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# THE INTERPLAY BETWEEN M&A AND IBC IN INDIA: AN ANALYSIS

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## ABSTRACT

*The Insolvency and Bankruptcy Code (IBC), 2016 has significantly altered the landscape of mergers and acquisitions (M&A) in India, especially for distressed assets. This paper explores how the IBC's structured and time-sensitive resolution framework allows buyers to acquire undervalued assets through competitive bidding processes. Landmark deals such as Tata Steel's purchase of Bhushan Steel illustrate the practical application of this mechanism. The analysis focuses on important legal factors—thorough due diligence, approval from the Committee of Creditors, adherence to regulations, and integration post-acquisition—while assessing the IBC's wider economic implications on market consolidation, attracting foreign investments, and improving corporate governance. However, notable challenges remain, such as intricate resolution processes, shifting regulatory interpretations, and the need for specialized skills for effective turnarounds. The research concludes that, despite these complexities, the IBC offers considerable opportunities for value creation for well-prepared acquirers who blend legal knowledge, expert support, and strategic operational insight to successfully navigate India's distressed asset market.*

**Keywords: Insolvency and Bankruptcy Code, Distressed Assets M&A, Corporate Insolvency Resolution, Committee of Creditors, Due Diligence**

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## **INTRODUCTION**

The Insolvency and Bankruptcy Code<sup>2</sup>, 2016 has gradually advanced but after various alterations, it presents a value path for M&A (Mergers and Acquisitions) transactions. The Insolvency and Bankruptcy Code (IBC) was established as a unified framework to bring together the legal provisions governing the reorganization and insolvency resolution processes for corporations, partnerships, and individuals.

The primary function of the Insolvency and Bankruptcy Code is to resolve the distressed assets of the company which is unable to meet its financial obligation. For this purpose, distress M&A transaction takes place. Distress assets are those assets that are under financial stress which include non-performing assets (NPA), restructured assets, etc. It means that the company is having difficulty dealing with its liabilities.<sup>3</sup> The entire procedure, starting from the initiation of proceedings to the endorsement of a resolution plan or the process of liquidation, is designed to adhere to strict timelines. The introduction of the Insolvency and Bankruptcy Code (IBC) has led to significant transformations in the mergers and acquisitions (M&A) sector in India, especially concerning financially distressed assets. It has also presented a range of challenges as well as opportunities for acquirers.

### **Effect of the Insolvency and Bankruptcy Code on M&A**

This code provides various opportunities for prospective acquirers who are part of transactions that involve distressed assets. Assets often possess intrinsic value, including valuable intellectual property, high-end real estate, or established customer bases. The Insolvency and Bankruptcy Code's organized resolution process provides a clear framework for asset acquisition, allowing buyers to take advantage of undervalued opportunities and facilitate significant value generation. Potential acquirers and other interested parties can participate in the resolution process by submitting comprehensive proposals.

These plans outline their strategies for reviving the struggling company, which may include financial restructuring, capital injection, or various strategic measures. The Insolvency and

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<sup>2</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

<sup>3</sup> Ricky Mason & Amy Wolf, Distressed M&A Rules of the Road (23 May, 2019)

<https://corpgov.law.harvard.edu/2019/05/23/distressed-ma-the-rules-of-the-road/>

Bankruptcy Code (IBC) fosters a competitive bidding environment that ensures transparency and facilitates the selection of the most suitable resolution approach. This framework allows prospective acquirers to obtain distressed assets and enhance their value under favorable conditions. Some notable transactions of distressed assets through the Insolvency and Bankruptcy Code would be Tata Steel's acquisition of Bhushan Steel and Arcelor Mittal's acquisition of Essar Steel.

