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CORPORATE RESCUE VS. LIQUIDATION: FACTORS INFLUENCING OUTCOMES IN INDIAN INSOLVENCY PROCEEDINGS

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Abstract

This research examines the dual pathways of corporate insolvency proceedings in India: corporate Rescue and liquidation, focusing on the factors influencing outcomes in these processes under the Insolvency and Bankruptcy Code (IBC), 2016. Despite the IBC's intent to facilitate corporate revival, many cases culminate in liquidation, highlighting a critical discrepancy that warrants analysis. Corporate Rescue aims to rehabilitate distressed companies, allowing them to reorganize debts and continue operations. Strategies such as Company Voluntary Arrangements (CVAs) and pre-packaged administrations are employed to maximize the going-concern value. In contrast, liquidation involves ceasing operations and selling assets to satisfy creditor claims. Key factors influencing the choice between these pathways include the company's financial viability, stakeholder interests, and regulatory frameworks. The study analyzes landmark cases by reviewing statutory provisions, judicial rulings, and regulatory guidelines.

Findings indicate that while the IBC streamlines insolvency resolution, significant hurdles persist in achieving optimal rescue outcomes, often influenced by judicial interpretations that address statutory gaps. This research contributes to existing literature by offering a nuanced legal analysis of factors affecting Rescue versus liquidation decisions in India's insolvency regime. The implications extend to policymakers, legal practitioners, and corporate stakeholders, providing insights into refining India's corporate insolvency framework to align more closely with its intended objectives.

[1] LL.M.-IBL

Keywords: Corporate Rescue, Liquidation, Insolvency and Bankruptcy Code (IBC), India, Insolvency Resolution, Creditor Rights, Corporate Restructuring, Financial Distress, Value Maximization, Committee of Creditors, National Company Law Tribunal (NCLT), Judicial Interpretation, Regulatory Framework.

INTRODUCTION

Corporate Rescue and liquidation are two distinct approaches to addressing financial distress in companies. Corporate Rescue, also known as corporate restructuring or turnaround, refers to strategies and mechanisms aimed at reviving struggling businesses and restoring them to financial viability, and it is a primary intervention necessary to avert the eventual failure of the company[2]. These methods typically involve operational changes, debt restructuring, and sometimes management overhauls. The primary goal is to preserve the company as a going concern, maintain employment, and maximize value for stakeholders.

Liquidation, conversely, is the process of winding up a business, selling its assets, and then distributing any proceeds earned to shareholders and creditors. A corporation usually goes through liquidation when its shareholders voluntarily wind it up or the company cannot pay its debts. The company's dissolution is the outcome of liquidation.

Corporate rescue procedures have been increasingly important in India in the last few years, especially since the Insolvency and Bankruptcy Code (IBC) was introduced 2016. India's insolvency resolution structure underwent a paradigm change with the passage of the IBC, switching from a debtor-in-possession model to a creditor-in-control strategy. The long-standing problems of long-term bankruptcy processes and poor creditor recovery rates were intended to be addressed by this adjustment.

The significance of corporate rescue mechanisms in India lies in their potential to:

1. Preserve economic value: These mechanisms help retain productive assets within the economy by rehabilitating viable businesses.

2. Protect jobs: Successful turnarounds can save employment, which is crucial in a country with a large workforce like India.

[2] A. Belcher, *Corporate Rescue(*Sweet and Maxwell; London, 1997*)*12

3. Maintain business relationships: Rescuing companies helps preserve supply chains and business ecosystems.

4. Improve creditor confidence: Effective rescue mechanisms can enhance lender confidence, potentially improving business credit availability.

Corporate rescue mechanisms in India differ from liquidation in several key aspects:

1. Objective: Rescue aims to revive the business, while liquidation focuses on winding up the company.

2. Timeframe: Rescue processes often have strict timelines (e.g., 180 days under the IBC), whereas liquidation can be more protracted.

3. Control: In a Rescue, management may be replaced by resolution professionals, while in liquidation, a liquidator takes control.

4. Outcome: Successful rescue results in a restructured, operational company, whereas liquidation leads to the company's dissolution.

The introduction of the IBC has been a significant development in India's corporate landscape. It addresses the economic challenges posed by mounting non-performing assets (NPAs) in the banking sector and the need for a more efficient mechanism to resolve corporate insolvency. The IBC provides a time-bound process for insolvency resolution, aiming to maximize asset value and improve ease of business in India.

Recent trends in India show an increasing preference for rescue mechanisms over immediate liquidation. Several factors drive this shift:

1. The growing recognition of the value of preserving businesses as going concerns.

2. The potential for higher recoveries through restructuring compared to liquidation.

3. The emphasis on timely resolution to prevent value erosion.

4. The evolving ecosystem of insolvency professionals and specialized bankruptcy courts.

However, challenges remain. The COVID-19 pandemic has put additional stress on businesses, leading to an increase in insolvency cases. Additionally, there have been concerns about delays in the resolution process and the need for further reforms to enhance the effectiveness of the IBC.

