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Comparative analysis of the conceptual and institutional frameworks governing company winding up procedures in Nigeria and India

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Abstract
The purpose of the research paper is to examine the institutional and conceptual frameworks for firm winding up in India and Nigeria. Both nations have passed legislations governing winding up. India has the Companies Act 2013 and the Insolvency and Bankruptcy Code of 2016, while Nigeria recently passed the Companies and Allied Matters Act 2020. Determining if Nigeria and India differ or are similar in their conceptual applications and the institutions involved in winding up businesses in both countries is the main goal of the paper. The paper adopts a doctrinal based research method, by examining several statutes, articles and academic contributions on company winding up both in Nigeria and in India. It was found that both countries having deep root in the English common law traditions and thus have similarities in concepts relating to insolvency. However, in terms of institutions relating to winding up, there exist some level of divergence between Nigeria and India. In contrast to Nigeria, which uses the traditional court system to settle winding up cases, India has expedited its winding up procedures by establishing the National Company Law Tribunal. Traditional courts have been found to slow down the process of winding up companies, which is unsettling for creditors and bad for the economy. The paper makes the argument that, in order to ensure that the objectives of the company law reform are not lost, Nigeria must make an equal effort to reform the institutions that are pertinent to the implementation of the company law reforms, given the progress it has made in reforming its legal framework regarding company winding up.

Keywords: Companies, winding up, Federal High Court, National Company Law Tribunal

Introduction

The process of winding up a company involves liquidating and dissolving it, realizing its assets, and allocating them according to specific priority standards for the benefit of its members, creditors, and staff. The idea of perpetual succession in company law refers to a corporation's ability to continue operating even in the event of an owner or member's death, bankruptcy, insanity, membership change, departure from the business, or share transfer. But even with the idea of everlasting succession, there are situations in which a business can be wound up. The terms “winding up” and “liquidation” are typically used interchangeably and are considered synonymous. This is due to the fact that the two procedures indicate when a company's existence is terminated and its assets are managed for the benefit of its members and creditors. The main aim of winding up procedural law is to replace the free-for-all creditors competitive claim with a legal regime in which creditors’ right and remedies are suspended and a process established for the orderly collection and realization of the debtors’ assets and their fair distribution of these according to creditors’ claims. Winding up, for example, includes the cessation of several ties and obligations and includes all actions taken in preparation for liquidation. In winding up, a company's duties to suppliers, customers, and workers must be fulfilled regardless of its financial situation. Before the company is liquidated, all of its affairs are organized. Realizing the company's assets and releasing its liabilities is the main goal of winding up. By guaranteeing a fair division of the company's assets, winding up provides the practical function of a company's orderly termination, protecting the interests of creditors and other important stakeholders.

The common law traditions of Nigeria and India are firmly anchored in English corporate law. Their winding up laws have historically been built on doctrinal lines that are anchored in court-supervised winding up and equitable treatment of creditors. But as time has gone on, each nation has created unique institutions and practices to meet its own requirements. The Company and Allied Matters Act 2020 (CAMA), which gave the Federal High Court judicial authority and the Corporate Affairs Commission (CAC) regulatory responsibilities, governs the winding up process in Nigeria. The Companies Act of 2013 and the Bankruptcy Code of 2016 serve as the foundation of India's dual structure for corporate winding up, with the National corporate Law Tribunal having sole judicial control.

The fundamental company law concepts of separate corporate identity, creditor protection, collective debt enforcement, and equitable distribution serve as the foundation for the conceptual framework of winding up in both countries. However, there are notable differences in the institutional architecture used to put these ideas into practice. India has been adopting a creditor-driven and time-bound insolvency and bankruptcy code, 2016 that puts business rescue ahead of liquidation, whereas Nigeria continues to use a primarily court-centered liquidation model. The World Bank has observed that judges and courts frequently obstruct the effective settlement of insolvency. Laws that subject companies to protracted legal proceedings or penalize bankruptcy discourage risk-taking business ventures. With the establishment of the IBC in 2016, it appears that the Indian jurisdiction was convinced by the aforementioned compelling arguments to change important institutions related to bankruptcy. Can Nigeria take a cue

from India and restructure the pertinent insolvency-related institutions?

