

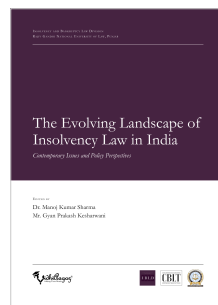
CHAPTER 19

The Next Frontier of Insolvency: Private Equity, AIFs, and Transformation of India's Distressed Assets Market

Aviral Jain and Aditi Bansal

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CHAPTER 19

The Next Frontier of Insolvency: Private Equity, AIFs, and Transformation of India's Distressed Assets Market

AVIRAL JAIN* AND ADITI BANSAL**

The Indian Stressed Assets market has undergone prominent change in its landscape since the transformation of the legislative intent with the implementation of Insolvency and Bankruptcy Code, 2016 (IBC). Long gone are the days when only Asset Reconstruction Companies (ARCs) historically dominated the market for stressed assets and debts, with various other key market players emerging from the shadows including that of Private Credit Funds as well as Alternative Investment Funds (AIFs), backed by domestic as well as global financial giants. Prominent players such as Edelweiss, Kotak, BlackRock, Varde Partners, and Brookfield, who earlier had nothing to associate with this industry, have started emerging as key actors in acquiring and financing distressed assets through various innovative structures that blend debt, equity, and securitization.

This paper aims to critically examine the expanding role of sophisticated investors in the resolution ecosystem, following their influence as highlighted in the recent landmark transactions, including that of Dewan Housing Finance Corporation Ltd, Videocon Industries, Reliance Infratel, and Srei Infrastructure Finance. These transactions bring forward the growing appetite of alternative capital pools to invest in stressed assets, bringing much needed liquidity and operational expertise to distressed companies. However, this growing trend also brings forward the inherent regulatory and policy gaps existing in the current regime. One of the prominent gaps including that of eligibility of AIFs and Private Credit Funds which remains challenged under the ambit of Section 29A, and that the regulatory oversight of the IBBI, RBI and SEBI over the acts of such players, gives rise to significant uncertainty amongst these market participants. Additionally, valuation disputes, potential conflict of interests, and misalignment between investors return expectations and equitable creditor recoveries raise important concerns over the fairness and transparency over the whole process.

Analyzing the same through comparative studies with foreign jurisdictions, including that of US and UK, wherein the private credit funds and AIFs have long played an integral role in the distressed assets market,

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this paper would further aim to argue as to how India needs to evolve further to incorporate this shifting landscape into its regime. The analysis would aim to provide the necessity of clear eligibility norms, harmonized disclosure obligations, and creation of a regulatory sandbox to test innovative resolution strategies that can responsibly integrate sophisticated investors into India's insolvency regime.

This paper would aim to highlight both the opportunities AIFs and Private Credit Funds present along with the inherent challenges posed by them, and the need to bring about reforms to enable IBC to fully realize its potential as a dynamic and inclusive platform for resolving financial distress in India's increasingly complex credit markets.

Keywords: Insolvency, Stressed Asset Resolution, Alternative Investment Funds, Private Credit Funds

1 INTRODUCTION

The Indian Stressed Assets Market, being one of the largest across the world, standing at an unprecedented USD 150 Billion¹, has been poised as one of the sectors with insurmountable growth and expansion. Since implementation of Insolvency and Bankruptcy Code, 2016², the Indian regime has been provided with a structured regulatory mechanism aiming to provide specifically for stressed assets and insolvent organizations, providing for a comprehensive way of resolution to protect the quality of assets and conserve the future of the organization. However, IBC, along with it, has also brought about a shift in the market participation and it has been for the good.

Before the implementation of IBC, the regulatory framework which largely governed the insolvency and liquidation regimes, failed to provide a set of guidelines required to be followed and that no set regulatory framework was set. And in the midst of all this, Asset Reconstruction Companies (ARCs) benefitted the most. While the companies tried to navigate the unstructured process of insolvency and liquidation, the ARCs would much rather step-in to buy distressed assets/NPAs in peanuts and benefit out of the whole process. Even though, after the implementation of IBC, it was ARCs who initially came out in the forefront as the lone survivor in the distressed assets market, with growing structural process and enhancement in the way of resolution of distressed assets, the market is witnessing new market participants entering this field with an aim of acquiring distressed assets, and these are none other than the Private Equity Funds, and Alternative Investment Funds.

