

INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES  
[ISSN 2581-5369]

---

Volume 8 | Issue 2  
2025

---

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact [support@vidhiaagaz.com](mailto:support@vidhiaagaz.com).

---

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Treatment of Operational Creditors under CIRP: An Unequal Playing Field?

---

VAIBHAV GATTANI<sup>1</sup> AND DR. SANTOSH KUMAR<sup>2</sup>

## ABSTRACT

*The Insolvency and Bankruptcy Code (IBC), 2016, brought a paradigm shift in the insolvency framework of India by prioritizing time-bound resolution over liquidation. However, the treatment of operational creditors under the Corporate Insolvency Resolution Process (CIRP) has sparked considerable debate. Unlike financial creditors, operational creditors often lack representation in the Committee of Creditors (CoC), limiting their influence in the resolution process. This paper critically analyzes the statutory framework, judicial pronouncements, and practical implications to assess whether operational creditors are placed on an unequal footing. It explores the rationale behind the differential treatment and evaluates whether it aligns with the principles of fairness, equity, and the objectives of the IBC. The study concludes with suggestions for a more balanced approach that safeguards the interests of operational creditors while maintaining the commercial efficacy of the CIRP.*

**Keywords:** Operational Creditors, CIRP, Insolvency and Bankruptcy Code, Committee of Creditors, Unequal Treatment.

## I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) marked a watershed moment in India's economic and legal landscape, seeking to consolidate various insolvency laws into a unified framework. Enacted to promote time-bound resolution of corporate distress, the IBC empowers both creditors and debtors to initiate the Corporate Insolvency Resolution Process (CIRP) for the revival or liquidation of financially distressed companies. The Code emphasizes maximizing the value of assets, promoting entrepreneurship, and balancing the interests of all stakeholders, including creditors, employees, and shareholders.<sup>3</sup>

Under the IBC, creditors are broadly classified into Financial Creditors (FCs) and Operational Creditors (OCs). While financial creditors are those who have extended loans or financial facilities to the corporate debtor, operational creditors are entities to whom the debtor owes

---

<sup>1</sup> Author is a LL.M. Student at Amity University Uttar Pradesh, India.

<sup>2</sup> Author is a Professor at Amity University Uttar Pradesh, India.

<sup>3</sup> Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), Statement of Objects and Reasons.

money in respect of goods or services, including government dues such as taxes.<sup>4</sup> OCs form the backbone of the supply chain — they include vendors, service providers, suppliers, employees, and statutory authorities whose dues often comprise significant operational liabilities for a company.

Despite their indispensable role, operational creditors have frequently found themselves in a disadvantageous position under CIRP. Financial creditors enjoy dominant powers, including full voting rights in the Committee of Creditors (CoC) under Section 21 of the Code, whereas OCs are largely excluded from decision-making, unless they meet a threshold that allows limited participation.<sup>5</sup> The Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India* upheld this classification, noting the differential treatment as constitutionally valid due to the inherently distinct nature of their claims.<sup>6</sup>

This research paper seeks to critically examine whether operational creditors are being treated unfairly under the current CIRP framework. It aims to explore the legal provisions, judicial trends, and practical challenges faced by OCs, especially in comparison to financial creditors.

Given the increasing number of corporate insolvencies and the significant implications for vendors and MSMEs, the fair treatment of operational creditors is crucial for maintaining trust in India's insolvency regime. Through doctrinal analysis and case studies, this paper evaluates the extent of inequality and proposes reforms to ensure a more equitable insolvency framework.

## II. LEGAL FRAMEWORK GOVERNING OPERATIONAL CREDITORS UNDER IBC

The Insolvency and Bankruptcy Code, 2016 (IBC) lays down a detailed framework for insolvency resolution in India, classifying creditors into financial creditors (FCs) and operational creditors (OCs). This categorization is pivotal to understanding the procedural rights and remedies available to different stakeholders during the Corporate Insolvency Resolution Process (CIRP).

