

CORPORATE INSOLVENCY IN INDIA: BALANCING CREDITOR REMEDIES, DEBTOR PROTECTION, AND RESOLUTION OBJECTIVES

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ABSTRACT

The Insolvency and Bankruptcy Code of 2016 was established to unify and enhance India's insolvency system, facilitating prompt resolutions while safeguarding the worth of troubled enterprises. Over time, Indian judiciary and the bankruptcy authority have consistently encountered instances when insolvency procedures are purportedly initiated not for authentic resolution but as a means for debt recuperation, extortion, evasion of regulations, or strategic dominance over business assets. This issue has gained fresh importance in 2026 due to the Insolvency and Bankruptcy Code (Amendment) Act, 2026, and the September 2026 circular from the Insolvency and Bankruptcy Board of India regarding due diligence on the misuse of the IBC framework. The legal precedents set by the Supreme Court, notably in GLAS Trust Co. LLC v. BYJU Raveendra and Anjani Technoplast Ltd. v. Shubh Gautam, emphasise the differentiation between insolvency resolution and debt collection. This article analyses the developing regulatory and judicial stance on the abuse of insolvency processes, assesses the sufficiency of current protections for corporate debtors and legitimate creditors, and advocates for a more systematic due-diligence framework that harmonises creditor access to insolvency solutions with the primary goal of corporate rehabilitation.

Keyword: Bancruptcy Laws, IBC, Insolvency, Banking Code

1. INTRODUCTION

The implementation of the Insolvency and Bankruptcy Code, 2016, signified a pivotal shift in India's strategy on corporate insolvency. Prior to the IBC, insolvency and debt recovery were regulated by many laws and institutional frameworks, often leading to extended processes, disjointed solutions, and significant erosion of economic value. The IBC tried to redirect attention from simply recovering debts to resolving financially troubled enterprises and optimising the value of their assets.

The foundational principles of the IBC are thus inherently dissimilar to those of a conventional debt-recovery law. Insolvency proceedings influence not just the dynamics between a single creditor and debtor but also the interests of several stakeholders, such as financial creditors, operational creditors, employees, shareholders, and the broader economy.

The efficacy of any insolvency structure is contingent upon its intended aim. If bankruptcy procedures are commenced solely to coerce a

corporate debtor into settling debts, bypass standard recovery methods, evade regulatory oversight, or gain control of valuable assets, the insolvency process may transform into a vehicle for commercial exploitation. This issue has gained notable importance in 2026. The Insolvency and Bankruptcy Code (Amendment) Act, 2026, implemented significant modifications to the insolvency structure, while the IBBI has concurrently enhanced regulatory scrutiny regarding the initiation and execution of insolvency proceedings.

The matter is no longer merely about the existence of a debt owed by a creditor and the occurrence of a default. The additional challenging inquiry is: at what point does the legal application of insolvency legislation transform into a misuse of the insolvency procedure? This article explores that inquiry within the framework of India's developing insolvency law.

2. UNDERSTANDING THE IBC'S CORE OBJECTIVE: INSOLVENCY RESOLUTION AND VALUE MAXIMISATION

The primary aim of the IBC is to address insolvency in a way that harmonises stakeholder interests and maintains the worth of sustainable enterprises. The Supreme Court has consistently differentiated insolvency procedures from standard debt-recovery processes. In *Swiss Ribbons Pvt. Ltd. v. Union of India*,¹ the Court acknowledged that the IBC primarily focuses on the rehabilitation and persistence of the corporate debtor, rather than merely facilitating creditors in reclaiming their respective debts.

This differentiation holds significant commercial value. When a typical creditor initiates a recovery action, the key issue revolves around the creditor's right to reclaim funds. Conversely, the initiation of the Corporate Insolvency Resolution Process (CIRP) results in significantly broader ramifications. Management could forfeit authority, a suspension might be enacted, creditors may join the Committee of Creditors (CoC), and the fate of the corporate debtor may finally hinge on the resolution procedure. Consequently, insolvency should often be initiated in instances of authentic financial turmoil necessitating a communal solution, rather than merely at the behest of a creditor seeking enhanced negotiating leverage.

3. WHEN INSOLVENCY BECOMES A RECOVERY MECHANISM: EXAMINING THE MISAPPLICATION OF THE IBC

The Supreme Court has progressively cautioned against regarding the IBC as merely an alternative method for debt recovery. In *GLAS Trust Co. LLC v. BYJU Raveendran*,² the Supreme Court underscored that the IBC must not be employed as a means of coercion or as an alternative to conventional debt recovery. The Court differentiated between authentic bankruptcy procedures and efforts by individual creditors to exploit insolvency for preferential payment or to coerce a debtor into repayment.

