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The shift from debtor in possession to creditor in control is the IBC Model Sustainable

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Abstract

The development of insolvency regimes in jurisdictions has been a progressive shift from the fragmented debtor-focused recovery regimes to those based on structured regimes which focus on the maximisation of values and timely resolution. The insolvency systems around the world have tried to find equilibrium between business rehabilitation and creditor protection with different levels of institutional controls. This move in India resulted in the law of the Insolvency and Bankruptcy Code, 2016, which brought together various acts under one umbrella law to effectively solve corporate distress within a time limit. The main characteristic of the IBC is the abandonment of the old regime of Debtor-in-Possession and a Creditor-in-Control regime, where the control of the corporate debtor is entrusted to an insolvency professional in the supervision of the committee of creditors.

This paper analyses the main research question based on the findings in determining whether the Creditor-in-Control model implemented in India is long-term viable based on the economic structure, institutional capability, and judicial realities of the country. The study follows a doctrinal approach, buttressed by the discussion of statutory provisions, the pronouncements of judicial courts and reports of insolvency law committees, as well as a comparative reference to international insolvency practice.

The research concludes that the CIC model has been effective to a large extent on credit discipline and recovery rates, but the model is limited by delays in the procedures, lack of insolvency infrastructure, and lack of fairness in participating in the model. The conclusion drawn in the paper is that to maintain the CIC model in India, it is necessary to have credible reforms, building of institutional capacity, and a situation-specific balance of creditor control and corporate revival.

Keywords

Insolvency and Bankruptcy Code, Creditor in Control, Debtor in Possession, Sustainable Insolvency Framework.

Introduction

The evolution of insolvency laws in India reflects the broader trajectory of the country's economic development and its gradual transition from a state-controlled economy to a market-oriented framework. Before the enactment of a comprehensive insolvency regime, India relied on a fragmented set of laws that addressed debt recovery and corporate distress in a piecemeal manner. Statutes such as the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), and provisions under the Companies Act governed different aspects of insolvency and debt enforcement. Each of these laws operated within its own limited domain, often with overlapping jurisdictions and inconsistent objectives, leading to confusion and inefficiency in practice.

SICA was primarily designed to identify and rehabilitate sick industrial companies, with the Board for Industrial and Financial Reconstruction (BIFR) acting as the nodal authority. While the law aimed at revival, in reality, it became synonymous with prolonged litigation and misuse by defaulting promoters seeking protection from creditors. Proceedings under SICA were marked by significant delays, with cases remaining pending for years without meaningful resolution. SARFAESI, on the other hand, empowered secured creditors to enforce their security interests without court intervention, but its scope was limited to secured assets and did not provide a holistic framework for corporate resolution. Similarly, the RDDBFI Act focused on expediting recovery of debts owed to banks and financial institutions through specialized tribunals, yet it remained primarily a recovery-oriented mechanism rather than a restructuring tool¹.

The Companies Act contained provisions for winding up, compromise, or arrangement, but these processes were court-driven and notoriously time-consuming. Liquidation often became the default outcome, resulting in destruction of enterprise value, loss of employment, and erosion of creditor confidence. The absence of coordination among these statutes resulted in multiple proceedings against the same debtor in different forums, leading to forum shopping, inconsistent outcomes, and high transaction costs². Collectively, the pre-IBC regime failed to provide a predictable, efficient, and creditor-friendly system for resolving insolvency, thereby adversely affecting credit discipline and the overall investment climate.

Enactment of the Insolvency and Bankruptcy Code, 2016

Against this backdrop of inefficiency and systemic delay, the Insolvency and Bankruptcy Code, 2016 (IBC) was enacted as a landmark reform to consolidate and amend laws relating to

¹ S&P upgrades ratings of 10 Indian financial institutions following sovereign action, <https://economictimes.indiatimes.com/news/economy/indicators/sp-upgrades-ratings-of-10-indian-financial-institutions-following-sovereign-action/articleshow/123343796.cms?from=mdr>.

² <https://ibbi.gov.in/uploads/whatsnew/36cd64096137032d8a949419ec1e85b9.pdf>

insolvency resolution of corporate persons, partnership firms, and individuals. The IBC was conceived as part of a broader economic reform agenda aimed at improving the ease of doing business, strengthening financial stability, and fostering a robust credit ecosystem³. By replacing the fragmented insolvency framework with a unified code, the legislature sought to address long-standing deficiencies in India's insolvency landscape.

One of the primary objectives of the IBC is to ensure time-bound insolvency resolution. Recognizing that delay erodes asset value and undermines the prospects of revival, the Code prescribes strict timelines for completion of the corporate insolvency resolution process. The emphasis on speed represents a significant departure from the earlier regime, where proceedings often lingered indefinitely. By imposing statutory deadlines and limiting judicial discretion, the IBC aims to instill discipline among stakeholders and reduce uncertainty in insolvency outcomes.

Another central objective of the IBC is the maximization of the value of assets of the corporate debtor. Rather than treating insolvency merely as a recovery mechanism for creditors, the Code prioritizes resolution over liquidation wherever feasible⁴. The underlying philosophy is that preserving the corporate debtor as a going concern yields higher value than piecemeal liquidation of assets. This value-centric approach aligns insolvency law with broader economic goals, including job preservation, continuity of business operations, and optimal utilization of resources. The IBC also seeks to balance the interests of all stakeholders by establishing a transparent and predictable process governed by clear statutory principles.