### **LEGAL CONSIDERATIONS INVOLVED**

While undertaking M&A transactions under the Insolvency and Banking Code, various intricacies must be considered. Due diligence is an important aspect of any M&A transaction, companies seeking acquisition must systematically inspect the financial, legal, and operational aspects of the distressed company to comprehend the associated risks, legal responsibility, and potential interactions. A meticulous examination is warranted for factors such as outstanding debts, pending litigation, regulatory compliance, intellectual property rights, and contractual obligations. Identification of distressed companies is another crucial component required under the Insolvency and Bankruptcy Code. Another crucial aspect is the approval of the Committee of Creditors (COC), which plays a vital role in this procedure.

It is essential for acquirers to establish communication with the Committee of Creditors (COC) and obtain their approval for the planned resolution. Mergers and acquisitions (M&A) carried out under the Indian Companies Act, particularly the Insolvency and Bankruptcy Code (IBC), must adhere to relevant regulatory requirements. It is recommended that acquirers consider obtaining approvals and consent from regulatory bodies, including the Competition Commission of India (CCI) and industry-specific regulators. Neglecting to meet these regulatory obligations could impede transaction progress and lead to potential legal complications. Mergers and acquisitions (M&A) can lead to conflicts and disputes, making it essential to establish mechanisms for dispute resolution.

Acquirers should proactively anticipate potential disagreements and incorporate suitable dispute resolution processes into their agreements. Alternative methods such as arbitration, mediation, or other similar techniques can be crucial in addressing conflicts that may arise during or after a transaction. After an acquisition, it is vital for the acquiring party to adhere to legal, regulatory, and contractual obligations consistently. Prioritizing the resolution of ongoing legal issues, meeting financial commitments, complying with corporate governance standards,

and maintaining regulatory compliance in the operations of the acquired entity is of utmost importance.

A thorough inspection of legal and practical factors is required in Mergers and Acquisitions executed under the Insolvency and Bankruptcy Code. Conducting thorough due diligence, formulating strong resolution strategies, obtaining approvals from the Committee of Creditors (COC), adhering to regulatory requirements, and efficiently integrating operations post-acquisition are crucial for attaining positive outcomes.

### ANALYSIS

The Insolvency and Bankruptcy Code has created significant opportunities for investors by streamlining the acquisition of troubled assets, allowing them to purchase valuable assets at competitive prices. Through an open bidding process, investors can identify struggling businesses with growth potential and capitalize on their untapped value. Furthermore, the Insolvency and Bankruptcy Code promotes market consolidation by permitting the acquisition of multiple companies within the same industry, enabling strategic buyers to enhance their competitiveness, diversify their offerings, and strengthen their market standing. This consolidation allows acquirers to optimize operations, eliminate redundancies, and achieve economies of scale. Additionally, the framework has attracted foreign investment in India's distressed asset market, as international investors are drawn to increased transparency, stronger creditor protections, and the potential for higher returns. This surge in foreign capital not only has the potential to spur economic growth but also to foster the development of distressed asset markets in India. The flexibility provided by the Insolvency and Bankruptcy Code facilitates innovative deal structures such as asset sales, mergers, and amalgamations. This adaptability allows acquirers to devise creative resolution strategies that maximize synergies, optimize resource allocation, and unlock value.

Moreover, the Insolvency and Bankruptcy Code prioritizes improvements in corporate governance to help struggling companies enhance their operations. Acquiring firms can benefit from engaging with organizations that have adopted governance reforms, as these changes foster greater accountability, transparency, and improved business practices. Such reforms lay a solid foundation for sustained growth and value creation. Additionally, the INSOLVENCY AND BANKRUPTCY CODE permits customized resolution plans, enabling acquirers to tailor the acquired entity to align with their corporate objectives.

One of the challenges posed by the Insolvency and Bankruptcy Code (IBC) is the complex nature of its resolution process, which involves various stakeholders and legal intricacies, even though it is designed to be time-bound. Acquiring entities must skillfully navigate these complexities, especially when dealing with financially distressed assets and competing bidders. Achieving success in such situations requires thorough due diligence and strong negotiation skills. Additionally, as the INSOLVENCY AND BANKRUPTCY CODE is relatively new, its implementation and interpretation are still evolving, leading to regulatory uncertainties. Mergers and acquisitions (M&A) transactions may face challenges due to poorly defined regulatory frameworks or conflicting court rulings.

