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BALANCING PUBLIC

TRUST AND CREDITOR PRIMACY IN PUBLIC-PRIVATE PARTNERSHIP CONCESSIONS UNDER INDIA'S INSOLVENCY FRAMEWORK

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TRUST AND CREDITOR PRIMACY IN PUBLIC-PRIVATE PARTNERSHIP CONCESSIONS UNDER INDIA'S INSOLVENCY FRAMEWORK

EQUILIBRIO ENTRE CONFIANZA PÚBLICA Y PRIMACÍA ACREEDORA EN CONCESIONES PÚBLICO-PRIVADAS BAJO EL RÉGIMEN CONCURSAL DE INDIA

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ABSTRACT

India's insolvency framework seeks the timely resolution of financially distressed corporate debtors while preserving their value as going concerns. Public-private partnerships, however, present distinctive challenges because infrastructure development and service delivery depend on concession agreements that combine commercial rights with public responsibilities. Conflict arises when a concessionaire enters corporate insolvency resolution and the granting authority seeks to terminate the concession. This study examines how Indian insolvency law can reconcile creditor protection, preservation of enterprise value, and the state's continuing responsibility for public infrastructure and services. Using doctrinal and comparative legal methods, the analysis examines the Insolvency and Bankruptcy Code, 2016, relevant constitutional principles, and Supreme Court jurisprudence concerning contractual termination during corporate insolvency. It also draws comparatively on the United Kingdom's special administration regimes and the United States' Chapter 9 municipal bankruptcy framework. The analysis identifies four principal areas of friction: the legal characterisation of concession rights, the interaction between termination powers and the insolvency moratorium, the potential erosion of going-concern value, and the treatment of termination compensation within creditor priorities. To address these problems, the study proposes a specialised public infrastructure insolvency framework incorporating a dual-threshold termination test, mandatory step-in rights for financial creditors, and ring-fenced termination compensation. These reforms seek to provide a more predictable balance between public-service continuity and creditor interests while strengthening legal certainty for granting authorities, concessionaires, creditors, and prospective resolution applicants involved in financially distressed public-private partnership projects in India.

Keywords:

Insolvency and Bankruptcy Code, Public-private Partnership, Concession Agreement, Public Trust Doctrine, Infrastructure Insolvency.

RESUMEN

El marco de insolvencia de la India procura la resolución oportuna de los deudores corporativos en dificultades financieras, preservando al mismo tiempo su valor como empresas en funcionamiento. Sin embargo, las asociaciones público-privadas presentan desafíos particulares, debido a que el desarrollo de infraestructura y la prestación de servicios dependen de contratos de concesión que combinan derechos comerciales con responsabilidades públicas. El conflicto surge cuando un concesionario entra en un proceso de resolución de insolvencia corporativa y la autoridad concedente pretende poner fin a la concesión. Este estudio examina cómo el derecho concursal indio puede conciliar la protección de los acreedores, la preservación del valor empresarial y la responsabilidad permanente del Estado respecto de la infraestructura y los servicios públicos. Mediante métodos jurídicos doctrinales y comparados, se analizan el Código de Insolvencia y Quiebras de 2016, los principios constitucionales pertinentes y la jurisprudencia

de la Corte Suprema relativa a la terminación contractual durante la insolvencia corporativa. Asimismo, se examinan comparativamente los regímenes de administración especial del Reino Unido y el régimen de quiebra municipal del Capítulo 9 de los Estados Unidos. El análisis identifica cuatro áreas principales de tensión: la caracterización jurídica de los derechos de concesión, la interacción entre las facultades de terminación y la moratoria concursal, la posible erosión del valor de la empresa en funcionamiento y el tratamiento de la compensación por terminación dentro del orden de prelación de los acreedores. Para abordar estos problemas, el estudio propone un régimen especializado de insolvencia de infraestructura pública que incorpore una prueba de doble umbral para la terminación, derechos obligatorios de intervención para los acreedores financieros y la afectación separada de las compensaciones por terminación. Estas reformas buscan establecer un equilibrio más predecible entre la continuidad de los servicios públicos y los intereses de los acreedores, al tiempo que fortalecen la seguridad jurídica de las autoridades concedentes, los concesionarios, los acreedores y los potenciales solicitantes de resolución involucrados en proyectos de asociación público-privada en dificultades financieras en la India.