### 1. Definition of Operational Creditor – Section 5(20)

Section 5(20) of the IBC defines an “operational creditor” as “*a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.*”<sup>7</sup> Operational debt, under Section 5(21), refers to a claim in respect of the provision of goods or services including employment, or a debt in respect of payment of dues arising

---

<sup>4</sup> Insolvency and Bankruptcy Code § 5(20), § 5(21), No. 31, Acts of Parliament, 2016 (India).

<sup>5</sup> Insolvency and Bankruptcy Code § 21, No. 31, Acts of Parliament, 2016 (India).

<sup>6</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).

<sup>7</sup> Insolvency and Bankruptcy Code § 5(20), No. 31, Acts of Parliament, 2016 (India).

under any law for the time being in force and payable to the Central Government, any State Government, or any local authority.<sup>8</sup> OCs thus include suppliers, service providers, employees, and statutory authorities such as the Income Tax or GST departments.

## 2. Filing of Claims under Section 9 vs. Section 7

Operational creditors initiate insolvency proceedings under Section 9 of the Code, which requires a *prior demand notice* under Section 8, giving the debtor a 10-day window to either pay the outstanding dues or bring to light any dispute regarding the debt.<sup>9</sup> In contrast, financial creditors initiate proceedings under Section 7, with no such requirement to issue a demand notice or prove absence of dispute. This procedural difference creates a more cumbersome entry route for OCs.

Moreover, the Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* clarified that even a pre-existing dispute, regardless of its merit, is sufficient to reject an OC's application under Section 9, thereby setting a relatively higher threshold for OCs to access the CIRP mechanism.<sup>10</sup>

## 3. Threshold Limits and Procedural Requirements

Initially, the IBC required a minimum default of ₹1 lakh to trigger insolvency proceedings, applicable to both OCs and FCs. However, via a notification dated 24 March 2020, the government increased this threshold to ₹1 crore, but only for corporate insolvency applications under Sections 7, 9, and 10.<sup>11</sup> This move was especially detrimental to smaller operational creditors such as MSMEs, who typically deal in smaller amounts.

OCs are also required to submit proof of the debt, invoices, and absence of dispute—formalities not applicable to FCs to the same extent under Section 7. These procedural hurdles make it harder for OCs to initiate CIRP effectively.

## 4. Rights of Operational Creditors during CIRP

Under Section 21 of the Code, only financial creditors form the Committee of Creditors (CoC), which is the key decision-making body during CIRP.<sup>12</sup> OCs do not have voting rights, unless they form more than 10% of the total debt, and even then, their participation is limited and without voting power. This structural limitation deprives OCs of any substantial influence on the approval of resolution plans, despite the fact that their recoveries are directly affected by

---

<sup>8</sup> Insolvency and Bankruptcy Code § 5(21), No. 31, Acts of Parliament, 2016 (India).

<sup>9</sup> Insolvency and Bankruptcy Code §§ 8–9, No. 31, Acts of Parliament, 2016 (India).

<sup>10</sup> *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353 (India).

<sup>11</sup> Ministry of Corporate Affairs, Notification No. S.O. 1205(E), Gazette of India (Mar. 24, 2020).

<sup>12</sup> Insolvency and Bankruptcy Code § 21, No. 31, Acts of Parliament, 2016 (India).

these decisions.

### 5. Judicial Interpretation – *Swiss Ribbons v. Union of India*

In the landmark case of *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court upheld the constitutional validity of the differential treatment between FCs and OCs. The Court justified the exclusion of OCs from the CoC by noting that financial creditors are better equipped to assess the viability of a corporate debtor and safeguard the economy.<sup>13</sup> However, critics argue that this approach reinforces inequality, especially when OCs suffer disproportionately high losses in resolution plans.

## III. COMPARATIVE ANALYSIS: OPERATIONAL CREDITORS VS FINANCIAL CREDITORS

The Insolvency and Bankruptcy Code, 2016 (IBC) adopts a creditor-in-control model, vesting primary decision-making powers in the hands of creditors, particularly financial creditors (FCs). However, the Code draws a sharp distinction between operational creditors (OCs) and FCs, which significantly affects their participation in and outcomes from the Corporate Insolvency Resolution Process (CIRP). This section undertakes a comparative analysis to evaluate whether this differential treatment is justifiable within the Code's objective of equitable resolution.

