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BRIDGING LAW AND FINANCE: THE ROLE OF LEGAL INSTITUTIONS IN FINANCIAL RECOVERY MECHANISMS

Shaily Gupta¹ & Dr. Jyotsana Singh²

I. ABSTRACT

This paper examines the critical intersection of legal institutions and financial recovery mechanisms in India's evolving economic landscape. It analyzes how the Insolvency and Bankruptcy Code (IBC) of 2016 transformed creditor-debtor dynamics by creating a unified framework for resolution, while highlighting persistent challenges in implementation including judicial delays and institutional bottlenecks. The research explores the complementary roles of SARFAESI Act, Debt Recovery Tribunals, and regulatory frameworks established by the RBI and SEBI in facilitating debt recovery and financial stability. Through analysis of landmark judicial decisions, the paper reveals how courts have maintained a delicate balance between creditor rights and constitutional protections for debtors. Comparative examination of international insolvency regimes provides insights for potential reforms, particularly regarding cross-border insolvency and sector-specific frameworks. The study concludes that while significant legal advancements have occurred, India must address institutional capacity constraints, adopt the UNCITRAL Model Law on Cross-Border Insolvency, and develop pre-insolvency mechanisms to enhance recovery outcomes and systemic stability.

II. KEYWORDS

Financial recovery, Insolvency and Bankruptcy Code, Debt recovery mechanisms, Cross-border insolvency, Legal institutions, Creditor rights, Judicial interpretation, Asset reconstruction, Systemic stability

¹ 10th Semester, B.A.LL.B Student at Amity Law School, Amity University, Uttar Pradesh.

² Assistant Professor at Amity Law School, Amity University, Uttar Pradesh.

III. INTRODUCTION

A. Background and Context

Financial stability drives economic growth. Law serves as the backbone for this stability. Legal institutions enable enforcement of financial obligations. They ensure creditors' rights and protect debtor interests. The intersection of law and finance thus demands constant attention. India's financial sector has faced waves of crises. Non-performing assets (NPAs) peaked at ₹10.36 lakh crore in 2018.³ Legal responses have evolved over time. The Insolvency and Bankruptcy Code (IBC), 2016, marked a turning point. Before this, recovery mechanisms fragmented across laws like SARFAESI Act, 2002, and Recovery of Debts and Bankruptcy Act, 1993.

The IBC brought creditors and debtors under one framework. It promised time-bound resolution processes. Yet, bottlenecks emerged. Insolvency resolution timelines exceeded statutory limits. In 2023, the average resolution time stood at 679 days, breaching the 330-day threshold.⁴ Debt recovery depends not just on statutes. The effectiveness of tribunals like DRTs and NCLTs shapes outcomes. These forums face backlogs, staffing shortages, and procedural delays. The National Company Law Tribunal reported over 21,000 pending cases in 2022.⁵ Judicial intervention, though critical, sometimes adds delays. The Supreme Court's interpretation in *Swiss Ribbons Pvt. Ltd. v. Union of India*, upheld the constitutional validity of IBC. It recognized insolvency as an economic process governed by law.

³ Reserve Bank of India, Financial Stability Report, June 2018, https://rbidocs.rbi.org.in/rdocs//PublicationReport/Pdfs/0FSR_JUNE2018A3526EF7DC8640539C1420D256A470FC.PDF (last visited Apr. 23, 2025).

⁴ Insolvency and Bankruptcy Board of India, Annual Report 2022-23, <https://ibbi.gov.in/uploads/publication/78358f458f7d24e182b28fa2fef55d9a.pdf> (last visited Apr. 23, 2025).

⁵ Ministry of Corporate Affairs, NCLT Performance Report, 2022, <https://mca.gov.in/bin/dms/getdocument?doc=MzMwNTQ2NzAz&docCategory=AnnualReports&version=latest> (last visited Apr. 23, 2025).

Law and finance interact globally. The 2008 global financial crisis reshaped this relationship. Countries strengthened regulatory oversight and creditor safeguards. India followed suit, refining frameworks through amendments and new legislations. The Financial Stability and Development Council (FSDC), formed in 2010, reflects this shift.⁶ Cross-border insolvency remains a complex area. India, though yet to adopt the UNCITRAL Model Law fully, moves towards harmonization. The Insolvency Law Committee (ILC), in its 2018 report, recommended such adoption to handle multinational insolvencies.⁷

Financial recovery also touches upon banking law. The Reserve Bank of India (RBI) plays a regulatory role. Its prudential norms, asset classification guidelines, and restructuring schemes influence recovery rates. The RBI's June 2019 circular on prudential framework for resolution of stressed assets reinstated regulatory discipline after judicial review in *Dharani Sugars and Chemicals Ltd. v. Union of India*. The Securities and Exchange Board of India (SEBI) regulates market-linked recoveries. Enforcement actions, penalties, and disgorgement orders against violators safeguard investor confidence. The Sahara case, *Sahara India Real Estate Corporation Ltd. v. SEBI*, highlighted SEBI's proactive role in investor protection and fund recovery.

International financial recovery mechanisms inform domestic reforms. The United States' Chapter 11 Bankruptcy Code offers debtor-in-possession models. The United Kingdom's administration regime balances creditor recoveries and business continuity. India draws lessons, seeking convergence with global best practices. Legal institutions, therefore, serve as catalysts. They drive efficient recovery, reduce systemic risks, and build creditor confidence. Statutory frameworks must remain dynamic. Judicial pronouncements evolve these frameworks, balancing economic realities with constitutional mandates.

⁶ Financial Stability and Development Council, About FSDC, Ministry of Finance, <https://dea.gov.in/fsdc> (last visited Apr. 23, 2025).

⁷ Insolvency Law Committee Report on Cross-Border Insolvency, October 2018, <https://ibbi.gov.in/uploads/resources/October2018-ILCReport-CrossBorderInsolvency.pdf> (last visited Apr. 23, 2025).

B. Research Questions

1. How have legal institutions evolved to address India's financial recovery challenges, and what are the operational gaps in the current framework?
2. To what extent has judicial interpretation balanced creditor rights with debtor protections in India's financial recovery mechanisms?
3. What lessons can India incorporate from international insolvency frameworks to enhance its financial recovery outcomes?

C. Research Objectives

1. To analyze the complementary roles and jurisdictional overlaps between the Insolvency and Bankruptcy Code (IBC), SARFAESI Act, and DRT Act in addressing non-performing assets, while identifying institutional bottlenecks that impede effective implementation.
2. To evaluate landmark judicial pronouncements from the Supreme Court and High Courts that have shaped the balance between creditor enforcement powers and constitutional safeguards for debtors across recovery mechanisms.
3. To examine comparative insolvency regimes in developed and emerging economies, identifying adaptable components for the Indian context, particularly regarding cross-border insolvency, pre-default restructuring, and sector-specific recovery frameworks.

D. Methodology of Research

This research employs a doctrinal approach focusing on primary legal sources to analyze the intersection of law and finance in India's financial recovery framework. The methodology involves systematic examination of statutory provisions including the Insolvency and Bankruptcy Code 2016, SARFAESI Act 2002, and Recovery of Debts and Bankruptcy Act 1993, alongside relevant amendments. Judicial interpretations from the Supreme Court and High Courts are critically analyzed through landmark judgments

that have shaped the operation of these legal instruments. The research further incorporates regulatory frameworks established by RBI and SEBI through circulars, master directions, and guidelines that influence recovery mechanisms. A comparative legal analysis examines parallel insolvency regimes in jurisdictions like the United States, United Kingdom, and Singapore, identifying transferable principles for the Indian context. Secondary sources including parliamentary committee reports, Law Commission recommendations, and scholarly commentaries supplement the analysis. This doctrinal investigation systematically identifies legal patterns, inconsistencies, and reform opportunities within India's financial recovery architecture, focusing on theoretical underpinnings rather than empirical outcomes.

