Insolvency Resolution Process and Liquidation of Corporate Persons under the Insolvency and Bankruptcy Code, 2016: A Doctrinal, Jurisprudential, and Empirical Analysis

Abstract

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) marked a structural watershed in India's commercial and corporate insolvency jurisprudence. Designed to replace a fractured, slow, and multi-layered statutory regime, the Code introduced a unified, time-bound, and creditor-in-control framework aimed primarily at the reorganization and revival of financially distressed corporate persons, asset value maximization, and credit discipline (BLRC, 2015).[1] This research paper undertakes a comprehensive doctrinal, statutory, and empirical examination of the two principal mechanisms established under Part II of the Code: the Corporate Insolvency Resolution Process (CIRP) under Chapter II (Sections 6 to 32A) and the Liquidation Process under Chapter III (Sections 33 to 54) (Insolvency and Bankruptcy Code, 2016).[2]

The study dissects the procedural mechanics governing CIRP initiation by financial creditors, operational creditors, and corporate applicants, the statutory shield of the Section 14 moratorium, the powers and fiduciary duties of the Interim Resolution Professional (IRP) and Resolution Professional (RP), the institutional primacy of the Committee of Creditors (CoC) and the judicial deference accorded to its commercial wisdom, the rigorous ineligibility filters under Section 29A, and the judicial contours of the "clean slate" doctrine (Essar Steel, 2020).[3] It subsequently examines the liquidation framework, evaluating the statutory gateways triggering corporate winding-up, estate administration by the liquidator, and the priority waterfall mechanism

[1] Bankruptcy Law Reforms Committee. (2015). Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and design. Ministry of Finance, Government of India.

[2] The Insolvency and Bankruptcy Code, No. 31 of 2016, Acts of Parliament, 2016 (India).

[3] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 S.C.C. 531 (India).

codified under Section 53, highlighting the deliberate legislative subordination of Crown debts (Swiss Ribbons, 2019).[4]

Through an analytical lens informed by landmark rulings of the Supreme Court of India—including *Swiss Ribbons*, *Essar Steel*, *Innoventive Industries* (2018),[5] *Mobilox Innovations* (2018),[6] and *Lalit Kumar Jain v. Union of India* (2021)—[7] the paper critically interrogates systemic fault lines: substantial creditor haircuts exceeding 68 percent of admitted claims, protracted temporal slippages surpassing statutory 330-day limits (averaging over 730 days), acute bottlenecks before the National Company Law Tribunal (NCLT), severe disadvantages faced by operational creditors, and the chronic drought of interim finance (World Bank, 2024; RBI, 2024).[8] Finally, it surveys legislative evolutions, including the Pre-packaged Insolvency Resolution Process (PPIRP) for MSMEs and the IBC Amendment Act, 2026, offering grounded policy proposals to enhance systemic independence, stakeholder equity, and asset value preservation (Insolvency and Bankruptcy Code (Amendment) Act, 2021; Insolvency and Bankruptcy Code (Amendment) Act, 2026).[9]

Keywords: Corporate Insolvency Resolution Process, Liquidation, Insolvency and Bankruptcy Code 2016, Committee of Creditors, Commercial Wisdom, Section 14 Moratorium, Priority Waterfall, Clean Slate Doctrine.

[4] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 S.C.C. 17 (India).

[5] Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 S.C.C. 407 (India).

[6] Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 S.C.C. 353 (India).

[7] Lalit Kumar Jain v. Union of India, (2021) 9 S.C.C. 321 (India).

[8] World Bank. (2024). Business Ready (B-READY) 2024: Insolvency and financial recovery metrics. World Bank Group; Reserve Bank of India. (2024). Financial stability report. RBI.

[9] Insolvency and Bankruptcy Code (Amendment) Act, No. 26 of 2021, Acts of Parliament, 2021 (India); Insolvency and Bankruptcy Code (Amendment) Act, No. 12 of 2026, Acts of Parliament, 2026 (India).

