

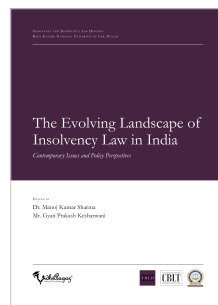
CHAPTER 13

ESG and Insolvency: Rethinking India's Bankruptcy Framework for a Sustainable Future

Aditya Pratap Singh and Sarthak Gupta

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CHAPTER 13

ESG and Insolvency: Rethinking India's Bankruptcy Framework for a Sustainable Future

ADITYA PRATAP SINGH* AND SARTHAK GUPTA**

With global economies striving for sustainable growth, the convergence of Environmental, Social, and Governance (ESG) principles with financial and legal systems has become increasingly critical. Yet, insolvency frameworks, which are a critical corporate accountability system, have traditionally lagged in incorporating such transformative principles. This study explores the understated yet powerful confluence of ESG standards and India's Insolvency and Bankruptcy Code (IBC), arguing that the future of insolvency reform must be harmonized with sustainability goals.

Employing a doctrinal and comparative analysis, the paper identifies systemic loopholes within the IBC in environmental commitments along with obligations, social spillovers, and governance failures of struggling businesses. It critically reviews the potentiality that the current resolution processes, which place almost singular emphasis on financial metrics, may risk ignoring long-term ESG performance and considerations of the public interest. Drawing on nascent international jurisprudence and policy shifts, the study presents an argument for rethinking India's insolvency system where ESG metrics become critical elements of resolution planning, creditor assessments, and judicial oversight. While existing literature, most notably publication by the IBBI and a few academic studies has begun to acknowledge the need for ESG integration into India's insolvency processes, much of it remains either normative or exploratory, with significant gaps in enforceability, stakeholder representation, and the treatment of environmental or CSR-related claims, including the lack of ESG performance audits, definitional clarity of ESG liabilities, and enforceable compliance post-resolution. The study offers forward-looking policy and regulatory suggestions, bridging the gap in existing literature that seek to embed ESG considerations in insolvency processes, hence bolstering corporate resilience, underpinning investor confidence, and enabling sustainable economic recovery. It also underscores the urgency of aligning India's insolvency regime with global sustainability norms.

Keywords: IBC, ESG, Corporate Insolvency, Sustainable Restructuring, Judicial Oversight

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1 INTRODUCTION

In recent years, Environmental, Social, and Governance (hereinafter ESG) factors have emerged as key considerations for corporate accountability, stakeholders' consideration, investor confidence, and long-term sustainability. Although these factors are gaining global recognition, their integration in insolvency proceedings in India is still untouched. The Insolvency and Bankruptcy Code of India, 2016 (hereinafter IBC), India's primary legislation for corporate rehabilitation and dissolution, is largely designed to maximize asset value and ensure creditor(s) recovery with little emphasis on non-financial risks such as environmental and social harm.

This existing gap becomes a significant factor for consideration when a company having environmental liability, societal violations, or poor governance enters insolvency. In the absence of proper accountability, these factors are generally ignored, affecting vulnerable stakeholders such as local communities, workers, and the environment. Moreover, when ESG-related liabilities, especially those arising from environmental damage or labour right violations, are among the contributing factors behind a company's insolvency, the absence of statutory obligations to govern them often leads to their exclusion during the resolution process. This oversight not only leaves the core issue unaddressed, but also creates a significant risk of recurrence post-resolution, potentially leading the company back into insolvency and creating an endless cycle. Furthermore, neglecting such liabilities undermines investor confidence and weakens stakeholder trust, ultimately affecting the quality and sustainability of the resolution itself.

This paper explores the importance of integration of ESG with the Indian Insolvency regime by analysing the inadequate space of the current IBC framework to incorporate rules governing ESG. The paper uses doctrinal research, including international examples and case studies, to highlight the growing need to address ESG issues in the IBC.

The paper argues for targeted reforms including proper ESG due diligence, amendment of existing provisions such as Sections 5(21), 30(2) and 53 of IBC addressing how waterfall mechanism impacts the integration. Ultimately, the paper proposes a roadmap for making an inclusive Insolvency regime in India with laws governing ESG parameters, as a step towards a sustainable finance.

2 UNDERSTANDING ESG AND INSOLVENCY: CONCEPTUAL FRAMEWORK

Before dealing with the intersection of IBC and ESG it is important to understand the conceptual framework of these concepts in brief. This section will present the brief about

ESG and IBC and their existing principles. In addition, this section will discuss how the confluence of ESG and IBC takes place.

2.1 Defining ESG Principles

ESG principles together form a multi-faceted framework for assessing a company's long-term sustainability, ethical track record, and operational integrity. Although traditionally undervalued in financial assessments, ESG metrics have become increasingly relevant in understanding the broader impact of corporate behavior not only on investors but also on employees, consumers, communities, and the environment. ESG standards have become the dominant feature of modern corporate governance and investment platforms as forward indicators of long-term performance and resilience.

The foundation of ESG in India dates back to 2009 as Business responsibility reporting,¹ which aligns with some of the global standards like Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB).²

The environmental aspect encompasses a company's green footprint, including climate change policy, energy efficiency, pollution control, and biodiversity conservation.³ Ignorance of environmental responsibility can expose companies to legal threats, reputational damage, and economic costs, a trend underpinned by increasing climate litigation and regulatory focus worldwide.

