
GAMIFICATION OF MERGERS AND ACQUISITIONS WITH INSOLVENCY AND BANKRUPTCY LAW

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ABSTRACT

The Insolvency and Bankruptcy Code (IBC), 2016, has fundamentally transformed India's corporate insolvency framework, notably through the implementation of the "clean slate" principle. Reinforced by the Supreme Court in the Essar Steel Case, this principle ensures that upon approval of a resolution plan, the corporate debtor is absolved of prior liabilities, thus affording the new management a fresh start. Section 31 of the IBC stipulates that the approved resolution plan is binding on all stakeholders, thereby protecting the debtor from claims related to previous obligations. Additionally, Section 32A, introduced by the 2019 amendment, grants immunity from prosecution for offences committed by the former management.

This paper scrutinizes the legal, regulatory, and judicial framework supporting this principle, emphasizing its impact on corporate resolution process and its interplay with other legislations, such as Securities and Exchange Board of India Act (SEBI), and the Prevention of Money Laundering Act (PMLA). Through an analysis of key cases, the document highlights the effectiveness of the clean slate principle in facilitating corporate rescues and ensuring a stable post-resolution environment, while also identifying potential challenges, particularly concerning regulatory actions and corporate criminal liability.

Keywords: Mergers, Acquisitions, Insolvency, Bankruptcy, Laws, etc.

INTRODUCTION

- **Relevance of Study**

The legal landscape surrounding Mergers and Acquisitions (M&A) is characterized by the consolidation of companies. Specifically, a merger is defined as the amalgamation of two entities to form a single entity, whereas an acquisition involves one entity assuming control over another. Within the realm of corporate finance, M&A stands as a pivotal aspect, aimed at the wealth maximization and leveraging synergistic opportunities. Entities continuously assess potential avenues for mergers or acquisitions, seeking to create enhanced value in comparison to their standalone operational capacities.

In the dynamic commercial milieu of India, M&A has emerged as a critical instrument for corporate growth and transformation. The recent surge in M&A activities within India can be attributed to market consolidation, globalization, and the pursuit of strategic synergies. Such transactions have not only precipitated substantial changes across various sectors but have also catalyzed economic progress, spurred innovation, and attracted foreign investments.

The ramifications of M&A on shareholders, employees, and governmental bodies are contingent upon a multiplicity of factors, encompassing the specific terms and conditions of the transaction, the market's reception of the mergers or acquisition, and the efficacy of the post-merger integration process. The M&A process can yield both gains and losses, influenced by the rigor of due diligence undertaken- a comprehensive scrutiny of the target entity's financial status, operational dynamics, and legal standing to appraise potential risks and opportunities. The success of M&A endeavors is predicated on several determinants, including the strategic congruence of the involved entities, the capacity to realize synergies and cost efficiencies, and the proficient integration of operations and corporate cultures.

- **Justification**

M&A exerts divergent impacts on stakeholders across different jurisdictions, attributable to variations in regulatory frameworks and market conditions. This analysis

undertakes a comparative examination of M&A impacts on stakeholders in India and the USA. It further scrutinizes deficiencies within Indian Legal Statutes concerning the protection of shareholder, governmental and employee rights.

The study aims to analyze the impact of the IBC on M&A transactions in India. The advent of the IBC has introduced a spectrum of challenges and opportunities for potential acquirers, focusing on the maximization of value and fostering growth.

MERGERS AND ACQUISITIONS: CONCEPT

A **merger** constitutes a legal agreement whereby two separate corporate entities are consolidated into a singular, new entity. Numerous classification of mergers exist, alongside various rationales underpinning the execution of such transactions. Mergers and Acquisitions (M&A) are frequently pursued to augment corporate reach, penetrate new market segments, or enhance market share, all with the ultimate objective of bolstering shareholder value. Typically, during a merger, parties may agree to no-shop clause, which restricts the target company from engaging in negotiation or transactions with other prospective purchasers or merging entities.

