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CORPORATE RESCUE IN THE UK & INDIA: ISSUES AND CHALLENGES

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ABSTRACT

The implementation of corporate rescue mechanisms is crucial in ensuring the preservation of the stability and longevity of companies that are experiencing financial difficulties. The present article scrutinises the concerns and complexities pertaining to corporate rescue in the United Kingdom (UK) and India. The study endeavours to identify significant similarities and differences in the approaches of various jurisdictions by scrutinising their legal frameworks and practises. The objective is to highlight the areas that necessitate further attention and improvement. The United Kingdom possesses a firmly established insolvency system that offers a range of mechanisms for corporate recovery, such as administration, company voluntary arrangements (CVAs), and pre-pack administrations. The aforementioned mechanisms are designed to achieve equilibrium between the concerns of creditors and shareholders, while concurrently enabling the recuperation and reorganisation of financially troubled firms. Notwithstanding, there exist certain challenges in domains such as the temporal aspect of interventions, the function of secured creditors, and the efficacy of rescue schemes in accomplishing enduring viability.

By way of contrast, India has undergone notable modifications in its insolvency structure with the implementation of the Insolvency and Bankruptcy Code (IBC) in recent times. The International Bankruptcy Code (IBC) endeavours to facilitate and accelerate the process of resolving bankruptcy cases, advocating for a creditor-centric approach. However, there are still obstacles that remain prevalent in the Indian scenario, such as the onus placed on the National Company Law Tribunal (NCLT), concerns pertaining to the process of determining the value of assets, and the necessity for a strong network of professionals specialising in insolvency. The present article offers an analysis of the obstacles encountered by the United Kingdom and India in their endeavours to

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rescue corporations, underscoring the imperative of ongoing assessment and enhancement of their corresponding legal structures. Through the identification of salient concerns and dissemination of optimal strategies, policymakers and practitioners can collaboratively strive towards augmenting corporate rescue mechanisms and guaranteeing the financial sustainability of ailing enterprises.

Keywords: Corporate Rescue, financial distress, UK, India, IBC etc.

AN ANALYSIS OF ENTERPRISES ACT, 2002

The "Enterprises Act of 2002" made a series of amendments that benefited financially challenged enterprises in reviving the economy. The Act's primary objective was to eliminate the Crown's special rights as a creditor. The role of administrative administration was drastically reduced when the Bankruptcy Act of 1986 was established. A change was also made to the management structure. It also suggested opening up the Plan of Arrangement to corporations covered by the Companies Act of 1985.

The Enterprise Act thus does not introduce any new concept but instead seeks to enhance the application of a known ideology. Reviewing the White Paper that came before the Act indicates that, in no particular order, its principal goals are to enhance corporate rescue, collectively, the highest possible realisations from the corporate estate, and general fairness amongst debtors.[1]

RESCUE CULTURE IN THE UNITED KINGDOM AT PRESENT

1. Administration

The British concept of administration was inspired by Chapter 11 of the United States Code, however there are significant distinctions between the two systems. It is typically regarded as the best choice for the majority of debtors and constitutes a significant portion of the UK's bankruptcy legislation. Its execution was substantially influenced by the Cork Committee Report. The company may continue to operate under this arrangement (statutory moratorium) as a consequence of the prohibition. In this manner, the company is relieved of the immediate responsibility to (temporarily) repay its debts. The Bankruptcy Regulations of 2016's Section III anticipates the potential of court-initiated bankruptcy proceedings. The Cork Report stressed the need for an alternative recovery strategy that would allow the business to continue, safeguard trade,

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[1] Sandra Frisby, *In Search of a Rescue Regime: The Enterprises Act 2002*, 2 The Modern Law Review 247 (2004), https://www.Jstor.org/stable/3699143 .

defend trading, provide benefits and earnings to the business, and also potentially satisfy the majority of the business' creditors.

The second relief tactic that sprang from this way of thinking was termed "organisation," and it was more formal in character and gave a suspension of the procedures for fulfilling duty requirements while also adding the certainty of a ban. The suggested organisational strategy was assured to result in one of four conceivable results, but these objectives were not delegated to any specific supervisors or based on any urgent business needs.

