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# **AN ANALYTICAL STUDY OF REVENUE RECOVERY TRENDS IN INSOLVENCY AND BANKRUPTCY CODE PROCEEDINGS**

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## **ABSTRACT**

This paper examines the treatment and recovery of Government dues particularly taxes and statutory levies within the framework of the Insolvency and Bankruptcy Code, 2016 (IBC). Historically, sovereign dues derived preferential treatment under the common-law doctrine of crown debts. However, the IBC introduces a structured, resolution-driven model that significantly subordinates Government claims to secured creditors, insolvency costs and certain financial debts. This shift reflects a modern insolvency philosophy emphasising value maximisation, predictability and time-bound resolution. The doctrinal analysis focuses on three central provisions: Section 53, which places Government dues low in the liquidation waterfall; Section 31, which binds all stakeholders including Government departments to approved resolution plans and effectuates the "clean slate" principle; and Section 238, which grants overriding effect to the IBC over conflicting recovery statutes. Judicial developments, including landmark pronouncements in *Ghanashyam Mishra and Sons (P) Ltd v Edelweiss Asset Reconstruction Co* (2021) and *State Tax Officer v Rainbow Papers Pvt Ltd* (2022), have shaped and at times unsettled the contours of sovereign priority. A comparative analysis of the United Kingdom, United States, Australia and Singapore reveal that mature insolvency regimes similarly limit sovereign preference, prioritising efficiency, creditor equality and restructuring viability. The paper concludes with targeted recommendations for statutory clarification, uniform administrative procedures, digital integration and expanded MSME-focused restructuring tools.

**Keywords:** Insolvency and Bankruptcy Code (IBC); Government Dues; Priority of Claims; Corporate Insolvency Resolution; Statutory Charges.

## I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to address the growing challenges in resolving corporate insolvency in India. Before its enactment, the legal framework was fragmented, often resulting in delays, uncertainty and low recovery for creditors. The IBC brought a unified and time-bound process aimed at resolving financial distress more efficiently and structurally, shifting the focus from mere recovery of dues to the revival of financially stressed companies. This change improved confidence among investors and other stakeholders. The IBC marked a decisive departure from the earlier regime, which was characterised by overlapping statutes, ad hoc judicial balancing and frequent conflicts between recovery and resolution objectives.

One of the key issues that has emerged under the IBC is the treatment of Government dues, particularly taxes and other statutory liabilities, during insolvency proceedings. Traditionally, such dues enjoyed preferential treatment under the doctrine of crown debts, which placed the Government in a favourable position vis-à-vis other creditor. However, the IBC introduces a clear statutory priority structure that, in most cases, places Government claims below secured creditors and financial debts. This has led to significant legal disputes and evolving judicial interpretations regarding the status and recovery of such dues. Understanding how revenue recovery interacts with the insolvency framework is therefore essential to evaluate the effectiveness and fairness of the current system. The tension between the State's legitimate interest in collecting public revenue and the systemic objective of preserving enterprise value represents a recurring doctrinal challenge that this paper seeks to address.<sup>1</sup>

The role of the Government as a creditor holds major importance in India's insolvency landscape because tax dues, duties, penalties and statutory levies constitute a substantial portion of the liabilities of distressed companies. Clarity on Government claim priority has significant academic, legal and policy dimensions. It affects how courts handle competing claims between secured creditors, operational creditors, workmen and the State. It further impacts how tax authorities amend assessments, issue demand notices, or initiate recovery

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<sup>1</sup>Swiss Ribbons (P) Ltd v Union of India (2019) 4 SCC 17.

proceedings when a corporate debtor enters insolvency. Socially and economically, clarity on Government claim priority affects investor confidence, credit availability and the broader functioning of capital markets. A predictable insolvency regime is crucial for India's economic reforms and ease-of-doing-business aspirations.<sup>2</sup>

Prior to the IBC, the primary doctrinal touchstone was the common-law doctrine of crown debts, which recognised that debts owed to the sovereign deserved a preferential status over other claims, subordinate only to prior perfected security interests. Indian courts, influenced by the colonial legal inheritance, acknowledged this doctrine in several decisions that recognised a special priority for sovereign dues such as taxes, duties and penalties. Judicial reasoning sought to reconcile the need for state revenue with the sanctity of consensual security interests, producing a court-crafted accommodation rather than a formal statutory hierarchy. The fragmented statutory landscape comprising the Companies Act winding-up provisions, SARFAESI, RDDBFI and various tax recovery statutes frequently produced conflicts, rendering outcomes uncertain and litigation-intensive.<sup>34</sup>