Mergers are prevalent across a myriad of sectors, including but not limited to healthcare, financial institutions, private equity and industrial enterprises.

Mergers are generally categorized into two types:

1. Horizontal Merger : This type of merger transpires when two entities operating within the same industry amalgamate. Such combinations may give rise to anti-trust concerns¹, contingent upon the specific industry dynamics.
2. Vertical Merger : This type of mergers occur when two businesses in the same value chain or supply chain merger.² For example, McDonald's merging Country Delight for the supply of milk.

The author is of the perspective that the choice of the type of merger a company wants to go in

¹[https://www.cci.gov.in/antitrust#:~:text=The%20Competition%20Act%2C%202002%20\(as,anti%2Dcompetitive%20practices%20by%20enterprises.](https://www.cci.gov.in/antitrust#:~:text=The%20Competition%20Act%2C%202002%20(as,anti%2Dcompetitive%20practices%20by%20enterprises.)

² <https://www.irejournals.com/formatedpaper/1702599.pdf>

depends on the goal of the companies involved.

A conglomerate merger represents the consolidation of entities that operate within disparate industries and engage in distinct, unrelated commercial activities. Such mergers confer upon the involved entities the strategic advantage of diversifying their operational scope and target markets. Given that the merging entities operate in different industries or markets the resultant conglomerate is less susceptible to declines in sales within any single industry or market sector.³

Historically, the United States experienced a notable wave of conglomerate mergers during the 1960s and 1970s. However, a significant number of these newly formed conglomerates were subsequently divested. In contemporary times, the occurrence of conglomerate mergers has become relatively infrequent.⁴

An **acquisition** transpires when one corporate entity procures a substantial portion or the entirety of another entity's shares, thereby obtaining control over the acquired entity. By acquiring in excess of 50% of the target firm's equity and assets, the acquirer is empowered to make decisions regarding the newly obtained assets without necessitating the consent of the target firm's remaining shareholders. Acquisitions are prevalent in the commercial sector and may proceed with or without the target company's endorsement. In cases where the acquisition is approved, a no-shop clause is frequently included to preclude the target company from engaging in negotiations with other potential buyers during the process.⁵

Companies pursue acquisitions for various strategic purposes, including the realization of economies of scale, diversification, augmentation of market share, enhancement of synergies, reduction of costs, or the acquisition of niche offerings. Through a single acquisition, an acquirer can potentially accomplish several years' worth of organic growth in one transaction. Additionally, acquisitions often provide access to a new customer base that holds strategic significance for acquiring entity, thereby generating new revenue systems.⁶

³ <https://corporatefinanceinstitute.com/resources/valuation/conglomerate-merger/>

⁴ *Supra* no. 3

⁵ Vardhana Pawaskar, *Effect of Mergers on Corporate Performance in India*, 26 *Econ. & Pol. Wkly.* 118-126 (2001), available at <https://www.studocu.com/in/document/the-maharaja-sayajirao-university-of-baroda/banking-and-insurance/pawaskar-2001-effect-of-mergers-on-corporate-performance-in-india/83131014>.

⁶ *Supra* no. 5

The success rate of acquisition solely depends upon the strength of the fundamental acquisition process, which includes the valuation of the company, its structure and operational integration.

INSOLVENCY AND BANKRUPTCY LAW: CONCEPT

The IBC was enacted to modernize and streamline the legal framework governing insolvency and bankruptcy in India. The Code consolidated pre-existing laws and institutes a time-bound procedure for addressing insolvency matters. The IBC aims to safeguard the interests of creditors while establishing an equitable framework for debtors to resolve financial distress, thereby avoiding total liquidation of their enterprises. This legislative reform is intended to bolster economic stability and improve the ease of doing business within the country.

