
INSOLVENCY BY SILENCE: DUE-PROCESS GUARDRAILS FOR CIIRP AND DEEMED AUTHENTICATION (IBC BILL, 2025)

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ABSTRACT

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 resets the entry point of Indian insolvency. It introduces a creditor initiated insolvency resolution process (CIIRP) that commences on the resolution professional's public announcement, even before an admission order. It also strengthens the information utility (IU) regime by requiring corporate debtors to authenticate creditor submitted financial information within set timelines. If the debtor does not respond, the record is deemed to be authenticated and later dispute is restricted.

This article frames the resulting problem as insolvency by silence. Speed is definitely valuable, but once silence is converted into proof, the practical question becomes whether the debtor had a real chance to speak. Defective service, poor digital access, fragmented accounting and limited legal capacity can turn non response into a procedural trap. The risk is concentrated among Ministry of Micro, Small & Medium Enterprises (MSME) and distressed firms where administrative bandwidth and document control are often thin.

Using doctrinal analysis and institutional design, the paper reconstructs CIIRP initiation, including: creditor thresholds, notice and representation duties, deemed commencement and the statutory challenge window. It tests each step against IBC commitments to fairness and tribunal oversight. It then explains how IU backed deemed authentication shifts proof burdens and bargaining power at the moment insolvency leverage starts to bite. The article contributes a Due Process Stress Test checklist for CIIRP and proposes implementable guardrails: treat deemed authentication as a rebuttable presumption with a short challenge window; require verified service, identity verification and immutable audit trails for IU uploads; adopt a rapid challenge and stay protocol during the objection period; and calibrate costs and sanctions for abusive filings. Written for the rule making and first wave litigation phase of the 2025 amendments, it aims to shape early practice before it hardens into precedent.

Keywords: CIIRP, deemed authentication, information utilities, due process, proof of default

I. Introduction

A. Problem and context

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (hereinafter referred to as the “**Bill**”) signals a procedural shift in Indian insolvency law. It seeks to reduce delay at the entry stage and to lessen factual contest on ‘default’ by depending more heavily on digital records. Two moves matter most for due process. First, the Bill proposes a creditor-initiated insolvency resolution process (“**CIIRP**”) that is designed to run largely out of court, with commencement linked to the resolution professional’s public announcement rather than a prior admission order. Second, it strengthens the information utility (“**IU**”) workflow by allowing a debtor’s non-response to operate as “deemed authentication” of the debt and default record. Together, these changes compress the window for contest and increase the legal weight of silence. This creates a predictable risk of error and abuse in cases where silence reflects constraints of notice, access, capacity, or control over records rather than agreement on liability.

Example

Consider a mid-sized MSME with fragmented accounting and outsourced compliance. A creditor uploads records to an IU and the system issues prompts to authenticate. The emails land on an inactive mailbox and the registered office receives a packet missing key working papers. The firm does not respond within the IU timeline. The record moves to “authenticated” by deemed logic. A CIIRP initiation then proceeds with creditor approvals, a public announcement is made and commencement is deemed. The debtor’s first meaningful opportunity arrives inside a short objection window, after leverage has already shifted. The legal question is no longer only “is there default”, it becomes “was the silence a reliable signal”.

B. Thesis and contribution

This article argues that CIIRP and deemed authentication can deliver legitimate speed only if the entry stage is rebuilt around enforceable due-process guardrails. The Bill relocates practical adjudicatory effect from the tribunal to two infrastructure nodes, notice and authentication. If that is where outcomes begin to harden, that is also where safeguards must harden. The contribution is threefold. *First*, the paper provides a due-process stress test for CIIRP initiation and IU deeming, framed as minimum safeguards tied to defined consequences. *Second*, it

proposes that deemed authentication be treated as a rebuttable presumption supported by a short and realistic challenge window. *Third*, it formulates an NCLT entry-stage screening standard focused on procedural integrity, supported by a model template for short findings.

C. Research questions and method

The article answers the following four research questions:

1. What, in procedural terms, does CIIRP change about commencement, leverage, and the timing of contest?
2. How does deemed authentication alter the evidentiary structure of ‘default’, particularly where silence is treated as validation?
3. What minimum safeguards are required so that speed does not produce systematic false positives or coercive settlements?
4. What institutional allocation of checks between the resolution professional, the IU, and the NCLT best fits tribunal capacity and the Bill’s design goals?

Methodologically, the article uses doctrinal analysis of the Bill’s proposed mechanics, institutional analysis of how IU records and commencement rules function as decision points, and design analysis to translate fairness commitments into operational rules, timelines, and remedies. It uses comparative references only to justify narrow design choices in notice, challenge windows, and screening standards, not to import whole models.

D. Structure of the article

The article is organised in three parts. Part A (*II*) sets the baseline on commencement, proof and procedural fairness at the entry stage. Part B (*III–V*) explains how the Bill shifts the entry gate to two infrastructure nodes, commencement-by-announcement and IU record-hardening and why this can produce “insolvency by silence” when contest is compressed. Part C (*VI–VII*) sets out guardrails and implementation, including a minimum safeguards checklist, a consequences matrix and a focused NCLT screening standard to preserve speed while restoring contestability.