With the primary focus of restructuring of distressed assets, and saving the assets quality being one of the foremost and fundamental aim of the legislation, the increased market participation from such funds would prove to be uniquely and inherently important and for

¹ Anchal Jindal & Vaibhav Gupta, *Stressed Assets Resolution in India: Present and Future*, IBC LAWS (May 22, 2020), <https://ibclaw.in/stressed-assets-resolution-in-india-present-and-future-by-cs-anchal-jindal-adv-vaibhav-gupta/>.

² The Insolvency and Bankruptcy Code, 2016.

the growth of market altogether. The shift in landscape, owing to increase in the distressed asset market and the better quality of assets being classified as distressed, have led to increased participants flocking the market with these credit and equity funds leading the race with deep pockets and willingness to acquire what the market has best to offer. However, this increased willingness of these funds to participate presents itself with various unanswered questions that pose a big challenge in the regulatory regime as well as the procedural aspect of the same.

This paper would undertake to answer the very main question which looms in the industry with the participation from these funds, which is that as to what extent can Alternative Investment Funds (AIFs) and Private Credit Funds be effectively and fairly integrated into India's insolvency resolution regime under the IBC, given the current legal, regulatory, and market constraints. In furtherance of which, the paper would also aim to answer as to what role these funds play in the resolution of major distressed assets under the IBC regime and as to how Section 29A of the Code could potentially create barriers for these funds to act as a resolution applicant. Along with that, the paper would also aim to answer as to how the other regulatory institutions, such as SEBI and RBI, would govern these sophisticated investors aiming to venture into the distressed assets market and if any overlap or gaps exists in their governance over these funds. Further, this paper aims to draw upon a comparative study from the like jurisdictions of the US and the UK and as to how the distressed assets markets have been captured majorly by these funds.

Hence, through this, this paper would aim to answer all these questions that surround the participation of these funds into the distressed assets markets and how the market forces actually interact with these participants and as to how the legislative and secretarial compliances play over the allow them to further into the market.

2 CHANGING LANDSCAPE OF THE STRESSED ASSET RESOLUTION IN INDIA

The Indian asset market has ever expanded with various policies and incentives targeted at maximising the utilization capacity of the assets market in India and that viable push to the industries is provided to capitalize on the same. However, with the increased push for asset capitalization, this aspect of Indian market attaches yet another flawed procedure with it. With lack of entrepreneurial skillset and that lack of various infrastructural support and logistical support, various business entities are facing insolvency or bankruptcy owing to such lack of facilities and the failure to bank on the available resources. This has led to inevitable increase in the distress of the assets and failure to optimize the same at the fullest.

An Economic Survey shed some light on the twin balance sheet problem of rising indebtedness of the Indian firms along with rising non-performing loans in the Indian banking

system during 2015-16.³ It drew the attention towards the rising distress in the asset quality of the business entities in the Indian jurisdiction and the lack of the legislative intent towards working towards or maintaining the same.

With the implementation of the IBC, 2016, it was aimed that the said issue will be legally and impactfully tackled with the help of the set rules and procedure and with professionals specializing in the same field to provide for ease and better utilization of the regulation put in place. The Code aimed at revitalizing the staggering debt market in India reeling under the enormous pressure of NPAs, bad debts, and banking frauds.⁴ Over the years, the impugned legislation gained support from all the market participants and that it has provided to rescue the looming debt spiral in the Indian Inc, providing for the assets quality to improve and NPAs to fall, and overall increase the health of the market.

