 DOI: https://doij.org/10.10000/IJLMH.1111061

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 6

2025

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Regulatory Choreography at the Nexus of Competition Law and Insolvency Resolution

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ABSTRACT

The intersection between competition law and insolvency resolution represents one of the most complex and dynamic areas of economic regulation in contemporary India. Competition law, embodied in the Competition Act, 2002, seeks to prevent market distortions arising from anti-competitive agreements, abuse of dominance, and undue concentration of economic power. Conversely, the Insolvency and Bankruptcy Code, 2016 (IBC) focuses on ensuring the timely revival or efficient liquidation of financially distressed enterprises to promote economic efficiency and credit discipline. When these two frameworks converge—especially in cases of mergers, acquisitions, or takeovers resulting from insolvency proceedings—their objectives may appear to conflict: one prioritizes market fairness, while the other emphasizes business continuity and asset preservation.

This article delves into the evolving interface between these regulatory regimes, analyzing statutory provisions, institutional coordination, and the jurisprudence developed by the Competition Commission of India (CCI) and the National Company Law Tribunal (NCLT). It explores how regulators have sought to harmonize procedural timelines, balance market efficiency with fairness, and address challenges of jurisdictional overlap. Drawing from comparative international practices, the study proposes a coherent framework for synchronizing competition and insolvency objectives, thereby fostering a more resilient, transparent, and competitive economic environment in India.

I. INTRODUCTION

Modern economies rely on a combination of robust competition regulation and efficient insolvency mechanisms. Competition law fosters innovation, consumer choice, and market discipline by prohibiting anti-competitive conduct and regulating mergers. In contrast, insolvency law serves as an economic safeguard by enabling the revival or orderly liquidation of distressed entities. Both systems aim at economic efficiency but operate from distinct policy angles.

The insolvency resolution ecosystem in India has undergone transformative change with the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016, aimed at expediting the

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revival or liquidation of distressed firms. Simultaneously, the Competition Act, 2002 protects market competitiveness by regulating mergers and acquisitions (combinations) that may create anti-competitive outcomes. The intersection of these statutes becomes pronounced when insolvency resolution plans constitute combinations requiring CCI scrutiny. In India, the Competition Commission of India (CCI) enforces the Competition Act, 2002, while insolvency proceedings are governed by the Insolvency and Bankruptcy Code, 2016 (IBC) and adjudicated by the National Company Law Tribunal (NCLT). Conflicts arise when resolution plans under the IBC involve combinations that trigger scrutiny under the Competition Act. The resulting regulatory overlap demands a coordinated choreography that balances speed with scrutiny, and market recovery with market fairness.

II. Conceptual interface between competition and insolvency law

The Competition Act, 2002, is founded on three principal pillars: prohibition of anti-competitive agreements, prevention of abuse of dominance, and regulation of combinations. Its ultimate goal is to maintain a competitive market structure that maximizes consumer welfare and promotes innovation. Under this Act, the Competition Commission of India (CCI) is empowered to block, modify, or scrutinize combinations (mergers, acquisitions, or amalgamations) that are likely to cause an appreciable adverse effect on competition (AAEC) in the relevant market[2].

In parallel, the Insolvency and Bankruptcy Code (IBC), enacted in 2016, consolidated India's previously fragmented insolvency regime into a unified, time-bound framework. The IBC aims at value maximization, promotion of entrepreneurship, and ensuring credit availability through a process marked by certainty and efficiency. It emphasizes resolution over liquidation, signaling a paradigm shift from protecting debtors to empowering creditors. Insolvency resolution plans, approved by the Committee of Creditors (CoC), facilitate either the revival of financially distressed firms or their liquidation if revival is unfeasible.

The intersection between the Competition Act and the IBC becomes particularly significant when a resolution plan under the IBC involves a combination as defined under the Competition Act. In such instances, Section 31(4) of the IBC mandates that the resolution plan must obtain prior approval from the CCI before the CoC can approve it. This ensures that the insolvency resolution process does not undermine competitive market structures while balancing the dual

[2] An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

objectives of economic revival and consumer welfare.

This intersection embodies a critical tension: while competition law seeks to prevent excessive market concentration and preserve competitive neutrality, insolvency resolution frequently necessitates consolidation, mergers, or acquisitions to salvage value and rehabilitate the distressed company. Therefore, a synchronized regulatory framework is essential—one that neither obstructs genuine rescue efforts nor compromises the principles of fair competition and market dynamics.

III. THE STATUTORY FRAMEWORK AND REGULATORY OVERLAP

Under the Competition Act, combinations must obtain prior CCI approval if they cross specified thresholds. Section 6 further mandates that no combination shall take effect without such approval[3]. Simultaneously, once the NCLT approves a resolution plan under the IBC, it becomes binding on all stakeholders. To harmonize these provisions, the Insolvency and Bankruptcy Board of India (IBBI) amended its regulations in 2018. Regulation 37A now requires that resolution applicants must obtain prior approval from the CCI before NCLT's final approval[4]. This ensures that anti-competitive risks are examined without derailing the time-sensitive nature of insolvency resolution.

