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GLOBAL CONNECT



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Reimagining Startup Insolvency in India

The paper analyses the IBC (Amendment) Bill, 2025 to bring a chain of reforms. This bill proposes to omit the provisions relating to the fast-track corporate insolvency resolution process and introduce a creditor-initiated insolvency resolution process as an out-of-court pre-insolvency mechanism for companies that fulfil the thresholds or categories to be further notified by the Ministry of Corporate Affairs. This paper attempts to study the peculiar concerns of distressed startups and analyse the closest possible global frameworks, to shed light and deliberate on adequate reforms, thereby rethinking the design and features of this specialised mechanism for it to be more accessible for the targeted segment.



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INTRODUCTION

The resolution of corporate insolvencies is not only an economic necessity but also serves the broader public (stakeholders') interest. The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code 2016") envisions mechanisms for the resolution of corporate and individual insolvency with the aim of maximising the value of assets, promoting entrepreneurship, and balancing the interests of all the stakeholders. Over time, the Code 2016 and related jurisprudence have evolved with several innovations like project insolvency, reverse corporate insolvency resolution process, pre-pack insolvency, and so on, on the basis of assessments of the industry requirements.

Globally, India ranks as the third-largest startup ecosystem.¹ Since being the largest in number or size is not enough, India is gearing to build a world-class ecosystem, to ensure ease of doing business. In light of these aspirations, and to promote entrepreneurship and growth of startups, Government of India has launched multiple schemes ranging from Atal Innovation Mission (AIM), Pradhan Mantri Mudra Yojana (PMMY), Startup India Scheme, Technology Incubation & Development of Entrepreneurs (TIDE 2.0), Credit Guarantee Fund Trust for Micro and Small Enterprises ("CGTMSE") to Make in India. During the financial years 2016-2023, startups

contributed ten to fifteen per cent to the growth of the gross domestic product (GDP) of India, and this trend is expected to continue upwards as Indian startups may add USD one trillion to the Indian economy by the financial year 2030.²

Startups are not full-grown companies; rather, they face peculiar challenges every day. While the Code 2016 has adopted a comprehensive scope towards companies, LLP, partnership firms, personal guarantors, and individuals, pre-packaged insolvency resolution process (PIIRP) for micro, small, and medium enterprises (MSMEs) and a separate mechanism for small companies and startups, namely, Fast Track Corporate Insolvency Resolution Process (FIRP), the diverse nature and needs of startups require the Code 2016 to revisit the mechanism from a fresh lens.

PIIRP and FIRP were conceived to provide speedier resolutions; however, these are rooted in assumptions suited to tangible asset-backed businesses. In effect, the existing corporate insolvency resolution process (CIRP) in the Code 2016 is not suited for cash-light, asset-light, and intellectual property-heavy startups. This makes the ground reality of this segment different from full-grown or legacy corporates. Addressing startup insolvency lies within the core mandates of the Code 2016, i.e., better time-bound resolution mechanisms/outcomes, preserving value, promoting entrepreneurship and balancing the interests of all the stakeholders. While the FIRP under the Code 2016 was incorporated with an intent to address insolvency of startup-like entities, this provision remains largely unused, and so, even without testing its potential in the battlefield, it depicts the non-acceptance of concerned stakeholders, primarily the corporate debtors, creditors and the supporting infrastructure, deeming it unviable.

The distress of mature startups signals that a robust startup insolvency resolution ecosystem requires tailored solutions, including but not limited to relaxations and the introduction of innovative pre-insolvency measures. Accordingly, this paper intends to investigate whether a mere extension of the PIIRP to startups or modifications in the FIRP would meaningfully address their insolvency challenges or merely replicate the limitations seen in

¹ Ministry of Commerce and Industry, Government of India, '9 Years of Startup India' (Press Information Bureau, 16 January 2025) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2093125>> accessed 28 December 2025.

² Indian Brand Equity Foundation, 'Indian Startups May Add US\$1 Trillion to Indian Economy by FY30' (15 March 2024) <www.ibef.org/news/indian-startups-may-add-us-1-trillion-to-indian-economy-by-fy30> accessed 28 December 2025.

MSME cases, while also drawing comparative insights from the top startup-friendly jurisdictions like the United States, South Korea, Singapore, European Union, Germany, and Japan. Further, it proposes actionable reforms for designing a framework within the provisions of the Code 2016 to align legal mechanisms with Indian ambitions of building an innovation economy.

Few startups collapse due to fraud or wilful misconduct committed by their promoters and management, and such cases do not merit any flexible policies or benefits and shall be explicitly excluded from any beneficial framework. However, a large proportion of startup failures stem from their unsustainable unit economics, high cash burn but no runway, misreading market signals, or intense competition. The latter category represents the entrepreneurial spirit and deserves a second chance, and can be protected with legitimate and nimble restructuring measures.

SCOPE OF THE STUDY

1. This paper seeks to address critical research questions ranging from how challenges faced by startups differ from legacy corporates, how the extant mechanisms or frameworks established within the Code 2016 fail to address such varied needs, how different countries are dealing with this aspect, to what reforms can help change the story of startup revival in India.
 2. The paper outlines an overview of the startups and a critical assessment of existing provisions under Chapter IV (Fast Track Corporate Insolvency Resolution Process) and Chapter III-A (Pre-Packaged Insolvency Resolution Process) of Part II of the Code 2016 to elaborate on whether the frameworks are misaligned for the needs of startups.
 3. Further the paper explores the comparative international mechanisms to look for features from global regimes that can help create a startup-aligned insolvency model for India.
 4. The paper concludes with recommendations for policymakers.
- a. It is not older than ten years from the date of its incorporation/ registration;
 - c. Its turnover has not exceeded Indian Rupees One Hundred Crores in any of the financial years since incorporation/ registration;
 - d. It is working towards innovation, development, or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation; and
 - e. It is not constituted by splitting up or reconstruction of an existing business.

The clause (wa) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, also refers to the above definition of startup; however, it excludes a partnership firm. It defines “startup” as a private limited company or a limited liability partnership that fulfils the criteria for startup as specified by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India (“**DPIT**”).⁴

An enterprise is classified as an MSME based on its quantum of investment in plant and machinery or equipment up to Indian Rupees Fifty Crore and turnover up to Indian Rupees Two Hundred and Fifty Crore.⁵

In 2023, the Ministry of Corporate Affairs (“**MCA**”) sought public comments over a plethora of proposals, including the FIRP (“**MCA Notification 2023**”), thereby highlighting that the need to revamp the provisions of the FIRP was recognised years ago.⁶ In the MCA Notification 2023, it was proposed to redesign the FIRP for a corporate debtor outside of the formal judicial process (i.e., an informal out-of-court procedure) while maintaining limited involvement of the adjudicating authority to enhance the legal certainty of the final outcome; and also proposed an opportunity for the financial creditors to drive the FIRP. As a development of such efforts, the **IBC (Amendment) Bill, 2025**⁷ has rightly omitted the FIRP due to its low uptake and has further proposed the insertion of the creditor-led out-of-court insolvency resolution process (“**CIIRP**”) as Part IV-A of the Code 2016.

