

Insolvency and Bankruptcy Code (Amendment) Bill, 2026 and draft Regulations

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Highlights of Amendments - CIRP related

1. Failure to pay suffices; mandatory CIRP if default has occurred [S. 7] *Vidarbha* taken care of
2. Resolution plan may provide for sale of non-core assets [S. 5(26)]
3. Restricted timeframe for filing withdrawal application [S. 12A]
4. Transfer of assets of guarantor to CD as part of CIRP [S. 28A] - to avoid fragmented sale of assets.
5. Separate approvals for implementation and distribution - S. 31
6. Mandatory submission of financial information with IU by OCs
7. S. 31 (5) and (6) : Clean slate principle - past liabilities not to be basis for suspending any rights/licenses or to initiate any proceedings
8. Life after failure of CIRP - S. 33 (IA) and (IB); one more chance of restoration of CIRP
9. Reinstatement of CIRP on contravention of plan by the CD - S. 33 (4)
10. Service providers of CD to cooperate with IP

Highlights of Amendments - Liquidation related

1. Government dues not secured debt: Dilemma of *Rainbow Papers* resolved - amendment in S. 53(1)(e)(i) and S. 3(31)
2. *Inter-se* priorities among secured creditors to be respected
3. Partly secured creditors - significant amendment - a creditor secured only upto liquidation value
4. S. 33 - moratorium as against creditors/suits continues during liquidation, subject to S. 52 rights
5. No more continuity in resolution and liquidation - the liquidator will **not** be the same person as the RP
6. Majority consensus to enforce security interest during liquidation
7. CoC's powers continue through to liquidation; resolution and liquidation to be a continuum
10. Claims not required to be filed afresh on liquidation - however, claims may be updated or newly filed
11. Amendment in S. 49; indirect transfers by related parties may also be challenged under avoidance transactions,
12. If avoidance transactions not proceeded with, RP/liquidator may face disciplinary action
13. Mandatory timeline for self-help sale by secured creditors [S. 52]; also majority consent in case of shared security interest
14. Time limit for liquidation shrunk to half - 6 months time to complete liquidation
15. Enabling direct dissolution after failed CIRP, bypassing the liquidation stage - S. 33(IA)

Highlights of Amendments - Others

Voluntary liquidation

1. Max 1 year time for completion of voluntary liquidation
 - mostly, the assets are stuck in illiquid receivables like tax deduction, government deposits, etc
2. Reversal of voluntary liquidation

Group Insolvency

1. Enabling powers given to CG to have rules for group insolvency

Creditor-Led Insolvency Resolution Process (CLIRP)

1. A completely new CLIRP initiated, class of Cos to be specified, but quite likely to be aligned with the RBI's Resolution of Stressed Assets Directions -
 - in addition to MSMEs - S. 54A
2. No creditor-in-possession here; certain actions of the CD require prior approval
3. Role of the AA limited: intimation to AA, but moratorium only based on AA order

Cross-border Insolvency

1. S. 240C: Powers given to CG to promulgate rules for cross border insolvency
2. Including provisions of the Code that will not apply, or apply with exceptions or modifications, and one or more benches for dealing cross-border insolvency matters

Other provisions

1. AA to record reason in writing if order not passed within the prescribed timeline
2. Limits for penalty has been prescribed for frivolous and vexatious proceedings



Corporate Insolvency Resolution Process



Failure to pay suffices; mandatory CIRP if default has occurred

- Section 7(5) of the Code provides as follows:

(5) Where the Adjudicating Authority is satisfied that –
*(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it **may**, by order, admit such application...*
- Usage of the term “may” in the provision prompted the SC, in *Vidarbha Industries*, to examine:
 - Whether sec 7 is triggered by a temporary inability to pay or by a permanent incapacity?
 - In the first instance, SC held that AA has the discretion to admit or reject an application u/s 7 of Code despite existence of a default.
- SC in review petition, however, indicated that the ruling in *Vidharbha Industries* was peculiar to facts and circumstances of the case.

Amendments in the IBC (Amendment) Bill

- Three exhaustive and self-sufficient conditions for admission of CIRP u/s 7–
 - (i) default;
 - (ii) application being complete; and
 - (iii) no disciplinary proceeding against IP.
- Application with IU Report shall be sufficient to ascertain existence of default
- Rejection not possible on any other ground.
- AA to record reason in writing in case of delay in acceptance/rejection of claim
- **The amendment effectively nullifies the *Vidarbha* judgment, and AA will not have any discretionary powers while dealing with CIRP applications**

Information utility to be the conclusive basis of default confirmation

- Currently, sec 215 (2) requires filing of information with IUs for initiation of insolvency, evidence as per IU records is mandatory:
 - vide amendment notification dated 14th June, 2022, filing of information of default with IU made mandatory for OCs as well [Reg. 20(1A)]
 - In Ganesh Ramkisan Rajale v. Panchtatwa Milk Industries Private Limited, NCLT Mumbai Bench held that furnishing record of default in IU is not mandatory for applications under section 9.
 - In Vijay Kumar Singhania v. Bank Of Baroda & Anr, NCLAT held that furnishing the record of default is not mandatory for application u/s 7 of the Code, even after amendment of Regulation 20 by insertion of Regulation 20(1A) of the IBBI (Information Utilities) Regulations, 2017 w.e.f. 14.06.2022.
 - In Univalue Projects Pvt. Ltd v. The Union Of India & Ors, Calcutta HC held that:

“54. Therefore, based on the above discussion, I am of the view that financial creditors can rely on either of the modes of evidences at hand to showcase a financial debt, that is, either a record of default from the IU OR any other document as specified which proves the existence of a financial debt.”
- Amendment in the Bill:
 - OCs will also be required to register a default in advance with IU
 - in case of OCs the requirement is applicable only if they are interested to proceed under this law
- noting of debt in IUs to be subject to cross verification:
 - that is, IU to give notice to CD or debtor, and a time for responding
- IU records to be exclusive and conclusive evidence of default
- Authentication of information:
 - Sec 215 (4) provides for authentication of information about claims - manner to be specified. Comes with a deeming authentication
- The provision about authentication and deemed authentication may mean the records of the IU will be valid against any contention of a dispute/ amount of claim
- If such is the intent/language of the rules, we are heading for very different times - the IU's records will override parties' mutual records or contracts

Bringing in more practicality in computation of voting share

- Voting share defined u/s 5(28) implies share of the voting rights of a single FC in the CoC
 - This is proportion of the financial debt owed to such FC to the entire financial debt owed by the CD
 - This definition leads to inclusion of debt held by related FCs as well in the denominator
 - Since the related FCs are debarred, the same is in contradiction

Amendment in the IBC (Amendment) Bill

- Voting share to be computed as proportion of financial debt owed to the concerned FC to the financial debt owed to the members of the CoC who are eligible to vote

Votes of related FCs:

- As for FCs being related party, the votes will be excluded both from numerator as also from denominator

Restricted timeline for withdrawal of CIRP Application

- S. 12A of the Code provides conditions for withdrawal of CIRP application u/s 7, 9, and 10:
 - **Who allows?** Adjudicating Authority
 - **When?** After constitution of CoC and before issuance of first invitation for Resolution Plan by RP
 - **Approval requirement?** 90% of voting shares of CoC, requirement to seek applicant's approval is not present
 - Application to be filed by? Resolution Professional
- *Brilliant Alloys Pvt Ltd. v. Mr. S. Rajagopal & Ors.* - withdrawal not allowed as EoI was invited.
- *Swiss Ribbons v. UoI* - considered withdrawal before constitution of CoC.
- Reg. 30A of CIRP Regulations was amended to allow withdrawal application before constitution of CoC and after EoI invitation.

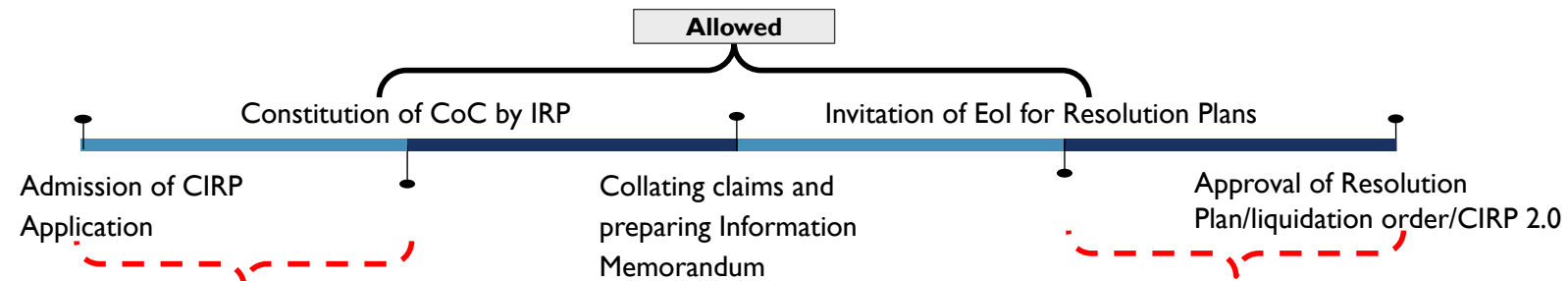
Amendment in the IBC Bill

- Timeline prescribed for withdrawal application
 - **After constitution of CoC**
 - **Before invitation of EoI**
- Order to be passed with 30 days

VKC comments: CIRP tarnishes the corporate history of a CD. Initiation of a CIRP is predicated by default to a single FC. If 90% in value of the FCs are opposed to it, why mandatorily put the CD into trauma?

This change is in line with the SC ruling in *Glas Trust Company Llc vs Byju Raveendran*, where it was held that NCLT/NCLAT cannot exercise inherent powers under Rule 11 to bypass the procedures regarding withdrawal as laid down in Regulation 30A. SC held:

“NCLT cannot be considered a post office that merely puts a stamp on the withdrawal application submitted by the parties through the IRP....in cases where withdrawal is sought after initiation of CIRP, but before the CoC is constituted, the NCLT must decide on the application after “hearing all the parties concerned and considering all relevant factors on the facts of each case.”



