COMPARATIVE ANALYSIS OF WINDING UP OF A COMPANY:

PERSPECTIVES IN UK, USA & INDIA

By Mayank Singhal, LLM, University School of Law & Legal Studies, GGSIPU

& Kanika Goel, LLM, Vivekananda Institute of Professional Studies, GGSIPU

ABSTRACT

For the establishment of any institution or an organization, there is a prescribed legal process, and this is applicable all throughout the globe. In the similar lines, a company gets incorporated while following a legal due process and the same must be kept in mind while it goes into liquidation, be it voluntary or due to any other reason like insolvency. This research studies the regime of winding up of the companies in three different nations namely the United Kingdom of Great Britain, the United States of America and India. The main aim is to study the efficacy of the legal processes and determining the comparison between the three. Further this paper also establishes the link between the different practices with respect to the new laws which are coming in, focusing on Companies Act 2013 and Insolvency & Bankruptcy Code 2016 particularly in the Indian context. The study also attempts to analyse the various problems faced by the companies while they engage in the insolvency and winding up process. The research also focuses on the historical evolution of the insolvency laws while touching upon the drivers of such a process. This study of provisions leads to the exploration of various underlying principles which provides valuable insights. Further, the paper attempts to reach a conclusion by establishing the differences and similarities in the different regimes and analysing their impacts.
Introduction

The laws pertaining to insolvency have attracted various research and changes from time to time. This phenomenon is not restricted to a particular region or country, rather this is global in nature because the world is becoming more integrated.\(^1\) Due to this interdependence and integration, the various jurisdictions have become susceptible to economic crisis which eventually leads to loss of business and as a result the company shuts down. Thereby begins the process of winding up and insolvency. One country takes lessons from the processes and the legal provisions of other countries to make comprehensive domestic insolvency laws.\(^2\) If we consider the whole process of corporate insolvency, it is primarily divided into two stages namely winding up and dissolution. The very definition of the phrase “winding up” can be stated to be settling of the assets and finishing the whole existence of the company. This is to say that the property is hence utilized for the betterment of the members as well as the shareholders of the company. By the virtue of this process, the debts of the company are paid, and all the assets are hence realized.

Robert Pennington has described the process in the following words, “When the management of the affairs of the company is taken away from the hands of the director(s), a liquidator is appointed who realizes the assets of the company the proceeds of which are used to discharge the debts and liabilities and the remaining, if any, is distributed amongst the members or the shareholders. Hence, the legal personality of the company is called to an end after all the discharges and that shall be the formal dissolution.”\(^3\)

Over the past few years, it has been observed that the insolvency laws in different jurisdictions have not been adequate which has led to corporate failures. At such a juncture it becomes important for the legal framework to step in to prevent economic distress and ensure firm rehabilitation. Talking about the UK Insolvency Act, enacted in 1986, was amended to suit the needs of time by the Enterprise Act 2002. In the same lines, it is important to have a transparent and predictable

---

1 \(^{1}\) ‘Modern Company Law’, 4th Edn., p.789
system of law so that the consequences of any such failure are dealt with in a comprehensive manner.⁴

The first bankruptcy law in the United States came into being in 1800 which was amended a lot of times. The Nelson Act of 1898 became the first modern Bankruptcy Act in the United States. If we widely talk of it, the insolvency law in the U.S. has always had the objective to attain certain goals, or perhaps more precisely, to overcome certain pitfalls of leaving debtor-creditor relations unregulated.

As far as the Indian law is concerned, it is deemed to have drawn inspiration from the English law of insolvency. Earlier it used to be the Companies Act 1956 which has largely been replaced by the Companies Act 2013. Moreover, the new Insolvency and Bankruptcy Code of 2016 now governs the process of winding up. This means that with time, the laws are evolving and that is not just the case with India but all around the world.