This essay looks at the conceptual and institutional frameworks that underpin business winding up practices in India and Nigeria. Their conceptual framework, adjudicatory institutions, procedural frameworks, and reform paths are all compared. The study aims to emphasize the two systems' strengths, reveal systemic flaws, and extract lessons that could guide future institutional reforms in Nigeria. To achieve this objective the paper is structured into five sections. Section one is introductory while section two deals on concepts relating to winding up which are common to both jurisdictions. Section three reviewed the institutions that are critical in matters relating to winding up procedings in both jurisdictions and section four covers a comparative analysis of the similarities and differences in the conceptual and institutional frameworks on winding up in both jurisdictions and section five concludes the paper with recommendations.

Conceptual Framework

1. Corporate Insolvency

In general, the term "insolvency" describes a situation in which an individual or organization is unable to repay their debt. A natural person who is unable to pay his debts and is declared bankrupt by a court of law is said to be in personal insolvency, sometimes referred to as bankruptcy. When a legally recognized business is unable to fulfill its responsibilities under its debt agreement with its creditors, it is said to be insolvent. Simply put, corporate insolvency is the state in which a business is unable to make its debt payments on time.

In Nigeria, corporate insolvency is specified by law and cannot be decided by the failing corporation or its creditors. If a business owes its creditors N200,000 or more and does not make payment within three weeks of receiving a written demand, an execution, or any other procedure on a judgment or decree that is returned (in whole or in part), it is considered to be unable to pay its debt. When it is demonstrated to the court that a business cannot pay its debts, taking into account its contingent and prospective liabilities, the company is considered to be insolvent.

The court can bring it authority to bear on a corporation to wind up if it is unable to pay its debts. When a corporation is unable to pay its debts, a creditor may initiate a voluntary winding up action to wind up the business.

If a failing company is permitted to continue operating, it will result in additional debt accumulation and the eventual loss of the company's assets, which will impact the members and creditors, particularly the unsecured creditors, whose investments and/or borrowed funds will be lost from the depleted assets of the failing business that was permitted to continue operating.

2. Liquidation

The process by which a company's assets are realized and distributed to creditors in order to satisfy debt owed to them, and what remains of the company's assets are then distributed to members in accordance with the value of their shareholdings or as specified by the articles of association, is known as liquidation in the corporate world.

Winding up, another name for liquidation, can be accomplished in a number of ways. Either freely under the court's supervision, voluntarily by members or creditors, or compulsorily by the court.

The process entails the appointment of a liquidator, the suspension of the directors' authority, and the approval of the liquidation's strategy for collecting and allocating the company's assets and all debts.

The voluntarily winding up of members occurs when the business is financially stable and able to settle its debts. It starts with the members passing a specific resolution to wind up the company, the corporation declaring itself solvent, and the appointment of a liquidator to manage its assets. The creditors would wound up the company voluntarily when it can no longer pay its debts. During a creditors' meeting, the liquidator is chosen by the creditors. The liquidator then proceeds to liquidate the business in line with the plan that the creditors adopted at their general meeting, either after the appointment has been approved by the court or after the appointment has been approved by the creditors.

On the request of several parties, such as creditors, the Corporate Affairs Commission, directors, etc., the Court performs compulsory winding up, on any of the grounds specified in Section 571 CAMA, or that the company is insolvent or that winding it up is just and equitable. After considering the application, the court may issue a winding up order, designating a liquidator to manage the company's assets in accordance with the court's instructions, or issue any other orders it sees fit. If the petition is deemed to be without merit, it may also be denied.

Additionally, a firm may be voluntarily wound up under court supervision. Both the rules of a voluntary winding up and the rules of a mandatory winding up are combined here. As a result, the members or creditors are free to wind up the business on their own, but they will be subject to judicial supervision because the court has the authority to provide guidance on how to handle this.

The company will no longer run its operations in order to protect its assets and prevent the loss of assets that should be used to settle creditors or share with members; as a result, the status quo of the company will be maintained. The liquidator now manages the company's assets since the directors' powers have been terminated.

