

Strategic Integration of SPACs within the IBC 2016 framework vis – a – vis, A Comparative Legal Analysis of Global Corporate Restructuring under Scheme of Arrangement and Resolution Mechanism

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ABSTRACT

In recent times, Special Purpose Acquisition Companies (SPACs) have emerged as an effective financial instrument touting global reach and application, consequently, has the possibility of integrating them into the Indian insolvency framework under the Insolvency and Bankruptcy Code, 2016 (IBC). SPACs, which are formed to raise capital through IPO, for a possible merger or acquisition offers better and practical approach to rescue a corporate entity. Their structure, such as pre-determined capital and a time bound process for acquisition are in line with the framework of the IBC, which enforces a time limit for disposal of distressed assets. Several approaches may be taken to address insolvency with the help of SPACs. Firstly, they offer time bound and speedy resolution by having availability of capital for acquisition, which support speedy transaction and reduce the delay which often erode the value of the distressed asset. This demonstrates the focus of the IBC, of resolving insolvency and repayment to creditors in a span of 330 days without extending for any further long-term durations, which cause loss in the recovery of assets in the case of liquidation. Secondly, SPACs can also bring an alternative solution to liquidation by infusing fresh capital to revive the distressed company, especially the inclusion of SPACs into “the Scheme of Arrangement” offering a formal structure for corporate restructuring of the financially distressed organization, maximizing the interest of the creditors and shareholders. SPAC is able to purchase an inoperative firm and acquire the enterprise preserving jobs and running the business acting as a “White Knight”, an objective sought under the IBC. SPACs also provide investor protection during the insolvency process. They may provide higher returns for creditors and shareholders, which are healthier than what is realizable in liquidation, where recovery rates as typically low. SPACs improve the ability of creditors to find use for the distressed assets in a more quick fashion ensuring adequate and swift resolution. For such vertically oriented industries that are in distress in certain sectors, SPACs provide appropriate capabilities and capital. In each of these sectors, SPACs can make structured investments, turn around, and grow distressed companies instead of just meeting the exigency of an immediate solution. To conclude, it is of significant value that in the realm of the corporate restructuring, SPACs come across as a favourable means of enhancing the efficacy of the existing insolvency regime in the country and more particularly that of the IBC. A plan to integrate SPACs under the present legislature as a potential resolution mechanism will aid in enhancing India's ability to deal with intricate insolvency cases, especially at the time of Scheme of Arrangement under IBC, 2016..



1. INTRODUCTION

Special Purpose Acquisition Companies (SPACs), often known as “blank-check firms” have over the years captured the global market’s attention as appropriate tools for the process of corporate rebuilding. These are publicly held companies that are established with the main purpose of offering securities in an IPO in order to achieve the aim of purchasing other firms or merging with them. Unlike the conventional method of going public, where a company approaches the market to floated and then seek for funds, a SPAC, on the other hand, raises the money and then searches for the company in which to invest in within stipulated time of 18- 24 months. This flexible organisation of operations enables SPACs to quickly and purposefully implement their plans, making them a useful instrument for solving the problem of financial distress in businesses and stimulating economic growth.

Internationally, several successes have been recorded with the use of SPACs to revitalize failure businesses, especially in the American markets where they have already contributed to the capital markets. The part played by these vehicles across technologies, health care, and infrastructure has exemplified their ability to finance business ventures that may otherwise appeal to conventional funding mechanisms. Many other jurisdictions such as United Kingdom, Singapore and Hong Kong have also come up with friendly regulations that would foster SPAC operations showcasing that these are international instruments. Pre-raised capital, efficiency, and achievement of maximum value for stakeholders together with ability to avoid interruptions for business operations are the important benefits of SPACs.

In the Indian context, bankruptcy and Insolvency law was recently developed with Insolvency and Bankruptcy Code (IBC), 2016. The IBC was a major step change or the much-needed reform to mitigate the drawbacks of fractured laws and to set up a structured and time-bound regime for resolution. It may entail as its goals, the optimization of the value of the assets, the prevention of the creditors’ losses and the boosting of the viability of the businesses. Complementing this, the IBC has been designed to have a mandated resolution timeline of not more than 330 days that greatly reduces the time that many organisations take to resolve their crises, time that very often leads to erosion of asset value. But it is not without drawbacks including slow proceedings, low recovery statistics for receivership cases, and a broad approach to company crisis that hardly pinpoints unique sector problems.

