

# IBC Lacuna: Bridging Gaps in Contemporary Research

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**Abstract-** The Insolvency and Bankruptcy Code, 2016 (IBC) represents India's most ambitious economic reform in the domain of insolvency resolution, replacing a fragmented and inefficient regime with a unified, creditor-centric framework. While the Code has significantly improved recovery rates, strengthened credit discipline, and enhanced India's global ranking in resolving insolvency, its practical implementation over nearly a decade has revealed several structural, procedural, and interpretational lacunae. These gaps have manifested in delays, value erosion, judicial inconsistencies, and stakeholder imbalances, thereby diluting the Code's foundational objectives of time-bound resolution and maximisation of value. This research paper undertakes an exhaustive doctrinal and empirical analysis of the key lacunae in the IBC, supported by statutory interpretation, case law, regulatory reports, and comparative international practices. It identifies sixteen major deficiencies, ranging from delays in admission and CIRP completion to ambiguities in government dues, personal guarantor liability, CoC accountability, Section 29A overbreadth, and the under-performance of information utilities. The paper also examines cross-border insolvency gaps, liquidation trends, and the challenges faced by homebuyers, MSMEs, and operational creditors. Drawing from comparative models in the UK, US, and Singapore, the paper proposes a set of calibrated reforms aimed at strengthening institutional capacity, enhancing procedural clarity, and restoring the primacy of resolution over liquidation. The study concludes that while the IBC remains a transformative statute, its long-term success depends on continuous refinement, judicial restraint, and robust institutional strengthening.

**Keywords:** insolvency resolution, liquidation, moratorium.

## I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 emerged as a response to India's long-standing crisis of

non-performing assets, fragmented insolvency laws, and protracted recovery mechanisms. Prior to the Code, insolvency proceedings were governed by a multiplicity of statutes, including the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), the Companies Act, and various sectoral regulations. These frameworks were characterised by delays, debtor-friendly processes, and low recovery rates, resulting in systemic inefficiencies and erosion of creditor confidence. The Bankruptcy Law Reforms Committee (BLRC) identified the need for a unified, time-bound, and creditor-driven insolvency regime, leading to the enactment of the IBC, which consolidated insolvency and bankruptcy processes for corporates, individuals, and partnership firms.

The IBC introduced several path-breaking features, including a strict timeline for completion of the Corporate Insolvency Resolution Process (CIRP), a moratorium on legal proceedings, a shift from debtor-in-possession to creditor-in-control, and the creation of new institutional mechanisms such as the Insolvency and Bankruptcy Board of India (IBBI), Information Utilities (IUs), and the National Company Law Tribunal (NCLT) as the adjudicating authority. The Code also established a waterfall mechanism for distribution of liquidation proceeds and introduced the concept of resolution applicants, resolution plans, and the Committee of Creditors (CoC) as the primary decision-making body.<sup>1</sup>

However, despite its transformative design, the IBC's implementation has revealed several lacunae that undermine its effectiveness. Delays in admission of cases, prolonged CIRP timelines, inconsistent judicial interpretations, inadequate institutional capacity, and structural disadvantages for operational creditors and

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<sup>1</sup> IBC Act, 2016, Part II & III; IBBI official framework documents.

homebuyers have raised concerns about the Code's ability to deliver timely and equitable outcomes. The high proportion of cases ending in liquidation, the under-utilisation of pre-packaged insolvency, and the absence of a comprehensive cross-border insolvency framework further highlight the need for systemic reform.

This research paper seeks to critically examine these lacunae through a doctrinal and empirical lens, integrating statutory analysis, case law, regulatory reports, and comparative international practices. The objective is to provide a comprehensive understanding of the challenges facing the IBC and to propose actionable reforms that can strengthen India's insolvency ecosystem.

## BACKGROUND OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The IBC was enacted with the primary objectives of consolidating insolvency laws, ensuring time-bound resolution, maximising the value of assets, promoting entrepreneurship, and balancing the interests of all stakeholders. The Code introduced a unified framework for insolvency resolution of corporate persons, individuals, and partnership firms, replacing a patchwork of earlier laws that often led to conflicting outcomes and jurisdictional overlaps.

