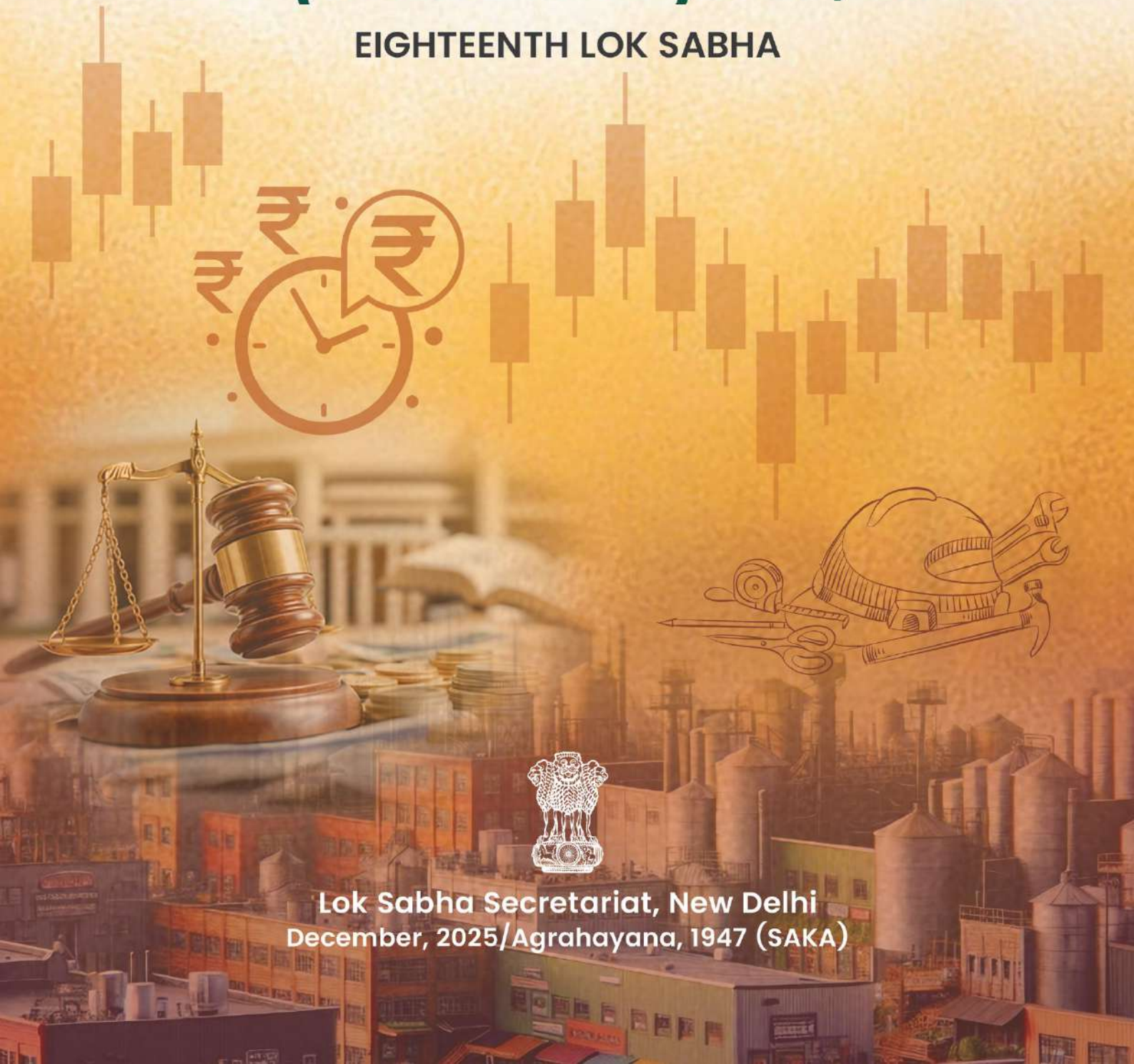
REPORT OF

THE SELECT COMMITTEE ON THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) BILL, 2025

EIGHTEENTH LOK SABHA



Lok Sabha Secretariat, New Delhi
December, 2025/Agrahayana, 1947 (SAKA)

LOK SABHA

REPORT OF THE SELECT COMMITTEE ON

THE INSOLVENCY & BANKRUPTCY CODE (AMENDMENT) BILL, 2025

(EIGHTEENTH LOK SABHA)

Presented to Lok Sabha on 17.12.2025

LOK SABHA SECRETARIAT

NEW DELHI

DECEMBER, 2025/AGRAHAYANA, 1947 (SAKA)

SCIBC 2025 No.01

Price **: Rs. .....**

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (____Edition) and Printed by

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COMPOSITION OF THE SELECT COMMITTEE ON INSOLVENCY & BANKRUPTCY CODE (AMENDMENT) BILL, 2025

Shri Baijayant Panda - Chairperson

MEMBERS

Lok Sabha

2. Dr. D. Purandeswari
3. Dr. C. N. Manjunath
4. Shri Mitesh Patel Bakabhai
5. Shri Anil Firojiya
6. Dr. Anand Kumar
7. Shri Biplab Kumar Deb
8. Dr. Sanjay Jaiswal
9. Shri Saumitra Khan
10. Shri Karti P. Chidambaram
11. Shri Shreyas M. Patel
12. Shri Ravindra Vasantrao Chavan
13. Shri Bhajan Lal Jatav
14. Shri Neeraj Maurya
15. Thiru D. M. Kathir Anand
16. Smt. Supriya Sule
17. Shri Lavu Sri Krishna Devarayalu
18. Smt. Mahua Moitra
19. Shri Sunil Kumar
20. Dr. Shrikant Eknath Shinde
21. Shri Navaskani K
22. Shri P V Midhun Reddy
23. Dr. Rajkumar Sangwan
24. Shri Chandra Prakash Choudhary

SECRETARIAT

1.	Shri Gaurav Goyal	Joint Secretary
2.	Smt. Bharti Sanjeev Tuteja	Director
3.	Shri Sidhartha Gautam Kamidi	Deputy Secretary
4.	Shri T. Mathivanan	Deputy Secretary
5.	Ms. Maya Menon	Under Secretary
6.	Shri Dhruv	Under Secretary
7.	Shri Vivek Saini	Under Secretary
8.	Shri Ravi Kant Prasad Sinha	Committee Officer
9.	Ms. Honey J. Ambanatu	Committee Officer
10.	Ms. Abhiruchi Srivastava	Committee Officer
11.	Ms. Divya Rai	Assistant Committee Officer
12.	Ms. Fanny S.M.	Assistant Committee Officer
13.	Shri Pawan Kumar	Assistant Committee Officer
14.	Shri Rahul Deo Karan	Senior Secretariat Assistant
15.	Shri Anand Lakra	MTS Grade I

INTRODUCTION

I, the Chairperson of the Select Committee to which the Bill titled "The Insolvency and Bankruptcy Code (Amendment) Bill, 2025" was referred, having been authorized by the Committee to submit the Report on their behalf, present this Report along with the Bill as reported by the Select Committee annexed thereto.

2. The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 was introduced in Lok Sabha on 12.08.2025. The Motion for reference of the Bill to a Select Committee of the House was moved in Lok Sabha on 12.08.2025 by the Minister of Finance and Corporate Affairs. (Appendix-I)

3. As per the motion moved in the House, the Select Committee was to make a Report by the first day of the next session (i.e. Winter Session, 2025). The Committee were granted extension of time once for presentation of the Report. The extension for presenting the report by the last day of the Winter Session of Parliament, 2025 was granted by the House as per the Motion moved and adopted on 01.12.2025 (Appendix-II).

4. The Statement of Objects and Reasons accompanying the proposed Amendment Bill clearly states the necessity for improving the operation; and enhancing the effective implementation of the Insolvency and Bankruptcy Code, 2016. The core objectives of these amendments are focused on achieving reduction in delays, the maximization of the value for all stakeholders, and the improvement of governance standards across all processes regulated under the Code. Consequently, the amendments seek both the refinement of existing statutory provisions under the Code and the introduction of novel provisions that incorporate and adhere to global best practices for robust insolvency resolution frameworks.

5. Keeping in view the importance of the Bill and its wide-ranging implications, the Committee decided to invite memoranda to obtain the views from experts/industry associations/organizations/stakeholders on the provisions of the aforesaid Bill. With a

view to give the widest publicity in receiving stakeholders' suggestions, the Select Committee had publicized its advertisement through various modes. Firstly, a press release inviting memoranda was issued on electronic media on 16.10.2025 and 21.10.2025 through the Press and Public Relations Wing, Lok Sabha Secretariat which was also disseminated through a scrolling ticker display on Sansad TV; Social Media Platforms of Lok Sabha viz. LSS Facebook page and LSS "X" handle for two weeks. Subsequently, for a wider outreach, suggestions were also sought through email from major Indian financial institutions, prominent law firms, professional accountancy bodies, consulting and auditing giants, large corporate entities and key regulatory/industry associations calling for the suggestions. The same was published in some prominent newspapers including ANI News, Central Chronicle, UNI India, The Statesman, Devdiscourse, Newkerala. Further, it was uploaded on the Committee homepage on Digital Sansad website. Then, the time-limit for submission of views/suggestions by the stakeholders was extended further for two weeks. Consequently, the Committee received 23 memoranda/suggestions/notes in total through both physical and digital mode and 07 from Members of the Committee. The suggestions received therein and during oral evidence were circulated to the Members of the Committee. The same were also sent to the nodal Ministry i.e. Ministry of Corporate Affairs and their comments were obtained. Important points raised/suggestions made by the experts/stakeholders and the replies thereon from the nodal Ministry were examined, discussed, considered and suitably incorporated in the Report. All such suggestions, which were within the scope of mandate of the Committee, were discussed and analysed in detail while finalizing Recommendations of the Committee. There were many suggestions, which were beyond the scope of the mandate of the Committee. All such suggestions may later be evaluated and considered on merits in appropriate forums.

6. The Committee held 23 Sittings totaling 35 hours and 10 minutes wherein, they heard the views/suggestions of the representatives from various experts/stakeholders and Ministry of Corporate Affairs, examined the bill clause by clause, held detailed internal discussions and adopted the Report.

7. The Committee held detailed internal deliberations and completed consideration of Clause-by-Clause of the Bill at their 22nd Sitting held on 10.12.2025. The Bill, as reported by the Select Committee, is appended after the Report as Annexure.

8. The Committee, in their 23rd Sitting held on 16.12.2025 considered and adopted the draft Report and authorized the Chairperson to present the Report on their behalf. The Committee also decided that one copy of the proceedings of the sittings of the Committee and two copies each of the memoranda received by the Committee on the Bill from various quarters may be placed in the Parliament Library after the Report has been presented to Parliament, for reference of the Members of Parliament.

9. The Committee have in the process of examination of the Bill come across all sorts of views for and against the Bill and to synthesize and harmonize them to a standard acceptable to a majority, if not all, has undoubtedly been a daunting task which it could perform with the active cooperation, sustained support and untiring efforts of one and all involved in the process, especially the Members of the Select Committee, for which they truly deserve special commendation. I extend my sincere thanks to all the Members of the Select Committee.

10. The Committee take this opportunity to express our deep appreciation to the officials of the Ministry of Corporate Affairs for providing their valuable inputs during the deliberations of the Select Committee in connection with the examination of the Bill. The Committee would like to place on record their appreciation for the reform-oriented approach and proactive engagement of the Ministry during the Sittings and being receptive in accepting the amendments proposed by the Committee. Additionally, the Committee appreciate the Ministry for accepting the suggestions on decriminalizing certain offences and on prescribing timelines for Adjudicating Authorities amongst others.

11. The Committee express its sincere thanks to Dr. Justice D.Y. Chandrachud, former Chief Justice of India for providing invaluable inputs, thereby greatly assisting the Committee in the examination of the Bill. The Committee acknowledge the constructive

engagement of all stakeholders who were highly receptive to the majority of the amendments proposed in the Bill. While some of the suggestions offered by stakeholders were deemed highly appreciable and beneficial to the IBC ecosystem, they were beyond the scope of the Bill.

12. The Secretarial assistance to the Committee was provided by the Lok Sabha Secretariat and a special Cell had been created for this purpose. The Committee would also like to acknowledge and place on record the appreciation of the Committee to the sincere and devoted efforts made by the Officers of Lok Sabha Secretariat in facilitating smooth conduct of all the Sittings of the Select Committee and in the diligent preparation of the Report of the Committee.

BAIJAYANT PANDA
CHAIRPERSON,
SELECT COMMITTEE OF LOK SABHA ON
THE INSOLVENCY AND BANKRUPTCY
CODE (AMENDMENT) BILL, 2025

NEW DELHI
16 December, 2025
Agrahayana 25, 1947(Saka)

REPORT

CHAPTER - I
GENERAL EXAMINATION OF THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) BILL, 2025 BY THE SELECT COMMITTEE OF LOK SABHA

Introduction

1.1 The Insolvency and Bankruptcy Code (IBC) of 2016 marked a paradigm shift in India's approach to corporate distress by overhauling the resolution regime. Being designed as a momentous mechanism of corporate governance, IBC has been balancing the interests of all stakeholders including the debtors, creditors and investors. Its overarching goal of maximizing asset value to ensure corporate viability aligns with the broader economic objective of driving the growth of the Gross Domestic Product (GDP). The IBC has been pivotal also in providing a defined mechanism that allows Financial Creditors and Operational Creditors to trigger corporate insolvency resolution in a structured and statutorily time-bound manner. Moreover, IBC has significantly improved India's debt recovery and credit ecosystem. Additionally, IBC has been instrumental in promoting entrepreneurship and improving the ease of doing business in India. Thus, since its inception, IBC has successfully driven a behavioral shift and instilled discipline within the corporate sector, fundamentally reshaping the dynamics between debtors and creditors which, in turn, has promoted business confidence, contributed to a reduction in non-performing assets and significantly improved debt recovery rates.

1.2 Nevertheless, the successful operation of any landmark legislation within a dynamic economy and evolving judicial framework requires continuous refinement. The IBC has continuously evolved since its enactment, having

undergone amendments six times to date, with the latest amendment being enacted in 2021. However, over the past few years, the practical implementation of the IBC has revealed several critical challenges such as protracted delays at the initial admission stage, delays impacting the finality of resolution plans, erosion of asset values and the absence of clear frameworks to manage complex modern corporate structures like multinational groups and cross-border insolvency issues. It is against this backdrop that the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, was introduced through a motion moved by the Minister of Finance and Corporate Affairs in the Lok Sabha on 12.08.2025.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025

1.3 The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 is a comprehensive economic legislation introduced to amend certain provisions of the Code and to insert certain new provisions for its effective implementation. The proposed amendments focus on reducing procedural delays, maximizing value for all stakeholders involved in the process and significantly improving the governance of all processes under the Code. These modifications seek to better align existing provisions with the overarching objectives of the IBC.

1.4 One of the most significant proposed measures is the introduction of a “Creditor-Initiated Insolvency Resolution Process (CIIRP)” featuring an out-of-court initiation mechanism specifically targeted at resolving cases of genuine business failures by facilitating a faster and more cost-effective resolution, with minimal business disruption and reduced reliance on formal judicial proceedings. Successfully implementing this change will promote the ease of doing business and enhance overall access to credit within the economy.

1.5 In addition to improving domestic procedures, the proposed legislation introduces two crucial frameworks that tackle complexity and international reach such as

"group insolvency" and "cross-border insolvency." The group insolvency framework aims to resolve insolvencies involving complex corporate group structures, minimizing the value destruction that typically results from fragmented proceedings and encouraging coordinated decision-making to maximize the recovery value for creditors across the entire corporate group.

1.6 Finally, the cross-border insolvency framework is designed to establish a foundational legal structure for addressing situations where debtors or assets are located in multiple jurisdictions. This development is pivotal for protecting stakeholder interests in both domestic and foreign proceedings, boosting investor confidence and ensuring that India's insolvency practices are harmonized with international standards.

The Legislative Journey: From Consultation to Drafting of the IBC (Amendment) Bill, 2025.

1.7 The foundation of the Bill stemmed from an extensive analysis of practical challenges observed since the enactment of IBC 2016 and the extensive stakeholder consultations that have been taken over the past three years. To undertake a comprehensive review exercise of the provisions of the IBC and to address the issues arising in the implementation of IBC, the Insolvency and Bankruptcy Board of India (IBBI) had organized a two-day Colloquium on the theme 'Functioning and Strengthening of the IBC Ecosystem' from November 19 to 20, 2022 in New Delhi. It was emphasized that given the importance of the IBC for the health of the economy at large, the insolvency ecosystem should welcome further amendments to the Code that improve its implementation and realize better outcomes for all stakeholders.

1.8 The colloquium was followed by deliberations in the Insolvency Law Committee in January, 2023. Further, the Ministry of Corporate Affairs published a discussion paper inviting public comments on the proposed changes to IBC. The

government examined the public and stakeholder comments and expert recommendations from the colloquium and decided to amend the Code to improve its operation, enhance its effectiveness, clarify its original intent and incorporate novel concepts.

Methodology adopted by the Select Committee of Lok Sabha on the IBC (Amendment) Bill, 2025.

1.9 Given the profound impact of IBC on multiple stakeholders and introduction of new measures *viz*. CIIRP; group insolvency and cross-border insolvency frameworks, the Committee in their first Sitting decided to invite Memoranda containing views/ suggestions from experts/industries/associations/ organizations/stakeholders on the provisions of the Bill through Press Release through the Press and Public Relations (PPR) Wing, Lok Sabha Secretariat. Subsequently, for a wider outreach, suggestions were also sought through email from major Indian financial institutions, prominent law firms, professional accountancy bodies, consulting and auditing firms, large corporate entities (including steel and infrastructure) and key regulatory/industry associations all of whom are significant stakeholders or participants in India's legal, corporate, and insolvency frameworks.

1.10 In response to that, the Committee received a total of 23 Memoranda from various stakeholders and 07 from Members of the Committee. The list of Members/stakeholders who have submitted the memoranda are given as below:

Sl. No.	Name of Members and Stakeholders
1.	Dr. D. Purandeswari, M.P.
2.	Dr. Anand Kumar, M.P.
3.	Shri Lavu Sri Krishna Devarayalu, M.P.
4.	Dr. Rajkumar Sangwan, M.P.
5.	Shri Navaskani K, M.P.
6.	Shri Shreyas M Patel, M.P.

7.	Shri Neeraj Maurya, M.P.
8.	Shri Sanjeev Ahuja, President, Missing Bridge Mediation & Negotiation Solutions and Resolutions forum
9.	CA Devang P. Sampat, Registered Insolvency Professional Sampat & Associates
10.	Shri Amit Gaur, Navi Mumbai
11.	Shri Alok Kaushik
12.	Shri MR Madhavan,President, PRS Legislative Research Institute for Policy Research Studies
13.	Dr. S. Krishnakumar,Department of Economics Sri Venkateswara College University of Delhi
14.	Shri Prashant, Solvenza Advisory LLP
15.	Shri Mukesh Chand,Senior Counsel Economic Laws Practice
16.	CA Manoj Kumar Anand,President All India Insolvency Professionals Association (AIIPA)
17.	Shri D Shivakumar Sharma,Senior Advisor Indian Banks' Association
18.	Shri Vishal Anand
19.	Shri Nikhil Rawat PwC | Manager - Deals PwC Corporate Business Services LLP
20.	Shri Arun P S,Founder and Research Director, Atyeti Research
21.	Ms. Monika Dilip Oak,Majestic Towers Consumer Welfare Association, Mumbai
22.	Ms. Shruti Kanodia,Managing Partner,Sagus Legal Advisors & Advocates
23.	Shri Deepak Arora,Chief Corporate Affairs ArcelorMittal Nippon Steel India Private Limited
24.	Shri Ravi Prakash Ganti,Insolvency Professional

25.	Shri Oodesh Tiwadee
26.	Vedanta Limited
27.	Shri Neeraj Chopra, Authorised Representative-Aggrieved Homebuyers of AMR Project, New Delhi
28.	Shri Abhay Roy,UTI Alternative Private Ltd. General Counsel
29.	Legislative Research Team Nation First Policy Research Centre (NFPRC)
30.	A&N Legal Solutions

1.11 Additionally, the Committee received suggestions through oral evidence during the Sittings. All the suggestions were tabulated and forwarded to the Ministry of Corporate Affairs to obtain their views. Out of the 394 suggestions sent to the Ministry, 17 suggestions were accepted by the Ministry. A total of 29 Stakeholders appeared before the Select Committee for Oral Evidence.

1.12 The Committee drew up an exhaustive list of representatives, stakeholders, and institutions for oral evidence which included National and Mid-level Industry Associations, Public and Private Sector Banks, MSME forums, professional bodies, consulting firms, real estate bodies, Adjudicating Authorities, asset and finance companies, regulatory and quasi-judicial bodies, and legal policy groups, along with relevant Ministries of the Government of India and State-Level Real Estate Regulatory Authorities. During oral evidence, submissions and Power-Point Presentations (PPTs) in a prescribed format were presented before the Select Committee. Thereafter, post-evidence replies on the queries posed by the Members of the Select Committee were also furnished which were circulated to the Members of the Select Committee. The Select Committee also sought written replies on specific issues from concerned Ministries/Departments for more clarity on the issues raised by the domain experts/stakeholders during their deposition. The Committee has also sought expert insights during their discussions with Dr.

Justice D.Y. Chandrachud, former Chief Justice of India. The Committee, thus, held extensive oral evidence/discussions with various government bodies, financial institutions, industry experts, chambers of commerce, and legal authorities, culminating in the drafting of the Report.

1.13 The details of Sittings held by the Select Committee are as under: -

Sl. No.	**Date of Sitting**	**Agenda/Names of the Organization/ Stakeholder/ Ministry/Experts**
1.	14.10.2025	Briefing by Ministry of Corporate Affairs.
2.	14.10.2025	Internal Deliberations of the Committee
3.	24.10.2025	Confederation of Indian Industry (CII); and Federation of Indian Chambers of Commerce and Industry (FICCI).
4.	24.10.2025	Associated Chambers of Commerce and Industry (ASSOCHAM); and PHD Chamber of Commerce and Industry (PHD CCI).
5.	30.10.2025	State Bank of India (SBI); and ICICI Bank
6.	30.10.2025	Federation of Indian Micro and Small & Medium Enterprises (FISME)
7.	31.10.2025	Insolvency and Bankruptcy Board of India (IBBI).
8.	31.10.2025	Vidhi (Vidhi Centre for Legal Policy); and Society of Insolvency Practitioners of India (SIPI)
9.	06.11.2025	Institute of Charted Accountants of India (ICAI); and Institute of Company Secretaries of India (ICSI)
10.	06.11.2025	BDO LLP; and Confederation of Real Estate Developers Associations of India (CREDAI)
11.	06.11.2025	Ministry of Finance (Department of Revenue); and Central Board of Direct Taxes (CBDT).
12.	06.11.2025	Ministry of Finance (Department of Financial Services); and Reserve Bank of India
13.	13.11.2025	National Company Law Tribunal (NCLT);
14.	13.11.2025	National Company Law Appellate Tribunal (NCLAT)

15.	13.11.2025	Edelweiss Asset Reconstruction Company Limited; and Piramal Finance Limited
16.	21.11.2025	Ministry of Micro, Small and Medium Enterprises of India
17.	21.11.2025	Ministry of Corporate Affairs (Clause by clause examination of the Bill)
18.	27.11.2025	Ministry of Housing and Urban Affairs
19.	27.11.2025	Ministry of Corporate Affairs (Clause by clause examination of the Bill)
20.	05.12.2025	All India Forum of Real Estate Regulatory Authorities (AIFORERA); Uttar Pradesh Real Estate Regulatory Authority (UP RERA); and Maharashtra Real Estate Regulatory Authority (MahaRERA).
21.	09.12.2025	Dr. Justice D.Y. Chandrachud, former Chief Justice of India
22.	10.12.2025	Internal Deliberations of the Committee (Clause by clause examination of the Bill)
23.	16.12.2025	Consideration and adoption of the Draft Report by the Select Committee.

1.14 In the process of examination of the Bill, the Committee obtained Background Notes, Written Replies, Post-Evidence Replies, Information, Clarification, Detailed Notes and other requisite documents from the Ministry of Corporate Affairs. The Committee took the Oral Evidences of the representatives of Ministry of Corporate Affairs on the Suggestions/Memoranda received from various Stakeholders on the provisions of the Bill during two Sittings of the Select Committee held on 21.11.2025 and 27.11.2025. The representatives from Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) were also present throughout all Sittings of the Committee to provide their legal and constitutional expertise. Detailed internal deliberations of the Select Committee was also held on 10.12.2025 to discuss clause by clause the provisions of the Bill. The Committee considered and adopted the draft Report and the amended Bill during the 23rd Sitting held on 16.12.2025.

1.15 Thus, based on the written and oral depositions of both official and non-official Witnesses and the Memoranda received from various Stakeholders and also

from the Members of the Select Committee, the Committee have examined the Bill exhaustively and given their considered views as enumerated in the succeeding Chapter-II which deal with the Clause-by-Clause examination of the amendments proposed in the Bill. The suggestions received *inter-alia* focused on areas such as *a*dmissions during the CIRP Process, Liquidation Process, Creditor-Initiated Insolvency Resolution Process (CIIRP), Pre-Packaged Insolvency Resolution Process(PPIRP), Real Estate Insolvency, Cross-Border Insolvency, Group Insolvency, Individual Insolvency / Personal Guarantors, Service Providers and Committee of Creditors (CoC), Waterfall Mechanism under Section 53 etc..

1.16 During the course of extensive hearings, a large number of suggestions were received by the Committee. All such suggestions, which were within the scope of mandate of the Committee, were discussed and analysed in detail while finalizing Recommendations of the Committee. There were many suggestions, which were beyond the scope of the mandate of the Committee. All such suggestions may later be evaluated and considered on merits in appropriate forums.

1.17 The Bill as reported by the Select Committee is placed at Annexure to the Report.

CHAPTER II

CLAUSE BY CLAUSE EXAMINATION OF THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) BILL, 2025

1. Clause 1 of the Bill seeks to provide for short title and commencement of the proposed legislation.

1.1 Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

(1) This Act may be called the Insolvency and Bankruptcy Code (Amendment) Act, 2025.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

1.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):

1. Short title, extent and commencement. –

(1) This Code may be called the Insolvency and Bankruptcy Code, 2016.

(2) It extends to the whole of India.

[1][***] *Omitted by the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 No.SO1123(E) dated 18th March, 2020. Before omission, it stood as "Provided that Part III of this Code shall not extend to the state of Jammu and Kashmir."*

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

1.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

Clause 1 provides for the short title and commencement of the proposed legislation, and enforcement of the various sections of the proposed legislation on different dates.

1.4 Important Views/Suggestions given by Experts/Stakeholders:

One of the suggestions given by a stakeholder, while seeking to bring in all amendments to the provisions of the Code at once and to empower the Board to introduce regulations for effective governance of the Code, suggested the following modification to sub-clause (2) :

> "(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, **appoint:** "

1.5 Examination by the Committee:

In response to suggestion given by the stakeholder, the Ministry of Corporate Affairs, in their written replies, have submitted as under :

> "The enabling provision permitting the Central Government to notify different sections of the Amendment Act on different dates is a legislative practice essential for staged and orderly implementation. The proposed amendments affect all stakeholders incl. adjudicatory authority, regulators, insolvency professionals, information utilities and corporate entities. Many of the amendment may require preparatory actions (systems upgrades, regulatory amendments, stakeholder training), and therefore a phased implementation of these provisions along with appropriate rules and regulations is suggested.
>
> IBBI is appropriately empowered under the Code and the Amendment Bill to adopt suitable regulations for the effective implementation of the Code. The Amendment Bill also now grants it, through amendments to

section 196(1)(t) and section 240(1), the authority to make regulations to carry out the "purposes of the Code" rather than solely the "provisions of the Code", thereby expanding its powers to make more effective regulations.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

1.6 Observations/Recommendations of the Committee:

The Committee note that Clause 1 provides for short title and applicability provision of the Bill. The Committee observe that the clause seeks to enable the Government to enforce various sections of the proposed legislation on different dates. The Committee concur with the justification given by the Ministry that enabling provisions permitting the Central Government to notify different sections of the Amendment Act on different dates is a legislative practice essential for staged and orderly implementation of the Act. Also, many amendments may require preparatory action such as system upgrades, stakeholder training etc., necessitating phased implementation of these provisions. Therefore, after examining the provisions of the Bill and considering the suggestions of stakeholders along with the justification given by the Ministry, the Committee accept the provisions of the Clause as proposed without any modification.

2. Clause 2 of the Bill proposes to amend Section 3 of the Principal Act.

2.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

In section 3 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act),—

(a) in clause (31), the following Explanation shall be inserted, namely:—

> "Explanation.—For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties, and shall not include a security interest created merely by operation of any law for the time being in force;";

(b) after clause (31), the following clause shall be inserted, namely:—

> '(31A) "service provider" means an insolvency professional, insolvency professional agency, information utility registered with the Board, and any person falling within the category of persons notified by the Central Government, for rendering services in relation to insolvency and bankruptcy processes under the Code and is registered with the Board;'.

2.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

3. In the Code, unless the context otherwise requires,

…

(31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee.

…

2.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

Section 3 (30) of the Code defines a 'secured creditor' as a creditor in favour of whom security interest is created. In State Tax Officer v. Rainbow Papers Limited (Civil Appeal No. 1661 of 2020), the Supreme Court interpreted the definition of 'secured creditor' to hold that any government or governmental authority shall be a secured creditor as the charge created by a statutory law can be considered as a 'security interest'.

The definition of 'security interest' under the Code means that a right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction, which secures payment of performance of an obligation. It is intended to be restricted to 'transactions', which means that the security interest should be created pursuant to an agreement on the part of the asset holder while giving rights to the other party. Further, 'transaction', as defined under section 3 (33), includes an agreement or arrangement in writing to transfer assets, funds, goods, or services from or to the CD. Thus, it is clear that the concept of security interest was intended to cover a consensual transaction between parties (and not any similar interest created through mere operation of a statute)

Clause 2 of the Bill seeks to insert an explanation in clause (31) of section 3 of the Code to clarify that security interest shall exist only when it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement by the act of two or more parties and shall not include a security interest created merely by operation of any law for the time being in force. Hence, a provision in central or state legislation or a subordinate law that states that a charge will be made on the property of the corporate debtor for non-payment of tax or a penalty shall not be considered a security interest.

A security interest shall only exist where the parties to an agreement or arrangement agree to create a right, title or interest or a claim to a property, whether or not it is in

writing. For instance, a charge created over the property of the corporate debtor to secure the financial debt under an agreement, or an arrangement where a mortgage is created by deposit of title deeds of its property between two or more persons.

Clause 2 also seeks to insert a definition of the term 'service provider' to include an insolvency professional, insolvency professional agency, information utility registered with the Insolvency and Bankruptcy Board of India (**Board**), and other persons notified by the Central Government for rendering services in relation to the insolvency and bankruptcy processes under the Code.

2.4 <u>Important Views/Suggestions given by Experts/Stakeholders:</u>

(i) In order to ensure that any dilution / modification in charge over security is done with the permission/knowledge of existing charge holder, a suggestion sought to include the following phrase in the explanation being inserted in Clause 2(a) :

> "any right, title, or interest or a claim to a property pursuant to an agreement or arrangement, shall be with the prior approval and agreement with existing charge holder"

(ii) Suggestion seeking an outstanding Performance Bank Guarantee to be treated as part of security interest, stated that :

> "Performance Guarantee wherever given as part of working capital requirement and issued post creation of any specific or general charge, also creates a security interest."

(iii) Suggestion pertaining to the definition of "service provider" stated as follows :

> "Section 3(b) after clause (31), the following clause shall be inserted, namely:-- '(31A) "service provider" means an insolvency professional, insolvency professional agency, information utility registered with the Board"

(iv) Further, referring to the definition of "service provider" as given under Clause 2(b), a suggestion seeking retention of the Four pillar concept of the Code, stated that:

> "It is unwarranted, if any additional category need to introduce, please do it through parliamentary process"

(v) Suggestion regarding deletion of phrase from Notes on Clauses – Clause 2, stated that :

> "Delete the words "whether or not it is in writing" under Notes on Clauses."

(vi) Suggestion regarding cash collateralized lending under "security interest" stated that :

> "Lending against cash collateral / against margin money not be treated as secured lending. Cash collateralized/margin money backed lending should not be impacted by moratorium and excluded from the scope of preferential transactions."

(vii) Suggestions corresponding to the applicability of the provision containing the definition of "security interest"; and adding a second Explanation or Proviso to Section 3 (31) i.e. Clause 2(a) of the Bill to link the definition of security interest to its enforceability through registration, are as follows :

> **(a.)** "Clarity is needed whether the said provision will be prospective or retrospective and with respect to the pending cases where Government authorities have been recognised as secured creditors by courts."
>
> **(b.)** "Another explanation may also be added to the effect that "Security Interest created on the assets of a Corporate Debtor must be registered with Registrar of Companies (ROC) as per the applicable provisions of Companies Act, 2013." The welcome clarification (in Part A) that "security interest" must be consensual (by agreement) successfully addresses the Rainbow Papers issue. However, it does not address the equally critical, and highly litigated, issue of enforceability.
>
> Lenders frequently fail to register their charges with the Registrar of Companies (RoC) under Section 77 of the Companies Act, 2013, or with other relevant authorities (like SARFAESI, or state revenue/registration departments for mortgages). They then litigate to be treated as secured creditors, creating significant delays and uncertainty for IPs. The Bill misses an opportunity to codify that a "security interest", to be valid in insolvency, must not only be consensual but also perfected by registration under all applicable laws.

Recommendation : We recommend adding a second Explanation or Proviso to Section 3(31) to link the definition of security interest to its enforceability through registration. Suggested Wording (as a new Explanation II) -

"Explanation II.—For the purposes of this Code, no security interest shall be considered valid or enforceable by a secured creditor in any proceeding under this Code unless such interest, where required, is duly registered and perfected in accordance with the provisions of Chapter VI of the Companies Act, 2013, or any other applicable law for the time being in force requiring such registration for its enforceability
a. against a liquidator or other creditors."
(c.) "Clarity is needed whether the said provision will be prospective or retrospective, with respect to the pending cases."

(viii) Suggestion pertaining to the definition of "service provider" as given in Clause 2(b) stated that :

> "The new definition laudably groups core regulated entities (IPs, IPAs, IUs) and provides a mechanism to notify new ones. However, it conspicuously omits two key entities that are already part of the ecosystem and regulated/recognized by IBBI: Registered Valuers (RVs), Insolvency Professional Entities (IPEs) and any other professional as may be specified. This omission creates ambiguity as to whether general rules or disciplinary provisions for "service providers" will apply to them."

(ix) Suggestion seeking clarity through insertion of a phrase in the Explanation furnished under Clause 2(a), stated that :

> "Section 3 (a) in clause (31), the following Explanation shall be inserted, namely: — "Explanation.— For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties, **whether perfected or not** and shall not include a security interest created merely by operation of any law for the time being in force"

(x) Suggestion to amend definition of "Claim" in Section 3 (6) to specifically include statutory or contractual interest in order to enable MSMEs to claim full benefit of Section 16 of MSMED Act:

"Amend definition of "Claim" in Section 3(6) to enable MSMEs to claim full benefit of Section 16 of MSMED Act: (6) "claim" means – (a) a right to payment (including interest, whether statutory or contractual), whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;"

2.5 Examination by the Committee:

(i) In response to the suggestion regarding any dilution/ modification in charge over security being done with the permission/knowledge of existing charge holder, the Ministry submitted that:

"The definition of "security interest" under IBC does not deal with inter-creditor arrangements existing between creditors and CD, which will be determined on a case-to-case basis. It only outlines the security interests recognized for the purposes of the Code, such as treatment in terms of priority in waterfall. The "question of prior approval and agreement of the existing charge holder" will be governed by the private arrangement or agreement of the parties or contract law outside IBC, and IBC merely recognises these rights as they existed prior to the commencement of the process."

(ii) Responding to the suggestion seeking outstanding Performance Bank Guarantee to be treated as part of security interest, the Ministry submitted that :

"Proviso to section 3(31) explicitly provides that the security interest shall not include a performance guarantee. Hence, it will not be appropriate to modify the proposed explanation in the Amendment Bill to include a performance guarantee. For instance, where a debt is secured by a Bank Guarantee, such Bank Guarantee should not be considered as a security interest as it is a contractual obligation to make payment.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(iii) In response to the suggestion pertaining to the definition of "service provider", the Ministry stated that :

> "Considering the evolution of the IBC ecosystem over the past ten years, it is important to have specialized services with IBC- specific expertise for effective implementation. For instance, valuers specializing in IBC processes. Accordingly, the concept of "service provider" is being introduced. Additionally, other services will only fall under the jurisdiction of IBBI when the Central Government notifies them, and the regulations that IBBI will make for them shall be laid before the Parliament in accordance with section 241.
>
> Furthermore, references to valuers and insolvency professional entities will be explicitly included in the proposed definition of "service provider." In addition, the Central Government may notify other service providers."

(iii)a. Further, during the oral evidence, the Ministry, in their presentation before the Committee, submitted that :

> "References of "registered valuers" and "IPEs" would be included in the definition of the "service providers"."

(iv) In response to the suggestion seeking retention of the Four pillar concept of the Code with regard to the definition of "service provider" as given under Clause 2(b), the Ministry submitted that :

> "Considering the evolution of the IBC ecosystem over the past ten years, it is important to have specialized services with IBC specific expertise for effective implementation. For instance, valuers specializing in IBC processes. Accordingly, the concept of "service provider" is being introduced. Additionally, other services will only fall under the jurisdiction of IBBI when the Central Government notifies them, and the regulations that IBBI will make for them shall be laid before the Parliament in accordance with section 241. Furthermore, references to valuers and insolvency professional entities will be explicitly included in the proposed definition of "service provider." In addition, the Central Government may notify other service providers."

(iv)a. Elaborating on the aforementioned response to the stakeholder suggestion, the representative of the Ministry of Corporate Affairs, during the

oral evidence held on 21st November, 2025, apprised the Committee as under :

> "…is about the definition of service provider should not be inserted in the code. If there is any new category, it should be through an amendment through the IBC. There was also an apprehension whether all professionals like statutory auditors, company secretaries, forensic auditors also will be brought under the definition of service provider. We are looking at a flexibility in the IBC process whereby where the creatures of the IBC process or the service delivery persons such as the insolvency information utilities or the insolvency professionals, et cetera, we expect that more and more evolution would come about. For instance, now they have got this insolvency professional entities which have come about and then their valuers also. We would like this to be done by notification rather than being done by an amendment to the code because the effect is mostly the same. The board needs to be empowered to regulate them so that the process is more efficient, etc. Statutory auditors, company secretaries, etc, per se, as long as they are not deliverers under the IBC code, would not be a part of this…"
>
> "…under service provider definitions, they wanted a four-pillar concept and that should not change. So, we made a request here that as the IBC keeps evolving, we may have different players in the IBC. Therefore, we may be allowed to include this…"

(iv)b. Furthermore, the representative also submitted that :

> "…Reference to registered valuers and insolvency professional entities should also be explicitly added in the definition of service provider…"

(v) In response to the suggestion seeking deletion of the phrase "whether or not it is in writing" from Notes on Clauses, the Ministry submitted that :

> "Generally, under common law and contractual law, there is no specific requirement that a security interest must be created through a written agreement. For example, a mortgage by deposit of title deeds—commonly called an "equitable mortgage"—is created when a borrower delivers the title deeds of immovable property to a creditor with the intent of creating security for a debt, without needing a written instrument. This is provided under section 58(f) of the Transfer of Property Act, 1882. Accordingly, this was mentioned in the notes on clauses.

The note on clauses explains the provisions of the bill, and are not per se amendment to an enactment."

(vi) Responding to the suggestion regarding cash collateralized lending under "security interest", the Ministry submitted that :

> "The IBC adopts a uniform approach towards the concept of "security interest" to ensure predictable and equitable treatment of all secured creditors during insolvency. Creating a special exemption for cash-collateralised or margin-backed lending may introduce a separate class of creditor rights that is inconsistent with the Code's foundational principles, particularly Sections 14 (moratorium), 43–51 (preferential and avoidance transactions), and the distribution waterfall under Section 53.
>
> Moreover, regarding preferential transactions, the existing framework already contains sufficient safeguards for transactions undertaken in ordinary course of business. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(vii) **(a. & b.)** In response to the suggestions regarding the applicability of the provision containing the definition of "security interest" and with respect to addition of a second Explanation or Proviso to Section 3 (31) i.e. Clause 2(a) of the Bill to link the definition of security interest to its enforceability through registration, the Ministry submitted that :

> "Section 3(31) provides a conceptual definition of "security interest" that explains the essential feature a transaction must have to be classified as a "security interest". The definition is applicable for both companies and non-corporates/individuals. The question related to registering charges will be determined by other applicable laws, which provide for such requirements like requirements of registration of charge with RoC and CERSAI.
>
> Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."
>
> **(c.)** "Since amendments to these provision serve as clarifications to reaffirm the original legislative intent, they are provided as explanations and will have retrospective effect."

(viii) Responding to the suggestion pertaining to the definition of “service provider” as given in Clause 2(b), the Ministry submitted that :

> “Reference to valuers and insolvency professional entities will be explicitly included in the proposed definition of “service provider.” And each of these is being defined as well. In addition, the Central Government may notify other service providers.”

(ix) Replying to the suggestion seeking clarity through insertion of a phrase in the Explanation furnished under Clause 2(a), the Ministry submitted that :

> “In practice, a charge is considered perfected when it has completed all the required legal steps—such as registration or notice—to render the security interest effective and enforceable against third parties. However, perfection of charge is not a legal phraseology. As mentioned above, this issue should be resolved through judicial interpretation, as it involves different laws—one governing the creation of the charge (such as the Transfer of Property Act, 1882) and another governing its registration with an authority (Information Utility, ROC, and CERSAI)—and an amendment to the Code may not be necessary.
>
> Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.”

(x) Responding to the suggestion seeking amendment of the definition of “claim” appearing in Section 3(6), the Ministry submitted that :

“Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 provides that if a buyer fails to make payment to an MSME supplier within the time specified under that Act, the buyer must pay compound interest (calculated monthly) on the delayed amount. Currently, the statutory definition of claim or debt does not restrict them to be either statutory or contractual in nature. Additionally, a broad definition of claim is provided under section 3(6), which, inter alia, recognises the *right to payment* as a claim. A clarification that claims, either statutory or contractual, should be considered as part of the insolvency resolution process is not required. For example, claims from income tax authorities or similar agencies are considered part of the insolvency resolution process and may be submitted during the process, even if they are statutory claims. An MSME, while submitting a claim, should explain the interest to be levied in accordance with the applicable law, and the IRP will consider this during the claim collection process, as per the regulations. For instance, particulars in the Form B in Schedule I of the CIRP

Regulations include "*Total Amount of Claim (Including any Interest as at the Insolvency Commencement Date)*" "

2.6 <u>Observations/Recommendations of the Committee:</u>

2.6.1 The Committee observe that Clause 2 of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, seeks to amend Section 3 of the Principal Act. The Committee also note that Clause 2(a) seeks to insert an explanation after Clause (31) clarifying the term "security interest". Further, the Committee observe that Notes on Clause 2 provide for the phrase "whether or not it is in writing". While noting the suggestion regarding deletion of this phrase, the Committee concur with the contention of the Ministry that Notes on clauses explain the provisions of the Bill and are not per se amendment to an enactment. However, for the sake of consistency and to avoid any scope for misinterpretation, the Committee

recommend that the said phrase be deleted and the Revised Note be read as :

> **"…A security interest shall only exist where the parties to an agreement or arrangement agree to create a right, title or interest or a claim to a property, whether or not it is in writing…".**

2.6.2 The Committee note that Clause 2(b) seeks to insert Clause (31A) after Clause (31) to provide for an inclusive definition for "service provider" under Corporate Insolvency Resolution Process (CIRP). The Committee, however, note that the definition omits entity, namely, 'registered valuer'. The Committee feel that such omission is likely to create ambiguity, especially with regard to applicability of general rules and disciplinary provisions for service providers under this section. Accordingly, the Committee recommend that definition of the term 'service provider' be suitably modified to include 'registered valuer' to the list of entities that are provided under the IBC and definition for 'registered valuer' be suitably inserted. The revised note may read as follows :

> **"registered valuer" means a person registered with the Board as a valuer for providing valuation services related to the assets and liabilities of the corporate debtor or debtor, as the case may be, in connection with the insolvency and bankruptcy processes under this Code.'**

2.6.3 In order to maintain coherence, appropriate references to 'registered valuer' be included where the term 'service provider' is used in the Amendment Bill in Clauses 55, 59, 60, 61, 62 and other relevant places. 2.6.4. Further, to ensure uniformity and effectiveness across provisions, it is also recommended that for the services falling under the jurisdiction of IBBI on notification by the Central Government, necessary regulations may be drafted and laid before Parliament.

Subject to the above modifications, the Committee accept the remaining provisions of the clause as proposed.

3. Clause 3 of the Bill seeks to amend Section 5 of the Principal Act.

3.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

In section 5 of the principal Act,—

(a) clause (2A) shall be re-numbered as clause (2B) thereof and before clause (2B) as so re-numbered, the following clause shall be inserted, namely:—

> '(2A) "avoidance transaction" means a transaction as referred to in sections 43, 45, 49 and 50;';

(b) after clause (9), the following clause shall be inserted, namely:—

> '(9A) "fraudulent or wrongful trading" means the fraudulent or wrongful trading as referred to in section 66;';

(c) in clause (11), the following proviso shall be inserted, namely:—

> "Provided that where multiple applications for initiation of the corporate insolvency resolution process in respect of a corporate debtor are pending before the Adjudicating Authority on the insolvency commencement date, the initiation date shall be the date on which the first such application was made before the Adjudicating Authority.";

(d) in clause (26), in the Explanation, for the words "merger, amalgamation and demerger", the words "merger, amalgamation, demerger and sale of one or more assets of the corporate debtor" shall be substituted;

(e) in clause (28), after the words "owed by the corporate debtor" occurring at the end, the words "to the members of the committee of creditors who are eligible to vote" shall be inserted.

3.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):

In this Part, unless the context otherwise requires, –

...

(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process [1][or pre-packaged insolvency resolution process, as the case may be];

...

(26) "resolution plan" means a plan proposed by [3][resolution applicant] for insolvency resolution of the corporate debtor as a going concern in accordance with Part II

[4][*Explanation.*- For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger,

...

(28) "voting share" means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

3.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

Clause 3 of the Bill seeks to amend section 5 of the Code by inserting definitions of the terms 'avoidance transaction' and 'fraudulent or wrongful trading' to ensure ease of reference and consistency throughout the Code.

Further, it seeks to insert a proviso to clause (11) of section 5 of the Code. It clarifies that if multiple applications to initiate the corporate insolvency resolution process (CIRP) in respect of a corporate debtor are pending before the Adjudicating Authority (AA) on the insolvency commencement date, and it admits one of them, then the initiation date for the CIRP of such corporate debtor shall be the date on which the first such application was

made before the AA. The AA, while passing the order for the commencement of the corporate insolvency resolution process, may mention the initiation date in its order in the interest of certainty, based on the rightful first application that was made against the corporate debtor and pending on the insolvency commencement date.

Additionally, it amends the explanation to clause (26) of section 5 to clarify that restructuring of the corporate debtor may also include the sale of one or more of its assets. It enables invitation of resolution plans for specific assets of complex businesses that can be included in the resolution plan providing for the insolvency resolution of the corporate debtor. The resolution applicants to whom such assets are being sold will also need to comply with the eligibility requirements under the Code. One or more resolution applicants may submit multiple plans for specific assets of the corporate debtor. The amendment will allow the committee of creditors to adopt the most commercially viable resolution plan for resolving the insolvency of a corporate debtor and ensure value maximization of its assets.

Lastly, it also proposes to amend the definition of 'voting share' under clause (28) of section 5 to clarify that 'voting share' will be computed on the basis of financial debt owed to only the members of the committee of creditors who are eligible to vote as per section 21, which excludes financial creditors that are related parties of the corporate debtor from voting. Hence, it is clarified that the financial debt owed to the creditors who are not eligible to vote in the committee of creditors shall not be included when determining the voting share.

3.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions received with respect to the various aspects of Clause 3 are given below :

(i) Suggestion pertaining to logical grouping of 'avoidance transaction' and 'fraudulent or wrongful trading' defined under Clause 3(a) & (b) –

"The Bill introduces definitions for "avoidance transaction" (Sec 5(2A)) and "fraudulent or wrongful trading" (Sec 5(9A)). However, the grouping is based on the remedy (transaction reversal vs. personal liability) rather than the nature of proof.

● "Avoidance"(Sec 43, 45,49, 50): Mixes intent neutral acts (43,45,50) with an intent- based act (49).

● "Fraud" (Sec 66): Kept separate, despite sharing the element of *mens rea* (fraudulent intent) with Section 49. From a jurisprudential and practical standpoint, proving Sections 49 and 66 is exceptionally difficult as both require establishing intent, unlike the other provisions.

Recommendation: We recommend re-classifying the definitions to group provisions based on the *nature of proof* (i.e., whether *mens rea* is required).

● "Avoidance Transaction" should refer only to Sections 43, 45, and 50.

● "Fraudulent or Wrongful Action"(or similar term) should be defined to include both Section 49 and Section 66."

(ii) Suggestions pertaining to the 'initiation date' of the application as contained in Clause 3(c) –

(i) "Initiation date can be "Record of default" as per IU for the purpose of determining PUFE transactions."

(ii) "If an earlier application is withdrawn then the same must not be considered."

(iii) "In section 5 in clause (11), the following proviso shall be inserted, namely:– "Provided that where multiple applications for initiation of the corporate insolvency resolution process in respect of a corporate debtor are pending before the Adjudicating Authority on the insolvency commencement date, the initiation date shall be the date on which the first such application was made before the Adjudicating Authority, **by a financial creditor.**"

(iii) Suggestions relating to definition of 'resolution plan' [Section 5(26)] and 'sale of assets' contained in the Explanation in Clause 3(d) –

(i) “Consider amending the definition of “resolution plan” to include “one or more plans” proposed by “one or more resolution applicants”.

(ii) “Explicitly allowing "sale of one or more assets" within a resolution plan is a pragmatic move to codify existing practice. However, it risks diluting the Code's primary objective of "resolution as a going concern." A CoC, guided by "commercial wisdom," might approve a plan that is essentially a piecemeal liquidation, destroying a viable business and jobs simply because it offers a marginally higher cash realization (e.g., selling factory land for real estate).

Recommendation: We recommend adding a safeguard, likely in Section 31 (Approval of plan), to empower the AA with a specific, limited review power in such cases.

Suggested Wording (as a new Proviso to Sec 31(1)): "Provided further that where a resolution plan provides for the sale of one or more assets which constitute a substantial part of the corporate debtor's business or undertakings, the Adjudicating Authority shall, before approval, record its satisfaction that the plan is not a disguised liquidation and that due consideration was given to preserving the viable business operations as a going concern, in line with the objectives of this Code."

(iv) Suggestions relating to the ‘voting share’ of the Committee of Creditors (CoC) –

(a) “Though changes, being clarificatory in nature, are welcome, another clarification may be inserted under section 5(28) with respect to treatment of absenteeism for calculating the ‘voting share’. It may be clarified that ‘total voting share’ (denominator) would be exclusive of absentee voting share.”

(b) “The voting share of all financial creditors, including financial institutions, should be calculated solely on the basis of the principal amount along with SBI-PLR + 2% without adding any component of penal interest or compound interest.”

(c) “Section 5, Clause (28) “voting share” means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such

financial creditor in relation to the financial debt owed by the corporate debtor."

3.5 Examination by the Committee:

Corresponding response of the Ministry of Corporate Affairs to the aforementioned suggestions is given below :

(i) "The phrase "avoidance transaction" and "fraudulent or wrongful trading" is defined for cross reference purposes to avoid repetition of provision numbers; the essential ingredient to establish that these transactions or trading exist will be governed by respective substantive provisions. Semantically, section 49 is mentioned as part of an "avoidance transaction" since it is an "undervalued transaction" defined in section 45 with fraudulent intent. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(ii)(a) "Under IBC presently, the insolvency commencement date (or the date of admission) is the date from which retrospectively the suspect period is calculated. In practice, it was observed that where the admission of an application takes longer than fourteen days, the look-back period for these transactions may not be able to capture a significant portion of transactions that occurred before the filing of an application. This may also give corporate debtors a perverse incentive to delay admission of the application for the commencement of the insolvency resolution process to reduce the scope of an avoidable transaction. Therefore, the threshold for the look-back period for these transactions has been adjusted to more effectively capture a broader range of pre-filing transactions, particularly those undertaken in anticipation of the commencement of the insolvency resolution process to exclude assets from the process. The record of default with the IU will be a significant piece of evidence for AA to decide whether the default exists. However, the record of default or its date recorded before the IU should not determine the look-back period, as it is not part of a proceeding before the AA where the question of initiating an insolvency resolution process is considered, which establishes the fact of insolvency. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(b) "The words "multiple applications … are pending before the Adjudicating Authority on the insolvency commencement date, particularly the use of the phrase "are pending" clearly imply that any application that will be considered for the purposes of this provision

should be pending, and an application that is already withdrawn on the insolvency commencement date should not be considered. The Adjudicating Authority does not have any discretion to consider non-pending and withdrawn applications. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(c) "The definition of "initiation date" is agnostic to who files the application, as an application for initiating CIRP can be filed by the operational creditor, financial creditor and the corporate debtor. Hence, it cannot be limited to the financial creditors. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(iii)(a) "The proposed amendment is being modified to clarify that the sale of assets may be through one or more plans proposed by one or more resolution applicants, subject to such conditions as may be specified. The Board shall specify the conditions for the above through regulations. However, one or more plans for the sale of assets will be a part of the resolution plan, which should provide for the corporate debtor as a going concern."

(iii)(a) 1. During the oral evidence held on 21st November, 2025, the representatives of the Ministry, while responding to the suggestion regarding amending the definition of 'resolution plan', apprised the Committee as under:

"…it says that consider amending the definition of the resolution plan to have one or more plans proposed by one or more resolution applicants. In fact, that has been our intent. But in the General Clauses Act, 1897, it says that the singular can include plural also to plan and resolution applicants.

… When we had drafted this, we had actually made that kind of a distinction, plan includes plan(s). But we were advised by the law department that it is understood. But however, if there has to be more clarity, because the stakeholder is actually wanting that this provision should actually be used for the intent which it was, we will look at redrafting it in such a way that plan includes plans and resolution applicant includes one or more resolution applicants to get clarity…"

(iii)(b) 2. Further, during the oral evidence, the Ministry, in their presentation before the Committee, also submitted that :

"Under the General Clauses Act, 1897 (Section 13(2)) words in the singular shall include the plural, hence, the words "plan" and "resolution applicant" will also include multiple "plans" or "resolution applicants". Further, Regulation 37(m) of the CIRP Regulations provides that the resolution plan may provide for a sale of one or more assets of the corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets, and the manner of dealing with remaining assets."

(b) "Section 5(26) of the IBC provides a definition of the 'resolution plan'. It means that a plan proposed by the resolution applicant for the insolvency resolution of the corporate debtor as a going concern in accordance with Part II. The phrase "going concern" implies that after the resolution, the corporate debtor should continue as a going concern, hence successfully revived, which is one of the objectives of the IBC. The amendment is being made to the explanation of Section 5(26) and must be read in conjunction with the main part of the provision. Furthermore, this requirement (sale of one or more assets as part of the resolution process) shall be implemented through regulations, and any concerns related to those highlighted in the stakeholder comments will be addressed through the regulations to ensure that this requirement does not function as a disguised liquidation process. An amendment to the Code is not required. Additionally, the proposed amendment is being modified to clarify that the sale of assets may be through one or more plans proposed by one or more resolution applicants, subject to such conditions as may be specified. The Board shall specify the conditions for the above through regulations. However, one or more plans for the sale of assets will be a part of the resolution plan, which should provide for the corporate debtor as a going concern."

(iv)(a) "The amendment to the definition of voting share seeks to clarify that voting share will be computed on the basis of financial debt owed to only the members of the committee of creditors who are eligible to vote as per section 21, which excludes financial creditors that are related parties of the corporate debtor from voting. Hence, it is clarified that the financial debt owed to the creditors who are not eligible to vote in the committee of creditors shall not be included when determining the voting share. Introducing a statutory exclusion of absentee voting share from the denominator would go beyond a clarificatory amendment and risk altering the very basis of CoC decision-making under Sections 28 and 30 of the Code. Such a change may also be misused, undermining collective decision-

making and commercial wisdom of the CoC. Absenteeism is already addressed through procedural safeguards such as electronic voting windows, quorum requirements, and structured timelines in the CIRP Regulations. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(b) "The amendment to Section 5(28) merely clarifies that "voting share" is to be computed with reference to the financial debt owed to members of the CoC who are eligible to vote. This clarification does not alter the existing principles governing the quantification and admission of claims. The Code does not re-write or standardise contractual interest components, penal charges, or other financial terms agreed between parties. The proposal to calculate voting share only on principal plus SBI-PLR + 2% would amount to substantive alteration of contractual rights, which does not fall within the scope or intent of the IBC. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(c) "This is a clarificatory amendment sought to clarify that voting rights will be calculated from amongst the financial creditors who are eligible to vote (unrelated). Section 21(2) provides that the CoC shall comprise the unrelated FCs, thereby classifying the financial debt into two categories: first, the financial debt owed to the unrelated FCs, and second, the financial debt owed to the related FCs. The restriction of the voting right is limited. In practice, the voting share of a single member (an unrelated FC) of the CoC is determined against the entire financial debt owed by the CD to the unrelated FCs (members of the CoC). Accordingly, the voting share threshold under different provisions of the Code is met. However, the text of the definition of the "voting share" implies that it should be against the entire financial debt, irrespective of whether it's owed to a related or unrelated FCs. This incongruity is sought to be clarified in the proposed amendment to the definition of "voting share". Section 5(28) is therefore being amended to clarify that 'voting share' will be computed as the financial debt owed to the concerned FC in relation to the financial debt owed to only the members of the CoC who are eligible to vote as per Section 21. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

3.6 Observations/Recommendations of the Committee:

3.6.1 The Committee note that Clause 3 of the Bill seeks to amend Section 5 of the Insolvency and Bankruptcy Code by –

(i) inserting definition of terms 'avoidance transaction' and 'fraudulent or wrongful trading';

(ii) inserting proviso to Clause (11) clarifying determination of 'initiation date' with respect to multiple pending applications; and

(iii) providing clarification regarding definition of 'resolution plan', 'sale of one or more assets' of the corporate debtor and 'voting share' of the Committee of Creditors (CoC) involved in the corporate insolvency resolution process (CIRP).

3.6.2 The Committee also note that Clause 3(a) & (b), by inserting definitions of the terms 'avoidance transaction' and 'fraudulent or wrongful trading', intend to ensure ease of reference and consistency throughout the Code. While considering the concerns of the stakeholders, the Committee concur with the justification provided by the Ministry and accordingly, accept the proposed amendments in Clause 3(a) and (b) without any modification.

3.6.3 The Committee further note that Clause 3(c) intends to change the lookback period for avoidance transactions through a proviso that clarifies that where multiple CIRP applications have been filed and admitted regarding the same corporate debtor, the date of filing of first such application should be considered as the 'initiation date'. The Committee, after considering and accepting the submission made by the Ministry, recommend that Clause 3(c) be accepted as proposed without any modification.

3.6.4 The Committee also observe that Clause 3(d) provides for restructuring of assets of the corporate debtor to allow for sale of one or more assets. Considering the suggestions received from the stakeholders and the deliberations on the same, the Committee, however, reckon that in order to clearly bring out the legislative intent of allowing sale of one or more assets for maximizing the value for a

corporate debtor holding multifarious businesses, the definition of resolution plan needs to be extended and made explicit to allow for one or more resolution plans for a corporate debtor undergoing CIRP. Therefore, the Committee accept Clause 3(d) subject to the following modifications:

(i) The Explanation under Section 5(26) contained in Clause 3(d) of the Bill be suitably amended to include provisions for sale of one or more of the corporate debtor's assets and the Explanation be redrafted. The Revised Explanation may read as :

"*Explanation*.— For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation, demerger, and sale of one or more assets of the corporate debtor through one or more plans proposed by one or more resolution applicants subject to such conditions as may be specified;".

(ii) It is also recommended that necessary regulations to specify the conditions for sale of one or more assets be drafted by IBBI and laid before the Parliament.

(iii) Further, it is recommended that once the formulation for amending the Explanation under clause 3(d) is finalized, Clause 66 be suitably modified in order to amend section 240 that gives the Board the power to make regulations.

3.6.5 Further, the Committee observe that while Clause 3(e) seeks to refine the definition of 'voting share', the amendment intends to be clarificatory in nature stating that the voting share is to be computed in proportion of the financial debt owed to members of the Committee of Creditors (CoC) who are eligible to vote. The Committee concur with the contention of the Ministry that the clarification does not alter the existing principles governing the quantification and admission of claims. The Committee, accordingly, accept provisions proposed under Clause 3(e) without any modification.

4. Clause 4 of the Bill seeks to amend Section 7 of the Principal Act.

4.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

In section 7 of the principal Act,—

(*a*) in sub-section (*4*), the proviso shall be omitted;

(*b*) for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (*2*), by an order—

(*a*) admit the application, if it is satisfied that a default has occurred and the application under sub-section (*2*) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or

(*b*) reject the application, if it is satisfied that a default has not occurred or the application under sub-section (*2*) is incomplete or a disciplinary proceeding is pending against the proposed resolution professional:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (*b*) of this sub-section, give a notice to the applicant to rectify the defect in his application within seven days from the date of receipt of such notice from the Adjudicating Authority:

Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (*2*), it shall record the reasons for such delay in writing.

Explanation I.—For the purposes of this sub-section, it is 15 hereby clarified that where the requirements under clause (*a*) have been complied with, no other ground shall be considered to reject an application filed under this section.

Explanation II.—For the removal of doubts, it is hereby clarified that where a record of default in respect of a financial debt 20 owed to a financial institution recorded with the information utility has been furnished along with the application filed by such financial institution under this section, such record shall be considered sufficient for the Adjudicating Authority to ascertain the existence of default under this section.".

4.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):

7. …

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3):

[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.][1]

(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed

4.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

[1] Ins. by Act No. 26 of 2019, sec. 3 (w.e.f. 16-8-2019).

Section 7 of the Code provides for an application by a financial creditor for the commencement of the CIRP in respect of a corporate debtor (CD). Under sub-section (5) of section 7, where the AA is satisfied that the CD has committed a default and other procedural requirements are fulfilled, it is required to admit the application and initiate the CIRP. The scope of the AA's power in this regard is limited to the determination of default, and the provision does not require the AA to consider other factors or circumstances regarding the inability of the CD to repay its debts. The legislative intent, in this regard, was also clarified in the Notes on Clauses to Clause 7 of the Insolvency and Bankruptcy Code Bill, 2015, when the law was originally introduced in the Parliament.

The Supreme Court, in Vidarbha Industries Power Limited v. Axis Bank Limited (Civil Appeal No. 4633 of 2021), has interpreted the use of 'may' in section 7(5) to indicate that the AA has the discretion to admit or reject despite existence of a default. Consequently, it is observed that the AAs delve into detailed factors relating to the solvency and financial health of the corporate debtor, which is not required as per the original intent of the law. This has resulted in confusion in the market regarding the scope of AA's discretion at the admission stage.

To alleviate any doubts in this regard, Clause 4 of the Bill amends section 7 to clarify that the AA shall mandatorily admit the application to initiate the CIRP once the occurrence of default is established, no disciplinary proceedings are pending against the proposed resolution professional and other procedural requirements under the section are complied with. Additionally, an explanation is inserted to clarify that the AA shall not consider any other grounds to reject the application where the requirements of these provisions have been complied with. Where the procedural requirements are fulfilled, the AA must only ascertain whether a default exceeding the threshold of section 4 exists and admit the application.

Another explanation is inserted to clarify that when a financial institution, submits a record of default in respect of a financial debt owed to such creditor, along with its application under this section, the AA shall consider it sufficient to ascertain the existence of default.

Given that financial institutions, as a regulated entity, maintain their records and financial information with information utilities in a structured and reliable manner, it would be appropriate for the Adjudicating Authority to rely on such records to ascertain the occurrence of default and promptly admit the application, within fourteen days of receipt of application.

4.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions received from stakeholders/experts are mentioned below :

(i) "These amendments seek to require NCLT to record reasons whenever it does not meet the timelines provided in the Code. Respectfully stated, reason for delays in NCLT are many and merely recording reasons will not address the causes of delay. For instance, if an adjournment is sought by a party, NCLT will merely record the reasons and adjourn. There is a need to address the four root causes responsible for delay in NCLT:
First, there is no criteria/qualification for appointment of members to the Adjudicating Authority provided under the Code. The Code in section 60 simply says NCLT will have jurisdiction to act as Adjudicating Authority. The Adjudicating Authority was not created. NCLT itself was conceived in 1999 on recommendations of Iradi Committee under the Companies Act. NCLT was created to solve the problems of 1990s. The Code came into existence 26 years later as a robust law which required a dynamic Adjudicating Authority as an institution of 21st century India. Neither the Code nor Companies Act provide for any insolvency experience for appointment to NCLT. As suitably qualified candidates are not appointed (in absence of insolvency related experience or qualification), the members appointed take a long time to learn about the nuances of insolvency, which is a complex subject.
Second, as of now mainly retired bureaucrats and judges are appointed – as per a study conducted, 79% technical members of NCLT are retired bureaucrats. Reputed industry experts don't apply in response to advertisements inviting applications for appointment to NCLT as they don't want to face risk of rejection, even though they are most suited for job. Instead of selection committee there should be a search cum selection committee which invites subject experts with

known integrity and reputation for interaction. Absence of experts impacts efficiency of NCLT.
Third, the hard infrastructure of NCLTs needs drastic improvement. It has churned back assets worth lakhs of crores back into economy by approving resolution plans, but the infrastructure is more than poor.
Fourth, there is need for behavioural change in approach to resolution of cases by NCLT members appointed to serve as Adjudicating Authority. Most technical members are trained in handling government jobs, and judicial members (judges) are trained to handle adversarial cases. The proceedings under Code are not adversarial in nature and traditional dispute resolution approach mars its efficiency; only insolvency and turnaround experts are suited to be members."

(ii) Suggestions regarding time limit for admitting/rejecting CIRP applications :

(a.)"The section amendment can also cover with regard to issue of limitation, date of default etc."

(b.) "Clauses 4 & 5 (Amendment to Sections 7 & 9): 14 days insufficient to admit/reject CIRP petitions. Timeline for curing defects – 7 days. Balance 7 days insufficient for (i) service of notice and; (ii) effective representation. Recording reasons for delay burdens limited judicial resources. Clause 19 (Amendment to Section 31): 30 days from filing of S. 30(6) insufficient to hear and dispose of plan approval application.

In addition, while the Bill's introduction of stage-wise timelines is commendable, their efficacy hinges on realism and comprehensiveness. In my humble submission, the following calibrations would render them more attainable without compromising urgency:

Particulars	Timelines
REALISTIC TIMELINES	
Recording reasons for delay	45 days
Disposal of Plan Approval application	60 days
NEW SUGGESTED TIMELINES	
Cooperation u/S. 19 and disqualification u/S. 29A	15 days from first listing
Challenging rejection of claim u/S. 60(5)	21 days from first listing

Disposal of applications for avoidance of transactions u/S. 43, 45, 47, 49, 51, 66	6 months from first listing
Certain applications like challenge to Resolution Plan, rejection of claims, etc. also need stipulated timelines for their disposal by the NCLAT.	

(iii) Suggestions with respect to initiation of corporate insolvency resolution process (CIRP) by financial creditor :

a.) “The timeline prescribed for the determination of the application under Section 7 may be removed. It may be recommended to:
1. Clarify "record of default from information utilities": Specify whether production of information utility records creates a rebuttable or irrebuttable presumption of default, and the standard of evidence required to rebut such record.
2. 7-day defect rectification period: Extend to 14 days to provide adequate time for gathering documentation, particularly for operational creditors who may face challenges obtaining financial records.
3. Modify or remove the reasoning requirement: The requirement for NCLT to record reasons when applications are not decided within 14 days may be either:
Option A (Preferred): Removed entirely, as it imposes additional administrative burden on already overburdened tribunals without addressing systemic capacity constraints that cause delays. Option B (Alternative): Modified to specify that reasons need be recorded only where delay is attributable to the Adjudicating Authority requiring time to pass orders after hearing parties, and not where delay is due to adjournments sought by parties, need for additional documentation, or administrative reasons.”

b.) “The adjudicating authority may have the discretion to admit or reject Section 7 applications.”

c.) “1) Delete Explanations I and II entirely.
2) Insert a proviso to Section 7(5) as follows: “Provided that the Adjudicating Authority shall afford the corporate debtor a reasonable opportunity to contest the application and to raise any legally permissible defence, including but not Limited to existence of a genuine dispute, restructuring arrangement, or pending settlement. The Adjudicating Authority shall determine the existence of default on the basis of documentary and oral evidence produced by both parties and not merely on the basis of an Information Utility record.”

3) Further, delete the 14 days mandatory period for adjudication. Instead of that, please extend the time period to 60 days which is extendable as per the discretion of the Adjudicating Authority for due examination.
4) It is proposed that in order to invoke insolvency proceedings under Section 7 IBC, 2016 against a real estate company, the minimum threshold should be either 2/3rd home buyers or default of principal amount equivalent to 10% of the total project cost in case of Financial Creditor or 10%of the project cost in case of Operational Creditor, as declared by the promoter before RERA Authority.
In view of the Project wise CIRP process framed by NCLAT in certain cases and upheld by the Hon'ble Supreme Court and also incorporated in IBBI CIRP Regulations, a specific chapter must be incorporated in the IBC, 2016 dealing the entire process of Project-wise Insolvency. This is required to protect the interest of the homebuyers. This will avoid undue delay in resolution."
d.) Mandatory Admission & IU Records – Explanation II makes IU records "sufficient" proof of default, supporting the mandatory admission under Sec7(5). However, the IU framework relies heavily on email-based deemed authentication. A genuine dispute or a simple missed email by an MSME could lead to an incorrect "default" being recorded. If this record is deemed "sufficient," the debtor's right to natural justice to contest the default at the admission stage is effectively nullified. Recommendation: The IU record should create a strong rebuttable presumption of default, not conclusive proof.

Suggested Wording (Revised Explanation II to Sec 7(5)): "Explanation II such Record shall be presumed to be sufficient evidence of default, unless the corporate debtor proves to the contrary with compelling evidence."

And / Or We strongly recommend that a statutory, time bound, and binding redressal mechanism be created within the IU framework itself (or via the AA) for genuine disputes over default entries, which must be exhausted before an application is filed."

e.) "(i) The proposed 14 days for mandatory admission of application by the Adjudicating Authority seems too stringent. Further the admission within 14 days of the receipt of the application also needs to be substituted by 30 days of first listing of the application. (ii) Amendment as proposed in Clause 4 (a) to be incorporated. Amendment in Clause (b) be substituted as follows: "The Adjudicating Authority shall within 30 days of the first listing of the application under Sub- Section (2) by an order (a) admit the application, if it is satisfied that default has occurred and the application under sub-section (2) is

complete and there is no disciplinary proceedings pending against proposed Resolution Professional; or …". Under sub-section (b), Explanation 1 has been added, which explanation is proposed to be substituted in following: "Explanation I – For the purposes of this sub-section, it is hereby clarified that where the requirements under Clause (a) have been complied with, no other ground shall be considered to reject the application filed under this section, except when application is demonstrably fraudulent, malicious or otherwise abuse of process of law". It is further proposed that a new Explanation III be added in following manner: "Explanation III – The period elapsed in making the application complete in event an order is passed under proviso to sub-section (5) of Section 7, shall be excluded in computing the period of 30 days".

f.) "Provided further that if the Adjudicating Authority has not passed an order under this sub- section within a period of fourteen days from the date of receipt of the application under sub section (2), it shall record the reasons for such delay in writing. The scenarios and the maximum permissible timeline for each of the scenarios, where such period beyond fourteen days is permissible shall be notified by the Board."

(iv) Suggestion regarding mandatory admission of insolvency application: "The discretionary power of AA to reject is removed. Provide an Alternative Resolution Mechanism for MSMEs: Permit MSMEs to opt for a simplified/pre-pack resolution framework prior to CIRP admission, so that automatic admission does not become the default outcome where early resolution is feasible."

(v) Suggestion pertaining to Section 7 of the Code regarding adherence to strict timelines by the Adjudicating Authority – "14 days for admission of Section 7 application. While it is a noble idea to include strict timelines, adherence to the same is also to be ensured through improvement of judicial infrastructure and capacity."

(vi) Suggestion to streamline CIRP – "7(4): This would curb the discretionary power of the Adjudicating Authority in delving into other issues, particularly with respect to insolvency of the Corporate Debtor, while deciding whether to admit the case. (Vidarbha Industries Power versus Axis Bank) 7(5): This provision is unrealistic given NCLT's current infrastructure deficits. Need to have dedicated Benches for

IBC. Increase the strength of benches. New Induction in NCLT shall be of the persons with knowledge of IBC and Co. law, or have extensive training program for NCLT members who newly join. In sec 7, 9 & 10 there should be amendment that promoters or CD can represent only when they deposit their 2 years books of accounts at NCLT or NESL or any agency as may be designated."

(vii) Suggestions regarding lack of Physical & IT Infrastructure of NCLT and NCLAT –

(a.) "These delays are, in my respectful submission, not a result of lack of timelines, but several systemic causes such as chronic understaffing, heavy backlogs, and procedural bottlenecks at both the NCLT and NCLAT. Yet, despite anchoring the 2025 amendments around tighter timelines, the Bill does not include any corresponding measures to expand judicial capacity or restructure the adjudicatory process. In State Bank of India & Ors vs. The Consortium of Mr Murari Lal Jalan,22 a three-judge bench of the Supreme Court (of which the undersigned was a part) recognized the systemic issues in the functioning of the Code and made the following observations:

'….184. One another serious issue pertaining to the functioning of the NCLTs and NCLAT is that there is often a shortage of members in the Tribunals and inadequate infrastructure to support their functioning. These vacancies heavily impact the insolvency reform initiative undertaken by the government since they lead to operational inefficiencies. A shortfall of members and the lack of requisite strength has led to Tribunals only sitting for a few days of the week or a few hours in a day. Even in Tribunals where there is no vacancy, the absence of requisite infrastructure has forced the benches to share courtrooms or halls on a rotation basis. As a consequence, the strict timelines provided in Section 12 of the IBC, 2016 are not complied with. Filling such vacancies with experts having adequate domain knowledge in the field must be prioritized along with addressing the infrastructure needs of the Tribunals to prevent any adverse effect on the resolution process. There must be strict mandates regarding the functioning of the Tribunals within its normal working hours. The appointment of new members must be done in a manner such that it coincides with the date of retirement of the sitting 24 members in a seamless manner to avoid such operational inefficiencies. Persons with high ideals & impeccable integrity should be appointed as Members in the NCLT as well as NCLAT. There should not be any political appointment.

185. It is now for the Parliament to look into our suggestions in consultation with the Insolvency Bankruptcy Board of India and the Ministry of Finance.'"

(b.) "Key to enhancing efficiency increasing available judicial time. Enhanced digital literacy through– (i) adoption of best practices derived from the SC and Delhi High Court; (ii) development of a checklist and simplification of the portal for ease of presenting applications; (iii) adoption of e stamping and e-notary to reduce timelines for listing of application.

Urgent need to give effect to Integrated Technology Platform. Operational online hearing facilities to avoid adjournments for absence of counsels."

4.5 Examination by the Committee:

Corresponding response of the Ministry of Corporate Affairs to the aforementioned suggestions is given below :

(i) NCLTs are constituted and established under the Companies Act, 2013, which also provides for their constitution.
First and Second Suggestions: These suggestions are related to the qualification of the members of the NLCT and comes outside the purview of IBC.
Third and Fourth Suggestions: These suggestions are related to infrastructure and functioning of NCLT and are administrative in nature and will be considered separately. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(ii) (a.) "The issue of limitation and date of default is a question of fact that shall be considered by the AA during adjudication. Section 238A inserted in 2018 already clarifies that the Limitation Act, 1963 shall apply to the proceedings before AA/NCLT. The proposal to additionally incorporate matters relating to limitation, date of default, chronology of events, or evidentiary details etc are already comprehensively addressed in the CIRP Regulations. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(b.) "Sections 7(4), 9(5), and 10(4) presently provide a fourteen-day timeline for the admission of applications by the financial creditor, operational creditor, and corporate debtors under the code, and the

same is continued under the Amendment Bill. Additionally, reforms in the proposed Amendment Bill regarding increased reliance on the IU may further streamline the admission process, allowing for quicker admissions.
Further, the amendment bill introduces timelines for processes which were earlier not present, such as the time period within which the AA has to pass an order for withdrawal of application under section 12A (30 days), time period for approval of a resolution plan under section 31 (30 days), time period for initiation of liquidation under section 33(2A) (30 days), etc.

Moreover, the amendment bill introduces a timeline for the NCLAT to pass orders (within 3 months from the date of receipt of the application).
Hence, the provisions in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(iii)A. Response of the Ministry regarding suggestions related to initiation of CIRP by financial creditor :
a.) "First Suggestion: Use of the phrase "record shall be considered sufficient" implies that the record of default with IU can be relied upon by the AA to admit an application. However, if contrary evidence is present, AA may consider the same based on the facts of each case. Second Suggestion: The 7-day timeline for rectification is already provided under the proviso to sub section (5) of section 7, and the same is being extended under the amendment without any modifications.
Third Suggestion: Requiring AA to provide written reasons for delays will help in making informed policy decisions to ensure faster adjudication. Moreover, the provision does not attribute delay to the Adjudicating Authority for delays and does not suggest that proceedings will terminate after 14 days.
The suggestion to remove the statutory timeline or dilute the requirement of recording reasons is not appropriate. Timelines are a foundational feature of the Code, which is built on expeditious determination of default and swift commencement of CIRP. The requirement to record reasons is an accountability mechanism that enhances transparency and does not affect the adjudicatory independence of the NCLT. The amendment as proposed is adequate and preserves the balance between speed and judicial oversight. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."
b.) "Under sub-section (5) of section 7, where the AA is satisfied that the CD has committed a default and other procedural requirements are fulfilled, it is required to admit the application and initiate the CIRP. The

scope of the AA's power in this regard is limited to the determination of default, and the provision does not require AA to consider other factors or circumstances regarding the inability of the CD to repay its debts. The legislative intent, in this regard, was also clarified in the Notes on Clauses to Clause 7 of the Insolvency and Bankruptcy Code Bill, 2015, when the law was originally introduced in the Parliament. The amendment to Section 7(5) restores the original, foundational scheme of the Code, namely that where debt and default are established and the application is complete, the Adjudicating Authority has to admit the application. This ensures speed, certainty and predictability. The discretion of the kind suggested would undermine the time-bound adjudication envisaged under Sections 7(4) and 7(5), reintroduce subjectivity, and dilute the discipline of the credit market. The amendment therefore achieves the intended clarity and certainty. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

c.) & d.) "The IU framework under the Code already provides a robust, multi layered opportunity for the corporate debtor to respond. Upon filing of information, the Regulation 21 of the IBBI IU Regulations, 2017 require the IU to authenticate and verify the information of default. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

e.) "(i): Sections 7(4), 9(5), and 10(4) presently provide a fourteen-day timeline for the admission of applications by the financial creditor, operational creditor, and corporate debtors under the code, and the same is continued under the Amendment Bill. Additionally, reforms in the proposed Amendment Bill regarding increased reliance on the IU may further streamline the admission process, allowing for quicker admissions. (ii): Notes on clauses clarifies that within the period of 14 days, the AA shall give notice to rectify any defects in not more than seven days before rejecting the application. The 7-day timeline for rectification of defects is already provided under the Code and the same is being extended under the amendment without any modifications. However, this concern is noted and will be addressed while making the detailed Adjudicating Authority Rules for the IBC process. (iii): An explanation is inserted to clarify that when a Financial Institution (which is defined in the Code and generally includes banks and large financial institutions regulated by RBI) submits a record of default in respect of a financial debt owed to such creditor, along with its application under this section, the AA shall consider it sufficient to ascertain the existence of default. It is also submitted that the Bankers'

Books Evidence Act, 1891 also provide that records of Banks are admissible as evidence in legal proceedings. Section 65, which addresses fraudulent initiation of CIRP, remains fully applicable. The proposed amendment does not in any way curtail the inherent powers of the AA to invoke Section 65 and reject an application where warranted. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

f.) "It is not appropriate for the IBBI (regulator) to specify a timeline for adjudication of applications by the NCLT (tribunal). Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(iii)B. While deposing before the Committee, the representatives of the Ministry apprised the Committee about their response to suggestions related to initiation and admissions during the CIRP and submitted that :

"…There was a suggestion that a 14-day period for admission or rejection of the application should not be mandatory. Also, the requirement for the Adjudicating Authority to record the reasons for taking a decision beyond 14 days, would increase the administrative burden. Then, maintain discretion of the Adjudicating Authority in considering factors other than the 'default' to admit or reject the applications. The AA should be given more reasons or let them go into more details, if required. Then, the record of default with Information Utility should not be considered as sufficient and the debtor should be provided with more opportunity to dispute this. So, these were the suggestions that came up. Our responses are like this. When we are asking the AA to record the reasons if the order is not passed within 14 days, the reason is only that it does not change any admission standard; it only enhances the transparency and it does not aim at limiting the judicial independence or the AA's ability to give the corporate debtor a reasonable opportunity to be heard. The requirement is also more of an accountability mechanism, because this would be within the NCLT itself, within the Adjudicating Authority (AA), for the President or the Members to understand why there is a delay. So, we hope that this would preserve the balance between speed and fair adjudication, and that it would not in any way impinge upon judicial independence. Where debt and default are established and the application is complete, under Section 75, we require the AA to admit the matter, and we do not want the AA to consider any other reasons for admission, because if the 14-day timeline is not maintained, then it would be difficult to adhere to the overall timeline of the CIRP process.

Therefore, we would like it to remain at 14 days, and all that needs to be seen is whether the record of default exists in the information utility. In fact, a very robust mechanism for authentication and verification has already been built into the regulations so that the IU record can be completely relied upon…"

(iv) "The Pre-Packaged Insolvency Resolution Process under Chapter IIIA of Part II provides an efficient and alternative framework under the Code for quicker, cost-effective insolvency resolution process that is least disruptive to the businesses as the management continues with the corporate debtor. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(v) "These suggestions are related to infrastructure and functioning of NCLT and are administrative in nature and will be considered separately. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(vi) "NCLTs are constituted and established under the Companies Act, 2013, which also provides for their constitution. The suggestion relates to the provisions of the Companies Act, 2013 and no amendment is required under the IBC. It is duly noted and may be considered as part of the amendment to the Companies Act, 2013. Additionally, requirements related to what information must be filed along with an application under sections 7, 9, or 10, or when CD defends the same, will be considered part of the subordinate law. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(vii) (a)1. Apprising the Committee regarding delay in adherence to timelines and attributing this to lack of infrastructure and manpower, the representative of the National Company Law Tribunal (NCLT) submitted that :

"One of the criticisms has been that regarding the timelines which have been prescribed under the IBC, there is no strict adherence to these timelines. We often see that there are delays in the resolution process. This is one reason. Now, the reason why this particular thing is happening, that is, the first challenge that NCLT is facing is this that when NCLT was instituted in 2016, initially it was given the mandate over Companies Act matter and subsequently it was also given the responsibility under the IBC. So, initially our strength, the strength that was given to us was 62 Members plus one President and this strength was given to us to decide

matters under the Companies Act which were given to NCLT. But subsequently when we were also designated as the adjudicatory authority under the IBC, there was no corresponding increase in the number of hon. Members. This is one reason why there is huge pendency in NCLT, why the timelines are not being adhered to, why it is taking too much time to dispose the cases. The second challenge that we face is infrastructure challenges. I mean NCLT is housed and is working in old buildings. The infrastructure that has been given to us is not adequate to help us in discharging our functions. I would very respectfully like to place this before the hon. Committee that we are courts fundamentally and the infrastructure that has to be given to us should match the infrastructure which should be available to a court. That is something which is lacking. Thirdly, with respect to IT and e-court system upgradation, there is a requirement to upgrade the e-court system that is presently present in NCLT. I am very happy to share this with the hon. Committee that in view of the judgement of the hon. Supreme Court in Sarvesh Mathur case, NCLT has implemented virtual courts in all its benches, in all its courts and we have virtual court hearings in all the courts and all the benches. Then, the fourth issue is with respect to appointment of permanent staff. More than 90 per cent of the workforce in NCLT is contractual in nature. Unless we have permanent staff, unless there are people who are working in NCLT continuously, it will be difficult to manage this institution because whenever people leave this institution there is loss of institutional memory…"

(a)2. On being asked about the need for increasing the number of NCLT Benches and training of members for enhancing sector-specific knowledge, the representatives of the Ministry, during their deposition, apprised the Committee as under :

"…Proposal for having 50 more courts of NCLT, and two more courts for NCLAT is already with the Cabinet, and I hope it will happen sooner than later.
… they are looking at colloquiums every three months and we hope that will improve the capacity."

(b) Response of the Ministry regarding lack of physical and IT infrastructure is as follows :

"These suggestions are related to the infrastructure and functioning of NCLT and are administrative in nature and will be considered

separately. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

4.6 Observations/Recommendations of the Committee:

4.6.1 The Committee note that the provisions under Clause 4 seek to amend Section 7 of the Code and provide for – (a) omission of the proviso to sub-section 4 in Section 7; (b) Adjudicating Authorities to admit an application within a duration of fourteen days including a period of not more than seven days to serve a notice for rectification of defects before rejecting the application; and (c) in case of financial institutions, streamline the admission process by increasing reliance of Adjudicating Authorities on financial records maintained by Information Utilities (IUs). The Committee understand that the purpose behind amending Section 7 of the Code through Clause 4 of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, is to expedite the insolvency process by eliminating the scope for discretion and resultant delays at the level of the Adjudicating Authority in cases where clear default has been established and where other procedural requirements have been fulfilled. The Committee are also aware that the lack of physical & IT infrastructure in the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) has posed major challenges towards timely resolution of pending cases. In this context, the Committee note suggestions from various stakeholders pertaining to the need for expanding judicial capacity or restructuring the adjudicatory process by increasing the number of benches and also enhancing financial allocation for improvement of infrastructure. Having been apprised that the Government is seized of the matter, the Committee desire that necessary measures to this effect may be taken up expeditiously.

4.6.2 Further, the Committee feel that in order for the Adjudicating Authorities to adhere to the established timelines in letter and spirit, the relevant provisions would need buttressing with supporting regulation. The Committee have been

assured by the Ministry that detailed regulations would be drafted under the 'Adjudicating Authority Rules for the IBC process' after carefully calibrating the infrastructure, functional and administrative requirements of Adjudicating Authorities to foster adherence to timelines extended under this provision. Accordingly, taking into consideration the views of the stakeholders and the assurance by the Ministry of Corporate Affairs, the Committee accept the proposed provisions under this clause, in entirety, without any modification.

5. Clause 5 of the Bill seeks to amend Section 9 of the Principal Act.

5.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

In section 9 of the principal Act,—

(*a*) in sub-section (*3*), in clause (*e*), for the words "such other information, as may be prescribed", the words "any other information, as may be specified" shall be substituted;

(*b*) in sub-section (*5*), after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of application under sub-section (*2*), it shall record the reasons for such delay in writing.".

5.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

9. …

(3) The operational creditor shall, along with the application furnish —

…

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.][2]

[2] Subs. by Act No. 26 of 2018, sec. 6 (a) (ii), for the words "such other information or as may be specified" (w.e.f. 6-6-2018).

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

….

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

…

5.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

Clause 5 of the Bill seeks to amend clause (e) of sub-section (3) of section 9 of the Code to empower the Board to specify by regulation any other type of information that the operational creditor must submit along with the application for initiation of the corporate insolvency resolution process. It also seeks to insert a proviso in sub-section (5) of section 9 to provide that where the application filed under this provision is not decided within fourteen days, the Adjudicating Authority will record reasons for such delay in writing.

