



CORPORATE INSOLVENCY IN INDIA AND OTHER COUNTRIES-A COMPARATIVE STUDY

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Introduction

The Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “Code/IBC”), implemented in phases since August 5, 2016, was enacted to overhaul the outdated and complex corporate insolvency laws in India to address an economy-wide problem of bad loans, with its resulting impact on the banking sector and access to credit. The Code has also materially impacted the rates of default on loan repayments. In other words, repayment rates have materially improved owing to a fear among controlling shareholders of Indian debtors that they may lose control of their (largely) family owned businesses if placed in insolvency. It is therefore equally important for existing creditors and shareholders to take note of the change in debtor-creditor dynamics introduced by the Code, given that it is now possible for creditors to credibly enforce their rights, including in ways that result in a change in ownership of debtors.

This Research Article focuses on the aspects of the practical implementation of the Insolvency and Bankruptcy Code, 2016 in India. The timelines have been drastically changed to tackle the delay in settlement of cases under the said law; however its practical impact is matter of assessment and therefore the need for present research. Four years since passing of this legislation, this article seeks to analyze the effectiveness of the Indian Insolvency Law (IBC) in comparison with its counterparts. This Article has drawn a comparison of insolvency and bankruptcy legal procedures in India from other countries such as US, UK, Germany, Singapore, and Australia.

Comparative Analysis of Insolvency Laws

One of the usual question that arises in our minds is how is the Indian IBC 2016 compared to other Insolvency Codes practiced internationally. Since internationally Insolvency and bankruptcy laws have been in place for a long time, and have dealt with several cases a look into their laws may give some more insight. As we know, IBC 2016 was enacted in May 2016 and is therefore, young and evolving. It should be really appreciated how proactively and speedily the regulator (Insolvency & Bankruptcy Board of India) is reacting to every emerging situation by bringing rules and regulations to deal with various situations appropriately.

The World Bank’s Doing Business report assesses 190 economies on eleven parameters¹ every year. The doing Business (DB) project of the World Bank provides useful data on the ease of doing business, rank each location and recommend reforms to improve performance in each of the indicator areas. DB studies the time, cost and outcome of insolvency proceedings involving domestic entities as well as the strength of the legal framework applicable to liquidation and reorganization proceedings. The data for the resolving insolvency indicators are derived from

¹ Eleven parameters used by World bank to assess Ease of Doing Business: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, labour market regulation, enforcing contracts and resolving insolvency.



questionnaire responses by local insolvency practitioners and verified through a study of laws and regulations as well as public information on insolvency systems. The ranking of economies on the ease of resolving insolvency is determined by sorting their distance to frontier scores for resolving insolvency. These scores are the simple average of the distance to frontier scores for the recovery rate and the strength of insolvency framework index.

The table below provide a comparative snapshot of the rankings of ease of doing business and resolving insolvency, as the study is focused.

Table 1: Ease of Doing Business and resolving insolvency Ranks from the year 2017 to 2020

Country	Ease of doing business				Ease of resolving insolvency		
	2017 (190)	2018 (190)	2019 (190)	2020 (190)	2017 (190)	2018 (190)	2019 (190)
India	130	100	77	63	136	103	108
United States (US)	8	6	8	6	5	3	3
United Kingdom(UK)	7	7	9	8	13	14	14
Germany	17	20	24	22	3	4	4
Singapore	2	2	2	2	29	27	27
Australia	15	14	18	22	21	18	20

Source: compiled from World Bank's Doing Business report 2017 to 2020

The above table clearly signifies, nation-wise progress achieved in ease of doing business and resolving insolvency from the year 2017 to 2020. India made remarkable progress. India's huge stride towards becoming a business-friendly nation has come in the last two years, with a total jump of 53 places in the year 2019 and 14 places in the year 2020. Singapore has been consistent throughout these years. As for "Ease of Resolving Insolvency", India's ranking declined by five places to settle at 108. This occurred despite the adoption of the Insolvency and Bankruptcy Code, which has started to show promising results on the ground. The other nations have more or less changes in rankings when compare from 2016 to 2019. The DB report, ultimately emphasis continuous reforms in policies and legislations for the smooth functioning of business activities in any nations. The reports published by World Bank are taken into consideration for analysis.