In view of these challenges, there is a real need and potential for further research on other processes that can aid in the IBC’s goals. Unfortunately, SPACs provide an even more appropriate solution. Their structure with focus on availability of capital and speed of their implementation is aligned with the IBC’s objective of speedy resolutions. It also prevents distressed firms from being expelled by injecting fresh capital from the investors willing to sponsor a SPAC into a new life and sustain employment. Thirdly, their inclination to wake up as “White Knights” to acquire and resuscitate distressed businesses also offer significant room to build up the India insolvency system.

Incorporation of SPACs in the conceptual structure of IBC can potentially bring some of the important problems of Insolvency process of India in the line. If India plays to the strength of SPACs, it can increase recovery for creditors and shareholders, decrease time taken, and give specificity to the troubled sectors. Further, the “Scheme of Arrangement” under the IBC could be achieved through the SPACs, as it presented a clear method of the reorganization of the corporate structure while safeguarding rights of the stakeholders. There are other more prospects in SPACs than simple financial recovery. They can help save jobs, sustain businesses and ensure investors have confidence in the Indian insolvency law. The US as well as Singapore have implemented SPACs in their corporate restructuring processes and hence the Indian markets can certainly learn from these nations. Moving now to the IBC, this article discusses how SPACs can be best utilised for addressing the some of the major issues that exist within the insolvency process. The paper compares and contrasts the global practices, outlines the legal and procedural changes which are needed for SPAC integration and further analyses the advantages of this strategy. In that way the article will assist in continuing the discussion about improving India’s insolvency rules and further establishing India as a place that provide outstanding corporate restructuring solutions.

Comparative Analysis of SPAC Integration in Global Insolvency Frameworks

Promising results can be observed in the incorporation of Special Purpose Acquisition Companies (SPACs) when applied to insolvency frameworks, although its outcomes differ from one country to another. Huge countries like the United States, United Kingdom, and Singapore have used SPACs as ways of managing corporate restructuring, managing assets that are in distress as well as in recovery from economic challenges. This chapter explores legal and regulatory structures surrounding SPACs in these areas together with their application in insolvency and the prospects for their adoption in India.

United States: Legal and Regulatory Framework for SPACs in Insolvency Cases

SPACs have become a dominant force in the United States capital markets, and the United States has been a pioneer in the creation of them. SPACs are governed primarily by the Securities and Exchange Commission (SEC), operating under a well defined, transparent framework in which the investors, protect and ensure the accountability. Key aspects of the U.S. regulatory framework include:



1. **Capital Market Integration:** Like SPACs, these are publicly listed entities, and subject to rigorous reporting and disclosure under the SEC.
2. **Investor Safeguards:** SPAC IPOs raise funds in a trust account until a merger or acquisition completed, translating into safety for investors.
3. **Operational Flexibility:** This structured, but flexible framework offers a mechanism to turnaround a corporation in 18–24 months through the use of SPACs.

U.S. SPACs have been an important game in rescuing distressed companies in the context of insolvency. SPACs have helped companies get through financial distress, preserve operations, and keep the employees on through capital infusion and merger negotiations. To give some examples, technology, healthcare, as well as renewable energy have had many distressed companies revived by SPAC sponsored acquisitions. Specifically, SPACs present an alternative to a bankruptcy court's realms of liquidation or restructuring under a Chapter 11 plan: SPACs tend to be faster and more economically viable ways to restructure than liquidation per se, or liquidation and a Chapter 11 plan combined.

United Kingdom: SPAC Utilization in Corporate Turnarounds

As the London Stock Exchange (LSE) has sought to attract SPAC activity, the United Kingdom has increasingly utilized SPACs as a mechanism for corporate turnarounds. Historically, U.K. SPAC activity lagged behind the U.S., but recent changes are making a favorable change for SPAC driven restructuring in the U.K. Key features of the UK framework include:

1. **Revised Rules for SPAC Listings:** This is in response to reforms introduced by the Financial Conduct Authority (FCA) in 2021 to remove automatic trading suspensions on SPACs when they announce acquisitions, building market confidence.
2. **Focus on Investor Protection:** In order to facilitate the existing creativity that exists between apparently unconnected corporate forms, SPACs in the UK will have to offer such enhanced shareholder rights as redemption rights and a vote on proposed acquisitions.
3. **Alignment with Insolvency Practices:** SPAC driven acquisitions fit in well with the UK's insolvency laws and provide the flexibility to integrate SPACs into distressed asset management.

