Creditor-Led CIRP under IBC has instilled fear in the Corporate Debtors of India, while bankruptcy under U.S. Bankruptcy Code is debtor-friendly and UK insolvency is known for speed, lower professional costs, creditor protection and reduced litigation

Mahender Pal Arora[1], Dr. Vikalp Shrivastava[2], Dr. Avinash Kumar[3]

[1]Research Scholar-Law Christ (Deemed to be University) Bangalore, India, NCR Campus ,Email: mahender.pal@res1.christuniversity.in

[2]Assistant Professor, School of Law, Christ (Deemed to be University) Delhi NCR, Ghaziabad, Uttar Pradesh. Email: vikalp@christuniversity.in

[3]Assistant Professor, NUSRL, Ranchi, Email: dr.avinashkumar@nusrlranchi.ac.in

Abstract:

Corporate insolvency under IBC is an offshoot of Company law, the reforms in insolvency took place in India after in the pipeline for many years and these took a formal shape with the introduction & enactment of the Insolvency and Bankruptcy Code, 2016. It is the failure of the corporate persons to service debt which leads to insolvency. The aims and objects of the Code are to provide & help in the resolutions of distressed assets whenever it is feasible and liquidation where the same cannot be revived. However, the IBC has deviated from its objects. The creditor-led IBC has instilled fear in the corporate sector in India which was not the object of the framers of the Code. The CIRPs under IBC are being handled as a tool to take over companies which the corporate debtors have established with their toil and efforts.

Keywords: Insolvency, Bankruptcy, Liquidation, CIRP, Resolution

Introduction

The Insolvency and Bankruptcy Code, 2016 has been enacted with a view to fast track Corporate Insolvency Resolution Process (CIRP) and if the same is not feasible, to order liquidation of the same in the best interest of all. As per Preamble of Code, 2016. "An Act to consolidate and amend the laws relating to reorganization and insolvency of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India and for matters connected therewith or incidental thereto"[1].

The Insolvency and Bankruptcy Code, 2016 has been enacted for resolution of distressed assets. It has been enacted by consolidating numerous legislations on the subject and provides a single, unified and vital platform for revival and/or liquidation of corporate and non-corporate bodies and self- proprietors. The main and substantial policy and procedural changes envisaged in the Code targets to salvage the movable and immovable assets engaged in the distressed organizations in a time-bound manner to protect the interests of not only creditors but also employees, workers, government and others involved. IBC is a proactive, incentive compliant, market-led and time bound insolvency law. The Apex Court in the case *Mansi Brar Fernandes v. Shubha Sharma* has held that "The insolvency and Bankruptcy Code is a landmark economic legislation."[2]

The Apex Court has also stated "Yet the IBC is also a highly misunderstood legislation, the nomenclature of the Code itself has often contributed to this perception. In popular imagination, the IBC is associated with bankruptcy and recovery of the (last drop of life) from a company. But a closer look reveals that the true character of the IBC lies not in its sombre title but in its design and purpose. It privileges resolution over ruin, revival over

[1] The Insolvency and Bankruptcy Code, 2016 Act No.31 of 2016 Dated May 28,2016

[2] *Mansi Brar Fernandes v. Shubha Sharma* AIR 2025 SC 4626

decay, and seeks to breathe life back life into companies where revival is possible, while providing for an orderly and dignified closure where it is not. As emphasised by this Court in *Swiss Ribbons v. Union of India,* (2019) 4 SCC 17 and a catena of subsequent decisions, liquidation is not the primary object of the Code, but a measure of the last resort. The Code is designed to revive and restructure distressed entities, so that they continue as going concern - safeguarding business continuity, protecting employment, and maximising value of stakeholders".[3]

While dealing with legal framework for timely resolution of Insolvency and Bankruptcy, the Apex Court in the case of *Piramal Capital and Housing Finance Limited (formerly known as Dewan Housing Finance Corporation Limited)* has emphasized that "The objective behind enacting the IBC is to provide an effective legal framework for timely resolution of insolvency and bankruptcy, which would support the development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitates more investments leading to higher economic growth and development."[4] While appreciating the objects and scope of IBC, the Apex Court in the case of *Insolvency and Bankruptcy Board of India v. Satyanarayan Bankatlal Mala* has again emphasized that "Insolvency and Bankruptcy Code, 2016 is a self-contained Code."[5]

However, if we look at the way CIRPs are taking place, the focus of the creditors in most of the CIRPs is not resolution of distressed assets but recovery of debt.

It has been held by the Apex Court in the case of Hindustan Construction Company Limited v. Union of India "Code is not meant to be a debt recovery legislation."[6] However, the same appears to be myth. Recognizing the objects and nature of CIRP under IBC, the Supreme Court of India also emphasized in the case of Jai Balaji Industries v. D.K. Mohanty by observing about the nature of the insolvency code stated that "Insolvency resolution process is protective of corporate debtor's interests. Code is a beneficial legislation to put corporate debtor on its feet, and not a mere recovery legislation for the creditors. Primary focus of the legislation is to ensure revival and continuation of corporate and to save the debtor not only from its own management but also from a corporate death by liquidation. Thus resolution process is not adversarial to corporate debtor but, in fact, protective of its interests."[7]

After the introduction of the Code, some discipline has been observed in the corporate sector and certain big organizations have started to pay back their loans and are trying to make their balance sheets free of debt so that they may not face proceedings under IBC. But having discipline is good but putting pressure and fear in the corporate debtors is not in the interest of the corporate world. India needs to learn lessons from US Bankruptcy Code, where it is Debtor-led and from UK Insolvency Law where it was Creditor-led earlier and now looking at the drawbacks of Creditor-led insolvency, is now debtor-led.