World Bank's Doing Business studies the time, cost and outcome of insolvency proceedings involving domestic legal entities. These variables are used to calculate the recovery rate, which is recorded as cents on the dollar recovered by secured creditors through reorganization, liquidation or debt enforcement (foreclosure or receivership) proceedings. To determine the present value of the amount recovered by creditors, *Doing Business* uses the lending rates from the International Monetary Fund, supplemented with data from central banks and the Economist Intelligence Unit.

Table 2: Insolvency Resolution Parameters and Credit Data						
Indicator	India	US	Germany	UK	Australia	Singapore
Rank	52	2	4	14	20	27
Recovery Rate	71.6%	81%	79.8%	81%	82.7%	88.7%
Time (years)	1.6	1.0	1.2	1.0	1.0	0.8

Source: World Bank Doing Business Report, 2019²

² <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency>



According to a World Bank Doing Business Report, 2019, it takes an average of 1.6 years for insolvency resolution of a company in India, whereas its 1.0 year in US, UK and Australia, 1.2 years in Germany and it takes 0.8 years in Singapore. Also, recovery rate is 71.6% lower than other countries in comparison.

At this juncture, it is pertinent to examine the practice in other jurisdictions for some guidance in bringing about reform in Indian insolvency regime. The reason for selecting the comparison of insolvency laws between India and these countries, is that as per the rankings of World Bank, India ranks at 52 in its insolvency resolution, while US ranks at 2, Germany is at 4, UK is at 14, Australia and Singapore are at 20 and 27 respectively. Hence, despite India's ranking is improving but there is still a long way to go for India in terms of 'Insolvency Resolution' in comparison with these countries.

Criteria of Cross Country Comparison of Insolvency Framework:

S.No.	Factors of Comparison	Description
1.	Initiation of Process: -Who can initiate -How is it initiated	Creditors are usually the ones who initiates insolvency process. However, there can be a reversal of this process too. Further, creditors may be of different types i.e. financial, operational, secured, unsecured etc.
2.	Period of Insolvency proceedings	Insolvency proceeding is a time bound process of resolution or if resolution is not work out then liquidation.
3.	Management during CIRP	Control may be retained by BOD or RP.
4.	Resolution Plan	The objectives of the management is to opt for reorganization of the firm. On the other hand, creditors are more likely to suggest measures which are quick like sale of assets or entire business so as to liquidate the firm. The resolution plan is adopted by Committee of Creditors.
5.	Moratorium	The moratorium in terms of IBC is described as a period wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can be instituted or continued against the Corporate Debtor.
6.	Priority of payment distribution	Everyone must have fair share by following a waterfall mechanism which gives priority to secured creditors over unsecured creditors, treatment for employees and government dues are also prescribed.
7.	Insolvency Proceeding Costs	Costs is occurred during insolvency proceedings. Generally the such cost is born by the person who initiate the proceedings.
8.	Role of IPs and Courts/Tribunals	Role of IP and Courts/Tribunal in the insolvency resolution process affect the cost of process as well as the time taken.

Insolvency Framework in United Kingdom

A vast majority of legal systems in the most countries are founded on English Common Law. Hence, it is not a surprise that the Code closely mirrors the UK Insolvency Regime. Although the



Indian Insolvency and Bankruptcy Code, 2016 is based on the UK structure, India has identified key aspects of the legislation that might not work in an Indian scenario, and therefore appropriately customized it for India.

