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IBC resolution is about restoring firms' viability

BEYOND RECOVERY. Insolvency resolution should be a pathway to regeneration, not just redistribution or auction of assets

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The Insolvency and Bankruptcy Code (IBC) did not merely create a new insolvency procedure; it rewrote the legal economics of business failure in India. It replaced a regime of bureaucratic forbearance and endless rollovers with a structured, time-bound, and market-led framework to decide swiftly and transparently which firms merit revival and which must close.

At its core lay a transformative conviction: insolvency could serve as an opportunity for renewal. The resolution process is envisioned as a marketplace of ideas and strategies, where new entrepreneurs, investors, and managers could compete to repurpose distressed assets and return them to productive use. The goal is not just to save failing firms, but to create viable ones: to transform distress into discovery, and closure into continuity.

The Code explicitly defines a resolution plan as one that resolves the insolvency of a distressed firm by restoring its health and long-term viability. It empowers resolution applicants to design flexible, creative strategies, whether business, financial, operational, technological, or organisational, subject only to the condition that the plan must revive the firm. The Supreme Court, in its early interpretations (*Innoventive*, 2017), upheld this vision, describing a resolution plan as one that enables the debtor "to repay its debts and get back on its feet."

Unfortunately, that foundational idea has eroded. The conversation has narrowed from restoring enterprise viability to calculating creditor recoveries. Institutional focus has drifted from revival to recovery, turning what was meant to be a market for entrepreneurial solutions into little more than an auction for assets. The central purpose of insolvency resolution — to enable a firm to pay its debts and regain stability — has too often been lost in practice.

DISTINCT STAGES

The Code envisages two distinct stages. The first is resolution designed to test whether new management, fresh capital, and a viable plan can restore value and keep the firm alive. The second is liquidation, the fallback when revival proves impossible, converting assets into cash for distribution. Resolution is inherently forward-looking; liquidation is terminal. Yet practice frequently collapses these distinctions. Financially viable enterprises are sold off, while economically obsolete ones sometimes find opportunistic buyers interested only in salvage value. The result is distributive rather than regenerative, value shifts to those able to pay most at the point of sale rather than being expanded through restructuring and future earnings.

The Bankruptcy Law Reforms Committee recognised that successful resolution hinges on the willingness and capacity to restructure liabilities. It, therefore, vested control of the process in the Committee of Creditors comprising primarily financial creditors, who were seen as capable of restructuring the liabilities of the firm, enabling revival. Operational creditors were excluded from decision-making as they focus on immediate payment, which might otherwise push firms prematurely into liquidation. The Supreme Court, in *Swiss Ribbons* (2019), endorsed this reasoning, emphasising that financial creditors were expected to prioritise rehabilitation over immediate realisation. Yet, in practice, financial creditors increasingly behave like operational creditors, seeking closure rather than continuity, recovery rather than restructuring.

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Restructuring typically entails extending repayment timelines, reducing or deferring interest, converting debt into equity, modifying security or covenants, and, in rare cases, partially waiving principal or interest. These adjustments ensure that the financial creditors have skin in the game: their recoveries depend on the firm's successful revival. The Code never envisaged recovery preceding revival; rather, recovery was meant to flow from the value created after revival. This alignment of incentives was intended to motivate creditors to scout and approve only those resolution plans that sustain debt repayment once the firm regains its footing.

At its best, the Code invites entrepreneurs to treat bankrupt firms as brownfield opportunities. The legislature envisioned an ecosystem where even entrepreneurs with modest capital but viable ideas and credible execution capacity could acquire distressed enterprises and rebuild them. Implicitly, the Code asks creditors to behave in a different register: to evaluate resolution plans not merely for immediate recoveries but for their capacity to generate future value. In this sense, the IBC presumes a venture-capital mindset; creditors should assess potential upside, not just the nearest payout.

The market has not consistently lived up to that expectation. Many creditors still act as if their role ends with enforcing claims rather than enabling recovery through revival. They prefer certainty and closure over risk and renewal. Public discourse on "haircuts" has deepened this short-term, ledger mentality. Recovery percentages dominate headlines, while the real question of whether the plan genuinely resolves the underlying business distress receives far less attention. When plans are judged primarily by what they pay upfront, rather than by the credibility of the revival strategy, the process favours financial buyers and asset reconstruction companies, side-lining strategic investors who can restore operations. The resulting landscape — modest average recoveries, a swelling queue of liquidations, the dominance of financial buyers, and a few headline-grabbing haircuts — reveals a market that prizes immediate exit over enduring value.

RECALIBRATE CHOICE

For resolution to function as intended, creditors must recalibrate their calculus of choice. Endorsing a credible plan for revival is not an act of charity; it is an investment decision. The right plan converts today's 100 into tomorrow's 120. That requires an appetite for risk and patience for execution. When creditors sell out at 70 per cent haircut merely to achieve closure, they are not protecting value; they are crystallising a loss of national wealth and productive potential. A creditor may justifiably prefer sale in certain cases, but such choices must be based on clear reasoning, not institutional habit. When the creditor community consistently opts for exit despite plausible upside, it signals a market failure within the insolvency ecosystem.

The IBC functions as a procedural engine: it identifies failure, centralises claims, and delivers outcomes. The next challenge, however, is deeper: to ensure that outcomes embody the Code's founding preference for continuity over closure, for regeneration over recovery. As the Code enters its second decade, efficiency is no longer the question; purpose is. The test is not how quickly resolution settles claims, but how effectively it restores firms. Law can recover assets, but only policy and practice can recover the enterprise. The IBC's enduring promise is to turn distress into opportunity to build a stronger tomorrow, prioritising future value over immediate gains. After all, it is not maximising the value for the creditors, but the value of the firm itself.

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