

Update - The Insolvency & Bankruptcy Code (Amendment) Act, 2026: Key Changes and Practical Insights

KEY CHANGES

The Amendment Act significantly strengthens the IBC ecosystem — improving creditor confidence, reducing litigation and enhancing value maximization.

- **Admission Process** - NCLT to admit if default occurred & application is complete; reasons for delay in admission/rejection to be recorded
- **Withdrawal Process** - Withdrawal not allowed before CoC constitution or after invitation for resolution plan
- **Resolution Plan** - Secured government dues not at par with secured creditors; dissenting FCs paid lower of liquidation/ resolution plan value; clean slate doctrine & licence continuity codified
- **Avoidance & Lookback Period** - Creditors may file all avoidance transactions; initiation date is now the reference point for lookback period
- **CIRP Changes** - RP to verify claims; guarantor assets transferable to CIRP; CD management & contractual employees to assist RP
- **Liquidation Process** - CoC supervises liquidation; moratorium applicability; security interest enforcement timelines set; FC contractual sale proceeds distribution arrangements now applies
- **Creditor-Initiated Insolvency Resolution Process** - Debtor-in-possession model with **вето rights and negative control with RP**; limited AA interference; framework for speedy resolution
- **Group Insolvency Framework** - Consolidation/pooling of group company assets; unified framework for group company insolvencies; rules to be notified
- **Cross-Border Insolvency** - Covers CD assets in foreign jurisdictions; based on UNCITRAL Model Law on Cross-Border Insolvency; rules to be notified by government
- **Miscellaneous Changes** - Interim moratorium is no longer applicable to personal guarantors of CD; bankruptcy filing where no repayment plan received

CHANGES IN ADMISSION PROCESS UNDER THE CODE

• Admission of Application – Mandatory

Earlier Position

- Hon'ble SC in the judgment of *Vidarbha Industries Power Ltd. v. Axis Bank Limited, Civil Appeal No. 4633 of 2022*, held that use of word "may" provides discretion to the adjudicating authority to not admit the application even if the application is complete.

Amendment

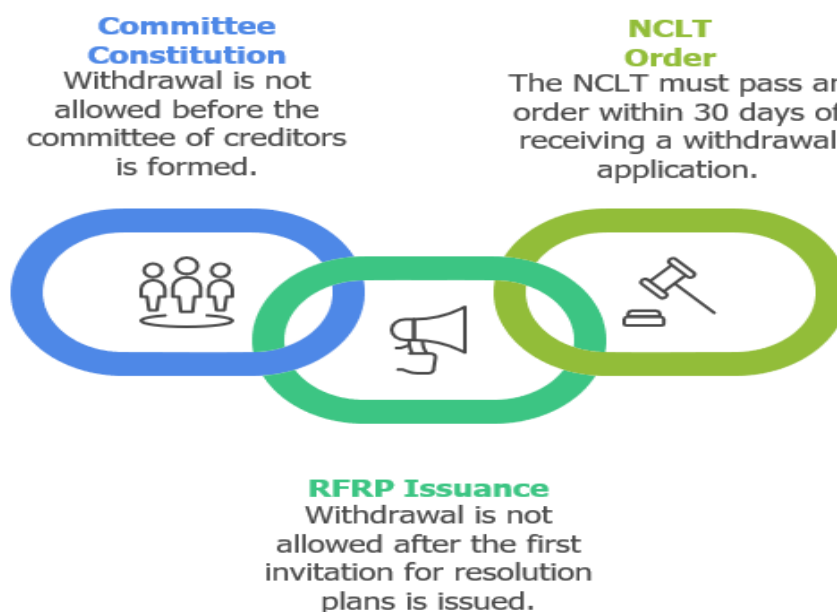
- In order to negate the position settled by Hon'ble SC in the Vidarbha judgment, the amendment now provides that NCLT has to **mandatorily admit the application** in the event the **default has occurred and application is complete**.