1. Legislative Genesis and Doctrinal Foundations

1.1 Historical Inadequacy of Pre-IBC Insolvency Regimes

Prior to the promulgation of the Insolvency and Bankruptcy Code in 2016, India's corporate distress and debt recovery landscape was characterized by acute institutional fragmentation, procedural inertia, and systemic value destruction (BLRC, 2015). The legal framework was scattered across overlapping enactments operating simultaneously with conflicting jurisdictional mandates:

1. The Companies Act, 1956 (and later 2013) governed traditional company winding-up and court-sanctioned schemes of arrangement (Sections 391–394 of the 1956 Act), which were procedural, heavily litigated, and frequently dragged on for decades.
2. The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) established the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). Although enacted to revive unviable industrial undertakings, SICA became notorious as a haven for defaulting promoters. The statutory automatic stay under Section 22 of SICA shielded defaulting management from recovery actions while allowing them to remain in operational control ("debtor-in-possession"), causing severe asset stripping, depreciation, and moral hazard. Furthermore, SICA was limited strictly to industrial companies, excluding service, trading, and non-manufacturing enterprises.
3. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI) established Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs). Intended to facilitate summary recovery by banks and financial institutions, the

DRTs became overburdened by backlogs, formalistic adjournments, and procedural bottlenecks, taking an average of four to six years to resolve recovery claims.

4. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) empowered secured creditors to enforce security interests without judicial intervention by seizing and auctioning collateral. While effective for secured lenders with clear, unencumbered collateral, SARFAESI remained unavailable to unsecured creditors and operational creditors. Crucially, SARFAESI was an enforcement and debt recovery mechanism aimed at piecemeal liquidation of assets, lacking any collective framework for enterprise restructuring or rescuing viable commercial entities as going concerns.

The cumulative consequence of this fragmented ecosystem was economically debilitating. Empirical data compiled by the World Bank's *Doing Business Report 2015* revealed that resolving insolvency in India took an average of 4.3 years, with creditors recovering a dismal 25.7 to 26 cents on the dollar, while administrative costs of insolvency averaged 9 percent of the estate (World Bank, 2014).[10] The absence of a swift collective insolvency regime contributed directly to a massive accumulation of non-performing assets (NPAs) on the balance sheets of Indian commercial banks, with gross NPAs peaking at 11.2 percent in 2018 (RBI, 2018).[11]

2. The Corporate Insolvency Resolution Process (CIRP): Statutory Mechanics and Procedural Architecture

The Corporate Insolvency Resolution Process is governed by Chapter II of Part II of the Code (Sections 6 to 32A), read with the Insolvency and Bankruptcy Board of India (Insolvency

[10] World Bank. (2014). Doing Business 2015: Going beyond efficiency. World Bank Group.
[11] Reserve Bank of India. (2018). Report on trend and progress of banking in India 2017–18. RBI.

Resolution Process for Corporate Persons) Regulations, 2016 (IBBI, 2016). CIRP provides an institutional pathway for formulating, evaluating, and implementing a market-tested resolution plan to restore a defaulting corporate person to operational viability.[12]

2.1 Default Threshold and Applicability

Under Section 4 of the Code, Part II applies to matters relating to the insolvency resolution and liquidation of corporate debtors where the minimum amount of default is statutory. Originally pegged at Rs. 1 Lakh, the Central Government, exercising powers under the proviso to Section 4, raised the minimum threshold of default to Rs. 1 Crore via Notification dated March 24, 2020. This modification was introduced to insulate micro, small, and medium enterprises (MSMEs) from being pushed into distress resolution due to transient liquidity shocks precipitated by the COVID-19 pandemic. Furthermore, Parliament enacted Section 10A, which introduced an absolute statutory bar prohibiting the initiation of CIRP for any default arising on or after March 25, 2020, up to March 24, 2021.

Corporate debtors eligible under Part II comprise companies registered under the Companies Act, 2013 (or previous company laws), Limited Liability Partnerships (LLPs) governed by the LLP Act, 2008, and other incorporated bodies notified by the Central Government. Under Section 11, specific entities are disqualified from initiating CIRP, including corporate debtors currently undergoing CIRP or PPIRP, corporate debtors having completed CIRP twelve months preceding the application, or entities against whom an order of liquidation has already been passed.

[12] Insolvency and Bankruptcy Board of India. (2016). Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2.2 Tripartite Initiation Gateways: Sections 7, 8 & 9, and 10

The Code provides three distinct procedural gateways to trigger CIRP before the Adjudicating Authority (the National Company Law Tribunal, NCLT, constituted under Section 408 of the Companies Act, 2013):[13]

2.2.1 Initiation by Financial Creditors (Section 7)

A financial debt, defined under Section 5(8), means a debt along with interest, if any, disbursed against the consideration for the time value of money, including term borrowings, credit facilities, bonds, debentures, and receivables sold or discounted. Under Section 5(7), a financial creditor is any person to whom financial debt is owed, including assignees or transferees.