Regulating Authority, Adjudicating Authority, and Appellate Authority

Insolvency and Bankruptcy Board of India (IBBI) is the regulating authority. It has been established by the Central Government to frame regulations and to keep oversight on Insolvency Professionals, Insolvency Professional Entities, Insolvency Professional Agencies and Information Utilities. IBBI was established on October 1, 2016, **"**The Insolvency and Bankruptcy Code 2016" (IBC) has been notified in the gazette of India on May 28, 2016.

National Company Law Tribunal (NCLT) is an adjudicating authority (AA) under IBC which has been constituted by the Central Government under Section 408 of Companies Act, 2013 for insolvency resolution and liquidation of corporate persons. Appeals against the orders of NCLT are filed with National Company Law Appellate Tribunal (NCLAT) which is an appellate authority and appeals against the orders of NCLAT on points of questions of law are filed with Supreme Court of India which is highest appellate body under IBC. NCLT has also jurisdiction in respect of personal insolvency of guarantors of the corporate debtors. However, for insolvency resolution and bankruptcy of non-corporate bodies, the adjudicating authority is Debt Recovery Tribunal (DRT) and appeals against the order of DRT are to be filed in Debt Recovery Appellate Tribunal (DRAT) and appeals against the orders of DRAT are to be filed in Supreme Court on points of questions of law.

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[3] Ibid 2

[4] *Piramal Capital and Housing Finance Limited (formerly Known as Dewan Housing Finance Corporation Limited) v. 63 Moons Technologies Limited & Ors.* SCC 2025(10) 452

[5] *Insolvency and Bankruptcy Board of India v. Satyanarayan Bankatlal Mala*, SCC 2024 (6) 508

[6] *Hindustan Construction Company Limited v. Union of India,* SCALE 2019 (16) 5823

[7] Jai Balaji Industries v. D.K.Mohanty, SCR 2021 (11) 350

Supreme Court of India is the highest appellate Court for appeals against the orders of NCLAT as well of DRAT. In relation to NCLT and NCLAT, it has been emphasized by *Ashok Bhushan, Chairperson, NCLAT* that the establishment of the National Company Law Tribunal and National Company Law Appellant Tribunal has "altered the contours of commercial justice in India"[8]. It has been stated that the "NCLT and NCLAT establishment was nothing short of a watershed moment."[9]

The Apex Court while reiterating upon the shortcomings in relation to functioning of NCLT and NCLAT, has stated in the case of *State Bank of India v. Consortium of Murari Lal Jalan and Florian Fritsch* that "authorities including NCLT and NCLAT must not aid Successful Resolution Applicants in circumventing strict mandates of law by acceding to their requests to relax terms of resolution plan itself."[10]

US Bankruptcy Code

On the other hand, U.S. Bankruptcy Code is the legislation which deals with the bankruptcy matters. In India and UK, the word 'insolvency' is used but in USA the same is known and used as 'bankruptcy'. Department of Justice of USA is the regulating authority for bankruptcy matters. The Federal Government created Bankruptcy Courts to settle all types of personal & corporate bankruptcy cases. The Appellate Court is U.S. Court of Appeals and the highest appellate Court is The Supreme Court of the United States.

U K Insolvency Act

Under U K Insolvency Act, the legal framework for dealing with business insolvency is primarily governed by the Insolvency Act, 1986. UK, Insolvency Act, 1986, was modified by the Enterprise Act, 2002. The Corporate Insolvency and Governance Act 2020 (CIGA) is the most recent Insolvency Law in U.K. Department of Business, Innovation and Skills which acts through the insolvency service, an executive agency of BIS. In the High Court of Justice, the Courts dealing with Insolvency are part of the Chancery Division. The Appellate Court is the Court of Appeal and the highest appellate Court is U.K. Supreme Court.

Administration of IBC

In India, IBC is administered by Interim Resolution Professional (IRP), Resolution Professional, and Bankruptcy Trustee & Liquidator. IRP is appointed by Adjudicating Authority as proposed in the application for CIRP initiated by the Financial Creditor. Resolution Professional is appointed by Adjudicating Authority on the proposal made by the Committee of Creditors. CIRP and Liquidation are two types of insolvency proceedings. The objectives of an administration are maximization of value of assets of such persons to promote entrepreneurship and availability of credit and balance the interests of all the stakeholders. Reiterating about the object and scope of the IBC, it has been stated by the Apex Court in the case *jai Balaji (supra)* that "Insolvency resolution process is not another avenue for money recovery by a creditor against corporate debtor. It has been held that the entire approach of appellant seems to be founded on a basic misconception that Code has provided another avenue for enforcing money recovery by a creditor against corporate debtor. Application under section 9 of the Code for initiation of CIRP was proceeded against respondent company, squarely contrary to elementary principles concerning object and purpose of Insolvency and Bankruptcy Code, 2016."[11]