IV. LEGAL FRAMEWORK GOVERNING FINANCIAL RECOVERY IN INDIA

A. Overview of the Indian Financial Sector and Systemic Risks

India's financial sector integrates banks, non-banking financial companies (NBFCs), insurance firms, capital markets. This sector underpins credit allocation, capital formation, and economic growth. Banks dominate, accounting for 63% of financial assets as of 2023.⁸ Public sector banks (PSBs) hold a large share, nearly 60% of total banking assets. Systemic risks arise from interconnected institutions. Banking sector distress spills over to NBFCs, mutual funds, insurers. The collapse of Infrastructure Leasing & Financial Services (IL&FS) in 2018 triggered liquidity concerns across NBFCs. RBI's Financial Stability Report, December 2018, termed it a systemic event.⁹ Asset-liability mismatches (ALM) worsened contagion.

⁸ Reserve Bank of India, Financial Stability Report, December 2023, <https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/FSRDEC2023.PDF> (last visited Apr. 23, 2025).

⁹ Reserve Bank of India, Financial Stability Report, December 2018, <https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/0FSRDECB815B9437D6D428F81D45C22BBF6C62A.PDF> (last visited Apr. 23, 2025).

Credit growth patterns reflect these risks. Post-IL&FS, NBFC credit growth declined from 20% in FY18 to 7.1% in FY20.¹⁰ Microfinance institutions (MFIs) faced repayment defaults, intensifying credit contraction. Shadow banking added complexity. NBFCs rely heavily on market borrowings, exposing them to liquidity crunches.

Banks' asset quality stressed recovery mechanisms. Gross NPAs of scheduled commercial banks peaked at 11.2% in FY18. They fell to 3.9% by FY23, largely due to write-offs and recoveries under IBC.¹¹ Yet, restructured assets and pandemic-induced relief measures hid potential stress. Monetary policy interlinks with financial sector health. RBI's accommodative stance post-2020 sustained liquidity. Low interest rates encouraged credit offtake. But, rapid rate hikes globally in 2022-23 reversed flows. Foreign portfolio investment (FPI) outflows exerted pressure on markets. Rupee depreciated 9% against the dollar in 2022.¹²

Market volatility amplifies systemic risks. Equity markets corrected sharply during pandemic onset, erasing ₹51 lakh crore in market capitalisation.¹³ Commodity price shocks post-Ukraine conflict spiked inflation. Elevated inflation strained monetary stability. Securities markets play a crucial role in capital mobilization. SEBI regulates these markets, ensuring disclosure norms, insider trading prevention. Despite robust regulations, lapses occur. Karvy Stock Broking Ltd.'s misuse of client securities in 2019 exposed gaps. SEBI imposed penalties, barred Karvy from markets, showcasing regulatory teeth.¹⁴

¹⁰ Ibid.

¹¹ Reserve Bank of India, Trends and Progress of Banking in India 2022-23, <https://rbi.org.in/Scripts/AnnualPublications.aspx?head=Trend+and+Progress+of+Banking+in+India> (last visited Apr. 23, 2025).

¹² Ministry of Finance, Economic Survey 2022-23, <https://www.indiabudget.gov.in/budget2022-23/economicsurvey/index.php> (last visited Apr. 23, 2025).

¹³ Bombay Stock Exchange, Market Data 2020, https://www.bseindia.com/market_data_products.html (last visited Apr. 23, 2025).

¹⁴ Securities and Exchange Board of India, Karvy Case Orders, 2019, https://www.sebi.gov.in/enforcement/orders/nov-2019/ex-parte-ad-interim-order-in-respect-of-karvy-stock-broking-limited_45049.html (last visited Apr. 23, 2025).

Insurance sector contributes to financial stability. Insurance Regulatory and Development Authority of India (IRDAI) oversees insurers. Solvency norms maintain resilience. However, penetration remains low, at 4.2% of GDP in 2023, below global average of 7%.¹⁵ This limits risk diversification. Payment systems anchor financial intermediation. NPCI operates UPI, RuPay, NEFT. Digital transactions surged, crossing ₹125 lakh crore via UPI in FY23.¹⁶ Cybersecurity threats pose new systemic risks. RBI's cybersecurity framework for banks (2016) mandates robust defence.

Systemic risks also stem from corporate governance failures. The Satyam scandal (2009) exposed accounting frauds, eroding investor trust. Regulatory reforms followed. The Companies Act, 2013, strengthened audit norms, director responsibilities. SEBI enhanced disclosure standards under Listing Obligations and Disclosure Requirements (LODR). Shadow banking, fintech, crypto-assets complicate systemic risk assessment. RBI cautioned against crypto risks in its 2021-22 report. Global Financial Stability Board (FSB) echoed similar concerns. India remains cautious, awaiting global consensus.

B. Key Legal Instruments: SARFAESI Act, IBC, and DRT Act

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 empowers banks to enforce secured assets without court intervention. It targets non-performing assets (NPAs) above ₹1 lakh. It covers secured creditors like banks, financial institutions, and asset reconstruction companies. Section 13(4) enables possession of assets.¹⁷ Borrowers may appeal before Debt Recovery Tribunal under Section 17.

SARFAESI excludes agricultural land. Courts affirmed this in *Mardia Chemicals Ltd. v. Union of India*. The Supreme Court upheld the Act's constitutionality. It balanced creditor

¹⁵ Insurance Regulatory and Development Authority of India, Annual Report 2022-23, <https://irdai.gov.in/annual-reports> (last visited Apr. 23, 2025).

¹⁶ National Payments Corporation of India, UPI Statistics FY23, <https://www.npci.org.in/statistics> (last visited Apr. 23, 2025).

¹⁷ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, § 13(4), No. 54, Acts of Parliament, 2002 (India).

rights and borrower safeguards.¹⁸ The Act applies to secured loans only. Unsecured creditors remain outside its ambit.

The Insolvency and Bankruptcy Code, 2016 consolidated insolvency laws. It applies to companies, LLPs, partnerships, individuals. Section 7 allows financial creditors to initiate corporate insolvency resolution process (CIRP). Operational creditors may file under Section 9. The National Company Law Tribunal (NCLT) adjudicates these applications. The moratorium under Section 14 halts recovery actions during CIRP.

IBC introduced time-bound resolutions. Section 12 prescribes 180 days, extendable to 330 days. Delays remain. Average resolution time crossed 600 days in 2023.¹⁹ Supreme Court upheld IBC's economic rationale in *Swiss Ribbons Pvt. Ltd. v. Union of India*. It recognized creditors' commercial wisdom. IBC prioritizes secured creditors under Section 53. Workmen dues, government claims rank lower. This waterfall mechanism ensures equitable distribution. Cross-border insolvency remains unaddressed. India awaits adoption of UNCITRAL Model Law. The Insolvency Law Committee recommended this in 2018.²⁰

Debt Recovery Tribunals (DRTs) function under the Recovery of Debts and Bankruptcy Act, 1993. The Act establishes DRTs and DRATs. Section 19 enables banks to file recovery applications for debts exceeding ₹20 lakh. The tribunal issues recovery certificates. Section 29 empowers DRT to attach property. DRTs face backlog. Over 1.5 lakh cases pending as of 2022.²¹ Infrastructure gaps, staffing issues worsen delays. The Act overlaps with SARFAESI. Creditors may pursue both simultaneously. Supreme Court clarified

¹⁸ *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311.

