

VII. GREEN FINANCE: RESTRUCTURING DEBT FOR A SUSTAINABLE FUTURE

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ABSTRACT

The neo-classical approach to economic development, which is primarily based on demand-supply theory, seems to lose its relevance in the current era. The major reason behind it is its short-sightedness and corrective approach, whereas we are currently looking towards a more preventive approach based on ecological economies. Green Finance is gaining huge momentum in the Indian economy, as it will play a crucial tool in its transition towards net zero emissions and financial decision-making. The integration of environmental concerns into financial decision-making is a crucial step for sustainable development as well. This will have a significant impact on debt restructuring and recovery as well, as the Insolvency and Bankruptcy Code (IBC)* primarily deals with the financial aspects, so the provisions have to incline with sustainability and environmental concerns. The evolution within the framework, which favours green finance under IBC, will signify an important step towards intertwining the challenges of financial distress and environmental concerns. The Environmental, Social, and Governance (ESG) trends are playing a growing role in restructuring, considering the enhanced market litigation about sustainability suits concerning ESG-related issues, which have significantly grown by more than 25% over the last three decades.* In the first section, the author aims to explain the intersection of IBC and Green Financing. In the second section, the author examines the restructuring of environmental liabilities within IBC. In the third section, the author highlights the conflict between the inclusion of ESG principles against the basic principles of IBC. The fourth section examines the compliance of debt restructuring under IBC with the sustainability goals. Sustainability-linked debt restructuring has a significant role in the inclusion of the ESG principles with the Code as harmonizing such incorporation with the Sustainable Development Goals (SDG)* is a very essential factor in this remarkable leap. The fifth and final section will deal with India's stance on environmental claims and its settlement under IBC. This will bring in a significant aspect of the use of green finance in responsible debt restructuring and recovery.

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* The Insolvency and Bankruptcy Code 2016 (India).

* Polina Lyadnova and Thomas S Kessler, 'Navigating the Shifting ESG Risks in Insolvency and Restructuring' (Cleary Gottlieb, 2023) <<https://content.clearygottlieb.com/corporate/global-restructuring-insights/navigating-the-shifting-esg-risks-in-insolvency-and-restructuring>> accessed 11 October 2024.

* United Nations, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (2015) <<https://sdgs.un.org/publications/transforming-our-world-2030-agenda-sustainable-development-17981>> accessed 11 October 2024.

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I. INTRODUCTION

The United Nations¹ has successfully incorporated green financing in its decisions, while at the same time delivering several of the sustainable development goals, which will help align with its broader agenda. The 2030 agenda² paved the way for crystalizing the values and concepts, which will determine the sustainable and responsible development system across the economies. The environmental wing³ is continuously working with the public and private sector organizations to align international financial systems to the

¹ Sean Fleming, 'What is Green Finance and Why is it Important?' (World Economic Forum, 9 November 2020) <<https://www.weforum.org/agenda/2020/11/what-is-green-finance/>> accessed 5 October 2024.

² United Nations, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (2015) <<https://sdgs.un.org/publications/transforming-our-world-2030-agenda-sustainable-development-17981>> accessed 11 October 2024.

³ United Nations Environment Programme, 'Supporting Resource Efficiency: Green Financing' <<https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-financing>> accessed 11 October 2024.

sustainable development agenda. The macroeconomic benefits of ecological economies cannot be denied. Green Finance as a wider arena emphasizes the assessment and mitigation of environmental risks, the promotion of environment-friendly practices and its alignment with restructuring the outcomes with the sustainability goals.

Insolvency and Bankruptcy Code, 2016 (**IBC**) addresses environmental claims through a waterfall mechanism while differentiating between secured and unsecured creditors.⁴ The claims are often dispersed through resolution plans, side-lining the environmental concerns. This raises a major question of harmonizing the IBC with other frameworks, as it is crucial to address environmental and social issues in a holistic manner. IBC's role in providing a legal framework for resolution and restructuring offers various opportunities to maximize the value of distressed assets while incorporating environmental concerns.

