MERGERS & ACQUISITIONS AND ITS INTERPLAY WITH INSOLVENCY AND BANKRUPTCY CODE 2016 FOR INSOLVENCY RESOLUTION

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ABSTRACT

Mergers and acquisitions (M&A) and insolvency resolution are two significant mechanisms of corporate restructuring in India, governed primarily by the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 (IBC). While both frameworks aim to revive distressed companies and maximise stakeholder value, they differ substantially in their objectives, procedures, and decision-making structures. The Companies Act adopts a stakeholder-centric approach, emphasising shareholder participation, creditor consent, and procedural safeguards. In contrast, the IBC establishes a creditor-driven, time-bound insolvency resolution process that prioritises efficiency and asset value preservation. The interaction between these frameworks often results in jurisdictional overlaps, procedural conflicts, and interpretational challenges, particularly when mergers are proposed during insolvency proceedings. Judicial pronouncements have played a crucial role in resolving these conflicts by affirming the supremacy of the IBC in cases of inconsistency. This study critically examines the relationship between the two regimes and the legal challenges arising from their coexistence.

Keywords: Mergers and Acquisitions, Companies Act 2013, Insolvency and Bankruptcy Code 2016, Corporate Insolvency Resolution Process, Committee of Creditors.

INTRODUCTION

Mergers and acquisitions (M&A) constitute one of the most significant mechanisms of corporate restructuring, enabling companies to achieve expansion, consolidation, and financial

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stability. The Companies Act, 2013, consolidates and modernises the law relating to corporate restructuring in India.

The Companies Act, 2013, adopts a stakeholder-oriented approach and places emphasis on procedural fairness and participation in decision-making. It recognises mergers and acquisitions not merely as a tool for corporate growth but also as an instrument to revive financially weak companies. However, the procedure is complex and time-consuming, which limits its effectiveness in severe financial distress.

Before 2016, India's insolvency framework was fragmented across multiple legislations, including the Sick Industrial Companies Act,[1] 1985 (SICA) and the Recovery of Debts Due to Banks and Financial Institutions Act,[2] 1993. This multiplicity of laws resulted in delays, inefficiencies, and erosion of asset value, thereby necessitating a comprehensive reform of the insolvency regime.

The introduction of the Insolvency and Bankruptcy Code, 2016 (IBC), marked a significant transformation in India's approach to corporate insolvency. The Code established a unified, time-bound, and creditor-driven framework for resolving insolvency, shifting control from the management of the debtor company to the Committee of Creditors (CoC). It aims to maximise the value of assets, ensure timely resolution, and promote credit discipline in the corporate sector.

Both frameworks share common objectives of corporate revival and value maximisation, yet they differ significantly in their approach. The Companies Act emphasises shareholder participation and procedural safeguards, whereas the IBC prioritises creditor interests and efficiency through a time-bound process. This divergence has led to jurisdictional overlaps, procedural conflicts, and interpretational ambiguities, raising important questions regarding the harmonisation of the two regimes.

When the Insolvency and Bankruptcy Code, 2016 (IBC) comes into play, it doesn't just sit alongside the usual merger and acquisition process; it kind of takes over the entire situation. And that shift is not always smooth. A company that might have been in the middle of negotiating a merger, or even close to finalising one, suddenly finds itself under a completely

[1] Sick Industrial Companies (Special Provisions) Act, 1985.
[2] Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

different legal regime. The priorities change, the decision-makers change, and honestly, even the pace of things changes.

One of the first and most immediate effects of the IBC is the declaration of a moratorium under Section 14. Now, on paper, this is meant to provide breathing space to the company. It stops all legal proceedings, enforcement actions, and recovery attempts against the corporate debtor. But when you look at it from the perspective of an ongoing M&A deal, it complicates things.

And then there's the shift in control. Under the Companies Act, mergers and acquisitions are largely driven by the company's management and approved by shareholders and creditors. But once the IBC process begins, control moves away from the existing management to the Resolution Professional **(**RP**)** and, more importantly, the Committee of Creditors (CoC).[3] This is a big change. The people who were originally negotiating the merger may no longer have the authority to continue doing so. Instead, the creditors who are primarily concerned with recovering their dues become the key decision-makers.

