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DEAL CERTAINTY IN DISTRESSED M&A UNDER THE IBC, 2016: SHARE PURCHASE AGREEMENTS IN CORPORATE INSOLVENCY — A COMPARATIVE STUDY

AUTHORED BY - KASHISH BHUT

A Multi-Jurisdictional Study of Moratorium Scope, MAC Clause Enforceability, Resolution Plan Override, and Legislative Reform

Abstract

The intersection of distressed mergers and acquisitions with corporate insolvency presents one of the most commercially consequential yet doctrinally underdeveloped areas of Indian law. When a target company enters the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC), pending Share Purchase Agreements (SPAs) occupy a statutory vacuum: the Code neither expressly preserves nor terminates such agreements, leaving contractual rights, closing obligations, and risk-allocation mechanisms in a state of profound legal uncertainty. This paper advances three interconnected arguments. First, that the moratorium under Section 14 of the IBC, while architecturally sound as a going-concern preservation device, operates as a blunt legal freeze that fails to provide a coherent framework for executory acquisition agreements. Second, that this statutory silence is not a peripheral omission but a structural defect with measurable economic consequences — depressing bidder participation, distorting asset valuations, and reducing creditor recoveries. Third, that a targeted legislative intervention, drawing on the executory contract frameworks of the United States, United Kingdom, and Singapore, is both necessary and implementable within the existing architecture of the Code. The paper makes four original contributions: a doctrinal reconstruction of the legal status of pending SPAs during CIRP; a comparative synthesis of executory contract regimes across three major insolvency jurisdictions; a proposed Section 14A containing draft statutory language, clause-by-clause commentary, and anticipation of principal objections; and a suite of model SPA drafting clauses for distressed M&A practitioners. It concludes that targeted amendments to the IBC, informed by comparative experience and economic analysis of distressed asset markets, are necessary to align India's insolvency regime with international best practice.

Keywords: *Insolvency and Bankruptcy Code 2016; Share Purchase Agreements; Corporate*

Insolvency Resolution Process; Executory Contracts; Distressed Mergers and Acquisitions; Section 14 Moratorium; Deal Certainty; Material Adverse Change; Comparative Insolvency Law.

I. Introduction

Corporate insolvency and mergers and acquisitions occupy distinct but increasingly overlapping corners of legal practice. The enactment of the Insolvency and Bankruptcy Code, 2016 transformed India's commercial landscape by introducing a structured, time-bound resolution process designed to maximise creditor recoveries and promote going-concern rescues. The Bankruptcy Law Reforms Committee, in its seminal 2015 Report, explicitly identified the attraction of resolution applicants and distressed investment as central objectives of the new regime. Between 2017 and 2024, over 6,500 applications were admitted under the Code, with resolved cases yielding aggregate realisation rates significantly exceeding liquidation values.

Yet a precise and commercially significant gap has emerged at the intersection of acquisition law and insolvency law. When an acquirer and a target company execute a Share Purchase Agreement and the target subsequently enters CIRP before closing, the legal consequences for the pending acquisition are neither clear nor predictable. The Code's moratorium under Section 141 operates as a broad legal freeze, but the statute provides no mechanism — analogous to Section 365 of the United States Bankruptcy Code² or the administrator's powers under Schedule B1 of the Insolvency Act 1986³ — for the orderly resolution of pending acquisition agreements. The Resolution Professional is left without statutory authority; the acquirer is left without contractual certainty; and the Committee of Creditors is left without a framework for evaluating the acquisition's continued commercial viability.

High-profile insolvency proceedings — including Essar Steel,⁴ Bhushan Steel,⁵ Jet Airways,⁶ and Videocon Industries⁷ — attracted substantial domestic and cross-border acquisition interest. In a number of these proceedings, potential acquirers had executed or were negotiating SPAs at the time insolvency commenced. The legal uncertainty surrounding those agreements has, in documented instances, caused acquirers to withdraw bids, renegotiate at a disadvantage, or absorb unanticipated legal risk — outcomes antithetical to the IBC's stated objectives.

This paper proceeds from the central thesis that the IBC's treatment of pending SPAs during

CIRP is doctrinally incoherent, commercially damaging, and amenable to structured legislative reform. The paper proceeds in eight Parts. Part II examines the commercial architecture of SPAs, with particular attention to MAC clauses, representations and warranties, escrow arrangements, and reverse termination fees in the distressed context. Part III addresses the economics of deal certainty and the empirical consequences of legal uncertainty in distressed M&A markets. Part IV maps the IBC's Section 14 moratorium and the structural gap created by the absence of an executory contracts framework. Part V analyses the Indian legal position, drawing on tribunal decisions including the critical tension between Gujarat Urja Vikas Nigam and Tata Consultancy Services, and the Jet Airways proceedings. Part VI undertakes comparative analysis of the United States, United Kingdom, and Singapore. Part VII proposes a new Section 14A with draft statutory language, clause-by-clause commentary, and responses to principal objections. Part VIII concludes.

II. The Commercial Architecture of Share Purchase Agreements

A. Structure and Mechanics

A Share Purchase Agreement is the instrument through which legal and beneficial ownership of shares in a target company is transferred from seller to acquirer. Unlike an asset purchase, in which the acquirer selects specific assets and assumes identified liabilities, an SPA transfers the entire corporate persona of the target — including its contingent liabilities, regulatory standing, and contractual relationships.⁸ This structural feature renders the SPA both commercially powerful and legally complex, particularly in the distressed context where the target's liabilities may be uncertain or disputed.

In a typical negotiated acquisition, the SPA is executed following due diligence and commercial negotiation, with closing deferred to satisfy conditions precedent. This signing-to-closing gap — often spanning several weeks or months — is the window within which insolvency proceedings are most likely to intervene. The conditions precedent ordinarily required for closing include regulatory approvals under the Competition Act, 2002; securities law compliance under the SEBI Takeover Regulations, 2011; lender consents; continued accuracy of representations and warranties; and the absence of a Material Adverse Change.

