Harmonizing Company Law and Insolvency and Bankruptcy Code: A stepping-stone for Sustainable Corporate Governance

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Abstract: The research explores the complex relationship between Company Law and the Insolvency & Bankruptcy Code (IBC) in India, revealing differences and their effect on sustainable corporate governance. The study examines the historical development, objectives, and provisions of both legal regimes underscoring the call for harmonization. It is through identifying a lot of challenges occasioned by a creditor-centric approach under the IBC that the study suggests some recommendations to address stakeholder imbalances, promote shareholder rights as well as induce industry expertise in decision-making processes. The author also looks at how current practices of corporate governance affect minority shareholders henceforth he sets out recommendations meant to enhance an all-inclusive and open framework for this task. The expected results are equitable decisions enabled by minority shareholders and a sustainable business environment. To finish with, avenues of further investigation are given which emphasize empirical research, comparative analyses, and alternative models for shareholder participation to provide more inclusive information about them.

Keywords: Company Law, Insolvency & Bankruptcy Code, Corporate Governance, Committee of Creditors, Minority Shareholders, Stakeholder Representation, Sustainable Business Environment Stakeholder Imbalance.

I. INTRODUCTION

Company Law and Insolvency & Bankruptcy Code stand as sentinel pillars, governing the legal landscape of corporate entities. As commerce evolves and economic ecosystems transform, the necessity for robust legal frameworks becomes imperative.

Company Law is a legal framework that outlines the formation to dissolution of a corporate entity including structure, management, and operation of companies, and serves as the bedrock of corporate governance. It maps out the rights and responsibilities of stakeholders, ensuring a balance of power and accountability.

The company law was enacted during the Industrial Revolution and was adopted from British law when we needed a law for regulating business entities, ensuring fair practices, and fostering investor confidence. Over the years, it has changed its shape to adapt to technological advancements, globalization, and dynamic market conditions.

After the economic recession in 2008 and a decrease in FDI India had to open the market and increase the index of ease of doing business to drive investment into the country. As a result in 2016, a culmination of laws that dealt with sick companies was brought together as IBC (insolvency and bankruptcy code), the objective was not only ease of doing business but also timely resolution, maximizing asset value and safeguarding the interests of creditors

However, this has raised pertinent questions about harmonious coexistences due to its basic disparities that have been raised by objective

The goal of the company law is to protect the stakeholders such as the director and promoters when compared to IBC which talks about COC having the major hold while winding up.

The research aims to identify areas where convergence is possible, We will be delving into aspects as to which supersedes when and along with the impact it has on the business world. Further exploring mechanisms to strike a balance between the protection of stakeholders' interests and the expeditious resolution of financial distress. By understanding the intricacies of both Company Law and the IBC, the research seeks to delineate a path toward a more coherent and

effective legal framework to create sustainable corporate governance.

II.LITERATURE REVIEW

In the literature review part of our study, we closely examine Company Law and the Insolvency & Bankruptcy Code, and the relationship along disparities between the laws. We aim to clearly explain the major objectives, provisions, and approaches of both. Through this section, we have referenced a variety of legal articles, Judicial pronouncements, academic studies, and expert opinions. These resources are used to put forward a narrative of sustainable corporate governance.

Among many major objectives, this research focuses primarily on ease of doing business, protecting the investors, preventing fraud, and further enhancing corporate governance. We believe that these topics need to be addressed, understood in depth, and given suitable guidelines for working under these laws.

1. Company Law: Overview

India's company laws are governed by the Companies Act of 2013. Compared to the Companies Act of 1956, the Act introduced and implemented major amendments to improve investor protection, corporate governance, and transparency. The Companies Act, 2013's preamble states that it is the fundamental legislation that controls the formation, operation, and dissolution of companies and the interactions between the public, the government, and the company's shareholders. This is a fundamental piece of legislation.