Section 57 of the Code 2016 allows an application for FIRP to be filed by a corporate debtor or its creditor(s). Section 55 of the Code 2016 states that an application can be filed for corporate debtors: (a) with assets and income

FAST-TRACK AND PRE-PACKAGED INSOLVENCY: CURRENT FRAMEWORKS AND GAPS FOR STARTUPS

An entity is considered a Startup,³ provided it fulfils each of the following criteria:

- a. It is incorporated or registered as a private limited company (under the Companies Act, 2013), or a partnership firm (under Section 59 of the Partnership Act, 1932), or a limited liability partnership (under the Limited Liability Partnership (LLP) Act, 2008) in India;

³ Department For Promotion of Industry & Internal Trade, Ministry of Commerce & Industry, ‘Notification G.S.R. 127(E)’ (19 February 2019) <<https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/198117.pdf>> accessed on 28 December 2025.

⁴ Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Notification G.S.R. 127(E) (19 February 2019) <<https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/198117.pdf>> accessed 28 December 2025.

⁵ The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, s 7, as amended by Notification S.O. 2119(E) (26 June 2020) <<https://www.dcmsme.gov.in/Notification-S.O-no-1364-E-dated-21.03.2025-Revised-Definition.pdf>> accessed 28 December 2025.

⁶ Ministry of Corporate Affairs, Invitation of comments from the public on changes being considered to IBC, File No. 30/38/2021-Insolvency (18 January 2023) <<https://ibbi.gov.in/uploads/whatsnew/7f55e29ae9c0023184a3895f849cd2ef.pdf>> accessed on 28 December 2025.

⁷ Insolvency and Bankruptcy Code (Amendment) Bill, 2025, Bill No. 107 of 2025 (12 August 2025) <<https://ibbi.gov.in/uploads/legalframework/da78600a457741799bb2e7c8da25f946.pdf>> accessed on 28 December 2025.

below notified levels; (b) with a notified class of creditors/ amount of debt; or (c) other notified corporate persons. In 2017, MCA notified that such corporate debtors can be a small company, a Startup (other than the partnership firm) as defined by DPIIT, or an unlisted company with total assets worth Indian Rupees One Crore or below in the preceding financial year.⁸ Furthermore, unlike PPIRP, the FIRP does not allow even a blended debtor-in-possession mechanism. Unlike long timelines of CIRP, FIRP has a strict 90-day timeline, with a 45-day extension window. However, taking a step forward, the proposed CIIRP provides for a blended mode of debtor-in-possession.

For an above threshold of default, an MSME may file for PPIRP with the adjudicating authority. However, there is no such threshold of default for startups in FIRP. The absence of a threshold may, on one hand, allow early intervention without waiting for larger defaults to take place, but on the other hand, may lead to potential misuse by pushing the company into the insolvency mode to obtain a moratorium for ill-motives or to defraud stakeholders of the company. Considering the latter as the larger concern to be addressed, a lower but reasonable threshold is required.

To date, *Right Tower Pvt. Ltd., CA(IB) No. 1390-KB-2019 in C.P. (IB) No. 505-KB-2017*, remains the rare and only example where an FIRP application was filed against the corporate debtor (Right Towers Private Limited) by the financial creditor, SREI Infra Fin. Ltd, under Sections 55-58 of the Code 2016. However, the resolution professional did not receive any expressions of interest, and as the corporate debtor did not have any assets and its operations were closed, the matter ended in liquidation. The National Company Law Tribunal (Kolkata Bench) passed the dissolution order on 08 November 2019. Notably, the corporate debtor had no liquid assets to bear the liquidation costs, and the financial creditor agreed to fund the liquidation costs in this matter and treat it as interim funding for the purpose of liquidation. Despite such a state, wherein liquidation was inevitable, it took almost two years for the dissolution order to come, and added financial burden on creditors who had not even recovered the principal, thereby defeating the stakeholders in terms of both cost and time involved. Similar to this case, startups are usually asset-light, and no assets would mean neither insolvency resolution for debtors nor financial recovery for creditors and rather add the burden of liquidation costs if it eventually ends with such dissolution, making FIRP futile for asset-less startups. While this may be the fate of many ailing businesses who fail to receive expressions of interest and viable resolution plans, as the Code 2016 cannot create value where none exists but can only provide a framework; if the intent is, however,

Addressing startup insolvency lies within the core mandates of the Code 2016, i.e., better time-bound resolution mechanisms/ outcomes, preserving value, promoting entrepreneurship and balancing the interests of all the stakeholders.

to bring a supportive framework to revive ailing yet viable startups and promote entrepreneurship, adoption of creative and innovative solutions are urgently required than mere shortened or restrictive timelines.

CASE LAWS

In *Sanjay Kumar Ruia v. Catholic Syrian Bank Ltd., 2019 SCC OnLine NCLAT 548*, the National Company Law Appellate Tribunal (“NCLAT”) held that the adjudicating authority erred in converting a CIRP (filed under Section 9) into a FIRP, as the corporate debtor (SN Plumbing) did not fall within the requisite eligibility criteria of having assets and income below the notified levels. However, the judgment remains silent on whether a CIRP (initially filed under Section 7, 9, or 10, and not under Section 55) can be converted into FIRP midway, provided the corporate debtor qualifies the eligibility criteria for FIRP. While the midway conversion from FIRP to CIRP is straightforward, the *vice versa* may become a tool to delay or derail the existing insolvency proceedings, unless otherwise safeguards have been built within the provisions. Further, if the CIRP has already progressed to a later stage, a midway conversion to FIRP would not attain any significant results.