- **Other Changes in the Admission Process for Section 7, 9 and Section 10 Applications**

- Record of default from Information Utility (IU) is now “sufficient” to ascertain default – eases the criteria for admission in cases where the default is registered with Information Utility by the financial creditors under Section 7 Application.
- Explanation to Section 7 – Other than existence of “debt” and “default” and whether application is in the prescribed format, no other ground is to be considered for admission.
- NCLT has to either admit / reject the application filed within 14 days; record the reason in case of any delay for admitting / rejecting the Section 7, Section 9 and Section 10 applications.
- For Section 10 application, IBBI now has to recommend the name of the insolvency professional who would act as an interim resolution professional for applications to be admitted.

CHANGES IN WITHDRAWAL PROCESS UNDER THE CODE

Withdrawal Application Restrictions



CHANGES IN THE RESOLUTION PLAN UNDER THE CODE

- **Treatment of secured statutory dues not to be treated at par with the dues of secured financial creditors under the Resolution Plan**

Earlier Position

- The Hon'ble SC in the case of *State Tax Officer v. Rainbow Papers Ltd.*, 2022 SCC OnLine SC 1162, held that in case a statute provides that any tax, interest and/or penalty payable by a person to a statutory dues creditor results in creation of a charge/lien over the property of such person by operation of law such statutory dues creditor would be treated as a “secured creditor” under the Code.

- Such statutory dues would therefore be treated at par with secured financial creditor dues and the workmen dues as per the waterfall provided under Section 53 of the Code.

Amendment

- To negate this position an Explanation has been inserted to the Code which defines “security interest” – restricts to include such cases **where right, title or interest or a claim to a property is created by the act of the parties (in form of an agreement or arrangement) and not created on account of operation of law.**
- Therefore, secured statutory dues are not to be treated at par with the dues of the secured financial creditors and such dues would fall in the bucket of the “operational dues” or “government dues” under Section 53 of the Code.
- **Sale of Core Assets of the Corporate Debtor under CIRP**
 - Formally includes sale of one or more assets of the corporate debtor through one or more resolution processes — enabling greater asset value maximization.
- **Entitlement to Dissenting Financial Creditors under Section 30 of the Code**
 - Hon’ble SC in the case of *India Resurgence Private Limited v. M/s Amit Metaliks Ltd. & Anr., Civil Appeal No. 1700 of 2021*, held that the payout to dissenting financial creditors is to be guided by the commercial wisdom of CoC and a dissenting financial creditor cannot claim an amount based on their value of their security interest.
 - Hon’ble SC in the case of *DBS Bank v. Ruchi Soya Industries Ltd. & Anr., Civil Appeal No. 9133 of 2019*, held that the dissenting financial creditors should be paid the minimum value basis their value of security interest and such value shall not be less than the amount payable in the event of liquidation.
 - **Basis the earlier position – in a scenario where the resolution plan is less than liquidation value or where the dissenting financial creditors would hold exclusive security interest then the dissenting financial creditors were incentivised to dissent in order to get a higher value under resolution plan which situation has been now addressed through the amendment act.**
 - Pursuant to the amendment act, the payout to dissenting financial creditors shall not be less than the lower of: (a) liquidation value, or (b) amount payable under the resolution plan as if it were distributed as per waterfall.
- **Two-Step Approval Process under Section 31**
 - Resolution plans with CoC approval (≥66% voting share) follow two-step approval — **distribution challenges do not stall plan implementation (in our experience most of the challenges to the implementation is in the nature of challenging the distribution under the plan).**
 - first, the terms of implementation of the plan may be approved; and
 - approve the manner of distribution within **30 days** from the date of approval of implementation of the plan.
- **Rectification before Rejection**
 - NCLT may notify CoC to rectify defects before rejecting a plan. **Order to be passed within 30 days, reasons to be recorded in case of delay.**

