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A COMPARATIVE ANALYSIS OF THE RESOLUTION PLAN UNDER IBC IN INDIA VIS CORPORATE RESCUE IN THE UNITED KINGDOM

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Abstract: This comparative analysis delves into the resolution mechanisms for distressed companies under the Insolvency and Bankruptcy Code (IBC) in India and corporate rescue procedures in the United Kingdom (UK). The study explores the legal frameworks, procedural intricacies, and practical implications of these mechanisms, while identifying key similarities and differences. The research focuses on the efficacy of resolution plans under the IBC and corporate rescue in the UK, scrutinizing their effectiveness in preserving value, promoting stakeholder interests, and facilitating economic revival. By examining case studies and empirical data, the analysis highlights the operational challenges, legal lacunae, and regulatory hurdles encountered in both jurisdictions. Key findings reveal disparities in the timelines, creditor rights, and judicial oversight between the IBC and UK corporate rescue regimes. While the IBC emphasizes creditor-led resolution through the Committee of Creditors (CoC) and mandates strict timelines for resolution, the UK framework prioritizes debtor-in-possession and provides greater flexibility in restructuring arrangements. Moreover, the research identifies legal ambiguities and procedural bottlenecks in the implementation of resolution plans under the IBC, including issues related to creditor hierarchy, valuation methodologies, and judicial interpretations. In contrast, the UK's well-established legal precedents and specialized courts offer more clarity and certainty to stakeholders, facilitating smoother restructuring processes. The analysis also underscores the significance of institutional infrastructure, regulatory support, and stakeholder engagement in enhancing the efficacy of corporate rescue mechanisms. It advocates for reforms in the IBC to address legal lacunae, streamline procedures, and bolster investor confidence in distressed asset resolution.

Key words - Insolvency and Bankruptcy Code, corporate rescue, comparative analysis, resolution plan, regulatory reforms.

I. INTRODUCTION

An 'organization' is any company. Since the term "organ" is the root of the word "organization," every "organization" shares many traits with an "organ." The organization has the potential to grow or deteriorate, just like any other "organ." Certain sectors, businesses, and professions—all of which are clearly organizations—need to be ill, while others need to be robust. An organization that is in good health may go sick after a few years. Certain sick organizations will die, while others could come back to life. Not every start-up will be successful. There will be some who succeed and those who fail. A start-up may fail even if it is sincere. There are phony start-up out there whose only goal is to take advantage of the system and embezzle public money. Numerous internal or external variables may be the cause of the sickness. It could have a brief or long-lasting effect. It could potentially be ongoing.

II. STATEMENT OF PROBLEM

To strengthen the promotion of universal rules on reconstruction and insolvency, UNCITRAL Model legislation has developed special model legislation. Currently, nations all around the world can use this new model law domestically. The previous model legislation has only been used in 44 states in the US since it was published in 1997. Although the phrase "resolution plan" is defined by the three-year-old Indian bankruptcy legislation as a "plan proposed by [resolution applicant] for insolvency resolution of the corporate debtor as a going concern," On the other hand, the 1986 UK Insolvency Law lays out a number of strategies for saving the business. These two nations represent the two extremes of restructuring; in the UK, corporate rescue governs the bankruptcy Act, while in India, a "resolution plan" is only a component of the bankruptcy system. The article highlights the distinctions between the two laws and the company restructuring plan's effectiveness in light of rulings from the courts in each nation. In order to arrive at a workable solution for the insolvency restructuring of both countries, the article decides to perform a comparative study of the two nations that do not share a similar restructuring method.

III. HYOTHESIS

The incorporation of the several corporate rescue processes outlined in UK insolvency law into India's insolvency framework will enhance the success rate of Indian company revivals.

IV. RESEARCH QUESTIONS

1. Does India's present bankruptcy law system adequately address the idea of restructuring?
2. Is the Indian system inferior to the UK Insolvency Law 1986 in terms of accomplishing business rescue?
3. Why does corporate rescue in India have a lower success rate?
4. Is it possible for India to implement the different corporate rescue mechanisms that the UK has?

IV. RESEARCH OBJECTIVES

The primary goals of this study are to:

• Analyze the shortcomings of India's existing insolvency regime; and

• Compare it to the UK's insolvency laws, paying particular attention to the corporate restructuring and resurrection process.

• To examine the causes of India's inefficient or careless corporate rescue program.

• To offer recommendations and changes to the 2016 Insolvency and Bankruptcy Code, with a focus on rescue as opposed to liquidation.

V. METHODOLOGY

I have utilized the Research Doctrinal Method. The available primary and secondary data are thoroughly examined. Numerous articles have been cited. In addition to the published publications that were available via NUALS Kerala's remote access, I have also consulted books, law journals, databases, and websites. I have recommended several primary materials for your research, such as judicial precedents and enacted laws. The secondary sources consist of newspaper articles, law journals, textbooks written by a variety of distinguished writers, etc.

2. LITERATURE REVIEW

2.1 IN CORPORATE INSOLVENCY IN INDIA AND OTHER OTHER COUNTRIES- A COMPARATIVE STUDY BY DR. BINOY J KATTADIYIL AND CS. PEER MEHBOOB[1]. An overview of the outdated and complicated corporate law of the Indian insolvency rules, which are the root cause of the economy-wide occurrence of bad loans and have an effect on credit availability and backing. The report focuses mostly on the elements of India's implementation of the 2016 Insolvency and Bankruptcy Code. Where the Act has been approved but there is still a delay in case resolution and practical aspects are still lacking, other countries are affected. The research topic raised by the study is how the Indian Insolvency and

[1] DR. Binoy J. Kattadiyil and CS. Peer Mehboob., "corporate insolvency in india and other countries-A comparative study, ISSN:2277-7881, Vol:9, ISSUE: 7(9) july 2020

Bankruptcy Code of 2016 compares to other insolvency codes according to international norms. In a nutshell, it describes how international banks do annual snooping reports that evaluate 190 economies across 11 different criteria. The World Bank's Doing Business Project provides us with helpful information on the ranking of the ease of doing business by location and the areas that have improved as a result of reforms.

