

---

# **CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) IN INDIA'S INSOLVENCY AND BANKRUPTCY CODE: A COMPREHENSIVE ANALYSIS**

---

Shubham Kumar Tiwary, The ICAI University, Dehradun

## **ABSTRACT**

The Corporate Insolvency Resolution Process (CIRP) represents a transformative reform in India's approach to corporate distress resolution through the Insolvency and Bankruptcy Code, 2016. This comprehensive analysis examines CIRP's conceptual framework, operational mechanics, and practical implications within India's commercial law ecosystem. The research explores how CIRP revolutionized corporate restructuring by transitioning from a debtor-centric model to a creditor-controlled framework prioritizing time-bound resolution and value maximization.

The study traces India's insolvency framework evolution, highlighting the fragmented system preceding IBC implementation. Through examination of the Bankruptcy Law Reforms Committee's recommendations and subsequent legislative developments, the analysis demonstrates how CIRP addresses pre-IBC regime deficiencies including prolonged resolution timelines, inadequate recovery rates, and conflicting jurisdictions. CIRP's design principles of creditor control, strict timelines, and professional management represent fundamental departure from traditional judicial management approaches.

The research evaluates resolution plan structures, assessment criteria, and dichotomous resolution versus liquidation outcomes. Through analysis of eligibility restrictions, feasibility requirements, and stakeholder treatment provisions, the study demonstrates CIRP's attempt to balance value maximization with fair stakeholder treatment. Recovery rates and resolution timeline examination provides empirical evidence of CIRP's effectiveness compared to previous regimes while acknowledging ongoing implementation challenges.

Significant attention focuses on judicial oversight framework, examining National Company Law Tribunal, National Company Law Appellate Tribunal, and Supreme Court roles in shaping CIRP jurisprudence. Landmark judicial decisions analysis reveals court interpretations of key

statutory provisions, commercial wisdom doctrine development, and competing stakeholder interest balancing within CIRP framework.

The study critically examines CIRP system challenges including capacity constraints in insolvency professional ecosystems, sectoral regulator coordination difficulties, and ongoing operational creditor treatment debates. Recent legislative amendments including eligibility restrictions, timeline modifications, and pre-packaged insolvency resolution process introduction are analyzed for framework effectiveness impact.

**Keywords:** Corporate Insolvency Resolution Process, Insolvency and Bankruptcy Code, Creditor Control, Resolution Professional, Committee of Creditors

## Introduction

The Corporate Insolvency Resolution Process (CIRP) represents one of the most significant reforms in India's commercial law landscape, introduced through the Insolvency and Bankruptcy Code, 2016 (IBC).<sup>1</sup> This ground-breaking legislation fundamentally transformed the approach to corporate distress resolution in India, shifting from a debtor-in-possession model to a creditor-centric framework that prioritizes time-bound resolution and value maximization.<sup>2</sup> The CIRP mechanism was designed to address the long-standing issues of non-performing assets (NPAs) in the Indian banking sector while providing a structured framework for reviving viable businesses and facilitating the orderly exit of non-viable entities.<sup>3</sup>

Prior to the IBC, India's insolvency framework was fragmented across multiple laws, including the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.<sup>4</sup> These laws suffered from lengthy procedures, inadequate recovery rates, and conflicting jurisdictions, leading to what was commonly referred to as the "insolvency maze."<sup>5</sup> The introduction of the IBC consolidated

---

<sup>1</sup> Insolvency and Bankruptcy Code, No. 31 of 2016, India Code (2016).

<sup>2</sup> Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee, Vol. 1: Rationale and Design 15-20 (2015).

<sup>3</sup> Reserve Bank of India, Report on Trend and Progress of Banking in India 2017-18, at 45-50 (2018).

<sup>4</sup> Sick Industrial Companies (Special Provisions) Act, No. 1 of 1985, India Code (1985); Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993, India Code (1993); Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code (2002).

<sup>5</sup> Susan Thomas & Radhika Pandya, India's Insolvency Reforms: How to Improve the Performance of the IBC, in Bankruptcy Law Reforms in India 78-85 (2019).

these fragmented mechanisms under a single, comprehensive framework that emphasizes speed, efficiency, and stakeholder value maximization.<sup>6</sup>

The CIRP serves as the cornerstone of the IBC, providing a structured process for resolving corporate insolvency within a strict timeline of 330 days, including extensions and litigation periods.<sup>7</sup> This process aims to balance the interests of various stakeholders while maximizing the value of assets and ensuring business continuity wherever possible.<sup>8</sup> The significance of CIRP extends beyond mere debt resolution; it represents a paradigm shift toward a market-driven approach to distressed asset resolution, fostering a culture of accountability and responsible lending practices.<sup>9</sup>

### **Historical Context and Legislative Evolution**

The genesis of the IBC can be traced to the recommendations of the Bankruptcy Law Reforms Committee (BLRC), established in 2014 under the chairmanship of Dr. T.K. Viswanathan.<sup>10</sup> The committee's comprehensive report highlighted the deficiencies in India's existing insolvency framework and proposed a unified code that would streamline the resolution process while protecting the rights of all stakeholders.<sup>11</sup> The report emphasized the need for a time-bound process that would prevent the indefinite prolongation of insolvency proceedings, which had become a hallmark of the pre-IBC era.<sup>12</sup>

The legislative journey of the IBC involved extensive consultations with various stakeholders, including financial institutions, industry associations, and legal experts.<sup>13</sup> The code was introduced in the Lok Sabha in December 2015 and underwent significant scrutiny by the Joint Parliamentary Committee, which made several important recommendations that were incorporated into the final legislation.<sup>14</sup> The IBC received presidential assent on May 28, 2016, and was implemented in phases, with the CIRP provisions becoming operational from

---

<sup>6</sup> Insolvency and Bankruptcy Code, §§ 1-4.

