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Open Access Law Journal, ISSN (O): 3049-0057

Editor-in-Chief – Prof. (Dr.) Amit Kashyap; Publisher – Reet Parihar

Resolving Corporate Distress: A Comprehensive Study of Insolvency and Winding Up Laws in India

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Published on: 16th April 2025

Abstract

Corporate insolvency and winding up are crucial aspects of commercial law that ensure financial discipline, investor confidence, and economic stability within a country. The increasing complexity of corporate structures and rising cases of corporate defaults have placed insolvency frameworks under the spotlight globally. In India, the evolution from the outdated winding-up mechanisms under the Companies Act, 1956, [1]to the modern, time-bound process introduced by the [2]Insolvency and Bankruptcy Code, 2016 (IBC), reflects the country's attempt to align with global best practices while addressing its unique economic challenges.

Corporate insolvency primarily deals with a situation where a company is unable to pay its debts and seeks either resolution or liquidation under legal supervision. Winding up, though often used interchangeably with insolvency, has a broader scope. It includes voluntary closure of solvent companies, as well as compulsory closure ordered by courts or tribunals.[3] Historically, Indian corporate law treated insolvency and winding up as closely related, but distinct mechanisms. The IBC has since brought coherence and consistency, integrated fragmented laws and set up a structured mechanism for corporate insolvency resolution and liquidation.

The IBC introduced a creditor-in-control model, shifting away from the earlier debtor-in-possession framework. It mandates the formation of a Committee of Creditors (CoC), comprised mainly of

[1] Companies Act, No. 1 of 1956, Acts of Parliament, 1956 (India) (repealed).
[2] Insolvency and Bankruptcy Code, No. 31 of 2016, Acts of Parliament, 2016 (India).
[3] Companies Act, §§ 271–272, No. 18 of 2013, Acts of Parliament, 2013 (India).

financial creditors, to determine the future of the distressed corporate debtor. The Code provides for time-bound resolution (180 to 330 days), failing which liquidation follows. This model is expected to foster quick recovery of debts, preserve asset value, and protect the interests of stakeholders including operational creditors, employees, and government authorities.

The Code's legal machinery includes the National Company Law Tribunal (NCLT) as the adjudicating authority for corporate insolvency proceedings. The Insolvency and Bankruptcy Board of India (IBBI), functioning as the regulator, oversees insolvency professionals, information utilities, and maintains discipline within the ecosystem. Judicial interpretation by Indian courts has also played a central role in shaping the insolvency landscape, especially through decisions such as [4]Swiss Ribbons v. Union of India, [5]Innoventive Industries v. ICICI Bank, and Essar Steel v. ArcelorMittal, which clarified legislative intent, upheld creditor primacy, and set standards for resolution and liquidation.

However, the IBC has not been without challenges. Procedural delays, value erosion of assets during resolution, and the lack of timely disposal by tribunals have raised concerns. [6]Moreover, the over-reliance on financial creditors, with limited voice for operational creditors and other stakeholders, has led to debate regarding the fairness of the system. The pandemic added further pressure, prompting temporary suspensions of filings and the emergence of pre-packaged insolvency frameworks for MSMEs.

Real-world applications of the IBC framework illustrate both its strengths and weaknesses. The insolvency case of Essar Steel India Ltd. [7]was a landmark for establishing creditor supremacy, with the Supreme Court reinforcing the primacy of the Committee of Creditors in approving resolution plans. The resolution fetched ₹42,000 crore from ArcelorMittal, setting a positive precedent. However, the case also exposed the delays caused by prolonged litigation and inter-creditor disagreements. Similarly, the Jet Airways insolvency case reflected the difficulties of reviving financially distressed companies with complex cross-border operations and competing creditor claims. The DHFL insolvency showed that the IBC could be successfully applied to large non-banking financial companies (NBFCs), paving the way for financial sector reforms. In contrast, the IL&FS crisis necessitated government intervention due to its systemic impact, underlining the limitations of judicially driven insolvency in cases of public interest and financial contagion.

