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REASSESSING THE POSSESSION MODEL IN INDIAN INSOLVENCY: EXPLORING THE NEED FOR A STRATEGIC SHIFT

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ABSTRACT

Since its adoption in 2016, India's insolvency regime—which is regulated by the Insolvency and Bankruptcy Code (IBC)—has mostly adopted a creditor-in-control framework, emphasizing quick resolution through resolution and protecting the interests of creditors. The United States (US), on the other hand, have more debtor-centric insolvency systems. Businesses are permitted to continue operating under their current management and create reorganization plans in order to maintain business continuity under Chapter 11 of the U.S. Bankruptcy Code. Similarly, a debtor-in-possession moratorium and restructuring plans with cross-class cram-down capabilities were introduced by the United Kingdom's (UK) Corporate Insolvency and Governance Act (CIGA) of 2020, which gave directors of the company the ability to guide the company through financial difficulties while maintaining certain protections for creditors. Recent court decisions in India have raised questions about the uniformity and dependability of the IBC, most notably the recent May 2025 Supreme Court's judgment to revoke a $2.3 billion acquisition deal between JSW Steel and Bhushan Power due to procedural irregularities, which was approved by NCLT in 2019 after 770 days from initiation and final acquisition in 2021. Aiming to enable out-of-court remedies led by creditors, the Creditor-Led Insolvency Resolution Procedure (CLRP) was introduced concurrently, allowing financially troubled businesses to continue operating without an instant change in management control.

By contrasting India's creditor-driven structure with the more debtor-oriented systems in the US and the UK, this study examines the shifting dynamics of insolvency regimes. It examines the benefits and drawbacks of migrating to a debtor-supportive system in India, taking into account operational continuity, creditor safeguards, and legal outcome predictability. The study aims to assess whether this change could enhance India's financial stability and increase its attractiveness to foreign investors.

Introduction

A robust and transparent insolvency system fosters confidence among businesses, investors, and creditors by providing a fair and predictable process that promotes economic activity and

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investment. Clear delineation of creditor/debtor rights and obligations facilitates effective risk management for businesses and creditors. Transparent and reliable systems undergo continuous improvement through regular evaluations, feedback mechanisms, and updates to legal frameworks, ensuring responsiveness to changing economic conditions and global best practices. Achieving harmonisation of incentives and disincentives across diverse market-based systems requires a comprehensive reform approach that considers many different laws and rules involved in how creditors and debtors are treated, as well as in systems for handling bankruptcy.

Condensing global best practices is crucial for designing effective insolvency systems and creditor/debtor regimes at the international level. Adapting these practices to individual countries necessitates a deep understanding of the specific market conditions in which these systems function. Developing countries, in particular, encounter significant challenges in adopting systems that meet their unique needs while remaining aligned with global trends and recognised best practices.

India currently operates under a 'creditor-in-control system' (CIC), a model influenced by the older insolvency framework in the United Kingdom (UK), thereby prioritising the maximisation of debt recovery during insolvency proceedings, with a resolution professional taking control on behalf of creditors. In contrast, the United States of America (US) adopts a debtor-friendly model, emphasising the rehabilitation and reorganisation of distressed companies under Chapter 11 of the Bankruptcy Code.[3] This allows debtor corporations to continue operating while restructuring debts, and if reorganization is unfeasible, liquidation can occur under a more debtor-controlled process in Chapter 7.[4] These differing approaches highlight the core strategies of creditor maximisation in India and debtor rehabilitation in the US.
After the implementation of the 'Corporate Insolvency and Governance Act, 2020' (CIGA)[5] in the UK, it has transitioned to a 'debtor-friendly approach' similar to the US, employing a 'Debtor-in-Possession' (DIP) regime within its existing framework. The evolution of these models reflects shifts in the balance of power and priorities within insolvency systems across these jurisdictions.

The CIGA has introduced a permanent provision known as the 'statutory moratorium', which offers a legal breathing space where company directors retain control during a specified period while exploring restructuring options, free from creditor pressure.[6] This DIP approach aligns with concepts implemented in other jurisdictions. The statutory moratorium provides a framework for companies to consider and execute restructuring plans without immediate creditor actions, aiming to facilitate more effective and sustainable resolutions.

[3] United States Code, (Title 11 of 2021), ss. 1101-1195.
[4] United States Code, (Title 11 of 2021), ss. 701-784.
[5] Corporate Insolvency and Governance Act 2020, c. 12.
[6] Taylor Wessing, *available at:* https://www.taylorwessing.com/en/insights-and-events/insights/2023/08/ciga-2020-what-have-we-learned-from-the-new-insolvency-reforms (last visited on 25 May 2025).

