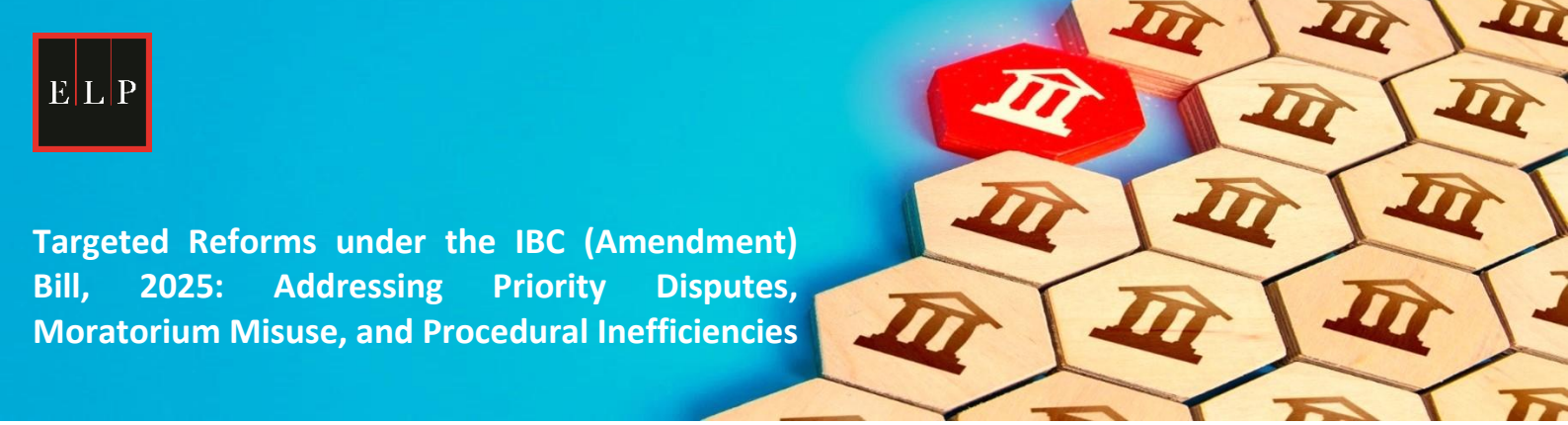

# Targeted Reforms under the IBC (Amendment) Bill, 2025: Addressing Priority Disputes, Moratorium Misuse, and Procedural Inefficiencies

Since its enactment in 2016, the Insolvency and Bankruptcy Code (IBC) has undergone a series of significant amendments aimed at refining the framework for timely and effective resolution of stressed assets. The Code, heralded as a game-changer in the insolvency landscape, initially provided a comprehensive mechanism to balance the interests of debtors and creditors. However, its practical implementation soon revealed certain gaps, leading to the need for legislative fine-tuning. Among the early landmark changes was the introduction of **Section 29A** in 2018, which disqualified defaulters and other specified categories from regaining control of the corporate debtor through the resolution process, a move designed to uphold the integrity of the system. Provisions were also introduced to allow withdrawal of the application both before and after admission.

Few of the early amendments dealt with the following:

- **BC Amendment Act, 2018 (January)** clarified voting thresholds of the Committee of Creditors (CoC), relaxed eligibility norms for MSMEs under Section 29A, and allowed homebuyers to be treated as financial creditors.
- **IBC Amendment Act, 2018 (July)** reduced the CoC voting threshold for critical decisions from 75% to 66%, introduced withdrawal of admitted CIRP applications under Section 12A, and made procedural refinements in insolvency timelines.
- **2019 Amendment** – This strengthened creditor rights and allowed the resolution plan to be binding on all stakeholders, including government authorities, thereby reducing post-approval litigation.
- **2020 Amendment** – Introduced **pre-packaged insolvency for MSMEs**, suspended initiation of fresh insolvency proceedings for defaults arising during the COVID-19 period (Section 10A), and provided clarity on distribution of proceeds in liquidation, especially in relation to secured creditors.
- **2021 Amendment** – Formalised **Pre-Packaged Insolvency Resolution Process (PPIRP)** for MSMEs under Chapter III-A of the Code, offering a faster, debtor-in-possession model for eligible small businesses.
- **2022 & 2023 Changes (Regulatory and Judicial)** – While no major statutory amendments were enacted, key regulatory refinements and Supreme Court judgments (such as *Rainbow Papers, Vidarbha Industries, and Ghanshyam Mishra*) governed the practical landscape.

