
BEYOND THE STATUTE: THE JUDICIAL EVOLUTION OF THE INSOLVENCY AND BANKRUPTCY CODE

Kshitij Arora, Amity Law School, Amity University Noida, Uttar Pradesh

ABSTRACT

The Insolvency and Bankruptcy Code, 2016, or the IBC, 2016, represents a watershed moment in Indian corporate insolvency landscape, addressing the inefficiencies and fragmentation that plagued earlier legal frameworks such as the Companies Act, 1956, the SARFAESI Act, 2002, and the Sick Industrial Companies Act (SICA), 1985. This chapter critically examines the legislative evolution leading up to the enactment of the IBC, highlighting the systemic shortcomings of the pre-IBC regime and the need for a unified, time-bound resolution mechanism.

The chapter explores the key provisions and objectives of the IBC, which seeks to promote creditor-in-control processes, maximize asset value, and ensure efficient resolution or liquidation. It further maps the institutional framework established under the Code, including the roles of the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), the Insolvency and Bankruptcy Board of India (IBBI), and insolvency professionals (IPs), emphasizing their interlinked functions and growing importance.

Through a discussion of pivotal judicial precedents, including *Jet Airways*, *Videocon Industries*, and *Shilpi Cable Technologies*, the chapter investigates the judiciary's proactive role in developing insolvency jurisprudence, particularly in cross-border insolvency and group resolution. Additionally, it reviews significant amendments and policy developments, such as introducing the Pre-Packaged Insolvency Resolution Process (PPIRP), digital innovations, and sector-specific adjustments for MSMEs and real estate.

By weaving together legislative analysis, institutional design, and judicial contributions, the chapter offers a comprehensive understanding of the IBC's functioning. It concludes by asserting that while the IBC has considerably improved India's insolvency regime, continuous refinement through policy reform, institutional strengthening, and international alignment remains essential for sustained effectiveness.

Keywords: Insolvency and Bankruptcy Code (IBC); Corporate Insolvency; Institutional Framework; NCLT; Cross-Border Insolvency; Group

Insolvency; Judicial Precedents; PPIRP; MSME Insolvency; Insolvency Law Reform; Creditor Rights.

I. Pre-IBC Scenario: Fragmented Laws

1. Companies Act, 1956

The Companies Act 1956 is the most notable legislation that attempted to handle corporate insolvency and liquidation through the IBC in 2016. It claimed to make provisions for restructuring corporations by liquidating and distributing assets or even running solvent businesses. It was unsuccessful due to its drawn-out nature and never-ending court proceedings, clawing back the possibility of any creditor receiving funds. A. Corporate insolvency provisions.

Section 433 of The Companies Act of 1956 gives authority to a company to liquidate itself due to several reasons and, therefore, also automatically offers the option of winding up the company:

- i. Inability to pay debts: If a company fails to pay a debt of INR 500 or more for three weeks after being served with a demand notice, it could be wound up by the Court.
- ii. Just and equitable grounds: The High Court could order winding-up if it deemed the company's continuation prejudicial to its shareholders or the public.
- iii. Creditors' petitions: Financial creditors could initiate winding-up proceedings by filing a petition seeking liquidation of the debtor's assets to recover their dues.

The lack of progress defines the gaps in the Companies Act's approach to winding up. The absence of a well-defined timeline further accelerates the erosion of the asset's value, prolonging litigation. The processes were commonly postponed because of overloaded courts, which left cases waiting for decades and creditors unable to recoup their funds. B. Winding-up proceedings.

The Companies Act prescribed several steps as part of the winding-up process, which included:

- i. Petition Filing: The creditors or the company could commence the winding-up proceedings by petitioning the High Court.

- ii. Appointment of a Liquidator: The Court would hear the petition and, if approved, appoint a liquidator to manage the sale of assets and payment to creditors.
- iii. Asset Liquidation: The liquidator's duty was to sell the company's assets and pay the creditors as per the payment structure.
- iv. Distribution of Proceeds: The proceeds of the liquidated assets were paid according to the diminishing order of seniority. Secured creditors got paid first, then the unsecured creditors, and finally, equity shareholders became entitled to payment.

The lack of insolvency and bankruptcy sector specialists, compounded by the absence of dedicated insolvency tribunals, meant that insolvency cases were handled at High Courts that were overwhelmed with civil and commercial disputes, resulting in further delays and complications. These tribunals were already under immense pressure due to an existing backlog, which led to further inefficiencies. Cases taking decades to resolve meant that the companies were severely distressed and losing substantial value.

2. SARFAESI Act, 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002, was implemented to structure rehabilitation of the NPAs problem in the Indian financial system. It also sought to facilitate the recovery of dues by secured creditors (chiefly financial enterprises) without resorting to court proceedings. This legislation, which seems to be solely for the benefit of lenders, was intended to enhance the maneuverability of banks regarding recovery measures and cut down the courts' workload.