**Conceptual framework**

The law concerning corporate insolvency primarily deals with the companies which are unable to pay off their liabilities and debts.⁵ If we consider the phrase ‘winding up’, it can appropriately be defined as the existence of the company coming to end and proceeds of the same being utilized for the benefit of the members and the shareholders.⁶

Various authors and philosophers have described the phrase in their own manner, where most of them stated it to be the cumulating of the various actions leading to the suspension of company’s activities, discharge of liability and distribution of funds between the members after settling the debts.⁷

As per the Halsbury’s Laws of England, winding up is a legal process where the company is dissolved and during that course, the assets are realized, and the remaining amount is distributed

---

⁵ Ruzita Azmi, Adilah Abd Razak, “Theories, Objectives and Principles of Corporate Insolvency Law: A Comparative Study between Malaysia and UK”.
⁶ Prof. (commodore) PK Goel, Business Law for Managers 246 (Dreamtech Press, New Delhi, 2006).
among the members with respect to the contribution they have made as per the articles of the company.\(^8\)

Hence it is noteworthy that almost all the definitions provided are identical and more or less talk about the same thing and the process. This brings us to the assertion of the other related terminologies.

Winding up is the first step in the process where dissolution is the final when the company’s legal existence is ended. A significant difference between the two is that the process of winding up can be initiated without judicial intervention; however, order of the court is essential so as to move into dissolution.

A threat or a fear which every business carries in mind, irrespective of the company’s size, holdings or the nature of its dealings, is that of insolvency. In trivial sense, it means the inability of the debtor to pay off the debts or the loans he has taken, not being able to meet financial commitments.\(^9\)

The concept of insolvency is deemed to be a bit ambiguous in nature because of the various definitions and understandings of the same. Where Armour on one hand defines the term in context of balance sheet, cash flow, liquidation & judicial intervention\(^10\); Wood states that the term insolvency is synonymous with the term ‘financial distress’.\(^11\) Lastly, liquidation, another synonym for winding up, is deemed to be a formal legal process which a company has to undergo as a means of bringing it to orderly dissolution.\(^12\) In essence, liquidation is a process of insolvency leading to the end of the company’s existence and the principal role of a liquidator is to keep in consideration of the assets of the company, covering the liquidation expenses and distributing dividends to creditors.\(^13\)


\(^9\) The OED Online provides a definition of insolvency as “the fact of being unable to pay one's debts or discharge one’s liabilities” available in http://dictionary.oed.com. (last visited on February 8, 2021)


\(^12\) Fletcher (n 68) pg. 611

\(^13\) Royston Miles Goode, “principles of corporate insolvency law” 24 (Sweet &Maxwell, 3rd Edn., 2005).
In essence, until and unless the company is dissolved, its legal existence continues during the process of winding up. The most prominent thing is that the control of the affairs of the company goes into the hand of the appointed liquidator. The legal entity of the company ceases and hence the company cannot keep its property, sue, or be sued.

It was categorically laid down by the Supreme Court in the case of Pierce Leslie & Co. Ltd. v. Violet Ouchterlony\textsuperscript{14} that winding up precedes the dissolution. The property of the company cannot be vested in a trustee and that the creditors or the shareholders are not its heirs or successors. The property left, if any, after dissolution, it vests with the government.

Compulsory winding up, voluntary winding up, winding up by court order are a few modes of winding up which are practiced by various countries and jurisdictions. How they are linked and how they are different from each other, alongside which is the most suited for a company is what shall follow in this research.

**Winding up in the United Kingdom**

The basic aims of English corporate insolvency law are stated to be addressing the issues of priority and control, as pointed out by Goode.\textsuperscript{15} The objectives of the law are clearly stated out by the statutes concerned therein. Taking for example, the objectives of administration are given under the Insolvency Act 1986 where the primary focus is on three concerns:

(a) ensuring that the company is safe as a concern.

(b) securing a better outcome for the creditors as compared to the one available post immediate liquidation.

(c) realization of property to safeguard the interests of the respective creditors\textsuperscript{16}

\textsuperscript{14} AIR 1969 SC 843.

\textsuperscript{15} Supra note 13 at p. 60.

\textsuperscript{16} Insolvency Act 1986, Schedule B1, para 3.
The consideration of aims and objectives of the English insolvency law is incomplete without the mention of the Cork Report\textsuperscript{17} which provided the base for the whole framework of insolvency and gave guidelines for the companies to follow at the time of such a financial distress.