Withdrawal u/s 12A - draft regulations

- Reg. 30A has been aligned with section 12A
 - Application for withdrawal to be made within 3 days of approval of the CoC
 - by a voting majority of 90%
 - voting share be computed as proportion of financial debt owed to the concerned FC to the financial debt owed to the members of the CoC who are eligible to vote

Promoters not to propose IRPs

- S. 10 of the Code empowers CD to initiate CIRP
- Cases of initiation of CIRP by CDs are quite less; they faded with the introduction of S. 29A
 - As on 31.03.2025, just 511 cases were initiated by CDs
- Currently, S. 10(3) empowers CD to propose name of IP proposed to be appointed as IRP
- Amendment:
 - To take away the right of proposing the name of IRP in case of S. 10 application
 - IRP in such cases be appointed by AA on recommendation of the IBBI
- Amendment to avoid conflicts of interest in the nomination of an IRP
- The [MCA Discussion Paper](#) dated 18th January, 2023 also proposed the same. (Read our [Comments](#) on the same)

Stakeholder wise distribution and trends on initiation of CIRP

Period	CIRP initiated by			Total
	FC	OC	CD	
2016 - 17	8	7	22	37
2017 - 18	286	310	111	707
2018 - 19	517	569	71	1157
2019 - 20	883	1056	51	1990
2020 - 21	197	317	22	536
2021 - 22	371	474	43	888
2022 - 23	654	538	70	1262
2023 - 24	535	402	66	1003
April - Jun, 2024	151	79	11	241
July - Sept, 2024	125	70	16	211
Oct - Dec, 2024	87	40	18	145
Jan - Mar, 2025	79	37	10	126
Total	3893	3899	511	8303

Note: This excludes four cases wherein applications filed by the RBI were admitted u/s 227 of the Code.

Moratorium and sureties

Amendment

- Amendment in sec. 14 (3) (b) saying moratorium not applicable to sureties to a corporate debtor
 - Explanation says the moratorium applies to a surety seeking to take action against CD pursuant to a guarantee
- Combined meaning of the two provisions:
 - Moratorium does not extend to a guarantor.
 - However, moratorium does block any action by the guarantor against CD. Clarificatory amendment reading “for removal of doubts”

Judicial Precedents

- [*P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd. \(Supreme Court\)*](#)

A surety cannot avail of the benefit of a moratorium as a result of which a creditor can enforce a guarantee, though not being able to enforce the principal debt during the period of moratorium

- [*State Bank of India v. V Ramakrishnan and Veelsons Energy Limited \(Supreme Court\)*](#)

The moratorium is applicable only on the corporate debtor and not the personal guarantors

- [*Alpha & Omega Diagnostics \(India\) Ltd. v. Asset Reconstruction Company of India Ltd. & Ors \(NCLAT\)*](#)

There is no scope of protection to the assets of the guarantor (be it personal or corporate) under the moratorium provisions of section 14.

- [*Schweitzer Systemtek India Pvt. Ltd v. Phoenix ARC Pvt. Ltd. & Ors. \(NCLAT\)*](#)

The moratorium shall prohibit the action against the properties of the corporate debtor that reflects in its balance sheet and not on the properties beyond the ownership of the corporate debtor.

Piecemeal Distribution: Partial resolution by splitting the entity

Standing Committee of Parliament (32nd Report):
[Aug., 2021]

“More Flexible Resolution Plans

7. Sec 5(26) of IBC defines a resolution plan as a plan proposed by RA for insolvency resolution of the CD as a going concern. RPs, CoCs, and certain orders of the NCLT indicate that the term ‘going concern’ implies that the resolution plan must result in disposal of the entire business & and operation of CD under I plan. Actual experience has shown that bidders may be interested in selected business units or assets, rather than entire business.... However, the RP does not currently have the flexibility within the IBC to dispose of the CD across multiple bidders.”

The Parliamentary Committee noted that the Regulations already permit partial sale; however, in view of the enabling provisions missing in the Code, the Committee wanted insertion of provisions in the Code

Reg 36B(6A) of CIRP Regulations allowed
piecemeal sale

[Inserted vide IRPCP (4th Amendment) Regulations, 2022 w.e.f. 16.09.2022]

Recently Omitted vide IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025

Amendment in the IBC Bill

- Explanation to Section 5(26): Resolution Plan amended to include piecemeal sale

Persons of CD to cooperate with IRP/RP

- Section 19 provides for Personnel to extend co-operation to IRP/RP.

Who all are covered presently?

- The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor
- NCLT Hyderabad in Ashwini Mehra v. Vinod Kumar Dandona, Romesh Sawhney v. Rajesh Gupta, Director MLP Developers and Promoters Pvt. Ltd., held auditors are also covered u/s 19
- In Pritam Bayal, RP of BKM Industries Ltd. v. NIT Global Data Centers & Cloud Infrastructure India Pvt. Ltd., NCLT Kolkata clarified that even a third-party service provider falls within the scope of the term “other person”.

Amendment in the IBC (Amendment) Bill

- The word “Personnel” shall be substituted by the word “Persons”
- Contracts of service - that is - service providers also to provide cooperation
- Past associates also to be included

*“Any person who **is or has been ...engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the interim resolution professional....”***

- Similar provision to also apply in case of:
 - Liquidation Proceedings (Section 34)
 - Pre-packaged insolvency resolution process (Section 54F)
 - Creditor-initiated insolvency resolution process (Section 58E)
- **Draft Regulation 3B - power to seek information from creditors - includes valuation report, stock statement, inspection report, etc**

Section 28A: Sweep of assets of the CD to include assets of guarantors as well

- New insertion - sec 28A - assets of CD taken possession of by a creditor
 - Permits transfer of such assets as a part of the resolution plan
 - Intent of the insertion explains in Select Committee report:
 - to avoid fragmented transfer of assets - e.g, plant belongs to CD but land belongs to guarantor
- Language may indicate that the impact of the provision will be that a creditor who has enforced security interest will also be transferred as a part of the CIRP:
 - MCA deliberations before Select Committee say that the provisions are voluntary
- To transfer asset of the guarantor as part of CIRP of the CD, provision requires the creditor to must have:
 - security interest over an asset of the guarantor
 - taken possession of the asset by enforcing its security interest
- If the guarantor itself is undergoing CIRP, provisions require approval of the CoC of the guarantor as well.
- In general, guarantee contracts may be unsecured in nature;
 - guarantor may not have created security interest on its assets.
 - Hence, the creditors of the CD will only have general right over all the assets of the guarantor.
 - This general right may be subject to specific rights which the guarantor might have created in favour of its own creditors.
- Basic principle is that no creditor can reach out to the assets of a debtor except by way of enforcement of security interest, or attachment under law or civil process.
- MCA representation before Select Committee clearly says the tagging of guarantor assets is only subject to concurrence of the creditor of the guarantor

Reg. 28A & 28B of CIRP Regulations

- The draft regulations require the consent of the guarantor's creditor, or the CoC of the guarantor undergoing CIRP, to transfer the asset
 - along with estimated realisable value
- if permitted by the CoC, the asset shall be disclosed in the IM
- CoC to take into consideration the realisable value of the asset for adequately safeguarding the interests of the creditor of the guarantor
- Coordination with RP of CD who is corporate guarantor [Reg. 28B]
 - approval of committee of corporate guarantor CD to be obtained
 - proposed transfer to be disclosed in IM

Implementation of resolution plan: RPs to be on implementation

- Text as recommended by Select Committee:
 - the constitution of a committee for this purpose, consisting of such persons **including** the resolution professional or any other insolvency professional
- Text appearing in the Act [Sec. 30(2)(d)]
 - constitution of a committee for this purpose **consisting of** a resolution professional or any other insolvency professional
- which means the flexibility of having on Committee anyone other than IP is taken away
- No changes in existing Reg. 38(4) of CIRP Regulations.

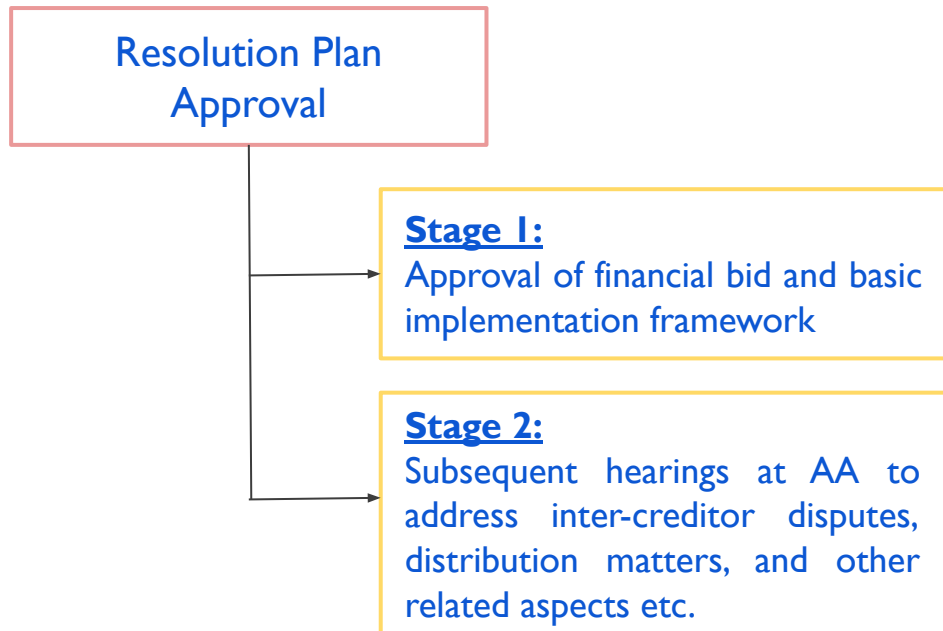
Minimum payment to dissenting financial creditors - Sec 30

- Important amendment in sec. 30 lays the amount payable to dissenting financial creditors shall be lower of the payable on liquidation, or distribution of the amount paid by the RA in the order of sec. 53
- This, therefore, reduces the incentive of an FC to vote against a resolution plan
- This introduces a new concept in the Code:
 - Resolution value versus liquidation value
- There may be situations where resolution value (value proposed by the RA) is lesser than liquidation value (value assessed by valuers)
 - valuations are all futuristic, and mostly, auctions get much lesser value compared to liquidation values
- The Code seeks to eliminate the perverse incentive of pushing for liquidation, in order to get better value, as that kills value for other creditors
- A question arises - what if the value of security interest is more than the payout proposed in the resolution plan to the dissenting secured FC?
- Earlier SC in India Resurgence ARC Private Limited v. Amit Metaliks Limited, held that:

“...It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.”

