COMMERCIAL WISDOM AND ECONOMIC JUSTICE UNDER THE IBC: A COMPARATIVE ANALYSIS OF INDIAN AND INTERNATIONAL INSOLVENCY FRAMEWORKS

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Introduction

The Insolvency and Bankruptcy Code[1] has been the bedrock of insolvency laws in the nation since its enactment in the 2016. The code was conceived to provide a dynamic framework to regulate insolvency and bankruptcy proceedings which awards genuine efforts to revive stressed assets and maximize the recovery within the prescribed timelines. The Committee of Creditors serves as the central and most crucial component within the broader framework of the Corporate Insolvency Resolution Process (CIRP). The Committee consists of the Financial Creditors, Operational Creditors and other stakeholders, but works in a creditor-in-control model, where the financial creditor plays dominant role in the approval of the Resolution Plan. The process of such approval is guided by the *commercial wisdom* which refers to the economic judgment exercised by the creditors acting through the Committee of Creditors (CoC) in evaluating the viability and feasibility of a resolution plan.

The doctrine of commercial wisdom has been the cornerstone of the resolution process which mirrors the legislative intent of IBC, that is to minimize judicial interference in a purely business decision. Commercial wisdom of the CoC has been recognised in various judgments of the Supreme Court representing a decisive shift form the pre-IBC era. The Supreme Court has time and again upheld that the decisions made by the CoC cannot be challenged or revised by Tribunals and Courts thus limiting the power of judicial review. This article aims to assert that while the doctrine of commercial wisdom promotes efficiency and creditor confidence, the near-absolute primacy given to the CoC raises serious concerns about the economic justice. A balanced approach is much required where judicial review remains limited and meaningful and is necessary to ensure that the insolvency process remains both economically efficient and

[1] Insolvency and Bankruptcy Code, No. 31 of 2016

legally sound.

Meaning and Scope of Commercial Wisdom

The primary purpose of the Committee is to access the viabilities and determine the most effective path of recovery from. The decision of CoC to approve a resolution plan is based on market conditions, industrial trends and recovery prospects of the debtor, thus ensuring that the resolution remains a market driven and economically efficient process. This decision-making authority is known as the "commercial wisdom" of the CoC which constitutes the fulcrum of the resolution process. The primary reason for awarding this responsibility to the CoC or the financial creditors is because of the expertise they bring to the table. They not only have access to financial information but are well equipped to calculate the economic viability of the plans. It should also be noted that it is the CoC that ultimately bears the financial risk, hence are better placed to make commercial decision.

The commercial wisdom of the CoC is not merely a procedural formality in the debt recovery mechanism but a critical tool in ensuring economic governance and stability. It strengthens creditor confidence but it remains a double-edged sword. The current creditor-centric framework often sacrifices debtor rehabilitation for the sake of Certainty in recovery from the debtor. Importance also has to be given to the right of the corporate debtor to survive and revive its business, thus recognising the very object of the code to facilitate debtor revival. Conversely, this doctrine raises critical questions about economic justice, more particularly the balance between the rights of the creditors and the protection of the corporate debtor. Where the creditors prioritise optimal recovery, the corporate debtor attempts to revive its business.

Judicial Recognition of Commercial Wisdom

The primacy of commercial wisdom has been interpreted and discussed in various judgements of the Supreme Court. The Apex court a made momentous ruling that the decision made by the CoC is purely commercial in nature and hence falls outside the purview and scope of justiciability[2]. In the case of ***Arun Kumar v. Jindal Steel & Power Ltd***[3]., the Hon'ble Court held that the innovation forms the adjudicating authority should be minimalised and not

[2] K Sasidhar V Indian Overseas Bank (2019) 12 SCC 150
[3] Arun Kumar v. Jindal Steel & Power Ltd, AIR 2021 SC 1563

disturbed unless it violates the fundamental principles of the code.

Further the Hon'ble Supreme Court in the case of ***Kalparaj Dharamshi Vs Kotak Investment Advisors Ltd.***[4] brought to light certain provisions under the IBC where the resolution plan can be contested. Section 30[5] and 61[6] of the IBC stipulates the following grounds for contesting the resolution plan, (a). contravention of the law, (b). failing to adhere to the rules established by the Insolvency and Bankruptcy Board of India, (c). material irregularities in the resolution professional to use of their authority and influence the decision making of the CoC, etc.