Over the years, judicial pronouncements though well-intentioned, created ambiguities or unintended consequences, such as the Rainbow Papers ruling on the treatment of government dues. The **Insolvency and Bankruptcy Code (Amendment) Bill, 2025** represents a comprehensive effort to address these pain points. It introduces structural reforms like the **Creditor-Initiated Insolvency Resolution Process (CIIRP)**, provisions for **group insolvency**, clearer rules on government dues in the distribution waterfall, measures to curb misuse of interim moratoriums, and streamlined procedural mechanisms for withdrawal, claim verification, and liquidation oversight. Collectively, these proposed changes aim to restore the clarity, speed, and commercial certainty that are central to the IBC's purpose while also aligning with the evolving needs of creditors, insolvency professionals, and the broader financial ecosystem.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 propose to introduce several significant changes aimed at strengthening the insolvency framework, enhancing creditor rights, and closing gaps exposed by judicial interpretations and practical challenges.

- One of the most notable amendments is the express legislative overruling of the Supreme Court's decision in the Rainbow Papers case, which had allowed certain statutory dues to be treated on par with **secured debts** in the distribution waterfall under Section 53. The Rainbow Papers judgment (Supreme Court, 2022) had significantly

impacted insolvency resolution by holding that statutory dues, such as those owed to tax authorities under laws like the Gujarat VAT Act, could be treated as secured debts if the relevant statute created a "charge" over the property of the debtor. This interpretation effectively allowed government authorities to claim priority similar to secured creditors in the Section 53 waterfall, thereby diluting recoveries for consensual secured creditors (banks, financial institutions, etc.). The 2025 Amendment Bill directly addresses this by inserting the following Explanation into the IBC's definition of *security interest: "For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties, and shall not include a security interest created merely by operation of any law for the time being in force.*

- **The Bill also introduces entirely new mechanisms and clarifications aimed at broadening IBC's scope and effectiveness.** The most notable structural reform is the introduction of a new Chapter IV-A – Creditor-Initiated Insolvency Resolution Process (CIIRP) for specified classes of corporate debtors to allow creditors to initiate a resolution process under a defined, time-bound framework separate from the standard CIRP and MSME PPIRP.
- **The Bill introduces significant procedural, creditor-rights, and structural reforms across both corporate and individual insolvency.** First, it curtails the withdrawal of admitted applications under Sections 7, 9, and 10 by prohibiting withdrawals before CoC constitution or after the first invitation for resolution plans and imposes a 30-day decision timeline for the Adjudicating Authority with reasons for delay.
- It clarifies the IRP/RP/Liquidator's role in **verifying and valuing** claims and enables the CoC to supervise liquidation, propose or replace the liquidator, and even restore CIRP in exceptional cases post-Section 33 initiation.
- A new **Section 28A** allows transfer of guarantor assets (corporate or personal) into the CIRP of the principal debtor under defined safeguards.
- The **clean-slate principle** is codified, ensuring extinguishment of prior claims post-plan approval.
- Liquidation-related reforms include extending moratorium protections, tightening timelines for secured creditor election under Section 52, altering priority for Government dues to override the Rainbow Papers interpretation, and revising look-back periods for avoidance and extortionate credit transactions to run from initiation date rather than admission date.
- Section 47 is expanded to empower creditors to directly seek avoidance orders when RP/Liquidator does not act, and Section 49 is amended to block indirect related-party transfers from escaping scrutiny.