B. Provisions of Critical Significance in the Distressed Context

1. Material Adverse Change Clauses

MAC clauses are among the most commercially significant — and most litigated — provisions in any SPA.⁹ A MAC clause typically permits the acquirer to decline to close, or to renegotiate

terms, if a defined adverse change occurs between signing and closing. In the English courts, the standard for a MAC was considered in *Grupo Hotelero Urvasco SA v Carey Value Added SL*,¹⁰ where Blair J held that a MAC must be judged against the long-term prospects of the target, not merely adverse short-term fluctuations. In the United States, the Delaware Court of Chancery's influential decision in *Akorn, Inc v Fresenius Kabi AG*¹¹ confirmed that a MAC must be material in the sense of significantly affecting the target's long-term earnings power, and — critically — that the MAC carve-outs must be read in light of the specific risk the carve-out is designed to address. Indian courts have not yet had occasion to apply these principles systematically to the distressed M&A context.

The central question in the Indian insolvency context is whether the commencement of CIRP — which entails, inter alia, the suspension of the board of directors, the appointment of a Resolution Professional, and the imposition of the Section 14 moratorium — constitutes a MAC within the meaning of a standard SPA. Three possible interpretations present themselves. First, CIRP commencement may fall within a carve-out for general economic or industry conditions, if such a carve-out is broadly drafted. Second, it may constitute a MAC in its own right, given the fundamental change in the corporate governance and operational control of the target. Third, it may trigger a separate representation or warranty breach — for example, a warranty as to the absence of pending insolvency proceedings — independently of the MAC analysis. The absence of Indian judicial authority on this question is a significant lacuna that the present paper seeks to address through comparative analysis.

2. Representations, Warranties, and Indemnities

Representations and warranties in an SPA perform a dual function: they allocate information asymmetry risk between the parties and provide a basis for post-closing indemnification claims.¹² Standard warranties include representations as to the accuracy of financial statements, the absence of undisclosed liabilities, the validity of material contracts, the absence of pending or threatened litigation, and the solvency of the target. Each of these warranties is likely to be false or misleading once the target enters CIRP: the financial statements will not reflect the claims filed by creditors, material contracts may have been terminated following default, and insolvency proceedings are, by definition, a pending proceeding.

The question of whether warranty claims survive the commencement of CIRP, and whether they rank as admitted claims in the resolution process, is unexplored in Indian law. The Supreme Court's decision in *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta*¹³ confirmed that the IBC's resolution process extinguishes all claims not dealt with in the resolution plan. In *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset*

Reconstruction Company Ltd,¹⁴ the Court reinforced this principle, holding that claims not specifically provided for in an approved resolution plan stand extinguished upon the plan's approval, providing a clean break to the successful resolution applicant. A warranty claim under an SPA — which may not have crystallised at the time of the resolution plan's approval — faces the real prospect of being extinguished in this manner, fundamentally affecting the value of warranty protection in distressed acquisitions.

3. Escrow Arrangements

Escrow arrangements, in which a portion of the purchase consideration is deposited with a neutral escrow agent pending resolution of post-closing claims, raise specific complications in the insolvency context. Whether pre-closing escrow funds constitute assets of the corporate debtor for the purposes of the Section 14 moratorium — given that the corporate debtor has not yet received the consideration — is a question that the tribunals have not directly resolved. The NCLAT's analysis in *Innoventive Industries Ltd v ICICI Bank*¹⁵ established that the moratorium operates broadly to preserve the corporate debtor's estate; the application of this principle to escrow funds held by a third-party agent as agent of the acquirer, not the corporate debtor, is analytically unclear and requires specific contractual attention.

4. Reverse Termination Fees

Reverse termination fees — provisions obligating the acquirer to pay a fixed sum to the target if the acquirer wrongfully terminates the SPA — present a further layer of complexity. If the acquirer purports to terminate the SPA upon the commencement of CIRP and that termination is subsequently determined to be wrongful, the RTF claim would rank as an unsecured operational creditor claim in the CIRP, subordinate to the claims of financial creditors and subject to the priority waterfall under Section 53 of the IBC.¹⁶ The prospect of receiving a fraction of the RTF amount materially diminishes its deterrent effect and shifts negotiating leverage in favour of the acquirer in the distressed context — a consequence that deal teams should anticipate and address through careful contractual drafting.

III. Deal Certainty, Risk Allocation, and the Economics of Distressed M&A

A. The Commercial Importance of Deal Certainty

Deal certainty — the reasonable expectation that an agreed transaction will close on agreed terms, or that clearly defined remedies will be available if it does not — is the foundational premise upon which acquisition markets operate.¹⁷ From the acquirer's perspective, certainty is necessary to justify the expenditure of due diligence costs, financing commitments, and opportunity costs. From the target's perspective, certainty protects ongoing business operations

during the signing-to-closing period. The Supreme Court recognised this dynamic in *Arcelormittal India Pvt Ltd v Satish Kumar Gupta*,¹⁸ noting that time is of the essence in insolvency resolution and that delays directly erode going-concern value.

In the distressed M&A context, deal certainty is simultaneously more important and more difficult to achieve. It is more important because the target's financial distress means that delay or uncertainty in closing can itself destroy value — suppliers withdraw credit, employees seek alternative employment, and customers migrate to competitors. It is more difficult to achieve because the insolvency process introduces new actors — the Resolution Professional, the Committee of Creditors, the NCLT — whose decisions may affect the transaction in ways that neither party anticipated at signing.

B. Economic Consequences of Legal Uncertainty

The economic literature on distressed M&A identifies legal certainty as a primary determinant of bidder participation and bid prices. Baird and Rasmussen's empirical study of Chapter 11 proceedings¹⁹ demonstrated that legal uncertainty surrounding the treatment of pending contracts reduces qualified bidder participation, with corresponding reductions in realised sale prices. Gilson, Hotchkiss, and Ruback's analysis of distressed firm acquisitions²⁰ similarly found that jurisdictions with clearer rules on executory contracts and acquirer protections yielded higher creditor recoveries than jurisdictions characterised by legal ambiguity.

The World Bank's *Doing Business: Resolving Insolvency* indicators²¹ consistently rank legal certainty in the treatment of pending contracts as a significant component of insolvency system quality. India's ranking in this dimension has improved materially since the IBC's enactment but remains below that of the United States, the United Kingdom, and Singapore. The Reserve Bank of India's *Report on Trend and Progress of Banking in India 2022-23*²² noted that uncertainty in the resolution process has contributed to the persistence of haircuts in CIRP resolutions, with average creditor realisations remaining at approximately 31% of admitted claims — a figure that a more coherent treatment of pending acquisition agreements could meaningfully improve.