There is a huge concern as to the restructuring of environmental liabilities under IBC, as the Code per se does not explicitly prioritize environmental claims, which leads to conflicts between the environmental obligations and creditor interests. The prioritization of such claims under the Corporate Insolvency Resolution Procedure (**CIRP**) has significant legal and pragmatic implications. The major reality around the globe is the adoption of the Environmental, Social and Governance (ESG) principles under the restructuring and recovery framework of respective countries to address their environmental, social and governance concerns. The piece aims to elaborate on the intersection of IBC and green finance, incorporate the ESG principles

⁴ Vinit Bachwani and Arunima Sao, 'ESG in IBC: Over-Enthusiasm or the Most Practical Approach: Critical Analysis' (IBC Law Blog, 2024) <<https://ibclaw.blog/esg-in-ibc-over-enthusiasm-or-the-most-practical-approach-critical-analysis-vinit-bachwani-arunima-sao/>> accessed 11 October 2024.

within the IBC framework to resolve environmental liabilities and provide a more sustainable way of debt restructuring and its potential alignment with the Sustainable Development Goals (SDG) goals.

II. INTERSECTION OF IBC AND GREEN FINANCE: THE BIG LEAP

Insolvency and Bankruptcy Code, 2016 was a major leap forward, which contributed to some of the most significant reforms as stated by the Finance Minister in her latest budget speech.⁵ The Code aligns with the UNCITRAL Model Law⁶ on Insolvency of Revival and the time-bound resolution process. The Code has rightly provided a reliable and predictable framework for insolvency resolution and has made quite great advancements. IBC has provided a major structural reform, but there has been a strong vocalization by the experts and Insolvency and Bankruptcy Board in India (IBBI) professionals to incorporate ESG principles into the Code. The parading of the idea of integration is well supported by the idea of integration of the ESG in the corporate law framework in the country in its complete entirety.

Section 135 of the Companies Act, 2013⁷ provides a mandate for some specific companies earning profit to contribute towards Corporate Social Responsibility (CSR). Schedule VII of the Companies Act, 2013⁸ provides for the expenditure of the sum contributed towards CSR in various activities, which includes fulfilling ESG goals such as social business projects,

⁵ Alekh Shah, 'Budget 2024: Finance Minister Announces Integrated Tech Platform to Transform IBC' (Economic Times, 23 July 2024) <<https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/budget-2024-finance-minister-announces-integrated-tech-platform-to-transform-insolvency-and-bankruptcy-code-ibc/111961804>> accessed 11 October 2024.

⁶ UNCITRAL Model Law on Cross-Border Insolvency, United Nations Commission on International Trade Law, 1997.

⁷ The Companies Act 2013, s135.

⁸ The Companies Act 2013, s7.

environmental sustainability etc. SEBI has also mandated Business Responsibility and Sustainability Reporting (BRSR) for the top 1000 companies, which is a much-advanced way than previous environmental reporting methodology.⁹

The enhanced alignment of economic activities with ESG, has increased the need of clarity as well. Indian Green Social and Sustainability bond has recorded a growth of 585% to reach \$75 billion in 2021.¹⁰ India's sustainable funds in comparison to retail assets held amounts to be ₹ 110 billion.¹¹ The recent developments have highlighted the significant need to incorporate ESG principles as a mandatory component of the Resolution plan approved under Section 31 of the IBC.¹² The code does not expressly require for the resolution plan to provide for incorporation of ESG. IBC for the purpose of settling environmental claims puts in use the waterfall mechanism, which differentiates between secured and unsecured creditors. Unsecured creditors also include environmental claims and this leads to them receiving the same funds, which they would receive during liquidation. The concern in the picture shifts to the fact that environmental claims fall under contingent or decree holders, and they are low-priority unsecured creditors whose claims will be eliminated by the resolution plan. This will ultimately result in side-

⁹ Securities and Exchange Board of India (SEBI), Business Responsibility and Sustainability Reporting by Listed Entities (SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021) <https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html> accessed 15 October 2024.

¹⁰ Chirag Madia, "Assets of ESG funds rise 5x in four years to Rs 12,450 crore, shows data", (Business Standard, 24th April 2022) <https://www.business-standard.com/article/markets/assets-of-esg-funds-rise-5x-in-four-years-to-rs-12-450-crore-shows-data-122042400997_1.html> accessed 13 October 2024.