Under Section 7(1), a financial creditor—either individually, jointly with other financial creditors, or through an authorized representative—may file an application in Form 1 before the NCLT upon the occurrence of a default (Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).[14] The application must be accompanied by:

- Conclusive record of default registered with an Information Utility (such as National E-Governance Services Limited - NeSL) or evidence of default from financial institutions.
- The proposed name of an Insolvency Professional to act as Interim Resolution Professional.
- Payment of the prescribed application fee of Rs. 25,000.

In *Innoventive Industries Ltd. v. ICICI Bank* (2018),[15] the Supreme Court laid down that for Section 7 admission, the NCLT is only required to ascertain the existence of a "default"—

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[13] The Companies Act, No. 18 of 2013, §§ 408 & 424, Acts of Parliament, 2013 (India).
[14] Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, r. 4, Form 1.
[15] Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 S.C.C. 407 (India).

defined broadly under Section 3(12) as non-payment of debt when whole or any part has become due and payable. The NCLT is not an authority to determine the quantum of default, nor can it entertain contractual counterclaims or cross-disputes. Once default of the threshold amount is established through Information Utility records or bank statements, the NCLT is statutorily bound to admit the petition.

2.2.2 Initiation by Operational Creditors (Sections 8 and 9)

An operational debt, under Section 5(21), encompasses claims arising from the provision of goods, services (including employment contracts), or statutory dues payable to the Central Government, State Governments, or local authorities.

Unlike financial creditors, an operational creditor must satisfy rigorous pre-litigation procedural hurdles:

1. Mandatory Demand Notice (Section 8): The operational creditor must first deliver a formal demand notice in Form 3 or an unpaid invoice in Form 4 to the corporate debtor demanding payment of the defaulted operational debt (Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).[16]

2. Statutory Ten-Day Window: The corporate debtor has a mandatory period of ten days from the receipt of the notice to either furnish proof of payment of the unpaid debt, or bring to the notice of the operational creditor the "existence of a dispute" or the pendency of a suit or arbitration proceeding filed prior to the receipt of the demand notice.

3. Application for CIRP (Section 9): If payment is not received or no pre-existing dispute is communicated within ten days, the operational creditor may file an application in Form 5 under Section 9 (accompanied by a fee of Rs. 2,000) (Insolvency and Bankruptcy

[16] Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, r. 5, Forms 3 & 4.

(Application to Adjudicating Authority) Rules, 2016). The applicant must submit an affidavit certifying that no notice of dispute has been received from the debtor, along with a bank certificate confirming non-payment. Proposing an IRP is optional for operational creditors.[17]

The standard for what constitutes a valid "dispute" was authoritatively settled by the Supreme Court in *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.* (2018).[18] The Court held that the dispute must be a *bona fide*, pre-existing dispute—not spurious, illusory, or hypothetical. The NCLT need not determine whether the defense will succeed on merits, but if a plausible dispute existed prior to the demand notice (e.g., quality complaints or contractual claims documented in pre-notice correspondence), the Section 9 application must be rejected.

2.2.3 Initiation by Corporate Applicant (Section 10)

A corporate debtor that has defaulted in debt servicing may initiate voluntary CIRP by filing Form 6 under Section 10 (Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016). The applicant must submit books of accounts, financial statements, and the name of a proposed IRP. Following the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (Insolvency and Bankruptcy Code (Second Amendment) Act, 2018),[19] Section 10 mandates that the corporate applicant must obtain prior approval from its shareholders via a special resolution passed by a 75 percent majority in an extraordinary general

[17] Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, r. 6, Form 5.

[18] Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 S.C.C. 353 (India); see also K. Kishan v. Vijay Nirman Company Pvt. Ltd., (2018) 17 S.C.C. 662 (India) (holding that arbitral award challenges constitute pre-existing disputes).