The outcomes included a CVA or other type of debt restructuring being approved, the company's operations, or a portion of them, continuing as a going concern, and the approval of a plan of action that would produce a more accurate assessment of the company's assets than is reasonably achievable through a standard liquidation process. The executive was considered a possible entry point for the adoption of extra, possibly restorative practises since he or she was in charge of the company's administration. The administrator's report to the court will determine whether the court requests an administration order. The company, the shareholders, or the debtors will then file an order proposal. The restriction put forward would cause any regulatory beneficiaries from the plan to resign from government.

When the request is approved, a certified debts expert will be chosen as the committee's chairwoman and given extensive power to look into and resolve the organization's issues. In order to carry out his tasks, the director, who was in charge of the organization's administration, distributed benefits as he thought fit.[2] The manager was tasked with sending out a notice ahead of a meeting with lending company executives, outlining the suggestions he wanted to be discussed. Until they were provided the recovery plan, lessees had access to information from the chief through a lenders' advice group. Even if the recovery plan's approval was typically confirmed at a meeting called by the chairperson, disputing investors or loan managers could file a lawsuit for redress if they believed they had suffered unwarranted bias in the arrangement. As part of the rehabilitation plan, the administrator may transfer the entire company or specific business divisions as a going concern, with the rest of the business is closed down and the administrator is released.

The administration's goals entailed more than just the short-term gain of reviving the company; they also included the long-term benefit of the business continuing to be a successful business. This implies that the designated administrator, a bankruptcy practitioner, will have broad authority.

[2] IBBI, QUINQUENNIAL OF INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBBI, 2021).

There was no clear order to the goals under Section 8(3). Because of this, it is even more important that the Court monitor this form of relief. The Bankruptcy Service established a pair of task forces to examine CVAs and administration separately; these groups produced findings in 1995[3] and 2000[4], respectively. Not that any revisions were made to bankruptcy law; in 1994, two laws were enacted that made some small but essential changes, though it was obvious that they were not meant to be sweeping changes.

II. Pre-Packs: A New Businesses Act Feature in Administration

By amending Section 8 of the Bankruptcy Act 1986 to implement Appendix B1, which details the revised administration strategy and directors' rights and responsibilities, the Companies Act of 2002 provides for a more enabling structure. To the contrary, this nullified the entirety of the IA 1986's Section 2: (the old organisation arrangements). Section II, however, is still protected for specific organisational structures, including those involved in water and sewer systems, railroads, air traffic control, open private associations, and even construction societies. If one disregards the substance of the new approach, which is significantly more complicated than before, the administration is largely unchanged with the exception of the high rescue priority and bankruptcy practitioner designation.[5]

Rearranging the schedule and establishing the idea that the method shouldn't continue longer than a year both aid in concentrating attention on fostering rapid and competent salvages. The most remarkable development has far-reaching effects on the strategy's trajectory and highlights recovery as the primary focus. Rescue is required to be an integral part of the management strategy, as stated in Section 3 of Appendix B1. In comparison, the IA 1986 laid out four distinct possibilities for the goal of the particular administration process, each of which was outlined in the basic administration method. As a result, each alternative was on par with the others; saving the company was as good as any other that wouldn't result in bankruptcy.

The new driving force behind the organisation fitted three different tiers of goals, the highest of which was to preserve the business as a going concern and, if not, to produce a better outcome than would be possible in bankruptcy. Therefore, the practitioner has an obligation to prioritise rescue unless it is not advantageous or the outcome for debtors is no better than it would be in bankruptcy. To allay directors' worries about the hive-down strategy and make it far more

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[3] Hamish Anderson, The Framework Of Corporate Insolvency Law 84-103 (Oxford University Press 2017).
[4] Vanessa Finch, *The Recasting of Insolvency Law*, 68(5) MLR 713-765 (2005), https://www.jstor.org/stable/3699055 .
[5] *Ibid.*

appealing to them, we've replaced the term "business" with "company" in this section. This will hopefully encourage the directors to act swiftly.

Second, there is always the chance of bettering the outcome that may be the effect of bankruptcy if choosing to stay in business for a long time is not usually an option. This improved bankruptcy is advantageous because it reduces the likelihood of a hurried "fire-sale" as well as the associated decrease in the value of the company or its assets. The administrator may act like a receiver and try to sell assets to pay off protected and/or preferred debtors if the first two choices fail. The practitioner, however, must provide an explanation that includes the common good and shows that if this choice were chosen, it would not suffer permanent harm.