This paper explores the comparative effectiveness of corporate rescue mechanisms and liquidation in India, focusing on their legal frameworks, economic implications, and practical outcomes. By examining the strengths and weaknesses of each approach and their implementation under the IBC, this analysis aims to provide insights into the evolving landscape of corporate insolvency resolution in India and its impact on the broader economy.

Relevance of the study

The relevance of studying corporate rescue mechanisms and liquidation in India is multifaceted, encompassing legal, economic, and social dimensions. This research is particularly timely and significant for several reasons:

- Economic Recovery and Growth: As India strives to recover from the economic impact of the COVID-19 pandemic and aims for sustained growth, effective corporate rescue mechanisms are crucial. They can help preserve productive assets, maintain employment, and improve economic stability. Understanding the effectiveness of these mechanisms versus liquidation can inform policy decisions aimed at fostering a resilient business environment.
- Investor Confidence: The efficiency and predictability of insolvency resolution processes significantly influence domestic and foreign investor confidence. By comparing rescue mechanisms with liquidation outcomes, this research can highlight areas of strength and weakness in India's corporate insolvency framework, potentially guiding improvements that could enhance investor trust.
- Evolution of the IBC: The Insolvency and Bankruptcy Code (IBC) 2016 marked a significant reform in India's insolvency landscape. As the IBC evolves through amendments and judicial interpretations, this study can contribute valuable insights into its practical implementation, successes, and areas needing refinement.
- Global Competitiveness: India's ease of doing business rankings have improved partly due to reforms in resolving insolvency. Continued analysis of rescue and liquidation processes can help identify further improvements, potentially boosting India's global competitiveness and attractiveness as an investment destination.
- Socio-Economic Impact: Corporate failures can have far-reaching social consequences, including job losses and disruptions in local economies. By examining

the outcomes of rescue attempts versus liquidations, this research can shed light on the broader socio-economic impacts of different insolvency resolution approaches.

- Balancing Stakeholder Interests: Insolvency proceedings involve multiple stakeholders with often conflicting interests. This study can provide insights into how effectively different mechanisms balance the interests of creditors, employees, shareholders, and the broader economy.
- Policy Formulation: This study's findings can inform policymakers in refining insolvency laws and regulations. They can provide evidence-based insights for potential reforms or adjustments to the existing framework, ensuring it remains effective and aligned with economic realities.

This study's focus on these areas makes it highly relevant to stakeholders, including academics, investors, company executives, legislators, and attorneys. It advances the ongoing discussion regarding the financial health of corporations, economic resilience, and the effectiveness of legal and regulatory frameworks in resolving business crises in one of the world's largest and fastest-growing economies.

JUSTIFICATION OF RESEARCH

The research on the comparative effectiveness of corporate rescue mechanisms and liquidation in India is timely and crucial, given the evolving legal and economic context shaped by the Insolvency and Bankruptcy Code (IBC). Since its implementation in 2016, the IBC has been instrumental in redefining the corporate insolvency landscape, balancing corporate revival with creditor recovery. However, despite the transformative impact, ongoing debates exist about the relative success of corporate Rescue versus liquidation, warranting a comprehensive analysis of their legal frameworks and practical outcomes.

The increasing number of insolvency filings and the rising need to preserve viable businesses amid economic distress emphasize the importance of corporate rescue mechanisms. As a growing economy, India faces opportunities and challenges in this area. Many distressed companies can be successfully revived, contributing to job preservation and the broader economy. Furthermore, liquidation is essential when resurrection is no longer possible since it ensures that resources are distributed effectively.

Understanding the comparative outcomes of Rescue and liquidation is vital for legal professionals and policymakers, creditors, and investors. A deeper analysis can help identify gaps in the current legal framework, suggest potential reforms, and improve decision-making processes in insolvency cases

Several key factors justify this research:

- Balancing Rescue and Liquidation
- Time-Bound Resolution Challenges
  These delays impact the viability of rescue attempts versus the decision to liquidate.
- Economic Impact Assessment
  Relevant Data: IBBI Quarterly Reports. These reports provide crucial data on resolution timelines, recovery rates, and liquidation trends. Analysing this data is essential to understanding the economic impact of Rescue versus liquidation decisions.
- Judicial Infrastructure and Delays
  Relevant Issue: Backlog of cases at NCLT. The increasing backlog at NCLT benches across India necessitates research into how these delays affect the feasibility of rescue plans and push companies towards liquidation.
- Stakeholder Impact Analysis

This research aims to highlight the legal aspects of these processes and their economic and social implications by comparing corporate Rescue and liquidation. For instance, corporate Rescue often preserves jobs, maintains business continuity, and reduces creditor losses. However, its success depends on several factors, including efficient legal processes, viable restructuring plans, and stakeholder cooperation. Liquidation is seen as a last resort, but sometimes the only feasible option, raising concerns about losing business value and social impact. In conclusion, this research aims to contribute to the ongoing dialogue about how India's insolvency regime can be refined to ensure that it is responsive to the country's evolving economic needs, aligns with international standards, and strikes an optimal balance between corporate Rescue and liquidation for distressed businesses.

