CREDITORS IN THE DRIVER'S SEAT: A CRITICAL ANALYSIS OF THE CREDITOR-INITIATED INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2026

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ABSTRACT

On 6 April 2026, the President of India gave assent to the Insolvency and Bankruptcy Code (Amendment) Act, 2026 the single largest set of changes to the insolvency framework since Parliament first enacted the Code a decade earlier. Of everything the amendment does, one change stands apart: a new Chapter IV-A creates the Creditor-Initiated Insolvency Resolution Process ("CIIRP"), letting financial creditors who together hold fifty-one percent of a company's debt begin a formal resolution process on their own, without first asking the National Company Law Tribunal for permission. Unlike ordinary insolvency proceedings, the company's own board stays in charge of day-to-day operations throughout CIIRP, working under the watch of a court-appointed Resolution Professional rather than being displaced by one. This piece traces the practical failures that pushed Parliament toward this reform chronic delay, the uncertainty introduced by the Supreme Court's ruling in Vidarbha Industries Power Ltd. v. Axis Bank Ltd., and the absence of any genuine out-of-court option for large creditors before working through exactly how Chapter IV-A operates in practice. It then asks whether CIIRP amounts to a genuinely new model of insolvency governance or merely a faster version of the old one, flags open questions around due process and valuation that the statute leaves unanswered, and considers what the reform means for lenders, promoters, insolvency professionals, and distressed-asset investors. The article closes by arguing that CIIRP's fate will turn less on the text of the statute itself than on the quality of the regulations still to come and on how tribunals handle the disputes it is bound to generate.

Keywords: Insolvency and Bankruptcy Code; Creditor-Initiated Insolvency Resolution Process; IBC Amendment Act 2026; Committee of Creditors; Debtor-in-Possession; Corporate Insolvency Resolution.

I. INTRODUCTION

Parliament built the Insolvency and Bankruptcy Code, 2016 around a simple promise: distressed companies would be resolved within one hundred and eighty days, with one ninety-day extension permitted in hard cases. Ten years on, that promise looks aspirational at best. According to figures released by the Insolvency and Bankruptcy Board of India, a corporate insolvency resolution process ("CIRP") now takes, on average, well over seven hundred days to close.[1] Somewhere along the way, a mechanism designed to rescue viable businesses quickly turned into fertile ground for delay promoters and dissenting creditors learned to use the Code's own procedural protections against the very outcomes it was meant to produce, often at the direct cost of the assets everyone was trying to save.

It is this failure of speed, more than any single controversy, that lies behind the Insolvency and Bankruptcy Code (Amendment) Act, 2026, which received presidential assent on 6 April 2026 and now stands as Act No. 6 of 2026.[2] Commentators have already called it the most far-reaching set of changes the Code has seen since its enactment, touching admission, resolution, liquidation, avoidance transactions and cross-border cooperation alike. But if one change deserves to be singled out, it is the insertion of a new Chapter IV-A, which creates the Creditor-Initiated Insolvency Resolution Process ("CIIRP"). For the first time, a defined class of financial creditors can start a structured resolution process without first convincing the National Company Law Tribunal ("NCLT") to admit an application and, unusually for Indian insolvency law, the corporate debtor's own board keeps running the company throughout, under the watchful eye of a Resolution Professional ("RP") rather than under its control.

The argument developed here is that CIIRP is not a minor procedural add-on but a genuine change in how the Code allocates power between courts and creditors from a system where the Tribunal screens every insolvency filing at the door, to one where a defined creditor majority can walk straight in. Part II sets out why Parliament felt compelled to legislate. Part III works through Chapter IV-A provision by provision. Part IV asks what, exactly, makes this a structural shift rather than a faster version of the status quo. Part V flags the questions the statute leaves open. Part VI turns to what the reform means for the different players who will

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[1] Insolvency and Bankruptcy Board of India, data on average time taken for closure of corporate insolvency resolution processes, as cited in "Rewriting The Rules Of Distress: What The IBC Amendment Act, 2026 Actually Changes—And What It Doesn't", Mondaq (June 2026).

