
AVOIDANCE OF TRANSACTIONS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016: A COMPARATIVE ANALYSIS WITH UK INSOLVENCY LAW

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (“**IBC**”) was introduced in India to simplify and streamline the process of insolvency and to ensure the distribution of assets fairly among all classes of creditors. The critical part of IBC is the avoidance of antecedent transactions which allows the resolution professionals to challenge and nullify the transactions that might impact the process of insolvency. The provisions under Sections 43 to 51 of IBC address the preferential transfers, undervalued transactions, Fraudulent transactions, and credit transactions to extortionate. The reasoning for incorporating these provisions is to prevent certain advantages to specific creditors and maintain the sanctity of the resolution process.

In UK Insolvency Act, 1986 there are well-established provisions for avoidance transaction particulars provided under Sections 238, 239, and 244 which deal with the under-valued transactions, preferential transactions, and extortionate credit transactions respectively. The key distinction between these two acts is the Look-back period in which the UK allows a broader timeframe of up to 6 years in some cases. The approach of the judiciary also varies with the UK system granting the court greater discretion in finding out the suspect transactions and IBC adopts a strict time-bound procedure.

This paper will examine landmark judgments such as Jaypee Infratech Ltd., Interim Professional v. Axis Bank Ltd. in India and Re Polly Peck International plc, 1996 in the UK which highlights the practical implications of avoidance provisions. The paper explores whether the IBC mechanism is effective in achieving its objective compared to the UK regime analyzing the procedural differences, judicial decisions, and its impact on the debt resolution of companies. The paper delved into the comparative perspective and aims to provide insights into the evolution of antecedent transactions under the IBC and potential areas for reforms in the Indian Legal Structure.

I. Introduction

The *Insolvency and Bankruptcy Code* (“IBC”) 2016, introduced in India, aims to resolve insolvencies in a time-bound manner while ensuring a fair distribution of assets among creditors. One of the key features of IBC is its provisions on the avoidance of transactions, which allow the resolution professional or liquidator to annul certain transactions that adversely affect the insolvency process or unfairly prejudice creditors. These provisions are similar in function to those in the UK’s insolvency regime, but the approach and legal frameworks differ significantly. Under Section 43 to Section 51 of the IBC, transactions like preferential transfers, undervalued transactions, and extortionate credit transactions can be challenged and avoided. Specifically, Section 43 empowers the resolution professional to challenge preferential transactions made within a look-back period of one year before the insolvency application (two years for related parties). Preferential transactions are those that provide undue advantage to certain creditors or parties to the detriment of others,¹ often leading to insolvency avoidance.

Undervaluation of assets, as per Section 45 of the IBC, allows transactions made at a value below their fair market value to be set aside if they occur within one year from the date of the insolvency application. Similarly, Section 50² addresses the avoidance of extortionate credit transactions that impose unreasonable terms on the borrower. In comparison, the UK’s *Insolvency Act 1986* has similar provisions, primarily dealing with antecedent transactions. The UK law allows for the avoidance of preferences (Section 239), undervalued transactions (Section 238), and transactions involving extortionate credit (Section 244), with look-back periods typically ranging from 2 to 6 years, depending on the type of transaction and the nature of the creditor. The case of *Jaypee Infratech Ltd. Interim Professional v Axis Bank Ltd*³ Under the IBC demonstrates how the provisions are applied in real-life cases in India. The National Company Law Tribunal (NCLT) emphasized the need for strict adherence to the timelines and the fairness of transactions in corporate insolvency.

In the UK, the case of *Re Polly Peck International plc* (1996)⁴ is pivotal in interpreting the avoidance of transactions, highlighting the courts’ role in scrutinizing transactions that could

¹Unmasking the Asset Tracing Tools Under the Indian Insolvency Law, at 127-129, <https://repository.nls.ac.in/viewcontent.cgi?article=1071&context=nlsblr> (last visited Feb. 10, 2025).

² Insolvency and Bankruptcy Code, 2016

³ (2020) 4 SCALE 310

⁴ [1998] EWCA Civ 789

defraud creditors or affect the equality of distribution. While both legal systems seek to protect the interests of creditors and prevent fraudulent conduct, the IBC's framework is more recent and incorporates stricter time limits. The UK system, being more established, provides a broader scope for judicial discretion, especially in cases of suspect transactions. The comparative study highlights differences in procedural timelines, judicial discretion, and the scope of transactions under scrutiny, offering insights into the evolution of insolvency law in both jurisdictions. While doing the comparative analysis, it is necessary to analyze the consequences of antecedent transactions in the proceedings of insolvency.⁵ In the Indian insolvency structure, the IBC aims to maintain a time-bound resolution process to ensure that assets are not wrongfully diverted before the proceedings are commenced. The look-back period under the IBC shows intent to enhance clarity and predictability in corporate insolvency cases which reduced the risk of prolonged disputes.