In *Pratima P. Shah v. IDBI Bank Limited, 2019 SCC OnLine NCLAT 1114*, the original issue was whether the application preferred by the corporate debtor (Amar Remedies Limited) formerly before the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) in terms of clause (b) of Section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (“**SIC Repeal Act, 2003**”), is barred under clause (d) of Section 11 of the Code 2016. While the application filed by

the corporate debtor was not directly related to FIRP, the NCLAT held that the prohibition under clause (d) of Section 11 of the Code 2016, to initiate CIRP against a corporate debtor in respect of whom a liquidation order has been made, does not extend to the initiation of the: (i) FIRP under Section 55 of the Code 2016, and (ii) CIRP by reference under clause (b) of Section 4 of the SIC Repeal Act, 2003. At a stage when the liquidation order has been made, assets are vested with the liquidator and the current management has ceased to exist, admitting it to FIRP will seriously dismantle the entire resolution process, and hence this judgment, with regard to FIRP, shall not be seen as a precedent. Interestingly, clause (c) of sub-section (2) of Section 54A of the Code 2016 explicitly prohibits the initiation of PPIRP if a liquidation order has been made against the corporate debtor under Section 33 of the Code 2016. Considering the close parallels in the nature of startups and MSMEs, this divergent treatment in statutory policy merits reconsideration.

The provisions enshrined in Chapter III-A (Pre-Packaged Insolvency Resolution Process) of Part-II of the Code 2016, read with the IBBI (PPIRP) Regulations 2021 with

8. *Ministry of Corporate Affairs, Notification S.O.1910(E) and S.O.1911(E) (14 June 2017)*, <www.mca.gov.in/bin/ebook/dms/getdocument?doc=OD-M5MA==&docCategory=Notifications&type=open> accessed on 28 December 2025, read with *Ministry of Corporate Affairs Notification S.O. 4142(E) (30 August 2022)*, <www.mca.gov.in/bin/ebook/dms/getdocument?doc=Mzc0NTZzNDZ2&docCategory=Notifications&type=open> accessed on 28 December 2025.

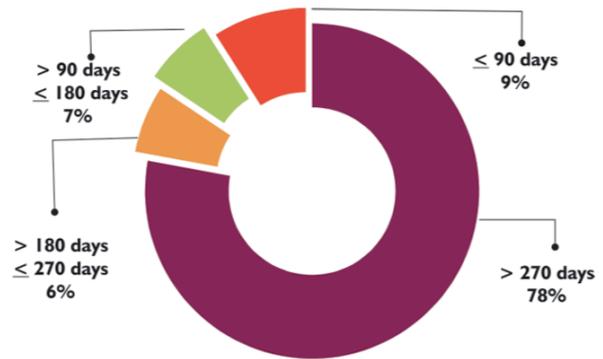
regard to the PPIRP, are available solely for MSMEs which are incorporated as either a company or a limited liability partnership, fulfil the eligibility criteria as stated under sub-section (1) of Section 7 of the MSME Act, 2006, and hold a Udyam Registration Certificate. The PPIRP blends debtor-in-possession with creditor-in-control. It allows a corporate debtor, having debts more than Indian Rupees Ten Lakhs but not exceeding Indian Rupees One Crore, to file an application after obtaining consent of at least sixty six per cent of its creditors (who are not related to the corporate debtor) and members' approval via special resolution. The role of the resolution professional is more of supervision and confirmation to ensure that the provision is not misused and submit the base resolution plan to the adjudicating authority, if it does not impair the claims owed to operational creditors and is approved by the committee of creditors. However, if it either impairs claims of operational creditors or is not approved by the committee of creditors, the resolution professional invites competing plans (legally known as the 'best alternative plan') from the prospective resolution applicants; and the best amongst both, the base resolution plan and the best alternative plan, gets approved. Furthermore, the provisions require the completion of the PPIRP within the timeline of one hundred and twenty days. While the hybrid debtor-in-possession model in PPIRP, with the limited role of insolvency professionals, limited judicial interference, and prior consent of creditors, was aspirational for a jurisdiction whose insolvency regime relies on the creditor-in-control model, the PPIRP did not meet its targeted aspirations and remains limited in use due to the involvement of procedural complexities and the impending risk that if PPIRP is left unsuccessful, it may lead to the initiation of CIRP.

Further, MSMEs typically rely on traditional bank lending routes for their funding requirements. Besides, banks are also accustomed to the business models of MSMEs, knowing predictable revenue streams, and often have sectoral relationships. Unlike startups, MSMEs are not always cash-light, and collateral is often easy to provide; and if not, the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) comes to the rescue. The CGTMSE enables MSMEs to obtain loans without collateral or third-party guarantees, and in case of a default by the MSME, CGTMSE pays the lending institution a specified percentage of the outstanding amount. Such benefits outside the Code 2016 help creditors to recover more value than they would have received in the PPIRP.

On average, it took two to three years for a CIRP to end in either liquidation or resolution in the financial year 2023-24.⁹ As of June 2025, seventy eight per cent of the ongoing CIRPs in India are running behind the standard timeline of two hundred and seventy days for closure of CIRP (as shown below in Figure 1)¹⁰. Unquestionably, assets gradually decline in value over time as a result of depreciation. While companies having assets may still

retain some value at the end of such CIRP, value erosion happens much faster in startups, and thereby losing breath likely within six months of a crunch of funds. In other words, as startups operate on a cash runway of six to twelve months, by the time an FIRP is admitted by the adjudicating authority (due to practical delays witnessed in the CIRP mechanism), the startup may have already become unviable.

Figure 1: Timeline of ongoing CIRPs



(Source: IBBI Newsletter, Apr-Jun 2025)

INTERNATIONAL PERSPECTIVES AND COMPARISONS

This section explores the comparative international mechanisms to look for features from global regimes and for their potential relevance that can help create a startup-aligned insolvency model for India.

1. European Union Directive

*European Union Directive on Preventive Restructuring Frameworks on Discharge of Debt & Disqualifications*¹¹ ("EU Directive") specifies standards for preventive debt restructuring mechanisms and debt discharge for entrepreneurs. It detailed ancillary measures like early warning systems and financial support for restructuring activities.

While it is commonly said that prevention is better than cure, when it comes to failing businesses, enterprises may turn deaf to it for multiple reasons ranging from late realisation of financial troubles, or a small financial trouble turning out to be a massive one due to domino effect or unintended mismanagement, to an emotional bias of promoters towards their brainchild leading to delays and denial.

For early identification of debt distress, the EU Directive has introduced early warning tools.¹² It exemplifies such tools as alert mechanisms when debtors have not made certain payments, incentives for third parties (say, an accountant, tax and social security authorities) to flag to the debtor a negative

⁹ *Insolvency and Bankruptcy Board of India, Annual Report 2023-24* <ibbi.gov.in/uploads/publication/de2f17cca103664da3f2c845fef35505.pdf> accessed on 28 December 2025.

¹⁰ *Insolvency and Bankruptcy Board of India (IBBI), Quarterly Newsletter, Vol. 35 (Apr-Jun 2025)* <ibbi.gov.in/uploads/publication/3694d8874ee2ac5802de48d293ad5802.pdf> accessed on 28 December 2025.