IV. JURISPRUDENTIAL DEVELOPMENT IN INDIA

The CCI's approach has evolved significantly in insolvency cases. In several landmark matters such as the ArcelorMittal–Essar Steel acquisition and the JSW Steel–Bhushan Power transaction, the CCI expedited approval recognizing the urgency of insolvency proceedings[5]. Similarly, the Reliance–Alok Industries[6] case demonstrated regulatory flexibility. The Supreme Court in the Essar Steel judgment[7] emphasized the importance of harmony between IBC and competition regulation.

V. PROCEDURAL CHOREOGRAPHY: TIMING AND SEQUENCE

The challenge lies in sequencing approvals. The Competition Act requires notification before consummation, yet IBC timelines demand speed. The introduction of the Green Channel

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[3] Section 5 of the Competition Act defines what constitutes a "combination" (merger, amalgamation, or acquisition) by specifying financial thresholds, while Section 6 prohibits combinations that cause or are likely to cause an **appreciable adverse effect on competition (AAEC)** in India. Section 6(2) also mandates that any such combination exceeding the thresholds must provide prior notice to the Competition Commission of India (CCI) and can only proceed after receiving approval. *See detail* Competition Act, 2002

[4] IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, Reg. 37A (2018 Amendment).

[5] Combination Registration No. C-2018/09/601, ArcelorMittal India Pvt. Ltd. v. Essar Steel India Ltd. (CCI, 2018).

[6] Combination Registration No. C-2018/06/586, *Reliance Industries Ltd. v. Alok Industries Ltd*. (CCI, 2018).

[7] Committee of Creditors of *Essar Steel India Ltd. v. Satish Kumar Gupta*, (2019) 11 SCC 1.

mechanism allowed deemed approval for non-overlapping combinations[8]. Further, 2018 amendments to IBC regulations require CCI clearance before NCLT approval, ensuring that anti-competitive issues are addressed in advance without delaying resolution.

VI. Challenges and frictions in regulatory synchronization

Competition law guards against market concentration, whereas insolvency law promotes consolidation to save distressed assets. Denying a merger may cause liquidation, while permitting one may reduce competition. Delays in obtaining CCI approval can jeopardize IBC's strict 330-day limit. Institutional silos among CCI, IBBI, and NCLT, and confidentiality concerns, further complicate coordination. This demonstrates the need for a more structured communication and data-sharing framework among regulators.

Timeline Constraints and Asset Value Risks

The IBC stipulates a CIRP completion timeline of 330 days (including extensions). However, real-world insolvency resolutions often extend beyond this period due to complex factors. The requirement that CCI clearance be obtained before CoC approval introduces procedural steps that can extend timelines. Even though CCI aims to expedite its approval process for CIRP-related combinations—averaging approximately 35 days—regulatory approval remains a significant component of the total CIRP duration.

Extended timelines risk the deterioration of asset value, which is critical since maximum value realization is a statutory goal of insolvency resolution. Balance must be maintained between ensuring competition compliance and facilitating prompt resolution.

Multiple Activities and Resource Inefficiencies

Resolution plans typically involve multiple bidders submitting separate applications for CCI approval, though only one bidder's plan will be ultimately approved by the CoC. This leads to duplicate filings, unnecessary regulatory burden, and wastage of resources both for bidders and the CCI.

Risk of Anti-Competitive Outcomes

While the Competition Act aims to prevent market distortions, certain scenarios pose risks when resolution plans are accepted without thorough competition scrutiny. The green channel for automatic approvals has been proposed for low-risk cases to speed up processes but carries the risk that anti-competitive consequences may only become apparent post-approval, complicating

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[8] CCI (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019, Reg. 5A.

remediation.

Institutional Coordination

There is presently limited procedural coordination or fixed timelines between the CoC, resolution professionals, and the CCI, leading to bottlenecks. Absence of formal mechanisms causes uncertainty for stakeholders regarding the timing and sequence of regulatory approvals.

VII. COMPARATIVE JURISPRUDENCE

Globally, regulatory authorities have crafted nuanced frameworks to balance the often competing objectives of competition law and insolvency resolution. The European Commission adopts the "failing firm defense," permitting mergers or acquisitions that might otherwise raise competition concerns if the acquired firm would likely exit the market absent the transaction. This doctrine prioritizes market stability and preserves viable business entities, recognizing that a firm's failure would also adversely impact competition and consumer welfare.