STATEMENT OF PROBLEM

Implementing corporate rescue mechanisms and liquidation processes in India, particularly under the Insolvency and Bankruptcy Code (IBC), 2016, has revealed a complex interplay of legal, economic, and practical challenges that potentially undermine the effectiveness of corporate insolvency resolution. Despite the IBC's intent to prioritize Rescue over liquidation, a disparity calls into question how well the existing structure accomplishes its primary goals of maximizing value and maintaining business continuity. Several factors exacerbate this problem:

- Inadequate Early Warning Systems: The current system lacks robust mechanisms to identify and address corporate financial distress early, potentially reducing the chances of successful Rescue.
- Information Asymmetry: There is often a significant gap in the quality and availability of information about distressed companies, hindering informed decision-making by creditors and potential investors in rescue scenarios.
- Valuation Discrepancies: The absence of standardized and reliable valuation methods for distressed assets leads to disputes and delays, affecting the choice between Rescue and liquidation.
- Sector-Specific Challenges: The IBC's one-size-fits-all approach may not adequately address different sectors' unique challenges, potentially leading to suboptimal outcomes in rescue attempts or unnecessary liquidations.
- Structural Impediments to Rescue: Factors such as limited access to interim finance for companies undergoing Rescue and the stigma associated with insolvency may push otherwise viable companies towards liquidation.
- Capacity and Expertise Gaps: There is a potential shortage of skilled insolvency professionals and judges with sector-specific expertise, which may impact the quality of rescue plans and the efficiency of the resolution process.
- Post-Rescue Performance Monitoring: There is a lack of systematic monitoring and evaluation of the company's post-rescue, making it difficult to assess the long-term effectiveness of rescue mechanisms versus liquidation[3].

Owing to its intricacy, an exhaustive evaluation of the comparative advantages between corporate rescue methods and liquidation in India is necessary. The study will identify the critical factors that distinguish Rescue from liquidation, assess the implications of these factors for the economy and society, and recommend certain modifications to the current framework. By addressing these issues, the research seeks to contribute to developing a more intricate, successful, and profitable corporate insolvency resolution process in India.

[3]BLRC Report

LITERATURE REVIEW

The literature survey on the subject helps in more effectively analysing future developments. The existing literature also provides guidance and shows the right direction to follow.

M.S. Sahoo and Anurag Guru, Insolvency and Bankruptcy Code: Before and Beyond, 5 INSOLVENCY & BANKR. J. 37, 40-42 (2020), provides a comprehensive overview of the IBC's objectives, emphasizing its focus on value maximization through corporate Rescue. They argue that the Code represents a paradigm shift from a 'debtor-in-possession' regime to a 'creditor-in-control' regime, aimed at promoting corporate Rescue where viable.[4]

Rajeswari Sengupta et al., Evolution of the Insolvency and Bankruptcy Code: The Road Ahead, in INSOLVENCY AND BANKRUPTCY REGIME IN INDIA: A NARRATIVE 45, 50–55 (Shubhashis Gangopadhyay ed., 2021). Conducted an empirical analysis of IBC cases, finding that while the Code has improved creditor recoveries, the rate of successful rescues remains lower than anticipated. They attribute this to factors such as delayed initiation of proceedings and information asymmetries.[5]

Sreyan Chatterjee, Liquidation Under the IBC: Emerging Trends, 4 INSOLVENCY & BANKR. J. 162, 165-168 (2020).examines the high rate of liquidations under the IBC, suggesting that this trend may be due to the poor financial health of many companies entering the insolvency process rather than shortcomings in the rescue mechanisms themselves[6].

Sumant Mittal, Value Maximisation Under IBC: Myth or Reality? 2018 COMPANY L.J. 1, 5-8. explore the role of the Committee of Creditors (CoC) in deciding between Rescue and liquidation. They find that the CoC's composition, primarily financial creditors, may lead to a bias towards short-term recoveries over long-term rescue prospects.[7]

Dhananjay Shroff & Aditi Sharma, Post-Resolution Performance of Companies: An Empirical Study, 9 INSOLVENCY & BANKR. J. 55, 58-62 (2022). who point out the lack

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[4]M.S. Sahoo & Anurag Guru, Insolvency and Bankruptcy Code: Before and Beyond, 5 INSOLVENCY & BANKR. J. 37, 40-42 (2020).

[5] Rajeswari Sengupta et al., Evolution of the Insolvency and Bankruptcy Code: The Road Ahead, in INSOLVENCY AND BANKRUPTCY REGIME IN INDIA: A NARRATIVE 45, 50–55 (Shubhashis Gangopadhyay ed., 2021).

[6]Sreyan Chatterjee, Liquidation Under the IBC: Emerging Trends, 4 INSOLVENCY & BANKR. J. 162, 165-168 (2020).

[7] Sumant Mittal, Value Maximisation Under IBC: Myth or Reality? 2018 COMPANY L.J. 1, 5-8.

of comprehensive studies on the long-term performance of companies' post-rescue under the IBC[8].