The Social dimension includes labor rights, occupational safety and health, human resource development, community and stakeholder participation.⁴ Studies by the ILO have established that companies with better social practices have better risk management and investor confidence.⁵

Governance is associated with internal control, board composition, audit arrangements, anti-bribery policy, and disclosure. Good governance minimizes the exposure to fraud and mismanagement and ensures that corporate behavior complies with ethical and regulatory

¹ *India's Business Responsibility and Sustainability Reporting (BRSR)*, ECOVADIS, <https://ecovadis.com/regulations/india-business-responsibility-and-sustainability-reporting-brsr> (last visited July 24, 2025).

² *BRSR Reporting and Its Role in India's Emerging ESG Trends*, SNOWKAP (May 20, 2025), <https://snowkap.com/brsr-reporting-and-its-role-in-indias-emerging-esg-trends>.

³ UNEP FINANCE INITIATIVE, *FINANCING CIRCULARITY: DEMYSTIFYING FINANCE FOR CIRCULAR ECONOMIES 5* (2020).

⁴ Dean Emerick, *What Is the Social in ESG?*, ESG THE REPORT, <https://esgthereport.com/what-is-esg/the-s-in-esg/> (last visited July 24, 2025).

⁵ INTERNATIONAL LABOUR OFFICE, *ALIGNING INVESTORS TO DECENT WORK 4* (June 2024), https://www.ilo.org/sites/default/files/2025-01/Aligning%20investors%20to%20Decent%20Work%20June2024_0.pdf.

norms.⁶ Empirical findings indicate that firms with good governance arrangements perform better than their peers in terms of financial well-being and valuation in the marketplace.⁷

2.2 Overview of India's Insolvency and Bankruptcy Code (IBC)

Enacted as the Insolvency and Bankruptcy Code, 2016,⁸ IBC consolidated a number of piecemeal insolvency legislation into one single statutory code with the aim of enabling time-bound resolution of corporate insolvency. The IBC aims at maximizing the value of assets of insolvent debtor(s), encouraging entrepreneurship, and balancing the interests of all such stakeholders, including creditors and debtors.⁹

One of the key aspects of the IBC is the “creditor-in-control” structure. Under such a structure, the creditors are empowered to form a committee which then takes the control of the company as the decision-making power during the process of insolvency. On the initiation of a Corporate Insolvency Resolution Process (hereinafter CIRP), the Committee of Creditors (hereinafter CoC) replaces the management board and appoints a resolution professional.¹⁰ The CoC scrutinizes and approves resolution plans, and all stakeholders come under the decisions, subject to judicial approval by the National Company Law Tribunal (NCLT).¹¹

The Code mandates a strict timeline: the CIRP has to be done within 180 days, extendable by up to 330 days plus pendency in litigations.¹² The system is aimed at avoiding value erosion and enabling quick recovery of the distressed assets. Due to this, India's Ease of Doing Business ranking in the World Bank improved substantially after the IBC came into force.¹³

However, ESG obligations find little place in this creditor-centric framework. Regulatory dues such as environmental penalties and pending Corporate Social Responsibility (CSR) obligations are treated as operational debts under Section 5(21) of the code, ranking below secured financial creditors during resolution and liquidation as per the waterfall mechanism under Section 53.¹⁴ This hierarchy often sidelines ESG-related stakeholders in the insolvency process.

⁶ ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE 10 (2015), <http://dx.doi.org/10.1787/9789264236882-en>.

⁷ *Id.*

⁸ Insolvency and Bankruptcy Code, 2016.

⁹ *Id.* pmbl.

¹⁰ *Id.* §§ 17, 18, 21.

¹¹ *Id.* §§ 30, 31.

¹² *Id.* § 12(3).

¹³ WORLD BANK, DOING BUSINESS 2020 54–55 (2020).

¹⁴ Insolvency and Bankruptcy Code, 2016, § 5(21), 53.

It is important to broaden the scope of stakeholder interests within the IBC to encompass environmental and social factors, either through legislative modification or by enabling adjudicating authorities to balance the influence of ESG in approving resolution plans.

2.3 The Intersection of ESG and IBC

The convergence of ESG principles with the Insolvency and Bankruptcy Code, 2016 (IBC) is still largely untapped despite being more pertinent in India's economic landscape. Although the fundamental premise of the IBC is to provide time-bound resolution and creditor value maximization, financial models worldwide today presume that financial responsibility must be followed by environmental and social responsibility.¹⁵ Indeed, around 79% of investors consider ESG risks and opportunities management as an important factor before investing,¹⁶ and while this also speaks volumes about the need for India's insolvency landscape to catch up, it is largely a feat to accomplish.

It would make it possible for resolution professionals and the CoC to value not only financial returns but also environmental compliance, social liabilities, and governance risks. For example, environmental clean-up or CSR compliance cannot be relegated. But environmental fines and overdue wages of labor are today valued as operational debts under Section 5(21) and are placed below in the distribution hierarchy of the IBC under section 53(1)(f).¹⁷

Corporate governance deficiencies are increasingly the root of insolvency. Although the current regime incorporates some governance standards during the insolvency process by allowing an insolvency professional to take over the management during the process and prevents the former management from participating in the process,¹⁸ ESG due diligence is not mandated, nor are institutional standards for Sustainability-driven Restructuring.

Thus, in the absence of legislative acceptance and regulatory endorsement, India stands to lose the opportunity to overhaul its insolvency regime on international models like the UN Sustainable Development Goals¹⁹ and the G20 Sustainable Finance Roadmap.²⁰ Incorporating ESG into the IBC is not an elusive ambition but a crucial goal to be achieved to enable economic recovery that is resilient and inclusive of ESG norms.