In the case of ***Essar Steel India Ltd (CoC) v Satish Kumar Gupta***[7] the Hon'ble Court determined the importance of CoC on how proceeds shall be distributed among the creditors and other stakeholders in the resolution plan, however it also stressed on the need to guarantee the Operational creditors, a minimum amount not less than the liquidation value of the debtor. While interpreting the role of CoC in the cases of ***Arcellor Mittal India Pvt Ltd v Satish Kumar Gupta & ors***[8] ***& Swiss Ribbons Pvt Ltd & Anr vs Union of India***[9]***,*** the Hon'ble Court observed that the CoC shall ensure the resolution plan balances out the rights of other stakeholders such as the operational creditors highlighting the importance of economic justice

Economic Justice on the touchstone of Commercial Wisdom

The term economic justice refers to fair distribution of economic resources, equitable treatment of stakeholders and balancing the interest of debtors and creditors. Under the contours of IBC must include the creditors right to recover while simultaneously ensuring that the corporate debtor is treated *as a going concern*[10]. Though by giving primacy to the CoC, the law seeks to ensure efficiency and market driven outcomes, however it raises an important normative question, does the supremacy of commercial wisdom advance or undermine the ideal of economic justice?.

A resolution plan approved by the CoC may be subject to substantial haircuts, this means that while a creditor accepts reduced recovery, the enterprise value of the debtor is significantly

[4] Kalparaj Dharamshi Vs Kotak Investment Advisors Ltd, (2021) 10 SCC 401
[5] Insolvency & Bankruptcy Code, 2016, § 30
[6] Insolvency & Bankruptcy Code, 2016, § 60
[7] Committee of Creditors of Essar Steel India Ltd (CoC) v Satish Kumar Gupta, (2020) 8 SCC 531
[8] Arcellor Mittal India Pvt Ltd v Satish Kumar Gupta & ors, (2019) 2 SCC 1
[9] Swiss Ribbons Pvt Ltd & Anr vs Union of India, (2019) 4 SCC 17
[10] Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209

diminished. In such cases the Company may survive but at severely undervalued restructuring, harming its long-term viability. The resolution applicant is often a competitor and the debtor is an easy target for them to eliminate existing competition in the market. The Resolution applicants acquire the debtor at low valuations and the debtor loses market identity and competitive position. Another proposition is the disregard to the minority and operational creditors. The decision-making is dominated by the financial creditors as upheld in various cases by the Hon'ble Supreme Court. Promoters, workmen dues and operational creditors have minimal influence in decision making and their interests are ignored in restructuring decisions.

The Hon'ble Apex Court in ***Kalyani Transco v. Bhushan Power and Steel Ltd***[11]**.** is important because it ultimately supports the commercial wisdom of the Committee of Creditors (CoC), while still keeping it within legal limits. What is particularly interesting is that the Court reversed its earlier position[12], where the resolution plan had been rejected and liquidation was ordered, and instead upheld the resolution plan. This clearly shows a preference for resolution, not liquidation, which is one of the main objectives of the IBC. The Court makes it clear that once the requirements under Section 30(2)[13] are satisfied, the decision taken by the CoC should generally not be interfered with, since financial creditors are in a better position to assess the viability of the plan.

At the same time, the Court does not say that the CoC has absolute power. It still checks whether the process followed is legally valid. In this case, although there were arguments about non-compliance, the Court did not find enough reason to interfere with the plan. This suggests that economic justice, according to the Court, lies more in ensuring a fair and lawful process rather than re-evaluating the financial outcome itself. In other words, the Court is not concerned with whether the deal is the best possible one, but whether it meets the legal standards laid down under the IBC.