This shift can feel a bit abrupt. Imagine a scenario where a merger was being planned with long-term strategic goals in mind, market expansion, synergy, and maybe even brand consolidation. Suddenly, those considerations take a backseat. The focus now is on resolution, recovery, and maximising the value of the company's assets in the shortest possible time. It's not that strategic goals completely disappear, but they are no longer the priority.

Another important aspect is the time-bound nature of the IBC process. The Code mandates that the Corporate Insolvency Resolution Process (CIRP) be completed within a specified period, typically 180 days, extendable to 330 days. This creates a sense of urgency that is quite different from the relatively slower, more procedural approach under the Companies Act. While this speed is beneficial in preventing value erosion, it can also put pressure on ongoing M&A negotiations. Deals that would normally take months of careful structuring and negotiation may now have to be rushed or abandoned altogether.

And then comes the question of approvals. Under the Companies Act, a merger requires approval from shareholders, creditors, and the NCLT. But under the IBC, the approval of the Committee of Creditors becomes central. If a merger or acquisition is proposed as part of a resolution plan, it must be approved by at least 66% of the CoC.[4] This effectively sidelines the

[3] Insolvency and Bankruptcy Code, 2016, ss. 17 and 21.
[4] Insolvency and Bankruptcy Code, 2016, s. 30(4).

traditional approval process under the Companies Act. So even if shareholders are in favour of a merger, it may not go through unless the creditors agree.[5]

This is where things start to feel a bit uneven. The balance of power clearly shifts towards creditors, and while this is intentional under the IBC, it can lead to conflicts. Another layer of complexity comes from Section 238 of the IBC, which gives the Code an overriding effect over other laws.

In simple terms, if there is any inconsistency between the IBC and the Companies Act, the provisions of the IBC will prevail. This has significant implications for ongoing M&A transactions. Procedures that are mandatory under the Companies Act may be bypassed if they conflict with the objectives or timelines of the IBC.

When you place the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 side by side, they almost seem like they're trying to solve the same problem but in very different ways. And that's where the friction begins. Both frameworks are concerned with corporate restructuring, and both aim at reviving companies and maximising value, but the paths they take to get there are not always aligned. So when they intersect, especially in real cases, the result is often confusion, overlap, and at times, outright conflict.

One of the most noticeable tensions comes from who actually gets to decide. Under the Companies Act, mergers and acquisitions are, in essence, a collective decision. Shareholders vote, creditors are consulted, and the process unfolds through a kind of participatory mechanism. It's slow, yes, but it tries to include everyone. Now compare that with the IBC. The moment a company enters insolvency, control shifts almost entirely to the Committee of Creditors (CoC).[6] Suddenly, the people who had a day earlier, especially shareholders, find themselves on the sidelines. It's not that they disappear completely, but their influence is reduced quite significantly.

And this shift isn't just procedural, it's philosophical. The Companies Act is built around the idea of balancing stakeholder interests, while the IBC is very clearly tilted towards creditor primacy. So, when both laws apply to the same situation, the question becomes: whose interests should prevail? There's no easy answer, and that's exactly the problem.

[5] Insolvency and Bankruptcy Code, 2016, s. 12.
[6] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.

Then there's the issue of jurisdiction, which is a bit ironic because both frameworks rely on the same authority, the National Company Law Tribunal (NCLT). On paper, that should simplify things. But in practice, it creates another layer of uncertainty. When a merger is proposed during insolvency, should the NCLT apply the procedure under the Companies Act, or should it treat the merger as part of a resolution plan under the IBC?[7] It sounds like a technical question, but it has real consequences. The procedures, the approvals, even the timelines—everything changes depending on which route is followed.

Speaking of timelines, that's another area where the two frameworks don't quite see eye to eye. The Companies Act doesn't impose strict deadlines for completing mergers. It allows time for meetings, negotiations, and approvals, which can stretch over months. The IBC, on the other hand, is built around urgency. The Corporate Insolvency Resolution Process (CIRP) has to be completed within a fixed timeframe. So, when a merger is attempted within this process, there's an inherent tension.

Another conflict, and maybe a more direct one, arises from Section 238 of the IBC, which gives it an overriding effect over other laws. In simple terms, if there's any inconsistency, the IBC prevails. Now this sounds clear enough, but in practice, it raises a lot of questions. Does this mean that all provisions of the Companies Act relating to mergers can be ignored during insolvency?

