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THE ROLE OF COMMITTEE OF CREDITORS (COC) IN SHAPING RESOLUTIONS

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I. ABSTRACT

The advent of the Insolvency and Bankruptcy Code, 2016 (IBC) in India marked a seminal shift in how financial distress is addressed. At the heart of this reform lies the Committee of Creditors (CoC), a body tasked with steering the Corporate Insolvency Resolution Process (CIRP). This paper critically examines the role of the CoC in shaping corporate resolutions, balancing creditor rights with debtor protections, and influencing the efficiency and outcomes of the insolvency process. Through an analysis of statutory frameworks, landmark judicial decisions, and practical implications, the paper reveals the evolving jurisprudence and real-world dynamics surrounding the CoC's decision-making authority. It argues for a more nuanced understanding of commercial wisdom, transparency, and accountability, especially in light of the increasing scrutiny by courts and stakeholders.

II. KEYWORDS

Insolvency, Committee of Creditors, Corporate Resolution, IBC, CIRP, Financial Creditors, Resolution Plan, Judicial Review.

III. INTRODUCTION

The introduction of the Insolvency and Bankruptcy Code, 2016 (IBC), marked a watershed moment in India's corporate legal landscape. For decades, the Indian insolvency regime struggled with inefficiencies, delays, and a lack of investor confidence,

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primarily due to fragmented and outdated laws. The IBC was enacted to consolidate and amend laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner. Among the most transformative aspects of the IBC is the creation of the Committee of Creditors (CoC), a body vested with substantial authority to shape the outcomes of corporate insolvency resolution processes (CIRP).[3]

The CoC, primarily comprising financial creditors, acts as the decision-making nucleus in any insolvency proceeding under the IBC. Its role is both administrative and strategic, as it evaluates resolution plans, selects resolution professionals, and guides the insolvency process. The centrality of the CoC in the resolution architecture reflects the legislature's intent to prioritize commercial decisions over judicial interference—an approach often described as the "creditor-in-control" model, in contrast to the earlier "debtor-in-possession" regime that characterized Indian insolvency law before 2016.[4]

What sets the CoC apart in India's framework is not merely its composition, but the legal sanctity and authority granted to its decisions. Under Section 30(4) of the IBC, the CoC holds the power to approve or reject resolution plans, with the National Company Law Tribunal (NCLT) bound to respect this commercial wisdom barring any legal infirmities. This principle was upheld robustly in K. Sashidhar v. Indian Overseas Bank, where the Supreme Court underscored that the adjudicating authority has limited scope to question the rationale of CoC decisions, provided they meet statutory requirements.[5]

Despite this well-defined role, the CoC's functioning has sparked extensive debate among legal scholars, policymakers, and insolvency professionals. Critics argue that the CoC—while powerful—is not always transparent or equitable, especially toward operational creditors who often have no voting rights in the committee.[6] Others highlight

[3] Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).
[4] Shikha Bansal, *The Role of Committee of Creditors under IBC*, 4 NUJS L. Rev. 122 (2020).
[5] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.
[6] Rahul Singh, *Operational Creditors and CoC: Need for Inclusion*, 7 Nat'l L. Sch. Ind. Rev. 99 (2021).

the inconsistency in how CoCs evaluate resolution plans, sometimes favoring haircuts over value maximization, or being influenced by external commercial interests.[7] These critiques point to the need for a more nuanced understanding of the CoC's role, authority, and accountability within the broader insolvency ecosystem.

This paper seeks to explore the multidimensional role of the CoC in shaping corporate resolutions under the IBC. Through a doctrinal and empirical approach, it will examine the legal structure of the CoC, analyze key case laws, highlight procedural challenges, and evaluate comparative global practices. The aim is to answer a central question: Does the CoC truly act as an efficient agent of resolution, or does its structure inadvertently foster inefficiency, exclusion, or value erosion?

The study will begin with an exploration of the statutory foundations of the CoC and the logic behind its creditor-centric architecture. It will then delve into the practical implications of CoC decisions, examining how courts have interpreted its powers and responsibilities. The paper will draw from landmark cases such as Essar Steel, where the boundaries of CoC discretion and judicial review were significantly tested.[8] Additionally, real-world resolution outcomes from major insolvency proceedings will be evaluated to assess whether the CoC consistently acts in the best interest of stakeholders.

