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# **TO WHAT EXTENT HAS THE INTRODUCTION OF THE CIRP UNDER THE IBC, 2016, REFORMED THE TRADITIONAL WINDING-UP FRAMEWORK UNDER THE COMPANIES ACT, 2013, IN PROMOTING A RESOLUTION-ORIENTED INSOLVENCY REGIME IN INDIA?**

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Joti Raagav NI, VIT Chennai

## **ABSTRACT**

The Insolvency and Bankruptcy Code (IBC), 2016, witnessed a paradigm change in India's corporate resolution-focused insolvency regime from the traditional provisions of winding up under the Companies Act, 2013. The author addresses the extent of such reformations by examining the procedural framework, stake-holder results, and empirical implications of the Corporate Insolvency Resolution Process (CIRP) and the winding up process. The piece draws on legislative interpretation, judicial case law, and precedent, contends the IBC went much beyond in establishing problem-solving regime, enhancing creditor recoveries and reducing resolution periods, even granting that obstacles like judicial delay and concerns over valuation still exist. The paper adds to enhancing one's perspective towards India's new insolvency system and its comparison with international standards.

## **Introduction**

India's insolvency framework has historically been characterized by sectoralized legislations, long resolution durations, and weak recovery rates for creditors, most under the Companies Act, 1956, and Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The Companies Act, 2013, updated the provisions on winding up but failed to address inefficiencies as its liquidation-centric approach, with resolutions often taking more than 1,500 days. The Insolvency and Bankruptcy Code (IBC), 2016, yielded one, creditor-focused law, prioritizing corporate rescue through the Corporate Insolvency Resolution Process (CIRP). This research examines how extensively the CIRP has changed the erstwhile winding-up process, given procedural efficiency, protection of stakeholders, and empirical findings. In order to pursue a resolution-focused insolvency regime in India, the paper answers the following question: To what degree has the implementation of the CIRP under the IBC, 2016 changed the conventional winding-up regime under the Companies Act, 2013? Its topics include case studies, comparative analysis, historical perspective, legal frameworks, reforms, difficulties, and future directions.

## **The Historical Development of India's Insolvency Laws**

The India's insolvency regime evolves through a shift from colonial-period regimes to contemporary creditor-oriented regimes. Initial statutes, like the Indian Companies Act, 1913, invested mere winding-up procedures with excessive court intervention. After independence, the Companies Act, 1956, and SICA, 1985, dominated insolvency but were devoid of efficiency, SICA's debtor-in-possession regime permitting management to procrastinate, causing asset loss. Until 2013, the Companies Act laid down eased winding-up provisions, but these were still liquidation-oriented, with no compulsory timelines and recovery rates of 12.4% on average. The piling up of nonperforming assets (NPAs) to Rs. 8 lakh crore by 2015 called for reform. The Bankruptcy Law Reform Committee (BLRC) came up with a uniform code, which culminated in the IBC enactment in 2016, which transitioned to a creditor-in-control model and consolidated winding-up for insolvency cases. Reserve Bank of India (RBI) rules also sped up resolution in large accounts, a dramatic break with the debtor-friendly system.<sup>1</sup>

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<sup>1</sup> The BLRC report emphasized consolidating fragmented laws to reduce delays.

## **The Companies Act, 2013: Classical Winding-Up**

Voluntary winding-up is under special resolution or sanction of the creditors. Liquidator, appointed by the NCLT or shareholders, sells assets and pays proceeds, secured creditors and government charges being paid first. The process is free of timelines, dragging at times by over 1,500 days due to judicial congestion and procedural complexities. Stakeholder recoveries are limited, with unsecured creditors and equity holders receiving very poor recoveries, and management under debtor-in-possession posing threats of asset stripping. No mechanism of orderly revival is offered by the Act's emphasis on liquidation, and therefore, it is not suited to financially troubled but otherwise viable businesses.

## **Corporate Insolvency Resolution Process under IBC, 2016**

The CIRP, as per IBC is a resolution-oriented procedure initiated by financial creditors, operational creditors, or the corporate debtor upon default (at least Rs. 1 crore after 2020 amendments). A 180-day (extendable to 330-day) moratorium, putting legal proceedings against the debtor on hold, is effected. A Resolution Professional (RP) replaces an Interim Resolution Professional (IRP), managing operations under the Committee of Creditors (CoC). The CoC approves resolution plans, with operational creditors ranked highest at liquidation value, and liquidation only in extreme cases. Institutional infrastructure of IBC, e.g., Insolvency and Bankruptcy Board of India (IBBI) and information utilities, achieves transparency and ease of access to data. Until June 2023, CIRP had cleared 678 cases, freeing

1. The BLRC report emphasized coming together of scattered laws to reduce delays.
2. Retention by management prior to IBC typically led to loss of assets.

## **Winding-Up vs. CIRP: Comparative Analysis**

The Companies Act, 2013, winding-up and the IBC, 2016, CIRP are in terms of purpose, procedure, and outcome vastly different. Winding-up is liquidation-oriented, attempting to wind up insolvent companies, as opposed to CIRP, which is revival-oriented, as is international best practice. Procedure-wise, winding-up has no timelines and allows resolution through an average of 1,500 days, while CIRP mandates completion within 330 days, with the average being 380 days. Reasons for initiation under the Act are fraud and default of compliance, whereas IBC considers only financial default, minimizing overlaps. The Act banks on court-

led liquidators, while CIRP grants powers to the CoC and RP, giving greater control to creditors. Recovery percentages under IBC are 41.3% on average, as opposed to 12.4% pre-IBC, with less priority to government dues.

