RECALIBRATING INDIA'S RESTRUCTURING PARADIGM: A CRITICAL LEGAL ANALYSIS OF THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2026, AND CONTEMPORARY JURISPRUDENTIAL SHIFTS

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ABSTRACT

The IBC 2016 is approaching its tenth anniversary. This is because IBC has revolutionized the corporate restructuring landscape in India by, in one stroke, adopting a creditor-in-control system, doing away with the debtor-in-possession paradigm. The IBC has faced severe operational hurdles due to systemic resistance in FY2024–2025. The NCLT faced bottlenecks in adjudication, mainly due to resource scarcity, with resolution periods soaring to 688 days. This led to unwarranted erosion of enterprise value, and nearly 50% of all admitted cases were outrightly liquidated. The domestic credit markets were disrupted by severe legal uncertainties arising from the IBC's interaction with concurrent penal laws and the sovereign debt priority system.

The research paper assesses developments in 2025–2026, a vital period for the economy, as it seeks to establish global investor confidence while protecting domestic businesses. The 2026 Amendment Act undergoes a thorough doctrinal examination as the study investigates the establishment of Chapter IV-A Creditor-Initiated Insolvency Resolution Process (CIIRP), the creation of project-based real estate resolution processes, the development of group and cross-border insolvency frameworks, and the elimination of major judicial precedents through legislation. The legislation strengthens secured financial creditor rights by removing adjudicatory power and changing the distribution system in liquidation.

The study examines important Supreme Court decisions from early 2026 that established the limits of IBC clean-slate protections and of sovereign penal laws, including the Benami Act and the Prevention of Money Laundering Act. The study evaluates whether the IBC 2.0 system achieves its capital recovery and corporate rehabilitation objectives by comparing its legal progress with macroeconomic recovery trends and the continuing financial exclusion of operational creditors from MSMEs, concluding that institutional bandwidth limitations must be resolved for the initiative to succeed.

Keywords: CIIRP; Cross-Border Insolvency; Group Insolvency; Clean Slate.

The 2016 implementation of the Insolvency and Bankruptcy Code IBC brought major changes to India's debt recovery system, which suffered from extreme fragmentation and slow processing times through its role as a complete solution.[1] The IBC establishes its core framework to achieve maximum asset value and entrepreneurship development by unifying its laws and creating a rigorous, time-bound system that operates under the supervision of the National Company Law Tribunal (NCLT).[2] By 2025, the Code had shown its complete macroeconomic effects through its ability to stop insolvency threats, which resulted in more than 30000 cases being resolved before admission, which involved defaults of INR 13.78 lakh crore, and this action brought scheduled commercial banks' gross non-performing asset (NPA) ratio down to 2.58%, a level not seen for many decades.[3]

The operational realities demonstrated critical structural barriers bottoming out the macroeconomic victories of the IBC. While the statute governing the completion of the CIRP required it to be completed within 330 days, the figure had become a legal fiction. The median resolution took 688 days in Q2, FY 2025-2026.[4] The NCLT was similarly plagued by serious delays in its adjudication process, as it had to dispose of more than 20,484 pending cases despite a limited judicial strength of 63 judges. The delays in the NCLT Adjudication process resulted in a dearth of business value.[5] The rehabilitation law could remain a graveyard for distressed assets because 43% of admitted cases resulted in liquidation rather than the recovery of the business.[6]

The credit market, operating on patterns, was rendered inoperative once judges began interpreting valid laws in divergent ways, yielding varied judicial results. The contentious verdicts forced the application of equitable discretion to the strict-liability admission examination, transferred statutory tax dues into secured-credit territory, and plunged the treatment of sophisticated multinational aggregations into a judicial maze.[7]

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[1] Nine years of IBC: Transforming India's insolvency landscape | EY, accessed on April 01, 2026, https://www.ey.com/en_in/insights/strategy-transactions/nine-years-of-ibc-transforming-india-s-insolvency-landscape

[2] 5 Landmark Insolvency Cases Of 2026 - SignalX, accessed on April 01, 2026, https://signalx.ai/5-insolvency-cases-of-2026/

[3] Ibid, 1.

[4] Global Insolvency: 2025 Reflections and 2026 Projections - PwC, accessed on April 02, 2026, https://www.pwc.com/gx/en/deals/pdf/global-insolvency-report-2025-26-india.pdf

[5] Ibid, 1.

[6] A Comparative Critique Of 2025 IBC Amendment - LiveLaw, accessed on April 02, 2026, https://www.livelaw.in/articles/comparative-critique-2025ibc-amendment-531495

[7] Ibid, 6.

The legislature launched an entire reform agenda as it felt the regime under the existing system was no longer functioning effectively. The Insolvency and Bankruptcy Code (Amendment) Act, 2026, was passed by Parliament after wide consultations with all stakeholders and the introduction of the Amendment Bill in August 2025. The legislation has been signed by the President and became effective from 6th April 2026.[8] "IBC 2.0" is the catchy nickname for this bundle of laws, which, if adopted, would, among many other things, enact more than 70 substantive amendments.[9] The researcher conducts a complete investigation of the 2026 Amendment Act, together with the current IBBI regulatory changes and the 2026 Supreme Court rulings, which establish legal precedent to assess their combined effects on India's insolvency legal system.