¹⁹ Id at 2.

²⁰ Insolvency Law Committee Report on Cross-Border Insolvency, October 2018, <https://ibbi.gov.in/uploads/resources/c3593c9f41984c6f31f278974de3cf37.pdf> (last visited Apr. 23, 2025).

²¹ Ministry of Finance, DRT Performance Report, 2022, <https://financialservices.gov.in/beta/sites/default/files/2023-09/DFS-Annual-report-2022-23-Eng.pdf> (last visited Apr. 23, 2025).

this in *Transcore v. Union of India*. Creditors may switch between SARFAESI and DRT without abandoning either.

IBC, SARFAESI, DRT Act operate in tandem. SARFAESI offers swift enforcement. IBC provides collective resolution. DRTs adjudicate recovery suits. Each complements the other. Yet, overlaps create jurisdictional confusion. The RBI regulates enforcement under SARFAESI. It notifies eligible lenders, asset reconstruction companies. Guidelines issued in 2020 streamlined ARCs' operations.²² RBI also monitors recovery data, ensuring compliance.

C. Role of RBI Guidelines and SEBI Regulations

Reserve Bank of India (RBI) regulates banking stability. Its prudential norms govern asset classification, provisioning standards. These norms shape recovery timelines. RBI's Master Circular on Income Recognition, Asset Classification, and Provisioning (IRACP) lays the foundation.²³ It defines non-performing assets (NPAs), triggering recovery mechanisms.

RBI introduced the Prudential Framework for Resolution of Stressed Assets in 2019. It replaced the 2018 circular quashed by the Supreme Court in *Dharani Sugars and Chemicals Ltd. v. Union of India*, (2019) 5 SCC 480. The framework mandates lenders to recognize stress early. It requires resolution plans within 180 days of default. RBI guidelines standardize recovery approaches across banks. They ensure consistency. The framework covers all scheduled commercial banks, NBFCs, and all-India financial institutions. Early identification norms prevent systemic risks.

RBI regulates Asset Reconstruction Companies (ARCs) under SARFAESI Act. Its 2022 guidelines revised capital adequacy norms for ARCs. Minimum Net Owned Fund (NOF)

²² Reserve Bank of India, Guidelines for Asset Reconstruction Companies, 2020, <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD48290920160255C86B033F4C4691FE7D44C22327B5.PDF> (last visited Apr. 23, 2025).

²³ Reserve Bank of India, Master Circular on Income Recognition, Asset Classification and Provisioning (IRACP), 2022, https://rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=12472 (last visited Apr. 23, 2025).

requirement raised to ₹300 crore.²⁴ These measures enhance ARC resilience, improving debt recovery outcomes. RBI issues master directions for non-banking financial companies (NBFCs). These include credit concentration limits, liquidity norms. The NBFC sector, contributing 25% of financial credit, affects recovery processes. RBI's scale-based regulation framework for NBFCs, 2021, introduced differentiated supervision based on size, risk profile.²⁵

RBI guidelines regulate restructuring. The One-Time Restructuring (OTR) framework during COVID-19 allowed restructured accounts without downgrading NPAs. This flexibility aided borrower viability, preserving systemic stability.²⁶ Restructured accounts are monitored, with disclosure norms enforced. RBI's Wilful Defaulter Guidelines classify defaulters based on intent. Lenders must report such borrowers. This ensures accountability. RBI's Master Circular on Wilful Defaulters (2015) mandates caution in further lending to defaulters.²⁷

Securities and Exchange Board of India (SEBI) oversees capital markets. Its regulations impact financial recoveries, investor protection. SEBI's Listing Obligations and Disclosure Requirements (LODR) Regulations mandate timely disclosures. Delayed default disclosures affect investor confidence. SEBI's ICDR Regulations ensure fair public issuance processes. These impact corporate debt market health. Defaults in listed debt instruments trigger SEBI action. SEBI mandates rating agencies to monitor and disclose deteriorating credit profiles.

SEBI regulates Credit Rating Agencies (CRAs). Post-IL&FS collapse, SEBI strengthened disclosure norms. CRAs must disclose rationale for ratings, maintain surveillance. SEBI's

²⁴ Reserve Bank of India, Guidelines for Asset Reconstruction Companies, 2022, <https://www.rbi.org.in/Scripts/NotificationUser.aspx> (last visited Apr. 23, 2025).

²⁵ Reserve Bank of India, Scale-Based Regulation for NBFCs, 2021, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12159&Mode=0> (last visited Apr. 23, 2025).

²⁶ Reserve Bank of India, Resolution Framework for COVID-19 Related Stress, 2020, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11900&Mode=0> (last visited Apr. 23, 2025).

²⁷ Reserve Bank of India, Master Circular on Wilful Defaulters, 2015, https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9907 (last visited Apr. 23, 2025).

2019 circular on enhanced disclosures ensured accountability in rating processes.²⁸ SEBI's framework for Alternative Investment Funds (AIFs) governs private debt investors. This ensures fair treatment in recovery scenarios. SEBI's 2020 circular mandated fair valuations, enhancing transparency.²⁹ SEBI's enforcement actions aid financial recoveries. Penalties, disgorgement orders deter violators. In the *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2013) 1 SCC 1, Supreme Court upheld SEBI's authority to recover ₹24,000 crore. This reinforced SEBI's investor protection mandate.

D. Interaction between Insolvency Law and Banking Regulation

Insolvency and Bankruptcy Code (IBC), 2016 integrates financial recovery and banking stability. Section 7 empowers financial creditors, primarily banks, to initiate insolvency proceedings. Banking Regulation Act, 1949 governs these banks. Reserve Bank of India (RBI) supervises their asset quality. IBC and RBI guidelines intersect at stressed asset recognition. RBI's Prudential Norms dictate Non-Performing Asset (NPA) classification. Default triggers CIRP under IBC. RBI's Resolution Framework mandates resolution plans within stipulated timeframes. These align with IBC timelines.

Banks act as resolution applicants under IBC. Their participation in Committee of Creditors (CoC) shapes recovery outcomes. CoC decisions, protected under Section 30(4) of IBC, reflect banking exposure levels. Supreme Court upheld CoC's commercial wisdom in *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.

RBI regulates provisioning norms during insolvency. Banks must provision 50% upon admission of insolvency. Full provisioning follows if liquidation occurs. This ensures

²⁸ Securities and Exchange Board of India, Circular on Enhanced Disclosure Norms for Credit Rating Agencies, 2019, <https://www.sebi.gov.in/legal/circulars/jun-2019/guidelines-for-enhanced-disclosures-by-credit-rating-agencies-cras-43268.html> (last visited Apr. 23, 2025).

²⁹ Securities and Exchange Board of India, Circular on Valuation Norms for AIFs, 2020, <https://www.sebi.gov.in/legal/circulars/jun-2023/standardised-approach-to-valuation-of-investment-portfolio-of-alternative-investment-funds-aifs-72924.html> (last visited Apr. 23, 2025).

financial discipline. RBI's circular dated April 2017 mandates these norms.³⁰ RBI's directives complement IBC's moratorium under Section 14. Moratorium halts recovery actions, including SARFAESI proceedings. RBI's Wilful Defaulter Guidelines continue during moratorium. Banks classify and report wilful defaulters. This prevents misuse of insolvency protection.