[2] The Insolvency and Bankruptcy Code (Amendment) Act, 2026, Act No. 6 of 2026, Gazette of India, pt. II, s. 1 (Apr. 6, 2026).

actually have to live with it, Part VII places CIIRP briefly alongside comparable mechanisms abroad, and Part VIII concludes.

II. GENESIS OF THE REFORM

A. The Cost of Delay

Delay is the complaint that appears most often in any account of why the Code needed reform. A process designed to move quickly instead became, in practice, difficult to distinguish from ordinary civil litigation in its capacity for drawn-out contest. Applications that the original Code expected the NCLT to admit within fourteen days routinely sat for months, held up by crowded dockets and repeated adjournments. Once a case was admitted, resolution plans could still be challenged late in the process, and because missed deadlines carried no real consequence, the statutory timeline functioned more as a target than as a rule.

B. Discretion Creeps Into the Admission Stage

A second, more doctrinal problem sat alongside the practical one. In *Innoventive Industries Ltd. v. ICICI Bank*[3], the Supreme Court had read Section 7 as leaving the NCLT little choice: once a financial creditor proved debt and default, admission followed almost automatically. *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*[4] complicated that certainty considerably, holding that Section 7(5) allowed the Tribunal to weigh the debtor's overall financial condition before ordering admission a more equitable reading, perhaps, but one that reopened exactly the kind of contestability the Code's drafters had tried to close off, and gave debtors a new and frequently used ground on which to resist admission.

C. The Waterfall Gets Disturbed

Around the same time, *State Tax Officer v. Rainbow Papers Ltd.*[5] unsettled a different part of the framework by effectively treating certain government dues as secured debt for the purposes of the Section 53 liquidation waterfall. That shift sat awkwardly against the finality the Supreme Court had itself insisted on elsewhere the “clean slate” principle affirmed in

[3] Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 (India).
[4] Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352 (India).
[5] State Tax Officer v. Rainbow Papers Ltd., 2022 SCC OnLine SC 1162 (India).

Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta[6] and *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*[7] and left resolution applicants less able to price with confidence exactly what they were buying.

D. No Real Alternative for Large Creditors

Finally, outside the narrow pre-packaged process created in 2021 for micro, small and medium enterprises, the Code offered creditors nothing resembling an out-of-court route. Large financial creditors often precisely the parties with both the information and the incentive to resolve distress fast, through negotiation rather than litigation had no way to act without first fighting an admission battle before an already overloaded Tribunal. Chronic delay, an unpredictable admission stage, and the absence of any scalable creditor-led alternative together set the stage for the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, introduced as Bill No. 107 of 2025 and eventually enacted as the 2026 Amendment Act.

III. UNDERSTANDING CIIRP: CHAPTER IV-A EXPLAINED

The 2026 amendment inserts an entirely new Chapter IV-A Sections 58A through 58K into Part II of the Code, setting out the Creditor-Initiated Insolvency Resolution Process.

A. Who Can Use It, and What It Takes

CIIRP is available only to financial creditors belonging to a notified class, and only against corporate debtors that meet prescribed asset or income thresholds the mechanism is not confined to micro, small and medium enterprises the way the 2021 pre-pack framework was.

B. How It Begins

The process opens with at least thirty days' notice to the corporate debtor, setting out the creditors' intention to appoint a Resolution Professional. The debtor may use this window to respond, including by disputing whether default has actually occurred. If the creditors decide to press ahead, a second vote again requiring support from fifty-one percent of debt by value is needed before the RP is formally appointed. Once appointed, the RP must make a public

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[6]Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531 (India).
[7]Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 (India).

announcement and notify both the NCLT and the IBBI.