¹¹ Prasad Thakur and Labanya Prakash Jena "Rejuvenating India's ESG investment landscape", (The Economic Times, September 24, 2023) <<https://bfsi.economictimes.indiatimes.com/blog/rejuvenating-indias-esg-investment-landscape/103872998>> accessed 13 October 2024.

¹² Insolvency and Bankruptcy Code 2016, s 31.

lining the environmental concerns associated with the claims. The incorporation of a responsible debt restructuring method is needed here to address such social and environmental concerns.

III. RESTRUCTURING OF THE ENVIRONMENTAL LIABILITIES WITHIN THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The treatment of environmental liabilities under IBC is an issue, which has remained a grey area for a prolonged time now and requires much clarity. The liabilities such as fines and penalties can be restructured under a resolution plan in a similar way as ordinary trade and statutory liabilities of a company. Nevertheless, all the liabilities of a company as per Indian law cannot be restructured and extinguished. However, India follows the principle of “absolute liability” when it is dealing with extremely hazardous waste or “inherently dangerous” activity, and it is most likely for the Courts to find that absolute liability cannot be restructured under a resolution plan.¹³ The principle of “absolute liability” gained its recognition when the Supreme Court affirmed the principle in the Bhopal Gas Tragedy Case¹⁴ stating that an entity engaged in inherently dangerous activities would have absolute liability.

A pertinent fact to consider in the given resolution regime under IBC is the principle of “absolute liability” in relation to a company which is undergoing insolvency proceedings. It is quite an unreliable and untested model because of the nascent nature of the legislation. India follows the principle of “polluter pays”, which states that an entity that pollutes the environment must pay to reverse the damages caused by its acts. There lacks a sense of clarity under Indian Insolvency law with regards to the treatment of

¹³ INSOL International, ‘ESG in Restructuring - India’ (2023) <<https://www.khaitanco.com/sites/default/files/2023-09/ESG%20in%20Restructuring%20-%20India.pdf>> accessed 15 October 2024.

¹⁴ Union Carbide Corporation v. Union of India, (1992) AIR 248.

certain environmental liabilities, although fines and liabilities imposed by the governmental authorities would fall within the ambit of operational dues. This will eventually result in a low ranking under the liquidation waterfall, which is prescribed as per IBC.

A resolution of a company and settlement of claims under IBC has to abide by the waterfall mechanism, which differentiates between secured and unsecured creditors. The Supreme Court in the case of *Swiss Ribbons v. Union of India*¹⁵ differentiated between secured and unsecured creditors and held that unsecured creditors would only be legally obliged to obtain the amount they would have received if the company were liquidated. Environmental claims can only be extinguished if environmental claimants are not legally obliged to obtain compensation under the waterfall mechanism.¹⁶ There have been several cases in which contingent claims have been extinguished via a resolution plan. A harmonious construction between IBC and environmental laws could find its way into India's Public Liability Insurance Act, 1991.¹⁷

The Act mandates companies, which are handling hazardous chemicals to get insurance protection against the accidents involving hazardous chemicals. The compensation is mostly determined on the basis of no fault liability, which means the owners are responsible for providing compensation to victims of accidents, irrespective of the presence of negligence. The Act also established the Environment Relief Fund within it to provide for victims of accidents, and the contributions are from the industries, which subscribe to the Act. The National Green Tribunal (NGT) for

¹⁵ *Swiss Ribbons v. Union of India*, (2019) 3 SCR 535.

¹⁶ Sriram Prasad, *Environmental Claims in Insolvency in India* (Oxford Business Law Blog, 17 May 2023) <<https://blogs.law.ox.ac.uk/oblb/blog-post/2023/05/environmental-claims-insolvency-india>> accessed 15 October 2024.

¹⁷ Public Liability Insurance Act 1991 (India).

environmental damages awards compensation in such cases.¹⁸ The schemes under the Act, although does not tackle a situation in full clarity provide a two-way balance between resolving environmental claims and adhering to insolvency policies.