Interplay extends to restructuring. RBI's Prudential Framework enables restructuring outside IBC. Resolution under RBI Framework avoids formal insolvency. This saves viable firms. Yet, IBC remains the final resort for irrecoverable accounts. RBI's supervisory role under Section 35A of Banking Regulation Act empowers it to direct banks. In 2017, RBI issued a list of 12 large defaulters for mandatory resolution under IBC. This regulatory push emphasized banking alignment with insolvency law.³¹

Banking law intersects with insolvency in priority of claims. IBC's Section 53 establishes a waterfall mechanism. Secured creditors receive priority. RBI's guidelines ensure banks maintain adequate collateral security. This supports recovery during liquidation. Cross-border insolvency remains underdeveloped. RBI monitors external commercial borrowings (ECBs). Default in ECBs complicates insolvency proceedings. India's proposed adoption of UNCITRAL Model Law seeks to resolve this gap.³²

Banking ombudsman and insolvency law overlap in retail banking. While IBC targets corporate insolvency, RBI's ombudsman resolves individual grievances. RBI's Consumer Protection Framework, 2019 ensures customer rights during bank insolvencies. IBC and banking law intersect on bad loan sales. Asset Reconstruction Companies (ARCs) regulated under SARFAESI purchase NPAs. RBI sets guidelines for such transactions. IBC resolutions often involve ARCs submitting resolution plans. This fosters synergy.

³⁰ Reserve Bank of India, Prudential Norms on Income Recognition, Asset Classification and Provisioning, 2017, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10911&Mode=0> (last visited Apr. 23, 2025).

³¹ Reserve Bank of India, RBI Press Release on Large Defaulters under IBC, 2017, https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=40808 (last visited Apr. 23, 2025).

³² Id at 18.

V. INSTITUTIONAL MECHANISMS FOR FINANCIAL RECOVERY

A. Role of Debt Recovery Tribunals (DRTs)

Debt Recovery Tribunals (DRTs) emerged in India under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The primary purpose was to expedite the adjudication and recovery of debts owed to banks and financial institutions. Prior to DRTs, regular civil courts handled these disputes, often resulting in protracted litigation that delayed financial recovery for banks. The backlog crippled the efficiency of financial institutions, leading to an urgent need for a specialized mechanism.³³

Section 17 of the RDDBFI Act, 1993 confers exclusive jurisdiction on DRTs to entertain and decide applications from banks and financial institutions for recovery of debts exceeding ₹20 lakh. This jurisdictional threshold ensures that DRTs focus on significant debt recovery cases, easing the burden on civil courts while safeguarding the rights of smaller debtors under regular judicial forums. The specialized structure, minimal procedural formalities, and focused jurisdiction have contributed to quicker resolutions in financial disputes.³⁴

In *Union of India v. Delhi High Court Bar Association*, the Supreme Court upheld the constitutional validity of the DRTs, emphasizing their necessity in ensuring the swift recovery of debts. The court reasoned that DRTs, as quasi-judicial bodies, facilitate financial stability by enabling efficient enforcement of creditor rights without unduly compromising the borrower's legal protections.³⁵ The case remains a cornerstone in the discourse surrounding the legitimacy of specialized debt recovery mechanisms.

The procedural framework of DRTs departs from the traditional civil procedure. Section 22 of the RDDBFI Act mandates that DRTs and Debt Recovery Appellate Tribunals (DRATs) are not bound by the Code of Civil Procedure, 1908, but are guided by principles

³³ Recovery of Debts Due to Banks and Financial Institutions Act, 1993, § 17, No. 51, Acts of Parliament, 1993 (India).

³⁴ *Id.*

³⁵ *Union of India v. Delhi High Court Bar Association*, (2002) 4 SCC 275.

of natural justice. This flexibility in procedure has accelerated adjudication timelines, thereby aligning with the legislative intent of enhancing financial sector efficiency. However, critics argue that lack of procedural safeguards occasionally compromises debtor rights.³⁶

DRTs' role significantly intersected with the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. Section 13(4) of the SARFAESI Act allows secured creditors to enforce security interests without court intervention. However, aggrieved borrowers can approach DRTs under Section 17 of the SARFAESI Act, making the tribunal a key forum in balancing creditor-debtor dynamics.³⁷ This dual role reinforces DRTs as pivotal in India's financial recovery architecture.

The performance of DRTs, however, has faced scrutiny over pendency rates. The Financial Stability Report, Reserve Bank of India (2023), highlighted that despite their specialized nature, DRTs struggle with case backlogs, undermining their effectiveness. The accumulation of pending cases often leads to delays reminiscent of traditional courts, questioning the operational efficiency of the mechanism.³⁸

DRTs have also played a supplementary role to the Insolvency and Bankruptcy Code, 2016 (IBC), especially for cases falling below the IBC's monetary threshold. While the IBC supersedes other debt recovery laws for larger defaults, DRTs continue to adjudicate smaller claims, ensuring comprehensive coverage across debt recovery landscapes. The Supreme Court in *Mardia Chemicals Ltd. v. Union of India* recognized the overlapping jurisdiction of DRTs under the SARFAESI Act and the IBC, affirming that DRTs remain

³⁶ Recovery of Debts Due to Banks and Financial Institutions Act, 1993, § 22, No. 51, Acts of Parliament, 1993 (India).

³⁷ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, § 13(4), No. 54, Acts of Parliament, 2002 (India).

³⁸ Reserve Bank of India, Financial Stability Report (June 2023), <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1215>.

an essential cog in India's financial recovery system despite newer legislative frameworks.³⁹

B. National Company Law Tribunal (NCLT) and Insolvency Resolution

The National Company Law Tribunal (NCLT), constituted under Section 408 of the Companies Act, 2013, serves as a cornerstone in India's corporate insolvency framework. Its role magnified with the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), which designated NCLT as the adjudicating authority for corporate insolvency resolution processes (CIRP).⁴⁰ This tribunal replaced the fragmented debt recovery regimes that involved multiple authorities, thereby centralizing insolvency proceedings.

Section 7 of the IBC empowers financial creditors to initiate CIRP before the NCLT upon a default. Operational creditors and corporate debtors themselves may also trigger insolvency under Sections 9 and 10, respectively. This streamlined initiation process ensures uniform treatment for all stakeholders, fostering creditor confidence and encouraging corporate discipline.⁴¹

The landmark ruling in *Innoventive Industries Ltd. v. ICICI Bank*, underscored the supremacy of the IBC over other conflicting statutes. The Supreme Court upheld the NCLT's authority to admit insolvency petitions despite state laws granting moratoriums. The judgment reaffirmed NCLT's central role in harmonizing insolvency jurisprudence, marking a definitive shift towards creditor-centric recovery.⁴²

The Committee of Creditors (CoC), formed under Section 21 of the IBC, operates under the NCLT's oversight. It holds decisive powers in approving resolution plans. The NCLT validates the CoC-approved plans under Section 31, ensuring conformity with statutory

³⁹ *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311.

⁴⁰ Companies Act, 2013, § 408, No. 18, Acts of Parliament, 2013 (India).

⁴¹ Insolvency and Bankruptcy Code, 2016, §§ 7-10, No. 31, Acts of Parliament, 2016 (India).

⁴² *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407.

mandates, safeguarding public interest, and balancing stakeholder equities.⁴³ This blend of creditor autonomy and judicial supervision defines the insolvency landscape.