- **Continuance of Licenses & Permits under Section 31(5)**

- Hon'ble SC in the case of *Gujarat Urja Vikas Nigam Limited v. Mr. Amit Gupta, Civil Appeal No. 9241 of 2019*, stated that the termination of government licenses, permits etc. on account of *ipso facto clauses* which allowed the authorities to terminate such licenses upon the commencement of insolvency proceedings was not permitted by virtue of the moratorium and the clear explanation has been added to ensure the continuity of such licenses subsists as long as there is no default in payment during moratorium to ensure that CD operates as a going concern.
- In order to meet the broader objectives of the Code and to essentially uphold the spirit of the "clean slate doctrine" the amendment act now provides that where a resolution plan has been "approved" under Section 31(1) of the Code, any license, permit, registration, quota etc., granted to the corporate debtor by the central or state or local authority shall not be suspended or terminated unless there has been a breach of obligation during the "remaining period of such grants or rights or concessions".

- **Formal recognition of Clean Slate Doctrine under Section 31(6)**

- All claims against corporate debtor and its assets prior to plan approval date shall stand extinguished and no proceedings to continue in relation to such claims.
- Therefore, the principle of "clean slate doctrine" highlighted by the Hon'ble SC under *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Limited, Civil Appeal No. 8129 of 2019*, has been statutorily recognized.

AMENDMENTS IN AVOIDANCE APPLICATION AND LOOKBACK PERIOD

- Preferential, undervalued, fraudulent and extortionate transactions shall now be collectively referred to as the "Avoidance Transaction" which remains distinct from the scope of "Fraudulent or Wrongful Trading" under the Code.
- "Initiation Date" clarified — the date of the filing application shall be considered — departure from the earlier position of considering the initiation date and/or commencement date as the date on which the application is **admitted** not the **filing date** of the application.

- **Lookback Period changes**

- Preferential Transaction and Undervalued Transaction: in case of related party – 2 years from "insolvency commencement date" to 2 years from "initiation date", and in cases of other than related party – 1 year from "insolvency commencement date" to 1 year from "initiation date".
- Extortionate Transaction: has now been changed to a period starting 2 years before initiation date and ending on insolvency commencement date.

- **Other Changes**

- Creditors (not just resolution professional) can now report and file an application with respect to Avoidance Transaction and Fraudulent and Wrongful Trading under Section 47 of the Code. Such reporting can also be filed before the adjudication authority by a member or partner of the corporate debtor as well.

AMENDMENTS IN CORPORATE INSOLVENCY RESOLUTION PROCESS

- **Moratorium**

- The moratorium under Section 14 will also be applicable against the surety where such surety seeks to initiate the proceedings against the corporate debtor pursuant to its right of

subrogation. If the surety has any claims against the corporate debtor, it should submit them during the process like other creditors.

- **Collation of claims by resolution professional**

- Hon'ble SC in the case of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors., Civil Appeal Nos. 8766-67 of 2019*, had clarified that the role of the RP is to verify claims and not to adjudicate upon them.
- Through this amendment act, the interim resolution professional's / resolution professional's duty to receive and collate claims under CIRP has been increased to now include verification of the claims as well and if required, also determine the value of the verified claims – **however, does not imply that the resolution professional would have the power to adjudicate on claims.**

- **Management of the CD to include personnel engaged in contract of service**

- As per the amendment act, the management of the corporate debtor also includes **persons who were engaged as personnels and/or engaged in a contract of service of the corporate debtor and/or promoter – such persons will also have to provide assistance to the resolution professional in relation to the CIRP proceedings.**

- **Reinstating CIRP**

- NCLT may, in its discretion, reinstate CIRP in cases where the liquidation order has been passed on account of person whose interest are prejudicially affected by the contravention of plan – **pursuant to the amendment, NCLT now has the discretion to reinstate CIRP in cases where the provisions of IBC have been contravened.**

