

The Insolvency and Bankruptcy Code (Amendment) Act, 2026

The Amendment Bill has now been approved by the Parliament post the report of the Select Committee as the Insolvency and Bankruptcy Code (Amendment) Act, 2026 (**Act**). Once in effect, the Act makes significant amendments to the Insolvency and Bankruptcy Code, 2016 (**IBC**) introducing several new concepts and tweaking existing concepts in light of difficulties faced to make the IBC more efficient. This note sets out a summary of the key changes.

A. Corporate Insolvency

1. Initiation of Insolvency Resolution Process

To deal with difficulties arising out of the *Vidarbha Judgment*, the Act provides that within 14 days of the receipt of an application for initiation of corporate insolvency process (**CIRP**) from a financial creditor, the National Company Law Tribunal (**NCLT**) shall (as opposed to the current 'may') admit or reject the application. If the debt and default are established and there are no disciplinary proceedings in relation to the proposed interim resolution professional (**IRP**), the NCLT cannot take into account any other factors. The Act also provides that production of record of default from the information utilities will be considered sufficient for the purpose of existence of default.

If the debt and default cannot be ascertained or there are disciplinary issues relating to the IRP, the NCLT will give 7 days' time to the applicant to rectify any defects.

A company filing an application for initiating CIRP will not be required to nominate an IRP anymore and the NCLT will seek recommendation of the IBBI for an IRP under such applications.



The NCLT will be required to record reasons if any application (whether by financial or operational creditor or the company) has not been decided within 14 days.

2. Withdrawal of Insolvency processes

Given the inconsistent judicial precedents on the manner and timing of withdrawal of CIRP, the Act provides that withdrawal of insolvency processes will only be permitted with 90% approval of the Committee of Creditors (**CoC**). No such withdrawal shall be permitted before constitution of the CoC and after the first invitation of resolution plans for the corporate debtor (**CD**), narrowing the window for withdrawals substantially.

The Act also provides for withdrawal of voluntary liquidation by a special resolution and a resolution of creditors of 2/3rd in value. There is no provision for withdrawal of voluntary liquidation currently.

3. Re-initiation of CIRP

The Act provides that if no resolution plan has been received within the maximum period of CIRP or a resolution plan is rejected, before passing a liquidation order, the NCLT may, if the CoC applies with 66% approval, restore the CIRP in case of no resolution plan from the initial stages, and in the case of rejection, from the stage of invitation of resolution plans. This will be an one-time restoration with a maximum period of 120 days to complete the restored process. The NCLT is required to pass a liquidation order if no resolution plan has been submitted for its approval within that extended period.

The NCLT can also order reinstatement of the CIRP if an approved resolution plan has been contravened although this does not appear to be limited by the above restrictions in relation to reinstatements.

4. Resolution Plans

The Act proposes several measures to streamline the approval and implementation process of resolution plans:

- i. The Act provides for multiple resolution plans for one corporate debtor including for sale of assets (as opposed to a 'going concern' resolution plan for the entire company) which will provide stakeholders and creditors more options to resolve a corporate debtor;
- ii. The Act provides for NCLT to approve a resolution plan and the manner of distribution in the resolution plan separately, as per the conditions specified by the IBBJ;
- iii. The CoC is to be given an opportunity to rectify any defects in the resolution plan found by the NCLT;
- iv. The NCLT will be required to pass an order on a resolution plan within 30 days of receipt failing which it will be required to record its reasons;
- v. The resolution applicant will be required to obtain any anti-trust approvals before the resolution plan

is submitted to the NCLT for approval as opposed to the current requirement to obtain it prior to the CoC approval;

- vi. The licenses, approvals and government concessions of the CD associated with the approved resolution plan will not be suspended or terminated during their current term if the CD or the resolution applicant is complying with the terms and conditions of such documents;
- vii. The Act provides for an implementation committee to be formed under a resolution plan for supervision and implementation of the plan which will comprise a resolution/insolvency professional, representatives of creditors and of the resolution applicant as members;
- viii. The Act codifies and clarifies (with potential retrospective operation) the clean-slate principle under the resolution plan without affecting claims against guarantors or promoters (while extinguishing any right of subrogation for guarantors and indemnity for co-obligors) and prohibits initiation or continuation of any proceedings for past claims against the CD; and
- ix. Contraventions of moratorium and an approved resolution plan is being de-criminalised and will only have civil consequences (with contraventions of resolution plans attracting high penalties).

