A Critical Analysis of the Insolvency and Bankruptcy (Amendment) Bill, 2025: A Legislative Response to Evolving Jurisprudence

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The Insolvency and Bankruptcy Code, 2016 (IBC) has been a landmark reform in resolving the distress of financially stressed corporate debtors and addressing systemic challenges such as the burgeoning non-performing assets (NPAs) that weighed heavily on the Indian economy at the time of its enactment. Yet, the evolving dynamics of insolvency practice have given rise to new complexities, prompting the Central Government to introduce the IBC (Amendment) Bill, 2025. Focusing on three pivotal structural reforms—the Creditor-Initiated Insolvency Resolution Process (CIIRP), the establishment of a Group Insolvency framework, and the proposed mechanism for Cross-Border Insolvency, this article evaluates the Bill's potential to reshape India's insolvency landscape. Furthermore, it provides forward-looking recommendations aimed at strengthening the maturing insolvency ecosystem in the country. ***Read on to know more…***

Introduction

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (the Bill), represents a pivotal moment in the evolution of India's insolvency framework, formalizing the culmination of years of judicial interpretation and extensive stakeholder consultation. While the Insolvency and Bankruptcy Code, 2016 (IBC/the Code)[1] has been lauded for its successes in facilitating over 1,300 corporate resolutions and contributing nearly half of all banking sector recoveries in the fiscal year 2024–25, it has simultaneously faced significant

[1] Press Information Bureau, *Six legislative amendments and Over 100 regulatory changes made to strengthen insolvency framework and reduce delays; IBC Accounts for Nearly Half of Bank Recoveries in FY 2024–25* (2025), https://pib.gov.in.

challenges that have necessitated a comprehensive legislative overhaul. The Bill, often referred to as "IBC 2.0," is a targeted legislative intervention[2] designed to address persistent pain points, including protracted delays, judicial ambiguities[3] , and the lack of a cohesive framework for complex corporate structures. This article is aimed at providing a critical analysis of the Bill, exploring the rationale for key amendments by rooting them in specific judicial pronouncements and professional feedback. It also offers forward-looking recommendations. The analysis focuses on three critical structural reforms—the Creditor-Initiated Insolvency Resolution Process (CIIRP), the framework for Group Insolvency, and the provisions for Cross-Border Insolvency—to offer a complete understanding of the Bill's potential to transform India's business and legal landscape[4] .

Part I: The Imperative for Legislative and Institutional Reform

A. The Genesis of IBC 2.0: Bottlenecks in the Existing Framework

Since its enactment, the IBC has been instrumental in reshaping India's approach to resolving financial distress, instilling a sense of credit discipline and significantly improving creditor recovery rates. As of September 30, 2025, 1,300 companies have been successfully resolved under the Code, with creditors realizing ₹3.99 lakh crore, accounting for 48.1% of the total recoveries made by Scheduled Commercial Banks in FY 2024–25. Despite these achievements, the Code has been plagued by implementation challenges that have led to a consensus among stakeholders on the need for targeted reforms.

A primary bottleneck has been the issue of prolonged delays and litigation. The time-bound nature of the CIRP, a cornerstone of the Code, has frequently been undermined by practical realities. The average time for completing a CIRP is approximately 603 days, which is well over the statutory limit of 330 days. Delays have been attributed at every stage—from the admission of insolvency applications by the adjudicating authority (AA) through the resolution plan approvals to liquidation orders—including notable delays even in the initial admission process itself. These procedural delays, compounded by the high volume of litigation and appeals, have directly contributed to the erosion of asset value for distressed companies, reducing the eventual recovery for creditors.

Furthermore, procedural ambiguities and judicial discretion have created an environment of legal uncertainty. The lack of a clear legislative mandate in certain sections of the Code has granted wide discretionary powers to the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). This has resulted in divergent judicial interpretations and a high number of appeals, further delaying the resolution process. Finally, while the IBC currently empowers creditors across jurisdictions to initiate insolvency proceedings against individual corporate debtors, the original Code lacked a comprehensive framework for dealing with complex corporate structures, failing to provide specific provisions for interconnected corporate groups or debtors with assets and creditors across multiple jurisdictions. This void resulted in fragmented and inefficient proceedings[5], often leading to value destruction for all stakeholders involved.

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B. The Catalysts of Change: Judicial Pronouncements and Stakeholder Feedback

The IBC 2025 Amendment Bill is a direct legislative response to the challenges highlighted by both the

[2] PwC India, *Key Changes in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025* (2025), https://www.pwc.in.