The DS research provides information on the duration, expense, and results of insolvency proceedings involving domestic practices as well as the robustness of the legal environment relevant to liquidation and reorganization proceedings. India made significant progress toward being a business-friendly nation between 2017 and 2020, moving up a total of 53 places in 2019 and 14 places in 2020. India drops many positions in the rankings to land at position 108. This occurred despite the insolvency and bankruptcy code's adoption, which has begun to have encouraging results in practice. A 2019 global bank doing business report states that it takes an Indian firm an average of 1.6 years to resolve its insolvency. In contrast, it is one year in the US, UK, and Australia. 0.8 years in Singapore and 1.2 years in Germany. Additionally, the recovery rate is 71.6% lower than in the other indicated nations.

The research includes a number of factors for comparing the insolvency framework, such as who may commence a procedure and how it is begun. When the time-bound costs of settlement or its resolution are not reached, the bankruptcy action is prolonged for a period of 12 months in the UK and 330 days in India with the cooperation of creditors and court approval. Whether the board of directors or a resolution specialist retains power during the corporate insolvency restructuring process.

The approval of a resolution plan for the company is its principal goal, however creditors are more likely to advise swift measures to liquidate the company, such as selling its assets or going out of business. The committee of creditors votes to approve the resolution plan. According to IBC, the term of memorantorum is the time period during which a corporate debtor cannot be the target of a recovery action, security interest enforcement action, asset sale or transfer action, or action to terminate an important contract.

Priority of payment distribution, where everyone must receive a fair share by adhering to a waterfall system that gives secured creditors priority over unsecured creditors, treatment for employees, and government dues are also required, are all set down. Costs associated with insolvency procedures are experienced during these processes. The individual who starts the process often bears the cost. The role that IPs and Courts/Tribunals play in the insolvency resolution process affects both the cost and the length of the procedure.

CRTICAL ANALYSIS

The author discussed the bankruptcy and insolvency laws of several nations and focused on how India, the UK, the US, Australia, Germany, and Singapore resolve their disputes. And described how the Indian Insolvency and Bankruptcy Code of 2016 compares to other insolvency codes used abroad. Since these laws have been in force for a while and have dealt with a number of instances, a closer look at them may provide more information. The author ranks each place based on the World Bank's report on the ease of doing business and suggests changes to raise performance in each of the indicator areas.

The article discusses a broad overview of cross-country comparisons, leaving out numerous important legal issues. The author takes a cursory look at the rules regulating insolvency, including those pertaining to who can initiate proceedings, the morator, managing control, approval of resolution plans, the expense of insolvency proceedings, and cross-border insolvency when the regulations are not explicitly addressed. The author's point of view was straightforward; similarly, he examines current proposals for legislative reform and tries to determine how they could affect this intricate but fascinating area of law and practice.

The author examined that Indian Insolvency & bankruptcy law is a progressive law and the main emphasis is on its resolution process with UK, US, Germany, Australia. All the laws looks for resolution plan on going basic over liquidation insolvency regulatory IBBI is proactively addressing the emerging situation which is remarkable. Where he stated that Indian laws envisage that the company can best be run by the Insolvency profession over the previous management and it’s a starting journey for India in IBC culture.

2.2 INDIA'S SUSTAMINED ECONOMIC RECOVERY WILL REQUIRY CHANGES TO ITS BANKTUPTCY LAW BY ANIRUDH BURMAN[2] –

The effective transfer of capital from unproductive enterprises to efficient ones, according to the author, would be one of the main forces behind India's economic resurgence. India's economy suffered one of the harshest effects of the catastrophic economic slowdown brought on by the coronavirus epidemic in 2020–2021. Although the economy is rebounding more quickly than expected, a sustainable economic recovery won't happen if struggling businesses can't adequately restructure their loans or if failing enterprises can't be resolved quickly. India's bankruptcy legislation is essential for addressing these issues.

The Insolvency and Bankruptcy Code, 2016 (IBC), which was passed by India in 2016 and was the first comprehensive law to handle insolvency, marked a historic change to the country's financial sector.1 However, the IBC has been put on hold for a full year ever since the lockdown relating to COVID-19 was implemented in March 2020. In its stead, the Reserve Bank of India (RBI), India's banks regulator, has in the interim implemented a limited restructuring program for stress connected to COVID-19. Older insolvency procedures that are still in use historically haven't performed as expected. This article makes the case that bringing back the IBC with the necessary changes when the one-year suspension period comes to an end is a crucial requirement for long-term economic growth.

The author clarifies India formerly suffered from a patchwork system of insolvency rules that, on the one hand, did not offer lenders sufficient authority to collect their obligations in the event of a failure or, on the other, solely catered to the interests of specific types of lenders—to the exclusion of others. Since it was passed, India's financial sector has experienced a dramatic decline in the issue of nonperforming assets (NPAs), sometimes known as "bad loans," thanks to the IBC, a contemporary and comprehensive bankruptcy legislation.

Following the COVID-19 economic disruption, the Indian government banned the operation of crucial IBC components. These modifications meant that, if a firm defaulted after March 20, 2020, lenders could not initiate bankruptcy procedures against the failing company. The economic "calm period" brought on by this suspension may have avoided needless business failures, but these policies have outlived their usefulness.

