



AWASHYA

AWASHYA & PARTNERS

# **CORPORATE DEBT RESTRUCTURING**

---

**THE INTERLAY BETWEEN CDR AND INSOLVENCY  
AND BANKRUPTCY CODE, 2016**

# Author



**Aastha Rani**  
*Galgotias University*  
*B.A. LL.B., 2nd year*



## CONTENTS

|  |    |
|--|----|
| Introduction .....                                     | 2  |
| 2. Legal Framework and Operating Mechanisms .....      | 4  |
| 2.1. Statutory vs Non-Statutory Mechanisms .....       | 4  |
| a. CDR (Non-Statutory Mechanism): .....                | 4  |
| b. IBC (Statutory Mechanism): .....                    | 5  |
| 2.2. Procedure adopted and Timeline Differences .....  | 6  |
| 3. Challenges and Conflicts .....                      | 9  |
| 3.1 Implementation Overlaps .....                      | 9  |
| 3.2 Stakeholder Interest .....                         | 11 |
| 4. Comparative Analysis .....                          | 14 |
| 4.1 International Practices .....                      | 14 |
| United States: .....                                   | 14 |
| United Kingdom (Restructuring Frameworks, 2020): ..... | 15 |
| India (Insolvency and Bankruptcy Code, 2016) : .....   | 16 |
| 6. CDR and IBC - Outcomes .....                        | 18 |

## INTRODUCTION

Corporate debt resolution is key to economic stability, especially when business distress can have far-reaching implications in a country like India. Two of the important frameworks that address this are 'Corporate Debt Restructuring'<sup>1</sup> (hereinafter referred to as CDR) and the 'Insolvency and Bankruptcy Code (IBC), 2016'<sup>2</sup> which employs the Corporate Insolvency Resolution Process (CIRP). Although addressing corporate insolvencies is the goal of both, the conflict over their cohabitation and relative importance has emerged because of their disparate underlying principles, processes and methods.

Established in 2001<sup>3</sup>, the CDR was a non-statutory, voluntary mechanism for the rescue of financially stressed but viable companies through debtor-creditor negotiations. Despite having the best of intentions, CDR was heavily criticized for tactics including excessive delay, poor execution, and a lack of accountability. The 'IBC', introduced in 2016, is a statutory (legislative), time-bound, creditor-driven procedure that highlights increased transparency and efficiency in the resolution process while eliminating many of the drawbacks of CDR.

Since the legal framework and processes are more robust in an Insolvency process, relevant questions about CDR arise. Should CDR be completely substituted or form part

---

<sup>1</sup> Institute of Company Secretaries of India, 'Corporate Restructuring, Valuation, and Insolvency' (2013) <https://www.icsi.edu/portals/70/23112013S2.pdf> accessed on 23 November 2024.

<sup>2</sup> Insolvency and Bankruptcy Board of India, *The Insolvency and Bankruptcy Code, 2016 (updated to 28 April 2022)* (IBBI 2022) <https://ibbi.gov.in/uploads/legalframework/2022-04-28-181717-r28jw-af0143991dbbd963f47def187e86517f.pdf> accessed 23 November 2024

<sup>3</sup> IMF, "India sought inspiration from the US Chapter 11 framework in designing its insolvency resolution process," in *Reforming India's Financial System* (IMF, 2011) <https://www.elibrary.imf.org/downloadpdf/book/9781616350819/ch019.xml#:~:text=India%20sought%20i%20nspiration%20from%20the,cases%20of%20multiple%20creditors%20financing> accessed 23 November 2024.

of IBC? This paper examines the issues in this regard and focuses more on the relationship between both systems and its effects on corporate restructuring in India. The study assesses whether the flexibility of CDR can be made to coexist with the statutory rigor of the IBC or if the former's efficiency warrants the phasing out of the latter.

This issue is particularly relevant for India, which continues to develop its financial markets to strengthen the ease of doing business, attract investment, and provide a more predictable and reliable environment in which corporate resolution can take place. In other words, improving the process of resolving distressed companies should help reduce NPAs<sup>4</sup>, which form a huge burden on the banking sector, thereby strengthening India's overall financial stability.

---

<sup>4</sup>Corporate Finance Institute, "Non-Performing Asset (NPA)" <https://corporatefinanceinstitute.com/resources/accounting/non-performing-asset/> accessed 23 November 2024.