Palabras clave:

Código de Insolvencia y Quiebras, asociación público-privada, contrato de concesión, doctrina de la confianza pública, insolvencia de infraestructura.

INTRODUCTION

The Indian bankruptcy legislative framework is laid down under the Insolvency and Bankruptcy Code (Parliament of India, 2016). The same was enacted to afford time-bound mechanism for resolving corporate insolvency while preserving the value of corporate debtor. The key mechanisms essential to the working of IBC involve, the moratorium, the Committee of Creditors (CoC), the Corporate Insolvency Resolution Process (CIRP); however, the same are primarily apt for conventional commercial enterprises and not a concessionaire delivering public services. The forementioned framework is inefficient to tackle PPP concessionaire, whose principal asset is development and maintenance of public infrastructure.

A PPP concession agreement is a contractual arrangement between a government authority and a private entity, referred to as the concessionaire. The concessionaire is granted limited right to develop, finance, operate and commercially utilizes the infrastructure to recover its investment. A concession agreement possesses both commercial law and public law characteristics, it confers conditional and time-bound operational rights for the public infrastructure and is generally under regulatory oversight. Such an agreement grants a commercially valuable right to the concessionaire and fulfils state's function to develop and regulate public infrastructure.

The dual identity of an PPP concession agreement is significant when the concessionaire enters into corporate insolvency. On one hand the state or the government granting authority requires effective delivery of the public service or infrastructure, and in case of default, right to terminate the concession. On the other hand, the insolvency law attains to preserve the corporate debtor enterprise value. In case of CIRP, if the concession is terminated the debtor may drop its capability to operate as a going concern. The same dilemma was considered by the Supreme Court of India (2021a, 2021b) in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*** & ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain***. Both the said judgements deliberated upon the circumstance wherein contractual termination may be restrained during CIRP, though the approach adopted differed.

The present study revolves around the extant legal framework that offers the adjudicating authorities with two inefficient and insufficient alternatives. The first is to restrain contract termination and protect corporate debtor's financial viability, this approach may hamper the granting authorities right to terminate the concession in public interest. Such a protection to concessionaire may discourage public authorities from entering into PPP arrangement. The other alternative is to permit termination and deprive the corporate debtor of revenue generating asset rendering the insolvency law's intent to preserve the commercial value, ineffective. This option may undermine the entire financial structure of the project and reduce creditor trust. Henceforth, the legal position fails to shield both the public service and infrastructure development, creditor value and concessionaire's commercial viability.

The paper aims to propose a specialised framework consequently balancing the interests of granting public authority, corporate debtor, creditors and public. The need of the hour is to develop a dedicated public infrastructure insolvency regime within the current insolvency law. The proposed regime is to address the legal and commercial peculiarities arising from insolvency in PPP concession. Firstly, in case of concessionaire insolvency, provision for temporary preservation of the contract to be provided, for the concessionaire to retain its revenue generation capacity. Secondly, the termination of concession should be according to defined standard and in time-bound manner, where the granting authority could intervene when continuation of the concession could cause threat to public safety or violation of regulatory compliance. Thirdly, the proposed regime should provide for transparent mechanism of ring-fenced funds payable as termination compensation and recognition of mandatory lender rights. The afore stated measure taken together will strike the correct balance between conflicting interest of public authority, concessionaire and the lenders.

METHODOLOGY

This study employs a qualitative legal research design combining doctrinal and comparative methods. The doctrinal analysis examines the interaction between the Insolvency and Bankruptcy Code (Parliament of India, 2016) and the legal framework governing public-private partnership concessions in India. It focuses on the moratorium, control and preservation of the corporate debtor's assets, termination rights, creditor priorities, the jurisdiction of the National Company Law Tribunal, and the overriding effect of the Insolvency and Bankruptcy Code.