IV. CONFLICT BETWEEN THE INCLUSION OF ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) PRINCIPLES AGAINST THE BASIC PRINCIPLES OF IBC

The objective served by the Code as stated in the preamble is to focus on the reorganization and insolvency resolution of the business in a specified time. ESG compliance on the other hand is mostly associated with the long drawn-out method and at the same time affects the time-bound nature of the act.¹⁹ The act of requiring an ailing company to adhere to the ESG parameters can act as a huge barrier towards achieving efficiency and profitability. This will lead to a resultant loss of entrepreneurship capabilities and a loss of economic interest with respect to the primary stakeholders of the company.

This will somewhere lead us to digress from the broader aim, which is to preserve the economic value of the companies and promote a sustainable method of business practices. ESG caters towards a lot of needs in the given scenario and as their increasing hold in the financial markets is at an all-time high, there is a strong need to include them in the restructuring arena²⁰ through IBC. Companies in recent times have sought to include new ESG methods and

¹⁸ Prasad (n 19).

¹⁹ Corey B Shapiro, Green Funds in a Gray Area (2023) 48 (2) Columbia Journal of Environmental Law & Policy <https://journals.library.columbia.edu/index.php/cjel/article/view/11734> accessed 15 October 2024.

²⁰ Carlo Ghia, Thiago Braga Junqueira, Mariam Zaidi, and Gabriel L Olivera, Sustainability in Insolvency and Restructuring Procedures (International Insolvency Institute, 9 June 2024) <https://www.iiiglobal.org/file.cfm/156/docs/sustainability%20in%20insolvency%20and%20restructuring%20procedures.pdf> accessed 5 October 2024.

angles in debt issuances, and before we include it in the Code or develop a restructuring method, the conflict has to be sought in a two-fold manner.

A. ESG Vis-À-Vis Basic Principles of IBC

The integration of ESG principles within the Code and applying it to restructuring and insolvency procedures requires a dynamic interplay between the ESG criteria and financial recovery. The business environment stimulating the operation of companies in India has a very microscopic view of corporate responsibility and at the same time micro-management of the business responsibilities. The excessive supervision and regulation compliances included in the process would lead to a negative impact on the entire concept of ease of doing business. It will overburden the already financially ill companies and defeat the purpose of the Insolvency Resolution under CIRP.²¹

The primary goal of IBC is to ensure efficient resolution of insolvency and maximise focus on asset recovery for creditors. The incorporation of ESG principles would prioritize long-term sustainability over short-term creditor returns. It will increase the complexity of the insolvency procedure as well for the insolvency professionals and creditors. The ESG standards are not clearly defined which leads to a lot of ambiguity and would result in potentially unfair outcomes. The incorporation of the ESG principles might lead to a significant shift from creditors to a broader range of stakeholders, which will include employees, the environment and the community at large. This will lead to the dilution of the rights and interests of the creditors, whose major objective is debt recovery.

The regulatory landscape around ESG is evolving and although incorporation of the principles could lead to significant legal uncertainties, it

²¹ Bachwani (n 7).

is an essential step towards sustainable business. The objective of green finance can be adhered to if these principles are incorporated after careful deliberation in order to balance creditor rights and insolvency resolution efficiency with long-term sustainability goals. India's legislative advancements provide a lucrative avenue for incorporating ESG factors in future insolvency resolutions.

B. ESG Principles against the Objectives of IBC

The inclusion of ESG as mandatory compliance can have a contradictory effect on the objectives stated in the preamble of the code. Firstly, the incorporation of excessive regulatory compliances and approvals from the environment, society and various other stakeholders even before a resolution plan could hold up the negotiation process with various stakeholders. This will not fulfil the objective of it being time-bound and following a strict timeline of 330 days²² in which a CIRP should be completed, which usually gets extended due to overburdened tribunals. The resolution plan before the approval itself by the adjudicating authority takes time beyond the stated timeline, so the added compliance will further increase its complexities.

