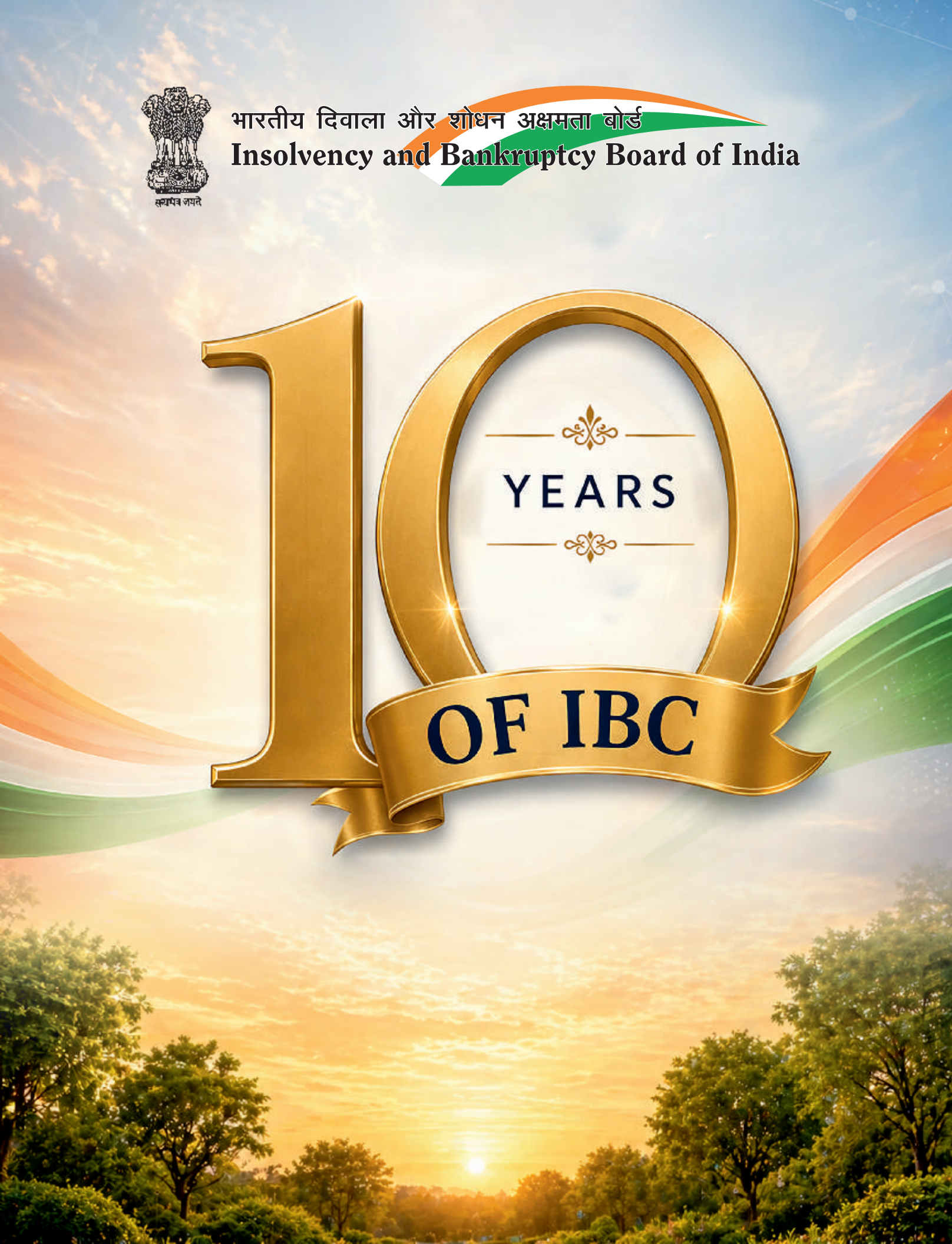
सत्यमेव जयते
भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India
10
YEARS
OF IBC

# 10 Years of IBC

## 2026

**Insolvency and Bankruptcy Board of India**

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# PREFACE

The introduction of the Insolvency and Bankruptcy Code, 2016 constituted a defining moment in the evolution of India's economic governance and financial sector architecture. Celebrated as a watershed reform, the Code was enacted with the objective of consolidating and modernising the fragmented insolvency framework in the country. It promised to move beyond an era marked by significant erosion of enterprise value, where prolonged delays spanning several years resulted in assets being sold piecemeal and little or no value being attributed to the investment made in establishing the going concern, often leaving creditors to recover only a few paise on the rupee. In response, the Code sought to establish a coherent, creditor-driven, and time-bound mechanism for the resolution of financial distress and insolvency, emphasising efficiency, corporate revival, and value maximisation. In doing so, it fundamentally reoriented the relationship between debt, enterprise, and accountability within the Indian economy.

A decade since its enactment, the Code has emerged not merely as a legislative reform, but as an institutional transformation with far-reaching implications for credit markets, corporate behaviour, investor confidence, and economic efficiency. Its implementation has improved recovery mechanisms, encouraged responsible borrowing and lending practices, and reinforced confidence in India's financial and legal systems. Equally, the jurisprudence evolving around the Code has contributed to the development of a robust and dynamic insolvency ecosystem that continues to adapt to emerging economic realities and stakeholder expectations.

This is evident from the fact that, as of March 2026, 1,419 has yielded resolution plans. The resolution process has facilitated realisation of over ₹ 4 lakh crore for creditors. This realisation to the creditors is 95% and 167% as against their fair and liquidation value, respectively. Further, till March 2026, a total of 8,987 cases have been admitted, with 7,102 reaching closure. Of these closed cases, while 4,099 companies- around 58% of these closures were successfully rescued, another 3,003 cases culminated in liquidation. Among the rescued entities, 1,388 cases were closed on account of appeal, review, or settlement; 1,292 were withdrawn. Notably, around 42% of the cases that ended with resolution plans had previously been with the Board for Industrial and Financial Reconstruction or were defunct, underscoring the Code's role in facilitating the revival of financially distressed enterprises.

The Code has also played a significant role in fostering credit discipline and strengthening repayment culture among borrowers. The deterrent effect of the Code is evident from the fact that more than 30,000 cases filed before the National Company Law Tribunal were resolved at the pre-admission stage through withdrawals, involving amounts estimated at nearly ₹ 14 lakh crore. These settlements demonstrate the extent to which the Code has altered debtor-creditor dynamics by encouraging timely resolution of financial stress outside formal insolvency proceedings. Importantly, in the absence of such settlements and withdrawals, the gross Non-Performing Asset ratio of the banking sector would likely have remained substantially higher than the reported level of 2.1% as of September 2025, compared to nearly 11.8% in 2017, as noted in the Reserve Bank of India's *Report on Trend and Progress of Banking in India*.

India's insolvency regime has also witnessed strengthening through improved recovery outcomes, faster resolution timelines, and greater creditor empowerment. *S&P Global Ratings* upgraded India's insolvency framework from 'Group C' to 'Group B', recognising improvements in the efficiency of the domestic resolution and recovery ecosystem. Average recovery rates have increased from nearly 15–20% in the pre-IBC period to around 30% post-IBC, while resolution timelines have reduced from nearly 6–8 years to about 2 years under the Code.

The continued effectiveness of the Code is also reflected in the Reserve Bank of India *Report on Trends and Progress of Banking in India 2024–25*, which identifies the Code as the most effective mechanism for recovery of stressed assets. Of the total recoveries of ₹ 1.04 lakh crore made by Scheduled Commercial Banks through various channels, nearly ₹ 0.54 lakh crore, accounting for about 52.4% was realised through the IBC process. The report further notes that recovery rates under IBC improved to 36.6% in 2024–25 from 28.3% in the previous year, highlighting the growing effectiveness of the insolvency framework in addressing stressed assets and contributing to the reduction in gross non-performing assets.

The IBC has been instrumental in reshaping debtor–creditor behaviour, a point also underscored by the IIM Bangalore study on its behavioural impact. The study has observed a marked improvement in credit behaviour following the implementation of the IBC. In particular, the proportion of loan accounts transitioning from the 'Overdue' to the 'Normal' category has steadily increased between 2018 and 2024, reflecting improved borrower discipline. This behavioural shift was also reflected in a sharp reduction in the average number of days an account remained overdue, which declined from 248–344 days to just 30–87 days.

A study undertaken by Indian Institute of Management Ahmedabad (2025) on resolved firms under IBC highlights the significant post-resolution revival of businesses. The study observes substantial improvements across key operational and financial indicators during the five-year period following resolution. Average sales of resolved firms increased by nearly 89%, while asset turnover ratios improved by around 131%, indicating enhanced operational efficiency and business recovery. The average capital expenditure rose by approximately 106% in five years after, reflecting renewed investment and economic viability. The study further notes a remarkable increase in the aggregate market valuation of resolved listed entities, which rose from nearly ₹ 2.8 lakh crore to about ₹ 9 lakh crore over five years, signalling strengthened investor confidence and improved long-term growth prospects following successful resolution.

The ten-year milestone of the IBC offers an important occasion for reflection, assessment, and renewed imagination. It invites a deeper consideration of the transformative impact of the insolvency framework on India's financial and institutional landscape, while also encouraging constructive engagement with the challenges that accompany a maturing insolvency regime. As India progresses towards the aspiration of *Viksit Bharat 2047*, the continuing evolution of an efficient and resilient insolvency system will remain indispensable to sustaining entrepreneurship, preserving productive capital, deepening financial stability, and promoting responsible economic growth

It is against this backdrop that the present commemorative volume, *"10 Years of IBC"*, has

been curated. Bringing together contributions from seventeen eminent personalities including policymakers, jurists, regulators, academicians and distinguished practitioners, the publication presents a rich and multidimensional engagement with the journey of the Code over the last decade. The articles contained herein reflect diverse experiences and perspectives on the conceptual foundations, jurisprudential developments, institutional innovations, implementation challenges, and future pathways of India's insolvency framework.

This publication is being released on the occasion of the commemorative event on 28th May 2026, marking ten years of the Code's transformative contribution to India's economic reform journey. The occasion is both reflective and aspirational: reflective in acknowledging the remarkable progress achieved through collective institutional endeavour, and aspirational in envisioning the future contours of a more responsive, efficient, and globally respected insolvency ecosystem.

We convey our deep appreciation to all the distinguished contributors whose experience and insights have enriched this volume. We also acknowledge the invaluable role played by the judiciary, regulators, financial institutions, insolvency professionals, academicians, industry participants, and policymakers in shaping the evolution of the insolvency regime in India. It is hoped that this publication will serve not only as a record of a decade of transformative reform, but also as a substantive intellectual resource for researchers, practitioners, policymakers, and future scholars engaged with the continuing development of insolvency law and practice in India.

**Mr. Ravi Mital**
Chairperson
Insolvency and Bankruptcy Board of India

# ACKNOWLEDGMENT

The Insolvency and Bankruptcy Code, 2016 completes a decade of its transformative journey as a landmark reform that has reshaped the insolvency ecosystem in India. Over the past ten years, the Code has evolved into a robust, dynamic, and forward-looking legal framework that has significantly strengthened the credit architecture, fostered a culture of timely resolution, and enhanced investor confidence. Its ability to adapt to emerging challenges while maintaining the delicate balance between stakeholders stands as a testament to the collective resolve and institutional commitment behind its implementation.

This publication, brought out to commemorate "10 Years of the Insolvency and Bankruptcy Code", is a reflection of the collective efforts, commitment, and vision of policymakers, regulators, adjudicating authority, insolvency professionals, financial institutions, academicians, industry representatives, and market participants who have played a significant role in shaping India's insolvency and restructuring framework.

The collective contribution of all regulated entities, adjudicating authority, market participants, and stakeholders in strengthening institutional capacity and fostering trust in the insolvency process is gratefully acknowledged.

I would also like to place on record my special thanks to Shri Ravi Mital, Chairperson, IBBI, for his constant guidance, leadership, and encouragement, which have been invaluable in shaping this publication. My sincere appreciation for the dedicated efforts of the team at the Insolvency and Bankruptcy Board of India in bringing out this publication. In particular, I express my gratitude to Shri Ravinder Maini, Executive Director; Shri Shiv Anant Shanker, Chief General Manager; Ms. Namisha Singh, Assistant General Manager; and Ms. Anjali Priya, Research Associate, whose commitment, meticulous efforts, and unwavering diligence have been instrumental in conceptualising and compiling this volume. Their professionalism and attention to detail have ensured that this publication meaningfully captures the essence of the Code's decade-long journey. I would also like to express my sincere gratitude to the senior management and other officers of the IBBI for their invaluable contribution to the successful implementation and evolution of the Insolvency and Bankruptcy Code.

It is my earnest hope that this publication will serve as a useful resource for policymakers, practitioners, researchers, and all stakeholders, while also inspiring continued dialogue and innovation in strengthening the insolvency framework in the years to come. May the coming decade of the Code be as impactful, progressive, and transformative as the remarkable journey of its first ten years.

**Dr. Bhushan Kumar Sinha**
Whole Time Member
Insolvency and Bankruptcy Board of India

# 01 TEN YEARS OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016: A DECADE OF TRANSFORMATION IN INDIA'S INSOLVENCY RESOLUTION REGIME

**Justice Ashok Bhushan**
**Chairperson, National Company Law Appellate Tribunal**
**Former Judge, Supreme Court of India**

## ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC/Code), has been one of the most transformative economic reforms in India's recent history. The year 2016 marked a watershed moment in India's economic history, shifting the credit paradigm from a "debtor-in-possession" to a "creditor-in-control" regime for distressed corporate entities seeking insolvency resolution. As we commemorate the tenth anniversary of this transformative legislation, this paper reflects on the evolution of the insolvency ecosystem under IBC's regime.

Conceived to consolidate and amend laws relating to insolvency resolution of corporate persons, partnership firms, and individuals, the Code has fundamentally altered the credit culture of the nation. Over the past decade, the IBC has evolved through legislative amendments, judicial pronouncements, and institutional strengthening. This write up reflects upon the journey of the IBC over ten years, examining its evolution, implementation, achievements, challenges, and future trajectory.

Drawing upon judicial precedents, legislative amendments, and empirical data, this paper highlights the emergence of a creditor-driven, time-bound resolution framework that has improved recovery rates, strengthened credit discipline, and enhanced investor confidence. It also critically examines persistent challenges such as delays in resolution, capacity constraints, valuation concerns, and the need for cross-border and group insolvency frameworks.

The paper concludes by outlining the future trajectory of the Code, emphasizing the importance of institutional strengthening, legislative refinement, and technological integration in ensuring that the IBC continues to serve as a robust pillar of India's economic architecture.

## INTRODUCTION: THE IMPERATIVE FOR REFORM

1. As the Chairperson of the National Company Law Appellate Tribunal (NCLAT), the author is privileged to reflect on the transformative decade since the enactment of the IBC. Introduced on 28$^{th}$May, 2016 and brought into force in a phased manner from December 2016, the IBC marked a paradigm shift from the fragmented, debtor-friendly, and protracted insolvency regime of the pre-2016 era.

2. Before the enactment of the Code, India's insolvency framework was fragmented and inefficient. Multiple laws governed insolvency and debt recovery, including: The Sick Industrial Companies (Special Provisions) (SICA) Act, 1985, The Recovery of Debts Due

to Banks and Financial Institutions (RDDBFI) Act, 1993, The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, provisions relating to winding up under the Companies Act 1956 and 2013, and personal insolvency provisions under the Presidency-towns Insolvency Act, 1909 & Provincial Insolvency Act, 1920.

3. These erstwhile legal frameworks suffered from several structural deficiencies relating to multiplicity of forums, prolonged litigation, absence of creditor control, weak recovery mechanisms, and erosion of asset value. As a consequence, insolvency proceedings often lasted several years, and recovery rates were extremely low.

4. Recognising these challenges, the Government of India undertook one of the most significant economic reforms in the legal domain through the enactment of the IBC in the year 2016. The Code introduced a unified and time-bound insolvency resolution process designed to maximize asset value and promote entrepreneurship. The Code represented a paradigm shift in India's insolvency philosophy. It introduced a creditor-driven process, strict timelines for resolution, and a modern institutional structure. Notably, a key institutional pillar of this framework was the creation of specialised adjudicatory bodies.

## INSTITUTIONAL ARCHITECTURE AND THE ROLE OF THE APPELLATE AUTHORITY

The success of the IBC lies in its robust institutional framework, comprising the National Company Law Tribunal (NCLT) as the Adjudicating Authority (AA), the National Company Law Appellate Tribunal (NCLAT) as the Appellate Authority, the Insolvency and Bankruptcy Board of India (IBBI) as the regulator, along with Insolvency Professionals (IPs), and Information Utilities (IUs).

Under the IBC, the NCLAT serves as the appellate authority for Orders passed by the NCLT, with respect to decisions relating to corporate insolvency resolution processes, liquidation proceedings, approval or rejection of resolution plans, claims of creditors, moratorium orders, avoidance transactions, and personal guarantor insolvency cases, amongst other related issues. The NCLAT's orders are appealable to the Supreme Court of India, thereby integrating it into the broader judicial hierarchy.

The NCLAT has, over the past decade, discharged its appellate jurisdiction with a focus on ensuring consistency and uniformity in interpretation, upholding the legislative intent of the Code, and balancing commercial considerations with legal principles. It has served as a critical link between the AA and the Supreme Court, contributing significantly to the development of a coherent insolvency jurisprudence.

## IMPLEMENTATION AND OPERATIONAL DYNAMICS

Below we will discuss some striking features of the IBC that makes it substantially different from its preceding regimes:

1. Time-bound Resolution Framework: The Code prescribes a timeline of 180 days (extendable up to 330 days). While practical constraints have led to deviations, the

framework has significantly improved resolution timelines compared to the pre-IBC era.

2. Creditor-in-Control Model: A distinct feature of the IBC is the transfer of control from the debtor to the creditors through the formulation of the Committee of Creditors (CoC). Further, judicial authorities have consistently upheld the primacy of the CoC's commercial wisdom, thereby upholding that the formation of the CoC, its duties, and privileges are justified in the eyes of law.

3. Market-driven Resolution: Lastly, the Code has facilitated competitive bidding processes, enabling the discovery of fair value through market mechanisms.

## EVOLUTION OF THE CODE: LEGISLATIVE AND REGULATORY MILESTONES

The IBC has evolved drastically through a series of amendments and regulatory refinements. Legislative refinements of the early phase (from 2016–2019) comprised mainly of stabilisation and foundational jurisprudence. Some of the key developments during this phase included the introduction of Section 29A to prevent backdoor entry of defaulting promoters, recognition of homebuyers as financial creditors, and the strengthening of the CoC.

The first five years of the IBC (2016–2021) were dedicated to establishing legal certainty. Landmark judgments such as S*wiss Ribbons*[1] and *Essar Steel*[2] reinforced the constitutional validity of the Code and established the "commercial wisdom" of the CoC as a cornerstone of the process.

The above phase included the consolidation phase (from 2020–2021) that corresponds to responding to economic stress. The beginning of this phase was marked by unprecedented challenging times for humanity when long phases of national lockdown were imposed due to the COVID-19 pandemic situation. On the insolvency resolution front, these tough times necessitated the suspension of the initiation of Corporate Insolvency Resolution Process (CIRP) under Section 10A.

These measures demonstrated the adaptability of the Code to unprecedented economic challenges. Moreover, little did we anticipate that this unprecedented crisis would catalyse one of the most significant technological revolutions in our justice delivery system. While the world withdrew into isolation, the sacred duty of dispensing justice could not be suspended. While the pandemic, proved to be disruptive, it presented a canvas upon which we reimagined our operational framework. This was the time when the NCLAT started with virtual court hearings, digitalisation of case files, and their record keeping. The hallowed corridors of justice, once resonant with the footsteps of advocates and litigants, transformed into virtual chambers where the pursuit of justice continued unabated.

In the latter half of the decade (2021–2026), the focus shifted toward expanding the Code's reach. In which we witnessed the introduction of the Pre-packaged Insolvency Resolution

[1] Swiss Ribbons v. Union of India (WRIT PETITION (CIVIL) NO. 99 OF 2018).

[2] Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others (CIVIL APPEAL NO. 8766-67 OF 2019).

Process (PPIRP) for Micro, Small, and Medium Enterprises (MSMEs) and the operationalization of provisions regarding Personal Guarantors to Corporate Debtors.

The period from 2022 onwards (the current ongoing phase), marks a continued chapter, which can be termed as the expansion phase, that makes a significant stride towards an overall maturity of the Code. Recent reforms and proposals are focusing on Cross-border insolvency mechanisms, Group insolvency frameworks, streamlining timelines, and reducing litigation.

An important concept that has been looked into is the concept of a "fresh start". This fresh start for a Successful Resolution Applicant (SRA) is vital for value maximization. Even recent rulings have clarified that once a resolution plan is approved, all "past ghosts"—including government dues and criminal liabilities of previous promoters—are extinguished. The IBC Amendment Bill, 2025, has now taken a significant step towards codifying this "Clean Slate" doctrine, providing legislative backing to our judicial stance in *Section 31* of the Code.

Another significant development in 2025 was the attempt at the legislative nullification of the *Vidarbha Industries*[3] ruling, bringing in the feature of mandatory admission, thereby bringing an end to discretion of the AA in the admission of a CIRP. As an Appellate Tribunal, there are often delays at the admission stage where NCLTs exercise their discretion in admitting cases. The 2025 Amendment has clarified that if a default is proven *via* Information Utility (IU) records, the AA must admit the case. This development, once ratified, will significantly streamline the entry point of the CIRP.

Further, there are many other significant changes in the pipeline pending by means of the IBC Amendment Bill, 2025, which awaits implementation. As such, the amendments in recent years reflect a shift from foundational development to systemic optimisation.

## JURISPRUDENTIAL DEVELOPMENT: KEY JUDICIAL PRINCIPLES

The jurisprudence under the IBC has evolved through landmark decisions of the Supreme Court and the NCLAT. A few important case laws that contributed in the development of the IBC jurisprudence are given below:

1. Commercial Wisdom of the CoC

In *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019)[4], the Supreme Court affirmed that the commercial decisions of the CoC are not subject to judicial review, except on limited grounds.

2. Objective of Value Maximisation

In *Swiss Ribbons*[5], the Court emphasised that the primary objective of the Code is resolution rather than liquidation.

[3] Vidarbha Industries Power Limited v. Axis Bank Limited (CIVIL APPEAL NO. 4633 OF 2021)

[4] Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others (CIVIL APPEAL NO. 8766-67 OF 2019).

[5] Swiss Ribbons v. Union of India (WRIT PETITION (CIVIL) NO. 99 OF 2018).

3. Pre-existing Dispute

In *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* (2017)[6], the Court laid down the test for determining the existence of a pre-existing dispute, thereby preventing misuse of the Code.

4. Limitation and Trigger of Insolvency

In *B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates* (2018)[7], the applicability of the Limitation Act, 1963, to IBC proceedings was affirmed.

5. Besides these, the more recent decisions in landmark cases have focused on:

- Preventing abuse of the insolvency process
- Clarifying the scope of the moratorium, and
- Addressing the interplay between IBC and other statutes

6. The NCLAT has served as the vanguard of the Code's implementation. One of the NCLAT's main roles has been to balance the "statutory timelines" with the "principles of natural justice." Moreover, in the last two years (2024 onwards), we have dealt with increasingly complex legal questions that go beyond simple debt and default.

## CASE STUDIES THAT DEMONSTRATE THE TREMENDOUS IMPACT OF THE IBC ON THE INDIAN CORPORATIONS

While there are a plethora of cases that have significantly impacted the country's corporations over the years, a quick walk through a select few of them will give a fundamental understanding of the most important developments that have impacted the different industries over the years.

1. Essar Steel[8] Resolution: The resolution of Essar Steel stands as a landmark case that demonstrated the effectiveness of competitive bidding and reinforced the primacy of the CoC.

2. Bhushan Steel and Power[9]: This case highlighted the successful turnaround of distressed assets and, consequently, the significant recovery for creditors.

3. Real Estate Insolvencies: Over the years, in various cases, but first held in *Pioneer Urban Land and Infrastructure Ltd. and Anr. v. Union of India and Ors*[10]., the inclusion of homebuyers as financial creditors has strengthened consumer protection and enabled collective representation.

[6] CIVIL APPEAL NO. 9405 OF 2017.

[7] CIVIL APPEAL NO.23988 OF 2017.

[8] Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others (CIVIL APPEAL NO. 8766-67 OF 2019).

[9] Kalyani Transco v. Bhushan Power & Steel Ltd. (CIVIL APPEAL NO. 1808 OF 2020).

[10] WRIT PETITION (CIVIL) NO. 43 OF 2019.

4. Jet Airways[11]: This case highlighted aviation challenges (*inter alia*, depreciating slots and cross-border claims) but demonstrated judicial innovation before the eventual liquidation order, informing future sector-specific rules.

## EMPIRICAL ASSESSMENT: ACHIEVEMENTS OVER THE DECADE

Over these 10 years, the IBC has evolved through legislative amendments, robust judicial interpretation by the Supreme Court, NCLAT, and NCLT benches, and regulatory stewardship by the IBBI. By end of December last year, 8,833 corporate debtors had been admitted into the CIRP, with 6,954 achieving closure: 1,376 through approved resolution plans. By September 2025, realization of approximately INR 12 lakh crore in aggregate debt resolution and about INR 4 lakh crore in creditor recoveries (about 170% of liquidation value and up to 94% of fair value in resolved cases), alongside 1260 settlements/withdrawals and 2,952 liquidations, have been noted. Based on this data, it can be observed that comparatively the recovery rates under the IBC have significantly exceeded those under the earlier mechanisms.

On the front of behavioural impact, the IBC has instilled credit discipline, wherein a large number of cases have been settled before admission, and where borrowers are incentivised to avoid insolvency proceedings. As per the details shared by IBBI, till December 2024, over 30,000 cases involving defaults of INR 13.78 lakh crore were resolved pre-admission, fostering unprecedented credit discipline.

Further, there has been a considerable reduction in Non-Performing Assets (NPAs) as the Code has played a critical role in addressing stressed assets in the banking sector, contributing to improved balance sheets. Gross NPA's of scheduled commercial banks plummeted to a multi-decadal low of 2.58% by March 2025, with IBC contributing 48.1% of total bank recoveries.

Moreover, on the global level, in the 'Ease of Doing Business' front, India's ranking in resolving insolvency improved significantly following the implementation of the IBC.

However, despite triumphs, systemic issues remain. Timelines average 597 - 713 days, with 78% ongoing CIRPs exceeding 270 days. Recoveries average 32.8% of admitted claims while liquidation yields dismal single-digit percentages, sometimes about 3-5%. As such, the journey of the Code has been marked by systemic challenges—primarily judicial delays and value erosion.

## CHALLENGES AND STRUCTURAL LIMITATIONS

Despite much advancement, a lot of challenges and limitations still plague the process, which include the following:

1. Delays in Resolution: Despite statutory timelines, delays persist due to judicial backlog, complex litigation, and multiplicity of proceedings. Notably, what needs to be realised is that significant delays in resolution lead to value erosion.

[11] State Bank of India & Ors. v. The Consortium of Murari Jalan and Florian Fritsch & Anr. (Civil Appeal 5023-5024 of 2024).

2. Haircuts and Value Erosion: High haircuts in certain cases have raised concerns regarding valuation methodologies and market participation.

3. Capacity Constraints: The increasing caseload has strained the capacity of NCLTs and NCLAT, and highlighted the need for institutional strengthening.

4. Litigation and Judicial Intervention: Wherein frequent challenges to resolution processes have impacted timelines.

5. Avoidance Litigation: Similar to the above-discussed point, disputes over "preferential" or "fraudulent" transactions (Sections 43-66) often stall the main resolution process.

6. Absence of a cross-border and group insolvency framework: The lack of a comprehensive cross-border and group insolvency regime remains a significant gap.

## SECTORAL AND ECONOMIC IMPACT

The IBC has had an unprecedented impact on the economy as a whole, including widespread behavioural changes. While some key features have already been discussed, below, the author will discuss some other important changes brought forth by the implementation of the Code in key different sectors:

1. The Banking Sector: The IBC has strengthened creditor confidence and facilitated the resolution of large stressed assets.

2. MSMEs: The introduction of PPIRP has provided a flexible mechanism tailored to MSMEs.

3. Real Estate: The recognition of homebuyers has improved accountability and enhanced transparency

## ROLE OF THE NCLAT IN SHAPING INSOLVENCY JURISPRUDENCE

Over the past decade, the NCLAT has harmonised divergent interpretations. Besides developing principles governing admission, resolution, and liquidation, it has also addressed complex questions relating to jurisdiction and statutory interplay. Its decisions have contributed to predictability in insolvency proceedings and strengthening of the rule of law.

## THE ROAD AHEAD: FUTURE TRAJECTORY OF THE IBC

Having discussed different aspects of the journey of the IBC in the past one decade, it is time that we discuss the future path of the Code. Looking ahead to 2026-2030, the IBC must mature into a fully digital, predictive, and globally aligned regime. Main priorities include:

1. Quick adoption of the 2025 Bill with adoption of the Select Committee inputs.

2. Strengthening of the post-resolution monitoring mechanism (statutory timelines, accountability for SRA).

3. Sector-specific developments: Aviation/insurance frameworks; enhanced PIRP/MSME incentives.

4. International benchmarking: Achieving and maintaining the target of top-20 in the World Bank's list of countries in resolving insolvency.

5. Adoption of a robust cross-border insolvency framework: Adoption of a framework based on the UNCITRAL Model Law is imperative.

6. Development of a strong and efficient group insolvency framework, wherein a coordinated approach for corporate groups is necessary to address interconnected entities.

7. Institutional strengthening and capacity augmentation: By increasing the capacity of adjudicating authorities and enhancing the insolvency profession. Steps include establishing dedicated insolvency benches and allowing more IPs/valuers to practice.

8. Increased technological integration: Marked by digitalisation of processes, AI-assisted case management, and use of data analytics for monitoring.

9. Reduction in litigation through clear statutory provisions and streamlined procedures.

## CONCLUSION

The Code has, over the past decade, transformed India's insolvency resolution regime. It has introduced a time-bound resolution framework, a creditor-driven process, and a market-oriented approach. This evolution has improved India's global ranking dramatically.

From the perspective of the Appellate Authority, the journey of the IBC reflects the evolution of a modern insolvency system grounded in efficiency, transparency, and fairness.

While some challenges remain, the continued refinement of the Code through legislative amendments, judicial interpretation, and regulatory oversight ensures that it remains responsive to emerging economic realities.

As India moves forward, the IBC is poised to play a pivotal role in strengthening financial stability, enhancing investor confidence, and supporting sustainable economic growth.

The first decade of the IBC is a testament to the transformative power of legal reform. This decade of the IBC has been about survival and standardization. The next decade will determine its consolidation as a global benchmark in insolvency law. However, the second decade must be about speed and sophistication. One of our primary goals as the Appellate Tribunal is to ensure that the "330-day" limit becomes a reality rather than an aspiration. Lastly, the author suggests moving towards a regime where liquidation is a rare exception and "rescue" is the absolute norm.

To conclude, the author extends his support and best wishes to the IBBI for its efforts to bring out a commemorative publication on the evolution, implementation, achievements, challenges, and future trajectory of the country's insolvency framework, on the occasion of the completion of a decade of the successful implementation of the IBC. He thanks IBBI for presenting him with the opportunity to contribute.

# 02 LANDMARK INSOLVENCY LAW JUDGEMENTS ACROSS JURISDICTIONS: LESSONS FOR THE INDIAN INSOLVENCY FRAMEWORK

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## INTRODUCTION

Insolvency law plays a critical role in modern economies by balancing competing interest of creditors, debtors and the broader financial system. Jurisdictions such as the UK, USA, Singapore and Australia have developed advanced insolvency regimes through legislation and judicial interpretation. Landmark judgements in these jurisdictions have brought out clear principles regarding creditor priority, restructuring mechanisms, fraudulent transactions, cross border insolvency and corporate revival.

India's Insolvency and Bankruptcy Code, 2016 (IBC/Code) represents a major structural reform to ensure time-bound resolution of distressed companies through asset value maximization, equitable treatment of creditors and efficient revival/liquidation of distressed firms. While the Code has evolved over time since its legislation through judicial interpretation, important insights can be drawn from global jurisprudence through various landmark judgments from UK, USA, Singapore and Australia. The following are few such learnings:

## UNITED KINGDOM

### *Sian Participation Corp v. Halimeda International Ltd [2024] UKPC 16*

The issue for consideration was regarding what is the correct approach to determining a creditor's winding-up/liquidation application pursuant to section 162(1)(a) of the Insolvency Act 2003 in circumstances where the debt is disputed and is subject to an arbitration agreement?

The Privy Council held that:

> 122. (1) …the correct test for the court to apply to the exercise of its discretion whether to make an order for the liquidation of a company where the debt on which the application is based is subject to an arbitration agreement or an exclusive jurisdiction clause and is said to be disputed is whether the debt is disputed on genuine and substantial grounds.

The decision in *Sian Participation Corp v. Halimeda International Ltd* significantly clarified the interaction between arbitration agreements and insolvency proceedings. The Privy Council rejected the earlier approach derived from *Salford Estates (No 2) Ltd v. Altomart Ltd (No 2) [2014] EWCA Civ 1575* which suggested that winding-up petitions should ordinarily be stayed in favour of arbitration where the underlying contract contained an arbitration clause. Instead, the Court reaffirmed the traditional insolvency law principle that the court must determine whether the debt is disputed on genuine and substantial grounds. If no such dispute exists,

the insolvency petition may proceed notwithstanding the presence of an arbitration agreement. This ruling prevents debtors from relying on arbitration clauses merely as a tactical device to delay or avoid insolvency proceedings.

**Differences between the UK and the Indian regime:**

Firstly, a point of difference which can be inferred between the Indian and UK law is that under the Code, a "pre-existing dispute" is primarily examined before the admission of a section 9 application (operational debt), and not before liquidation. A genuine dispute, existing before the demand notice, bars the initiation of the Corporate Insolvency Resolution Process (CIRP), but once CIRP is admitted, the focus shifts to resolution or liquidation. There is no requirement to check whether a pre-existing dispute exists before initiation of liquidation proceedings as liquidation is a further stage which comes after CIRP fails under IBC. This judgment of UK privy council talks about examining existence and grounds of dispute before liquidation/winding up proceedings.

Secondly, the existence of a dispute in this UK judgment was taken in case where a term loan was advanced to the appellant which was not repaid and later on the respondent applied to have liquidators appointed in respect of the appellant on the basis that it was both cash flow and balance sheet insolvent. In India, existence of pre-existing dispute is not seen in respect of financial debt or applications under Section 7 IBC. Pre-existing dispute is not relevant once debt and default are proved as regards financial creditors. The adjudicating authority (AA) is required to examine and satisfy itself that a financial debt exists and a default has occurred. In *Innoventive Industries Ltd. v. ICIC Bank*, (2018) 1 SCC 407, the Court stated that a pre-existing dispute, relevant under Section 9, has no bearing on a financial creditor's application under section 7 IBC. This was reiterated in *Catalyst Trusteeship Ltd. v. Ecstasy Realty (P) Ltd.*, 2026 SCC OnLine SC 300, decided on 24.02.2026.

Thirdly, this Sian judgment of UK privy Council requires the debt to be "genuinely disputed on substantial grounds". The *Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd.*, judgement of the Hon'ble Supreme Court of India, emphasizes that the tribunal's role at the admission stage is primarily confined to verifying the existence of default and, in the case of operational creditors, determining whether a plausible pre- existing dispute exists. The tribunal does not undertake an extensive adjudication of the merits of the dispute at this stage. If there exists a pre- existing dispute, the application is liable to be dismissed.

Under Indian law, following the judgment of Hon'ble Supreme Court in *K. Kishan v. Vijay Nirman [Civil Appeal No. 21825 of 2017]*, it is required to see whether there is existence of a dispute between the parties or the record of pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such a dispute. The Court observed that the alarming result of an operational debt contained in an arbitral award for a small amount of say, two lakhs of rupees, cannot possibly jeopardize an otherwise solvent company worth several crores of rupees. In such a case the company can challenge the arbitral award passed against it, and this challenge can be said to dispute the award. Such a case would clearly come under Mobilox Innovations (supra), being a case of a pre- existing ongoing dispute between the parties.

Reliance was also placed on a judgment of Singapore High Court, referred to *in LKM Investment Holdings Pte Ltd. vs. Cathay Theatres Pte Ltd. [2000] SGHC 13*, where it was held that the practice directions referred are in situations where the debt needs to be bona fide disputed, which is not the situation under our (Indian) Code. Hence, the Court cannot agree that a pending proceeding challenging an award or decree of a tribunal or Court would not make the debt contained therein a debt that is disputed.

Under Indian law, it is only seen whether the dispute is real and not "spurious, hypothetical or illusory". In Indian insolvency regime, the factor that is taken in consideration is the existence of a pre-existing dispute. It is seen that the debt can be said to be disputed but delving into the dispute to consider whether it is based on genuine and substantial grounds is not done under Indian law. Under Indian law, if it is found that the pre-existing dispute is fake or illusory then the application is admitted but if it is concluded that the pre-existing dispute exists, the application is rejected. However, these facts depend on case to case basis and the AA has to decide on the facts and circumstances of each case.

It was clearly stated in the case of *K. Kishan v. Vijay Nirman* [Civil Appeal No. 21825 of 2017], that a higher threshold for determining the authenticity and grounds of the pre-existing dispute need not be adopted in India as it has been made clear by the judicial precedents such as Mobilox Innovations that the insolvency process, particularly in relation to operational creditors, cannot be used to bypass the adjudicatory and enforcement process of a debt contained in other statutes and therefore higher threshold of genuineness of debt will have no application to the situation under our code.

So, if a dispute is pending in arbitration, it will still be considered as a pre- existing dispute. A higher threshold of genuineness can be misused by creditors to bypass other recovery mechanisms and get insolvency proceedings started. Insolvency proceedings cannot be used as a shortcut to recover disputed debts.

All these differences are significant in nature between the Indian and UK Law. The difference in threshold of pre-existing dispute look only like a slight point of difference, however, a significant one as this is one of the factors which determines whether an application is admitted or not. However, in contrast to India, in UK, the law was changed post *Sian judgment* and it is necessary that the dispute is not based on substantial grounds for the petition to be admitted in the UK.

To put it more clearly, while the United Kingdom and British Virgin Islands approaches lean towards protecting creditor rights and enforcing arbitration agreements, the Indian approach emphasizes corporate revival and debtor protection.

The United Kingdom, post-Sian, requires substantial evidence of a genuine dispute, while India maintains a stricter threshold for admitting insolvency petitions to prevent misuse. In the United Kingdom, courts play a more active role in determining the validity of insolvency petitions by examining whether the dispute is based on substantial grounds.

Indian insolvency regime can take this inference from the law of the United Kingdom. Ensuring that the dispute is based on substantial grounds can prevent rejection of some petitions which are genuine and the debtor is hiding behind the veil of a pre-existing dispute which is

not significant in nature as the objective of IBC is corporate restructuring. However, the Indian law ensures that IBC does not become a mere tool for debt repayment and the objective of IBC is not lost.

## UNITED STATES OF AMERICA

The United States enacted Chapter 15 of the Bankruptcy Code in 2005 to implement the UNCITRAL Model Law on Cross-Border Insolvency.

Chapter 15 establishes procedures for recognition of foreign insolvency proceedings and provides mechanisms for cooperation between courts and insolvency administrators in different jurisdictions.

### A. Lehman Brothers Holdings Inc. (2008)

The collapse of Lehman Brothers during the global financial crisis represents one of the most complex cross-border insolvency cases in history. Lehman Brothers was a global investment bank with operations in more than forty countries. When the firm filed for bankruptcy protection in the United States in September 2008, numerous parallel insolvency proceedings were initiated in other jurisdictions.

These proceedings involved hundreds of subsidiaries and thousands of creditors located around the world.

Key legal issues included:

- coordination between multiple insolvency proceedings across jurisdictions
- recognition of foreign insolvency representatives
- allocation and distribution of assets located in different countries.

U.S. courts adopted a cooperative approach consistent with Chapter 15 principles. Courts worked closely with foreign insolvency administrators and courts in other jurisdictions to coordinate asset recovery and creditor claims. The Lehman Brothers case demonstrated the importance of structured cross- border insolvency mechanisms and highlighted the effectiveness of modified universalism in managing multinational insolvency proceedings.

### B. In re Fairfield Sentry Ltd. (2013)

This case emerged from the collapse of investment funds linked to the Bernard Madoff Ponzi scheme. Fairfield Sentry Limited, incorporated in the British Virgin Islands, entered liquidation proceedings in that jurisdiction. Liquidators sought recognition of these proceedings in the United States to pursue recovery of assets.

The central issue was whether the liquidation proceedings constituted a foreign main proceeding under Chapter 15.

The U.S. court recognized the liquidation as a foreign main proceeding after determining that the debtor's Centre of Main Interests (COMI) was located in the British Virgin

Islands.

The decision clarified the interpretation of COMI and strengthened the legal predictability of cross-border insolvency recognition.

**Key Takeaways**

In the United States, Chapter 15 proceedings have become increasingly common in multinational restructurings. Courts have emphasized the importance of judicial cooperation and recognition of foreign proceedings to maintain stability in global financial markets.

In India, the insolvency of Videocon Industries involved several group companies with interconnected financial structures and international operations.

The key issue concerned the management of insolvency proceedings for multiple related entities across jurisdictions. Indian courts permitted substantive consolidation of insolvency proceedings for several Videocon group companies to facilitate a coordinated resolution process.

The case highlighted the increasing complexity of multinational insolvency proceedings in India and underscored the need for a comprehensive cross- border insolvency framework.

## SINGAPORE

**Re Compuage Infocom Ltd [2025] SGHC 49**

Compuage Infocom Ltd. (CIL) was incorporated under the Companies Act 1956 and continued to exist under the Companies Act 2013. CIL's business was in the Information Technology (IT) and mobility distribution services sector with a branch office in Singapore i.e. Compuage Infocom Limited (CIL SG), which was registered in Singapore as a foreign entity. This branch's management and control were based in India. On 02.11.2023, the National Company Law Tribunal, Mumbai Bench (NCLT) passed an Order of initiation of the CIRP against CIL.

Originating Application No 1272 of 2024:

OA 1272 was filed on 05.12.2024 seeking access to CIL SG branch's HSBC Singapore bank statements and substitution of Mr. Jain, the RP, as authorised signatory, since the bank required recognition of the NCLT orders. The application also sought vesting and repatriation of CIL's Singapore assets to enable orderly administration under the CIRP, in line with Section 25(2)(a) of the IBC.

**Issues and corresponding Findings**

**A.** *Whether the CIRP is a foreign proceeding*

The court relied on Article 2(h) of the UNCITRAL Model Law which defines a "foreign proceeding" as a collective judicial or administrative proceeding in a foreign State under an insolvency law, where the debtor's property and affairs are subject to court supervision for reorganisation or liquidation. Reliance was also placed on *Ascentra Holdings, Inc (in official liquidation) and others v. SPGK Pte Ltd [2023] 2 SLR 421*, wherein the Court of Appeal identified five cumulative requirements: the proceeding must be collective; must be judicial or administrative in a foreign State; conducted under an

insolvency law; subject the debtor's property and affairs to court control or supervision; and be for reorganisation or liquidation.

The CIRP satisfied these requirements. It was collective as it concerned all creditors, involved public notice and claim submission, formed a CoC, ensured fair treatment (including safeguards for operational creditors), imposed a moratorium, and addressed all assets through a resolution plan managed by the RP.

It was a judicial or administrative proceeding in India, supervised by the NCLT, which qualified as a "foreign court" under the Model Law. Although quasi-judicial, the NCLT exercised adjudicative powers, including admitting CIRP applications, imposing moratoriums, appointing RPs, and approving or rejecting resolution plans.

The CIRP was conducted under the Code, a law relating to insolvency; CIL's property and affairs were subject to the NCLT's control or supervision, particularly through its authority to approve resolution plans; and the process was aimed at reorganisation, with liquidation as a last resort. Accordingly, the Court held that CIRP fulfilled all five requirements and qualified as a foreign proceeding under the Model Law.

**B.** *Whether Mr. Jain is a foreign representative, and whether he was appointed under the CIRP*

Under Article 2(i) of the Model Law, a foreign representative refers to a person or body authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding. Mr. Jain fell within this definition, as he was appointed and authorised by the NCLT order to act as the RP in the CIRP and to administer CIL's reorganisation. Accordingly, he was recognised as a foreign representative under Article 2(i) of the Model Law.

**C.** *Whether the procedural requirements under Art 15 of the Model Law have been satisfied.*

Article 15 requires certain procedural conditions before recognition may be sought. These were satisfied: the application was supported by certified copies of the two NCLT orders (Art 15(2)(a)) and a statement identifying all known foreign and Singapore insolvency proceedings concerning CIL (Art 15(3)). As the documents were in English, Article 15(4) was also complied with.

**Recognition under Article 17 and COMI**

Recognition as a main foreign proceeding under Article 17(2)(a) requires a foreign proceeding in the State of the debtor's Centre of Main Interests (COMI). Having found the CIRP to be a foreign proceeding, the issue was whether CIL's COMI was in India.

In *Re Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener) [2019] 4 SLR 1343*, the court held that COMI is determined as at the date of the recognition application. Under Article 16(3) of the Model Law, there is a rebuttable presumption that COMI is located at the debtor's registered office. This may be displaced by objectively ascertainable factors, particularly those relevant to creditors and their credit decisions. Such factors must reflect permanence and prioritise actual operations over formal legal structures. Key considerations include the location of the company's control and management, clients, creditors, employees, and

operations, as well as third-party dealings and the governing law. CIL's registered office was in India and no evidence displaced this presumption. Its control and management, principal assets, operations, and the majority of creditors were based in India, with only one Singaporean creditor having filed a claim. Accordingly, CIL's COMI was in India, and the CIRP was recognised as a foreign main proceeding under Article 17(2)(a).

Additional relief was sought to repatriate CIL's Singapore assets, subject to Article 22(1), which requires adequate protection of creditors' interests. Although Singapore creditors had been notified, invited to submit claims, and could participate in the CIRP with assurances of equal treatment under any resolution plan, the court declined to grant repatriation at this stage. Singapore creditors must first be given notice and an opportunity to object, consistent with protecting local creditor interests and the spirit of modified universalism, including the considerations reflected in Section 250(3)(c)(i) of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA). It emphasised that such relief would be contingent upon prior leave of the Singapore HC.

## INDIA AND THE CROSS-BORDER INSOLVENCY REGIME

Within IBC, the framework to deal with cross-border insolvency was limited and fragmented. Sections 234 and 235 of the IBC provided a framework for cross border insolvency. Section 234 of the IBC permitted the Central Government to enter into bilateral agreements for cross-border insolvency enforcement, but in the absence of any such agreements, it remained ineffective. Section 235 allowed Indian courts to request assistance from foreign courts.

The Judiciary had tried to bridge this gap. For example, the Hon'ble NCLAT has given its nod to offshore proceedings in the *Jet Airways insolvency case* by allowing the Administrator, Rocco Mulder, appointed by Dutch Insolvency Court (Trustee) to participate in the meetings of the Committee of Creditors (CoC).

As Indian companies increasingly hold assets and liabilities across jurisdictions, an effective recognition and coordination mechanism becomes essential to preserve value, protect creditors, and ensure orderly resolution. Strengthening cross-border insolvency cooperation not only aligns India with global best practices but also enhances creditor confidence, improves ease of doing business, and reinforces the IBC's core objective of time-bound and value-maximising resolution. The 2025 IBC Amendment Bill, is a welcome step in this path which has tried to correct the lacuna of the existing statute by inserting a new Section 240 C which:

- Empowers Government to prescribe rules for cross-border insolvency.
- Allows modifications/exceptions to IBC/CompaniesAct for implementation.
- Rules subject to Parliamentary procedure before notification

**Key Takeaways**

The decision of the Singapore High Court in *Re Compuage Infocom Ltd* marks a significant milestone for the Indian insolvency regime, demonstrating that proceedings under the IBC are capable of receiving structured recognition and judicial respect in mature foreign jurisdictions applying the UNCITRAL Model Law. The recognition of CIRP as a foreign main

proceeding, and of the Resolution Professional as a foreign representative, affirms the credibility, collective nature, and court-supervised character of India's insolvency framework. At the same time, the measured approach adopted by the Singapore Court in safeguarding local creditor interests highlights the importance of balanced cross-border coordination. For India, this case underscores the urgent need for a comprehensive statutory cross-border insolvency framework beyond the limited scope of sections 234 and 235 and lends strong practical support to the proposed reforms under section 240C. As Indian businesses continue to operate globally, such developments strengthen the IBC's position as a modern, internationally compatible insolvency regime capable of facilitating value maximisation across borders.

## AUSTRALIA

### *Bryant v. Badenoch Integrated Logging Pty Ltd [2023] HCA 2*

This case involved a dispute between the liquidators of Gunns Limited (the appellants/ Gunns) and its former supplier, Badenoch Integrated Logging Pty Ltd (the respondent/ Badenoch), over whether a series of payments made to Badenoch constituted "unfair preferences" under the Corporations Act 2001. The High Court was primarily tasked with deciding whether the "peak indebtedness rule", a principle allowing liquidators to maximize the value of preference claims by selecting the highest point of debt as the starting date for a claim, remained part of Australian law.

**Issues in the Matter**

The High Court identified three primary questions for determination:

**A.** *Is the "peak indebtedness rule" part of or excluded by Section 588FA(3) of the Corporations Act?.*

**B.** *What is the proper approach to determining whether a transaction is an "integral part of a continuing business relationship" for commercial purposes?.*

**C.** *Were specific payments (identified as payments 1–2 and 5–11) part of a continuing business relationship, and when did that relationship officially end?.*

**Facts of the Case**

Gunns and Badenoch entered into an agreement in 2003 for Badenoch to supply timber harvesting and hauling services. From 2010, Gunns' revenue declined significantly. By late 2011, it was in a "parlous financial position," and by March 2012, it had halted share trading. Gunns was determined to have been insolvent as of 30 March 2012. Despite Gunns' frequent late or partial payments, Badenoch continued to supply services. Badenoch occasionally ceased supply for short periods and issued demands but continued working with Gunns until August 2012, when they agreed to terminate the contract and transition to a new contractor.

Liquidation: Liquidators were appointed on 25 September 2012. They sought to recover payments made to Badenoch between 26 March and 25 September 2012 as voidable unfair preferences.

**Analysis and Findings Arrived by the Court**

A. *Rejection of the Peak Indebtedness Rule*

The Court found that Section 588FA(3) is a statutory embodiment of the "running account principle", which looks at the "ultimate effect" of all transactions in a series. The Court held that the peak indebtedness rule is not part of the Act. A liquidator cannot arbitrarily choose the starting point of peak debt. The "single transaction" created by the running account must include all transactions in the relationship that occurred during the prescribed period.

B. *Test for a "Continuing Business Relationship"*

The Court clarified that determining whether a transaction is an "integral part of a continuing business relationship" is an objective factual inquiry. The "business character" of a transaction is determined by the whole evidence of the actual business relationship. While the parties' subjective intent is relevant, it is not determinative. The key is whether the payment was intended to induce further supply (looking forward) or merely to discharge old debt (looking backward).

Decision

Because the net indebtedness of Gunns to Badenoch actually increased between 30 March 2012 (the date of insolvency) and the end of the relationship in July 2012, the deemed "single transaction" resulted in no unfair preference to Badenoch. Consequently, the appeal by the liquidators was dismissed.

## COMPARISON OF PROVISIONS BETWEEN IBC, 2016 AND THE CORPORATIONS ACT 2001

### A. Preferential Transactions (Section 43 of IBC)

In India, "unfair preferences" are addressed under section 43 of the IBC, 2016, which deals with Preferential Transactions.

**The Australian Case:** Discusses Section 588FA, which defines an unfair preference as a transaction where a creditor receives more than they would in a winding up.

**Relation to IBC:** Section 43 of the IBC uses a similar "betterment" test. A transaction is preferential if it puts a creditor in a beneficial position compared to the distribution of assets under the "liquidation waterfall" (Section 53).

### B. Ordinary Course of Business vs. Continuing Business Relationship

The Australian High Court spent considerable time analyzing whether transactions were an "integral part of a continuing business relationship". The Australian Case held that if payments are made to induce further supply rather than just to pay old debt, they might be protected as part of a "running account".

Section 43(3) of the IBC provides an exception for transactions made in the "ordinary course of the business or financial affairs" of the corporate debtor or the transferee.

The Australian court's "objective factual inquiry" into the "business character" of transactions provides a persuasive logic that Indian practitioners might use to argue whether a series of payments fits the "ordinary course" exception.

**C. Look-Back Periods**

The Australian Case: Dealt with a 6-month "relation-back period". With respect to IBC, 2016 The IBC has specific "relevant periods" (look-back periods) under Section 43(4): which is Two years for transactions with related parties and One year for transactions with unrelated parties.

**D. The "Running Account" and Net Effect Principle**

The core of the Australian ruling was the rejection of the "peak indebtedness rule" in favor of the "ultimate effect" of a running account. The Australian Case: Ruled that a liquidator cannot "cherry-pick" the highest point of debt to maximize a claim; they must look at the net effect of all transactions in the relationship during the relevant period. With Relation to IBC: While the IBC does not explicitly mention "running accounts" in the context of preference claims, Resolution Professionals (RPs) and Liquidators in India often challenge individual payments. This Australian precedent suggests a more holistic approach, looking at whether the creditor also provided value (goods/services) back to the debtor during the same period, thereby not harming the "general body of creditors".

**Key Takeaways**

**A. Adoption of "Net Effect" Approach:** Preferential transactions should be evaluated based on the overall effect of the entire trading relationship, rather than isolating individual payments within the suspect period. Though this duty in the Indian insolvency practice is being followed and practiced by RPs as they determine the Preferential transaction.

**B. Reject Arbitrary Transaction Selection:** Resolution Professionals should not be permitted to select transactions in a manner that artificially maximizes recovery through avoidance proceedings.

**C. Recognize "Running Account" or Continuous Business Relationships:** Payments made within an ongoing commercial relationship intended to maintain the supply of goods or services should receive greater statutory protection.

## CONCLUSION

Evolution of insolvency law across the UK, US, Singapore and Australia demonstrates the importance of judicial interpretation in shaping effective restructuring frameworks. India's insolvency regime has already transformed the country's landscape of insolvency. However, continued refinement is necessary. Lessons from global jurisprudence suggest that India should:

**A.** **Develop a robust statutory framework for cross-border insolvency:** With Indian businesses increasingly operating across jurisdictions, there is a pressing need to move beyond the present ad hoc mechanisms. A comprehensive adoption of internationally recognised principles, particularly those reflected in the UNCITRAL Model Law, would enable smoother recognition of foreign proceedings, coordinated asset administration, and greater certainty for global creditors.

**B.** **Strengthen institutional mechanisms for recognition and cooperation**: The recognition of Indian insolvency proceedings by foreign courts underscores the growing credibility of the IBC framework. At the same time, it highlights the importance of formalising processes relating to recognition of foreign representatives, determination of COMI, and protection of local creditors. Legislative backing to such mechanisms would ensure consistency and reduce reliance on judicial improvisation.

**C.** **Adopt a commercially realistic approach to avoidance transactions:** Instead of examining transactions in isolation, a broader assessment of the entire commercial relationship between the debtor and creditor would provide a fairer outcome. Recognising the concept of continuing business relationships and focusing on the overall financial impact can prevent artificial inflation of avoidance claims and better reflect genuine business practices.

**D.** **Maintain a balance between creditor rights and resolution objectives:** Comparative jurisprudence demonstrates that an effective insolvency regime must carefully reconcile enforcement rights with the goal of preserving enterprise value. India's framework should continue to evolve in a manner that discourages recovery-driven misuse while promoting genuine restructuring efforts.

**E.** **Promote certainty and consistency in adjudication:** A predictable legal environment is critical for investor confidence. Continued development of clear and consistent judicial standards under the IBC will not only reduce litigation but also enhance the efficiency and credibility of the insolvency process.

By incorporating these lessons, India can move towards an even more efficient and globally competitive insolvency system.

# 03 RESOLVING FAILURE, RENEWING CAPITAL: TEN YEARS OF THE INSOLVENCY AND BANKRUPTCY CODE

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Economic progress requires the ability to create and sustain successful enterprises and the institutional capacity to resolve failure when it occurs. In dynamic economies, the process of creative destruction is as important as the process of creation. Joseph Schumpeter described capitalism as a system in which economic renewal depends upon the continuous replacement of obsolete firms, technologies, and business models by more productive ones, calling this process "the perennial gale of creative destruction".[1] Economies that do not enable the exit of unviable firms risk slowing the reallocation of capital and labour towards more productive uses. Insolvency law serves as an economic institution that facilitates the timely resolution of distress and the efficient redeployment of resources.[2]

The importance of such institutional capacity has been discussed in international empirical research. OECD studies show that countries with efficient insolvency systems experience faster reallocation of capital and labour from weak to stronger firms, higher productivity growth, and lower persistence of "zombie firms" that continue operating despite being unable to service debt sustainably.[3] Where insolvency systems are delayed or fragmented, distressed firms may survive for prolonged periods through repeated refinancing, thereby locking financial resources into low-productivity activity and suppressing credit availability for emerging enterprises.[4] The economic cost of delayed resolution is not confined to creditors and borrowers. It extends to the broader macroeconomy through weaker investment efficiency, slower credit deepening, and reduced dynamism in enterprise formation.[5]

Cross-country experience suggests that the design of insolvency frameworks plays an important role in shaping economic resilience and the efficiency of capital allocation. The United States Bankruptcy Code provides an example of how restructuring mechanisms can support enterprise value preservation while enabling creditor coordination through time-bound processes.[6] The

[1] Schumpeter, Joseph A. *Capitalism, Socialism and Democracy*. Harper & Brothers, 1942, https://archive.org/details/in.ernet.dli.2015.190072/mode/1up

[2] World Bank. *Principles for Effective Insolvency and Creditor/Debtor Regimes*, 2021, https://documents1.worldbank.org/curated/en/391341619072648570/pdf/Principles-for-Effective-Insolvency-and-Creditor-and-Debtor-Regimes.pdf

[3] Adalet McGowan, Müge, Dan Andrews, and Valentine Millot. OECD Working Paper No. 1529, *The Walking Dead? Zombie Firms and Productivity Performance in OECD Countries*. OECD Publishing, https://one.oecd.org/document/ECO/WKP(2017)31/en/pdf

[4] OECD. *Design of Insolvency Regimes Across Countries*. OECD Economics Department Working Papers, 2018. https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/09/design-of-insolvency-regimes-across-countries_96709843/d44dc56f-en.pdf

[5] IMF. *Orderly and Effective Insolvency Procedures*. International Monetary Fund Legal Department, https://www.imf.org/external/pubs/ft/orderly/

[6] United States Bankruptcy Code, Chapter 11, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics

United Kingdom's framework emphasises the rescue of viable firms while maintaining creditor confidence through enforcement processes.[7] Germany's post-2012 insolvency reforms strengthened early restructuring and creditor participation, aligning with broader evidence that timely restructuring frameworks improve recovery outcomes and preserve viable firms.[8] Singapore's insolvency framework consolidates provisions for corporate restructuring, insolvency, and individual bankruptcy, including provisions applicable to foreign companies, reflecting an emphasis on integrated and predictable insolvency processes.[9]

Prior to 2016, India's insolvency framework was characterised by multiple parallel legal channels with differing objectives, jurisdictions, and timelines, including the Sick Industrial Companies Act (SICA), Debt Recovery Tribunals (DRTs), SARFAESI proceedings, and company law processes. In many instances, the multiplicity of proceedings was associated with delays in resolution, during which enterprise value tended to diminish, affecting recovery outcomes and timely recognition of financial distress.[10] By the middle of the previous decade, rising stressed assets in the banking system had begun to constrain fresh credit expansion and dampen investment, particularly in sectors dependent on long-gestation financing.[11]

The Insolvency and Bankruptcy Code, enacted in 2016 (IBC/Code),[12] marked a structural departure from the earlier regime by introducing a unified, time-bound framework with specialised adjudication and a central role for creditors in the resolution process. By shifting control from the debtor to creditors upon default, the Code made the loss of control a credible consequence. This institutional design strengthened the role of creditors in the resolution process and contributed to a more disciplined credit environment. The Code's significance extends beyond resolution statistics, reflecting a broader shift in how financial distress is addressed within the credit system.