## 2. LEGAL FRAMEWORK AND OPERATING MECHANISMS

CDR and IBC are two distinct approaches to solving corporate distress through their legal frameworks. Each framework has unique operational mechanisms that cater to the needs and objectives that are pertinent to the corporate restructuring process. This section will cover the variations in procedures, whether CDR and IBC are statutory or non-statutory, and which approach is more efficient in resolving the issues of the stakeholders.

### 2.1. STATUTORY VS NON-STATUTORY MECHANISMS

---

#### A. CDR (NON-STATUTORY MECHANISM):

The Corporate Debt Restructuring (CDR) mechanism is a voluntary, non-statutory framework introduced by the Reserve Bank of India (RBI) to assist financially distressed companies in restructuring their debt obligations. The process begins when a borrower, along with at least 75% of creditors by value and 60% by number, submits a restructuring proposal to CDR Cell. If the proposal is found viable, it proceeds to the Empowered Group (EG), composed of senior representatives from major financial institutions, for evaluation and approval. The debtor and creditors enter into two key agreements: the Debtor-Creditor Agreement (DCA) and the Inter-Creditor Agreement (ICA), which ensure collective decision-making. Based on the financial assessment, restructuring measures, such as interest rate reductions, extended loan tenures, or partial debt waivers,

are negotiated and implemented under the supervision of a Monitoring Committee. One of the significant advantages of this non-statutory approach is its flexibility<sup>5</sup>.

Since there is no formal court involvement, the negotiations between the debtor and creditors can proceed at their own pace, allowing for customized solutions. However, there is no legal backing to force parties to comply. This freedom comes at the expense of the agreements' reduced enforceability. In practice, this can prolong discussions or even lead to the failure of the restructuring process, as creditors may hold conflicting views on the proposed terms. Moreover, the lack of statutory oversight reduces transparency and accountability, leaving no formal legal recourse in cases of default. While the non-statutory nature of CDR provides flexibility, it ultimately undermines its efficiency in ensuring timely and binding debt resolution.

---

## B. IBC (STATUTORY MECHANISM):

IBC provides a detailed framework of legislation to provide a structured process for the resolution of insolvency and bankruptcy in India.

The IBC is a law enacted by the Indian Parliament in the year 2016 and is intended to apply the process of formal law to address corporate insolvency through the application of the 'Corporate Insolvency Resolution Process (CIRP)<sup>6</sup>'. According to the IBC, a "Committee of Creditors (CoC)" must be established to carry out the procedure, determine whether the firm should be liquidated or reformed, and oversee the process.

---

<sup>5</sup>TaxGuru, 'Overview of Corporate Debt Restructuring (CDR)' (TaxGuru, 9 August 2022) <https://taxguru.in/company-law/overview-corporate-debt-restructuring-cdr.html> accessed 23 November 2024.

<sup>6</sup> Insolvency and Bankruptcy Board of India, 'FAQs on Corporate Insolvency Resolution Process (CIRP)' (24 August 2023) <https://ibbi.gov.in/uploads/faqs/CIRPFAQs%20Final2408.pdf> accessed on 23 November 2024.

Since it's a statutory process, the process is enforceable by law, with clear timelines and penalties for non-compliance.

It also brings about more transparency in the process since the process is supervised by a Resolution Professional (RP)<sup>7</sup>, and the decisions of the CoC are under judicial oversight. More importantly, the IBC has a 'time-bound framework', requiring that insolvency resolution be completed within 330 days, including appeals. This helps prevent companies and creditors from being bogged down in indefinite negotiations, as is often the case with non-statutory frameworks like CDR.

## 2.2. PROCEDURE ADOPTED AND TIMELINE DIFFERENCES

### *a) CDR: Initiation, Negotiation, and Outcomes:*

The CDR process commences when a distressed company voluntarily approaches its creditors with a restructuring proposal. Once this proposal is acceptable to the creditors, the process continues outside of court, and debtor-creditor negotiations may be conducted on an informal basis. The key stages of CDR are as follows:

1. *Initiation:* The debtor company seeks to invoke CDR, and the creditors constitute a committee to deliberate on the proposal.
2. *Negotiation:* The creditors of the company negotiate various terms with the debtor company like debt rescheduling, reduction in interest rates, and debt forgiveness.