While this paper makes the case that the total suspension of the IBC was possibly necessary due to the financial disruption brought on by the epidemic, it is crucial that the IBC be reinstated with the necessary changes to allow India to experience sustainable economic growth. India's economy has a larger need for growth than the economies of most other nations because it was already slowing down before the shutdown. The IBC and other insolvency and bankruptcy rules are essential to the financial system because they let unproductive businesses to "die" with little disturbance and redistribute money to the most productive and dynamic businesses. The IBC's suspension and the issues with its current design, as this paper emphasizes, are likely to impede the allocative process in the Indian economy. Because of its rigidity toward debtors, the IBC's operation has caused displeasure in many quarters. This added unnecessary controversy to its operation. This report suggests adjusting the IBC's framework to provide debtor enterprises more flexibility and control. This is especially important in light of the urgently required economic recovery, in which the financial system should assist and encourage businesses that, although facing financial challenges as a result of the epidemic, are otherwise healthy and productive. These enterprises must be allowed to reform and restructure without being forced into liquidation. While current governmental initiatives have temporarily given firms this buffer, many companies across the economy will continue to experience financial hardships brought on by the epidemic for some time to come. A viable, market-based option to serve these companies and their lenders is an IBC framework that is fully functional and appropriately customized to their needs.

This article makes the case that policymakers should carefully take into account several possibilities to enhance the effectiveness of the IBC, including adding more debtor-friendly clauses and lowering the incentives for borrowers and creditors to file lawsuits. The administration will need to go through the prevalent debate about favoritism and corruption in order to implement some of these ideas. However, putting these measures into place would be crucial for ensuring that India's economic recovery is long-lasting.

CRTICAL ANALYSIS

The author explain about the suspension of the IBC was deemed required to provide business a calm period and prevent unnecessary value destruction. Cause many countries provides relaxation from their insolvency laws, in India the scope for value destruction is much higher due to both the structural features of the IBC and the way it has been used by lenders.

[2] ANIRUGH BURMAN.,"India's Sustained Economic Recovery Will Require Changes to Its Bankruptcy LAW", CARNEGIE INDIA – WORKING PAPER, Published April 2021.

However, the author claims that in order to support increased productivity, employment, and sustainable economic growth but there are many issues with need be to stated. The first issue is that the incentives to liquidate rather than restructure and the inadequate procedures under the IBC that allow creditors to keep or reclaim control are likely to have a detrimental impact on economic recovery. The IBC has to be altered to boost reorganization incentives and provide debtors better chances to restructure debts under the IBC while still maintaining control over their businesses. Debtors who are deemed to be willful defaulters by the RBI or who are already insolvent are ineligible to file a resolution application and come within the definition of section 29A. The second concern is that the NCLT lacks sufficient judicial competence, which causes delays in the insolvency procedure. This is a result of both a manpower scarcity and the IBC process itself which are lacking behind. These require additional resources and court time because many cases end up being liquidated. Additionally, delays are exacerbated by concurrent litigation involving insolvency procedures.

The legal system must be altered to lessen the incentives for litigation in addition to the government's efforts to increase NCLT capacity. As a consequence, the author revised the IBC's architecture to make it more appropriate for the current setting of India's economic recovery. However, the author should have done a more thorough research of section 29A of the IBC because it would fundamentally change from the current creditor-in-control arrangement. The default framework for micro, midsize, and medium-sized businesses may also be this one.

I concur with the author's suggestion to make the IBC more lenient toward debtors in order to increase the likelihood of creditors being able to collect their obligations. The author proposes a new "debor-in-control" bankruptcy procedure that ought to resemble chapter 11 of the US code, which offers a debtor the opportunity to file for bankruptcy while still being in control of a legitimate business which is a valid approach. He had examined the process of law under insolvency and criticized the insufficient legislation with regard to the rescue culture.

2.3 EXPLORING NEW PERSPECTIVES ON INSOLVENCY by INSOLVENCY AND BANKRUPTCY BOARD OF INDIA -2022[3] This book is published by the Insolvency and Bankruptcy Board of India and is released on the occasion of the Azadi ka Amrit Mahotsav celebrations to commemorate the path breaking economic reform, the Insolvency and Bankruptcy Code, 2016. The writer implies about Executory contracts are, broadly speaking, those where performance (other than money) is still owed at the time an insolvency petition is filed. The performance of such executory obligations may occasionally make the debtor's rebirth unviable. In other situations, the continuance of the advantages resulting from such arrangements may be crucial to the revival of the debtor when there may have been violations of such contracts at a pre-insolvency stage that would have entitled the counter party to terminate. Because the proper resolution of a debtor would need either retaining the value of advantageous contracts or rejecting onerous contracts, the handling of executory contracts necessitates striking a balance between contractual autonomy and policy objectives of the insolvency regime.

By analyzing the approaches to executory contracts in the US and UK and reviewing the policy goals of the Insolvency and Bankruptcy Code, 2016, this study proposes a conceptual legislative system for the regulation of executory contracts in India.

First, this article defines the definition and application of executory contracts in the US and UK legal systems. This paper then discusses how executory contracts are handled in US and UK legal systems, emphasizing the stances taken by each country regarding the handling of contract clauses that call for the termination or modification of executory contracts in the event of insolvency.

This article also suggests a viable legislative model for how executory contracts should be handled under the insolvency laws of India. In the lack of a significant statutory framework, this study seeks to investigate these circumstances, including cases in the Indian context where such disputes have occurred and been resolved. This study will compare how these executory contracts are handled in insolvency procedures in the US and the UK, two international countries. For the resolution and reorganization of enterprises under Chapter 11 of the US Bankruptcy Code (Bankruptcy Code), the US, unlike India, adheres to the debtor-in-possession model.12 Studying the US jurisdiction, however, becomes essential because it has dealt with the treatment of executory contacts the most and because its goals are similar to those of the Indian Insolvency and Bankruptcy Code, 2016 (IBC/Code). As the Code prominently references the UK Insolvency Act, 1986 (UK Insolvency Act), this article examines the handling of executory contracts in the UK's legal system in more detail.