Antecedent transactions serve as an important tool in preserving the integrity of insolvency processes by preventing the inequitable disposing of assets and ensuring equitable treatment of all classes of creditors. Making a well-structured insolvency framework requires a delicate balance between statutory rigidity and judicial flexibility which enables a timely resolution and at the same time safeguards against abuse. While examining the India and the UK insolvency law side by side, this paper contributes to a deeper understanding of antecedent transactions and culminates the areas of improvement in the insolvency laws in both jurisdictions.

Understanding the real-world challenges posed by the avoidance measure under the UK Insolvency Act and IBC is crucial to strengthening the conversation. Despite being essential tools for preventing asset dissipation and guaranteeing creditor equality, these restrictions are tough to enforce. The burden of proof on resolution professionals to show that a transaction is covered by avoidance laws is one of the most urgent problems in India.⁶ The IBC required a rigorous statutory interpretation, which occasionally reduces the effectiveness of these prohibitions in contrast to the UK system which gave the courts greater flexibility in evaluating the suspicious transactions. Furthermore, the efficacy of transaction avoidance strategies is

⁵What to Do When You're Broke: The Laws Governing Personal Bankruptcy in India, Legal Developments, <https://www.legal500.com/developments/thought-leadership/what-to-do-when-youre-broke-the-laws-governing-personal-bankruptcy-in-india/> (last visited Feb. 10, 2025).

⁶England and Wales - Global Restructuring & Insolvency Guide, <https://restructuring.bakermckenzie.com/wp-content/uploads/sites/23/2016/12/Global-Restructuring-Insolvency-Guide-New-Logo-England-and-Wales.pdf> (last visited Feb. 10, 2025).

diminished by adjudication delays brought by overburdened NCLT which frequently postpone the resolution.

India can fortify its bankruptcy system and guarantee equitable and effective outcomes by improving its transaction avoidance procedures and bringing them into compliance with international standards. To establish a more successful insolvency system, both jurisdictions may profit from important areas highlighted in this comparison of the IBC and the UK Insolvency Act. Looking forward, improving the predictability, equity, and effectiveness of avoidance provisions in insolvency law will require ongoing judicial interpretations, policy improvement, and capacity-building initiatives.

II. The Framework of Antecedent Transaction

There are various forms of structures under which business can be done and the company structure is one of them. One of the biggest advantages the company business structure has to offer is the separate legal entity of the company.⁷ A company is an artificial legal person who can hold, acquire, and sell property at the same time it can be sued and it can sue others. Members or shareholders of a company are only liable for the unpaid amounts of the called capital. Corporate insolvency is a situation where a company becomes insolvent and cannot repay its debt as and when it is due.⁸ It is either a financial or operational creditor that initiates the corporate insolvency resolution process (“CIRP”) against the company. The company itself can also initiate the CIRP proceedings if it thinks there is a need to do so. When a company becomes insolvent and cannot be saved through a resolution plan it runs into liquidation. Liquidation is a process through which the company's assets are realized to return the debts that are due to the company.⁹ This means that no individual who is either a shareholder, member, director or an employee is personally liable to pay the debt. Debts have to be repaid from the amount realized from liquidating the assets of the company and hence there is no personal liability.

Safeguards have always existed against the misuse of the separate legal entity concept. As companies are only artificial personalities there do exist people who are the brains behind the

⁷Eva Micheler, Separate Legal Personality – an Explanation and a Defence, 24 J. Corp. L. Stud. 301 (2024), <https://www.tandfonline.com/doi/full/10.1080/14735970.2024.2365170> (last visited Nov. 22, 2024).

⁸Nadine Levratto, From Failure to Corporate Bankruptcy: A Review, 2 J. Innovation & Entrepreneurship 20 (2013), <https://doi.org/10.1186/2192-5372-2-20> (last visited Nov. 22, 2024).

⁹BC Laws EditorSV, Diving into the Waterfall of Insolvency & Bankruptcy Code 2016 - By Yug Thatere, IBC Laws (May 8, 2024), <https://ibclaw.in/diving-into-the-waterfall-of-insolvency-bankruptcy-code-2016-by-yug-thater/> (last visited Nov. 22, 2024).

company. Hence, there do exist certain transactions which if executed can lead to the lifting of the corporate veil. For instance, if a director of the company makes a decision that leads to personal benefit and is not beneficial for the interests of the company, the director can be made personally liable for the losses that the company suffers from such a decision. In scenarios of corporate insolvency when the CIRP process is initiated a resolution professional (“RP”) is appointed. The RP makes an effort to understand the transactions that the company has done in the recent past to understand the reason for insolvency and also understand the debts and assets of the company. When we talk about some common reasons why companies run into insolvency is wrong estimation of the demand for their goods and services, unplanned expansions, and unexpected situations arising in the market. The COVID-19 pandemic for example was something that led to several corporations becoming insolvent.