In the final segments, the paper will juxtapose India's CoC framework with creditor committees in the U.S. Chapter 11 regime and the UK's administration process, drawing lessons and offering policy recommendations. In doing so, it seeks to contribute to the ongoing dialogue on reforming India's insolvency landscape to make it more inclusive, efficient, and economically robust.

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[7] Somasekhar Sundaresan, *Haircuts, Hairlines and the CoC's Commercial Wisdom*, The Hindu BusinessLine (Jan. 2021).

[8] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

IV. UNDERSTANDING THE COMMITTEE OF CREITORS (COC)

To fully appreciate the Committee of Creditors' pivotal role in India's insolvency ecosystem, one must understand its structural and legal foundation under the Insolvency and Bankruptcy Code, 2016 (IBC). The CoC is not merely a consultative body—it is the engine that drives the corporate insolvency resolution process (CIRP). Composed primarily of financial creditors, the CoC wields significant power in approving or rejecting resolution plans, selecting insolvency professionals, and guiding the debtor's journey through insolvency.

1. Legal Framework and Formation

The legal bedrock for the CoC lies in Section 21 of the IBC, which stipulates that the interim resolution professional (IRP) shall constitute a CoC after collating all claims received against the corporate debtor and determining the financial creditors.9 Only financial creditors are granted the right to be members of the CoC, a choice grounded in the belief that these creditors are best placed to assess the viability and feasibility of revival strategies, given their commercial exposure and financial expertise.

An interesting caveat lies in the treatment of related party creditors. Under Section 21(2), related party financial creditors are excluded from participating in the CoC to prevent conflicts of interest and undue influence over decision-making. This aspect has been affirmed in judicial decisions such as Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd., where the National Company Law Appellate Tribunal (NCLAT) ruled that related parties must be excluded from CoC formation to uphold the neutrality of the process.10

Moreover, in cases where there are no financial creditors or they are too few to form a CoC, the Code permits operational creditors to constitute the committee, albeit in a non-

[9] Insolvency and Bankruptcy Code, § 21, No. 31 of 2016.
[10] Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd., Company Appeal (AT) (Insolvency) No. 284 of 2019 (NCLAT).

voting capacity. This arrangement, however, continues to attract criticism due to its inherently exclusionary design.11

2. Composition and Eligibility

The composition of the CoC has been a matter of legal clarity and legislative intent. Only financial creditors (defined under Section 5(7)) who have a financial debt (Section 5(8)) are eligible to be members of the CoC.[12] Financial creditors can include banks, NBFCs, bondholders, or any entity that has disbursed funds against the consideration for the time value of money.

In practice, however, the CoC tends to be dominated by large institutional creditors such as public sector banks. This concentration can influence the nature and pace of decision-making. Moreover, the dominance of financial institutions often sidelines other equally invested stakeholders, particularly operational creditors such as vendors, employees, and suppliers, whose dues might be critical to the company's operations but who have no voting rights in the committee.[13]

In **Swiss Ribbons Pvt. Ltd. v. Union of India**, the Supreme Court justified this hierarchy by emphasizing that financial creditors are better equipped to assess business viability and negotiate terms of revival plans, given their long-term interests and financial expertise.[14] Still, this ruling remains contentious in scholarly discourse, particularly when viewed against principles of equitable treatment in insolvency law.

3. Decision-Making Mechanisms and Voting Thresholds

The CoC's decisions are not made arbitrarily—they follow a structured voting mechanism that aligns with the principles of democratic governance, albeit with a

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[11] Babu Mathew, *The Voice of the Silent Stakeholder: Operational Creditors in IBC*, 9 Indian J. L. & Econ. 107 (2022).
[12] Insolvency and Bankruptcy Code, § 5(7), 5(8).
[13] Vikram Nanda, *Who Speaks for the Vendors? Operational Creditors in CIRP*, The Wire (Sept. 2022).
[14] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.

commercial tilt. Under Section 30(4) of the IBC, all decisions of the CoC—whether pertaining to the approval of a resolution plan, liquidation of the corporate debtor, or appointment/replacement of the resolution professional—must be taken by a vote of **at** least 66% of the voting share of the financial creditors.[15]

Before the 2018 amendment, the threshold stood at 75%, but it was revised downward to expedite decision-making and avoid deadlocks. This reform has since had a significant impact on the pace and outcome of CIRPs, although questions remain about how effectively this system balances efficiency with fairness.