¹¹ *Directive (EU) 2019/1023 [2019] OJ L 172/18* <https://eur-lex.europa.eu/eli/dir/2019/1023/oj/eng> accessed 28 December 2025.

¹² *Directive (EU) 2019/1023 OJ L172/18 art 3*, <https://eur-lex.europa.eu/eli/dir/2019/1023/oj/eng> accessed 28 December 2025.

development, and so on. However, a fragmented warning tool may not be able to help companies, as it may give result on one fragmented segment; hence, it rather requires a comprehensive early warning system that combines all the alerts (expanding to, but not limited to, delayed negative working capital cycles/vendor payments and repeated bounced cheques), and uses benchmark mathematical ratios/ industry specific ratios and allows startups to gauge themselves and receive early warning signals by simply putting their monthly and annual financials on an online portal. It is worth noting that, at times, promoters fear the risk of being snatched out of their companies by their other stakeholders if their financial struggles become public or even known to stakeholders. Hence, the success key of such a system lies in confidentiality.

2. Germany – Two-tier restructuring system

a. StaRUG – Preventive Restructuring Procedures/ Early Intervention Tool

Inspired by the EU Directive, the *Act on the Stabilisation and Restructuring Framework for Companies (Corporate Stabilisation and Restructuring Act – StaRUG)* is a pre-insolvency corporate rescue toolkit to avoid formal insolvency proceedings, which came into effect in 2021. It allows any company, which is yet not insolvent, but is facing imminent illiquidity (its expected inability to meet existing debt obligations on their maturity date in the forecasting period of the next 24 months), to initiate a debtor-led pre-insolvency preventive restructuring process.¹³ This enables the debtor to remain in possession, secure a moratorium and slip under a protective shield, protecting them from creditors' enforcement actions while negotiating out-of-court restructuring with limited court intervention, working on restructuring and fostering value preservation by early actions. It remains a flexible, rapid, and low-disruption turnaround option.

While case studies of big names, like LEONI AG¹⁴, VARTA AG¹⁵, and Spark Networks SE¹⁶ are available for discussion, where not only businesses were revived but also employments were preserved, the success of StaRUG cannot be defined in numbers as no official statistics are published since its inception in 2021 due to confidentiality and the structure of the regime.

German law requires companies to prepare a forward-looking liquidity plan, and if, in such a plan, imminent illiquidity is visible, management initiates StaRUG.

¹³ *Act on the Stabilisation and Restructuring Framework for Companies (Corporate Stabilisation and Restructuring Act - StaRUG) art 3 (12 December 2020)* <www.gesetze-im-internet.de/starug/BJNR325610020.html> accessed on 28 December 2025.

¹⁴ *Leoni AG, 'Financial restructuring concept in place: Leoni's future is secured' (Press Release, 3 April 2023)* <https://d3ga0yfowtcfnef.cloudfront.net/fileadmin/group/press/releases/2023/files/LEONI_AG_Press_release_Financial_restructuring_fin.pdf> accessed 28 December 2025.

¹⁵ *Varta AG, 'Financial reorganization with StaRUG proceedings' (Press Release, 21 July 2024)* <<https://www.varta-ag.com/en/about-varta/news-press/details/varta-ag-announces-financial-reorganization-with-starug-proceedings>> accessed 28 December 2025.

¹⁶ *Spark Networks, 'Continues Transformation on a Stronger Financial Basis' (4 January 2024)* <www.spark.net/news-media/47jw5i0nq2fy0v0ef3rvnn1qxjsj2e2> accessed 28 December 2025.

If, upon scrutiny, creditors later challenge the liquidity prognosis in courts. Accordingly, India can adopt a modified process, where such liquidity prognosis is first approved by a super-majority of creditors, before applying for the restructuring process.

b. Debtor-in-possession model – Formal insolvency proceedings with self-administration

The insolvency court may order the opening of insolvency proceedings along with an order allowing the debtor-in-possession management, for such debtor is entitled to manage and realise the insolvency estate under the supervision of an insolvency monitor. The debtor may request the debtor-in-possession benefit, by submitting such request for the ordering of the debtor-in-possession along with a debtor-in-possession management plan covering: (i) a six-month financial plan along with account of the sources of finance for ordinary business operations to continue and proceedings' costs to be covered; (ii) strategy for conducting the insolvency proceedings, objective of debtor-in-possession, and proposed measures; (iii) status of negotiations with creditors; (iv) precautionary measures to safeguard the debtor's ability to meet the obligations; (v) anticipated cost changes; (vi) statements on with which creditors the debtor is in contact as regards the performance of statutory obligations, past enforcement or realisation bans, and compliance with disclosure requirements for the last three business years.¹⁷

The court-approved debtor-in-possession based on the proof-of-potential in the derailed management plan strikes a balance against potential misuse of the debtor-in-possession model. It allays fears of bias against creditors and offers a nuanced approach for startups genuinely offering value protection on the table.

3. South Korea

Korean model showcases support beyond classic legal structuring through procedural facilitation and economic incentives. The above multi-tiered solutions offer a commendable and fresh perspective to deal with insolvencies.

a. Corporate Restructuring Promotion Act (CRPA) – Early Warning System

Albeit the *Corporate Restructuring Promotion Act ("CRPA")* was enacted as a domestic response to cater to its own needs while dealing with the financial crisis of the country and was not drafted under the influence of the EU Directive, its overall framework nevertheless remains consistent with the core intent and essence of the EU Directive. CRPA functions as a preventive restructuring tool that operates as a voluntary but creditor-led out-of-court process. Where, on the basis of its evaluation of the credit risk of a customer enterprise, a principal creditor bank identifies that its customer enterprise is exhibiting an indication of financial distress or insolvency, the principal bank shall provide a notice of this fact, along with the underlying reasons, to the relevant enterprise. On such an early warning signal or notification received

¹⁷ *Insolvency Code (Insolvenzordnung – InsO) Section 270 et seq. (5 October 1994) Federal Law Gazette I 2866* <www.gesetze-im-internet.de/englisch_inso/englisch_inso.html> accessed 28 December 2025.

from the principal creditor, such an enterprise with the risk of insolvency has an option to file an application to commence either a joint administrative proceeding with the council of financial creditors or, alternatively, an administrative proceeding with the principal creditor bank. In either case, it must be accompanied by a self-rehabilitation plan for corporate improvements and restructuring.¹⁸ The principal creditor shall operate and represent the council of financial creditors, and the latter shall deliberate to decide on key matters such as joint administrative proceedings, grace period for exercising claims, corporate improvement plan, claim adjustments, new credit provisioning, possibility of business normalisation, etc.¹⁹ Dissenting creditors may file a claim against the principal creditor bank for the purchase of their dissenting financial claims, and consenting creditors are required to jointly purchase relevant claims. However, the deadline for automatic purchase of dissenting claims gets suspended if either of the parties files a petition with the mediation centre or a complaint with the court, as it requires a formal resolution instead beyond a cooperative workout. Such a purchase of dissenting financial claims, subject to procedural safeguards, enables decisions to proceed with effective majority support, while ensuring a fair cram-down mechanism for dissenting creditors. In essence, CRPA enables distressed companies to negotiate restructurings before and outside the formal insolvency process, thereby avoiding the need for the latter.