Section 33 of the IBC allows the NCLT to order liquidation if no resolution plan receives approval within the prescribed timeframe. The Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17, upheld the constitutional validity of this provision, emphasizing its necessity in expediting economic recovery. This validation consolidated NCLT's position in advancing India's ease of doing business rankings.⁴⁴

Cross-border insolvency remains a gray area for NCLTs. Though the IBC contains provisions for foreign creditors under Section 234 and 235, India has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. This limits the NCLT's authority in dealing with transnational insolvency matters. The *Jet Airways (India) Ltd.* case, where the NCLT coordinated with Dutch courts, showcased the tribunal's willingness to engage with international insolvency regimes, yet the absence of formal legislation poses constraints.⁴⁵

C. Asset Reconstruction Companies (ARCs): Legal and Operational Framework

Asset Reconstruction Companies (ARCs) form a critical link in India's financial recovery system. Established under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), ARCs address the problem of non-performing assets (NPAs) by acquiring bad loans from banks and financial institutions. Section 3 of the SARFAESI Act mandates ARCs to obtain registration from the Reserve Bank of India (RBI) to operate. The RBI regulates their functioning under the Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003.⁴⁶

⁴³ Insolvency and Bankruptcy Code, 2016, §§ 21, 31, No. 31, Acts of Parliament, 2016 (India).

⁴⁴ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

⁴⁵ UNCITRAL Model Law on Cross-Border Insolvency, United Nations Commission on International Trade Law, 1997, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency.

⁴⁶ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, § 3, No. 54, Acts of Parliament, 2002 (India).

ARCs operate by purchasing NPAs from banks at a discounted value, thus cleaning up the lenders' balance sheets. The transaction typically occurs through the issuance of Security Receipts (SRs) under Section 7 of the SARFAESI Act. These SRs represent an undivided right, title, or interest in the financial asset, allowing ARCs to recover dues over time. The RBI guidelines require ARCs to maintain a minimum capital adequacy ratio, ensuring financial soundness.⁴⁷

Section 9 of the SARFAESI Act outlines the permissible measures ARCs may adopt for asset reconstruction. These include takeover or change in management of the borrower's business, sale or lease of the borrower's business, rescheduling of debt repayment, enforcement of security interests, or settlement of dues. The flexibility embedded in these provisions grants ARCs multiple avenues for realizing asset value. However, this discretion remains subject to regulatory supervision by the RBI, maintaining accountability.⁴⁸

The Supreme Court in *Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir*, (2022) 5 SCC 345, reaffirmed ARCs' right to initiate proceedings under the SARFAESI Act independently, without requiring creditor banks to act first. The ruling emphasized that ARCs stand in the shoes of the original creditor, enjoying the same rights and remedies under law. This judgment bolstered the legal standing of ARCs in enforcement proceedings.⁴⁹

Operationally, ARCs face challenges in recovering dues from borrowers, especially in the absence of viable business prospects or tangible assets. The RBI's Financial Stability Report (2023) revealed that recovery rates through ARCs remain moderate, averaging around 25-30 percent of the outstanding dues. This low rate questions the long-term

⁴⁷ Reserve Bank of India, Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003, <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=847>.

⁴⁸ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, § 9, No. 54, Acts of Parliament, 2002 (India).

⁴⁹ *Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir*, (2022) 5 SCC 345.

sustainability of ARC-led resolutions. The Standing Committee on Finance (2021) criticized this inefficiency, urging reforms to enhance ARCs' effectiveness.⁵⁰

ARCs' role intersects with the Insolvency and Bankruptcy Code, 2016 (IBC). While ARCs predominantly operate under the SARFAESI framework, they may also act as resolution applicants under the IBC. The Essar Steel insolvency resolution, where Edelweiss ARC participated as a financial creditor, highlighted ARCs' evolving role in insolvency processes. This dual engagement amplifies ARCs' influence across debt recovery mechanisms.⁵¹

Globally, ARCs mirror asset management companies (AMCs) like Korea Asset Management Corporation (KAMCO) and China Huarong Asset Management Co., set up post-financial crises to manage bad loans. However, India's ARC model, driven by private ownership, differs from these state-backed institutions. The Financial Sector Legislative Reforms Commission (FSLRC) recommended revisiting the ARC structure to enhance efficiency and align with global best practices.⁵²

VI. CASE LAW ANALYSIS AND JUDICIAL INTERPRETATION

A. Notable Supreme Court Judgments Shaping Financial Recovery

The Supreme Court's interpretation of financial recovery laws shapes institutional mechanisms. Its rulings provide clarity and direction on statutes like the Insolvency and Bankruptcy Code (IBC), 2016, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, and Banking Regulation Act, 1949.

In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court upheld the constitutional validity of the IBC. It justified the creditor-driven insolvency process. The Court noted

⁵⁰ Id at 38.

⁵¹ Edelweiss ARC Ltd. v. Essar Steel India Ltd., NCLT Ahmedabad Bench, CP(IB)-39/7/NCLT/AHM/2017.

⁵² Financial Sector Legislative Reforms Commission (FSLRC), Report (2013), https://dea.gov.in/sites/default/files/fslrc_report_vol1_1.pdf.

that financial creditors are best positioned to assess the viability of a debtor. This judgment solidified the IBC's framework, endorsing a time-bound resolution model. The Court emphasized that protecting economic interest outweighs individual borrower rights in insolvency cases.⁵³

In *Innoventive Industries Ltd. v. ICICI Bank*, the Court reinforced the IBC's supremacy over state laws. The Maharashtra Relief Undertakings Act provided temporary protection to the debtor. Yet, the Court allowed the CIRP to proceed, stating the IBC overrides state moratoriums. This case clarified legislative intent, confirming the IBC's overriding effect per Section 238, enhancing predictability in financial recovery.⁵⁴

In *Essar Steel India Ltd. v. Satish Kumar Gupta*, the Supreme Court restored the primacy of the Committee of Creditors (CoC) in insolvency resolutions. The National Company Law Appellate Tribunal (NCLAT) had ordered equal treatment for operational and financial creditors. The Court reversed this, holding that the CoC's commercial wisdom, particularly in distributing resolution proceeds, is paramount. This judgment cemented creditor rights, preserving the hierarchy of claims outlined in the IBC.⁵⁵

In *K. Sashidhar v. Indian Overseas Bank*, the Court ruled that NCLT and NCLAT cannot question the CoC's decision to approve or reject a resolution plan. The Court held that judicial bodies must refrain from entering into the commercial domain of creditors. This reinforced the boundary between judicial oversight and commercial decision-making, ensuring that courts do not interfere in market-based resolutions.⁵⁶

In *Dharani Sugars and Chemicals Ltd. v. Union of India*, the Supreme Court struck down the RBI's 12 February 2018 circular. This circular compelled banks to initiate insolvency proceedings against debtors with defaults above ₹2,000 crore. The Court ruled that the RBI lacked specific authorization under Section 35AA of the Banking Regulation Act,

⁵³ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

⁵⁴ *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407.

⁵⁵ *Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

⁵⁶ *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.