The BLRC Report (2015)<sup>2</sup> emphasised the need for a predictable and efficient insolvency regime that could facilitate early detection of financial distress and enable swift resolution. The IBC operationalised this vision through several key features: a strict timeline of 180 days (extendable to 270 days) for CIRP, later capped at 330 days including litigation<sup>3</sup>; a moratorium under Section 14 to preserve the corporate debtor as a going concern; the appointment of an Interim Resolution Professional (IRP) and later a Resolution Professional (RP) to manage the debtor's affairs; and the constitution of the CoC, comprising financial creditors, to evaluate and approve resolution plans.

The Code also introduced the concept of avoidance transactions, enabling the RP to challenge preferential, undervalued, fraudulent, and extortionate transactions.

The waterfall mechanism under Section 53 established a clear priority for distribution of liquidation proceeds, placing secured creditors and workmen at the top and government dues below unsecured creditors. The Code further provided for fast-track insolvency, voluntary liquidation, and individual insolvency, although the latter remains largely unimplemented.

Despite these innovations, the IBC's success depends heavily on institutional capacity, judicial efficiency, and stakeholder cooperation. The NCLTs, tasked with adjudicating insolvency matters, have faced significant caseload pressures, leading to delays in admission and resolution. The IBBI, while proactive, continues to refine regulations in response to emerging challenges. Insolvency professionals, valuers, and information utilities form the backbone of the ecosystem, but their capacity and standardisation remain evolving.

## II. REVIEW OF THE EXISTING FRAMEWORK

The existing framework of the IBC is built on four pillars: the legal framework, institutional infrastructure, regulatory oversight, and judicial interpretation. Each of these pillars has contributed to the Code's strengths and weaknesses.

The legal framework provides a comprehensive structure for insolvency resolution, but frequent amendments and judicial interventions have created interpretational complexities. The institutional infrastructure, comprising NCLTs, RPs, CoCs, and IUs, has enabled the functioning of the Code but suffers from capacity constraints and uneven performance. Regulatory oversight by the IBBI has been dynamic, with frequent amendments to regulations, but this has also led to uncertainty for stakeholders. Judicial interpretation, particularly by the Supreme Court and NCLAT, has played a crucial role in shaping the contours of the Code, but inconsistent decisions have sometimes undermined predictability.<sup>4</sup>(*Swiss Ribbons Pvt. Ltd. v. Union of India, 2019*).

<sup>2</sup> BLRC Report, Ministry of Finance, Government of India (2015).

<sup>3</sup> Insolvency and Bankruptcy Code, 2016, Section 12

<sup>4</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India (2019)*: Upheld the constitutional validity of the IBC,

### III. DETAILED ANALYSIS OF LACUNAE

#### 1. Delay in Admission and CIRP Timelines

A fundamental lacuna in the Insolvency and Bankruptcy Code, 2016 lies in the persistent delays in admission of insolvency petitions and the inability of the system to adhere to the statutory timelines prescribed under Section 12. Although the Code envisages a strict 14-day period for the National Company Law Tribunal (NCLT) to admit or reject an application under Sections 7, 9, or 10, empirical evidence demonstrates that admission often takes several months, and in some cases more than a year. This delay is attributable to multiple factors, including inadequate judicial capacity, procedural inefficiencies, repeated defects in filings, and prolonged arguments on maintainability. The Supreme Court in *Surendra Trading Company v. Juggilal Kamlatpat Jute Mills* acknowledged that the 14-day period is directory rather than mandatory, thereby weakening the time-bound character of the Code. Once admitted, the Corporate Insolvency Resolution Process (CIRP) is required to be completed within 180 days, extendable to 270 days, and later capped at 330 days including litigation. However, the Supreme Court in *Essar Steel* held that the 330-day limit could be relaxed in exceptional circumstances, which has now become a common route for extensions.<sup>5</sup> (2020, 8 SCC 531). These delays defeat the Code's core objective of swift resolution, lead to erosion of asset value, and create uncertainty for creditors and resolution applicants. The Parliamentary Standing Committee (2021) also highlighted that more than 70% of cases breach the statutory timelines, demonstrating a systemic failure that requires structural reforms in judicial capacity, procedural streamlining, and pre-admission scrutiny mechanisms.<sup>6</sup>(IBC 2016)

#### 2. Value Erosion During Moratorium and the “Going Concern” Challenge

Another significant lacuna arises from the deterioration of the corporate debtor's value during the moratorium period under Section 14. The moratorium

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emphasizing its role in balancing creditor and debtor interests.