[19] Insolvency and Bankruptcy Code (Second Amendment) Act, No. 26 of 2018, Acts of Parliament, 2018 (India).

meeting. As held in *Gaja Trustee Co. P. Ltd. v. Haldia Coke and Chemicals P. Ltd.*, an application filed by directors without shareholder approval is *void ab initio*.[20]

2.3 Adjudication, Summary Timelines, and Natural Justice

Under Sections 7(4) and 9(5), the NCLT is directed to ascertain default and communicate its order of admission or rejection within 14 days of receipt of the application. Where an application is defective, the NCLT must give 7 days' notice to the applicant to rectify defects before rejecting it.

In *Surendra Trading Company v. Juggilal Kamlapat Jute Mills Company Ltd.* (2017),[21] the Supreme Court held that both the 14-day timeline for admission and the 7-day period for defect rectification are directory, not mandatory. This ruling reflects the settled administrative law principle that procedural time limits imposed on statutory adjudicatory authorities cannot divest them of jurisdiction.

Furthermore, while Sections 7 and 9 do not explicitly mandate an oral hearing, judicial pronouncements in *Sree Metaliks Ltd. v. Union of India* (Calcutta H.C. 2017)[22] and *Innoventive Industries* established that Section 424 of the Companies Act, 2013 obligates the NCLT to adhere to the principles of natural justice (*audi alteram partem*). The Adjudicating Authority must issue a limited notice to the corporate debtor to afford an opportunity to contest the existence of default.

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[20] Gaja Trustee Co. P. Ltd. v. Haldia Coke and Chemicals P. Ltd., Company Appeal (AT) (Insolvency) No. 137 of 2017 (NCLAT 2017) (India).

[21] Surendra Trading Company v. Juggilal Kamlapat Jute Mills Company Ltd., (2017) 16 S.C.C. 143 (India).

[22] Sree Metaliks Ltd. v. Union of India, 2017 S.C.C. OnLine Cal 2749 (Calcutta H.C. 2017) (India).

2.4 The Statutory Moratorium under Section 14

Upon admitting a CIRP application, the NCLT declares a comprehensive moratorium under Section 14(1), lasting until the completion of CIRP or the passing of a liquidation order. The moratorium acts as a protective shield against asset erosion, prohibiting:

- The institution of suits or continuation of pending legal proceedings, judgments, decrees, or execution orders before any court, tribunal, or arbitration panel.
- Any transferring, encumbering, alienating, or disposing of the corporate debtor's assets, rights, or beneficial interests.
- Any action to foreclose, recover, or enforce security interests created under SARFAESI or the Transfer of Property Act.
- The recovery or repossession of any property occupied by or in possession of the corporate debtor by an owner or lessor.

*Statutory Exemptions and Legal Boundaries of Moratorium*The moratorium is deliberately designed to protect enterprise operations, not to serve as an umbrella immunity for unlawful acts:

- **Essential Goods and Services (Section 14(2)):** The supply of essential utilities—specifically water, electricity, telecommunications, and information technology services—cannot be terminated, suspended, or interrupted during the moratorium, provided they do not constitute direct manufacturing inputs used to generate profits (*ICICI Bank v. Innoventive Industries Ltd.*; *Dakshin Gujarat VIJ Company Ltd. v. ABG Shipyard Ltd.*). Operating costs incurred for essential supplies during the moratorium form part of the Insolvency Resolution Process Costs and enjoy first priority.[23]

[23] Dakshin Gujarat VIJ Company Ltd. v. ABG Shipyard Ltd., Company Appeal (AT) (Insolvency) No. 334 of 2017 (NCLAT 2017) (India).

- **Criminal and Regulatory Proceedings:** In *Tayal Cotton Ltd. v. State of Maharashtra* (2018),[24] the Bombay High Court held that the Section 14 moratorium applies strictly to pecuniary recovery proceedings and civil suits, excluding criminal prosecutions. Similarly, in *Varrsana Ispat Ltd. v. Deputy Director, Directorate of Enforcement* (NCLAT 2018),[25] the NCLAT affirmed that attachment and confiscation of proceeds of crime under the Prevention of Money Laundering Act, 2002 (PMLA) prevail over the Section 14 moratorium.[26]
- **Personal and Corporate Guarantors:** Section 14(3)(b), inserted via the 2018 Amendment, expressly provides that the moratorium does not apply to a surety in a contract of guarantee for the corporate debtor (Insolvency and Bankruptcy Code (Amendment) Act, 2018).[27] In *State of India v. V. Ramakrishnan* (2018),[28] the Supreme Court held that this amendment was clarificatory and retrospective, allowing financial creditors to proceed simultaneously against personal guarantors before the NCLT under Section 60(2). This was further reinforced in *ICICI Bank Ltd. v. Anuj Jain (Jaypee Infratech Case)* (2020),[29] where the Court differentiated between direct financial debts and third-party security pledges, affirming that security interests created without direct disbursal against time value of money do not confer financial creditor status.