COMPARATIVE CHART – UNITED KINGDOM AND INDIA		
Comparative Chart		
Basis of Comparison	UK Insolvency Act, 1986	Insolvency and Bankruptcy Code, 2016
Who can start Insolvency & Bankruptcy Process	<ul style="list-style-type: none"> • Creditors; or • Debtor Company; or • Holders of qualifying floating charges(QFC) 	<ul style="list-style-type: none"> • Financial Creditors (Sec. 7); • Operation Creditors (Sec. 9) & • Corporate Debtor (Sec. 10)
Moratorium	Yes, after the Court appoints administrator.	Yes, as per Section 14.
Period for insolvency process	12 months with creditors consents / court's approval it can be extended upto 6 more months	330 days (Section 12).
Management Control during insolvency proceeding	Management control passes to insolvency practitioner or administrator. However the daily operations of the company remain in the hands of the directors.	Insolvency Professional as IRP/RP, to be appointed by the Adjudicating Authority. Board of directors gets suspended with the appointment of IRP
Resolution Plan	08 weeks of Admn appointment or extended period as court may allow. The resolution plan approval requires a simple majority in value of those creditors present & voting.	Based on the information memo (S 29), a resolution plan can be submitted (S 30). S 30.4 needs that the plan is to be approved by CoC by 66% voting share. S 31 needs that such approved Resolution plan by CoC should be approved by AA.
Sale of assets during insolvency	Admn is like an agent of the company, has the power to contract without personal liability. They have the power to sell any of the debtor property without the permission of the court.	RP may do so after the approval of CoC (S 28).
Insolvency Proceeding Costs	Cost is borne by Debtor.	<ul style="list-style-type: none"> • CIRP initiated under Sec. 7/9 – Creditors • CIRP initiated under Sec. 10 - Debtor
When the process comes to an end	Admn ceases : one year or any extended time and if Administrator either applies that process objective is achieved or Administrator application saying that no purpose can be achieved hence liquidate on	180 day with a max 90 day one time extension (S 12) with the approval of Resolution plan by AA (S 31) failing which liquidation proceedings as per S 33.



Priorities of the payments - to be read from top to bottom in the order of priorities	<ul style="list-style-type: none"> - Secured lenders - Expenses of the insolvent estate - Employees - 04 months prior to insolvency - Prescribed Part protected portion of the money to unsecured creditors - a formulae - Floating charge creditors - Unsecured creditors - Equity holders 	<ul style="list-style-type: none"> - Insolvency cost - workmen dues for 24 months - Secured creditors - Employees for preceding 12 months - Unsecured creditors - State dues or secured creditors for any amount unpaid - any remaining debts & dues - Pref shareholders - Equity holders
Cross Border Insolvency	<ul style="list-style-type: none"> - Inside EU - EU Insolvency Regulation - Outside EU - UNCITRAL Model Law on Cross-Border Insolvency Proceedings 	UNCITRAL Model Law on Cross-Border Insolvency has been recommended but not yet been adopted.

Insolvency Framework in United States

Chapter 11 of US Bankruptcy Code focuses on preserving reorganization or going concern value over liquidation value. As a corollary, Chapter 11 assumes that the most efficacious way to achieve that result is to retain management and enable multiple outcomes either through a plan of reorganization, a series of going concern sales and even a liquidating plan. Chapter 11 enables a wide range of proposals to be put into a reorganization plan, including having the company and its management survive the process. Chapter 11 cases fall into two general categories: the “freefall” case or a pre-packaged or pre-negotiated case. In the former, relief is sought under Chapter 11 of the Bankruptcy Code without having an agreed exit strategy among the company and at least a critical mass or core group of creditors. The latter is characterized by commencing a Chapter 11 case following the development of a consensus on the outcome of the case.