The DIP model grants more control to debtors during insolvency proceedings, allowing them to continue operating the business while restructuring. This can be advantageous in certain contexts, fostering business continuity and preserving value. However, potential issues with the DIP model include concerns about creditor protection, potential misuse by debtors, and the need for a robust regulatory framework to prevent abuse. Learning from the experiences of other jurisdictions and carefully tailoring any adopted model to India's unique economic, legal, and institutional landscape is crucial. Although, through the 'Pre-Packaged Insolvency Resolution Process (PPIRP)', the DIP model was rolled out for the Medium, Small and Micro Enterprise (MSMEs) in India after COVID-19[7], its effectiveness is yet to be determined, as only six applications were admitted under PPIRP, out of which three cases were resolved in a span of 2.5 years.[8] Further, as per the statistics of the World Bank, the average time taken by India for completing the corporate insolvency process is much higher than UK and the US.[9] Hence, it is evident that there is a necessity to examine the insolvency procedures in India and gain insights into the practices employed by the UK and US, which have proven successful for them.[10]

Debtor in possession versus Creditor in Control Model: Pros and Cons

There are benefits and drawbacks to both the DIP and CIC methods. Since present management frequently possesses significant insights into the functioning of the organisation, proponents of the DIP strategy contend that eliminating them might potentially ruin any possibility of the company's rehabilitation. On the other hand, some debtors may find it tempting to participate in rehabilitation programmes even when success appears unlikely because they want to postpone the inevitable and benefit from protection of the creditors. The debtor's assets may continue to be depleted as a result. Additionally, there's a chance that management will act carelessly or even dishonestly, which would make the rehabilitation process even more difficult.[11]

Conversely, the CIC approach makes the assumption that insolvency professionals are more suited to run the business than the current management. This strategy seeks to improve outcomes for the company and its creditors by giving creditors the authority to make important choices, like approving resolution plans. However, by concentrating only on debt repayment, creditors may ignore the company's shareholders, employees, and broader interests, which might limit the company's ability to develop and innovate. Conflicts amongst creditors may also make it more difficult to make decisions and take longer to develop resolution strategies, which can cause

[7] Insolvency and Bankruptcy Board of India, *available at:* https://ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf (last visited on 04 June, 2025).
[8] Business World, *available at:* https://www.businessworld.in/article/ppirp-a-pre-packaged-solution-for-msmes-with-a-post-dated-cheque-540152 (last visited on 04 June, 2025).
[9] The Times of India, *available at:* https://timesofindia.indiatimes.com/business/india-business/reforms-needed-to-boost-speed-recovery-rates-and-judicial-efficiency-of-indias-insolvency-and-bankruptcy-framework/articleshow/113900250.cms?utm_source=chatgpt.com (last visited on 25 May, 2025).
[10] *Supra* note 7.
[11] Harvard Law School, *available at:* https://bankruptcyroundtable.law.harvard.edu/2023/10/24/loan-to-own-2-0/ (last visited on 06 June 2025).

unnecessary delays to the insolvency process. Despite these difficulties, both strategies place a higher priority on continuity of the business operations rather than liquidating them, demonstrating their common goal of maintaining the company's viability whenever possible.

The resolution model's efficacy is primarily dependent on a number of critical elements; all these measures aim to ensure the smooth operation of the business and maximize the benefit of its resources for all stakeholders. These factors include:

1. **Preservation of Business Value:**
   Under the DIP model, the corporate debtor maintains operational control, which may protect corporate value and guarantee continuity, particularly if the current management has the critical knowledge and connections that are essential to the company's survival.[12] Whereas creditors under the CIC model would prioritise maximising their recovery, which could result in asset sales or aggressive restructuring measures.[13] This strategy could result in the loss of continuing operations and commercial value, even though it might speed up resolution and the maximum amount may be recovered by the business as a going concern rather than going into liquidation.

2. **Efficiency and Resolution Acceleration:**
   Because of debtor-led negotiations and court scrutiny, the DIP model may cause the resolution process to go more slowly. However, it might result in a more comprehensive restructuring strategy that addresses the underlying reasons for financial distress.[14] On the contrary, the CIC model might result in a quicker resolution process since creditors would have direct control over restructuring initiatives. But this strategy might encourage more confrontation and legal issues, which could lead to delays and inefficiencies.
3. **Protection of Creditors:**
   Creditors may be concerned about the debtor's capacity to put their interests ahead of those of shareholders or management under the DIP model.[15] However, the model gives creditors access to courts and a way to challenge decisions that don't serve their interests. By providing creditors with more immediate control over the restructuring process, the CIC model, on the other hand, may be able to better defend their interests. This strategy, meanwhile, may also lead to decisions made by creditors that put their own interests ahead of the long-term survival of the business.

