



Dynamics amid Choosing Rehabilitation and Liquidation for Insolvent Businesses in India — A Comparative Study

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Abstract: The Insolvency and Bankruptcy Code 2016 (IBC) is vital in shaping the Corporate Insolvency Resolution Process (CIRP) for Indian businesses and companies. The research explores the critical legal subtleties to analyse the key paths provided with the IBC 2016 and choosing the appropriate process of “rehabilitation and liquidation of insolvent businesses in India beginning with the country’s insolvency restructurings and rapid economic progress.” The choice of the resolution procedures aims to interpret rehabilitation as a practical and viable approach with quantifiable consequences as compared to liquidation and analyses major aspects such as maximizing economic worth for stakeholders, delaying the resolution process herein, liquidation or insolvency, creditors looking for incentives, a viable restructuring process, sustainability of the businesses, and improper institutional capacity of restructuring as referred to the doctrinal provisions of the code. The study employs a mixed-methods approach employing real statistical data that uses doctrinal legal analysis of empirical research with institutional data from the Insolvency and Bankruptcy Board of India as well as qualitative research with statutory provisions, National Company Law Tribunal judgments, judicial precedents, case reviews, and legal reports pertaining to the procedure under the CIRP, IBC, and other related laws. A comparative study with insolvency resolution practices in the United Kingdom, the United States of America, and the European Union for exe-

cutting the rehabilitation approach along with landmark cases from all of these in the past as well as those of recent times is integrated effectively. The outcomes depict the rise in implementation of rehabilitation techniques over liquidation by as much as 30 % on an average as compared to the latter. Employing the appropriate methods gives the readers, legal experts, counsels, academicians, and further research enthusiasts the predilection to choose rehabilitation as a better procedure of resolution in India's insolvent businesses, as it conserves employment, capitalizes the economic worth, sustains businesses, achieves stakeholder gratification, and provides long-term economic benefits, further explaining the prospective need to progress research into viable options, taking into account the pros and cons of this process over liquidation as well as the factors that influence creditor composition and bidder interests.

Keywords: Insolvency and Bankruptcy Code; rehabilitation; liquidation; economic worth; stakeholders; insolvent businesses in India; the UK; the USA; EU

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I. Introduction

The foremost aspect for India, as a developing economy in terms of financial growth, is that companies, organizations, and institutions need to evaluate robust credit flows along with a stable generation of investments or capital. Insolvency for a company is not a sudden event; it happens over a series of financial and operational accountabilities leading to distress and the caution of its collapse. Adopting the resolution processes facilitated and implemented globally (Kattadiyil and Mehboub, 2020) by financially stable countries such as the United States of America, the United Kingdom, and the European Union is necessary to tackle insolvency issues. The paper briefs on the impediments and resolution timelines in the provisions of the Insolvency and Bankruptcy Code 2016 (IBC), which need to be looked into with the procedure stating rehabilitation as a better option, while noting that liquidation is often pursued in practice, laying down the pros and cons of choosing the former procedure in the Indian insolvency system. Amidst an ineffective legal framework with inadequacies in the IBC for a viable and functional restructuring process, the insolvency and bankruptcy practices in India have seen a drastic momentum towards transformative practices with the codified implementation of IBC 2016 (Sameera, 2025).

The Insolvency and Bankruptcy Code 2016 was integrated as a unified enactment, taking in several fragmented old provisions to present an effective means of restructuring for the debtor as well as enhance the rights of creditors. A creditor-driven model was introduced, prioritizing the revival through the Corporate Insolvency Resolution Process (CIRP), making restructuring viable for businesses (Singh, 2021). In this scenario, it can be an accomplishment, but the dynamics between

rehabilitation and liquidation under the IBC reveals critical challenges that threaten the Code's foundational objective of value maximization and business revival.

The research identifies several key gaps in the current understanding and application of insolvency law in India. The foremost-identified gap is the lack of a comprehensive comparative analysis between India's insolvency framework and the legal regimes of the United States, the United Kingdom, and the European Union, particularly in relation to restructuring and resolution processes and the differences among them. Secondly, while the IBC mandates the maximization of asset value, there is insufficient legal and institutional support for early-stage restructuring and preventive measures, which has been a robust aspect of the pre-pack mechanisms in the UK insolvency regime. Thirdly, there has been limited momentum with the role of Insolvency Professionals (IPs), with challenges in expertise and practicing a time-bound approach resulting in ineffective revival mechanisms for the insolvent businesses.

I.1. Objectives and Purpose of the Research

Critically examine the dynamics of rehabilitation and liquidation of insolvent entities in India under the Insolvency and Bankruptcy Code, 2016, through a comparative analysis of the legal frameworks and selected case studies from the United States, the United Kingdom, and the European Union (Kattadiyil and Mehboob, 2020). This research also aims to identify the factors that influence the decision whether to rehabilitate or liquidate a company or enterprise experiencing financial distress. The jurisdictional and organizational structure in a legal framework to promote the rehabilitation of insolvent businesses and revive them with effective legal designs adapted globally is significant for this study. Evaluation of the role of other players including authorities, government, policy makers, insolvency professionals, mainly the debtor, in shaping the outcome of insolvency proceedings is an important part of the study. It includes, primarily, analysis of legislative and procedural frameworks with a comparative study for the same in the US, the UK, the EU, with that of India, highlighting the framework for

these two resolution processes (Patil, 2023). It further enhances the viability of insolvent businesses to choose the best option and an advantage of revival (Koshcheeva and Minnullina, 2021). Finally, the emphasis on how the 30 percent advantage of rehabilitation works compared to other resolution process with appropriate and relevant data for the same (Cook et al., 2001). In doing so, the research contributes to the broader discourse on global insolvency law reform and supports India's aspirations to become a better player in the global markets, with India being a mixed economy and considering the current IBC frameworks for restructuring insolvent businesses.

I.2. Problem Statement

Reorganization of a distressed business with reference to insolvency acts has been undergoing several changes in the countries mentioned herein, with the key player being the US following a *Debtor-in-Possession (DIP)* model slowly inclining towards a creditor-friendly model with political momentum in the economic reforms. The EU has adapted to the recently implemented *EU Directive 2026/799* with an inclination towards harmonization across its States (Bláhová, 2026). Globalization and cross-border insolvency are gaining rapid momentum in the recent past, emphasizing restructuring of organizations into rehabilitation rather than liquidation (Van Hoof, 2026). Sections 234 and 235 of the IBC 2016 reflect inconsistency in implementing a functional agenda as a legal structure in cross-border resolution processes primarily reliant on ineffective measures available (Chawda, 2024). This clearly states the absence of a codified legal framework, such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law. The result of such a lacuna results in judicial disintegration proceedings on a global basis, hence leading to deferred and discriminatory conclusions. A comparative analysis of the legal regimes in the US, the UK, and the EU may help identify universally applicable principles for ensuring an effective rehabilitation process and a viable, globally recognized liquidation framework. The system practiced in India challenges creditor assurance, hindering a robust resolution process for insolvencies within the county as well as for cross-border entities.