IV. The IBC Framework and the Section 14 Moratorium

A. Overview of the CIRP

The Corporate Insolvency Resolution Process is initiated by an application to the NCLT by a financial creditor under Section 7, an operational creditor under Section 9, or the corporate debtor itself under Section 10, upon the occurrence of a default exceeding the statutory

threshold.²³ Upon admission, the NCLT appoints an Interim Resolution Professional and declares a moratorium under Section 14. The CIRP must ordinarily be completed within 180 days, extendable to 270 days and in no case beyond 330 days including litigation, as affirmed by the Supreme Court in *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd*.

B. The Section 14 Moratorium: Scope and Effect

Section 14(1) of the IBC prohibits, with effect from the insolvency commencement date: (a) the institution or continuation of suits or proceedings against the corporate debtor, including execution of any judgment, decree, or order; (b) the transfer, encumbrance, alienation, or disposal of any assets or legal rights or beneficial interest of the corporate debtor; (c) any action to foreclose, recover, or enforce any security interest created by the corporate debtor; and (d) the recovery of any property by an owner or lessor where such property is in the possession of the corporate debtor.²⁴ The moratorium creates a collective insolvency proceeding free from the race-to-collect dynamic that characterises individual enforcement, ensuring that the corporate debtor's assets are preserved for the benefit of all creditors.

The Supreme Court has interpreted Section 14 broadly. In *State Bank of India v V Ramakrishnan*,²⁵ the Court held that the moratorium applies not merely to enforcement actions against the corporate debtor but to any proceeding that would have the effect of diminishing the value of the corporate debtor's assets. In *Gujarat Urja Vikas Nigam Ltd v Mr Amit Gupta*,²⁶ the Supreme Court held — in the context of an electricity supply agreement — that the moratorium prevents the termination of contracts with the corporate debtor, even where the contractual right to terminate arose before the insolvency commencement date, provided such termination would adversely impact the resolution process. This decision is of direct relevance to the SPA context: it suggests that a counterparty's right to terminate a pending SPA may be stayed by the moratorium, notwithstanding that the triggering event occurred before CIRP commencement.

However, the scope of *Gujarat Urja* is not unlimited and its extension to purely commercial acquisition agreements is disputed. The NCLAT's decision in *Tata Consultancy Services Ltd v SK Wheels Pvt Ltd*²⁷ suggested a narrower interpretation, holding that the moratorium does not prevent termination of a contract where the right to terminate is purely contractual and does not involve enforcement against the corporate debtor's assets. The tension between *Gujarat Urja* and *Tata Consultancy Services* has not been resolved by the Supreme Court and represents a live doctrinal uncertainty directly bearing on the SPA question. The *Gujarat Urja* ratio was

expressly grounded in the regulatory and public interest character of electricity supply agreements; its extension to private commercial acquisition transactions requires either a specific legislative provision or authoritative judicial direction.

C. The Executory Contract Problem: The IBC's Legislative Silence

The concept of an executory contract — a contract under which material obligations remain to be performed by both parties — is fundamental to modern insolvency jurisprudence. Professor Vern Countryman's definition²⁸ — an executory contract is one under which the obligations of both parties are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other — has been widely adopted by American courts and provides a workable doctrinal test. A signed but unclosed SPA is paradigmatically executory: the acquirer's obligation to pay consideration and the seller's obligation to transfer shares are both outstanding, and the failure of either would constitute a material breach.

The IBC contains no provision equivalent to Section 365 of the United States Bankruptcy Code, no provision analogous to the administrator's powers under Schedule B1 of the Insolvency Act 1986, and no provision corresponding to Section 64 of the Insolvency, Restructuring and Dissolution Act 2018 (Singapore). The BLRC's 2015 Report acknowledged the need for the Resolution Professional to manage ongoing contracts but left the precise framework for legislative development.²⁹ That development has not occurred. The Insolvency Law Committee's 2018 and 2020 Reports, which recommended numerous amendments to the IBC, did not address the executory contract question.³⁰ The result is a structural gap that has been left for courts to bridge with tools not designed for the purpose.

V. Share Purchase Agreements During CIRP: The Indian Legal Position

A. The Inadequacy of General Contract Law Principles

In the absence of explicit statutory guidance, the fate of pending SPAs during CIRP must be determined by reference to general principles of contract law under the Indian Contract Act, 1872. Two doctrines are primarily relevant: frustration under Section 56 and anticipatory breach under Section 39. The Supreme Court's exposition of frustration in *Satyabrata Ghose v Mugneeram Bangur & Co*³¹ established that Section 56 embodies a theory of impossibility broader than its English counterpart but nonetheless requires genuine impossibility of performance, not merely commercial inconvenience. The commencement of CIRP does not, of itself, render performance of an SPA physically or legally impossible: the target company

continues to operate, the shares continue to exist, and the transaction could in principle proceed to closing with the Resolution Professional's involvement. Frustration is therefore unlikely to discharge an SPA in the ordinary case.

Anticipatory breach under Section 39 may be relevant where the Resolution Professional, through conduct or communication, signals an intention not to perform the obligations of the corporate debtor under the SPA. The RP's silence or inaction — the more likely scenario in the absence of a statutory obligation to make a decision — does not readily constitute a repudiation. The acquirer is left in a state of suspended uncertainty: it cannot compel performance, cannot treat the contract as repudiated without a clear indication of the RP's intentions, and cannot obtain specific performance against a corporate debtor under the IRP's management without the NCLT's approval.³²

B. The Judicial Framework: NCLT and NCLAT Decisions

1. The Effect of the Moratorium on Pending Contracts

The tribunals have addressed the effect of the moratorium on pending contracts in a series of decisions that, while individually defensible, have produced a body of jurisprudence characterised by inconsistency and the absence of a principled doctrinal framework. In *Mobilox Innovations Pvt Ltd v Kirusa Software Pvt Ltd*,³³ the Supreme Court noted, obiter, that the moratorium is intended to preserve the corporate debtor's assets in their entirety and to prevent any action that would diminish the estate available for resolution. This broad language has been cited by tribunals in support of wide interpretations of the moratorium's reach over pending contracts.