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[4] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17
[5] Innoventive Indus. Ltd. v. ICICI Bank, (2018) 1 SCC 407 .
[6] VIDHI CENTRE FOR LEGAL POLICY, https://vidhilegalpolicy.in (last visited Apr. 16, 2025).
[7] Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

Winding up under the Companies Act, 2013 still exists as a parallel process but has become secondary to the IBC mechanism. The Act provides for winding up by the Tribunal in cases of fraud, default, or if it is just and equitable to do so. Voluntary winding up is also permitted when a company decides to close its operations despite being solvent. However, in practice, most creditor-driven winding up petitions now follow the IBC route due to its time-bound structure and procedural efficiency. The Companies Act's winding up provisions, therefore, play a residual role and are mostly invoked in non-debt related closures or where the corporate debtor is not covered by IBC (such as certain categories of companies under special statutes).

Comparatively, jurisdictions like the United Kingdom and the United States have distinct insolvency and bankruptcy regimes with established case law and institutional support. The UK model emphasizes administration and voluntary arrangements, while the U.S. Chapter 11 process is debtor-friendly and aimed at corporate restructuring. The Indian IBC attempts to balance creditor and debtor rights but leans toward a creditor-in-control model. The integration of the UNCITRAL Model Law on Cross-Border Insolvency remains a work in progress in India, though its adoption has been proposed.

Ultimately, corporate insolvency and winding up laws in India are a work in evolution. The IBC has undoubtedly transformed the insolvency ecosystem by instilling creditor discipline, reducing NPAs, and improving India's ranking in the Ease of Doing Business Index. Yet, continued reforms are necessary to address delays, improve stakeholder participation, strengthen insolvency professionals, and ensure balanced outcomes. This research paper critically analyses the development of the legal framework governing insolvency and winding up in India, explains its functioning through case laws and real-life examples, and proposes recommendations for improving the process to better serve the economy and the public interest.

Keywords: *Insolvency and Bankruptcy Code (IBC), Corporate Insolvency, Winding Up, Committee of Creditors (CoC), Financial Restructuring*

INTRODUCTION

Corporate insolvency and winding up are indispensable components of financial and commercial legal systems. These mechanisms are fundamental to maintaining economic stability, ensuring creditor protection, facilitating market discipline, and allowing for an orderly exit of companies from the business landscape. They also serve as crucial deterrents against reckless financial management and corporate misgovernance. Insolvency refers to a state in which a corporate entity is unable to

meet its financial obligations as they become due. Winding up, while often associated with insolvency, has a broader application and refers to the formal legal process through which a company's operations are brought to an end, and its assets are liquidated for the purpose of paying off creditors and stakeholders.

The evolution of corporate insolvency laws in India has been gradual but transformative. Historically, India lacked a consolidated legal framework to deal with insolvency. [8]Various statutes such as the Companies Act, 1956, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI), and others coexisted, leading to jurisdictional overlaps and delays in resolving insolvency cases. These frameworks were creditor-unfriendly, allowed excessive discretion to debtors, and often resulted in the erosion of asset value. Most significantly, the existing mechanisms lacked timeliness, leading to low recovery rates and massive build-ups of non-performing assets (NPAs) in the banking system.

The enactment of the **Insolvency and Bankruptcy Code, 2016 (IBC)** was a watershed moment in Indian corporate legal history. The IBC replaced the archaic and fragmented systems with a modern, creditor-driven, and time-bound mechanism that aimed to balance the interests of all stakeholders. The Code sought to increase the ease of doing business in India by improving the credit market and ensuring quicker resolution of distressed businesses. It also aligned India with international best practices in insolvency law. One of its core features is the Corporate Insolvency Resolution Process (CIRP), which aims to either rescue a financially stressed company or lead it into liquidation in a transparent and structured manner.