- **Transfer of assets of the guarantor of the corporate debtor during CIRP**

- The creditor who has taken possession of the asset by enforcing the security interest of the personal or corporate guarantor of the corporate debtor **would also have the option to transfer such assets during CIRP of the corporate debtor with the approval of the CoC.**
- In cases where the corporate guarantor is undergoing CIRP or the liquidation process then transfer of such asset of the corporate guarantor would also require approval of CoC of such guarantor (not less than 66% voting share). In cases where the personal guarantor is undergoing insolvency resolution process or bankruptcy process, the creditor, pursuant to forfeiture or surrender of his right in the asset, may transfer such asset after obtaining the approval three-fourth majority creditors.
- **Likely to be used in a scenario where the value maximization of the assets of the corporate debtor are dependent upon monetization of assets with a guarantor or holding company. For e.g., if overall land parcels which are contiguous and are likely to fetch higher market value if sold together are housed separately in parts with the corporate debtor and the guarantor/holding company then these can be clubbed for value maximization. Creditors otherwise unlikely to approve the transfer of assets without the transfer of corresponding liability attached to such asset.**

- **Extension of CIRP before initiation of liquidation process**

- NCLT before the passing of the liquidation order **may consider an application made by the CoC members (with a minimum of 66% voting share) to restore the CIRP only once (if resolution plan is not received or not approved) and order it to be completed within 120 days.**

AMENDMENTS IN LIQUIDATION PROCESS

- **Supervision of liquidation process by Committee of Creditors (CoC)**
 - As per the amendment, the **CoC is now empowered to supervise the liquidation proceedings** of the corporate debtor, and all the existing liquidation proceedings and new liquidation proceedings are to be supervised by CoC.
- **Applicability of moratorium**
 - Provision of **Section 14 of the Code dealing with (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor, and (ii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFAESI Act, 2002, now applies *mutatis mutandis* upon passing of the liquidation order under Section 33, except for the proceedings to be notified by the government.**
- **No verification of claims by liquidator**
 - The liquidator is no more obligated to verify the claim and is only dutybound to maintain an updated list of claims thereby reducing the duplicity of work.
- **Management of the CD to include personnel engaged in contract of service**
 - As per the amendment act, the management of the corporate debtor also includes **persons who were engaged as personnels and/or engaged in a contract of service of the corporate debtor and/or promoter – such persons will also have to provide assistance to the resolution professional in relation to the liquidation proceedings.**
- **Timeline for passing of liquidation order by NCLT**
 - NCLT to pass an order under Section 33 of the Code **within a period of 30 (thirty) days from the receipt of application and record reasons for delay in writing.**
- **Appointment of liquidator by IBBI**
 - Pursuant to the passing of liquidation order, the NCLT has to refer to IBBI for making recommendation of an insolvency professional to be appointed as liquidator **and resolution professional appointed under CIRP cannot continue, or be appointed as liquidator.**
- **Realisation of Security Interest by the Creditors**
 - In the event the creditor opts for enforcing its security interest, it shall inform the liquidator of such identified asset and realise such security interest within 14 (fourteen) days from the liquidation commencement date, else such security interest shall be **deemed to be relinquished.**
 - Further, if there is more than one security interest over the same asset then the creditor cannot be allowed to enforce the security **and realise the proceeds of the sale without obtaining consent of the super majority of secured creditors (≥ 66% percent) – under Section 13(9) of SARFAESI Act, 2002, the threshold for consent of creditors sharing security interest is 60% in value of the amount outstanding as on a record date – Has this threshold now changed?**
 - Workmen's dues and Liquidation costs now deductible from security enforcement proceeds and to be borne by the secured creditor who has realized the security interest under Section 52 of the Code.