5. Payments to Dissenting Creditors

Currently, the IBC provides that a resolution plan shall provide for a dissenting financial creditor to receive a minimum of liquidation value which has since been held to be subject to the CoC's decision in judgments such as *Amit Metallics*. The Act provides that a resolution plan shall provide for a dissenting financial creditor to receive not less than the lower of liquidation value of such a creditor or its entitlement under the resolution plan applying the liquidation waterfall. This will apply to cases where the CoC has not approved a resolution plan or liquidation of the CD or, where liquidation has not commenced.

6. Liquidation process

The Act provides that the liquidator shall complete the liquidation process within 180 days which may

be extended by another 90 days by NCLT for sufficient reasons (current timeline is one year). Voluntary liquidations are to be completed within one year. If any proceedings relating to avoidance transactions or distribution of dividends are pending at the time of dissolution application, the CoC is required to decide how such proceedings will be pursued after dissolution and how the proceeds will be dealt with.

To further strengthen the role of the CoC in insolvency of a CD, the CoC will now supervise the conduct of a liquidation process as is done during CIRP with, if the IBBI so specifies, other creditors participating as non-voting members. This changes the existing position where during liquidation process the stakeholder consultation committee (**SCC**) was constituted with all creditors, and the liquidator was only required to consult the SCC on key decisions without their advice binding the liquidator.

The moratorium during liquidation is being expanded to prohibit enforcement of security over the CD's assets (subject to the secured creditor's entitlement to realise its security under section 52) in addition to prohibition over initiating or continuing legal proceedings against the CD. However, the liquidator will be permitted to initiate or continue legal proceedings on behalf of the CD with approval of the NCLT.

The CoC will have the power to choose the liquidator by a resolution of 66% and also replace the liquidator at any time by a 66% approval.

The CoC will also have the power to resolve to directly dissolve the CD (without going through liquidation) if the specified conditions are met.

7. Liquidation Waterfall

To deal with issues raised with security not covering the entire debt of a creditor but the creditor demanding status of secured creditor for the entire debt (due to the phrase 'due owed to a secured creditor' in section 53(1)(b)(ii)), it has been proposed that a creditor will be a secured creditor only to the extent of the value of their security relinquished to the liquidation estate.

An illustration is proposed to be added in section 53(2) to clarify that inter-se priority arrangements between the creditors at the same level of priority in section 53 is valid and will not be disregarded by the liquidator.



An explanation to the definition of 'security interest' is proposed to exclude statutory charges such that Government dues do not have the status of 'secured creditor' in the IBC. An explanation is also proposed in section 53(1)(e)(i) to clarify that Central or State Government dues will not be entitled to the priority of 'secured creditor'. These have been proposed to deal with the issues arising out of *Rainbow Papers* Judgment.

8. Enforcement of security over assets

The Act provides that during liquidation, any creditor intending to realise their security outside liquidation shall inform the liquidator of such intended action within 14 days, failing which the security shall be deemed to have been relinquished to the liquidation estate. Enforcement of security over an asset charged to more than one lender will require approval of 66% by value of all such lenders. Such lenders will be required to deposit from the proceeds of sale their *pro rata* share of CIRP costs, liquidation costs and the workmen's dues with the liquidator.

The Act provides that if any creditor has taken possession of an assets of a personal guarantor or corporate guarantor of the CD, such asset may be sold, subject to approval of the CoC, as part of the corporate insolvency process of the CD. However, if the corporate guarantor is undergoing CIRP or liquidation (if the asset was relinquished to the liquidation estate), then such sale will also require approval of the CoC of the corporate guarantor and the proceeds of such a sale

shall go to the CIRP or liquidation of the corporate guarantor. Similarly, if the personal guarantor is undergoing insolvency process or bankruptcy and the asset has been surrendered to the bankruptcy trustee, the assets can be transferred upon approval of 3/4th of the creditors with the proceeds going to the insolvency or bankruptcy process.