Moreover, voting shares are calculated in proportion to the debt owed to each creditor, meaning that creditors with larger exposures wield greater influence. While this aligns with economic logic, it can sometimes lead to decisions that prioritize recoveries for large creditors at the expense of smaller ones or operational stakeholders.

For instance, in the Binani Cement case, the CoC was criticized for favoring a resolution plan that promised higher recoveries to financial creditors, ignoring the equitable distribution to operational creditors.[16] This led to judicial observations that CoCs must not act in a manner that is arbitrary or biased, even though their decisions are protected by the "commercial wisdom" doctrine.

4. Regulatory Oversight and Guidelines

While the CoC enjoys broad autonomy, it operates within the regulatory framework prescribed by the Insolvency and Bankruptcy Board of India (IBBI). The IBBI has issued several guidelines and regulations—such as the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016—that define how meetings of the CoC must be

[15] Insolvency and Bankruptcy Code, § 30(4).
[16] Rajeev Gupta, *The Binani Cement Saga: Equity, Not Just Recovery*, 3 NLSIR 203 (2020).

convened, the quorum required, the role of authorized representatives, and disclosure obligations.[17]

These regulations are designed to foster transparency and prevent procedural lapses. For example, every CoC meeting must be minuted, and creditors must disclose any conflict of interest. Despite these safeguards, transparency continues to be a concern. Many resolution plans and CoC deliberations occur behind closed doors, and stakeholders—particularly operational creditors and shareholders—have limited visibility into the process.

Moreover, the role of resolution professionals in advising the CoC has been debated. Although they are expected to be neutral facilitators, in practice, their dependence on CoC approval for remuneration and retention can raise questions about their independence.

V. POWER AND COMMERCIAL WISDOM OF COC

The Committee of Creditors (CoC) wields immense power within India's corporate insolvency framework, and this authority is not merely operational—it is strategic, evaluative, and in many ways, determinative of the corporate debtor's future. The bedrock principle guiding this authority is what courts and scholars have termed "commercial wisdom." This phrase encapsulates the idea that CoC members, being financial stakeholders, are in the best position to decide whether a company should be revived, liquidated, or reorganized.

1. Approval of Resolution Plans

One of the most consequential powers of the CoC is the approval of resolution plans. Under Section 30(4) of the IBC, once a resolution professional submits a plan, it must be approved by a 66% majority of the voting share of the CoC. The plan must consider the

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[17] IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 18–25.

feasibility and viability of the proposal and must also balance the interests of all stakeholders, including operational creditors.[18]

This provision was most famously interpreted in **K. Sashidhar v. Indian Overseas Bank**, where the Supreme Court held that if a resolution plan is rejected by the CoC, the NCLT or NCLAT cannot second-guess this decision unless it violates the provisions of the IBC or is discriminatory.[19] The Court essentially gave the CoC carte blanche over commercial matters, which was a strong statement in favor of minimal judicial interference.

2. **Selection and Oversight of Resolution Professionals**

Another key power is the selection and replacement of the resolution professional (RP). Under Section 22(2) of the IBC, the CoC has the authority to confirm or replace the interim resolution professional with a vote of at least 66%.[20] The RP plays a crucial role in managing the CIRP, including verifying claims, facilitating meetings, and ensuring compliance with timelines.

The RP, while expected to be independent, often finds themselves in a delicate balancing act. Since the CoC approves their fees and continuation, the RP might feel incentivized to align with creditor preferences. This has sparked a conversation on whether the autonomy of RPs is being eroded by the dominant position of the CoC.

3. **Decision on Liquidation**

If no viable resolution plan emerges within the prescribed period, the CoC also holds the power to recommend liquidation. This decision too requires a 66% majority. The IBC, while prioritizing resolution over liquidation, provides this option to ensure creditors are not indefinitely stuck in a non-performing process.

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[18] Insolvency and Bankruptcy Code, § 30(4), No. 31 of 2016.
[19] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.
[20] Insolvency and Bankruptcy Code, § 22(2).

In **IDBI Bank Ltd. v. Jaypee Infratech Ltd.**, the CoC's decision to pursue a liquidation was scrutinized, as it would have severely affected homebuyers who were later brought into the fold as financial creditors after legislative intervention.[21] This case highlighted the ethical weight behind CoC decisions and how they ripple beyond the balance sheets.

