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ANALYSIS**

TOPIC

**PROPOSED IBC AMENDMENT 2026
& RETHINKING INDIA'S INSOLVENCY
FRAMEWORK**

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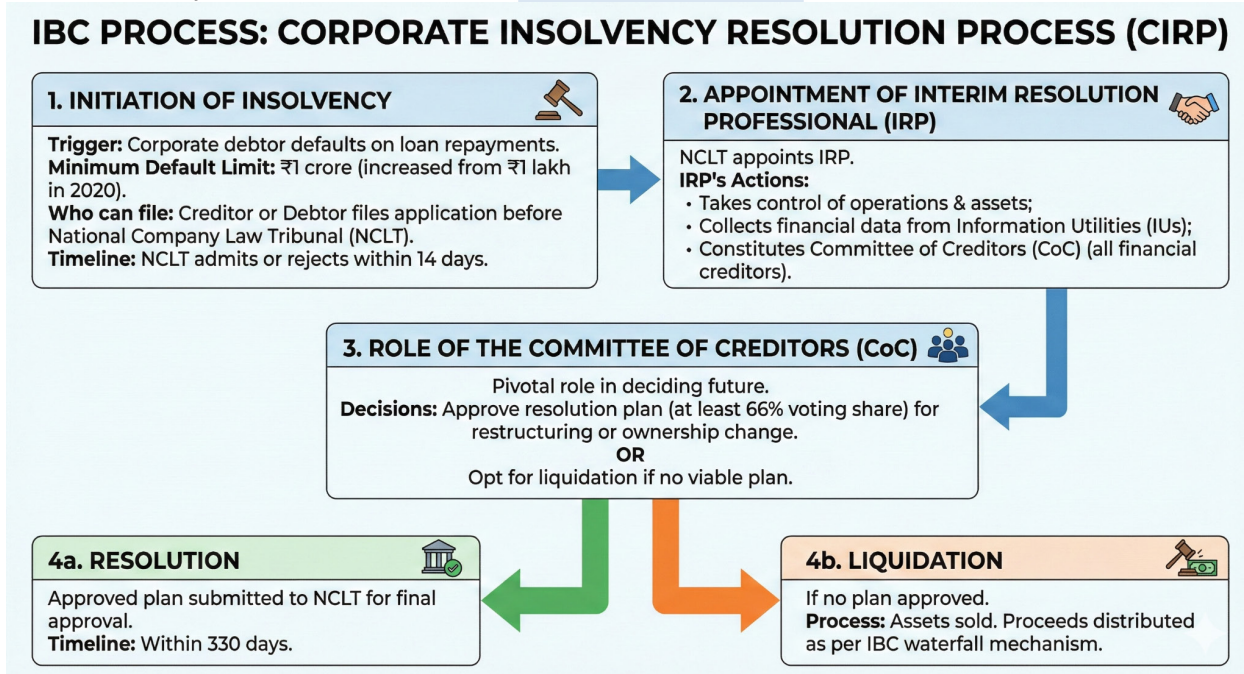
PROPOSED IBC AMENDMENT 2026 & RETHINKING INDIA'S INSOLVENCY FRAMEWORK

Context

- The proposed **Insolvency and Bankruptcy Code (IBC) Amendment, 2026** introduced the **Creditor-Initiated Insolvency Resolution Process (CIIRP)** aimed at faster resolution of stressed assets while preserving enterprise value.
- However, its restriction of initiation rights to select 'notified financial institutions' has triggered debates on fairness, constitutionality, and efficiency.

Evolution of India's Insolvency Framework

- Pre-IBC Era:**
 - Sick Industrial Companies Act (SICA), 1985** adopted a **debtor-in-possession** model through the Board for Industrial and Financial Reconstruction (BIFR).
 - The framework suffered from excessive delays, litigation, and misuse by promoters seeking to avoid repayment obligations.
 - Subsequent mechanisms such as the **SARFAESI Act, 2002** and the **Debt Recovery Tribunals (DRTs)** improved recovery but lacked a comprehensive resolution framework.
- IBC, 2016:** It introduced a **creditor-in-control model**, established a time-bound insolvency process under the supervision of the **National Company Law Tribunal (NCLT)**.
 - It prioritised value maximisation, creditor recovery, and ease of doing business, and recognised globally as a major structural reform.