II. Baseline: How Entry & Proof Work Under The IBC

A. Entry and commencement

The pre-2025 IBC entry design is tribunal-gated. A corporate insolvency resolution process (CIRP) begins only when the adjudicating authority admits an application, not when a creditor alleges default.¹ This sequencing matters because the moratorium and the transfer of control to an insolvency professional are consequences of admission, not of filing.²

Entry is “default-based” and applicant-specific. The Code permits initiation by a financial creditor, an operational creditor, or the corporate debtor itself (acting through a corporate applicant).³ The trigger is a “default”, defined as non-payment of a debt when due and payable.⁴ The monetary threshold is set by section 4, as modified through notification power. Since March 2020, the minimum default for corporate insolvency initiation has been specified at one crore rupees.⁵ Sections 7, 9 and 10 reach the tribunal through different filters, but each turns on a summary satisfaction of default and statutory completeness before insolvency consequences attach.⁶

Even where timelines are treated as directory, the admission order remains the legal hinge. Until admission, the process does not commence and moratorium-style leverage does not attach.⁷

B. Information utilities and authenticated records

IUs are regulated entities under the Code that receive, store, and provide financial information to support insolvency processes.⁸ In practice, IU authentication status under the Regulations shapes what can be placed before the tribunal quickly and what a debtor must rebut at the threshold.⁹

¹ Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 7(5), 9(5), 10(4), INDIA CODE (2016).

² Insolvency and Bankruptcy Code §§ 5(12), 13(1), 14(1).

³ Insolvency and Bankruptcy Code § 6.

⁴ Insolvency and Bankruptcy Code § 3(12).

⁵ Insolvency and Bankruptcy Code § 4 proviso; Ministry of Corporate Affairs, Notification No. S.O. 1205(E) (Mar. 24, 2020) (India).

⁶ Insolvency and Bankruptcy Code §§ 7, 9, 10.

⁷ Surendra Trading Co. v. Juggilal Kamlapat Jute Mills Co. Ltd., (2017) 16 S.C.C. 143, ¶¶ 17, 23, 26 (India).

⁸ Insolvency and Bankruptcy Code §§ 209–214.

⁹ Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, regs. 21(2)–(4) (India).

Admission is summary, but not mechanical, and the adjudicator must still be satisfied on default from the material placed before it.¹⁰ The BLRC's design rationale supports IU-backed standardisation, but the enacted Code preserves a tribunal checkpoint rather than delegating admission to the record alone.¹¹

C. Procedural fairness at entry

For operational creditors, the demand notice stage is the baseline fairness filter before a section 9 filing.¹² The Supreme Court's test in *Mobilox* directs rejection where there is a genuine pre-existing dispute on a plausible contention standard, so insolvency is not used as a disguised recovery tool.¹³ For financial creditors, procedural fairness is delivered through service of the filed application and an opportunity to be heard at admission under the application rules.¹⁴ The Supreme Court has rejected the claim that section 7 admission is notice-free and has anchored debtor participation in the statutory design of admission.¹⁵ *Innoventive* clarifies the limited but meaningful role of the corporate debtor at admission, namely to show that default has not occurred or that the debt is not due in law.¹⁶

In short, commencement consequences, including moratorium, remain tied to admission rather than filing. Procedural fairness is still mediated through service, a response opportunity, and a tribunal checkpoint. Proof is increasingly channelled through IU-backed default material, but it operates as an evidentiary accelerant rather than a replacement for adjudicative satisfaction at entry.¹⁷

With this baseline, the next Part asks a simple question: if leverage is relocated to infrastructure, can fairness remain tribunal-centric.

III. The 2025 Shift: Doctrinal & Procedural Modifications

A. CIIRP architecture as a sequence of legal steps

¹⁰ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17, ¶¶ 28–32 (India).

¹¹ BANKRUPTCY LAW REFORMS COMMITTEE, REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE: VOLUME I, RATIONALE AND DESIGN ¶¶ 78–79 (Ministry of Finance Nov. 2015).

¹² Insolvency and Bankruptcy Code §§ 8(1)–(2).

¹³ *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 S.C.C. 353, ¶ 40 (India).

¹⁴ Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, rr. 4(3), 6(2), 7(2) (India).

¹⁵ *Swiss Ribbons*, (2019) 4 S.C.C. 17, ¶ 28 (India).

¹⁶ *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 S.C.C. 407, ¶ 28 (India).

¹⁷ Insolvency and Bankruptcy Code § 7(3)(a).

The Bill replaces the Code's fast track corporate insolvency resolution process by omitting Chapter IV of Part II and inserting a new Chapter IV-A that creates the creditor-initiated insolvency resolution process (CIIRP).¹⁸ CIIRP is not framed as a universal alternative to CIRP. It is targeted and enabling. Eligibility is left to delegated specification through Central Government notification by reference to asset or income levels, creditor classes or debt amounts, and other categories.¹⁹ The initiation gateway is also confined. Only a financial creditor belonging to a notified class of financial institutions may trigger CIIRP, subject to conditions that are to be prescribed.²⁰

The initiation sequence is structured around three pre-commencement checks. First, the initiating financial creditor must obtain prior approval from eligible financial creditors meeting a 51 per cent in-value threshold.²¹ Second, the creditor must inform the corporate debtor of its intention and provide at least thirty days for representation.²² Third, after considering any representation, the initiating creditor must again obtain 51 per cent approval within thirty days from receipt of the representation, failing which fresh approval and compliance steps are required if initiation is still pursued.²³ The design therefore creates a short, defined debtor input channel before commencement but places control of timing and continuation with creditors, subject to threshold discipline.