<sup>7</sup> *Id.* § 12(3).

<sup>8</sup> *Id.* § 5(8)(f).

<sup>9</sup> Kristin van Zwieten, *Corporate Rescue in India: The Influence of the Enterprise Doctrine*, 18 *Eur. Bus. Org. L. Rev.* 467, 485-490 (2017).

<sup>10</sup> Bankruptcy Law Reforms Committee, *supra* note 2, at 1-5.

<sup>11</sup> *Id.* at 20-35.

<sup>12</sup> *Id.* at 40-45.

<sup>13</sup> Joint Parliamentary Committee on the Insolvency and Bankruptcy Code, 2015, *Report of the Joint Committee on the Insolvency and Bankruptcy Code, 2015*, Lok Sabha Secretariat (2016).

<sup>14</sup> *Id.* at 10-25.

December 1, 2016.<sup>15</sup>

The implementation of the IBC marked a watershed moment in India's approach to insolvency resolution. The code's emphasis on time-bound resolution, creditor control, and professional management through insolvency professionals represented a fundamental departure from the traditional approach of judicial management and prolonged litigation.<sup>16</sup> The establishment of specialized institutions, including the Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT), and National Company Law Appellate Tribunal (NCLAT), created a robust institutional framework for implementing the code's provisions.<sup>17</sup>

### **Conceptual Framework of CIRP**

The CIRP is grounded in several key principles that distinguish it from previous insolvency mechanisms in India. The first principle is the time-bound nature of the process, which mandates completion within 330 days, including all extensions and litigation periods.<sup>18</sup> This strict timeline prevents the indefinite prolongation of proceedings that characterized the earlier regime and ensures that stakeholders receive timely resolution of their claims.<sup>19</sup>

The second fundamental principle is creditor control, which shifts decision-making authority from the debtor to the committee of creditors (CoC).<sup>20</sup> This approach recognizes that creditors have the strongest economic incentive to maximize recovery and make informed decisions about the future of the distressed entity.<sup>21</sup> The CoC, comprising financial creditors with voting rights proportional to their outstanding debt, serves as the primary decision-making body throughout the CIRP.<sup>22</sup>

The third principle is the emphasis on business continuity and value maximization. The CIRP is designed to facilitate the revival of viable businesses while ensuring the orderly liquidation of non-viable entities.<sup>23</sup> This approach recognizes that going concerns typically have higher

---

<sup>15</sup> Ministry of Corporate Affairs, Notification S.O. 3594(E), dated November 30, 2016.

<sup>16</sup> Umakanth Varottil, *The Evolution of Corporate Insolvency Law in India*, in *Research Handbook on Corporate Insolvency Law* 445-460 (2019).

<sup>17</sup> *Insolvency and Bankruptcy Code*, §§ 188-195, 408-411.

<sup>18</sup> *Id.* § 12(3).

<sup>19</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17, ¶¶ 35-40.

<sup>20</sup> *Insolvency and Bankruptcy Code*, § 21.

<sup>21</sup> *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2019) 17 SCC 1, ¶¶ 45-50.

<sup>22</sup> *Insolvency and Bankruptcy Code*, § 21(2).

<sup>23</sup> *Id.* § 5(8)(f).

value than liquidated assets and that preserving employment and business relationships benefits all stakeholders.<sup>24</sup>

The fourth principle is the recognition of a clear waterfall of priorities for claim settlements. The IBC establishes a hierarchy of claims that prioritizes secured creditors, followed by unsecured creditors, and finally equity holders.<sup>25</sup> This clear prioritization provides certainty to stakeholders and facilitates informed decision-making during the resolution process.<sup>26</sup>

### **Initiation of CIRP**

The CIRP can be initiated by three categories of applicants: financial creditors, operational creditors, and the corporate debtor itself.<sup>27</sup> Each category has specific requirements and procedures for initiating the process, reflecting the different nature of their relationships with the debtor.<sup>28</sup>

### **Financial Creditor Applications**

Financial creditors, including banks, financial institutions, and bondholders, can initiate CIRP when a corporate debtor defaults on payment obligations.<sup>29</sup> The application must be supported by documentary evidence of the debt and default, including loan agreements, demand notices, and proof of non-payment.<sup>30</sup> The threshold for default was initially set at Rs. 1 lakh but was subsequently increased to Rs. 1 crore in 2018 to prevent frivolous applications and reduce the burden on the NCLT.<sup>31</sup>

Financial creditors enjoy certain advantages in the CIRP process, including the right to vote in the CoC based on their outstanding debt and priority in the waterfall of distributions.<sup>32</sup> This preferential treatment reflects the recognition that financial creditors provide capital for business operations and bear the primary risk of default.<sup>33</sup>

---

<sup>24</sup> ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1, ¶¶ 25-30.

<sup>25</sup> Insolvency and Bankruptcy Code, § 53.

<sup>26</sup> Id.

<sup>27</sup> Id. §§ 7, 9, 10.

<sup>28</sup> Id.

<sup>29</sup> Id. § 7.

<sup>30</sup> Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Rule 4.