Therefore, the weight is shifted from a single major creditor to all of the company's debtors, and the receiver is expected to act in their best interests. By including a precise directive, making it a legal obligation, an administrator must do his obligations as efficiently and fairly as feasible that may be implemented in practise, demonstrating that the changes are also intended to improve efficiency and speed. The new order of priorities also recognises the practitioner's privileged position by requiring the court to defer to his professional judgement and barring exceptional situations, which it will never do.[6]

The second major shift concerns the nomination process, which was formerly governed by the court and necessitated a motion filed by either the bankrupt or a creditor. As part of the changes, the company and certain protected debtors now have the choice of making meetings outside of court. A proven eligible floating charge if a provisional liquidator or administration receiver has not yet been designated, the bearer may name an administrator. Schedule B1 must be referenced in qualifying charges, and they must also purport to enable the holder to establish an administrator over the business or to arrange a meeting that could have been made by an administration receiver. There are requirements for what constitutes a "qualified floating charge," such as the creditor having protection over the majority of the company's assets.

After an administrator has been appointed, he or she must file a notice of appointment with the court, as well as any other required documents, such as a statutory declaration attesting to the fact that the administrator consents to his appointment, the appointment was made legally, the person making the appointment is the owner of a qualifying enforceable floating charge, and what the administrator believes the administration's goal is. When a company wants to nominate itself, the

[6] The Enterprises Act, 2002, sch. B1, para. 76-78, 2002.

board of directors must inform the protected creditor, who then has the opportunity to nominate someone else. When there is a disagreement, the judge must side with the borrower. This indicates the belief that the creditor is more likely to act in response to potential inaction on the directors' part because they have expert knowledge of the debtor's financial situation.[7]

In the year after the reforms were enacted, arrangements increased significantly, demonstrating that the potential to escape judicial scrutiny of agreements was a motivating factor, particularly in the pre-pack context. A pre-main pack's goal is to safeguard the account bearer organisation against potential social harm and a decline in trust from its contractual partners as the company gets closer to its debt ceiling. The expert makes an effort to put together an offer of benefits or the substance of the company to a preselected customer in order to reverse the situation with these assurances in place.[8]

The "following pony offer," which is a bid or offer intended to test the market ahead of a formal sale, effectively establishes a reserve price for a gain-sharing arrangement and is the process upon which the United Kingdom's pre-pack is based. If the assets or operation cannot be sold in excess of the offer, the person or group initiating the offer must complete the transaction. Practitioners and main creditors in the UK often work together, to find a buyer through the practitioner's professional and personal networks. The primary concern is safeguarding the debtor's good name and, until the contract is signed by the buying business and approved by the court in a last-ditch administration procedure, other creditors, particularly unsecured creditors, will not be able to compete for a publicly listed company's stock.[9]

One significant drawback of pre-packs is that other debtors (typically uninsured ones) are often kept in the dark about what is up until a practitioner is selected to oversee the subsequent administration. The protected creditor's choice of the administrator—who is frequently the same person who handled the pre-pack—helps to guarantee a rapid turnover of sales while maintaining a high level of secrecy. However, the issue of whether or not such a transaction would be legal arises poses the phoenix syndrome danger that caused so much alarm before the Bankruptcy Act of 1986 was enacted.

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[7] Dr Jennifer L. L. Gant and Dr Alexandra Kastrinou, *The Impact of Austerity in the Framework of Corporate Rescue and the Rights of Workers in the EU: A Road to Recovery?,* (2014), https://core.ac.uk/download/pdf/84339513.pdf (last visited Mar. 5, 2023).
[8] *Ibid.*
[9] Paul Omar & Dr Jennifer Grant, *Corporate Rescue in United Kingdom: Ten Years After the Enterprises Act 2002 Reforms*, 24 JOUR (2016).

Part of the solution can be found in the practitioner's duty to the larger group of debtors stated above; however, the requirement is probably more important than the insurance policy by which all practitioners are obligated to abide. Additional safeguards for vulnerable creditors can be found in Statement of Insolvency Procedure 16 ("SIP 16"), first issued by the JIC in 2008 and revised twice, most recently in 2015. It specifies mandatory conformance requirements and discusses the obligations of practitioners in the context of a pre-pack transaction. Practitioners are obligated to bear in mind the importance of the shared nature of procedures, transparency, and the public interest.