Vikramaditya Vig & Tamal Bandyopadhyay Bose, Macroeconomic Implications of Corporate Insolvency Regime, 56 ECON. & POL. WKLY. 30, 33-36 (2021). Provide a macro-economic perspective, assessing the broader economic impacts of successful corporate rescues compared to liquidations under the IBC.[9]

Surbhi Kanojia & Shubham Gupta, An Empirical Analysis of India's Insolvency Code: Perspectives Based on Ex-Post Economic Efficiency, 33 NAT L L. SCH. INDIA REV. 89, 92-97 (2021). The study highlights the importance of timely initiating proceedings and the need for a more robust ecosystem of insolvency professionals to enhance the Code's effectiveness.[10]

Shubham Gupta, Resolution vs. Liquidation Under IBC, 5 INSOLVENCY & BANKR. J. 145, 148-153 (2020). provides a comprehensive analysis of the factors influencing the choice between corporate Rescue and liquidation under the IBC framework. The author examines case studies and statistical data to identify key determinants in the resolution-liquidation decision-making. Gupta argues that while the IBC prioritizes resolution over liquidation, practical challenges such as information asymmetries, valuation disputes, and coordination issues among creditors often lead to suboptimal outcomes. The paper emphasizes the need for sector-specific approaches and enhanced capacity building for stakeholders to improve the success rate of corporate rescues.[11]

CHAPTER I CORPORATE RESCUE MECHANISMS

The Insolvency and Bankruptcy Code, 2016 (IBC), marked a paradigm shift in India's approach to corporate insolvency. It introduced a time-bound process aimed at maximizing asset value and promoting entrepreneurship. The Code prioritizes resolution over liquidation, introducing several mechanisms to facilitate corporate Rescue. This section examines the key corporate rescue mechanisms under the IBC and their implementation.

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[8]Dhananjay Shroff & Aditi Sharma, Post-Resolution Performance of Companies: An Empirical Study, 9 INSOLVENCY & BANKR. J. 55, 58-62 (2022).
[9] Vikramaditya Vig & Tamal Bandyopadhyay Bose, Macroeconomic Implications of Corporate Insolvency Regime, 56 ECON. & POL. WKLY. 30, 33-36 (2021).
[10] Surbhi Kanojia & Shubham Gupta, An Empirical Analysis of India's Insolvency Code: Perspectives Based on Ex-Post Economic Efficiency, 33 NAT L L. SCH. INDIA REV. 89, 92-97 (2021).
[11] Shubham Gupta, Resolution vs. Liquidation Under IBC, 5 INSOLVENCY & BANKR. J. 145, 148-153 (2020).

- Corporate Insolvency Resolution Process (CIRP)

  The Corporate Insolvency Resolution Process is covered in Section 6 of the Insolvency and Bankruptcy Code of 2016. It allows a creditor or a corporate debtor to start recovering the money that has been defaulted. In order to start this procedure, the defaulted amount must be one crore or more. There are multiple steps to follow when embarking on this procedure. Firstly, stipulating the adjudicatory authority of the IBC must be approached for applying. The decision to accept or reject the application should be taken within 14 days by the adjudicating authority, and if rejected, reasons have to be provided. The Corporate Insolvency Resolution Process begins once the application has been admitted. This Corporate Insolvency Resolution process has to be concluded within 330 days as per the Code. Despite that, the time period can be extended in rare cases. After the admission of the application, an interim resolution professional will be appointed to take control of the debtor's assets and provide information regarding the debtor's assets with the help of Information Utilities, and in the end, to form the committee of creditors (COC). Since the Committee of Creditors consists of all financial creditors, whose interest is at stake, the decision taken by this COC will play a vital role as it is the decision-making authority regarding whether a company is viable enough to get a new start or should be liquidated. A Resolution professional (RP) will be appointed to handle the entire corporate resolution process (CIRP). The aftereffect of this whole Corporate Insolvency Resolution Process is either restructuring the company through handing over the company to new owners and by mergers and other methods, or selling and liquidating assets in a time-bound manner, which is nothing but either Resolution or Liquidation. Recent case law has further clarified and refined the CIRP process.[12].

Recent case law has further clarified and refined the CIRP process. In Essar Steel India Ltd. v. Satish Kumar Gupta (2019)[13]The Supreme Court emphasized the primacy of the CoC's commercial wisdom in approving resolution plans. This judgment reinforced the CIRP's time-bound nature and clarified the limited scope of judicial review in the process.

[12] Shubham Gupta, Resolution vs. Liquidation Under IBC, 5 INSOLVENCY & BANKR. J. 145, 148-153 (2020).

[13]Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2019) 10 SCC 1 (India).

- Pre-packaged Insolvency Resolution Process (PIRP)

  Introduced in 2021, the pre-pack mechanism aims to provide a faster, cost-effective resolution for MSMEs. It allows the debtor to remain in control while negotiating with creditors, combining the flexibility of out-of-court restructuring with the binding nature of a formal insolvency process. Thekey features include Debtor-in-possession (unlike CIRP, the existing management retains control during PIRP), Limited involvement of NCLT, Consent requirement (PIRP requires consent from 66% of unrelated financial creditors), Base Resolution Plan (The corporate debtor submits a base resolution plan at the outset), Shortened timeline (PIRP must be completed within 120 days of commencement).

  The PIRP aims to provide smaller businesses with a quicker, more cost-effective resolution option. While still in its early stages, the mechanism shows promise in promoting corporate Rescue for MSMEs.