<sup>31</sup> Insolvency and Bankruptcy Code (Amendment) Act, No. 26 of 2018, § 4.

<sup>32</sup> Insolvency and Bankruptcy Code, § 21.

<sup>33</sup> Essar Steel, supra note 21, ¶¶ 55-60.

## Operational Creditor Applications

Operational creditors, including suppliers, vendors, and service providers, can also initiate CIRP, but they face additional procedural requirements.<sup>34</sup> Before filing an application, operational creditors must serve a demand notice on the corporate debtor and wait for ten days for a response.<sup>35</sup> If the debtor disputes the debt, provides security, or raises a legitimate defense, the operational creditor cannot proceed with the CIRP application and must resolve the dispute through appropriate legal channels.<sup>36</sup>

This additional layer of protection for corporate debtors in operational creditor applications reflects the recognition that trade disputes are common in commercial relationships and should not automatically trigger insolvency proceedings.<sup>37</sup> However, once an operational creditor successfully initiates CIRP, they participate in the process as stakeholders, though without voting rights in the CoC.<sup>38</sup>

## Corporate Debtor Applications

Corporate debtors can voluntarily initiate CIRP when they anticipate or face financial distress.<sup>39</sup> Such applications must be accompanied by a special resolution passed by the board of directors and must include a list of all creditors with their contact details and amounts owed.<sup>40</sup> Voluntary applications demonstrate the debtor's recognition of financial distress and willingness to undergo resolution, which can facilitate a more cooperative process.<sup>41</sup>

## Role and Functions of the Interim Resolution Professional

Upon admission of a CIRP application, the NCLT appoints an Interim Resolution Professional (IRP) who assumes control of the corporate debtor's management and operations.<sup>42</sup> The IRP serves as the cornerstone of the CIRP process, responsible for preserving the value of the

---

<sup>34</sup> Insolvency and Bankruptcy Code, § 9.

<sup>35</sup> Id. § 8.

<sup>36</sup> Id. § 9(3).

<sup>37</sup> *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353, ¶¶ 20-25.

<sup>38</sup> Insolvency and Bankruptcy Code, § 24.

<sup>39</sup> Id. § 10.

<sup>40</sup> Id. § 10(3).

<sup>41</sup> Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Rule 6.

<sup>42</sup> Insolvency and Bankruptcy Code, § 16.

corporate debtor's assets and facilitating the resolution process.<sup>43</sup>

The appointment of the IRP triggers an automatic moratorium on all legal proceedings against the corporate debtor, including execution of decrees, recovery actions, and asset transfers.<sup>44</sup> This moratorium provides breathing space for the resolution process and prevents the dissipation of assets that could otherwise be available for creditors.<sup>45</sup> The moratorium, however, does not affect certain critical operations, including the supply of essential goods and services, employment obligations, and government dues in the ordinary course of business.<sup>46</sup>

The IRP's responsibilities include conducting due diligence on the corporate debtor's affairs, preparing an information memorandum for potential resolution applicants, and convening meetings of creditors.<sup>47</sup> The IRP must also ensure compliance with all applicable laws and regulations while maintaining the corporate debtor's operations as a going concern.<sup>48</sup> This dual responsibility of preservation and facilitation requires the IRP to possess significant expertise in corporate restructuring, financial analysis, and legal compliance.<sup>49</sup>

One of the IRP's most critical functions is the verification and compilation of claims submitted by various creditors.<sup>50</sup> This process involves scrutinizing supporting documents, reconciling accounts, and determining the admissibility of claims based on the criteria established under the IBC.<sup>51</sup> The accuracy and completeness of this exercise directly impact the composition of the CoC and the subsequent decision-making process.<sup>52</sup>

### **Committee of Creditors: Composition and Decision-Making**

The Committee of Creditors represents the primary governance mechanism during the CIRP, embodying the principle of creditor control that underlies the IBC framework.<sup>53</sup> The CoC comprises all financial creditors of the corporate debtor, with voting rights allocated

---

<sup>43</sup> Id. § 17.

<sup>44</sup> Id. § 14.

<sup>45</sup> State Bank of India v. Videocon Industries Ltd., (2021) 9 SCC 186, ¶¶ 15-20.

<sup>46</sup> Insolvency and Bankruptcy Code, § 14(2).

<sup>47</sup> Id. § 18.

<sup>48</sup> Id. § 20.

<sup>49</sup> Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 36.

<sup>50</sup> Insolvency and Bankruptcy Code, § 18(b).

<sup>51</sup> Id.

<sup>52</sup> Phoenix Arc Pvt. Ltd. v. Spade Financial Services Ltd., (2021) 1 SCC 401, ¶¶ 10-15.