The IBC addressed this fragmentation by introducing a structured, collective framework for resolving corporate insolvency. The Code's architecture is built around three pillars: a moratorium that prevents unilateral recovery during the resolution process; a committee-driven mechanism for approving resolution plans that bind all stakeholders; and a liquidation waterfall that establishes a statutory hierarchy of claims. Within this framework, the treatment of Government dues as operational debt reflects a conscious policy choice to subordinate sovereign interests to the broader objectives of value maximisation and collective creditor welfare. This paper analyses this framework in depth, examining statutory provisions, judicial developments and comparative international practice to assess whether the current approach achieves an optimal balance between sovereign revenue interests and insolvency objectives.<sup>5</sup>

## **II. LEGISLATIVE FRAMEWORK AND STATUTORY ANALYSIS**

### **A. Key Provisions of the Insolvency and Bankruptcy Code, 2016**

The IBC is the principal legislation governing corporate insolvency resolution and liquidation

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<sup>2</sup>Insolvency Law Committee, Report of the Insolvency Law Committee (Ministry of Corporate Affairs 2020).

<sup>3</sup>State of M.P. v State Bank of Indore (2002) 10 SCC 441.

<sup>4</sup>Dena Bank v Bhikhabhai Prabhudas Parekh & Co (2000) 5 SCC 694.

<sup>5</sup>Insolvency and Bankruptcy Code 2016, s 53.

in India. For the purposes of Government claims, five provisions are of central importance. Section 5(21) defines "operational debt" as a claim in respect of goods or services, including employment, and dues arising under any law for the time being in force and payable to the Central or State Government. This broadly encompasses taxes, duties, levies and other statutory obligations, classifying them as operational debts rather than financial debts. The distinction is significant because financial creditors, who are represented on the Committee of Creditors and play a central role in the CIRP, enjoy a structurally superior position compared to operational creditors, including Government authorities.<sup>6</sup>

Section 14 imposes a moratorium during the Corporate Insolvency Resolution Process (CIRP), staying all recovery and enforcement actions against the corporate debtor. This provision operates as a protective shield, preventing tax authorities from issuing attachment orders, continuing recovery proceedings, or enforcing demands during the pendency of insolvency. The objective of the moratorium is to preserve the value of the corporate debtor's assets, prevent a race among creditors and enable the resolution professional to manage the debtor as a going concern. The moratorium thus represents a structural mechanism that subordinates the individual enforcement interests of Government authorities to the collective objective of resolution.<sup>7</sup>

Sections 30(2) and 31 govern the approval and binding effect of resolution plans. Once a resolution plan is approved by the adjudicating authority, it becomes binding on all stakeholders, including the corporate debtor, its creditors, employees and critically all Central and State Government authorities. Liabilities not expressly provided for in the approved plan stand extinguished, giving effect to the "clean slate" principle. This principle is indispensable for ensuring that resolution applicants can acquire the corporate debtor free from legacy claims, thereby incentivising participation in the CIRP. The binding effect on Government authorities has been confirmed and reinforced by judicial decisions, as discussed further below.<sup>8</sup>

Section 53 prescribes the liquidation waterfall, establishing the statutory hierarchy of claims in the event of liquidation. Insolvency resolution costs rank first, followed by workmen's dues for the preceding twenty-four months and debts owed to secured creditors. Thereafter come wages and unpaid dues to employees for the preceding twelve months, then financial debts to unsecured creditors and operational debts. Government dues including taxes and statutory

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<sup>6</sup>R Varottil and S Gopalan, 'Reassessing Creditor Priorities under the IBC' (2019) 12 NUJS L Rev 221.

<sup>7</sup>A Kshirsagar, 'Impact of IBC Waterfall on Government Revenues' (2021) 8(2) Indian Journal of Insolvency Law 145.

<sup>8</sup>Ghanashyam Mishra and Sons (P) Ltd v Edelweiss Asset Reconstruction Co (2021) 9 SCC 657.

levies fall below secured and financial creditors in the waterfall. This sequencing reflects a deliberate policy choice that privileges credit certainty and the enforcement of consensual security interests over sovereign revenue claims. Finally, Section 238 grants the IBC overriding effect over inconsistent provisions of other laws, ensuring that tax recovery statutes cannot circumvent the Code's framework.