[12] Taxmann, *available at*: https://www.taxmann.com/research/ibc/top-story/105010000000026591/legal-frameworks-of-corporate-insolvency-a-comparative-analysis-of-creditor-in-control-and-debtor-in-possession-models-experts-opinion (last visited on 04 June 2025).
[13] *Id.*
[14] ELP Law, *available at:* https://elplaw.in/wp-content/uploads/2024/10/The-Proposed-Creditor-Led-Resolution-Process-CLRP-A-Hybrid-Model-for-Insolvency-in-India-An-attempt-to-revive-Pre-Pack-without-addressing-key-issues.pdf (last visited on 04 June 2025).
[15] *Id.*

An Insight into Insolvency Possession Model of India

The IBC architecture is currently based on the concept of CIC model, which is a change from the earlier principle of DIP approach that was widely used in India's insolvency system before IBC was introduced. The IBC transfers management control from the existing owners to a new management led by an Insolvency 'Resolution Professional' (RP), who functions under the overall direction and control of the 'Committee of Creditors' (CoC). With the help of this framework, organisations can reorganise through a market-driven process with the goal of either facilitating their closure if their business is no longer viable or saving insolvent companies. It represents a shift from the debtor-in-possession structure being dominant in earlier Indian insolvency law and a move toward a regime of CIC. Under IBC, the business reorganises to function as a going concern wherever the rescue is possible, and the claims of the creditors are then settled gradually as per the timeline enumerated under the Act.[16]

As per the IBC, a stakeholder possesses the power to commence the 'Corporate Insolvency Resolution Process' (CIRP), which results in the 'Corporate Debtor' (CD) shifting from being DIP to being CIC.[17] With the help of the resolution professional, the CoC makes important decisions during the CIRP in this approach. Crucial responsibilities like forming the CoC and allocating voting shares to creditors according to their debts are the responsibility of the CoC, who are supposed to use their business acumen for the benefit of the CD. As a point of contact between the Adjudicating Authority and CoC, the RP plays a crucial role to the facilitation and management of the whole CIRP process.[18]

The IBC has had a significant impact on both lenders' and borrowers' behaviour, which is shown by the fact that debtors do not default as a result of the IBC process; they make payment out of fear of losing control which is why so many CIRP applications are withdrawn prior to or after admission.

Sl. No.	Particulars	From Oct 2016- March 31, 2024	In 2024-25	Total (As on March 31, 2025)
1.	**Total number of IBC cases admitted**	**7,584**	**724**	**8308**
2.	**Total CIRPs cases Closed**	**5,667**	**715**	**6382**
3.	Closure by: Appeal/Review/Settled/Others	1,177	99	1276
4.	Withdrawal u/s 12A	1,083	71	1154
5.	Approval of Resolution Plan	935	259	1194
6.	Commencement of Liquidation	2,472	286	2758
7.	**Ongoing CIRPs**	**1,917**	**NA**	**1926**

[16] *Supra* note 9.
[17] Devesh Saxena, "All About Corporate Insolvency Resolution Process (CIRP) under IBC, 2016," S&D Legal Associates Blog, 22 September 2020, *available at:* https://www.sndlegalassociates.com/post/all-about-corporate-insolvency-resolution-process-cirp-under-ibc-2016 (last visited on 30 May 2025).
[18] *Id.*

Notes: Figures as per IBBI Data

Pre and post-admission case disposal and realisation

Particulars	Number	Impact
Pre-admission case disposal*	30,310	Rs. 13,78,423 crore of underlying default addressed
Post-admission case disposal#	4,502	
Resolution#	1,194	Rs. 3,88,904 crore realised
Settled/ withdrawn/ closed#	2,430	Rs. 1,03,806 crore
Liquidation completed#	878	Rs. 9,330 crore realised
Total Disposal	**34,812**	

*Notes: * Figures as per NCLT Data; # Figures as per IBBI Data*

Furthermore, there have been notable changes in the conduct of creditors. On the other hand, some contend that no one other than the management of a corporation is more qualified to oversee its operations. After so many amendments in the IBC, the possession model of India remained the same; however, some amendments were made in view of the powers vested with the resolution professionals, so as to align the CIRP towards resolution with higher recovery rates rather than high haircuts to the creditors.[19]

Movement towards Debtor in Possession model by India through Pre-Pack Insolvency

The IBC was amended once again in 2021, this time to include the introduction of the 'Pre-Packaged Insolvency Resolution Process' (PPIRP), which is designed especially for MSMEs (micro, small, and medium-sized enterprises).[20] The goal of this alternate insolvency resolution procedure was to accelerate results. In contrast to other jurisdictions like the US and UK, where pre-packs developed organically under stable insolvency regimes, India chose a statutory intervention because of its ever-changing legal environment. Courts usually have a limited involvement in such stable systems, mainly approving resolution plans after confirming that they adhere to established principles.[21]

PPIRP was introduced in an effort to protect defaulters' businesses while striking a balance between the interests of creditors and debtors, which is particularly important for MSMEs. These businesses, which are frequently driven by promoters, mainly depend on them for their operational and financial requirements. Therefore, giving the management to an RP could endanger the company's ability to revive. PPIRP leaves management in the hands of the current board of

[19] *Supra* note 17.
[20] ANM Global, *available at:* https://anmglobal.net/ibc-msme-2-0-pre-packaged-insolvency-resolution-process/ (last visited on 30 May 2025).
[21] *Supra* note 19.

directors, in contrast to the CIRP, which assigns RP to run the business as a going concern. Although during PPIRP, at any time before its completion, the CoC with 66% votes has the power to divest the management of the CD from the board of directors and hand over the same to the RP.[22] This change in responsibilities was a break from the CIC strategy used in India, when the creditors gained effective control over the promoters. This implies that although debtors maintain managerial control, creditors also have power over them. PPIRP also minimises the resolution professional's responsibility, although he still has the authorising power, especially when it comes to the completion of the PPIRP within the timeline.