¹⁵ WORLD ECONOMIC FORUM, THE GLOBAL RISKS REPORT 2023 10 (18th ed. 2023).

¹⁶ PRICEWATERHOUSECOOPERS, PWC'S GLOBAL INVESTOR SURVEY: THE ECONOMIC REALITIES OF ESG 2021 2 (2021).

¹⁷ Insolvency and Bankruptcy Code, 2016, § 53(1)(f).

¹⁸ Carlo Ghia, Thiago Braga Junqueira, Mariam Zaidi & Gabriel Olivera, *Sustainability in Insolvency and Restructuring Procedures* 14 (International Insolvency Institute, June 9, 2024), <https://www.iiiglobal.org/file.cfm/156/docs/sustainability%20in%20insolvency%20and%20restructuring%20procedures.pdf>.

¹⁹ U.N. Sustainable Development Goals, *Sustainable Development Goals*, <https://sdgs.un.org/goals> (last visited July 24, 2025).

²⁰ G20 SUSTAINABLE FINANCE WORKING GROUP, G20 SUSTAINABLE FINANCE ROADMAP (Oct. 2021), https://g20sfwg.org/wp-content/uploads/2022/01/RoadMap_Final14_12.pdf.

3 CURRENT ENFORCEMENT OF IBC AND ESG

This section will discuss the current enforcement of ESG principles under IBC in India with the help of other existing laws and guidelines in relation to the principles of ESG.

The current regime under IBC does not explicitly address the ESG concerns, and there are no obligations on the resolution professional to address the same. However, during the approval of the resolution plan, the Resolution professional needs to verify that the resolution plan should not be in contravention with any law for the time being in force. But the problem is the hierarchy following which the claim amount will be disbursed. The ESG related claims will be coming under the definition of operational debts, and these concerns are lower ranked during the priority of payments due to waterfall mechanisms. As a result, other contractual creditors such as lenders, banks, and bondholders will be paid before those with ESG-related claims, and they are also likely to receive a larger share of the available funds.

India's insolvency framework prioritizes financial creditors, often marginalizing stakeholders related to ESG, such as environmental regulators, workers, and communities. The absence of formal representation in the CoC marginalizes their interests, undermining equitable resolution.²¹

When the process of insolvency against a corporate debtor (hereinafter CD) starts, the order of moratorium under section 14 of IBC is issued. This order prohibits the continuation of existing legal proceedings or actions or the initiation of any such proceedings with respect to any debt against the CD. In this case for the claim of debt, the creditor needs to register their claim with the insolvency professional, and these are termed as contingent claims.²² And these classifications lead to hierarchy of payments of claim during the recovery, and contingent claims are ranked lower and receive insufficient amount in claim, if any.²³

For example few of existing legislations related to ESG are: Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, Companies Act, 2013 (CSR Regulations), SEBI's BRSR framework, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations), etc. If there are any existing claims/penalties/debts in relation to these laws, then those will be covered in the definition 'operational debt' in section 5(21). However, the problem is with the hierarchy of such

²¹ VIDHI CENTRE FOR LEGAL POLICY, REPORT ON PRE-PACKAGED INSOLVENCY RESOLUTION (July 2020), <https://vidhilegalpolicy.in/wp-content/uploads/2020/07/Report-on-Pre-Packaged-Insolvency-Resolution.pdf>.

²² M.P. Ram Mohan & Sriram Prasad, *Environmental Claims Under Indian Insolvency Law: Concepts and Challenges*, 59 TEX. INT'L L.J. 6 (2023).

²³ See *Corporate Processes*, INSOLVENCY & BANKRUPTCY NEWS, Q1 (Insolvency & Bankruptcy Bd. of India, New Delhi), Jan.–Mar. 2022, at 19.

claims, which are often subjugated in front of the claims of the ‘financial creditors’ during the resolution and liquidation process. For instance, as per the quarterly newsletter of IBBI published in January-March 2022,²⁴ after calculating the realized amounts for contingent claimants, it was found that, upon successful resolution, financial creditors recovered 34% of their claims, while operational creditors were able to recover only 11%. On the other hand, in the case of liquidation the outcome is no different. The secured financial creditors were able to receive 11% upon waiving away their security interest whereas the “other creditors” under which contingent claims would be classified were able to secure a mere 2%.²⁵

4 COMPARATIVE ANALYSIS OF INTERNATIONAL REGULATIONS

There are existing laws and guidelines worldwide that incorporate ESG metrics under their respective Insolvency and Bankruptcy regimes. This section will discuss existing international statutes and guidelines on insolvency and how they deal with ESG metrics. This analysis is aimed at drawing inspiration and examples on how such an integration can be done, which will be a step closer towards a sustainable economy.

4.1 The United States of America

The U.S. Bankruptcy Code²⁶ governs restructuring and liquidation. Chapter 7 deals with liquidation, while Chapter 11 addresses Restructuring and resolution,²⁷ and the code includes the provision of an ‘automatic stay,’²⁸ similar to the ‘moratorium’²⁹ under India’s IBC, 2016. However, unlike the IBC’s blanket moratorium on ‘any debt,’³⁰ the U.S. Bankruptcy Code provides exceptions, namely the exception for “police and regulatory power”.³¹

This exception allows certain regulatory actions, including those involving environmental violations, to proceed during bankruptcy.³² For example, proceedings under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) do not stall,³³ as affirmed in *In re New York Trap Rock Corporation*.³⁴ Additionally, the Code addresses

²⁴ *Id.*

²⁵ Ram Mohan & Prasad, *supra* note 22, at 19.