Deconstructing the IBC (Amendment) Act, 2026: Substantive Structural Reforms

The 2026 Amendment Act fundamentally recalibrates the balance of power within the insolvency ecosystem. The new regime grants creditors greater power. The new system implements strict time limits for procedures. The new system removes judicial powers to make flexible decisions.[10]

A. Restoring Procedural Certainty: The Overruling of *Vidarbha Industries*

Before the amendment, financial creditors faced unpredictable results when they tried to submit CIRP applications under Section 7 of the Code. The Supreme Court's 2022 decision in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd*. created this instability because it established that NCLT judges could choose to dismiss an insolvency application based on Section 7, which used the word "may" to create discretion, even when all evidence confirmed both debt existence and default status, if external factors such as pending regulatory awards or overall financial condition justified the dismissal.[11] The NCLT faced indecisive equity hearings because of this judgment, which combined the "default" test with the "solvency" test, instead of achieving its goal of fast case admission.

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[8] IBC Amendment Bill 2025: Key Changes to Insolvency Law Explained, accessed on April 03, 2026, https://lawsikho.com/blog/ibc-amendment-bill-2025-key-changes-2/

[9] Ibid, 1.

[10] IBC Amendment Act 2026: Architecture of a new insolvency order - What changes and how to structure around it [Part I], accessed on April 04, 2026, https://www.barandbench.com/view-point/ibc-amendment-act-2026-architecture-of-a-new-insolvency-order-what-changes-and-how-to-structure-around-it-part-i

[11] Ibid, 7.

The 2026 Act legislatively extinguishes the Vidarbha doctrine. The amended Section 7 strips the adjudicating authority of its discretion, mandating that the NCLT shall admit the application within 14 days of receipt, provided three exhaustive conditions are satisfied: (i) the existence of a default; (ii) the completeness of the application; and (iii) the absence of disciplinary proceedings against the proposed insolvency professional.[12]

The amendment establishes records from Information Utilities (IUs), including National E-Governance Services Limited (NeSL), as the default evidence, to reduce disputes over evidence.[13] If an order is not delivered by the NCLT within 14 days, it shall be delivered as quickly as possible, but no later than 15 days. The whole reason behind the delay shall be stated by the adjudicating authority in the order.[14] The mechanism enforces adjudicatory discipline while establishing an appellate review system for NCLAT, which functions as an assessment method, yet insolvency officials, from their critical research, warn that NCLT needs to expand its institutional capacity before the 14-day requirement can function as a genuine judicial process, because tribunals will start to handle their case backlog through issuing standard explanations for delays.[15]

B. The Creditor-Initiated Insolvency Resolution Process (CIIRP)

Chapter IV-A presents the most structurally innovative and conceptually disruptive element to the Code through its introduction of the Creditor-Initiated Insolvency Resolution Process (CIIRP).[16] The traditional CIRP model operates on a "creditor-in-control" philosophy, which states that when a company immediately declares insolvency, all management authority must be transferred to an external Resolution Professional who will take charge of operations. The method requires complete management removal from highly distressed organizations because it results in operational shutdown and crucial supplier connections break while the incoming RP faces major challenges due to information imbalance.[17]

The CIIRP provides a special out-of-court resolution process that combines elements of the

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[12] IBC Amendment Act 2026: Key Changes & Insolvency Reforms - MHCO Law, accessed on April 05, 2026, https://www.mhcolaw.com/updates/the-insolvency-and-bankruptcy-code-amendment-act-2026/212
[13] Ibid, 8.
[14] Ibid, 8.
[15] Ibid, 8.
[16] A Comparative Critique Of 2025 IBC Amendment - LiveLaw, accessed on April 05, 2026, https://www.livelaw.in/articles/comparative-critique-2025ibc-amendment-531495
[17] Ibid, 16.

United States Bankruptcy Code Chapter 11 DIP model to address particular corporate debtors that have received Central Government notifications.[18]

The procedural mechanics of CIIRP represent a radical departure from standard IBC proceedings:

1. **Initiation Threshold:** A notified financial institution can initiate the CIIRP out-of-court, without an initial NCLT admission order, provided it secures the prior approval of 51% of similarly classified financial creditors by value.[19]

2. **Debtor-in-Possession:** Crucially, the corporate debtor's existing management retains day-to-day operational control, operating under the overarching supervisory oversight of an appointed RP.[20]

3. **Accelerated Timelines:** The process is governed by an extraordinarily compressed timeline of 150 days, extendable by a maximum of 45 days.[21]

4. **Conversion Safeguards:** If the debtor contests the initiation, or if a viable resolution plan fails to materialize within the statutory window, the CIIRP is automatically terminated, and the NCLT is petitioned to convert the proceedings into a standard, court-driven CIRP.[22]

The CIIRP system has been designed to meet theoretical standards, but it has received serious criticism from both academic experts and practitioners in the field. The structural architecture of Chapter IV-A operates a total exclusion mechanism that prevents operational creditors from both starting and participating in the voting process.[23] The intentional exclusion of this information perpetuates the subjugation of MSMEs while prioritizing the swift financial recovery of large institutional investors over all other obligations.[24] Critics contend that the Indian credit system, which has operated through an established network of hidden relationships between business owners and financial institutions since its inception, lacks the necessary framework to handle the advanced pre-negotiation rescue operations that enable

[18] Ibid, 8.
[19] Ibid, 16.
[20] Ibid, 8.
[21] Ibid, 8.
[22] Ibid, 8.
[23] Ibid, 8.
[24] Ibid, 16.

