Corporate Insolvency

The Road to Viksit Bharat

Law, Policy and Practice

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Introduction

India's pursuit of *Viksit Bharat*, a developed and *atmanirbhar* nation, demands robust institutions, sound economic governance, and a legal architecture that fosters enterprise, innovation, and accountability. Among these, a credible and efficient insolvency regime is indispensable. It ensures that resources are not indefinitely locked in failing ventures and that entrepreneurship is encouraged by the assurance of an exit with dignity.

BIRTH OF THE IBC

The tale of insolvency is as old as commerce itself. In Shakespeare's *The Merchant of Venice*, Antonio, a prosperous merchant, borrows money from Shylock, a Jewish moneylender, pledging a pound of his flesh as collateral. When his ships are lost at sea and he cannot repay the debt, Shylock demands his gruesome bond. The court intervenes, allowing Shylock the flesh but forbidding him from shedding blood, rendering the contract unenforceable. This timeless parable captures the inherent perils of credit risk, the cruelty of punitive collateral, and the need for equity to temper the rigours of contract law, long before modern insolvency frameworks emerged.

India's journey toward a modern insolvency regime began from a similar impasse. The business reforms of the 1990s unleashed a wave of economic freedom, ushering in a market economy, powered by competition and innovation. Inefficient firms came under existential pressure to adapt or exit, while innovation rapidly rendered traditional business models obsolete. Many firms, having outlived their economic relevance, slipped into financial distress. Without a structured exit mechanism, they remained trapped in a *chakravyuha*, a maze without escape. Scarce resources, including capital and entrepreneurial talent, were locked in unviable ventures, while zombie firms littered the economic landscape, dragging down productivity and growth.

Even businesses with fundamentally sound models struggled to recover in the face of inadequate resolution tools. There was no coherent system that could distinguish viable from unviable enterprises, nor facilitate the timely rescue of the former and the efficient closure of the latter. As a result, both languished in operational paralysis, eroding business confidence and deterring fresh investment and entrepreneurship.

This structural deficiency was exacerbated by the imprudent use of leverage. In the new market economy, firms embraced debt as a means to expand and compete. Amid the exuberance of a booming economy around 2010, many took on unsustainable debt, often encouraged by lenders lacking credible recovery mechanisms. A satirical caricature captures the irony of the time: A borrower jests with a banker, "Your lending rates are okay! But the high NPA numbers, wow, that's what attracted me to your bank!"

Leverage is a double-edged sword. It amplifies returns in buoyant times but wreaks havoc on balance sheets when the cycle turns. By the early 2010s, the fallout was unmistakable: India was engulfed in a twin balance sheet crisis, with both corporate and banking balance sheets under severe stress. Overleveraged firms struggled to generate enough revenue to service their interest obligations. Banks, burdened with non-performing assets (NPAs), pulled back credit. The credit channel dried up. Investments declined. Growth stalled. The need for a fair, efficient, and time-bound process to resolve insolvency became acute: one that could differentiate between firms worth saving and those beyond rescue, and take timely, decisive actions.

"How did you go bankrupt?"

"Two ways. Gradually, then suddenly."

This brief exchange between Bill and Mike in *Hemingway's The Sun Also Rises* captures a profound truth: decline often begins unnoticed, slow, silent, and insidious, until it culminates in abrupt collapse. India's tryst with insolvency followed a similar arc. For years, financial stress simmered beneath the surface. Firms clung to life despite eroding viability, while banks continued lending to postpone the inevitable recognition of bad loans. Then, almost overnight, these cracks widened into a full-blown crisis, forcing urgent and sweeping reforms.

Out of this moment of reckoning emerged the Insolvency and Bankruptcy Code, 2016 (IBC/Code), a decisive response to years of silent decay, enacted on 28 May 2016. The Code introduced a time-bound, creditor-in-control, market-driven process to rescue viable enterprises and liquidate those beyond recovery. It aimed to unlock capital and entrepreneurial energy trapped in unviable ventures, restore creditor discipline, and send a clear message: failure is not a stigma but an essential feature of a vibrant economy. Most importantly, it institutionalised the freedom to fail, the ultimate economic freedom, by enabling swift, efficient, and dignified exit.

THE IBC JOURNEY

India had no prior experience of a modern insolvency regime that is proactive, incentive-compliant, market-led, and time-bound. The Code and the underlying reform were a journey into uncharted territory. Many institutions required for the implementation did not exist. The law had to be laid down; infrastructure created; capacity built; professions developed; the markets and practices evolved; and stakeholders educated, persuaded, and enabled to embrace the change.

