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Corporate Restructuring in Distress: Competition Approval and Creditor Governance under the IBC

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Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) introduced a transformative, time-bound, creditor-driven framework for resolving financially distressed companies in India. Corporate restructuring under the Corporate Insolvency Resolution Process (CIRP) often involves acquisitions or consolidations of distressed firms by resolution applicants, which are crucial for maximizing value and reviving debtors. However, such transactions can raise competition concerns when they lead to increased market concentration, necessitating scrutiny under the merger control provisions of the Competition Act, 2002, overseen by the Competition Commission of India (CCI). This article explores the regulatory interface between insolvency resolution and competition law, analyzing how distressed acquisitions are assessed amid the dual goals of efficient insolvency resolution and maintaining competitive markets. Through examination of statutory frameworks, regulatory practices, and judicial decisions, it highlights the role of creditor governance in shaping restructuring outcomes and their impact on market structure. While the IBC emphasizes speed and creditor recovery, competition oversight remains essential to prevent anti-competitive consolidation in concentrated sectors. The article concludes by advocating for enhanced coordination between insolvency authorities and competition regulators to ensure that corporate restructuring under the IBC supports both economic recovery and robust market competition.

Keywords: Creditor governance, corporate restructuring, distressed acquisitions, Insolvency and Bankruptcy Code (IBC), Corporate Insolvency Resolution Process (CIRP), Competition Commission of India (CCI), merger control, Competition Act 2002, Committee of Creditors (CoC)

I. Introduction

Corporate restructuring in India today is inseparable from the architecture of the Insolvency and Bankruptcy Code, 2016 (IBC). Enacted against a backdrop of mounting non-performing assets (NPAs), fragmented recovery laws and protracted litigation, the IBC consolidated legacy statutes such as SICA, RDDBFI, SARFAESI and Companies Act winding up into a single, time bound, market driven framework for resolving corporate distress. Its design, a creditor-in-control model, strict 180/330-day timelines, specialised tribunals (NCLT/NCLAT) and professional insolvency intermediaries was intended not only to clean up bank balance sheets but also to reposition India as a competitive, investment-friendly economy.

Empirical evidence suggests that the IBC has significantly altered India's insolvency landscape. Resolution times have fallen relative to the pre-IBC regime, recovery rates improved in the early years, and India's "resolving insolvency" and overall Ease of Doing Business rankings rose sharply after 2016[1]. The World Bank data indicate a decline in average insolvency duration from more than four years to under two years, with recovery rates

[1] Sharma, R. (2024). Corporate Restructuring and Insolvency Resolution: Analysis of the Insolvency and Bankruptcy Code. *International Journal For Multidisciplinary Research*. https://doi.org/10.36948/ijfmr.2024.v06i02.16366.

increasing from roughly 26 cents to over 70 cents per dollar in the immediate post-IBC period[2]. These gains have been widely interpreted as signalling better creditor protection, stronger credit discipline and improved investor confidence in India's markets[3]. At the same time, more recent studies highlight emerging stresses: average resolution periods now often exceed the statutory 330 days, and aggregate recovery percentages have begun to decline, particularly in large, complex cases[4].

Within this evolving framework, the Corporate Insolvency Resolution Process (CIRP) has become a principal channel for corporate restructuring and for the transfer of distressed assets in core sectors such as steel, power, infrastructure and manufacturing. High-profile resolutions have led to substantial consolidation of capacity in already concentrated industries, with successful resolution applicants often being incumbent competitors or large conglomerates leveraging strong balance sheets and banking relationships[5]. While this has facilitated the rapid redeployment of stressed assets and contributed to macroeconomic stability, it also raises questions about market structure, contestability and long-run competition in key product markets.

The IBC's internal governance is explicitly creditor centric: financial creditors in the Committee of Creditors (CoC) exercise decisive control over resolution outcomes, subject to limited judicial review focused on legality rather than commercial merits. However, India's corporate landscape is characterized by concentrated ownership and complex group structures, which can blunt the shift from a "manager-driven" to a genuinely "creditor-primacy" regime in practice[6]. CoC preferences, naturally oriented towards maximising short-term recovery and speed, may not always align with broader competition and consumer welfare concerns, especially where resolution plans result in combinations that enhance market power or entrench dominant undertakings.