[3] Policy Circle, *IBC Amendment Bill: India Needs Revamped Law, Not Patchwork Fixes* (2025), https://www.policycircle.org.

[4] Chambers & Partners, *Insolvency & Bankruptcy Code (Amendment) Bill, 2025: Key Reforms & What They Mean for Stakeholders* (2025), https://chambers.com.

[5] IIBC Laws, *The Insolvency and Bankruptcy Code (Amendment) Bill, 2025* (2025), https://www.ibclaw.in.

judiciary and practitioners. It represents a deliberate effort to clarify legislative intent and close loopholes that emerged through judicial interpretations.

A notable example is the legislative overruling of the Supreme Court's decision in *State Tax Officer v. Rainbow Papers Limited* (2022). In this case, the Supreme Court had held that statutory dues owed to government authorities, such as tax arrears, could be treated as a secured debt under Section 53 of the Code if the relevant state law created a "charge" over the corporate debtor's property. This interpretation fundamentally disrupted the established waterfall mechanism under Section 53, which prioritizes secured creditors who have a security interest created by agreement, followed by other creditors. By allowing government dues to be placed on par with the claims of secured creditors, the ruling diluted the recovery prospects for financial institutions and introduced significant commercial uncertainty. The Bill directly addresses this issue by inserting a clarification that a "security interest" shall exist only if it is created by an agreement or arrangement between two or more parties and not merely by operation of any law. This amendment is a critical step by the legislature to re-assert the original commercial hierarchy and restore the predictability essential for credit markets, ultimately strengthening the confidence of global and domestic investors.

> ***The Bill introduces a penalty of ₹1 lakh to ₹2 crore as a pre-emptive measure to deter this anticipated shift toward frivolous proceedings before the AA.***

Another key amendment is the curb on the discretionary power of the AA in admitting insolvency applications. The Supreme Court's ruling in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* (2022) was widely interpreted as granting the NCLT the discretionary power to reject an application under Section 7 even if a default was proven. This interpretation created a loophole that corporate debtors could exploit to delay the admission process, contrary to the time-bound objective of the Code. The Bill makes the admission of financial creditor applications mandatory if a default is proven, the application is complete, and no disciplinary proceedings are pending against the proposed resolution professional. To expedite this process, it clarifies that records of default from a financial institution submitted to an Information Utility will be considered conclusive proof of default. While this is designed to prevent judicial delays at the admission stage, it is anticipated that litigation efforts by debtors may now shift to challenging the default records themselves or filing frivolous appeals at the NCLAT stage.

The Bill's introduction of a specific penalty, via the insertion of new sections (Section 183A or Section 64A), to punish any person initiating frivolous or vexatious proceedings before the AA with a fine ranging from ₹1 lakh to ₹2 crore, is a pre-emptive measure to deter this anticipated shift. This measure is complemented by the amendment to Section 235A, which substantially increases the general penalty for non-specific contraventions of the Code to a maximum of ₹5 crore or three times the loss or gain, whichever is higher. Together, these two provisions signify a resolute legislative intent to introduce greater procedural discipline and ensure the AA's time is utilized for genuine resolution efforts.

Finally, the Bill addresses loopholes in the withdrawal of CIRP applications, a trend highlighted by the high-profile insolvency case of Byju's. The case, initiated by the Board of Control for Cricket in India (BCCI) as an operational creditor, saw a settlement proposal challenged by a financial creditor, Glas Trust, after the Committee of Creditors (CoC) had been constituted. The Supreme Court eventually upheld the NCLAT's view that once a CoC is constituted, its collective wisdom is paramount, and a settlement between the original parties cannot override it without the requisite 90% CoC approval. The Bill formalizes this principle by restricting the withdrawal of admitted applications before-CoC constitution and after the first invitation of a resolution plan, reinforcing the sanctity of the collective process and ensuring it cannot be used as a mere debt recovery tool.

Part II: In-Depth Examination of New Structural Frameworks

A. Creditor-Initiated Insolvency Resolution Process (CIIRP): A Paradigm Shift

The CIIRP is arguably the most transformative proposal in the Bill, representing a fundamental shift from a purely adjudication-driven process to a hybrid, out-of-court mechanism. The primary rationale for introducing this new framework is to provide a faster, more cost-effective, and less litigious resolution for genuine business failures that are not burdened by complex legal disputes.