---

<sup>7</sup> Manupatra, 'Appointment, Role, and Powers of Interim Resolution Professional (IRP) and Resolution Professional (RP)' <http://student.manupatra.com/Academic/ReadyReckoner/Insolvency-&-Bankruptcy/Appointment-Role-and-Powers-of-IRP-RP.htm> accessed 24 November 2024



3. *Outcome*: If the creditors agree upon it, then the debtor company signs a restructuring agreement. But if the creditors reject the proposal, then the debtor company may face the hazard of liquidation or further legal proceedings.

The process is strictly subject to the accord between the debtor and creditors, and it usually does not have a stated timeline. This process gives flexibility, but the result will take time, and the company will stay in distress for a longer period if creditors carry conflicting interests.

***b) IBC: Corporate Insolvency Resolution Process (CIRP):***

Under the IBC (insolvency process), the CIRP procedure is considerably more formal and time stamped. The procedure begins when a creditor or even the debtor accepts an insolvency petition, and a "Resolution Professional" (RP) is designated. An RP is tasked with taking over the company's management and is required to form a "Committee of Creditors"<sup>8</sup> (CoC) so that they can choose the best course of action. The process of CIRP under the IBC is divided into the following stages:

1. *Application Filing*: Either the financial creditor or the debtor files an insolvency application before the 'National Company Law Tribunal (NCLT)<sup>9</sup>.
2. *Admission*: After accepting the application, the NCLT designates an Resolution Professional to oversee the procedure.
3. *Creation of the Resolution Plan*: The RP then creates a resolution plan that the CoC must adopt.

---

<sup>8</sup> Investopedia, 'Creditor's Committee' <https://www.investopedia.com/terms/c/creditors-committee.asp> accessed 23 November 2024.

<sup>9</sup> National Company Law Tribunal, 'Official Website of NCLT' <https://nclt.gov.in/> accessed 22 December 2024.

4. *Voting by CoC*: Once the CoC decides to approve it, the resolution plan is referred to the NCLT for final approval.
5. *Result* : If a resolution cannot be reached in a reasonable amount of time, the firm is liquidated or enters into a successful resolution (debt restructuring).

The IBC is designed to ensure that the entire process is concluded within '330 days<sup>10</sup>', as mandated under Section 12 of the IBC, 2016, which includes the completion of the Corporate Insolvency Resolution Process (CIRP) along with any appeal or extension. This time-bound approach aims to minimize uncertainty, preserve value, and facilitate quicker resolution. Sections 7, 9, and 10 govern the initiation of insolvency proceedings by financial creditors, operational creditors, and corporate applicants, respectively. Additionally, Section 29A imposes restrictions on ineligible resolution applicants to maintain the integrity of the process. By ensuring adherence to these statutory timelines, the IBC seeks to prevent prolonged distress for both debtors and creditors, fostering a more efficient insolvency resolution framework.

---

<sup>10</sup> Adv Prasad Warkar, 'Extension of CIRP Period to Start from the Date of Order Allowing Such Extension Instead of 180th/270th Day' (IBCLaw) <https://ibclaw.in/extension-of-cirp-period-to-start-from-the-date-of-order-allowing-such-extension-instead-of-180th-270th-day-by-adv-prasad-warkar/#:~:text=As%20per%20section%2012%20of%20IBC,pursuing%20the%20legal%20proceedings%2C%20if%20any> accessed 24 November 2024

### 3. CHALLENGES AND CONFLICTS

The parallel existence of the Corporate Debt Restructuring (CDR)' and Insolvency and Bankruptcy Code (IBC)' systems pose significant challenges and conflicts, particularly with India's financial landscape changing rapidly. Lately, 'overlapping mechanisms' have created concern that renders it unclear which system to pursue in the case of distressed companies. A series of cases have highlighted that this challenge, demonstrating the inefficiency of selecting between the two frameworks, is and remains. For instance in *Innoventive Industries Ltd. vs. ICICI Bank (2017)*<sup>11</sup>, is among the first landmark cases decided under the IBC. Here, the Hon'ble Supreme Court took note of supremacy of the IBC over any other laws and mandated that the Scheme of the IBC be a singular one for all.