Over the past decade, the Code has evolved from being viewed primarily as an exit mechanism into a broader institutional framework shaping credit discipline, risk pricing, and economic accountability. Its relevance lies not only in resolving failures after they occur, but also in influencing economic conduct before distress becomes irreversible. In that sense, the Code belongs to the same family of reforms that modern economies use to strengthen market credibility by ensuring that failure, when it occurs, is resolved in a manner that preserves economic value, allocates loss transparently, and permits productive renewal. The evolution of the Code has been accompanied by a series of targeted legislative refinements that have strengthened its functioning in practice. Early amendments addressed gaps in the framework by clarifying the role of resolution applicants and by strengthening creditor primacy through

[7] UK Insolvency Act 1986, Administration Procedure, https://www.legislation.gov.uk/ukpga/1986/45/contents

[8] European Commission Staff Working Document (2016), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016SC0357

[9] Ministry of Law, Singapore. *Insolvency, Restructuring and Dissolution Act reforms, 2018*, https://sso.agc.gov.sg/Act/IRDA2018

[10] Ministry of Finance, Government of India (2015). *Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design,* https://dea.gov.in/files/other_reports_documents/BLRCReportVol1_04112015.pdf

[11] Economic Survey 2016-17, Volume I, Chapter 4 on Resolving India's Twin Balance Sheet Problem. Ministry of Finance, Government of India, https://www.indiabudget.gov.in/budget2017-2018/es2016-17/echapter.pdf

[12] Insolvency and Bankruptcy Code, 2016. Government of Indiam, https://ibbi.gov.in/legal-framework/act

disqualification provisions for defaulting promoters seeking to regain control of distressed assets.[13] As the system matured, subsequent amendments focused on reducing delays and improving resolution outcomes, including the introduction of a statutory outer time limit for completing the insolvency resolution process.[14] The scope of the framework was also expanded to address sector-specific challenges, with homebuyers in real estate projects being recognised as financial creditors, thereby strengthening their position within the creditor committee.[15] In 2021, pre-packaged insolvency processes for MSMEs were introduced, reflecting a shift towards greater flexibility and the recognition that formal insolvency proceedings must be complemented by hybrid restructuring mechanisms.[16]

Most recently, the Insolvency and Bankruptcy Code (Amendment) Act 2026[17] represents a further stage in the evolution of the framework, drawing on the past decade of implementation experience. The need for refinement emerged from practical challenges observed in the operation of the Code, including delays arising in the resolution process, increased complexity in resolving large and interconnected firms, and gaps in areas such as cross-border and group insolvency. The amendment seeks to address these issues through provisions that enable creditors to intervene earlier, with structured oversight designed to preserve enterprise value before significant deterioration. It also introduces enabling provisions for addressing group insolvency and cross-border insolvency. Several provisions seek to strengthen procedural discipline, including time-bound admission, clearer timelines for the approval of resolution plans and the disposal of matters, and clarification of aspects related to distribution under resolution plans. The evolution of these provisions reflects a continuing process of institutional calibration in response to operational experience. Their effectiveness, however, is closely linked to the strength of the institutional architecture through which they are implemented.

## THE INSTITUTIONAL ARCHITECTURE

The Code rests on four institutional pillars, namely insolvency professionals, insolvency professional agencies, information utilities, and adjudicating authorities. The Insolvency and Bankruptcy Board of India (IBBI), established under the Code, functions as the apex regulatory body overseeing all service providers and processes.[18] Building this infrastructure from the ground up in a short period after enactment has itself been a significant undertaking, involving the development of regulatory frameworks, professional standards, examination systems, and information architecture. As of 2026, the ecosystem comprised over 4,600 registered insolvency professionals,[19] multiple insolvency professional agencies, the National e-

[13] Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, https://ibbi.gov.in/legal-framework/act

[14] Insolvency and Bankruptcy Code (Amendment) Act, August 2019, https://ibbi.gov.in/uploads/legalframwork/630af836c9fbbed047c42dbdfd2aca13.pdf

[15] Insolvency and Bankruptcy Code (Second Amendment) Act, August 2018, https://ibbi.gov.in/legal-framework/act

[16] Insolvency and Bankruptcy Code (Amendment) Ordinance, April 2021, https://ibbi.gov.in/uploads/legalframwork/04af067c22275dd1538ab2b1383b0050.pdf

[17] The Insolvency and Bankruptcy Code (Amendment) Act, 2026, https://ibbi.gov.in/uploads/legalframwork/2026-04-07-115842-i5nsk-7ed69ef2a4d23a8b0d472cc0fcd55e79.pdf

[18] Insolvency and Bankruptcy Code, 2016, Section 188 (establishment of IBBI), https://ibbi.gov.in/uploads/legalframwork/2021-11-16-173128-h609x-e942e8ee824aa2c4ba4767b93aad0e5d.pdf

[19] IBBI List of Registered Insolvency Professionals (IPs), https://ibbi.gov.in/ips-register/view-ip/1

Governance Services Limited as the operational information utility, over 6,100 registered valuers,[20] and the National Company Law Tribunal (NCLT) as the primary adjudicating authority with benches across the country. This ecosystem represents a measurable addition to India's institutional infrastructure for markets. The information utility plays a role that extends beyond record-keeping. Maintaining electronic records of financial contracts and defaults helps verify claims and reduces information asymmetry between debtors and creditors. The availability of authenticated default records enables a structured approach to pre-admission proceedings, reducing the scope for disputes over the existence of default at the admission stage.

## A DECADE OF OUTCOMES

The Code came into operational effect for corporate insolvency in India from December 1, 2016. In the years that followed, the volume of filings grew steadily as awareness and institutional familiarity among creditors increased. By the end of September 2022, a total of 5,893 Corporate Insolvency Resolution Processes (CIRPs) had been admitted under the Code, of which approximately 67 per cent had been closed.[21] By March 2024, the cumulative number of corporate debtors whose matters had been disposed of under the Code, including pre-admission withdrawals and settlements, had reached 31,394, involving underlying defaults of approximately ₹ 13.9 lakh crore.[22] This captures a dimension of the Code's operation that is often underappreciated, as a substantial number of cases are settled between creditors and debtors before formal admission into the CIRP. The existence of an operational Code alters the negotiating dynamic even before a case is formally filed, as the prospect of initiating insolvency proceedings provides creditors with a credible enforcement mechanism.

Beyond volumes, recoveries under the IBC have consistently exceeded those under predecessor mechanisms. Reflecting these improvements, S&P Global Ratings upgraded India's insolvency regime from 'Group C' to 'Group B' in December 2025. S&P noted that average recovery rates have improved from 15-20 per cent under the pre-IBC regime to approximately 30 per cent, while resolution timelines have reduced from 6-8 years to about 2 years.[23] A research study commissioned by IBBI and conducted by the Indian Institute of Management Ahmedabad found a significant increase in the profitability of resolved firms. Resolved firms also demonstrated improvement in operating cycles and other activity ratios relative to their pre-resolution position.[24] A complementary analysis by the Indian Institute of Management Bangalore, utilising nearly six crore corporate loan filings recorded between 2018 and 2024 on the National e-Governance Services Limited's data infrastructure, documented the broader credit discipline effects of the Code. The study found that the average duration of overdue corporate loan accounts fell sharply between 2018 and 2024, and documented a decline in gross non-performing assets over the same period, reflecting a structural improvement in

[20] IBBI List of Registered Valuers (RVs, https://ibbi.gov.in/service-provider/rvs

[21] Economic Survey 2022-23

[22] Economic Survey 2023-24

[23] PIB dated 29 January 2026, https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2220002&reg=3&lang=2

[24] IBBI, Report of Study on Effectiveness of the Resolution Process: Firm Outcomes in the Post-IBC Period, conducted by Indian Institute of Management Ahmedabad, August 2023, https://ibbi.gov.in/uploads/resources/f42521011e8c39d591a8f1b439a80da7.pdf

credit discipline that extends well beyond the population of formally resolved cases.[25]

## THE ROAD AHEAD

The Code prescribes timelines for CIRP, reflecting the principle that time-bound resolution is integral to preserving enterprise value, which erodes under prolonged conditions of ownership and management uncertainty. In practice, completion timelines have remained well above the statutory limit. For instance, cases closed in FY 2024-25 had an average duration of more than 2 years. One of the main constraints underlying these delays is the adjudicating authority's capacity. A large stock of cases is pending before the National Company Law Tribunal across its benches, while vacancies in sanctioned Member strength and a bench network that has not expanded in proportion to case volumes have compounded these pressures. The supply of insolvency professionals presents another constraint, with only about half of those registered holding an active authorisation to make assignments.[26]

As noted in the Economic Survey 2024-25, a continuously evolving and improving IBC framework is important to achieving sustained growth over the next decade, and India's growth aspirations require capital to operate at the frontiers of productivity and efficiency.[27] An insolvency system that resolves distress predictably and within defined timelines enables more accurate risk pricing, supports the development of credit markets for a wider range of borrowers, and facilitates the reallocation of capital and labour towards more productive uses. Sustained improvement in insolvency outcomes depends not only on the Code but also on the broader institutional environment within which it operates, including contract enforcement, secured transactions law, valuation standards, information infrastructure, and secondary markets for distressed assets.

Ten years from its enactment, the IBC has delivered a structural shift in how financial distress is resolved in India, from a fragmented, debtor-protective regime to a unified, creditor-driven process. What the second decade requires is the consolidation of institutional capacity, procedural efficiency, and extended coverage to allow the framework to operate consistently at the scale and within the timelines its design intends. The legal architecture is in place. The quality of outcomes will depend on how resolutely the supporting infrastructure responds to the evolving demands of the amended code.

[25] IBBI, Research Study on Behavioural Impact of the Insolvency and Bankruptcy Code, conducted by Indian Institute of Management Bangalore (May 2025), https://ibbi.gov.in/uploads/whatsnew/1af62766c26f90a284c1fa996faa6e97.pdf

[26] Economic Survey 2025-26

[27] Economic Survey 2024-25

# 04 FROM INCEPTION TO IMPACT: A DECADE OF IBC

**M. Nagaraju**
**Secretary, Department of Financial Services**

The year 2026 marks a pivotal milestone in India's economic history as the Insolvency and Bankruptcy Code, 2016 (IBC/Code) completes a decade of implementation. Conceived as a carefully structured reform to consolidate and amend the laws relating to reorganisation and insolvency resolution, it has matured into the cornerstone of India's financial stability. Over the past ten years, the IBC has reshaped the country's credit culture, instilled discipline in financial markets, and reinforced investor confidence in the resilience of the Indian economy. More than a legal framework, it has transformed corporate behavior, redefined the architecture for recovery and resolution of financial distress, and catalyzed the creation of a transparent, resilient and a mature financial ecosystem. This fundamental shift has left a profound and lasting imprint on the nation's economic trajectory, positioning India as a model for reform-driven financial stability in the global arena.

## THE IMPERATIVE NEED FOR IBC

Prior to the enactment of the IBC, India's insolvency framework was fragmented across multiple legislations, including the Sick Industrial Companies Act (SICA), 1985, the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI Act), 1993 (since renamed as the Recovery of Debt and Bankruptcy (RDB) Act), and provisions under the Companies Act, 2013. This patchwork of laws often resulted in overlapping jurisdictions, procedural inconsistencies, and prolonged litigation, thereby undermining the efficiency of insolvency resolution.

SICA was enacted on the recommendations of the Tiwari Committee in the year 1985 to facilitate the revival of financially distressed companies, with implementation overseen by the Board for Industrial and Financial Reconstruction (BIFR). RDB Act was enacted to strengthen the then existing debt recovery mechanism. Subsequently in 2002, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) was enacted, empowering lenders to enforce security interests without court intervention and thereby improving recovery from secured assets. However, these reforms were largely recovery-centric, focusing on dues collection rather than establishing a comprehensive insolvency framework. This narrow approach often led to delays, overlapping jurisdictions, and procedural inefficiencies. Resolution timelines were excessively long, frequently stretching from 4 to 10 years or more. The fragmented and complex system underscored the need for a consolidated and unified framework. While asset recovery was emphasized, the revival of distressed companies remained neglected. What was required was a holistic mechanism capable of resolving corporate distress efficiently, preserving economic value, and balancing the interests of all stakeholders.

### Birth of IBC

Recognizing the urgent need for a modern and unified insolvency framework, the Bankruptcy

Law Reforms Committee (BLRC), chaired by former Law Secretary T.K. Viswanathan, submitted its landmark report and recommended creation of a single, consolidated insolvency law with a strict time-bound resolution process designed to prioritize the revival of viable businesses and maximize asset value. Acting on these recommendations, the IBC was drafted and introduced in Parliament. Passed in 2016, the IBC established a creditor-driven insolvency process that fundamentally reshaped India's approach to resolving corporate distress.

## DEBTOR'S PARADISE TO CREDITOR-LED DISCIPLINE

The advent of IBC marked a decisive break from the debtor-in-possession era, ushering in a new creditor-in-control model. This historic transformation not only redefined the dynamics between creditors and debtors but also instilled greater credit discipline, encouraged responsible borrowing, and strengthened confidence in India's financial system. At its core, the IBC introduced a powerful deterrent of "the fear of losing the company", which fundamentally altered the balance of power between Indian banks and corporate borrowers, ensuring accountability and reshaping the culture of corporate finance.

### Pillars of IBC Framework

IBC laid the foundation for a professionalized insolvency ecosystem, designed to administer, regulate and resolve cases in a time-bound manner. At the heart of this framework, the Insolvency and Bankruptcy Board of India (IBBI/Board) was established as the regulator, ensuring uniform standards and acting as a watchdog over the entire system. Equally important was the coordinated functioning of key institutions, *viz* Adjudicating Authorities (NCLT and NCLAT), Insolvency Professionals, Insolvency Professional Agencies, and Insolvency Utilities. Together, they created a structured and transparent ecosystem that enabled timely resolution of distressed companies, strengthened stakeholder confidence, and ensured that insolvency proceedings were conducted with fairness, accountability and efficiency.

## COMMITTEE OF CREDITORS: A CORNERSTONE OF IBC

One of the most transformative reforms IBC was the shift of decision-making authority from defaulting borrowers to the Committee of Creditors (CoC). This marked a fundamental departure from earlier laws and placed creditors firmly at the center of the insolvency process. The new framework recognized the *commercial wisdom* of creditors, granting them decisive voting rights to determine the fate of distressed enterprises. The empowerment of the CoC became a cornerstone of the IBC architecture, ensuring collective decision-making and enforcing adherence to timelines for resolution. By prioritizing creditor control, the Code not only streamlined insolvency proceedings but also reinforced accountability, discipline, and efficiency in India's financial system.

## TIMELINESS AS THE CORE OF IBC

One of the most revolutionary features of IBC is its insistence on timelines for resolving corporate distress. The law mandates completion of the Corporate Insolvency Resolution Process (CIRP) within 180 days, extendable up to a maximum of 330 days. By embedding these deadlines into the framework, IBC created a structured and highly effective mechanism for preserving asset value, strengthening financial discipline, and improving credit recoveries.

Yet, this time-bound resolution, while transformative in principle, remains one of the most challenging aspects in practice. Infrastructural limitations, institutional bottlenecks, and procedural complexities often hinder adherence to timelines. As a result, despite its promise, the strict deadlines continue to test the resilience of India's insolvency ecosystem, highlighting the need for ongoing reforms and capacity building to fully realize the IBC's vision of swift and efficient resolution.

## EVOLVEMENT OF IBC

Over the past decade, IBC has emerged as a transformative reform in India's financial and legal landscape, consolidating fragmented insolvency laws into a unified, time-bound framework that fosters transparency, accountability, and efficiency in debt and corporate resolution. Since its enactment in 2016, IBC has undergone continuous refinement through legislative amendments, institutional strengthening and judicial interpretation, addressing practical challenges while broadening its scope to include homebuyers, personal guarantors as well as micro, small and medium enterprises (MSMEs) through pre- packaged insolvency mechanism. By shifting from a debtor-friendly regime to a creditor- driven system, IBC has improved recovery rates, enhanced investor confidence and laid the foundation for a more resilient and robust economy.

## FORMATIVE PHASE OR LAYING THE GROUNDWORK (2016-18)

In its formative years, IBC laid the groundwork for a professional insolvency ecosystem by introducing regulations for insolvency professionals, their agencies, and information utilities. Several large corporate insolvency cases were referred to NCLT, which played a pivotal role in testing the effectiveness of the new framework. IBC fundamentally altered debtor—creditor dynamics, compelling accountability from those who had previously relied on legal shields, and triggering a significant behavioral shift, where the mere threat of losing control over their enterprises prompted many debtors to settle dues swiftly. This is evident from the fact that, up to March 2025, more than thirty thousand applications for initiation of CIRPs involving aggregate amount of ₹ 13.78 lakh crore were resolved at pre-admission itself. The resolution of major distressed companies during this period helped establish the credibility of the insolvency ecosystem, facilitated the revival of stressed assets, and highlighted the need for targeted amendments to further strengthen the IBC's effectiveness.

### Key Amendments during the period

IBC witnessed landmark amendments in its early years that reshaped the insolvency landscape. The introduction of section 29A in 2017 barred defaulting promoters from bidding for their own companies, ensuring that mismanagement and deliberate defaults carried serious consequences while instilling confidence among new investors and strengthening the fairness of the resolution process. In 2018, homebuyers were recognized as financial creditors, empowering them to initiate insolvency proceedings against defaulting developers, to have representation in the CoC and to vote on resolution plans, which enhanced the credibility of IBC in the real estate sector. Despite these critical amendments, the foundation stage of IBC faced challenges such as limited tribunal capacity, delays in admission and resolution, and the need for judicial clarification on complex legal interpretations. The lessons

learned during this phase provided valuable insights that shaped subsequent refinements and strengthened the overall insolvency framework.

## TRANSITION PHASE: FROM CHALLENGES TO STABILITY (2018-2022)

This phase tested the resilience of IBC, particularly during the COVID-19 pandemic and marked its evolution into a more resilient framework. Several landmark judicial pronouncements and legislative amendments reshaped the insolvency landscape. The Essar Steel judgment (2019) affirmed the supremacy of the CoC's commercial wisdom, firmly establishing the creditor-in-control model, while the Swiss Ribbons case (2019) upheld the constitutional validity of IBC, strengthening its legitimacy. Other rulings such as Pioneer Urban, Manish Kumar, and Virbhadra Industries clarified creditor rights, treatment of operational creditors, and distribution of resolution proceeds. On the legislative front, reforms included the mandate to complete CIRPs within 330 days, resolution plans being binding on all stakeholders and introduction of section 32A, which granted immunity to corporate debtors from past offences to encourage investor participation. Threshold requirements for insolvency filings against real estate developers were also introduced to prevent misuse.

The outbreak of COVID-19 in 2020 posed unprecedented challenges, prompting protective measures such as raising the minimum default threshold to ₹ 1 crore, suspension of initiation of CIRP through insertion of section 10A and the launch of the Pre-Packaged Insolvency Resolution Process (PPIRP) in 2021 for MSMEs, enabling them to negotiate debt restructuring while retaining business control. Collectively, the period from 2019 to 2022 witnessed a blend of judicial clarity, legislative innovation, and regulatory reforms that stabilized the insolvency ecosystem, enhanced investor confidence, and strengthened IBC as a robust and flexible mechanism for addressing corporate stress.

Between 2019 and 2022, the insolvency framework underwent significant transformation through a combination of legislative amendments, landmark judicial pronouncements, and regulatory refinements. These developments addressed practical challenges, streamlined processes, and collectively strengthened IBC, shaping it into a more stable, flexible, and effective mechanism for resolving corporate distress.

## TRANSFORMATIVE PHASE (2023-26)

By this period, the Code had entered its most transformative phase. The emphasis shifted toward enhancing efficiency, minimizing delays, and aligning India's insolvency framework with global best practices. Regulatory initiatives by the Insolvency and Bankruptcy Board of India (IBBI) focused on improving transparency, strengthening institutional standards, and streamlining the role of insolvency professionals to ensure more effective resolution processes. With sustained efforts from all stakeholders, the gross non-performing assets ratio of Scheduled Commercial Banks declined to 2.05% in September 2025.

In line with the objective of IBC to revive a viable business and to maximise the value of corporate debtors, all-out efforts have been made to encourage resolution rather than the liquidation. It may also be observed from the fact that in 2017-18, for every 1 CD resolved, 5

CDs would go into liquidation which has steadily improved to nearly 10 CDs being resolved against 5 CDs going to liquidation.

The years 2023—24 were marked by key amendments aimed at operational efficiency and strengthening the IBC ecosystem. Recognizing the complexities of real estate insolvencies, the introduction of 'project-wise' resolution addressed sector-specific challenges and safeguarded the interests of homebuyers. Regulatory changes also carved out targeted exemptions under the moratorium (Section 14) for high-value sectors such as aviation and mining. The role of the CoC was reinforced to enhance procedural clarity and to reduce delays, while the 2024 amendments empowered the Stakeholders' Consultation Committee in critical matters, thereby strengthening the liquidation process.

A landmark Supreme Court judgment in 2024 further shaped the trajectory of the IBC. It underscored the limitations of the existing framework, highlighted the importance of strict adherence to timelines in resolving distressed assets, and emphasized the urgent need for a comprehensive cross-border insolvency regime in India.

## THE PROPOSED LEGISLATIVE AMENDMENTS

Since its inception, the IBC has undergone six amendments, accompanied by 122 amendments to Regulations, to address structural gaps and to enhance the efficiency of the resolution process. These amendments reflect the dynamic nature of the IBC and the continuous efforts to refine the insolvency framework.

To address the evolving structural changes and complexities particularly in Group Insolvency and Cross Border Insolvency, the Seventh Amendment, *i.e.* the Insolvency and Bankruptcy (Amendment) Bill, 2025 was introduced in the Lok Sabha in August 2025. The Bill seeks to strengthen the framework by aligning it with global best practices and to address persistent challenges such as delays in resolution and liquidation, low recovery rates, increasing complexities and litigations. Proposed changes are expected to make insolvency proceedings more efficient, predictable and globally compatible.

Some of the salient features of the proposed amendment include, *inter alia,* the introduction of Group Insolvency, aimed at resolving cases involving multiple related entities within the same corporate group and streamlining the resolution of interconnected companies; the recognition of Cross-Border Insolvency to enable insolvency of companies with assets or creditors across jurisdictions; and institution of a Creditor-Initiated Insolvency Resolution Process to provide a creditor-driven mechanism to encourage quicker and more effective resolution. The proposed changes will also help in enforcing clear statutory timelines to reduce delays in admission, resolution, and liquidation, thereby preserving asset value, enhancing investor confidence, and balancing stakeholder interests. In addition, the Bill empowers Committee of Creditors to oversee the liquidation process to ensure faster decision-making and value maximization, and formally recognizes the Monitoring Committee to safeguard the interests of all stakeholders, thereby improving efficiency, transparency, and accountability within the insolvency framework.

## IMPACT AND LEGACY OF IBC

The enactment of IBC has significantly influenced the Indian economy over the past decade by strengthening the financial system and transforming the credit landscape. Prior to its introduction, the banking sector was burdened with rising Non-Performing Assets, particularly pertaining to high-value advances. Large corporate insolvencies such as Bhushan Steel, Essar Steel, and Jet Airways demonstrated the potential of the IBC framework to unlock value from distressed assets, with their resolution releasing stuck capital and redirected the same into the productive sectors, thereby driving growth and strengthening the overall economy.

Further, resolutions through IBC resulted in resolving the twin balance sheet crisis of banks and companies, reducing gross NPA ratio of banks to a multi-decadal low of 2.05%. Public sector banks achieved a record net profit of ₹ 1.41 lakh crore in FY 2023-24 and ₹ 1.78 lakh crore in FY 2024-25, reinforcing their strength and contribution to the economy.

In line with its objective, IBC, by keeping distressed firms as going concerns, preserved productive assets, protected employment, and maintained economic activity, with resolution-driven revival supporting long-term stability. A study by IIM Ahmedabad found that companies resolved under IBC experienced a 76% rise in revenues and a 130% increase in capital expenditure, underscoring its role in economic regeneration. It also instilled credit discipline, as the threat of losing control incentivized promoters to settle dues early, with number of borrowers clearing their debts even before CIRP admission, thereby fostering behavioral change and reinforcing credit discipline.

Equally significant has been the creation of a structured insolvency ecosystem, including dedicated tribunals, specialized benches, and the IBBI to regulate professionals, agencies, and utilities in a transparent manner. The framework has opened new opportunities for investors, asset reconstruction companies, and bad banks to acquire distressed firms through sales, mergers, and restructuring, ensuring better utilization of idle assets and greater investor participation. Looking ahead, the proposed amendments on group insolvency and cross-border insolvency are expected to deliver coordinated resolutions of interconnected companies and international cases, leading to improved recoveries, enhanced investor confidence, and a more resilient and efficient financial ecosystem.

# 05 10 YEARS OF IBC

**Challa Sreenivasulu Setty**
**Chairman, State Bank of India**

On 28 May 2026, India will mark ten years since the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC/Code), one of the most consequential financial sector reforms in the country's recent economic history. In the evolution of a modern financial system, certain policy interventions alter not only institutional frameworks but also the behavioural norms that govern economic activity. The IBC stands firmly in that category.

Over the past decade, the Code has evolved from a legislative response to a pressing financial challenge into a foundational pillar of India's credit architecture. It has redefined how financial distress is addressed, strengthened the enforceability of credit contracts, and introduced a new level of accountability in the use of borrowed capital.

From the perspective of the banking system, the significance of this reform is particularly profound. Banks sit at the heart of the financial intermediation process, channeling the savings of millions of households into investments that drive economic growth. When the mechanisms for resolving financial distress are weak or uncertain, the consequences extend well beyond individual borrowers or lenders as they affect the broader stability and efficiency of the financial system itself.

In this context, the IBC has played a truly transformative role. By establishing a credible and time-bound framework for insolvency resolution, it has restored confidence in the enforceability of credit, enabled banks to address legacy stressed assets, and strengthened the foundations of India's financial system.

The Code is often discussed primarily in terms of recoveries or resolution statistics. While these outcomes are important, they represent only part of the story. The deeper significance of the IBC lies in the way it has reshaped India's credit culture by reinforcing the principle that access to capital must be accompanied by responsibility, transparency, and discipline.

Ten years on, the experience of the Code offers an opportunity not only to reflect on the progress achieved but also to consider the next phase of institutional evolution needed to support India's rapidly expanding economy.

## THE INFLECTION POINT: WHY 2016 BECAME A TURNING POINT

To fully appreciate the significance of the IBC, it is necessary to recall the circumstances that led to its enactment.

By the middle of the last decade, India's financial system faced a serious structural challenge. A prolonged investment cycle had resulted in high levels of leverage across several capital-intensive sectors such as steel, power, infrastructure, and construction. At the same time, economic headwinds, regulatory delays, and project execution challenges impaired the repayment capacity of many borrowers.

The result was the well-known "twin balance sheet" problem i.e., stressed corporate balance sheets alongside rapidly rising non-performing assets (NPAs) in the banking sector.

Gross non-performing assets of scheduled commercial banks rose sharply, crossing 9% by March 2016 and eventually peaking above 11% by March 2018. For banks, the implications were significant. Capital became tied up in stressed assets, credit growth slowed, and the ability of the financial system to support investment was constrained.

Equally challenging was the absence of a unified and time-bound insolvency framework.

Before the IBC, India's insolvency regime was fragmented across multiple laws and forums. The Recovery of Debts Due to Banks and Financial Institutions Act,1993, led to the establishment of Debt Recovery Tribunals (DRTs). The SARFAESI Act, 2002, enabled secured creditors to enforce collateral without court intervention. The Sick Industrial Companies Act (SICA) and the Board for Industrial and Financial Reconstruction (BIFR) addressed industrial sickness, while liquidation processes were governed under the Companies Act.

Each of these frameworks served an important purpose and represented progressive reforms in their time. However, the overall system remained fragmented and often prolonged. Resolution processes frequently extended over several years, creditor coordination proved difficult, and the value of distressed assets deteriorated during extended legal proceedings. In many cases, borrowers continued to retain control of businesses even after prolonged default, reducing the prospects of meaningful restructuring.

From a banker's standpoint, this fragmentation posed a structural challenge. The lack of predictability in recovery outcomes affected credit pricing, risk assessment, and ultimately the willingness to lend to long-gestation sectors.

Recognising these systemic challenges, the Government of India constituted the Bankruptcy Law Reforms Committee in 2014 under the chairmanship of Dr. T. K. Viswanathan, former Union Law Secretary and a distinguished legal scholar and policy expert with over four decades of contributions to legislative drafting, governance, academia and public policy. The Committee undertook a comprehensive review of India's insolvency framework and articulated a modern approach centered on speed, creditor coordination, and value maximisation.

Its landmark recommendations laid the institutional foundations for a unified insolvency law. The enactment of the IBC in 2016 reflected a broad policy consensus on the need for structural reform in India's credit architecture, fundamentally altering the landscape of credit enforcement in India.

## A NEW ARCHITECTURE FOR INSOLVENCY RESOLUTION

The IBC introduced several innovations that fundamentally reshaped India's insolvency ecosystem.

First, the Code established a time-bound resolution framework. The Corporate Insolvency Resolution Process (CIRP) was designed to conclude within 180 days, extendable by 90 days which was further increased to 330 days including litigation. This emphasis on speed was critical because delays in insolvency resolution typically led to erosion of enterprise value.

Second, the Code introduced a "creditor-in-control" model. Once insolvency proceedings are admitted, control of the company shifts from existing management to a committee of creditors, represented largely by financial institutions. This structural shift significantly altered the dynamics between borrowers and lenders and strengthened the negotiating position of creditors.

Third, the Code ensured that successful resolution applicants acquire the enterprise on a "clean slate," free from legacy liabilities. This provision has played an important role in attracting credible investors and enabling distressed assets to find new owners capable of reviving them.

Fourth, the IBC created a comprehensive institutional ecosystem, including the Insolvency and Bankruptcy Board of India (IBBI/Board), Insolvency Professionals, information utilities, and specialised adjudication through the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT).

From a banking perspective, the creation of this ecosystem represented a major institutional advancement. Within a relatively short period, India developed a professional framework capable of managing large-scale financial distress through structured market mechanisms.

## THE QUIET TRANSFORMATION OF CREDIT BEHAVIOUR

While the most visible outcomes of the IBC are reflected in the resolution of large stressed assets, its most profound impact has been behavioural.

Prior to the introduction of the Code, delayed resolution often became an implicit negotiating strategy. Borrowers could continue operations even after prolonged default, while lenders had limited tools to enforce timely restructuring.

The IBC fundamentally changed this dynamic.

The prospect of losing managerial control once insolvency proceedings begin has significantly altered borrower behaviour. Promoters today are more inclined to engage with lenders at early stages of stress rather than risk losing control of the enterprise.

Evidence of this behavioural shift can be seen in the large number of cases resolved even before formal admission into the insolvency process. By December 2024, over 30,000 cases involving underlying defaults of more than ₹13 lakh crore had reportedly been settled prior to admission into the CIRP.

For bankers, this phenomenon highlights an important point that the influence of the IBC extends far beyond the cases that actually reach insolvency tribunals. The Code acts as a credible deterrent against strategic default and encourages early resolution through negotiation.

In this sense, the IBC has strengthened the enforceability of financial contracts and restored discipline in the credit ecosystem.

## OUTCOMES FOR THE BANKING SECTOR

A decade after its enactment, the effectiveness of the Code can be assessed through measurable outcomes in terms of recovery rates, value realisation, and balance sheet repair.

One of the most notable achievements of the IBC has been its ability to maximise value relative to liquidation outcomes. Data from the IBBI indicate that realisations under approved resolution plans have consistently exceeded estimated liquidation values by a substantial margin.

In many resolved cases, creditors have realised between 1.5 and 2 times the liquidation value. On average, resolved cases have yielded approximately 170% of liquidation value and over 90% of the estimated fair value.

For banks, this has been critical. Instead of dismantling distressed companies through liquidation, the Code has enabled viable businesses to continue as going concerns while preserving asset value.

Recovery rates have also improved significantly compared to earlier resolution mechanisms. Under earlier frameworks such as DRTs and SARFAESI, recoveries were often limited (upto 12-25%) and prolonged. In contrast, recovery rates under the IBC have generally ranged between 30% and 35% of admitted claims in resolved cases.

Recent data suggest further improvement, with recovery rates rising from about 28% in FY2024 to nearly 37% in FY 2025.

Equally significant has been the role of the Code in facilitating balance sheet repair within the banking system. The gross non-performing asset ratio of scheduled

commercial banks has declined sharply from its peak of over 11% in 2018 to nearly 2% by 2024–25.

While multiple factors contributed to this improvement, including regulatory reforms, improved underwriting, and economic recovery, the IBC played a central role in resolving large legacy stressed accounts.

This, in turn, has enabled banks to recycle capital into productive sectors, supporting credit growth and economic expansion.

## INSTITUTIONAL DEVELOPMENT AND MARKET CREATION

The first decade of the IBC has also been a period of significant institutional development.

The IBBI has emerged as the central regulatory authority overseeing insolvency professionals, professional agencies, and information utilities. Through regulatory guidance and capacity-building initiatives, it has helped establish a transparent and professional insolvency ecosystem.

At the same time, the NCLT and NCLAT have played a crucial role in shaping the jurisprudence of insolvency law in India. Judicial interpretation over the years has clarified many complex aspects of the Code, contributing to the stability and predictability of the framework.

Perhaps equally important has been the development of a market for distressed assets. Domestic and global investors, private equity firms, and turnaround specialists have increasingly participated in resolution processes. This growing investor interest has enhanced competition during bidding and contributed to better value discovery.

From the lens of the banking industry, the emergence of a credible distressed asset market is a particularly positive development, as it improves the prospects of timely resolution.

## SECTORAL IMPACT AND ECONOMIC RENEWAL

The impact of the IBC has been especially visible in sectors that experienced significant financial stress during the previous investment cycle.

Industries such as steel, power, and infrastructure witnessed some of the earliest and most prominent resolutions under the Code. In many of these cases, distressed assets were acquired by new promoters with stronger financial capacity and operational expertise.

These outcomes demonstrated that insolvency resolution can serve not only as a recovery mechanism but also as an instrument of economic revival.

More recently, the Code has also addressed challenges in the real estate sector. The recognition of homebuyers as financial creditors has allowed them to participate in

resolution processes, providing an institutional pathway for the revival of stalled projects.

Evidence from empirical studies also indicates strong post-resolution performance among companies emerging from the insolvency process. Within two to three years of resolution, revenues in such firms have increased substantially by over 75%, liquidity positions have improved by ~80%, and capital expenditure infusion has risen by about 130%.

These outcomes highlight that insolvency resolution, when implemented effectively, can preserve productive capacity and sustain employment.

## EMERGING CHALLENGES

Despite its achievements, the experience of implementation has also highlighted certain challenges.

One important issue relates to delays in resolution timelines. Although the Code envisages completion of the resolution process within 330 days, many cases have taken longer due to litigation and procedural complexities.

Extended timelines can lead to deterioration in asset value and reduce recovery outcomes for creditors.

Another challenge relates to capacity constraints within the adjudication infrastructure, particularly the NCLT. The growing volume of insolvency cases has placed considerable pressure on available benches, resulting in backlogs.

Complex litigation and multiple interim applications also sometimes interrupt the resolution process.

As Indian businesses increasingly operate across international jurisdictions, the need for cross-border insolvency mechanisms has also become more relevant. Similarly, the absence of a comprehensive group insolvency framework can create challenges when large corporate groups face financial distress.

These issues highlight the need for continued institutional strengthening as the insolvency framework evolves.

## THE ROAD AHEAD: A BANKER'S PERSPECTIVE

As India enters the second decade of the IBC, the focus must shift toward strengthening efficiency, deepening market participation, and integrating the insolvency framework more closely with credit practices.

For banks, a key lesson from the past decade is that effective resolution begins at the stage of credit origination. Strengthening underwriting standards will therefore be critical.

There is a growing need to shift toward cash flow-based lending, where repayment capacity is assessed primarily on the strength and sustainability of cash flows. This marks an important evolution in credit philosophy i.e., from asset-backed lending toward income-backed lending.

At the same time, banks may need to increasingly structure loans in alignment with the IBC framework to facilitate efficient resolution should financial distress arise. Well- designed covenants, clear security structures, and effective inter-creditor arrangements can facilitate smoother resolution in case of distress.

Such alignment can help reduce procedural friction during insolvency proceedings and improve value realisation for all stakeholders.

In parallel, continued reforms to strengthen adjudicatory capacity will remain essential. Expanding NCLT infrastructure, leveraging digital case management systems, and reducing procedural delays will help preserve asset value and improve recovery outcomes.

The proposed amendments to the Code through IBC Amendment Bill, 2025 are also expected to address important structural gaps, including the introduction of group insolvency and cross-border insolvency frameworks.

Technological innovation can further strengthen the insolvency ecosystem. Greater use of digital platforms, data analytics, and information utilities can improve transparency and accelerate decision-making during resolution processes.

Equally important will be the continued development of deep and competitive markets for distressed assets. Greater participation from domestic and international investors will enhance value discovery and improve recovery outcomes.

Taken together, these measures point toward a more integrated credit system, where underwriting, monitoring, and resolution function as a cohesive framework.

## THE ENDURING LEGACY OF THE CODE

Ten years after its enactment, the Code has firmly established itself as a cornerstone of India's financial architecture. What began as a legislative response to mounting stressed assets has matured into a comprehensive institutional framework that underpins the credibility and resilience of the country's credit system.

For the banking sector, the Code has provided a vital pathway to restore balance sheet strength and recycle capital toward productive economic activity. By enabling the resolution of large legacy stressed accounts, it has helped unlock resources that can be redeployed to finance new investment, innovation, and infrastructure.

More fundamentally, the IBC has reinforced an essential principle of modern financial systems i.e., credit markets function efficiently only when contractual obligations are enforceable and economic discipline is maintained. By establishing a credible mechanism to address financial distress, the Code has strengthened confidence among lenders, borrowers, and investors alike.

As India advances toward its Viksit Bharat aspirations and seeks to deepen its integration with global capital markets, the continued evolution of the insolvency framework will remain critical. Strengthening adjudicatory capacity, deepening markets for distressed assets, integrating cross-border insolvency mechanisms, and aligning credit structuring with resolution frameworks will define the next phase of reform.

The first decade of the IBC demonstrates that institutional reform, when supported by clear policy intent and sustained commitment, can fundamentally reshape economic governance.

Ultimately, the true legacy of the IBC will not be measured solely by the number of cases resolved or the quantum of recoveries achieved. Its enduring impact will lie in the credit discipline it has instilled, the investor confidence it has strengthened, and the culture of financial responsibility it continues to embed within India's economic system.

** The views expressed in this article are personal reflections of the author. They are intended to contribute to the broader discourse on the evolution of India's insolvency framework and should not be interpreted as the formal views of the author's organisation.*

# 06 10 YEARS OF IBC: A REFLECTION ON THE INSOLVENCY AND BANKRUPTCY CODE (IBC) FRAMEWORK IN INDIA

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The Insolvency and Bankruptcy Code, 2016 (IBC/Code) emerged as a comprehensive, time-bound and effective legislation of the country for resolving insolvency and bankruptcy for companies, partnerships, and individuals. Since inception, and over the years, the Code streamlined the processes dealing with loan assets that turned non-performing, aiming to maximize asset value, protect creditors, and promote entrepreneurship. The Code came into existence in the year 2016 with the initiative of the Government of India. It marked the dawn of a new era, bringing with it a long-awaited and transformative structural reform in India's financial and corporate landscape. Before its introduction, India's insolvency system was scattered across multiple laws, resulting in delays and inefficiencies. The coexistence of several laws which included the Companies Act, the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and the SARFAESI Act created overlapping jurisdictions that often led to delays and extended litigation. In other words, most of the times resolution of stressed assets took several years and recovery rates for creditors were extremely low.

The IBC was introduced with the aim of transforming the existing system by establishing a unified and time-bound mechanism for resolving insolvency involving companies, partnerships, and individuals. Its key objectives were to maximize the value of assets, encourage entrepreneurship, balance the interests of various stakeholders, and enhance the ease of doing business in India. A most important change brought about by the Code was the transfer of control of distressed companies from debtors to creditors, thereby fostering greater financial discipline within the country's credit ecosystem.

Over the past decade, the IBC has substantially reshaped India's approach to dealing with corporate distress. It has contributed to improved recovery rates, strengthened the credit culture, and equipped lenders with an effective legal framework to tackle non-performing assets (NPAs). Nevertheless, today as we do a retrospection, we see that the long journey has not been without its challenges.

The following paragraphs examine the ten-year journey of the IBC, analysing its background, achievements, impact on the economy, major challenges, and the reforms required for the next decade.

## BACKGROUND

Prior to the enactment of IBC, the processes to deal with insolvency and bankruptcy were not comprehensive which led to inefficiency and prolonged delays. There were multiple governance frameworks such as Debt Recovery Tribunals (DRTs), Sick Industrial Companies Act (SICA), High Courts under the Companies Act, the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), among others. All such frameworks endeavored to resolve various issues of insolvency; however, the success rates were very low. Such fragmented and multiple laws led to creation of various issues impacting the banking industry and the economy of the country. The Important issues were: Increased level of NPAs, Huge delays in resolution, Low recoveries, Lack of creditor control and Non-Conducive business environment.

## GENESIS OF IBC

To address the above issues, a strong need for consolidation of the existing multiple laws was felt. Accordingly, the concept for an efficient insolvency mechanism was proposed by various committees. However, significant progress was made by the Bankruptcy Law Reforms Committee (BLRC), which was set up under the chairpersonship of Dr. T.K. Viswanathan. The Committee examined the concerns of the creditors regarding insolvency and bankruptcy.

The Committee considered one useful benchmark namely United Nations Commission on International Trade Law (UNCITRAL) Legislative Guide on Insolvency to base a new design of bankruptcy and insolvency. It submitted its report to the then Finance Minister on 4th November, 2015. The Code received the assent of the President of India on May 28, 2016. While enacted on May 28, 2016, different provisions of the code came into effect in phases, with key sections for corporate insolvency becoming effective on December 1, 2016.

## FOUR PILLARS OF IBC FRAMEWORK

The IBC ecosystem rests on four pillars which are as under -

a. **Insolvency Professionals (IP)-** The first pillar is licensed professionals who manage the distressed company during the insolvency process, ensuring impartial administration.

b. **Information Utilities (IU) -** The IUs form the second pillar of the institutional infrastructure which are regulated and licensed repositories of information relating to the corporate debtor (CD). IUs collect, collate, authenticate, and disseminate financial information to be used in insolvency resolution, liquidation, and bankruptcy proceedings.

c. **Adjudicating Authorities (AA)**: The judicial oversight of IPs is provided by adjudicating authorities (AAs), the third pillar of the IBC's institutional infrastructure. The AAs are specialized tribunals tasked with ensuring that the insolvency resolution, liquidation, and bankruptcy process are being performed as per the IBC and its related rules and regulations

d. **IBBI, the Regulator**: The Insolvency and Bankruptcy Board of India (IBBI/Board) was established on October 1, 2016 as a regulatory body for IBC, which is considered as the fourth pillar of the IBC framework. Being a unique regulator – the IBBI regulates both the professionals involved and the transactions conducted. It has regulatory oversight over IPs, IPAs, IPEs and IUs. It also prescribes and enforces regulations for insolvency and bankruptcy processes, namely, the CIRP, the liquidation process, partnership and individual insolvency resolution, and partnership and individual bankruptcy.

## KEY FEATURES OF THE IBC FRAMEWORK

The IBC introduced several structural reforms in India's insolvency ecosystem. They are:

a. **Time bound resolution** - The Corporate Insolvency Resolution Process (CIRP) prescribed to be completed in a time bound manner within 180 days (extendable in certain circumstances to 330 days). This timeline was designed to prevent erosion of asset value and ensure swift decision-making.

b. **Fast-Track Corporate Insolvency Resolution Process (CIRP):** For certain categories of entities, including small companies and startups, the IBC provides a fast-track resolution mechanism that can be completed within 90 days, offering a faster alternative to regular proceedings.

c. **Control of the Creditor –** Key decisions including approval for the resolution process vested on the Committee of Creditors- which is mostly comprising of financial creditors.

d. **Moratorium Period -** Once insolvency proceedings begin, legal actions against the debtor are prescribed to be stayed to preserve business value.

e. **Liquidation as a Last Resort-** The Code prioritizes resolution and revival of companies over liquidation.

## EVOLUTION OF THE CODE THROUGH AMENDMENTS

The IBC has been significantly strengthened by a series of landmark judgments from the Supreme Court of India. These judgments transformed the Code from a nascent legislative framework into a robust, creditor-in-control mechanism focused on time-bound resolution and value maximization.

Key jurisprudence that has shaped the IBC includes:

1. Upholding Constitutional Validity & Core Objectives:

- *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019): This is the foundational case that upheld the constitutionality of the IBC. The Court affirmed the distinction between financial and operational creditors, validated the role of the Committee of Creditors (CoC), and emphasized that the IBC is not just a recovery tool, but a "beneficial legislation" meant for the revival of CDs.

2. Primacy of Committee of Creditors (Commercial Wisdom):

- *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019): The Court declared that the CoC's "commercial wisdom" is supreme and not subject to judicial review, provided the resolution plan meets the statutory requirements of section 30 of the Code.

3. Strict Timelines and "Clean Slate" Doctrine:

- *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.* (2021): This judgment solidified the "clean slate" doctrine. It held that once a resolution plan is approved by the Adjudicating Authority (NCLT), all claims (including statutory dues to government authorities) that are not part of the plan stand extinguished, preventing future litigation against the new management.

4. Defining "Default" and Operational Creditor Disputes:

- *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* (2017): The Court laid down the test for a "dispute" under section 9. It ruled that an operational creditor's petition must be rejected if there is a "real" (not illusory) pre-existing dispute regarding the debt, strengthening the protection for debtors against frivolous insolvency filings.

- *Innoventive Industries Ltd. v. ICICI Bank* (2017): This first major Supreme Court judgment on IBC established that the Adjudicating Authority only needs to be satisfied with the existence of a default, not the merits of the dispute, to admit a case.

5. Eligibility and Transparency (Section 29A):

- *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta* (2018): The Court emphasized that ineligibility under section 29A (which bars defaulting promoters) is mandatory. It established that the Resolution Professional (RP) must independently verify the eligibility of resolution applicants, ensuring the integrity of the process.

6. Expanding Scope: Homebuyers and Personal Guarantors:

- *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (2019): This ruling upheld the inclusion of homebuyers as "financial creditors," giving them a voice in the CoC and empowering them in insolvency proceedings.

- *Lalit Kumar Jain v. Union of India* (2021): The Court upheld the government's notification extending IBC provisions to personal guarantors, allowing creditors to pursue them simultaneously with the CD.

These rulings have shifted the paradigm from debtor-in-possession to creditor-in-control, established the finality of resolution plans, and reinforced the time-bound nature of the insolvency process.

The Insolvency and Bankruptcy Board of India continuously reviewed the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) with a view to addressing implementation challenges, removing procedural ambiguities, and enhancing the efficiency, predictability, and integrity of the corporate insolvency resolution process under the Code.

Based on feedback received from stakeholders and issues observed during the conduct of corporate insolvency resolution processes (CIRPs), the Board at different times identified certain areas where greater procedural clarity is required to avoid inconsistencies, disputes, escalation of costs, or sub-optimal value outcomes. Indian Banks' Association (IBA) has been one of the key stakeholders who has been voicing out the feedbacks and suggestions of member banks since the implementation of IBC. The IBBI has been instrumental in affecting various amendments in the code. There have been six major and important amendments till now since its implementation. Important highlights of the amendments are:

Key Amendments to the insolvency and bankruptcy Code:

| **Year of Amendment** | **Facilitated Aspects** |
|---|---|
| 2017 | Classified Personal Guarantors and blocked ineligible persons |
| 2018 | Recognized Home Buyers and allowed withdrawal with 90% approval |
| 2019 | Mandatory 330- day resolution process and binding planImmunity for past misdeeds and no termination of licences |
| 2020 | Suspension of initiation for COVID-19 related defaults |
| 2021 | Introduction of pre-packaged Insolvency resolution Process |

The 7th amendment i.e. IBC Amendment Bill 2025 is just approved. The key objectives of the amendment aim to reduce delays, maximization of value of assets and improving governance. The proposed amendments seek to address some of the important aspects such as Cross Boarder Insolvency, Group Insolvency, Creditor led resolution processes etc.,

## ACHIEVEMENTS OF THE IBC OVER TEN YEARS

In this challenging journey of 10 years, the IBC has delivered several measurable achievements across financial, economic and legal dimensions.

1. **Financial Impact:**

   **a. Significant Recovery for Creditors -** Till December, 2025, the creditors have realised ₹ 4.11 lakh crore under the resolution plans. The fair value and liquidation value of the assets available with these CDs, when they entered the CIRP, was estimated at ₹ 3.66 lakh crore and ₹ 2.40 lakh crore, respectively, as against the total claims of the creditors worth ₹ 12.99 lakh crore. The creditors

have realised 171.54% of the liquidation value and 94.95% of the fair value (based on 1250 cases where fair value has been estimated). The haircut for creditors relative to the fair value of assets is around 5%, while relative to their admitted claims is around 69%. Furthermore, this realisation does not include the CIRP cost, and many probable future realizations such as equity, realisation from corporate and personal guarantees, funds infused into the CD including capital expenditure by the resolution applicants, and recovery from avoidance applications. Till December 2025, 2952 CIRPs have ended in liquidation. Of the 2952 CDs, 1613 CDs have been completely liquidated with submission of final report. (Source: IBBI Newsletter Dec 2025)

b. **Impact on NPAs -** The banking sector's health has shown remarkable improvement. The RBI's Financial Stability Report (FSR December 2025) indicates that, at the aggregate level, the GNPA ratio of SCBs declined to a fresh multi-decadal low of 2.2 per cent, and their NNPA ratio remained at a record low of 0.5 per cent. The RBI's Report on Trends and Progress of Banking in India for the year 2024-25, as released in December 2025, showed that the IBC emerged as the dominant recovery route for SCBs, accounting for 49.5 % of all recoveries made by banks surpassing other channels such as SARFAESI, Debt Recovery Tribunals, and Lok Adalats.

c. **Improved Credit Culture -** Apart from formal proceedings, the Code has encouraged a culture of timely resolution.

d. **Shift from Liquidation to Resolution –** The Economic Survey 2025-26 stated that as of September 2025, 57 % of the closed CIRP cases resulted in going-concern rescue. The remaining 43% ended in liquidation orders. Over time, the resolution-to-liquidation ratio improved sharply from 20% in FY18 to 91% in FY25. This highlights the system's increasing commitment to ensuring revival while safeguarding economic value.

e. **Recovery Rates have improved in comparison with earlier regimes –** The S&P Global Ratings report released in 2025 highlighted IBC's contribution in improving recovery and credit culture in India. The agency noted that under the previous bankruptcy regime, recovery values were between 15-20%. But with IBC, they have improved to over 30%. This progress has reinforced the confidence of lenders and enabled more efficient redeployment of capital in the financial system.

f. **Better Valuation Outcomes -** Under the Code, resolution plans have generated outcomes well above liquidation benchmarks, in many cases exceeding the liquidation value of the assets.

g. **Improvement in India's Investment Climate -** A predictable insolvency framework plays an important role in attracting investment. The IBC has enhanced investor confidence by ensuring that creditors have a time-bound clear legal recourse in the event of default. Improvements in India's insolvency framework have also been recognized by global rating agencies.

2. **Economic Impact:**

The IBC has had wide-ranging implications for the Indian economy.

a. **Strengthening the Banking Sector-** Through the introduction of a reliable resolution mechanism, the IBC assisted banks in cleaning up their balance sheets and unlocking tied-up capital, thereby facilitating greater lending and supporting economic growth.

b. **Better Corporate Governance -** The risk of loss of control in cases of default has reinforced accountability among promoters, thereby enhancing financial discipline and encouraging sounder balance sheet management.

c. **Moving towards Responsible Borrowing -** Given that default can lead to the loss of managerial control, borrowers are exercising greater restraint in undertaking excessive leverage.

d. **Faster Capital Recycling -** The Code facilitates the swift reallocation of capital from distressed enterprises to more productive sectors.

e. **Boosting Ease of Doing Business -** An assured and predictable exit framework is vital for promoting entrepreneurship. The IBC has aligned India more closely with international best practices in insolvency resolution.

3. **Legal Impact:**

Landmark insolvency cases under the IBC, including those of Essar Steel India Limited, Bhushan Steel Limited, Jet Airways, Bhushan Power & Steel Limited, Amtek Auto Limited, and Infrastructure Leasing & Financial Services, have played a pivotal role in shaping India's insolvency jurisprudence and strengthening the framework's credibility. These cases clarified crucial principles such as the primacy of the Committee of Creditors' commercial wisdom, treatment of operational creditors, priority of secured lenders, coordination with enforcement agencies, cross-border insolvency cooperation, and the importance of credible resolution applicants.

Collectively, they tested the robustness of the Code in complex and high-value matters, reinforced creditor confidence, and contributed significantly to the maturation and stability of India's insolvency ecosystem.

## LESSONS LEARNED OVER A DECADE

The ten-year experience of the Code provides important insights into the operation of modern insolvency frameworks. While the Code has significantly transformed India's approach to addressing corporate distress, its implementation has revealed key structural, institutional, and policy lessons. These learnings are essential not only for reinforcing the current framework but also for shaping future reforms.

a. **Strong Institutions Matter -** The experience under the IBC highlights that the effectiveness of any well-designed legislation largely depends on the strength

and capability of the institutions tasked with its implementation. Sufficient judicial capacity, domain expertise, robust digital infrastructure, and timely appointments are critical to ensuring seamless resolution processes.

b. **Time Is Critical in Insolvency** - A core principle of the IBC is the emphasis on time-bound resolution. The Code acknowledges that delays can quickly erode the value of distressed assets. Lengthy insolvency proceedings not only lower recovery prospects for creditors but also interrupt business operations, impact employees, and weaken investor confidence.

c. **Creditor Empowerment Improves Discipline** - A distinctive feature of the IBC is the transfer of control from defaulting promoters to the Committee of Creditors (CoC). This shift represented a fundamental transformation in India's insolvency approach, replacing the earlier debtor-in-possession framework with a creditor-led model.

d. **Legal Certainty Encourages Investment** – Predictability and legal certainty are fundamental to maintaining a stable investment environment. Both domestic and international investors need confidence that contractual rights will be upheld and that resolution plans, once sanctioned, will not be exposed to unnecessary uncertainty.

e. **Continuous Reform Is Necessary** - Insolvency law is dynamic and must adapt to evolving economic realities, emerging business practices, and practical implementation challenges. Since its introduction, the IBC has been amended multiple times to bridge operational gaps, incorporate pre-packaged insolvency mechanisms, remove ambiguities, and address exceptional situations such as the COVID-19 pandemic.

The past decade has shown that ongoing review and reform are vital to preserving the framework's relevance and effectiveness. As new complexities arise including cross-border insolvency, group insolvency, and issues relating to emerging sectors the legal regime must continue to evolve in response.

## ACADEMIC RESEARCH ON THE EFFECTIVENESS OF THE CODE

Through the research initiatives of the IBBI, a comprehensive research study was undertaken by the Indian Institute of Management Ahmedabad (IIMA) to assess the effectiveness of the resolution process under the IBC in India. This study examined the performance of firms both before and after the resolution process, comparing them against sector and size peers to understand the impact of the IBC. Key findings from the IIM Ahmedabad study are as follows:

(a) Financial Recovery: Creditors have, on average, realised 32% of admitted claims and 168% of liquidation value in cases resolved under IBC.

(b) Sales Growth: Average sales of resolved firms increased by 76% in the three years following resolution.

(c) Operational Profitability: While net margins remain negative, resolved firms have achieved operational break-even (4% operating margin) by the third-year post-resolution, a significant improvement from the pre-resolution period.

(d) Employment: There was a 50% increase in average employee expenses three years post- resolution, indicating higher employment intensity in resolved listed firms. Total employment across firms also showed a substantial increase.

(e) Asset Growth: Average total assets of resolved firms increased by about 50% post- resolution, coupled with a 130% increase in capital expenditure (CAPEX), indicating a build-up of tangible assets.

(f) Profitability Convergence: The study found that profitability ratios of resolved firms converged with benchmark averages in the post-resolution period.

(g) Market Valuation: For listed resolved firms, there was a significant revival in average market valuations post-resolution. The aggregate market valuation of all resolved firms increased from around ₹ 2 lakh crore to ₹ 6 lakh crore post-resolution.

(h) Liquidity Improvement: Liquidity improved by about 80% in the post-resolution period. The current assets to current liabilities ratio improved from 1.01 in the year of bankruptcy to 1.83 in the third year post-resolution.

These findings suggest that IBC has been effective in not only providing financial recovery for creditors but also in reviving and improving the operational and financial health of resolved firms. The study demonstrated that firms undergoing resolution through the IBC process have shown significant improvements in various aspects of their business, including sales, profitability, asset growth, market valuation, and liquidity.

**IIM Bangalore study**

Further, the impact of the IBC on credit discipline has also been corroborated by a comprehensive study conducted by the Indian Institute of Management Bangalore (IIMB). The study has analysed data on corporate loan accounts, CIRP, firm-level financial data and NPA data. The study finds that IBC has prompted borrowers to adhere to stipulated loan payment schedules. During the period under review, the study notes a significant reduction in loan accounts deemed 'Overdue', both in terms of the Rupee amount as well as in terms of the number of accounts. Similarly, the yearly proportion of transitions of loan accounts from the 'Overdue' category to the 'Normal' category have increased, supporting the view of an improvement in the credit culture of corporates. Even the average number of days that a loan account stays in 'Overdue' category before transitioning to 'Normal' category has reduced from 248–344 days to 30-87 days. This shows that both debtors and creditors are trying to resolve the delinquencies at the earliest. The IIM Bangalore study also indicates a 3% reduction in cost of debt for distressed firms post- IBC (vs. non-distressed firms), indicating an improved credit environment for distressed firms. As per the study, the IBC has improved corporate governance by increasing independent directors on resolved companies' Boards.

**India's position in global landscape in respect of insolvency laws:**

As per the World Bank's Ease of Doing Business Report 2020, India had moved up to rank 52, with a significant improvement in the "Resolving Insolvency" parameter from 136 to 52 in just a few years, largely attributed to the enactment of IBC. Advanced jurisdictions such as the UK, Singapore, and the USA offer models where restructuring is emphasized over liquidation, cross-border insolvency is fully recognized, and judicial capacity is stronger and more specialized.

## CHALLENGES AFTER TEN YEARS

Despite its notable achievements, the IBC continues to encounter several structural and operational challenges.

a. **Delays in Resolution** – While the Code mandates a maximum timeline of 330 days, numerous cases extend well beyond this limit. There have been instances where the average resolution period has exceeded 700 days. Such delays impact asset value and affect recovery prospects.

b. **Judicial Capacity Constraints** – The National Company Law Tribunal (NCLT) and appellate forums continue to have substantial case backlogs and constrained infrastructure. This impacts timely approvals and contributes to heightened uncertainty for investors.

c. **Litigation and Legal Complexity** – Frequent appeals and prolonged legal disputes often delay the effective implementation of approved resolution plans.

d. **Sector-Specific Issues** – Certain industries, particularly real estate, pose unique challenges due to the presence of multiple and diverse stakeholders, including homebuyers.

e. **Post-Resolution Risks** – At times, judicial interventions have led to the reopening of concluded cases, creating apprehensions about finality and potentially impacting investor confidence.

f. **Institutional and Operational Bottlenecks -** In addition to legal challenges, various institutional and operational constraints continue to affect the overall efficiency of the IBC framework.

g. **Limited Tribunal Capacity -** The existing number of benches and judicial members remains inadequate when compared to the steadily increasing caseload, resulting in pressure on adjudicating authorities.

h. **Shortage of Skilled Insolvency Professionals-** Many insolvency cases are complex in nature and demand specialized expertise in finance, law, valuation, and corporate restructuring. A limited pool of highly experienced professionals can affect the quality and speed of resolution.

i. **Information Asymmetry-** Incomplete financial documentation, inadequate record-keeping, and limited access to reliable data often delay proceedings and complicate decision-making during the resolution process.

While IBBI is continuously engaged in addressing these these institutional and operational issues these aspects are crucial for enhancing the effectiveness and outcomes of the insolvency framework under the Code.