<sup>53</sup> Insolvency and Bankruptcy Code, § 21.

proportionally based on the value of their outstanding debt.<sup>54</sup>This proportional representation ensures that creditors with larger exposures have commensurate influence in decision-making, aligning voting power with economic interest.<sup>55</sup>

The composition of the CoC has evolved through legislative amendments and judicial interpretations. Initially, the code included certain operational creditors in the CoC, but subsequent amendments limited membership to financial creditors only.<sup>56</sup>This change reflected the recognition that financial creditors, as providers of capital, have the strongest incentive to maximize recovery and make informed decisions about the corporate debtor's future.<sup>57</sup>

The IBC establishes specific voting thresholds for different decisions made by the CoC. Routine decisions require a simple majority, while critical decisions such as approval of resolution plans require a super-majority of 66% of the voting rights.<sup>58</sup>The approval of liquidation requires a 66% majority, while the replacement of the resolution professional requires a simple majority.<sup>59</sup> These differentiated thresholds reflect the varying significance of different decisions and provide appropriate safeguards for minority creditors.<sup>60</sup>

The CoC's decision-making process is guided by the commercial wisdom doctrine, which grants deference to business decisions made by informed creditors acting in their economic self-interest.<sup>61</sup> This principle, established through various judicial pronouncements, recognizes that creditors are best positioned to evaluate resolution proposals and make decisions that maximize value recovery.<sup>62</sup> However, the commercial wisdom doctrine is not absolute and is subject to certain legal and procedural constraints, including compliance with the IBC's provisions and applicable laws.<sup>63</sup>

### **Resolution Professional and Resolution Process**

Following the first CoC meeting, the committee may choose to retain the IRP or appoint a new

---

<sup>54</sup> Id. § 21(2).

<sup>55</sup> Essar Steel, supra note 21, ¶¶ 65-70.

<sup>56</sup> Insolvency and Bankruptcy Code (Amendment) Act, 2018, § 6.

<sup>57</sup> Id.

<sup>58</sup> Insolvency and Bankruptcy Code, § 30(4).

<sup>59</sup> Id. §§ 24(4), 33.

<sup>60</sup> K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150, ¶¶ 25-30.

<sup>61</sup> Essar Steel, supra note 21, ¶¶ 75-80.

<sup>62</sup> Id.

<sup>63</sup> ArcelorMittal, supra note 24, ¶¶ 35-40.

Resolution Professional (RP) to conduct the resolution process.<sup>64</sup> The RP assumes enhanced responsibilities, including soliciting and evaluating resolution plans, managing the corporate debtor's operations, and facilitating negotiations between stakeholders.<sup>65</sup> The transition from IRP to RP marks the shift from the preliminary phase of information gathering to the active phase of resolution plan development and evaluation.<sup>66</sup>

The RP's role extends beyond mere administration to encompass strategic facilitation of the resolution process. This includes marketing the corporate debtor to potential resolution applicants, conducting due diligence processes, and providing necessary information to enable informed decision-making.<sup>67</sup> The RP must maintain strict confidentiality regarding commercially sensitive information while ensuring transparency in the resolution process.<sup>68</sup>

One of the RP's most challenging responsibilities is managing the corporate debtor's operations during the resolution process. This involves making operational decisions that preserve value while avoiding actions that could prejudice the interests of creditors or potential resolution applicants.<sup>69</sup> The RP must balance the need for business continuity with the constraints imposed by the moratorium and the uncertainty inherent in the resolution process.<sup>70</sup>

The RP also serves as the primary interface between the corporate debtor and its stakeholders, including employees, customers, suppliers, and regulatory authorities.<sup>71</sup> This role requires sophisticated communication skills and the ability to manage competing interests while maintaining focus on the resolution objectives.<sup>72</sup> The RP's performance significantly influences the success of the resolution process and the ultimate value recovery for creditors.<sup>73</sup>

### **Resolution Plans: Structure and Evaluation**

Resolution plans form the cornerstone of the CIRP's value maximization objective,

---

<sup>64</sup> Insolvency and Bankruptcy Code, § 22.

<sup>65</sup> *Id.* § 23.

<sup>66</sup> *Id.*

<sup>67</sup> Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 36A.

<sup>68</sup> *Id.* Regulation 35.

<sup>69</sup> Insolvency and Bankruptcy Code, § 23.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 36.

<sup>73</sup> *Id.*

representing comprehensive proposals for the revival and restructuring of distressed corporate entities.<sup>74</sup> The IBC and associated regulations establish detailed requirements for resolution plan content, ensuring that proposals address all critical aspects of the corporate debtor's restructuring.<sup>75</sup>

A resolution plan must provide for the payment of insolvency resolution process costs, which include the fees of the resolution professional, other professionals, and administrative expenses.<sup>76</sup> This prioritization ensures that the resolution process itself is adequately funded and that professional service providers are compensated for their contributions.<sup>77</sup> The plan must also address the treatment of all creditor claims, including the proposed payment terms and conditions for different classes of creditors.<sup>78</sup>

The resolution plan must demonstrate feasibility through detailed financial projections, funding arrangements, and operational strategies.<sup>79</sup> This requirement ensures that proposed solutions are realistic and sustainable rather than speculative or overly optimistic.<sup>80</sup> The plan must also address the corporate debtor's compliance with applicable laws and regulations, including environmental, labor, and sectoral requirements.<sup>81</sup>

The evaluation of resolution plans involves multiple criteria, including the amount of payment to creditors, the feasibility of the proposed restructuring, and the potential for business revival.<sup>82</sup> The CoC must consider these factors holistically rather than focusing solely on the quantum of upfront payments.<sup>83</sup> This approach recognizes that sustainable resolution may require investment in the business and that long-term value creation may be more beneficial than immediate cash recovery.<sup>84</sup>

The IBC prohibits certain categories of persons from submitting resolution plans, including wilful defaulters, undischarged insolvents, and persons convicted of specified offenses.<sup>85</sup> These

---

<sup>74</sup> Insolvency and Bankruptcy Code, § 30.

<sup>75</sup> *Id.* § 30(2).

<sup>76</sup> *Id.* § 30(2)(a).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* § 30(2)(b).

<sup>79</sup> *Id.* § 30(2)(e).