#### 3.1 IMPLEMENTATION OVERLAPS

The most significant development in the debate on CDR and IBC was when the Government in 2023 'streamlined insolvency laws' by phasing out CDR and urging companies to opt for IBC-according to reports in several news dailies<sup>12</sup>. This decision came at the back of delays in the 'CDR process', which failed to administer expeditious resolutions for distressed companies. The 'RBI provided definitions of voluntary restructuring that could take place under CDR, but the process between creditors and debtors was frequently drawn out with uncertain results.

**a. Confusion at the Stakeholder Level:** One of the significant sources of confusion among stakeholders is the 'inadequate clarity in choosing the right mechanism.' In cases where

---

<sup>11</sup> *Innoventive Industries Ltd v ICICI Bank (2017) Civil Appeal No. 8337-8338 of 2017 (SC)*

<sup>12</sup> Reserve Bank of India, 'Revised Guidelines on Corporate Debt Restructuring (CDR) Mechanism' (RBI, 23 August 2001) <https://www.rbi.org.in/upload/notification/pdfs/67158.pdf> accessed 23 February 2025.

the companies were in a fiscal crisis, where they got caught between choosing CDR or invoking IBC. Often the IBC process is selected, signifying a greater preference for a more formalized and legally enforceable framework over a voluntary, often protracted CDR negotiation. The article<sup>13</sup> observed that debtor-creditor negotiations in CDR can be too lengthy, such that when meaningful resolution comes about, the solvency of the company has been eroded.

*b. Timelines and Efficiency:* The timelines under IBC rank as one of its major strengths. The very fact that the process has a defined timeline, such as 180 days to resolve and a further 90 days within IBC<sup>14</sup>, makes its framework much more structured than the relatively flexible and rather lengthy process under CDR. The efficiency of this was shown in the resolution of companies like Essar Steel where the IBC ensured the process could be resolved within its stipulated timeline. However, progress on CDR mechanisms was often criticized for making no headway.

*c. Legal Uncertainty:* According to the report 'Business Standard' in 2023<sup>15</sup>, Legal intricacies surrounding the CDR agreements and the IBC were binding in nature. In fact, at the time of the entry of these companies under CDR into IBC, there were situations where pre-existing CDR agreements were ignored, and court battles ensued. This overlap

---

<sup>13</sup> Cyril Amarchand Mangaldas, 'Jet Set and Grounded: Supreme Court Orders Liquidation of Jet Airways' (Cyril Amarchand Mangaldas, November 2024)

<https://corporate.cyrilamarchandblogs.com/2024/11/jet-set-and-grounded-supreme-court-orders-liquidation-of-jet-airways/> accessed 21 February 2025.

<sup>14</sup> Adv Prasad Warkar, 'Extension of CIRP Period to Start from the Date of Order Allowing Such Extension Instead of 180th/270th Day' (IBCLaw) <https://ibclaw.in/extension-of-cirp-period-to-start-from-the-date-of-order-allowing-such-extension-instead-of-180th-270th-day-by-adv-prasad-warkar/#:~:text=As%20per%20section%2012%20of%20IBC,pursuing%20the%20legal%20proceedings%2C%20if%20any> accessed 24 November 2024

<sup>15</sup> 'Debtors resolving cases before admission under insolvency law: IBBI' *Business Standard* (20 February 2024) [https://www.business-standard.com/companies/news/debtors-resolving-cases-before-admission-under-insolvency-law-ibbi-124022000664\\_1.html](https://www.business-standard.com/companies/news/debtors-resolving-cases-before-admission-under-insolvency-law-ibbi-124022000664_1.html) accessed 26 November 2024.

between voluntary restructuring under CDR and mandatory resolution under IBC adds another layer of complexity, making it hard for creditors to rely on agreements made under the CDR framework.

### 3.2 STAKEHOLDER INTEREST

The ‘debtor-centric approach’ of CDR, which often focuses on giving the distressed company some leeway for recovery, is contrasted sharply with the ‘creditor-centric approach’ of the IBC. Recent ‘reports’<sup>16</sup> have noted that the ‘debtor-friendly nature’ of CDR sometimes tends to prolong the resolution process because the company and creditors get entangled in a process of ‘lengthy negotiations’ to settle the matter<sup>17</sup>. However, they seem dissatisfied because this model does not guarantee recovery within a specific period.