<sup>5</sup> Citation: (2020) 8 SCC 531

is intended to preserve the corporate debtor as a going concern by halting all legal proceedings, enforcement actions, and recovery measures. However, in practice, the moratorium often coincides with operational paralysis. Resolution Professionals (RPs) frequently struggle to maintain business continuity due to lack of working capital, non-cooperation from promoters, loss of key employees, and disruption of supply chains. The Code does not impose a statutory obligation on financial creditors to provide interim finance, nor does it provide adequate mechanisms to compel promoter cooperation. As a result, assets deteriorate, customers migrate to competitors, and the market reputation of the debtor declines. This erosion of value is reflected in the high haircuts observed in several major cases, such as *Alok Industries*, *Videocon*, and *Amtek Auto*, where creditors recovered only a fraction of their admitted claims. The Insolvency and Bankruptcy Board of India (IBBI) has attempted to strengthen the framework for interim finance and RP powers, but the absence of a robust statutory mechanism continues to undermine the Code's objective of maximising value. The moratorium, instead of acting as a protective shield, often becomes a period of accelerated decline, thereby reducing the attractiveness of the debtor to potential resolution applicants and increasing the likelihood of liquidation.

#### 3. Ambiguity in Treatment of Government Dues and Post-Resolution Liabilities

The treatment of government dues under the IBC remains one of the most contentious and litigated issues, revealing a deep structural lacuna in the Code's design. Section 53<sup>7</sup> places government dues below secured and unsecured financial creditors in the liquidation waterfall, reflecting a deliberate legislative choice to prioritise credit markets over sovereign claims. However, government authorities, particularly tax departments, have frequently challenged resolution plans, issued fresh demands after plan approval, and asserted priority over other creditors. The Supreme Court in *Ghanashyam Mishra & Sons v. Edelweiss ARC* clarified that once a resolution plan is approved

<sup>6</sup> *Insolvency and Bankruptcy Code, 2016 (Government of India Gazette Notification).*

<sup>7</sup> *Insolvency and Bankruptcy Code, 2016 – Section 53 (Liquidation waterfall) explicitly places government dues below secured and unsecured financial creditors.*

under Section 31, all claims not included in the plan stand extinguished, including statutory dues. Despite this authoritative pronouncement, government departments continue to raise demands, citing independent statutory powers under tax laws. This creates uncertainty for resolution applicants, who fear post-resolution liabilities that could undermine the viability of their plans. The lack of a harmonised framework between the IBC and various tax statutes leads to jurisdictional conflicts, multiplicity of proceedings, and erosion of the finality that the Code seeks to achieve. The lacuna persists because the Code does not explicitly override all statutory claims, nor does it provide a mechanism for binding all government departments irrespective of their participation in the CIRP. This ambiguity discourages bidders, depresses valuations, and increases litigation, thereby undermining the efficiency of the insolvency regime.

#### 4. Unsettled Legal Position on Personal Guarantor Liability

The liability of personal guarantors to corporate debtors represents another complex lacuna in the IBC framework. The Central Government's 2019 notification<sup>8</sup> bringing personal guarantors under the jurisdiction of the NCLT was upheld by the Supreme Court in *Lalit Kumar Jain v. Union of India*, which affirmed that the insolvency of a corporate debtor and its guarantor are intrinsically linked. However, several unresolved issues continue to create uncertainty. One major question is whether the approval of a resolution plan discharges the guarantor's liability. While the Supreme Court in *Essar Steel* suggested that guarantor liability survives unless explicitly extinguished, other judgments have created ambiguity by interpreting Section 31 in varying ways. Parallel proceedings against guarantors in Debt Recovery Tribunals (DRTs) and NCLTs further complicate matters, leading to inconsistent outcomes and procedural overlaps. Creditors often pursue guarantors aggressively even after substantial recovery through resolution plans, raising concerns of double recovery. The Code does not provide a unified mechanism for joint insolvency of corporate debtors and guarantors, nor does it clearly

define the extent to which guarantor rights of subrogation survive post-resolution. This fragmented legal landscape creates uncertainty for promoters, creditors, and resolution applicants, and increases litigation, thereby undermining the predictability and coherence of the insolvency framework.<sup>9</sup>