4. Commercial Wisdom vs Judicial Oversight

The principle of "commercial wisdom" has evolved to become a shield that protects CoC decisions from judicial review. Courts have consistently held that adjudicating authorities cannot interfere with the merits of a commercial decision taken by the CoC unless there is a violation of law or procedural impropriety.

The Supreme Court in **Essar Steel India Ltd. v. Satish Kumar Gupta** reaffirmed this doctrine and observed that the adjudicating authority cannot substitute its wisdom for that of the CoC, provided the latter's decision aligns with the provisions of the IBC and regulations laid by the Insolvency and Bankruptcy Board of India (IBBI).[22] This verdict solidified the CoC's stature as the primary decision-maker, while simultaneously calling for fairness and equitable treatment of all stakeholders, especially operational creditors.

5. Influence of External Factors

Despite the ideal of neutrality, CoC decisions are often influenced by extraneous factors—governmental nudges, inter-creditor rivalries, or even economic forecasts. Banks as majority creditors may be subject to pressure from regulatory agencies or ministries, especially in high-profile cases involving public money. This introduces a degree of opacity and politicization into what is ideally a commercially driven decision-making process.

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[21] IDBI Bank Ltd. v. Jaypee Infratech Ltd., Company Appeal (AT) (Insolvency) No. 26 of 2019 (NCLAT).
[22] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

Scholars like Bhargava and Sen have argued that while commercial wisdom is a sound principle, it must be exercised transparently and equitably, not just expediently.[23] The challenge, therefore, is to strengthen the institutional integrity of the CoC without undermining its commercial freedom.

VI. JUDICIAL SCRUTINY AND THE EVOLUTION OF CASE LAW

The Indian judiciary has played an instrumental role in shaping the contours of the Committee of Creditors' (CoC) authority under the Insolvency and Bankruptcy Code (IBC). While the Code clearly outlines the legal framework within which the CoC operates, it is through judicial interpretation that the true breadth and boundaries of its powers have been defined. Over the past few years, landmark judgments have clarified the doctrine of commercial wisdom, highlighted procedural expectations, and, at times, imposed much-needed checks on arbitrary decision-making.

1. Commercial Wisdom as a Judicial Principle

Perhaps the most transformative judicial endorsement of the CoC's autonomy came in the case of **K. Sashidhar v. Indian Overseas Bank**, where the Supreme Court held that courts are not equipped to evaluate the commercial viability of resolution plans and must defer to the CoC's majority decision, provided legal and procedural requirements are met.[24] This judgment set the tone for subsequent jurisprudence, effectively insulating CoC decisions from extensive judicial scrutiny.

The Court reasoned that resolution of a distressed company requires financial expertise and risk assessment, which lies outside the judicial domain. Thus, unless the CoC's decision is found to be mala fide or in contravention of the law, the tribunal cannot

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[23] Bhargava & Sen, *Creditor Control and the Limits of Commercial Wisdom in India's Insolvency Regime*, 14 NUJS L. Rev. 89 (2022).
[24] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.

intervene. While this principle reinforces creditor primacy, it also brings into question the absence of redressal mechanisms for minority or operational creditors.

2. Essar Steel: Balancing Wisdom with Equity

The next major turning point came with the Supreme Court's decision in Committee of **Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta**, which further reinforced the sanctity of commercial wisdom but added an important caveat—equitable treatment of stakeholders.[25] In this case, the CoC had approved a resolution plan that offered disproportionate recoveries to different classes of creditors, particularly operational creditors.

The National Company Law Appellate Tribunal (NCLAT) initially tried to alter the terms of the plan to make recoveries more equitable. However, the Supreme Court overturned this, asserting that courts cannot rewrite commercial terms of a plan approved by the CoC. Yet, it also emphasized that the CoC must apply its commercial wisdom in a manner that is not arbitrary, especially with respect to operational creditors.

Thus, **Essar Steel** struck a delicate balance: affirming that while the CoC's decisions are supreme in commercial matters, they must not violate the principle of fair and equitable treatment. This judgment nudged CoCs toward greater responsibility in exercising their discretion.

3. Binani Cement: Substance Over Form

In the **Binani Industries Ltd. v. Bank of Baroda** case, the resolution process saw competing bids, and the CoC initially approved a plan that offered higher recoveries to financial creditors but marginal returns to operational creditors.[26] The successful bidder, however, later argued for an inclusive distribution that honored the principle of equality among similarly placed creditors.