²⁶ 11 U.S.C. (2012).

²⁷ *Id.* §§ 1101–1174 (2012).

²⁸ *Id.* § 362.

²⁹ Insolvency and Bankruptcy Code, 2016, § 14.

³⁰ *Id.*

³¹ 11 U.S.C. § 362(b)(4).

³² Ghia et al., *supra* note 18, at 8.

³³ *Id.*

³⁴ *In re New York Trap Rock Corp.*, 153 B.R. 642, 645 (Bankr. S.D.N.Y. 1993) (“governmental actions under CERCLA to recover costs in response to completed environmental violations are not stayed when an alleged responsible party files a bankruptcy case.”).

social concerns, particularly through Section 524(g), which allows the creation of a trust, funded in the restructuring process to handle asbestos and product liability claims.³⁵ An injunction is issued requiring that personal injury, wrongful death, or property-damage claims be paid through this trust.³⁶ In terms of governance, the code mandates clear obligations for directors and trustees. The statutory committee may investigate the debtor's acts, conduct, assets, liabilities, and financial condition³⁷ and debtors are also required to disclose adequate information post-petition, including the debtor's business history and financial records.³⁸

Thus, it reflects a multidimensional approach that considers not just financial creditors but also broader ESG responsibilities, ensuring that restructuring is not limited to economic objectives alone.

4.2 China

The Enterprise Bankruptcy Law of the People's Republic of China³⁹ (hereinafter EBL) governs corporate bankruptcy. Although a centralized integration of environmental concerns into bankruptcy law is still lacking, local initiatives have emerged.⁴⁰ For example, the Guiyang Intermediate People's Court issued guidelines detailing how environmental and ecological concerns should be addressed during bankruptcy proceedings⁴¹ that define stakeholder roles, outline procedures, and propose mechanisms to fund environmental remediation.⁴²

The EBL also integrates social protections, considering employees entitled to subsidies for medical treatment, old age pension, injuries, disability, support of the family of the deceased employees, and other statutory compensations as creditors.⁴³ It explicitly prohibits the restructuring plan from reducing or exempting unpaid social insurance premiums beyond those listed in Article 82(2),⁴⁴ thereby preventing debtors from avoiding social obligations. Debtors must disclose financial details such as claims, debts, history, and employee

³⁵ 11 U.S.C. § 524(g).

³⁶ Ghia et al., *supra* note 18, at 9.

³⁷ 11 U.S.C. § 1103.

³⁸ *Id.* § 1125.

³⁹ Enterprise Bankruptcy Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 27, 2006, effective June 1, 2007) (China).

⁴⁰ Shuai Guo, *When Environment Meets Bankruptcy: Global Lessons for and from China*, REV. EUR. COMP. & INT'L ENVTL. L. (forthcoming), at 6, <http://dx.doi.org/10.2139/ssrn.5160773>.

⁴¹ Guiyang Intermediate People's Court, Guidelines on the Handling of Ecological and Environmental Issues in the Trial of Enterprise Bankruptcy Cases (Trial) / 审理企业破产案件中涉生态环境问题处理的工作指引 (试行) (2022).

⁴² *Id.*

⁴³ Enterprise Bankruptcy Law of the People's Republic of China art. 82(2).

⁴⁴ *Id.* art. 83.

payment plan⁴⁵ while an administrator supervises the process;⁴⁶ directors and senior managers may be personally held liable for misuse of power or irregular income,⁴⁷ ensuring accountability and sound governance during restructuring.

4.3 European Union

The European Union has created one of the most comprehensive ESG integration systems in firm regulation and insolvency. Member States are required to incorporate EU directives into law and directly applicable regulations.⁴⁸ EU Regulations No. 1346/2000 and 2015/848 seek to harmonize cross-border insolvency proceedings for the purposes of encouraging economic, financial, and social sustainability, although not through explicit use of the ESG terms.⁴⁹

Directive 2019/1023 places “efficiency” at the forefront, seeking to maintain discharge of debt and disqualifications, restrict value destruction, and maintain human and administrative resources in the process of restructuring.⁵⁰ Such ESG-sensitive culture is also seen in non-financial disclosure requirements under the Non-Financial Reporting Directive (NFRD), Directive 2014/95/EU, which requires large public-interest entities to provide environmental protection, anti-corruption, diversity, and human rights policies.⁵¹

Regulation 2019/2088, the Sustainable Finance Disclosure Regulation (SFDR), obliges financial market participants to disclose how they integrate sustainability risks into decision-making, making finance serve for ESG objectives.⁵² The Corporate Sustainability Reporting Directive (CSRD)⁵³ and the proposed Corporate Sustainability Due Diligence Directive (CSDD)⁵⁴ extend disclosure obligations for ESG risks and environmental and human rights due diligence in international supply chains.

⁴⁵ *Id.* art. 8.

⁴⁶ *Id.* art. 25.

⁴⁷ *Id.* art. 36.

⁴⁸ European Comm’n, *The EU – What It Is and What It Does*, <https://op.europa.eu/webpub/com/eu-what-it-is/en/> (last visited July 24, 2025).

⁴⁹ Regulation 2015/848, 2015 O.J. (L 141) 19 (EU), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0848>.