### 1. Differences in Initiation of CIRP, Voting Power, and Recovery Rate

One of the most notable differences lies in the initiation process. FCs can initiate CIRP under Section 7 without first issuing a demand notice or showing that the debt is undisputed. OCs, however, are required to issue a demand notice under Section 8, and may proceed under Section 9 only if no dispute exists.<sup>14</sup> This procedural burden was upheld by the Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, where the Court held that even the existence of a plausible dispute bars an OC's application.<sup>15</sup>

In terms of voting power, FCs exclusively constitute the Committee of Creditors (CoC) under Section 21, and possess voting rights in proportion to the financial debt owed to them. OCs, on the other hand, have no voting rights unless they constitute more than 10% of the total debt, and even then, their participation is observational, not deliberative.<sup>16</sup>

When it comes to recovery rates, operational creditors are typically the worst hit. According to data released by the Insolvency and Bankruptcy Board of India (IBBI), OCs have consistently

---

<sup>13</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).

<sup>14</sup> Insolvency and Bankruptcy Code §§ 7–9, No. 31, Acts of Parliament, 2016 (India).

<sup>15</sup> *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353 (India).

<sup>16</sup> Insolvency and Bankruptcy Code § 21, No. 31, Acts of Parliament, 2016 (India).

received significantly lower recoveries compared to FCs in approved resolution plans. In some high-profile cases like *Essar Steel*, OCs received a negligible percentage of their dues while FCs recovered substantial amounts.<sup>17</sup>

## 2. Section 30(2)(b): Minimum Payments to OCs

Section 30(2)(b) of the IBC mandates that a resolution plan must provide for the payment of debts owed to OCs in a manner not less than the amount they would receive in the event of liquidation.<sup>18</sup> While this clause aims to safeguard the interests of OCs, its practical impact is limited. Since OCs are unsecured creditors, their expected liquidation value is often minimal or even nil. As a result, resolution plans that allocate near-zero payments to OCs technically comply with Section 30(2)(b) without offering substantive relief.

The Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* reaffirmed that so long as the plan meets the liquidation benchmark under Section 30(2)(b), differential payments to creditors are permissible.<sup>19</sup> This has legitimized the disproportionate treatment of OCs in resolution plans, regardless of their role in the company's operations.

## 3. Role in CoC and Absence of Voting Rights

The absence of voting rights for OCs stems from the rationale that FCs are better equipped to assess the commercial viability of the resolution plan and have a greater stake in the financial restructuring of the debtor. While this logic has been upheld judicially,<sup>20</sup> it creates a structural imbalance, particularly for small vendors, suppliers, and MSMEs whose survival may depend on the outcome of the CIRP.

The IBC permits representation of OCs in CoC meetings only if the total debt owed to them exceeds 10% of the overall debt, and even then, without any voting rights.<sup>21</sup> This marginalizes OCs in the resolution process and effectively renders them passive observers.

## 4. Do These Provisions Align with Equitable Treatment?

While the IBC's goal is to maximize value and ensure fairness, the existing framework arguably favors secured financial interests over the commercial and equitable interests of operational stakeholders. The Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India* justified this on the ground that FCs are more involved in long-term financing and risk assessment.<sup>22</sup> Yet, the

---

<sup>17</sup> *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).

<sup>18</sup> Insolvency and Bankruptcy Code § 30(2)(b), No. 31, Acts of Parliament, 2016 (India).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).

<sup>21</sup> Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 16A(1) (India).

<sup>22</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).

cumulative outcome of this framework has been a consistent undercutting of OCs' interests.

Thus, while the legal design may be internally consistent, it falls short of ensuring equitable treatment in spirit, especially for smaller operational entities that lack bargaining power but contribute significantly to the debtor's day-to-day operations.

#### IV. CASE LAW ANALYSIS

Judicial interpretation has played a pivotal role in shaping the position of Operational Creditors (OCs) under the Insolvency and Bankruptcy Code, 2016 (IBC). Courts have consistently balanced the objectives of the Code—such as value maximization and timely resolution—against the principles of equity and fairness, particularly in cases involving unequal treatment of OCs vis-à-vis Financial Creditors (FCs). This section analyzes key judgments that have influenced the rights of OCs in the insolvency regime.