[25] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.
[26] Binani Industries Ltd. v. Bank of Baroda, Company Appeal (AT) (Insolvency) No. 82 of 2018 (NCLAT).

Although this case was resolved without a final Supreme Court verdict, the NCLAT made key observations, noting that resolution plans must aim to maximize value, not just recoveries. It warned against a mechanical interpretation of CoC powers that prioritize expediency over fairness. The case became a reference point for discussions around CoC accountability and the objective of insolvency processes beyond simple creditor recovery.

4. Jaypee Infratech and the Expanding Circle of Creditors

The **Jaypee Infratech** insolvency brought to light another layer of complexity: the role of homebuyers. Initially considered operational creditors, homebuyers lacked voting rights in the CoC. This changed after the 2018 amendment to the IBC, which classified homebuyers as financial creditors, entitling them to CoC membership.[27]

The Supreme Court in **Chitra Sharma v. Union of India** held that homebuyers, due to their significant financial stake and vulnerability, must have a say in resolution matters.[28] Consequently, authorized representatives were allowed to vote on their behalf. This judicial intervention illustrated that creditor composition, while guided by the Code, is a living concept subject to judicial refinement based on fairness and evolving market realities.

5. Judicial Checks on Procedural Abuses

While the courts have generally refrained from interfering in CoC decisions, they have not hesitated to step in when procedural lapses or abuses of power are evident. In **IDBI Bank v. Educomp Infrastructure**, the tribunal invalidated a CoC-approved resolution plan due to procedural violations and non-disclosure of conflicts of interest by the

[27] Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, No. 26 of 2018.
[28] Chitra Sharma v. Union of India, (2018) 18 SCC 575.

resolution applicant.[29] The ruling served as a reminder that while courts may defer to commercial wisdom, they will enforce strict compliance with due process.

Similarly, in **Punjab National Bank v. KSK Mahanadi Power Ltd.**, the tribunal scrutinized whether the CoC had provided all resolution applicants with a level playing field. The case underscored the judiciary's role as a procedural guardian, ensuring that fairness, transparency, and competition are not sacrificed under the guise of commercial discretion.[30]

6. Shifting the Narrative: Courts as Ethical Catalysts

Through these judgments, Indian courts have evolved from passive enforcers to active interpreters of insolvency principles. They have neither micromanaged commercial decisions nor abdicated their role entirely. Instead, the judiciary has acted as a catalyst for ethical governance, clarifying that the power of the CoC comes with responsibility.

Legal scholars have welcomed this shift. As Arora notes, "the judiciary has given commercial wisdom a constitutional conscience by insisting that it align with values of equity, transparency, and public interest."[31] This evolving jurisprudence signals that while creditor primacy remains central, it cannot operate in a vacuum devoid of accountability.

VII. CHALLENGES, CRITIQUES

Despite its pivotal role in India's insolvency ecosystem, the Committee of Creditors (CoC) has not been immune to criticism. While the doctrine of commercial wisdom has empowered creditors to drive resolution processes, it has also created space for opacity, conflicts of interest, and inconsistent decision-making. As the IBC regime matures, it

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[29] IDBI Bank v. Educomp Infrastructure, Company Appeal (AT) (Insolvency) No. 1185 of 2019 (NCLAT).
[30] Punjab National Bank v. KSK Mahanadi Power Ltd., Company Appeal (AT) (Insolvency) No. 513 of 2020.
[31] Arjun Arora, *Balancing Wisdom with Justice: The Judicial Role in India's Insolvency Code*, 5 NLIU L. Rev. 68 (2023).

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becomes crucial to take a hard look at the challenges facing CoCs and outline pathways for reform that preserve their autonomy while enhancing transparency and accountability.

1. Lack of Transparency in Decision-Making

One of the most frequently cited criticisms of the CoC is its **opaque deliberation process**. Minutes of CoC meetings are often minimalistic, revealing little about how decisions were made, what alternatives were considered, or whether dissenting voices were heard. In practice, the power dynamics between larger and smaller creditors often mean that a few dominant players—typically large public sector banks—can effectively steer decisions without meaningful discussion.

The Insolvency and Bankruptcy Board of India (IBBI) has issued regulations requiring greater disclosure of meeting outcomes, yet these are not always enforced in letter or spirit.[32] This lack of transparency undermines the IBC's fundamental goal: a fair and equitable resolution process for all stakeholders.