Despite the systemic importance of these transactions, the interface between the IBC and India's competition regime under the Competition Act, 2002 remains under-theorised in Indian scholarship. Existing IBC analyses largely foreground macroeconomic impact, recovery performance, procedural delays and stakeholder protection, with limited engagement with how Competition Commission of India (CCI) merger control interacts with time-bound insolvency resolution. Yet resolution plans commonly involve mergers, acquisitions or asset sales that meet the notification thresholds or raise substantive competition concerns. The need to obtain CCI approval sits uneasily with the IBC's strict timelines and the judiciary's deference to CoC commercial wisdom.

This paper situates corporate restructuring under the IBC squarely within India's market-competition context. It examines, first, how India's insolvency reforms have reshaped corporate control, creditor governance and the pipeline of restructuring-driven combinations; second, how competition approval under the Competition Act interacts with the moratorium, bidding, and CoC voting under the IBC; and third, whether current institutional

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[2] Singh, L., & Mishra, A. (2025). Analysing the Emergence of Insolvency and Bankruptcy Law in Indian Economic Landscape. *International Journal For Multidisciplinary Research*. https://doi.org/10.36948/ijfmr.2025.v07i03.48178.

[3] Maniar, P., & Varashti, D. (2025). Unveiling Key Challenges In The IBC: A Critical Study Of Loopholes And Structural Issues In India's Insolvency Framework. *International Journal of Environmental Sciences*. https://doi.org/10.64252/c6zsn811.

[4] Kalwani, N., & Sharma, P. (2025). The Insolvency and Bankruptcy Code (IBC) and its Impact on the Indian Economy: A Quantitative and Qualitative Analysis. *International Journal of Advanced Research In Commerce, Management & Social Science*. https://doi.org/10.62823/ijarcmss/8.2(i).7567.

[5] Garg, C. (2025). Reforming corporate distress resolution in India: A financial and legal analysis of the insolvency and bankruptcy code (IBC), 2016. *International Journal of Financial Management and Economics*. https://doi.org/10.33545/26179210.2025.v8.i1.504.

[6] Mohan, M., & Raj, V. (2021). Section 29A of India's Insolvency and Bankruptcy Code: an instance of hard cases making bad law?. *Journal of Corporate Law Studies*, 22, 365 - 390. https://doi.org/10.1080/14735970.2022.2083771.

practice adequately balances resolution speed, creditor recovery and competitive market structure. By focusing on the CCI–IBC interface in prominent resolution cases, the paper seeks to articulate an India-specific framework for creditor governance that is compatible with both financial stability and competition law objectives.

II. Research Problem

Section 14 IBC is described as a shield against certain legal actions to preserve the debtor and give a breathing space during CIRP, mainly staying recovery, enforcement, and suits against the corporate debtor. It is designed to protect the *going concern*, not to insulate the debtor from all forms of regulatory or public law scrutiny. None of the papers state that moratorium bars regulatory investigations or approvals by specialized regulators such as CCI. Thus, moratorium appears directed at private enforcement and creditor action, not at ex ante competition review of combinations[7].

The CoC has primary, near-plenary "commercial wisdom" over approval of resolution plans, with courts intervening only for illegality or irrationality. CoC timing and voting are framed around IBC timelines (180/330 days), not around external regulatory approvals[8].

IBC is portrayed as a special, time bound restructuring code with NCLT/NCLAT as insolvency fora, but it co-exists with other regulatory regimes rather than displacing them. The relationship between the IBC and CCI flag is an emerging issue within broader insolvency reforms, not as an area where IBC automatically ousts CCI jurisdiction.

This paper examines whether the time bound corporate insolvency resolution framework under the Insolvency and Bankruptcy Code adequately accommodates merger control review under the Competition Act, and whether creditor-driven restructuring may produce unintended anti-competitive market outcomes.

III. Research Methodology

This study adopts a doctrinal and comparative research methodology. First, it analyses statutory provisions of the IBC and the Competition Act governing insolvency resolution and merger control. Second, it examines judicial precedents from the Supreme Court of India, NCLT and NCLAT that define the scope of creditor governance and the moratorium. Third, it studies select Competition Commission of India (CCI) orders involving insolvency-driven acquisitions. Finally, the paper draws comparative insights from European Union and United States competition law, particularly the failing-firm doctrine.

IV. IBC as a Creditor Centric Restructuring Framework

The Insolvency and Bankruptcy Code, 2016 (IBC) marked a decisive move from India's earlier debtor-in-possession, court-driven insolvency regime to a creditor in control, time-bound framework. Earlier statutes such as SICA, RDDBFI, SARFAESI and Companies Act winding-up provisions were fragmented, slow and often

[7] Sethia, S., & Halder, S. (2024). Cross Border Insolvency in India. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4770575.

