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Role of Corporate Governance in Corporate Debt Restructuring in India: A Legal Study

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ABSTRACT

In the dynamic landscape of business, companies constantly navigate a tightrope between growth and survival. Unpredictable market forces and fierce competition pose persistent threats, potentially pushing even viable businesses towards the brink of failure. When companies falter, two contrasting outcomes emerge: either they succumb to creative destruction, swallowed whole by their more agile competitors, or they embark on a path of corporate restructuring, seeking to revive their fortunes and reclaim their market share. This study delves into the crucial intersection of corporate governance and debt restructuring in India. In this context, effective corporate governance becomes a powerful lifeline, acting as the bedrock upon which successful restructuring efforts are built. It's the set of principles and practices that governs a company's decision-making, ensuring transparency, accountability, and a balance between the interests of diverse stakeholders – shareholders, creditors, employees, and the larger society. When corporate governance falters, financial distress often follows. Lenders lose confidence, investors hesitate, and the very viability of the company hangs in the balance. Therefore, this study proposes that shifting the focus beyond mere loan repayment towards scrutinizing the beneficiaries and objectives of corporate debt can become a critical first step in fostering a robust restructuring environment. Through this lens, we can analyze how strengthened corporate governance mechanisms, coupled with strategic debt restructuring practices, can empower struggling companies in India to avoid the perilous grip of financial collapse and emerge stronger, more competitive, and resilient.

Keywords: *Corporate Governance, Corporate Debt Restructuring, Corporate Insolvency, CDR, IBC.*

I. INTRODUCTION

Building a successful, thriving company takes time and dedicated effort in today's competitive business environment. Mere years rarely suffice to forge a corporate giant. At the heart of any enterprise lies its human capital – the minds and hands that drive its operations, propel its profits, and ultimately determine its success or failure. Effective leadership, then, becomes the

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cornerstone of any organization, demanding skilful navigation through a spectrum of decisions, both brilliant and fallible. This continuous "failing forward" process, guided by a strong, forward-looking vision, forms the bedrock of exceptional corporate governance.

Establishing robust corporate governance requires a deliberate set of principles and practices implemented by the company's executives. Whether navigating daily operations or charting strategic course corrections, sound governance permeates every level, from front-line interactions with customers to boardroom decisions on resource allocation and financial backing. Ultimately, it's about fostering an environment where every action, every choice, contributes to a solid foundation for sustainable financial growth and success. In essence, corporate governance is the intricate web of rules, relationships, and best practices that bind a company to its stakeholders, ensuring optimal performance and mutual trust.

(A) Corporate Governance: Meaning and Definition

The term "governance" originates from the Latin verb "*gubernare*" and the Greek word "*kubernaein*", both of which signify "to steer".[2] Additionally, it can denote the act of exercising authority, directing, or influencing. According to Merriam Webster Dictionary, "Governance" means *"the act or process of governing or overseeing the control and direction of something"*[3] *"Corporate"* means *"formed into an association and endowed by law with the rights and liabilities of an individual"*[4]

The Institute of Company Secretaries of India defines corporate governance as "*the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility, for sustainable development of all stakeholders."*[5]

According to Gabrielle O'Donovan (2003), corporate governance can be defined as *"An internal system encompassing policies, processes and people, which serves the needs of shareholders and other stakeholders, by directing and controlling management activities, with good business savvy, objectivity, accountability and integrity. Sound corporate governance is reliant on external market place commitment and legislation, plus a healthy board culture which*

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[2]Oxford English Dictionary "Governance", https://www.oed.com/dictionary/governance_n?tl=true(last visited Jan 16, 2024)

[3]Merrian Webster Dictionary, "Governance" https://www.merriam-webster.com/dictionary/governance (last visited Jan 16, 2024)

[4]Merrian Webster Dictionary, "Corporate" https://www.merriam-webster.com/dictionary/corporate(last visited Jan 16, 2024)

[5] The Institute of Company Secretaries of India (ICSI), "Corporate Governance" https://www.icsi.edu/webmodules/icsiweb/works/Schdiary/upload/Corporate%20Governance.doc(last visited Jan 16, 2024)

safeguards policies and processes"[6]

So, the "Governance" refers to the set of frameworks or regulations essential to govern a "Corporate," which can be any type of existing legal corporate entity. Its primary purpose is to ensure a company's continued success while safeguarding its investors' capital. Bank of Credit and Commerce International, which occurred in the UK in 1981, is considered the first incidence of corporate governance failure.[7] After the middle of 1996, when the Indian economy began to liberalise and enterprises and industries were deregulated, the idea of corporate governance was first introduced. The Confederation of Indian Industries (CII) Code was the first initiative of its kind in the Indian business sector and a significant step toward better corporate governance when it was introduced in 1996.[8]

Failures in corporate governance have led to the downfall of high-profile companies and the imprisonment of influential businesspeople like Rana Kapoor, Chanda Kochhar, the Malvinder and Shivinder Singh (Singh brothers), and other prominent peoples in business world.[9]

The Organisation for Economic Co-operation and Development (OECD) released the Principles of Corporate Governance in 1999. These principles have subsequently gained worldwide recognition as a benchmark for countries in establishing their corporate governance norms. The guiding principles emphasise the crucial role that effective corporate governance plays in maintaining the ongoing robustness and stability of global economies.[10]

The OECD Principles are the globally recognised benchmark for corporate governance, providing guidance for ongoing reform efforts in both the private sector and the public domain. The OECD Principles highlight that the rights of stakeholders are primarily determined by legislative statutes (such as labour, business, commercial, environmental, and bankruptcy laws) or by contractual agreements that corporations are legally obliged to uphold. Upon closer examination, it becomes apparent that the OECD Principles also highlight the importance of an effective bankruptcy system and the enforcement of creditor rights as a way to enhance the

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[6] Gabrielle O'Donovan (2003) "Change Management - A Board Culture of Corporate Governance", Mondaq Business Briefing, July, 2003

[7] Thomas C. Baxter, "Chapter 19 BCCI: The Lessons for Banking Supervision", E-Library, International Monetary Fund https://www.elibrary.imf.org/configurable/content/book$002f9781557755032$002fch032.xml?t%3Aac=book%24002f9781557755032%24002fch032.xml&tabs=fulltext(last visited Jan 16, 2024)

[8] The Confederation of Indian Industries, Desirable Corporate Governance: A Code"1998, https://www.nfcg.in/UserFiles/ciicode.pdfc(last visited Jan 16, 2024)

[9]Kasmin Fernandes, Biggest Corporate Governance Failures in India, April 20, 2021 https://thecsrjournal.in/corporate-governance-failures-india/(last visited Jan 16, 2024)

[10] Organisation for Economic Cooperation and Development, Principles of Corporate Governance, https://www.oecd.org/corporate/principles-corporate-governance/ (last visited Jan 16, 2024)

structure of corporate governance.[11]

(B) The key principles form the pillars of this intricate framework:

Effective corporate governance isn't merely a box to tick; it's the cornerstone of a thriving business. By weaving these principles into the fabric of their operations, companies foster trust, mitigate risks, and pave the way for sustainable growth, benefiting stakeholders and society as a whole.