II. The Advent of the IBC 2016 — Enhancements and Impediments

The IBC 2016 comprehensively defined insolvency as a condition wherein the debtors are unable to pay the dues and debts giving rise to the legal procedure under insolvency (Aparna, 2015). Prior to the IBC 2016, Section 6 of the Provincial Insolvency Act 1920 (the 1920 Act) defined insolvency as a series of actions, such as intentionally absconding to delay creditors' dues, transferring property to escape the creditors, selling the property under litigation, or non-execution of a court decree that clearly states the default by the debtors that account for legal procedures (Sahoo and Guru, 2020).

The 1920 Act was more stringent, particularly in its time-bound approach and protection of debtors; however, it contained flaws that could shield fraudulent insolvents. By contrast, the IBC 2016, enacted with regard to international standards and the needs of corporate debtors, emerged after significant and sometimes conflicting judicial decisions as a more structured framework. It provides a streamlined resolution process, aligns with contemporary insolvency strategies, and benefits both small and large businesses (Shekhar, 2025).

The IBC 2016 draws on the UNCITRAL Model Law, cross-border insolvency practices, and effective legal approaches developed by global financial giants, including the US, the UK, and EU. The Code has established Insolvency and Bankruptcy Board of India (IBBI) for the regulation process and has empowered the National Company Law Tribunal (NCLT) to decide insolvency cases based on corporate standards (Shekhar, 2025). The Code has altered major hindrances for debtors, accentuating resolution, positioning investor enticements, and a waterfall mechanism (Shah, 2025). Section 53 of the IBC 2016 delves into the scope of this mechanism, prioritizing the hierarchy of creditors during the process of liquidation and sale of assets (Shah, 2025). In this view, the Code is perceived as being a creditor-friendly model rather than a revival of debtors. Although the Code has emerged as a better operative compared to the previous acts and laws for insolvency, it is still a creditor-beneficial process not giving much opportunity to the debtors and a proper restructuring solution through a legal path for the insol-

vent business (Gupta and Kumar, 2025). The following study further elaborates on different forms of insolvency explained in Indian context and other jurisdictions such as the USA, the UK, and the EU. In India, there are several ways when insolvency may arise in relation to corporate entities, partnerships, individuals, sole proprietors, and groups or institutions (Kokorin, 2021).

The IBC 2016 has laid down the Corporate Insolvency Resolution Process (CIRP) as a procedure that facilitates a legal approach to look into the financial distress of Indian companies. This framework was introduced to rehabilitate viable businesses while protecting creditors' interests. The procedure under resolution in the IBC is to provide restructuring through rehabilitation and liquidation as another option. The major intent of the CIRP is to optimize stakeholders' value, preserve employment and enhance business endurance through appropriate rehabilitation (Gupta and Kumar, 2025). This process has been designed to reflect the IBC policy structure. The CIRP majorly strives to keep the entity as a going concern and help the companies survive distress that arises financially increasing liability (Singhvi and Tiwari, 2021). The policy has laid down a timeline of 330-day-frame-work which helps resolution through viable restructuring and then, if it does not work out, it carries out liquidation as another resolution process (Singh, 2021). Prior to the 2019 amendment, there was a 180-day period with an extension up to 270 days, and with this change, it provides better structure and efficiency.¹

A recent IBBI study,² along with supported research from IIM Ahmedabad, indicates that aspects pertaining to sales, expenditure for the working group in such businesses, capital expense, valuation, and market position have rapidly improved, highlighting the possible prospects of rehabilitation as a resolution process.³ Scholars note that reha-

¹ Model Timeline for the Corporate Insolvency Resolution Process. Available at: <https://elplaw.in/wp-content/uploads/2023/12/CIRP-Model-Timeline.pdf>.

² Transforming Insolvency Resolution in India 2025 Report. Published by the Insolvency and Bankruptcy Board of India (IBBI). Available at: <https://ibbi.gov.in/uploads/whatsnew/9f9dc60d2f3d49b5ab5aed5dfad2ba1a.pdf> [Accessed 29.01.2026].

³ Effectiveness of the Resolution Process: Firm Outcomes in the Post IBC Period. IIM Ahmedabad (IBBI 2026) IBBI/PR/2026/4. Available at: <https://ibbi.gov.in/uploads/press/0a6d94ca4b89c24e09a459c11c60b2bd.pdf> [Accessed 29.01.2026].

bilitation is seldom used in practice, despite being frequently discussed as a potential solution (Shekar and Guru, 2020). Moreover, the absence of a well-defined pre-packaged insolvency mechanism, common in such jurisdictions (Kumar, 2022) as the UK and the US, limits the speed and efficiency of restructuring, pushing viable entities toward liquidation.

The primary objective of the IBC 2016 is to revive and restructure insolvent businesses through rehabilitation, thereby enabling distressed companies to recover. By preserving the going-concern principle, the Code seeks to maintain economic value, protect employment continuity, and promote entrepreneurship. In developing a robust insolvency framework and effective resolution processes, restructuring regimes may draw on best practices from major jurisdictions, including the United States' Bankruptcy Code (Title 11 of the U.S. Code), the United Kingdom's Insolvency Act 1986, and the EU Insolvency Regulation (Regulation (EU) 2015/848). Chapter 11 of Title 11 of the US Code states a robust approach and restructuring procedure majorly extending protection to the debtor along with a corroboration of the judicial system. Taking the regime of the UK, with its Corporate Insolvency and Governance Act (CIGA) 2020, the law clearly introduced a hybrid model with the pre-pack mechanised model to speed up sale of assets and safeguard employment in turn upholding the continuity of businesses (Iheme and Nanda, 2025). India clearly lacks the above two integrated mechanisms for effective resolution under its insolvency code (Sengupta and Sharma, 2016). Consequently, the process may be delayed due to the absence of a formal pre-pack mechanism, judicial backlogs, extended timelines, and poor coordination among stakeholders.

The Indian law defines bankruptcy as a *“legal declaration of an individual or entity's inability to meet the financial obligations granted by a judicial authority to provide relief from the obligation to repay certain debts, subject to the liquidation of assets”* (Shekar and Guru, 2020). There may be a condition of financial distress for a company that it cannot be revived. In such a case, the law enables organizations to either discharge debts or streamline through a court appropriate plan (McCormack, 2025). Bankruptcy can be the last resort in case the other restructuring plans are not viable for rehabilitation or liquidation. Sec-

tions 79(3) and 126 of the IBC 2016 define the terms “bankruptcy” and “bankrupt” as the state when a debtor is declared incapable to fulfil financial requirements, which applies both to individuals and firms.⁴ Bankruptcy is aligned with a legal approach and declared as bankrupt under law. The relevant Indian legislation includes the IBC 2016, the Companies Act 2013, and other related statutes with insolvency provisions being consolidated under the Code.

