



# When resolution becomes recovery

## A collective resolution framework is being repurposed into an enforcement mechanism

The Insolvency and Bankruptcy Code (IBC), 2016, promised a decisive break from India's creditor-driven, enforcement-heavy approach to corporate distress. It was conceived as a framework for rescuing viable businesses, preserving enterprise value, and resolving financial stress collectively. Over time, however, the Code has steadily morphed into the country's most potent debt recovery tool. The dominant narrative today is not how much stress the IBC has resolved, but how much money it has recovered.

This narrative is reinforced by official data. Central bank reports highlight that the IBC delivers the highest recoveries among all mechanisms, an average recovery rate of 37 per cent, compared to 32 per cent under Sarfaesi, 10 per cent through debt recovery tribunals (DRTs), and 2 per cent via Lok Adalats in 2024-25. The IBC alone accounted for 52 per cent of total bank recoveries in that year. Most publications foreground realisations by creditors under resolution plans. Public discourse and media coverage focus on "haircuts" as the primary metric for assessing the performance of the IBC.

This framing is deeply misleading. It glorifies recovery for what the IBC was never intended to be. The data is often cherry-picked, while critical qualifiers are ignored — that recoveries under the IBC are over and above the rescue of companies, which remains the Code's prime objective. The by-product of the IBC is compared with the primary output of other mechanisms; recoveries under resolution plans are highlighted, while the meagre recoveries through liquidation are overlooked; and outcomes for financial creditors dominate the narrative, masking the abysmal recoveries experienced by operational creditors.

This distortion is disturbing because the IBC is not a recovery legislation. On the contrary, once insolvency proceedings are initiated, the Code imposes a moratorium on all recovery actions, signalling a clear legislative departure from enforcement-driven out-

comes. The statutory architecture is unambiguous. Section 65 explicitly penalises the initiation of insolvency proceedings for any purpose other than the resolution of insolvency.

The Supreme Court clarified this at the inception of the Code. In *Swiss Ribbons Pvt Ltd*, it characterised the IBC as a beneficial legislation intended to put the company back on its feet. It reiterated in *M/s HPCL Bio-Fuels Ltd (2024)* that recovery in insolvency proceedings is only incidental to resolution, not the main relief. This understanding aligns with the UNCITRAL Legislative Guide on Insolvency Law, which emphasises that insolvency law is not a means of debt enforcement.

Yet the gap between statutory command and operational reality has become a chasm. Two factors primarily explain this. The first is Section 29A. Of the 8,659 cases admitted into the corporate insolvency resolution process (CIRP), only about 1,300 have culminated in approved resolution plans. Meanwhile, nearly 30,000 cases, involving ₹14 trillion of debt, were withdrawn before admission. For every one case resolved through a plan, roughly 25 are withdrawn at the threshold. The ratio would be starker if cases dropped before or after the issue of notice of

intent to trigger CIRP is included. There are also withdrawals after admission with the approval of the committee of creditors (CoC).

These withdrawals do not reflect the resolution of stress. They reflect settlement outside the IBC, or in its shadow. Section 29A, which renders many promoters ineligible to submit resolution plans once CIRP commences, creates a powerful deterrent. Faced with the existential threat of insolvency admission and likely loss of control, promoters often settle. The Code thus becomes leverage, an effective stick for extraction rather than a framework for restructuring. Though Section 29A warrants calibration, its deterrent role is undeniable. The problem lies not in its existence, but in how the ecosystem exploits it.



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The second driver is the approach of financial creditors who comprise the CoC. These creditors possess sophisticated recovery machinery and a longstanding bias towards upfront cash over patient value maximisation through business turnaround. Recoveries under resolution plans are typically front-loaded; creditors rarely wait to realise value from post-resolution performance. This institutional disposition enables, and arguably legitimises, the perversion of the Code's purpose.

Together, these two factors allow creditors, both financial and operational, to weaponise the IBC for recovery rather than resolution. The pattern is fairly clear. Promoters frequently wait until CIRP admission before negotiating settlements, as acknowledged in *Glas Trust Company LLC (2024)*, where the Supreme Court criticised attempts to bypass Section 12A through private settlements.

As a result, the insolvency application has become the opening salvo in negotiations: File first, negotiate later. The credible threat of CIRP admission, with its attendant reputational damage, collapse of credit lines, supply-chain disruption, and talent flight, concentrates the debtor's mind wonderfully. From the perspective of an individual creditor, this strategy may appear rational. Why engage in protracted restructuring negotiations when an IBC filing is so effective in extracting payment?

This is, however, corrosive for the system. The IBC was designed to address collective action problems and prevent a race for enforcement that destroys going-concern value. We are witnessing the opposite: Creditors racing to the courthouse not to preserve enterprise value collectively, but to secure individual recovery.

The Bankruptcy Law Reforms Committee assumed that insolvency would be triggered only after serious deliberation and exhaustion of bilateral options. That assumption has proved spectacularly wrong. The insolvency petition is no longer the end of negotiation; it is its commencement. Even when resolution succeeds, the damage inflicted during the process often leaves lasting scars.

The consequences are perverse. Solvent firms facing temporary liquidity stress can be dragged into CIRP for a single missed payment, while deeply insolvent firms may be ignored because there is nothing to extract. This drift must be arrested before it hardens into institutional culture. Once judges, practitioners, and creditors internalise the IBC as a recovery tool, reversal will be exceedingly difficult. The ecosystem will inevitably orient itself around extraction, not rescue.

The IBC trajectory will shape India's credit markets, investment behaviour, and economic growth for generations. Section 65 reflects Parliament's clear intent: Insolvency proceedings are for resolution, not recovery. Whether that intent is honoured depends less on legislative tinkering and more on a fundamental change in creditor approach. If that change does not come soon, the opportunity for course correction may be irretrievably lost. The choice is stark: A genuine resolution regime or a highly efficient recovery machine masquerading as insolvency law. The window is closing.

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