However, sometimes there do exist transactions that if analyzed should not have been undertaken in a company. For example, if a RP comes across a transaction where the company when in need of funds had taken a loan at an interest rate of 50% per month. This transaction is something that should not have been undertaken under normal circumstances because taking debt at an interest rate of 50% per month is going to lead the company into financial trouble. Hence, there exists a need to regulate such transactions and in certain scenarios reverse the same. Such transactions are regulated under the concept of antecedent transactions also commonly referred to as avoidance transactions. One of the main purposes of IBC is to ensure the best recovery of assets and then ensure fair and equitable distribution under the waterfall mechanism. Transactions that undermine the waterfall mechanism by providing priority to one creditor or a set of creditors harming the interests of all other stakeholders are reversed under the concept of antecedent transactions.¹⁰

Insolvency and Bankruptcy Code 2016 (IBC) is the primary piece of legislation dealing with avoidance transactions under the Indian legal scenario. Present under Chapter III of IBC sections 43 to 51 deal with various types of antecedent transactions and their regulation.¹¹ If we talk about the literal meaning of the term antecedent, it means something that existed before other things and hence the IBC has in place to identify and reverse the impact of all those transactions which were harmful to the corporate debtor and undermined the waterfall

¹⁰Jahnawi Tiwari Varendyam, A Critical Analysis of Transaction Avoidance in Insolvencies with Special References to Extortionate Credit Transactions Under the Insolvency and Bankruptcy Code, 2016 (2018), <https://papers.ssrn.com/abstract=3999061> (last visited Nov. 22, 2024).

¹¹ *Insolvency and Bankruptcy Code 2016* s 43-51.

mechanism. IBC has a set hierarchy in place following which the proceeds of a liquidation process are distributed to the creditors and other stakeholders.¹² Any transaction done to undermine that hierarchy can be reversed. IBC recognizes four categories of avoidance transactions namely undervalued, preferential, fraudulent, and extortionate credit transactions.¹³ PUF is an acronym used for denoting these transactions together.

Under the scheme of IBC 2016 the first type of avoidance transaction discussed is preferential transaction. Preferential transaction as indicated by the name itself is all about giving undue preference to a particular individual or entity. Section 43 of the Code outlines what constitutes preferential transactions and defines the relevant timeframe for them.¹⁴ According to Section 43(1)¹⁵, if the resolution professional or liquidator has reason to believe that the corporate debtor has unfairly favoured certain parties within a specified period, they can approach the Adjudicating Authority to nullify such transactions.¹⁶ Section 43(2) specifies the conditions under which a transaction is regarded as preferential. A corporate debtor is considered to have given preference if it involves transferring property or interest to a creditor, guarantor, or surety for settling an existing debt or liability. Such a transfer is deemed preferential if it gives the creditor, guarantor, or surety an advantage over others, placing them in a better position than they would have been under the insolvency distribution rules outlined in Section 53.¹⁷ Under the IBC, the look-back period for identifying preferential transactions is two years when dealing with related parties and one year for all other cases, measured from the date the insolvency process begins.¹⁸

In the judgement of *Jaypee Infratech Ltd. Interim Professional v Axis Bank Ltd* the Supreme Court of India explained the ingredients of a preferential transaction.¹⁹ The Supreme Court emphasized that certain questions must be examined to determine if a transaction falls under Section 43 of the Code. These include whether the transfer benefits a creditor, surety, or guarantor; whether it pertains to an existing financial or operational debt or other liabilities of the corporate debtor; and whether it places the creditor, surety, or guarantor in a more

¹² Ibid s 53.

¹³ Avoidance Transactions Under Indian Insolvency Law: Moving Towards a Creditor-Centric Paradigm, Oxford Law Blogs (2023), <https://blogs.law.ox.ac.uk/oblb/blog-post/2023/01/avoidance-transactions-under-indian-insolvency-law-moving-towards-creditor> (last visited Nov. 22, 2024).

¹⁴ *Insolvency and Bankruptcy Code 2016* s 43.

¹⁵ Ibid 2.

¹⁶ Ibid s 43(1).

¹⁷ Ibid s 43(2).

¹⁸ Ibid s 43(4).