The Cork report gave its various considerations with respect to the corporate insolvency framework which can be summarized as:

a) System of credit needs to be taken into consideration as the emancipation of wealth depends upon the same. Hence the corporate insolvency framework shall be able to address the issues arising there from. So, in that case, it is not just the interest of the creditors is taken care of, but the society at large also suffers due to insolvency and hence their well-being also has to be ensured.

b) The law shall be able to attend to the closure of the non-suitable ventures but also shall ensure that profitable and suitable businesses which contribute to the society are preserved.

c) If a company anticipates that it might have to wind up, it shall do it sooner than later

d) Consideration of the rights of the creditors, be it secured or unsecured.

e) Recognition and the realization of the assets to be done without any laches and all the debts to be paid within time

f) If any proceed is left, evenly distribute to the members in fair and equitable manner after paying off to the creditors and if still remain, then to the debtor

These suggestions led to the new regime of insolvency law in the UK and eventually the Enterprise Act of 2002 laid the foundation of a more efficient model for the insolvency of a company.\textsuperscript{18}

The alternatives provided by the English law on insolvency are two, one being the process of reorganization where the whole administration of the company is fully changed, and new managerial personnel is appointed and the second being amalgamation or merger either another company subsumes the to-be insolvent company in itself or another company combines with the


\textsuperscript{18} Sandra Frisby, “Making a Silk Purse out of a Pig’s Ear -Medforth v. Blake & Ors” 413-423, 63 MLR (2000).
same. These two alternatives might help in getting the company back on track in terms of earning profits. The two processes are possible with due consultations and proper management.

It has also been observed that the concerned laws of insolvency in the UK, creditors’ rights and interests are given preference over the others. This can be made clear by the following objectives:

a) securing better outcome for the creditors of the company in totality would be a great probability if the company winds up.

b) Distribution of the property of the company amongst the preferential creditors by the realization

On consideration of the aspects of the United Kingdom corporate insolvency law with respect to the legislations and theories mentioned therein establishes that the law has preserved the interest of the creditors and vis-à-vis the nature, it is communitarian, although the levels in that way vary accordingly. The protection of creditors has been the most intrinsic part of the law since the inception. 19

Before the Insolvency Act 1986 came into picture, the law had the process of management receivership and a detailed framework of the same. Considering the legalities and terminologies, a receiver would be deemed to be ‘a contractor working in individual capacity who has been vested with the responsibility of ensuring that the interest of his appointer is protected’. 20 He is endowed with multiple responsibilities which include the accountability towards the principal which is the company to ensure that any such practices which hamper the goodwill of the company are not undertaken. 21 Notably, if the receiver carries out his duties in the procedure stipulated therein, then apart from securing the interests of the creditors, many other issues can be easily addressed.

So, all in all, the various reforms introduced, beginning from the Cork’s recommendations with respect to insolvency, eventually lead to the conclusion that the corporate insolvency laws should

21 IRC v. Goldblatt (1972) 1 Ch 498.
be aimed at promoting the profitable and viable businesses. On the satisfaction of these objectives, the rights, and interests of other employees as well as the economy of the country are also protected. This largely entails the virtue of the happiness of the whole community. This communitarianism is visible even in the Cork Report’s recommendations wherein the interest of creditors, public and the employees of the company are protected. The same ideals were followed in the Insolvency Act 1986 which elaborated more on the insolvency rescue processes.

**Administration**

This is called to be a saving method for all those companies which are already bankrupt or might go into insolvency in the near future. There are three ways by which administration can be entered into which are:

(a) By a court order,

(b) When a creditor files a notice or petition in the court,

(c) Notice or petition filed in court by the company or any of its employees.

As and when an administrator is appointed, he takes over the whole management of the company. The administrator hence has to attain three particular aims namely:

(a) Maintaining the repute of the company

(b) Trying to attain the maximum value for creditors at the time of liquidation.

(c) Realizing assets and even distribution of the same

**Voluntary arrangements**

Following this, the company follows the process of putting forth a debt restructuring proposal to the creditors without hampering or changing the rights of any of its creditors, be it secured or preferential, at the time of bankruptcy. A majority decision of at least 75% is needed for the same to be approved. Once this proposal is accepted and taken note of by the creditors, the court has to look onto the terms and conditions and ratify the same so that fair practices are followed.