[8] Garg, C. (2025). Reforming corporate distress resolution in India: A financial and legal analysis of the insolvency and bankruptcy code (IBC), 2016. *International Journal of Financial Management and Economics*. https://doi.org/10.33545/26179210.2025.v8.i1.504.

gamed by promoters through litigation, leading to prolonged distress, value erosion and mounting NPAs[9]. The IBC consolidated these into a single architecture centred on the Corporate Insolvency Resolution Process (CIRP), with strict 180/330-day timelines, specialised tribunals (NCLT/NCLAT), and licensed insolvency professionals.

A core design choice is the shift to a manager displaced model. Once CIRP is admitted, control over the debtor's affairs and assets passes to the Interim/Resolution Professional, and strategic decisions are taken collectively by the Committee of Creditors (CoC), predominantly financial creditors[10]. This contrasts with debtor-driven systems such as US Chapter 11 and is explicitly justified by India's history of promoter opportunism and concentrated ownership structures[11]. The CoC evaluates resolution plans, decides between reorganisation and liquidation, and can even replace the Resolution Professional. Courts and tribunals are expected to defer to this "commercial wisdom", intervening only where decisions are illegal, irrational or contrary to the Code's objectives[12].

Empirical analyses suggest that this creditor centric design has materially altered resolution outcomes. Studies comparing pre and post IBC periods find a sharp reduction in average resolution time from more than four years under legacy regimes to roughly 394 days in major IBC cases and significant improvement in recovery rates relative to past mechanisms[13]. The high-profile RBI-12 cases demonstrate that CIRP can restore profitability, liquidity and financing access, with positive stock-market reactions indicating stronger investor confidence and perceived creditor protection. Aggregate data show that CIRP has become a primary route to address large NPAs and to reorganise distressed firms as going concerns, rather than writing them off slowly through enforcement and litigation[14].

However, tensions exist between intent and practice in this creditor driven architecture. Quantitative studies show a substantial share of CIRPs ending in liquidation, even though recoveries under liquidation are typically lower than under resolution[15]. Nair and Nemade argue that, in practice, India's creditor-driven model has displayed a tendency towards liquidation rather than reorganisation, partly due to information asymmetry, weak cooperation from incumbent management and limited capacity of insolvency professionals[16]. Sector-wise analysis reveals high haircuts and modest average recovery (around one-third of admitted claims), with particularly stressed outcomes

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[9] Pandey, I., Saxena, A., Kumar, A., & Gupta, N. (2025). From Distress to Resolution: A Study of RBI-12 Cases Under the IBC, 2016. *Journal of Information Systems Engineering and Management*. https://doi.org/10.52783/jisem.v10i39s.7427.

[10] Singh, V. (2021). Modern Corporate Insolvency Regime in India: A Review. *Social Science Research Network*. https://doi.org/10.2139/ssrn.3766210.

[11] Nair, J., & Nemade, B. (2024). Creditor Driven Insolvency Resolution Law – A Review of Intent v/s Practice.. *Journal of Global Economy*. https://doi.org/10.1956/jge.v20i1.711.

[12] R, S. (2021). Code of Conduct for Creditors under the Insolvency and Bankruptcy Code, 2016 - Fall of Supremacy of Committee of Creditors ?. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4232323.

[13] Deb, S., & Dube, I. (2020). Insolvency and Bankruptcy Code 2016: revisiting with market reality. *International Journal of Law and Management*. https://doi.org/10.1108/ijlma-05-2020-0133.

[14] Singh, L., & Mishra, A. (2025). Analysing the Emergence of Insolvency and Bankruptcy Law in Indian Economic Landscape. *International Journal For Multidisciplinary Research*. https://doi.org/10.36948/ijfmr.2025.v07i03.48178.

[15] Rao, N., & Kasture, J. (2024). Sectoral insights into corporate insolvency: a comprehensive analysis of Corporate Insolvency Resolution Process (CIRP) outcomes in India. *International Journal of Law and Management*. https://doi.org/10.1108/ijlma-08-2024-0291.