Key features of the IBC⁷ are -

- 1. Consolidation of law** – Prior to the enactment of the IBC, insolvency laws in India were fragmented across various statutes, including the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, and the Companies Act. The IBC seeks to streamline these processes by consolidating diverse legal frameworks into a unified code.
- 2. Time Bound Resolution** – The IBC mandates a prompt resolution process, stipulating that insolvency proceedings must be concluded within 180 days, extendable by an additional 90 days. This fixed timeline aims to prevent delays that plagued previous regimes. An amendment in 2019 further extended the resolution period to 330 days, including time spent in legal processes.
- 3. Shift from Debtor Control to Creditor Control** – Under the IBC, the management of a defaulting company is transferred to an Insolvency Resolution Professional (IRP), moving away from the debtor-in-possession model where companies retained control during insolvency proceedings. This shift ensures that decisions are made in the best interests of creditors or mitigates the risk of mismanagement.
- 4. Committee of Creditors (CoC)** – A central feature of the IBC is the empowerment of

⁷ Shreeja Athota, *Reverting Back: A Critical Analysis of the Insolvency and Bankruptcy Code*, 12 *Pen Acclaims* 1 (Sept. 2020), available at <https://pure.jgu.edu.in/id/eprint/2132/1/SSRN-id3710944.pdf>

creditors through the establishment of the CoC. The CoC, comprising financial creditors, is integral in approving the resolution plan, ensuring that the insolvency process aligns with creditors' interests.

5. **Protection of Creditors' Rights** – The IBC establishes a structured mechanism for creditors to recover their dues. Unlike the previous regime, where recovery was often protracted, the IBC introduces a clear process emphasizing fairness and equity, balancing creditors' rights with debtors' needs.
6. **Maximization of Asset Value** – A primary objective of the IBC is to preserve and maximize the value of the debtor's assets. The aim is not only to recover assets for creditors but also to maintain the corporate entity as a going concern wherever possible, thereby preserving jobs and business value.
7. **Addressing Corporate Failures** – The IBC acknowledges that corporate failures are inherent to the business environment but seeks to address these failures through restructuring rather than immediate liquidation. This re-organization can aid in the recovery of dismissed companies, offering a balanced and equitable approach to insolvency management.

The IBC has overhauled India's insolvency framework by instituting a unified, time-bound, and efficient mechanism for resolving insolvency and bankruptcy matters. This legislative framework has considerably strengthened the position of creditors, while simultaneously facilitating the potential revival of debtors, thereby bolstering economic growth and stability. Notwithstanding these advancements, certain challenges persist, particularly in the form of protracted resolution processes and ambiguities in specific legal provisions. Nevertheless, the IBC constitutes a pivotal advancement in the modernization of India's financial infrastructure, fostering a more robust credit culture and enhancing the ease of doing business.⁸

THE ROLE OF IBC IN FACILITATING MERGERS AND ACQUISITIONS

The IBC, constitutes a significant legislative development aimed at regulating the restructuring and liquidation of insolvent entities. Prior to the IBC's enactment, the prevailing liquidation

⁸ Dr. Samadhan K. Khamkar & Dr. Girish B. Pawar, *A Study on IBC as a Powerful Tool for Resolving Insolvency Issues of Indian Economy*, *Int'l J. Food & Agric. & Nutrition Sci*, available at <https://ijfans.org/uploads/paper/62ca8a81c10870949aa4a92f5adeb90d.pdf>.

framework, as per the Companies Act, 2013, primarily focused on dissolving companies to settle their debts. In contrast, the IBC emphasizes the maintenance of the entity as a "going concern," prioritizing commercial resolutions over judicial determinations. The Code seeks to revive financially distressed corporations wherever feasible, and, where revival is not possible, to proceed with their liquidation.

Upon default in debt repayment to financial or operational creditors, the Corporate Insolvency Resolution Process (CIRP) may be initiated against a corporate debtor. When the CIRP is initiated, the tribunal declares a "moratorium period," during which creditor actions are stayed, and the bankruptcy court assesses the feasibility of recovery.

All legal proceedings are barred or stayed to the extent possible. As soon as the CIRP is initiated under the Code, any resolution applicant may come forward and submit a resolution plan to the Insolvency Professional to facilitate the company's recovery. The Code provides various options for mergers and demergers through the sale of the company or its business to external parties.