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Unlike the traditional CIRP, the CIIRP is an out-of-court process initiated by financial creditors holding at least 51% of the debt. The process commences with a public announcement by a Resolution Professional (RP), rather than a court order, thereby bypassing the initial delay at the admission stage. While management remains with the corporate debtor (a debtor-in-possession model), it is subject to the oversight and veto power of the RP. The moratorium is also not automatic and must be applied for by the RP to the NCLT. The entire process is designed to be concluded within a strict timeline of 150 days, with a possible one-time extension of up to 45 days, further reinforcing the commitment to speed.

A critical feature of the CIIRP is the inclusion of safety valves that allow for a transition back to the judicial process. The NCLT retains the power to convert the CIIRP into a standard CIRP if a resolution plan is not approved, the debtor's management fails to cooperate with the RP, or the proposed plan is rejected. This hybrid model attempts to strike a balance between speedy resolution and stakeholder protection. The success of this process hinges on two critical factors: the RP's ability to enforce their oversight without an automatic moratorium, and the debtor's willingness to cooperate. A potential risk is that an uncooperative debtor may simply use the CIIRP as a delaying tactic, only to have the process converted to a regular CIRP later, thus adding another layer of complexity and cost before the actual resolution begins.

B. The Framework for Group Insolvency

The Code, as originally enacted, treats each corporate debtor as a standalone entity, even if they belong to the same conglomerate. This created significant practical difficulties, particularly for large, inter-connected business groups like Videocon, Jaypee and Amrapali Group cases. The fragmented insolvency proceedings against multiple subsidiaries led to value destruction, conflicting claims, and a complex web of inter-company guarantees and transactions, making effective resolution nearly impossible under the existing framework.

In the absence of a legal framework, the NCLT had to rely on equitable principles to manage these complex cases. In the Videocon case, the NCLT applied the Doctrine of Substantial Consolidation[6] to merge the CIRP of 13 out of 15 group companies, a judicial innovation born out of necessity to ensure a coordinated resolution. This judicial intervention set a precedent and highlighted the urgent need for a statutory framework to govern such cases.

The Bill directly responds to this by introducing a new Chapter VA, which empowers the Central Government to prescribe a framework for Group Insolvency proceedings against two or more corporate debtors that are part of a group. The rules will enable a common NCLT bench, a common RP, and a joint CoC, thereby facilitating coordinated resolution and value maximization. The common RP is primarily for coordination, communication and information sharing appointed with the agreement of respective corporate debtors. This enabling provision[7] is a cautious, phased approach, as recommended by the IBBI-

[6] IndiaCorpLaw, *Videocon Case: The Doctrine of Substantial Consolidation* (2025), https://indiacorplaw.in.

[7] Insolvency & Bankruptcy Board of India (IBBI), *Group Insolvency* (2025), https://ibbi.gov.in.

constituted Working Group on Group Insolvency. The Committee advised that India should first implement procedural coordination before moving to substantive consolidation—the pooling of assets and liabilities—which is a more complex and legally contentious issue. While this approach provides flexibility, it leaves a significant gap in the law, as the complexities of inter-company claims and the intricate web of interdependencies remain unresolved without a clear legislative framework for substantive consolidation. This could lead to continued judicial interventions and delays.

C. Cross-Border Insolvency: Aligning with Global Standards

The globalization of commerce has made a robust cross-border insolvency framework essential for any modern economy. The IBC, 2016, contained only two enabling sections, 234 and 235, which were designed to facilitate cross-border proceedings through bilateral agreements. However, these provisions have remained largely unimplemented, as India has not entered into significant reciprocal agreements, creating a void in the legal framework.

The insolvency of Jet Airways became a test case[8] for India's unpreparedness in this area. With parallel proceedings in India and the Netherlands, the NCLAT had to resort to approving a "Cross-Border Insolvency Protocol" between the RP of India and the Dutch trustee to ensure coordination and asset preservation. This landmark judicial intervention highlighted the urgent need for a statutory framework. The Bill empowers the Central Government to prescribe rules for Cross-Border Insolvency and designate special benches. This is a direct response to the recommendations of the Insolvency Law Committee[9], which proposed adopting the UNCITRAL Model Law on Cross-Border Insolvency[10], a globally recognized standard that promotes cooperation, predictability, and judicial certainty.

While the Bill's enabling provision is a step forward, its design raises a crucial question. By not directly adopting or embedding the Model Law into the statute, the Bill leaves the legal framework to future rules. This can create uncertainty for foreign investors and creditors who rely on codified legal certainty and a globally harmonized framework. While a phased approach is understandable, a more direct legislative move would have bolstered India's image as an investor-friendly jurisdiction and provided greater legal certainty for foreign stakeholders.