The doctrine was reiterated in 2026 in *Anjani Technoplast Ltd. v. Shubh Gautam*.³ The Supreme Court said that if a creditor has a standard method for enforcing an order, utilising insolvency jurisdiction solely to apply pressure on the corporate debtor may represent an inappropriate

use of the IBC. The ruling is notably important as it illustrates that the judiciary is considering more than merely the presence of debt and default. They are growing more apprehensive about the intent and context related to the application of insolvency jurisdiction.

This methodology was additionally substantiated in *Dhanlaxmi Bank Ltd. v. Mohammed Javed Sultan*,⁴ where the Supreme Court determined that "in instances where the aim of invoking the Code is not to address authentic financial hardships but to coerce payments, such invocation constitutes an abuse of process," explicitly referencing *Glas Trust* and *Anjani Technoplast*.

The regulatory framework has experienced significant transformation throughout 2026. The Amendment Act to the Insolvency and Bankruptcy Code was granted Presidential approval on April 6, 2026. The revisions pertain to many components of the insolvency framework, encompassing corporate insolvency resolution, liquidation, voluntary liquidation, pre-packaged insolvency resolution, and creditor-initiated insolvency procedures.

A significant advancement is the establishment of a creditor-initiated insolvency resolution process (CIIRP) for designated categories of financial creditors. The structure includes procedural protections, such as authorisation prerequisites and a chance for the corporate debtor to state their case. The proliferation of creditor-driven systems amplifies the significance of responsible initiation. Enhanced creditor access to bankruptcy solutions can boost efficiency, although it may also foster avenues for strategic or coercive exploitation of the insolvency system. The legislation must strike a careful equilibrium: facilitating access to insolvency processes results in quicker resolutions, yet unrestricted access may permit strategic exploitation.

4. REGULATING STRATEGIC INSOLVENCY: THE SIGNIFICANCE OF THE SEPTEMBER 2026 IBBI CIRCULAR

The most recent advancement in this domain is the IBBI's circular issued on 9 September 2026, entitled "Due diligence by Insolvency

¹ *Swiss Ribbons Pvt. Ltd. v. Union of India*, MANU/SC/0066/2019.

² *Glas Trust Co. LLC v. Byju Raveendran*, MANU/SC/1197/2024.

³ *Anjani Technoplast Ltd. v. Shubh Gautam*, MANU/SC/0392/2026.

⁴ *Dhanlaxmi Bank Ltd. v. Mohammed Javed Sultan*, MANU/SC/0487/2026.

Professionals concerning the exploitation of the IBC framework.”⁵ The circular indicates that the IBBI has obtained intelligence from law enforcement and regulatory bodies regarding instances where the IBC framework may have been exploited for reasons other than authentic insolvency resolution or liquidation.

The apprehensions encompass the potential employment of insolvency procedures to alleviate tax obligations, evade regulatory oversight, circumvent enquiries, prosecutions, or sanctions, consolidate or dissolve enterprises without adequate regulatory examination, and capitalising on or safeguarding assets. This advancement is significant as it redirects some regulatory attention from post-CIRP events to the appropriateness of initiating or structuring the insolvency process.

5. BEYOND PROCEDURAL COMPLIANCE: INSOLVENCY PROFESSIONALS AS GUARDIANS AGAINST IBC MISUSE

The Resolution Professional (RP) holds a distinctive role within the insolvency structure. The RP transcends the role of a mere administrative officer. The RP is anticipated to execute the insolvency procedure in compliance with the legal framework while upholding professional autonomy. The September 2026 circular consequently accentuates the necessity for careful diligence among insolvency practitioners.

This is especially significant when conditions indicate the existence of merely one creditor, abrupt shifts in debt control, numerous interconnected entities undergoing insolvency processes, atypically restricted competition among resolution candidates, extraordinary or exaggerated recoveries, or ambiguous transactions involving related parties. The presence of a single such situation does not inherently indicate maltreatment. Commercial exchanges can validly generate atypical trends. The more suitable method is thus risk-oriented examination instead of automatic dismissal. This differentiation is crucial as an excessively forceful

anti-abuse system can compromise the accessibility of the IBC.

6. THE REACH OF SECTION 65: REGULATING BAD-FAITH INVOCATION OF THE IBC

Section 65 of the IBC is especially pertinent to the issue of abuse. The regulation pertains to the deceitful or malevolent commencement of bankruptcy proceedings. Its fundamental aim is to deter parties from exploiting the insolvency framework for objectives not pertaining to authentic settlement.

The difficulty, therefore, resides in defining what qualifies as “malicious” initiation. A creditor ought not to face repercussions only due to the corporate debtor contesting the validity or magnitude of the debt. In such manner, the very act of a creditor pursuing repayment does not render the insolvency petition exploitative. The pertinent inquiry should focus on whether insolvency jurisdiction is predominantly employed for an inappropriate objective, such as coercion, evasion of regulations, or manipulation of business resources. The IBBI's discussion paper from August 2026⁶ had previously highlighted the issue of fraudulent or malicious commencement of CIRP and considered Sections 60(5) and 65 as potential protective measures.