BUSINESS VOLUNTARY PRESETS

A CVA is a debt settlement agreement between a business and its debtors. Company Voluntary Agreements (CVAs) can be initiated by the company's shareholders or, by the appointed administrator or receiver, if the business is already bankrupt or under administration. According to the aforementioned plan, proof of the company's bankruptcy or impending insolvency is not required to initiate procedures. A Company Voluntary Arrangement (CVA) begins with a plan approved by at least 75% of bondholders. The plan must be accepted by the judge. Likewise, there is no hard and fast time restriction on the same.

- **Under Insolvency Act 1986**[10]

Part- I of the Bankruptcy Act, of 1986 governs CVA, and this section is split into two sub-sections: the application section, and the deliberation and execution sections. The administrators of the business or the debtors are required to make a plan to settle the obligations owed to the insolvent company under the Bankruptcy Act of 1986. The plan must have either an agreement or a claim resolution as its primary purpose. CVAs can also be initiated by an administrator or receiver, as stated in Section 1(3) of the Act, so long as the administration or bankruptcy procedure has already begun. Whoever starts the process (nominee) is responsible for submitting the report to the Court detailing whether or not a gathering of creditors is necessary.

- **Cork Report**

In 1982, the Cork Report claimed that the Company Voluntary Arrangement (CVA) would be a more efficient and cost-effective way to address financial difficulties informally. The Cork Committee's primary goal was to eliminate the time-consuming formal procedures associated with

[10] IA 1986, Sec. 1-7.

rescuing distressed companies. The CVA allowed companies to propose a plan for addressing financial distress before insolvency became a real threat, making the process more flexible. However, there were several challenges associated with the CVA system.

The Insolvency Service's 1993 report highlighted some obstacles to its use, as well as the absence of a moratorium, which made it challenging to ensure successful arrangements. Additionally, financial support for debtor organization restructuring was a problem. The appointment of a receiver was frequently desired by creditors since it gave them authority over the situation. Because it was unclear what would occur if the company defaulted after the CVA, the CVA was also underutilised, leading creditors to believe that they may not benefit. Most significantly, the process was time-consuming, and creditors could still request liquidation during the process.

However, the 2000 Insolvency Act and the availability of a moratorium have addressed some of these issues, making the CVA a more attractive option. Nonetheless, these challenges explain the reasons the CVA was first underused, which caused the adoption of newer organizational strategies.

RESOLUTION PLAN IN INDIA

- **INSOLVENCY AND THE BANKRUPTCY CODE, 2016 AND THE RESCUE CULTURE**

The rules of bankruptcy were first combined into a single code in 2016, known as the Insolvency and Bankruptcy Code (IBC). The settlement plan, which helped troubled businesses and corporate creditors, was created after the IBC was enacted. Many people were relieved by this news. A plan for resolving a legal dispute is defined in Section 5(26) of the Law.

With the passing of the Insolvency and Bankruptcy (Second Amendment) Act, there is now greater clarity regarding the admissibility of corporate resolution plans for the goal plan, the preservation of the unmatched quality of money-related loan bosses with regard to the utilisation of assets proposed by the goal candidate, and the explanation of the goal plan's relevance to every legal position.

The resolution of disputes between financial lending managers is a major concern in the implementation of Settlement Plans. To receive the Adjudicating Authority's blessing, a goal plan must receive support from at least 66% of the democratic part of the fiscal loan leaders (as defined

in Section 30(4) of the Code). Contradicting financial institutions were originally defined in the Indebtedness and Bankruptcy Board of India (Insolvency Settlement Procedure for Business People) Rules, 2016 as financial institutions that voted against the lending committee's approved final proposal. From that moment forward, "money-related lenders who evaded choosing in favour of the goal plan" would be considered as opposing money lenders according to the Bankruptcy and Chapter 11 Board of India (Insolvency Settlement Procedure for Business Persons) Rules, 2016.