A. Asset reconstruction.

The SARFAESI Act established three levels of hierarchy concerning the surrender of debt obligations to financial institutions:

- i. Notice of Default: It compelled the lender to issue a notice regarding default to the borrower, demanding payment within 60 days.
- ii. Enforcement of Security Interest: Upon non-compliance, the lender could take the following actions:

- a. Take possession of the secured assets.
 - b. Auction of the assets to recover the outstanding dues.
 - c. Appoint a receiver to manage the secured property.
- iii. Asset Reconstruction Companies (ARCs): It enhanced the capacity of banks to offload their distressed assets to ARCs, which were permitted to either restructure or dismantle the assets to recover some value.

B. Lender-centric recovery mechanisms.

Tough the SARFAESI Act helped make it possible for secured creditors to recover their money quickly, it was too biased in Favor of lenders and did not consider the following:

- i. Operational creditors: Vendors, suppliers, and other operational creditors had no recourse under SARFAESI, leaving them without protection in insolvency cases.
- ii. Unsecured creditors: The Act only protected secured creditors, leaving unsecured creditors with limited recovery options.
- iii. Judicial delays: Although SARFAESI was designed to bypass courts, borrowers often challenged the recovery proceedings through litigation, delaying enforcement and reducing effectiveness.

3. SICA, 1985

The Sick Industrial Companies (Special Provisions) Act (SICA), 1985, was introduced to revive financially distressed companies. It aimed to prevent the closure of sick industrial units by facilitating their restructuring and rehabilitation. The Act was intended to protect the interests of workers and promote industrial recovery, but its implementation proved highly inefficient.

A. Revival of sick companies.

Under SICA, financially distressed companies were referred to the Board for Industrial and Financial Reconstruction (BIFR), which was tasked with overseeing their revival. Key

provisions included:

- i. **Classification of Sick Companies:** Industrial companies with accumulated losses equal to or exceeding their net worth were classified as sick companies.
 - ii. **Rehabilitation Plans:** The BIFR could propose mergers, acquisitions, or financial restructuring to facilitate the company's recovery.
 - iii. **Moratorium on Legal Proceedings:** During the rehabilitation process, creditor actions were stayed, providing companies with temporary relief from legal proceedings.
- B. Inefficiency in resolution.

B. Inefficiency in resolution.

Despite its intended objectives, SICA was largely ineffective in reviving sick companies due to several challenges:

- i. **Prolonged Proceedings:** The BIFR proceedings were often delayed for years, allowing companies to exploit legal loopholes and evade creditor claims.
- ii. **Lack of Enforcement Powers:** The BIFR lacked the authority to enforce its decisions, making the rehabilitation process weak and inefficient.
- iii. **Misuse of the Act:** Companies frequently misused SICA as a shield to avoid creditor claims, leading to increased litigation and financial losses for creditors.

II. Key Provisions and Objectives of the IBC, 2016

1. Objectives

The Insolvency and Bankruptcy Code (IBC), 2016, sought to simplify the underlying processes and system infrastructure after the pre-IBC regime, which was a disorganized and lacklustre attempt at attempting insolvency. The new system is set to increase resolution speed, enforce economic value incentivization, and protect creditors' interests.

A. Time-bound resolution process.

A. Time-bound resolution process.

One of the IBC's goals is to resolve insolvency cases within a bounded period. It implements the cap of 180 days on completing the Corporate Insolvency Resolution Process (CIRP), which can be extended once for an additional 90 days, making the maximum achievable duration 270 days. This ceiling limit fights undesired null delays while preserving the relevant value.

Due to a lack of provisions under the pre-IBC structure, insolvency cases would take numerous years due to systemic inefficiencies, eroding available value, and recovery for creditors. Timelines enforced due to this IBC structure strengthen the null delay issue, making it easier for investors and creditors to trust the system.

B. Maximizing asset value.

Last, the other core activity the IBC concentrates on is distressed assets: the depreciated market value, which brings unique benefits. The Code prevents value loss through prolonged processes, making the asset more appealing to hold onto.

Furthermore, the IBC has a waterfall structure for distributing proceeds that pay secured creditors first. This ensures creditors recover the most from the distressed company's assets. C. Enhancing creditor confidence.

C. Enhancing creditor confidence.

Under the IBC, financial creditors are given more power by being made Committee of Creditors (CoC) members. This strengthens creditor confidence because they are important in deciding whether to approve or disapprove resolution plans.

Moreover, the unlevelled balance of power is tilted toward secured creditors above other nonsecured creditors, making the insolvency framework more favourable to creditors. The IBC encourages optimal financial stability and fosters lending by guaranteeing transparent and equitable recovery systems.