7. PURPOSE OVER FORM: THE SUPREME COURT'S EVOLVING APPROACH TO IBC MISUSE IN 2026

The Supreme Court's ruling in *Anjani Technoplast Ltd. v. Shubh Gautam*⁷ in 2026 is especially pertinent to the current discussion. The Court based its decision on the principle set forth in GLAS Trust that insolvency must not serve as a replacement for debt collection. The significance of this legal doctrine resides in the notion that insolvency law cannot be examined in a purely mechanical manner.

This does not imply that an adjudicating authority must undertake a comprehensive trial on the creditor's intentions each time a CIRP application is submitted. Conversely, in instances when there

⁵ Insolvency and Bankruptcy Board of India, Circular on "Due diligence by Insolvency Professionals regarding misuse of IBC framework" (9 September 2026).

⁶ Insolvency and Bankruptcy Board of India, Discussion Paper on "Guidance to Insolvency Professionals for Due Diligence to Identify Fraudulent or Malicious Initiation of

Corporate Insolvency Resolution Process, and Recourse under Sections 60(5) and 65 of the Insolvency and Bankruptcy Code, 2016" (August 2026).

⁷ *Anjani Technoplast Ltd. v. Shubh Gautam*, MANU/SC/0392/2026.

are evident signs of abuse, the tribunal need to be able to scrutinise the context of initiation. This method guarantees that the procedure stays effective for legitimate creditors while discouraging individuals who aim to exploit the legal framework.

8. BALANCING DEBT ENFORCEMENT AND CORPORATE RESOLUTION UNDER INDIA'S INSOLVENCY FRAMEWORK

Creditors should possess a viable recourse against corporations that default. Intensive examination of creditor applications could render the IBC sluggish and inefficient. The efficacy of the IBC is partially contingent upon the assurance of financial entities and investors that defaults will incur significant legal repercussions. Consequently, safeguarding against abuse should not serve as a justification for undermining the rights of legitimate creditors.

Simultaneously, entry into CIRP might result in significant repercussions for a corporate debtor. A corporation might experience harm to its reputation, diminished investor trust, disruption in commercial partnerships, and alterations in management authority. An inadequately commenced CIRP can induce financial turmoil in a financially sound corporation, counteracting the objectives of the IBC. Thus, the legislation must differentiate between financial turmoil necessitating collective intervention and transient business challenges that can be addressed via standard contractual or recovery methods.

9. THE CORPORATE LAW DIMENSIONS OF INSOLVENCY RESOLUTION UNDER THE IBC

The matter holds considerable importance from the standpoint of corporate and transactional law. Contemporary corporate dealings sometimes encompass intricate financing frameworks, collateral agreements, assurances, transactions among affiliated parties, mergers and acquisitions, reorganisation, international investments, and various corporate entities within a singular business group. Under these conditions, insolvency processes might yield repercussions that affect more than just one corporate debtor.

The commencement of CIRP against a single entity may influence subsidiaries, parent firms, guarantors, creditors, investors, employees, contractual partners, and prospective resolution applicants. This increasingly links insolvency law

with business restructuring and commercial consultancy practices. For corporate solicitors, the crucial inquiry is not merely how to submit an insolvency petition. It is also a method for organising transactions and business agreements to ensure that insolvency risk is recognised prior to a conflict escalating to the National Company Law Tribunal (NCLT).

10. CROSS-BORDER AND GROUP INSOLVENCY: UNRESOLVED CHALLENGES IN INDIA'S INSOLVENCY FRAMEWORK

The growing intricacy of Indian enterprises additionally prompts enquiries regarding cross-border insolvency. Corporate conglomerates often function via various entities across diverse legal jurisdictions. If bankruptcy procedures commence in one jurisdiction while assets, creditors, or associated companies reside in different locations, strategic actions may become considerably more intricate.

The 2026 Amendment Act establishes a facilitative structure for cross-border insolvency, granting the Central Government the authority to formulate regulations detailing the procedures and stipulations for managing and executing cross-border insolvency cases, encompassing the acknowledgement of foreign proceedings and judicial collaboration. The newly established Chapter V-A presents a framework for group insolvency, enabling the Central Government to set regulations for insolvency processes involving multiple corporate debtors within a group, which includes the designation of a shared resolution professional and the creation of a unified Committee of Creditors.

The potential for concurrent legal activities, rival creditors, asset relocation, transactions among affiliated entities, and contradictory regulatory mandates heightens the necessity for thorough due diligence. The regulatory emphasis in September 2026 on the abuse of insolvency has ramifications that reach beyond national CIRP. It could become progressively vital for Indian insolvency experts, transactional attorneys, and restructuring consultants to scrutinise the comprehensive corporate and financial framework of the debtor.