Remarkably, the entire regulatory framework for service providers and corporate insolvency, and the entire ecosystem for corporate insolvency, were put in place to enable the commencement of corporate insolvency resolution by

1 December 2016. The first corporate insolvency resolution process commenced on 17 January 2019. The first resolution plan under the Code was approved on 2 August 2017. There is perhaps no global parallel to the speed and depth with which this transformative reform was enacted and implemented, thanks to the visionary leadership of Mr Arun Jaitley, a steadfast champion of economic freedom who steered this historic change.

Implementation posed several challenges. All concerned faced them head-on and resolved issues expeditiously. The government led from the front, demonstrating its unwavering commitment: subordinating its dues to claims of all stakeholders except equity, making the resolution plan binding on itself, pushing large corporates with high NPAs into the IBC process early on, amending banking law, revenue law and company law to facilitate the processes under the Code, and constituted the Insolvency Law Committee for continuous review and recommendations.

Regulators did their roles too: The Securities and Exchange Board of India exempted resolution plans from making public offers under the Takeover Code; RBI allowed external commercial borrowings for resolution applicants to repay domestic term loans; and the Competition Commission of India devised a special route for swift approvals for combinations under resolution plans.

The Insolvency and Bankruptcy Board of India spearheaded an intensive stakeholder engagement through hundreds of roundtables annually. The unprecedented cooperation and partnership among authorities and stakeholders proved instrumental in implementing the Code in letter and spirit. Stakeholders emerged as the IBC ecosystem's most valuable asset. Indeed, many view the IBC as a reform *by* the stakeholders, *for* the stakeholders, and *of* the stakeholders.

The Code is an economic law: A living, empiric framework evolving through experimentation. It started with standard processes, anticipating prompt course corrections to better serve businesses and the economy. Such corrections arose from difficulties encountered while implementing the provisions of the Code and from the changes in the economic environment. In its first five years, the Code underwent six legislative amendments, each reinforcing its core objective: resolving corporate distress in tune with market realities.

The insolvency journey weathered several storms on the way. Besides the usual challenges of building institutional capacity and developing the markets and practices to implement the reform, there was scepticism about whether the Code could be implemented at all and if it would meet the same fate as many such reforms had in the past. There was also reluctance to accept the reform and, at times, vigorous efforts to cling to the old order. A few big fish preferred to watch from the sidelines till commoners tried their hands and emerged successful. Critics hastily condemned the reform, as the first resolution plan yielded 6 per cent of creditors' claims. What they overlooked, however, was that this represented 600 per cent of the firm's liquidation value, an extraordinary outcome for a company that had remained sick for decades. Meanwhile, as the IBC process began transferring the distressed firms away from their existing promoters, resistance to the Code intensified, with legal challenges gaining momentum.

Judicial authorities (Adjudicating Authority, Appellate Authority, High Courts, and the Supreme Court) delivered landmark rulings that explained conceptual issues, settled contentious issues, and resolved grey areas with alacrity. These decisions imparted the much-needed clarity to the roles of various stakeholders, streamlining the IBC processes. Almost every provision related to corporate insolvency under the Code, as well as each amendment, was subjected to constitutional scrutiny. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities, passed the constitutional muster.[1] Today, India's insolvency regime boasts of one of the largest bodies of case law globally.

SOLE OBJECTIVE

I wish to clarify one ambiguity around the Code's objective, often stemming from interpretations of its long title. In *Binani Industries Ltd.* v. *Bank of Baroda*[2], the Appellate Authority established a hierarchy of objectives: the first-order objective is resolution; the second, maximisation of the value of assets of the corporate debtor; and the third, promoting entrepreneurship, ensuring availability of credit, and balancing the interests of stakeholders. This order is sacrosanct. In *Swiss Ribbons (P) Ltd.* v. *Union of India*[3], the Supreme Court observed:

> ... the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. ... the primary focus of the legislation is to ensure revival and continuation of the corporate debtor ... from a corporate death by liquidation.

Such pronouncements have led to the widespread understanding that "resolution" under the Code means resolution by a resolution plan.

The Code provides for reorganisation and insolvency resolution to address corporate stress. If stress is resolved in the manner it provides, like a time-bound process, a calm environment, a priority rule for claims (waterfall), and a clean slate takeover, it yields several benefits. It maximises the value of the assets of the stressed entity, promotes entrepreneurship, improves credit availability in the economy, and balances the interests of stakeholders. However, the objective remains singular, resolving stress, while the benefits are many.