The Indian insolvency and bankruptcy legal process has undergone a transformative evolution, culminating in the enactment of the IBC 2016 that represents a paradigm shift from fragmented and inefficient pre-IBC laws to a modern, market-driven, and time-bound framework. This reform was necessitated by the inadequacies of earlier legislation such as the Companies Act 1956, which dealt only with liquidation, and the Sick Industrial Companies (Special Provisions) Act 1985 (SICA), where a debtor-in-possession regime was limited in scope and plagued by delays, resulting in low recovery rates and ineffective incentives for timely reorganization. The IBC marked a decisive move toward a creditor-centric, efficient, and outcome-oriented system, aligning India with global best practices in insolvency resolution. The IBC framework and mechanism have both advantages and disadvantages, although its intent is to revive distressed companies and encourage rehabilitation where the statutory intent and the practical applicability seem parallel (Mittal, 2025). The Code puts forth both the liquidation and rehabilitation processes under resolution similar for both business organizations and individuals (Mittal, 2025). Several mechanisms have improved the process from the debtor’s perspective, including early detection of financial distress. This facilitates timely rehabilitation, helps prevent complete business failure, and supports the revival of the business. It was not so in the old regimes of insolvency laws that rather drove companies and individuals into bankruptcy with little chance for revival (Sushmita, 2025).

⁴ Part-III Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms. [2018]. IBC Laws. Available at: <https://ibclaw.in/section-79-definitions-of-part-iii/>.

III. CIRP Triggers and the Concerned Sections

Section 5(6) of the IBC 2016 defines default by a company to repay a debt as the primary trigger for insolvency resolution process. In the present scenario, the CIRP operates on certain triggers primarily stating the default and the failure to make a repayment within 30 days when the debt is due (Sharma and Arora, 2025). Under Section 7 of the IBC, 2016, the insolvency resolution process may be initiated by financial creditors, including banks, financial institutions, and other lenders that have extended credit through loans, bonds, or similar financial arrangements (Chhabra, 2020). Operational creditors — including government authorities, employees — may initiate proceedings under Section 9 of the IBC 2016, claiming from goods and services. Section 10 of the IBC encourages the corporate debtor to initiate the process so as to aid in rehabilitation through revival rather than to resort to liquidation method (Ravi and Gupte, 2025). The IBC 2016 originally permitted the initiation of the corporate insolvency resolution process upon a default of at least ₹100,000. In March 2020, the Central Government increased this threshold to ₹10 million (₹1 crore), then approximately US\$ 130,000. Unlike the earlier regime, which largely focused on the classification of non-performing assets (NPAs), the IBC treats default as the trigger for insolvency proceedings and seeks to facilitate timely resolution and business revival for eligible debtors. This has been provided with an intent of revival for the corporate debtor and not just recovery.

The triggers for commencing the CIRP were clarified in *Innovative Industries Ltd. v. ICICI Bank*, which established that a “default,” as defined under Section 3(12), is the key basis for initiating proceedings under Section 7 of the IBC 2016. The Supreme Court opined that the “Creditor-in-Control model has been the emphasis of the ruling by the Supreme Court with a time bound resolution process prioritized in this case.” In *Kotak Mahindra Bank v. A. Balakrishnan (2022)*, the Supreme Court held that a certificate of recovery under the RDDBFI Act generates a new cause of action even if the default of payment was prior to this. The ruling clearly marked the interchange between the pre-IBC and post-IBC mechanisms of debt retrieval. In *Vidharba Industries Power Ltd. V. Axis Bank (2023)* the *Innovative Industries* case ruling

was looked into, where the Supreme Court stated the limited discretion for NCLT under Section 7(5) to reject an initiation only under “rare and exceptional circumstances.”

An analysis of landmark insolvency decisions will be included in the study to illustrate the operation and impact of the IBC 2016 to enhance the paper’s comparative study of insolvency regimes.

In *National Sewing Thread Co. Ltd. v. DCIT* (Delhi High Court, 2024), the company failed to respond to the assessment order issued by the Deputy Commissioner on 22 May 2024. A resolution plan had already been approved under the IBC. This converses the Tax Department from making further claims. According to the Delhi High Court, the Revenue and Tax Authorities could not pursue claims that were covered by the scope of an already approved resolution plan. *Omkara Assets Reconstruction Pvt. Ltd.* concerns a situation in which a lender’s loan account becomes a non-performing asset (NPA) and the lender assigns the debt to Omkara, an asset reconstruction company. As assignee, Omkara may initiate recovery proceedings under the SARFAESI Act. Such proceedings may be challenged by the borrower or other parties on grounds including the validity of the assignment, compliance with statutory procedure, jurisdiction, and the effect of any concurrent proceedings under the IBC.

There are two aspects to be considered in this regard while studying the decision of the court/tribunal. The first aspect concerns the status of the ARC after transfer/purchase and the voidness of assignment/transfer when SARFAESI proceedings are challenged. In such cases, the proper statutory process must be followed, whereby the borrower approaches the appropriate forum (SARFAESI DRT/DRAT) and does not file for writ jurisdiction.

The second aspect concerns the impact of the IBC moratorium on such actions. Once corporate insolvency resolution process (CIRP) is initiated under the IBC, the statutory moratorium automatically prohibits any parallel recovery proceedings, including SARFAESI actions. Consequently, all such processes and the admission of claims fall within the exclusive scope of the insolvency proceedings, and any pending enforcement action must be stayed.

In *Srei (an NBFC/financier)*⁵ that gave credit/loan facilities to M/s Navinchandra Steels, the insolvency proceedings were initiated under the IBC 2016 on the borrower's account becoming a non-performing asset and challenges were raised by the debtor on the insolvency process, primarily on whether the proceedings/claims can be sustained and how the IBC process should proceed in the particular circumstances. The Supreme Court held the maintainability/scope of the IBC process in the context of the dispute. The decision underlined that once the statutory conditions for invoking/continuing CIRP are satisfied, the insolvency mechanism under the IBC is to be followed in the manner contemplated by the law, and challenges not falling within the permissible contours of the process would not go against it.

In the third scenario here, *Jindal Steel (NCLAT 2020)*,⁶ it was questioned whether a financial/operational creditor filed an application for insolvency proceedings against Jindal Steel under the IBC 2016 and whether the application was admitted by the NCLT and further initiated the CIRP. Furthermore, the dispute extended to issues arising between the parties during or after the CIRP, such as the admission and maintainability of claims (including the existence of debt or default), compliance with IBC timelines and procedures, and whether certain actions taken by the resolution applicant or the committee could be sustained.

In another case, namely *Kalyani Transco v. Bhushan Steel*,⁷ the issues of "debt" and "default" were questioned (specifically, whether the party's claim is admissible in the CIRP), along with whether the dispute is essentially contractual or recovery-based (and should therefore be pursued through the IBC claim process rather than in parallel proceedings). Furthermore, the court examined the effect of the moratorium on enforcement actions and whether the NCLT/NCLAT rightly exercised its jurisdiction in admitting or continuing the CIRP.

⁵ *A Navinchandra Steels Pvt Ltd vs Srei Equipment Finance Limited* (Supreme Court of India).

⁶ *Arun Kumar Jagatramka vs Jindal Steel And Power Ltd* (Supreme Court of India).

⁷ *Kalyani Transco v. Bhushan Power and Steel Limited and Others* (Supreme Court of India).