##### 1. *Swiss Ribbons Pvt. Ltd. v. Union of India*

In *Swiss Ribbons*, the constitutional validity of various provisions of the IBC, including the differential treatment of FCs and OCs, was challenged. The petitioners argued that the exclusion of OCs from the Committee of Creditors (CoC) violated Article 14 of the Constitution.

The Supreme Court upheld the distinction, reasoning that FCs are involved in assessing the viability of the corporate debtor and restructuring plans, while OCs typically deal in supply of goods and services and do not have the same financial exposure.<sup>23</sup> The Court emphasized that the Code's classification was intelligible and based on economic rationale, not arbitrary.

However, while affirming the constitutionality, the Court directed that the interests of OCs must still be protected under Section 30(2)(b) of the Code and by the adjudicating authority, which is tasked with ensuring fairness in resolution plans.<sup>24</sup>

##### 2. *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*

This was a landmark judgment that clarified the primacy of the CoC and its commercial wisdom in approving resolution plans. The CoC had approved a plan that offered OC recoveries of less than 5%, while FCs received over 90% of their admitted claims.

The Supreme Court held that differential treatment of creditors is permissible as long as the plan adheres to the liquidation value required under Section 30(2)(b). It reiterated that the NCLT and NCLAT cannot interfere with the CoC's commercial decisions, unless the resolution plan

---

<sup>23</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).

<sup>24</sup> *Ibid.*

contravenes any provisions of law.<sup>25</sup>

This decision effectively reduced judicial scrutiny over the fairness of distribution, leaving OCs with minimal remedies against inequitable outcomes.

### **3. Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh**

In this case, the issue before the Court was whether the resolution applicant is required to match the liquidation value in its plan. The Supreme Court held that liquidation value is a floor, not a ceiling, and that the resolution plan need not match or exceed it in all cases.<sup>26</sup>

Although the case primarily dealt with valuation, it further underscored the discretion available to resolution applicants and the CoC, with no guaranteed minimum payout for OCs beyond what they would get in liquidation. This reinforces the limited bargaining position of OCs in the resolution process.

### **4. Ruchi Soya Industries Ltd. Case**

In the insolvency of Ruchi Soya Industries Ltd., FCs recovered approximately 65–70% of their claims, whereas OCs received less than 20%. Though the plan complied with Section 30(2)(b), many OCs, including small vendors, expressed dissatisfaction over the steep haircut.

The NCLT approved the resolution plan, reiterating that as long as minimum liquidation value is paid, the plan cannot be rejected merely for offering low returns to OCs.<sup>27</sup>

This case highlighted the practical vulnerability of OCs, especially MSMEs and suppliers, who have limited leverage and no voting rights, despite their essential role in the debtor's operations.

### **5. Judicial Approach to OC Rights: Summary**

The judiciary has consistently upheld the limited role of OCs in CIRP, recognizing their exclusion from CoC and reduced recoveries as permissible under the law. The Courts have emphasized “commercial wisdom of the CoC” as sacrosanct and immune from challenge, even when OCs receive minimal recoveries.

Thus, while legal safeguards such as Section 30(2)(b) exist, their practical efficacy remains questionable. The recurring judicial message is clear: OCs are to be protected only to the extent of their liquidation value, with no parity with FCs in terms of decision-making or financial outcomes.

---

<sup>25</sup> Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531 (India).

<sup>26</sup> Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467 (India).

<sup>27</sup> National Company Law Tribunal, Mumbai Bench, *Ruchi Soya Industries Ltd.*, CP(IB)-137/MB/2017 (Order dated July 24, 2019).



## V. CRITICAL ISSUES AND CHALLENGES FACED BY OPERATIONAL CREDITORS

Despite the intended inclusivity and fairness under the Insolvency and Bankruptcy Code, 2016 (IBC), Operational Creditors (OCs) often find themselves at a structural disadvantage during the Corporate Insolvency Resolution Process (CIRP). While the law offers a basic framework for participation and claim realization, in practice, several challenges restrict OCs—particularly small vendors and MSMEs—from achieving meaningful outcomes. This section explores the key hurdles operational creditors face under the current legal and procedural regime.