---

Receivership

Receivership is not a cumulative arrangement; it is rather the rights of implementation made available to the creditors. The receiver so appointed is under a primary obligation to ensure that proper liquidation takes place, and the assets are evenly distributed from the proceeds of sale in between the creditors with respect to priority.

Winding up in the United States of America

As earlier mentioned, the very first law pertaining to bankruptcy in the United States of America was enforced in 1800. It was replaced by a new Act in 1841 after the earlier got repealed in 1803 only. The 1841 law too could not stand much and was repealed in 1843. The new Act came in 1867, which after due considerations, was amended in 1874 and eventually repealed in 1878. Finally, the Nelson Act of 1898 came forth as the modern-day bankruptcy law. It was functioning well until it was replaced by the Bankruptcy Reform of 1978. The most recent amendment to the law was done in 2005 by the Bankruptcy Abuse, Prevention & Consumer Protection Act. If we study the whole law concerning bankruptcy in USA, six chapters cover the whole of the Bankruptcy Code under Title 11. Petitions can be filed under the chapters 7, 9, 11, 12, 13 and 15 of the US Bankruptcy Code so that the individuals and the companies can secure their interests.

Chapter 7: Liquidation

It engulfs the whole mechanism of the winding up and liquidation with the aspect of a trustee being appointed by the concerned court dealing with bankruptcy dealing with the liabilities and assets of the corporate debtor. The trustee is entrusted with the responsibility of selling the assets and utilizing the proceeds to satisfy the interests of the creditors in the preferential order. The plea for insolvency can be raised both by individuals as well as corporate. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BACPA) led to the most talked about amendment in the law pertaining to bankruptcy in the United States. This amendment restrained the consumer debtors from filing for the process of insolvency.

---

One prominent argument raised in favour of this amendment was that this would act as a protection of creditors like credit card companies who face losses due to bankrupt consumers.²⁴

**Chapter 9: Reorganization of Municipalities**

The bankruptcy law under the aegis of this chapter talks about the municipalities and what proceed to move into the process of liquidation for the satisfaction of the outstanding debt or the amount. Municipality is nothing but any public agency functioning under the control of the government. The municipality needs to have a prior approval of either the *lex loci*, or any officer of the government or any other delegated authority of the state. Prior to the enactment of this chapter, the recourse available to such municipalities was that the creditors therein could knock the doors of the municipality so that the taxes could be raised. Extension of the code to municipalities was possible post an amendment to the Bankruptcy Code.²⁵

**Chapters 11, 12, and 13: Reorganization**

The whole process of liquidation is governed by Chapter 7, whereas the realization and the utilization of the assets of the debtor are taken care of by Chapters 11, 12 & 13. It is an established practice of letting the holder of the account to keep a large chunk of the benefits accrued with him to use them for paying off the debts and other liabilities. All the businesses, be it individual ownership, corporation, or partnership, fall under the aegis of Chapter 11. For the interests of the agricultural families and fishermen, there is Chapter 12 for their rescue. Ceiling rates and interests are higher under this chapter to secure the maximum benefits.²⁶

**Chapter 11: Restructuring**


²⁵ *Supra* note 23.

For an organization leading towards insolvency, Chapter 11 is the legal guardian. The procedure prescribes that the administration who has committed the default or the individual debtor retains the possession of the assets and deals with the affairs of the company and the court overlooks the same.

In addition to that, the event of bankruptcy is not necessary to occur to move for the filing process, mere anticipation of the insolvency shall be sufficient to move for the same. The whole framework of realization and reconstruction is prepared within 120 days so that the activities of the firm can continue. There are two ways to move forth with such framework:

A. UCP (Unanimous consent procedure)

The framework so adopted must go through and get approved by all the respective classes of the creditors with at least two-third majority of the whole unsettled claim and at least half the total number of creditors.