Liquidation and Windup Process

A major area of overlap within these laws is due to the process and roles of stakeholders during the dissolution of companies, which can occur either voluntarily by the company's choice or by an order of the court. The process of winding up a company is thoroughly outlined in sections 270 to 366 of the Companies Act, which prescribes the legal framework for initiating and conducting winding-up proceedings. The act provides for various types of Liquidation and Winding-Up Processes such as:

Voluntary winding up is initiated by the company itself, typically through special resolutions[1] passed by its members. On the other hand Winding-Up by The Tribunal (National Company Law Tribunal - NCLT) on the grounds of the company's inability to pay debts, or for reasons deemed just and equitable among others, etc.[2]

In case of winding up by the Tribunal, an Official Liquidator is appointed to oversee the company's assets and liabilities.[3]The concerned official is tasked with compiling and submitting a detailed report to the Tribunal regarding the company's affairs.[4]Following the resolution of the company's affairs, the Tribunal then has the authority to issue an order formally dissolving the company.[5]

Roles and Responsibilities of Stakeholders

In this, we enlist various roles and responsibilities of directors, shareholders, and creditors during the winding-up process of a company, in lieu of Indian company law. We analyze each stakeholder's specific duties to ensure a systematic and fair liquidation, drawing upon legal precedents and provisions to explain their obligations.

- Directors: Upon deciding to wind up or liquidate a company the role of the director is to cooperate with the liquidator and They are responsible for handling the control of the company's assets to ensure a smooth liquidation process is possible.[6] which was further stated in the case of Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwala (1976).
- Shareholders: In case of voluntary winding up, the shareholders must cast a majority vote to initiate the process. Moreover, they are expected to participate in meetings held throughout the winding-up process to ensure a systematic winding-up process.[7]
- Creditors: The company law provides a clear framework to safeguard creditors' rights, detailing their roles, rights, and obligations, which include the order of payments in section 53, prioritizing secured creditors. Additionally, creditors have a right to be notified and attend the meeting where

[1] Companies Act, 2013, Section 270-303
[2] Companies Act, 2013, Sections 272-365:
[3]Companies Act, 2013, Section 359
[4] Companies Act, 2013,Section - 363
[5] Companies Act, 2013,Section - 366
[6]Companies Act, 2013,Section - 281 and 283
[7] Companies Act, 2013,Section - 306

the resolutions for winding up are discussed. Moreover, they have the power to scrutinize the actions of promoters, directors, etc[8] and they have access to the company's[9] financial records and documents.

In the case of Manglam Plywood Ltd. v. Patheja Forgings and Auto Parts Mfg. Co. Ltd. (2019) emphasized the importance of the right of creditors to receive notices and be informed about the proceedings during the insolvency process.

This highlights that while the company is ultimately transferred to the Liquidator once the winding-up decision is finalized, however till then the rights of shareholders remain safeguarded throughout the process. Shareholders retain their decision-making capabilities, provided there has been no engagement in fraudulent activities

2. IBC

According to the preamble of IBC, to ensure that reorganization and insolvency resolution is conducted within a specified timeframe, to maximize the value of a debtor's assets, and to establish an equitable setting for all stakeholders. The landmark case of Swiss Ribbons Pvt. Ltd. v. Union of India stands out, where the Supreme Court upheld the constitutional validity of the Insolvency and Bankruptcy Code. The court provided clarification on the processes and legitimacy of the act.

The Corporate Insolvency Resolution Process (CIRP)

This is a multi-step process, which Initiates by filing an application under section 6 by financial creditor/s as upheld in the case of Canara Bank v. Deccan Chronicle Holdings Ltd. (2019), it showcases the right of financial creditors to initiate insolvency proceedings if there is a default in the repayment.[10] Subsequently, the NCLT reviews the application and gives a verdict on whether to accept or reject it based on merit, If it is admitted then an Interim Resolution Professional is appointed[11] and a moratorium [12] is issued, this effectively hands over the control of assets from management to IRP who then has the right and responsibility to take the major decision during the process.

Once the CIRP is underway, the IRP initiates the process by informing creditors and forming a Committee of Creditors (COC) which primarily comprises financial creditors[13]—those entities or individuals to whom debtor[14] owes a financial debt. Furthermore, it is important to note shareholders including preferential shareholders are excluded from the CoC as stated in the case of EPC Constructions India Limited through its Liquidator – Abhijit Guhathkurtha v. M/s Matix Fertilizer and Chemicals Limited. However, there is a stipulated provision to allow operational creditors to be included in the CoC when financial creditors are insufficient in number, who further can either appoint an IRP as RP or a new RP via voting.

The IRP handovers the management to RP, and further RP invites resolution plans from prospective resolution applicants which are evaluated by the CoC then votes[15] on a feasible plan. If the resolution plan is approved it requires the approval of the National Company Law Tribunal[16]. In a situation where a resolution plan fails to be approved by Coc or the NCLT, or if no plan is put forward within a given timeline, the company is then directed toward liquidation.[17]

Roles and Responsibilities stakeholders

- Shareholder: The IBC does not explicitly define the term "shareholder", but it gives a distinction between the role of preferential and equity shareholders. A preferential shareholder can be part of the CoC if their shares are redeemable[18].