1. **Transparency**: Like a spotlight illuminating the company's activities, transparency demands open and accurate disclosure of material information. Financial results, operational decisions, and governance practices must be shared readily with stakeholders, fostering trust and enabling informed decision-making. This commitment extends to timely financial reporting, clear and accessible communication, and proactive disclosure of risks and challenges.[12]

2. **Accountability**: The buck stops here. Accountability rests upon the Board of Directors, who act as watchdogs, holding management responsible for performance, ethical conduct, and adherence to policies. Robust internal controls act as the company's immune system, safeguarding against fraud and ensuring financial integrity.[13]

3. **Stakeholder Focus**: Beyond just shareholder primacy, stakeholder focus expands the lens to encompass a broader ecosystem. Employees, creditors, customers, and even the community itself all hold a stake in the company's success. Engaging with these groups, understanding their concerns, and balancing their needs are crucial aspects of responsible governance.[14]

4. **Fairness and Equity**: A level playing field ensures everyone gets a fair shake. Fairness and equity demand equal treatment of all shareholders, with respect to voting rights, dividend distribution, and access to information. Additionally, robust conflict of interest management and ethical conduct guidelines ensure decisions are made with integrity and transparency.

5. **Continuous Improvement**: Governance is not a static snapshot; it's a living, breathing entity in constant evolution. Continuous improvement involves regular review and assessment of practices, identifying areas for refinement, and adapting to changing circumstances.

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[11] *Ibid.*

[12] Cadbury, R. (1999). The Cadbury Report: Code of Corporate Governance. [https://cadbury.cjbs.archios.info/report] (last visited Jan 16, 2024)

[13] World Bank. (2017). Corporate Governance: A Framework for Business. [https://www.worldbank.org/en/topic/financialsector/brief/corporate-governance] (last visited Jan 16, 2024)

[14] OECD Principles of Corporate Governance. (2015). [https://www.oecd.org/corporate/principles-corporate-governance/] (last visited Jan 16, 2024)

Embracing feedback from stakeholders and evolving best practices ensure this vital framework remains relevant and effective.

(C) Corporate Governance: Legal Overview

The Indian corporate landscape is shaped by a dynamic interplay of legal frameworks, regulatory guidelines, and industry best practices, all aimed at fostering good corporate governance. In India, the development of Corporate Governance rules, both mandatory and voluntary, has progressed since 1998. This progress may be attributed to the initiatives taken by various committees formed by the Ministry of Corporate Affairs, Government of India, and the Securities and Exchange Board of India (SEBI). The primary basis for governance is derived from the Companies Act, along with the Rules established in accordance with the Companies Act, along with the Notifications and Circulars released by the Ministry of Corporate Affairs (MCA).

At the core lies the Companies Act, enacted in 2013 to supersede the older 1956 Act. This comprehensive legislation mandates enhanced disclosures, reporting standards, and compliance norms, setting a formal structure for responsible corporate conduct.

Policies and procedures pertaining to corporate governance are influenced by a complex web of secondary legislation in addition to the Companies Act. Fair competition is encouraged by the Competition Act of 2002, which succeeded the Monopolies and Restrictive Trade Practices Act of 1969. Regulating foreign exchange transactions is the responsibility of the Foreign Exchange Management Act of 1999, which succeeded the Foreign Exchange Regulation Act of 1973. In addition, the industries (Development and Regulation) Act of 1951 makes a significant contribution to the regulation of certain sectors of the economy.

Regulatory bodies also contribute significantly to shaping corporate governance. Notably, the Securities and Exchange Board of India (SEBI) has spearheaded numerous initiatives in this direction. The landmark Kumar Mangalam Birla Committee report (2000) led to the introduction of Clause 49 in the Listing Agreement, promoting robust governance practices for listed companies.[15] Further committees, like the Naresh Chandra Committee (2002) and the Narayana Murthy Committee (2003), also addressed key issues like auditor-company relations, independent directors, and financial disclosures.

The Naresh Chandra Committee was constituted by the Ministry of Corporate Affairs in 2002

[15] Securities and Exchange Board of India, "Report of the Committee Appointed by the SEBI on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla" 2000, https://www.nfcg.in/UserFiles/kumarmbirla1999.pdf (last visited Jan 16, 2024)

to investigate matters related to corporate audit and governance. Their mandate encompassed the interaction between the auditor and the company. Their autonomy, the rules governing the sufficiency of entities charged with monitoring, the function and efficiency of independent directors, etc. [16]

In 2002, the SEBI established the N R Narayana Murthy Committee with the purpose of assessing and enhancing the existing Corporate Governance Practices. The committee aimed to determine the responsibilities of companies in addressing market rumours and other price-sensitive information, with the goal of improving market transparency and integrity. The recommendations made by the committee in the final report were chosen based on criteria such as their relative significance, equity, responsibility, transparency, ease of execution, verifiability, and enforceability. [17]

Many of their recommendations were incorporated into the revised Clause 49, solidifying its importance as a statutory requirement.[18] In addition to legislation and regulations, industry associations such as the Confederation of Indian Industries (CII) actively engage in taking initiative. The Confederation of Indian Industries recognised the need of Corporate Governance in protecting investor interests, enhancing openness, and adhering to worldwide norms for disclosing corporate sector information. To address this, they formed a national task force in 1995, led by Rahul Bajaj. In 1998, the task committee created a voluntary code called "Desirable Corporate Governance.".[19]

The Confederation of Indian Industry (CII), the Institute of Company Secretaries of India (ICSI) and the Institute of Chartered Accountants of India (ICAI), contributed to the establishment of the National Foundation for Corporate Governance (NFCG) in the year 2003. This was done in conjunction with the Ministry of Corporate Affairs. The NFCG is a trust that is not for profit and operates as such. The National Stock Exchange formed a collaboration with the Institute of Cost Accountants of India in 2010, and the Indian Institute of Corporate Affairs (IICA) joined the cooperation the following year in 2013.

Trustees were designated to supervise the affairs. The platform functions as a venue for

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[16] Securities and Exchange Board of India, "The Report of Shri N R Narayana Murthy Committee on Corporate Governance," March 21, 2003, https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-_12986.html(last visited Jan 16, 2024)
[17]Ministry of Corporate Affairs, Government of India, Naresh Chandra Committee (2002) https://www.mca.gov.in/Ministry/latestnews/Draft_Report_NareshChandra_CII.pdf(last visited Jan 16, 2024)
[18] SEBI, Clause 49, https://www.sebi.gov.in/sebi_data/commondocs/cir2803an1_p.pdf(last visited Jan 16, 2024)
[19] Desirable Corporate Governance A Code(1998), https://www.nfcg.in/UserFiles/ciicode.pdf(last visited Jan 16, 2024)

addressing topics related to efficient corporate governance. The goal of this initiative is to enhance the knowledge of company leaders regarding the importance of adopting effective corporate governance standards. Moreover, it enables the exchange of experiences and ideas among executives in the corporate sector, regulators, policymakers law, enforcement agencies, and non-governmental organisations. Their 2009 code of governance practices offers more direction for responsible corporate behaviour.

In the year 2019, the Ministry of Corporate Affairs (MCA) has developed the "National Guidelines on Responsible Business Conduct" (NGRBC) with the intention of providing assistance to businesses in meeting their obligations to comply with legal requirements. The NGRBC is applicable to businesses in general, regardless of differences in ownership, size, industry, structure, or geographical presence. The recently implemented regulations provide an outline of unique concepts that define the obligation of the firm. The "core elements" are a collection of conditions and actions that are necessary for successfully putting the principles into practice within the operational framework.[20]

This intricate tapestry of legal frameworks, regulatory bodies, and industry initiatives reflects India's commitment to fostering a robust corporate governance environment. By continually evolving and adapting, these mechanisms strive to ensure transparency, accountability, and responsible decision-making within Indian corporations.