A particularly significant aspect of this judgment is the Court's treatment of financial parameters such as EBITDA and other valuation metrics, holding that these lie within the contours of the Request for Resolution Plan (RFRP). This clarification enhances predictability, ensuring that commercial terms are tethered to the RFRP and not open to arbitrary, ex post reinterpretation. Such certainty is indispensable for attracting credible resolution applicants and

[11] Kalyani Transco v. Bhushan Power and Steel Ltd, 2025 SCC OnLine SC 1010
[12] Kalyani Transco Vs. Bhushan Power and Steel Ltd. and Ors, MANU/SC/0630/2025
[13] Insolvency & Bankruptcy Code, 2016, § 30(2)

long-term investors. Predictability, consistency, and fairness these are the cornerstones upon which successful insolvency resolution depends. Thus, the EBITDA issue highlights the need for clearer regulatory guidance to balance commercial flexibility with fairness.

Commercial Wisdom and International Practices

The position of India with respect to Commercial Wisdom has been crystallized through judicial pronouncements such as ***K. Sashidhar v. Indian Overseas Bank[14] and Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta[15]***. While this principle has attained a settled ground in India, a comparative analysis with international jurisdictions will reveal both convergence and divergence in the allocation of decision-making authority and judicial oversight, thus to better understand the contours of this principle it is imperative to examine how insolvency regimes function in other jurisdictions.

Judicial Management in Singapore

The insolvency framework in Singapore is governed by the **Insolvency, Restructuring and Dissolution Process Act, 2018[16].** The said act provides for Judicial management which is analogous to Corporate Insolvency Resolution Process of IBC in India. Introduced after the collapse of Pan Electric Industries Limited in 1985, primarily known for the aftershocks leading to the unprecedented closure of Singapore Stock Exchange for 3 days, judicial management was introduced to potentially restructure the liabilities and rehabilitate the stressed companies.

Under the said regime the process of insolvency is predominantly controlled and overlooked by a licenced insolvency professional known as the Judicial Manager, where he undertakes wide range of managerial responsibilities. In contrast to India where the decision-making authority and management of the Corporate Debtor rests with the CoC and Resolution Professionals respectively, the Singapore model reflects a more centralised authority by providing maximum control in the hands of the Judicial Manager. The Judicial Manager is tasked with the management and affair of the company, vital economic decisions for the revival or liquidation of the company and construction and implementation of restructuring proposals.

[14] K Sasidhar, *supra* note 2
[15] Essar Steel, *supra* note 8
[16] Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) (Sing.).

Similar to the IBC, courts retain the supervisory and jurisdiction over the Judicial Manager's actions thus ensuring accountability. One key distinction between the two models is the role of creditors in deciding the faith of the debtor. While the Indian model places the Creditors in Control, the latter does not provide the same decisive authority to the creditors, rather it reflects a centralized authority in Judicial manager. However, the act does not render the Judicial Manager's decisions absolute and judicial intervention may still occur in case of Bad faith, unfair prejudice to stakeholders, breach of statutory duties.

In the case of ***Lim Siew Soo v. Sembawang Engineers & Constructors Pte Ltd***[17] the Hon'ble High Court of Singapore highlighted that the Judicial manager's function are multi-faceted, encompassing operational control, restructuring strategy, credit engagement and quasi-judicial functions. Where Indian model prioritises creditor autonomy, Singapore places greater reliance on professional expertise and fiduciary responsibility.

Administrator-Centric Model in United Kingdom

The insolvency resolution framework in United Kingdom operates through the mechanism of *Administration.* The objectives of the Insolvency Act, 1986 are similar and closely mirrors to those in India where priority is given to the revival of the debtor, maximizing recovery of creditors and balancing the economic interest of both the creditors and debtor. The Administrator serves as the fulcrum in this process, who is tasked with extensive managerial powers, but is bound by the duties of good faith, independence and impartiality.

Unlike the Indian framework and similar to the Singapore Model, the Uk Model is administrator centric. Key structural divergence from Indian model lies within the contours of decision making. In India Pre CIRP process is primarily controlled by the CoC and majority of the decisions lie within the Commercial Wisdom of the committee and the resolution Professional plays a rather facilitative role. Whereas in the United Kingdom, the administrator is the central decision maker while the creditor plays a supervisory role through committees.

