LEGISLATING AROUND THE COURT: THE IBC AMENDMENT ACT, 2026 AND THE EROSION OF EX-ANTE ANTITRUST SCRUTINY IN INSOLVENCY RESOLUTION

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ABSTRACT

In January 2025, the Supreme Court of India in the case of Independent Sugar Corporation Ltd. v. Girish Sriram Juneja ruled that the provisions of Section 31(4) of the Insolvency and Bankruptcy Code, 2016 which mandates sanction of a resolution plan by the Committee of Creditors after first securing an approval by the Competition Commission of India for a "combination", is compulsory and not directory. After fifteen months, the Parliament passed the Insolvency and Bankruptcy Code (Amendment) Act, 2026, making an amendment in the same proviso that the Court had interpreted as requiring CCI approval before the vote of CoC, to now instead allow CCI approval to be taken after the vote of CoC but before filing the Plan before the Adjudicating Authority. This article examines whether the amendment, in force from 26 May 2026, functionally reopens the sequencing gap the Supreme Court closed. It states that although the amendment addresses real concerns about delay and the costs associated with duplicative filing of applications, it does so by moving the substantive antitrust review to a point where the CoC's commercial position is already settled, thereby watering down the nature of merger control as an ex-ante factor as the Court had earlier considered it to be an integral part of Section 31(4). It places this change in the context of the fundamental conflict between the time-bound resolution goal of the IBC and the gatekeeping role of the Competition Act, and suggests a narrower solution that will continue to maintain both.

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 and the Competition Act, 2002 are not always squarely aligned with their objectives. The IBC is meant to address distress in the company in a stipulated time-frame with the objective of creating as much value from the assets of a corporate debtor whereas the Competition Act is concerned with creating adverse combination which appreciates competition in the relevant market. If a resolution plan is for the acquisition of a corporate debtor by an entity that is already competing in the same market, the plan is also a "combination" under Section 5 of the Competition Act, which must be approved by the CCI in advance.[1] The proviso to Section 31(4) of the IBC was the statutory connection that had to get the approval of CCI before a resolution applicant would be allowed to seek approval of the Committee of Creditors for the combination of the schemes.[2]

It has been a decade since the question of the meaning of this requirement was debated in practice. Resolution professionals and the National Company Law Appellate Tribunal have repeatedly treated it as directory whereby a CoC was allowed to vote on the plan as long as the approval of the CCI is eventually secured before the plan goes to the Adjudicating Authority. The Supreme Court in *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja* in January 2025, rejected the same position and upheld the proviso as mandatory and struck down a resolution plan approved by the CoC without prior approval from the CCI.[3]

After fifteen months, Parliament made a further amendment to the same proviso through the Insolvency and Bankruptcy Code (Amendment) Act, 2026, which allows CCI approval to be granted after the CoC vote, prior to plan being sent to the Adjudicating Authority.[45] The 2026 Amendment Act, however justified, effectively returns the sequencing issue *Independent Sugar Corporation* determined to shut down, in a way which requires no recourse into the reasoning, merely a Parliamentary process to determine the same.

[1]Competition Act, 2002, § 5, No. 12, Acts of Parliament, 2003 (India).
[2]Insolvency and Bankruptcy Code, 2016, § 31(4) proviso, No. 31, Acts of Parliament, 2016 (India).
[3]Independent Sugar Corporation Ltd. v. Girish Sriram Juneja, (2025) 5 SCC 209.
[4]The Insolvency and Bankruptcy Code (Amendment) Act, 2026, No. 6, Acts of Parliament, 2026 (India).
[5]*The Insolvency and Bankruptcy Code (Amendment) Act, 2026*, CMS INDUSLAW (Apr. 13, 2026), https://cms-induslaw.com/en/ind/publication/the-insolvency-and-bankruptcy-code-amendment-act-2026.