This brings us to the role of judicial interpretation. Courts and tribunals have, more or less, been filling in the gaps left by the legislature. In some cases, they've emphasised the supremacy of the IBC, especially when speed and resolution are at stake. In others, they've tried to ensure that procedural safeguards under the Companies Act are not completely bypassed.

If there's one thing that really defines how mergers and acquisitions work under the Companies Act, 2013, it's that the process doesn't belong to just one group. It isn't driven entirely by management, or shareholders, or even the Tribunal. It's shared. And sometimes that sharing feels balanced, sometimes it feels messy, but it's always there in the background.

At the centre of it all are the shareholders, and their role is probably the most visible. They are the ones who ultimately vote on whether a merger or arrangement should go through. But their involvement is not just about raising hands or casting votes. Before they even get to that stage,

[7] Companies Act, 2013, s. 408.

they're expected to understand what the scheme offers, what it changes, and what it risks. That's why the law insists on disclosures, explanatory statements, financial details, all of it.[8]

Now, whether every shareholder actually goes through all that information carefully is another question. Some do, especially institutional investors. Others rely on summaries or on what the majority seems to be doing. And that's where things get a bit uneven. Because while the law gives everyone a voice, the weight of that voice often depends on how much stake they hold. So technically, everyone participates, but practically, not everyone influences equally.

Then there are the creditors, and their role feels slightly different, maybe a bit more cautious. While shareholders often think in terms of growth or long-term value, creditors are usually more concerned with recovery and security. They want to know if this merger will affect repayment. Will their position weaken? Will they still get what they are owed?

And because of that, their approval is just as important as that of shareholders.[9] In fact, in some cases, their concerns can carry even more weight. A merger that looks attractive from a business perspective might still raise red flags for creditors. And when that happens, the process doesn't move forward easily. There are discussions, negotiations, and sometimes even revisions to the scheme.

What's interesting here is how these two groups, shareholders and creditors, often look at the same merger differently. One sees opportunity, the other sees risk. And the law doesn't try to eliminate that difference. It simply creates a structure where both perspectives are heard, and somehow, a middle ground is reached or at least attempted.

Then there's the role of the National Company Law Tribunal (NCLT), which feels a bit different from the others. It's not a stakeholder in the usual sense; it doesn't have a financial interest in the merger. But its role is still central. It acts as a kind of balancing authority, stepping in after the stakeholders have made their decisions.

If the Companies Act, 2013 feels like a system built on patience—careful steps, multiple approvals, a certain rhythm that takes its time, the Insolvency and Bankruptcy Code, 2016 feels very different. Almost like a reset. It doesn't ease into things; it steps in when something has

[8] Companies Act, 2013, Section 230.
[9] Id. Section 230(6).

already gone wrong. When a company can't pay its debts, when obligations start slipping, when uncertainty begins to build, that's when the IBC enters the picture.

And the shift, when it happens, is quite noticeable. Control changes, priorities change, and even the pace changes. What was earlier a structured but somewhat slow-moving process suddenly became time-bound, almost urgent. The law is not trying to negotiate growth anymore; it's trying to resolve distress.

The IBC was introduced to address a very real problem. Before 2016, India's insolvency framework was fragmented, to say the least. There were multiple laws, multiple forums, and not much coordination between them. Cases dragged on, recovery rates were low, and by the time resolution happened, if it happened at all, the value of the company had already eroded significantly.

But what really sets the IBC apart is not just its structure, but its philosophy. Unlike the Companies Act, which tends to balance interests, the IBC leans more towards creditor control. Once the process begins, the management of the company steps aside, and the creditors, through the Committee of Creditors (CoC), take charge.[10]

Now, this shift can feel a bit abrupt. A company that was earlier making its own decisions suddenly finds itself under external control. The people who were running the business no longer have the final say. Instead, decisions are taken collectively by creditors, guided by a Resolution Professional.

The process begins when an application is filed either by a financial creditor, an operational creditor, or even the company itself. Once the National Company Law Tribunal (NCLT) admits the application, the Corporate Insolvency Resolution Process (CIRP) begins.[11] And from that moment, things start to move differently.