Conceptual Shift: Debtor-in-Possession to Creditor-in-Control

A defining feature of the IBC is the conceptual shift from the Debtor-in-Possession (DIP) model to the Creditor-in-Control (CIC) framework⁵. Under the DIP model, commonly associated with insolvency regimes in certain jurisdictions, the existing management of the corporate debtor retains control over the business during the insolvency process, subject to supervision by the court or creditors. The rationale behind this model is that the debtor's management is best placed to operate the business and facilitate its revival, given their familiarity with the enterprise.

In contrast, the CIC model adopted under the IBC removes the existing management from control upon commencement of insolvency proceedings and vests decision-making authority in the creditors, primarily through the Committee of Creditors (CoC). An independent insolvency professional is appointed to manage the affairs of the corporate debtor during the resolution process. This shift reflects a deliberate policy choice by the Indian legislature, informed by the

³ Insolvency and Bankruptcy Board of India (2025). Insolvency and Bankruptcy News: The Quarterly Newsletter of IBBI, Jan-March Issue

⁴ Insolvency and Bankruptcy Board of India, Press Release No. IBBI/PR/2025/14 dated May 30, 2025

⁵ Insolvency and Bankruptcy Board of India (2025). Insolvency and Bankruptcy News: The Quarterly Newsletter of IBBI, Jan-March Issue

experience of the pre-IBC regime where debtor control was frequently abused to delay proceedings and dissipate assets.

The rationale for adopting the CIC model in India lies in the need to restore creditor confidence and address issues of moral hazard. By transferring control to creditors, the IBC seeks to ensure that resolution decisions are driven by commercial considerations rather than the self-interest of defaulting promoters⁶. The CIC framework also aims to promote accountability and transparency, as creditors are expected to act collectively to maximize value. In the Indian context, where governance standards have historically been uneven, creditor control was perceived as a necessary corrective to entrenched inefficiencies and strategic defaults.

Research Problem and Significance

Despite its transformative intent, the IBC has generated important questions regarding the balance of power between creditors and other stakeholders, particularly in the context of corporate revival. A key research problem arises from the concern that excessive creditor dominance under the CIC model may undermine the long-term sustainability of resolution outcomes. While creditors are incentivized to recover their dues, their focus on short-term financial recovery may conflict with the broader objective of preserving the corporate debtor as a viable going concern. This tension raises the question of whether the current framework adequately accommodates the interests of employees, operational creditors, and the enterprise itself.

The significance of this research lies in examining the role of sustainability in insolvency resolution. Sustainable resolution goes beyond immediate debt recovery to encompass long-term operational viability, responsible corporate governance, and socio-economic considerations such as employment and market stability. As insolvency law increasingly intersects with issues of economic resilience and sustainable development, it becomes imperative to assess whether the creditor-centric approach of the IBC sufficiently addresses these dimensions. Analyzing this issue is crucial for evaluating the effectiveness of the IBC not only as a debt resolution mechanism but also as an instrument of broader economic policy. By exploring the interplay between creditor control and sustainable revival, this study contributes to the ongoing discourse on refining India's insolvency framework to achieve balanced and enduring outcomes.

Conceptual Framework: DIP vs CIC Models

The design of corporate insolvency regimes reflects a fundamental choice about who should control a financially distressed firm during the resolution process. Two dominant models have emerged in comparative insolvency law: the Debtor-in-Possession (DIP) model and the Creditor-in-Control (CIC) model. Each represents a distinct allocation of power between debtors

⁶ As per department for Promotion of Industry and Internal Trade (DPIIT).

and creditors and is grounded in different economic and legal assumptions. Understanding these models is essential to evaluating the effectiveness, fairness, and efficiency of modern insolvency frameworks.

Debtor-in-Possession (DIP) Model

The Debtor-in-Possession model allows the existing management of a distressed company to retain control over the business and its assets during insolvency proceedings, subject to judicial supervision. Instead of displacing management, the law presumes that those who are already running the firm are best placed to preserve its value as a going concern. This model is most prominently associated with the United States' Chapter 11 reorganization framework.

A defining feature of the DIP model is continuity of management. The debtor's board of directors and senior executives continue to operate the company, negotiate with creditors, and formulate a restructuring or reorganization plan. Oversight is exercised through the court, creditors' committees, and statutory disclosure requirements, rather than through direct takeover by creditors. The debtor is often granted an exclusivity period during which only it may propose a resolution plan, reinforcing managerial control in the early stages of insolvency.

The role of existing management under the DIP framework is both operational and strategic. Management is expected to stabilize business operations, maintain relationships with employees, suppliers, and customers, and design a viable plan for financial restructuring. Because management possesses firm-specific knowledge, such as operational intricacies and market conditions, the model assumes that value erosion can be minimized. However, management operates under fiduciary duties that shift toward the collective interest of creditors once insolvency proceedings commence.

The DIP model offers several advantages. It promotes the preservation of going-concern value by avoiding the disruption that accompanies managerial displacement. The model also encourages early filings, as debtors may be more willing to seek formal restructuring when they are not automatically stripped of control. Additionally, DIP financing mechanisms, which grant priority status to new lenders, can improve liquidity and facilitate business recovery during insolvency.

Despite these benefits, the DIP model is not without disadvantages. Retaining control with existing management may exacerbate agency problems, particularly where managerial decisions contributed to financial distress. There is a risk of moral hazard, as managers may delay filings, favor insiders, or pursue self-serving strategies at the expense of creditors. The heavy reliance on judicial oversight can also make the process costly, time-consuming, and procedurally complex, especially in jurisdictions with overburdened courts.