[16] Nair, J., & Nemade, B. (2024). Creditor Driven Insolvency Resolution Law – A Review of Intent v/s Practice.. *Journal of Global Economy*. https://doi.org/10.1956/jge.v20i1.711.

in real estate and manufacturing[17]. These patterns raise concerns about whether CoC incentives focused on quick, certain cash recoveries always align with the Code's stated priority of revival and value maximisation.

At the governance level, once can find both the centrality and the fragility of CoC supremacy. While courts have repeatedly affirmed deference to commercial wisdom, instances of perceived misuse, exclusion of operational creditors, and strategic delays have prompted calls for a formal code of conduct for CoC members and tighter procedural safeguards. Parallel research on information asymmetry and transaction costs shows that strengthening information utilities and negotiation frameworks could improve CoC decision-making and reduce inefficient liquidation[18].

Within this creditor centric framework, CIRP has also emerged as a structured acquisition channel for stressed assets, with resolution applicants often incumbent firms or large conglomerates competing for distressed capacity in core sectors. This acquisition led restructuring underscores the need to assess how a creditor-in-control model, geared toward rapid value realisation, interacts with merger control and competition policy in shaping long run market structure.

V. CIRP as a Route for Distressed M&A

CIRP under the IBC has rapidly evolved into a structured distressed-asset M&A channel, especially in capital intensive sectors such as steel and textiles. Resolution applicants submit competing plans, and successful bidders effectively acquire the business through an NCLT-approved resolution plan, often with significant debt haircuts and cleansed liabilities[19]. High profile resolutions such as Essar Steel and Alok Industries demonstrate how CIRP has enabled rapid transfer of control, preservation of productive capacity and swift consolidation of fragmented assets in stressed industries.

From an acquisition standpoint, there are several efficiencies. CIRP offers a court supervised, timebound framework, reduced information and enforcement risk, and a single-window mechanism to acquire assets free of most legacy claims, making it attractive relative to conventional M&A routes[20]. Empirical and case study work on post-IBC resolutions suggests that this channel has supported business continuity, restored profitability and improved solvency in several large firms, while delivering recoveries above liquidation value to creditors. These features underpin the view of CIRP as investment- and acquisition-friendly, contributing to India's broader appeal as a restructuring destination[21].

At the same time, creditor-centric incentives shape how CIRP is used as an acquisition route. CoC members seek speed and certainty of recovery, and may prefer straightforward sales to strong incumbents over more complex reorganisation strategies, particularly where information is poor or sectoral conditions are weak. Studies of CIRP outcomes show substantial liquidation rates and frequent concentration of successful bids among a limited set of

[17] Rao, N., & Kasture, J. (2024). Sectoral insights into corporate insolvency: a comprehensive analysis of Corporate Insolvency Resolution Process (CIRP) outcomes in India. *International Journal of Law and Management*. https://doi.org/10.1108/ijlma-08-2024-0291.

[18] Thakkar, H., & Agarwal, P. (2024). Enhancing efficiency through negotiation and minimizing transaction costs: application of Coase theorem to corporate insolvency. *International Journal of Law and Management*. https://doi.org/10.1108/ijlma-04-2024-0136.

[19] Handa, A. (2020). An analysis of the corporate insolvency resolution process as a route for acquisitions in India. *International Insolvency Review*, 29, 234-253. https://doi.org/10.1002/iir.1380.

[20] Khaitan, S. (2023). The Case of Asset Acquisition: Are IBC-Led M&A Activities the Way Forward?. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4406014.

[21] Mittal, A. (2025). Impact of IBC on Indian Economy and Corporate Landscape. *International Journal For Multidisciplinary Research*. https://doi.org/10.36948/ijfmr.2025.v07i03.45594.

large players, especially in sectors such as steel and cement[22]. This pattern suggests a tilt toward capacity consolidation and creditor-driven exits rather than genuine multi-bidder restructuring, even though the statutory objective is revival and value maximisation.

These dynamics have clear implications for market structure, even when not explicitly framed in competition law terms. Consolidation of stressed capacity into a handful of large incumbents can raise concentration ratios and weaken long run contestability, particularly in already oligopolistic industries. When dominant firms acquire distressed competitors through CIRP, market concentration may increase in industries already characterized by high entry barriers and limited competition. The Competition Commission of India (CCI) scrutinizes such combinations to assess potential adverse effects on market competition. While some have proposed green-channeling insolvency resolution plans under a failing-firm defense to expedite approvals, research cautions that this approach may overlook anticompetitive risks without thorough competition assessments[23].