Western DIP systems to function successfully.[25] The management team needs immediate funding to continue their business operations because they lack sufficient cash reserves, which should have been provided by post-petition financing.[26]

C. Overhauling the Liquidation Architecture: The Supremacy of the CoC

The 2026 Amendment Act fundamentally reimagines the liquidation process under Chapter III of the Code, transitioning it from an independent, liquidator-led procedure to a deeply creditor-driven regime. The CoC ceased to exist after a company entered liquidation because the liquidator obtained extensive quasi-judicial powers to determine stakeholder claims through admission and rejection and valuation processes. The creditors were assigned to the Stakeholders Consultation Committee (SCC), which provided only advisory services and lacked the authority to make commercial decisions over the liquidator's operations.[27]

The amendments dismantle this dichotomy. The Act gives the CoC authority to supervise liquidation proceedings, which functions as a replacement for SCC control.[28] The CoC now has statutory authority to appoint a liquidator while overseeing asset sales, and replacing the liquidator requires 66 percent of members to vote in favor of the change.[29] The liquidator lost his independent power to settle claims through quasi-judicial methods, which he had acquired. The liquidator now functions as an administrative executor who must implement the CoC's decisions.[30]

The transition creates a major impact on legal principles that govern court decisions. The Supreme Court confirmed the IBC's constitutionality in its ruling in Swiss Ribbons Pvt. Ltd. v. Union of India, as it showed how an RP operates during resolution work and how a liquidator functions during liquidation work, which require different legal powers to achieve separate goals.[31] The 2026 Amendment creates a major conflict of interest through its structural wall collapse. The CoC members, who mostly belong to the secured financial creditors group, now exercise direct control over the process that assesses conflicting claims. Critics assert that the current system strongly encourages the CoC to pursue maximum recovery of secured debt

[25] Ibid, 16.
[26] Ibid, 16.
[27] Ibid, 16.
[28] Ibid, 8.
[29] Ibis, 8.
[30] Ibid, 16.
[31] Ibid, 16.

while it works to minimize or deny the claims made by operational and unsecured creditors who occupy lower positions in the distribution hierarchy.[32] The Act establishes an inflexible deadline requiring NCLT to issue a liquidation order within 30 days of receiving an application and to complete all liquidation activities within 180 days, which may be extended for an additional 90 days.[33]

D. Correcting the Waterfall Anomaly: The Nullification of *Rainbow Papers*

The fundamental principle of present-day insolvency legislation depends on predictable outcomes from its established priority waterfall system. The IBC established Section 53 to create a structured order of financial claims, which established secured financial creditors and workmen as top priorities, while unsecured creditors received lower status. The law specifically assigned government and statutory dues to a lower-priority status under clause e to promote rescue capital efforts.

This disillusionment was destroyed when the Supreme Court issued its very controversial 2022 judgment in *State Tax Officer v. Rainbow Papers Limited*.[34] The Court determined that a statutory charge created for the State constituted "secured creditors" under Section 3(30) of the IBC when interpreting the provisions of the Gujarat Value Added Tax (GVAT) Act. The Court equated Holdco's sovereign tax liabilities with the claims of secured financial creditors. This precedent significantly altered leveraged lenders' approach to risk identification and continues to interfere with the distribution of potential resolutions.[35]

The 2026 Amendment Act marks the death knell for the *Rainbow Papers* doctrine and firmly reinstates the paramountcy of contractual security.[36] The Act inserts an explicit Explanation to Section 178 and Section 53, respectively, that "... clarifies the treatment of the statutory dues payable to the Central / State Governments expressly.[37] The new section provides that the government shall be deemed to have an unsecured debt immediately before the commencement of the insolvency, equal in priority to a debt under the first category mentioned in subsection

[32] Ibid, 16.
[33] Ibid, 8.
[34] IBC (Amendment) Bill, 2026.pptx - Vinod Kothari Consultants, accessed on April 06, 2026, https://vinodkothari.com/wp-content/uploads/2026/04/IBC-Amendment-Bill-2026.pptx.pdf
[35] Ibid, 34.
[36] Ibid, 8.
[37] IBC 2026 Overhaul: Faster Resolutions, Stronger Creditors, Better Outcomes - Taxmann, accessed on April 07, 2026, https://www.taxmann.com/research/ibc/top-story/105010000000028117/ibc-2026-overhaul-faster-resolutions-stronger-creditors-better-outcomes-experts-opinion?utm_medium=Social_Media_Post

(d), that is, one incurred in the two years immediately preceding the start of the insolvency.[38] Those other legacy government dues that remain after the 2-year period are placed down the waterfall, at clause (e).[39] Through legislative intervention in the form of the 2026 Act, this uncertainty has now been rectified by returning the development of the concept of 'Crown debts' back to the position maintained by the common law.[40]

E. Restricting Strategic Withdrawals under Section 12A

To discourage corporate debtors from misusing the provisions of the 2026 Act, the procedure for withdrawing insolvency petitions under 12A has been made very stringent.[41] In the past, promoters often used the IBC as a threat of enforcement and settled bilaterally with the initiating creditor just before the constitution of the CoC to preserve control of the company.[42]

The application withdrawal period is reduced in the reformed framework. It now begins after CoC members are appointed and ends before the submission of the first formal EoI request and resolution plan announcement.[43] Importantly, any such co-option would again be subject to a high 90% voting threshold of the CoC's voting board members.[44]