Dual stage approval of the resolution plan (1/2)

- Insertion of proviso in Section 31(1):
 - Dual stage approval of RP with approval of 66% votes of CoC
 - First approve implementation of plan
 - Next approve manner of distribution
 - Manner of distribution provided (Stage 2) to be approved within 30 days from the date of approval of implementation of such resolution plan



- Earlier, para 9(b) of the MCA DP also proposed **separation of resolution plans and the distribution of proceeds**.
 - The proposal also provided for preparation of an equitable scheme of distribution of proceeds received pursuant to resolution plan(s) through a separate waterfall mechanism in the CIRP. As per this scheme,
 - creditors will receive proceeds up to the CD's liquidation value for their claims in the order of priority provided in section 53.
 - Any surplus over such liquidation value will be distributed between all creditors in the ratio of their unsatisfied claims.
 - Finally, any remaining amount or further surplus would be distributed to the shareholders and partners of the corporate debtor, as the case may be.
- In the present change also, although a separate waterfall in CIRP is not inserted, it is implicit that distribution of the proceeds is to be made a role of the CoC.
 - Sec 30(4) provides for taking into account the order of priority amongst creditors as laid down in sec 53(1) by CoC₂₁ while considering any resolution plan for approval.

Dual stage approval of the resolution plan - (2/2)

- Discussions before the Select Committee:
 - *“...this structural reform is essential to prevent intercreditor disputes over distribution from stalling the handover of the corporate debtor.”*
 - *“...permitting the immediate “implementation” of the plan preserves asset value and prevents deterioration during litigation, while distribution disputes can be adjudicated separately.”*
- Inter-creditor disputes should not stall the resolution process
- Reg. 39 amended to provide for carve out for the purpose of operationalising dual-stage approval
 - RP to endeavour to submit approved plan at least 30 days before CIRP ends
 - in Form H

Life after CIRP [1/2] [Section 31(5)] - licenses, permits to survive

- Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors. - SC highlighted the significance of the anti-deprivation rule
 - continuation of the contract assumes enormous significance for the successful resolution process
- Also proposed in MCA Discussion Paper
- If the intent of the provision is anti deprivation, it actually does not serve the same:
 - First, it only refers to certain authorities
 - it adds a condition of compliance with the conditions of the license etc
 - the language could have been - the commencement of CIRP shall not be the reason for termination, etc.

Provisions in IBC (Amendment) Act

- *a licence, permit, registration, quota, concession, clearances or a similar grant or right given by the CG, SG, local authority, sectoral regulator or any other authority ...**shall not be suspended or terminated** during the subsistence of the remaining period of such grants or rights, if the CD or, if applicable, the person whose resolution plan is approved under sub-section (1), complies with the obligations in respect of the remaining period of such grants or rights*
- Section 31(6): After resolution plan approval:
 - All past claims against the corporate debtor (CD) are extinguished (unless plan provides otherwise).
 - No proceedings can continue or start on such claims.
 - Claims against promoters, guarantors, or joint debtors are not affected
 - If guarantor/co-debtor pays later, they cannot recover from CD.
- Clean slate principle:
 - Select Committee also notes the **declaratory nature** of the amendment, and that it will apply to all existing matters too

Life after CIRP [2/2] [Section 33(1A)]

- Section 33(1) provides the following cases where the AA may initiate liquidation-
 - a. If before the expiry of insolvency resolution period or maximum time permitted for completion of CIRP under section 12, the AA does not receive a resolution plan under section 30(6)
 - b. If the AA rejects resolution plan under section 31 for non-compliance of the requirements specified therein
- Under the existing provisions, the usual process is that liquidation is the *fait accompli*, if resolution has failed; however, **it is amended to give life one more chance over corporate death** in line with the objective of IBC- “resolution over liquidation”
- Select Committee discussion:
 - recommended robust regulation so that resolution does not become a tool for avoiding inevitable liquidation

Provision in the IBC (Amendment) Act

- **Restoration before liquidation** – If grounds in Section 33(1)(a) or (b) exist, the Adjudicating Authority may, on an application filed by RP with the consent of at least 66% CoC voting share, restore the CIRP before passing a liquidation order.
- **Stage** - to the stage of submission of res plans. Intent seems to be permit late stage res. plans
- **Timelines** – Restoration period cannot exceed 120 days; in case of clause (b), it can be restored to the stage of inviting resolution plans with conditions as specified.
- **Last chance** - The restoration is the last chance - no further restoration
- **Applicability** – Applies retrospectively to ongoing CIRPs (where no liquidation order is passed) even if initiated before the 2025 amendment.



Creditor-Initiated Insolvency Resolution Process (CIIRP) - Chapter IVA



Creditor-led Insolvency Resolution Process - a new concept

- Informal or out-of-court resolution of a stress is a very common and intuitive process
- With whatever success at its back, the JLF method under the RBI's resolution framework was the sole process before the IBC
- Advent of the IBC made JLF go into the background
- The essential idea of CLRP is
 - A mutual inter-creditor process with no interference of the AA except for the purpose of formal CIRP initiation, and for moratorium
 - Process may be converted into CIRP on creditor consent

Preceding discussions

- **MCA Discussion paper 18th Jan 2023**
- IBBI's Expert Committee report, May 2023
- Proposals here are largely based on the Expert Committee Report

1. **MCA Discussion Paper dated January 18, 2023 discussed the idea of an “out of court” resolution**
2. **May 2023 report of Expert Committee appointed by IBBI submitted a report on Creditor Led Resolution Approach**
3. CG to specify via notification subsequently:
 - a. eligible classes of CDs against whom CLIRP can be initiated (Sec. 58A)
 - b. eligible classes of FCs who can initiate CLIRP against any of the eligible CDs (Sec. 58B)
4. CLIRP Regulations drafted with an enabling approach
 - a. to be amended upon notification of eligibility by CG

Chapter IV A - Creditor-Led Insolvency Resolution Process (CLIRP)

1. **What is it:** Designed to be creditor-driven process; AA's intervention limited
2. **For who all:** Rules to define CDs with assets/income limits, class of creditors/amount of debt, or a category of CDs:
 - a. Amendment to sec. 54A; MSMEs clearly covered
3. **Process:** FC of class (mostly regulated lenders), having defaulted debt, obtains the approval of the FCs representing $\geq 51\%$ in value of the debt due to such FCs.
 - a. Whether the stake of applicant FC be counted?
4. Inform the CD of its intention to initiate the CIIRP.
 - a. Period of at least 30 days to the CD to make any representation.
 - b. FC to consider the representation.
5. If FC decides to pursue CIIRP, approval required from FC representing at least 51% in value of the debt due to such FC within a period of 30 days from the receipt of the representation.
 - a. Is there a dual approval requirement?
 - b. What if the earlier FCs, enforce the security interest or satisfy its dues otherwise, will the applicant FC be required to seek approval from the new set of FCs?
7. RP appointment, if no disciplinary proceeding pending
8. RP to ensure the following:
 - a. Public announcement. This is the Commencement date
 - b. Intimation to IBBI and AA
9. Management is not suspended during CrIIRP
10. Process to be completed within 150 days + 45 days (one time extension AA may grant)
 - a. If not completed, convert into CIRP
11. Application to AA to be made in the following cases:
 - a. Appeal by the CD against initiation of the process;
 - b. If moratorium is sought, subject to $\geq 51\%$ approval of CoC;
 - c. Extension if CIIRP period;
 - d. Approval of resolution plan;
 - e. Conversion to CIRP;
 - f. Process withdrawal.

Process of CIRP: Draft regulations (1/2)

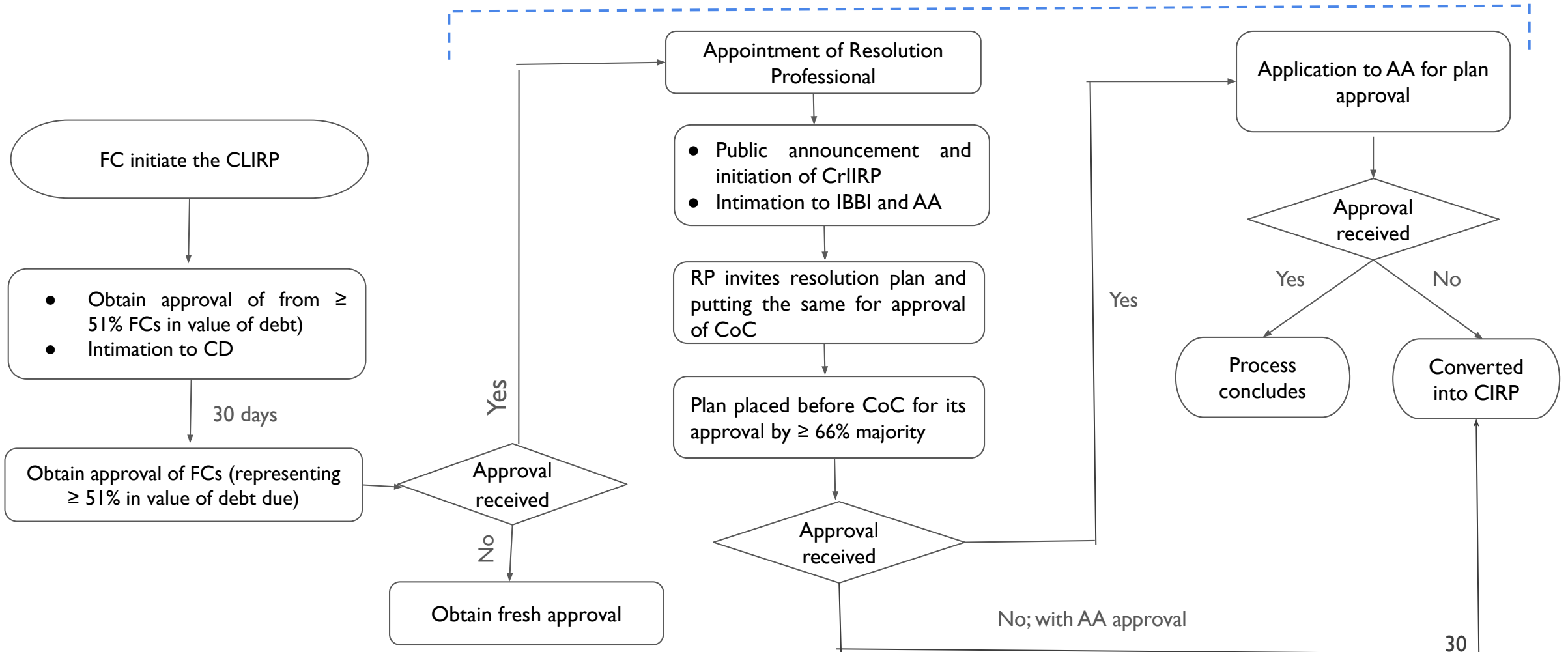
- Meetings to be physical, unless the Committee permits them to be virtual
- Applicant FC to prepare list of eligible FCs from IU records
 - as on last date of preceding month
 - if IU records not available, from “available records”
 - to whom CD owes financial debt
 - Intimation in form C-1
- Convene a meeting of all eligible FCs by giving 15 days’ notice
- Consent of at least 51% in value for CIRP
 - does not seem to be “present and voting”
 - since Reg 26 of CIRP Regs applicable, voting by electronic means seems possible
- Intimation to corporate debtor
 - Intimation in form C-2
- Representation by CD within 30 days
- Second approval from FCs:
 - after considering the response from CD
- Appoint RP within 3 days, preferably IPE
 - Consent in form C-3
- Public announcement by RP
 - in form C-4
 - Reg. 6 of CIRP Regulations to apply
- Intimation within 3 days of Public announcement to IBBI and NCLT
 - in form C-5
- CD can file objections before NCLT
 - in case of no default or contravention of Sec. 58A/58B
 - in form C-7