⁵⁰ Directive 2019/1023, 2019 O.J. (L 172) 18 (EU), <https://eur-lex.europa.eu/eli/dir/2019/1023/oj/eng>.

⁵¹ European Parliament, *Harmonising Insolvency Laws in the EU: New Initiative* (EPRS Briefing, 2021), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI\(2021\)654213_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI(2021)654213_EN.pdf).

⁵² Regulation 2019/2088, 2019 O.J. (L 317) 1 (EU), <https://eur-lex.europa.eu/eli/reg/2019/2088/oj/eng>.

⁵³ Directive 2022/2464, 2022 O.J. (L 322) 15 (EU), <https://eur-lex.europa.eu/eli/dir/2022/2464/oj/eng>.

⁵⁴ European Commission, Commission Recommendation (EU) 2022/158 on a Common Set of Principles for Climate Mitigation Finance Tracking (Feb. 4, 2022), https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF.

Together, these instruments represent a transformative regulatory ecosystem for ESG. They offer critical lessons for India's IBC, where sustainability integration remains aspirational.

4.4 Brazil

Brazil's bankruptcy legislation includes judicial reorganization proceedings that allow financially distressed businesses to restructure while continuing operations. ESG failures have played a key role in instigating insolvency among many of Brazil's largest businesses and, more importantly, have been incorporated into their restructuring proposals.

One such model case is *Samarco Mineração*, which sought judicial reorganization after the 2015 Fundão dam disaster, a disaster ranked among Brazil's worst environmental catastrophes. The judicially approved plan required Samarco to meet its environmental and social restoration commitments under the 2018 Conduct Adjustment Agreement,⁵⁵ and firms such as Manikraft Guaianazes Industries and the João Santos Group obtained tax incentives in return for meeting social commitments such as financing schools, medicine, and public infrastructure.⁵⁶

Corporate governance flaws have also led to insolvency. In the *Americanas S.A.* case, there was a gigantic accounting scam that created a USD 8.5 billion shortfall,⁵⁷ and the sanctioned reorganization plan needed to meet more stringent ESG and governance requirements. Non-compliance with ESG-based obligations under such plans means liquidation, which provides Brazilian courts with an effective enforcement tool.

Therefore, the case of Brazil illustrates how ESG commitments can be implemented through restructuring, either to repair past damage or to provide improved governance serving both recovery and sustainability.

4.5 Key Takeaways

There are some of the lessons that India can take from the Bankruptcy code of the United States and China. In regard to environmental claims, the inspiration from Guiyang guidelines may be drawn as this tries to address the Environmental concerns within the insolvency proceedings rather than excluding it like the US and raises multiple actions and claims on the distressed company. Secondly, the formation of trust during the restructuring process

⁵⁵ *Blow-Out Materials: RSA/TS Projections*, SAMARCO MINERAÇÃO S.A. (May 2023), <https://www.samarco.com/wp-content/uploads/2023/05/Samarco-Blow-Out-Materials-RSA-TS-Projections.pdf>.

⁵⁶ Manikraft Guaianazes Indus. Judicial Reorganization Case, No. 1107466-61.2022.8.26.0100 (2d Bankr. Ct. São Paulo Sept. 30, 2022).

⁵⁷ *Judicial Reorganization Plan*, SAMARCO MINERAÇÃO S.A. (Sept. 2022), <https://api.mziq.com/mzfilemanager/v2/d/347dba24-05d2-479e-a775-2ea8677c50f2/3d3cdf1-5b23-b2d2-e19f-39ebe8870bb8?origin=1>.

is a valuable addition as it does not ignore social concerns and, on the same hand, does not allow these claims to become a hurdle and slow down the insolvency proceedings.

In an Indian regime where various people suffered directly/indirectly because of the act(s) of the entity declaring itself insolvent, most of the time they are left untouched. This provision will act as a shield for such claims. Although in some aspects the IBC of India addresses the social aspect, such as prioritizing the employees and workmen due and payment under waterfall mechanisms, not every stakeholder is addressed. For instance, claims arising from displacement of people because of the establishment or acts of the companies, along with the health, and cultural loss are often ignored.

Moreover, some international perspectives, including the IMF Staff Climate Note (2022), advocate for legal mainstreaming of ESG concerns in financial governance and debt recovery frameworks.⁵⁸ And the World Economic Forum (WEF) further reinforces this by proposing universal ESG metrics aligned with SDG targets,⁵⁹ which remain absent in IBC resolutions.

5 CASE STUDIES

After analyzing international statutes on the subject matter, it is important to discuss some important case studies which put emphasis on the growing need for the integration of ESG metrics in IBC. This section will discuss two major case studies; one domestic and one global in order to put the emphasis on the existing loopholes and the growing need for integration of ESG under the insolvency regime.

5.1 Liquidation of Jet Airways in India

The Jet Airways case is a landmark example of governance and social failures contributing to insolvency, highlighting the importance of non-financial factors in resolution viability and long-term sustainability. In November 2024, the Supreme Court of India ordered the liquidation of Jet Airways after unsuccessful execution of the Resolution Plan by Jalan Fritsch Consortium, the successful resolution applicant (SRA).⁶⁰ While the book value of the assets of Jet Airways is approximately 1000 crores, NCLT admitted the claim of 15,723

⁵⁸ Int'l Monetary Fund, *Managing Systemic Financial Risks from Climate Change* (IMF Staff Climate Note No. 2022/001, 2022).