IBC provides two provisions that assist in cross-border insolvency disputes i.e. Section 234 and Section 235. Section 234 of the IBC empowers the Central Government to enter into bilateral agreements with foreign jurisdiction in order to resolve the issues of cross-border insolvency. India has adopted the UNCITRAL Model Law on Cross-Border Insolvency in 2022. Company Liquidation is a process rather than a term. Liquidation is the procedure under which a company is wound up. Company Liquidation under IBC may be Voluntary (where the Company is solvent) or Compulsory (where the Company is insolvent). Under the IBC, this protection is accorded by way of a moratorium period which is a calm period intended to protect and preserve the value of assets during the corporate insolvency resolution period. Creditors' Committee is constituted by Interim Resolution Professional. It mainly consists of independent financial creditors. If there are no financial creditors, then it will consist of eighteen largest operational creditors. CoC has a statutory role. It can even write off dues of stakeholders. It must apply highest standards of duty of care. It must not only follow the due process, but also be fair towards all stakeholders and transparent in discharge of its responsibilities. Prospective Resolution Applicants (PRA) can submit resolution plan. Resolution Professional places before the CoC all the plans received by him from the Prospective Resolution Applicants (PRA) and one of which will be accepted by the CoC and submitted to NCLT for its approval. Preferential transactions, undervalued transactions, extortionate credit transactions and transactions defrauding creditors are avoidable transfers in India. At present pre-pack is available only for MSMEs.

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[8] *Bhushan Ashok, Chairperson, NCLAT*, June 2, 2026 The Economic Times

[9] Ibid

[10] *State Bank of India v. Consortium of Murari Lal Jalan and Florian Fritsch* SCC 2024 (8) 1

[11] Jai balaji (supra note 7)

Government of India is working on allowing the scheme for even large companies.
It cannot be denied that the commercial wisdom of the Committee of Creditors is an essential factor that need to be considered while formulating and finalizing a resolution plan but it need to be emphasized that such commercial wisdom should be exercised keeping in mind the provisions of IBC and efforts should be made to balance the interests of the creditors for establishing the viability and feasibility of the resolution plan submitted before it by the Resolution Professional. As per Section 30(2)(b) of IBC, which is a mandatory provision, it is made clear that the operational creditors should be paid in the manner suggested by IBBI which provides that it should not be less than the amount to such creditors in the event of liquidation of the corporate debtor gets under section 53 of IBC. It is interesting to observe that the Legislature, while enacting the IBC, has consciously not provided any ground to Challenge the commercial wisdom of the individual financial creditors or the collective decision of the CoC before the National Company Law Tribunal (NCLT)/ National Company Law Appellate Tribunal (NCLAT and the decision of the CoC's commercial decisions has been made non-justiciable.

The Apex Court in the case of *"Ngaitlang Dhar v Panna Pragati Infrastructure"* has held that "it is trite law that 'commercial wisdom' of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the process within the timelines prescribed by the IBC. It has been consistently held that it is not open to the Adjudicating Authority (NCLT) or the Appellate Authority (NCLAT) to take into consideration any other factor other than the one specified in Section 30(2 or Section 61(3) of the IBC."[12]

The Apex Court in the case of *Bharti Airtel Limited and Another v Vijay Kumar V Iyer* has emphasized that there is a difference between Corporate Insolvency Resolution Process (CIRP) and Liquidation process of IBC. 'Corporate Insolvency Resolution Process focuses on and fosters rehabilitation, revival and resolution of corporate debtor, whereas liquidation process focuses on constellation of assets of the company in liquidation, and distribution and payment to the creditors from the liquidation estate in terms of order of preference set in insolvency statute' [13]

Large–Ticket Insolvency Cases under IBC in India[14]
These are the biggest cases by admitted claims, RBI's "Dirty Dozen" and highest recoveries. RBI directed banks to file cases under IBC in respect of 12 companies owing > Rs.5000 Cr each

Name of the Company	Sector	Admitted Claims in Rs. Crore	Status/ Acquirer	Recovery
Bhushan Steel Limited	Steel	56,000	Resolved /Tata Steel	63%
Bhushan Power & Steel	Steel	47,000	Resolved JSW Steel	41%
Essar Steel India	Steel	49,000	Resolved/ArcelorMittal+Nippon Steel	92%
Alok Industries	Textiles	29,500	Resolved/ Reliance Ind.	17%
Amtek Auto	Auto Parts	12,700	Resolved/Deccan Value Investors	35%
Monnet Ispat & Energy	Steel	10,000	Resolved/ JSW+AION	26%
ElectroSteel Steel	Steel	13000	Resolved/ Vedanta	40%
Jyoti Structures	EPC	7000	Resolved/ Shard Sanghi Group	
Jaypee Infratech	Real Estate	23,000	Resolved/Surakasha Group	Flats to 20000 + Homebuyers
ABG Shipyard	Shipbuilding	19,000	Liquidation	10%
Lanco Infratech	Power/ Infra	44,000	Liquidation	Low
Era Infra	Infra	10,000	Liquidation	Low

Result 9 of 12 resolved, yielding 54% of claims admitted

[12] *Ngaitlang Dhar v Panna Pragati Infrastructure* SCC (2022) 6 172
[13] Bharti Airtel Limited and Another v. Vijay Kumar V. Iyer SCC 2024(4) 668
[14] compiled from IBBI newsletters and judgments of Supreme Court of India