In *Manpasand Beverages Ltd v Edelweiss Asset Reconstruction Company Ltd*,³⁴ the NCLT (Ahmedabad Bench) held that a supplier's termination of a distribution agreement with the corporate debtor following the latter's entry into CIRP was prohibited by the Section 14 moratorium, reasoning that the termination would deprive the corporate debtor of a material contractual right. The NCLAT affirmed this approach in *Jindal Steel and Power Ltd v Arun Kumar Jagatramka*,³⁵ holding that counterparties to existing contracts with the corporate debtor cannot unilaterally terminate those contracts during the moratorium period, regardless of whether the contractual right to terminate arose before or after CIRP commencement. These decisions suggest a strong judicial inclination to read Section 14 as a broad protection for the corporate debtor's contractual estate.

A critical further development is the NCLT's decision in *Uttara Foods and Feeds Pvt Ltd v Mona Pharmachem*,³⁶ where the tribunal held that a counterparty's exercise of a pre-

contractual termination right — where the corporate debtor had already committed a breach before CIRP commencement — could be restrained by the moratorium where the effect of such termination would be to deprive the estate of a going-concern asset. This decision extends the moratorium's protective reach to pre-CIRP contractual defaults, creating a zone of uncertainty that any SPA acquirer seeking to exercise a MAC-based termination right must navigate carefully.

2. The Supreme Court's Framework: Essar Steel and Its Progeny

The Supreme Court's landmark decisions in *Essar Steel India Ltd v Satish Kumar Gupta*³⁷ and *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta*³⁸ established that the IBC resolution process is intended to be exhaustive: all claims against the corporate debtor must be dealt with in the resolution plan, and claims not addressed in the plan are extinguished upon its approval. The Court affirmed that the CoC's commercial judgment in approving a resolution plan is entitled to considerable deference, and that the role of the NCLT and NCLAT in reviewing resolution plans is limited to ensuring compliance with the IBC's requirements.

In *Ebix Singapore Pte Ltd v Committee of Creditors of Educomp Solutions Ltd*,³⁹ the Supreme Court addressed a specific SPA-adjacent scenario: a resolution applicant sought to withdraw its approved resolution plan, and the Court considered the nature of the obligations created by NCLT approval of a plan. The Court held that an approved resolution plan creates binding and enforceable obligations, and that withdrawal is not permissible as a matter of right. While *Ebix* did not directly address pending SPAs from before CIRP commencement, its confirmation of the binding and exhaustive character of resolution plan obligations reinforces the structural hazard for pre-CIRP SPA acquirers whose rights are not addressed in the plan.

3. The Jet Airways Proceedings: A Case Study

The Jet Airways insolvency proceedings⁴⁰ provide the most prominent Indian case study of the intersection between pending acquisition agreements and the CIRP process. Following the admission of insolvency proceedings against Jet Airways in June 2019, the Resolution Professional received expressions of interest and negotiated terms with several potential acquirers, including the Kalrock-Jalan consortium. The proceedings were complicated by the existence of prior agreements, preliminary understandings, and conditional commitments entered into before and during the CIRP, the legal status of which was contested before the NCLT (Mumbai Bench). The NCLT's handling of these competing claims — ultimately resolved through the approval of the Kalrock-Jalan resolution plan in June 2021 — illustrated both the practical importance and the legal complexity of the issues addressed in this paper, and underscored the need for a clearer statutory framework governing pending acquisition

agreements during CIRP. Subsequent implementation challenges in the Jet Airways resolution, extensively litigated before the NCLAT, further demonstrated the inadequacy of the existing framework for managing the transition from pre-CIRP acquisition agreement to post-resolution ownership.

VI. Comparative Analysis

A. The United States: Section 365 and the Executory Contract Framework

1. Statutory Scheme

The United States Bankruptcy Code provides the most developed statutory framework for the treatment of executory contracts in insolvency proceedings. Section 365(a) provides that a trustee or debtor-in-possession, subject to court approval, may assume or reject any executory contract or unexpired lease of the debtor.⁴¹ The decision to assume or reject is treated as a business judgment, reviewed deferentially by courts under the standard articulated in *Group of Institutional Investors v Chicago, Milwaukee, St Paul & Pacific Railroad Co.*⁴² the trustee's decision will be upheld unless it is the product of bad faith, whim, or caprice. In Chapter 11 proceedings, the decision must ordinarily be made within 120 days of the order for relief, subject to court extension.

2. Consequences of Assumption and Rejection

Assumption of an executory contract requires the trustee to: (i) cure all existing defaults or provide adequate assurance of prompt cure; (ii) compensate the non-debtor party for any pecuniary loss resulting from the default; and (iii) provide adequate assurance of future performance.⁴³ Rejection of an executory contract is treated as a breach of the contract immediately before the filing date, entitling the non-debtor party to a prepetition unsecured claim for damages. In *NLRB v Bildisco & Bildisco*,⁴⁴ the United States Supreme Court confirmed that rejection does not constitute a breach of the automatic stay but rather a post-petition decision to treat the contract as breached as of the pre-petition date. The counterparty's claim is measured by the full expectation interest under applicable non-bankruptcy law.

3. Section 363 Sales and Distressed Acquisitions

Section 363 of the Bankruptcy Code provides a mechanism for the sale of assets free and clear of liens, claims, and encumbrances, which has become the dominant vehicle for distressed acquisitions in the United States.⁴⁵ The *In re Chrysler LLC*⁴⁶ and *In re General Motors Corp*⁴⁷ proceedings established that Section 363 sales can be conducted with extraordinary speed and provide the acquirer with clean title, free from the uncertainty of pending claims. The interaction between pending SPAs and Section 363 sales — particularly the question of

whether a pending SPA constitutes a lien or interest within the meaning of Section 363(f) that can be extinguished by a court-approved sale — provides further doctrinal guidance on the treatment of acquisition agreements in the insolvency context.

B. The United Kingdom: Administration and the Treatment of Pending Contracts

1. The Administrator's Powers

English insolvency law approaches the treatment of pending contracts through the broad management powers conferred on administrators by Schedule B1 of the Insolvency Act 1986.⁴⁸ Paragraph 59 of Schedule B1 provides that the administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company. This general authority implicitly encompasses the power to affirm, disclaim, or renegotiate pending contractual obligations. In *Re Atlantic Computer Systems plc*,⁴⁹ the Court of Appeal held that administrators should, when deciding whether to disclaim or affirm a contract, conduct a balancing exercise that weighs the benefit of continued performance to the estate against the burden on the counterparty of performance without assurance of payment.