Commencement is the Bill's central procedural pivot. Once an insolvency professional is appointed as resolution professional under the initiation provision, the resolution professional must make a public announcement and communicate it, with a report confirming compliance with the eligibility and initiation requirements, to the adjudicating authority and the Board.²⁴ The Bill then deems CIIRP to have commenced from the date of that public announcement and defines the "creditor-initiated insolvency commencement date" accordingly.²⁵ This changes the traditional hinge of commencement. The process begins as a matter of law without a prior admission order, even though later tribunal scrutiny remains available through specified

¹⁸ Insolvency and Bankruptcy Code (Amendment) Bill, 2025, Bill No. 107 of 2025, cls. 39–40 (India) (omitting Chapter IV of Part II and inserting Chapter IV-A, proposed §§ 58A–58K).

¹⁹ *Id.* cl. 40 (proposed § 58A(1)).

²⁰ *Id.* cl. 40 (proposed § 58B(1)).

²¹ *Id.* cl. 40 (proposed § 58B(2)(a)).

²² *Id.* cl. 40 (proposed § 58B(2)(b)).

²³ *Id.* cl. 40 (proposed § 58B(2)(c), proviso, and Explanation).

²⁴ *Id.* cl. 40 (proposed § 58B(4)).

²⁵ *Id.* cl. 40 (proposed § 58B(4) and Explanation (i) (definition of 'creditor-initiated insolvency commencement date')).

routes.²⁶

The Bill links commencement to a set of immediate procedural consequences. Most notably, it imposes a statutory bar on filing or admission of CIRP or pre-packaged insolvency resolution process (PPIRP) applications in respect of the same corporate debtor during the CIIRP period.²⁷ It also creates a debtor challenge pathway that is explicitly time-bound. A corporate debtor with objections to commencement may apply to the adjudicating authority within thirty days from the creditor-initiated insolvency commencement date.²⁸ On such an application, the tribunal may declare commencement void ab initio where default has not occurred, and may also do so where both non-default and contravention of the initiation requirements are shown.²⁹ Where default has occurred but initiation contravened the eligibility or initiation requirements, the tribunal must convert the process into CIRP and make consequential orders.³⁰ This objection pathway therefore performs two distinct functions: it preserves a limited entry-stage corrective mechanism and it establishes conversion as the principal remedy for procedurally defective initiation when default is real.

Management remains with the board, but the resolution professional is embedded from the creditor-initiated insolvency commencement date through meeting participation and a defined power to reject specified resolutions.³¹ A moratorium is not automatic, but where sought it is stated to commence from the date of the resolution professional's application during the CIIRP period, which makes sequencing decisive for leverage.³²

B. Deemed authentication within the IU workflow

The Bill's second procedural pivot is the strengthening of the information utility pipeline by shifting authentication duties onto the corporate debtor or debtor and by attaching a deeming consequence to non-response. Clause 58 amends section 215's marginal heading to frame the section as dealing with submission and authentication of financial information, and it restructures the operational creditor pathway by making IU submission a precondition for filing

²⁶ *Id.* cl. 40 (proposed § 58C).

²⁷ *Id.* cl. 40 (proposed § 58B(5)).

²⁸ *Id.* cl. 40 (proposed § 58C(1)).

²⁹ *Id.* cl. 40 (proposed § 58C(2)(a)).

³⁰ *Id.* cl. 40 (proposed § 58C(2)(b)).

³¹ *Id.* cl. 40 (proposed §§ 58F(1)–(2)).

³² *Id.* cl. 40 (proposed § 58G(2)).

a section 9 application.³³ This change institutionalises IU engagement at the operational creditor entry stage, converting what was often an evidentiary choice into a procedural step that must precede tribunal initiation.

Most significantly, the Bill inserts a new subsection 215(4) that mandates authentication by the corporate debtor or debtor in respect of information submitted to the information utility, within a manner and period to be specified.³⁴ The proviso adds a deeming rule. Where the corporate debtor or debtor does not respond in the specified manner and period, the information is deemed authenticated.³⁵ The Bill's Notes on Clauses explain the intended operational effect in stronger terms, indicating that non-response results in deemed authentication and is intended to constrain later dispute of that information.³⁶ Even if the operative text uses the more neutral formulation of "deemed authentication", the legislative direction is clear: the evidentiary status of IU information is to be hardened through silence, subject to downstream contest design.

The Notes on Clauses indicate that non-response is intended to constrain later dispute of IU-stored information.³⁷ This elevates service quality and access to IU channels from practical considerations to legal conditions for the record's evidentiary status at entry.³⁸

C. Combined effect: accelerated initiation and hardened records

Taken together, the CIIRP commencement design and the IU deeming rule move the system towards "entry by record" rather than "entry by admission". CIIRP commences by public announcement and immediately blocks parallel entry routes, while the IU pathway makes non-response more likely to be treated as validation of the creditor's informational case.³⁹ The debtor retains formal contest channels, including the thirty-day objection application and tribunal conversion powers.⁴⁰ Yet the structure of contest is changed. It is relocated into compressed windows, often after the process has legally commenced and often against a record that may have already acquired "authenticated" status by deeming.