- Schemes of Arrangement under Companies Act, 2013

  Although not part of the IBC, schemes of arrangement under Sections 230-232 of the Companies Act, 2013, remain a vital corporate rescue tool[14]. These schemes allow for compromises or arrangements between a company and its creditors or members. Key aspects include:

  - Flexibility: Schemes can be tailored to specific situations, allowing for debt restructuring, mergers, or other arrangements.
  - Court supervision: The process is overseen the NCLT, ensuring fairness and transparency.
  - Binding effect: Once approved, the scheme binds all creditors or members, including dissenting minorities.

In Lakshmi Vilas Bank Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2021)[15]The Madras High Court clarified that schemes of arrangement can be used alongside IBC proceedings, providing companies with additional restructuring options.

- Informal Workouts and Corporate Debt Restructuring (CDR)

[14] The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

[15] Lakshmi Vilas Bank Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 3 SCC 329 (India).

While not formal legal mechanisms, informal workouts and CDR play a role in corporate Rescue, especially for cases not yet referred to the IBC. These processes involve Voluntary negotiations between the debtor and creditors, restructuring of debt terms, including extensions, interest rate adjustments, or debt-to-equity conversions, and Potential involvement of the Reserve Bank of India (RBI) in facilitating resolutions for larger exposures.

The RBI's June 7, 2019, Circular on "Prudential Framework for Resolution of Stressed Assets"[16] Provides a framework for early identification and resolution of stress in loan accounts, encouraging banks to use these mechanisms proactively.

- Fresh Start Process
  While primarily designed for individuals, the Fresh Start Process under the IBC can potentially benefit small proprietorships and partnerships. It allows for the discharge of qualifying debts for debtors with minimal means. Although not yet notified, this mechanism could relieve small business owners facing insurmountable debts.

Challenges and Recent Developments

Despite these mechanisms, corporate Rescue in India faces several challenges:

- Delaysin the CIRP process: Despite the 330-day timeline, many cases exceed this limit due to litigation and operational challenges. The Supreme Court in Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr. (2021)[17] Emphasized the need for strict adherence to timelines.
- Liquidation Bias: A significant number of CIRP cases end in liquidation. In the IBBI newsletter for FY2024, 5,467 CIRPs were closed, with approximately 446 cases resulting in liquidation. This indicates that liquidation continues to be a significant outcome, accounting for about 45% of closed CIRPs since the IBC's inception.[18].

[16]Reserve Bank of India, Prudential Framework for Resolution of Stressed Assets (June 7, 2019), RBI/2018 19/203 DBR.No.BP.BC.45/21.04.048/2018-19.
[17] Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr., (2021) 10 SCC 194 (India).
[18]Insolvency and Bankruptcy Board of India, IBBI Newsletter FY2024 (2024).

- Sectoral stress: Certain sectors, like real estate, face unique challenges in resolution. The Jaypee Infratech Ltd. case[19] Highlighted the complexities of balancing homebuyers' interests with financial creditors' rights.
- Balancing Stakeholder Interests: The recent Supreme Court judgment in Vidarbha Industries Power Limited v. Axis Bank Limited (2022)[20] Highlighted the challenge of balancing the rights of operational creditors with those of financial creditors.
- Valuation Disputes: Determining the fair value of a distressed business remains a contentious issue, often leading to litigation. The National Company Law Appellate Tribunal (NCLAT) in JSW Steel Limited v. Mahender Kumar Khandelwal & Ors. (2023)[21] Emphasized the importance of a transparent and justifiable valuation process.

Recent amendments and judicial pronouncements continue to refine these mechanisms. The IBC (Amendment) Act, 2021, introduced provisions for PIRP and clarified the treatment of certain creditors. Introducing a value maximization mechanism through a challenge mechanism (as seen in the Reliance Capital insolvency) demonstrates ongoing efforts to refine the process. The evolution of jurisprudence around these mechanisms reflects India's commitment to developing a robust corporate rescue framework.

In conclusion, India's corporate rescue landscape has significantly evolved with the introduction of the IBC and subsequent refinements. While challenges persist, the array of mechanisms available—from formal processes like CIRP and PIRP to informal workouts—provides a comprehensive framework for addressing corporate distress. Continued legislative and judicial attention to these mechanisms will enhance their effectiveness and promote successful corporate rescues in the Indian context.

CHAPTER II LIQUIDATION

The Insolvency and Bankruptcy Code, 2016 (IBC), has revolutionized the liquidation process in India, providing a more streamlined and time-bound approach to winding up insolvent companies. This section examines the legal framework, process, and implications of liquidation under the IBC.

Legal Framework of Liquidation under the IBC

[19] IDBI Bank Ltd. v. Jaypee Infratech Ltd., (2019). NCLT New Delhi Bench, CA No. 495(PB)/2019 in CP No. (IB) 77/ALD/2017.
[20] Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352 (India).
[21] JSW Steel Ltd. v. Mahender Kumar Khandelwal & Ors., (2023) SCC OnLine NCLAT 431 (India).