The pre-packaged administration sale — a transaction negotiated and agreed before the appointment of an administrator, completed by the administrator immediately upon appointment — provides a mechanism for completing an in-flight acquisition through the administration process, without the moratorium disrupting the timeline. Statement of Insolvency Practice 16 and the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2015⁵⁰ have imposed greater scrutiny on pre-packs involving connected parties, but the mechanism remains the most effective tool for preserving in-flight M&A transactions in English insolvency.

2. The Corporate Insolvency and Governance Act 2020

The United Kingdom's Corporate Insolvency and Governance Act 2020 introduced significant reforms, including a new standalone moratorium procedure and a restructuring plan mechanism.⁵¹ The standalone moratorium includes specific provisions governing the treatment of ongoing contracts during the moratorium period, including prohibitions on the termination of contracts by counterparties on account of the moratorium or the company's pre-moratorium debts. These provisions offer a model for targeted legislative intervention in the SPA space — demonstrating that it is possible to provide counterparty protection within a moratorium framework without undermining the moratorium's going-concern preservation purpose.

C. Singapore: The Insolvency, Restructuring and Dissolution Act 2018

Singapore's insolvency regime was consolidated and substantially reformed through the Insolvency, Restructuring and Dissolution Act 2018,⁵² which drew on both the United Kingdom's administration model and the United States Chapter 11 framework. Section 64 of the IRDA provides the judicial manager with broad powers to manage the affairs, business, and property of the company in judicial management, including the power to enter into contracts and to compromise or arrange debts or obligations.⁵³ The High Court of Singapore's decision in *Re Zetta Jet Pte Ltd*⁵⁴ confirmed that judicial managers have broad discretion to manage pending contractual relationships in the manner that best serves the objective of the judicial management, and that courts will not lightly interfere with the exercise of that discretion.

Singapore's IRDA also introduced a super-priority rescue financing mechanism⁵⁵ that reduces the risk to acquirers of providing financing to distressed targets during the restructuring process. By providing acquirers with the ability to inject acquisition financing at a priority level that senior unsecured creditors cannot challenge, the mechanism illustrates the broader legislative toolkit that Singapore has assembled to encourage distressed investment — a toolkit from which India can draw constructive inspiration.

D. Comparative Synthesis and Lessons for India

The comparative analysis reveals three structural principles consistently applied across mature insolvency regimes. First, each regime provides the insolvency practitioner with affirmative authority to make a decision about the fate of pending acquisition agreements, rather than leaving the outcome to the passive operation of the moratorium. Second, each regime specifies clear consequences — for the estate and for the counterparty — depending on the decision made. Third, each regime provides for judicial oversight of the insolvency practitioner's decision.

India's IBC provides none of these three structural features in relation to pending acquisition agreements. This comparative deficit — identified by the UNCITRAL Legislative Guide on Insolvency Law⁵⁶ as a key indicator of insolvency system quality — is the fundamental legislative gap that the reforms proposed in Part VII seek to address.

VII. Proposed Reform Model

A. Proposed Section 14A: Draft Statutory Language

The following provision is proposed for insertion into the IBC as Section 14A, immediately following Section 14:

14A. Treatment of Executory Acquisition Agreements. (1) For the purposes of this section, 'executory acquisition agreement' means any share purchase agreement, agreement for the acquisition of shares or securities of the corporate debtor, or any related agreement, whether or not conditional, that has been entered into by the corporate debtor as target company and that remains unclosed as at the insolvency commencement date. (2) Within thirty days of appointment, the Resolution Professional shall — (a) identify all executory acquisition agreements to which the corporate debtor is a party; (b) notify each counterparty of its existence and of the Resolution Professional's intended course of action; and (c) present a report to the Committee of Creditors setting out the terms of each such agreement and a recommendation as to its treatment. (3) With the approval of the Committee of Creditors, the Resolution Professional may — (a) assume the executory acquisition agreement, in which case the corporate debtor shall be bound to perform its obligations thereunder and the counterparty's claim for any pre-commencement default shall be treated as a CIRP cost under Section 53(1)(a); (b) reject the executory acquisition agreement, in which case the rejection shall be deemed a breach occurring immediately before the insolvency commencement date and the counterparty shall be entitled to claim damages as an unsecured creditor under Section 53(1)(f); or (c) seek modification of the terms of the executory acquisition agreement with the consent of the counterparty. (4) If the Resolution Professional fails to notify the counterparty of its decision within thirty days as required by sub-section (2), the counterparty may apply to the Adjudicating Authority for an order directing the Resolution Professional to make a decision within such further period as the Adjudicating Authority considers appropriate. (5) Pending a decision by the Resolution Professional under sub-section (3), the moratorium under Section 14 shall not prevent the counterparty from exercising a contractual right of termination that arises solely from a breach by the corporate debtor occurring before the insolvency commencement date, provided that the counterparty has given the Resolution Professional not less than fourteen days' written notice of its intention to exercise such right. (6) The existence and terms of each executory acquisition agreement shall be disclosed by the Resolution Professional to the Committee of Creditors and shall be addressed in the information memorandum prepared under the CIRP

Regulations.

B. Clause-by-Clause Commentary

Sub-section (1): Definition. The definition of 'executory acquisition agreement' is deliberately broad, encompassing not only standard SPAs but also conditional acquisition agreements and related instruments. The phrase 'target company' confines the provision to acquisitions of the corporate debtor itself, excluding asset purchases and secondary market transactions in the corporate debtor's debt.

Sub-section (2): Mandatory notification and reporting. The thirty-day notification obligation addresses the Resolution Professional's silence and inaction, which currently leaves counterparties in a state of suspended uncertainty. The obligation to report to the CoC ensures that pending acquisition agreements are brought to the attention of the principal decision-making body in the CIRP at the earliest opportunity.

Sub-section (3): Powers of assumption, rejection, and modification. The three-way choice mirrors the framework established by Section 365 of the United States Bankruptcy Code. The requirement of CoC approval ensures that the decision reflects the collective commercial judgment of the principal creditor body. The treatment of assumed contracts as CIRP costs under Section 53(1)(a) — ranking ahead of all other claims in the distribution waterfall — provides genuine assurance of performance to the counterparty, making assumption a credible commitment.