³³ *Id.* cl. 58 (amending Insolvency and Bankruptcy Code § 215, including § 215(3)).

³⁴ *Id.* cl. 58 (proposed Insolvency and Bankruptcy Code § 215(4) (main clause)).

³⁵ *Id.* cl. 58 (proposed Insolvency and Bankruptcy Code § 215(4) proviso).

³⁶ Notes on Clauses to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, cl. 58 (India) (explaining intended effect of non-response in the IU workflow).

³⁷ *Id.* cl. 58.

³⁸ IBC Amendment Bill, cl. 58 (proposed Insolvency and Bankruptcy Code § 215(4) proviso).

³⁹ IBC Amendment Bill, cl. 40 (proposed §§ 58B(4)–(5)), cl. 58 (proposed Insolvency and Bankruptcy Code § 215(4)).

⁴⁰ *Id.* cl. 40 (proposed §§ 58C, 58H).

This is the doctrinal and procedural turn that grounds the article's later argument. Speed and standardisation are advanced by relocating decision points from the tribunal to the infrastructure of notice, IU workflows and resolution professional reporting. The question is no longer whether the tribunal can decide fast, but whether the legal system has specified the minimum conditions under which silence can fairly do evidentiary work and commencement can fairly precede admission.

To test that relocation, Part IV maps the Bill as a sequence of decision nodes and identifies where contestability can fail.

IV. CIIRP Process Map & Institutional Leverage Points

A. Statutory timeline matrix: from initiation notice to close of the objection window

CIIRP has a two-stage entry design. The first stage is creditor-controlled and occurs before commencement. A financial creditor from a notified class may initiate CIIRP by appointing a resolution professional, but only after it secures 51 per cent in-value approval from eligible financial creditors of the corporate debtor and informs the corporate debtor of its intention, while giving at least thirty days for representation.⁴¹ If a representation is received and the initiating creditor continues to pursue initiation, it must again obtain 51 per cent approval within thirty days of receiving the representation, failing which it must restart the approval process.⁴²

The second stage is RP-driven and defines commencement. After appointment, the resolution professional must make a public announcement of initiation and communicate the same, along with a report confirming compliance with sections 58A and 58B, to the adjudicating authority and the Board within the specified period and manner.⁴³ The statute then deems CIIRP to have commenced from the date of that public announcement, which is defined as the “creditor-initiated insolvency commencement date”.⁴⁴ From that date, the “CIIRP period” begins and runs until an order is passed under the CIIRP exit, withdrawal, or plan approval provisions specified in the definition.⁴⁵

⁴¹ *Id.* cl. 40 (proposed §§ 58B(2)(a)–(b)).

⁴² *Id.* cl. 40 (proposed § 58B(2)(c) and proviso).

⁴³ *Id.* cl. 40 (proposed § 58B(4)).

⁴⁴ *Id.* cl. 40 (proposed § 58B(4) and Explanation (i)).

⁴⁵ *Id.* cl. 40 (proposed § 58B Explanation (ii)).

The debtor's principal early corrective mechanism is time-bound. If the corporate debtor objects to commencement, it must apply to the adjudicating authority within thirty days from the creditor-initiated insolvency commencement date.⁴⁶ The tribunal must decide the objection application within thirty days from receipt, and must record reasons in writing if it cannot do so.⁴⁷ Depending on the finding, the tribunal may declare commencement void ab initio, or convert the process into CIRP while issuing the consequential orders specified in the conversion provision.⁴⁸

Table 1: CIIRP entry-stage timeline

Phase	Statutory event	Legal Provision
Pre-commencement	51% creditor approval to initiate	Proposed s 58B(2)(a)
Pre-commencement	Notice of intention to corporate debtor and minimum 30 days for representation	Proposed s 58B(2)(b)
Pre-commencement	Fresh 51% approval within 30 days after receipt of representation, if initiation continues	Proposed s 58B(2)(c)
Day 0 (commencement)	Public announcement by RP and report to adjudicating authority and IBBI	Proposed s 58B(4)
Day 0 (commencement)	CIIRP deemed commenced from public announcement date	Proposed s 58B(4) and Explanation (i)
Day 0 onward	Bar on filing or admission of CIRP or PPIRP applications	Proposed s 58B(5)
Day 0 to Day 30	Debtor objection to commencement	Proposed s 58C(1)
Within 30 days of filing	Tribunal order on objection, reasons required for delay	Proposed s 58C(3)

B. Points of leverage created by deemed commencement

Deemed commencement relocates entry-stage leverage away from an admission order and towards creditor-led action plus RP certification. The public announcement date does not merely signal initiation. It is the commencement date as a matter of law. This means that the reputational and transactional effects that ordinarily follow an insolvency commencement

⁴⁶ *Id.* cl. 40 (proposed § 58C(1)).

⁴⁷ *Id.* cl. 40 (proposed § 58C(3) and proviso).