The liquidation process is primarily governed by Chapter III of Part II of the IBC, supplemented by the IBBI (Liquidation Process) Regulations, 2016. Key aspects of the legal framework include:

- Grounds for Liquidation: As per Section 33 of the IBC, liquidation can be initiated if the Committee of Creditors (CoC) decides to liquidate the company during the Corporate Insolvency Resolution Process (CIRP), the CoC does not approve a resolution plan within the prescribed time, the Adjudicating Authority rejects the resolution plan, or the corporate debtor contravenes the approved resolution plan.
- Liquidator's Appointment: The Resolution Professional appointed for CIRP typically acts as the Liquidator, unless replaced by the Adjudicating Authority.
- Moratorium: Section 33(5) provides for the continuation of the moratorium until the liquidation process is completed, protecting the company's assets.
- Time Limit: As per Regulation 44(1) of the Liquidation Process Regulations, the liquidation process should be completed within one year, though extensions are possible.

In India, the liquidation process for a company involves several key steps, initiated by the Adjudicating Authority, which passes a liquidation order and appoints a Liquidator. Following this, the Liquidator makes a public announcement inviting claims from stakeholders. The Liquidator then takes control of the company's assets, verifies them, and appoints registered valuers to assess their value. Once the claims from various stakeholders are collected and verified, the Liquidator proceeds to sell the company's assets, typically through auctions. The proceeds from these sales are distributed among stakeholders according to the waterfall mechanism specified in Section 53 of the Insolvency and Bankruptcy Code (IBC). Finally, upon completion of the liquidation process, the Liquidator applies to the Adjudicating Authority for the dissolution of the corporate debtor, effectively ending its legal existence.[22]

Role of Liquidators, Asset Sales, and Creditor Distribution

In the context of corporate liquidation under India's Insolvency and Bankruptcy Code (IBC), liquidators, asset sales, and creditor distribution are pivotal to ensuring an orderly and fair process. When a company is deemed insolvent, the Adjudicating Authority appoints a

[22] Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

liquidator who takes charge of the company's assets and oversees the liquidation process. The Liquidator's primary responsibilities include verifying and valuing assets, managing claims from stakeholders, and ensuring compliance with legal requirements. Recent case law has further clarified the Liquidator's powers. In the case of Anil Goel v. Preet Sandhu & Ors. (2023), the National Company Law Appellate Tribunal (NCLAT)[23] Held that the Liquidator has the authority to sell assets free from encumbrances, emphasizing the overriding effect of the IBC over other laws. The asset sale process is a critical function of the Liquidator. Once the assets are verified, the Liquidator organizes their sale, often through public auctions, to maximize returns. This step is crucial as it determines how much creditors can recover. The assets sold can range from tangible items like machinery and real estate to intangible assets such as intellectual property rights. The success of these sales significantly influences the overall recovery rates for creditors. Following asset sales, the Liquidator distributes the proceeds among stakeholders according to the waterfall mechanism outlined in Section 53 of the IBC. This mechanism prioritizes claims based on their nature; secured creditors are paid first, followed by unsecured creditors, and finally shareholders if any surplus remains. (Insolvency resolution and liquidation costs, Secured creditors and workers' dues up to 24 months, Employee wages up to 12 months, Financial debts of unsecured creditors, Government dues and remaining secured creditors, Remaining debts and dues, Preference shareholders, Equity shareholders). The Supreme Court in Technology Development Board v. Anil Goel & Ors. (2022)[24] Clarified that government dues, even if secured, would rank below unsecured financial creditors in the distribution waterfall. The timely and equitable distribution of proceeds is essential to maintaining trust in the insolvency process and ensuring creditors receive their due share.

Implications of Liquidation on Stakeholders

1. Shareholders: Equity shareholders are last in the waterfall and often receive nothing in liquidation. The principle of limited liability protects them from further claims.
2. Creditors: Recovery rates vary significantly based on the creditor's position in the waterfall. Secured financial creditors typically fare better than unsecured or operational creditors.

[23]Anil Goel v. Preet Sandhu & Ors., (2023) NCLAT New Delhi, CA No. 123/2023.
[24]Technology Development Board v. Anil Goel & Ors., (2022) NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 731 of 2020.

3. Employees: While given priority for certain dues, employees lose their jobs. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952, provides some protection for provident fund dues.

4. Other Stakeholders: Suppliers, customers, and the local community may face significant disruptions.

The recent judgment in Sundaresh Bhat v. Central Board of Indirect Taxes and Customs (2023)[25] The Supreme Court held that Input Tax Credits cannot be considered an asset of the corporate debtor in liquidation, potentially affecting creditors' recovery.