¹⁹ *Jaypee Infratech Ltd. Interim Resolution Professional v. Axis Bank Ltd.*, (2020) 8 SCC 401

advantageous position than they would have been under the asset distribution rules in Section 53.²⁰ Additionally, for related parties (excluding employees), the transfer must have occurred within two years before the insolvency commencement date, while for unrelated parties, the time frame is one year. Lastly, it must be considered whether the transaction is excluded under Section 43(3)²¹. The Court further clarified in its judgment that even if the specified conditions are satisfied, preferential transactions are permissible if they occurred as part of the regular business dealings between the corporate debtor and the transferee or if they brought new value to the corporate debtor.²²

III. Translation avoidance and Extortionate Transaction under IBC, 2016.

Credit in an economy has an indispensable role as it gives opportunities to companies to take risks to generate higher profits. However, the risk sometimes results in unfulfilled obligations due to some unforeseen circumstances, voluntary misconduct, or sheer negligence by the companies which leads to insolvency. Especially in insolvency matters a collective approach is adopted to administer the debtor's assets, ensuring the fair distribution among all the creditors. Despite that, sometimes corporate debtors engage in evasive behaviour to reduce the total assets available for the insolvency resolution which harms the interest of creditors.²³ This demands a robust legal structure for transaction avoidance i.e. a principle widely accepted in insolvency laws across all jurisdictions and emphasizing anti-deprivation and *pari passu* distribution.

To have an advantage over the other creditors, they naturally try to reduce their risks when they are on the edge of going bankrupt by enforcing more strict lending terms or requesting more security.²⁴ For eg. in England, suppliers are entitled to charge the premium rates for continuing to supply distressed enterprises since the execution of contracts is still enforceable even during the insolvency proceedings. Because they are against the core idea of equitable asset allocation under the insolvency rules, these kinds of transactions are considered outrageous. Therefore, to safeguard the collective interest of the creditors and restrict the unjust enrichment of some

²⁰ Ibid.

²¹ Ibid 2.

²² *Insolvency and Bankruptcy Code 2016* s 43(3).

²³ J.T. Varendyam, A Critical Analysis of Transaction Avoidance in Insolvencies with Special References to Extortionate Credit Transactions Under the Insolvency and Bankruptcy Code, 2016, SSRN (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3999061 (last visited Feb. 10, 2025).

²⁴ Reserve Bank of India, Guidelines on Fair Practices Code for Lenders (May 5, 2003), <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency>.

stakeholders at the expense of others, transaction avoidance measures are crucial.²⁵

The England judiciary has acknowledged significant transaction avoidance and states that when a creditor exploits debtors' vulnerability to demand higher prices for recurring supply such action calls for the judiciary examination. This avoids the unfair results and maintains the collaborative aspects of the bankruptcy process.²⁶ The goal of this law, which is to fairly balance conflicting interests, may be undermined if such transactions are permitted to continue because they might provide some creditors an unjust advantage.

A rigorous approach to prevent transactions that negatively affect the insolvency resolution process is offered by IBC, 2016. Though the IBC does not define transaction avoidance specifically, it does give resolution specialists and liquidators the ability to request that transactions completed within the defined lookback periods be cancelled by the adjudicating authority. A transaction that imposes an undue financial strain on a corporate debtor may be considered exorbitant under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2018. There are primary IBC provisions that talk about avoidance transactions such as Section 43²⁷ provides the Preferential Transaction that compromises the equitable distribution principles by extending preference to one creditor over another. Section 45, provides an Undervalued Transfer that is carried out at rates much lower than the market rates, which may suggest that fraudulent intent such are prohibited under the act. Section 49 provides Fraudulent Transactions that are done to mislead creditors or lower the asset base of corporate debtors.²⁸ Section 50 is an Extortionate Credit Transaction that places excessive demands on the debtor's terms of repayment.

Together these clauses guarantee that deals made just before the bankruptcy procedures don't unjustly harm the interest of the creditors or make asset theft easier.

A. Understanding the Extortionate Credit Transactions Under the IBC regime.

Resolution Professionals can contest the lending agreements that place unjust financial

²⁵The Avoidance of Pre-Bankruptcy Transactions, https://www.iiiglobal.org/file.cfm/12/docs/2017_silver_agm_2017_the_avoidance_of_pre-bankruptcy_transactions.pdf (last visited Feb. 10, 2025).

²⁶Sumit Chatterjee et al., Avoidance Transactions Under Indian Insolvency Law: Moving Towards a Creditor-Centric Paradigm, Oxford Law Blogs (2023), <https://blogs.law.ox.ac.uk/oblb/blog-post/2023/01/avoidance-transactions-under-indian-insolvency-law-moving-towards-creditor> (last visited Feb. 10, 2025).

²⁷ Ibid 2.