B. Cram-down procedure

Under this process, it is the responsibility of the judge to create an agreement which considers of all the creditors’ interests. The just and fair treatment of creditors is imperative. Since the procedure is time consuming and expensive as compared to UCP. Once undertaken, it is mandatory for all to follow this.

Chapter 13: Wage Earners Plan

This chapter is for the person or the sole proprietor who has his assets being liquidated but still has another source of income which enables him to procure and submit his reorganization framework to the court. As a part of that very process, the debtor has a tenure of about three to five years to repay the outstanding dues.27

---

The insolvency proceedings in the U.S. thus have various positives as well as negatives too. The differential treatment to different creditors, the timely initiation of the proceedings of insolvency, rights of the shareholders and the managers and lastly the proactive role of the courts have seen various drawbacks too. On paper the law might appear to be very controlling and noteworthy, but the practicality has been different.

**The Indian practice**

The law concerning corporate in India has drawn a large influence from the English company law, owing to the rule of the British in India for a long period of almost 200 years. In that manner, the Halsbury’s Laws of England defines the term ‘company’ as a group of many individuals who come under one common entity, has powers vested by law to enter into contracts, can sue and be sued and enjoys variety of privileges and even political rights. On the contrary, it was prominently held in the case of *State Trading Corporation of India v. CTO* that a citizen status under the Constitution of India cannot be conferred upon a company.

IF we talk about the historical development of the company legislation in India, the first one was the enforcement for the purpose of registering Joint Stock Companies which saw the light of the day in 1850, loosely drawing inspiration from the English Companies Act, 1844. Post that, various such laws have been passed in India which deal with the corporate law framework in India. The Companies Acts of 1956, 2002, 2013 and more recently the IBC 2016 are the landmark legislations. If we talk specifically of the laws concerning winding up, then laws governing cases of insolvency, grounds of winding up including bankruptcy, banking frauds etc have been passed. The most prominent ones are the SICA 1985, RDBF 1993 and SARFAESI 2002.

**Winding Up as per Companies Act 1956**

A company incorporated under the provisions of the Companies Act 1956 could be wound up in any of the three following modes -

---

28 India Insolvency (Bankruptcy) Laws and Regulations Handbook - Strategic Information, Basic Regulations 58.
29 AIR 1963 SC 1811.
30 Supra note 28.
31 The Companies Act, 1956 (Act No. 1 of 1956), s.425.
1. Compulsory winding up i.e., by the court\textsuperscript{32}

2. Winding up on own i.e., voluntarily, which could either be-
   a. Members winding up voluntarily; or
   b. Creditors winding up voluntarily; or
   c. Court supervising for winding up of company.\textsuperscript{33}

In all the cases and instances of winding up, a single person or a group of persons is appointed as liquidator(s) so that they could take care of the property of the company and they are under an obligation to firstly secure the interest of the creditors of the company by using the assets ensuring that proper order is followed in the same and post that, the remaining shall be distributed among the members of the company as per their rights.

**Winding up by the Court**

A petition must be presented before the appropriate court to begin the process of winding up and thus obtaining the requisite order. This whole process is governed by the Section 10 of the Companies Act, 1956 which entails the proper jurisdiction for the presentation of the above stated petition.

The relevant high Court situated at the place where the company is situated or has its registered office has the appropriate jurisdiction for the process to begin, or the jurisdiction can also be vested with a district court by the provisions of the legislations, or the Central Government can put forth a notification in the same respect. It was prominently stated in the case of *GTC Industries Ltd v. Parasrampuria Trading*\textsuperscript{34}, that even if an agreement existed between the parties about the dispute being settled in any other High Court where the office was not situated, still the High Court where the office subsists will have the appropriate jurisdiction.