### 1. Low Recovery Rates for OCs

One of the most pressing concerns is the consistently low recovery rates for operational creditors in approved resolution plans. As per the Insolvency and Bankruptcy Board of India's quarterly data, OCs receive substantially lower recoveries compared to financial creditors. For instance, in the *Essar Steel* resolution, FCs recovered over 90% of their claims, whereas OCs recovered less than 5%.<sup>28</sup>

This is largely due to the fact that OCs are typically unsecured creditors, and under Section 30(2)(b), they are only guaranteed an amount not less than their liquidation value, which in most cases is negligible or zero.<sup>29</sup> This makes OCs passive victims of the process, bearing the brunt of financial restructuring despite their pivotal role in company operations.

### 2. Disproportionate Influence of FCs in CoC Decisions

The Committee of Creditors (CoC) is composed entirely of financial creditors under Section 21 of the IBC, giving them exclusive decision-making power in approving or rejecting resolution plans. Operational creditors are excluded from voting rights unless they meet the threshold of 10% of total debt, and even then, they have no real voice in the resolution strategy.<sup>30</sup>

The Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India* justified this structure on the basis that FCs are better equipped to assess financial viability. However, in practice, this setup leads to biased resolutions that often sideline operational concerns, with minimal accountability to OCs.<sup>31</sup>

### 3. Vulnerability of Small Businesses and MSMEs

Most operational creditors fall within the category of small suppliers, vendors, or MSMEs, whose survival hinges on the timely receipt of dues. For such entities, any delay or haircut in

---

<sup>28</sup> Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531 (India).

<sup>29</sup> Insolvency and Bankruptcy Code § 30(2)(b), No. 31, Acts of Parliament, 2016 (India).

<sup>30</sup> Insolvency and Bankruptcy Code § 21, No. 31, Acts of Parliament, 2016 (India).

<sup>31</sup> Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India).

payment can be financially crippling. The IBC lacks tailored mechanisms to address the unique risks faced by small operational creditors, making them particularly vulnerable during CIRP.

Moreover, many MSMEs lack the legal knowledge and resources to effectively file claims, attend CoC meetings, or challenge resolution plans, placing them at a systemic disadvantage. Studies suggest that small creditors are often unaware of CIRP proceedings until their dues are written off or significantly reduced in approved plans.<sup>32</sup>

#### **4. Delays in Payments and Post-Resolution Uncertainty**

Even when OCs are provided for in resolution plans, disbursement delays post-resolution are common. Resolution applicants may re-negotiate payment terms, and there's no standardized enforcement mechanism to ensure that OCs receive their dues within a specific time frame after plan approval.

For instance, in the *Jaypee Infratech* case, several OCs, including homebuyers and suppliers, faced extended delays even after the National Company Law Tribunal (NCLT) approved the resolution plan.<sup>33</sup> This lack of enforceability undermines the certainty that the Code aims to achieve and adds to the operational creditor's woes.

#### **5. Absence of Active Representation Mechanisms for OCs**

Another key challenge is the lack of formal representation for OCs in the insolvency process. Unlike FCs, who are represented by authorized officials and participate actively in CoC decisions, OCs do not have a collective representation mechanism or industry-based advocacy platform to protect their interests during CIRP.

Although Section 24(3) of the IBC allows OCs to attend CoC meetings if their claims exceed 10% of total debt, they cannot vote and are rarely in a position to influence outcomes.<sup>34</sup> This creates a democratic deficit, where a major stakeholder group remains structurally voiceless in crucial decisions affecting their recoveries.

### **VI. INTERNATIONAL BEST PRACTICES**

While India's Insolvency and Bankruptcy Code, 2016 (IBC) has significantly reformed corporate insolvency, the treatment of Operational Creditors (OCs)—particularly in terms of participation and recovery—remains a contentious issue. A comparative perspective can help identify progressive global standards and offer constructive models to enhance the Indian

---

<sup>32</sup> See Ministry of Corporate Affairs, *Standing Committee on Finance Report on Implementation of IBC*, 2021 (India).