2. Key Provisions

The IBC, 2016, introduced a legal framework for resolving insolvency in one piece, in place of the incoherent and obsolete laws that existed before the IBC. It provided orderly steps and

institutional frameworks for prompt and open resolution. A. Corporate Insolvency Resolution Process (CIRP).

A. Corporate Insolvency Resolution Process (CIRP).

The IBC defines the Corporate Insolvency Resolution Process (CIRP) as the most important way to resolve corporate insolvencies. It offers an orderly way for distressed firms to either:

- i. Undergo restructuring and continue operations or,
- ii. Face liquidation if the resolution plan is not approved.

Key Stages of CIRP¹:

i. Filing of Insolvency Petition:

- a. The CIRP starts when either a financial creditor, operational creditor, or corporate debtor self-files an insolvency petition with the National Company Law Tribunal (NCLT).
- b. During the first hearing, the NCLT appoints an Interim Resolution Professional (IRP) from the list of registered insolvency professionals who shall supervise the affairs of the debtor post-admission.

ii. Moratorium Period:

- a. Upon step 1, the NCLT simultaneously adopts procedures to suspend any legal action to safeguard the debtor.
- b. This legal suspension caters to the removal of creditor distractions to create the necessary resolution to save the debtor from complete financial collapse strategically.

iii. Formation of Committee of Creditors (CoC):

- a. IRP commences the creation of a CoC composed of financial creditors with voting

¹ Corporate Insolvency Resolution Process Under IBC, INCORP ADVISORY, <https://incorpadvisory.in/blog/corporate-insolvency-resolution-process-under-ibc/> (last visited Mar. 24, 2025).

privileges regarding the acceptance or denial of a given resolution plan.

- b. CoC makes fundamental decisions on the debtor's life, including staying out of restructuring deals or facing automatic liquidation.

iv. Voting and Approval of Resolution Plan:

- a. For the resolution plan to pass, approval must be obtained from a minimum of two-thirds of the votes of the CoC.
- b. The company is pushed into liquidation if the CoC fails to approve the plan, or no resolution plan is proposed within the specified period.

B. Liquidation process.

If the CIRP fails or no resolution plan is approved within the specified timeline, the debtor undergoes liquidation. The liquidation process involves:

i. Appointment of Liquidator:

- a. The Resolution Professional (RP) appointed during the CIRP becomes the liquidator, responsible for managing the debtor's assets.
- b. The liquidator oversees the sale of assets and the distribution of proceeds.

ii. Asset Valuation and Sale:

- a. The liquidator evaluates and sells the debtor's assets to maximize creditor recoveries.
- b. The proceeds are distributed according to the waterfall mechanism specified under Section 53 of the IBC², prioritizing secured creditors over unsecured ones.

iii. Distribution of Proceeds:

² The Insolvency and Bankruptcy Code, 2016, § 53, IBBI, <https://ibbi.gov.in/uploads/legalframework/2020-0923-232605-8ldhg-e942e8ee824aa2c4ba4767b93aad0e5d.pdf> (last visited Mar. 24, 2025).

- a. Secured creditors are given top priority.
- b. Workmen's dues for the preceding 24 months are paid next.
- c. Unsecured creditors and government dues follow.
- d. Equity shareholders receive the residual amount, if any.

C. Rights of financial and operational creditors.

The IBC clearly defines the rights and priorities of financial and operational creditors, ensuring equitable treatment during insolvency proceedings.

Financial Creditors:

- i. Financial creditors, such as banks and financial institutions, prioritize the debtor's assets first.
- ii. They form the CoC and have voting power to approve or reject resolution plans.
- iii. In the event of liquidation, financial creditors receive priority distribution under the waterfall mechanism.

Operational Creditors:

- i. Operational creditors, including vendors, suppliers, and employees, have limited voting rights and are only part of the CoC if financial creditors are absent.
- ii. The IBC mandates that operational creditors receive at least the liquidation value or more in the resolution plan.
- iii. Their interests are protected through mandatory payments during insolvency, ensuring they are not left uncompensated.