Judicial review and accountability are also some key aspects of comparison between the two models. The United Kingdom explicitly allows for judicial interventions even in commercial decisions made by the administrator unlike in India where there exists a blanket protection of the commercial wisdom of CoC. Judicial intervention can be made by the courts when the

[17] Lim Siew Soo v. Sembawang Engineers, (2021) SGHC 32, para118.

conduct of the Administrator causes unfair prejudice to creditor interests, breach of statutory duties or misfeasance.

This position of the courts was clarified in the case of ***Re Charnely Davis Ltd (No.2).***[18]***,*** where a challenge against the decision of Administrator to sell the company's assets at an allegedly undervalued price was brought by the creditors before the UK High Court of Chancery. Justice Millett clarified that "***Courts should not evaluate commercial decisions with the benefit of hindsight but must assess whether the Administrator acted reasonably in the circumstances.***[19]***".*** This judgement reflects a rational review standard rather than complete judicial abstention and resembles the Indian doctrine of non-interference with commercial wisdom but with a broader scope for accountability

The United Kingdom has also developed a robust system of Professional Administrator regulation brought through the introduction of Statements of Insolvency Practice (SIPs) by regulatory bodies such as Insolvency Service. These provide for certain guidelines which aim to standardize the conduct of Administrators and Liquidators, ensure transparency, fairness and benchmark for evaluating professional decisions. These are mandatory and non-compliance of the SIP's may not directly invalidate decisions but can serve as persuasive evidence of misconduct.

To conclude neither model is inherently superior; each reflects its own economic priorities and institutional realities. However, the Indian approach, in its strong deference to commercial wisdom, risks overlooking the consequences of insolvency on smaller creditors, employees, and the long-term health of the debtor. The comparative analysis suggests that while efficiency and finality are indispensable, they need not come at the complete expense of fairness. A more balanced framework that preserves the speed of resolution while retaining a narrow but meaningful scope for review may better align insolvency law with its broader objective of economic justice.

Economic Justice and way Forward

In light of this, some careful reforms may be worth considering. First, there is a need to improve transparency and reasoning in CoC decisions, especially regarding distribution and valuation.

[18] Re Charnely Davis Ltd (No.2), [1990] BCLC 760
[19] Ibid

Second, the role of operational creditors and other non-voting stakeholders could be slightly enhanced, not necessarily by changing voting rights, but by allowing more participation and visibility in the process. Third, while judicial review should stay limited, it could be adjusted to allow intervention in cases of clear unfairness or grossly inequitable results, without reopening purely commercial judgments. Lastly, clearer regulatory guidance on valuation standards and resolution plan structure would help reduce inconsistencies and boost confidence in the system. Ultimately, insolvency law cannot be seen only as a recovery tool. It also involves preserving economic value, supporting businesses, and ensuring fairness among those affected. Commercial wisdom should therefore act not as unchecked power, but as a responsibility one that is exercised within a broader framework of legality, fairness, and economic justice.

Conclusion

The evolution of insolvency law under the Insolvency and Bankruptcy Code, 2016 shows a clear shift toward efficiency, certainty, and creditor confidence. The idea of commercial wisdom, as shown in cases like ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta***[20] and more recently in ***Kalyani Transco v. Bhushan Power & Steel Ltd***[21]., has been crucial in reaching these goals. It protects business decisions from too much judicial intervention and allows a timely resolution process that reflects market realities.

However, this analysis shows that the strong emphasis on commercial wisdom comes with drawbacks. The ongoing issues of deep haircuts, undervaluation of assets, marginalization of operational creditors, and the limited input from other stakeholders indicate that the current system, while efficient, may not always be fair. Economic justice here seems to function more as a procedural safeguard than a real assurance.

The law makes sure that the process is followed, but it does not always guarantee a fair outcome in a broader sense. Looking at international insolvency legislations of the United Kingdom and Singapore reveals that it is possible to maintain commercial flexibility while also ensuring accountability. These systems do not entirely question commercial decisions, but they do allow some intervention when actions are unreasonable, harmful, or not in line with legal duties. This

[20] Essar Steel, *supra* note 8
[21] Kalyani Transco, *supra* note 12

balanced approach offers a useful reference for the Indian framework as it develops.