



भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

IBC के आठ वर्ष

शोध एवं विश्लेषण

2024

CONTENTS

	Preface	v
1	A Reflection on the Role & Effectiveness of Stakeholders under the IBC Framework in India	1
	Sunil Mehta	
2	Streamlining India’s CIRP for a Win-Win Outcome.....	15
	Atul Kumar Goel	
3	Taxation and Insolvency: Towards a Foundational Understanding	21
	M P Ram Mohan and Sai Muralidhar K	
4	Increasing Resolutions is Key to IBC’s Success	41
	Sidharth Sharma	
5	Evolving Insolvency Regime and Legal Obligations under International Conventions.....	47
	Sudhaker Shukla and Raghav Maheshwari	
6	Treatment of Dues to any Workman and Employee from the Provident Fund, Pension Fund and Gratuity Fund under IBC.....	55
	Sandip Garg, Anshul Agrawal and Vishal Rajpurohit	
7	Strengthening Valuation Framework under IBC: Enhancing Credibility, Consistency and Competence.....	73
	Satish Sethi and Archana Sharma	
8	Leveraging the Digital Transformation with AI, Digital tools, and Blockchain Towards Insolvency Processes.....	87
	Pihu M. Shukla and Sushanta Kumar Das	
9	Walking a Legal Tightrope: An International Perspective on “Creditor Duty” during “Twilight Zone”	99
	Mayank Mehta and Nitika	
10	Balancing Transparency and Privacy: Navigating Data Protection in Indian Insolvency Proceedings	107
	Asit Behera and Namisha Singh	
11	The Status Quo of Homebuyers: A Complex Web of Uncertainty and Concerns.....	121
	Nainshree Goyal and Shalini Shah	
12	The Case for Allowing Direct Dissolution during CIRP: A Needed Evolution in IBC.....	131
	Surbhi Gupta	

IIMA Annual Research Workshop on Insolvency and Bankruptcy

13	Tweaking IBC to Resolve Airline Insolvencies.....	139
	Kumar Saurabh Singh, Ashwij Ramaiah and Rohitesh Tak	
14	Evaluating the Archaic Nature of the ‘Gibbs Rule’ in Cross-Border Insolvency: A Case for Embracing Modified Universalism.....	171
	Avinash Subramanian and Aashirwa Baburaj	
15	Rescuing Lenders: Lifting of the Related Party and Controlling Party Veil.....	189
	Saloni Thakkar, Urmika Tripathi and Simrann Venkkatesan	
16	Comprehending Bank Insolvency Resolution vis-à-vis Analysis of Banking Regulations under the Umbrella of UNIDROIT Legislative Guide on Bank Insolvency	203
	Vivek Saurav, Richa Kashyap and Bhanu Saxena	
17	Exploring the Journey of Operational Creditors from Admittance to Compromise	231
	Sunit Shah and Yashree Dixit	
18	Litigation Funding: Maximising Value.....	247
	Shiv Anant Shanker, Ajanta Gupta and Ansh Gupta	
19	From Moratorium to Security Interest: Decoding the Intricacies of Government Dues in IBC Proceedings	273
	Pooja Singla and Romit Nandan Sahai	
20	A Study on the Untapped Potential of Pre-Insolvency Resolution Procedures	293
	Archana Sharma and Anchita Sood	
21	Exploring the Synergy between ESG Principles and Corporate Restructuring: Lessons from Global Jurisdictions and A Road Map for India	317
	Anchal Raj and Diksha Sarma	
	About the Authors.....	337



PREFACE

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) signifies a major shift in India's legal and economic landscape. Enacted to remedy the shortcomings and fragmentation that plagued the country's insolvency and bankruptcy regime, the Code established a comprehensive and unified framework designed to facilitate timely resolution of distressed entities. Unlike earlier approaches that focused primarily on recovery, the IBC prioritizes maximizing the value of assets and maintaining businesses as going concern in alignment with international best practices. This shift from a debtor-in-possession to a creditor-in-control model introduced strict timelines for each step of the resolution process, which is crucial for preserving assets. The new framework was designed to tackle '*Chakravyuha Challenge*' as emphasized in the Economic Survey of 2015-16 (i.e., the ability to enter but not exit the market) thus, giving them an opportunity to exit honorably from genuine failed business ventures, thereby promoting ease of doing business and encouraging entrepreneurship. The Code aims to address financial distress promptly by mandating that an Insolvency Professional oversees the insolvency process and manages the operations of the distressed corporate debtor. Simultaneously, a committee of creditors drives the resolution process and makes all significant decisions, thus, minimizing further value erosion during the process. The process finally concludes by the judicial approval of the Adjudicating Authority. Through its design and implementation, the Code seeks to balance the interests of all stakeholders.