Other Mega Cases > Rs. 10,000 Crore Admitted Claims[15]

Name of the Company	Sector	Admitted Claims in Rs. Crore	Status /Acquirer	Recovery %
Videocon Industries	Consumer/ Electronics	64,000	Resolved/Vedanta / Twin Star	4 % - Largest by claims
Reliance Communications	Telecom	49,000	Under Liquidation	< 10 %
Dewan Housing Finance Corp	NBFC	87,000	Resolved/Piramal Group	42 % of claims
Srei Infrastructure + Srei Equipments	NBFC	32,000	Resolved/ NARCL	42% of claims
Jet Airways	Airlines	15,000	Resolved/Jalan Kalrock	Stalled
Reliance Capital	Financial	25,000	Resolved/Hinduja Group IIHL	42 %

IBC Aggregate Statistics[16]

In respect of large cases having more than Rs. 1,000 Cr, admitted Claims were Rs. 12.21 Lakh Cr. Liquidation Value was Rs.2.22 Lakh Cr. and realisation by creditors were Rs.3.83 Lakh Cr. as on March 2026. Realisation by creditors as % of admitted claims was **Rs.31.41** and Realisation by creditors as % of Liquidation Value was Rs.**172.54**

In respect of all the cases as on 31st March, 2026, admitted claims were Rs.14.13 Lakh cr, Liquidation Value was Rs.2.59 Lakh Cr. and realisation by creditors were Rs.4.32 Lakh Cr. as on March 2026. Realisation by creditors as % of admitted claims was **Rs.30.56** and Realisation by creditors as % of Liquidation Value was Rs.**166.85**

Overall IBC: 8987 CIRPs admitted till March, 2026, out of which 7102 cases were closed. This comprise of 1292 withdrawn under section 12A, 1388 closed on appeal or review or settled and in respect of 1419 cases, resolutions plans were approved and in respect of 3003 cases, liquidation orders were passed. On-going CIRP cases as on 31st March, 2026 were 1885.
Recovery rate: Large cases > Rs. 1,000 Cr. recovered **31.41%** vs **30.56%** for all cases. "Asset – heavy" firms draw strategic investors.
30310 cases settled pre – admission covering Rs. 13.78 Lakh Cr. default

Why large cases do better

- **Asset base:** Bigger tangible assets attract bidders
- **Pan- India presence:** Strategic investors prefer national footprint
- **Better Data:** Unlisted small firms lack quality financials
- **Time Matters:** If resolved within 330 days, recovery 49%, if more than 600 days, drops to 26%

Why some thrived: the acquirer factor

IBC's biggest winners are conglomerates with deep pockets + sector expertise
Adani Group -- 13 IBC acquisitions, mostly power
JSW Group -- 7 acquisitions including Bhushan Power
Reliance -- 5 assets: Telecom tower, textiles
Tata Group -- 3 companies including Bhushan Steel
Together these 4 bought companies with 25% of all IBC admitted claims Rs.13 trillion

Administration of Bankruptcy under U.S. Bankruptcy Code

On the other hand, U.S. Bankruptcy Code is administered by the U.S. Trustee or Bankruptcy Administrator. United States Attorney General appoints a United States Trustee. In USA, Bankruptcy generally provides two options- liquidation or reorganization. The United States Bankruptcy is largely governed by a federal

[15] compiled from IBBI newsletters and judgments of Supreme Court of India

[16] compiled from IBBI newsletter, March, 2026

law which is found in Title 11 of the United States Code. This is commonly referred to as the "Bankruptcy Code". Title 11 contains nine Chapters, six of which provide for the filing of a petition. The other three Chapters provide rules governing bankruptcy cases in general. A case is typically referred to by the chapter under which the petition is filed, for example:
Chapter 7: A liquidation bankruptcy.
Chapter 11: A reorganization bankruptcy that can be used by Corporation or partnership. Chapter:
13 A reorganization process for most private individuals.
(USA's Chapter 11 - Bankruptcy is recognized globally for its flexible and debtor-in-possession provisions that allows Corporate Debtors to restructure while continuing operations)

The present Chapter 11 of Bankruptcy Code of 1978 (with subsequent amendments) has evolved from the Bankruptcy Act of 1800 and provides a well-established insolvency regime recognized globally for its flexibility and debtor-in-possession provisions that allow companies to restructure while continuing operations during the process. Under this Chapter Bankruptcy, the debtor usually retains the exclusive right to propose a reorganization plan for a set period. It offers a more flexible timeline, allowing the debtor and creditors to negotiate and develop a reorganization plan, which may sometimes take years to finalize.
A Chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. The United Nations Commission on International Trade Law (UNCITRAL) Model Law has been adopted in the Chapter 15 of the U.S. Bankruptcy Code in 2005 to deal with Cross-Border Insolvency. Chapter 7 provides that non-exempt assets liquidated and proceeds distributed to creditors. In Chapter 11 case, a liquidation plan is permissible. The automatic stay provides a period of time in which all judgments, collection activities, foreclosures, and repossessions of property are suspended and may not be pursued by the creditors on any debt or claim that arose before the filing of the bankruptcy petition. Creditors' Committee is appointed by the U. S. Trustee and ordinarily consists of unsecured creditors who hold the seven largest unsecured claims against the debtor. The debtor has a 120-days period during which it has an exclusive right to file a plan. This exclusivity period may be extended or reduced by the court. But in no event may the exclusivity period including all extensions, be longer than 18 months. After the exclusivity period has expired, a creditor or the case trustee may file a competing plan. The U.S. trustee may not file a plan. Only a debtor may file a plan of reorganization during the first 120 day period after the petition is filed. In addition, the debtor has 180 days after the petition date or entry of the order for relief to obtain acceptances of its plan. A debtor in possession or the trustee, as the case may be, has what are called "avoiding powers' these powers may be used to undo a transfer of money or property made during a certain period of time before the filing of the bankruptcy petition. A pre-packaged bankruptcy is a strategy to emerge from bankruptcy by negotiating with creditors in advance of Chapter 11 proceedings. The goal of such a plan which must be approved by shareholders and a court to speed up the overall time a company is under bankruptcy