II. Concept of Corporate Debt Restructuring

Corporate debt restructuring (CDR) has emerged as a crucial tool in the Indian financial sector, providing a glimmer of light to enterprises struggling with the overwhelming burden of increasing debt. It is not merely a monetary solution; rather, it is a deliberate restructuring of a company's debts, with the goal of restoring its financial stability, revitalising its cash flow, and ultimately, ensuring the survival of the business. The complex process involves conversations between the financially challenged company and its creditors, predominantly banks and financial institutions, who possess the crucial means for the company's continuation.

The restructuring of corporate debt plays a significant role in India's economic health, since it is closely connected to financial stability, the uninterrupted operation of businesses, and the trust of investors. The Non-Performing Assets (NPAs) have reached an alarming amount of Rs. 11.1 lakh crore as of September 2023, according to the Reserve Bank of India.[21] In order to

[20] CA. M K Sridhar, "Corporate Governance in India", The Institute of Chartered Accountants of India: Southern India Regional Council Chennai, https://www.sirc-icai.org/images/cabf/Corporate%20Governance%20in%20India.pdf (last visited Jan 16, 2024)
[21] Reserve Bank of India. (2023, October 27). Reserve Bank of India - Statistical Tables.

effectively deal with this complicated situation, efficient debt resolution processes such as the Insolvency and Bankruptcy Code (IBC) have become crucial tools. The need of efficient restructuring goes beyond just financial numbers; it forms the foundation of India's economic growth.

Debt restructuring fundamentally provides a protective measure for both struggling enterprises and the wider financial system. The unchecked non-performing assets (NPAs) impose severe restrictions on banks' lending capabilities, hence constraining their capability to support new enterprises and impeding economic growth.[22] Through restructuring, banks are able to free up these resources, so enabling them to once again fulfil their crucial function as the vital force driving the economy. Businesses on the brink of closure owing to overwhelming debt discover a path to recovery through the process of restructuring. The IBC has witnessed the filing of more than 480,000 cases since 2016, out of which 230,000 have been successfully settled, resulting in the recovery of Rs. 3.26 trillion. These figures highlight the significant impact of these mechanisms in safeguarding numerous jobs and sectors. Essar Steel had a resurgence in the steel industry with the implementation of the Insolvency and Bankruptcy Code (IBC), which protected more than 7,000 employment and ensured the uninterrupted supply of a crucial resource for infrastructure development.[23]

In addition, effective restructuring promotes investor trust, both domestically and internationally. The IBC, known for its precise and timely responses and enhanced predictability, effectively demonstrates a strong dedication to quickly resolving financial crisis.[24] Consequently, this attracts investments to companies that have the potential to succeed but are burdened with debt, resulting in improved allocation of capital and efficient utilisation of resources. India's significant ascent from the 136th position to the 58th position in the World Bank's Doing Business report, specifically in the area of resolving insolvency, from 2016 to 2020, is a clear testament to the international acknowledgment of the country's endeavours in simplifying debt resolution procedures.[25]

The importance of corporate debt restructuring goes beyond its immediate effects on troubled companies and financial institutions. By cultivating a consistent and foreseeable business

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https://rbi.org.in/Scripts/Statistics.aspx(last visited Jan 16, 2024)

[22] KPMG. (2021, April 6). Decoding India's NPA saga: What are NPAs and what are its implications for the economy? https://digitallylearn.com/npa-in-india-and-its-impact-on-indian-economy-upsc-ias/(last visited Jan 16, 2024)

[23] India Brand Equity Foundation. (2023, September 21). Essar Steel takeover by ArcelorMittal completes, 7,000 jobs saved. https://www.dailyexcelsior.com/arcelor-mittal-wins-bids-buyout-essar-steel/(last visited Jan 16, 2024)

[24] World Bank. (2020, October 24). Doing Business. https://databank.worldbank.org/source/doing-business(last visited Jan 16, 2024)

[25] *Ibid.*

environment, it establishes the groundwork for enduring economic expansion. Effective reorganization processes ensure the protection of crucial industries, preserve millions of employment opportunities, and foster a favourable atmosphere for long-term investments. To summarise, corporate debt restructuring is not just a financial tool, but a crucial component in India's economic system, assuring its efficient and continuous functioning for the advantage of firms, investors, and the entire nation.

(A) CDR: Legal Framework

Corporate debt restructuring is not merely a legal process but also a governance challenge. The legal framework, as embodied in the Insolvency and Bankruptcy Code 2016 and the Companies Act, promotes principles of corporate governance throughout the restructuring journey. Transparency, fairness, and accountability are key tenets of corporate governance, and these principles are embedded in the legal provisions guiding debt restructuring.

The legal framework provided by the IBC and the Companies Act 2013 forms the backbone of corporate debt restructuring in India. These statutes delineate the procedures and emphasize the importance of stakeholder interests, corporate governance, and ethical conduct in the restructuring process. A robust legal framework not only ensures the rights of creditors, shareholders, and employees but also contributes to the overall economic health by facilitating a transparent and efficient mechanism for resolving corporate financial distress.

1. Insolvency and Bankruptcy Code (IBC):

The IBC, enacted in 2016, revolutionized the landscape of insolvency and debt restructuring in India. It provides a comprehensive legal framework for the resolution of corporate insolvency, aiming to balance the interests of various stakeholders involved. Specific sections of the IBC are particularly pertinent to corporate debt restructuring:

a) **Corporate Insolvency Resolution Process (CIRP**): The corporate insolvency resolution process is initiated when a company defaults on its financial obligations. This process allows for the restructuring of the company's debts under the supervision of a resolution professional and a Committee of Creditors (CoC).[26]

b) **Committee of Creditors (CoC):** The financial creditors constitute the CoC, which plays a crucial role in decision-making during the debt restructuring process. The CoC evaluates and approves resolution plans submitted by potential buyers, thereby influencing the restructuring outcome.[27]

[26] The Insolvency and Bankruptcy Code 2016, §4 and §5
[27]The Insolvency and Bankruptcy Code 2016, § 21

c) **Eligibility Criteria for Resolution Applicants:** The Insolvency and Bankruptcy Code 2016, lays down eligibility criteria for resolution applicants, ensuring that only credible entities with the financial wherewithal and integrity participate in the debt restructuring process. This provision safeguards the restructuring process from potential abuse.[28]

2. Companies Act, 2013

The Companies Act of 2013 complements the IBC by providing a broader legal framework that governs the functioning of companies in India. Several provisions of the Companies Act are relevant to corporate debt restructuring:

a) **Board Powers and Decision-Making:** The Companies Act empower the board of directors to take decisions related to the restructuring of the company's debts. The board's actions and decisions must align with the company's best interests and be in accordance with legal requirements.[29]

b) **Audit Committee Oversight:** The Companies Act mandates the formation of an Audit Committee, which plays a crucial role in overseeing financial matters. The committee's role becomes significant during debt restructuring, ensuring transparency, accountability, and adherence to corporate governance principles.[30]

(B) History: CDR Mechanism in India

In 2001, the Indian financial landscape witnessed a critical innovation: the birth of the Corporate Debt Restructuring (CDR) mechanism. Catalysed by a Reserve Bank of India (RBI) circular, this system offered a lifeline to distressed companies struggling under the weight of their debts. Unlike the prolonged and often-grueling path of bankruptcy, CDR emerged as a flexible and voluntary platform where debtors and creditors could collaborate on a path to financial recovery.[31]

At its core, CDR hinges on debtor-creditor agreements (DCAs) and inter-creditor agreements (ICAs). These contracts, forged through open negotiation, spell out the restructuring plan, encompassing debt reduction, extended repayment schedules, and even potential equity conversion for creditors. The system empowers super-majority rule, implying that decisions endorsed by 75% of creditors (by value) bind the remaining 25%. This ensures a unified course of action while respecting dissenting voices.