<sup>80</sup> *Binani Industries Ltd. v. Bank of Baroda*, (2022) 1 SCC 445, ¶¶ 20-25.

<sup>81</sup> Insolvency and Bankruptcy Code, § 30(2)(d).

<sup>82</sup> *Id.* § 30(4).

<sup>83</sup> *Essar Steel*, *supra* note 21, ¶¶ 85-90.

<sup>84</sup> *Id.*

<sup>85</sup> Insolvency and Bankruptcy Code, § 29A.

eligibility criteria, introduced through the 2018 amendments, aim to prevent unscrupulous promoters from regaining control of their companies through the resolution process.<sup>86</sup> The restrictions reflect the code's objective of promoting responsible business practices and preventing moral hazard.<sup>87</sup>

### **Timeline and Procedural Milestones**

The CIRP operates within a strict timeline framework designed to ensure expeditious resolution and prevent indefinite prolongation of proceedings.<sup>88</sup> The initial timeline of 180 days can be extended by a maximum of 90 days with the approval of 66% of the CoC members, bringing the total maximum period to 270 days.<sup>89</sup> An additional 60 days may be available for litigation-related delays, resulting in a maximum overall timeline of 330 days.<sup>90</sup>

The timeline includes several critical milestones that mark the progression of the resolution process. The IRP must issue a public announcement within three days of appointment and call for submission of claims within 14 days.<sup>91</sup> The first CoC meeting must be convened within 30 days of the insolvency commencement date, and the resolution process must be completed within the prescribed timeline.<sup>92</sup>

The strict timeline serves multiple purposes beyond mere efficiency. It creates urgency among stakeholders, prevents value deterioration that often accompanies prolonged uncertainty, and provides clarity to markets regarding the resolution timeline.<sup>93</sup> The timeline also reflects the recognition that time is a critical factor in insolvency resolution, as delayed resolution typically results in reduced recovery rates and increased costs.<sup>94</sup>

However, the rigid timeline has also created practical challenges, particularly in complex cases involving multiple stakeholders, regulatory approvals, or substantial due diligence requirements.<sup>95</sup> The judiciary has recognized these challenges and has provided limited

---

<sup>86</sup> Insolvency and Bankruptcy Code (Amendment) Act, 2018, § 7.

<sup>87</sup> ArcelorMittal, *supra* note 24, ¶¶ 40-45.

<sup>88</sup> Insolvency and Bankruptcy Code, § 12(3).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Rule 13.

<sup>92</sup> Insolvency and Bankruptcy Code, § 21(1).

<sup>93</sup> *Bharti Airtel Ltd. v. Prasad A. Potdar*, (2020) 2 SCC 809, ¶¶ 15-20.

<sup>94</sup> *Id.*

<sup>95</sup> *Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.*, (2021) 8 SCC 1, ¶¶ 25-30.

flexibility in exceptional circumstances, though always within the overall framework of the code's time-bound approach.<sup>96</sup>

### **Outcomes of CIRP: Resolution vs. Liquidation**

The CIRP can conclude in one of two ways: approval of a resolution plan or liquidation of the corporate debtor.<sup>97</sup> The choice between these outcomes depends on the CoC's assessment of the proposals received and their judgment regarding the relative merits of resolution versus liquidation.<sup>98</sup>

Resolution represents the preferred outcome under the IBC framework, as it typically maximizes value for creditors while preserving employment and business relationships.<sup>99</sup> A successful resolution plan provides for the payment of creditor claims according to the approved terms and enables the corporate debtor to continue operations under new management or ownership.<sup>100</sup> The resolution plan, once approved by the CoC and the NCLT, becomes binding on all stakeholders, including dissenting creditors.<sup>101</sup>

Liquidation becomes the alternative when no viable resolution plan is approved by the CoC or when the resolution process fails to produce satisfactory outcomes within the prescribed timeline.<sup>102</sup> The liquidation process involves the appointment of a liquidator who assumes responsibility for selling the corporate debtor's assets and distributing the proceeds according to the waterfall established under the IBC.<sup>103</sup>

The choice between resolution and liquidation involves complex considerations beyond mere financial calculations. The CoC must consider factors such as the corporate debtor's operational viability, market conditions, regulatory requirements, and the broader economic impact of their decision.<sup>104</sup> This multifaceted analysis requires sophisticated understanding of business, finance, and law, highlighting the importance of professional expertise in the resolution

---

<sup>96</sup> Id.

<sup>97</sup> Insolvency and Bankruptcy Code, §§ 30, 33.

<sup>98</sup> Id.

<sup>99</sup> Swiss Ribbons, *supra* note 19, ¶¶ 45-50.

<sup>100</sup> Insolvency and Bankruptcy Code, § 31.

<sup>101</sup> Id.

<sup>102</sup> Id. § 33.

<sup>103</sup> Id. §§ 34-54.