The U.S. Chapter of 11 Bankruptcy Code is known for its flexibility, which is its significant strength. It allows financial distressed companies to remain in control of their operations through the Debtor-in-possession mechanism, enabling management to work on a reorganization plan while continuing business activities. This reorganization-focussed approach aims to help the debtor emerge from bankruptcy as a viable entity, preserving jobs, maintaining relationships with suppliers, and protecting the value of the business. The flexibility provided by Chapter 11 is particularly beneficial for companies with complex financial structures that require a tailored structured plan

One of the major limitations of Chapter 11 is that it can be a lengthy and expensive process. The flexibility that allows for comprehensive restructuring also means that the process can drag for years, leading to high administrative and legal costs. This can be burdensome for smaller companies that may not have the financial resources to sustain a prolonged restructuring effort. Additionally, the debtor-in-possession provision can sometimes be abused by debtors to delay obligations and stall creditor actions, which can lead to prolonged uncertainty and reduced recoveries for creditors.

Biggest Corporate Bankruptcies in USA by Assets

Company	Filed	Assets	What happened	Why Famous
Lehman Brothers Holdings	Sep 15, 2008	$613 Billion	Chapter 11	Largest ever "Crash of 08" Subprime mortgage exposure. Triggered global panic, Dow dropped 4.5% in 1 days
WorldCom Inc.	July11,2002	$107 billion	Chapter11	$ 11B accounting fraud, Telecom giant cooked books
General Motors	June 1, 2009	$ 82 billion	Chapter11	Auto crisis, Government bailout, "Government Motors" emerged stronger
Enron Corp	Dec 2, 2001	$ 63.4 billion	Chapter 11	Accounting fraud, Off balance sheet entities let to Sarbanes – Oxley Act
PG & E	Jan 29, 2019	$ 51.7 billion	Chapter 11	California Wildfire liabilities. First major "Climate Bankruptcy"

Administration of insolvency under U.K. Insolvency Act, 1986

There are five main corporate insolvency procedures in the UK. These are administration, administrative receivership, company voluntary arrangement, Creditors Voluntary liquidation and compulsory liquidation. In U.K. insolvency is administered by Insolvency Practitioner as Administrator or Administrative Receiver, Liquidator, Nominee and Supervisor, Interim Trustee, The Monitor. Administrative receivers are appointed by the lender (or a consortium of lenders) which holds securities in the form of a floating charge. Administrators are appointed either by the court, on the application of the company, directors or creditors or out of court by floating charge holders. Administration, receivership, liquidation and company voluntary arrangements & schemes are the types of Insolvency Proceedings. The primary objective of an administration is to rescue the company as a going concern. Where a company is (or is likely to become) insolvent, it can enter into administration, through this process, administrators take over the day-to-day management and control of the business (usually for up to one year unless an extension is agreed with the court). A company and its directors, or one or more of its creditors can start the administration process. Once a company enters administration, its creditors cannot start any legal action (or continue any existing action) to recover assets without permission from the Court. Administration may result in a better outcome for creditors than if the business was wound up. Only Secured creditors can begin the administrative receivership process. In certain situations, a secured creditor may lose faith in a company's ability to repay its debts to them. Administrative receivership enables these creditors to appoint a licensed insolvency practitioner to sell the business' assets and recover the money owned.

Company Voluntary Arrangement (CVA) is a binding agreement between a struggling business and its creditors. It sets out how the company will pay back all, or part of its debts, over an agreed period. A CVA allows the company to continue trading; as such, it is a welcome and widely used tool for companies in financial difficulty. A insolvency practitioner must supervise the implementation of a CVA. Compulsory Liquidation happens when a business's creditors petition for it to be liquidated. This usually occurs after the creditor has made several attempts to recover the debt. Creditors can apply to the High Court to serve the debtor company with a winding-up-petition. The struggling company has seven days to challenge the application, pay its debts, arrange a company voluntary arrangement (CVA), or enter administration. In some cases, rather than struggling with unmanageable debts, a company will decide to cease trading and close, this is known as creditors' voluntary liquidation. (CVL). Initiated by the company's directors, a CVL arrangement allows for the voluntary winding down of a company and the liquidation of its assets. Creditors' voluntary liquidation can also be quicker than compulsory liquidation.