The primary sources include statutory and constitutional provisions and judicial decisions concerning insolvency, contractual termination, public trust, creditor decision-making, and government contracting. Particular attention is given to ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*** and ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain*** (Supreme Court of India, 2021a, 2021b) because of their relevance to the relationship between contractual termination and corporate insolvency resolution. Secondary sources include legal scholarship and interdisciplinary studies on insolvency, public-private partnership financing, ***ipso facto*** clauses, creditor priorities, special administration, and municipal bankruptcy.

The comparative analysis examines the United Kingdom's special administration regimes (Department for Energy Security and Net Zero, HM Treasury, Ofgem, & Department for Business, Energy & Industrial Strategy, 2017) and the United States' Chapter 9 municipal bankruptcy framework (United States Congress., 1978). These jurisdictions are used as functional reference points rather than models for direct transplantation into Indian law. The comparison focuses on continuity of public services, creditor protection, termination rights, public-sector intervention, and institutional mechanisms for reconciling public and private interests.

The analysis proceeds in three stages. First, the Indian statutory and judicial framework is examined to identify legal uncertainties affecting insolvent public-private partnership concessionaires. Second, selected mechanisms from the United Kingdom and the United States are compared with the Indian framework to identify principles that may be adapted to the Indian context. Third, the doctrinal and comparative findings are synthesised to formulate a reform framework addressing the legal character of concessions, termination during insolvency, preservation of going-concern value, treatment of termination compensation, and the relationship between public interest and creditor rights.

The study is limited to doctrinal and comparative legal analysis and does not include interviews, surveys, statistical testing, or empirical measurement of insolvency outcomes. Accordingly, its recommendations constitute a normative legal proposal grounded in the statutory, judicial, and comparative materials examined.

DEVELOPMENT

The literature relevant to the insolvency of public-private partnership concessionaires can be organised into three principal areas: public law and government contracting, insolvency and corporate restructuring, and comparative approaches to infrastructure-specific insolvency. Together, these areas provide the doctrinal and comparative foundations for identifying the legal gaps addressed in this study.

Public Law and Administrative Freedom

The first cluster examines concession agreements through the principles of sovereign and fiduciary responsibility rather than as ordinary commercial contracts. In ***MC Mehta v Kamal Nath***, the Supreme Court of India (1996) established that the state acts as trustee of resources intended for public use and that governmental decisions concerning such resources remain subject to judicial scrutiny. The Constitution Bench in the ***Natural Resources Allocation*** reference reaffirmed the state's fiduciary responsibility over natural resources and their allocation in the public interest. These principles provide the legal basis for understanding why a granting authority's power to terminate a concession cannot be treated solely as a private contractual right. Such power must also be considered in light of public interest, the public trust doctrine, and the constitutional principle of non-arbitrariness under Article 14 of the Constitution of India (Government of India, 1950). However, this jurisprudence does not clearly determine how these public-law obligations should operate when a concessionaire becomes insolvent and the Insolvency and Bankruptcy Code (Parliament of India, 2016) applies to the concession.

A related strand concerns the application of the principle of non-arbitrariness to government contracting. Even where a concession agreement grants the state a contractual right of termination, the exercise of that right remains subject to constitutional standards applicable to state action. The unresolved issue is how these public-law constraints interact with insolvency rules intended to preserve the corporate debtor and its assets. This separation between public-law analysis and insolvency scholarship constitutes a central gap addressed by the present study.

Insolvency and Corporate Restructuring Theory

The second cluster focuses on insolvency and corporate restructuring. Jain (2020) examines the overriding effect of section 238 of the Insolvency and Bankruptcy Code (Parliament of India, 2016) and the circumstances in which the Code prevails over inconsistent legal provisions. This issue is particularly relevant to public-private partnership concessions because the insolvency framework may

interact with sector-specific legislation, regulatory powers, and contractual rights. In ***ICICI Bank Ltd. v. ABG Shipyard Ltd.***, the interaction between the insolvency moratorium and electricity-disconnection powers further illustrates the tension between preserving a corporate debtor as a going concern and allowing the exercise of rights arising under sector-specific frameworks (National Company Law Tribunal, 2017).