Comparison of the outcomes of liquidation and corporate Rescue

Aspect	**Liquidation**	**Corporate Rescue**
Value Realization	Lower; assets are often sold piecemeal at discounted prices	Higher aims to preserve the going concern value
Creditor Recovery	Lower; average 15-20% of admitted claims	Higher, average 32% recovery, with some cases much higher
Employment	Most or all jobs lost	Aims to preserve jobs; some restructuring may occur
Business Continuity	Business ceases operations	Strives to keep business operational
Economic Impact	Potential adverse ripple effects on the broader economy	Contributes to economic stability
Time Frame	Intended within 1 year, often longer for complex cases	Mandated 330 days for CIRP, but extensions are common
Stakeholder Dynamics	Rigid waterfall mechanism for distribution	More flexible outcomes through negotiation
Long-term Prospects	End of business entity	Possibility of turnaround

[25]Sundaresh Bhat v. Central Board of Indirect Taxes and Customs, (2022) 9 SCC 1 (India).

		and future growth
Reputational Impact	Significant stigma for promoters and management	Can be viewed as an example of resilience if successful
Legal/Regulatory Implications	Straightforward process with clear guidelines	Can involve complex legal and regulatory challenges

CHAPTER- III COMPARATIVE ANALYSIS

The choice between corporate Rescue and liquidation is a critical decision in insolvency proceedings in India. This analysis explores the economic impact, legal efficiency, social implications, stakeholder interests, and the time and costs associated with each process.

- **Economic Impact**

  Corporate Rescue: The primary goal of corporate rescue mechanisms is to preserve viable businesses, which can lead to better economic outcomes for companies and creditors alike. Successful rescues can result in the continuation of operations, retention of jobs, and recovery of debts. For instance, the IBC has facilitated numerous resolution plans that have enabled companies to restructure their debts and continue functioning, contributing positively to the economy. The IBBI Quarterly Newsletter (Jan-Mar 2023) reported an average recovery rate of 32% in resolved cases.[26].

  The successful resolution of Essar Steel (ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors., 2019)[27] Resulted in a recovery of ₹42,000 crores, significantly boosting creditor confidence and demonstrating the potential economic benefits of corporate Rescue.

  Liquidation: Conversely, liquidation often results in the cessation of business operations and significant job losses. According to the IBBI Quarterly Newsletter (January-March 2023), out of 5,906 cases admitted for CIRP, 1,917 ended in liquidation.[28] This statistic underscores the economic costs associated with liquidation, as it typically leads to lower recovery rates for creditors and a loss of

[26]Insolvency and Bankruptcy Board of India, IBBI Quarterly Newsletter (Jan-Mar 2023) (2023).
[27] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2019) 10 SCC 1 (India).
[28]Insolvency and Bankruptcy Board of India, IBBI Quarterly Newsletter (Jan-Mar 2023) (2023).

economic productive capacity. The average haircut for creditors can be substantial; reports indicate that recoveries have been around 32% under liquidation compared to potentially higher rates in successful rescues.

The liquidation of Lanco Infratech Limited in 2018, with debts exceeding ₹45,000 crores, resulted in minimal recovery for creditors and significant job losses, highlighting the potential economic drawbacks of liquidation.

- **Legal Efficiency**

Corporate Rescue: The legal framework established by the IBC aims to provide a time-bound resolution process through mechanisms like the Committee of Creditors (CoC). However, challenges such as judicial delays persist. The average duration for closing a CIRP yielding a resolution plan has been reported at around 843 days (FY2024), indicating inefficiencies that can hinder timely resolutions.

The Supreme Court in Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr. (2021)[29] emphasized the need for strict adherence to timelines in the CIRP process

Liquidation: While liquidation processes are designed to be straightforward, they can also face delays due to court backlogs. High-profile cases like Jet Airways' ones have shown that even liquidation can become protracted. However, liquidation may be perceived as more efficient once initiated because it follows a clear statutory framework for asset realization and distribution.

The recent judgment in Sundaresh Bhat v. Central Board of Indirect Taxes and Customs (2023)[30] Clarified certain aspects of asset treatment in liquidation, potentially streamlining the process.

- **Social Impacts**

Corporate Rescue: The social implications of corporate Rescue are generally positive. By preserving businesses, these mechanisms help maintain employment levels and bolster investor confidence. Successful rescues can enhance market stability by preventing sudden disruptions from mass layoffs or business closures.

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[29]Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr., (2021) 10 SCC 194 (India).

[30]Sundaresh Bhat v. Central Board of Indirect Taxes and Customs, (2022) 9 SCC 1 (India).

The resolution of Binani Cement (Committee of Creditors v. Binani Industries Ltd., 2018)[31]. This preserves jobs and improves market confidence in the IBC process.

Liquidation: The social impact of liquidation is often negative, leading to job losses and reduced consumer confidence. Employees face uncertainty regarding their future, while investors may perceive increased risk in investing in distressed sectors. The emotional toll on employees and communities affected by business closures cannot be understated.

The liquidation of Jet Airways[32] In 2023, a failed resolution attempt led to thousands of job losses and affected investor confidence in the aviation sector.

- **Stakeholder Interests**

Corporate Rescue tends to benefit a broader range of stakeholders. Creditors may recover more through restructuring than liquidation, while employees retain their jobs and shareholders can regain value from their investments. The IBC emphasizes stakeholder engagement through the CoC, allowing collective decision-making during resolution.

The Supreme Court in Swiss Ribbons Pvt. Ltd. v. Union of India (2019)[33] Upheld the IBC's focus on resolving corporate distress while balancing various stakeholder interests.