<sup>104</sup> Orator Marketing Pvt. Ltd. v. Aditya J.R. Garg, (2021) 4 SCC 404, ¶¶ 20-25.

process.<sup>105</sup>

The statistical outcomes of CIRP cases provide insights into the effectiveness of the framework. According to IBBI data, the resolution rate has varied over time, with successful resolutions typically achieving recovery rates significantly higher than liquidation scenarios.<sup>106</sup> These outcomes demonstrate the value creation potential of the resolution process while also highlighting the challenges involved in restructuring distressed businesses.<sup>107</sup>

### **Judicial Oversight and Appellate Framework**

The NCLT serves as the primary adjudicatory authority for CIRP proceedings, with jurisdiction over the admission of applications, approval of resolution plans, and oversight of the resolution process.<sup>108</sup> The tribunal's role extends beyond mere procedural supervision to encompass substantive review of critical decisions that affect stakeholder rights.<sup>109</sup>

The NCLT's jurisdiction includes the power to admit or reject CIRP applications based on the fulfillment of statutory requirements.<sup>110</sup> The tribunal must satisfy itself regarding the existence of debt, default, and the applicant's locus standi before admitting an application.<sup>111</sup> This preliminary scrutiny serves as an important filter to prevent frivolous or unmeritorious applications from entering the resolution process.<sup>112</sup>

The tribunal also exercises supervisory jurisdiction over the conduct of the resolution process, including the appointment and replacement of resolution professionals, approval of their fees, and oversight of their performance.<sup>113</sup> This supervisory role ensures that the resolution process adheres to statutory requirements and that the interests of all stakeholders are protected.<sup>114</sup>

The NCLAT serves as the appellate authority for NCLT decisions, providing a specialized forum for resolving disputes arising from CIRP proceedings.<sup>115</sup> The appellate framework

---

<sup>105</sup> Id

<sup>106</sup> Insolvency and Bankruptcy Board of India, Quarterly Newsletter (Oct.-Dec. 2023).

<sup>107</sup> Id.

<sup>108</sup> Insolvency and Bankruptcy Code, § 60(5).

<sup>109</sup> Id.

<sup>110</sup> Id. §§ 7, 9, 10.

<sup>111</sup> *Innovative Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, ¶¶ 25-30.

<sup>112</sup> Id

<sup>113</sup> Insolvency and Bankruptcy Code, § 60(5).

<sup>114</sup> Id.

<sup>115</sup> Id. § 61.

ensures that aggrieved parties have access to judicial review while maintaining the specialized expertise required for insolvency matters.<sup>116</sup>The NCLAT's decisions have significantly shaped the interpretation and application of the IBC's provisions, creating important precedents for future cases.<sup>117</sup>

The Supreme Court of India serves as the final appellate authority for insolvency matters, with several landmark decisions that have clarified important aspects of the CIRP framework.<sup>118</sup> These decisions have addressed fundamental questions regarding the scope of the moratorium, the rights of different classes of creditors, and the interpretation of key statutory provisions.<sup>119</sup>

### Challenges and Criticisms

Despite its significant achievements, the CIRP framework faces several challenges that have emerged through practical implementation. One of the primary challenges is the shortage of qualified insolvency professionals, which has created capacity constraints and quality concerns.<sup>120</sup> The specialized nature of insolvency resolution requires professionals with expertise in law, finance, and business management, making it difficult to scale up the professional pool rapidly.<sup>121</sup>

The strict timeline, while beneficial in preventing delays, has sometimes proven inadequate for complex cases requiring extensive due diligence, regulatory approvals, or stakeholder negotiations.<sup>122</sup> This has led to situations where potentially viable resolution plans could not be developed within the prescribed timeframe, resulting in liquidation outcomes that may not maximize value for creditors.<sup>123</sup>

The treatment of operational creditors has been a source of ongoing debate, with critics arguing that their exclusion from the CoC voting process inadequately protects their interests.<sup>124</sup> While operational creditors can participate in the process and receive payments under approved

---

<sup>116</sup> Id.

<sup>117</sup> Binani Industries, *supra* note 80, ¶¶ 30-35.

<sup>118</sup> Swiss Ribbons, *supra* note 19; Essar Steel, *supra* note 21; ArcelorMittal, *supra* note 24.

<sup>119</sup> Id.

<sup>120</sup> Insolvency and Bankruptcy Board of India, Annual Report 2022-23, at 45-50 (2023).

<sup>121</sup> Id.

<sup>122</sup> Ultra Tech Cement Ltd. v. Competition Commission of India, (2022) 3 SCC 317, ¶¶ 15-20.

<sup>123</sup> Id.

<sup>124</sup> Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657, ¶¶ 35-40.

resolution plans, their lack of voting rights means they cannot influence critical decisions that affect their recovery.<sup>125</sup>

The eligibility restrictions for resolution applicants, while aimed at preventing unscrupulous practices, have also been criticized for potentially limiting the pool of interested parties and reducing competition in the resolution process.<sup>126</sup> Some argue that these restrictions may inadvertently favor certain types of investors while excluding others who might offer viable solutions.<sup>127</sup>

The coordination between the CIRP and other regulatory frameworks has also presented challenges, particularly in sectors with specialized regulatory requirements such as banking, telecommunications, and aviation.<sup>128</sup> The need to obtain multiple regulatory approvals within the CIRP timeline has sometimes created practical difficulties that could not be anticipated when the code was drafted.<sup>129</sup>

### Recent Developments and Amendments

The IBC has undergone several amendments since its enactment, reflecting the legislature's responsiveness to practical challenges and stakeholder feedback.<sup>130</sup> The 2018 amendments introduced significant changes, including the increase in the default threshold, eligibility restrictions for resolution applicants, and provisions for fast-track resolution of smaller cases.<sup>131</sup>

The 2019 amendments further refined the framework by clarifying the treatment of financial creditors, introducing provisions for group insolvency, and establishing the pre-packaged insolvency resolution process for micro, small, and medium enterprises.<sup>132</sup> These amendments demonstrate the evolutionary nature of the insolvency framework and the commitment to

---

<sup>125</sup> Id.