### **Legal and Procedural Differences**

The winding-up process under the Companies Act is under the control of comprehensive judicial intervention, with NCLT sanctioning each stage, causing delay. CIRP, on the other hand, vests decision-making powers in the hands of the CoC, with NCLT having the authority to only approve or reject resolution plans. The moratorium in the IBC safeguards debtors from creditor action, overlaps were minimized by transferring "inability to pay debts" to IBC. The liquidator under the Act has restricted powers to reorganize, while the RP can negotiate resolution plans, encouraging revival. Such variations emphasize CIRP's effectiveness and resolution orientation.

### **Stakeholder Outcomes**

Under the Companies Act, government dues and secured creditors control distributions with little going to unsecured creditors. The IBC gives priority to financial creditors in the CoC but operational creditors are at least guaranteed liquidation value, giving wider stakeholder protection. Shareholders of the Act see little recovery of value, whereas CIRP gives residual benefits if resolution works. Employees gain from the IBC's priority for workmen dues, in contrast with the Act's more unstructured approach.

### **Case Studies**

A judicial milestone in affirming the constitutional suitability and structure of the IBC's Corporate Insolvency Resolution Process (CIRP) is the Supreme Court's judgment in *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.* (2019)<sup>2</sup>. In this path-breaking case, the Court reaffirmed the IBC as a whole, upholding its essential purpose of giving dominance to revival of the company over liquidation. The judgment reaffirmed that the Code was brought in to curb delays and erosion of value of assets under the erstwhile regime of the Companies Act and SICA. The Court favored the creditor-in-control model, retaining differential treatment of financial and operational creditors as per Article 14 of the Constitution because financial

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<sup>2</sup> *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.* is (2019) 4 SCC 17

creditors have technical knowhow to evaluate business viability as well as reorganization proposals. Further, the judgment confirmed the applicability of Section 29A disqualifying specific promoters from filing resolution plans, noting that the provision was necessary to uphold the purity of the resolution process. The Court also endorsed Section 12A permitting withdrawal of CIRP proceedings with the approval of 90% of the Committee of Creditors (CoC) and underlining the group character of insolvency proceedings. Importantly, the Court described CIRP as a process in rem with respect to all concerned and not merely the petitioner, thus sustaining the conditions of a governed and time-bound process that will protect common interests—something under the winding-up process of the Companies Act, 2013, is not given. Another recent and highly representative precedent is the August 1, 2025 order of the Supreme Court in the Bhushan Power & Steel case, in which the Court overturned its previous May 2, 2025 liquidation order for the company.

The overturning restored the ₹20,000 crore resolution plan filed by JSW Steel, previously approved by both the NCLT and NCLAT under the CIRP regime. The Court's reversal also reflected a policy preference on the part of the judiciary to favor maintaining viable resolution plans and business continuation over resort to liquidation. The real-world consequence was avoiding loss of enterprise value, conserving thousands of jobs, and achieving more favorable recovery for creditors than through liquidation under the winding-up regime of the Companies Act. Concurrently, the case of Bhushan Power & Steel is a prime example of the judiciary's dedication to preserving the intent of the IBC in keeping ailing companies alive through the rescue of struggling firms as going concerns wherever possible. Both such cases reiterate that CIRP is not an hostile procedural choice to winding-up but a model of rehabilitation to achieve the best realization of assets, safeguard stakeholders, and make Indian insolvency law comply with international best practice.

### **Challenges and Limitations**

The IBC, though reformed, is beleaguered. NCLT overloading causes delay, with resolutions taking 384 days on average, higher than the mandated 330-day timeline. Group insolvencies with serious complexity, such as IL&FS, reveal loopholes in handling inter-linked entities. Consistency of valuations and determination of resolution applicants hinder progress. Absence of pre-pack insolvency and cross-border mechanisms limits global convergence. COVID-19 triggered delays with Section 10A suspensions impacting new filings. Access to data remains

an issue, with IBBI reports lacking repositories with open access.

Constraints on data emphasize the necessity of open-access repositories.

### **The Way Forward**

Raising NCLTs benches and judicial education can assist in reducing delays to make CIRPs more effective. Pre-pack insolvency, as suggested in 2021, might make MSME resolutions easier. A cross-border regime of insolvency, modelled on UNCITRAL Model Law, would address multinational cases. Greater transparency of IBBI's data and valuation requirements might make the outcome better. These reforms would make strong India's resolution-oriented regime.

### **Conclusion**

The CIRP of the IBC, 2016, has greatly overhauled the conventional windingup framework under the Companies Act, 2013, by diverting from liquidation to resolution, cutting down timelines, and enhancing recovery rates. Empirical data, with 678 resolutions and Rs. 2.5 lakh crore rescued assets, attest to its success. Case studies such as Bhushan Steel and Jal Power showcase CIRPs capability to save businesses, in contrast to the Act's inefficiencies. But judicial backlog and valuation disputes pose challenges.

## REFERENCES

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