The Resolution Applicant⁹, which may be any individual or entity, can put forward a distressed merger or acquisition of the corporate debtor with other organizations. Various concessions are granted to facilitate such resolutions. Once a resolution plan is approved by the Committee of Creditors (CoC), it receives judicial sanction, reinforcing the requirement to maintain the entity as a "going concern" to maximize the corporate debtor's value.

The CIRP plan may encompass the significant acquisition of shares of the corporate debtor, the merger or consolidation of the corporate debtor with other entities, or the transfer of all or part of the corporate debtor's assets to one or more individuals or entities, along with other provisions.

"Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016¹⁰ states":

⁹ Pramod Srihari, *Going Concern: Meaning and Relevance in the IBC*, IIIPI 18-23 (2024), available at <https://www.iiipicai.in/wp-content/uploads/2024/08/18-23-Article.pdf>

¹⁰ *Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016*, amended up to Apr. 24, 2020, available at <https://ibbi.gov.in/uploads/legalframework/b37ac2f0201e2e3c41cfa3d989f58f4d.pdf>

“The liquidator may sell –

- 1. a) an asset on a standalone basis; b) the assets in a slump sale; c) a set of assets collectively; d) the assets in parcels; e) the corporate debtor as a going concern; or f) the business(s) of the corporate debtor as a going concern...”*

“Regulation 29(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ¹¹ states”:

“A genuine purchaser of assets sold under this Regulation shall have a free & marketable title to such assets despite the terms of the fundamental documents of the corporate debtor, shareholders agreement, joint venture agreement or other document of a similar nature.”

This legal morality facilitates M&A opportunities, allowing acquirers to purchase assets during insolvency while shielding the acquisition from future legal disputes.

“A M&A opportunity may also arise during the CIRP when a Resolution Plan is submitted by the Resolution Professional. The plan can provide for:

- 1. Transfer of all or part of the assets of the corporate debtor to one or more persons;*
- 2. Sale of all or part of the assets whether subject to any security interest or not;*
- 3. Substantial acquisition of shares, or the merger or consolidation of corporate debtor with one or more, persons.¹²”*

Additionally, M&A opportunities may emerge depending on the CIRP when, as part of the Resolution Plan, the Resolution Applicant obtains consent to dispose all or parts of the corporate debtor.

The Insolvency and Bankruptcy Code has opened numerous avenues for M&A in India, providing companies with inorganic growth opportunities. The IBC offers corporate debtors alternatives to liquidation, striving to preserve the viability of financially distressed entities.

¹¹ *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*, amended up to Aug. 7, 2020, available at <https://ibbi.gov.in/uploads/legalframework/2020-08-17-234040-pjor6-59a1b2699bbf87423a8afb5f5c2a0a85.pdf>

¹² Adity Chaudhury, *Distressed M&A under IBC*, Argus P. (July 3, 2018), available at <https://www.argus-p.com/papers-publications/thought-paper/distressed-ma-under-ibc>

The IBC stands as a pivotal mechanism for addressing stressed assets, facilitating M&A opportunities within the CIRP. As part of the Resolution Plan, consent may be secured by the Resolution Applicant to divest all or portions of the corporate debtor's assets through M&A activities over a specified period following the completion of the CIRP.

“According to the reports, till 2018, the M&A deals in distressed assets worth USD 14.3 billion were done in just 2 years of operations of the Code. Indian economy is having rush in emphasized assets and it is no wonder that the complication of the problem has called for multiple changes to various laws and the introduction of several new ones.”¹³

IBC is a tool to understand and solve the problems related to the stressed assets.

“In terms of actual deals, distressed M&A’ have accounted for about 3% of the total M&A volume in the Indian market and 21 out of a total of 623 deals completed since 2017.”¹⁴

In recent years, India has seen accelerated resolutions for non-performing stressed assets and debts, including their restructuring, facilitated by the IBC. This legislation has equipped financial and operational creditors with a powerful tool for managing insolvency, thereby improving the overall efficiency of the resolution process.