Merger control for insolvency resolution plans involving automatic or "green-channel" treatment of such transactions, based on a broad failing-firm logic, risks under scrutinising potentially anti-competitive combinations[24]. Comparative analysis with EU failing-firm doctrine emphasises that financial distress alone cannot be the sole touchstone. Competition authorities must still examine substitutability, remaining rivals and entry barriers to avoid entrenching market power through distress-driven M&A[25].

VI. Moratorium, Parallel Proceedings and Regulatory Jurisdiction

Section 14 of the IBC establishes a time bound moratorium designed primarily to halt enforcement and private suits against the corporate debtor so that assets are preserved and the business can function as a going concern during CIRP. Insolvency moratoria is often characterized as "breathing space" that pauses individual creditor action and the grab race for assets, without annihilating underlying rights. The core function is thus to suspend individual enforcement in favour of a collective resolution process, not to insulate the debtor from all forms of state or regulatory intervention[26].

The Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank*[27] interpreted this moratorium broadly, holding that it applies not only to court proceedings but also to tribunals, arbitration forums, and other authorities. The Court emphasized that Section 14's objective is to maintain the status quo of the debtor's assets and operations during CIRP, ensuring that no individual creditor can disrupt collective resolution efforts.

The scope of the moratorium was further expanded in *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*[28], where the Supreme Court held that even quasi-criminal proceedings under Section 138 of the Negotiable Instruments Act fall within its ambit because such proceedings are essentially aimed at enforcing payment obligations against the

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[22] Suthar, R., & Gajjar, U. (2025). Navigating the Financial Landscape: A Comprehensive Analysis of Steel Companies in Corporate Insolvency Resolution Process. *International Journal For Multidisciplinary Research*. https://doi.org/10.36948/ijfmr.2025.v07i01.34684.

[23] Laus, V., Battisti, E., Stankevičienė, J., & Salvi, A. (2025). Distressed M&A and international strategies: mapping the field through a systematic literature review. *International Marketing Review*. https://doi.org/10.1108/imr-04-2025-0188.

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[26] McCormack, G. (2021). The European Restructuring Directive and stays on creditor enforcement actions. *International Insolvency Review*. https://doi.org/10.1002/iir.1423.

[27] *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407 (Supreme Court of India).

[28] *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*, (2021) 6 SCC 258 (Supreme Court of India).

corporate debtor. This interpretation underscores that any proceeding which threatens to enforce claims or recover debts from the debtor is stayed during CIRP. The National Company Law Appellate Tribunal (NCLAT) in *Canara Bank v. Deccan Chronicle Holdings Ltd*[29]extended this principle by observing that regulatory proceedings may also be subject to the moratorium if they effectively amount to enforcement actions or threaten depletion of the debtor's assets.

However, courts have drawn an important distinction between enforcement actions aimed at debt recovery and regulatory oversight intended to maintain market discipline or compliance. In *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd*[30]., the Supreme Court clarified that regulatory actions not directed at debt recovery but focused on maintaining regulatory compliance or market order do not constitute proceedings "against the corporate debtor" under Section 14 and thus fall outside the moratorium. This distinction is particularly significant in relation to merger control under competition law. Proceedings before the CCI are ex ante regulatory safeguards designed to prevent appreciable adverse effects on competition (AAEC) arising from mergers, acquisitions, or amalgamations. Unlike creditor enforcement actions, CCI's review does not seek to recover debts or enforce claims against a corporate debtor but rather evaluates whether a proposed combination would harm competitive market structures.

The Competition Act, 2002 mandates prior approval from CCI for combinations crossing specified asset or turnover thresholds under Sections 5 and 6. Judicial practice confirms that these competition law proceedings operate independently of insolvency processes under IBC and do not interfere with CIRP's objectives. The ArcelorMittal–Essar Steel acquisition exemplifies this parallel jurisdiction: while Essar Steel's CIRP was ongoing before the National Company Law Tribunal (NCLT), ArcelorMittal simultaneously sought and obtained CCI approval for its acquisition plan without delay or interference with insolvency resolution[31].

Analyses of parallel proceedings emphasize that the IBC coexists with sectoral and public-law regimes, and that Section 238's non-obstante clause only overrides other statutes where there is a direct and irreconcilable conflict with the Code's scheme or specific orders. Reading it as a blanket supremacy rule can actually undermine asset-preservation and coordination. Instead, it should be understood to harmonize and ensure inter-regime cooperation rather than automatic displacement of other law[32]. This supports an understanding in which regulatory supervision, investigations, or public-law enforcement (for competition, securities, tax or environmental norms) normally continue, subject to not cutting across the moratorium's protection against debt-collection and execution.