COMPARATIVE CHART – UNITED STATES AND INDIA		
Comparative Chart		
Basis of Comparison	Chapter 11 of US Bankruptcy Code	Insolvency and Bankruptcy Code, 2016
Who can start Insolvency & Bankruptcy Process	<ul style="list-style-type: none"> • Debtor Company 	<ul style="list-style-type: none"> • Financial Creditors (Sec. 7); • Operation Creditors (Sec. 9) & • Corporate Debtor (Sec. 10)
Moratorium	Yes, after filing the petition in Bankruptcy Court	Yes, as per Section 14.
Period for insolvency process	Period of 120 days extendable upto 18 months on sound reasons	330 days (Section 12).
Management Control during insolvency proceeding	Management continues. Debtor in Possession (DIP) approach is adopted.	Insolvency Professional as IRP/RP, to be appointed by the Adjudicating Authority. Board of directors gets suspended with the appointment of IRP
Resolution Plan	Debtor has an exclusive period of 04 months (ext upto 18 months) to	Based on the information memo (Section 29), a resolution plan can



	propose and seek approval from impaired creditors & shareholders within two months. Each class of creditors whose rights have been impaired to vote in favour by majority and 2/3 in amount actually voting	be submitted (S 30). Section 30 needs that the plan is to be approved by CoC by 66% voting share. Section 31 needs that such approved Resolution plan by CoC should be approved by AA.
Sale of assets during insolvency	Section 363 allows a debtor to sell substantially all of its assets free of liens. This allows assets to be sold quickly and avoids further erosion of the value due to losses	RP may do so after the approval of CoC (Section 28).
Insolvency Proceeding Costs	Cost is born by Debtor. Lender may provide finance to Debtor against lien (superior) over assets which are not pledged to other lenders.	<ul style="list-style-type: none"> • CIRP initiated under Sec. 7/9 – Creditors • CIRP initiated under Sec. 10 - Debtor
When the process comes to an end	Resolution plan confirmation discharges debtor's pre obligation other than what is proposed in the plan. if plan is not confirmed then conversion to Bankruptcy proceeding as per Chapter 7	180 day with a max 90 day one time extension (S 12) with the approval of Resolution plan by AA (S 31) failing which liquidation proceedings as per S 33.
Priorities of the payments - to be read from top to bottom in the order of priorities	<ul style="list-style-type: none"> - Secured creditors - Insolvency proceeding cost - Claims arising during the gap period - Employees wages & benefits - Deposit claims - Govt tax claims - Unsecured claims - Equity interest 	<ul style="list-style-type: none"> - Insolvency cost - workmen dues for 24 months - Secured creditors - Employees for preceding 12 months - Unsecured creditors - State dues or secured creditors for any amount unpaid - any remaining debts & dues - Pref shareholders - Equity holders
Cross Border Insolvency	Chapter 15 of US Bankruptcy Code deals with the Cross Border Insolvency. US has also substantially implemented UNCITRAL Model Law on Cross Border Insolvency into their domestic legislation.	UNCITRAL Model Law on Cross-Border Insolvency has been recommended but not yet been adopted.

Insolvency Framework in Australia

There are separate insolvency regimes in Australia for insolvent individuals and insolvent corporations. The insolvency regime in Australia is primarily governed by the Corporations Act 2001 (the "Corporations Act") and its associated regulations, which provides the legislative framework for corporate insolvencies, and the Bankruptcy Act 1966 (the "Bankruptcy Act") and its associated regulations, which provides a statutory regime for insolvent individuals. The position in Australia is that the key test of solvency is the 'cash flow' test, rather than the 'balance sheet' test.

A company when in financial difficulty may be placed into external administration. There are five types of external administrations:



- Receivership;
- Voluntary administration;
- Deed of company arrangement (“DOCA”);
- Scheme of arrangement; or
- Liquidation or winding up (including provisional liquidation).

Liquidation is typically a terminal administration, the purpose of which is to deregister the company. It may be the inevitable outcome for a hopelessly insolvent company, regardless of which external administration is first implemented.³

The term “Insolvency” has been defined under the Corporations Act, 2001 in the following terms:

‘a person is solvent if, and only if, the person is able to pay all the person’s debts, as and when they become due and payable’.

Thus, a person who is not solvent can be called as insolvent.⁴

The Insolvency and Bankruptcy regime in Australia is constantly evolving through changes and reforms brought into the law. One such major overhaul of Insolvency regime in Australia is the introduction of the Insolvency Law Reform Act, 2016 (ILRA) which has amended different legislations like the Bankruptcy Act, 1966, the Corporations Act, 2001 and the Australian Securities and Investments Commission Act, 2001.