#### 5. Unclear Scope of Powers, Duties, and Protections of Resolution Professionals

Resolution Professionals (RPs) play a central role in the CIRP, yet the Code leaves several aspects of their powers, duties, and liabilities inadequately defined. RPs are expected to manage the corporate debtor as a going concern, conduct forensic audits, identify avoidance transactions, run a transparent bidding process, and interface with multiple stakeholders, including regulators, courts, and creditors. Despite these extensive responsibilities, the statutory protections available to RPs are limited. They face potential civil and criminal liability for decisions taken in good faith, particularly in cases involving allegations of undervaluation, preferential transactions, or procedural lapses. The absence of a clear safe-harbour provision discourages competent professionals from taking up complex assignments and incentivises overly cautious behaviour that slows down the process. Moreover, the Code does not clearly define the investigative powers of RPs, leading to disputes over access to documents, cooperation from promoters, and authority to engage forensic experts. The IBBI has issued several guidelines, but the lack of statutory clarity continues to create uncertainty. This lacuna undermines the efficiency of the CIRP, increases litigation, and weakens the credibility of the insolvency ecosystem.

#### 6. Dominance of the Committee of Creditors Without Corresponding Accountability

The Committee of Creditors (CoC) wields enormous power under the IBC, with its "commercial wisdom" being largely immune from judicial review, as affirmed in *K. Sashidhar v. Indian Overseas Bank* and *Essar Steel*. While this deference is essential to prevent judicial interference in business decisions, it has also exposed a significant lacuna: the absence of

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<sup>8</sup> notification dated 15 November 2019.

<sup>9</sup> [Acuity.law.co.in](http://Acuity.law.co.in)

accountability mechanisms for CoC decisions. The Code does not require the CoC to record detailed reasons for rejecting resolution plans, delaying decisions, or preferring liquidation over resolution. Conflicts of interest among creditors, particularly where a creditor is also a competitor or has exposure in multiple capacities, are not adequately addressed.<sup>10</sup> Operational creditors, homebuyers, and other stakeholders have limited influence in CoC deliberations, despite being significantly affected by the outcomes. The lack of transparency and accountability in CoC functioning has led to allegations of arbitrary decision-making, value destruction, and strategic behaviour. This lacuna undermines stakeholder confidence, reduces the attractiveness of the insolvency process, and increases the likelihood of liquidation, contrary to the Code's objectives.

#### 7. Structural Disadvantage and Marginalisation of Operational Creditors

A persistent structural lacuna in the Insolvency and Bankruptcy Code, 2016 is the marginalisation of operational creditors within the insolvency framework. Although operational creditors play a vital role in the functioning of corporate entities—providing essential goods, services, and labour—the Code accords them a limited role in the decision-making process. Under Section 21, operational creditors do not form part of the Committee of Creditors (CoC) unless they constitute a significant portion of the financial debt, which is rare in practice. As a result, they lack voting rights and have minimal influence over the approval or rejection of resolution plans. Judicial pronouncements, particularly in *Swiss Ribbons v. Union of India*, have upheld this differential treatment on the ground that financial creditors are better equipped to assess the viability of resolution plans. However, this reasoning overlooks the economic reality that operational creditors often bear the brunt of insolvency, receiving negligible recoveries under resolution plans. The Supreme Court in *Essar Steel* further reinforced the primacy of financial creditors by allowing differential treatment in distribution, provided it is based on

intelligible criteria. This has resulted in operational creditors frequently receiving liquidation value or even zero recovery, raising concerns about equity and fairness. The Parliamentary Standing Committee (2021) noted that operational creditors recovered less than 5% of their admitted claims in many cases, highlighting a systemic imbalance. The Code's design, which uses operational creditors as a trigger for insolvency but sidelines them in resolution, creates a moral hazard and undermines trust in the insolvency regime. Without meaningful participation rights or guaranteed minimum recoveries, operational creditors remain structurally disadvantaged, weakening the overall creditor ecosystem.