### **B. Allied Economic and Recovery Laws**

The interaction between the IBC and various tax and recovery statutes frequently generates complex legal questions. Tax laws including the Income Tax Act 1961, the Central Goods and Services Tax Act 2017, the Customs Act 1962 and various State tax statutes contain their own recovery mechanisms and, in some instances, create "first charge" clauses over the assets of debtors. The enforceability of such charges during insolvency turns on whether the charge is specific, perfected and attached to identifiable assets. In the absence of these conditions, such claims are treated as operational debts and subject to the Section 53 waterfall. Where a statute unequivocally creates a first charge on specific assets, the Government may assert secured creditor status; however, general recovery provisions do not displace the IBC's framework without meeting this standard.<sup>9</sup>

The SARFAESI Act 2002 and the Recovery of Debts and Bankruptcy Act 1993 provide mechanisms for creditors to enforce security interests, but their operation is effectively suspended once insolvency proceedings commence under the IBC. The primacy of the IBC in such situations reflects a broader legislative intent to streamline debt enforcement within a single, unified process. Similarly, the winding-up provisions of the Companies Act 2013 have residual relevance, but where the IBC is invoked, it ordinarily prevails for insolvent corporates. These allied statutes continue to inform the interpretation of specific legal questions such as the nature and scope of statutory charges but their enforcement mechanisms operate within the overarching framework of the IBC.<sup>1011</sup>

### **C. Constitutional Framework**

India's constitutional architecture plays a significant role in shaping the relationship between insolvency law and tax enforcement. Articles 246 and 254 allocate legislative competence and deal with repugnancy between Central and State laws. The IBC, enacted as a Union law on

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<sup>9</sup>Income Tax Act 1961; Central Goods and Services Tax Act 2017; Customs Act 1962.

<sup>10</sup>SARFAESI Act 2002; Recovery of Debts and Bankruptcy Act 1993.

<sup>11</sup>Companies Act 2013, ss 270–365.

insolvency and bankruptcy under the Union List, enjoys primacy over conflicting State enactments by virtue of the constitutional repugnancy doctrine. Section 238 of the IBC operationalises this primacy in the specific context of insolvency, ensuring that the Code prevails over inconsistent provisions of any other law for the time being in force. This constitutional scaffolding undergirds the IBC's comprehensive and overriding design.<sup>1213</sup>

Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. While this provision affirms the legitimacy of Government claims to taxes and statutory levies, it does not grant an automatic priority in insolvency proceedings. The right to levy taxes is constitutionally guaranteed, but the manner of recovery must conform to the broader legal framework, including insolvency law. This balance between fiscal legitimacy and insolvency design is essential for maintaining both public revenue discipline and economic efficiency. The constitutional framework thus supports both the validity of Government dues and the subordination of their enforcement to the collective mechanism of the IBC.

### III. JUDICIAL DEVELOPMENTS AND CASE LAW

#### A. The Foundational Cases

The judiciary has been instrumental in shaping the treatment of Government claims under the IBC. The first significant Supreme Court pronouncement under the Code was *Innoventive Industries Ltd v ICICI Bank* (2018), which established the overriding effect of Section 238, upholding the Code's primacy over inconsistent State laws. While this case did not directly concern Government dues, its reasoning laid the foundation for subsequent cases in which tax recovery statutes conflicted with IBC processes. The Court characterised the IBC as a complete code, designed to ensure certainty and finality in insolvency proceedings.<sup>14</sup>

In *Monnet Ispat & Energy Ltd v Principal Commissioner of Income Tax* (2018), the Supreme Court made its first affirmation that Income Tax Department claims stand subordinated under the IBC. The Court held that Section 238 overrides Section 226 of the Income Tax Act in cases of inconsistency, signalling a major shift from common-law presumptions favouring sovereign priority. Importantly, the Court acknowledged the traditional doctrine of crown debts and clarified that Government dues do not automatically override secured creditors or the waterfall mechanism unless a valid statutory charge exists. This decision provided early clarity on the

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<sup>12</sup>Constitution of India, arts 246, 254.

<sup>13</sup>Insolvency and Bankruptcy Code 2016, s 238.

<sup>14</sup>*Innoventive Industries Ltd v ICICI Bank* (2018) 1 SCC 407.

structural subordination of sovereign claims within the IBC framework.<sup>15</sup>

The seminal ruling in this area came in *Ghanashyam Mishra and Sons (P) Ltd v Edelweiss Asset Reconstruction Co* (2021), where the Supreme Court held that upon approval of a resolution plan, all statutory dues of the Central and State Governments prior to the plan stand extinguished and no fresh proceedings or claims can be initiated post-approval for past periods. The Court emphasised the clean slate principle as essential for value maximisation and bidder confidence, noting that permitting tax departments to persist with legacy demands would undermine finality, discourage resolution applicants and frustrate the objectives of the IBC. This judgment remains the cornerstone of the law on Government dues in insolvency.