Process of CLIRP: Draft regulations (2/2)

- Moratorium is applicable only on application to NCLT
 - 51% vote of CoC, or eligible FCs (if CoC not constituted)
 - Public announcement of moratorium order
 - in form C-8A, if approved
 - in form C-8B, if rejected
- CoC to be constituted, within 2 days of verification of claims
 - 1st meeting within 3 days
 - Reg. 18 of CIRP Regulations to apply *mutatis mutandis*
- IM to be prepared by RP after obtaining information from promoter and personnel of CD
 - submit to CoC within 45 days
- Unlike in case of CIRP, here it is not creditors in control
 - hence, reg 16 provides that the CD shall continue to be in control
 - transactions (above CoC specified threshold) by CD subject to CoC approval
- Resolution plan process seems substantially similar to CIRP
- Challenge mechanism applicable
- Lots of provisions of CIRP extended to CLIRP as well
- Committee may decide to convert CLIRP into CIRP
 - by a vote of 66% of CoC
 - application for conversion within 3 days of CoC approval by RP

CLIRP Process flow - A broad overview

Within 150 days + one time 45 days extension with AA approval



CIRP v. CLIRP (1/2)

Basis of Distinction	CIRP	CLRP
Overall theme	Insolvency resolution under adjudicating process; FCs continue to run the process as CoC	Insolvency resolution under financial institutions (banks, NBFCs); limited role of AA
Existence of default	A default to a financial or operational creditor	Default to a financial institution
Commencement	No prior notice of intention to move; initiation only on decision by AA	Pre-notice of intent to initiate; after receiving CD's representation, a dual stage approval with 51% vote; initiation on public notice by RP
Role of AA	Initiation, approval of resolution plan, etc	Intimation of initiation, appeal by the CD, moratorium, approval of resolution plan, conversion into regular process
Creditor in control	Yes	No, but several decisions of CD require approval of CoC
Moratorium	Automatic	Only on decision by AA
Timeline	Law prescribes a timeline of 180 days, with a one time extension of 90 days, subject to a maximum of 330 days	Prescribed timeline for the process in 150 days with a one time extension of 45 days, if not completed convert into CIRP

CIRP v. CLIRP (2/2)

Basis of Distinction	CIRP	CLRP
Conversion of process	CIRP cannot be converted into CLRP	CLRP can be converted to CIRP in following cases: <ol style="list-style-type: none"> 1. Resolution plan does not received within due-timeline 2. Where Resolution plan rejected 3. Where CD or personnel failed to cooperate with Resolution professional
Corporate Debtors	CDs with a default of a minimum amount INR 1 Crore.	CDs which have asset sizes as notified by the Central Government and with a default of a minimum amount INR 1 Crore
Voting threshold for approval of resolution plan	66%	66%
Avoidance proceedings whether applicable	Yes	Yes
Outcome in case of failure of the process	Liquidation or dissolution, if the CoC decides to dissolve the CD u/s 33(2)	Converted into CIRP

CIRP v. PPIRP (1/2)

Basis of Distinction	CIRP	PPIRP
Overall theme	FCs driven, AA supervised insolvency resolution process	Debtor-in-possession and pre-negotiated resolution
Initiation	The application is presented to the AA for initiation of CIRP. On application by FC, OC or CD before AA, which passes an order for admission and the process commences.	CD convenes meetings of the unrelated FCs. Creditors representing not less than 66% in value of debt approve filing of application for initiation of PPIRP. CD files application for initiation of process before the AA and the process commences on the date of admission of the application
CDs	CDs with a default of a minimum amount INR 1 Crore.	CDs those are MSMEs and have committed a default of at least INR 10 lakh
Management of CD	RP-in-possession with creditor-incontrol	Debtor-inpossession with creditor-in-control
Moratorium	Moratorium comes into effect from date of order by the AA till the completion of the CIRP.	Limited scope of moratorium. Moratorium comes into effect from the date of order by the AA till the completion of the process.

CIRP v. PPRIP (2/2)

Basis of Distinction	CIRP	PPRIP
Resolution plan	The Resolution professional invites plans and the plan that is approved by the CoC will be presented before the AA	CD presents a base resolution plan. If the same is not accepted by CoC, alternate plans are invited. The best alternate plan is selected through a mandatory challenge mechanism.
Avoidance transactions	RP to examine the avoidance transactions.	RP to examine the avoidance transactions and on their existence the process to terminate.
Timeline	180 days with an extension of 90 days	120 days from commencement date
Participation of promoter	IM to prepared by RP	CD to prepare preliminary IM. RP to finalise the IM. CD convenes the meeting of unrelated FCs. CD prepares the Base Resolution Plan



Liquidation



CoC to continue to supervise liquidation

- Para 13.6.1 of the Select Committee Report:
 - The Committee observe that this amendment is intended to leverage the institutional memory and commercial wisdom acquired by the CoC during the Corporate Insolvency Resolution Process (CIRP) to assist the liquidator in taking efficient commercial decisions for value maximization.
- On the question of disparity between claims and security interest held (e.g., unsecured financial creditor, second charge creditor), the MCA represented that the intent is to have the Committee participation based on claim, not security interest
 - A creditor using sec. 52 enforcement will remain only for residual value
- **What will supervision entail?**
 - The Committee recommend that the regulations to be framed by the Board should clearly delineate the scope of "supervision" to prevent conflict with the liquidator's statutory duties and ensure that the mechanism for stakeholder participation is implemented effectively.

No “stakeholder” consultation in liquidation; CoC will continue to supervise

- Section 35(2) of the Code provides as follows:

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53: ...

- Regulation 31A (notified vide amendment in the Liquidation Regulations dated 25th July, 2019) mandates the formation of an SCC to advise the liquidator on critical matters, the advice of such committee is not binding on the liquidator and he may take a decision deviating from the advice given by the committee after recording his reasons in writing.
- SCC is a multi-stakeholder consulting forum, and liquidator has to lean on that body for most significant decisions. Deviations have to be reported to AA and IBBI, thereby putting the liquidator in an indecisive position.

Our detailed presentation on enhancement in the role of SCC

Amendment in the IBC (Amendment) Bill

- “Power” of liquidator to “consult” stakeholders under section 35(2) deleted
 - Including the proviso whereby liquidator was not bound by the consultation
- CoC from CIRP (which consists of financial creditors only) shall supervise the liquidation conducted by the liquidator in the manner specified by IBBI.

“(11) Where the liquidation process of the corporate debtor is initiated under Chapter III, the committee of creditors constituted under this section shall also supervise the conduct of the liquidation process by the liquidator...” (Section 21)

- Amended law admittedly moves from “consultation” to “supervision”. Basically, liquidation to become a creditor-driven process similar to resolution.

Moratorium during liquidation

- Additions under section 33(1): AA shall declare moratorium for the purpose referred to in section 14(1)(a) and (c) read with sec. 14(3) - *mutatis mutandis* applicability of sec. 14
 - Sec. 14(1)(a) prohibits institution/continuation of suits, proceedings against corporate debtor
 - Sec. 14(1)(c) prohibits SARFAESI action
 - Sec. 14(3): moratorium does not apply to notified transactions and to sureties
- What happens to sec. 14(1)(b) - transfer/alienation of assets/rights by the CD?
 - cannot be covered under moratorium, as liquidation would involve sale of assets
- What happens to sec. 14(1)(d) continuation of- recovery of property by owner/lessor occupied by CD?
 - not covered under moratorium, as these assets will not form part of liquidation estate
- What happens to sub-sections (2) and (2A): Supply of “essential” and “critical” goods and services shall not be terminated/suspended
 - CD may not be a going concern during liquidation. however, business may be continued for beneficial liquidation

Language of amendment reads as under:

(i)subject to the provisions of section 52, declare a moratorium for the purposes referred to in clauses (a) and (c) of sub-section (1) read with sub-section (3) of section 14, which shall, mutatis mutandis, apply to the proceedings under this Chapter

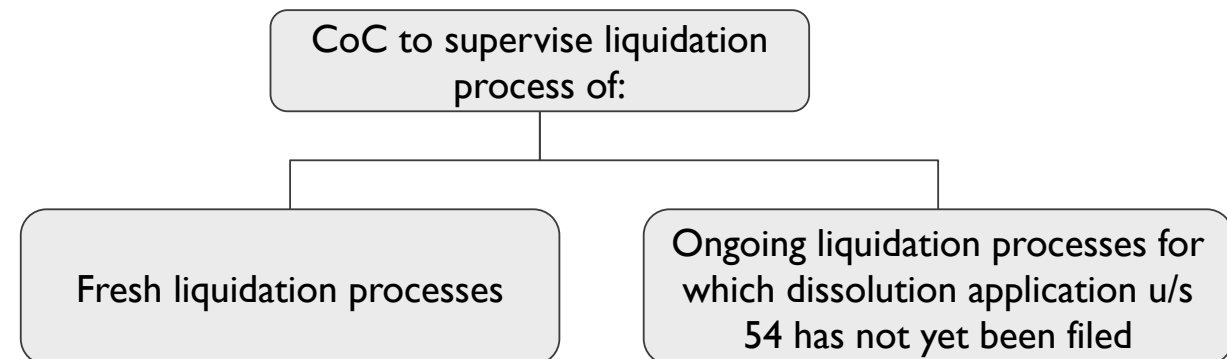
- Subject to sec. 52 - obviously, rights of secured creditor protected, as realisation of security interest possible in liquidation (subject to conditions)
 - Contrast with sec. 14 during resolution which envisages a calm period
- Inapplicability:
 - Legal proceedings in relation to transactions to be notified by CG in consultation with financial sector regulator or any authority

Delhi HC in *Elecon Engineering Company Ltd. v. Energo Engineering Projects Ltd. & Ors.* held that:

“13. From the language of Section 33(5) of the IBC, it is clear that the bar/moratorium is only in respect of fresh suits or legal proceedings. Unlike the moratorium under Section 14 of the IBC, where it is clearly noted that the moratorium is in respect of institution of suits or continuation of pending suits or proceedings against corporate debtor, the words "continuation of pending suits or proceedings" are conspicuously absent in Section 33(5) of the IBC.”