[9]The IBC is designed around the "creditor in control" model, wherein financial creditors, organized through the Committee of Creditors (CoC), have the power to decide the future of the corporate debtor. Once an insolvency petition is admitted, the management is transferred to an Interim Resolution Professional (IRP), and a moratorium is imposed on all proceedings, providing the debtor a chance to resolve its affairs under creditor supervision. If a viable resolution plan is approved by 66% of the CoC within the prescribed time limit, the company continues as a going concern under new management. If not, liquidation follows. The role of the **National Company Law Tribunal (NCLT)** as the adjudicating authority and the **Insolvency and Bankruptcy Board of India (IBBI)** as the regulatory authority ensures institutional strength in the functioning of the Code.

In parallel, the Companies Act, 2013 still governs the process of winding up, which may be invoked

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[8] Insolvency and Bankruptcy Code, No. 31 of 2016, Acts of Parliament, 2016 (India).
[9] INDIAN REVIEW OF CORPORATE AND COMMERCIAL LAWS, https://www.irccl.in/post/has-the-creditor-in-control-model-helped-to-achieve-the-objectives-of-the-ibc (last visited Apr. 16, 2025).

voluntarily by solvent companies or compulsorily through a tribunal order. [10]**Section 271 of the Companies Act** lists the grounds for compulsory winding up, including company default, fraudulent conduct, or any other situation where it is just and equitable to do so. [11]**Section 304** provides for voluntary winding up by members of a solvent company. These provisions exist alongside the IBC and are invoked primarily in cases unrelated to insolvency or when a company wishes to close operations legally and formally.

While insolvency and winding up are legally distinct, the two often converge in practice. For example, an unsuccessful resolution process under the IBC will lead to the winding up of the company through liquidation. However, not all winding up involves insolvency. Companies may voluntarily wind up due to strategic business decisions, mergers, or restructuring. Therefore, while insolvency is primarily concerned with a company's inability to pay its debts, winding up addresses the legal closure of a company's corporate existence.

The real significance of corporate insolvency and winding up mechanisms lies in their implications for a wide range of stakeholders—creditors, shareholders, employees, government agencies, and even the larger economy. Insolvency law is not merely a tool for creditors to recover dues, but a broader economic instrument that seeks to reallocate capital, preserve enterprise value, and reduce systemic financial risk. A weak or inefficient insolvency regime can paralyze the credit system, as witnessed in India pre-IBC, where banks struggled to recover dues, and promoters misused legal loopholes to retain control over defaulting companies.

The shift introduced by the IBC has not been without its challenges. While the initial years saw success stories such as the resolution of **Essar Steel** and **Bhushan Steel**, more recent years have witnessed increasing delays in the CIRP, litigation at every stage, and concerns about declining recovery rates. Many cases have crossed the 330-day maximum timeline, undermining one of the foundational goals of the Code—time-bound resolution. Moreover, operational creditors, such as MSMEs and vendors, have often found themselves marginalized in the decision-making process, as financial creditors dominate the CoC.

Additionally, the COVID-19 pandemic posed a serious threat to the functioning of the IBC. Recognizing the extraordinary disruption caused, the government suspended the filing of new insolvency petitions for a period of one year. Furthermore, it introduced **pre-packaged insolvency resolution processes** for MSMEs to allow faster and more flexible out-of-court settlements. These

[10] Companies Act, § 271, No. 18 of 2013, Acts of Parliament, 2013 (India).
[11] Companies Act, § 304, No. 18 of 2013, Acts of Parliament, 2013 (India).

developments point to the need for adaptive, sector-specific, and resilient insolvency frameworks that can cater to diverse corporate realities.[12]

Winding up procedures under the Companies Act, while less complex, are also not free from criticism. Delays in appointments of official liquidators, inadequate resources for asset management, and limited creditor involvement have weakened the effectiveness of winding-up proceedings. As a result, voluntary liquidations under the IBC—particularly for solvent companies—are increasingly preferred, highlighting the gradual marginalization of the traditional winding-up routes.