Liquidation: In contrast, liquidation primarily benefits secured creditors who have priority over unsecured creditors and shareholders. While creditors may receive some recovery through asset sales, employees are often left without jobs or severance packages. This disparity raises concerns about equitable treatment among stakeholders.

The Supreme Court in Technology Development Board v. Anil Goel & Ors. (2022)[34] Clarified the position of government dues in the liquidation waterfall, affecting stakeholder recoveries.

[31] Committee of Creditors v. Binani Industries Ltd., (2018) NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 82 of 2018.
[32] Jet Airways (India) Ltd. v. State Bank of India & Anr., (2019) NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 707 of 2019.
[33] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India).
[34] Technology Development Board v. Anil Goel & Ors., (2022) NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 731 of 2020.

- **Time & Costs**

  Corporate Rescue: Although corporate rescue processes aim for efficiency, they often encounter delays due to judicial scrutiny and procedural complexities. The costs of prolonged proceedings can also be high for distressed companies navigating complex negotiations with creditors.

  A report by ICRA found that the average time taken for resolution under IBC was 830 days, exceeding the statutory limit but still faster than previous regimes.[35].

  Liquidation: Once initiated, liquidation processes can be quicker; however, they still incur legal fees and asset management costs. The costs associated with liquidation can be significant if not appropriately managed, particularly if asset values decline during extended proceedings.

  The IBBI's FY 2022-23 data showed that 71% of liquidation cases were closed within the one-year timeline, indicating improved efficiency.[36]

Based on this analysis, corporate Rescue emerges as the preferred option in most scenarios, scoring higher in economic impact, social impact, and stakeholder interests. However, liquidation remains a necessary and sometimes more appropriate tool for unviable businesses.

Conclusion

Summary of Key Findings

This research paper has examined the critical distinctions between corporate Rescue and liquidation within India's Insolvency and Bankruptcy Code (IBC) framework, 2016. The findings indicate that while corporate rescue mechanisms aim to preserve viable businesses and maximize asset value for creditors, liquidation often results in significant economic and social costs, including job losses and diminished stakeholder recovery. The analysis revealed that a substantial percentage of corporate insolvency resolution processes (CIRPs) end in liquidation, highlighting a systemic bias that necessitates attention. Judicial delays, inadequate infrastructure, and uneven treatment of stakeholders emerged as significant challenges affecting both processes. Furthermore, successful corporate rescues yield better economic outcomes for companies and creditors, fostering a more resilient business environment.

[35]ICRA, Record High Number of Resolution Plans Approved Under IBC in FY2024 (May 17, 2024).

[36]Insolvency and Bankruptcy Board of India, IBBI Quarterly Newsletter (FY 2022-23) (2023).

Implications for Stakeholders and Policymakers

The implications of this research are profound for stakeholders involved in insolvency proceedings. Policymakers must recognize the need for reforms that enhance the efficiency of corporate rescue mechanisms while streamlining liquidation processes. The findings suggest that improving judicial capacity within the National Company Law Tribunal (NCLT) and increasing the number of benches significantly reduces delays and enhances the overall effectiveness of the IBC. Creating a standardized valuation framework also empowers stakeholders to make informed decisions during insolvency proceedings, ultimately leading to better recovery rates. For practitioners, understanding the factors influencing outcomes in insolvency processes is crucial. Legal professionals, insolvency practitioners, and financial advisors must navigate these complexities to advocate effectively for their clients' interests—whether they are debtors seeking Rescue or creditors aiming for recovery.

Future Outlook for Corporate Insolvency Proceedings in India

Looking ahead, the future of corporate insolvency proceedings in India will likely hinge on ongoing legislative reforms and judicial interpretations. As the IBC evolves, there is an opportunity to address gaps in cross-border and group insolvency provisions. This evolution will be essential in fostering a more coherent and predictable insolvency landscape that aligns with international best practices.

Recommendations

Policy Suggestions to Promote Viable Rescues

To promote viable rescues, policymakers should consider implementing targeted reforms to enhance the CIRP's efficiency. This includes increasing funding options for distressed companies through interim financing provisions and creating incentives for creditors to support restructuring efforts rather than opting for liquidation.

Proposed Improvements to the Insolvency Resolution Process

Improvements to the insolvency resolution process should focus on reducing judicial delays by increasing staffing levels at NCLT and enhancing technological infrastructure for case management. Streamlining data submission processes through Information Utilities (IUs) can expedite case admissions and resolutions.

Areas for Further Research

Future research should explore the effectiveness of specific amendments to the IBC post-implementation, particularly those aimed at improving creditor rights and stakeholder engagement. Additionally, comparative studies examining international insolvency frameworks can provide valuable insights into best practices that could be adapted within the Indian context.

In conclusion, while the IBC has significantly transformed India's corporate insolvency landscape, the journey towards an optimal balance between Rescue and liquidation is ongoing. The framework's success will depend on continuous refinement based on practical experiences and evolving economic realities. By prioritizing value maximization and stakeholder interests, policymakers can further enhance the effectiveness of corporate rescue mechanisms, reserving liquidation as a last resort for genuinely unviable businesses. This approach will benefit individual stakeholders and contribute to India's overall economic resilience and growth.

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