CRPA has been available to all distressed entities, irrespective of size and sectors, and hence, startups or small enterprises have used this mechanism alike.

Where Germany offers support in cases of imminent illiquidity by management itself, Korea offers support if the risk of insolvency is highlighted by creditors and accepted by the debtor. Both countries offer insights to evolve a pre-insolvency mechanism for startups, where either party recognises risk and the other confirms it, the system supports the entity to rescue it from being pushed into insolvency.

b. Simplified Rehabilitation Proceedings (Summary & Individual Rehabilitation Proceedings)

Korea introduced summary rehabilitation proceedings (“SRP”) for small and medium enterprises (whose debts do not exceed KRW 5 billion and having no record of having obtained discharge within the past 5 years) in 2015 within the Chapter IX (Simplified Rehabilitation Proceedings) of the *Debtor Rehabilitation and Bankruptcy Act* (“DRBA”)²⁰, as a means to reduce costs, increase efficiency, and boost the chances of successful plan adoption. It modifies the corporate rehabilitation procedure described above by eliminating the need for a custodian and an inspector in most cases. An inspection commissioner who is an accountant or a court official may be appointed, with simplified duties under the Supreme Court Regulations.

Furthermore, not all cases warrant the constitution of the creditors’ council, and the voting thresholds for adoption of a plan are also relaxed.²¹ SRP can be filed by the debtor only. In most of the cases, the court appoints the debtor as a receiver, which is functionally equivalent to the debtor-in-possession mechanism; however, if there are concerns of fraud or mismanagement, the court retains discretion to appoint an independent receiver.²²

Understanding that in the distressed circumstances, not only small and medium enterprises but also their owners suffer insolvency, the Chapter IX also provides for the individual rehabilitation proceedings (“IRP”) to enable such individuals (with secured debts not more than KRW 1 billion and unsecured debts not more than KRW 500 million) to restructure all the debts (business and personal), excluding secured debts, in a single proceeding. Individual rehabilitation proceedings for owners of such an enterprise are assigned to the responsible judge of the panel in charge of the summary rehabilitation proceeding for such enterprise. The debtor prepares a plan (with maximum payment period as 3 years) which is subject to a vote, and the court may approve the rehabilitation plan despite the objection of creditors, provided certain conditions are met (i.e., that creditors receive no less than they would in liquidation, the total payments under the plan meet a minimum threshold, and the debtor’s disposable income is applied towards the satisfaction of the payments under the plan).²³

Korean SRP is a classic case of relaxations available to small enterprises; such incentives in the form of simplified and reduced procedures can bring a ray of hope for distressed startups.

c. Multi-Tiered Support Framework – CCRS, Government Schemes, and S-Track

In addition to the formal process under DRBA, individuals may also benefit from the Credit Counselling and Recovery Service (“CCRS”) for their business debts, to reach out-of-court debt restructuring arrangements with creditors. In this scheme, the council develops a repayment plan for discussion with creditors, based on the information provided by the debtor and confirmed by creditors. The repayment plan may be approved with the consent of a simple majority of creditors; any dissenting creditors are obligated under the terms of a contractual inter-creditor agreement. Over 100,000 applications are received annually, and in over eighty per cent of the cases where a plan is proposed by the council, it has been accepted by the creditors. To further ensure rehabilitation of small and medium enterprises, several government programs offer support in the form of expert advice; help defray the cost of the procedure as well as the cost of restructuring, and provide enhanced access to fresh financing on which a restructuring

¹⁸. *Corporate Restructuring Promotion Act art 5 (18 March 2016)* <<https://law.go.kr/LSW/lsInfoP.do?lsiSeq=181896&viewCls=engLsInfoR&urlMode=engLsInfoR#0000>> accessed 28 December 2025.

¹⁹. *Corporate Restructuring Promotion Act art 22 and 23 (18 March 2016)* <<https://law.go.kr/LSW/lsInfoP.do?lsiSeq=181896&viewCls=engLsInfoR&urlMode=engLsInfoR#0000>> accessed 28 December 2025.

²⁰. *Debtor Rehabilitation and Bankruptcy Act art 293* <www.law.go.kr/LSW/lsInfoP.do?lsiSeq=224905&viewCls=engLsInfoR&urlMode=engLsInfoR#EJ37:0> accessed 28 December 2025.

²¹. *International Monetary Fund, Republic of Korea: Financial Sector Assessment Program-Technical Note-Insolvency and Creditor Rights (IMF Staff Country Reports 2020/276, 18 September 2020)*, 10, 11, 20, 21 <<https://doi.org/10.5089/9781513556987.002>> accessed 28 December 2025.

²². *Min Han, ‘Simplified Rehabilitation Proceedings for MSEs in the Republic of Korea’ (Navigating the Storm: Helping MSMEs Set Sail with Legal Harmonization, UNCITRAL RCAP Incheon Law & Business Forum, 7 September 2021)* <https://uncitral.un.org/sites/uncitral.un.org/files/pages/RCAP/panel_4_simplified_rehabilitation_proceedings_for_mses_in_korea_min_han.pdf> accessed on 28 December 2025.

²³. 21 (above).

generally depends,²⁴ and establishing an Equity Retention plan carrying a debt-to-equity swap, enabling the entrepreneur to earn back equity in the business.²⁵ In 2017-2018, the Seoul Bankruptcy Court introduced the ‘S-Track’ program to enhance accessibility to numerous schemes for businesses with debts of less than KRW 15 billion. The S-Track is a program that integrates various support programs offered by different agencies.²⁶

Often, startups resort to not-so-specialised professionals instead of the specialised ones to save costs. If a CCRS-like structure is built at the government level, with empanelled experts (post-assessment of their relevant experience), offering support at subsidised fees, it can go a long way to assist startups in their distress journey.

d. Proposed Debt Restructuring Centres & Fast-Track System

To further assist microenterprises, the Ministry of SMEs and Startups of Korea has announced a work plan for the year 2025 to help them deal with the impact of rising prices and financing costs/ expenses, coupled with a sluggish recovery in domestic consumption and the transition into a super-aged society. One of the notable proposed actions of this work plan is the establishment of 30 microenterprise debt restructuring centres, which will work in collaboration with bankruptcy courts to streamline debt restructuring processes. Likely, such centres will offer practical assistance, counselling, and process coordination for debt restructuring among vulnerable micro and small businesses, thereby reducing administrative burden and enhancing access to insolvency mechanisms. Additionally, a dedicated fast-track system is being planned and introduced to reduce the duration of bankruptcy and rehabilitation procedures (currently taking about 12 months), ensuring expedited recovery support for businesses in crisis;²⁷ however, if such a reduction in duration is not supported with innovative solutions, it may not achieve the intended results.