The amendment achieves its purpose by stopping bilateral gaming, requiring that all creditor interests be evaluated after the collective mechanism begins. The process became extremely rigid because the amendment established a system for dealing with creditor claims. Corporate law experts, including Vinod Kothari Consultants, have critiqued this threshold, noting that if 89% of creditors favor a highly lucrative out-of-court settlement, a single dissenting minority creditor holding an 11% voting share can effectively veto the global settlement, forcing a viable corporate debtor to endure the immense "trauma" and reputational damage of a protracted CIRP.[45]

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[38] Ibid, 8.
[39] Ibid, 37.
[40] Ibid, 10.
[41] Ibid, 8.
[42] IBC is a threat, but MSME creditors still get short-changed: Study - Insolvency Tracker, accessed on April 07, 2026, https://insolvencytracker.in/2026/04/07/ibc-is-a-threat-that-works-but-msme-creditors-still-get-short-changed-study/
[43] Ibid, 8.
[44] The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 - PRS India, accessed on April 08, 2026, https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-amendment-bill-2025
[45] Ibid, 8.

Navigating Complex Corporate Architectures: Group and Cross-Border Frameworks

Before 2026, the IBC evaluated corporate insolvency cases under its strict entity-separation framework. The framework lacked legal provisions to address the actual circumstances that modern multinational corporations encounter when operating with interlinked financial obligations, worldwide supply networks, and overseas asset management systems. The process of resolving those entities through separate components yielded unreasonable business outcomes, leading to a substantial loss of value across the system.

A. Procedural Coordination: The Group Insolvency Framework (Chapter VA)

The 2026 Act addresses the lacuna of conglomerate distress by inserting Chapter VA, which establishes a foundational, enabling framework for Group Insolvency.[46] The Indian legislature rejected the radical doctrine of "substantive consolidation," which merges all group entity assets and liabilities by piercing the corporate veil and canceling the separate legal personality. According to its design, the Chapter VA system uses "procedural coordination" as its fundamental principle.[47]

The framework empowers the Central Government to formulate subordinate rules that facilitate the synchronized resolution of corporate debtors within the same group.[48] The legal framework establishes rules that permit the NCLT to create a unified adjudication panel to handle all connected cases, while the group will select one insolvency expert to serve all its members, and the creditors will establish a common committee to evaluate the combined asset value. The parties will create mandatory coordination pacts that enable them to devise resolution plans without merging their separate legal assets.[49] The Act establishes specific legal standards for detecting related companies through its definitions of control and significant ownership, which borrow their meanings from the Companies Act 2013.[50]

B. Adopting the UNCITRAL Model Law for Cross-Border Insolvency

Indian companies faced severe challenges because their global operations required cross-

[46] IBC Amendment Act 2026: Key Changes & Insolvency Reforms - MHCO Law, accessed on April 26, 2026, https://www.mhcolaw.com/updates/the-insolvency-and-bankruptcy-code-amendment-act-2026/212
[47] Ibid, 34.
[48] Ibid, 34.
[49] Ibid, 46.
[50] Ibid, 46.

border bankruptcy regulations that did not exist at the time. The IBC system required the Central Government to establish bilateral treaties through Section 234 and 235 negotiation which43 operated as its only framework for international bankruptcy cases.[51] This disjointed approach made chasing foreign assets and even giving effect to foreign insolvency proceedings fraught with uncertainty, as was evident in intricate restructures such as *Videocon* CIRP.[52]

A new (amended) Section 240 seeks to establish a comprehensive cross-border insolvency scheme primarily based on the UNCITRAL Model Law on Cross-Border Insolvency (1997).[53] Based on the doctrine of "modified universalism," the model seeks to reconcile these variations in procedural laws among member states with a relative harmony in international cooperation.[54] The rules provide ways to find a debtor's main business address. This distinction allows us to distinguish between the debtor's two types of international legal cases: 'foreign main proceedings', which take place at the debtor's main business address, and 'foreign non-main proceedings', which occur at any other place where the debtor has assets.[55]

The execution of the legislative has met with fierce scholarly criticism for not delivering on its transformational ambitions. The Indian amendment enables the executive branch to create rules, whereas other jurisdictions, such as the United States (Chapter 15) and the United Kingdom (Cross-Border Insolvency Regulations 2006), have implemented the UNCITRAL Model Law by directly incorporating its entire operative text into their main legal statutes.[56] The operative text of the 2026 Act lacks built-in automatic recognition mechanisms, detailed reciprocity regimes, or direct codifications of the COMI doctrine.[57] The cross-border framework functions depend entirely on upcoming executive regulations, which are subordinate to higher legal authority, because the framework permits constitutional delegation beyond what statutory laws permit.[58] Legal academics warn that international judicial cooperation requires advanced judicial expertise, leading them to doubt that the NCLT, with its current backlog, can handle complex legal cases spanning multiple jurisdictions, as its

[51] Bankruptcy and insolvency issues across the border of India - International Journal of Law, accessed on April 08, 2026, https://www.lawjournals.org/assets/archives/2026/vol12issue1/12086.pdf
[52] Ibid, 16.
[53] Ibid, 46.
[54] UNCITRAL Model Law on Cross-Border Insolvency (1997), accessed on April 09, 2026, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency
[55] Ibid, 16.
[56] Ibid, 16.
[57] Ibid, 8.
[58] Ibid, 8.

judges lack the necessary specialized training.[59]