Creditor-in-Control (CIC) Model

In contrast, the Creditor-in-Control model shifts management authority away from the debtor upon the commencement of insolvency proceedings. Control is transferred to an independent insolvency professional or administrator, who manages the firm during the resolution process. This model underpins insolvency regimes in several jurisdictions, including India under the Insolvency and Bankruptcy Code (IBC), 2016, and is rooted in the principle that creditors, as residual risk-bearers in insolvency, should direct the resolution process.

A central feature of the CIC model is the replacement or suspension of the debtor's existing management. Once insolvency proceedings are initiated, management powers vest in a Resolution Professional or similar authority. This professional assumes responsibility for running the company, preserving assets, and inviting resolution plans. The objective is to ensure neutrality, competence, and transparency in managing the distressed enterprise.

Decision-making authority in the CIC framework primarily rests with the Committee of Creditors (CoC), typically comprising financial creditors. The CoC evaluates resolution plans, determines the feasibility and viability of restructuring proposals, and exercises decisive control over the outcome of the insolvency process. Voting thresholds and timelines are statutorily prescribed, emphasizing speed and certainty in resolution.

The CIC model offers notable advantages. By displacing incumbent management, it reduces the risk of opportunistic behavior and mitigates conflicts of interest. Creditor-led decision-making aligns control with those who have the most at stake financially. The emphasis on strict timelines enhances predictability and prevents prolonged value erosion. Moreover, professional management during insolvency can improve discipline and accountability.

However, the CIC model has attracted criticism. Excluding existing management may lead to loss of firm-specific knowledge, potentially impairing operational efficiency. The dominance of financial creditors in the CoC has raised concerns about the marginalization of operational creditors, employees, and other stakeholders. Critics also argue that excessive creditor control may prioritize liquidation value over long-term business sustainability, especially in cases where revival is possible.

Theoretical Justifications

The divergence between DIP and CIC models can be explained through various theoretical frameworks. Agency theory provides a useful lens by focusing on conflicts between managers (agents) and creditors or shareholders (principals). Under the DIP model, agency costs may increase due to continued managerial control, necessitating judicial and creditor oversight mechanisms. The CIC model seeks to minimize agency costs by removing management and placing control with creditors or neutral professionals.

Creditor primacy theory strongly supports the CIC approach. It posits that once a firm becomes insolvent, creditors replace shareholders as the primary residual claimants. Therefore, decision-making authority should shift to creditors, as they bear the economic consequences of failure or success. This theory underlies creditor-dominated governance structures and justifies the CoC's central role in resolution processes.

Stakeholder theory offers a more inclusive perspective, emphasizing that insolvency affects a wide range of interests beyond creditors, including employees, suppliers, consumers, and the broader economy. From this viewpoint, the DIP model may better accommodate stakeholder considerations by preserving employment and business continuity. Conversely, stakeholder theory critiques rigid creditor control for potentially undermining social and economic objectives in favor of narrow financial recovery.

International Practices

International insolvency regimes reflect diverse applications of DIP and CIC principles. The United States' Chapter 11 system represents the archetypal DIP model. It allows debtors to retain control, provides an automatic stay on creditor actions, and facilitates reorganization through court-approved plans. The emphasis is on rehabilitation rather than liquidation, with significant flexibility for negotiation and restructuring.

In contrast, the United Kingdom traditionally followed a creditor-oriented approach through administration, where an insolvency practitioner assumes control of the company. However, recent reforms have introduced hybrid elements, such as the restructuring plan under the Companies Act, which allows greater debtor involvement while retaining creditor approval mechanisms. Similarly, the European Union's Preventive Restructuring Directive encourages early intervention and debtor-led restructuring, blending DIP features with creditor safeguards.

These hybrid models reflect a growing recognition that rigid adherence to either DIP or CIC extremes may be suboptimal. By combining debtor expertise with creditor oversight, modern insolvency systems aim to balance efficiency, fairness, and value maximization. The comparative experience demonstrates that effective insolvency frameworks are context-sensitive, adapting control structures to institutional capacity, market conditions, and policy objectives.

The IBC Framework and Creditor Control

The Insolvency and Bankruptcy Code, 2016 (IBC) represents a paradigm shift in India's insolvency regime by decisively moving away from a debtor-in-possession model to a creditor-in-control framework. The central objective of the IBC is not merely recovery of debts but the resolution of insolvency in a time-bound manner so as to preserve the value of the corporate debtor as a going concern. Creditor control under the IBC is institutionalised through statutory mechanisms such as the Corporate Insolvency Resolution Process (CIRP), the

Committee of Creditors (CoC), and the suspension of the board of directors, all of which collectively aim to balance economic efficiency with legal certainty.

- **Statutory Scheme under the IBC**

The statutory framework of the IBC is designed to trigger a collective insolvency resolution process once a corporate debtor commits default. The initiation of the CIRP can be undertaken by a financial creditor, an operational creditor, or the corporate debtor itself under Sections 7, 9, and 10 of the Code respectively. The threshold requirement of default serves as the jurisdictional fact, and once satisfied, the Adjudicating Authority, namely the National Company Law Tribunal (NCLT), admits the application. Upon admission, a moratorium under Section 14 is imposed, which prohibits the institution or continuation of proceedings against the corporate debtor, thereby creating a calm period necessary for resolution.

Following the admission of CIRP, the appointment of an Interim Resolution Professional (IRP) marks a crucial transition in control. The IRP is appointed either on the recommendation of the applicant or by the NCLT, and is entrusted with the immediate management of the affairs of the corporate debtor. The IRP's primary function is to take over the management, make a public announcement inviting claims, and collate such claims to determine the financial position of the debtor. This appointment signifies the displacement of the existing management and underscores the creditor-centric nature of the process.