THE JUDICIAL POSITION: INDEPENDENT SUGAR CORPORATION AND THE MANDATORY SEQUENCING RULE

The dispute over the resolution plan for Hindustan National Glass and Industries Ltd. was raised because in April 2022 where both the Independent Sugar Corporation Ltd. and the company AGI Greenpac Ltd. had submitted their resolution plans.[6] The plan proposed by AGI Greenpac involved an acquisition of two competitors in the glass packaging industry in India, hence it had to be approved as a combination by the CCI. The Resolution Professional in reply to a query on the timeline of approval by CCI on 25 August 2022 eased this requirement in his e-mail to the applicant and allowed them to get the approval of CCI after the CoC vote but before they take the case before the NCLT.[7] AGI Greenpac had no valid CCI application when the CCI declared its initial Form I as invalid on 22 October 2022 and later, on 28 October 2022, the CoC still went ahead and approved AGI Greenpac's plan with 98% of the vote.[8] On 3 November 2022, AGI Greenpac had filed a fresh Form II application and had got approval subject to the conditions of CCI on 15 March 2023 for the project after the company had agreed to divest one of the plants of HNGIL, located in Uttarakhand.[9] INSCO's challenge to the CoC's approval was rejected by both the NCLT and the NCLAT on the ground that the proviso's timing requirement was directory.[10]

A three-judge bench of the Supreme Court was reversed by a majority of 2:1. The majority ruled that the words "prior to the approval of such resolution plan by the committee of creditors" did not give any flexibility and a directory reading of the proviso cannot overlook its intent.[11] The Court explained that the imposition of the necessity of CCI clearance before the CoC vote is an attempt to shield the CoC from taking decisions based on a plan that may be later amended or disapproved by the sectoral regulator (which action may result in their direction of a reverse commitment).[12][13] The Court cancelled the approval of AGI Greenpac's

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[6]*Case Summary and Analysis of Independent Sugar Corporation Ltd. v. Girish Sriram Juneja and Ors.*, THE LEGAL QUORUM (Mar. 22, 2026), https://thelegalquorum.com/case-summary-and-analysis-of-independent-sugar-corporation-ltd-v-girish-sriram-juneja-and-ors/.

[7]Id.

[8]Id.

[9]*Insolvency & Competition: Legal Imperatives Post Independent Sugar Corp. v. Girish Sriram*, TAXGURU (July 15, 2025), https://taxguru.in/corporate-law/insolvency-competition-legal-imperatives-post-independent-sugar-corp-v-girish-sriram.html.

[10]Independent Sugar Corporation Ltd. v. Girish Sriram Juneja, supra note 3.

[11]Id.

[12]Id.

[13]*Supreme Court Ruling Shakes Up Insolvency and Competition Approvals in India*, KLUWER COMPETITION L. BLOG (Mar. 22, 2025), https://legalblogs.wolterskluwer.com/competition-blog/supreme-court-ruling-shakes-

proposal and requested that it be reconsidered with regards to only plans approved by the CCI as of 28 October 2022.[14] Both the CCI and AGI Greenpac sought review of the judgment. On the same appeals, on 16 May, 2025, the same three-judge bench granted a CCI's review petition, on specifically a procedural point in Section 29 of the Competition Act, but on which counsel for the respondents expressly states, and which the Court accepted, that the interpretation by the majority under the proviso to Section 31(4) is not reopened in these appeals.[15] AGI Greenpac's review petition that specifically challenged the review of Section 31(4) construction was dismissed as a non-justifiable subject of review jurisdiction and the Court finding that an application to consider it in a different light in law does not show error on the record. The Court, however, shifted the timelines for the implementation of the resolution plan and asked the CoC to re-imagine the resolution plan of INSCO, adding requirements of certain financial commitments made by INSCO to the CoC, within two weeks.[16]

Section 31(4) holding survived a dedicated review challenge within three months of the Bill that would subsequently be amended to include that section making its entry into Parliament, is a point worth bearing in mind throughout the rest of this article.