The PPIRP encountered a number of challenges during its implementation in India, which limited its effectiveness. The major challenges were the absence of a moratorium period ("calm period") and the exclusion of operational creditors, which made the financial creditors more involved.

Calm Period: PPIRP doesn't have a specific provision for a calm period since CoC may terminate the PPIRP if non-compliance is observed. A 'calm period' is incorporated into the provisions of the current CIRP, which allows the resolution professional to concentrate on reviving the company's operating prospects without undue intervention from the CoC.[23] The resolution professional has an opportunity to request approval at this time for a resolution plan that could serve as a good alternative to the company's insolvency.[24]

Exclusion of Operational Creditors: In the past, operational creditors couldn't be part of the CoC under the IBC. However, they could still start the CIRP against the debtor. The PPIRP modification, however, eliminated the right of operational creditors while rendering it possible only for the debtor to initiate the procedure alone. Because of PPIRP, active creditors can't take part in the CoC. According to 'Swiss Ribbons case'[25], the reasoning behind this exclusion is predicated on the erroneous belief that operational creditors are only interested in recouping the cost of goods and services, whereas financial creditors have the necessary skills to evaluate the feasibility of the resolution plan.[26] This is in contrast to the laws in other jurisdictions, such as the US and the UK, which have provisions in place to safeguard the rights of unsecured creditors who might not get adequate consideration. MSMEs suffer from the exclusion as well because they are regarded as operational creditors themselves. Since operational creditors wouldn't have a say or a vote in the process, any eventual PPIRP framework for larger firms could be biased against them.

[22] Insolvency and Bankruptcy Board of India, "Pre-Packaged Insolvency Resolution Process: Information Brochure," 30 June 2021, *available at:* https://ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf (last visited on 30 May 2025).
[23] Taxmann, *available at:* https://www.taxmann.com/post/blog/pre-packaged-insolvency-resolution-process-ppirp/?msockid=390888d04c1a61be01c79a134d7e60de (last visited on 04 June 2025).
[24] Himani Singh, "Pre-packaged Insolvency in India: Lessons from USA and UK" (Social Science Research Network, Rochester, NY, 2020).
[25] *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India*, (2019) 4 SCC 17.
[26] *Id.*

MSEs commonly rely on a blend of business and personal debt, which may include personal guarantees, exposing entrepreneurs and their families to significant repercussions, including social stigma. Furthermore, many MSEs are operated by individuals as sole proprietors, placing both the business and personal affairs of the debtor-entrepreneur at risk. These factors together create specific problems for small and medium-sized enterprises (MSEs) when dealing with bankruptcy.

Ultimately, the PPIRP model in India faced several challenges, and only 10 applications were received, out of which only 2 PPIRP were successfully completed with approved resolution plans.[27] Since MSMEs are small entities, they are reluctant to engage in the complex procedures.

How is US Resolution Model Distinct from India

In societies, where the DIP model is used, people are less likely to blame the company's failure on the leaders of the business compared to societies with a creditor-in-control model is adopted Even if it means going bankrupt, US investors like to work with business owners who have some experience in the past. Corporate resolution and reorganisation are part of Chapter 11 of US Bankruptcy Code. [28]

It is considered a very helpful setup for companies and is said to help them progress as much as possible during the process. The company can keep operating while going through bankruptcy, thanks to Chapter 11 of the US Bankruptcy Code, which helps struggling businesses get back on track. In the Chapter 11 case, a US Trustee, who is an officer from the Department of Justice, is in charge of overseeing the company's situation and its management assets.[29]

US bankruptcy law has two main options for companies that go bankrupt. The first option is Chapter 7, where a trustee takes control and sells the company's assets to pay debts. The second option is Chapter 11, where the company stays in control and tries to reorganize or sell its assets in a planned way to pay off its debts.

Automatic stay what we call as a clam period/moratorium, is embodied under Section 362[30] of the Bankruptcy Code and is one of the most crucial provisions for the US insolvency regime. It is a statutory injunction that comes to attach immediately once the bankruptcy case has been commenced. The stay generally enjoins most creditors from actions and remedies against property of the debtor. There are a few situations where the automatic stay doesn't apply, and the court can change it if there is a good reason. The automatic stay allows the debtor or the trustee some breathing space to identify and collect all property of the estate without interference from creditors who merely seek to protect their own interests.

[27] KNN, *available at:* https://knnindia.co.in/news/newsdetails/msme/ibbi-report-reveals-limited-adoption-of-ppirp-for-msmes-suggests-improvements (last visited May. 25, 2025).
[28] "Pre-pack scheme: Pre-pack scheme under IBC likely for large companies too - The Economic Times."
[29] *Supra* note 3.
[30] U.S. Code, 11 U.S.C. § 362 (2021).