⁵⁹ WORLD ECON. F., *MEASURING STAKEHOLDER CAPITALISM: TOWARDS COMMON METRICS AND CONSISTENT REPORTING OF SUSTAINABLE VALUE CREATION* (2020), https://www3.weforum.org/docs/WEF_IBC_Measuring_Stakeholder_Capitalism_Report_2020.pdf.

⁶⁰ Aviral Jain, *From Rescue to Ruin: The Supreme Court's Judgment in Jet Airways and the Future of Airline Insolvencies*, INDIA-CORPLAW (Dec. 4, 2024), <https://indiacorplaw.in/2024/12/04/from-rescue-to-ruin-the-supreme-courts-judgment-in-jet-airways-and-the-future-of-airline-insolvencies/>.

crores when it was first grounded in 2019. The existing aids make up only 13% of total claims of financial creditors and 6.4% of total claims.⁶¹

More than 20000 people were unemployed, ticket claims from passengers went unanswered, vendors had directly or indirectly taken the livelihood of thousands of people.⁶² Jet's financial distress was partly due to poor board oversight, overleveraging, and flawed expansion of the route⁶³ but IBC never formally scrutinized board conduct prior to default. As such, there were no environmental claims present in this case, but even though that would be the case it would be compensated by not more than a penny, if at all.⁶⁴

Claims related to ESG are mostly classified as operational debts which are listed at much lower hierarchy as per waterfall mechanism. So, if the assets of the company are less than the debt amount of secured creditors, then there would be no legal obligations for unsecured creditors to receive any funds. This raises a very critical need for the integration of ESG concerns under IBC so that proper accountability and review can be ensured with proper compensations and payments to all affected stakeholders.

5.2 ESG Failures and Judicial Restructuring in the Samarco and Brumadinho Mining Disasters in Brazil

The Brazilian mining industry saw two of the most disastrous environmental accidents in four years, initially the collapse of the Samarco dam in 2015 and then the Brumadinho tragedy in 2019, both by companies affiliated with Vale S.A., which is a world-renowned mining company.

In the *Samarco* case, the collapse of the Fundão tailings dam caused 19 deaths and extensive environmental damage. Judicial reorganization was requested by Samarco Mineração S.A., a joint venture between Vale and BHP, in 2021 under Case No. 5046520-86.2021.8.13.0024. The Brazilian bankruptcy court authorized a resolution plan that included environmental remediation under the Conduct Adjustment agreement of 2018. The

⁶¹ *Liquidation of Jet Airways Assets May Give Creditors Around Rs 1,000 Crore*, MONEYCONTROL (July 19, 2025), <https://www.moneycontrol.com/news/business/liquidation-of-jet-airways-assets-may-give-creditors-around-rs-1000-crore-12860880.html>.

⁶² *Sky-High Tragedy: How Jet Airways Fell from the Top to Liquidation*, FIN. EXPRESS (July 21, 2025), <https://www.financialexpress.com/business/airlines-aviation-sky-high-tragedy-how-jet-airways-fell-from-the-top-to-liquidation-3659334/>.

⁶³ *The Fall of Jet Airways: What Happened*, SP'S AIRBUZ, <https://www.spsairbuz.com/story/?id=884&h=The-fall-of-Jet-Airways-What-happened> (last visited July 24, 2025).

⁶⁴ Sriram Prasad, *Environmental Claims in Insolvency in India*, OXFORD BUS. L. BLOG (May 24, 2023), <https://blogs.law.ox.ac.uk/oblb/blog-post/2023/05/environmental-claims-insolvency-india>.

plan made socio-environmental liabilities binding and non-subordinated, a first judicial acknowledgment of ESG commitments in insolvency.⁶⁵

In contrast, in the 2019 Brumadinho tragedy, Vale's relatively robust ESG disclosures and interaction reduced investor outrage. A study in *The Quarterly Review of Economics and Finance* (2024) empirically proved that although both tragedies generated substantial negative abnormal returns, Vale's transparency in Brumadinho led to faster market recovery.⁶⁶

These examples reinforce two important takeaways from ESG-insolvency: (i) that global ESG failures materially exacerbate financial distress and (ii) that judicial restructuring can be an effective means of ESG enforcement if obligations are made enforceable in the restructuring process.

6 PROPOSALS AND RECOMMENDATIONS

After analyzing the existing problem on the subject matter, this section discusses and proposes various policies, regulations, and procedural recommendations that would assist in integration of Environmental, Social and Governance principles under the Insolvency and Bankruptcy Code of India.

6.1 Policy Suggestions for Embedding ESG in IBC

The current structure of India's Insolvency and Bankruptcy Code, 2016 (IBC) fails to implement a mechanism to recognize or enforce ESG commitments within the CIRP. This deficiency undermines the pillars of sustainable restructuring and protection of stakeholder interests. In filling this lacuna, a variety of regulatory and procedural steps are suggested.

6.1.1 *Compulsory Due Diligence of ESG for CIRP*

Resolution Professionals (RPs) should perform due diligence on ESG at the beginning of CIRP, as part of the Information Memorandum under Section 29 of the IBC. Environmental liabilities pending under the Environment (Protection) Act, 1986⁶⁷ and Air (Prevention and Control of Pollution) Act, 1981⁶⁸, social issues like CSR defaults under Section 135 of the Companies Act, 2013,⁶⁹ and governance issues like SEBI's LODR or BRSR non-

⁶⁵ *Consensual Judicial Reorganization Plan*, SAMARCO MINERAÇÃO S.A. (July 28, 2023), https://www.samarco.com/wp-content/uploads/2023/07/2023-07-28-Plano-de-Recuperacao-Judicial-Consensual-Final_ENG.pdf.