Sector-Specific Interventions: Reforming Real Estate Insolvency

The real estate sector represents one of the most distressed and heavily litigated segments within the Indian insolvency ecosystem, accounting for approximately 22% to 25% of all ongoing CIRP cases by the end of 2025.[60] The traditional CIRP model proved uniquely destructive for this sector. The developer's company faced a worldwide project suspension after creditors filed insolvency proceedings against it, affecting all its ongoing projects. The financial default in an entirely unrelated development section that occurred punished innocent homebuyers who purchased homes in healthy, near-complete projects.[61]

Codification of Project-Wise Resolution

Appellate courts started testing new judicial methods to address this unfair situation. The National Company Law Appellate Tribunal (NCLAT) handed down its landmark decision in Flat Buyers Association Winter Hills-77 Gurgaon v. Umang Realtech Pvt. Ltd., setting out the novel judicial doctrine of "Reverse CIRP".[62] Such a doctrine would favor the completion of the project over the abatement of the developer, hence channeling the misery solely into the defaulted project.

The 2026 Amendment Act, heavily influenced by IBBI panel recommendations, formally codifies this judicial innovation into a statutory "project-wise resolution" framework.[63] This mechanism enables NCLT to protect insolvency proceedings for specific defaulting real estate projects rather than extend protection to the entire corporate entity through the CIRP process.[64] The precise limits of this procedure enable construction work on financially viable projects that the same developer oversees to continue without interruption. This building work safeguards

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[59] Ibid, 16.

[60] IBC recovery rates stay weak at 31.6% in Q3FY26 as liquidation dominates closures, accessed on April 09, 2026, https://bfsi.economictimes.indiatimes.com/articles/ibc-recovery-rates-stay-weak-at-31-6-in-q3fy26-as-liquidation-dominates-closures/127962445

[61] Homebuyers As Financial Creditors: Where Does The Law Stand In 2026?, accessed on April 10, 2026, https://www.advkumardeepraj.in/blog-details/homebuyers-as-financial-creditors-where-does-the-law-stand-in-2026

[62] Real Estate Litigation 2026 - India | Global Practice Guides - Chambers and Partners, accessed on April 26, 2026, https://practiceguides.chambers.com/practice-guides/real-estate-litigation-2026/india/trends-and-developments

[63] Ibid, 61.

[64] Ibid, 61.

the company's essential structure from complete failure while meeting the needs of homebuyers in the particular project.[65]

Operational Delivery and Asset Ring-Fencing

The 2026 amendments establish operational safeguards that will help reduce consumer allottees' extreme distress. The Act permits RPs to execute conveyance deeds while transferring completed residential units to homebuyers during CIRP proceedings.[66] The law states that properties that builders have already transferred to buyers must remain outside the developer's bankruptcy estate because technical legal title ownership has not yet been established through registration. This law protects consumers' assets from financial creditors who use aggressive debt-collection methods.[67] To manage the logistical nightmare of communicating with thousands of distinct creditors in mega-projects, the law formally introduces the appointment of "facilitators" to streamline homebuyer representation and voting processes within the CoC.[68]

Supreme Court Jurisprudence (2025–2026): Defining the Boundaries of the IBC

The first quarter of 2026 witnessed a flurry of highly consequential judgments by the Supreme Court of India. These decisions were significant in identifying where the IBC coincided with overarching sovereign, penal, and civil laws and delineating the exact extent of the IBC.

A. The Limits of Insolvency: Sovereign Statutes and Tainted Assets

The IBC faced its toughest jurisdictional challenges in cases involving corporate fraud, money laundering, and the confiscation of sovereign assets. The IBC protective moratorium created ongoing conflict with the State's power to execute aggressive asset attachment under its penal laws.

In the landmark judgment of *S. Rajendran v. Deputy Commissioner of Income Tax (Benami Prohibition) and Ors.* (February 24, 2026), The Supreme Court addressed whether the IBC's Section 14 moratorium and Section 32A clean-slate provisions could override attachments

65 Project-Wise Insolvency for Real Estate: IBBI's New Approach - Realty Applications, accessed on April 26, 2026, https://www.realtyapplications.in/blog/ibbi-recommends-projectwise-insolvency-for-real-estate-275
66 Ibid, 61.
67 Ibid, 61.
68 Ibid, 61.

made under the Prohibition of Benami Property Transactions Act, 1988.[69] The actual evidence showed that the Padmaadevi Sugars Ltd. promoters had completely transferred their ownership rights to V.K. Sasikala through an intermediary who acted as a middleman. The payment of approximately INR 450 crore was made entirely through demonetized high-value currency notes during the late 2016 demonetization period.[70] Consequently, authorities invoked the Benami Act, characterizing the corporate debtor as a mere "benamidar" (ostensible holder) to mask the true ownership of the factory land and plant machinery, leading to provisional attachment orders.[71]

The Liquidator took legal action against Benami attachments at NCLT because the corporate debtor had entered liquidation, and he claimed that all assets belonged to the liquidation estate, while the IBC moratorium made all penal attachments invalid.[72] And the Court flatly repudiated this at the outset, holding that the IBC cannot, as law, trump the Benami Act. The Court reiterated the following fundamental principles of jurisdiction and elaborated that:

1. **Scope of the Liquidation Estate:** If the corporate debtor is an "ostensible holder" of property of the beneficial ownership of a third person, such property does not form part of the estate of the corporate debtor under Section 36 of the IBC.

2. **Nature of the Moratorium:** The Section 14 moratorium is aimed at preventing civil commercial creditors from executing the debt against a corporate debtor; it is not a measure to prevent "tainted assets" from state prosecution for economic crimes.