## Beyond these headline amendments, the Bill proposes several substantive changes:

- **Withdrawal of Admitted Applications**
  - Prohibition on withdrawal of applications admitted under Sections 7, 9, or 10:
    - Not allowed **before** CoC constitution under Section 21.
    - Not allowed **after** first invitation to submit a resolution plan by RP.
    - No exceptions under any circumstances.
  - 30-day limit for Adjudicating Authority to decide withdrawal applications, with reasons for delay to be recorded.

- **Verification and Valuation of Claims**
  - Explanation in Section 18 (b)
    - IRP/RP/Liquidator IRP/RP/Liquidator must verify claims while collating.
    - Where a verified claim is imprecise, they must determine its value.
    - Regulations to specify circumstances and manner of performing this function.

- **COC's role in Liquidation**
  - Section 21 amended to enable CoC constituted during CIRP **to supervise liquidation.**
  - Allow use of CIRP learnings for commercial decisions in liquidation and empower IBBI to specify additional classes of creditors who may attend CoC meetings in liquidation (no voting rights).

- **Transfer of Guarantor's Assets- New Section 28 A**
  - Allows transfer of a guarantor's asset as part of the CIRP of the corporate debtor, if;
    - Creditor has security interest over the asset.
    - Creditor has taken possession under law enabling transfer.
    - CoC of corporate debtor agrees.
  - Additional approval needed if guarantor is undergoing insolvency/bankruptcy.
  - Value realised adjusted against guarantor's debt, surplus to guarantor.

- **Codification of the Clean State Principle**
  - New subsections to recognise judicially established principle:
    - For the plan approved, claims are settled per plan and extinguished unless otherwise provided.
    - Past liabilities cannot be a basis to suspend/terminate rights or initiate proceedings against the resolved debtor.

- **Liquidation Process Reforms**
  - Moratorium during liquidation extended (Section 33) for clauses (a) and (b) of Section 14(1).
  - CoC empowered to restore CIRP in exceptional cases where:
    - No plan approved within IBC timelines, or
    - Approved plan rejected under Section 31.
  - Section 34 amended:
    - Liquidator to be appointed on CoC proposal (not automatic RP).
    - CoC may propose existing RP or another IP with written consent.
  - New Section 34 A:
    - Allows replacement of liquidator during liquidation by CoC.

- **Avoidance and Look-back Period Amendments**
  - Section 43: Section 43: Look-back period to run from **initiation date** (application filing), not commencement date.
  - Includes period between initiation date and commencement date.
  - Section 50: Similar change for extortionate credit transactions.
  - Section 47 substituted: Creditors or members/partners may apply directly for avoidance orders if RP/Liquidator does not act.
  - Section 49 amendment: Prevents related-party-to-third-party transfers from escaping scrutiny ("transactions defrauding creditors").

- **Section 52- Secured Creditors' Rights**
  - 14-day limit from liquidation commencement date for secured creditor to elect whether to realise security outside liquidation.
  - Failure to inform it will be deemed relinquishment to liquidation estate.
  - Costs and workmen's dues to be deducted from any realisation outside liquidation.
  - Explanation inserted in Section 53(1)(b)(ii):
    - Secured creditor's claim priority limited to value of relinquished security.
  - Explanation inserted in Section 53 (1)(e)(i):

- Government dues (secured or unsecured) for two years prior to liquidation date rank in clause (e)(i), not higher priority.

- **Proceedings post-dissolution**
  - New subsections in Section 33: CoC to decide on avoidance/fraud/wrongful trading proceedings post-dissolution.
    - Adjudicating Authority can dissolve without completing CIRP/liquidation if CoC so decides.
    - Dissolution does not halt proceedings; arrangements for continuation must be in place.

- **Creditors- Initiated Insolvency Resolution Process (CIIRP)**
  - New Chapter IV-A (Sections 58A–58K):
    - Central Government to notify eligible corporate debtors.
    - Certain classes excluded despite eligibility.
    - Creates a separate, creditor-driven resolution track from CIRP/PPIRP.