Consultation vs supervision

- The idea of multi-stakeholder committee - while IBBI may provide for other stakeholders to participate in the meetings, but they will not have a voting share
- Sec 24 shall apply to such committee - Manner of meeting of CoC
- CoC will be able to implement learnings of CIRP in liquidation -> Enable liquidator to take “efficient commercial decisions”
- Amended Section 34A empowers CoC to replace liquidator by 66% votes.
 - Select Committee says - addresses the current imbalance of power
- Curiously, looking at Exp (b) below 21, the provision extends to existing liquidations too- if the dissolution application has not been filed. Curiously, CoCs in many such cases may have expired years ago
- **MCA’s submission to Select Committee: Calibrated CoC oversight in liquidation merely aligns decision-making with the stakeholders bearing the economic risk without in any way curtailing the liquidator’s statutory powers, duties, or accountability under the Code**
- **Secretary, MCA’s statement: “we have proposed to make the process of CIRP as well as liquidation into a continuous process”**
- The provisions of sec. 35 (2) on the power of consultation have been removed
- Instead, sec 35 (2) now provides for supervision by the CoC
- The revised provisions do not affect existing liquidation proceedings.
- **Evaluation of the stakeholder consultation process:** The multi-stakeholder process was IBBI’s own creature. After trying this for nearly 6 years, it is finally time to bid it a good-bye.



CoC powers during liquidation - draft Regulations

- Draft regulations change the name of the Stakeholder Consultation Committee to Committee [Reg. 2(1)(ba) of Liq. Regulations]
- Reg. 8 substituted:
 - CoC to be reconstituted with updated voting rights basis revaluation of claims during liquidation.
 - The apparent meaning of this is that the voting share will be based on amount of claim, and not the liquidation value
 - the draft reg provides that for a creditor who realises security interest u/s 52 will have claim only for the remaining value
 - 1st meeting within 7 days of LCD
 - Regs. 18 to 26 of CIRP Regulations pertaining to meeting of CoC to apply *mutatis mutandis*
 - Following to be presented in every meeting by Liquidator:
 - actual cost and reason for exceeding estimates;
 - progress made and status of pending legal proceedings

Prior approval of CoC of 66% for following:

- appointment/remuneration of professionals;
- sale u/r 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process;
- liquidator's fees; liquidation costs
- valuation u/r 35;
- manner of pursuing PUFEE transactions after dissolution of CD, incl. distribution
- continuation/institution of litigations by/against CD;
- extension of payment of balance sale consideration beyond ninety days;
- assignment of not readily realisable assets;
- appropriate arrangement for pursuing any suit w.r.t distribution of proceeds; and
- any other matter

Discretion of liquidator curbed.

Amendment to definition of “liquidation cost”

- Draft regulations propose to remove “costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern” from the definition of liquidation cost
- This seems to be result of a confusion
- The deletion of going concern sale does not mean the business of the CD cannot be carried until liquidation
- In fact, many business operations still have to be kept going until the business is sold
- The idea of liquidation sale is not to throttle the CD to death
 - many businesses will have no value if the business ceases to be a going concern

Liquidation fees - Reg. 4 of Liq Regulations

- Seeks to remove the fee scale based on realisation of assets and provides only for fees based on distribution
 - CoC to fix remuneration in first meeting
 - monthly fees;
 - as % of amount distributed, as follows:

Amount of Distribution to stakeholders (excl. liquidation costs) (₹)	% of fee on the amount distributed		
	first six months	next six months	thereafter
On the first 1 crore	5	4	2
On the next 9 crore	4.5	3	1.5
On the next 40 crore	2.5	2	1
On the next 50 crore	1.25	1	0.5
On further sums realized	0.25	0.20	0.1

- Prospective amendment i.e. liquidations commencing post amendment

No more continuity of resolution professional as liquidator

- The era of professional continuity between resolution and liquidation is gone
 - democracy will be at work on appointment of liquidator in every case
- Amendments in sec 34 (1), (1A) and (5) and (6) almost ensure that either there is no continuity in appointment, or the process will remain uncertain for a long time
- Revisions [based on Select Committee recommendation]:
 - As against the proposal in the original Bill, the Act now eliminates any continuity of the RP during liquidation
 - explicit provision in sec. 33 (4)
 - Net result:
 - loss of time- the entity remains headless in the meantime
 - complete loss of continuity
- Select Committee observations:
 - intended to guard against perverse interest - to gain fees during liquidation

Existing situation - Sec 34(1):

*(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, **the resolution professional appointed for the corporate insolvency resolution process** under I Chapter II or for the pre-packaged insolvency resolution process under Chapter III-A shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form, **shall act as the liquidator for the purposes of liquidation** unless replaced by the Adjudicating Authority under sub-section (4),*

No more claims during liquidation

- Sections 38-42 dealing with claims during liquidation deleted.
- How will the amount of the claim as on the commencement of liquidation be determined?
- How delayed claim will be submitted?
- Multiple reasons for claims amounts/claimants to change:
 - amount undergoes change
 - new claims arise during CIRP
 - lots of claimants who fail to file claims, arise
 - there are multitudes of claims, particularly from govt. departments, which come years after LCD
- **Adjudicatory role of Liquidator, different from the role of RP, as held by NCLAT in *Concept Management Consulting Ltd. Vs. Anand Chandra Swain & Anr.*, seemingly goes away**
- **Discussions before Select Committee:**
 - **The Committee recommend that the regulation-making process should ensure that the transition of verified claims from the resolution process to the liquidation phase is seamless and enhances efficiency without inadvertently creating friction between stakeholders - para 11.6.2**
 - **Regulations will take care of “updated” claims :**
 - **There may be claims arising from resolution**
 - **or the value of claims may change, e.g, interest accrued, expenses not paid**

Existing Position

- Within 30 days from the Liquidation Commencement Date, the liquidator shall receive or collect the claims of creditors.
- The creditors can vary/ withdraw claims within 14 days of submission.
- Within 30 days of the receipt of claims, the liquidator shall verify the claims and may require evidence.
- The liquidator shall admit/ reject the claim and communicate the same to the creditor within 7 days of the admission/ rejection.
- A creditor may file an application before AA against the decision of admission/ rejection by the Liquidator/ for condonation of delay- sec 42.

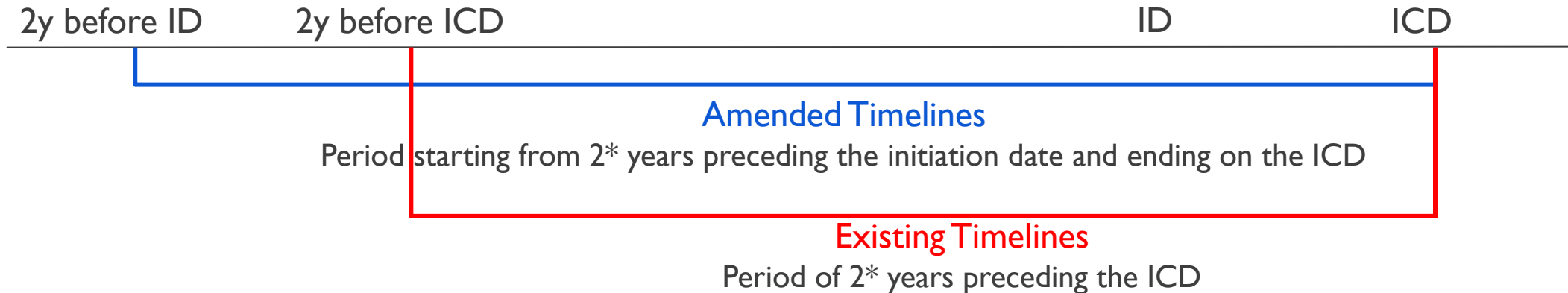
Updation of claims during liquidation - Draft regulation

- Draft Reg 12 (2) of Liquidation Regulations
- Public announcement shall call upon stakeholders
 - to submit claims if not submitted
 - to update claims if submitted
- 14 days time from liquidation commencement date
- the process seems substantially similar to filing a new claim
- just that lesser of documentation/evidence where claims have already been settled on resolution
- Note the liquidator is now mandatorily a new person
 - does that become a challenge?
- for new claims, the process of making and proving in the same as before - Reg 16
- much of reduction of timelines was explained by the avoidance of process of claim filing:
 - is it a real relief?

Look back period for avoidance matters

Look back period change

Preferential [Sec 43(4)], Undervalued [Sec 46(1)] and Extortionate Transactions [Sec 50(1)]



Insolvency Commencement Date (ICD) - date of admission of an application for initiating CIRP by the AA under sections 7, 9 or section 10.

Initiation Date (ID) - date on which FC/ corporate applicant/ OC makes an application to the Adjudicating Authority (AA) for initiating CIRP/ PPIRP.

Amendment - Where multiple applications for initiation of CIRP are pending before the Adjudicating Authority on the ICD, the initiation date shall be the date on which the first such application was made before the AA.

*1 year if the counterparty is other than a related party in case of preferential transactions and undervalued transactions.