One of the first steps is the declaration of a moratorium. This is important. It essentially freezes all legal actions against the company, no recovery proceedings, no enforcement actions, nothing that could disrupt the process. The idea is to give the company some breathing space, to allow the resolution process to take place without external pressure.

[10] Id. Sections 17&21.
[11] Id. Sections 7, 9, 10.

At the same time, a Resolution Professional (RP) is appointed, who takes over the management of the company. This is a significant shift. The existing management is no longer in control. The RP runs the company as a going concern, manages its operations, and works towards finding a resolution.

Then comes the formation of the Committee of Creditors (CoC), which becomes the key decision-making body. The CoC evaluates resolution plans, negotiates terms, and ultimately decides whether a plan should be approved.[12] And here, the law places a lot of trust in their "commercial wisdom." Courts generally do not interfere with these decisions, unless there is a clear violation of the law.

The entire process is time-bound. Initially, it was set at 180 days, with possible extensions, but now, the outer limit is 330 days.[13] This emphasis on speed is one of the defining features of the IBC. It tries to prevent delays, to ensure that value is preserved, and that decisions are not stretched indefinitely.

But this speed also creates pressure. Resolution plans have to be prepared, evaluated, and approved within a limited timeframe. Stakeholders have to act quickly, sometimes without the level of deliberation seen under the Companies Act. And while this improves efficiency, it can also make the process feel slightly rushed.

What's also interesting is how mergers and acquisitions fit into this framework. Under the IBC, M&A doesn't disappear; it evolves. Instead of being a standalone process, it often becomes part of a resolution plan. A distressed company may be acquired by another entity as a way of resolving its insolvency. So, in a way, M&A continues but under a different structure, with different priorities.

The relationship between the IBC and other laws is also shaped by Section 238, which gives the Code an overriding effect.[14] This means that if there is any inconsistency between the IBC and another law like the Companies Act, the IBC prevails. This provision has been crucial in resolving conflicts, but it has also raised questions about how far this override extends.

[12] Id. Section 30(4).
[13] Id. Section 12.
[14] Id. Section 238.

Courts have played a key role in clarifying this. In Innoventive Industries Ltd. v. ICICI Bank, the Supreme Court made it clear that the IBC overrides conflicting laws, reinforcing its dominant position in insolvency matters.[15] This case set the tone for how the Code would be applied going forward.

Another important judgment is Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, where the Supreme Court emphasised the importance of the CoC's commercial wisdom.[16] The Court held that decisions taken by the CoC should not be interfered with, except on limited grounds. This strengthened the creditor-driven nature of the process.

So, when you look at the IBC as a whole, it feels quite different from the Companies Act. It is faster, more structured, and more decisive. It doesn't try to balance every interest equally; it prioritises resolution, even if that means some interests take a back seat.

Another important objective is maximisation of value. The Code doesn't aim to simply recover debts; it aims to preserve and enhance the value of the company as a going concern. Because, in many cases, a running business is worth more than a broken one. So, the focus is not just on repayment, but on finding a solution that keeps the business alive, if possible.

And this is where the idea of resolution over liquidation comes in. The IBC prefers revival. It encourages resolution plans that restructure the company, bring in new investors, or reorganise operations. Liquidation is treated as a last resort, something to fall back on if nothing else works. It's almost like the law is saying, try to save the business first, and only shut it down if there's no other option.

Then there's the shift towards creditor control, which is probably one of the most defining features of the IBC. Once the insolvency process begins, the control of the company moves away from its existing management and into the hands of the Committee of Creditors (CoC).[17] This is a significant change from earlier frameworks, where management often remained in control even during distress.

The reasoning behind this is quite straightforward. Creditors, especially financial creditors, have a direct stake in recovering their money. They are seen as better positioned to make

[15] *Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 SCC 407 (India).
[16] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).
[17] Id. Section 17, 21.

decisions about the future of the company. So the Code places trust in their "commercial wisdom," allowing them to evaluate resolution plans and decide what works best.

But this shift is not without its complications. While it strengthens creditor rights, it also reduces the role of other stakeholders, particularly shareholders. Their influence becomes limited, and their interests may not always align with those of creditors. The law acknowledges this imbalance, but it still prioritises efficiency and recovery.