[8]Companies Act, 2013, Section 282
[9]Companies Act, 2013, Section 291
[10] It can be filled by operational creditor, or the corporate debtor themselves,
[11] Insolvency and Bankruptcy Code, 2016 (31 of 2016), Section 16
[12]Insolvency and Bankruptcy Code, 2016 (31 of 2016), Section 14
[13] Insolvency and Bankruptcy Code, 2016 (31 of 2016),Section 21
[14]Insolvency and Bankruptcy Code, 2016 (31 of 2016), Section 5(7)
[15]Insolvency and Bankruptcy Code, 2016 (31 of 2016), Section 21(6) and 30(4))
[16] Insolvency and Bankruptcy Code, 2016 (31 of 2016),SECTION 31
[17] Insolvency and Bankruptcy Code, 2016 (31 of 2016),Section 32, 33
[18] Abhijit Guhathkurtha v. M/s Matix Fertilizer and Chemicals Limited ,Company Petition (I.B.) No. 156/KB/2022

On the other hand, any other shareholder including those holding unredeemed preferential shares does not have any right to vote or to participate in the CoC further in most cases, approval of the Resolution plan by shareholders is not necessary as circular by mca.[19] While NCLT might take into consideration the opinions of shareholders in the final approval of the resolution plan—particularly if significant ownership or structural changes are proposed at its discretion, however in most cases, they don't have much influence. The same can be seen in the decision of NCLAT in the case of V. Padmakumar v. Stressed Assets Stabilization Fund (SASF) (2020)

- Role of Director: Post-moratorium, the directors are expected to hand over the entire management and offer complete cooperation with the RP during the process [20], to provide information and support without harming the interests of creditors, the same has been emphasized through various cases such as M/s. Innoventive Industries Ltd. v. ICICI Bank (2017), M/s. Emaar MGF Land Limited v. Aftab Singh (2019)
- Creditor: Unlike The creditors[21] who play a significant role in the context of the Insolvency and Bankruptcy Code (IBC) during the Corporate Insolvency Resolution Process (CIRP) which encompasses Voting Rights on key decisions during the CIRP which includes the appointment of RP, and approval of the resolution plan. The Corporate Insolvency Resolution Process gives decision-making power to the Committee of Creditors, making them primary arbiters of the company's future. The functions of the directors are limited to providing mandatory assistance and cooperation to the RP, which was also highlighted in the case of M/s. Essar Steel India Ltd. v. Satish Kumar Gupta (2019).

Another important provision of IBC is section 238 of the code which functions as a non-obstante clause This provision ensures the supremacy of the Code in the case of conflicting clauses within this legislation or any other law. which was further upheld by the Supreme Court in the case of Pr. Commissioner of Income Tax vs Monnet Ispat and Energy Ltd.

III. METHODOLOGY

We look closely at a range of primary sources like legislature text ie., Insolvency and Bankruptcy Code (IBC), focusing on objectives, resolution processes, creditor rights, and corporate insolvency resolution and the Company Act 2013 where we focus on aspects related to corporate governance, shareholder rights, regulatory compliance, and CSR obligations. Further, delve into landmark judicial pronouncements from various legal forums, including the Supreme Court, High Courts, and National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), to understand the dynamic changes and adaptations taken by the law which any practical challenges faced by companies in reconciling the provisions of Company Law and the IBC.

Available secondary data was extensively used for the study. The investigator procures the required data through a secondary survey method. Different news articles, Books, and the Web were used which were enumerated and recorded. These sources further help us dissect the important provisions and court decisions related to company management and insolvency rules.

Our method blends insights from Judicial pronouncements, amendments in the law, and thoughts from academic experts including the thoughts of a few directors. This mix of information guides us as we try to harmonize the differences between Company Law and the Insolvency & Bankruptcy Code, aiming to find clear and practical ways to align them better and create sustainable corporate governance. The process involves looking at diverse perspectives to identify where and how Company Law intersects with the Insolvency & Bankruptcy Code.

Overall, our methodology merges legal theory with practical analysis, providing a nuanced understanding that informs our recommendations for aligning corporate governance with contemporary legal requirements. We ensure our study is professional,

[19] Circular published by IBC on MCA website https://www.mca.gov.in/Ministry/pdf/CircularIBC_25102017.pdf

[20] Insolvency and Bankruptcy Code, 2016 (31 of 2016),Section 14

[21] Insolvency and Bankruptcy Code, 2016 (31 of 2016),Section 21

insightful, and directly applicable to current business law practices.