III.1. United States — Bankruptcy Code

Chapter 7 governs the liquidation of the debtor's assets to satisfy creditors' claims (Newton and Liquerman, 2012). This Chapter establishes a federal legal procedure for individuals and businesses in financial distress. It permits debtors to retain exempt property, while non-exempt assets may be liquidated to satisfy creditors' claims, and eligible debts may be discharged. It helps individuals and small business survive as well as revive post the insolvency process and continue the businesses. Chapter 11 deals with reorganization of the business while continuing operations. The debtor-in-possession (DIP) model allows the company's management to retain control during restructuring (Vrontis et al., 2019). Under Chapter 13 individuals, earning a regular income are allotted the revival process enabling a simple mode of repayment of debts and liabilities; individuals with regular income may reorganize debts and repay them over time.

III.2. United States — The Debtor-in-Possession Model (DIP)

Insolvency laws in the U.S. have always been a boon to sick companies seeking for restructuring, as they emphasise a system that supports the *debtor-in-possession* (Druin and Allgrunn, 2014). Under Chapter 11, as discussed above, DIP retains the control with the debtor to be in charge of his daily operational tasks even during the legal proceedings for bankruptcy (Vrontis et al., 2019). The U.S. has adopted this model to reinforce confidence in the incumbent management. Given their comprehensive understanding of the business, they are uniquely positioned to design an effective, operational resolution plan to restructure the distressed entity. Additionally, the DIP is allotted an exclusive period for filing the restructuring plan. Creditors are also given their right to vote in order to keep up the survival of the business by exercising with a majority of two-thirds from each class category with acceptance to the plan. The bankruptcy court then confirms the plan pursuant to statutory criteria to ensure a *fair and equitable* process, thereby fostering cooperation between management and the court while ensuring efficient operations to reorganize the distressed entity.

In *Re Rehabilitation of Scottish Re (U.S.), Inc. (Delaware, 2022)*, the Court of Chancery held that, in seeking approval of the company's rehabilitation plan, the Delaware Insurance Commissioner was not required to demonstrate that the plan satisfied the "liquidation standard" discussed in the Opinion.⁸ The Commissioner proposed a rehabilitation plan, but the parties could not agree on the standard that the court would apply when determining whether to approve the rehabilitation plan.

The issue was whether the Commissioner had to establish that the rehabilitation plan validly determined that each claimant would receive at least as much as they would in the Company's liquidation — a requirement referred to as the "liquidation standard" — and whether the court should impose compliance with that standard as a matter of common law. The Court of Chancery held (1) the statutory scheme does not require compliance with the liquidation standard; and (2) common law does not require compliance with the liquidation standard.

In *Harrington v. Purdue Pharma L.P.* (U.S. Supreme Court, 2024), the Court contested that the plan for bankruptcy had an inclusion of a third-party coverage for the Sackler family who were not a debtor to the case, but could be treated like this from civil claims arising from the settlement. The issues were whether the court would permit non-debtors a release without consent as per the plan under the Title 11 of the U.S. Bankruptcy Code. It also involved a proposed global settlement under which the Sackler family would make a substantial financial contribution in exchange for protection from opioid-related claims. The code did not approve of claims for non-debtors under Chapter 11 reviewed by the Supreme Court, although the lower courts permitted the release.

Thus, under the statutory provisions, the Supreme Court did not enhance the claims and plan for non-debtors as per provisions under the law and there was a clear rejection for the claim by the third party in the case under consideration.

⁸ *In the Matter of The Rehabilitation of Scottish RE (US), Inc* [2022] Chancery of the State of Delaware C.A. No. 2019-0175-JTL.

III.3. United Kingdom — The Insolvency Act 1986

The UK in its insolvency regime arranges an agreement with the creditors to the company and the entity as a whole to provide a re-organizing solution in order to restructure the existing debt (McCormack, 2025). Additionally, *administration* is a court-supervised process where an administrator takes control of the company to rescue it as a going concern or realize assets for creditors. Apart from company rescue mechanisms, the UK insolvency system also provides for a structured liquidation process to dissolve the company, realise its assets, and satisfy creditors' claims in an efficient and expeditious manner. Specifically, CIGA 2020 enables directors to retain control of the company by introducing a debtor-in-possession moratorium, alongside a viable restructuring plan.

III.4. European Union — EU Insolvency Regulation (2015)

Recognition and acceptance of legal policies mutually encourage harmony and recognition with neighbouring Member States. The EU operates within a coordinated framework, aligning administration and restructuring procedures for global enterprises, despite the absence of a unified insolvency regime across the European Union.

III.5. The UK, EU and US — A Synchronized Administration of Resolution Process

The Insolvency Administration for Restructuring in the UK applies the Insolvency Act 1986. This enactment features a similar spirit to the CIRP practiced in India under the IBC 2016. The court, in its jurisdiction enables the appointment of an administrator and an insolvency practitioner along with a floating charge holder and the directors to the company.

An administrator, an independent insolvency practitioner, is appointed by the court, along with a floating charge holder, or the company's directors. The primary role of the administrator upon taking control is to facilitate the corporate rescue process, enabling the enterprise

to continue its operations. If the administrator at any point of restructuring finds it unattainable, a plan for liquidation with an enhanced outcome must be operated in view of the creditors.

An analysis of the EU insolvency framework reveals that Member States operate in coordination during insolvency proceedings, enabling group-wide recovery and efficient administration. This encourages clear jurisdictional interests and recognizing the member countries with applicability of its insolvency laws during such proceedings. The EU has a similar structure in comparison to India and UK, prioritizing the safeguard of its creditors involved.

With respect to its insolvency framework, the United States emphasizes the Debtor-in-Possession (DIP) model over liquidation. This reflects a core policy aimed at preserving the organization and its assets — both tangible and intangible — in order to maximize economic value through continued employment and revenue generation. This principle has led to the United States being a global leader in maintaining efficiency in its insolvency resolution processes inclining toward a debtor friendly model proving across jurisdictions the significance of revival rather than ruin.

IV. India — The Creditor in Possession Model

India's IBC operates with creditor-in-possession model (CIP model), although the debtor can also initiate the insolvency resolution process. In a creditor-in-possession mode following the initiation of CIRP, control of the corporate debtor is transferred from the Board of Directors to a Resolution Professional (RP). The Committee of Creditors (CoC), composed of financial creditors, are the major players in determining and carrying out the decision for the resolution. The National Company Law Tribunal (NCLT) is designated under the IBC 2016 to oversee the judicial process and approve the resolution plan approved by the CoC with a 66 % voting share. In India, the CIRP can be initiated either by the debtor or the creditors and significantly emphasises the maximization of assets with a feasible revival plan adapted from Chapter 11 of the US Insolvency Framework to let the continuity of the

business concern, preserving entrepreneurship (Shekhar, 2025). This framework looks ideal in the Act, yet its options face limited practical applicability, which is significantly influenced by the UK model regarding the role of Insolvency Professionals.