### **B. The Rainbow Papers Controversy and Its Aftermath**

The legal landscape was temporarily unsettled by *State Tax Officer v Rainbow Papers Pvt Ltd* (2022), in which the Supreme Court held that certain statutory dues when backed by a statutory first charge under the Gujarat VAT Act could qualify the Government as a secured creditor, thereby attracting a higher priority in the resolution framework. This judgment caused considerable concern among insolvency practitioners, who feared that it would reintroduce crown-debt preferences through the back door and dilute the efficiency of CIRP. The ruling appeared to conflict with the settled position established in *Ghanashyam Mishra* and raised the possibility of Government authorities asserting secured status on the basis of broadly worded statutory charge provisions.<sup>16</sup>

However, subsequent judicial decisions including the Supreme Court's ruling in *Sundaresh Bhatt, Liquidator of ABG Shipyard Ltd v Central Board of Indirect Taxes & Customs* (2022) and various NCLAT decisions sought to re-establish and clarify the limits of the Rainbow Papers holding. The emerging consensus is that a statutory charge must be clear, specific and asset-attached in order to confer secured creditor status on the Government; a general recovery right does not suffice. Even where a statutory charge exists, its enforceability must be consistent with the structure and purpose of the IBC, particularly the need for resolution finality and the sanctity of the Section 53 waterfall. These corrections have re-aligned the jurisprudence with the IBC's legislative ethos, restoring the primacy of the clean slate principle and the subordinated treatment of Government claims.<sup>17</sup>

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<sup>15</sup>*Monnet Ispat & Energy Ltd v Principal Commissioner of Income Tax* (2018) 18 SCC 786 (order).

<sup>16</sup>*State Tax Officer v Rainbow Papers Pvt Ltd* (2022) 9 SCC 330.

<sup>17</sup>*Sundaresh Bhatt, Liquidator of ABG Shipyard Ltd v Central Board of Indirect Taxes & Customs* (2022) 7 SCC 321.

### C. Principles Evolved Through Case Law

Through the above line of cases, the judiciary has evolved several doctrinal principles that now form the backbone of insolvency practice in India. The clean slate doctrine holds that, post-approval, all past liabilities including statutory dues stand extinguished unless expressly incorporated in the resolution plan. The specific charge test establishes that Government dues qualify for secured priority only where the relevant statute creates an explicit first charge, the charge attaches to a specific and identifiable asset, and its enforcement does not conflict with the IBC's resolution framework. The IBC supremacy principle, derived from Section 238, ensures that the Code prevails over conflicting recovery laws, thereby reducing jurisdictional disputes and reinforcing CIRP timelines. These doctrines collectively signal a deliberate judicial choice in favour of statutory clarity and economic functionality over the historical instinct to privilege sovereign dues.<sup>1819</sup>

In addition to these substantive doctrines, courts have clarified important procedural dimensions of Government participation in insolvency. It is now well-established that Government authorities must file claims within the prescribed timelines, participate in the CIRP process and accept the binding effect of approved resolution plans. Failure to file timely claims may result in the extinguishment of dues, as the plan-approval process does not provide for reinstatement of unsubmitted claims. The Court in *Embassy Property Developments (P) Ltd v State of Karnataka* (2019) emphasised that Government authorities, like all other creditors, are subject to the collective framework of the IBC and cannot invoke the jurisdiction of statutory authorities to circumvent insolvency proceedings.<sup>20</sup>

## IV. CHALLENGES IN REVENUE RECOVERY UNDER THE IBC

### A. Legal and Doctrinal Challenges

Despite the clarity introduced by the IBC and judicial decisions, several significant legal challenges persist in the area of Government revenue recovery in insolvency. The primary doctrinal challenge concerns the status and priority of Government dues: whether statutory dues are invariably operational debt, or can be elevated to secured status through statutory charges, and how such status influences priority under Section 53. The controversy generated by the *Rainbow Papers* ruling demonstrates that this question remains susceptible to divergent judicial interpretation. Ambiguity in the language of charge-creating provisions across different

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<sup>18</sup>Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta (2020) 8 SCC 531.

<sup>19</sup>K Sashidhar v Indian Overseas Bank (2019) 12 SCC 150.