[3] "Exploring New Perspectives on Insolvency" by IBBI publication, published on May 1, 2022.

A conceptual legislative framework that may be used in the Indian context would be examined and outlined on the basis of the variations in methods in such countries. The comparative study will show how these countries have attempted to strike a balance between the fundamental principles of contract law and the fundamental aims of the bankruptcy system, and how they have dealt with this contradiction. This essay explores the importance of executory contracts in the context of insolvency law as well as the definition and application of executory contracts in the US and the UK.

The handling of executory contracts in US and UK legal systems is then covered in this study. This article next discusses how the US and the UK handle clauses in contracts that call for the termination or modification of executory contracts upon the occurrence of insolvency. This article also suggests a viable legislative model for how executory contracts should be handled under the insolvency laws of India.

CRITICAL ANALYSIS

The ability of any company to profit from its contractual arrangements is essential to its financial viability, according to THE AUTHOR. As a result, executory contracts are a crucial asset of the debtor and directly affect the debtor's ability to continue operating as a viable business. As a result, any efficient insolvency resolution procedure should include provisions for how executory contracts will be handled in order to guarantee the debtor's ability to continue as a going concern and its prompt resolution.

The key issue with the establishment of any such system, according to the author, is that any method for handling executory contracts would naturally be at odds with the established norms of contract law. The equity sought after and goals advanced under a bankruptcy regime allowing for the handling of executory contracts would frequently be at odds with the established concepts of contract sanctity and party autonomy. But these disputes and anomalies should be settled in favor of the bankruptcy regime's goals, which have wider socioeconomic and public interest ramifications. Economic laws frequently create certain inconsistencies into the law. However, courts in India have generally concluded that such inconsistencies are tolerable when compared to the larger public interest that such laws serve.

The Code is a piece of economic law with significant socioeconomic repercussions. It is more than just a tool for creditors to recover unpaid debts. From this vantage point, an insolvency law that allows for adjustments of equity in relation to contractual rights along with the necessary checks and balances advances the public interest in debtor resolution, and such public interest outweighs any considerations pertaining to individual contractual rights.

In order to bring attention to and kick off debate of the subject, this study aims to conceptualize a legislative model for the handling of executory contracts in the Indian context. The author agreed with all of the author's comments about the concerns of executory contracts and insolvency. Based on industry standards and lessons learned in other jurisdictions, the author fails to clarify important aspects of the new insolvency legislation.

2.4 INSOLVENCY SET OFFS IN INDIA: A COMPARATIVE PERSPECTIVE – BY M.P RAM MOHAN, VISHAKHA RAJ [4] The author states objective of the Insolvency and Bankruptcy Code, 2016 (IBC) is to foster rescue culture in India and facilitate the reorganization, restoration and resolution of the corporate debtor rather than its liquidation. However, liquidation has been the most prevalent outcome so far for corporate debtors who have entered into the insolvency resolution process.

The author explains about the liquidation process under the IBC entails an orderly distribution of sale proceeds of the liquidation estate or the unsold assets of the corporate debtor where each creditor receives a proportionate amount of their claims based on their place in the distribution hierarchy of the liquidation process.

The author first states about understanding the role of set offs in insolvency law and evolution of india’s position on insolvency set offs. Futher says about the treatment of insolvency set off before the ibc and after IBC. And explains about the set off and the moratorium, set offs and distributiton under insolvency resolution plans and set off under the liquidation process. And author traced insolvency set offs in the UK and the US in comparison with india.

The author talks about the pari pass and objective to insolvency set offs where pari passu principle is considered one of the key features of modern insolvency and bankruptcy law. Further, section 53 containing the liquidation hierarchy states that debts within each class will be ranked equally among each other, thus making it an expression of the pari passu principle. the UNCITRAL Model Law on Cross Border Insolvency’s

[4] M. P. Ram Mohan & Vishakha Raj on “Insolvency set offs in India: A comparative perspective”., W.P.NO.2021-06-01.

Legislative Guide also provides for the right of set off as an exception to the principle of pari passu distribution.

The author talk about before IBC where, the winding up provisions under the Companies Act, 1956 and Companies Act, 2013 are similar to one another in that both allow for the creditor to initiate winding up when a company cannot pay its debtors. The author made a examination of set offs was carried out by the Gujarat High Court in Bank of Maharashtra v. Official Liquidator.

The author state after the IBC, The IBC consolidated insolvency laws prior to it and created a comprehensive piece of legislation for corporate insolvency and individual bankruptcy. The IBC allows creditors to initiate insolvency proceedings against the corporate debtor if it commits a default exceeding INR 10,000,000. And how the creditor's ability to set off a debt by-passes this orderly scheme of distribution and allows the creditor exercising the set off to be preferred over others to the extent of the set off value. Despite this manifestation of the right to set off, it is preserved in the insolvency and bankruptcy regimes of the US and the UK, the latter making it mandatory. India recognized set offs under insolvency law prior to the enactment of the IBC. After the IBC's enactment, an indebted creditor's right to set off during the insolvency resolution process has become ambiguous.

The author opined how the IBC's protective moratorium during the insolvency resolution process has been used to deny indebted creditors of their ability to exercise set offs against the corporate debtor. This paper analyses the evolution in the Indian position on insolvency set offs and compares it with the treatment of set offs in the UK and the US. The paper finds that set offs are not inherently antithetical to insolvency law and that the IBC can embrace them.

CRITICAL ANALYSIS

The author highlights how the IBC imposed many changes to how a corporation and creditors were handled during bankruptcy proceedings in the UK and the US. The handling of the creditor's right to set off, particularly in the context of a bank's power to offset deposits against the corporate debtor's outstanding debts, is a significant move that the author notes seems to have slipped under the radar. Whereas the IBC itself permits money subject to set offs to be excluded from the liquidation estate through notice by the IBBI, the arrangement does not appear to be envisioned as a permanent one.