²⁸Business Ready, World Bank, <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency> (last visited Feb. 10, 2025).

requirements on the corporate debtor according to Section 50 of IBC, 2016 which addresses the extortionate credit transactions in specific. Exorbitant terms like abnormally high interest rates, or excessive penalties that pragmatic commercial thresholds are frequently associated with such kinds of deals. Exorbitant credit transactions are typically carried out when a corporate debtor is compelled to comply with the exploitative lending term due to a lack of access to traditional finance and extreme financial distress. To be considered exorbitant a transaction needs to first, demand disproportionate payments from the corporate debtor in exchange for credit they have been granted, secondly it contains clauses that, according to the accepted principles of contract law, are unconscionable.

If the adjudicating body finds that a transaction meets these requirements it might declare the transaction void, remove unfair restrictions, or impose changes to credit terms. In particular, the consequences of an extortionate credit finding may have an impact on other parties who have profited from such arrangements in addition to the primary participants in transactions.

B. Interpretation by Judiciary and Practical Challenges.

Under the IBC regime, Judicial interpretation of extortionate credit transactions has been developing. Courts have emphasized how crucial it is to differentiate between truly exploitative agreements and commercially aggressive lending tactics. That justification for judicial intervention is strengthened by enormous repayment obligation and unambiguous evidence of the debtor's financial suffering at the time of execution, even though high interest rates by themselves do not always make exorbitant transactions.

However, it can be difficult to prove exorbitant credit transactions. The resolution professional bears the burden of proving that terms were unfair and unduly burdensome in comparison to market standards. Furthermore, the range of transactions that can be contested is considered by procedural restrictions such as a two-year look-back period.²⁹ This discrepancy is troublesome because there are longer statutes of limitations for contesting unconscionable contracts³⁰ under other legal regimes such as the Indian Contract Act and The Usurious Loans Act, of 1918.³¹

Additional procedural criteria are additionally imposed by Regulation 11(2) of IBBI regulations³² which calls for evidence of both substantive unfairness and procedural absurdity.

²⁹ *LIC of India v. Consumer Education and Research Centre*, (1995) 5 SCC 482, 32, 37.

³⁰ *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*, 1986 SCR (2) 278.

³¹ Law Commission of India, Report No. 103, Unfair Terms in Contract (July 28, 1984), 12.6.

³² IBBI (Voluntary Liquidation Process) Regulations, 2017

However, bringing the coercive credit analysis into line with the contract law concepts leads to legal discrepancy and makes it more difficult for resolution professionals to secure relief under section 50 of the code.

C. Suggestions for Reinforcing Extortionate Credit Provisions

Several improvements are suggested to improve Section 50 of IBC effectiveness. First and foremost, the look-back period must be prolonged to conform to other legal frameworks and provide a closer examination of prior transactions that might have unjustly burdened the debtor. Second, to ensure that there are uniform standards for evaluating exorbitant interest rates and unjust contractual duties, objective criteria must be developed to define what constitutes exorbitant terms. Furthermore, by strengthening their investigative capabilities including the use of forensic audits resolution professionals may more effectively identify and combat exploitative lending practices.³³ Last but not least, a combination approach that combines judicial discretion with the structure's legislative requirements should be used to better fit changing economic circumstances and guarantee that extortionate credit transactions are dealt with by a just and balanced legal framework. By placing excessive financial obligations on corporate debtors, extortionate credit transactions endanger the insolvency resolution process by eroding the asset value and affecting the interests of creditors. Even though Section 50 of IBC offers a way to dispute such transactions, enforcement issues, the weight of evidence, and procedural limitations call for more revisions.³⁴ The effective implementation of transaction avoidance tools under IBC will depend on future legislative improvements judicial coherence, and procedural efficiency.

IV. Analysis in Comparison to the UK Insolvency Act of 1986.

Similar to the Indian Insolvency and Bankruptcy Code, 2016, the UK's Insolvency Act, 1986, offers a structured framework for transaction avoidance; nevertheless, it differs significantly in its scope, methodology and judicial discretion. Both legal systems seek to stop deals that diminish the number of assets available for distribution among creditors or unfairly favour some creditors. However, because of differences in legislative intent and insolvency

³³India's Bankruptcy Law and Comparative Analysis with Other Countries, https://vulj.vupune.ac.in/archives5/2.INDIAS_BANKRUPTCY_LAW_AND_COMPARATIVE_ANALYSIS_WITH_OTHER_COUNTRIES.pdf (last visited Feb. 10, 2025).