If the objectives of the IBC explain why the law exists, the Corporate Insolvency Resolution Process CIRP is where things actually begin to move. And once it starts, it doesn't really ease into motion. It shifts the entire situation almost immediately. What was earlier a company managing its own affairs becomes a company under a structured, time-bound process, where decisions are no longer entirely internal.

It begins with something fairly simple, a default. A debt is due, and it hasn't been paid. That's enough. An application can then be filed before the National Company Law Tribunal (NCLT) by a financial creditor, an operational creditor, or even the company itself.[18] The Tribunal doesn't conduct a detailed trial at this stage; it only checks whether a default exists. And once that is established, the process begins.

This stage has been clarified quite strongly in Innoventive Industries Ltd. v. ICICI Bank, where the Supreme Court observed that the adjudicating authority only needs to be satisfied that a default has occurred.[19] It is not required to go into deeper disputes or detailed arguments. This makes the entry into CIRP relatively swift, which aligns with the overall objective of the Code.

Once the application is admitted, a moratorium is declared.[20] This is one of the most defining features of the CIRP. It essentially freezes all proceedings against the company, no suits, no recovery actions, no enforcement of security interests. Everything pauses. The intention here is to create a controlled environment where the company can be assessed without external pressure.

But this pause is not passive. At the same time, an Interim Resolution Professional (IRP) is appointed, who takes over the management of the company. This marks a significant shift. The

[18] Insolvency and Bankruptcy Code, 2016, Sections 7, 9, 10.
[19] *Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 SCC 407 (India).
[20] Insolvency and Bankruptcy Code, 2016, Section 14.

existing management steps aside, and control moves to the IRP. It can feel abrupt… almost like a sudden transition from autonomy to supervision.

The IRP then collects claims from creditors and forms the Committee of Creditors (CoC). And this is where the process becomes distinctly creditor-driven. The CoC, primarily consisting of financial creditors, becomes the central decision-making body. It evaluates resolution plans, negotiates terms, and ultimately decides the future of the company.

This emphasis on the CoC has been reinforced in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta.[21] The Supreme Court made it clear that the commercial wisdom of the CoC is paramount and should not be interfered with by the Tribunal, except on limited grounds. This judgment essentially strengthened the idea that creditors, not courts, should decide the viability of a resolution plan.

Once the CoC is constituted, the IRP is either confirmed or replaced by a Resolution Professional (RP), who continues managing the company as a going concern.[22] The company does not shut down; it continues operating, even while its future is being decided. This creates a somewhat unusual situation for a business running, but under external control.

The RP then invites resolution plans from prospective applicants. These plans propose different ways to resolve the insolvency through restructuring, acquisition, or a combination of both. The CoC evaluates these plans, compares them, negotiates terms, and eventually selects the most suitable one.

Throughout this process, time remains a constant factor. The CIRP is required to be completed within a prescribed period, with an outer limit of 330 days.[23] This time-bound nature ensures that the process does not drag on indefinitely. But it also creates pressure. Decisions have to be made quickly, and there is limited room for prolonged negotiation.

Once a resolution plan is approved by at least 66% of the CoC, it is submitted to the NCLT for final approval. The Tribunal then examines whether the plan complies with the requirements of the Code. It does not question the commercial aspects that responsibility lies with the CoC.

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[21] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).
[22] Insolvency and Bankruptcy Code, 2016, Section 22.
[23] Id. Section 12.

If approved, the plan becomes binding on all stakeholders, including creditors, shareholders, and employees. This gives the process finality. The company moves forward under the new structure, and the insolvency is considered resolved.

However, if no plan is approved within the time limit, the process shifts towards liquidation. And that shift is quite definitive. It means that revival was not possible, and the focus now moves to selling assets and repaying creditors.

So, when you look at the CIRP as a whole, it feels structured but intense. It moves step by step, but each step carries weight. There's protection through the moratorium, control through the Resolution Professional, and decision-making through the CoC. And above all, there's a constant push towards resolution, quick, decisive, and final.

But even with all this structure, the process is not entirely free from challenges. The shift in control, the emphasis on creditor interests, and the strict timelines all of these create tensions. And those tensions become even more visible when we compare this framework with the more participatory approach under the Companies Act.