

IBC Reforms Without Realism: A Recipe for Delay, Dispute and Litigations

The Insolvency and Bankruptcy Code (IBC) has been India's most ambitious economic reform in the last decade, aimed at timely resolution of distressed assets, value preservation, and creditor confidence. Yet, eight years on, the ecosystem, while the Code has resolved a number of cases, it continues to be marred by prolonged delays, significant value erosion, a liquidation-heavy outcome profile, and frequent misuse of the process as a debt recovery tool rather than a revival mechanism.

The Code's **"one-size-fits-all" approach** has also exposed its limitations, particularly in the **services sector**, where asset-light businesses face very different challenges compared to manufacturing or real estate. The insolvency of major airlines like *Jet Airways* and *Go First*, and high-profile service sector entities, where value was largely in intangibles such as brand, licences, slots, and human capital, showed that the IBC framework struggled to preserve enterprise value. Delays in resolution, prolonged grounding of operations, and inability to safeguard key operational assets meant that, by the time plans were approved, much of the value had already evaporated. The result in such cases has often been paper recoveries for creditors and failed attempts at revival.

While IBBI claims that under IBC eco system creditors have been able to recovery around 32.6% of their claim which account of 170% of the liquidation and 94.9% of the fair value. However, some experts believe that *"if this amount (of recovery) is distributed over a typical four-year resolution plan and discounted at 10% per annum—with the optimistic assumption of full recovery—the present value drops to 20.8%. Realistically, actual recoveries will be lower, likely under 20%, and would decrease further when accounting for poor outcomes from liquidations"*¹. Mr Ganatra in his article writes that delays further reduced the present value (PV) of credit recovery. As a result, *"over the past 8½ years, CIRP performance seems to be regressing to the levels seen under older regimes like the Recovery of Debt and Bankruptcy Act, 1993 and the SARFAESI Act, 2002"*.

The IBC Amendment Bill, 2025 comes against this backdrop, promising to refine processes, speed up resolutions, and plug loopholes. Certain changes are indeed welcome, or instance, partial curbs on the misuse of interim moratorium in personal insolvency, procedural tightening to reduce frivolous withdrawals, and an attempt to clarify the definition of "security interest" in Section 3(31). However, these do not address the structural bottlenecks or the fundamental causes of delay.

The much-publicised proposals, such as the **Creditor-Initiated Insolvency Resolution Process (CIIRP)** and the **restrictions on withdrawals under Section 12A**, carry a high risk of increasing litigation rather than reducing it. Other measures, like pooling personal guarantor assets into the corporate debtor's CIRP, are likely to trigger disputes between secured creditors, while the so-called "clarification" on security interest is more cosmetic than substantive.

It is important to note that the concept of *Pre-Pack Insolvency*, introduced in 2021 through amendments to the IBC, has failed to meet its intended objectives. Instead of offering a simplified and efficient route for MSMEs, it only added multiple layers of procedure (like approval of 66% on base plan, pre-approval on the name of RP, application for initiation to National Company Law Tribunal (NCLT), appointment of Resolution Professional (RP), involvement of public in bidding process, vesting of management with RP based on CoC call, MSME bearing entire cost of the process and limitation on the resolution plan to be submitted by MSME) over and above the normal CIRP. The requirement of NCLT approval at every stage, admission, approval of base plan, and implementation, made the process costlier and more cumbersome for MSMEs. The fact that barely three or four cases have been admitted in over four years speaks for itself.

¹ [Missing the Bull's Eye: Will the IBC Amendment Bill 2025 Deliver Real Reform?](#)

On similar lines, the proposed ***Creditor-Initiated Insolvency Resolution Process*** carries serious risks of increasing litigation and pendency before the already overburdened NCLTs. At almost every stage, the proposed framework leave room for challenges, involvement of NCLTs and cross litigations. It envisages filing of applications before the Adjudicating Authority, for commencement, for moratorium, for objections, for conversion into CIRP, and for approval of the plan and so on. Each such filing creates scope for promoters and other stakeholders to intervene, as has been the experience with interlocutory applications in existing Corporate Insolvency Resolution Process (CIRPs). Even the moratorium, though said to commence immediately, is subject to the discretion of the NCLT to grant, withdraw, or refuse. This opens the door for avoidable disputes.