5.4 Important Views/Suggestions given by Experts/Stakeholders:

Suggestion made in respect of the time period available with the Adjudicating Authority for admitting or rejecting an application is as follows :

> (i) "Delete the newly inserted proviso or make the 14 days period explicitly directory. Insert a clarification: "Provided that nothing contained in this section shall prevent the Adjudicating Authority from granting reasonable time to the corporate debtor to file its reply and produce relevant records for determining the existence of a dispute."
>
> (ii) "Provided further that if the Adjudicating Authority has not passed an order under this sub- section within a period of fourteen days from the date of receipt of the application under sub section(2), it shall record the reasons for such delay in writing. The scenarios and the maximum

permissible timeline for each of the scenarios, where such period beyond fourteen days is permissible shall be notified by the Board."

5.5 Examination by the Committee:

Response of the Ministry to the suggestion made by stakeholder :

(i) "The proposed proviso to Section 9(5), requiring the Adjudicating Authority to record reasons where an order is not passed within 14 days, does not alter the substantive standard for admission. The requirement to record reasons for delay reinforces transparency and does not in any way curtail judicial independence. It does not curtail the Adjudicating Authority's ability to grant a reasonable opportunity to the corporate debtor to place material regarding the underlying case.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(ii) "It is not appropriate for the IBBI (regulator) to specify a timeline for adjudication of applications by the NCLT (tribunal). Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

5.6 Observations/Recommendations of the Committee:

5.6.1 The Committee note that clause 5 of the Amendment Bill seeks to amend clause (e) of sub-section (3) of Section 9 of the IBC Code to empower the Insolvency and Bankruptcy Board of India (IBBI) to specify, by regulation, any other type of information that the operational creditor must submit along with the application for initiation of the Corporate Insolvency Resolution Process (CIRP). The Committee also note that the amendment aims to prevent any misuse of the CIRP by employing delaying tactics such as filing an application based on multiple defective documents.

5.6.2 Further, the Committee observe that Clause 5 also seeks to insert a proviso in sub-section (5) of Section 9 to provide that where the application filed under this provision is not decided within fourteen days, the Adjudicating Authority shall record reasons for such delay in writing. The Committee find that the proposed

provision does not, in any manner, curtail judicial independence or alter the substantive standard for admission.

5.6.3 Concurring with the legislative intent of the proposed provision, the Committee note that apart from underscoring the need for a clear regulation for information to be furnished by the operational creditor along with the application, it also ensures accountability on the part of the Adjudicating Authority. Therefore, the Committee accept the provisions proposed under this clause in their entirety without any modification.

6. Clause 6 of the Bill seeks to amend Section 10 of the Principal Act.

6.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

In section 10 of the principal Act,—

(*a*) in sub-section (*3*),—

(*i*) in clause (*a*), for the words “for such period as may be specified;”, the words “and any other information, as may be specified; and” shall be substituted;

(*ii*) clause (*b*) shall be omitted;

(*b*) in sub-section (*4*),—

(*i*) in clause (*a*), the words “and no disciplinary proceeding is pending against the proposed resolution professional” shall be omitted;

(*ii*) in clause (*b*), the words “or any disciplinary proceeding is pending against the proposed resolution professional” shall be omitted;

(*iii*) after the existing proviso, the following proviso shall be inserted, namely:—

“Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (*2*), it shall record the reasons for such delay in writing.”.

6.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

10. …

[(3) The corporate applicant shall, along with the application, furnish-

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.][3]

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order-

(a) admit the application, if it is complete [and no disciplinary proceeding is pending against the proposed resolution professional][4]; or

(b) reject the application, if it is incomplete [or any disciplinary proceeding is pending against the proposed resolution professional][5]:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

…

6.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

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[3] Ins. by Act No. 26 of 2018, sec. 7(a) (w.e.f. 6-6-2018), before substitution the sub clause 3, stood as under – "(3). The corporate applicant shall, along with the application furnished the information relating to – (a) its books of account and such other documents relating to such period as may be specified; and (b) the resolution professional proposed to be appointed as an interim resolution professional."

[4] Ins. by Act No. 26 of 2018, sec. 7(b) (i) (w.e.f. 6-6-2018).

[5] Ins. by Act No. 26 of 2018, sec. 7(b) (ii) (w.e.f. 6-6-2018).

Under section 10 of the Code, a CD is empowered to apply to initiate the CIRP voluntarily on occurrence of a default. Along with the application for initiating CIRP, the CD can propose an insolvency professional to be appointed as an interim resolution professional ("IRP").

As per section 16(2), the proposed insolvency professional is appointed as an IRP after admission of the case. It is felt that since the IRP is required to hold the trust and confidence of the committee of creditors upon commencement of the CIRP, it often becomes incongruous for a person being considered by the CD to be appointed as an IRP. He is responsible for accumulating relevant information from the CD and scrutinising its affairs to trace avoidable transactions or transactions amounting to wrongful or fraudulent trading.

Clause 6 of the Bill therefore seeks to amend section 10 to abrogate the right of the corporate debtor to propose an interim resolution professional under an application filed under this section. This seeks to eliminate the possibility of bias in the appointment of the interim resolution professional, thereby ensuring the impartial discharge of duties and maintaining the confidence of creditors in the process.

It also seeks to amend clause (a) of sub-section (3) of section 10 of the Code to broaden the powers of the Board to specify any other type of information that may be furnished along with the application for commencement of corporate insolvency resolution process by a corporate applicant.

It also seeks to insert a proviso in sub-section (4) of section 10, to provide that where the application is not decided within fourteen days, the Adjudicating Authority will record reasons for such delay in writing.

6.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions received from stakeholders / experts are as follows:

(i) “Corporate Debtor may continue to have the right to appoint a resolution professional.”

(ii) “(i) Amendment as proposed in Clause 6 (a) be incorporated; (ii) Amendment proposed in Clause 6 (b), which proposes amendment of sub-section 4 of Section 10, needs to be substituted in following words: “Clause (4) – The Adjudicating Authority shall within a period of 30 days of the first listing of the application, by an order – (a) admit the application, if it is complete; (b) reject the application, if it is not complete; Provided that Adjudicating Authority while rejecting application, give notice to the Applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.” After the existing proviso, a proviso sought to be inserted as follows: “Provided further that if the Adjudicating Authority has not passed an order under this sub-section, within a period of 30 days from the date of first listing of application under sub-section (2), it shall record such reason for delay in writing”.

(iii) “The Code should embed the principle that IRP appointments by the AA, based on IBBI recommendations, must be transparent and objective. The specific procedural details for this selection should then be detailed in rules or regulations. Suggested Wording (as an amendment to Section 16): "We recommend that the relevant sub-sections of Section 16 be amended to include this principle. For example, the new Section 16(3A) relating to Sec. 10 applications could be modified to read: '...the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional, who shall be selected in a transparent and objective manner as may be specified by regulations, and who may act as an interim resolution professional.' A similar mandate should be applied to the AA's appointment process under Section 16(3) for Sec 7 & 9 cases to ensure any selection from a panel or list provided by IBBI is also governed by a transparent process' as may be specified'."

(iv) “Provided further that if the Adjudicating Authority has not passed an order under this sub- section within a period of fourteen days from the date of receipt of the application under sub section(2),it shall record the reasons for such delay in writing. The scenarios and the maximum permissible timeline for each of the scenarios, where such period beyond fourteen days is permissible shall be notified by the Board.”

6.5 Examination by the Committee:

Corresponding responses of the Ministry to the suggestions :

(i) “The amendment to section 10 inter alia abrogates the right of the corporate debtor to propose an IRP under an application filed under this section. This seeks to eliminate the possibility of bias in the appointment of the IRP, thereby ensuring the impartial discharge of duties and maintaining the confidence of creditors in the process.

Under existing section 10, a CD is empowered to apply to initiate the CIRP and propose an insolvency professional (IP) to be appointed as an interim resolution professional (IRP), who is appointed as an IRP after admission of the case. Since the IRP is required to hold the trust and confidence of the CoC upon commencement of the CIRP, it often becomes incongruous for a person being considered by the CD to be appointed as an IRP. He is responsible for accumulating relevant information from the CD and scrutinising its affairs to trace avoidable transactions or transactions amounting to wrongful or fraudulent trading. Thus, it will be appropriate to appoint an independent person as the IRP to prevent misuse of this provision.

Further, in section 7 and 9 also, the IBC provides for recommendation of name of IRP by creditors in their applications. Further, during the process, the CoC is empowered to recommend replacement of the IRP / RP. Therefore, in line with same, even in section 10 application, debtor should not be empowered to propose the name of IRP.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.”

(ii) “(i): Sections 7(4), 9(5), and 10(4) presently provide a fourteen-day timeline for the admission of applications by the financial creditor, operational creditor, and corporate debtors under the code, and the same is continued under the Amendment Bill. Additionally, reforms in the proposed Amendment Bill regarding increased reliance on the IU may further streamline the admission process, allowing for quicker admissions. (iii) The 7-day timeline for rectification of defects is already provided under the existing provisions of the Code, as a proviso to sub-section (4) of section 10 and no change has been made to this provision. However, this concern is noted and will be addressed while making the detailed Adjudicating Authority Rules for the IBC process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.”

(iii) "The concern regarding transparency in the appointment of insolvency professionals (IPs) is noted. It may also be noted that under the present framework, the appointment of the interim resolution professional (IRP) in all cases—whether filed under Section 7, 9, or 10—is by an order of Adjudicating authority. IBBI has already introduced mechanisms such as maintenance of panels of IPs to ensure transparency and objectivity in this regard. This allows flexibility to refine the process based on evolving sectoral needs, caseload patterns, and the growing maturity of the insolvency profession. The suggestion to incorporate a principle of "transparent and objective selection" explicitly into the Code may not be necessary. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(iv) "It is not appropriate for the IBBI (regulator) to specify a timeline for adjudication of applications by the NCLT (Tribunal). Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

6.6 <u>Observations/Recommendations of the Committee:</u>

The Committee note that provisions proposed under Clause 6, by way of amending Section 10 of the Code, seek to – (a) abrogate the right of the corporate debtor to propose an interim resolution professional (IRP) in order to avoid any conflict of interest and ensure an independent and unbiased resolution process; (b) provide for the corporate debtor to furnish any specific information as sought by the Board; and (c) require the Adjudicating Authority to record, in writing, the reasons for delay in case the application for resolution is not decided within fourteen days. The Committee also note the concerns raised by the stakeholders that provisions calling for the Adjudicating Authority to abide by the strict timelines mentioned with respect to accepting or rejecting of applications need to be supplemented with adequate regulations. The Committee have been assured that such concerns would be addressed through appropriate regulations. Considering the submissions made by the Ministry and the deliberations by the Committee on

the proposed amendments, the Committee accept the same in entirety without any modification.

7. Clause 7 of the Bill seeks to amend Section 11 of the Principal Act.

7.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

In section 11 of the principal Act, in clause (*ba*), after the words, figures 5 and letter "under Chapter III-A", the words, figures and letter "or Chapter IV-A" shall be inserted.

"The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely: -

…

[(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A or Chapter IV-A, twelve months preceding the date of making of the application; or]

…

7.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:-

…

[(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or]

…

7.3 <u>Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :</u>

Clause 7 of the Bill seeks to amend section 11 of the Code as a consequential amendment pursuant to the insertion of the creditor-initiated insolvency resolution process under Chapter IV-A of Part II of the Code.

7.4 Observations/Recommendations of the Committee:

The Committee note that clause 7 of the Bill seeks to amend section 11 which is aimed at preventing the misuse of the insolvency process by restricting individuals from repeated filing for insolvency resolution. The Committee observe that the provisions under this clause are a consequential amendment pursuant to the insertion of the creditor-initiated insolvency resolution process under Chapter-IV A of Part II of the Code. The Committee, accordingly, accept the clause as proposed in its entirety without any modification.

8. Clause 8 of the Bill seeks to substitute Section 12A of the Principal Act relating to the withdrawal of application admitted under Section 7, 9 or 10 with a new Section.

8.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

12A. Subject to sub-section (2), the Adjudicating Authority may allow the withdrawal of an application admitted under section 7, 9 or 10, on an application made by the resolution professional, with the approval of ninety per cent. voting share of the committee of creditors in such manner as may be specified.

(2) Notwithstanding anything contained in any law for the time being in force, an application admitted under section 7, 9 or 10 shall not be withdrawn –

(a) before the constitution of the committee of creditors under sub-section (1) of section 21; and

(b) after the first invitation for submission of a resolution plan has been issued by the resolution professional.(3) The Adjudicating Authority shall pass an order under sub-section (1), within a period of thirty days from the date of receipt of the application:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.

8.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

[12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the

approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.][6]

8.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

Clause 8 of the Bill seeks to substitute section 12A of the Code to provide that the AA may allow an application admitted under section 7, 9, or 10 to be withdrawn on an application made by the resolution professional with the prior approval of ninety per cent. of the voting share of the committee of creditors.

Further, it clarifies that the AA shall not allow the application admitted under section 7, 9, or 10 to be withdrawn either before the committee of creditors is constituted under section 21 of the Code or after the first invitation to submit a resolution plan by the resolution professional under any circumstances.

Additionally, a period of thirty days is provided for the AA to decide the withdrawal application. If the application is not decided within thirty days, the AA is required to record reasons for such delay in writing.

8.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the suggestions given by experts / stakeholders are as follows :

> (i) "Clarify that application should be filed with AA before invitation for resolution plan (as withdrawal itself by NCLT may take time since after the judgment of Hon'ble SC in Glas Trust v. Byju Raveendran, 2024 SCC OnLine SC 3032, AA is required to hear all relevant parties before allowing withdrawal."
>
> (ii) "The Bill's proposal to bar withdrawals until after CoC approval restricts the debtor's ability to settle directly with individual creditors. This is especially problematic where the applicant is an Operational Creditor

[6] Ins. by Act No. 26 of 2018, sec. 9 (w.e.f. 6-6-2018).

(OC) who has no voting rights in the CoC. Given that over 50% of 12A withdrawals involve claims around one crore, such settlements often serve as a practical dispute resolution tool. Making them subject to CoC approval could unnecessarily delay settlements and push more cases into full CIRP, further burdening the NCLTs. Further, the system cannot take away right of a debtor to deal and negotiate with the debtors especially the operational creditors."

(iii) "Section 12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee creditors, in manner as may be specified within 90 days from the date of constitution of the Committee of Creditors."

(iv) "The requirement of 90% approval from the Committee of Creditors (CoC) for withdrawal of CIRP proceedings should be limited to cases initiated by financial creditors. In instances where the application is filed by an operational creditor and admitted, withdrawal should be permitted based on the applicant's consent alone, provided it occurs prior to the constitution of the CoC."

8.5 <u>Examination by the Committee:</u>

Response of the Ministry to the corresponding suggestions :

(i) "Stakeholder suggestion incorporated in the proposed provision. The proposed new Section 12A permits withdrawal of application only after the constitution of the CoC and before the first invitation for resolution plan. Therefore, stakeholder's concerns are already accounted for. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(ii) "Section 12A provides that an application initiated under CIRP under sections 7, 9, and 10 can be withdrawn with the approval of 90% of the CoC. Presently, the interpretation adopted for section 12A suggests that the AA before the constitution of the CoC may permit withdrawal of the application's inherent powers under Rule 11 of the NCLT Rules. Furthermore, Section 12A does not specify an outer time limit for filing an application seeking withdrawal.

Since the CIRP is an in-rem proceeding, it is essential for the CoC overseeing the resolution process to be consulted before withdrawing the application or approving any form of settlement. There have been instances where the interpretation of this provision has deviated from its original intent, allowing for the withdrawal of admitted applications even before the CoC is constituted. In some cases, AAs have also denied the CoC's consultation during the pendency of withdrawal applications or stayed the CoC's constitution to dispose of these applications. This discourages the CoC's involvement in withdrawing the CIRP and promotes individual actions to exclude the general interest of all creditors. Furthermore, the possibility of withdrawing the CIRP before the formation of the CoC can incentivise parties (like previous management) to postpone the formation of the CoC, thereby going against the objective of the Code for a timely resolution.

Furthermore, there is currently no outer timeline for seeking withdrawal of the application under Section 12A. Previously, the CIRP Regulations required submitting a Section 12A application before issuing an invitation for expression of interest during the CIRP; which was interpreted to be directory in nature. The absence of clear timelines for withdrawing the CIRP causes disruptions to the process, as applications for withdrawal of proceedings are filed at belated stages. For example, the tribunals have allowed the CoC to consider the option of Section 12A even after approving the resolution plan or during the liquidation period.

Further, if an application is withdrawn under Sections 7, 9, or 10, the CIRP will be closed, and the former CD management will be restored. It may also contradict the objectives of Section 29A, particularly when the withdrawal occurs while considering resolution plans from the market. Persons who file for CIRP withdrawal cannot be considered resolution applicants; therefore, the disqualification does not apply to them. Hence, if the former management is disqualified under Section 29A, they can still pursue an application under Section 12A as a last resort to retain the CD. This may discourage potential resolution applicants from submitting their plans.

It is crucial to have a certain and reliable process for conducting the CIRP to help stakeholders manage risks and make informed economic decisions. To build trust and confidence in the process, the

Code should not allow for the possibility of the CIRP being closed prematurely while negotiations for the CD's resolution are ongoing, especially for market participants. Therefore, the proposed amendment provides that no withdrawal be allowed after the first invitation for the submission of resolution plans. At that stage, the CoC has already deliberated on the financial affairs of the CD and come to the conclusion that a resolution shall be required; hence, that process, once initiated after due consideration by the CoC, should not come to a premature end.

Furthermore, this provision states that the AA “may” allow a withdrawal application. Therefore, the AA has the discretion to decide whether a matter is suitable for withdrawal. When an operational creditor is the applicant and their application is intended to be withdrawn, they may raise their objection, if any, before the AA. The notes on clauses to this clause explains that “The consent of the applicant who made these applications will not be required at the stage of filing the application for withdrawal, and he shall be provided an opportunity for hearing during the adjudication of this application before the Adjudicating Authority”.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.”

(iii) “The Bill provides that the application shall be withdrawn only after the constitution of the CoC and before the first invitation for resolution plan, providing adequate time for the CoC to consider withdrawal. The suggestion to mandate that a Section 12A withdrawal application must be approved “within 90 days from the date of constitution of the CoC” is not accepted. The proposed amendment to Section 12A already introduces a clear and balanced framework by restricting withdrawal to the period after CoC constitution and before the first invitation for resolution plans. Introducing an additional statutory 90-day outer limit is not necessary. The existing amendment sufficiently safeguards procedural efficiency. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.”

(iv)A. Response submitted by the Ministry was similar to that given at Para 8.5 (ii) of this Report.

(iv)B. Further, during their deposition before the Committee, the representatives of the Ministry submitted that :

"…Now, as far as the CIRP process is concerned, issues have been raised regarding withdrawal of the application after admission. It has been suggested that withdrawal should be allowed before the constitution of the CoC, and that the threshold should not be as high as 90 per cent. They want us to reduce the threshold. Our argument is that the amendment ensures that withdrawal is permitted only after the CoC is formed…
…What we are saying is that once the application is admitted, withdrawal will not be allowed. So, between the filing of the application and admission, which we hope will be completed within 14 days - if they manage to reach a settlement, they can withdraw. Once it is admitted, other stakeholders are also involved, and then it can only be withdrawn with the approval of the Committee of Creditors…
…The hon. Supreme Court has upheld this in a recent case - that unless the CoC is formed, only with CoC approval should withdrawal be allowed…"

8.6 Observations/Recommendations of the Committee:

8.6.1 The Committee note that Clause 8 of the Bill seeks to substitute Section 12A of the Code to provide that the Adjudicating Authority may allow an application admitted under sections 7, 9, or 10 to be withdrawn on an application made by the resolution professional with the prior approval of ninety per cent of the voting share of the Committee of Creditors (CoC). The amendment further mandates that such withdrawal of application admitted under the said clauses shall not be allowed either before the constitution of the Committee of Creditors under Section 21 of the Code or after the first invitation for submission of a resolution plan by the Resolution Professional, under any circumstances. Further, the clause provides for a period of thirty days for the Adjudicating Authority to decide on the withdrawal application, failing which, the reasons for such delay are required to recorded in writing.

8.6.2 The Committee reckon that the absence of clear timelines for withdrawing the CIRP causes disruption to process when applications for withdrawal are filed at belated stages. Further, since CIRP is an in-rem proceeding, it is essential for the CoC overseeing the process to be consulted before withdrawal of application or approval of any form of settlement. The Committee observe that the proposed amendment has been brought in place to remove misinterpretation of Section 12A which suggested that Adjudicating Authority may permit withdrawal of application before constitution of the Committee of Creditors under inherent powers of the Adjudicating Authority provided under Rule 11 of National Company Law Tribunal (NCLT) Rules. Further the amendment to Section 12A has also been proposed rectifying the issue of lack of outer time limit for filing an application seeking withdrawal. Thus, taking into account the concerns raised by the stakeholders and submissions made by the Ministry, the Committee, after thorough deliberations, accept the proposed amendment without any modification.

9. Clause 9 of the Bill seeks to amend Section 14 of the Principal Act.

9.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

14. (1) Subject to provisions of sub-sections (2), (2A) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

….

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor:

Explanation.– For the removal of doubts, it is hereby clarified that the provisions of sub-section (1) shall also apply where the surety seeks to initiate or continue any action or proceedings against the corporate debtor pursuant to a contract of guarantee.

9.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

14. (1) Subject to provisions of sub-sections *(2)* and *(3)*, on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

…

[7] [(3) The provisions of sub-section (1) shall not apply to —

[8][(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

9.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

Clause 9 of the Bill seeks to amend sub-section (1) of section 14 of the Code to clarify that the applicability of the moratorium under sub-section (1) shall also be subject to sub-section (2A) of section 14. It also seeks to insert an explanation into clause (b) of sub-section (3) of section 14 to clarify that the moratorium shall apply where the surety seeks to initiate or continue any action or proceedings pursuant to a contract of guarantee against the corporate debtor undergoing the corporate insolvency resolution process. Hence, the moratorium under section 14 will apply against the surety where, it seeks to initiate a proceedings against the corporate debtor pursuant to its right of subrogation in contravention of sub-section (1) of section 14.

9.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions are as follows :

> (i) "There is uncertainty on whether tax assessment and adjudication proceedings for pre CIRP period can validly continue during the CIRP. Current practice has led to conflicting judicial views, with some cases allowing continuation of assessment while others treating it as barred. Tax assessment during the CIRP period for a CD

[7] Subs. by Act No. 26 of 2018, sec. 10 (w.e.f. 6-6-2018). Before its substitution, it stood as under: - "(3) The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator."

[8] Subs. by Act No. 1 of 2020, sec.5 (w.e.f. 28-12-2019). Before substitution, it stood as "such transaction as may be notified by the Central Government in consultation with any financial regulator;"

as going concern, only, could be considered. The explanation could be amended accordingly."

(ii) "There is uncertainty on whether tax assessment and adjudication proceedings for pre CIRP period can validly continue during the CIRP. Current practice has led to conflicting judicial views, with some cases allowing continuation of assessment while others treating it as barred. Tax assessment during the CIRP period for a CD as going concern, only, shall be considered."

(iii) "Moratorium; Application to Surety and Subrogation Rights Although the Bill's inserted Explanation extends moratorium to sureties initiating proceedings, the language does not explicitly state suspension of the surety's 'right of subrogation', leaving scope for interpretative litigation on whether subrogation can be exercised post enforcement by guarantor. Recommendation It is suggested to codify working of Monitoring Committee and in order to insert an express clause in section 14 or as an Explanation stating: 'The right of subrogation of a surety or guarantor against the corporate debtor shall remain suspended during the corporate insolvency resolution process, and any action founded on such subrogation shall be barred unless expressly permitted in the approved resolution plan.'."

(iv) "Ambiguity Regarding Guarantor's Right to Initiate Action Against the Corporate Debtor After Moratorium or Resolution The proposed Explanation to Section 14(3)(b) clarifies that during the moratorium period, no surety or guarantor (individual or corporate) can initiate or continue any action or proceeding against the corporate debtor under a contract of guarantee. However, there is no clarity on the position after the moratorium ends - i.e., whether a guarantor can pursue recovery or subrogation against the corporate debtor once resolution is approved or liquidation is ordered. The "clean slate" principle under Section 31(6) suggests that all prior claims stand extinguished post- resolution, which may bar such actions. This ambiguity can lead to conflicting interpretations and litigation. Recommendation: Insert an additional clarificatory provision or explanation under Section 14 or Section 31 stating that the right of subrogation or recovery of a guarantor against the corporate debtor shall remain suspended not only during the moratorium but shall also stand extinguished upon approval of a resolution plan under Section 31(4), except where specifically provided in the plan. In the case of liquidation, the guarantor's right, if any, should be exercised only in accordance with the priority waterfall under Section 53."

9.5 Examination by the Committee:

Replies of the Ministry corresponding to the suggestions are as follows :

(i) "The current provisions of Section 14 already provide adequate protection regarding actions during moratorium, including those by revenue authorities. Introducing an additional clarification on tax assessment may be unnecessary and could create further interpretational complexities. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(ii) "The current provisions of Section 14 already provide adequate protection regarding actions during moratorium, including those by revenue authorities. Introducing an additional clarification on tax assessment may be unnecessary and could create further interpretational complexities. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(iii) "The right of subrogation under the Indian Contract Act, 1872, principally governed by Sections 140 and 141, allows a surety who has fulfilled the obligation of the principal debtor to step into the shoes of the creditor. This means the surety acquires all the rights and remedies that the creditor had against the principal debtor to recover the amount paid or to enforce any securities held by the creditor. The proposed explanation to section 14(3)(a) clarifies that the moratorium applies when a guarantor seeks to initiate any proceedings against the corporate debtor. Hence, if a guarantor seeks to initiate or continue a legal proceeding against the corporate debtor pursuant to a right of subrogation, the same will be prohibited by the moratorium. However, exercise of this right against the creditor is not restricted, and once a guarantor has fulfilled its obligation and paid all amounts to the creditor, it can claim from the corporate debtor during its CIRP by filing a claim with the interim resolution process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(iv) "The proposed explanation to section 14(3)(b) clarifies that moratorium will apply when a guarantor seeks to initiate a proceeding against the corporate debtor. Also, the proposed Explanation II to Section 31(6), provides that once a resolution plan is approved a guarantor cannot initiate an application on the basis of a resolved debt

pursuant to the right of subrogation or indemnification. The proposed Explanation I to Section 31(6) provides that post resolution the proceedings can continue against the promoter/guarantor. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

9.6 <u>Observations/Recommendations of the Committee:</u>

The Committee observe that Clause 9 of the Bill seeks to amend sub-section (1) of Section 14 of the Code which provides that the applicability of the moratorium under sub-section (1) shall also be subject to sub-section (2A) of Section 14 and it also seeks to insert an explanation into clause (b) of sub-section (3) of Section 14 to clarify that the moratorium shall apply where the surety seeks to initiate or continue any action or proceedings pursuant to a contract of guarantee against the corporate debtor undergoing the Corporate Insolvency Resolution Process (CIRP). The Committee, while agreeing with the intended purpose of the provisions proposed under this Clause, accept the clause in entirety without any modification.

10. Clause 10 of the Bill seeks to amend Section 16 of the Principal Act.

10.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

In section 16 of the principal Act,—

(*a*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Where the application for corporate insolvency resolution process is made by a financial creditor, the resolution professional, as proposed in the application under section 7, shall be appointed as the 40 interim resolution professional, if no disciplinary proceedings are pending against him.";

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) Where an application for the corporate insolvency resolution 45 process is made under section 10, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.";

(*c*) in sub-section (*4*), after the word, brackets and figure "sub-section (*3*)", the words, brackets, figure and letter "or sub-section (*3A*), as the case may be," shall be inserted.

10.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

16.

…

(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(4) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

10.3 Reasons / Justification given by the Ministry of Corporate Affairs for the proposed provision :

Clause 10 seeks to amend section 16 of the Code as a consequence of the amendments to section 10, wherein the right of the corporate debtor to propose an interim resolution professional is abrogated. In such cases, the AA shall make a reference to the Board for recommending an insolvency professional who may act as an interim resolution professional and accordingly appoint the interim resolution professional.

10.4 Important Views/Suggestions given by Experts/Stakeholders:

> "In Section 16 of the IBC, following sub-section (6) needs to be added : "(6) Interim Resolution Professional shall be a public servant within meaning of Section 2 (28) of Bhartiya Nayaya Sanhita, 2023."

10.5 Examination by the Committee:

> "The implications of making RP a public servant needs to be studied in detail. May not be taken up at this stage. Further, jurisprudence would guide future course of action."

10.6 Observations/Recommendations of the Committee:

The Committee understand that Clause 10 seeks to amend Section 16 of the Code as a consequence of the amendments to Section 10, wherein the right of the corporate debtor to propose an Interim Resolution Professional (IRP) is abrogated and in such cases, the Adjudicating Authority shall make a reference to the Board for recommending an Insolvency Professional who may act as an Interim Resolution Professional (IRP) and accordingly appoint the Resolution Professional. Concurring with the goal of the proposed legislation, the Committee accept the provisions proposed under the clause without any modification.

11. Clause 11 of the Bill seeks to amend Section 18 of the Principal Act.

11.1 Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

In section 18 of the principal Act, in clause (b),—

(*a*)after the words “submitted by creditors to him”, the words “in such manner as may be specified” shall be inserted;

(*b*)the following *Explanation* shall be inserted, namely:—

“*Explanation*.—For the removal of doubts, it is hereby clarified that the interim resolution professional, while collating the claims, shall verify them, and, if required, determine the value of such verified claims.”

11.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code,2016)

18. The interim resolution professional shall perform the following duties, namely: -

…

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

…

11.3 Reasons/Justification given by the Ministry of Corporate Affairs(MCA) for the proposed provision

Clause 11 of the Bill seeks to amend clause (*b*) of section 18 of the Code to clarify that the Board is empowered to specify the manner of collating the claims received from the creditors. It also seeks to insert an explanation in clause (*b*) of section 18 to clarify that while collating the claims, the interim resolution professional is empowered and obligated to verify the claims and, if required, determine the value of such verified claims. While collating claims, the interim resolution professional has the duty to verify them. In case the verified claim is not precise, the interim resolution professional shall determine the value of the verified claim. The amendment seeks to clarify this function, which will be carried out by the interim resolution professional, the resolution professional, or the liquidator, as applicable, in maintaining or updating the list of claims. The regulations will specify the circumstances in which this function should be performed and the manner in which it should be carried out.

11.4 Important Views/Suggestions given by Experts/Stakeholders

i. The feedback from stakeholders on clause 11focussed on the scope of delegated legislation and the powers of the Resolution Professional (RP) regarding the verification and valuation of claims.

ii. One of the stakeholders in a written submission argued that there should be due parliamentary process and submitted that" The regulations will specify the circumstances in which this function should be performed and the manner in which it should be carried out". It means regulations will play much more bigger role than Section, hence it is suggested this code should be read with regulations while proposing for amendment**.** The regulations or rules, must be pass through parliamentary process along with code.

iii. Another stakeholder suggested that the determination of the value of verified claim by resolution professional if backed by technical/expert advice may not be a subject of litigation. For the purpose of verification of claims received by an IRP during CIRP, the information submitted by the Creditors and the CDs and stored in IU, may be relied upon by the IRP, as per suggested addition to the Explanation:- "*For removal of doubts, it may further be clarified that the IRP while collating the claims may verify the information submitted by Creditors and CDs/Debtors and stored with IU, wherever available, to determine the value of such claims. "*Stakeholder further justified their stance by submitting that a similar provision existed as Regulation 14 of Insolvency Resolution Process for Corporate Persons. Though, in practice, post the *Essar Steel* judgement some of the disputed and contingent claims were being assigned a value of INR 1/-. However, for contingent and disputed claims, a determination by the resolution professional may result in litigation. Thus, for claims of technical nature, the resolution professional may, in addition, where required, take an expert opinion. Thereafter, a finality may be assigned to the determination, based on the backing of a technical expert.

iv. Clarify the treatment of disputed or contingent claims (as admitted by IRP/ RP) which have crystallised by the liquidation commencement date and remove the power of the IRP/RP to determine value of claims. The effect of these proposed amendments is that no new claims or additional claims may be added as of the liquidation commencement date. This particularly creates question related to treatment of disputed or contingent claims (as admitted by IRP/ RP) which have crystallised by the liquidation commencement date. By virtue of giving the power to determine the value of claims, the IRP/ RP may be accorded adjudicatory power in admission of claims. This goes against the settled position of law is that the IRP/RP can only verify claims and has no adjudicatory role in admissions of claims.

11.5 Examination by the Committee

i. The Ministry of Corporate Affairs furnished their comments on these suggestions, maintaining that the existing legal framework and proposed amendments are adequate. The details of the Ministry's responses are as follows:

> **"**All regulations made by IBBI are issued within the regulation-making framework prescribed under the Code, which includes prior public consultation and laying of such regulations before Parliament as mandated under Section 241 of the Code. Hence, the regulations made by IBBI are subject to appropriate parliamentary supervision and prior public consultation. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.**"**
>
> The proposed amendment to section 18 provides the IBBI power to specify, through regulations, manner in which the value of the claims is to be received and collated by the interim resolution professional. The CIRP Regulations already enable the IRP/RP to make a best estimate for contingent and disputed claims, and require the IRP to examine the supporting documents submitted by creditors. Specifying or listing the documents to be relied upon, or prescribing detailed verification sources such as IU records in the Code, may not be practical and could unduly constrain the professional's discretion. The existing statutory provisions and regulations are sufficient to guide the IRP in verifying and determining value of claims. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.
>
> Claim collection process between the CIRP and Liquidation is synchronised to avoid duplication. IRP has to verify claims and determine their value while collating them, and the regulations will provide the detailed procedure. The concept of determination of claims is presently also provided in Regulation 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, for CIRP and section 41 of the IBC for liquidation. Determining the value of claims will not be required in all cases, and only relevant when the claim value is not precise. Further, as per the proposed amendments to section 35, the liquidator has the power and duty to maintain an updated list of claims of creditors during the liquidation process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.**"**

ii. Representatives of Ministry of Corporate Affairs (MCA) and Insolvency and Bankruptcy Board of India(IBBI) during the oral evidences further elaborated on their written submissions and submitted that:

"..the powers of the Interim Resolution Professional (IRP) or the Resolution Professional (RP) regarding claim verification and determination, which we are proposing to remove from the Code and continue only in the regulations. Stakeholders want these powers to be codified in the law itself, and not specified only in the regulations. They also say that the RP should not have the power to determine the value of claims, and that the powers currently available to the liquidator in the liquidation process should be retained.

Our view is that the claim collection process currently takes place twice: first during the CIRP process, where the RP collects and verifies claims, and then again during liquidation. To expedite the liquidation process, especially as timelines have already been proposed, this duplication can be removed. The IRP will verify and determine the value of claims, as already provided in the regulations. The liquidator will only update the list of creditors' claims, if any changes are required.(verb 21.11 (FN), pg 44,)

..what we can do is that we can have a specific look at what the regulation says regarding the intimation to the people, who have filed a claim and see whether it should be made available online or should an email or message will be sent that the information has been updated or not….

…refers to the duties of the Interim Resolution Professional (IRP), and seeks clarification that, to remove doubt, it may be expressly stated that while collating claims, the IRP may verify information submitted by creditors, the Corporate Debtor, and debtors, including information available with Information Utilities (IUs). Our position is that this is already provided for in the CIRP Regulations and through IBBI's regulatory framework. Therefore, such clarification may not be required."

iii. In another written submission Ministry have submitted to the Committee that:

"The BLRC in its Report has noted that the RP must provide the most updated information about the entity as accurately as is reasonably possible to this range of solution providers. In order to do this, the RP has to be able to verify claims to liabilities as well as the assets disclosed by the entity. The proposed amendment is required to enable the RP to carry out this function. Further, the regulations will specify the circumstances and manner in which the IP performs this function, thus addressing the detailed procedural realities of claim revision and CoC stability.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

11.6 Observations/Recommendations of the Committee

11.6.1 The Committee, after thorough examination of Clause 11 of the Bill and considering the justification furnished by the Ministry of Corporate Affairs, note that the clause amends Section 18 of the principal Act to mandate the interim resolution professional to verify claims and, if required, determine their value, in such manner as may be specified. The Committee observe that this framework empowers the Insolvency and Bankruptcy Board of India to prescribe the detailed procedure for collation and verification of claims through regulations. The Committee further note that the proposed provisions are intended to synchronize the claim collection process between the Corporate Insolvency Resolution Process (CIRP) and the Liquidation process, thereby eliminating the need for fresh invitation and verification of claims during liquidation and avoiding procedural duplication. The Committee also take note of the Ministry's clarification that this amendment is necessary to expedite the liquidation timeline and that the liquidator will henceforth only be required to maintain an updated list of claims based on the verification already conducted by the resolution professional.

11.6.2 At the same time, the Committee underscore that the effectiveness of this synchronized claim verification framework will depend significantly on the design of the regulations framed by the Board. The Committee are of the opinion that, while framing the regulations for operationalising this mechanism, the framework must be tailored to ensure that the power vested in the resolution professional to "determine" the value of claims is exercised with objective clarity to minimize the scope for subjectivity and resultant litigation. The Committee recommend that the regulation-making process should ensure that the transition of verified claims from the resolution process to the liquidation phase is seamless and enhances efficiency without inadvertently creating friction between stakeholders. Thus, after considering the replies of the Ministry and noting that the proposed provisions establish a streamlined mechanism consistent with the objective of time-bound

resolution, the Committee are of the view that the amendment under Clause 11 is appropriate. Accordingly, the Committee accept the amendment in its present form.

12. Clause 12 of the Bill seeks to amend Section 19 of the Principal Act.

12.1 <u>Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025</u>

In section 19 of the principal Act,—

(*a*)in the marginal heading, for the word “Personnel”, the word “Persons” shall be substituted;

(*b*)for sub-section (*1*), the following sub-section shall be substituted, namely:—

“(*1*) Any person who is or has been a personnel of the corporate debtor or its promoter or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the interim resolution professional as may be required by him for the purposes of managing the affairs of the corporate debtor or performing the duties conferred on him under this Chapter.”;

(*c*)in sub-section (*2*), for the words “any personnel of the corporate debtor, its promoter”, the words, brackets and figure “any person referred to in sub-section (*1*)” shall be substituted.

(*d*)in sub-section (*3*)—

(*i*)for the words “direct such personnel”, the words, brackets and figure “direct such person referred to in sub-section (*1*)” shall be substituted;

(*ii*)for the words “resolution professional”, the words “interim resolution professional” shall be substituted;

(*e*)after sub-section (*3*), the following *Explanation* shall be inserted, namely:—

“*Explanation*.—For the purposes of this section, it is hereby clarified that references to the interim resolution professional shall also include references to the resolution professional.”

12.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)</u>

19. Personnel to extend co-operation to interim resolution professional. -

19. Personnel to extend cooperation to interim resolution professional

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

12.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

Clause 12 of the Bill seeks to amend section 19 of the Code to provide the categories of persons required to extend assistance to and cooperate with the interim resolution professional. These categories will include any person who is or has been (*i*) personnel of the corporate debtor, (*ii*) its promoter, (*iii*) associated with the management of the corporate debtor, or (*iv*) engaged in a contract for service with the corporate debtor. Constructive cooperation from the aforementioned categories will enable the interim resolution professional to manage the affairs of the corporate debtor and perform his duties effectively, such as collecting information for purposes such as the conduct of the corporate insolvency resolution process, filing applications for the avoidance of transactions, etc. In case these persons fail to assist or cooperate, an application may be submitted to the Adjudicating Authority to direct them, and, if necessary to ensure compliance, any other related persons connected to them, to comply with the instructions issued by the resolution professional and to cooperate with him. It is also clarified that the provisions of section 19 apply to the interim resolution professional as well as the resolution professional.

12.4 Important Views/Suggestions given by Experts/Stakeholders

i. One stakeholder suggested that along with this, there must be provision where IRP/RP/LIQ can seek protection from local police, or authorities while taking handover of custody or to take control on CD property.

ii. Regarding the scope of persons required to cooperate, a suggestion was made that the past personnel of the corporate debtor may be excluded from the ambit of Section 19(1) or a capping on the look back period for seeking cooperation from such past employees may be done. The phrase "*a person who has been a personnel*" is overly

broad and may extend to individuals long separated from the company, creating unenforceable demands and needless disputes.

iii. Stakeholders also raised concerns regarding the lack of transparency at the pre-admission stage. It was submitted that "Section19(1) of the IBC requires personnel and promoters of the corporate debtor to extend cooperation and provide information or documents to the Interim Resolution Professional (IRP). However, there is no specific obligation on them to submit the books of accounts of the corporate debtor at the pre-admission stage when defending anapplicationunderSection7or9. This results in lack of transparency and hinders the Adjudicating Authority's ability to verify defaults or evaluate the financial position of the debtor. Without prior access to records, NCLT's decision-making becomes time-consuming and prone to incomplete information.

a) Authorize IBBI to define "non-cooperation" objectively in the Regulations.
b) Provide fast-track process for RPs to seek compelled cooperation.
c) Strict timelines and penal provisions be introduced for non-compliance of Adjudicating Authority's Order in case of non-cooperation.

Further, it may be mandated to debar the directors from filing any application under the Code until such time the application u/s 19(2) against them is disposed of by the court. In sec 7, 9 & 10 there should be amendment that promoters or CD can represent only when they deposit their 2 years books of accounts at NCLT or NCLAT or any agency as may be designated. Stakeholder justified it by adding that This will ensure compliance with the spirit of Section 19(2) (cooperation with the IRP) and enhance transparency, accountability, and procedural efficiency in admission proceedings. This will reduce many applications during CIRP before the bench."

iv. A suggestion was made that after Section 19(1), following may be included: The corporate debtor shall submit "statement of affairs" as a part of reply for the initiation of Section 7/9 application with the Adjudicating Authority. The proposed suggestion would substantially reduce the non-cooperation issues and would assist the Insolvency Professional in discharging his duties effectively under the Code.

v. A specific concern was raised regarding the impact on real estate companies. Stakeholders submitted that the amendment unreasonably expands liability to an indefinite range of persons including former promoters, consultants, contractors, architects, and service providers who are not part of management. In real- estate companies, this will expose hundreds of external Professionals and landowners to coercive proceedings. Such retrospective and indefinite liability is arbitrary, violative of natural justice, and will deter professional participation in real-estate projects. Cooperation should be required only from those presently managing or controlling the corporate debtor.

vi. Regarding enforcement, stakeholders suggested that the Code must equip the Adjudicating Authority with stronger, *direct* powers to enforce compliance with Section

19.Suggested Wording (as a new sub- section (4) in Section 19):to address the *primary* weakness of Section 19: the lack of effective enforcement. Even after an AA order under Sec 19(3), non- cooperative promoters often continue to delay and dissimulate. The IP's only recourse is to file for contempt of court, which is a slow, separate, and often ineffective proceeding, allowing significant value destruction to occur in the interim.

"(4) Notwithstanding anything contained in any other law, where any person referred to in sub-section

(1) willfully fails to comply with an order of the Adjudicating Authority under sub-section (3), the Adjudicating Authority shall have the powers, inter alia, to issue directions for arrest and detention, attach the personal assets of such person, or pass any other order as may be necessary to secure compliance." Stakeholder further suggested that an IP's ability to take control of accompany and trace assets is the foundation of a successful CIRP. Granting the AA direct and stringent powers (beyond contempt) will act as a real deterrent and provide a swift remedy against errant promoters, preventing them from derailing the CIRP through non-cooperation.

vii. Another stakeholder in a written submission to the Committee stated that "(1) Subject to sub-section (2), the adjudicating Authority shall may allow the withdrawal of an application admitted under section 7, 9 or 10, on an application made by the resolution professional, with the approval of ninety per cent. voting share of the committee of creditors in such manner as may be specified. Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing. The scenarios and the maximum permissible timeline for each of the scenarios, where such period beyond thirty days is permissible, shall be notified by the Board. In consistency with the amendment made to Sections 7(5) and 9(5), the explicit discretion available with the AA to allow withdrawal of an application may be dispensed with by substituting the word 'may' by 'shall'. We do not have concerns on the amendment prescribing 30-day timeline for AA to decide on the application. To avoid any undue delays, it may be better for IBBI to notify as part of the rules, the scenarios and maximum timeline under each scenario, that is permissible, where AA can exceed the timeline specified under this sub-section.

12.5 Examination by the Committee

i. The Ministry, in response to the suggestion regarding police protection, submitted that the

> Section 19(3) empowers the AA to issue suitable orders to seek cooperation. In case of non-compliance with the AA or NCLT's orders, provisions of the Companies Act, 2013, can be invoked, such as contempt powers under section 425 of the Companies Act, 2013, or the power to seek assistance from the Chief Metropolitan Magistrate to take custody or control of property, books of account, or other documents under section 429 of the

Companies Act, 2013. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

ii. Regarding the suggestions to exclude past personnel or limit the scope of persons required to cooperate, the Ministry submitted that:

> **"**The proposed amendments to section 19 of the Code seek to provide categories of persons required to extend assistance to and cooperate with the interim resolution professional. These categories will include any person who is or has been (i) personnel of the corporate debtor, (ii) its promoter, (iii) associated with the management of the corporate debtor, or (iv) engaged in a contract for service with the corporate debtor. Constructive cooperation from the aforementioned categories will enable the interim resolution professional to manage the affairs of the corporate debtor and perform his duties effectively, such as collecting information for purposes such as the conduct of the corporate insolvency resolution process, filing applications for the avoidance of transactions, etc. Furthermore, information related to the corporate debtor or a specific transaction is often available from former personnel of the CD, promoters, or individuals involved in the management of the CD. Therefore, such cooperation is valuable for the interim resolution professional to perform its functions and duties effectively. Additionally, the interim resolution professional must manage the corporate debtor's operations as a going concern under section 20(1). For this purpose, cooperation from not only the personnel and employees of the corporate debtor but also from individuals engaged in the contract for service is of utmost importance. If someone refuses to cooperate, the law requires the interim resolution professional to seek assistance from AA, and whether cooperation is necessary can be assessed on a case-by-case basis. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

iii. Ministry on the suggestion regarding pre-admission submission of books submitted that

> **"**The suggestion to mandate books submission pre-admission in Section 7 or 9 defenses is not required because existing provisions already address the lack of transparency at the admission stage. The reliance on IU records, especially for financial institutions, is deemed sufficient proof to ascertain default, accelerating admission and reducing reliance on the CD's books pre-admission. The suggestion detailing mechanisms like defining "non-cooperation," introducing a fast-track process, and mandating pre-admission deposit of books is not necessary because Clause 12 and other related amendments sufficiently address these issues by strengthening

existing statutory and regulatory tools. Clause 12 expands the categories of persons obligated to cooperate to include past and present personnel, promoters, and contractors, ensuring the Resolution Professional (RP) has the broadest possible power to seek information for managing the Corporate Debtor (CD).If cooperation fails, the current framework under Section 19(2) and 19(3) already enables the IP to apply to the Adjudicating Authority (AA) for necessary directions to compel cooperation. Furthermore, new sections introduce penalties (up to two crore rupees) for initiating frivolous or vexatious proceedings, deterring non-cooperative behavior and misuse of the legal process. Finally, the need for mandatory pre-admission deposit of books is mitigated by amendments strengthening the Information Utilities (IUs), which mandate creditors to submit authenticated debt records, thus accelerating the AA's decision-making process based on external, verified proof of default. Any additional requirement could also be specified by IBBI through regulations as per requirement. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

iv. Ministry on the suggestion regarding statement of affairs submitted that:

"The amendment in Clause 12 sufficiently addresses the need for information post-admission by broadening the scope of cooperation under Section 19(1) to include promoters, past and present personnel, and service contractors. This expansion ensures the Interim Resolution Professional (IRP) can effectively collect all necessary documents and manage the CD's affairs after the process commences. Furthermore, the Bill aims to streamline the admission process (Clauses 4 and 5) by requiring the Adjudicating Authority (AA) to admit applications mandatorily once default is established. The reliance for proving default is shifted toward authenticated records furnished by Information Utilities (IUs), particularly from financial institutions, which are considered sufficient proof of default. Introducing a "statement of affairs" pre-admission would burden the AA with complex verification, causing unnecessary delays in the fourteen-day admission window, contrary to the core objective of the Code to ensure timely initiation. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

v. Ministry on the suggestion regarding real estate companies submitted that

"The proposed amendments to section 19 of the Code seek to provide categories of persons required to extend assistance to and cooperate with the interim resolution professional. These categories will include any person who is or has been (i) personnel of the corporate debtor, (ii) its promoter, (iii) associated with the management of the corporate debtor, or (iv)

engaged in a contract for service with the corporate debtor. Constructive cooperation from the aforementioned categories will enable the interim resolution professional to manage the affairs of the corporate debtor and perform his duties effectively, such as collecting information for purposes such as the conduct of the corporate insolvency resolution process, filing applications for the avoidance of transactions, etc. Furthermore, information related to the corporate debtor or a specific transaction is often available from former personnel of the CD, promoters, or individuals involved in the management of the CD. Therefore, such cooperation is valuable for the interim resolution professional to perform its functions and duties effectively. Additionally, the interim resolution professional must manage the corporate debtor's operations as a going concern under section 20(1). For this purpose, cooperation from not only the personnel and employees of the corporate debtor but also from individuals engaged in the contract for service is of utmost importance. If someone refuses to cooperate, the law requires the interim resolution professional to seek assistance from AA, and whether cooperation is necessary can be assessed on a case-by-case basis with sufficient judicial oversight. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

vi. Ministry on the suggestion regarding stronger enforcement powers submitted that the considering the civil nature of this legislation, the AA may not be appropriate to order arrest or detention. Section 19(3) empowers the AA to issue suitable orders to seek cooperation. In case of non-compliance with the AA's orders, provisions of the Companies Act, 2013, can be invoked, such as contempt powers under section 425 of the Companies Act, 2013, or the power to seek assistance from the Chief Metropolitan Magistrate to take custody or control of property, books of account, or other documents under section 429 of the Companies Act, 2013.Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

vii. Ministry on the suggestion regarding withdrawal of application submitted that:

"Once the CIRP is initiated under an application filed under sections 7,9, and 10, the proceedings are in rem, thereby affecting the rights of persons beyond those who were parties to the application for initiating the proceedings. Withdrawal is an exception to the initiation of CIRP, and when a withdrawal application is being considered, the AA may need to have appropriate jurisdiction to consider the objections of creditors, especially the applicant whose application is being withdrawn, in accordance with the principle of natural justice. As explained in the notes on clauses to this clause "The consent of the applicant who made these applications will not be required at the stage of filing the application for withdrawal, and he shall be provided an opportunity for hearing during the adjudication of this

application before the Adjudicating Authority". The subjectivity involved in these cases requires the AA to have suitable discretion. Accordingly, the word "may" is more appropriate in place of "shall". IBBI's power to specify the manner under this section is to establish the procedure for filing an application by the RO, along with other related procedural details. It does not grant the IBBI the authority to determine how the AA shall conduct adjudication, as this remains an exclusive and independent jurisdiction of the AA. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

viii. Representatives of Ministry and IBBI during the course of oral evidence further clarified their positions as under:

> *"Expanding the obligation to cooperate to a larger range of persons which we are proposing, including former promoters and those engaged in contract of service, is found to be unreasonable and violates the principles of natural justice.*
> *Our submission here is that this proposed amendment ensures that the insolvency professional gets whatever information requires to prepare an information memorandum and which would often be available with former personal former service providers, who are engaged over a period of two years or five years. There is adequate judicial oversight which we have put into this so that there is no misuse of this provision….*
> *….I Just want to reiterate this point. There is no harassment because each person, that the RP proposes to call for getting information, will have to be approved by both the Adjudicating Authorities so there will be no misuse of the provision.*

ix. When asked by the Committee, DFS highlighted the change regarding the determination of the value of claims, noting it is no longer mandatory in all cases to save time, and submitted before the Committee as under:

> *"As regards Section 18(B), there is a process of collation, verification, and subsequent determination also. The determination process is not made mandatory now. So, with verification, if the claims are verified and agreed upon, then, there is no mandatory determination required. So, this will save the time."*

x. RBI expressed their views before the Committee, suggesting that verification and valuation should be mandatory to strengthen the IRP's role and gave the following submission:

"The Interim Resolution Professional (IRP) is required to collate certain claims, and there is a Clause stating that, "If Required", he will value the claims. When the IRP is collating the claims and ascertaining their validity, it is presumed that the valuation aspect automatically gets addressed. Therefore, we would request that the phrase "If Required" be dropped and that the verification and valuation of claims be made mandatory. This will strengthen the IRP's role and bring greater clarity to the process. This will strengthen the IRP's role and bring greater clarity to the process."

xi. Ministry further clarified their position on the Clause with the following written submission:

"The suggestion to mandate books submission pre-admission in Section 7 or 9 defenses is not required because existing provisions already address the lack of transparency at the admission stage. The reliance on IU records, especially for financial institutions, is deemed sufficient proof to ascertain default, accelerating admission and reducing reliance on the CD's books pre-admission.

The suggestion detailing mechanisms like defining "non-cooperation," introducing a fast-track process, and mandating pre-admission deposit of books is not necessary because Clause 12 and other related amendments sufficiently address these issues by strengthening existing statutory and regulatory tools.

Clause 12 expands the categories of persons obligated to cooperate to include past and present personnel, promoters, and contractors, ensuring the Resolution Professional (RP) has the broadest possible power to seek information for managing the Corporate Debtor (CD).

If cooperation fails, the current framework under Section 19(2) and 19(3) already enables the IP to apply to the Adjudicating Authority (AA) for necessary directions to compel cooperation. Furthermore, new sections introduce penalties (up to two crore rupees) for initiating frivolous or vexatious proceedings, deterring non-cooperative behavior and misuse of the legal process.

Finally, the need for mandatory pre-admission deposit of books is mitigated by amendments strengthening the Information Utilities (IUs), which mandate creditors to submit authenticated debt records, thus accelerating the AA's decision-making process based on external, verified proof of default. Any additional requirement could also be specified by IBBI through regulations as per requirement. Hence, the provision in the Insolvency and

Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change." (sr no 14, Batch &II partially accepted)

12.6 Observations/Recommendations of the Committee

12.6.1 The Committee, having scrutinized Clause 12 of the Bill, note that it proposes to amend Section 19 of the Code to broaden the array of persons required to assist and cooperate with the interim resolution professional. The proposed amendment encompasses not only current personnel but extends to past personnel, promoters, and individuals engaged in a contract for service. The Committee took note of the apprehensions expressed by stakeholders regarding the potential for this expanded scope to be used coercively against former employees or external consultants. However, the Committee acknowledge the Ministry's stance that such an expansion is critical for the resolution professional to gather comprehensive information about the corporate debtor's affairs.

12.6.2 At the same time, the Committee take on record the Ministry's clarification that while specific statutory amendments for pre-admission information submission were not considered necessary, any additional requirements regarding the manner and extent of cooperation can be specified by the Insolvency and Bankruptcy Board of India through regulations. The Committee are of the opinion that this regulatory flexibility will allow for a nuanced implementation that balances the need for information with appropriate procedural safeguards. In light of the above, and noting the enabling framework for the Board to prescribe necessary requirements, the Committee endorse the amendment proposed in Clause 12 and accept it without any modifications.

13. Clause 13 of the Bill seeks to amend Section 21 of the Principal Act.

13.1 Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

In section 21 of the principal Act, after sub-section (10), the following sub-section shall be inserted, namely:—

"(11) Where the liquidation process of the corporate debtor is initiated under Chapter III, the committee of creditors constituted under this section shall also supervise the conduct of the liquidation process by the liquidator, and the provisions of this section and section 24 shall apply to such liquidation process under Chapter III as the context may require:

Provided that the Board may specify any other class or classes of creditors, who may attend the meetings of the committee of creditors during liquidation process, but shall not have any right to vote in such meetings.

Explanation.—For the purposes of Chapter III, it is hereby declared that the provisions of sub-section (11) of this section, section 34A and sub-section (2) of section 35, as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall apply to—

(a) the liquidation process of a corporate debtor initiated after the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025; and

(b) the ongoing liquidation process of a corporate debtor as on such date of commencement, where the liquidator has not made an application under section 54, for which the committee of creditors shall continue for the remainder of the liquidation process."

13.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)

21. …..

13.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

Clause 13 of the Bill seeks to amend section 21 of the Code to enable the committee of creditors constituted during the corporate insolvency resolution process to supervise the conduct of the liquidation process by the liquidator. The committee of creditors would be able to incorporate the learnings acquired during the corporate insolvency resolution process regarding the status of the corporate debtor into supervising the conduct of the liquidation process thereby directing the liquidator in taking efficient commercial decisions to liquidate the assets. It also seeks to empower the Board to specify any other class or

classes of creditors who may attend the meetings of the committee of creditors during the liquidation process in addition to its participants during the corporate insolvency resolution process. However, such specified creditors will not have a right to vote in the meetings.

13.4 Important Views/Suggestions given by Experts/Stakeholders

i. The Committee received various memoranda and oral submissions regarding the proposed amendment to Section 21, which empowers the Committee of Creditors (CoC) to supervise the liquidation process. Stakeholders raised concerns regarding the potential disenfranchisement of Operational Creditors and MSMEs, the clarity on the scope of "supervision," and the balance of power between the CoC and the liquidator. Some of the suggestions are:

ii. With the intend of the code to discourage the liquidation of CD, it would be more appropriate to discard the liquidation process from the Code itself, rather it may rejuvenate process in fag end of CIRP with different name.

iii. It may be suggested that a clarification be added to Section 21(11) that the secured creditors who have not relinquished their security interest may not be part of the liquidation process decision making.

iv. Amendment enables CoC constituted during the resolution process to supervise the conduct of liquidation process by the liquidator. Strengthen MSME Representation in CoC: Consider creating a minimum representation or voting rights for MSME creditors within the CoC to ensure their interests are not overshadowed by larger financial creditors. Require clear disclosure of CoC decisions and rationale, so interests of MSMEs and other smaller creditors are considered. Stakeholder further submitted that the CoC's role has been further strengthened, with new powers to supervise the liquidation process, and an ability to replace the liquidator with a 66% vote. MSME creditors being “Operational Creditors” are not part of CoC and therefore will have no say in the liquidation process. In high-profile cases such as Bhushan Steel, judicial interventions have repeatedly exposed the weaknesses of creditor-driven resolution.

v. One of the stakeholders suggested regarding the Transitional Clarity and Balance of Powers in Supervised Liquidation Framework:

> a) Explain/clarify “supervise the conduct of the liquidation process by the liquidator”.(b) Clarify whether supervision means oversight, advisory input, or approval powers? (Scope) (c) Specify stage when CoC supervision begins? What is the trigger point? Consistently in liquidation powers of the liquidator are being reduced. This will be again giving power to the COC members who has already failed twice, once at the actual lending time and post lending monitoring then in 2nd failure to resolve in CIRP. (d) The Government shall not rely too much on the failed FC’s in liquidation also. (e) Secondly the responsibility of the liquidator should also be reduced in balance with reduction in the powers.

The phrase “supervise the conduct of liquidation by the liquidator” must be defined to specify whether it implies oversight, advisory, or approval powers, and from which stage such supervision begins. Progressive reduction in the liquidator’s powers risks over-empowering the CoC, whose members have already failed in lending and CIRP resolution stages. Excessive CoC control may compromise efficiency and independence in liquidation. Correspondingly, any reduction in powers must be balanced with a reduction in the liquidator’s responsibility and liability.

CoC Role in Liquidation: The Bill rightly continues the CoC into liquidation to provide supervision, replacing the Stakeholders' Consultation Committee (SCC). However, this completely disenfranchises. Operational Creditors (OCs) and other stakeholders who had at least a consultative role in the SCC. ACoC comprised solely of Financial Creditors (FCs) may supervise the liquidation (e.g., asset sales) only to its own benefit, ignoring the interests of OCs. The proposed amendment to continue the CoC should be modified to ensure representation for key non-FC stake holders. The provision should mandate the inclusion of one representative for employees and one representative for government dues (or operational creditors) in the supervising committee, granting them defined, limited voting rights**.**

13.5 Examination by the Committee

i. During the briefing meeting on the subject representatives of the Ministry informed the Committee as under:

> *“In case of contravention of a resolution plan, as of today, liquidation is ordered but however they may, if they want, reinstate the CIRP. As I had mentioned earlier, the CIRP and liquidation were taken as two separate processes. We are making it into a continuum. Therefore, we also propose that the CoC which was formed in the CIRP process continues to exercise his commercial wisdom and not give the liquidator a free run during the liquidation process also. In fact, the liquidation process is now taking more than two years and the value is coming down. May be, this will help us.”*

ii. Ministry on the suggestion regarding discarding the liquidation process submitted that:

> **“**Every insolvency law should include a liquidation process, as it provides a clear, legally structured method to orderly wind up an insolvent entity when reorganisation or revival is not feasible. This process enables a fair and transparent distribution of the debtor’s assets to creditors, protecting stakeholders’ interests and ensuring legal certainty. It also safeguards

economic stability by allowing an orderly exit mechanism and maximises the value recoverable from the insolvent entity. A similar practice is observed in most developed jurisdictions, like Chapter 7 of the Bankruptcy Code (US), Part IV of the Insolvency Act, 1986 (UK) and Part 8 of the Insolvency, Restructuring and Dissolution Act, 2018 (Singapore). Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

iii. Ministry on the suggestion regarding secured creditors submitted that:

"During the CIRP, the CoC is formed based on the claims of the creditors, rather than the security interests they hold. A similar understanding will continue during the liquidation process, and this issue will be clarified in the regulations. For instance, if a person decides to realise the security interest outside the liquidation process, his claim may be limited to any residual amount that is pending after realisation of the security interest, and may form part of the CoC only for such part. This oversight ensures that commercial matters benefit from the creditors' wisdom. The CoC in CIRP consists primarily of financial creditors. Crucially, the amendment allows the Board (IBBI) to specify "any other class or classes of creditors" who may attend CoC meetings during liquidation. However, such specified creditors will not have a right to vote in the meetings. This provision provides the Board the flexibility to include relevant stakeholders. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

iv. Ministry on the suggestion regarding MSME representation submitted

"The intent of extending the role of the CoC to supervise the conduct of the liquidation process by the liquidator is to incorporate the learnings acquired during the corporate insolvency resolution process regarding the status of the corporate debtor into supervising the conduct of the liquidation process thereby directing the liquidator in taking efficient commercial decisions to liquidate the assets. Accordingly, the CoC, as constituted under Section 21 for CIRP, is extended to the liquidation process. Furthermore, to ensure wider representation, the proviso to proposed subsection (11) of Section 21 empowers the IBBI to specify any other class or classes of creditors who will have attendance rights at the meetings of the CoC during the liquidation process. Accordingly, the representation of other creditors, including operational creditors, in addition to those mentioned under Sections 21 and 24, shall be considered part of the regulations as non-voting members. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

v. Ministry on the suggestion regarding transitional clarity and powers submitted that:

> "The intent of extending the role of the CoC to supervise the conduct of the liquidation process by the liquidator is to incorporate the learnings acquired during the corporate insolvency resolution process regarding the status of the corporate debtor into supervising the conduct of the liquidation process thereby directing the liquidator in taking efficient commercial decisions to liquidate the assets. Accordingly, the CoC, as constituted under Section 21 for CIRP, is extended to the liquidation process. Furthermore, to ensure wider representation, the proviso to proposed subsection (11) of Section 21 empowers the IBBI to specify any other class or classes of creditors who will have attendance rights at the meetings of the CoC during the liquidation process. Accordingly, the representation of other creditors, including operational creditors, in addition to those mentioned under Sections 21 and 24, shall be considered part of the regulations as non-voting members. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change**.**

vi. Representatives Ministry of Corporate Affairs (MCA) and Insolvency and Bankruptcy Board of India (IBBI)during the course of oral evidence gave further clarifications on the suggestions of the stakeholders as under:

> *"Amendment to Section 21 and introduction of Section 34A extend the CoC's role to supervise the conduct of liquidation process, which encroaches upon the independence of the liquidator. Further, more clarity is required on the claim collection and verification powers of the liquidator. Here our submission is that extending the CoC's role into liquidation is essentially to let the commercial wisdom of the CoC to guide.*

vi. Responding to the suggestion regarding discarding the liquidation process Ministry of Corporate Affairs (MCA) and Insolvency and Bankruptcy Board of India (IBBI)during the course of oral evidence gave further clarifications as under:

> *"…..They have proposed that the AA should mandatorily allow withdrawal, replacing the word "May" with "Shall". However, we have retained the word "May" so that the Adjudicating Authority may exercise discretion depending on the case.…They propose that it should be "Shall", but we maintain that "May" is more appropriate, as the judiciary must have the discretion to determine whether withdrawal is appropriate or whether any mala-fide intent exists……Their position is that if 90 per cent of the Committee of Creditors (CoC) votes in favour of withdrawal, the AA should automatically permit it. However, under the present provision, the AA "May" decide to allow withdrawal…..There could be a situation where an Operational Creditor has filed a claim, but 90 per cent of the Financial Creditors wish to*

withdraw. In such a case, the Operational Creditor should be given an opportunity to present their case. It is also possible that some Financial Creditors may be unregulated entities…… minority stakeholders should at least have the opportunity to be heard. The existing provision allows the AA to ensure that…..The intention is to protect minority creditors within the CoC…..The provision merely allows the remaining 10 per cent to be heard. It is a question of natural justice and ensuring they are not prejudiced……since the intent of the Code is to discourage liquidation, the liquidation process should be discarded. However, the scheme of the Code is that liquidation follows if CIRP fails. Therefore, liquidation proceedings must remain within the IBC framework, and we have not accepted this proposal.

vii. Ministry of Corporate Affairs have given further clarifications on their stance as under:

During the CIRP, the CoC is formed based on the claims of the creditors, rather than the security interests they hold. A similar understanding will continue during the liquidation process, and this issue will be clarified in the regulations. For instance, if a person decides to realise the security interest outside the liquidation process, his claim may be limited to any residual amount that is pending after realisation of the security interest, and may form part of the CoC only for such part. This oversight ensures that commercial matters benefit from the creditors' wisdom. The CoC in CIRP consists primarily of financial creditors. Crucially, the amendment allows the Board (IBBI) to specify "any other class or classes of creditors" who may attend CoC meetings during liquidation. However, such specified creditors will not have a right to vote in the meetings. This provision provides the Board the flexibility to include relevant stakeholders. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

The intent of extending the role of the CoC to supervise the conduct of the liquidation process by the liquidator is to incorporate the learnings acquired during the corporate insolvency resolution process regarding the status of the corporate debtor into supervising the conduct of the liquidation process thereby directing the liquidator in taking efficient commercial decisions to liquidate the assets. Accordingly, the CoC, as constituted under Section 21 for CIRP, is extended to the liquidation process. Furthermore, to ensure wider representation, the proviso to proposed subsection (11) of Section 21 empowers the IBBI to specify any other class or classes of creditors who will have attendance rights at the meetings of the CoC during the liquidation process. Accordingly, the representation of other creditors, including operational creditors, in addition to those mentioned under Sections 21 and 24, shall be considered part of the regulations as non-voting members.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

The explanation in section 22(11) provides that the amendments concerning the role of the CoC during the liquidation process will apply to both liquidation procedures that begin after the amendments take effect and ongoing liquidations where the liquidator has not filed for dissolution under section 54. The amendments are being applied to the ongoing proceedings to ensure their benefits are also used in the pending liquidation processes. It is clearly provided that the CoC shall continue for the remainder of the liquidation to ensure that the procedures already completed prior to the implementation of the amendments are not affected. The liquidator already maintains a list of claims for the purposes of the liquidation process, and the CoC can be formed based on the same. Furthermore, if any difficulties arise, the Central Government will issue appropriate orders that are necessary or expedient to remove the difficulty under Section 242, as amended by Clause 68 of the Amendment Bill. Second Suggestion: During the CIRP, the CoC is formed based on the claims of the creditors, rather than the security interests they hold. A similar understanding will continue during the liquidation process, and this issue will be clarified in the regulations. For instance, if a person decides to realise the security interest outside the liquidation process, his claim may be limited to any residual amount that is pending after realisation of the security interest, and may form part of the CoC only for such part. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change**.**

13.6 Observations/Recommendations of the Committee

13.6.1 The Committee, having examined Clause 13 of the Bill, note that it introduces a new sub-section (11) to Section 21 of the Code, extending the role of the Committee of Creditors (CoC) to supervise the conduct of the liquidation process. The Committee observe that this amendment is intended to leverage the institutional memory and commercial wisdom acquired by the CoC during the Corporate Insolvency Resolution Process (CIRP) to assist the liquidator in taking efficient commercial decisions for value maximization. The Committee note the Ministry's clarification regarding the composition of the CoC during liquidation. The Committee take on record that the CoC will be constituted based on admitted claims, consistent with the principles applicable during CIRP. The Committee further observe that the rights of secured creditors who choose to realize their

security interest outside the liquidation process are adequately preserved within this framework, ensuring that their participation in the CoC is aligned with their remaining interest in the liquidation estate.

13.6.2 Furthermore, the Committee observe that the Ministry has addressed stakeholder concerns regarding the exclusion of other creditors. The Committee note that the proposed framework empowers the Insolvency and Bankruptcy Board of India to specify other classes of creditors who may attend CoC meetings during liquidation. The Committee concur with the view that such participation will ensure necessary transparency and broader representation without compromising the decisiveness required for commercial decision-making. The Committee also take note of the clarifications regarding the applicability of this provision to ongoing liquidation processes. The Committee, are of the view that extending this supervisory framework to existing cases where dissolution has not yet been filed is a pragmatic step to prevent value erosion and ensure efficient closure of pending matters. In light of the above, the Committee endorse the amendment proposed in Clause 13. The Committee recommend that the regulations to be framed by the Board should clearly delineate the scope of "supervision" to prevent conflict with the liquidator's statutory duties and ensure that the mechanism for stakeholder participation is implemented effectively.

14. Clause 14 of the Bill seeks to amend Section 22 of the Principal Act.

14.1 Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

In section 22 of the principal Act, in sub-section (*3*), in clause (*a*), for the words "it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority", the words "such person shall be deemed to be appointed as the resolution professional from the date of such resolution, and this decision shall be communicated to the interim resolution professional, the corporate debtor, and the Board" shall be substituted.

14.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)

22. …

(3) Where the committee of creditors resolves under sub-section (2)-

(a) to continue the interim resolution professional as resolution professional [subject to a written consent from the interim resolution professional in the specified form][9], it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

14.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

Clause 14 of the Bill seeks to amend section 22 of the Code to provide deemed continuation of the interim resolution professional as a resolution professional where the committee of creditors resolves to appoint him as a resolution professional. The decision regarding the appointment shall be communicated to the interim resolution professional, the corporate debtor, and the Board. It will ensure that where an interim resolution professional appointed by the Adjudicating Authority is continued as a resolution professional, separate intervention by the Adjudicating Authority is not required.

14.4 Important Views/Suggestions given by Experts/Stakeholders

i. The Committee received specific suggestions regarding the proposed "deemed appointment" of the Resolution Professional and the terminology used for communicating decisions to the Corporate Debtor. Stakeholders raised concerns about potential redundancy, confusion regarding appointment dates, and the appropriate signatories

during the Corporate Insolvency Resolution Process (CIRP). The views are detailed in the forthcoming paragraphs.

ii. Stakeholders argued for the Deemed Appointment of RP and submitted that **t**he Bill substitutes Section 22(3)(a) to state that if the CoC continues the IRP as RP, such person shall be "deemed to be appointed... from the date of such resolution" and this shall be communicated to the Board (instead of the AA).The stakeholder justified their stance with the following justification:

- Redundancy: The existing legal framework is already clear and effective. The CoC passes a resolution confirming the IRP as RP, and that person continues their duties seamlessly from that moment. The existing requirement to simply *communicate* this decision to the AA is purely informational and does not imply a need for AA *approval*. The process is already self-executing based on the CoC's resolution.
- Creates Confusion: The term "deemed to be appointed" introduces ambiguity where none existed. It raises procedural questions :Is a formal Appointment letter now required? What is the 'deemed' date if the resolution is passed over several days of e-voting? It attempts to solve a non-existent problem.
- Better Handled by Regulations: If any clarification on the exact timing or process of the IRP's transition to RP is needed, it is a matter of procedural detail best handled by IBBI (Insolvency Professionals) Regulations, not by altering the Code itself.

iii. Another suggestion was that the word “corporate debtor” may be replaced with suspended Board of directors/partners of the LLP, as the case may be the purpose of including corporate debtor in our understanding is to make the management of corporate debtor aware of the progress under IBC. During CIRP, the authorized signatory for all purposes for “corporate debtor” is Insolvency professional itself. Therefore, for the sake of clarity, the word corporate debtor may be replaced with suspended Board of directors/partners of the LLP, as the case may be.

14.5 Examination by the Committee

i. Ministry on the suggestion regarding the deemed appointment of the Resolution Professional submitted that:

> **“**Presently, Section 22 of the Code provides that when an IRP is confirmed as an RP of the CD in the first meeting of the CoC, such decision is required to be communicated to the AA. Since AA is the appointing authority for the IRP who is sought to be continued, the Code stipulates only a communication requirement rather than an order from AA. The legislative intent has not been to provide for a separate hearing before the AA for confirmation of the IRP as the RP. However, it is observed in practice that the NCLTs conduct separate hearings and pass orders to take on record the confirmation of the IRP as the RP by the CoC in the

first meeting. This leads to an additional burden on the AA and delays the CIRP process. Given that the confirmation of an IRP as an RP does not require a separate hearing to be conducted, Section 22(3)(a) is proposed to be amended to create a deeming fiction for automatic confirmation of an IRP as an RP once the same is approved by the CoC. It will ensure that where an IRP appointed by the AA is continued as an RP, separate intervention by the AA is not required. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

ii. Ministry on the suggestion regarding the replacement of the word "corporate debtor" with "suspended Board of directors/partners" submitted that

> **"**Presently, also section 22(3)(a) provides that the decision should be communicated to inter alia "the corporate debtor", and the same language is continued under the proposed amendment. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

iii. Ministry clarified it further during the oral submission and deposed as under:

> *"concerns the deemed appointment of the RP. This deeming provision merely eliminates the need to approach the NCLT again where the same person is continuing".*

14.6 Observations/Recommendations of the Committee

The Committee have reviewed Clause 14, which amends Section 22 of the Code to provide for the "deemed appointment" of the interim resolution professional as the resolution professional upon a resolution by the Committee of Creditors. The Committee concur with the Ministry's rationale that this is a procedural simplification intended to reduce the burden on the Adjudicating Authority. By eliminating the need for a separate order when the same professional continues, the amendment expedites the resolution process. Accordingly, the Committee recommend that Clause 14 be accepted as proposed without any modifications.

15. Clause 15 of the Bill seeks to amend Section 25 of the Principal Act.

15.1 Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

In section 25 of the principal Act, in sub-section (2), for clause (j), the following clause shall be substituted, namely:—

"(j) file an application to the Adjudicating Authority in respect of an avoidance transaction or fraudulent or wrongful trading, if any; and".

15.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)

25. …

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

…

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

15.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

Clause 15 of the Bill seeks to amend section 25 of the Code to clarify that the duty of the resolution professional to file an application for avoidance transaction under Chapter III also extends to fraudulent or wrongful trading under Chapter VI of Part II.

15.4 Observations/Recommendations of the Committee

The Committee note that Clause 15 amends Section 25 to explicitly include the filing of applications regarding fraudulent or wrongful trading under Chapter VI as a duty of the resolution professional. The Committee observe that this is a clarifying amendment ensuring that the resolution professional's obligation to report suspect transactions is comprehensive. Therefore, the Committee accept Clause 15 as proposed without any modifications.

16. Clause 16 of the Bill seeks to substitute new section for section 26 of the Principal Act.

16.1 Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

16. For section 26 of the principal Act, the following section shall be substituted, namely:—

"26. The filing of an application in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47, shall not affect the proceedings of the corporate insolvency resolution process or the liquidation process, as the case may be.

Explanation.—For the removal of doubts, it is hereby clarified that the completion of the corporate insolvency resolution process or the liquidation process shall not affect the continuation of proceedings in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47, as the case may be.".

16.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)

26. Application for avoidance of transactions not to affect proceedings. -

The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.

16.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

Clause 16 of the Bill seeks to substitute section 26 of the Code to clarify that the proceedings in respect of avoidance transactions or fraudulent or wrongful trading or under section 47 of the Code shall not affect the corporate insolvency resolution process, and these proceedings will continue independently and are not affected by the completion of the corporate insolvency resolution process. Similarly, it is also provided that filing of these proceedings shall not affect the liquidation process, and completion of the liquidation process shall not affect the continuation of these proceedings. The amendments to section 54 provide how such proceedings shall continue after the liquidation process is completed and the corporate debtor is dissolved.

16.4 Important Views/Suggestions given by Experts/Stakeholders

i. Regarding the suggestions regarding the procedural clarity for avoidance proceedings stakeholders submitted that the Explanation to Sec26 rightly clarifies that avoidance proceedings can continue even after CIRP/ liquidation is complete. However, the Bill is silent on the procedure for this. Once the corporate debtor is dissolved (Sec 54) and the

liquidator is functus officio (duties over), who pursues these claims? How are the recovered proceeds distributed to erstwhile creditors? The Bill should empower the framing of a mechanism for this. Suggested Wording (Add to Explanation in Sec 26):"...as the case may be. The manner in which such proceedings shall be continued, and the proceeds thereof distributed post-dissolution, shall be as may be prescribed."

ii. Regarding the Ordinary Course of Business Exception, a suggestion was made to insert a proviso stating that applications applications under Sections 43 to 51 shall not be maintainable in respect of transactions made in ordinary course of business or in furtherance of completion of ongoing real estate projects, unless the Adjudicating Authority, after hearing the promoter and the Resolution Professional, finds prima facie evidence of fraudulent intent.

16.5 Examination by the Committee

i. The representatives of MCA during the briefing meeting gave clarification that dissolution can proceed even if avoidance proceedings are pending and deposed before the Committee as under:

> *"the biggest advantage of the CIRP process was to have a moratorium on the various court cases or various proceedings pending against the corporate debtor. Now, once the resolution plan is approved or a liquidation is ordered, the moratorium ceases to apply, and all these cases which were till now not taken up, suddenly spring up. It again leads to a lot of delay in completing the liquidation process. Therefore, it is proposed to extend the moratorium into the liquidation process as well. Further, the corporate debtor can also be dissolved pending the proceedings of the avoidance transactions, fraudulent transactions, etc., because till now a call was being taken that as long as the avoidance transactions are not completed, you cannot dissolve the corporate debtor, or if the corporate debtor is dissolved, the avoidance proceedings cannot take place. So, that has now been clarified."*

ii. MCA on the suggestion regarding the procedure for post-dissolution avoidance proceedings submitted that

> **"**The proposed Section 26, which will substitute the existing Section 26, clarifies that the proceedings related to the avoidance transaction or fraudulent or wrongful trading before the AA, as well as the conduct of the CIRP or Liquidation, are separate procedures. The completion of the CIRP or liquidation shall not affect the continuation of these proceedings. The manner of conducting these proceedings may be decided by the CoC as part of the resolution plan, and requirements related to this will be part of the regulations. For instance, the Regulation 38 of the IBBI CIRP

Regulations, which provides the mandatory content of the resolution plan provides that the resolution plan shall inter alia provide for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed. Further, the proposed amendments to section 54, which deals with "Dissolution of Corporate Debtor" provide that where these proceedings are pending after the assets of the CD are liquidated, the CoC shall determine the manner of pursuing such proceedings and the distribution of proceeds arising out of the same. Regulations will lay down the the procedure to be followed in this regard. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

iii. MCA on the suggestion regarding the "ordinary course of business" exception submitted that

> **"**The current Code already contains inherent safeguards, and the proposed amendment in Clause 16 focuses on the independence of these proceedings. The definition of preferential transaction (Section 43) excludes transactions conducted in the "ordinary course of business". Furthermore, existing CIRP Regulations offer flexibility for real estate cases, allowing the Committee of Creditors (CoC) to direct the Resolution Professional (RP) to invite separate resolution plans for individual projects. The core function of Clause 16 (substituting Section 26) is to ensure that the filing or continuation of avoidance proceedings shall not affect the CIRP or liquidation process, clarifying their necessary independence and survival even post-resolution. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

iv. On the suggestion received on the clause 16 there were elaborate discussions on the suggestions received from stakeholders with the Ministry of Corporate Affairs. The representatives of the Ministry and IBBI during the course of oral evidence submitted as under:

> *….proposes replacing the term "Corporate Debtor" with "Suspended Board of Directors" or "Partners of the LLP", as applicable…. According to them, the CIRP, the authorised signatory for the purpose of the corporate debtor is the insolvency professional. Therefore, it is better to replace this with a suspended board or the directors of the party of the LLP, as the case may be. We are saying that Section 22(3)(a) currently provides that the decision should be communicated to the corporate debtor and the same language we are including everywhere. Instead of specifying whether it should be a*

suspended director, insolvency professional, whatever is the corporate debtor, whatever constitutes the corporate debtor, it will be sent to them….. ……..regarding the survival of the avoidance proceedings. They say that this provides a necessary legislative hook for the IBBI and Government to create a specific workable procedure, like appointing a trust or a specific authority to manage these zombie proceedings, whichever have not been assigned or which are against the company and to ensure that these recoveries are fairly distributed. We have not put forth the procedure in the bill, so they want us to write that very clearly…..There are three provisions around this. We have said in the amendments and we have clarified it that once the CIRP process will get over, the new promoter will come in and take over the company. But, if you have any avoidance transaction, any PUFE transaction, then those proceedings will carry on. Their concern is that how will this entire PUFE be carried on? Where will the funds come for that? Please specifically provide that, because there is no way to follow it up. The way it happens right now is that the concerned RP then carries on the PUFE transactions in the NCLT and takes it to a logical conclusion. We have also proposed in the new amendment that the IBBI has a fund……. Sir, we have already provided in the regulations that it will be given in the resolution plan whether the new promoter takes it over or the creators want to take it over. They will have to specify it in the resolution plan. It is being specified and whoever takes it over also spends on it. I mean, whoever will get the money out of the court decisions also spends on pursuing it…

v. MCA gave further written submissions on the suggestions on clause 16 and submitted that:

> "The proposed Section 26, which will substitute the existing Section 26, clarifies that the proceedings related to the avoidance transaction or fraudulent or wrongful trading before the AA, as well as the conduct of the CIRP or Liquidation, are separate procedures. The completion of the CIRP or liquidation shall not affect the continuation of these proceedings. The manner of conducting these proceedings may be decided by the CoC as part of the resolution plan, and requirements related to this will be part of the regulations. For instance, the Regulation 38 of the IBBI CIRP Regulations, which provides the mandatory content of the resolution plan provides that the resolution plan shall inter alia provide for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed. Further, regarding the liquidation process, since there is no

concept of a resolution plan, the proposed amendments to section 54, which deals with “Dissolution of Corporate Debtor” provide that where these proceedings are pending after the assets of the CD are liquidated, the CoC shall determine the manner of pursuing such proceedings and the distribution of proceeds arising out of the same. IBBI will provide the procedure in this regard. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.”

16.6 Observations/Recommendations of the Committee

16.6.1 The Committee, having examined Clause 16 of the Bill, note that it substitutes Section 26 of the Code to clarify that the filing of an application in respect of avoidance transactions, fraudulent trading, or wrongful trading shall not affect the proceedings of the corporate insolvency resolution process (CIRP) or the liquidation process. The Committee observe that the explanation to the clause further clarifies that the completion of the CIRP or the liquidation process shall not affect the continuation of such proceedings, thereby ensuring that the "clean slate" principle for the successful resolution applicant does not inadvertently extinguish the liability of perpetrators of fraud or beneficiaries of avoidable transactions. The Committee took note of the concerns raised by stakeholders regarding the lack of a specified procedure for pursuing these proceedings once the corporate debtor is dissolved and the liquidator becomes functus officio. Stakeholders suggested that the Bill should explicitly empower the framing of a mechanism for the continuation of such proceedings and the distribution of proceeds post-dissolution.

16.6.2 The Committee observe that the Ministry have partially accepted the suggestion by clarifying that while the substantive provision in Clause 16 establishes the independence of these proceedings, the procedural mechanism is addressed elsewhere. For CIRP, the Committee note that the manner of pursuing such proceedings is determined by the Committee of Creditors (CoC) as part of the

resolution plan. Crucially, for the liquidation process, the Committee take on record the Ministry's submission that the proposed amendments to Section 54 (Dissolution of corporate debtor) explicitly mandate the CoC to determine the manner of pursuing such proceedings and distributing the proceeds after dissolution. In light of the above, the Committee are of the view that the proposed legislative framework, read with the amendments to Section 54 and the regulation-making power of the Board, adequately addresses the procedural concerns regarding post-dissolution proceedings. Accordingly, the Committee endorse Clause 16 as proposed and recommend no modification.

17. Clause 17 of the Bill seeks to insert new section 28A

17.1 Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

17. After section 28 of the principal Act, the following section shall be inserted, namely:––

"28A. (1) Notwithstanding anything contained in this Code or any other law for the time being in force, where a creditor of the corporate debtor has taken possession of an asset of a personal guarantor or corporate guarantor of the corporate debtor by enforcing its security interest over such asset under any law for the time being in force which empowers the creditor to transfer the asset, the creditor may, during the corporate insolvency resolution process of the corporate debtor, permit the transfer of such an asset as part of its insolvency resolution with prior approval of the committee of creditors in such manner and subject to such conditions as may be specified:

Provided that where the corporate guarantor is undergoing a corporate insolvency resolution process or the liquidation process, transfer of the asset under this sub-section shall take place upon approval of the committee of creditors of the corporate guarantor, by a vote of not less than sixty-six per cent. of the voting share, and the amount received pursuant to the transfer shall form part of the corporate insolvency resolution process or the liquidation estate of the corporate guarantor, as the case may be:

Provided further that during the liquidation process of the corporate guarantor, the approval of the committee of creditors under the first proviso is required only where the creditor has relinquished such asset to the liquidation estate under section 52:

Provided also that where the personal guarantor is undergoing an insolvency resolution process or the bankruptcy process and the creditor has forfeited or surrendered his right in relation to an asset, the transfer of such asset under this sub-section shall take place upon approval by a majority of more than three-fourths in value of the creditors of the personal guarantor, and the amount received pursuant to the transfer shall form part of the insolvency resolution process or the bankruptcy process of the personal guarantor, as the case may be.

(2) The transfer of an asset referred to in sub-section (1) under a resolution plan shall vest in the transferee all rights in, or in relation to the asset, as if the transfer had been made by the owner of such asset.

(3) The amount received pursuant to the transfer of the asset shall be adjusted towards the amount of debt owed by the guarantor in accordance with the applicable law, subject to any costs, charges and expenses incurred in respect of the preservation and protection of the asset before its transfer, and where such amount is more than the debt owed, the surplus shall be paid to the guarantor.".

17.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)

[*Insertion of a new Section*]

17.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

Clause 17 of the Bill seeks to insert a new section 28A in Chapter II of Part II in the Code to enable a transfer of an asset of a guarantor (personal or corporate) of the corporate debtor as part of the corporate insolvency resolution process of such corporate debtor. To transfer such asset as part of the corporate insolvency resolution process of the corporate debtor, the creditor must (*i*) have a security interest over an asset of the guarantor of the corporate debtor; (*ii*) have taken possession of the asset by enforcing its security interest under any law for the time being which should enable the creditor to transfer the asset. Further, such a creditor and the committee of creditors of the corporate debtor must agree to transfer the asset under this provision. However, where the guarantor is undergoing insolvency resolution, liquidation or bankruptcy under the Code, additional approval will be required from the committee of creditors or creditors of the guarantor, as the case may be. The regulations will specify the process for transferring the assets of the guarantor as part of the corporate insolvency resolution, including conditions on the types of assets that can be transferred, the eligibility of persons who can purchase these assets, and the method for determining their value in the case of a cumulative transfer. After the transfer of the asset of the guarantor as part of the corporate insolvency resolution process, the value received for such an asset shall be adjusted towards the debt of the guarantor as per the applicable law, subject to any costs, charges and expenses. Thereafter, any surplus shall be paid to the guarantor as per the applicable law, and if the guarantor is undergoing insolvency resolution or bankruptcy process under the Code, it shall be included as part of such process.