This research paper aims to explore in depth the legal, procedural, and practical aspects of corporate insolvency and winding up in India. It will examine the key provisions of the IBC and the Companies Act, assess the role of institutional stakeholders such as NCLT, IBBI, and the judiciary, and analyze important case laws that have shaped the interpretation of the Code. It will also look at real-life insolvency and winding-up cases involving prominent Indian companies such as **Jet Airways**, **DHFL**, **IL&FS**, and **Kingfisher Airlines** to illustrate how theory translates into practice.

Furthermore, the paper will engage with comparative perspectives by briefly analyzing insolvency laws in jurisdictions such as the United Kingdom and the United States. It will highlight global trends, including the adoption of the **UNCITRAL Model Law on Cross-Border Insolvency**, and the growing emphasis on business rescue over liquidation. Finally, the paper will identify persistent challenges in the Indian context and offer recommendations for reform, such as strengthening insolvency professional standards, reducing procedural bottlenecks, increasing stakeholder participation, and promoting a culture of timely debt resolution.[13]

In sum, the topic of corporate insolvency and winding up lies at the intersection of law, finance, and governance. It not only reflects how societies deal with corporate failure but also influences how businesses raise capital, structure investments, and respond to financial distress. A sound insolvency and winding-up regime fosters trust, supports entrepreneurship, and enhances economic resilience. As India's corporate ecosystem becomes more sophisticated and globalized, the continued evolution and strengthening of these legal mechanisms will remain central to its economic aspirations.

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[12] Ernst & Young, *Cross-Border Insolvency: Indian Legal Framework and International Practices* (2020).
[13] IMF, *India: Financial Sector Assessment Program—Technical Note on Insolvency and Creditor/Debtor Regimes* (2021).

Real-Life Examples and Practical Challenges in Corporate Insolvency and Winding Up

I. Real-Life Examples

To understand how insolvency and winding up mechanisms function in practice, it is essential to study prominent corporate cases that have tested the resilience and efficiency of India's legal and institutional framework.

1. Essar Steel India Ltd.[14]

The insolvency of Essar Steel was a landmark case under the IBC. The company owed approximately ₹49,000 crore to creditors. After prolonged litigation and multiple challenges, ArcelorMittal acquired the company with a resolution plan worth ₹42,000 crore. The Supreme Court, in Committee of Creditors of Essar Steel v. Satish Kumar Gupta, upheld the primacy of the Committee of Creditors' commercial wisdom, reinforcing that courts should not interfere with business decisions unless there is a violation of law.

Lesson: While the case showcased the success of creditor-driven resolution, it also exposed delays caused by legal challenges, as the process exceeded 500 days despite a statutory limit of 330 days.

2. Jet Airways (India) Ltd.[15]

Jet Airways' insolvency highlighted the challenges of cross-border insolvency. The airline had assets and proceedings in both India and the Netherlands. Although India has not adopted the UNCITRAL Model Law on Cross-Border Insolvency, the NCLAT permitted cooperation between Indian and Dutch resolution professionals. The resolution, however, was delayed significantly due to jurisdictional and operational complexities.

Lesson: India's lack of a codified framework for cross-border insolvency hampers efficient resolution in cases involving multinational corporations.

3. Dewan Housing Finance Corporation Ltd. (DHFL)

DHFL became the first non-banking financial company (NBFC) referred to insolvency under the IBC. The resolution was successful, with Piramal Capital acquiring the company for over ₹34,000 crore. It demonstrated the expanded scope of the IBC following its amendment to cover NBFCs and financial service providers.

Lesson: The case was a breakthrough for applying IBC to financial institutions, but it also highlighted the need for sector-specific expertise among resolution professionals.