⁴⁸ *Id.* cl. 40 (proposed §§ 58C(2)(a)–(b)).

event are triggered by a step that precedes any tribunal admission decision. The design also changes the competitive landscape for entry routes. During the CIIRP period, no application for initiation of CIRP under sections 7, 9, or 10, and no PPIRP application under section 54C, may be filed or admitted in respect of the corporate debtor.⁴⁹ The bar is both on filing and on admission. It therefore operates as a channel-control mechanism that concentrates early process control within CIIRP once commencement occurs.

The moratorium position further differentiates CIIRP from CIRP. In CIRP, the moratorium under section 14 follows admission and is anchored to the insolvency commencement date.⁵⁰ In CIIRP, a moratorium is not automatic on commencement. The resolution professional may apply for a moratorium after committee approval, and even before committee constitution with 51 per cent creditor approval of the notified class.⁵¹ The moratorium, if applied for, commences from the date of the application, and continues during the CIIRP period, with the tribunal empowered to confirm it if necessary for the proper and efficient conduct of CIIRP or to reject the application.⁵² The resolution professional must also make public announcements of the filing of the moratorium application and of any rejection order.⁵³ These design choices place moratorium leverage behind a decision node that is creditor-mediated and tribunal-reviewed, rather than being an automatic consequence of commencement.

C. Procedural failure modes: service, access, and timing

The Bill's mechanics place unusual weight on procedural integrity at three points: service, access, and timing. The first point is pre-commencement notice. The initiating creditor must inform the corporate debtor of its intention and must allow at least thirty days for representation. This is the only express debtor-facing notice step that precedes commencement. If the method of informing, the content of the notice, or the completeness of the initiation dossier is weak, the representation opportunity can be formal while being practically ineffective.

The second point is access to the record that is said to justify initiation. Yet the debtor's objection window runs from the public announcement date, not from actual service of a

⁴⁹ *Id.* cl. 40 (proposed § 58B(5)).

⁵⁰ Insolvency and Bankruptcy Code §§ 5(12), 13(1), 14(1).

⁵¹ IBC Amendment Bill, cl. 40 (proposed § 58G(1) and proviso).

⁵² *Id.* cl. 40 (proposed § 58G(2)).

⁵³ *Id.* cl. 40 (proposed § 58G(3)).

complete initiation record on the debtor. Where a debtor learns of commencement late, or cannot access the IU record or the creditor's packet quickly, the objection right becomes time-compressed in practice. This is compounded by the bar on alternative filings that activates immediately on commencement.

The third point is timing interaction between the objection window and other CIIRP steps. During this period, CIIRP continues to run as a commenced process. In parallel, the resolution professional may seek a moratorium, which commences from the date of application even before tribunal confirmation, and continues during the CIIRP period unless rejected. This creates a realistic sequencing possibility in which substantial leverage, including moratorium effects, can be triggered while the debtor's objection is pending. The architecture therefore makes early service reliability, access to materials, and a workable challenge pathway central to the integrity of commencement-by-announcement.

These failure modes are the mechanisms by which silence is produced, and Part V shows how deeming rules can convert that produced silence into presumptive truth.

V. The Silence Trap: Contestability Risks Under CIIRP & IU Deeming

A. From non-response to presumptive truth

The Bill hardens the evidentiary consequences of inaction by converting a debtor's silence in the IU workflow into statutory "authentication". The proposed insertion of section 215(4) requires the corporate debtor or debtor to authenticate information submitted to the information utility within a prescribed manner and period. Where the debtor does not respond in that manner and period, the information is deemed to be authenticated.⁵⁴ This is not merely a restatement of existing IU practice. Under the current IU Regulations, an item of information may move to a "deemed to be authenticated" status after the prescribed request and reminder cycle.⁵⁵ The Bill, however, elevates this into a statutory duty and attaches stronger normative significance to silence through the accompanying Notes on Clauses, which indicate that non-response is intended to constrain later dispute of the stored information.⁵⁶

Clause 58 makes IU submission a procedural precondition in the operational creditor pathway,

⁵⁴ *Id.* cl. 58 (proposed Insolvency and Bankruptcy Code § 215(4)).

⁵⁵ Information Utilities Regulations, regs. 21(2)–(4).

⁵⁶ Notes on Clauses to the IBC Amendment Bill, cl. 58.

converting what was often an evidentiary choice into an entry step that must precede tribunal initiation.⁵⁷ In parallel, the financial creditor pathway already recognises a record of default as a proof channel at admission, which reinforces the shift towards entry-stage disputes being fought against IU status outcomes.⁵⁸

Once stabilisation is achieved through a deeming rule, silence begins to perform evidentiary work. The practical effect is burden shifting.

If the IU record becomes “authenticated” through non-response, later contest is more likely to be framed as an exceptional challenge to the process of authentication, not as a primary contest on whether default is established. That changes how entry-stage disputes are pleaded, prioritised and decided.

B. Commencement before admission and the compression of contest

The Bill’s CIIRP design amplifies the consequences of evidentiary hardening by relocating the commencement trigger. CIIRP is deemed to have commenced from the date of the resolution professional’s public announcement, which the Bill defines as the creditor-initiated insolvency commencement date.⁵⁹ This date does not merely announce an intention to commence. It is the commencement date as a matter of law. The commencement design therefore activates insolvency consequences, in practice, at a point that precedes a traditional admission order.