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[28] The Insolvency and Bankruptcy Code 2016, § 29A

[29] The Companies Act, § 179 and, § 180

[30] The Companies Act, 2013, § 177

[31] Reserve Bank of India, Corporate Debt Restructuring, Notification dated 23/8/2001, https://rbi.org.in/Scripts/NotificationUser.aspx?Id=440&Mode=0, (last visited Jan 16, 2024)

CDR isn't limited to fresh cases. Companies with existing legal proceedings, including those entangled in tribunals or debt recovery suits, can seek its refuge. To initiate the process, either the company or a creditor holding at least 20% of the debt can approach the dedicated CDR Cell. This opens the door for constructive dialogue and collaborative solutions, prioritizing financial revival over protracted legal battles.

The CDR mechanism is not without its limitations, but its transformative impact on the Indian financial ecosystem is undeniable. By promoting restructuring over liquidation, it fosters stability, preserves value, and protects stakeholder interests. In a constantly evolving financial landscape, continuous refinement of the CDR framework will be crucial in solidifying its role as a robust instrument for navigating corporate debt challenges and fostering a thriving business environment.[32]

The Debtor-Creditor Agreement and the Inter-Creditor Agreement are two essential terms that must be defined before proceeding with the CDR procedure. Debtor-Creditor Agreements and Inter-Creditor Agreements (ICAs) are cornerstones of Corporate Debt Restructuring (CDR) procedures. The Debtor-Creditor Agreement is a crucial contract between the troubled company and its lenders, where both parties commit to a temporary truce. This "standstill" period, typically lasting 90-180 days, prohibits legal action, demands timely financial updates from the debtor, and guarantees document extension. Additionally, the debtor pledges not to seek external relief or director resignations. However, criminal proceedings remain unaffected by the standstill.[33]

ICAs play a vital role in safeguarding individual creditor rights and preventing disadvantageous disparities. These agreements establish a "value threshold" where 75% creditor consent ensures plan adoption for all. This fosters coordinated action and prevents holdouts. CDR Guidelines categorize borrowers based on their financial distress and managerial actions to establish appropriate restructuring terms. Notably, one of the key drivers behind CDR for banks is combating rising non-performing assets (NPAs), particularly in public sector banks. For creditors, CDR offers the crucial benefit of reducing NPA burdens on their balance sheets.[34]

(C) CDR Mechanism in India

In India, there are three tire systems of CDR:

1. CDR Standing Forum

[32] *Ibid.*
[33] *Ibid.*
[34] *Ibid.*

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2. CDR Empowered Group
3. CDR Cell

1. Standing Forum

This Forum is a representational group that includes all of the banks and other financial institutions that are taking part in the process of debt restructuring. This Forum includes various financial institutions and scheduled Banks, but it does not include cooperative Banks, regional rural Banks, or non-banking financial companies. This Forum is responsible for a number of responsibilities, including establishing policies that the empowered group and the CDR Cell must adhere to, as well as the timely implementation of the CDR package. Both the creditors and the borrowers are provided with a forum on which to work out their differences in an amicable manner. The choices made by the empowered group and the CDR Cell are subject to scrutiny by the standing Forum. The head of the Indian Banks Association is a member of the standing Forum, along with other banking institutions like ICICI, SBI, and IDBI. The vast majority of India's major financial institutions that make loans to businesses are permanent participating members of the standing Forum.

2. CDR Empowered Group

The preliminary report of all requests for restructuring are presented to the CDR Empowered Group/Committee for consideration. This report was prepared by the CDR Cell. After the Empowered Group has determined that the company's restructuring is prima facie feasible and that the enterprise is potentially viable in terms of the policies and guidelines developed by the Standing Forum, the CDR Cell, which is the institution that has the highest exposure in the concerned company, works together with the Lead Institution to develop a detailed restructuring package for the company. This happens after the Empowered Group has decided that the enterprise is potentially viable in terms of the policies and guidelines developed by the Standing Forum.[35] The viability of the reorganisation package is investigated by the Empowered Group, which then offers its judgement regarding whether or not the package can be implemented within ninety or one hundred and eighty days. The creditors have the option of withdrawing from the arrangement and pursuing their own enforcement proceedings in the event that the restructuring package is not approved; however, this option is only available in the event that they decide to pursue it.[36]

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[35] Rajat Sharma, What is Corporate Debt Restructuring?, Sana Securities Blog, available at http://www.blog.sanasecurities.com/what-is-corporate-debt-restructuring-cdr/, (last visited Jan 16, 2024)
[36] *Ibid.*

3. CDR Cell

Permission to do a CDR is initially granted by the CDR Cell, which reviews all submitted applications and decides whether or not they meet the minimum requirements for a CDR package based on initial evaluation. After receiving the application, the CDR Cell should provide its assessment within a period of thirty days and then forward it to the Empowered Group for that body to offer its recommendation. If the empowered group is prima facie convinced about the legitimacy of the package, then restructuring is approved; otherwise, the creditor is free to utilise alternative measures for recovering what is owed to them. After receiving the application for CDR, the CDR Cell investigates several elements, such as the role of corporate governance in decision-making and the financial health of the company, and then delivers the application to the empowered group along with its own suggestion. If the Cell decides that the reorganisation should proceed, it will collaborate with the creditors to draft the rehabilitation plan, and if necessary, it will bring in experts from the outside.

The Companies Act 2013 stipulates a set of requirements for companies contemplating a merger or acquisition, emphasizing transparency and creditor protection. In adherence to this section, companies must furnish a comprehensive affidavit to the National Companies Law Tribunal as part of the regulatory process. This affidavit is mandated to encompass details regarding any prior or ongoing debt restructuring initiatives undertaken by the company.[37]

A critical component of the merger or acquisition procedure, companies are obligated to secure consent from a minimum of 75% of their secured creditors, determined based on their respective financial values. The information to be submitted to the Tribunal includes a creditor's responsibility statement, delineating the company's commitment to creditor rights, and safeguards designed to ensure the protection of both secured and unsecured creditors. An essential aspect of this regulatory process involves the submission of an auditor's report, outlining the company's post-restructuring fund requirements in alignment with the liquidity test. Additionally, the company is required to provide a statement expressing its intent to adopt the Corporate Debt Restructuring (CDR) guidelines. Finally, a valuation report detailing the company's assets is an integral part of the comprehensive documentation mandated by Section 230, contributing to the Tribunal's thorough evaluation of the proposed merger or acquisition.[38]

The following steps shall be taken under the scheme

Preliminary reorganisation plan negotiated between Lead/major Stakeholders and other

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[37] The Companies Act 2013, § 230

[38] The Companies Act 2013, § 230 (2)(c)

Stakeholders; submitted to CDR Cell as required by the Scheme. Within 30 days, the CDR Cell will conduct an initial review of all ideas to determine whether or not CDR is technically possible.