- **Clarification with respect to classification of secured and unsecured creditors**

- In the event for the security interest which has been relinquished by the creditors, the “value of the security interest as determined in the manner as may be specified” is less than the total debt owed to such creditor by the corporate debtor then such creditor shall be treated as an “unsecured creditor” to the extent of such remainder of debt.
- Contractual arrangement or *inter-se* arrangement between the creditors with respect to the realisation of proceeds as per the ranking of charges would not be affected by the waterfall mechanism under Section 53 – this is a welcome change since NCLAT and NCLT in its rulings (i.e., *Technology Development Board v. Anil Goel* (NCLAT) and *State Bank of India v. Varam Bioenergy Private Limited* (NCLT)) had previously stated that the *inter-se* priorities between the secured creditors was to be disregarded by the liquidator and hence, liquidation waterfall priorities and structuring of private and commercial credit risk was under threat and would otherwise lead to disregarding of inter-creditor arrangements agreed to between the secured creditors and thereby negatively impact the credit market and discourage financial creditors from granting debt fearing the potential liquidation scenarios.

- **Streamlining of Dissolution Process under the Code**

- As per the amendment act, the liquidator has to complete the liquidation process and shall make an application with the adjudicating authority for the dissolution of the corporate debtor within 180 days (with an extension of up to 90 days, if allowed).

- **Termination of Voluntary Liquidation**

- Voluntary liquidation may be terminated before the liquidator files dissolution application – requires special resolution and approval of creditors holding / representing two-third of the total debt due by the company.

INTRODUCTION TO CREDITOR-INITIATED INSOLVENCY RESOLUTION PROCESS (CREDITOR INITIATED PROCESS)



- **Debtor-in-possession model – management to stay with the CD and its promoters compared to creditor-in-possession of CIRP wherein the management vests in a resolution professional** - While the positive control is not available with the resolution professional, CIIRP provides the **veto right or negative control** to the resolution professional thereby ensuring there is a certain degree of control over the affairs / conduct of the corporate debtor – whereas under pre-packaged insolvency resolution process (PPIRP) there is no negative control available with the resolution professional to ensure certain degree of control over the affairs / conduct of the corporate debtor.
- **New Chapter IV-A inserted – an alternative to CIRP for eligible financial creditors (to be notified by Central Government)**
- **Creditor Initiated Process (CIP) applicable for corporate debtors with: (i) assets/income below prescribed levels, or (ii) belonging to a specific class – rules to be notified by the central government**
- **Pre-requisite for initiation – obtaining approval for initiation of the financial creditor holding 51% or more value of debt or, intimating the CD of initiation, representation by CD and approval of financial creditors for initiation pursuant to receipt of representation made by the CD – there is a requirement to obtain twice the approval of the financial creditors i.e., (i) at the time of initiation, and (ii) pursuant to the receipt of representation received from the corporate debtor.**
- **Key Features of CIP**
 - Limited NCLT interference; greater creditor autonomy; NCLT interference only required the time of approval of plan.
 - Resolution professional appointed by notified financial creditor to supervise and invite resolution plans.
 - Timeline: 150 days from creditor-initiated insolvency commencement date; extendable by 45 days pursuant to CoC application.
 - Moratorium: Resolution professional may apply to adjudicating authority for moratorium order, subject to CoC approval – **moratorium to apply from the date when the application is filed and the adjudicating authority may consider factors such as the necessity to protect and preserve the assets of the corporate debtor, the conduct of the process to be run in a fair and orderly manner, or the non-cooperation by the management of the corporate debtor before passing of the moratorium order.**
 - Withdrawal: allowed on application by RP with 90% CoC approval.
 - Resolution Professional to make public announcement, call for claims, prepare IM, compliance report under Section 29A and 30 of the Code – similar to CIRP.
 - If no plan received or corporate debtor fails to cooperate — adjudicating authority passes order for CIRP; CoC may at any time, pass a resolution to convert CIP to CIRP with 66% of more voting share.
 - CIP cannot be initiated if corporate debtor is already under CIRP, liquidation, PPIRP, CIIRP, or CIRP within the preceding 3 years.

INTRODUCTION TO GROUP INSOLVENCY FRAMEWORK

- **Group Insolvency – Insertion of Chapter VA to the Code**

- Refers to a situation where the group members or interconnected companies simultaneously undergo insolvency proceedings in relation to a common debt and there is consolidation of assets of the Corporate Debtor at enterprise level.