17.4 Important Views/Suggestions given by Experts/Stakeholders

i. One of the stakeholders suggested to also include a provision that fruits of these litigations may be assigned to creditors or third parties by the RP/ Liquidator with CoC approval.

ii. The regulations will specify the process for transferring the assets of the guarantor as part of the corporate insolvency resolution, including conditions on the types of assets that can be transferred, the eligibility of persons who can purchase these assets, and the method for determining their value. Once again it reiterate that without regulation or Rules, amended code should be proposed to the parliamentary process.

iii. Representatives of one of Asset Reconstruction Companies in a written suggestion submitted that:

- This integrated approach eliminates the need for parallel proceedings against guarantors and accelerates recovery timelines.
- However, there may be certain challenges with respect to the guarantor's right of redemption for the asset intended to be transferred.
- Further, coordination challenges may arise in cases where the constitution of CoC for CD and CG is different.
- Therefore, right of redemption needs to be kept into consideration while finalizing the provision.

They justified their submissions as under:

- There may be challenges regarding the guarantor's right of redemption for the asset intended to be transferred.
- Guarantor's or Borrower's right of redemption is a paramount right recognized by both legislature (under SARFAESI and Transfer of Property Act) and judicial precedents.
- Hence, clarity is required as regards interplay of the enactments dealing with substantive rights of guarantors.
- Not considering the right of redemption may expose this amendment to legal and constitutional challenges before the Court.
- Further, a creditor holding exclusive security over a guarantor's asset may resist sharing value with other creditors, leading to inter se priority challenges.
- This Amendment sets to intermingle SARFAESI, TP Act and IBC, both being special statues, there has to be corresponding changes/amendments for the same.

17.5 <u>Examination by the Committee</u>

i. Ministry of Corporate Affairs explaining the intent behind the proposed amendment submitted to the Committee, as under:

> *"Now, we are proposing an amendment to the Bill to facilitate the transfer of guarantor's assets as a part of the CIRP of the corporate debtor to realise better value. But this is a voluntary process with the CoC of the corporate debtor and such creditors of the personal guarantor also to be agreeing to this.However, wherever there is a surplus amount, what was due, if that is obtained, then that will be given back to the guarantor".*

ii. When asked by the Committee RBI sought clarity on the timing of asset acquisition by the creditor relative to the CIRP commencement.

> *"Regarding the transfer of assets of the guarantor of the Corporate Debtor (CD), there is a provision under Section 28A that allows the creditor to transfer the guarantor's assets. However, the wording appears to suggest that such transfer would occur only if the creditor had already acquired the asset before the commencement of the CIRP process. We seek clarity on whether this understanding is correct. If not, it may be explicitly stated in the*

final draft that the creditor should have acquired the asset prior to the initiation of the CIRP. That is how we envisage the intent of this section."

iii. Ministry on the suggestion regarding the assignment of fruits of litigation submitted that

> **“** The proposed Section 26, which will substitute the existing Section 26, clarifies that the proceedings related to the avoidance transaction or fraudulent or wrongful trading before the AA, as well as the conduct of the CIRP or Liquidation, are separate procedures. The completion of the CIRP or liquidation shall not affect the continuation of these proceedings. The manner of conducting these proceedings may be decided by the CoC as part of the resolution plan, and requirements related to this will be part of the regulations. For instance, the Regulation 38 of the IBBI CIRP Regulations, which provides the mandatory content of the resolution plan provides that the resolution plan shall *inter alia* provide for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed. Further, the proposed amendments to section 54, which deals with “Dissolution of Corporate Debtor” provide that where these proceedings are pending after the assets of the CD are liquidated, the CoC shall determine the manner of pursuing such proceedings and the distribution of proceeds arising out of the same. IBBI will provide the procedure in this regard. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.”

iv. Ministry on the suggestion regarding the need for regulations submitted that

> **“**Clause 17 introduces Section 28A, enabling a creditor who possesses a guarantor's asset (personal or corporate) to permit its transfer as part of the Corporate Debtor’s (CD) resolution, provided there is prior approval of the Committee of Creditors (CoC).The Bill's text and background already grant the necessary power to the regulatory body (IBBI) to detail these procedural aspects, ensuring a balance between creditor flexibility and regulated asset transfers. The Notes on Clauses states that the regulations will specify the process for transferring the guarantor's assets. This includes:
>
> 1. Conditions on the types of assets that can be transferred.
> 2. Eligibility of persons who can purchase these assets.
> 3. The method for determining their value in the case of a cumulative transfer.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

v. Ministry on the suggestion regarding title and inter-creditor disputes submitted to the Committee that:

"Section 28A is proposed to provide for the transfer of assets of the guarantor of the corporate debtor during the CIRP. In practice, it is observed that secured FCs, such as banks, are common to the CD and one or more of its guarantors. In such cases, it is seen that the security interest created in favour of the bank on the underlying assets of the guarantor is closely linked with the assets of the CD. For instance, where the factory land belongs to the guarantor and the building, plant, and machinery over it belong to CD, such cases prove to be challenging to resolve, as the land is not part of the assets available for resolution. Under certain statutes, secured creditors (such as banks or financial institutions) have the right to take possession of the guarantor's secured assets upon default in payment and sell/auction them to recover their dues, like the SARFAESI Act. Hence, once such a right to take possession is exercised by the secured creditors, Section 28A merely offers a platform for selling the encumbered asset as part of the resolution process and obtaining a better value for all stakeholders. It simply offers a procedural option for the secured creditor to seek a higher value by transferring the asset as part of the CD's CIRP rather than independently. It does not aim to alter the substantive rights of any party involved or grant creditors an unrestricted right to sell any property of the guarantor of the CD during the CIRP. Further, the rights of the guarantor or the secured creditor under the applicable law are adequately protected under sub-section (3) of section 28A, and surplus will be provided to the guarantor. If the guarantor is undergoing the insolvency resolution process under the Code, section 28A provides that the asset of the guarantor shall be transferred to the CIRP of the corporate debtor only with the consent of the CoC of the guarantor. Additionally, IBBI is empowered to set procedural details, including any conditions, when exercising this option. Therefore, appropriate timelines and procedural safeguards will be established for the effective implementation of this section. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

vi. Ministry in written replies have further submitted to the Committee that:

"The proposed Section 26, which will substitute the existing Section 26, clarifies that the proceedings related to the avoidance transaction or fraudulent or wrongful trading before the AA, as well as the conduct of the

CIRP or Liquidation, are separate procedures. The completion of the CIRP or liquidation shall not affect the continuation of these proceedings.

The manner of conducting these proceedings may be decided by the CoC as part of the resolution plan, and requirements related to this will be part of the regulations. For instance, the Regulation 38 of the IBBI CIRP Regulations, which provides the mandatory content of the resolution plan provides that the resolution plan shall *inter alia* provide for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.

Further, regarding the liquidation process, since there is no concept of a resolution plan, the proposed amendments to section 54, which deals with "Dissolution of Corporate Debtor" provide that where these proceedings are pending after the assets of the CD are liquidated, the CoC shall determine the manner of pursuing such proceedings and the distribution of proceeds arising out of the same. IBBI will provide the procedure in this regard. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

Clause 17 introduces Section 28A, enabling a creditor who possesses a guarantor's asset (personal or corporate) to permit its transfer as part of the Corporate Debtor's (CD) resolution, provided there is prior approval of the Committee of Creditors (CoC)

The Bill's text and background already grant the necessary power to the regulatory body (IBBI) to detail these procedural aspects, ensuring a balance between creditor flexibility and regulated asset transfers. The Notes on Clauses states that the regulations will specify the process for transferring the guarantor's assets.

This includes:

1. Conditions on the types of assets that can be transferred.

2. Eligibility of persons who can purchase these assets.

3. The method for determining their value in the case of a cumulative transfer.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

Section 28A is proposed to provide for the transfer of assets of the guarantor of the corporate debtor during the CIRP. In practice, it is observed that secured FCs, such as banks, are common to the CD and one or more of its guarantors. In such cases, it is seen that the security interest created in favour of the bank on the underlying assets of the guarantor is closely linked with the assets of the CD. For instance, where the factory land belongs to the guarantor and the building, plant, and machinery over it belong to CD, such cases prove to be challenging to resolve, as the land is not part of the assets available for resolution. Under certain statutes, secured creditors (such as banks or financial institutions) have the right to take possession of the guarantor's secured assets upon default in payment and sell/auction them to recover their dues, like the SARFAESI Act. Hence, once such a right to take possession is exercised by the secured creditors, Section 28A merely offers a platform for selling the encumbered asset as part of the resolution process and obtaining a better value for all stakeholders. It simply offers a procedural option for the secured creditor to seek a higher value by transferring the asset as part of the CD's CIRP rather than independently. It does not aim to alter the substantive rights of any party involved or grant creditors an unrestricted right to sell any property of the guarantor of the CD during the CIRP. Further, the rights of the guarantor or the secured creditor under the applicable law are adequately protected under sub-section (3) of section 28A, and surplus will be provided to the guarantor. Additionally, IBBI is empowered to set procedural details, including any conditions, when exercising this option. Therefore, appropriate timelines and procedural safeguards will be established for the effective implementation of this section.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change." (sr no 19 to 21, batch I and II Compiled)

17.6 Observations/Recommendations of the Committee

17.6.1 The Committee, having examined Clause 17 of the Bill, note that it introduces Section 28A to the Code to facilitate the transfer of assets of a personal or corporate guarantor as part of the Corporate Insolvency Resolution Process (CIRP) of the corporate debtor. The Committee observe that this provision addresses the practical challenge of asset fragmentation—where the corporate

debtor owns the business but the guarantor owns the underlying land or critical assets—by enabling a consolidated resolution to maximize value. The Committee took note of the concerns raised by stakeholders regarding the potential infringement of the guarantor's right of redemption, inter-creditor disputes, and the lack of procedural clarity on valuation and eligibility. Stakeholders suggested that the provision requires detailed safeguards and regulatory clarity to prevent litigation and ensure fairness to the guarantor's own creditors.

17.6.2 The Committee observe that the Ministry has effectively addressed these suggestions by clarifying that the provision is a voluntary, enabling mechanism that can only be exercised if the creditor has already taken possession of the asset under applicable law and obtains the approval of the Committee of Creditors (CoC). Furthermore, the Committee note the Ministry's assurance that the substantive rights of the guarantor are protected through the mandatory return of any surplus realized. Regarding procedural details, the Committee take on record that the Insolvency and Bankruptcy Board of India (IBBI) will specify the necessary regulations governing conditions, eligibility of purchasers, and valuation methodology to ensure transparency. In light of the above, the Committee are of the view that the proposed legislative framework, accompanied by the enabling power for regulations, adequately balances the objective of value maximization with the protection of rights. Accordingly, the Committee endorse Clause 17 as proposed and recommend no modification.

18. Clause 18 of the Bill seeks to amend Section 20 of the Principal Act.

18.1 <u>Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025</u>

In section 30 of the principal Act, in sub-section (2),—

(a) in clause (b), in the long line, the portion beginning with ", and provides for the payment of debts of financial creditors", and ending with "liquidation of the corporate debtor" shall be omitted.

(b) after clause (b), the following clause shall be inserted, namely:—

"(ba) provides for the payment of debts of the financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified, which shall not be less than the lower of the amount—

(i) to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed, in accordance with the order of priority in sub-section (1) of section 53,

as the case may be.

Explanation I.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation II.—For the purposes of this sub-section, it is hereby declared that the provisions of this sub-section as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall not apply to the corporate insolvency resolution process where any of the following acts have first occurred,—

(i) the committee of creditors has approved a resolution plan under sub-section (4) of section 30;

(ii) the committee of creditors has approved intimation to the Adjudicating Authority to initiate the liquidation under sub-section (2) of section 33; or

(iii) the Adjudicating Authority has passed a liquidation order under sub-section (1) of section 33,

as the case may be, on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025;".

(*c*) for clause (*d*), the following clause shall be substituted, namely:—

"(*d*) provides for the implementation and supervision of the resolution plan, and provides for the constitution of a committee for this purpose, subject to such conditions and in such manner as may be specified;".

18.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)

30. …

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

…

[10][(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

18.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

Clause 18 of the Bill seeks to amend sub-section (*2*) of section 30 of the Code to provide that under a resolution plan, the minimum threshold for payment to the financial creditors who have not voted in favour of the resolution plan ('dissenting financial creditors') shall be the amount that would have been paid to them–(*i*) in the event of liquidation under section 53 or (*ii*) if the amount to be distributed under the resolution plan was distributed as per the order of priority under section 53, whichever is lower. Accordingly, if the amount payable to dissenting financial creditors under the first scenario is lower than that under

[10] Subs. by Act No. 26 of 2019, sec. 6 (w.e.f. 16-8-2019), before substitution it stood as "provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;".

the second scenario, then the amount under the first scenario shall serve as the minimum that must be paid to them for the resolution plan to be considered valid. This ensures that the requirement to provide at least a minimum amount to the dissenting financial creditors does not obstruct the approval of a feasible and viable resolution plan. It also seeks to amend clause (*d*) of sub-section (*2*) of section 30 of the Code to provide that each resolution plans shall provide for the constitution of a committee to oversee the implementation and supervision of the plan once it has been approved by the Adjudicating Authority. The regulations will provide details such as the composition of the committee, the cases in which it should be constituted, and its functions.

18.4 Important Views/Suggestions given by Experts/Stakeholders

i. Stakeholders suggested avoiding confusion regarding how distribution under Section 53 is calculated and submitted that to avoid confusion as to how distribution under Section 53 may be calculated. The proposed "lower of" test replicates language applicable to operational creditors but introduces complexity without apparent benefit when applied to financial creditors with security interests. The fundamental question is whether the two calculation methods yield different results, and if so, when and why. Under clause (i), dissenting creditor receives "amount to be paid in liquidation under section 53." Under clause (ii), dissenting creditor receives "amount that would be paid if resolution proceeds were distributed according to section 53(1) priorities." Both formulations appear to require applying the Section 53 waterfall, suggesting identical outcomes. If the "lower of" test serves no practical purpose because both calculations yield identical results, the provision may be simplified to eliminate unnecessary complexity. If the provisions are intended to produce different results in specific scenarios, the Bill may explicitly explain when and why, with worked examples demonstrating the intended operation.

ii. Stakeholders vide their suggestions raised Concerns were about the possibility of the ambiguity in liquidation value for dissenting secured creditors may perpetuate disputes and inconsistent treatment. A clear definition aligning with Section 53 and excluding separately realizable security value ensures uniformity, prevents double recovery, and upholds fairness and predictability in distribution under approved resolution plans.

iii. Regarding Implementation and Supervision Committee, it is suggested that the essential framework governing the constitution, composition, powers and functioning of the *Implementation and Supervision Committee* be expressly incorporated in the Code itself, rather than being left entirely to subordinate legislation. The section may, inter alia, specify – (i)The constitution and composition of the Committee, including representation from the Committee of Creditors, the successful resolution applicant, and other stakeholders as may be necessary. (ii) The voting rights and decision-making mechanism to be followed by the Committee. (iii) The powers and responsibilities of the Chairperson, including the extent of any overriding authority and

The timeline and manner in which the Committee shall report to the Adjudicating Authority in the even tof breach, non-implementation, or material deviation from the approved resolution plan.

iv. Regarding Real Estate Corporate Debtors stakeholders argued that the proposed clause (ba) should be amended to exclude its application to real estate corporate debtors, or to provide that payments to dissenting creditors shall be aligned with project completion milestones and cash flows. In the alternative, the law should mandate that dissenting creditors in the case of real estate projects shall not demand immediate cash payout; instead, they may be issued deferred instruments or project-linked recoveries approved by NCLT. Real estate resolution depends on preserving cash for ongoing construction, not premature payouts. Allowing dissenting lenders to withdraw their share early will cripple project financing, reduce recovery for all creditors, and stall completion. The Code's objective is maximisation of value through continuity of business, not liquidation of funds. Requiring project-aligned distribution will protect developers, ensure completion, and maintain equitable treatment among creditors.

v. A stakeholder pointed out that the phrase 'if required' The phrase 'if required' in the explanation may be made unambiguous. Under the explanatory clause being added, there is an element of subjectivity as it is not specified as to who will determine as to whether the value of verified claims needs to be ascertained.

vi. NCLAT suggested that the provision regarding payment to Operational Creditors needs amendment and submitted that the provision regarding the payment to Operational Creditors was amended by Act 26 of 2019, w.e.f 16 August, 2019, but it has not served its purpose, the Operational Creditors in most of resolution insolvency process do not get any amount towards their admitted claim. The Operational Creditors are those creditors, who provide goods and services to the CD at the time when CD has been running as a going concern. The provision of Section 30, sub-section 2(b) needs to be amended to provide certain percentage of amount to the Operational Creditors as compared to those received by Secured Creditors. Following is proposed in Section 30, sub-section (2)(b):

"(b) Provides for the payment of debts of Operational Creditors in such manner as may be specified by Board, which shall not be less than 50% of pay out percentage as payable to the Secured Creditor under the resolution plan".
The rest of the amendments proposed with regard to pay out to the Financial Creditors in Section 30, sub-section (2)(b) be incorporated.
Explanation I. and Explanation II in sub-section 2(b) as has been proposed be incorporated.
NCLAT gave further justifications for their suggestion and added The Operational Creditors are small traders, who provide goods and services to the corporate debtor. The Operational Creditors file their claims, which is admitted by the RP, however, generally the liquidation value of the Operational Creditors being 'Nil', they are not paid any amount in the resolution plan, since their entitlement under Section 30, sub-section

(2)(b) read with Section 53 of the IBC becomes Nil. The Secured Creditors receive the maximum pay outs under the resolution plan. The Operational Creditors, who generally are small traders are not paid any amount in the plan. Further, in Section 30, sub-section (2) under the Explanation I, it was clarified that distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors. However, distribution to Operational Creditors in most of the cases is neither fair nor equitable. Thus, unless certain percentage of payment to the Operational Creditors in comparison to the pay out to the Secured Creditors is provided, their interest shall not be protected. Thus, it is proposed that not less than 50% of the percentage of the claim, which has been paid to the Secured Creditors be provided to the Operational Creditors. This can be explained by an illustration, suppose under the resolution plan payout to a Secured Creditor is Rs.40, then the Operational Creditor would be paid Rs.20, which is 50% of Rs.40.

vii. Concerns were raised by the stakeholders regarding the Impact on Minority Creditors and they mentioned that whilst this strengthens majority decision-making in the CoC, careful monitoring is needed to ensure it does not adversely impact last-mile funding or create unintended consequences for minority creditors. As per the proposed amendment, where the minimum amount payable is linked not only to the liquidation value but instead, linked to the lower of either the liquidation value or the liquidation value as per the plan, the dissenting financial creditors would be further disincentivized to dissent. The cram down of minority is further strengthened through the proposed amendment and the majority decision making process in CoC gets a boost through these changes.

18.5 Examination by the Committee

(i) During the briefing meeting the Committee were briefed by the Ministry of Corporate Affairs on changing the minimum entitlement for dissenting financial creditors to the lower of liquidation or resolution value and submitted as under:

> *"Thereafter, I come to the minimum protection for dissenting financial creditors. The 2019 Amendment provided that the dissenting financial creditors would be protected to the extent of the value in case of a liquidation. But, it was often noticed that the value that was obtained in the resolution plan was way lower than the liquidation value of the corporate debtor. So, the financial creditors or the CoC had an incentive to dissent so that they would at least move the company to liquidation and remove their assets by SARFAESI or get only the liquidation value. The liquidation value is a notional value. Therefore, the liquidation value or actual realization which takes place, that only should be distributed. So, we are looking at a scenario where there is a lower resolution value than the liquidation value or lower liquidation value than the resolution value. In both the scenarios, whichever is the lower of the two is to be distributed to the dissenting creditor. This is also to discourage dissent and not pull the CD into liquidation."*

(ii) Ministry on the suggestion regarding the "Lower Of" Test submitted that

"In 2019, the Code was amended to provide that the FCs who do not vote in favour of the plan will be protected to the extent of the liquidation value of their debt under a resolution plan. The amendment sought to ensure that the FCs were treated fairly and the AA's burden was reduced. While interpreting Section 30(2)(b)(ii) of the Code, the apex court also noted that the dissenting FCs have a 'statutory option' to register their protest against the distribution of the proceeds under the resolution plan when the proceeds are less than the amount they would have received under Section 53(1)(b)(ii) if the corporate debtor had gone into liquidation. It is observed that post-amendment, while the FCs can receive at least the minimum protection, in many cases, they are incentivised to dissent to gain minimum protection, especially in situations where a viable resolution plan offers a value lesser than the liquidation value. Such FCs register their dissent despite the feasible and viable plan to take advantage of the minimum protection. Therefore, the proposed amendment provides that the minimum threshold for the dissenting FCs should be the lower of the resolution value and the liquidation value. The textual language for these provisions is as per the existing section 30(2)(b), and the same is continued. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(iii) Ministry on the suggestion regarding the Implementation Committee submitted that:

"Clause 18 substitutes Section 30(2)(d) to mandate that every resolution plan must provide for the constitution of a committee to oversee the implementation and supervision of the plan, subject to such conditions and in such manner as may be specified. The regulations made therein will provide for proper representation of the relevant stakeholders on the monitoring committee, like the resolution applicants, CoC, and the operational creditors. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change".

(iv) Ministry on the suggestion regarding Real Estate Corporate Debtors submitted that

"The amendment introduces the "lower of" test (Section 30(2)(ba)) to prevent DFCs from strategically dissenting to extract higher value when resolution value is low, thereby forcing liquidation. This framework ensures DFCs receive a minimum statutory floor without obstructing the approval of a feasible and viable resolution plan. Furthermore, the current CIRP Regulations already provide flexibility for real estate cases by allowing the

Committee of Creditors (CoC) to direct the Resolution Professional (RP) to invite separate resolution plans for individual projects under Regulation 36A(1) of the CIRP Regulation. The Code's focus on feasibility means that any resolution plan, including those for real estate, must inherently address project completion milestones and cash flows to be approved under Section 30(2).Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(v) Ministry on the suggestion regarding "If Required" Ambiguity submitted that **"**The interim resolution professional is required to collate the claims. Presently, the process of collating claims is also provided under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. IBBI's power in this regard is being clarified by the insertion of the phrase "in such manner as may be specified" in Section 18(b). Furthermore, it is clarified through an explanation in the statute itself that the interim resolution professional, while collating claims, shall verify them and, if required, determine the value of such verified claims. This will also guide IBBI in maintaining appropriate regulations on these aspects. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(vi) Ministry on the suggestion given by NCLAT on the clause replied that:
The concerns raised regarding operational creditors are addressed under the existing framework, including:

- Mandatory fair and equitable treatment under Section 30(2)(b) of the Code.
- Binding nature of resolution plans on all stakeholders under Section 31 (ensuring non-discriminatory treatment).
- Judicial scrutiny by Adjudicating Authority at approval stage.
- CoC's fiduciary obligations and guidelines for CoC conduct issued on 6 August 2024 (Background Note, para 51) ensure reasoned, transparent decision-making.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change".

(vii) Ministry on the suggestion regarding Operational Creditors Payout submitted that:
"In 2019, the Code was amended to provide that the FCs who do not vote in favour of the plan will be protected to the extent of the liquidation value of their debt under a resolution plan. The amendment sought to ensure that the FCs were treated fairly and the AA's burden was reduced. While interpreting Section 30(2)(b)(ii) of the Code, the apex court also noted that the dissenting FCs have a 'statutory option' to register their protest against the distribution of the proceeds under the resolution plan when the proceeds

are less than the amount they would have received under Section 53(1)(b)(ii) if the corporate debtor had gone into liquidation. It is observed that post-amendment, while the FCs can receive at least the minimum protection, in cases where a viable resolution plan offers a value lesser than the liquidation value, they are incentivized to dissent to get protection of liquidation value. Therefore, the proposed amendment provides that the minimum threshold for the dissenting FCs should be the lower of the resolution value and the liquidation value. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

(viii) Representatives of MCA and IBBI, during the oral evidence, further clarified the suggestions on the clause no 18 as under:

"We have said in the statute that the interim Resolution Professional – this is with respect to the determination of claims. When an Interim Resolution Professional or a Resolution Professional determines the claim, he determines it only when the value is ambiguous. That is why we have said in the explanation that the Interim Resolution Professional, while collating the claims, shall verify them, and if required, determine the value of such verified claims and this will also guide the IBBI in maintaining an appropriate regulation in the statute."

(ix) In a written submission, Ministry submitted their further clarifications as under:

"Clause 18 substitutes Section 30(2)(d) to mandate that every resolution plan must provide for the constitution of a committee to oversee the implementation and supervision of the plan, subject to such conditions and in such manner as may be specified. The regulations made therein will provide for proper representation of the relevant stakeholders on the monitoring committee, like the resolution applicants, CoC, and the operational creditors. Further, the amendment to section 30(2)(d) is being modified to provide an indicative list of members of the monitoring committee to include the resolution professional or any other insolvency professional, and the representatives of a class or classes of creditors and the resolution applicant."

18.6 Observations/Recommendations of the Committee

18.6.1 The Committee note that Clause 18 of the Bill seeks to amend Section 30 of the Code to provide clarity on the minimum entitlement for dissenting financial creditors and to statutorily mandate the constitution of a committee for the

implementation and supervision of the resolution plan. The Committee further note that the proposed amendment to Section 30(2)(b) introduces the "lower of" test for dissenting financial creditors, entitling them to the lower of the liquidation value or the value under the resolution plan. The Committee concur with the Ministry's rationale that this measure is necessary to disincentivize strategic dissent by creditors seeking to force liquidation solely to extract higher value, thereby aligning with the Code's primary objective of resolution. Regarding the constitution of the monitoring committee under Section 30(2)(d), the Committee however feel that leaving the composition and framework of such a critical body entirely to regulations may create ambiguity regarding accountability during the implementation phase. The Committee concur with the stakeholder suggestions that the essential composition of this committee should be codified within the statute itself to ensure transparency. The Committee note that the Ministry has accepted this suggestion and provided a revised formulation.

18.6.2 Accordingly, after considering the suggestion received and the submissions of the Ministry as well as detailed deliberation in the matter, the Committee recommend that the clause be amended. The amended Clause 18(c), substituting clause (d) of sub-section (2) of Section 30, may read as:

"(c) for clause (d), the following clause shall be substituted, namely:—
"(d) provides for the implementation and monitoring of the resolution plan, including the constitution of a committee for this purpose, consisting of such persons including the resolution professional or any other insolvency professional, and the representatives of a class or classes of creditors and the resolution applicant, and subject to such conditions and in such manner as may be specified."

Apart from the above suggested amendment, the clause is accepted.

19. Clause 19 of the Bill seeks to amend Section 31 of the Principal Act.

19.1 Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

19. In section 31 of the principal Act,—

(a) in sub-section (1), after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that the Adjudicating Authority may, on an application made by the resolution professional, with the approval of the committee of creditors, by a vote of not less than sixty-six per cent. of the voting share, in such form and manner, and subject to such conditions as may be specified, first approve the implementation of the resolution plan and thereafter approve the manner of distribution provided therein within a period of thirty days from the date of approval of implementation of such resolution plan.";

(b) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority may, before rejecting the resolution plan, give notice to the committee of creditors to rectify any defects in the resolution plan.";

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The Adjudicating Authority shall pass an order under sub-section (1) or (2), within a period of thirty days from the date of receipt of the resolution plan:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.";

(d) in sub-section (4), in the proviso, for the words "prior to the approval of such resolution plan by the committee of creditors", the words, brackets and figures "before the resolution plan is submitted to the Adjudicating Authority under sub-section (6) of section 30" shall be substituted;

(e) after sub-section (4), the following sub-sections shall be inserted, namely:—

"(5) Notwithstanding anything contained in any other law for the time being in force and subject to sub-section (6), where a resolution plan has been approved under sub-section (1), a licence, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, associated with such resolution plan, shall not be suspended or terminated during the subsistence of the remaining period of such grants or rights, if the corporate debtor or, if applicable, the person whose resolution plan is approved under sub-section (1), complies with the obligations in respect of the remaining period of such grants or rights.

(6) Where the Adjudicating Authority approves the resolution plan under sub-section (1),––

(*a*) unless otherwise provided in the resolution plan, any claim, against the corporate debtor and its assets under any other law for the time being in force, prior to the date of approval, shall be extinguished; and

(*b*) no proceedings shall be continued or instituted against the corporate debtor or its assets on the basis of such claims, including proceedings for assessment of the claims.

Explanation I.—For the purposes of this section, it is hereby clarified that nothing in this section shall affect a claim or any proceeding in respect of a person who was a promoter or in the management or control of the corporate debtor, a guarantor of the corporate debtor or any person having a joint liability or a joint and several liability with the corporate debtor, as the case may be.

Explanation II.—For the purposes of this section, it is hereby clarified that if a person has a joint liability or a joint and several liability with the corporate debtor for payment of debt owed to a creditor before the approval of resolution plan, and such person makes a payment for such debt after the approval of the resolution plan, then any right of such person to be indemnified by the corporate debtor shall be extinguished.".

19.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)

31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [11] [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[12][Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

…

[11] Ins. by Act No. 26 of 2019, sec. 7 (w.e.f. 16-8-2019).

[12] Ins. by Act. No. 26 of 2018, sec. 24 (w.e.f. 6-6-2018).

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.

19.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

Clause 19 of the Bill seeks to insert a new proviso in sub-section (*1*) of section 31 of the Code to enable the Adjudicating Authority to first approve the implementation of the resolution plan, and then, by a separate order, approve the manner of distribution provided therein within a period of thirty days. This power shall only be exercised by the Adjudicating Authority on an application made by the resolution professional with the approval of the committee of creditors. The Board will specify the form and manner, and any condition for making such an application. Before approving the implementation of the resolution plan, the Adjudicating Authority shall confirm that the resolution plan meets the mandatory requirements under section 30 other than the requirements concerning the manner of distribution such as the minimum distribution related requirements for certain creditors. When the resolution plan is approved without the manner of distribution, it shall be binding on all stakeholders as provided under section 31. In the meantime, the moratorium imposed under section 14 will continue to apply against the creditors and other stakeholders as the process is still in progress, subject to the implementation of the resolution plan. When the manner of distribution is subsequently approved, it shall also be binding and the process shall stand completed.

ii. Additionally, it seeks to insert a proviso in sub-section (*2*) to empower the Adjudicating Authority to provide an opportunity to the committee of creditors to rectify any defects in the resolution plan before rejecting it, where the defects are procedural, non-material and can be rectified by the committee of creditors. It also seeks to insert sub-section (*2A*) to provide that the Adjudicating Authority must give its order regarding approval or rejection within thirty days. In addition to the above, it seeks to amend the proviso to sub-section (*4*) of section 31 to provide that if a resolution plan provides for a combination which requires prior approval of the Competition Commission of India under the Competition Act, 2002, then such approval shall be obtained by the resolution applicant before the resolution plan is submitted to the Adjudicating Authority for approval.

iii. It further seeks to insert sub-sections (5) and (6) to clarify and acknowledge the concept of the clean-slate principle recognised by judicial pronouncements. Once a resolution plan

is approved, claims are settled according to the plan, and unless otherwise specified, they are extinguished. Therefore, such a resolution should be recognised by and binding on all parties, and past liabilities should not serve as a basis for suspending or terminating any grant or right, or for any proceedings against the resolved corporate debtor.

iv. Sub-section (5) clarifies that where the Adjudicating Authority has approved a resolution plan, the grant or right given by the Central Government, State Government, local authority, sectoral regulator, or any other authority constituted under any other law for the time being in force that is associated with such a resolution plan shall not be suspended or terminated during the subsistence of the remaining period of such grants or rights. The resolution plan will specify the grants or rights of the corporate debtor that are meant to be continued. To seek this protection, the corporate debtor must comply with the obligations associated with such grants or rights for the remainder of the period. It will also apply when the assets of the corporate debtor, along with any grants or rights associated with the corporate debtor, are sold to a resolution applicant who complies with the obligations linked to such grants or rights for the remaining period. However, the obligations in respect of the debts arising prior to the date of approval of the resolution plan, which were resolved during the corporate insolvency resolution process, shall be governed as per sub-section (6) of section 31. The provider of such grants and rights cannot take non-payment of such debt as a ground for suspension or termination.

v. Furthermore, sub-section (6) to clarifies that after the approval of the resolution plan under sub-section (1), all claims against the corporate debtor or its assets not covered by the resolution plan will be deemed to have extinguished, and no proceedings shall be continued or instituted against the corporate debtor or its assets in connection with such claims. It is clarified that this provision does not affect any claim or proceedings against a former promoter or management or guarantor of the corporate debtor. It is also clarified that if a person with joint liability or a joint and several liability with the corporate debtor settles a debt that was owed to a creditor before the approval of the resolution plan, then the right of such a person to be indemnified by the corporate debtor shall also be extinguished after the approval of the resolution plan.

19.4 Important Views/Suggestions given by Experts/Stakeholders

i. With regard to Inter-se Disputes Panel a stakeholder recommended that if the inter se disputes among creditors is not resolved within 30 days from the date of approval of the resolution plan by NCLT, then the same shall be referred to IBBI panel consisting of members with experience in banking industry. Such decision of the panel shall be binding on the parties, thus, saving the bandwidth of NCLTs from these litigations. There are no consequences specified in case the distribution of the plan is not approved within the stipulated 30-day period. As per the provision proposed in the Bill, if the creditors do not agree upon the distribution within 30 days, no remedy would be available otherwise. Therefore, there would be uncertainty amongst lenders for voting in resolution plans. In such a situation, applications under section 60 of the Code may potentially clog the

process rendering the amendment infructuous. Thus, to mitigate that risk, an IBBI panel to resolve such disputes has been suggested.

ii. It was suggested by another stakeholder that the Amendments be made to the Competition Act, 2002, to ensure that timely approval from the Competition Commission of India is obtained, within a defined timeframe. CCI approval has to be obtained prior to submitting the resolution plan to the NCLT. There may be situations where CCI's approval is not received, and the resolution plan cannot be submitted to the NCLT due to the delay in approval by the CCI. Such undue delay can be avoided by amending the Competition Act, 2002 as suggested.

iii. Suggestions were made to replace "Resolution Professional" replacing with Committee of Creditors in the amended proviso. Also consider clarifying that the "rectification of defects" shall be limited to the "compliances" under Section 30 (2).The committee of creditors should not be allowed to interfere in the plan approval process directly. The compliances are the responsibility of the Resolution Professional and he alone should carry out the rectification work with the concurrence of the CoC. Direct involvement of CoC in such matter may bring the inter-creditor issues directly before the NCLT and may interfere in the plan approval process.

iv. Another suggestion was made to consider providing a truncated timeline for the decision to be made by the Competition Commission of India ("**CCI**") regarding combinations arising out of a resolution plan. The Competition Act, 2002 may be amended to require such decision to be made by the CCI within 30 days of filing of notice by the resolution applicant. A deemed approval mechanism may be provided in the law where a decision by the CCI is not made within this timeline. The proposed amendment only partially addresses the issue regarding timing of CCI approval for combinations under a resolution plan. Although giving creditors flexibility to obtain such approvals before approval of the resolution plan by the Adjudicating Authority is helpful, it will not adequately address the issue of delays owing to CCI approvals. The key issue in this regard is that the timelines for approval of a resolution plan under the IBC and the approval of combinations by the CCI are not aligned. Resolution applicants usually apply for a CCI approval after they respond to the request for resolution plans, since details of the proposed resolution plan are not confirmed till this stage. As per Regulation 40A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, this leave 45 days till the resolution plan is to be approved by the Adjudicating Authority. The Competition Act, 2002 provides a timeline of 210 days to the CCI to decide on approval or rejection of a proposed combination from the date of filing of notice. Therefore, you may consider recommending an amendment of the Competition Act, 2002 to provide a timeline of 30 days to decide on combinations arising out of a resolution plan. Where no decision is made by the CCI in this timeline, the proposed combination may be deemed to be approved. This was recommended by the Insolvency Law Committee in its report of March 2018. Further, the Report of the Competition Law Review Committee recommended that "*combinations arising out of*

resolution plans under the IBC may be permitted to be notified through the Green Channel".[4] The green channel mechanism is a quicker combination review mechanism that also has a deemed approval provision. However, both these recommendations have not been codified into the law. While IBC transactions can be filed under the green channel route if they meet the requisite criteria, most resolution plans would typically would not qualify for such approval. Thus, truncated timelines for CCI approvals of combinations arising out of resolution plans under the IBC may be considered.

v. A suggestion was made that it must not be proposed under the amendment –31 (1).Sec 31 (1) proposed for first approval of resolution plan and thereafter distribution of resolution plan, is not going to solve the problem, rather it shall increase more litigation.

vi. A stakeholder suggested to provide clarification on post-approval challenges and on non-adherence of the 30-day timeline under the two-stage resolution plan approval process. This Clause of the Bill introduces a two-stage approval process for resolution plans, allowing approval of the plan first and subsequent finalization of the inter-se distribution among creditors within 30days. However, the provision leaves room for some uncertainty such as: (i) Whether a plan, once approved with respect to the implementation and the full amount, may still be challenged before the NCLAT in the absence of manifest error and fraud, solely on the grounds of inter-se disputes?; and (ii) What may be the consequences of the distribution of the plan not being approved withing the stipulated 30-day period? The questions such as the impact on the earlier approval given by the NCLT on the resolution plan or it may lead to a forfeiture of the right of the lenders to challenge the approved resolution plan, may arise.

vii. A suggestion was made by stakeholders regarding the addition of proviso: "Provided furtherthat implementation of the resolution plan shall not be treated as a separate transaction to transfer any contract, lease, license, landholding or approval held in the name of the corporate debtor, solely on account of change of share holding of the corporate debtor upon implementation of the resolution plan and accordingly all the benefits accrued through the same would continue in the same way as prior to the corporate insolvency resolution process without being treated as a transfer of any rights and no contract, lease, license or approval shall be terminated solely on account of implementation of the resolution plan**.**"

viii. Instead of the bifurcated approval, a stakeholder proposed an escrow arrangement and proposed the addition of the following sub- sections:

(c) any encumbrance or charge against the corporate debtor or its assets on the basis of such claims shall be removed by the creditor within thirty days of the approval of the resolution plan;

(d) unless otherwise provided in the resolution plan, the corporate debtor shall not be liable for the payment of insolvency resolution process costs.

Addition of the following explanation:

Explanation III – For the purposes of this clause, it is clarified that all claims, whether filed, not filed, known, unknown, admitted, rejected, crystallized, contingent, disputed or admitted as a contingent liability shall be extinguished. It may be considered to:
Remove the bifurcated approval mechanism entirely. Instead, the law may provide that:
1.Escrow arrangement: Resolution applicant deposits plan amounts into an escrow account upon NCLT approval of the resolution plan.
2. CoC discretion on distribution timing: The CoC may decide the distribution mechanism and priorities either
(a)at the time of plan approval under Section 30(4), or (b) subsequently through a supplementary decision by 66% voting share.
3. Binding effect: The CoC's distribution decision (whether concurrent with plan approval or subsequent) shall be binding on all creditors, subject to mandatory minimum entitlements for dissenting financial creditors under Section 30(2)(b) and operational creditors. The following justifications was given by the stakeholder for the suggestions:

NCLT's limited role: NCLT approves the resolution plan, verifying compliance with Section 30(2) requirements including that minimum entitlements are provided . NCLT does not separately approve "manner of distribution" which is within CoC's exclusive domain.

Distribution among creditors is quintessentially a commercial decision within the CoC's domain under Essar Steel principles, not subject to separate NCLT approval. The bifurcated mechanism substitutes judicial scrutiny for commercial wisdom without legal basis and adds 30 days to an already time-bound process while creating uncertainty about the plan's binding effect during the interim. The escrow mechanism protects creditor interests by securing funds while allowing CoC flexibility on distribution timing without requiring NCLT's approval. This approach respects the division between CoC's commercial decisions and NCLT's compliance verification role. NCLT's role may be limited to verifying that minimum entitlements are provided for, not separately scrutinizing distribution mechanics already approved by CoC.

ix. The a stakeholder suggested the Committee to consider either: (a) maintaining current pre-CoC approval timing which works effectively, or (b) if post-CoC timing is retained, incorporate explicit modification framework and timeline extensions as suggested above. It may be recommended to maintain the current position where CCI approval is obtained before CoC approval. The proposed amendment reintroduces the exact problem the 2018 amendment solved, without providing any mechanism to address the finality vs. modification conflict. Unless explicit framework for post-CoC modifications is created (with appropriate safeguards and timeline extensions), the amendment may generate extensive litigation and practical deadlock in cases requiring CCI approval. The Select Committee may consider either: (a) maintaining current pre-CoC approval timing which works effectively, or (b) if post-CoC timing is retained, incorporate explicit modification framework and timeline extensions as suggested above.

x. A stakeholder proposed adding a new section (32B); Extinguishment of civil liabilities –

a. Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, all liabilities of a corporate debtor, including statutory, contractual and regulatory liabilities, arising prior to the commencement of the corporate insolvency resolution process shall cease, and no proceedings shall be instituted or continued in respect to such liabilities.
b. No action shall be taken against the property of the corporate debtor, covered under a resolution plan approved by the Adjudicating Authority, in relation to any liabilities, including statutory, contractual and regulatory liabilities, arising prior to the commencement of the corporate insolvency resolution process.
c. Notwithstanding the above, proceedings filed by the Corporate Debtor prior to the initiation of the corporate insolvency resolution process shall continue after the Adjudicating Authority approves the resolution plan.
d. Notwithstanding anything contained in any other law for the time being in force, the provisions of this section shall apply to all resolution plans which have either been approved by the Adjudicating Authority and/or been implemented as on the date of the notification of the amendment.

Notwithstanding anything contained in any judgment, decree, order of any court or other law for the time being in force, Section 32B shall be deemed to have been in force in all material times during the period commencing on November 30, 2016.

xi. One of the stakeholders suggested to consider replacing Committee of Creditors with Resolution Professional in the amended proviso. Also consider clarifying that the “rectification of defects” shall be limited to the “compliances” under Section 30 (2).The committee of creditors should not be allowed to interfere in the plan approval process directly. The compliances are the responsibility of the Resolution Professional, and he alone should carry out the rectification work with the concurrence of the CoC. Direct involvement of CoC in such matter may bring the inter-creditor issues directly before the NCLT and may interfere in the plan approval process.

xii. Some of the stakeholders gave suggestions to codify the "Clean Slate Principle" more explicitly. Without express mention of penal or statutory proceedings, government enforcement agencies may continue or initiate actions post-plan approval, creating uncertainty for resolution applicants and chilling bid participation. It is recommended to amend Section 31(6) to add an Explanation: 'For the avoidance of doubt, on approval of a resolution plan under sub-section (4), all claims and proceedings (civil, contractual, statutory, penal or regulatory) in rem and in person am against the corporate debtor in respect of pre-approval liabilities shall stand extinguished unless expressly preserved by the Resolution plan; provided that criminal liability insofar as it pertains to persons other than the corporate debtor(e.g. promoters) shall not be extinguished unless specifically mentioned.' An explanation may be added that any claim under the PMLA Act against the corporate debtor shall also be covered under Section 31(6)(a).They further added

that Though 30-days timeline is laudable however, recording the reasons for delay, if any, in passing the order may waste judicial time of the Adjudicating Authority. Further, the Supreme Court has already decided in the catena of judgments that all timelines of the Adjudicating Authority are directory in nature. Section 31(5): This immunity/ relief should cover the CIRP also and this is a critical omission. The Bill codifies the "clean slate" (extinguishment of all prior claims) upon approval of "the resolution plan." However, the Bill (via Sec 5(26)) also encourages *partial* or *asset-sale* based plans. The Bill is silent on what happens if a plan resolves only one division/asset, while the rest of the company goes to liquidation. Does the 'clean slate' apply to the *entire* company, unfairly extinguishing claims of creditors related to the liquidating part. Stakeholder further suggested that The scope of the 'clean slate' must be explicitly tied to the scope of the resolution plan. Suggested Wording (Add Explanation III to Sec 31(6)): "Explanation III.—Whereas resolution plan...provides for the resolution of only specific assets or business undertakings...the extinguishment of claims under clause(a)shall apply only to:(i) claims provided for or settled under such plan; and (ii) claims demonstrably attributable solely to the assets or undertakings resolved. All other claims shall survive to be dealt within the subsequent liquidation of the remaining assets. "Stakeholder further explained there positing by submitting that absence of explicit statutory recognition of the clean slate principle leads to continued enforcement and uncertainty post- resolution, deterring investors. Codifying extinguishment of all pre- plan claims and proceedings against the corporate debtor ensures finality, legal certainty, and effective revival, while preserving accountability of individuals for personal or criminal misconduct. Attachment of assets by PMLA has been a major bone of contention in the resolution process. If the clean slate principle as laid down under Section 31(6) also covers PMLA proceedings, it shall facilitate the closure of resolution process in a timely manner. This is vital to prevent manifest injustice. It ensures that creditors of the unresolved parts of the business retain their right to claim in the subsequent liquidation, aligning the extinguishment of debt with the specific assets being resolved.

xiii. There were some real estate specific suggestions and suggested the following amendments

> **(1)** Delete the new proviso to Section31(1)or restrict it to *non-real-estate* companies. Insert a proviso: *“Provided that in the case of real-estate or infrastructure developers, the Adjudicating Authority shall approve the resolution plan and the manner of distribution simultaneously, to ensure protection of home- buyers and continuity of project funding.”*
>
> Or in the alternative, after sub-section(1),the following sub-section shall be inserted, namely:—
>
> *“(1A) Not withstanding anything contained in this Code or any other law for the time being in force,—*

(a) upon approval of the resolution plan under sub- section (1), the total amount proposed under such plan shall stand frozen and shall remain unalterable; and no enhancement,

modification, or additional financial demand shall be entertained during the course of implementation of the resolution plan or prior to the approval of the manner of distribution among the stakeholders;

(b) any such alteration or additional demand made during the said period shall be deemed invalid and unenforceable, as it would disturb the financial projections forming the basis of the approved plan and adversely affect its execution; and

(c) the moratorium declared under section 14 shall continue to operate in respect of the corporate debtor, its assets, and affairs until the final distribution of the resolution plan amount among all stakeholders is duly completed in accordance with the approved plan."

(2) Amend sub-section (6) to preserve the rights of personal and corporate guarantors. The following amendment is proposed in sub section (a) and (b); *"(a) Unless otherwise provided in the resolution plan, all claims against the corporate debtor, its assets, and its personal guarantors arising under any law for the time being in force and relating to any period prior to the date of approval of the resolution plan shall stand fully extinguished upon such approval; and*

(b) No proceedings shall be continued or instituted against the corporate debtor, its assets, or its personal guarantors on the basis of such extinguished claims, including any

Proceedings for assessment, adjudication, enforcement, or recovery of those claims."

(3) Delete Explanation I and II under subsection 6(1) to Section 31.

The stakeholder further justified the suggestion by submitting that Amendment provisions are deferring distribution approval creates uncertainty, jeopardizing buyer protection, lender priority, and project-wise escrow usage. Automatic extinguishment of all prior claims and guarantor rights contradicts the cooperative- resolution model. Promoters routinely infuse funds post-plan approval to complete projects; depriving them of reimbursement will deter revival efforts. Excluding promoters from protection but extinguishing their indemnity discourages honest promoters from supporting resolution. Therefore, a simultaneous approval mechanism and preserved indemnity rights are essential to maintain liquidity, fairness, and project completion. The imposition of a freeze on the Resolution Plan amount

after approval of implementation but before approval of distribution to stakeholders will ensure that financial projections of SRA are not affected. The same shall result in increased investor confidence.

xiv. Another stakeholder suggested to explicitly include within the ambit of this section all permissions and approvals relevant to real-estate and infrastructure development, including RERA registration, building plan sanction, environmental clearance, development licence, and municipal NOC. Further, add a proviso that the period of proceedings under the IBC shall be excluded from the period of validity of approvals, and therefore these approvals shall continue for the balance period of their validity after the resolution plan is accepted. They cannot be withheld or cancelled on account of change in management or ownership, unless ordered by the Adjudicating Authority after hearing the corporate debtor and its promoters.

xv. Expressly include within its ambit all proceedings and/or investigations initiated by statutory authorities and Government agencies pertaining to any alleged offence prior to initiation of CIRP qua the corporate debtor. Real-estate projects depend on a web of statutory approvals from State and local authorities. Even a temporary suspension or revalidation requirement can halt project completion and erode value. Promoters who cooperate in resolution or settlement should not lose project permissions due to change in control. Express statutory protection and judicial oversight will prevent bureaucratic obstruction, ensure seamless project continuity, and safeguard both the developer's and creditors' interests. Stakeholder justified it by submitting that Real-estate projects are often riddled with large-scale fraud, frequently perpetrated by absconding promoters. Therefore, including a clause that provides immunity from all fraudulent acts of erstwhile promoters by the Enforcement Directorate or the Serious Fraud Investigation Office (SFIO) will boost investor confidence and result in greater participation by prospective bidders.

xvi. Regarding the Two-Stage Approval of Resolution Plan (Clause 19(a) / Sec 31(1) stakeholders suggested that The Bill inserts a new proviso to Section 31(1) allowing the AA, on a CoC-approved application, to "first approve the implementation of the resolution plan and thereafter approve the manner of distribution... within a period of thirty days. "Stakeholder further that this provision for a two-stage plan approval be removed from the Bill. We believe it is fundamentally flawed and will undermine the integrity of the resolution process:

Undermines Commercial Wisdom: The "manner of distribution" is not separate from the plan; it is an integral and indivisible part of the commercial bargain approved by the CoC. Lenders (FCs) vote in favour of a plan precisely because they have agreed on the specific distribution. Approving a plan without its distribution component is akin to approving a contract without the payment terms.

Creates Total Uncertainty for Creditors: This provision creates an unacceptable level of uncertainty. The CoC would be asked to approve the implementation of a

plan (e.g., asset transfer, change in management) while the distribution of proceeds remains subject to a separate, later approval by the AA. No creditor can make a rational commercial decision under such conditions.

Encourages Litigation: It invites the AA to interfere with the commercial distribution agreed upon by the CoC, which goes against the established "commercial wisdom" doctrine. It gives dissenting creditors a second opportunity to litigate the distribution, even after the plan's implementation has begun.

Destroys Faith in the Process: If the AA were to approve implementation but later alter the distribution, it would render the CoC's initial approval (based on the original distribution) redundant and destroy the trust creditors have in the process. If the AA feels the distribution is unfair, the only correct remedy (as established by the Supreme Court) is to send the entire plan back to the CoC for reconsideration—not to rewrite the distribution terms itself. This amendment, while perhaps intended to offer flexibility, would create fatal uncertainty at the heart of the resolution plan and should therefore be avoided.

This amendment balances the need for compliance with the objective of maximizing going concern value and avoiding premature liquidation for rectifiable defects.T his amendment appears to address the scenario created by the Supreme Court judgment in Kalyani Transco v. Bhushan Power and Steel Limited, 2025 SCC Online SC 2093.(1) Clear timelines should be specified for rectification of defects; (2) The number of opportunities for rectification should be limited to prevent indefinite delays; (3) Only technical or procedural defects should be rectifiable, not substantive non- compliance with mandatory provisions.

xvii. Former Chief Justice of India Shri D Y Chandrachud, gave the following written submissions on the clause 19 w.r.t the clean slate principle:

Proposed Amendment: Modifications to proposed Section 31(6) – Extinguishment of pre-CIRP liabilities and codification of "Clean Slate Principle".

Additions to Clause 19 of the Bill for amending proposed Section 31(6) of the Code: Express insertion of reference to "encumbrance" in the context of extinguishment in Section 31(6)(a).

Express restriction on issuing demand or creation of "encumbrance" basis extinguished claims.

Proposed Language of Section 31(6) of the Code:

Where the Adjudicating Authority approves the resolution plan under sub-section (1) (a) unless otherwise provided in the resolution plan, any claims or encumbrances, statutory, contractual or otherwise, against the corporate

debtor and / or its assets, including under any other law or the time being in force, prior to the date of approval, shall be extinguished; and (b) no demands shall be issued and no proceedings shall be continued or instituted against the corporate debtor or its assets on the basis of such claims or encumbrances, statutory, contractual or otherwise, including any proceedings for recovery or assessment of the such claims, or creation of encumbrances on the basis of such claims.

Proposed Amendment: Insertion of Section 31A – Clarification on consequences of removal of erstwhile management to give effect to IBC.

Insertion of Section 31(5A) of the Code: Clarification that a change in shareholding or name of the CD on implementation of a resolution plan is not a transfer; A bar on termination of any contract or imposition of charges on treating the same as a transfer.

Proposed Language of Section 31(5A) of the Code: (5A) Notwithstanding anything contained in any other law for the time being in force, the resolution plan approved under sub-section (1), and its implementation, shall not be treated as a conveyance or transfer of any contract, lease, license, land holding, or approval held in the name of the corporate debtor, solely on account of the change of shareholding or name of the corporate debtor. Explanation - For avoidance of doubt, upon the implementation of the resolution plan, all benefits accrued under contracts, leases, licenses, land holdings, or approvals held in the name of the corporate debtor would continue without imposition of any fees, charges, or statutory dues, and no contract, lease, license, land holding, or approval shall be terminated solely on account of the implementation of the resolution plan".

19.5 Examination by the Committee

i. Ministry during the briefing meeting gave the following submissions, w.r.t. the Two-stage approval process to reduce delays; Mandatory timeline for NCLT to approve plans; and Timing of Competition Commission of India (CCI) approval, to the Committee:

"To reduce time delays in the resolution part, we notice that there is a dispute between the creditors. There are inter-creditor disputes with respect to the manner of distribution of the money that flows in after a resolution plan is approved. As a result of this, there is continuous litigation even though a successful resolution applicant has been found. Therefore, the AA is not able to allow this company to move from the corporate debtor into the successful resolution applicant's hand. Therefore, it has been proposed that in such cases, COC may recommend to the adjudicating authority to allow

the company to move into the successful resolution applicant's hand and let the manner of distribution be taken care of later. Whatever it is between the manner of distribution and this, the time gap should not be more than 30 days. Further, Sir, we also notice that NCLT has often been delaying, though we have a timeline of 330 days to complete the entire process of CIRP. Often it is noted that the resolution plan is lying with the NCLT for a very long time due to IAs or due to various other reasons. Here again, we are mandating a timeline for the NCLT that within 30 days of receipt of a resolution plan, the NCLT will have to approve the resolution plan. If it is delayed, they have to give a reason in writing. Further, while examining the reasons for delay, there was also one reason for delay, that is, there is a proviso 315 which states that the Competition Commission of India's approval for a combination under a resolution plan has to be received before the CoC approves a resolution plan.

As a result of it, all the prospective resolution applicant proposals have to go to CCI in case of the combination involved, and all of them need to be approved. Earlier this was held as directory and not mandatory, but the Supreme Court in the case of Independent Sugar Corporation Ltd. v. Girish Sriram Juneja has held it as mandatory. Therefore, this would be a time-consuming exercise because ultimately it is only one resolution applicant that needs to get cleared. Therefore, once the CoC approves a successful resolution applicant, he will have to go and get the approval of the CCI before the final approval is accorded by the NCLT. (verb 14.10., pg 7-8)

ii. Ministry informed the Committee about the Clean Slate Principle and preventing new suits on old claims during the briefing meeting as under:

"Sir, coming to the clean slate principle, there are implementation hurdles which we found. The successful resolution applicants often have implementation hurdles due to termination of essential grants and there are certain agencies which continue to raise the demand for old dues which were already considered during the resolution plan and in fact, they were extinguished. We noticed that in practice, what happens is, despite the consideration of these claims under the plan, the creditors continue to pursue their past debts in different forum and continue the recovery proceedings, etc. In fact, the resolution plan is supposed to be binding on all creditors and post-approval, the non-receipt of past claims should not be a ground for terminating, suspending existing grants, rights, etc., if all the requirements have otherwise been complied with. Therefore, we propose to clarify that the grants and rights remain active if the CD has fulfilled his obligation and once the resolution plan is approved, the old claims will be addressed only as per the resolution plan. No new suit proceedings can commence against these claims."

iii. When asked by the Committee, the Department of Financial Services explained the proposal for a staggered approval process to expedite resolution and submitted before the Committee as under:

> *"One of the proposed amendments is Section 30(1).* [Note: Contextually refers to Section 31 proviso]. *It says that today we have to have a resolution plan and the approval of distribution at the single point. We are suggesting that a staggered approval can be given -- time for approval of resolution and within 30 days, mandatorily, the distribution can be approved."*

iv. RBI during the evidence meeting suggested a fallback mechanism if the Competition Commission rejects a winning bidder and deposed before the Committee as under:

> *"with regard to approval of the resolution plan, both the Corporate Insolvency Advisory Committee (CIAC) and the Department of Financial Services (DFS) have discussed this issue. We are of the opinion that, if at any stage the Competition Commission rejects an application, there should be a provision to identify a second resolution applicant instead of reinitiating the entire resolution process. This would help reduce time and enhance efficiency."*

v. The Ministry on suggestion regarding the problem of delays and reducing the burden on AA submitted that:

> **"**The Bill's proposed amendment in Clause 19 addresses the precise problem of delays caused by disputes over distribution, reducing the burden on the Adjudicating Authority (AA) more effectively and maintaining judicial oversight. Clause 19 inserts a new proviso to Section 31(1), enabling the AA to first approve the implementation of the resolution plan and later approve the manner of distribution by a separate order. This key change ensures that resolution plan objections regarding distribution do not stall the successful resolution applicant from taking over the Corporate Debtor's management. Importantly, the moratorium imposed under Section 14 continues to apply against creditors and other stakeholders during this interim period until the distribution is finalized. This system streamlines the process, leading to quicker plan commencement and completion, mitigating the delay caused by distribution disagreements, which is the underlying cause of AA bandwidth saturation. This will reduce delays and improve the bids of prospective resolution applicants. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

vi. The MCA on the suggestions regarding Competition Act,2002 submitted that:

> *"The proposed amendment to IBC is also being made with prior consultation of CCI. This recommendation pertains to the Competition Act, 2002 and falls outside the scope of amendments to the IBC. The observation is duly noted*."

vii. On the suggestions regarding approval of resolution plan and rectification of defects, MCA submitted that

> **"**Since the resolution plan approved by the CoC is being presented before the AA under section 30(6), the CoC should be the appropriate body to rectify the defect. This process will be facilitated by the RP. The section intends to give an opportunity to rectify any defects that are procedural, non-material and can be rectified by the committee of creditors. A reference to section 30(2) would imply that a substantive defect can also be rectified, as section 30(2) provides for the mandatory requirement that the resolution plan should comply with. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.
>
> The proviso in Section 31(2) is to be inserted with the intent for the Adjudicating Authority to provide an opportunity to the committee of creditors to rectify any defects in the resolution plan before rejecting it, where the defects are procedural, non-material and can be rectified by the committee of creditors. The proviso is not intended to cover non-compliances of section 30(2), if such non-compliances are not procedural, technical in nature or capable of being rectified. Further, since such rectifiable defects are by nature limited and straightforward, they will not require multiple rounds of reiteration or extended timelines. Consequently, prescribing rigid timelines or a fixed number of opportunities for rectification becomes unnecessary. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

viii. On the suggestions on section 31(4),MCA in a written reply informed the Committee that:

> **"**The former proviso to Section 31(4) of the Code required Competition Commission of India (CCI) approval prior to the approval of such resolution plan by the committee of creditors. This setup burdened multiple resolution applicants (RAs) simultaneously, leading to high compliance costs and increased regulatory workload for the CCI, thus causing delays. Clause 19(d) mandates that CCI approval is required only "before the resolution plan is submitted to the Adjudicating Authority under sub-section (6) of section 30". This ensures that only the single successful RA obtains clearance after the Committee of Creditors' (CoC) selection, thereby successfully reducing delay

and easing the CCI's burden without needing amendments to the Competition Act. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

ix. Ministry on the suggestion regarding Post-Approval Challenges submitted that:

"This separation in approval of plan and distribution is intended to accelerate the operationalisation of the corporate debtor (CD). While the first approval is binding on all stakeholders, enabling the plan's implementation, the moratorium under Section 14 continues to apply during the 30-day period until the manner of distribution is approved, ensuring the process remains in progress. The intent behind separating the approval stages is precisely to prevent objections relating to the manner of distribution (which form the majority of Interim Applications filed) from holding up the plan's implementation. Furthermore, if the manner of distribution is not approved within the 30-day period, the framework implies that the AA retains jurisdiction to address this final stage, ensuring the overall binding nature of the core resolution plan remains intact. This design prioritises resolution certainty and maximisation of value, mitigating the delays previously caused by prolonged litigation. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

x Regarding the suggestion on Protection of Contracts, Ministry submitted that:

"Since the decision of the implementation of the resolution plan will be pursuant to an order of the NCLT, the same may be appealed to NCLAT if a person is aggrieved by the same. Further, as explained in the notes on clause for this provision, before approving the implementation of the resolution plan, the AA shall confirm that the resolution plan meets the mandatory requirements under section 30 other than the requirements concerning the manner of distribution such as the minimum distribution related requirements for certain creditors. When the resolution plan is approved without the manner of distribution, it shall be binding on all stakeholders as provided under section 31. In the meantime, the moratorium imposed under section 14 will continue to apply against the creditors and other stakeholders as the process is still in progress, subject to the implementation of the resolution plan. When the manner of distribution is subsequently approved, it shall also be binding and the process shall stand completed. Additionally, a 30-day timeline is provided to ensure that the AA passes the order related to the manner of distribution swiftly. Generally, it is observed that the Supreme Court has regarded such timelines as directory. If the 30 days lapse, it would not mean that the implementation of the resolution plan would become invalid. In any case, since the proceedings will remain pending, the AA may issue appropriate interim orders as needed. Furthermore, it should be noted that

the option for this part approval will only be available through an application by the CoC, and the procedure for submitting such an application will be outlined in the regulations, including any conditions regarding when and how the CoC should make such a request. The regulations will provide for the effective use of this option by the CoC. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

xi. Ministry and IBBI during the course of oral evidence submitted the following on phase wise appeal:

"Regarding the phase-wise approval of the resolution plan, that is, the separate approval for implementation and manner of distribution. There is concern expressed around it that it should be reversed and there should be more clarity about the mechanism which is to be provided for approval of the manner of distribution by the AA." …..

……To prevent that it should not linger on, we have put 30 days between the approval of the plan and the approval of the distribution part of it also. This will happen infrequently and there will be an agreement generally within the CoC that the plan is good to go."

xii. Ministry on the suggestion regarding Clean Extinguishment submitted that:

"The proposed sub-section (5) to section 31 seeks to ensure that once a resolution plan is approved, and the claims of any creditor relating to grants or rights have been duly considered within the insolvency resolution process, the non-payment of such past debt shall not constitute a ground for suspension or termination of those grants or rights. This provision reinforces the clean slate principle recognised by courts, ensuring that an approved resolution plan is binding on all stakeholders. Additionally, the effect of reorganising or restructuring the corporate debtor and its assets pursuant to the implementation of a resolution plan must be assessed on a case-by-case basis. For instance, a resolution plan may stipulate that a particular asset or business shall remain with the corporate debtor, or alternatively, that it shall be transferred to a third party. Each scenario carries distinct legal implications. In the first, the continuity of rights occurs under the reconstituted ownership of the corporate debtor; in the second, it entails an actual transfer of ownership to another entity. The stakeholder's suggestion, however, proposes to generalise the legal consequences of implementing a resolution plan by creating a deeming fiction—treating such implementation as not constituting a transfer of any contract, lease, licence, landholding, or approval. Adopting such a blanket approach will be inappropriate, as the

consequences of a resolution plan should be determined by jurisprudence and contextual interpretation rather than a statutory deeming provision. These issues are better resolved case-by-case, depending on the nature and structure of the transaction envisioned in each plan. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

The proviso in Section 31(2) is to be inserted with the intent for the Adjudicating Authority to provide an opportunity to the committee of creditors to rectify any defects in the resolution plan before rejecting it, where the defects are procedural, non-material and can be rectified by the committee of creditors. The proviso is not intended to cover non-compliances of Section 30(2), if such non-compliances are not procedural, technical in nature or capable of being rectified. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

xiii. Ministry on the suggestion on Clause 31(4) regarding Change of Name replied that:

"The amendment to the proviso of sub-section (4) of section 31 provides that where a resolution plan involves a combination requiring prior approval of the Competition Commission of India ("CCI") under the Competition Act, 2002, such approval must be obtained by the resolution applicant before the plan is submitted to the Adjudicating Authority for approval. This may be even after the approval of the resolution plan by the CoC. The amendment aims to ensure that the time required for obtaining CCI approval does not delay or impede the CoC's consideration of the resolution plan. Previously, CCI approval was required before the CoC could approve the plan, which may have prolonged the overall process. Additionally, to facilitate the timely completion of the resolution process, corresponding reforms will be undertaken at the CCI level to enable swifter approvals without hampering the efficiency of insolvency proceedings. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

xiv. During the oral evidence representatives of the Ministry and IBBI deposed as under:

"The next 2.10 is for a truncated timeline may be provided for decision of CCI regarding the combinations arising from a resolution plan... Our submission here is that only the plan which is approved by the COC would go to CCI. This would reduce the load on the CCI and all prospective resolution applicants need not go…..

….The law says that whenever an application for combination comes to the Competition Commission, they have to make their prima facie view whether there is an appreciable adverse impact on competition. And this decision has to be made within 30 days. If it is not made within 30 days, then it is deemed approved."

xv. On the suggestions regarding the extinguishment of civil liabilities, MCA submitted that:

> **"**The stakeholder proposes the insertion of a new section for complete extinguishment of civil liabilities post CIRP. However, this suggestion is not acceptable. The IBC Amendment Bill, 2025, proposes to introduce Section 31(6), which provides that on the approval of the resolution plan by the AA, unless otherwise provided in the plan, any claim against the corporate debtor and its assets prior to the approval of the plan shall be extinguished. Further, there is also a bar against institution or continuation of proceedings in respect of such claims. This provision is materially similar to the provision proposed by the stakeholder, and covers the issues listed therein. Therefore, another section for the extinguishment of civil liability is not required. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.
>
> The extinguishment of criminal liability against the corporate debtor and its property is already provided for in Section 32A of the Code. Therefore, additional clarification in this regard is not required. See response to Serial No. 21 for the recommendation on extinguishment of liability for asset specific resolution plans. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.“

xvi. On the suggestions regarding clean slate principle pertaining to amendments to Section 31(5) & (6), MCA informed the Committee that:

> **"**Clause 19(a) introduces a two-stage approval process where the Adjudicating Authority (AA) first approves the implementation of the resolution plan, with distribution approval reserved for a separate order within thirty days. This prevents distribution disputes (the source of most litigation) from delaying the corporate debtor’s immediate takeover, thereby maintaining asset value and increasing investor confidence and bids. Furthermore, Clause 19(e) codifies the clean-slate principle by extinguishing the right of any person with joint or several liability to be indemnified by the corporate debtor after plan approval, ensuring the successful resolution applicant (SRA) inherits a liability-free entity. This extinguishment is a necessary safeguard for the SRA. Selectively applying the amendment to certain sectors may create distortions. Additionally, the creditor-initiated

insolvency resolution process will promote insolvency resolution of genuine business failures. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

xvii. A During the course of oral evidence further deliberations were held, on the clean slate principle and statutory dues, as under:

*"With respect to clarity on new Sections 31(v) and 31(vi) which was sought... Our submission here is that the amendment basically focuses on maintaining the substance of the business going on and its operational licenses and the extinguishment of all the civil claims that lie against the corporate debtor, which are not included in the plan are automatically extinguished so that the corporate debtor can move on with a clean slate**...***

….It will give a very clean slate and it will actually make it very hard-coded in the code. These problems come at the State level mostly. When you have environmental clearances or you have the local development authorities who give a problem to this. Once you specify in the court that all previous claims have been extinguished except for the ones which are the part of the resolution plan, it will protect them also because they feel scared about letting their dues go."

xviii. On the suggestions regarding real estate approvals Ministry submitted that:

"Clause 19(e) of the Bill introduces sub-section (5) into Section 31, which provides comprehensive protection for "a licence, permit, registration, quota, concession, clearances or a similar grant or right" given by any government or sectoral regulator. This broad language inherently encompasses approvals relevant to real estate without the need for an exhaustive list. This clause mandates that these rights shall not be suspended or terminated solely due to the approved resolution plan or change in management/ownership, provided the resolution applicant complies with remaining obligations. Furthermore, Clause 19(e), inserting sub-section (6), codifies the clean-slate principle, extinguishing all claims and preventing any proceedings by statutory authorities based on pre-approval liabilities, ensuring the corporate debtor can operate as a going concern. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.**"**

xix. On the suggestions regarding Opposition to Two-Stage Approval plan, MCA submitted that

"The insertion of the further proviso in Section 31(1) is a deliberate, strategic amendment aimed at mitigating delays that reduce asset value. This

mechanism empowers the Adjudicating Authority (AA), upon a Committee of Creditors (CoC) application (with 66% voting share), to first approve the implementation of the resolution plan. Since major litigation currently arises from disputes over the manner of distribution of proceeds, approving implementation immediately allows the successful resolution applicant to take over and operate the corporate debtor (CD), thereby preventing value deterioration during protracted judicial disputes. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

xx. Ministry on the suggestion regarding Combined Approval submitted that:

"The amendment is proposed to grant flexibility to the Adjudicating Authority to approve manner of distribution at a later stage. This is to ensure that the SRA gets control of the company as soon as the AA approves the bid and he need not wait for the decision on distribution. However, if there are no disputes AA can approve the plan as a whole as prevalent now. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

xxi. Ministry on the suggestions regarding Delays and Non-Consensus, submitted that:

"Segregating the plan-approval stage from distribution has not been made mandatory in all cases. It remains within the discretion of the CoC, which may recommend such segregation only where it is considered necessary and feasible to implement. The insertion of the further proviso in Section 31(1) is aimed at mitigating delays that reduce asset value. This mechanism empowers the Adjudicating Authority (AA), upon a Committee of Creditors (CoC) application (with 66% voting share), to first approve the implementation of the resolution plan. Since major litigation currently arises from disputes over the manner of distribution of proceeds, approving implementation immediately allows the successful resolution applicant to take over and operate the corporate debtor (CD), thereby preventing value deterioration during protracted judicial disputes. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

xxii. Ministry have given further clarifications on the suggestions regarding Clause 19 as under:

"This separation in approval of plan and distribution is intended to accelerate the operationalisation of the corporate debtor (CD). While the first approval is binding on all stakeholders, enabling the plan's implementation, the moratorium under Section 14 continues to apply during the 30- day period until the manner of distribution is approved, ensuring the

process remains in progress The intent behind separating the approval stages is precisely to prevent objections relating to the manner of distribution (which form the majority of Interim Applications filed) from holding up the plan's implementation. Furthermore, if the manner of distribution is not approved within the 30-day period, the framework implies that the AA retains jurisdiction to address this final stage, ensuring the overall binding nature of the core resolution plan remains intact. This design prioritises resolution certainty and maximisation of value, mitigating the delays previously caused by prolonged litigation.

First Suggestion: Since the decision of the implementation of the resolution plan will be pursuant to an order of the NCLT, the same may be appealed to NCLAT if a person is aggrieved by the same. Further, as explained in the notes on clause for this provision, before approving the implementation of the resolution plan, the AA shall confirm that the resolution plan meets the mandatory requirements under section 30 other than the requirements concerning the manner of distribution such as the minimum distribution related requirements for certain creditors. When the resolution plan is approved without the manner of distribution, it shall be binding on all stakeholders as provided under section 31. In the meantime, the moratorium imposed under section 14 will continue to apply against the creditors and other stakeholders as the process is still in progress, subject to the implementation of the resolution plan. When the manner of distribution is subsequently approved, it shall also be binding and the process shall stand completed.

Second Suggestion: Additionally, a 30-day timeline is provided to ensure that the AA passes the order related to the manner of distribution swiftly. Generally, it is observed that the Supreme Court has regarded such timelines as directory. If the 30 days lapse, it would not mean that the implementation of the resolution plan would become invalid. In any case, since the proceedings will remain pending, the AA may issue appropriate interim orders as needed. Furthermore, it should be noted that the option for this part approval will only be available through an application by the CoC, and the procedure for submitting such an application will be outlined in the regulations, including any conditions regarding when and how the CoC should make such a request. The regulations will provide for the effective use of this option by the CoC. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

xxiii. Ministry on the suggestion of former Chief Justice of Indi submitted as under:

“Sub-section (6) of section 31 states that after the approval of the resolution plan under sub-section (1), all claims against the corporate debtor or its assets not covered by the resolution plan will be considered extinguished. It also prohibits any proceedings in this regard. Currently, the word “claim” is broadly used to include any right exercised against the CD or its assets that existed before the approval of the resolution plan. Therefore, if an asset is encumbered or a security interest is created on it in relation to a claim, the provision should still apply, subject to the terms of the resolution plan. Further, the proceedings against the CD or asset after approval of the resolution plan shall be prohibited. Further, section 3(6) provides a very broad definition of the term claim to mean:
“(6) “claim” means—
(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

In furtherance of the clean slate principle, the proposed sub-section (5) of section 31 clarifies that after the approved resolution plan, the government and authorities shall not suspend or terminate such grant or rights during the subsistence of the remaining period of such grants or rights, if the corporate debtor complies with the obligations in respect of the remaining period of such grants or rights. Since the scope of IBC relates to the insolvency resolution of the CD, once a resolution plan is approved, past debts are settled, and this should not serve as a basis for suspending or terminating a grant or right. However, the scope of IBC does not extend to interfering with the powers of the government or authority to ensure other technical compliance requirements are met when a CD operates in that sector. The licenses/ contracts may require approval of the regulator or the counterparty to ensure that the controlling shareholder holds the capability to fulfil the terms of the license/ contract. For instance, an agreement for the transmission of electricity is entered into by the Central Transmission Utility of India (CTUIL) and the concessionaire transmission company after a competitive bidding process, during which the company and its parent company have to demonstrate the ability to fulfil the agreement, including the technical and financial obligations provided therein. Such agreements may require the parent to maintain control of the company to ensure technical feasibility and continuity. Allowing the successful resolution applicant to bypass this requirement may lead to cases in which the concerned regulator does not have an adequate opportunity to examine the new parent company's capability to fulfil its obligations under the

license/agreement. These are requirements specific to law governing that sector and do not fall under the domain of IBC.
Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

19.6 Observations/Recommendations of the Committee

19.6.1 The Committee, having examined Clause 19 of the Bill, note that it inserts a proviso to Section 31(1) of the Code to empower the Adjudicating Authority to bifurcate the approval of the resolution plan into two stages: first, approving the implementation, and subsequently, approving the manner of distribution within thirty days. While taking note of stakeholder apprehensions regarding the potential uncertainty for creditors and impact on the Committee of Creditors' commercial wisdom, the Committee find merit in the Ministry's justification that this structural reform is essential to prevent inter-creditor disputes over distribution from stalling the handover of the corporate debtor. The Committee concur that permitting the immediate "implementation" of the plan preserves asset value and prevents deterioration during litigation, while distribution disputes can be adjudicated separately.

19.6.2 Furthermore, the Committee strongly endorse the insertion of sub-sections (5) and (6) in Section 31, which codify the "Clean Slate" principle. The Committee observe that this amendment provides necessary statutory protection to the Successful Resolution Applicant against past claims, including those from statutory authorities, ensuring that the corporate debtor starts on a fresh footing. The Committee emphasize that this provision is declaratory in nature, clarifying the original legislative intent that the extinguishment of all past claims and liabilities is absolute. Consequently, the Committee clarify that this protection is intended to be applicable to all cases, whether pending or resolved, thereby ensuring finality and preventing the reopening of settled liabilities. Accordingly, the Committee

endorse Clause 19 as proposed and recommend its acceptance without any modification.

19.6.3 However, to ensure that this protection is not misused, the Committee recommend clarifying the interplay with Section 69. The Committee emphasize that while the "Clean Slate" protects the corporate debtor and its assets, it does not absolve any person, including erstwhile promoters or officers, from criminal liability for offences under Section 69 (Punishment for transactions defrauding creditors) or other penal provisions of the Code. The liability of such individuals must continue independently of the resolution plan approval.

19.6.4 Additionally, to prevent unnecessary litigation regarding applicability, the Committee recommend that the declaratory nature of the Clean Slate provisions must be amply clarified. The cases, however, already settled under the IBC need not be reopened. Accordingly, the Committee recommend that Clause 19 be appropriately amended to insert an explanation as follows:

> **"Explanation III - For the removal of doubts, subsections (5) and (6) are clarificatory in nature and codify the original legislative intent of the Act. Save as otherwise expressly provided or decided through judicial pronouncements, the provisions of this section shall apply from the date of the commencement of the Principal Act."**

The Ministry may reword the above explanation suitably, if required, to avoid unintended consequences.

19.6.5 In view of the above, the Committee endorse Clause 19 and recommend its acceptance.

20. Clause 20 of the Bill seeks to amend Section 33 of the Principal Act.

20.1 Provisions proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

20. In section 33 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a), the words and figures “or the fast-track corporate insolvency resolution process under section 56” shall be omitted;

(ii) in clause (b),—

(I) in sub-clause (ii), after the words “in liquidation,”, the word “and” shall be omitted;

(II) after sub-clause (iii), the following sub-clauses shall be inserted, namely:—

“(iv) subject to the provisions of section 52, declare a moratorium for the purposes referred to in clauses (a) and (c) of sub-section (1) read with sub-section (3) of section 14, which shall, mutatis mutandis, apply to the proceedings under this Chapter:

Provided that provisions of this sub-clause shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and

(v) pass an order appointing a liquidator for the liquidation process in accordance with section 34.”;

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-section (1), where the Adjudicating Authority is satisfied that the grounds mentioned in clause (a) or clause (b) of sub-section (1) of this section exist, it shall, before passing the liquidation order, consider an application made by the committee of creditors, in such manner and subject to such conditions as may be specified, by not less than sixty-six per cent. of the voting share, for restoring the corporate insolvency resolution process, and after considering such application, it may, by an order—

(a) if the ground mentioned in clause (a) of sub-section (1) exists, restore the corporate insolvency resolution process to be completed within such duration as it deems fit, but not exceeding one hundred and twenty days; or

(b) if the ground mentioned in clause (b) of sub-section (1) exists,—

(i) restore the corporate insolvency resolution process to the stage of invitation for submission of a resolution plan, which shall be completed in such manner and subject to such conditions as specified; and

(ii) provide the duration for completion of such restored corporate insolvency resolution process as it deems fit, but not exceeding one hundred and twenty days.

Explanation.—For the purposes of this section, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025, the provisions of sub-sections (1A) and (1B) shall also apply to the corporate insolvency resolution process of a corporate debtor initiated under Chapter II before such date of commencement, where the Adjudicating Authority has not passed a liquidation order under sub-section (1) of this section, and shall not apply where the liquidation order is passed.

(1B) The corporate insolvency resolution process of a corporate debtor may be restored in accordance with sub-section (1A) only once.

Explanation.—For the purposes of this section, it is hereby clarified that where the Adjudicating Authority does not receive a resolution plan under sub-section (6) of section 30 within the period provided under clause (a) or clause (b) of sub-section (1A) or rejects the resolution plan received by it during such period under sub-section (2) of section 31, it shall pass a liquidation order under sub-section (1).";

(c) in sub-section (2),—

(i) after the word "liquidate", the words "or dissolve" shall be inserted;

(ii) for the brackets, letters and word "(ii) and (iii)", the brackets, letters and word "(ii), (iii), (iv) and (v)" shall be substituted;

(iii) for the words, brackets and figure "of sub-section (1).", the words, brackets, figures and letter "of sub-section (1) or a dissolution order under sub-section (2A) of section 54, as the case may be:" shall be substituted;

(iv) the following proviso shall be inserted, namely:—

"Provided that the committee of creditors shall, before taking the decision to dissolve the corporate debtor, comply with such conditions, as may be specified.";

(v) in the Explanation, after the word "liquidate", the words "or dissolve" shall be inserted;

(d) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The Adjudicating Authority shall pass a liquidation order under this section within a period of thirty days from the date of receipt of an intimation or application, as the case may be, to initiate the liquidation process under this section:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.";

(e) in sub-section (3), for the brackets, letters and word "(ii) and (iii)", the brackets, letters and word "(ii), (iii), (iv) and (v)" shall be substituted;

(f) in sub-section (4),—

(i) for the words, brackets, letters and figure "sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)", the words, brackets, letters and figure "sub-clauses (i), (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and pass any other order as it deems fit" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that where an application under sub-section (3) is made, the Adjudicating Authority may, if it deems fit, reinstate the corporate insolvency resolution process and pass appropriate orders.";

(g) sub-section (5) shall be omitted;

(h) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) Where a liquidation order has been passed, no suit or other legal proceeding shall be commenced, or if pending at the date of the liquidation order, shall be proceeded with by the liquidator, on behalf of the corporate debtor, except with the leave of the Adjudicating Authority and subject to such terms as the Adjudicating Authority may impose.".

20.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 016)

33. (1) Where the Adjudicating Authority,—

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under Section 12 or the fast track corporate insolvency resolution process under Section 56, as the case may be, does not receive a resolution plan under sub-section (6) of Section 30; or

(b) rejects the resolution plan under Section 31 for the non-compliance of the requirements specified therein,

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [13][approved by not less than sixty-six per cent of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[14][Explanation.—For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

20.3 Reasons/Justification given by the Ministry of Corporate Affairs (MCA) for the proposed provision

i. Clause 20 of the Bill seeks to amend section 33 of the Code to extend the moratorium declared during the corporate insolvency resolution process to the liquidation process to the extent it is provided under clauses (*a*) and (*b*) of sub-section (*1*) read with sub-section (*3*) of section 14. It is provided that the suits or other legal proceedings on behalf of the corporate debtor shall not be commenced or continued without the leave of the Adjudicating Authority. This will ensure that the moratorium during the corporate insolvency resolution process also extends to the liquidation process. As a result, all pending and future legal proceedings against the corporate debtor will be prohibited, preventing multiple actions that could deplete resources and cause delays. It significantly reduces the financial and administrative burden on the liquidator, who would otherwise need to pursue or defend numerous claims across various forums. It is also clarified that the Adjudicating Authority, when issuing an order to initiate the liquidation process, shall also appoint the liquidator in accordance with section 34.

ii. Further, it seeks to insert new sub-sections (*1A*) and (*1B*) to section 33 to restore the corporate insolvency resolution process in exceptional cases, provided that the committee of creditors makes such a request by an application. The Adjudicating Authority can only restore the process if it is satisfied that the following circumstances

[13] Ins. by Act 26 of 2018, S. 25 (w.e.f. 6-6-2018).

[14] Ins. by Act 26 of 2019, S. 8 (w.e.f. 16-8-2019).

under sub-section (*1*) exist-first, no resolution plan has been approved within the period stipulated under the Code, or second, the resolution plan approved by the committee of creditors has been rejected under section 31. After considering the application, the Adjudicating Authority will determine if the application demonstrates that there is still some potential to resolve the insolvency of the corporate debtor and may, by an order, restore the process. This ensures that errors, which cause either the process not to be completed on time or the resolution plan to be rejected, do not prevent a corporate debtor from successfully resolving insolvency and avoid forcing it into liquidation. In the first scenario, the Adjudicating Authority will restore the process and provide an appropriate duration within which the process must be completed, not exceeding one hundred twenty days. In the second scenario, it shall restore the process to the stage of invitation of the resolution plan and specify a duration within which the restored process should be completed, not exceeding one hundred twenty days. The regulation will specify the procedures and conditions for completing the restored process to ensure effective outcomes and prevent abuse. This option to restore the process shall be available only once, irrespective of which of the two scenarios it is exercised under.

iii. It also enables the committee of creditors to seek dissolution of the corporate debtor at any time during the corporate insolvency resolution process, but before confirmation of the resolution plan and after complying with such conditions as may be specified by the Board. Such a request may be made where the corporate debtor does not have any meaningful or recoverable assets and undergoing the entire process will be cumbersome and costly. It further seeks to provide a thirty-day period within which the Adjudicating Authority shall pass a liquidation order.

iv. Additionally, when an application is made for a liquidation order due to the contravention of an approved resolution plan, the Adjudicating Authority may, in exceptional cases, reinstate the corporate insolvency resolution process instead, if it is viable for maximising the value of the corporate debtor. While reinstating the process, it may determine the stage from which the process will commence and pass any other orders to facilitate the process. Similarly, in such cases where the Adjudicating Authority decides to make a liquidation order, it can also pass any other orders it deems fit for efficient conduct of the process.

20.4 Important Views/Suggestions given by Experts/Stakeholders

i. Stakeholders gave suggestions on discarding liquidation and submitted that the intend of the proposed code to discourage the liquidation process, so it is more better to discard this process, whereas 33 1A/1B is already having provision for restarting the CIRP, or also provision for direct dissolution, so why to have one more separately for formality only, rather better to discard liquidation process.

ii. Stakeholder further submitted that there may not be any restoration of CIRP. If a prospective resolution applicant has not decided to bid in the first instance there may not be a reason to give a second chance. Similarly, if the resolution professional, committee

of creditors, litany of consultants and lawyers are unable determine whether the plan being submitted to adjudicating authority fulfils all the criterion or not and is rejected thereafter; it surely does not deserve a second chance.

iii. Regarding the suggestions on Restoration / Re-initiation of CIRP by Adjudicating Authority (suo motu) on plan contravention stakeholders submitted that

- The uncapped re-initiation exposes the corporate debtor and stakeholders to repeated CIRP cycles, uncertainty and asset value erosion. It is recommended to amend the clause to specify that re-initiation may be ordered only once (one restoration) unless compelling new grounds arise and require the Adjudicating Authority to record detailed reasons and to place strict time-bound directions for completion of the restored CIRP. Consider including a 'finality' safeguard: after one restoration, only liquidation or final adjudication should follow unless new evidences produced under a strict threshold.
- Differentiate between Liquidation commencement vs Liquidation initiation in statutory text; Though 30-days timeline is laudable however, recording the reasons for delay, if any, in passing the order may waste judicial time of the Adjudicating Authority. Further, the Supreme Court has already decided in the catena of judgments that all time lines of the Adjudicating Authority are directory in nature. S. 33(6): The proposed sub-section6ispractICallyimpossible to be implemented as all other courts/ tribunals, wherever any suit or other legal proceedings are pending require the presence/ representation of the liquidator. Not proceeding with the same by the liquidator may invite penal actions from such courts / tribunals. Now introduction of IA&IB will definitely delay the process. New Sub(1) and Sec33(6)seems to be contradictory plus there is no need to remove proviso to Sec33(5)“Provided that a suitor other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.”
- CIRP Restoration Trigger: The Bill allows the CoC to apply for a 120-day "restoration" of CIRP *before* the AA passes the liquidation order. However, in the case of plan rejection (Sec 33(1A)(b)),the AA might pass the liquidation order immediately, giving the CoC no time to meet, discuss, and file this new application.

  The stakeholder that the Bill should provide a brief, mandatory window or the CoC to act, or mandate this decision be taken proactively and suggested the following Wording :
  - Option A: Mandate Proactive Decision :Amend Sec 30 to require the CoC, when approving a plan, to *also* pass a contingent resolution on whether to seek restoration under Sec33(1A)*if* the plan is rejected. This

decision would then be part of the plan application itself.

- Option B: Grant a Window: Add a proviso to Sec 33(1A): "Provided that where the ground for liquidation is the rejection of a resolution plan... the Adjudicating Authority shall grant a period of ten working days for the committee of creditors to make an application under this sub-section before passing an order under sub-section (1)."

Liquidation Moratorium (Clause 20(a)(ii) / Sec 33(1)(b)(iv)) : The Bill introduces a liquidation moratorium that applies Sec 14(1)(c) (*mutatis mutandis*), which prohibits the "enforcement of any security interest." This directly conflicts with Sec 52, which *grants* secured creditors the right to enforce their security outside liquidation. While the new clause begins with "subject to the provisions of section 52," this is subtle and could still lead to litigation.

Recommendation: For absolute clarity and to prevent needless litigation, the exclusion of Section 52 must be made explicit and unambiguous. Suggested Wording (Add a Proviso to Sec 33(1)(b)(iv)):

"...apply to the proceedings under this Chapter: Provided that nothing in this sub-clause shall prevent a secured creditor from realizing its security interest in accordance with section 52: Provided further that provisions of this sub-clause shall not apply to legal proceedings..."

iv. This amendment reduces costs and delays in cases where liquidation would serve no meaningful purpose, such as when the corporate debtor has no realizable assets or when liquidation costs would exceed potential realizations. It empowers the CoC to make pragmatic decisions and avoid wasteful expenditure on formal liquidation processes (1) Clear conditions should be prescribed for when direct dissolution is permissible (e.g., no assets, or assets insufficient to cover liquidation costs); (2) Safeguards should ensure all creditor claims are properly addressed; (3) The CoC should be required to obtain an independent valuation confirming that liquidation would not yield additional value.