A related issue concerns ***ipso facto*** clauses, which permit contractual termination because of a counterparty's insolvency. Jon (2025) examines such clauses in Korean and cross-border insolvency contexts and highlights the tension between contractual termination rights and the preservation of agreements necessary for corporate rehabilitation. This issue is directly relevant to public-private partnership concessions, where termination of a key agreement may undermine the debtor's ability to continue operating. In India, the Insolvency and Bankruptcy Code (Parliament of India, 2016) does not establish a general prohibition on ***ipso facto*** termination. The protection provided under section 14 is limited, leaving uncertainty regarding the treatment of concession agreements when termination occurs during insolvency proceedings.

A further strand concerns the commercial decision-making authority of the Committee of Creditors. In ***K. Sashidhar v. Indian Overseas Bank*** and ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta***, the Supreme Court of India (2019) limited judicial intervention in the commercial decisions of financial creditors concerning the feasibility and viability of resolution plans. This principle creates a particular difficulty in public-private partnership insolvencies because decisions concerning the debtor's principal asset may also affect the continuity of public infrastructure or services. The resulting question is whether creditor-centred decision-making can adequately accommodate the public interests attached to a concession.

Finally, the priority framework under section 53 presents another relevant area of tension. Shah & Sabne (2025) analyses the statutory distribution mechanism and the priority accorded to different categories of creditors. In the context of public-private partnership concessions, this framework becomes particularly significant when termination compensation, secured creditor claims, and claims by the granting authority must be reconciled. Existing scholarship addresses the distributional consequences of the statutory priority structure but provides limited guidance on how such competing claims should be resolved while simultaneously protecting the continuity and value of public infrastructure.

Comparative and International Models

The third cluster examines comparative approaches to insolvency involving entities responsible for public infrastructure and essential services. In the United Kingdom (Department for Energy Security and Net Zero, HM Treasury, Ofgem, & Department for Business, Energy & Industrial Strategy, 2017), special administration regimes modify ordinary insolvency procedures in sectors where continuity of service constitutes an important public interest. Parry et al. (2026) critically examine these sector-specific regimes and identify problems arising from their fragmentation and differing institutional arrangements. Their analysis is relevant to the Indian context because it demonstrates the need for insolvency mechanisms capable of considering public-service continuity alongside creditor interests. This experience provides a useful comparative basis for assessing whether public-private partnership concessionaires require treatment different from that applicable to ordinary commercial enterprises.

In the United States (United States Congress, 1978), Chapter 9 of the Bankruptcy Code provides a specialised debt-adjustment framework for municipalities and other eligible public entities. Coordes (2016) identifies structural limitations in this framework and demonstrates the difficulties involved in reconciling insolvency objectives with the distinctive public functions performed by municipal debtors. Alexander (2025) similarly questions the effectiveness of Chapter 9 as a mechanism for addressing financial distress involving public entities. The United States experience therefore illustrates both the potential value and the limitations of creating a specialised insolvency regime: continuity of public functions must be protected without disregarding creditor interests and financial viability.

The financing dimension is particularly relevant to the Indian context. Sinha & Jha (2020) examine financing constraints affecting public-private partnership projects in India and identify factors that contribute to financial difficulties in infrastructure projects. Their findings demonstrate that the legal and financial sustainability of public-private partnerships depends on the allocation and management of project risks. Accordingly, the interaction between concession rights, financial distress, and insolvency should be considered not only as a doctrinal issue but also as part of the broader framework governing the viability and financing of public infrastructure.

The Research Gap

Two principal gaps emerge from the literature reviewed. First, although the overriding effect of section 238 of the Insolvency and Bankruptcy Code (Parliament of India, 2016) has been examined in relation to commercial contracts and sector-specific legislation, limited attention has been devoted to its application to public-private partnership concessions. Such concessions present distinctive characteristics because the granting authority is a public entity, the concession frequently concerns public infrastructure or assets, and termination may affect both the financial viability of the concessionaire and the continuity of public services.