The role of the Resolution Professional (RP), who may either be the IRP or a replacement appointed by the CoC, is pivotal in steering the insolvency process. The RP acts as a neutral fiduciary, managing the operations of the corporate debtor as a going concern while facilitating the resolution process. Importantly, the RP does not possess independent decision-making authority in commercial matters but acts under the supervision and approval of the CoC. This structural limitation reinforces the principle that economic decisions relating to the fate of the corporate debtor rest primarily with creditors.

- **Committee of Creditors (CoC)**

The Committee of Creditors is the cornerstone of creditor control under the IBC. Constituted under Section 21, the CoC comprises exclusively financial creditors, excluding operational creditors except in limited circumstances. The rationale behind this composition is that financial creditors are better equipped to assess the viability of the corporate debtor due to their long-term exposure and access to financial information. Voting rights within the CoC are proportionate to the financial debt owed, thereby aligning decision-making power with economic stake.

The CoC exercises significant authority over the insolvency process, including the appointment or replacement of the RP, approval of resolution plans, and decisions relating to liquidation. Resolution plans require approval by a specified voting threshold, reflecting collective creditor

consensus. The Supreme Court has consistently upheld the primacy of the CoC's "commercial wisdom," recognising that courts and tribunals lack the expertise to evaluate the economic feasibility of business decisions. This doctrine of commercial wisdom limits judicial interference to procedural and legal compliance, thereby granting the CoC substantial autonomy.

The recognition of commercial wisdom has strengthened creditor confidence and predictability within the insolvency framework. However, it has also raised concerns regarding the marginalisation of operational creditors and other stakeholders. Despite these concerns, the legislative intent clearly prioritises value maximisation and timely resolution over distributive equity, with the CoC functioning as the principal decision-making body.

- **Suspension of the Board of Directors**

One of the most significant legal consequences of CIRP admission is the suspension of the board of directors and the transfer of management powers to the RP under Section 17 of the IBC. This statutory suspension does not dissolve the board but renders it inoperative during the resolution period. The objective is to prevent mismanagement, asset stripping, or interference by the existing promoters and management, whose actions may have contributed to the financial distress of the company.

From a corporate governance perspective, this suspension represents a temporary but complete shift in control. The RP assumes the powers of the board and key managerial personnel, ensuring that decisions are taken in the interests of creditors rather than promoters. This mechanism reflects a clear departure from traditional company law principles where shareholders and directors exercise control, highlighting the special nature of insolvency proceedings.

For promoters and management, the implications are profound. They lose decision-making authority and are relegated to a cooperative role, required to assist the RP by providing information and records. Additionally, provisions such as Section 29A disqualify defaulting promoters from regaining control through the resolution process, reinforcing accountability and discouraging wilful default. This exclusionary approach underscores the IBC's emphasis on responsible corporate conduct and creditor protection.

- **Timelines and Control Mechanisms**

The time-bound nature of the IBC is integral to its effectiveness. Initially envisaged as a 180-day process extendable by 90 days, the framework was later reinforced by introducing an outer limit of 330 days, inclusive of litigation delays. These timelines are intended to prevent value erosion caused by prolonged insolvency proceedings and to instil discipline among stakeholders.

The strict adherence to timelines strengthens creditor control by reducing opportunities for delay tactics by debtors and other interested parties. Speedy resolution enhances asset value and

facilitates economic revival. However, the emphasis on speed has raised concerns regarding substantive justice, particularly in complex cases involving multiple stakeholders and intricate legal issues. Critics argue that rigid timelines may compromise thorough evaluation of resolution plans and fairness to certain classes of creditors.

Judicial interpretation has sought to strike a balance between procedural efficiency and substantive justice by allowing limited flexibility in exceptional cases. Nevertheless, the overarching philosophy of the IBC favours certainty and timeliness over prolonged adjudication. This balance reflects the legislature's intent to prioritise economic outcomes while maintaining minimum procedural safeguards.

The IBC framework institutionalises creditor control through a carefully structured statutory scheme that redefines insolvency resolution in India. By empowering creditors, suspending management, and enforcing strict timelines, the Code aims to maximise value and promote responsible corporate behaviour. While challenges remain in harmonising speed with fairness, the creditor-centric model has undeniably strengthened India's insolvency ecosystem and reshaped corporate governance norms during financial distress.

Judicial Interpretation and Evolution of CIC under IBC

The Insolvency and Bankruptcy Code, 2016 (IBC) represents a paradigmatic shift in India's insolvency regime by prioritising creditor-driven resolution over debtor-in-possession models. Central to this framework is the Committee of Creditors (CoC), which has emerged as the fulcrum of the corporate insolvency resolution process (CIRP). Judicial interpretation, particularly by the Supreme Court of India, has played a decisive role in shaping the contours of the CoC's powers, its commercial autonomy, and the extent of judicial intervention permissible under the Code. Over time, courts have evolved a jurisprudence that reinforces creditor supremacy while attempting to balance revival, fairness, and systemic integrity.

The Supreme Court's endorsement of creditor supremacy under the IBC was firmly articulated in *Swiss Ribbons Pvt. Ltd. v. Union of India*⁷. In this landmark decision, the Court upheld the constitutional validity of the Code and recognised the CoC as a body best suited to assess the feasibility and viability of resolution plans. The Court reasoned that financial creditors, by virtue of their exposure, expertise, and ability to assess risk, are better equipped than operational creditors or courts to make commercial decisions. This recognition laid the foundation for a creditor-centric insolvency process, emphasising resolution over liquidation while minimising judicial interference in commercial matters⁸.