<sup>33</sup> In re *Jaypee Infratech Ltd.*, CP(IB)-77/ALD/2017, National Company Law Tribunal, Allahabad Bench.

<sup>34</sup> Insolvency and Bankruptcy Code § 24(3), No. 31, Acts of Parliament, 2016 (India).

framework.

### **1. United Kingdom: Balanced Approach in Creditor Committees**

The UK's insolvency framework, primarily governed by the Insolvency Act 1986, adopts a more creditor-centric model. Unsecured creditors, including OCs, are typically represented in creditor committees, which are formed under Section 141 of the Act.<sup>35</sup>

Although secured creditors often retain priority, unsecured creditors are given proportional voting rights in insolvency proceedings based on the value of their claims.<sup>36</sup> This allows operational creditors to have a direct say in the insolvency process, particularly in decisions concerning asset distribution and appointment of insolvency practitioners.

Furthermore, the UK does not structurally exclude any class of creditor from participation unless their claims are disputed or contingent. This inclusive approach ensures that small suppliers and service providers can actively participate, reducing potential bias in favor of financial institutions.

### **2. United States: The Chapter 11 Model**

The United States' Chapter 11 bankruptcy process, governed by the U.S. Bankruptcy Code, offers substantial procedural safeguards to all creditor classes. Unsecured creditors, including OCs, are typically organized into a Creditors' Committee under 11 U.S.C. § 1102, which actively participates in negotiations and monitors the debtor's activities during reorganization.<sup>37</sup>

Each class of creditors, including operational ones, must vote on the reorganization plan. The "cramdown" provisions under 11 U.S.C. § 1129(b) ensure that no creditor class can be unfairly discriminated against without adequate justification.<sup>38</sup> This legal design promotes equity and transparency, offering operational creditors a real seat at the table and protection against one-sided outcomes.

Notably, recovery rates for OCs under Chapter 11 are often better than in India, primarily because of the active negotiation and restructuring role granted to them through statutory mechanisms.

### **3. Singapore: Harmonized Treatment Under the IRDA**

Singapore's Insolvency, Restructuring and Dissolution Act, 2018 (IRDA) represents one of the most modern and adaptive insolvency regimes globally. The Act encourages pre-packaged

---

<sup>35</sup> Insolvency Act 1986, c. 45, § 141 (UK).

<sup>36</sup> See *Corporate Insolvency and Governance Act 2020*, c. 12 (UK).

<sup>37</sup> 11 U.S.C. § 1102 (2018) (U.S.).

<sup>38</sup> 11 U.S.C. § 1129(b) (2018) (U.S.).

plans and promotes creditor inclusivity. Section 70 of IRDA mandates classification of creditors and gives OCs the right to vote on schemes, proportional to the value of their claims.<sup>39</sup>

Additionally, Singapore courts have emphasized that all creditor classes must be treated fairly and must receive at least as much as they would in a liquidation scenario. The IRDA also incorporates features from both UK and US systems, including debtor-in-possession restructuring and judicial oversight.

In landmark decisions such as *Re Pacific Andes Resources Development Ltd.*, Singapore's judiciary has reiterated the importance of balancing interests between secured and unsecured creditors.<sup>40</sup>

#### **4. Are There Models Where OCs Have a More Balanced Standing?**

Yes—both the US and Singapore offer examples where operational creditors enjoy a more equitable standing:

- In the US, creditor committees act as watchdogs, holding the debtor accountable and influencing restructuring outcomes.
- In Singapore, mandatory classification and class-wise voting ensure that the voice of unsecured creditors, including OCs, is heard and considered fairly.
- In the UK, the inclusive creditor committee system ensures representation without excluding any particular class from key decision-making.

These models highlight that equal treatment does not require identical rights, but at least meaningful participation and protection against arbitrary outcomes.