<sup>20</sup>Embassy Property Developments (P) Ltd v State of Karnataka (2019) 13 SCC 308.

tax statutes creates fertile ground for litigation, as Government authorities seek to establish secured status while resolution applicants and financial creditors contest such claims.

A related challenge is the tension between the binding effect of approved resolution plans and the State's imperative to collect taxes and penalties. While Sections 30 and 31 are clear in their terms, instances of post-approval demands and reassessment proceedings for periods covered by approved plans continue to arise. These actions contradict the clean slate principle, force resolution applicants into avoidable litigation and chill bidding interest in future CIRPs. The administrative practice of issuing notices or demands for pre-CIRP periods after plan approval reflects a persistent gap between the legal position established by the courts and the institutional practices of Government departments.<sup>21</sup>

The treatment of contingent and unassessed liabilities poses additional doctrinal difficulties. Tax liabilities may crystallise post-insolvency commencement but relate to pre-CIRP periods, creating uncertainty about whether they are bound by the plan or can be enforced independently. IBBI regulations permit the filing of contingent or best-estimate claims, but tax authorities are often reluctant to file estimates pending formal assessment. The later crystallisation of such claims collides with plan finality, provoking disputes about whether the claims are time-barred or extinguished under the clean slate doctrine.<sup>22</sup>

## **B. Administrative and Practical Challenges**

Beyond doctrinal issues, the effective recovery of Government dues in insolvency is hampered by significant administrative and practical challenges. Government departments face institutional difficulties in adhering to the strict timelines imposed by the CIRP, in quantifying indirect tax exposures for claim-filing purposes and in coordinating across multiple departments that may each hold distinct claims against the same corporate debtor. Corporate debtors often owe taxes to several authority's income tax, GST, customs, state levies making it difficult to present a consolidated claim or to participate effectively in plan negotiations within the compressed timeframes of the CIRP.<sup>23</sup>

Information asymmetry between Resolution Professionals and Government authorities is another persistent challenge. Tax departments may not have access to comprehensive financial information about the corporate debtor, while Resolution Professionals may lack detailed

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<sup>21</sup>IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, reg 12(2).

<sup>22</sup>Insolvency Law Committee, Report of the Insolvency Law Committee (Ministry of Corporate Affairs 2018).

<sup>23</sup>IBBI Annual Report (2022).

knowledge of the extent and nature of outstanding tax liabilities. This asymmetry can lead to inaccurate claim quantification, delays in verification and disputes about the validity of Government claims. The electronic filing requirements introduced by the IBBI have partially addressed this issue, but variations in digital infrastructure and procedural capacity across different Government departments continue to create inconsistencies.<sup>24</sup>

The lack of disaggregated data on Government recoveries in CIRP and liquidation is a further obstacle to evidence-based policy. Without reliable data on the amounts claimed by Government authorities, the proportion admitted and realised, and the timelines for claim filing, it is difficult to assess the systemic effects of the current approach or to design targeted reforms. The IBBI has made progress in improving statistical reporting, but comprehensive data on sovereign recoveries remains unavailable. This data gap also limits academic analysis of the relationship between Government claim treatment and broader CIRP outcomes such as resolution rates, haircuts and timelines.<sup>25</sup>

### **C. Federal Coordination Challenges**

The federal structure of India's tax system introduces additional coordination challenges. Central and State tax departments operate under different legal frameworks, with divergent institutional cultures and enforcement traditions. While the IBC provides a uniform framework for insolvency resolution, the plurality of tax authorities that may hold claims against a single corporate debtor creates difficulties in achieving consistent participation. State tax departments, in particular, may be less familiar with IBC procedures and more resistant to accepting the subordination of their claims or the extinguishment of dues under approved plans. The constitutional principle of cooperative federalism requires alignment between Union insolvency policy and State tax enforcement, but achieving this alignment in practice remains an ongoing challenge.

## **V. COMPARATIVE INTERNATIONAL ANALYSIS**

### **A. United Kingdom**

The United Kingdom's insolvency framework is governed primarily by the Insolvency Act 1986, substantially reformed by the Enterprise Act 2002 to shift the emphasis towards corporate rescue. The Enterprise Act abolished most Crown preferences that had previously allowed HM

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<sup>24</sup>IBBI (Liquidation Process) Regulations 2016.

<sup>25</sup>Bankruptcy Law Reforms Committee, Report of the Bankruptcy Law Reforms Committee (Government of India 2015).