⁶⁶ Inés Merino Fdez-Galiano & José Manuel Feria-Dominguez, *Do ESG Disclosures Mitigate Investors' Reaction on Mining Disasters? Evidence from Brazil*, 95 Q. REV. ECON. & FIN. 256 (2024).

⁶⁷ Environment (Protection) Act, 1986, § 3.

⁶⁸ Air (Prevention and Control of Pollution) Act, 1981, § 21.

⁶⁹ Companies Act, 2013, § 135.

compliance would be covered in such an assessment. ESG risks are increasingly better known to be material to corporate distress,⁷⁰ and the ESG due diligence report should be attached to the Information Memorandum under Section 29 of the IBC and shared with prospective resolution applicants (RA).

6.1.2 *ESG Metrics in Resolution Plans*

The resolution applicant under Section 30 should be obligated to submit an ESG compliance roadmap as part of their financial restructuring proposal. The roadmap should include historical weaknesses of ESG, suggested cures, and suggested future ESG goals. This will enable CoC to evaluate not only the financial strength of the plan but also its impact on sustainability. In today's world, about 80% of investors factor ESG performance into investment decision-making.⁷¹

6.1.3 *Inclusion of ESG-Driven Review Initiated by the Committee of Creditors (CoC)*

A two-metric assessment approach by the CoC must be initiated, striking a balance between financial revival and ESG compliance. This entails the participation of a non-voting ESG advisor (e.g., from the Central Pollution Control Board or the Ministry of Corporate Affairs) in CoC meetings and ESG impact scores in resolution plan evaluations. EU Directive 2019/1023 also highlights the requirement to preserve human capital and external sustainability in reorganization.⁷² This would ensure a more holistic restructuring aligned with “stakeholder capitalism”.

6.1.4 *Post-Resolution ESG Monitoring*

For the sake of enforceability, approved schemes must provide for post-resolution ESG monitoring in the form of quarterly compliance reports to the IBBI and the appointment of an ESG compliance officer. Non-compliance should invoke penalties under Section 74 of the IBC,⁷³ giving ESG commitments the same status as financial covenants. These reforms will bring India's insolvency resolution framework in line with its SDG 2030, the climate transition, and international investor expectations.

6.2 **Regulatory Recommendations**

The current IBC framework remains largely silent on the assessment, prioritisation, and enforcement of ESG obligations. In an era where sustainable business practices are no

⁷⁰ WORLD ECON. F., *supra* note 59, at 21.

⁷¹ PRICEWATERHOUSECOOPERS, *supra* note 16.

⁷² Directive 2019/1023, 2019 O.J. (L 172) 18 (EU).

⁷³ Insolvency and Bankruptcy Code, 2016, § 74.

longer aspirational but imperative, this vacuum risks stakeholder confidence and long-term sustainability. To bridge this gap, a comprehensive regulatory response is needed. These are some of the Regulatory recommendations that can be embedded in order to step closer to the sustainable process:

6.2.1 IBBI Guidelines on ESG Assessment

The IBBI is empowered under section 196, IBC, to issue guidelines and specify regulation standards,⁷⁴ and it can mandate ESG due diligence as a part of CIRP, by requiring Insolvency Resolution Professionals to disclose ESG risks and liability at the early stage. Such a measure will provide two benefits: first, both the resolution applicants and the stakeholders would be better informed and thus positioned to take better decisions, and second, it would incentivize companies to maintain their ESG compliance, so that they have a better chance for favourable resolution terms and higher valuation during CIRP.

6.2.2 Legislative Amendments in IBC to Integrate ESG

To ensure proper integration of ESG in IBC, certain amendments are necessary. First, the definition of ‘operational debt’ under section 5(21) should be expanded to include ESG terms as this section currently includes dues payable only under statutory obligations. However, there are non-statutory ESG claims such as damages arising from community displacement, unpaid voluntary carbon offset contracts, and many more which may be shadowed due to the current language of the Act. Additionally, amendments under section 30(2) are necessary to require resolution applicants to address ESG liabilities and propose treatment. Inspiration can be drawn from Guiyang guidelines on this and Article 82 of the EBL.⁷⁵ Lastly, the waterfall mechanism under section 53 needs an amendment to prioritise claims related to ESG as currently they are mostly addressed as unsecured creditors.

6.2.3 Enhanced Role of Judiciary

To effectively integrate ESG into IBC, the role of adjudicating Authority should be expanded. Although the Adjudicating Authority is empowered to scrutinize the plan before approving, a regulatory framework can mandate ESG compliance checks as part of this scrutiny. This judicial oversight would not only ensure that resolution applicants incorporate proposals to ESG risks & liabilities in their plans but also serve as a deterrent against environmental and social neglect in pre-insolvency operations.

⁷⁴ *Id.* § 196.

⁷⁵ Enterprise Bankruptcy Law of the People’s Republic of China art. 82(2).

6.3 Procedural Reforms

The following are some of the procedural reforms which are proposed for integrating ESG and IBC:

6.3.1 ESG-Based Creditor Classification

India's IBC does not yet differentiate between financial, operational, and socially or environmentally affected creditors. This leaves a structural lacuna for identifying stakeholders impacted by ESG failures like: Pollution Control Boards, trade unions, and affected communities. A new statutory category of "ESG Statutory Creditors" needs to be established for those whose claims arise under environmental or social legislation.