Insolvency law in the US primarily aims for maximum returns to creditors (and to equity holders, to the extent possible) of the debtor.[31] To achieve this goal and to keep jobs while ensuring that the value of reorganising is greater than the value of closing down the business, a business debtor is restructured rather than liquidated. This is done under Chapter 11, wherein a debtor corporation is reorganised. This is done by restructuring a company that owes money according to the rules of Chapter 11 of the Bankruptcy Code. If reorganising the company isn't possible or won't provide the most value for the creditors, the company can be shut down (liquidated) under Chapter 11 or Chapter 7 of bankruptcy law. In Chapter 7, the control of the liquidation process shifts from the company's management, who usually know the assets and their worth well, to a trustee. This trustee is either appointed by the US Trustee or chosen by the creditors. Generally, when a company goes through a Chapter 7 liquidation, creditors tend to get less back than they would in other types of cases. Because of this, companies are more likely to end up in Chapter 7 when there aren't enough funds to keep the business going or to support a Chapter 11.[32]

Chapter 11 allows a company that is in financial trouble to keep its leaders and management in charge (called a DIP) unless a trustee is put in place for a good reason.[33] This chapter allows a struggling company to reorganise its operations and restructure its finances in hopes of coming out stronger. The company has the first 120 days after filing to suggest a plan for reorganisation, known as the exclusive period. This time frame can be extended up to 18 months if the company shows progress and provides reasons for the extension. The reorganisation plan explains how the company's assets will be divided among creditors and shareholders. Sometimes, instead of reorganising, the company might decide to sell off its assets that's also possible under Chapter 11, though it's usually a more organised process than a simple liquidation under Chapter 7.[34]

Because the prepackaged Chapter 11 case has been around for a long time in the US, there are generally well-understood processes for developing, filing and confirming prepackaged Chapter 11 plans.[35] Such detailed advice is necessary because, unlike cases of the conventional Chapter 11 variety, in a prepackaged Chapter 11 situation, the court plays a more passive role and may not even be there to guide the proponents of the prepackaged plan to confirmation and consummation.[36]

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[31] ICLG – Restructuring & Insolvency Laws & Regulations – USA 2025, 30 April 2025, *available at*: https://iclg.com/practice-areas/restructuring-and-insolvency-laws-and-regulations/usa (last visited on 30 May 2025).
[32] Douglas G. Baird and Robert K. Rasmussen, "Chapter 11 at Twilight" 56 Stanford Law Review 673 (2003)
[33] *Supra* note 30.
[34] GRR, https://globalrestructuringreview.com/guide/the-art-of-the-pre-pack/edition-3/article/prepackaged-chapter-11-in-the-united-states-overview (last visited May. 25, 2025).
[35] Dennis F. Dunne, Dennis C. O'Donnell, and Nelly Almeida, "Prepackaged Chapter 11 in the United States: An Overview," The Art of the Pre-Pack – Edition 3, Global Restructuring Review, 16 May 2023, available at https://globalrestructuringreview.com/guide/the-art-of-the-pre-pack/edition-3/article/prepackaged-chapter-11-in-the-united-states-overview (last visited on 30 May 2025).
[36] *Id.*

Under the US Bankruptcy Code, which typically governs how a traditional Chapter 11 case is conducted, a bankruptcy court is required to decide and thereby approve the level of disclosure necessary, the proper procedures for solicitation, the classification of claims and interests and other significant issues before a vote on any plan may occur. In a prepackaged Chapter 11, however, the court does not review the information distributed and solicitation made until the solicitation has occurred and the case has been filed.

Important aspects of UK Insolvency Resolution Models

Doubt about letting the current leaders handle businesses that are struggling financially has affected how the UK deals with companies that go bankrupt. Since the Insolvency Act of 1986, UK courts have shown more understanding of creditors' rights when someone cannot pay their debts. The *UK mainly uses the CIC method.* In the UK, the administrator works with the RP. The administrator takes over the company's operations to help keep it running and save it from failing. If reaching this goal can't happen, the administrator should try to get a better outcome for the company's creditors than if the company closes down. If the goals mentioned before cannot be achieved, the Administrator will focus on selling the company's assets to pay back secured and preferred creditors. The needs of creditors match with the objectives of the management process. The UK has a system where creditors can take control of a company without needing management.[37] Also, India's bankruptcy laws are mostly adopted from UK due to a shared common law foundation.[38]

UK's "Light Touch" Administrations

The "light-touch"" approach to administration, which can be seen as a form of DIP model, has often been overlooked in the UK. Essentially, administration is meant to be a rescue mechanism. Its main goal is to keep the company running as a going concern. The "light-touch" management is only used when the administrators and, in some cases, others really trust the debtor's management team. Without trust, it's normal for managers to be hesitant to take on the risk of being held responsible.