Application for avoidance transactions (Sec 47)

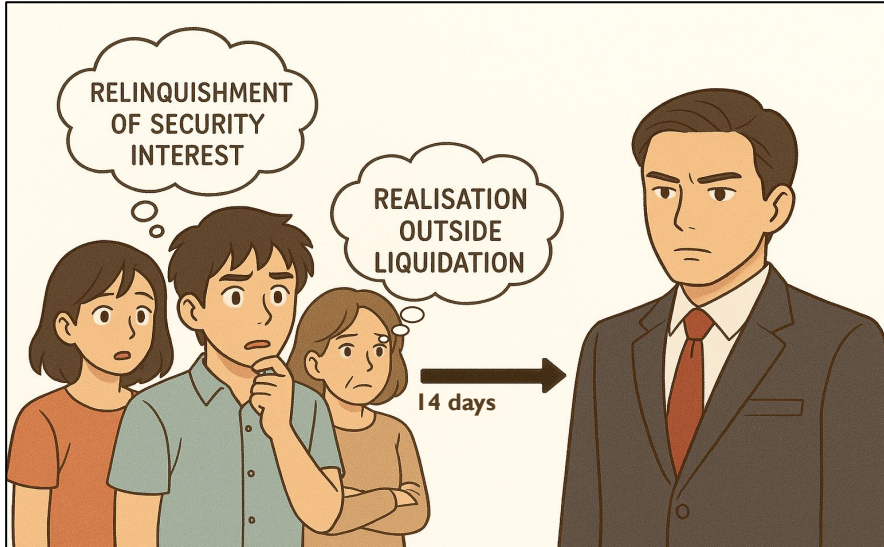


Proposed Definition: Avoidance Transaction - a transaction as referred to in sections 43, 45, 49 and 50.

A collective term for Preferential, Undervalued or Extortionate credit transactions and Fraudulent or wrongful trading.

Particulars	Existing	Amended
Who applies to AA?	A creditor, member or a partner of CD	Insert: A creditor, either by itself or jointly with other creditors
Transactions	Undervalued transactions (not reported by the Liquidator/ RP to the AA)	Preferential, undervalued or extortionate credit transactions or fraudulent or wrongful trading (not reported by the Liquidator/ RP to the AA)
Prayer	to declare transactions void and reverse their effect as per Chapter III.	to pass orders under Chapter III/ VI
Role of AA	<p>If satisfied regarding both</p> <ul style="list-style-type: none"> ■ Occurrence of such transaction AND ■ Non reporting by Liquidator/ RP in spite of sufficient information or opportunity to avail information about transactions <p>Shall order</p> <ul style="list-style-type: none"> ■ restoring the position and reversing the effects of the transaction ■ requiring the IBBI to initiate disciplinary proceedings against the liquidator/ RP. 	<ul style="list-style-type: none"> ■ If satisfied that transaction has occurred, shall pass an order for avoiding it as if the application had been filed by a liquidator/ RP under Chapter III/VI. ■ After passing such order, it shall consider whether fault of the RP/ Liquidator and pass the same orders as per the existing provisions.

Realisation of Security Interest in Liquidation



Intention to realise outside the Liquidation Process [Sec 52(2)]

- The Secured Creditor shall inform the liquidator of such security interest and identify the secured asset within **14 days from the Liquidation Commencement Date**.
- Failure leads to deemed relinquishment to the liquidation estate.
- Draft Reg 21A makes supportive provisions

Multiple secured creditors. Multiple security interests. One secured asset. [Proviso to Sec 52(8)]*

- In such a case, secured creditors are entitled to realise its security interest only if realisation agreed upon by the SC representing at least **66% of the value** of all claims that are secured by such security interests.

SARFAESI Act, 2002

- If financing of a financial asset by more than one secured creditor or joint financing, secured creditors can exercise the rights of possession, sale, lease, etc. only if consent of secured creditors representing **at least 60%** of the outstanding amount.
- Action binding on all the secured creditors. [Section 13(9)]

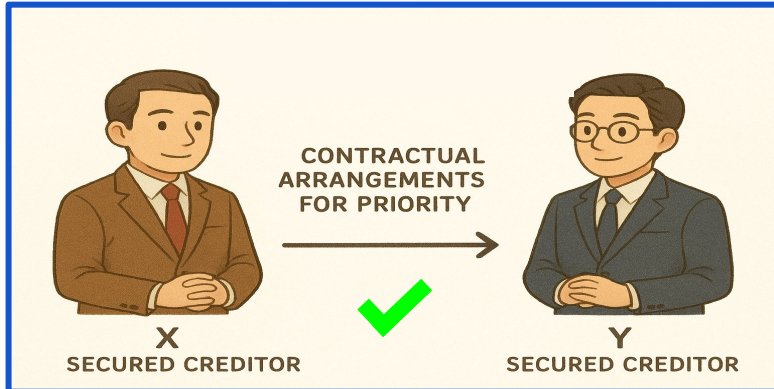
NCLAT

- [Srikanth Dwarakanth Liquidator of Surana Power Limited vs. BHEL](#)
 - If the secured creditors having **60% of the value** in the secured debt decide to relinquish or realize the security interest, decision shall be binding on the other pari-passu charge holders.

*Not applicable to Liquidation process initiated on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2026.

Inter-se priorities among secured creditors to be respected [Sec 53(2)]

Proposed Illustration 2



- Contractual arrangement that in the event of insolvency or liquidation of the CD, the debt owed to “X” shall be cleared before clearing any debt owed to “Y” shall not be disregarded.

Interpretation

This rule shall equally apply to resolution (by reference of section 53 and “fair and equitable” clause in section 30).

See our write up [here](#).

Judicial Precedents

- Established precedents in [ICICI v. SIDCO Leathers](#)
- Differential security rights (senior, subordinated etc.) are a matter of mutual agreement between the creditors inter se, and with the debtor.
 - First ranking secured creditors to be paid off first.
 - Residual value, if any, shall be distributed to second or subsequent secured creditors, sequentially.
 - In case of exclusive security interest, the exclusive charge holders to the extent of such claim shall have the right.
- Diverse rulings under IBC
 - NCLAT in [Technology Development Board vs. Anil Goel](#)
 - Secured Creditors relinquishing the security interest to be treated as one class ranking equally for distribution u/s 53(1)(b)(ii). See also [Anil Kumar Anchalia v. Oriental Bank of Commerce](#).
 - NCLAT in [JM Financial Asset Reconstruction Company Ltd. Vs. Finquest Financial Solutions Pvt. Ltd. & Ors.](#)
 - Right to realize security under Section 52 of IBC is restricted to a creditor that has an ‘exclusive charge’ or ‘sole first charge’.
- [Standard Chartered Bank v. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors](#), SC declared that “equitable” does not mean equal distribution; it means distribution which does justice to every stakeholders involved in the process.”

Well-established principle but amenable to varied judicial interpretation settled by amendment.

Government dues not secured debt: Dilemma of *Rainbow Papers* resolved [Sec 3(31), 53]

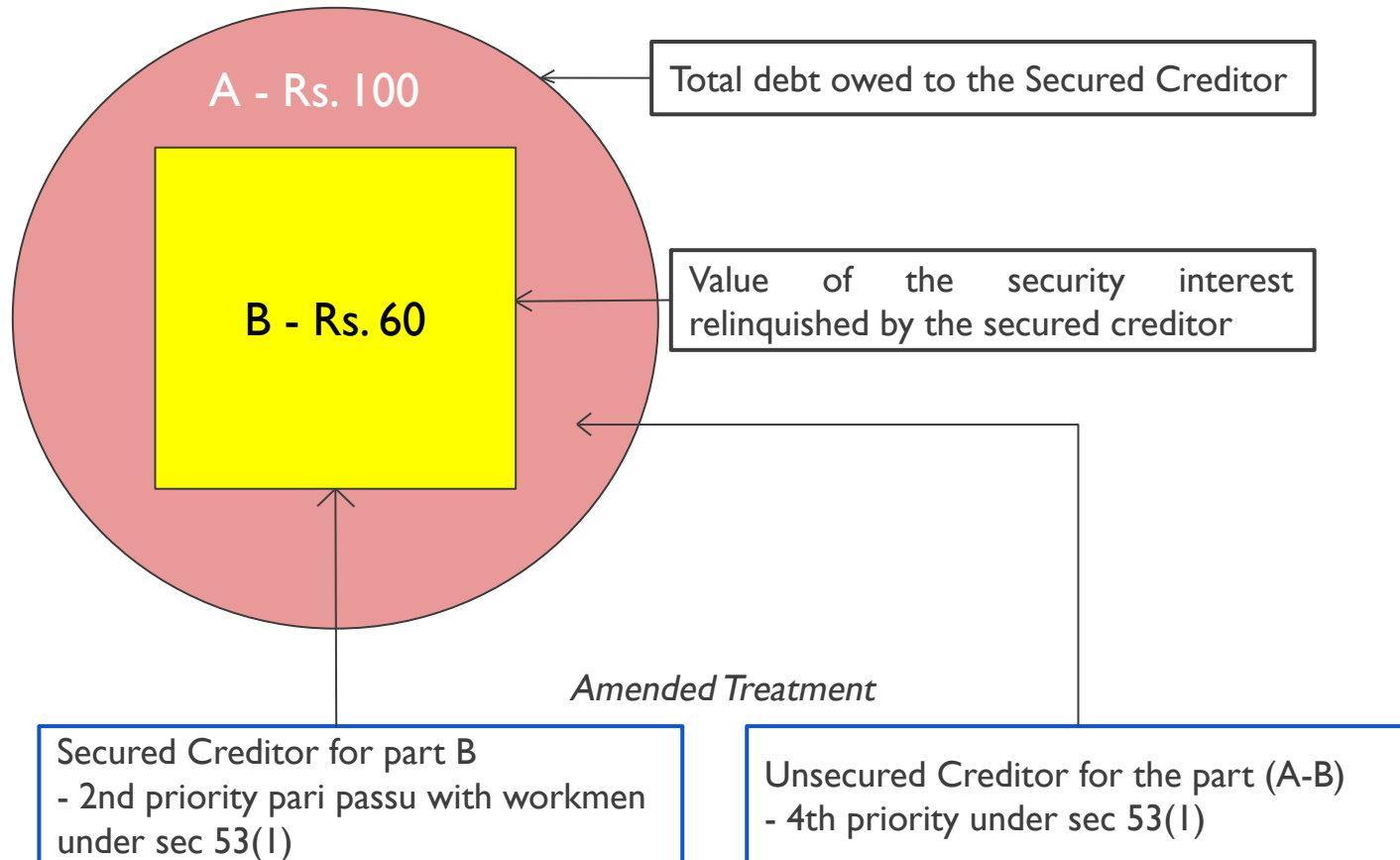
The Riddle of the Rainbow Papers

- Aug, 2022 *Sundaresh Bhatt v. Central Board of Indirect Taxes and Customs* - SC held that IBC has an overriding effect on Customs Act (which too, creates statutory charge in favour of customs authorities).
- Sept, 2022 *State Tax Officer v. Rainbow Papers Limited* - SC held that by virtue of the 'security interest' created in favour of the Government under GVAT, the State is a 'secured creditor' as per the definition in IBC. [*Our [article](#) on the same*]
- July, 2023 *Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Private Limited & Ors* - SC confined the applicability of Rainbow Papers to its own factual circumstances, providing relief to all stakeholders, especially IPs undertaking liquidation processes. [*Our [article](#) on the same*]
- Oct, 2023 *Review of the matter of Rainbow Papers*- SC rejected review petition of Rainbow papers largely on technical grounds. [*Our [article](#) on the same*]
- Dec, 2024 *Curative Petition in the matter*- Admitted and pending before the SC.