C. Management Stays in Place

Perhaps the single most unusual feature of CIIRP is what it does not do: it does not remove the board. Ordinary CIRP triggers a moratorium and hands control to an Interim Resolution Professional, suspending the board's powers for the duration of the process. CIIRP instead leaves the board running the company, subject to oversight rather than replacement by the RP. Nothing quite like this existed in the Code before 2026, and it represents a conscious borrowing from restructuring traditions built around keeping management in place.

D. Deadlines, and What Happens If They Are Missed

CIIRP must conclude within one hundred and fifty days, extendable by a further forty-five days on application to the NCLT, itself conditional on support from creditors holding sixty-six percent of the CoC's voting share. If no viable resolution plan emerges within that window, or if the debtor obstructs the process, the NCLT can convert the proceeding into an ordinary CIRP at which point the usual consequences, including the board's removal, apply.

E. Provisions Built to Work Together

Several other 2026 changes reinforce Chapter IV-A rather than sitting apart from it. Section 11 has been amended to stop a corporate debtor under CIIRP from being pulled into a parallel ordinary CIRP, and vice versa. Section 12A, on withdrawal of admitted applications, now requires ninety percent CoC approval and forbids withdrawal once resolution plans have already been invited a change squarely aimed at stopping CIRP, and by extension CIIRP, from being used as a bargaining chip in debt recovery rather than as a genuine path to resolution.

IV. A STRUCTURAL DEPARTURE, NOT AN INCREMENTAL TWEAK

A. The Tribunal Steps Back From the Door

Every earlier route into insolvency under the Code financial creditor applications under Section 7, operational creditor applications under Section 9, debtor-initiated filings under Section 10 required the NCLT to be satisfied before proceedings could begin at all. CIIRP removes that requirement entirely for eligible creditors. The screening function the Tribunal has always performed is replaced, for this class of creditor, by an internally determined fifty-one percent threshold. That is a genuine transfer of decision-making authority from the judiciary to private market actors, and not merely a procedural shortcut.

B. Undoing Vidarbha's Widened Discretion

The 2026 amendment also tightens the discretion *Vidarbha*[8] had introduced into ordinary Section 7 applications, pulling the law back closer to the mandatory-admission position taken in *Innoventive Industries*. Read together with the creation of CIIRP, the pattern is consistent: wherever discretionary delay had crept in, Parliament has moved to squeeze it out either by narrowing the Tribunal's room for judgment or by building a route around the Tribunal altogether.

C. Borrowing a Debtor-in-Possession Idea

Keeping management in place during CIIRP, subject only to RP oversight, echoes debtor-in-possession features long associated with Chapter 11 reorganisation in the United States, and to a lesser degree with restructuring plans under English law.

D. Creditors Gain Ground Elsewhere Too

The shift toward creditor primacy is not confined to Chapter IV-A alone. The 2026 amendment also gives the CoC power to appoint, remove and supervise liquidators, moving liquidation oversight from a largely quasi-judicial process into one substantially run by creditors. Secured creditors must now realise their security within fourteen days of the liquidation commencement date or see it deemed relinquished to the liquidation estate.

V. CRITICAL CONCERNS AND OPEN QUESTIONS

A. Is Thirty Days Enough?

Compressing prior judicial screening into a thirty-day notice period raises a real due-process question. Ordinary CIRP has, at times, been used as leverage in debt recovery despite the Supreme Court's repeated disapproval of exactly that use, most notably in *Swiss Ribbons Pvt.*

[8]Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352 (India).

Ltd. v. Union of India[9]. By lowering the initiation threshold and removing the Tribunal from that stage altogether, CIIRP arguably raises rather than lowers this risk a bare fifty-one percent coalition could, at least in theory, use the threat of CIIRP to extract concessions from an otherwise healthy business, with minority creditors and the debtor itself having limited practical room to object before the process is already under way.