#### **5. Lessons for India**

India can draw several lessons from these international frameworks:

- Establish a Creditor Committee for OCs under the CIRP framework, modeled after the US or UK system.
- Grant limited voting rights to OCs proportional to their claim value, ensuring their interests are not sidelined in CoC deliberations.
- Mandate class-wise voting and restructuring plans, as in Singapore, to ensure fairness and transparency. *Re Pacific Andes Resources Dev. Ltd.* [2018] SGHC 210 (Sing.).
- Introduce procedural representation mechanisms, such as industry associations or legal

---

<sup>39</sup> Insolvency, Restructuring and Dissolution Act 2018, No. 40/2018, § 70 (Sing.).

<sup>40</sup> *Re Pacific Andes Resources Dev. Ltd.* [2018] SGHC 210 (Sing.).

representatives, to voice the concerns of MSMEs and smaller operational creditors.

While India's IBC emphasizes speed and efficiency, integrating these international best practices can help balance the scales and deliver more substantive justice to operational creditors.

## **VII. SUGGESTIONS AND REFORMS**

The structural disadvantages faced by Operational Creditors (OCs) under the Insolvency and Bankruptcy Code, 2016 (IBC) require a policy rethink that ensures procedural fairness and economic justice. While the IBC has transformed India's insolvency ecosystem, its long-term success depends on a more inclusive framework that addresses the needs of all stakeholders—especially those, like OCs, whose claims are often modest but crucial for business continuity.

This section outlines key reforms to improve the treatment of OCs in the Corporate Insolvency Resolution Process (CIRP).

### **1. Amendments to Allow Limited Voting Rights**

One of the most pressing reforms is the grant of limited voting rights to OCs. Presently, under Section 21 of the IBC, only financial creditors constitute the Committee of Creditors (CoC) and exercise voting powers.<sup>41</sup> OCs can attend meetings under certain thresholds (Section 24(3)) but are denied any participatory vote.

To address this imbalance, the legislature should consider amending Section 21 to allow OCs voting rights proportional to their admitted claims, subject to a cap. A limited and structured voice for OCs in key decisions—such as approval of resolution plans—would promote equity and legitimacy in the resolution process.

This suggestion aligns with international best practices, particularly Chapter 11 of the U.S. Bankruptcy Code, where unsecured creditors form part of official committees and are consulted in restructuring matters.<sup>42</sup>

### **2. Equitable Representation in the CoC**

A complementary reform would be to introduce multi-class CoCs that separately represent financial and operational creditors. Much like class voting models under Singapore's IRDA or creditor committees in the UK, a dual-class system would recognize the distinct interests of OCs and ensure a balanced approach to negotiations.<sup>43</sup>

---

<sup>41</sup> Insolvency and Bankruptcy Code § 21, No. 31, Acts of Parliament, 2016 (India).

<sup>42</sup> 11 U.S.C. § 1102 (2018) (U.S.).

<sup>43</sup> Insolvency, Restructuring and Dissolution Act 2018, No. 40/2018, § 70 (Sing.).

Such representation could be sector-wise (e.g., MSME vendors, service providers) or based on claim size. Moreover, independent professionals or industry bodies may be authorized to represent dispersed or small-value operational creditors who are otherwise unable to attend proceedings.

### **3. Improve Transparency and Access to Information**

A recurring grievance among OCs is the lack of timely access to critical information during the CIRP. Often, OCs are unaware of the proceedings or receive delayed updates on resolution plan developments. Although Regulation 20 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for notice of CoC meetings, OCs are not entitled to minutes or plan details unless the resolution professional chooses to share them.<sup>44</sup>

To bridge this gap, the following measures are suggested:

- Mandating a dedicated portal where OCs can view case status, claim status, and resolution plans.
- Ensuring that all OCs, irrespective of voting rights, receive regular updates on the CIRP and draft resolution plans.
- Allowing digital representation or proxy participation, particularly beneficial for small and remote creditors.

Such steps would enhance transparency, reduce information asymmetry, and foster confidence in the insolvency process.