Revenue and Customs (HMRC) to rank ahead of unsecured creditors. However, the Finance Act 2020 reintroduced a limited "secondary preferential" status for HMRC in respect of certain taxes collected by companies on behalf of the Government, including VAT, Pay-As-You-Earn (PAYE) income tax and employee National Insurance Contributions. This partial restoration affects the distribution from floating charge realisations, reducing recoveries available to floating charge holders and thereby increasing borrowing costs, particularly for small and medium enterprises that rely on asset-based lending.<sup>2627</sup>

The UK's administration regime, introduced by the Enterprise Act 2002, provides a powerful rescue tool that allows an administrator to manage the corporate debtor as a going concern, seek a buyer for the business, or otherwise achieve an orderly realisation of assets. UK courts apply statutory priority schemes strictly, emphasising predictability and commercial certainty. The *Re Lehman Brothers International (Europe)* litigation demonstrated the English courts' capacity to manage complex multi-creditor insolvencies while adhering to structured priority rules. The UK experience illustrates that even a limited restoration of Government preference can have measurable effects on credit behaviour, serving as a cautionary lesson for policy-makers considering similar adjustments in India.<sup>28</sup>

## **B. United States**

The United States Bankruptcy Code (Title 11, United States Code) provides a highly codified framework for insolvency resolution, with detailed provisions governing the priority of Government tax claims. Section 507(a)(8) grants priority status to certain categories of taxes and customs duties, subject to specified look-back periods. Tax liens, created under federal and state law, can prime other unsecured claims and play a decisive role in determining the distribution of assets. The confirmation of a Chapter 11 reorganisation plan under Section 1141 binds all creditors, including governmental units, to the plan's terms. The US model demonstrates that Government priority can be accommodated within a codified framework through precise, lien-based mechanisms rather than general preferential treatment.<sup>29</sup>

Debtor-in-possession (DIP) financing, cramdown provisions and the small business reorganisation framework under Subchapter V illustrate the sophistication of the US approach to balancing diverse creditor interests. While the US system accommodates Government tax

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<sup>26</sup>Insolvency Act 1986 (UK); Enterprise Act 2002 (UK).

<sup>27</sup>Finance Act 2020 (UK), s 98.

<sup>28</sup>*Re Lehman Brothers International (Europe)* [2012] UKSC 6.

<sup>29</sup>United States Bankruptcy Code, 11 USC §§ 507(a)(8), 724(b).

priority and lien mechanisms, it does so through precise, codified rules that provide certainty and predictability. The complexity and cost of the US framework have been criticised, particularly in respect of smaller corporate debtors, but the overall architecture demonstrates that Government participation in insolvency can be effectively managed within a clear priority system. For India, the US experience offers lessons in the importance of precise statutory language for defining the scope and enforceability of Government liens.<sup>30</sup>

### **C. Australia**

The Australian insolvency framework, governed primarily by the Corporations Act 2001 and the Personal Property Securities Act 2009 (PPSA), represents a model of minimal sovereign preference combined with transparency and perfection-based priority. The Australian Taxation Office (ATO) generally has no super-priority in corporate insolvency proceedings; employee entitlements are preferential, and the ATO competes as an unsecured creditor except where it holds a statutory lien or benefits from specific enforcement mechanisms such as the director penalty regime. The PPSA's notice-and-perfection system rewards well-perfected security interests, reducing disputes about ranking and facilitating the pricing of credit risks.<sup>31</sup>

The Australian approach demonstrates that limiting sovereign preference need not compromise public revenue objectives. By relying on ex ante enforcement mechanisms such as director liability and rigorous pre-insolvency compliance, Australia reduces the need for priority claims in insolvency without sacrificing the integrity of tax collection. The PPSA's transparent registration system provides clarity about the existence and ranking of security interests, minimising the scope for disputes about Government charges. This model aligns closely with India's post-IBC philosophy subordinating Government dues except where a specific, perfected charge exists while offering additional structural clarity through the PPSA framework.

### **D. Singapore**

Singapore's Insolvency, Restructuring and Dissolution Act 2018 (IRDA), which came into force in 2019, consolidates corporate insolvency and personal bankruptcy into a single statute with a strong restructuring orientation. The IRDA integrates US-style reorganisation tools including pre-packaged insolvency schemes and court-supervised moratoriums with UK-style administration logic, offering a sophisticated and flexible framework. Government taxes typically rank as unsecured debts under the IRDA, subject to limited preferential debts

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<sup>30</sup>Thomas H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986).