It has been observed, over the time, that the Code has opened and paved the way for investors looking for business expansion through a process which is time-bound, information intensive and ends with a plan that is binding on all stakeholders. With the regulation coming into force and ensuring progress in the resolution process of NPAs, there has been a rise in genuine interests amongst the investors in the distressed assets investment markets with their inherent 'buy low-sell high' potential. Businesses have been on a hunt since 2016 for buying good underlying assets with potential for a turnaround at a reasonable valuation.⁵

However, apart from the shift in the trends of provisioning to save the asset quality, the market participation has also seen a shift in the trends. Along with the ARCs, the oldest participants in the market of distressed assets, various business units have also started venturing into this field and the new entrants to the market include the PE Funds and AIFs, who have shined as the saviours in the recent circumstances, approaching the market with deep-filled pockets and with the aim of acquiring control over the distressed assets of the target company and saving them from going insolvent or bankrupt with an actual clean slate as an ancillary objective achieved in the process, providing for the most optimized way of acquiring control and managing the target company.

With the increase in establishment of specialized AIFs operating in the field of insolvent and distressed assets markets with specialization in identifying, targeting, acquiring, and operating the distressed assets, the AIFs are targeting the market to optimize and capitalize on the distressed assets and NPAs with turnaround potential promising higher returns

³ Chairperson, IBBI, *IBC: Developing a Market for Distressed Assets*, IBBI, <https://ibbi.gov.in/uploads/resources/b7d255fa23b6d70f3dda575e9ec0dfae.pdf>.

⁴ SAM, *Distressed Asset Opportunities in India*, SAM, <https://www.amsshardul.com/wp-content/uploads/2019/09/Reports-IBC-Distressed-Asset-Opportunities-in-India-July2019.pdf>.

⁵ Chairperson, IBBI, *IBC: Developing a Market for Distressed Assets*, IBBI, <https://ibbi.gov.in/uploads/resources/b7d255fa23b6d70f3dda575e9ec0dfae.pdf>.

multiplying the investments. On a similar footing and with the same aims and objectives, the PE Funds are also expanding in the impugned market.

Hence, it can be easily deduced that the landscape of the distressed markets is rapidly changing with the new market entrants and hence, there is nothing wrong in stating that it is changing. The only question which looms is that if it is changing for the good or for bad.

3 STRUCTURING DISTRESSED ASSETS: THE FUNDS' WAY

There has been recent news of acquisitions such as that of debt-ridden Hotel Leelaventure by Brookfield. One thing common amongst all these strategic acquisition or procurements of the management by these entities is that the acquiring entities are all either PE Firms or AIFs gaining control over the business units that are strategically failing or have been found to be indebted, and are approaching IBC for a resolution.

As has been repeatedly highlighted that the PE Funds and AIFs, amongst the other participants, are increasingly venturing into the distressed assets markets, it is important to understand as to how these funds are actually aiming and acquiring these assets and are achieving the aim they set out with.

The PE Funds, majorly foreign entities have started venturing into the Indian distressed assets markets for it is something that has provided with vast options and variety to these entities. These fund houses, those who participate actively in the distressed assets markets, are more interested in acquiring controlling stake in companies undergoing insolvency and that these opportunities seem conducive for cherry picking their targets as they acquire the entire company/assets at throwaway prices similar to a shopper splurging on one of those 'shopping carnivals' with discounts.⁶

These PE Firms like picking controlling stake into and pave their way for an exit rather than depend on the promoters.⁷ Further, PE Firms also come to aid to ailing firms suffering through CIRP and give a hope of revival through picking up sizable equity stake and earn returns after it comes to a position wherein it can stand itself.⁸ These organizations provide requisite monetary support to distressed assets and aim for revival which in turn benefits the ailing company as well as the economy at large.

Further, after the Covid pandemic, emergence of PE Funds specifically focused on stressed and battered assets primarily aiming to make strategic investments and revival of distressed assets, have led the market for they have structured and fully functional team

⁶ Ashish Parwani, *Key Factors That Should Guide PE Funds While Investing in Companies Through IBC Route*, INC42 (Feb. 21, 2021), <https://inc42.com/resources/key-factors-that-should-guide-pe-funds-while-investing-in-companies-through-ibc-route/>.