The leverage effect is strengthened by channel control. During the CIIRP period, the statute bars the filing or admission of applications for initiation of CIRP under sections 7, 9 or 10 and PPIRP under section 54C in respect of the same corporate debtor.⁶⁰ This makes CIIRP a gating mechanism once commenced. It restricts competing routes that might otherwise be used to resolve priority, forum, or sequencing disputes. The debtor’s corrective pathway is also time-bound. A corporate debtor that objects to commencement must apply to the adjudicating authority within thirty days from the creditor-initiated insolvency commencement date, and the adjudicating authority is directed to decide the application within thirty days from receipt, subject to recorded reasons for delay.⁶¹

⁵⁷ IBC Amendment Bill, cl. 58 (amending Insolvency and Bankruptcy Code § 215, including § 215(3)).

⁵⁸ Insolvency and Bankruptcy Code § 7(3)(a).

⁵⁹ IBC Amendment Bill, cl. 40 (proposed § 58B(4) and Explanation (i)).

⁶⁰ *Id.* cl. 40 (proposed § 58B(5)).

⁶¹ *Id.* cl. 40 (proposed § 58C(1), § 58C(3), and proviso).

Moratorium design adds another layer to contest compression. In CIRP, the moratorium is anchored to admission and the insolvency commencement date.⁶² In CIIRP, the moratorium is not automatic. The resolution professional may apply for a moratorium after committee approval and even before committee constitution with the required creditor approval, and the moratorium is stated to commence from the date of that application during the CIIRP period.⁶³ This creates a plausible sequencing in which significant leverage can attach while the debtor's objection to commencement is being prepared or adjudicated. The issue is not the desirability of speed. The issue is whether the system ensures that the debtor has a real and workable opportunity to contest before record-hardening and commencement-based leverage begin to shape outcomes.

C. When silence is produced by the process

The principal risk in a “silence-based” evidentiary design is that silence is not always volitional. The Bill does provide an express pre-commencement representation window. The initiating creditor must inform the corporate debtor of its intention and provide at least thirty days for representation, and the subsequent creditor approval step is tied to receipt of representation.⁶⁴ Yet the effectiveness of this protection depends on service quality and on the completeness of the initiation packet provided to the debtor at the representation stage. If service is defective or if the debtor is not given meaningful access to the record relied upon for initiation and IU submission, the representation right can become formal while the commencement clock is poised to start.

A similar concern arises from the baseline service architecture. Under the existing application rules, service and documentation are central to the validity of the initiation process, including for financial creditor applications where there is no statutory demand notice equivalent.⁶⁵ When the legal system shifts weight towards pre-admission actions and IU workflows, these service and access steps become more than compliance formalities. They become the integrity conditions for treating silence as probative. A deeming rule that attaches consequences to non-response assumes that the debtor received a proper opportunity to respond, had access to the materials necessary to respond and had a workable channel through which to respond.

⁶² Insolvency and Bankruptcy Code §§ 5(12), 13(1), 14(1).

⁶³ IBC Amendment Bill, cl. 40 (proposed §§ 58G(1)–(3) and proviso).

⁶⁴ *Id.* cl. 40 (proposed §§ 58B(2)(b)–(c) and proviso).

⁶⁵ Adjudicating Authority Rules, rr. 4(3), 6(2), 7(2).

In addition, insolvency often begins in conditions where access and control over records are contested or degraded. Distress can involve management changes, employee exits, operational shutdown and fragmented accounting systems. In such settings, the ability to authenticate or dispute IU submissions quickly can be materially constrained. If silence is treated as authentication in these conditions, the process risks converting incapacity into evidence.

D. Distributional exposure and legitimacy risk

Procedural capacity is not equally distributed. A system that shortens response windows and hardens records through deeming is likely to place greater pressure on firms with thinner administrative bandwidth and less stable access to professional support. The risk also interacts with the post-2020 threshold structure. Since March 2020, initiation of corporate insolvency requires a minimum default of one crore rupees.⁶⁶ That threshold reduces exposure for smaller claims, but it does not eliminate distributional asymmetry. Firms that sit near the threshold, including many smaller and mid-sized enterprises, may still face high-stakes initiation while having limited capacity to respond rapidly across multiple procedural channels.

Legitimacy concerns sharpen because the Supreme Court has insisted that insolvency is not a debt recovery substitute where a real dispute exists, and that entry scrutiny cannot be mechanical. Even in financial creditor initiation, admission requires satisfaction of default and cannot be reduced to automation.⁶⁷

If the Bill relocates practical adjudicatory effect into commencement-by-announcement and IU record-hardening, safeguards must relocate into that same zone. Otherwise, the system risks false positives and coercive settlements driven by early leverage. It also risks an expansion of litigation focused on service defects, access failures and correction of hardened records.

This diagnosis frames the task for the next part of the article. The reform question is not whether CIIRP and IU reform should proceed. The question is what minimum due-process architecture is necessary so that speed is achieved without making silence do evidentiary work in circumstances where the opportunity to speak was not reliably real.

⁶⁶ Insolvency and Bankruptcy Code § 4 proviso; Ministry of Corporate Affairs, Notification No. S.O. 1205(E) (Mar. 24, 2020) (India).

⁶⁷ *Innoventive*, (2018) 1 S.C.C. 407, ¶ 28 (India); *Swiss Ribbons*, (2019) 4 S.C.C. 17, ¶¶ 28–32 (India).