[24] Tayal Cotton Ltd. v. State of Maharashtra, 2018 S.C.C. OnLine Bom 2069 (Bombay H.C. 2018) (India).
[25] Varrsana Ispat Ltd. v. Deputy Director, Directorate of Enforcement, Company Appeal (AT) (Insolvency) No. 493 of 2018 (NCLAT 2018) (India).
[26] The Prevention of Money Laundering Act, No. 15 of 2003, Acts of Parliament, 2003 (India).
[27] Insolvency and Bankruptcy Code (Amendment) Act, No. 8 of 2018, Acts of Parliament, 2018 (India).
[28] State Bank of India v. V. Ramakrishnan, (2018) 17 S.C.C. 394 (India).
[29] ICICI Bank Ltd. v. Anuj Jain, (2020) 8 S.C.C. 401 (India).

2.5 Operationalizing CIRP: Interim Resolution Professional, Committee of Creditors, and Resolution Plans

2.5.1 Appointment and Duties of the IRP and RP (Sections 16–18, 22–28)

Upon admission, the NCLT appoints an Interim Resolution Professional (IRP) under Section 16. Under Section 17, the management of the affairs of the corporate debtor vests in the IRP, the powers of the board of directors stand suspended, and officers and managers report directly to the IRP. Under Section 18 and Regulation 6 of the CIRP Regulations, the IRP issues a public announcement in Form A within three days inviting claims, collates and verifies creditor claims, takes control and custody of all assets, and constitutes the Committee of Creditors (CoC) (ICAI, 2021).[30]

At the first meeting of the CoC (held within seven days of constitution under Section 22), the CoC may resolve by a 66 percent voting share either to appoint the IRP as the Resolution Professional (RP) or replace the IRP with another licensed Insolvency Professional. Under Section 25, the RP is charged with preserving and protecting the assets of the debtor, continuing business operations as a going concern, raising interim finance (Section 5(15)), appointing registered valuers (Regulation 27) to compute fair value and liquidation value (Regulation 35), preparing the Information Memorandum (Regulation 36), publishing the Invitation for Expression of Interest in Form G (Regulation 36A), and issuing the Request for Resolution Plans (RFRP) alongside an evaluation matrix (Regulation 36B). Under Section 28, critical actions—such as raising interim finance above agreed thresholds, creating security interests, changing capital structure, or undertaking related-party transactions—require prior CoC approval by a 66 percent vote.

[30] Institute of Chartered Accountants of India. (2021). Handbook on Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016. ICAI.

2.5.2 Constitution and Primacy of the Committee of Creditors (Sections 21, 24, 25A)

Under Section 21, the CoC comprises all unrelated financial creditors of the corporate debtor, with voting shares assigned strictly in proportion to the financial debt owed to each. Operational creditors hold no voting rights in the CoC, although operational creditors (or their representative) whose aggregate dues are not less than 10 percent of the total debt may attend CoC meetings without voting power under Section 24(3)(c). Where a corporate debtor has no financial debt or all financial creditors are related parties, Regulation 16 provides that the CoC shall consist of the eighteen largest operational creditors by value, one representative of workmen, and one representative of employees. For classes of financial creditors—such as real estate allottees recognized as financial creditors under Section 5(8)(f) via the 2018 Second Amendment (Insolvency and Bankruptcy Code (Second Amendment) Act, 2018)—Section 25A and Regulation 16A govern the appointment of an Authorized Representative (AR) who votes in accordance with the prior instructions of the class.[31]

In *K. Sashidhar v. Indian Overseas Bank* (2019)[32] and *Essar Steel* (2020), the Supreme Court established that the "commercial wisdom" of the CoC is paramount and non-justiciable. Neither the NCLT nor the NCLAT possesses equity jurisdiction to substitute its own commercial assessment for that of the CoC, nor can they interfere with the distribution matrix approved by the requisite 66 percent voting share, provided the plan satisfies the statutory floors of Section 30(2).