The IBBI's capacity to keep money susceptible to setoffs out of the liquidation estate supports the idea that setoffs with the goals of Indian bankruptcy law are not necessarily incompatible. Whereas the writers' choice of whether to acknowledge it or not is fundamentally a policy choice that is not adequately stated.

The author discusses Due to the moratorium imposed by section 14, the NCLT has rejected attempts by banks and creditors to exercise their right to set off. Any deposits held by a bank on behalf of a debtor (or any other amount held by a creditor susceptible to setoff) must be transferred to the liquidation estate once the process of liquidation has started. The COVID-19 epidemic has put a burden on banks to the point that they are unable to file new insolvency actions against noncompliant clients until the government-imposed embargo on such actions is removed.

The author discusses the occurrence and persistence of this pandemic, which made it the ideal time for IBBI to initiate action, however she leaves out the issue of loopholes in corporate insolvency restructuring processes. There are numerous important topics that the author didn't include in the article, which solely discusses setoff with the contact of liquidation procedure. Where I'll draw attention to all the omitted details, they'll all be included. Additionally, the reasoning presented by the author was weak. The author has provided a clear explanation of the legal ruling pertaining to the rescue structure.

3.1 COMPARATIVE STUDY

Few studies have been done up to this point to track the development and history of bankruptcy legislation. Paul Huvelin's bibliographical sketch[5] reveals that bankruptcy and insolvency laws have very little case law. But if one looks through Ancient Greek history, "Peonage," or the custom of paying debts, is one of the most prevalent practices. Peonage is another word for "debt slavery," meaning that if a person could not pay their obligations on time, they would be imprisoned until they were paid off.

Bankruptcy was viewed as a crime later in the pre-medieval age, and those who filed for bankruptcy were punished like criminals and finally imprisoned. Since then, countries have developed their own bankruptcy criteria and bankruptcy and insolvency laws have appeared all over the world. Every bankruptcy legislation, regardless of where it came from, has two main goals. First and foremost, the insolvent debtor must ensure

[5] L'Histoire du Droit Commercial [1904].

that his property is fairly distributed among all of his creditors. Secondly, the insolvent debtor must refrain from acting in a way that would jeopardize the interests of his creditors[6].

The goals of the bankruptcy and insolvency laws in the UK and India are essentially limited to the two mentioned above. However, in recent years, both of these laws have undergone significant revisions and updates. This chapter examines the development of these laws as well as their current standing in the global economy.

3.2 BANKRUPTCY/INSOLVENCY LAWS IN UK

The United Kingdom's insolvency rules have their origins in antiquity. There are three main periods to the bankruptcy and insolvency laws in the United Kingdom: pre-19th, during, and post-19th century. The ninth provision of the Magna Carta of 1915 stated: "If the debtor is unable to discharge his debt due to lack of means, his sureties shall be answerable for it." If they so choose, they are entitled to the debtor's lands and rents until the debt they paid for him is satisfied, unless the debtor can demonstrate that he has fulfilled his responsibilities to them and is abiding by the same.

The earliest English legal act pertaining to insolvency was the Bankruptcy Code of 1542, which went into effect. It established the pari-passu concept, putting everyone facing insolvency on an equal basis for the first time. However, the Code continued to punish those who are not in debt as criminals.

Numerous precedents, such Fowler v. Padget[7], when bankruptcy was still seen as a felony, also came after this. The Code of 1542 and previous rulings made matters worse for the many bankrupts who were deemed "criminals" and housed in debt prisons. Prisons that were in such a terrible condition of debt made room for contemporary company laws, which resulted in the Joint Stock Companies Act of 1844 and the Joint Stock Companies Winding Up Rules of 1844. The Limited Liabilities Act of 1855, which limited an individual's (investor's) liability to the amount he had invested and nothing more, alleviated the situation with debt imprisonment.

However, until the Debtor's Act of 1869, which eliminated the idea of debt jail and eliminated the notion of bankrupts as criminals, the perception of bankrupts remained the same as that of criminals. As a result, this Act established a shield of protection for the bankrupt and insolvent, and instances like Salomon v. Salomon[8] shown that even the tiniest company would be protected (shelter).

The 20th century also saw attempts to control the economy and enact appropriate bankruptcy rules. The efforts undertaken in the United Kingdom during the 20th century can be divided into three stages: first, creating a respected hierarchy among a company's creditors; second, saving the company—which was primarily made possible by the Cork Committee Report, 1982[9]; and third, determining who was responsible for those who benefited or suffered from insolvency.

Although the UK's bankruptcy laws were not wholly outdated when the Cork Committee was formed, the laws as they were written did not take modern company needs into account. The statute had not undergone any significant revisions in a number of years, except from a few minor adjustments. The Bankruptcy Act 1914 continued to govern the close-to-home chapter 11 laws, which were limited to England and Wales. While Scotland and Northern Ireland have their own insolvency procedures, there were important similarities across all three.

Under the Companies Act 1948, corporate bankruptcy was managed by a unified framework that applied throughout the United Kingdom. This Act provided a framework for both an automatic liquidation initiated by loan bosses and a deliberate liquidation initiated by the organization and its investors. Additionally, a method existed by which a compromise or plan of action could be agreed upon by the company and its tenants; this method was similar in structure to the informal agreement of game plan and before the innovative Scheme of Arrangement.

