

The Future of Indian Insolvency Law: New-Age Business, Technology and Sustainability

For an emerging economy such as India, the timely resolution of financial distress and efficient redeployment of productive assets are essential for sustaining investment, strengthening the financial sector, and supporting long-term economic growth. As India's business landscape undergoes structural transformation, the Insolvency and Bankruptcy Code, 2016 must evolve to accommodate technology-driven and intangible-asset-intensive enterprises. This necessitates more sophisticated approaches to valuation and resolution, particularly for digital platforms, intellectual property-rich firms, and data-centric business models. At the same time, the insolvency framework must respond to the increasing frequency and severity of natural calamities, which disrupt operations, impair supply chains, and escalate recovery and compliance costs. These challenges highlight the need to embed greater resilience and adaptability within the insolvency regime to ensure its continued effectiveness in a dynamic economic and environmental context.



Adv. Vaidehi Gulati

Senior Research Associate
Insolvency Law Academy
Delhi
gulativaidehi1@gmail.com

INTRODUCTION

A modern and efficient insolvency regime is a fundamental pillar of a market economy.¹ For an emerging economy such as India, the ability to resolve financial distress quickly and redeploy productive assets is essential for sustaining investment, strengthening the financial sector, and supporting long-term economic growth.

India's economy is going through a complex landscape as currently it is facing several headwinds from global trade protectionism (tariff wars) and intensifying geopolitical conflicts leading to increased import costs to disruption of supply chain. In such an environment of heightened uncertainty, businesses are more vulnerable to financial distress, delayed cash flows, and increased borrowing costs making the need for an efficient insolvency framework even more critical. Against this backdrop, this article seeks to explore and analyze the need for aligning and increasing the efficiency of the Insolvency and Bankruptcy Code, 2016 (IBC) to the demands of the new era shaped by technological

advancements, evolving business models, financial distress and the obligations arising out of the environment, social and governance (ESG).

A DECADE OF IBC

Insolvency regimes are often seen as tools that come into play only when a business is on the verge of collapse. This narrow view, however, overlooks their far more expansive and dynamic role within a modern economy. In reality, they influence the entire business and credit life cycle. From shaping initial financing decisions and risk-taking behavior to guiding the resolution of financial distress, these frameworks play a continuous and proactive role. A well-designed insolvency regime not only facilitates efficient reorganization or liquidation but also reduces uncertainty, encourages responsible lending & borrowing and strengthens overall economic stability.²

India's modern insolvency framework did not emerge overnight. For decades, the country struggled with fragmented and inefficient mechanisms for resolving financial distress. The journey of reform began with the Tiwari Committee in 1981. The legal landscape was governed by multiple laws including the Sick Industrial Companies Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBFI), and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). These frameworks operated in silos and often resulted in prolonged litigation, value erosion of assets, and delays in resolving corporate distress. The country's economy needed rejuvenation through large investment, and measures were required to regain investor confidence. It was at once realized that an efficient insolvency law was the prerequisite for attracting the foreign investors and other urgent reasons including the frightening levels of stress that had built in Indian banking sector over the course of few years.

¹ *The Economic Impacts of Insolvency Regimes*, <<https://subnational.doingbusiness.org/en/data/exploretopics/resolving-insolvency/why-matters#:~:text=Why%20does%20a%20good%20insolvency,the%20bankruptcy%20system%20is%20maintained.>>

² *The World Bank regards insolvency regimes as an important tool for the treatment of unsustainable debt levels, both for individuals and firms.*

The Non-Performing Assets (NPA) constituted 90% of the total bad loans of the industry.³ To address these issues, the Financial Sector Legislative Reforms Commission was formed in 2013 which in 2014 culminated in the formation of the Bankruptcy Law Reforms Committee.

The IBC has further generated a significant “deterrence effect” or “shadow of the Code,” whereby many defaulting debtors settle their obligations before admission or during the early stages of the insolvency process to avoid the displacement of existing management.

In the overall journey of over nine years, the IBC has largely been structured around asset-heavy industries, where value is primarily derived from tangible assets such as land, machinery, and inventory. However, this design in the evolving scenario landscape marked by the rise of technology-driven enterprises, platform-based models, and startups has led to the emergence of asset-light companies, where enterprise value is increasingly tied to intangible assets such as intellectual property, data, algorithms, and brand value. This shift presents significant challenges withing the framework of IBC. For example, in the Jet airways case⁴ a substantial portion of value was linked to intangible elements which are not conventionally considered as “assets”, like the strong brand value and goodwill that was built over decades as a premium full service airline in India, valuable bilateral rights on lucrative routes⁵ which were difficult to transfer or monetize independently within the CIRP framework, airport slots⁶ which are not owned but are regulatory permissions, loyalty programs offered by the airlines, passenger data and route network, trained workforce⁷ and operational know-how. For an airline company these intangibles derive competitive advantage and borrowing capacity from intangibles which are recognized in balance sheets are also central to revenue generation.