According to the Insolvency and Bankruptcy Board of India (Via its circular dated September 14th, 2018), non-members of the Committee of Creditors who are in charge of financial loans do not have the ability to cast a vote, and hence cannot be considered lessees who are opposing or declining a target procedure. It is clear from the foregoing that the Adjudicating Experts (NCLT/NCLAT), the governing authority (IBBI), and the members all share a common interest in the swift and uncomplicated approval and implementation of the Goal Plan. The most up-to-date IBBI newsletter claims that IBC supports a competitive market where participants from all over the globe compete to offer the best possible reward for the organisation. The value realised from the target plans is roughly double what was expected from the bankruptcy.[11]

The Corporate Bankruptcy Resolution Process (CIRP) envisioned in Chapter II of the Code is crucial to comprehending the bailout culture in India. Part II of the Insolvency and Bankruptcy Act, 2016, sections 6-32 contains an outline of the Business Insolvency Settlement Procedure. It stipulates that the corporate settlement procedure set forth in chapter II of the Act may be started if a corporate debtor becomes failure in settling an obligation that has become due and owing but has not been reimbursed.

According to the Act, a financial creditor, a practical creditor, or a corporate insolvent may start the resolution process, and it emphasises the importance of the early discovery of financial trouble for expeditious resolution. The financial creditor may submit an application to the National Company Law Commission for the name of a resolution specialist to act as a temporary resolution professional. The deciding entity will move forward once it has determined that failure has occurred. The procedure for an operational creditor differs from that of a financial creditor because operational obligations are typical of a lower total sum and are of a recurrent nature.

[11] *Ibid.*

In the event of a failure, the practical creditor is obligated to send a demand notification or a billing duplicate, respectively, to the debtor. These safeguards against practical debtors, who typically hold lesser debt claims, and corporate bankrupts, are hurried into the insolvency resolution procedure, or the process is started for unrelated reasons. The chapter establishes a 180-day timetable for the completion of the corporate bankruptcy process, which may be extended by an additional 90 days.

Once the application has been admitted, the adjudicating body has fourteen days to designate a temporary resolution expert who will play a pivotal role in the corporate resolution process. Until a settlement specialist is chosen, he is responsible for a number of different things, such as accumulating claims, investigating the corporate delinquent, organising a committee of creditors, running the business in the interim, and keeping an eye on its assets.

A resolution professional's first order of business after being hired is to compile an information brief that can be used by a resolution candidate in developing a resolution proposal. It is planned to create such a statement so that market players can offer suggestions for dealing with the business debtor's bankruptcy. Any person or entity may file a settlement application so long as they do so in accordance with the relevant statutes.

All resolution plans given to the resolution expert must be presented to the creditors' group for approval or rejection. In the event of acceptance, the plan will be presented to the adjudicating body for final approval; otherwise, the business will enter bankruptcy.

The Court held, "The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislation have failed, 'trial' had led to repeated errors, ultimately leading to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster."

A resolution applicant, who is not disqualified under Section 29 A, may submit a resolution plan to the resolution professional under the rules of the Insolvency and Bankruptcy Code, 2016. This plan aims to revive a distressed company and bring it back into the economy. The resolution professional is responsible for ensuring that the plan does not violate any provisions and meets the requirements of Section 30(2) of the Code.

A resolution plan must go by specified rules that the court has established in the Binani Industries Limited v. Bank of Baroda & Anr[12] case. These regulations include the fact that the resolution plan should be a means to resolve the situation of the corporate debtor as a going concern, and not as a sale, auction, recovery, or liquidation. By optimising revenues and balancing the interests of debtors and creditors, the resolution plan's main objective should be to remove the possibility of insolvency. It is important to note that the resolution plan is distinct from the concept of recovery, which is not allowed as per the Insolvency and Bankruptcy Code.

Furthermore, the resolution plan must be carefully thought out and differentiate itself from the concept of liquidation. The resolution plan should promote a thriving economy and be equitable to all stakeholders. Any discrimination among financial creditors or operational creditors would go against the fundamental purpose of the promulgation of Section 5(26) of the Code.

In summary, the plan for resolution under the Insolvency and Bankruptcy Code, 2016 is a crucial tool to help distressed companies revive themselves and return to the economy. The Binani Industries Limited v Bank of Baroda & Anr case has established specific regulations that the resolution plan must adhere to, including the elimination of insolvency risk, balancing of interests, and avoidance of discrimination among stakeholders. It is essential to differentiate the resolution plan from recovery or liquidation concepts and to ensure that it promotes a thriving economy.

PRE-PACKS: INDIA'S INNOVATION IN RESCUE?