3. **Limits of Residuary Jurisdiction:** The NCLT's residuary power under Section 60(5) of the IBC is not all-pervasive. The tribunal lacks the authority to operate as an appellate body that reviews administrative and quasi-judicial decisions mandated by public law statutes through independent judicial processes. The public interest in punishing penal transactions through sovereign functions supersedes the IBC's protections for the recovery of commercial debt.

A parallel principle regarding sovereign rights was applied in *State Bank of India v. Union*

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[69] February 2026: Landmark Supreme Court Judgments on Insolvency ..., accessed on April 11, 2026, https://ibclaw.in/february-2026-landmark-supreme-court-judgments-on-insolvency-and-bankruptcy-code-ibc-key-legal-takeaways/
[70] Ibid, 69.
[71] Ibid, 69.
[72] Ibid, 69.

of India (February 2026). The Supreme Court ruled that telecom spectrum is a "sovereign, finite natural resource" held by the Union of India in public trust.[73] Telecom Service Providers possess merely a limited right to use the spectrum, not absolute ownership. Therefore, the spectrum cannot be subjected to insolvency or liquidation proceedings as a tradable asset of the corporate debtor. The Court clarified that spectrum cannot be transferred to a resolution applicant without first clearing all government dues and strictly complying with specialized telecommunication laws, affirming that the IBC cannot bypass specific statutory regulatory regimes.

B. The "Clean Slate" Promise and PMLA Attachments

The IBC Section 32A from 2019 established a clean start for corporate debtors and their assets after resolution, aiming to attract resolution applicants. The law proved contentious because it interacted with the PMLA 2002 (Prevention of Money Laundering Act) regulations.

In *Shiv Charan v. Adjudicating Authority*, the Bombay High Court clarified the procedural mechanics regarding properties attached by the Enforcement Directorate (ED) under the PMLA.[74] The corporate debtor, DSK Southern Projects, had undergone CIRP, resulting in the approval of a resolution plan. Concurrently, the ED had attached 14 flats belonging to the debtor under the PMLA. The ED also questioned the NCLT's jurisdiction to direct the release of these flats, contending that the PMLA proceedings are entirely distinct from insolvency proceedings.

The Court articulated a "three-gate architecture" that must be satisfied to invoke Section 32A protections: (i) a resolution plan must be formally approved by the NCLT under Section 31; (ii) the plan must result in a complete change in management or control; and (iii) the incoming management must not be promoters, related parties, or individuals involved in the underlying offense.[75] The Court ruled that once a resolution plan fulfills these statutory prerequisites, the ED's attachments automatically and instantly cease by operation of law. Furthermore, affirming the supremacy of the resolution process in corporate rehabilitation, the NCLT possesses the

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[73] Ibid, 69.

[74] IBC section 32A rules even the PMLA | India - Law.asia, accessed on April 11, 2026, https://law.asia/insolvency-code-protection/

[75] Upfront disclosure of Section 32A eligibility: IBBI strengthens the clean slate framework in insolvency resolution - Trilegal, accessed on April 13, 2026, https://trilegal.com/knowledge_repository/trilegal-update-upfront-disclosure-of-section-32a-eligibility-ibbi-strengthens-the-clean-slate-framework-in-insolvency-resolution/

requisite jurisdiction under the IBC to direct the ED to release the attached properties, ensuring that the new management is not saddled with a legally inaccessible asset pool.[25]

C. Procedural Integrity, Admission Thresholds, and Commercial Wisdom

The Supreme Court also issued a series of definitive rulings in February 2026 that reinforced procedural discipline and clarified the scope of the NCLT's adjudicatory powers.

1. The Irrelevance of Pre-Existing Disputes for Financial Creditors: In *Catalyst Trusteeship Ltd. v. Ecstasy Realty Pvt. Ltd.*, the debtor attempted to block a Section 7 admission by claiming that a "pre-existing dispute" existed regarding a purported restructuring moratorium negotiated via email with a majority debenture holder.[76] The Supreme Court set aside the NCLT and NCLAT orders that had accepted this defense. The Court decisively ruled that the concept of a "pre-existing dispute" (which is a valid defense under Section 9 for operational creditors) has absolute zero bearing on applications filed by financial creditors under Section 7. Likewise, unilateral emails cannot override the formal change procedure prescribed in any binding Debenture Trust Deed. Under Section 7, the only command that the NCLT has is to prove that a debt is due and that a default has occurred.

2. The Primacy of "Commercial Wisdom": In *Torrent Power Ltd. v. Ashish Arjunkumar Rathi (SKS Power Generation)*, the Supreme Court strongly reaffirmed the doctrine of the "commercial wisdom" of the CoC.[77] Applicants who were unsuccessful in their resolution submissions challenged the approval of the resolution plan for Sarda Energy and Minerals Limited (SEML), citing procedural lapses in the handling of bank guarantees. The Court dismissed the challenge, reiterating that the IBC represents a deliberate shift from a court-centric model to a creditor-driven process. Decisions regarding business viability, asset valuation, and creditor "haircuts" are inherently commercial. Neither the NCLT nor the NCLAT possesses the jurisdiction in equity to substitute its own assessment for the commercial decisions made by the requisite majority of the CoC, provided the plan complies with the strict statutory requirements of Section 30(2).

3. Overriding Legacy Statutes and Parallel Proceedings: In *Omkara Assets Reconstruction Pvt. Ltd. v. Amit Chaturvedi*, the Court affirmed the overriding effect of Section 238 of the

[76] Ibid, 69.
[77] Ibid, 69.