Secondly, the provision of making ESG compliances a mandatory measure in the approval of a resolution plan could lead to increased pressure upon the distressed assets and give a finite financial space to adhere to the various environmental and social regulations. It will affect the overall productivity and lead to a reduction in the value of the asset. Thirdly, ESG affects productivity and profitability, while it gives major value to environmental, social and governance norms. This will hamper the economic interests of the primary stakeholders of the company i.e. shareholders,

²² Insolvency and Bankruptcy Code, s12.

creditors, employees etc. The incorporation of ESG principles could on one hand lead to sustainable business growth and will protect the basic values of business through its compliance, but at the same time will affect the primary economic interests of the stakeholders. It will create a huge imbalance in promoting stakeholder's interest on one hand, which will lead to the defeating of the objective of credit availability in the market.

The concerns with regards to the incorporation of the principles to the Code, in order to promote the bigger objective of green finance have huge long-term business growth whereas at the same time defeat the objective of the Code. The integration could lead to a positive insolvency resolution landscape, which goes far beyond the web of compliances. A conscious approach by the legislators can help to strike a perfect balance between the ESG principles and the Code. The alignment of the ESG principles²³ in business operations not only contributes towards social welfare but also aligns the country's motto towards sustainable business and community growth. The ESG principles will help in harmonizing the objectives of green finance and will help in the successful integration of sustainability growth in the Indian debt restructuring and recovery landscape.²⁴

V. COMPLIANCE OF DEBT RESTRUCTURING UNDER IBC WITH THE SUSTAINABILITY GOALS

Sustainability-linked debt restructuring within the framework of India's IBC represents a ground-breaking step toward embedding ESG objectives in the financial recovery process. By integrating ESG principles, this approach aligns the Code with the United Nations' Sustainable

²³ INSOL INT. (n 16).

²⁴ Ulka Bhattacharyya, Understanding the Regulatory Framework for Sustainable Finance in India (NLS Business Law Review, 19 April 2024) <<https://www.nlsblr.com/post/understanding-the-regulatory-framework-for-sustainable-finance-in-india>> accessed 5 October 2024.

Development Goals (SDGs) for 2024, particularly in supporting sustainable growth, resilience, and responsible business practices. Sustainability-linked debt restructures are in essence, designed to incentivize companies to meet specific ESG milestones during insolvency and recovery, placing India's corporate sector on a path to achieve long-term ecological and social value alongside financial recovery.

IBC's approach to corporate distress has traditionally prioritized creditor rights, emphasizing efficient recovery mechanisms over environmental or social concerns. However, India's ambitious SDG goals demand a more balanced framework that not only ensures creditors' interests are met but also addresses sustainability challenges, such as emissions reduction, waste management, and energy transition. Notably, the IBC has yet to mandate any explicit ESG consideration, underscoring a significant gap that sustainability-linked restructuring could fill by transforming distressed companies into more environmentally conscious entities, thus meeting the country's commitment to net-zero emissions.²⁵

In practical terms, sustainability-linked restructuring could employ various ESG-focused mechanisms to drive corporate transformation. For example, a resolution plan could include criteria such as reducing emissions or increasing renewable energy usage, with penalties for non-compliance or incentives for exceeding targets.²⁶ Such provisions could be tailored by sector, ensuring that high-impact industries adopt stricter sustainability requirements. The use of sustainability-linked bonds and loans could also help companies secure financing based on their ESG performance, thereby embedding

²⁵ M. P. Ram Mohan and Sriram Prasad, 'Environmental Claims under Indian Insolvency Law' (2023) Indian Institute of Management Ahmedabad Research and publication, <<https://www.iima.ac.in/publicationenvironmental-claims-under-indian-insolvency-law-concepts-and-challenges-0>> accessed 7 October 2024.

²⁶ INSOL IND. (n 16).

sustainability directly into the recovery process. These bonds, by tying financial incentives to meeting sustainability milestones, would enhance accountability and make environmental and social goals intrinsic to debt restructuring.²⁷

Aligning IBC with the SDGs could also prioritize environmental claims within the hierarchy of creditors, which are currently treated as low-priority, and often sidelined behind secured creditors. By elevating the status of environmental liabilities, IBC could ensure that companies address the full scope of their environmental impacts during restructuring, harmonizing the goals of financial recovery with ecological integrity. Studies advocate for restructuring plans to include clear standards and metrics that enable distressed companies to adapt sustainably, thus creating a robust framework for monitoring compliance and progress.²⁸