20.5 Examination by the Committee

i. Ministry tendered the following, during the briefing meeting, regarding the Restoration of CIRP before liquidation order is passed:

> *"Sir, now, I come to the maximisation of value facets insofar as the resolution is concerned. We have seen that sometimes liquidation is ordered based on a lapse of a statutory timeline or certain non-compliance of certain requirements, etc. Here we put in that if the CoC so says that the corporate debtor still has some value and it is viable, then it should be allowing the restoration of the CIRP process at least once and give them an extension for about 120 days."*

ii. When asked by the Committee, the Department of Financial Services highlighted the new provision allowing the restoration of the resolution process to maximize value as under:

> *"I come to Section 33. The NCLT may restore the resolution process only once on the request of CoC and may give a 120 additional days to complete the process. So, if you feel that by giving a little more time the resolution process can be completed... the NCLT may allow another 120 days to come up with a modified resolution plan."*

iii. Further the RBI gave the following submission, for reinstating the resolution process even in cases where the Corporate Debtor contravenes the plan:

> *"We have identified three instances under Sections 33(1)(A) and (B) where reinstatement of CIRP is possible. However, in the last case, where the resolution plan is contravened by the CD, there is a direct provision for liquidation. ... we believe that reinstating the resolution process would yield higher value than liquidation..."*

iv. Ministry on the suggestion regarding Discarding Liquidation submitted that

> The provision ensures that liquidation occurs only when resolution is no longer viable, thereby preventing premature liquidation and preserving asset value. It provides a limited, time-bound opportunity between the conclusion of the CIRP and the passing of a liquidation order, allowing the CoC—with at least 66% approval and subject to the Adjudicating Authority's discretion—to seek reinstatement of CIRP in genuine cases. This is particularly relevant where a liquidation application has been filed but not yet ordered, and intervening developments such as improved market conditions or renewed investor interest make revival feasible. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

v. Regarding the suggestions on restoration process and moratorium, MCA submitted to the Committee that:

> Section 33(1B) provides re-instatement of CIRP only once.(ii) As per the stakeholder, the application for re-instatement should form a part of the application of approval of resolution plan. However, since this is a procedural matter, the manner of filing the application shall be handled through regulations.(iii) With respect to application of moratorium, it has already been clarified that the moratorium during liquidation will be subject to the provisions of Section 52. A further proviso is not required. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

vi. Ministry on the suggestion regarding Safeguards and Legal Proceedings submitted that:

> **"**The proposed amendment limits reinstatement to one instance under proposed Section 33(1B). Judicial discretion and the CoC's 66% voting approval ensure adequate safeguards against misuse while allowing revival only in genuine cases. Further, it also empowers the Adjudicating Authority to consider restoration before passing a liquidation order, allowing the CoC to act based on the circumstances of each case without procedural rigidity. Requiring the AA to record reasons for any delay enhances transparency and accountability. The moratorium provision clearly states it is "subject to Section 52," ensuring that secured creditors' rights to realise security interests remain protected. Under existing section 33(5), there is no bar on the resumption of any pending suit or legal proceeding. This leads to revival of old cases that were filed against the CD and were not being pursued due to moratorium during CIRP, causing undue hardship, especially when the CD does not have adequate funds to defend such proceedings. ILC, in 2020 report, had recommended that the amendments be made in section 33(5) so that, apart from proceedings under section 52, the leave of the AA is required for continuing any suit or legal proceeding by or against a CD undergoing liquidation. Further, the recommendation would enable early closure of process, if sufficient provisions are available for pending litigation. Finally, the restoration provision is an enabling, time-bound measure to prevent premature liquidation where revival remains possible. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

vii. Ministry on the suggestion regarding Direct Dissolution submitted that:

> "The concerns raised regarding clarity of conditions for direct dissolution, safeguards for settlement of creditor claims, and the need for independent valuation can be effectively addressed through regulations to be framed by IBBI. The statutory framework proposed in the Bill is enabling in nature and appropriately leaves the operational details to be specified in subordinate legislation. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

viii. During the course of deliberations MCA and IBBI gave the following clarifications on the suggestions of the stakeholders

> *" Restoration of CIRP as provided for in the amendment to Section 33 should not be permitted as it will create an endless loop of continuing the CIRP and there would be a value destruction. This is one concern. The other is uncapped reinitiation exposes the corporate debtor and*

stakeholder to repeated CIRP cycles, uncertainty and asset value erosion. Our submission here is that the amendment to Section 33 providing for restoration of CIRP is to be exercised only once, that too when the company still has value. The application would be made by the CoC (66 per cent voting share) to the AA for restoration of the CIRP. This again would use commercial wisdom of the CoC. Where the CIRP is restored on completion of the timeline – usually if the timeline is lapsed then it moves into liquidation, but there is still value – an additional period to be given which is not more than 120 days by the AA. Where it is restored or where there is a rejection of a resolution plan then the AA can restore the CIRP from the stage of invitation of the bid itself and even there an additional period of 120 days is to be given. Our request here is that when there is a value, why should a company move into liquidation. It can very well be resolved. Secondly, about reinstatement of CIRP, where there is a contravention of an approved resolution plan, it goes into liquidation. Here again, we are saying that reinstatement can happen only once that too when the AA feels that it is fit to be reinstated and the AA will decide the stage from which the project process has to commence. So, the reinstatement again is subject to proper judicial oversight. Our submission is to retain this."

ix. Ministry further clarified their position and gave the following written submission:

"(i) Section 33(1B) provides re-instatement of CIRP only once.

(ii) As per the stakeholder, the application for re-instatement should form a part of the application of approval of resolution plan. However, since

this is a procedural matter, the manner of filing the application shall be handled through regulations.

(iii) With respect to application of moratorium, it has already been clarified that the moratorium during liquidation will be subject to the provisions of Section 52. A further proviso is not required.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

The concerns raised regarding clarity of conditions for direct dissolution, safeguards for settlement of creditor claims, and the need for independent valuation can be effectively addressed through regulations to be framed by IBBI. The statutory framework proposed in the Bill is enabling in nature and appropriately leaves the operational details to be specified in subordinate legislation.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

20.6 Observations/Recommendations of the Committee

20.6.1 The Committee, having examined Clause 20 of the Bill, note that it amends Section 33 of the Code to introduce a mechanism for the restoration of the Corporate Insolvency Resolution Process (CIRP) even after grounds for liquidation have arisen, and to extend the moratorium protections to the liquidation process. The Committee took note of the concerns raised by stakeholders regarding the proposed power to restore CIRP (Section 33(1A)). Stakeholders apprehended that this could lead to an "endless loop" of proceedings, delaying finality and eroding asset value. The Committee observe that the Ministry have clarified that the proposed Section 33(1B) explicitly restricts such restoration to a single instance. The Committee find merit in the Ministry's submission that this provision serves as a final opportunity to rescue the corporate debtor in genuine cases, subject to the commercial wisdom of the Committee of Creditors (66% voting share) and the discretion of the Adjudicating Authority, with a strict timeline of 120 days.

20.6.2 Regarding the extension of the moratorium to the liquidation process (Section 33(1)(b)(iv)), the Committee note the apprehensions expressed by secured creditors that this might conflict with their right to realize security interest under Section 52. The Committee observe that the Ministry has clarified that the provision is explicitly drafted as "subject to the provisions of section 52," thereby ensuring that the statutory right of secured creditors to stand outside liquidation remains unfettered. The Committee further observe that the successful implementation of the restoration mechanism depends on the procedural framework to be "specified" by the Insolvency and Bankruptcy Board of India (IBBI). The Committee recommend that the Board frames robust regulations laying down the specific "manner and conditions" for filing such applications, to ensure that this provision is utilised only in cases with genuine prospects of revival and does not become a

tool for delaying inevitable liquidation. In light of the above, the Committee are of the view that the proposed amendments strike an appropriate balance between the objective of value maximization (revival) and the rights of secured creditors. Accordingly, the Committee endorse Clause 20 as proposed and recommend its acceptance without modifications.

CHAPTER III

LIQUIDATION PROCESS

21. Clause 21 of the Bill proposes to amend Section 34 of the Principal Act (Appointment of liquidator and Fee to be paid)

21.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

(1) The committee of creditors, may, by a vote of not less than sixty-six per cent of the voting share, either resolve to –

(a) propose the resolution professional appointed for the corporate insolvency resolution process under Chapter II or for the pre-packaged insolvency resolution process under Chapter III-A, subject to a written consent from the resolution professional in such form as may be specified; or

(b) propose an insolvency professional, other than the resolution professional, subject to a written consent from the insolvency professional in such form as may be specified,

to be appointed as the liquidator for the purposes of the liquidation, as the case may be and forward his name to the Adjudicating Authority, within such period and in such manner as may be specified.

(1A) The Adjudicating Authority shall forward the name of the proposed liquidator under sub-section (1) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

…

(3) Any person who is or has been a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the liquidator as may be required by him for the purposes of managing the affairs of the corporate debtor or performing the duties conferred on him under this Chapter and the provisions of section 19 shall apply in relation to liquidation and voluntary liquidation process as they apply in relation to corporate insolvency resolution process with the substitution of references to the liquidator for references to the interim resolution professional and resolution professional and references to the corporate insolvency resolution process with liquidation and voluntary liquidation process, respectively.

(4) Notwithstanding anything contained in this section and section 34A, the resolution professional appointed for the corporate insolvency resolution process under Chapter II or pre-packaged insolvency resolution process under Chapter III-A for a corporate debtor, as the case may be, shall be disqualified from being appointed as the liquidator,

where the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section

(5) Where the committee of creditors does not forward the name of the proposed liquidator or the Board does not confirm the name of the proposed liquidator, the Adjudicating Authority shall make a reference to the Board for recommendation of an insolvency professional to be appointed as the liquidator.

21.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)

34.(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under [15][Chapter II [16][or for the pre-packaged insolvency resolution process under Chapter III-A] shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

…

(3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the interim resolution professional.

(4) The Adjudicating Authority shall by order replace the resolution professional, if–

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [17][in writing; or]

[18][(c) the resolution professional fails to submit written consent under sub-section (1).]

[15] *Subs. by Act No. 26 of 2018, sec 26(a), for the words and figures "Chapter II shall" (w.e.f. 6-6-2018).*
[16] *Ins. by Act No. 26 of 2021, sec. 7 (w.e.f. 04-04-2021).*
[17] *Sub by Act No. 26 of 2018, sec 26(b), for the words "in writing" (w.e.f. 6-6-2018).*

(5) For the purposes of [19][clauses (a) and (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

21.3 Reasons/Justification by the Ministry for the proposed provision

As per section 34 of the Code, the resolution professional appointed during the CIRP automatically continues as a liquidator during the liquidation process except where a change is recommended by the Board or if the resolution professional fails to perform its duties related to the examination of the resolution plan. Unlike CIRP, there is no provision to replace liquidators, even if the circumstances warrant, during the liquidation process. *Clause 21* of the Bill therefore seeks to amend section 34 of the Code to provide that the liquidator shall be appointed on the proposal of the committee of creditors, and the resolution professional shall not automatically be appointed as a liquidator. It can either propose the existing resolution professional or propose another insolvency professional, subject to their written consent to be appointed as the liquidator. Where the committee of creditors does not forward the name of the proposed liquidator or the Board does not confirm the name of the proposed liquidator, the AA shall appoint the liquidator on reference from the Board. *Clause 21* also seeks to substitute sub-section (3) of section 34 of the Code to apply provisions similar to the amended section 19 to the liquidation process and voluntary liquidation process.

21.4 Important Views/Suggestions given by Experts/Stakeholders:

Important suggestions of the stakeholders in this regard are furnished below:-

(i) in all liquidation cases, the liquidator should be the person, other than the Resolution Professional (RP) who conducted Corporate Insolvency Resolution Process (CIRP).

(ii) ...approval of the resolution plan is responsibility of the COC, RP is only running the process, if intentional misleading on compliance than consequence of not. Appointment etc is okay, but when COC approves the plan with all due & care, then only RP cannot be made responsible for non-compliance, (if any found). The judicial intervention also must not be allowed to make over indulgence on compliance of all laws, even if it is not required to comply.

(iii) (a) Delete or narrow the phrase or engaged in a contract for service with the corporate debtor to restrict cooperation obligations only to current management and key personnel. (b) Omit or relax the automatic disqualification clause for RPs, allowing reappointment where no professional misconduct is found and (c) simplify appointment by allowing NCLT to appoint liquidator directly upon CoC recommendation, without prior IBBI confirmation.

(iv) The provision in sub-section (3) is suggested to be substituted with the following: "(3) Any person who is or has been, in the 2 years immediately preceding the initiation date, a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the liquidator as may be required by him for the purposes of managing the affairs of the corporate debtor or performing the duties conferred on him under this Chapter and the provisions of section 19 shall apply in relation to liquidation and voluntary liquidation process as they apply in relation to corporate insolvency resolution process with the substitution of references to the liquidator for references to the interim resolution professional and resolution professional and references to the corporate insolvency resolution process with liquidation and voluntary liquidation process, respectively. Sub-section (4), (5) and (6) in the original provision may be omitted as proposed in the amendment bill.

21.5 Examination by the Committee

21.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under:-

(i) The proposed amendments to section 34 of the IBC are being modified to explicitly bar the resolution professional for a corporate debtor during the CIRP from being appointed as the liquidator for the same corporate debtor.

(ii) Further, pursuant to stakeholder comments the proposed amendments to section 34 of the IBC are being modified to explicitly bar the resolution professional for a corporate debtor during the CIRP from being appointed as the liquidator for the same corporate debtor.

(iii) The proposed amendments to section 19 of the Code seek to provide categories of persons required to extend assistance to and cooperate with the interim resolution professional. These categories will include any person who is or has been (i) personnel of the corporate debtor, (ii) its promoter, (iii) associated with the management of the corporate debtor, or (iv) engaged in a contract for service with the corporate debtor. Constructive cooperation from the aforementioned categories will enable the interim resolution professional to manage the affairs of the corporate debtor and perform his duties effectively, such as collecting information for purposes such as the conduct of the corporate insolvency resolution process, filing applications for the avoidance of transactions, etc. Furthermore, information related to the corporate debtor or a specific transaction is often available from former personnel of the CD, promoters, or individuals involved in the management of the CD. Therefore, such cooperation is valuable for the interim resolution professional to perform its functions and duties effectively. Additionally, the interim resolution professional must manage the corporate debtor's operations as a going concern under section 20(1). For this purpose, cooperation from

not only the personnel and employees of the corporate debtor but also from individuals engaged in the contract for service is of utmost importance. If someone refuses to cooperate, the law requires the interim resolution professional to seek assistance from AA, and whether cooperation is necessary can be assessed on a case-by-case basis with sufficient judicial oversight. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change. (b) Pursuant to stakeholder comments the proposed amendments to section 34 of the IBC are being modified to explicitly bar the resolution professional for a corporate debtor during the CIRP from being appointed as the liquidator for the same corporate debtor. (c) The manner of appointment of liquidator by the AA shall be prescribed by regulations. No amendment to the Code is required. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iv) Information related to the corporate debtor or a specific transaction is often available from former personnel of the CD, promoters, or individuals involved in the management of the CD. Therefore, such cooperation is valuable for the liquidator to perform its functions and duties effectively. Additionally, the liquidator must manage the corporate debtor's affairs under the proposed section 34(3). For this purpose, cooperation from not only the personnel and employees of the corporate debtor but also from individuals engaged in the contract for service is of utmost importance, which may be determined on a case-to-case basis. The time period in the past for which assistance/cooperation from ex-personnel may be sought by the IRP/RP is primarily determined by its nature, which can be beyond two years. If someone refuses to cooperate, the law requires the liquidator to seek assistance from AA, and whether cooperation is necessary can be assessed on a case-by-case basis with sufficient judicial oversight. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

21.5.2 The Committee enquired on feasibility of replacement of existing RP when COC proceeds for liquidation proceedings, on the issue Secretary Ministry of Corporate Affairs submitted as under "…Further, there is always a perverse incentive for a resolution professional to take the company into liquidation because he gets a higher return when he goes into liquidation because it is the percentage of the liquidation estate and here, in fact, in the resolution process, he gets only a monthly salary. So, there is always a perverse incentive. In order to remove that, we have given a discretion to the CoC that you may continue the resolution professional as a liquidator with 66 per cent of a decision, otherwise he should invariably be replaced and you can replace the liquidator at any time during the process as well."

21.5.3 Adding further, the representatives of the Ministry of Corporate Affairs during clause-by-clause discussion submitted that the "The Resolution Professional during CIRP should not continue as a liquidator." the representatives further submitted that "...the main suggestion, which was received from the stakeholder, was regarding the liquidator and change of the liquidator. The Ministry is of the view that we will accept that recommendation."

21.5.4 On the issue the representatives of IBBI submitted as under "Now, what happens today is that the same RP continues as liquidator. We feel that he has a perverse incentive. So, we would like a different RP. We propose a different RP to do liquidation... So, sir, we are requesting or submitting that this provision should be slightly amended and there should be a different RP as a liquidator. It should be mandated so that there is no conflict of interest."

21.5.5 The Committee also enquired about the Power of CoC to Appoint/Replace Liquidator, on this the representatives of Department of Financial Services submitted as under"...As regards Section 34, CoC may replace the liquidator at any stage. Today, the Committee of Creditors do not have the power to recommend or appoint a liquidator. So, we are suggesting that that power should be given to the Committee of Creditors. It was only AA which was doing it. Now, the Committee of Creditors may be given the power as regards the existing liquidator to continue or a new liquidator to come in."

21.5.6 Representatives from Reserve Bank of India also commented on the view to Replace RP during liquidation “I think, prima-facie, it appears that it is a good suggestion."

21.6 Observations/Recommendations of the Committee:

21.6.1 The Committee after in-depth examination of the amendment bill, exhaustive deliberations with the stakeholders, industry experts, organizations and in view of the replies furnished by the Ministry of Corporate Affairs note that Clause 21 seeks to fundamentally change the process of appointing a liquidator under Section 34 of the Code, moving away from the existing automatic appointment of the Resolution Professional (RP) to one based on the proposal and approval of the Committee of Creditors (CoC). The Committee observe that this amendment primarily addresses the concerns regarding a potential "perverse incentive" for the RP to favour liquidation over resolution to secure additional fees, as the liquidator's remuneration is often a percentage of the liquidation estate, unlike the RP's fixed monthly salary. The Committee find merit in the argument for a clear separation of roles to eliminate the perception and possibility of a conflict of interest.

21.6.2 The Committee therefore recommend to revise the relevant provisions of Section 34 of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 to

reflect that RP who has conducted the CIRP or PPIR for corporate debtor shall be ineligible to be appointed as the Liquidator. Apart from the proposed amendment the committee accept Clause as it is. Accordingly the revised Clause shall now be read as under:-

> **34 (1) "Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the Adjudicating Authority shall make a reference to the Board for recommendation of an insolvency professional to be appointed as the liquidator, and on receipt of the proposal of the Board, appoint such insolvency professional as the liquidator."**
>
> **(4) Notwithstanding anything contained in this section and section 34A, an insolvency professional appointed as a resolution professional for the corporate insolvency resolution process of the corporate debtor under Chapter II, shall not be appointed or replaced as the liquidator for the liquidation process of such corporate debtor.**
>
> **(5) After the liquidation order is passed, the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process to the liquidator.**
>
> **(6) The Board shall propose the name of an insolvency professional, other than the resolution professional appointed for the corporate insolvency resolution process of the corporate debtor under Chapter II, along with written consent from the insolvency professional in the specified form, within ten days of the direction issued by the Adjudicating Authority under sub-section (1).**

22. Clause 22 of the Bill proposes to insert a new Section 34 A in Chapter III of Part II of the Principal Act.

22.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

34A. (1) Where, at any time during the liquidation process, the committee of creditors is of the opinion that a liquidator appointed under section 34 or this section is required to be replaced, it may, by a vote of not less than sixty-six per cent. of the voting share, resolve to replace the liquidator with another insolvency professional, subject to a written consent from such proposed liquidator in such form as may be specified.

(2) Where the committee of creditors resolves under sub-section (1) to replace a liquidator, it shall apply to the Adjudicating Authority for the appointment of the proposed liquidator, and if no disciplinary proceedings are pending against him, the Adjudicating Authority shall, by an order, replace the liquidator appointed under section 34 or this section and appoint the proposed liquidator as the liquidator.

22.2 Provision as per Insolvency and Bankruptcy Code, 2016

Insertion of New Clause

22.3 Reasons/Justification by the Ministry for the proposed provision

Clause 22 of the Bill seeks to insert a new section 34A in Chapter III of Part II of the Code to allow for the replacement of liquidator by the committee of creditors during the liquidation process as per this provision.

22.4 Important Views/Suggestions given by Experts/Stakeholders:

Important suggestions of the stakeholders in this regard are furnished below

(i) Insert a safeguard requiring NCLT's satisfaction of "sufficient cause" before approving replacement. Suggested wording: *"The Adjudicating Authority shall not approve replacement of a liquidator unless it is satisfied that there exist valid reasons such as misconduct, inefficiency, or conflict of interest, and that such replacement is necessary for value maximisation."* Alternatively, exclude real estate and infrastructure companies from the unrestricted operation of Section 34A, allowing replacement only with NCLT approval after hearing the liquidator and key stakeholders.

(ii) The following proviso may be added after Sub-section (2): "Provided that if the committee of creditors of the corporate debtor, by a vote of not less than sixty-six per cent. of the voting share, decides that till the Adjudicating Authority approves the replacement of the liquidator, the previous liquidator shall continue to perform certain duties, the previous liquidator shall continue to perform such duties as directed by the committee of creditors."

22.5 Examination by the Committee

22.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under

(i) The Code and the Regulations made thereunder bestow various powers on the CoC which inter alia includes appointing the Interim Resolution Professional (IRP) as RP, supervise their functioning and conduct, and in the event, the conduct of the RP is not up to its satisfaction, replace the RP, under section 27 of the Code. However, there is no provision to provide for replacement of liquidator even if circumstances warrant, during liquidation process. The absence of the provision creates imbalance of power. The proposed amendments would enfranchise the creditors to appoint liquidator of their choice. The proposed safeguard is unnecessary, as draft provision already ensures scrutiny by NCLT, while empowering the CoC (being the primary economic stakeholder), thus maintaining both independence and efficiency in liquidation. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) The replacement of the liquidator will occur only once an order is passed by the AA to replace the existing liquidator. The order appointing the new liquidator and replacing the current one will be issued simultaneously. Therefore, there will not be a situation without a liquidator, and the liquidation process will not be in suspension. This provision is similar to section 27, which is currently applicable to the CIRP. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

22.6 Observations/Recommendations of the Committee:

The Committee after thorough examination of the instant amendment bill and in the light of the replies furnished by the Ministry of corporate Affairs note that Clause 22 introduces a new Section 34A into the Principal Act, empowering the Committee of Creditors (CoC) to replace the liquidator at any time during the liquidation process by a vote of not less than 66% of the voting share. This proposed amendment addresses the current imbalance of power by empowering the creditors, who are the primary economic stakeholders, to choose and replace their liquidator. The Committee therefore, support the core objective of the proposed Section 34A, as it aligns the power of the CoC during liquidation with its powers during the resolution phase. The Committee feel that this change is crucial for maintaining independence and efficiency in the liquidation process.

Accordingly, the Committee accept the proposed amendment without any modification.

23 Clause 23 proposes to amend Section 35 of the Principal Act (Powers and Duties of Liquidator)

23.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

35. (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -

(a) to maintain an updated list of claims of creditors in such manner as may be specified;

…

(j) to settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

…

(l) continue or initiate proceedings in respect of an avoidance transaction or fraudulent or wrongful trading;

Explanation.— For the purposes of this Chapter, it is hereby declared that the provisions of clauses (a) and (j) of this sub-section and sections 38 to 42 as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025 shall not apply to the liquidation process and voluntary liquidation process initiated on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.

(2) The committee of creditors shall supervise the conduct of the liquidation process by the liquidator under Chapter III in such manner as may be specified.

23.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)

35. (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -

(a) to verify claims of all the creditors;

.

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

.

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

23.3 Reasons/Justification by the Ministry for the proposed provision

Clause 23 of the Bill seeks to amend section 35 of the Code to harmonise the powers and duties of the liquidator during the liquidation process with those during the CIRP. This would avoid repetition of common activities and ensure faster completion of the liquidation process. The claims collated during the CIRP will be maintained and updated during the liquidation process. The Board will specify the procedure for maintaining and updating the claims, including the need to verify the claims and determine their value, if necessary. However, a fresh process of invitation of claims will not be conducted. Further, the liquidator will not be obligated to make a fresh investigation to identify avoidable transaction or fraudulent or wrongful trading. However, it will be empowered and obligated to continue or institute proceedings regarding an avoidance transaction or fraudulent or wrongful trading. It also seeks to extend the role of the committee of creditors constituted during the CIRP to the liquidation process. The committee of creditors will supervise the conduct of the liquidation process by the liquidator. During the liquidation process, the committee of creditors will advise and guide the liquidator on commercial matters. It will act to uphold the interests of all stakeholders entitled to distribution under section 53 and perform an oversight function to ensure transparency and accountability in the conduct of the liquidation. The Board will specify how the committee will supervise the conduct of the liquidation process by the liquidator. Additionally, the role of the committee of creditors is limited to the liquidation process under section 35 and does not extend to voluntary liquidation. When this provision applies to voluntary liquidation pursuant to sub-section (6) of section 59, the Board will establish a separate procedure for consulting stakeholders.

23.4 Important Views/Suggestions given by Experts/Stakeholders:

Important suggestions of the stakeholders in this regard are furnished below

(i) Consider retaining the requirement of inviting and verifying claims during the liquidation process.

(ii) Extending CoC supervision into liquidation may dilute the independence of the liquidator, who is statutorily responsible for conducting the process. Without corresponding amendments redefining liabilities and duties, the structure may create dual accountability and governance conflict.

(iii) Need to clearly define the rights and powers of CoC during the liquidation process. Views and decisions of the CoC should be binding on the liquidator during the liquidation process in the manner similar to CIRP.

23.5 Examination by the Committee

23.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under

(i) Claim collection process between the CIRP and Liquidation is synchronised to avoid duplication. IRP has to verify claims and determine their value while collating them, and the regulations will provide the detailed procedure. The concept of determination of claims is presently also provided in Regulation 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, for CIRP and section 41 of the IBC for liquidation. Determining the value of claims will not be required in all cases, and only relevant when the claim value is not precise. Further, as per the proposed amendments to section 35, the liquidator has the power and duty to maintain an updated list of claims of creditors during the liquidation process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change

(ii) The proposed amendment covered in Clause 23 seeks to extend the role of the CoC constituted during the CIRP to the liquidation process. The CoC will supervise the conduct of the liquidation process by the liquidator. During the liquidation process, the CoC will advise and guide the liquidator on commercial matters. It will act to uphold the interests of all stakeholders entitled to distribution under section 53 and perform an oversight function to ensure transparency and accountability in the conduct of the liquidation. The CoC has been provided under the Code to take decisions in respect of the CD during CIRP and the supremacy of CoC's commercial wisdom is now a well settled jurisprudence. Hence, calibrated CoC oversight in liquidation merely aligns decision-making with the stakeholders bearing the economic risk without in any way curtailing the liquidator's statutory powers, duties, or accountability under the Code. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) As per the proposed amendment, the CoC will supervise the conduct of the liquidation process by the liquidator in such manner as may be specified. The regulations will provide details related to the rights and powers of the CoC to supervise the liquidation process by the liquidator. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

23.5.2 Justifying the need for the amendment with regard to Role of CoC in Liquidation, Secretary, Ministry of Corporate Affairs during the sitting deposed as under "We are making it into a continuum. Therefore, we also propose that the CoC which was formed in the CIRP process continues to exercise his commercial wisdom and not give the liquidator a free run during the liquidation process also."…"The CIRP process as well as the liquidation process was taken as two distinct processes.....So, this was taking a lot of time.....we have proposed to make the process of CIRP as well as liquidation into a continuous process." with regard to Liquidator's Duty (Avoidance Transaction) the Ministry of Corporate Affairs further stated that .."However, it will be empowered and

obligated to continue or institute proceedings regarding an avoidance transaction or fraudulent or wrongful trading."

23.6 <u>Observations/Recommendations of the Committee:</u>

23.6.1 The Committee observe that Clause 23 proposes amendments to Section 35 aimed at harmonizing the liquidation process with the Corporate Insolvency Resolution Process (CIRP). This involves streamlining the claims process and formally extending the role of the Committee of Creditors (CoC) to supervise the liquidation. This streamlined approach is intended to avoid repetition of activities conducted during CIRP and expedite the liquidation process.

23.6.2 The Committee considered the stakeholders concern with regard to defining the powers and duties of CoC during the liquidation process as also the need to verify/reverify the claims during the liquidation process. The Committee accept the Ministry's assurance that necessary safeguards will be incorporated through regulations. The Committee therefore accept the proposed amendment without any modification.

24. Clause 24 of the Bill proposes to amend Section 36 of the Principal Act (Liquidation Estate)

24.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

36. …
(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—
…
(f) any assets or their value recovered through proceedings in respect of avoidance transaction, fraudulent or wrongful trading or under section 47;
…

24.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)

36…
(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—
.
(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
…

24.3 Reasons/Justification by the Ministry for the proposed provision

Clause 24 of the Bill seeks to amend section 36 of the Code as a consequential change pursuant to the insertion of the definitions of "avoidance transaction" and "fraudulent or wrongful trading" to clarify that assets recovered from all types of proceedings in respect of avoidance transactions, fraudulent or wrongful trading, or under section 47 of the Code shall be part of the liquidation estate.

24.4 Important Views/Suggestions given by Experts/Stakeholders:

Important suggestions of the stakeholders in this regard are furnished below

(i) Section 36(4)(a)(iii) may be amended to clarify whether provident/gratuity fund dues are required to be fully paid in priority during resolution process or liquidation, when such dues are not carved out/kept in trust/fund by the CD. Such clarification would ensure adherence to statutory mandates and obviate disputes concerning the treatment of workmen's and employees' entitlements.

(ii) In Section 36(4) of IBC, after clause(e), insert the following clause: "(f) any immovable property or residential unit in a real estate project in respect of which possession has been handed over to an allottee/Homebuyer prior to the liquidation commencement date, and where such allottee or homebuyer has obtained occupancy or completion certificate, shall not form part of the liquidation estate." Provided that, in such cases, the liquidator shall exclude such property from the inventory of liquidation

assets and record the possession and interest of the concerned homebuyer in the asset register accordingly."

24.5 Examination by the Committee

25.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under

(i) This is a consequential change pursuant to the insertion of the definitions of "avoidance transaction" and "fraudulent or wrongful trading" to clarify that assets recovered from all types of proceedings in respect of avoidance transactions, fraudulent or wrongful trading, or under section 47 of the Code shall be part of the liquidation estate. The existing provision under Section 36(4)(a)(iii) already provides a clear statutory exclusion of provident fund, pension fund and gratuity fund from the liquidation estate. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) The Liquidation Regulations under Regulation 46A (inserted on 12 February 2024), that in accordance with section 36(4)(e) of the Code, any asset in a real estate project for which possession has been given to an allottee shall be excluded from the liquidation estate. This ensures that assets effectively handed over to homebuyers are protected from liquidation, thereby safeguarding their rights while preventing such units from being treated as realizable estate of the corporate debtor. Hence, the provision in the insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

24.6 <u>Observations/Recommendations of the Committee:</u>

The Committee note that Clause 24 of the proposed amendment bill proposes a consequential amendment to Section 36(3)(f) to clarify that assets or their value recovered from a broader range of legal actions will form part of the Liquidation Estate. The Committee have been informed that the instant amendment is a technical clarification following the insertion of new definitions for "avoidance transaction" and "fraudulent or wrongful trading", and explicitly includes recoveries made under Section 47 of the Code. The said amendment ensures that the liquidation estate is clearly defined to include recoveries from avoidance transactions, fraudulent or wrongful trading and proceedings initiated under Section 47. The Committee agree that this is a necessary, harmonizing and

consequential amendment which seeks to comprehensively cover all newly defined categories of avoidable transactions and recovery mechanisms, thereby maximizing the value of the liquidation estate. The Committee therefore, accept the proposed amendment without any modification.

25. Clause 25 of the Bill proposes to amend (Section 38-42) of the Principal Act (Provisions related to claims consolidation, verification and determination)

25.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (Bill)

These present provisions are proposed to be omitted.

25.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)

38. (1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

(2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility: Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor under sub-section (3).

(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

39. (1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

40. (1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be: Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

41.The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

42. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision.

25.3 Reasons/Justification by the Ministry for the proposed provision

Clause 25 seeks to omit sections 38, 39, 40, 41, and 42 of the Code to prevent duplication of processes in the CIRP and liquidation process.

25.4 Important Views/Suggestions given by Experts/Stakeholders:

Important suggestions of the stakeholders in this regard are furnished below

(i) provide explicit clarification in the Insolvency and Bankruptcy Board of India (Liquidation) Regulations regarding: (a) Whether new claims can be filed by creditors after commencement of liquidation and (b) The applicable time limit or cut-off date for submission of such claims.

(ii) one Section with regard to claim updation and manner of claim updation may be considered for inclusion in the Code.

(iii) It was suggested that the Bill must explicitly contain the provision relating to Creditor's basic right to file claims at liquidation stage, receive a timely reply regarding acceptance/rejection of their claim, appeal to NCLT within 30 days and mandate the NCLT to decide the appeal within 30 days ensuring rejections include specific reasons, in order to secure creditors' basic right to file an appeal claims through law aligning with the international approach as followed in countries like USA, UK and Singapore which retain claim filing rights in main law, regardless of duplication**.**

25.5 Examination by the Committee

25.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under

(i) and (ii) The requirement to invite claims afresh during the liquidation process results in duplication and causes avoidable delays. As the claims have already been invited, verified, and adjudicated through a well-regulated process during the CIRP, repeating this exercise may not be necessary. Eliminating such duplication would streamline procedures and enhance the overall efficiency of the liquidation process. However, as provided under proposed amendments to section 35, the liquidator will have the power and duty to maintain an updated list of claims. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) The Amendment Bill seeks to omit sections 38 to 42 of the Code to prevent duplication of processes in the CIRP and liquidation. However, as provided under the amendments to section 35, the liquidator will have the power and duty to maintain an updated list of claims of the creditor against the corporate debtor, in accordance with the procedure specified in the regulations. Furthermore, unlike other jurisdictions where reorganization and liquidation may be separate processes requiring a new initiation, in India, liquidation directly results from an unsuccessful CIRP. Therefore, processes such as claim collection that are undertaken for CIRP will remain valid for liquidation, as the company continues under the supervision of an insolvency professional. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

25.5.2 During the sitting, **t**he representatives from the Ministry of Corporate Affairs deposed as under:- "Where claim collection and collation has been done at the beginning of the CIRP process, the same process will not be repeated in the liquidation. These repetitive steps would be done away with, and we will have an updation of claims if at all required." The representatives further submitted that "The claims collated during the corporate insolvency resolution process will be maintained and updated during the liquidation process." "…However, a fresh process of invitation of claims will not be conducted."

25.5.3 Adding further, the representatives of the Ministry of Corporate Affairs submitted as under:- "Therefore, our view is that the claim collection process currently takes place twice: first during the CIRP process... and then again during liquidation. To expedite the liquidation process... this duplication can be removed. The IRP will verify and determine the value of claims... The liquidator will only update the list of creditors' claims, if any changes are required."

25.6 <u>Observations/Recommendations of the Committee:</u>

25.6.1 The Committee note that Clause 25 proposes the omission of Sections 38 to 42 of the Principal Act, which comprehensively govern the collection, verification, adjudication, valuation and appeal of claims during the liquidation process. The Ministry's justification is to prevent duplication of processes that occur during the Corporate Insolvency Resolution Process (CIRP) and thus, expedite the liquidation phase, which currently faces significant delays. The new approach relies on the claims collated, verified, and adjudicated during the preceding CIRP. The Ministry

asserts that as the claims are already invited, verified and adjudicated during the CIRP, making a repeat exercise during liquidation is unnecessary and a major source of avoidable delay. The proposed structure treats liquidation as a continuation of CIRP, with the liquidator only required to "maintain an updated list of claims" under the amended Section 35.

25.6.2 The Committee concur with the justification forwarded by the Ministry that omission od Sections 38-42 is pivotal for reducing the procedural timelines in liquidation, which suffers from chronic delays and resultant value destruction. The Committee therefore, accept the proposed amendment without any modification.

26. Clause 26 proposes to amend Section 43 of the Principal Act (Preferential transaction and relevant time)

26.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

43. …

(4) A preference shall be deemed to be given at a relevant time, if –

(a) it is given to a related party (other than by reason only of being an employee), during the period starting from two years preceding the initiation date and ending on the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period starting from one year preceding the initiation date and ending on the insolvency commencement date.

26.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016) (IBC/ Code)

43…

(4) A preference shall be deemed to be given at a relevant time, if—
(a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

26.3 Reasons/Justification by the Ministry for the proposed provision

Clause 26 of the Bill seeks to amend sub-section (4) of section 43 of the Code to make two modifications to the look-back period for determining preferential transactions. Firstly, it changes the threshold for the look-back period from the insolvency commencement date to the initiation date (the date of filing of the application for initiation of the CIRP). Secondly, it includes the period between the initiation date and the insolvency commencement date in the look- back period for such transactions. Currently, the threshold for the look-back period in section 43 is the insolvency commencement date (date on which the application for initiation of the corporate insolvency resolution process is admitted). Where the admission of an application takes longer than fourteen days, the look-back period for preferential transactions may not be able to capture a significant portion of transactions that occurred before the filing of an application. This may also give CDs a perverse incentive to delay admission of the application for the commencement of the insolvency resolution process to reduce the scope of an avoidable transaction. Therefore, the threshold for the look-back period for preferential transactions has been adjusted to more effectively capture a broader range of pre-filing transactions, particularly those undertaken in anticipation of the commencement of the insolvency resolution process to exclude assets from the process.

26.4 Important Views/Suggestions given by Experts/Stakeholders:

Important suggestions of the stakeholders in this regard are furnished below

(i) Look back period could be linked with the date of default or date of NPA and not with date of initiation of CIRP.

(ii) look back period should be linked with the date of default or Date of NPA with the Bank which has filed CIRP and not linked with date of initiation of CIRP.

(iii) the definition of relevant period for any avoidance transaction now being amended to start backwards from the initiation date, may be modified to include the complete financial year in which the starting date lies, two or one year(s) prior to the said initiation date.

(iv) Amend Sections 43–66 and insert Section 67A enabling NCLT to suo motu seek information and enforce recoveries...Proposed Amendment to Sections 43–66 and Insertion of Section 67A: "The Adjudicating Authority may Suo motu or on application direct the RP or Liquidator to obtain information from government databases or third parties for investigation of preferential, undervalued, fraudulent, or extortionate transactions and similarly may direct the suspended management, KMPs, or third parties to provide such information. Recovery arising through avoidance transaction applications shall be executed in the same manner as a decree of a civil court."

(v) Extend Look-Back period to as the shorter checking time may allow wrongdoers to escape to align with the international standards as UK, EU and U.S. give longer and flexible timelines with judicial checks.

26.5 Examination by the Committee

26.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under

(i) and (ii) Linking the look-back period to the *initiation of insolvency* ensures uniformity and legal certainty, as this date is formally determined by the Adjudicating Authority. In contrast, default/NPA dates vary across creditors and lack uniformity, leading to enhanced litigation. The proposed amendment aligns with the Code's structure, which recognises default only as the trigger for insolvency. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) The look-back periods proposed reflect a carefully calibrated legislative balance that captures all materially suspect transactions without overextending the scope of scrutiny, and expanding the relevant period to entire financial years would create uncertainty, widen litigation, and dilute the timeliness and efficiency of the insolvency process. Hence, the provision

in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iv) The application for avoidance transactions or fraudulent or wrongful trading should be made by a person with information such transactions or trading, and who may benefit from the outcome of these proceedings as part of the collective insolvency resolution process. Accordingly, amendments to section 47 provide that, in addition to the IRP/RP/Liquidators, the creditors, members, or partners of the CD may file an application. It may not be appropriate for the AA to initiate the proceedings *suo motu*. Pursuing these proceedings may involve costs and supporting evidence, and stakeholders should decide whether they are appropriate. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(v) The lookback period for avoidance transactions is not proposed to be shortened. In fact, the lookback period will now be calculated from the initiation date (date of filing the application) rather than the insolvency commencement date (date of admission of application), and the period during the pendency of an admission application will also be included, thereby expanding the scope of the lookback period. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

26.5.2 On the proposed amendment, representatives from the State Bank of India (SBI) submitted that "Section 43(4), … regarding these preferential transactions, it lays down that these professional transactions when they have taken place, the look back period is two years... Our submission is that after the CIRP is filed, normally it takes two years or as we said in the beginning, sometimes one and a half years, two years for this to get admitted. During that period - it is a lull period because it has already become an NPA and corporate debtor at that point in time does not have much interest in the company so whatever preferential transaction he has to do, he does before the account becomes NPA. So, our submission is that the look back period should be two years from the date it becomes NPA, non-performing asset, rather than two years from the admission, which is a much later date." ... "Only submission is there might be a case where, if suppose this amendment is accepted by the honourable Committee, there might be a case where the borrower has not taken any loan from any bank. So, there is no case of account becoming NPA... So, the wording should be, if this is accepted, conditionally if there is NPA with any bank, this will be the clause. Otherwise, whatever is proposed is fine, Sir."

26.5.3 On query regarding Look-back Period (Date of Filing), the representatives of the Department of Financial Services (DFS) deposed before the Committee as follows:- "As regards Section 43(4), the look-back period today for avoidance and preferential transactions is from the date of admission. We have said that it should

be from the date of filing because there are sometimes delays between both these dates."

26.5.4 The representatives of the Ministry of Corporate Affairs with regard to Look-back Period (Date of Filing vs Admission) stated that "… they want the look-back period to be linked with the date of default or the date of NPA, not with the initiation of CIIRP. We submit that the Record of Default (RoD) is the authenticated document from the day from which the default starts. So, we take it as the filing date and we take it behind two years after the filing date." .... Clarifying further they submitted that "for fraud, there is no look-back period. For any fraudulent transactions, there is no look-back period."

26.6 <u>Observations/Recommendations of the Committee:</u>

26.6.1 The Committee note that Clause 26 proposes a critical amendment to Section 43(4) by resetting the threshold for the look-back period for preferential transactions. The Committee also note that presently, the period is measured backwards from the Insolvency Commencement Date (CD) viz. the date of admission. The Committee further note that the proposed amendment shifts the start of the look-back period backward to the Initiation Date viz. date of filing the application for CIRP and includes the period between the Initiation Date and the Insolvency Commencement Date. The Committee agree with the Ministry's contention that linking the look-back period to the Initiation Date (date of filing) prevents the CD from misusing the time lag between filing and admission to protect preferential transactions. The Committee are of the view that change is crucial to effectively capture pre-filing transactions made in anticipation of insolvency.

26.6.2 The Committee, therefore, recommend that the proposed amendment under Clause 26 be retained without any change.

27. Clause 27 proposes to amend Section 46 of the Principal Act (Relevant period for avoidable transactions)

27.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

46. Relevant period for avoidable transactions

(1) In an application for avoidance of an undervalued transaction, the liquidator or the resolution professional, as the case may be, shall demonstrate that –

(i) such transaction was made with any person within the period starting from one year preceding the initiation date and ending on the insolvency commencement date; or

(ii) such transaction was made with a related party within the period starting from two years preceding the initiation date and ending on the insolvency commencement date.

27.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)

46. Relevant period for undervalued transactions

(1) In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that—

(i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or

(ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

27.3 Reasons/Justification by the Ministry for the proposed provision

Clause 27 of the Bill seeks to amend the marginal heading of section 46, to substitute the word “avoidable” for the word “undervalued”. Similar to amendments to section 43, it seeks to amend the threshold for the look-back period for undervalued transactions to more effectively capture a broader range of pre-filing transactions, particularly those undertaken in anticipation of the commencement of the insolvency resolution process to exclude assets from the process.

27.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below

(i) (a) Extend the look-back period for related party transactions (Sec43(4)(a) & Sec46(1) (b)) from two years to at least four or five years and (ii) Change the start

of the look-back period from the "initiation date" to the "date of first default" with the financial creditor who initiated the CIRP, or the date of default as per IU records.

(ii) Delete the right of individual creditors or members to file avoidance applications; such applications should only be filed by the RP/ Liquidator with prior CoC approval. Insert a proviso that “transactions undertaken in the ordinary course of business of real-estate development, or for completion of ongoing projects, including inter- corporate fund transfers within a developer group, payments to contractors, suppliers, and landowners, shall not be treated as preferential or undervalued unless fraudulent intent is prima facie established by the Adjudicating Authority.” Replace automatic disciplinary direction against RPs with a discretionary power of the NCLT, exercisable only upon clear evidence of mala fide omission.

(iii) that the word period, one year or two year from initiation of proceeding, should be relevant financial years, it is difficult to underline demarcation if data need to be cut oA in between the year.

27.5 Examination by the Committee

27.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under:-

(i) Under the proposed scheme of the Code, the two-year look back period is sufficient. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) The amendment promotes transparency and value maximisation by permitting creditors or members to file avoidance applications when the RP or liquidator fails to act. This prevents loss of value due to inaction or conflict of interest and ensures that suspect transactions are promptly addressed. Judicial oversight safeguards against misuse or frivolous claims. By broadening access while maintaining accountability, the provision strengthens vigilance, deters negligence, and preserves the integrity of the insolvency process, ensuring equitable recovery and greater creditor confidence. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) The amendment ensures consistency and legal clarity by defining the look-back period for undervalued transactions from the initiation date to the insolvency commencement date. This fixed one- and two-year duration enables accurate examination of pre-insolvency transactions and aligns with international best practices. Linking the period to financial years would instead create ambiguity, complicate investigations, and allow recent suspect transactions to evade review. The look-back periods proposed reflect a carefully calibrated legislative balance that captures all materially

suspect transactions without overextending the scope of scrutiny, and expanding the relevant period to entire financial years would create uncertainty, widen litigation, and dilute the timeliness and efficiency of the insolvency process.
Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

27.6 <u>Observations/Recommendations of the Committee:</u>

27.6.1 The Committee note that clause 27 proposes to amend Section 46, which deals with undervalued transactions, to align it with the changes made to Section 43 (Preferential Transactions). The key proposed amendments are change in Nomenclature: Substituting the marginal heading word "avoidable" with the clearer term "undervalued" and resetting the Look-back Period: Shifting the start of the look-back period from the Insolvency Commencement Date (ICD) (date of admission) backwards to the Initiation Date (date of filing the application for CIRP), and including the intervening period.

27.6.1 The Committee view these amendments as necessary to capture a broader range of pre-filing transactions, particularly those undertaken in anticipation of insolvency to exclude assets from the process. The Committee agree that resetting the threshold to the Initiation Date is essential for maintaining the integrity of the insolvency estate and ensuring that undervalued transactions made in the anticipation of CIRP commencement are captured. The Committee, therefore, accept the amendments proposed in clause 27 without any change.

28. Clause 28 proposes to amend Section 47 of the Principal Act (Application by creditor in cases of undervalued transactions)

28.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

47. Application by creditors, member or partner in case of certain transactions or trading. –

(1) Where–

(a) a preferential transaction under sub-section (1) of section 43; or
(b) an undervalued transaction under section 45; or
(c) an extortionate credit transaction under sub-section (1) of section 50; or
(d) fraudulent trading or wrongful trading under section 66,

has occurred and the liquidator or the resolution professional, as the case may be, has not reported it to the Adjudicating Authority, a creditor, either by itself or jointly with other creditors, a member, or a partner of the corporate debtor, as the case may be, may make an application to the Adjudicating Authority to pass orders in accordance with the respective provisions of this Chapter or Chapter VI, as the case may be.

(2) Where the Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that the relevant transaction or trading under clauses (a) or (b) or (c) or (d) of sub-section (1) has occurred, it shall pass an order, for the avoidance of such transaction or trading, as the case may be, as if such an application had been filed by a liquidator or a resolution professional in accordance with the relevant provisions of this Chapter or Chapter VI.

(3) After passing an order under sub-section (2), where Adjudicating Authority is satisfied that the liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transaction or trading, did not report such transaction or trading to the Adjudicating Authority, it shall pass an order requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional, as the case may be.

28.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)

47(1) Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

(2) Where the Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that—

(a) undervalued transactions had occurred; and

(b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order—

(a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48;

(b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

28.3 Reasons/Justification by the Ministry for the proposed provision

Clause 28 of the Bill seeks to substitute section 47 of the Code to enable creditors (individually or jointly with other creditors) or a member or partner of the corporate debtor, as the case may be, to apply to the AA for the avoidance of an avoidable transaction under sections 43, 45, or 50 of the Code or fraudulent or wrongful trading under section 66 of the Code if the liquidator or resolution professional has not reported such transaction or trading to the AA. The AA is empowered to pass an order for the avoidance of such transactions or fraudulent or wrongful trading as if such an application had been filed by the liquidator or resolution professional in accordance with the relevant provisions of the Code. Following the passing of such an order, the Adjudicating Authority is also empowered to pass an order requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional, if it is satisfied that the liquidator or the resolution professional did not report the transaction or trading to the AA even after having sufficient information or opportunity to obtain information regarding the same.

28.4 Important Views/Suggestions given by Experts/Stakeholders:

The important suggestions of the stakeholders in this regard are furnished below

(i) the Resolution Professional may not be subjected to disciplinary proceedings

(ii) welcome amendment, however, resolution professional must be obligated to report if forensic audit of the lender does not have such transactions which was identified by transaction auditor to highlight gaps in lender process to identify early fraud detection. The lenders need to cooperate in providing all the documents whether internal note/report or external report to IRP/RP for performing transaction identification.

(iii) that Sub-section 3 needs to be omitted In case of Creditors in class this will become a major hurdle point for all the IPs in practice and will undermine the freedom of the RP and that will lead to vague applications by RPs to avoid the disciplinary proceedings and will lead to further burdening the Adjudicating Authorities.

(iv) A creditor's right to file should be contingent on the IP *failing to act* after being formally intimated Suggested Wording (Revised Sec 47(1)): *"...has occurred and the*

liquidator or the resolution professional... has failed to report it to the Adjudicating Authority within sixty days of receiving a formal intimation in writing from such creditor, member, or partner, then such creditor... may make an application..."

28.5 Examination by the Committee

28.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under:-

(i) The intent is not to penalise professional judgment but to provide greater scope in identifying and reporting such transactions, which are crucial for value maximisation and transparency. Disciplinary action applies only where negligence or omission is observed ensuring fairness while deterring laxity. Hence, the proposed provision rightly balances professional discretion with accountability and upholds the integrity of the insolvency process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) Regulation 4(3) of the CIRP Regulations already requires creditors to share all relevant reports, including audit, inspection, and other documents that help the resolution professional. This covers forensic or transaction audit reports as well. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) The intent is not to penalise professional judgment but to provide greater scope in identifying and reporting such transactions, which are crucial for value maximisation and transparency. Disciplinary action applies only where negligence or omission is evident, ensuring fairness while deterring laxity. Hence, the proposed provision rightly balances professional discretion with accountability and upholds the integrity of the insolvency process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iv) Section 47 of the Code enables creditors (individually or jointly with other creditors) or a member or partner of the corporate debtor, as the case may be, to apply to the Adjudicating Authority for the avoidance of an avoidable transaction under sections 43, 45, or 50 of the Code or fraudulent or wrongful trading under section 66 of the Code if the liquidator or resolution professional has not reported such transaction or trading to the AA. This will be in the nature of a preventative intimation to the AA, and following such intimation, the AA is empowered to pass an order for the avoidance of such transactions or fraudulent or wrongful trading as if such application had been filed by the IP under the Code. However, in such a case, adverse action by the AA (in the form of directing the IBBI to initiate disciplinary proceedings against the IP), is a discretionary power. Further, the AA shall only pass such pass orders once it is satisfied that the liquidator or the

resolution professional did not report the transaction or trading to the Adjudicating Authority even after having sufficient information or opportunity to obtain information regarding the same. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

28.5.2 During the briefing sitting of the Committee held on 14.10.2025, the representatives of the Ministry of Corporate Affairs with regard to Avoidance Proceedings and Dissolution submitted as under:- "Further, the corporate debtor can also be dissolved pending the proceedings of the avoidance transactions, fraudulent transactions, etc., because till now a call was being taken that as long as the avoidance transactions are not completed, you cannot dissolve the corporate debtor, or if the corporate debtor is dissolved, the avoidance proceedings cannot take place. So, that has now been clarified."

28.5.3 Further, the representatives of the Ministry of Corporate Affairs with regard to Creditor Filing of Avoidance Applications stated that "allowing the creditors to file an avoidance application which improves the accountability... We have said that Section 47 is allowing the creditors or members to approach the AA for avoidance transactions in case if the IP does not report them. The AA can act on such an intimation and can direct disciplinary action only when it is satisfied that the RP had an opportunity to report it but did not do it willingly."

28.5.4 with regard to Protection for RPs regarding Avoidance, **t**he Ministry of Corporate Affairs further submitted "… once the NCLT is looking at this application which is coming from the creditor... it is going to exercise its mind saying actually whether the RP deliberately withheld this information... So, there is actually protection given to him in that sense."

28.6 <u>Observations/Recommendations of the Committee:</u>

28.6.1 The Committee note that Clause 28 proposes to substitute all the Sub clauses of Section 47, the core intent being to broaden the scope of reportable transactions and strengthen accountability by empowering creditors, members, or partners of the corporate debtor to bring any failure to report such transactions to the attention of the Adjudicating Authority (AA). The Committee also note that the new Section 47 allows the aforementioned parties to file an application if the Resolution Professional (RP) or Liquidator has not reported the occurrence of Preferential transaction, Undervalued transaction, Extortionate credit transaction and Fraudulent or wrongful trading. The Committee observe that the Ministry have justified this amendment as promoting transparency, maximizing value, and

strengthening vigilance by permitting creditors/members/partners to act when the IP fails to report a transaction due to "inaction or conflict of interest". The AA is empowered to act upon this intimation as if the application was filed by the IP.

28.6.2 The Committee agree that the substitution of Section 47(1) and (2) is a crucial step for improving accountability and deterring laxity on the part of the IP, as the final order for avoidance can now be achieved through creditor initiation when the IP has been negligent or compromised.

28.6.3 The Committee feel that the discretionary power of the AA provides sufficient safeguard to the IP, balancing professional discretion with necessary accountability. The Committee therefore, accept the amendment proposed in Clause 28 without any modification.

29. Clause 29 proposes to amend Section 49 of the Principal Act (Transactions defrauding creditors)

29.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

49. …
Provided that an order under this section -

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor or a related party of the corporate debtor, as the case may be, and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

---

29.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)

49…
Provided that an order under this section —

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

---

29.3 Reasons/Justification by the Ministry for the proposed provision

Clause 29 of the Bill seeks to amend clause (a) of the proviso to section 49 of the Code to also exclude the property acquired from a related party of the CD from the exception under this proviso. It prevents the transactions wherein the asset of the CD is transferred to its related party, and consequently, such an asset is transferred from the related party to a third party, from being exempted as “transactions defrauding creditors”. However, if the asset is further transferred from the third party to another person, it can still be exempted if the other requirements are met. This ensures that the transfer of the property through a related party does not gain protection under clause (a) of the proviso to section 49, which should apply to transactions taken in good faith between the sellers and buyers of the property that belonged to the CD.

29.4 Views/Suggestions given by Experts/Stakeholders:

No views of the stakeholders have been received with respect to this clause

29.5 Examination by the Committee

29.5.2 On query regarding Guarantor's Assets (Timing of Acquisition) the representatives of RBI submitted that "Regarding the transfer of assets of the guarantor of the Corporate Debtor (CD), there is a provision under Section 28A that allows the

creditor to transfer the guarantor's assets. However, the wording appears to suggest that such transfer would occur only if the creditor had already acquired the asset before the commencement of the CIRP process. We seek clarity on whether this understanding is correct. If not, it may be explicitly stated in the final draft that the creditor should have acquired the asset prior to the initiation of the CIRP."

29.5.3 The representative of the Ministry of Corporate Affairs with respect to Section 28 (a) on Pooling of Guarantor's Assets ".. deposed before the Committee as follows "...it is merely a voluntary procedural mechanism where the secured creditor already has possession of the asset. All they are doing is they are agreeing to pool it in order to increase the value of the asset."

29.6 <u>Observations/Recommendations of the Committee:</u>

29.6.1 The Committee note that clause 29 proposes to amend Section 49, Proviso (a), which deals with transactions intended to defraud creditors. The Committee observe that currently, Proviso (a) protects a Good Faith Buyer if they acquired the property from "a person other than the corporate debtor". The amendment extends the exclusion, stating that protection will also not apply if the property was acquired from a "related party of the corporate debtor".

29.6.2 The Committee further note that the Ministry have justified the proposed amendment prevents a two-step transaction whereby ensuring that transactions involving related parties do not gain the exemption intended for genuine, arm's-length transfers.

29.6.3 The Committee endorse the amendment and feel that effectively closes a statutory loophole that could be exploited to cleanse property titles of assets fraudulently transferred by the CD, undermining the interests of creditors. The Committee therefore, accept the amendment proposed in Clause 29 without any modification.

30. Clause 30 of the bill proposes to amend Section 50 of the Principal Act (Extortionate credit transactions)

30.1 Provision as per the Insolvency and Bankruptcy Code (Amendment) Bill, 2025

50. (1) Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period starting from two years preceding the initiation date and ending on the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

…

30.2 Relevant provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)

50. (1) Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

…

Explanation.— For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

30.3 Reasons/Justification by the Ministry for the proposed provision

Clause 30 seeks to amend sub-section (1) of section 50 of the Code to make changes to the look-back period for determining extortionate credit transactions.

Similar to amendments to section 43, it seeks to amend the threshold for the look-back period for extortionate credit transactions to more effectively capture a broader range of pre-filing transactions, particularly those undertaken in anticipation of the commencement of the insolvency resolution process to exclude assets from the process.

30.4 Important Views/Suggestions given by Experts/Stakeholders:

suggestions of the stakeholders in this regard is furnished below

(i) Clear transitional provisions should be included for cases where applications have been filed but not yet admitted. The amendment should be coupled with measures

to ensure expeditious admission of applications to prevent manipulation of the lookback period. Consideration should be given to extending the lookback period itself (beyond 1-2 years) for certain categories of transactions, particularly those involving related parties, to align with international best practices. In cases where a CIRP was admitted, subsequently settled or withdrawn, and another CIRP is initiated against the same corporate debtor within a three-year or such other period, the NCLT should be vested with the discretion to treat the filing date of the first CIRP application as the reference point for determining the lookback period for avoidance transactions in the second proceeding.

30.5 Examination by the Committee

30.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under:-

The proposed amendments extending the look-back period should apply prospectively to CIRPs initiated after these provisions come into effect. Additionally, the 1/2-year look-back period is appropriate, and the Code already permits a longer, differential look-back period of 2 years in cases involving related parties. Also, the proposed amendments include time spent in the admission process when calculating the look-back period, thereby extending it. Furthermore, the calculation of the look-back period is tied to the CIRP that is initiated; it may not be suitable to connect it to a prior dismissed or withdrawn application. Additionally, the amendments to section 12A will ensure that withdrawals occur only in genuine cases and help prevent strategic withdrawals intended to bring transactions out of the look-back period. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

30.6 <u>Observations/Recommendations of the Committee:</u>

30.6.1 The Committee note that clause 30 proposes to amend Section 50(1) by resetting the threshold for the look-back period for identifying extortionate credit transactions. The Committee observe that the current period runs two years preceding the Insolvency Commencement Date i.e. the date of admission. The proposed amendment shifts the period to begin two years preceding the Initiation Date i.e. the date of filing the application for CIRP and includes the time period between these two dates.

30.6.2 The Committee further observe that extortionate credit transactions often involve a Corporate Debtor (CD) taking on debt with exorbitant terms just before financial collapse. Linking the look-back period to the Initiation Date prevents the CD from successfully protecting these predatory loans merely by delaying the admission of the CIRP application.

30.6.3 The Committee agree that resetting the threshold to the Initiation Date is a needed and logical step to prevent the misuse of the insolvency process timeline, aligning the legal scrutiny of extortionate credit with other avoidance mechanisms (Preferential and Undervalued Transactions). The Committee therefore, accept the amendment proposed in Clause 30 without any modification.

31. Clause 31 of the Bill seeks to amend Section 52 of the Insolvency and Bankruptcy Code 2016 relating to "Secured creditor in liquidation proceeding". The proposed amendments read as under:-

31.1 "In section 52 of the principal Act,—

(*a*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Where the secured creditor intends to realise the security interest under clause (*b*) of sub-section (*1*), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised within a period of fourteen days from the liquidation commencement date, and if he fails to do so, such security interest shall be deemed to be relinquished to the liquidation estate:

Provided that where more than one secured creditor has any security interest over an asset of the corporate debtor, no secured creditor shall be entitled to realise its security interest, unless the realisation is agreed upon by the secured creditors representing not less than sixty-six per cent. of the value of all claims that are secured by such security interests.";

(*b*) for sub-section (*8*), the following sub-section shall be substituted, namely:—

"(*8*) The amount of insolvency resolution process, costs and the liquidation costs, and workmen's dues as referred to in clause (*a*) and sub-clause (*i*) of clause (*b*) of sub-section (*1*) of section 53, respectively, shall be deducted from the proceeds of any realisation by the secured creditors who realise their security interests in the manner provided in this section, and they shall transfer such amounts to the liquidator to be included in the liquidation estate in such manner, within such period and subject to such conditions to secure the payment as may be specified.";

(*c*) after sub-section (*9*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the purposes of this section, it is hereby declared that the provisions of sub-section (*2*) as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall not apply to the liquidation process initiated on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.".

31.2 The existing Provisions of the IBC, 2016 are as under:-

"52. Secured creditor in liquidation proceedings. –

…….

(2) Where the secured creditor realises security interest under clause (b) of subsection (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

……..

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53."

31.3 Explanation / justification put forth by the Ministry of Corporate Affairs

(i) Under section 52 of the Code, secured creditors may, during liquidation, choose to recover their dues either by realising their security interest outside of the liquidation proceedings or by relinquishing their security interest to the liquidation estate.

In practice, it is observed that despite a timeline being specified in the regulations, the secured creditors do not inform the liquidator about their decision to relinquish or realise their security interests. As a result, the liquidator waits for a secured creditor's decision for an extended period and cannot determine how the assets should be sold. Clause 31 of the Bill therefore seeks to amend sub-section (2) of section 52 of the Code to introduce a mandatory timeline requiring a secured creditor to communicate, within fourteen days from the liquidation commencement date, whether it intends to realise its security interest outside the liquidation process. If a secured creditor fails to do so within this period, the security interest shall be deemed relinquished and become part of the liquidation estate. The amendment aims to ensure timely completion of the liquidation process and prevent delays caused by inaction or indecision by secured creditors.

(ii) In instances where multiple secured creditors have a security interest over an asset of the CD, some creditors may decide not to relinquish the security interest, while the remaining secured creditors may favour such relinquishment. In such cases, the liquidator will not be able to proceed with the sale of encumbered assets. Therefore, Clause 31 also seeks to insert a proviso in sub-section (2) to address cases where multiple secured creditors hold a security interest over the same asset. In such cases, no secured creditor may realise its interest independently unless creditors representing at least sixty-six per cent in value of the combined secured claims consent. Only claims directly secured by the asset are considered, regardless of the asset's sufficiency to cover all claims or the priority of the security interest.

Clause 31 further seeks to amend sub-section (8) of section 52 to clarify that the contribution of the amount towards the insolvency resolution process costs, liquidation costs and workmen's dues under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53 shall be deducted from the proceeds of any realisation by the secured creditors, when the secured creditor decides to realise its security interest outside the liquidation process. This will ensure that a secured creditor who chooses to realise its security interest outside the liquidation process contributes towards the insolvency resolution costs, liquidation costs, and workmen's dues, as these would have been distributed if the secured creditor had relinquished their security interest to the liquidation estate. The Board will specify the period and conditions for transferring the amount to the liquidator and securing the payment. It also ensures that workmen do not receive any lesser amount than the portion of dues accorded priority under sub-clause (i) of clause (b) of sub-section (1) of section 53 in the liquidation process if the secured creditors choose to stand outside the collective liquidation process to realise their security interests. The requirement of contribution by secured creditors in such a case will ensure the protection of the interests of the workmen.

31.4 Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) this provision create drift among lenders, RP etc. We recommend to discard this provision for relinquishment.

(ii) Clarify that a first charge holder can realize his security without the consent of subordinate charge holders.

(iii) The Bill proposes a 66% consent threshold for secured creditors to realize a shared asset outside liquidation. While high, this supermajority (66%) may be necessary to ensure that the interests of all charge holders (e.g. first, second, pari passu) are adequately considered before a single credit or force sale, which could be detrimental to subordinate charge holders. We support retaining the 66% supermajority threshold. However, to prevent stalemates and ensure fairness, we recommend adding a clarification, either in the Act or by regulations, that this 66% calculation must be based on a valuation that respects the hierarchy and value of all charges on the asset, not just the claims of the initiating creditors. Suggested Clarification (via Regulation): "Regulations should specify that the 66% consent must be calculated after the liquidator, in consultation with valuers, has provided a report to all secured creditors on that asset, detailing the estimated value, the hierarchy of charges (first, second, etc.), and the expected distribution of proceeds from realization, to ensure all parties vote with full information."

(iv) We suggest that at least 30 days' time shall be provided for concerned creditor for taking decision on relinquishment or otherwise. The actual process of realization from unrelinquished securities may take more time. The clause may be redrafted accordingly. Requirement of 66% would mean that any creditor with more than 34% in a jointly held security may decide not to relinquish. This will lead to Liquidation getting stalled. As such,

we suggest that in jointly held security, relinquishment shall either be by simple majority of 51%. In case of a security exclusively held by a creditor, where the property could have been auctioned under SARFAESI with full realization going to the specific financial creditor, inclusion of workmen dues, may lead to negligible or NIL recovery for that creditor. As such, we suggest that workmen dues as applicable under Section 53(1)(b)(i) along with other IRP Cost, shall be deducted proportionate to the share in claims of the creditors, from the realization of exclusive security.

31.5 The Ministry in their written replies to the corresponding suggestion have submitted as under:

(i) The current proposal in the Bill provides flexibility which ensures a balance between individual creditor rights and collective asset maximisation. It prevents undue delay in decision making regarding whether asset will form a part of the liquidation estate, promotes cooperation in liquidation, and aligns with the IBC's objective of efficient value realisation while upholding fairness and certainty in the insolvency process.

(ii,iii &iv) The proposed proviso to sub-section (2) of section 52 states that when multiple secured creditors have claims secured by a security interest over a specific asset of the corporate debtor, the decision shall be based on 66% of the total value of all claims that are secured by such security interest holders. It does not consider whether a person has a first or second charge on the secured assets. Since realization of secured assets outside the liquidation will mean that all secured creditors holding security interests over the asset will receive a lower priority, this approach is more equitable and provides an opportunity for everyone affected by the decision to participate. This also aligns with the text under section 13(9) of the SARFAESI Act, 2002, which provides that:

"Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:"

31.6 Additionally, the Bill provides a clear 14 day window for secured creditors to choose realisation or relinquishment, ensuring certainty and avoiding delays; extending this period would dilute the intended efficiency. The 66% consent requirement for jointly secured creditors aligns with existing IBC voting standards and prevents fragmented decisions. Further, Bill also already provides that secured creditors realising security outside liquidation must deduct and contribute the amounts attributable to insolvency resolution costs, liquidation costs, and priority workmen's dues under section 53(1)(a) and 53(1)(b)(i). This ensures the same outcome as relinquishment and prevents any shortfall in workmen's dues. The Bill also authorises IBBI to specify timelines and

conditions for transferring these amounts to the liquidator. The amendment fully protects workmen's interests and ensures fair contribution by secured creditors.

31.7 Observations/ Recommendations of the Committee

The Committee note that clause 31 of the Amendment Bill seeks to amend Section 52 of the Principal Act by introducing mandatory time line of 14 days requiring a secured creditor to communicate, if it intends to realize its security interest outside liquidation. Also, where security is shared among multiple secured creditors consent of at least 66 percent in value of such secured creditors for enforcement of realization of common security outside liquidation is mandated. The Committee observe that the amendments also impose proportionate contribution obligations towards insolvency resolution process cost, liquidation cost and specified workmen's dues. The Committee are of the view that the amendments will bring in efficiency and will ensure the protection of interests of the workmen. The Committee, therefore, accept the clause 31 as proposed by the Ministry without any modification.

32. Clause 32 of the Bill seeks to amend Section 53 of the Insolvency and Bankruptcy Code 2016, relating to "Distribution of Assets". The proposed, amendments read as under:-

32.1 "In section 53 of the principal Act,—

(a) in sub-section (*1*),—

(i) in clause (*b*), in sub-clause (*ii*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that where the value of the security interest relinquished by the secured creditor is less than the total debt owed to such secured creditor by the corporate debtor, he shall be a secured creditor to the extent of the value of such security interest, determined in such manner as may be specified, and for the remaining value of such debt, he shall be considered to be an unsecured creditor;";

(*ii*) in clause (*e*), in sub-clause (*i*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that any amount, whether or not a security interest is created to secure such amount, due to the Central Government and the State Government, in respect of the whole or any part of the period of two years preceding the liquidation commencement date, shall be distributed under this sub-clause, and any remaining amount, whether or not a security interest is created to secure such amount, due to the Central Government and the State Government, shall be distributed under clause (*f*);";

(b) in sub-section (*2*), the following *Illustrations* shall be inserted, namely:—

"*Illustration* I.—The workmen and the secured creditors of the corporate debtor have a contractual arrangement which provides that in the event of insolvency or liquidation of the corporate debtor, all debt owed to the secured creditors shall be cleared before clearing any debt owed to the workmen. Such a contractual arrangement shall be disregarded.

Illustration II.—"X", a secured creditor of the corporate debtor, has a contractual arrangement with "Y", another secured creditor of the corporate debtor. As per the contractual arrangement, in the event of insolvency or liquidation of the corporate debtor, the debt owed to "X" shall be cleared before clearing any debt owed to "Y". Such a contractual arrangement shall not be disregarded.".

32.2 The existing Provisions of the IBC, 2016 are as under:-

53. Distribution of Assets

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following :—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

…..

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

32.3 Explanation / justification put forth by the Ministry of Corporate Affairs

(i) Clause 32 of the Bill seeks to insert an explanation in sub-clause (ii) of clause (b) of sub-section (1) of section 53 of the Code to clarify that in cases where the value of the security interest that the secured creditor has relinquished to the liquidation estate is less than the total debt that the corporate debtor owes to that secured creditor, such secured creditor will be considered a secured creditor to the extent of the value of such security interest. The Board will specify the manner of

determining the value of the security interest. For the remaining value of such debt, it shall be considered an unsecured creditor.

(ii) Clause 32 further seeks to insert an explanation in sub-clause (i) of clause (e) of sub-section (1) of section 53 to clarify that the dues of the Central and State Governments, whether or not a security interest is created to secure such amounts, shall not receive a higher order of priority under sub-section (1) of section 53. Such dues shall not be distributed as per the higher order of priority under sub-clause (ii) of clause (b) of sub-section (1) of section 53 along with the secured creditors even though a security interest is created to secure these dues. Beyond the period of two years preceding the liquidation commencement date, any remaining dues of the Central and State Government will be distributed as per the lower order of priority under clause (f) of sub-section (1) of section 53.

(iii) Additionally, the clause seeks to insert illustrations after sub-section (2) to clarify the scope and application of sub-section (2) of section 53.

32.4 Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) Illustration III may be inserted stating – "X", a secured creditor with exclusive charge over some of the assets of the corporate debtor, may receive at least the liquidation value of such exclusively charged assets of the Corporate Debtor in the event of insolvency or liquidation of the corporate debtor and such secured creditor X relinquishing its security interest in favour of the liquidation estate. For avoidance of doubt, by relinquishing its security interest, the secured creditor X may not be pro rata the other secured creditors to the extent of the liquidation value of the exclusively charged assets.

(ii) Clarification should be included in relation to inter-se arrangement among secured creditors to be extended to unsecured financial creditors as well.

(iii) Clarify the payment to be made to secured creditors in the same class.

(iv) Firstly, security interest created should be reckoned from the charge created whether floating or fixed and not merely on the basis of security interest relinquished. Secondly, the distribution of plan shall be on the basis of existing waterfall mechanism. Majority of the Banks provide credit both in the form of Term Loan as well as Cash Credit facility. In Cash Credit, security is stocks and receivables, which diminishes swiftly as account turns NPA by the time CIRP is initiated. As such majority of the working capital exposure of Banks becomes unsecured at the time of CIRP commencement. Treating part of the Bank's credit as unsecured merely due to lack of security due to borrower's diversion/siphon off, puts Banks at a disadvantageous position. This aspect may be re-examined.

(v) Ambiguity regarding the effective date of implementation of the explanations added to Section 53(1) of the Code. Many cases are already pending and it is unclear whether the new explanations apply retrospectively or prospectively.

(vi) The dues of ‘local authorities’ be also included under section 53(1)(e)(i) and proposed Explanation to clause (e) of section 53(1).

(vii) Delete the Explanation to Section 53(1)(e)(i) that prioritizes government dues, or clarify that such dues shall not include lease rent, land premium, development charges, or other statutory amounts payable by real- estate developers to authorities. Insert a proviso: “Provided that any lease rent, premium, development charge, or similar dues arising out of land allotment or project development by a real-estate or infrastructure company shall not be treated as government dues under this clause.”

(viii) Government dues on account of tax also consist of tax which has been deducted at source or collected at source (TDS or TCS, as the case may be) by the corporate debtor but has not been deposited with the Central Government. TDS/TCS is tax of third party retained on behalf of the Government by the corporate debtor. The Corporate debtor has unjustly enriched himself by keeping government money as his own. TDS on salary and professional payment is akin to workmen dues. The deductee or the collectee seeks credit of the amount so deducted or collected from the Government. There is obligation on the Government towards the deductee / collectee for the said amount. If the amount of TDS/TCS is required to be refunded to the deductee/ collectee, then the same goes out from the Government exchequer. This will have significant impact on the Government.

(ix) The Code must clarify the scope of these terms to include all earned benefits. Suggested Clarification as an Explanation to Sec 53(1)(c):

"Explanation.—For the purposes of clauses (b) and (c) of sub-section (1), 'wages and any unpaid dues' shall include basic salary, allowances, and proportionate leave encashment, gratuity, superannuation, and other retirement benefits accrued or earned by the workman or employee during the period specified in the respective clauses, as well as during the period of the corporate insolvency resolution process (to be included under Section 53(1)(a)).

(x) We propose a systemic rebalancing by suggesting that a portion of the security value be" carved out" for the benefit of unsecured creditors. This should be mandated via an amendment to the Code (e.g., in Section 52 or 53). Suggested Approach: "A provision should be introduced that a percentage of the value of any security interest held by a secured financial creditor (e.g., equivalent to the loan-to-value (LTV) margin originally insisted upon at the time of sanction, or a flat percentage) shall be reserved and contributed to the liquidation estate for distribution to unsecured financial creditors and operational creditors. This would apply in both resolution and liquidation."

(xi) In case of transactions undertaken between the government and private parties, wherein a security interest (often in the form of a priority charge) is created in favour of the government through the act of parties, Government may claim a priority under Section 53 (1) (b) (ii). In order to avoid interpretational rift between Section 53 (1) (b) (ii) and Section 53 (1) (e), it would be advisable to introduce a clarification in Section 53 (1) (b)(ii) to exclude the security interest (and secured creditor being Government) covered under Section 53 (1) (e). (sl.no.3)

32.5 The Ministry in their written replies to the corresponding suggestion have submitted as under:

(i) The proposed two illustrations under the Amendment Bill deal with manner of treatment of contractual arrangement inter-se creditors, which is sought to be clarified. However, the suggested illustration III deals with the value a secured creditor will receive on relinquishment of security interests. This is clarified in the explanation to section 53(1)(b)(ii), which also provides that regulations will specify the manner of determination of value of such security interest.

(ii) The two illustrations clarify the application of sub-section (2) of section 53, which ensures that the order of priority amongst equally ranked class of stakeholders under section 53(1) (like workmen and secured creditor) is not disrupted by the contractual arrangement between stakeholders of such different classes having equal priority. Illustration I confirm this understanding. Further, the proposed Illustration II confirms that valid inter-se arrangements among secured creditors are respected as they are within the same class of creditors, and also imply the restriction under sub-section (2) of section 53 does not apply to these contractual arrangements. Hence, if the unsecured financial creditors, belonging to the same class, have a subordination arrangement sub-section (2) of section 53 will not apply. Illustrations should be read to understand the applicability of section 53(2), and an illustration for each case or scenario is not required. However, the Ministry will insert the word “by an act of two or more parties or merely by operation of law” in the Explanation proposed in the Bill after the section 53(b)(ii).

(iii) The proposed Amendment Bill seeks to insert an explanation in sub-clause (ii) of clause (b) of sub-section (1) of section 53 of the Code to clarify that in cases where the value of the security interest that the secured creditor has relinquished to the liquidation estate is less than the total debt that the corporate debtor owes to that secured creditor, such secured creditor will be considered a secured creditor to the extent of the value of such security interest. IBBI will specify the manner of determining the value of the security interest. For the remaining value of such debt, it shall be considered an unsecured creditor.

(iv) The issues pertain to whether a transaction will be security interest under IBC, and this issue will be decided on a case-to-case basis based on the definition of “security interests” and the contractual arrangements.

(v) As the explanation clarifies how these provisions apply, it will operate retrospectively.

(vi&vii) The amendment clarifies the original legislative intent of giving the government dues a lower order of priority and does not create a new heirarchy for them altertering their present status within the waterfall. The government dues fall under the fifth order of priority, as laid down in Section 53, which supports the legislative intent to modify the original priority of government dues and assign it a lower priority. The understanding of "government dues" under this lower priority in section 53(1)(e)(i) includes any amount owed to the Central Government and the State Government, including the amount to be received on the account of the Consolidated Fund of India and the Consolidated Fund of the State, if any. Courts have adopted a limited interpretation of what falls under the understanding of these "government dues" at this order of priority. The suggestion does not explain what constitutes "local authorities", and a reference can be made to the definition of "local authorities" from the General Clause Act, 1897, which provides that "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. Further, the order of priority established by section 53(1)(e)(i) has two main effects: it clarifies the treatment of all state and central government dues under this priority, regardless of whether the debt is secured, and places these government dues for two years above general unsecured creditors. The government dues beyond two years are ranked alongside other unsecured creditors at the sixth priority level. Currently, authorities not covered by section 53(1)(e)(i), if they hold unsecured debt, fall under the sixth priority; if they have a secured interest, then they are ranked higher (second priority), similar to other secured creditors. Therefore, adding a reference "local authorities" to section 53(1)(e)(i) may have substantive implications, and also change the order of priority for those coming after the fifth priority level. First, it may be where they have a security interest and the amendment will bring them to a lower priority, or where they are unsecured creditors, it will place their dues from the last two years at the fifth level, hence giving them a priority over other unsecured creditors, such as MSMEs. Considering the implication of this amendment, it requires a wider consultation, also to assess whether the local authorities will have the financial capacity to receive a lower priority, considering they might be autonomous bodies, and the impact it may have on dues of other creditors. Furthermore, the benefits that such local authorities may receive through legal provisions granting them priority over other dues—by creating a security interest by operation of law—have already been clarified through the amendment to the explanation of section 3(31).

(viii) The proposed explanation to be added in section 3(31) and section 53(1)(e)(i) clarifies the original legislative intent to give government dues a lower priority. Accordingly, it clarifies that the government dues, whether secured or not will receive a lower priority. This also aligns with the consequential amendments made to other tax laws when IBC was introduced and even later. For example, Section 142A of the Customs Act, 2016, and Section 82 of the Central Goods and Services Tax Act, 2017, specify that tax will be a first charge on the property. However, they

also state that these provisions apply save as otherwise provided in the IBC. Thus, they align with the priority order under the IBC. Since similar synchronization is lacking in many other laws, particularly at the state level, these explanations are necessary. Section 238 of the IBC also has an overriding effect over other laws, and since it governs asset distribution during insolvency and collective proceedings, other laws should not alter this framework. The concern is noted and will be addressed in the regulation.

(ix) The existing provisions under sections 53(1)(b) and 53(1)(c) of the Code are considered sufficient. The terms “wages” and “unpaid dues” have been interpreted contextually and in accordance with applicable labour laws, depending on the facts of each case. Providing an exhaustive or expanded definition may create further complexity and inconsistency in implementation, as the nature of employee dues can vary widely across industries and employment terms. Hence, introducing such clarification may lead to confusion rather than clarity, and the existing framework is adequate.

(x) The amendment in Section 22(3) merely streamlines continuation of the interim resolution professional (IRP) as RP when approved by CoC. It does not alter the substantive rights of any creditor class. In any case the IRP is appointed by NCLT and has therefore been subjected to judicial scrutiny once. The concerns raised regarding MSME operational creditors are addressed under the existing framework, including: • Mandatory fair and equitable treatment under Section 30(2)(b) of the Code. • Binding nature of resolution plans on all stakeholders under Section 31 (ensuring non-discriminatory treatment). • Judicial scrutiny by Adjudicating Authority at approval stage. • CoC’s fiduciary obligations and guidelines for CoC conduct issued on 6 August 2024 (Background Note, para 51) ensure reasoned, transparent decision-making. The amendment is procedural, will reduce delays and does not affect distribution or priority, which is already governed by the Code. Additionally, Section 53 lays down a well-considered waterfall mechanism for distribution of proceeds, formulated after extensive deliberations, including the recommendations of the Bankruptcy Law Reforms Committee (BLRC). Introducing a carve-out from secured creditors’ recoveries would disturb this carefully structured hierarchy and create further confusion in implementation. Abrogating or diluting these rights would increase credit risk, raise financing costs, discourage secured lending, and ultimately reduce the availability of capital—undermining both the insolvency framework and the broader economy.

(xi) The proposed explanation to sec 35(1) (e) is being modified to amply clarify the proposed explanation to section 53(1)(e) that any amount due to the Central Government and the State Government shall receive lower priority, whether or not a security interest is created to secure such amount by an act of two or more parties or merely by operation of law is being modified

The Committee also enquired as to whether local Government dues can also be added to the waterfall priority clauses, the Ministry deposed as under:

" Including "local authorities" in section 53(1)(e)(i) would substantially alter the existing order of priority by shifting their dues—whether secured or unsecured—into the fifth priority level, thereby affecting unsecured creditors such as MSMEs and potentially lowering the priority of authorities holding security interests. Given these implications, wider consultation is needed to assess the financial capacity of such local authorities and the broader impact on other creditors, especially since priority created by operation of law is already addressed through the amendment to the explanation of section 3(31)."

Asked further, whether the changes to treatment of Government dues apply prospectively or retrospectively, the Ministry submitted that since amendments to this provision serve as clarifications to reaffirm the original legislative intent, they are provided as explanations and will have retrospective effect.

(xii) With regard to distribution of assets in waterfall mechanism, Secretary MSME has submitted that given their present spread, distribution, size and vulnerability, MSMEs should be treated nearly pari passu with the workers."

(xiii) The Committee further enquired into the feasibility of guaranteed Minimum recovery to MSME, the Ministry in their written reply stated that the concerns raised regarding MSME operational creditors are addressed under the existing framework, including: Mandatory fair and equitable treatment under Section 30(2)(b) of the Code. Binding nature of resolution plans on all stakeholders under Section 31 (ensuring non-discriminatory treatment). Judicial scrutiny by Adjudicating Authority at approval stage. CoC's fiduciary obligations and guidelines for CoC conduct issued on 6 August 2024 (Background Note, para 51) ensure reasoned, transparent decision-making. Further, IBBI has requested Management Development Institute (MDI) Gurgaon to study the concerns of MSMEs in relation to IBC and suggest improvements. IBBI will make necessary changes in the regulations based on the recommendations of this study.

32.6 Observations/ Recommendations of the Committee

32.6.1 The Committee note that the proposed amendment seeks to clarify the order of priority of Government dues and inter-creditor arrangements within the liquidation distribution waterfall mechanism. The Committee further note that the proposed amendment clarifies the original intent of legislation to give government dues a lower priority. The amendment also

proposes to add an explanation to section 53(1)(e)(i) which clarifies that Central Government or State Government dues will not be entitled to the priority of a "secured creditor". The Committee however feel that where security interests have been created in favour of the Government through an act of parties, situation may arise leading to an interpretational conflict. Accordingly, after considering the suggestion received and the submissions of Ministry as well as detailed deliberation in the matter, the Committee recommend that the clause be amended. The amened explanation to section 53(1) (e) may read as:

"in clause (*e*), in sub-clause (*i*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that any amount, whether or not a security interest is created to secure such amount *by an act of two or more parties or merely by operation of law*, due to the Central Government and the State Government, in respect of the whole or any part of the period of two years preceding the liquidation commencement date, shall be distributed under this sub-clause, and any remaining amount, whether or not *such* security interest is created to secure *the* amount, due to the Central Government and the State Government, shall be distributed under clause (*f*);"; "

32.6.2 The Committee also take on record the assurance given by the Ministry that the revenue loss to the Government on account of tax which has been collected or deducted at source (TDS/TCS) by the corporate debtor but has not been deposited with the Central Government will be taken care of while formulating the regulations.

Apart from the above suggested amendment, the clause is accepted.

33. Clause 33 of the Bill seeks to amend Section 54 of the Insolvency and Bankruptcy Code 2016, relating to "Dissolution of Corporate Debtor". The proposed, amendment reads as under:-

33.1 "In section 54 of the principal Act,—

(a) for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) The liquidator shall completely liquidate the assets of the corporate debtor and make an application for its dissolution to the Adjudicating Authority within a period of one hundred and eighty days from the liquidation commencement date in such manner as may be specified:
Provided that the Adjudicating Authority may, on an application by the liquidator along with sufficient reasons, extend the stipulated time by such period as it deems fit, but not exceeding a period of ninety days.

(*1A*) Where a proceeding in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47 is pending before an application is made under sub-section (*1*) or a decision is made to dissolve the corporate debtor under sub-section (*2*) of section 33, the Committee of creditors shall determine the manner of pursuing such proceedings and the distribution of the proceeds arising out of such proceedings, in such manner and subject to such conditions as may be specified.

(*1B*) Where any suit or other legal proceeding against the corporate debtor in respect of any proceeds to be distributed under section 53 is pending before application is made under sub-section (*1*) or a decision is made to dissolve the corporate debtor under sub-section (*2*) of section 33, the committee of creditors shall make appropriate arrangements for pursuing such suit or proceeding, and distribution of proceeds to the parties in such suit or proceedings

(b) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*2A*) Without prejudice to the provisions of sub-section (*2*), the Adjudicating Authority may, on receipt of the decision of the committee of creditors to dissolve the corporate debtor under sub-section (*2*) of section 33, order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly:

Provided that if, on the passing of an order under this sub-section, any asset of the corporate debtor remains with it, such asset may be disposed of in such manner as may be specified, and the proceeds thereof shall be distributed for payment of the insolvency resolution process costs and any surplus remaining after payment of such costs shall be credited to the Insolvency and Bankruptcy Fund formed under section 224.

(*2B*) Notwithstanding anything contained in sub-section (*2*) and sub-section (*2A*), the passing of the dissolution order shall not affect the continuation of proceedings referred to in sub-section (*1A*) and (*1B*).";

(c) in sub-section (*3*), after the words, brackets and figure "sub-section (*2*)", the words, brackets, figure and letter "or sub-section (*2A*)" shall be inserted;

(d) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The Adjudicating Authority shall pass a dissolution order under this section within a period of thirty days from the date of receipt of the application under sub-section (*1*) or the intimation of the decision of the committee of creditors to dissolve the corporate debtor under sub-section (*2*) of section 33:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing."

33.2 Relevant Provision in the Insolvency and Bankruptcy Code, 2016

"54. Dissolution of corporate debtor. –

(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered."