11. THE SUFFICIENCY OF EXISTING LEGAL SAFEGUARDS AGAINST MISUSE OF THE IBC

The current structure incorporates multiple protections against abuse, including as court oversight, Section 65, the functions of the NCLT/NCLAT, the responsibilities of insolvency practitioners, and regulatory oversight by the IBBI. Nonetheless, the advancements in 2026 indicate that the issue persists. A significant obstacle is the lack of a wholly impartial assessment for identifying abusive beginning.

A solitary creditor commencing CIRP is not inherently exploitative. Nevertheless, when other contextual factors suggest tactical conduct, further examination may be warranted. Transactions occurring just prior to insolvency may necessitate scrutiny if they seem intended to divert value from creditors. When multiple interrelated firms simultaneously enter CIRP, experts may need to ascertain whether the situation indicates true financial hardship or tactical reorganisation. Moreover, a resolution process characterised by notably restricted involvement could impact value optimisation and hence warrants examination when conditions imply potential manipulation. The aim should be prompt identification without imposing superfluous procedural obstacles.

12. RECOMMENDATIONS

To tackle these issues, the IBBI's existing methodology can be refined into a more systematic risk-oriented framework. Insolvency experts ought to categorise situations into low, medium, and high-risk classifications with objective metrics. Typically, insolvency processes ought to be constrained by time. Nevertheless, when evident signs of malevolent initiation are present, adjudicative bodies have to possess sufficient frameworks for performing restricted first examinations.

Corporate frameworks comprising numerous interconnected entities might facilitate the manipulation of insolvency. Enhanced clarity about beneficial ownership can aid RPs and creditors in detecting dubious transactions. Additionally, IBC-related processes may intersect with issues concerning SEBI, RBI, MCA, ED, CCI, and tax authorities. Enhanced institutional collaboration can assist in averting the misuse of insolvency processes to bypass an alternative regulatory framework. Ultimately, anti-abuse protocols ought not to unduly disrupt the commercial decision-making power of the CoC. Judicial and regulatory examination ought to

concentrate on illegality, fraud, procedural misconduct, and breaches of statute instead than replacing the business discretion of creditors. Furthermore, insolvency practitioners operating in good faith when disclosing potential abuse ought to be safeguarded under Section 233 of the IBC. A petition submitted under Section 60(5) in conjunction with Section 65, in compliance with the obligatory directive established by the September 2026 Circular, is clearly an action taken under the Code. The expenses associated with a Section 65 application are classified as CIRP expenditures, which take precedence under Section 53(1)(a).

13. THE WAY FORWARD

The advancements in 2026 indicate that India's insolvency framework is transitioning into a new stage. The initial stage of the IBC focused predominantly on establishing an operational insolvency framework. The subsequent phase concentrated more on enhancing efficiency, expediting settlement timelines, and maximising creditor recoveries. The nascent third phase seems to focus on the integrity of the insolvency procedure itself.

The IBBI circular from September 2026 holds particular importance in this context. It acknowledges that the presence of an insolvency framework fosters the potential for strategic conduct, hence necessitating heightened professional due diligence. Simultaneously, the jurisprudence of the Supreme Court indicates that regulation alone cannot resolve the issue. Judicial bodies must persist in maintaining the essential differentiation between insolvency resolution and debt recovery. The aim should not be to complicate access to the IBC. The aim should be to facilitate quick access to insolvency resolution for those in actual need, while simultaneously obstructing individuals who misuse insolvency for coercive, regulatory evasion, or asset manipulation purposes.

14. CONCLUSION

The Insolvency and Bankruptcy Code has radically transformed India's strategy regarding corporate distress. The efficacy of the Code relies not solely on the promptness of initiating insolvency procedures but also on the sincerity of the objectives behind their initiation. The 2026 legislative revisions, along with the IBBI's circular from September 2026 and the recent rulings of the

Supreme Court, indicate a definitive shift toward rectifying the abuse of insolvency jurisdiction. The fundamental tenet arising from these advancements is clear: the IBC serves as a framework for addressing insolvency, rather than a replacement for standard debt collection.

Nonetheless, curbing abuse must not lead to undue judicial interference or undermine the rightful entitlements of creditors. The suitable method is hence one of focused, evidence-informed, and risk-aware examination. India's forthcoming challenge is thus not just to expedite insolvency processes but also to enhance their credibility, predictability, and resilience against strategic exploitation. A developed insolvency framework should safeguard creditors without permitting insolvency legislation to serve as a means of coercion, while concurrently maintaining viable enterprises and optimising economic worth. The efficacy of the post-2026 insolvency regime will ultimately hinge on sustaining a fragile balance of creditor enforcement, business rehabilitation, and procedural fidelity.