3. Corporate Rescue and Business Rehabilitation

It is not in the best interest of a nation that companies are wound up, because winding up has a ripple effect across the socio-economic framework of the nation. When a company is wound up, jobs are lost reducing the number of economically viable persons and increasing the number of dependents and the unemployment ratio of the country. When a manufacturing company is wound up, goods are no longer produced dropping the Gross Domestic Product ratio of the nation. When a company is wound up and the assets are limited and can no longer satisfy all the creditors, some creditors are left unsatisfied increasing creditors' uncertainty in the corporate world.

The aforementioned clarifies that a corporation is better off being saved than being wound up. Therefore, business rescue and rehabilitation is a notion designed to help a firm get back on its feet instead of shutting it down.

In Nigeria, corporate rescue techniques include receivership, administration, scheme and arrangement, and company voluntary arrangements (CVA). Each of these strategies aims to save the business and protect its assets for the

benefit of its creditors. In administration, for example, an administrator is appointed with the primary objective of saving the company. If this is not feasible, he will manage the business to provide the creditors with a better outcome than they would have had if the business was wound up. If neither of the first two options is feasible, he will then rescue the company's assets for the benefit of the preferential creditors, provided that doing so will not negatively impact the interests of the other creditors. Another example is the CVA, in which the business establishes a deal with its creditors about the payment of its debts. Instead of collecting the entire amount owing to them, which might not be due if the business is wound up, the creditors might enable the business to continue operating by accepting a smaller payment from it. The other corporate rescue techniques mentioned above each have unique characteristics of their own.

4. Insolvency Practitioners and Liquidators

A person who has received training in managing an insolvent business is known as an insolvency practitioner. As stated by CAMA a person must meet the following criteria in order to be acknowledged as an insolvency practitioner:

a. has graduated from any accredited university or polytechnic with a degree in law, accounting, or a related field;
b. Possesses at least five years of post-qualification experience in insolvency-related situations;
c. Possesses a certificate of membership from the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN) or any other professional organization that the Commission has approved, allowing them to work in accordance with its regulations; and
d. Possesses a commission-granted authorization.

Conversely, a liquidator is a person designated to close down a business. He is in charge of realizing the company's assets, paying off its debt, and allocating any remaining funds to its members. The Court, members, or creditors may appoint him. In addition, he has the authority to sell the company's assets and carry out incidental tasks related to winding up the business, such as hiring legal and accounting professionals to assist him in carrying out his duties. A liquidator may serve as the company's official receiver or as an insolvency practitioner. He may also serve as the CVA's supervisor or administrator.

To guarantee the transparency of the liquidation process, it is crucial that a liquidator, typically an impartial individual be appointed to oversee the business. If a director were to be chosen, he might cover the transgressions of other directors who might have taken part in "killing" the company. Additionally, since an insolvency practitioner has been trained to manage a bankrupt firm, it is not only beneficial but also healthy for the company to appoint him as a liquidator. This will prevent the business from ending up in the hands of inexperienced individuals who would deplete its assets and incur further debt.

Types of winding up

1. Voluntary Winding Up

A company may be wound up voluntarily if the period, if any, set forth in the articles for the company's duration expires, or if an event, if any, occurs and the articles stipulate that the company is to be dissolved and the company has passed a resolution at its general meeting requiring the company to be wound up voluntarily, or if the company decides to wound up by special resolution.

There are two kinds of voluntary winding up; one done by the members and the other done by the creditors.

1.1. Member's Voluntary Winding Up

The first step in this process is convening a general meeting at which the members will adopt a special resolution to voluntarily wind up the company. The resolution will appear in two national daily newspapers or the Federal Government Gazette. The resolution's passing is considered to be the start of the voluntarily winding up. After approving the resolution demonstrating that the company can pay its debt within a year, the directors must subsequently make a statutory statement of solvency within five weeks.

After the above have been done, the members will appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company, and fix the remuneration to be paid to him or them. The liquidator will then proceed to liquidate the company's assets and as soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of and when the account is prepared he shall lay it before the general meeting of members and within seven days after the meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meeting.