Just as the pre-pack framework failed due to over-engineering and excessive reliance on NCLT approval, the proposed CIIRP risks the same fate. By multiplying procedural stages and filings, it adds opportunities for litigation instead of removing them.

The irony lies in provisions such as automatic conversion of the process into CIRP if the promoters do not cooperate. Experience under IBC has shown that promoters routinely resort to litigation to frustrate proceedings, and resolution professionals have had to approach NCLTs repeatedly for directions compelling cooperation. If most cases are bound to end up as CIRPs, there seems little justification for creating a parallel mechanism which only burdens the system with additional procedures. Indian legal jurisprudence and the banking system have already witnessed enough of promoter-initiated litigation and promoter-driven third-party challenges aimed at thwarting recovery efforts, whether under DRT, SARFAESI, or even the IBC. Experience shows that promoters routinely resort to litigation at every stage to delay or derail proceedings. Against this background, it is unclear on what basis the proposed *Creditor-Initiated Insolvency Resolution Process* would operate as a smooth mechanism. In contrast, the existing CIRP framework is gradually stabilising, with NCLTs now passing admission orders at a much faster pace. At this stage, introducing another hybrid experiment risks unsettling settled jurisprudence and creating fresh layers of challenge and litigation, which may ultimately reduce the IBC to little more than a civil recovery process.

Further, the banking industry has already witnessed the futility of such hybrid experiments under SARFAESI, BIFR, and the CDR framework, where litigation became the norm and resolution the exception. The current CIRP framework under the IBC, despite delays, has functioned reasonably well. Its challenges are well known, time overruns at admission and plan approval, misuse of the process by some promoters, and judicial delays. These can be addressed by strengthening NCLT infrastructure, appointing more judges with expertise in commercial law, and adopting scientific methods to check misuse of the Code.

What we truly need is a *real and genuine Pre-Pack*, a streamlined, out-of-court, creditor-driven process that ensures certainty of timelines and minimises judicial intervention. What we do not need are “*hybrid*”, “*over engineered*” or “*jugaad Pre-Packs*”, which only multiply procedures, create new opportunities for litigation, and weaken the efficacy of the system.

The system can ill afford another half-hearted experiment and instead of multiplying procedures, focus should remain on strengthening the existing CIRP and ensuring timelines are adhered to.

Certainly, the legislature would wish to closely examine the experience of the *Pre-Pack Insolvency* provisions under the IBC, the reasons behind their limited uptake and failure to achieve intended objectives, and whether the proposed *CIIRP* truly addresses those shortcomings. It is essential that any new framework builds on lessons learnt from the past rather than replicating procedural hurdles in another form.

Thus, while the Bill makes some incremental improvements, it lacks the path-breaking reforms needed to lift the system out of its current state. The sector requires a true pre-packaged resolution framework, targeted relaxation of Section 29A for clean promoters, clear inter se priority rules for secured creditors, and significant judicial capacity-building, without which the IBC will continue to grapple with inefficiency, value destruction, and misuse.

Further, the following proposed amendments are also going to create friction and litigations among creditors:

- **Section 12A Restriction – Limiting Settlements:** The Bill’s proposal to bar withdrawals until after CoC approval restricts the debtor’s ability to settle directly with individual creditors. This is especially problematic where the applicant is an Operational Creditor (OC) who has no voting rights in the CoC. Given that over 50% of 12A withdrawals involve claims around one crore, such settlements often serve as a practical dispute resolution tool. Making them subject to CoC approval could unnecessarily delay settlements and push more cases into full CIRP, further burdening the NCLTs. Further, the system can not take away right of a debtor to deal and negotiate with the debtors especially the operational creditors.
- **Pooling of Personal Guarantor Assets:** Bringing personal guarantor assets into the corporate debtor’s resolution process may enlarge the asset pool but could also spark disputes between secured creditors. A lender holding exclusive security over a guarantor’s asset may resist sharing value with other creditors, leading to inter se priority battles that the Bill leaves unresolved, despite repeated recommendations by the Insolvency Law Committee.
- **Section 29A – A Missed Chance for Targeted Relaxation:** Instead of experimenting with a new process like CIIRP, a more impactful reform would have been **targeted relaxation of Section 29A** to allow promoters back into the process where there is no history of fraud, willful default, fund diversion, or other disqualifying misconduct. This could open the door to faster, viable resolutions in cases where promoters are best placed to revive the business.
- **Unresolved Issues in Personal Insolvency:** The partial fix to the **interim moratorium** in personal insolvency leaves scope for confusion. Conceptually, participation of a secured creditor in the insolvency process is at his will. Secured creditor or secured debt is never a part of the insolvency mechanism unless the secured creditor chooses so. Secured creditors can still remain outside the process unless they voluntarily relinquish their security, limiting the effectiveness of pooling assets. The **look-back period** in personal insolvency remains tied to the bankruptcy commencement date, meaning most suspect transactions will be time-barred by the time bankruptcy orders are passed.
- **Security interest: a cosmetic “fix” to a problem of argument, not drafting:** The Bill’s proposed **Explanation** to the definition of “security interest” adds little. **Section 3(31) was always clear:** a security interest is a right in property “**created by a transaction**” (mortgage, charge, hypothecation, assignment, etc.), not a statutory first charge created by a non-consensual law. The confusion that followed *Rainbow* was less about the text of 3(31) and more about how the point was argued (or not argued). including the context of the Preamble, the BLRC’s design, and Section 53’s waterfall, which consistently treats transactional secured creditors as a distinct class.

Assessment of the Proposed changes in light of IBC’s Existing Challenges

The IBC, in its current form, already struggles with high liquidation rates (33% of all CIRPs) and low recovery in liquidation (6.3% of claims), procedural delays far exceeding statutory timelines, 71% of cases pending for over 270 days and misuse IBC as a pressure tactic, evidenced by high Section 12A withdrawal rates and small claim-driven filings. Against this backdrop, the 2025 Bill seems more likely to add new litigation risks than to deliver the promised speed or efficiency. Without addressing judicial capacity, secured creditor priority disputes, and procedural streamlining, these amendments may not improve recoveries or timelines in any meaningful way.

Proposed Changes requiring NCLT to Record Reasons:

The proposed amendments introduce provisos at almost every stage of the insolvency process requiring the Adjudicating Authority to “record reasons in writing” if orders are not passed within the prescribed timelines. While this may look like a reform to enforce time discipline, in practice it is more of an academic exercise rather than a practical solution to the problem of delays. Section 7 itself contain similar provisions but that has hardly made any impact on outcome.

The Supreme Court, in *Surendra Trading Co*². and *Dena Bank v. Shivakumar Reddy*³, has already held that such timelines are directory and not mandatory. Therefore, merely multiplying these provisos in the statute is unlikely to make much difference on the ground.

Delays in IBC proceedings stem primarily from structural bottlenecks, capacity constraints of NCLTs, shortage of members with commercial law expertise, and misuse of the process by promoters and third parties through endless interlocutory applications. Unless these infrastructure and systemic issues are addressed, and unless IBC is strictly reserved for genuine cases of insolvency and revival rather than being used as a pressure tactic for debt recovery, these amendments will not deliver meaningful impact.

Group Insolvency:

The Insolvency and Bankruptcy (Amendment) Bill, 2025 also introduces a new **Chapter V-A (Sections 59A onwards) on Group Insolvency**. These provisions empower the Central Government to frame rules for conducting insolvency proceedings when two or more corporate debtors form part of a group. The framework is designed to facilitate better coordination of insolvency and liquidation processes across related entities. The key elements include, the possibility of designating a common Bench for all group entities, with powers to transfer pending cases, mechanisms for coordination between different CoCs, insolvency professionals, or liquidators of group entities, appointment of a common insolvency professional to align proceedings across the group, creation of a joint committee of creditors for group entities, allowing coordination agreements that are binding on participating entities, with the Adjudicating Authority empowered to enforce them.