#### 8. Under-Utilisation and Design Limitations of Pre-Packaged Insolvency

The introduction of the pre-packaged insolvency resolution process (PPIRP) for MSMEs in 2021 was intended to provide a faster, more flexible alternative to the traditional CIRP. However, the uptake of PPIRP has been minimal, revealing significant design and implementation lacunae. One major limitation is the restrictive eligibility criteria, which require the corporate debtor to be an MSME and to obtain the consent of unrelated financial creditors representing at least 66% of the debt before initiating the process. This pre-filing requirement places excessive power in the hands of financial creditors and undermines the debtor-driven nature of pre-packs. Moreover, the requirement that the base resolution plan be submitted by the existing management raises concerns about transparency and fairness, particularly in cases where promoters may have contributed to the financial distress. Creditors often prefer CIRP because it gives them greater control through the CoC, whereas PPIRP retains the debtor-in-possession model with oversight by the RP.<sup>11</sup> The absence of clear incentives for creditors to opt for PPIRP, coupled with limited awareness and capacity among MSMEs, has resulted in negligible utilisation. The IBBI's data indicates that only a handful of PPIRP cases have been admitted since its introduction, demonstrating that the framework has not achieved its intended purpose. The lacuna lies not only in the restrictive design but also in

filing requirements and base resolution plan submission by existing management.

<sup>10</sup> NLSIR, *Indian Journal of Corporate Law*

<sup>11</sup> Ministry of Corporate Affairs Notification (April 2021) – Detailed the PPIRP framework, including pre-

the lack of integration with broader restructuring mechanisms, such as out-of-court workouts and RBI's prudential norms. Without reforms that expand eligibility, strengthen safeguards, and align creditor incentives, PPIRP risks becoming a dormant provision rather than a meaningful tool for early resolution.<sup>12</sup>

#### 9. Incomplete and Fragmented Framework for Cross-Border Insolvency

In an increasingly globalised economy, the absence of a comprehensive cross-border insolvency framework represents a major lacuna in the IBC. Sections 234 and 235 provide only a skeletal mechanism based on bilateral agreements and letters of request, which is inadequate for dealing with multinational corporate groups with assets, creditors, and operations spread across jurisdictions. India has not yet adopted the UNCITRAL Model Law on Cross-Border Insolvency, despite repeated recommendations from expert committees and the IBBI. As a result, Indian insolvency proceedings face significant challenges in accessing foreign assets, coordinating with foreign courts, and ensuring equitable treatment of international creditors. The Jet Airways insolvency case highlighted these limitations, where parallel proceedings in India and the Netherlands required ad hoc cooperation between courts, rather than a structured statutory framework. The absence of clear rules on recognition of foreign proceedings, cooperation between insolvency professionals, and coordination of concurrent proceedings creates uncertainty and increases litigation. Foreign creditors may be reluctant to participate fully in Indian insolvency proceedings due to concerns about enforceability and priority. Similarly, Indian resolution professionals face difficulties in securing overseas assets or preventing their dissipation. This lacuna undermines India's attractiveness as a restructuring jurisdiction and hampers the ability of the IBC to deal effectively with complex, cross-border insolvency scenarios. Adoption of the Model Law, with suitable modifications to protect domestic interests, is essential to modernise India's insolvency regime and align it with global best practices.

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<sup>12</sup> *IBC: Evolution, Learnings and Innovation* (2023), published by the Insolvency and Bankruptcy Board of India

#### 10. Judicial Intervention and the Tension with Commercial Wisdom

While the IBC is premised on the principle that the CoC's commercial wisdom should be paramount, judicial intervention has often extended beyond the intended limits, creating uncertainty and diluting the autonomy of creditors. The Supreme Court in *K. Sashidhar and Essar Steel* emphasised that courts should not interfere with the merits of commercial decisions, restricting their review to procedural compliance and adherence to statutory requirements. However, subsequent judgments have seen courts intervening in matters such as distribution of proceeds, eligibility of resolution applicants, treatment of statutory dues, and interpretation of resolution plan terms. The *Rainbow Papers* judgment, which elevated certain statutory dues to the status of secured creditors, created significant confusion and was widely criticised for undermining the priority structure under Section 53. Although later judgments attempted to clarify the position, the episode highlighted the risks of judicial overreach. Frequent litigation by disgruntled stakeholders, including promoters, operational creditors, and government authorities, has further expanded the scope of judicial scrutiny. This unpredictability discourages resolution applicants, increases transaction costs, and prolongs the resolution process. The lacuna lies not in the existence of judicial review but in the absence of clear statutory boundaries that delineate the permissible scope of intervention. Without such clarity, the tension between judicial oversight and commercial autonomy will continue to undermine the efficiency and predictability of the insolvency regime<sup>13</sup>.