III. Institutional Mechanisms

1. National Company Law Tribunal (NCLT)

The National Company Law Tribunal (NCLT), established in 2013, adjudicates issues pertaining to corporate debtors under the Insolvency and Bankruptcy Code (IBC) of 2016. As outlined in the Companies Act of 2013, the NCLT has jurisdiction over initiating and supervising insolvency proceedings; under the IBC, the NCLT has been invested with jurisdiction over liquidating enterprises deemed insolvent. The NCLT holds an exemplary position in controlling admission, adjudication, and supervision of the Corporate Insolvency Resolution Process (CIRP), which forms a part of the insolvency ecosystem.³

Jurisdiction and Functions

The NCLT has exclusive jurisdiction over:

- i. Corporate Insolvency Proceedings: In terms of Section 7, and Section 9, respectively, the NCLT possesses jurisdiction over petitions submitted by financial and operational creditors to the IBC.
- ii. Moratorium Orders: After accepting an application for insolvency, the NCLT imposes a moratorium that suspends all judicial activities relative to the corporate debtor, thereby providing sanctuary and protection to the corporation.
- iii. Approval of Resolution Plans: The NCLT assesses, approves, and disapproves resolution plans submitted by the Committee of Creditors (CoC). If the plan does not meet the legal requirements prescribed, it may be rejected, and the NCLT will commence liquidation.
- iv. Liquidation Proceedings: Where the CIRP fails, the NCLT initiates the liquidation process and appoints a liquidator to sell and distribute the assets.
- v. Cross-Border Insolvency: Sections 234 and 235 of the IBC mandate that the NCLT is empowered to issue letters of request to other jurisdictional courts for assistance in crossborder insolvency matters.

Powers and Impact

The NCLT is vested with the power to:

³ National Company Law Tribunal, <https://nclt.gov.in/> (last visited Mar. 24, 2025).

- i. Admit or refuse applications for insolvency depending on whether a default has occurred.
- ii. Assign the responsibility of managing the debtor's affairs to an Insolvency Resolution Professional (IRP) for the Debtor's Corporate Insolvency Resolution Process (CIRP).
- iii. Make decisions on the distribution of assets and creditors' claims in the liquidation process.
- iv. Manage cooperation in cross-border insolvency with other countries through their courts.

2. National Company Law Appellate Tribunal (NCLAT)

The National Company Law Appellate Tribunal is the first appellate Court to the NCLT, under the provisions of the IBC, to hear appeals from the NCLAT. It was set up under Section 410 of the Companies Act 2013 and hears appeals against the IBBI and the Competition Commission of India (CCI)⁴.

Jurisdiction and Functions

The NCLAT primarily handles:

- i. Appeals against NCLT Orders: Any creditor, debtor, or even an insolvency professional may appeal before the NCLAT for an NCLT order within a month of the decision.
- ii. Review of Resolution Plans: Affected parties may seek the appellate Court's intervention if the NCLT decides on a resolution plan.
- iii. Cross-Border Insolvency Appeals: The NCLAT also deals with appeals related to crossborder insolvency proceedings, thus supervising international insolvency issues.

Powers and Impact

The NCLAT has the authority to:

- i. Overturn or modify NCLT decisions if they are deemed erroneous.
- ii. Grant interim relief during the pendency of appeals.
- iii. Review the conduct of insolvency professionals and regulatory bodies, such as the IBBI.

⁴ National Company Law Appellate Tribunal, <http://nclat.nic.in/> (last visited Mar. 24, 2025).

- iv. Establish legal precedents, contributing to the evolving jurisprudence of insolvency laws.

3. Insolvency and Bankruptcy Board of India (IBBI)

The legal authority regulating the insolvency process under IBC is the Insolvency and Bankruptcy Board of India (IBBI). It was formed within the IBC under paragraph 188, which mandates the board's framework on the licensing and regulation supervision of insolvency practitioners, professional agencies (IPAs), and Information Utilities (IUs)⁵.

Powers and Functions

The IBBI is tasked with:

- i. **Licensing and regulating insolvency professionals:** The licensing of IPs and IPAs is under the authority of IBBI, provided there is compliance with the ethics and processes laid down by the IBC.
- ii. **Monitoring CIRP and Liquidation Processes:** The IBBI monitors the performance of insolvency professionals and ensures compliance with the IBC framework.
- iii. **Conducting Investigations:** The IBBI may inspect and investigate a practitioner's conduct and take disciplinary steps for improprieties.
- iv. **Issuing Regulations and Guidelines:** Transparency and efficiency are reinforced when IBBI issues guidelines and circulars regulating the insolvency process to streamline efficiency.

Impact of the IBBI

The issues of transparency, accountability, and fairness are the core practices within the insolvency framework that mandate the role of IBBI. Stakeholder confidence is further enhanced through oversight, thereby promoting efficient resolution of insolvency cases.

4. Insolvency Professionals (IPs)

⁵ Insolvency and Bankruptcy Board of India, <https://ibbi.gov.in/> (last visited Mar. 24, 2025).

Insolvency Professionals (IPs) are managers of a corporation who are authorized to take over an insolvency case for an entity. NCLTs appoint them to oversee the CIRP and liquidation proceedings⁶.