Second, comparative approaches to public-service insolvency have received limited attention in the Indian public-private partnership context. The United Kingdom's special administration regimes examined by Parry et al. (2026) and the United States Chapter 9 framework discussed by Coordes (2016) provide relevant comparative perspectives on the reconciliation of public-service continuity with creditor interests. However, their potential application to the specific legal and institutional characteristics of Indian public-private partnership concessions remains insufficiently explored. The present study addresses these gaps by examining public-private partnership concessions as a distinct problem within the Insolvency and Bankruptcy Code (Parliament of India, 2016) and by drawing on selected comparative approaches to develop a reform framework adapted to the Indian context.

Four distinct points of friction recur once a public-private partnership concessionaire is admitted into the corporate insolvency resolution process, each arising from the mismatch between the general design of the Insolvency and Bankruptcy Code and the public character of the concession.

1. The Categorisation Dilemma

The first issue concerns the legal characterisation of a concession agreement. Section 18(1)(f) of the Insolvency and Bankruptcy Code (Parliament of India, 2016) requires the interim resolution professional to take control and custody of the assets of the corporate debtor. However, the Code does not expressly determine whether a public-private partnership concession constitutes an asset capable of preservation or transfer during insolvency or a conditional right whose continuation remains subject to the granting authority and the terms of the concession agreement. This distinction is particularly important because the concession may constitute the principal source of revenue and going-concern value of the corporate debtor while simultaneously involving rights over public infrastructure, land, or other public assets.

In ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta***, the Supreme Court addressed the termination of a Power Purchase Agreement that was central to the continued operation of the corporate debtor. Although the judgment demonstrates that contractual termination may interact directly with the objectives of the Insolvency and Bankruptcy Code (Parliament of India, 2016) it does not provide a general solution for public-private partnership concessions. Road, port, and airport concessions may involve not only contractual revenue rights but also conditional rights to occupy, operate, or commercially exploit public infrastructure. The unresolved question is therefore whether, and to what extent, such concession rights should be treated as assets of the corporate debtor during insolvency without undermining the granting authority's legal powers and responsibilities over the underlying public infrastructure.

2. The Moratorium Paradox

Section 14 of the Insolvency and Bankruptcy Code (Parliament of India, 2016) establishes a moratorium intended to protect the corporate debtor and facilitate its continuation as a going concern during the Corporate Insolvency Resolution Process. Section 238 further provides that the Code prevails over inconsistent provisions contained in other laws or instruments. However, a granting authority may possess contractual or statutory powers to terminate a concession on grounds such as non-performance, regulatory non-compliance, public safety, or other public-interest considerations. The exercise of these powers during insolvency creates a tension between preserving the corporate debtor and protecting the granting authority's responsibilities toward public infrastructure and services.

The Supreme Court of India (2021a, 2021b) addressed this tension differently in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*** and ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain***. In the former, termination concerned an agreement that constituted the corporate debtor's principal source of revenue, and the Court recognised the jurisdiction of the National Company Law Tribunal to intervene where termination was directly connected with the insolvency proceedings and threatened the debtor's survival. In the latter, the Court distinguished termination arising from contractual breaches independent of insolvency and limited the circumstances in which the National Company Law Tribunal could restrain contractual termination. These decisions provide important guidance but do not establish a specific framework for public-private partnership concessions, leaving uncertainty where termination may simultaneously protect a legitimate public interest and undermine the corporate debtor's ability to continue as a going concern.

3. The Valuation Collapse

Termination of a concession during insolvency may substantially reduce the going-concern value of the corporate debtor, particularly where the concession constitutes its principal revenue-generating asset. Uncertainty regarding the continuation of the concession may affect financing, revenue flows, and the willingness of prospective resolution applicants to participate in the resolution process. Sinha & Jha (2020) demonstrate the importance of financing constraints and risk allocation in Indian public-private partnership projects, supporting the broader proposition that uncertainty surrounding concession rights can affect project financing and viability.