⁷ *Id.*

⁸ *Id.*

specializing in these kinds of investments and that they make such strategic moves keeping in mind the overall market conditions which helps the company benefit out of such investments and give a leeway for revival.⁹

Further, the foreign PE Firms are also finding it attractive to infuse capital into India and target companies undergoing resolution process and obtaining control over them through acquiring the distressed assets and providing financial and infrastructural support to revive them and reap benefits out of such strategic acquisitions. These foreign entities bring in valuable expertise in asset restructuring and turnaround management, strengthening India's financial capabilities. The participation boosts market confidence and signals faith in India's economic prospects and regulatory framework which further attracts investments.¹⁰ On the other hand foreign funds are also drawn towards the Indian markets owing to potential of high returns driven by valuation gaps and diverse investment avenues available with them. This strategic entry into India's expanding financial sector allows for a long-term presence, bolstered by a regulatory framework offering clarity and transparency.¹¹ These foreign investments contribute largely towards the job preservation, economic expansion, and a more resilient financial sector, through fostering a more mature and sophisticated financial ecosystem and promoting best international practices, ultimately driving long-term growth and stability.

Hence, it can be easily deduced that these Fund houses are more drawn towards this market with the aim of strategically acquiring the companies facing distress and have non-performing assets over its books of accounts and that these funds acquire the same with the target of refinancing them and disposing them off later after acquiring a sizable chunk of profits on the initial investments made by them. Hence, the specialized PE Funds, using the strategic acquisition and later exiting the position strategically is the methodology adopted by them to make profits and it's a long-term game that they lock into.

Apart from these organizations, another type of business that has recently made a name into the impugned market is that of Alternative Investment Funds (AIFs). It is pertinent to note that AIFs are divided into three categories of funds based on the activities they undertake and as under the Category I of AIFs, a separate type of fund has been identified, termed as Special Situations Funds (SSFs). These SSFs are essentially investment funds that focus on the distressed assets, turnaround opportunities, and event driven investments.¹² They

⁹ *Id.*

¹⁰ Dhananjay Jain, *Opening India's Stressed Assets Market: A Necessary Catalyst?*, MONEY CONTROL OPINION (Apr. 4, 2025), <https://www.moneycontrol.com/news/opinion/opening-india-s-stressed-asset-market-a-necessary-catalyst-12984569.html>.

¹¹ *Id.*

¹² Perna Jain & Paras Pradhan, *Regulatory Framework of Special Situation Funds in India* (May 21, 2025), <https://ibclaw.in/regulatory-framework-of-special-situation-funds-in-india-by-perna-jain-and-adv-paras-pradhan/>.

play an important role in restructuring financially troubled companies and were brought into existence by the SEBI as a part of the AIFs for capitalizing on the unique, non-recurring opportunities to typically invest in the companies facing financial or operational challenges but have a potential of recovery and growth.¹³

Since being heavily regulated by the SEBI, the AIFs have a special permissible area wherein they can enter into financially and invest into the market. Even for SSFs, they have a permissible investment area, as approved by the SEBI, to invest into and have certain minimum threshold which are required to be adhered to.¹⁴ There are also conditions laid down by SEBI which provides that these AIFs are supposed to operate only in the distressed assets markets and are not allowed to obtain funds for any other purpose. Along with that, the SEBI also reserves the power to set the limit of investments and further thresholds with regards to the investments into the fund.¹⁵

There are various roles that these SSFs play into the market, for they facilitate the corporate turnarounds, enhance the market liquidity and debt resolution, support M&A and PE transactions and encourage FDI and global capital inflow.¹⁶ The SSFs focus on event-driven strategies, for they have an opportunistic approach to seek undervalued assets or distressed securities, aiming for high returns by investing at a discount and profiteering from recovery or restructuring.¹⁷ Since, it takes time to unfold the actual opportunities, SSFs are more long-term focused. Along with that, since these funds operate similar to that of Hedge Funds and PE Firms, particularly in their focus on turnaround strategies and value extraction, many SSFs engage in active management, working closely with the company's management to influence restructuring decision or operational improvements.¹⁸

Hence, it can be easily deduced that the introduction of SSFs as an AIF into the distressed assets markets, have allowed infrastructural investors, including foreign entity to participate in the impugned market, and that in the recent times, there is no doubt as to how SSFs are playing an increasingly crucial role in India's evolving distressed asset market.