- **Recognition of “Group Insolvency”**

- Two Factor Test for Group Insolvency – Doctrine of “Substantial Consolidation” and “Yardstick of 14 Factors” i.e., **common control, common directors, common assets, common liabilities, interdependence, interlacing of finance, pooling of resource, co-existence of survival, intricate link of subsidiaries, inter-twined accounts, inter-looping of debts, singleness of economics of units, common financial creditors, and common group of corporate debtors** as recognized by NCLT, Mumbai Bench for the first time in the case of *SBI v. Videocon Industries Limited, 2018 SCC OnLine NCLT 13182*.
- UNCITRAL Model Law on Enterprise Group Insolvency provides guiding principles for dealing with group insolvencies and implementing a framework – India not a signatory, however, may rely on its principles to frame the provisions for group insolvency under the Code.
- The provisions would deal with the insolvencies of two or more corporate debtors under Part II of the Code.
- Criteria for defining a “group” covers holding company, subsidiary, associate companies
- Group insolvency framework to have provisions for common bench, group CoC, common resolution professional, coordinated resolution proceedings and drafting of an agreement to manage different aspects of insolvency proceedings between the group companies.
- Rules yet to be notified – **delegated the power to formulate rules to the Central Government which shall be laid before both the House of Parliament – the approach for delegation is to ensure that the Code is not amended time and again and the rules as formulated and notified by IBBI and central government be fine-tuned to meet the requirements of the framework.**

- **Cross Border Insolvency Frame – Insertion of Section 240C to the Code**

- Provides for a framework to deal with the situations where the assets of the corporate debtor are situated in a foreign jurisdiction and such assets cannot form part of the domestic insolvency framework and/or creditors of foreign jurisdiction who have granted borrowing to the corporate debtor cannot participate in the domestic insolvency proceedings of such creditors.
- Requires territorial reciprocity to enforce orders passed in foreign jurisdiction and/or seek relief basis the order passed in foreign jurisdiction which may extend to domestic courts with respect to insolvency proceedings initiated in different jurisdiction – Principle of Reciprocity and Comity.
- UNCITRAL Model Law on Cross-Border Insolvency provides guiding principles for dealing with cross- border insolvency and implementing a framework – India not a signatory, however, may rely on its principles to frame the provisions for cross-border insolvency under the Code.
- Rules yet to be notified; delegated the power to formulate rules to the Central Government which shall be laid before both the House of Parliament - **delegated the power to formulate rules to the Central Government which shall be laid before both the House of Parliament – the approach for delegation is to ensure that the Code is not amended time and again and the rules as formulated and notified by IBBI and central government be fine-tuned to meet the requirements of the framework.**

MISCELLANEOUS CHANGES TO THE CODE

- **Personal Guarantors - Interim Moratorium Exclusion**
 - Benefit of **interim moratorium not available** to personal guarantor of corporate debtor undergoing CIRP or bankruptcy proceedings — new sub-sections (4) to Section 96 and Section 124.
- **Personal Guarantors - Termination of Insolvency Resolution Process**
 - If no repayment plan received from personal guarantor — adjudicating authority shall pass termination order on application by creditor or debtor.
- **Adjudicating authority - Power to Impose Penalties (Section 235A)**
 - Adjudicating authority may impose penalties for contravention committed by any person — where loss is quantifiable, may extend to three times of such loss quantified/unlawful gain;
 - Where not quantifiable, a maximum of INR 5 crore (where loss/gain cannot be quantified).
- **“Provisions” substituted with the word “purposes” – rule making power (Section 239(1), Section 240(1) and Section 196(1) of the Code)**
 - The intent of the legislature is to now delegate the rule making authority to central government and IBBI to meet the broader requirements of the Code and not restrict the amendments to be brought in only by way of the Parliament – **Rule making power now extends to effectuate the provisions of the Code and not specific to where the central government / IBBI was earlier empowered to make the rules.**

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