Beyond Indian jurisprudence, similar tensions between insolvency moratoria and parallel jurisdiction arise internationally. For example, European insolvency law grapples with conflicts between insolvency-related moratoria conferring exclusive jurisdiction on insolvency courts and other jurisdictional rules under Brussels I Regulation[33]. These challenges highlight broader questions about how insolvency frameworks interact with concurrent regulatory regimes.

The moratorium is framed as a shield for the estate: to prevent depletion and ensure going concern value and yet can be abused to stall legitimate claims or delay accountability. Such misuse threatens both creditors' rights and the going concern principle, prompting calls for tighter judicial scrutiny and clearer boundaries around what Section 14 can legitimately stay. A jurisdictional carve out, wherein Section 14 stays coercive creditor action and certain proprietary remedies, but neither extinguishes public-law powers nor mandates that regulatory and

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[29] *Canara Bank v. Deccan Chronicle Holdings Ltd.*, (2017) 5 SCC 133 (Supreme Court of India).

[30] *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.*, (2018) 16 SCC 143 (Supreme Court of India).

[31] Ziegert, R., & Sotirov, M. (2024). Regulatory politics and hybrid governance: the case of Brazil's Amazon Soy Moratorium. *Global Environmental Change*. https://doi.org/10.1016/j.gloenvcha.2024.102916.

[32] Vikram, V., & Jhunjhunwala, K. (2023). The non-obstante nuisance: a critique of Section 238 of the Insolvency and Bankruptcy Code. *Indian Law Review*, 7, 322 - 340. https://doi.org/10.1080/24730580.2023.2259259.

[33] Fabok, Z. (2016). The Jurisdictional Paradox in the Insolvency Regulation. .

criminal processes be frozen, except where they directly conflict with the conduct of CIRP or the Code's express provisions.

VII. Competition Approval, Failing-Firm Logic and Co-Primacy

The IBC–CCI interface is increasingly analysed through the lens of merger control, the failing-firm defence, and institutional allocation of powers. Work on IRP driven combinations shows that many resolution plans effectively operate as mergers or acquisitions and are therefore subject to the Competition Act's ex-ante combination review where thresholds are met. The Competition Law Review Committee's proposal to "green-channel" such IRP combinations i.e., grant near-automatic approval, rests on the idea that these are failing-firm situations where exit would be more harmful to competition than rescue[34].

Detailed scrutiny of CCI decisions on IRP transactions, however, finds no principled basis for exempting them from full competition analysis. Comparative assessment with EU practice shows that the failing firm defence is a narrow, fact-intensive exception requiring proof that: the target is truly failing, there is no less anti-competitive buyer, and the assets would exit the market absent the merger. Translating this into a blanket green channel for insolvency cases risks under enforcement where distressed assets are acquired by incumbents in already concentrated markets, potentially entrenching market power and triggering consolidation waves[35]. The conclusion is that financial distress should be an important consideration, not a conclusive determinant, in merger appraisal.

A second strand focuses on control and notifiability. As many resolution plans involve changes in governance, lender consortia, or strategic buyers, the CCI's contested and evolving notion of "control" becomes central. Ambiguity over when creditor rights, vetoes, or board representation amount to "control" generates uncertainty about which resolution transactions must be notified and at what stage, a concern heightened in concentrated or network industries where even minority or joint control can significantly lessen competition[36]. Proposals call for clearer, scenario based CCI guidance on control from both a jurisdictional and substantive standpoint, so that CIRP timelines can be aligned with mandatory merger review without sacrificing antitrust scrutiny.

From a broader market competition policy perspective, merger control in developing economies highlights how competition law often interacts with industrial policy and state-driven restructuring. In India, the IBC has become a key industrial and financial-stability tool by facilitating large scale distressed M&A[37]. This raises questions about whether competitive concerns may be subordinated to recovery, banking, or industrial goals. Comparative work on merger remedies and enforcement capacity stresses that, particularly in such contexts, competition agencies must retain independent assessment powers, including the ability to impose structural or behavioural remedies even on state-backed or policy favoured deals[38].

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[34] Srivastava, S., & Devi, D. (2025). Mergers and Acquisitions in India: An In-depth Analysis of Indian Companies and the Legal Environment. *International Journal on Science and Technology*. https://doi.org/10.71097/ijsat.v16.i2.3997.