<sup>31</sup>Corporations Act 2001 (Cth); Personal Property Securities Act 2009 (Cth).

enumerated by statute, with employee claims and winding-up costs ranking superior. The state can achieve secured status only if a specific statutory lien or charge exists and is enforceable.<sup>3233</sup>

Singapore courts emphasise commercial certainty and efficiency, applying textual and purposive interpretation to support rescue while preventing runaway sovereign priority. The pre-pack confirmation standards and cross-border recognition practices aligned with the UNCITRAL Model Law spirit further strengthen Singapore's position as a predictable restructuring venue. For India, the Singapore experience offers valuable lessons in procedural discipline, MSME-focused restructuring tools and the integration of cross-border recognition mechanisms. The IRDA's matured pre-pack framework with strict timelines, template plan structures and standardised treatment of statutory dues provides a model for expanding India's own pre-pack mechanisms beyond the current framework.<sup>3435</sup>

### **E. Comparative Lessons for India**

The comparative analysis across these four jurisdictions reveals several consistent themes. First, mature insolvency regimes universally limit sovereign preference, recognising that the broader objectives of value maximisation, creditor equality and restructuring viability are best served by a structured priority system that privileges secured creditors over general Government claims. Second, where Government priority is accommodated as in the US through tax liens and in the UK through HMRC's secondary preference it is done through precise, codified mechanisms rather than open-ended preferential treatment. Third, procedural discipline including standardised claim-filing procedures, strict timelines and binding plan effects is essential for ensuring effective Government participation in insolvency without disrupting the collective process.<sup>36</sup>

India's current framework aligns substantially with these international principles, but there are specific lessons that can usefully inform further reform. The US experience highlights the importance of precise statutory language in defining the scope and enforceability of Government liens, which would reduce the litigation generated by ambiguous charge-creating provisions. The Australian model demonstrates the effectiveness of perfection-based clarity and ex ante enforcement mechanisms. Singapore's mature pre-pack framework offers a

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<sup>32</sup>Insolvency, Restructuring and Dissolution Act 2018 (Singapore).

<sup>33</sup>Re Pacific Andes Resources Development Ltd [2016] SGHC 210.

<sup>34</sup>UNCITRAL, Legislative Guide on Insolvency Law (UNCITRAL 2019).

<sup>35</sup>IMF, Orderly & Effective Insolvency Systems (IMF 2020).

<sup>36</sup>UNCITRAL, Model Law on Cross-Border Insolvency (1997).

template for expanding MSME-focused restructuring tools. The UK's partial restoration of Crown preference serves as a cautionary example of the adverse effects on credit markets that can result from expanding Government priority, reinforcing the case for maintaining India's current subordinated treatment of Government dues.

## VI. RECOMMENDATIONS

### A. Statutory Clarification on Specific Statutory Charges

The divergent judicial interpretations prompted by the *Rainbow Papers* ruling demonstrate the urgent need for statutory clarity on what constitutes a valid statutory charge for insolvency purposes. The IBC or relevant tax statutes should be amended to codify a precise definition of a valid statutory charge, requiring: explicit statutory language creating a first charge; identification of the specific asset or class of assets to which the charge attaches; clarity on the priority of the charge vis-à-vis consensual security interests; and procedural notice or perfection requirements. Borrowing from the precision of the US lien law and Australia's PPSA framework, such codification would significantly reduce litigation, provide certainty to resolution applicants and prevent the ad hoc resurrection of sovereign priority claims through broad interpretive arguments.

### B. Uniform Standard Operating Procedures for CIRP Participation

The Central Board of Direct Taxes (CBDT), Central Board of Indirect Taxes and Customs (CBIC) and State tax departments should issue uniform Standard Operating Procedures (SOPs) governing their participation in CIRP proceedings. These SOPs should ensure timely submission of claims within CIRP timelines, provide standardised formats for filing contingent claims, establish single-window coordination across departments for cases involving multiple tax authorities, and set out structured internal approval processes for settlement or waiver in resolution plans. Drawing on the procedural discipline illustrated by Singapore's IRDA framework and the US trustee guidance culture, such SOPs would reduce administrative friction, improve the accuracy of Government claims and enhance overall resolution efficiency.

### C. Digital Integration with IBBI Platforms

Information asymmetry between Resolution Professionals and Government authorities represents a significant source of delay and dispute in the current framework. An integrated electronic portal linking IBBI systems with tax authorities would facilitate automated claim filing, real-time verification of pending demands, status updates on assessments and secure

sharing of documents with Resolution Professionals and Liquidators. Such digital integration would drastically reduce errors, delays and manual inconsistencies, while also improving transparency for all stakeholders. The IBBI's existing digital infrastructure provides a foundation for such integration, which could be developed incrementally in consultation with CBDT and CBIC.