2.5.3 Eligibility Filters under Section 29A and the MSME Carve-Out (Section 240A)

To prevent errant promoters from repurchasing their distressed enterprises at steep discounts at the expense of creditors, Parliament inserted Section 29A via the 2018 Amendment.

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[31] Insolvency and Bankruptcy Code (Second Amendment) Act, No. 26 of 2018, Acts of Parliament, 2018 (India).

[32] K. Sashidhar v. Indian Overseas Bank, (2019) 12 S.C.C. 150 (India).

Section 29A disqualifies a wide spectrum of persons—and any person acting jointly or in concert with them—from submitting a resolution plan, including undischarged insolvents, wilful defaulters, persons whose accounts have been classified as Non-Performing Assets (NPAs) for at least one year prior to CIRP commencement, persons convicted of specified offences, disqualified directors, and connected persons.

In *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* (2019),[33] the Supreme Court upheld a purposive interpretation of Section 29A, piercing the corporate veil to evaluate *de facto* control and holding that eligibility is assessed at the time of submission of the resolution plan. Recognizing the unique promoter-driven nature of small enterprises, Section 240A exempts resolution applicants for MSME corporate debtors from the disqualifications under Clauses (c) and (h) of Section 29A (Insolvency and Bankruptcy Code (Amendment) Act, 2018).

2.5.4 Resolution Plan Approval, Timelines, Withdrawal, and the "Clean Slate" Doctrine (Sections 12, 12A, 30, 31)

Under Section 30(2), the RP examines every resolution plan to verify that it provides for:

- Payment of Insolvency Resolution Process Costs in priority to all other debts.
- Payment of debts of operational creditors in an amount not less than the liquidation value payable under Section 53 or the amount payable if distributed in the order of priority under Section 53, whichever is higher (as clarified by the 2019 Amendment and *Essar Steel*).
- Payment to dissenting financial creditors not less than the liquidation value payable to them under Section 53(1) (Regulation 38).

[33] ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 S.C.C. 1 (India).

- Management of the affairs of the corporate debtor after plan approval and mechanisms for implementation and supervision.

Once approved by at least 66 percent of the voting share of the CoC under Section 30(4), the plan is submitted to the NCLT under Section 31. Upon NCLT satisfaction that the plan meets Section 30(2) requirements, the approved resolution plan becomes binding on the corporate debtor, its employees, members, creditors (including Central, State, and local government authorities), guarantors, and other stakeholders.

In *Essar Steel* and *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* (2021),[34] the Supreme Court entrenched the "clean slate" doctrine: all claims not forming part of the approved resolution plan stand permanently extinguished, ensuring that a successful resolution applicant is not ambushed by undecided hydra-headed claims after taking over the enterprise.

Under Section 12, CIRP must be completed within 180 days, extendable once by up to 90 days upon a 66 percent CoC resolution. Following the 2019 Amendment (Insolvency and Bankruptcy Code (Amendment) Act, 2019) [35]and *Essar Steel*, the outer statutory limit is 330 days (inclusive of extensions and legal proceedings), though tribunals retain narrow discretion to extend beyond 330 days in exceptional cases where delay is attributable to adjudicatory processes rather than litigant default (*Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd.*).[36] Additionally, under Section 12A and Regulation 30A, the NCLT may allow the withdrawal of an admitted application on an application made by the applicant with the approval

[34] Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 S.C.C. 657 (India).
[35] Insolvency and Bankruptcy Code (Amendment) Act, No. 26 of 2019, Acts of Parliament, 2019 (India).
[36] Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 185 of 2018 (NCLAT 2018) (India).

of a 90 percent voting share of the CoC (*Swiss Ribbons*; *Brilliant Alloys Pvt. Ltd. v. S. Rajagopal*).[37]

3. The Liquidation Process of Corporate Persons (Sections 33 to 54)

When enterprise reorganization fails, Chapter III of Part II (Sections 33 to 54), read with the IBBI (Liquidation Process) Regulations, 2016 (IBBI, 2016), governs the orderly winding-up, asset realization, and distribution of the liquidation estate.