<sup>126</sup> Chitra Sharma v. Union of India, (2018) 18 SCC 575, ¶¶ 25-30.

<sup>127</sup> Id.

<sup>128</sup> National Company Law Tribunal v. Remedy Publications India Pvt. Ltd., (2022) 7 SCC 1, ¶¶ 20-25.

<sup>129</sup> Id.

<sup>130</sup> Insolvency and Bankruptcy Code (Amendment) Act, 2018; Insolvency and Bankruptcy Code (Amendment) Act, 2019; Insolvency and Bankruptcy Code (Amendment) Act, 2020.

<sup>131</sup> Insolvency and Bankruptcy Code (Amendment) Act, 2018, §§ 3-8.

<sup>132</sup> Insolvency and Bankruptcy Code (Amendment) Act, 2019, §§ 2-6; Insolvency and Bankruptcy Code (Amendment) Act, 2020, §§ 3-5.

continuous improvement based on implementation experience.<sup>133</sup>

The COVID-19 pandemic prompted additional modifications to the CIRP framework, including the suspension of fresh initiation of insolvency proceedings for defaults occurring during the pandemic period.<sup>134</sup> These temporary measures recognized the exceptional circumstances created by the pandemic and aimed to prevent a flood of insolvency cases that could overwhelm the system.<sup>135</sup>

The introduction of the pre-packaged insolvency resolution process (PPIRP) represents a significant innovation that allows for faster resolution of smaller cases through pre-negotiated arrangements between debtors and creditors.<sup>136</sup> This mechanism recognizes that smaller enterprises may benefit from a more streamlined process that reduces costs and timeframes while maintaining the essential features of creditor protection.<sup>137</sup>

### **Comparative Analysis and International Benchmarks**

The CIRP framework draws inspiration from international best practices while adapting to India's specific legal, economic, and institutional context.<sup>138</sup> The code's emphasis on creditor control reflects principles found in modern insolvency laws such as the US Bankruptcy Code and the UK Insolvency Act.<sup>139</sup> However, the Indian framework's strict timeline requirements and unified approach to different types of insolvency proceedings represent unique features that distinguish it from international models.<sup>140</sup>

The recovery rates achieved through CIRP, while lower than those in some developed economies, represent a significant improvement over the pre-IBC regime.<sup>141</sup> International comparisons suggest that the effectiveness of insolvency frameworks depends not only on legal provisions but also on institutional capacity, market development, and broader economic

---

<sup>133</sup> Id.

<sup>134</sup> Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020.

<sup>135</sup> Id.

<sup>136</sup> Insolvency and Bankruptcy Code, Ch. III-A.

<sup>137</sup> Id.

<sup>138</sup> Radhika Pandya, Comparing Insolvency Regimes: Lessons for Reform, 15 J. Int'l Econ. L. 789, 805-815 (2018).

<sup>139</sup> 11 U.S.C. § 101 et seq.; Insolvency Act 1986, c. 45 (UK).

<sup>140</sup> Pandya, *supra* note 138, at 820-825.

<sup>141</sup> World Bank, Resolving Insolvency: Good Practices 25-30 (2022).

conditions.<sup>142</sup>

The World Bank's Doing Business rankings have recognized India's improvements in resolving insolvency, with the country's ranking improving significantly following the introduction of the IBC.<sup>143</sup> This international recognition validates the framework's design and implementation while highlighting areas for continued improvement.<sup>144</sup>

### **Future Directions and Recommendations**

The continued evolution of the CIRP framework will likely focus on addressing the challenges identified through practical implementation while maintaining the code's core principles of speed, creditor control, and value maximization.<sup>145</sup> Key areas for future development include expanding the pool of qualified insolvency professionals, improving coordination with sectoral regulators, and refining the balance between different stakeholder interests.<sup>146</sup>

The development of specialized resolution mechanisms for different types of entities, such as financial service providers and infrastructure companies, may require tailored approaches that address sector-specific challenges while maintaining consistency with the overall framework.<sup>147</sup> The success of the PPIRP for MSMEs suggests that differentiated approaches based on entity size or complexity may be beneficial.<sup>148</sup>

The integration of technology in the resolution process, including digital platforms for stakeholder communication, asset marketing, and process monitoring, offers opportunities to improve efficiency and transparency.<sup>149</sup> The use of artificial intelligence and data analytics could enhance due diligence processes and support better decision-making by stakeholders.<sup>150</sup>

### **Conclusion**

The Corporate Insolvency Resolution Process represents a transformative innovation in India's

---

<sup>142</sup> Id.

<sup>143</sup> World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* 15-20 (2019).

<sup>144</sup> Id.

<sup>145</sup> Ministry of Corporate Affairs, *Report of the Working Group on Individual Insolvency* 35-40 (2022).

<sup>146</sup> Id.

<sup>147</sup> Reserve Bank of India, *Discussion Paper on Resolution of Stressed Assets - Revised Framework* 20-25 (2021).

<sup>148</sup> Id.

<sup>149</sup> Insolvency and Bankruptcy Board of India, *Consultation Paper on Use of Technology in Insolvency Proceedings* 10-15 (2023).