The timing of termination is therefore particularly important. If the status of the concession remains unresolved while the Corporate Insolvency Resolution Process is underway, the economic value on which a resolution plan depends may deteriorate before a definitive judicial determination is reached. Consequently, subsequent protection of the

concession may not fully restore the financial position or going-concern value of the corporate debtor. This creates a sequencing problem between the exercise of termination rights and the objectives of insolvency resolution.

4. The Priority Waterfall Collision

A further difficulty arises when termination compensation becomes payable. Concession agreements may establish different compensation mechanisms depending on whether termination results from concessionaire default, authority default, force majeure, or other specified circumstances. These contractual arrangements must then interact with the statutory distribution framework established by section 53 of the Insolvency and Bankruptcy Code, (Parliament of India, 2016) which determines the priority of claims in liquidation.

Shah & Sabne (2025) identifies limitations associated with the rigidity of the statutory priority framework. In the context of public-private partnership concessions, the difficulty is determining how termination compensation should be treated when secured creditor claims, claims of the granting authority, and other statutory priorities coexist. The Insolvency and Bankruptcy Code (Parliament of India, 2016) does not establish a specific mechanism for the treatment or ring-fencing of compensation arising from the termination of public-private partnership concessions. This creates uncertainty regarding whether such compensation should form part of the insolvency estate, how competing claims against it should be addressed, and how its distribution should interact with the statutory priority framework. A clearer legislative mechanism is therefore necessary to reconcile termination compensation with creditor priorities and the financial structure of public infrastructure projects.

- Judicial Oscillations

The Supreme Court of India (2021a, 2021b) decisions in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*** and ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain*** define the principal limits of judicial intervention in contractual termination during the Corporate Insolvency Resolution Process.

In ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta***, a power distribution company sought to terminate a long-term Power Purchase Agreement because the corporate debtor had entered insolvency proceedings. The Supreme Court upheld the intervention of the National Company Law Tribunal, emphasising that the agreement constituted the corporate debtor's sole source of revenue and that its termination would undermine its continuation as a going concern. The Court held that the residuary jurisdiction under section 60(5)(c) extends to disputes arising from or relating to insolvency proceedings and recognised the relevance of section 238 where contractual provisions conflict with the operation of the Insolvency and Bankruptcy Code (Parliament of India, 2016). However, the decision was expressly linked to the importance of the agreement for the corporate debtor's survival.

In ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain***, the Supreme Court of India (2021b) limited the reach of this principle. The dispute concerned termination based on contractual breaches independent of the corporate debtor's insolvency. The Court held that section 60(5)(c) cannot be used to adjudicate contractual disputes that do not arise from or relate to insolvency proceedings. It further clarified that the obligation of the resolution professional under section 25 to preserve the corporate debtor's assets does not convert every determinable contract into a non-terminable agreement.

Read together, the decisions establish two relevant considerations: whether the termination dispute arises from or is sufficiently connected with the insolvency proceedings, and whether termination threatens the corporate debtor's survival as a going concern. Nevertheless, neither decision establishes a specific rule for public-private partnership concessions. In such cases, the granting authority may exercise contractual or statutory powers associated with public safety, regulatory compliance, or continuity of essential services, while termination may simultaneously eliminate the corporate debtor's principal source of economic value. The existing jurisprudence therefore leaves unresolved how insolvency protection should operate when contractual termination also constitutes an exercise of public authority.

- Theoretical Conflict: Public Trust Doctrine and Creditor Primacy

This uncertainty reflects a broader tension between the public responsibilities attached to infrastructure and the creditor-centred structure of the Insolvency and Bankruptcy Code (Parliament of India, 2016).

The public trust doctrine provides one side of this conflict. In ***M. C. Mehta v. Kamal Nath***, the Supreme Court of India (1996) recognised the state's responsibility as trustee of resources held for public use. The ***Natural Resources Allocation*** reference further emphasised the public-law obligations governing state control and allocation of natural resources. Applied to public-private partnership concessions, these principles indicate that granting operational or commercial rights over public infrastructure does not eliminate the state's continuing responsibilities toward the public. Consequently, decisions concerning the control and continuity of such infrastructure during insolvency cannot be understood exclusively as matters of private contractual or financial interest.