[35] Kokkoris, I. (2020). The "Failing Firm Defence" in Failing Markets: The Case for Bank Mergers. *Financial Crisis Management and Bank Resolution*. https://doi.org/10.4324/9781003122876-15.

[36] Bhattacharya, P. (2021). Competition Commission of India's "control" conundrum – practice, precedent, and proposals. *European Competition Journal*, 17, 473 - 505. https://doi.org/10.1080/17441056.2021.1921513.

[37] Sethia, S., & Halder, S. (2024). Cross Border Insolvency in India. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4770575.

[38] Eidenmueller, H. (2019). The Rise and Fall of Regulatory Competition in Corporate Insolvency Law in the European Union. *European Business Organization Law Review*, 20, 547 - 566. https://doi.org/10.1007/s40804-019-00160-0.

Taken together, these strands support a co-primacy model: the IBC is a special restructuring code that structures the insolvency process and allocates decision making among creditors and tribunals, but it does not displace the CCI's constitutional role as the ex-ante guardian of market structure. Failing-firm logic justifies giving weight to rescue and continuity in merger appraisal, not bypassing it. Coexistence implies coordinated timing (e.g., standstill and long-stop dates aligned with CIRP) and possibly tailored procedural tools (fast-track or guidance for IRP cases), while preserving the CCI's jurisdiction to review, clear with conditions, or block anticompetitive resolutions where necessary[39].

VIII. Creditor Governance vs. Competition and Consumer Welfare

Creditor governance under the IBC primarily focuses on maximizing creditor recovery and expediting resolution, often favoring liquidation or quick exits over comprehensive reorganization. This creditor-centric approach raises concerns about its alignment with the IBC's stated objective of a "resolution-first" regime aimed at preserving enterprise value and long-term viability. Empirical and doctrinal studies suggest that creditors' incentives to prioritize speed and recovery may lead to suboptimal outcomes, including premature liquidation or consolidation that undermines broader economic welfare[40]. From a competition law perspective, this dynamic can conflict with the CCI's mandate to maintain competitive markets and protect consumer welfare, especially when CoC endorsed resolution plans result in increased market concentration or reinforce incumbent conglomerates' dominance in already concentrated sectors[41].

The tension arises because creditor governance is driven by financial interests focused on asset recovery, whereas competition policy emphasizes preserving market structure and preventing anti-competitive consolidation that harms consumers through higher prices, reduced innovation, or diminished choice[42]. For example, when resolution plans facilitate mergers or acquisitions by dominant players without rigorous competition assessment, they risk entrenching market power and reducing competitive pressures. This misalignment highlights the need for better integration between insolvency processes and competition oversight.

Proposals to address these challenges include clearer CCI guidance on distressed-asset mergers and more transparent criteria for applying the failing-firm defence in insolvency-driven combinations. Such guidance would help ensure that financial distress alone does not automatically justify bypassing thorough competition review. Structured coordination mechanisms or safe harbors between the IBC process and CCI merger control could also streamline approvals while safeguarding competitive outcomes[43]. This would balance creditors' legitimate interest in swift resolution with the public interest in maintaining competitive markets.

Broader economic research supports this nuanced view of competition's impact on consumer welfare. Studies show that increased competition in credit markets can sometimes reduce consumer welfare due to adverse selection and riskier lending practices by less incentivized lenders[44]. Conversely, excessive market power can

[39] Gupta, D. (2022). Implementation of merger remedies under India competition law – Jurisprudential journey in the last decade. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4221939.

[40] Heidhues, P., & Kőszegi, B. (2010). Exploiting Naïvete about Self-Control in the Credit Market. *The American Economic Review*, 100, 2279-2303. https://doi.org/10.1257/aer.100.5.2279.

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[43] Billett, M., Esmer, B., & Yu, M. (2017). Creditor Control and Product-Market Competition. *Corporate Finance: Valuation*. https://doi.org/10.2139/ssrn.2307031.

[44] Gissler, S., Ramcharan, R., & Yu, E. (2018). The Effects of Competition in Consumer Credit Market. *Household Finance eJournal*. https://doi.org/10.2139/ssrn.3170996.

harm borrowers through higher prices and limited access[45]. These findings underscore the importance of calibrated regulatory intervention that considers both creditor incentives and consumer protection.