## THE ROAD AHEAD: REFORM PRIORITIES

To sustain and enhance the effectiveness of the IBC, a number of focused reforms are required.

a. **Strengthening Tribunal Infrastructure -** Augmenting the number of NCLT benches and judicial members is essential to ease case backlogs and ensure timely resolution of matters.

b. **Reducing Litigation-** Greater clarity in statutory provisions, along with more efficient appellate mechanisms, can help minimize avoidable litigation and procedural delays.

c. **Expanding Pre-Pack Insolvency-** Wider adoption of pre-packaged insolvency frameworks can facilitate quicker resolutions, particularly for MSMEs and mid-sized enterprises.

d. **Improving Data and Technology-** Enhanced digital case management systems and more robust financial information platforms can accelerate decision-making and improve transparency in the resolution process.

e. **Enhancing Professional Capacity-** Continuous development, training, and effective regulation of insolvency professionals are necessary to ensure high standards of competence and integrity.

f. **Upholding the Commercial Wisdom of the CoC:** Judicial authorities prioritise to uphold the commercial decisions of the Committee of Creditors to preserve efficiency and maintain the creditor-driven nature of the process.

g. **Comparison with other countries -** Since the introduction of the IBC, India's insolvency framework has witnessed substantial improvement compared to many other emerging economies. Notable advancements include quicker resolution timelines relative to the previous regime, improved recovery rates, and strengthened rights for creditors. However, to achieve parity with more mature insolvency systems such as those in the United States and the United Kingdom, their experience could be drawn to facilitate in reducing procedural delays and enhance overall efficiency.

**Role of IBA in strengthening the IBC framework**

The Indian Banks' Association (IBA) plays a significant role in fortifying the insolvency resolution framework under the Code, leveraging its expertise, influence, and collaborative efforts to enhance the insolvency regime's effectiveness, efficiency, and resilience. As a pivotal industry body representing the banking sector, the IBA contributes to developing, implementing, and refining policies, practices, and mechanisms aimed at streamlining insolvency processes, protecting creditor interests, and fostering a conducive environment for economic revival. IBA played a multifaceted role in strengthening the IBC framework:

Policy Advocacy and Industry Engagement:

The IBA engages in policy advocacy, representing the collective interests of banks and financial institutions in shaping regulatory frameworks, legislative reforms, and industry best practices related to insolvency resolution. By collaborating with regulatory authorities, government agencies, and industry stakeholders, the IBA advocates for practical solutions, regulatory enhancements, and policy interventions that promote creditor rights, streamline insolvency procedures and enhance the operational efficiency of the IBC framework.

The Standing Committee on Stressed Assets Management at IBA deliberates the emerging issues in implementation of IBC in detail and provides a collective suggestion to the regulator. Most of the suggestions made by IBA have been duly acknowledged and accepted while considering policy amendments.

Capacity Building and Training Initiatives:

The IBA with the collaboration of IBBI and SBI, undertakes capacity-building initiatives, training programs, and knowledge-sharing sessions to equip banking professionals with the requisite skills, knowledge, and expertise to navigate insolvency proceedings effectively. By conducting workshops, seminars, the IBA facilitates to enhance the competencies of officials handling IBC matters, empowers them to engage proactively in insolvency cases, and fosters a culture of compliance and professionalism within the banking sector.

Information Sharing and Best Practice Dissemination:

The IBA facilitates the exchange of information, insights, and best practices among member banks, fostering a collaborative environment for sharing experiences, lessons learned, and success stories in insolvency resolution. By disseminating knowledge, and promoting industry standards, the IBA enables banks to adopt best practices, mitigate risks, and optimize outcomes in insolvency cases, thereby enhancing the overall efficiency and effectiveness of the insolvency resolution process.

Technology Adoption and Digital Transformation:

The IBA joins the collaborative initiatives with NeSL, and drives technological innovation, digital transformation, and automation initiatives within the banking sector to streamline insolvency processes and improve operational efficiencies in handling insolvency cases. By

promoting the adoption of digital platforms, the IBA facilitates banks to leverage technology to smoothen the IBC procedural aspects.

In summary, the Indian Banks' Association (IBA) plays a pivotal role in fortifying the IBC framework in India by advocating for creditor interests, enhancing industry capabilities, fostering collaboration among stakeholders, and facilitating technological advancements in insolvency resolution practices. Through its proactive engagement, knowledge-sharing initiatives, and advocacy efforts, the IBA contributes to the resilience, efficiency, and integrity of the insolvency ecosystem, ultimately aiming to protect creditor rights, optimize recovery outcomes, and promote a robust insolvency regime that fosters economic revival and financial stability within the Indian banking sector.

## CONCLUDING REFLECTIONS

Ten years after its enactment, the IBC has emerged as one of India's most significant economic reforms. It has fundamentally transformed the country's approach to financial distress by establishing a unified, creditor-driven, and time-bound insolvency framework.

The Code has led to improved recovery rates, reinforced credit discipline, and contributed to reducing non-performing assets within the banking system. It has also strengthened India's standing as a more predictable and investor-friendly destination.

However, the experience of the past decade also underscores key areas requiring attention. Judicial delays, infrastructure limitations, and legal uncertainties continue to impact the effectiveness of the resolution process. Addressing these challenges is crucial to maintaining the reform momentum.

As India moves into the second decade of the IBC, emphasis should be placed on institutional strengthening, ensuring timely resolutions, and boosting investor confidence. With appropriate reforms and sustained policy focus, the Code can evolve into one of the most robust insolvency frameworks among emerging economies.

Ultimately, the true measure of the IBC's success lies not only in resolving distressed enterprises but also in promoting responsible borrowing, transparent governance, and long-term economic stability.

*Source & Acknowledgements:*

*Reflections from various articles / publications and a collective perspective*

# 07 TEN YEARS OF THE INSOLVENCY AND BANKRUPTCY CODE: A BANKER'S REFLECTION ON A DECADE OF TRANSFORMATION

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## IBC: A DEFINING MOMENT IN INDIA'S RESOLUTION HISTORY

India's economic journey since Independence has been marked by the resolute commitment of its financial institutions to fuel industrial growth, support entrepreneurship, and sustain national development. Yet one persistent challenge that haunted the financial system had been the financially stressed and insolvent enterprises. These enterprises have consumed productive capital, burdened banks' balance sheets, and crippled the credit ecosystem.

Insolvency laws rarely attract public affection, as they come into focus only when a business fails, lenders stop getting paid, jobs are at risk, and value begins to disappear with the passage of time. Yet, in the life of a modern economy, only few legal reforms matter as much as a credible insolvency framework. India's Insolvency and Bankruptcy Code, 2016 (IBC/ Code), is one such reform.

Ten years after its enactment, the Code stands as India's most consequential economic reform since liberalization, addressing issues related to the failure of borrowing units, credit nuances, and entrepreneurship revival to strengthen the economy. A decade on, it is a story of significant gains in discipline and resolution capacity, tempered by rising concerns around delays, modest recovery rates, and the need for a more mature 'second generation' framework.

## THE JOURNEY

IBC emerged in the backdrop of India's "twin balance sheet" problem, when corporates were over-leveraged and banks, especially public sector lenders, were burdened with mounting NPAs under a fragmented insolvency regime.

To appreciate what the IBC changed, one has to remember the pre-IBC landscape. India did not suffer from a lack of laws; it suffered from too many infructuous decisions and inadequate remedies. Recovery proceedings were split across forums and statutes. Recovery mechanisms such as the Sick Industrial Companies Act, Debt Recovery Tribunals, SARFAESI, and company law provisions led to parallel forums. Lenders moved between DRTs, SARFAESI, company law processes, and negotiated settlements, often with little coordination and prolonged legal protraction, leading to enterprise value erosion and promoters retaining control over assets even after default. The result was predictable: weak recovery, poor credit discipline, and growing stress on banks' balance sheets.

With the enactment of IBC, the conversation changed because it changed the design. It offered a unified framework, a defined process, a moratorium, an empowered Committee of Creditors (CoC), and a resolution professional-led mechanism under judicial supervision.

Most importantly, it replaced a weak, debtor-led system with a creditor-driven architecture. The shift was not merely procedural — it altered incentives across the credit chain. A default no longer meant endless forbearance but a real possibility of losing control of the business.

What has made the Code genuinely distinctive is its capacity to evolve. Rather than remaining frozen within its four corners, the IBC matured through successive amendments, regulatory refinements, judicial interpretation, and practical learnings. Insolvency Professionals (IPs), the IBBI, the NCLT, and the appellate courts emerged as institutions. The extension of the framework to personal guarantors, the tailored treatment of specified financial service providers, and the ongoing policy conversations around cross-border and group insolvency all point to the same underlying reality that insolvency law is not a static text but a living economic institution.

Each round of amendments has sharpened it further. The 2019 amendment fixed the resolution timeline at 330 days, making it simultaneously more generous and more binding. The 2021 amendment introduced pre-packaged insolvency for MSMEs, acknowledging that the full CIRP process could impose disproportionate costs on smaller enterprises.

Further, judicial decisions have done equally important work. The Supreme Court progressively settled critical questions: the sanctity of the CoC's commercial wisdom, the binding effect of approved resolution plans on government statutory dues, and the protection offered to resolution applicants from inherited legacy claims.

The institutional infrastructure that has evolved around the IBC reflects its own story. Today, the ecosystem has over 5,000 registered IPs, a functioning NCLT bench structure across the country, a robust IBBI with enforcement capabilities, and a well- structured judicial framework.

For banks, the IBC is not an abstract legal reform, it is a working instrument that affects recovery, provisioning, profitability, capital allocation, pricing, and even future credit culture. From the viewpoint of public sector banks such as Indian Bank, the IBC story is therefore not only about what happens after a default, but also about what the very existence of the Code has done to borrower behaviour, lender discipline, and the wider flow of credit in the system.

## IMPACT ON THE FINANCIAL SYSTEM

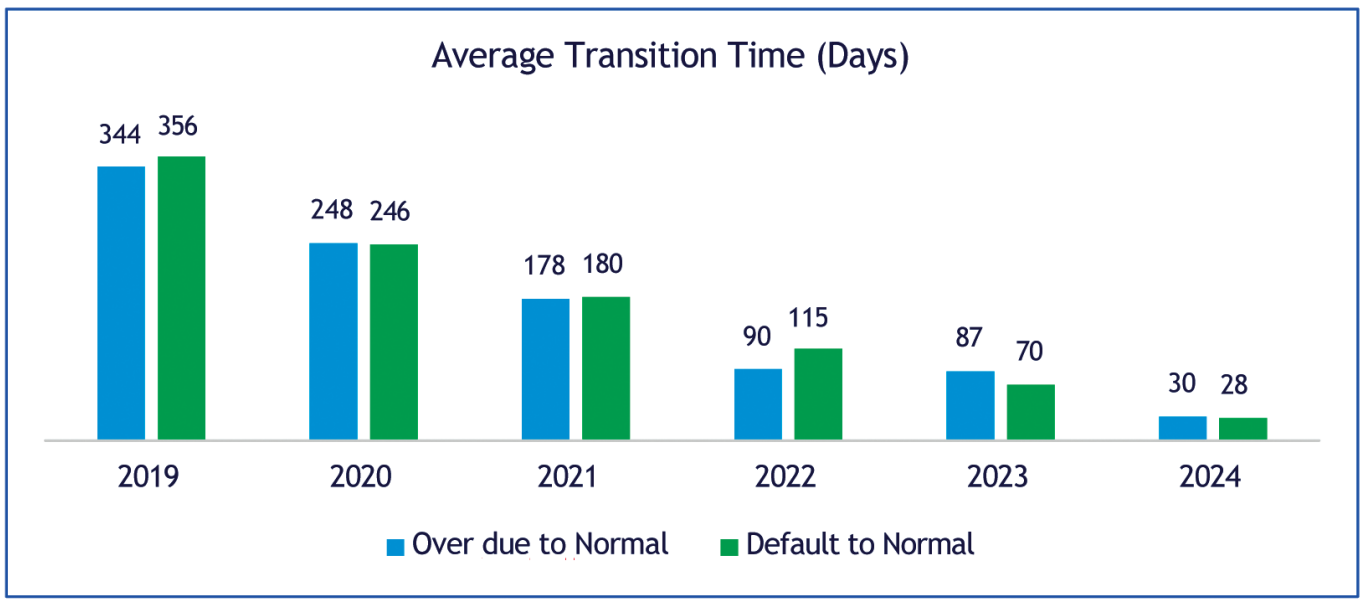
As of early 2026, over 8,800 Corporate Insolvency Resolution Processes (CIRPs) have been admitted. Resolution plans approved under the IBC have led to realisation of ₹ 4 lakh crore for creditors, representing about 170% of liquidation value. It shows that the Code has more resolutions than liquidation.

Recovery rates under the IBC improved from 28.3% in FY24 to 36.6% in FY25, consistently outperforming alternative recovery mechanisms such as SARFAESI at 31.5%, DRTs at roughly 15%, and Lok Adalats at a mere 1.8%. However, we need to remember that the recovery rate of IBC is weighed down by legacy cases where underlying asset values had already significantly eroded well before admission. As the system progressively clears the backlog and resolves newer cases with greater speed, overall recovery yields are expected to improve considerably in near future.

Equally important is the pre-admission effect. By March 2025, as many as 30,310 applications with an underlying default of ₹ 13.78 lakh crore were resolved before NCLT admission, highlighting the IBC's preventive effectiveness. Debtors now negotiate promptly to avoid losing management control to the CoC.

The impact on banking sector health has been tangible. Gross NPAs of Scheduled Commercial Banks fell from 11.5% in March 2018 to a historic low of 2.15% by September 2025, indicating a major credit culture shift aided by the IBC alongside better lending practices.

The strongest evidence for this shift in credit culture comes from a study by IIM Bangalore. The study finds that the proportion of overdue corporate loan amounts relative to total outstanding fell from 18% in 2018 to 9% in 2024. Further, there is a decrease in the average number of days for accounts to transition from overdue to normal, and from default to normal, during the period 2019 to 2024.




A separate part of the same study, covering 51 banks between 2010 and 2024, found that the introduction of the IBC was instrumental in reducing the Net NPA to Net Advances ratio by around 0.96%. While falling NPAs also reflected write-offs, direct recoveries, and better lending practices, the underlying shift in borrower behaviour, i.e., a growing awareness that default now carries real consequences, is broadly seen as the IBC's lasting contribution.

Indian Bank's own IBC journey mirrors this broader national narrative. With 348 cases admitted under the Code, involving aggregate debt of ₹ 38,536 crore, the Bank has realised recoveries of ₹ 10,387 crore. Beyond recoveries, the deeper gain is visible in the sustained improvement in credit discipline across the borrower base. Fresh slippage as well as SMAs have declined measurably over the years, a trend driven primarily by stricter credit policies and more selective lending practices.

## A BANKER'S EXPERIENCE: WHAT WE LEARNED BY DOING

It would be an overstatement to say that banks were ready for the IBC from day one. The truth is more nuanced.

In the early years of the operation of the IBC, public sector banks, including Indian Bank, approached the NCLT process with a mix of hope and hesitation because here at last was a hope of defined mechanism for resolution and hesitation, because the process was new, the legal terrain unfamiliar, and the institutional capacity of the NCLT was still being built. There were teething problems everywhere. Registry workflows were nascent, the availability of experienced IPs was limited, and the CoC dynamics, where multiple banks with varied exposures and risk appetites had to arrive at a consensus, proved far more complicated in practice than in theory.

Over time, however, bankers learned. Hitherto, NPA management had often been a reactive function, responding to defaults only when they occurred; but now it has evolved into proactive asset management, where banks developed dedicated verticals to handle likely stress through various enablers.

A few distinct learnings stand out from the experience of a decade:

- ✓ Timing remains the most consequential variable in the resolution process, as value erodes rapidly in the earliest months of distress when assets depreciate, brand equity dissipates, and key personnel depart. Banks must build robust early warning frameworks and confidently invoke section 7 before deterioration becomes irreversible.
- ✓ A CoC succeeds only when its members are fully prepared. Creditors who approach the table with a clear understanding of the business model, realistic liquidation values, and the merits of the resolution plan consistently accelerate the recovery process, achieving optimal result.
- ✓ Resolution plans require deep commercial sophistication rather than mere legal compliance. Evaluating a plan is fundamentally a credit exercise that requires assessing the track record of the applicant, the viability of the proposed business model, the treatment of stakeholders, and the long-term sustainability of the restructured entity. Therefore, CoC members must evaluate a resolution plan with the same intensity as they would apply to a fresh credit appraisal.
- ✓ Banks must shed any reluctance to vote for liquidation when commercial reality necessitates it. A prompt liquidation that realises fair value is ultimately preferable to a prolonged CIRP culminating in a deeply discounted resolution years later.

## EMERGING BOTTLENECKS

Despite its transformative success, the IBC ecosystem currently faces severe procedural constraints. The primary goal of providing a swift, time-bound resolution is increasingly being

compromised by systemic delays. While the Code originally envisioned a strict 330-day outer limit for completing the CIRP, the average time taken for the approval of resolution plans surged from 716 days in March 2025 to an alarming 883 days by December 2025. Similarly, the timeline for finalising liquidation orders has extended to an average of 807 days. These prolonged delays erode the underlying asset value and dampen the enthusiasm of prospective resolution applicants. To address these bottlenecks, there is an urgent need for creation of dedicated IBC benches at the NCLT and NCLAT, along with the expansion of judicial infrastructure in prominent commercial hubs.

## THE ROAD AHEAD

As the IBC enters its second decade, policymakers are focused on expanding its jurisdictional scope, eliminating procedural bottlenecks, and integrating advanced global practices. A few key reforms will define this next phase of the Code's evolution such as:

- ✓ The upcoming legislative amendments aimed to introduce Group Insolvency and the Creditor Initiated Insolvency Resolution Process (CIIRP), will address the increasingly complex corporate structures and reduce the cost and time of parallel applications.
- ✓ Establishment of dedicated IBC benches at the NCLT at prominent commercial locations will be vital for managing the growing caseload and restoring the promise of swift, time-bound admissions and resolutions.
- ✓ Implementation of stricter litigation thresholds, such as upfront deposit requirements for promoters or unsuccessful applicants seeking stays, will deter frivolous litigation and prevent unnecessary delays in the resolution process.
- ✓ Necessary recalibration of existing provisions, including a review of the relevance of the COVID-era Section 10A and potential extensions to the lookback period for avoidable transactions, will ensure the Code remains an effective tool for recovery.
- ✓ The adoption of the UNCITRAL (United Nations Commission on International Trade Law) Model Law on Cross-Border Insolvency is set to revolutionise international debt recovery and provide a critical mechanism for multinational stakeholders.
- ✓ The anticipated integration of AI-powered claim verification systems and standardised electronic documentation shall be essential to streamline procedural complexities and expedite future case resolutions.

## CONCLUSION: TEN YEARS AND THE WORK STILL AHEAD

When the Code was enacted in 2016, it was described as the most significant economic reform since liberalisation. A decade on, the Code has fundamentally changed India's credit culture, creating a credible mechanism for resolving financial distress, recovering nearly ₹ 4 lakh crore for the banking system, and establishing institutions that did not exist ten years ago.

And yet, the journey is far from complete. The promise of time-bound resolution has not yet been consistently delivered. However, with focused approach and more involvement of CoCs, the cases can be resolved within the time frame. As legacy cases are gradually getting resolved, recovery rates are likely to improve moving forward. Beyond mere financial recoveries, IBC has already catalysed a profound cultural shift in credit discipline, managerial robustness, and asset quality improvement.

The IBC's first ten years were about building the architecture; the next ten must be about perfecting it. What gives us confidence about the next decade is precisely what gave us confidence about the first: the institutional intent behind the IBC.

IPs are now more experienced, bankers understand the process better, and a more developed legal and judicial framework is in place. The policymakers, through the IBC Amendment Bill, 2025, have signalled a recalibration which seeks to preserve the Code's foundational strengths while addressing the frictions that a decade of practice has revealed.

As India marches toward its "Viksit Bharat" vision of becoming a developed nation with a $30 trillion GDP by 2047, the financial services sector will require an optimally functioning insolvency framework. By effectively resolving distressed enterprises, maximising capital efficiency, and preserving employment, the IBC will continue to serve as a crucial catalyst for India's enduring economic resilience and industrial growth.

*The views expressed are personal and do not represent the official position of any institution.*

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# 08 THE IBC AS AN INSTRUMENT OF CORPORATE GOVERNANCE: FROM DETERRENCE TO DISCLOSURE

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## INTRODUCTION

When the Insolvency and Bankruptcy Code, 2016 (IBC/Code) came into force, it was welcomed primarily as a creditor-rights reform — a long-overdue mechanism for resolving non-performing assets that had clogged the balance sheets of Indian banks. The IBC was, in equal measure, one of the most consequential corporate governance reforms in India. Its merit lay not merely in what it empowered creditors to do, but also the manner in which it curtailed misconduct by promoters. This article examines the three interlocking mechanisms through which the IBC has transformed corporate behaviour: Section 29A, Section 66(2), and the disclosure architecture embedded in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), and argues that together they have created a credible deterrent against the abuse of external capital.

## THE STRUCTURAL PROBLEM: WHEN OWNERS ARE MANAGERS

Nobel laureate Ronald Coase framed corporate governance as an attempt to address a classic principal-agent problem[1]. In large corporations, dispersed shareholders, each holding a minuscule stake, face prohibitively high costs in monitoring the agents (directors and managers) they appoint to run the company. Rational disengagement by principals enables self-serving conduct by agents: short-termism, excessive perquisites, and empire-building through overleveraging.

Indian equity ownership, however, has never been so dispersed. The empirical picture is striking. According to NSE's India Ownership Tracker, promoters collectively held[2] 50.0% of the total market capitalisation of all NSE-listed companies as of June 2025, a figure that had peaked at 57.6% in March 2009 before SEBI mandated a minimum public float of 25% in 2010[3]. Private Indian promoters alone account for 32.2% of total NSE-listed market capitalisation. Even among the blue-chip Nifty 50 universe, promoter shareholding stands at 40.2%, a near 23-year low, and that figure reflects the cumulative effect of a decade of SEBI-mandated dilution, not organic dispersal. In sectors most relevant to the NPA crisis i.e. real

[1] Coase, R.H. (1937), The Nature of the Firm. Economica, 4: 386-405.

[2] NSE India Inc. Ownership Tracker, Q1 FY26 (June 2025), published by NSE Empirical Research.s Source: CMIE Prowess, NSE EPR. The report covers all NSE-listed companies and tracks ownership trends from 2001.

[3] The SEBI's decision to increase minimum public shareholding from 10% to 25%, implemented through amendments to Securities Contracts (Regulation) Rules, 1957 (Rule 19A), required listed companies to achieve the 25% public float by June 2013. The consequent decade-long dilution by promoters is the primary explanation for the decline from the 2009 peak. See also S&R Associates, 'Minimum Public Shareholding Norms in India — Is it Time for Change?' (2019), noting that promoter ownership declined from 61.34% in June 2009 over the subsequent decade.

estate and utilities, the promoter ownership remains at 65.2% and 58.1% respectively.[4] An OECD study on Indian ownership commissioned with SEBI's involvement found that individual Indian promoters' holdings across all listed companies had ranged between 48% and 53% since 2006.[5]

The critical point is that even after a decade of regulatory pressure to dilute, promoters remain the single largest shareholder class in Indian equity markets, larger than FPIs (17.3%), domestic mutual funds (10.6%), and individual retail investors (9.6%) combined.[6] And crucially, in the typical Indian listed company, the promoter does not merely hold shares but simultaneously occupies the chair of the board and the managing director's office. There is hardly any separation of ownership and control. The principal-agent tension that corporate law was designed to manage simply does not arise, or rather, it arises in a different place. The meaningful conflict is not between shareholders and managers, but between the promoter-manager and the company's external stakeholders: minority shareholders, employees, suppliers, and above all, lenders.

This configuration generates perverse incentives. A promoter who controls both the equity and the management of a company faces asymmetric payoffs when the company is financially distressed. If the company recovers, the upside flows primarily to the promoter. If it fails, the losses fall disproportionately on creditors. This asymmetry incentivises risk-taking with borrowed money, delay in acknowledging distress, and in extreme cases, the stripping of assets from the corporate estate before creditors can enforce their claims.

Pre-IBC Indian law offered creditors very little by way of a structural remedy. Contractual protections such as financial covenants, information undertakings, acceleration clauses were theoretically available but practically toothless. The "nuclear option" of winding up under the Companies Act, 1956[7] was rendered otiose by delays that routinely stretched to decades. Banks effectively had a binary choice: restructure on terms dictated by promoters, or write off. The result was a culture of reckless borrowing and cavalier debt servicing that culminated in the non-performing asset crisis that preceded the IBC's enactment.

## THE EVOLUTION OF DIRECTOR DUTIES: FROM SHAREHOLDERS TO CREDITORS

To appreciate the IBC's governance contribution, it is necessary to understand the statutory baseline from which it departed. Director duties in India have evolved through three distinct phases, each representing a meaningful but incomplete step toward creditor protection.

[4] NSE India Inc. Ownership Tracker, Q1 FY24 (March 2024), sector-wise ownership data. Real Estate: 65.2%; Utilities: 58.1%. Source: CMIE Prowess, NSE EPR.

[5] OECD, 'Ownership Structure of Listed Companies in India' (2020), prepared in collaboration with SEBI. Figure 1.3 shows that Indian individual promoters are the dominant promoter category for all listed companies, with average holdings ranging between 48% and 53% since 2006.

[6] NSE India Inc. Ownership Tracker, Q1 FY26 (June 2025). FPI ownership: 17.3% (lowest in 13.5 years); DMF ownership: record high of 10.6%; individual retail: 9.6%.

[7] The Companies Act, 1956 (now repealed and replaced by the Companies Act, 2013) provided for winding up by court under Sections 433 to 483. The endemic delays in these proceedings, routinely spanning a decade or more, rendered the remedy commercially ineffective.

The Companies Act, 1956 did not codify directors' duties in statute at all. The 1956 Act regulated directors' powers and liabilities in considerable detail: disqualification, disclosure of interest, loans to directors; but said nothing about the affirmative duties owed by a director to any stakeholder. Those duties existed only in common law, imported from English equity jurisprudence through judicial decisions. The beneficiary of that common law duty was, invariably, the company and, through it, its shareholders. Creditors did not feature.[8]

The Companies Act, 2013 brought statutory codification for the first time. Section 166 (2) now requires a director to act in good faith 'in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.[9] This was a genuine broadening. The director's duty-constituency expanded from shareholders alone to a wider set of stakeholders, reflecting a more pluralist conception of the company's purpose. But the list was conspicuous for a glaring omission: creditors. A director reading Section 166 would find no statutory obligation to protect those who had lent the company money, even as the company approached insolvency.

The IBC completed this evolution. Section 66(2) of the IBC, the wrongful trading provision imposes personal liability on directors who, knowing or ought to have known that there was no reasonable prospect of avoiding the commencement of a CIRP, failed to exercise due diligence in minimising potential losses to creditors.[10] For the first time in Indian statutory law, creditors appear as the named beneficiaries of a director's duty. And critically, this duty arises not at insolvency itself but at the earlier point when insolvency becomes reasonably foreseeable, which is the twilight zone where creditors are most vulnerable and directors most tempted to self-deal.

The progression is, in retrospect, a coherent arc: 1956 (no statutory duty, common law duty to shareholders); 2013 (statutory duty to a broadened constituency, but not creditors); 2016 (statutory duty to creditors in the zone of insolvency, backed by personal liability). The IBC did not displace the Companies Act regime but it overlaid a creditor-protective layer precisely where the earlier regime was silent.

## THE LOSS OF CONTROL: SECTION 29A AND THE DETERRENT AGAINST MISFEASANCE

The single most powerful governance intervention in the IBC is not a liability provision at all. It is Section 29A which functions as a blunt eligibility bar that prevents certain categories of persons from submitting resolution plans or acquiring distressed assets through the insolvency

[8] The Companies Act, 1956, Sections 291-323 dealt with directors' powers, duties, and liabilities, but contained no general statutory statement of directors' fiduciary duties. As Nishith Desai Associates observed in a 2013 analysis, 'the pre-existing Companies Act, 1956 did not explicitly stipulate directors' duties, which made it necessary to fall back on common law principles.' See Nishith Desai Associates, 'Codification of Directors' Duties: Is Common Law Excluded?' (2013).

[9] Section 166(2), Companies Act, 2013. The provision came into force on April 1, 2014 vide Notification No. S.O. 902(E) dated 27.03.2014.

[10] Section 66(2), Insolvency and Bankruptcy Code, 2016. The provision was modelled on Section 214 of the UK Insolvency Act, 1986, though with a materially lower trigger threshold as discussed below.

process. Its governance impact flows not from what happens after a company enters the Corporate Insolvency Resolution Process (CIRP), but from what promoters fear might happen to them if it does.

Section 29A bars any person who (among other categories) is a promoter of a company classified as an NPA for more than one year, whose accounts have been declared wilfully defaulting, who is an undischarged insolvent, who is disqualified as a director under the Companies Act, 2013,[11] or who has been debarred by SEBI from accessing capital markets, from bidding for a company undergoing CIRP.[12] The bar extends not merely to the defaulting promoter directly, but to their connected persons and related parties.[13]

The consequence is stark: a promoter who presides over a default that triggers a CIRP application may lose the company entirely. There is no guaranteed right of reinstatement. There is no presumption that the incumbent management will be retained in a resolution plan. The insolvency professional displaces the board on admission,[14] and if the resolution plan approved by the Committee of Creditors installs new management, the promoter's decades of equity creation may be extinguished at a stroke.

This prospect has fundamentally altered the calculus of borrowing and default in India. For the first time, the cost of financial failure is not merely borne by lenders — it is visited upon the promoter personally, through the loss of the enterprise itself. The Supreme Court's endorsement of the constitutional validity of Section 29A and the NCLAT's consistent application of the provision have cemented its deterrent effect.[15] The provision has also been applied extraterritorially, to bars arising from disqualifications in foreign jurisdictions, reinforcing its comprehensive reach.

The exclusion of connected persons and related parties from the eligibility bar has been interpreted broadly to prevent back-door re-entry by barred promoters through holding structures and nominees. The CoC's commercial wisdom in accepting or rejecting resolution plans means that even technically eligible bidders may be disfavoured where their connection to the distressed management raises concerns. Section 29A has thus created not merely a legal bar but a reputational hazard: the association of a name with a failed corporate debtor carries consequences that extend well beyond the insolvency proceeding itself.

[11] Section 164, Companies Act, 2013 specifies grounds for disqualification of directors, including conviction for fraud, non-filing of financial statements, and failure to repay deposits. A person so disqualified is ineligible under Section 29A(d) of the IBC.

[12] Section 29A(f), IBC. The SEBI debarment ground creates an important feedback loop with the LODR regime discussed in Section V below: misconduct in securities markets disqualifies the promoter from any future CIRP participation.

[13] Section 29A(j) read with the Explanation to Section 29A, IBC, defines 'connected person' broadly to include holding companies, subsidiaries, associates, and persons acting in concert — deliberately closing off the back-door re-entry routes that promoters might otherwise use through nominee structures.

[14] Section 17, IBC: on insolvency commencement date, the powers of the board of directors stand suspended, and are vested in the interim resolution professional. Section 23 extends this to the resolution professional for the duration of the CIRP.

[15] Vikas Oswal v. Union of India, Writ Petition (Civil) No. 43 of 2019. The Supreme Court upheld the constitutional validity of Section 29A, rejecting challenges based on Articles 14 and 19(1)(g) of the Constitution.

## WRONGFUL TRADING: COMPLETING THE FIDUCIARY PIVOT

Section 29A operates prospectively as it deters future misbehaviour by making insolvency costly. Section 66(2) of the IBC operates retrospectively, imposing liability on directors for conduct in the lead-up to insolvency. Together, they create a regime that governs director behaviour both before and during financial distress.

Section 66(2) introduces into Indian law the concept of wrongful trading, borrowed from Section 214 of the UK Insolvency Act, 1986.[16] It provides that, on an application by the resolution professional, the NCLT may order a director to make a personal contribution to the assets of the company if: (a) the director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a CIRP; and (b) the director did not exercise due diligence in minimising the potential loss to creditors.

As the preceding section establishes, the significance of this provision lies in the statutory shift it effects in directors' fiduciary duties by imposing a creditor-protective duty in the zone of insolvency where shareholders are economically out of the money and creditors bear the real residual risk. Continuing to manage in shareholders' interests at that stage is not merely suboptimal for creditors; it is affirmatively harmful, as it transfers risk to them while preserving the optionality of equity.

Section 66(2) compels a reorientation of fiduciary duties at the onset of financial distress. When insolvency becomes reasonably foreseeable, directors must pivot their conduct from shareholder value maximisation to creditor loss minimisation. Failure to do so exposes them to disgorgement of personal assets and not merely the company's assets. The provision is notable in not requiring any element of fraudulent intent: the standard is negligence, not dishonesty. A director who continued trading in "business as usual" mode despite clear signs of impending insolvency may be liable even if entirely honest, simply for failing to exercise the diligence that the circumstances demanded.

Two aspects of the Indian formulation deserve particular attention. First, the trigger point in Section 66(2) i.e. "no reasonable prospect of avoiding the commencement of a CIRP" is set at a significantly lower threshold than the equivalent English provision, which requires the prospect of insolvent liquidation. A CIRP can be commenced on a default of as little as Rs. one crore.[17] This means that wrongful trading liability can crystallise well before balance sheet insolvency is established. Second, the standard of due diligence is assessed against a hypothetical director performing the same functions which is an objective test that denies directors the benefit of claiming personal ignorance of financial realities they ought to have known.

A comparative perspective sharpens the significance of India's design choices. Singapore's Insolvency, Restructuring and Dissolution Act 2018 (IRDA) introduced a wrongful trading

[16] Section 214, Insolvency Act 1986 (UK). The English provision uses 'insolvent liquidation' as the trigger, whereas Section 66(2) of the IBC uses 'commencement of CIRP' — a materially lower threshold discussed below.

[17] Section 4, IBC, as amended by the Insolvency and Bankruptcy (Amendment) Act, 2020, which raised the default threshold from Rs. one lakh to Rs. one crore. The increase was introduced as a COVID-related measure but has been made permanent. Even at Rs. one crore, the threshold remains low relative to the scale of most listed-company borrowings, meaning wrongful trading liability can crystallise at the very earliest stages of financial difficulty.

provision in Section 239 that is in some respects broader than either the English or Indian formulation: it extends personal liability not merely to directors but to any person who is 'a party to the company trading wrongfully', including officers, employees, and potentially even counterparties who knowingly participated.[18] The quantum of liability under the IRDA can extend to all debts of the company, not merely the incremental losses during the wrongful trading period. Against this backdrop, the Indian Section 66(2), with its lower trigger threshold than England but narrower personal scope than Singapore occupies a middle position.

For independent and nominee directors, who have traditionally occupied a somewhat passive role on Indian boards, Section 66(2) presents a particular challenge. The provision makes no distinction between executive and non-executive directors.[19] A nominee director appointed by a bank or a private equity fund to the board of a borrowing or investee company faces personal liability if they fail to agitate for creditor-protective action at the early signs of distress, even if they had no executive role in the mismanagement that caused it. This has had a significant impact on board dynamics, forcing independent directors to more actively seek information about the company's financial position, to be more willing to dissent from management, and to remain more alert to early warning signs than they were in the pre-IBC era.

## THE MARKET TRANSPARENCY LAYER: LODR DISCLOSURE OBLIGATIONS

Section 29A and Section 66(2) operate within the insolvency process itself. But the governance impact of the IBC extends beyond the insolvency arena through the disclosure architecture that SEBI has built into the LODR regime. This architecture creates a third layer of discipline for listed companies operating through market transparency rather than legal liability that complements the IBC's internal deterrents.

It is worth pausing to note that the LODR is not merely a disclosure regulation in the narrow sense. Regulation 4, which sets out the foundational principles governing all listed entities' obligations, expressly recognises the interests of stakeholders as a governing consideration. Regulation 4(1)(b) requires listed entities to prepare financial statements 'taking into consideration the interest of all stakeholders', while Regulation 4(1)(h) imposes a general obligation to follow disclosure obligations 'taking into consideration the interest of all stakeholders. [20] More significantly, Regulation 4(2)(d), titled 'Role of stakeholders in corporate governance', requires listed entities to 'recognise the rights of its stakeholders' established

[18] Section 239, Insolvency, Restructuring and Dissolution Act 2018 (Singapore), in force from July 30, 2020. Unlike Section 66(2) of the IBC or Section 214 of the UK Insolvency Act 1986, Section 239 IRDA also provides for criminal liability independently of civil proceedings, and allows directors or companies to seek an advance declaration from the court on whether a contemplated course of action would constitute wrongful trading — a prospective advisory mechanism unavailable under Indian law.

[19] Section 66(2), IBC, applies to 'a director' without qualification as to executive or non-executive status. This is confirmed by the broad definition of 'director' under Section 5(13) of the IBC, which cross-refers to Section 2(34) of the Companies Act, 2013, covering all persons appointed to the board.

[20] Regulation 4(1)(b) and Regulation 4(1)(h), SEBI (LODR) Regulations, 2015. Regulation 4(3) further provides that in case of any ambiguity or incongruity between these principles and the specific regulations, the principles shall prevail — making the stakeholder interest standard a hierarchically superior interpretive anchor for the entire LODR framework.

by law or through mutual agreements, and to 'encourage co-operation between listed entity and the stakeholders.' Creditors, whose rights are established both by contract and by the IBC, fall squarely within this formulation. The LODR's stakeholder orientation thus provides the underpinning for the IBC specific disclosure obligations that follow. It is not merely that the law requires these disclosures but that the foundational principles of the listing framework treat creditor interests as a constituent part of what listed entities must consider and protect.[21]

Schedule III, Part A, Para A of the LODR requires listed corporate debtors to make immediate, unconditional disclosures to the stock exchanges upon the occurrence of specified CIRP events, without the benefit of any materiality threshold.[22] The breadth of these obligations is striking. A listed entity must disclose: the filing of a CIRP application by or against it (specifying the amount of default); the admission, rejection, or withdrawal of that application by the NCLT; the public announcement made pursuant to the NCLT's order; the list of creditors; the appointment or replacement of the resolution professional; Committee of Creditors meeting intimations; the invitation and number of resolution plans received; the filing of a resolution plan with the NCLT; and the salient features of any resolution plan approved, including pre- and post-resolution shareholding patterns, asset details, creditor payouts, incoming investor profiles, and business strategy.[23]

These disclosure obligations operate upstream as well. Events that signal financial stress before a CIRP is formally initiated are separately designated as deemed material events requiring immediate stock exchange intimation: a payment default or fraud,[24] the signing of an Inter-Creditor Agreement,[25] a one-time settlement with a bank,[26] and any winding-up petition.[27] Forensic audit initiation must be separately disclosed. [28]The mandatory disclosure

[21] Regulation 4(2)(d), SEBI (LODR) Regulations, 2015. The provision is modelled on the OECD Principles of Corporate Governance, which similarly recognise the role of stakeholders — including creditors — in the governance of listed companies.

[22] Schedule III, Part A, Para A, Item 16, SEBI (LODR) Regulations, 2015 (as amended). Para A events are 'deemed material' and must be disclosed irrespective of whether they satisfy the general materiality criteria in Regulation 30(4). The CIRP disclosure obligations were inserted by the SEBI (LODR) (Third Amendment) Regulations, 2018 (effective June 1, 2018) and have been substantially elaborated by subsequent amendments in 2021 and 2023.

[23] Schedule III, Part A, Para A, Item 16(a)-(m), SEBI (LODR) Regulations, 2015. Item 16(k) specifically requires disclosure of: pre and post net-worth; asset details post-CIRP; securities continuing on assets; other material liabilities; detailed pre and post shareholding pattern (assuming 100% conversion); funds infused and creditors paid off; additional investor liabilities; investor impact metrics (P/E, RONW); names and backgrounds of new promoters; and business strategy.

[24] Schedule III, Part A, Para A, Item 6, SEBI (LODR) Regulations, 2015. 'Default' is defined as non-payment of interest or principal in full on the due date. For revolving facilities, default arises after 30 continuous days of excess over sanctioned limit or drawing power.

[25] Schedule III, Part A, Para A, Item 9(ii), SEBI (LODR) Regulations, 2015. The ICA signing must be disclosed as a deemed material event. This obligation was reinforced by NSE Circular NSE/CML/2019/27 dated 24.09.2019 on disclosure of default/ICA.

[26] Schedule III, Part A, Para A, Item 10, SEBI (LODR) Regulations, 2015.

[27] Schedule III, Part A, Para A, Item 11, SEBI (LODR) Regulations, 2015.

[28] Schedule III, Part A, Para A, Item 17, SEBI (LODR) Regulations, 2015, inserted by the 2021 amendments. The disclosure must include the fact of initiation, the name of the initiating entity, reasons (if available), and, upon receipt, the final forensic audit report along with management comments.

of the ICA signing is particularly significant: its execution signals publicly that lenders have identified the borrower as stressed and are coordinating a collective response. That signal reaches the market, bond investors, counterparties, and regulators simultaneously.

The governance effect of this transparency framework is highly effective. Promoters of listed companies know that any pathway toward insolvency, from the first default through every stage of the CIRP will be publicly visible in real time. There is limited possibility of engaging in clandestine off-market negotiations with a select group of powerful lenders who may extract disproportionately unfavourable terms against the interests of the borrower and its other stakeholders. The mandatory disclosure of resolution plan details, including the names and backgrounds of incoming investors and the impact on existing shareholders, ensures that the equity market can price the distress accurately. The prior practice of promoters managing stock price narratives through selective disclosure while privately negotiating with lenders has been substantially curtailed.

The LODR disclosure obligations also interact with the IBC's substantive provisions in ways that amplify their governance effect. SEBI's debarment of a promoter from accessing capital markets, itself triggered by conduct such as market manipulation or fraudulent disclosures is one of the grounds for Section 29A ineligibility.[29] Thus misconduct in the securities markets disqualifies the promoter from participating in any future insolvency resolution, not merely their own company's. Conversely, the extensive disclosure of resolution plan features required under Schedule III provides SEBI with the raw material to monitor whether the IBC process is being used to re-entrench disqualified promoters through back-door structures.

## THE ECOSYSTEM OF DETERRENCE: HOW THE THREE MECHANISMS INTERACT

Taken individually, each of these mechanisms — the loss of control through Section 29A, personal financial liability through Section 66(2), and market exposure through LODR disclosures — would represent a significant advance in corporate governance. Taken together, they create what might fairly be described as an ecosystem of deterrence that addresses misconduct at every stage of a company's financial lifecycle. This ecosystem did not emerge fully formed from the statute alone; it has been built, piece by piece, through regulatory architecture and institutional action.

In the early phase of financial difficulty, the wrongful trading provision incentivises directors to respond proactively: seeking formal solvency opinions, stress-testing cash flows, disclosing early warning signals to lenders, and in appropriate cases initiating voluntary CIRP.[30] The LODR disclosure obligations ensure that the market receives contemporaneous information about payment defaults and restructuring discussions, preventing promoters from using private negotiations as cover for asset dissipation.

[29] Section 29A(f), IBC. SEBI's power to debar persons from accessing the securities market arises under Section 11(4)(b) of the SEBI Act, 1992 and Regulations 11 and 27 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003.

[30] Section 10, IBC provides for voluntary CIRP initiation by the corporate debtor itself, subject to a special resolution of shareholders. The interaction between this provision and Section 66(2) wrongful trading liability is discussed in detail in Bahram N. Vakil, Suharsh Sinha and Ashrita Gulati, 'Liability of Directors for Wrongful Trading under the Insolvency & Bankruptcy Code', AZB & Partners Publication (July 2020).

A significant part of the deterrence effect operates not through actual CIRP proceedings but through the shadow they cast. A body of research commissioned by the IBBI and conducted by the Indian Institute of Management, Bangalore, drawing on comprehensive datasets spanning 2010 to 2024, found that the average duration of overdue corporate loans fell sharply from between 248 and 344 days before the IBC to just 30 to 87 days thereafter, that gross NPAs declined from 11.2% of bank advances in 2018 to 2.8% in 2024, and that there is a measurable and increasing tendency among borrowers to settle debts specifically to avoid the trigger of CIRP proceedings.[31] This last finding — that the threat of CIRP is as potent as CIRP itself — is perhaps the most powerful empirical validation of the governance-deterrence thesis advanced in this article. The IBC's governance impact is not confined to what happens inside the insolvency process; it has changed corporate behaviour well before any insolvency application is filed.

The same IIM-B research found that resolved firms showed improved governance outcomes, including a higher proportion of independent directors on their boards post-resolution. This suggests that the IBC's governance effects extend beyond deterrence into structural reform: companies that pass through the CIRP process emerge with boards that are constituted differently. The insolvency process has, in a meaningful sample of cases, functioned as a forced governance reset.

The avoidance transactions framework, Sections 43 to 51 of the IBC, provides a further backstop. Resolution professionals are required to investigate pre-CIRP transactions and apply to the NCLT for reversal of preferential payments, undervalued transactions, extortionate credit transactions, and fraudulent trading.[32] This creates a look-back period that penalises the most egregious forms of asset dissipation, including the intra-group transfers and friendly-encumbrance creation that was endemic to some of the large corporate failures of the pre-IBC era.

The post-resolution phase is equally addressed through proactive crafting of regulations by the IBBI. The IBBI's amendments to the CIRP Regulations mandate that the information memorandum prepared by the resolution professional must disclose all identified avoidance transactions to prospective resolution applicants before plan submission, eliminating the information asymmetry that previously allowed asset-stripping to be hidden from bidders and priced into recovery rates only after the fact.[33]

[31] Research Study, 'Behavioural Impact of the Insolvency and Bankruptcy Code', conducted by Prof. Jayadev M, Prof. Abhinav Anand, Dr. Aishwarya Krishna, and Prof. Srijith Mohanan, IIM Bangalore, published by IBBI, May 2025 (IBBI Press Release No. IBBI/PR/2025/13 dated 29 May 2025). The study draws on NeSL loan data (2018–2024), IBBI CIRP data (2017–2023), RBI NPA data, and CMIE Prowess financial data.

[32] Section 43 (preferential transactions), Section 45 (undervalued transactions), Section 50 (extortionate credit transactions), and Section 49 (transactions defrauding creditors), IBC. The look-back periods range from 12 months (preferential transactions with non-related parties) to 2 years (with related parties) and up to 2 years for undervalued transactions. IBBI Circular No. IBBI/Facilitation/001/2020 dated 8 May 2020 clarified the mandatory nature of these obligations and specified that RPs must make avoidance transaction determinations by the 115th day and file applications by the 135th day of the insolvency commencement date, under Regulation 35A of the IBBI (CIRP for Corporate Persons) Regulations, 2016.

[33] IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025, effective 4 July 2025. The amendments require the information memorandum to include details of all identified avoidance transactions, fraudulent trading, and wrongful trading, and bar any resolution plan from dealing with such transactions unless they were pre-disclosed to all prospective resolution applicants.

The information architecture that further enables disclosures and market scrutiny rests on IBBI's regulatory architecture built to empower the functioning of information utilities. The National E-Governance Services Limited (NeSL), established as India's first information utility under the IBC, provides authenticated records of financial contracts and defaults — eliminating the routine factual disputes over the existence of default that caused so much delay in pre-IBC proceedings, and providing the authenticated dataset that the CIRP process requires to function efficiently.[34] When default is authenticated through NeSL, it becomes difficult to dispute. That authentication, combined with mandatory LODR disclosure and the avoidance transaction investigation obligation, creates a comprehensive information environment in which concealment of financial distress is structurally harder than it was before the IBC.

In the post-resolution phase, the detailed LODR disclosure requirements governing approved resolution plans ensure ongoing market oversight of the incoming investors' commitments, including their plans for achieving minimum public shareholding[35] and any proposed delisting. This addresses a governance concern specific to the Indian IBC context: the risk that resolution may install a new controlling shareholder who then engages in precisely the same conduct as the outgoing promoter. Transparency about the new management's background, strategy, and obligations reduces the scope for governance arbitrage through the insolvency door.

## LIMITATIONS AND THE ROAD AHEAD

The wrongful trading provision has generated remarkably little case law in nearly a decade of operation. Resolution professionals have filed few Section 66(2) applications, partly from unfamiliarity with the provision and partly from the difficulty of assembling the evidence needed to establish the requisite knowledge element. The due diligence standard remains substantially untested by the NCLT. Until there is a body of adjudicated cases establishing what conduct does and does not satisfy the standard, directors cannot calibrate their behaviour with confidence, and the provision's deterrent effect rests more on theoretical than demonstrated risk.

A related concern is the chilling effect that Section 66(2)'s open-ended standard may have on directors who are genuinely trying to navigate distress in good faith. Singapore's IRDA offers an instructive model for addressing this. Section 239(10) of the IRDA allows a company, or, with its consent, any person interested in its business to apply to the court for a prospective declaration as to whether a particular course of conduct, transaction, or series of transactions would constitute wrongful trading. The court may, on such terms and conditions as it thinks fit, declare that the proposed course of action does not constitute wrongful trading; and

[34] Section 3(21) and Part IV of the IBC; IBBI (Information Utilities) Regulations, 2017. NeSL was established as the first information utility under the IBC. Its authenticated loan data was also the primary dataset used in the IIM-B behavioural impact study, illustrating how the information infrastructure of the insolvency regime enables rigorous governance research.

[35] Regulation 38, SEBI (LODR) Regulations, 2015, read with Rule 19A, Securities Contracts (Regulation) Rules, 1957, requires listed companies to maintain a minimum public shareholding of 25% at all times. Schedule III, Part A, Para A, Item 16(m) specifically requires quarterly updates on MPS compliance by incoming investors post-resolution.

under Section 239(11), such a declaration may be made on confidential terms, protecting commercially sensitive information in the process. The utility of such a mechanism for Indian law is self-evident. A director of a financially distressed company who genuinely wishes to take a difficult but potentially value-preserving decision such as a sale of a division, a fresh borrowing, a restructuring proposal to creditors, may currently have no reliable way of knowing whether that decision will later be characterised as wrongful trading by a liquidator armed with the benefit of hindsight. The result, predictably, is decision paralysis: the very directors most motivated to act in creditors' interests may refrain from doing so for fear of personal liability. An advisory declaration mechanism modelled on Section 239(10) IRDA would allow such directors to seek judicial guidance prospectively, acting in the confidence that their conduct has been assessed against the standard the law actually demands. It would also reduce contested wrongful trading litigation, since a director who has obtained a declaration would have a strong defence to any subsequent claim. The absence of any equivalent mechanism from Section 66(2) is a gap that a future amendment to the IBC would be well advised to address.

Section 29A has generated prolonged litigation about its scope and constitutional validity, creating uncertainty in live CIRP processes. The broad connected-persons bar has in some cases deterred legitimate commercial bidders from participating in resolution processes, reducing the pool of viable resolution applicants and, in certain large cases, contributing to liquidation outcomes that are worse for all stakeholders than a flawed resolution would have been. Further, there are legitimate cases where the borrower has faced financial distress not due to misfeasance by the promoter but due to extraneous reasons genuinely beyond the promoter's control. In these limited circumstances Section 29A may in fact deter entrepreneurial spirit by curtailing even calculated risk taking.

The LODR[36] disclosure obligations, while comprehensive on paper, depend for their effectiveness on enforcement by the stock exchanges and SEBI. The practical reality is that disclosures of CIRP events have often been delayed, incomplete, or technically compliant without being genuinely informative. SEBI's strengthening of the materiality framework represent positive steps, but the culture of meaningful disclosure in distressed situations remains a work in progress.

Notwithstanding these limitations, the enhancement in governance standards is clear and the distance covered is substantial. The IBC and IBBI's regulatory framework have achieved what decades of company law reform could not: it has made the failure of a company personally costly to those who run it negligently or in a self-serving manner.

## CONCLUSION

Historically, the governance regime was such that promoter-managers were able to borrow recklessly, service debt selectively, and strip assets in anticipation of insolvency, confident that the law offered no effective remedy to lenders. The IBC has changed each of those

[36] SEBI (LODR) (Second Amendment) Regulations, 2023, dated June 14, 2023, which substantially revised Regulation 30 and Schedule III. SEBI (LODR) (Third Amendment) Regulations, 2024, dated December 12, 2024, which introduced further refinements including revised thresholds for regulatory action disclosures under Para A, Items 19 and 20.\

equations. Through Section 29A, it has made loss of the enterprise a real and credible outcome. Through Section 66(2), it has completed the arc that the Companies Act, 2013 began, extending directors' fiduciary duties to creditors in the one context where that protection matters most. Through the LODR disclosure architecture, anchored in a foundational commitment to stakeholder interests under Regulation 4, it has ensured that the equity market exercises continuous oversight over the lifecycle of financial distress.

The IBC's governance impact is not a byproduct of its creditor-rights function; it is an integral design feature. By simultaneously threatening promoters with loss of control, directors with personal liability, and listed entities with public market scrutiny, the IBC has created a comprehensive deterrence paradigm that addresses the promoter-manager problem that Indian corporate law had for so long failed to solve. The code has irreversibly altered the rules of engagement. The task now is to ensure that its mechanisms are used with the rigour and consistency that their design demands.

# 09 10 YEARS OF IBC-PROGRESS AND PROSPECTS

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In many ways, an efficient and effective resolution process can be considered as a public good. It enables early resolution of problem credits and effective recovery of impaired credits. This in turn enables the financing institutions to recycle their funds faster and manage with lower capital. The benefits to the economy flow in through lower cost and greater availability of credit for economic growth. Hence a statutory framework like the Insolvency and Bankruptcy Code, 2016 (IBC/Code) which facilitates effective and efficient recovery, becomes an important enabler for economic growth and for promoting a stable and healthy financial system.

An efficient insolvency legislation should ensure a time-bound resolution process which maximises the value of assets to be recovered, while also supporting entrepreneurship by allowing for an honourable exit in genuine cases. In addition, the resolution framework should also distinguish between various classes of financial creditors based on the quality of security available to them. It should not shy away from liquidating ventures if it is found to be a costlier proposition for the society to allow the venture to linger on.

## INSOLVENCY RESOLUTION PRIOR TO 2016

Prior to the enactment of IBC in 2016, India had a plethora of legislations, each having part jurisdiction over the process of insolvency resolution of a borrower. We had the Sick Industrial Companies Act (SICA) that was enacted in 1985, under which the Board for Industrial Financial Reconstruction (BIFR) was set up to rehabilitate sick and weak industries. The Debt Recovery Tribunals (DRTs) were set-up under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (since rechristened as Recovery of Debts and Bankruptcy Act, 1993). In 2002, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act was enacted to provide for faster enforcement of security interest without the intervention of courts. What was notable in these enactments was that these had a positive impact on the resolution of stressed assets in the initial period after enactment, but the impact tended to wane over time. Moreover, the focus of the pre-IBC resolution efforts was more towards preservation of companies and employment, sometimes even at the expense of credit discipline and production efficiency of the economy.

The enactment of IBC in 2016 resulted in a paradigm shift in the efforts towards resolution of stressed assets in the financial system. The Code marked a radical departure from the prevalent approaches in that it embraced the “creditor-in-control” model as against the “debtor-in-possession” model that had failed to produce any tangible improvements in the credit discipline in the country. The Code fundamentally reset the power balance between debtors and creditors in the face of a default by the debtors. In a single stroke, the Code removed “the divine right of promoters to continue in saddle”, as observed by the Hon’ble Supreme Court, restoring the interests of other stakeholders, especially the creditors. For the first time, the

promoters faced the possibility of losing control of their respective companies if the financial stress was not addressed in a timely and comprehensive manner.

The Code established Committee of Creditors (CoC) with the responsibility of ensuring maximisation of value for stakeholders during the resolution of a corporate debtor (CD), while at the same time casting an obligation on it to treat their individual interests as subservient to the larger public interest. This was, and remains, a unique feature of the Code as compared to similar legislations elsewhere.

As a regulator, Reserve Bank has had a critical stake in the success of the Code since the RBI regulated lending system is an important stakeholder whose interests are protected by effective bankruptcy laws. The enactment of IBC and the default event being a trigger for initiating insolvency proceedings under the statute also forced a rethink of the regulatory trigger for mandatory resolution. This is evidenced by the reset of the prevailing schemes for restructuring with a simple and harmonised Prudential Framework for Resolution of Stressed Assets.[1]

Any assessment of the outcomes brought about by the Code must be based on objective criteria, accounting for both the explicit and implicit outcomes. The IBC's performance is often unfairly judged solely by "haircuts," absorbed by the lenders. However, it is necessary to make a broader assessment of its deterrent effects and systemic clean up of the balance sheets of the regulated entities that has been made possible. When we look at the Gross Non-Performing Assets (GNPA) of scheduled commercial banks, it is seen that these had peaked at 11.2% in 2018 before coming down to a multi-decadal low of 2.15% by 2025. A significant part of this reduction is due to IBC-enabled resolutions, which cleared the "legacy baggage" of the early 2010s. In addition, we also need to factor in the *Power of Deterrence*. The data up to March 2025, reveals 30,310 applications for initiation of CIRPs, having underlying default of ₹ 13.78 lakh crore were resolved before their admission itself. The "credible threat" of losing control of a company has forced borrowers to negotiate seriously, achieving the Code's objective without even entering the court. This proves that the Code is far superior to the "scrap value" outcomes of the previous era, effectively rescuing companies as "going concerns". While average realizations hover around 33% of admitted claims, realization for financial creditors consistently reaches nearly 170% of the liquidation value and 94.1% of fair value.

The Code also enhanced the negotiating power of operational creditors by allowing them also to make applications for initiating Corporate Insolvency Resolution Process (CIRP) in respect of operational debtors who are in default. Data reveals that while a large proportion of the CIRP cases were filed by operational creditors, a higher proportion of withdrawals also related to such cases, reflecting perhaps the use of CIRP filing as a negotiating tactic, that has worked for such operational creditors.

[1] Since replaced by the RBI ( Resolution of stressed Assets )Directions 2025 https://www.rbi.org.in/Scripts/BS_ViewREwiseDraftDirections.aspx?id=19

As India marks 10 years of the IBC in 2026, a comparative analysis reveals that while India's "Creditor-in-Control" model was a necessary shock to the system, it needs to also move towards providing a degree of flexibility as seen in the US and UK. A comparator of the frameworks is given below:

## COMPARATIVE FRAMEWORK: INDIA (2026 REFORMS) vs. US vs. UK

| Feature | India (IBC 2026 - Proposed) | USA (Chapter 11) | UK (Part 26A/CVA) |
|---|---|---|---|
| **Primary Philosophy** | **Creditor-in-Control** (with a shift toward hybrid/out-of-court). | **Debtor-in-Possession** (Management usually stays). | **Mixed/Court-Led** (Administrator or Management control). |
| **Role of Creditor Committee** | **The CoC:** Decisions require 66% vote. Reforms propose a strict **Fiduciary Code of Conduct**. | **Unsecured Creditors' Committee:** Primarily advisory; can object but doesn't "run" the firm. | **Variable:** Creditors vote by classes; focus is on negotiated "Arrangements." |
| **Control of Business** | **Resolution Professional (RP):** Operates under CoC supervision. | **Management:** Retains control unless fraud is proven. | **Administrator/ Monitor:** A professional usually takes over or monitors. |
| **Cramdown Powers** | **Limited:** Dissenting creditors must get "Liquidation Value," but cross-class cramdown is still maturing. | **High:** Court can force a plan on a dissenting class if it is "fair and equitable." | **High:** "Cross-class cramdown" allows courts to bind dissenting classes (introduced in 2020). |
| **Timelines** | **330 Days (Statutory):** 2026 reforms aim to enforce 14-day admission to curb current ~600-day delays. | **Flexible:** Often takes 12–24 months; extensions are common. | **Efficient:** Faster than India; focuses on preserving "going concern" via pre-packs. |
| **Recovery Rates (Average)** | **32% -36%** (Improving but hampered by late-stage filing). | **~81%** (Driven by early intervention). | **~85%** (High reliance on private restructuring). |

The key takeaways from the comparison are as follows:

- *The approach to the promoter/management group* - while the US model assumes management is best suited to run the business during restructuring, the IBC is built with an innate suspicion of promoters. While this was perhaps warranted, given the past experience with recalcitrant borrowers, there is also a need to

move towards a middle ground balancing both the approaches. The 2025-26 reforms (like the Creditor-Initiated Insolvency Resolution Process - CIIRP) is in a way a move closer to the US model by allowing some management continuity under strict creditor supervision to prevent value loss.