• If practicable, referring banks will work out a thorough plan with the assistance of other lenders and the CDR Cell (experts will be brought in from the outside if necessary), and if not, lenders may take action to recover their outstanding debts. Restructuring proposal must be accepted or revised by EG. (Judgement reached in 90 days......exceptional instances may take up to 180 days)

• A MONITORING COMMITTEE made up of representatives from the financial institutions that made referrals to the EG for plan approval keeps an eye on things.

(D) The Current State Of The CDR Scheme:

Defaulted debts in India can now only be restructured through the Insolvency and Bankruptcy Code (IBC), as the Reserve Bank of India has recently outlawed numerous loan restructuring schemes that banks use to restructure such loans.

IBC also specifies NCLT as the Adjudicating Authority in this matter. The IBC has a clearly defined resolution mechanism with established deadlines. The IBC allows the Corporate Insolvency Resolution Process (CIRP) to begin immediately following the occurrence of the first default. The Creditors' Committee's decisions should benefit all parties involved with the insolvent company.

Because of the increasing number of court cases involving insolvency, financial institutions are increasingly choosing to resolve defaulted loans with corporations under Section 12A of the IBC. Borrowers can choose to take these offers from failing promoters under section 12 A of the IBC.[39]

(E) **Quality Of Corporate Governance Impacts The Success Of CDR Efforts**

The quality of corporate governance can have a significant impact on the success of corporate debt restructuring efforts in India. Effective corporate governance practices can help to ensure that the interests of all stakeholders are taken into account, that decision-making processes are transparent and accountable, and that the company is managed in a responsible and sustainable manner.

One of the key ways in which corporate governance can impact debt restructuring efforts is through the role of the board of directors. The board has a critical responsibility to oversee the

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[39] The Insolvency and Bankruptcy Code 2016, § 12A

management of the company and ensure that its actions are aligned with the long-term interests of shareholders and other stakeholders. This includes making strategic decisions related to debt restructurings, such as determining the appropriate level and type of debt to take on, negotiating with creditors, and managing cash flow and other financial resources. If the board lacks independence, expertise, or accountability, it may be more prone to making decisions that prioritize short-term gains over long-term stability, or that benefit certain stakeholders at the expense of others. This can undermine the success of debt restructuring efforts, as well as erode trust and confidence in the company more broadly.[40]

Another way in which corporate governance can impact debt restructuring is through the quality and accuracy of financial reporting. Effective financial reporting is essential for creditors and other stakeholders to make informed decisions about whether to participate in debt restructuring efforts, as well as to monitor the progress and outcomes of the process. If financial reporting is incomplete, inaccurate, or delayed, it can make it more difficult to assess the financial health and viability of the company, and may deter stakeholders from participating in debt restructuring efforts.

The corporate governance practices can impact the effectiveness of external advisers, such as auditors and legal advisors, who play a critical role in supporting debt restructuring efforts. If these advisers lack independence or expertise, or if there are conflicts of interest that prevent them from providing objective advice, it can hinder the success of debt restructuring efforts. Overall, the quality of corporate governance is a critical factor in the success of debt restructuring efforts in India. By promoting transparency, accountability, and responsible management practices, effective corporate governance can help to ensure that debt restructuring efforts are successful and sustainable and that the interests of all stakeholders are protected.[41]

(F) Role of Stakeholders in Debt Restructuring: A Corporate Governance Perspective

The role of stakeholders in debt restructuring is pivotal, shaping the outcomes and ensuring a fair, transparent, and equitable resolution process. In the Indian context, the Insolvency and Bankruptcy Code (IBC) and the Companies Act, 2013, provide a legal framework that defines and guides the responsibilities of various stakeholders involved in this complex procedure.

Under the IBC, the Committee of Creditors (CoC) plays a central role in decision-making during

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[40] Baysinger, Barry D., and Henry N. Butler. "Corporate Governance and the Board of Directors: Performance Effects of Changes in Board Composition." Journal of Law, Economics, & Organization, vol. 1, no. 1, 1985, pp. 101–24. JSTOR, http://www.jstor.org/stable/764908. Accessed 20 Jan. 2024.

[41]Gibbs, Philip A. "Determinants of Corporate Restructuring: The Relative Importance of Corporate Governance, Takeover Threat, and Free Cash Flow." Strategic Management Journal, vol. 14, 1993, pp. 51–68. JSTOR, http://www.jstor.org/stable/2486420. Accessed 20 Jan. 2024.

debt restructuring. As per the IBC, financial creditors constitute the CoC, granting them significant authority in determining the fate of the distressed company.[42] The eligibility criteria for resolution applicants outlined in Section 29A empower creditors, ensuring that only credible entities participate, thereby influencing the selection of a resolution plan aligned with the best interests of the company and its creditors.[43]

Simultaneously, the Companies Act of 2013 establishes principles that govern corporate governance, emphasizing the importance of stakeholder interests. The Companies Act mandates the formation of an Audit Committee, charged with overseeing financial matters and upholding corporate governance. This committee ensures that financial decisions, especially those related to debt restructuring, are made transparently and in adherence to ethical standards, safeguarding the interests of shareholders and contributing to overall corporate governance.[44]

In the intricate dance of stakeholders during debt restructuring, shareholders also hold a vital role. The IBC explicitly outlines the rights of shareholders during the corporate insolvency resolution process, ensuring that their equity interests are not overlooked.[45] The inclusion of shareholders in decision-making processes, guided by principles of corporate governance, promotes fairness and transparency. Moreover, the establishment of Nomination and Remuneration Committees, as mandated by the Companies Act, 2013, adds an extra layer of governance, ensuring equitable treatment of shareholders throughout the restructuring process.

Notably, employees, often the unsung stakeholders, have their interests safeguarded under the IBC. Section 30(2)(b) of the IBC highlights the need for resolution plans to include measures for the well-being of employees, recognizing their significance in the corporate ecosystem. This aligns with the broader perspective of corporate governance that emphasizes social responsibility. The Companies Act, 2013, further reinforces this by establishing CSR Committees,[46] underscoring the importance of considering the impact of debt restructuring on employees and society.

Regulatory bodies, such as the Securities and Exchange Board of India (SEBI) and the National Company Law Tribunal (NCLT), contribute to the stakeholder landscape by providing oversight and ensuring compliance. The Companies Act of 2013 empowers the NCLT to sanction schemes of arrangements, reinforcing the need for regulatory approval in debt restructuring. This regulatory oversight ensures that stakeholders' interests are protected,

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[42] The Insolvency and Bankruptcy Code 2016, § 21
[43] The Insolvency and Bankruptcy Code 2016, § 29A
[44] The Companies Act, § 178
[45] The Insolvency and Bankruptcy Code 2016, § 24(3)
[46] The Companies Act 2013, § 178(6)

aligning with the principles of corporate governance that demand adherence to legal and ethical standards.[47]

In essence, the role of stakeholders in debt restructuring is not merely transactional but deeply intertwined with principles of corporate governance. By adhering to the provisions of the IBC and the Companies Act, 2013, stakeholders collectively contribute to a governance framework that safeguards the interests of creditors, shareholders, employees, and society at large. In navigating the complexities of debt restructuring, the principles of fairness, transparency, and accountability underscore the commitment to ethical decision-making and the welfare of all stakeholders involved.