The Insolvency Act 1986 under paragraph 64(1) of Schedule B1 allows administrators to authorise directors to continue managing the company similar to a debtor-in-possession model. This plan assumes that the leaders trust the current management enough and believe that their actions did not seriously harm the company's financial problems. Under such circumstances, a 'light touch' administration can be a helpful way to use the expertise of current management, enabling the

[37] *Id.*

[38] Andrew Godwin, Risham Garg and Debaranjan Goswami, "Cross-border Insolvency Law in India: Are the Principles of Comity of Courts and Inherent Common Law Jurisdiction Relevant?" 32(2) International Insolvency Review 228-252 (2023).

company to work through its challenges while enjoying the protections offered by the statutory moratorium.[39]

Main benefit of the "light-touch administration" process is that it tries to lower costs. The New Moratorium is meant to help struggling businesses by not adding extra expenses.

Shift in UK through CIGA towards DIP model

In recent years, there has been growing attention on the use of moratoria in insolvency matters, along with a wider trend to shift from traditional creditor-led proceedings to DIP approach.[40] While the company is undergoing restructuring, a debtor's managers retain authority over its assets and operations. This way of thinking has led to major changes in English insolvency legislation. [41]

While there is general agreement that moratoria and DIP mechanisms can play a vital role in preserving value in financially distressed but potentially viable businesses, the legislature has to strike a careful balance. [42] It must ensure that these protections do not unduly infringe on the rights of individual creditors, as doing so could undermine creditor confidence, destabilise credit markets, and increase the risk of 'moral hazard' meaning the risk that debtor management may act irresponsibly or in self-interest.

Because of the economic difficulties brought by COVID-19, the Corporate Insolvency and Governance Act 2020 (CIGA 2020) introduced several changes exemptions on a temporary basis. Measures had the effect of putting on hold the wrongful trading rules for company directors and they also prevented presenting winding-up petitions during the period from 1 March to 30 September 2020.[43]

Apart from the more immediate actions, CIGA 2020 also introduced three important permanent improvements to UK insolvency and restructuring law.

a. A new standalone moratorium was developed to prevent creditors from taking action against companies.
b. Creating a new way for businesses to restructure smoothly.
c. Prohibiting long lead-time for terminating a supply contract (also referred to as ipso facto clauses).

(i) A new standalone moratorium

[39] Lexis Nexis, "Light Touch Administration," available at https://www.lexisnexis.co.uk/legal/guidance/light-touch-administration (last visited on 25 May 2025).
[40] Aurelio Gurrea Martinez, "Debtor in Possession Financing in Reorganisation Procedures: Regulatory Models and Proposals for Reform" 24 European Business Organization Law Review 555-582 (2023)
[41] Peter Walton and Lezelle Jacobs, "Corporate Insolvency and Governance Act 2020 - Final Evaluation Report November 2022" (2022)
[42] George Triantis, "Debtor-in-Possession Financing in Bankruptcy" EE 177-192 (2020)
[43] Hamiisi Junior Nsubuga, "Political, Regulatory Competition and the U.K. Debt-Restructuring Regime at the Crossroads" Common Law World Review 1-17 (2025)

A significant new feature of CIGA 2020 adds a standalone moratorium that protects financially strained companies from being harassed by their creditors.[44] The goal of this process is to allow restructuring needed for the business to keep operating smoothly.[45] To contrast with former procedures, the company directors are able to remain in charge during the moratorium period. If all eligibility rules are met, directors can ask for an initial moratorium of 20 business days.[46] The main benefit of the stand-alone moratorium is that directors manage the process during the first 20 days which may be extended by another 20 business days by those same directors.
After 15 business days, you may seek approval from pre-moratorium creditors or from the court to extend the moratorium by an extra 12 months.[47]
While the language of the new stand-alone moratorium does not refer to it as the DIP model, it does, in practice, give the struggling company's owner the authority to handle things as restructuring takes place by the debtor. [48]
Yet according to Insolvency Service statistics, a mere 45 New Moratoria were obtained between June 2020 and June 2023.[49]

(ii) A new restructuring plan

CIGA 2020 also introduced a new restructuring plan, referred to as Part 26A, for companies that are financially struggling and may stop being able to operate.[50] The debtor does not have to show they are insolvent under the new 26A procedure, but must present evidence of real or expected financial problems.[51] Additionally, the revised Part 26A procedure now includes a new rule for creditor 'cross-class cram-down' that debtors did not benefit from before.[52] The inherent advantage of the provisions on creditor cross-class cram-down is that the debtor is afforded an opportunity to address 'hold-out' problems that may slow, if not, totally halt the debtor's restructuring plan.[53]
New rule Part 26A can be part of a package combined with the new moratorium to give the company added protection breathing space as it implements its rescue plan. Therefore, as the