Further, it is important to highlight the fact that, post Covid pandemic, the distressed assets market has witnessed a paradigm shift into the market participants, and how it has shifted into the likings of PE Funds and AIFs, who have emerged as the proud market leader in the distressed assets market and as to how they are controlling the flow of the

¹³ *Id.*

¹⁴ Stratage Law Partners, *Special Situations Alternative Funds*, STRATAGE LAW PARTNERS (Jan. 27, 2022), <https://www.stratage.in/special-situations-alternative-investment-funds-2/>.

¹⁵ *Id.*

¹⁶ Prerna Jain & Paras Pradhan, *Regulatory Framework of Special Situation Funds in India* (May 21, 2025), <https://ibclaw.in/regulatory-framework-of-special-situation-funds-in-india-by-prerna-jain-and-adv-paras-pradhan/>.

¹⁷ *Id.*

¹⁸ *Id.*

same, for they have started actively acquiring NPAs with huge potential and started banking on them for reaping profits out of such positions.

4 REGULATORY AND LEGAL IMPLICATIONS

The regulatory regime governing the resolution process of insolvent and bankrupt companies has so far developed a proper structural flow of whole process and have provided a substantial and comprehensive solution to the insolvent and distressed companies to resolve their debts and provide them a fresh start. The Code has imbibed all these aspects into the procedural compliances to give this into effect.

However, the Code has also mandated some aspects to be checked off by the entities before allowing them to properly acquire the distressed companies and give them a platform for turnaround. Section 29A of the Code provides for persons not eligible to be resolution applicants and that this section has elaborated and laid down proper aspects that need to be adhered to before becoming a successful resolution applicant. The section provides that a person is barred from being a resolution applicant if they have guaranteed the debt of any firm under the insolvency or liquidation under any jurisdiction and also have barred any entity who is also an undischarged insolvent in any jurisdiction. This bars out PE Firms and AIFs who have lent any guarantee to the insolvent company and this is essentially aimed at disqualifying most global PE Funds, especially those specializing in acquiring and financing troubled assets from submitting a resolution plan under the Code.¹⁹

Along with this, they have also restricted related party from being qualified as successful resolution applicant, and over the years, one thing that has become crystal clear is that there is no set definition of a related party and that this may preclude any fund who is even remotely attached to any promoter or a director leading to them being qualified as a related party. This also provides for a very ambiguous and wide interpretation of the related party and further a disqualification of any fund failing to establish no connection.²⁰

Hence, it can be easily deduced that this impugned section makes it difficult for the PE Funds and AIFs to demarcate themselves as not a related party and that, even though it is highlighted to provide for a proper safeguard against flawed applications, it makes the process redundant for the funds specializing in distressed assets markets might find themselves in a deadlock for not being able to qualify as a resolution applicant. This clause provides for

¹⁹ Jayshree P Upadhyay & Deborshi Chaki, *IBC Ordinance May Disqualify Global Private Equity Funds*, MINT (Nov. 30, 2017), <https://www.livemint.com/Industry/33T3lCHzQ1YM3neIq4bsyJ/IBC-ordinance-may-disqualify-global-private-equity-funds.html>.

²⁰ *Id.*

these funds to master themselves in proper corporate structures and that structure themselves in such a way to avoid failing as a resolution applicant.

Beyond the Insolvency and Bankruptcy Code, there are various other regulations that play a vital role in this specific aspect and needs to be adhered to so as to avoid any overlapping of the laws and proper implementation of the procedure. RBI plays a key role in the current circumstances, for they provide for comprehensive guidelines and procedural compliances to be achieved by the entities that are bringing about foreign capital into India, especially foreign PE Funds and AIFs. The Foreign Direct Investment in India is heavily regulated and that all the compliances as laid down by RBI are required to be strictly followed. Along with that, RBI over time has also released various guidelines targeting the ARCs and SSFs to enhance the regulatory regime over such entities along with making provision for these entities to operate and not escape or subsume any legislative procedure as laid down. Hence, all the PE Firms and AIFs have to keep in mind the regulations placed by RBI in their respective industries as well as for any inflow of foreign fund as capital into India, increasing a check on such investments, along with the IBC.