The difficulty arises because the Insolvency and Bankruptcy Code (Parliament of India, 2016) assigns financial creditors a central role in determining the feasibility and viability of corporate resolution. Where the corporate debtor operates public infrastructure, decisions intended to preserve or maximise its economic value may therefore

intersect with the granting authority's independent obligation to protect public interests. This creates the central doctrinal problem: how to preserve the creditor-centred structure of insolvency resolution without displacing the public responsibilities that continue to attach to the infrastructure subject to the concession.

On the other side of the conflict stands the principle of creditor primacy. In ***K. Sashidhar v. Indian Overseas Bank*** and ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta***, the Supreme Court of India (2019) affirmed the central role of the commercial wisdom of the Committee of Creditors in determining the feasibility and viability of a resolution plan, subject to the statutory limits of judicial review under sections 30(2) and 61(3) of the Insolvency and Bankruptcy Code (Parliament of India, 2016). This approach rests on the assumption that financial creditors are best positioned to evaluate the commercial viability of the corporate debtor. Its application becomes more complex, however, when the debtor's principal asset is a public infrastructure concession whose operation also involves public-service obligations.

The resulting difficulty is determining how creditor decision-making should interact with the granting authority's continuing responsibilities toward public infrastructure and services. Maximising going-concern value may support both insolvency resolution and continuity of service, but these interests do not necessarily coincide in every case. A granting authority may consider regulatory compliance, public safety, or continuity of an essential service to require intervention even where continued operation would better preserve creditor value. Existing insolvency law does not provide a specific mechanism for reconciling these competing considerations.

Article 14 of the Constitution of India provides an additional public-law dimension through the principle of non-arbitrariness (Government of India, 1950). When a public authority terminates a concession during insolvency proceedings, the exercise of that power remains subject to the constitutional standards applicable to state action. This provides a distinct basis for reviewing termination independently of whether the Insolvency and Bankruptcy Code (Parliament of India, 2016) overrides the relevant contractual provision. ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India*** (Supreme Court of India, 2019), although arising in a different context, illustrates the broader importance of assessing the interaction between insolvency legislation and other legal interests within the constitutional framework. In the public-private partnership context, this perspective supports examining termination not only as a contractual matter but also as an exercise of public authority.

Proposed Solution

The first proposal is the incorporation into the Insolvency and Bankruptcy Code (Parliament of India, 2016) of a dedicated framework for corporate debtors whose principal operations depend on a concession, licence, or comparable governmental grant for the provision of public infrastructure or essential services. The comparative experience of the United Kingdom demonstrates the potential value of specialised insolvency mechanisms while also revealing the risks associated with fragmented sector-specific regimes. Parry et al. (2026) identify significant difficulties arising from the multiplicity and differing structures of special administration regimes.

India could therefore adopt a unified public infrastructure insolvency framework rather than separate regimes for individual sectors. The principal rules could be incorporated into the Insolvency and Bankruptcy Code (Parliament of India, 2016) while sector-specific requirements could be addressed through subordinate regulation developed in coordination with the relevant regulatory authorities. Such an approach would preserve a common insolvency structure while allowing necessary differentiation among infrastructure sectors.

- Dual-Threshold Termination Test

The second proposal is a statutory test governing termination of public infrastructure concessions during the Corporate Insolvency Resolution Process. As a general rule, termination should be temporarily stayed where it would materially impair the corporate debtor's ability to continue operating or undergo resolution. However, the granting authority should be permitted to seek termination where continuation creates a demonstrable and immediate risk to public safety, continuity of an essential service, or compliance with mandatory regulatory requirements.

The adjudicating authority should therefore assess two questions: whether termination would materially undermine the viability of the corporate debtor as a going concern, and whether continuation of the concession would create a sufficiently serious public-interest risk to justify termination notwithstanding its effect on insolvency resolution. This dual threshold would translate the principles emerging from ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*** and ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain*** (Supreme Court of India, 2021a, 2021b) into a clearer statutory framework while recognising the distinctive public responsibilities associated with infrastructure concessions.