If the winding-up process takes longer than a year, the liquidator must call a general meeting of the company at the end of the first year after the winding-up began, and every year after that. He must also call a meeting at the earliest opportunity within three months of the end of the year, or for a longer period of time if the Commission permits. The meeting must be given an account of the liquidator's actions and dealings, as well as the winding-up's conduct during the previous year.

When the Commission receives the account and the relevant return, it will promptly register them. Three months after the return is registered, the company is considered dissolved.

1.2. Creditor's Voluntary Winding up

Calling a general meeting of the members and suggesting a voluntary winding up initiates this approach. The proposal for the voluntarily winding up will then be presented to the creditors in a meeting. A statement outlining the company's financial situation, assets, debts, and obligations will also be presented by the directors.

A liquidator will be chosen by the creditors to carry out the liquidation of the company's assets and may designate an inspection committee to collaborate with the liquidator. After the liquidator has finished winding up the company's affairs, he will prepare an account of the winding up with details on how the winding up was carried out and how the company's property was disposed of. He will then present the prepared account to the general meeting of members and a meeting of creditors and the liquidator is required to make a return of the meeting to the Commission and transmit a copy of the account within seven days of the meeting.

If the winding-up process takes longer than a year, the liquidator will call a general meeting of the company and a meeting of the creditors at the end of the first year from the start of the winding-up and of each subsequent year, or at the earliest convenient date within three months from the end of the year, or for a longer period of time as permitted by the Commission. The liquidator will then present to the meetings an account of his actions and dealings, as well as the conduct of the winding-up during the previous year.
When the Commission receives the account and the relevant return, it will promptly register them. Three months after the return is registered, the company is considered dissolved.

2. Compulsory Winding Up

Presenting a winding up petition to the Federal High Court initiates a mandatory winding up. The following individuals may submit this petition:

a. A director or the company
b. A creditor, including a potential or contingent creditor of the company
c. The official receiver
d. A contributory
e. A personal representative or trustee in bankruptcy for a contributing or creditor
f. The Commission under this Act's section 366
g. A receiver, if permitted by the instrument of his appointment
h. By any or all of those parties, collectively or individually

However, in addition to the aforementioned individual, other individuals may be authorized by other sectoral legislation to submit a winding up petition. For example, the NDIC may submit a winding up petition for a bank.
A petition may only be submitted on the following grounds; it cannot be submitted for any other purpose.

a. By special resolution, the business decided that the court would wind it up.
b. When the statutory report is not delivered to the Commission or the statutory meeting is not held, a default occurs.
c. When a company has more than one shareholder, the number of members is lowered below two.
d. The company cannot settle its debts.
e. The prerequisite for the company's operation is no longer in place.
f. Ultimately, the Court believes that winding up the corporation is fair and just.

The Court may dismiss a winding-up petition, postpone the hearing conditionally or unconditionally, issue any interim order, or make any other order it sees fit. However, the Court may not decline to issue a winding-up order simply because the company's assets have been mortgaged to an amount equal to or greater than those assets, or because the company has no assets at all.
In order to wind up a company and carry out any duties the court may assign, the court will designate a liquidator or liquidators. In the event that a vacancy occurs, the official receiver will, by virtue of his position, act as liquidator until the vacancy is filled.
When a company's affairs are finished, the liquidator will apply to the court to dissolve the company. The court will then issue an order for the dissolution, which will take effect on the date of the order. The liquidator must send a copy of the order to the Commission within 14 days of the date it was made.

3. Winding Up Under the Supervision of the Court

A petition can be filed with the court to have the voluntarily winding up of a company carried out under the court's supervision after a resolution has been issued. The Court will oversee every aspect of the voluntary winding up after this is completed. In this case, the liquidator or another liquidator may be appointed by the court.
For all intents and purposes, an order for a winding-up subject to supervision is an order for winding-up by the Court, with the exception of the twelfth schedule's requirements.