33.3 Explanation / justification put forth by the Ministry of Corporate Affairs

(i) Clause 33 of the Bill seeks to substitute sub-section (1) of section 54 of the Code to provide timelines for completing the liquidation process within a period of one hundred and eighty days from the liquidation commencement date. This period can be extended by the Adjudicating Authority, on an application by the liquidator, by such a period as it deems fit, provided that such period does not exceed ninety days.

(ii) It further seeks to insert sub-sections (1A) and (1B) to enable the committee of creditors to determine the manner of pursuing proceedings in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47 and any suit or other legal proceedings against the CD concerning any proceeds to

be distributed under section 53 after the dissolution of the corporate debtor, respectively. It will be the duty of the committee of creditors to make suitable arrangements to pursue such proceedings and distribute the proceeds recovered from such proceedings as per the procedure specified by the Board, before the liquidator or the resolution professional applies to dissolve the corporate debtor to the AA.

(iii) It also seeks to insert sub-section (2A) to empower the Adjudicating Authority to pass an order of dissolution of the corporate debtor on receipt of the decision of the committee of creditors to dissolve the corporate debtor under sub-section (2) of section 33 of the Code without completing CIRP or undergoing liquidation process. It may be considered by the AA whether the CD has any meaningful or recoverable assets, or if the entire process will be cumbersome and costly when passing the dissolution order.

(iv) It also seeks to insert sub-section (2B), to provide that the passing of the dissolution order shall not affect the continuation of proceedings in respect of avoidance transaction or fraudulent or wrongful trading or under section 47 and any suit or other legal proceedings against the corporate debtor concerning any proceeds to be distributed under section 53. Before passing the dissolution order, the AA should confirm whether such proceedings are pending and if the committee of creditors has made appropriate arrangements for their continuation post-dissolution.

(v) It also seeks to insert sub-section (4) to provide a period of thirty days for the Adjudicating Authority to pass a dissolution order.

33.4 Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing. The scenarios and the maximum permissible timeline for each of the scenarios, where such period beyond thirty days is permissible shall be notified by the Board.

(ii) Treatment of Pending Proceedings During Liquidation The proposed substitution of sub- sections (1), (1A), and (1B) in Section 54 of the Insolvency and Bankruptcy Code, 2016, providing that the liquidator shall liquidate assets and apply for dissolutionwithin180 days, with possible extension of 90 days. Pending proceedings are addressed only for: ● Avoidance transactions ● Fraudulent or wrongful trading Suits under Section 47 or distribution of proceeds under Section 53 Itis suggested to provide explicit clarification in the Regulations or Section itself regarding the treatment of other proceedings that may remain pending during liquidation, including: 1) Disputes relating to claims of creditors. 2) Disputes raised by statutory authorities,

e.g., Provident Fund or labor authorities. ● Proceedings initiated by the liquidator with NCLT approval in other forums for any other matters not explicitly covered.

(iii) provision analogous to Section 66 (Wrongful Trading) should be introduced for individuals and partnership firms, with a defined look-back period(e.g.,5-7years) to prevent indefinite liability while still capturing culpable pre- bankruptcy conduct.

(iv) the timeline for completion of liquidation may be considered as 2 years with only extension of 90 days.

(v) Insert a proviso that the 180- day period may be relaxed for companies engaged in real- estate or infrastructure development, where liquidation involves asset- wise or project-wise disposal subject to statutory and regulatory approvals. Suggested wording: "Provided that in the case of corporate debtors engaged in real estate or infrastructure development, the Adjudicating Authority may, for reasons to be recorded, extend the period for liquidation beyond 270 days to ensure completion of asset transfers, regulatory clearances and protection of home-buyers' interests." Also add a proviso to sub- sections (1A) & (1B): "Provided that where the corporate debtor is a real- estate developer, the committee of creditors shall consult representatives of allottees or home-buyers before determining the manner of pursuing such proceedings or distribution of proceeds."

(vi) The conclusion of liquidation process should be done in 365 +90 days. The shortened period is too less, requires at least a year to liquidate. 365+90 is reasonable however, it is case to case basis. PUFE by appropriate stakeholders RAs/ FCs extension in big cases NCLT to be decided.

(vii) Reforming Pre-Packaged Insolvency Regime Simplify approval requirements, enable NCLT-appointed RP, and allow conversion of failed CIRP into pre-pack... Proposed Amendment to Chapter III-A (Sections 54A 54P): • Remove mandatory moratorium and make it optional for creditors to enforce before filing pre pack. • Allow initiation by creditors having a voting share of 50% as it is applicable to MSME without a resolution plan from promoters.

33.5 The Ministry in their written replies to the corresponding suggestion have submitted as under:

(i) It is not appropriate for the IBBI (regulator) to specify a timeline for adjudication of applications by the NCLT (tribunal)..

(ii) the proposed amendment allows the CoC to decide how to pursue proceedings related to avoidance transactions or fraudulent or wrongful trading, as well as any non-IBC suit or legal proceeding against the corporate debtor after its dissolution. These proceedings are separate (see also amendments to section 26) from those related to the liquidation process. However, issues important to liquidation, such as claims and asset sales, cannot be decided after dissolution.

(iii) Section 66 for Wrongful Trading the Ministry stated that Section 66 of the IBC is specifically designed for corporate debtors under Part II to address fraudulent or wrongful trading by persons managing the company, recognizing the separate legal personality of corporations and the potential for misuse by directors or management. In contrast, Part III, dealing with individuals and partnerships, does not contain a similar provision because these entities lack the distinct separation between owners and the business that corporations have, and their liabilities are more direct and personal. Hence, making the corporate-specific provision in Section 66 unnecessary and unsuitable for non-corporate debtors.

(iv,v &vi) The proposed amendment introduces a 180-day timeline for completing the liquidation process, extendable by 90 days, and extends the moratorium and CoC oversight from CIRP to liquidation. By eliminating the need to re-invite claims, it removes duplication and procedural delays, ensuring efficient and timely asset realization and distribution. These measures reinforce a time-bound framework, reduce operational burdens on the liquidator, and safeguard stakeholders' interests, thereby improving the overall effectiveness and predictability of the liquidation process. Further, clause 16 of the Bill seeks to substitute section 26 of the Code to clarify that the proceedings in respect of avoidance transactions or fraudulent or wrongful trading or under section 47 of the Code shall not affect the corporate insolvency resolution process, and these proceedings will continue independently and are not affected by the completion of the corporate insolvency resolution process. Similarly, it is also provided that filing of these proceedings shall not affect the liquidation process, and completion of the liquidation process shall not affect the continuation of these proceedings. The amendments to section 54 provide how such proceedings shall continue after the liquidation process is completed and the corporate debtor is dissolved.

(vii) It is agreed that initiating PPIRP should require approval from unrelated financial creditors holding at least 51% of the voting shares, intended to ease the initiation process and enhance the feasibility of MSMEs seeking resolution through PPIRP. Amendments to section 54C simplify the filing requirements along with the application to initiate the process under subsection (3). These will be specified in IBBI regulations. The PPIRP progresses in two distinct stages: an initial informal stage followed by a formal stage once the process is officially initiated. During the informal stage, the corporate debtor and its creditors negotiate without a formal moratorium, relying on voluntary negotiations between the parties. At this stage, the resolution professional (RP) is nominated by unrelated financial creditors. Upon formal initiation by the Adjudicating Authority (AA), the nominated RP is officially appointed by the AA to manage the process. The initiation of the CIRP within PPIRP requires approval by at least 66% of the CoC, ensuring creditor control over the resolution process. A moratorium, which limits enforcement actions against the corporate debtor, is declared only upon the AA's formal initiation of the process. This moratorium is crucial to facilitate an uninterrupted and swift resolution. A limited moratorium applies after the

initiation to ensure continued business operations while safeguarding creditor interests. Lastly, having a base resolution plan before initiating the pre-pack process is essential because the process is consensual, relying on a preliminary understanding about the resolution framework, which then competes with the resolution plans from the market.

33.6 Observations/ Recommendations of the Committee

The Committee note that the clause 33 seeks to introduce a 180-day timeline for completing the liquidation process, extendable by 90 days, and extends the moratorium and CoC oversight from CIRP to liquidation. By eliminating the need to re-invite claims, it removes duplication and procedural delays, ensuring efficient and timely asset realization and distribution. These measures reinforce a time-bound framework, reduce operational burdens on the liquidator, and safeguard stakeholders' interests, thereby improving the overall effectiveness and predictability of the liquidation process. The Committee, after considering Clause 33 of the Bill, find the proposal appropriate, they therefore accept the proposed amendments.

34. Clause 34 of the Bill seeks to amend Section 54 A of the Insolvency and Bankruptcy Code 2016, relating to "Corporate Debtors eligible for pre-packaged insolvency resolution process". The proposed, amendment reads as under:-

34.1 In section 54A of the principal Act, in sub-section (*2*),—

(*a*) in clause (*a*), for the words "pre-packaged insolvency resolution process or", the words "pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process, or" shall be substituted;

(*b*) in clause (*b*), after the words "resolution process", the words "or a creditor-initiated insolvency resolution process" shall be inserted.

34.2 Relevant Provision in the Insolvency and Bankruptcy Code, 2016

"54A. Corporate debtors eligible for pre-packaged insolvency resolution process.

(1) An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

(2) Without prejudice to sub-section (1), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that— (a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

(b) it is not undergoing a corporate insolvency resolution process;

(c) no order requiring it to be liquidated is passed under section 33;

(d) it is eligible to submit a resolution plan under section 29A;

(e) the financial creditors of the corporate debtor, not being its related parties, representing such number and in such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

(f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, *inter alia*, that— (i) the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days; (i) the pre-packaged insolvency resolution process is not being initiated to defraud any person; and (ii) the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);

(g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating pre packaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

……"

34.3 Explanation / justification put forth by the Ministry of Corporate Affairs

Clause 34 seeks to amend sub-section (2) of section 54A of the Code as a consequential change pursuant to the insertion of Chapter IV-A titled "Creditor-Initiated Insolvency Resolution Process".

34.4 Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) Delete the words "or creditor- initiated insolvency resolution process" from Section 54A(2).

(ii) Process Simplification: The Process needs to be further simplified addressing the constraints highlighted. A fairer balance must be ensured so that operational and minority creditors and stakeholders are not disproportionately disadvantaged. ii. Awareness creation: Awareness needs to be created both for MSMEs and the Financial Advisors/ Chartered Accountants. The Institute of Chartered Accountants of India (ICAI) and similar institutions need to be roped in to create awareness by issuing Guides for CAs, Financial Advisors and Insolvency Professionals. iii. Incentives and guidelines for Banks/ FIs: Banks should be clearly guided that supporting modern insolvency processes serves the national interest, with the RBI playing a key role in encouraging compliance.

(iii) Section54A(1)may be amended to provide that the PPIRP framework shall apply to all types of CD in addition to the MSMEs to expand its applicability under IBC.

(iv**)** PPIRP should be strengthened and for this stakeholder consultation at appropriate level may be done, so that level playing field could be provided to MSMEs. Section 54(2)(e) of the Pre-packaged Insolvency Resolution Process (PPIRP) requires the corporate debtor to obtain approval from 66% creditors for the appointment of an insolvency professional to act as the resolution professional (RP) before the application for PPIRP is filed. This requirement may be reduced to 51%. Section 54K of the Insolvency and Bankruptcy Code (IBC) governs the consideration and approval of a resolution plan during a PPIRP. The corporate debtor submits a base resolution plan, which is evaluated by the committee of creditors (CoC). After the CoC's approval by a 66% vote, the final approved plan has to be submitted to the Adjudicating Authority (AA). The voting percentage of resolution plan may be reduced from 66% to 51% to expedite proceeding.

34.5 The Ministry in their written replies to the corresponding suggestion have submitted as under:

(i) The proposed amendment does not dilute the framework of pre-packaged insolvency. It merely provides that a corporate debtor cannot opt for PPIRP where a CIIRP has already been undertaken, thereby preserving process integrity and preventing parallel or sequential misuse. The core character of PPIRP as a distinct mechanism remains unaffected.

(ii) The PPIRP framework is limited to MSME's, and it is clarified that it is not extended to other types of corporate debtors. The proposed amendment to section 54C only enable IBBI make regulations related to the relevant information that needs to be filed along with the PPIRP request, and the regulation will further simplify filing requirements for applicants. Other suggestions relate to implementation of PPIRP framework related to awareness and incentives and guidelines for Banks/FIs are duly noted and pertains to implementation of these provisions and warrant an amendment to the Code. Additionally, section 54A will also be amended to lower the voting threshold for unrelated financial creditors to approve the initiation of the process from 66% to 51%, to facilitate the initiation of PPIRP.

(iii) PPIRP was designed for MSME corporate persons and is limited to them. A new process, offering similar benefits such as continuing management with the board of directors, is being introduced for genuine business failures and ensuring business continuity through the creditor- initiated insolvency resolution process.

(iv) Voting thresholds for initiation of the PPIRP process may be considered to be reduced from 66% to 51% to facilitate quicker resolution.

(iv) The Committee sought to know whether voting threshold for unrelated financial creditors can be reduced, the Secretary, Ministry of Corporate Affairs during the evidence submitted as under:

> *"The point regarding threshold of approval from 66 per cent to 51 per cent is something we can examine…….on the PIP, PIRP aspects, we can do that because ultimately, he is a debtor in possession and he has the right of first refusal."*

34.6 Observations/ Recommendations of the Committee

The Committee note that Clause 34 seeks to amend sub-section 2 of the Section 54A is a consequential change pursuant to the insertion of chapter IV-A titled "Creditor-Initiated Insolvency Resolution Process". The Committee note that the current voting threshold for initiation of PPIRP for unrelated Financial Creditors is sixty-six percent. The Committee are of the view that same can be reduced to expedite the PPIRP process. The Committee therefore, recommend to amend Section 54A and substitute the words "sixty-six" with "fifty -one" appearing in the section 54A (2) (e) and 54A(3) of the Principal Act. The amended clause 34 to be read as under:

"34. In section 54A of the principal Act, (a) in sub-section (2),—

(i) in clause (a), for the words "pre-packaged insolvency resolution process or", the words "pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process, or" shall be substituted;

(ii) (ii) in clause (b), after the words "resolution process", the words "or a creditor-initiated insolvency resolution process" shall be inserted.

(iii) in clause (e), for the words "sixty-six per cent", the words "fifty-one per cent" shall be substituted

(b) in sub-section (3) for the words "sixty-six per cent", the words "fifty-one per cent" shall be substituted"

Apart from the above-mentioned amendment the Committee accept the Clause 34 as proposed.

35. Clause 35 of the Bill seeks to amend Section 54 C of the Insolvency and Bankruptcy Code 2016, relating to "Application to initiate pre-packaged insolvency resolution process". The proposed amendments read as under:-

35.1 In section 54C of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(3) The corporate applicant shall, along with the application, furnish such information as may be specified."

35.2 Relevant Provision in the Insolvency and Bankruptcy Code, 2016

"54C. Application to initiate pre-packaged insolvency resolution process

…

(3) The corporate applicant shall, along with the application, furnish-

(a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of section 54A;

(b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;

(c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;

(d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.

…"

35.3 Explanation / justification put forth by the Ministry of Corporate Affairs

Clause 35 seeks to substitute sub-section (*3*) of section 54C of the Code to enable the Board to specify the information to be furnished by the corporate applicant along with the application to initiate the pre-packaged insolvency resolution process to ensure efficiency.

35.4 Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) Rather than deleting the existing provisions, a clause may be added to state that in addition to those specified here, any other information as may be specified shall also be submitted.

(ii) The PPIRP framework for MSMEs should be simplified by relaxing eligibility criteria and by introducing clear, step-by step procedures that can be easily followed. A low-cost, technology enabled solution should be implemented, including online templates, integration with the Udyam portal for automated eligibility and filing, and reduction of professional fees. In the event that a PPIRP fails, the process should be automatically transitioned into a regular CIRP to prevent delays and avoid redundant filings. Regulatory or structural solutions should be introduced to address promoter-related debt discharge issues. Additionally, a combined MSME Exit and Resolution Framework should be developed, integrating features of voluntary closure and PPIR P, supported by Fast-Track MSME Resolution Regulations.

35.5 The Ministry in their written replies to the corresponding suggestion have submitted as under:

(i) On the issue of retaining the existing provision, the Ministry stated that Amendment intends to provide greater flexibility to IBBI to modify and simplify these requirements based on the experience in the implementation of PPIRP.

(ii) The proposed amendment to section 54C enables IBBI to make regulations related to the relevant information that needs to be filed along with the PPIRP request, and the regulation will further simplify filing requirements for applicants. Further, section 240B of the proposed Amendment Bill enables creation of an electronic portal which will also ensure technology enabled framework for PPRIP. Additionally, section 54A will also be amended to lower the voting threshold for unrelated financial creditors to approve the initiation of the process from 66% to 51%, to facilitate the initiation of PPIRP.

35.6 <u>Observations/ Recommendations of the Committee</u>

The Committee note that the Ministry through this amendment seeks to substitute the existing details about the information to be furnished along with the application for initiation of Pre-Packaged Insolvency Resolution Process (PPIRP) in the section 54C(3) of the Principal Act. The Committee feel that the substitution gives necessary freedom to IBBI to seek any information that they deem fit based on the experience of implementation of PPIRP. The Committee are of the view that the intent of the amendment is to provide greater flexibility to the IBBI to modify and

simplify the PPIRP. The Committee are in agreement with amendment and accept the same without modification.

36. Clause 36 of the Bill seeks to amend Section 54 F of the Insolvency and Bankruptcy Code 2016, relating to "Application to Duties and powers of resolution professional during pre-packaged insolvency resolution process". The proposed amendments read as under:-

36.1 In section 54F of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) Any person who is or has been a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, mutatis mutandis, apply in relation to the proceedings under this Chapter.".

36.2 Relevant Provision in the Insolvency and Bankruptcy Code, 2016

"54F Application to Duties and powers of resolution professional during pre-packaged insolvency resolution process

…

(5) The personnel of the corporate debtor, its promoters and any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, *mutatis mutandis* apply, in relation to the proceedings under this Chapter."

36.3 Explanation/justification put forth by the Ministry of Corporate Affairs

Clause 36 seeks to substitute sub-section (*5*) of section 54F of the Code to apply provisions similar to the amended section 19 to the pre-packaged insolvency resolution process to ensure assistance and cooperation with the resolution professional.

36.4 Observations/ Recommendations of the Committee

The Committee note the proposed amendment to this section is necessitated due to the amendment proposed by the Ministry in Section 19 dealing with pre-packaged insolvency resolution process of the code so that similarity could be maintained. The Committee accept the amendment proposed without any modification.

37. Clause 37 of the Bill seeks to amend Section 54 L of the Insolvency and Bankruptcy Code 2016, relating to "Approval of resolution plan". The proposed, amendments read as under:-

37.1 In section 54L of the principal Act,—

(a) in sub-section (2), for the word, brackets and figure "and (4)", the brackets, figures and word ", (4), (5) and (6)" shall be substituted;

(b) in sub-section (3), the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority may, before rejecting the resolution plan, give notice to the committee of creditors to rectify any defects in the resolution plan.";

(c) in sub-section (4), in clause (b), for the brackets, letters and word "(ii) and (iii)", the brackets, letters and word "(ii), (iii), (iv) and (v)" shall be substituted.

37.2 Relevant Provision in the Insolvency and Bankruptcy Code, 2016

"54L. Approval of resolution plan

…

(2) The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(3) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under section 54N.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the resolution plan approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be of section 54K, does not result in the change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —

(a) rejecting such resolution plan;
(b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

37.3 Explanation / justification put forth by the Ministry of Corporate Affairs

Clause 37 seeks to amend section 54L of the Code to apply certain changes made to sections 31 and 33 to the pre-packaged insolvency resolution process under Chapter III-A of Part II of the Code.

37.4 Observations/ Recommendations of the Committee

The Committee note the proposed amendment to this section is consequential to changes made to the Sections 31and 33 dealing with pre-packaged insolvency resolution process of the code. The Committee accept the amendment without any modification.

38. Clause 38 of the Bill seeks to amend Section 54 N of the Insolvency and Bankruptcy Code 2016, relating to "Termination of pre-packaged insolvency resolution process". The proposed amendments read as under:-

38.1 In section 54N of the principal Act, in sub-section (4), in clause (a), for the brackets, letters and word "(ii) and (iii)", the brackets, letters and word "(ii), (iii), (iv) and (v)" shall be substituted.

38.2 Relevant Provision in the Insolvency and Bankruptcy Code, 2016

54N. Termination of pre-packaged insolvency resolution process

…

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the pre-packaged insolvency resolution process is required to be terminated under sub-section (1), the Adjudicating Authority shall pass an order —

(a) of liquidation in respect of the corporate debtor as referred to in sub-clauses (i), (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) of section 33; and

…

38.3 Explanation / justification put forth by the Ministry of Corporate Affairs

Clause 38 seeks to amend section 54N of the Code to apply changes made to section 33 dealing with the initiation of the liquidation process to the pre-packaged insolvency resolution process.

38.4 <u>Observations/ Recommendations of the Committee</u>

The Committee note the proposed amendment to this section is consequential to changes made to the Sections 33 dealing with the initiation of the liquidation process to the pre-packaged insolvency resolution process of the code. The Committee therefore accept the amendment without any modification.

39. Clause 39 of the Bill, seeks to omit chapter IV of Part-II of the Insolvency and Bankruptcy Code 2016, relating to "Fast Track Corporate Insolvency Resolution Process". The proposed, amendments read as under:-

39.1 "In Part II of the Principal Act, Chapter IV shall be omitted."

39.2 Relevant Provision in the Insolvency and Bankruptcy Code, 2016

"CHAPTER IV

FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

55. Fast track corporation insolvency resolution process. - (1) A corporate insolvency resolution process carried out in accordance with this Chapter shall be called as fast track corporate insolvency resolution process. (2) An application for fast-track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely: - (a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or (b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or (c) such other category of corporate persons as may be notified by the Central Government.

56. Time period for completion of fast-track corporate insolvency resolution process. - (1) Subject to the provisions of sub-section (3), the fast-track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date. (2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast-track corporate insolvency resolution process beyond ninety days if instructed to do so by a resolution passed at a meeting of the 73 committee of creditors and supported by a vote of seventy-five percent of the voting share. (3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order, extend the duration of such process beyond the said period of ninety days by such further period, as it thinks fit, but not exceeding forty-five days: Provided that any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.

57. Manner of initiating fast track corporate insolvency resolution process. - An application for fast-track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be, along-with- (a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and (b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast-track corporate insolvency resolution process. Manner of initiating fast track corporate insolvency resolution process.

58. Applicability of Chapter II to this Chapter. - The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require."

39.3 Explanation / justification put forth by the Ministry of Corporate Affairs

Clause 39 of the Bill seeks to omit Chapter IV of Part II of the Code comprising of sections 55 to 58, which deal with the fast-track corporate insolvency resolution process. Consequential amendments are made to the code for the omission of the provisions related to the fast-track corporate insolvency resolution process.

39.4 Observations/ Recommendations of the Committee

The Committee after considering clause 39 of the Bill find that as a result of inclusion of mandatory time lines through various clauses in the various sections of the Principal Act the fast-track implementation has been ensured. The Committee therefore, accept the omission as proposed in the Bill.

40. Clause 40 of the Bill proposes to insert new sections after Section 58 of the principal Act.

40.1 Provisions Proposed in the Amendment Bill, 2025.

After Chapter IV of the principal Act, the following Chapter shall be inserted, namely

Chapter IV-A

Creditor-Initiated Insolvency Resolution Process

58A. Corporate debtors eligible for creditor-initiated insolvency resolution process.

(1) A creditor-initiated insolvency resolution process may be initiated in respect of the following corporate debtors under this Chapter, namely:-

(a) a corporate debtor with assets or income or both, below such levels;
(b) a corporate debtor with such class of creditors or such amount of debt; or
(c) such other category of corporate debtors,
as may be notified by the Central Government.

(2) Without prejudice to sub-section (1), a creditor-initiated insolvency resolution process shall not be initiated in respect of a corporate debtor, -
(a) for which an insolvency resolution or liquidation proceedings has been commenced and is still undergoing under the provisions of Part II; and

(b) that has undergone a creditor-initiated insolvency resolution process, pre-packaged insolvency resolution process, or completed a corporate insolvency resolution process, during the period of three years preceding the creditor-initiated insolvency commencement date.

58B. Initiation of creditor-initiated insolvency resolution process.

(1) A financial creditor, belonging to such class of financial institutions as may be notified by the Central Government, in respect of which a default is committed by a corporate debtor, may initiate the creditor-initiated insolvency resolution process for such corporate debtor by appointing a resolution professional in accordance with the provisions of this section, and subject to such conditions as may be prescribed.

(2) The financial creditor seeking to initiate the creditor-initiated insolvency resolution process shall, before appointing the resolution professional,–

(a) obtain the approval of the financial creditors of the corporate debtor belonging to the class of financial institutions notified under sub-section (1), who represent not less than fifty-one per cent. in value of the debt due to such financial creditors, in such manner as may be specified;

(b) inform the corporate debtor of its intention to initiate the creditor-initiated insolvency resolution process and give it a period of at least thirty days to make any representation in such form and manner as may be specified; and

(c) after consideration of the representation received under clause (b), if any, where the financial creditor continues to pursue the initiation of the process, it shall obtain approval of the financial creditors of the corporate debtor belonging to such class as notified under sub-section (1), who represents not less than fifty-one per cent. in value of the debt due to such financial creditors, within a period of thirty days from the date of receipt of the representation, in such manner as may be specified:

Provided that where no approval is obtained under clause (c) within the stipulated period of thirty days, the financial creditor shall, if it seeks to initiate the creditor-initiated insolvency resolution process, obtain fresh approval under clause (a) and comply with the procedure under this sub-section.

Explanation. - For the purposes of this section, it is hereby clarified that where the corporate debtor does not make a representation within the period given by the financial creditor under clause (b), the financial creditor may, after the expiry of such period proceed to appoint the resolution professional in accordance with the provisions of sub-section (3).

(3) Where the financial creditor, who seeks to initiate the creditor-initiated insolvency resolution process, meets the requirements under sub-sections (1) and (2), it may appoint an insolvency professional as the resolution professional, if no disciplinary proceedings are pending against him, immediately after fulfilling all the requirements under sub-section (2).

(4) Where the resolution professional is appointed under sub-section (3), he shall –

(a) make a public announcement of the initiation of the creditor-initiated insolvency resolution process; and

(b) communicate the same along with a report confirming whether the financial creditor meets the requirements under sections 58A and 58B to the Adjudicating Authority and the Board,

within such period and in such form and manner as may be specified, and the creditor-initiated insolvency resolution process shall be deemed to have commenced from date of such public announcement:

(5) Notwithstanding anything contained in sections 7, 9, 10 and 54C, no application for initiation of the corporate insolvency resolution process or the pre-packaged insolvency resolution process in respect of the corporate debtor shall be filed or admitted during the creditor-initiated insolvency resolution process period.

Explanation. – For the purposes of this Chapter,–

(i) "creditor-initiated insolvency commencement date" means the date of the public announcement referred to in sub-section (4) of section 58B;

(ii) "creditor-initiated insolvency resolution process period" means the period beginning from the creditor- initiated insolvency commencement date and ending on the date on which an order is passed under sub-section (1) of section 58H or under sub-section (1) of section 58-I or under section 58J read with section 31.

58C. Objections to commencement of process.

(1) If the corporate debtor has any objection to the commencement of the process under section 58B, it may file an application to the Adjudicating Authority within a period of thirty days from the creditor-initiated insolvency commencement date in such form and manner as may be specified, accompanied with such fee as may be prescribed.

(2) Where the Adjudicating Authority, pursuant to an application under sub-section (1) is satisfied that:

(a) a default has not occurred or both a default has not occurred and the initiation of the creditor-initiated insolvency resolution process was in contravention of sections 58A or 58B, it may, by order, declare the commencement of the process to be void *ab-initio*;

(b) a default has occurred, however, the initiation of the creditor-initiated insolvency resolution process was in contravention of sections 58A or 58B, it shall, convert the creditor-initiated insolvency resolution process to corporate insolvency resolution process and pass an order as referred to in sub-clauses (i) to (v) of sub-section (1) of section 58H.

(3) The Adjudicating Authority shall pass an order under sub-section (2), within a period of thirty days from the date of receipt of the application under sub-section (1):

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.

58D. Period for completion of creditor-initiated insolvency resolution process.

(1) Subject to sub-section (2), the creditor-initiated insolvency resolution process shall be completed within a period of one hundred and fifty days from the creditor-initiated insolvency commencement date.

(2) The Adjudicating Authority may, on the application made by the resolution professional, with the approval of the committee of creditors, by a vote of not less than sixty-six per cent. of the voting share, extend the period under sub-section (1), by a period of not more than forty-five days:

Provided that any extension of the period of the creditor-initiated insolvency resolution process under this section shall not be granted more than once.

(3) Where no resolution plan is approved by the committee of creditors within the period stipulated in sub-section (1) or the extended period under sub-section (2), the Adjudicating Authority shall pass an order under sub-section (1) of section 58H.

58E. Duties and powers of resolution professional.

(1) The resolution professional, shall exercise and perform the following powers and duties during the creditor-initiated insolvency resolution process period, in such manner and subject to such conditions as may be specified, namely:–

(a) call for the submission of claims;

(b) prepare the information memorandum;

(c) prepare a report in such form as may be specified, confirming whether the conduct of the creditor-initiated insolvency resolution process is in accordance with the procedural requirements and that the resolution plan, filed along with it, complies with the requirements of sections 29A and 30 which shall, *mutatis mutandis*, apply to the proceedings under this Chapter;

(d) duties referred to in clauses (a) to (c) of section 18 and clauses (e) to (j) of sub-section (2) of section 25, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter;

(e) powers as referred to in sub-section (3) of section 54F which shall, *mutatis mutandis* apply, to the proceedings under this Chapter;

(f) file such report and documents with the Board as may be specified; and

(g) perform such other duties as may be specified.

(2) Any person who is or has been a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, *mutatis mutandis*, apply in relation to the proceedings under this Chapter.

58F. Management of affairs of corporate debtors and cooperation of its personnel.

(1) Subject to the provisions of this section, during the creditor-initiated insolvency resolution process period, the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, of the corporate debtor as the case may be, and the provisions of section 54H shall, *mutatis mutandis,* apply to the proceedings under this Chapter

(2) Notwithstanding anything contained in any other law, from the creditor-initiated insolvency commencement date, the resolution professional shall attend meetings of members, Board of Directors and committee of directors, or partners of the corporate debtor, and he shall have the right to reject any resolutions passed in these meetings subject to such conditions and in such manner as may be specified, and once he rejects a resolution, it shall not be approved.

(3) The promoter and personnel of the corporate debtor shall provide relevant information related to the corporate debtor for preparing the information memorandum to the resolution professional in such form and manner and within such time period as may be specified, and where any person has sustained loss or damage as a consequence of the omission of any material information or inclusion of any misleading information or false information provided by such persons, they shall be liable and in this regard, the provisions of sub-sections (2) to (4) of section 54-G and section 77-A, shall, *mutatis mutandis,* apply to the proceedings under this Chapter.

58G.Moratorium.

(1) During the creditor-initiated insolvency resolution process period, the resolution professional may, after obtaining the approval of the committee of creditors, make an application to the Adjudicating Authority for a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, mutatis mutandis apply, to the proceedings under this Chapter

Provided that the resolution professional may file such application before the constitution of the committee of creditors, after obtaining approval of the financial creditors of the corporate debtor belonging to the class of financial institutions notified under sub-section (1) of section 58B, who represent not less than fifty-one

per cent. in value of the debt due to such financial creditors, in such manner as may be specified.

(2) Where an application has been made in sub-section (1), a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14 shall commence from the date of the application and continue to be in operation during the creditor-initiated insolvency resolution process period, and the Adjudicating Authority may confirm the moratorium, if it is satisfied that the moratorium is required for the proper and efficient conduct of the creditor-initiated insolvency resolution process, or reject the application.

(3) The resolution professional shall make public announcement of the following, in such form and manner as may be specified, namely:–

(a) filing of application under sub-section (1); and

(b) order of the Adjudicating Authority rejecting the application under sub-section (2) , if any.

58H. Conversion of creditor-initiated insolvency resolution process to corporate insolvency resolution process.

(1) Where the Adjudicating Authority,—

(a) does not receive a resolution plan for approval, within the period stipulated under section 58D;

(b) is satisfied that the corporate debtor or its personnel have failed to assist or cooperate with the resolution professional; or

(c) rejects the resolution plan under sub-section (2) of section 58J read with sub-section (2) of section 31,

it shall, by an order, –

(i) convert the creditor-initiated insolvency resolution process to corporate insolvency resolution process under Chapter II and provisions of such Chapter shall apply;

(ii) decide the stage from which the corporate insolvency resolution process shall commence, after considering any recommendation of the committee of creditors, made in such manner as may be specified;

(iii) appoint the resolution professional for the creditor-initiated insolvency resolution process as the interim resolution professional or the resolution professional for the corporate insolvency resolution process, as the case may be;

(iv) declare a moratorium for the purposes referred to in section 14; and

(v) declare that the costs incurred during the creditor-initiated insolvency resolution process, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.

(2) Where the committee of creditors, at any time during the creditor-initiated insolvency resolution process period, by a vote of not less than sixty-six per cent. of the voting share, resolves to convert the creditor-initiated insolvency resolution process to the corporate insolvency resolution process in respect of the corporate debtor, the resolution professional shall make an application for this purpose to the Adjudicating Authority in such form and manner as may be specified, and the Adjudicating Authority shall pass an order as referred to in sub-clauses (i) to (v) of sub-section (1).

(3) Where the Adjudicating Authority passes an order to convert the creditor-initiated insolvency resolution process to the corporate insolvency resolution process under Chapter II —

(a) the proceedings initiated for avoidance transaction or fraudulent or wrongful trading or under section 47, if any, during the creditor-initiated insolvency resolution process shall continue during the corporate insolvency resolution process;

(b) such order shall be deemed to be an order of admission of an application under section 7 and the financial creditor who initiated the creditor-initiated insolvency resolution process under section 58B shall be considered as the applicant for that purpose; and

(c) for the purposes of sections 43, 46 and 50, the references to “initiation date and ending on the insolvency commencement date” shall be construed as “creditor- initiated insolvency commencement date and ending on the insolvency commencement date.

58-I. Withdrawal of public announcement made under section 58B.

(1) Subject to sub-section (2), the Adjudicating Authority may allow the withdrawal of the public announcement made under sub-section (4) of section 58B and close the creditor-initiated insolvency resolution process on an application made by the resolution professional with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.

(2) Notwithstanding anything contained in any law for the time being in force, the public announcement made under sub-section (4) of section 58B shall not be withdrawn –

(a) before the constitution of the committee of creditors; and

(b) after the first invitation for submission of a resolution plan has been issued by the resolution professional.

(3) The Adjudicating Authority shall pass an order under sub-section (1), within a period of fourteen days from the date of receipt of the application:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.

58J. Application for approval of resolution plan.

(1) Where the committee of creditors, by a vote of not less than sixty-six per cent. of the voting share, approves the resolution plan in accordance with the provisions of section 30, the resolution professional shall submit such approved resolution plan to the Adjudicating Authority, along with a report referred to in clause (c) of sub-section (1) of section 58E.

(2) On receipt of the resolution plan, the Adjudicating Authority, may, pass an order in accordance with the provisions of section 31, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

58K. Application of provisions of Chapters II, III, VI and VII to this Chapter.

(1) Save as provided in this Chapter, the provisions of sections 21, 24, 25A, 26, 27, 28, 28A, 29, 32, 32A, 43 to 51, and the provisions of Chapters VI and VII of this Part shall, *mutatis mutandis* apply, to the creditor-initiated insolvency resolution process, subject to the modifications that the references to -

(a) “corporate insolvency resolution process” shall be construed as reference to “creditor- initiated insolvency resolution process”;

(b) “insolvency commencement date” shall be construed as reference to “creditor-initiated insolvency commencement date”;

(c) “insolvency resolution process period” shall be construed as reference to “creditor- initiated insolvency resolution process period”; and

(d) the references to “period starting from” shall be construed as “period of” and “initiation date and ending on the insolvency commencement date” shall be construed as “creditor- initiated insolvency commencement date” under sections 43, 46 and 50

(2) The creditor- initiated insolvency resolution process of a corporate person under this Chapter shall meet such conditions and procedural requirements as may be specified by the Board.

40.2 Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):

Newly Inserted Chapter IVA in Part II titled CIIRP.

40.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provisions:

Clause 40 proposes the new creditor-initiated insolvency resolution process.

The proposed **Section 58A** seeks to provide the types of corporate debtors who shall be eligible for the creditor-initiated insolvency resolution process. Sub-section (1) empowers the Central Government to notify the types of corporate debtors in respect of whom the creditor-initiated insolvency resolution process may be initiated.

Additionally, sub-section (2) stipulates specific types of corporate debtors for whom, despite eligibility under sub-section (1), the creditor-initiated insolvency resolution process shall not be initiated. For instance, the CDs for whom either an insolvency resolution or liquidation process has been commenced and is still undergoing, are excluded from being an eligible CDs in respect of whom the creditor-initiated insolvency resolution process may be initiated. Also, the CDs for whom any insolvency resolution process has taken place three years preceding the creditor-initiated insolvency commencement date will not be eligible for this process. To determine this eligibility, three years will be calculated from the date of the public announcement from which the creditor-initiated insolvency resolution process commences

Section 58B seeks to provide the procedure for initiating the creditor-initiated insolvency resolution process.

(i) Sub-section (1) provides that a financial creditor of the CDs in respect of whom default is committed may initiate the creditor-initiated insolvency resolution process, should belong to the class of financial institutions notified by the Central Government.

Only these notified financial institutions shall have the right to initiate the process. Additionally, since this is an insolvency process under Part II, the minimum default threshold specified in section 4 of the Code must be satisfied.

Also, the Central Government may prescribe other conditions for initiation of the process, which will be required to be complied with for initiating the process.

(ii) Sub-section (2) lists the mandatory requirements that must be complied with by the financial creditor seeking to initiate the creditor-initiated insolvency resolution process.

(iii) Sub-section (3) provides that if requirements under sub-section (2) are fulfilled, the financial creditor may appoint an insolvency professional as the resolution professional.

(iv) Sub-section (4) provides that the resolution professional, after its appointment, shall make a public announcement of the initiation of the process and communicate the same to the Adjudicating Authority and the Board.

The creditor- initiated insolvency resolution process shall be deemed to have initiated from the date of the public announcement, and no order or direction from the Adjudicating Authority or the Board shall be required for the same. This will be an out-of-court commencement of the process.

(v) Sub-section (5) provides that after the process under Chapter IV-A is commenced, no application for initiation of the CIRP or the pre-packaged insolvency resolution process in respect of the CD shall be filed during the creditor-initiated insolvency resolution process period. Since the CD will be undergoing an insolvency resolution process, its creditors will be required to participate in this process by submitting claims.

Section 58C seeks to allow the CD to object to the commencement of the process under section 58B by applying to the AA within thirty days from the creditor-initiated insolvency commencement date.

The right to object to the commencement of the process before the AA, can be exercised only after the process has been initiated and not before the public announcement under section 58B. If the CD chooses not to object within the specified period, it will be assumed that it has no objection and that the initiation of the process is valid.

Sub-section (2) of section 58C provides that where the AA is satisfied that a default has not occurred, or both a default has not occurred and also the initiation of the process is in contravention of the procedure stipulated under sections 58A or 58B, it may, by an order, declare the commencement of the process as void ab-initio. The Adjudicating Authority will only be required to ascertain whether these two requirements are fulfilled, and no other ground or objection shall be considered.

It also seeks to insert a proviso in sub-section (3) to provide that the AA shall decide the application within thirty days from its receipt, and if it is not decided within the stipulated time-period, the AA shall record reasons for such delay in writing.

Section 58D sets out the period for the completion of the creditor- initiated insolvency resolution process.

(i) Sub-section (1) provides that the process shall be completed within one hundred and fifty days.

(ii) Sub-section (2) allows this period to be extended by period of forty-five days. Any extension to this period extension shall not be granted more than once.

Sub-section (3) provides that where the committee of creditors does not approve any resolution plan within the stipulated period in sub-section (1) or under the extended period under sub-section (2), the AA shall pass an order.

(iii) converting the creditor-initiated insolvency resolution process into CIRP.

Such a mandatory period will ensure timely resolution of insolvency. It will also ensure that protections (like moratorium) during the process with control of the corporate debtor by its management do not continue beyond the period mentioned in this section to avoid any misuse of the process.

Section 58E sets out the duties and powers of the resolution professional during the creditor-initiated insolvency resolution period. He will be required to, *inter alia,* call for submission of claims and prepare the information memorandum

The resolution professional is also required prepare a report confirming whether the conduct of the process is in accordance with the procedural requirements and that the resolution plan complies with the requirements of sections 29A (*Person not eligible to be resolution applicant*) and 30 (*Submission of resolution plan*).

The provisions similar to section 19 (*Personnel to extend co-operation to interim resolution professional*) apply to the creditor-initiated insolvency resolution process to ensure assistance and cooperation with the resolution professional

Section 58F states that the management of the affairs of the CD shall continue to vest in the Board of Directors or the partners of the CD during the creditor-initiated insolvency resolution process period.

Additionally, the resolution professional shall, from the creditor-initiated insolvency commencement date, attend all meetings of the members, Board of Directors, and

committee of directors, or partners of the CD. The resolution professional can reject any decision or resolution made in these meetings, and if rejected, such decision or resolution shall not be approved or adopted.

This will ensure that the management of the CD is conducted in an orderly manner which aligns with the creditor- initiated insolvency resolution process.

Also, the promoter and personnel of the corporate debtor are required to provide relevant information related to the CD to the resolution professional for preparing the information memorandum and shall be liable for any non-compliance.

Section 58G seeks to allow the resolution professional to make an application before the AA for a moratorium for the purpose of sub-section (1) read with sub-section (3) of section 14 (Moratorium) after obtaining approval of the committee of creditors. This application may also be filed before the constitution of the committee of creditors, after obtaining approval of the financial creditors of the CD belonging to the class of financial institutions notified under sub-section (1) of section 58B, who represent not less than fifty-one per cent. in value of debt.

The AA may confirm the moratorium, if it is satisfied that the moratorium is required for the proper and efficient conduct of the creditor-initiated insolvency resolution process or reject the application.

Sub-section (3) provides for the resolution professional to make a public announcement of the application for moratorium filed under this section and for the order of the AA rejecting the application, in the manner as may be specified.

Section 58H provides that the AA shall convert the creditor-initiated insolvency resolution process to the corporate insolvency resolution process in the following cases:

(i) where it does not receive a resolution plan for approval within the stipulated period;

(ii) where it is satisfied that the CD or its personnel have failed to assist or cooperate with the resolution professional; or

(iii) where it rejected the resolution plan.

Clearly outlining the events for the conversion of the process ensures that it proceeds promptly and prevents the management of the corporate debtor from abusing its protections.

While passing an order for conversion, the Adjudicating Authority shall also decide the stage from which the CIRP process shall commence, appoint the resolution professional for the creditor-initiated insolvency resolution process as the interim resolution professional for the CIRP, declare a moratorium under section 14 and

declare that the costs incurred during the creditor-initiated insolvency resolution process as CIRP costs.

Additionally, sub-section (2) provides that the committee of creditors may, at any time during the creditor-initiated insolvency resolution process, decide to convert the creditor-initiated insolvency resolution process to the CIRP.

Sub-section (3) clarifies that where any order of conversion is passed under this section, it shall be deemed to be an order under section 7 (Initiation of corporate insolvency resolution process by financial creditor) of the Code.

Section 58-I lays down the procedure for withdrawal of the public announcement and closing the creditor-initiated insolvency resolution process.

Sub-section (1) provides that the AA may allow withdrawal of the public announcement on an application made by the resolution professional with the approval of ninety per cent. of the voting share.

Sub-section (2) provides that the public announcement shall not be withdrawn before the constitution of the committee of creditors and after the first invitation for submission of a resolution plan issued by the resolution professional.

Sub-section (3) provides that the Adjudicating Authority shall pass an order under sub-section (1) within a period of fourteen days from the date of receipt of the application.

Section 58J provides for the procedure for approval of the resolution plan by the AA.

Sub-section (1) provides that where the committee of creditors approves a resolution plan by a vote of not less than sixty-six percent of the voting share, the resolution professional shall submit such approved resolution plan to the AA, along with the report confirming whether the conduct of the process is in accordance with procedural requirements. The report shall be given due regard by the AA when approving the resolution plan to ensure prompt adjudication.

Sub-section (2) provides that the AA shall pass an order in accordance with section 31 (Approval of resolution plan), which shall, mutatis mutandis, apply to the creditor-initiated insolvency resolution process.

Section 58K provides that certain provisions of Part II of the Code that shall, mutatis mutandis apply, to the creditor-initiated insolvency resolution process with suitable modifications.

40.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) The trigger point for initiation of CIIRP provisions sought to be introduced by way of amendment is occurrence of default. It is suggested that in cases where both debtor and creditor consensually agree to initiation of CIIRP process, the trigger point could be imminent default in payment of debt or likelihood of default. Invariably, debtors and creditors are aware of the likelihood of insolvency. Both have visibility of distress. It would be in interest of all stakeholders if the insolvency is initiated as soon as red flags appear rather than wait till default occurs as erosion of value starts as soon as distress sets in even if actual default in payment of debt may not have occurred. Most advanced jurisdictions like USA allow insolvency process to start even if default has not occurred. Earliest the intervention better the value outcomes.

(ii) Creditor-Led Resolution Process (CLRP) framework requires fundamental restructuring to address cooperation paradox, the following suggestions may be considered:

First Suggestion: Introduce retention mechanisms: Amend Section 58G to explicitly permit resolution plans under CLRP that allow existing shareholders to retain ownership through debt restructuring, subject to CoC approval by 75% voting share, payment of not less than liquidation value, and compliance with Section 30(2) requirements.

Second Suggestion: Limited Section 29A carve- out: Create exception from Section 29A disqualification for existing promoters in CLRP, subject to strict conditions including no diversion of funds, no preferential transactions, full cooperation, and CoC approval by 75% voting share.

Third Suggestion: Explicit incentive structure: Introduce provisions giving cooperating promoters right of first refusal to match competing offers, consideration in tie situations, ability to participate as co- investors, and management continuity provisions.

Fourth Suggestion: Mandatory conversion to CIRP: Strengthen Section 58C(4) to mandate automatic conversion if corporate debtor fails to cooperate, value erosion exceeds 15%, assets diverted, or CLRP cannot be completed within 210-day timeline.

Fifth Suggestion: Quarterly NCLT review: Require RP to file quarterly reports with NCLT detailing cooperation level, operational performance ,management decisions, and concerns regarding asset diversion, with suo motu power to convert CLRP to CIRP if reports indicate non-cooperation.

CLRP follows debtor-in-possession model where existing management continues operations while resolution professional supervises but imports this mechanism without the retention incentive that makes US Chapter 11 successful. The process works as follows: creditor initiates CLRP, existing

management continues operations, resolution plans invited from external applicants only (existing promoters disqualified under Section 29A), CoC approves external bidder's plan, existing promoters lose ownership entirely regardless of cooperation level. Section 29A disqualification applies not just to CIRP/CLRP but also to liquidation asset purchases, eliminating any pathway for promoters to retain or re-acquire stakes. Without retention possibility or any compensating benefit, CLRP faces systematic non-cooperation as promoters have no incentive to strengthen a business that external bidders may acquire. The suggested reforms create necessary incentive alignment through retention mechanisms and explicit benefits for cooperation while maintaining safeguards through CoC oversight, strict eligibility conditions, and automatic conversion when cooperation fails.

(iii) This process may be reconsidered. This follows the earlier discussion paper of IBBI. However, given that IBC already has pre pack, CIPR, voluntary liquidation besides the RBI Prudential Framework for resolution of Stressed Assets (June 07, 2019)- the relevance of addition of yet another process in this mix is not immediately apparent. Lack of NCLT supervision in this new process can also contribute to a situation where it would be difficult to agree on deep restructuring of a CD.It can also potentially lead to increase in stakeholder disputes since the mechanism is not subject to NCLT oversight.

The entire Chapter IV-A should be deleted or modified to ensure that no insolvency process can commence without prior judicial satisfaction by the Adjudicating Authority (NCLT). Creditors may be permitted to file an application before NCLT but not to unilaterally declare insolvency or appoint a Resolution Professional. Removing judicial oversight from the admission stage is contrary to the fundamental scheme of the IBC, which is built on NCLT’s quasi-judicial determination of default. In sectors like real estate, creditor- initiated commencement could be weaponised by a few financial institutions to seize control of ongoing projects, destroy business viability, and create systemic loss to home buyers and other stakeholders. Judicial intervention ensures natural justice and prevents misuse.

(iv) A stricter definition of Creditor initiated insolvency resolution process should be introduced in the Act to define a insolvency resolution process initiated pursuant to an application filed by an operational or financial creditor only.

(v) It is suggested that mediation is mandatorily proposed between the debtor and its creditors prior to initiation of insolvency resolution process which will help the debtor and the creditor to reach a settlement. The agreement reached between the parties on conclusion of mediation to be endorsed by the Adjudicating Authority to have effect of court order to facilitate implementation. Amendments to be made to link the Mediation Act, 2023 and

IBC to make mediation an effective tool in dealing with insolvencies. Mediation has increasingly become a preceding stage to insolvency across the world. The US has court supervised mediations in Chapter 11 (bankruptcy) proceedings, the UK has court-directed ones, while Singapore has incorporated judicial mediation for insolvencies in its Companies Act. Even in India, under the Commercial Courts Act, pre institution mediation has been introduced to encourage amicable settlement among parties and reduce the burden of the courts. Moreover, India is at the cusp of developing its mediation laws, as the Mediation Act has been introduced in 2023, and it is the right time to integrate it in various legislations like recovery laws and insolvency laws, to reap its benefits. Considering mediation is voluntary and based on the consent of the parties involved, it may not be a success in insolvencies and therefore, the recommended changes would be required in the Mediation Act for insolvency cases.

(vi) IBBI's Expert committee, in its report titled 'Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016,' also examined the issue of mandatory mediation versus voluntary mediation. It observed that: committee noted that in principle, while mandatory mediation encourages parties to make a serious attempt at resolving their disputes at an early stage and eliminates the parties' concerns of appearing weak or uncertain of their success at litigation, voluntary mediation respects parties' autonomy and increases the likelihood of successful mediation outcomes since parties engage in the process willingly. After detailed deliberation on pros and cons of mandatory mediation, the committee is of the view that voluntary mediation, i.e., reference of dispute to mediation by consensus of parties will be best suited to the Indian insolvency regime. This will permit timelines to be preserved as unwilling parties will not be forced to 'exhaust' a mandatory pit-stop before approaching the NCLT. At the same time, for the willing parties, it will provide opportunity to engage in a collaborative and problem-solving environment. The committee noted that even after opting to mediate by consensus, the parties would retain the right to opt-out if they can demonstrate that mediation is unsuitable or unlikely to be successful in their specific circumstances. The committee further recommends that it shall be onus of the parties to approach and inform the NCLT (or the appellate tribunal or the Supreme Court, as the case may be) of their intent and mutual agreement to mediate the dispute. It is important that the law recognizes that such voluntary mediations would run parallel with the statutory processes and timelines under the Code. The timelines under the Code ought to remain sacrosanct, even when parties engage in mediation. The committee is of the view that no provision for stay or extension of statutory timelines by orders of the NCLT due to ongoing mediation may be made at parties' request or on the tribunal's own discretion. This will ensure that parties pursue their chance

at mediation seriously. A provision for automatic termination of the mediator's mandate upon expiry of particular statutory timeline must be provided to ensure sanctity of current IBC timelines that will run parallel to the process. For example, at the post-institution but pre-commencement/ admission stage, the timeline of 14 days under the Code sets in on the date of filing of CIRP. Should mediation be initiated or continued during the said timeline, the automatic termination of mediation mandate would be either the date of admission under the Code or 30 days, whichever is earlier. In case of specific types of cases during CIRP, for example, at claims' collation stage, regulations may provide scope for parties to attempt mediation before approaching the NCLT. These will also be fit cases of 'class mediations', where possible. Data on settlement of OC initiated proceedings (discussed above) indicates that mediation may be most helpful in case of an OC-initiated CIRP under Section 9 of the Code, especially a single OC dispute where the object of insolvency application is directed towards repayment of operational debt."28 Any proposal for mediation should, however, ensure that it does not become another layer of a protracted process/litigation used by recalcitrant debtors or wilful defaulters to delay the final outcome.

(vii) Expand Eligibility for CIIRP Initiation: Allow some mechanism for operational creditors, including MSMEs, to initiate CIIRP so they are not forced into the more formal and costly CIRP process. Lower Voting Thresholds: Consider reducing the 50% creditor approval requirement for initiating CIIRP ensuring that smaller creditors with lower claim values are not excluded from accessing CIIRP. The provision has limited benefit for MSME creditors as the CIIRP may only be initiated by a specified class of creditors. MSMEs being the OCs are left to the more formal CIRP process. Automatic conversion of CIIRP to CIRP upon failure to produce a time- bound resolution plan may create disputes, as CIIRP depends on a resolution professional appointed without adjudication of court.

(viii) The qualifying conditions for corporate debtors ought to be sufficiently wide-ranging to optimise the effectiveness of this process. The ability to commence CIIRP should not be excessively limited, and the Adjudicating Authority should refrain from imposing any temporary suspension on CIIRP commencement during the initial phase, as this would undermine the purpose for which it was established. An extensive Swiss challenge procedure, similar to that outlined in the PPIRP framework, should be expressly incorporated into CIIRP to enhance the competitive nature of the bidding process. The ability to seek a moratorium from the Adjudicating Authority would be essential as it would provide a period of respite for all stakeholders, including creditors, potential bidders and management, to examine resolution possibilities without

the risk of creditor enforcement action during this time. CIIRP offers considerably shorter timeframes compared to CIRP, which reflects the streamlined character of CIIRP, and these shorter timelines will also encourage and foster discipline among stakeholders to make swifter decisions.

(ix) In sub Section (3), a specific timeline of 7 days may be mentioned to appoint an insolvency professional. Thus, sub-section (3) of Section 58B be read as follows: "(3) Where the financial creditor, who seeks to initiate the creditor initiated insolvency resolution process, meets the requirements under subsections (1) and (2), it may appoint an insolvency professional as the resolution professional, if no disciplinary proceedings are pending against him, within 7 days after fulfilling all the requirements under sub-section (2) Creditor-Initiated Insolvency Resolution Process as a new concept seems to be a novel and unique idea for out-of court insolvency resolution. However, given that the government is to notify the classes of debtors and creditors to whom this would apply, it would be suggested that the government gives a broad idea on what kind of debtors and creditors this would apply so that the concerned parties can anticipate the changes accordingly. Additionally, at present there is no specific period given to appoint the insolvency professional. Instead of the words "immediate", a specific period of 7 days would be suggested to be added. Further, the right of resolution professional might be overreaching given that he would have the right to veto any resolution passed in a board meeting or a CoC meeting. Under CIIRP, scope of mandatory pre- adjudication may be incorporated.

40.4 Examination by the Committee:

40.4.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under:

(i) The IBC framework establishes a more stringent and objective mechanism for determining insolvency through the 'default test,' which applies when a debt that is due and payable remains unpaid. Enshrined in Sections 4 and 78 of the IBC, this approach supersedes the earlier subjective standards that contributed to lengthy delays, streamlining admission by necessitating only the confirmation of default. The sole exception arises in voluntary liquidation, which requires the consensus of creditors, shareholders, and management in the case of solvent companies.

Notably, the IBC does not prescribe a balance sheet test (when a company's liabilities exceed its assets), consistent with the Bankruptcy Law Reforms committee's observations, which noted the limitations with the quality of accounting standards and their wide variation across single entities make the

reliability of the balance sheet test vulnerable. The BLRC Report (2015) and its Interim Report noted that previous regimes relying on 'inability to pay debt' led to delays and inefficiency due to the subjective nature of the determination process.

The suggestion to introduce a "likelihood of insolvency" test reflects an intent to enable earlier intervention, but it raises concerns about ambiguity, definitional vagueness, and increased judicial discretion. Under the IBC, creditor intervention and the commencement of formal insolvency procedures only occur upon verified default, whereas pre-default restructuring is addressed through alternative legislative mechanisms, such as compromise and arrangement schemes under Sections 230-231 of the Companies Act, 2013. This structure also ensures that entities experiencing financial strain, but not yet in default, can pursue restructuring without invoking the IBC procedures, which are more rigorous for preserving asset value.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

A pre-default mechanism may be ideal. No pre-default mechanism exists. Also, with the new definition of MSME a lot of entities will get covered under Chapter IIIA.

(ii) First and Third Suggestion: The manner of corporate debtors' reorganisation and the continuation of existing shareholders will be governed by the resolution plan that is approved by the CoC in its commercial wisdom.

Second Suggestion: Diluting section 29A would risk allowing such unscrupulous persons to exploit the process for their benefit, undermining the IBC's goal of ensuring a transparent and effective revival of stressed companies while safeguarding creditor interests, weaken competition, distort value discovery, and maintaining confidence in the insolvency system. Therefore, Section 29A serves as a vital safeguard that preserves the credibility and effectiveness of the insolvency resolution process. Additionally, the implementation of the creditor-initiated insolvency resolution process aims for the process to start early in the default stage, when the promoters or directors of genuine business failures may not be disqualified under section 29A, thus providing an opportunity to compete with the market to offer a resolution plan.

Fourth Suggestion: Section 58H already provides that AA will convert the process in four scenarios: (a) where it does not receive a resolution plan for approval within the stipulated period under section 58D; (b) where it is satisfied that the corporate debtor or its personnel have failed to assist or cooperate with the resolution professional; (c) where it rejected the resolution

plan; and (d) when the CoC decides by a vote of 66% anytime during the process. Hence, it has been adequately provided as to when the creditor-initiated insolvency resolution process shall be converted into CIRP. Factors such as a 15% erosion of value for conversion of the process are too subjective for determination and adjudication, and CoC may decide, based on the conduct of the process, whether it is appropriate to convert the process in its wisdom.

Fifth Suggestion: The requirement for reporting the process by RP and the appropriate forum for it will be decided by the regulations. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) CIIRP enables out-of-court commencement, avoiding the need for NCLT involvement at the initiation stage, unlike the standard CIRP, which requires mandatory NCLT admission. It will reduce procedural delays and judicial burden; the time spent on admission can be utilised for insolvency resolution, helping to preserve the value of the corporate debtor. CIIRP retains debtor management during the resolution process—the existing board of directors and RP form part of the board with veto powers. In contrast, in CIRP, management is immediately transferred to IRP. Further, CIIRP operates on a compressed 150-day timeline (extendable by 45 days), offering faster resolution. Additionally, while the process of initiation is out-of-court, once the procedure under section 58B is formally initiated, NCLT will exercise supervisory jurisdiction if any intervention is required, and it's involvement is required for critical stages like plan approval or conversion to CIRP.
Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iv) CIIRP can be initiated by a notified class of financial creditors (from financial institutions). It does not require filing an application, which is necessary for the CIRP, which remains applicable for operational creditors. Hence, no changes to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

(v) The primary objective of the Insolvency and Bankruptcy Code (IBC) is time-bound resolution for maximisation of value. Mandating pre-initiation mediation would add an unspecified period of delay, directly contravening the Bill's focus on strict adherence to timelines, such as the thirty-day period for Adjudicating Authority (AA) orders on resolution plans (Clause 19(c)) and the fourteen-day admission timeline (Clauses 4, 5, 6). The Bill already promotes early resolution through the new Creditor-Initiated Insolvency Resolution Process (CIIRP) (Chapter IV-A). Under CIIRP, the financial creditor must inform the corporate debtor and provide at least thirty days to make a representation before initiating

the process, thereby creating a statutory window for settlement without imposing an external, complex mediation structure. Existing mechanisms under Section 12A also permit the withdrawal of admitted applications based on settlement. Hence, no changes to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

(vi) The primary objective of the IBC is time-bound resolution for maximisation of value. Pre-initiation mediation would add an unspecified period of delay, directly contravening the Bill's focus on strict adherence to timelines, such as the thirty-day period for AA orders on resolution plans (Clause 19(c)) and the fourteen-day admission timeline (Clauses 4, 5, 6). The Bill already promotes early resolution through the new Creditor-Initiated Insolvency Resolution Process (CIIRP) (Chapter IV-A). Under CIIRP, the financial creditor must inform the corporate debtor and provide at least thirty days to make a representation before initiating the process, thereby creating a statutory window for settlement without imposing an external, complex mediation structure. Existing mechanisms under Section 12A also permit the withdrawal of admitted applications based on settlement after the constitution of the CoC. Hence, no changes to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

(vii) Suggestion on Eligibility for CIIRP Initiation: The Expert committee in its Framework Report on Creditor-Led Resolution Approach in Fast-track Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 (2023), explains the rationale for the requirement that why the financial creditors, particularly, notified financial institutions should have the right to initiate the process: “Under the Code, unrelated financial creditors bear the responsibility of actively involving themselves in resolving the insolvency of the CD, as they possess the capacity to evaluate the CD’s business viability, restructure loans, and comprehend how a distressed CD can reorganize its affairs. Consequently, the committee concurred that a special right could be conferred upon financial creditors to initiate the insolvency resolution process through an out-of-court system adopting a hybrid approach to resolution. Additionally, financial institution agreements typically entail substantial lending sums accompanied by well-documented and clearly defined repayment plans, simplifying the process of identifying and establishing any defaults that may arise. Furthermore, the likelihood of abusing this right is diminished, as most financial creditors are regulated entities directly accountable to the Reserve Bank of India and other regulatory bodies. “Further, the eligibility requirement for corporate persons qualified for the creditor-initiated insolvency resolution process will be decided by the Central Government through notification while implementing this process.

Suggestion to lower threshold: Furthermore, the 51% requirement for the financial creditors of a class of notified financial institutions to agree suggests a uniform agreement for opting for the process, which will ensure efficient conduct of the proceedings. Suggestion on automatic conversion: An order of the AA for the conversion of the creditor-initiated insolvency resolution process is necessary to ensure finality. Also, because conversion has significant consequences, such as vesting management with the IRP and suspending the board of directors. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(viii) The suggestion relates to implementation of the CIIRP framework, it is duly noted and will be considered while implementing the notifications, rules and regulations for this process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ix) The eligibility requirements for corporate persons to participate in the creditor-initiated insolvency resolution process will be determined by the Central Government through a notification issued during the implementation of this process.

The concerned financial creditor must appoint the resolution professional immediately after fulfilling the requirements under sub-section (2) of section 58B. After which, the resolution professional is required to make the public announcement and communicate it, along with the report, to the AA and the IBBI. The CIIIRP process will commence from the date of public announcement. The word immediately conveys the legislative intent that the RP be appointed swiftly, and, since this may require procedural steps, the appropriate timelines and procedures will be set out in the regulations.

Section 58F(2) enables the RP to participate in the meetings of the Board of Directors and have veto rights. Further, since the commercial decision-making in the resolution process resides with the CoC, it is not appropriate for the RP to have a veto in CoC meetings. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

40.5.2 On the suggestion that a brief court review be conducted before financial creditors announce the initiation of CIIRP confirming a genuine default within seven days and thereby ensuring the process remains swift while preventing misuse. The Ministry, in its written reply, stated as under:

The CIRP can be initiated by financial creditors, who are financial institutions notified by the Central Government. The Expert Committee, in its Framework Report on Creditor-Led Resolution Approach in Fast-track Corporate

Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 (2023), while suggesting that financial institutions should initiate the process, So observed that -

"... financial institution agreements typically entail substantial lending sums accompanied by well-documented and clearly defined repayment plans, simplifying the process of identifying and establishing any defaults that may arise. Furthermore, the likelihood of abusing this right is diminished, as most financial creditors are regulated entities directly accountable to the Reserve Bank of India and other regulatory bodies."

Additionally, CIIIRP has appropriate safeguards to avoid wrongful initiation of the process. The process must commence with the approval of the financial creditors belonging to the notified class of financial institutions, representing not less than 51 per cent. of the total value of the debt due to such financial creditors. Before initiation of the process, the financial creditor is required to give notice to the corporate debtor and consider its representation. Also, after the process is initiated, the corporate debtor has the right to object before the AA. Section 65(3) also imposes a penalty to deter the malicious or fraudulent initiation of the process.

Further, the CIRP is intended to be an out-of-court process for quick initiation, and a court check prior to initiation would be contrary to the proposed design of the CIIRP and would delay its initiation. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment)

Bill, 2025 may be retained without any change.

40.5.3 On an enquiry as to what specific regulation will be put in place by IBBI to govern the out-of-court commencement CIIRP application and its impact on the process, the Chairperson, IBBI during the sitting of the Committee deposed as under:

"The creditor-led CIRP is what is followed internationally. We are trying to introduce this international practice on an experimental basis. As per the proposed amendment, only financial institutions will be allowed to initiate the process. "Financial institutions" have been defined under the Code, and, by and large, they are banks. The objective is to make the admission process simpler and faster – ideally within a month or two. Thereafter, the same rigor applicable to regular CIRP will be followed. If anyone has any grievance regarding the process, they can approach the NCLT, which can intervene or stop the process. There are a large number of business failures, and genuine ones will fall under this mechanism. If this experiment succeeds, it will reduce timelines, improve recoveries, and enhance the resolution process."

40.5.4 On a further enquiry as to why a stricter definition of Creditor initiated insolvency resolution process cannot be provided, the Secretary, Ministry of Corporate affairs deposed before the Committee as under:

"We have said that it is the financial institutions because we are trying out a new system, which is out of Code. So, we wanted to give it to the financial institutions because they are regulated. They have a record of default. They have a very intimate relationship with the corporate debtor. Hence, that kind of a circumspection is there. Sir, this is actually the international best practice."

40.5.5 The Committee also sought to know whether the Swiss Challenge is allowed in CIIRP, Chairperson, IBBI deposed before the Committee as under:

"In our resolution process, we allow that bidders who have been shortlisted are allowed to bid again. I mean the CoC can decide to take bids again. But no Swiss Challenge is allowed because that would mean that the entire process of shortlisting will then get vitiated. So, Swiss Challenge is not allowed in CIIRP."

40.5.6 The Committee further desired to know whether a timeline of 3-4 days could be mandated for appointment of IP. Chairperson IBBI informed that the regulations provide for a timeline of 3 days from the date of appointment.

40.6 <u>Observations/Recommendations of the Committee:</u>

40.6.1 The Committee note that the Clause 40 introduces a new framework comprising Sections 58A to 58K to provide for the initiation and conduct of the Creditor-Initiated Insolvency Resolution Process (CIIRP). The Committee observe that this inclusion mechanism allows notified classes of financial creditors to initiate an insolvency resolution process against specified categories of corporate debtors, thereby filling a procedural gap in the Code by reducing delays and judicial burden and allowing time otherwise spent on admission to be devoted to resolution efforts and preservation of the corporate debtor's value.

40.6.2 The Committee also note the Ministry's submission that this creditor-led model reflects international practice and is being introduced on an experimental basis with the objective of simplifying and expediting admission while retaining the rigor of the CIRP thereafter.

40.6.3 The Committee acknowledge the Ministry's submission that the CIIRP provisions relating to eligibility, safeguards prior to initiation, procedural timelines, approval thresholds, and the role of the resolution professional have been designed to ensure discipline and transparency in the process. The Committee are

of the view that the incorporation of defined stages such as the 30 day period for representation by the corporate debtor, the mandatory compliance report, and the approval requirements for commencement will facilitate appropriate scrutiny and minimise procedural abuse. The Committee also observe that the provisions for conversion of CIIRP into CIRP, the application of moratorium upon approval, and the continuation of avoidance and fraudulent-trading proceedings ensure consistency with the existing insolvency architecture under the Code.

40.6.4 The Committee, therefore, recommend that, while framing notifications, rules, and regulations for operationalising CIIRP, the qualifying conditions for corporate debtors should be framed in a manner that ensures the process remains effective and accessible. The Committee strongly believe that the ability to commence CIIRP should not be excessively limited and that the Adjudicating Authority should avoid any temporary suspension of CIIRP initiation during the initial phase. The Committee believe that the ability to commence CIIRP should not be excessively limited and that the Adjudicating Authority should avoid any temporary suspension of CIIRP initiation during the initial phase.–Further, the ability to seek a moratorium would be essential to provide stakeholders with a period of stability to explore resolution options, and the shorter statutory timelines envisaged under CIIRP should be maintained to foster discipline and swifter decision-making.

40.6.5 The Committee, thus, after considering the replies of the Ministry and noting that the new sections strengthen creditor-driven resolution while introducing clarity and procedural safeguards, accept the amendment made under Clause 40.

41. Clause 41 of the Bill proposes to amend the Section 59 of the Principal Act.

41.1 Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

In section 59 of the principal Act,—

(a) in sub-section (2), for the words “procedural requirements as may be specified by the Board”, the words “procedural requirements, and be completed within such **period** which shall not be more than one year, as may be specified” shall be substituted;

(b) in sub-section (3), in clause (b), in sub-clause (ii), for the words “a registered valuer”, the words and figures “a valuer registered under section 247 of the Companies Act, 2013” shall be substituted;

(c) in sub-section (4), for the word “notify”, the word “**inform**” shall be substituted;

(d) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(5A) Any time after the commencement of a voluntary liquidation proceeding under sub-section (5) but before an application under sub-section (7) is filed, the voluntary liquidation proceeding shall be terminated if the following conditions are satisfied, namely:—

(a) the members of the company have passed a special resolution for terminating the voluntary liquidation proceeding;

(b) where the company owes debt to any person on the date of the resolution under clause (a), creditors representing two-thirds in value of such debt have approved the resolution passed under clause (a) within a period of seven days of such resolution; and

(c) such other conditions as may be specified.

(5B) The liquidator shall intimate the Board and the Registrar of Companies regarding the special resolution under clause (a) of sub-section (5A) within a period of seven days of passing the resolution or subsequent approval of the creditors under clause (b) thereof, as the case may be.

(5C) A voluntary liquidation proceeding shall be deemed to have been terminated from the date on which the liquidator intimates the Registrar of Companies under sub-section (5B), and such termination shall bring the term of the liquidator to an end and have such other consequences as may be specified.”;

(e) in sub-section (6), after the words “provisions of”, the words**,** brackets, letter and figures “clause (b) of section 18 of Chapter II,” shall be inserted.

41.2 .<u>Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):</u>

In section 59 of the principal Act,—

(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.

(3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely: -

(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely: -

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(4) The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(6) The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

41.3 <u>Reasons/Justification given by the Ministry for the proposed provisions:</u>

Clause 41 of the Bill seeks to amend section 59 of the Code to provide for a period to be specified by the Board within which the voluntary liquidation is to be completed, which shall not be more than one year. It also provides that the report of the valuation of the assets of the company, as required under sub-section (3) of section 59, will be prepared by a valuer registered under section 247 of the Companies Act, 2013. Further, it provides the procedure for termination of the voluntary liquidation in certain circumstances. There may be scenarios where such termination may be warranted. For instance, business opportunities may emerge that can make the corporate person profitable or viable after initiating the voluntary liquidation process. To account for this, the amendment has provided a streamlined manner of making such terminations similar to commencement

procedure of the voluntary liquidation process. It also seeks to amend sub-section (6) of section 59 due to the omission of sections 38 to 42 of the Code, dealing with the consolidation, verification, admission or rejection and determination of claims. A reference to clause (b) of section 18 is inserted, which will apply to the voluntary liquidation process with such modifications as necessary. It clarifies that the omission of sections 38 to 42 under Chapter III of Part II of the Code does not affect the powers and duties of the liquidator to verify the claims and determine their value. The regulations may also provide a detailed process for claims invitation and consideration.

41.4 Important Views/Suggestions given by Experts/Stakeholders:

An important suggestion of a stakeholder is summarized as under:

Safeguards should be included to prevent abuse by promoters seeking to delay liquidation; (2) The liquidator should be required to provide a report on the feasibility of revival before termination; (3) Costs incurred during liquidation should be addressed in the termination framework. This amendment provides flexibility for genuine cases where voluntary liquidation may no longer be necessary due to changed circumstances, such as identification of new investors or improved business prospects. It balances the interests of members and creditors by requiring both special resolution and creditor consent. However, appropriate safeguards are needed to prevent misuse.

41.5 Examination by the Committee:

While accepting the suggestion partially, the Ministry in their written replies have responded as under:

The termination procedure of the voluntary liquidation process is similar to its initiation, being out of court and with the proper approval of key stakeholders. Hence, this will ensure that the termination process is not abused by the promoters. In particular, the declaration from the majority of the company's directors required for initiation is not required for termination, which includes the mandatory agreement of shareholders (special resolution) and creditors (two-thirds in value). Furthermore, the conditions specified in the regulations should be met before termination, which will provide additional safeguards to prevent abuse of the termination process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

41.6 Observations/Recommendations of the Committee:

41.6.1 The Committee note that the provisions proposed under Clause 41 of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, which seeks to amend Section 59, primarily relate to prescribing a fixed upper time limit of one year for completion of voluntary liquidation, introducing a clear mechanism for termination of voluntary liquidation proceedings, and aligning the requirement of valuation with Section 247 of the Companies Act, 2013. The Committee observe that the proposed subsections (5A)–(5C) establish a statutory framework for termination of voluntary liquidation prior to dissolution, aligning with the Ministry's rationale to provide flexibility where new business opportunities emerge or the corporate person's viability improves.

41.6.2 The Committee also observe the concerns raised by stakeholders regarding the potential misuse of the termination process by promoters, the need for a liquidator's report on the feasibility of revival before permitting termination and ensuring liquidation costs already incurred are properly addressed. The Committee are, however, of the opinion that termination procedure of the voluntary liquidation process being similar to its initiation, being out of court and subject to approval by key stakeholders provide for adequate safeguards and aligns with the objective of providing flexibility in genuine cases where continuation of voluntary liquidation is unnecessary. Accordingly, the Committee recommend that the provisions under Clause 41 be accepted without modification. Nonetheless, the Committee emphasize that the regulations to be framed should clearly specify the conditions for termination, including the proper treatment of liquidation costs and any other necessary safeguards.

42. The Clause 42 of the Bill proposes to insert new sections after Section 59 of the principal Act.

42.1 <u>Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

Chapter V-A

Group Insolvency

Power to make rules for initiating proceedings for coordination and cooperation of corporate debtors of a group.

59A. (1) Notwithstanding anything to the contrary contained in this Code, the Central Government may, prescribe the manner and conditions for conducting insolvency proceedings under Part II, where these proceedings are initiated against two or more corporate debtors that form part of a group.

(2) Without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters, namely:–

(a) a common Bench for the insolvency proceedings of the corporate debtors that form part of a group and the manner of the transfer of pending proceedings of such corporate debtors to such Bench, and for proceedings under the rules made under this section;

(b) coordination between the insolvency proceedings of the corporate debtors that form part of a group including the coordination between their committee of creditors and interim resolution professionals, resolution professionals, or liquidators, as the case may be;

(c) appointment and replacement of an insolvency professional to facilitate the coordination between the insolvency proceedings of the corporate debtors that form part of a group;

(d) formation of a committee comprising of the committee of creditors of the corporate debtors that form part of the group;

(e) making of an agreement that provides measures to coordinate and synchronise different aspects of the insolvency proceedings of the corporate debtors that form part of a group, which shall be binding on the corporate debtors approving the same including their committees of creditors, and the Adjudicating Authority may issue necessary orders to implement the approved agreement; and

(f) treatment of the costs incurred for taking measures to coordinate the insolvency proceedings of the corporate debtors that form part of a group.

(3) The rules made by the Central Government under this section may provide that any of the provisions of the Code shall apply with such modifications, as may be required to administer and implement the provisions of this section.

Explanation.– For the purposes of this Chapter, the expressions -

(a) "control" includes the right to appoint majority of the directors or other key managerial personnel entitled to manage the affairs of the corporate person or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding, management rights, ownership interest, shareholders agreements, voting agreements, articles of association, limited liability partnership agreements or in any other manner;

(b) "group" means two or more corporate debtors that are interconnected by control or significant ownership, and include a holding company, a subsidiary company and an associate company of a corporate debtor, as defined under the Companies Act, 2013;

(c) "insolvency proceedings" means the corporate insolvency resolution process and liquidation process under Part II of this Code;

(d) "significant ownership" includes the right to exercise twenty-six per cent. or more voting rights.

(4) Notwithstanding anything contained in section 241, a draft of every rule proposed to be issued under this section, shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if both Houses agree in disapproving the issue of rule or both Houses agree in making any modification in the rule, the rule shall not be notified or shall be notified only in such modified form, as may be agreed upon by both the Houses of Parliament.

(5) The period of thirty days referred to in sub-section (4) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.

(6) Every rule notified under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

42.2 Reasons/Justification given by the Ministry for the proposed provisions:

Clause 42 of the Bill seeks to insert a new Chapter VA titled "Group Insolvency" in Part II of the Code to enable the Central Government to make rules concerning the manner and conditions for conducting insolvency proceedings and liquidation

proceedings under Part II, where these proceedings are initiated against two or more CDs that form part of a group.

The group insolvency framework will facilitate improved coordination between insolvency resolution and liquidation processes for CDs that form part of a group to maximise the value.

In addition to these general powers, an indicative list of subject matters on which the Central Government may make rules to guide the implementation of this framework is provided. It aims to establish a voluntary procedural coordination framework for group insolvency. This will, among other things, seek the appointment of a group coordinator to facilitate communication, information sharing, and alignment of proceedings.

The coordination will be through an agreement among the participating CDs and their committees of creditors. Additionally, a common bench may also be constituted for further procedural coordination.

Also, there may be situations where implementation of this framework will require alterations to the existing provisions of the Code, and the Central Government is suitably empowered to make those modifications.

Further, before the rules framed under this section are issued, a draft of every rule proposed to be issued shall be laid down before each House of Parliament as per the procedure provided in the Chapter.

42.3 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) The Insolvency and Bankruptcy (Amendment) Bill, 2025 also introduces a new Chapter V-A (Sections 59A onwards) on Group Insolvency. These provisions empower the Central Government to frame rules for conducting insolvency proceedings when two or more corporate debtors form part of a

group. The framework is designed to facilitate better coordination of insolvency and liquidation processes across related entities. The key elements include, the possibility of designating a common Bench for all group entities, with powers to transfer pending cases, mechanisms for coordination between different CoCs, insolvency professionals, or liquidators of group entities, appointment of a common insolvency professional to align proceedings across the group, creation of a joint committee of creditors for group entities, allowing coordination agreements that are binding on participating entities, with the Adjudicating Authority empowered to enforce them. While the proposal draws inspiration from international best practices and UNCITRAL’s model on group insolvency, it is critical that the Indian

framework does not merely replicate foreign models. India faces unique challenges, especially the entrenched pattern of promoter-initiated litigation, related-party influence, and judicial delays. The presence of different sets of creditors in each group company, with varying rights, priorities, and exposures, combined with the intrinsic value of the assets belonging to each entity, would naturally compel creditors to resist or thwart any attempt to consolidate CIRPs or pool assets for a combined bidding process. Each creditor will seek to maximise recovery from the specific entity against which it holds security or debt exposure, creating conflicts of interest and potential litigation. Therefore, it is vital that India does not replicate models mechanically. The IBBI must design rules that are attuned to India's unique context, promoter behaviour, entrenched litigation strategies, and judicial delays, so that the framework does not add procedural complexity without achieving meaningful coordination. One hopes that, instead of a "copy-paste" model, India adopts a framework that is practical, sensitive to creditor rights, and workable within the existing judicial ecosystem.

(ii) No comments unless all regulations also put up for discussion and put to parliamentary process proposal. This Code should be read with regulations and without putting regulation to parliamentary process, amendment should not be carried out.

(iii). Group insolvency provisions must not be made applicable to real-estate companies or entities engaged in project- wise development. Insert an explicit statutory exemption in Section 59A stating: "Nothing contained in this Chapter shall apply to real- estate developers or infrastructure companies executing projects through separate project-specific entities or SPVs, each having distinct assets, liabilities, and regulatory registration. "Group insolvency defeats the foundational principle of project-wise insolvency recognised by RERA and numerous judicial precedents (e.g., Flat Buyers Association Winter Hills v. Umang Realtech). Each project is legally and economically separate. Consolidating multiple projects under a single group proceeding would cause chaos in ownership, financing, and delivery. It would freeze healthy projects, discourage investors, and devastate public confidence in the real-estate sector. A clear exemption will preserve the viability of ongoing projects, protect homebuyers, ensure completion, and maintain promoter-led revival consistent with the IBC's value- maximisation objective.

(iv) The framework should be mandatory for groups meeting certain thresholds of inter-connectedness of its business and organisation structures. Provisions should allow for substantive consolidation of assets and liabilities where appropriate. The group insolvency framework should additionally allow creditors the option to consolidate proceedings involving personal guarantors of the corporate debtors. Permit the consolidation and sale of interlinked assets across group entities, subject to CoC approval. A corporate insolvency resolution process focused on individual entities may fail to achieve optimal value maximisation in situations

where each entity obtains a significant portion of its economic value by virtue of being part of a larger group. Just as consolidation of multiple corporate debtors serves common objectives, similar benefits would arise from consolidating proceedings involving personal guarantors.

(v) Permit the consolidation and sale of interlinked assets across group entities, subject to CoC approval. A clear framework for identifying and valuing interlinked assets, along with safeguards to prevent misuse, will strengthen the effectiveness of group insolvency proceedings.

(vi) NEED FOR REALISTIC TIMELINES

Clauses 4 & 5 (Amendment to Sections 7 & 9): 14 days insufficient to admit/reject CIRP petitions. Timeline for curing defects – 7 days. Balance 7 days insufficient for (i) service of notice and; (ii) effective representation. Recording reasons for delay burdens limited judicial resources. Clause 19 (Amendment to Section 31): 30 days from filing of S. 30(6) insufficient to hear and dispose of plan approval application.

Particulars	Timelines
REALISTIC TIMELINES	
Recording reasons for delay	45 days
Disposal of Plan Approval application	60 days
Cooperation u/S. 19 and disqualification u/S. 29A	15 days from first listing
Challenging rejection of claim u/S. 60(5)	21 days from first listing
Disposal of applications for avoidance of transactions u/S. 43, 45, 47, 49, 51, 66	6 months from first listing

NEED FOR INTRODUCING TIMELINES

Absence of timelines for: (i) applications seeking cooperation under S. 19; (ii) rejection of claims under S. 60(5); (iii) disqualification under S. 29A and (iii) avoidance applications.

Repercussion – (i) value depletion; (ii) lack of certainty for creditors and resolution applicant; and (iii) protracted litigation.

NEED FOR TIMELINES FOR NCLAT

No timelines prescribed. Need for – (i) challenge to rejection of claims in CIRP/liquidation and; (ii) approval/rejection of Resolution Plan.

42.4 Examination by the Committee:

The Ministry in their written replies to the corresponding suggestions above have submitted as under:

(i) The suggestion relates to the framework for group insolvency, it is duly noted and will be considered while implementing the rules which will be made after proper consultations.

(ii) The proposed Chapter seeks to provide a framework for voluntary procedural coordination for group insolvency, and it is required to give flexibility to the Central Government to make appropriate framework for group insolvency to deal with dynamic situations. The draft rules shall be laid before their implementation in the Parliament to ensure legislative scrutiny over the exercise of these delegated powers, thereby mitigating concerns regarding potential overreach. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) The concern about applying group insolvency to real-estate developers is misplaced. Clause 42 provides only a voluntary, procedural coordination framework, not substantive consolidation of assets across SPVs. It neither merges projects nor alters separate asset–liability structures recognised under RERA. The Bill expressly preserves entity separateness, allowing participation where it enhances value. Importantly, nothing in the proposed Chapter VA compels project-wise CIRP to be clubbed; CoCs retain full commercial discretion, and coordination may be opted out of entirely. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iv). The proposed Chapter VA and Section 59A seek to establish a voluntary procedural coordination framework for group insolvency. It does not seek to enable a substantive consolidation whereby the assets and liabilities of different group companies are consolidated so that they are treated as part of a single insolvency estate for the purpose of reorganisation or distribution in liquidation. Presently, it is appropriate to provide a procedural coordination framework, and with time and experience in implementing it and the evolving jurisprudence, the need for a substantive consolidation framework can be considered in the future.

(v) The suggestion relates to the framework for group insolvency, it is duly noted and will be considered while implementing the rules which will be made after proper consultations. Hence, no changes to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

(vi) Sections 7(4), 9(5), and 10(4) presently provide a fourteen-day timeline for the admission of applications by the financial creditor, operational creditor, and corporate debtors under the code, and the same is continued under the Amendment Bill. Additionally, reforms in the proposed Amendment Bill regarding increased reliance on the IU may further streamline the admission process, allowing for quicker admissions.

Further, the amendment bill introduces timelines for processes which were earlier not present, such as the time period within which the AA has to pass an order for withdrawal of application under section 12A (30 days), time period for approval of a resolution plan under section 31 (30 days), time period for initiation of liquidation under section 33(2A) (30 days), etc.

Moreover, as suggested during the Select Committee meetings, the proposal to introduce a timeline for the NCLAT to pass orders (within 3 months from the date of receipt of the application) is accepted.

42.5.2 When asked about their views on the issue of having a clear guidelines on Group insolvency , the Secretary Ministry of Corporate Affairs stated as under during oral evidence before the Committee:

> It is only procedural coordination. It is not substantive coordination. So, I think, here there is not really a problem. I do not think that we need to go back and look at the way we framed the provision right now. The broad contours are already actually well laid out here. Regarding definition of group insolvency, we can certainly consider including a broad definition or whatever is deemed appropriate, and incorporate it if required.

42.5.3 The Committee sought clarification on the definition of “Group” within the Group Insolvency Framework, that it should be based on debt exposure and the identification of financially linked entities to ensure clarity in group insolvency proceedings, the Ministry in its written reply stated as under:

> The proposed amendment provides for a definition of group to mean two or more corporate debtors that are interconnected by control or significant ownership, and include a holding company, a subsidiary company and an associate company of a corporate debtor, as defined under the Companies Act, 2013. The terms “control” and “significant ownership" are also defined.