- *Approach towards Cross-Class Cramdown.* Here again the initial approach differed from what we have seen in approaches in advanced economies. The UK's 2020 reforms introduced the "cross-class cramdown," which allows a court to approve a plan even if an entire class of creditors dissents. We are now looking at similar statutory recognitions to prevent "hold-out" creditors from stalling resolutions.

- *Institutionalizing the "Fresh Start"* While the US Chapter 11 is famous for the "Clean Slate" principle, India has only recently codified this through judicial precedents (e.g., *Essar Steel*). The 2026 legislative updates aim to provide a statutory guarantee that a new buyer will not be hounded by the previous owner's "hidden liabilities," bringing India's legal certainty on par with the UK and US.

A quick analysis of the US (Chapter 11) and UK (Part 26A) insolvency regimes also highlights three critical gaps in the current Indian "Creditor-in-Control" model: The first is the *Fiduciary Gap*: In the US, creditor committees have a "fiduciary duty" to the entire class they represent. While the Indian reality is that creditors often vote based on their internal targets. Second is the *Decision-Velocity Gap*: while the UK administrators and US debtors make real-time operational decisions the Indian reality is that CoC meetings are often adjourned for "internal bank approvals," leading to a "Value Death Spiral which will be avoided if the Code of Conduct for the creditors insists on require Pre-Authorized Voting Mandates, ensuring that the "Value of Time" is respected. Finally, *the "Hold-out" Problem*: In India small dissenting creditors often initiate litigation that stalls the 330-day clock. The new conduct norms should institutionalize Mediation and Pro-rata Funding, the incentive for litigious dissent.

Ten years of the IBC have proven that while the law is robust, the "implementation is a function of the broader ecosystem." For the IBC to flourish in its second decade, the focus must shift from merely "recovering debt" to "unlocking economic value". The transition from a "defaulter's paradise" to a "disciplined credit culture" is well underway, but its completion requires creditors to act with the same urgency that the law demands. This includes prescription of strict timelines for voting on resolutions, making it mandatory to give the pro-rata contributions for essential going concern expenses and considering a liquidation value floor and offer a guaranteed payout for dissenters, but no power to veto a majority-approved plan to curb the tendency or ability of dissenting creditors to stall the process.

To ensure that the processes are followed, enforcement measures could be considered to ensure better discipline. The Insolvency and Bankruptcy Board of India (IBBI/Board) should have the power to levy penalties on financial institutions (not just the individuals) for "mala fide delays" or "non-participation" in meetings. Further, compliance with the CoC Code of Conduct should be a parameter in the RBI's Annual Financial Inspection (AFI) of banks and persistent laggards should face "supervisory action."

A modern insolvency law such as the IBC deserves support and patience from all stakeholders as the processes, procedures and case laws are still evolving and the boundaries are being tested. It is necessary to continue improving the regulatory regimes to address the shortcomings through suitable harmonisation of the regimes across various classes of regulated entities as well as periodic review of the framework to keep pace with the changes in the economy, and financial system.

In order to strengthen the Code further, work on following four dimensions needs to be considered:

**A.** **To look at the big picture in resolution:** A comprehensive law like the IBC is often viewed as a last resort by the lenders – an avenue that needs to be explored after exhausting all alternatives. However, this view stems from the lack of a comprehensive vision for the future of a beleaguered borrower. Various classes of lenders are governed by disjoined set of out-of-court resolution frameworks that applies separately to each class of lender. Without participation of all lenders, any effort towards resolution is likely to be incomplete and would be a mere postponement of the inevitable reckoning. The time lost in pursuing such incomplete resolutions is likely to compound the eventual losses to the creditors and costs to the financial system.

**B.** **Address the Delays in admission of insolvency applications:** A disconcerting aspect is the time taken between filing of an insolvency application and the eventual admission of the application. The Code prescribes a period of 14 days. However, in reality, the admission usually takes a much longer time than that. Such delays in admission reduce the efficiency of IBC as a comprehensive bankruptcy law and may weaken the creditor rights and ease of exit for bankrupt borrowers.

**C.** **Increase in the coverage of pre-pack resolutions:** Like any piece of legislation, IBC also needs to evolve with the changing economic fundamentals. The new dimensions being introduced to the IBC such as the new module of the pre-packaged insolvency resolution process (PPIRP/pre-packs) which combines the best of the out-of-court resolution efforts and the judicial finality of a resolution plan approved by an Adjudicating Authority are welcome and should be extended to all class of borrowers.

**D.** **Group Resolutions:** Another important dimension that needs to be incorporated in the Code is the concept of group resolution – one in which the resolution of borrowers belonging to the same corporate group is undertaken together. Such a process is especially vital in an economy like India where traditionally credit contracts have been embedded with cross obligations and credit mitigating covers provided by parent and group companies of the borrower.

## ROLE OF OTHER STAKEHOLDERS

Lenders should not wait for a default by a borrower to initiate resolution processes, instead they should combine prudent risk pricing of their exposures with ongoing monitoring of the exposure Since the point at which a counterparty has become insolvent cannot be pinpointed accurately, the risk management practices of the lenders have to be sophisticated enough to

capture the changes in risk factors that may affect the safety of the said credit exposure. After all they are responsible for safeguarding their own interest and interest of their stakeholder.

The IBC assigns a central role to the CoC in the CIRP. However, this is an area where significant improvements are needed. There have been instances where the CoC's performance has been found lacking in several aspects. These include disproportionate prioritization of individual creditors' interests over the collective interest of the group; disagreements among CoC members on approving a resolution plan due to concerns over undervaluation or perceived lack of viability; disagreements on the distribution of proceeds even when a resolution plan is agreed upon; non-participation in CoC meetings and lack of effective engagement, coordination, or information exchange among members. Instances have been noted regarding insufficient skill sets in areas like corporate finance, legislation, and industry knowledge; and, lastly, the nomination of financial creditors to the CoC are entrusted with responsibilities that far exceed their actual authority. It is in the larger interest of the creditors that the issues relating to the conduct of the CoC are addressed by the members themselves without waiting for regulatory prescriptions or fiats where incentives are not perfectly aligned, deviations from best practices become the norm, and therefore, we need an enforceable code of conduct for the CoC.

The CoC is the heart of the IBC, and if the heart stops to deliberate or defer, the body dies. To ensure this, the Board must ensure that the CoCs are adequately empowered, and have the authority to commit the bank to a resolution plan. We need to look at Asset Maximization over Haircut Minimization: we need to move away from a mindset which focuses "How much loss can we avoid today?" to "How much enterprise value can we save for the economy? This however, is a broader challenge as losses if accepted by the CoCs can then be subject to post mortem and questioning by audits and law enforcement. This is a structural issue which we need to address if the approach as to change. Adopting the CoC Code of Conduct is perhaps the option we need to bridge the 35% recovery gap between India and the West. By professionalizing the CoC, the bank reduces its Credit Risk and improves Capital Allocation by churning stressed assets faster.

A key stakeholder under the IBC ecosystem is the Resolution Professional (RP) whose expertise and proficiency materially impacts the outcome of the resolution process. The code implicitly and explicitly casts lot of operational responsibilities on the RP ranging from collation of claims to finding prospective resolution applicants to providing material inputs to CoC for finalising the resolution plan. However, in many instances, the RP do not enjoy the cooperation of other stakeholders, which impairs the ability of the RP to discharge its duties satisfactorily. There is a need to strengthen the ability of the RP to deliver the outcomes envisaged under the IBC. While regulations have helped create an ecosystem for RPs, the market should develop compensation structures for RPs that are tied to the outcomes of the resolution process. This would address the principal-agent issue and align the RP's goals with the CoC, maximizing value for both parties. It would also attract experienced professionals, benefiting the system as a whole.

## WAY FORWARD

It has been ten years since the introduction of the Code and several large cases have been successfully resolved under the code. The achievements are significant and there have been several positive outcomes. It is important to have a strong feedback loop and ensure that the data being generated, out of the insolvency process, can be gainfully used going forward, as inputs for improved credit underwriting standards as well as in valuation and pricing of credits. A detailed study of enterprises placed under the insolvency process can provide valuable insights if we compile data from such cases. If such data is collected and institutionalised through a structured process, it can give us valuable insights and precedents on how to proceed in complex cases.

The real success of a formal insolvency framework lies in its role as a deterrent than based on its actual use. It is out of court workout procedures that need to work as the primary instruments of resolution, albeit under the shadow of the formal insolvency framework. What is therefore required is a mechanism to bridge the principle-based resolution approach under out of court workout with that of the statutory umbrella of IBC so that a resolution initiated out of court can be transitioned and get implemented under IBC.

There are few key areas that could be explored further to improve the overall resolution ecosystem. First, a better understanding of the reasons behind defaults—whether this is on account of the general economic environment, specific industry challenges, or professional mismanagement. This perspective can help to tailor appropriate solutions. Second, addressing the delay resulting from lack of cooperation by some CDs in the insolvency process, such as delay in submitting information, withholding valuable details, using litigation to stall progress, or creating indirect obstacles to discourage potential resolution applicants, is crucial. Finally, examining valuation, including insights on how collateral types affect realization versus valuation, the impact of time on recovery, and the relationship between resolution timelines and valuation outcomes. Often the disparity in valuation between the appraisal and the resolution stages is indicative of over exuberance in valuation and possible lack of appropriate due diligence.

With the rise of technology, and the significant transformation of the financial system, banks and other stakeholders should use technology to help resolve issues with stressed borrowers in several key areas like predicting defaults before they happen based on the borrower's data, enabling early corrective action; analysing both structured and unstructured data to identify related party or preferential transactions. As technology and its application evolves on these fronts, there could be significant reduction in effort involved as well as costs associated with the resolution. We should, however, look to restructuring and revival of units as the first option and enable it in a quick and time bound manner. There are valuable assets vesting within an enterprise that we as a nation can ill afford to run doing even though as creditors the liquidation process appears as the safer and risk-free option. For this it may be necessary to create an ecosystem that encourages revival of the enterprises.

## CONCLUSION: A DECADE OF MATURITY

In 2016, the IBC was a "leap of faith." By 2026, it has become an "economic stabilizer." The Code's success should not be measured by the number of companies it liquidates, but by the number of defaults it prevents. The IBC has given many distressed businesses a genuine path to revival— putting assets back to work, preserving employment where feasible, and allowing fresh capital and management to restore productivity. At the same time there is a need to strengthen institutional capacity. The establishment of additional NCLT benches for a limited period may be necessary to clear the backlog. In the long term, there is a need to consider creating dedicated insolvency benches, staffed and trained exclusively for IBC matters and also tighten governance. While Section 29A of the Code, which bars errant promoters from re-entering through back doors, must be further strengthened to prevent proxy participation. Section 32A, which gives new management a clean slate, must be carefully implemented to prevent misuse. Insolvency Professionals must be held to the highest standards, with robust disciplinary mechanisms. The challenges of delay, backlog, and other complexities require to be addressed by the concerted effort of all stakeholders—the Government, the regulator, Insolvency Professionals, the judiciary, and the financial sector so that we collectively ensure that the Code realises its full potential.

Even as we observe the tenth anniversary of the Insolvency and Bankruptcy Code, 2016, the legislation stands as a transformative pillar of the nation's financial architecture. What began as an ambitious attempt to clean up bank balance sheets has evolved into a sophisticated ecosystem that has fundamentally reshaped the "credit culture" of the country. Ten years of the IBC have proven that while the law is robust, its success is a "function of the broader ecosystem". The Code has the potential and has shown a way to transform India from a "defaulter's paradise" to a "disciplined credit culture". The challenge for the next decade lies in the hands of the creditors: they must act with the same urgency that the law demands to ensure that "Enterprise Value" is never sacrificed for "Procedural Compliance".

# 10 A DECADE OF REFORM: JURISPRUDENCE, PERFORMANCE, AND THE FUTURE OF INDIA'S INSOLVENCY REGIME

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## INTRODUCTION

A developing economy seeking recognition as a reliable global economic participant must establish robust recovery regimes to attract sustained domestic and foreign investment.

As the report of the Bankruptcy Law Reforms Committee[1] (BLRC Report) identified, debtors may default on payments due to financial or business failures, even without intending to do so.[2] An insolvency and bankruptcy system must protect both lenders and borrowers from the consequences of such failures. The BLRC Report defines a "*sound bankruptcy process*" as "*one that helps creditors and debtors realise and agree on whether the entity is facing financial failure and business failure.*"[3]

Since India opened up as a global economic player in 1991, policymakers have introduced numerous reforms to make the country an attractive investment destination. However, an uncertain and fragmented insolvency regime challenged prospects of debt recovery. The Statement of Objects and Reasons of the Insolvency and Bankruptcy Code, 2016 acknowledged that the erstwhile regime was "*inadequate, ineffective and results*[sic] *in undue delays in resolution...*"[4]

In its first detailed order[5] concerning the Insolvency and Bankruptcy Code, 2016 (IBC/Code), the Supreme Court of India (Supreme Court) evaluated the need for the IBC in the Indian economy, noting that India lagged behind in offering reliable insolvency resolution frameworks.[6] Prior to the IBC's enactment, India's insolvency framework was acutely fragmented, with provisions scattered across multiple statutes—including the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and the Companies Act, 2013—each administered by separate fora, such as the Board for Industrial and Financial Reconstruction (BIFR), Debt

[1]Bankruptcy Law Reforms Committee, *The report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design*, November 2015, https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (BLRC Report).

[2]BLRC Report, Section 3.2 (*The role that insolvency and bankruptcy plays in debt financing*).

[3]BLRC Report, Section 3.2 (*The role that insolvency and bankruptcy plays in debt financing*).

[4]The statement of objects and reasons to the Insolvency and Bankruptcy Code, 2016, as quoted in Pramod Rao, *Critique of the Insolvency & Bankruptcy Code, 2016*, 2(1) National Law School Business Law Review (2016), Article 4,https://repository.nls.ac.in/nlsblr/vol2/iss1/4 at page 2.

[5]*Innoventive Industries Limited v ICICI Bank Limited*, AIR 2017 Supreme Court 4084 (Innoventive).

[6] Innoventive, ¶14.

Recovery Tribunals (DRTs), and the High Courts.[7] This disjointed regime resulted in resolution timelines averaging 4.3 years,[8] recovery rates among the lowest globally (approximately 20% on a net present value basis),[9] and entrenched managements retaining control well beyond default, to creditors' detriment.[10] The IBC was designed to remedy these deficiencies by consolidating insolvency law under a single, unified code,[11] introducing a time-bound resolution process,[12] designating the National Company Law Tribunal (NCLT) as the dedicated adjudicating authority,[13] transferring management to independent resolution professionals,[14] and empowering creditors' committees to make commercially rational decisions aimed at maximising the value of the debtor's assets.[15] The Supreme Court recognised that the creditor-led model, modelled after the insolvency regime of the United Kingdom,[16] was intended to place financially faltering companies in the hands of experienced financiers capable of rescuing them as going concerns while removing errant promoters from management.

This paper seeks to provide a bird's eye view of the Indian insolvency regime a decade into the enactment of the IBC.

In this context, this paper evaluates some key jurisprudential developments, incepted by courts and policymakers, that have now been crystallised or addressed in the recently enacted Insolvency and Bankruptcy (Amendment) Act, 2026 (IBC Amendment Act). The IBC Amendment Act represents an attempt at rationalising and consolidating the lessons of the past decade into meaningful legal reform, ensuring that the key concerns we have seen arising in market practice over the IBC's history are adequately addressed in the black letter of the law.

Further, this paper also evaluates the quantitative performance of the IBC over the last decade. The IBC sought, as has been set out above, to improve insolvency and liquidation outcomes for companies and creditors alike. This paper evaluates the data published by the Insolvency and Bankruptcy Board of India (IBBI) in its quarterly reports, as well as other sources and surveys, to evaluate how successful the IBC has been in achieving its stated goal. This paper also seeks to specifically evaluate the impact of Covid-19 on the performance of the IBC, and splits its analysis temporally into three phases – the period after the enactment of the IBC and prior to the onset of the Covid-19 pandemic (Pre-Covid Period), the period during the prevalence of the Covid-19 pandemic (Covid Period), and the period after the Covid-19 pandemic (Post-Covid Period).

[7] The statement of objects and reasons to the Insolvency and Bankruptcy Code, 2016, as quoted in Innoventive, ¶12.

[8] Innoventive, ¶13.

[9] BLRC Report, Section 2 (*Executive Summary*).

[10] Innoventive, ¶10.

[11] The statement of objects and reasons to the Insolvency and Bankruptcy Code, 2016, as quoted in Innoventive, ¶12.

[12] Innoventive, ¶31.

[13] The statement of objects and reasons to the Insolvency and Bankruptcy Code, 2016, as quoted in Innoventive, ¶12.

[14] Innoventive, ¶23.

[15] Innoventive, ¶¶24-25.

[16] Innoventive, ¶15.

Lastly, this paper briefly sets out some broad areas of development that policymakers and regulators should look at in the future. These largely concern new economic and technological developments that must be freshly and innovatively addressed under the IBC, to ensure its completeness and efficiency as an insolvency resolution regime.

## EVOLUTION OF THE IBC OVER THE LAST DECADE

The IBC has undergone important judicial and policy developments over the past decade, some of the most significant of which are set out below:

### 1. Simultaneous proceedings against corporate debtors and guarantors

Section 128 of the Indian Contract Act, 1872 provides that a surety's liability is co-extensive with that of the principal debtor.[17] The Supreme Court affirmed in *State Bank of India v. Indexport Registered and Ors.*[18] that a creditor may proceed against the debtor, the surety, or both, without being obliged to exhaust remedies against one before the other. The IBC reinforces this architecture through Section 60(2), which requires any insolvency application against a guarantor to be filed before the same bench of the NCLT which is dealing with the corporate debtor's corporate insolvency resolution process (CIRP),[19] and Section 60(3), which mandates transfer of a guarantor's pending proceedings to that bench[20]—both provisions implicitly contemplating concurrent proceedings.

The first significant disruption to this understanding came with the National Company Law Appellate Tribunal's (NCLAT) decision in *Dr. Vishnu Kumar Agarwal v. Piramal Enterprises Ltd.*(Vishnu Kumar Agarwal), which held that although no bar existed on filing simultaneous Section 7 applications under the IBC, once such an application was admitted against one entity, a second application on the same claims could not be admitted against the other.[21]However, a different NCLAT bench in *State Bank of India v. Athena Energy Ventures*[22] declined to follow Vishnu Kumar Agarwal, creating a schism in the appellate jurisprudence.

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[17] Indian Contract Act, 1872, Section 128:

***"Surety's liability.***

*The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.*

***Illustration***

*A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it."*

[18] *State Bank of India v Indexport Registered and Ors.*, 1992 SCR (2)1031, ¶¶14-19.

[19] Insolvency and Bankruptcy Code, 2016, Section 60(2):

*"(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal."*

[20] Insolvency and Bankruptcy Code, 2016, Section 60(3):

*"An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor."*

[21] *Dr. Vishnu Kumar Agarwal v M/s Piramal Enterprises Ltd.*, Company Appeal (AT) (Ins.) No. 346 of 2018 (NCLAT), ¶32.

[22] *State Bank of India v Athena Energy Ventures Private Limited,* Company Appeal (AT) (Ins.) No.633 of 2020 (NCLAT), ¶¶12-13.

In its report dated 20 February, 2020 (ILC Report 2020),[23] the Insolvency Law Committee (ILC) observed that restricting concurrent proceedings would prejudice creditors' contractual rights[24] and that Section 60(2) envisaged simultaneous proceedings.[25] It consequently recommended no legislative amendment,[26] though it cautioned against double recovery.[27]

In *Maitreya Doshi v. Anand Rathi Global Finance Ltd. and Anr.*, the Supreme Court confirmed that Section 7 proceedings under the IBC may be initiated against two entities that qualify as 'corporate debtors', provided the same amount is not realised from both.[28]

The question was comprehensively settled in *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.*, where the Supreme Court held that Section 60(2) expressly contemplates simultaneous proceedings, consistent with co-extensive liability.[29]

This was reaffirmed in *ICICI Bank Ltd. v. ERA Infrastructure (India) Ltd.*, where the Supreme Court rejected the doctrine of election, holding that its statutory prerequisites were unsatisfied.[30] On the issue of double enrichment, the Supreme Court acknowledged the concern but held it insufficient to bar concurrent proceedings, pointing to safeguards in Regulations 12A and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, which require creditors and resolution professionals to update claims upon any recovery.[31]

### 2. Competition Commission of India's approval for resolution plans

The proviso to Section 31(4) of IBC provides that a resolution applicant of a resolution plan which contains a combination must seek approval of the Competition Commission of India (CCI) before the committee of creditors (CoC) approves the plan.[32]

The Supreme Court in *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja* interpreted this provision strictly.[33]

Under the Competition Act, 2002, any enterprise proposing a combination must notify the CCI prior to consummation of the combination,[34] and no combination may take effect until 150 days have elapsed or the CCI has passed orders.[35] As noted above, the proviso to Section 31(4) requires that, where a resolution plan involves a combination, CCI approval must be obtained before the CoC approves the plan.

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[23] Insolvency Law Committee, *Report of the Insolvency Law Committee*, February 2020, available at https://ibbi.gov.in/uploads/whatsnew/4e94077d49f9dbd49c875097dbdcf791.pdf (ILC Report 2020).

[24] ILC Report 2020, ¶7.2.

[25] ILC Report 2020, ¶7.3.

[26] ILC Report 2020, ¶7.9.

[27] ILC Report 2020, ¶7.10.

[28] *Maitreya Doshi v Anand Rathi Global Finance Ltd. and Anr.*, Civil Appeal No. 6613 of 2021 (Supreme Court), ¶37.

[29] *BRS Ventures Investments Ltd. v SREI Infrastructure Finance Ltd.,* Civil Appeal No. 4565 of 2021 (Supreme Court), ¶19.

[30] *ICICI Bank Ltd. v ERA Infrastructure (India) Ltd.,* Civil Appeal No. 6094 of 2021 (Supreme Court), ¶¶87-95.

[31] *ICICI Bank Ltd. v ERA Infrastructure (India) Ltd.,* Civil Appeal No. 6094 of 2021 (Supreme Court), ¶¶96-100.

[32] The Insolvency and Bankruptcy Code, 2016, Section 31 (4), *proviso.*

[33] *Independent Sugar Corporation Ltd. v Girish Sriram Juneja & Ors.*, Civil Appeal No. 6071 of 2023 (Supreme Court) (INSCO).

[34] The Competition Act, 2002, Section 6 (2).

[35] The Competition Act, 2002, Section 6 (2A).

The Supreme Court held that this proviso is mandatory rather than directory.[36] Applying the literal rule of interpretation, it found that the words "prior to" reflected a clear legislative intent to make CCI approval a precondition.[37] The Supreme Court rejected arguments that approval could be sought at a later stage, holding that such an interpretation would undermine both statutes.[38]

This decision departed from longstanding market practice, whereby CCI approval would be sought in parallel with CoC consideration of a resolution plan, or even after approval.

Notably, the IBC Amendment Act has revised the proviso to Section 31(4) such that approval of the CCI will be required only before the resolution plan is submitted to the NCLT for approval.[39] This amendment aligns the regulatory requirement with market practice, and introduces much-needed relief for prospective resolution applicants, who would otherwise be required to go through the bureaucratic process of obtaining approval from the CCI for their proposed resolution plans without any certainty on whether they would be accepted by the CoC of a corporate debtor.

### 3. Treatment of statutory dues

In *State Tax Officer v. Rainbow Papers Ltd.*[40] (Rainbow Papers), the Supreme Court evaluated whether the State, where a taxation statute created a statutory mortgage over the assets of a taxpayer for unpaid taxes, would be considered a secured creditor.[41] The Supreme Court held that State dues backed by statutory security would rank equally with secured creditors under Section 53(1)(b)(ii).[42] A review petition was filed against this judgment but was dismissed in *Sanjay Kumar Agarwal v. State Tax Officer (1) & Anr.*[43]

However, in *Paschimanchal Vidyut Vitran Nigam Ltd. v Raman Ispat Private Limited & Ors.*,[44] the Supreme Court held that the "waterfall mechanism" under Section 53, which determines the priority of claims among creditors during liquidation, must have primacy. The Supreme Court clarified that secured creditors have two options: either relinquish their security interest and receive proceeds as per Section 53, or enforce their security under Section 52, ranking lower in priority than those who have relinquished security for any remaining dues.[45]Importantly, the Supreme Court highlighted that government dues are intentionally placed lower in priority than secured, unsecured, and operational creditors, reflecting

[36] INSCO, ¶150.

[37] INSCO, ¶¶52-53.

[38] INSCO, ¶150.

[39] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 19 (d).

[40] *State Tax Officer v Rainbow Papers Ltd.*, Civil Appeal No. 1661 of 2022 (Supreme Court) (Rainbow Papers).

[41] Rainbow Papers, ¶¶57-58.

[42] Rainbow Papers, ¶¶57-58.

[43] *Sanjay Kumar Agarwal v State Tax Officer (1) & Anr.*, Review Petition (Civil) No. 1620 Of 2023 In Civil Appeal No. 1661 of 2020 (Supreme Court).

[44] *Paschimanchal Vidyut Vitran Nigam Ltd. v Raman Ispat Private Limited & Ors.*, Civil Appeal No. 7976 of 2019 (Supreme Court) (PVVNL).

[45] PVVNL, ¶¶34-35.

Parliament's intent to treat such debts differently.[46] It observed that Rainbow Papers failed to consider the waterfall mechanism.[47]This omission limited that ruling strictly to its specific facts, preventing it from serving as precedent.[48]

The IBC Amendment Act has further clarified this position, by excluding any security interest created solely by operation of law from the scope of 'security interest' under the IBC.[49] Consequently, government dues – including those of the nature covered in Rainbow Papers – are not required to be treated as secured dues during CIRP.

The IBC Amendment Act has also sought to rationalise the scope of recovery of government dues further in the liquidation waterfall, and has provided that *"any amount, whether or not a security interest is created to secure such amount by an act of two or more parties or merely by operation of law, due to the Central Government and the State Government, in respect of the whole or any part of the period of two years preceding the liquidation commencement date"* will be distributed under the head of government dues, and *"any remaining amount, whether or not such security interest is created to secure the amount, due to the Central Government and the State Government"* will be distributed under the head of any remaining debts and dues, ranked below the head of government dues.[50]

**4. Micro, small and medium enterprise (MSME) framework: promoters may submit resolution plans**

The IBC is a creditor-led insolvency regime that generally seeks to oust the erstwhile management of a corporate debtor. The IBC recognises that old promoters are responsible for the corporate debtor's financial distress, and new management must be introduced to revive it without disrupting going concern status.

However, for MSMEs, the IBC permits erstwhile promoters to submit resolution plans in certain circumstances, encouraging non-defaulting promoters to retain their businesses and continue them as going concerns.

In line with recommendations of the report of the ILC dated 26 March, 2018,[51] Section 240A(1) of the IBC, introduced *via* a 2019 amendment, provides that a person who has an account which is a non-performing asset or a person who has provided a guarantee for a company under CIRP will not be barred from submitting a resolution plan under Section 29A of the IBC for MSMEs.[52]

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[46] PVVNL, ¶¶49-50.

[47] PVVNL, ¶49.

[48] PVVNL, ¶53.

[49] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 2 (b).

[50] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 32(a)(ii).

[51] Insolvency Law Committee, *Report of the Insolvency Law Committee*, March 2018, https://ibbi.gov.in/ILRReport2603_03042018.pdf, p. 100.

[52] The Insolvency and Bankruptcy Code, 2016, Section 240A:

*240A. Application of this Code to micro, small and medium enterprises.—*

*(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or prepackaged insolvency resolution process of any micro, small and medium enterprises."*

This position has been reaffirmed by the Supreme Court in *Hari Babu Thota v. [None].*[53]

MSMEs may also avail of the pre-packaged insolvency mechanism, which is intended to resolve small companies while keeping erstwhile management intact.[54]

## 5. Payments to dissenting financial creditors

The distribution of resolution proceeds falls within the purview of the CoC.[55]During distribution, the CoC must have due regard to minimum entitlements prescribed under the IBC for amounts payable to dissenting financial creditors (Dissenting FCs).[56]

The IBC contains express statutory protections for Dissenting FCs.[57] Under Section 30(2)(b), Dissenting FCs are entitled to receive an amount not less than the value they would have received in a liquidation of the corporate debtor, determined in accordance with the payment waterfall in Section 53.[58]

The precise interpretation of this statutory entitlement has been the subject of considerable judicial scrutiny. In *India Resurgence ARC Pvt. Ltd. v. Amit Metaliks Limited and Anr.* (Amit Metaliks), the Supreme Court held that Dissenting FCs are not entitled to receive the value of their security interest as part of their minimum entitlement under a resolution plan.[59] On this view, the liquidation value payable to Dissenting FCs is determined by reference to the statutory waterfall under Section 53, without separately accounting for the realisable value of any security held by such creditors.[60]

In contrast, the Supreme Court in *DBS Bank Limited Singapore v. Ruchi Soya Industries Limited and Anr.* (Ruchi Soya) adopted a different approach, holding that Dissenting FCs should receive an amount equivalent to the value of their security interest, on the basis that such value forms part of what they would receive in liquidation.[61] This position, if upheld, would afford greater protection to secured Dissenting FCs.

Given this divergence, the question raised in Ruchi Soya was referred to a larger bench for authoritative adjudication.[62]

However, the IBC Amendment Act has inserted the following provision under Section 30(2):

> (b) after clause (b), the following clause shall be inserted, namely:—

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[53] *Hari Babu Thota v [None],* Civil Appeal No. 4422 of 2023 (Supreme Court).

[54] The Insolvency and Bankruptcy Code, 2016, Chapter III-A.

[55] Neha Somani, *Commercial wisdom of CoC:Wise? Vice? Or a blessing in disguise?*, https://www.taxmann.com/research/ibc/top-story/105010000000017653/commercial-wisdom-of-coc-wise-vice-or-a-blessing-in-disguise-experts-opinion.

[56] The Insolvency and Bankruptcy Code, 2016, Section 30 (2).

[57] The Insolvency and Bankruptcy Code, 2016, Section 30 (2) (b).

[58] The Insolvency and Bankruptcy Code, 2016, Section 30 (2) (b).

[59] *India Resurgence ARC Pvt. Ltd. v Amit Metaliks Limited and Anr.,* Civil Appeal No. 1700 of 2021 (Supreme Court) (Amit Metaliks), ¶15.

[60] Amit Metaliks, ¶13.1.

[61] *DBS Bank Limited Singapore v Ruchi Soya Industries Limited and Anr.*, Civil Appeal No. 9133 of 2019 (Supreme Court) (Ruchi Soya), ¶41.

[62] Ruchi Soya, ¶49.

> (ba) provides for the payment of debts of the financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified, which shall not be less than the lower of the amount—
>
> (i) to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
>
> (ii) that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed, in accordance with the order of priority in sub-section (1) of section 53, as the case may be.[63]

This position addresses the concern in Ruchi Soya, and ensures that Dissenting FCs receive a fair share of resolution proceeds in a CIRP.

Further, the IBC Amendment Act has also rationalised the extent of recovery a secured creditor may receive under the liquidation waterfall. Pursuant to the IBC Amendment Act, the IBC now provides that, where the value of the security interest held by a secured creditor is less than the value of its debt, it will only be considered to be a secured creditor to the extent of the value of its security interest.[64] For the remainder of its debt, it will be treated as an unsecured creditor, and will be ranked accordingly in the liquidation waterfall to the extent of this unsecured portion of its debt.[65]

### 6. Mandatory admission of Section 7 applications upon establishing debt and default

Section 7 of the IBC provides for the filing of an application for initiation of CIRP against a corporate debtor by a financial creditor. Section 7(5)(a) provides:

> Where the Adjudicating Authority is satisfied that—
>
> (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it **may**, by order, admit such application;(emphasis supplied)

An ordinary reading appears to provide discretion to the adjudicating authority (the NCLT) to admit a Section 7 application even where debt and default have been established, the proposed insolvency professional is not barred, and there are no other issues with the application.

This issue was adjudicated bythe Supreme Court in *Vidarbha Industries Power Limited v. Axis Bank Limited*(Vidarbha), where the Supreme Court specifically distinguished the use of 'may' in Section 7(5)(a) from'shall' under Section 9(5) (applicable to operational creditors), holding that the NCLT may also take into account "*all relevant facts and circumstances, including the overall financial health and viability"*of a corporate debtor.[66]

Thus, the Supreme Court interpreted Section 7 as imbuing the NCLT with significant discretionary power over Section 7 applications.

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[63] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 18 (a)(ii).
[64] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 32 (a).
[65] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 32 (a).
[66] *Vidarbha Industries Power Limited v. Axis Bank Limited*, Civil Appeal No. 4633 of 2021 (Supreme Court), ¶77.

A review petition was filed against the order in Vidarbha, wherein the Supreme Court did not interfere with the order in Vidarbha, but observed as follows:

> The elucidation in paragraph 90 and other paragraphs were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute.[67]

Further, the scope of Vidarbha was subsequently narrowed in *M. Suresh Kumar Reddy v. Canara Bank*[68]and *Elegna Co-op Housingand Commercial Society Ltd. v. Edelweiss Asset Reconstruction Company Ltd. and Anr.*,[69] wherein the Supreme Court held that the NCLT must admit a Section 7 application once debt and default have been established and there are no other defects. The Supreme Court identified Vidarbha as a narrow, fact-specific exception that cannot be applied generally.

The IBC Amendment Act has resolved any remaining uncertainty by replacing 'may' with 'shall' in Section 7(5).[70]

## 7. Clean slate doctrine

Section 31(1) of the IBC provides that a resolution plan, once approved by the NCLT, is binding on all stakeholders. *Vide* the Insolvency and Bankruptcy Code (Amendment) Act, 2019, it was specifically clarified that the plan would be binding on *"the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed."*[71]

In *Ghanashyam Mishra and Sons Private Limited v Edelweiss Asset Reconstruction Company Limited* (Ghanashyam Mishra), this amendment was held to be retrospective in nature.[72]It was also held in Ghanashyam Mishra that the intent of the IBC is to ensure that a resolution applicant starts on a "clean slate" with no uncertain claims,[73] and consequently, all outstanding pre-CIRP claims of all stakeholders against a corporate debtor, including governmental authorities, would be extinguished upon approval of a resolution plan.[74]

The Supreme Court in Ghanashyam Mishra relied on *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.*, wherein the Supreme Court had observed that

> ...successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping

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[67] *Axis Bank Limited v Vidarbha Industries Power Limited*, Review Petition(Civil) No. 1043 of 2022 in Civil Appeal No. 4633 of 2021 (Supreme Court), pg. 3.

[68] *M. Suresh Kumar Reddy v Canara Bank*, Civil Appeal No. 7121 of 2022 (Supreme Court), ¶13.

[69] *Elegna Co-op Housing and Commercial Society Ltd. v Edelweiss Asset Reconstruction Company Ltd. and Anr.,* Civil Appeal No. 10261 of 2025 (Supreme Court), ¶¶12.6, 12.20.

[70] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 4 (b).

[71] Insolvency and Bankruptcy Code (Amendment) Act, 2019, Section 7.

[72] *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited,* Civil Appeal No. 8129 of 2019 (Ghanashyam Mishra), ¶¶87, 95 (ii).

[73] Ghanashyam Mishra, ¶88.

[74] Ghanashyam Mishra, ¶95.

up which would throw into uncertainty amounts payable by a prospective resolution applicant ...[75]

The ILC, in the ILC Report 2020, further recommended inclusion of a specific provision which would safeguard the property of the corporate debtor from attachment for actions done pre-CIRP.[76] The ILC noted that this was already undertaken under Section 10 of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, which inserted Section 32A to this effect in the IBC. This was later codified under the Insolvency and Bankruptcy Code (Amendment) Act, 2020. The Supreme Court in *Manish Kumar v. Union of India* upheld the constitutional validity of Section 32A.[77]

Despite judicial clarity, tax authorities have continued to issue demands on resolved entities, prompting calls for administrative directives to align practice with the law.[78]There also remain persistent issues with continuation of key licenses for corporate debtors, especially in specialized sectors, that introduce uncertainty in the resolution process.

To address these concerns, the IBC Amendment Act has further introduced provisions stating that *"permit, registration, quota, concession, clearances or a similar grant or right given"* by a government authority would not be suspended during the remaining tenure of the same, if the corporate debtor and/or the resolution applicant complies with the terms of the same after completion of CIRP, and that all claims against a corporate debtor would be extinguished, and no proceedings would be initiated against the corporate debtor, including for assessment of claims.[79]

## EMPIRICAL EVALUATION OF PERFORMANCE OF THE IBC

This section empirically examines the effectiveness of the IBC in fulfiling its objectives across three distinct time periods: (a) Pre-Covid Period, (b) Covid Period, and (c) Post-Covid Period. The analysis is undertaken across four key indicators: (a) trends in filing cases under the IBC, (b) resolution time, (c) recovery rate, and (d) resolution cost. The analysis in this section is based on publicly available data published, *inter alia,* by the IBBI, the Reserve Bank of India, and the World Bank.

### 1. Pre-Covid Period (2016 – March 2020)

#### *Trends in filing and resolution outcomes*

The early years of the IBC witnessed a rapid and sustained increase in the number of CIRPs initiated. In the inaugural year of 2016-17, a modest 37 CIRPs were admitted. This figure rose sharply to 707 in 2017-18, 1,157 in 2018-19, and approximately 1,991 in 2019–20.[80]

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[75] *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta & Ors.*, Civil Appeal Nos. 8766-8767 of 2019 (Supreme Court), ¶67.

[76] ILC Report 2020, ¶17.

[77] *Manish Kumar v. Union of India and Anr.*, Writ Petition (C) No. 26 of 2020.

[78] Majmudar and Partners, *The Clean Slate Doctrine and the tax quandary,* https://www.majmudarindia.com/clean-slate-doctrine-tax-quandary/.

[79] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 19 (e).

[80] Reserve Bank of India, *Financial Stability Report, June 2025,* https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/0FSRJUNE20253006258AE798B4484642AD861CC35BC2CB3D8E.PDF (FSR June 2025).

By March 2020, a cumulative total of approximately 3,774 CIRPs had been admitted. Of the CIRPs closed by that date, 221 had yielded approved resolution plans, whilst 914 had ended in orders for liquidation, 312 had been closed on appeal, review, or settlement, and 157 had been withdrawn under Section 12A of the IBC. The relatively high proportion of liquidations—approximately 56.98% of closed CIRPs ending in liquidation as against 13.77% ending in resolution—requires contextualization: approximately 72.46% of the CIRPs ending in liquidation involved corporate debtors that were earlier with the BIFR or were defunct.[81] The economic value in most of these entities had already been substantially eroded before they were admitted into CIRP.

***Threat of Insolvency as a Settlement Mechanism***

One of the IBC's most significant — and perhaps underappreciated — achievements during this period was its function as a credible deterrent. The threat that a corporate debtor might lose control of its enterprise through CIRP incentivized a significant volume of pre-admission settlements. By March 2020, a substantial number of applications for initiation of CIRPs had been withdrawn before their admission, as debtors settled their dues at the earliest stages of financial distress.[82] As the IBBI observed, debtors were resolving distress when default was imminent, upon receipt of a notice for repayment but before filing an application, and even after filing but before admission.[83]

Post-admission, 157 CIRPs had been withdrawn under Section 12A of the IBC by March 2020.[84] Data on the distribution of these withdrawals reveal that nearly 40% of the cases withdrawn involved claims of less than INR 1 crore, and the most common reason for withdrawal was settlement with creditors.[85]The data on filing and closure of cases in the Pre-Covid Period is set out below:[86]

| Year | CIRPs at the beginning of the period | Admitted | Closure by | | | | CIRPs at the end of the period |
|---|---|---|---|---|---|---|---|
| | | | Appeal / Review / Settled | Withdrawal under Section 12A of the IBC | Approval of resolution plan | Commencement of Liquidation | |
| 2016-17 | 0 | 37 | 1 | 0 | 0 | 0 | 36 |
| 2017-18 | 36 | 707 | 95 | 0 | 18 | 91 | 539 |
| 2018-19 | 539 | 1,157 | 158 | 97 | 75 | 305 | 1,061 |
| 2019-20 | 1,061 | 1,991 | 350 | 220 | 132 | 537 | 1,813 |

[81] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for January-March, 2020*, available at https://ibbi.gov.in/uploads/publication/3a3e6013ea3e0b73d5a3575d5c38b9c5.pdf (IBBI Newsletter Q1 2020).

[82] IBBI Newsletter Q1 2020.

[83] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for January-March, 2024*, available at https://ibbi.gov.in/uploads/publication/21aa7620a9e809f7a20b432eec89888b.pdf (IBBI Newsletter Q1 2024).

[84] IBBI Newsletter Q1 2020.

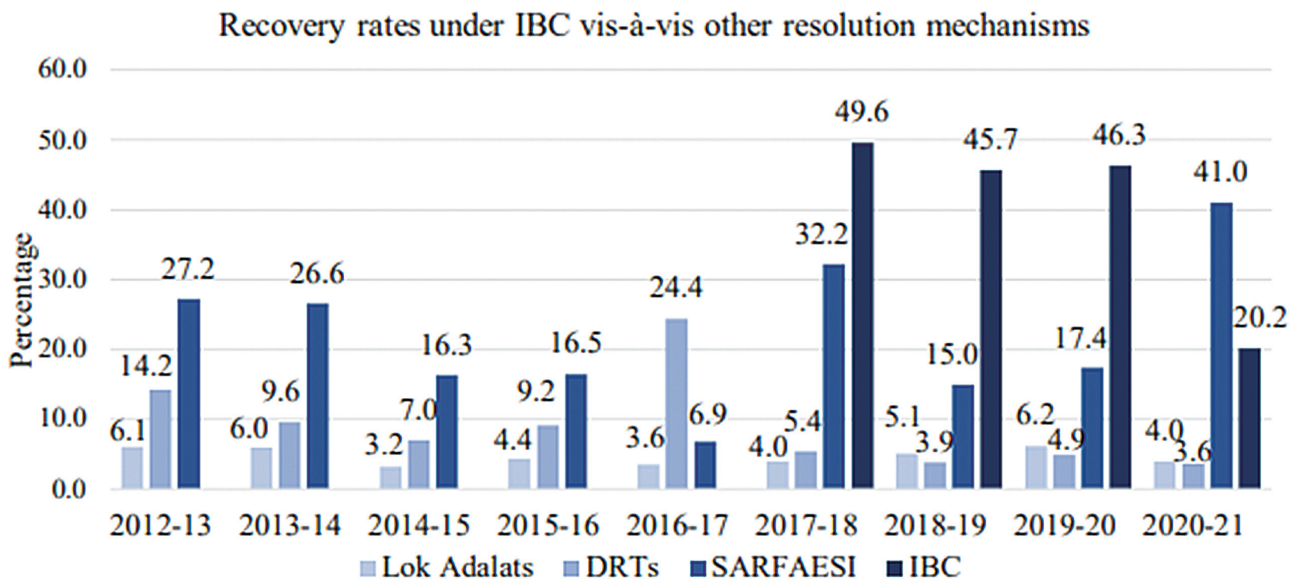
[85] IBBI Newsletter Q1 2020.

[86] FSR June 2025.

***Recovery Rates***

Recovery rates under the IBC during the Pre-Covid Period represented a marked improvement over the pre-IBC recovery mechanisms. Data compiled by the IBBI as at March 2020 indicate that financial creditors recovered approximately 45.96% of their admitted claims in CIRPs that yielded resolution plans, which represented approximately 183.37% of the liquidation value of the underlying assets.[87]Further, though recovery is incidental under the IBC – the primary objective being rescue and resolution – the recovery rate under the IBC was the highest among all channels available to creditors.[88] The data on recovery under the IBC and other resolution mechanisms are set out below:[89]

**Figure 1**




Internationally, the World Bank's Doing Business 2020 report recorded a dramatic improvement in India's resolving insolvency indicators. India's recovery rate jumped from 26.5 cents on the dollar to 71.6 cents on the dollar, and the time taken for resolving insolvency fell from 4.3 years to 1.6 years. India's resolving insolvency rank improved to 52nd globally, up from 108th, making it the best performer in South Asia and comparing favourably with the average for OECD high-income economies.[90]

***Timelines***

Adherence to the statutory timeline remained a recurring challenge. The IBC originally envisaged completion of CIRPs within 180 days, extendable by 90 days. The Insolvency and Bankruptcy Code (Amendment) Act, 2019 subsequently extended the outer limit to 330 days,

[87] IBBI Newsletter Q1 2020.

[88] IBBI Newsletter Q1 2020.

[89] A Abhirami and Rahul Thekkedath, *On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence From India*, 2 (1) Law and Business (February 2023), https://www.researchgate.net/publication/368414513_On_the_Effectiveness_of_Insolvency_and_Bankruptcy_Code_2016_ Empirical_Evidence_From_India.

[90] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for September-December, 2019*, https://ibbi.gov.in/uploads/publication/62a9cc46d6a96690e4c8a3c9ee3ab862.pdf.

including any litigation time. By March 2020, the 221 CIRPs that had yielded resolution plans took on average 415 days (including the time excluded by the adjudicating authority) and 375 days (excluding time excluded by the adjudicating authority) for completion of the CIRP.[91]The average time taken for completion of 914 CIRPs, which ended in liquidation, was 309 days.[92]

Of the 2,170 ongoing CIRPs as of March 2020, 738 had been pending for more than 270 days, 494 between 180 and 270 days, 561 between 90 and 180 days, and 377 for less than 90 days.[93]

More than one-third of ongoing CIRPs had exceeded 270 days, indicating the emerging trend of timeline slippage, driven in significant part by inordinate delays in admission of applications by the adjudicating authority and protracted litigation at multiple stages.[94] Approximately 80% of the total delay was concentrated at four stages: issue of the list of resolution applicants, issue of the request for resolution plans, issue of the expression of interest, and approval of the resolution plan.[95]

Notwithstanding these delays, the IBC represented a transformative improvement over the pre-IBC regime, under which the average time for resolving insolvency was 4.3 years, and in many cases proceedings under SICA and DRTs extended beyond a decade, leading to significant deterioration in the value of assets.[96]

***Costs Incurred***

Data on insolvency resolution process costs during the Pre-Covid Period indicate a lean cost structure. By September 2020, cost details were available for 260 CIRPs that had yielded resolution plans, and the average cost worked out to 0.79% of liquidation value and 0.42% of resolution value.[97]These figures compared favourably with the World Bank's estimate of 9% of estate as the cost of insolvency proceedings in India—a figure that encompasses broader costs and is calculated on a standardised methodology.[98]

Publicly available data on interim finance raised during this period remain limited, though the IBC does enable the resolution professional to raise interim finance to maintain the corporate debtor as a going concern.

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[91] IBBI Newsletter Q1 2020.

[92] IBBI Newsletter Q1 2020.

[93] IBBI Newsletter Q1 2020.

[94] Neeti Shikha and Urvashi Shahi, *Assessment of Corporate Insolvency and Resolution Timeline*, IBBI Research Initiative RP-01/2021, https://ibbi.gov.in/uploads/publication/2021-02-12-154823-p3xwo-8b78d9548a60a756e4c71d49368def03.pdf.

[95] Neeti Shikha and Urvashi Shahi, *Assessment of Corporate Insolvency and Resolution Timeline*, IBBI Research Initiative RP-01/2021, https://ibbi.gov.in/uploads/publication/2021-02-12-154823-p3xwo-8b78d9548a60a756e4c71d49368def03.pdf.

[96] Purushottam Sharad Bedekar and Jigar Bhatt, *Insolvency and Bankruptcy Code, 2016: Framework, Impact, and Reforms*, NIBM Working Paper Series WP 53/August, https://www.nibmindia.org/static/working_paper/NIBM_WP53_PSBJB.pdf(NIBM Working Paper).

[97] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for July-September 2020*, https://ibbi.gov.in/uploads/publication/411436dab58c1265aacb015b6b43a215.pdf(IBBI Newsletter Q3 2020).

[98] World Bank Group, Doing Business 2020, https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf.

Expenses pertaining to insolvency resolution rise non-linearly with delays in resolution, implying that prolonged CIRP processes result in disproportionately higher costs. This underscores the importance of time-bound resolution processes to reduce inefficiencies and provide higher realisation of claims for creditors.[99]

## 2. During Covid Period (March 2020 – March 2021)

### *Key Legislative Amendments*

The onset of the Covid-19 pandemic in early 2020 prompted a series of legislative and regulatory interventions designed to shield the insolvency ecosystem from the effects of an unprecedented economic shock. The most consequential of these was the introduction of Section 10A into the IBC through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, promulgated on 5 June 2020. Section 10A suspended the applicability of Sections 7, 9, and 10 of the IBC—that is, applications for initiation of CIRP by financial creditors, operational creditors, and corporate debtors respectively—in respect of any default arising on or after 25 March, 2020.[100]The suspension was initially for six months, but was extended twice by further periods of three months each, expiring on 24 March, 2021.[101]

Section 10A achieved its immediate objective of preventing a flood of pandemic-related insolvency filings from overwhelming the NCLT benches and the insolvency ecosystem at a time when economic activity had ground to a halt. The measure was broadly welcomed as a pragmatic response to force majeure conditions.

In parallel, the government increased the minimum default threshold for triggering CIRP from INR 1 lakh to INR 1 crore, with effect from 24 March, 2020, with the stated intent of protecting MSMEs from being pushed into insolvency on account of pandemic-related disruptions.[102]A complementary amendment inserted sub-section (3) into Section 66, shielding directors and partners from personal liability for wrongful trading during the suspension

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[99] Prof. M P Ram Mohan and Prof, Balagopal Gopalakrishnan, Indian Institute of Management Ahmedabad, *Effectiveness of the Resolution Process – Firm Outcomes in the Post-IBC Period* (April 2026), available athttps://ibbi.gov.in/uploads/resources/f42521011e8c39d591a8f1b439a80da7.pdf(IIMA April 2026).

[100] The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, Section 2:

*"2. After section 10 of the principle* [sic] *Act, the following section shall be inserted, namely:-*

*"10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.""*

[101] Ministry of Corporate Affairs, *Notification dated 24 September, 2020*, S.O. 3265(E), available at https://ibbi.gov.in/uploads/legalframwork/2987e1e33d62d2e1781c700ee16baa36.pdf; Ministry of Corporate Affairs, *Notification dated 22 December, 2020*, S.O. 4638(E), available at df55d4f612f270d6c637ee4b3c8131c8.pdf.

[102] Ministry of Corporate Affairs, *Notification dated 24 March, 2020*, S.O. 1205(E), available at 48bf32150f5d6b30477b74f652964edc.pdf; Press Information Bureau, Highlights of Finance Minister's Stimulus Package – V, 17 May, 2020, available at https://www.pib.gov.in/PressReleseDetailm.aspx?PRID=1624649&reg=3&lang=2.

period, thereby removing the disincentive for continued business operations during the pandemic.[103]

The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, enacted on 23 September, 2020, replaced the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, and formalised these measures.[104]Concurrently, the IBBI amended the regulations under the IBC to provide that the period of lockdown would not be counted for timeline purposes in relation to any activity that could not be completed due to the lockdown.[105]

***Impact on Filing Trends***

The combined effect of Section 10A and the increased default threshold was a steep decline in CIRP admissions. In 2020-21, only 536 CIRPs were admitted—a reduction of approximately 73% compared with the approximately 1,990 CIRPs admitted in 2019-20.[106] The quarterly breakdown reveals the depth of the disruption: only 84 CIRPs were admitted in Q1 FY21 (April-June 2021), 95 in Q2, and 104 in Q3,[107] before a partial recovery to approximately 253 in Q4.[108]Financial creditor-initiated filings fell to 197, whilst operational creditor-initiated filings declined to 317, and corporate debtor-initiated filings dropped to just 22.[109]

The data on filing and closure of cases in the Covid Period is as follows:[110]

| Year | CIRPs at the beginning of the period | Admitted | Closure by | | | | CIRPs at the end of the period |
|---|---|---|---|---|---|---|---|
| | | | Appeal / Review / Settled | Withdrawal under Section 12A of the IBC | Approval of resolution plan | Commencement of Liquidation | |
| 2020-21 | 1,813 | 536 | 92 | 168 | 119 | 349 | 1,621 |

***Recovery Rates and Resolution Activity***

Despite the sharp decline in new filings, the resolution process continued for CIRPs already in progress. During 2020-21, 119 resolution plans were approved, and 349 CIRPs ended in

[103] The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, Section 3:

*"3. In section 66 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:— "(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.""*

[104] The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020.

[105] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 40C; Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 47A.

[106] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for April-June, 2024*, available at https://ibbi.gov.in/uploads/publication/9bc46bf1e4b86dab3b0310cb8284cb74.pdf (IBBI Newsletter Q2 2024).

[107] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for October-December, 2020*, available at https://ibbi.gov.in/uploads/publication/9c804e45a2741e109a6cab56f48a140b.pdf (IBBI Newsletter Q4 2020).

[108] IBBI Newsletter Q2 2024.

[109] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for January-March, 2025*, available at https://ibbi.gov.in/uploads/publication/912e97d4d9f96651386541fb7059203b.pdf (IBBI Newsletter Q1 2025).

[110] FSR June 2025.

liquidation.[111] Cumulatively, by March 2021, the 348 corporate debtors rescued through resolution plans had generated realisations of approximately INR 2.09 lakh crore, which represented approximately 189% of the realisable value of these corporate debtors, with financial creditors recovering 39.6% of their admitted claims.[112] On a year-on-year basis, however, the recovery rate under the IBC declined during 2020-21. As per the data mentioned in *Figure 1* above, the recovery rate under the IBC fell below the recovery rate under SARFAESI in FY 2020-21, a reversal attributable to the pandemic-related constraints on the process.

The data on liquidation further reveals the financial challenges posed by Covid-19: the 1,277 corporate debtors ending in liquidation orders by March 2021 had an aggregate claim of INR 6.47 lakh crore but assets valued at only INR 0.46 lakh crore on the ground.[113]By December 2020, 194 corporate debtors had been completely liquidated, together holding outstanding claims of INR 27,194 crore against assets valued at just INR 770 crore.[114]

***The Deterrent Effect and Pre-admission Settlements***

Notwithstanding the suspension of fresh filings, the IBC continued to exert a behavioural influence on debtors. By November 2020, 15,662 applications for initiation of CIRPs with an underlying default of INR 5,17,073 crore were resolved before their admission.[115]Post-admission, 411 CIRPs had been withdrawn under Section 12A of the IBC by March 2021.[116]

Approximately 80% of all disputes filed before the adjudicating authority were settled through out-of-court settlements at the pre-admission stage, with operational creditors accounting for the largest proportion. Recovery rates under these out-of-court settlements were higher than those achieved through formal CIRP adjudication,[117] confirming the model's prediction that the shadow of the IBC was itself a powerful driver of debt resolution.

***Timelines***

The pandemic posed challenges. By March 2021, the 348 CIRPs that had yielded resolution plans took on average approximately 406 days (excluding time excluded by the adjudicating authority), an increase of approximately 150 days compared with the Pre-Covid Period baseline, attributable primarily to the lockdowns and operational disruptions.[118]Similarly, the 1,277 CIRPs ending in liquidation by March 2021 took on average 351 days for conclusion. Further, the 240 liquidation processes closed by submission of final reports by March 2021 took on average 410 days for closure-up from 307 days for 126 liquidation processes as at March

[111] FSR June 2025.

[112]Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for January-March, 2021*, https://ibbi.gov.in/uploads/publication/2021-05-29-204331-atxcy-3363461de858b06bfa1afdbf13151b90.pdf (IBBI Newsletter Q1 2021).

[113] IBBI Newsletter Q1 2021.

[114] IBBI Newsletter Q4 2020.

[115] IBBI Newsletter Q4 2020.

[116] IBBI Newsletter Q1 2021.

[117] Ram Singh and Hiteshkumar Thakkar, *Settlements and Resolutions Under the Insolvency and Bankruptcy Code: Assessing the Impact of Covid-19*, 69 (3) The Indian Economic Journal (2021), https://journals.sagepub.com/doi/full/10.1177/00194662211013218.

[118] IBBI Newsletter Q1 2021.

2020.[119]The NCLAT, by its order of 30 March, 2020, excluded the period of lockdown from the computation of the CIRP timeline under Section 12 of the IBC.[120]

***Costs Incurred***

Data on costof CIRPs concluded during the Covid Period indicate that the average cost of insolvency resolution rose to 0.92% of liquidation value and 0.49% of resolution value, based on 322 CIRPs for which cost details were available by March 2021.[121]The increase likely reflects the operational difficulties of conducting the process during lockdown conditions.

**3. Post Covid Period**

***Recovery in Filing and Resolution Activity***

The expiry of the Section 10A suspension on 24 March, 2021 was followed by a gradual recovery in CIRP admissions. In 2021-22, 891 CIRPs were admitted—a 66% increase over the 536 of the preceding year, though still below the pre-Covid peak of 1,991 in 2019-20.[122]Filings continued to rise to 1,262 in 2022-23, before moderating to 1,003 in 2023-24 and approximately 733 in 2024-25.[123] The decline in admissions from 2023-24 onward has been attributed to stronger financial discipline among borrowers, a growing preference for early settlements, and a stabilisation of the insolvency ecosystem.[124]

Resolution activity, by contrast, surged. The number of resolution plans approved rose from 142 in 2021-22 to 186 in 2022-23, and then to 263 in 2023-24 and 259 in 2024-25.[125] Of the 1,194 resolution plans approved since the IBC's inception, 60% (708 resolutions) were achieved in the last three years alone.[126] The ratio of resolution to liquidation orders also improved materially, from 0.20 in 2017-18 to 0.59 in 2023-24, and further to 1.89 in the quarter ending March 2025—meaning that for every corporate debtor entering liquidation, nearly two were being resolved.[127]

Cumulatively, by March 2025, 8,308 CIRPs had been admitted, of which 1,194 had yielded resolution plans, 2,758 had ended in liquidation, 1,276 had been closed on appeal, review, or settlement, and 1,154 had been withdrawn under Section 12A.[128]The year-wise data on filing and closure of cases in the Post-Covid Period is as follows:[129]

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[119] IBBI Newsletter Q1 2021.

[120] IBBI Newsletter Q1 2020; *Suo motu*, Company Appeal (AT) (Ins.) No. 01 of 2020 (NCLAT).

[121] IBBI Newsletter Q1 2021.

[122] FSR June 2025.

[123] FSR June 2025.

[124] PWC, *Global Insolvency: 2025 Reflections and 2026 Projections: India* (February 2026), https://www.pwc.com/gx/en/deals/pdf/global-insolvency-report-2025-26-india.pdf.

[125] FSR June 2025.

[126] IBBI Newsletter Q1 2025.

[127] IBBI Newsletter Q1 2025.

[128] FSR June 2025.

[129] FSR June 2025.

| Year | CIRPs at the beginning of the period | Admitted | Closure by | | | | CIRPs at the end of the period |
|---|---|---|---|---|---|---|---|
| | | | Appeal / Review / Settled | Withdrawal under Section 12A of the IBC | Approval of resolution plan | Commencement of Liquidation | |
| 2021-22 | 1,621 | 891 | 129 | 200 | 142 | 340 | 1,701 |
| 2022-23 | 1,701 | 1,262 | 192 | 230 | 186 | 406 | 1,949 |
| 2023-24 | 1,949 | 1,003 | 160 | 168 | 263 | 444 | 1,917 |
| 2024-25 | 1,917 | 724 | 99 | 71 | 259 | 286 | 1,926 |
| **Total** | **N/A** | **8,308** | **1,276** | **1,154** | **1,194** | **2,758** | **1,926** |

By December 2025, these figures had risen to 8,833 admissions, 1,376 resolution plans, 2,952 liquidations, 1,260 withdrawals under Section 12A, and 1,366 CIRPs closed on appeal, review or settlement.[130]

***Recovery Rates***

Creditor recovery rates during the Post-Covid Period have remained broadly stable, with some year-on-year variation driven by case composition. Cumulatively, by March 2025, creditors had realised INR 3.89 lakh crore under resolution plans, representing 32.8% of admitted claims and 170.1% of liquidation value.[131]By December 2025, resolution plans on average were yielding 94.95% of the fair value of the corporate debtors[132] — a significant improvement from approximately 83-85% in earlier periods.[133]

Further, a study by the Indian Institute of Management, Ahmedabad found that the average recovery rate, accounting for the time value of money, was approximately 37.5%, with financial creditors realising an average of 43% and operational creditors approximately 25%.[134]These figures mark an improvement over earlier benchmarks and substantially exceed the pre-IBC average recovery rate of approximately 26%.[135]

As at March 2025, 2,758 corporate debtors had entered liquidation, with 214 of these having admitted claims exceeding INR 1,000 crore; collectively, they had aggregate claims of INR 9.63 lakh crore but assets valued at only INR 0.46 lakh crore.[136] Of the 878 closed liquidations till March 2025, realisation stood at approximately 90% of the liquidation value.[137]The IBC's recovery rate through closed liquidations thus remained significantly above that achieved

[130] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for October-December, 2025*, https://ibbi.gov.in/uploads/publication/63ca2664fde1e59fb2c438e93a0d50f6.pdf (IBBI Newsletter Q4 2025).

