

A New Track for Corporate Insolvency



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In these very pages in 2022, I argued that the Insolvency and Bankruptcy Code's (IBC) central weakness was its test of corporate insolvency. The IBC had promised time-bound resolution and largely delivered it once a case was inside the process, yet the process could not be entered without an order of admission from the Adjudicating Authority (AA), and that order was the point at which everything slowed down. I noted then that the AA had, in certain cases, taken close to two years merely to admit an application, and that the Supreme Court in *Vidarbha Industries Power Ltd v Axis Bank Ltd*¹ had made matters worse by holding that admission was discretionary even where debt and default stood established. The choke point sat at the tribunal's door. The IBC (Amendment) Act, 2026² now makes two fundamental changes.

For one class of cases it removes the AA route altogether. For the rest it takes the discretion out of the lock. The first is achieved by a new Chapter IV-A, the Creditor-Initiated Insolvency Resolution Process, or CIIRP, inserted as sections 58A to 58K.³ The second is achieved by a single word substituted in section 7(5)(a), where the tribunal's "may" admit becomes "shall" admit, reversing *Vidarbha* by statute. Read together, these are one strategy aimed at the same disease from both ends, and that is why the Amendment is a welcome move.

It has been argued widely in media and in academia that the IBC has failed. It can be reasonably averred with conviction that it drastically improved upon the SICA and BIFR regime it replaced, dragging Indian insolvency from a world of indefinite reference into one of statutory deadlines. The difficulty was always the entry gate. Under section 7,9

or 10 nothing happens until the tribunal admits the application. Admission is what fixes the insolvency commencement date, what triggers the automatic moratorium under section 14, and what displaces the debtor's management under sections 17 to 20. Every consequence of the process hangs on a single judicial act, and so a delay at that act delays everything.

Vidarbha turned a queue into a very wide judicial discretion, something which the policy makers had planned against at the time of enactment of the IBC. The Court read the word "may" in section 7(5)(a) as conferring on the Adjudicating Authority a power to decline admission even where the financial creditor had proved both debt and default, inviting the tribunal to weigh the debtor's overall solvency before letting the case in. A defaulting debtor now had a reason to contest admission itself, and a further year or two of value could bleed out of a running business while it did so.

The 2026 Amendment answers this at the root by changing "may" to "shall" and requiring that applications be admitted or rejected within fourteen days, with written reasons if the tribunal takes longer. So the factual question that *Vidarbha* allowed to sprawl is closed at the outset.

CIIRP begins without the AA in the picture at all. The initiating creditor must belong to a class of financial institutions notified by the Central Government, so operational creditors and the debtor itself cannot start it, which already narrows the track to repeat-player institutional lenders. Before anything is commenced, that creditor must obtain the approval of notified-class financial creditors holding at least fifty-one per cent in value of the debt owed to such creditors, give the debtor at least thirty days to make a representation, and after considering it obtain the fifty-one per cent approval a second time within thirty days. Only then does the creditor appoint an insolvency professional as resolution professional, who makes a public announcement.

The process, in the words of the statute, "shall be deemed to have commenced from the date of such public announcement," and the Notes on Clauses are blunt that "no order or direction from the Adjudicating Authority or the Board shall be required for the same."⁴ Commencement has become a private act.

This way the business remains preserved. Under section 58F the management continues to vest in the board. The resolution professional attends its meetings and holds a right to reject any resolution passed there, and a rejected resolution cannot take effect. This is debtor-in-possession with a veto, and it is the sharpest departure from ordinary CIRP, where sections 17 to 20 strip the board of its powers on day one. The moratorium, too, is no longer automatic. Section 58G confers no stay on commencement. The resolution professional must apply to the tribunal for one, backed by the creditors' committee or, before that committee exists, by notified-class creditors holding fifty-one per cent in value, and the moratorium runs only from the date of that application. A halt on the debtor's creditors has become a deliberate, justified intervention rather than an automatic incident of the process.

The clock is therefore much shorter and the exit is facilitated. Section 58D requires the resolution to be completed within one hundred and fifty days, extendable once by up to forty-five, against CIRP's one hundred and eighty plus ninety. Where no plan is approved in time, or the debtor fails to cooperate, or a plan is rejected, section 58H directs the tribunal to convert the process into a full CIRP. The design is easier to hold in view when the two tracks are placed side by side.