⁷ AIR 2019 SUPREME COURT 739, 2019 (4) SCC 17

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<https://ibclaw.in/swiss-ribbons-pvt-ltd-v-union-of-india-the-constitutionality-of-ibc-upheld-understanding-the-procedural-aspect-and-the-after-effects-by-ms-manisha-arora-and-mr-pranav-ashutosh/>

This approach was further strengthened in *K. Sashidhar v. Indian Overseas Bank*⁹, where the Supreme Court clarified that the approval or rejection of a resolution plan by the CoC is a matter of commercial discretion. The Court held that once the requisite voting threshold is met, neither the adjudicating authority nor appellate forums can substitute their judgment for that of the CoC. Judicial scrutiny, the Court observed, is limited to ensuring compliance with the procedural requirements under Section 30(2) of the Code. This decision reinforced the autonomy of the CoC and underscored the legislative intent to insulate commercial decisions from prolonged litigation¹⁰.

The doctrine of “commercial wisdom of the CoC” has since become a cornerstone of insolvency jurisprudence under the IBC. Courts have consistently treated the CoC’s decisions as non-justiciable on merits, recognizing that insolvency resolution involves complex economic assessments beyond judicial expertise. This principle of non-justiciability ensures speed, certainty, and predictability in the CIRP, which are essential to preserve the value of stressed assets. By limiting judicial intervention, the Supreme Court has sought to prevent delays that plagued earlier insolvency regimes and undermined creditor confidence.

However, the insulation of commercial wisdom is not absolute. The Supreme Court has acknowledged that judicial review, though narrow, remains available to prevent arbitrariness, illegality, or material irregularity. Courts may intervene where the resolution process violates statutory mandates, principles of natural justice, or constitutional norms. This calibrated approach reflects an attempt to balance deference to economic decision-making with the rule of law, ensuring that the CoC’s powers are exercised within the framework of fairness and transparency.

The tension between revival and recovery came to the forefront in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*¹¹. In this seminal judgment, the Supreme Court upheld the primacy of the CoC in distributing proceeds under a resolution plan, rejecting the notion of equal treatment between financial and operational creditors. The Court clarified that “equitable treatment” does not mean identical treatment and that differential payouts may be justified based on the nature of claims, security interests, and risk exposure. By doing so, the Court reaffirmed that the objective of the IBC is resolution and maximization of value, rather than mere recovery of dues¹².

⁹ Civil Appeal No. 10673 of 2018 with C.A. No. 10719 of 2018, C.A. No. 10971 of 2018 and SLP (C) No. 29181 of 2018 Decided on 05-Feb-19

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[https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Feb/K%20Sashidhar%20Vs%20Indian%20Overseas%20Bank%20&%20Ors%20Civil%20Appeal%20No.%2010673-2018%20with%20CA%20No.%2010719%20-2018%20CA%20No.%2010971%20-2018%20and%20SLP%20\(C\)%20No.%2029181_2019-02-06%2010_31_11_2019-02-06%2023:00:50.pdf](https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Feb/K%20Sashidhar%20Vs%20Indian%20Overseas%20Bank%20&%20Ors%20Civil%20Appeal%20No.%2010673-2018%20with%20CA%20No.%2010719%20-2018%20CA%20No.%2010971%20-2018%20and%20SLP%20(C)%20No.%2029181_2019-02-06%2010_31_11_2019-02-06%2023:00:50.pdf)

¹¹ AIR ONLINE 2019 SC 1494, (2019) 16 SCALE 319, (2019) 4 CURCC 410, (2019) 8 MAD LJ 524

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<https://ibclaw.in/summary-of-landmark-judgment-of-supreme-court-in-committee-of-creditors-of-essar-steel-india-limited-vs-satish-kumar-gupta-ors-under-ibc/>

At the same time, *Essar Steel* highlighted the need to ensure that operational creditors are not reduced to insignificance. The Court mandated that operational creditors must receive at least the amount they would have obtained in liquidation, thereby providing a statutory floor of protection. This balance reflects judicial sensitivity to the broader ecosystem of stakeholders, including suppliers, employees, and smaller creditors, whose interests are critical to the sustainability of corporate revival.

Despite this evolving jurisprudence, emerging judicial concerns have begun to surface regarding the functioning of the CoC. One such concern relates to deep haircuts accepted by creditors, which have raised questions about value maximization and potential liquidation bias. In several high-profile cases, resolution plans have involved substantial write-offs, prompting debates on whether the CoC prioritizes speedy exits over genuine revival. While courts have generally refrained from second-guessing such decisions, observations in recent judgments indicate an awareness of the systemic risks posed by excessive haircuts.

Procedural fairness has also emerged as an area of judicial scrutiny. Issues such as inadequate information sharing, exclusion of minority financial creditors, and lack of transparency in CoC deliberations have drawn judicial attention. Although the commercial wisdom doctrine limits substantive review, courts have emphasized adherence to due process and informed decision-making. These concerns signal a gradual judicial effort to refine the balance between autonomy and accountability without undermining the efficiency of the insolvency framework.