Unlike the US, UK, and EU frameworks analysed herein, India's Insolvency and Bankruptcy Code (IBC 2016) does not expressly provide for a legislative cross-class cramdown in pre-insolvency reorganisations. Nevertheless, the IBC 2016 integrally distinguishes a method of cramdown through the Corporate Insolvency Resolution Process (CIRP). Establishing the Committee of Creditors (CoC), under the IBC 2016 exclusively with financial creditors, thereby excluding operational creditors from voting rights is practised here (Sehrawat, 2024). This operational strategy permits the CoC to support a resolution plan despite the dissent from operational creditors, effectually empowering a *de facto* cramdown across this class of creditors. In the landmark case of *Swiss Ribbons Pvt Ltd & Anr v. Union of India*, the Supreme Court upheld this principle, emphasizing that operational creditors must receive equitable treatment despite lacking voting rights. Nonetheless, pre-insolvency restructuring mechanisms in India — including schemes of arrangement under Sections 230–232 of the Companies Act 2013 — necessitate class-wise consent, which effectively precludes the implementation of a cross-class cramdown mechanism in corporate restructuring.⁹

Similarly, the RBI's Prudential Framework for Non-Performing Assets highlights¹⁰ the paucity of effective cramdown mechanisms, thereby restraining the efficacy of multifaceted reorganisations. Eminent insolvency experts and restructuring professionals have argued that the implementation of this revival mechanism exerts a profound influence on restructuring proceedings. In contrast to the limitations inherent in the CIRP, this approach effectively minimizes time and maximizes economic value.

⁹ Section 232 in The Companies Act, 2013.

¹⁰ Ministry of Finance. Government and RBI Implement Comprehensive Framework to Recover and Reduce NPAs (Reserve Bank of India 2025) Press Release. Available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2146819®=48&lang=2> [Accessed 19.09.2026].

Case Laws & Examples

Tata Steel BSL Limited (formerly Bhushan Steel) Case (Pandey and Anshul, 2024). This is one of the most successful examples of rehabilitation under the IBC 2016. Tata Steel acquired the distressed entity, and the resolution plan was approved by the NCLT. This ensured the company continued as a going concern, saving thousands of jobs and ensuring a better recovery for creditors than if the company was forced into liquidation.

Noida Special Economic Zone Authority v. Manish Agarwal and Ors (2024). The Supreme Court clarified that the resolution plan's focus is to maximize asset value and that claims not covered in the approved plan stand extinguished, promoting the rehabilitation of the corporate debtor without the burden of past liabilities.

According to the Revamping India's Insolvency Framework Report (2024) by ELP, 40 % of successfully resolved cases were previously considered defunct or nearing liquidation, underscoring that the statutory rehabilitation framework functions as a critical turnaround mechanism.

V. The Cramdown Mechanism in Insolvency: A Comparative Perspective

The cramdown mechanism is a vital legal tool within the contemporary global insolvency framework. It enables the rehabilitation of a business by allowing a resolution plan to be approved regardless of the majority vote or dissent of a particular class of creditors, thereby preserving the enterprise's economic value and operational continuity (Mahajan and Sharma, 2025). This system was adopted from the US Bankruptcy Code and was looked upon as a crucial segment in the revival of a company heading out a resolution plan. In this mechanism, the tool is enabled to equip support when one class of creditors object and hence uphold the restructuring.¹¹

The United States have implemented the cross-class cramdown mechanism for a long time and it has been recognized globally as a ro-

¹¹ Legal Clarity Team. The Cram down Process in Bankruptcy Explained (2025). *Business and Financial Law*. Available at: <https://legalclarity.org/the-cram-down-process-in-bankruptcy-explained/> [Accessed 19.09.2026].

bust legal approach in insolvency laws featuring a strong drive toward rescue orientation. The primary purpose of this mechanism is to overcome creditor dissent regarding restructuring plans that would otherwise hinder the revival of distressed entities. Examining the strategy behind creditor behaviour laid the foundation for the cross-class cram-down mechanism. The mechanism was implemented by the UK to unfold traditional enactments in insolvency laws hindering business continuity for financial distressed companies.

Innovations in the UK's restructuring mechanisms are designed to streamline complex revival plans involving numerous classes of creditors (Mokal, 2025).

The EU's Restructuring Directive from the 2019/1023 applied similar approaches as its cross-class cram down system for effective revival and rescue of insolvent businesses (Munoz, 2022). The mandates are similar to UK and EU except in the voting threshold for some member countries, and differs to some extent in its priority interest. The intent is equivalent for US, UK and EU when it relates to creditor interests and effects as well as the rescue approach. A comparative analysis of the cramdown mechanism practiced by the different countries can be explained with regard to the characteristics and other aspects that include creditors' role, voting rights, effect of the mechanism, test of interest, priority, and the discretion of the court.

The statutory provisions for the US framework are derived from Section 1129(b) of Chapter 11 of the U.S. Bankruptcy Code, which governs the cross-class cramdown mechanism. This provision requires the resolution plan to be approved by at least one impaired class of creditors, thereby ensuring that dissenting classes cannot block the implementation of the plan at any stage. The test adopted by the U.S. Bankruptcy Code in a restructuring process is the "best interest of creditors" in order to provide determined value which has been proved better for the impaired class compared to the disadvantage with an immediate liquidation. This test mainly emphasizes the valuation of the assets of the debtor, putting an effort into the rule of "Nothing-to-Lose," explains the "test of interest" so as to maintain an equitable and fair method that clearly states its approach of the absolute priority rule while the discretion of the courts is limited.

The statutory provisions for the UK have been enacted under the Section 26A of the Companies Act 2006, along with Sections 901F and 901G. The voting and creditors' role for a restructuring plan for the UK cramdown system requires the approval by one class with an economic interest. Similar to that of the US, the effect has been "cross-class cram down" since the year 2020. The test of interest applied here is the "No worse off" under the restructure plan proposed as a "relevant alternative" to liquidation. This test aims to protect creditors regarding asset valuation and recovery assessment, while effectively binding the creditors to the process.

A comparative analysis of the jurisdictions studied herein reveals that the cross-class cramdown mechanism applied in the US, UK, and EU utilizes the best interests test to evaluate the resolution plan against alternative outcomes, specifically hypothetical liquidation. The U.S. has brought out one of the most flexible methods for restructuring which is probable, debtor supportive, creditor concerned and is robust in its legal domain. The U.K. has flexibility in its mechanism, although reliable on courts and its discretion bringing in an innovative process for restructure. Although the E.U. has only recently mandated this framework, it has been effectively implemented across Member States, differing primarily in the specific voting thresholds required for plan approval. The comparative analysis of the cramdown mechanisms applied in the U.S., U.K., and E.U. demonstrates an increasing recognition of cross-border insolvency regimes, driving a global momentum toward corporate rescue that prioritizes restructuring as a means to revive distressed entities and enhance economic value through business continuity.

United States — In the case of Re: MPM Silicones "Momart"

The decision upheld the "unquestionable equivalence approach" when appealed by three classes of creditors. It emphasized that genuine valuations, which align with current market rates and reflect inherent risks, are essential for facilitating successful restructuring plans.¹²

¹² *In the Matter of: MPM Silicones, LLC* [2017] United States Court of Appeals, Second Circuit 874 F.3d 787 (2017).

The advantage obtained through the CCCM applied in this case study is the “established flexibility” in the determination of the cramdown interest rate.