[44] Sarah Paterson, "Restructuring Moratoriums Through an Information-Processing Lens" 23(1) Journal of Corporate Law Studies 37-67 (2023)
[45] Clive Garston and Francesco Rosso, "The new UK restructuring plan: an overview" International Bar Association, available at: https://www.ibanet.org/article/EB2F4177-A6C2-4F9E-9F5F-2875B6D50072 (last visited on May 30, 2025).
[46] Edward I. Altman, *Corporate Financial Distress and Bankruptcy*, 3 (Wiley, 1993).
[47] Jennifer Payne, "An Assessment of the UK Restructuring Moratorium" SSRN 14-19 (2021)
[48] *Id.*
[49] Jonathan Munnery, "Understanding the Standalone Moratorium for UK Companies" *Begbies Traynor Group*, 2023 *available at*: https://www.begbies-traynorgroup.com/articles/insolvency/understanding-the-standalone-moratorium-for-uk-companies (last visited on June 4, 2025).
[50] Hamiisi Junior Nsubuga, Political, regulatory competition and the U.K. debt-restructuring regime at the crossroads, Common Law World Review, (2025)
[51] MH Graham, Discovery of Experts Under Rule 26 (b)(4) of the Federal Rules of Civil Procedure: Part One, An Analytical Study, HeinOnline, (1976)
[52] *Id.*
[53] Sarah Paterson, "Restructuring Moratoriums Through an Information-Processing Lens" 23(1) Journal of Corporate Law Studies 37-67 (2023)

new restructuring plan is debtor led, directors may propose a restructuring plan they think would enable to compromise creditor and/or members' claims to achieve their intended restructuring plan. This further affords directors' involvement and/or participation and control in the company's restructuring process, which may be seen as a big step towards a DIP model integration into the UK insolvency and restructuring landscape.

Out of Court Resolutions: Approach towards Hybrid Possession model by India through Creditor Led Resolution Approach

The CLRP Expert Committee was formed to review and improve the existing insolvency resolution processes under the Insolvency and Bankruptcy Code. Its purpose is to address inefficiencies, especially delays in case admissions, and to design a faster, more effective framework tailored to specific corporate debtors. Drawing from global best practices and stakeholder experiences, the committee aims to enable quicker, court-free resolutions where possible.[54]

The Insolvency and Bankruptcy Code lists three ways companies can be resolved: the Corporate Insolvency Resolution Process (CIRP), the Fast-track Corporate Insolvency Resolution Process (Fast-track or FCIRP) and the Pre-packaged Insolvency Resolution Process (Pre-pack).[55] The CIRP is the head framework for resolving corporate insolvency. When the company enters this process, the company's control is given to an RP and a CoC, both consisting of unrelated financial creditors. A key's role of the CoC is to choose how to resolve the company's insolvency.

FCIRP is meant for straightforward situations, when the main part of what you owe is to one main lender. It is structured in the same way as the CIRP, just to move faster without sacrificing openness or teamwork among creditors. Pre-pack was designed with MSMEs in mind. Though both are team efforts, a company can drive the growth itself here. First, the company develops a basic resolution plan internally which others can compete to improve during the formal process. Because of delays when courts admit cases, the intention that CIRP and Fast-track would be time-limited has not been achieved. As a consequence, using the Fast-track often leads to something very similar to CIRP in scale and length, providing not much real distinction. Because of these issues, the IBBI decided to reconsider and improve the Fast-track framework, thanks to an expert group.[56] The idea is to make a framework that fits particular corporate debtors which helps speed up the process and gives better results for all involved.

It noted that initial delays which occur far too often, have greatly reduced how useful the CIRP is. In a number of instances, it has taken over a year just to start the process which has resulted in the

[54] CLRP Committee (May 2023)
[55] D. Kavitha, A panacea for small firm insolvencies? – A critical review of the pre-pack scheme launched in India, 64(5) International Journal of Law and Management, (2022)
[56] *Framework Report on Creditor Led Resolution Approach in Fast-Track Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 by The Expert Committee*, (IBBI, New Delhi, May 2023)

money losing value and reduced trust in the system. Therefore, the committee chose to model a new resolution process that may be initiated directly after default, drawing ideas from UK and US examples where a court is not necessary.[57]

The Committee looked at the current system for CIRP to find ways to encourage FCs and CDs to help the company be rescued or revived outside of court. When establishing the main points of the Proposed Framework, the Committee was guided by people's experiences.[58]

(a) in particular, the methods for dealing with financial distress that are initiated by creditors, with the RBI Framework 2019 as the main example.[59]
(b) the existing models of voluntary insolvency resolution in the UK, USA and other countries are examined above.[60]
(c) the CIRP and Pre-packs have been implemented under the Code.

Based on its deliberations the Committee recommended that[61],

(a) CLRP that sets out a co-operative process using a time-efficiency model, so that eligible and unrelated FCs lead through designated classes, with the CD having control over the company as the lead bidder, while able to participate and/or contest the restructuring plan.
(b) As far as regulating CLRP, the Committee advises that the amendments to the Code in Chapter IV of Part II should only be minor and they should address three basic ideas.
    i. The process consists of an 'out-of-court' start and applying for the approval of the restructuring plan to the AA,
    ii. Resolving matters that originate from debtor-in-possession or not replacing the current management.
    iii. Method in which the moratorium is put into practice.