The definition of a “group” under the Amendment Bill is based on a formal and functional approach. A formal approach, such as the existence of shareholding or voting rights of a specified threshold. A functional approach by focusing on the existence of ‘control’, which may be direct or indirect, actual or potential. While the former ensures ex-ante certainty, as it is based on objective thresholds, the latter provides a broader, inclusive definition, with the potential to ensure that a wide variety of enterprise groups fall within its scope. This definition of group was also recommended by the Report of the CBIRC-II on Group Insolvency (2021) which observed that: “In the group insolvency framework under the Code, a broad and inclusive definition of ‘group’ should be provided so as to include a large number of corporate debtors within the ambit of the framework. The definition of ‘group’ may be based on the criteria of control and significant ownership. This definition should be applicable to all entities that fall within the definition of a ‘corporate debtor’ under the Code, i.e., companies and limited liability partnerships. The group insolvency framework may not apply to financial service providers notified under Section 227 of the Code. … Considering the wide variety of forms in which groups may exist in practice, the Committee is of the view that a prescriptive definition that is only based on objective thresholds, while ensuring certainty, may fail to include all kinds of enterprise groups. Such a definition may prevent courts from recognising the economic realities of such groups, and thus prove to be inadequate. The Committee also noted that, insofar as procedural coordination is concerned, there is no potential harm in allowing a wide range of entities to be included within the definition of a ‘group’, as the same is a voluntary and enabling mechanism, aimed at reducing administrative costs and increasing efficiency, without affecting the assets and liabilities of each participating member. Given this, the Committee recommends that the Code should provide an inclusive definition of ‘group’ which may be based on the existence of control or significant ownership, similar to the ones recommended in the UNCITRAL Legislative Guide and the MLEGI. The Committee also discussed that the terms ‘control’ and ‘significant ownership’ should be defined in the Code to ensure that there is sufficient clarity in the applicability of the group insolvency framework. In respect of the term ‘control’, it was noted that this term has been defined in various legislations while defining the meaning of a ‘group’. For instance, different definitions of ‘control’ are provided in the Companies Act, 2013, the Competition Act, 2002, the SEBI Takeover Regulations, etc. A definition for control has also been provided in the MLEGI. On studying these definitions, it was felt that there is benefit in utilising the jurisprudence under the Companies Act in this regard as it already applies to all companies in India. The Committee agreed that the definition of ‘control’ under the Companies Act, 2013 may be inserted in the Code. Suitable modifications may be made to this definition to account for control in limited liability partnerships. In

respect of ‘significant ownership’, the Committee noted that this term has not been defined in other Indian laws for the purposes of defining the meaning of a ‘group’. However, the ability to exercise 26% or more of voting power by one company in another is usually considered as a sufficient threshold for considering them to be part of a group. For instance, a 26% ownership criterion is used in the definitions of ‘group’ in Section 5 of the Competition Act, 2002, in Article 2.1.25 of FDI Policy 2020, etc. Given this, the Committee agreed that ‘significant ownership’ may be defined as the ability to exercise 26% or more voting power. The Committee also discussed that the definitions of control and significant ownership should be inclusive so as to provide flexibility to Adjudicating Authorities to apply the definition broadly. The applicability of a principle-based definition, as recommended above, would be subject to factual determination by courts, on a case-to-case basis. While this will ensure that Adjudicating Authorities can recognize a wide variety of groups, it may also, at the initial stage, result in lack of clarity regarding its scope, owing to conflicting judicial interpretations. To prevent this, and to provide sufficient guidance to Adjudicating Authorities, the Committee recommends that an Explanation may be provided to this definition, to clarify that holding companies, subsidiaries and associate companies, as defined under the Companies Act, 2013, would fall under the definition of a ‘group’.” Hence, no changes to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

42.5.4 The Committee sought the Report of The Cross Border Insolvency Rules/ Regulations Committee (CBIRC-II) on Group Insolvency, pursuant to which the Ministry of Corporate Affairs furnished the complete report. The key recommendations of the CBIRC-II on Group Insolvency are summarised below.

i. A group insolvency framework that is voluntary, flexible and enabling in nature should be provided under the Code. Such a framework may be introduced in phases. In the first phase, only provisions governing domestic group insolvency may be enacted.

ii. The Model Law on Enterprise Group Insolvency (MLEGI) may not be adopted in India at present, and its adoption may be considered after enactment of single entity cross border insolvency laws and based on learnings from its implementation.

iii. Jurisprudence on substantive consolidation, i.e., pooling of assets and liabilities of an insolvent group, is already developing under the Code through case law. This isa remedy resorted to in exceptional circumstances and provisions governing substantive consolidation may not be provided in the Code at present. The need for such provisions may be contemplated at a later stage, on the basis of practice and jurisprudence evolved in this regard.

iv. In the group insolvency framework under the Code, a broad and inclusive definition of ‘group’ should be provided so as to include a large number of corporate debtors within the ambit of the framework. The definition of ‘group’ may be based on the criteria of control and significant ownership. This definition should be applicable to all entities that fall within the definition of a ‘corporate debtor’ under the Code,i.e., companies and limited liability partnerships. The group insolvency framework may not apply to financial service providers notified under Section 227 of the Code.

v. The group insolvency framework under the Code should only apply to corporate debtors in respect of whom a corporate insolvency resolution process or liquidation process is ongoing. The law shall not apply to solvent members of the group.

vi. A list of procedural coordination mechanisms should be available under the group insolvency framework. These are discussed below.

vii. Filing of joint applications for initiation of corporate insolvency resolution proceedings against multiple corporate debtors belonging to the same group may be permitted. Such applications may be filed with an Adjudicating Authority that has territorial jurisdiction over any one of the corporate debtors in respect of whom such joint application is being filed. Although filing jointly may be permitted, the application form for each corporate debtor should be separate.

viii. All proceedings related to corporate debtors belonging to a group may take place under the same Adjudicating Authority. To give this effect, all pending applications and proceedings under the Code in respect of a group member may be transferred to the NCLT that is the first to admit an application for triggering an insolvency resolution process in respect of any corporate debtor belonging to the group. All new applications in respect of any group member should also be filed in such

ix. A common insolvency professional may be appointed as the resolution professional or liquidator of corporate debtors that belong to the same group. An insolvency professional should refuse taking such appointment if she believes that there are 10conflicts of interest which may affect her functions. She may approach the Adjudicating Authority for suitable directions if conflicts arise after her appointment.

x. A group CoC may be formed with adequate representation from CoCs of all group members (outside group coordination proceedings in points xi-xviii). This may beat discretion of the CoCs and its constitution and formation may be subject to negotiation amongst parties. The group CoC (outside of a group coordination proceeding) may only provide procedural assistance and should not be tasked with taking decisions that affect the substantive rights and obligations of the parties,

which right shall continue to be available to the CoCs of the relevant group members.

xi. The CoCs and insolvency professionals appointed in respect of corporate debtors belonging to the same group should mandatorily be required to cooperate, coordinate and share information with each other.

xii. The law should enable group coordination proceedings for corporate debtors belonging to the same group and undergoing a corporate insolvency resolution or liquidation process under the Code. A group coordination proceeding may be opened on application made by two or more CoCs of corporate debtors belonging to a group. If the corporate debtor is in liquidation, the application may be made by the liquidator. Such applications will be made to the Adjudicating Authority. The Adjudicating Authority may open the group coordination proceedings and appoint a group coordinator (as proposed in the application and subject to eligibility criteria). The proceedings will run alongside the separate insolvency or liquidation proceedings of the corporate debtors.

xiii. Participation of a corporate debtor in the group coordination proceeding should be voluntary. The CoCs may have flexibility to opt-in to the group coordination proceedings until 30 days after its opening. Any opt-ins after such time may be permitted with the approval of the participating CoCs and liquidators. For such approval, each CoC would have to vote in favor of such opt in by at least 50% of each of their voting shares. The participating group members may opt out of the group coordination proceedings at any time until a group strategy has been approved by their respective CoC.

xiv. The group coordinator shall constitute a group CoC consisting of suitable representatives from CoCs of all participating group members. The group CoC (ingroup coordination proceeding) may perform functions delegated to it by separate CoCs. However, the power to approve a resolution plan shall not be permitted to be delegated to the group CoC.

xv. The group coordinator will conduct the group coordination proceedings and develop a group strategy. A group strategy may provide various combinations of measures that synchronise the insolvency resolution or liquidation proceedings of the participating corporate debtors. Such measures may be different for different companies included in the strategy. The group coordinator will also assist the resolution professionals, liquidators and CoCs of the corporate debtors so as to enable effective coordination amongst them.

xvi. A group strategy should require the approval of all participating CoCs by 66% of each of their voting shares respectively. Where a corporate debtor participating in a group coordination proceeding is undergoing liquidation, the liquidator should decide whether to approve the group strategy for the corporate debtor it

represents. Once approved, the group strategy shall be filed with the Adjudicating Authority and shall be binding on all parties to the group strategy.

xvii. A group coordination proceeding shall terminate if the group coordinator applies for a termination order, which may be on the grounds that – (a) the group strategy has been approved and fully implemented; (b) the CoCs and liquidators have approved such termination by requisite majority; (c) the CoCs and liquidators have failed to approve a group strategy and the group coordinator is of the opinion that it is not feasible for participating group members to agree on a group strategy.

xviii. The costs of conducting group coordination proceedings should form part of the insolvency resolution or liquidation process costs of the participating group members. Further, where group coordination proceedings are opened, an additional90 days may be added to the time period for completion of the insolvency resolution process for the participating corporate debtors.

xix. Specific provisions to deal with perverse behaviour may not be required as provisions dealing with avoidance actions and fraudulent or wrongful trading under the Code may be sufficient. Detailed provisions targeting perverse behavior ingroup insolvency scenarios should be legislated based on practice developed under the Code in due course.

xx. Effective capacity building measures and increase in use of technology during implementation will bolster the efficiency of the group insolvency framework.

42.5 Observations/Recommendations of the Committee:

42.5.1 The Committee, after thorough examination of Clause 42 of the Bill and considering the justification furnished by the Ministry of Corporate Affairs, note that the Clause introduces a new Chapter V-A comprising Sections 59A to operationalise a framework for Group Insolvency. This framework empowers the Central Government to prescribe the manner and conditions for conducting coordinated insolvency and liquidation proceedings when such proceedings involve two or more corporate debtors forming part of a group. The Committee observe that the proposed provisions envisage measures such as the constitution of a common Bench, mechanisms for coordination between committees of creditors and professionals, appointment of a group coordinator, formation of a combined committee of creditors, and the execution of binding coordination

agreements, thereby providing a structured mechanism for achieving procedural alignment across related entities. The Committee also take note of the Ministry's clarification that this enabling framework draws from international best practices, including UNCITRAL models, but is intended to function as a voluntary coordination mechanism rather than an automatic consolidation of assets or proceedings.

42.5.2 Nevertheless, the Committee underscore that the effective functioning of the Group Insolvency framework relies critically on the rules to be framed under this Chapter. The Committee are of the opinion that the framework's operational rules, regulations and notifications must be precisely tailored to India's unique institutional environment which includes factors like promoter-driven litigation, related-party influence, and the inherent complexity of cross-entity claims. The Committee, therefore, recommend that the rule-making process should ensure that procedural coordination enhances efficiency without inadvertently introducing greater complexity or fostering scope for legal disputes. In view of the above, the Committee accept the proposed amendment under Clause 42 in its present form.

42.5.3 The Committee further observe that the Insolvency and Bankruptcy Code presently does not prescribe any statutory timelines for the disposal of appeals by the National Company Law Appellate Tribunal (NCLAT). This gap has resulted in delays, particularly in appeals challenging the rejection of claims during the CIRP or liquidation processes, as well as appeals concerning the approval or rejection of resolution plans. The Committee further note that the Amendment Bill also fails to introduce any specific statutory timelines for the NCLAT.

42.5.4 The Committee feel given that the effectiveness of the Code rests on a strict time-bound framework, the Committee therefore emphasize that undue appellate delays risk undermining the efficiency and certainty of the insolvency resolution process. To preserve the integrity of this framework, the Committee recommend the introduction of a clear statutory timeline for the NCLAT. Accordingly, the

Committee propose that Section 61 be amended by inserting a new Clause 42A, to read as follows:

“The National Company Law Appellate Tribunal shall dispose of an appeal within three months from the date of its receipt.”

43. Clause 43 the of the Bill proposes to insert new sections after Section 64 of the principal Act

43.1 Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

After Section 64 of the Principal Act, the following section shall be inserted namely:

64A. Penalty for initiating frivolous or vexatious proceedings under Part II.

If any person has initiated a frivolous or vexatious proceeding before the Adjudicating Authority under this Part, it may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to two crore rupees.

43.2 Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):

Insertion of insert new sections after Section 64 of the principal Act

43.3 Reasons/Justification given by the Ministry for the proposed provisions:

It is observed that several proceedings are maliciously instituted before the Adjudicating Authority (AA) to delay the conduct of processes.

Proceedings are also initiated with no reasonable prospect of success or based on insufficient evidence submitted without any purpose to determine the actual issue.

These proceedings take up a substantial time of the AA, which can be utilised for other matters, resulting in draining of resources for the concerned parties and causing delays in the conduct of insolvency resolution processes under the Code.

Clause 43 therefore seeks to insert a new section 64A in Chapter VI of Part II of the Code to introduce a penalty for initiating frivolous or vexatious proceedings before the AA under Part II of the Code to deter persons from initiating such proceedings and delay the insolvency resolution and liquidation processes.

43.4 Important Views/Suggestions given by Experts/Stakeholders:

Important suggestion of a stakeholder is summarized as under:

64A. Penalty for initiating frivolous or vexatious proceedings under Part II may be modified as: If any person has initiated a frivolous or vexatious proceeding before the Adjudicating Authority or appellate authority under this Part, it may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to two crore rupees. Explanation – For the removal of doubts, once a resolution plan has been implemented, any litigation challenging the resolution plan, on any ground, shall be deemed to be frivolous (Batch 1, Sl no 182)

43.5 Examination by the Committee:

The Ministry in their written replies have responded to the suggestion as under:

> The provision seeks to empower the AA to impose a penalty for frivolous or vexatious proceedings, which is often alleged in practice. The proposal suggests adding an explanation that once a resolution plan has been implemented, any litigation challenging the resolution plan, on any ground, shall be deemed to be frivolous. Whether a proceeding is frivolous or vexatious depends on the specific facts of each case. It would not be appropriate to apply a uniform formula or categorically treat any class of proceedings as frivolous. This determination is a factual question that the Adjudicating Authority must assess on a case-by-case basis. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

43.6 Observations/Recommendations of the Committee:-

The Committee note that Clause 43 of the Bill seeks to insert a new Section 64A into the Insolvency and Bankruptcy Code, 2016 to impose penalties on persons initiating frivolous or vexatious proceedings before the Adjudicating Authority under Part II of the Code. Observing the Ministry's justification that such filings often lack reasonable prospects of success or are intended to delay insolvency resolution and liquidation processes, thereby consuming substantial judicial time and straining resources, the Committee recognize the need for a deterrent against such misuse. The Committee are of the view that the proposed amendment appropriately strengthens the framework by empowering the Adjudicating Authority to penalize misuse while preserving adjudicatory discretion, and, therefore, accept Clause 43 as proposed.

44. Clause 44 amends the Section 65 of the Principal Act

44.1 Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

In section 65 of the principal Act, in sub-section (3), for the words “pre-packaged insolvency resolution process” the words “pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process” shall be substituted.

44.2 Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):

3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the

resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

44.3 Reasons/Justification given by the Ministry for the proposed provisions:

Clause 44 of the Bill seeks to amend section 65 of the Code due to the insertion of Chapter IV-A titled “Creditor-Initiated Insolvency Resolution Process”. The penalty under this section shall also apply to a person who initiates the creditor-initiated insolvency resolution process fraudulently or with the intent of malice or to defraud any person.

44.4 Important Views/Suggestions given by Experts/Stakeholders:

An important suggestion of a stakeholder is summarized as under:

Delete the inclusion of “creditor-initiated insolvency resolution process: The amendment, exposes both debtors and creditors in real- estate insolvencies to allegations of malicious conduct, given the subjective nature of project financing and delays. Real- estate projects often involve multiple financial and operational creditors with conflicting interests. A poorly defined “malicious intent” test can be misused to harass genuine promoters or lenders. Statutory clarification is needed to ensure that penalties apply only in proven cases of bad faith, not where the process is initiated for legitimate restructuring or recovery**. (**Batch II, Sl no 184)

44.5 Examination by the Committee:

The Ministry in their written replies have responded to the suggestion as under:

CIIIRP has appropriate safeguards to avoid malicious or fraudulent initiation of the process. Before initiation of the process, the financial creditor is required to give notice to the corporate debtor and consider its representation. Also, after initiation of the process the corporate debtor has the right to object before the AA. Additionally, section 65(3) provides a penalty to deter malicious and fraudulent initiation of the process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

44.6 <u>Observations/Recommendations of the Committee:</u>

The Committee note that Clause 44 of the Bill proposes to amend Section 65(3) of the Insolvency and Bankruptcy Code, 2016, to extend the applicability of the penalty provisions to cases involving initiation of the Creditor-Initiated Insolvency Resolution Process (CIIRP). The Committee observe that this amendment is necessitated by the insertion of the new CIIRP framework under Chapter IV-A and is intended to ensure that any person initiating the process fraudulently, with malicious intent, or with the intent to defraud is subject to appropriate penal consequences, similar to the existing treatment under the pre-packaged insolvency resolution process. The Committee also acknowledge the Ministry's view that the CIIRP framework is designed to reduce delays, preserve value, and retain debtor-in-possession management while still allowing NCLT oversight at critical stages. In view of the above, and considering that the proposed amendment merely aligns Section 65 with the newly introduced CIIRP mechanism while maintaining adequate safeguards against misuse, the Committee accept the amendment proposed under Clause 44 in its present form.

45. Clause 45 of the Bill proposes to amend the section 66 of the Principal Act

45.1 Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

45.1 In section 66 of the Principal Act,-

(a) in sub-section (1), after the words “resolution professional”, the words “or the liquidator,” shall be inserted;

(b) in sub-section (2), after the words “during the corporate insolvency resolution process”, the words “or by a liquidator” shall be inserted.

45.2 . Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):

Fraudulent trading on wrongful trading.

66. (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—

45.3 Reasons/Justification given by the Ministry for the proposed provisions:

Clause 45 seeks to amend section 66 of the Code relating to fraudulent or wrongful trading to clarify that the liquidator is also permitted to file applications under this section during the liquidation process.

45.4 Observations/Recommendations of the Committee:

The Committee note that Clause 45 of the Bill seeks to amend Section 66 of the Insolvency and Bankruptcy Code, 2016 by explicitly enabling the liquidator, in addition to the resolution professional, to file applications related to fraudulent or wrongful trading. The Committee observe that this inclusion serves to clarify and align the existing legal framework, ensuring that the essential safeguard against fraudulent conduct remains effective, as evidence of such misconduct may become apparent not only during the Corporate Insolvency Resolution Process (CIRP) but also during the subsequent liquidation phase. In view of the above, and noting that the amendment merely clarifies and strengthens an essential safeguard against fraudulent conduct, the Committee find the proposed amendment under Clause 45 to be appropriate and accept it in its present form.

46. Clause 46 of the Bill proposes to amend the Section 67A

46.1 Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

46.1 In section 67A of the principal Act,—

(a) in the marginal heading, for the words "pre-packaged insolvency resolution process", the words "pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process" shall be substituted;

(b) for the words "pre-packaged insolvency commencement date", the words "pre-packaged insolvency commencement date or creditor-initiated insolvency commencement date" shall be substituted.

46.2 Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):

Fraudulent management of corporate debtor during pre-packaged insolvency resolution process.

On and after the pre-packaged insolvency commencement date, where an officer of the corporate debtor manages its affairs with the intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may, on an application by the resolution professional, pass an order imposing upon any such officer, a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

46.3 Reasons/Justification given by the Ministry for the proposed provisions:

Clause 46 of the Bill seeks to amend section 67A of the Code due to the insertion of Chapter IV-A under Part II titled "Creditor-Initiated Insolvency Resolution Process". The penalty under this section shall also apply to the officers of the corporate debtor during the creditor-initiated insolvency resolution process.

46.4 Important Views/Suggestions given by Experts/Stakeholders:

An important suggestion of a stakeholder is summarized as under:

(i) Retain the applicability of Section 67 A only to corporate debtor-initiated pre-packaged insolvency resolution processes. Delete the words "or creditor-initiated insolvency resolution process". The amendment unfairly exposes promoters, directors, and professionals to personal liability in creditor-initiated insolvencies over which they have no control. Real estate projects, being complex and long-term, frequently encounter financial strain without any fraudulent intent. Expanding Section 67A of IBC, 2016 without defining "creditor- initiated insolvency" or limiting the liability standard will deter legitimate promoters from cooperating with

resolution professionals and will chill investment in the sector. Liability should arise only upon clear proof of fraudulent intent, not mere commercial failure.

(iii) Penalising initiation and continuation of litigations for pre-CIRP dues.

Additions to Clause 43 of the Bill for amending proposed Section 64A of the Code: Section 74 – no deterrence to frivolous litigations given the time taken in prosecution.
Mandatory imposition of penalty for breach of moratorium and initiation and continuation of litigations by creditors despite extinguishment of claims. Incorporation of provision for deposit of advance costs in Rules. Penalty for contravening moratorium or resolution plan.
Proposed Language of Section 64A of the Code: "64A. Penalty for initiating frivolous or vexatious proceedings under Part II or contravention of moratorium or the resolution plan (1) If any person has initiated a frivolous or vexatious proceeding before the Adjudicating Authority or the Appellate Authority under this Part or any other court, he shall be liable for it may impose upon such person penalty which shall not be less than one lakh rupees, but may extend to two crore rupees. a Explanation I: For the purpose of this clause, a proceeding continued or instituted under this Part on the basis of claims extinguished in terms of Section 31(6) shall be deemed to be frivolous or vexatious proceeding within the meaning of this provision. (2) If any person contravenes the moratorium under Section 14 or a resolution plan approved under Section 31 or acts in breach of Section 31(5) or Section 31(6) or Section 32A, he shall be liable for a penalty which shall not be less than one lakh rupees, but may extend to two crore rupees.

46.5 <u>Examination by the Committee:</u>

46.5.1 The Ministry in their written replies have responded to the suggestion as under:

(i) During pre-pack process, the management continues with the board of directors, and section 67A deters them from managing the corporate debtor in a fraudulent manner. Since the management continues with the board of directors even during CIIRP, this provision should be extended to it. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) Sections 64A and 183A introduce penalties for initiating frivolous and vexatious proceedings before the AA under Part II and Part III of the Code. These provisions aim to deter parties from commencing such proceedings solely to delay or obstruct insolvency resolution processes under the IBC. Given the variety of proceedings possible under the IBC, the determination of what constitutes frivolous or vexatious will depend on the specific facts of each case,

as evaluated by the AA. The proposal also suggests empowering “any other court” to also impose penalties for frivolous or vexatious proceedings. Since the AA is the primary adjudicating forum under the IBC that exercises judicial oversight over the conduct of the process, such a provision applies to the AA. It may not be appropriate for IBC to empower courts outside its domain to impose penalties, and which provisions of costs or penalties under other laws should govern.

Further, provisions such as the proposed sections 31(5) and 31(6), and section 32A are declaratory in nature. They articulate the binding effect of an approved resolution plan, which must be given effect to and enforced before any forum where it is relied upon. The application and interpretation of these provisions will depend on the facts of each case and the forum concerned. It may, therefore, be inappropriate for the AA to assume jurisdiction to enforce them. Given the IBC’s overriding effect, the consequences of an approved resolution plan should be binding on any forum where its effect falls to be considered.

Furthermore, section 74 prescribes punishment for violating the moratorium and resolution plan. It has been decided to decriminalize this and replace it with a civil penalty. Hence, a separate penalty provision will be provided for this purpose.

46.5.2 During the clause by clause deliberation with the Ministry of Corporate Affairs, the Secretary, Ministry of Corporate Affairs informed that the Ministry is considering the decriminalizing the Sections 74 and 76 of the IBC Act 2016.

46.5.3 The Committee thereupon sought to understand the objective and justification for the penalty provisions introduced under the Insolvency and Bankruptcy Code, 2016, particularly Sections 70, 74, 76, and 185. In its written submission, the Ministry of Corporate Affairs stated as under:

The offence and penalty provisions under the Insolvency and Bankruptcy Code, 2016 particularly Sections 70, 74, 76 and 185 were introduced as safeguards to uphold the integrity and effectiveness of the insolvency framework. They aim to deter misconduct, concealment and fraud by discouraging debtors, creditors or other stakeholders from manipulating the process through concealment, contraventions or non-disclosure. Section 70(2) imposes criminal liability on insolvency professionals who deliberately contravene provisions of Code. Section 74 specifically protects the sanctity of the moratorium and approved resolution plans by penalizing wilful contraventions. Section 76 was designed to deter operational creditors from initiating insolvency proceedings on false or frivolous grounds by concealing existence of a dispute or receipt of payment, thereby protecting corporate debtors from abuse of the Code. Likewise, Section 185 establishes statutory discipline for insolvency professionals by making them liable for imprisonment and payment of compensation, in the event he contravenes the provisions of Part III.

46.5.4 the Committee alos sought to know about the enforcement experience of with respect to Sections 70(2), 74, 76, and 185 since the inception of the Insolvency and Bankruptcy Code, 2016. The Ministry have informed as under:

> In practice, Sections 70(2), 76 and 185 have not resulted in any prosecutions or convictions to date. With respect to Section 74, twelve complaints have been filed before designated Special Courts, primarily relating to non-implementation of resolution plans by successful resolution applicants. However, trials have faced delays due to difficulties in serving summons (particularly where accused persons reside outside India), capacity constraints of special courts, procedural challenges and interlocutory litigation. Till date no trial has reached its intended outcome. As such, the conduct of trial has been time consuming and the result unfruitful with respect to its intended objectives as stated above.

46.5.5 Enquired whether many of the contraventions envisaged under Sections 70(2), 74, 76, and 185, in actual implementation, stem from procedural shortcomings, interpretational challenges, or bona fide mistakes, as opposed to deliberate or fraudulent misconduct, the Ministry, in its reply have stated as under:

> Yes. In matters arising under Section 74(3), parties frequently cite *bona fide* practical constraints such as incomplete or evolving financial information at plan formulation stage, delays in obtaining statutory approvals, and funding challenges as reasons for delayed implementation. Since the commercial viability of resolution plans depends on market conditions, failure to implement may not always be wilful or fraudulent. Accordingly, the Adjudicating Authority should be empowered to impose penalties by examining circumstances of each case.

46.5.6 Enquired upon whether the Ministry has examined the need to decriminalize or rationalize the provisions contained in Sections 70(2), 74, 76, and 185, the Ministry have submitted as under:

> The Ministry has examined the need to decriminalize provisions of IBC. In this regard, Sections 74 and 76 may be decriminalized with the power to impose penalties to lie with the Adjudicating Authority as this would facilitate speedier delivery of justice.

46.6 Observations/Recommendations of the Committee:

46.6.1 The Committee note that Clause 46 of the Bill seeks to extend the applicability of Section 67A to the creditor-initiated insolvency resolution process (CIIRP), thereby ensuring that officers of the corporate debtor remain accountable for fraudulent management during both PPIRP and CIIRP. The Committee observe that since management continues with the existing board of directors during CIIRP

as well, extending this provision maintains parity and strengthens safeguards against fraudulent conduct. In view of the explanations furnished by the Ministry and noting that the amendment reinforces an essential deterrent against misuse of management powers, the Committee find the proposed amendment under Clause 46 with respect to Section 67A is appropriate and accept it as proposed.

46.6.2 The Committee observe that the offence and penalty provisions under Sections 70(2), 74, 76 and 185 of the Insolvency and Bankruptcy Code (IBC), 2016 were incorporated to safeguard the integrity of the insolvency framework by deterring concealment, misconduct and fraudulent actions by debtors, creditors, insolvency professionals and other stakeholders. However, the Committee note from the Ministry's submission that no prosecutions or convictions have taken place under Sections 70(2), 76 or 185, and although twelve complaints have been filed under Section 74, none has reached conclusion due to procedural hurdles, capacity constraints of Special Courts, difficulties in serving summons particularly on individuals residing abroad and interlocutory litigation. Consequently, the Committee find that the existing criminal provisions have not delivered the timely or effective deterrence originally envisaged. The Committee further note that, in actual implementation, many alleged contraventions under Sections 74 and 76 arise not from fraudulent or wilful misconduct but from procedural shortcomings, interpretational ambiguities or bona fide practical constraints. These include incomplete or evolving financial information at the plan formulation stage, delays in obtaining statutory and regulatory approvals, and funding challenges that may impede or delay the implementation of resolution plans. The Committee observe that non-implementation or delayed implementation of resolution plans may therefore not always be attributable to *malafide* intent.

46.6.3 The Committee are of the view that continuing to retain criminal penalties for such technical or good-faith lapses creates unnecessary fear among stakeholders, contributes to increased litigation, and ultimately hampers the efficiency and

predictability of the resolution process. This is also inconsistent with international best practices, wherein comparable jurisdictions such as the UK, Singapore and Australia reserve criminal sanctions for only the most serious acts of fraud or wilful misconduct, relying on civil-penalty regimes for compliance-related contraventions.

46.6.4 Accordingly, the Committee recommend that Sections 74 and 76 be decriminalised and substituted with new civil-penalty provisions namely Clause 67B (Punishment for contravention of moratorium and resolution plan) and Clause 67C (Punishment for non-disclosure of dispute or payment of debt by operational creditor) as proposed in the Bill. The Committee believe these revised provisions would ensure continued accountability while avoiding over-criminalisation of procedural or good-faith errors. The Clauses may be read as under:

> **67-B Contravention of moratorium or the resolution plan.**
>
> **(1) If the corporate debtor or any officer thereof contravenes the provisions of section 14, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose a penalty upon the officer, who committed or authorised or permitted such contravention, which shall not be less than one lakh rupees, but may extend to two crore rupees.**
>
> **(2) If any creditor contravenes the provisions of section 14, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose a penalty upon any person who authorised or permitted such contravention by a creditor, which shall not be less than one lakh rupees, but may extend to two crore rupees.**
>
> **(3) If the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, contravenes any of the terms of such resolution plan or abets such contravention, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose a penalty upon such corporate debtor, officer, creditor or person, which shall not be less than one lakh rupees, but may extend to either one crore rupees or twenty per cent. of the amount to be distributed under the resolution plan, whichever is higher.**

67-C. Non-disclosure of dispute or payment of debt by operational creditor.

If—

(a) an operational creditor concealed in an application under section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final payment of the unpaid operational debt; or

(b) any person who authorised or permitted such concealment under clause (a),

the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose a penalty upon such operational creditor or person, which shall not be less than one lakh rupees but may extend to two crore rupees.

Explanation. **—For the purposes of this Code, it is hereby declared that the omission of sections 74 and 76 by the Insolvency and Bankruptcy Code (Amendment) Act, 2025 shall not affect:—**

(i) any prosecution instituted under these provisions on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025 and pending immediately before such date of commencement before any court, which shall continue to be heard and disposed of by the said court as if the Insolvency and Bankruptcy Code (Amendment) Act, 2025 had not been enacted; and

(ii) any punishment imposed under this section on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.

47. Clause 47 of the Bill proposes to amend the Section 96 of the Principal Act.

47.1 Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

In section 96 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) The provisions of this section shall not apply where an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor."

47.2. Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):

96. **Interim- moratorium.** - (1) When an application is filed under section 94 or section 95 –

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period –

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator

47.3 Reasons/Justification given by the Ministry for the proposed provisions:

The interim moratorium under section 96 provides that upon the filing of an application, all legal actions or proceedings pending in respect of the concerned debt shall remain stayed, and creditors shall not initiate any legal action or proceeding in respect of such debt.

The Adjudicating Authority (AA) has, on occasion, expressed concerns regarding the misuse of initiation of the individual insolvency resolution process by personal

guarantors to take advantage of the interim moratorium. *Clause 47* therefore seeks to insert a new sub-section (4) to section 96 of the Code to provide that provisions of section 96 of the Code will not apply where an application to initiate an insolvency resolution process in respect of a personal guarantor to a corporate debtor is filed by a creditor or the debtor itself.

47.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) Consider providing an interim moratorium on disposal of assets by the debtor. The report of the Insolvency Law Committee of February 2020 recommended that Section 96 and 124 should be amended to include a stay on actions relating to disposition of assets by the debtor.

(ii) Removal of this amendment may be considered. The proposed amendments make the provision of interim moratorium non applicable in cases of personal guarantor to a corporate debtor which provides for protection to the personal guarantor from legal actions of the creditors. However, such interim protection is critical to the resolution process. Some of the other important issues that have arisen in practice have not been addressed i.e. no thresholds for admission to insolvency process have been specified, no specific guidelines for MSME guarantors etc.

(iii) The Bill seeks to introduce a new sub- section excluding application of interim moratorium in respect of personal guarantor to a CD. Non-application of interim moratorium might encourage the personal guarantor to dispose of their assets to the detriment of creditors. Non-application of interim moratorium might encourage the PG to dispose of assets to the detriment of creditors. To prevent such wrongful disposal of assets by PG, provisions for moratorium may be introduced to prohibit alienation of assets by the guarantors post filing of the application.

47.5 Examination by the Committee:

47.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under:

(i) The interim moratorium under section 96 provides that upon the filing of an application, all legal actions or proceedings pending in respect of the concerned debt shall remain stayed, and creditors shall not initiate any legal action or proceeding in respect of such debt. Concerns have been expressed regarding the misuse of initiation of the individual insolvency resolution process (IIRP)by PGs to take advantage of the interim moratorium. To remove any perverse incentives to initiate IIRP, the proposed amendment seeks to dispense with the concept of interim moratorium for the insolvency of PG to CD. Hence, the provision in the

Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) Additionally, Part III currently applies to personal guarantors, who may or may not be MSMEs. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) It is clarified that the proposed Amendment Bill restricts the interim moratorium protection for personal guarantors, thereby creating a level playing field for PGs and their creditors to seek appropriate remedies outside the IBC before the insolvency resolution or bankruptcy process is initiated. Hence, no changes to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

47.5.2 Regarding the issue of removal of Interim moratorium, the secretary, Ministry of Corporate Affairs stated as under during the deposition before the Committee:

"This concerns individual insolvency, personal guarantees, etc. They recommend reconsidering the removal of interim moratorium protection for personal guarantors during insolvency and bankruptcy processes. They also suggest allowing automatic commencement of the bankruptcy process without a three-month gap after completion of the CIRP or liquidation proceedings. They further propose extending provisions similar to Section 66 regarding fraudulent or wrongful trading to personal insolvency. Our position is that removing the interim moratorium for personal guarantors is intended primarily to prevent misuse. Currently, when recovery proceedings begin against a personal guarantor, the guarantor rushes to file an application before the NCLT, triggering the interim moratorium immediately. This provision has been subject to misuse, hence our proposal to remove it. Under statutes such as SARFAESI and through multiple Supreme Court judgments, it is very clear that the creditor is not required to exhaust remedies against the borrower first. The law treats the borrower and guarantor on the same footing once default occurs. That means, once there is a default, the law applies equally to the borrower as well as to the guarantor. It is pointed out in the SARFAESI Act, there is no moratorium."

47.5.3.Elaborating further on the issue, Chairperson , IBBI stated as under during oral evidence:

NCLT members have repeatedly flagged this issue. In fact, in our colloquiums, they cite it as the number one mechanism through which thousands of crores are being siphoned off. Therefore, this amendment is one of the most crucial for plugging a major loophole in the IBC.

47.6 Observations/Recommendations of the Committee:

The Committee note that Clause 47 seeks to amend Section 96 to exclude personal guarantors to corporate debtors from the scope of the interim moratorium. The Committee observe that this amendment is aimed at addressing a persistent concern flagged by the Adjudicating Authority and insolvency practitioners namely, the misuse of interim moratorium by personal guarantors who file applications solely to obstruct or delay legitimate recovery proceedings, a major loophole confirmed by NCLT members to be responsible for significant value erosion. The Committee, having considered detail submissions of the Ministry and IBBI, underscore that removing this unnecessary pre-admission shield is essential. The Committee observe that the law, consistent with SARFAESI Act and Supreme Cour judgements, treats the borrower and the guarantor on the same footing upon default, and the proposed amendment does not deprive personal guarantors of the right to seek insolvency resolution or bankruptcy under Part III of the Code. In view of the above, and recognising the need to curb strategic filings and strengthen the integrity of the insolvency process, the Committee find the proposed amendment under Clause 47 to be appropriate and recommend its acceptance in its present form.

48. Clause 48 of the Bill proposes to amend the Section 99 of the Principal Act.

48.1 Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

In section 99 of the principal Act, -

(a) in sub-section (1), for the words “ten days”, the words “twenty-one days” shall be substituted;

(b) in sub-section (10), for the words “or the creditor, as the case may be”, the words “and the creditor” shall be substituted.

48.2 Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):

99. Submission of report by resolution professional. – (1) The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.

(8) Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.

(9) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).

(10) The resolution professional shall give a copy of the report under sub-section

(7) to the debtor or the creditor, as the case may be.

48.3 Reasons/Justification given by the Ministry for the proposed provisions:

Clause 48 amends section 99 of the Code to extend the period for the resolution professional to examine applications under sections 94 or 95 and submit its report to the Adjudicating Authority (AA) to twenty-one days.

It also requires that the report be shared with both the debtor and creditor, to ensure fairness by keeping both parties informed and enabling them to present submissions before the AA.

48.4 <u>Observations/Recommendations of the Committee:</u>

The Committee note that Clause 48 amends the Section 99 of the Principal Act extending the time available to the Resolution Professional (RP) for examining applications under sections 94 and 95 from ten days to twenty-one days, and mandates that the examination report be shared with both the debtor and the creditor. The Committee observe that the existing ten-day period is often insufficient for RP to verify information, seeking clarifications, and prepare a reasoned report, particularly in complex cases involving multiple creditors. The enhanced timeline is, therefore, expected to improve the quality and accuracy of the RP's examination report. The Committee further note that requiring the report to be furnished to both parties strengthens transparency and procedural fairness, ensuring that the debtor as well as the creditor have an equal opportunity to make submissions before the Adjudicating Authority. In view of the above, the Committee feel the amendment proposed under Clause 48 to be reasonable and recommend it as proposed.

49. Clause 49 of the Bill proposes to amend the Section 106 of the Principal Act

49.1 <u>Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

In section 106 of the principal Act,–

"(a) after sub-section (1), the following sub-section shall be inserted, namely:–

"(1A) Where no repayment plan is submitted within the period stipulated under sub-section (1), the resolution professional shall submit a report to the Adjudicating Authority, and the Adjudicating Authority shall pass an order terminating the insolvency resolution process of the debtor and the debtor or the creditors shall be entitled to file an application for bankruptcy under Chapter IV.";

(b) after sub-section (3), the following sub-section shall be inserted, namely:–

"(3A) Notwithstanding anything to the contrary contained in the provisions of sub-section (2) and sub-section (3), where the repayment plan is in respect of the debtor who is a personal guarantor to a corporate debtor, the resolution professional shall summon the meeting of the creditors by issuing a notice in writing specifying therein the date, time and place of such meeting.";

(c) in sub-section (4), after the words, brackets and figure "For the purposes of sub-section (3)", the words, brackets, figure and letter "and sub-section (3A)" shall be inserted..".

49.2 <u>Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)</u>:

106. (1) The resolution professional shall submit the repayment plan under section 105 along with his report on such plan to the Adjudicating Authority within a period of twenty-one days from the last date of submission of claims under section 102.

(3) The report referred to in sub-section (2) shall also specify the date on which, and the time and place at which, the meeting should be held if he is of the opinion that a meeting of the creditors should be summoned.

(4) For the purposes of sub-section (3)—

(a) the date on which the meeting is to be held shall be not less than fourteen days and not more than twenty eight days from the date of submission of report under sub-section (1);

(b) the resolution professional shall consider the convenience of creditors in fixing the date and venue of the meeting of the creditors.

49.3 Reasons/Justification given by the Ministry for the proposed provisions:

The Code presently does not contemplate any consequence for non-submission of a repayment plan by an insolvent individual during the individual insolvency resolution process under Chapter III of Part III.

Section 105 mandates the Personal Guarantor (PG) to submit a repayment plan consisting of a proposal to the creditors for restructuring his debt or affairs. However, there may be a situation where the repayment plan is not submitted. At present, there is no provision for recourse if the repayment plan is not filed.

Clause 49 of the Bill therefore inserts sub-section (1A) in section 106 of the Code, requiring the resolution professional to report to the Adjudicating Authority if no repayment plan is submitted within twenty-one days of the last claim submission. The Authority may then terminate the process if the debtor failed to prepare the plan in consultation with the resolution professional, with no extensions allowed, after which the debtor or creditor may apply for the debtor's bankruptcy.

Further, in an individual insolvency resolution process, the resolution professional recommends the calling of the meeting of the creditors, if necessary. Where the meeting of creditors is not required to be summoned, the RP states the reasons for not calling it. While the provision was intended to provide speedy resolution of matters in low-value cases, it is felt that the meeting of the creditors should be necessary in the case of guarantors as such cases are complex in comparison to other cases of individual insolvencies.

Clause 49 therefore also inserts sub-section (3A) into section 106, requiring the resolution professional to summon a creditors' meeting with notice to consider any repayment plan submitted during the insolvency resolution of a debtor who is a personal guarantor to a CD.

49.4 Important Views/Suggestions given by Experts/Stakeholders:

An important suggestion of a stakeholder is summarized as under:

Clause 49 of the Bill seeks to insert a new sub-section (1A) into section 106 of the Code to provide that where no repayment plan is submitted within twenty-one days from the last date of claim submission as required under section 105 of the Code, the resolution professional must submit a report to the Adjudicating Authority. The Adjudicating Authority will then terminate the process if it is satisfied that the debtor failed to prepare the repayment plan in consultation with the resolution professional within the stipulated period. No extension will be granted, and after the termination of the process, the debtor or creditor will be entitled to apply for bankruptcy of the debtor.

It further seeks to insert a new sub-section (3A) into section 106 to provide that where the repayment plan is being submitted during the insolvency resolution process of a debtor who is a personal guarantor to a corporate debtor, it is mandatory for the resolution professional to summon a meeting of the creditors for consideration of the repayment plan by issuing a notice.

The Code must have provision for auto start “Bankruptcy Process” why gap of three months is giving for initiating process, it should like Sec 33 of the code.

49.5 <u>Examination by the Committee:</u>

The Ministry in their written replies have responded to the suggestion as under:

The report of the Bankruptcy Law Reforms Committee (2015) specifically addressed this issue. It believed that in the case of individual insolvency, there should be greater effort at the possibility of voluntary negotiations such that personal assets of the debtor remain with her to the extent possible. The stigma of bankruptcy is higher for individuals; hence failure of an IRP should not automatically lead to bankruptcy proceedings. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

49.6 <u>Observations/Recommendations of the Committee:</u>

49.6.1 The Committee note that Clause 49 introduces two key amendments to the individual insolvency framework namely, a consequence for non-submission of a repayment plan within the stipulated timeline; and mandate for a creditors’ meeting in cases involving personal guarantors to corporate debtors. The Committee observe that the proposed sub-section (1A) addresses the current gap, where the absence of a filed repayment plan leading to uncertainty and delay, by enabling the Adjudicating Authority to terminate the process and allow parties to proceed with bankruptcy, wherever warranted.

49.6.2 The Committee also acknowledge the rationale for mandating a creditors’ meeting in cases of personal guarantors, given the complexity and higher stakes involved as compared to other individual insolvency matters. In light of the above, the Committee find the proposed amendments under Clause 49 to be appropriate and recommend their acceptance without any modification. In view of the above,

the Committee find the proposed amendment under Clause 50 appropriate and recommend to accept it as proposed.

50. Clause 50 of the Bill proposes to amend section 121 of the Principal Act

50.1 <u>Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

121. In section 121 of the principal Act, in sub-section (1),–

(a) in clause (c), for the word and figures "section 118.", the words and figures "section 118; or" shall be substituted;

(b) after clause (c), the following clause shall be inserted, namely:–

"(d) where an order has been passed by an Adjudicating Authority under sub-section (1A) of section 106.".

50.2 <u>Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016):</u>

121. (1) An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely—

(c) where an order has been passed by an Adjudicating Authority under sub-section (3) of Section 118

50.3 <u>Reasons/Justification given by the Ministry for the proposed provisions:</u>

Clause 50 of the Bill seeks to amend section 121 of the Code to clarify that once the Adjudicating Authority issues an order terminating the insolvency resolution process of the debtor due to the non preparation of the repayment plan in accordance with sub-section (1A) of section 106, a creditor individually or jointly with other creditors or a debtor, may make an application for bankruptcy of the debtor.

50.4 <u>Observations/Recommendations of the Committee:</u>

The Committee note that Clause 50 of the Bill amends Section 121 of the Code to clarify that a creditor or debtor may file a bankruptcy application even after the insolvency resolution process is terminated under Section 106(1A). The Committee observe that this amendment provides legal clarity and effectively removes any existing ambiguity regarding eligibility to initiate bankruptcy proceedings following a failed or terminated resolution attempt. In view of the

above, the Committee find the proposed amendment under Clause 50 appropriate and recommend to accept it as proposed.

51. Clause 51 of the Bill proposes to amend section 124 of the Principal Act

51.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

51. In section 124 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely: –

"(4) The provisions of this section shall not apply where an application is filed for initiating a bankruptcy process in respect of a personal guarantor to a corporate debtor.".

51.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

124. Effect of application. –

(1) When an application is filed under sections 122 or 123 –

(a) an interim-moratorium shall commence on the date of the making of the application on all actions against the properties of the debtor in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date; and

(b) during the interim-moratorium period –

(i) any pending legal action or legal proceeding against any property of the debtor in respect of any of his debts shall be deemed to have been stayed;

(ii) the creditors of the debtor shall not be entitled to initiate any legal action or legal proceedings against any property of the debtor in respect of any of his debts.

(2) Where the application has been made in relation to a firm, the interim moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the making of the application.

(3) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

51.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:

Clause 51 of the Bill seeks to insert a new sub-section (4) to section 124 of the Code to provide that provisions of section 124 of the Code will not apply where an application to initiate a bankruptcy process in respect of a personal guarantor to a CD is filed by a creditor or the debtor itself.

51.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) Consider providing an interim moratorium on disposal of assets by the debtor. The report of the Insolvency Law Committee of February 2020 recommended that Section 96 and 124 should be amended to include a stay on actions relating to disposition of assets by the debtor.

(ii) Removal of this amendment may be considered. The proposed amendments make the provision of interim moratorium non applicable in cases of personal guarantor to a corporate debtor which provides for protection to the personal guarantor from legal actions of the creditors. However, such interim protection is critical to the resolution process. Some of the other important issues that have arisen in practice have not been addressed i.e. no thresholds for admission to insolvency process have been specified, no specific guidelines for MSME guarantors etc.

(iii) The Bill seeks to introduce a new sub- section excluding application of interim moratorium in respect of personal guarantor to a CD. Non-application of interim moratorium might encourage the personal guarantor to dispose of their assets to the detriment of creditors. Non-application of interim moratorium might encourage the PG to dispose of assets to the detriment of creditors. To prevent such wrongful disposal of assets by PG, provisions for moratorium may be introduced to prohibit alienation of assets by the guarantors post filing of the application.

(iv) The moratorium should be specific to the assets of the corporate debtor and should not indefinitely halt the resolution or recovery process against the guarantor.

51.5 Examination by the Committee:

51.5.1 Justifying the amendment, the Ministry in their written replies to the corresponding suggestions submitted as follows:

(i) The interim moratorium under section 96 provides that upon the filing of an application, all legal actions or proceedings pending in respect of the concerned debt shall remain stayed, and creditors shall not initiate any legal action or proceeding in respect of such debt. Concerns have been expressed regarding the misuse of initiation of the individual insolvency resolution process (IIRP) by PGs to take advantage of the interim moratorium. To remove any perverse incentives to initiate IIRP, the proposed amendment seeks to dispense with the concept of interim moratorium for the insolvency of PG to CD. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) Additionally, Part III currently applies to personal guarantors, who may or may not be MSMEs. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) It is clarified that the proposed Amendment Bill removes the interim moratorium protection for personal guarantors, thereby creating a level playing field for PGs and their creditors to seek appropriate remedies outside the IBC before the insolvency resolution or bankruptcy process is initiated. Hence, no changes to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

51.5.2 The representative of the Ministry during the Clause-by-Clause examination of the Bill held on 21.11.2025, submitted as follows:

> *"Our position is that removing the interim moratorium for personal guarantors is intended primarily to prevent misuse. Currently, when recovery proceedings begin against a personal guarantor, the guarantor rushes to file an application before the NCLT, triggering the interim moratorium immediately. This provision has been subject to misuse, hence our proposal to remove it. Under sections 7 and 9, the moratorium applies only upon admission of the application, and there is a gap between filing and admission. However, for personal guarantors, the moratorium begins immediately upon filing. Actually, there was a complaint and there is specific example of it."*

51.5.3 The Chairman of IBBI during the discussions also submitted as follows:

"..... NCLT members have repeatedly flagged this issue. In fact, in our colloquiums, they cite it as the number one mechanism through which thousands of crores are being siphoned off. Therefore, this amendment is one of the most crucial for plugging a major loophole in the IBC."

51.6 Observations/Recommendations of the Committee:

The Committee note that Clause 51 of the Bill seeks to amend Section 124 of the Code to exclude personal guarantors to corporate debtors from the application of the interim moratorium. The Committee observe that the existing provision has been repeatedly misused, with personal guarantors filing applications primarily to trigger the automatic moratorium and thereby obstruct legitimate recovery proceedings. Such strategic filings have resulted in significant diversion of assets and erosion of value, as highlighted by stakeholders including the Ministry of Corporate Affairs and IBBI. The Committee further note that the proposed amendment does not restrict the rights of personal guarantors or creditors to initiate insolvency or bankruptcy proceedings post-admission under Part III of the Code. The Committee also recognise that the amendment is intended to address this systemic concern while ensuring that the integrity and efficacy of the insolvency framework are maintained. After examining the rationale and detailed submissions of the Ministry, IBBI and other stakeholders, the Committee find the proposed amendment under Clause 51 to be appropriate and recommend its acceptance in its present form without any modification.

52. Clause 52 of the Bill proposes to insert new section 164A

52.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

52. After section 164 of the principal Act, the following section shall be inserted, namely: –

"164A. (1) Where the debtor has entered into an undervalued transaction as referred to in sub-section (6) of section 164 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such debtor–

(a) for keeping its assets beyond the reach of any person who is entitled to make a claim against the debtor; or

(b) in order to adversely affect the interests of such a person in relation to the claim,

the Adjudicating Authority shall make an order, –

(i) restoring the position as it existed before such transaction, as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section –

(a) shall not affect any interest in property which was acquired from a person other than the debtor or his associate, as the case may be, and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest; and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum, unless he was a party to the transaction."

52.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

Insertion of new section 164A

52.3 <u>Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:</u>

Clause 52 of the Bill seeks to insert a new section 164A in the Code for the insolvency resolution and bankruptcy of individuals and partnership firms under Part III of the Code concerning transactions defrauding creditors similar to section 49 under Part II of the Code.

52.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) The period of identifying such transaction must be considered for corporate debtor initiation date of proceeding or record of default filed in IU. Since 2019, once PG to CD, was introduced, since than many of transaction must have been done to elimination of assets of PG. Avoidable transactions period must be linked with date of default. Otherwise it shall be futile exercise and borrower/guarantor will get Scot free.

(ii) A provision analogous to Section 66 (Wrongful Trading) should be introduced for individuals and partnership firms, with a defined look-back period (e.g., 5-7 years) to prevent indefinite liability while still capturing culpable pre-bankruptcy conduct. Though the Bill introduces Sec 164A ("Transactions defrauding creditors"), which mirrors Sec 49 for individuals, however, it misses the opportunity to introduce concepts parallel to Sec 66 (Wrongful Trading). An individual (especially a proprietor or partner) can continue to trade recklessly while insolvent, incurring further debts, yet there is no provision to make them personally liable for that *wrongful* conduct, only for specific fraudulent *transactions*. This would create parity between corporate and personal insolvency, holding individuals accountable for reckless or negligent trading while insolvent, which is a key gap in the current framework.

52.5 Examination by the Committee:

52.5.1 The Ministry in their written replies to the corresponding suggestions above submitted as under:

(i) Section 164A is similar to Section 49 under the CIRP, and the question of the look-period is not relevant to such transactions under this provision.

(ii) Section 66 of the IBC is specifically designed for corporate debtors under Part II to address fraudulent or wrongful trading by persons managing the company, recognizing the separate legal personality of corporations and the potential for misuse by directors or management. In contrast, Part III, dealing with individuals and partnerships, does not contain a similar provision because these entities lack the distinct separation between

owners and the business that corporations have, and their liabilities are more direct and personal. Hence, making the corporate-specific provision in Section 66 unnecessary and unsuitable for non-corporate debtors. Section 164A is similar to Section 49 under the CIRP, and the question of the look-period is not relevant to such transactions under this provision. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

52.5.2 Giving further clarification to the suggestion from the stakeholder, the representative of the Ministry during the Clause-by-Clause examination of the Bill held on 21.11.2025, submitted as follows:

> *"Section 66 is basically for corporate persons, fraudulent and wrongful trading of business of the corporate debtor which is a separate legal entity from a person. So, the same may not be appropriate for individuals. We are of the view that fraudulent and wrongful trading would not apply to individuals."*

52.6 <u>Observations/Recommendations of the Committee:</u>

The Committee note that Clause 52 of the Bill seeks to insert a new Section 164A into Part III of the Code to address transactions defrauding creditors in relation to individuals and partnership firms. The Committee observe that the proposed provision empowers the Adjudicating Authority to restore the position as if any asset transfer undertaken to place assets beyond the reach of creditors or to adversely affect their interests had not occurred, thereby filling a gap in the existing individual insolvency framework. The Committee acknowledge that while stakeholders had suggested introducing a provision analogous to Section 66 on wrongful trading, the Ministry has clarified that such a provision is appropriate only for corporate debtors under Part II, given the direct and personal liabilities of individuals or partnership firms. The Committee also take into account that Section 164A mirrors the approach under Section 49 for corporate insolvency but is tailored to address the unique circumstances of non-corporate debtors. After examining the rationale and detailed submissions of the Ministry and other stakeholders, the Committee find the proposed insertion of Section 164A under

Clause 52 to be appropriate and recommend that it be accepted as proposed without any modification.

53. Clause 53 of the Bill proposes to amend section 178 of the Principal Act

53.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

53. In section 178 of the principal Act, in sub-section (1), in clause (d), the following Explanation shall be inserted, namely: –

"Explanation. – For the removal of doubts, it is hereby clarified that any amount, whether or not a security interest is created to secure such amount, due to the Central Government and the State Government, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date, shall be distributed under this clause, and any remaining amount, whether or not a security interest is created to secure such amount, due to the Central Government and the State Government, shall be distributed under clause (e);".

53.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

178. Priority of payment of debts. —

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or the State Legislature for the time being in force, in the distribution of the final dividend, the following debts shall be paid in priority to all other debts —

…….

(d) fourthly, any amount due to the Central Government and the State Government including the amount to be received on account of Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date;

53.3 <u>Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:</u>

Clause 53 of the Bill seeks to insert an explanation into clause (d) of sub-section (1) of section 178 of the Code to clarify that the Central and State Government dues for the period of two years preceding the bankruptcy commencement date shall be distributed as per the order of priority under clause (d) of sub-section (1) of section 178, whether or not a security interest is created to secure such amount.

Such dues shall not be distributed as per the higher order of priority under sub-clause (ii) of clause (b) of sub-section (1) of section 178.

Beyond the period of two years preceding the bankruptcy commencement date, any remaining dues of the Central and State Government will be distributed as per the lower order of priority under clause (e) of sub-section (1) of section 178.

53.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) The dues of 'local authorities' be also included in the proposed Explanation to clause (d) of section 178(1). Section 26E of SARFAESI Act2002 and section 31B of the Recovery of Debts and Bankruptcy Act, 1993, both recognise 'local authority 'alongside the Central and State Governments while determining priority of claims, after the secured creditors. For consistency across related financial legislations, it is desirable that the dues of local authorities are also explicitly included under section 178(1)(d).

(ii) Waterfall mechanism for distribution of assets as per Section 53 of IBC, takes care of all category of dues. Amount due to the Central or State Govt is the liability of CD and not individual guarantors in personal capacity, per se. As such this provision may be considered for removal to ensure that recovery from personal guarantors

(iii) As such this provision may be considered for removal. Amount due to the Central or State Govt is the liability of CD and not individual guarantors in personal capacity, per se.

53.5 Examination by the Committee:

53.5.1 The Ministry in their written replies to the corresponding suggestions above submitted as under:

(i) The Government dues fall under the fifth order of priority, as laid down in Section 53, which supports the legislative intent to modify the original priority of Government dues and assign it a lower priority. The understanding of "Government dues" under this lower priority in section 53(1)(e)(i) includes any amount owed to the Central Government and the State Government, including the amount to be received on the account of the Consolidated Fund of India and the Consolidated Fund of the State, if any. Courts have

adopted a limited interpretation of what falls under the understanding of these "Government dues" at this order of priority.

The suggestion does not explain what constitutes "local authorities", and a reference can be made to the definition of "local authorities" from the General Clause Act, 1897, which provides that "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

Further, the order of priority established by section 53(1)(e)(i) has two main effects: it clarifies the treatment of all state and central government dues under this priority, regardless of whether the debt is secured, and places these government dues for two years above general unsecured creditors. The government dues beyond two years are ranked alongside other unsecured creditors at the sixth priority level. Currently, authorities not covered by section 53(1)(e)(i), if they hold unsecured debt, fall under the sixth priority; if they have a secured interest, then they are ranked higher (second priority), similar to other secured creditors.

Therefore, adding a reference "local authorities" to section 53(1)(e)(i) may have substantive implications, and also change the order of priority for those coming after the fifth priority level. First, it may be where they have a security interest and the amendment will bring them to a lower priority, or where they are unsecured creditors, it will place their dues from the last two years at the fifth level, hence giving them a priority over other unsecured creditors, such as MSMEs.

Considering the implication of this amendment, it requires a wider consultation, also to assess whether the local authorities will have the financial capacity to receive a lower priority, considering they might be autonomous bodies, and the impact it may have on dues of other creditors. Furthermore, the benefits that such local authorities may receive through legal provisions granting them priority over other dues—by creating a security interest by operation of law—have already been clarified through the amendment to the explanation of section 3(31). Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) The dues specified under section 178 of the Code are dues owed by the bankrupt (non-corporate) to the Central Government and the State Government under Part III. In contrast, section 53 is distribution waterfall for corporate persons in Part II. Hence, the proposed amendment also seeks to clarify the ranking of Central and State Government

dues under section 178 like proposed under section 53. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

53.5.2 Clarifying further on the suggestions, the Secretary, Ministry of Corporate Affairs, during the Clause-by-Clause examination of the Bill held on 21.11.2025, submitted as follows:

> *"The dues of local authorities should also be included under the Government dues and the proposed Explanation of 53(1)(e). Our submission here is that including local authorities in this Section will substantially alter the existing order of priority by shifting their dues because whether secured or unsecured as of today it comes in the other debts and dues. So, it would probably get a little higher because Government dues are protected to the extent of two years. This is the protection which is available. Given these implications, we are of the view that there needs to be a wider consultation to assess also the financial capacity of these local authorities and the broader impact on other creditors that may come about due to the priority. xxx When the RP is running it, he is paying current dues. So, they are getting their current dues. That much entitlement they have got."*

53.6 <u>Observations/Recommendations of the Committee:</u>

The Committee note that Clause 53 of the Bill seeks to insert an Explanation into clause (d) of sub-section (1) of section 178 of the Code to clarify the treatment of Government dues in the priority waterfall under Part III. The Committee observe that the proposed Explanation explicitly provides that amounts owed to the Central and State Governments for the period of two years preceding the bankruptcy commencement date shall be distributed under section 178(1)(d), irrespective of a security interest, and that any remaining dues shall be distributed under section 178(1)(e). The Committee further note the Ministry's submission that the amendment is necessary to remove interpretational ambiguities, align the treatment of government dues under Part III with the clarification under section 53 for corporate insolvency, and ensure that government dues are appropriately prioritized relative to other creditors. The Committee also take into account the

views of stakeholders suggesting inclusion of local authorities; however, the Ministry has clarified that such inclusion could have substantive implications on the priority waterfall and affect other creditors. The Committee concur with Ministry's view. After examining the rationale and detailed submissions of the Ministry and stakeholders, the Committee find the proposed amendment under Clause 53 to be appropriate and recommend that Clause 53 be accepted as proposed without any modification.

54. Clause 54 of the Bill proposes to insert new section 183A

54.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

54. After section 183 of the principal Act, the following section shall be inserted, namely:-

"183A. If, any person has initiated a frivolous or vexatious proceeding before the Adjudicating Authority under this Part, it may impose upon such person a penalty which shall not be less than one lakh rupees but which may extend to two crore rupees."

54.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

New Insertion after section 183

54.3 <u>Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:</u>

Clause 54 of the Bill seeks to insert a new section 183A in Chapter VI of Part II of the Code (similar to section 64A (Clause 43 of the Bill)) to introduce a penalty for initiating frivolous or vexatious proceedings before the Adjudicating Authority under Part III of the Code to deter persons from initiating such proceedings and delay the insolvency and bankruptcy processes.

54.4 <u>Important Views/Suggestions given by Experts/Stakeholders:</u>

An important suggestion of the stakeholders in this regard is furnished below:

Clear guidelines should be provided defining what constitutes "frivolous or vexatious" proceedings to prevent arbitrary application. The penalty range should be calibrated based on the size of the claim and the degree of frivolousness. Safeguards should be included to ensure that genuine creditors are not deterred from initiating legitimate proceedings due to fear of penalties. An appellate mechanism should be available for challenging penalty orders. Penalties should also extend to frivolous objections and interventions during ongoing proceedings, not just initiation applications. The introduction of penalties for frivolous proceedings will: (1) Deter misuse of the insolvency framework by unscrupulous parties seeking to harass corporate debtors or delay genuine resolution

processes; (2) Reduce the burden on NCLT Benches by filtering out non-meritorious applications; (3) Protect the interests of genuine stakeholders by preventing value erosion caused by frivolous litigation; (4) Align with the objective of the IBC to provide a time-bound resolution process. However, the provision must be carefully calibrated to ensure it does not have a chilling effect on legitimate creditors exercising their rights under the Code.

54.5 Examination by the Committee:

54.5.1 The Ministry in their written replies to the corresponding suggestions above has submitted as under:

Sections 64A and 183A introduce penalties for initiating frivolous and vexatious proceedings before the AA under Part II and Part III of the Code. These provisions aim to deter parties from commencing such proceedings solely to delay or obstruct insolvency resolution processes under the IBC. Given the variety of proceedings possible under the IBC, the determination of what constitutes frivolous or vexatious will depend on the specific facts of each case, as evaluated by the AA. The penalty will be imposed by the NCLT or the DRT, thereby ensuring judicial oversight and safeguarding legitimate creditor actions. Moreover, since these penalties are imposed by orders of the NCLT and DRT, appeals can be filed before the NCLAT and the DRAT, respectively, under sections 61 and 181 of the Code. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

54.5.2 Clarifying further on the suggestion, the representative of the Ministry during the Clause-by-Clause examination of the Bill held on 27.11.2025, submitted as follows:

"*Suggestion is to define frivolous or vexatious proceedings clearly to prevent arbitrary application. Frame penalties based on the claim size and degree of frivolousness include safeguard, protecting genuine creditors, provide appellate mechanism for challenging the penalty orders, extend penalties to frivolous objections during ongoing proceeding, not just during the initiation of application. We are not accepting this on the ground that 64A and 183A are introducing the penalties for frivolous proceeding to deter any obstruction."*

54.5.3 When the Committee sought clarification on whether frivolous would be defined as per on the suggestion, the representative of the Ministry clarified that this is an accepted definition. IBBI Chairperson added as follows:

".... this 'frivolous' word is there in several acts. There are hon. Supreme Court and High Court orders saying about frivolous. So, it is already well accepted in judicial circles. xxx...this point was discussed in the colloquium also and the judges said that this is already a well settled."

54.6 Observations/Recommendations of the Committee:

The Committee note that Clause 54 of the Bill seeks to insert a new Section 183A into the Code, empowering the Adjudicating Authority to impose a penalty ranging from one lakh to two crore rupees on any person initiating frivolous or vexatious proceedings under Part III. The Committee observe that the proposed provision is aimed at deterring misuse of the insolvency and bankruptcy process by parties seeking to obstruct or delay legitimate proceedings, thereby ensuring efficiency and protecting the interests of genuine stakeholders. The Committee further note the Ministry's clarification that the term "frivolous or vexatious" is already well-settled in judicial practice, and that the imposition of penalties will be subject to judicial oversight, with an appellate mechanism available under sections 61 and 181 of the Code, thereby safeguarding genuine creditor actions. The Committee also recognise that Section 183A aligns with Section 64A introduced for corporate insolvency, ensuring consistency in the treatment of frivolous proceedings across Parts II and III of the Code. After considering the rationale and detailed submissions of the Ministry, IBBI, and other stakeholders, the Committee find the proposed amendment under Clause 54 to be appropriate and recommend that Clause 54 be accepted as proposed without any modification.

55. Clause 55 of the Bill proposes to amend section 196 of the Principal Act

55.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

55. In section 196 of the principal Act, in sub-section (1),–

(a) for the words “insolvency professional agencies, insolvency professionals and information utilities”, wherever they occur, the words “service providers” shall be substituted;

(b) for the words “insolvency professionals, insolvency professional agencies and information utilities”, wherever they occur, the words “service providers” shall be substituted;

(c) in clause (c), the following Explanation shall be inserted, namely: –

> “Explanation. – For removal of doubts, it is hereby clarified that the levy of fee or other charges under this clause also includes any fee or other charges levied by the Board in relation to the processes under this Code.”

(d) after clause (s), the following clause shall be inserted, namely: –

> “(sa) specify the standards of conduct of the committee of creditors and its members while acting under Part II and Part III of this Code, as the case may be;”;

(e) in clause (t), for the words “under this Code”, the words “for the purposes of this Code” shall be substituted.

55.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

196. Powers and functions of Board. –

(1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely: -

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

[(aa) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;]

.....

(c) levy fee or other charges [for carrying out the purposes of this Code, including fee for registration and renewal] of insolvency professional agencies, insolvency professionals and information utilities;

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

.....

(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;

(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;

(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and

.....

55.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:

Clause 55 of the Bill seeks to amend sub-section (1) of section 196 of the Code to substitute the references to insolvency professional agencies, insolvency professionals, and information utilities, wherever they occur in various clauses of this provision, with 'service providers', as a common definition of 'service provider' is inserted into section 3 of the Code. The Board may provide registration and other norms for all persons falling under the definition of service providers.

It further seeks to insert an explanation into clause (c) of sub-section (1) of section 196 to clarify that the Board can also levy fees or other charges in relation to all types of insolvency resolution, liquidation, and bankruptcy processes covered under the Code.

It also seeks to insert clause (sa) into sub-section (1) of section 196 to empower the Board to specify regulations for the standards of conduct of the committee of creditors and its members while acting under Part II and Part III of the Code. This will help the committee of creditors and its members to operate efficiently and effectively.

Further, it seeks to amend clause (t) of sub-section (1) of section 196 to empower the Board to make regulations and guidelines relating to insolvency and bankruptcy as may be required for carrying out the purposes of the Code.

55.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) There should not be blanket approval for adding any service provided in this IBC Code. The four-pillar concept was manifested in BLRC report which is foundation of this code,

such ambiguity and blanket approval must not be given unless passes through parliamentary process.

(ii) The explanation should not be added to Section 196(1)(c). The Board must not levy any other fee or charges on the insolvency resolution process of the Corporate Debtor.

(iii) The use of the word ‘specify' and the notes on clauses to the Bill suggest that such standards would be framed through regulations issued by the IBBI, thereby making them binding. Instead of a prescriptive binding code, soft law instruments such as guidelines or advisory standards would be more appropriate ensure accountability without creating regulatory overlaps or litigation risks. Specifying standards of conduct of CoC and its members may be burdensome as most members of the CoC are regulated financial institutions with high standards of corporate governance and conduct. Separate code by IBBI may result in jurisdictional conflict. In practice, there have been very rare instances where the conduct of CoC or its members has affected the insolvency Resolution processes has been questioned. Moreover, such resolutions are aimed at being time bound, and laying down a formal code of conduct for the CoC and its members (which are predominantly regulated entities) will hamper the flexibility and speed of the resolution process, due to an added layer of norms to adhere to.

(iv) Please clarify if the standard of conduct for the CoC is intended to be binding or not. We suggest that such standards of conduct may be better suited through on-prescriptive, non-binding instruments such as guidelines. We suggest that instead of a prescriptive code of conduct, soft law instruments like guidelines are better suited. The present guidelines provided by the IBBI may be emboldened if needed for this purpose. Further, the law should clarify that the guidelines for conduct of the CoC cannot be a basis for challenging approval of resolution plans. The guidelines may be supplemented with creditor personnel training and advocacy measures. Stricter conduct rules, if required, may be made by sectoral regulators governing institutional creditors instead of the IBBI.

The language of the proposed amendment does not clarify if the standard of conduct of the CoC is to have a binding effect. The use of the word ‘specify’ and the notes on clauses to the Bill suggest that it is to be provided through regulations made by the Insolvency and Bankruptcy Board of India (“IBBI”). This implies that the standard of conduct is intended to be a binding instrument. Although instances of misconduct by members of the CoC are concerning, we suggest that a standard of conduct for CoC members should not be binding. Enacting a prescriptive code of conduct for this purpose will not be suitable and may in fact be counter-productive.

First, the CoC consists not just of regulated financial creditors (like banks and financial service providers) but also of private and unregulated entities (like non-statutory banks, home buyers, foreign financial institutions, etc.). In case of the former, since institutional financial creditors are already regulated by the Reserve Bank of India and Securities and Exchange Board of India, subjecting such creditors to the IBBI's conduct regulations as well may lead to overlaps and conflicts. In case of the latter, enforcing a code of conduct on such financial creditors may be difficult (e.g., foreign creditors) or undesirable (e.g., home buyers). Therefore, regulating all financial creditors who form part of the CoC may not be feasible. Additionally, regulation of only some categories of financial creditors by a non-sectoral regulator (like the IBBI) may not stand constitutional scrutiny.

Second, the guidelines for CoC prepared by the IBBI contain provisions imposing responsibilities on CoC members that are very broadly worded. Some such responsibilities are "maintain integrity in performing its roles and functions", "maintain objectivity in decision making process", etc. These terms may be too vague and subjective, and if made prescriptive, would lead to unwarranted litigation. If the code of conduct is read as 'law', any perceived non-compliance with it could be a ground for assailing the approval of a resolution plan on the basis that it contravenes provisions of the law. This may lead to even more challenges to and litigation over resolution plans approved by the CoC and increase delays.

Additionally, although the Bill implies that the standard of conduct is to be made through regulations, the manner of enforcing these is not provided in the law. It is therefore unclear if the legislative intent is to empower the IBBI to hold disciplinary proceedings or take another action against violations of such conduct regulations. Clarity on this aspect is crucial to maintain the sanctity of the law. In the absence of a clear framework in this regard, parties would raise conduct issues to invalidate creditor decisions at every stage of the insolvency and liquidation processes. This would open a pandora's box of litigious issues, which cannot be the legislative intent underlying the proposed amendment.

Finally, the IBC has sufficient safeguards to act as a check on the decisions of the CoC. A plan approved by the CoC is required to be thereafter approved by the Adjudicating Authority. Thus, decisions of the CoC are subject to judicial review. Judicial pronouncements have clarified that such judicial review is limited, and commercial decisions taken by the CoC are not justifiable. Nevertheless, the Adjudicating Authority may review decisions of the CoC to ensure that the corporate debtor is run as a going

concern, the value of the assets of the corporate debtor are maximised, and the interests of all stakeholders of the corporate debtor have been considered.

(v) The existing guidelines for CoC issued by IBBI have so far been sufficient and effective to ensure that the CoC's commercial wisdom retains its importance. The members of CoC largely represent financial creditors and most of them are under regulatory oversight of the financial sector regulators other than Insolvency and Bankruptcy Board of India.

(vi) The board power on issuing regulation, should be done with Parliamentary process, Board power needs to curtail on this. The code of conduct for COC, is a great indeed. The board power of issuing regulation with parliamentary process, must be curtailed and COC code of conduct is must to implement this code effectively.

(vii) The provision may be supported by a clear enforcement mechanism or, in the absence thereof, may be reconsidered or be omitted in its entirety. An effective enforcement mechanism may be instituted to address situations where the Committee of Creditors fails to act in accordance with the prescribed regulations. In the absence of such a mechanism, the provision risks becoming merely declaratory in nature, lacking enforceability. Moreover, the absence of clear enforcement measures may invite avoidable litigation, as stakeholders may challenge the actions or inactions of the Committee of Creditors on the grounds of noncompliance with regulatory requirements.

(viii) The clause (sa) to Section 196 (1) should not be inserted It is a good move to speed up the process and ensure that authorised personnel come to the CoC

55.5 Examination by the Committee:

55.5.1 The Ministry in their written replies to the corresponding suggestions above has submitted as under:

(i) The definition of "service provider" has been proposed to be inserted as sub-section (31A) to section 5 of the Code. This definition covers insolvency professional agencies, insolvency professionals, information utilities, and any other category of persons that may be notified by the Central Government for rendering services related to insolvency and bankruptcy and registered with the Board. It enables the Central Government to notify additional category of persons whose services are required for the implementation of the Code, thereby empowering the Board to regulate them for the efficient and proper conduct of the insolvency and bankruptcy processes.

This amendment is intended to streamline the Code, reduce repetitive references, and provide regulatory flexibility to recognise new classes of service providers that may emerge in the evolving insolvency ecosystem. It ensures that the framework remains responsive to the evolving needs of the market and the Code.

Furthermore, references to valuers and insolvency professional entities may be included in the proposed definition of “service provider.” In addition, the Central Government may notify other service providers.

(ii) The proposed insertion under Section 196(1)(c) of the Code is explanatory in nature and does not impose any additional condition of fee or charge on stakeholders. It reiterates the existing scope of the Board’s power to levy fees or charges under the Code. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) The proposed provision may be considered to be modified to provide that in addition to enabling IBBI to lay down standards of conduct, the regulations will also specify the period within which the CoC shall take decisions.

(iv) Additionally, the proposed amendment is only an enabling provision that empowers the IBBI to specify regulations for such standards. Its objective is to strengthen governance and enhance stakeholder confidence in the insolvency framework, while preserving the autonomy of the CoC and ensuring consistency with the Code’s objectives of time-bound and value-maximising resolution. The enforceability and binding nature of such standards will be determined by IBBI after due process, ensuring that the framework is practical and proportionate. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(v) All regulations made by IBBI are issued within the regulation-making framework prescribed under the Code, which includes prior public consultation and laying of such regulations before Parliament as mandated under Section 241 of the Code. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(vi) Additionally, since the standard of conduct will be specified through regulations, if they are binding in nature, adverse consequences for regulation violations like the penalty under the proposed section 235A will serve as a deterrent.

55.5.2 The representative of the Ministry during the Clause-by-Clause examination of the Bill held on 21.11.2025, have submitted as follows:

> *"..Provision empowering the IBBI to specify standards of code of conduct may be supported by a clear enforcement mechanism. Reference to registered valuers and insolvency professional entities should also be explicitly added in the definition of service provider. We are accepting both these suggestions. We are proposing to revise section 196SA, xxx"*

The representative of the Ministry further submitted as follows:

> *"..about the definition of service provider should not be inserted in the code. If there is any new category, it should be through an amendment through the IBC. There was also an apprehension whether all professionals like statutory auditors, company secretaries, forensic auditors also will be brought under the definition of service provider. We are looking at a flexibility in the IBC process whereby where the creatures of the IBC process or the service delivery persons such as the insolvency information utilities or the insolvency professionals, et cetera, we expect that more and more evolution would come about. For instance, now they have got this insolvency professional entities which have come about and then their valuers also. We would like this to be done by notification rather than being done by an amendment to the code because the effect is mostly the same. The board needs to be empowered to regulate them so that the process is more efficient, etc. Statutory auditors, company secretaries, etc, per se, as long as they are not deliverers under the IBC code, would not be a part of this, xxx".*

55.6 <u>Observations/Recommendations of the Committee:</u>

55.6.1 The Committee note that Clause 55 of the Bill seeks to amend Section 196(1) of the Insolvency and Bankruptcy Code by: (i) substituting references to insolvency professional agencies, insolvency professionals, and information utilities with the consolidated expression "service providers"; (ii) inserting an Explanation under clause (c) regarding levy of fees or other charges; (iii) inserting a new clause (sa) relating to standards of conduct and timelines for the Committee

of Creditors; and (iv) making a consequential amendment to clause (t) by substituting the words "under this Code" with "for the purposes of this Code".

55.6.2 In light of the deliberations and views of stakeholders and as a consequential amendment to Clause 2(b) of the Bill, in the preceding para no.2.6.3, the Committee note the recommendation that term "service provider" shall include the term "registered valuer". In view of this, the Committee also recommend consequential modifications to Section 196 to ensure that IBBI's regulatory and enforcement powers apply to all persons falling under the definition of "service providers".

55.6.3 The Committee take note of concerns raised by stakeholders regarding the insertion of the Explanation under section 196(1)(c), particularly the apprehension that it may extend the Board's power to levy fees. The Committee also note the Ministry's submission that the Explanation is clarificatory in nature and reiterates the existing scope of the Board's power under the Code. Accordingly, the Committee accept the Explanation proposed under section 196(1) (c).

55.6.4 The Committee observe that several stakeholders expressed apprehensions regarding the proposed clause (sa) under section 196(1), including concerns about the enforceability and binding nature of conduct standards for the Committee of Creditors. The Committee further note the Ministry's submission that the proposed clause (sa) has been modified to also empower the Board to specify the period within which the Committee of Creditors shall take decisions. The Committee are of the view that specifying both standards of conduct and timelines will enhance governance, improve predictability, and support the objective of a time-bound resolution under the Code. Accordingly, the Committee recommend the following modification to clause (sa) under section 196(1) to read as under:

> **"(sa) specify the standards of conduct for the Committee of Creditors and its members, including the period within which the Committee of Creditors shall take decisions, while acting under Part II and Part III of this Code, as the case may be,"**

55.6.5 The Committee also note the proposed amendment to clause (t) of Section 196(1) substituting the words "under this Code" with "for the purposes of this

Code". The Committee find that this amendment appropriately broadens the Board's authority to frame regulations and guidelines necessary for carrying out the purposes of the Code. The Committee, therefore, accept the amendment proposed under section 196 (1) (t).

Subject to the above-mentioned modifications, the Committee accept the remaining provisions of Clause 55 as proposed.

56. Clause 56 of the Bill proposes to amend section 208 of the Principal Act

56.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

56. In section 208 of the principal Act, in sub-section (1), after clause (ca), the following clause shall be inserted, namely:—

"(cb) creditor-initiated insolvency resolution process under Chapter IVA of Part II;".

56.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

Insertion of new clause to sub section (1) of section 208.

<u>56.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:</u>

Clause 56 of the Bill seeks to insert clause (cb) into sub-section (1) of section 208 of the Code consequent to the insertion of the creditor-initiated insolvency resolution process under Chapter IV-A of Part II.

56.4 <u>Observations/Recommendations of the Committee</u>:

The Committee note that Clause 56 seeks to insert clause (cb) into Section 208(1) as a consequential amendment to the introduction of the creditor-initiated insolvency resolution process under Chapter IVA of Part II. The Committee observe that the provision ensures the functions and obligations of insolvency professionals are explicitly aligned with the expanded framework of the Code. After

examination of the proposal and consideration of the justification provided by the Ministry of Corporate Affairs, the Committee find the amendment to Section 208(1) to be appropriate and necessary, and recommend that Clause 56 be accepted as proposed without any modification.

57. Clause 57 of the Bill proposes to amend section 214 of the Principal Act

57.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

57. In section 214 of the principal Act, in clause (e), after the words “such information”, the words “, in such manner as may be specified” shall be inserted.

57.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

214. Obligations of information utility. –

For the purposes of providing core services to any person, every information utility shall–

(a) create and store financial information in a universally accessible format;

(b) accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of section 215, in such form and manner as may be specified by regulations;

(c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;

(d) meet such minimum service quality standards as may be specified by regulations;

(e) get the information received from various persons authenticated by all concerned parties before storing such information;

(f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;

(g) publish such statistical information as may be specified by regulations.

(h) have inter-operatability with other information utilities.

57.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:

Clause 57 of the Bill seeks to amend clause (e) of section 214 of the Code to empower the Board to specify the procedure for the authentication of information received by the information utilities.

57.4 Observations/Recommendations of the Committee:

The Committee note that Clause 57 seeks to insert words into clause (e) of Section 214 *"in such manner as may be specified"* to empower the Board to specify the manner of authentication of information received by the Information Utilities. The Committee observe that this amendment is procedural in nature and is aimed at ensuring the integrity, reliability, and evidentiary value of records maintained by Information Utilities. The amendment provides the framework necessary to implement related substantive provisions of the Code. After detailed examination of the proposal and consideration of the justification provided by the Ministry of Corporate Affairs, the Committee find the amendment to clause (e) of Section 214 to be appropriate and recommend its acceptance as proposed without any modification.

58. Clause 58 of the Bill proposes to amend section 215 of the Principal Act

58.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

58. In section 215 of the principal Act, –

(a) for the marginal heading, the following marginal heading shall be substituted, namely: –

"Submission and authentication of financial information to information utilities.";

(b) in sub-section (3), for the words "An operational creditor may", the words and figure "An operational creditor shall, before filing an application under section 9 of the Code," shall be substituted;

(c) after sub-section (3), the following sub-section shall be inserted, namely: –

"(4) The corporate debtor or debtor, as the case may be, in respect of whom any information is submitted under this section, shall authenticate the information in such manner and within such period, as may be specified:

Provided that where the corporate debtor or debtor does not respond to the information submitted to the information utility in the manner and period as has been specified, such information shall be deemed to be authenticated.".

58.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

215. Procedure for submission, etc. of financial information. –

(1) Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations.

(2) A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations.

(3) An operational creditor may submit financial information to the information utility in such form and manner as may be specified.

58.3 <u>Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:</u>

Clause 58 seeks to amend section 215 by updating the heading to “Submission and authentication of financial information to information utilities.”

Section 215(2) of the Code makes it mandatory for the financial creditors to submit financial information to the IUs. In the event of a default, the record can be presented to the AA to determine that the default has in fact taken place. While submission of such information is a mandatory requirement for the FCs under section 215(2), it is only a directory requirement for the operational creditors.

It requires operational creditors to submit financial information to an information utility before filing under section 9, with the Board ensuring appropriate procedures for different types of creditors.

Further, once the financial information is submitted to the information utility under section 215, there is no requirement for the CD or the debtor to respond to such information. Section 214 (e) only creates an obligation for the utilities to get the information authenticated by all concerned parties before storing such information. Naturally, it is essential to ensure the validity of the financial information submitted to the information utility and that the CD’s views supplement it. Therefore, the CD should be required to respond to the financial information submitted before the IUs and either authenticate it or decline to do so.

Consequently, a new sub-section (4) is introduced to ensure the validity of financial information and supplement it with the CD’s views, requiring the CD/debtor to authenticate, supplement, or dispute the information, the submitted information with supporting documents with a deemed authentication if no response is received. All information will be stored by the information utility and can be relied upon by the Adjudicating Authority.

58.4 <u>Important Views/Suggestions given by Experts/Stakeholders</u>:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) Reporting practices of corporates have to be tightened. If reporting standards are not tightened, such transactions would hardly show up in the balance of payments of the country. Given the implications on financial stability, such sort of Prompt Corrective Action through better report of exposure and risks of companies would be appreciated.

(ii) The proposed sub-section (4) may be modified to provide that the Corporate Debtor regarding whom information is submitted u/s215, will be required to authenticate the information. Suggested change: “Provided that where the CD or Debtor does not respond to the information submitted to the IU in the manner and period as has been specified, such information shall be deemed to be authenticated and the Corporate Debtor may be restricted from Disputing the information later.” The reasons/ object of this amendment to Sec 215 (4) and Proviso are given in the notes to the IBC Amendment Bill. But it is not reflected in the text of proposed amended clause.

(iii) A mechanism may be introduced where a party's "silence will be deemed as an acknowledgment" of the amount due, which would reduce the administrative burden on the Resolution Professional and free up time for the NCLT to focus on judicial work.

(iv) The Income Tax Department should also be enabled in the Information Utility (IU) to update its status of demand. They noted that Financial Creditors can use the utility to consolidate claims and provide the latest status, and the Tax Department needs the same facility to intimate a reduced outstanding demand (e.g., if the amount is changed following an appeal).

58.5 <u>Examination by the Committee</u>:

58.5.1 The Ministry in their written replies to the corresponding suggestions above submitted as under:

(i) The role of the corporate debtor or debtor, to the extent it pertains to the authentication of information submitted by creditors to the IU, is strengthened by creating an obligation for them to respond; otherwise, the records will be deemed authenticated. Other corporate governance reporting requirements suggested by the stakeholder are not governed by IBC; they fall under the company law regime and are duly noted. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) If the corporate debtor or debtor fails to respond, the information shall be deemed to be authenticated. This deeming provision rests on the presumption that the corporate debtor or debtor, being aware of their statutory obligation to respond, voluntarily chose to remain silent and thereby impliedly accepted the information submitted by the creditor. Consequently, the debtor will be precluded from disputing the information at a later stage.

This statutory presumption will be binding on the AA, and they will rely on it when assessing the evidentiary value of these IU records, which will be treated as authentic, regardless of whether the corporate debtor or debtor disputes it. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change

58.5.2**.** The representative of the Ministry, during the Clause-by-Clause examination of the Bill held on 21.11.2025, has further submitted as follows:

> *"..suggest amending Section 215(4) to explicitly require the corporate debtor to authenticate information of the IU. Already, standards are there, xxx, that is properly authenticated. xxx are to do with the service providers where they are saying that no blanket permission should be given. Here, we are saying: "Given the power to the Central Government to notify it".*

58.6 <u>Observations/Recommendations of the Committee:</u>

The Committee note that Clause 58 amends Section 215 to update the marginal heading to "Submission and authentication of financial information to information utilities", mandate operational creditors to submit financial information to Information Utilities (IUs) before filing an application under Section 9, and introduces a new sub-section (4) requiring the Corporate Debtor/debtor to authenticate the information. The Committee observe that the provisions are necessary to mandate discipline in reporting by Operational Creditors, maintain the integrity of IU records, and provide evidentiary value for the Adjudicating Authority. The Committee further note the Ministry's clarification that in case of non-response by the Corporate Debtor/debtor, the submitted information shall be deemed authenticated, which will be binding on the Adjudicating Authority and will

preclude the Corporate Debtor or debtor from disputing the information at a later stage. After examining the proposal and the justification provided by the Ministry of Corporate Affairs, the Committee find the provisions proposed under Clause 58 to be appropriate and recommend its acceptance as proposed without any modification.

59. Clause 59 of the Bill proposes to amend section 217 of the Principal Act

59.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

59. In section 217 of the principal Act,-

(a) for the marginal heading, the marginal heading “Complaints against service providers” shall be substituted;

(b) for the words “an insolvency professional agency or insolvency professional or an information utility”, the words “a service provider” shall be substituted.

59.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

217. Complaints against insolvency professional agency or its member or information utility. –

Any person aggrieved by the functioning of an insolvency professional agency or insolvency professional or an information utility may file a complaint to the Board in such form, within such time and in such manner as may be specified.

59.3 <u>Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision</u>:

Clause 59 of the Bill seeks to amend sections 217 of the Code to substitute the words “insolvency professional agency or insolvency professional or information utility”, wherever they occur in the section, with the term “service provider”, as a common definition of “service provider” is inserted into section 3 of the Code. Therefore, these provisions will apply to all types of persons covered under the definition of “service provider”.

59.4 <u>Important Views/Suggestions given by Experts/Stakeholders</u>:

Some of the important suggestions of the stakeholders in this regard are furnished below:

i. There should not be blanket approval for adding any service provider in this IBC Code. The four-pillar concept was manifested in the BLRC report, which is the foundation of this

Code. Such ambiguity and blanket approval must not be given unless it passes through the parliamentary process.

ii. The introduction of new insertions should be avoided to prevent overlapping regulation by various regulators, to further ease of doing business, and to avoid a cobweb of multiple regulations/regulators. Suitable amendments should be carried out in the Code with regard to penalties. Service providers should be only as per the existing definition.

iii. IBBI should be the sole regulator for Insolvency Professionals. Furthermore, they suggested that the power of the Insolvency Professional Agencies (IPAs) to handle the disciplinary mechanism should be removed entirely, with the IBBI taking over the full disciplinary process. The need for a unified and strong regulator (IBBI) supports the rationale for amending Sections 218 to use the consolidated term “service provider.”

59.5 <u>Examination by the Committee:</u>

59.5.1 The Ministry in their written replies to the corresponding suggestions above submitted as under:

(i) Considering the evolution of the IBC ecosystem over the past ten years, it is important to have specialized services with IBC specific expertise for effective implementation. For instance, valuers specializing in IBC processes. Accordingly, the concept of “service provider” is being introduced. Additionally, other services will only fall under the jurisdiction of IBBI when the Central Government notifies them, and the regulations that IBBI will make for them shall be laid before the Parliament in accordance with section 241. Furthermore, references to valuers and insolvency professional entities may be included in the proposed definition of “service provider.” In addition, the Central Government may notify other service providers.

(ii) The definition of “service provider” has been proposed to be inserted as sub-section (31A) to section 5 of the Code. This definition covers insolvency professional agencies, insolvency professionals, information utilities, and any other category of persons that may be notified by the Central Government for rendering services related to insolvency and bankruptcy and registered with the Board. It enables the Central Government to notify additional category of persons whose services are required for the implementation of the Code, thereby empowering the Board to regulate them for the efficient and proper conduct of the insolvency and bankruptcy processes. This amendment is intended to streamline the Code, reduce repetitive references, and provide regulatory flexibility to recognise new

classes of service providers that may emerge in the evolving insolvency ecosystem. It ensures that the framework remains responsive to the evolving needs of the market and the Code. Furthermore, references to valuers and insolvency professional entities may be included in the proposed definition of “service provider.” In addition, the Central Government may notify other service providers.