UK — Re: Petrofac limited (2025)

The “relevant alternative” test was applied in this case, which involved a \$ 350 million restructuring plan for outstanding debt. While the decision upheld the validity of the mechanism, it ultimately reversed the sanctioning of the plan, questioning the sufficiency of robust evidence.¹³ The primary advantage demonstrated in this case is that creditor dissent does not preclude cross-border restructurings, provided that the plan incorporates fair and equitable standards.

EU — Royal IHC (Netherlands, 2024)

In *WHOA restructuring of Royal IHC* case,¹⁴ the Dutch Court approved amendments to undrawn bank guarantees and inter-creditor agreements to alter creditor rankings, while granting judicial pre-approval for minor asset sales. In order to ensure operational continuity, the decision upheld the legal enforceability of the mechanism and its capability to bind all affected creditors. The key advantage demonstrated by this case law is that it represents a pivotal utilization of the WHOA to cram down a consortium of creditors.

VI. The Concept of 30 % Rehabilitation Advantage

Statistical data on the insolvency resolution process under the IBC 2016 demonstrate that rehabilitation allows creditors to recover an average of 32 % of their claims. This represents a significantly higher recovery rate compared to the outright liquidation of the company (Thekethil, 2018). This method prioritizes reorganization and revival of a

¹³ *In re Petrofac Ltd* (in the High Court of Justice Business and Property Courts of England and Wales Insolvency and Companies List (ChD)).

¹⁴ *The Dutch Supreme Court judgment on the WHOA restructuring of Royal IHC* (District Court of Rotterdam).

financially distressed business rather wind up the company and hence maintain continuity of the present employment, possessions, and value. The concept echoes the intention of “revive rather than ruin.” Key aspects of the rehabilitation/resolution process focus on a going concern wherein the IBC2016 promotes saving the company as a functioning entity, avoiding the massive value erosion that occurs during liquidation. Time-Bound Process proves a crucial aspect as the Corporate Insolvency Resolution Process (CIRP) mandates strict timelines to prevent further degradation of assets. Rehabilitation maximizes value realization by attracting new investors through resolution plans, the IBC ensures higher pay-outs compared to liquidation.

As mentioned earlier, statistics indicate that Financial Creditors (FCs) recover an average of 32 % of their claims through successful resolution plans, whereas in liquidation cases, the recovery rate drops drastically, often to around 6–9 % for certain asset categories.¹⁵ Operational Creditor (OCs) have also shown to be beneficiaries of successful resolutions, with recovery rates around 25 %. A key advantage that should also be noted is business continuity, which allows the corporate debtor to continue operations, thereby preserving employment and supply chains.¹⁶

According to statistical data, out of 8,175 CIRP cases admitted, 1,119 have been completed through the implementation and approval of resolution plans, while 2,707 have been ordered to be liquidated. Additionally, 1,236 have been disposed of through settlement and appeals, and 1,130 have been withdrawn due to Section 12A. The recovery data reveal that, overall, creditors have realized 31.4 % of their admitted claims through successful resolutions. Specifically, Financial Creditors (FCs) achieved a 31.4 % recovery rate, whereas Operational Creditors (OCs) recovered 25.4 %.¹⁷

¹⁵ IBC Laws. Recovery Rate through the IBC, 2016 and SARFAESI in Financial Year 2025. Performance of the Insolvency Code (IBC Laws 2026) Survey. Economic Survey 2025-26. Available at: <https://ibclaw.in/recovery-rate-through-the-ibc-2016-and-sarfaesi-in-financial-year-2025-performance-of-the-insolvency-code/> [Accessed 19.09.2026].

¹⁶ IBC Laws (No. 38).

¹⁷ IBC Laws. Analysis of Insolvency Cases under IBC as on 31.12.2024. CIRP Initiation, Closures, Recovery and Yield from Resolution Plan and Liquidation (19 March 2025).

Resolution plans have realized 162.8 % of the liquidation value, thus making rehabilitation more advantageous from an economic standpoint. The case studies considered include Jet Airways (India),¹⁸ Lehman Brothers (US) (Gilson et al., 2019), Thomas Cook (UK).¹⁹ The insolvency case of the Videocon Group has also been examined, as the court introduced a judicial innovation by consolidating 15 entities under a single resolution process, despite the absence of explicit statutory provisions.

VII. Pre-Packaged Insolvency Resolution (PPIRP) and Rehabilitation Advantage

Analysing the Micro, Small, and Medium Enterprises (MSMEs), the Pre-Packaged Insolvency Resolution Process (PPIRP) (Kumar and Jain, 2022) offers a similar advantage, allowing the existing management to run the company while a rehabilitation plan is prepared. Utilizing the “debtor-in-possession” rather than the creditor-in-control model, this process is faster and more cost-effective, thereby providing a higher chance of rehabilitation.

Additionally, rehab in place of liquidation provides a range of economic, social, as well as system-related benefits. The main goal of modern insolvency rules now is not only a redistribution of assets; rather, it is the maximization of enterprise value through enterprise survival. Moreover, evidence from enterprise cases consistently confirms that rehab outcomes provide better recoveries for creditors in comparison to liquidation results.

As mentioned, the resolution plans in India, as per the IBC 2016, resulted in recoveries of 162.8 % of the liquidation value, thus proving that rehab is more beneficial from a financial viewpoint.²⁰ One of the major benefits of rehabilitation as opposed to liquidation is that employment opportunities are maintained. Liquidation leads to huge loss-

¹⁸ *State Bank of India & Ors v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr* (Supreme Court of India).

¹⁹ *Re Thomas Cook Group Plc & Ors [2019] EWHC (Ch)* (High Court of Justice (Chancery Division), England and Wales).

²⁰ IBC Laws (No. 38).

es in employment, while as a part of rehab, enterprises actually function providing employment. Additionally, due to enterprise closure, intangible benefits also disappear, whereas in enterprise rehab, businesses exist proving beneficial from this viewpoint as well.

The IMF study dedicated to orderly insolvency processes clearly states that liquidation ought only to happen in cases where there is a lack of an economical possibility of rehabilitation providing long-term, sustainable recoveries from a creditor perspective.²¹ While liquidation offers immediate but often limited returns — especially for distressed asset sales — rehabilitation enables creditors to recover through future earnings. The Financial Rehabilitation & Insolvency Act 2009 indicated that creditors are able to recover “more if the debtor continues as a going concern than if it is immediately liquidated.” This is particularly true for capital-intensive industries where the liquidation values of assets have significantly low values than their enterprise value. A sound rehabilitation framework promotes lending by convincing creditors that distressed businesses are offered a meaningful opportunity to recover. For example, the U.S. Chapter 11 system has protected corporate viability in periods of economic crisis, such as the 2008 financial crisis and the pandemic.

In the Indian context, there is an alignment towards resolution over liquidation as advocated in good governance practices across the world through the IBC 2016. However, due to procedural delays and the huge backlog in hearings, coupled with an incomplete design without any mechanism to implement interventions, there has been an increased trend towards liquidation consequences for stressed accounts. As observed up until December 2024, as many as 2,707 CIRP admissions from 8,175 have been referred to liquidation procedures.