3.1 Statutory Triggers for Liquidation (Section 33)

Under Section 33, the NCLT passes an order requiring the corporate debtor to be liquidated in four primary contingencies:

1. Expiry of CIRP Timeline (Section 33(1)(a)): No resolution plan is received by the NCLT before the expiry of the maximum period permitted under Section 12.
2. Rejection of Resolution Plan (Section 33(1)(b)): The NCLT rejects a submitted resolution plan under Section 31 for non-compliance with statutory requirements.
3. Decision of the CoC (Section 33(2)): At any time during CIRP prior to confirmation of a resolution plan, the CoC resolves by not less than a 66 percent voting share to liquidate the corporate debtor (including where the debtor is economically unviable).
4. Contravention of Approved Resolution Plan (Section 33(3)): Where an approved resolution plan is contravened by the corporate debtor, any person whose interests are prejudicially affected may apply to the NCLT for a liquidation order.

Upon passing a liquidation order, a fresh moratorium under Section 33(5) bars the institution of any suit or legal proceeding by or against the corporate debtor, though secured creditors retain the option under Section 52 either to relinquish their security interest to the

[37] Brilliant Alloys Pvt. Ltd. v. S. Rajagopal, (2018) S.C.C. OnLine S.C. 3154 (India).

liquidation estate and receive proceeds under Section 53, or to realize their security interest independently outside the liquidation process.

4. Empirical Assessment, Systemic Fault Lines, and Legislative Evolution

4.1 Empirical Performance and Structural Bottlenecks

While the IBC has significantly improved credit culture and prompted substantial pre-admission settlements—with tens of thousands of applications resolved prior to admission—empirical metrics published by the Insolvency and Bankruptcy Board of India (IBBI, 2025), the Reserve Bank of India (RBI, 2024), and the World Bank (2024) expose critical operational challenges: haircuts exceeding 68 percent of admitted claims, protracted temporal slippages surpassing statutory 330-day limits (averaging over 730 days), acute bottlenecks before the National Company Law Tribunal (NCLT), severe disadvantages faced by operational creditors, and the chronic drought of interim finance (Datta, 2020; Sengupta & Sharma, 2016).[38]

4.2 Legislative Evolution and Policy Recommendations

To address these systemic fault lines, Parliament has enacted targeted reforms, notably the *Pre-packaged Insolvency Resolution Process (PPIRP)* for MSMEs under Chapter IIIA (Sections 54A–54P, introduced via the Insolvency and Bankruptcy Code (Amendment) Act, 2021)—which blends debtor-in-possession operational continuity with creditor oversight and a Swiss Challenge bidding mechanism—and the *IBC Amendment Act, 2026* (Insolvency and Bankruptcy Code (Amendment) Act, 2026), which streamlines Section 7 admissions through mandatory reliance on Information Utility conclusive default records, codifies group insolvency

[38] Insolvency and Bankruptcy Board of India. (2025). Annual report and quarterly newsletters. IBBI; Reserve Bank of India. (2024). Financial stability report. RBI; World Bank. (2024). Business Ready (B-READY) 2024: Insolvency and financial recovery metrics. World Bank Group; Datta, P. (2020). The insolvency and bankruptcy code: A game changer for Indian economy. Economic and Political Weekly, 55(32–33), 45–52; Sengupta, R., & Sharma, A. (2016). Corporate insolvency resolution in India: Lessons from a cross-country comparison. Economic and Political Weekly, 51(52), 37–46.

coordination, and establishes a cross-border insolvency framework modeled on the UNCITRAL Model Law.

To further strengthen institutional efficacy and stakeholder equity, four targeted reforms are warranted:

1. **Dedicated Bench Capacity and Summary Admission Protocol:** Expand NCLT bench strength with specialized insolvency benches and enforce strict statutory timelines for relying on NeSL Information Utility records to eliminate pre-admission mini-trials.
2. **Minimum Equitable Floor for Operational Creditors:** Refine Section 30(2)(b) and Regulation 38 to ensure operational creditors receive a predictable baseline share when resolution values exceed liquidation value, mitigating supply-chain contagion.
3. **Institutionalizing Rescue Financing:** Establish dedicated distressed-asset credit enhancement facilities and clarify super-priority lien protections for interim finance providers under Section 5(15) and Regulation 31.
4. **Strengthening CoC Accountability and IP Governance:** Introduce a statutory stewardship code for CoC members alongside streamlined disciplinary mechanisms under the IBBI to balance commercial autonomy with procedural fairness.

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