LEGISLATIVE EVOLUTION

The primary issue examined discussed by the author concerns the persistence of legacy liabilities following the acquisition of distressed companies under the IBC. Prospective acquirers are frequently deterred by the apprehension of inheriting unresolved financial, regulatory, or criminal liabilities attributable to previous management. Such historical liabilities can impose considerable monetary and legal risks upon new proprietors. The paper addresses the legislative measures undertaken to alleviate these concerns, including amendments aimed at providing acquirers with a “clean slate”. The paper underscores that ensuring exemption from legacy liabilities is essential for instilling confidence among investors and encouraging active participation in the resolution process.

¹³ Aditi Bhawsar, *IBC: A Viable Solution for Mergers & Acquisitions in 2020*, SignalX (Sept. 3, 2020), available at <https://signalx.ai/blog/ibc-a-viable-solution-for-mergers-acquisitions/>

¹⁴ *Supra* no. 13

- **Legislative Amendments**

The 2019 Amendment¹⁵ to the IBC is a critical legislative development, notably due to the revision of Section 31. This amendment explicitly stipulates that an approved resolution plan is legally binding on all stakeholders, including governmental authorities. As a consequence, it precludes subsequent claims against acquirers for liabilities incurred prior to the resolution. The legislative intent was to ensure that governmental entities adhere to the IBC process and abstain from pursuing acquirers for antecedent obligations.¹⁶

The 2020 Amendment¹⁷ introduced Section 32A, which provides additional protections for acquirers. Section 32A stipulates that once a corporate debtor is acquired pursuant to a resolution plan, it is insulated from criminal and civil liabilities for offences committed antecedent to the acquisition, subject to the fulfillment of certain conditions. The said amendment represents a significant advancement in furnishing legal certainty and fostering confidence among potential investors, thereby promoting the acquisition of distressed assets under the IBC.¹⁸

- **Judicial Pronouncements**

In the Essar Steel Judgement¹⁹, Hon'ble Supreme Court of India gave a landmark ruling underscored that a resolution plan, once approved, is binding on all stakeholders, effectively proving a fresh start to the acquirer. The judgement emphasized that all claims should be submitted by the resolution professional can be pursued afterward. This decision is pivotal in reducing the uncertainty faced by the acquirers.

The author will like to address that there has been major tussle when it comes to the interplay between the IBC and other laws. In the case of Ultra Tech Nathdwara Cement Ltd v. Union of India & Ors.,²⁰ Rajasthan High Court, on an application by the Corporate Debtor post-acquisition invalidated claims made by the Goods and Services

¹⁵ <https://ibbi.gov.in/uploads/legalframework/630af836c9fbbed047c42dbdfd2aca13.pdf>

¹⁶ <https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-amendment-bill-2019>

¹⁷ <https://ibbi.gov.in/uploads/legalframework/d36301a7973451881e00492419012542.pdf>

¹⁸ <https://nishithdesai.com/SectionCategory/33/M&A-Hotline/12/59/MAHotline/4364/1.html>

¹⁹ *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.*

²⁰ <https://ibbi.gov.in/uploads/order/eee9e6247d407246d19b1b55c5cd38c8.pdf>

Tax authorities for outstanding GST dues incurred by the Corporate Debtor prior to the acquisition. This decision invoked the 2019 amendments to the Insolvency and Bankruptcy Code (IBC), which stipulate that an approved resolution plan is binding on government authorities. The Rajasthan High Court also admonished the authorities to file claims post-acquisition in accordance with the Corporate Insolvency Resolution Process (CIRP) under the IBC. Although the Supreme Court in the Essar Steel Case addressed uncrystallized and pending adjudication claims, this judgement represents the first instance of a High Court addressing, “(a) a writ petition filed by the Corporate Debtor post-implementation of the resolution plan, rather than the successful resolution applicant, seeking to uphold the terms of the resolution plan; and (b) the validity of specific clauses within a resolution plan that extinguish (i) pending litigation claims, (ii) unassessed claims, and (iii) unknown liabilities.”