Roles and Responsibilities

IPs play a pivotal role in:

- i. **Managing the Corporate Debtor:** The IP takes over the Corporate Debtor from the management and takes control by removing the board of directors.
- ii. **Formation of the Committee of Creditors (CoC):** The IP crosschecks the claims and establishes the CoC, which consists of all crucial resolutions pertaining to the liquidation or debtor's resolution.
- iii. **Drafting and Evaluating Resolution Plans:** The IP drafts the information memorandum, prepares resolution plans, and submits them to the CoC for voting.
- iv. **Liquidation Process:** During liquidation, the IP becomes the liquidator and is responsible for realizing the debtor's assets and distributing the proceeds in a stipulated priority order.

Impact of Insolvency Professionals

The IPs are responsible for providing the necessary protection of the asset's value, reducing the costs in the IBC, and ensuring the CIRP is completed in time. His or her impact is most vital to restoring order within the resolution process.

IV. Judicial Precedents: Cross-Border and Domestic Precedents

1. Jet Airways (India) Ltd. – Cross-Border Insolvency Framework

The Jet Airways case is a landmark decision underlining the lack of constructive cross-border insolvency architecture within the Insolvency and Bankruptcy Code (IBC), 2016. Subsequently, in June 2019, the State Bank of India (SBI) submitted an insolvency petition

⁶ Insolvency Professionals (IPs), Drishti IAS (last updated Mar. 24, 2025), <https://www.drishtiiias.com/dailyupdates/daily-news-analysis/insolvency-professionals-ips>.

against Jet Airways to the Mumbai bench of the National Company Law Tribunal (NCLT), claiming a loan default of around ₹8,500 crores under Section 7 of the IBC.⁷

Simultaneously, two European creditors-initiated bankruptcy proceedings in the Netherlands. The Noord-Holland District Court passed the order for seizure of a Jet Airways Boeing 777 parked at Schiphol Airport due to unpaid dues of nearly ₹280 crores.

The Dutch Court appointed an administrator to oversee Jet Airways' assets within Dutch jurisdiction, while the Indian NCLT admitted the Corporate Insolvency Resolution Process (CIRP) in India. The Dutch administrator sought recognition of the Netherlands proceedings in India and requested that the Indian CIRP be stayed, but the NCLT denied recognition, citing the absence of a formal cross-border insolvency framework.

On appeal, the National Company Law Appellate Tribunal (NCLAT) overturned the decision of the NCLT. The NCLAT permitted the Dutch administrator to consult with the Indian resolution professional, allowing him to participate in the Committee of Creditors (CoC) meetings, albeit without voting rights. This joint resolution process was a landmark development in India's cross-border insolvency jurisprudence, demonstrating the need for Part Z of the IBC, which proposes a comprehensive cross-border insolvency framework.

2. Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd. – Rights of Foreign Operational Creditors

In *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*, the Supreme Court of India addressed the rights of foreign operational creditors under the IBC. The case arose when Macquarie Bank Ltd., a foreign creditor, initiated insolvency proceedings against Shilpi Cable Technologies Ltd., an Indian corporate debtor, for non-payment of operational debt.⁸ The case involved two key legal issues:

⁷ Jet Set and Grounded: Supreme Court Orders Liquidation of Jet Airways, Corporate Law Blog (Nov. 2024), <https://corporate.cyrilamarchandblogs.com/2024/11/jet-set-and-grounded-supreme-court-ordersliquidation-of-jet-airways/>.

⁸ *Macquarie Bank Limited vs. Shilpi Cable Technologies*, Mondaq (Feb. 14, 2018), <https://www.mondaq.com/india/corporate-and-company-law/664032/macquarie-bank-limited-vsshilpi-cable-technologies>.

- i. Whether a foreign operational creditor needed to submit a certificate from a financial institution under Section 9(3)(c) of the IBC.
- ii. Whether a demand notice under Section 8(1) could be issued by a lawyer on behalf of a foreign creditor.

The Supreme Court held that the certificate requirement under Section 9(3)(c) was directory, not mandatory, especially for foreign creditors. The Court also ruled that demand notices issued by legal representatives (lawyers) were valid, expanding the rights of foreign operational creditors to initiate insolvency proceedings in India.

3. State Bank of India v. Videocon Industries Ltd. – Group Insolvency Issues

The State Bank of India (SBI) initiated insolvency proceedings against Videocon Industries Ltd. for unpaid financial debts under Section 7 of the IBC. The case marked a landmark ruling on group insolvency in India. The Mumbai Bench of the NCLT admitted 13 Videocon group companies into a consolidated CIRP, making it the first case of group insolvency resolution under the IBC.

The NCLT's decision was based on the interlinked operations and shared financial transactions between the Videocon group companies. It ruled that group insolvency resolution was necessary to maximize asset value and streamline proceedings, as individual resolutions would have been inefficient. The case highlighted the need for a formal group insolvency framework in India, which the IBC lacks.