4. IL&FS Crisis

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[14] MONDAQ, https://www.mondaq.com/india/insolvencybankruptcy/1058270/case-note-judgement-of-the-supreme-court-in-the-essar-steel-case (last visited Apr. 16, 2025).

[15] Jet Airways (India) Ltd. v. State Bank of India & Ors., Company Appeal (AT) (Insolvency) No. 707 of 2019.

The Infrastructure Leasing & Financial Services (IL&FS)[16] crisis was one of India's largest financial failures. Due to its systemic importance, the government did not use IBC but instead superseded the board and initiated a custom resolution framework. The company had over ₹90,000 crore in debt and affected a vast number of stakeholders.

Lesson: Not all financial failures can be handled under IBC. Systemically important entities may require bespoke legal interventions beyond the conventional insolvency route.

5. Kingfisher Airlines[17]

Before the IBC, Kingfisher Airlines faced winding-up proceedings under the Companies Act, 1956. The company defaulted on loans and dues to employees and government agencies. The winding up took several years, and most creditors recovered little to nothing.

Lesson: The Kingfisher case underscores the inefficiency and value erosion that occurred under the pre-IBC winding-up regime.

II. Practical Challenges

Despite the advances introduced by the IBC and supporting laws, the Indian insolvency regime continues to face several practical challenges:

1. Procedural Delays

Although the IBC mandates resolution within 330 days, many cases exceed this limit due to litigation, lack of tribunal infrastructure, and adjournments. As of 2023, over 75% of ongoing cases had crossed the statutory time frame.

Impact: Delays lead to depreciation of asset value, reduced creditor confidence, and prolonged uncertainty for employees and vendors.

2. Insufficient Tribunal Capacity

The National Company Law Tribunals (NCLTs), which act as the adjudicating authority under IBC, are overburdened. There is a shortage of judges and administrative staff, and infrastructure remains inadequate in many states.

Impact: Case backlogs and slow adjudication reduce the effectiveness of a time-bound insolvency resolution process.

3. Unequal Treatment of Stakeholders

The Committee of Creditors (CoC) is composed exclusively of financial creditors, giving them disproportionate control over resolution plans. Operational creditors, including MSMEs, employees, and trade creditors, have little say in the outcome.

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[16] Ministry of Corporate Affairs, Infrastructure Leasing & Financial Services (IL&FS) Resolution Framework (2018).

[17] Kingfisher Airlines Limited & Ors vs Union of India AIR 2015 (NOC) 337 (CAL.)

Impact: This undermines the IBC's objective of fairness and inclusivity and has led to constitutional challenges (e.g., Swiss Ribbons).

4. Deficiencies in Valuation and Bidding

Resolution professionals often struggle with reliable asset valuations, and resolution applicants sometimes quote low values due to distressed conditions. Additionally, the absence of standardized bidding protocols leads to unpredictability.

Impact: Creditors may end up accepting sub-optimal recovery plans, and valuable businesses may be liquidated unnecessarily.

5. Cross-Border Insolvency Issues

India has not yet adopted the UNCITRAL Model Law on Cross-Border Insolvency. As a result, companies with foreign assets or creditors face legal uncertainty and inconsistent cooperation with foreign courts and insolvency regimes.

Impact: Global corporations are deterred from investing or operating in India due to lack of predictability in cross-border dispute resolution.

6. Capacity Constraints of Resolution Professionals (RPs)

Many RPs lack industry-specific knowledge, managerial expertise, or resources to effectively run complex companies during the CIRP. Some have faced allegations of bias or procedural lapses.

Impact: Poor performance of RPs undermines the credibility and effectiveness of the entire process.

7. Limited Use of Pre-Pack and Out-of-Court Options

Despite the introduction of pre-packaged insolvency for MSMEs, the broader use of out-of-court settlements and restructuring is minimal. India lacks an ecosystem to promote informal or hybrid resolution mechanisms.

Impact: Many viable companies enter full CIRP even when alternate rescue options may be more suitable.