(iii) Additionally, to ensure consistency in understanding across the provisions of the Code, and following the insertion of the definition in section 3(31A), consequential modifications are made to sections 196, 217 to 220 to ensure that IBBI’s regulatory and enforcement powers apply to all persons falling under the definition of “service providers”. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

59.6 <u>Observations/Recommendations of the Committee:</u>

59.6.1 The Committee note that Clause 59 of the Bill proposes to amend Section 217 to update the marginal heading to “Complaints against service providers and substitute the specific terms (insolvency professional agency, insolvency professional, or information utility) with the consolidated term “service provider”.

59.6.2 In light of the deliberations and views of stakeholders and as a consequential amendment to Clause 2(b) of the Bill, in the preceding para no.2.6.3, the Committee note the recommendation that term “service provider” shall include the term “registered valuer”. In view of this, the Committee recommend consequential modifications to Section 217 to ensure that IBBI’s regulatory and enforcement powers apply to all persons falling under the definition of “service providers”.

Subject to this modification to Section 217, the Committee accept the remaining provision of Clause 59 as proposed.

60. Clause 60 of the Bill proposes to amend section 218 of the Principal Act

60.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

60. In **section 218** of the principal Act,-

(a) for the marginal heading, the marginal heading "Investigation of service providers" shall be substituted;

(b) in sub-section (1), for the words "insolvency professional agency or insolvency professional or an information utility", occurring in both the places, the words "service provider" shall be substituted.

60.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

218. Investigation of insolvency professional agency or its member or information utility.

(1) Where the Board, on receipt of a complaint under section 217 or has reasonable 152 grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility.

60.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:

Clause 60 of the Bill seeks to amend section 218 of the Code to substitute the words "insolvency professional agency or insolvency professional or information utility", wherever they occur in the section, with the term "service provider", as a common definition of "service provider" is inserted into section 3 of the Code. Therefore, these provisions will apply to all types of persons covered under the definition of "service provider".

60.4 <u>Important Views/Suggestions given by Experts/Stakeholders</u>:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) There should not be blanket approval for adding any service provider in this IBC Code. The four-pillar concept was manifested in the BLRC report, which is the foundation of this Code. Such ambiguity and blanket approval must not be given unless it passes through the parliamentary process.

(ii) The new insertions should not be introduced to avoid overlapping regulation by various regulators, to ease doing business, and to avoid a cobweb of multiple regulations/regulators. Suitable amendments should be carried out in the Code with regard to penalties. Service providers should be only as per the existing definition.

(iii) IBBI should be the sole regulator for Insolvency Professionals. The power of the Insolvency Professional Agencies (IPAs) to handle the disciplinary mechanism should be removed entirely, with IBBI taking over the full disciplinary process. The need for a unified and strong regulator (IBBI) supports the rationale for amending Sections 218 to use the consolidated term “service provider.”

60.5 <u>Examination by the Committee</u>:

60.5.1 The Ministry, in their written replies to the above suggestions, submitted as under:

(i) Considering the evolution of the IBC ecosystem over the past ten years, it is important to have specialized services with IBC specific expertise for effective implementation. For instance, valuers specializing in IBC processes. Accordingly, the concept of “service provider” is being introduced. Additionally, other services will only fall under the jurisdiction of IBBI when the Central Government notifies them, and the regulations that IBBI will make for them shall be laid before the Parliament in accordance with section 241. Furthermore, references to valuers and insolvency professional entities may be included in the proposed definition of “service provider.” In addition, the Central Government may notify other service providers.

(ii) The definition of “service provider” has been proposed to be inserted as sub-section (31A) to section 5 of the Code. This definition covers insolvency professional agencies,

insolvency professionals, information utilities, and any other category of persons that may be notified by the Central Government for rendering services related to insolvency and bankruptcy and registered with the Board. It enables the Central Government to notify additional category of persons whose services are required for the implementation of the Code, thereby empowering the Board to regulate them for the efficient and proper conduct of the insolvency and bankruptcy processes. This amendment is intended to streamline the Code, reduce repetitive references, and provide regulatory flexibility to recognise new classes of service providers that may emerge in the evolving insolvency ecosystem. It ensures that the framework remains responsive to the evolving needs of the market and the Code. Furthermore, references to valuers and insolvency professional entities may be included in the proposed definition of "service provider." In addition, the Central Government may notify other service providers.

(iii) To ensure consistency in understanding across the provisions of the Code, and following the insertion of the definition in section 3(31A), consequential modifications are made to sections 196, 217 to 220 to ensure that IBBI's regulatory and enforcement powers apply to all persons falling under the definition of "service providers". Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

60.6 <u>Observations/Recommendations of the Committee</u>:

60.6.1 The Committee note that Clause 60 seeks to amend Section 218 by updating the marginal heading to "Investigation of service providers" and substituting the specific terms (insolvency professional agency, insolvency professional, or information utility) with the consolidated term "service provider" and to amend the marginal heading.

60.6.2 In light of the deliberations and views of stakeholders and as a consequential amendment to Clause 2(b) of the Bill, in the preceding para no.2.6.3, the Committee note the recommendation that term "service provider" shall include the term "registered valuer". In view of this, the Committee also recommend consequential modifications to Section 218 to ensure that IBBI's regulatory and enforcement powers apply to all persons falling under the definition of "service providers".

Subject to this modification to Section 218, the Committee accept the remaining provision of Clause 60 as proposed.

61. Clause 61 of the Bill proposes to substitute new section for section 219 of the Principal Act

61.1 Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

61. For section 219 of the principal Act, the following section shall be substituted, namely:-

"219. Where the Board, upon completion of an inspection or investigation under section 218 or on the basis of material available on record, is of the *prima facie* opinion that sufficient cause exists to take action under section 220, it may issue a show cause notice to a service provider in such manner, providing such period for giving reply, as may be specified.".

61.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):

219. Show cause notice to insolvency professional agency or its member or information

utility.

The Board may, upon completion of an inspection or investigation under section 218, issue a show cause notice to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.

61.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:

Clause 61 of the Bill seeks to substitute Section 219 of the Code to clarify that the Board may issue a show cause notice to a service provider if it is of prima facie opinion that sufficient cause exists to take action under section 220 of the Code. Such action can be taken based on the findings of the inspection or investigation upon their completion under section 218 of the Code or on the basis of any material on record.

61.4 Important Views/Suggestions given by Experts/Stakeholders:

The new insertions should not be introduced. In the interest of avoiding overlapping regulation by various regulator(s), to further ease of doing business and avoid cobweb of multiple regulations / regulator(s) suitable amendments be carried out in the Code, with regard to the penalties.

61.5 Examination by the Committee:

61.5.1 To the suggestion given above, the Ministry in their written replies have submitted as follows:

> "*Considering the evolution of the IBC ecosystem over the past ten years, it is important to have specialized services with IBC-specific expertise for effective implementation. For instance, valuers specializing in IBC processes. Accordingly, the concept of "service provider" is being introduced. Additionally, other services will only fall under the jurisdiction of IBBI when the Central Government notifies them, and the regulations that IBBI will make for them shall be laid before the Parliament in accordance with section 241.*
>
> *The definition of "service provider" has been proposed to be inserted as sub-section (31A) to section 5 of the Code. This definition covers insolvency professional agencies, insolvency professionals, information utilities, and any other category of persons that may be notified by the Central Government for rendering services related to insolvency and bankruptcy and registered with the Board. It enables the Central Government to notify additional category of persons whose services are required for the implementation of the Code, thereby empowering the Board to regulate them for the efficient and proper conduct of the insolvency and bankruptcy processes.*
>
> *This amendment is intended to streamline the Code, reduce repetitive references, and provide regulatory flexibility to recognise new classes of service providers that may emerge in the evolving insolvency ecosystem. It ensures that the framework remains responsive to the evolving needs of the market and the Code.*
>
> *Additionally, to ensure consistency in understanding across the provisions of the Code, and following the insertion of the definition in section 3(31A), consequential modifications are made to sections 196, 217 to 220 to ensure that IBBI's regulatory and enforcement powers apply to all persons falling under the definition of "service providers".*
>
> *Section 219, which relates to the issuance of a show cause notice (SCN), only applies to service providers as defined under section 3(31A). These include IPs, IPAs, and IUs, as well as any other category of persons notified by the Central Government for rendering services in relation to insolvency and bankruptcy processes under the Code and registered with the IBBI. Hence, for an additional class of professionals to be considered as service providers and exercise SCN related powers, a notification by the Central Government is required.*
>
> *Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change*."

61.6 <u>Observations/Recommendations of the Committee:</u>

The Committee note that Clause 61 of the Bill seeks to substitute a new Section for Section 219 of the Code regarding issuance of a show cause notice to service provider. The Committee observe that the newly substituted Section seeks to empower the Board to issue a show cause notice to any service provider, upon completion of an inspection or investigation under Section 218 or on the basis of material available on record, if it reaches a *prima facie* opinion that sufficient cause exists for taking action under Section 220 of the Code. The Committee also note that unlike the existing Section 219, which is limited to the issuance of a show cause notice to an insolvency professional agency, its member, or an information utility, the proposed draft consistently uses the broader term "service provider." The Committee observe that this change is consequential to the insertion of the definition of "service provider" in Section 3(31A), thereby ensuring that the Board's regulatory and enforcement powers apply to all persons falling under that definition. The Committee, therefore, concur with the justification given by the Ministry of Corporate Affairs that the extant modification is essential to ensure consistency in the provisions of the Code. Accordingly, after thorough examination of the Clause and taking into consideration the views submitted by the Ministry and stakeholders, the Committee accept Clause 61 as proposed without any modification.

62. Clause 62 of the Bill proposes to amend section 220 of the Principal Act

62.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

62. In section 220 of the principal Act,–

(a) for sub-section (1), the following sub-section shall be substituted, namely:–

"(1) The Board shall constitute one or more disciplinary committees consisting of one or more persons from amongst its Chairperson, whole-time members or officers not below the rank of the Executive Director for the purposes of this section.";

(b) after sub-section (1) as so substituted, the following sub-section shall be inserted, namely:-

"(1A) The show cause notice issued under section 219 shall be referred to a disciplinary committee constituted under sub-section (1).";

(c) for sub-section (2), the following sub-section shall be substituted, namely:

"(2) Where the disciplinary committee, after giving the service provider an opportunity of being heard, is satisfied that sufficient cause exists, it may, impose a penalty as provided in sub-section (3), or suspend or cancel the registration of the service provider, or direct disgorgement under sub-section (4).";

(d) in sub-section (3),-

(i) for the opening portion, the following opening portion shall be substituted, namely:-

"Where any service provider has contravened any provisions of this Code or rules or regulations made thereunder, the disciplinary committee may impose penalty which shall be upto-";

(ii) in the proviso, for the words "more than one crore rupees", the words "two crore rupees" shall be substituted;

(e) in sub-sections (4) and (5), for the word "Board", wherever it occurs, the words "disciplinary committee" shall be substituted;

(f) after sub-section (6), the following sub-sections shall be inserted, namely:–

"(7) Any person aggrieved by an order of the disciplinary committee under sub-sections (2) to (5), may prefer an appeal to the National Company Law Appellate Tribunal within a period of thirty days from the date of receipt of the order.

(8) The National Company Law Appellate Tribunal may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within thirty days, allow the appeal to be filed under sub-section (7) within a further period not exceeding fifteen days.

62.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

220. Appointment of disciplinary committee.

(1) The Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted under sub-section *(6)* of section 218:

Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.

(2) On the examination of the report of the Investigating Authority, if the disciplinary committee is satisfied that sufficient cause exists, it may impose penalty as specified in subsection *(3)* or suspend or cancel the registration of the insolvency professional or, suspend or cancel the registration of insolvency professional agency or information utility as the case may be.

(3) Where any insolvency professional agency or insolvency professional or an information utility has contravened any provision of this Code or rules or regulations made thereunder, the disciplinary committee may impose penalty which shall be –

(i) three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention; or

(ii)three times the amount of the unlawful gain made on account of such contravention, whichever is higher:

Provided that where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.

(4) Notwithstanding anything contained in sub-section *(3)*, the Board may direct any person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code, or the rules or regulations made thereunder, to disgorge an amount equivalent to such unlawful gain or aversion of loss.

(5)The Board may take such action as may be required to provide restitution to the person who suffered loss on account of any contravention from the amount so disgorged, if the person who suffered such loss is identifiable and the loss so suffered is directly attributable to such person.

(6) The Board may make regulations to specify-

(a) the procedure for claiming restitution under sub- section (5)

(b) the period within which such restitution may be claimed; and

(c) the manner in which restitution of amount may be made.

62.3 <u>Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision</u>:

Clause 62 of the Bill seeks to amend section 220 of the Code to clarify and strengthen the framework for disciplinary actions against service providers in the insolvency and bankruptcy ecosystem. It proposes to substitute sub-section (1) to provide that the Board may constitute one or more disciplinary committees, each consisting of one or more persons from the Chairperson, whole-time members, or officers not below the rank of Executive Director. This reflects the growing number of service providers and ensures adequate expertise in handling disciplinary matters.

The clause also inserts a new sub-section (1A), clarifying that any show-cause notice issued to a service provider shall be referred to a standing disciplinary committee under sub-section (1), ensuring a structured approach to addressing alleged misconduct.

Sub-section (2) is proposed to be substituted to specify that the disciplinary committee may take one or more actions against a service provider by order, after giving it an opportunity to be heard, if sufficient cause exists based on the material on record. Actions may include imposing penalties, suspending or cancelling registration, or directing disgorgement, as appropriate. Sub-section (3) is amended to clarify that the quantum of penalty is an upper limit within which the committee may determine a proportionate amount, and the upper limit is increased from one crore to two crore rupees to strengthen deterrence.

Sub-sections (4) and (5) are amended to empower the committee to direct disgorgement of unlawful gains or avoided losses, after giving the service provider an opportunity to be heard, and to ensure restitution of the disgorged amount in accordance with the Board's procedure.

Finally, new sub-sections (7) and (8) are inserted to allow any person aggrieved by the committee's order to appeal to the National Company Law Appellate Tribunal, reinforcing fairness, accountability, and transparency in the exercise of disciplinary powers.

62.4 Important Views/Suggestions given by Experts/Stakeholders:

62.4.1 Some of the important views/suggestions given by experts/stakeholders are as follows:

i. Disciplinary Committee; Penalty Ceiling for Service Providers/ Insolvency Professionals: The amendment increases the monetary ceiling from₹1crore to ₹2 crore and states this as the upper limit. The drafting appears to present a fixed monetary ceiling without active guidance on proportionality for lesser contraventions, which could operate harshly for minor or technical lapses. It is recommended to replace the fixed-stated cap phrasing with an express 'up to two crore rupees' phrasing in the statutory text and include a mandatory sentence requiring the disciplinary committee to record reasons for the proportionate quantum of penalty in each order. Additionally, it is suggested to insert an enabling clause directing the Board to issue scales/guidelines (by regulation) aligning penalty quantum with the fee/income band of the service provider. A fixed penalty ceiling without proportionality may result in excessive punishment for minor lapses. Using the phrase "up to two crore rupees" and mandating reasoned orders ensures fairness and

transparency. Regulatory penalty scales linked to fee or income bands will promote consistency and equity across cases.

ii. Given the serious nature of matters requiring disciplinary actions, only whole time member of the Board only possessing requisite seniority should decide on such matters.

iii. In the interest of avoiding overlapping regulation by various regulator(s), to further ease of doing business and avoid cob web of multiple regulations/ regulator(s). Suitable amendments be carried out in the Code, with regard to the penalties. Further, any disgorgement ordered by Board should be limited to a certain maximum sum, say INR 50 Lacs. This is to ensure that there is reasonable certainty in administration of professionals by the Board.

62.5 <u>Examination by the Committee:</u>

62.5.1 The Ministry in their written replies to the above suggestions have submitted as under:

i. "The proposed amendments to section 220 address the concern about proportional and fair penalties.

The amendment seeks to substitute sub section (2) of section 220 to clarify that the disciplinary committee may take action against a service provider after providing an opportunity to be heard, if satisfied that sufficient cause exists based on the material on record. These actions may include imposing penalties or suspending or cancelling registration or directing disgorgement, as the case may be.

Further, the amendment expressly clarifies under sub-section (3) of section 220 that the monetary limit of "up to two crore rupees" is an upper limit for the imposition of the penalty within which the disciplinary committee may decide the proportionate penalty amount for a contravention.

Thus, the amendments aim to ensure fairness, transparency, and appropriate safeguards against excessive punishment for minor lapses.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

ii. "The Code establishes an insolvency regulator (IBBI) for regulating insolvency professionals, insolvency professional agencies and information utilities. The Board is required to discharge quasi-judicial functions through its administrative law wing. The resulting orders are envisaged to be in the nature of regulatory orders vis-a vis regulated entities. Considering the increasing number of service providers rendering services in the insolvency and bankruptcy ecosystem, officers at Executive Director

level or above are now proposed to be included in the disciplinary committees. These officers possess the requisite seniority, domain expertise, and regulatory experience necessary to discharge the quasi- judicial functions effectively. This is also similar to other regulators, such as SEBI.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

iii. *"Considering the evolution of the IBC ecosystem over the past ten years, it is important to have specialized services with IBC-specific expertise for effective implementation. For instance, valuers specializing in IBC processes. Accordingly, the concept of "service provider" is being introduced. Additionally, other services will only fall under the jurisdiction of IBBI when the Central Government notifies them, and the regulations that IBBI will make for them shall be laid before the Parliament in accordance with section 241.*

The definition of "service provider" has been proposed to be inserted as sub-section (31A) to section 5 of the Code. This definition covers insolvency professional agencies, insolvency professionals, information utilities, and any other category of persons that may be notified by the Central Government for rendering services related to insolvency and bankruptcy and registered with the Board. It enables the Central Government to notify additional category of persons whose services are required for the implementation of the Code, thereby empowering the Board to regulate them for the efficient and proper conduct of the insolvency and bankruptcy processes.

This amendment is intended to streamline the Code, reduce repetitive references, and provide regulatory flexibility to recognise new classes of service providers that may emerge in the evolving insolvency ecosystem. It ensures that the framework remains responsive to the evolving needs of the market and the Code.

Additionally, to ensure consistency in understanding across the provisions of the Code, and following the insertion of the definition in section 3(31A), consequential modifications are made to sections 196, 217 to 220 to ensure that IBBI's regulatory and enforcement powers apply to all persons falling under the definition of "service providers".

Section 219, which relates to the issuance of a show cause notice (SCN), only applies to service providers as defined under section 3(31A). These include IPs, IPAs, and IUs, as well as any other category of persons notified by the Central Government for rendering services in relation to insolvency and bankruptcy processes under the Code and registered with the IBBI. Hence, for an additional class of professionals to be considered as service providers and exercise SCN related powers, a notification by the Central Government is required.

Furthermore, the disgorgement provision ensures that no one benefits from a contravention, linking it to unlawful gains or averted losses. The amount of unlawful gains or averted losses will depend on the facts of each case, and it may not be appropriate to set a fixed cap on this provision. Therefore, prescribing a fixed monetary cap (such as INR 50 lakh) would defeat its purpose and may undermine the deterrent effect in serious cases.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

62.5.2 The Committee sought clarification from the Ministry regarding the possibility that only whole-time member of the Board possessing requisite seniority decide on matters related to Section 220 (1). The Ministry in their written replies submitted as follows:

"The Code establishes an insolvency regulator (IBBI) for regulating insolvency professionals, insolvency professional agencies and information utilities. The Board is required to discharge quasi judicial functions through its administrative law wing. The resulting orders are envisaged to be in the nature of regulatory orders vis-avis regulated entities. Considering the increasing number of service providers rendering services in the insolvency and bankruptcy ecosystem, officers at Executive Director level or above are now proposed to be included in the disciplinary committees. These officers possess the requisite seniority, domain expertise, and regulatory experience necessary to discharge the quasi- judicial functions effectively. This is also similar to other regulators, such as SEBI."

62.5.3 Apprehending that a fixed penalty ceiling could lead to excessive punishment for minor lapses, the Committee enquired regarding the feasibility of amending the fixed cap phrasing to include a more flexible "upto two crore rupees" cap with a mandatory requirement for the Disciplinary Committee to record reasons justifying the proportionality of the penalty quantum in each order, the Ministry in their written replies have stated as under:

"The proposed amendments do not provide for a fixed penalty, which is also clarified by the use of the phrase "may impose a penalty which shall be up to" under clause 62(d)(i) of the Amendment Bill. Therefore, section 220 sets a maximum limit for penalties, and the Disciplinary Committee of IBBI determines the appropriate penalty within this limit based on the facts and circumstances of each case".

62.6 Observations/Recommendations of the Committee:

62.6.1 The Committee note that Clause 62 of the Bill seeks to substantially amend Section 220 of the Insolvency and Bankruptcy Code to strengthen the disciplinary framework by mandating the IBBI to constitute Disciplinary Committees comprising its Chairperson, whole-time members, or officers not below the rank of Executive Director. The Committee find that these amendments are intended to empower the Disciplinary Committee to leverage senior expertise and manage the increasing quasi-judicial workload, similar to regulators like SEBI. The Committee observe that the amendments significantly empower the Disciplinary Committees to impose penalties, suspend/cancel registration, and direct disgorgement. Specifically, the upper limit for monetary penalties has been doubled from one crore to two crore, and the Disciplinary Committee is explicitly empowered to direct disgorgement of an amount equivalent to the full unlawful gain or averted loss without a fixed monetary cap, ensuring no one benefits from contraventions and preserving the provision's strong deterrent effect. Also, the new sub-sections introduce a crucial appeal mechanism to the National Company Law Appellate Tribunal (NCLAT) against the orders of Disciplinary Committees.

62.6.2 Upon examination and after considering the views of the Ministry and stakeholders, the Committee observe that the amendments proposed in Clause 62 are necessary to ensure fairness and proportionality in disciplinary actions and to enhance the overall regulatory effectiveness. Therefore, the Committee accept the Clause 62 as proposed without any modification.

63. Clause 63 of the Bill proposes to amend section 224 of the Principal Act

63.1 <u>Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

63. In section 224 of the principal Act,–

(a) in sub-section (2),—

(a) in clause (c), after the words “any other source;”, the word “and” shall be omitted;

(b) in clause (d), for the word “Fund.”, the words “Fund; and” shall be substituted;

(c) after clause (d), the following clause shall be inserted, namely—

“(e) amounts from such other sources as may be prescribed.”;

(b) for sub-section (3), the following sub-section shall be substituted, namely:–

“(3) The sums credited to the Fund may be utilised –

(a) by a person who has contributed any amount to the Fund under clause (b) of sub-section (2), in the event of proceedings initiated in respect of such person under this Code before an Adjudicating Authority, by making an application to such Adjudicating Authority for withdrawal of funds not exceeding the amount contributed by it, for making payment to workmen, protecting the assets of such persons, meeting the incidental cost during the proceedings or such purposes as may be prescribed; and

(b) for such other purposes and in such manner as may be prescribed.”.

63.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

224. Insolvency and Bankruptcy Fund.

(2) There shall be credited to the Fund the following amounts, namely —

(a) the grants made by the Central Government for the purposes of the Fund;

(b) the amount deposited by persons as contribution to the Fund;

(c) the amount received in the Fund from any other source; and

(d) the interest or other income received out of the investment made from the Fund.

(3) A person who has contributed any amount to the Fund may, in the event of proceedings initiated in respect of such person under this Code before an Adjudicating Authority, make an application to such Adjudicating Authority for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of such persons, meeting the incidental costs during the proceedings or such other purposes as may be prescribed.

63.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:

Clause 63 seeks to amend section 224 to allow contributions to the Insolvency and Bankruptcy Fund from other sources as prescribed by the Central Government and to enable the Government to prescribe a detailed framework for its utilization, including purposes beyond those benefiting the contributors.

63.4 Examination by the Committee:

The Committee, during the examination of the Clause, expressed a concern that there is a lack of a permanent, specialized framework within the IBC that differentiates between typical business failures and insolvency caused by catastrophic incidents like pandemics, wars, or natural calamities, which leads to the liquidation of otherwise viable companies. In this context, the Committee enquired the Ministry regarding the feasibility of establishing a Government-backed Insolvency Relief Fund financed by a small, dedicated cess to provide immediate protection and financial assistance to viable but distressed firms as adopted by countries like Singapore, the UK and the Japan during the COVID-19 crisis. The Ministry in their written reply have submitted that the suggestion is duly noted and it would be considered during the operationalization of the Insolvency and Bankruptcy Fund.

63.5 Observations/Recommendations of the Committee:

The Committee note that Clause 63 of the Bill seeks to amend Section 224 of the IBC 2016 to broaden the scope of the Insolvency and Bankruptcy Fund by allowing the Central Government to prescribe both additional sources of contributions and a comprehensive framework for its utilization. The Committee find this amendment appropriate because it ensures that the Fund is not limited solely to the benefit of contributors but can be leveraged for broader prescribed purposes related to various processes under the Code. However, the Committee observe a critical gap due to lack of a specialized mechanism to differentiate between typical business failures and insolvency caused by catastrophic incidents like pandemics, wars, or natural calamities which risks the liquidation of otherwise viable companies. Therefore, to provide immediate, time-bound financial assistance and special protection to such viable but distressed firms, the Committee are of the opinion that while framing rules for operationalizing the Insolvency and Bankruptcy Fund, the Ministry shall ensure that a Government-backed Insolvency Relief Fund is established, to be financed by a small cess, within the framework of existing Insolvency and Bankruptcy Fund under Section 224. After the deliberations and keeping into consideration the justification given by the Ministry, the Committee are of the view that the proposed amendments enhance the financial resilience and operational scope of the Insolvency and Bankruptcy Fund. The Committee accordingly accept the Clause as proposed without any modification.

64. Clause 64 of the Bill proposes to substitute new section for section 235A of the Principal Act

64.1 <u>Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

64. For section 235A of the principal Act, the following section shall be substituted, namely:–

"**235A.** If a person has contravened any provision of this Code or any rules or the regulations made thereunder, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose upon such person, a penalty which shall not be less than one lakh rupees for each day during which the contravention continues, but which may extend up to–

(a) three times the amount of loss caused, or likely to have been caused, to persons concerned on account of such contravention;

(b) three times the amount of the unlawful gain made on account of such contravention,

whichever is higher:

Provided that where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed five crore rupees:

Provided further that where the Adjudicating Authority is of the opinion that sufficient cause exists to do so, it may, for reasons to be recorded in writing, impose a penalty which may be less than one lakh rupees for each day that the failure continues.

Explanation I. - For the removal of doubts, it is hereby clarified that the Adjudicating Authority for the purposes of this section shall be the same as referred to in section 60 or section 179, as the case may be.

Explanation II. – For the purposes of this section, it is hereby declared that the amendment of this section by the Insolvency and Bankruptcy Code (Amendment) Act, 2025 shall not affect:

(i) any prosecution instituted under this section on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025

and pending immediately before such date of commencement before any court, which shall continue to be heard and disposed of by the said court as if the Insolvency and Bankruptcy Code (Amendment) Act, 2025 had not been enacted; and

(ii) any punishment imposed under this section on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.".

64.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):

235A. Punishment where no specific penalty or punishment is provided.

If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

64.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:

Clause 64 of the Bill seeks to substitute section 235A of the Code with a new provision to allow the AA, on an application made by the Board or the Central Government or any person authorized by the Central Government, to impose a penalty on any person who has contravened any provision of the Code, or any rules or regulations made thereunder.

It provides the lower and upper monetary thresholds within which the AA is empowered to impose a proportional penalties for these contraventions.

64.4 Observations/Recommendations of the Committee:

64.4.1 The Committee note that Clause 64 of the Bill seeks to substitute Section 235A of the Code which originally dealt with 'punishment where no specific penalty or punishment is provided'. The Committee also note that the new provision now deals with 'power of Adjudicating Authority to impose penalties.' The Committee are of the view that the proposed amendment is designed to create a clear and structured mechanism for penalty imposition which significantly empower the Adjudicating Authority to impose a proportional penalty on any person who has contravened any provision of the Code, or any rules or regulations made thereunder. The Committee also find that the Clause sets clear lower and upper monetary thresholds within which the Adjudicating Authority must operate, ensuring that the penalties are both proportional to the contravention and consistent. The Committee upon examination find that the Clause can significantly strengthen the deterrent effect of the Code and is appropriate.

64.4.2 However, the Committee observe that the saving clause in Explanation II to Section 235A at Line No. 21 refers to only "this Section" instead of "Code" and does not specify omission of Sections 74 and 76 respectively carried out under Clauses 46B and 46C. The Committee are of the view that for a comprehensive understanding of its legislative intent, the Explanation must provide clarity regarding non-application of omission of Sections 74 and 76 and the amendment of Section 235A in certain cases and its effect across the statute. Therefore, the Committee recommend to replace the phrase "this Section" with the word "Code".

64.4.3 The Committee also observe that consequent to the omission of Sections 74 and 76 at Clauses 46B and 46C, it is required to be explicitly mention in Explanation II. The Committee note that to ensure that the saving clause clearly preserves the legal consequences of the omitted provisions, explicitly adding the phrase "the omission of Sections 74 and 76" will avoid ambiguity. Therefore, the

Committee recommend to add the phrase "the omission of Sections 74 and 76" at Line No.22 before the phrase "the amendment".

64.4.4 Finally, the Committee note that a reference to the penal provisions affected by the omission need to be appropriately mentioned in the Explanation II. The Committee are of the view that due to the omission of Sections 74 and 76, the Explanation must refer to "these Sections" instead of "this Section" to clearly mention that any prosecution instituted under these sections on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025 and pending immediately before such date of commencement before any court, which shall continue to be heard and disposed of by the said court as if the Insolvency and Bankruptcy Code (Amendment) Act, 2025 had not been enacted and any punishment imposed under these sections on and before the date of commencement of the Act shall not be affected due to the omission of Sections 74 and 76 and amendment of Section 235A.

64.5.5 The amended Explanation II to Section 235A be read as under:

> ***Explanation. II*—For the purposes of this (**) Code, it is hereby declared that the omission of sections 74 and 76, and the amendment of this section by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall not affect:—**
>
> **(*i*) any prosecution instituted under (**) these sections (**) on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025 and pending immediately before such date of commencement before any court, which shall continue to be heard and disposed of by the said court as if the Insolvency and Bankruptcy Code (Amendment) Act, 2025 had not been enacted; and**
>
> **(*ii*) any punishment imposed under (**) these sections (**) on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.".**

64.4.6 Apart from the above-mentioned amendments, the Committee accept Clause 64 as proposed.

65. Clause 65 of the Bill proposes to amend section 239 of the Principal Act

65.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

65. In section 239 of the principal Act,–

(a) in sub-section (1), for the word “provisions”, the word “purposes” shall be substituted;

(b) in sub-section (2),—

(i) clause (ea) shall be omitted;

(ii) after clause (fe), the following clauses shall be inserted, namely:–

“(ff) the conditions under sub-section (1) of section 58B;

(fg) the fee for filing an objection under sub-section (1) of section 58C;

(fh) the manner and conditions under sub-section (1) **of** section 59A;”;

(iii) for clause (zi), the following clause shall be substituted, namely:–

“(zi) the other sources of amounts to be credited to the Insolvency and Bankruptcy Fund under clause (e) of sub-section (2) of section 224;”;

(iv) after clause (zi) as so substituted, the following clauses shall be inserted, namely:–

“(zia) the purposes under clause (a) of sub-section (3) of section 224;

(zib) the other purposes and the manner under clause (b) of sub-section (3) of section 224;”;

(v) after clause (zm), the following clause shall be inserted, namely:–

“(zma) the manner and conditions under sub-section (1) of section 240C;”.

65.2 <u>Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):</u>

239. Power to make rules. -

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Code.

(ea) other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information under clause (e) of sub-section (3) of section 9;

(fe) the conditions and restrictions with which the promoters, members, personnel and partners of the corporate debtor shall exercise and discharge contractual or statutory rights and obligations under clause (c) of section 54H;

--

(zj) the manner of administering the fund under sub-section (4) of section 224;

--

(zm) the form and the time for preparing annual report under sub-section (1) of section 229;

--

65.3 <u>Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:</u>

Clause 65 seeks to amend sub-section (1) of section 239 of the Code to enable the Central Government to frame rules for carrying out the purposes of the Code rather than for carrying out the provisions of the Code.

It also seeks to amend sub-section (2) of section 239 to enable the Central Government to frame rules for matters related to amendments made to the provisions of the Code.

65.4 Observations/Recommendations of the Committee:

The Committee note that Clause 65 of the Bill seeks to amend sub-section (1) of Section 239 of the Code shifts the scope of the Central Government's rule-making power from merely carrying out the "provisions" of the Code to fulfilling the "purposes" of the Code. This change provides the Central Government with a broader, more flexible mandate to frame rules that ensure the overall objectives of the Code are met, even in areas without explicit detailing. Furthermore, the Committee observe that the amendment to sub-section (2) of Section 239 enables the Central Government to frame rules specifically for matters related to the amendments made to the provisions of the Code. The Committee consider these changes are essential for enhancing the administrative efficiency and adaptability of the IBC framework, as they ensure necessary procedural and operational rules can be framed and notified effectively as the Code evolves. The Committee, therefore, after examining the Clause and considering the justification given by the Ministry, accept Clause 65 as proposed without any modification.

66. Clause 66 of the Bill proposes to amend section 240 of the Principal Act

66.1 <u>Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:</u>

66. In section 240 of the principal Act,–

(a) in sub-section (1), for the word “provisions”, the word “purposes” shall be substituted;

(b) in sub-section (2), —

(i) after clause (f), the following clause shall be inserted, namely :–

“(fa) other information under clause (e) of sub-section (3) of section 9;”;

(ii) for clause (h), the following clause shall be substituted, namely: –

“(h) the other document or any other information under clause (a) of sub-section (3) of section 10;”;

(iii) after clause (h) as so substituted, the following clause shall be inserted, namely: –

“(ha) the manner under sub-section (1) of section 12A;”;

(iv) in clause (n), after the words, brackets and letter “of clause (a),” the words, brackets and letter “the manner under clause (b),” shall be inserted;

(v) after clause (o), the following clause shall be inserted, namely: –

“(oa) any other class or classes of creditors who may attend the meetings of committee of creditors under the proviso to sub-section (11) of section 21;”;

(vi) after clause (t), the following clause shall be inserted, namely:–

“(ta) the manner and conditions under sub-section (1) of section 28A;”;

(vii) in clause (w), for the words, brackets, letters and figures “the manner of payment of debts under clause (b), and the other requirements to which a resolution plan shall conform to under clause (d), of sub-section (2) of section 30;”, the words, brackets, letters and figures “the manner of payment of debts of operational creditors under clause (b), the manner of payment of debts of financial creditors who do not vote in favour of the resolution plan under clause (ba), the conditions and manner for

constitution of a committee under clause (d) and the other requirements to which a resolution plan shall conform to under clause (f) of sub-section (2) of section 30;", shall be substituted;

(viii) after clause (wa), the following clauses shall be inserted, namely:–

"(wb) the form, manner and the conditions under the second proviso to sub-section (1) of section 31;

(wc) the manner and conditions for making an application by the committee of creditors for restoring the corporate insolvency resolution process and manner and conditions for completing the restored corporate insolvency resolution process under sub-section (1A) of section 33;

(wd) the conditions under the proviso to sub-section (2) of section 33;";

(ix) for clause (x), the following clause shall be substituted, namely: –

"(x) the period within which and the manner in which the committee of creditors shall forward the name of the proposed resolution professional or the proposed insolvency professional to be appointed as the liquidator to the Adjudicating Authority, the form of written consent from the resolution professional under clause (a) and the form of written consent from the insolvency professional under clause (b) of sub-section (1) of section 34;";

(x) after clause (x) as so substituted, the following clauses shall be inserted, namely:–

(xa) the form of written consent from insolvency professional under sub-section (6) of section 34;

(xb) the fee for the conduct of the liquidation proceedings and proportion to the value of the liquidation estate assets under sub-section (8) of section 34;
(xc) the form for giving written consent under sub-section (1) of section 34A;";

(xi) in clause (y), for the words, brackets and letter "the manner of evaluating the assets and property of the corporate debtor under clause (c)", the words, brackets and letters "the manner of maintaining an updated list of claims of creditors under clause (a), the manner of evaluating the assets and property of the corporate debtor under clause (c)" shall be substituted;

(xii) for clause (z), the following clause shall be substituted, namely:—

“(z) the manner in which the committee of creditors shall supervise the conduct of the liquidation process by the liquidator under sub-section (2) of section 35;”;

(xiii) clauses (ze), (zf) and (zg) shall be omitted;

(xiv) after clause (zi), the following clause shall be inserted, namely:—

“(zia) the manner, period and conditions under sub-section (8) of section 52;”;

(xv) after clause (zj), the following clauses shall be inserted, namely:–

“(zja) the period and the manner of distribution of proceeds of sale under sub-section (1) of section 53;

(zjb) the manner of determining the value of security interest under the *Explanation* to sub-clause (ii) of clause (b) of sub-section (1) of section 53;

(zjc) the manner in which the liquidator shall make an application to the Adjudicating Authority for the dissolution of the corporate debtor under sub-section (1) of section 54;

(zjd) the manner and conditions under sub-section (1A) of section 54;

(zje) the manner and conditions under sub-section (1B) of section 54;”;

(xvi) for clause (zk), the following clause shall be substituted, namely:—

“(zk) the manner under the proviso to sub-section (2A) of section 54;”;

(xvii) for clause (zke), the following clause shall be substituted, namely:–

“(zke) the information to be furnished under sub-section (3) of section 54C;”;

(xviii) clause (zl) shall be omitted;

(xix) after clause (zl) as so omitted, the following clauses shall be inserted, namely:–

(zla) the manner under clause (a), the form and manner under clause (b), and the manner under clause (c) of sub-section (2) of section 58B;

(zlb) the period, form and manner under sub-section (4) of section 58B;

(zlc) the form and manner under sub-section (1) of section 58C;

(zld) the manner and conditions for exercising the powers and performing duties by the resolution professional under section 58E;

(zle) the form in which the report to be prepared under clause (c), the report and documents to be filed with the Board under clause (f), and such other duties to be performed under clause (g) of section 58E;

(zlf) the conditions and manner for the resolution professional to attend the meetings and exercise the right to reject under sub-section (2) and the form, manner and period under sub-section (3) of section 58F;

(zlg) the manner under the proviso to sub-section (1) of section 58G;

(zlh) the form and manner in which the resolution professional shall make public announcement under sub-section (3) of section 58G;

(zli) the manner under sub-clause (ii) of sub-section (1) of section 58H;

(zlj) the form and manner under sub-section (2) of section 58H;

(zlk) the manner under sub-section (1) of section 58-I;

(zll) the conditions and procedural requirements under sub-section (2) of section 58K;";

(xx) in clause (zm), for the words "conditions and procedural requirements", the words "conditions, procedural requirements, and period" shall be substituted;

(xxi) after clause (zm), the following clauses shall be inserted, namely:–

"(zma) the other conditions under clause (c) of sub-section (5A) of section 59;

(zmb) the other consequences under sub-section (5C) of section 59;";

(xxii) in clause (zv), after the words, brackets and letter "utilities under clause (r)," the words, brackets and letters "standards of conduct of the committee of creditors and its members under clause (sa)," shall be inserted;

(xxiii) after clause (zzs), the following clause shall be inserted, namely:–

"(zzsa) the manner under clause (e) of section 214;";

(xxiv) after clause (zzw), the following clause shall be inserted, namely:–

“(zzwa) the manner and period under sub-section (4) of section 215;”;

(xxv) for clause (zzza), the following clause shall be substituted namely :–

“(zzza) the manner and period under section 219;”.

66.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):

240. Power to make regulations. –

(1) The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: —

--

(f) the other record or evidence of default under clause (a), and any other information under clause (c), of sub-section (3) of section 7;

(h) the period under clause (a) of sub-section (3) of section 10;

--

(n) the other matters under sub-clause (iv) of clause (a), and the other duties to be performed by the interim resolution professional under clause (g), of section 18;

(na) the number of creditors within a class of creditors under clause (b) of sub-section (6A) of section 21;

(nb) the remuneration payable to authorised representative under clause (ii) of the proviso to sub-section (6B) of section 21;

(nc) the manner of voting and determining the voting share in respect of financial debts under sub-section (7) of section 21;]

(o) the persons who shall comprise the committee of creditors, the functions to be exercised such committee and the manner in which functions shall be exercised under the proviso to sub-section (8) of section 21;

--

(t) the other actions under clause (k) of sub-section (2) of section 25;

--

(w) the manner of making payment of insolvency resolution process costs under clause (a), the manner of **[**payment of debts**]** under clause (b), and the other requirements to which a resolution plan shall conform to under clause (d), of subsection (2) of section 30;

(*wa*) other requirements under sub-section (*4*) of section 30;

(x) the fee for the conduct of the liquidation proceedings and proportion to the value of the liquidation estate assets under sub-section (8) of section 34;

(y) the manner of evaluating the assets and property of the corporate debtor under clause (c), the manner of selling property in parcels under clause (f), the manner of reporting progress of the liquidation process under clause (n), and the other functions to be performed under clause (o), of sub-section (1) of section 35;

(z) the manner of making the records available to other stakeholders under subsection (2) of section 35;

--

(ze) the form, the manner and the supporting documents to be submitted by operational creditor to prove the claim under sub-section (3) of section 38;

(zf) the time within which the liquidator shall verify the claims under sub-section (1) of section 39;

(zg) the manner of determining the value of claims under section 41;

--

(zi) the other means under clause (b) of sub-section (3) of section 52;

(zj) the manner in which secured creditor shall be paid by the liquidator under subsection (9) of section 52;

(zk) the period and the manner of distribution of proceeds of sale under sub-section (1) of section 53;

--

(zke) the form for providing written consent of the insolvency professional under clause (b), the form for declaration under clause (c), the information relating to books of account and such other documents relating to such period under clause (d) of subsection (3) of section 54C;

(zl) the other means under clause (a) and the other information under clause (b) of section 57;

(zm) the conditions and procedural requirements under sub-section (2) of section 59;

--

(zv) the intervals in which the periodic study, research and audit of the functioning and performance of the insolvency professional agencies, insolvency professionals and information utilities under clause (r), and mechanism for disposal of assets under clause (t), of sub-section (1) of section 196;

--

(zzs) the minimum service quality standards under clause (d) of section 214;

--

(zzw) the form and manner for submitting financial information and information relating to assets under sub-section (2) of section 215;

--

(zzza) the manner of carrying out inspection of insolvency professional agency or insolvency professional or information utility and the time for giving reply under section 219;

--

66.3 Reasons/Justification given by the Ministry of Corporate Affairs(MCA) for the proposed provision:

Clause 66 of the Bill seeks to amend sub-section (1) of section 240 of the Code to enable the Board to frame regulations for carrying out the purposes of the Code rather than for carrying out the provisions of the Code.

It also seeks to amend sub-section (2) of section 240 to enable the Board to frame regulations for matters related to amendments made to the provisions of the Code.

66.4 Important Views/Suggestions given by Experts/Stakeholders:

66.4.1 Some of the important views/suggestions given by experts/stakeholders are as follows:

i. The proposed wordings provide an unbridled power to the delegated legislation, whose validity could be constitutionally challenged.

ii. May consider making the sentence parallel i.e., "..resolution professional during the corporate insolvency resolution process or by a liquidator during the liquidation process."

Examination by the Committee:

66.5.1 To the suggestions given above, the Ministry in their written replies submitted as follows:

i. *"The substitution of the word "provisions" with "purposes" in Section 240(1) is intended to align the scope of the Board's regulation-making powers with the broader objectives of the Code and does not confer any unbridled or unfettered powers on the Board.*
All regulations framed by the Board are issued within the framework of delegated legislation prescribed under the Code, which already ensures robust checks and balances through mandatory public consultation and laying of regulations before Parliament under Section 241. Thus, adequate parliamentary oversight exists.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

ii. *"Since the concept "liquidator", is only specific to pending liquidation proceedings, hence, addition of the phrase "during the liquidation process" is not required. The proposed amendment is clear to clarify that liquidator can also made an application under section 65(2), which shall be made during the liquidation process. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."*

66.6 Observations/Recommendations of the Committee:

66.6.1 The Committee note that Clause 66 seeks to amend Section 240 to empower the Insolvency and Bankruptcy Board of India (IBBI) to make regulations. Specifically, the proposed amendment to sub-section (1) of Section 240 grants the IBBI a broader, more flexible mandate by replacing the power to frame regulations for carrying out the "provisions" with the power to regulate for fulfilling the "purposes" of the Code. The Committee concur with the Ministry that this change is crucial for allowing the Board to create rules necessary to achieve objectives of the Code, rather than being strictly limited to operationalizing specific sections. The Committee also note that the amendment to sub-section (2) of Section 240 further enhances the framework by enabling the Board to quickly frame regulations for matters related to the amendments made to the Code, significantly improving the administrative agility and ensuring seamless implementation of legislative changes within the IBC ecosystem. The Committee acknowledge that the broadened power of IBBI remains subject to robust checks and balances, including mandatory public consultation and the requirement for laying regulations before the Parliament.

66.6.2 However, the Committee note that the amendment in clause (26) of Section 5 of the principal Act by Clause 3 at preceding para 3.6.4 (i) expands the definition of resolution plan and make it explicit to allow for one or more resolution plans for a corporate debtor undergoing CIRP and providing for restructuring of assets of the corporate debtor to allow for sale of one or more assets for maximizing the value for a corporate debtor holding multifarious businesses. The Committee observe that the conditions governing these multiple plans and asset sales to be covered in regulations must be appropriately reflected in Section 240 which provides for the power to make regulations. Consequently, the Committee recommend the amendment of sub-clause (b) of Clause 66 so as to reflect the change in corresponding Section 240. The committee also recommend that

subsequent to a new insertion in sub-clause (b)(i), the existing sub-clause b(i) shall be renumbered as b(ia). The amended sub-clause (b) reads as follows:

"(*b*) in sub-section (*2*),—

(*i*) after clause (*ea*), the following clause shall be inserted, namely:—

"(*eb*) the conditions under *Explanation* to clause (*26*) of section 5;";

(*ia*) after clause (*f*), the following clause shall be inserted, namely:—

"(*fa*) other information under clause (*e*) of sub-section (*3*) of section 9;";"

66.6.3 The Committee also note that consequent upon the insertion of sub-clauses under Section 34 and as discussed at para 21.6, consequential changes must be reflected in Clause 66 appropriately. The amended sub-clauses (ix) and (x) may be read as follows:

"(*ix*) for clause (x), the following clauses (**)shall be substituted, namely:—

"(*x*) the form of written consent from insolvency professional under sub-section (*6*) of section 34;

(*xa*) the fee for the conduct of the liquidation proceedings and proportion to the value of the liquidation estate assets under sub-section (*8*) of section 34;";

(*x*) after clause *(xa)* (**) as so substituted, the following clause (**) , shall be inserted, namely:-

" (**) (*xb*) the form for giving written consent under sub-section (1) of section 34A;";"

66.6.4 Apart from the above-mentioned amendments, the Committee accept Clause 66 as proposed.

67. Clause 67 of the Bill proposes to insert new sections 240B and 240C

67.1 Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

67. After section 240A of the principal Act, the following sections shall be inserted, namely:—

"240B. Notwithstanding anything to the contrary contained in this Code, the Central Government may, by notification, **provide** an electronic portal and the procedures related to the insolvency and bankruptcy processes under this Code, which shall be carried out on such electronic portal.

240C. Notwithstanding anything to the contrary contained in this Code and the Companies Act, 2013, the Central Government may prescribe the manner and conditions for administering and conducting cross-border insolvency proceedings under the Code, for such class or classes of debtors and corporate debtors as may be notified by the Central Government.

(2) The rules made under this section may provide that any of the provisions of this Code or the Companies Act, 2013 shall apply with such exceptions, modifications and adaptations, as may be required to administer and implement the provisions of this section and rules made thereunder, including designating one or more Benches for dealing with proceedings under this section.

(3) A draft of every rule proposed under this section shall be laid before each House of Parliament in such manner as provided under sub-sections (4) to (6) of section 59A, which shall, *mutatis mutandis* apply, to the rules made under this section.".

67.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):

240A. Application of this Code to micro, small and medium enterprises. –

(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process 2[or pre-packaged insolvency resolution process] of any micro, small and medium enterprises.

(2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

(a) not apply to micro, small and medium enterprises; or

(b) apply to micro, small and medium enterprises, with such modifications as may be

specified in the notification.

(3) A draft of every notification proposed to be issued under subsection (2), shall be laid

before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.

(5) The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.

(6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

Explanation.— For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).

67.3 <u>Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:</u>

Clause 67of the Bill seeks to introduce new sections, namely sections 240B and 240C, into Part V of the Code.

Section 240B empowers the Central Government to provide, by way of notification, an electronic portal and the procedures related to the insolvency and bankruptcy processes under the Code, which shall be carried out on such electronic portal.

Section 240C of the Code empowers the Central Government to prescribe rules relating to cross- border insolvency proceedings, for administering and conducting cross-border insolvency proceedings under the Code, for such class or classes of debtors and corporate debtors as may be notified by the Central Government.

It also provides that the rules made under this section may provide that any of the provisions of the Code or the Companies Act, 2013 shall apply with such exceptions, modifications, and adaptations, as may be required to administer, and implement the provisions of this section and rules made thereunder, including designating one or more Benches for dealing with proceedings under this section.

Further, before the rules framed under this section are issued, a draft of every rule proposed to be issued shall be laid down before each House of Parliament as per the procedure provided in this provision.

67.4 Important Views/Suggestions given by Experts/Stakeholders:

67.4.1 Some of the important views/suggestions given by experts/stakeholders are as follows:

i. Please see the existing electronic portal being given to IP's , such electronic portal must not be done, unless majority of stake holders gives consent after testing and trailing for this. Otherwise it would be disaster.

ii. The UNCITRAL Model Law on Cross-Border Insolvency was not made part of the Code in 2016 when it was enacted. The Joint Parliament Committee (JPC) of the Parliament in its report of 2015 on IBC Bill 2015 noted that IBC at present does not explicitly deal with issues and text related to cross-border insolvency. However, "given that many corporate transactions and businesses today involve an international and cross-border element, the implications of cross-border insolvency cannot be ignored for too long if India is to have a comprehensive and long lasting insolvency law as the [IBC] aims to achieve. Not incorporating this will lead to an incomplete [IBC]". Instead, two provisions were inserted in IBC at the last minute to deal with cross-border issues: a provision that allows the government to foreign countries to enforce IBC provisions, and a provision that confers power on the appropriate NCLT to issue a letter of request seeking aid and assistance in a foreign jurisdiction. While Section 240C is a laudable provision as it provides an enabling provision for introducing cross border insolvency, but it would be suitable to include the following key aspects of cross border insolvency law as sub sections of Section 240C as they go to root of jurisdiction of Adjudicating Authority, which is not vested presently: *1. Jurisdiction of Adjudicating Authority to recognition insolvency proceedings in other jurisdictions. 2. Jurisdiction of Adjudicating Authority to decide whether such proceeding shall be main or non- main proceedings 3. Jurisdiction of Adjudicating Authority to grant reliefs 4. Jurisdiction of Adjudicating Authority to cooperate with other jurisdictions.* Jurisdiction should be vested by substantive provisions in the law approved by the Parliament and not by way of subordinate legislation. Rest of the framework of cross border insolvency can be introduced by Rules. Else the Rules might be prone to legal challenge.

iii. To include a cross-border insolvency framework laying out broad structure within Code itself, rather than completely leaving it to be delegated for rule-making exercise. The draft structure as such may be on the lines of previously 'Draft Z' of Cross Border framework, issued by Ministry of Corporate Affairs and publicly debated thereafter. Providing broad framework within the Code itself, given the criticality of the matter, would be preferable to this being subordinated legislation.

This would obviate and curtail the potential litigation once the framework is implemented on ground.

iv. Insert a specific carve-out for domestic real-estate projects: “Provided that where the corporate debtor is a real- estate or infrastructure developer having projects situated in India, no cross- border insolvency proceeding or foreign recognition order shall restrictor suspend the completion of such projects or transfer of title to allottees in India. The Adjudicating Authority shall ensure domestic project completion and possession delivery have overriding priority over foreign proceedings.” This ensures that foreign insolvency claims cannot paralyse housing projects located in India or prevent promoters from completing them. It upholds territorial control over Indian assets, protects homebuyers and domestic creditors, and ensures project value is realised locally.

v. The Central Government should expeditiously frame detailed rules based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997. The framework should provide for automatic recognition of foreign insolvency proceedings rather than requiring case- by-case judicial discretion. Clear provisions for cooperation between Indian and foreign insolvency professionals/ administrators should be included. The framework should apply to all corporate debtors with cross-border assets or operations, without limiting it to specific classes. A comprehensive framework will facilitate asset recovery, reduce litigation costs, and enhance India's attractiveness as an investment destination.

vi. Replace the whole clause with a detailed provision on the manner and conditions for administering and conducting cross-border insolvency proceedings. Clause 67 of the Bill empowers the Central Government to prescribe rules relating to cross-border insolvency proceedings, for administering and conducting cross- border insolvency proceedings under the Code. Instead of delving into the details of the manner and conditions for administering and conducting cross- border insolvency within the Code, the decision to delegate this primary legislative responsibility to the executive must be revisited. It should also be remembered that the Insolvency Law Committee led by Mr. Injeti Srinivas IAS had recommended that the proposed draft cross-border insolvency legislation they had prepared was to be incorporated into the Code. The committee should recommend incorporation of the Insolvency Law Committee draft legislation along with principles enshrined in the UNCITRAL Model Law on Cross- Border Insolvency (1997) adopted by a total of 65 jurisdictions across the globe.

vii. Replace 240C. (2) with the following: The Central Government may prescribe rules as may be required to implement the provisions of this section and rules made thereunder, including designating one or more Benches for dealing with proceedings under this section. For the purpose of making rules, the Central Government shall publicise the following, seeking comments: (a) a draft of the

proposed rules; (b) a statement on the proposed rules and explaining key changes in simple language; economic analysis of the proposed rules; (d) a statement on the international best practices relevant to the proposed rules; (e) the manner and timeline of implementation of the proposed rules; and (f) the manner and process for receiving comments from the public. The Central Government shall provide at least thirty days for the public to submit their comments.

viii. The legislation does not reflect on the Draft Z proposal put forward by the Insolvency Law Committee , and the Cross Border Committee later. Nor does it take any other different approach. Something explicit on these lines of the suggestions of the Committee Reports ought to be included , else, we will end up continuing the ad hoc arrangement. About cross-border cases, in particular with respect to emerging market economies like India, rather than considering the universalist vs territorial approach as separate, the assets hould be classified as different groups when insolvency is administered, since the creditors who financed risky activities without due diligence (like, say, the purchase of brands) should be responsible for bearing the credit risks of loss. This is important, otherwise even as any additional investment would not have happened within the country from the funds mobilised abroad or within the country / from its own domestic resources, the domestic group would have to pay up and the domestic creditors would be at risk.

67.5 <u>Examination by the Committee:</u>

67.5.1 The Ministry in their written replies have submitted the following views for the suggestions given above:

i. "The proposed provision is only enabling, not mandatory, and merely empowers the Central Government to create an electronic portal—not to operationalise it without safeguards. Any such portal will necessarily undergo phased development, testing, and stakeholder consultation before deployment.

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

ii. "The concept of delegated legislation enables the legislature to confer limited law-making powers on the executive, particularly in complex and technical domains such as economic regulation, where flexibility and adaptability are crucial. Judicial precedent has consistently upheld delegated legislation when the primary legislative policy is clearly determined by the legislature and sufficient guidelines are in place to prevent the arbitrary exercise of power. This approach promotes flexibility, elasticity, and expedition in the implementation of the law, particularly in fields demanding executive experimentation.

The proposed Section 240C of the IBC Amendment Bill confers two distinct delegated powers upon the Central Government: the authority to enact Rules prescribing the manner and conditions for administering and conducting cross-border insolvency proceedings, and the power to issue notifications specifying the applicable classes of corporate debtors or debtors. The technical nature and established international meaning of "cross-border insolvency proceedings," referring to multi-jurisdictional cases necessitating coordination, provides a sufficiently clear and non-vague scope for the delegated rule-making power. This ensures rule-making precision while maintaining adaptability to global and domestic complexities in insolvency cases, which is necessitated by the intricate and multi-jurisdictional nature of the subject matter, as well as variations in the global implementation of frameworks such as the UNCITRAL Model Law.

The UNCITRAL Model Law provides a globally recognized framework for cross-border insolvency, but jurisdictions often adapt it with minor variations, ranging from substantial modifications in countries like Japan and South Korea to non adoption in Russia and Germany. China has introduced a draft framework for judicial cooperation in cross-border bankruptcy that draws inspiration from the UNCITRAL Model Law, but opts for a pragmatic, restrictive approach rather than full adoption. This diversity underscores the need for flexibility in the subordinate law, allowing its cross-border insolvency regime to maintain coherence with international standards while also taking into account local jurisdictional and geopolitical factors. Such flexibility is well-supported by the delegated legislation powers conferred under Section 240C, which permit dynamic adaptations as domestic and global practices evolve.

Furthermore, the proposed section also enables the prescription of exceptions, modifications, or adaptations to provisions of the Code, a mechanism analogous to Section 240A of the IBC and Section 462 of the Companies Act, 2013, and <u>includes a mandatory requirement to lay draft rules before their implementation in the Parliament to ensure legislative scrutiny over the exercise of these delegated powers, thereby mitigating concerns regarding potential overreach</u>.

Further, the proposed <u>section 240C in the Amendment Bill is being modified to clarify certain aspects of the cross-border insolvency proceedings that may be included in the rules, while maintaining flexibility to make appropriate rules.</u> These changes are proposed <u>to codify the basic tenets of the cross-border insolvency framework</u> in the Code itself, providing clear guidance for the Central Government to make rules and address any concerns related to excessive delegation.

iii. *"The concept of delegated legislation enables the legislature to confer limited law-making powers on the executive, particularly in complex and technical domains such as economic regulation, where flexibility and adaptability are crucial. Judicial precedent has consistently upheld delegated legislation when the primary*

legislative policy is clearly determined by the legislature and sufficient guidelines are in place to prevent the arbitrary exercise of power. This approach promotes flexibility, elasticity, and expedition in the implementation of the law, particularly in fields demanding executive experimentation.

The proposed Section 240C of the IBC Amendment Bill confers two distinct delegated powers upon the Central Government: the authority to enact Rules prescribing the manner and conditions for administering and conducting cross-border insolvency proceedings, and the power to issue notifications specifying the applicable classes of corporate debtors or debtors. The technical nature and established international meaning of "cross-border insolvency proceedings," referring to multi-jurisdictional cases necessitating coordination, provides a sufficiently clear and non-vague scope for the delegated rule-making power. This ensures rule-making precision while maintaining adaptability to global and domestic complexities in insolvency cases, which is necessitated by the intricate and multi-jurisdictional nature of the subject matter, as well as variations in the global implementation of frameworks such as the UNCITRAL Model Law.

The UNCITRAL Model Law provides a globally recognized framework for cross-border insolvency, but jurisdictions often adapt it with minor variations, ranging from substantial modifications in countries like Japan and South Korea to non adoption in Russia and Germany. China has introduced a draft framework for judicial cooperation in cross-border bankruptcy that draws inspiration from the UNCITRAL Model Law, but opts for a pragmatic, restrictive approach rather than full adoption. This diversity underscores the need for flexibility in the subordinate law, allowing its cross-border insolvency regime to maintain coherence with international standards while also taking into account local jurisdictional and geopolitical factors. Such flexibility is well-supported by the delegated legislation powers conferred under Section 240C, which permit dynamic adaptations as domestic and global practices evolve.

Furthermore, the proposed section also enables the prescription of exceptions, modifications, or adaptations to provisions of the Code, a mechanism analogous to Section 240A of the IBC and Section 462 of the Companies Act, 2013, and includes a mandatory requirement to lay draft rules before their implementation in the Parliament to ensure legislative scrutiny over the exercise of these delegated powers, thereby mitigating concerns regarding potential overreach.

Further, the proposed section 240C in the Amendment Bill is being modified to clarify certain aspects of the cross-border insolvency proceedings that may be included in the rules, while maintaining flexibility to make appropriate rules. These changes are proposed to codify the basic tenets of the cross-border insolvency framework in the Code itself, providing clear guidance for the Central Government to make rules and address any concerns related to excessive delegation.

The proposed section 240C in the Amendment Bill is being modified to clarify certain aspects of the cross border insolvency proceedings that may be included in the rules, while maintaining flexibility to make appropriate rules. These changes are proposed to codify the basic tenets of the cross-border insolvency framework in the Code itself, providing clear guidance for the Central Government to make rules and address any concerns related to excessive delegation.

iv. *The concept of delegated legislation enables the legislature to confer limited law-making powers on the executive, particularly in complex and technical domains such as economic regulation, where flexibility and adaptability are crucial. Judicial precedent has consistently upheld delegated legislation when the primary legislative policy is clearly determined by the legislature and sufficient guidelines are in place to prevent the arbitrary exercise of power. This approach promotes flexibility, elasticity, and expedition in the implementation of the law, particularly in fields demanding executive experimentation.*

The proposed Section 240C of the IBC Amendment Bill confers two distinct delegated powers upon the Central Government: the authority to enact Rules prescribing the manner and conditions for administering and conducting cross-border insolvency proceedings, and the power to issue notifications specifying the applicable classes of corporate debtors or debtors. The technical nature and established international meaning of "cross-border insolvency proceedings," referring to multi-jurisdictional cases necessitating coordination, provides a sufficiently clear and non-vague scope for the delegated rule-making power. This ensures rule-making precision while maintaining adaptability to global and domestic complexities in insolvency cases, which is necessitated by the intricate and multi-jurisdictional nature of the subject matter, as well as variations in the global implementation of frameworks such as the UNCITRAL Model Law.

The UNCITRAL Model Law provides a globally recognized framework for cross-border insolvency, but jurisdictions often adapt it with minor variations, ranging from substantial modifications in countries like Japan and South Korea to non adoption in Russia and Germany. China has introduced a draft framework for judicial cooperation in cross-border bankruptcy that draws inspiration from the UNCITRAL Model Law, but opts for a pragmatic, restrictive approach rather than full adoption. This diversity underscores the need for flexibility in the subordinate law, allowing its cross-border insolvency regime to maintain coherence with international standards while also taking into account local jurisdictional and geopolitical factors. Such flexibility is well-supported by the delegated legislation powers conferred under Section 240C, which permit dynamic adaptations as domestic and global practices evolve.

Furthermore, the proposed section also enables the prescription of exceptions, modifications, or adaptations to provisions of the Code, a mechanism analogous to

Section 240A of the IBC and Section 462 of the Companies Act, 2013, and includes a mandatory requirement to lay draft rules before their implementation in the Parliament to ensure legislative scrutiny over the exercise of these delegated powers, thereby mitigating concerns regarding potential overreach.

Further, the proposed section 240C in the Amendment Bill is being modified to clarify certain aspects of the cross-border insolvency proceedings that may be included in the rules, while maintaining flexibility to make appropriate rules. These changes are proposed to codify the basic tenets of the cross-border insolvency framework in the Code itself, providing clear guidance for the Central Government to make rules and address any concerns related to excessive delegation.

Additionally, the corporate debtors or debtors to whom the cross-border insolvency framework under section 240C will apply shall be notified by the Central Government through a notification. The suggestion will be considered at the stage of operationalising this framework. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

v. *"The suggestion relates to the framework for group insolvency and cross-border insolvency, it is duly noted and will be considered while framing the rules.*

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

vi. *"The proposed section 240C in the Amendment Bill is being modified to clarify certain aspects of the cross-border insolvency proceedings that may be included in the rules, while maintaining flexibility to make appropriate rules. These changes are proposed to codify the basic tenets of the cross-border insolvency framework in the Code itself providing clear guidance for the Central Government to make rules and address any concerns related to excessive delegation."*

vii. *"The rules for the cross-border insolvency framework will be made after proper consultation. Also, before they are implemented, the rules shall be laid in the Parliament for 30 days. To be addressed in the Rules.*

Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change."

viii. *"The proposed section 240C in the Amendment Bill is being modified to clarify certain aspects of the cross-border insolvency proceedings that may be included in the rules, while maintaining flexibility to make appropriate rules. These changes are proposed to codify the basic tenets of the cross-border insolvency framework in the Code itself providing clear guidance for the Central Government to make rules and address any concerns related to excessive delegation."*

67.5.2 During the briefing Sitting held on 14.10.2025, with regard to insertion of new Section 240(C), the Ministry have deposed before the Committee as follows:

"The IBC currently does not provide a framework for dealing with the crossborder insolvency cases. Presently, there is an agreement requirement with each country to enforce the IBC provision under Section 234 of the existing Code. A need was felt for a cross-border insolvency framework when the companies had assets, creditors or operation spread across multiple countries requiring coordinated legal proceedings. So, here it is proposed to empower the Central Government to establish rules for the cross-border proceedings under the Code. Rules may provide for application of the Code or the Companies Act with exceptions, modifications, adaptations as may be required. The rules may also designate a Bench or one or more Benches of the NCLT to deal only with the cross-border insolvency proceeding bringing in specialization which is much necessary. The draft rules will be placed before the Parliament before implementation."

67.5.3 Elaborating on the issue, the Ministry have submitted as under:

"We have studied almost 53 or 56 jurisdictions. Here, we are talking about easing the process of our companies getting access to foreign insolvency proceedings outside the country. We have a provision of protecting a national interest because we can have exceptions. We can have special provisions for reciprocity and we can also decide what provision shall apply to which country to what extent. So, there are a lot of details which can go into it. That is why, we have specified in the Amendment that it will be prescribed by the rules. So, that will come in the rules later on. But this is just an enabling framework which we are setting up. It also gives us a lot of good signals to the international community that we are open to some common basic procedures to be followed."

67.5.4 Elaborating on the framework of cross-border insolvency in the Code, the Ministry, during the Clause-by-Clause examination of the Bill held on 21.11.2025, have submitted as follows:

"Legislature does grant us some limited law-making powers, which is delegated legislation for complex legislative subject like this, especially the proposed Section 240C. In fact, we are proposing to users to create rules for cross-border insolvency. We want to ensure that there is flexibility in adapting to various standards. UNCITRAL law could be an inspiration, but not necessarily completely following that. In fact, legislative scrutiny is maintained via mandatory requirement to lay down these draft Rules before the Parliament before they are even notified.

The phrase "cross-border insolvency" law is a well-accepted concept that will help us in the rule-making."

67.5.5 On a clarification sought regarding jurisdictional efficacy of Section 240C in cross-border insolvency, the Ministry in their written replies have *inter-alia* submitted the following:

"The concept of delegated legislation enables the legislature to confer limited law-making powers on the executive, particularly in complex and technical domains such as economic regulation, where flexibility and adaptability are crucial. Judicial precedent has consistently upheld delegated legislation when the primary legislative policy is clearly determined by the legislature and sufficient guidelines are in place to prevent the arbitrary exercise of power. This approach promotes flexibility, elasticity, and expedition in the implementation of the law, particularly in fields demanding executive experimentation. The proposed Section 240C of the IBC Amendment Bill confers two distinct delegated powers upon the Central Government: the authority to enact Rules prescribing the manner and conditions for administering and conducting cross-border insolvency proceedings, and the power to issue notifications specifying the applicable classes of corporate debtors or debtors. The technical nature and established international meaning of "cross-border insolvency proceedings," referring to multi-jurisdictional cases necessitating coordination, provides a sufficiently clear and non-vague scope for the delegated rule-making power. This ensures rule-making precision while maintaining adaptability to global and domestic complexities in insolvency cases, which is necessitated by the intricate and multi-jurisdictional nature of the subject matter, as well as variations in the global implementation of frameworks such as the UNCITRAL Model Law. The UNCITRAL Model Law provides a globally recognised framework for cross-border insolvency, but jurisdictions often adapt it with minor variations, ranging from substantial modifications in countries like Japan and South Korea to non-adoption in Russia and Germany. China has introduced a draft framework for judicial cooperation in cross-border bankruptcy that draws inspiration from the UNCITRAL Model Law, but opts for a pragmatic, restrictive approach rather than full adoption. This diversity underscores the need for flexibility in the subordinate law, allowing its cross-border insolvency regime to maintain coherence with international standards while also taking into account local jurisdictional and geopolitical factors. Such flexibility is well-supported by the delegated legislation powers conferred under Section 240C, which permit dynamic adaptations as domestic and global practices evolve. Furthermore, the proposed section also enables the prescription of exceptions, modifications, or adaptations to provisions of the Code, a mechanism analogous to Section 240A of the IBC and Section 462 of the Companies Act, 2013, and includes a mandatory requirement to lay draft rules before their implementation in the Parliament to ensure legislative

scrutiny over the exercise of these delegated powers, thereby mitigating concerns regarding potential overreach. The other suggestions related to the cross-border insolvency framework are noted and will be taken into account when implementing this provision."

67.5.6 The Committee, apprehending that relying solely on delegated legislation for cross-border insolvency framework may lead to excessive delegation of power, sought clarification from the Ministry regarding the feasibility of inclusion of its skeletal structure. The Ministry in their written reply have submitted as follows:

"Section 240C of the Code empowers the Central Government to prescribe rules relating to cross-border insolvency proceedings, for administering and conducting cross-border insolvency proceedings under the Code, for such class or classes of debtors and corporate debtors as may be notified by the Central Government.

Pursuant to comments received from stakeholders, the proposed section 240C is being modified to provide that the rules made by the Central Government for cross-border insolvency shall include the process for recognition of proceedings involving such countries or territories outside India as may be specified in such notifications, and for granting relief, judicial cooperation, assistance and coordination in connection with such proceedings. It is also clarified that the cross-border insolvency framework may be applied to persons incorporated with limited liability outside India, if notified by the Central Government. These changes are proposed codify the basic tenets of the cross-border insolvency framework in the Code itself, so that there is clear guidance for the Central Government to make rules and to address any concerns related to excessive delegation.

The proposed modification clarifies certain aspects of the cross-border insolvency proceedings that may be included in the rules, while maintaining flexibility to make appropriate rules."

67.5.7 On a further enquiry as to whether it is constitutionally sound to delegate broad legislative power to IBBI, the Ministry have clarified in the matter that the power to make the cross-border insolvency framework is not delegated to IBBI, and the Central Government is being enabled to make the same through rules. It has been further submitted that before the rules framed under this section are issued, a draft of every rule proposed to be issued shall be laid down before each House of Parliament as per the procedure provided in this provision.

67.5.8 During a Sitting convened for oral evidence with the Department of Financial Services on 06.11.2025, the Committee enquired regarding the requirement for delegated legislation in respect of cross-border insolvency. The representatives from Department of Financial Services have deposed as under:

“While currently, as we see in the companies now, a large number of MSMEs holding companies are outside India also. Then the holding company become bankrupt the other place. How do we actually resolve it, is an issue. Holding companies within India, they may have a subsidy outside. Now, how do you resolve it? This provision we made as an enabling provision, and a couple of countries have already made it. Therefore, we have made cross-border enabling. We will see how it functions. Based on that, I think we will take action. That is why, we also provided the responsibility to IBBI to issue the regulations on this. We have not kept in the law what has to be there.”

67.6 Observations/Recommendations of the Committee:

67.6.1 The Committee note that Clause 67 of the Bill seeks to insert two new sections 240B and 240C in Part V of the Code which provide for notifying an electronic portal for facilitating procedures related to the insolvency and bankruptcy processes and conferring power to the Central Government to make rules for cross-border insolvency respectively.

67.6.2 The Committee while noting the concern expressed by stakeholders regarding the potential issues with immediate, untested implementation of the electronic portal, accept the Ministry's assurance that the inserted provision at Section 240B is only an enabling provision, not a mandate for immediate, untested implementation; and the actual operationalization of this large-scale electronic platform will be subject to a phased approach which shall necessarily include extensive testing, trial runs, and mandatory stakeholder consultation. The Committee also observe that the new clause inclusion only grants the Central Government the statutory authority to create an electronic portal, thereby, providing a legal basis for digital integration of the insolvency and bankruptcy processes in the Code; and aligning the technology adoption with standard governmental practices and the principles of good governance. The Committee, therefore, consider this newly inserted provision as a necessary first step towards enhancing the efficiency, transparency, and accessibility of the Code. The Committee, therefore, find the insertion of Section 240B appropriate; but desire that the Ministry put adequate safeguards in place before operationalizing the electronic portal.

67.6.3 The Committee further note that proposed inclusion of Section 240C in the Code is intended as a significant legislative step towards adopting a modern, harmonized, and fair framework for handling insolvency proceedings that involve debtors with assets or creditors in countries outside India, taking cue from the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) principles. After detailed examination of the Clause and considering the suggestions of stakeholders and the submissions of the Ministry, there is a compelling need for legislative clarity and to ensure the proper scope of the law. The

Committee are of the opinion that while adopting the UNCITRAL Model Law principles is essential, the Government is not required to emulate it exactly. However, the Committee feel that UNCITRAL principles should be adapted to fit the Indian legal framework, ensuring that the adopted mechanism is sensitive to the unique socio-economic, judicial, and institutional realities of India. This adaptation is critical to harmonize international best practices with the domestic system, thereby ensuring the new cross-border provisions are both effective and legally sound within the country. The Committee feel that it is imperative to codify the basic tenets of the cross-border insolvency framework directly within the Code itself to provide clear legislative guidance for the Central Government and address these judicial concerns. Furthermore, the Committee identify the need to clarify the term "corporate debtor" in Section 240C to explicitly include any person incorporated with limited liability outside India to ensure the cross-border provisions legally apply to and govern insolvency proceedings that involve a foreign company with assets, creditors, or operations connected to India.

67.6.4 The Committee, therefore, recommend two specific amendments to the proposed Section 240C. Firstly, the Committee recommend that the section 240C be amended to explicitly specify that the rules governing cross-border insolvency shall detail the process for recognition of proceedings involving specified foreign countries/territories, alongside the process for granting relief, judicial cooperation, assistance, and coordination. This explicit listing of process components within the primary law (the Code) itself serves as the codified basic tenets that prevent undue delegation. Secondly, the Committee recommend adding an Explanation to Section 240C to clarify and broaden the term "corporate debtor" to explicitly include any person incorporated with limited liability outside India. The amended Section 240C be read as under:

> "240C. (*1*) Notwithstanding anything to the contrary contained in this Code and the Companies Act, 2013, the Central Government may prescribe the manner and conditions for administering and conducting cross-border insolvency proceedings under **(**)** **this** Code, **including the process for recognition of**

proceedings, granting relief, judicial cooperation, assistance and coordination in connection with such proceedings, for such class or classes of debtors or corporate debtors involving such countries or territories outside India, as may be notified by the Central Government **in this regard**.

(*2*) The rules made under this section may provide that any of the provisions of this Code or the Companies Act, 2013 shall apply with such exceptions, modifications and adaptations, as may be required to administer and implement the provisions of this section and rules made thereunder, including designating one or more Benches for dealing with proceedings under this section.

(*3*) A draft of every rule proposed under this section shall be laid before each House of Parliament in such manner as provided under sub-sections (*4*) to (*6*) of section 59A, which shall, *mutatis mutandis* apply, to the rules made under this section.

***Explanation*—For the purposes of this section, the expression "corporate debtor" shall also include any person incorporated with limited liability outside India."."**

67.6.5 Apart from the above-mentioned amendments, the Committee accept Clause 67 as proposed.

68. Clause 68 of the Bill proposes to amend section 242 of the Principal Act

68.1 Provision proposed in The Insolvency and Bankruptcy Code (Amendment) Bill, 2025:

68. In section 242 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), if any difficulty arises in giving effect to the provisions of this Code, as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, the Central Government may, by an order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code, as may appear to it to be necessary or expedient for removing such difficulty:

Provided that no such order shall be made under this section after the expiry of a period of five years from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.".

68.2 Relevant Provision of the Principal Act (The Insolvency and Bankruptcy Code, 2016):

242. Power to remove difficulties. -

(1) If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Code.

68.3 Reasons/Justification given by the Ministry of Corporate Affairs for the proposed provision:

Clause 68 of the Bill seeks to insert a new sub-section (1A) into section 242 of the Code to empower the Central Government to remove any difficulty that may arise in giving effect to the provisions of the Insolvency and Bankruptcy Code (Amendment) Act, 2025, by publishing an order in the Official Gazette, before the expiry of five years from the date of commencement of this Act. Every such order made by the Central Government shall be laid before each House of Parliament as soon as possible under sub-section (2) of section 242.

68.4 Observations/Recommendations of the Committee:

The Committee note that Clause 68 of the Bill seeks to insert a new sub-section (1A) into Section 242 of the Code which pertain to the power of Central Government to remove any difficulty that may arise in giving effect to the provisions of the proposed Bill. The Committee observe that the proposed provision under this Section enable the Central Government to address any transitional challenges or practical impediments or operational hindrances that may emerge during the implementation of the Insolvency and Bankruptcy Code (Amendment) Act, 2025. The Committee, after considering the justification given by the Ministry of Corporate Affairs and examining the proposed provision, accept Clause 68 as proposed without any modification.