[131] IBBI Newsletter Q1 2025.

[132] IBBI Newsletter Q4 2025.

[133] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for January-March, 2023*, https://ibbi.gov.in/uploads/publication/51cd3268be50c04f9745bb3959b09a89.pdf; IBBI Newsletter Q1 2024.

[134] IIMA April 2026.

[135] NIBM Working Paper.

[136] IBBI Newsletter Q1 2025.

[137] IBBI Newsletter Q1 2025.

through antecedent mechanisms but, as has been consistently noted, the low liquidation values relative to claims reflect the advanced state of distress at the point of entry into the CIRP process.

By FY 2024-25, the IBC's recovery rate of 36.6% outperformed SARFAESI (31.5%), DRTs (9.5%), and Lok Adalats (2.4%), reaffirming its position as the dominant mode of recovery.[138] The IBC accounted for 52.4% of the total amount recovered across all channels in 2024-25, up from 49.5% in the previous year.[139]

***The Deterrent Effect in the Post-Covid Period***

The behavioural impact of the IBC has strengthened considerably in the Post-Covid Period. By December 2024, 30,310 applications for initiation of CIRPs, with an underlying default of INR 13.78 lakh crore, had been withdrawn before their admission.[140]Post-admission, the number of withdrawals under Section 12A reached 1,260 by December 2025.[141]The most common reasons for withdrawal remained full settlement with the applicant and other settlements with creditors.[142]Almost three-quarters of withdrawn CIRPs involved claims of less than INR 10 crore,[143] indicating the particular utility of the IBC's disciplining effect in the MSME and mid-market segments.

A 2025 study by the Indian Institute of Management, Bangalore[144] found that the IBC has significantly improved borrower discipline, reduced loan delinquencies, and enhanced the pace of debt resolution. The study also links the IBC with better credit culture, a decline in gross non-performing assets (NPAs) from 11.2% in 2018 to 2.8% in 2024, a reduction in the average duration of overdue corporate loans from 248-344 days to just 30-87 days, and improved governance among resolved firms. It concluded that the fear of losing control during CIRP had prompted early settlements.

***Timelines***

Resolution timelines have continued to lengthen, representing a persistent challenge to the IBC's effectiveness. By March 2025, the 1,194 CIRPs that had yielded resolution plans took on average 597 days (excluding the time excluded by the NCLT) for conclusion,[145] well in excess of the statutory outer limit of 330 days. By September 2025, this figure had risen further to 603 days,[146] and by December 2025 to 619 days.[147]The average time for liquidation

[138] Reserve Bank of India, *Financial Stability Report, December 2025*, https://rbidocs.rbi.org.in/rdocs//PublicationReport/Pdfs/0FSRDEC25D1EB9AAEE5724BD5A3E068490996BAD5.PDF (FSR December 2025).

[139] FSR December 2025.

[140] IBBI Newsletter Q1 2025.

[141] IBBI Newsletter Q4 2025.

[142] IBBI Newsletter Q4 2025.

[143] IBBI Newsletter Q4 2025.

[144]Jayadev M. et al., *Behavioural Impact of IBC*, Indian Institute of Management, Bangalore (20 May, 2025) https://ibbi.gov.in/uploads/whatsnew/1af62766c26f90a284c1fa996faa6e97.pdf

[145] IBBI Newsletter Q1 2025.

[146]Insolvency and Bankruptcy Board of India, *Quarterly Newsletter for July-September, 2025*, https://ibbi.gov.in/uploads/publication/452d899ae03283f1eb40b1bf7ee5f187.pdf.

[147] IBBI Newsletter Q4 2025.

orders similarly increased, from 495 days as at March 2024[148] to 508 days by March 2025[149] and 527 days by December 2025.[150]

Of the approximately 1,300 CIRPs resolved by September 2025, only 170 (approximately 13%) were concluded within the statutory 330-day limit, 480 were concluded between 331 and 600 days, and 655 took more than 600 days. Critically, a negative correlation between resolution timelines and recovery rates persists: cases resolved within 330 days achieved a recovery rate of 49%, compared with 33% for cases resolved between 331 and 600 days, and only 29% for cases exceeding 600 days.[151]This demonstrates a clear inverse relationship between the length of the resolution process and the recovery rate.

The causes of timeline overruns include pendency of cases before the NCLT. Over 20,000 cases were pending at NCLT benches in 2025, contributing to average delays of 60 days in admission and 90 days in resolution plan approval.[152] Promoter-initiated litigations under Section 29A and inter-creditor disputes are also significant contributors to delay.[153]

Therefore, it is evident that the insolvency ecosystem needs to function in a manner where there is greater adherence to timelines. The average time taken has increased from approximately 375 days (excluding time excluded by the NCLT) as at March 2020[154] to 597 days as at March 2025,[155] representing an increase of approximately 59%. However, from FY 2023-24 onwards, there was a modest decrease in resolution timelines, with a greater proportion of cases being concluded within 600 days, although only a small number were resolved within the statutory limit of 330 days.[156]

***Costs Incurred***

Insolvency resolution process costs have remained modest in proportionate terms. By December 2025, the average cost of CIRPs yielding resolution plans worked out to 1.30% of liquidation value and 0.77% of resolution value.[157]This represents a modest increase from the 0.79% of liquidation value and 0.42% of resolution value recorded during the Pre-Covid Period,[158] likely reflecting the increased complexity and duration of cases.

Systematic data on interim finance raised during CIRPs remain limited in the publicly available

[148] IBBI Newsletter Q1 2024.

[149] IBBI Newsletter Q1 2025.

[150] IBBI Newsletter Q4 2025.

[151] EY, *Insolvency and Bankruptcy Code, 2016: IBC evolution and journey over last nine years* (January 2026), https://www.ey.com/content/dam/ey-unified-site/ey-com/en-in/insights/strategy-transactions/documents/2026/ey-insolvency-and-bankruptcy-code-2016-ibc-evolution-and-journey-over-last-nine-years-v3.pdf.

[152] NIBM Working Paper.

[153] NIBM Working Paper.

[154] IBBI Newsletter Q1 2020.

[155] IBBI Newsletter Q1 2025.

[156] EY, *Insolvency and Bankruptcy Code, 2016: IBC evolution and journey over last nine years* (January 2026), https://www.ey.com/content/dam/ey-unified-site/ey-com/en-in/insights/strategy-transactions/documents/2026/ey-insolvency-and-bankruptcy-code-2016-ibc-evolution-and-journey-over-last-nine-years-v3.pdf.

[157] IBBI Newsletter Q4 2025.

[158] IBBI Newsletter Q3 2020.

reports. Notably, 50% of CIRPs without interim finance end in liquidation,[159] underscoring the importance of interim finance in preserving enterprise value and the cost implications of its absence. This data shows that there is still a large opportunity for financial investors to capitalise on to be able to deploy capital in insolvency processes where it will be accorded priority even over and above existing dues.

## FUTURE OUTLOOK AND NEW DEVELOPMENTS

### 1. Proposals under the IBC Amendment Act:

In addition to the provisions set out in Part II in this paper, the following key amendments to the insolvency regime have been made under the IBC Amendment Act:

**a.** **Group Insolvency**: The growing complexity and interdependence of large corporate groups in India highlights the need for a statutory group insolvency framework.

The IBC Amendment Act has incorporated provisions for consolidation of CIRP for group companies under a new Chapter VA, which broadly entails:[160]

1. a common bench for the insolvency proceedings of the corporate debtors that form part of a group and the manner of the transfer of pending proceedings of such corporate debtors to such bench, and for proceedings under the rules made under this section;
2. coordination between the insolvency proceedings of the corporate debtors that form part of a group, including the coordination between their CoCs and interim resolution professionals, resolution professionals, or liquidators;
3. appointment and replacement of a common insolvency professional to facilitate coordination between the insolvency proceedings of the corporate debtors that form part of a group;
4. formation of a committee comprising the CoCs of the corporate debtors that form part of a group;
5. making of an agreement that provides measures to coordinate and synchronise different aspects of the insolvency proceedings of the corporate debtors that form part of a group, which shall be binding on the corporate debtors approving the same including their CoCs, and whereadjudicating authority may issue necessary orders to implement the approved agreement; and
6. treatment of the costs incurred for taking measures to coordinate the insolvency proceedings of the corporate debtors that form part of a group.

**b.** **Creditor-Initiated Insolvency Resolution Process (CIIRP)**: In cases where a majority of the financial creditors are not averse to conducting an insolvency process while the

[159] NIBM Working Paper.

[160] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 42.

promoter and the erstwhile directors remain in control, the IBC Amendment Act has introduced a creditor-initiated insolvency resolution process, a time-bound expedited process (150 plus 45 days) to be undertaken by creditors in cooperation with the debtor.[161]

c. **Realising security interest by secured creditors**: Multiple creditors may have security interest over the same asset. As secured creditors are permitted to enforce their security interest outside of liquidation in the liquidation process in certain circumstances under the IBC, disagreements between creditors may limit the inclusion of assets into the estate of the corporate debtor, which would ultimately adversely affect recovery. To address this issue, the IBC Amendment Act clarifies that where more than one creditor has security interest over the same asset, its value may be realised by secured creditors holding at least 66% of the debt secured by that asset.[162]

d. **Dealing with assets of guarantors in CIRP:** The IBC Amendment Act has inserted a new Section 28A in the IBC, permitting creditors to deal with guarantor assets as follows:[163]

1. A creditor, upon taking possession of a personal or corporate guarantor's asset, may permit transfer of such asset as part of the corporate debtor's CIRP with 66% CoC approval. Such transfer is not permissible if the creditor has not relinquished the asset in liquidation.

2. If the corporate guarantor is undergoing CIRP or liquidation, 66% CoC approval is required. If the personal guarantor is undergoing insolvency or bankruptcy, approval of creditors with more than three-quarters value is required. Amounts received pursuant to transfer form part of the guarantor's insolvency or bankruptcy estate.

3. Amounts received pursuant to transfer shall be adjusted towards the amount owed by the guarantor, with any surplus paid to the guarantor.

e. **Penalties for frivolous litigation:** The IBC Amendment Act has inserted a new Section 64A to the IBC, clarifying that the penalty for initiating any frivolous and vexatious proceedings shall be not less than one lakh rupees and may extend to two crore rupees.[164]

f. **Enforceability of ranking of security under intercreditor agreements**: The IBC Amendment Act has amended Section 53 to include an illustration under Section 53(2), which now permits intercreditor arrangements, under which *inter se* ranking of security among creditors may be stipulated, to be considered in the waterfall mechanism.[165]

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[161] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 40.
[162] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 31 (a).
[163] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 17.
[164] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 44.
[165] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 32 (b).

**2. Some other avenues of exploration:**

**a. Reverse CIRP and project-wise CIRP**: Reverse CIRP is a judicial innovation that permits the original developer to complete a stalled real estate project under supervision during insolvency, rather than replacing them with a third-party resolution applicant. This prioritises project completion over asset liquidation, prevents proliferation of homebuyer claims, and allows financially stable promoters to complete projects rather than face complete ouster.[166] The concept was developed by the NCLAT in *Flat Buyers Association, Winter Hills-77, Gurgaon v Umang Realtech (P.) Ltd.*,[167] which also held that CIRP for real estate companies should be project-specific, not company-wide, where the debt is limited to a single project. Recently, in *Gagan Tandon & Ors. v IL & FS Financial Services Ltd. & Ors.*[168]the NCLAT restricted CIRP to projects forming part of the loan security, excluding unrelated projects of the corporate debtor. This reinforces the viability of project-wise CIRP and protects stakeholders in unrelated projects from being drawn into insolvency. However, the IBC framework does not yet formally recognise this approach. A codified and regulated approach to Reverse CIRP would therefore be welcome.

**b. Cross-border Insolvency:**[169] The effective resolution of offshore assets and global companies remains a significant regulatory gap within the current Indian insolvency framework. As Indian businesses increasingly hold substantial assets in multiple jurisdictions, the absence of a comprehensive cross-border insolvency regime creates uncertainty regarding the recovery, management, and distribution of offshore assets during insolvency proceedings. A robust cross-border insolvency regime is essential to address these challenges and support effective resolution of global companies with assets spanning across multiple jurisdictions. While the IBC Amendment Act has provided the government with rulemaking powers for cross-border insolvency,[170] a comprehensive framework must be introduced as a priority.

**c. Digital Assets:** A resolution framework for asset-light companies with substantial digital assets (such as crypto currency companies) has not been addressed in the IBC. Given the proliferation of digital assets, along with platforms and exchanges, which may host and facilitate dealings in financial assets, a specific regime governing the treatment of insolvencies in this sector requires due consideration.

**d. Personal Insolvency Regime:** The increase in consumer loans in India[171] and the

[166] Adith Narayan and Akash Santosh Loya, *Critical Analysis of Umang Realtech Ltd: The Evolution of Reverse CIRP and Other Conundrums*, https://www.taxmann.com/research/ibc/top-story/105010000000017690/critical-analysis-of-umang-realtech-ltd-the-evolution-of-reverse-cirp-and-other-conundrums-experts-opinion.

[167] *Flat Buyers Association, Winter Hills-77, Gurgaon v Umang Realtech (P.) Ltd.*, Company Appeal (AT) (Insolvency) No. 926 of 2019 (NCLAT).

[168] *Gagan Tandon & Ors. v IL & FS Financial Services Ltd. & Ors.,* Company Appeal (AT) (Insolvency) Nos. 500 and 502 of 2025 (NCLAT).

[169] Dr. Binoy J. Kattadiyil and CS Nitika Manchanda, *Cross Border Insolvency Framework in India*, https://icsiiip.in/panel/assets/images/research_articles/16331671708889CROSS BORDER INSOLVENCYFRAMEWORK IN INDIA volume9-issue4(7)-2020.pdf.

[170] The Insolvency and Bankruptcy (Amendment) Act, 2026, Section 71.

[171] Anshika Kayastha, *Indians are taking more retail loans: Consumer loans jump to 55% of household borrowings in H1 FY26*, 31 December, 2025, https://www.livemint.com/industry/banking/household-borrowing-rbi-financial-stability-personal-loans-growth-11767186192140.html.

growing market share of non-banking financial companies (NBFCs) in consumer lending[172]—including new products such as small loans from fintech companies[173] and ballooning credit card debt[174]—requires efficient resolution mechanisms. In the farming sector, issues with farmers falling into debt traps persist.[175] A personal insolvency regime could allow repayment to lenders while preventing continuation of debt traps. The IBC provides for a rigorous personal insolvency regime under Part III. As of this date, this Part has not been brought into force for all cases of personal insolvency, and only provisions relating to personal guarantors of corporate debtors have been notified. However, in light of macroeconomic developments and the increasing stress among retail lenders and the microfinance sector arising out of personal insolvencies and financial distress, policymakers may consider bolstering the infrastructure to enable notification of the personal insolvency provisions.

## CONCLUSION

A decade since its enactment, the IBC has fundamentally reshaped India's approach to corporate distress. Where the pre-IBC landscape was characterised by multiplicity of statutes, protracted timelines, and poor recovery rates, the IBC has ushered in a unified, creditor-led framework that has demonstrably improved outcomes across every key metric.

Perhaps the most striking achievement of the IBC has been its powerful deterrent effect. The fear of losing control during CIRP has prompted a cultural shift towards early settlement and improved borrower discipline, contributing to a decline in gross NPAs in the system. The IBBI has been instrumental in nurturing this ecosystem — through its regulatory stewardship, its publication of transparent data, and its facilitation of a professional cadre of insolvency practitioners, and building the institutional infrastructure upon which the IBC's success rests.

The jurisprudential evolution of the IBC over the past decade has been equally significant. Through landmark decisions on simultaneous proceedings against debtors and guarantors, the mandatory admission of Section 7 applications, and the clean slate doctrine, the Supreme Court has progressively clarified the architecture of the IBC and reinforced its foundational objectives. The crystallisation of these judicial developments in the IBC Amendment Act represents a commendable exercise in translating a decade of practical experience into durable legislative reform.

Looking ahead, the horizon for the IBC is one of considerable promise. The introduction of a group insolvency framework and the creditor-initiated insolvency resolution process under

[172] ETBFSI Staff, *NBFCs dominate small-ticket lending with 86.6% share in consumer durable loans; originations jump 41% in Q3: Report*, https://bfsi.economictimes.indiatimes.com/articles/nbfcs-dominate-small-ticket-lending-with-86-6-share-in-consumer-durable-loans-originations-jump-41-in-q3-report/128749266.

[173] TOI Tech Desk, *66% of loans from Indian fintech companies went to customers under 35, says FACE report*, 3 July, 2025, https://timesofindia.indiatimes.com/technology/tech-news/66-of-indian-fintech-company-loans-were-directed-towards-customers-under-35-rbi-report-claims/articleshow/122212936.cms.

[174] Lavanya Mohan, *Swipe now, pay forever | Credit card debt in India is no longer a silent crisis*, 5 September, 2025, available at https://www.thehindu.com/society/credit-card-debt-india-swipe-now-pay-forever-debt-crisis-young-indians/article70002804.ece.

[175] Tribune Editorial, *Agri debt burden*, 13 February, 2026, https://www.tribuneindia.com/news/editorials/agri-debt-burden/.

the IBC Amendment Act opens new avenues for efficient and coordinated resolution of complex corporate structures. The exploration of reverse CIRP and project-wise CIRP in the real estate sector, the development of a cross-border insolvency regime, and the formulation of tailored approaches for digital assets and asset-light enterprises present significant opportunities for reform. The notification of the personal insolvency provisions under Part III of the IBC, in light of the expanding consumer credit market and the growing stress in the microfinance and retail lending segments, holds the potential to extend the IBC's disciplining influence to an entirely new segment of the Indian economy.

The first decade of the IBC has established a robust and credible insolvency resolution framework that has materially improved creditor recoveries, instilled greater financial discipline among borrowers, and enhanced India's standing as a destination for domestic and foreign investment. The trajectory of the IBC—from its ambitious inception to the significant reforms embodied in the IBC Amendment Act—reflects a maturing legal ecosystem that is well-positioned to adapt to the evolving demands of India's dynamic economy. The continued collaboration between the legislature, the judiciary, the IBBI, and the wider stakeholder community will be pivotal in ensuring that the next decade of the IBC builds upon the strong foundations laid thus far.

# 11 FINANCIAL CREDITORS UNDER THE IBC: A LANDSCAPE OF RIGHTS AND REGULATION

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## INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) along with being a major reform in consolidating debt reorganization and restructuring laws also aimed at harmonising procedures and limiting judicial activism in cases of financial distress.[1] The previous regime that put a balance sheet or the cash flow of a company into test was replaced by a clear *prima facie* default test[2] for the purpose of determining the insolvency status of a corporate enterprise. Moreover, envisioning the nature of companies that would go into insolvency, a threshold of default with *prima facie* evidence[3] was also envisaged to not steer away from the commercial nature of an insolvency law with the singular purpose of efficiently resolving a corporate debtor's financial distress.

The proposed overhaul of existing and scattered laws would pave the way for an insolvency regime that would consolidate powers into a committee which would comprise of creditors with financial and commercial acumen.[4] In doing so, the Bankruptcy Law Reforms Committee (BLRC) proposed the following as the basis with which provisions of the law should be brought into text:[5]

> When a firm (referred to as the corporate debtor in the draft law) defaults, the question arises about what is to be done. Many possibilities can be envisioned. One possibility is to take the firm into liquidation. Another possibility is to negotiate a debt restructuring, where the creditors accept a reduction of debt on an NPV basis, and hope that the negotiated value exceeds the liquidation value. Another possibility is to sell the firm as a going concern and use the proceeds to pay creditors. Many hybrid structures of these broad categories can be envisioned.
>
> The Committee believes that there is only one correct forum for evaluating such possibilities, and making a decision: a creditors committee, where all financial creditors have votes in proportion to the magnitude of debt that they hold. In the past, laws in India have brought arms of the government (legislature, executive or judiciary) into this question. This has been strictly avoided by the Committee.

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[1]BLRC, Interim Report of the Bankruptcy Law Reforms Committee (Ministry of Finance, Government of India, February 2015), https://msme.gov.in/sites/default/files/Interim_Report_BLRC.pdf

[2]Innoventive Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407 (Supreme Court, 31 August 2017).

[3]IBC 2016, § 3(12); read with Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353 (Supreme Court, 21 September 2017).

[4]IBC 2016, Preamble.

[5]BLRC, Report of the Bankruptcy Law Reforms Committee, Vol. I: Rationale and Design (Ministry of Finance, Government of India, November 2015), p. 12 https://ibbi.gov.in/BLRCReportVol1_04112015.pdf.

> The appropriate disposition of a defaulting firm is a business decision, and only the creditors should make it.

In the above context, the BLRC specifically proposed the categorisation and classification of creditors based on the nature of debt. Thus, deliberations on what could constitute different types of debt, based on contracts that are entered into by a corporate were discussed. The definition of debt accordingly introduced financial, operational, secured, unsecured and decree holders as an all-encompassing definition of debt.[6]

Financial debt in specific had a crucial determinative role. The type of financial debt would determine a creditors committee with a clear agenda of business value protection and maximization that would become a focal point of how debt resolutions, through reorgansiation or liquidation could take place. Subsequently, withdrawal settlements were also added as a method of debt resolution under the IBC.[7]

In the above background, as we embark on ten years of IBC for corporate insolvency resolution, the jurisprudential evolution, implementation roadblocks and proposed reforms for strengthening the regime warrant consideration, particularly in the context of the *financial creditor,* that is a key player in the IBC ecosystem.

In the past ten years, several dimensions of legal reasoning with respect to the definition, treatment, powers and regulation of a financial creditor, who is the driver of a resolution process have undergone legislative changes and review through judicial interpretation. It also becomes significant to note that its specific powers are unique and wide in a corporate insolvency resolution process (CIRP). This is largely owed to the distinction created on account of 'commercial wisdom'[8] necessary to run a distressed enterprise as a going concern separate from asset realisation on account of secured or unsecured debt in liquidation.[9]

Thus, in this chapter, the authors discuss, who the financial creditor is, its treatment, powers and regulation within a CIRP and what needs future consideration on account of the latest Insolvency and Bankruptcy Code (Amendment) Act, 2026 (IBC 2026 Amendment).

## DEFINING FINANCIAL DEBT AND THE POSITION OF A FINANCIAL CREDITOR

### *Statutory Definition, Legislative Intent and Judicial Expansion*

The definition of financial debt contained in Section 5(8)[10] is a unique definition that intentionally offered the inclusion of all types of "*debt alongwith interest, if any, which is disbursed against the consideration for the time value of money*," that was elaborated in the case of *Nikhil Mehta v. AMR Infrastructure Ltd.* as below:[11]

> The key feature of financial transaction as postulated by section 5(8) is its consideration

[6] IBC 2016, § 3(11).

[7] IBC 2016, § 12A.

[8] Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) 4 SCC 17 (Supreme Court, 25 January 2019).

[9] IBC 2016, § 53(1)(b)&(d).

[10] IBC 2016, § 5(8).

[11] Nikhil Mehta & Sons (HUF) v. AMR Infrastructure Ltd., Company Appeal (AT) (Insolvency) No. 07 of 2017 (NCLAT, 21 July 2017).

for time value of money. In other words, the legislature has included such financial transactions in the definition of 'Financial debt' which are usually for a sum of money received today to be paid for over a period of time in a single or series of payments in future. It may also be a sum of money invested today to be repaid over a period of time in a single or series of instalments to be paid in future. In Black's Law- Dictionary (9th edition) the expression 'Time Value' has been defined to mean "the price associated with the length of time that an investor must wait until an investment matures or the related income is earned". In both the cases, the inflows and outflows are distanced by time and there is a compensation for time value of money.

The legislative intention provided under the BLRC[12] was to include any lending arrangement that creates a financial liability on the contracting party, which has through judicial interpretation reaffirmed contracts of guarantee,[13] sale purchase agreements,[14] instruments such as convertible debentures[15] and any such contract that creates a commercial effect of borrowing.[16] The legislative intent was further interpreted to allow inclusions within existing parameters as necessary, making the definition extensive.[17] The qualification of financial debt, thus, creates the class of financial creditors under Section 5(7)[18] for the purposes of processes under IBC: CIRP, liquidation or withdrawal from insolvency.

***Sectoral Challenges: Real Estate Allottees***

While the scope of the definition was extensive, in 2018, sectoral bankruptcies saw independent considerations with the test of whether the types of financial debt defined under Section 5(8) were truly as exhaustive as envisaged. The insolvency admission of Jaypee Infratech Ltd. brought to the forefront, questions of consumers, i.e., real estate allottees,[19] in common parlance referred to as homebuyers and their status within the CIRP. Such types of financial creditors were not deliberated upon during the BLRC stage of drafting the IBC.

After many discussions,[20] to put to rest competing judicial decisions on the creditor status of real estate allottees and their financing and purchase contract with a real estate developer, i.e., a real estate corporate entity, the Insolvency and Bankruptcy Code (Second Amendment) Act, of 2018,[21] introduced real estate allottees as a separate class of financial creditors with retrospective criteria of insolvency admission being introduced for all pending insolvency applications. While

[12] BLRC, Report of the Bankruptcy Law Reforms Committee, Vol. I: Rationale and Design (Ministry of Finance, Government of India, November 2015), p. 77 https://ibbi.gov.in/BLRCReportVol1_04112015.pdf

[13] Maitreyi Doshi v. Anand Rathi Global Finance, (2023) 17 SCC 606 (Supreme Court, 22 September 2022).

[14] Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd., (2023) 3 SCC 753 (Supreme Court, 26 July 2021).

[15] Shubham Corporation Pvt. Ltd. v. Kotoju Vasudeva Rao (IRP) and Ors., Civil Appeal (AT)(CH)(Insolvency) No. 163 of 2023 (NCLAT, 22 May 2024)

[16] Global Credit Capital Ltd. v. Sach Mktg. (P) Ltd., (2024) 9 SCC 482 (Supreme Court, 25 April 2024).

[17] Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd., (2023) 3 SCC 753 (Supreme Court, 26 July 2021); Kotak Mahindra Bank Ltd. v. A. Balakrishnan, (2022) 9 SCC 186 (Supreme Court, 30 May 2022).

[18] IBC 2016, § 5(7).

[19] The Real Estate (Regulation and Development) Act, 2016, § 2(d).

[20] Ministry of Corporate Affairs, Report of the Insolvency Law Committee (March 2018), point (iii) at pp 4-5, https://ibbi.gov.in/ILRReport2603_03042018.pdf

[21] The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, clause 3, https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Aug/The%20Insolvency%20and%20Bankruptcy%20Code%20(Second%20Amendment)%20Act,%202018_2018-08-18%2018:42:09.pdf

the IBC recognised that financial debt could qualify as individual or as a class, i.e., consortium lending for the purposes of initiating any insolvency application, real estate allottees were introduced specifically as a class of creditors under Section 5(7) in the context of insolvency initiation and their role in controlling a CIRP. The inclusion of a class further required clarifications on the debt-default threshold test for initiation of corporate insolvency.

Under Section 7, the financial creditor initiating the insolvency, which is typically a bank or a financial institution,[22] may provide financial statements and/or the evidence from an information utility record which demonstrates a default that has crystallised and is not contingent over the threshold of INR 1 crore.[23] Significantly, the IBC Amendment have mandated the admission of an application filed under Section 7 upon demonstration of default, without regard to extraneous considerations.[24] In the context of a class of creditors, a combined debt approach with allotment letters was introduced as evidence of default and the real estate allottee would be represented by a duly appointed authorised representative who would make decisions and vote on behalf of the homebuyer class of creditor.[25] The voting share is categorically decided on account of their share against the total debt size.[26]

***The Committee of Creditors and financial creditor subcategorisation***

The financial creditor is designed to play a vital role in controlling the CIRP.[27] While the insolvency petition can be filed by the financial creditor or a class of financial creditors,[28] operational creditors[29] or the corporate debtor,[30] once admitted the insolvency professional appointed as the interim resolution professional constitutes a committee of creditors (CoC) of financial creditors excluding related parties.[31]

Importantly, the evaluation of the assets and liabilities of the debtor to determine the best realizable outcome based on the fair and liquidation value is based on the empowered CoC, [32] who has 'commercial wisdom'[33] to decide on resolution and reorganisation, with limited grounds

[22] As of December 2025, of the 8,828 CIRPs initiated, 4,211 (approximately 47.67%) were initiated by financial creditors. Notably, 22% of the CIRPs admitted were against real estate companies. Of the resolution plans approved up to December 2025, 17% pertained to real estate companies, while 19% of the liquidation applications commenced were in respect of real estate companies. See IBBI, Quarterly Newsletter of the Insolvency and Bankruptcy Board of India (October–December 2025), https://ibbi.gov.in/uploads/publication/63ca2664fde1e59fb2c438e93a0d50f6.pdf

[23] Innoventive Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407 (Supreme Court, 31 August 2017); IBC 2016, § 4.

[24] IBC 2016, § 7(5) as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2026.

[25] Ministry of Corporate Affairs, Report of the Insolvency Law Committee (March 2018), pp 38-39, https://ibbi.gov.in/ILRReport2603_03042018.pdf; Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), Regulation 25A.

[26] IBC 2016, § 5(28).

[27] K. Sashidhar v. Indian Overseas Bank & Ors., (2019) 12 SCC 150 (Supreme Court, 5 February 2019); Insolvency and Bankruptcy Code, 2015, Notes on Clauses; BLRC, Report of the Bankruptcy Law Reforms Committee, Vol. I: Rationale and Design (Ministry of Finance, Government of India, November 2015), p. 12, https://ibbi.gov.in/BLRCReportVol1_04112015.pdf; Ministry of Corporate Affairs, Report of the Insolvency Law Committee (May 2022), pp 41-42, https://ibbi.gov.in/uploads/whatsnew/7c9bde175431a4abb8c33bb105e1f2dd.pdf.

[28] IBC 2016, § 7(1).

[29] IBC 2016, § 9(1).

[30] IBC 2016, § 10(1).

[31] IBC 2016, § 5(24).

[32] IBC 2016, § 21.

of adjudication and intervention by the insolvency adjudicator, i.e., the National Company Law Tribunal (NCLT).[34] The IBC 2026 Amendment has further expanded the remit of the CoC by empowering it to also have oversight over an involuntary liquidation process.[35]

The insolvency professional may take actions such as raising capital as interim finance to manage the affairs of the corporate debtor only on the vote and sanction of a CoC.[36] The actions of the CoC are sanctioned by a simple majority vote model of 66% majority for a CIRP for most actions.[37] Issues such as abstaining from voting or absentee votes have also received procedural clarifications once they have been subjected to judicial pronouncement.[38]

Here, one must note that there are stakeholders with the financial creditor classification that have specific powers and protection that have also evolved to stabilize the position of the CoC, thus reinforcing the clarity of substantive measures and procedural coordination. The key categories of financial creditors include: the dissenting financial creditor, the secured and unsecured financial creditor and the related party financial creditor.

The dissenting financial creditor is subject to a cram down[39], however, the dissent is recorded as a part of the confidential minutes of meeting[40] and the payout of such creditors is to be considered in priority in a resolution plan.[41]

The related party financial creditor is excluded from voting and to be a part of the CoC, however, the payouts towards such creditors as a part of a resolution plan do not have the same clarity as in liquidation where a director or a related party financial creditor is to be paid as per Section 53 that lays down the priority of payouts in liquidation, irrespective of being a connected person to the insolvency.[42] Since Section 53 is to be followed in terms of payout for all creditors who have not been identified as specifically reprioritized in a resolution plan under Section 30(1),[43] the unsecured related party financial creditor is lower in the priority of claims or waterfall. Any such payout considerations are subject to the commercial

[33] K. Sashidhar v. Indian Overseas Bank & Ors., (2019) 12 SCC 150 (Supreme Court, 5 February 2019); Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. (2020) 8 SCC 531 (Supreme Court, 15 November 2019).

[34] Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) 4 SCC 17 (Supreme Court, 25 January 2019); IBC 2016, § 31(1).

[35] IBC 2016, § 21(11) as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2026.

[36] IBC 2016, § 28.

[37] Actions such as convening meetings or non-essential items have 33% and 51% voting. For the purposes of withdrawal 90% of the CoC must vote. CIRP Regulations, Regulation 18(2); IBC 2016, Sections 12A(1) and 21(8).

[38] Oriental Bank of Commerce v. Bhimeshwar Ispat Ltd., IA 141/2023 in CP (IB) No. 4550/MB-II/2018 (NCLT Mumbai, 28 April 2025); read with Tata Steel Ltd. v. Liberty House Group Pte. Ltd., 2019 SCC Online NCLAT 13 (NCLAT, 4 February 2019).

[39] BLRC, Report of the Bankruptcy Law Reforms Committee, Vol. I: Rationale and Design (Ministry of Finance, Government of India, November 2015), p 84, https://ibbi.gov.in/BLRCReportVol1_04112015.pdf.

[40] CIRP Regulations, Regulations 24(6) and (7); Regulation 25(5). Records of such dissent are preserved under Regulation 39A (1).

[41] IBC 2016, § 30(2)(b).

[42] Times Innovative Media Ltd. v. Pawan Kumar Aggarwal, 2024 SCC OnLine NCLAT 1108 (NCLAT, 19 September 2024)

[43] IBC 2016, § 30(1).

wisdom of the CoC, a position that is reinforced,[44] in the most recent case of *Kalyani Transco v. Bhushan Power and Steel & Ors.* (BPSL Case).[45]

Finally, the secured financial creditor is a settled yet contentious position.[46] The secured creditor may relinquish or enforce the collateral outside the CIRP before insolvency admission, i.e., before a stay on individual enforcement actions and a moratorium is imposed.[47] In instances, where a secured creditor has reset its relinquishment of security interest and realised an amount lower than the enforcement value, courts have ruled that assets once placed for the purposes of resolution cannot be enforced out of the CIRP.[48]

The distinctions and deviations in the rights created by the subcategories of financial creditors are put to rest with the commercial wisdom test that is central to th enforcement of a CIRP.

## CATEGORIZING COMMERCIAL WISDOM AND JUDICIAL ACTIVISM

The commercial wisdom of the CoC can be categorised into five interactions: (i) the interplay with the resolution professional of the corporate debtor, i.e., the role the CoC plays in controlling the CIRP, (ii) the negotiations with the resolution applicant, (iii) the protection of creditor interests in the resolution plan, i.e., secured, unsecured and dissenting financial creditors, operational creditors including workmen, employees and government, (iv) the NCLT on account of its limited adjudicatory role in a CIRP and (v) as the implementor of the resolution plan.

Each of these interactions have through clear judicial pronouncement and in instances corresponding legislative intervention reinforced the principle of commercial wisdom that scopes the manner in which insolvency resolution would take place in a time bound value maximized manner.[49]

In the first instance, the role of the CoC in the appointment and removal of the resolution professional has been a crucial procedural introduction.[50] However, the sanctions on delays on the resolution professional imposed by regulations are worth discussion here. Several instances of delays on account of CoC negotiations that led to a non-compliance of the resolution timeframe have been highlighted,[51] which has led to guidelines that are directory in nature

[44] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2020) 8 SCC 531 (Supreme Court, 15 November 2019).

[45] 2025 INSC 1165, (Supreme Court, 26 September 2025).

[46] DBS Bank Ltd. v. Ruchi Soya Industries Ltd., (2024) 3 SCC 752 (Supreme Court, January 2024); Avil Menezes (liquidator) v. Hinduja Leyland Finance Ltd., Company Appeal (AT) (Ins.) No. 555 of 2024 (NCLAT, 21 January 2025); Mr. K. Sivalingam v. Sundaram Home Finance Ltd.,CP(IB)/885/2018 (NCLT, Chennai, 12 July 2024).

[47] IBC 2016, § 14.

[48] India Resurgence ARC (P) Ltd. v. Amit Metaliks Ltd. (2021) 19 SCC 672 (Supreme Court, 13 May 2021); Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Ltd. and Ors, (2022) 1 SCC 401 (Supreme Court, 24 March 2021).

[49] Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) 4 SCC 17 (Supreme Court, 25 January 2019); reinforced in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2020) 8 SCC 531 (Supreme Court, 15 November 2019).

[50] IBC 2016, § 22(2).

[51] Jindal Saxena Financial Services Pvt. Ltd. v. Mayfair Capital Private Limited, C.P. No. (IB)-84(PB)/2017, (NCLT, New Delhi, 4 July 2018).

for the CoC to ensure procedural compliance in a CIRP.[52] As the curative measure, the Insolvency Law Committee constituted to review the implementation of the IBC, in 2022 noted as follows:[53]

> Standard of conduct of the Committee of Creditors (CoC): The CoC has been entrusted with wide powers under the Code. It is tasked with making key decisions during the CIRP, including the manner of resolving the corporate debtor's distress. Thus, improper conduct by members of the CoC impacts the life of the corporate debtor, and consequently its stakeholders. Given this pivotal role of the CoC, the Committee has recommended that the IBBI should issue guidelines that provide the standard of conduct for members of the CoC. This may be in the form of guidance that provides a normative framework to members of the CoC about the manner of conducting themselves in processes under the Code.

On February 10, 2026, the insolvency regulator, the Insolvency and Bankruptcy Board of India (IBBI) had sought comments on a framework to provide CoC oversight and procedural clarity. Suggestions from this framework are currently being deliberated (2026 CoC Discussion Paper).

The CIRP is designed to evaluate the going concern value and assets of the debtor in a reorganisation model as opposed to a recovery model of resolution.[54] The legal intention was also to offer regulated dealmaking in a time-bound manner to deter against value deterioration of the corporate debtor that has either been accumulating distress or has been classified as a non-performing asset on account of default on loan obligations. It is also pertinent to note that while the CoC is not a juristic person, for the purposes of the Code, it can also pursue litigation.[55] In this context, the evaluation matrix[56] plays the key denominator in the manner in which resolution plans can be assessed and voted on by a CoC.

The resolution plan model was designed to have business structures that allowed for a wide berth of negotiations. In a distress scenario with the need to ensure the reduction of transaction costs, i.e., the going concern CIRP costs and also maintaining business and asset value, using a swiss challenge method,[57] which provides a pre-determined fixed criteria for classifying eligible resolution plans was proposed as policy for the CoC to implement in evaluating resolution plans.[58] This is owed to the fact that the model was successfully used in one of the

[52] SBJ Exports & Mfg. Pvt. Ltd. v. BCC Fuba India Ltd., CP-659/2016, (NCLT, New Delhi, 7 June 2018); Jindal Saxena Financial Services Pvt. Ltd. v. Mayfair Capital Private Limited, C.P. No. (IB)-84(PB)/2017, (NCLT, New Delhi, 4 July 2018); Subsequently, IBBI issued circular dated 10 August 2018, https://ibbi.gov.in//webadmin/pdf/legalframwork/2018/Aug/coc%20circular-1_2018-08-10%2019:39:07.pdf.

[53] Ministry of Corporate Affairs, Report of the Insolvency Law Committee (May 2022), pp 6-7, https://ibbi.gov.in/uploads/whatsnew/7c9bde175431a4abb8c33bb105e1f2dd.pdf .

[54] HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190 (Supreme Court, 7 November 2024); Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) 4 SCC 17 (Supreme Court, 25 January 2019);

[55] CoC of Think and Learn Pvt. Ltd. v. Riju Ravindran and Ors., Company Appeal (AT)(CH)(Ins) No. 475/2025 (NCLAT, 24 February 2026).

[56] CIRP Regulations, Regulation 39(3)(a).

[57] Through this challenge method, the CoC may consider any unsolicited plans or revisions based on a decided criteria that is based on the commercial viability of the plan. Ministry of Corporate Affairs, Report of the Insolvency Law Committee (May 2022), para 2.45 on pp 36-37, https://ibbi.gov.in/uploads/whatsnew/7c9bde175431a4abb8c33bb105e1f2dd.pdf .

[58] Ministry of Corporate Affairs, Report of the Insolvency Law Committee (May 2022), para 2.45 on pp 36-37, https://ibbi.gov.in/uploads/whatsnew/7c9bde175431a4abb8c33bb105e1f2dd.pdf .

large insolvencies.[59] The argument against such a preset criteria lies in instances of sectoral bankruptcies where the swiss challenge method may not apply such as real estate companies where positions of law allow for the completion of the real estate project,[60] and further distinguish between the real estate project and the real estate company[61] or interconnected company resolutions through substantive consolidation.[62]

Given that the previous regimes of distressed reorganisations such as the corporate and strategic debt restructuring schemes and the now repealed Sick Industrial Companies (Special Provisions) Act, 1985 that focused on the model of rehabilitation and revival, the reliance of banks and financial institutions to make commercial and financially sound decisions acting in the best interests of all stakeholders as prescribed by law was factored as the most reliable form of insolvency resolution.[63] Subsequent court sanction to put any such reorganisation through a fair and equitable test also provided respite towards the credibility of the process.[64]

In this context, the first set of judgements with *K. Sashidhar v. Indian Overseas Bank*[65] defined the concept of commercial wisdom which has been identified as the backbone of the CIRP.[66] The relevant text is as extracted below:[67]

> ….Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made nonjusticiable.

In the resolution of Essar Steel India Limited, the Supreme Court further reinforced the binding value of the resolution plan approved by the CoC on all stakeholders as long as

[59] The Swiss Challenge method has been used by the CoC in the CIRP of Ruchi Soya Industries Ltd; IBBI, Discussion Paper, 27 August 2021 https://ibbi.gov.in/Discussionpaper-CIRP-27Aug2021.pdf; Ministry of Corporate Affairs, Report of the Insolvency Law Committee (May 2022), para 2.46 on p 38, https://ibbi.gov.in/uploads/whatsnew/7c9bde175431a4abb8c33bb105e1f2dd.pdf.

[60] Flat Buyers Assn. v. Umang Realtech (P) Ltd 2020 SCC OnLine NCLAT 1199 (NCLAT, 4 February 2020); Pioneer Urban Land and Infrastructure Ltd. v. Union of India, 2019 SCC Online SC 1005 (Supreme Court, 9 August 2019).

[61] Flat Buyers Assn. v. Umang Realtech (P) Ltd 2020 SCC OnLine NCLAT 1199.

[62] SBI v. Videocon Industries Ltd., 2018 SCC Online NCLT 13182 (NCLT Mumbai, 8 August 2019).

[63] BLRC, Report of the Bankruptcy Law Reforms Committee, Vol. I: Rationale and Design (Ministry of Finance, Government of India, November 2015), p 12, https://ibbi.gov.in/BLRCReportVol1_04112015.pdf; Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) 4 SCC 17 (Supreme Court, 25 January 2019);

[64] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2020) 8 SCC 531 (Supreme Court, 15 November 2019).

[65] (2019) 12 SCC 150 (Supreme Court, 5 February 2019).

[66] Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) 4 SCC 17 (Supreme Court, 25 January 2019).

[67] K. Sashidhar v. Indian Overseas Bank & Ors., (2019) 12 SCC 150, at para 30 (Supreme Court, 5 February 2019).

Section 30 is complied with.[68] The aftermath of this case led to a position that the commercial wisdom is not subject to judicial review,[69] and issues of inequity or fairness can only be considered if the payouts contravene Section 30.[70]

The IBC 2026 Amendment now requires the CoC to record its reasons for the approval of a resolution plan, thereby introducing a measure of accountability and addressing longstanding concerns regarding the fairness and equitability of the resolution outcome.[71] Moreover, once approved by NCLT under Section 31, the resolution plan must be implemented under the guidance of the duly appointed representatives of the CoC along with the resolution professional and the appointed representatives of the resolution applicants.[72] The IBC 2026 Amendment further envisage a procedural opportunity for the CoC to cure defects identified by the NCLT before a resolution plan is rejected, reaffirming creditor primacy and ensuring that procedural infirmities do not result in the premature termination of a viable resolution.[73]

In the above context, the BPSL Case proved to be a reassertion of the power of the CoC to continue guidance till the resolution plan is implemented. In the BPSL Case, the Supreme Court reasserted that reopening claims post resolution plan, if contingent claims resurface, deter the principle of clean slate and extinguishment of liability based on which a resolution plan can be implemented. While the BPSL case brings different challenges to surface on account of enforcement of resolution plans, it is a clear denominator of empowering the CoC to control the resolution outcome of complex corporate debtor resolutions. Further, the CoC representatives at the implementation stage, with a now mandatory implementation and monitoring committee of a passed resolution plan,[74] have acted in best interests with instances of invoking the performance bank guarantee protection that is to be offered by the resolution applicant, should the implementation of the resolution plan be hampered.[75] Courts have adopted a pro implementation approach binding the resolution applicant to executing the resolution plan.[76] Given that a resolution plan is a key component of the process, the IBC

[68] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2020) 8 SCC 531 (Supreme Court, 15 November 2019).

[69] Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 (Supreme Court, 13 April 2021); Ngaitlang Dhar v. Panna Pragati Infrastructure Pvt. Ltd. & Ors., (2022) 6 SCC 172 (Supreme Court, 17 December 2021).

[70] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2020) 8 SCC 531 (Supreme Court, 15 November 2019); Kalyani Transco v. Bhushan Power and Steel & Ors., 2025 INSC 1165 (Supreme Court, 26 September 2025) ; Sagar Stone Industries v. Sajjan Kumar Dokania (I.A. (IBC)/ 4977 (ND) 2024 in CP No. (IB)- 417/ (ND)/2021 (NCLT, New Delhi 21 February 2025)

[71] IBC 2016, § 30(4) as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2026.

[72] IBC 2016, § 30(2)(d); CIRP Regulations, Regulation 38(4)(b).

[73] IBC 2016, § 31(2) as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2026.

[74] IBC 2016, § 30(2)(d); CIRP Regulations, Regulation 38(4) (as of date 13-04-2026); Kalyani Transco v. Bhushan Power and Steel & Ors., 2025 INSC 1165 (Supreme Court, 26 September 2025); IBBI Discussion Paper on strengthening CoC's oversight and procedural clarity under the CIRP Regulations, 2016 (16 February 2026) https://ibbi.gov.in/uploads/whatsnew/0d3a369d7d8a358fbb0b1d5ff171739f.pdf

[75] Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), (2022) 2 SCC 401 (Supreme Court, 13 September 2021) read with Beni Gopal Singhi v. EMC Limited (IA (IB) No. 1275/KB/2020 in CP (IB) No. 1237/KB/2018 (NCLT Kolkata, 20 April 2022); Allahabad Bank v. Jharkhand Mega Food Park Private Limited, IA(IBC)/672(KB)2022 in CP(IB)/1231(KB)2019 (NCLT Kolkata, 19 January 2024); CIRP Regulations, Regulation 36B.

[76] Bank of Baroda v. IDBI Bank Limited (Company Appeal (AT) (Insolvency) No. 1708 of 2025 (NCLAT, 23 December 2025).

2026 Amendment has also introduced a conduct-based constraint on the power of financial creditors to initiate a CIRP and restricting such initiation where a financial creditor has violated the terms of an approved resolution plan.[77]

The complexity with which certain resolutions require deliberations have also been identified as a key factor in reaffirming the manner in which the resolution model is voted on by the CoC.[78] Lastly, the CoC may vote for withdrawal or liquidation neither of which can be processed without the constitution of a CoC under a default-based creditor initiated insolvency.[79]

## INTRODUCTION OF A CREDITOR-LED PROCESS

There has been sustained debate on whether the law should accommodate a creditor-led and out-of-court resolution mechanism that is negotiated largely outside the contours of the IBC but operates within clear a statutory framework and defined procedural safeguards. [80] In 2023, the IBBI recommended that the fast-track process could be recalibrated into a creditor-led, out-of-framework with limited initiation checks for specified categories of corporate debtors, as means to address procedural delays. [81]

The IBC 2026 Amendment adds an additional procedural relaxation for financial creditors by introducing a creditor-initiated insolvency resolution process (CIIRP) through Chapter IV-A.

### *CIIRP*

A CIIRP can be initiated by an pre-defined class of financial creditors. A single financial creditor can initiate a CIIRP upon a default committed by a corporate debtor by appointing a resolution professional.[82] A two-stage approval mechanism has been built-in as a safeguard where the initiating financial creditor must first obtain the prior approval of financial creditors belonging to the notified class and representing at least 51% in value of the debt owed to the class. After obtaining the first approval, the initiating financial creditor must inform the corporate debtor of its intention to initiate a CIIRP and provide the debtor with 30 days to furnish representations.

After due consideration of the representations of the corporate debtor, the initiating financial creditor is required to obtain fresh approval of at least 51% of the financial creditors of the corporate debtor, to initiate the process.[83] Upon the resolution professionals' appointment, a public announcement of commencement of CIIRP is issued. The resolution professional must

[77] IBC 2016, § 30(4) as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2026.

[78] Standing Committee on Finance (2025–26), Twenty-Eighth Report, Eighteenth Lok Sabha, Review of Working of Insolvency and Bankruptcy Code and Emerging Issues (Twenty Eighth Report),(December 2025) https://ibbi.gov.in/uploads/resources/d75daa3a490fc1bc316632cd993fca06.pdf.

[79] IBC 2016, § 12A(2)(a) and § 33(2).

[80] IBBI, Report of the Colloquium of Functioning and Strengthening of the IBC Ecosystem (November 2022), https://ibbi.gov.in/uploads/resources/f0cca521f619483efb1c372ccf000b8a.pdf ;

[81] IBBI, Framework Report on Creditor Led Resolution Approach in Fast-track Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 by The Expert Committee May 2023, https://ibbi.gov.in/resources/reports.

[82] IBC 2016, § 58B(1) as introduced by IBC Amendment Act 2026.

[83] IBC 2016, § 58B(2) as introduced by IBC Amendment Act 2026.

also intimate the NCLT of such public announcement along with whether the financial creditor satisfies the statutory requirements for initiating the process.[84]

Post commencement, the CoC constituted by the resolution professional in the same manner as under a CIRP assumes the central role of governance.[85] A CIIRP must be completed within 150 days from the commencement date, a considerably tighter timeline than the 180-day period (extendable to 330 days) available under the CIRP.[86] The CoC retains the power to approve an extension of timeline with a 66% voting, subject to NCLT finally approving such extension for not more than 45 days on a one time basis.[87]

Unlike a CIRP, the CIIRP does not provide an automatic moratorium. The CoC, by a simple majority, may approve an application by the resolution professional to the NCLT for the grant of a moratorium. Even prior to the formation of the CoC, the resolution professional may apply to the NCLT for a moratorium, provided the approval of financial creditors belonging to the notified class who represent not less than 51% in value of the debt due to such creditors, has been obtained.[88]

One of the most consequential powers vested in the CoC is the ability to convert the CIIRP into a CIRP at any time by a vote of not less than 66%, subject to the NCLT's final sanction.[89] In case a CIIRP has been converted into a CIRP for the abovementioned or any other specified reasons, the CoC is further empowered to recommend the stage at which the CIRP is to commence.[90] Conversion to a CIRP may also be directed by the NCLT where the initiation requirements for the CIIRP are not met but a default has been established, thereby fortifying a financial creditors' right to initiate proceedings on the occurrence of a default.[91]

Withdrawal and closure of the CIIRP requires a 90% vote by the CoC, consistent with the threshold applicable under the CIRP.[92] A resolution plan under the CIIRP is voted upon and approved in the same manner as under a CIRP under Section 30 of the IBC and the NCLT is thereafter required to pass an order in accordance with Section 31, which applies to a CIIRP. Dissenting financial creditors are subject to the cram down mechanisms and are entitled to the protections available under Section 30.[93]

Overall, the process, designed to deliver a timely and cost-effective resolution, may be especially useful in resolving genuine business failures[94] where a sudden shift of management control would be detrimental to enterprise value as opposed to cases needing a hard reset

[84] IBC 2016, § 58B(4) as introduced by IBC Amendment Act 2026.
[85] IBC 2016, § 58E(1)(d) and 58K as introduced by IBC Amendment Act 2026.
[86] IBC 2016, § 58D(1) as introduced by IBC Amendment Act 2026.
[87] IBC 2016, § 58D(2) as introduced by IBC Amendment Act 2026.
[88] IBC 2016, § 58G as introduced by IBC Amendment Act 2026.
[89] IBC 2016, § 58H(2) as introduced by IBC Amendment Act 2026.
[90] IBC 2016, § 58H(1)(ii) read with § 58H(2) as introduced by IBC Amendment Act 2026.
[91] IBC 2016, § 58C(2)(b) as introduced by IBC Amendment Act 2026.
[92] IBC 2016, § 58-I as introduced by IBC Amendment Act 2026.
[93] IBC 2016, § 58J as introduced by IBC Amendment Act 2026.
[94] Lok Sabha, The Select Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 Page 151-152; https://prsindia.org/files/bills_acts/bills_parliament/2025/IBC_Select_Comm_Report.pdf

where a CIRP may be better suited. By retaining a debtor-in-possession model under the supervision of the resolution professional, the CIIRP seeks to preserve business continuity while maintaining the trust-based value maximisation ingredients of CIRP intact, including a creditor-in-control regime and deference to commercial wisdom. The process also provides the corporate debtor with a period of 30 days for making representations thereby also creating a statutory window for settlements.[95]

***Commercial Choice of Process***

The introduction of CIIRP creates a newer model of commercial and financial wisdom by enabling a choice of process. With key features that distinguish the management of the corporate debtor as a going concerns, it provides for optionality in the manner in which resolutions can be undertaken with the IBC and out-of-court thus proposing a newer market method for distressed resolutions.

The CIIRP also differs from purely pre-insolvency, out-of-court mechanisms such as the prudential norms regulated by the banking regulator which are largely contractual and driven by negotiations between the debtor and its creditors, typically offering greater flexibility, confidentiality, and scope for bespoke commercial arrangements.[96] Several jurisdictions, such as the United Kingdom, the United States, and Australia, have varied forms of out-of-court resolution processes.[97] The CIIRP, by contrast, remains a statutory process with prescribed initiation conditions, supervised roles, and procedural requirements. It sits conceptually between a fully informal workout and a CIRP offering a modular approach to corporate distress. For instance, when an out-of-court restructuring may not succeed, alternatives of CIRP or the CIIRP, may be and have been pursued. [98]

## WAY FORWARD

Judicial pronouncements and legislative intent have consistently demonstrated a pro financial creditor and commercial wisdom approach. Currently, the regulation of a CoC and its code of conduct are directory and do not demonstrate the way the CoC can act in a time bound manner by design since the insolvency professional is empowered to uphold the procedural compliance elements of time for resolution. Some proposed guidelines include: upholding the integrity of the process to steer clear of issues that raise concerns on account of fairness[99] and the number of rounds of negotiations with the resolution applicants to amend the resolution plan.[100] The 2026 CoC Discussion Paper makes some proposals towards implementation of

[95] Lok Sabha, The Select Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 Page 259-260; https://prsindia.org/files/bills_acts/bills_parliament/2025/IBC_Select_Comm_Report.pdf

[96] World Bank, Pre- Insolvency Negotiations Through Online Dispute Resolution Platforms https://documents1.worldbank.org/curated/en/099022526103020594/pdf/P175664-49b6c013-0d60-4145-95b7-3132b674f291.pdf

[97] IBBI, Creditor-led Resolution Approach (May 2023), Chapter 3, https://ibbi.gov.in/uploads/resources/ede9252b24c28166ea95602ca3c214b1.pdf

[98] Indian Bank (erstwhile Allahabad Bank) v. M/s Agson Global Private Limited,

IB-614/ND/2023; Order dated 30 January 2024.

[99] IBBI, Guidelines for Committee of Creditors, 6 August 2024, https://ibbi.gov.in/uploads/legalframwork/db3d7327523500331bd793bed7835ff2.pdf

[100] CIRP Regulations, Regulation 39 (1A) (as of date 13-04-2026).

time bound compliances, improving procedural discipline and strengthening CoC's oversight in a CIRP, which are currently undergoing deliberations.

Cases have ruled that in the case of a deadlock on resolution owing to the inability to constitute the CoC, the insolvency professional is empowered to initiate liquidation by application.[101] Systemic issues such as the information asymmetry problem where consolidating assets, issues of avoidance transactions, the scope with which resolutions could take place continue to plague large-scale corporate insolvency require a timeline reset as is the most recent instance of the BPSL Case. While such instances cause a reflective need for judicial and legislative intervention to assert the need to not deviate from the intent of the law, they do not change the scope with which the CoC exercises commercial wisdom.

It is pertinent to note that the Code is an evolving law owing to the market in which implementation occurs and the CIRP is the first of its kind process that allows financial and commercial wisdom to supersede individual rights and remedies. Given this framework, the sanctity of commercial wisdom continues to be maintained and the manner in which creditor protections have been outlined under the priority waterfall and under Section 30 continue to persist. New procedures such as the CIIRP may also enable early intervention by the financial creditors.

Further, legislative amendments through the IBC 2026 Amendment to harmonise the law through requiring a CoC to record reasons of approval of a resolution plan have been undertaken, the NCLT and the courts are duty-bound to reinforce the legislative intent to maintain commercial sanctity, time-bound and value-maximised resolution, which is central to the efficiency of a CIRP and also now a CIIRP.

With the IBC Amendment Act 2026 and 2026 CoC Discussion Paper, the next guideline of a CoC code of conduct to be proposed by the IBBI may bring further necessary systems in place to conduct the CIRP, CIIRP or withdrawal and liquidation in a more effective and efficient manner. IBC being a procedural law may benefit from such guidelines to reinforce the intent contained in the preamble that reads:[102]

> An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

[101] Kalpana Kamlesh Gandhi, IRP of Konverge Healthcare Pvt. Ltd., IA No. (Liq.) 01/2025 in C.P. (IB) No. 133/BB/2023, (NCLT Bengaluru, 25 July 2025).

[102] IBC 2016, Preamble.

# 12 A DECADE INTO INSOLVENCY AND BANKRUPTCY REFORMS: TRIUMPHS AND UNRESOLVED CHALLENGES

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Often, crises are catalysts for change — economic crises either facilitate or outright cause economic reforms. Most major shifts in global insolvency policies have been the result of the financial crisis. From the economic upheaval of the Great Depression of 1930s to the life-threatening COVID-19 pandemic, the crisis has compelled governments to mitigate the effects of crisis on businesses and the broader economy.[1] The story of India's insolvency reforms is not any different. The country faced a severe financial crisis in 1991. Though under immensely adverse circumstances and extreme pressure, India grabbed the opportunity offered by the crisis with both hands and introduced systemic changes accepting it as an idea whose time had come.[2] The Narasimha Rao-led government with Manmohan Singh as Finance Minister launched a raft of economic reforms, including the dismantling of the license raj, the first major leap towards a free market economy.[3]

These reforms continued for years albeit at slow pace and somewhat reluctantly. A free and competitive market provides three kinds of corporate freedoms to commercial entities - the freedom of entry for a commercial entity (that is, the freedom to start a business; the freedom of doing business or to continue doing business (by providing a level playing field); and the freedom to exit or discontinue business efficiently. While the reforms to provide freedom to start or to continue doing business received fair amount of attention of policy makers, the freedom to exit distressed businesses in an orderly and time-bound manner did not find much zeal. The journey of the Indian insolvency reforms remained painfully slow and incremental. The legal framework for insolvency remained fragmented and ineffective.[4]In the two decades following the 1991 crisis, India's overall growth started faltering, reaching a nadir of just 4.8 per cent in the third quarter of 2013. The country's once-compelling growth story lost its lustre.[5] Absence of a robust insolvency law compounded the problem and began to tell increasingly even on the economic one as the non-performing assets (NPAs) of the Indian banks started accumulating. The stressed assets in the banking system peaked at approximately US$ 150 billion (approximately 15 per cent of gross advances).[6] By the early

[1] Sumant Batra, *Corporate Insolvency: The Road to Viksit Bharat*, Law Practice and Policy, Chapter 2 (Eastern Book Company, 2025).

[2] Dr. Manmohan Singh, the then Finance Minister of India, charged with the reforms, said quoting Victor Hugo, "No power on Earth can stop an idea whose time has come" at the conclusion of his speech after introducing the economic reforms in Parliament in 1991.