B. Whose Numbers Can You Trust?

Because the board stays in charge throughout, the RP must lean heavily on information supplied by the very management whose conduct triggered the creditors' loss of confidence in the first place. The amendment's new statutory definition of "registered valuer", aligned with Companies Act, 2013 standards, is a step toward more defensible valuation.

C. The Rules Are Not Written Yet

At the time of writing, Chapter IV-A is not yet operative; like several other parts of the 2026 amendment, it awaits a specific notification from the Central Government. The IBBI moved quickly, releasing a set of discussion papers within days of presidential assent that begin to address questions such as what counts as a "notified class" of eligible creditors, the required form of the initiation notice, and how the RP is expected to behave during the debtor-in-possession phase.

D. Where the Early Disputes Will Land

Several interpretive questions seem likely to reach the NCLT and appellate courts once Chapter IV-A is switched on. These include how convincingly a corporate debtor must dispute default within the thirty-day notice window to avoid CIIRP; where supervisory oversight by the RP ends and something closer to de facto control begins; and how dissenting creditors, who fall outside the fifty-one percent majority yet remain bound by the outcome, are to be treated. How tribunals answer these questions will shape whether CIIRP settles into a genuinely consensual restructuring tool or drifts, in practice, toward something that looks much like ordinary CIRP.

[9]Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India) (cautioning against use of the Code as a substitute for debt-recovery proceedings).

VI. IMPLICATIONS FOR STAKEHOLDERS

For banks and financial institutions, CIIRP offers a materially quicker, less resource-intensive way to start resolution, sidestepping the admission-stage bottlenecks that have frustrated creditors under Sections 7 and 9 for years. For corporate debtors and promoters, it offers a real chance to negotiate directly with creditors and hold on to operational control but only if they engage quickly and transparently; delay or obstruction risks automatic conversion into ordinary CIRP, and with it, loss of management control. For insolvency professionals, CIIRP creates a distinct kind of mandate, closer to active financial oversight than to the wholesale operational takeover typical of ordinary CIRP appointments. For registered valuers, the new statutory standards are likely to push up demand for valuation work capable of standing up to scrutiny in a process where management keeps access to, and influence over, the underlying numbers. And for distressed-asset investors, CIIRP opens an entirely new pre-Tribunal window for deal-making, one that will require rethinking due diligence and bid structuring given how compressed the timeline for finalising a resolution plan now is.

VII. A COMPARATIVE NOTE

Debtor-in-possession restructuring is nothing new internationally. Chapter 11 of the United States Bankruptcy Code lets management keep operating a business through reorganisation, under court supervision and often with negotiated debtor-in-possession financing in place.

VIII. CONCLUSION

The Creditor-Initiated Insolvency Resolution Process deserves to be read as more than a procedural footnote to the Insolvency and Bankruptcy Code. Where the original statute put the Adjudicating Authority at the threshold of every insolvency proceeding, Chapter IV-A lets a defined majority of financial creditors begin a structured, time-bound process entirely outside that gate, while leaving incumbent management in place, at least at the outset. It is a considered bet that speed and creditor primacy will, on balance, produce better outcomes than continued reliance on an overstretched Tribunal system and it borrows deliberately, though selectively, from debtor-in-possession models developed elsewhere.

Whether that bet pays off depends on things that remain unsettled for now: how clearly the IBBI's still-pending regulations are drafted; whether the NCLT has the capacity to handle the conversion disputes CIIRP is likely to generate; and whether courts are willing to draw a firm line between genuine creditor-led resolution and the kind of coercive debt recovery the Supreme Court has warned against under ordinary CIRP. Get those right, and CIIRP has a real claim to becoming India's functional equivalent of a pre-packaged, creditor-driven restructuring tool for companies well beyond the micro, small and medium enterprise sector. Get them wrong, and it risks joining the list of provisions that exist on the statute book but see little practical use. The next eighteen to twenty-four months, as notification and subordinate rule-making proceed, will offer the first real answer.

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