While the proposal draws inspiration from international best practices and UNCITRAL's model on group insolvency, it is critical that the Indian framework does not merely replicate foreign models. India faces unique challenges, especially the entrenched pattern of promoter-initiated litigation, related-party influence, and judicial delays. The presence of different sets of creditors in each group company, with varying rights, priorities, and exposures, combined with the intrinsic value of the assets belonging to each entity, would naturally compel creditors to resist or thwart any attempt to consolidate CIRPs or pool assets for a combined bidding process. Each creditor will seek to maximise recovery from the specific entity against which it holds security or debt exposure, creating conflicts of interest and potential litigation. Therefore, it is vital that India does not replicate models mechanically. The IBBI must design rules that are attuned to India's unique context, promoter behaviour, entrenched litigation strategies, and judicial delays, so that the framework does not add procedural complexity without achieving meaningful coordination. One hopes that, instead of a "copy-paste" model, India adopts a framework that is practical, sensitive to creditor rights, and workable within the existing judicial ecosystem.

Other Misses:

Ironically, the IBC **does not contain any express provision making the resolution plan binding on the resolution applicant itself**, nor does it spell out the direct consequences of failure by the applicant to implement the plan. The Code only provides (Section 31) that an approved resolution plan shall be binding on stakeholders such as creditors, guarantors, and statutory authorities, and further lays down consequences where the *corporate debtor* violates the terms of an approved plan. This leaves a significant gap, as accountability of the resolution applicant, who actually steps in to take over and implement the plan, remains unaddressed. Cases like *Amtek Auto* and *Liberty House* highlight the consequences of resolution applicants backing out without clear statutory accountability.

Similarly, despite this mechanism rescuing companies, the **Code does not provide that buyers under liquidation sales acquire a "clean slate."** The Code permits revival at liquidation through a *going concern sale*, but it nowhere incorporates the "clean slate" concept at the liquidation stage. This gap explains the frequent post-sale demands raised by tax authorities and other statutory bodies. Such demands undermine value-maximisation and create prolonged uncertainty for buyers.

² *Surendra Trading Company v. Juggilal Kamlatpat Jute Mills Co. Ltd. & Ors.* (2017) 16 SCC 143

³ CIVIL APPEAL NO.1650 OF 2020

What is also missing in the proposed amendments is a deeper, evidence-based response to the **litigation patterns under IBC**. A substantial proportion of IAs before the NCLTs are filed by promoters seeking to delay or derail the process, by third parties raising collateral challenges, or by statutory authorities and tax departments pressing post-resolution/liquidation demands. Systematic research into these patterns by the IBBI could have given the Ministry of Corporate Affairs valuable insights into the practical bottlenecks and informed meaningful reform.

Despite repeated suggestions from the banking industry, the amendments are also silent on some of the most litigated and critical issues under IBC, such as:

- **Inter-se priority among secured creditors**, which continues to be a source of disputes at plan approval and liquidation,
- **Mediation frameworks** under IBC to resolve inter-creditor conflicts and avoid protracted litigation,
- **Delegation of routine powers** (such as approval of change of RP, procedural extensions, or administrative approvals) to lower authorities, which would ease the burden on NCLTs.

Without addressing these core issues, and sector specific challenges and requirements, the new procedural experiments risk adding complexity without solving the underlying problems.

In sum, the 2025 Bill tinkers at the edges but fails to tackle the fundamental challenges of judicial capacity, creditor coordination, and misuse of the Code, service sector and real estate specific issues etc. Without bold reforms, a genuine pre-pack framework, targeted relaxation of Section 29A, statutory clarity on secured creditor priority, and systemic strengthening of NCLTs, the IBC risks sliding into the very inefficiencies it was designed to overcome.

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:

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