The decision significantly bolsters the confidence of potential acquirers, as it effectively ring-fences and crystallizes the liabilities of the corporate debtor under the IBC. Consequently, it provides further assurance to acquirers to pursue asset acquisitions under the IBC, as opposed to other mechanisms, by substantially mitigating legacy or historical issues.

The author will like to discuss the Hon’ble Supreme Court’s decision in *Manish Kumar v. Union of India*²¹, wherein constitutional validity of Section 32A²² was affirmed. The Court underscored the imperative of legislative latitude in economic affairs and acknowledged the necessity for resolution applicants to receive a “clean slate” to efficaciously revive distressed enterprises. The judgement reinforces the essential role of Section 32A in the IBC, conferring legal certainty upon acquirers and ensuring that antecedent liabilities do not impede new investments in distressed assets.

- **Implications for Regulatory Actions**²³

The paper underscores that, the notwithstanding the clarity imparted by Section 32A of the IBC and corroborative judicial rulings, challenges in its enforcement persist,

²¹ *Manish Kumar v. Union of India*, January 19, 2021 in W.P. (C) No. 26 of 2020

²² Section 32A of Insolvency and Bankruptcy Code, 2016 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00055_201631_1517807328273&ordemo=38

²³ <https://www.snrlaw.in/wp-content/uploads/2021/03/SR-Insights-IBC-Supreme-Court-of-India-Endorses-the-Fresh-Start-on-a-Clean-Slate-Principle.pdf>

particularly concerning actions by regulatory authorities such as the Securities and Exchange Board of India (SEBI) and the Enforcement Directorate (ED). These regulatory bodies have, on occasion, continued to initiate or sustain regulatory or enforcement actions against corporate debtors subsequent to the approval of a resolution plan, thereby engendering conflicts with the principles enshrined in the IBC.

The IBC was instituted to establish a structured mechanism for resolving insolvency that supersedes other claims and proceedings, thereby enabling successful resolution applicants acquire distressed companies devoid of historical liabilities. Section 32A, in particular, seeks to ensure that following the approval of a resolution plan, the corporate debtor is absolved from accountability for prior offences, such as non-compliance with disclosure requirements or money laundering violations, provided that the new management is not implicated.

Nevertheless, the actions of regulatory authorities such as SEBI and the ED have, at times, undermined this objective. For example, SEBI has issued show-cause notices and imposed penalties for infractions that occurred prior to the initiation of the CIRP, even after the implementation of resolution plans. Similarly, the ED has attempted to attach assets of companies undergoing CIRP for offenses such as money laundering committed by the previous management. These actions with the “clean slate” protection envisioned under the IBC.

The persistence of such enforcement actions has precipitated legal disputes, compelling resolution applicants and the new management of the acquired corporate debtor to contest regulatory actions in judicial forums. For instance, the JSW Steel acquisition of Bhushan Power²⁴ underscored the conflict between the provisions of the IB and the powers vested in the ED under the Prevention of Money Laundering Act (PMLA). The National Company Law Appellate Tribunal (NCLAT) was necessitated to adjudicate that proceedings under the PMLA should not impede the resolution process subsequent to the approval of a resolution plan under the IBC.

These disputes engender uncertainty for prospective investors contemplating participation in the CIRP. If resolution applicants cannot be guaranteed comprehensive

²⁴ JSW Steel Limited v. Mahender K. Khandelwal and others, 2020 SCC OnLine NCLAT 55

protection against antecedent liabilities, the allure of acquiring distressed assets through the IBC may be diminished. This uncertainty has the potential to decelerate the resolution process and diminish investors' propensity to offer optimal prices for distressed assets, thereby adversely affecting the recovery rates for creditors.