VI. Guardrails For Commencement-By-Announcement & IU Record-Hardening

CIIRP relocates the legal trigger for commencement to the resolution professional's public announcement, so the process can begin without a prior admission order.⁶⁸ The Bill also tightens the IU workflow by requiring debtor authentication within a prescribed manner and period, while treating non-response as deemed authentication.⁶⁹ These two shifts interact, because commencement-linked leverage and "authenticated" records can harden outcomes before the debtor has had a workable chance to contest.⁷⁰

The guardrails below are designed for that interaction. They keep speed, but they also preserve contestability at the points where the Bill relocates legal effect.

A. Minimum safeguards checklist

a) Notice integrity

CIIRP's pre-commencement debtor participation is anchored to the requirement that the initiating creditor inform the corporate debtor of its intention and allow at least thirty days for representation.⁷¹ That representation window cannot do its work unless the debtor receives notice through verified service and receives the material necessary to respond.⁷²

A verified service standard should require traceable delivery through reliable modes and it should treat proof of service as a condition for relying on debtor silence.⁷³ A "complete packet" standard should require disclosure, at the representation stage, of the core initiation record including the default computation, the relevant instrument or facility terms, the creditor approval record, the proposed RP's consent and the IU submission details relied upon.⁷⁴

b) Effective opportunity to respond

The debtor's principal statutory challenge route is time-bound, because objections to commencement must be filed within thirty days from the creditor-initiated insolvency

⁶⁸ IBC Amendment Bill, cl. 40 (proposed § 58B(4)).

⁶⁹ *Id.* cl. 58 (proposed Insolvency and Bankruptcy Code § 215(4) proviso).

⁷⁰ *Id.* cl. 40 (proposed § 58B(5)).

⁷¹ *Id.* cl. 40 (proposed § 58B(2)(b)).

⁷² Adjudicating Authority Rules, r. 6(2).

⁷³ *Id.* r. 4(3).

⁷⁴ IBC Amendment Bill, cl. 40 (proposed § 58B(2)(a)).

commencement date.⁷⁵ A time-bound remedy is only meaningful if access is real, because a debtor cannot contest what it cannot see.⁷⁶

Where the creditor relies on an IU record, the debtor must be given prompt access to the IU entry, its supporting documents and the authentication trail, including reminders and status changes that led to deemed authentication.⁷⁷ This is consistent with the Code's use of IU-backed material, including the "record of default", as a proof pathway at admission.⁷⁸

c) Neutral checkpoint

The Bill preserves a tribunal checkpoint by empowering the adjudicating authority to declare commencement void ab initio where default has not occurred, and to convert CIIRP to CIRP where default exists but initiation contravened the CIIRP requirements.⁷⁹ These powers are the system's core integrity controls, so they need a clear entry-stage screening focus on procedure rather than merits.⁸⁰

A fast screening model is consistent with the Supreme Court's description of insolvency entry as summary, but not automatic, and with the Court's insistence that insolvency should not become a coercive substitute for ordinary recovery in contested settings.⁸¹ The screening question should therefore be whether minimum contestability conditions were met, not whether every liability dispute can be decided at entry.⁸²

B. Consequences matrix for safeguard failure

Guardrails need defined consequences, otherwise they remain aspirational. A defective notice should lead to cure and re-service with a short compliance timeline, because the debtor's representation right cannot be treated as used if it could not realistically be exercised.⁸³ A proven access failure should justify a limited pause tied to restoration of access, because the

⁷⁵ *Id.* cl. 40 (proposed § 58C(1)).

⁷⁶ *Id.* cl. 40 (proposed § 58C(3)).

⁷⁷ Information Utilities Regulations, reg. 21(2).

⁷⁸ Insolvency and Bankruptcy Code § 7(3)(a).

⁷⁹ IBC Amendment Bill, cl. 40 (proposed § 58C(2)(a)).

⁸⁰ *Id.* cl. 40 (proposed § 58C(2)(b)).

⁸¹ *Swiss Ribbons*, (2019) 4 S.C.C. 17, ¶¶ 28–32 (India).

⁸² *Innovative*, (2018) 1 S.C.C. 407, ¶ 28 (India).

⁸³ IBC Amendment Bill, cl. 40 (proposed § 58B(2)(b)).

purpose is to restore contestability, not to halt the process on merits.⁸⁴

Where the defect concerns the IU outcome itself, the corrective action should be record-focused through reopening, correction, or at minimum dispute-annotation that preserves the audit trail.⁸⁵ This approach aligns the remedy with the location of the error, because a silence-based status outcome is the immediate object that is distorting entry-stage bargaining.⁸⁶

Abuse deterrence should be explicit, because a speed-oriented process increases the payoff from procedural ambush. The Code already provides for consequences where proceedings are initiated fraudulently or with malicious intent, and that logic should extend to procedurally abusive CIIRP triggers and reckless IU uploads.⁸⁷

C. Deemed authentication as rebuttable presumption

The Bill's deeming rule should be treated as evidentiary acceleration, not as near-conclusive truth.⁸⁸ A workable doctrinal characterisation is to treat deemed authentication as a rebuttable presumption that stabilises proof for entry purposes unless the debtor raises a timely and credible integrity challenge.⁸⁹

The challenge window should be aligned to the CIIRP objection logic, because record-hardening should not outpace the debtor's statutory ability to contest commencement-linked leverage.⁹⁰ A debtor should be able to rebut the presumption by showing defective service, incomplete packet disclosure, demonstrable inability to access the IU entry in time, or a prima facie mismatch between the IU record and core supporting material.⁹¹

During the challenge period, the default response should be annotation rather than erasure, because speed is preserved when the record remains usable but visibly contested.⁹² Interim relief should be narrowly tailored to restoring contestability, including limited pauses where

⁸⁴ *Id.* cl. 40 (proposed § 58G(2)).