### **4. Revisit Section 30(2)(b) Thresholds**

Section 30(2)(b) of the IBC mandates that OCs be paid not less than the amount they would receive in liquidation, which in many cases, especially for unsecured operational creditors, is zero or negligible.<sup>45</sup> While upheld in *Essar Steel India Ltd. v. Satish Kumar Gupta*, the current standard creates a legal ceiling rather than a fair floor.<sup>46</sup>

A reformative approach would involve:

- Revising Section 30(2)(b) to provide minimum guaranteed recovery thresholds for small operational creditors—such as 10–15% of their admitted claims, or
- Introducing a priority slab for MSMEs and micro-creditors up to a fixed value—akin to

---

<sup>44</sup> IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 20.

<sup>45</sup> Insolvency and Bankruptcy Code § 30(2)(b), No. 31, Acts of Parliament, 2016 (India).

<sup>46</sup> *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).

the "small creditor protections" under Singapore's regime.<sup>47</sup>

Such amendments would promote substantive fairness and reflect the spirit of equitable treatment envisioned in the Preamble to the IBC.

## VIII. CONCLUSION

The Insolvency and Bankruptcy Code, 2016 (IBC) marked a turning point in India's approach to corporate insolvency, focusing on time-bound resolution and maximization of value. However, its treatment of Operational Creditors (OCs)—a vital class of stakeholders—has raised legitimate concerns of systemic inequity.

### 1. Recap of Key Findings

Throughout this paper, it has been observed that:

- OCs have limited procedural rights under the IBC. They may initiate insolvency proceedings under Section 9, but unlike Financial Creditors (FCs) under Section 7, they have no voting rights in the Committee of Creditors (CoC) unless they constitute a substantial portion of the debt under Section 24(3) of the Code.<sup>48</sup>
- The Supreme Court in *Swiss Ribbons v. Union of India* upheld the distinction between FCs and OCs, stating that the classification was based on intelligible differentia. However, even in this landmark case, the Court recognized the need to safeguard OCs from arbitrary discrimination.<sup>49</sup>
- Under Section 30(2)(b), OCs are guaranteed the liquidation value—but in practice, this often results in negligible recoveries.<sup>50</sup> Major resolution plans like in Essar Steel have reinforced the perception that OCs are often passive spectators, with little influence on the outcome.<sup>51</sup>
- Jurisdictions like the United States, United Kingdom, and Singapore have implemented more inclusive frameworks that allow unsecured creditors (like OCs) to participate actively, ensuring better transparency and fairness.

### 2. Final Position: Are OCs Treated Unequally under CIRP?

To a considerable extent—Yes. The differential treatment of OCs in terms of voting rights, information access, and recovery priorities amounts to structural inequality. While the rationale

---

<sup>47</sup> Re Pacific Andes Resources Dev. Ltd. [2018] SGHC 210 (Sing.).

<sup>48</sup> Insolvency and Bankruptcy Code §§ 7, 9, 24(3), No. 31, Acts of Parliament, 2016 (India).

<sup>49</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).

<sup>50</sup> Insolvency and Bankruptcy Code § 30(2)(b), No. 31, Acts of Parliament, 2016 (India).

<sup>51</sup> *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).

for prioritizing FCs—due to their risk assessment capabilities and systemic importance—is understandable, it should not come at the cost of complete exclusion of OCs from decision-making.

The unequal playing field is especially harsh for small suppliers, service providers, and MSMEs, who often lack legal sophistication and resources to assert their claims or challenge unfair resolution plans.

### **3. Way Forward: Towards a Balanced CIRP Framework**

India's insolvency regime must evolve from a purely creditor-in-control model to a stakeholder-inclusive system. A rebalancing of rights and representation is essential for the long-term legitimacy and effectiveness of CIRP. Key reforms include:

- Granting limited or proportional voting rights to OCs.
- Establishing OC representation mechanisms within CoCs.
- Enhancing transparency through mandated disclosures and real-time information access.
- Reworking Section 30(2)(b) to offer minimum recovery guarantees for small operational creditors.

Such reforms would ensure that efficiency does not override equity, and that CIRP remains faithful to the foundational objectives of the IBC—namely, equitable treatment of stakeholders, value maximization, and sustainable resolution.

\*\*\*\*\*