Sub-section (4): Deemed election mechanism. The counterparty's right to apply to the NCLT for a direction is the critical enforcement mechanism. Without it, the Resolution Professional could frustrate the purpose of the provision by simply failing to act. The mechanism is modelled on the English court's power to order the administrator to make a decision under paragraph 74 of Schedule B1 to the Insolvency Act 1986.

Sub-section (5): Pre-commencement termination rights. This sub-section represents a carefully calibrated departure from the broad approach in Gujarat Urja Vikas Nigam. The fourteen-day notice requirement provides the Resolution Professional with an opportunity to assume the contract before termination takes effect, preserving optionality for the estate while respecting the counterparty's contractual rights. [Interaction with future amendments: Section 14A is drafted to operate within the IBC's existing architecture and does not depend on any particular configuration of the CIRP Regulations. Sub-section \(6\) deliberately refers to "the CIRP Regulations" generically rather than by their current title, so that the provision remains operative if those regulations are amended, replaced, or supplemented by IBBI circulars or](#)

[guidelines. If Parliament subsequently enacts a group insolvency framework or adopts the UNCITRAL Model Law on Cross-Border Insolvency, Section 14A's application to those contexts should be addressed through a specific carve-out or extension at that time rather than by judicial construction.](#)

C. Anticipation of Principal Objections

The proposed Section 14A is likely to attract three principal objections from insolvency practitioners, creditor groups, and legislative commentators. Each is addressed below.

Objection 1 — Impact on Creditor Autonomy: Critics may argue that the proposed framework, by requiring the Resolution Professional to identify and report pending SPAs to the CoC within thirty days, imposes a procedural burden that constrains the CoC's commercial freedom to determine the resolution strategy. This objection misunderstands the proposal's design. Section 14A does not require the CoC to honour pending SPAs or to prefer the SPA acquirer over other resolution applicants. It requires the RP to disclose their existence and to seek the CoC's approval for the chosen course of action — assumption, rejection, or modification. Far from constraining creditor autonomy, the provision enhances it by ensuring that the CoC makes an informed decision, armed with knowledge of pending acquisition agreements that might otherwise remain undisclosed.

Objection 2 — Interaction with Existing IBC Provisions: A second objection concerns the interaction between the proposed Section 14A and existing provisions — particularly Section 238's non-obstante clause and Section 30's resolution plan framework. The concern is that creating a statutory basis for SPA acquirers to assert rights during CIRP may complicate or delay the resolution process by introducing additional stakeholders and claims. This concern is addressed by the sub-section (3)(b) mechanism: where the CoC determines that a pending SPA should be rejected, the SPA acquirer's remedy is a pre-commencement damages claim as an unsecured creditor, not a veto over the resolution plan. The SPA acquirer becomes one creditor among many, subject to the same priority rules and plan discipline as all other operational creditors. The resolution timeline is not extended.

Objection 3 — Implementation Challenges: A third objection raises practical implementation concerns — specifically, that Resolution Professionals may lack the commercial expertise to identify and evaluate pending SPAs within the thirty-day window, and that the CoC may lack the information necessary to make an informed decision about assumption or rejection. This objection is addressed by the mandatory information memorandum disclosure in sub-section (6): the CIRP Regulations already require the Resolution Professional to prepare an

information memorandum containing details of the corporate debtor's assets, liabilities, and material contracts. Extending this obligation to executory acquisition agreements requires only a targeted amendment to the CIRP Regulations, not a separate institutional infrastructure. The thirty-day timeline is calibrated against the IBC's existing timelines — the CIRP process allows 180 days for resolution, and a thirty-day window for identification and reporting is proportionate.

D. Model SPA Drafting Clauses for Distressed M&A Practitioners

1. Insolvency-Specific MAC Definition

'Material Adverse Change' means any change, event, circumstance, or development that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the business, assets, financial condition, results of operations, or prospects of the Target, taken as a whole, including without limitation: (i) the admission by the National Company Law Tribunal of an application under Section 7, 9, or 10 of the Insolvency and Bankruptcy Code, 2016 in respect of the Target; (ii) the filing of any such application, whether or not admitted; (iii) the appointment of an Interim Resolution Professional or Resolution Professional in respect of the Target; or (iv) the imposition of a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 in respect of the Target.

2. Resolution Professional Cooperation Clause

The Seller shall use all reasonable endeavours to procure that any Resolution Professional appointed in respect of the Target (a) is promptly notified of the existence of this Agreement; (b) is provided with copies of this Agreement and all related documents; and (c) is requested to confirm in writing within thirty days of appointment whether it intends to assume, reject, or seek modification of this Agreement pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 or any applicable law. In the event that the Resolution Professional declines to assume this Agreement or fails to confirm its intention within the period specified above, the Buyer may apply to the National Company Law Tribunal for such relief as may be available under applicable law.

3. Escrow Treatment Clause

The parties agree that any amounts deposited with the Escrow Agent pursuant to this Agreement are held by the Escrow Agent as agent of the Buyer and do not constitute assets of the Target or the Seller for the purposes of Section 14 of the Insolvency and Bankruptcy Code, 2016 or otherwise. In the event of CIRP Commencement in respect of the Target, the Escrow Agent shall continue to hold such amounts in accordance with the terms of the Escrow Agreement and shall not release such amounts to any party except in accordance with the written instructions of both the Buyer and the Resolution Professional (if any) or pursuant to an order of the National Company Law Tribunal.

[A note on scope is warranted before proceeding to the conclusion. This paper focuses on share purchase agreements in which the corporate debtor is the target company, within the framework of the Insolvency and Bankruptcy Code, 2016. It does not examine asset purchase agreements, which raise distinct questions regarding the allocation of liabilities and the transfer of encumbered property. It does not address cross-border group insolvencies, in which parallel proceedings in multiple jurisdictions may affect the enforceability of pending acquisition agreements. Nor does it examine acquisitions involving financial service providers, which remain subject to a separate insolvency framework under the IBC. Each of these areas presents issues of sufficient complexity to warrant independent treatment.](#)

VIII. Conclusion

The Insolvency and Bankruptcy Code, 2016 has transformed India's commercial landscape and, by most measures, represents a landmark achievement in economic law reform. The statistics of resolution — thousands of admitted applications, significant realisations for creditors, and a measurable shift in the credit culture of Indian commerce — attest to the Code's success in achieving its core objectives. Yet the Code's silence on the treatment of pending Share Purchase Agreements during the Corporate Insolvency Resolution Process is a structural gap that threatens to undermine those achievements in precisely the domain — distressed acquisition investment — where the Code's ambitions are most commercially significant.