In the United States, coordination between antitrust and bankruptcy regulators is institutionalized under the Hart–Scott–Rodino (HSR) Antitrust Improvements Act of 1976. This Act mandates premerger notifications to both the Federal Trade Commission (FTC) and the Department of Justice (DOJ) prior to certain large mergers and acquisitions, including transactions involving financially distressed firms undergoing bankruptcy. Notably, acquisitions conducted under Section 363(b) of the U.S. Bankruptcy Code benefit from an expedited 15-day review period, shorter than the standard 30-day waiting period. This accommodation balances the imperative for swift bankruptcy resolutions with thorough antitrust scrutiny. The HSR Act imposes rigorous filing thresholds—including size-of-person and size-of-transaction tests—ensuring that only significant mergers are subject to review, with government agencies retaining authority to challenge or impose remedies on transactions deemed anticompetitive.

The United Kingdom's Competition and Markets Authority (CMA) similarly incorporates the failing firm doctrine within its Merger Assessment Guidelines (2021). The CMA recognizes that while its primary role is to prevent anti-competitive market concentration, exceptions may be warranted when a firm is truly failing and no less anti-competitive alternatives exist. This approach aims to balance competition preservation with the rescue of financially distressed companies, thereby enhancing overall market stability

VIII. TOWARD A COHERENT FRAMEWORK

Competition and insolvency laws are complementary in ensuring market efficiency and

economic recovery[9]. Reforms should include: (1) a Memorandum of Understanding between CCI, IBBI, and NCLT for coordination; (2) a 15-day fast-track CCI approval process for insolvency-related cases; (3) statutory recognition of the failing firm doctrine; (4) creation of a digital portal for simultaneous filings; and (5) cross-regulatory training programs for officers and professionals. Together, these measures can improve predictability, reduce delays, and ensure fairness.

Proposed Solutions and Recommendations

Expedited Approval Framework

Codifying an expedited or preferential review track within the CCI for CIRP-related combinations can realign approval timelines with insolvency resolution objectives. Empirical data suggests that CCI already expedites such cases relative to standard merger reviews; formalizing this would provide regulatory certainty and predictability.

Streamlined Approval Process

Amendments to the IBC should focus on requiring only the successful resolution applicant—the one selecting the winning bid—to obtain mandatory CCI clearance post-CoC selection. This would minimize duplicative filings, reduce regulatory burden, and accelerate resolution.

Enhanced Coordination Protocols

Statutory or regulatory mandates establishing clear communication and procedural coordination between the resolution professional, CoC, and CCI, with stipulated timelines and responsibilities, can help minimize delays and procedural friction.

Restricted Green Channel Approvals

The green channel mechanism should be selectively applied to low-risk combinations with negligible potential for appreciable adverse effects on competition. Rigorous pre-qualification can ensure that only suitable cases bypass full CCI scrutiny.

Legislative and Policy Reforms

To resolve inherent tensions, flexible legislative mechanisms should be introduced permitting interim regulatory oversight, phased competition assessments, or conditional approvals to balance insolvency time constraints with competition law's rigorous mandates.

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[9] Shroff, Shardul & Bansal, Ananya, "*Competition Law and IBC: Harmonizing Objectives*," National Law Review (2021).

IX. Conclusion

The convergence of competition and insolvency law in India marks a significant evolution in regulatory governance, reflecting the complexities inherent in balancing market efficiency with economic recovery objectives. Since the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016, India has witnessed promising collaboration between regulators such as the Competition Commission of India (CCI), insolvency professionals, and judicial forums, particularly the Supreme Court. This collaborative interplay has improved clarity on procedural and substantive matters, fostering a more integrated approach toward business rescues while safeguarding market competition.

However, despite these strides, formal mechanisms for inter-agency coordination remain embryonic, underscoring the critical need for procedural synchronization. Without clear, statutory timelines harmonized between insolvency resolution and competition law review processes, conflicting priorities can lead to prolonged creditor recoveries or unintended market distortions. Doctrinal ambiguities regarding the sequencing and mandatory nature of competition approvals further compound this challenge, often leading to litigation and regulatory uncertainty.

A future-ready regulatory framework must therefore embody both efficiency and equity. Efficiency demands streamlined, expedited review processes and clear protocols that facilitate swift distressed asset recovery without compromising legal sanctity. Equity requires that the competitive neutrality of markets be preserved, preventing dominant firms from leveraging insolvency proceedings to gain disproportionate market power.

Achieving this equilibrium will necessitate legislative reforms introducing expedited ‘green channels’ or conditional approvals, institutionalizing robust information-sharing protocols, and enhancing judicial and administrative clarity on resolution plan requirements vis-à-vis competition scrutiny. Ultimately, India’s evolving regulatory choreography at the nexus of competition and insolvency law must ensure that the nation’s economic revival is not only fast and effective but also fair and conducive to sustainable, competitive markets.

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