A novel strategy in India is the pre-packaged operation of insolvency to rescue companies, although it is not unique to India, as other countries have been using it for some time. For instance, pre-packs were invented in the United Kingdom in the late 20th century. However, it seems that India has not fully embraced the pre-packaged administration concept.[13] A pre-packaged administration involves negotiating prior to hiring an administrator, the sale of a company's assets to a buyer, who then sells the assets shortly after their appointment.

According to Black's Law Dictionary,[14] a "pre-pack bankruptcy" is one in which the debtor accepts conditions that shorten the time needed to handle the business. Pre-packaged administration may alter India's insolvency rules if they were implemented.

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[12] Binani Industries Limited v. Bank of Baroda & Anr, (2018) , Company Appeal (AT) (Insolvency) No. 82 of 2018.
[13] Lorraine Conway and Ali Salchi, Pre-Pack Administrations, (2021), https://commonslibrary.parliament.uk/research-briefings/sn05035/ (last visited Mar. 05, 2023).
[14] Black's Law Dictionary, The Law Dictionary, 2nd. Edn., https://thelawdictionary.org/prepackaged-bankruptcy/ (last visited Mar. 05, 2023).

- ***Pre-Packaged Administration Initiation***

Before insolvency proceedings start, initiating Pre-Packaged Administration is necessary. By doing so, debtors can analyze the resolution under pre-packs and decide whether to restructure the debt under pre-packs. Additionally, if a creditor anticipates a "pre-default," they can request pre-packs to allow the debtor to restructure the debt.

- **Functioning of Pre-Packs**

Pre-packs aim to rebuild an organization's obligations. The method used for rebuilding will depend on factors such as the nature and quantum of the outstanding debt, the borrower organization's nature of business, and the stage of pain faced by the borrower organization. The corporate restructuring may also be included as a part of the rebuilding process. Once the rebuilding method and its particulars are decided, the pre-pack is put into action as soon as the company submits an insolvency petition. Pre-packs are implemented in several European nations on the same day as the insolvency professional (IP) is hired, which results in an immediate transfer of ownership of the company to the prospective buyer.[15]

- **Maintaining the Business under Current Management**

The existing management plays a crucial role in pre-pack negotiations, as these negotiations happen before the start of bankruptcy proceedings. Initiating pre-pack procedures earlier can help the business retain its present management, which would be agreed upon by the lenders.

- **Rapid and less expensive solution**

Pre-packs often cost less money and take less time than formal insolvency and bankruptcy proceedings, as all the essentials of the Corporate Insolvency Resolution Process (CIRP) are completed beforehand, including the transfer and acceptance of the resolution plan. This reduces the legal and professional fees involved in the formal process, and there is minimal intervention by the courts, especially in the Indian context.

[15] Adrian Cohen, *A Guide to European Restructuring and Insolvency Procedures,* Clifford Chance (2015).

- **Creditor Confidence**

Creditors are assured of repayment of the loan amount given to the debtor under pre-packs. This is not the case when the CIRP is initiated, where the offer to each creditor is based on the resolution strategy offered by the qualified candidate.

- **Privacy**

Pre-pack transactions are private, which helps to maintain the going-concern value of the Corporate Debtor, and it does not harm or reduce the value of the company's business.

- **Going Concern**

The going-concern worth of the corporate debtor remains intact under pre-packs as the business continues to be operated by the existing management. This is not the case when the resolution happens after the application is filed, as there is a possibility of the company being liquidated if there is no successful resolution plan for restructuring or reorganization. Moreover, no moratorium is imposed on as in the event of claims within sections 7, 9, or 10, the corporate debtor.

- **Final Authority of Courts**

To become official, a pre-packaged arrangement requires the approval of the appropriate authority, such as the National Company Law Tribunal (NCLT) in the Indian context. The NCLT will only approve resolution plans that adhere to Section 30 of the Code's provisions.

- **Reduction of Burden on the NCLT**

The implementation of pre-pack plans in India will reduce the burden on the already-burdened NCLT, as there will already be a resolution plan in place.

RESOLUTION APPLICANT

It is forbidden for certain individuals to submit a settlement application under the 2016 Insolvency and Bankruptcy Code ("Code") Section 29A. This clause forbids anyone who, via their misconduct, caused the corporate debtor's failures or who is otherwise unwelcome from acquiring or reacquiring ownership of the corporate debtor.