Moreover, there is little public accountability for how resolution plans are selected or rejected. As Sen and Kumar point out, "the CoC functions like a private club deciding the fate of public assets behind closed doors."[33] A system that places so much power in the hands of a few must ensure proportional responsibility.

2. Unequal Treatment of Creditors

Although the IBC aims to balance the interests of all creditors, operational creditors have consistently found themselves at a disadvantage. Since voting rights in the CoC are limited to financial creditors, operational creditors have no formal say in resolution outcomes—even when the default significantly affects them.

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[32] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 24 & 25.
[33] Rajat Sen & Meera Kumar, *The Invisible Hands: Power and Accountability in India's CoC Framework*, 3 IBC L.J. 45 (2022).

Judicial intervention, such as in the **Essar Steel** case, emphasized the need for equitable treatment of operational creditors, but this has not fully translated into practice.[34] Many resolution plans continue to offer operational creditors mere fractions of their claims, justified under the guise of "lesser risk exposure." However, from a business continuity perspective, operational creditors—suppliers, workers, vendors—are often more vital to the company's functionality than financial lenders.

The unequal footing of these stakeholders not only breeds distrust but may also affect the long-term sustainability of the resolved entity.

3. Dominance of Public Sector Banks

Another concern is the disproportionate influence of public sector banks (PSBs) within the CoC. Since PSBs dominate India's credit market, they often hold the largest voting shares in insolvency proceedings. This presents a dual-risk scenario: decisions may be swayed by bureaucratic considerations or influenced by government priorities, especially in politically sensitive cases.

For instance, in high-profile insolvencies like **Jet Airways** or **IL&FS**, anecdotal evidence suggests that external pressures shaped CoC preferences, even when alternative proposals might have better served recovery or sustainability goals.[35] The lack of independent credit institutions or private alternatives skews the voting process and narrows the range of possible resolutions.

There's also a question of capacity—do PSBs possess the expertise to evaluate complex resolution plans, especially in sectors like infrastructure, fintech, or aviation? Studies by the Vidhi Centre for Legal Policy have raised concerns about CoC members lacking the financial modeling and sector-specific insights needed to assess strategic proposals.[36]

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[34] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

[35] Jet Airways (India) Ltd. v. State Bank of India, Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT).

[36] Vidhi Centre for Legal Policy, *Understanding Capacity Deficits in IBC Implementation*, Policy Brief (2021).

4. Conflict of Interest and Moral Hazard

The current framework does not adequately safeguard against **conflict of interest** in CoC decision-making. Financial creditors might prioritize their own short-term recovery over the long-term viability of the corporate debtor. In some cases, creditors have rejected viable plans offering marginally lower recoveries, opting instead for liquidation where recovery is arguably worse—but more immediate.

This moral hazard becomes pronounced when the same financial institutions serve both as creditors and potential bidders through connected entities or asset reconstruction companies (ARCs). While regulations prohibit collusion and require disclosure of related-party transactions, enforcement remains weak.

Moreover, resolution applicants often tailor their bids to appease the most influential CoC members, sidelining other important considerations like job preservation, environmental impact, or community obligations.

5. Underrepresentation of Diverse Stakeholders

The CoC's composition—limited primarily to financial creditors—excludes other vital stakeholders like employees, minority shareholders, and unsecured creditors. While these groups are permitted to raise concerns during hearings or through public announcements, they lack any decision-making authority. The principle of **inclusive** governance, fundamental to modern corporate restructuring, is noticeably absent in the CoC framework.

Comparatively, other jurisdictions like the United States under Chapter 11 of the Bankruptcy Code allow for creditor committees representing varied interests, including equity holders and employees. India's model, while efficient in theory, risks losing legitimacy if it fails to represent a broader cross-section of affected parties.

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VII. THE WAY FORWARD: PROPOSALS FOR REFORM

While the CoC has played an indispensable role in enabling timely and creditor-driven insolvency resolutions, it is clear that the current model has systemic limitations. Reform must focus on strengthening the CoC's capacity, accountability, and inclusiveness without diluting its autonomy. Below are key proposals.

A. Mandatory Transparency Standards

First, CoC meetings and decisions must be recorded and disclosed more comprehensively. Regulations should mandate detailed minutes, reasoning for approvals/rejections, and financial impact assessments for each proposed resolution. Transparency builds trust—not just among creditors, but among bidders, regulators, and the public.

