IBC Amendment: More clarity, less reform

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The IBC Amendment Bill uses the phrase "it is hereby clarified" 17 times. One such clarification restores the original trigger for initiating corporate insolvency resolution: Admission if a default exists, rejection if it does not, and no other grounds. This undoes *Vidarbha Industries* (2022) and reaffirms what the Bankruptcy Law Reforms Committee, the original notes on clauses, and *Innoventive Industries* (2017) had already settled.

Another restores the original liquidation waterfall by overturning *Rainbow Papers* (2022), which had put government dues under the Gujarat Value Added Tax Act, 2003, at the same level as secured creditors. The Bill makes it clear that a security interest must arise from a contractual agreement, not merely by operation of law, and that Central and state dues, secured or otherwise, rank lower in priority.

Other clarifications, though not so labelled, include the clean slate principle: A resolution plan binds all stakeholders, extinguishes unpreserved claims, and protects existing licences and permits for their remaining term, curbing post-approval demands and litigation.

The IBC seeks early commencement and swift closure of rescues. While it imposes strict timelines on market participants for individual tasks and the overall process, it has been less prescriptive for the Adjudicating Authority (AA) and appellate bodies. The Bill narrows this gap: The AA must admit or reject Cirp (corporate insolvency resolution process) applications within 14 days, and decide withdrawal requests, approve or reject resolution plans, issue liquidation orders, and pass dissolution orders within 30 days, stating reasons if these timelines are not met.

Such provisions for certain tasks exist in the Code for the AA but have had little impact. Without a matching increase in capacity, the AA is unlikely to meet timelines, particularly as courts often treat them as directory. And with no timelines for appellate bodies, delays may persist: *Bhushan Steel and Power* (2025) took five years to clear the Supreme Court.

These clarifications and timelines, primarily aimed at state agencies, seek to safeguard the IBC's integrity, but risk triggering an endless cycle of legislative fixes. Misunderstandings may be fewer this time, given the Bill's quality drafting and detailed notes on clauses, but they will not be eliminated. And without consequences for non-compliance, for instance, by the AA, improved performance is not assured.

The problem is deeper: Adjudication runs through layered hierarchies, each revisiting subordinate decisions, even after process closure. Ideally, a process should attain finality with the AA's approval; if irregularities emerge later, those responsible should face swift civil, regulatory, or criminal action. Appeals should address points of law, without unsettling the underlying transaction.

The Amendment Bill elevates several provisions from regulations into the Code: allows a resolution plan to provide for the sale of asset(s) of the corporate debtor; requires secured creditors realising collateral outside the liquidation estate to contribute to insolvency and liquidation costs, and workmen's dues; prescribes timelines for liquidation and voluntary liquidation; and provides for deemed authentication of information with an Information Utility where the debtor does not respond.

The Bill makes several minor tweaks. For example, the look-back period for preferential transactions would span two years preceding the initiation date, plus the 14 days to account for the period between initiation and commencement. It empowers the government and the regulator to make subordinate legislation to carry out the purposes of the Code and establishes a right of appeal from the regulator's orders to the National Company Law Appellate Tribunal.

Beyond incremental changes, the Bill makes notable reforms. It empowers the insolvency regulator to oversee the conduct of the committee of creditors and its members, bringing a key actor under regulatory scrutiny. It also ends the long-standing fiction in the liquidation waterfall that treats creditors as fully secured regardless of collateral value: Security would count only to its actual worth, with any shortfall ranking as unsecured debt. Together, these measures could reshape creditor behaviour. The Bill, however, leaves untouched the deep disparity between financial and operational creditors. In January-March 2025, financial creditors realised 78 per cent of their claims under approved resolution plans, against 10 per cent for operational creditors.

The Bill proposes a creditor-initiated insolvency process and empowers the government to prescribe who may initiate it and against which corporate debtors. Unlike the Cirp, it requires no AA approval to commence, and a professional does not run the business. Apart from bypassing the AA initially, it offers no clear advantage over the Cirp. It rather makes initiation difficult, risks litigation, dilutes the professional's role, undermines information symmetry, and could trigger a fresh Cirp midway, a likely scenario, leading to suboptimal outcomes. Further, the provision to rerun the Cirp after its prescribed period is likely to be widely used, risking a prolonged process and reduced effectiveness.

The Bill enables two major reforms that would materially change outcomes. For group insolvency, it lists the matters to be prescribed by rules; for cross-border insolvency, it leaves the entire framework to the rules, which could override the Code. This constitutes excessive delegation, particularly for cross-border insolvency, where current geopolitical sensitivities warrant embedding the basic framework in the statute itself.

In sum, the Bill is well-intentioned and well-drafted, closes several interpretational and procedural gaps, and reaffirms core IBC principles. By sidestepping deeper structural issues and leaning on delegated legislation, it may deliver incremental improvements where the system needs a transformative overhaul.

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