Inserted Clarifications

- **Explanation to Sec 53(i)(e)**
Government dues pertaining to 2 years preceding the liquidation commencement date, whether secured or unsecured falls under clause (e) and remaining amount beyond 2 years, if any to fall under clause (f).
- **Explanation to Sec 3(31) - Security Interest**
Security Interests created merely by operation of any law shall be excluded.
- Both the explanations inserted as 'For the removal of doubts' and hence, can have retrospective effect.

Secured creditor secured only for the value of security interest



- Explanation to Sec 53(1)(b)(ii) - Inserted for the purpose of Removal of doubts.
- Valuation of the security interest to be done as per valuation rules yet to be notified and hence, difficult to apply it retrospectively.

Insolvency Law Committee Report

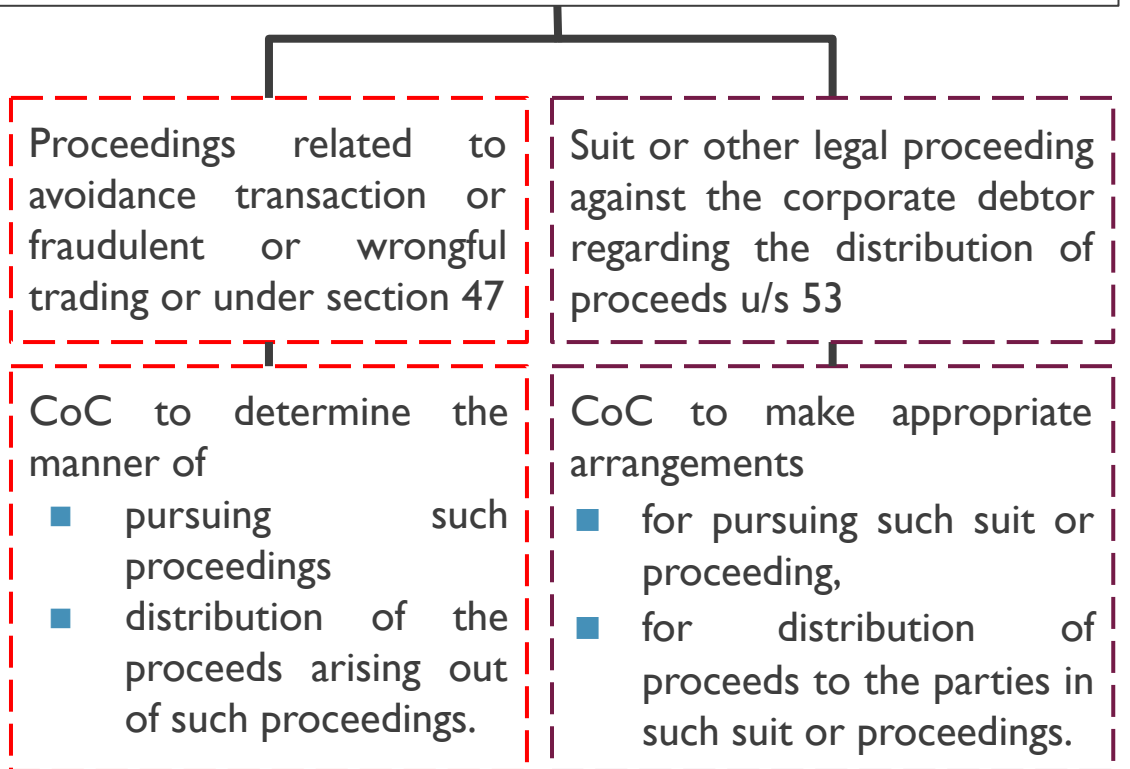
- Secured creditors who relinquish their security interest are provided second-highest priority in the recovery of their dues.
- Not intended to provide such secured creditors priority of repayment over their entire debt regardless of the extent of their security interest, as it would tantamount to respecting a right that has never existed.
- Broad scope for misuse as even creditors who are not secured to the full extent of their debt would recover the entire amount of their unpaid dues in priority to all other stakeholders.

Direct Dissolution of the Corporate Debtor

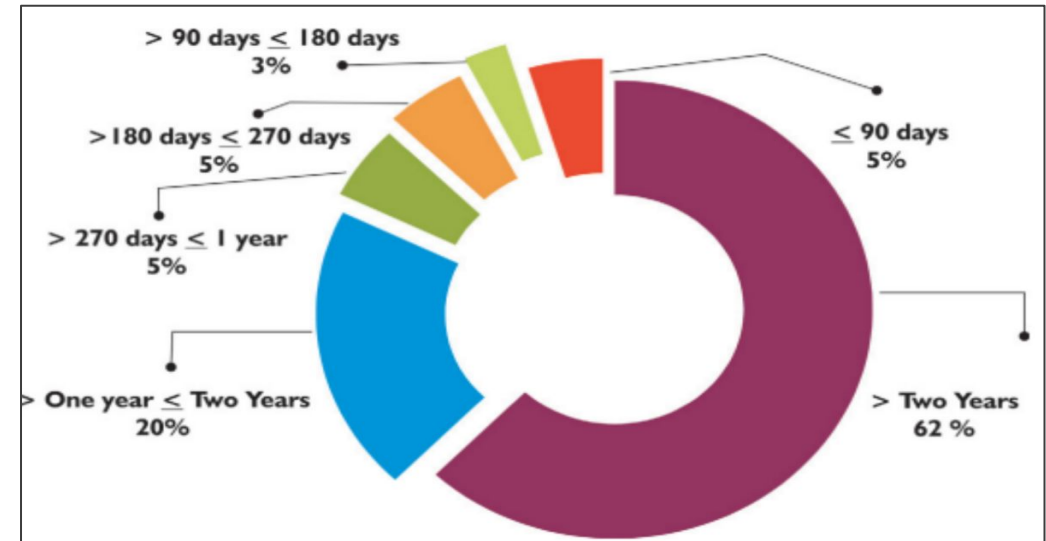
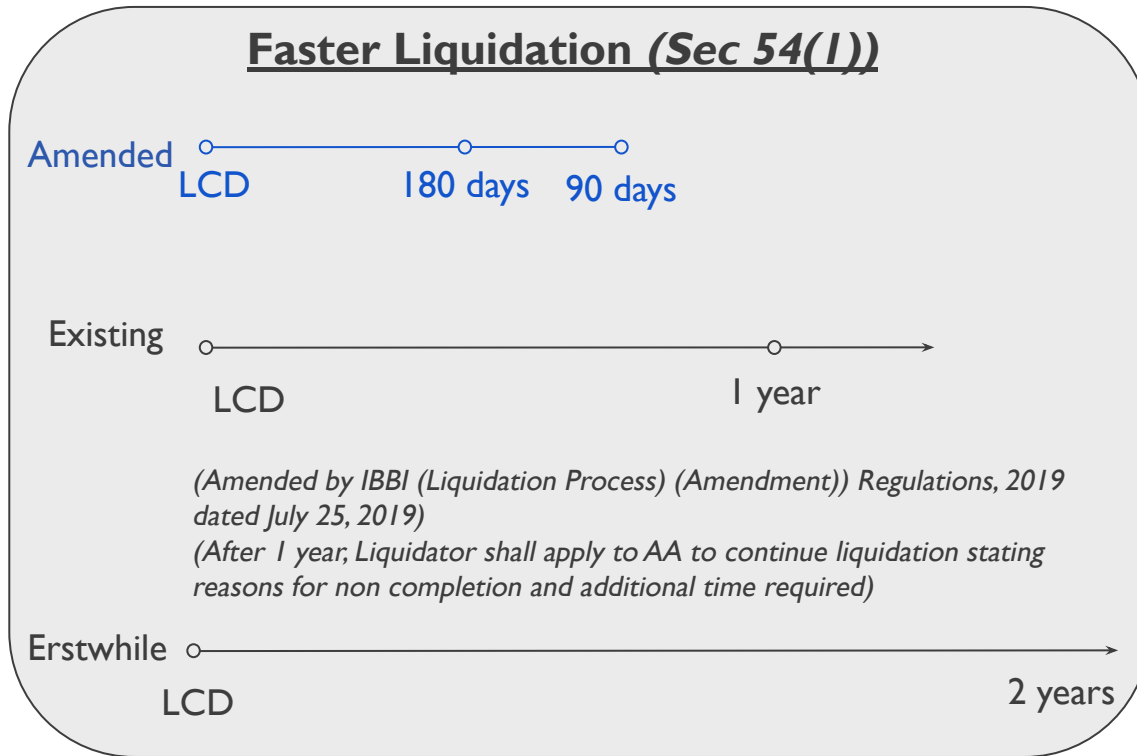
Enabling direct dissolution after failed CIRP, bypassing the liquidation stage (Sec 54(2A))

- Sec 33(2) empowers AA to pass liquidation order if the CoC decides so with ≥66% majority.
- Amended to empower AA to order direct dissolution of CD
 - if any asset remains with the CD, same may be disposed of in such manner as may be specified;
 - proceeds thereof shall be distributed for payment of the IRP costs; and
 - What about other payments?
 - any surplus shall be credited to the Insolvency and Bankruptcy Fund formed under section 224.