[3] Sumant Batra, Corporate Insolvency: Law and Practice (Eastern Book Company, 2017).

[4] *Ibid.*

[5] Sumant Batra, "Introduction" in Corporate Insolvency: Law and Practice (Eastern Book Company, 2017).

[6] Rajeswari Sengupta and Anjali Sharma, "Corporate Insolvency Resolution in India: Lessons from a Cross-country Comparison" (2016) 51(15) Economic and Political Weekly 37-46.Accessed April 20, 2026, shttps://www.jstor.org/stable/pdf/44002687.pdf.

2010s, the fallout was unmistakable: India was engulfed in a twin balance sheet crisis, with both corporate and banking balance sheets under severe stress. Overleveraged firms struggled to generate enough revenue to service their interest obligations. Banks, burdened with NPAs, pulled back credit. The credit channel dried up. Investments declined. Growth stalled.[7]

Out of this moment of reckoning emerged the Insolvency and Bankruptcy Code, 2016 (IBC/ Code) - a decisive response to years of silent decay. Enacted on 28 May 2016, the IBC sought to provide a coherent, time-sensitive, and transparent resolution mechanism with creditors placed in a position of control. It aimed to unlock capital and entrepreneurial energy trapped in unviable ventures, restore creditor discipline, and send a clear message: failure is not a stigma but an essential feature of a vibrant economy. Most importantly, it institutionalised the freedom to fail by enabling swift, efficient, and dignified exit.[8] The enactment of IBC was hailed by the International Monetary Fund as a big bang reform.[9]

## THE TRIUMPHS OF IBC

Measuring the impact of legislation is one of the best contemporary practices of legislative development.[10] A central tool for achieving the quality of legislation is knowledge of the benefits and costs before voting on it. No such assessment of IBC was made before its enactment. Ex-post legislative evaluations can also offer insights into the practical functioning of legislation following its enactment. A vast body of literature has studied the impact of the IBC. There is unanimity that the impact is manifold and remarkable. IBC has facilitated resolution of large number of distressed enterprises in a short span of time which are now back in the economy contributing to the national productivity. Most studies celebrate IBC for the mindboggling amounts recovered by banks by its application and how the reform has helped the economy emerge out of the twin balance sheet crisis.[11] IBC is also applauded for bringing behavioural change in promoters.

The track record of IBC is a mix of hits and misses. In this essay, the author attempts to discuss candidly key macro-outcomes of IBC - some tangible, others not as tangible, and major disappointments that are significant but have not been featured as prominently in the literature of last ten years.

### Reminiscent of stepping out of colonial mindset

An outstanding message from the success of IBC is India's demonstration that the country is capable of producing a model economic legislation that could set standards for many other

[7] Dr. M.S. Sahoo, "Introduction" in Sumant Batra's Corporate Insolvency: The Road to Viksit Bharat (Eastern Book Company, 2025).

[8] Ibid

[9] IMF, India: 2017 Article IV Consultation - Press Release; Staff Report; and Statement by the Executive Director for India, Accessed April 20, 2026 <https://www.imf.org/en/Publications/CR/Issues/ 2017/02/22/India-2017-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-Executive-44670#:~:text=This%202017%20Article%20IV%20Consultation%2Ohighlights>.

[10] Naseem Abdullah Aliwi, "Methodological Applications for Measuring the Impact of Legislation" (2023) 16(3) Baltic Journal of Law & Politics.

[11] Sumant Batra, "Introduction" in Corporate Insolvency: Law and Practice (Eastern Book Company, 2017).

jurisdictions. India has, post-1991, heavily borrowed from the experiences of developed economies and standards prescribed by the multilateral institutions,while enacting its municipal legislations. IBC is one of the first where India has produced a largely indigenous economic law. While guided by the global best practices like the UNCITRAL Legislative Guide on Insolvency Law and the experiences of many advanced insolvency jurisdictions, IBC was customized for the business, economic and social eco-system of the country. It is full of innovations and experiments. Many of these have worked out well. For example, the Insolvency and Bankruptcy Board of India (IBBI), the regulator under IBC is an innovation of Indian policymakers; a gift to the world of insolvency. It is a novel experiment, having no parallel either in the Indian regulatory milieu or in the insolvency space else-where.[12] IBC provided for creation of a regulated information utility that would address information asymmetry by making available all relevant information to all stakeholders and facilitate resolution, another first in the world. Emerging markets and developing economies (EMDEs) represent about 85 percent of the world's population and 60 percent of the global gross GDP. Today, they are the main drivers of economic growth for the world. EMDEs generally differ from advanced economies in several aspects, including level of economic and financial development, as well as the existence of robust market and strong institutional environments. The policy recommendations proposed for advanced economies might not often be suitable for countries with totally different market and institutional environments.[13] The IBC is a classic case study for emerging economies which require different thoughts, strategies and policy approaches. In a way, IBC signifies a pivotal juncture in the trajectory of India's advancement towards economic maturity and the establishment of financial discipline.[14] This takeaway from IBC would receive acknowledgement in history someday.

**Where there is a will, there is a way**

Another key lesson from the decade-long journey of IBC is that laws can be implemented effectively where political will exists. India defied its past track record and surpassed all expectations in implementation of IBC. BLRC was set up in August 2014, it submitted its final report in November 2015. The reform proposed by BLRC, in many ways, was a journey into uncharted territory - a leap into the unknown and a leap of faith. The law had to be laid down from scratch; many institutions and their infrastructure had to be created; capacity had to be built; professions had to be developed; the markets and practices had to evolve. The government moved swiftly. IBC was enacted on 28 May 2016. Leading from the front, the government moved at an unprecedented pace to operationalise IBC, probably with no parallel anywhere else in the world. The months ahead witnessed an unprecedented cooperation and partnership among authorities and stakeholders, to implement IBC. In less than six months after the enactment of IBC, subordinate legislation was finalised, and most of the institutions were put in place. The entire ecosystem for corporate insolvency was put in place to enable commencement of corporate insolvency proceedings by 1 December 2016. An economic law is essentially empiric and evolves continuously through experimentation. The initial journey of

[12] Sumant Batra, "Introduction" in Corporate Insolvency: Law and Practice (Eastern Book Company, 2017).

[13] Insolvency Law Academy, Task Force on Insolvency Law in Emerging Markets and Developing Economies, https://insolvencylawacademy.com/emde-task-force/.

[14] Justice A.K. Sikri, "Foreword" in Corporate Insolvency: The Road to Viksit Bharat (Eastern Book Company, 2025).

IBC was characterised by numerous unprecedented twists and turns from the very first day, requiring a high level and speed of responsiveness to adapt and surmount the challenges. Several legislative changes were made.In less than ten years, IBC has witnessed seven legislative interventions, out of which six were in the first four years since its enactment. IBBI has also made over 100 amendments. As a result, IBC has undoubtedly emerged as a living law reinforcing the idiom – where there is a will, there is a way.

**The apex court paves the path, like never before**

An economic legislation is typically a skeletal structure. It is judicial pronouncements which provide flesh and blood to it. Judges interpret the letter of the law.[15] It can take several years for a major law to settle down and for there to be complete clarity, certainty, and predictability about it for stakeholders. In the context of IBC, the Supreme Court of India has played a pivotal role in shaping the contours of the insolvency regime and in developing what may now be regarded as a distinctive and sophisticated body of insolvency jurisprudence. Despite being a relatively nascent regime, the last nearly ten years have seen the development of a strong IBC jurisprudence, delineating key legal principles which now form its backbone. The Supreme Court was called upon to test the constitutionality of IBC and its provisions or interpret them. Realising the significance of IBC, the Supreme Court took up IBC matters brought before it on priority and delivered numerous landmark orders to explain the main objectives of IBC, sort conceptual problems, settle contentious issues, and resolve grey areas with clarity. While upholding various provisions in IBC, the Supreme Court accorded a certain degree of deference to the legislative judgment in economic choices, apart from the presumption of constitutionality in economic legislation. However, even as some of these rulings established the key bedrock of IBC principles, some arguably also diluted the objective of the law. The landmark decisions collectively form the doctrinal backbone of the Indian insolvency regime and demonstrate how IBC has evolved into a mature and credible legal framework within a relatively short span of time.

**Averted a crisis in banking sector**

In May 2014, frightening levels of stress had built in the Indian banking sector. The NPAs constituted over 90 per cent of the total bad loans of the industry. As of March 2016, the Gross NPA ratio of the public sector banks was 14.5 per cent.[16] Maximum stress was in the industry and infrastructure sectors.[17] At the peak of the banking crisis around 2017–18, the Gross NPA ratio of scheduled commercial banks had crossed 11 percent, reflecting severe stress in the financial system. It wouldn't be an exaggeration to say that public sector banks in particular were on the verge of a crisis. The enactment of IBC has averted this crisis.[18] In the first few years of its implementation, IBC turned around the Indian banking sector. The Gross NPA ratio of banks declined to 2.8 percent by March 2024, with the net NPA ratio falling

[15] Frank H. Easterbrook, *Legal Interpretation and the Power of the Judiciary* (1984) 7 Harvard Journal of Law and Public Policy 87.

[16] RBI's Report on Trends and Progress of Banking in India 2022-23.

[17] Sumant Batra, Corporate Insolvency: The Road to Viksit Bharat (Chapter 2, Eastern Book Company, 2025).

[18] *Ibid.*

to 0.6 percent, marking a multi-year low.[19] This trend continued further, with the gross NPA ratio declining to around 2.1–2.2 percent by 2025[20], one of the lowest levels recorded in over a decade.IBC, together with the measures taken by the RBI, have nursed the credit sector back to sound health. As of the end of March 2024, all banks met this as well as the CET-1 ratio[21] requirement of 13.9 per cent, well above the regulatory minimum. As a result of these efforts, public sector banks today have stronger balance sheets, which is reflected in the appreciation of their market cap in the stock markets. The combined effect of institutional reform, decisive regulatory intervention, and capital support allowed India to avert what could have become a systemic banking crisis.[22]

**Improved access to credit**

Ease of access to credit is the cornerstone of economic development of any country.[23] This goal is also enshrined in the object statement of IBC. Since the enactment of IBC and the consequent resolution of NPAs, the flow of financial resources to the commercial sector in India has increased substantially as a result of financial debts being repaid. Bank credit growth has sustained momentum during FY24, with broad-based growth across sectors. Credit disbursal by SCBs stood at ₹ 164.3 lakh crores, growing by 20.2 per cent at the end of March 2024, compared to 15 per cent growth at the end of March 2023. The trend is continuing in FY25, as reflected in a 19 per cent and 19.8 per cent profit after growth in bank credit in April and May 2024.[24] Credit given by banks and financial institutions to the commercial sector (other than food) has increased from ₹ 74952.24 crores in 2016-2017 to ₹ 9161.09 crores in 2017-2018, as per RBI data. The total flow of resources to the commercial sector in India, both bank and non-bank and domestic and foreign (relatable to the non-food sector), has increased from a total of ₹ 14,530.47 crores in 2016-2017 to ₹ 18,469.25 crores in 2017-2018.[25] These figures, in some way, reflect the salutary impact of IBC on the credit flow in the economy.[26]

**Turnaround of distressed assets**

The primary objective of IBC is rescuing lives of enterprises in distress in a sustainable way so that it continues to manifest after the exit from IBC process. The trends in the market capitalisation of listed resolved firms indicate a significant revival in the average market

[19] Indian banks' gross NPA ratio at multi-year low of 2.8%, net NPA down to 0.6% in FY24: RBI Financial Stability Report, https://www.ibef.org/news/indian-banks-gross-npa-ratio-at-multi-year-low-of-2-8-net-npa-down-to-0-6-in-fy24-rbi-financial-stability-report?utm_source=chatgpt.com

[20] Business Standard, Dec 29, 2025, Bank NPAs at multi-decade lows as gross NPA ratio falls to 2.1%: RBI data https://www.business-standard.com/industry/banking/bank-npas-at-multi-decade-lows-125122900801_1.html?utm_source=chatgpt.com

[21] Common Equity Tier 1 refers to the sum of common shares (equivalent for non-joint stock companies) and stock surplus, retained earnings, other comprehensive income, qualifying minority interest and regulatory adjustments.

[22] Sumant Batra, "Introduction" in Corporate Insolvency: Law and Practice (Eastern Book Company, 2017).

[23] Sumant Batra, *Corporate Insolvency: The Road to Viksit Bharat* (Eastern Book Company, 2025).

[24] *Ibid.*

[25] Reserve Bank of India, Handbook of Statistics on Indian Economy (2018), Accessed April 20, 2026, https://www.rbi.org.in/Scripts/AnnualPublications.aspx?head=Handbook%20of%20Statistics%20 on%20Indian%20Economy.

[26] Sumant Batra, *Corporate Insolvency: The Road to Viksit Bharat* (Chapter 2, Eastern Book Company, 2025).

valuations in the post-resolution period. which is expected given the growth opportunities that will accrue to these firms post the resolution with the creditors. A similar trend is seen for the aggregate market valuation of all the resolved firms which has increased from around ₹ 2 lakh crores to ₹ 6 lakh crores in the post-resolution phase. Overall, the results suggest that the market has priced and acknowledged the potential of these firms in the post-resolution period. The profitability, liquidity, activity, and turnover ratios of resolved firms have improved during the post-resolution period.[27] The resolved firms have reduced the wedge with the comparable cohort of firms in the post-resolution period, especially in the profitability metrics. Many of these firms are able to obtain credit on reasonable terms and have made significant investments in capital expenditure (CapEx) and working capital.[28] There is an increase in tangible assets and average CapEx in the post-resolution period compared to the pre-resolution period. The aggregate market valuation of resolved firms rose from around ₹ 72 lakh crores in the pre-resolution phase to ₹ 76 lakh crores in the post-resolution phase. Average sales have shown an increase of 76 per cent in three years since resolution. While the net margins continue to remain negative, the resolved firms have operationally broken even in the post-resolution period (operating margin of 4 per cent as of T+3), which is a significant improvement from the pre-resolution period. The total employment across listed firms has also shown a substantial increase in the post-resolution period. The trends indicate a significant increase of around 50 per cent in the average total assets of resolved firms' post-resolution. This is coupled with 130 per cent increase in the CapEx, which indicates a build-up of tangible assets in the balance sheet of these firms in the post-resolution period.[29]

**Behavioural Change**

One of the far-reaching spill-over effects of IBC is stated to be the behavioural change effectuated by it - a cultural shift in the dynamics between lenders and borrowers. Many studies state that IBC has nudged thousands of debtors to settle their dues even before the initiation of insolvency proceedings.[30] The State Bank of India claims that the biggest change IBC has brought in the default is no longer a bank problem, it has now become the borrower's problem.[31] Recovery of an enormous debt[32] in applications withdrawn before their admission into IBC[33] is cited as a sign of behavioural change. This, according to some economists, is the

[27] Indian Institute of Management, Ahmedabad, Report of Study on Effectiveness of the Resolution Process Firm Outcomes in the Post-IRC Period (August 2023).

[28] *Ibid.*

[29] *Ibid.*

[30] Government of lndia. Economic Survey 2022-23. Ministry of Finance, Department of Economic Affairs, economic Division, Accessed on April 20,2026, https://www.indiabudget.gov.in/economicsurvey/.

[31] Kumud Das, *IBC Brought Behavioural Change Among Borrowers, Says SB! MD*, BizzBuzz, September 21, 2023, Accessed on December 15, 2024, https://www.bizzbuzz.news/trendz/ibc-brought-behavioural-change-among-borrowers-says-sbi-md-1249770.

[32] Government of lndia, Economic Survey 2022-23. Ministry of Finance, Department of Economic Affairs, Economic Division, Accessed on December 15, 2024. https://www.indiabudget.gov.in/economicsurvey/.

[33] Insolvency and Bankruptcy Board of lndia, *Chairperson's Editorial Note.*, IBBI Quarterly Newsletter: JulySeptember 2024, Accessed on December 15, 2024, https://ibbi.gov.in/uploads/whatsnew/edc044b410d37f0fd22cbe07a74665f3.pdf.

nudge effect of IBC.[34] However, this view is debatable.[35] There is not enough empirical data to establish that this recovery is a systemic response to the underlying attitudinal problems in the creditor-debtor relationship. In my view, the upscale in recovery from defaulters is on account of 'fear of losing control' of management of enterprise if an insolvency petition under IBC admitted. This threat is compounded by Section 29A. Even Indian Institute of Management, Bangalore (IIMB) in its study finds that, "that there is an increasing tendency to settle debts to avoid the CIRP proceedings" and not use IBC for insolvency resolution. IIMB though, interprets it as a positive sign."[36] Pertinently, in its study report on behavioural impact of IBC, IIMB itself records that the "objective of the study" is analysis of withdrawals "due to threat of IBC". The objective of IBC is not to collect or recover monies from defaulters; it is to resolve distressed assets. Measuring the behavioural effect of IBC as a preventive tool to recover money without having to invoke IBC provisions has no link with the objectives of IBC. Recovery of money, at best, is a collateral benefit of the construct of IBC. A threat of displacement from management on commencement of IBC or ban by Section 29A, by no means, qualify as a 'nudge' as professed by Thaler and Sunstein in their 2008 book, *Nudge: Improving Decisions about Health, Wealth, and Happiness*.[37] Nudge theory is essentially an indirect approach, which seeks to modify situations for people by encouraging positive choices rather than trying to restrict undesirable behaviour with some kind of sanctions or restricting freedom of choice. In fact, there is a widespread belief in the market that many promoters are getting back control of their enterprises using the back door through entities (including some regulated by the RBI acting as resolution applicants or acquiring debts from creditors to hold decisive vote share in the committee of creditors, at the instance of the promoters. If promoters are indeed circumventing IBC provisions by such engineering, with active support from regulated players in the market, clearly the argument of behavioural change is a bit too early to make.

## UNRESOLVED CHALLENGES

IBC promises a strict resolution timeline and maximizing value for creditors. Yet, a decade on, several unanticipated disappointments have tempered its impact. Large corporate resolutions have seen lenders accept massive write-offs impacting maximisation of value. In this section I flag the areas where IBC has yet to make its mark.

### A missing Adjudicating Authority

Often, the Adjudicating Authority (AA) is blamed for delays plaguing IBC. Many measures have been taken to speed up decisions by AA. In my view, the problem is not with AA but in its

[34] Guru, Anuradha, *The Code: A Behavioural Perspective,* Insolvency and Bankruptcy Board of India, Accessed December 15, 2024,https://ibbi.gov.in/uploads/whatsnew/2456194a119394217a926e595b537437.pdf.

[35] The 'Real' Behavioural Change, pg. 27. Accessed April 20 2026 https://ibbi.gov.in/uploads/publication/36cd64096137032d8a949419ec1e85b9.pdf

[36] Behavioral Impact of IBC - A Research Study Submitted to Insolvency and Bankruptcy Board of India, Centre for Capital Markets and Risk Management, The Indian Institute of Management, Bangalore, Accessed on April 20 2026, https://ibbi.gov.in/uploads/resources/1af62766c26f90a284c1fa996faa6e97.pdf.

[37] Badhani, Pragyan. "Behavioral Economics in Policy Making." Misra Centre for Financial Markets and Economy, Indian Institute of Management Ahmedabad, March 27, 2024, https://www.iima.ac.in/sites/default/files/2024-04/MCFME_RPIFME_1_27.03.2024.pdf.

institutional design. In its report, BLRC suggested for an AA to serve as an adjudicator for corporate insolvency and bankruptcy so as to minimise undue burden on the judiciary.[38] AA's role was proposed to ensure that the insolvency or bankruptcy resolution process is performed within the framework laid down by the law.[39] But BLRC fell short by recommending that the National Company Law Tribunal (NCLT) established under the Companies Act, 2013 be given jurisdiction as AA. Picking NCLT over a customised institutional model deprived IBC of an AA customised for IBC. NCLT was created in 1999 to solve the problems of 1990s.[40] But NCLT could not be established as its constitutional validity was challenged. The Supreme Court put its stamp of approval on the constitutional validity in 2010. It, however, proposed that defects in these provisions relating to NCLT be corrected.[41] This was eventually resolved in 2015 by the Supreme Court.[42] By then 16 years had passed and a lot had changed. The architecture of NCLT, based on the thinking of the 1990s, was non-suited for a fast-growing economy and a robust insolvency law provided in IBC.

On 1 June 2016, NCLT was notified and members appointed to NCLT started functioning as AA. Judicial members, trained to handle adversarial cases all their lives were suddenly handling insolvency cases. Technical members were borrowed from establishment. Theywere also trained in a particular fashion. No separate rules for AA were notified. The AA started functioning on the basis of NCLT Rules, designed for corporate dispute resolution, which are primarily adversarial. Due to this institutional flaw, from day one, the AA started functioning as a full-fledged court/tribunal, drowning in litigation. IBC increasingly turned adversarial. Every stage—from admission of applications to approval of resolution plans—is contested. Creditors and debtors file objections over default amounts, eligibility of resolution applicants, and valuation methods. Operational creditors, often sidelined, challenge every decision, while suspended promoters fight to retain control. Add to these applications by hundreds of homebuyers. This combative environment has massively burdened the AA's docket, defeating the IBC's original mandate of timely resolution. Consequently, resolution timelines stretch for years, eroding asset value. The AA now spends disproportionate time interpreting legal nuances and hearing arguments rather than facilitating swift insolvency resolution. What was meant to be a specialized arbitrator for economic turnaround has become yet another overburdened court, undermining the very efficient and creditor-friendly ethos the IBC promised. Appeals against AA's orders further clog higher forums. How do we blame AA alone for this. A transformational change can be brought by establishing an AA, different from NCLT, with appointment of members possessing insolvency expertise, selected from the industry rather than from retired workforce of the government and judiciary.[43]

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[38] Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee, Volume 1: Rationale and Design (November 2015) p. 25, para 44.3, https://ibbi.gov. in/BLRCReportVol1_04112015.pdf,Accessed on April 20, 2026.

[39] Ibid. para 4.2.

[40] Sumant Batra, Corporate Insolvency: The Road to Viksit Bharat (Eastern Book Company, 2025).

[41] Union of India v. Madras Bar Assn ' (2010) |1 SCC 1: (2010) 156 Comp Cas 392.

[42] Madras Bar Assn ' v. Union of India(2015) 190 Comp Cas. 484.

[43] Sumant Batra, Corporate Insolvency: The Road to Viksit Bharat, Law Practice and Policy, (Eastern Book Company, 2025).

**Liquidation as last resort - an assault on the foundational principle**

One decision by an otherwise stellar judge, holding that the objective of IBC is resolution; liquidation is last resort[44] assaulted the foundational principle of insolvency law. Liquidation is an inherent and indispensable component of any well-functioning insolvency regime.A mature insolvency ecosystem does not shy away from liquidation; it embraces it as a mechanism for market correction and capital reallocation, ensuring that viable businesses are rescued while unviable ones exit the market in an orderly manner. Section 33(2) of IBC recognised this principle by allowing the creditors to take a call on liquidation at any stage. Insolvency frameworks are not designed merely to rescue distressed companies; they are designed to allocate economic resources efficiently when a business fails. By framing liquidation as an undesirable or exceptional outcome, the discourse around IBC moved away from this fundamental principle. The constant reiteration that "liquidation is the last resort" has, in many ways, distorted the foundational philosophy of insolvency law.[45] Insolvency resolution process is dragged for years to avoid liquidation even if there is no value in enterprise. It is only lately that a little correction is sought to be made by removing 'sale as going concern in liquidation'.[46]

**Professional standards and ethics**

Another important challenge has been the quality of professional standards and ethical practices within the insolvency profession. The success of any insolvency regime depends heavily on the competence, independence, and integrity of the professionals who administer the process. Insolvency professionals function as the central actors in the resolution process, responsible for managing distressed firms, preserving asset value, coordinating creditors, and ensuring procedural fairness. Strengthening professional standards will therefore be critical for the next phase of the insolvency regime. Ensuring that the insolvency profession evolves to meet global best practices in professionalism and ethics will be essential for maintaining confidence in the insolvency ecosystem and for sustaining the long-term success of IBC. I have written extensively about this in my recent book.[47]

**Neglect of avoidance transactions**

An area where IBC has made little progress is realisation of proceeds of avoidance transactions. The statistics spell a grim future for avoidance applications. The only case that stands out is that of JIL. Due to the determined pursuit of avoidance application by the IRP in that case, an area of 758 acres of prime real estate worth thousands of crores was restored to CD's corpus, adding significantly to its asset value.[48] The delay and uncertainty in adjudication of avoidance transactions is causing serious prejudice to creditors. The debtor's estate loses out on the

[44] Swiss Ribbons Pvt. Ltd. vs Union of India, 2019 (4) SCC 17.

[45] Sumant Batra, Corporate Insolvency: The Road to Viksit Bharat, Law Practice and Policy, (Eastern Book Company, 2025).

[46] Insolvency and Bankruptcy Board of India Notification, New Delhi dated 14th October, 2025-https://ibbi.gov.in/uploads/legalframwork/85d48cede86251c9446cf712d1812308.pdf.

[47] Sumant Batra, Corporate Insolvency: The Road to Viksit Bharat, Law Practice and Policy,(Eastern Book Company, 2025).

[48] Sumant Batra, *The Jaypee Infra Insolvency Saga* (Om Books International, 2024).

incremental value that the assets underlying suspect transactions could have contributed to the resolution process. If avoidance applications are dealt with swiftly, they can be an important avenue to improve recoveries for creditors, especially where high-value assets are involved. A quick and effective mechanism to deal with avoidance applications is, thus, a critical missing piece in the current framework of IBC.

**Maximising price discovery continues to elude**

A closer examination of recovery patterns reveals that price discovery (maximisation of value) continues to elude. 77.6 percent of CIRPs (820 cases) have resulted in recoveries below 50 per cent of admitted claims, indicating that substantial creditor haircuts remain a dominant feature of the resolution process. Within this, 138 CIRPs (13 per cent) have realised only 0-5 per cent of their admitted claims, while another 125 CIRPs (11.8 per cent) have secured recoveries in the 5-10 per cent range. The largest segment (555 CIRPs) falls within the 10-50 per cent recovery range, with creditors recovering 29.3 per cent of admitted claims and 144.6 per cent of the liquidation value, demonstrating that while haircuts are high, recoveries still outperform liquidation scenarios. A significant 22.4 per cent of CIRPs achieved recoveries exceeding 50 per cent, showcasing marked improvements in value realisation.[49] The amounts realised by creditors vis-à-vis their admitted claims are low. The economy must get the maximum value out of failed firms. A deep and competitive market for stressed assets with adequate liquidity to support acquisition from the banks and support assets turn-around, is essential to improve the credit market further. A vibrant market for stressed assets improves secondary market liquidity for loans and attracts a wider range of institutional investors to assist in corporate restructuring. This creates a competitive marker which, in turn, leads to better price discovery. The Indian market does not have enough investors to compete for distressed assets to enable the price discovery of the NPAs is efficient. The asset reconstruction companies regulated under the SARFAESI Act have emerged as an alternative channel for investors. To deepen the distressed asset market further, in July 2021, the National Asset Reconstruction Company Limited (NARC) was established. The Securities and Exchange Board of India (SEBI) has permitted the Special Situation Fund, a sub-component of the Alternative Investment Funds, to participate in the distressed asset market subject to certain conditions. Yet, the secondary market for distressed assets is monopolised by a few ARCs and NARCL hampering competition and price discovery.

**Bond market**

In its report, Bankruptcy Law Reforms Committee (BLRC) noted that the corporate bond markets, which should have been one of the natural sources of finance for large companies, are not widely used in India due to inter-alia the fact that corporate bondholders have had bad recovery rates under the extant arrangements. With recovery rates improving, one would expect an increase in non-bank-based borrowing and an increase in unsecured borrowing in the total debt portfolio of the firms, and firms are likely to be more leveraged to generate returns on risk capital. It noted that an effective insolvency system can contribute to the development of the Indian bond market. Globally, the equity markets are massive, with a

[49] Data as on 31 December 2024. Sumant Batra, Corporate Insolvency: The Road to Viksit Bharat (Eastern Book Company, 2025).

total market capitalisation of around $ 110 trillion. The bond market is even bigger, totalling about $ 130 trillion. In India, the story is a bit different. The market cap of the equity markets is about $5 trillion, while the bond market is around $2.5 trillion. So, unlike the global trend, India's bond market is still catching up.[50] Improvements in bankruptcy system tend to be associated with increases in the bond share of debt, especially for high-risk firms. The impact of IBC on the bond market is yet to fully manifest. We must wait to see how IBC influences the growth of the Indian bond market.

**Promoting entrepreneurship**

One of the objectives of IBC is to promote entrepreneurship. The BLRC stated in its report that "the promoters can make a proposal that involves buying back the company for a certain price, alongside a certain debt restructuring" and there should be no "constraints on the proposals that the resolution professional can present to the creditors committee". This approach is reiterated in the notes to clauses of IBC presented to Parliament as a Bill. Promoters can present a plan and RPs are duty-bound to examine it and present it to the committee of creditors if their plan qualifies the parameters laid down in IBC and regulations. The impact of IBC on entrepreneurship has yet to be studied. When that exercise is carried out, one will also have to assess the long-term impact of Section 29-A, inserted by way of an amendment in 2017, on entrepreneurship. It would be fair to state that Section 29-A has served a useful purpose by sending a strong message that there will be a cost to financial discipline. It has resulted in some corrections. Equally, it has deprived an unfortunate promoter of an opportunity to keep his company, where default in payment of debt may have occurred for reasons beyond their control. There are many honest promoters who are unfortunate defaulters and deserve to be given a second chance. It would be unfair to exclude them from consideration by not bracketing them with dishonestpromoters. After all, every person with the name Prem Chopra is not a villain![51] There is a case to relax the rigours of Section 29-A gradually, over the next few years.

## CONCLUDING REMARKS

There are other areas like cross-border insolvency and group insolvency where India has taken longer than necessary to implement a suitable framework. Yet it is hard to find another policy measure that has created such winners as IBC. The next phase of reforms must focus on addressing the shortfalls of last ten years, and on implementation of cross-border insolvency, and group insolvency frameworks. Path for these have been paved by the Insolvency and Bankruptcy Amendment Act 2026. We also need revolutionary thinking on personal insolvency law that meet the needs of 21st-century India, andresonates with her youth, before it is implemented. With sustained policy attention and institutional development, IBC has the potential to mature into a robust framework that effectively balances timely resolution, value maximization, and equitable treatment of stakeholders within India's growing economy, and competes with the best in the world.

[50] Parth Parikh, *Explore India's Bond Market: Growth and Future Opportunities*(5-9-2024), Accessed on September 5, 2024, https://vestedfinance.com/blog/bonds/indias-bond-market-size-structure-growth- and-opportunities/.

[51] Sumant Batra, *Why exclude promoters from insolvency process; implications can be serious*, Financial Express. 14-11-2017, Accessed on November 14, 2017, https://www.financialexpress.com/opinion/why-exclude-promoters-from-insolvency-process-implications-can-be-serious/933222/.

# 13 AVOIDANCE TRANSACTIONS AND THE IBC 2016: A DECADE IN REVIEW

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## INTRODUCTION

The tenth anniversary of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) is an occasion for positive reflection. This includes in relation to the avoidance transactions laws, an essential part of any country's insolvency laws. The IBC consolidates avoidance transactions laws under the popular umbrella acronym "PUFE", covering Preferential, Undervalued, Fraudulent and Extortionate credit transactions. These laws maintain and enforce the creditor waterfall that applies in insolvency proceedings, enabling transactions entered into in the period before the insolvency to be challenged. Transactions that occur during that period are often contrary to the interests of creditors and the detection and pursuit of these transactions is an important part of the roles of resolution professionals and liquidators.[1] Scrutiny of the IBC's avoidance provisions reveals an intelligent and adaptive legislative design bearing similarity to the laws of England and Wales in the Insolvency Act 1986 (UK). This was no crude transplant exercise, but rather an adaptation for the Indian context. Moreover, the Indian system has a strong record of data collection, including in relation to voidable transactions, and other systems could learn from this.

Admittedly the picture that emerges is not uniformly positive but this is symptomatic of many relatively new systems. Implementation in what is a litigious society has placed significant strain on court capacity, and this was worsened by the Covid-19 pandemic impact on court procedures. The gap between the volume of avoidance claims filed and the amounts actually recovered is also striking. However, the legislature has responded actively, and the IBC Amendment Act 2026, which was notified on 7 April 2026, contains a suite of reforms directly addressed to the avoidance framework. The reforms are justified in their evidence-based approach.

This article proceeds by a brief discussion of the legislative process behind the avoidance transaction provisions. It then examines the design of the avoidance transaction provisions comparatively, discussing how they have departed from the Insolvency Act 1986 provisions. and evaluating case statistics and the 2026 reforms. The paper ends by drawing conclusions about what the first decade tells us and what the second might bring.

## THE LEGISLATIVE CONTEXT: DESIGNING THE IBC UNDER PRESSURE

The IBC is a consolidation instrument, replacing a fragmented landscape of insolvency legislation that had long been criticised for its inability to deliver effective resolution. [2] The

[1] Subhajit Chakraborty, *Role of Resolution Professionals in Detecting PUFE Transactions Under IBC 2016* (2024) 23 IUP Journal of Accounting Research & Audit Practices 231-238.

[2] The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act 2013.

late Finance Minister Shri Arun Jaitley, a driving force behind the legislation, recognised that a modern, unified insolvency framework was essential infrastructure for India's growing economy and its attractiveness to domestic and international investment. Importantly the law was in line with modern trends in prioritising resolution over liquidation.

The legislative process was thorough, even though conducted on an ambitious timescale. The Bankruptcy Law Reforms Committee (BLRC), chaired by T.K. Viswanathan, conducted a comprehensive review and its 2015 report provided the intellectual and technical foundation for the Code. The BLRC drew consciously on the UNCITRAL Legislative Guide and with comparative models with the insolvency laws of England and Wales being particularly influential, while remaining attentive to the specificities of the Indian legal and commercial environment. The result was not a transplantation exercise but an act of informed adaptation, and the avoidance provisions are among the clearest illustrations of this approach. The drafting team, working under considerable time pressure, made deliberate and considered departures from the English model where the Indian context required it. As this article argues, those departures were frequently well-judged. The avoidance provisions are in this respect a microcosm of the IBC's broader legislative character.

It is, however, a well-established observation in comparative law and institutional economics that a new law on the statute book is alone insufficient to bring about lasting change.[3] Supporting institutions must be constructed, professional cultures must develop, and courts must adjust to new jurisdictional responsibilities. The IBC recognised this. The legislation established the Insolvency and Bankruptcy Board of India (IBBI/Board) as a dedicated regulatory authority, with responsibility for standard-setting, professional oversight and data collection. It created a new cadre of Insolvency Professionals (IPs), the Resolution Professionals (RPs) and Liquidators, operating under a professional framework that did not previously exist. It designated the National Company Law Tribunal (NCLT) as the specialist Adjudicating Authority (AA) for corporate insolvency matters, centralising jurisdiction that had previously been dispersed. Each of these institutional innovations required time to bed in, and the early years of the Code's operation inevitably reflected the challenges of building capacity from a standing start.

A decade on, the picture is substantially more developed. A body of sophisticated jurisprudence has accumulated, particularly from the Supreme Court and the National Company Law Appellate Tribunal. The IBBI's regulatory and data functions have matured. RPs have developed expertise across a range of insolvency contexts. A changed professional and commercial culture is discernible. This is one in which the disciplines of the insolvency process are taken seriously and in which the avoidance provisions, in particular, are understood as tools of genuine practical consequence rather than theoretical reserve powers. Further progress remains to be made, but the trajectory is clear.

## THE AVOIDANCE PROVISIONS: INTELLIGENT ADAPTATION OF UK LAW

The PUFE provisions are found principally in Chapters III and VI of Part II of the Code, and collectively empower the RP or Liquidator to identify and challenge transactions entered into

[3] Douglass C North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press, 1990).

by the corporate debtor (CD) prior to the commencement of insolvency proceedings. The underlying policy rationale is the protection of the general body of creditors from the dissipation of assets in the period leading up to insolvency, whether through deliberate manipulation or through the preferential treatment of favoured creditors. The PUFE framework thus performs both a corrective and a deterrent function.

The provisions operate during a "lookback period" a defined time window calculated backwards from a reference date. As originally enacted, that reference date was the insolvency commencement date (i.e. the date of admission of the CIRP application). A significant reform in the IBC Amendment Act 2026 shifts this reference point to the "initiation date," being the date of filing of the application. This reform is discussed further below.

The primary obligation to identify and challenge undervalued transactions rests with the RP or Liquidator. There are timeline expectations as to when this should be done, although case law has shown some leniency.[4] A RP who unreasonably fails to pursue a voidable transaction application may face disciplinary proceedings before the IBBI, creating professional accountability alongside the substantive legal obligation. The law empowers a creditor, member or partner to bring an application where the IP has failed to do so, providing an important backstop against professional inaction. The IBC Amendment Act 2026 further expands creditor standing, extending it expressly across preferential, extortionate credit, fraudulent and wrongful trading transactions as well.

**Section 43 — Preferential Transactions**

Section 43 targets transactions by which the CD has, during the relevant lookback period, transferred property or an interest therein to a creditor, surety or guarantor in respect of an antecedent debt, where the effect of that transfer is to put the recipient in a better position than they would have occupied in an immediate liquidation. The lookback period is twelve months for transactions with unconnected parties, and two years for transactions with connected parties. The longer lookback for connected party transactions reflects the heightened risk of manipulation where the parties share a close relationship. Connected parties are defined broadly and expressly exclude employees acting merely in that capacity.

The concept of "property" is given an expansive definition under section 3(27) of the Code, encompassing actionable claims, moveable and immoveable property, and any rights or interests therein. The reference to "interest" in section 43 further extends the provision's reach. Ownership rights, security interests and beneficial interests in property may all, in principle, be subject to challenge. This breadth is appropriate given the ingenuity with which value may be extracted from an insolvent estate in the period preceding formal proceedings.

The relief available under section 44 is correspondingly broad and flexible. The AA may order the retransfer of property, the application of the proceeds of any prior sale, the release or discharge of any security interest granted in connection with the impugned transaction, the payment of sums representing the benefit received, the revival of any guarantee that was

[4] Aditya Kumar Tibrewal v. Om Prakash Pandey, NCLAT New Delhi Bench, judgment dated 06 April 2022:

discharged as part of the transaction, or the provision of fresh security. The practical effect is to restore the CD's estate to the position it would have occupied absent the preferential transaction. Any recovery obtained vests in the CD and is available to the general body of creditors.

The provision incorporates important protections for innocent third parties. A person who has acquired an interest in good faith, for value, and without notice of the relevant circumstances is protected from the consequences of an avoidance order. However, a connected party with knowledge of the insolvency is presumed not to have acted in good faith. This presumption, which effectively reverses the burden in connected party cases, again reflects the policy judgment that those with access to information about the debtor's financial position cannot readily claim ignorance.

Section 43 of the IBC departs from its closest English equivalent, section 239 of the Insolvency Act 1986, in one analytically significant respect. Under section 239, a preference is only voidable where the transaction was 'influenced by a desire' to improve the position of the creditor, surety or guarantor who benefited.[5] This is a subjective mental element that must be established by the IP, although it is presumed in the case of connected parties (other than employees).[6] The IBC contains no equivalent mental requirement. A transaction within the lookback period that has the effect of improving a creditor's position in a hypothetical liquidation is challengeable on that basis alone, without any inquiry into the debtor's state of mind. It is however subject to important defences, discussed later.

This departure from the English model is not unique to India. Many common law jurisdictions whose insolvency laws were originally modelled on English legislation have made the same move, adopting an objective standard and dispensing with the desire-to-prefer requirement.[7] The reasons for doing so are well-founded.[8] As Professor Robert Weisberg argued in a foundational study of the history of preference law, the subjective mental element in English preference law is not straightforwardly a principled policy choice but rather can be viewed as an historical artefact.[9] From around the fourteenth century, when voidable transactions laws were first developed[10] English law had developed a morally complex image of the merchant character, and Weisberg contends that this cultural ambivalence about merchants, simultaneously distrusted and celebrated, permeated the development of English bankruptcy law from its earliest origins. It is regarded as shaping the preference provisions in ways that reflect moral preoccupation with the debtor's character rather than any coherent theory of creditor protection. On this analysis, the desire-to-prefer requirement could be seen as

[5] IA 1986, § 239(5).

[6] IA 1986, § 239(6).

[7] Australia (Section 588FA of the Corporations Act 2001); USA (Section 547 of the US Bankruptcy Code); New Zealand (section 292 of the Companies Act 1993).

[8] See e.g. Andrew Keay, *Preferences in Liquidation Law : A Time for a Change* (1998) 2 Company Financial and Insolvency Law Review 198-216.

[9] Robert Weisberg, *Commercial Morality, the Merchant Character, and the History of the Voidable Preference* (1986) 39 Stanford Law Review 3.

[10] The introduction to a 1376 statue, 50 Ed. 3, c. 6, declared that "Fraudulent Assurances of Land or Goods, to deceive Creditors, shall be void.

telling us considerably more about historical attitudes to the merchant debtor than it does about the culpability of the creditor who received the preference or the harm suffered by the general body of creditors.

The IBC's objective approach is more analytically coherent. It directs attention to the question of whether the transaction produced an outcome inconsistent with the creditor waterfall. Indian courts have given effect to this approach, and the Supreme Court's treatment of the ordinary course of business defence in *Anuj Jain v. Axis Bank*[11] illustrates how the objective framework operates in practice: the focus is on the character and timing of the transaction rather than on what the debtor intended by it. In another case it was therefore irrelevant that a creditor had exerted pressure to bring about the transaction.[12]

That said, the structure of section 239 is not without its advantages. In practice, the desire-to-prefer requirement functions as an implicit filter on litigation in respect of arm's length transactions: it is genuinely difficult to establish that an insolvent debtor was *influenced by a desire* to prefer a creditor with whom it had no special relationship, and the presumption applies only to connected parties. This has the effect of concentrating English preference litigation where the risk of manipulation is highest: connected party transactions, while leaving ordinary commercial payments largely undisturbed. The IBC achieves a similar result through the differential lookback periods, which are considerably more generous for unconnected parties, and the exceptions that are discussed next, but the mechanisms by which the two systems arrive at comparable practical outcomes are instructively different.

Two exceptions qualify the operation of section 43 and prevent uncertainty in commercial dealings. First, a transaction that occurs in the ordinary course of business of either the debtor or the transferee falls outside the provision's scope. In *Anuj Jain v. Axis Bank*, this was interpreted as requiring that the transfer was made in the ordinary course of the business or financial affairs of the corporate debtor *and* the transferee. Second, a transfer made in return for new value provided contemporaneously is similarly protected. Cumulatively, these exceptions preserve commercial normality, with the effect that the Code does not seek to unwind routine business dealings simply because insolvency has subsequently intervened. It should be noted, however, that the mere fact that a transfer was made pursuant to a court order does not preclude a challenge under section 43, a clarification of some practical importance.

The judicial development of section 43 has been significant. In *Anuj Jain v Axis Bank*,[13] the Supreme Court set out the responsibilities of the IP in identifying and pursuing preferential transactions, emphasising that the RP is under a positive duty to investigate and act and cannot adopt a passive posture. In *KL Jute*,[14] it was confirmed that an application in respect of a preferential transaction may be brought before the adjudicating authority under section 44 independently of other proceedings. In *Tirumala Balaji Alloys*,[15] it was held that even a transaction

[11] (Civil Appeal Nos. 8512-8527 of 2019) dated 26.02.2020.

[12] GVR Consulting Services Pvt. Ltd. v. Pooja Bahry – NCLAT New Delhi.

[13] (Civil Appeal Nos. 8512-8527 of 2019) dated 26.02.2020.

[14] K L Jute Products Pvt Ltd v. Tirupti Jute Industries Ltd and Ors, NCLAT.

[15] Tirumala Balaji Alloys Pvt Ltd v. Sumit Binani, Company Appeal (AT) (Insolvency) Nos. 600 & 601 of 2018, NCLAT.

falling within the ordinary course of business exception may in certain circumstances be subject to scrutiny, reflecting a purposive approach to the provision that resists purely mechanical application of the statutory defences.

**Section 45 — Undervalued Transactions**

Section 45 addresses transactions in which the CD has made a gift or transferred property for a consideration significantly below its true market value, where the transaction was not entered into in the ordinary course of business. [16] The lookback periods mirror those under section 43: twelve months for arm's length transactions and two years for connected party transactions.

There are differences from the lookback periods in England and Wales and those in section 46. The lookback period in IA 1986,[17] differs as a two-year period applies regardless of whether the other party was a connected party.[18] More significantly, it additionally requires that the company was insolvent at the time, or became insolvent as a result of the transaction. This narrows the scope of the provision significantly and leaves scope for the company to enter into undervalued transactions whilst it is solvent, perhaps emphasising freedom of contract in such circumstances.

The ordinary course of business exclusion also offers a further point of contrast with the law of England and Wales. Under section 238(5)(a) of the Insolvency Act 1986, a transaction at undervalue is not voidable if it was entered into in good faith, for the purpose of carrying on business, and if at the time there were reasonable grounds for believing it would benefit the company. The English defence is conjunctive: all three limbs must be satisfied. Notably it again incorporates a subjective element, good faith, alongside the more objective inquiry into business purpose and anticipated benefit, although this defence is not considered difficult to make out for companies who keep good records of decisions.[19] The IBC's "ordinary course of business" as a standard, by contrast, is characteristically assessed by reference to objective commercial norms: whether the transaction was of a type and on terms consistent with how the business ordinarily conducted its affairs. The IBC's exclusion accordingly keeps the analysis trained on the character of the transaction rather than the mind of the debtor, maintaining the structural consistency that runs across the avoidance provisions as a whole.

Where the valuation of the transaction is in dispute, the provision contemplates the appointment of an independent third-party valuer. This is a practical and sensible mechanism, though the quality and consistency of valuation evidence has been identified in practice as a source of difficulty, particularly in respect of distressed assets whose value may be contested.

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[16] IBC 2016, § 45(2).

[17] IA 1986, § 240.

[18] Malak Sheth, *Indian Position on Undervalued Transactions: Analysing the 'Material Facts' Required to be Pleaded and Proved*, 11 National Law School Business Law Review 2, 2025.

[19] Rebecca Parry, Sharif Shivji and Guy Oliff-Cooper, *Transaction Avoidance in Insolvencies* 3rd edn (Oxford University Press, 2018), para 4.160.

**Section 50 — Extortionate Credit Transactions**

Section 50 targets credit transactions entered into within the two years preceding the insolvency commencement date on terms that are extortionate, either requiring exorbitant payments or imposing unconscionable terms. The provision is directed at the exploitation of the CD's vulnerability in the period of financial distress, where lenders may extract terms that would not be accepted by a solvent borrower negotiating at arm's length.

Here again the Indian formulation makes a significant departure from the UK model. Section 244 of the Insolvency Act 1986 requires that the transaction be "grossly extortionate" in the sense of requiring grossly exorbitant payments or grossly contravening ordinary principles of fair dealing. The IBC omits the qualifier "grossly," adopting the lower threshold of "extortionate" simpliciter. It also provides a safe harbour for financial transactions. Whether this difference is significant in practice depends on how the AAs have calibrated the standard, and the case law on this provision remains comparatively underdeveloped relative to the preference and undervaluation provisions itself a finding of some interest. Moreover, section 244 has not generated *any* cases that led to avoidance. [20] It is generally considered that extortionate creditor transactions are rare in practice due to regulated consumer credit markets.[21]

Indian courts have actively applied sections 50 and 51 of the IBC, generating a body of case law that gives the provisions real operational content. In *Anamika Singh v. Shinhan Bank*, [22] the NCLAT held that interest rates of 45–60% per annum, imposed without board approval or demonstrable commercial need, were unconscionably high and set aside the arrangements as extortionate. Courts have since reinforced that while there is no statutory cap on interest, private loan rates not exceeding 24% per annum are generally unlikely to be extortionate, giving practitioners a working reference point even in the absence of a bright-line rule. In *Naveen Luthra v. Bell Finvest*,[23] the NCLAT clarified that claims of usurious terms cannot defeat admission of an insolvency petition under section 7 but must be addressed through the avoidance framework. This approach preserves the integrity of the collective process while ensuring that extortionate arrangements do not generate unjust enrichment for creditors.

**Section 49 — Transactions Defrauding Creditors**

Section 49 operates without any lookback period, reflecting the gravity of the conduct it addresses. It targets transactions by which property has been alienated or obligations incurred with the purpose of keeping assets beyond the reach of creditors or of adversely affecting their interests. A paradigm case would be the transfer of substantial assets to a related company at low price soon before the insolvency.[24] Another would be the purchase of assets at an inflated value from a related party, draining cash from the CD while nominally complying with the form of a commercial transaction.

[20] The claims failed in White v. Davenham Trust Ltd [2010] EWHC 2748 (Ch), [2011] BPIR 280; Jackson v. Casey [2019] EWHC 1657 (Ch).

[21] Elaine Kempson and Claire Whyley, Extortionate Credit in the UK: A Report to the DTI (Personal Finance Research Centre, June 1999).

[22] Anamika Singh & Ors v. Shinhan Bank & Ors (NCLAT, 2020).

[23] Id.

[24] Edelweiss Asset Reconstruction Company Limited v. Net 4 India Limited, NCLAT – New Delhi bench dated 29 April 2021.

The relief available mirrors that under section 44, permitting the court to make such order as it thinks fit restoring the position and protecting the interests of victims of the transaction. The absence of any temporal limitation is justified by the fraudulent character of the conduct: the legislature has taken the view that the passage of time cannot immunise a deliberate act of creditor evasion from scrutiny.

The case of *Vital SA Abhishek*[25] established that there is no limitation period applicable to fraudulent transactions, with the principle being, evocatively, that once a fraud, always a fraud.[26] This is a proposition with obvious implications for the boundary between sections 43 and 49.

The IBC Amendment Act 2026 significantly extends the reach of section 49 by expanding its scope to encompass not only the assets of the corporate debtor itself but also those of its related parties.[27] This closes an identified loophole by which value could be extracted from the CD, routed through a related party vehicle, and then transferred to a third party purchaser who might otherwise invoke the good faith defence. The amendment ensures that the structural ingenuity of asset-stripping arrangements does not defeat the underlying policy of the provision.

## EMPIRICAL DIMENSION: WHAT THE IBBI STATISTICS TELL US

The Indian system also possesses a significant comparative advantage in its empirical dimension. The IBBI maintains and publishes detailed quarterly statistics on cases and outcomes, including in relation to avoidance proceedings. This statistical reporting provides an empirical picture of PUFE performance that most insolvency jurisdictions cannot replicate. The statistics are cumulative, showing the numbers of cases to date for each for the PUFEs, as well as combined cases that featured more than one of the provisions.

The distribution across each of the PUFE provisions, as of 31 December 2025,[28] is instructive. There had been 1,788 applications in total. Fraudulent transactions account for the largest amounts at stake in each single provision. There had been claims valued at ₹ 141,393 crore total across 615 cases. This reflects the prevalence of asset-stripping and fund diversion in large corporate insolvencies. The combination category, pleading multiple heads simultaneously, dominates by both number (803 applications) and total value, though it is significantly distorted by the *Jaypee Infratech* proceedings alone, which involved 858 acres of land. Only 8 extortionate credit applications were filed but this is consistent with the broader pattern in comparative jurisdictions where provisions targeting unconscionable lending see limited practical use despite their theoretical reach.

The statistics in The IBBI Quarterly Newsletter for January–March 2025, which gave data up to March 2025, had additional details, dividing the statistics into cases brought and cases disposed of, the sums involved, as well as the amounts clawed back. These highlighted the difficulties in case backlogs. At that time here had been 1,396 avoidance applications filed

[25] Vital SA, Abhishek Nagori (Liquidator) v. Asian Natural Resources (India) Ltd, NCLT.

[26] See also Amit Patel v. Chandra Jain, NCLT Ahmedabad Bench, 16 February 2022.

[27] The Insolvency and Bankruptcy Code (Amendment) Act 2026, § 29.

[28] IBBI Quarterly Newsletter, October to December 2025, available at https://ibbi.gov.in/publication

across all categories from the commencement of the IBC to March 2025, with a total amount at stake of ₹ 85,067 crore. Of those, 368 applications had been disposed of, giving a disposal rate of approximately 26%, with ₹ 7,931 crore clawed back from disposed cases involving amounts totalling ₹ 65,650 crore.

Those figures reward careful reading. The disposal rate of 26% confirms what practitioners and the ILC had already identified: PUFE proceedings are subject to severe capacity pressures at the NCLT, with nearly three quarters of applications filed still awaiting resolution. The recovery figure requires equal care. ₹ 7,931 crore represents approximately 12% of the amounts at stake in disposed cases, a ratio that appears low but must be read alongside the IBBI's acknowledgment that recovery in avoidance cases is frequently effectuated after closure of the primary insolvency process and does not always appear in published data.[29] The true recovery rate is likely to be higher than the table suggests, although by how much cannot be determined from available figures.

The PUFE statistics are, moreover, only one component of a remarkably comprehensive data architecture. The October–December 2025 newsletter alone contains 36 tables covering the full lifecycle of corporate insolvency: initiation and stakeholder distribution of CIRPs, sectoral breakdowns, timeline data for concluded and ongoing processes, resolution plan outcomes listed case by case, including large cases and financial service providers, liquidation modes and timelines, claims data, going concern sales, voluntary liquidation, pre-packaged insolvency, and personal insolvency, alongside detailed statistics on insolvency professionals, registered valuers, and information utilities. This rich statistical approach is impressive internationally.

The withdrawal of disposal and recovery data from more recent newsletters is, however, a development worth noting: granular performance data of this kind is what enables evidence-based reform, and its continued publication would strengthen the accountability function that the IBBI's statistical reporting otherwise performs well. After the reforms that will address the court backlogs have had time to take effect it would be interesting to see this broader range of data reported again.

## THE 2026 REFORMS: SELF-CORRECTION AND MATURATION

The important recent reforms[30] are evidence of the system working as it should: a legislature responding to empirical evidence and judicial signals. Aspects relevant to avoidance transactions have already been touched upon but the lookback period reform merits further discussion.

In the most significant change for avoidance practice lookback period is adjusted to run from the date of filing rather than the date of admission to CIRP. The practical importance of this reform is considerable. The gap between filing and admission has grown substantially as case volumes have increased: by 2021 the average stood at 133 days against the 14 days the legislation contemplated,[31] meaning that a significant portion of the lookback window was

[29] Reasons why are discussed by Aparna Ravi, Avoidance Actions under the IBC: Learnings and Challenges, Insolvency and Bankruptcy Board of India, IBC, Idea, Implementation and Statistics (IBBI, 2022).

[30] Insolvency and Bankruptcy Code (Amendment) Act 2026.

[31] Harsh Bansal, From Recovery to Prevention: Designing a Pre-Insolvency PUFE Regime for India's IBC, Winnie Tarinyeba (ed) INSOL I-Read February 2026.

being silently consumed before proceedings formally commenced. Shifting the reference point to the filing date restores the protective function that the provision was designed to serve.

One gap that the 2026 reforms do not address is the absence of an equivalent to section 127 of the Insolvency Act 1986, under which dispositions of a company's property made after the commencement of winding up are void unless sanctioned by the court. Such a provision protects the estate from dissipation during the period between petition and order, complementing the retrospective avoidance framework. Its omission from the IBC is understandable as the Code was designed around resolution rather than liquidation, and a provision of this kind sits most naturally in a liquidation-focused statute. However, as the period between the date of filing and the date of admission is significant and is a time when transactions to the detriment of creditors are common, the case for its inclusion merits consideration.

## CONCLUSION

Ten years on, the IBC's avoidance provisions offer a compelling illustration of both the promise and the difficulty of ambitious insolvency reform in a jurisdictionally complex environment. The design was intelligent. The drafters made well-considered modifications to mature provisions drawn from England and Wales, consistently substituting objective criteria for subjective mental elements and calibrating lookback periods to reflect connected party risk. The result is a framework that is not merely derivative but analytically coherent on its own terms.

Implementation has been uneven, and the gap between the value of PUFE claims identified and the amounts successfully recovered remains the most pressing challenge that the avoidance framework faces. The 2026 reforms, which extend lookback periods to the date of filing, broaden creditor standing, codify the survival of PUFE proceedings beyond CIRP, and close the related party routing loophole, address precisely the weaknesses that a decade of practice had exposed. That capacity for evidence-responsive self-correction is one that many more established insolvency regimes might envy.

Few jurisdictions combine the IBC's statutory sophistication, active judicial development, a dedicated specialist regulator, and publicly available empirical data in the way that India now does. The IBBI's data infrastructure in particular is a comparative advantage that researchers and policymakers elsewhere have been slow to replicate. The insolvency profession is developing rapidly, and the scholarly, professional and judicial engagement with the framework that has characterised the first decade gives good reason for confidence that the provisions will continue to be refined in the years ahead. The next ten years will be worth watching.

# 14 THE INFORMATION UTILITY: THE EVOLUTION OF AN INSTITUTION

**N S Vishwanathan, Chairman, NeSL and**
**Debajyoti Ray Chaudhuri, MD & CEO, NeSL**

## THE GENESIS

The Insolvency and Bankruptcy Code (IBC/Code) notified in 2016, envisaged a paradigm shift in the resolution of stressed debts especially of banks. The central theme of the IBC was timelines, keeping in view the earlier experiences when resolution of stressed debts was seemingly an endless process.

The IBC was different from the then prevailing manner of resolution of stressed debts in India and had its inspiration from insolvency legislation in many other parts of the world especially the United Kingdom. However, the IBC also provided for the institution of Information Utility (IU), which had no parallel in any other insolvency jurisdiction in the world.

The Bankruptcy Law Reforms Committee, which conceptualised the Code, in its report noted that, in India there was information asymmetry, which was a barrier to fair negotiations between the debtor and creditor. It therefore proposed, in a bold step, that a new institution called the IU be created as an electronic repository of financial information to aid the processes of the IBC. It felt that such an institution would ensure information symmetry between stakeholders and swift insolvency resolution.

The IBC was a brand-new legislation; it envisaged the creation of various institutions to implement the provisions of the Code. The Insolvency Professional (IP) was a key person, being a driver of the processes under the IBC, and a special dispensation was made for selecting the first few professionals. At the same time, a structured process for selection of IPs, through a written exam was notified by the Insolvency and Bankruptcy Board of India (IBBI), the principal regulator under the IBC. Another institution was the Insolvency Professional Agencies and the three professional institutes, the ICAI, ICMAI and ICSI came forward to set up these institutions.

Around this time, National E-Governance Services Limited (NeSL) was incorporated to set up operations as an Account Aggregator. However, the necessary RBI (Reserve Bank of India) notification was not in place. Therefore, NeSL made necessary changes in it's Articles of Association (AoA), so that it could set up operations as an IU and fill the gap in the insolvency ecosystem. NeSL then submitted the required documents to IBBI and after due process, it was granted registration as an IU in 2017.

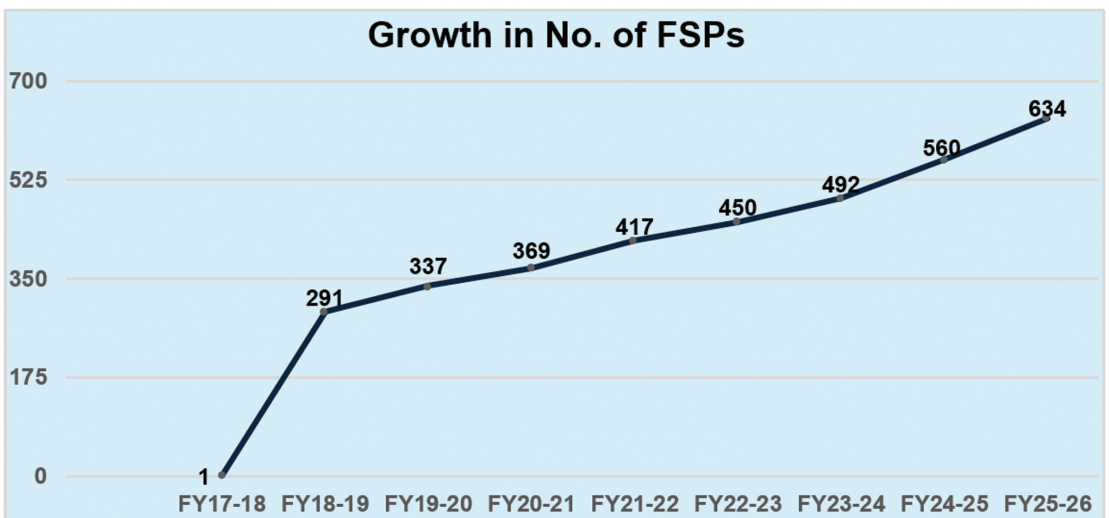
## INFORMATION UTILITY: THE INITIAL DAYS AND SUBSEQUENT GROWTH

When it started operations, the IU had to tread cautiously as there was no precedent of such an institution anywhere in the world. The technology infrastructure was created in association

with one of the largest software companies in India. The operational creditors were the first to make use of the IBC by initiating Corporate Insolvency Resolution Process (CIRP) under the Code. In much the same way, it was an operational creditor which submitted the first information to NeSL. Subsequently, RBI issued directions to its regulated entities like banks, Non-Banking Financial Companies (NBFC) and ARCs in 2017 to comply with the provisions of the Code and have necessary arrangements in place to submit information to the IU.