The technology needs to be effectively incorporated for prevention of insolvency as it can play a pivotal role in spotting signs of financial distress by analyzing vast amounts of data with speed and precision.

IBC, ESG AND DIGITAL INDIA

Keeping pace with the fast change in technology has increased the exposure to the vast promise and perils of new age technologies.⁸ In India, the Digital India⁹ has

become a transformative force both for the growth of the economy and the citizens. The financial technology, commonly known as fintech¹⁰, in recent years, has completely transformed how finance works, making it an essential part of the finance industry.

The insolvency and restructuring practice and management are no exception¹¹. The insolvency proceedings are by their very nature time sensitive and resource intensive. The insolvency ecosystem currently in India, works with fragmented and siloed technological platforms especially in case of the adjudicating authority, the regulator and the information utility (National E-Governance Services Limited/IU). For example, lack of common portal for the data transfer to IBBI by the NCLT, limited inter-connectivity of NCLT and the IU which is required for the debt record repository and template-based filing portals for insolvency applications. This disjointed framework creates challenges such as redundancies, untrained and contractual staff, ineffective time management and asymmetry of flow of uniform information.

To address the issues at the adjudicating authority level, there is a need to create an integrated platform for streamlining the process and to facilitate the exchange of information. The government has proposed an integrated

tech platform that consolidated data from all relevant insolvency stakeholders including IBBI, lenders, Insolvency Professionals (IP) and the adjudicating authority to maintain accuracy of data and ensure uniform access to information.¹²

At the IP level they need to keep abreast with the new technological developments by integrating the technology for case management,

assistance in prioritizing the claims based on secured and unsecured status of the creditors and other factors etc.¹³. This integration of technology will assist in reducing the delay and maximizing value of the assets.

The technology further needs to be effectively incorporated for prevention of insolvency as they can play a pivotal role in spotting signs of financial distress by analyzing vast amounts of data with speed and precision thereby assisting in identifying potential insolvency risks and minimizing debt defaults. The integration of digital technology or artificial technology for detection of frauds and preventing avoidance transactions by providing triggers and alerts to the creditors. This will also support preventing large Non-Performing Assets build-up and curb costs to the economy.

³. Gross NPAs of the scheduled commercial banks, on domestic operations, increased from 263015 crores as on 31st March 2014 to Rs.790268 crores as on 31st March 2017 and Sumant Batra, 2nd edition of Corporate Insolvency: The Road to Viksit Bharat.

⁴. Kalrock Capital Partners Ltd. & Murari Lal Jalan v. State Bank of India & Ors. Company Appeal (AT) (Insolvency) No. 707 of 2020, dated 22 June 2021.

⁵. Lucrative routes like India–UK, India–Middle East.

⁶. Slots at congested airports like Mumbai, London, Heathrow etc. Jet Airways could not claim historic airport slots during insolvency Slots for Jet Airways will be based on existing norms, not historicity: Govt tells NCLT - Times of India 4 June 2021.

⁷. Experience pilots, engineers, crew etc.

⁸. The United Nations Secretary General in July 2018 convened a High-level Panel on Digital Cooperation to advance proposals to strengthen cooperation in the digital space among governments, the private sector, civil society, international organization, academic institutions, the technical community and other relevant stakeholders. <<https://www.un.org/en/sg-digital-cooperation-panel#:~:text=on%20Digital%20Cooperation,The%20High%20Level%20Panel%20on%20Digital%20Cooperation%20was%20convened%20by,community%20and%20other%20relevant%20stakeholders.>>

⁹. An initiative launched by the Government of India in 2015. <<https://csc.gov.in/digitalIndia>>

¹⁰. It was initially applicable to the technology employed at the back-end systems of established financial institutions such as banks, now it also includes different sectors and industries such as education, retail banking, fundraising, non-profit and investment management etc.