SPACs have enabled takeover of poor but cheaply buying UK companies and doing turnaround there. For example, SPACs have been tapped for investment by firms in distress in retail and manufacturing, which were in desperate need of capital and strategic direction for recovery. This is a fledgling of an idea: on the One hand, the UK's balance between encouraging investor protection and preserving operational flexibility has made SPACs attractive with which to address corporate distress; on the other hand, there are some significant jurisdictional and executional challenges.

Singapore: Recent Developments in SPAC Regulations for Distressed Asset Management

The introduction of a robust regulatory framework which positions Singapore as a hub for SPAC activity in Asia has attracted the SPAC listings. In 2021, the Singapore Exchange (SGX) introduced SPAC specific rules aimed at achieving market growth and investor protection via a balance. Key elements of Singapore's SPAC framework include:

1. **Minimum Market Capitalization:** To participate, only credible players and only SPACs with a minimum market capitalization of SGD 150 million can list in SGX.
2. **Enhanced Due Diligence:** SPAC sponsors must show strong track records and have their interests aligned with those of the investors.
3. **Timeline for Acquisitions:** The SPACs in Singapore work similarly to the U.S. — they have to merge or acquire within 24 months, with an optional six month extension.

As a result, Singapore has found success using SPACs to solve the problem of distress asset management in specific industrial realms such as infrastructure, tech, and logistics. Their regulatory framework has allowed the city state to direct SPAC activity in tandem with the rest of the city state's economic aims, such as supporting failing industries and encouraging innovation. Mentionably enough, SPACs in Singapore have been instrumental in bailing out companies hit by the bad effects of the COVID-19 pandemic by providing the necessary capital to restructure and remain afloat.

Lessons for India from International Practices

The US, the UK and Singapore has given useful lessons for India as it contemplates on the inclusion of the SPAC mechanism in its IBC regime of 2016. Key lessons include:

1. **Authorities' explanations and Investment safeguard**



The transparent and clear rules of the regulators and the protection for investors are well regarded by the US and Singapore frameworks for the attainment of SPAC specific transactions. India could also pursue such reforms by adopting practices regarding SPACs in the IBC through legislative amendment to spell out the function of SPACs in insolvency processes.

Promising significant shareholder's rights protection and transparency in operations as well as developing compatible disclosure standards will be vital for attracting investors.

2. Mofted with insolvency objectives

This paper also shows that SPACs in the U.S. and U.K. have been rightly integrated into the insolvency regime, thereby offering an option to liquidation and bankruptcy processes. India can apply SPACs to bolster the IBC's aim of speedy resolutions by tapping into the fund that SPACs raise before targeting companies to save them swiftly.

3. Sector-Specific Applications

This SPAC case of Singapore shows that predetermined approaches for the effective management of distressed asset in different sectors are possible. India can determine specific sectors like infrastructure, real estate and manufacturing sectors, which could benefit from the use of SPACs mostly.

4. Capacity Enhancement and Market Staging

The observed increase of SPACs in the U.S. and UK mostly result from strong financial markets and quality of professionals. India needs to undertake policy development to create room for the growth of its capacities as well as to train insolvency professionals and enhance awareness of SPAC mechanisms among market participants.

5. On time delivery and value preservation

The fact that the acquisitions made through the SPAC structures take place during a limited period is also consistent with the IBC approach to the swift resolution of cases. India needs to incorporate the use of SPACs in the insolvency laws to guarantee that the distressed assets are picked up on time and restored and the value retained for the shareholders.

6. Policy Coordination

In order to better manage and co-ordinate the implementation of SPACs in resolutions, there is a need to closely co-operate between SEBI and IBBI. From the Singaporean and American cases, India can develop a consistent legal framework for SPAC activity that will compl The coverage of the IBC's goals.

SPACs and the Scheme of Arrangement under IBC

The IBC, 2016, has shifted the Indian insolvency landscape, provided a legal framework to address corporate restructuring under the Scheme of Arrangement. This legal provision allows companies to rearrange debts and activities within a structure that is protected legally from raw creditors and share holders. In this regard, the utilization of Special Purpose Acquisition Companies (SPACs) within the framework of the Scheme of Arrangement re-imagines a fresh way of dealing with financial diseases and improving the methods of insolvency resolutions for the member states.

An appreciation of the Scheme of Arrangement under the IBC

The Scheme of Arrangement can be understood as a type of workouts enabling companies to reshape their financial debts and carry out activities. It facilitates:

1. Debt Restructuring: Renegotiating initially agreed terms of payments with the idea of switching them for more favorable terms for the company.
2. Capital Infusion: The need to attain new funds with a view of fostering and stabilizing or enhancing the business.
3. Creditor and Stakeholder Consensus: Where necessary, to involve necessary parties such as the creditors, shareholders, and relevant regulatory agencies in a bid to improve the transparency of the transaction and seek their approval.