In the meantime, NeSL had already begun an outreach to banks individually and through the forum of Indian Banks' Association (IBA). Several decisions were taken during this time in consultation with the banks. After extensive discussions, it was decided to have a bulk submission mode through the Secure File Transfer Protocol (SFTP) mode for submission of financial information by banks. The Technical Standards of IBBI related to implementation of Regulations of the IU were discussed, and all the processes were then aligned to those standards. In March 2018, State Bank of India became the first Financial Service Provider (FSP) to submit financial information to the IU. Since then, gradually other banks and NBFCs also came on board. NeSL reached out to other players in the financial services industry like Housing Finance Companies(HFCs), Debenture Trustees (DTs), Small Finance Banks(SFBs), Alternative Investment Funds(AIFs) and cooperative banks and after sustained engagement, NeSL started execution of the agreements and acceptance of information from these entities as well. The number of FSPs that are now submitting information to the IU are over 634. Figure 1 shows the growth in FSPs over the years.

**Fig 1. Growth in no. of FSPs**




## AUTHENTICATION OF DEFAULT

The IBC and the Regulations made thereunder provide for record of default (ROD) of the IU to be part of the application to initiate CIRP. The objective of this provision was to facilitate identification of default and swift admission of insolvency proceedings. The Code provides for the Adjudicating Authority (AA) to dispose of the application within 14 days of the date of receipt of the same and it was envisaged that the Record of Default (ROD) of the IU would facilitate the AA to adhere to this timeline.

By 2019 most banks had come on board and information on the corporate segment was being submitted. NeSL then reached out to stakeholders as to how it could play a more meaningful role in CIRP. When the first few CIRPs commenced in 2016, NeSL was not ready, but now, when the data related to corporate segments was being submitted by banks, it was realised that there were other challenges to be addressed.

The IU is a unique institution in many respects. The IBC provides that, when information is submitted by a user like bank or NBFC, the information has to be presented to the concerned parties to the debt like the borrowers or guarantors for their authentication. During the process of authentication, the parties concerned can accept the information as submitted by the creditor, they can also dispute the same or they can even choose to do nothing and ignore the same. As a result, it gave the debtor or guarantor the choice not to authenticate information of default submitted by a creditor, without any adverse consequences. In the then prevailing environment, when the onus was always on the creditors to come to a settlement with debtors in case of nonpayment, there was no incentive for the debtors to authenticate the information of default. The IBC provides that the AA ascertains the existence of default based on the records of the IU and admits a debtor into CIRP. However, if the debtor did not authenticate the default, it was not possible for NeSL to issue its ROD.

NeSL engaged with IBBI on the issue and after extensive discussions and examination of various legal aspects, IBBI amended its Regulations. The amended Regulations provided that if the debtor did not respond even after multiple reminders, then the information of default would be "Deemed to be authenticated". With the completion of authentication in this manner, the IU was now legally empowered to issue its ROD, a document, which confirms that the debtor has defaulted to the creditor. The ROD could now be part of the application to initiate CIRP in respect of the corporate debtor, as required under the provisions of the Code.

This was a landmark legal provision and IBBI incorporated various safeguards in the Regulations so that interests of all stakeholders were protected. The request for authentication sent by NeSL had to be "delivered" to the debtor and not just sent, and the IU was required to have three different colour codes based on the type of authentication. If it was "authenticated" by the debtor, it would be green, if it was disputed by the debtor, it would be red and if the debtor chose not to respond, it was "deemed to be authenticated" with a yellow colour code. This was to give a clear message to the AA that explicit authentication by the debtor was not available for the same, although adequate opportunity was afforded to the debtor to provide the same.

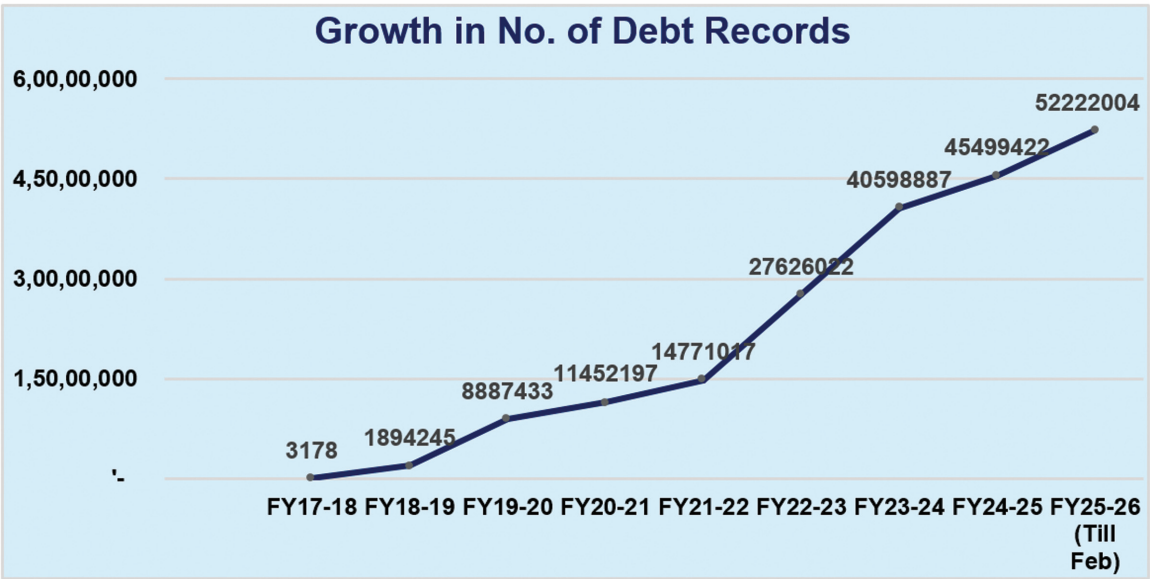
## SUBMISSION OF INFORMATION FOR INDIVIDUAL AND NON-CORPORATE SEGMENTS

The first CIRP under the Code was initiated in 2016, whereas the IU started operations in 2017 and it was only by 2019 that a significant number of banks/NBFCs were on board and the first ROD of the IU was issued. At this time, while most banks/NBFCs were submitting records pertaining to the corporate segment, information in respect of the individuals and partnership firms were not being submitted.

The sections of the IBC related to the individuals and non-corporate entities were not notified by the government, however, it was important for the IU to have the financial information related to these segments so that the IU would be prepared to support creditors whenever the provisions of the IBC related to these segments were notified by the government. In the meantime, the insolvency related to Personal Guarantor to Corporate Debtors had come into force and IBBI had taken steps to notify the sections relating to individuals. In the absence of data related to these segments, the IU was unable to provide its services related to these segments. The matter was taken up with RBI which wrote to banks stating that financial information related to all customer segments must be submitted to the IU.

With most of the legislative enablers in place, the focus was now on increasing the coverage of the IU. The increasing adoption of the platform is evident from the growth in the platform from a modest 3,178 records in FY 2017-18 to the landmark one crore records milestone in FY 2020-21. During FY 26, the aggregate records surpassed the 5 crore mark including records in both standard and default segment and across corporate, individual and other commercial entities like partnership firms. The figure 2 below shows the growth in records over the years.

**Fig 2. Growth in no. of debt records**




## THE CONCEPTUALISATION OF DIGITAL DOCUMENT EXECUTION (DDE)

The IBC provides for acceptance of documents along with financial information by the IU. While submission of information of debt started in right earnest, all banks faced challenges in submission of the related debt documents. Firstly, submission of documents was cumbersome as, unlike data, which was usually centralised after implementation of CBS by almost all banks, documents were usually with operative units or branches of banks in different parts of the country. Further, scanning of documents was not just laborious but also uploading such heavy content would have led to implications of time and cost on account of data storage. There were also legal implications in scanned documents being downloaded in a jurisdiction where stamp duty requirements were higher.

During the discussion with banks on submission of documents, it was realised that while there was rapid digitalisation in banks, the pace was somewhat uneven and the documentation for debt was largely physical. A major constraint in digital execution of documents was the stamp requirements, which were different in all the states of the country and had to be procured in physical form. While Stock Holding Corporation of India Limited (SHCIL) was the Central Recording Agency (CRA) in the major states of the country and had transitioned to digital record keeping, for the end user, the stamp procurement was still in physical form.

**DDE: Support from IBBI**

In the initial days, IBBI being the newest financial services regulator drew on the experiences of the other regulators like RBI, Securities and Exchange Board of India (SEBI) etc. It was noted that during the filing of CIRP application with the AA, copies of debt documents had to be submitted which were highly voluminous and even for the AA, management of such records was proving to be a challenge. In the capital markets, earlier the securities like shares etc. were in physical form, and SEBI introduced dematerialisation which marked a radical shift in the way shares etc. were traded. This landmark reform led to greater transparency and investor protection, leading to increased growth in the markets. IBBI felt that it was required to support such an initiative in the dematerialisation of documents, which, besides supporting the flow of credit, would also benefit the insolvency ecosystem. Accordingly, IBBI took it up with relevant stakeholders in the government and leading banks to support this initiative.

**DDE: The new era of contracting**

NeSL sensed that DDE, besides solving a problem, was also a business opportunity. It initiated talks with SHCIL and some of the state governments. There were intense internal deliberations on the transaction flow for software development. As the debt documents were not standardized across banks, a common template, as in the securities markets, was not considered viable. The process had to be fully secure to get regulated entities like banks and FSPs on board. Application Programming Interface (APIs) had to be designed to fetch the stamp in digital form through SHCIL, and for a few states, directly from the state governments. Further, the state governments had to specifically authorise NeSL for this purpose, although they had appointed SHCIL as CRA.

NeSL worked with all stakeholders on this and in 2021 the first DDE transaction was executed by Union Bank of India. This was a landmark development, as for the first time document execution would be digital at every stage i.e. execution, storage and retrieval. This was possible only because of India's DPI, which enabled every Indian with a valid Aadhaar, to digitally execute a document. Further, the country had all the necessary legal enablers in place so that documents executed and stored in digital form were valid in law.

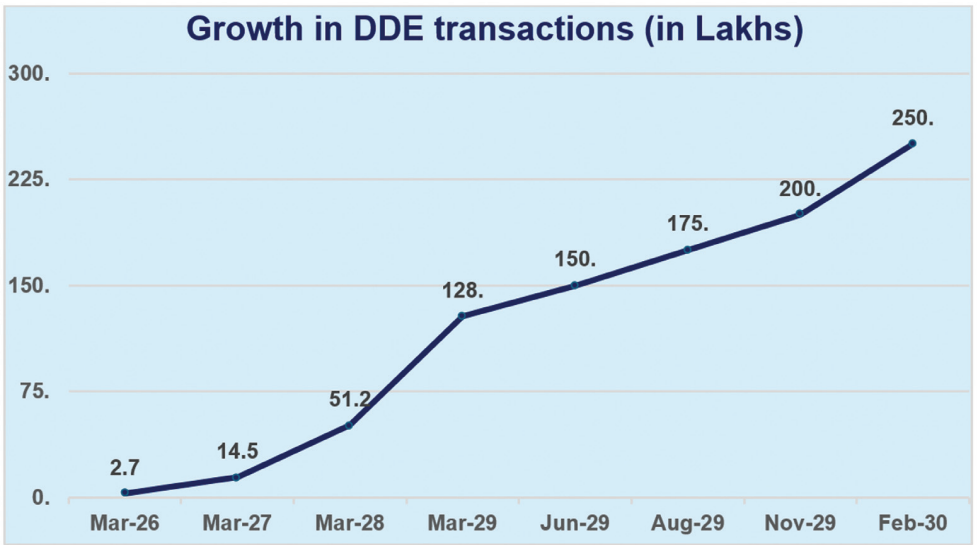
**DDE: The consolidation phase**

Even while the first DDE transaction was executed in 2021, the subsequent path was slow and arduous. The necessary approvals had to be sought from each individual state government for this purpose, and banks were hesitant to come on board with approval only from only a few states. As more states came on board, the confidence of banks grew, and they started integration with NeSL for availing DDE services.

In the digital world many practices prevalent in the physical world would not be applicable, like signatures on every page, or the place of execution etc. The company engaged with the best legal minds to ensure that a document executed through the DDE platform would be valid and enforceable in court.

The benefits of DDE were obvious; it complemented the digital lending initiatives of banks and made the credit journey fully digital. The requirement of physical presence of customers for documentation was dispensed with, and this reduced time and optimised costs for all concerned. With India's vast population, digital journeys bring economies of scale and make investments in IT infrastructure viable. DDE found instant favour with India's young population, which was at ease with digital mode of transactions. Even so scaling up took some time as it involved getting all states on Board and integration with banks and FSPs through dedicated APIs. The graph in Figure 3 below shows how DDE had a slow start, but gained pace subsequently, as users became convinced of its robustness, reliability and effectiveness. More than 80 FSPs are now integrated with NeSL for providing DDE services.

**Fig 3. Growth in DDE Transactions**



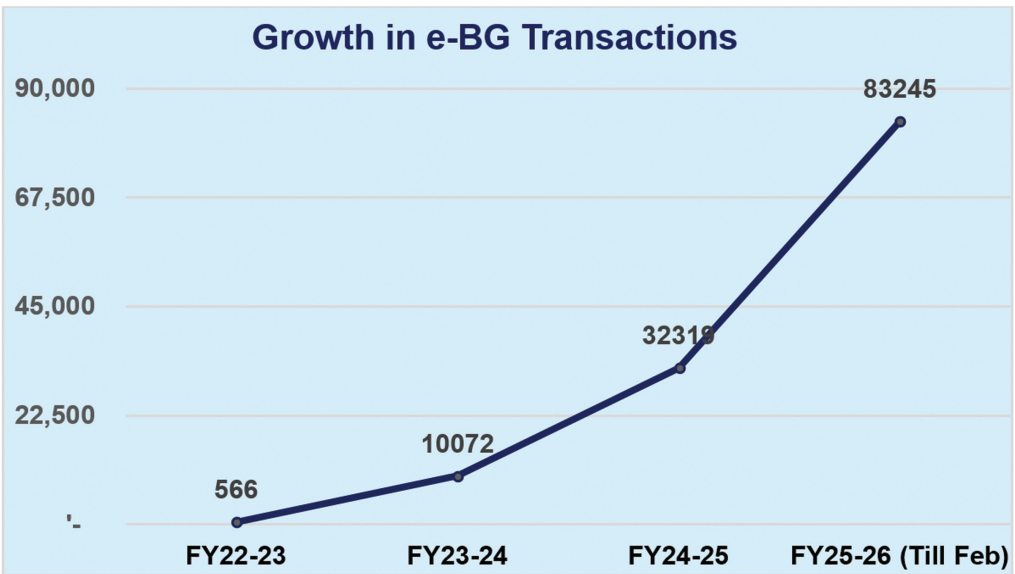

## THE LAUNCH OF ELECTRONIC BANK GUARANTEE (E-BG)

The success of DDE brought to the fore another opportunity for NeSL. The increasing number of frauds in bank guarantees was the concern of all stakeholders. Moreover, contract execution was delayed as the beneficiaries had to go through an arduous process of verification of a BG, before awarding a contract. The process of verification of BGs and even the practice of sending confirmation messages through SFMS had its drawbacks. Moreover, this also causes inconvenience and delays to the applicants of BGs, who were often entities in the Micro, Small and Medium Enterprises (MSME) segment.

NeSL sensed an opportunity and on being approached, agreed to take this project forward. As bank guarantees are issued by banks, NeSL worked closely with IBA in this regard. The two important guiding principles were that it would be digital at every stage, including the various life cycle events of an e-BG and that all the concerns in the physical process of issuance of

an e-BG need to be addressed. NeSL worked closely with banks and the first e-BG was issued by HDFC Bank in 2022. Since then, the platform has grown multifold. As is evident in Figure 4 below, the adoption by banks was relatively slow in the beginning but gathered pace in recent years with increasing acceptance of the same by beneficiaries.

**Fig 4. Growth in e-BGs**




While e-BGs are issued by banks, DDE finds use across banks and FSPs. Even some corporates are using it for their documentation needs. At the same time, a portal was also launched for citizen centric services like execution of lease deeds and affidavits. However, NeSL remains committed to its original role of supporting the insolvency ecosystem. The documents executed through DDE are always available in digital form on the NeSL portal and can support the creditors when there is default and application for insolvency proceedings needs to be filed. Similarly, e-BGs can help the insolvency professional ascertain the contingent liabilities of the CD undergoing insolvency resolution.

**IBC is not just CIRP**

The data shows that the longer a CIRP takes, the lesser the realisation is for creditors. This is intuitively true as the longer the stress in a debtor lingers, stakeholders like employees, suppliers and customers get concerned and start looking elsewhere for better opportunities. So, the best course of action is always to address stress at a very early stage when the company still has value.

NeSL, an IU, plays an important role in this, as it provides alerts at three stages. Firstly, when there is a default to one creditor, the IU sends an alert to all creditors after completion of the process of authentication and verification as provided in the Regulations. Secondly when one creditor files an application for initiation of CIRP, NeSL alerts all creditors linked to that debtor. Finally, when a CIRP is admitted, the NeSL sends alerts to all creditors. It may be noted that at every stage debtor can negotiate with creditors and come to a resolution and can avoid going through the formal CIRP with its attendant time and costs.

Of the three types of alerts referred to above, the first type of alert, which is the default alert, is sent by NeSL for all types of debtors irrespective of whether they are individual, corporate or non-corporate. Further, while the threshold for initiation of CIRP is ₹ 1 crore, there is no threshold for the submission of information including default to the IU, and hence the default alert could be for any amount.

Our analysis shows that these default alerts help, as many accounts get regularised within 60 days of submission of information default to the IU. This trend is distinct in the corporate segment where CIRP is notified but the trends in the non-corporate and individual debtor segments are not too different. The macro data also reveal that many applications for initiation of CIRP get withdrawn after the filing of application of CIRP. This may not necessarily indicate an effective resolution of the debtor, but it relieves the pressure on the AA and affords a chance for negotiation between the debtor and its creditors on mutually acceptable terms, while prior to the IBC era, the lenders were perceived to be in a less advantageous position.

## IBC 2.0-THE NEXT PHASE OF REFORMS

The IBC marked a paradigm shift in the resolution of stressed debts especially of public sector banks. While the outcomes were substantially better than conventional ways of debt resolution, the expectations were much higher from the ecosystem. Two major concerns that have emerged over the years were those of delays at every stage and poor resolution outcome as far as recovery of outstanding dues of creditors were concerned.

There have been many amendments to the IBC since 2016 in responses to the challenges faced in implementation and to improve outcomes. However, it was felt that a comprehensive set of amendments were the need of the hour. While all amendments to the IBC were widely discussed before being notified, this time it was felt that all possible hindrances as well as facilitation measures need to be addressed. Accordingly, extensive consultations were made since the first discussion paper for amendments to the IBC was put out in 2024.

The draft IBC Amendment Bill has now been presented to Parliament where it was referred to a Select Committee. The Committee had detailed discussions with stakeholders and after carefully considering all aspects has given its recommendations on the same which has been placed before Parliament in the month of December 2025.

## THE PROPOSED LEGAL ENABLERS FOR THE IU

The IU was an institution created to support the processes of the IBC. During the implementation of the IBC one of the challenges was the delays in the admission of application for CIRP. The IBC provides for the use of the ROD of the IU but as it was not mandatory, the use of the same was very slow to gain acceptance. Besides, in the absence of specific provisions in the IBC, the AA was constrained to look at various other documents for admission of CIRP.

When the proposed amendments to the IBC were being considered, there were discussions on whether the use of ROD of the IU should be made mandatory. While there were many arguments in favour of the same, others felt that a decision like admission of a company into insolvency proceedings had far reaching implications and it would not be appropriate to limit

a user to use the services of a specific institution. At the same time, everyone was convinced that an institution like the IU, which was specifically created for the IBC, should be used effectively to benefit the ecosystem. The draft amendments to the IU therefore propose that if the ROD of the IU is attached to the application for initiation of CIRP by certain categories of financial creditors, the same shall be considered sufficient for the AA to ascertain the existence of default.

The draft amendments also address a long-standing issue of authentication by debtors, by making it mandatory for a debtor or corporate debtor to authenticate information which is presented by the IU. This benefits all parties to the debt, the debtor gets to know the terms of the debt in the books of the creditor and can dispute the same if it is different from the terms he had accepted. Even for the creditor this is important, as it signifies acceptance of the debt and terms of the same on a neutral platform with digital signature, and therefore cannot be disputed later.

The IBC makes it mandatory for financial creditors like FSPs to submit financial information to the IU. However, it is optional for Operational Creditors who are usually in the MSME sector. This sector, while being extremely important for the economy in terms of its contribution to employment generation, GDP and exports, faces various challenges. An Expert Committee was constituted by RBI, to undertake a comprehensive review of the sector and to identify causes and propose long-term solutions, for their economic and financial sustainability. The committee, which had Shri U K Sinha, as Its Chairman, in its report submitted in 2019, took cognizance of the issue of delayed payments to MSMEs and recommended that, to address the issue of delayed payments, submission of information to the IU should be mandatory for MSMEs beyond a certain threshold of debt.

During the discussions on the proposed amendments to the IBC, the issue of submission of information by Operational Creditors was considered but, after multiple consultations with stakeholders, it was decided that submission of the information shall be mandatory only if the Operational Creditor files an application for initiation of insolvency proceedings against a corporate debtor.

## WAY FORWARD

The GST and the IBC were probably the landmark reforms the country has ever undertaken. The former creates a unified market while the latter promotes entrepreneurship by providing a market driven and regulated framework for failing entities to get back on their feet.

The IBC marks a behavioural shift wherein debtors are increasingly coming forward to engage with their creditors when they are unable to pay their debt. At the same time, one of the objects of the IBC was also to promote entrepreneurship as it offers an opportunity for honourable exit to promoters of debt-ridden companies which have become unviable for reasons beyond their control. Further, the IBC framework has to be aligned with global frameworks in this regard to make India an attractive destination for FDI. We need to carefully see if the current provisions of the IBC are aligned with these objectives.

India's MSME sector contributes substantially to employment, exports and the GDP of the country. With India's young population, we need to also encourage entrepreneurship to gainfully engage our youth and increase employment opportunities. However, most of the MSMEs are unincorporated partnership firms or proprietorship firms. These entities can function in an optimum manner with better access to credit if they have access to debt resolution mechanisms under the IBC. Similarly, as individuals in India have more access to credit, there are reports of increasing indebtedness and many are struggling to get out of debt traps. The individual segment also needs to have a regulated debt resolution mechanism as proposed under the IBC. The IBC already has provisions for individual and non-corporate segments and can be implemented when these sections are notified by the government. NeSL, the IU, already has financial information related to these segments and can support the ecosystem whenever these sections are implemented.

# 15 TEN YEARS OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 -RESHAPING THE BANKRUPTCY JURISPRUDENCE

**Dr T.K. Viswanathan**
**Chairperson, Bankruptcy Law Reforms Committee and**
**Shruti Khanijow**
**Advocate and Partner, Shardul Amarchand Mangaldas**

## THE GENESIS OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Prior to the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC/Code), India's insolvency landscape was fragmented and debtor-friendly. Colonial-era statutes such as the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 governed individual insolvency, while corporate distress was addressed through a patchwork of mechanisms including the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and the Board for Industrial and Financial Reconstruction (BIFR). These frameworks permitted delays of five to seven years, during which promoters could entrench themselves and strip assets while creditors remained without effective remedy.[1] The crisis peaked in FY 2015–16, when gross non-performing assets (NPAs) of Indian banks reached 11.2% of total advances.[2]

Against this backdrop, the Hon'ble Finance Minister in his Budget Speech of 2014-15 announced that an entrepreneur-friendly legal bankruptcy framework would be developed to enable easy exit for enterprises. It was followed by the constitution of the Bankruptcy Law Reforms Committee (BLRC) on 22 August 2014, with the mandate to draft a new bankruptcy law, along the lines of the work done by the Justice Srikrishna-led Financial Sector Legislative Reforms Commission. The BLRC diagnosed three fundamental flaws in the existing system: the absence of a unified insolvency law, excessive admission discretion vested in courts, and a complete lack of time-bound resolution mechanisms.[3]

The BLRC, after holding many meetings and interacting with various stakeholders, recommended a single Code to resolve insolvency for all companies, limited liability partnerships, partnership firms and individuals. The Committee submitted its report along with a draft Insolvency and Bankruptcy Code Bill, 2015 to the Finance Minister on 4 November 2015. The Bill was introduced in Lok Sabha on 21 December 2015 and was referred to a Joint Committee of Parliament (JPC) for their examination and report. The JPC submitted its report on 28 April 2016 and the Bill was passed by both houses of Parliament on 5 May 2016 and received Presidential assent on 28 May 2016. The Code consolidated and replaced eleven prior statutes into a single unified framework, laying the foundation for modern bankruptcy jurisprudence in India.

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[1] See Synopsis: Ten Years of IBC – Evolution, Implementation, Challenges and Future Trajectory; IBBI Annual Publication 2025.

[2] RBI Financial Stability Reports; IBBI data. Gross NPAs at 11.2% of advances in 2015–16; PSB write-offs approximately

[1] ₹ 7 lakh crore (2019–23).

[3] Report of the Bankruptcy Law Reforms Committee (November 2015); Synopsis: Ten Years of IBC.

## FUTURISTIC OBJECTIVES AND DESIGN OF THE CODE

The Code is an economic legislation and is designed to serve *inter alia* four objectives: (a) creating effective barriers against managers who transfer cash out of a company when default nears; (b) swiftly shifting power from shareholders to creditors upon default based on an inability to pay test rather than a net worth erosion test; (c) enshrining limited liability; and (d) enshrining business failure as a normal and legitimate part of the working of a market economy.

The Code is structured in such a way that it is easy to study the effect of its provisions and facilitate the Government to respond to fast-paced changes in the credit market. The Code addresses many pitfalls which historically plagued the credit market and has introduced new benchmarks for identifying and redressing bankruptcy. Importantly, the Code is futuristic in design and has many features to cater to the challenges posed by technology and fast-changing volatile market forces in the financial sector. It ushers in a new trend in legal reform based on Big Data, which enables law-in-action studies and impact analysis by creation of a rich ecosystem to service the Code on a continuous basis.

## THE INSTITUTIONAL ECOSYSTEM: UNIQUE ARCHITECTURE AND PILLARS OF THE CODE

The Code repealed the Presidency Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920, and consolidated nine Acts into a single unified Code laying down the foundation of bankruptcy jurisprudence. Its architecture is designed to be comprehensive and self-contained, supported by accompanying institutional service providers on a real-time basis. The Code is buttressed by the following pillars to create a dynamic legislative ecosystem:

### (a) The Insolvency and Bankruptcy Board of India (IBBI)

The Insolvency and Bankruptcy Board of India (IBBI), an apex body incorporated under Section 188 of the Code, is the driving force behind its implementation. As the single unified regulator for insolvency and bankruptcy in India, its jurisdiction extends to insolvency professionals, insolvency professional agencies, information utilities, and registered valuers. It is also the quasi-judicial authority for enforcement of regulations.

The role of IBBI is distinct among insolvency regulators across the world. It is unique in its ability to carry out rulemaking, registration, supervision, enforcement, and policy research; all of which makes it one of the most integrated financial sector regulators in India. The IBBI has been continuously undertaking many research projects on insolvency and bankruptcy, and has commissioned law-in-action studies to measure the effect of the Code's provisions. Notable reports commissioned by IBBI include:

a. The Report of the Working Group on Tracking Outcomes of the Code,[4] which recommended a comprehensive framework for developing metrics for measuring the outcomes of Code to objectively evaluate the achievements under the Code,

[4] Constituted on 24 May 2019 by IBBI.

b. The Behavioural Impact of IBC Research Study[5], conducted by the Centre for Capital Markets and Risk Management at IIM Bangalore,

c. The Report on the Effectiveness of the Resolution Process: Firm Outcomes in the post-IBC Period.[6]

The IIM Bangalore study, in particular, found that firms undergoing successful resolution recorded a 76% increase in sales, a 50% increase in employee expenses, and a 130% increase in capital investment over three years following resolution, demonstrating the tangible economic benefits of going-concern preservation under the Code.[7] Beyond the studies, the IBBI website contains a wealth of information and Big Data useful to all stakeholders. Since its establishment, the IBBI has registered over 4,500 insolvency professionals and 5,812 registered valuers as of 2025, building an entirely new professional ecosystem from near-zero in just eight years.[8]

**(b) Information Utilities: NeSL and the Challenge of Information Asymmetry**

The Code recognises that asymmetry of information is a critical barrier to fair negotiations and to ensuring swiftness of the resolution process. To address this, it provides for a regulated information utility to make all relevant credit information available to all stakeholders. Information Utilities (IUs), established under Section 210 of the Code, with the IBBI as the registering and overseeing authority, develop and maintain verified and time-stamped digital records of financial information such as loan agreements, security interests, defaults, etc., which can be accessed by any party in an insolvency case. Prior to the existence of the Code, establishing debt and defaults in Indian courts took years of evidentiary hearings. The IUs are meant to condense this into a near-instantaneous process of creating a verified record, thereby reducing years of preliminary argument to a database query.

To make the task easier, the Government has undertaken a slew of measures for datafication of information by enacting the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, amending the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899, and the Depositories Act, 1996, creating a central registry to maintain records of transactions related to secured assets and a central database to integrate records of property registered under various registration systems with this central registry. This includes integration of registrations made under the Companies Act, 2013, the Registration Act, 1908, and the Motor Vehicles Act, 1988, all designed to eliminate the information gaps that long plagued India's credit market. In numbers: by 2025, National E-Governance Services Limited (NeSL),

[5] Research Study Submitted to Insolvency and Bankruptcy Board of India by the Centre for Capital Markets and Risk Management, IIM Bangalore, *Behavioural Impact of IBC*, https://ibbi.gov.in/uploads/resources/4ec8b72b703bb9d8532642a0bf07c6d8.pdf.

[6] https://ibbi.gov.in/uploads/resources/f42521011e8c39d591a8f1b439a80da7.pdf.

[7] Centre for Capital Markets and Risk Management, IIM Bangalore (submitted to IBBI), *Behavioral Impact of IBC* Research Study, Post-resolution outcomes: +76% sales, +50% employee expenses, +130% capital investment over three years.

[8] IBBI Annual Reports 2017–2025; IBBI Quarterly Newsletters Q1 FY17–Q2 FY26.

India's sole operational IU, had over 1,400 financial entities registered and more than 2,60,000 financial contracts on its platform.[9]

### (c) Resolution Professionals, Insolvency Professionals & IPAs

Insolvency Professionals (IPs) are the human infrastructure of the Code. Registered under Chapter IV and regulated by the IBBI through Insolvency Professional Agencies (IPAs), they serve as Interim Resolution Professionals (IRPs), Resolution Professionals (RPs), and Liquidators in Corporate Insolvency Resolution Process (CIRP) and liquidation proceedings. The IP assumes control of the corporate debtor's (CD) management, constitutes the Committee of Creditors (CoC), manages the information memorandum, and facilitates the resolution plan process. Three IPAs - the Indian Institute of Insolvency Professionals of ICAI (IIIPI), the Insolvency Professional Agency of Institute of Cost Accountants of India (IIPA-ICAI), and the ICSI Insolvency Professionals Agency (ICSI-IPA) - function as the examining, registering, and disciplinary bodies for IPs under IBBI oversight. The IP ecosystem has grown from 1,028 registered professionals in 2017 to over 4,500 by 2025, representing one of the fastest-growing professional ecosystems in Indian commercial law.[10]

### (d) The Committee of Creditors

The CoC, which is established in accordance with Section 21 of the Code, is the principal decision-making body during the CIRP process. Composed of all financial creditors of the CD, the CoC is mandated to approve the resolution plan with a 66% voting majority (reduced from 75% by the 2018 amendment to the Code), appoint the RP, and make decisions regarding extension of the CIRP period and liquidation. The CoC structure is arguably the most distinctive feature of the Code's organizational design, which sets it apart from other insolvency frameworks by not allowing creditor negotiations to be led by the courts but rather creditor-driven and commercially led, with judicial intervention restricted to procedural compliance and minimum standards of fairness. The primacy of the CoC—now judicially validated by the Supreme Court in *K. Sashidhar v. Indian Overseas Bank*[11] and CoC of *Essar Steel v. Satish Kumar Gupta*[12]—is arguably the most significant judicial evolution in the Code's first decade. Empirical data confirms that smaller CoCs (1–5 members) consistently achieve higher average recovery rates of approximately 42%, compared to 22% for CoCs with 20 or more members—suggesting that decision-making speed and alignment within creditor groups is a significant determinant of recovery value.[13]

### (e) Valuation Framework: The Role of ICAI as a Strategic Partner

One of the central objectives of the Code is the maximisation of the value of assets of the CD in a time-bound manner. Valuation of the CD serves as a critical input for evaluation of

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[9] NeSL Annual Reports; IBBI Annual Reports 2018–2025; Standing Committee on Finance Report, December 2024.

[10] IBBI Annual Reports 2017–2025; IBBI Quarterly Newsletters. Registered IPs grew from 1,028 (2017) to 4,500+ (2025).

[11] K Sasidhar - 2019 SCCOnLine SC 257.

[12] (2020) 8 SCC 531.

[13] IBBI Annual Publication 2025; IBBI Quarterly Newsletter Q2 FY26; ICRA Research 2025. CoC size vs. recovery rate: 1–5 members (42%), 6–10 (35%), 11–20 (28%), 20+ (22%).

resolution plans and facilitates informed decision-making by stakeholders, including the CoC, resolution applicants, and adjudicating authorities. Transparent, objective, and credible valuation of assets is therefore fundamental to the effective functioning of the insolvency framework. To address this critical factor the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 require the determination of fair value and liquidation value of the CD by registered valuers (RVs) appointed under Regulation 27 and determined under Regulation 35, with "*fair value*" and "*liquidation value*" defined in the CIRP Regulations.[14] These values, evidenced in valuation reports and play a crucial role in ensuring that viable businesses are rescued while unviable ones are liquidated in an orderly fashion. In addition, the IBBI has mandated use of a Valuation Report Identification Number (VRIN) for every valuation report prepared under the Code, effective for reports dated on or after 12 August 2024, to improve authenticity and traceability of valuation outputs.[15,16] The IBBI constituted an Expert Committee on valuation, which submitted its Report of the Expert Committee to Suggest Policy Changes for Valuations under the Insolvency and Bankruptcy Code, 2016 in November 2025; contemporaneously, the Board issued a discussion paper on November 14, 2025 and, on November 19, 2025, a draft set of Guidelines for Conducting Valuation under the Code for public comment.[17,18,19]

The ICAI is a strategic knowledge partner with the Government in making the Code an effective restructuring tool and continues to play a pivotal role in advancing the insolvency and valuation ecosystem. ICAI's contributions as a knowledge partner in policy development, as a member of key committees including the Insolvency Law Committee, and as a standard-setter for valuation practices through its Valuation Standards have significantly shaped the integrity, maturity, and global alignment of India's insolvency regime. ICAI's President for 2023–24 was publicly noted as a member of the Insolvency Law Committee and the MCA's

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[14] IBBI, *Discussion Paper on Strengthening the Valuation Process under the Insolvency and Bankruptcy Code, 2016* (14 Nov. 2025), paras. 3, 5, 9, setting out the existing CIRP framework on appointment of two RVs under Regulation 27 and valuation under Regulation 35 and referencing the definitions of "fair value" and "liquidation value" in the CIRP Regulations; and IBBI, Discussion Paper on Proposed Guidelines for Conducting Valuation under the Insolvency and Bankruptcy Code, 2016 (19 Nov. 2025), Part I, noting that fair value and liquidation value definitions are those in Regulations 2(1)(hb) and 2(1)(k) of the CIRP Regulations, https://ibbi.gov.in/uploads/whatsnew/07994904562b27286b00c4def2cc79a0.pdf, https://ibbi.gov.in/uploads/whatsnew/97388870e87e11d5df09b29b69bbbb38.pdf.

[15] IBBI Circular No. IBBI/RV/75/2024, Generation of Valuation Report Identification Number for valuation conducted by Registered Valuer under Insolvency and Bankruptcy Code, 2016 (12 Aug. 2024), https://ibbi.gov.in/uploads/legalframwork/fec61f0798e424d32aa521af3e82f344.pdf.

[16] See also, ICSI RVO, VRIN Circular (12 Aug. 2024) reproducing IBBI Circular No. IBBI/RV/75/2024; and The Hindu BusinessLine report, Insolvency Board launches ID number for valuation reports (13 Aug. 2024), summarizing the VRIN regime and its applicability to all reports dated on/after Aug. 12, 2024, https://www.icsirvo.in/Docs/VRIN_Circular_dated_12th_August_2024.pdf, https://www.thehindubusinessline.com/economy/insolvency-board-launches-id-number-for-valuation-reports/article68519631.ece.

[17] IBBI, Reports page, *Report of the Expert Committee To Suggest Policy Changes For Valuations Under The Insolvency And Bankruptcy Code, 2016* (Nov. 2025), https://ibbi.gov.in/resources/reports.

[18] IBBI, *Discussion Paper on Strengthening the Valuation Process under the Insolvency and Bankruptcy Code*, 2016 (14 Nov. 2025), proposing harmonized valuation standards, refined fair value concept, single valuer for small cases, and a coordinator-valuer construct, https://ibbi.gov.in/uploads/whatsnew/07994904562b27286b00c4def2cc79a0.pdf.

[19] IBBI, *Discussion Paper on Proposed Guidelines for Conducting Valuation under the Insolvency and Bankruptcy Code, 2016* (19 Nov. 2025), circulating draft Guidelines and asset class report formats for public comment, https://ibbi.gov.in/uploads/whatsnew/97388870e87e11d5df09b29b69bbbb38.pdf.

standing committee reviewing IBC implementation, evidencing ICAI's representation on these bodies.[20] ICAI's Insolvency & Valuation Standards Board (I&VSB) was newly constituted for 2024–25 to strengthen standard-setting and policy engagement in insolvency and valuation, alongside ICAI's ongoing RESOLVE conventions.[21,22]

Accordingly recognising the need to have consistent, uniform and transparent valuation policies and harmonize the diverse practices in use in India, ICAI constituted the Valuation Standards Board (VSB) on 28 February, 2017. The VSB formulates Valuation Standards to be recommended to Registered Valuers Organisations, the Government and other regulatory bodies in India and abroad. These Valuation Standards set out standardised principles, practices and procedures that are mandatory for ICAI members in valuation engagements under the Companies Act and recommendatory for other statutes until government notified valuation standards are issued; they set concepts, principles and procedures aligned with internationally accepted practice and the Indian legal framework.[23,24] They benchmark to ensure uniformity in approach and quality of valuation output. As of the latest access to IBBI's official "Registered Valuers" register, the database displays 6,113 Registered Valuers across the three asset classes; accordingly, the total has surpassed 5,800 and should not be stated as capped at 5,812 (accessed April 2026).[25]

**(f) Adjudication Infrastructure: The National Company Law Tribunal (NCLT), the National Company Law Appellate Tribunal (NCLAT), Debt Recovery Tribunal (DRT) & Debt Recovery Appellate Tribunal (DRAT)**

The NCLT and NCLAT are the Adjudicating Authorities under Section 5(1) and Section 61 of the Code, respectively. The NCLT handles the admission of CIRP applications, appointment of Interim Resolution Professionals, sanction of resolution plans, and passing of liquidation orders. The NCLAT deals with appeals from orders of the NCLT, with a further appeal to the Supreme Court on questions of law.

Established under Section 408 of the Companies Act, 2013, the NCLT and NCLAT were designated by the Code as specialist commercial courts—a deliberate design choice that distinguished India's framework from jurisdictions that rely on civil courts for insolvency

[20] International Federation of Accountants (IFAC), Profile: CA. Aniket Sunil Talati, noting roles including "member of the Insolvency Law Committee and the Standing Committee of MCA for review of the implementation of the Insolvency & Bankruptcy Code, 2016" during his 2023–24 ICAI presidency, https://www.ifac.org/who-we-are/ca-aniket-sunil-talati.

[21] ICAI, Insolvency, Bankruptcy and Valuation Standards Board (I&VSB) — 2024–25 constitution and terms of reference. Available at: https://www.icai.org/post/insolvency-valuation-standards-board.

[22] International Convention on Insolvency Resolution and Valuation — RESOLVE 2025, hosted by ICAI's I&VSB, https://resolve.icai.org/.

[23] ICAI Valuation Standards 2018 announcement, effective for valuation reports issued on or after July 1, 2018; mandatory under Companies Act engagements for ICAI members; recommendatory otherwise until government notified standards, https://www.icai.org/post/15070.

[24] ICAI Learning — Valuation Standards page (overview and purpose of ICAI Valuation Standards 2018); and ICAI Advisory (21 Dec. 2020) reiterating applicability for ICAI members, https://learning.icai.org/committee/vs/; https://www.icai.org/post/advisory-icai-valuation-standards-2018.

[25] IBBI, Registered Valuers list (live register) showing "Total Records: 6113" at the time of access; note this is a dynamic counter and should be cited with an accessed date, https://ibbi.gov.in/service-provider/rvs.

matters. As of 2025, the NCLT operates 16 benches across the country, though with a working strength of only 42 members against a sanctioned strength of 63—a structural capacity deficit that has contributed to mounting case pendency and delays in admission and resolution timelines.[26]

The BLRC Report noted that current Indian laws on individual insolvency were archaic and did not treat individual insolvency at par with corporate insolvency. Jurisdiction over individual insolvency was vested with High Courts (for Calcutta, Madras and Bombay) or District Courts (for the rest of India). Unlike corporate insolvency, the physical infrastructure of the adjudication institutions for individual insolvency needs to be much more widespread across the entire country to facilitate access to justice for the common Indian. Since currently, NCLT is a work in progress and it may take some time for NCLT benches to have a wide-scale presence at the national level, and in contrast, at present Debt Recovery Tribunal (DRT) benches have much wider presence across the country, the Committee recommended that DRT and Debt Recovery (Appellate Tribunal) (DRAT) should be vested with the jurisdiction over individual insolvency and bankruptcy matters.

**(g) Insolvency Law Committee: A standing mechanism for continuous reform by the Ministry of Corporate Affairs (MCA)**

In order to ensure effective implementation of the Code, it was necessary to periodically evaluate the functioning of the Code. Therefore, within one year of implementation of the provisions of the Code relating to corporate insolvency, the Government constituted the Insolvency Law Committee (ILC) to take stock of the functioning of the newly enacted Code and to make suitable recommendations to ensure effective implementation of the CIRP and liquidation framework. The ILC's work has been prolific and responsive. Its first report in March 2018, amongst others, recommended granting exemption to Micro, Small and Medium Enterprises (MSMEs) from Section 29A, restricting the disqualification to wilful defaulters from bidding for MSMEs, and critically, treating home buyers as financial creditors owing to the unique nature of real estate financing.

The ILC's second report in October 2018 recommended a comprehensive framework for cross-border insolvency under the Code based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997. Around the same time, the sub-committee of the ILC submitted its report on notification of Financial Service Providers (FSPs), recommending a specialised resolution framework for certain FSPs under Section 227 of the Code.

Recognising the dynamic nature of issues involved in the implementation of Code, the MCA reconstituted the Committee as a Standing Committee to address emerging issues including personal insolvency, the fresh start process, avoidable transactions, and improper trading.

The Third Report of the ILC in February 2020 recommended *inter alia* review of the minimum default threshold for admitting a case under Section 4 of the Code, proposing a higher default threshold of INR 50 lakhs, while also recommending certain exemptions to the MSME sector

[26] IBBI Quarterly Newsletters Q1 FY17–Q2 FY26; NCLT Annual Reports; Standing Committee on Finance Report, December 2024; MCA data. NCLT working strength: 42 against sanctioned 63 (as of 2025).

including modified threshold limits for MSME, restricting the initiation of CIRP by class of creditors instead by a single financial creditor, facilitating continuation of government licenses during the moratorium period and clarifying that a successfully resolved CD should not be held liable for an offence committed prior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related party, promoter or other person in management and control of the CD at the time of or any time following the commission of the offence.

The Fourth Report of the ILC on Pre-packaged Insolvency Resolution Process in July 2021 recommended a regulatory framework for pre-pack insolvency resolution process. The Fifth Report in May 2022 provided recommendations on mandating reliance on IUs for establishing default, clarifying the continuation of avoidable transaction proceedings after CIRP, expanding the look-back period for avoidable transactions, curbing unsolicited resolution plans and plan revisions, imposing timelines for approval or rejection of resolution plans, and establishing the formation of Stakeholders Consultation Committees (SCC) and standards of conduct for the Committee of Creditors.

## LEGISLATIVE AMENDMENTS: SEVEN ROUNDS OF REFORM

Since its enactment, the Code has been amended seven times, each intervention responding to challenges identified through implementation experience, judicial interpretation, and stakeholder feedback, making it the most systematically recalibrated Indian statute in its formative years.

First, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ordinance No. 7 of 2017), promulgated on 23 November 2017, introduced Section 29A, barring wilful defaulters, undischarged insolvents, and certain disqualified persons from submitting resolution plans, thereby closing the critical loophole that had allowed defaulting promoters to regain control of their own distressed companies.[27]

Second, the Insolvency and Bankruptcy Code (Amendment) Act, 2018 (Act No. 6 of 2018), which replaced the 2017 Ordinance, retained and expanded the Section 29A framework, reduced the CoC voting threshold from 75% to 66%, recognised homebuyers as financial creditors (subsequently upheld in Pioneer Urban Land Infrastructure Ltd. v. Union of India), and clarified the moratorium under Section 14.[28]

Third, the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (Act No. 26 of 2018), preceded by the Amendment Ordinance, 2018 (promulgated 6 June 2018), refined the related-party exclusion framework within the CoC, formalised the withdrawal mechanism under Section 12A (requiring 90% CoC approval), and addressed the treatment of allottees under real estate projects.[29]

Fourth, the Insolvency and Bankruptcy Code (Amendment) Act, 2019 (Act No. 1 of 2020), mandated CIRP completion within 330 days (including litigation time), introduced Section

[27] Innoventive Industries v. ICICI Bank (2018) 1 SCC 407.

[28] Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd..

[29] Swiss Ribbons Pvt Ltd.

32A granting the corporate debtor immunity from prosecution for pre-CIRP offences, raised the minimum default threshold to ₹ 1 crore, and clarified financial creditor priority in the resolution plan distribution waterfall.[30]

Fifth, the Insolvency and Bankruptcy Code (Amendment) Act, 2020 (Act No. 1 of 2021), preceded by the Amendment Ordinance, 2020 (Ordinance No. 9 of 2020, promulgated 5 June 2020), was the Code's pandemic-era intervention.[31] It suspended fresh CIRP filings under Sections 7, 9, and 10 for defaults arising on or after 25 March 2020 (subsequently extended to 25 March 2021),[32] permanently raised the default threshold to ₹ 1 crore, and laid the groundwork for alternative resolution pathways for MSMEs.

Sixth, the Insolvency and Bankruptcy Code (Amendment) Act, 2021 (Act No. 26 of 2021), formally legislated the Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs by inserting Chapter IIIA (an expedited, debtor-in-possession pathway with a 120-day ceiling) and clarified real estate project-wise resolution provisions.[33]

Seventh, the Insolvency and Bankruptcy Code (Amendment) Act, 2026, represents the most comprehensive structural reform since the Code's enactment.[34] It introduces a Creditor-Initiated Insolvency Resolution Process (CIIRP) under a new Chapter IVA (Sections 58A to 58K), with Section 58F preserving debtor management during the process, replacing the unutilised Fast Track Insolvency Process; mandates CIRP admission upon proof of debt and default; establishes a dedicated cross-border insolvency chapter (Section 240C) and a group insolvency framework (new Chapter VA); codifies the clean-slate principle in amended Sections 31(5) and (6); provides for an electronic portal for virtual hearings (Section 240B); and clarifies the treatment of government dues in the resolution plan waterfall.

Taken together, these seven interventions reflect responsive, data-driven lawmaking, enabling the Code to adapt to judicial developments, market realities, and exogenous shocks while preserving its foundational architecture of creditor-led, time-bound, and value-maximising resolution.

## LANDMARK JURISPRUDENCE: THE SUPREME COURT AS CO-ARCHITECT OF THE CODE

The Hon'ble Supreme Court in a catena of decisions laid down the principles which form the foundation of India's bankruptcy jurisprudence. These rulings have not only resolved interpretive ambiguities but have actively co-authored the Code's operational framework. In key rulings, summarised below, the Court has held:

a. the 'twin test' (debt + default) as the only threshold for CIRP admission and held that the Code overrides state legislation providing the Code its foundational legal certainty[35],

[30] Arcelormittal India Pvt Ltd.

[31] Pioneer Urban Land and Infrastructure Ltd.

[32] Sashidhar v. Indian Overseas Bank 2019 SCC OnLine SC 257.

[33] CoC of Essar Steel v. Satish Kumar Gupta (2020) 8 SCC 531.

[34] Manish Kumar v. Union of India (2021) 4 SCC 1.

[35] Laxmi Pat Surana v. Union Bank of India AIR 2021 SC 1707.

b. the demand notice requirement under section 8 of the Code is a procedural safeguard, not a jurisdictional condition and thus, expanded operational creditor's access to the Code;[36]

c. upholding the constitutional validity of the Code in its entirety, the Financial Creditor/ Operational Creditor (FC/OC) distinction under Article 14, and affirming the default-based trigger;[37]

d. upheld the promoter disqualification under section 29A and established the principle of lifting the corporate veil to identify beneficial ownership, thereby closing the proxy-applicant loophole for disqualified promoters;[38]

e. recognised real estate allottees as financial creditors (FCs) paving the way for the 2020 amendment and formally creating the homebuyer class of FCs. Thereby, protecting millions of housing consumers;[39]

f. that the NCLT and the NCLAT have no jurisdiction to evaluate the commercial wisdom of the CoC in approving or rejecting a resolution plan, establishing the CoC primacy doctrine;[40]

g. affirmed that the CoC's commercial wisdom is non-justiciable, introduced the 'clean slate' principle – enabling the resolution applicant to acquire the CD free of prior claims, and also removed the 'equitable distribution' gloss;[41]

h. upheld the constitutional validity of Part III (personal guarantor insolvency) and affirmed immunity for the resolution applicant under Section 32A from prosecution for prior offences of the CD;[42]

i. that the personal guarantor of a CD can be proceeded against independently under the Code even where the principal borrower is not in CIRP, expanding the scope of personal guarantor insolvency;[43]

j. that Sec.7(5)(a)'s use of 'may' confers discretion on NCLT to reject CIRP even where debt and default established. Caused significant admission uncertainty;[44]

## A DECADE IN NUMBERS: THE STATISTICAL RECORD

Any assessment of the Code's impact over its first decade must reckon with the empirical record. As of June 2025, 8,308 CIRPs have been admitted, of which 1,194 have yielded approved resolution plans, realizing approximately ₹ 3.96 lakh crore against ₹ 11.87 lakh crore in

[36] Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd..
[37] Swiss Ribbons Pvt Ltd.
[38] Arcelormittal India Pvt Ltd.
[39] Pioneer Urban Land and Infrastructure Ltd.
[40] Sashidhar v. Indian Overseas Bank 2019 SCC OnLine SC 257.
[41] CoC of Essar Steel v. Satish Kumar Gupta (2020) 8 SCC 531.
[42] Manish Kumar v. Union of India (2021) 4 SCC 1.
[43] Laxmi Pat Surana v. Union Bank of India AIR 2021 SC 1707.
[44] Vijay Kumar Garg v. Enforcement Directorate (2021) 5 SCC 1.

admitted claims—a recovery rate of approximately 33–39% of admitted claims and, more significantly, 150–180% of the liquidation value of the underlying assets.[45] This consistent outperformance of liquidation value across all years is the most commercially significant metric, demonstrating that the CIRP process reliably preserves the going-concern premium of distressed enterprises.

Perhaps the most striking—and most underappreciated—impact of the Code lies in its deterrence effect. Of 73,000 applications filed before the NCLT through March 2025, approximately 85% were settled or disposed of at the pre-admission stage, representing an estimated ₹ 13.8 lakh crore in defaults resolved without entering formal CIRP proceedings.[46] This figure dwarfs the ₹ 3.96 lakh crore realized through approved resolution plans, making deterrence the Code's single largest measurable economic contribution. The growth in Section 12A withdrawals—from 7 in FY2018 to over 1,154 cumulatively by 2025, facilitating approximately ₹ 2.58 lakh crore in settlements—further underscores that the Code functions as a powerful credit discipline mechanism even before the NCLT formally engages.[47]

On the macroeconomic front, the Code has contributed to a significant improvement in India's credit health. Gross NPAs of Indian banks fell from a peak of 11.2% in 2015–16 to 2.8% (gross) and 0.6% (net) by June 2024, as reported by the Reserve Bank of India.[48] India's position on the World Bank's Ease of Doing Business rankings improved by 79 places—from 142nd in 2014 to 63rd in 2020—with the insolvency recovery rate rising from 25.7 cents per dollar to 71.9 cents per dollar and the resolution time falling from 4.3 years to 1.6 years in the World Bank model.[49] In the Resolving Insolvency sub-indicator specifically, India's ranking improved by 84 positions—from 136th (2015) to 52nd (2019)—the largest single-indicator improvement in India's Doing Business history.[50]

## INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS

When the provisions relating to Part III (relating to individuals and partnership firms) are brought into force, virtual hearings and online court proceedings will be a boon to individuals seeking redress under the Code, enabling them to participate in online hearings instead of travelling to Tribunals situated at far-off places. This is all the more important because, unlike corporate insolvency, where companies can afford to file and defend cases before NCLTs which are located only in select cities, individual insolvency will have a far wider reach, with individuals located in every remote corner of the country subject to the Code and needing to engage with the concerned DRTs, which are the Adjudication Authorities for

[45] IBBI Quarterly Newsletter Q4 FY25; ICRA Research Report June 2025; IBBI Annual Publication 2025.

[46] IBBI Quarterly Newsletters FY17–FY25; IBBI Annual Publication 2024 & 2025. Pre-admission disposal rate approximately 85% across all years.

[47] IBBI Quarterly Newsletters; MCA Parliamentary Response September 2024. Section 12A withdrawals: 1,154 cumulative, facilitating approximately ₹ 2,58,400 crore in settlements.

[48] RBI Financial Stability Reports; IBBI data. Gross NPAs: 11.2% (2015–16) to 2.8% gross / 0.6% net (June 2024).

[49] World Bank Doing Business Reports 2014–2020. India's overall rank: 142nd (2014) to 63rd (2020); insolvency recovery: 25.7 to 71.9 cents per dollar.

[50] World Bank Doing Business Reports. Resolving Insolvency rank: 136th (2015) to 52nd (2019), an improvement of 84 positions.

individual insolvency. Since the Code replaces the jurisdiction of the district courts that formerly operated under the Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909, it has amended the Recovery of Debts due to Banks and Financial Institutions Act, 1993, empowering the DRTs to sit in circuit sittings at district headquarters to provide easy access to litigants. Nevertheless, online filings, electronic submissions, and virtual hearings by DRTs will be essential to address the access-to-justice challenge for individuals in remote areas. The DRTs are already empowered under the said Act to accept electronic filing of documents and are digitally compliant, requiring only minor amendments to fully accommodate online proceedings.

## MEDIATION IN INSOLVENCY AND BANKRUPTCY PROCEEDINGS

Mediation is emerging as a preferred alternative dispute resolution mechanism for settling low-value disputes, and its application to proceedings under Part III of the Code offers a cost-effective remedy for individuals exposed to bankruptcy. In recognition of this, an Expert Committee was constituted by the IBBI on 6 March 2023 to propose a detailed framework for the use of mediation under the Code. The Committee submitted its report in January 2024, addressing key questions including whether mediation should be mandatory or voluntary, how to accommodate mediation within the timelines specified by the Code, the circumstances and stages at which mediation may be referred, enforcement mechanisms for mediation outcomes, the cost structure of mediation, and the operational and infrastructure framework required to support it.

The majority of insolvency and bankruptcy proceedings involving individuals may not involve multiple stakeholders, higher amounts of debt, or contentious issues requiring adjudication by tribunals. The very insolvency process entails the inclusion of sophisticated legal procedure and related legal and financial documents, which lead to incurring heavy costs. Mediation as a tool to resolve issues of insolvency and bankruptcy can eliminate these hassles. The report highlighted the importance of non-judicial assistance in order to encourage the informal negotiation settlements and suggested "*the intervention and assistance of a trained cadre of resolution mediators.*" In this context, Online Service Providers dispensing mediation services can play a useful role in settling disputes, and moreover, where the stakes are not high, intervention of lawyers can also be dispensed with and provisions for online mediation can be incorporated into the legislation.

## MIGRATION OF PROCEEDINGS TO VIRTUAL MEDIUM

Viewed against the above background, online filings and virtual court hearings are poised to become the standard mode of conducting the judicial proceedings in the near future. The provisions of the Code are flexible enough to accommodate these developments with minimum amendments. The IBC (Amendment) Act, 2026, with its electronic portal provisions under Section 240B, provides the necessary statutory foundation for this migration.

A point of concern raised during the Colloquium '*Functioning and Strengthening of the IBC Ecosystem*' held on November 19 to 20, 2022 in New Delhi pertained to the adverse market perception emerging about the Code's performance. It was reiterated that such perceptions

must be effectively countered by all stakeholders in the insolvency ecosystem on the basis of concrete evidence backed by data and analytics. The sole object of the Code, as stated in its long title, is reorganisation and it is against this objective that the Code must be evaluated.

## EVALUATING THE CODE: BEYOND RECOVERY METRICS

The Code is not a recovery legislation, and any evaluation of its working must be cognizant of this distinction. It is neither fair nor accurate to evaluate the Code's effectiveness by reference to objectives it was never designed to achieve. Judging the Code primarily on the number of cases that have proceeded to liquidation or the scale of haircuts is misplaced. Most of the cases clogging the NCLTs, and for which the Code is unfairly criticized, are legacy cases that arose before its enactment, caused by the very ills in the credit market that the Code was designed to address.

The data bears this out: of the 1,194 resolution plans approved through June 2025, approximately 497 (40%) involved erstwhile BIFR or defunct companies that were already non-operational at the time of admission. When these legacy cases are excluded, the recovery rate for going-concern companies rises to approximately 40% of admitted claims and 210% of liquidation value—a far more instructive picture of the Code's effectiveness.[51] As the backlog of pre-IBC cases clears, the credit market stands to be restored to health, and evaluation metrics will increasingly reflect the Code's intended operation.

## BIG DATA, LITIGATION STRATEGY AND THE BRANDEIS BRIEF

A slew of measures taken by the Government for collection and systematisation of data about actors in the credit market has made Big Data readily available to all stakeholders. The Code reposes great faith in the wisdom of FCs and market forces to decide the outcome of proceedings under the Code. For this purpose, Big Data about the players in the credit market is readily available for impact analysis of the Code. New techniques melding traditional statistics and computer science make it increasingly feasible to analyse large sets of data, and the algorithms developed by statisticians and computer scientists to search for patterns in data hold the potential to provide a wealth of actionable information.

The outcome of the future litigation under the Code will depend upon Big Data rather than on black letter law alone. The use of data to fortify legal argument before a Court was successfully demonstrated over a century ago in the famous U.S Supreme Court case Muller v. Oregon[52] by Louis Brandeis, who pioneered the use of empirical evidence in constitutional litigation. As the Code's ecosystem continues to generate ever-richer data, through IBBI quarterly newsletters, NeSL records, NCLT databases, and BAANKNET auction platforms, practitioners and policymakers will have the tools to build similarly data-driven arguments, transforming the landscape of insolvency litigation in India.