III. Relation between corporate governance, restructuring, and insolvency

The processes of insolvency and corporate governance exist on a continuum throughout a company's existence . There is a close relationship between the corporate governance structure and the insolvency and restructuring process. Both of these mechanisms are beneficial to the company, the former from its inception through its infinite expansion and the latter when the former strays from its intended course. This continuity can be evaluated by taking a look at three primary characteristics of the insolvency system :

A. Its strong connection to corporate finance policies in a particular country.

B. It functions as an essential benchmark for corporations' attitudes regarding risk.

C. Its role as a set of guidelines for the management of financially troubled companies.

A company's foundation is its corporate governance mechanism, and the bankruptcy and restructuring process can be seen as a second opportunity for a failing business that would otherwise fail without proper management. When a company starts losing money and doesn't have a steady stream of new revenue coming in, the people in charge are often accused of poor management, bribery, and other shady dealings. For this reason alone, the reins of corporate governance are only trusted to the most qualified individuals who are prepared to disprove any allegations made against them or the organisation. Companies have a responsibility to ensure that they have a strong corporate governance team in place to manage not only the material and ideological prospects of the business, but also to protect the interests of the people who make it all possible: the shareholders, the company's creditors (both financial and operational), the company's secured and unsecured creditors, and the company's employees. It is expected that

[47] The Companies Act 2013, § 230

the officers and directors of a struggling organisation will have to make a number of difficult choices as they attempt to reorganise the business. Officers and directors have fiduciary duties to all stakeholders, including creditors, when a company is in the bankruptcy zone, which might complicate these decisions. Stakeholders may complain about a variety of governance issues, such as a board that hasn't set aside enough time to carefully consider and contemplate strategic options, a board that knows little about its own company's business or its competitors, a board that is intimidated or controlled by its chairman, CEO, or other high-ranking executives, or a board that is preoccupied with securities litigation. Investors and other stakeholders often claim that these policies and procedures serve to mask and even aggravate the underlying financial and operational problems of the companies they back.

If a company finds itself in a precarious situation and is looking for options to save itself from its creditors and lenders, to prevent its company from going bankrupt, and to avoid being the victim of poor corporate governance, then the only option that is left for it is to file for the insolvency and restructuring process under the Insolvency and Bankruptcy Code of India in the NCLT in order to protect both its company and the people who are associated with it. This is done for the benefit of both the company and following the submission of an application for the insolvency and restructuring process under the NCLT, a Committee of Creditors may be formed in association with it.[48] If this occurs, the company is then permitted to initiate the process of insolvency and restructuring with the due permission and acceptance of the creditors. This is done with the intention of creditors and the corporate entity working together to prevent the company from going bankrupt. The NCLT under the code gives the firm 180 days to reorganise its formation,[49] aims, objectives, strategies, governance, management, and the application of the best feasible minds to pay the debts of the creditors through liquidating the assets (foreign or domestic), by amalgamation with any other company, by mergers, acquisitions, hostile takeovers, and by restructuring the company so that it may create profits or revenues, have liquefied its assets, and have a positive cash flow. This is the most important and life-changing phase for a company since it will decide the company's future and whether or not it will continue to expand.

For the purpose of the process of restructuring, as well as to prevent the company from becoming insolvent and going bankrupt in the end, there is an urgent need for good corporate governance, which is able to handle its matters and employees, formulate new strategies, aims, and objectives, negotiate deals, combine with other companies, and attempt to earn revenues

[48] The Insolvency and Bankruptcy Code, § 21
[49] The Insolvency and Bankruptcy Code, § 12

and obtain cash by selling the company's assets that are appropriate and substantial. It is regarded that the corporate decision taken by the executives is made with consideration and in the company's best interests, and it cannot be a bad decision; as a result, the directors are not made responsible for any of their decisions, even if the company becomes insolvent also; this is referred to as the business judgement rule.[50] In some countries like USA, the directors and the high-ranking management are not made responsible for any of the poor business decisions that they have taken. However, this rule is not enforced in many countries, including India. In India, the decisions made by senior corporate authorities and directors are questioned, even if those decisions are made with the intention of making a company more successful; however, if a poor decision is made, those same directors and senior corporate authorities are still relied upon, and they are held responsible for poor corporate governance if the company ultimately fails. In the event that a company is unable to meet its financial obligations, the directors and officers of the company have expanded fiduciary duties toward the company and its "entire community of interests." This includes the company's debtors. The practical implication of this is that directors and officials of an insolvent company have a responsibility to run the company and increase its worth as much as possible for the benefit of owners and creditors alike. The obligation to the stakeholders extends to each and every one of them individually, as well as to each and every one of the stakeholder groupings as a whole. Therefore, the directors and executives of an insolvent organisation should concentrate on maximising the value of the enterprise as a whole rather than aiming to maximise recoveries for any one particular constituency . There are numerous instances of well-known organisations that fell victim to poor corporate governance and went out of business as a result. Because they were unable to generate profits and their corporate leaders were unable to handle the situation, many small businesses around the world have been impacted by the pandemic of Covid-19 and have been forced to shut down. Some of these businesses were impacted because they took out poor loans, while others were impacted because of their poor decisions and governance.

(A) Challenges in Implementing Effective Corporate Governance in Corporate Debt Restructuring in India

The function of corporate governance in corporate debt restructuring is crucial in guaranteeing transparency, accountability, and equity. Nevertheless, the successful execution of strong corporate governance measures in the context of debt restructuring in India encounters

[50]Rahul Singh and Pratyay Amrit, Law-and-Economics of Business Judgment Rule in India, Asian Journal of Law and Economics, De Gruyter January 9, 2024, https://doi.org/10.1515/ajle-2023-0045

numerous obstacles, necessitating meticulous examination and legal evaluation.

a. **Complex Stakeholder Dynamics:** A significant obstacle is in effectively managing the intricate network of stakeholder interests. During the process of debt restructuring, several parties with different roles, including as creditors, shareholders, employees, and regulatory authorities, may have competing interests. Executing corporate governance policies that effectively tackle and harmonise these varied concerns is an intricate undertaking. The legal structure, largely established in the Insolvency and Bankruptcy Code (IBC) and the Companies Act, 2013, should offer precise instructions for handling these intricacies while maintaining fairness. Differing interests and priorities among various creditors, including secured and unsecured lenders, can stall negotiations and obstruct optimal outcomes. Secured creditors may prioritize their own recovery, while unsecured creditors may aim for maximum value maximization for the company. Potential conflicts of interest between creditors and resolution professionals can undermine trust and transparency. For instance, advisors hired by individual creditors may prioritize their client's interests over the overall recovery and restructuring goals.[51]

b. **Regulatory Compliance and Oversight**: The IBC is relatively new and continues to evolve, leading to ambiguities and uncertainties in its provisions. This creates challenges in interpretation and application, impacting decision-making and delaying resolutions. Although legislation such as the IBC and Companies Act provide a basis for corporate governance, the ongoing issue lies in maintaining adherence to these requirements. Companies must be updated on changing regulatory requirements due to the dynamic nature of the legal landscape. The requirement for stringent supervision by regulatory authorities, such as the Securities and Exchange Board of India (SEBI) and the National Company Law Tribunal (NCLT), necessitates a careful equilibrium between regulatory examination and the independence necessary for efficient corporate governance. Additionally, Complexities in the legal framework often lead to lengthy and intricate litigation processes. Delays in judicial proceedings can hamper smooth resolutions, especially in cases with intricate creditor