COMPARATIVE CHART – AUSTRALIA AND INDIA		
Comparative Chart		
Basis of Comparison	Australian Insolvency Law	Insolvency and Bankruptcy Code, 2016
Laws governing Bankruptcy	Bankruptcy Act, 1966, the Corporations Act, 2001 and the Australian Securities and Investments Commission Act, 2001.	Insolvency and Bankruptcy is governed by the Insolvency and Bankruptcy Code, 2016 along with Rules and Regulations framed thereunder.
Adjudicating Authorities	The Federal Court of Australia and the Supreme Courts of each Australian state and territory have jurisdiction to hear matters relating to the insolvency of a corporation. In the process of Voluntary administration and receivership, often no courts are involved.	National Company Law Tribunal (Adjudicating Authority) and Appeals are filed before National Company Law Appellate Tribunal (Appellate Authority).
Initiation of resolution process	Creditors, Directors or Debtor	Financial Creditor, Operational Creditor or Corporate Debtor itself
Resolution Process	<ul style="list-style-type: none"> • Receivership • Voluntary Administration • Deed of Company Arrangement • Scheme of arrangement 	<ul style="list-style-type: none"> • Corporate Insolvency Resolution Process (CIRP) • Fast Track Insolvency Resolution Process

³ <http://restructuring.bakermckenzie.com/wp-content/uploads/sites/23/2016/12/Global-Restructuring-Insolvency-Guide-New-Logo-Australia.pdf>

⁴ http://www5.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s95a.html



Appointment of Insolvency Professionals	A debtor or their lawyer can pick their a Trustee or Liquidator as long as the Trustee or Liquidator signs a 'consent form' agreeing to be appointed and must provide creditors with a Declaration of Independence, Relevant Relationships and Indemnities ("DIRRI") in their first communication, explaining why their appointment will not impact their independence and ability to act objectively.	An individual who has cleared the Limited Insolvency Professional Examination (and other requirements for registration with IBBI) can act as a Resolution Professional for the Corporate Debtor upon approval from the Committee of Creditors.
Management Control during insolvency proceeding	<ul style="list-style-type: none"> Receivership- Receiver Voluntary Administration including DOCA – Administrator 	Insolvency Professional as IRP/RP, to be appointed by the Adjudicating Authority. Board of directors gets suspended with the appointment of IRP
Consent of Committee of creditors in case of resolution process	Approval from majority of the creditors is required.	Approval of resolution plan requires vote of not less than Sixty-Six percent of voting share of the financial creditors.
Priorities of the payments - to be read from top to bottom in the order of priorities	<ul style="list-style-type: none"> Secured creditors (subject to certain requirements*). Expenses in a liquidation and or administration. The petitioning creditors' fees in a winding up context. Outstanding employee entitlements. Unsecured creditors. Contributories (shareholders) <p>* secured creditors that hold a circulating security interest may need to subrogate their security to outstanding employee entitlement interests. If this is the case, those secured creditors will take their interest after any outstanding employment entitlements have been paid.</p>	<ul style="list-style-type: none"> Insolvency cost workmen dues for 24 months Secured creditors Employees for preceding 12 months Unsecured creditors State dues or secured creditors for any amount unpaid any remaining debts & dues Pref shareholders Equity holders
Cross Border Insolvency	Corporations Act and the Cross-Border Act contain mechanisms to address cross-border insolvency matters.	<p>Sections 234 and 235 of IBC contain details of cross border insolvency in India. It gives power to the that the Central Government can make any agreements with the foreign country to start with the insolvency proceedings</p> <p>UNCITRAL Model Law on Cross-Border Insolvency has been recommended but not yet been adopted.</p>
Group Insolvency	Conducted by way of provisions enlisted in Corporations Act, 2001.	No Legislation or Regulations.