⁸⁵ Information Utilities Regulations, reg. 21(4).

⁸⁶ Notes on Clauses to the IBC Amendment Bill, cl. 58.

⁸⁷ Insolvency and Bankruptcy Code § 65.

⁸⁸ Notes on Clauses to the IBC Amendment Bill, cl. 58.

⁸⁹ Indian Evidence Act, No. 1 of 1872, § 4, INDIA CODE (1872).

⁹⁰ IBC Amendment Bill, cl. 40 (proposed § 58C(1)).

⁹¹ Adjudicating Authority Rules, r. 7(2).

⁹² Information Utilities Regulations, reg. 21(2).

necessary to prevent the objection right from becoming illusory.⁹³

D. NCLT entry-stage screening standard

At the objection stage, three checks should be treated as non-deferrable. The tribunal should verify threshold and initiation compliance on the face of the initiation record, because CIIRP initiation is restricted to notified creditor classes and it is gated by creditor approval thresholds.⁹⁴ The tribunal should verify service integrity and packet completeness, because silence cannot do probative work without reliable notice and usable disclosure.⁹⁵ The tribunal should verify IU integrity markers, including authentication status and the notice trail that led to deemed authentication, because the evidentiary shift is being executed through the IU channel.⁹⁶

Merits-heavy disputes, valuation contests and complex accounting issues should ordinarily be deferred unless they are necessary to prevent clear injustice at entry.⁹⁷ A short order should record findings on the integrity checks, set cure directions where needed and state how the remaining objection window will operate once contestability is restored.⁹⁸

VII. Implementation & Conclusion

Implementation should proceed on three tracks. First, subordinate legislation should prescribe verified service modes and minimum “complete packet” contents for the CIIRP representation stage, because the statute leaves key operational details to prescription.⁹⁹ Second, IU standards should mandate identity integrity, immutable audit trails and visible dispute flags for authentication requests, reminders and deemed outcomes, because the Bill uses non-response to generate authentication.¹⁰⁰ Third, a short NCLT screening protocol should be operationalised through a model order format that separates integrity checks from merits disputes, because inconsistent screening will predictably generate satellite litigation.¹⁰¹

⁹³ IBC Amendment Bill, cl. 40 (proposed § 58C(3)).

⁹⁴ *Id.* cl. 40 (proposed § 58B(1)).

⁹⁵ Adjudicating Authority Rules, r. 6(2).

⁹⁶ IBC Amendment Bill, cl. 58 (proposed Insolvency and Bankruptcy Code § 215(4)).

⁹⁷ *Mobilox*, (2018) 1 S.C.C. 353, ¶ 40 (India).

⁹⁸ IBC Amendment Bill, cl. 40 (proposed § 58C(3) proviso).

⁹⁹ *Id.* cl. 40 (proposed § 58A(1)).

¹⁰⁰ *Id.* cl. 58 (proposed Insolvency and Bankruptcy Code § 215(4)).

¹⁰¹ *Surendra Trading Co.*, (2017) 16 S.C.C. 143, ¶¶ 17, 23, 26 (India).

The likely first-wave questions will be procedural and they should be resolved with the same integrity logic. Courts will need to decide what counts as verified service for the representation and objection windows, when deemed authentication can be reopened for integrity failures and what threshold justifies a limited pause during the objection period.¹⁰² Courts will also need to clarify whether conversion to CIRP is the default remedy for procedurally defective initiation where default exists, because the Bill embeds conversion as the principal corrective tool in that setting.¹⁰³

The core claim of this article is that CIIRP and deemed authentication can deliver speed only if they are paired with enforceable contestability conditions at the notice, access and checkpoint stages.¹⁰⁴ Silence cannot be treated as reliable evidence where the process makes silence plausible through weak service, inaccessible records or distress-induced incapacity.¹⁰⁵ Early precedent should therefore lock in three propositions: verified notice is a precondition for relying on silence, deemed authentication operates as rebuttable evidence where integrity is doubtful and entry-stage review focuses on procedural integrity before leverage is permitted to harden outcomes.¹⁰⁶

¹⁰² *Swiss Ribbons*, (2019) 4 S.C.C. 17, ¶ 28 (India).

¹⁰³ IBC Amendment Bill, cl. 40 (proposed § 58C(2)(b)).

¹⁰⁴ *Swiss Ribbons*, (2019) 4 S.C.C. 17, ¶¶ 28–32 (India).

¹⁰⁵ Notes on Clauses to the IBC Amendment Bill, cl. 58.

¹⁰⁶ *Innoventive*, (2018) 1 S.C.C. 407, ¶ 28 (India).