8. Stigma and Fear of Insolvency

In India, insolvency is still perceived as a stigma, not a business risk. Promoters often resist resolution and prefer to drag on litigation rather than cooperate with creditors or new investors.

Impact: Cultural and behavioural resistance impedes the rescue-centric objective of the IBC.

Conclusion and Recommendations

Corporate insolvency and winding up laws are foundational to maintaining financial discipline, protecting stakeholders, and ensuring the healthy functioning of a market economy. India's historical experience with fragmented and inefficient insolvency laws revealed the need for a comprehensive, streamlined, and time-bound legal framework. The **Insolvency and Bankruptcy Code, 2016 (IBC)** emerged as a transformative piece of legislation that addressed many systemic gaps in the earlier

regime, establishing a modern mechanism for corporate insolvency resolution and liquidation.

The Code introduced several innovations, such as the creditor-in-control model, strict timelines for the completion of resolution processes, and the creation of a professional ecosystem comprising Insolvency Professionals (IPs), Information Utilities (IUs), and institutional adjudication through the NCLT and NCLAT. Landmark judgments by the Supreme Court in cases like *Swiss Ribbons*, *Essar Steel*, and *Innoventive Industries* have provided much-needed clarity on various provisions and reinforced the Code's constitutional and commercial validity.

Alongside insolvency, the Companies Act, 2013 continues to govern voluntary and tribunal-directed winding up. While winding up and insolvency are often related, the legal frameworks and processes differ in scope and intent. Winding up is primarily concerned with the legal closure of companies, whereas insolvency resolution under IBC focuses on restructuring and rescuing distressed firms wherever possible.

Despite significant progress, **practical challenges persist**. Procedural delays, overburdened tribunals, unequal treatment of operational creditors, and valuation mismatches have weakened the IBC's efficacy in some cases. Moreover, the limited role of out-of-court restructuring and the absence of a legal framework for cross-border insolvency have restricted the IBC's flexibility. Real-life examples such as *Jet Airways*, *DHFL*, and *IL&FS* have exposed both the strengths and the limitations of the current framework.[18]

International comparisons offer valuable insights. The **UK's focus on business rescue**, the **US's debtor-in-possession model under Chapter 11**, and the **UNCITRAL Model Law on Cross-Border Insolvency** provide templates that India can adapt to its needs. While India's insolvency framework aligns with global standards in many ways, incorporating mechanisms for cross-border cooperation and improving judicial efficiency will elevate the regime to the next level.

Key Recommendations:

1. **Strengthen NCLTs** by increasing staffing, training judges, and deploying digital infrastructure to minimize delays.

2. **Enhance the accountability and competence of Insolvency Professionals (IPs)** through continuous professional development and stricter oversight by IBBI.

3. **Balance the role of operational creditors** in the Committee of Creditors to ensure equitable treatment of all stakeholders.

[18] World Bank Group, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (2020).

4. **Promote out-of-court restructuring and pre-pack insolvency** as credible alternatives to full CIRP, especially for MSMEs and startups.
5. **Adopt the UNCITRAL Model Law on Cross-Border Insolvency** to facilitate international cooperation in multinational insolvency cases.
6. **Reform valuation norms and bidding mechanisms** to reduce asset value erosion and attract more credible resolution applicants.
7. **Encourage behavioral change among promoters and stakeholders** through awareness, incentives for early resolution, and penalties for delay tactics.

Conclusion

Corporate insolvency and winding up mechanisms reflect the maturity of a nation's commercial legal system. They serve as instruments not just for recovery and closure but for economic renewal and investor confidence. India has made remarkable strides with the IBC, but the journey toward a fully efficient, equitable, and future-ready insolvency regime is ongoing. Continued reforms, judicial clarity, and global alignment will ensure that the insolvency and winding-up laws serve their ultimate purpose—facilitating sustainable business, protecting stakeholders, and promoting economic growth.

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