Insolvency Framework in Germany

The purpose of German insolvency proceedings is to jointly satisfy the creditors by utilizing the assets and distributing the proceeds, or by deviating from an insolvency plan, in particular to preserve the company. The honest debtor is given the opportunity to free himself from his remaining liabilities. The German Insolvency regime is regulated by the Germany Insolvency Code ("InSO"). It is centralised on federal level. Thus, the 16 single states of Germany do not have their own applicable insolvency law. Insolvencies in Germany are mainly governed by the Insolvency Code ("Code") which was enacted on 5th October 1994 which applies to all regardless of which industry a debtor is in.

COMPARATIVE CHART – GERMANY AND INDIA		
Comparative Chart		
Basis	Germany Insolvency Code ("InSO")	Insolvency and Bankruptcy Code, 2016
Adjudicating Authorities	<p>For the insolvency proceedings, the district court, in the district of which a regional court has its seat, is exclusively responsible as the bankruptcy court for the district of this regional court.</p> <p>The sole jurisdiction is the insolvency court in whose district the debtor has his general place of jurisdiction. If the focus of an independent economic activity of the debtor is at a different location, then only the insolvency court in whose district this location is located is responsible. If more than one court has jurisdiction, the court that first applied for bankruptcy proceedings excludes the others.</p>	<p>National Company Law Tribunal (Adjudicating Authority) and Appeals are filed before National Company Law Appellate Tribunal (Appellate Authority).</p> <p>The appeal against the order of NCLT may be filed at NCLAT.</p>
Appointments of Insolvency Professionals in case of resolution and liquidation process	<ul style="list-style-type: none"> Formal Insolvency Proceedings - Preliminary Insolvency Administrator followed by Final Insolvency Administrator Insolvency Plan Proceedings- Administrator Self Administration: Custodian Liquidation – Liquidator Voluntary Liquidation- Liquidator 	<ul style="list-style-type: none"> Corporate Insolvency Resolution Process- Interim Resolution Professional followed by Resolution Professional Fast Track Insolvency Resolution Process- Interim Resolution Professional followed by Resolution Professional Liquidation- Liquidator Voluntary Liquidation- Liquidator
Initiation of resolution process	Debtor company itself or creditors	Financial Creditor, Operational Creditor or Corporate Debtor itself
Possession of the insolvent company's assets in case of resolution process	<ul style="list-style-type: none"> Formal Insolvency Proceedings- Insolvency Administrator Insolvency Plan Proceedings: 	Insolvency Professional as IRP/RP, to be appointed by the Adjudicating Authority. Board of directors gets suspended with the appointment of IRP



	Insolvency Administrator • Self Administration- Debtor	
Consent of Committee of creditors in case of resolution process	Approval of the plan requires majority in each group of creditors along with the sum of the claims approving the plan exceeds half of the sum of all claims of the voting creditors in that group.	Approval of resolution plan requires vote of not less than Sixty Six percent of voting share of the financial creditors.
Priorities of the payments - to be read from top to bottom in the order of priorities	<ul style="list-style-type: none"> - Creditors with rights of separation - Secured Creditors - Estate Creditors - Insolvency Creditors - Equity Holders 	<ul style="list-style-type: none"> - Insolvency cost - workmen dues for 24 months - Secured creditors - Employees for preceding 12 months - Unsecured creditors - State dues or secured creditors for any amount unpaid - any remaining debts & dues - Pref shareholders - Equity holders
Cross Border Insolvency	The provisions of International Insolvency Law along with European Insolvency Regulation set the rules for cross-border insolvencies, in which the debtor has its centre of main interest in one of the Member States of the EU. UNCITRAL Model Law on Cross-Border Insolvency not adopted.	Sections 234 and 235 of IBC contain details of cross border insolvency in India. It gives power to the that the Central Government can make any agreements with the foreign country to start with the insolvency proceedings UNCITRAL Model Law on Cross-Border Insolvency has been recommended but not yet been adopted.
Group Insolvency framework	Germany has group insolvency systematic framework for group insolvencies.	In India, the Code is silent about group insolvency; however, the courts are trying to fill in this lacuna through judicial pronouncements. Group Insolvency can be tackled by either Procedural Co-ordination or Substantive Consolidation.