Further, another critical issue in the interplay between insolvency resolution and competition regulation in India is whether CCI approval must precede the CoC vote on a resolution plan. Under Section 30 of the Insolvency and Bankruptcy Code (IBC), 2016, a resolution plan requires approval by at least 66% of the CoC and subsequent confirmation by the adjudicating authority under Section 31. The 2018 amendment to Section 31(4) clarified that statutory approvals, including CCI clearance for combinations under the Competition Act, must be obtained within one year after adjudicating authority approval. More importantly, the proviso to Section 31(4) mandates that CCI approval must be secured before the CoC approves any resolution plan involving a merger or acquisition.

This requirement was introduced to prevent situations where creditor-approved plans become unimplementable due to lack of competition clearance. The Competition Act regulates combinations that may cause appreciable adverse effects on competition (AAEC), with CCI as the primary authority assessing such impacts. Insolvency cases like ArcelorMittal–Essar Steel demonstrate that competition review often runs concurrently with insolvency proceedings, with CCI clearance obtained before final tribunal approval.

The Supreme Court's ruling in *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja* (2025)[46] settled earlier ambiguities by holding that prior CCI approval before CoC voting is mandatory, not directory. The Court reasoned that creditor decisions must be informed by complete legal and regulatory assessments, including competition impact, to maintain commercial wisdom integrity. This prevents post-approval modifications or rejections by CCI that could undermine creditor consensus.

Consequently, resolution applicants must engage early with CCI, integrating competition law due diligence into insolvency processes. While this may add procedural steps, it enhances transparency, legal certainty, and coordination between insolvency governance and competition regulation strengthening both market integrity and restructuring legitimacy

In sum, creditor governance under the IBC tends to prioritize financial recovery and speed, which may conflict with competition law's goals of preserving market structure and consumer welfare. Addressing this requires enhanced coordination between insolvency authorities and competition regulators, clearer rules on merger control for distressed assets, and careful application of failing-firm logic to avoid anti-competitive consolidation. Such measures would help align creditor-driven resolutions with broader economic objectives of competitive markets and consumer protection.

IX. Conclusion: Towards a Model of Institutional Co-Primacy

The increasing prominence of insolvency-driven mergers and acquisitions in India highlights the critical intersection between the IBC and the Competition Act, 2002. While the IBC focuses on rapid corporate restructuring and maximizing creditor recovery, competition law aims to preserve market competitiveness and protect consumer welfare. These dual objectives, though distinct, are not inherently conflicting but require a coordinated approach to ensure that insolvency resolutions do not undermine competitive market structures.

[45] De Quidt, J., Fetzer, T., & Ghatak, M. (2018). Market Structure and Borrower Welfare in Microfinance. *Political Economy - Development: International Development Efforts & Strategies eJournal*. https://doi.org/10.1111/ecoj.12591.

[46] Independent Sugar Corporation Ltd. v. Girish Sriram Juneja, 2025 INSC 124 (Supreme Court of India, Jan. 29, 2025).

Research underscores the necessity of institutional co-primacy, where insolvency tribunals, Committees of Creditors and the CCI operate in parallel yet harmoniously. This framework envisions both the insolvency authority and the competition regulator retaining their distinct roles while collaborating to address overlaps, particularly in insolvency-related mergers and acquisitions. Three key mechanisms can operationalize this approach: First, parallel review of insolvency-driven mergers by the CCI during the Corporate Insolvency Resolution Process, allowing competition concerns to be assessed without delaying insolvency timelines. Second, fast-track merger review procedures tailored for distressed-asset transactions to expedite approvals while safeguarding competitive markets; and third, clearer regulatory guidance on notification thresholds, control rights, and failing-firm analyses specific to insolvency contexts to reduce uncertainty and improve predictability for stakeholders.

Such reforms would enable insolvency proceedings to proceed efficiently, respecting the IBC's time-bound resolution goals, while ensuring that combinations resulting from distress do not harm consumer welfare or entrench market power. The co-primacy model aligns with broader calls in Europe emphasizing the need for a consistent legal framework that balances business rescue objectives with competition law principles, avoiding dysfunctional clashes between these domains. It also recognizes that insolvency law's moratorium provisions protect debtors from private enforcement but do not shield them from public regulatory scrutiny such as merger control. Ultimately, institutional co-primacy fosters a cooperative regulatory environment where creditor governance under insolvency law and competition oversight complement rather than undermine each other, promoting both financial stability and competitive markets.