³⁴Comparative Corporate Insolvency Law, at 12-13, https://www.ecgi.global/sites/default/files/working_papers/documents/SSRN-id2799863.pdf (last visited Feb. 10, 2025).

jurisprudence, their look back time frames, procedural systems, and levels of judicial intervention varied greatly.³⁵

The look-back time for transaction avoidance is one of the main differences between the two countries. Preferential transactions have a year look back time for unrelated parties and a two-year look back term for linked parties under IBC. The look-back period for extortionate credit transactions is two years in advance of the start of insolvency proceedings. With transactions at an undervalue and preference that can be challenged within two years for related parties and six months for others, the UK Insolvency Act, on the other hand, offers lengthy look-back periods. Furthermore, extortionate credit transactions may be contested within three years as under Section 244 of the UK act.³⁶ Because of the longer look-back period permitted by UK law, a greater percentage of pre-insolvency transactions can be thoroughly examined and, if determined to be harmful to credit interests, set aside.

The extent of judicial discretion in deciding whether a transaction should be avoided is another significant distinction. Transactions are considered avoidable in India under the IBC's structured, rule-based approach provided they satisfy specific legal requirements. The NCLT³⁷, the adjudicating authority, is primarily accountable for determining whether the requirements listed in Sections 43 to 51 of the IBC are achieved. However, the UK Insolvency Act gives judges more latitude to assess deals using the standard of intent, fairness, and commercial sense. This makes it possible for UK courts to take a more lenient stance while determining whether a transaction should be annulled in light of its overall effect on insolvency proceedings.

Additionally, the enforcement methods are more adaptable under the UK structure. Administrators and liquidators have broad authority to look into contest questionable transactions under the Insolvency Act. They can ask for court orders to change credit terms, reverse transactions, or return assets. Furthermore, the UK system contains provisions that permit the creditors or any other victim of fraudulent transactions to start legal action without first undergoing insolvency processes.³⁸ For eg. Transactions that fraud creditors may be

³⁵Report of the Review Committee, Insolvency Law and Practice (Cmnd 8558, June 1982, U.K.), at 11481-1484.

³⁶Rebecca Parry, Extortionate Credit Transactions (Insolvency Act 1986, Sections 244 and 343), in Transaction Avoidance in Insolvencies 197 (Rebecca Parry et al. eds., 3rd ed. 2018).

³⁷ National Company Law Tribunal

³⁸Andrew Keay, The Avoidance of Pre-Liquidation Transactions: An Anglo-Australian Comparison, J.B.L. 548 (Nov. 1988).

contested under Section 423³⁹ even in the absence of formal insolvency proceedings. This is in contrast to IBC, which restricts the capacity of Individual creditors to take independent action by requiring a resolution professional or liquidator to start transaction avoidance procedures within Insolvency proceedings.

The way the two regimes handle extortionate credit transactions is among their most obvious differences. Courts in the UK may investigate credit transactions and decide whether the terms are excessive or extremely unjust under Section 244⁴⁰. Courts have the authority to change repayment terms, lower interest rates, or cancel the deal entirely if it turns out to be excessive. Usually, the liquidator or administrator bears the burden of proving that the debtor was confronted with excessive financial responsibilities as a result of the transaction. Section 50 of IBC takes a somewhat stricter stance, requiring a resolution specialist to prove that the transaction had unreasonable terms or outrageously exorbitant fees. While IBC requires more stringent adherence to legislative restrictions, the UK framework's scope of Judicial authority gives courts greater flexibility in addressing unfair lending practices.

Additionally, a wider variety of transaction avoidance policies including those about *pari passu* principles and anti-deprivation guidelines, are included in the UK Insolvency Act. Transactions that seek to deprive the bankrupt estate of valuable assets are guaranteed access to accessible assets since the anti-deprivation law prohibits contractual clauses from taking assets away from the bankruptcy estate. In the same way, the *pari passu*⁴¹ concept guarantees that the division of assets adheres to a just and equitable structure, prohibiting specific creditors from receiving preferential treatment. Although the IBC does not specifically define the anti-deprivation concept as a stand-alone legal framework, it does not include these principles in its preferential transaction and undervaluation provisions.

The adjudicatory approach in the UK system is very different from that in India from a procedural perspective. The UK system offers more flexibility in settling issues involving questionable transactions by permitting administrative reviews and out-of-court settlements. On the contrary, the IBC necessitates adjudication through the NCLT, resulting in a more organized and frequently time-consuming procedure. While the UK's focus on administrative

³⁹ The Insolvency Act, 1986

⁴⁰ Ibid 39.

⁴¹ On equal Footing.

resolution mechanisms enables more effective implementation of avoidance measures, India's procedural rigour may cause delays in transaction avoidance circumstances.