9. Avoidance Transactions and Fraudulent / Wrongful Trading

The look-back period for preference, undervalued and extortionate credit transactions is being extended to two years or one year, as the case may be, from the filing date as opposed to the admission date.

The creditors are being given the ability to challenge preferential, undervalued, extortionate transactions and cases of fraudulent/ wrongful trading if the RP / liquidator fails to do so. Currently, this ability is limited to undervalued transactions.

Liquidator will not need to investigate affairs of the CD afresh for the avoidance proceeding or fraudulent or wrongful trading and can continue or initiate proceedings on the basis of the investigations conducted by the RP during CIRP. It is also being clarified that completion of the CIRP or the liquidation process or dissolution does not affect the proceedings relating to avoidance or fraudulent or wrongful trading and such proceedings can continue.

10. Strict timelines for NCLT and NCLAT

In addition to the timelines already covered above, the NCLT is required to pass orders in the following timelines, failing which it will have to record its reasons for such delay:

- i. Withdrawal of CIRP: within 30 days of application;
- ii. Liquidation orders: within 30 days of application;
- iii. Dissolution orders: within 30 days of application;
- iv. Challenge to CLRP initiation: within 30 days of application;
- v. Withdrawal of CLRP – 14 days of application;

To manage NCLT's workload and disincentivise bad actors delaying insolvency resolution, a new section has been proposed under which NCLT may impose a penalty of INR 1 Lakh to INR 2 Crores on any person initiating vexatious or frivolous proceedings.

Further, the Act provides that the National Company Law Appellate Tribunal shall dispose of the appeals filed before it within 3 months of its receipt.

11. Conduct of the Insolvency Processes

Under the Act, the office-holders have been given additional powers to run the insolvency processes more efficiently and effectively. These are:

- i. In addition to existing personnel and directors, now past personnel and directors as well as service providers of the CD will also be required to extend all co-operation and assistance to the IRP/RP. Similar provisions have been made in relation to assistance to the liquidators in liquidation including voluntary liquidation cases and the RPs in the pre-pack process;
- ii. Liquidators will not have to invite claims afresh and can update the claims verified by the RP during CIRP. This will also take away the provisions relating to appeals against decisions of the liquidator on claims received; and
- iii. Liquidators have also been empowered to file proceedings for wrongful / fraudulent trading in addition to resolution professionals.

12. Creditor-initiated Insolvency Resolution Process

The Act introduces a new resolution process being creditor-initiated insolvency resolution process (**CLRP**). The key features of CLRP are as follows:

- i. CLRP will be available for CDs belonging to notified levels of assets or income or having notified class of creditors;
- ii. A financial creditor of a CD belonging to a notified class of creditors after taking approval of 51% of such class of creditors inform the CD of its intention to appoint a RP if a default has occurred. The CD can make a representation in response within 30



- days. The financial creditor can appoint the RP after considering the CD's response and obtaining the 51% approval of the notified class of creditors within 30 days of the CD's response;
- iii. The RP will then make a public announcement of initiation of CLRP and notify the NCLT and the IBBI. No application for CIRP may be filed or admitted against such CD after the date of public announcement;
 - iv. The CD can challenge the commencement of CLRP and the NCLT may declare the initiation of CLRP void if no default had occurred, or convert the CLRP into a CIRP if a default had occurred but the initiation was otherwise non-compliant;
 - v. CLRP is required to be completed within a period of 150 days extendable by 45 days by the NCLT consequent to an approval by the CoC by 66% value;
 - vi. The RP is required to call for claims, prepare an information memorandum, prepare reports on the process and the resolution plans, invite resolution plans as well as file application for avoidance transactions and fraudulent/ wrongful trading;
 - vii. The management of affairs of the CD continues with the Board of the CD. However, the RP attends all board and committee meetings and has the right to reject any resolutions passed in such meetings. Fraudulent management of the affairs of the CD during CLRP may make the officers of the CD liable for a penalty of up to INR 1 Crore;
 - viii. A moratorium similar to that in CIRP can be ordered by the NCLT if applied for the RP which application and any rejection will need to be publicly announced by the RP;
 - ix. A resolution plan needs to be approved by 66% by value of the CoC and then the NCLT;
 - x. If no resolution plan has been received within the 150 days period or a plan is rejected or the directors and personnel of the CD do not co-operate with the RP, the NCLT shall pass an order to convert the CLRP into a CIRP and other consequent orders. CoC can also decide at any time to convert the CLRP into a CIRP and seek an order from the NCLT for that conversion;
 - xi. Similar provisions as above for withdrawal of CIRP apply to CLRP; and
 - xii. The provisions in CIRP relating to CoC constitution, contents and approval of resolution plans, eligibility of resolution applicants, enforcement over guarantor assets, extinguishment of past liabilities and prior offences, and avoidance transactions apply to the CLRP as well.