4. Japan

a. Civil Rehabilitation Proceedings

While Japanese Civil Rehabilitation Proceedings can be initiated under the *Civil Rehabilitation Act* by either a debtor or a creditor, the debtor-in-possession model is generally available to all debtors (whether individuals or legal entities). Unless the rehabilitation debtor administers and disposes of its property in an inappropriate manner or the court otherwise finds it particularly necessary for the rehabilitation of the rehabilitation debtor’s business, a trustee is not appointed.²⁸ Rather, the court appoints a supervisor only to oversee and monitor the debtor’s activities, and in the supervision order, it designates acts that the rehabilitation debtor may not conduct without

obtaining the consent of the supervisor.²⁹ Unless a specific injunction is granted, the rights of secured creditors are not subject to the stay order and continue to remain enforceable.

In practice, Japan is witnessing an increasing number of mixed regimes, i.e., trustee-type civil rehabilitations (instead of supervisor-based civil rehabilitations), as well as quasi-debtor-in-possession-type corporate reorganisations (instead of trustee-based corporate reorganisations), making the differences between civil rehabilitation and corporate reorganisation proceedings, whether debtor-in-possession-type or trustee-type, blurred and less pronounced over recent years.³⁰

b. Simplified Rehabilitation and Consensual Rehabilitation

Further, the Civil Rehabilitation Act allows for ‘Simplified Rehabilitation’ in case creditors (holders of filed rehabilitation claim who hold said claim) that account for three-fifths or more of the value, and ‘Consensual Rehabilitation’ where all the holders of filed rehabilitation claims have consented to the proposed rehabilitation plan submitted by the rehabilitation debtor. Such applications can be made by the rehabilitation debtor post expiry of the period for filing proofs of claims and before the beginning of the ordinary period for investigation. Such rehabilitations skip the usual lengthy procedures, including investigation and determination of rehabilitation claims (simply put, verification of claims). Procedure for adopting a resolution on a proposed rehabilitation plan submitted by the rehabilitation debtor, etc., is not required to be performed, i.e., formal creditor meetings are skipped.³¹

Like Korean SRP, Japanese Simplified and Consensual Rehabilitation offer much needed relaxations in lengthy procedures, offering insights where the startup insolvency regime can skip procedures with a safeguard for prior consents and supervision of insolvency professionals.

5. Singapore – Simplified Insolvency Programme

Insolvency, Restructuring and Dissolution Act, 2018 (“IRDA”) introduced the simplified restructuring provisions for small businesses, namely, the Simplified Insolvency Programme (“SIP”), which is bifurcated into: (a) the Simplified Debt Restructuring Programme in Part 5A (“SDRP”); and (b) the Simplified Winding Up Programme in Part 10A (“SWUP”).³² SIP was introduced in 2018 as a pilot project to be run till 2026. Before the expiry of this sunset clause, the Ministry of Law of Singapore passed the Insolvency, Restructuring and Dissolution (Amendment) Bill in January 2025 to

²⁴ Financial Services Commission, ‘Government Prepares KRW80 Trillion Financial Support Programs to Help SMEs Overcome Crisis’ (Press Release, 11 January 2023) <<https://fsc.go.kr/eng/pr010101/79293>> accessed 28 December 2025.

²⁵ 20 (above).

²⁶ 21 (above).

²⁷ Ministry of SME & Startups, ‘Plan for 2025’ (Press Release, 10 January 2025), <<https://www.mss.go.kr/site/eng/ex/bbs/View.do?cbIdx=244&bcIdx=1055757>> accessed 28 December 2025.

²⁸ Civil Rehabilitation Act, art 64 (Administration Order) <www.japaneselawtranslation.go.jp/en/laws/view/3095> accessed 28 December 2025.

²⁹ Civil Rehabilitation Act, art 54 (Supervision Order), <https://www.japaneselawtranslation.go.jp/en/laws/view/3095> accessed 28 December 2025.

³⁰ Masaki Fujita & Sayuri Tago, ‘General overview of and recent developments in Japanese rescue-type insolvency proceedings’, *Insolvency and Restructuring International* (2021) 15(2), 42, 43 <www.amt-law.com/asset/res/news_2021_pdf/publication_0023989_ja_001.pdf> accessed 28 December 2025.

³¹ Civil Rehabilitation Act, ch XII <www.japaneselawtranslation.go.jp/en/laws/view/3095> accessed 28 December 2025.

³² Insolvency, Restructuring and Dissolution Act 2018 <<https://sso.agc.gov.sg/Act/IRDA2018?WholeDoc=1#P15A->>> accessed 28 December 2025.

make the SIP a permanent feature of IRDA,³³ whereby: (i) the eligibility criteria to apply for above programmes is that the applicant's total liabilities must not exceed \$2 million; (ii) out-of-court process is encouraged, i.e., the court involvement will also be limited to situations where approval of a debt repayment plan is disputed and only on specified grounds, and if the debt repayment plan is backed by the majority of creditors, present and voting, comprising of at least two-thirds of creditors in value, the debt repayment plan is considered to be approved and becomes binding and enforceable against all the creditors (including the creditors dissenting to the debt repayment plan); (iii) the initial moratorium period during which creditors are unable to enforce their rights is shortened from 90 to 30 days, with limit of one extension; (iv) a five-year black-out period is introduced, meaning that a company which is unable to successfully complete the SDRP is barred from re-applying the SDRP until the expiry of at least 5 years); and (v) SDRP may convert into other liquidation processes, ensuring the unviable companies are liquidated and dissolved efficiently.³⁴

To mention its success, as on 31 December 2024, a total of 116 applications for the existing SIP had been submitted, and 77 of them were accepted. Of these, 61 micro and small companies in severe financial distress were successfully assisted.³⁵ These numbers demonstrate that approximately eighty per cent of accepted applicants/micro and small companies achieved a workable resolution rather than liquidation.

India has recently recognised a similar measure in the IBC Amendment Bill 2025 for entities meeting thresholds to be notified by the Ministry of Corporate Affairs, as the creditor-led out-of-court insolvency with blended form debtor-in-possession, to be added as Chapter IV-A of the Code 2016.