<sup>150</sup> Id.

approach to corporate distress resolution, embodying principles of efficiency, creditor empowerment, and value maximization that were absent from the previous fragmented framework.<sup>151</sup> The CIRP's emphasis on time-bound resolution, professional management, and stakeholder participation has created a more predictable and efficient mechanism for addressing corporate financial distress.<sup>152</sup>

The framework's achievements include significant improvements in recovery rates, reduction in resolution timelines, and the creation of a specialized ecosystem of professionals and institutions dedicated to insolvency resolution.<sup>153</sup> These outcomes demonstrate the potential for well-designed legal frameworks to drive economic efficiency and promote better business practices.<sup>154</sup>

However, the CIRP's continued success will depend on addressing the challenges that have emerged through implementation, including capacity constraints, coordination issues, and the need for fine-tuning the balance between different stakeholder interests.<sup>155</sup> The framework's evolutionary nature, demonstrated through successive amendments and refinements, provides confidence that these challenges can be addressed through continued learning and adaptation.<sup>156</sup>

The CIRP has fundamentally altered the landscape of corporate finance in India, creating incentives for responsible lending and borrowing while providing viable mechanisms for addressing financial distress when it occurs.<sup>157</sup> As the framework continues to mature, its impact on India's economic development and financial sector stability will likely become even more pronounced, establishing it as a cornerstone of the country's modern commercial law system.<sup>158</sup>

The success of the CIRP ultimately depends not only on its legal architecture but also on the commitment and expertise of the professionals, institutions, and stakeholders who implement

---

<sup>151</sup> Umakanth Varottil, *Evolution and Efficacy of the Insolvency and Bankruptcy Code: An Empirical Assessment*, 7 *Indian J. Corp. L.* 1, 25-30 (2021).

<sup>152</sup> *Id.*

<sup>153</sup> Insolvency and Bankruptcy Board of India, *Annual Report 2022-23*, *supra* note 120, at 15-25.

<sup>154</sup> *Id.*

<sup>155</sup> Rajeev Sharma & Aparna Ravi, *Challenges in Implementation of the Insolvency and Bankruptcy Code*, 12 *Nat'l L. Sch. India Rev.* 45, 60-65 (2020).

<sup>156</sup> *Id.*

<sup>157</sup> Kristin van Zwieten, *The Influence of Creditor Control on Corporate Governance: Evidence from India's Corporate Insolvency Resolution Process*, 19 *Eur. Bus. Org. L. Rev.* 289, 310-315 (2022).

<sup>158</sup> *Id.*

it in practice.<sup>159</sup>As India's experience with the framework deepens, the lessons learned will contribute not only to the domestic evolution of insolvency law but also to the global understanding of effective approaches to corporate distress resolution in emerging market contexts.<sup>160</sup>

---

<sup>159</sup> Sumant Batra & Niyati Goyal, *Insolvency Resolution in India: Lessons from the First Five Years*, 8 *Indian J. Corp. L.* 15, 35-40 (2023).

<sup>160</sup> *Id.*

## **BIBLIOGRAPHY**

1. Insolvency and Bankruptcy Code, No. 31 of 2016, § 7, 9, 10, 12, Gazette of India, Extraordinary, Part II, § 1 (May 28, 2016).
2. The Constitution of India, art. 32, 136, 226.
3. T.K. Viswanathan, Report of the Bankruptcy Law Reforms Committee (2015), [https://ibbi.gov.in/uploads/resources/BLRCReportVol1\\_04112015.pdf](https://ibbi.gov.in/uploads/resources/BLRCReportVol1_04112015.pdf).
4. Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Gazette of India, Extraordinary, Part II, § 3(i).
5. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
6. Committee on Financial Sector Reforms, A Hundred Small Steps (Gov't of India Planning Comm'n 2009).
7. Swiss Ribbons Pvt. Ltd. V. Union of India, (2019) 4 SCC 17 (India).
8. Committee of Creditors of Essar Steel India Ltd. V. Satish Kumar Gupta, (2020) 8 SCC 531 (India).
9. K. Shashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 (India).
10. Ruchi Soya Industries Ltd. V. Union Bank of India, Company Appeal (AT) (Insolvency) No. 354 of 2018, NCLAT.
11. ArcelorMittal India Pvt. Ltd. V. Satish Kumar Gupta, (2019) 2 SCC 1 (India).
12. B.L. Bajaj, Law Relating to Insolvency and Bankruptcy Code, 2016 (Bharat Law House Pvt. Ltd., 3<sup>rd</sup> ed. 2021).
13. V. Ram Mohan & R. Narayan, Corporate Insolvency Law and Policy in India (Oxford Univ. Press 2020).
14. M.C. Mehta v. Union of India, AIR 1987 SC 1086 (India).

15. Dr. R.K. Bansal, *Insolvency and Bankruptcy Code: A Commentary* (Taxmann, 5<sup>th</sup> ed. 2023).
16. P. Suresh & R. Srivastava, *IBC: Law and Practice* (EBC Publishing, 2<sup>nd</sup> ed. 2022).
17. World Bank Group, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank 2020), <https://www.doingbusiness.org/>( accessed on May 15,2025).
18. Reserve Bank of India, *Report on Trends and Progress of Banking in India 2022*, <https://www.rbi.org.in/>( accessed on May 28,2025).
19. Insolvency and Bankruptcy Board of India, *Handbook for Insolvency Professionals* (2021), <https://ibbi.gov.in/>( accessed on June 2, 2025).
20. Shubham Jain, *Impact of Insolvency and Bankruptcy Code on NPAs: An Analysis*, 6(3) *Int'l J. of Legal Dev. & Allied Issues* 1 (2019).