The administrator must follow this objective unless he considers that to do so is not reasonably practicable. The United Nations Commission on International Trade Law (UNCITRAL) Model Law has been adopted in the UK under the Cross-Border Insolvency Regulations, 2006. In UK if there is a conflict between the 2006 Regulations & the EU Insolvency Regulation, the EU Insolvency Regulation will prevail. A liquidator is appointed to take control of the company and to collect, realize and distribute its assets. Compulsory liquidation is liquidation by order of the court and is the only method by which a creditor can initiate liquidation. Creditors' voluntary liquidations (Insolvent) and members' voluntary liquidation (Solvent) are also possible but require shareholder approval. Once the liquidation has been completed the company is dissolved. A standalone moratorium procedure is available under the UK Act with the aim of allowing distressed companies breathing space while they explore restructuring options. The purpose of the creditors' committee is to assist the administrator in the discharge of his functions and to determine the administrator's remuneration. Once in place, the first task of an administrator is to make proposals to achieve the administration objectives. These should be given to the registrar and unsecured creditors within 10 weeks, followed by a creditor vote to approve the plans by simple majority. If creditors do not approve the court may make an order as it sees fit. At the meeting, the creditors, or classes of creditors, or members, or classes of members, will be asked to approve the Restructuring Plan and it will be approved if 75 per cent in value of those voting approve it. The court will then be asked to approve the Restructuring Plan if one or more classes of

creditors or members approve the Restructuring Plan. Section 423 of the Insolvency Act 1986 (IA 1986) allows for the avoidance of transactions which were designed to defraud creditors. Its provisions are intended to prevent debtors from disposing of assets so as to frustrate creditors. A pre-pack is a deal to sell the assets of a failed company, agreed prior to insolvency, which completed almost immediately after the appointment of administrators (or occasionally receivers).

Comparative Analysis of IBC and U.S. Bankruptcy

Under IBC, once insolvency proceedings begin, control typically shifts to a Resolution Professional and creditors. Promoters and management lose control, which can sometimes disrupt operations. Under the U.S. System, especially under Chapter 11, existing management usually remains in control of the company during restructuring. It preserves business continuity; management retains operational expertise and reduces disruption to customers and suppliers. Under IBC, interim finance is available, but India's market for insolvency financing remains relatively underdeveloped. Funding distressed businesses is often more difficult. The U.S. system provides strong protections and incentives for new lenders to finance a distressed company during bankruptcy. Under this system, companies can obtain fresh liquidity, there are higher chances of successful turnaround and it maintains employee salaries and business operations. Under IBC, process is more creditor-driven and often culminates in a sale of the company rather than a deep operational restructuring. There is greater flexibility in restructuring, Chapter 11 allows Debt-equity swaps, Contract modifications, Lease rejections, operational restructuring before liquidation. Under this system, there are more options for rescuing viable businesses; it encourages rehabilitation rather than sale. The U.S. has extensive experience with pre-packaged bankruptcies and there are faster resolutions, lower costs and less litigation. On the other hand, India introduces pre-packs later and primarily for MSMEs and adoption remains limited. The U.S. Bankruptcy Code has decades of judicial interpretation and has greater predictability, more certainty for investors and lenders and well-developed jurisprudence. On the other hand IBC is relatively young (enacted in 2016) and several issues are still being clarified through court decisions. In relation to Cross-Border Insolvency Framework, the U.S. has Chapter 15 based on UNCITRAL Model Law. It has better coordination for multinational insolvencies and there is easier recognition of foreign proceedings. In contrast, IBC has not yet fully adopted the UNCITRAL Model Law, though reforms have been discussed. IBC has stronger creditor control. IBC deliberately shifted power from defaulting promoters to financial creditors. IBC reduces promoter abuse, limits ever-greening of loans, it improves credit discipline. IBC prescribes strict timelines for resolution. It ensures faster decisions in principle, reduces value destruction caused by needless litigation. On the other hand, some Chapter 11 cases can continue for years. Through provisions such as Section 29A under IBC, certain defaulting promoters are barred from regaining control. It prevents misuse of the insolvency process and enhances accountability. The U.S. system is generally more permissive regarding existing owners and management.

If the goal is business rescue and corporate restructuring, many experts view the U.S. Chapter 11 framework as more sophisticated because it offers DIP management, strong DIP financing, flexible restructuring tools and extensive judicial experience. If the goal is creditor protection and tackling chronic loan defaults, India's IBC introduced stronger creditor rights and significantly improved recovery mechanisms compared with India's pre-2016 regime.

Rather than being universally "better", the U.S. Bankruptcy Code is generally considered superior for reorganization and preserving companies as going concerns, while IBC 2016 is often viewed as stronger in enforcing creditor discipline and preventing promoter misuse. The current trend in India is to retain IBC's creditor-centric framework while gradually incorporating some Chapter 11 style restructuring features.