THE LEGISLATIVE RESPONSE: THE AMENDED PROVISO TO SECTION 31(4)

This bill to amend the Insolvency and Bankruptcy Act, 2025 was presented in the Lok Sabha on 12 August 2025 and referred on the same day to the Select Committee & the report of Select Committee was presented in Lok Sabha on 17 December 2025. The Bill was reportedly passed by the Lok Sabha on 30 March 2026 and by the Rajya Sabha on 1 April 2026, and received Presidential assent on 6 April 2026 as Act No. 6 of 2026.[17][18] Notification by the Central Government introduces provisions relating to resolution-plan approval into effect from 26 May 2026, including the amended proviso to Section 31(4).[19]

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[14]Independent Sugar Corporation Ltd. v. Girish Sriram Juneja, supra note 3.

[15]Competition Commission of India v. Independent Sugar Corp. Ltd. & Anr., 2025 SCC OnLine SC 1325, ¶ 8 (Review Petition (C) No. 482 of 2025 in Civil Appeal No. 4924 of 2023).

[16]AGI Greenpac Ltd. v. Independent Sugar Corp. Ltd. & Ors., 2025 SCC OnLine SC 1325, ¶ 19 (Review Petition (C) No. 657 of 2025 in Civil Appeal No. 6071 of 2023).

[17]The Insolvency and Bankruptcy Code (Amendment) Act, 2026, supra note 4.

[18]*President Assents to Insolvency and Bankruptcy Code (Amendment) Act, 2026*, IBC LAWS (Apr. 7, 2026), https://ibclaw.in/president-assents-to-insolvency-and-bankruptcy-code-amendment-act-2026/.

[19]Ministry of Corporate Affairs, Notification No. S.O. 2625(E) (May 22, 2026), Gazette of India, Extraordinary, pt. II, § 3(ii), No. 2533 (May 25, 2026) (India).

The amended proviso now requires that CCI approval for a combination be obtained by the resolution applicant "before the resolution plan is submitted to the Adjudicating Authority for approval," rather than before the CoC vote.[20] Provision of amendments have been open about the purpose they serve and the amendment hereby "relaxes the mandatory requirement for obtaining the approval of CCI before the resolution plan is approved by the CoC," which is what industry stakeholders described as "operational delay" caused by *Independent Sugar Corporation*.[21] Another such argument is that the delay in obtaining CCI's clearance until the time of selection would help the applicants interested in unsuccessful plans not to be saddled with the burden of obtaining clearance from the CCI to keep their plans alive for the CoC vote as under the earlier one every alternate plan was required to obtain clearance from CCI to maintain its viability for the CoC vote.[22] The 2026 Amendment Act was also suitably backed up with the addition of two new sub-sections namely (5) and (6) to Section 31, introducing comparative binding aspects as opposed to one case at a time testing at the implementation stage, thereby giving a nod to the 'clean slate' principle laid down in *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*[23]

CRITICAL ANALYSIS: RELOCATING SCRUTINY, NOT PRESERVING IT

No extra powers or privileges have been reintroduced in the 2026 Amendment Act to nearly the sugar corporation pre-Independent Sugar case position. It is not the legislated NCLAT's fully directory reading, whereupon CCI could approve at any convenient time before the implementation. Rather, Parliament has prescribed the following mandatory sequence: Application for CCI clearance before submitting to Adjudicating Authority. In essence, this would seem to maintain the ex-ante scrutiny, but move it along further in the process. But when scrutinized, the same structural fault is present that had troubled the majority for the Independent Sugar Corporation.

The Court's focus was not just that a plan may be approved before any CCI, but that a plan voted on in advance of CCI review may be incurring an advance commitment to the plan which imposes terms the regulator may later seek to modify, such as the terms of the AGI Greenpac's 15 March 2023 clearance required to divest a facility which was not part of the plan approved

[20]CMS INDUSLAW, supra note 5.
[21]Id.
[22]*Resetting the Clock – Insolvency and Bankruptcy Code (Amendment) Act, 2026*, PSA LEGAL COUNSELLORS (May 25, 2026), https://psalegal.com/resetting-the-clock-insolvency-and-bankruptcy-code-amendment-act-2026/.
[23]Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 (India).

by the CoC in October 2022.[24] Under the amended proviso, it is once again the CoC that votes with its 98 percent approval on AGI Greenpac, and it alone that comes after the winning party requests clearance, which this party may receive with conditions, modifications or with a denial. No provision in the amendments bars a plan from being approved by a CoC before being rejected by the CCI, and in fact a plan may only be submitted to the Adjudicating Authority when it is approved by the CoC, thus returning the resolution process to the CoC stage as the resolution process had been compressed in the enabling Act to complete within timelines, so as to avert the very problems the amendment was intended to correct.