The establishment of the Insolvency and Bankruptcy Board of India (IBBI/ Board) on October 1, 2016, further strengthened the regulatory framework. Although the IBC is still in its early stages, its impact has already been transformative, marking a significant departure from the shortcomings of the previous insolvency regime. This is evident from the fact that as of June 2024, a total of 7,813 cases have been admitted, with 5,840 reaching closure. Of these closed cases, 3,293 companies—accounting for 56% of the closures—were successfully rescued, while 2,547 resulted in liquidation. Among the rescued companies, 1,192 cases were closed due to appeal, review, or settlement; 1,096 were withdrawn; and 1,005 concluded with the approval of resolution plans. Notably, 40% of the cases that ended with resolution plans had previously been with the Board for Industrial and Financial Reconstruction or were defunct.

While the Code's immediate advantage lies in enhancing the recovery process, its broader and more significant impact comes from the behavioural change it has induced—particularly the shift in the relationship between creditors and borrowers. Notably, even before formal admission, over 28,818 cases having underlying debt of ₹10.22 lakh crore were withdrawn as on March, 2024. When combined with the ₹3.40 lakh crore recovered through resolutions, the IBC has effectively recouped ₹13.62 lakh crore into the economy. This shift in behaviour has fundamentally changed the narrative around non-performing assets (NPAs) or defaults; it is no longer solely a burden on banks but has become a critical concern for borrowers as well. As per RBI's Financial Stability Report, June 2024, the gross-NPA ratio of scheduled commercial banks fell to multi-year lows of 2.8% in March, 2024. The Code was recognized as an effective solution to the twin balance sheet problem, where banks were weighed down by NPAs and corporations were overleveraged and struggling to repay their debts.

The Indian Institute of Management, Ahmedabad conducted a study to review the functioning of firms that had undergone resolution under the Code. This Report analysed the performance of the firms both before and after the resolution process and finds that the IBC framework

has yielded, for the resolved firms (i) increased sales, (ii) increased employee expense which could be attributed to increased employment generation, (iii) increase in assets, (iv) increased CAPEX, (v) threefold increase in market valuation of resolved firms, and (vi) significant improvement in liquidity of these resolved firms.

The IBC has emerged as an unprecedented piece of legislation, fundamentally transforming India's insolvency landscape. Its evolution has been marked by ongoing learning and adaptation to changing economic and market conditions. Research is crucial for advancing the IBC's goals, as rigorous data analysis helps uncover new trends and patterns that can guide policymakers in developing evidence-based policies under the Code. This publication marks the sixth consecutive annual release of the IBBI's Annual Publication, coinciding with the completion of eight years since the Code's inception. It delves into the intricate dynamics of IBC, examining the roles and effectiveness of key stakeholders within the framework. It provides an analysis of the evolving insolvency regime, explores the intersection of taxation and insolvency, evolving legal obligations under international conventions, examines the treatment of dues payable to workmen and employees under IBC, highlights the potential of digital transformation tools like AI and blockchain in streamlining insolvency processes, and the need for a stronger valuation framework. Through an international lens, one of the articles discusses the legal obligations of creditors, while others highlight the privacy concerns in data protection, the complexities faced by homebuyers and explore the possibility of direct dissolution during CIRP.

This publication also features nine research papers which were presented at the IIM Ahmedabad Annual Research Workshop on Insolvency and Bankruptcy, in March, 2024. The papers explore the need for tailored solutions to airline insolvencies and questions the relevance of the 'Gibbs Rule' in today's cross-border insolvency landscape. It examines the intricacies of lifting of corporate veil in related party transactions and analyses the bank insolvency resolution through the lens of the UNIDROIT Legislative Guide on Bank Insolvency. Additionally, it explores the evolving journey of operational creditors, the impact of litigation funding, deciphers the complex relationship between government dues and security interests under IBC, uncovers the untapped potential of pre-insolvency resolution procedures and offers a deep dive into the intersection of Environmental, Social, and Governance (ESG) principles with corporate restructuring, drawing lessons from global jurisdictions.

The Code's evolution, marked by numerous unexpected developments, has demonstrated a steady and forward-moving progress over the years. The key to its continued success lies in its ability to adapt to and address future challenges effectively. Looking ahead, the aim is to surpass the achievements of the past, bringing even greater efficiencies and outcomes.

The IBBI extends its sincere thanks to all the authors for generously contributing their valuable insights and expertise to this publication. We also acknowledge and appreciate the ongoing efforts of the Research Division in making this publication possible.

(Jayanti Prasad)
Whole Time Member
Insolvency and Bankruptcy Board of India

For full report please see: <https://ibbi.gov.in/uploads/whatsnew/2024-10-04-181657-17py3-8b35dbeca4577105ca46c15e1508dc2c.pdf>