6. United States – Small Business Debtor Reorganisation

The United States' insolvency resolution system³⁶ operates primarily on a debtor-in-possession model and allows an automatic stay³⁷ (akin to a moratorium) on the filing of the bankruptcy petition itself. Subchapter V (Small Business Debtor Reorganisation) of Chapter 11 (Reorganisation) allows the debtor to have all the rights and powers, and the obligation to perform all the functions and duties, of a trustee.³⁸ Further, the debtor is required to file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.

The benefit of this provision is limited through strict conditions: (a) threshold of \$2 million aggregate debts, (b) requirement that at least fifty per cent of debts arise from business activities of the debtor, and (c) exclusion of entities such as publicly listed companies (including affiliates) and single asset real estate debtors. Such restrictions ensure that the expedited bankruptcy relief is available only to the target segment of genuine small business debtors, and not large corporations or conglomerates.³⁹ While a formal committee of creditors is not mandated for Subchapter V, a trustee is appointed to supervise and support the process, by performing specific duties, including facilitating consensual plan development, appearing at hearings involving plan confirmation, ensuring the debtor makes timely payments under a confirmed plan, and if the debtor ceases to be a debtor-in-possession, operating the business and managing estate assets.⁴⁰ In effect, no automatic committee of creditors and a narrower scope of trustee translates into lower fees and administrative expenses, yet the supervisory role of the trustee helps prevent fraud or mismanagement risks. In case of failure to file or confirm a plan within the time, the court shall either convert it into a case under Chapter 7 (Liquidation) or dismiss the case under this chapter. The time bound nature ensures creditors are not left in limbo for eternity.

Measuring the success of this regime, approximately fifty per cent of plans submitted under Subchapter V were confirmed, and on average, such plans were confirmed within almost six months. Roughly, eighty six per cent of companies that confirmed plans were still operating as of December 2023, compared to approximately ten months in non-Subchapter V cases.⁴¹ Compared to small businesses' rehabilitation cases filed outside the Subchapter V under Chapter 11, those under Subchapter V have shown nearly twice the rate of the confirmed plans, a dismissal rate lower by twenty per cent, as well as a shorter time to confirmation. Moreover, the number of small businesses opting for the provisions of Subchapter V under Chapter 11 has witnessed a rise from 159 cases in the previous years to 206 cases in July 2025, representing a 30 per cent growth in one year.⁴² Up to the present, a total of 10,50,000 cases have been filed under the Subchapter V.⁴³

Allowing the debtor-in-possession with no committee of creditors has remained the most liberal yet an effective resolution mechanism for small businesses in the United States.

^{33.} *Insolvency, Restructuring and Dissolution (Amendment) Act 2025* (Singapore, 14 February 2025) <<https://sso.agc.gov.sg/Acts-Supp/3-2025/Published/20250211?DocDate=20250211#pr12>> accessed 28 December 2025.

^{34.} *Ministry of Law, Simplified Insolvency Programme to be Revamped and Made Permanent to Support Financially Distressed Companies*, (Press Release, 11 November 2024), <https://www.mlaw.gov.sg/simplified-insolvency-programme-revamped-and-made-permanent-to-support-financially-distressed-companies/>.

^{35.} *Edwin Tong SC, 'Speech by Minister for Culture, Community and Youth & Second Minister for Law, on the Second Reading of the Insolvency, Restructuring and Dissolution (Amendment) Bill' (7 January 2025)* <www.mlaw.gov.sg/second-reading-speech-for-the-insolvency-restructuring-and-dissolution-amendment-bill/> accessed 28 December 2025.

^{36.} *Bankruptcy Code (US) ss 11*

^{37.} *Bankruptcy Code (US) ss 362*

^{38.} *Bankruptcy Code (US) ss 1184*

^{39.} *Bankruptcy Code (US) ss 101(51D)*

^{40.} *Bankruptcy Code (US) ss 1183*

^{41.} *United States Trustee Program, 'Chapter 11 Subchapter V Statistical Summary Through December 31, 2024'* <www.justice.gov/ust/page/file/1499276/dl?inline>, <https://www.justice.gov/ust/subchapter-v> accessed 28 December 2025.

United States Trustee Program, 'Small Business Reorganization Act Implementation and Trends' (Blog, 2021) <https://www.justice.gov/archives/ust/blog/small-business-reorganization-act-implementation-and-trends> accessed 28 December 2025.

^{42.} *American Bankruptcy Institute, 'July Commercial Chapter 11 Filings Increase 78 Percent over Last Year; Total Commercial Bankruptcy Filings Up 26 Percent' (Press Release, 05 August 2025)* <www.abi.org/node/1000566> accessed 28 December 2025.

^{43.} *American Bankruptcy Institute (4 August 2025)*, <<https://app.powerbi.com/view?r=eyJrIjoiNzJmYWJlNDQzMGNlMy00MDA5LTlmZWYtODU5YTQyMDRjYWVjIiwidCI6ImI0NDh0WmYyLThjNmYtNGNlYS1YzI1LWYzZTI0MGJjNGI1ZC1mMi0jF9>> accessed 28 December 2025.