Comparative Analysis of U.S. Bankruptcy and UK Insolvency

In a typically Chapter 11 case, management usually stays in charge as a "debtor in possession" Existing management often knows the business best and can continue operations while reconstructing. The US system is designed primarily to preserve and rehabilitate businesses. Chapter 11 allows renegotiation of contracts, restructuring of debt, sale of assets and operational changes while continuing business. Once a bankruptcy petition is filed in the U.S, an automatic stay generally stops law suits, foreclosures, collection actions and creditor enforcement actions. This gives the company breathing room. A U.S. bankruptcy court can confirm a restructuring plan over the objection of certain creditor classes if statutory classes are met. The "cram-down" mechanism can prevent a small group of creditors from blocking a viable restructuring. Chapter 11 allows companies to obtain Debtor-in-possession (DIP) financing, priority treatment for new lenders, court-approved financing structures. This can provide liquidity during restructuring. Many multinational corporations choose to restructure in U.S. courts because of: extensive case law, specialized bankruptcy judges, sophisticated restructuring market and large ecosystem of advisers and investors. The depth of precedent can make outcomes more predictable for complex cases

UK Insolvency procedures involve an insolvency practitioner or administrator taking significant control. The UK system has rescue mechanism such as: administration, company voluntary arrangement, restructuring plan. But historically, it was seen as more creditor-oriented and less debtor-friendly. The UK has moratorium protections in some procedures *but the U.S. stay is often regarded as broader and more comprehensive.* The UK now has cram-down features in restructuring plans, *but the USA has decades of experience and jurisprudence applying similar concepts.* Chapter 11 allows companies to obtain DIP financing, priority treatment for new lenders, court-approved financing structures which

Creditor-Led CIRP under IBC has instilled fear in the Corporate Debtors of India, while bankruptcy under U.S. Bankruptcy Code is debtor-friendly and UK insolvency is known for speed, lower professional costs, creditor protection and reduced litigation

can provide crucial liquidity during restructuring, On the other hand, UK has fewer equivalent mechanisms and historically has not developed as deep a DIP financing market.

The UK system is often praised for speed- proceedings can be faster and less expensive than major U.S. Chapter 11 cases. UK system has lower professional costs on the other hand. Chapter 11 cases can generate enormous legal and advisory fees. The UK framework has traditionally provided stronger creditor oversight and discipline. U.S. bankruptcies can become highly contentious and involve extensive court battles. Under Chapter 11, it may continue operating for months or years while renegotiating leases, labour agreements and debt. However, under UK procedures, restructuring is possible, but historically, there has been greater emphasis on protecting interest and achieving a quicker resolution.

IBC Creditor-Led, US Debtor-Led and UK earlier Creditor-Led now Debtor-Led

The Insolvency Bankruptcy Code, 2016 of India is Creditor-led and the Committee of Creditors consist of independent financial Creditors. There is always a fear in the minds of the promoters of the defaulting companies that their companies may go out of their hands if the default is continued. In this way even genuine promoters who have no fault have to suffer in the process of CIRP under IBC. India has adopted UK model which was earlier Creditor-Led and now the same is Debtor-Led

The US Bankruptcy Code is Debtor-led and the committee of creditors consist of unsecured creditors appointed by the U.S. Trustee. It consists of seven largest who hold unsecured claims against the debtor. A Chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. The debtor has a 120-days period during which it has an exclusive right to file a plan. This exclusivity period may be extended or reduced by the court. But in no event may the exclusivity period including all extensions, be longer than 18 months. After the exclusivity period has expired, a creditor or the case trustee may file a competing plan. The U.S. trustee may not file a plan. Only a debtor may file a plan of reorganization during the first 120 day period after the petition is filed. In addition, the debtor has 180 days after the petition date or entry of the order for relief to obtain acceptances of its plan.

In UK, insolvency matters are governed by Insolvency Act, 1986, modified by the Enterprise Act, 2002 and the same has been Creditor-driven. However, after enacting The Corporate Insolvency and Governance Act 2020 (CIGA) which is the most recent Insolvency Law in U.K, it has adopted Debtor-led process. Once in place, the first task of an administrator is to make proposals to achieve the administration objectives. These should be given to the registrar and unsecured creditors within 10 weeks, followed by a creditor vote to approve the plans by simple majority. If creditors do not approve, the court may make an order as it sees fit. At the meeting, the creditors, or classes of creditors, or members, or classes of members, will be asked to approve the Restructuring Plan and it will be approved if 75 per cent in value of those voting approve it. The court will then be asked to approve the Restructuring Plan if one or more classes of creditors or members approve the Restructuring Plan.

India should also have debtor-led or hybrid type process so that the debtors do not live under constant fear of take-over by other companies and first, debtor may be given the chance to submit repayment plan and in case it fails only then the creditor may be allowed to submit the repayment plan as it is in USA.

IBC Amendments made vide Act of 2026

Realising the drawbacks of **Creditor in Control Model,** a number of changes have been made in the IBC Amendment Act, 2026 providing for **Debtor in possession Model.** A completely new Creditor-Led Insolvency Resolution Process (CLIRP) has been introduced in specified class of companies. Class of companies to be specified are likely to be aligned with the RBI's Resolution of Stressed Assets Directions in addition to MSMEs. It provides for mandatory CIRP if default has occurred. Failure to pay suffices. Default, application being complete and no disciplinary proceeding against IP are the three exhaustive and self-sufficient conditions for admission of CIRP under Section 7 of IBC. For ascertaining existence of default, application with IU report shall be sufficient. Rejection not possible on any other ground and Adjudicating Authority needs to record reason in writing in case of delay in acceptance / rejection of claim. This amendment effectively nullifies the Vidarbha Judgment of the Supreme Court of India and Adjudicating Authority will not have discretionary powers while dealing with CIRP applications. Under CLIRP, insolvency resolution is under financial institutions and there is limited role of Adjudicating Authority. Pre-notice of intent to initiate is given to CD and after receiving CD's representation, a dual stage approval with 51% vote and initiation on public notice by RP. Intimation of initiation is given and the corporate debtor has right to appeal, moratorium is there only on decision of Adjudicating Authority. There is approval of resolution plan and the same may be converted into regular process. Under this system, creditor is not in control but several decisions of CD require approval of CoC. Prescribed timeline for the process is 150 days with a onetime extension of 45 days, if not completed; the same is converted into CIRP. CLIRP can be converted to CIRP in the cases where resolution plan is not received within due time-line or where resolution plan is rejected or where CD or its personnel have failed to co-operate with Resolution Professional. Other important features are that the Resolution plan may provide for sale of non-core assets, restricted time-frame for filing withdrawal application, transfer of assets of guarantor to CD as part of CIRP to avoid fragmented sale of assets, separate approvals for implementation and distribution, mandatory submission of financial information with IUs by Operational Creditors.