Given the complexities surrounding the acquisition of distressed assets under the Insolvency and Bankruptcy Code (IBC), it becomes essential for acquirers to remain vigilant and informed about ongoing legal developments. The landscape of insolvency laws can be intricate, with frequent updates and changes in regulations, judicial interpretations, and best practices emerging from case law. By staying abreast of these changes, acquirers can better navigate the legal framework that governs their transactions, ensuring that they are compliant and can strategically position themselves to capitalize on new opportunities or avert potential pitfalls. This proactive approach can significantly reduce the risk of unexpected legal challenges that may arise during the acquisition process.

In this context, seeking professional advice is not just beneficial; it is crucial. Engaging legal and financial experts who specialize in insolvency and restructuring can provide invaluable insights that help acquirers understand the intricacies of the Insolvency and Bankruptcy Code. These professionals can guide acquirers through the maze of regulatory requirements and help them develop strategies that align with their specific goals. Furthermore, experts can assist in conducting thorough due diligence, which is critical when evaluating distressed assets. A rigorous examination of the company's financial health, operational capacity, and existing liabilities can uncover hidden risks and opportunities that may not be immediately apparent.

Acquiring distressed assets often involves engaging with companies that are grappling with both operational and financial difficulties. This multifaceted challenge requires specialized knowledge and expertise. For instance, acquirers must not only analyze the financial statements of the target company but also evaluate its operational processes, workforce dynamics, and market conditions. Understanding these factors is essential for identifying the root causes of the company's distress and formulating effective turnaround strategies.

Once the acquisition is made, implementing successful turnaround strategies becomes critical. This may involve operational restructuring, which could include streamlining processes, cutting unnecessary costs, and reallocating resources to more profitable business segments. Financial management is equally important; acquirers might need to renegotiate supplier contracts, stabilize cash flows, and explore new financing options to ensure the viability of the business moving forward. These efforts are not merely reactive; they should be part of a proactive strategy that aims to enhance the overall value of the acquired assets. Maximizing the potential of acquired distressed assets requires acquirers to address challenges head-on and act efficiently. This means establishing clear goals and actionable plans that prioritize operational improvements and financial stability. Acquirers should be prepared to invest time and resources into building a comprehensive understanding of the acquired business and its market environment. Furthermore, anticipating potential challenges and developing contingency plans can significantly enhance the likelihood of a successful turnaround.

Ultimately, navigating the complexities of acquiring distressed assets under the Insolvency and Bankruptcy Code demands a combination of legal awareness, expert guidance, strategic foresight, and operational acumen. By adequately preparing to confront these challenges, acquirers can safeguard their investments and unlock substantial value from the distressed assets they acquire.

## **CONCLUSION**

In conclusion, the Insolvency and Bankruptcy Code (IBC) has significantly reshaped the landscape of mergers and acquisitions (M&A) in India, particularly concerning distressed assets. By providing a structured framework for acquiring troubled companies, the IBC offers acquirers unique opportunities to acquire valuable assets at competitive prices while promoting market consolidation and enhancing corporate governance. However, the complexities inherent in the resolution process, evolving regulatory frameworks, and potential legal uncertainties necessitate a vigilant and informed approach from acquirers. Engaging legal and financial experts is crucial for navigating these intricacies, ensuring compliance, and conducting thorough due diligence to uncover hidden risks and opportunities. Successful acquisition and turnaround strategies require operational and financial restructuring and a proactive mindset that emphasizes continuous improvement and value creation. By addressing challenges head-on and implementing strategic plans, acquirers can maximize the potential of distressed assets, ultimately contributing to their growth and stability. As the IBC continues to evolve, acquirers

who remain adaptable and well-informed will be better positioned to capitalize on the opportunities presented by distressed asset acquisitions, fostering a more resilient and dynamic economic environment in India.

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