[51] IBBI Annual Publication 2025; ICRA Research Report June 2025. Going-concern companies: approximately 40% recovery of claims, 210% of liquidation value; BIFR/defunct companies: 18.74% of claims, 152% of liquidation value.
[52] (208 US 412).

## CONCLUSION: THE CODE AS PRELUDE TO INDIA EMERGING AS A MAJOR RESTRUCTURING HUB OF ASIA

The ecosystem accompanying the Code and the implementation of its provisions through modern technology and information tools enables the Government not only to measure and calibrate the impact of the Code, but also to monitor the decisions of the NCLT and NCLAT, and take remedial action as may be necessary. It is no overstatement to say that no other Indian statute is as transparent in making its effectiveness measurable and visible to all stakeholders.

Viewed in this light, the Code is a state-of-the-art legislation, drafted to leverage and capitalise the benefits of modern technology and to serve as a historic law reform legislation. With ₹ 3.96 lakh crore recovered through resolution plans, a deterrence dividend exceeding ₹ 13.8 lakh crore, gross NPAs reduced from 11.2% to 2.8%, and an 84-position improvement on the World Bank's Resolving Insolvency indicator, the Code has fundamentally reshaped India's credit landscape in its first decade. As the comprehensive reforms in the IBC (Amendment) Act, 2026, including cross-border insolvency, group insolvency, and the Creditor-Initiated Resolution Process, are implemented in the second decade of the Code, India is well positioned to emerge as a major restructuring hub of Asia, rivalling Singapore, and to continue using Big Data, data analytics, and market indicators to keep the law in tune with current economic and social realities.

# 16 SYSTEMIC ANXIETIES IN LITIGATION BEHAVIOUR: A STUDY OF INTERLOCUTORY APPLICATIONS BEING FILLED IN INSOLVENCY CASES

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## INTRODUCTION

The Latin maxim "No decision shall be given against a party without affording him a reasonable hearing (audi alteram partem)"[1] has become a key pillar of jurisprudence in all jurisdictions. Meeting this aspect of natural justice often causes delays, and at times it stands in conflict with another maxim: "Justice delayed is justice denied."[2] Since all the jurisdictions strive for time bound disposal of insolvency cases, almost all-important jurisdictions have put in place mechanisms to expedite the disposal of intervening applications. The Insolvency law in India is no different. Habitual filing of interlocutory applications (IAs) perpetuates delays, even in processes that are otherwise strictly time bound.

The tension between procedural fairness and timeliness must also be understood within the constitutional framework of Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. The Supreme Court has consistently interpreted this right to include the right to a speedy trial, thereby imposing a positive obligation on adjudicatory bodies to ensure expeditious disposal of proceedings.[3] In *Hussainara Khatoon v. Home Secretary, State of Bihar*, the Court held that "speedy trial is an essential ingredient of reasonable, fair and just procedure."[4] This principle was later reaffirmed in *P. Ramachandra Rao v. State of Karnataka*, where the Court clarified that the right extends across all stages of adjudication, including ancillary and procedural stages.[5]

Within this constitutional framework, interlocutory applications assume a dual character. While they serve as essential instruments to secure procedural justice, their excessive or strategic deployment risks undermining the constitutional mandate of timely adjudication. The challenge, therefore, lies not in the existence of interlocutory mechanisms per se, but in their transformation from safeguards of fairness into instruments of delay.

The increasing deployment of interlocutory applications in this transformed role has deeper systemic implications. When invoked excessively or strategically, such applications do not

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[1] *Ridge v. Baldwin* [1964] AC 40 (HL); *A K Kraipak v Union of India* AIR 1970 SC 150; HWR Wade and CF Forsyth, *Administrative Law* (11th edn, OUP 2014) 371.

[2] The maxim "justice delayed is justice denied" reflects the necessity of timely adjudication in legal systems. See Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369; also discussed in M.P. Jain, *Indian Constitutional Law* (8th ed., LexisNexis, 2018).

[3] Constitution of India, Art. 21.

[4] Hussainara Khatoon v. Home Secretary, State of Bihar, (1979) AIR 1369 (SC).

[5] P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578.

merely delay proceedings but actively undermine the foundational objective of the Insolvency and Bankruptcy Code, 2016 (IBC/Code). The Code was conceived as a time-bound framework aimed at ensuring speed, certainty, and value maximisation; however, the proliferation of interlocutory litigation has introduced a parallel procedural layer that dilutes this design. In effect, the very instruments intended to secure procedural fairness are increasingly operating as structural impediments to timely resolution.

The examination of practices in the United Kingdom, United States, Singapore, and Australia, alongside procedural frameworks developed by international bodies such as the OECD and the European Commission for the Efficiency of Justice (CEPEJ), highlights the extraordinary efforts made by various jurisdictions to prevent their systems from being clogged with IAs. The findings from international best practices demonstrate that jurisdictions with higher procedural efficiency consistently deploy: (i) strict and enforceable timelines for filing and responding to applications; (ii) structured case-management conferences under active judicial supervision; (iii) consolidation of related applications to avoid fragmented adjudication; (iv) holding special sessions for collective disposal of applications; (v) paper-based determinations as the default, with oral hearings reserved for necessity; and (vi) mediation among the parties; and (vii) specialised benches for legally or factually complex matters.

Under IBC, proceedings are touted as beneficial legislation; nevertheless, overlitigation is still the order of the day. Judicial experience across forums suggests that interlocutory applications are increasingly being deployed not merely for legitimate procedural relief, but as strategic tools to delay proceedings, fragment adjudication, and prolong litigation timelines.

Courts have repeatedly cautioned against such misuse, recognising its systemic implications for the administration of justice. In *Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar*, the Supreme Court characterised frivolous and groundless filings as a "serious menace" that consumes judicial time, clogs institutional capacity, and prolongs dead issues to the detriment of genuine litigants. The Court underscored that liberal access to justice cannot be equated with "access to chaos and indiscipline", and emphasised that the imposition of exemplary costs is not merely discretionary but necessary to deter such abuse.[6]

This position was further clarified in *General Motors (India) (P) Ltd. v. Ashok Ramnik Lal Tolat*, where the Court held that while no litigant can be penalised merely for invoking the jurisdiction of a court, punitive consequences are justified where proceedings are demonstrably frivolous.[7] The doctrinal thread running through these decisions reflects a consistent judicial concern that procedural mechanisms, when strategically deployed, cease to serve their facilitative purpose and instead operate as instruments of delay.

The problem is compounded by dilatory practices such as repeated adjournments, which the Supreme Court has described as an "insult to justice" and fundamentally inconsistent with the principle of timely adjudication.[8] Taken together, these judicial observations reinforce the emerging empirical reality under the IBC framework, namely, that procedural interventions,

[6] Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar, (2017) 5 SCC 496, §14.
[7] General Motors (India) (P) Ltd. v. Ashok Ramnik Lal Tolat, (2015) 1 SCC 429, §16.
[8] Ishwarlal Mali Rathod v. Gopal, SLP (C) Nos. 14117–14118 of 2021, order dated 20 September 2021

particularly interlocutory applications, are increasingly being used not as safeguards of fairness but as tactical devices that fragment proceedings and erode adjudicatory efficiency.

In *Asian Resurfacing of Road Agency Pvt. Ltd. v. CBI*, the Supreme Court emphasised that interim orders must not operate indefinitely and observed that procedural interventions should not result in the stalling of substantive proceedings.[9] Similarly, in *Indian Council for Enviro-Legal Action v. Union of India*, the Court characterised repetitive and meritless applications as an abuse of process and imposed exemplary costs to deter such conduct.[10]

This judicial concern aligns with the emerging empirical reality under the IBC framework, where interlocutory filings increasingly contribute to procedural congestion, adjournments, and multiplicity of proceedings.

The Adjudicating Authorities are vigilant towards preventing beneficial legislation from being the battleground for casual sets of objections. The huge backlog clearance drive of IAs in India's National Company Law Tribunal (NCLT) has emerged as a credible institutional response. This study examines 108,934 interlocutory applications filed before the National Company Law Tribunal across 15 benches during the period from January 2016 to March 2025[11] and identifies discernible trends and analysis associated with the subject.

The overall disposal rate stands at 77.55 per cent, with 84,481 applications being disposed of and 24,453 applications remaining pending, yielding a national pendency rate of 22.45 per cent. However, this aggregate performance masks significant inter-bench variations and the chronic accumulation of backlogs in specific jurisdictions.

Available trend showcases there was a massive surge in filing IAs since 2019. This surge also brought a credible response by the NCLTs despite the capacity constraints. Initially, the system permitted the accumulation of the backlog; however, since 2021, the disposal rate as a percentage of fresh filing has drastically improved and recorded 98% disposal in 2025. This improved performance has significantly reduced the gap between filing and disposal as shown in the figure below, and it is projected that not only will the gap between new filing and disposal further narrow down, but also the first-time curve will eventually flatten.

Notwithstanding these improvements, a critical structural limitation persists. The evolution of the insolvency framework has required the NCLT to discharge an increasingly specialised and time-sensitive jurisdiction within a broader adjudicatory mandate. As the volume and complexity of insolvency cases have expanded, the institutional framework has correspondingly adapted to meet these demands. The pressures observed in high-volume jurisdictions therefore reflect not a deficiency in institutional design, but the rapid scaling of insolvency litigation following the success and widespread adoption of the Code.

NCLT's jurisdiction, inherited from the company law framework, encompasses a wide range of corporate disputes, resulting in institutional overlap and adjudicatory congestion. The superimposition of a strict timeline-driven insolvency regime upon this broader institutional

[9] Asian Resurfacing of Road Agency Pvt. Ltd. v. CBI, (2018) 16 SCC 299.

[10] Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161.

[11] Insolvency and Bankruptcy Code 2016; National Company Law Tribunal and National Informatics Centre data (2016–2025) (as analysed in the study).

architecture has created a mismatch between legislative intent and operational capacity, which continues to manifest in systemic delays, particularly in high-volume jurisdictions.

While there has been a credible response towards clearing the backlog, a large number of filings on a continuous basis form the foundation of what may be understood as systemic anxieties in litigation behaviour under the IBC framework.

The five systemic anxieties identified for our instant study are:

I. The Anxiety of Exclusion and the Battle for Classification
II. The Anxiety of Information Asymmetry
III. The Anxiety of Time as Weapon and Constraint
IV. The Anxiety of Fraudulent Dissipation and Avoidance
V. The Anxiety of Being Bound Without Adequate Voice.

These anxieties are not isolated or episodic concerns but arise from recurring patterns in stakeholder behaviour and institutional functioning under the IBC framework.

## ANATOMY OF HIGH DISPOSAL RATES; RECENT TRENDS

The implementation of the Insolvency and Bankruptcy Code, 2016, marked the commencement of specialised insolvency adjudication through the National Company Law Tribunal framework.

While the Code represents a decisive departure from the fragmented insolvency regime that existed under earlier legislative frameworks, its implementation has revealed that procedural innovation must be accompanied by institutional readiness. The persistence of delays through interlocutory litigation suggests that while the legal architecture of the Code is robust, its operational ecosystem continues to evolve in response to the demands of a modern, high-volume insolvency regime.

The temporal evolution of interlocutory application filings reflects the gradual mainstreaming of the Code as the primary mechanism for corporate insolvency resolution, exhibiting distinct growth phases that correspond to the progressive adoption of the insolvency framework by stakeholders.

As depicted in the table below, the initial year of 2016 witnessed minimal activity, with only two interlocutory applications filed, reflecting the nascent stage of Code implementation, wherein insolvency petitions themselves were limited in number, and the ancillary application ecosystem had not yet developed. The year 2017 saw the number of filings being increased to 22 applications, which was an insignificant number. By 2018, filings reached 291 applications, indicating growing awareness and utilisation of the insolvency framework among creditors and other stakeholders.

However, the year 2019 marked a critical inflexion point, with filings surging to 1,541 applications, representing a fivefold increase over the previous year. From this year onwards, filing of IAs witnessed an exponential growth phase, signalling that with the mainstreaming of the IBC, stakeholders increasingly resorted to filing of formal interlocutory applications in the name of natural justice. Ever-increasing IAs reached the level of over 24000 in 2025, and

extrapolating a similar trend, it can be said with certainty that the numbers will cross the 27000 mark by the end of 2026.

This exponential rise in interlocutory applications is not merely a quantitative phenomenon but reflects a qualitative shift in litigation behaviour. As the data indicates, interlocutory applications per CIRP increased from negligible levels in the initial years to over 10 applications per CIRP by 2024, suggesting that insolvency proceedings are increasingly being accompanied by multiple layers of procedural contestation.[12]

At the same time, while disposal rates have improved, the average time for completion of CIRP has continued to rise, increasing from approximately 679 days in early 2024 to nearly 739 days by the end of 2025.[13] Notably, this increase in time has not been accompanied by a corresponding improvement in recovery rates, which have remained relatively stable in the range of 31–33 per cent.[14]

The increasing average duration of insolvency proceedings suggests that procedural expansion, particularly through interlocutory filings, is not merely incidental but structurally embedded within the system. Such temporal expansion undermines creditor confidence and erodes the economic rationale of the Code, which is premised on swift resolution to preserve enterprise value.

Taken together, these trends indicate that the growing volume of interlocutory litigation contributes to procedural expansion without commensurate gains in substantive outcomes, thereby raising serious concerns regarding efficiency within the insolvency framework.

The table below provides year-wise filing of the IAs.

**Table: Year-wise Timeline - showing Year, Opening Balance, New Cases Filed, Cases Disposed, and Closing Balance**

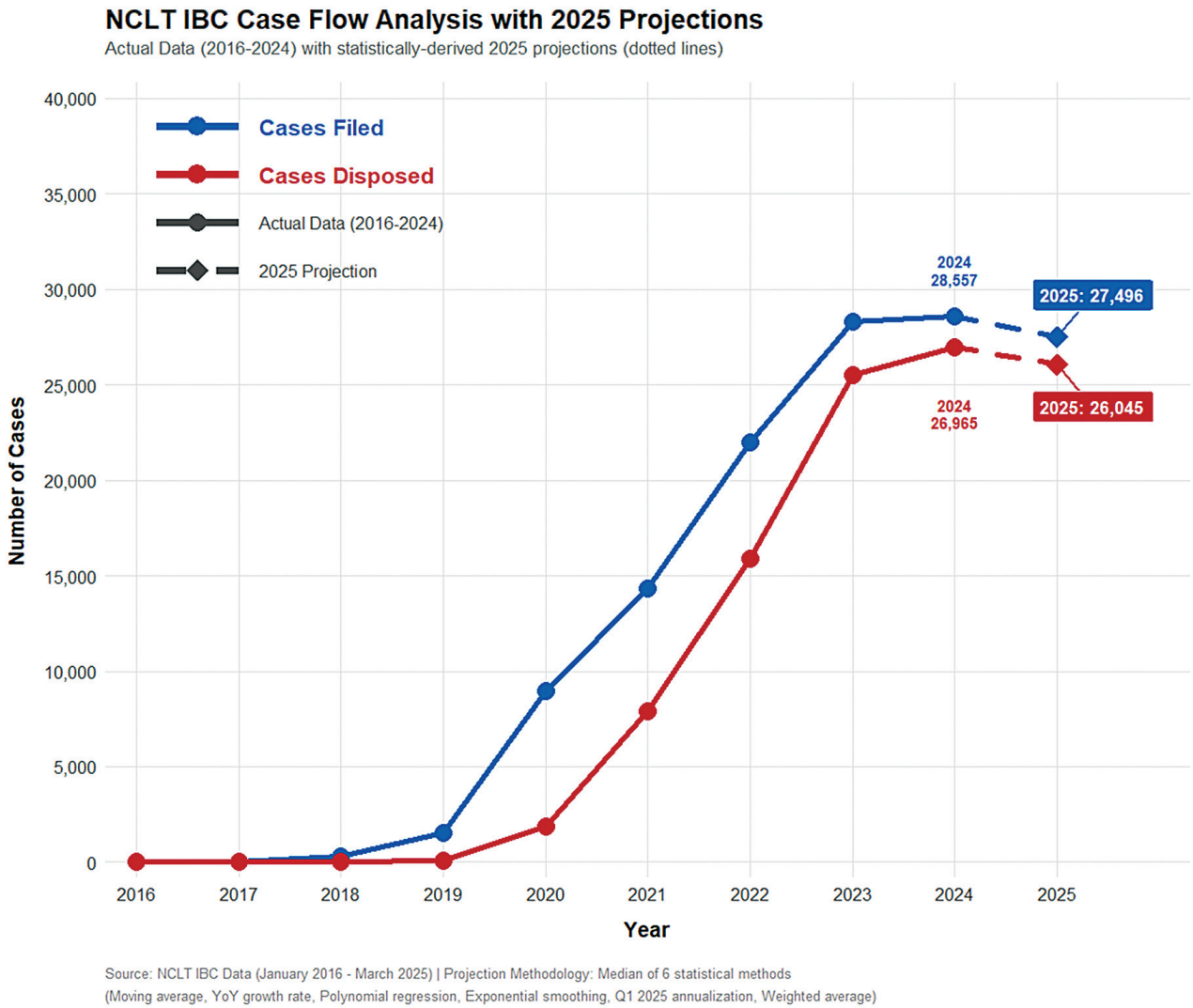
| Year | Opening Balance | New Cases Filed | Cases Disposed | As % of new filings | Closing Balance |
|---|---|---|---|---|---|
| 2016 | 0 | 2 | 0 | 0 | 2 |
| 2017 | 2 | 22 | 6 | 27% | 18 |
| 2018 | 18 | 291 | 27 | 9% | 282 |
| 2019 | 282 | 1,541 | 65 | 4% | 1,758 |
| 2020 | 1,758 | 8,511 | 1,870 | 22% | 8,399 |
| 2021 | 8,399 | 14,078 | 7,892 | 66% | 14,585 |
| 2022 | 14,585 | 21,403 | 15,884 | 74% | 20,104 |
| 2023 | 20,104 | 28,185 | 25,491 | 90% | 22,798 |
| 2024 | 22,798 | 28,421 | 26,965 | 95% | 24,254 |
| 2025 (up to March) | 24,254 | 6,399 | 6,281 | 98% | 24,372 |

[12] IBBI Data, IA per CIRP trends (2016–2024).

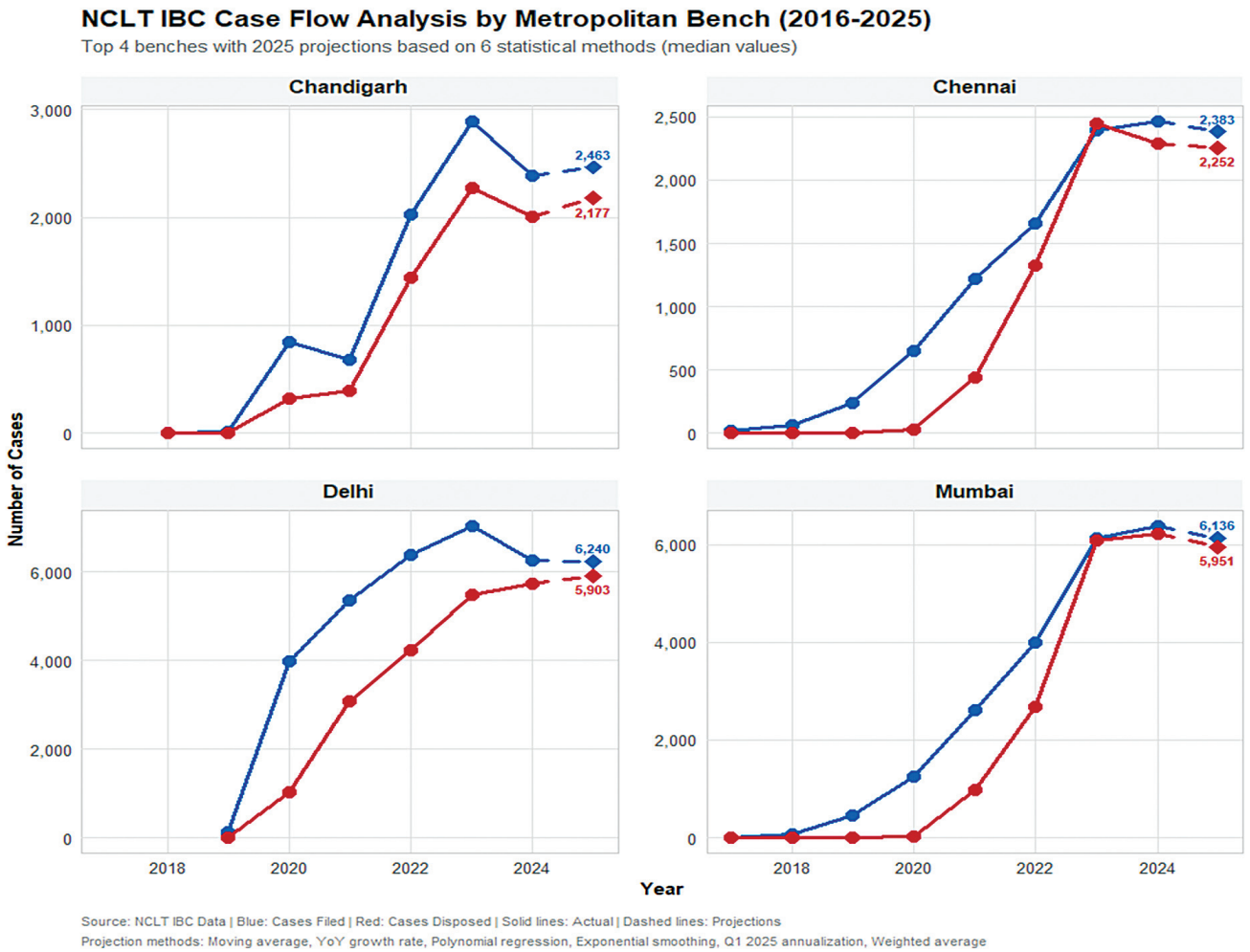
[13] IBBI Quarterly Reports (Mar 2024–Dec 2025), Avg CIRP timeline.

[14] Ibid., Realisation rates (31–33%).

However, this surge of filing applications also brought a credible response by the NCLTs despite the capacity constraints. Initially, the system permitted the accumulation of the backlog, as can be seen from the disposal percentages presented in the table above. However, since 2021, the disposal rate as a percentage of fresh filing has drastically improved and recorded 98% disposal in 2025. This improved performance has significantly reduced the gap between filing and disposal as shown in the figure below, and it is projected that not only will the gap between new filing and disposal further narrow down, but also the first-time curve will eventually flatten.




The bench-wise trend also depicts a similar trend in terms of improved performance in the disposal rate. In the four important jurisdictions of Delhi, Mumbai, Chennai and Chandigarh, the gap between filing and considerably lowered.




## TRENDS OF BACKLOG ACCUMULATION

The temporal data reveal a persistent gap between filing rates and disposal capacity throughout the study period. While detailed year-by-year progression after 2019 reveals variations in annual filing volumes, the fundamental pattern persists: new filings consistently exceeded disposals during the high-growth phase, resulting in the accumulation of a cumulative backlog. The progression from 2 cases in 2016 to 24,453 cases in 2025, as seen in the closing balance, illustrates the magnitude of this accumulation, reflecting a system that experienced accelerated demand growth alongside ongoing institutional expansion efforts.

The disposal performance in the early years exhibited particularly concerning characteristics. In 2017, despite only 22 new filings, merely 6 applications were disposed of, yielding an in-year disposal rate of 27.3 per cent. The year 2018 saw 27 disposals against 291 filings, an in-year disposal rate of 9.3 per cent. The year 2019 recorded 65 disposals against 1,541 filings, representing an in-year disposal rate of 4.2%. These figures indicate that during the exponential growth phase, the sharp increase in filings created significant pressure on adjudicatory timelines.

The structural nature of this backlog accumulation becomes evident when examining the cumulative number of pending cases. The closing balance of 1,758 cases at the end of 2019 represented a sixfold increase from the opening balance of 282 cases. This backlog subsequently compounded as additional filings in subsequent years added to the unresolved stock rather than replacing disposed cases. The progression demonstrates that early-year capacity deficits created a base of chronic pendency that subsequent performance improvements have not fully addressed.

While disposal rates improved in later years as the system matured and disposal capacity expanded through additional judicial appointments and process refinements, the legacy of early-year backlogs persists. The current pendency of 24,453 applications includes cases filed across multiple years, with older cases facing particular challenges in being disposed of. This temporal dimension of pendency; wherein cases age within the system rather than being resolved on a first-in, first-out basis, creates a bifurcated pendency profile, comprising fresh cases entering normal processing and chronic cases that have become structurally stuck.

The temporal analysis establishes that the current state of pendency cannot be attributed solely to recent filing surges but rather reflects accumulated deficits from years when disposal capacity lagged significantly behind demand growth. Addressing this chronic backlog requires not merely maintaining pace with new filings but also implementing targeted clearance mechanisms for older pending applications. While the system is at point of achieving equilibrium, wherein disposals match filings on a sustained basis, however lot of work is required for simultaneously reducing the backlog stock accumulated during the growth phase.

**Ageing Profile of Disposed Cases**

The time elapsed from application filing to disposal constitutes a critical efficiency metric, revealing whether cases move through the system expeditiously or languish for extended periods before reaching resolution. The ageing profile of disposed applications demonstrates that a substantial majority achieve relatively prompt disposal, while a minority experience significant delays that elevate average processing times and raise concerns regarding justice delivery for affected parties.

Nationally, 63,839 applications were disposed within 179 days of filing, representing 75.57 percent of all disposed cases. This concentration of three-quarters of disposals within approximately six months demonstrates that the National Company Law Tribunal system possesses inherent capacity to process interlocutory applications efficiently when cases progress normally through hearing and adjudication stages. The average disposal time for this cohort stands at 44.3 days, equivalent to 1.48 months, indicating relatively reasonable resolution for applications that do not encounter procedural complications or evidentiary delays.

Applications disposed between beyond 180 days, constituting 24.43% of applications reflect systematic delays with possible impact on the timelines. 180 and 359 days after filing—roughly six months to one year—comprise 9,127 cases representing 10.80 percent of disposals. The average disposal time for this bracket is 257.62 days or 8.59 months. This timeframe, not

at all augurs well with the prescribed procedural timelines of 270 days as enunciated in the Code. Another 13.63% of cases even take more than a year to dispose of and are serious cause for worry.

**Table 2: Ageing of Disposed Cases (All Benches) - showing Age Bin, Number of Cases, Percentage, Average Days, and Average Months**

| Age Bin | Number of Cases | Percentage | Avg Days | Avg Months |
|---|---|---|---|---|
| 0-179 days | 63839 | 75.57 | 44.3 | 1.48 |
| 180-359 days | 9127 | 10.8 | 257.62 | 8.59 |
| 360-539 days | 4548 | 5.38 | 441.08 | 14.7 |
| 540-719 days | 2496 | 2.95 | 622.5 | 20.75 |
| 720-899 days | 1679 | 1.99 | 803.56 | 26.79 |
| 900-1079 days | 1136 | 1.34 | 985.37 | 32.85 |
| 1080-1259 days | 710 | 0.84 | 1159.07 | 38.64 |
| 1260-1439 days | 414 | 0.49 | 1347.49 | 44.92 |
| 1440-1619 days | 261 | 0.31 | 1513.3 | 50.44 |
| 1620-1799 days | 145 | 0.17 | 1701.54 | 56.72 |
| 1800-1979 days | 69 | 0.08 | 1875.06 | 62.5 |
| 1980-2159 days | 32 | 0.04 | 2086.66 | 69.56 |
| 2160-2339 days | 18 | 0.02 | 2210.67 | 73.69 |
| 2340 + days | 7 | 0.01 | 2455.71 | 81.86 |
| **OVERALL AVERAGE** | **84481** | **100** | **159.6** | **5.32** |

11,515 applications required more than one year to dispose, representing 13.63 percent of all resolved cases. These protracted disposals include 4,548 cases in the one-to-one-and-a-half-year bracket, 2,496 cases between one-and-a-half to two years, and progressively smaller cohorts extending to applications that required more than six years to resolve. While these extended timeline cases constitute a numerical minority, they represent significant message of watching the cases where numerous objects are being raised post filing of the IA.

The aging profile reveals a characteristic pattern wherein most applications cluster in the rapid disposal category while a long tail of extended timeline cases stretches across multiple years. This bimodal distribution suggests that interlocutory applications fall into distinct categories: routine matters that can be resolved quickly through standardized procedures, and complex or contested matters that require extensive evidentiary development, multiple hearings, or resolution of novel legal questions. The challenge lies in differentiating these categories at the filing stage and channelling them into appropriate processing tracks.

The existence of 154 disposed cases that required more than six years to resolve represents a rare instance of extended timelines. While constituting only 0.18 percent of disposed cases, these extreme delay cases indicate urgent need for alternative disposal mechanism to swiftly clear the frivolous cases on priority.

**Judicial Comments on Frivolous Litigation**

NCLTs play a pivotal role in balancing procedural fairness with the IBC's objective of achieving timely resolution. NCLTs have the role of admission, oversee CIRP, and approve resolution plans to ensure the timely resolution of the stressed corporate debtor. Along with this, NCLTs also have to adjudicate IAs to provide stakeholders with an opportunity to raise their concerns and seek clarification, ensuring procedural fairness.

An interlocutory application can be filed under section 60(5) of the IBC, which serves as an essential procedural mechanism seeking interim reliefs, clarifications, or directions during the CIRP. Its purpose is to facilitate stakeholders of the CIRP in providing efficient dispute resolution without derailing the main petition. However, contrary to its purpose, it is being massively misused as a dilatory tactic. It is a misuse through frivolous, repetitive, or meritless filings and has become a passive challenge to the objectives of IBC.

NCLTs across India have, on numerous occasions, observed and imposed costs on frivolous interlocutory applications. In the case of *Anand Infoedge Pvt. Ltd. v. Nitin Batra and Ors.*,[15] The Hon'ble NCLT, in its order dated 19.07.2024, explicitly criticised the CD for intentionally delaying the admission processes. The main contention of the Hon'ble court was that the CD was filing repetitive and frivolous applications to delay the process despite clear evidence of default. The multiplicity of IA created a web of applications that not only delayed admissions but also substantially burdened the tribunal and severely impacted procedural efficiency.

The December 2024 report of the Standing Committee on Finance marks a qualitative shift in Parliament's understanding of the IA problem under the IBC as structural rather than episodic. This evolving legislative understanding has culminated in a concrete statutory response. The Insolvency and Bankruptcy Code (Amendment) Bill, 2025, passed by the Parliament recently Lok Sabha in March 2026, and awaiting the President's assent, introduces a strengthened deterrence framework to address the misuse of interlocutory applications. **The amendment empowers adjudicating authorities to impose significant monetary penalties in cases involving frivolous, vexatious, or fraudulent filings, thereby signalling a shift towards active discouragement of procedural abuse.[16]**

## PROLIFERATION OF INTERLOCUTORY APPLICATIONS: FROM PROCEDURAL DEVICE TO STRATEGIC TOOL

The affidavits, as sworn statements, carry evidentiary value; hence, the courts take due cognisance of them in connection with the disposal of the main case. While the hypothesis is that a large number of affidavits are being filed intentionally to delay the process, there is a category of affidavits which are required to be filed in compliance with procedural requirements.

[15] (2023) ibclaw.in 165 SC.

[16] The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (as passed by Lok Sabha in March 2026).

Parties often file interim applications (IA) before NCLT, e.g., for stay, impleading, substitution, extension of time, etc. Each such IA must be accompanied by an affidavit stating the facts and reasons for seeking relief. This has emerged as a significant factor in IBC processes that have encountered delays. The IAs can be filed for a wide range of reasons, such as Settlement before Admission, replacement of the RP, sale of assets, etc. While some of the disputes are genuine and necessary for the fair adjudication of the matter, it is a matter of research to determine the number of IAs stemming from an ulterior motive to deter the process. These IAs result in adjournments, stays, and injunctions, which ultimately delay the CIRP.

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**Qualitative analysis of affidavit content patterns**

The quantitative analysis presented in Sections I and II above establishes the aggregate dimensions of the interlocutory application problem filing volumes, disposal rates, pendency patterns, bench-wise performance differentials, and application-type characteristics. However, numerical data alone cannot reveal why applications are filed, what stakeholders actually seek through the process, and what systemic tensions drive the persistent accumulation of pending matters. To address these questions, a systematic qualitative analysis was undertaken on a stratified sample of 14,700 affidavits drawn from the universe of 66,345 PDF affidavits furnished by the National Informatics Centre and the National Company Law Tribunal.[17]

The sample comprised 10,700 affidavits from pending cases, drawn across three independent batches from universe populations of 15,091, 13,234, and 13,321 documents, respectively, and 4,000 affidavits from disposed cases, drawn from a universe of 24,699 documents. Systematic sampling methodology was employed, selecting every fourth document from sequentially ordered PDF files. This approach achieved 25.69 per cent coverage of the pending universe and 16.19 per cent coverage of the disposed universe, both substantially exceeding conventional thresholds for policy-grade research. All 14,700 sampled documents underwent successful text extraction and natural language processing, achieving complete classification with no missing values. Manual validation of a random 100-document subset by legal professionals yielded agreement of greater than 95 per cent with AI-generated classifications, confirming analytical reliability.

[17] National Company Law Tribunal and National Informatics Centre data (2016–2025) (as analysed in the study).

The qualitative inquiry addresses three central questions: What do these affidavits contain? Why are they filed? And what common threads emerge across thousands of individual filings that illuminate the systemic functioning of India's insolvency adjudication framework? The findings are organised across seven thematic sub-sections, each grounded in patterns observed across the sampled corpus.

**The Procedural Response Phenomenon**

The most striking finding to emerge from the affidavit corpus concerns the fundamental nature of the filings. Contrary to the assumption that interlocutory applications principally represent proactive efforts by stakeholders seeking substantive relief, the analysis reveals that a substantial majority of affidavits in pending cases are reactive filings, replies, rejoinders, counter-affidavits, objections, and rebuttals responding to prior submissions rather than initiating new claims.

The content of these procedural responses reveals an intensely adversarial orientation. Common formulations include denials and refutations of claims made in previous filings, counter-narratives challenging factual assertions, legal arguments contesting the maintainability or merit of applications, and procedural objections to the form, timing, or standing of opposing parties. The linguistic register is consistently combative: phrases such as "vehemently denied," "baseless and misconceived," "without prejudice to preliminary objections," and "the applicant has suppressed material facts" recur throughout the corpus.

Beyond the simple reply-to-application structure, the data reveals serial litigation patterns in which multiple rounds of responses proliferate around a single underlying issue. Affidavits reference "further replies," "additional submissions," "supplementary affidavits," and "rejoinders to counter-affidavits," indicating litigation cascades in which each filing triggers multiple responses, which in turn generate further responses. Approximately seven to nine per cent of affidavits contain explicit language indicating they are second, third, or subsequent rounds of procedural response on the same matter. This volume multiplication effect means that a single original application may generate five, ten, or more responsive filings as different parties respond, original applicants file rejoinders, and respondents file sur-rejoinders. The cumulative effect transforms what was intended to be a time-bound legislative process into a protracted written advocacy campaign in which each round of filing consumes hearing time, necessitates adjournment, and extends the pendency period.

**Asset Protection and the Settlement Imbalance**

A substantial proportion of affidavits focus explicitly on asset protection, preservation, and the prevention of disposal. This category encompasses applications for attachment orders, preservation directions, injunctions against asset transfers, requests to prevent disposal of property, and challenges Asset protection concerns appear in 34.4 per cent to 40.0 per cent of pending case affidavits across the three independent samples, with a combined average of 37.6 per cent, indicating that more than one in three affidavits in pending cases explicitly address asset protection issues. The language patterns in asset-focused affidavits consistently emphasis urgency and irreversibility: recurring formulations include "assets are being dissipated," "property is at risk of alienation," "urgent preservation required," "transactions

executed to defeat creditors," and "books of accounts not produced."

The implications of this asymmetry are significant for understanding how the insolvency framework operates in practice. Stakeholders in pending insolvency proceedings are overwhelmingly focused on securing, protecting, or contesting control of assets rather than on negotiating business solutions or achieving collaborative restructuring. The IBC framework is thus operating primarily in litigation mode rather than resolution mode, with procedural mechanisms being deployed as instruments of asset contestation. This observation is corroborated by broader language analysis across the corpus, which reveals that adversarial terminology dispute, contestation, challenge, opposition, denial appears approximately five times more frequently than cooperative terminology joint action, mutual agreement, consent, unanimity across both pending and disposed populations.

The most striking finding to emerge from the affidavit corpus concerns the fundamental nature of the filings. Contrary to the assumption that interlocutory applications principally represent proactive efforts by stakeholders seeking substantive relief, the analysis reveals that a substantial majority of affidavits in pending cases are reactive filings, replies, rejoinders, counter-affidavits, objections, and rebuttals responding to prior submissions rather than initiating new claims. The dominance of procedural responses reinforces the understanding that interlocutory litigation under the IBC is increasingly self-generative in nature. Each application triggers a sequence of replies, rejoinders, and counter-affidavits, creating a cascading effect that expands the volume of proceedings without necessarily advancing resolution. This phenomenon reflects what may be described as a "procedural multiplication effect," wherein litigation sustains and reproduces itself through successive interlocutory engagements.

From a jurisprudential perspective, such patterns raise concerns regarding abuse of process, particularly where filings are repetitive, reactive, or designed to prolong adjudication. Courts have consistently held that procedural devices must not be permitted to defeat substantive justice, especially where they are deployed to evade compliance or delay final outcomes.[18]

## THE SYSTEMIC ANXIETIES IN LITIGATION BEHAVIOUR

### (i) Anxiety of Exclusion and the Battle for Classification.

The single most pervasive concern running through the affidavit corpus is creditors' efforts to avoid procedural exclusion through adverse classification. This concern is not mere technical pedantry about labels. The Code creates a two-tier system in which financial creditors possess substantive decisional power through Committee of Creditors membership, including voting rights on resolution plans, while operational creditors are relegated to procedural participation without voting authority.[19] Affidavits contesting creditor classification reveal that stakeholders understand this power differential with clarity and will expend significant litigation resources contesting classification because, as the proceedings themselves make plain, classification determines participation.

[18] Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161.

[19] Insolvency and Bankruptcy Code 2016, ss 21, 24; Swiss Ribbons Pvt Ltd v Union of India (2019) 4 SCC 17.

Creditors contest the definition of "financial debt" under Section 5(8), arguing that their transactions involved time value of money, deployment of funds, or a recognisable debt relationship sufficient to qualify.[20] These arguments are not academic: they represent the practical difference between having a voice in shaping a resolution plan and having none. The Code's binary taxonomy of financial or operational forces hybrid commercial arrangements into categories that do not always fit, creating artificial classification disputes. Inter-corporate deposits, advance payments serving dual financing and operational functions, and related-party transactions that defy arm's-length characterisation all give rise to classification litigation. The stated purpose in hundreds of affidavits is technical reclassification, but the deeper purpose is consistent: securing participation rather than being rendered a spectator in proceedings that determine the fate of one's claim.

**(ii) Anxiety of Information Asymmetry.**

A substantial proportion of affidavits exist solely or primarily to compel production of information, such as requiring suspended management to furnish books of account, requiring Resolution Professionals to share information memoranda, compelling banks to disclose security positions, or forcing related parties to reveal transaction details. These are not mere procedural requests. They reflect a systemic recognition that in insolvency proceedings, information is power, its concealment is a strategic weapon, and informational asymmetry materially determines outcomes.[21]

Resolution Professionals' affidavits seeking tribunal directions to compel cooperation reveal professionals who recognise they cannot fulfil their statutory duties without the basic informational infrastructure withheld by suspended management. The fundamental documents, routinely unavailable or deliberately withheld, are not esoteric materials but elementary requirements: audited financial statements, trial balances, ledger accounts, asset inventories, and contract files.[22] The Code's architecture rests on assumptions about corporate recordkeeping and governance that the affidavit corpus reveals are routinely violated in practice. The statutory timelines for information processing, thirty days for the information memorandum, ninety days for resolution plan submission, become aspirational rather than achievable when the underlying documentary infrastructure does not exist or is actively concealed.

Information anxiety manifests differently across stakeholder categories, but with a similar underlying logic. Financial creditors seek disclosure of all other security interests. Operational creditors demand details of preferential payments to others. Prospective resolution applicants request granular asset information to enable informed bidding. Dissenting creditors demand transparency in CoC deliberations. In each instance, the affidavit reflects the stakeholder's recognition that informational control shapes narrative and narrative influences outcomes.

[20] Insolvency and Bankruptcy Code 2016, § 5(8); Pioneer Urban Land and Infrastructure Ltd v. Union of India (2019) 8 SCC 416.

[21] Insolvency and Bankruptcy Code 2016, § 18, 25.

[22] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, reg 36.

**(iii) Anxiety of Time as Weapon and Constraint.**

The Code's defining characteristic, time-bound resolution, creates a temporal pressure dynamic that, as the affidavit corpus reveals, fundamentally shapes stakeholder behaviour and drives specific categories of application. Time functions simultaneously as a weapon strategically deployed by those who benefit from delay or acceleration, and as a constraint that generates panic as deadlines approach. This paradoxical dynamic means that the Code's promise of speed generates more litigation rather than less.[23]

Affidavits seeking extensions for filing claims, submitting resolution plans, completing due diligence, implementing approved plans, or filing appeals rarely argue that the statutory deadline was unreasonable in principle. Instead, they contend that specific circumstances made compliance impossible despite good-faith efforts: non-cooperation by management, the complexity of transactions, the unavailability of information, parallel litigation, or unanticipated operational complications. The deeper revelation across these filings is that the Code's timelines assume a level of cooperation, information availability, and procedural simplicity that practice consistently refuses to provide.

Temporal anxiety also manifests in aggressive form, with affidavits opposing extensions, demanding strict timeline adherence, and invoking automatic liquidation provisions. These filings, typically by financial creditors frustrated with inadequate resolution plans or creditors who prefer liquidation to uncertain recovery, weaponise time by arguing that deadlines must be enforced and that extensions are unwarranted.[24] The corpus reveals time being used not as a neutral procedural mechanism but as a strategic lever to force outcomes that would not emerge from deliberative processes. Resolution applicants time late submissions to exploit deadline pressure; creditors threaten to let timelines expire to force liquidation; promoters file last-minute settlement applications; appellants use appeal timelines to delay plan implementation. The cumulative effect is that temporal strictness, intended to ensure speed, instead generates a different category of inefficiency: decisions made under artificial pressure that lack the quality to withstand subsequent scrutiny, thereby spawning further rounds of litigation.

**(iv) Anxiety of Fraudulent Dissipation and Avoidance.**

A substantial strand of the affidavit corpus concerns avoidance actions, attempts to claw back transactions occurring before insolvency that allegedly preferred some creditors, undervalued assets, or fraudulently dissipated the estate. The statutory provisions of Sections 43, 45, and 66 of the Code create lookback periods during which transactions can be avoided and reversed, and the affidavits reveal this power as a central battleground where pre-insolvency commercial conduct is retroactively judged through the lens of subsequent failure.[25]

Affidavits filed by Resolution Professionals and liquidators alleging avoidance violations reveal

[23] Insolvency and Bankruptcy Code 2016, § 12.

[24] ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1; see also Section 12 and Section 33, Insolvency and Bankruptcy Code, 2016 (mandatory CIRP timeline and automatic liquidation consequence upon non-adherence).

[25] Insolvency and Bankruptcy Code 2016, § 43, 45, 66.

a consistent pattern: examination of the corporate debtor's pre-insolvency transactions discloses payments to related parties, asset transfers to group companies, preferential settlements with select creditors, security creation favouring particular lenders, loans to promoters, and various other transactions that, viewed retrospectively through the lens of insolvency, appear to constitute extraction before collapse. The defence most commonly raised is that the transactions were "in the ordinary course of business" and therefore exempt under the statutory exceptions. The affidavit corpus reveals extensive litigation over what constitutes ordinary course, whether paying one supplier in full while others remain unpaid is ordinary, whether creating new security for a bank after years without it is ordinary, or whether transferring assets to a group company at book value is ordinary for a company approaching insolvency. The definitional elasticity of "ordinary course" enables almost any transaction to be defended with sufficient legal creativity,[26] making avoidance litigation among the most protracted and contested in the insolvency ecosystem. This is confirmed by the quantitative findings in Section VI, which identify avoidance applications as recording the lowest disposal rate in the entire dataset at 26.8 per cent, with 73.2 per cent of such applications remaining pending.

**(v) Anxiety of Being Bound Without Adequate Voice.**

The fifth major theme concerns situations where stakeholders find themselves bound by decisions in which they had inadequate participation, insufficient voice, or no vote. This anxiety manifests most acutely in three contexts: operational creditors bound by resolution plans they had no role in approving; dissenting financial creditors bound by majority CoC decisions they opposed; and all creditors bound by tribunal orders they feel were reached without adequate hearing.[27] Section 31(1) of the Code provides that approved resolution plans bind all stakeholders, including those who did not vote for the plan, did not participate in the process, or were not adequately notified of the proceedings.[28] This broad binding effect, while necessary for plan implementation, generates profound legitimacy concerns that manifest as extensive affidavit litigation.

Operational creditor affidavits are particularly revealing in this regard. These creditors, often small and medium vendors or service providers, find themselves bound by resolution plans approved by a Committee of Creditors composed exclusively of financial creditors, which typically offer operational creditors nominal recovery, often in the single digits of admitted claims. The affidavits reveal that operational creditors recognised they had no seat at the table and no vote on the plan, yet the approved plan binds them completely. The stated purposes in these affidavits vary, seeking better treatment, challenging plan approval, requesting exclusion from binding effective but the underlying concern is consistent: the legitimacy of a binding outcome that was reached without meaningful participation.

[26] Anuj Jain v Axis Bank Ltd (2020) 8 SCC 401.

[27] *Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Ltd* (2021) 1 SCC 401.

[28] Insolvency and Bankruptcy Code 2016, s 31(1).

## CONCLUSION

The evolving judicial and legislative response indicates a growing recognition of the need to curb frivolous and excessive interlocutory filings. Recent policy discussions and parliamentary observations have acknowledged that delays in insolvency proceedings are not merely a function of institutional capacity constraints, but are also attributable to the manner in which proceedings are conducted, particularly through fragmented and IA-driven litigation.

In this context, the imposition of costs on frivolous applications, stricter case management practices, and the development of mechanisms for summary disposal of routine procedural filings assume critical importance. The objective is not to restrict legitimate access to procedural remedies, but to ensure that such remedies are not misused in a manner that undermines the time-bound framework of the IBC.

In this context, the introduction of statutory penalties represents a critical design correction within the framework. The absence of a robust deterrent mechanism had previously enabled parties to engage in strategic filings with minimal consequences, effectively externalising the cost of delay onto the system and other stakeholders. By internalising this cost through financial penalties, the amended framework seeks to realign litigation incentives with the core objectives of efficiency and timeliness. However, the success of this reform will depend on consistent judicial application and the development of principled standards to distinguish legitimate procedural recourse from mala fide delay tactics.

The comprehensive analysis of 108,934 interlocutory applications filed before the National Company Law Tribunal from January 2016 to March 2025, supplemented by a qualitative examination of 14,700 systematically sampled affidavits, reveals a system that exhibits both significant institutional strengths and key structural challenges.

The comprehensive analysis of 108,934 interlocutory applications filed before the National Company Law Tribunal from January 2016 to March 2025 reveals a system exhibiting both significant strengths and critical weaknesses. The overall disposal rate of 77.55 percent demonstrates baseline efficiency, with most benches disposing three-quarters of applications within six months, proving that rapid processing is achievable. However, substantial performance variations across benches, persistent backlog accumulation in specific jurisdictions, and longer disposal timelines for complex application types indicate areas where targeted procedural refinements may further enhance efficiency.

The evidence-based findings establish five critical patterns. First, a statistically significant inverse relationship between caseload volume and disposal efficiency, wherein high-volume benches experience proportionately greater adjudicatory pressure. Second, a stark complexity-delay correlation where routine administrative matters exceed 90 percent disposal while complex legal applications fall below 60 percent. Third, notable geographic variations in efficiency with performance varying by factor of 3.3 across benches despite uniform legal frameworks. Fourth, a bimodal pendency distribution indicating both flow and stock problems. Fifth, consistent evidence that 75-85 percent fast-track disposal is achievable across all benches, with problems concentrated in specific case cohorts.

Immediate action priorities include emergency intervention for 1,028 cases pending beyond six years, targeted clearance of 7,430 cases in the two-to-four-year bracket at risk of chronic delay, and establishment of specialized avoidance application benches to address the 73.2 percent pendency rate in this critical application category.

Short-term reforms should focus on resource reallocation based on empirical volume-performance relationships, implementation of three-track case management differentiating administrative, standard, and complex matters, replication of best practices from high-performing benches, and establishment of real-time performance monitoring dashboards enabling early warning for emerging backlogs.

In addition, there is an urgent need for institutional capacity augmentation. The concentration of caseload in select benches, particularly in metropolitan jurisdictions, necessitates the establishment of additional benches and the development of specialised insolvency divisions within the tribunal structure. Without such expansion, procedural and legislative reforms are unlikely to translate into meaningful reductions in delay.

Medium-term solutions require bench strength expansion at Delhi and Mumbai proportional to caseload concentration, creation of specialized financial law benches with technical expertise for complex avoidance and valuation matters, comprehensive overhaul of fast-track CIRP procedures addressing the catastrophic 77.5 percent pendency rate, and deployment of technology-enabled case management systems with AI-based priority scoring and predictive analytics.

Long-term structural reforms should aim at segregating large number of affidavits being filled as a part procedural compliance. Such cases which do not need any judicial interpretation and filled as a compliance in relation to provisions of the code and regulations made thereunder., can be facilitated to be disposed of at the office of registrar.

Further there is need to implement pendency-based dynamic resource allocation enabling mobile deployment to emerging hotspots and develop an integrated justice delivery ecosystem encompassing electronic filing, virtual hearings for routine matters, and comprehensive stakeholder access to case tracking information.

The analysis demonstrates that the National Company Law Tribunal system possesses inherent capacity for efficient processing, as evidenced by high-performing benches and the consistent ability to dispose three-quarters of applications within six months. The challenge lies not in establishing whether efficiency is achievable but in replicating best practices universally and addressing the specific bottlenecks affecting complex applications and chronic backlogs. Implementation of the phased recommendations grounded in quantitative evidence promises substantial improvement in disposal efficiency, pendency reduction, and overall effectiveness of India's insolvency resolution framework.

# 17 IMPACT OF IBC ON POST RESOLUTION FIRM OUTCOMES AND STATE CAPACITY

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## ABOUT THE POST RESOLUTION STUDIES OF 2023 AND 2026

Assessments of Insolvency and Bankruptcy Code, 2016 (IBC/Code) outcomes have, mainly focused on creditor realisations. While that is a good starting point for assessing the effectiveness of IBC, we need to keep in mind that the goal of the legislation was always to return assets to a productive state. The firm houses those assets, whether as machinery, buildings, know-how or intellectual property. To examine firm-level outcomes, the Insolvency and Bankruptcy Board of India (IBBI) commissioned IIM Ahmedabad to study the performance of resolved firms post-resolution. The first edition of the study (August 2023) tracked resolved firms three years post-resolution (T+3). The updated report (March 2026) extends the analysis to five years (T+5). This article draws from both the studies to provide an understanding of the impact of successful resolution on firm health post-resolution.

The author's goal was to understand if resolved firms contribute to the economy through employment, investment, and efficient use of their assets.

The resolved firms were identified using the IBBI database. Initially 1194 firms were identified. Exclusions were made due to non-availability of data, firms that were financial intermediaries, and firms with missing or zero-sales data. This left us with data from 844 firms for the T+5 study. Financial data was sourced from the Ministry of Corporate Affairs from FY 2013 to FY 2024.

The author also compared the performance of resolved firms with similarly sized firms in the same sector or industry (i.e. peers). Data on peer firms was obtained from the CMIE Prowess database, covering 5,085 firms over the same period.

Each resolved firm is tracked from the point it entered the insolvency process, rather than by the calendar year in which these events occurred. This allows firms that went through the process at different points in time to be meaningfully compared with each other. The analysis also accounts for economy-wide conditions, such as the COVID-19 pandemic.

## PERFORMANCE OF RESOLVED FIRMS

Overall, the results indicate a significant improvement in the performance of resolved firms in the post-resolution period. The 2026 findings at T+5 are, in most cases, stronger than those reported at T+3 in the 2023 study. When the bankruptcy process was initiated, the average resolved firm had an operating margin of -26% and an asset turnover ratio (net sales to assets ratio) of 0.37, indicating that these firms were both loss-making and generating limited revenue relative to their asset base (T+5).

**Table 1: Key Performance Metrics — Resolved Firms**

| Indicator | T+3 (2023) | T+5 (2026) |
|---|---|---|
| Operating Margin | +4% | +8% |
| Sales Growth | +76% | +89% |
| CAPEX Growth | +130% | +106% |
| Asset Turnover | +53% | +131% |
| Employee Expenses | +50% | +71.91% |

*Sources: (IIMA, 2023, 2026)*

More data is available in case of listed firms amongst the resolved firms. The analysis showed that the total market capitalisation in case of listed firms increased from INR 2.8 lakh crore to INR 9 lakh crore (T+5, 83 firms).

Overall, the operating margins have seen an improvement from -26% at the time of bankruptcy (T+5), though the net margins (ratio of net profit to total sales) continue to remain negative. Convergence with the peers is seen in the case of both net margins and operating margins (T+5). The authorwill have to wait longer to see how the metrics for ratios such as Return on Capital Employed (ROCE) and CAPEX ratio pan out.

***Liquidity & Leverage***

Liquidity as measured by ratio of current assets to current liabilities, has shown a significant improvement in the post-resolution period. The current ratio improved from 1.01 at the time of bankruptcy to 2.09 at T+5, an improvement of 106%. The 2023 study had reported a current ratio of 1.83 at T+3, indicating that the improvement has continued over time. The liquidity ratios of resolved firms at T+5 are close to the averages observed for industry and size-matched performing firms, suggesting a recovery in the operational position of these firms.

The trends in leverage ratios also indicate an improvement in the post-resolution period. The interest coverage ratio (i.e ability to service interest payments) has recovered to near pre-bankruptcy levels. Resolved firms show higher leverage relative to its peers in the post-resolution period. This likely reflects the debt raised to fund the capital expenditure and working capital, rather than a deterioration in financial health.

Capital expenditure increased by 106% in the T+5 study, indicating a build-up of productive assets in the balance sheets of resolved firms. The asset turnover ratio increased from 0.37 at the time of resolution to 0.87 at T+5. Activity ratios, which measure the efficiency of working capital management, also show an improvement in the post-resolution period. Inventory days, receivables days, and payables days have all declined, indicating improved management of the production cycle, collections, and supplier payments under new ownership.

***Recovery Rates and Resolution Costs***

The T+5 study showed an average time value adjusted recovery rate of 33.79% compared to 30.07% in the T+3 study. On average, financial creditors recovered 38.79% of admitted claims, compared to 35% reported in the 2023 study. Operational creditors recovered an average of 23.29%, compared to 21.89% previously. These values have been adjusted for the opportunity cost of capital at a 7% discount rate, approximating the 10-year Government of India treasury yield.

Recently, the Standing Committee on Finance (2025-26) noted a recovery rate of 32.8% against total admitted claims and 170% against liquidation value under the IBC.

Recovery rates vary across industries. The highest recovery rates for both financial and operational creditors are observed in the Hotels and Restaurants industry. The lowest recovery rates are

observed in the Electricity, Gas and Water Supply industry (T+3) and Mining and Quarrying (T+5). Both the studies find that the highest recovery rates are observed in asset-light industries, holding substantial intangible assets. The extraction of value from intangible assets by the creditors, and their prospective monetisation by applicants indicates that going-concern value may be better realised through a competitive auction process.

Analysing the cost of resolution as affected by the time taken to resolve, the analysis shows that resolution costs rise disproportionately with delays. Further, time is only one of the factors affecting the cost of resolution. Other key factors are case complexity, industry, and firm size. For instance, resolution expenses in the Wholesale and Retail Trade sector could amount to nearly half of the realisable amount, in part due to extended timelines. Therefore, time bound resolution is necessary to keep the recovery rates high. Delays in the process impose a cost that is ultimately borne by creditors.

***Survey and Interview Findings***

The T+3 study was also accompanied by a survey of 62 resolved firms, along with focused interviews with management representatives. The results showed that approximately 3 out of 4 respondents were satisfied by the firm productivity, only half were satisfied by the financial position of the firm.

Access to financing was identified as a continuing problem in the post-resolution period. A third of the surveyed firms were able to obtain financing from banks after resolution. However, only 40% of those firms indicated that the terms were reasonable and acceptable.

The respondents indicated that they were overall satisfied in their interaction with the NCLT. The delays arising from appeals were flagged as being a cause of friction.

Respondents also noted difficulties faced in obtaining clearances from the Income Tax Department, Customs Department, and the Reserve Bank of India. As regards, the Resolution Professionals (RPs), during the focus interview, the respondents stated that while the overall working of RPs was satisfactory, there was scope for improvement in business and managerial skills. Additional training was suggested in business management, given that they are required to oversee firm operations during the interim period, and usually do not have such a background.

## NCLT: A LOAD BEARING PILLAR OF THE ECONOMY

The recent observation of the Supreme Court in the case of *AVJ Heightss Apartment Owners Association v. IIFL Finance Limited & Anr.* noted the delays in approval of resolution plans. The observations led to the *suo moto* taking up of the issue of manpower shortage and infrastructure gaps at NCLT. While news reports usually point out the increasing time to resolution, and the cost of delays, the observations by Bench of Justice J.B. Pardiwala and Justice K.V. Viswanathan show how both the problems are a symptom of the disease. These concerns are not new, and have been raised numerous times before.

The coming into force of the IBC, was also closely accompanied by the reorganisations of Tribunals. The NCLT was notified in June, 2016 under the Companies Act, 2013. Shortly afterwards, the Finance Act, 2017 reorganised the working of the Tribunals. The scope of both NCLT and NCLAT stood significantly expanded and altered.

The reorganisation and the rules issued thereunder were challenged before the Supreme Court. One of the issues raised was the necessity of undertaking a Judicial Impact Assessment. The Supreme Court directed that such an exercise should be undertaken and sufficient resources made available to the Tribunals (*see Issue V, para. 189).*

The Standing Committee on Finance (2024-25) flagged the whole gamut of challenges (severe

manpower shortage, reliance on contractual staff, use of technology, infrastructure issues etc). Similar issues had been raised by the NCLT Bar association before the Delhi High Court, via a writ petition in 2018. Last year the NCLT Bar Association highlighted the water leakage in 3 court rooms, which had led to the floor being designated as 'unsafe'. The courts then commenced functioning on a half-day basis (letter dated 4 September 2025).

Fundamentally, this is an issue of 'state capacity. A justice delivery system, spreads the gains or losses widely, while the 'State' bears the costs. So while the IBC has been 10 years in the making, so has the slow but steady spreading of cracks along this load bearing pillar of our economy. The state muscle needed to ensure 'maintenance' is different from the muscle needed to 'create'. The maintenance muscle is tested every day, challenged by all stakeholders.

In the case of NCLT, the Supreme Court noted that the delay in resolutions awaiting approval before the NCLT ranged from 48 days to 738 days (approx. 2 months to 2 years). Firms, their lenders, and future resolution applicant (buyers) are all calculating the margins they have to maintain in order to absorb the delays. The creditors incorporate these delays by increasing interest rate; the buyers by reducing the offer size as machines are out of commission for longer; and firms by reducing credit uptake.

## CONCLUSION

Continuous monitoring of the functioning of the Code and its institutions should become a regular and institutionalized exercise. Across the world, periodic surveys and impact assessments of laws, courts, and tribunals are undertaken annually to evaluate their effectiveness, identify operational bottlenecks, and assess institutional capacity. Such reviews help policymakers and stakeholders understand whether the objectives of the legal framework are being achieved and what reforms may be necessary.

In this regard, the IBBI, along with the Ministry of Corporate Affairs, has already taken initial steps by examining post-resolution outcomes of firms in two separate studies, and many other studies. The studies on post resolution outcomes show significant achievements on firms that have come out of the resolution process. Be that as it may, there remains significant scope for developing a more comprehensive and systematic assessment mechanism to evaluate the overall health and performance of the IBC framework on an annual, or at least biennial, basis. Regular publication of such assessments would provide valuable insights to all stakeholders in the insolvency ecosystem, enable evidence-based policy corrections, and strengthen confidence in the insolvency regime.

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