IBC. It ruled that pending or defunct proceedings for a Scheme of Arrangement under the legacy Companies Act, 1956, cannot bar the initiation of CIRP, especially when the debtor failed to comply with the strict statutory timelines under the Companies (Court) Rules, 1959 (Rules 78, 79, and 81).[78]

Similarly, in *ICICI Bank Ltd. v. ERA Infrastructure (India) Ltd.*, the Court addressed the issue of parallel insolvency proceedings against interconnected entities. It ruled that a creditor can pursue CIRP against both the principal debtor and the corporate guarantor simultaneously or separately.[79] The "Doctrine of Election" does not apply to the IBC; there is no statutory bar to claiming from both parties, provided insolvency regulations prevent double recovery and unjust enrichment.

4. Substantial Compliance and Limitation: In *B. Prashanth Hegde v. State Bank of India*, the Court clarified that Section 7 applications should not be rejected for insignificant procedural omissions if they substantially comply with the prescribed forms.[80] The Court also reiterated that acknowledgments of debt contained in formal corporate balance sheets or restructuring agreements are valid to extend the limitation period under Section 18 of the Limitation Act, 1963.

In *Satinder Singh Bhasin v. Col. Gautam Mullick*, addressing the real estate sector, The Court ruled 100 allottees (or 10% of total buyers) threshold limit for the application of Section 7(1) should be determined as on the date of the filing of the petition and not at the time of hearing. It also reiterated the principle of joint liability; a single consolidated insolvency petition can be filed against two separate corporate debtors that are part of the same composite real estate project.[81] Finally, in *Ankhim Holdings Pvt. Ltd. v. Zaveri Construction*, the Court applied the conflict-of-laws framework of the Arbitration and Conciliation Act to sit effectively as a forum dealing with proceedings and transactions held earlier, and held that these proceedings or transactions cannot be nullified by a High Court under Section 15 (2) of the Arbitration Act merely because a moratorium under Section 14 had come into effect thereafter.

[78] Ibid, 69.
[79] Ibid, 69.
[80] Ibid, 69.
[81] Ibid, 69.

Regulatory Architecture Enhancements by the IBBI (2025–2026)

Alongside these legislative and judicial changes, the IBBI also brought legal reforms in the form of regulations that specified the standards of professional conduct, introduced a uniform framework for valuation of assets, and defined the systemic bandwidth of the insolvency system.

A. Capacity Management of Insolvency Professionals

One of the major causes of CIRP delay was an excessive reliance on leading insolvency practitioners who tend to accept more insolvencies than they can handle. To deal with the problem, the IBBI issued the Insolvency Professionals (Second Amendment) Regulations, 2025, which came into effect in November 2025.[82]

The regulation imposes a strict, quantifiable cap on the operational bandwidth of an Insolvency Professional (IP). However, an IP shall not be allowed more than ten concurrent assignments across the types of interim resolution professional, Resolution Professional, and Liquidator. To reflect the extreme complexity and resource requirements of a very large S11 restructuring, a maximum of three concurrent assignments of the ten above shall have admitted claims over INR 1,000 crores. IPs with a backlog over these limits will not be permitted to take on any additional assignments until their turnaround time to reach zero decreases.[83] This intervention is meant to equalize work allocations, reduce systemic concentration risk, and improve the integrity of the resolution ecosystem.

B. Harmonization of Valuation Standards

Asset valuation has been one of the areas of greatest dispute in the CoC evaluation of a resolution plan—it has often been the cause of litigation, subsequently delaying approval. To promote uniformity, the IBBI (Liquidation Process) (Amendment) Regulations, 2026, issued in February 2026, required the regulator to adopt a standardized valuation process.[84]

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[82] IBBI (Insolvency Professionals) Second Amendment Regulations 2025 - SCC Online, accessed on April 14, 2026, https://www.scconline.com/blog/post/2025/11/25/ibbi-insolvency-professionals-second-amendment-regulations-2025/

[83] Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2025 - Argus Partners, accessed on April 16, 2026, https://www.argus-p.com/updates/updates/insolvency-and-bankruptcy-board-of-india-insolvency-professionals-second-amendment-regulations-2025/

[84] IBC recoveries hit ₹4.1 lakh crore, but haircuts deepen to 20% in Q3: ICRA - BFSI News, accessed on April

The revised definition of "fair value" explicitly provides for registered valuers to calculate the realizable value of a corporate debtor by taking into consideration both tangible and intangible assets and the inherent synergies of its operation as a whole.[85] In addition, the IBBI created the role of a 'coordinated valuer' to facilitate uniform valuation in different asset classes of a corporate debtor. This modernization aims to substantially reduce the extreme subjectivity, discrepancies, and competing valuation reports that previously plagued the resolution bidding process.

Macroeconomic Outcomes and the MSME Conundrum

A comprehensive jurisprudential analysis of the 2026 reforms requires contextualizing the statutory text against empirical data on recovery. Economic surveys and ratings agency reports (such as ICRA, CRISIL, and CareEdge) from the final quarter of 2025 and early 2026 paint a highly complex, often sobering picture of the IBC's efficacy.

A. Empirical Recovery Analysis

The Indian financial system uses IBC as its primary recovery mechanism, which delivers better results than the SARFAESI Act, yet its recovery statistics indicate that the system needs more effective methods for extracting value.