4. Fraudulent trading and wrongful trading

The offence of fraudulent trading occurs where during winding up, it is shown that a company was managed recklessly or with intention to defraud its creditors or any other person or where it was carried out for fraudulent purpose. Where such is the case, the court, upon the application of the official receiver, liquidator, creditor, or contributory of the company, may, if it deems proper, declare that the persons who were knowingly parties to such acts be personally responsible without any limitation of liability for all or any of the debts or liabilities of the company. In so declaring, the court may direct that as a means of meeting his liability, the company would have a charge on any funds, charge or mortgage held by it on his behalf. In addition, it is an offence to carry on the company's business with the intention of defrauding its creditors or any other person. On conviction, the offender will be liable to a fine or to imprisonment for not more than two years. In Re Todd Ltd, a company director was held liable to contribute over seventy thousand pounds in satisfaction of the company's debts when it was established that he had indulged in wrongful trading.
On the heels of fraudulent trading is the lesser offence of wrongful trading. Under this head of liability, the liquidators are enabled to proceed against directors for wrongful trading without the necessity of establishing any intention to defraud. As such, a director may be held liable if, at some point before the commencement of winding up, he knew or ought to have known that there was no reasonable prospect that the company would avoid insolvency, yet he continued to trade. In Re Produce Marketing Consortium Ltd (No.2) over a seven-year period, a company slowly drifted into insolvency. Its two directors did nothing wrong except that they did not put the company into liquidation after it was apparent that insolvency was inevitable. They were held liable to contribute to the company's debts.
In essence, the court may require a director to contribute to the assets of a company which goes into insolvent liquidation on the application of the liquidator if, at some point, before it commences winding up, he knew or ought to have known that there was no reasonable prospect of the company avoiding insolvent liquidation. But the court will not make the declaration if satisfied that after knowing of unavoidable insolvency, a director took every step to minimize potential losses to its creditors as he ought to have taken. The fact that he ought to have known or ascertained, the conclusions which he ought to reach, and the steps he ought to take will be those which will be known or

ascertained or taken by a reasonably diligent person who has the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as those carried out by himself in relation to the company.

5. Priority in settlement of insolvent claims

The liquidator's work extends beyond asset realization to asset distribution according to the rights of those entitled to them. Where a company's assets are sufficient to settle its creditors and members, priority would not be an issue. But since insolvency is the most prominent ground upon which companies are liquidated, with assets often being insufficient to settle creditors, it is left for the liquidator to balance the interests of the company's stakeholders in compliance with rules of priority. Rules which recognise the priority of some creditors over others.

All secured creditors have the first right to the assets of the wound-up company and are usually paid out before there is a distribution. After this is paid out, any remaining debts are paid in the following order or priority: the cost, charges and expenses involved in the liquidation. All wages and salaries payable to employees, including holiday pay. Unsecured creditors and any interest that is attached to any debt (but only if the debt became due before the liquidation process began). Any debt owed to shareholders of the company, such as dividends or profits.

Institutional Framework

1. Nigeria's Institutional Framework

Nigerian institutions that participate in the process of winding up companies are not restricted to just the Corporate Affairs Commission; they also involve the Courts and other professional bodies.

2. The Corporate Affairs Commission

The Corporate Affairs Commission created by the Companies and Allied Matters Act is the body responsible for registration, regulation and oversee the affairs of companies in Nigeria. The Commission participates actively in the winding up of companies in several ways; firstly, the Commission has the power to strike off the name of a company from the register of companies. This power applies where a company has become a defunct company and an application is made to the Commission to do act. When this happens, the company after the filing of the relevant documents can have its name struck off the register of companies.

Again, the Commission is one of the persons allows to petition the court for the winding up of a company. This means that where the Commission thinks it fit that a company has satisfied the grounds upon which a Court can wind up the company, the Commission may petition the Court for the winding up of the company.

The Commission is also in charge of receiving filings and documentations before the proper dissolution of a company. After the liquidator is done with liquidating the assets of the company, he must file certain documents to the Commission; it is only upon such filing that the company becomes officially dissolved three months after the filing of those documents.

Also, the Commission is vested with powers to make regulations for the purpose of the Companies and Allied Matters Act; including the proper enforcement and understanding of the Act. It is pursuant to this power that the Insolvency Regulations 2022 was issued by the Commission.