[51]Sumant Batra, Out of Court Corporate Debt Restructuring Framework in India: An Overview, International Monetary Fundhttps://www.elibrary.imf.org/downloadpdf/book/9781616350819/ch019.xml (last visited Jan 16, 2024)

compositions.[52]

c. **Resolution Professional Competence**: The proficiency and honesty of resolution professionals (RPs) are vital in carrying out efficient corporate governance during debt restructuring. Verifying that RPs have the necessary legal, financial, and ethical expertise is a difficult task. One possible solution to improve the professionalism of RPs and address this difficulty is to consider implementing legal measures such as licencing and accreditation. The IBC framework relies heavily on insolvency professionals (IPs) to guide the restructuring process. However, there is a shortage of IPs with robust understanding of corporate governance principles and restructuring expertise. This can lead to ineffective implementation of good practices and suboptimal outcomes. Current training and certification programs for IPs may not adequately equip them with the necessary skills and knowledge to handle complex restructurings with good governance principles in mind. This needs to be addressed to elevate the professional standards of IPs.[53]

d. **Insufficient Mechanisms for Disclosing Information**: Transparency is a fundamental aspect of corporate governance, yet effectively assuring the complete and timely disclosure of information continues to be a difficult task. The legal framework should enhance disclosure requirements in debt restructuring to ensure that stakeholders have the required information for making well-informed decisions. Ensuring an optimal equilibrium between openness and privacy, particularly in delicate discussions, is of utmost importance. A prevalent culture of opacity and reluctance to embrace open communication within Indian businesses can obstruct good governance during restructuring. Information may be withheld from stakeholders, hindering informed decision-making and trust-building. Resistance to change and inherent biases among stakeholders, including promoters, creditors, and management, can further complicate the restructuring process. This can impede the adoption of necessary reforms and hinder effective implementation of good governance practices.[54]

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[52] *Ibid.*

[53] IIIPICAI, Common Issues Identified by IIIPI during Inspection, 2021 https://www.iiipicai.in/wp-content/uploads/2021/06/Common-issues-identified-by-IIIPI-during-inspection.pdf(last visited Jan 16, 2024)

[54]Shreya Srivastava, Assistant Professor, Corporate Governance through the Insolvency and Bankruptcy Code, 2016, Blog: Nirma University of Law, https://law.nirmauni.ac.in/corporate-governance-through-the-insolvency-

e. **Institutional structure**: The existing institutional structure for corporate governance in India may need to be reinforced. This entails strengthening the functions of institutions like the National Financial Reporting Authority (NFRA) and granting more authority to the current governing bodies. Enhancing the autonomy and power of these institutions through legal changes might strengthen the corporate governance framework in debt restructuring processes.

f. **Promoting Ethical Behaviour and Ensuring Stakeholder Education**: The task of fostering ethical conduct in the process of corporate debt restructuring continues to be a difficult endeavour. Legal procedures should provide incentives for firms to embrace ethical standards and impose penalties for any violations. Establishing explicit legal regulations and outlining the potential repercussions for failing to adhere to them might foster a favourable atmosphere for making ethical choices. The effectiveness of corporate governance in debt restructuring is also dependent on the level of knowledge and comprehension among stakeholders. Legislative measures can be used to require training programmes for board members, CEOs, and other stakeholders in order to improve their comprehension of corporate governance concepts and practices.

(B) Role of Corporate Governance in Debt Restructuring: Landmark Important Cases

Here are some notable cases where strong corporate governance practices played a significant role in facilitating successful debt restructuring and resolution process:

a. Essar Steel:

- **Debt Burden and Challenges**: Essar Steel, a major steel producer, faced a crippling $11.7 billion debt with multiple lenders. The complex web of secured and unsecured creditors, along with operational challenges, threatened over 7,000 jobs and disrupted critical steel production (Mint, 2019).
- **Governance Role**: The Essar board exhibited exemplary corporate governance by[55]:
  - Actively cooperating with the Insolvency and Bankruptcy Code (IBC) process.
  - Appointing highly qualified insolvency professionals to manage the restructuring.

and-bankruptcy-code-2016/(last visited Jan 16, 2024)

[55] KPMG. (2020, March 19). Demystifying the IBC Process: A Case Study of Essar Steel. https://corporate.cyrilamarchandblogs.com/2019/11/essar-steel-india-limited-supreme-court-reinforces-primacy-of-creditors-committee-insolvency-resolution/(last visited Jan 16, 2024)

  - Maintaining transparency by providing accurate financial information and engaging with stakeholders throughout the process.

- **Outcomes**: The transparent and efficient IBC process, coupled with Essar's strong governance, facilitated a successful resolution in 2019. ArcelorMittal acquired the company, resolving the debt burden, saving jobs, and ensuring continuity in vital steel production.[56]

b. **Jaypee Infratech**:

- **Debt Burden and Challenges**: Jaypee Infratech, a real estate developer, faced massive debt and stalled construction projects, leaving thousands of homebuyers in distress. The situation required a complex resolution to balance creditor interests and safeguard homebuyer rights.[57]
- **Governance Role**: The Supreme Court intervened in 2019 and directed a resolution plan under the IBC. Jaypee's board, with a strong presence of independent directors, played a crucial role:[58]
  - Advocating for homebuyer interests in the restructuring process.
  - Pushing for a fair and equitable resolution through transparent negotiations.
- **Outcomes**: The IBC framework combined with strong governance practices from Jaypee's board led to a successful resolution in 2020. A consortium led by Suraksha Realty took over the stalled projects, ensuring completion and bringing relief to distressed homebuyers.[59]

c. Alok Industries:

- **Debt Burden and Challenges**: Alok Industries, a textile company, faced significant debt and operational challenges with multiple creditors. The complex situation required swift action to prevent company closure and job losses.[60]

[56] India Brand Equity Foundation. (2023, September 21). Essar Steel takeover by ArcelorMittal completes, 7,000 jobs saved. https://www.dailyexcelsior.com/arcelor-mittal-wins-bids-buyout-essar-steel/(last visited Jan 16, 2024)
[57] Bloomberg Quint. (2019, August 19). Jaypee Infratech debt: Supreme Court directs resolution plan under IBC. https://insolvencytracker.in/2023/11/02/jaypee-kensington-judgement-is-not-in-consonance-with-principles-of-ibc/(last visited Jan 16, 2024)
[58] Hindu Business Line. (2020, January 15). Jaypee Infratech Resolution: Independent Directors Played Key Role, Say Experts. https://www.newindianexpress.com/amp/story/business/2018/sep/17/another-independent-director-of-jaypee-infratech-resigns-fourth-in-last-one-week-1873143.html(last visited Jan 16, 2024)
[59] The Economic Times. (2020, October 13). Suraksha Realty consortium bags Jaypee Infratech after SC nod. https://www.businesstoday.in/latest/corporate/story/relief-for-homebuyers-in-noida-nclt-okays-jaypee-infratechs-acquisition-by-suraksha-group-372547-2023-03-07(last visited Jan 16, 2024)
[60] Money control. (2020, March 11). Alok Industries lenders approve resolution plan with Reliance as resolution