IV. STEPS TOWARDS SUSTAINABLE CORPORATE GOVERNANCE

Our first step in creating sustainable corporate governance is to establish a balanced distribution of rights among all the stakeholders.

Ever since the enactment of the Insolvency and the Bankruptcy Code, 2016 (IBC), there has been a shift towards a creditor-oriented debt resolution legislation, which says that once a company undergoes CIRP, COC assumes all powers and makes the decisions in regard to the company. The legitimacy of CoC's decisions aren't questioned provided they comply with the objectives of the IBC itself.

However, the question arises how can the creditor gather the suitable know-how- of the commercial land that the company to make such crucial decisions especially while it's underwater, In most cases the creditor's primary focus might center on the recovery of their dues rather than the long-term viability of the company. Upon facing Liquidation 'the waterfall mechanisms' prescribed under IBC make sure, creditors are the first to be paid back. This situation points out the need for corporate governance that combines creditors' benefits with a broader vision for the recovery of the company as well.

In the scenario of delisting of the company, equity shares are completely written off which impacts the shareholders (the general public) who have invested in the belief of the company's potential. This type of situation often arises since creditors' repayment is prioritized. But the shareholders but shareholders are left without a say or a viable exit strategy. Furthermore, the lack of Reverse Book Building fails to offer a mechanism for shareholders to regain their investments[22]which was the case in CIRP of DHFL, there was a complete reduction in the paid-up share capital of the company, that too for zero[23]

The case of Jaypee Kensington Boulevard v. NBCC (India) Limited[24]. The resolution plan resulted in a complete reduction of the paid-up share capital at a negligible cost and the same was even approved by the Supreme Court. This precisely shows unfair treatment to the public (minority shareholders) as they suffer the most of the loss.

Responding to these concerns, a report was published by SEBI in 2022, highlighting that minority shareholders occupy a marginalized position under IBC. They Lack any representation in the CoC and they do not have direct consent for any act as it is "deemed" to be given. While SEBI has proposed a protection framework to safeguard the shareholders, the implementation is still pending. [25]

Perhaps as an interim measure, the shareholder must be given a set percentage of voting rights within COC to ensure their interests are protected and their voices are heard in the company's resolution process.

Management issue :

Providing the roles and responsibility of the entire management to a singular Resolution Professional by the Insolvency and Bankruptcy Code raises substantive questions about this model, and yet the independence of the resolution professional's actions is certainly subject to question only by the COC or if he/she goes against the code.

However, the major question to arise here is, how can one individual, potentially lacking specific industry expertise, can guide a company towards profitability when a collective management team comprising industry experts with years of experience has failed to do so. Many countries including the UK give certain amounts of power to continue the process by existing management itself. This is evident in the verdict of System Building Services Group Limited [26]where The Chancery Division of the High Court of England and Wales has clarified the duties of directors/ management would be continued independent of, and run parallel to, the duties owed by an administrator or liquidator. The law reinforces the idea that effective

[22]Attention Shareholders Of Insolvent Companies - Here's What Your Paper's Worth By NDTV;

[23] Dewan Housing Finance Corporation Limited CP(IB)No. 4258/MB/C-II/2019

[24] Jaypee Kensington Boulevard ... vs Nbcc (India) Ltd AIRONLINE 2021 SC 224

[25] The (Negligible) Role of Shareholders in Corporate Insolvency By Umakanth Varottil
Url: https://indiacorplaw.in/2017/10/negligible-role-shareholders-corporate-insolvency.html

[26] *System Building Services Group Limited* [2020] EWHC 54 (Ch) CR-2017-005997

governance mandates more than one person to act as a fiduciary to the company's duties as they consider directors to be an important part of protecting and reviving the company.

Further, expecting IRP/RP to carry on the role of the director while suspending the original directors could be impractical. Mere cooperation and assistance from the suspended director to IRP/RP in the managerial and operations decisions may not suffice, especially when the company is on a downgrade point path as was highlighted in the Subasri Realty case. However, there should be clear guidelines for approving significant financial or any other transactions that might impact the firm vividly to avoid any financial fraud.

Further to enhance the current framework, we propose that COC must have an experienced ex-director or managerial person who can bring their years of experience to the table that could prove pivotal in making informed decisions that align with the company's long-term interests.