Insolvency Framework in Singapore

Singapore's system of insolvency laws comprises procedures for liquidation as well as rehabilitative debt restructuring procedures. The main types of proceedings within the latter category are judicial management and schemes of arrangement. The key statute governing insolvency and corporate rescue mechanisms in Singapore is Chapter 50 of the Companies Act, 1967⁵. Parliament passed significant amendments to various insolvency and debt restructuring provisions in the Companies Act in 2017 and those have come into force with effect from 23 May 2017.

⁵ <https://sso.agc.gov.sg/Act/CoA1967>



COMPARATIVE CHART – SINGAPORE AND INDIA		
Comparative Chart		
Basis	Singapore's system of Insolvency Laws	Insolvency and Bankruptcy Code, 2016
Laws governing Insolvency	Chapter 50 of Companies Act currently governs Insolvency In Singapore.	Insolvency and Bankruptcy Code, 2016 (IBC)
Adjudicating Authority	The Singapore courts have assigned certain judges with the requisite expertise as docketed insolvency judges to hear applications relating to insolvency and restructuring, including when the matter is urgent	National Company Law Tribunal (NCLT) is the Adjudicating Authority. The Appellate Authority is National Company Law Appellate Tribunal (NCLAT).
Types	There is Judicial Management, Schemes of Arrangement, Compulsory Liquidation and Receivership. Their system of Judicial Management is similar to the Corporate Insolvency Process followed in India.	There is Corporate Insolvency, Voluntary Liquidation and Liquidation which includes schemes of arrangement.
Who can trigger	<i>Judicial Management:</i> The company, its directors or its creditors. <i>Schemes:</i> Company prepares a sample scheme and makes an application to court for a meeting of the creditors. <i>Compulsory Liquidation:</i> Creditors, the company and judicial manager can petition. <i>Receivership:</i> A secured creditor appoints a receiver in circumstances where a company is already insolvent or nearing insolvency.	Under IBC, the debtor themselves, the creditors (financial or operational) can trigger insolvency
Management Control during insolvency proceeding	<i>Judicial Management:</i> Judicial Manager (officer of the court) takes over running of company and management is displaced. Creditors may establish committee to monitor the process. <i>Schemes:</i> Management retains control of business while restructuring <i>Compulsory Liquidation:</i> Liquidator nominated by creditor, appointed by court has responsibility to wind up affairs of company <i>Receivership:</i> Receiver controls running of business.	Insolvency Professional as IRP/RP, to be appointed by the Adjudicating Authority. Board of directors gets suspended with the appointment of IRP
Role of Insolvency Professional	<i>Judicial Management:</i> Preserve business of debtor as going concern. Present rescue plan to creditors, takes into custody all property and manage company's affairs according to plan. <i>Schemes:</i> No requirement of an IP <i>Compulsory Liquidation:</i> Collect assets and creditors' claims. Carry on business during the proceedings. Post	Under IBC, the Insolvency Professional is known as the officer of the court and plays the role of taking over the Corporate Debtor, keeping it as a going concern, managing claims, holding creditor meetings, preparing the Information Memorandum etc. On company undergoing liquidation, the IP has to hand over the company to the