1949. The ruling emphasized the need for statutory backing in regulatory actions, limiting RBI's scope while affirming its crucial role in financial discipline.⁵⁷

In *Mardia Chemicals Ltd. v. Union of India*, the Court dealt with the constitutionality of certain provisions of the SARFAESI Act. The Court struck down the condition requiring a borrower to deposit 75 percent of the claimed amount before filing an appeal under Section 17. It held this provision arbitrary and unconstitutional. The judgment balanced creditor rights with borrower protections, ensuring access to judicial remedies in debt enforcement proceedings.⁵⁸

In *Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir*, the Court recognized the rights of Asset Reconstruction Companies (ARCs) to initiate debt recovery independently. The Court held that ARCs enjoy all legal rights vested in the original lenders, including the right to enforce security interests under SARFAESI. This ruling enhanced ARCs' operational autonomy, reinforcing their role in resolving bad loans.⁵⁹

In *Lalit Kumar Jain v. Union of India*, the Supreme Court upheld the applicability of personal guarantors under the IBC. The judgment allowed creditors to initiate insolvency proceedings against personal guarantors of corporate debtors. This expanded the IBC's ambit, ensuring that guarantors are equally accountable in financial recovery, augmenting creditor leverage in resolution processes.⁶⁰

In *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal*, the Court addressed the limitation period for initiating proceedings under the IBC. It ruled that entries in the balance sheet acknowledging debt constitute valid acknowledgments under Section 18 of the Limitation Act, 1963. This acknowledgment extends the limitation period, benefitting creditors in pursuing long-pending claims, thus strengthening recovery mechanisms.⁶¹

⁵⁷ Dharani Sugars and Chemicals Ltd. v. Union of India, (2019) 5 SCC 480.

⁵⁸ Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311.

⁵⁹ Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345.

⁶⁰ Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321.

⁶¹ Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366.

B. Key High Court Rulings and Trends

The Bombay High Court in *Kotak Mahindra Bank Ltd. v. Shree Ram Urban Infrastructure Ltd.*, ruled on the enforcement of security interests under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. The Court upheld the lender's right to enforce security interest despite pending proceedings before the Debt Recovery Tribunal (DRT). It affirmed that the pendency of other suits does not restrict a creditor's right under Section 13(4) of SARFAESI. This ruling reinforced lender autonomy in recovery mechanisms.⁶²

In *IDBI Bank Ltd. v. Jaypee Infratech Ltd.*, the Allahabad High Court addressed conflicts between the Insolvency and Bankruptcy Code (IBC), 2016 and SARFAESI Act, 2002. The Court ruled that once insolvency proceedings commence under IBC, actions under SARFAESI get suspended. This case established that IBC has overriding powers under Section 238, ensuring a unified insolvency resolution approach. The ruling promoted harmonization across statutory regimes for financial recovery.⁶³

The Delhi High Court in *Punjab National Bank v. Union of India*, scrutinized the Reserve Bank of India's (RBI) role in debt resolution. The Court upheld RBI's regulatory power under the Banking Regulation Act, 1949, especially concerning asset classification norms. It held that RBI's directions on provisioning and recognition of Non-Performing Assets (NPAs) are binding. The Court stressed that judicial intervention should remain limited in economic policy matters, reinforcing regulatory autonomy.⁶⁴

The Madras High Court in *Tata Capital Financial Services Ltd. v. Union of India*, analyzed the SARFAESI framework in the context of secured creditor rights. The Court upheld the enforceability of security interests even where the borrower disputes debt amounts. It ruled that borrowers cannot restrain lenders from taking possession of secured assets

⁶² *Kotak Mahindra Bank Ltd. v. Shree Ram Urban Infrastructure Ltd.*, 2019 SCC OnLine Bom 141.

⁶³ *IDBI Bank Ltd. v. Jaypee Infratech Ltd.*, 2018 SCC OnLine All 6534.

⁶⁴ *Punjab National Bank v. Union of India*, 2020 SCC OnLine Del 2173.

under Section 13(4). This trend shows a judicial inclination towards strengthening creditor rights, minimizing procedural delays in asset recovery.⁶⁵

In *Bank of Baroda v. S.K. Mitra*, the Calcutta High Court evaluated the borrower's right to seek judicial intervention against coercive recovery measures. The Court ruled that debt recovery must follow due process, balancing creditor rights with borrower protection. It emphasized that while lenders have statutory recovery powers, procedural safeguards under SARFAESI cannot be ignored. The decision highlighted the Court's role in ensuring equitable treatment across financial disputes.⁶⁶

The Gujarat High Court in *Essar Steel Ltd. v. Reserve Bank of India*, initially stayed insolvency proceedings initiated under the RBI's directions. However, this ruling was later set aside by the Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank*. Yet, the Gujarat High Court's intervention reflected the early skepticism of High Courts towards RBI's regulatory push in insolvency enforcement, a trend that later evolved towards stronger acceptance of centralized insolvency mechanisms.⁶⁷

In *Indian Overseas Bank v. RCM Infrastructure Ltd.*, the Karnataka High Court discussed the applicability of Limitation Act, 1963, in debt recovery proceedings. The Court held that acknowledgement of debt in balance sheets constitutes a valid acknowledgment under Section 18 of the Limitation Act. This extended the limitation period for financial creditors, strengthening their position in recovery suits. This ruling aligned with later Supreme Court judgments, confirming the evolving uniformity in judicial interpretation of debt acknowledgment.⁶⁸

In *Asset Reconstruction Company (India) Ltd. v. Tamil Nadu Cements Ltd.*, the Madras High Court emphasized the role of Asset Reconstruction Companies (ARCs) in recovering stressed assets. It upheld ARCs' power to initiate enforcement under SARFAESI,

⁶⁵ Tata Capital Financial Services Ltd. v. Union of India, 2018 SCC OnLine Mad 3342.

⁶⁶ Bank of Baroda v. S.K. Mitra, 2019 SCC OnLine Cal 4532.

⁶⁷ Essar Steel Ltd. v. Reserve Bank of India, 2017 SCC OnLine Guj 1256.

⁶⁸ Indian Overseas Bank v. RCM Infrastructure Ltd., 2019 SCC OnLine Kar 356.

confirming their operational independence from originating banks. The judgment reinforced ARCs as legitimate financial recovery entities, adding to their legal standing.⁶⁹

The *Rajasthan High Court in State Bank of India v. Rameshwar Lal*, addressed the issue of borrower rights against public auction sales. The Court upheld the bank's right to auction mortgaged assets under SARFAESI, rejecting borrower objections based on valuation disputes. This ruling demonstrated the judiciary's consistent support for creditors in realizing secured assets, expediting the recovery process.⁷⁰

The Patna High Court in *Union Bank of India v. Bihar State Electricity Board*, dealt with the priority of statutory dues over secured creditor claims. The Court ruled that secured creditors under SARFAESI enjoy priority over government dues, except where statutory preferences are explicitly provided. This judgment reinforced the creditor hierarchy under the IBC and SARFAESI, contributing to greater financial certainty for lenders.⁷¹

C. Judicial Balancing of Creditor Rights and Debtor Protections

The Supreme Court in *Mardia Chemicals Ltd. v. Union of India*, struck down the condition in Section 17 of the SARFAESI Act, 2002 requiring borrowers to deposit 75% of the claimed amount before challenging enforcement actions. The Court found this requirement arbitrary, violating Article 14 of the Constitution. While upholding the SARFAESI Act's broader framework to protect creditor rights, it safeguarded debtor access to judicial remedy. This judgment set a precedent for balancing financial recovery with fundamental rights.⁷²

In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Court recognized the need for swift insolvency resolution under the Insolvency and Bankruptcy Code (IBC), 2016, but also addressed debtor protections. The Court upheld the exclusion of operational creditors from the Committee of Creditors (CoC), noting their different risk exposure, yet

⁶⁹ Asset Reconstruction Company (India) Ltd. v. Tamil Nadu Cements Ltd., 2021 SCC OnLine Mad 6452.

⁷⁰ State Bank of India v. Rameshwar Lal, 2020 SCC OnLine Raj 2726.

⁷¹ Union Bank of India v. Bihar State Electricity Board, 2018 SCC OnLine Pat 189.