**Circumstances of winding up of a company by the court.**

\textsuperscript{32} Substituted by ‘Tribunal’ by Companies (Second Amendment) Act, 2002.
\textsuperscript{33} Omitted by the Companies (Second Amendment) Act, 2002.
\textsuperscript{34} 2001 104 CompCas 368 All.
The different circumstances in which the court can pass an order for winding up the company have been given under Section 433 of the Companies Act, 1956:

- A special resolution has been passed to resolve the winding up of the company by the court.
- The statutory meeting has not been convened or there has been a default by the company in reporting to the Registrar.
- The business of the company has been held back for a whole year or has not even started within a year of the incorporation.
- The statutory requirement of minimum members in the public or private company is not met or satisfied.
- The company becomes unable to discharge its liabilities.
- The court deems it fit to wind up the company on fair and equitable grounds.
- The balance sheet of the company has not been filed or the yearly returns are not reported to the company registrar.
- The company indulges in certain acts which go against the sovereignty of the country, compromises the security, or tampers the foreign relations, or the acts are not decent or moral.

Given the grounds highlighted above, it becomes pertinent to delve in detail of a few terminologies:

**Inability to pay debts:** If the creditor of the company submits a demand to the company in writing asking for the due payment of the debt, amounting to more than Rs 500 and the company has not
been able to pay the amount within three weeks or has not been able to satisfy the court giving reasons, in such a scenario the company shall be called to be unable to pay off the debts.

_Just & Equitable Grounds:_ The decision of such ground’s vests with the court to decide upon the winding up of the company. Following the various precedents, certain grounds under this provision can be listed as follows-

- The company’s whole objective is vexatious or fraudulent.
- The objective on which the company was established has not disappeared or has become impossible to attain.
- The company object is illegal or becomes illegal by some amendment in the law.
- A tussle arises between the management of the company and does not get resolved by board meetings.
- The directors of the company indulge in misutilization or mismanagement of the company funds.

_Petition for winding up._

The people who can file the petition for winding up of the company are listed under Section 439 of the Companies Act, 1956. The same can be put forth as follows-

- A special resolution can be passed during the general meeting of the company where the directors themselves can file the petition.
- A person to whom a debt is assigned, a decree holder or even a debenture holder fall within the ambit of a creditor and all these creditors can go ahead with the petition in case the company is not able to fulfil its liabilities towards them.
• In case the statutory requirement of the minimum members in a public or private company is not met, in that case a winding up petition can be presented by any contributory.
• The winding up petition can also be presented by the Registrar of the companies and the prior sanction of the central government is required for the same.

Member’s voluntarily winding up.

This whole process is governed by from section 490 to 498 of the Companies Act, 1956. If the functioning of the company is going smooth, then creditors need not be consulted. The directors can themselves convene a board meeting and can make a solvency declaration of paying the debts off within three years of the time when the winding up begins.

Every director does not need to come out with a separate affidavit in that respect, as stated in In Collector of Moradabad v. Equity Insurance Co. Ltd. The declaration shall precede the resolution at least five weeks and should reach the registrar before that date as well. The assets of the company shall be evidently made clear by the director and if not done so, it attracts punishment of six months imprisonment or fine of Rs 50,000 or both.

Procedure for Members’ Voluntary Winding Up

The appointed liquidator by the company is vested with the responsibility to take care of the winding up procedure including the proper realization and the distribution of the assets. A lawyer or even the secretary of company can be endowed with that duty as held in London & Australian Agency Corp. Ltd. The liquidator’s remuneration should be fixed at a meeting as per the case of

---

35 Supra note 31, s.489.
37 supra note 31, s.488.
38 Id., s.491(1).
39 (1873) 29 LT 417: 22 WR 45.
Amalgamated Syndicate Ltd. The liquidator can knock the doors of the court if the same is not done.

The registrar shall be informed about the appointment in ten days and the whole management of the company shall hence have no further powers to carry out the affairs of the company. When the process of voluntary winding up is underway, it shall be presumed that all the liabilities will be met unless the contrary is proven, as stated in the case of Gerard v. North of Paris Ltd.

Creditors voluntarily winding up.

A creditor’s voluntary winding up is called when the solvency declaration is not made, and the Registrar is not made aware of the same. It is governed under Sections 500 to 509 of the Companies Act 1956. The Board of Directors is under an obligation to show full situation to the creditors in the meeting. The creditors can also nominate someone to be the liquidator and their nomination prevails. The meeting is convened, and the resolution passed therein is given to the Registrar. Noncompliance of this provision makes the directors liable to pay fine, as held in Pure Milk Supply Co. Ltd. V. S. Hari Singh.