	assessment, adjudicate claims lodged against company, realize company's assets and distribute proceeds in order of statutory priority. <i>Receivership:</i> Take control of all or most of company's assets. Liquidator has to wait until receiver has completed his task.	Liquidator.
Moratorium	<i>Judicial Management:</i> Automatic and immediate moratorium as soon as insolvency is triggered. <i>Schemes:</i> No automatic moratorium while Scheme is being proposed. <i>Compulsory Liquidation:</i> Post winding up order, automatic stay on proceedings against company unless court permits proceedings to continue. <i>Receivership:</i> No moratorium at all.	Yes, as per Section 14.
Priorities of the payments - to be read from top to bottom in the order of priorities	<ul style="list-style-type: none"> Secured creditors have priority over all other claims. Claims of creditors secured by floating charge rank behind liquidator's fees and expenses and preferential claims. The general order of payment priority: <ol style="list-style-type: none"> 1. Receivers' expenses. 2. Claims secured by fixed charges. Costs and expenses of winding up. Employees' remuneration and other payments due to employees. 3. All taxes assessed before date of commencement of winding up or assessed at any time before expiration of time fixed for proving of debts. 4. Claims secured by a floating charge. 5. Unsecured creditors. Any surplus to company/shareholders.	<ul style="list-style-type: none"> - Insolvency cost - workmen dues for 24 months - Secured creditors - Employees for preceding 12 months - Unsecured creditors - State dues or secured creditors for any amount unpaid - any remaining debts & dues - Pref shareholders - Equity holders
Cross Border Insolvency	Singapore adopted the UNCITRAL model of Cross Border Insolvency Law through the amended Companies Act 2017 and is enshrined in the provisions Section 354A, 354B and 354C of the Companies Act.	Sections 234 and 235 of IBC contain details of cross border insolvency in India. It gives power to the that the Central Government can make any agreements with the foreign country to start with the insolvency proceedings

Conclusion:

Indian Insolvency & Bankruptcy law is a progressive law and the main emphasis is on its resolution process. One of the major difference compared to the US laws is that US laws stipulate a "Debtor in Possession" approach (management remains in control on running the company) where as Other countries & Indian laws envisage the management of the company through



Insolvency professional. Although both the situations have their own merits, for example, US laws believe that the management of the company is best suited for running the company for a quick reorganisation plan rather than a new person who will have own learning curve as well cost, however UK & Indian laws envisage that the company can best be run by Insolvency Professional over the previous management.

All the laws look for a resolution plan on going concern basis over liquidation. Insolvency regulator IBBI is proactively addressing the emerging situations which is remarkable. IBC has brought a culture change in corporate India, but it is a journey which has only just started.

A Bird's eye views on cross country comparison:

S. No.	Details	India	UK	US	Australia	Germany	Singapore
1.	Law governing Insolvency	IBC, 2016	UK Insolvency Act, 1986	Chapter 11 of US Bankruptcy Code	Bankruptcy Act, 1966, the Corporations Act, 2001 and Australian Securities and Investments Commission Act, 2001.	German Insolvency Code (<i>InsO</i>)	Chapter 50 of the Companies Act, 1967
2.	Who can start proceeding	Creditors, Corporate Debtor	Creditors, debtors, Holders of qualifying floating charges (QFC)	Debtor Company	Creditors, Directors or Debtor	Debtor company or creditors	Company, its directors or its creditors.
3.	Moratorium	Yes	Yes	Yes	Yes	Yes	Yes
4.	Management Control	Board of directors are suspended with the appt. of IP	Insolvency Practitioner but daily operations remains with the directors	Management continues. Debtor in Possession (DIP) approach	Receiver and administrator	Debtor in case of self administration, else Debtor	Judicial Manager (officer of the court) takes over running of company
5.	Approval of Resolution Plan	Approved by CoC by 66% votes	By simple majority in value of creditors	by majority and 2/3 in amount actually voting	Approval from majority of the creditors is required	By majority of creditors	By majority of creditors
6.	Insolvency Proceeding Costs	Whoever initiates the process	Born by Debtor	Borne by Debtor	Whoever initiates the process	Born by debtor	Whoever initiates the process



7.	Cross Border Insolvency	Sec.234 & 235 of the Code, UNCITRAL not yet adopted	Inside EU - EU Insolvency Regulation, Outside EU - UNCITRAL Model Law	UNCITRAL model law has substantially been adopted	Australia also adopted UNCITRAL model law	UNCITRAL Model law is not adopted, own set of rules are complied	Singapore adopted the UNCITRAL model of Cross Border Insolvency Law
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