This paper has argued, through doctrinal, comparative, and economic analysis, that this gap is not merely technical. It has measurable commercial consequences: it depresses bidder participation, distorts asset valuations below going-concern levels, imposes avoidable

transaction costs, and reduces creditor recoveries below the level that a well-designed insolvency framework would achieve. The empirical evidence from comparable jurisdictions consistently demonstrates that legal certainty in the treatment of pending acquisition agreements is associated with higher creditor recoveries and greater investment in distressed situations. [This conclusion is supported by convergent evidence: the World Bank's Doing Business: Resolving Insolvency indicators consistently identify legal certainty in the treatment of pending contracts as a significant component of insolvency system quality; Baird and Rasmussen's empirical study of Chapter 11 proceedings demonstrates a measurable relationship between executory contract uncertainty and reduced bidder participation; and the Reserve Bank of India's own reporting confirms that average creditor realisations in CIRP proceedings remain at approximately 31 per cent of admitted claims — a figure that a more coherent treatment of pending acquisition agreements could, on the comparative evidence, meaningfully improve.](#)

The Indian judicial position is characterised by a tension — between the broad moratorium approach of Gujarat Urja Vikas Nigam and the narrower contractual reading of Tata Consultancy Services — that no amount of careful SPA drafting can fully resolve. The Supreme Court decisions in Essar Steel and Ghanashyam Mishra confirm that [unaddressedunaddressed](#) pre-CIRP claims are extinguished by approved resolution plans, creating a structural hazard for SPA acquirers whose rights are not specifically preserved. The Jet Airways proceedings illustrate the practical complexity that arises when pending acquisition interests collide with the CIRP process — a complexity that a coherent statutory framework would substantially reduce.

The comparative analysis demonstrates that mature insolvency regimes — the United States through Section 365, the United Kingdom through the administrator's broad management powers and the pre-packaged sale, and Singapore through the judicial manager's statutory authority — address this gap through a coherent combination of affirmative practitioner authority, clear consequences for assumption or rejection, and judicial oversight. India's IBC provides none of these features in the SPA context.

The reform proposed in this paper — a new Section 14A introducing an executory acquisition agreement framework — is designed to fill this gap in a manner that is proportionate, implementable, and consistent with the IBC's overarching objectives. The principal objections

to the proposal — its impact on creditor autonomy, its interaction with existing IBC provisions, and the implementation challenges it presents — have been addressed and found to be manageable within the existing architecture of the Code. The model drafting clauses provide practitioners with tools to achieve, through careful contractual drafting, some approximation of the statutory clarity that the reforms would ultimately provide.

The case for reform is ultimately grounded in the commercial logic of insolvency law. Distressed investment is central to the prospect of going-concern rescue and value preservation. Legal certainty is not a luxury for acquirers in distressed situations; it is a precondition of their participation. India's ambition to develop a world-class insolvency regime will remain incompletely realised until the Code provides a coherent framework for the most commercially important category of distressed acquisition agreement: the pending SPA caught between signing and closing by the onset of insolvency.

Directions for Future Research. Several related questions fall outside the scope of this paper and merit independent study. First, the treatment of asset purchase agreements during CIRP raises distinct issues regarding the allocation of liabilities and the interaction with Section 53's priority waterfall that the present analysis does not address. Second, group insolvency — where related entities across a corporate group enter CIRP simultaneously or sequentially — creates additional complexity for pending acquisition agreements that span multiple group members, and the absence of a group insolvency framework in the IBC compounds the uncertainty examined here. Third, the cross-border recognition of Indian CIRP proceedings, and its implications for pending acquisition agreements governed by foreign law or involving foreign acquirers, deserves sustained analysis as India's adoption of the UNCITRAL Model Law on Cross-Border Insolvency moves closer to implementation. Fourth, distressed acquisitions involving financial institutions — banks, non-banking financial companies, and insurance entities — remain subject to separate resolution frameworks whose interaction with pending SPA rights has not yet been examined in the literature. Each of these areas presents opportunities for doctrinal and comparative scholarship that this paper's analysis may help to frame.

Appendix: Practical Checklist for Distressed M&A Lawyers

The following checklist is intended as a practical reference for lawyers advising acquirers or targets in distressed M&A transactions involving a corporate debtor under the IBC. It does not

constitute legal advice and should be adapted to the specific facts of each transaction.

Due Diligence

1. Conduct enhanced insolvency due diligence: verify the target's financial position, pending creditor claims, status of any CIRP application, and the composition of existing debt facilities.
2. Review all pending financing arrangements, security interests, and cross-default provisions that may be triggered by a change in control or the commencement of CIRP.

SPA Drafting

3. Include an insolvency-specific MAC definition that expressly addresses CIRP commencement, appointment of an IRP or RP, and imposition of the Section 14 moratorium (see model clause at VII.D.1).
4. Structure escrow arrangements so that funds held by the escrow agent are expressly constituted as agent of the buyer, not the target, and are excluded from the Section 14 moratorium estate (see model clause at VII.D.3).
5. Include a Resolution Professional cooperation clause obligating the seller to procure RP notification and to seek the RP's written confirmation of intention to assume or reject within a defined period (see model clause at VII.D.2).

Regulatory and Process Matters

6. Identify all regulatory approvals required to close (Competition Act, SEBI Takeover Regulations, sector-specific approvals) and assess whether those approvals may be affected or delayed by the commencement of CIRP or the RP's assumption or rejection decision.
7. Evaluate whether contractual rights should be preserved through specific drafting in the SPA or through an application to the NCLT for directions, in light of the current uncertainty between the Gujarat Urja and Tata Consultancy Services lines of authority.
8. Monitor the CIRP timeline actively: if the RP does not respond to notifications within the contractually or statutorily prescribed period, consider whether an application to the NCLT for directions is warranted before the CIRP resolution deadline extinguishes unaddressed claims.