The judicial interpretation of the CoC under the IBC reflects a dynamic evolution shaped by economic pragmatism and constitutional discipline. The Supreme Court has consistently upheld creditor supremacy and the sanctity of commercial wisdom while carving out narrow spaces for judicial oversight to ensure legality and fairness. As insolvency jurisprudence matures, courts are increasingly attentive to concerns of value erosion, stakeholder balance, and procedural integrity. This evolving judicial approach seeks not to dilute the authority of the CoC, but to strengthen the credibility and effectiveness of India's insolvency regime in the long run.

Sustainability of the Creditor-in-Control Model: Critical Analysis

The creditor-in-control model, as embedded within many modern insolvency regimes, most notably India's Insolvency and Bankruptcy Code (IBC), was conceived with the twin objectives of balancing creditor rights and enabling efficient corporate rescue. At its core, this model empowers financial creditors—who typically bear the greatest economic risk—to drive the resolution process. While this approach seeks to align incentives toward maximizing recoveries, its sustainability as a framework for corporate rescue and preserving going-concern value has been the subject of considerable debate. A critical examination reveals that, despite certain

strengths, the model exhibits structural biases and practical limitations that may compromise long-term revival goals in favor of short-term creditor interests¹³.

One of the most salient criticisms of the creditor-in-control model is its underlying preference for liquidation over holistic revival. Financial creditors often prioritize recovering dues quickly, which can skew decision-making toward liquidation when faced with prolonged uncertainty. This proclivity stems from risk aversion: banks and financial institutions, constrained by regulatory capital requirements and non-performing asset thresholds, may view continued restructuring as an untenable drain on balance sheets. Consequently, even where a company has credible turnaround potential, stakeholders may favor liquidation because it offers a clearer, albeit truncated, path to recoupment. This dynamic undermines the very purpose of an insolvency regime designed to preserve economic value and employment.

The tension between short-term recovery and long-term revival is further exacerbated by the limited incentives for financial creditors to absorb incremental risk. A genuine rescue effort often necessitates time, managerial overhaul, operational transformation, and fresh capital infusion—factors that do not yield immediate recoveries. Because the creditor-in-control model places financial creditors at the helm, their inherent focus on near-term financial outcomes can overshadow broader measures of sustainability. In practice, this can translate into hastened decisions to liquidate, sidelining innovative restructuring plans that could salvage the enterprise as a going concern and contribute to systemic economic health.

Central to understanding the model's operational dynamics is the role of financial creditors, who command decisive influence in the Committee of Creditors (CoC). While this reflects economic logic—these creditors hold the largest financial stakes—it gives rise to accusations of a bank-centric approach. Critics argue that banks, driven by internal performance metrics and external regulatory pressures, may pursue strategies that protect their immediate interests at the expense of comprehensive stakeholder welfare. This perceived bank centrism can overshadow the needs of other creditor classes and dilute the focus on enterprise revitalisation, particularly where plans require concessionary treatment that diminishes short-term recoveries for financial institutions.

Closely tied to this criticism is the problem of conflict of interest inherent in the creditor-in-control model. Financial creditors may possess competing motivations: for instance, a consortium of lenders could favour a resolution plan that shifts future liabilities or operational costs onto operational creditors or employees while preserving their own contractual claims. Such conflicts can distort negotiation dynamics and result in inequitable outcomes that erode trust in the insolvency framework. When operational stakeholders perceive that their interests are consistently subordinated, the legitimacy and acceptability of the entire resolution process may be called into question.

¹³ An operational creditor can file a petition for initiation of CIRP under Section 9 of IBC.

Perhaps the most visible consequence of this dynamic is the marginalisation of other stakeholders, particularly operational creditors, employees, and workmen, as well as Micro, Small and Medium Enterprises (MSMEs). Operational creditors often provide essential goods and services that sustain a company's ability to function. Yet, under the creditor-in-control model, their claims are typically subordinated in the priority waterfall, diminishing their bargaining power. This structural imbalance can discourage these stakeholders from engaging constructively in the resolution process or extending necessary post-insolvency support, which is critical in maintaining continuity of operations.

Employees and workmen, whose livelihoods depend on the survival of the enterprise, routinely find themselves on the periphery of decision-making. While insolvency laws may grant certain protections, the prioritization of financial creditors often means that workforce concerns are treated as secondary—leading to job losses, wage defaults, and erosion of human capital. Similarly, MSMEs, which constitute the backbone of supply chains in many economies, frequently face significant haircuts or delayed payments, threatening their own financial viability. The asymmetric treatment of these stakeholders not only raises issues of fairness but also weakens the broader economic ecosystem that supports viable corporate recovery.

In parallel, the disempowerment of promoters, particularly through provisions like Section 29A of the IBC, reflects another dimension of the sustainability debate. Section 29A aims to prevent unscrupulous promoters from re-acquiring control of distressed companies, thereby blocking those whose prior actions may have contributed to insolvency¹⁴. While the objective of excluding bad actors is laudable, the provision's broad sweep has sometimes ensnared genuine entrepreneurs, effectively barring them from participating in resolution plans. Critics contend that this exclusionary stance may deprive the process of experienced custodians who understand the business's operations and potential more deeply than external bidders.

The tension here lies between protecting the process from manipulation and ensuring that viable rescuers are not arbitrarily disqualified. When capable promoters with credible revival plans are excluded, the pool of resolution applicants narrows, potentially limiting competitive bidding and reducing recovery values. Furthermore, the perception of promoter disenfranchisement can deter entrepreneurial engagement with the insolvency framework in future, hampering efforts to cultivate a vibrant market for distressed assets.