However, there was nothing like corporate recovery or recovery-focused technique that had been acquired elsewhere. A few early examples are mentioned, such as redressement judiciaire in the French Decree of May 20, 1955, which was subsequently replaced by the Law of July 13, 1967, and legal administration in the South African Companies Act 1926. Acknowledging the need for a salvage-oriented approach meant, however, that the 1978 implementation of the most widely used recovery model, known as Chapter 11 of the US Bankruptcy Code ("Chapter 11"), greatly piqued the interest of the Cork Committee, since the conversation fully anticipated its development and subsequent approval in line with the beginning of the trustees' deliberations[10].

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[6] Levinthal and Louis Edward 'The Early History of Bankruptcy Law' 66 (5): 223. JSTOR 3314078.
[7] Fowler v. Padget [1789] 7 Term Rep 509;101 ER 1103.
[8] Salomon v. A Salomon & Co Ltd [1896] UKHL 1, [1897] AC 22.
[9] Cork Review Committee Report on Insolvency Law and Practice 1982 [Cmnd 8558].
[10] The history of the firm and its most prominent clients is discussed in Sir Kenneth Cork's excellent autobiography, titled Cork on Cork [Macmillan, 1988].

3.4 MAJOR ISSUES AND CRITICISMS UK

A paradigm change in the insolvency and rescue procedures in the United Kingdom was the main goal of the Enterprises Act, 2002 and the Insolvency Act 2000. Even though these Acts have made a significant contribution to the success of rescue operations, most aspects remain unclear.

Although the administrative receivership has been terminated, the full abolition remains unattainable. While statistics for the period of the ongoing global financial emergency must be taken to contain a high component of cases in which one of the exemptions to the overall denial applies, the reality of the rejection in accordance with pre-EA 2002 agreements can be found in the insights mirroring the arrangements from 2003 onwards.The figures for the number of receiverships have decreased more lately, which may indicate a significant shift in favor of administration as the primary option for rescue.

It is impossible to say for sure how much of this is in defiance of the creditors' demands, but one might conclude that there is still rivalry between the two methods in the statistics—just not as much as there was in the pre-EA 2002 scenario. Should more reforms be implemented?

More lately, it appears that the process is declining and the numbers are still declining. Maybe the best course of action is just to leave the method in place and emphasize again the operations that have a genuine rescue purpose. But considering that rescues themselves are evolving due to changes in North America, one must wonder what kind of rescue this one is going to be. Given that many operations in the United States result in sales under section 363 of Chapter 11, there is, in reality, a push in practice—which is mirrored in the literature—to reassess the goal of rescue[11].

Recently, the concept of rescue has been defined as involving the recycling of assets to bring them back to a productive form so that others in better positions can maximize their "use-value." That is a description that could have also been used in the context of receivership, where the creditor's recovery was seen as helping to preserve these assets, particularly in terms of recycling them (or their value) in anticipation of future lending, even though it was typically followed by the liquidation of the corporate shell.

Recent modifications have only made minor adjustments to the CVA. CVA proceedings are thought to take a long time. Since shareholder challenges under section 4A of the IA 1986 are likely to succeed, CVAs are therefore more focused on the needs of debtors and therefore "inimical to creditors."

3.5 BANKRUPTCY/INSOLVENCY LAWS IN INDIA

The economy's basic tenet is that the strongest will prevail and the weakest will be eliminated. As mercy killing frequently results in less suffering than prolonging it, businesses and organizations should also follow this rule. At this point, the idea of insolvency is relevant. In basic English, insolvency is the state of not being able to pay debts or the circumstance in which someone is unable to do so. Many problems arise when a firm becomes bankrupt, including if it can be saved or not, if it needs to go through the liquidation process, and so on.

Laws that oversee insolvency procedures become necessary. Over the past ten years, there have been two significant changes in corporate insolvency legislation and processes. The way corporate players manage bankruptcy risks has changed theoretically from ex post reactions to company crises. In order to allow participants in corporate and insolvency proceedings to see organizational collapse as an issue that should be anticipated and prevented rather than brought up after the fact, insolvency obligations have been modified.

These innovations more accurately reflect broader trends in social and regulatory performance auditing, as well as the issues associated with risk management requirements. Such advances are essential to lawyers practicing corporation and insolvency law. They reconsider the difficulties and goals of corporate insolvency law and redefine several issues within the new framework assumptions. The frequency of instances involving financial distress and bankruptcy has significantly increased in the last several years.

"RDDBI" stands for Recovery of Debts Due to Banks and Financial Institutions Act of 1993. The Goswami Committee's findings, which attempted to improve the suggested changes to the administrative framework for indebtedness, gave rise to the RDDBI Act. The Goswami Committee report apologized in its foreword, saying, "There are unpaid workers, sick companies, sick banks, and failing financial institutions." However, there aren't many ill promoters. The crux of the issue is contained there."

RDDBI was approved with procedures allowing Banks to record an application before an exceptionally created Debt Recovery Council ("DRT") asking a "Testament of Recovery" in order to expedite the recovery process. The effect and status of an endorsement of recovery were comparable to those of a civil court decree. Because SICA was given precedence over RDDBI, the RDDBI Act failed to address the state of muddled indebtedness. Finally, it was discovered that DRTs had an excessive number of open cases.

[11] See J. Girgis, "Corporate Reorganisation and the Economic Theory of the Firm", Chapter 8 in B. Wessels and P. Omar (eds), Insolvency and Groups of Companies (INSOL Europe, 2011), pages 108-9, and the references cited in footnotes 1 and 24 of that work.

The government introduced The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) in 2002 in response to these obstacles in an effort to expedite the objectives of non-performing assets. Although SARFAESI sped up the recovery process a little, its influence was limited to confirmed resources. Furthermore, SARFAESI does not include resources for rehabilitation or rebuilding, which is a crucial component of an expanding economy[12].