Finally, for Our last recommendation/suggestion, good governance principles must be implemented in corporate governance especially in cases of public companies, to instill transparency, and accountability that can help the shareholders have enough know-how and also create a sustainable business environment that balances the interests of creditors with the idea for corporate renewal.

V.IMPACT AND FUTURE RECOMMENDATIONS

The implementation of a creditor-centric approach under the Insolvency and Bankruptcy Code, 2016 (IBC), has significantly reshaped the dynamics of debt resolution in India. The prominence of the Committee of Creditors (CoC) in decision-making during the Corporate Insolvency Resolution Process (CIRP) has brought forth a streamlined mechanism. However, the impact of these changes on various stakeholders, particularly minority shareholders and the managerial aspects of distressed companies, requires careful consideration. The anticipated impact of implementing the suggested changes,

1. Balanced Decision-Making: The implementation of balanced stakeholder representation will lead to decisions that consider the interests of both creditors and shareholders, contributing to a fairer corporate governance framework.
2. Empowered Minority Shareholders: Enhanced shareholder participation and voting rights will empower minority shareholders, allowing them to voice their concerns and influence decisions that impact their investments.
3. Effective Industry Insight: Involving experienced ex-directors or managerial experts in the decision-making process will bring practical industry knowledge to the forefront, contributing to more informed and strategic decisions.
4. Transparent Delisting Process: - A transparent delisting process with a reverse book-building mechanism will provide clarity and fairness, ensuring that shareholders are adequately informed and have an exit option.
5. Guided Management during CIRP: Clearly defined guidelines for resolution professionals managing the company during the CIRP will promote responsible and ethical decision-making, minimizing the risk of financial fraud.
6. Sustainable Business Environment: The incorporation of good governance principles will contribute to the creation of a sustainable business environment, fostering trust among stakeholders and promoting long-term corporate success.

The recommendations outlined above aspire to strike a balance between creditor-centric approaches and the protection of minority shareholders. By addressing the concerns related to the managerial role of RPs and enhancing shareholder rights, the goal is to foster sustainable corporate governance practices in the evolving landscape of insolvency and debt resolution in India. These proposals aim to create an ecosystem that not only prioritizes the interests of creditors but also ensures fairness and inclusivity for all stakeholders involved in the corporate governance framework.

These measures aim to mitigate the identified impacts and contribute to the overall health of the corporate ecosystem in India.

VI.FUTURE RECOMMENDATIONS FOR RESEARCH

At first glance, there are promising areas to be explored that will aid in our understanding of the future landscape of corporate governance and

insolvency resolution. The first aspect is a requirement for research into the impact of such proposed regulatory frameworks as SEBI's minority shareholder protection framework. It would be advisable for empirical studies to evaluate the effectiveness of these safeguards on shareholders' representation within the Committee of Creditors (CoC) and their ability to protect their interests.

Extensional studies should examine how resolution professionals (RPs) have adapted their roles over time. Further investigations could explore whether more experienced ex-directors or managers should be included in the CoC to help them make informed decisions during the CIRP – Corporate Insolvency Resolution Process. Also, it is worth studying if in any way continuing with current management alongside RPs is beneficial, particularly where existing teams have proven adept at dealing with distressed businesses.

International comparative research, particularly concerning countries where there are established insolvency regimes like the UK, may provide useful insights. Comparative study might reveal what can be regarded as best practices in terms of balancing creditor rights.

VII.CONCLUSION

This study has examined various aspects in the rapidly changing field of corporate governance and insolvency resolution, shedding light on the effects of a creditor-driven approach and suggesting ways for a more sustainable platform.

The Insolvency and Bankruptcy Code (IBC) has certainly streamlined debt resolution through the Committee of Creditors (CoC), which is guided by the creditor-centric paradigm. Nonetheless, according to this study, there needs to be a change in stakeholder relations especially with regard to minority shareholders. These recommendations call for their improved representation, voting rights in the CoC, and better exit options that foster inclusive governance structures.

Consequently, suggestions have been made regarding resolution professionals' (RPs) increasing roles such as including experienced ex-directors within the CoC and preserving existing management. These recommendations help bring industry knowledge into decision-making during the Corporate Insolvency Resolution Process (CIRP) leading to more informed decisions and better outcomes.

The goal is that the corporate governance of insolvency and debt settlement can become fairer, more inclusive, and more sustainable by dealing with these frontiers. A well-balanced and dynamic governance model will be necessary in order to foster a resilient and upright corporate ecosystem as stakeholders negotiate the complex interactions between creditors, shareholders, and insolvency practitioners.