3. Federal High Court

The Federal High Court is established under Section 249 of the Nigerian Constitution 1999. This Court is usually referred to as a Court of limited jurisdiction because it does not have Jurisdiction to hear all matters. The matters that can be entertained by this Court have been prescribed by the Constitution. By virtue of Section 251 (e) of the Nigerian 1999 Constitution, (as amended) the Court has the power to hear matters that relate to the Companies and Allied Matters Act or any enactment replacing the Act or regulating the operation of companies incorporated under the CAMA. Also, the Court by Section 251 (j) of the Constitution has exclusive jurisdiction hearing matters relating to bankruptcy and insolvency.

The above claims are strengthened by the provisions of the Companies and Allied Matters Act, Companies Winding up Rules and the Companies Proceedings Rules that grant similar Jurisdiction on the Federal High Court.

The effect of the above is that where a company is to be wound up compulsorily or where any question or grievance arises during the winding up process of a Company, the Federal High Court is the Court with Jurisdiction to hear such claims. In fact, and in law, any matter relating to corporate activities arising from the CAMA is to be heard by the Federal High Court.

4. The Court of Appeal

Section 237 of the Nigerian Constitution established the Court of Appeal and gave it the authority to consider appeals from the Federal High Court. The Nigerian Constitution distinguishes between two types of appeals: appeal as of right and appeal as of leave. According to the Constitution, a Federal High Court ruling that grants or denies an injunction or the appointment of a receiver may be appealed as of right. However, any appeal of a Federal High Court or High Court decision that is not covered by section 241 of the Constitution is an appeal that needs the Court's permission.

Therefore, the Federal High Court's judgments regarding the winding up of a firm are not definitive; they can be appealed to the Court of Appeal, and in cases where the decision includes the appointment of an official receiver, the court's permission is not needed for such an appeal.

5. The Supreme Court

This court was created in accordance with section 230 of the Federal Republic of Nigeria 1999 Constitution (as amended). It has the original and appellate competence to hear appeals from the Court of Appeal in both civil and criminal cases. It may be made as a right or with permission from the Court or the Court of Appeal. Since the court is Nigeria's highest court, matters resulting from insolvency issues may be referred to it for final resolution. Aside from the President's and State Governors' prerogative powers on the prerogative of mercy, no other individual or body may be appealed to a Supreme Court decision.

6. Business Rescue and Insolvency Practitioners Association of Nigeria and other Professional Bodies

A liquidator is typically appointed to manage a company's affairs during its winding up, particularly to realize its assets

and pay off its debt. These liquidators are often individuals with expertise in insolvency procedures. A person must be a member of the Business Rescue and Insolvency Practitioners Association of Nigeria or any other recognized professional organization in Nigeria in order to be recognized as an insolvency practitioner, which increases his chances of getting appointed as a liquidator. The CAMA's Section 705 outlines the requirements as follows:
Only those who have earned a degree in law, accounting, or a related field from an accredited university or polytechnic and have at least five years of post-qualification experience in insolvency-related problems are eligible to work as insolvency practitioners; He is able to act in this way because he has a certificate of membership from the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN) or because he is a member of any other professional organization that the Commission recognizes and is authorized to act in accordance with its rules.
In addition to the BRIPAN, the Commission has recognized a few other professional associations in its Insolvency Regulations, and members of these organizations may also be considered insolvency practitioners. Among these bodies are: the Association of National Accountants of Nigeria, the Institute of Chartered Accountants of Nigeria, the Nigerian Bar Association, and the Institute of Chartered Secretaries and Administrators of Nigeria.
Together with the BRIPAN, these organizations create, educate, oversee, and control the moral behaviour of insolvency professionals who serve as a company's liquidator.

7. India's Institutional frameworks

In India, closing a business is a complex procedure that calls for cooperation from judicial, administrative, and regulatory bodies. Everybody makes sure that the change over from a functioning entity to a dissolved one is carried out legally.

7.1. National Company Law Tribunal (NCLT)

As the principal adjudicating authority for corporate bankruptcy and winding-up issues in India, the NCLT is a quasi-judicial body created under Section 408 of the Companies Act, 2013. It has the first authority to consider requests for mandatory winding up, designate temporary liquidators, and issue final directives for a corporate debtor's dissolution. According to the IBC, the NCLT is in charge of accepting or disapproving applications for insolvency and, in the event that a plan is rejected, managing the process of moving from resolution to liquidation. Natural justice principles and the particular procedural conditions specified in the Companies (Winding Up) Rules, 2020 serve as the foundation for the tribunal's findings.