This mechanism is helpful especially to firms in the state of financial shock as it will focus more of the outcome on reviving the firm as opposed to liquidation. However, there are three significant factors that can make or mar the Scheme: timing, capital infusion, and operating turnaround which should be complemented by SPACs.

The Role of SPACs in the Scheme of Arrangement

The mechanisms which comprae an integral part of the Scheme of Arrangement include Special Purpose Acquisition Companies (SPACs) which are crucial to corporate rejuvenation and restructuring. Unlike traditional IPOs that deplete a target firm's working capital, SPACs offer pre-acquired capital, which allows for the reorganization of debt and for rejuvenation of operations and potential growth and development projects. This capital infusion is in particular to fund the Scheme of Arrangement under the IBC towards its directed goals. Furthermore, SPACs fit well into the IBC framework of the time-bound nature of the process, as the time frame of the acquisition (generally, from 18 months to 2 years) is very



effective when it comes to executing the deal. This fast flow excludes the erosion of the value and makes the whole process of the restructuring quicker, what is helpful in increasing the efficiency of the work. On The Same side, “White Knights” SPACs rescue creditors’ firms from liquidation in order to sustain employees’ employment, and appropriate organizational stability. Conversation towards this strategy also serves the general apparatus in enhancing economic stability and at the same time meets certain targets within the framework of IBC. In addition, the SPACs create value for stakeholders by providing better returns for creditors and shareholders than liquidations and make sure that assets are not idle. Lenient regulation surrounding SPACs has led to one being incorporated into the Scheme of Arrangement, thus creating a more formal legalized means of acquisitions, corporate turnarounds Increasing recognition, credibility and acceptance amongst investors and creditors. This well-defined approach classifies SPACs as an innovative gizmo for implementing long-run and efficient corporate restructuring in terms of IBC.

The cases of United States, United Kingdom and Singapore show how SPACs can serve to be a disruption in fixing corporate failures and improving insolvency environment. These jurisdictions have shown this by presenting examples of how SPACs can support economic revival in terms of capital provision, company rescues, and maintenances of stakeholder worth. The idea of utilizing SPACs in the configuring the IBC for India presents an approach of developing a perfectly suited environment of insolvency management, which is capable to extinguish all the existing and potential pitfalls while getting sorted with the best practices of the international standards. It is only by such a targeted reform where lessons from other countries have been learned that India has an opportunity to become an innovator in the provision of corporate restructuring.

2. CONCLUSION AND POLICY RECOMMENDATIONS

SPACs hold a great transformative opportunity for reshaping India’s insolvency regime under the IBC 2016. With regard to the main issues like long time span of resolution, low rate of claim recovery and inadequate methods for handling non-performing assets, SPACs can complementarily operate to strengthen the efficiency of the IBC. The proven capacity for access to pre-raised funds, quick deal doing, and the avoidance of operational disruption is consistent with manifested goals of IBC – time-bound resolution and value enhancement. For the realization of the possibilities of SPACs, the following policies must be put into consideration: First, legal changes include bills passed that require amendment to the IBC to provide legal recognition of SPACs as a mechanism for resolution of such companies. It should contain clear provisions or roles, responsibilities and procedures in insolvency cases, eligibility criteria as well as operation details. These reforms will definitely disperse the clarity expected of the regulating bodies to incorporate SPACs into the current structure.

Secondly, appropriation of the compelling institutional infrastructure to safeguard the shareholders’ interest as the essential investor protection mechanisms are mandatory to instill confidence among the investors. Higher levels of transparency on SPACs’ operations, legal steps regarding shareholder rights and anti-conflict measures in mind are imperative to protect shareholder interests. SEBI and IBBI coordination will also be a key to rationalise SPAC-driven solutions and compliance with securities and insolvency legislations.

Last and interactive reforms should be made by carrying out the capacity-building programs based on educational programmes addressed to insolvency professionals, legal practitioners and market participants responsible for financing and restructuring, aimed at enhancing awareness of SPAC mechanisms. Continuing education in the form of workshops, certifications, or knowledge-sharing platforms can aid in the development of the requisite talent to competently handle SPAC-related resolutions. Building on successful global examples, India can be at the forefront of innovative solution to corporate structure issues. In so doing, it will be in a position to spur the economy, attract investors and make it more resilient within a challenging post Covid-19 world

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