Table 1: Summary of major features in jurisdictions covered in this study

Category	Jurisdiction/ Authoritative Document	Mechanism / Tool	Key Features
Small businesses	Singapore (IRDA 2018)	Simplified Insolvency Programme (SIP)	Debtor-in-possession (“DIP”); Out-of-court negotiations on debt repayment plan, subject to approval of 2/3 of creditors by value; Cross-class cramdown; Shortened moratorium of 30 days; Conversion into other liquidation processes, ensuring efficient liquidation and dissolution of the unviable companies.
	United States (U.S. Code)	Small Business Debtor Reorganisation	DIP with Trustee for supervision; Automatic Stay; Limited time of 3 months to file a plan; No formal Committee of Creditors.
	South Korea (DRBA)	a. Summary rehabilitation proceedings (SRP)	Eliminates the need for a custodian and inspector; the Inspection commissioner (accountant/ court official) is appointed for simplified duties; Creditors’ council is not mandatory; Relaxed voting thresholds for plan approval; Functionally, DIP (as the debtor is appointed as receiver in most cases).
		b. Individual rehabilitation proceedings	Run parallel to SRP before the same judge and court may approve the plan even if creditors don’t, provided they receive not less than what they would have in liquidation; Govt schemes; CCRS (where plans are developed by Council); Equity Retention Scheme; S-Track Program (to integrate various support programs).
Startups	South Korea (Proposed Measures as per Work Plan 2025; not yet codified)	a. Microenterprise debt restructuring centres	Microenterprise debt restructuring centres to collaborate with bankruptcy courts to coordinate and streamline debt restructuring processes, improve access to insolvency mechanisms, offer practical assistance, reduce administrative burden, and provide counselling.
		b. Fast-track system	Intended to reduce the duration of bankruptcy and rehabilitation procedures.
General application (i.e., not restricted basis the size and the scale of the company)	European Union Directive	Preventive debt restructuring mechanisms and early warning tools	Early intervention tools to prevent insolvency; focus on restructuring before formal proceedings; requires member states to transpose into national law.
	Germany (Act on Stabilisation & Restructuring Framework for Companies)	a. StaRUG – The Preventive Restructuring Procedure	Debtor-led pre-insolvency process, out-of-court restructuring with limited court intervention, upon imminent illiquidity (its expected inability to meet existing debt obligations on their maturity date in the forecasting period of the next 24 months).
		b. DIP model – Formal insolvency proceedings with self-administration	DIP is subject to proof of ability to utilise it efficiently (via submission of a plan covering revival strategy along with supporting sources of finance, precautionary measures, and adequate disclosures).
	Japan (Civil Rehabilitation Act)	a. Civil Rehabilitation Proceedings	DIP with supervisor; no moratorium for secured creditors, unless specifically granted. Mixed regimes (developed by practice), i.e., trustee-type civil rehabilitations and quasi-DIP type corporate reorganisations, show flexibility in the system.
		b. Simplified and consensual rehabilitation	Skip the usual lengthy procedures, including investigation and determination of rehabilitation, and formal creditor meetings.
	South Korea (CRPA)	CRPA – Voluntary but creditor-led out-of-court process	Principal creditor bank highlights a sign of insolvency, basis which such an enterprise can file for administrative or joint administrative proceedings along with a self-rehabilitation plan; Balanced cram-down feature with requirement of buyout of claims of dissenting creditors by principal creditor bank, if requested by the former.

THE WAY FORWARD AND CONCLUDING REMARKS

Startups and MSMEs overlap in certain characteristics such as size, scale, resource constraints, capital challenges and motivation, and also remain distinct in terms of their age categorisation, innovation factor, business objectives, funding patterns, asset structures, risk profiles, and growth trajectories. While MSMEs are focussed on stable cash flows and steady businesses, startups usually pursue high-risk, high-reward growth models. Yet, some startups may initially qualify as MSMEs based on investment and turnover thresholds, especially early-stage ventures. While distinctions should guide design, such distinctions may become blurred when such entities are facing financial turmoil, leading to insolvency. Practical differences that once mattered in the growth phase matter less than the need for a nimble rescue in the insolvency phase. Procedural complexity due to duplication or fragmented solutions or the need to fit into different buckets adds to the layers of cost, time, and effort, and hence, when devising solutions to resolve their insolvency, practical simplicity should guide execution at insolvency. Accordingly, the rescue process for both structures can be blended to reach a tailor-made, simplified and streamlined process.

Irrespective of it being clubbed or kept separate, principally, startups also deserve a debtor-in-possession mechanism, as available for MSMEs under PPIRP. For both MSMEs and startups, promoters are often the key asset and their relationships, supplier networks, and customer trust hold the business together. Removing them, as that happens in CIRP's creditor-in-control mechanism, can destroy the going-concern value instantly. Debtor-in-possession mechanism can allow the business to run without operational disruption during the FIRP. Further, full CIRP requires huge costs, rather debtor-in-possession with limited oversight of a resolution professional is not only cost effective but also helps founders salvage business know-how, technology and intellectual property, and offers them a second chance in their entrepreneurial journey. Further, as the debtor-in-possession model has the potential to be abused for adopting delay tactics, the US-like debtor-in-possession model may be too liberal to be initiated within the current Indian regime; henceforth, a Germany-like court-approved debtor-in-possession based on proof-of-potential, i.e., where the existing management has demonstrated a credible rehabilitation plan, can be a midway solution for startups' insolvency resolution. This will ensure that the interests of creditors are equally protected while allowing management to stay motivated to minimise disruptions.

The creditors driving the formal FIRP or the informal out-of-court procedures go against the globally recognised need for debtor-in-possession and debtor-led processes in special cases. The proposed creditor-led out-of-court CIIRP procedure in the Amendment Bill 2025 sets the tone, as an informal out-of-court process



can surely alleviate the plight of failing startups to an extent. However, their sanctity would largely depend on the adherence to timelines in the quasi-judicial bodies, as well as stricter provisions against post-CIIRP disputes in the courts of law. Accordingly, Singapore's SIP-like debtor-led out-of-court procedures can be structured in the Indian insolvency regime for startups. Excluding approval of related parties and affiliates, and limiting consent requirements to independent creditors, can function as a guardrail in such workout arrangements.

Not only startups find no beneficial outcome in proceeding with the extant FIRP regime, but venture capital and private equity investors also often hesitate to let startups pursue modes under the Code 2016 due to contractual restrictions in shareholders' agreements, as it would mean recognising losses and relinquishing control. Noticeably, there are no major cases where a venture-backed startup has successfully used Code 2016 for resolution.⁴⁴ Interestingly, in 2022, the *Framework for Protection of Interest of Public Equity Shareholders in Case of Listed Companies Undergoing CIRP under the IBC*⁴⁵, the Securities and Exchange Board of India noted that the rights available to creditors are undeniably distinguished and superior when compared to an equity shareholder; equity is also a risk capital. The existing public equity shareholders (i.e. non-promoter public shareholders) of the corporate debtor shall be provided an opportunity to acquire equity of the fully diluted capital structure of the new entity to the extent of up to the minimum public shareholding percentage (currently twenty five per cent), on the same pricing terms as agreed upon by the resolution applicant. While this proposal has not seen the light of day, a similar structure shall be adopted for startups, leaving some room for revival for venture capitalists to promote startups to adopt the route under the Code 2016.

⁴⁴. Pramod Sihari, *Exit route for start-ups - The Hindu BusinessLine* (31 March 2025) <www.thehindubusinessline.com/opinion/exit-route-for-start-ups/article69397507.ece> accessed 28 December 2025.

⁴⁵. Securities & Exchange Board of India, *Framework for protection of interest of public equity shareholders in case of listed companies undergoing CIRP under the Insolvency and Bankruptcy Code* (10 November 2022) <www.sebi.gov.in/reports-and-statistics/reports/nov-2022/framework-for-protection-of-interest-of-public-equity-shareholders-in-case-of-listed-companies-undergoing-corporate-insolvency-resolution-process-cirp-under-the-insolvency-and-bankruptcy-code-ibc-_64850.html> accessed 28 December 2025.