The scope and application of Section 29A were clarified by the Supreme Court in Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta.[16] Furthermore, in Switzerland Ribbons Pvt. Ltd. v. Union of India[17], the Supreme Court defended the legitimacy of this rule. One might wonder, though, what motivated the inclusion of Code Section 29A. A settlement candidate could have been a creditor, advocate, potential investment, employee, or anyone else under the initial Code.[18] This had serious repercussions for the Code. Creditors' interests were harmed because promoters, guarantors, and ex-management were able to repurchase their properties at low rates.

Therefore, it was agreed that section 29A of the rules should be introduced to the Code in order to exclude certain groups of people from presenting settlement offers. However, it was found that this clause was extremely inclusive and barred anybody who had even a remote connection to the corporate insolvent from submitting a settlement offer. Therefore, the Bankruptcy legislation Council put up amendments that were eventually included into the relevant section of the legislation. The major emphasis of the Code is company settlement. The plan's objectives are to identify workable solutions for the corporate debtor's revival and restructuring and to provide realistic procedures for implementing the settlement.

The Law allows for the filing of resolution proposals for the business bankrupt by potential resolution candidates. Previously, a settlement candidate could be anyone, including creditors, promoters, potential investors, employees, and others. At the expense of the financiers, the corporate debtor's founders, guarantors, and/or prior administration were able to make low-cost bids on and buyback their own assets. It became apparent as a result that the Code required language barring participation in the settlement process from certain groups of people. That's why Article 29A of the Code exists today.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017[19] , and the Insolvency and Bankruptcy Code (Amendment) Act, 2018 (6 of 2018)[20] ("Amendment Act") both added Section 29A. Persons who are ineligible to submit a resolve application are detailed below. It was, however, noted that the reach of section 29A was quite broad and that anyone even tangentially connected to the corporate bankrupt was disqualified from presenting a settlement plan. This was seen as a stumbling block in the corporate debtor's "Corporate Bankruptcy Resolution Procedure" (CIRP).

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16 Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta, (2018) LL 2021 SC 454.
17 Switzerland Ribbons Pvt. Ltd. v. Union of India, (2019) W.P. (CIVIL) NO. 99 OF 2018.
18 VINOD KOTHARI, IBC: USHERING IN A NEW ERA (Vinod Kothari & Company, 2016), https://vinodkothari.com/wp-content/uploads/2019/06/Booklet-IBC-Final.pdf .
19 The Insolvency and Bankruptcy Code (Amendment) Act, 2017, No. 8, Acts of Parliament, 2017 (India).
20 The Insolvency and Bankruptcy Code (Amendment) Act, 2018, No. 6, Acts of Parliament, 2018 (India).

The 2018 Bankruptcy Law Committee recommended that Section 29A be adopted to make sure that only those individuals would be rejected who had contributed to the corporate debtor's fall or who were otherwise unqualified to govern the organisation. The Committee recommended changes to Section 29A in its report that would limit its scope of applicability.

These changes were codified by the Insolvency and Bankruptcy Law (Second Amendment) Act of 2018 (the "Second Amendment Act"). The addition of section 29A has been advantageous to the corporate debtor and the borrowers when taking into account the objectives of the Code, which are the restructuring and revival of the corporate debtor. The process of resolving corporate bankruptcy is delayed, it slows the economy, and it limits the interests of actual entrepreneurs, to name only a few disadvantages.

The research and analysis of part 29A of the Insolvency and Bankruptcy Code are two main goals of this part. The section first elaborately explores the legal justification for the inclusion of section 29A to the Code and its contents. Second, it seeks to examine the conditions that restrict a resolution applicant from presenting their application the full under section 29A in light of the Supreme Court's ruling in Arcelor Mittal India Pvt. v. Satish Kumar Gupta. Thirdly, this section will explore the concerns that Swiss Ribbons Pvt. Ltd. v. Union of India raised before the Apex Court, notably those that related to the constitutional validity of section 29A.

Investigating this is crucial because it clarifies the legal context in which section 29A functions. Fourthly, this section aims to resolve the problem with section 29A's retroactive applicability. Prior to its creation, there was no limit on a resolution applicant's eligibility, which was seen as a hole in the Code that let defaulters to make an offer to purchase a company's assets while it was undergoing CIRP. By prohibiting defaulters from taking part in the settlement process, section 29A was included to solve this problem.