B. Capacity Building and Independent Experts

To enhance decision-making quality, CoCs—especially those dominated by PSBs—should be supported by sectoral experts, financial analysts, and legal advisors who are independent of creditor influence. The IBBI could create a panel of neutral advisors to assist CoCs, ensuring informed and objective evaluations of resolution plans.

C. Voting Rights for Operational Creditors (at Least in Advisory Capacity)

Although full voting rights may be infeasible due to the scale and diversity of operational creditors, a middle path could be adopted. This might include advisory committees or a system of weighted consultation where operational creditors provide non-binding inputs that must be formally acknowledged in CoC deliberations.

D. Conflict of Interest Safeguards

The IBBI and adjudicating authorities must strictly enforce rules preventing CoC members or their affiliates from participating in the resolution process through back channels. Cooling-off periods, full disclosure requirements, and third-party evaluations can reduce moral hazard and encourage impartiality.

E. Institutional Oversight and Auditing

An independent audit mechanism could periodically review CoC decisions in resolved and unresolved cases. This does not imply judicial interference, but rather administrative oversight to check systemic patterns of misconduct or inefficiency.

F. Inclusive Stakeholder Representation

Finally, the CoC model must evolve to include other stakeholder voices, if not in voting, then at least in structured consultation. Employees, regulators, ESG representatives, and even minority shareholders have legitimate stakes in resolution outcomes. Ignoring them risks reducing insolvency to a mere creditor recovery exercise, detached from broader economic and social goals.

VIII. CONCLUSION

The Committee of Creditors has rightly emerged as the centerpiece of India's insolvency resolution process, bringing market-based logic into the restructuring of distressed assets. Its decisions shape the destiny of companies, jobs, and economic value. However, with great power comes great responsibility.

The IBC's deference to commercial wisdom must not become a shield against transparency, equity, or due process. A CoC that is well-informed, inclusive, and accountable can serve as a beacon of effective governance. One that is insular and opaque risks turning a progressive insolvency framework into a creditor-centric cartel.

Judicial interpretation has tried to walk this tightrope, but lasting reform must come through institutional design and legislative fine-tuning. The future of India's corporate resolution ecosystem lies not in choosing between autonomy and oversight—but in designing mechanisms where both coexist meaningfully.

IX. BIBLIOGRAPHY

1. Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).
2. Shikha Bansal, The Role of Committee of Creditors under IBC, 4 NUJS L. Rev. 122 (2020).
3. K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.
4. Rahul Singh, Operational Creditors and CoC: Need for Inclusion, 7 Nat'l L. Sch. Ind. Rev. 99 (2021).
5. Somasekhar Sundaresan, Haircuts, Hairlines and the CoC's Commercial Wisdom, The Hindu BusinessLine (Jan. 2021).
6. Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.
7. Insolvency and Bankruptcy Code, § 21, No. 31 of 2016.
8. Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd., Company Appeal (AT) (Insolvency) No. 284 of 2019 (NCLAT).
9. Babu Mathew, The Voice of the Silent Stakeholder: Operational Creditors in IBC, 9 Indian J. L. & Econ. 107 (2022).
10. Insolvency and Bankruptcy Code, § 5(7), 5(8).
11. Vikram Nanda, Who Speaks for the Vendors? Operational Creditors in CIRP, The Wire (Sept. 2022).
12. Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.
13. Insolvency and Bankruptcy Code, § 30(4).
14. Rajeev Gupta, The Binani Cement Saga: Equity, Not Just Recovery, 3 NLSIR 203 (2020).

15. IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 18–25.
16. Insolvency and Bankruptcy Code, § 30(4), No. 31 of 2016.
17. K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.
18. Insolvency and Bankruptcy Code, § 22(2).
19. IDBI Bank Ltd. v. Jaypee Infratech Ltd., Company Appeal (AT) (Insolvency) No. 26 of 2019 (NCLAT).
20. Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.
21. Bhargava & Sen, Creditor Control and the Limits of Commercial Wisdom in India's Insolvency Regime, 14 NUJS L. Rev. 89 (2022).
22. K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.
23. Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.
24. Binani Industries Ltd. v. Bank of Baroda, Company Appeal (AT) (Insolvency) No. 82 of 2018 (NCLAT).
25. Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, No. 26 of 2018.