Notwithstanding these differences, the protection of creditor's rights and maintaining openness throughout insolvency procedures are shared objectives of both legal systems. Both jurisdictions' transaction avoidance laws seek to preserve the integrity of insolvency processes, stop asset dissipation and ensure equitable asset distribution.⁴² However, the Indian system places a higher priority on statutory conformity and systematic enforcement, whereas the UK framework stresses judicial discretion and procedural flexibility. This discrepancy emphasizes how insolvency law is changing and how crucial it is to strike a balance between judicial flexibility and regulatory consistency.

There are significant distinctions in methods, judicial discretion and enforcement mechanisms of transaction avoidance provisions found in IBC and the UK Insolvency Act of 1986. The IBC offers a structured and rule-based framework designed to ensure compliance and predictability, however, the UK system gives longer look-back periods, more enforcement flexibility and more judicial autonomy. The Indian Insolvency regime can be improved by using lessons learned from the UK framework, especially in areas like independent creditors' action, judicial discretion, and procedural efficiency. A combination of approaches that incorporate the advantages of both jurisdictions may help create a more efficient and well-rounded insolvency resolution system as insolvency legislation develops further.

V. Bridging the Gaps: Challenges and Strategic Recommendations for Indian Insolvency Law

The IBC, 2016 which offers a systematic method for resolving financial problems in businesses has significantly improved the country's bankruptcy resolution procedure. However, several issues that impact the effectiveness and predictability of insolvency proceedings emerge when examined through the lens of the UK Insolvency Act, of 1986. Complex Cross-Border insolvency situations, difficulty appropriately assessing distressed assets, possible unfair treatment of unsecured creditors, and uncertain legal interpretation are the main concerns. To ensure the IBC's continuous development and efficacy, these issues must be addressed. The complexity of cross-border insolvency is one of the main hurdles. Because different nations

⁴²Debanshu Goswami & Andrew Godwin, India's Journey Towards Cross-Border Insolvency Law Reform, *Asian J. Comp. L.*, Cambridge Core (2024), <https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/indias-journey-towards-crossborder-insolvency-law-reform/358135F0BED9AA9375F21913BAB56A73> (last visited Feb. 10, 2025).

have different bankruptcy systems in dealing with international firms that have assets and creditors across numerous jurisdictions can lead to legal issues. The smooth coordination of international and Indian processes is hindered by IBC's lack of a thorough cross-border insolvency framework. India currently takes a case-by-case approach, resulting in ambiguity and inconsistent decisions. India should implement the UNCITRAL⁴³ Model Law on Cross-Border Insolvency⁴⁴ which has been successfully applied in the UK to mitigate this. Coordination and predictability can be increased by establishing bilateral agreements with important trading partners and establishing precise protocols for identifying international insolvency processes.⁴⁵

Challenges with Asset valuation are a further significant problem. One of the most controversial topics in insolvency procedures is accurately assessing the value of distressed assets, especially in real estate, Intellectual property, and complicated financial instruments. The insolvency process is delayed by a disagreement between creditors and resolution professionals triggered by inconsistent valuation techniques. India must require the engagement of independent valuation specialists with defined procedures to solve this and strengthen its asset valuation systems.⁴⁶ Greater uniformity and reliability in the valuation process can be ensured by following the UK's example of using court-appointed valuation experts and releasing valuation reports.

These are issues with IBC's treatment of unsecured creditors likewise. Particularly in Liquidation situations, the priority given to secured creditors frequently results in minimal recovery for unsecured creditors. The IBC's waterfall mechanism under Section 53 of the IBC significantly favours secured creditors, in comparison with the UK Insolvency Act, which offers a more balanced approach by ensuring a certain amount of distribution to unsecured creditors through the specified part mechanism. To guarantee equitable recovery, India should look into possibilities like implementing a set of portions for unsecured creditors, similar to the UK model. This reform would boost lending in the Indian Financial sector and give unsecured creditors a greater sense of security.

⁴³ United Nations Commission on International Trade Law

⁴⁴ IBC – Idea, Impressions, and Implementation, at 288-290, <https://ibbi.gov.in/uploads/whatsnew/b5fba368fbd5c5817333f95fbb0d48bb.pdf> (last visited Feb. 10, 2025).

⁴⁵ Insolvency Laws and International Trade: A Perspective, at 15-16, https://www.ris.org.in/sites/default/files/Publication/DP_298_Insolvency_Laws_and_International_Trade_A_Perspective-Amol_Baxi_compressed.pdf (last visited Feb. 10, 2025).

⁴⁶ Ashish Makhija, *Insolvency and Bankruptcy Code of India* (2018) 992.