*a. Debtor vs. Creditor-Centric Approaches:* As companies increasingly find themselves in bankruptcy, their ‘priority shifts from long-term recovery’ to short-term resolution. The ‘Ruchi Soya case’<sup>18</sup> was one such instance where, preferring IBC, creditors opted out of CDR. Creditors in preference were keen on a quicker resolution process under the IBC as opposed to being bogged down for years under the CDR process. For instance, here, with IBC, it was the structured timeline that appealed to creditors more than the leeway given by CDR; they surmised that they could get speedy recoveries.

---

<sup>16</sup> Bank for International Settlements, ‘Strengthening the Financial Architecture: Lessons from the Recent Crisis’ (BIS, 14 August 2012) <https://www.bis.org/review/r120814a.pdf> accessed 21 February 2025.

<sup>17</sup> International Monetary Fund, ‘The Design of Financial Systems: Towards a Synthesis of Function and Structure’ (IMF Staff Position Note, 2010) <https://www.imf.org/external/pubs/ft/spn/2010/spn1002.pdf> accessed 21 February 2025

<sup>18</sup> ICSIIIP, ‘Insolvency of Ruchi Soya: A Brief Analysis’ (2020) vol 9 issue 5 [https://icsiiip.in/panel/assets/images/research\\_articles/16331662252768INSOLVENCY%20OF%20RUCHI%20SOYA,%20A%20BRIEF%20ANALYSIS%20volume9-issue5\(2\)-2020.pdf](https://icsiiip.in/panel/assets/images/research_articles/16331662252768INSOLVENCY%20OF%20RUCHI%20SOYA,%20A%20BRIEF%20ANALYSIS%20volume9-issue5(2)-2020.pdf) accessed 25 November 2024.

*b. Financial Institutions:* These two frameworks are caught in the middle. Within the context of the 'Jet Airways insolvency case<sup>19</sup>,' it could be seen that the largest creditor the 'State Bank of India (SBI)' showed a preference for the IBC mechanism, simply because the outcomes were clearer and faster compared to CDR. These debtor-creditor preference clashes are manifested in the ongoing debates on which framework better serves the overall interest of India's financial stability. The 'conflicting expectations of financial institutions' that face diverse challenges in terms of risk appetite and recovery timelines further complicate the situation.

*c. Role of Regulatory Bodies:* Regulatory bodies like the RBI and Insolvency and Bankruptcy Board of India<sup>20</sup> notification sought to strengthen the IBC framework by limiting the scope of CDR, which was becoming increasingly redundant. The 'NCLT,' which adjudicates the IBC process, has also seen 'delays and capacity issues' in managing the increasing number of insolvency cases, as highlighted in a recent report on insolvency proceedings in India.' Adding to those inefficiencies is the sheer and swelling number of insolvency professionals, too, which fuels inconsistencies in the outcomes expected of either. The challenges of 'implementation overlaps' and 'stakeholder conflicts' remain significant hurdles in India's insolvency ecosystem. The recent legal and regulatory developments- such as the government's push for a more streamlined and robust IBC process reflect the shifting winds away from the voluntary nature of CDR in favor of a more formal and structured insolvency resolution process. Therefore, these challenges

---

<sup>19</sup> S N Thyagarajan, 'Supreme Court says Jet Airways case an eye-opener, suggests reforms to IBC' (Bar and Bench, 8 November 2024) <https://www.barandbench.com/news/supreme-court-says-jet-airways-case-eye-opener-suggests-reforms-ibc> accessed 26 November 2024.

<sup>20</sup> Economic Laws Practice, 'In a Big Policy Shift, RBI Allows Asset Reconstruction Companies to Be Resolution Applicant under Insolvency and Bankruptcy Code 2016' (ELP, 11 October 2022) <https://elplaw.in/leadership/in-a-big-policy-shift-rbi-allows-asset-reconstruction-companies-to-be-resolution-applicant-under-insolvency-and-bankruptcy-code-2016/#:~:text=On%20October%2011,of%20the%20Act> accessed 26 November 2024.

must be mitigated by addressing jurisdictional conflicts and stakeholder disagreements arising out of the coexistence of two frameworks. Streamlining insolvency laws would create an efficient, more streamlined system to overcome most of the issues now present and provide smoother and faster corporate debt resolutions.