COMPARATIVE ANALYSIS WITH USA

- **Insolvency and Bankruptcy Code of India, 2016** ²⁵

The Insolvency and Bankruptcy Code is the statute that governs insolvency and restructuring in India. The IBC aims at corporatization by way of resolution in time grid for financially stressed companies through CIRP.

The Code underscores revival of the ailing firms as going concern rather than facilitating prompt closure. CIRP is when M&A transactions take place because a resolution applicant can bid for distressed entities during the process.

The CoC is instrumental in the approval of resolution plans (including any mergers and acquisitions), with an objective to realize maximum value for legitimate creditors.

Section 32A of the IBC offers "clean state" provisions for acquirers, protecting them from previous liabilities, including criminal liabilities, of the corporate debtor, provided certain conditions are met.

- **USA- Bankruptcy Code (Chapter 11)** ²⁶

Chapter 11, imposes on reorganization of the companies in USA indicates about bankruptcy law. It permits firms to reorganize their operations and financial obligations but still operate.

Chapter 11 also foretells debtor in possession, which gives the new company management to be pioneered by current top leadership.

²⁵ Insolvency and Bankruptcy Code (IBC), 2016

²⁶ U.S. Bankruptcy Code, Chapter 11

In Chapter 11 proceedings, M&A transactions are usually completed by means of Section 363 sales²⁷ that the debtor may conduct under its discretion to sell off some assets to buyers. This makes it a relatively effective sale of assets compared to full restructuring plan.

The "stalking horse" process, in which a first bidder designates an opening bid and other possible buyers enter bids at auction. It has created a competitive bid process for buying these loans.²⁸

Both systems have their strengths, the IBC's time bound process helps reduce delays, whereas Chapter 11 offers flexibility that can lead to better outcomes for complex restructuring. Each country's framework presents unique opportunities and challenges for M&A, influencing how distressed assets are resolved and how businesses are revived.

CONCLUSION

The integration of M&A as a resolution mechanism within the framework of the IBC of India represents a significant advancement in CIRP. This research examines how M&A can be strategically employed as a resolution plan under the IBC to rehabilitate financially distressed companies, thereby preserving stakeholders value and contributing to economic stability. The analysis demonstrates that M&A not only prevents liquidation but also offers a structured approach for acquiring entities to leverage distressed asset, providing a mutually beneficial solution for creditors, debtors, and acquiring entities.

The flexibility of M&A under the IBC has been bolstered by judicial interpretations and regulatory amendments, fostering an environment conducive to strategic takeovers and asset sales. Key cases highlighted in the study illustrate the successful implementation of M&A as a resolution plan, showcasing its role in corporate rehabilitation and improved recovery rates for creditors. The adaptability of M&A structures within the IBC framework enables innovative resolution plans, tailored to address the unique challenges and opportunities of each distressed entity.

²⁷<https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics#:~:text=The%20debtor%20in%20possession%20may,obtain%20permission%20from%20the%20court.>

²⁸ Chapter 11 reorganizations, such as those related to the "stalking horse" process and 363 sales

However, practical challenges persist in the application of M&A as a resolution plan under the IBC. The study identifies issues such as delays in approval processes, valuation disputes, and complexities in integrating distressed assets, which can impede the efficacy of M&A transactions. Addressing these challenges necessitates a robust legal and procedural framework that promotes transparency, expedites approvals, and ensures fair valuations. Ongoing reforms and judicial clarity are essential to enhancing the synergy between M&A and the IBC process, ensuring balanced interests for all stakeholders during the resolution process.

As India continues to develop as a global business hub, the effective integration of M&A strategies within the IBC framework can play a critical role in achieving a more efficient and resilient insolvency resolution process, thereby contributing to long term growth and stability.

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Research Papers and Legal Commentaries:

1. Articles on the *differences between IBC and Chapter 11* from Indian legal publications like *NALSAR Law Review* or *Indian Law Review*.
2. Comparative studies published in international journals like the *Journal of Corporate Law Studies* which often contrast Indian and U.S. frameworks for handling distressed assets and the role of M&A in insolvency proceedings.