Clean slate principle – past liabilities not to be basis for suspending any rights/ licenses or to initiate any proceedings. These amendments are not only crucial but are also important for success and revival of the distressed assets of the corporate sector. Allowing possession to remain with the Corporate Debtor instead of resolution professional is a paradigm shift from the IBC 2016. These amendments will help the revival and resolution of distressed assets of the corporate debtor in an effective manner.
In regard to aforesaid amendments, the Ministry of Corporate Affairs (MCA) has taken a staggered approach for implementing the Insolvency and Bankruptcy Code (Amendment) Act, 2026. Several procedural and time related changes are active; however, three major macro-reforms have been left to be notified later due to their operational complexity.

Creditor-initiated Insolvency Resolution Process (CIIRP) formulated under the newly inserted Chapter IV-A (Sections 58A to 58K), this framework introduces a fast-tracked, out of court, debtor in possession mechanism. It requires a 51% creditor consensus to initiate and mandates a strict 150-day timeline (extendable by 45 days) to resolve corporate stress before approaching the NCLT for final approval.
Group Insolvency Framework: This provides for the simultaneous, coordinated insolvency resolution of inter-connected corporate group entities. Its purpose is to prevent value erosion by consolidating the assets and liabilities of parent-subsidiary networks instead of dealing with them in silos.

Cross-Border Insolvency Mechanism: This establishes a comprehensive rule-making architecture heavily aligned with the UNCITRAL Model Law. This will govern cases involving foreign assets, cross-border default claims and coordination with international courts.
The aforesaid specific sections have been withheld by the government to give the IBBI, the regulating authority and the NCLT, the Adjudicating Authority and NCLAT the Appellate Authority adequate time to build the necessary infrastructure and guidelines.

Conclusions and Suggestions

To make IBC more effective, India can draw valuable lessons from the USA's Chapter 11 framework. By integrating certain aspects of Chapter 11, the IBC can address some of its current limitations and provide a more balanced approach to corporate insolvency resolution. It is observed that Indian insolvency Law is largely on the lines of The British insolvency regime. Originally, the insolvency laws of the UK were heavily influenced by the Creditor-in-control (CIC) system which has been adopted in the IBC. The Americans on the other hand have a Debtor-in-Possession (DIP) regime, which differs from the Indian and the traditional UK regime. One of the key features of Chapter 11 is the Debtor-in-Possession provision, which allows the existing management of a distressed company to retain control during the insolvency process. Introducing Debtor-in-Possession provisions under certain circumstances in the IBC could provide companies with a better chance of recovery. This approach would allow the debtor to continue managing the business while working on a restructuring plan, minimizing disruptions and retaining the expertise of the existing management team. The Debtor-in-Possession provision could be restricted to cases where the existing management has demonstrated a credible plan for revival, ensuring that creditors' interests are still protected.

While the creditor-driven approach of the IBC ensures the creditors' interests are prioritized, providing the debtor with more opportunities for reorganization could lead to better outcomes in certain cases. A more balanced approach that allows debtors to propose restructuring plans, similar to Chapter 11, could help distressed companies explore viable solutions before resorting to liquidation. This could be especially beneficial for companies facing temporary financial challenges that have the potential for long-term viability if given sufficient time to reorganize their operations and negotiate obligations.

The success of any insolvency framework depends significantly on the efficiency and expertise of the judicial system. In the USA, the Bankruptcy Court plays a crucial role in overseeing Chapter 11 cases, with judges experienced in handling complex restructuring matters. To improve the effectiveness of the IBC, India should focus on enhancing the capacity and expertise of the NCLT and related judicial bodies. This could involve specialized training for judges, increased staffing to reduce case backlogs, and the establishment of dedicated benches to handle complex insolvency cases more efficiently. Strengthening the judicial infrastructure will help ensure that insolvency cases are resolved in a timely manner while maintaining the quality of decision-making.
While IBC's strict timelines are intended to expedite the insolvency process, greater flexibility in timelines could help address cases that require more comprehensive restructuring. Introducing provisions that allow for timeline extensions in specific scenarios, particularly for large and complex cases, could provide companies with the breathing space and need to develop and implement viable restructuring plans. Such flexibility would need to be balanced with safeguards to prevent misuse and ensure that the process remains efficient.
IBC in India can adopt hybrid type system which can be combination of Debtor in Possession and Creditor in Control Models which will help it to become more flexible, robust and in this way debtors may be protected from the creditors who at present are mainly concerned about recovering their money and least bothered about the resolution of distressed assets of the corporate debtors