13. Group Insolvency

The Act provides for a regime for group insolvency resolution similar to those observed most notably in the *Videocon* and *Srei* cases. These will apply to two or more CDs in a group in respect of which insolvency processes have been commenced (but not solvent entities). The details of how this regime will operate has

been left to be provided in the rules to be legislated by the Central Government. Those rules may provide for a common bench for all such CDs, coordination between such proceedings, common insolvency professional and a common CoC.

14. Other changes

The fast-track corporate insolvency resolution process is proposed to be omitted.

B. Personal Insolvency

The Act also makes some important changes in relation to personal insolvency regime. The key proposed changes are as follows:

1. Interim Moratorium

The Act does away with interim-moratorium (available upon filing of an application for initiating personal insolvency resolution process or bankruptcy) for personal guarantors to CDs. Currently, the personal insolvency provisions of the IBC are in force in respect of only such personal guarantors.

2. Eligibility for Bankruptcy Applications

The Act clarifies that if no repayment plan has been received in respect of a debtor within the time period prescribed, the debtor and the creditors shall be eligible to file for bankruptcy of the debtor.

3. Transactions Defrauding Creditors

Section 49 makes these transactions avoidable in corporate insolvency. A new section has been proposed to the same effect in personal bankruptcy.

4. Waterfall

Changes corresponding to the those proposed in relation to priority of Government dues in corporate insolvency have been proposed in relation to personal bankruptcy as well.

5. Vexatious or frivolous proceedings

A penalty of INR 1 Lakhs to INR 2 Crores has been proposed for initiating vexatious or frivolous proceedings under personal insolvency provisions as well.

C. Common Changes

1. Powers of the IBBI

It is proposed that powers of the IBBI will now include power to regulate the conduct of all service providers in relation to insolvency or bankruptcy processes and will have inspection and investigation powers in that regard. IBBI will also have the authority to specify the conduct of the CoC and its members including the timelines within which the CoC will take decisions, while acting in relation to the insolvency processes.

Constitution of the disciplinary committee for the purposes of such investigation and complaints is proposed. The committee will have the power to impose penalties (proposed to be up to INR 2 Crores) or suspend or cancel the registration of the service provider after giving them an opportunity of being heard. It is proposed that appeal against the decisions of the disciplinary committee will lie before the National Company Law Appellate Tribunal.

2. Information Utilities

It is proposed that operational creditors will be required to file the financial information with information utilities before filing an application for initiating a CIRP. Further, if the CD or the debtor does not authenticate the financial information submitted by any creditor within the specified period, such information shall be deemed to be authenticated.

3. Electronic Portal

The Act provides for an integrated electronic portal to be set up by the Central Government in relation to procedures to be carried out in insolvency and bankruptcy processes under the IBC.

4. Cross-Border Insolvency

The Act provides for the Central Government to prescribe rules for administering and conducting cross-border insolvency proceedings including for recognition of insolvency proceedings of companies registered outside India. The proposal includes designation of special benches to deal with cross-border insolvency cases.

Conclusion

The Act introduces far-reaching changes in the IBC and deal with difficulties that have arisen as well including new tools for resolving insolvent persons in India. The introduction of CLRP, group insolvency and cross-border insolvency was keenly awaited. Some of the recent judicial

precedents had cast some doubts as to efficacy of the IBC. However, the Government has acted decisively and precisely to deal with these issues as well as introduce modern tools for insolvency resolution.

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