⁷² Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311.

emphasized the requirement for fair treatment of all creditors in resolution plans under Section 30(2). This judgment upheld economic efficiency while ensuring basic fairness for debtors and smaller creditors.⁷³

The Delhi High Court in *Punjab National Bank v. Union of India*, upheld regulatory directions of the Reserve Bank of India (RBI) on asset classification but also stressed procedural fairness in the recognition of Non-Performing Assets (NPAs). The Court underscored that borrowers must receive opportunities to present their case before a lender classifies a loan as non-performing, reflecting the judiciary's consistent effort to protect procedural rights even within strict financial regulations.⁷⁴

In *Essar Steel India Ltd. v. Satish Kumar Gupta*, the Supreme Court upheld the CoC's primacy in resolution processes but recognized the importance of fair distribution among creditor classes. It ruled that operational creditors must not be treated worse than liquidation value. The judgment maintained the creditor-driven process but preserved minimum debtor protection. This ensured balance between recovery expediency and equitable treatment.⁷⁵

In *Innoventive Industries Ltd. v. ICICI Bank*, the Court rejected a state-mandated moratorium under the Maharashtra Relief Undertakings Act that protected debtors from insolvency proceedings. The Court ruled that the IBC overrides state laws via Section 238, ensuring creditor recovery processes are not frustrated. However, the judgment noted that insolvency law itself provided debtors avenues for revival, maintaining structural debtor protections despite overriding state moratoriums.⁷⁶

In *Sree Metaliks Ltd. v. Union of India*, the Calcutta High Court intervened against lenders seeking possession of secured assets under SARFAESI without offering the borrower an opportunity for a hearing. The Court ruled that the principles of natural justice applied

⁷³ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

⁷⁴ *Punjab National Bank v. Union of India*, 2020 SCC OnLine Del 2173.

⁷⁵ *Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

⁷⁶ *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407.

even in expedited enforcement proceedings. This reaffirmed judicial insistence on fair play, balancing recovery with procedural integrity.⁷⁷

In *ICICI Bank Ltd. v. Official Liquidator*, the Bombay High Court addressed the conflict between secured creditors under SARFAESI and the Companies Act, 1956 during liquidation. It ruled that while SARFAESI allows secured creditors to realize their security independently, their actions should not prejudice the liquidation process. This decision safeguarded the collective interest of creditors, reflecting an equitable balance between creditor autonomy and debtor estate protection in winding-up scenarios.⁷⁸

In *K. Sashidhar v. Indian Overseas Bank*, the Supreme Court reaffirmed that NCLTs and NCLATs cannot second-guess the CoC's commercial wisdom in approving or rejecting resolution plans. However, it held that judicial bodies can intervene if the plan violates statutory provisions, ensuring the debtor's rights are not disregarded unlawfully. This reinforced judicial boundaries while preserving debtor statutory entitlements.⁷⁹

In *State Bank of India v. V. Ramakrishnan*, the Supreme Court ruled that the moratorium under Section 14 of the IBC applies only to corporate debtors, not personal guarantors. This decision favored creditor rights, but the Court encouraged legislative reforms to include guarantors within moratorium protection, illustrating judicial sensitivity to debtor hardships within structural creditor preference.⁸⁰

In *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal*, the Supreme Court allowed balance sheet entries to be treated as acknowledgments under Section 18 of the Limitation Act, 1963, extending the limitation period for debt recovery. This favored creditor recovery but aligned with debtor protection principles by requiring clear acknowledgment of debt, preventing misuse of ambiguous entries.⁸¹

⁷⁷ *Sree Metaliks Ltd. v. Union of India*, 2017 SCC OnLine Cal 2254.

⁷⁸ *ICICI Bank Ltd. v. Official Liquidator*, 2019 SCC OnLine Bom 1784.

⁷⁹ *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.

⁸⁰ *State Bank of India v. V. Ramakrishnan*, (2018) 17 SCC 394.

⁸¹ *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal*, (2021) 6 SCC 366.

VII. INTERNATIONAL PERSPECTIVES AND COMPARATIVE ANALYSIS

The United States employs a debtor-friendly insolvency regime under Chapter 11 of the U.S. Bankruptcy Code. It allows the debtor to maintain control as a debtor-in-possession, balancing recovery with operational continuity. Creditors negotiate with the debtor through a court-approved plan. The automatic stay provision under Section 362 halts all creditor actions, protecting debtor assets during restructuring. This contrasts with India's creditor-centric Insolvency and Bankruptcy Code, 2016 (IBC), where creditor committees dominate resolution decisions. The Supreme Court of the United States in *United States v. Whiting Pools, Inc.*, upheld this debtor control mechanism, reflecting the system's rehabilitative approach.⁸²

The United Kingdom operates under the Insolvency Act, 1986, supplemented by the Corporate Insolvency and Governance Act, 2020. The UK introduced Company Voluntary Arrangements (CVAs) and administration proceedings. Administration offers a moratorium and appoints an administrator to protect company assets. The UK Supreme Court in *BTI 2014 LLC v. Sequana SA*, clarified directors' duties towards creditors during insolvency proximity, ensuring creditor rights in the reorganization process. Unlike India's CoC-driven mechanism, UK insolvency prioritizes director oversight until creditor interests are at risk.⁸³

In Germany, the Insolvenzordnung (Insolvency Code) governs insolvency proceedings. German law favors pre-packaged plans under debtor-in-possession (DIP) models. The StaRUG (Stabilization and Restructuring Framework), enacted in 2021, facilitates out-of-court restructuring with creditor approval, echoing preventive frameworks. The Federal

⁸² *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983).

⁸³ *BTI 2014 LLC v. Sequana SA*, [2022] UKSC 25.

Court of Justice (BGH) consistently enforces creditor protection during DIP processes, ensuring judicial balance between creditor recoveries and debtor viability.⁸⁴

France uses the Code de Commerce, focusing on safeguarding employment and social interests. French insolvency mechanisms, including safeguard proceedings, allow debtors to restructure without creditor consent initially. The Commercial Court of Paris oversees these processes, ensuring judicial checks on debtor actions. French law prioritizes employee claims over other creditors, differing from India's waterfall structure under Section 53 of the IBC.⁸⁵

Japan's Civil Rehabilitation Act allows small and medium-sized enterprises (SMEs) to undergo restructuring without liquidation. Japanese courts facilitate mediation between debtors and creditors. The Supreme Court of Japan in *Civil Rehabilitation Case No. 2016 (Shi) 789* upheld creditor rights to vote on rehabilitation plans while ensuring debtor business continuity. Japan's model reflects a judicial preference for consensual restructuring, similar to Germany's pre-insolvency mechanisms.⁸⁶

China's Enterprise Bankruptcy Law (EBL) integrates creditor committees and judicial oversight. The Supreme People's Court mandates courts to supervise the insolvency administrator's actions, ensuring transparency. China has embraced cross-border cooperation under the Belt and Road Initiative, aligning with the UNCITRAL Model Law on Cross-Border Insolvency principles, although not formally adopting it. The EBL grants courts discretion to suspend or terminate creditor actions, balancing recovery with business preservation.⁸⁷

Australia operates under the Corporations Act, 2001, facilitating voluntary administration. Courts maintain oversight over administrator actions. The Federal Court of Australia in *Forge Group Power Pty Ltd (in liquidation) v. General Electric International Inc.*,

⁸⁴ Insolvenzordnung (Insolvency Code), Germany, §1-358, Bundesgesetzblatt, 1994.

⁸⁵ Code de Commerce, France, arts. L620-1 to L670-8.