A data-driven assessment of the creditor-in-control model further highlights concerns about its sustainability. Empirical evidence from insolvency regimes suggests significant variability in resolution versus liquidation rates, with many cases culminating in liquidation despite the theoretical preference for revival. This raises questions about whether the model effectively facilitates sustainable restructuring or merely formalizes a process that often ends in asset sell-offs. Moreover, data on average haircuts—the percentage of claims written off by

¹⁴ Insolvency and Bankruptcy Code 2016, Section 29A

creditors—indicate that financial institutions may achieve modest recoveries in many cases, raising doubts about the economic efficacy of protracted insolvency proceedings.

In addition, persistent delays beyond statutory timelines have plagued insolvency processes, diluting asset value and increasing costs. Although legal frameworks often prescribe strict timelines for resolution, in practice, procedural and operational bottlenecks extend the duration of cases, undermining the goal of quick and efficient turnaround. Prolonged uncertainty can erode stakeholder confidence, diminish the firm’s market position, and reduce the feasibility of revival plans, thereby pushing cases toward liquidation. These delays reflect structural infirmities that cannot be rectified simply through creditor dominance in decision-making.

The creditor-in-control model offers a structured mechanism to balance creditor rights and promote orderly resolution; its sustainability as a vehicle for corporate rescue and preservation of going-concern value is contested. The model’s inclination toward liquidation, bank-centric decision-making, marginalisation of non-financial stakeholders, disempowerment of genuine promoters, and empirical outcomes all point to systemic challenges. For the model to achieve its intended purpose, reforms may be necessary to recalibrate stakeholder participation, incentivise long-term revival over short-term recoveries, and streamline procedural efficiency. Only by addressing these structural biases can insolvency frameworks evolve toward more equitable and sustainable corporate rescue mechanisms.

Comparative Analysis: Lessons from Global Insolvency Regime¹⁵

- **United States**

The United States’ Chapter 11 insolvency framework is widely regarded as a debtor-friendly restructuring regime that prioritizes business continuity and value preservation. A defining feature of Chapter 11 is the concept of “debtor in possession,” under which the existing management typically retains control of the company during the restructuring process. This approach assumes that incumbent management possesses superior operational knowledge and is best placed to rehabilitate the firm, subject to court supervision. The availability of tools such as automatic stay, debtor-in-possession financing, and flexible reorganization plans enables distressed firms to stabilize operations while negotiating with stakeholders. As a result, Chapter 11 has been instrumental in allowing large and complex enterprises to restructure rather than liquidate, thereby preserving employment and going-concern value.

Another important institutional feature of the US regime is the active role played by creditors’ committees. These committees, usually representing unsecured creditors, act as a counterbalance to debtor control by participating in negotiations, monitoring management conduct, and

¹⁵ www.worldbank.org Ease of Doing Business

influencing the formulation of reorganization plans. The committees enhance transparency and collective creditor participation, reducing coordination problems that often arise in dispersed creditor structures. While Chapter 11 has been criticized for high costs and prolonged timelines, its emphasis on negotiated restructuring and stakeholder engagement offers valuable lessons for jurisdictions seeking to balance debtor protection with creditor rights.

- **United Kingdom**

The United Kingdom follows an administrator-led insolvency model that differs significantly from the US approach. Upon initiation of administration, control of the company shifts from the debtor's management to an independent insolvency professional, the administrator. The primary statutory objective of administration is the rescue of the company as a going concern, failing which the administrator seeks to achieve a better result for creditors than immediate liquidation. This model reflects a more creditor-oriented philosophy, emphasizing professional oversight and swift decision-making to minimize value erosion.

Recent reforms, including the introduction of pre-pack administrations and the restructuring plan under the Companies Act, have strengthened the UK's rescue culture. Pre-packs allow for the sale of a business shortly after administration begins, preserving value and continuity, though concerns regarding transparency remain. Overall, the UK framework demonstrates how strong professional control combined with a clear rescue mandate can facilitate efficient insolvency resolution while maintaining creditor confidence.

- **European Union**

The European Union has increasingly focused on preventive restructuring frameworks, particularly through the EU Restructuring and Insolvency Directive. The Directive encourages member states to adopt mechanisms that enable financially distressed but viable businesses to restructure at an early stage, before insolvency becomes inevitable. A key objective is to reduce stigma associated with insolvency and promote a culture of early intervention, thereby preserving economic value and employment.

Preventive restructuring regimes in the EU typically include features such as temporary moratoria, debtor-in-possession restructuring, and court-sanctioned restructuring plans that can bind dissenting creditors. These frameworks seek to strike a balance between flexibility and safeguards by ensuring creditor protection while allowing debtors sufficient space to negotiate restructuring solutions. The EU experience highlights the importance of timely intervention and harmonised minimum standards in addressing cross-border insolvency challenges within integrated markets.

- **Relevance for India**

India's Insolvency and Bankruptcy Code (IBC) 2016 has significantly improved insolvency resolution by introducing time-bound processes and consolidating fragmented laws. However, comparative insights from global regimes suggest the need for a more calibrated or hybrid approach. While the IBC has elements of creditor control similar to the UK model, it lacks the extensive restructuring flexibility seen in Chapter 11 and the EU's preventive frameworks. The limited scope for debtor-led restructuring and early intervention often results in insolvency proceedings being triggered at advanced stages of financial distress, reducing the likelihood of successful revival.

Drawing from international practices, India could benefit from strengthening pre-insolvency restructuring mechanisms, enhancing the role of creditor committees beyond voting thresholds, and allowing greater flexibility in resolution planning for complex enterprises¹⁶. A hybrid framework that combines creditor discipline with structured debtor participation and early warning mechanisms would better align insolvency outcomes with the broader objectives of value maximisation and economic stability. Such calibration would ensure that the Indian regime evolves from a resolution-centric model to a more holistic restructuring ecosystem.