4. Intesa Sanpaulo S.P.A v. Videocon Industries Ltd. – Recognition of Foreign Decrees

In this case, Intesa Sanpaulo S.P.A, an Italian financial institution, filed a winding-up petition against Videocon Industries Ltd. before the Bombay High Court, seeking enforcement of a foreign decree issued by the Turin Court, Italy.

The Bombay High Court ruled that:

- i. Foreign creditors could initiate insolvency proceedings in India.
- ii. The existence of a foreign decree did not preclude the filing of a winding-up petition under

Indian insolvency laws.

The Court's decision strengthened the rights of foreign creditors by recognizing foreign insolvency judgments in domestic proceedings, thereby advancing cross-border enforcement under the IBC⁹.

5. Marine Geotechnic LLC v. Coastal Marine Construction & Engineering Ltd. – CrossBorder Dispute Resolution

In this case, Marine Geotechnic LLC, a US-based company, obtained an ex-parte decree from a US District Court against Coastal Marine Construction & Engineering Ltd., an Indian company, over unpaid contractual dues.

The Bombay High Court refused to recognize the US decree, holding that:

- i. Foreign decrees from non-reciprocating territories (such as the US) were not automatically enforceable in India.
- ii. The foreign creditor was required to file a fresh suit in India based on the original cause of action, not merely the foreign decree.

The ruling reaffirmed that cross-border enforcement of foreign decrees was subject to reciprocity agreements under Section 44A of the Civil Procedure Code (CPC).

6. Bank of New York Mellon, London Branch v. Cranes Software International Ltd. – Foreign Creditor Claims

In this case, the Bank of New York Mellon, a foreign creditor, filed a winding-up petition against Cranes Software International Ltd., an Indian company, for defaulting on its Foreign Currency Convertible Bonds (FCCBs).

The Karnataka High Court ruled that:

- i. Foreign creditors have the right to initiate winding-up proceedings under Indian law.

⁹ *Intesa Sanpaolo S.P.A. v. Videocon Indus. Ltd.*, (2013) SCC OnLine Bom 882 : (2014) 1 Mah LJ 597 (India), available at <https://supremetoday.ai/doc/judgement/00400044378>.

- ii. The existence of an exclusive jurisdiction clause in favour of English courts did not bar creditors from seeking remedies in Indian courts.

The ruling emphasized the equal treatment of foreign creditors in domestic insolvency cases under the IBC¹⁰.

7. Reserve Bank of India v. BCCI – Treatment of Foreign Creditors

The Reserve Bank of India (RBI) filed an insolvency petition against the Bank of Credit and Commerce International (BCCI), which operated through its Mumbai branch in India.

The Bombay High Court ruled that:

- i. The foreign insolvency order from the Cayman Islands court was recognized in India.
- ii. The assets of the Mumbai branch were distributed according to Indian insolvency laws, protecting local creditors.

8. Transcore v. Union of India – Debt Recovery Provisions

In Transcore v. Union of India, the Supreme Court of India clarified that:

- i. SARFAESI proceedings could continue alongside CIRP under the IBC.
- ii. Creditors could simultaneously pursue SARFAESI remedies and IBC proceedings, promoting creditor flexibility.

V. Recent Amendments and Policy Shifts

1. Pre-Packaged Insolvency Resolution Process (PPIRP)

The Pre-Packaged Insolvency Resolution Process (PPIRP) was introduced in April 2021 through the Insolvency and Bankruptcy Code (Amendment) Ordinance 2021, aimed explicitly at Micro, Small, and Medium Enterprises (MSMEs). This amendment responded to the financial distress caused by the COVID-19 pandemic, offering a faster, cost-effective, and less

¹⁰ Bank of N.Y. Mellon, London Branch v. Cranes Software Int'l Ltd., I.A. Nos. 1142–1144/2020 in C.P. No. 99/BB/2019, NCLT Bengaluru Bench (India), <https://www.casemine.com/judgement/in/5e96dc8e4653d05364585596>.

adversarial framework for resolving insolvency compared to the traditional Corporate Insolvency Resolution Process (CIRP).

Under the PPIRP, the corporate debtor (CD) retains control over business operations during the resolution process, unlike in CIRP, where the resolution professional (RP) takes over. This debtor-in-possession model ensures continuity of operations, reducing business disruption while allowing creditors to negotiate repayment terms.

Key Features of PPIRP:

- i. **Debtor-in-Possession Model:** Different from CIRP, which entails management takeover, PPIRP permits the debtor to retain operational control. This model allows MSMEs to remain operational while undergoing a scrutiny of debt which staves off further value erosion.
- ii. **Time-Bound Process:** The period within which the insolvency resolution process is to be completed is 120 days, which is a significant reduction from the 330 days under CIRP. The expedited processes characteristic of PPIRP allows for faster resolution and lower depreciation of value.
- iii. **Creditor Approval:** No fewer than 66% of financial creditors have to accept the base resolution plan before it goes to the National Company Law Tribunal (NCLT) for final approval. This ensures that the creditors' active involvement is encouraged and safeguards them.
- iv. **Pre-Negotiated Agreements:** PPIRP fosters out-of-court negotiated agreements between debtors and creditors to minimize legal and judicial involvement and reduce costs, making the process more streamlined than CIRP.