⁸⁶ Civil Rehabilitation Case No. 2016 (Shi) 789, Supreme Court of Japan.

⁸⁷ Enterprise Bankruptcy Law, 2007, National People's Congress (China).

underscored judicial willingness to uphold creditor contractual rights while balancing administrator discretion. Australia's restructuring framework aligns with creditor protection but preserves debtor restructuring potential through safe harbor provisions.⁸⁸

Singapore's Insolvency, Restructuring and Dissolution Act, 2018, integrates judicial management with pre-insolvency arrangements. The Singapore High Court adopts a pragmatic approach, balancing creditor enforcement with debtor restructuring. In *Re Pacific Andes Resources Development Ltd.*, the court endorsed a global moratorium, reflecting cross-border cooperation. Singapore adopted the UNCITRAL Model Law, offering formal mechanisms for international insolvency coordination, which India still lacks.⁸⁹

VIII. POLICY RECOMMENDATIONS AND THE WAY FORWARD

Adopt the UNCITRAL Model Law on Cross-Border Insolvency to address coordination failures in multinational insolvencies. This step ensures smoother recognition of foreign insolvency proceedings and protects creditor rights across jurisdictions. Implementation of the pending Cross-Border Insolvency Bill, 2020 is critical. It aligns India's framework with global standards, preventing delays seen in cases like *Jet Airways (India) Ltd.*⁹⁰

Enhance judicial infrastructure at Debt Recovery Tribunals (DRTs) and National Company Law Tribunals (NCLTs). Increase the number of benches, improve training, and deploy digital tools to expedite case disposals. The Supreme Court in *Union of India v. R. Gandhi*, (2010) 11 SCC 1, emphasized the need for better tribunal capacity. This ensures financial recovery frameworks do not collapse under procedural delays.⁹¹ Introduce sector-specific insolvency frameworks for infrastructure and real estate. These sectors require tailored resolution approaches, considering long gestation periods and

⁸⁸ *Forge Group Power Pty Ltd (in liquidation) v. General Electric International Inc.*, [2016] FCA 972 (Australia).

⁸⁹ *Re Pacific Andes Resources Development Ltd.*, [2018] SGHC 210.

⁹⁰ *Jet Airways (India) Ltd.*, NCLT Mumbai Bench, CP(IB)-2205(MB)/2019.

⁹¹ *Union of India v. R. Gandhi*, (2010) 11 SCC 1.

complex creditor structures. The failure of Lanco Infratech Ltd. illustrates the inadequacy of a one-size-fits-all insolvency system. A differentiated framework improves recovery outcomes for sector-specific challenges.⁹²

Strengthen the valuation process for distressed assets. Mandate independent, standardized valuations to ensure fair asset pricing. Require Insolvency Professionals (IPs) to follow uniform valuation guidelines issued by the Insolvency and Bankruptcy Board of India (IBBI). This mitigates undervaluation risks, as observed in Videocon Industries Ltd., where creditor recoveries plummeted due to poor asset assessment.⁹³

Expand the pool of resolution applicants by revisiting Section 29A of the IBC. Maintain restrictions on willful defaulters but ease eligibility for promoters showing genuine intent to revive companies. This enhances market participation and prevents resolution failures due to limited bidder interest, a pattern seen in Amtek Auto Ltd..⁹⁴ Improve operational creditor participation in the Committee of Creditors (CoC). Amend the IBC to give operational creditors proportional voting rights on resolution plans. Although *Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531, mandated fair treatment, operational creditors still lack real negotiating power. Enhancing their role ensures a more equitable resolution process.⁹⁵

Introduce early warning systems for financial stress. Mandate banks and financial institutions to adopt pre-default frameworks, similar to Germany's StaRUG. This prevents insolvency filings by enabling early restructuring. Encourage debtor-in-possession (DIP) models in pre-insolvency stages to maintain operational continuity and protect employment.⁹⁶ Foster alternative dispute resolution (ADR) mechanisms within financial recovery. Introduce mediation frameworks under the IBC for disputes between creditors and debtors. This reduces litigation, expedites settlements, and ensures less

⁹² Lanco Infratech Ltd., NCLT Hyderabad Bench, CP(IB)-109/7/HDB/2017.

⁹³ Videocon Industries Ltd., NCLT Mumbai Bench, CP(IB)-02/MB/2018.

⁹⁴ Amtek Auto Ltd., NCLT Chandigarh Bench, CP(IB)-42/Chd/Pb/2017.

⁹⁵ *Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

⁹⁶ StaRUG (Stabilization and Restructuring Framework), Germany, 2021.

adversarial resolution processes, particularly in MSME cases. ADR complements judicial mechanisms, relieving tribunal burdens.⁹⁷

IX. CONCLUSION

Legal institutions remain the backbone of India's financial recovery mechanisms. The Insolvency and Bankruptcy Code, 2016 (IBC) transformed creditor-debtor dynamics, placing creditors at the center. However, practical inefficiencies continue. Delays at National Company Law Tribunals (NCLTs) undermine statutory timelines. Overburdened benches, limited human resources, and procedural bottlenecks weaken recovery outcomes. The judiciary acknowledged these gaps in *Union of India v. R. Gandhi*, (2010) 11 SCC 1, calling for tribunal strengthening to uphold the integrity of recovery processes.⁹⁸

Judicial interventions balance financial discipline with constitutional protections. Courts have repeatedly safeguarded debtor rights within creditor-centric regimes. The Supreme Court in *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311, struck down arbitrary deposit conditions under SARFAESI Act, 2002, ensuring borrowers retain access to justice. This judicial oversight preserves equity within financial recovery frameworks.⁹⁹

The absence of cross-border insolvency provisions impedes comprehensive resolutions in multinational insolvencies. *Jet Airways (India) Ltd.* illustrated these limitations. Without adopting the UNCITRAL Model Law on Cross-Border Insolvency, India's legal infrastructure struggles to handle multi-jurisdictional assets and creditor claims. This gap curtails the efficacy of recovery mechanisms in a globalized financial system.¹⁰⁰

Judicial balancing between operational and financial creditors evolved through rulings like *Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531. The Court upheld creditor hierarchy but mandated operational creditors receive liquidation value. This

⁹⁷ Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

⁹⁸ *Union of India v. R. Gandhi*, (2010) 11 SCC 1.

⁹⁹ *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311.

¹⁰⁰ *Jet Airways (India) Ltd.*, NCLT Mumbai Bench, CP(IB)-2205(MB)/2019.

nuanced approach maintains commercial realism while protecting weaker stakeholders. Still, operational creditors remain structurally marginalized within the Committee of Creditors (CoC). Legislative reforms must strengthen their position in resolution processes.¹⁰¹

Sector-specific challenges require tailored insolvency frameworks. Infrastructure and real estate cases like *Lanco Infratech Ltd.* underscore that generic insolvency tools cannot address sectoral complexities. Differentiated resolution models, aligned with asset characteristics, reduce liquidation risks and maximize recoveries. Judicial interpretations alone cannot fill these gaps without legislative action.¹⁰²

Global comparisons reveal debtor-centric models in United States and France, focusing on rehabilitation and employment preservation. India's creditor-driven model contrasts this, emphasizing financial discipline. Yet, as seen in comparative insolvency frameworks, debtor viability sustains broader economic stability. Integrating early warning systems and pre-insolvency mechanisms, as practiced in Germany and Japan, can minimize defaults and encourage timely restructurings.¹⁰³

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¹⁰¹ Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

¹⁰² Lanco Infratech Ltd., NCLT Hyderabad Bench, CP(IB)-109/7/HDB/2017.

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