7.2. National Company Law Appellate Tribunal (NCLAT)

Under Section 410 of the Companies Act of 2013, the NCLAT was established to act as a specialist appellate body for parties that felt wronged by the NCLT's rulings. It has the power to examine, alter, or overturn NCLT rulings pertaining to liquidators' behaviour, winding up, and insolvency settlement. The appeal must be filed under the IBC within 30 days of the NCLT's ruling. According to the Companies Act, an appeal to the NCLAT must normally be submitted within 45 days following the NCLT judgment. The tribunal's goal is to resolve these issues within a three-month target window. In order to provide a layer of judicial monitoring for the overall corporate liquidation regulatory framework, the NCLAT now considers appeals against IBBI orders.

7.3. Insolvency and Bankruptcy Board of India (IBBI)

Established under the 2016 bankruptcy and Bankruptcy Code (IBC), the IBBI is the principal regulator of all IBC-initiated bankruptcy and liquidation procedures. By establishing qualifying requirements and enforcing a stringent Code of Conduct, it governs the Insolvency Professionals (IPs) who serve as liquidators. Additionally, the Board creates the particular procedural rules that specify how assets are realized and proceeds are allocated to stakeholders. The IBBI upholds the effectiveness and legitimacy of the liquidation system by keeping an eye on compliance and looking into professional misconduct.

Comparative analysis

As we earlier observed at the conceptual level both jurisdictions share common principles rooted in English company law that emphasizes separate corporate personality and limited liability; collective enforcement and distribution of assets of the company upon insolvency; protection against fraudulent preferences and wrongful trading and overarching judicial oversight that ensure fairness and just outcomes in the winding up of a company. It is imperative to state despite this conceptual convergence between the two jurisdiction there remain policy divergence regarding insolvency practice in both jurisdictions. In Nigeria there is absence of mandatory provision for resort to corporate rescue before liquidation. But in India their insolvency provision is tailored towards a rescue driven model. Liquidation comes as the last resort.
Institutionally, divergence exist between the two jurisdictions with regard to winding up. In Nigeria winding up of a company is still more of the business of the Federal High Court which is vested with original exclusive jurisdiction to handle all matters patterning to winding up. Appeals arising from judgment of the court could go to Court of Appeal and then final appeal to the Supreme Court. It is catholic to state that some of judges of the Federal High Court may not have insightful knowledge in handling matters arising from winding up. Besides the court is also saddled with the responsibility of adjudicating over matters other than insolvency and that may occasion delays in disposal of matters relating to winding up in the court. India, on the other had have a specialized tribunal which is the National Company Law Tribunal vested with the jurisdiction to administer matters arising from corporate dispute. The tribunal is manned by experts thereby guaranteeing the speedy disposal of insolvency matters. Appeals from the tribunal goes to the National Company Law Appellate Tribunal.
In Nigeria creditors may initiate winding up proceedings, but the ultimate disposal of the winding up proceedings rest with the court and the liquidator that may be appointed by the creditors. But in India, the IBC introduces the Committee of Creditors (CoC) which exercises control over resolution of insolvency matters.

India with specialized tribunal has strict timelines for the resolution of insolvency dispute. This brings about certainty and predictability in matters relating to insolvency. Such is not the case in Nigeria as there is no strict timelines for the resolution of insolvency disputes. This undermines creditor recovery effort and promote inefficiency.

Conclusion

The comparative examination of Nigeria and India reveal a shared conceptual foundation rooted in common law insolvency principles but a marked divergence in institutional evolution. Nigeria maintains a court driven liquidation-oriented regime, whereas India has embraced a specialized, creditor driven, resolution first model.

The study shows that insolvency reform is not merely a matter of statutory amendment but of institutional reform as well. If the goal of company law reform is to enhance economic efficiency, creditor confidence, and corporate rejuvenation, the India experience offers lessons that Nigeria can draw from in reforming her institutions in order to achieve the overall goal of the corporate reform introduced by CAMA 2020.

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