No impact of dissolution on pending proceedings - their fate in the hands of the CoC



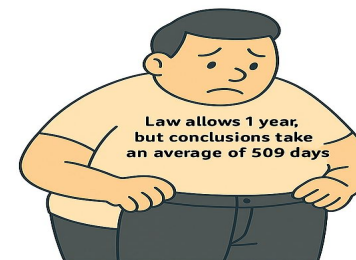
Reduced Liquidation Timelines



Timelines of 1384 ongoing Liquidation Processes as of March, 2025

VKC Comments: Impractical timelines reduce respect of the law. Every time there is an extension application, there is a process of filing an application, appearance, and order - all unwarranted burden on a clogged system.

EXISTING LAW



BEFORE: Existing Law:
Liquidation to be completed within 1 year

PROPOSED LAW



AFTER: Proposed Amendment:
Liquidation to be completed within 180 days; extension of 90 days may be granted by (AA)



Voluntary liquidation of corporate persons - Chapter V



Voluntary Liquidation - Longer Timelines and Reversible [Sec 59]

Timelines for completion

1 year (amended)

Process **to be completed** within such period which shall not be more than one year

- Reg 37 provides a timeline of 90/270 days, with extension possible (discussed below); now is it amended to put a cap of 1 year, including extensions?

270 days (existing)

Where company owes debt to any person and approval is required from such creditors, liquidator to **endeavour**.

[Reg 37(1)(a) of Voluntary Liquidation Regulations, 2016]

90 days (existing)

In all other cases, liquidator to **endeavour**.

[Reg 37(1)(b) of Voluntary Liquidation Regulations, 2016]

Liquidation Commencement Date

Termination of Voluntary Liquidation

After Commencement of VL proceedings

Before filing dissolution application u/s 59(7)

Conditions for Termination

- SR passed by members of the company.
 - Within 7 days of the SR, approval from $\frac{2}{3}$ majority of the creditors of CD.
 - Other conditions to be specified.
-
- Within 7 days of the SR passed by members or the subsequent approval of creditors, Liquidator to intimate IBBI and ROC about the SR.
 - Date of termination of VL:
 - Same as date of intimation
 - Term of liquidator ends and other specified consequences

Termination of voluntary liquidation process - Draft Regulations

- Initiation of voluntary liquidation is without any reference to the AA, until dissolution
- However, as for termination of voluntary liquidation, IBBI proposes, in terms of sec 59(5A)(c), that the liquidator shall intimate the AA with the following assurances:
 - due process for termination of voluntary liquidation proceedings has been followed; and
 - (b) the termination of voluntary liquidation proceedings is not initiated to defraud any person and the corporate person is solvent.
- Within 7 days of passing of special resolution, shall intimate IBBI and the registrar about termination



Group Insolvency - Chapter VA



Provisions relating to Procedural Coordination for Group Insolvency

- **A new Chapter VA [sec 59A] sought be inserted**
- **Proposal for rules:**
 - Common Bench (AA) for CIRP of CDs belonging to same group
 - Coordination b/w proceeding incl. CoC & IRPs, RPs, Liquidators
 - Appointment/Replacement of **common IP**
 - Committee of CoCs of group CDs
 - Agreement to coordinate and synchronise different aspects of insolvency proceedings
 - Treatment of costs incurred for coordination
- Note that this is only for coordinated proceeding, and not for initiation of CIRP against a group - meaning, each of the entities to come under group process must already be in CIRP. Decision to initiate or order cannot be taken on group basis.
- **Definitions**
 - Control: as defined under CA, 2013
 - *Also includes right to exercise control by virtue of ownership interest, AoA, LLP Agreement or in any other manner;*
 - Significant ownership - ability to exercise 26% or more voting power
 - Group: >2 CDs connected by control/ significant ownership (incl. holding/subsidiary/associate)
 - Insolvency proceedings: CIRP/Liquidation under /Part II of IBC
- **CG to prescribe manner and condition for Group Insolvency**

Key Points

- The entire law on this seems to be potentially rule-driven. As to who, with what considerations shall make the application for group insolvency does not seem laid
- Some key points:
 - Each of the entities in the group must be undergoing CIRP
 - there is no substantive consolidation - hence the question of any common assets, common claims, or commingling of assets or liabilities does not arise
 - The rules may provide for common conduct, but mutual ring fencing of the entities will continue

Possible factors to determine the need of group insolvency

- The extent to which management, the business and the finances of the companies are intermingled
- The conduct of the related company towards the creditors of the insolvent company
- The expectation of creditors that they were dealing with one economic entity rather than two or more group companies
- The extent to which the insolvency is attributable to the actions of the related group company
- Effect of such measures on creditors, as collective interests will conflict if the total assets of the combined companies are insufficient to meet all claims

Difference b/w Procedural Coordination & Substantive Consolidation

Basis of distinction	Procedural Coordination	Substantive Consolidation
Purport	To only coordinate the “procedures” relating to insolvency of each insolvent entity belonging to the group	To consolidate the assets and liabilities of all the insolvent entities in the group so as to treat them as “one”, and if financial and operational “oneness” of entities may be proved, to aggregate solvent group entities as well.
Objective	To make the administration of insolvency proceedings against group entities easier and inexpensive	To ensure that enterprise value is not lost due to fragmented resolution of only some entities, leaving other entities behind. To ensure equitable treatment to creditors by commingling assets and value, which, in reality, belong to an interdependent enterprise.
Substantive right of creditors	Procedural coordination does not impact the substantive rights of the creditors	Substantive consolidation affects the substantive rights of the creditors
Principle of separate legal entity	Separate legal entity of each group entity is kept intact	The principle of separate legal entity is completely disregarded
Effect on inter-entity claims	Inter-entity claims remains unaffected	Inter-entity claims vanish.
Nature of integration	Procedural coordination is more in the nature of “business integration”	Substantive consolidation is more in the nature of “asset integration”



Cross-Border Insolvency



Cross Border Insolvency - Present and Amended

■ Present Scenario in India:

- Sections 234 and 235 of IBC
 - Section 234: Bilateral agreements, by CG
 - Section 235: Assets located abroad, the RP/Liquidator can apply to AA for a Letter of request to be issued by AA to competent foreign authority
- Recognition of foreign proceedings: Civil Procedure Code, 1908, common law
 - Principles of Comity – see later
- Recognition of Indian Proceedings in foreign jurisdictions Order to be recognized by the foreign court

Amendments in the IBC (Amendment) Bill

- Insertion of **Section 240C empowering CG to prescribe**
 - **manner and conditions for administering and conducting cross-border insolvency proceedings** under the Code, for such class or classes of debtors and corporate debtors as may be notified by the Central Government.
- Rules under this section:
 - Application of provisions of the Code or Companies Act, 2013 with necessary exceptions, modifications, and adaptations.
 - Designation of one or more Benches for dealing with proceedings under this section.

Principles of Comity

- Section 44A of the Code of Civil Procedure of 1908
 - allows Indian courts to enforce orders passed by non-Indian courts in “reciprocating territories”
 - A country would be considered a reciprocating territory if it were declared one by the Government of India through publication in the Official Gazette.
 - Section 13 imposes certain restrictions upon enforcement of foreign decrees.
- “comity of courts” principle ensures that foreign judgments and orders are unconditionally conclusive of the matter in controversy. *Surjeet Singh vs State & Another* [Delhi High Court]
- The principles of comity of nation demand us to respect the order of English Court. Even in regard to an interlocutory order, Indian Courts have to give due weight to such order unless it falls under any of the exceptions under Section 13 of the CPC.
 - *International Woolen Mills vs M/S. Standard Wool (U.K.) Limited* on 25 April, 2001, cited in *Alcon Electronics Pvt. Ltd.v. Celem S.A. of FOS 34320 Roujan, France, 2016*

Cross Border Rules - Why & How?

- Mutual/reciprocal assistance in insolvency/liquidation proceedings
- Taking control of assets lying in other jurisdictions
- Recognition of foreign proceedings in India: assistance to foreign court/foreign representative
 - Prioritization of law
 - Corporate debtor may have assets in India
- Assistance for domestic proceedings in foreign jurisdictions: assistance to adjudicating authority/insolvency professional
 - Corporate debtor may have assets in foreign jurisdictions, including investment in foreign subsidiaries
 - Personal or corporate guarantors
- Protection of rights of creditors – domestic/foreign
 - Making procedures easy
- Facilitating avoidance proceedings irrespective of location



Other amendments



Ancillary Amendments

Section	Amendment
43- Preferential Trans. 46- Avoidable 'undervalued' Trans. 50- Extortionate credit Trans.	Relevant period for avoidance transactions- <ul style="list-style-type: none"> - in case of Related parties, 2 years preceding LCD, till the date of LCD - in case of other than RPs, 1 year preceding the LCD, till the date of the LCD
Proviso(a) to 49(1)- Trans. defrauding creditors	Orders passed by AA in case of 'transaction defrauding creditors', thereby restoring the provision as existed before, shall not affect any interest in the property acquired : <ul style="list-style-type: none"> - from a person <u>other than the corporate debtor or a related party of the corporate debtor, as the case may be</u> and - in good faith
54L- Approval of resolution plan	AA to give notice to CoC to rectify defects, if any, in the resolution plan, before rejecting the resolution plan
Chapter IV- Fast Track Corporate Insolvency	Omitted completely
96- Interim Moratorium	Shall not apply in case of insolvency resolution process initiated in respect of personal guarantor of the CD

Penalty regime

- Currently, IBC does not provide for adjudication of penalties; it has provisions for fines [Rs. 1 lakhs to Rs. 2 Crores] and imprisonment.
- Prosecutions under IBC have been scanty; enforcement has largely been limited, with few instances of actual prosecution, resulting in a gap between statutory provisions and their practical implementation.
- Now, for vexatious applications, sec 64A provides penalty from Rs. 1 lakhs to Rs. 2 Crs.
- Sec 235A seeks to have provision for penalties for contravention of provisions of IBC, **higher of:**
 - Rs. 1 lakh each day during which contravention continues,
 - 3 times of loss caused/likely to be caused/ unlawful gain made due to contravention
- Where no loss/ unlawful gain is quantifiable, penalty upto Rs. 5 Crs. can be imposed by AA [NCLT/ DRT]
- Sec 236 provides for ‘Trial of offence by Special Court’
 - Code of Criminal Procedure, 1973 will apply to the proceedings before Special Court

- **No retrospective applicability of section 235A**
 - not applicable on prosecution instituted or pending before any court as on the provision coming in force;
 - punishment imposed u/s 235A (as stood prior to amendment) as on the date of provision coming in force

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