Identification of such creditors will accomplish the following:

- A place at the table via CoC representation,
- Preferential right to ESG claims in the distribution waterfall, and
- Enforcement of long-overdue environmental and social responsibilities.

This is in line with EU Directive 2019/1023, where human capital retention and stakeholder interest in pre-insolvency restructuring take precedence.⁷⁶ In India, operational creditors recover only an average of 11% in approved resolution plans compared to 34% for financial creditors.⁷⁷ ESG claimants are generally classified as operational or contingent creditors and thus end up at the waterfall bottom. Classification would move them up the hierarchy.

6.3.2 Fast-Track Resolution for Sustainable Enterprises

A green fast-track insolvency procedure should be made available to ESG compliant firms. It can be made available through the following:

- SEBI's BRSR ratings,
- Third-party ESG scores, and
- ISO 14001 or LEED certifications.

This speed will promote compliance with the ESG while ensuring faster resolution. Globally, companies that comply with ESG outperform their peers in crisis resilience and recovery, with 76% of institutional investors considering a company's exposure to ESG risks and opportunities when screening investment opportunities.⁷⁸

⁷⁶ Directive 2019/1023, 2019 O.J. (L 172) 18 (EU).

⁷⁷ Ram Mohan & Prasad, *supra* note 22, at 19–20.

⁷⁸ PRICEWATERHOUSECOOPERS, *supra* note 16.

7 CHALLENGES DURING INTEGRATION AND IMPLEMENTATION

The integration of principles of Environmental, Social and Governance into insolvency resolution is appealing, but there are various practical and legal challenges that hinder its implementation under the current framework of Insolvency and Bankruptcy Code, 2016.

7.1 Resistance from Financial Creditors

ESG related claims such as environmental penalties, unpaid social claims, or/and governance failures often fall under operational, contingent liabilities, or non-statutory claims, and expanding the pool of claims and elevating their priorities in payment may dilute the recovery of financial creditor(s). This will create a natural resistance from financial creditors dominated CoCs towards the recognition or prioritization of such claims notwithstanding of ensuring the long-term viability of corporate debtors.

7.2 Difficulties in Measuring the ESG Impact

A fundamental challenge in the integration of ESG is the absence of standardized metrics to quantify ESG related claims and damages. Environmental liabilities, such as costs of pollution remediation or compliance with green regulations, and social costs, such as rehabilitation or failure to meet CSR obligations, often involve subjective and sector-specific evaluations. The lack of framework for determining the monetary valuation of such non-financial harms makes it difficult for inclusion in insolvency regime.

7.3 Timeliness vs. Sustainability Trade-Off

The need for expert audits or third-party assessments can further delay the resolution process. As according to the official data, the average time taken for completion of resolution process was 716 days⁷⁹ surpassing its statutory obligation of 330 days.⁸⁰ The inclusion of ESG evaluations will require stakeholder consultations, audit certifications, and can increase the already delayed time frame of CIRP. This will create a dilemma of trade-off between the aim of achieving quick resolution and long-term sustainability of the corporate debtor. This delay will not only discourage serious bidders but also impact the value maximisation of the assets.

⁷⁹ *On Average, Resolution of Cases Under IBC Took 716 Days at NCLT in 2023–24: Govt.*, ECON. TIMES (Aug. 26, 2024), <https://legal.economictimes.indiatimes.com/news/law-policy/on-average-resolution-of-cases-under-ibc-took-716-days-at-nclt-in-2023-24-govt/112326165>.

⁸⁰ Insolvency and Bankruptcy Code, 2016, § 12.

7.4 Procedural and Financial Burden

The introduction of ESG dimensions into insolvency may overburden the process both financially and procedurally, which will increase the cost and administrative friction. Additionally, industries involved in mining, chemical, manufacturing that go into insolvency will suffer bidders' deterrence due to the fear of bearing the liability of ESG dues and liabilities, which will ultimately reduce the pool of resolution applicants and hamper the resolution process.

8 CONCLUSION

The integration of ESG principles into the IBC regime is a growing need due to the evolving dynamics of responsible business conduct. As this paper clearly demonstrates, the current structure of IBC lacks the integration of ESG claims and often sidelines such claims. This neglect poses a dual threat: it compromises the long-term viability of revived entities and potential risks, and weakens investor and stakeholder confidence in the resolution process.

The inspiration for such inclusion can be drawn from existing international statutes like the ones in the US, China, EU, and Brazil. Additionally, the need for such integration is further strengthened by the analysis of case studies of Jet Airways and the Samarco and Brumadinho Mining Disasters. The aforementioned analysis clearly points out the need for sustainable finance and how it cannot be achieved without the proper framework and regulatory guidelines.

Although the expansion of the current statute including sections 5(21), 30(2), 53 and 196 of IBC will provide a foundation for this incorporation, the application and implementation is limited. Embedding ESG due diligence into the insolvency resolution process through pre-resolution disclosures by insolvency professionals, ESG inclusive resolution plans, and by mandating ESG compliance checkpoints by CoC can help in mitigating these concerns.

Nevertheless, such integration is not without challenges such as resistance from financial creditors, quantification difficulties, and the dilemma of sustainable finance with the time bound CIRP. A cautious approach is necessary; one that balances the IBC's objective to achieve efficient resolution with India's broader commitment to sustainable development. In addition, a balanced model that involves ESG sensitive regulations on ESG, industry specific exemptions, and post-resolution compliance with ESG could be a better way to integrate ESG into India's Insolvency regime.