The recourse to court in such proceedings may arise only to speed up the whole process. Moreover, the court will itself intervene for the fairness or the whole process. Adding to that, certain cases are specifically dealt with by the court, as provided for in the Act.

Supervision of the Court in Winding up

The resolution for winding up gets passed in the general meeting and the court can only act as a supervisor. Here in this process, the regular reporting of the process needs to be done every three
months. The court is also vested with the power to appoint or remove the liquidator. However, this whole process was omitted from the whole Act.

The changes brought forth by the Companies Act 2013

The process of voluntary winding up is governed by Part II of Chapter XX (Sections 304 to 323) of the Companies Act, 2013. The provisions are identical to the ones provided for in the 1956 Act, just that they are now in a much-compressed manner. Some of the changes brought forth are mentioned here-

- The fine under Section 485 has been amended by Section 307 to increase the fine from Rs 500 to Rs 5000
- Two more clauses pertaining to the contents of the declaration have been added to Section 488, amended by Section 305. Also, the punishment has been enhanced from imprisonment of six months and fine of fifty thousand rupees to an imprisonment of at least three years extending to five years and fine of at least fifty thousand rupees extending to three lakh rupees.
- Section 310 has been made from combining Sections 490 and 502 where the liquidator shall be appointed by a panel of the Central Government.
- Notice of the meeting is now not mandatory to be advertised as per Section 306.
- Procedure of removal of liquidator has now been provided in the Section 311, made from combining Sections 492 and 506.
- The provision of quarterly reporting by the liquidator has been mandated under Section 316, made from Sections 496 and 508.
- Time limit for sending final winding up account details has been increased to two weeks from one week under Section 318 made from the combination of Sections 497 and 509.

The repealed law: SICA

The whole structure of a company going into liquidation or even restructuring of assets earlier used to be governed by the Sick Industrial Companies Act, 1985, also known as SICA. It came as
a brilliant economic reform to revamp the digressing industries which were facing huge losses. One primary goal of SICA was to help in the winding up of unprofitable companies. For the same, two quasi-judicial bodies were appointed under it namely Board for Industrial and Financial Reconstruction (BIFR) & Appellate Authority for Industrial and Financial Reconstruction (AAIFR). While BIFT was bestowed with the authorization of revamping and reorganizing a company or a unit and move forth with the liquidation of unviable companies, the AAIFR was an appellate authority for the people who were not happy with the order of the BIFR. 46

Insolvency and Bankruptcy Code, 2016 (IBC)

A new code to deal with a better and a comprehensive framework for the restructuring of an organization and ensuring that speedy winding up took place so that the creditor’s interest could be secured was passed by the Parliament of India in December 2016. It came out to be known as the Insolvency and Bankruptcy Code of 2016. However, the effect of the implementation of the Code is yet to be seen in consonance with the current infrastructure and bureaucracy.47

This code has a comprehensive framework which consists of-

(1) IBBI (Insolvency & Bankruptcy Board of India) as the authority which controls and regulates,

(2) Insolvency professionals (who are middlemen so that such debt-ridden companies can undergo a safe and sound reconstruction),

(3) Information utilities (credit information storing units), and

(4) Adjudicatory mechanisms, to ensure a smooth process and pass orders if necessary