However, integrating sustainability within IBC is not without challenges. Sustainability-linked restructuring could complicate insolvency procedures, as the additional requirements may extend the resolution timeline beyond the 330-day limit mandated by the Code. Further, mandating ESG compliance might place undue financial strain on already distressed companies, potentially counteracting the Code's objective of efficient creditor recovery. Addressing these concerns requires careful calibration to ensure that

²⁷ Shilpy Sinha, 'NARCL plans to separate sustainable part of Simplex Infrastructures debt', (Economic Times, 2023) <<https://economictimes.indiatimes.com/industry/indl-goods/svs/construction/narcl-plans-to-separate-sustainable-part-of-simplex-infrastructures-debt/articleshow/112663094.cms>> accessed on 8 October 2024.

²⁸ M. P. Ram Mohan and Sriram Prasad, 'Environmental Claims under Indian Insolvency Law' (2023) Indian Institute of Management Ahmedabad Research and publication, <<https://www.iima.ac.in/publicationenvironmental-claims-under-indian-insolvency-law-concepts-and-challenges-0>> accessed 7 October 2024.

sustainability-linked restructuring does not compromise the core objectives of IBC while still promoting long-term resilience and growth.

In conclusion, sustainability-linked debt restructuring presents a unique opportunity to align India's insolvency framework with its SDG commitments. By embedding ESG metrics within the resolution process, India can create a more resilient, responsible corporate landscape that supports both financial recovery and environmental stewardship. This approach not only strengthens the Code's impact but also enhances India's global standing as a leader in sustainable business practices.

VI. PROPOSED SOLUTIONS FOR INTEGRATING ENVIRONMENTAL CLAIMS INTO INDIA'S INSOLVENCY FRAMEWORK

India's approach to environmental claims under its insolvency regime, led by IBC reveals a progressive but complex interplay between creditor priorities and environmental accountability. The treatment of environmental liabilities in insolvency cases has long been a topic of legal debate, with such claims often relegated to lower priority within IBC's waterfall mechanism. This system, which places secured creditors at the top and environmental liabilities as contingent claims near the bottom, has spurred criticism that environmental concerns are inadequately addressed within insolvency proceedings.²⁹

In response to growing environmental challenges, Firstly, India could prioritize environmental claims within the creditor hierarchy. The "polluter pays" principle—embedded in Indian environmental jurisprudence—supports the idea that entities responsible for environmental damage should be held liable for remediation costs. However, conflicts arise when companies under

²⁹ Mohan (n 28).

insolvency, obligated to pay for ecological damage, have limited resources, often insufficient to satisfy both creditor claims and environmental liabilities. This clash between creditor interests and environmental responsibility has prompted calls for legislative amendments that would increase the standing of environmental claims in the insolvency process.³⁰

A potential avenue for reform involves recognizing environmental liabilities as “operational dues” under the IBC. By reclassifying these claims, they could receive higher priority in the recovery process, ensuring they are addressed alongside other critical operational expenses. Legal experts argue that India’s insolvency framework could incorporate environmental liabilities in a manner akin to the Public Liability Insurance Act, 1991, which mandates insurance for industries handling hazardous substances and establishes an Environmental Relief Fund to compensate victims of environmental damage. This model provides a structured mechanism for compensating environmental harm, aligning with India’s commitment to sustainable business practices.³¹

Secondly, India’s judicial system, notably through the National Green Tribunal (NGT), has reinforced the significance of environmental accountability by imposing penalties on companies for ecological damages. While these penalties fall under operational dues in the IBC framework, they often fail to achieve substantial compensation due to the Code’s prioritization of secured creditors. Recent cases have demonstrated that environmental

³⁰ Aditi Bharadwaj & Pratishtha Shrivastava, ‘Redefining Insolvency: A Case for Prioritizing Ecological Concerns’ (The Indian Review of Corporate and Commercial Laws, 2024) <<https://www.ircl.in/post/redefining-insolvency-a-case-for-prioritizing-ecological-concerns>> accessed 8 October 2024.