#### 11. Over-Breadth and Chilling Effect of Section 29A Ineligibility

Section 29A, introduced to prevent defaulting promoters and tainted persons from regaining control of the corporate debtor, has become one of the most controversial provisions of the IBC. While the legislative intent is sound, the provision's sweeping scope has created significant practical challenges. Section 29A disqualifies not only the promoters of the

<sup>13</sup> Parliamentary Standing Committee on Finance (2021) – Report highlighting systemic issues in IBC.

corporate debtor but also connected persons, related parties, and entities with even indirect exposure to non-performing assets. This broad net has deterred genuine resolution applicants, particularly in industries where corporate structures are complex and inter-linked. The Supreme Court in *ArcelorMittal v. Satish Kumar Gupta* upheld the strict interpretation of Section 29A, emphasising the need to prevent backdoor entry of defaulting promoters. However, the provision's rigidity has resulted in exclusion of capable bidders who may have the expertise and resources to revive the corporate debtor. The due diligence required to establish eligibility under Section 29A is extensive, time-consuming, and costly, further discouraging participation. In some cases, resolution plans have failed due to lack of eligible bidders, pushing the corporate debtor into liquidation. The lacuna lies in the absence of a nuanced, case-specific approach that distinguishes between wilful defaulters and genuine business failures. Without calibrated reforms that balance integrity with flexibility, Section 29A will continue to narrow the bidder universe, reduce competition, and depress recovery rates.

#### 12.High Incidence of Liquidation and the Drift Away from Resolution

One of the most troubling lacunae in the IBC framework is the high proportion of cases that end in liquidation rather than resolution. Data from the IBBI indicates that more than 70% of completed CIRPs result in liquidation, with many cases involving companies that were already defunct or asset-light at the time of admission. However, even viable companies have been pushed into liquidation due to delays, lack of bidder interest, CoC indecision, or procedural complexities. Liquidation often yields minimal recovery, particularly for unsecured and operational creditors, undermining the Code's objective of maximising value. The emphasis on resolution over liquidation, articulated in the BLRC Report and reinforced by judicial pronouncements, has not translated into practice. The absence of strong incentives for early restructuring, pre-insolvency workouts, or out-of-court settlements contributes to the over-reliance on CIRP as the primary restructuring

mechanism. Once a case enters CIRP, the deterioration of assets during the moratorium and the challenges faced by RPs further reduce the likelihood of resolution. The lacuna lies in the systemic tilt towards liquidation, driven by procedural delays, structural weaknesses, and inadequate pre-insolvency frameworks. Without reforms that promote early intervention, strengthen debtor-creditor negotiations, and enhance the attractiveness of resolution, the IBC risks becoming a liquidation-centric regime rather than a genuine rescue framework.<sup>14</sup>

#### 12.Information Asymmetry and Under-Performance of Information Utilities

A critical lacuna in the IBC framework is the persistent information asymmetry between creditors, debtors, and insolvency professionals, compounded by the under-performance of Information Utilities (IUs). The Code envisaged IUs as central repositories of authenticated financial information, enabling swift verification of debt and default, thereby reducing litigation and expediting admission of cases. However, in practice, the utilisation of IUs has been limited, with many financial creditors failing to regularly file information, and corporate debtors frequently disputing entries. The absence of mandatory filing requirements for all credit transactions has resulted in incomplete datasets, forcing NCLTs to rely on traditional documentary evidence such as loan agreements, bank statements, and affidavits.<sup>15</sup> This undermines the objective of creating a streamlined, evidence-light admission process. The Supreme Court in *Innovative Industries v. ICICI Bank* emphasised the importance of establishing default as a threshold requirement, but the lack of reliable IU data has led to prolonged disputes over the existence and quantum of debt. Moreover, the integration of IUs with banking systems remains inadequate, preventing automatic updating of credit information. The lacuna lies not only in the limited statutory mandate of IUs but also in the absence of strong incentives or penalties to ensure compliance by creditors. Without a robust, comprehensive, and trusted information infrastructure, the IBC's promise of swift, predictable, and transparent insolvency resolution remains unfulfilled.