Further, SEBI aims to govern the AIFs and has over time laid down various regulations and guidelines which governs the AIFs. Since SSF is essentially an AIF and have been structured in such a form to qualify as one, it is necessary for it to also adhere to such guidelines as laid down governing them and hence forms another road-block in the acquisition of distressed assets by the AIFs specializing in it. Hence, it can be stated that the AIFs face a huge challenge of regulatory compliance in acquisition of distressed assets.

Hence, it can be easily deduced that due to multiplicity of the laws and regulations governing these specific organizations, the specific industry poses a wide-spread challenge for the funds to actively acquire the distressed assets and rework on them to reap benefits and profits out of them. However, it is also essential to note that this sector is heavily regulated owing to the strategic importance of such regulations for they aim to govern the entities dealing in the distressed assets, which forms essential to the core of the economy.

Hence, even though it is a divided opinion of the market participants over the multiplicity of the regulations governing them, it cannot be further argued that the regulations are indeed in place and it is a necessity to comply with all of them, in order to legally function and process and to achieve the outcome set out.

5 THE GLOBAL COMPARATIVE ANALYSIS

The PE Funds and AIFs getting involved in the distressed assets market is something that is not only visible in India, but has become a world-wide trend for these entities are finding

a very enriching and profitable domain in the distressed assets market and are aiming to reap the last bit of benefit from all these entities.

PE Funds and Hedge Funds have emerged as key players in the U.S. distressed assets markets, particularly under the Chapter 11 proceedings, wherein their strategic involvement has shaped restructuring outcomes and market behaviour. Almost 90% of the large Chapter 11 filings between 1997 and 2007 indicated involvement of Hedge Funds somehow, reflecting their dominance in the impugned market. This data includes approximately half of all distressed debt trading, one-third of leveraged loan trading, and one-quarter of high-yield bond trading during that period, demonstrating a wide-spread market integration.²¹ Their influence stems not only from financial clout but also from tactical positioning within the capital structure, often acquiring unsecured debt, which serves as the “fulcrum security,” allowing them to steer the reorganization process toward favourable equity positions.²² The strategy is frequently operationalized through the “loan-to-own” model, where hedge funds acquire debt with the express goal of converting it into controlling equity post-restructuring. In Northwestern Corporation’s Chapter 11 case, hedge funds like Oaktree and Avenue Capital used this strategy to convert senior unsecured notes into 92% equity in the restructured firm, achieving a recovery rate of nearly 90%.²³

Empirical evidence supports the argument that such funds can promote efficiency in bankruptcies: their presence correlates with greater likelihood of emergence from Chapter 11, improved recoveries for junior creditors, and more favourable outcomes for equity holders. These gains often result from hedge fund-driven initiatives such as CEO turnover, adoption of Key Employee Retention Plans (KERPs), and the breaking of exclusivity rights in plan filing.²⁴

Recovery trends also show relatively favourable performance in U.S. restructurings, with recovery rates on defaulted corporate bonds in Chapter 11 cases often exceeding those seen in sovereign or international proceedings, further affirming the role of structured private capital in efficient resolution.²⁵

On the other hand, in the UK, private equity firms and alternative investment funds (AIFs), including hedge funds, are central players in the distressed assets landscape, particularly through their participation in pre-pack administrations. A pre-pack occurs when the

²¹ Wei Jiang, Kai Li & Wei Wang, *Hedge Funds and Chapter 11*, COLUMBIA BUSINESS SCHOOL, https://business.columbia.edu/sites/default/files-efs/pubfiles/4130/Hedge_funds_ch_11.pdf.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Manmohan Singh, *Recovery Rates from Distressed Debt: Empirical Evidence from Chapter 11 Filings, International Litigation, and Recent Sovereign Debt Restructurings* (IMF Working Papers, Aug. 1, 2003), <https://www.imf.org/en/Publications/WP/Issues/2016/12/30/Recovery-Rates-From-Distressed-Debt-Empirical-Evidence-From-Chapter-11-Filings-International-16487>.

sale of a distressed company's assets is negotiated prior to its entry into administration and effected immediately upon appointment of administrators, often facilitating swift business rescue while preserving value.²⁶ Since the 2000s, this mechanism has grown increasingly common, specifically for the SMEs restructuring, with private capital playing a key role.