47 Insolvency and Bankruptcy Code, 2016 (Bill No. 349 of 2015).
Two different authorities have been established under the IBC for the better adherence to the process of insolvency. These are the NCLT which presides over the matters of the companies and the Limited Liability Partnerships and the DRT which deals with the issues of partnership firms and individuals.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>India</th>
<th>UK</th>
<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concerned</td>
<td>IBBI</td>
<td>Court</td>
<td>Court</td>
</tr>
<tr>
<td>Authority</td>
<td>Financial or operational creditors can</td>
<td>The Board initiates the process</td>
<td>The trustee initiates by</td>
</tr>
<tr>
<td>Who initiates the</td>
<td>initiate or even the company.</td>
<td>while a member from the</td>
<td>satisfying the interests</td>
</tr>
<tr>
<td>process</td>
<td></td>
<td>management can present</td>
<td>of creditors in respective</td>
</tr>
<tr>
<td></td>
<td></td>
<td>petition to the court for</td>
<td>order. The plea can be raised</td>
</tr>
<tr>
<td></td>
<td></td>
<td>liquidation.</td>
<td>by the company.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>When does the</td>
<td>Default of minimum Rs One Lakh</td>
<td>Resolution by Shareholder about</td>
<td>Unsecured debts of less than</td>
</tr>
<tr>
<td>process begin</td>
<td></td>
<td>inability to pay off debts.</td>
<td>$250,000, and secured debts of</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>less than $750,000, and</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time allotted</td>
<td>180 days (extension of 90 days)</td>
<td>1 Year</td>
<td>1.5 Years</td>
</tr>
<tr>
<td>Control in hands</td>
<td>Interim Resolution Professional (IRP) and</td>
<td>Liquidator in creditors while</td>
<td>Defaulting management or debtor</td>
</tr>
<tr>
<td>of</td>
<td>Insolvency Professional</td>
<td>monitored by Court in compulsory.</td>
<td>in control while court</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>supervises.</td>
</tr>
<tr>
<td>Foundation</td>
<td>4 Pillars:</td>
<td>2 Pillars:</td>
<td>2 Pillars:</td>
</tr>
<tr>
<td>---------------------</td>
<td>--------------------------------</td>
<td>------------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>• IBBI</td>
<td>• Adjudicatory mechanisms (Court)</td>
<td>• Adjudicatory mechanisms (Court)</td>
</tr>
<tr>
<td></td>
<td>• IP’s</td>
<td>• Administration or Liquidator (on appointed basis)</td>
<td>• Trustee (By appointment)</td>
</tr>
<tr>
<td></td>
<td>• IU’s</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Adjudicatory (NCLT &amp; DRT)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Priority</td>
<td>Creditors based</td>
<td>Creditors based</td>
<td>Debtor-in-possession</td>
</tr>
<tr>
<td>Role of IP</td>
<td>Management of affairs and approval of resolution plan</td>
<td>Review of assets and carrying on business.</td>
<td>Realization of assets and distribution</td>
</tr>
<tr>
<td>Ease of Liquidation</td>
<td>Easy liquidation</td>
<td>Easy liquidation</td>
<td>Tedious</td>
</tr>
<tr>
<td>Role of Adjudicating Authority</td>
<td>Can accept or reject the proposal. On rejection, oversees the liquidation.</td>
<td>Oversees the process.</td>
<td>Jots down detailed and fair procedure to meet interests of all.</td>
</tr>
</tbody>
</table>
| Projected issues    | Non deviable deadline of 180/270 days may push otherwise salvageable firms into liquidation. | Most of the time the process results in liquidation rather than restructuring. | • Huge Delay  
|                     |                                |                                                | • High cost of Procedure                      |
|                     |                                |                                                | • APR violation                               |
|                     |                                |                                                | • Debtor in possession                        |
|                     |                                |                                                | • Overinvestment                              |
Conclusion

The USA Bankruptcy Code is somewhat like the repealed law of SICA of India. In both, the debtor remained in possession of the company and the assets while the process of securing the interest of the creditors often led to inordinate delays. Restructuration in such a scenario occurs in the cases where the company undergoing the process undertakes risky steps. On the contrary, the IBC provides an altogether different framework and follows the aegis of the Insolvency law of the United Kingdom, wherein insolvency professionals are appointed, and they function under the close monitoring of the committee of creditors so that the liquidation process can be taken care of accordingly.

Talking of the Companies Act 2013, it is not as elaborate as the Companies Act 1956, where many of the sections have been combined under one and various provisions have even been removed. Most prominently, the provisions pertaining to punishments have been amended, but still the cases continue to rise. In that manner, the government needs to be more vigilant in terms of providing punishments than having multiplicity of legislations.

Finally, it can be concluded that voluntary winding up is preferable in the Indian scenario, given it is a speedy process. Both the members as well as the creditors have control over the proceedings. The intervention of the tribunal could be sought only when need arises like when the companies’ practices are not keeping in mind the interest of the public at large.