- **Impact on Rainbow Papers case**
  - Explanation inserted to define "security interest":
    - Exists only if created by agreement/arrangement between two or more parties.
    - Excludes security interest created solely by operation of law.

- **Personal Guarantor and Individual Insolvency**
  - **Section 96:** Interim moratorium provisions not to apply in certain creditor/debtor-initiated applications.
  - **Section 106:** 21-day limit to prepare repayment plan; failure leads to termination and possible bankruptcy.
    - Creditors' meeting mandatory for repayment plan of personal guarantors.
  - **Section 121:** Clarifies bankruptcy application can follow repayment plan termination.
  - Section 124: Certain provisions not applicable where creditor/debtor initiates bankruptcy of a personal guarantor.
  - New Section 164 A: "Transactions defrauding creditors" for individuals/partnerships.

- **Cross-Border Insolvency**
  - New Section 240 C:
    - Empowers Government to prescribe rules for cross-border insolvency.
    - Allows modifications/exceptions to IBC/Companies Act for implementation.
    - Rules subject to Parliamentary procedure before notification.

Thus, the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, proposes several changes aimed at resolving long-standing issues in the insolvency and liquidation framework, many of which have been a cause of concern for bankers and other stakeholders. The Bill also tackles the misuse of the interim moratorium under Section 96, which has been exploited by personal guarantors to stall enforcement proceedings without genuine intent to resolve debt. Under the proposed change, Section 96 will not apply where insolvency resolution of a personal guarantor is initiated by a creditor or by the guarantor themselves. Further, Section 106 introduces a strict twenty-one-day limit for preparation of a repayment plan, after which the process will be terminated if no plan is submitted, and creditors may directly proceed with bankruptcy. This change curtails delay tactics and safeguards creditor rights.

Several procedural reforms have been introduced to enhance efficiency and reduce abuse of process. Withdrawal of admitted applications under Sections 7, 9, or 10 will no longer be permitted after the constitution of the committee of creditors (CoC) or the first invitation for submission of resolution plans, ensuring that proceedings are not derailed

mid-way. The CoC's role is expanded beyond CIRP into liquidation, enabling it to supervise the process, replace the liquidator, and even restore CIRP in exceptional cases. Creditors are also empowered to approach the Adjudicating Authority directly for avoidance actions if the resolution professional or liquidator fails to act. Importantly, the look-back periods for preferential and extortionate transactions are aligned to commence from the initiation date rather than the admission date, closing gaps that previously allowed suspect transactions to escape scrutiny.

Another important reform is the codification of the "clean slate" principle, which has been recognised in judicial pronouncements but often contested in practice. The Bill clarifies that once a resolution plan is approved, all past liabilities, unless specifically preserved, are extinguished, and no pre-resolution defaults can be used as grounds to cancel grants, rights, or initiate proceedings against the resolved corporate debtor. This will significantly enhance resolution applicant confidence and reduce post-resolution litigation.

The Bill also facilitates faster asset realisation by introducing a mechanism under new Section 28A to transfer assets of guarantors (corporate or personal) as part of the CIRP of the corporate debtor, subject to mutual approval of the CoC and the secured creditor. This integrated approach eliminates the need for parallel proceedings against guarantors and accelerates recovery timelines.

In addition, the introduction of the Creditor-Initiated Insolvency Resolution Process (CIIRP) provides a special track for creditor-led insolvency in respect of notified categories of corporate debtors, particularly useful where management is uncooperative or urgent intervention is required. Together with the emerging group insolvency framework, it allows coordinated resolution of interconnected defaults across related entities, addressing the problem of fragmented proceedings.

Overall, the Bill directly addresses three persistent problem areas in insolvency and liquidation practice, priority disputes (especially concerning government dues), misuse of moratorium and procedural loopholes, and inefficiencies in asset realisation and creditor empowerment.

*We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:*

***Mukesh Chand, Senior Counsel – Email –*** *mukeshchand@elp-in.com*