To address transparency concerns, the UK introduced regulations in 2021 requiring that transactions to connected parties (which may include funds or private equity buyers already engaged with the distressed firm) must be approved by creditors or accompanied by an independent "evaluator" report confirming the reasonableness of the deal. These reforms aim to bolster stakeholder confidence while ensuring the continued viability of pre-packs as rescue instruments.²⁷

Recent data shows a dramatic increase in pre-pack usage, from 201 cases in 2021 to 628 in 2024, a 212% rise. Sales to connected parties have also surged, from 106 in 2021 to 395 in 2024, underlining the growing role of fund-backed buyers in such deals. In this environment, AIFs and private credit vehicles serve as critical sources of capital and continuity, stepping in promptly to acquire and stabilize distressed businesses, even though within an evolving framework designed to ensure accountability and fairness.²⁸

Hence, it can be easily deduced that PE Funds and AIFs have long played a key role in the developed markets of the distressed assets, including that of the UK and the US, and one thing that can be deduced is that these entities play a key role, regardless of the jurisdiction, for they are someone with good capital available to be infused quickly and the strategic expertise in their professionals who are well trained in operationalizing such structures. Hence, it is easy to deduce that these entities play a key role in the distressed assets markets and that it is about time that the Indian markets also opt for providing a key role to these entities to acquire and strategically place companies under the governance of the professionals who have the required expertise to reap benefits out of such assets by providing them a turnaround.

6 CONCLUSION AND THE WAY FORWARD

The Indian distressed assets markets stand at crossroads. The emergence of AIFs and PE Funds plays a dominant role in the market, signalling towards a structural transformation as

²⁶ Jacqueline Ingram & Damilola Odetola, *United Kingdom: Core Elements of a Pre-Pack Administration*, GRR (Mar. 4, 2022), <https://globalrestructuringreview.com/guide/the-art-of-the-pre-pack-archived/edition-2/article/united-kingdom-core-elements-of-pre-pack-administration>.

²⁷ Richard Tett, Adam Jones & Yoonji Lee, *UK Regulations on Pre-Pack Administrations Come into Force* (May 3, 2021), <https://transactions.freshfields.com/post/102gwuk/uk-regulations-on-pre-pack-administrations-come-into-force>.

²⁸ Jo Milner & David Buchler, *July 2025 Newsletter: UK Connected Party Pre-Packs Soar*, BUCHLER PHILLIPS (July 16, 2025), <https://www.buchlerphillips.com/july-2025-newsletter-uk-connected-party-pre-packs-soar/>.

to how the insolvency resolution is approached in India. These sophisticated investors have brought about much needed capital infusion along with operational turnaround expertise in the global best practices in the distressed assets restructuring, as evident from the cases like DHFL, Srei Infra, and Reliance Infratel.

However, the regulatory framework governing their participation, particularly under the IBC, remains as a significant roadblock. The current interpretation of the related party and disqualification criteria, while rooted in safeguarding the resolution process, inadvertently, excludes the entities that could otherwise bring about an efficient and meaningful restructuring. The lack of nuanced eligibility framework leaves too much ambiguity and restricts the competition.

In order to ensure that the Indian markets can harness the capabilities of these funds, a few regulatory reforms are necessary to be incorporated, which includes provision for clarity to be provided on Section 29A and removal of any ambiguity placed on the restriction of participation of Funds specializing in acquiring insolvent companies and distressed assets. Further, regulatory harmonization is essential to be done in order to avoid any duplicity of laws and overlapping of jurisdictions. Further, an enablement of regulatory sandbox has formed as a necessity for distressed assets transaction and management along with institutionalization of the role the SSFs play. Along with this, a need is felt for establishment and maintenance of a proper platform for distressed assets, in furtherance of Ease of Doing Business and proper exchange of information, enhancing the focus of the market participants.

In sum, India must now recognize that to fully unlock the value of the distressed assets market, regulatory reform must evolve. While safeguarding the sanctity of the resolution process remains priority, fostering an inclusive regime where capital and competence are welcomed will ensure that the IBC achieves its vision and not just as a mechanism of recovery, but as a platform for economic rejuvenation. The successful models of the U.S. and the U.K. provide vital templates and it is time for India to adapt them to its unique context.