Part III: Strategic Recommendations for Insolvency Professionals (IPs)

The IBC Amendment Bill, 2025, marks a new chapter in India's insolvency regime, and IPs will need to adapt their strategies to thrive in this evolving landscape. The following strategic proposals are crucial for enhancing the framework, while the actionable advice is tailored for professionals to navigate the changes effectively.

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A. Strategic Proposals for Enhancing the Framework

To truly achieve the objectives of a more agile and transparent insolvency ecosystem, the following enhancements to the Bill and its future implementation are recommended:

- **Codify the UNCITRAL Model Law:** Instead of relying on an enabling provision, the government should take the bold step of embedding the UNCITRAL Model Law on Cross-Border Insolvency directly into the IBC. This would

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[8] Olivia Nahak, *The Jet Airways Case: Addressing India's Cross-Border Insolvency Inadequacies*, IBC Laws (2025), https://www.ibclaw.in. IBBI, *NCLAT: Jet Airways Appeal (Company Appeal (AT) (Insolvency) No. 707 of 2019)* (2019), https://ibbi.gov.in.

[9] IBBI, *Report of Insolvency Law Committee on Cross-Border Insolvency* (2025), https://ibbi.gov.in.

[10] UNCITRAL, *Model Law on Cross-Border Insolvency* (1997), https://uncitral.un.org.

provide the necessary legal certainty and predictability for international stakeholders, as exemplified by the Jet Airways case where a judicial protocol was required to fill a legislative void.

- **Define Substantive Consolidation:** While the Bill's focus on procedural coordination is a good first step, the government should expedite the development of a legal framework for substantive consolidation in Group Insolvency. Without this, the complexities of inter-company claims and asset pooling, as seen in the Videocon case, will continue to hamper effective resolution and value maximization, potentially leading to prolonged legal battles.

B. Actionable Advice for Insolvency Professionals

- **Navigating the New Debtor-in-Possession Model:** The CIIRP introduces a new and unique challenge for IPs. They must develop a new skill set that is both collaborative and firm, focusing on oversight and strategic guidance rather than the direct management control they are accustomed to in traditional CIRP. The ability to balance creditor interests with the need to ensure business continuity will be paramount.

> ***This Bill is not just a procedural update; it is a strategic step towards modernizing India's insolvency regime and reinforcing its position as a globally competitive economy.***

- **Mastering Group and Cross-Border Procedures:** IPs should proactively build expertise in dealing with complex multi-entity structures. This involves understanding inter-company transactions, coordinating with legal teams in different jurisdictions, and managing a single insolvency professional and a joint CoC. Proactive engagement with regulatory bodies and international counterparts will be essential.

It is important to clarify that the UNCITRAL Model Law on Cross-Border Insolvency, which India aims to adopt, pertains solely to the insolvency of a single debtor and the administration of that debtor's assets across multiple jurisdictions. It does not currently address insolvency involving multiple affiliated entities or companies within a group.

The introduction of a cross-border insolvency framework under the Model Law is a vital first step towards India's broader insolvency reform agenda. This step lays the groundwork for the eventual adoption of more advanced legal provisions dealing explicitly with Group Insolvency—the insolvency of multiple interconnected entities—which remains an emerging area in Indian law and is envisaged as the "second level" of insolvency reform aligned with international best practices.

- **Leveraging Technology and Data:** The Bill places a strong emphasis on leveraging technology and data. With the proposal for conclusive proof of default from Information Utilities and mandatory e-auctions for asset sales, IPs must embrace a digital-first approach. Proficiency with digital tools and data analytics will be essential for efficient claim verification, asset valuation, and transparent transactions, which will be critical to fulfilling the objectives of the new amendments.

Conclusion

The Insolvency and Bankruptcy (Amendment) Bill, 2025, is a significant and timely piece of legislation that moves beyond incremental change to propose fundamental structural reforms. By directly addressing the judicial pronouncements that exposed the Code's weaknesses and introducing new frameworks for CIIRP, Group, and Cross-Border insolvency, the Bill aims to create a more agile, transparent, and creditor-friendly ecosystem. While the Bill's enabling provisions represent a cautious and phased approach, their successful implementation will depend on robust regulatory oversight, capacity building for IPs, and a clear legislative roadmap to address the remaining gaps. This Bill is not just a procedural update; it is a strategic step towards modernizing India's insolvency regime and reinforcing its position as a globally competitive economy.