The amendment also undermines the enforceability of the competitive applications and dissenting creditors. The procedural success of Insco was hinged on the fact that it was able to establish that the CoC's vote lacked a prior clearance by CCI and thus had a legal defect that could be faulted, allowing the plan to be set aside despite its overwhelming support. As soon as the CoC vote is legally completed and the application for CCI has been deferred till the pre-file stage, there isn't any similar procedural advantage for an unsuccessful rival applicant, as the vote will stand and only the approval of the regulator is the remaining leg of the regulatory to-do list – and there, competing applicants and dissenting creditors will not have a vote. This is, in the language of the majority, the replacement of a substantively reviewed commercial choice with one that has already taken shape without that review.[25][26]

A supporter of an amendment could argue that the Adjudicating Authority's approval stage coupled with the clean-slate principle now made enshrined in sub-sections (5) and (6) of Section 31 constitutes itself the necessary 'backstop' because no plan goes to implementation without CCI clearance.[27][28] This answer is a misunderstanding of "to comply" with "to examine." It is well settled that the jurisdiction of the Adjudicating Authority under Section 31 is of a supervisory nature, and is not appellate and that it is to determine whether a plan meets the requirements of the mandatory contents of a plan as required by Section 30(2), rather than to establish whether the underlying commercial arrangement constitutes a competitively appropriate outcome of the transaction. The binding commercial commitment of a CCI-cleared plan is complete when the plan reaches the Adjudicating Authority and the Authority is poorly positioned to revisit that bargain merely because the antitrust conditions attached to it differ

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[24] TAXGURU, supra note 9.
[25] Independent Sugar Corporation Ltd. v. Girish Sriram Juneja, supra note 3.
[26] KLUWER COMPETITION L. BLOG, supra note 13.
[27] Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., supra note 23.
[28] CMS INDUSLAW, supra note 5.

from what creditors originally approved.

However, one has a legitimate efficiency argument for the amendment that must not be overlooked. Time constraints are not the CCI's only concern and requiring all of the combinations by every competing applicant to be made available for CCI clearance before the CoC even votes makes the process realistically more expensive than it ought to be for applicants that don't get selected to present their combination.[29] But this is a cost-allocation argument, not an answer to the competition-law objection the Court raised. However, the advantage brought about by the deferral of CCI approval to the successful bidder alone does not rely necessarily on deferral of CCI review after the CoC vote as that can just as well be attained by insisting on CCI approval for the chosen or shortlisted CoC proposal before the CoC vote can be concluded.

CONCLUSION

In the span of about a year and a half, India's insolvency-competition interface has gone from a Supreme Court ruling mandating that all ex-ante antitrust reviews be conducted, to review petitions filed against the said ruling, to a legislative amendment which moves CCI's approval further in the process where its influence is significantly reduced on decisions. This is not a Parliament-versus-Supreme Court matter because the 2026 Amendment Act does not say that the earlier proviso in the letter was misinterpreted by the Court, and Parliament has the right to change the underlying law of a judgment. But the line between correcting a judgment's legal basis and defeating its practical purpose is doing a lot of work here. The concern which motivated the Court's decision in Independent Sugar Corporation was that creditors should not be made to vote on a competitive fait accompli. The 2026 Amendment Act's sequencing change does not resolve that concern; it relocates the point at which the fait accompli is created. The more limited amendment which would have provided for CCI clearance only of the CoC's plan prior to final approval would have safeguarded the efficiency which the legislature intended without revisiting the sequencing issue that was resolved by the Court in its entire judgment. It is unlikely that any resolution applicant, creditor, and the CCI itself will not be forced to go back to square one without further consideration of the recalculation of the amendment.

[29]PSA LEGAL COUNSELLORS, supra note 22.