The framework for PPIRP was designed and drafted by the Ministry of Corporate Affairs (MCA), following multi-stakeholder consultation, with the recognition that insolvency processes needed simplified for MDMS firms with limited financial resources during economic contractions.¹¹

¹¹ Insolvency and Bankruptcy Board of India, Pre-Packaged Insolvency Resolution Process 1 (2021), <https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf>.

2. Key Amendments to Enhance Resolution Timelines

The Insolvency and Bankruptcy Code (Second Amendment) Act 2020¹² introduced significant changes to reduce delays and enhance resolution efficiency. These amendments were driven by concerns over prolonged resolution timelines and the need to improve creditor recoveries¹³.

Key Changes:

- i. **Reduction in CIRP Timelines:** The maximum timeline for CIRP completion was initially capped at 270 days, but the amendment extended it to 330 days, including all litigation and appellate processes. This amendment aims to prevent indefinite delays caused by prolonged legal disputes, enhancing the efficiency of the insolvency process.
- ii. **Threshold Increase for Filing CIRP:** The amendment raised the default threshold for initiating CIRP from ₹1 lakh to ₹1 crore, reducing frivolous insolvency filings and ensuring that only significant defaults lead to insolvency proceedings.
- iii. **Expanded Moratorium Provisions:** The amendment broadened the moratorium period to include contractual obligations, preventing the termination of essential contracts (such as lease agreements) during insolvency. This protects the debtor's operational stability, preventing further business deterioration.
- iv. **Empowering the Committee of Creditors (CoC):** The amendment strengthened the CoC's powers by enabling them to approve resolution plans with a simple majority of 66% of voting shares, reducing the scope for deadlocks and enhancing decision-making efficiency.

3. Digital Transformation and Technology-Driven Reforms

Reducing procedural delays and expediting insolvency proceedings are targets of digital integrations into the IBC framework. These integrations improve stakeholder participation, add transparency, and expedite case resolutions.

¹² Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, No. 17, Acts of Parliament, 2020 (India), available at <https://ibbi.gov.in/uploads/whatsnew/aa1ac00c9a594c699c71c2d34fb990f9.pdf>.

¹³ Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, No. 9, Ordinances of 2020 (India), available at <https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-amendment-ordinance-2020>.

Key Technological Reforms:

i. AI-Powered Case Management: Automated systems for insolvency tracking are being implemented, significantly reducing manual documentation processes. This ensures better case management, enhanced decision-making, and expedited documentation processes. ii. E-filing and Virtual Hearings: NCLT implemented these processes during the pandemic period, considerably reducing case backlogs and streamlining the adjudicating processes. iii. Enhanced Role of Information Utilities (IUs): IUs were given enhanced responsibilities in the amendments, requiring real-time financial data to enable better creditor decisions and reduce fraudulent claims, improving the overall financial system.

4. Sector-Specific Amendments: Real Estate and MSME Insolvency

The IBC framework introduced tailored amendments for the real estate sector and MSMEs, recognizing sector-specific challenges.

A. Real Estate Sector:

Following the Amrapali Group insolvency case and Pioneer Urban Land and Infrastructure Limited vs. Union of India¹⁴, the Supreme Court ruled that homebuyers qualify as financial creditors, granting them the right to initiate CIRP and claim dues. This ruling was later codified through an amendment in 2018, granting homebuyers the same rights as financial creditors. The amendment significantly enhanced the legal protection of homebuyers, allowing them to participate directly in creditor committees and CIRP decisions.¹⁵ B. MSMEs and Aviation Sector:

After the Jet Airways insolvency, the MCA recognized the need for sector-specific insolvency frameworks, particularly in the aviation sector. Amendments prioritized aircraft leasing agreements and foreign lessor rights in insolvency cases. This protected aircraft lessors and ensured their contractual rights were preserved during CIRP, reducing uncertainty for foreign

¹⁴ Pioneer Urban Land & Infrastructure Ltd. & Anr. v. Union of India & Ors., (2019) 8 SCC 416 (India), available at https://digiscr.sci.gov.in/view_judgment?id=MTU0MzY=.

¹⁵ Cyril Amarchand Mangaldas, Home Buyers Are Equivalent to Financial Creditors, Supreme Court Rules, Corporate Law Blog (Aug. 13, 2019), available at <https://corporate.cyrilamarchandblogs.com/2019/08/homebuyers-equivalent-financial-creditors-supreme-court-rules/>.

creditors¹⁶.