Table 1: Key Performance Indicators of the IBC (FY 2025 – Q3 FY 2026)

Metric / Indicator	Data Status (FY 2025 / Q3 FY 2026)	Trend / Analytical Observation
Overall Recovery Rate	31.6% to 36.6%	Despite an improvement from pre-IBC eras, creditors still absorb massive haircuts of 63% to 68% on admitted claims.
Average CIRP Timeline	~688 Days	Substantially exceeds the statutory limit of 330 days.

17, 2026, https://bfsi.economictimes.indiatimes.com/articles/ibc-recoveries-hit-4-1-lakh-crore-but-haircuts-deepen-to-20-in-q3-icra/129013653

[85] Insolvency and Bankruptcy Board of India - ICSI, accessed on April 17, 2026, https://www.icsi.edu/media/webmodules/infocapsule/InfoCapsule_26022026.pdf

		This excessive delay remains the primary driver of erosion in enterprise value.
Liquidation Outcomes	33.4% of total admitted cases	Liquidation remains the dominant outcome. Over 2,950 companies have been liquidated, fundamentally challenging the IBC's premise as a "resolution" code.
Resolution Plan Approvals	~15.0% of total admitted cases	Indicates a remarkably low success rate for genuine corporate rehabilitation and going-concern rescues.
Total Realization Amount	~INR 4.11 Lakh Crore	Represents significant absolute capital recovery for the banking sector, helping reduce NPA ratios.

It emphasizes a paradox: although the IBC prospect induces enormous pre-admission settlements (which serve as an efficient bargaining platform), the traditional NCLT mechanism itself can hardly take very long to hear, which makes asset impairment at the post-admission stage so strong.[86] Notably, nearly 77% of the liquidation cases involve defunct companies or legacy cases transferred from the archaic Board for Industrial and Financial Reconstruction (BIFR).[87] This suggests that the IBC is frequently utilized by lenders as a terminal burial ground for functionally dead companies to cleanse their balance sheets, rather than a rescue vehicle for viable enterprises.

B. The Structural Subordination of Operational Creditors (MSMEs)

The 2026 Amendment Act fails to address an essential flaw in the IBC architectural system because it does not address the core problem, which disadvantages Operational Creditors (OCs)

[86] Recovery rate through the IBC, 2016 and SARFAESI in Financial Year 2025 | Performance of the Insolvency Code, accessed on April 18, 2026, https://ibclaw.in/recovery-rate-through-the-ibc-2016-and-sarfaesi-in-financial-year-2025-performance-of-the-insolvency-code/

[87] IBC recovery rates stay weak at 31.6% in Q3FY26 as liquidation dominates closures, accessed on April 18, 2026, https://bfsi.economictimes.indiatimes.com/articles/ibc-recovery-rates-stay-weak-at-31-6-in-q3fy26-as-liquidation-dominates-closures/127962445

who represent Micro Small and Medium Enterprises (MSMEs).

Empirical studies published in early 2026 detail the devastating "funnel effect" experienced by small suppliers.[88] While financial creditors (banks) achieve moderate recoveries (averaging 31-36%), operational creditors suffer a median recovery rate of only 5%, with the vast majority receiving absolute zero in the distribution waterfall. Because operational creditors hold no voting rights on the CoC (unless their debt exceeds 10% of the total, which is rare), the multi-objective bidding system is structurally disfavored. Resolution applicants systematically balance payouts to please the financial creditors who hold the voting power, effectively ignoring the operational needs of the MSMEs.

Economic policy analysts have strongly advocated for a paradigm shift toward a 'Quasi-Absolute Priority Rule' (Quasi-APR). The financial creditors have first rights to their claims, but their recovery is limited to the total value of the company's assets at the time of liquidation, according to the proposed theoretical framework. The company will distribute its remaining resolution premium according to a proportional system that divides the premium between financial and operational creditors while guaranteeing MSMEs receive their fair share, which supports their survival needs during the recovery process. By deliberately excluding operational creditors from the newly enacted CIIRP out-of-court framework, the 2026 Act further institutionalizes this disparity, prioritizing institutional capital over the supply-chain backbone of the Indian economy.

Conclusion

The Insolvency and Bankruptcy Code (Amendment) Act, 2026, together with current Supreme Court jurisprudence, creates a highly advanced second-generation framework for India's restructuring industry. The legislature has strengthened financial creditor rights while creating business certainty by eliminating adjudicator power from Vidarbha-based judicial discretion, treating the Rainbow Papers tax priority anomaly as resolved, and implementing UNCITRAL cross-border cooperation standards. The CIIRP models and the real estate sector's statutory project-wise resolution system show how the sector addresses its specific distress situations while protecting its asset value through practical methods.

The 2026 reforms show doctrinal elegance, which becomes clear through institutional

[88] Ibid, 42.

constraints that must halt their implementation. The NCLT adjudicatory capacity operates amid critical resource shortages and severe case backlogs, which prevent the successful implementation of 14-day admission limits, 180-day liquidation requirements, and international border control procedures. Operational creditors face permanent structural subordination because the system excludes them from the CIIRP, indicating that the regime chose to reduce banking system risk rather than to provide fair, complete business recovery support.

The legal framework established by the 2025–2026 developments creates a powerful system that operates worldwide, yet requires funding for the judicial system and an equitable distribution of stakeholders to translate statutory progress into faster case resolutions, greater asset recovery, and better protection for MSMEs. The law on paper is robust; the challenge of the next decade lies entirely in its execution.