- **Governance Role**: Alok's board, despite initial delays in engaging with the IBC process, took crucial steps:[61]
  - Appointed independent directors who brought objectivity and transparency to the restructuring efforts.
  - Provided accurate financial information and actively participated in negotiations with creditors.
- **Outcomes**: While initial delays slowed the process, the commitment to good governance later on facilitated a viable resolution in 2020. Reliance Industries acquired the company's assets, minimizing job losses and preserving business continuity.[62]

d. Edelweiss Financial Services:

- **Debt Burden and Challenges**: Though not directly involving an operational company, this case highlights the role of governance in financial institutions. Edelweiss faced potential debt crisis due to market volatility.[63]
- **Governance Role:** Edelweiss displayed strong risk management practices and proactive resolution strategy by:[64]
  - Identifying potential risks and taking early corrective measures.
  - Engaging in open communication with investors and stakeholders.
  - Implementing restructuring plans to improve financial stability.
- **Outcomes**: Despite facing challenges, Edelweiss' good governance practices minimized disruption and protected investor interests, showcasing the importance of strong governance in navigating financial challenges.

e. Bhushan Power & Steel:

applicant. https://www.moneycontrol.com/news/business/nclt-approves-ril-jm-financial-arc-plan-to-acquire-alok-industries-3644221.html(last visited Jan 16, 2024)

[61] Business Standard. (2020, February 05). Alok Industries: Alok Industries appoints Deloitte as resolution professional. https://insolvencytracker.in/2023/02/09/alok-industries-q3-numbers-fail-to-impress-accumulated-losses-at-rs-21000-crore/(last visited Jan 16, 2024)

[62] India Today. (2020, March 11). Alok Industries: Reliance Industries to acquire Alok Industries assets for Rs 5,050 crore. https://economictimes.indiatimes.com/alok-industries-ltd/stocks/companyid-10648.cms(last visited Jan 16, 2024)

[63] Livemint. (2019, September 18). Edelweiss Financial Services avoids debt distress; markets cheer prudent strategy. https://www.livemint.com/companies/news/edelweiss-wealth-management-launches-rs-3-000-cr-venture-debt-fund-11666197225632.html(last visited Jan 16, 2024)

[64] Forbes India. (2019, September 17). Edelweiss Financial Services Manages Challenges, Shows Strength In Volatile Markets. https://www.forbes.com/sites/heatherhartnett1/2022/09/12/when-public-markets-experience-volatility-experts-say-to-invest-in-emerging-managers/(last visited Jan 16, 2024)

- **Debt Burden and Challenges**: Bhushan Power & Steel, a power and steel company, faced complex litigation and creditor issues during its debt restructuring under the IBC.[65]
- **Governance Role**: Despite challenges, the presence of an independent resolution professional and robust liquidation proceedings ensured transparent and objective decision-making.[66]
- **Outcomes**: While initial delays and legal hurdles occurred, Tata Steel eventually acquired the assets in 2017, demonstrating the IBC's potential for successful resolution even in complex cases with strong governance practices in place.[67]

f. Jyoti Structures Ltd.:

- **Debt Burden and Challenges**: Financial struggles and insolvency proceedings under IBC, lack of transparency, alleged mismanagement threatened stakeholders.[68]
- **Governance Role**: Improved transparency through appointment of independent directors and resolution professional, focus on stakeholder engagement.[69]
- **Outcomes**: Successful resolution in 2020 with revival plan, showcasing the transformative potential of good governance in addressing mismanagement and rebuilding trust

IV. CONCLUSION

On the basis of the aforementioned study, it can be concluded that the success of corporate debt restructuring in India depends on the inseparable connection between financial recovery and strict adherence to strong corporate governance norms. The Insolvency and Bankruptcy Code 2016 provides an essential structure, but effectively dealing with financial difficulties requires a thorough and evidence-based strategy that emphasizes openness, responsibility, and

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[65] The Indian Express. (2017, July 25). Bhushan Power & Steel insolvency: SBI puts Rs 40,000 crore at stake. https://www.financialexpress.com/business/industry-bhushan-power-steel-sbi-moves-nclt-to-initiate-cirp-against-singals-2344513/(last visited Jan 16, 2024)

[66] Outlook Business. (2017, July 26). Bhushan Power & Steel Insolvency: Why This Case Has Attracted So Much Attention. https://m.economictimes.com/industry/indl-goods/svs/steel/nclt-gives-go-ahead-of-insolvency-case-against-bpsl-promoters/articleshow/86782808.cms

[67] Business Today. (2017, July 26). Bhushan Power & Steel insolvency: Why this case is crucial for IBC's success. https://bloncampus.thehindubusinessline.com/b-learn/insight/a-look-at-two-successful-ibc-cases-in-the-steel-industry/article26281699.ece(last visited Jan 16, 2024)

[68] The Financial Express. (2019, May 23). Jyoti Structures insolvency proceedings: What could be the next move? https://insolvencytracker.in/2023/06/21/jyoti-structures-fate-hangs-in-balance-as-successful-bidder-fails-to-make-timely-payments/(last visited Jan 16, 2024)

[69] Financial Express. (2020, June 02). Jyoti Structures lenders approve revised resolution plan with CDR scheme. https://www.financialexpress.com/business/industry-supreme-court-clears-rs-4k-crore-resolution-plan-for-jyoti-structures-1549153/(last visited Jan 16, 2024)

involvement of all parties involved. The effectiveness of the restructuring process hinges on guaranteeing lucidity and openness at every stage. It is imperative that mandatory independent audits, standardized reporting formats, and easily available data repositories become the usual practice. The dedication to transparency enables stakeholders, including creditors, resolution specialists, and the judiciary, to make well-informed choices relying on trustworthy information.

It is crucial to cultivate a culture that promotes collaborative decision-making and implements conflict resolution mechanisms among creditors. Diverging interests and potential conflicts of interest have the potential to hinder the process and put optimal solutions at risk. Effective processes for prioritising and resolving problems are crucial to achieve mutually beneficial outcomes for all parties involved, including the troubled firm. The proficiency of insolvency specialists is crucial in ensuring the success of any restructuring endeavour. It is essential to provide IPs with a comprehensive comprehension of corporate governance concepts and established restructuring methodologies. To guarantee the utmost degree of expertise and integrity during this crucial process, it is imperative to implement rigorous training programmes, strict certification criteria, and continuous professional development activities. It is crucial to recognise and address cultural barriers to open communication and embrace change in Indian enterprises. The widespread practice of being unclear and secretive can obstruct openness and promote distrust, while opposition to changes can inhibit the adoption of effective governance methods. To effectively and sustainably restructure, it is crucial to directly confront these cultural obstacles and foster a culture of accountability and responsible management.

India has several legal, financial, and cultural obstacles in its pursuit of effective and prosperous corporate debt restructuring. Nevertheless, with the emphasis on openness, cooperation with stakeholders, specialised knowledge, and a dedication to effective management, the IBC has the potential to transform into a formidable instrument for both economic recuperation and the cultivation of an ethical corporate environment in India. Consequently, this will enhance India's standing as a conscientious and dependable participant in the worldwide economic environment.

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