5. Policy Shifts and Future Directions

The recent amendments and policy shifts reflect India's efforts to:

- i. **Align with Global Best Practices:** The introduction of cross-border insolvency frameworks, based on the UNCITRAL Model Law, aims to streamline multinational insolvency cases and enhance cooperation with foreign courts. This facilitates faster resolution of cross-border disputes and protects the rights of foreign creditors.
- ii. **Enhance Judicial Efficiency:** The government is increasing the number of NCLT benches and promoting the use of dedicated insolvency courts to reduce case backlogs and improve resolution timelines.
- iii. **Strengthen Creditor Rights:** The amendments empower operational creditors by ensuring equitable distribution of recoveries and reducing delays caused by prolonged litigation.

¹⁶ Vishwanath Pratap Singh & Riya Verma, Interplay Between IBC and MCA Notification: Balancing Lessors' Interests and Airline Revival, Bar & Bench (May 17, 2023), available at <https://www.barandbench.com/lawfirms/view-point/interplay-between-ibc-and-mca-notification-balancing-lessors-interests-and-airline-revival>.

REFERENCES

1. Bank of N.Y. Mellon, London Branch v. Cranes Software Int'l Ltd., I.A. Nos. 1142–1144/2020 in C.P. No. 99/BB/2019, NCLT Bengaluru Bench (India), <https://www.casemine.com/judgement/in/5e96dc8e4653d05364585596>.
2. Corporate Insolvency Resolution Process Under IBC, INCORP ADVISORY, <https://incorpadvisory.in/blog/corporate-insolvency-resolution-process-under-ibc/> (last visited Mar. 24, 2025).
3. Cyril Amarchand Mangaldas, Home Buyers Are Equivalent to Financial Creditors, Supreme Court Rules, Corporate Law Blog (Aug. 13, 2019), available at <https://corporate.cyrilamarchandblogs.com/2019/08/home-buyers-equivalentfinancial-creditors-supreme-court-rules/>.
4. Insolvency and Bankruptcy Board of India, <https://ibbi.gov.in/> (last visited Mar. 24, 2025).
5. Insolvency and Bankruptcy Board of India, Pre-Packaged Insolvency Resolution Process 1 (2021), <https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf>
6. Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, No. 9, Ordinances of 2020 (India), available at <https://prsindia.org/billtrack/the-insolvency-and-bankruptcycode-amendment-ordinance-2020>.
7. Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, No. 17, Acts of Parliament, 2020 (India), available at <https://ibbi.gov.in/uploads/whatsnew/aa1ac00c9a594c699c71c2d34fb990f9.pdf>.
8. Insolvency Professionals (IPs), Drishti IAS (last updated Mar. 24, 2025), <https://www.drishtiias.com/daily-updates/daily-news-analysis/insolvencyprofessionals-ips>.
9. Intesa Sanpaolo S.P.A. v. Videocon Indus. Ltd., (2013) SCC OnLine Bom 882 : (2014)

1 Mah LJ 597 (India), available at:
<https://supremetoday.ai/doc/judgement/00400044378>.

10. Jet Set and Grounded: Supreme Court Orders Liquidation of Jet Airways, Corporate Law Blog (Nov. 2024), <https://corporate.cyrilamarchandblogs.com/2024/11/jet-setand-grounded-supreme-court-orders-liquidation-of-jet-airways/>.
11. Macquarie Bank Limited vs. Shilpi Cable Technologies, Mondaq (Feb. 14, 2018), <https://www.mondaq.com/india/corporate-and-company-law/664032/macquarie-banklimited-vs-shilpi-cable-technologies>.
12. National Company Law Appellate Tribunal, <http://nclat.nic.in/> (last visited Mar. 24, 2025).
13. National Company Law Tribunal, <https://nclt.gov.in/> (last visited Mar. 24, 2025).
14. Pioneer Urban Land & Infrastructure Ltd. & Anr. v. Union of India & Ors., (2019) 8 SCC 416 (India), available at https://digiscr.sci.gov.in/view_judgment?id=MTU0MzY=.
15. The Insolvency and Bankruptcy Code, 2016, § 53, IBBI, <https://ibbi.gov.in/uploads/legalframework/2020-09-23-232605-8ldhge942e8ee824aa2c4ba4767b93aad0e5d.pdf> (last visited Mar. 24, 2025).
16. Vishwanath Pratap Singh & Riya Verma, Interplay Between IBC and MCA Notification: Balancing Lessors' Interests and Airline Revival, Bar & Bench (May 17, 2023), available at <https://www.barandbench.com/law-firms/view-point/interplay-betweenibc-and-mca-notification-balancing-lessors-interests-and-airline-revival>.