<sup>14</sup> Bankruptcy Law Reforms Committee (BLRC) Report, 2015

<sup>15</sup> IBC: Evolution, Learnings and Innovation (IBBI & IIM Ahmedabad, 2023)

### 13. Incomplete Protection and Practical Difficulties for Homebuyers

The recognition of homebuyers as financial creditors under the IBC, following the 2018 amendment and the Supreme Court's decision in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*<sup>16</sup> was a landmark development aimed at protecting the interests of consumers in real estate insolvencies. However, the practical implementation of this reform has revealed significant lacunae. Homebuyers, who are numerous, dispersed, and often unorganised, face challenges in coordinating their claims, participating in CoC meetings, and evaluating complex resolution plans. Authorised representatives appointed under the regulations often struggle to effectively represent diverse and sometimes conflicting interests. Resolution plans in real estate cases frequently prioritise completion of certain towers or phases, leaving some homebuyers disadvantaged. Delays in CIRP exacerbate project delays, causing prolonged uncertainty for homebuyers who may have invested their life savings. The Code does not provide a tailored insolvency framework for real estate projects, which have unique characteristics such as escrow arrangements, regulatory approvals, and inter-linked construction obligations. The absence of project-wise insolvency mechanisms leads to situations where solvent projects within a larger development are stalled due to insolvency of the parent entity. This lacuna undermines the objective of protecting homebuyers and highlights the need for sector-specific reforms that address the complexities of real estate insolvency.

### 14. Avoidance Transaction Proceedings as Open-Ended and Uncoordinated

Avoidance transactions—preferential, undervalued, fraudulent, and extortionate transactions—are critical tools for preserving the value of the corporate debtor's estate. However, the framework for avoidance proceedings under the IBC suffers from significant lacunae. These proceedings often run parallel to the

CIRP and continue long after the approval of the resolution plan, creating uncertainty for resolution applicants regarding the potential recovery or liability associated with such transactions. The Code does not prescribe strict timelines for disposal of avoidance applications, leading to prolonged litigation and inconsistent outcomes. Resolution Professionals, constrained by time and resources, may file avoidance applications in a broad, defensive manner without fully developed evidence, resulting in weak cases that burden the adjudicatory system. The absence of clarity on whether recoveries from avoidance transactions accrue to the corporate debtor, the creditors, or the resolution applicant further complicates valuation and bidding. The Supreme Court in *Anuj Jain v. Axis Bank* clarified certain aspects of preferential transactions, but many grey areas remain, particularly regarding related-party transactions and the standard of proof required. This lacuna undermines the deterrent effect of avoidance provisions and reduces the predictability of the insolvency process.

### 15. Institutional Capacity Constraints of NCLTs, NCLAT, and the Regulatory Ecosystem

The effectiveness of the IBC is heavily dependent on the institutional capacity of adjudicatory and regulatory bodies, yet this remains one of the most significant lacunae in the system. The National Company Law Tribunals (NCLTs), originally designed to handle company law matters, have been burdened with a massive insolvency docket without commensurate expansion in infrastructure, staffing, or specialised training.<sup>17</sup> Frequent vacancies, uneven distribution of benches, and heavy non-IBC caseloads contribute to delays in admission, interim relief, and approval of resolution plans. The National Company Law Appellate Tribunal (NCLAT) faces similar challenges, leading to prolonged appellate timelines. The Insolvency and Bankruptcy Board of India (IBBI), while proactive, must constantly balance regulatory innovation with stability, resulting in frequent amendments that create uncertainty for stakeholders. Insolvency Professional Agencies (IPAs), valuers, and

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<sup>16</sup> (2019) 8 SCC 416 – Landmark judgment upholding the amendment and affirming homebuyers' rights to be part of the CoC.