Need for the IBC 2026 Amendment

- Major Drivers:** Prolonged resolution timelines beyond statutory limits, value erosion of stressed firms during insolvency proceedings, excessive judicial intervention, and need for a restructuring mechanism that preserves business continuity.
- The amendment seeks to provide a faster and less disruptive alternative for companies facing temporary financial stress.

Key Features of the IBC 2026 Amendment

- **Introduction of CIIRP:** It establishes a **Creditor-Initiated Insolvency Resolution Process (CIIRP)** through new provisions (Sections 54C–54P). It designed as a hybrid framework combining elements of both:
 - ♦ **Debtor-in-possession**, where existing management continues operations.
 - ♦ **Creditor oversight**, through supervision by a resolution professional.
- **Preservation of Enterprise Value:** Avoids abrupt displacement of management, enables continuity of business operations during restructuring, and reduces the risk of value destruction often associated with traditional insolvency proceedings.
- **Reduced Procedural Delays:** Encourages restructuring before financial distress escalates into liquidation, and limits unnecessary judicial intervention.
- **Clarification of Admission Standards:** Replaces the discretionary term ‘may’ with ‘shall’ in the relevant admission provision.
 - ♦ Makes admission mandatory once debt and default are established through Information Utility records, and enhances predictability and certainty for creditors.
- **Restricted Eligibility:** Only ‘notified financial institutions’ can initiate the CIIRP. It is the most debated aspect of the amendment.

Key Concerns in 2026 Amendment and the Overall IBC Framework

- **Constitutional Concerns under Article 14:** The amendment creates a distinction within the class of financial creditors.
 - ♦ The Supreme Court, in **2019**, upheld differentiation between financial and operational creditors based on ‘intelligible differentia’.
 - ♦ However, differentiating between notified and non-notified financial creditors may be difficult to justify.
- **Concentration of Power:** Bargaining power becomes concentrated in the hands of a few notified institutions.
 - ♦ Smaller lenders and non-notified creditors may lose meaningful participation in restructuring negotiations.
- **Disadvantage to Operational Creditors:** Operational creditors already occupy a weaker position in the repayment waterfall.
 - ♦ CIIRP may further marginalise their interests.
- **Risk of Strategic Behaviour:** Creditors excluded from CIIRP may resort directly to the more aggressive CIRP mechanism.
 - ♦ It could increase disputes and undermine the objective of consensual restructuring.
- **Continuing Challenges within IBC:** Beyond the amendment, broader concerns i.e. judicial delays, capacity constraints in NCLTs, shortage of insolvency professionals, low recovery in certain sectors, and frequent litigation affecting resolution timelines remain.

Global Practices: Lessons for India

- **United States:** Strong debtor-in-possession framework; existing management generally retains control; access is based on financial distress rather than the identity of creditors; and encourages broad stakeholder participation.
- **United Kingdom:** Focuses on restructuring viable businesses, permits participation of different creditor classes, and uses objective financial criteria instead of regulatory status.
- **India’s Divergence:** India’s proposed framework restricts initiation rights to a select group of institutions unlike these systems. Such an approach may:
 - ♦ Reduce investor confidence;
 - ♦ Create perceptions of regulatory favoritism;
 - ♦ Discourage participation by non-traditional lenders and foreign investors.

Way Forward: Strengthening Measures

- **Adopt a Universal CIIRP Framework:** Allow any financial creditor to initiate CIIRP.
 - ◆ Require support from creditors representing at least **51% of total financial debt**.
 - ◆ Ensures broad legitimacy while preventing frivolous filings.
- **Use a Default-Neutral Initiation Rule:** Base eligibility on objective financial exposure rather than institutional identity.
 - ◆ Enhances constitutional robustness.
- **Strengthen NCLT Capacity:** Increase benches and judicial resources, and improve disposal rates and reduce pendency.
- **Protect Minority and Operational Creditors:** Ensure transparency in negotiations, and introduce safeguards against exclusion from restructuring decisions.
- **Promote Pre-Packaged and Early Restructuring Mechanisms:** Encourage resolution before financial distress becomes irreversible, and preserve employment, assets, and enterprise value.
- **Improve Information Infrastructure:** Strengthen Information Utilities and digital insolvency processes, and reduce disputes regarding debt and default.

Daily Mains Practice Question

[Q] Examine the significance of the proposed Insolvency and Bankruptcy Code (IBC), 2016 Amendment introducing the Creditor-Initiated Insolvency Resolution Process (CIIRP). Discuss its potential benefits, constitutional concerns, and the need for a more inclusive insolvency framework.

Source: TH