The Code envisages stress resolution of a company in two ways, first by the rescue of the company through a resolution plan, failing which, by the closure of the company through liquidation. A company is under stress if it is not performing well; the resources at its disposal are underutilised. If the company has a viable business, it should be possible to revive it. The Code provides for corporate insolvency resolution process that enables the market to find a feasible and viable resolution plan to revive the company as a going concern. If such a plan is approved, the company gets a new lease of life, and resources are put to optimal use. If the

1. *Swiss Ribbons (P) Ltd.* v. *Union of India*, (2019) 4 SCC 17: (2019) 213 Comp Cas 198.
2. 2018 SCC OnLine NCLAT 521.
3. (2019) 4 SCC 17: (2019) 213 Comp Cas 198.

company has an unviable business, the market is unlikely to find a resolution plan. In such a case, the company undergoes liquidation, which releases resources, including entrepreneurs, as per the priority rule, for optimal use elsewhere.

Thus, the Code enables the market to determine the viability of a company and, on that basis, to rescue or close it down. Either way, stress is resolved: the company either continues optimally or exits, releasing the resources for fresh allocation. Both the resolution plan and liquidation serve the same economic purpose of stress resolution. Liquidation is not a failure but a legitimate resolution method for rejuvenating a market economy through "creative destruction".

PERFORMANCE APPRAISAL

Nine years into the reforms, the outcomes of the Code speak for themselves. On the primary parameter of stress resolution, regardless of mode, the answer is an unequivocal "yes". Out of 8300 companies entering resolution, 6400 have successfully exited, with 1900 ongoing.

The secondary parameters are the efficiency and efficacy of these resolutions. The Code envisages two efficiency benchmarks: resolution should be time-bound and should maximise the value of stressed assets. Performance on these counts has been less satisfactory. In the quarter ending March 2025, 107 resolution processes concluded, taking an average of 788 days, far exceeding the intended 180 days. Similarly, the realised value under resolution plans to date has averaged only 93 per cent of the fair market value of the companies, indicating a gap in value maximisation. A key efficacy measure is the quality of resolution. A recent study by the Indian Institute of Management, Ahmedabad, finds the outcomes to be encouraging. Post-resolution, companies have shown significant recovery: turnover increased by 76 per cent, profitability ratios converged with industry benchmarks, and market capitalisation tripled.

Tertiary parameters assess the Code's impact on macroeconomic efficiency and behaviour. A marked shift has occurred in the conduct of debtors, who are now more proactive in addressing financial distress. As of December 2024, 30,310 cases involving defaults of ₹13.78 lakh crores were settled before admission. Bank NPAs, after peaking at 14.8 per cent in September 2018, dropped to 2.4 per cent by March 2025. Banks posted record profits of ₹3.2 lakh crores in 2024–2025, compared to a loss of ₹32,438 crores in 2017–2018. Corporate balance sheets have strengthened, with prudent leverage and an interest coverage ratio exceeding 3.5. per cent Corporate governance has improved as well, evidenced by a decline in related party transactions post-IBC, according to a study by the Centre for Advanced Financial Research and Learning. Notably, India's global rank for resolving insolvency improved dramatically from 136th to 52nd in the first three years of IBC implementation.

AUTHOR

Mr Sumant Batra has been a pioneering and persuasive voice in India's insolvency reform journey. With first-hand engagement in legislative design, judicial interpretation, and market response, he combines a jurist's clarity with a practitioner's realism. His insights are shaped by a deep understanding of the institutional, political, and economic forces that drive reform.

In *Corporate Insolvency—The Road to Viksit Bharat: Law, Policy and Practice*, Mr Batra chronicles India's remarkable insolvency journey with depth and insight. He captures the making of an institution that anchors economic trust and fuels national aspiration. The work distils years of experience and reflection into a compelling narrative. It presents a panoramic view of India's evolving insolvency regime: its genesis, key challenges, and future trajectory. Far from treating insolvency in isolation, Mr Batra situates it within the broader arc of India's development story, as a transformative shift in the country's approach to credit, corporate governance, and market discipline. With lucidity and conviction, he unpacks the intricate interplay between law, finance, and public policy. Importantly, he moves beyond analysis to offer a roadmap for reform focussed on enhancing efficiency, fairness, and institutional credibility in India's insolvency ecosystem.

As someone who has witnessed the emergence of India's insolvency ecosystem from its early blueprints and conceptual frameworks to the gradual evolution and institutional maturation, I find this work to be an invaluable guide. The book offers deep insights, practical reflections, and scholarly rigour that make it essential reading for policymakers shaping the next phase of reform, professionals navigating the evolving regulatory terrain, scholars exploring the theoretical contours, and students seeking to understand one of India's most significant economic and legal transformations. I strongly recommend this work to anyone interested in the future of India's economy and institutions.

—Dr M.S. Sahoo

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