<sup>17</sup> Insolvency and Bankruptcy Board of India (IBBI) Annual and Quarterly Reports

<sup>17</sup> Ministry of Corporate Affairs Discussion Paper (2020) – Proposed adoption of the UNCITRAL Model Law on Cross-Border Insolvency.

other ecosystem participants are still evolving in terms of standards, oversight, and capacity. These institutional constraints are not merely administrative challenges; they directly affect the Code's ability to deliver timely, consistent, and credible outcomes. Without significant investment in judicial capacity, specialised training, and institutional strengthening, the IBC's long-term effectiveness will remain compromised.

#### IV. COMPARATIVE PERSPECTIVE: UK, US, AND SINGAPORE

A comparative analysis of insolvency frameworks in the UK, US, and Singapore reveals several best practices that can inform reforms to the IBC. The UK's Insolvency Act emphasises early intervention, creditor engagement, and flexible restructuring tools such as Company Voluntary Arrangements (CVAs) and schemes of arrangement. The US Chapter 11 framework provides a debtor-in-possession model that encourages business continuity, supported by strong protections for interim financing and clear rules on executory contracts. Singapore's Insolvency, Restructuring and Dissolution Act (IRDA) incorporates elements of both UK and US systems, offering pre-packaged schemes, cross-border cooperation under the UNCITRAL Model Law, and strong judicial oversight balanced with commercial flexibility. These jurisdictions also emphasise specialised insolvency courts, robust information systems, and clear statutory guidance on creditor priorities and restructuring tools. Compared to these systems, the IBC lacks a comprehensive pre-insolvency framework, a modern cross-border insolvency regime, and adequate institutional capacity. The comparative perspective underscores the need for India to adopt global best practices while tailoring them to domestic realities.

#### V. RECOMMENDATIONS FOR REFORM

Reforms to address the lacunae in the IBC must be multi-dimensional, targeting legal, institutional, and procedural aspects. Strengthening judicial capacity through additional NCLT benches, specialised insolvency courts, and mandatory training for judges is essential to reduce delays. Enhancing the role and accountability of the CoC through statutory requirements for reasoned decisions,

conflict-of-interest disclosures, and greater transparency can improve decision-making. Revising Section 29A to introduce a more nuanced, case-specific approach that distinguishes between wilful defaulters and genuine business failures would expand the bidder universe. Adopting the UNCITRAL Model Law on Cross-Border Insolvency would modernise India's framework and facilitate international cooperation. Strengthening Information Utilities through mandatory filing requirements, integration with banking systems, and penalties for non-compliance would reduce information asymmetry. Introducing a sector-specific insolvency framework for real estate, expanding the scope of PPIRP, and promoting pre-insolvency restructuring mechanisms would enhance the effectiveness of the insolvency ecosystem. Clear timelines and outcome-linked rules for avoidance proceedings, along with statutory safe-harbour provisions for RPs, would improve efficiency and reduce litigation. These reforms, taken together, would strengthen the IBC's ability to deliver timely, equitable, and value-maximising outcomes.

#### VI. CONCLUSION

The Insolvency and Bankruptcy Code, 2016 represents a transformative shift in India's approach to insolvency resolution, replacing a fragmented and inefficient regime with a unified, creditor-centric framework. However, nearly a decade of implementation has revealed significant lacunae that undermine the Code's objectives of time-bound resolution, maximisation of value, and equitable treatment of stakeholders. Delays in admission and CIRP completion, value erosion during moratorium, ambiguity in treatment of government dues, unsettled guarantor liability, unclear RP powers, CoC dominance without accountability, marginalisation of operational creditors, under-utilisation of pre-packs, absence of a cross-border framework, judicial overreach, Section 29A rigidity, high liquidation rates, weak information utilities, inadequate protection for homebuyers, open-ended avoidance proceedings, and institutional capacity constraints collectively weaken the insolvency ecosystem. Addressing these lacunae requires a combination of legislative amendments, regulatory refinement, judicial restraint, and institutional strengthening. The IBC remains a

landmark reform, but its long-term success depends on continuous evolution, informed by empirical evidence, comparative insights, and stakeholder feedback. A mature insolvency regime must balance speed with fairness, commercial autonomy with judicial oversight, and creditor rights with broader economic considerations. With thoughtful reforms, the IBC can fully realise its potential as a modern, efficient, and equitable insolvency framework capable of supporting India's economic growth and financial stability.