Reform Imperatives and the Way Forward

The experience of the Insolvency and Bankruptcy Code, 2016 (IBC) over the past years reveals that while it has significantly improved credit discipline and recovery outcomes, certain structural imbalances continue to affect its long-term sustainability. One of the most debated concerns is the dominance of financial creditors in the resolution process, often resulting in limited consideration of debtor viability and broader stakeholder interests. Re-balancing creditor control without diluting efficiency is therefore central to the future evolution of the IBC.

A key reform imperative lies in the inclusion of meaningful debtor participation in the insolvency resolution process. While promoter misconduct must be discouraged, complete marginalisation of debtors may undermine value maximisation, particularly where promoters possess critical business knowledge¹⁷. Carefully structured participation, subject to transparency and safeguards against abuse, can enhance resolution outcomes. Alongside this, strengthening the accountability of Resolution Professionals (RPs) is essential. Although RPs play a pivotal role in managing the corporate debtor as a going concern, inconsistencies in professional conduct and oversight persist. Clearer standards of performance, enhanced monitoring by the Insolvency and Bankruptcy Board of India (IBBI), and proportionate penalties for lapses can reinforce confidence in the resolution process.

¹⁶ Guru, Anuradha, The Code: A Behavioural Perspective, Insolvency and Bankruptcy Board of India. Accessed December 15, 2024.

<https://ibbi.gov.in/uploads/whatsnew/2456194a119394217a926e595b537437.pdf>

¹⁷ Behavioral Impact of IBC - A Research Study Submitted to Insolvency and Bankruptcy Board of India, Centre for Capital Markets and Risk Management, The Indian Institute of Management, Bangalore, accessed on 25 August 2025,

<https://ibbi.gov.in/uploads/resources/1af62766c26f90a284c1fa996faa6e97.pdf>

Moving forward, the adoption of a hybrid insolvency model offers a pragmatic path. The rigid creditor-in-control framework may not be suitable for all firms, particularly those that are operationally viable but financially distressed. Introducing a conditional Debtor-in-Possession (DIP) model for such firms, under strict judicial and creditor supervision, could preserve enterprise value and employment. Further, sector-specific insolvency frameworks are necessary to address the unique characteristics of industries such as infrastructure, real estate, and financial services. A uniform approach risks inefficiency where asset structures, revenue cycles, and stakeholder profiles differ significantly.

Institutional capacity building remains another critical area. The National Company Law Tribunal (NCLT), as the adjudicatory backbone of the IBC, continues to face challenges relating to infrastructure constraints, judicial vacancies, and procedural delays. Without adequate benches, technological support, and specialised training, the statutory timelines under the Code become difficult to achieve in practice. Parallely, Information Utilities must be strengthened to ensure timely, accurate, and comprehensive financial information¹⁸. Reliable data reduces litigation, expedites admission, and enhances trust among stakeholders.

The protection of stakeholder interests must extend beyond financial creditors. Employees and operational creditors often face uncertainty and delayed payments, despite being integral to the functioning of the corporate debtor. Greater representation and equitable treatment within the resolution framework can improve fairness without compromising efficiency. Additionally, Micro, Small and Medium Enterprises (MSMEs) require tailored insolvency reforms, recognising their limited access to credit, dependence on promoters, and socio-economic significance. Simplified procedures and flexible eligibility norms can make insolvency a tool for revival rather than liquidation.

Conclusion

This study has examined the Insolvency and Bankruptcy Code as a transformative reform aimed at resolving corporate distress in a time-bound and market-driven manner. The analysis highlights that the IBC has substantially improved creditor confidence, reduced delays in insolvency resolution, and shifted India away from a debtor-friendly but inefficient regime. The introduction of clear timelines, creditor control, and institutional mechanisms such as the NCLT and IBBI has strengthened the overall insolvency ecosystem.

However, the findings also reveal persistent challenges that raise concerns about the long-term sustainability of the current framework. Excessive concentration of power in financial creditors, procedural delays, limited debtor participation, and inadequate protection for non-financial

¹⁸ Behavioral Impact of IBC - A Research Study Submitted to Insolvency and Bankruptcy Board of India, Centre for Capital Markets and Risk Management, The Indian Institute of Management, Bangalore, accessed on 25 August 2025, <https://ibbi.gov.in/uploads/resources/1af62766c26f90a284c1fa996faa6e97.pdf>.

stakeholders risk undermining the Code's objective of value maximisation. While recoveries have improved, they are not uniform across sectors, and liquidation remains a frequent outcome, particularly for smaller firms.

In response to the central research question on sustainability, the IBC is sustainable in principle but requires continuous recalibration in practice. Sustainability depends not merely on recovery statistics but on the ability of the insolvency regime to balance efficiency with fairness, resolution with revival, and creditor rights with broader economic interests. Without such a balance, the Code risks becoming overly liquidation-oriented, which may harm entrepreneurship, employment, and long-term economic growth.

Looking ahead, the future of the IBC lies in adaptive reform rather than structural overhaul. Incremental changes aimed at institutional strengthening, stakeholder inclusivity, and contextual flexibility can preserve the core strengths of the Code while addressing its limitations. If supported by judicial capacity, regulatory vigilance, and policy coherence, the IBC can evolve into a mature and resilient insolvency framework capable of supporting India's dynamic and diverse economy.

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