VII.1. Rehabilitation vs Liquidation: A Structural Imbalance

The discussion interchanges on the tension between Legal Design and practical outcomes in India’s insolvency regime. While the IBC was

²¹ International Monetary Fund IMF, (1999). *Orderly and Effective Insolvency Procedures*. Available at: <https://doi.org/https://doi.org/10.5089/9781557758200.071> [Accessed 19.09.2026].

modelled on Chapter 11 (US) and UK restructuring frameworks, its implementation reveals critical deviations. Although the 180-day time-frame with an addition of another 90-day cycle of CIRP, prescribed by the IBC, aims to provide a prompt judicial conclusion to the insolvency procedure, it may compel creditors to choose liquidation in the absence of an immediate formulation of restructuring plans. On the other hand, Chapter 11 facilitates long restructuring timelines through debtor-in-possession financing and an automatic stay. Additionally, the UK's CIGA 2020 creates a moratorium period of up to one year to provide an insolvency-affected company with more time to hold negotiations with creditors. Finally, the absence of a preventive restructuring regime in India, like the one prescribed by the EU's Restructuring Directive, adds to the aforementioned problem. Indeed, the processes prescribed by the EU's regulations include mechanisms to intervene in insolvency cases at an earlier juncture to provide an increased scope of restructuring and reduce liquidation risk.

VII.2. Role of Insolvency Professionals and Transparency

Insolvency Professionals (IPs) and their role on a global perspective from the U.S., the U.K., and E.U., in comparison to Indian insolvent businesses has been crucial and significant in the restructuring process. IPs are responsible to provide an advisory service during prepacks that include the independent valuation of the business and the need for transparency for creditors, which additionally involve unique approaches that lead the reorganization. Their significance can be examined through the cases analysed above, demonstrating how liquidation is administered to maximize creditor returns while preserving the interests of the debtor company (Itheme and Nanda, 2025). Recent cross-border cases clearly demonstrate how rehabilitation-focused insolvency law has significantly evolved across global jurisdictions, driven by enhanced international cooperation and compliance with local legal frameworks. Furthermore, the Resolution Professionals in India have limited time at hand as well as limited domain expertise in the relevant sectors while assessing the options. Such observations have prompt-

ed the IBBI to amend the rules by keeping the liquidation process in abeyance for 10 days to allow the Section 230 schemes.²² As observed in the Videocon Group case,²³ there has indeed been judicial innovation in consolidation in proceedings, but on a piecemeal basis (Chandrasekhar, 2021).

VII.3. Scenarios in Which Neither Restructuring nor Liquidation Is Viable

There are also scenarios where options of rehabilitation or liquidation just cannot be implemented when the asset realization is beyond practicality and the entity cannot be revived. Thus, in some cases, a business may be so severely distressed that rehabilitation is not viable because its liabilities substantially exceed its assets. Further, the business could be one where future profitability could never be achieved. In a similar sense, the Sick Industrial Companies (Special Provisions) Act of 1985 was also criticized for its attempts to rehabilitate organizations where the chances for the same were extremely low since the equity reserves had run low. Moreover, the business could be one where liquidation itself cannot be achieved for the simple reason that the asset values for liquidation could be abysmally low. In these circumstances, administrative dissolution or voluntary strike-off could be more suitable. There exists the understanding by the IMF that liquidation processes work best where an asset hierarchy exists. Without this, liquidation is a formality that has little economic effect. The concept of a hybrid system involving the sale of a business as a going concern during a state of liquidation blurs this difference (Batra et al., 2024). The sale of a going concern in liquidation maintains employment and enterprise value while still qualifying as a transfer of assets (Singhvi and Tiwari, 2021). The approach taken in the recent German insolvency regime is a model of a unified proceeding, in that the initial proceeding does not assume rehabilitation or liquidation from inception, as outcomes

²² IBBI Amends the Liquidation Regulations and Voluntary Liquidation Regulations. Available at: <https://www.argus-p.com/updates/updates/ibbi-amends-the-liquidation-regulations-and-voluntary-liquidation-regulations/> [Accessed 05.03.2025].

²³ *State Bank of India vs Videocon Industries Ltd & Ors.*

will depend upon continuously changing perspectives.²⁴ The lack of a preventive restructuring regime in India leads quite a few companies coming into CIRP at a late stage, as viability has declined significantly (Sengupta and Sharma, 2016). The proposed system of a moratorium from the IBBI, along with plans for pre-packaged insolvency cases involving larger entities, might address this.

Furthermore, not all businesses may be viable in terms of restructuring. Technologically antiquated businesses, as well as overly leveraged businesses in dying industries, may lack the fundamentals to undergo successful rehabilitation. According to the U.S. Bureau of Labor Statistics, 65 % of new businesses fail to survive past their tenth year. Sustainable business models have not been the case for such businesses. Furthermore, fraudulent promoters impair the rehabilitation process. As recognized by the IBC code with respect to fraudulent promoters not being allowed to develop a plan of resolution, the management is the key to rehabilitation. Thus, it may be noted that though rehabilitation is the more financially viable option, it remains dependent on various factors.

VII.4. Recommendations with Emphasis on Rehabilitation over Liquidation

Structuring rehabilitation as a major goal of insolvency in India, it may be concluded and recommended that a few proposed points under the Insolvency and Bankruptcy Code may be mentioned as codifying rehabilitation as the primary objective. Prioritizing rehabilitation, while considering landmark domestic and international judgments, would facilitate modifications to Section 3 of the Code, read in conjunction with the Swiss Ribbons precedent.²⁵ The Preventive Restructuring Directive issued by the EU in 2019/1023 emphasizes the need to place restructuring measures before insolvency (Mastrullo, 2023). Enhancing Management Involvement & Debtor-in-Rehabilitation stands out from other measures such as liquidation, as continuity matters. It should also provide scope for debtor-in-possession (DIP) finance, like in Chapter 11 of

²⁴ Insolvency Code — Germany 1999 (Insolvenzordnung).

²⁵ *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India* (No. 75).

the U.S. Bankruptcy Code, to generate liquidity, thereby encouraging viable firms to restructure and not wind up.²⁶ The significant role of Resolution Professionals must be highlighted as one of the most contributory aspects in helping a distressed business in its restructuring process (Goel, 2026). The reform should include empowering resolution professionals to propose rehabilitation schemes under Section 230 of the Companies Act, even after liquidation has commenced, and introducing performance-based incentives for professionals who successfully restore distressed entities.²⁷ Introducing cramdown reform and class voting reforms with provisions stated under Chapter 11 under the U.S. Bankruptcy Code, could bind dissenting creditor classes if found fair and equitable. A more efficient system of Class Voting, as outlined in Section 230, would help eliminate unnecessary delay. Analogously, Group Consolidated Resolution of corporate groups must be allowed under the Indian system to protect synergies and to secure value.²⁸ Facilitating going-concern sales and employee retention with a modification to Regulation 32 of the Liquidation Process Regulations provides that going-concern sales are to be presumed unless there is no viability for restructuring of the business. Emphasising that employee contracts survive the going-concern sale and, hence, the workforce continuity, which is sometimes identified as an important factor in business revival, will be achieved (Singhvi and Tiwari, 2021). These reforms place India's insolvency regime as rehabilitation-centric, deepen investor confidence, support economic stability, and enable effective application in an interdependent global economy (Saurav and Saxena, 2024).