¹¹. The Role of Artificial Intelligence (AI) and Technology in Global Bankruptcy and Restructuring Practices July 2019 <[https://insol.azureedge.net/cmsstorage/insol/media/document-library/special%20reports/the-role-of-artificial-intelligence-\(ai\)-and-technology-in-global-bankruptcy-and-restructuring-practices.pdf](https://insol.azureedge.net/cmsstorage/insol/media/document-library/special%20reports/the-role-of-artificial-intelligence-(ai)-and-technology-in-global-bankruptcy-and-restructuring-practices.pdf)>

¹². Year-end review 2025: Ministry of Corporate Affairs <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2210429®=3&lang=1>>

¹³. Sumant Batra, Corporate Insolvency: The Road to Viksit Bharat, Law, Policy and Practice, 2nd edition.

RETHINKING IBBI AS THE REGULATOR OF THE FUTURE

The IBBI is a quasi-legislative body that not only plays a pivotal role as regulator but also is critical in operationalizing India's modern insolvency framework. The IBBI's function includes capacity building and monitoring/disciplining the IPs and the valuers¹⁴. The IBBI has pushed for better disclosure standards to reduce information asymmetry and encouraged digitization to make insolvency process faster and more accessible.

Building on these developments, the important next step is to make the IBBI ready for the future, by creating a regulated insolvency profession by protecting the consumers and ensuring the coordination between the IPs, insolvency professional entities (IPEs) and the IU. The problems persist and arise mainly due to lack of professionalism, and the unavailability of civil liability regime.

EMBEDDING THE ESG CONSIDERATIONS

There is a need for embedding the ESG considerations into the insolvency framework and incorporating environmental liabilities into valuation practices, encouraging socially responsible resolution plans, and strengthening governance standards among insolvency professionals.

The IBBI may also focus on bringing in sector specific experts to address issues due to technical, regulatory, or operational complexities such as environmental consultants, forensic auditors, industry specialists, and technology advisors, can significantly enhance the quality of decision-making during the resolution process.

For instance, environmental experts can help assess contingent liabilities and compliance risks, while sector specialists can provide realistic projections for business revival and operational viability. Institutionalizing such expertise, either through formal panels, accredited advisory networks, or mandatory consultation in complex cases, can reduce delays, improve the feasibility of resolution plans, and minimize value, enhance accountability and investor confidence.

INTEGRATING ESG METRICS INTO INSOLVENCY

The increase in the intensity and frequency of natural calamities poses serious risks to national and global economies. These climate driven disruptions trigger prolonged operational downtime, damage critical infrastructure, and halt industrial production. This gap not only undermines the goal of sustainable resolutions but also reduces investor confidence, particularly among ESG-conscious funds.¹⁵

¹⁴ *Supra note 13*

¹⁵ Dr. Raghav Pandey and Sumant Batra, *A thought paper on climate change and insolvency* October 2024 <https://insolvencylawacademy.com/wp-content/uploads/2024/10/Final_Thought-Paper-on-Climate-Change-and-Insolvency-in-India.pdf>



WAY FORWARD: STANDARDIZING FOR SUSTAINABILITY

The increasing prominence of digital and intangible assets in modern businesses necessitates the development of robust valuation standards within the insolvency framework keeping in view the international standards. Unlike traditional assets, digital assets such as user data, algorithms, software, domain names, and platform-based ecosystems do not have easily ascertainable market values, making their assessment during insolvency both complex and inconsistent. To bridge the gap the IBBI can introduce specialized guidelines that standardize the valuation of digital assets which may include adopting hybrid valuation models that combine income-based approaches (such as discounted cash flows), market comparables, and data-driven metrics like active users, retention rates, and monetization potential. To reduce information asymmetry clear disclosure requirements regarding nature, ownership, and monetization of digital assets should be made mandatory.

Adding institutional capacity by training registered valuers and IPs in digital asset assessment and incorporation of technology can act as a key enabler by facilitating ESG data tracking, improving disclosure quality, and ensuring real-time monitoring, thereby helping align insolvency outcomes with broader sustainability goals.

To address the issue of non-standardized metrics for assessment of the reduction in investor confidence etc. the regulators like the IBBI, in coordination with the Securities and Exchange Board of India, could develop sector-specific ESG scoring frameworks for insolvency. Standardization would enable objective evaluation, guide resolution applicants, and ensure that insolvency outcomes align with both financial recovery and sustainability objectives.

At the end, the shift of approach from a purely financial recovery tool to a holistic restructuring framework which includes operational revival, stakeholder engagement, sustainability and ESG integration will align IBC with the realities of 21st century business, support economic growth and will aid in achieving the goal of becoming a developed economy by 2047 (Viksit Bharat).