Under the general heading of the "corporate insolvency resolution process," the Insolvency and Bankruptcy Code unifies the insolvency, restructuring, and rehabilitation processes. Therefore, there are many similarities between India and the UK in terms of the historical development of the bankruptcy law. Prior to the current insolvency framework, both countries had included insolvency into various patchworks, primarily under their separate Companies Acts. Because business bankruptcy and cost-related concerns were not addressed by either of the Companies Acts, the present insolvency framework has been a boon to the economies of both nations.

3.6 RESOLUTION PLAN IN INDIA: ISSUES AND CHALLENGES

India has a lengthy history of businesses that failed to turn a profit and eventually fell into liquidation. At that juncture, the Reserve Bank of India created the Tiwari Committee to investigate the obstacles preventing company recovery. Statistics showing a rising number of liquidations and winding ups were not a positive sign for a developing economy like India. Because of this, the Tiwari Committee detailed in their report a few strategies for the firms' resurrection, which were: • Management takeovers; debt restructurings; mergers with other businesses; and business sales

In addition to these revitalization strategies, the Tiwari Committee suggested passing exceptional laws to enable swift and efficient action. Thus, the Sick Industrial Companies Act was passed on January 8, 1986, with the President's approval, taking into consideration all of the recommendations made by the Tiwari Committee. The Sick Industrial Companies Act was limited to the recommendations and actions made by the Tiwari Committee. A quasi-judicial authority was also formed under the Sick Industrial Companies Act to oversee and rescue the "sick industries."

The Board for Industrial and Financial Reconstruction was the name of the quasi-judicial body (BIFR). The Sick Industrial Companies Act further limited the ability of civil courts to intervene in BIFR cases. The Appellant authority for Industrial and Financial Reconstruction handled each and every appeal from BIFR. The firm director's referral would come before the BIFR procedures were started. In order to file a complaint, BIFR verifies that the business is "ill." The Sick Industrial Companies Act does not employ bankruptcy or insolvency, but rather work illness.

The Sick Industrial Companies Act defines "sickness" as falling under one of two extremely specific categories: either the firm must have been registered for at least five years, or it must have more liabilities (accumulated losses) than assets[13]. A firm should be allowed appropriate time to establish itself in the market, which is the rationale behind the inclusion of the first criterion. Nonetheless, the second sentence implies insolvency as a prerequisite; nonetheless, by making insolvency a requirement, the aforementioned article violates the whole purpose of the Sick Industrial Companies Act, which was to provide "immediate measures for revival."

Insolvency is a stage of almost no hope, so rather than moving on to the process of interference into the sick companies after they get into "mortuary," it is important to revive them anticipating their financial distressing condition.

It was decided that BIFR had broad authority in Nasik People's CoOperative Bank Ltd v. Data Switchgear[14] and VDCS Enterprises Ltd v. Union of India60. BIFR uses a two-step method to determine whether a firm requires rehabilitation or not. First, it determines if the company can survive on its own. If so, it gives the company the time it needs to undergo the same {Section 17(1)} and Second, should BIFR determine that the firm is incapable of being rehabilitated on its own, it will examine whether rehabilitation is necessary in the "public interest" and further direct the agency (operating agency) to create the plan.

The concept of public interest and the extensive authority of BIFR have often faced criticism. The primary goal of the Sick Industrial enterprises Act was to revive the enterprises, but in addition to failing horribly, there was a paradigm change from BIFR rehabilitation to liquidation in the 1990s. The Goswami Committee recommended an alternative to the Sick Industrial Companies Act as the UK's administrative procedure in a report it produced in the 2000s.

[12] World Bank. 2016. Doing Business 2016. Washington, DC: World Bank. DOI: 10.1596/978-1-4648-1440-2.
[13] Real Value Appliances v. Canara Bank.
[14] Upper India Couper Paper Mills Company Limited v. AAIFR (1992) 75 Comp. Case 653.

3.7 INSOLVENCY AND THE BANKRUPTCY CODE, 2016 AND THE RESCUE CULTURE

The first consolidated code that covered bankruptcy laws only was the Insolvency and Bankruptcy Code, 2016 (IBC). With the introduction of the IBC, a resolution plan that offered assistance to financially troubled businesses and corporate creditors also emerged. For many, it was a relief. The Code specifies "resolution plan" under Section 5(26). The Insolvency and Bankruptcy (Second Amendment) Act brought clarity to the admissibility of corporate resolution plans that should be kept in mind for the goal plan, upholding the unmatched caliber of loan supervisors concerning the appropriateness of assets offered by the goal candidate, and elucidating the goal plan's significance on all legal grounds. The point at which the amendment made it clear that the goal plan considers reconstructing the corporate account holder through merger, amalgamation, or demerger—and that the corporate indebted person shouldn't be required to consent to the Merger Framework as recorded in the Organizations Act 2013 and Rules made thereunder—was a significant victory for the Corporate Debtors and Resolution Applicants.

Understanding the Corporate Insolvency Resolution Process (CIRP), which is outlined in Chapter II of the Code, is essential to comprehending the rescue culture in India. Chapter II of the Insolvency and Bankruptcy Code, 2016 (Sections 6-32) contains the entirety of the Corporate Insolvency Resolution Process. It stipulates that the corporate resolution procedure, as outlined in chapter II of the Act, may be started in cases where a corporate debtor has neglected to pay a debt that has become due and payable but has not been reimbursed. The Act specifies that a financial creditor, an operational creditor, or the corporate debtor may initiate the resolution process and emphasizes the need of early diagnosis of financial difficulty for timely resolution. Together with documentation of default and the identity of a resolution specialist who will serve as an interim resolution professional, the financial creditor may file an application with the National Company Law Tribunal. The adjudicating authority will go forward as soon as it is convinced that a default has occurred[15]. Because operational debts are recurrent in nature and typically have lesser amounts than financial obligations, the procedure for operational creditors differs from that of financial creditors. Following a default, the operating creditor is required to provide a copy of an invoice or a demand notice for payment of the outstanding balance. This makes sure that operational creditors, whose debt claims are often lower, cannot start the insolvency resolution procedure for irrelevant reasons or place the corporate debtor into it too soon.