VIII. Critical Analysis

Liquidation is the preferred route despite legislative framework tilting in favour of rehabilitation. It was shown earlier that under the

²⁶ United States Code, 2024 Edition, Title 11 — Bankruptcy.

²⁷ Understanding Section 230 of the Companies Act, 2013. The Legal Backbone of Corporate Mergers, Restructuring & Compromises, (2025). *Secretarial Insights*. Available at: <https://uja.in/wp-content/uploads/2025/08/Section-230-of-the-Companies-Act-2013-Corporate-Merger.pdf> [Accessed 19.09.2026].

²⁸ Transforming Insolvency Resolution in India 2025 Report. The Insolvency and Bankruptcy Board of India (IBBI).

IBC legislative framework, the preferred route is resolution. Contrary to the legislative framework, data has shown that over 33 % of CIRP admitted cases (2,707 out of 8,175) have fallen back into liquidation.²⁹ Further, the data could be compared with the Chapter 11 case filing system in the U.S., whereby 70–80 % of Chapter 11 case filing businesses are reorganized. Similarly, the data could be compared with the pre-pack administration case filing system in the UK, whereby 356 pre-pack case filing businesses were recorded in 2017.

Operational creditors dominate low-value defaults; however, recoveries are low for them, too. About 80 % of the cases involving defaults below ₹1 crore are from OCs. However, recoveries of admitted debts are only 25.4 % for OCs, as opposed to 31.4 % for FCs. The reason behind this phenomenon again lies in structural imbalances.

The pre-packaged insolvency is still in its infancy in India (Kumar and Jain, 2022) and has seen minimal uptake in India only for MSME companies. The same has been in existence in India since 2021 but has seen limited uptake due to a lack of transparency in this process in India vis-à-vis the pre-pack process in the U.S. that offers a far more transparent approach in dealing with insolvency through Chapter 11 of the U.S. Bankruptcy Code and in the U.K., which requires valuations through Statement of Insolvency Practice 16 (SIP 16) (Corbae and Erasmo, 2017). There is a vacuum in the law on cross-border insolvency in India. While in the U.S. and the U.K. foreign cases are facilitated by the adoption by both jurisdictions of the UNCITRAL Model Law, in India there has been a vacuum in the law in cases of cross-border insolvency, as evidenced in the recent “Jet Airways” case where Dutch administrators sought to facilitate parallel cases to be heard, initially refused by the court but subsequently allowing cooperation in a ruling by the NCLAT, setting a judicial universalist precedent. Financial institutions handle high value defaults: about 80 % of default petitions based on defaults above ₹10 crores are filed by FCs, as they play a significant role in resolving large-scale corporate defaults. However, in defaults with claims above ₹1,000 crores (totalling ₹8.84 lakh crores), the value that has been realized is just ₹0.44 lakh crores (Chandra, 2024).

²⁹ IBC Laws (No. 38).

IX. Limitations of the Study

Although exhaustive in scope, this study has a few limitations, primarily arising from its reliance on information collected from the IBBI, RBI, and NCLT/NCLAT. This information might not include pending or unreported cases. This analysis is also influenced by information on publication delays and differences in standards. Judicial Discretion and Inconsistency in Indian insolvency case laws are still in an evolving stage and have shown inconsistent rulings from NCLTs. The limited scope of India's Pre-Packaged Insolvency Resolution Process (PPIRP) restricts its application to MSMEs, whereas pre-packs in the U.K. and the U.S. operate within a much broader scope. There were issues of a system that is not just and fair in pre-packs in India, with a lack of transparency and valuations with disclosure to creditors. Empirical research on the conduct of creditors is limited despite the provision of voting rights in the IBC 2016. The Code fails to clearly define the application of Section 29A regarding outstanding insolvency, wilful defaults, and non-performing assets (NPAs). This ambiguity leads to implementation challenges, potential misuse, and debtor mismanagement. Consequently, further research and legislative amendments are required to clarify these restrictions, ensure a fair execution of the resolution process, and maintain systemic efficiency. Adaptation with reference to the IBC 2016 and insolvency laws in the U.S., the U.K., and the E.U. for restructuring of insolvent businesses is still a huge drawback considering India as a mixed economy, creditor-in-possession model, as compared to the trends in the European Union. There are limitations within the current legislation and policy frameworks, which remain heavily theoretical, alongside practical constraints in executing debtor-in-possession models, as demonstrated by data available up to December 2024.

Despite the above limitations, this study has highlighted an extremely beneficial framework comparing rehabilitation and liquidation in Indian law. It has emphasized the extension of pre-pack procedures, introduction of the cross-class cram-down approach, etc., in order to enhance the efficacy of the IBC. The authors highlighted aligning Indian law with other rules across the world in order to improve India's economic growth through entrepreneurship.

X. Conclusion

The Insolvency and Bankruptcy Code (IBC) 2016 heralds a paradigm shift in resolving insolvency or corporate insolvency scenarios in conformity with global best practices in corporate insolvency resolution, focusing significantly on corporate rehabilitation over corporate liquidation. The real-life statistics regarding resolution plans under IBC focusing significantly on corporate insolvency resolution show that the resolution plans under IBC have realized a value of 162.8 % as compared with corporate liquidation, thereby substantiating the economic benefits of corporate revival over corporate resolutions or liquidations. High-profile corporate resolutions under IBC, such as *Ruchi Soya* or *Bhushan Power & Steel*, exemplify corporate rehabilitation scenarios that were undertaken under IBC, thereby highlighting the economic viability of corporate revival.

Unlike the EU's Restructuring Directive (2019/1023) that mandates early restructuring tools, or CIGA 2020 in the UK that facilitates moratoriums and pre-packaged insolvencies, India's IBC largely forces distressed firms into formal insolvency only after viability has eroded. The irreversibility of liquidation is a critical limitation in the IBC. While the Code does not allow conversion of cases from liquidation to rehabilitation, judicial innovation has allowed revival through Section 230 schemes of compromise and arrangement under the Companies Act, 2013. Furthermore, this evolving recognition is reflected in the NCLAT's recent directive in the S.C. Sekaran case, which mandated a ten-day stay of the liquidation process to allow for the submission of a restructuring scheme, a stance subsequently mirrored in a similar proposal by the IBBI. However, these remain ad hoc measures without any statutory support, hence uncertain.

Cross-border remains another significant regulatory gap. Unlike the United States, through Chapter 15 of its Bankruptcy Code, and the United Kingdom, both of which have enacted the UNCITRAL Model Law on the recognition of foreign proceedings, India lacks a comparable statutory framework. While the judgment of the Jet Airways case emphasized universalism, there is no legislation.

Notwithstanding, an analysis of the rehabilitation-liquidation interface reveals underlying structural and procedural challenges. More-

over, a disheartening percentage of cases — where 2,707 out of a total of 8,175 initiated CIRP cases had been sent to liquidation as of December 2024 (over 33 %) — points to an underlying procedural bias towards liquidation. This systemic issue is further exacerbated by the absence of a comprehensive, formal preventive restructuring framework and an inherently inflexible procedural approach.

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