- Mandatory Tripartite and Step-In Rights

The third proposal is to establish mandatory step-in rights for secured financial creditors in public-private partnership concession agreements. When a concessionaire defaults or enters insolvency proceedings, eligible creditors should have an opportunity to propose a substitute operator before termination, provided that the proposed operator satisfies technical, financial, and regulatory requirements established by the granting authority. The exercise of these rights should be coordinated with the resolution professional and subject to the granting authority's

continuing responsibility for public safety, regulatory compliance, and continuity of service.

This mechanism would provide an alternative to immediate termination by allowing the concession and its associated revenue-generating capacity to be preserved while operational responsibility is transferred to a qualified entity. The United Kingdom's special administration experience provides a useful functional comparison because of its emphasis on maintaining essential services during financial distress (Parry et al., 2026). At the same time, the limitations identified in the United States municipal bankruptcy framework demonstrate the importance of preserving creditor interests within any specialised public-infrastructure insolvency regime (Alexander, 2025; Coordes, 2016). In the Indian context, such a mechanism could also reduce financing uncertainty associated with the allocation of risks in public-private partnership projects (Sinha & Jha, 2020).

- Ring-Fenced Termination Funds

The fourth proposal concerns compensation payable following the termination of a public-private partnership concession. Such compensation should be placed in a ring-fenced account forming part of the insolvency or liquidation estate and administered in accordance with the Insolvency and Bankruptcy Code (Parliament of India, 2016). Claims asserted by the granting authority against the concessionaire should be addressed through the applicable claims-verification and distribution procedures rather than through unilateral deductions that could alter the statutory treatment of competing claims.

This mechanism would provide greater certainty regarding the relationship between contractual termination compensation and statutory creditor priorities. Shah & Sabne (2025) identifies broader limitations associated with the rigidity of the distribution framework under section 53. A ring-fencing mechanism adapted to public-private partnership concessions would preserve the granting authority's right to assert legitimate claims while requiring those claims to be considered within the insolvency framework. It would thereby promote greater transparency in the treatment of termination compensation and reduce uncertainty concerning the distribution of funds following termination.

CONCLUSIONS

The insolvency of public-private partnership concessionaires requires a framework capable of reconciling corporate resolution with the public responsibilities attached to infrastructure and essential services. Treating concession agreements exclusively as ordinary commercial assets risks overlooking the granting authority's continuing public obligations, while allowing unrestricted termination may destroy the revenue-generating asset on which successful insolvency resolution depends. ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*** and ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain*** (Supreme Court of India, 2021a, 2021b) demonstrate the difficulty of achieving this balance through the existing provisions of the Insolvency and Bankruptcy Code (Parliament of India, 2016) alone.

This study therefore proposes a dedicated public infrastructure insolvency framework based on four elements: a specialised statutory regime, a dual-threshold test for concession termination, mandatory step-in rights for financial creditors, and ring-fenced treatment of termination compensation. Drawing on the comparative experience of the United Kingdom's special administration regimes and the United States' Chapter 9 municipal bankruptcy framework, these reforms seek to preserve continuity of public services without subordinating legitimate creditor interests.

A specialised framework would provide greater legal certainty for granting authorities, creditors, concessionaires, and resolution applicants while preserving the distinctive public character of infrastructure concessions. The central objective is not to privilege public authority over creditor rights, or creditor recovery over public interest, but to establish a predictable mechanism through which both can be reconciled during insolvency. Such an approach would strengthen the capacity of the Indian insolvency framework to address financial distress in public infrastructure while supporting the long-term viability of public-private partnership financing.

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The authors declare no conflicts of interest.

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Barkha Rani, Neeti Goyal, Madhulika Singh: Conceptualization, data curation, formal analysis, investigation, methodology, supervision, validation, visualization, original draft writing, and writing, review, and editing.

Ethical statement:

The study was based exclusively on the analysis of documentary sources and publicly available data and therefore did not involve the direct participation of human subjects. No personally identifiable information was handled, and due to the documentary nature of the research, ethics committee approval was not required.