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## “APPLICATION OF THE COASE THEOREM IN THE CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)”

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## **APPLICATION OF THE COASE THEOREM IN THE CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)**

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### **Extended Abstract**

The insolvency laws involve various stakeholders including Corporate Debtors (CDs), Resolution Professionals (RPs), Financial Creditors (secured and unsecured) and Operational Creditors. The code attempt to ensure the welfare of all the stakeholders. The law has tried to maintain some level of efficiency by giving negotiating or bargaining power to the major stakeholders in the CIRP proceedings. This has also been reiterated by the Apex court, where the court emphasized the equitable treatment of every creditor in the insolvency process. Coase Theorem is more interested in increasing the economic value of the transaction through a libertarian approach i.e., free bargain than a utilitarian approach i.e., maximum benefit to a maximum number of people. Ex-ante Corporate Insolvency Resolution Process (CIRP) ensured that the stakeholders would arrive at an efficient outcome through bargaining and negotiation regardless of the initial allocation of legal rights. It also minimizes transaction costs to facilitate a voluntary resolution/settlement process; otherwise, it is costly to determine, how much stakeholder value the same. IBC helps creditors to recover their dues through a cost-efficient ex-ante CIRP process. The structure of IBC is to minimize the harm caused by the failure of a private agreement/settlement. However, when private negotiation/settlement fails, the insolvency law allocates the rights to the party who values them most. CIRP is a unique mechanism which provides a group solution while maintaining the balance between the welfare of the stakeholders and the efficiency of the process.

It is pertinent to note that the CIRP should not be considered as par with a bargaining process among the stakeholders. The reason for that lies in its differential treatment which resultantly varies the bargaining power of the stakeholders, thereby inducing an increase in the transaction costs. Nevertheless, the overall transaction costs are positively impacted by the Insolvency and Bankruptcy Code (IBC)/CIRP norms which leads to the inducement of bargain and negotiation.

The stakeholders being aware of the costs of the litigation and other expenses will enter into a bargain. On the other hand, in case of law favouring debtors, the dues will be borne by the debtors and the repayment of dues will therefore be made by the debtors themselves, thus reaching the efficient outcome without legal intervention.

The structure of the IBC is to minimize the harm caused by private negotiation. In this respect, the framework of CIRP is more inclined towards Hobbesian fear. If seen from the angle of Normative Coase, the CIRP process is making the norms simpler and certain thus lubricating the bargain. However, the process is not a set of substantive norms but a procedural law, thus is not lubricating the bargain but is instead replacing it with a proper procedure than a voluntary mechanism.

On the other hand, the CIRP process has given priority to the economic principle of high-value ownership thus *allocating* the rights to the higher-value owner.

Normative Hobbesian ideals of the preservation function of law have also been served through the introduction of CIRP. The CIRP has been by and large successful in establishing a unique mechanism which provides a group solution while maintaining the balance between the welfare of the stakeholders and the efficiency of the process.

**Method :** The research relies on a mixed method – Quantitative Data and Qualitative Data from the relevant stakeholders in the Corporate Insolvency Resolution Process (CIRP) to verify Coase Theorem in the real world.

**Keywords:** Coase Theorem, Corporate Insolvency Resolution Process (CIRP), transaction costs, bargaining power

## REFERENCES

- Medema, S. (1999). Symposium on the Coase Theorem: Legal Fiction: The Place of the Coase Theorem in Law and Economics. *Economics & Philosophy*, 15(2), 209-233. doi:10.1017/S0266267100003989.
- Campbell, D. (2016). Ronald Coase's 'the problem of social cost'. *University of Queensland Law Journal*, 35(1), 75-98.
- Pigou, A. C. (1920). *The Economics of Welfare*. <http://ci.nii.ac.jp/ncid/BA06951880>.
- Gourley, P. (2018). Farmer Brown v. Rancher Wyatt: Teaching the Coase Theorem. *Journal of Economic Education*. <https://doi.org/10.1080/00220485.2018.1438864>.
- Coase, R. H. (1960). The Problem of Social Cost. In *Palgrave Macmillan UK eBooks* (pp. 87–137). [https://doi.org/10.1057/9780230523210\\_6](https://doi.org/10.1057/9780230523210_6).
- Schwab, S. J. (1986). Collective Bargaining and the Coase Theorem. *Cornell L. Rev.*, 72, 245.
- Medema, S. G. (1996). Coase, costs, and coordination. *Journal of Economic Issues*, 30(2), 571-578.
- Marciano, A. (2011). Ronald Coase, “The problem of social cost” and the Coase theorem: An anniversary celebration. *European Journal of Law and Economics*, 31, 1-9.
- Hobbes, T. (1967). *Hobbes's leviathan*. Рипол Классик.
- Medema, S. G., & Zerby Jr, R. O. (1995). *The coase theorem*. CRESP, Center for Research on Economic and Social Policy, University of Colorado at Denver.
- Cooter, R. (1982). The cost of Coase. *The Journal of Legal Studies*, 11(1), 1-33.
- Nash, R. (1991). The subjective theory of economic value. *Journal of Interdisciplinary Studies*, 3(1/2), 31-50.
- Gupta, A. (2018). Insolvency and bankruptcy code, 2016: a paradigm shift within insolvency laws in India. *The Copenhagen Journal of Asian Studies*, 36(2), 75-99.
- Jain, S. (2020). Operational Creditors – The 'Outcast' of Insolvency and Bankruptcy Code. *Issue 4 Int'l JL Mgmt. & Human.*, 3, 77.
- Kala, P. J. (2022). Status Quo of Operational Creditors under IBC-A Judicial Analysis. *Issue 3 Int'l JL Mgmt. & Human.*, 5, 2039.
- Cooter, R. D., & Ulen, T. S. (1988). *Law and Economics* (6th ed.). Pearson.