The chapter also establishes a 180-day deadline for the corporate insolvency procedure, with a further 90 days for completion. The adjudicating body then selects an expert in interim resolution who plays a key role in the corporate resolution procedure within fourteen days of the application being admitted. In addition to collecting claims, he also forms a committee of creditors, gathers information on the corporate debtor, manages the company's operations in the interim, and keeps an eye on assets until a resolution expert is assigned. Following his appointment, the resolution professional may proceed to draft an information memorandum that will allow a resolution applicant to draft a resolution plan.

It is intended that such an information memorandum be developed so that market players might provide options to address the corporate debtor's insolvency. Subject to adherence to the relevant legislation, there are no restrictions on who may file a resolution application. Each resolution plan that has been provided to him by the resolution professional must be presented to the creditors' committee for approval or disapproval. If it is accepted, it will then be sent to the adjudicating body for approval; if it is rejected, the business will enter liquidation.

The Court ruled that the Insolvency Code is a piece of law that addresses economic issues and, more broadly, the national economy. The Code was finally enacted as a result of earlier efforts, as we have seen, when legislation failed and "trials" resulted in recurrent failures. The experiment in the Code meets constitutional scrutiny when evaluated by the whole scope of its provisions rather than by the petitioners' identified "crudities and inequities." The resolution plan under the Insolvency and Bankruptcy Code of 2016 is essentially a strategy to assist the financially troubled organization in reviving its economy. The resolution expert receives the plan from the resolution applicant (who is not disqualified under Section 29 A) and is responsible for ensuring that it conforms with Section 30(2) of the Code and does not violate any other laws. The Hon'ble Court established some guidelines that must be adhered to by a resolution plan in the case of Binani Industries Limited v. Bank of Baroda & Anr,63. These guidelines include A) The Resolution Plan does not include a sale, auction, recovery, or liquidation; rather, it resolves the Corporate Debtor as a continuing company. b) The Resolution plan's main goal is to reduce the danger of insolvency by increasing earnings and

[15] Mobilox Innovations Private Limited Vs. Kirusa Software, LATEST LAWS.COM (last visited Aug. 31, 2021, 12:13 PM) https://www.latestlaws.com/latest-caselaw/2017/september/2017-latest-caselaw-700-sc/.

strengthening the equilibrium between creditors' and debtors' interests. c) The idea of a resolution plan should be distinguished from that of recovery. While recovery is forbidden, the Insolvency and Bankruptcy Code supports the resolution plan. d) A resolution strategy necessitates mental application and must be distinguished from the liquidation notion as well. The economy must continue to expand in order for a resolution plan to be necessary. e) A resolution plan must maintain equality for all parties involved; otherwise, it will violate the fundamental goal of the Code's Section 5(26) proclamation, which prohibits discrimination against any operational or financial creditor.

CONCLUSION

One fundamental piece of legislation is the Insolvency and Bankruptcy Code (henceforth, "IBC'). Officially, it began on May 28, 2016. According to the World Bank's 2016 Doing Business report, creditors in India typically recovered just 20% of their entire obligation from a distressed firm at the conclusion of the debt procedures, which was a stark contrast to countries where creditors recovered up to 72.3% of their obligation.

Additionally, the administrative systems in place in India before to the IBC's authorization were labor-intensive because it took 4.3 years to complete the recovery process overall, compared to just 1.7 years in OECD countries. For the reasons mentioned above, India's bankruptcy settlement ranking was a pitiful 130 out of 189 countries. The current recovery rate increased from 20 to 42% with the release of the IBC. The 2016 Code allows for a time-bound process to establish insolvency. Given that it has updated India's antiquated method of recognizing debt and liquidation, the IBC is unquestionably very significant and important in the contemporary context.

One may reasonably argue that we now have a comprehensive, unified legislation that adheres to universal principles. The Code is still in its early stages, thus it is expected that it will be utilitarian in nature, focusing more on actualizing the law than on operationalizing it as quickly as possible. There was also a new rescue mechanism with the implementation of the new IBC. The careful examination of the rescue cultures in the UK and India was the focus of this dissertation.

SUGGESTION

It is clear from this study question—whether India's existing insolvency framework does the notion of restructuring justice—that IBC, despite its infancy, has assisted several financially troubled enterprises with its timely and appropriate implementation. In response to the question of whether the UK Insolvency Law of 1986[16] achieves corporate rescue more successfully than the Indian regime, it is recognized that the UK Insolvency Law is significantly more advanced because third-party interference is much less common in the UK, which is also one of the reasons why corporate rescue culture in India is not as successful. India may be able to adjust to procedures like the UK's most recent Act (UK Corporate Insolvency and Governance Act, 2020). Similar to the UK Act's free-standing moratorium, an analogous implementation in India would provide the creditors "a breathing space" to review and carry out the rescue plan. Additionally, it is proposed that the "cross class cram down" rules, which are already in effect in India, be extended to the requirements of the nation's Companies Act, which mandate that operational creditors and shareholders, regardless of their approval of the scheme, be obligated by it. In addition to the aforementioned provisions, it is important to grant NCLT and NCLAT the authority they need to carry out the resolution plan effectively.

This is because, for a firm that is already insolvent and burdened, public knowledge of a breach of the resolution plan severely damages the corporate debtor's market position, which is hard to recover. Nevertheless, there are times when the successful bidder disregards the Code's requirement, and the corporate debtor (together with its members and employees), creditors, and other pertinent parties lose the battle. The only way to remedy this shortcoming is by clear and concise provisions.

[16] Cornhill Insurance plc v Improvement Services Ltd [1986] 1 WLR 114.