Under IBC, insolvency procedures are made much more difficult by problems with the interpretation of law. Implementation irregularities are caused by ambiguities related to operational creditor rights, the function of the resolution professional and selection procedures for insolvency professionals. These sections have been read differently by courts, which has resulted in unpredictable outcomes. To lessen this, IBBI⁴⁷ ought to announce comprehensive legal rules that make clear important points such as operational creditors' rights, resolution professionals' credentials and procedural deadlines. This would put India's insolvency structure in line with the UK's whose laws related to insolvency are backed by the extensive rules and case law precedent that ensure its uniform application. The reality is that international insolvency professionals are unfamiliar with the Indian system is another significant hurdle. Due to its procedural intricacies and distinctions from the international bankruptcy laws, insolvency experts from other jurisdictions especially the UK may find it difficult to deal with IBC given India's growing involvement in worldwide trade and investment.⁴⁸ India should start capacity-building initiatives to teach international insolvency professionals particularly those that deal with cross-border insolvency proceedings, to address this knowledge gap. Smoother cross-border insolvency resolution could be made possible by cooperative training sessions, certification programs, and knowledge-sharing platforms with UK insolvency professionals.

Considering these challenges, several suggestions can improve India's insolvency system efficacy. India should first negotiate bilateral agreements with important jurisdictions and formally adopt the UNCITRAL Model Law to reinforce its framework for cross-border insolvency. Second, it should adopt standardized valuation procedures and necessitate the intake of independent valuation professionals to establish strong asset valuation standards.⁴⁹ Third, to ensure fair treatment, protecting the unsecured creditors should be given the highest priority. This can be accomplished through the investigating alternate distribution framework or a defined part method.⁵⁰ Fourth, improving legal clarity through comprehensive IBBI standards can provide certainty in insolvency procedures and avoid errors.⁵¹ Lastly, efforts to increase the capacity of international insolvency professionals will facilitate the resolution of

⁴⁷ Insolvency and Bankruptcy Board of India.

⁴⁸ Tracing Director Liability Framework During Borderline Insolvency, <https://www.iima.ac.in/sites/default/files/rnpfiles/812680252021-08-02.pdf> (last visited Feb. 10, 2025).

⁴⁹ Bankruptcy Law Reform Committee, Interim Report of the Bankruptcy Law Reform Committee (Feb. 2015), at 98-99.

⁵⁰ Report of the Insolvency Law Committee on Cross-Border Insolvency, https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf (last visited Feb. 10, 2025).

⁵¹ Business Ready, World Bank, <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency> (last visited Feb. 10, 2025).

cross-border bankruptcy proceedings and advance India as a globally competitive Insolvency regime.

By placing these steps into position, the IBC can develop into a more reliable, effective, and efficient insolvency structure that meets the particular needs of the Indian Economy while also conforming with global best practices. Creditor confidence will rise, good corporate conduct will be encouraged and India's Financial system would become more resilient if legal and procedural aspects of bankruptcy resolution are strengthened.

VI. Conclusion

By shifting from the debtor-in-possession paradigm towards the creditor-in-control one, the IBC, 2016 has fundamentally changed India's insolvency structure. This change has increased the recovery rates, strengthened the monetary control, and minimized defaulting promoters' manipulation of insolvency processes. However several issues still exist, necessitating the additional improvements to increase the Code's efficacy. Cross-border insolvency is a significant issue since India does not have a clear structure in place to deal with multinational insolvencies. In these situations, legal certainty as well as coordination would be improved by establishing bilateral agreements and adopting the UNCITRAL Model Law.⁵² Another problem is asset value since different approaches to the valuation can cause delays and disagreements. Transparency would be improved by putting in place consistent valuation standards and hiring impartial valuation professionals.

Section 53⁵³ which gives priority to the secured creditors and leaves unsecured creditors with less recovery raises concerns about how unsecured creditors are dealt with. Like the UK, India might use an established percentage system to guarantee fair asset allocation. Procedural delays are also caused by legal issues about operational creditors and resolution professionals. Efficiency would be increased by issuing thorough IBBI rules and setting up a rapid dispute resolution process inside the NCLT.

The IBC has already shown effectiveness despite these obstacles, as evidenced by higher recoveries and better debtor behaviour. In addition to improving India's insolvency structure, strengthening cross-border laws, asset valuation methods, and credit rights will promote

⁵²Insolvency Laws and International Trade: A Perspective,
https://www.ris.org.in/sites/default/files/Publication/DP_298_Insolvency_Laws_and_International_Trade_A_Perspective-Amol_Baxi_compressed.pdf (last visited Feb. 10, 2025).

⁵³ Waterfall Mechanism under IBC.

financial stability and economic growth. The IBC is positioned to become a transparent and globally competitive insolvency method with ongoing improvements.