## 4. COMPARATIVE ANALYSIS

To understand the interplay of Corporate Debt Restructuring (CDR) and the Insolvency and Bankruptcy Code (IBC) in India, comparative analysis across the international economy and the outcomes of both mechanisms are essential. The subsequent section delves into international restructuring frameworks to draw lessons for India by comparing the efficiency and recovery outcomes of CDR and IBC.

### 4.1 INTERNATIONAL PRACTICES

While countries with well-established insolvency regimes have introduced diverse structural models to deal with the issue of corporate distress, a thorough examination of practices in the United States and the United Kingdom would prove helpful to India.

---

#### UNITED STATES:

Chapter 11 Bankruptcy Framework: The U.S. Chapter 11 of the Bankruptcy Code<sup>21</sup> permits businesses to be reorganized so they may continue to operate and gradually pay back their debts; individuals can also use it. A Chapter 11 case is started in the bankruptcy court by a petition, which can be either involuntary (by creditors) or voluntary (by the debtor), 11 U.S.C. Section 301, 303. All information pertaining to assets, obligations, income, and a statement of financial affairs should be filed with the bankruptcy court by the debtor; the latter will require an extra step for persons, which is the inclusion of credit counseling certificates. Unless the court decides differently, the debtor-in-possession often maintains control over their firm and takes on many of the responsibilities of the trustee 11 U.S.C. Section 1107. It is necessary to file a disclosure statement and a

---

<sup>21</sup> U.S. Courts, 'Chapter 11 Bankruptcy Basics' (United States Courts) <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics> accessed 26 November 2024



reorganization plan, which the creditors then vote on. Small firms benefit from simplified provisions, such as debt restrictions and expense reductions. While the U.S. trustee makes sure that the case follows the proper processes, creditor committees might act as the representatives of unsecured creditors. The debtor is allowed to provide a workable and sincere plan for a maximum of 120 days, after which it must be approved by at least one impaired class of creditors 11 U.S.C. Section 1121<sup>22</sup>. Upon filing, an automatic stay, stops all collection efforts, giving the debtor time to engage in negotiations 11 U.S.C Section 362. Confirmation of the plan discharges the majority of prepetition claims. The debtor files for between four and twelve months while performance under the plan is reported. Such a modification must be approved pursuant to section 112 (7) of the Code. All in all, it is an elaborate process with lots of hurdles aimed at negotiating a compromise between the debtors and their creditors.

---

#### UNITED KINGDOM (RESTRUCTURING FRAMEWORKS, 2020):

The UK has “The Corporate Insolvency and Governance Act 2020 (CIGA 2020)<sup>23</sup>”, promulgated on June 25, 2020, was an attempt to respond to difficulties faced by businesses arising due to the COVID-19 pandemic. It incorporated some permanent measures as well as temporary measures aimed to assist corporate insolvency and governance. Among the permanent features of the Act was the introduction of a statutory moratorium that permits companies to have a 20-business-day period before their process for formulating a rescue plan can be obstructed by creditors, extendable for additional periods with or without creditor consent. A new restructuring plan was

---

<sup>22</sup> United States Courts, ‘Court Programs’ (United States Courts) <https://www.uscourts.gov/court-program> accessed 21 February 2025.

<sup>23</sup> House of Commons Library, ‘Corporate Insolvency and Governance Act 2020: A Briefing’ (House of Commons Library, July 2020) <https://researchbriefings.files.parliament.uk/documents/CBP-8971/CBP-8971.pdf> accessed 27 November 2024.

introduced that allows courts to approve restructurings even when classes of dissenting creditors disapprove, using a cross-class cram-down mechanism. Moreover, in a bid to ensure continued supply of essential goods and services during the recovery period, termination clauses in contracts with suppliers were made void. On the temporary measures, directors were provided a personal exemption against wrongful trading liability for specified periods, statutory demands were voided, and restrictions were made on presenting winding-up petitions so as to protect viable businesses. Corporate governance flexibility was also introduced, permitting virtual AGMs and extending the deadlines for filing accounts to reduce the strain on administrative duties. Although the Act received plaudits for reforming UK insolvency law, concerns about its complexity and doubtful costs to SMEs were raised. The early use of the restructuring tools was limited, possibly because extensive government support measures were available during the pandemic. Overall, CIGA 2020 will seek to make the corporate rescue framework in the United Kingdom stronger and provide businesses with necessary tools to tackle financial distress while balancing creditors' interests. Their long-term effectiveness will be evaluated as the economic terrain shrinks in a post-pandemic world.