Table 1: CIRP and CIIRP compared (design parameters)

Design parameter	CIRP (Chapter II)	CIIRP (Chapter IV-A)
Who may initiate	Financial creditor, operational creditor, or corporate debtor (ss. 7, 9, 10)	Only a financial creditor of a notified class of financial institutions (s. 58B)
How it commences	Order of admission by the Adjudicating Authority	Public announcement by the resolution professional; no tribunal order required (s. 58B)
Who runs the company	Interim/resolution professional; board displaced (ss. 17–20)	Board continues; resolution professional holds a veto over its resolutions (s. 58F)
Moratorium	Automatic on admission (s. 14)	Discretionary; applied for, and runs from the application date (s. 58G)
Outer timeline	180 days, extendable once by 90 days, subject to the 330-day outer limit	150 + 45 days (s. 58D)
Plan approval	Committee at 66%; tribunal order under s. 31	Committee at 66%; tribunal order under s. 31 (mutatis mutandis) (s. 58J)
Exit or fallback	Liquidation	Conversion into CIRP, deemed a section 7 admission (s. 58H)

As can be read across the table, the two tracks converge only at the plan-approval stage and diverge at every point before it. CIRP is adjudication-led from its first act. The tribunal is its entry gate, the source of its commencement date, and the trigger of both its moratorium and its displacement of management. CIIRP is private in each of those respects and calls the tribunal in only later. Where CIRP fails into liquidation, CIIRP fails into CIRP, and that fallback is what holds the statutory design together.

The obvious but surface reading of CIIRP is that it means less court. That reading is not entirely correct, and the error is worth correcting because it misses what the Amendment actually does. CIIRP instead of abolishing judicial supervision relocates it. The Adjudicating Authority is removed from the threshold of the process only to be repositioned at its perimeter and its exit. It enters on the debtor's objection under section 58C, which may be brought within thirty days of commencement and can render a wrongly commenced process void ab initio. It enters again to confirm or reject the moratorium under section 58G and to approve the plan under section 58J. Subsequently it enters, most consequentially of all, to order conversion under section 58H.

The conversion bridge is where the design shows its intelligence. When a CIIRP fails, the conversion order under section 58H is "deemed to be an order of admission of an application under section 7," with the initiating creditor treated as the section 7 applicant, and it brings with it the automatic moratorium and the displacement of the board that CIIRP had withheld. The debtor who refused to cooperate inside the gentle track is delivered directly into the harsh one, having lost the thirty-day window and the void-ab-initio remedy that only the entry stage offered. It is pertinent that this arrangement does its most important work without ever being used. Because the in-court track is loaded behind the out-of-court track, the debtor's dominant strategy inside CIIRP is cooperation, and the resolution professional's veto is credible precisely because the alternative to accepting it is a full CIRP in which the board no longer sits.

None of this is to say the framework is beyond question, and a candid appraisal must name where the pressure will fall. Commencement is a private act, and the debtor's only pre-emptive safeguard is the section 58C objection after the fact. A creditor's assertion of default is not tested by any neutral authority before the public announcement goes out. That is a real shift of risk onto the corporate debtor. It is defensible only because the notified initiating class is confined to institutional lenders whose default records the Information Utility can corroborate, and because the void-ab-initio and conversion remedies stand behind the objection. Withdrawal under section 58-I opens only after the committee is constituted, closes at the first invitation for resolution plans, and needs a ninety per cent vote, and commentators are right that so tight an aperture may discourage settlements that ought to be encouraged.

The framework awaits the notification of the eligible creditor and debtor classes and the finalisation of IBBI's process regulations, of which only a discussion paper with draft rules presently exists.⁵ It is important to note that the genesis of the scheme lies in the IBBI Expert Committee whose 2023 Report on a Creditor-Led Resolution Approach⁶ proposed the out-of-court, debtor-in-possession model, though the enacted version departs from it in two respects worth flagging to any reader who consults the report. The Committee would have made the moratorium automatic, where the Act makes it discretionary. It also set the timeline at one hundred and twenty plus forty-five days, where the Act sets it at one hundred and fifty plus forty-five.

For the capital-markets reader the payoff is direct. Institutional lenders gain a resolution track whose start they control and whose clock is shorter than the one they know. A corporate debtor, for its part, is spared the decapitation of a running business on the first day and carries less of the stigma that a section 7 admission drags with it. Resolution applicants inherit going concerns that have not bled value in an admission queue. Bench time, the tribunal's scarcest resource, is recovered and spent on genuine disputes rather than on uncontested admissions it was always going to

grant. And the corporate debt market gets what it most wants from any insolvency regime, which is distress resolution that comes earlier and prices more predictably, because predictable resolution is finally a pricing input for credit. What I diagnosed in 2022 as the choke point at the tribunal's door, the 2026 Amendment has answered from both ends. It remains to be seen whether the notifications and the regulations honour the design, but the design itself is sound, and that is more than the regime has been able to say about its doorway for a very long time.

¹ Vidarbha Industries Power Ltd v Axis Bank Ltd, Civil Appeal No. 4633 of 2021 (SC).

² The Insolvency and Bankruptcy Code (Amendment) Act, 2026, as gazetted (ibbi.gov.in, 7 April 2026).

³ The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (Bill No. 107 of 2025); Report of the Select Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (17 December 2025).

⁴ The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (Bill No. 107 of 2025), Notes on Clauses.

⁵ IBBI, Discussion Paper on draft IBBI (Creditor-Initiated Insolvency Resolution Process) Regulations, 2026 (15 April 2026).

⁶ IBBI Expert Committee, Report on a Creditor-Led Resolution Approach (24 May 2023).