In addition to these, the Committee has decided that some other matters are important and these, including the rights and obligations of RP and the CD's clear management, might be addressed by making amendments to the Code. The Board has authority to include other necessary conditions for CLRP implementation in regulations they notify.[62] To run a regulatory sandbox, IBBI must be flexible enough to find and use the best regulatory approach in an efficient manner. The below mentioned table provides the criteria of handling the management of the corporate debtor in all the three ways:

CIRP	PPIRP	CLRP

[57] T Bond, A Global Approach for Multi-Creditor out-of-Court Restructurings-A New Initiative and the Wider Issues, HeinOnline, (2001)
[58] *Supra* note 56.
[59] VK Singh, Modern corporate insolvency regime in India: A review, 7 NLS Bus. L. Rev. 22, (2021)
[60] AC LED, Hybrid Insolvency Resolution Process, (2024)
[61] *Supra* note 56.
[62] *Id.*

Management is vested with the Interim RP on Insolvency commencement date and subsequently transmitted to RP (Section 17)[63] (RP-in-possession with CIC)'	The management is vested with erswhile management and RP is responsible to monitor it (Section 54F(2)(d))[64] (DIP with CIC)'	Party in Control of the CD (The CD's management itself or a creditor/s who may have come in possession/ control before initiation of CLRP)

As a result, the Committee recommended switching the existing fast-track process to a creditor led and out-of-court procedure for resolving insolvency. It is believed by the subject experts that the recommended rules for CLRP in the regulatory framework will help meet the main goal of compressed resolution in the Code. These recommendations will both reduce the workload on courts in insolvency matters and boost insolvency resolution efforts in India. Introducing these reforms into India's system will help the country's economy, attract investment from other nations and encourage its growth.

The Expert Committee May 2023 presented the Framework Report on Creditor Led Resolution Approach in Fast-track Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.[65]

Conclusion- Need for the Shift by India: Practices from UK and USA

As elaborated above, both the UK and the US are now aimed at protecting the debtor and helping the business survive after bankruptcy rather than liquidating it. Countries around the world are updating their insolvency laws to add more forgiving debt relief and restructuring choices. In 2017, Singapore adopted laws to help companies revise their businesses in line with parts of Chapter 11 of the US Bankruptcy Code. In addition, the UK is moving towards supporting debtors with the passage of the Corporate Insolvency and Governance Act 2020.[66]

In line with many other countries, English insolvency law is rapidly moving toward becoming debtor-friendly. Yet, progress is still slow since making further strains in credit markets that have already been affected by the economy, must be avoided. This is why people often postpone using the moratorium or other ways to address their debt. RPs which need support from powerful creditor groups, have been implemented more frequently and have achieved better outcomes. Thanks to these guidelines, it appears that debtors can more easily reorganize their businesses with the help of their creditors.

[63] Phiroze Jeejeeboy Towers, BSE Scrip Code: 532795 (2022)
[64] J.K. Budhiraja, "Pre-Packaged Insolvency Resolution Process for MSME" 56 Management Accountant Journal 82 (2021)
[65] A Creditor LED, "Hybrid Insolvency Resolution Process" (2024)
[66] M. P Ram Mohan and Muskaan Wadhwa, Stigma, corporate insolvency, and law: International practices and lessons for India, (2022)

The CIGA allows companies to request a free-standing moratorium to shield them from creditor's actions.[67] A free-standing Indian moratorium would give Indian businesses and their lenders a break from being sued so they can create a restructuring strategy. Therefore, with the move toward more flexible debtor-friendly policies by nations, it could be good for India to update its Insolvency and Bankruptcy Code and support saving corporations as going concerns, instead of having them liquidated.

It is expected that using the CLRP method will lower the time taken for insolvency cases and help tribunals by handling a lighter caseload. Large companies may soon get a way to resolve insolvency outside of court, based on talks among the parties involved and with no open bidding for who gets the chance to resolve the case.[68] The plan seeks to reduce the National Company Law Board's involvement, unlike the former scheme for MSMEs which lets creditors take charge of the process. A proposal existed to enable larger companies to use the debtor-led pre-pack scheme, but it was abandoned because lenders found the idea unworkable.[69] For this reason, lenders are not inclined to use the pre-pack scheme for MSMEs because they worry a decision made by the debtor could bring them under investigation. At present, the pre-pack scheme can help MSMEs who struggle financially – if the debt is up to Rs 1 crore, but it has failed in ensuring out-of-court settlements, with only fourteen cases being admitted and eight being resolved under the scheme as on 31st March 2025.[70] As the economic as well as legal framework of India is expanding, the right approach towards the adoption of resolution model is an indispensable requirement for the Indian insolvency framework.

[67] A. James, Curtailment of individual rights by statutory moratoria, *22*(2) Journal of Corporate Law *Studies*, 1017-1044 (2022)
[68] M Faure and F Weber, Potential and Limits of Out-Of-Court Rapid Claims Settlement—A Law and Economics Analysis, 28 *Journal of Environmental Law*, 125-150 (2016)
[69] A Awasthi and D Reshmi, The Evolving Indian Insolvency Law Regime in a Pandemic Era, (2022)
[70] *The Quarterly Newsletter of Insolvency and Bankruptcy Board of India*, 2025.