Footnotes

- 1 Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s 14.
- 2 11 U.S.C. § 365 (United States Bankruptcy Code).
- 3 Insolvency Act 1986 (UK), Schedule B1, para 59.
- 4 Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta [2020] 8 SCC 531.
- 5 Bhushan Steel Ltd, NCLT (Principal Bench), CP No 2443/IB/2017, Resolution Plan approved 15 May 2018.
- 6 Jet Airways (India) Ltd, NCLT (Mumbai Bench), CP No 2205/IBC/MB/2019, admitted 20 June 2019.
- 7 Videocon Industries Ltd, NCLT (Mumbai Bench), CP No 02/IBC/NCLT/MB/MAH/2018.
- 8 Michael Blank, *The Law and Practice of Distressed Mergers and Acquisitions* (2nd edn, LexisNexis 2019) ch 2.
- 9 Kenneth A Adams and Alan S Schwartz, 'Understanding "Material Adverse Change" Provisions' (2013) 63 *Syracuse Law Review* 941.
- 10 Grupo Hotelero Urvasco SA v Carey Value Added SL [2013] EWHC 1039 (Comm), [2013] 2 CLC 490, [334]-[341] (Blair J).
- 11 Akorn, Inc v Fresenius Kabi AG, No 2018-0300-JTL (Del Ch 1 October 2018), slip op at 89.
- 12 Ronald J Gilson, 'Value Creation by Business Lawyers: Legal Skills and Asset Pricing' (1984) 94 *Yale Law Journal* 239.
- 13 Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta [2020] 8 SCC 531, [67]-[72].
- 14 Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd [2021] 9 SCC 657.
- 15 Innoventive Industries Ltd v ICICI Bank [2018] 1 SCC 407.
- 16 Insolvency and Bankruptcy Code, 2016, s 53(1)(f).
- 17 Brian JM Quinn, 'Optionality in Merger Agreements' (2010) 35 *Delaware Journal of Corporate Law* 789.
- 18 Arcelormittal India Pvt Ltd v Satish Kumar Gupta [2019] 2 SCC 1, [83].
- 19 Douglas G Baird and Robert K Rasmussen, 'The End of Bankruptcy' (2002) 55 *Stanford Law Review* 751.
- 20 Stuart C Gilson, Edith S Hotchkiss and Richard S Ruback, 'Valuation of Bankrupt Firms' (2000) 13 *Review of Financial Studies* 43.
- 21 World Bank, *Doing Business: Resolving Insolvency* (World Bank Group, 2020), Methodology, Annex A.
- 22 Reserve Bank of India, *Report on Trend and Progress of Banking in India 2022-23* (RBI, 2023), Chapter IV, [4.26]-[4.31].
- 23 Insolvency and Bankruptcy Code, 2016, ss 7, 9, 10.
- 24 Insolvency and Bankruptcy Code, 2016, s 14(1)(a)-(d).
- 25 State Bank of India v V Ramakrishnan [2018] 17 SCC 394, [21]-[25].
- 26 Gujarat Urja Vikas Nigam Ltd v Mr Amit Gupta [2021] 7 SCC 209.
- 27 Tata Consultancy Services Ltd v SK Wheels Pvt Ltd, NCLAT (New Delhi), Company Appeal (AT) (Insolvency) No 487 of 2018, decided 28 September 2018.
- 28 Vern Countryman, 'Executory Contracts in Bankruptcy: Part I' (1973) 57 *Minnesota Law Review* 439, 460.
- 29 Bankruptcy Law Reforms Committee, *Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design* (Government of India, November 2015), Chapter 6, [6.5.3].
- 30 Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs, Government of India, March 2018 and October 2020).
- 31 Satyabrata Ghose v Mugneeram Bangur & Co [1954] SCR 310.
- 32 Indian Contract Act, 1872, s 39; see also *Derry v Peek* (1889) 14 App Cas 337 (House of Lords) on the standard for repudiation.
- 33 Mobilox Innovations Pvt Ltd v Kirusa Software Pvt Ltd [2018] 1 SCC 353.
- 34 Manpasand Beverages Ltd v Edelweiss Asset Reconstruction Company Ltd, NCLT (Ahmedabad Bench), CP No 25/IBC/NCLT/AHM/2019, order dated 14 March 2019.
- 35 Jindal Steel and Power Ltd v Arun Kumar Jagatramka, NCLAT (New Delhi), Company Appeal (AT) (Insolvency) No

- 221 of 2017, decided 17 January 2018.
- 36 Uttara Foods and Feeds Pvt Ltd v Mona Pharmachem, NCLT (Ahmedabad Bench), CP No 96/IBC/NCLT/AHM/2017, order dated 1 March 2018.
- 37 Essar Steel India Ltd v Satish Kumar Gupta [2019] SCC Online SC 1478.
- 38 Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta [2020] 8 SCC 531.
- 39 Ebix Singapore Pte Ltd v Committee of Creditors of Educomp Solutions Ltd [2022] 2 SCC 401.
- 40 Jet Airways (India) Ltd, NCLT (Mumbai Bench), CP No 2205/IBC/MB/2019; see also Kalrock Capital Management Ltd v Mr Ashish Chhawchharia, NCLAT (New Delhi), Company Appeal (AT) (Insolvency) No 707 of 2021.
- 41 11 U.S.C. § 365(a).
- 42 Group of Institutional Investors v Chicago, Milwaukee, St Paul & Pacific Railroad Co, 318 U.S. 523 (1943).
- 43 11 U.S.C. § 365(b)(1).
- 44 NLRB v Bildisco & Bildisco, 465 U.S. 513 (1984).
- 45 11 U.S.C. § 363(b), (f).
- 46 In re Chrysler LLC, 405 B.R. 84 (Bankr S.D.N.Y. 2009), aff'd 576 F.3d 108 (2d Cir 2009).
- 47 In re General Motors Corp, 407 B.R. 463 (Bankr S.D.N.Y. 2009).
- 48 Insolvency Act 1986 (UK), Schedule B1, para 59(1).
- 49 Re Atlantic Computer Systems plc [1992] Ch 505 (CA).
- 50 Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 (UK), SI 2021/427.
- 51 Corporate Insolvency and Governance Act 2020 (UK), Part 1 (Moratorium) and Part 2 (Restructuring Plans).
- 52 Insolvency, Restructuring and Dissolution Act 2018 (Singapore) (No 40 of 2018).
- 53 IRDA 2018 (Singapore), s 64.
- 54 Re Zetta Jet Pte Ltd [2019] 4 SLR 1 (High Court, Singapore).
- 55 IRDA 2018 (Singapore), s 67 (super-priority rescue financing).
- 56 UNCITRAL Legislative Guide on Insolvency Law (United Nations, 2004), Part Two, Recommendation 71.

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