---

INDIA (INSOLVENCY AND BANKRUPTCY CODE, 2016)<sup>24</sup> :

India's IBC is a game-changing reform. It has made the corporate insolvency process much better, but the following implementation challenges still linger:

- a. Creditor-Driven Process: Rather than a debtor-in-possession model like that used in the U.S., a creditor-driven process is initiated in India wherein control of the debtor's assets and management is handed over to a resolution professional.

---

<sup>24</sup> Insolvency and Bankruptcy Board of India, *The Insolvency and Bankruptcy Code, 2016 (updated to 28 April 2022)* (IBBI 2022) <https://ibbi.gov.in/uploads/legalframework/2022-04-28-181717-r28jw-af0143991dbbd963f47def187e86517f.pdf> accessed 23 November 2024

- b. Moratorium: Similar in nature to that under the U.S. and UK systems is a moratorium granted under the IBC but has sometimes been delayed, thus proving to be a crucial bottleneck.
- c. Resolution Framework: Approval of resolution must be by 66% of creditors, leading to certain impediments for delaying resolution.
- d. Limited Restructuring Flexibility: India is devoid of tools like cross-class cram-down that may help in smoothing the dissenting creditors' path-which other countries like the United States and the UK can very well execute.

## 6. CDR AND IBC - OUTCOMES

A comparison between the CDR mechanism and IBC in India sheds light on how both differ in terms of their relative effectiveness in dealing with corporate distress. Case studies drawn from the analysis show some differences in recovery rates, efficiency, and stakeholder satisfaction.

- a. Recovery Rates and Efficiency: Recovery rates were always low when CDR was in practice because of its 'non-statutory nature' and 'long timelines.' As per RBI, many companies that underwent Corporate Debt Restructuring (CDR) failed to arrive at a successful resolution, and at any rate, some of those enjoying several rounds of restructuring are not out of the woods yet<sup>25</sup>.
- b. In contrast, IBC, with its 'time-bound resolution process', has demonstrated higher recovery rates. A 2023 analysis by the Insolvency and Bankruptcy Board of India (IBBI) reported an average recovery rate of '33% for financial creditors', significantly higher than CDR outcomes<sup>26</sup>.

From this comparative analysis, it is quite evident that the recovery rates are much better with IBC and its overall efficiency along with stakeholder confidence is higher than that of CDR. Drawing from the best international practices, India can further perfect the framework for its IBC to resolve the lingering challenges of this new mechanism. The IBC can become a benchmark to change the face of insolvency resolution globally by defeating old legacy systems such as the famed legacy system of CDR. Hence, in the case of IBC,

---

<sup>25</sup>Gopika Gopakumar, 'RBI moves to wind up CDR system' *Mint* (4 March 2018) <https://www.livemint.com/Industry/k2S0MIBwJ1Imv7x6PXPxSJ/RBI-moves-to-wind-up-CDR-system.html> , accessed on 27 November 2024

<sup>26</sup> Indian Institute of Corporate Affairs, 'IBC Brief Q3 2023-24' (2024) <https://iica.nic.in/images/Report-2024/IBC-Brief-Q3-2023-24.pdf> accessed 27 November 2024

being a statutory, time-bound process, it will offer a much more structured, transparent, and enforceable approach to corporate debt restructuring. While being rigorous, the CIRP process is sure to hold a clear path forward so that corporate distress is resolved within a well-defined period. Therefore, in the background of the dynamic landscape of insolvency in India, this framework of IBC provides a more pragmatic and efficient solution than the non-statutory CDR mechanism.

The challenges of 'implementation overlaps' and 'stakeholder conflicts' remain significant hurdles in India's insolvency ecosystem. The recent legal and regulatory developments- such as the government's push for a more streamlined and robust IBC process reflect the shifting winds away from the voluntary nature of CDR in favor of a more formal and structured insolvency resolution process. Therefore, these challenges must be mitigated by addressing jurisdictional conflicts and stakeholder disagreements arising out of the coexistence of two frameworks. Streamlining insolvency laws would create an efficient, more streamlined system to overcome most of the issues now present and provide smoother and faster corporate debt resolutions.