³¹ *ibid.*

claims are rarely prioritized within the restructuring plan, leaving ecological and social concerns secondary to financial recovery.³²

Recent policy recommendations propose that IBC consider environmental liabilities alongside other claims of public interest, particularly within industries prone to environmental risks. By prioritizing ecological concerns, the Code could better balance financial recovery with environmental stewardship, facilitating sustainable corporate restructuring that aligns with both domestic legal principles and international best practices.

Thirdly, the Courts in India have previously refused to admit companies under insolvency. There stands a huge possibility that the courts may go on to refuse insolvency against a company that strategically defaults to evade environmental claims, regardless of the pre-existence of default and debt. The possibility in the pertaining case might remain a valid situation to refuse environmental claims, but it does not prove to be an efficient solution for environmental claimants. A company, which has caused environmental harm, if not accepted to insolvency, although it faces many environmental claims. The creditors in the given case would naturally seek other remedies, such as enforcing their security interests and among other actions in order to secure their debt. This will ultimately result in the company's assets being stripped off and difficult for it to continue in a going concern. The environmental claimants might also have to be involved in litigation against the financial creditors, but with a slight upper hand, as they would have greater time and resources to expend on litigation as compared to environmental claimants.

³² Mohan (n 28).

A. Recommended Approach for Insolvency Courts when Choosing Liquidation over Reorganisation

In India, directing a company to liquidate rather than reorganise will result in running into a waterfall mechanism, in which gains from liquidation are distributed according to the waterfall mechanism as per the IBC. It can be concluded that directing a company to liquidation rather than reorganisation is not an efficient solution in trying to solve the distress of the environmental claimants under IBC. The Courts have refused the application of a few specific provisions of insolvency laws if they clash with the environmental policy. There are insolvency regimes, which allow the liquidator to abandon onerous property or contracts.

There are several instances, where insolvency and environmental policy clash, the liquidators have tried to abandon environmentally onerous properties, and courts have often not allowed the power of disclaiming onerous property.³³ The application of IBC in India showcases that the environment claimants may not even have any real advantage if the company refuses insolvency, as the Courts have upheld in various other jurisdictions. It appears essential to devise a workable solution for the treatment of environmental claims in insolvency, as it upholds the future of green finance in India.

India's stance on environmental claims within the insolvency framework is evolving, with growing recognition of the need to integrate ecological accountability into the recovery process. By amending the IBC to prioritize environmental claims, India could ensure a more responsible insolvency landscape that aligns with its broader commitment to sustainable development and environmental protection. This shift towards a balanced insolvency framework could pave the way for responsible corporate practices

³³ Mohan (n 28).

that respect both creditor rights and environmental obligations, further solidifying India's role as a leader in sustainable finance.

VII. CONCLUSION

Modern insolvency legislation aims to provide a chance for a failing company to revive. In the current scenario, insolvency acts as a defence against much of environmental liability. The entire objective of the waterfall mechanism is the fact that insolvency prioritizes financial debt over environmental claims and insolvency prioritizes economic policy over social goals. The given concern about the potential burden and distraction from business goals will be in existence but the strategic incorporation of ESG principles in the IBC will enhance the effectiveness of the insolvency resolution process, making it more comprehensive and aligning it with the evolving methodology of finance, which helps in a sustainable and environmentally friendly way of business operation.

The prioritization of environmental claims during such bankruptcy proceedings could provide better alternatives for the stakeholders, who are left high and dry in many situations. Sustainability is the key to taking ahead any business operation and the integration of ESG principles could lead to a healthy debt restructuring and recovery way out for the companies. India's commitment towards providing a better avenue for fostering the development of green finance could lead to better investments and make the application of IBC in a much better manner. This long-term integration requires a conscious approach by the legislators, in order to strike a perfect balance between the ESG principles and IBC and towards its healthy adoption in the Indian legal system. Insolvency is complex and it is sceptical towards social issues by its very design, which makes it oblivious to environmental policies. In such scenarios, the way forward, which can be applied, would be the application of

the Public Liability Insurance Act, 1991.³⁴ It is not a fool proof way but at the same time provides for a better balance between environmental policies by resolving environmental claims, while at the same time respecting insolvency policies. It can also help with the better integration of the components of green finance in the IBC for a sustainable debt restructuring and recovery method.

³⁴ Mohan (n 28).