#### **D. Expanding MSME-Friendly Pre-Pack Mechanisms**

Micro, Small and Medium Enterprises (MSMEs) face particular challenges in navigating the CIRP framework, given the procedural complexity of the process and the often-substantial proportion of their liabilities attributable to statutory dues. India's existing pre-packaged insolvency framework, introduced in 2021, provides a basis for further development inspired by Singapore's IRDA pre-pack standards and the US Subchapter V small business reorganisation framework. Reforms should include standard plan templates, pre-negotiated settlement pathways for statutory dues, streamlined moratorium procedures and time-bound plan confirmation. Clarifying the treatment of statutory dues in pre-pack contexts including discounts, instalments and their interaction with Section 31 finality would make the framework more accessible and effective for MSMEs.

#### **E. Training and Capacity Building for Tax Officers**

The persistence of post-plan demands and parallel recovery actions reflects a gap in institutional understanding of insolvency law among tax officials. Mandatory training modules should be introduced for assessment officers and recovery officers, covering the binding effect of Section 31, the extinguishment of past dues under approved plans, the limits of recovery during the moratorium, and the procedures for filing contingent claims within CIRP timelines. Regular CBDT and CBIC advisories aligned with IBC timelines similar to the guidance culture of the UK's Insolvency Service and the US Trustee Program would help officers avoid issuing demands contrary to approved plans, uphold the clean slate principle and reduce avoidable litigation.

#### **F. Improving Data Collection on Government Recoveries**

The absence of disaggregated data on Government recoveries in CIRP and liquidation significantly hampers evidence-based policy design. Structured reporting should be mandated, covering admitted Government claims, amounts realised under resolution and liquidation, distribution across tax types, timelines for claim filing and the proportion of cases in which

Government claims were extinguished under approved plans. Such data would support policy reviews, academic research and future IBC amendments, enabling more targeted and informed reform. The IBBI's existing statistical monitoring framework provides a basis for this reporting, which could be expanded in coordination with CBDT, CBIC and State tax departments.

## VII. CONCLUSION

This paper has demonstrated that India's insolvency regime has made a conscious and economically sound shift from the historical doctrine of crown debts toward a modern, codified system that balances sovereign interests with collective creditor welfare and enterprise rescue. The IBC's statutory architecture embodied in the moratorium under Section 14, the binding effect of approved plans under Section 31, the liquidation waterfall under Section 53 and the overriding clause under Section 238 creates a coherent framework within which Government dues are treated as operational debts, subordinated to secured and financial creditors except where a specific statutory charge confers secured status. Judicial interpretation has been pivotal in entrenching the clean slate doctrine, narrowing the scope of sovereign priority and reinforcing the primacy of the IBC.

The comparative analysis confirms that India's approach aligns with international best practices. Mature insolvency regimes in the United Kingdom, United States, Australia and Singapore similarly limit sovereign preference, prioritising efficiency, creditor equality and restructuring viability. The most effective systems share three characteristics: clear priority rules, limited sovereign preference and procedurally disciplined participation by Government entities. India's framework embodies these principles in statute and, increasingly, in judicial doctrine. However, challenges in implementation including ambiguities in the specific charge standard, administrative delays in claim filing, coordination difficulties across federal and State tax departments, and gaps in insolvency data require targeted reform.

The recommendations proposed in this paper statutory clarification of the specific charge standard, uniform Government SOPs for CIRP participation, digital integration with IBBI platforms, expanded MSME-friendly pre-pack mechanisms, training for tax officers and improved data collection are directed at strengthening the coherence and efficiency of the insolvency framework without altering its fundamental architecture. These reforms do not require a reconsideration of the principle of Government subordination; rather, they seek to ensure that the existing framework is implemented with the procedural discipline and

institutional clarity that its design demands. Adopting these measures would reduce litigation, improve resolution outcomes and foster a transparent, predictable and investment-friendly insolvency environment.

Ultimately, the treatment of Government dues in insolvency is not merely a doctrinal question but a reflection of India's commitment to economic modernisation, rule of law and balanced governance. By continuing to refine the IBC's architecture and administrative practice, India can consolidate its position as a robust and progressive insolvency jurisdiction capable of supporting sustainable economic growth and social welfare. The subordination of sovereign claims within a clear, codified priority system tempered by targeted exceptions for genuinely secured statutory charges represents the appropriate balance between the State's legitimate revenue interests and the systemic objectives of an effective insolvency regime.