CHAPTER – III

Consolidated Observations/Recommendations of the Committee

S. No.	*Para No.*	*Clause No.*	*Observations/Recommendations*
1.	*1.6*	*1*	**The Committee note that Clause 1 provides for short title and applicability provision of the Bill. The Committee observe that the clause seeks to enable the Government to enforce various sections of the proposed legislation on different dates. The Committee concur with the justification given by the Ministry that enabling provisions permitting the Central Government to notify different sections of the Amendment Act on different dates is a legislative practice essential for staged and orderly implementation of the Act. Also, many amendments may require preparatory action such as system upgrades, stakeholder training etc., necessitating phased implementation of these provisions. Therefore, after examining the provisions of the Bill and considering the suggestions of stakeholders along with the justification given by the Ministry, the Committee accept the provisions of the Clause as proposed without any modification.**
2.	*2.6*	*2*	**2.6.1 The Committee observe that Clause 2 of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, seeks to amend Section 3 of the Principal Act. The Committee also note that Clause 2(a) seeks to insert an explanation after Clause (31) clarifying the term "security interest". Further, the Committee observe that Notes on Clause 2 provide for the phrase "whether or not it is in writing". While noting the suggestion regarding deletion of this phrase, the Committee concur with the contention of the Ministry that Notes on clauses explain the provisions of the Bill and are not per se amendment to an enactment. However, for the sake of consistency and to avoid any scope for misinterpretation, the Committee recommend that the said phrase be deleted and the Revised Note be read as :** **"…A security interest shall only exist where the parties to an agreement or arrangement agree to create a right,**

			title or interest or a claim to a property, ~~whether or not it is in writing~~…". **2.6.2 The Committee note that Clause 2(b) seeks to insert Clause (31A) after Clause (31) to provide for an inclusive definition for "service provider" under Corporate Insolvency Resolution Process (CIRP). The Committee, however, note that the definition omits entity, namely, 'registered valuer'. The Committee feel that such omission is likely to create ambiguity, especially with regard to applicability of general rules and disciplinary provisions for service providers under this section. Accordingly, the Committee recommend that definition of the term 'service provider' be suitably modified to include 'registered valuer' to the list of entities that are provided under the IBC and definition for 'registered valuer' be suitably inserted. The revised note may read as follows :** **"registered valuer" means a person registered with the Board as a valuer for providing valuation services related to the assets and liabilities of the corporate debtor or debtor, as the case may be, in connection with the insolvency and bankruptcy processes under this Code.** **2.6.3 In order to maintain coherence, appropriate references to 'registered valuer' be included where the term 'service provider' is used in the Amendment Bill in Clauses 55, 59, 60, 61, 62 and other relevant places.** **2.6.4 Further, to ensure uniformity and effectiveness across provisions, it is also recommended that for the services falling under the jurisdiction of IBBI on notification by the Central Government, necessary regulations may be drafted and laid before Parliament.** ***Subject to the above modifications, the Committee accept the remaining provisions of the clause as proposed.***

3.	*3.6*	*3*	**3.6.1 The Committee note that Clause 3 of the Bill seeks to amend Section 5 of the Insolvency and Bankruptcy Code by –** **(iv) inserting definition of terms 'avoidance transaction' and 'fraudulent or wrongful trading';** **(v) inserting proviso to Clause (11) clarifying determination of 'initiation date' with respect to multiple pending applications; and** **(vi) providing clarification regarding definition of 'resolution plan', 'sale of one or more assets' of the corporate debtor and 'voting share' of the Committee of Creditors (CoC) involved in the corporate insolvency resolution process (CIRP).** **3.6.2 The Committee also note that Clause 3(a) & (b), by inserting definitions of the terms 'avoidance transaction' and 'fraudulent or wrongful trading', intend to ensure ease of reference and consistency throughout the Code. While considering the concerns of the stakeholders, the Committee concur with the justification provided by the Ministry and accordingly, accept the proposed amendments in Clause 3(a) and (b) without any modification.** **3.6.3 The Committee further note that Clause 3(c) intends to change the lookback period for avoidance transactions through a proviso that clarifies that where multiple CIRP applications have been filed and admitted regarding the same corporate debtor, the date of filing of first such application should be considered as the 'initiation date'. The Committee, after considering and accepting the submission made by the Ministry, recommend that Clause 3(c) be accepted as proposed without any modification.** **3.6.4 The Committee also observe that Clause 3(d) provides for restructuring of assets of the corporate debtor to allow for sale of one or more assets. Considering the suggestions received from the stakeholders and the deliberations on the same, the Committee, however, reckon that in order to clearly bring out the legislative intent of allowing sale of one or more assets for maximizing the value for a corporate debtor holding multifarious businesses, the definition of resolution plan needs to be extended and made explicit**

			to allow for one or more resolution plans for a corporate debtor undergoing CIRP. Therefore, the Committee accept Clause 3(d) subject to the following modifications: **(iv) The Explanation under Section 5(26) contained in Clause 3(d) of the Bill be suitably amended to include provisions for sale of one or more of the corporate debtor's assets and the Explanation be redrafted. The Revised Explanation may read as :** **"*Explanation*.— For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation, demerger, <u>and sale of one or more assets of the corporate debtor through one or more plans proposed by one or more resolution applicants subject to such conditions as may be specified;</u>".** **(v) It is also recommended that necessary regulations to specify the conditions for sale of one or more assets be drafted by IBBI and laid before the Parliament.** **(vi) Further, it is recommended that once the formulation for amending the Explanation under clause 3(d) is finalized, Clause 66 be suitably modified in order to amend section 240 that gives the Board the power to make regulations.** **3.6.5 Further, the Committee observe that while Clause 3(e) seeks to refine the definition of 'voting share', the amendment intends to be clarificatory in nature stating that the voting share is to be computed in proportion of the financial debt owed to members of the Committee of Creditors (CoC) who are eligible to vote. The Committee concur with the contention of the Ministry that the clarification does not alter the existing principles governing the quantification and admission of claims. The Committee, accordingly, accept provisions proposed under Clause 3(e) without any modification.**

4.	*4.6*	*4*	**4.6.1 The Committee note that the provisions under Clause 4 seek to amend Section 7 of the Code and provide for – (a) omission of the proviso to sub-section 4 in Section 7; (b) Adjudicating Authorities to admit an application within a duration of fourteen days including a period of not more than seven days to serve a notice for rectification of defects before rejecting the application; and (c) in case of financial institutions, streamline the admission process by increasing reliance of Adjudicating Authorities on financial records maintained by Information Utilities (IUs). The Committee understand that the purpose behind amending Section 7 of the Code through Clause 4 of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, is to expedite the insolvency process by eliminating the scope for discretion and resultant delays at the level of the Adjudicating Authority in cases where clear default has been established and where other procedural requirements have been fulfilled. The Committee are also aware that the lack of physical & IT infrastructure in the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) has posed major challenges towards timely resolution of pending cases. In this context, the Committee note suggestions from various stakeholders pertaining to the need for expanding judicial capacity or restructuring the adjudicatory process by increasing the number of benches and also enhancing financial allocation for improvement of infrastructure. Having been apprised that the Government is seized of the matter, the Committee desire that necessary measures to this effect may be taken up expeditiously.** ***4.6.2 Further, the Committee feel that in order for the Adjudicating Authorities to adhere to the established timelines in letter and spirit, the relevant provisions would need buttressing with supporting regulation. The Committee have been assured by the Ministry that detailed regulations would be drafted under the 'Adjudicating Authority Rules for the IBC process' after carefully calibrating the infrastructure, functional and administrative requirements of Adjudicating Authorities to foster adherence to timelines extended under this provision. Accordingly, taking into consideration the***

			views of the stakeholders and the assurance by the Ministry of Corporate Affairs, the Committee accept the proposed provisions under this clause, in entirety, without any modification.
5.	*5.6*	*5*	**5.6.1 The Committee note that clause 5 of the Amendment Bill seeks to amend clause (e) of sub-section (3) of Section 9 of the IBC Code to empower the Insolvency and Bankruptcy Board of India (IBBI) to specify, by regulation, any other type of information that the operational creditor must submit along with the application for initiation of the Corporate Insolvency Resolution Process (CIRP). The Committee also note that the amendment aims to prevent any misuse of the CIRP by employing delaying tactics such as filing an application based on multiple defective documents.** **5.6.2 Further, the Committee observe that Clause 5 also seeks to insert a proviso in sub-section (5) of Section 9 to provide that where the application filed under this provision is not decided within fourteen days, the Adjudicating Authority shall record reasons for such delay in writing. The Committee find that the proposed provision does not, in any manner, curtail judicial independence or alter the substantive standard for admission.** **5.6.3 Concurring with the legislative intent of the proposed provision, the Committee note that apart from underscoring the need for a clear regulation for information to be furnished by the operational creditor along with the application, it also ensures accountability on the part of the Adjudicating Authority. Therefore, the Committee accept the provisions proposed under this clause in their entirety without any modification.**
6.	*6.6*	*6*	***The Committee note that provisions proposed under Clause 6, by way of amending Section 10 of the Code, seek to – (a) abrogate the right of the corporate debtor to propose an interim resolution professional (IRP) in order to avoid any conflict of interest and ensure an independent and unbiased resolution process; (b) provide for the corporate debtor to furnish any specific information as sought by the Board; and (c) require the***

			Adjudicating Authority to record, in writing, the reasons for delay in case the application for resolution is not decided within fourteen days. The Committee also note the concerns raised by the stakeholders that provisions calling for the Adjudicating Authority to abide by the strict timelines mentioned with respect to accepting or rejecting of applications need to be supplemented with adequate regulations. The Committee have been assured that such concerns would be addressed through appropriate regulations. Considering the submissions made by the Ministry and the deliberations by the Committee on the proposed amendments, the Committee accept the same in entirety without any modification.
7.	*7.4*	*7*	**The Committee note that clause 7 of the Bill seeks to amend section 11 which is aimed at preventing the misuse of the insolvency process by restricting individuals from repeated filing for insolvency resolution. The Committee observe that the provisions under this clause are a consequential amendment pursuant to the insertion of the creditor-initiated insolvency resolution process under Chapter-IV A of Part II of the Code. The Committee, accordingly, accept the clause as proposed in its entirety without any modification.**
8.	*8.6*	*8*	**8.6.1 The Committee note that Clause 8 of the Bill seeks to substitute Section 12A of the Code to provide that the Adjudicating Authority may allow an application admitted under sections 7, 9, or 10 to be withdrawn on an application made by the resolution professional with the prior approval of ninety per cent of the voting share of the Committee of Creditors (CoC). The amendment further mandates that such withdrawal of application admitted under the said clauses shall not be allowed either before the constitution of the Committee of Creditors under Section 21 of the Code or after the first invitation for submission of a resolution plan by the Resolution Professional, under any circumstances. Further, the clause provides for a period of thirty days for the Adjudicating Authority to decide on the withdrawal application, failing which, the reasons for such delay are required to recorded in writing.**

			8.6.2 The Committee reckon that the absence of clear timelines for withdrawing the CIRP causes disruption to process when applications for withdrawal are filed at belated stages. Further, since CIRP is an in-rem proceeding, it is essential for the CoC overseeing the process to be consulted before withdrawal of application or approval of any form of settlement. The Committee observe that the proposed amendment has been brought in place to remove misinterpretation of Section 12A which suggested that Adjudicating Authority may permit withdrawal of application before constitution of the Committee of Creditors under inherent powers of the Adjudicating Authority provided under Rule 11 of National Company Law Tribunal (NCLT) Rules. Further the amendment to Section 12A has also been proposed rectifying the issue of lack of outer time limit for filing an application seeking withdrawal. Thus, taking into account the concerns raised by the stakeholders and submissions made by the Ministry, the Committee, after thorough deliberations, accept the proposed amendment without any modification.
9.	*9.6*	*9*	**The Committee observe that Clause 9 of the Bill seeks to amend sub-section (1) of Section 14 of the Code which provides that the applicability of the moratorium under sub-section (1) shall also be subject to sub-section (2A) of Section 14 and it also seeks to insert an explanation into clause (b) of sub-section (3) of Section 14 to clarify that the moratorium shall apply where the surety seeks to initiate or continue any action or proceedings pursuant to a contract of guarantee against the corporate debtor undergoing the Corporate Insolvency Resolution Process (CIRP). The Committee, while agreeing with the intended purpose of the provisions proposed under this Clause, accept the clause in entirety without any modification.**
10.	*10.6*	*10*	**The Committee understand that Clause 10 seeks to amend Section 16 of the Code as a consequence of the amendments to Section 10, wherein the right of the corporate debtor to propose an Interim Resolution Professional (IRP) is abrogated and in such cases, the**

			Adjudicating Authority shall make a reference to the Board for recommending an Insolvency Professional who may act as an Interim Resolution Professional (IRP) and accordingly appoint the Resolution Professional. Concurring with the goal of the proposed legislation, the Committee accept the provisions proposed under the clause without any modification.
11.	*11.6*	*11*	**11.6.1 The Committee, after thorough examination of Clause 11 of the Bill and considering the justification furnished by the Ministry of Corporate Affairs, note that the clause amends Section 18 of the principal Act to mandate the interim resolution professional to verify claims and, if required, determine their value, in such manner as may be specified. The Committee observe that this framework empowers the Insolvency and Bankruptcy Board of India to prescribe the detailed procedure for collation and verification of claims through regulations. The Committee further note that the proposed provisions are intended to synchronize the claim collection process between the Corporate Insolvency Resolution Process (CIRP) and the Liquidation process, thereby eliminating the need for fresh invitation and verification of claims during liquidation and avoiding procedural duplication. The Committee also take note of the Ministry's clarification that this amendment is necessary to expedite the liquidation timeline and that the liquidator will henceforth only be required to maintain an updated list of claims based on the verification already conducted by the resolution professional.** **11.6.2 At the same time, the Committee underscore that the effectiveness of this synchronized claim verification framework will depend significantly on the design of the regulations framed by the Board. The Committee are of the opinion that, while framing the regulations for operationalising this mechanism, the framework must be tailored to ensure that the power vested in the resolution professional to "determine" the value of claims is exercised with objective clarity to minimize the scope for subjectivity and resultant litigation. The Committee recommend that the regulation-making process should**

			ensure that the transition of verified claims from the resolution process to the liquidation phase is seamless and enhances efficiency without inadvertently creating friction between stakeholders. Thus, after considering the replies of the Ministry and noting that the proposed provisions establish a streamlined mechanism consistent with the objective of time-bound resolution, the Committee are of the view that the amendment under Clause 11 is appropriate. Accordingly, the Committee accept the amendment in its present form.
12.	*12.6*	*12*	**12.6.1 The Committee, having scrutinized Clause 12 of the Bill, note that it proposes to amend Section 19 of the Code to broaden the array of persons required to assist and cooperate with the interim resolution professional. The proposed amendment encompasses not only current personnel but extends to past personnel, promoters, and individuals engaged in a contract for service. The Committee took note of the apprehensions expressed by stakeholders regarding the potential for this expanded scope to be used coercively against former employees or external consultants. However, the Committee acknowledge the Ministry's stance that such an expansion is critical for the resolution professional to gather comprehensive information about the corporate debtor's affairs.** **12.6.2 At the same time, the Committee take on record the Ministry's clarification that while specific statutory amendments for pre-admission information submission were not considered necessary, any additional requirements regarding the manner and extent of cooperation can be specified by the Insolvency and Bankruptcy Board of India through regulations. The Committee are of the opinion that this regulatory flexibility will allow for a nuanced implementation that balances the need for information with appropriate procedural safeguards. In light of the above, and noting the enabling framework for the Board to prescribe necessary requirements, the Committee endorse the amendment proposed in Clause 12 and accept it without any modifications.**

13.	*13.6*	*13*	**13.6.1 The Committee, having examined Clause 13 of the Bill, note that it introduces a new sub-section (11) to Section 21 of the Code, extending the role of the Committee of Creditors (CoC) to supervise the conduct of the liquidation process. The Committee observe that this amendment is intended to leverage the institutional memory and commercial wisdom acquired by the CoC during the Corporate Insolvency Resolution Process (CIRP) to assist the liquidator in taking efficient commercial decisions for value maximization. The Committee note the Ministry's clarification regarding the composition of the CoC during liquidation. The Committee take on record that the CoC will be constituted based on admitted claims, consistent with the principles applicable during CIRP. The Committee further observe that the rights of secured creditors who choose to realize their security interest outside the liquidation process are adequately preserved within this framework, ensuring that their participation in the CoC is aligned with their remaining interest in the liquidation estate.** **13.6.2 Furthermore, the Committee observe that the Ministry has addressed stakeholder concerns regarding the exclusion of other creditors. The Committee note that the proposed framework empowers the Insolvency and Bankruptcy Board of India to specify other classes of creditors who may attend CoC meetings during liquidation. The Committee concur with the view that such participation will ensure necessary transparency and broader representation without compromising the decisiveness required for commercial decision-making. The Committee also take note of the clarifications regarding the applicability of this provision to ongoing liquidation processes. The Committee, are of the view that extending this supervisory framework to existing cases where dissolution has not yet been filed is a pragmatic step to prevent value erosion and ensure efficient closure of pending matters. In light of the above, the Committee endorse the amendment proposed in Clause 13. The Committee recommend that the regulations to be framed by the Board should clearly**

			delineate the scope of "supervision" to prevent conflict with the liquidator's statutory duties and ensure that the mechanism for stakeholder participation is implemented effectively.
14.	*14.6*	*14*	**The Committee have reviewed Clause 14, which amends Section 22 of the Code to provide for the "deemed appointment" of the interim resolution professional as the resolution professional upon a resolution by the Committee of Creditors. The Committee concur with the Ministry's rationale that this is a procedural simplification intended to reduce the burden on the Adjudicating Authority. By eliminating the need for a separate order when the same professional continues, the amendment expedites the resolution process. Accordingly, the Committee recommend that Clause 14 be accepted as proposed without any modifications.**
15.	*15.4*	*15*	***The Committee note that Clause 15 amends Section 25 to explicitly include the filing of applications regarding fraudulent or wrongful trading under Chapter VI as a duty of the resolution professional. The Committee observe that this is a clarifying amendment ensuring that the resolution professional's obligation to report suspect transactions is comprehensive. Therefore, the Committee accept Clause 15 as proposed without any modifications.***
16.	*16.6*	*16*	**16.6.1 The Committee, having examined Clause 16 of the Bill, note that it substitutes Section 26 of the Code to clarify that the filing of an application in respect of avoidance transactions, fraudulent trading, or wrongful trading shall not affect the proceedings of the corporate insolvency resolution process (CIRP) or the liquidation process. The Committee observe that the explanation to the clause further clarifies that the completion of the CIRP or the liquidation process shall not affect the continuation of such proceedings, thereby ensuring that the "clean slate" principle for the successful resolution applicant does not inadvertently extinguish the liability of perpetrators of fraud or beneficiaries of avoidable**

			transactions. The Committee took note of the concerns raised by stakeholders regarding the lack of a specified procedure for pursuing these proceedings once the corporate debtor is dissolved and the liquidator becomes functus officio. Stakeholders suggested that the Bill should explicitly empower the framing of a mechanism for the continuation of such proceedings and the distribution of proceeds post-dissolution. **16.6.2 The Committee observe that the Ministry have partially accepted the suggestion by clarifying that while the substantive provision in Clause 16 establishes the independence of these proceedings, the procedural mechanism is addressed elsewhere. For CIRP, the Committee note that the manner of pursuing such proceedings is determined by the Committee of Creditors (CoC) as part of the resolution plan. Crucially, for the liquidation process, the Committee take on record the Ministry's submission that the proposed amendments to Section 54 (Dissolution of corporate debtor) explicitly mandate the CoC to determine the manner of pursuing such proceedings and distributing the proceeds after dissolution. In light of the above, the Committee are of the view that the proposed legislative framework, read with the amendments to Section 54 and the regulation-making power of the Board, adequately addresses the procedural concerns regarding post-dissolution proceedings. Accordingly, the Committee endorse Clause 16 as proposed and recommend no modification.**
17.	*17.6*	*17*	**17.6.1 The Committee, having examined Clause 17 of the Bill, note that it introduces Section 28A to the Code to facilitate the transfer of assets of a personal or corporate guarantor as part of the Corporate Insolvency Resolution Process (CIRP) of the corporate debtor. The Committee observe that this provision addresses the practical challenge of asset fragmentation—where the corporate debtor owns the business but the guarantor owns the underlying land or critical assets—by enabling a consolidated resolution to maximize value. The Committee took note of the concerns raised by**

			stakeholders regarding the potential infringement of the guarantor's right of redemption, inter-creditor disputes, and the lack of procedural clarity on valuation and eligibility. Stakeholders suggested that the provision requires detailed safeguards and regulatory clarity to prevent litigation and ensure fairness to the guarantor's own creditors. **17.6.2 The Committee observe that the Ministry has effectively addressed these suggestions by clarifying that the provision is a voluntary, enabling mechanism that can only be exercised if the creditor has already taken possession of the asset under applicable law and obtains the approval of the Committee of Creditors (CoC). Furthermore, the Committee note the Ministry's assurance that the substantive rights of the guarantor are protected through the mandatory return of any surplus realized. Regarding procedural details, the Committee take on record that the Insolvency and Bankruptcy Board of India (IBBI) will specify the necessary regulations governing conditions, eligibility of purchasers, and valuation methodology to ensure transparency. In light of the above, the Committee are of the view that the proposed legislative framework, accompanied by the enabling power for regulations, adequately balances the objective of value maximization with the protection of rights. Accordingly, the Committee endorse Clause 17 as proposed and recommend no modification.**
18.	*18.6*	*18*	**18.6.1 The Committee note that Clause 18 of the Bill seeks to amend Section 30 of the Code to provide clarity on the minimum entitlement for dissenting financial creditors and to statutorily mandate the constitution of a committee for the implementation and supervision of the resolution plan. The Committee further note that the proposed amendment to Section 30(2)(b) introduces the "lower of" test for dissenting financial creditors, entitling them to the lower of the liquidation value or the value under the resolution plan. The Committee concur with the Ministry's rationale that this measure is necessary to disincentivize strategic dissent by creditors seeking to force liquidation solely to extract higher value, thereby aligning with the Code's primary objective of resolution.**

			Regarding the constitution of the monitoring committee under Section 30(2)(d), the Committee however feel that leaving the composition and framework of such a critical body entirely to regulations may create ambiguity regarding accountability during the implementation phase. The Committee concur with the stakeholder suggestions that the essential composition of this committee should be codified within the statute itself to ensure transparency. The Committee note that the Ministry has accepted this suggestion and provided a revised formulation. **18.6.2 Accordingly, after considering the suggestion received and the submissions of the Ministry as well as detailed deliberation in the matter, the Committee recommend that the clause be amended. The amended Clause 18(c), substituting clause (d) of sub-section (2) of Section 30, may read as:** **"(c) for clause (d), the following clause shall be substituted, namely:—** **"(d) provides for the implementation and monitoring of the resolution plan, including the constitution of a committee for this purpose, consisting of such persons including the resolution professional or any other insolvency professional, and the representatives of a class or classes of creditors and the resolution applicant, and subject to such conditions and in such manner as may be specified."** **Apart from the above suggested amendment, the clause is accepted.**
19	*19.6*	*19*	**19.6.1 The Committee, having examined Clause 19 of the Bill, note that it inserts a proviso to Section 31(1) of the Code to empower the Adjudicating Authority to bifurcate the approval of the resolution plan into two stages: first, approving the implementation, and subsequently, approving the manner of distribution within thirty days. While taking note of stakeholder apprehensions regarding the potential uncertainty for creditors and impact on the Committee of Creditors' commercial wisdom, the Committee find merit in the Ministry's justification that this structural reform is essential to**

			prevent inter-creditor disputes over distribution from stalling the handover of the corporate debtor. The Committee concur that permitting the immediate "implementation" of the plan preserves asset value and prevents deterioration during litigation, while distribution disputes can be adjudicated separately. **19.6.2 Furthermore, the Committee endorse the insertion of sub-sections (5) and (6) in Section 31, which codify the "Clean Slate" principle. The Committee observe that this amendment provides necessary statutory protection to the Successful Resolution Applicant against past claims. The Committee are of the firm view that this provision is declaratory and clarificatory in nature, merely restating the original legislative intent that the extinguishment of past liability is absolute.** **19.6.3 However, to ensure that this protection is not misused, the Committee recommend clarifying the interplay with Section 69. The Committee emphasize that while the "Clean Slate" protects the corporate debtor and its assets, it does not absolve any person, including erstwhile promoters or officers, from criminal liability for offences under Section 69 (Punishment for transactions defrauding creditors) or other penal provisions of the Code. The liability of such individuals must continue independently of the resolution plan approval.** **19.6.4 Additionally, to prevent unnecessary litigation regarding applicability, the Committee recommend that the declaratory nature of the Clean Slate provisions must be amply clarified. The cases, however, already settled under the IBC need not be reopened. Accordingly, the Committee recommend that Clause 19 be appropriately amended to insert an explanation as follows:** **"Explanation III - For the removal of doubts, subsections (5) and (6) are clarificatory in nature and codify the original legislative intent of the Act.** **Save as otherwise expressly provided or decided through judicial pronouncements, the provisions of this**

			section shall apply from the date of the commencement of the Principal Act." **The Ministry may reword above explanation suitably, if required, to avoid unintended consequences.** **19.6.5 In view of the above, the Committee endorse Clause 19 and recommend its acceptance.**
20	*20.6*	*20*	**20.6.1 The Committee, having examined Clause 20 of the Bill, note that it amends Section 33 of the Code to introduce a mechanism for the restoration of the Corporate Insolvency Resolution Process (CIRP) even after grounds for liquidation have arisen, and to extend the moratorium protections to the liquidation process. The Committee took note of the concerns raised by stakeholders regarding the proposed power to restore CIRP (Section 33(1A)). Stakeholders apprehended that this could lead to an "endless loop" of proceedings, delaying finality and eroding asset value. The Committee observe that the Ministry have clarified that the proposed Section 33(1B) explicitly restricts such restoration to a single instance. The Committee find merit in the Ministry's submission that this provision serves as a final opportunity to rescue the corporate debtor in genuine cases, subject to the commercial wisdom of the Committee of Creditors (66% voting share) and the discretion of the Adjudicating Authority, with a strict timeline of 120 days.** **20.6.2 Regarding the extension of the moratorium to the liquidation process (Section 33(1)(b)(iv)), the Committee note the apprehensions expressed by secured creditors that this might conflict with their right to realize security interest under Section 52. The Committee observe that the Ministry has clarified that the provision is explicitly drafted as "subject to the provisions of section 52," thereby ensuring that the statutory right of secured creditors to stand outside liquidation remains unfettered. The Committee further observe that the successful implementation of the restoration mechanism depends on the procedural framework to be "specified" by the Insolvency and Bankruptcy Board of India (IBBI). The Committee recommend that the Board frames robust**

			regulations laying down the specific "manner and conditions" for filing such applications, to ensure that this provision is utilised only in cases with genuine prospects of revival and does not become a tool for delaying inevitable liquidation. In light of the above, the Committee are of the view that the proposed amendments strike an appropriate balance between the objective of value maximization (revival) and the rights of secured creditors. Accordingly, the Committee endorse Clause 20 as proposed and recommend its acceptance without modifications.
21	*21.6*	*21*	**21.6.1 The Committee after in-depth examination of the amendment bill, exhaustive deliberations with the stakeholders, industry experts, organizations and in view of the replies furnished by the Ministry of Corporate Affairs note that Clause 21 seeks to fundamentally change the process of appointing a liquidator under Section 34 of the Code, moving away from the existing automatic appointment of the Resolution Professional (RP) to one based on the proposal and approval of the Committee of Creditors (CoC). The Committee observe that this amendment primarily addresses the concerns regarding a potential "perverse incentive" for the RP to favour liquidation over resolution to secure additional fees, as the liquidator's remuneration is often a percentage of the liquidation estate, unlike the RP's fixed monthly salary. The Committee find merit in the argument for a clear separation of roles to eliminate the perception and possibility of a conflict of interest.** **21.6.2 The Committee therefore recommend to revise the relevant provisions of Section 34 of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 to reflect that RP who has conducted the CIRP or PPIR for corporate debtor shall be ineligible to be appointed as the Liquidator. Apart from the proposed amendment the committee accept Clause as it is. Accordingly the revised Clause shall now be read as under:-** **34 (1) "Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the Adjudicating Authority shall make a reference to the Board for recommendation of an insolvency professional to**

			be appointed as the liquidator, and on receipt of the proposal of the Board, appoint such insolvency professional as the liquidator." **(4) Notwithstanding anything contained in this section and section 34A, an insolvency professional appointed as a resolution professional for the corporate insolvency resolution process of the corporate debtor under Chapter II, shall not be appointed or replaced as the liquidator for the liquidation process of such corporate debtor.** **(5) After the liquidation order is passed, the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process to the liquidator.** **(6) The Board shall propose the name of an insolvency professional, other than the resolution professional appointed for the corporate insolvency resolution process of the corporate debtor under Chapter II, along with written consent from the insolvency professional in the specified form, within ten days of the direction issued by the Adjudicating Authority under sub-section (1).**
22	*22.6*	*22*	**The Committee after thorough examination of the instant amendment bill and in the light of the replies furnished by the Ministry of corporate Affairs note that Clause 22 introduces a new Section 34A into the Principal Act, empowering the Committee of Creditors (CoC) to replace the liquidator at any time during the liquidation process by a vote of not less than 66% of the voting share. This proposed amendment addresses the current imbalance of power by empowering the creditors, who are the primary economic stakeholders, to choose and replace their liquidator. The Committee therefore, support the core objective of the proposed Section 34A, as it aligns the power of the CoC during liquidation with its powers during the resolution phase. The Committee feel that this change is crucial for maintaining independence and efficiency in the liquidation process.**

			Accordingly, the Committee accept the proposed amendment without any modification.
23	*23.6*	*23*	**23.6.1 The Committee observe that Clause 23 proposes amendments to Section 35 aimed at harmonizing the liquidation process with the Corporate Insolvency Resolution Process (CIRP). This involves streamlining the claims process and formally extending the role of the Committee of Creditors (CoC) to supervise the liquidation. This streamlined approach is intended to avoid repetition of activities conducted during CIRP and expedite the liquidation process.** **23.6.2 The Committee considered the stakeholders concern with regard to defining the powers and duties of CoC during the liquidation process as also the need to verify/reverify the claims during the liquidation process. The Committee accept the Ministry's assurance that necessary safeguards will be incorporated through regulations. The Committee therefore accept the proposed amendment without any modification.**
24	*24.6*	*24*	**The Committee note that Clause 24 of the proposed amendment bill proposes a consequential amendment to Section 36(3)(f) to clarify that assets or their value recovered from a broader range of legal actions will form part of the Liquidation Estate. The Committee have been informed that the instant amendment is a technical clarification following the insertion of new definitions for "avoidance transaction" and "fraudulent or wrongful trading", and explicitly includes recoveries made under Section 47 of the Code. The said amendment ensures that the liquidation estate is clearly defined to include recoveries from avoidance transactions, fraudulent or wrongful trading and proceedings initiated under Section 47. The Committee agree that this is a necessary, harmonizing and consequential amendment which seeks to comprehensively cover all newly defined categories of avoidable transactions and recovery mechanisms, thereby maximizing the value of the liquidation estate.**

			The Committee therefore, accept the proposed amendment without any modification.
25	*25.6*	*25*	**25.6.1 The Committee note that Clause 25 proposes the omission of Sections 38 to 42 of the Principal Act, which comprehensively govern the collection, verification, adjudication, valuation and appeal of claims during the liquidation process. The Ministry's justification is to prevent duplication of processes that occur during the Corporate Insolvency Resolution Process (CIRP) and thus, expedite the liquidation phase, which currently faces significant delays. The new approach relies on the claims collated, verified, and adjudicated during the preceding CIRP. The Ministry asserts that as the claims are already invited, verified and adjudicated during the CIRP, making a repeat exercise during liquidation is unnecessary and a major source of avoidable delay. The proposed structure treats liquidation as a continuation of CIRP, with the liquidator only required to "maintain an updated list of claims" under the amended Section 35.** **25.6.2 The Committee concur with the justification forwarded by the Ministry that omission od Sections 38-42 is pivotal for reducing the procedural timelines in liquidation, which suffers from chronic delays and resultant value destruction. The Committee therefore, accept the proposed amendment without any modification.**
26	*26.6*	*26*	**26.6.1 The Committee note that Clause 26 proposes a critical amendment to Section 43(4) by resetting the threshold for the look-back period for preferential transactions. The Committee also note that presently, the period is measured backwards from the Insolvency Commencement Date (CD) viz. the date of admission. The Committee further note that the proposed amendment shifts the start of the look-back period backward to the Initiation Date viz. date of filing the application for CIRP and includes the period between the Initiation Date and the Insolvency Commencement Date. The Committee agree with the Ministry's contention that linking the look-back period to the Initiation Date (date of**

			filing) prevents the CD from misusing the time lag between filing and admission to protect preferential transactions. The Committee are of the view that change is crucial to effectively capture pre-filing transactions made in anticipation of insolvency. **26.6.2 The Committee, therefore, recommend that the proposed amendment under Clause 26 be retained without any change.**
27	*27.6*	*27*	**27.6.1 The Committee note that clause 27 proposes to amend Section 46, which deals with undervalued transactions, to align it with the changes made to Section 43 (Preferential Transactions). The key proposed amendments are change in Nomenclature: Substituting the marginal heading word "avoidable" with the clearer term "undervalued" and resetting the Look-back Period: Shifting the start of the look-back period from the Insolvency Commencement Date (ICD) (date of admission) backwards to the Initiation Date (date of filing the application for CIRP), and including the intervening period.** **27.6.1 The Committee view these amendments as necessary to capture a broader range of pre-filing transactions, particularly those undertaken in anticipation of insolvency to exclude assets from the process. The Committee agree that resetting the threshold to the Initiation Date is essential for maintaining the integrity of the insolvency estate and ensuring that undervalued transactions made in the anticipation of CIRP commencement are captured. The Committee, therefore, accept the amendments proposed in clause 27 without any change.**
28	*28.6*	*28*	**28.6.1 The Committee note that Clause 28 proposes to substitute all the Sub clauses of Section 47, the core intent being to broaden the scope of reportable transactions and strengthen accountability by empowering creditors, members, or partners of the corporate debtor to bring any failure to report such transactions to the attention of the Adjudicating Authority (AA). The Committee also note that the new**

			Section 47 allows the aforementioned parties to file an application if the Resolution Professional (RP) or Liquidator has not reported the occurrence of Preferential transaction, Undervalued transaction, Extortionate credit transaction and Fraudulent or wrongful trading. The Committee observe that the Ministry have justified this amendment as promoting transparency, maximizing value, and strengthening vigilance by permitting creditors/members/partners to act when the IP fails to report a transaction due to "inaction or conflict of interest". The AA is empowered to act upon this intimation as if the application was filed by the IP. **28.6.2 The Committee agree that the substitution of Section 47(1) and (2) is a crucial step for improving accountability and deterring laxity on the part of the IP, as the final order for avoidance can now be achieved through creditor initiation when the IP has been negligent or compromised.** **28.6.3 The Committee feel that the discretionary power of the AA provides sufficient safeguard to the IP, balancing professional discretion with necessary accountability. The Committee therefore, accept the amendment proposed in Clause 28 without any modification.**
29	*29.6*	*29*	**29.6.1 The Committee note that clause 29 proposes to amend Section 49, Proviso (a), which deals with transactions intended to defraud creditors. The Committee observe that currently, Proviso (a) protects a Good Faith Buyer if they acquired the property from "a person other than the corporate debtor". The amendment extends the exclusion, stating that protection will also not apply if the property was acquired from a "related party of the corporate debtor".** **29.6.2 The Committee further note that the Ministry have justified the proposed amendment prevents a two-step transaction whereby ensuring that transactions involving related parties do not gain the exemption intended for genuine, arm's-length transfers.** **29.6.3 The Committee endorse the amendment and feel that effectively closes a statutory loophole that could be**

			exploited to cleanse property titles of assets fraudulently transferred by the CD, undermining the interests of creditors. The Committee therefore, accept the amendment proposed in Clause 29 without any modification.
30	*30.6*	*30*	**30.6.1 The Committee note that clause 30 proposes to amend Section 50(1) by resetting the threshold for the look-back period for identifying extortionate credit transactions. The Committee observe that the current period runs two years preceding the Insolvency Commencement Date i.e. the date of admission. The proposed amendment shifts the period to begin two years preceding the Initiation Date i.e. the date of filing the application for CIRP and includes the time period between these two dates.** **30.6.2 The Committee further observe that extortionate credit transactions often involve a Corporate Debtor (CD) taking on debt with exorbitant terms just before financial collapse. Linking the look-back period to the Initiation Date prevents the CD from successfully protecting these predatory loans merely by delaying the admission of the CIRP application.** **30.6.3 The Committee agree that resetting the threshold to the Initiation Date is a needed and logical step to prevent the misuse of the insolvency process timeline, aligning the legal scrutiny of extortionate credit with other avoidance mechanisms (Preferential and Undervalued Transactions). The Committee therefore, accept the amendment proposed in Clause 30 without any modification.**
31	*31.7*	*31*	**The Committee note that clause 31 of the Amendment Bill seeks to amend Section 52 of the Principal Act by introducing mandatory time line of 14 days requiring a secured creditor to communicate, if it intends to realize its security interest outside liquidation. Also, where security is shared among multiple secured creditors consent of at least 66 percent in value of such secured creditors for enforcement of realization of common security outside liquidation is mandated. The Committee observe that the amendments also impose proportionate contribution obligations towards**

			insolvency resolution process cost, liquidation cost and specified workmen's dues. The Committee are of the view that the amendments will bring in efficiency and will ensure the protection of interests of the workmen. The Committee, therefore, accept the clause 31 as proposed by the Ministry without any modification.
32	*32.6*	*32*	**32.6.1 The Committee note that the proposed amendment seeks to clarify the order of priority of Government dues and inter-creditor arrangements within the liquidation distribution waterfall mechanism. The Committee further note that the proposed amendment clarifies the original intent of legislation to give government dues a lower priority. The amendment also proposes to add an explanation to section 53(1)(e)(i) which clarifies that Central Government or State Government dues will not be entitled to the priority of a "secured creditor". The Committee however feel that where security interests have been created in favour of the Government through an act of parties, situation may arise leading to an interpretational conflict. Accordingly, after considering the suggestion received and the submissions of Ministry as well as detailed deliberation in the matter, the Committee recommend that the clause be amended. The amened explanation to section 53(1) (e) may read as:** **"in clause (*e*), in sub-clause (*i*), the following *Explanation* shall be inserted, namely:—** **"*Explanation*.—For the removal of doubts, it is hereby clarified that any amount, whether or not a security interest is created to secure such amount *by an act of two or more parties or merely by operation of law*, due to the Central Government and the State Government, in respect of the whole or any part of the period of two years preceding the liquidation commencement date, shall be distributed under this sub-clause, and any remaining amount, whether or not *such* security interest is created to secure *the* amount, due to the Central Government and the State Government, shall be distributed under clause (*f*);"; "** **32.6.2 The Committee also take on record the assurance given by the Ministry that the revenue loss to the**

			Government on account of tax which has been collected or deducted at source (TDS/TCS) by the corporate debtor but has not been deposited with the Central Government will be taken care of while formulating the regulations. Apart from the above suggested amendment, the clause is accepted.
33	*33.6*	*33*	**The Committee note that the clause 33 seeks to introduce a 180-day timeline for completing the liquidation process, extendable by 90 days, and extends the moratorium and CoC oversight from CIRP to liquidation. By eliminating the need to re-invite claims, it removes duplication and procedural delays, ensuring efficient and timely asset realization and distribution. These measures reinforce a time-bound framework, reduce operational burdens on the liquidator, and safeguard stakeholders' interests, thereby improving the overall effectiveness and predictability of the liquidation process. The Committee, after considering Clause 33 of the Bill, find the proposal appropriate, they therefore accept the proposed amendments.**
34	*34.6*	*34*	**The Committee note that Clause 34 seeks to amend sub-section 2 of the Section 54A is a consequential change pursuant to the insertion of chapter IV-A titled "Creditor-Initiated Insolvency Resolution Process". The Committee note that the current voting threshold for initiation of PPIRP for unrelated Financial Creditors is sixty-six percent. The Committee are of the view that same can be reduced to expedite the PPIRP process. The Committee therefore, recommend to amend Section 54A and substitute the words "sixty-six" with "fifty - one" appearing in the section 54A (2) (e) and 54A(3) of the Principal Act. The amended clause 34 to be read as under:** ***"34. In section 54A of the principal Act, (a) in sub-section (2),—*** ***(iii) in clause (a), for the words "pre-packaged insolvency resolution process or", the words "pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process, or" shall be substituted;*** ***(iv) (ii) in clause (b), after the words "resolution process", the words "or a creditor-initiated***

			insolvency resolution process" shall be inserted. ***(iii) in clause (e), for the words "sixty-six per cent", the words "fifty-one per cent" shall be substituted*** ***(b) in sub-section (3) for the words "sixty-six per cent", the words "fifty-one per cent" shall be substituted"*** **Apart from the above-mentioned amendment the Committee accept the Clause 34 as proposed.**
35	*35.6*	*35*	**The Committee note that the Ministry through this amendment seeks to substitute the existing details about the information to be furnished along with the application for initiation of Pre-Packaged Insolvency Resolution Process (PPIRP) in the section 54C(3) of the Principal Act. The Committee feel that the substitution gives necessary freedom to IBBI to seek any information that they deem fit based on the experience of implementation of PPIRP. The Committee are of the view that the intent of the amendment is to provide greater flexibility to the IBBI to modify and simplify the PPIRP. The Committee are in agreement with amendment and accept the same without modification.**
36	*36.4*	*36*	**The Committee note the proposed amendment to this section is necessitated due to the amendment proposed by the Ministry in Section 19 dealing with pre-packaged insolvency resolution process of the code so that similarity could be maintained. The Committee accept the amendment proposed without any modification.**
37	*37.4*	*37*	**The Committee note the proposed amendment to this section is consequential to changes made to the Sections 31and 33 dealing with pre-packaged insolvency resolution process of the code. The Committee accept the amendment without any modification.**
38	*38.4*	*38*	***The Committee note the proposed amendment to this section is consequential to changes made to the Sections 33 dealing with the initiation of the liquidation process to the pre-packaged insolvency resolution process of the code. The Committee therefore accept the amendment without any modification.***
39	*39.4*	*39*	**The Committee after considering clause 39 of the Bill find that as a result of inclusion of mandatory time**

			lines through various clauses in the various sections of the Principal Act the fast-track implementation has been ensured. The Committee therefore, accept the omission as proposed in the Bill.
40	*40.6*	*40*	**40.6.1 The Committee note that the Clause 40 introduces a new framework comprising Sections 58A to 58K to provide for the initiation and conduct of the Creditor-Initiated Insolvency Resolution Process (CIIRP). The Committee observe that this inclusion mechanism allows notified classes of financial creditors to initiate an insolvency resolution process against specified categories of corporate debtors, thereby filling a procedural gap in the Code by reducing delays and judicial burden and allowing time otherwise spent on admission to be devoted to resolution efforts and preservation of the corporate debtor's value.** **40.6.2 The Committee also note the Ministry's submission that this creditor-led model reflects international practice and is being introduced on an experimental basis with the objective of simplifying and expediting admission while retaining the rigor of the CIRP thereafter.** **40.6.3 The Committee acknowledge the Ministry's submission that the CIIRP provisions relating to eligibility, safeguards prior to initiation, procedural timelines, approval thresholds, and the role of the resolution professional have been designed to ensure discipline and transparency in the process. The Committee are of the view that the incorporation of defined stages such as the 30 day period for representation by the corporate debtor, the mandatory compliance report, and the approval requirements for commencement will facilitate appropriate scrutiny and minimise procedural abuse. The Committee also observe that the provisions for conversion of CIIRP into CIRP, the application of moratorium upon approval, and the continuation of avoidance and fraudulent-trading proceedings ensure consistency with the existing insolvency architecture under the Code.** **40.6.4 The Committee, therefore, recommend that, while framing notifications, rules, and regulations for**

			operationalising CIIRP, the qualifying conditions for corporate debtors should be framed in a manner that ensures the process remains effective and accessible. The Committee strongly believe that the ability to commence CIIRP should not be excessively limited and that the Adjudicating Authority should avoid any temporary suspension of CIIRP initiation during the initial phase. The Committee believe that the ability to commence CIIRP should not be excessively limited and that the Adjudicating Authority should avoid any temporary suspension of CIIRP initiation during the initial phase. Further, the ability to seek a moratorium would be essential to provide stakeholders with a period of stability to explore resolution options, and the shorter statutory timelines envisaged under CIIRP should be maintained to foster discipline and swifter decision-making. **40.6.5 The Committee, thus, after considering the replies of the Ministry and noting that the new sections strengthen creditor-driven resolution while introducing clarity and procedural safeguards, accept the amendment made under Clause 40.**
41	*41.6*	*41*	**41.6.1 The Committee note that the provisions proposed under Clause 41 of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, which seeks to amend Section 59, primarily relate to prescribing a fixed upper time limit of one year for completion of voluntary liquidation, introducing a clear mechanism for termination of voluntary liquidation proceedings, and aligning the requirement of valuation with Section 247 of the Companies Act, 2013. The Committee observe that the proposed subsections (5A)–(5C) establish a statutory framework for termination of voluntary liquidation prior to dissolution, aligning with the Ministry's rationale to provide flexibility where new business opportunities emerge or the corporate person's viability improves.** **41.6.2 The Committee also observe the concerns raised by stakeholders regarding the potential misuse of the termination process by promoters, the need for a liquidator's report on the feasibility of revival before permitting termination and ensuring liquidation costs already incurred are properly addressed. The Committee are, however, of the opinion that termination procedure**

			of the voluntary liquidation process being similar to its initiation, being out of court and subject to approval by key stakeholders provide for adequate safeguards and aligns with the objective of providing flexibility in genuine cases where continuation of voluntary liquidation is unnecessary. Accordingly, the Committee recommend that the provisions under Clause 41 be accepted without modification. Nonetheless, the Committee emphasize that the regulations to be framed should clearly specify the conditions for termination, including the proper treatment of liquidation costs and any other necessary safeguards.
42	*42.5*	*42*	**42.5.1 The Committee, after thorough examination of Clause 42 of the Bill and considering the justification furnished by the Ministry of Corporate Affairs, note that the Clause introduces a new Chapter V-A comprising Sections 59A to operationalise a framework for Group Insolvency. This framework empowers the Central Government to prescribe the manner and conditions for conducting coordinated insolvency and liquidation proceedings when such proceedings involve two or more corporate debtors forming part of a group. The Committee observe that the proposed provisions envisage measures such as the constitution of a common Bench, mechanisms for coordination between committees of creditors and professionals, appointment of a group coordinator, formation of a combined committee of creditors, and the execution of binding coordination agreements, thereby providing a structured mechanism for achieving procedural alignment across related entities. The Committee also take note of the Ministry's clarification that this enabling framework draws from international best practices, including UNCITRAL models, but is intended to function as a voluntary coordination mechanism rather than an automatic consolidation of assets or proceedings.** **42.5.2 Nevertheless, the Committee underscore that the effective functioning of the Group Insolvency framework relies critically on the rules to be framed under this Chapter. The Committee are of the opinion that the framework's operational rules, regulations and notifications must be precisely tailored to India's unique institutional environment which includes factors like**

			promoter-driven litigation, related-party influence, and the inherent complexity of cross-entity claims. The Committee, therefore, recommend that the rule-making process should ensure that procedural coordination enhances efficiency without inadvertently introducing greater complexity or fostering scope for legal disputes. In view of the above, the Committee accept the proposed amendment under Clause 42 in its present form. **42.5.3 The Committee further observe that the Insolvency and Bankruptcy Code presently does not prescribe any statutory timelines for the disposal of appeals by the National Company Law Appellate Tribunal (NCLAT). This gap has resulted in delays, particularly in appeals challenging the rejection of claims during the CIRP or liquidation processes, as well as appeals concerning the approval or rejection of resolution plans. The Committee further note that the Amendment Bill also fails to introduce any specific statutory timelines for the NCLAT.** **42.5.4 The Committee feel given that the effectiveness of the Code rests on a strict time-bound framework, the Committee therefore emphasize that undue appellate delays risk undermining the efficiency and certainty of the insolvency resolution process. To preserve the integrity of this framework, the Committee recommend the introduction of a clear statutory timeline for the NCLAT. Accordingly, the Committee propose that Section 61 be amended by inserting a new Clause 42A, to read as follows:** **"The National Company Law Appellate Tribunal shall dispose of an appeal within three months from the date of its receipt."**
43	*43.6*	*43*	**The Committee note that Clause 43 of the Bill seeks to insert a new Section 64A into the Insolvency and Bankruptcy Code, 2016 to impose penalties on persons initiating frivolous or vexatious proceedings before the Adjudicating Authority under Part II of the Code. Observing the Ministry's justification that such filings often lack reasonable prospects of success or are intended to delay insolvency resolution and liquidation processes, thereby consuming substantial judicial time and straining resources, the Committee recognize the need for a deterrent against such misuse. The Committee are of the view that the proposed amendment**

			appropriately strengthens the framework by empowering the Adjudicating Authority to penalize misuse while preserving adjudicatory discretion, and, therefore, accept Clause 43 as proposed.
44	*44.6*	*44*	**The Committee note that Clause 44 of the Bill proposes to amend Section 65(3) of the Insolvency and Bankruptcy Code, 2016, to extend the applicability of the penalty provisions to cases involving initiation of the Creditor-Initiated Insolvency Resolution Process (CIIRP). The Committee observe that this amendment is necessitated by the insertion of the new CIIRP framework under Chapter IV-A and is intended to ensure that any person initiating the process fraudulently, with malicious intent, or with the intent to defraud is subject to appropriate penal consequences, similar to the existing treatment under the pre-packaged insolvency resolution process. The Committee also acknowledge the Ministry's view that the CIIRP framework is designed to reduce delays, preserve value, and retain debtor-in-possession management while still allowing NCLT oversight at critical stages. In view of the above, and considering that the proposed amendment merely aligns Section 65 with the newly introduced CIIRP mechanism while maintaining adequate safeguards against misuse, the Committee accept the amendment proposed under Clause 44 in its present form.**
45	*45.4*	*45*	**The Committee note that Clause 45 of the Bill seeks to amend Section 66 of the Insolvency and Bankruptcy Code, 2016 by explicitly enabling the liquidator, in addition to the resolution professional, to file applications related to fraudulent or wrongful trading. The Committee observe that this inclusion serves to clarify and align the existing legal framework, ensuring that the essential safeguard against fraudulent conduct remains effective, as evidence of such misconduct may become apparent not only during the Corporate Insolvency Resolution Process (CIRP) but also during the subsequent liquidation phase. In view of the above, and noting that the amendment merely clarifies and strengthens an essential safeguard against fraudulent conduct, the Committee find the proposed amendment under Clause 45 to be appropriate and accept it in its present form.**

46	*46.6*	*46*	**46.6.1 The Committee note that Clause 46 of the Bill seeks to extend the applicability of Section 67A to the creditor-initiated insolvency resolution process (CIIRP), thereby ensuring that officers of the corporate debtor remain accountable for fraudulent management during both PPIRP and CIIRP. The Committee observe that since management continues with the existing board of directors during CIIRP as well, extending this provision maintains parity and strengthens safeguards against fraudulent conduct. In view of the explanations furnished by the Ministry and noting that the amendment reinforces an essential deterrent against misuse of management powers, the Committee find the proposed amendment under Clause 46 with respect to Section 67A is appropriate and accept it as proposed.** **46.6.2 The Committee observe that the offence and penalty provisions under Sections 70(2), 74, 76 and 185 of the Insolvency and Bankruptcy Code (IBC), 2016 were incorporated to safeguard the integrity of the insolvency framework by deterring concealment, misconduct and fraudulent actions by debtors, creditors, insolvency professionals and other stakeholders. However, the Committee note from the Ministry's submission that no prosecutions or convictions have taken place under Sections 70(2), 76 or 185, and although twelve complaints have been filed under Section 74, none has reached conclusion due to procedural hurdles, capacity constraints of Special Courts, difficulties in serving summons particularly on individuals residing abroad and interlocutory litigation. Consequently, the Committee find that the existing criminal provisions have not delivered the timely or effective deterrence originally envisaged. The Committee further note that, in actual implementation, many alleged contraventions under Sections 74 and 76 arise not from fraudulent or wilful misconduct but from procedural shortcomings, interpretational ambiguities or bona fide practical constraints. These include incomplete or evolving financial information at the plan formulation stage, delays in obtaining statutory and regulatory approvals, and funding challenges that may impede or delay the implementation of resolution plans. The Committee observe that non-implementation or delayed**

			implementation of resolution plans may therefore not always be attributable to *malafide* intent. **46.6.3 The Committee are of the view that continuing to retain criminal penalties for such technical or good-faith lapses creates unnecessary fear among stakeholders, contributes to increased litigation, and ultimately hampers the efficiency and predictability of the resolution process. This is also inconsistent with international best practices, wherein comparable jurisdictions such as the UK, Singapore and Australia reserve criminal sanctions for only the most serious acts of fraud or wilful misconduct, relying on civil-penalty regimes for compliance-related contraventions.** **46.6.4 Accordingly, the Committee recommend that Sections 74 and 76 be decriminalised and substituted with new civil-penalty provisions namely Clause 67B (Punishment for contravention of moratorium and resolution plan) and Clause 67C (Punishment for non-disclosure of dispute or payment of debt by operational creditor) as proposed in the Bill. The Committee believe these revised provisions would ensure continued accountability while avoiding over-criminalisation of procedural or good-faith errors. The Clauses may be read as under:** **67-B Contravention of moratorium or the resolution plan.** **(1) If the corporate debtor or any officer thereof contravenes the provisions of section 14, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose a penalty upon the officer, who committed or authorised or permitted such contravention, which shall not be less than one lakh rupees, but may extend to two crore rupees.** **(2) If any creditor contravenes the provisions of section 14, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose a penalty upon any person who authorised or permitted such contravention by a**

			creditor, which shall not be less than one lakh rupees, but may extend to two crore rupees. **(3) If the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, contravenes any of the terms of such resolution plan or abets such contravention, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose a penalty upon such corporate debtor, officer, creditor or person, which shall not be less than one lakh rupees, but may extend to either one crore rupees or twenty per cent. of the amount to be distributed under the resolution plan, whichever is higher.** **67-C. Non-disclosure of dispute or payment of debt by operational creditor.** **If—** **(a) an operational creditor concealed in an application under section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final payment of the unpaid operational debt; or** **(b) any person who authorised or permitted such concealment under clause (a),** **the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose a penalty upon such operational creditor or person, which shall not be less than one lakh rupees but may extend to two crore rupees.** ***Explanation.* —For the purposes of this Code, it is hereby declared that the omission of sections 74 and 76 by the Insolvency and Bankruptcy Code (Amendment) Act, 2025 shall not affect:—** **(i) any prosecution instituted under these provisions on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025 and pending**

			immediately before such date of commencement before any court, which shall continue to be heard and disposed of by the said court as if the Insolvency and Bankruptcy Code (Amendment) Act, 2025 had not been enacted; and **(ii) any punishment imposed under this section on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.**
47	*47.6*	*47*	**The Committee note that Clause 47 seeks to amend Section 96 to exclude personal guarantors to corporate debtors from the scope of the interim moratorium. The Committee observe that this amendment is aimed at addressing a persistent concern flagged by the Adjudicating Authority and insolvency practitioners namely, the misuse of interim moratorium by personal guarantors who file applications solely to obstruct or delay legitimate recovery proceedings, a major loophole confirmed by NCLT members to be responsible for significant value erosion. The Committee, having considered detail submissions of the Ministry and IBBI, underscore that removing this unnecessary pre-admission shield is essential. The Committee observe that the law, consistent with SARFAESI Act and Supreme Cour judgements, treats the borrower and the guarantor on the same footing upon default, and the proposed amendment does not deprive personal guarantors of the right to seek insolvency resolution or bankruptcy under Part III of the Code. In view of the above, and recognising the need to curb strategic filings and strengthen the integrity of the insolvency process, the Committee find the proposed amendment under Clause 47 to be appropriate and recommend its acceptance in its present form.**
48	*48.4*	*48*	**The Committee note that Clause 48 amends the Section 99 of the Principal Act extending the time available to the Resolution Professional (RP) for examining applications under sections 94 and 95 from ten days to twenty-one days, and mandates that the examination report be shared with both the debtor and the creditor. The Committee observe that the existing ten-day period is often insufficient for RP to verify information, seeking clarifications, and prepare a**

			reasoned report, particularly in complex cases involving multiple creditors. The enhanced timeline is, therefore, expected to improve the quality and accuracy of the RP's examination report. The Committee further note that requiring the report to be furnished to both parties strengthens transparency and procedural fairness, ensuring that the debtor as well as the creditor have an equal opportunity to make submissions before the Adjudicating Authority. In view of the above, the Committee feel the amendment proposed under Clause 48 to be reasonable and recommend it as proposed.
49	*49.6*	*49*	**49.6.1 The Committee note that Clause 49 introduces two key amendments to the individual insolvency framework namely, a consequence for non-submission of a repayment plan within the stipulated timeline; and mandate for a creditors' meeting in cases involving personal guarantors to corporate debtors. The Committee observe that the proposed sub-section (1A) addresses the current gap, where the absence of a filed repayment plan leading to uncertainty and delay, by enabling the Adjudicating Authority to terminate the process and allow parties to proceed with bankruptcy, wherever warranted.** **49.6.2 The Committee also acknowledge the rationale for mandating a creditors' meeting in cases of personal guarantors, given the complexity and higher stakes involved as compared to other individual insolvency matters. In light of the above, the Committee find the proposed amendments under Clause 49 to be appropriate and recommend their acceptance without any modification. In view of the above, the Committee find the proposed amendment under Clause 50 appropriate and recommend to accept it as proposed.**
50	*50.4*	*50*	**The Committee note that Clause 50 of the Bill amends Section 121 of the Code to clarify that a creditor or debtor may file a bankruptcy application even after the insolvency resolution process is terminated under Section 106(1A). The Committee observe that this amendment provides legal clarity and effectively removes any existing ambiguity regarding eligibility to initiate bankruptcy proceedings following a failed or terminated resolution attempt. In view of the above, the**

			Committee find the proposed amendment under Clause 50 appropriate and recommend to accept it as proposed.
51	*51.6*	*51*	**The Committee note that Clause 51 of the Bill seeks to amend Section 124 of the Code to exclude personal guarantors to corporate debtors from the application of the interim moratorium. The Committee observe that the existing provision has been repeatedly misused, with personal guarantors filing applications primarily to trigger the automatic moratorium and thereby obstruct legitimate recovery proceedings. Such strategic filings have resulted in significant diversion of assets and erosion of value, as highlighted by stakeholders including the Ministry of Corporate Affairs and IBBI. The Committee further note that the proposed amendment does not restrict the rights of personal guarantors or creditors to initiate insolvency or bankruptcy proceedings post-admission under Part III of the Code. The Committee also recognise that the amendment is intended to address this systemic concern while ensuring that the integrity and efficacy of the insolvency framework are maintained. After examining the rationale and detailed submissions of the Ministry, IBBI and other stakeholders, the Committee find the proposed amendment under Clause 51 to be appropriate and recommend its acceptance in its present form without any modification.**
52	*52.6*	*52*	**The Committee note that Clause 52 of the Bill seeks to insert a new Section 164A into Part III of the Code to address transactions defrauding creditors in relation to individuals and partnership firms. The Committee observe that the proposed provision empowers the Adjudicating Authority to restore the position as if any asset transfer undertaken to place assets beyond the reach of creditors or to adversely affect their interests had not occurred, thereby filling a gap in the existing individual insolvency framework. The Committee acknowledge that while stakeholders had suggested introducing a provision analogous to Section 66 on wrongful trading, the Ministry has clarified that such a provision is appropriate only for corporate debtors under Part II, given the direct and personal liabilities of individuals or partnership firms. The Committee also take into account that Section 164A**

			mirrors the approach under Section 49 for corporate insolvency but is tailored to address the unique circumstances of non-corporate debtors. After examining the rationale and detailed submissions of the Ministry and other stakeholders, the Committee find the proposed insertion of Section 164A under Clause 52 to be appropriate and recommend that it be accepted as proposed without any modification.
53	*53.6*	*53*	**The Committee note that Clause 53 of the Bill seeks to insert an Explanation into clause (d) of sub-section (1) of section 178 of the Code to clarify the treatment of Government dues in the priority waterfall under Part III. The Committee observe that the proposed Explanation explicitly provides that amounts owed to the Central and State Governments for the period of two years preceding the bankruptcy commencement date shall be distributed under section 178(1)(d), irrespective of a security interest, and that any remaining dues shall be distributed under section 178(1)(e). The Committee further note the Ministry's submission that the amendment is necessary to remove interpretational ambiguities, align the treatment of government dues under Part III with the clarification under section 53 for corporate insolvency, and ensure that government dues are appropriately prioritized relative to other creditors. The Committee also take into account the views of stakeholders suggesting inclusion of local authorities; however, the Ministry has clarified that such inclusion could have substantive implications on the priority waterfall and affect other creditors. The Committee concur with Ministry's view. After examining the rationale and detailed submissions of the Ministry and stakeholders, the Committee find the proposed amendment under Clause 53 to be appropriate and recommend that Clause 53 be accepted as proposed without any modification.**
54	*54.6*	*54*	**The Committee note that Clause 54 of the Bill seeks to insert a new Section 183A into the Code, empowering the Adjudicating Authority to impose a penalty ranging from one lakh to two crore rupees on any person initiating frivolous or vexatious proceedings under Part III. The Committee observe that the proposed provision is aimed at deterring misuse of the insolvency and bankruptcy process by parties seeking to obstruct**

			or delay legitimate proceedings, thereby ensuring efficiency and protecting the interests of genuine stakeholders. The Committee further note the Ministry's clarification that the term "frivolous or vexatious" is already well-settled in judicial practice, and that the imposition of penalties will be subject to judicial oversight, with an appellate mechanism available under sections 61 and 181 of the Code, thereby safeguarding genuine creditor actions. The Committee also recognise that Section 183A aligns with Section 64A introduced for corporate insolvency, ensuring consistency in the treatment of frivolous proceedings across Parts II and III of the Code. After considering the rationale and detailed submissions of the Ministry, IBBI, and other stakeholders, the Committee find the proposed amendment under Clause 54 to be appropriate and recommend that Clause 54 be accepted as proposed without any modification.
55	*55.6*	*55*	**55.6.1 The Committee note that Clause 55 of the Bill seeks to amend Section 196(1) of the Insolvency and Bankruptcy Code by: (i) substituting references to insolvency professional agencies, insolvency professionals, and information utilities with the consolidated expression "service providers"; (ii) inserting an Explanation under clause (c) regarding levy of fees or other charges; (iii) inserting a new clause (sa) relating to standards of conduct and timelines for the Committee of Creditors; and (iv) making a consequential amendment to clause (t) by substituting the words "under this Code" with "for the purposes of this Code".** **55.6.2 In light of the deliberations and views of stakeholders and as a consequential amendment to Clause 2(b) of the Bill, in the preceding para no.2.6.3, the committee note the recommendation that term "service provider" shall include the term "registered valuer". In view of this, the Committee also recommend consequential modifications to Section 196 to ensure that IBBI's regulatory and enforcement powers apply to all persons falling under the definition of "service providers".**

			55.6.3 The Committee take note of concerns raised by stakeholders regarding the insertion of the Explanation under section 196(1)(c), particularly the apprehension that it may extend the Board's power to levy fees. The Committee also note the Ministry's submission that the Explanation is clarificatory in nature and reiterates the existing scope of the Board's power under the Code. Accordingly, the Committee accept the Explanation proposed under section 196(1) (c). **55.6.4 The Committee observe that several stakeholders expressed apprehensions regarding the proposed clause (sa) under section 196(1), including concerns about the enforceability and binding nature of conduct standards for the Committee of Creditors. The Committee further note the Ministry's submission that the proposed clause (sa) has been modified to also empower the Board to specify the period within which the Committee of Creditors shall take decisions. The Committee are of the view that specifying both standards of conduct and timelines will enhance governance, improve predictability, and support the objective of a time-bound resolution under the Code. Accordingly, the Committee recommend the following modification to clause (sa) under section 196(1) to read as under:** **"(sa) specify the standards of conduct for the Committee of Creditors and its members, including the period within which the Committee of Creditors shall take decisions, while acting under Part II and Part III of this Code, as the case may be,"** **55.6.5 The Committee also note the proposed amendment to clause (t) of Section 196(1) substituting the words "under this Code" with "for the purposes of this Code". The Committee find that this amendment appropriately broadens the Board's authority to frame regulations and guidelines necessary for carrying out the purposes of the Code. The Committee, therefore, accept the amendment proposed under section 196 (1) (t).** **Subject to the above-mentioned modifications, the Committee accept the remaining provisions of Clause 55 as proposed.**

56	*56.4*	*56*	**The Committee note that Clause 56 seeks to insert clause (cb) into Section 208(1) as a consequential amendment to the introduction of the creditor-initiated insolvency resolution process under Chapter IVA of Part II. The Committee observe that the provision ensures the functions and obligations of insolvency professionals are explicitly aligned with the expanded framework of the Code. After examination of the proposal and consideration of the justification provided by the Ministry of Corporate Affairs, the Committee find the amendment to Section 208(1) to be appropriate and necessary, and recommend that Clause 56 be accepted as proposed without any modification.**
57	*57.4*	*57*	**The Committee note that Clause 57 seeks to insert words into clause (e) of Section 214 "in such manner as may be specified" to empower the Board to specify the manner of authentication of information received by the Information Utilities. The Committee observe that this amendment is procedural in nature and is aimed at ensuring the integrity, reliability, and evidentiary value of records maintained by Information Utilities. The amendment provides the framework necessary to implement related substantive provisions of the Code. After detailed examination of the proposal and consideration of the justification provided by the Ministry of Corporate Affairs, the Committee find the amendment to clause (e) of Section 214 to be appropriate and recommend its acceptance as proposed without any modification.**
58	*58.6*	*58*	**The Committee note that Clause 58 amends Section 215 to update the marginal heading to "Submission and authentication of financial information to information utilities", mandate operational creditors to submit financial information to Information Utilities (IUs) before filing an application under Section 9, and introduces a new sub-section (4) requiring the Corporate Debtor/debtor to authenticate the information. The Committee observe that the provisions are necessary to mandate discipline in reporting by Operational Creditors, maintain the integrity of IU records, and provide evidentiary value for the Adjudicating Authority. The Committee further note the Ministry's clarification that in case of non-response by the Corporate Debtor/debtor,**

			the submitted information shall be deemed authenticated, which will be binding on the Adjudicating Authority and will preclude the Corporate Debtor or debtor from disputing the information at a later stage. After examining the proposal and the justification provided by the Ministry of Corporate Affairs, the Committee find the provisions proposed under Clause 58 to be appropriate and recommend its acceptance as proposed without any modification.
59	*59.6*	*59*	**59.6.1 The Committee note that Clause 59 of the Bill proposes to amend Section 217 to update the marginal heading to "Complaints against service providers and substitute the specific terms (insolvency professional agency, insolvency professional, or information utility) with the consolidated term "service provider".** **59.6.2 In light of the deliberations and views of stakeholders and as a consequential amendment to Clause 2(b) of the Bill, in the preceding para no.2.6.3, the committee note the recommendation that term "service provider" shall include the term "registered valuer". In view of this, the Committee recommend consequential modifications to Section 217 to ensure that IBBI's regulatory and enforcement powers apply to all persons falling under the definition of "service providers".** **Subject to this modification to Section 217, the Committee accept the remaining provision of Clause 59 as proposed.**
60	*60.6*	*60*	**60.6.1 The Committee note that Clause 60 seeks to amend Section 218 by updating the marginal heading to "Investigation of service providers" and substituting the specific terms (insolvency professional agency, insolvency professional, or information utility) with the consolidated term "service provider" and to amend the marginal heading.** **60.6.2 In light of the deliberations and views of stakeholders and as a consequential amendment to Clause 2(b) of the Bill, in the preceding para no.2.6.3, the Committee note the recommendation that term "service provider" shall include the term "registered valuer". In**

			view of this, the Committee also recommend consequential modifications to Section 218 to ensure that IBBI's regulatory and enforcement powers apply to all persons falling under the definition of "service providers". **Subject to this modification to Section 218, the Committee accept the remaining provision of Clause 60 as proposed.**
61	*61.6*	*61*	**The Committee note that Clause 61 of the Bill seeks to substitute a new Section for Section 219 of the Code regarding issuance of a show cause notice to service provider. The Committee observe that the newly substituted Section seeks to empower the Board to issue a show cause notice to any service provider, upon completion of an inspection or investigation under Section 218 or on the basis of material available on record, if it reaches a *prima facie* opinion that sufficient cause exists for taking action under Section 220 of the Code. The Committee also note that unlike the existing Section 219, which is limited to the issuance of a show cause notice to an insolvency professional agency, its member, or an information utility, the proposed draft consistently uses the broader term "service provider." The Committee observe that this change is consequential to the insertion of the definition of "service provider" in Section 3(31A), thereby ensuring that the Board's regulatory and enforcement powers apply to all persons falling under that definition. The Committee, therefore, concur with the justification given by the Ministry of Corporate Affairs that the extant modification is essential to ensure consistency in the provisions of the Code. Accordingly, after thorough examination of the Clause and taking into consideration the views submitted by the Ministry and stakeholders, the Committee accept Clause 61 as proposed without any modification.**
62	*62.6*	*62*	**62.6.1 The Committee note that Clause 62 of the Bill seeks to substantially amend Section 220 of the Insolvency and Bankruptcy Code to strengthen the disciplinary framework by mandating the IBBI to constitute Disciplinary Committees comprising its**

			Chairperson, whole-time members, or officers not below the rank of Executive Director. The Committee find that these amendments are intended to empower the Disciplinary Committee to leverage senior expertise and manage the increasing quasi-judicial workload, similar to regulators like SEBI. The Committee observe that the amendments significantly empower the Disciplinary Committees to impose penalties, suspend/cancel registration, and direct disgorgement. Specifically, the upper limit for monetary penalties has been doubled from one crore to two crore, and the Disciplinary Committee is explicitly empowered to direct disgorgement of an amount equivalent to the full unlawful gain or averted loss without a fixed monetary cap, ensuring no one benefits from contraventions and preserving the provision's strong deterrent effect. Also, the new sub-sections introduce a crucial appeal mechanism to the National Company Law Appellate Tribunal (NCLAT) against the orders of Disciplinary Committees. **62.6.2 Upon examination and after considering the views of the Ministry and stakeholders, the Committee observe that the amendments proposed in Clause 62 are necessary to ensure fairness and proportionality in disciplinary actions and to enhance the overall regulatory effectiveness. Therefore, the Committee accept the Clause 62 as proposed without any modification.**
63	*63.5*	*63*	**The Committee note that Clause 63 of the Bill seeks to amend Section 224 of the IBC 2016 to broaden the scope of the Insolvency and Bankruptcy Fund by allowing the Central Government to prescribe both additional sources of contributions and a comprehensive framework for its utilization. The Committee find this amendment appropriate because it ensures that the Fund is not limited solely to the benefit of contributors but can be leveraged for broader prescribed purposes related to various processes under the Code. However, the Committee observe a critical gap due to lack of a specialized mechanism to differentiate between typical business failures and insolvency caused by catastrophic incidents like pandemics, wars, or natural calamities**

			which risks the liquidation of otherwise viable companies. Therefore, to provide immediate, time-bound financial assistance and special protection to such viable but distressed firms, the Committee are of the opinion that while framing rules for operationalizing the Insolvency and Bankruptcy Fund, the Ministry shall ensure that a Government-backed Insolvency Relief Fund is established, to be financed by a small cess, within the framework of existing Insolvency and Bankruptcy Fund under Section 224. After the deliberations and keeping into consideration the justification given by the Ministry, the Committee are of the view that the proposed amendments enhance the financial resilience and operational scope of the Insolvency and Bankruptcy Fund. The Committee accordingly accept the Clause as proposed without any modification.
64	*64.4*	*64*	**64.4.1 The Committee note that Clause 64 of the Bill seeks to substitute Section 235A of the Code which originally dealt with 'punishment where no specific penalty or punishment is provided'. The Committee also note that the new provision now deals with 'power of Adjudicating Authority to impose penalties.' The Committee are of the view that the proposed amendment is designed to create a clear and structured mechanism for penalty imposition which significantly empower the Adjudicating Authority to impose a proportional penalty on any person who has contravened any provision of the Code, or any rules or regulations made thereunder. The Committee also find that the Clause sets clear lower and upper monetary thresholds within which the Adjudicating Authority must operate, ensuring that the penalties are both proportional to the contravention and consistent. The Committee upon examination find that the Clause can significantly strengthen the deterrent effect of the Code and is appropriate.** **64.4.2 However, the Committee observe that the saving clause in Explanation II to Section 235A at Line No. 21 refers to only "this Section" instead of "Code" and does not specify repeal of Sections 74 and 76 respectively carried out under Clauses 46B and 46C. The Committee are of the view that for a comprehensive**

			understanding of its legislative intent, the Explanation must provide clarity regarding non-application of repeal of Sections 74 and 76 and the amendment of Section 235A in certain cases and its effect across the statute. Therefore, the Committee recommend to replace the phrase "this Section" with the word "Code". **64.4.3 The Committee also observe that consequent to the repeal of Sections 74 and 76 at Clauses 46B and 46C, it is required to be explicitly mention in Explanation II. The Committee note that to ensure that the saving clause clearly preserves the legal consequences of the omitted provisions, explicitly adding the phrase "the omission of Sections 74 and 76" will avoid ambiguity. Therefore, the Committee recommend to add the phrase "the omission of Sections 74 and 76" at Line No.22 before the phrase "the amendment".** **64.4.4 Finally, the Committee note that a reference to the penal provisions affected by the repeal need to be appropriately mentioned in the Explanation II. The Committee are of the view that due to the repeal of Sections 74 and 76, the Explanation must refer to "these Sections" instead of "this Section" to clearly mention that any prosecution instituted under these sections on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025 and pending immediately before such date of commencement before any court, which shall continue to be heard and disposed of by the said court as if the Insolvency and Bankruptcy Code (Amendment) Act, 2025 had not been enacted and any punishment imposed under these sections on and before the date of commencement of the Act shall not be affected due to the repeal of Sections 74 and 76 and amendment of Section 235A.** **64.5.5 The amended Explanation II to Section 235A be read as under:** **"Explanation. II—For the purposes of this (**) Code, it is hereby declared that the omission of sections 74 and 76, and the amendment of this section by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall not affect:—**

			(i) any prosecution instituted under (**) these sections (**) on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025 and pending immediately before such date of commencement before any court, which shall continue to be heard and disposed of by the said court as if the Insolvency and Bankruptcy Code (Amendment) Act, 2025 had not been enacted; and **(ii) any punishment imposed under (**) these sections (**) on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.".** **Apart from the above-mentioned amendments, the Committee accept Clause 64 as proposed.**
65	*65.4*	*65*	**The Committee note that Clause 65 of the Bill seeks to amend sub-section (1) of Section 239 of the Code shifts the scope of the Central Government's rule-making power from merely carrying out the "provisions" of the Code to fulfilling the "purposes" of the Code. This change provides the Central Government with a broader, more flexible mandate to frame rules that ensure the overall objectives of the Code are met, even in areas without explicit detailing. Furthermore, the Committee observe that the amendment to sub-section (2) of Section 239 enables the Central Government to frame rules specifically for matters related to the amendments made to the provisions of the Code. The Committee consider these changes are essential for enhancing the administrative efficiency and adaptability of the IBC framework, as they ensure necessary procedural and operational rules can be framed and notified effectively as the Code evolves. The Committee, therefore, after examining the Clause and considering the justification given by the Ministry, accept Clause 65 as proposed without any modification.**
66	*66.6*	*66*	**66.6.1 The Committee note that Clause 66 seeks to amend Section 240 to empower the Insolvency and Bankruptcy Board of India (IBBI) to make regulations. Specifically, the proposed amendment to sub-section (1) of Section 240 grants the IBBI a broader, more flexible mandate by replacing the power to frame regulations for**

			carrying out the "provisions" with the power to regulate for fulfilling the "purposes" of the Code. The Committee concur with the Ministry that this change is crucial for allowing the Board to create rules necessary to achieve objectives of the Code, rather than being strictly limited to operationalizing specific sections. The Committee also note that the amendment to sub-section (2) of Section 240 further enhances the framework by enabling the Board to quickly frame regulations for matters related to the amendments made to the Code, significantly improving the administrative agility and ensuring seamless implementation of legislative changes within the IBC ecosystem. The Committee acknowledge that the broadened power of IBBI remains subject to robust checks and balances, including mandatory public consultation and the requirement for laying regulations before the Parliament. **66.6.2 However, the Committee note that the amendment in clause (26) of Section 5 of the principal Act by Clause 3 at preceding para 3.6.4 (i) expands the definition of resolution plan and make it explicit to allow for one or more resolution plans for a corporate debtor undergoing CIRP and providing for restructuring of assets of the corporate debtor to allow for sale of one or more assets for maximizing the value for a corporate debtor holding multifarious businesses. The Committee observe that the conditions governing these multiple plans and asset sales to be covered in regulations must be appropriately reflected in Section 240 which provides for the power to make regulations. Consequently, the Committee recommend the amendment of sub-clause (b) of Clause 66 so as to reflect the change in corresponding Section 240. The committee also recommend that subsequent to a new insertion in sub-clause (b)(i), the existing sub-clause b(i) shall be renumbered as b(ia). The amended sub-clause (b) reads as follows:** "(*b*) in sub-section (*2*),— **(*i*) after clause (*ea*), the following clause shall be inserted, namely:—** **"(*eb*) the conditions under *Explanation* to clause (*26*) of section**

			5;"; **(*ia*)** after clause (*f*), the following clause shall be inserted, namely:— "(*fa*) other information under clause (*e*) of sub-section (*3*) of section 9;";" **66.6.3 The Committee also note that consequent upon the insertion of sub-clauses under Section 34 and as discussed at para 21.6, consequential changes must be reflected in Clause 66 appropriately. The amended sub-clause (ix) may be read as follows:** **"(*ix*) for clause (x), the following clauses (**)shall be substituted, namely:—** **"(*x*) the form of written consent from insolvency professional under sub-section (*6*) of section 34;** **(*xa*) the fee for the conduct of the liquidation proceedings and proportion to the value of the liquidation estate assets under sub-section (*8*) of section 34;";** **(*x*) after clause *(xa)* (**) as so substituted, the following clause (**) , shall be inserted, namely:-** **" (**) (*xb*) the form for giving written consent under sub-section (1) of section 34A;";"** **Apart from the above-mentioned amendments, the Committee accept Clause 66 as proposed.**
67	*67.6*	*67*	**67.6.1 The Committee note that Clause 67 of the Bill seeks to insert two new sections 240B and 240C in Part V of the Code which provide for notifying an electronic portal for facilitating procedures related to the insolvency and bankruptcy processes and conferring power to the Central Government to make rules for cross-border insolvency respectively.** **67.6.2 The Committee while noting the concern expressed by stakeholders regarding the potential issues with immediate, untested implementation of the electronic portal, accept the Ministry's assurance that the inserted provision at sub-section 240B is only an enabling provision, not a mandate for immediate, untested implementation; and the actual operationalization of this large-scale electronic platform will be subject to a phased approach which shall necessarily include extensive testing, trial runs, and mandatory stakeholder consultation. The Committee**

			also observe that the new clause inclusion only grants the Central Government the statutory authority to create an electronic portal, thereby, providing a legal basis for digital integration of the insolvency and bankruptcy processes in the Code; and aligning the technology adoption with standard governmental practices and the principles of good governance. The Committee, therefore, consider this newly inserted provision as a necessary first step towards enhancing the efficiency, transparency, and accessibility of the Code. The Committee, therefore, find the insertion of Section 240B appropriate; but desire that the Ministry put adequate safeguards in place before operationalizing the electronic portal. **67.6.3 The Committee further note that proposed inclusion of Section 240C in the Code is intended as a significant legislative step towards adopting a modern, harmonized, and fair framework for handling insolvency proceedings that involve debtors with assets or creditors in countries outside India, taking cue from the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) principles. After detailed examination of the Clause and considering the suggestions of stakeholders and the submissions of the Ministry, there is a compelling need for legislative clarity and to ensure the proper scope of the law. The Committee are of the opinion that while adopting the UNCITRAL Model Law principles is essential, the Government is not required to emulate it exactly. However, the Committee feel that UNCITRAL principles should be adapted to fit the Indian legal framework, ensuring that the adopted mechanism is sensitive to the unique socio-economic, judicial, and institutional realities of India. This adaptation is critical to harmonize international best practices with the domestic system, thereby ensuring the new cross-border provisions are both effective and legally sound within the country. The Committee feel that it is imperative to codify the basic tenets of the cross-border insolvency framework directly within the Code itself to provide clear legislative guidance for the Central Government and address these judicial concerns. Furthermore, the Committee identify the need to clarify the term "corporate debtor" in Section 240C to explicitly**

			include any person incorporated with limited liability outside India to ensure the cross-border provisions legally apply to and govern insolvency proceedings that involve a foreign company with assets, creditors, or operations connected to India. **67.6.4 The Committee, therefore, recommend two specific amendments to the proposed Section 240C. Firstly, the Committee recommend that the section 240C be amended to explicitly specify that the rules governing cross-border insolvency shall detail the process for recognition of proceedings involving specified foreign countries/territories, alongside the process for granting relief, judicial cooperation, assistance, and coordination. This explicit listing of process components within the primary law (the Code) itself serves as the codified basic tenets that prevent undue delegation. Secondly, the Committee recommend adding an Explanation to Section 240C to clarify and broaden the term "corporate debtor" to explicitly include any person incorporated with limited liability outside India. The amended Section 240C be read as under:** "240C. (*1*) Notwithstanding anything to the contrary contained in this Code and the Companies Act, 2013, the Central Government may prescribe the manner and conditions for administering and conducting cross-border insolvency proceedings under **(**) <u>this</u>** Code, **<u>including the process for recognition of proceedings, granting relief, judicial cooperation, assistance and coordination in connection with such proceedings, for such class or classes of debtors or corporate debtors involving such countries or territories outside India,</u>** as may be notified by the Central Government **<u>in this regard</u>**. (*2*) The rules made under this section may provide that any of the provisions of this Code or the Companies Act, 2013 shall apply with such exceptions, modifications and adaptations, as may be required to administer and implement the provisions of this section and rules made thereunder, including designating one or more Benches for dealing with proceedings under this section. (*3*) A draft of every rule proposed under this section shall be laid before each House of Parliament in such manner as provided under sub-sections (*4*) to (*6*) of section 59A, which

			shall, *mutatis mutandis* apply, to the rules made under this section. ***Explanation*—For the purposes of this section, the expression "corporate debtor" shall also include any person incorporated with limited liability outside India."."** **Apart from the above-mentioned amendments, the Committee accept Clause 67 as proposed.**
68	*68.4*	*68*	**The Committee note that Clause 68 of the Bill seeks to insert a new sub-section (1A) into Section 242 of the Code which pertain to the power of Central Government to remove any difficulty that may arise in giving effect to the provisions of the proposed Bill. The Committee observe that the proposed provision under this Section enable the Central Government to address any transitional challenges or practical impediments or operational hindrances that may emerge during the implementation of the Insolvency and Bankruptcy Code (Amendment) Act, 2025. The Committee, after considering the justification given by the Ministry of Corporate Affairs and examining the proposed provision, accept Clause 68 as proposed without any modification.**

NEW DELHI
16 December, 2025
Agrahayana 25, 1947(Saka)

BAIJAYANT PANDA
CHAIRPERSON,
SELECT COMMITTEE OF LOK SABHA ON THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) BILL, 2025

LOK SABHA

SUPPLEMENTARY LIST OF BUSINESS
Tuesday, August 12, 2025 / Sravana 21, 1947 (Saka)

LEGISLATIVE BUSINESS
Bill to be introduced

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025.

22. SMT. NIRMALA SITHARAMAN to move for leave to introduce a Bill further to amend the Insolvency and Bankruptcy Code, 2016.

ALSO to introduce the Bill.

BILL FOR REFERENCE TO SELECT COMMITTEE

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025.

***23. SMT. NIRMALA SITHARAMAN** to move that the Bill further to amend the Insolvency and Bankruptcy Code, 2016, be referred to a Select Committee of the House.

The names of the members of the Committee will be decided by Hon'ble Speaker.

The terms & conditions regarding the Committee will be decided by Hon'ble Speaker.

The Committee shall make a report by the first day of the next session.

NEW DELHI;
August 12, 2025
Sravana 21, 1947 (Saka)

UTPAL KUMAR SINGH
Secretary General

*** To be moved in case Bill at sl. no. 22 is introduced.**

No. 3297 **Committee Branch**

Composition Of The Select Committee On The Insolvency And Bankruptcy Code (Amendment) Bill, 2025

Members
Lok Sabha

1. Shri Baijayant Panda
2. Dr. D. Purandeswari
3. Dr. C. N. Manjunath
4. Shri Mitesh Patel Bakabhai
5. Shri Anil Firojiya
6. Dr. Anand Kumar
7. Shri Biplab Kumar Deb
8. Dr. Sanjay Jaiswal
9. Shri Saumitra Khan
10. Shri Karti P. Chidambaram
11. Shri Shreyas M. Patel
12. Shri Ravindra Vasantrao Chavan
13. Shri Bhajan Lal Jatav
14. Shri Neeraj Maurya
15. Thiru D. M. Kathir Anand
16. Smt. Supriya Sule
17. Shri Lavu Sri Krishna Devarayalu
18. Smt. Mahua Moitra
19. Shri Sunil Kumar
20. Dr. Shrikant Eknath Shinde
21. Shri Navaskani K
22. Shri P V Midhun Reddy
23. Dr. Rajkumar Sangwan
24. Shri Chandra Prakash Choudhary

2. The Hon’ble Speaker has been pleased to appoint Shri Baijayant Panda, MP, Lok Sabha as the Chairperson of the Select Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025.

LOK SABHA

BULLETIN - PART I

(Brief Record of Proceedings)

Monday, December 01, 2025

No. 90

11:00 AM

1. Obituary References*

The Speaker made references to the passing away of Col. (Retd.) Sona Ram Choudhary, Member of the Eleventh, Twelfth, Thirteenth and Sixteenth Lok Sabhas; Prof. Vijay Kumar Malhotra, Member of the Sixth, Ninth, Thirteenth and Fourteenth Lok Sabhas; Shri Ravi Naik, Member of the Twelfth Lok Sabha; Shri Dharmendra, Member of the Fourteenth Lok Sabha and; Shri Sriprakash Jaiswal, Member of the Thirteenth, Fourteenth and Fifteenth Lok Sabhas.

Thereafter, Members stood in silence for a short while as a mark of respect to the memory of the departed souls.

11.06 A.M.

2. Felicitations* by the Speaker

The Speaker, on behalf of the House, congratulated Indian Women Cricket Team for winning Women Cricket World Cup, 2025 by defeating South Africa in the final on 2.11.2025 and; Indian Blind Women Cricket Team for winning 1st Women's T20 Cricket World Cup for the Blind 2025 by defeating Nepal in the final on 23.11.2025.

He also congratulated India's Women Kabaddi Team for winning the Women's Kabaddi World Cup 2025 by defeating Chinese Taipei in the final on 24.11.2025 and; Indian Team for their best ever performance at the Deaflympics held in Japan from 15-26 November, 2025.

* Original in Hindi. For details, please see the debates of the day.

8. Motion regarding the Report of the Select Committee on Insolvency & Bankruptcy Code (Amendment) Bill, 2025 – Extension of Time

Dr. D. Purandeswari moved the following motion:

"That this House do extend time for the presentation of the Report of the Select Committee on the Insolvency & Bankruptcy Code (Amendment) Bill, 2025' upto the last day of the Winter Session, 2025".

The motion was put to vote and adopted.

9. Motion regarding the Report of the Select Committee on the Jan Vishwas (Amendment of Provisions) Bill, 2025 – Extension of Time

Shri Tejasvi Surya moved the following motion:

"That this House do extend time for the presentation of the Report of the Select Committee on the Jan Vishwas (Amendment of Provisions) Bill, 2025' upto the last day of the second week of the Winter Session, 2025".

The motion was put to vote and adopted.

10. Supplementary Demands for Grants

Smt.Nirmala Sitharamanpresented a statement (Hindi and English versions) showing Supplementary Demands for Grants – First Batch for 2025-2026.

12.07 P.M.

11. Government Bill – Introduced

The Manipur Goods and Services Tax (Second Amendment) Bill, 2025

12. Statement regarding Ordinance – Laid on the Table

An explanatory statement (Hindi and English versions) showing reasons for immediate legislation by promulgation of the Manipur Goods and Services Tax (Second Amendment) Ordinance, 2025 (No. 2 of 2025) was laid on the Table.

APPENDIX-III

Details of Stakeholders who Submitted Memoranda

S. No.	Name of Stakeholders
1.	Shri Sanjeev Ahuja President Missing Bridge Mediation & Negotiation Solutions and Resolutions forum
2.	CA Devang P. Sampat Registered Insolvency Professional Sampat & Associates
3.	Shri Amit Gaur, Navi Mumbai
4.	Shri Alok Kaushik
5.	Shri MR Madhavan President PRS Legislative Research Institute for Policy Research Studies
6.	Dr. S. Krishnakumar Department of Economics Sri Venkateswara College University of Delhi
7.	Solvenza Advisory LLP Prashant
8.	Shri Mukesh Chand Senior Counsel Economic Laws Practice
9.	CA Manoj Kumar Anand President All India Insolvency Professionals Association (AIIPA)
10.	Shri D Shivakumar Sharma, Senior Advisor, Indian Banks' Association
11.	Shri Vishal Anand
12.	Shri Nikhil Rawat PwC | Manager - Deals PwC Corporate Business Services LLP
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THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) BILL, 2025

AS REPORTED BY THE SELECT COMMITTIEE

[*Words in bold and underlined indicate the amendments suggested by the Select Committee and asterisks* ***(**)*** *indicate omissions*]

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) BILL, 2025

A

BILL

further to amend the Insolvency and Bankruptcy Code, 2016.

BE it enacted by Parliament in the Seventy-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Insolvency and Bankruptcy Code (Amendment) Act, 2025.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of 31 of 2016.

2. In section 3 of the Insolvency and Bankruptcy Code, 2016 (hereinafter

section 3.

referred to as the principal Act),—

(*a*) after clause (*27*), the following clause shall be inserted, namely:—

'(*27A*) "registered valuer" shall have the same meaning as assigned to it under Chapter XVII of the Companies Act, 2013;

(*aa*) in clause (*31*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties, and shall not include a security interest created merely by operation of any law for the time being in force;";

(*b*) after clause (*31*), the following clause shall be inserted, namely:—

'(*31A*) "service provider" means an insolvency professional, insolvency professional agency, information utility **(**)**, **registered valuer** and any person falling within the category of persons notified by the Central Government, for rendering services in relation to insolvency and bankruptcy processes under **(**) this** Code and is registered with the Board;'.

Amendment of section 5.

3. In section 5 of the principal Act,—

(*a*) clause (*2A*) shall be re-numbered as clause (*2B*) thereof and before clause (*2B*) as so re-numbered, the following clause shall be inserted, namely:—

'(*2A*) "avoidance transaction" means a transaction as referred to in sections 43, 45, 49 and 50;';

(*b*) after clause (*9*), the following clause shall be inserted, namely:—

'(*9A*) "fraudulent or wrongful trading" means the fraudulent or wrongful trading as referred to in section 66;';

(*c*) in clause (*11*), the following proviso shall be inserted, namely:—

"Provided that where multiple applications for initiation of the corporate insolvency resolution process in respect of a corporate debtor are pending before the Adjudicating Authority on the insolvency commencement date, the initiation date shall be the date on which the first such application was made before the Adjudicating Authority.";

(*d*) in clause (*26*), in the *Explanation*, for the words "merger, amalgamation and demerger", the words "merger, amalgamation, demerger and sale of one or more assets of the corporate debtor **through one or more plans proposed by one or more resolution applicants subject to such conditions as may be specified**" shall be substituted;

(*e*) in clause (*28*), after the words "owed by the corporate debtor" occurring at the end, the words "to the members of the committee of creditors who are eligible to vote" shall be inserted.

Amendment of section 7.

4. In section 7 of the principal Act,—

(*a*) in sub-section (*4*), the proviso shall be omitted;

(*b*) for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (*2*), by an order—

(*a*) admit the application, if it is satisfied that a default has occurred and the application under sub-section (*2*) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or

(*b*) reject the application, if it is satisfied that a default has not occurred or the application under sub-section (*2*) is incomplete or a disciplinary proceeding is pending against the proposed resolution professional:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (*b*) **(**)**, give a notice to the applicant to rectify the defect in his application within seven days from the date of receipt of such notice from the Adjudicating Authority:

Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (*2*), it shall record the reasons for such delay in writing.

Explanation I.—For the purposes of this sub-section, it is hereby clarified that where the requirements under clause (*a*) have been complied with, no other ground shall be considered to reject an application filed under this section.

Explanation II.—For the removal of doubts, it is hereby clarified that where a record of default in respect of a financial debt owed to a financial institution recorded with the information utility has been furnished along with the application filed by such financial institution under this section, such record shall be considered sufficient for the Adjudicating Authority to ascertain the existence of default under this section.".

Amendment of section 9.

5. In section 9 of the principal Act,—

(*a*) in sub-section (*3*), in clause (*e*), for the words "such other information, as may be prescribed", the words "any other information, as may be specified" shall be substituted;

(*b*) in sub-section (*5*), after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of application under sub-section (*2*), it shall record the reasons for such delay in writing.".

Amendment of section 10.

6. In section 10 of the principal Act,—

(*a*) in sub-section (*3*),—

(*i*) in clause (*a*), for the words "for such period as may be specified;", the words "and any other information, as may be specified; and" shall be substituted;

(*ii*) clause (*b*) shall be omitted;

(*b*) in sub-section (*4*),—

(*i*) in clause (*a*), the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be omitted;

(*ii*) in clause (*b*), the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be omitted;

(*iii*) after the existing proviso, the following proviso shall be

inserted, namely:—

"Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (*2*), it shall record the reasons for such delay in writing.".

Amendment of section 11.

7. In section 11 of the principal Act, in clause (*ba*), after the words, figures and letter "under Chapter III-A", the words, figures and letter "or Chapter IV-A" shall be inserted.

Substitution of new section for section 12A.

8. For section 12A of the principal Act, the following section shall be substituted, namely:—

Withdrawal of application admitted under section 7, 9 or 10.

"12A. (*1*) Subject to sub-section (*2*), the Adjudicating Authority may allow the withdrawal of an application admitted under section 7, 9 or 10, on an application made by the resolution professional, with the approval of ninety per cent. voting share of the committee of creditors in such manner as may be specified.

(*2*) Notwithstanding anything contained in any law for the time being in force, an application admitted under section 7, 9 or 10 shall not be withdrawn—

(*a*) before the constitution of the committee of creditors under sub-section (*1*) of section 21; and

(*b*) after the first invitation for submission of a resolution plan has been issued by the resolution professional.

(*3*) The Adjudicating Authority shall pass an order under sub-section (*1*) within a period of thirty days from the date of receipt of the application:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.".

Amendment of section 14.

9. In section 14 of the principal Act,—

(*a*) in sub-section (*1*), for the words, brackets and figures "sub-sections (*2*) and (*3*)", the words, brackets, figures and letter "sub-sections (*2*), (*2A*) and (*3*)" shall be substituted;

(*b*) in sub-section (*3*), in clause (*b*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that the provisions of sub-section (*1*) shall also apply where the surety seeks to initiate or continue any action or proceedings against the corporate debtor pursuant to a contract of guarantee.".

Amendment of section 16.

10. In section 16 of the principal Act,—

(*a*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Where the application for corporate insolvency resolution process is made by a financial creditor, the resolution professional, as proposed in the application under section 7, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.";

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) Where an application for the corporate insolvency resolution process is made under section 10, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution

professional.";

(*c*) in sub-section (*4*), after the word, brackets and figure "sub-section (*3*)", the words, brackets, figure and letter "or sub-section (3*A*), as the case may be," shall be inserted.

11. In section 18 of the principal Act, in clause (*b*),— Amendment of section 18.

(*a*) after the words "submitted by creditors to him", the words "in such manner as may be specified" shall be inserted;

(*b*) the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that the interim resolution professional, while collating the claims, shall verify them, and, if required, determine the value of such verified claims.".

12. In section 19 of the principal Act,— Amendment of section 19.

(*a*) in the marginal heading, for the word "Personnel", the word "Persons" shall be substituted;

(*b*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Any person who is or has been a personnel of the corporate debtor or its promoter or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the interim resolution professional as may be required by him for the purposes of managing the affairs of the corporate debtor or performing the duties conferred on him under this Chapter.";

(*c*) in sub-section (*2*), for the words "any personnel of the corporate debtor, its promoter", the words, brackets and figure "any person referred to in sub-section (*1*)" shall be substituted.

(*d*) in sub-section (*3*)—

(*i*) for the words "direct such personnel", the words, brackets and figure "direct such person referred to in sub-section (*1*)" shall be substituted;

(*ii*) for the words "resolution professional", the words "interim resolution professional" shall be substituted;

(*e*) after sub-section (*3*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the purposes of this section, it is hereby clarified that references to the interim resolution professional shall also include references to the resolution professional.".

13. In section 21 of the principal Act, after sub-section (*10*), the following sub-section shall be inserted, namely:— Amendment of section 21.

"(*11*) Where the liquidation process of the corporate debtor is initiated under Chapter III, the committee of creditors constituted under this section shall also supervise the conduct of the liquidation process by the liquidator, and the provisions of this section and section 24 shall apply to such liquidation process under Chapter III as the context may require:

Provided that the Board may specify any other class or classes of creditors, who may attend the meetings of the committee of creditors during

liquidation process, but shall not have any right to vote in such meetings.

Explanation.—For the purposes of Chapter III, it is hereby declared that the provisions of sub-section (*11*) of this section, section 34A and sub-section (*2*) of section 35, as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall apply to—

(*a*) the liquidation process of a corporate debtor initiated after the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025; and

(*b*) the ongoing liquidation process of a corporate debtor as on such date of commencement, where the liquidator has not made an application under section 54, for which the committee of creditors shall continue for the remainder of the liquidation process.".

Amendment of section 22.

14. In section 22 of the principal Act, in sub-section (*3*), in clause (*a*), for the words "it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority", the words "such person shall be deemed to be appointed as the resolution professional from the date of such resolution, and this decision shall be communicated to the interim resolution professional, the corporate debtor, and the Board" shall be substituted.

Amendment of section 25.

15. In section 25 of the principal Act, in sub-section (*2*), for clause (*j*), the following clause shall be substituted, namely:—

"(*j*) file an application to the Adjudicating Authority in respect of an avoidance transaction or fraudulent or wrongful trading, if any; and".

Substitution of new section for section 26.

16. For section 26 of the principal Act, the following section shall be substituted, namely:—

Application in respect of certain transactions or trading not to affect processes.

"26. The filing of an application in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47, shall not affect the proceedings of the corporate insolvency resolution process or the liquidation process, as the case may be.

Explanation.—For the removal of doubts, it is hereby clarified that the completion of the corporate insolvency resolution process or the liquidation process shall not affect the continuation of proceedings in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47, as the case may be.".

Insertion of new section 28A.

17. After section 28 of the principal Act, the following section shall be inserted, namely:—

Transfer of assets of guarantor of corporate debtor during process.

"28A. (*1*) Notwithstanding anything contained in this Code or any other law for the time being in force, where a creditor of the corporate debtor has taken possession of an asset of a personal guarantor or corporate guarantor of the corporate debtor by enforcing its security interest over such asset under any law for the time being in force which empowers the creditor to transfer the asset, the creditor may, during the corporate insolvency resolution process of the corporate debtor, permit the transfer of such an asset as part of its insolvency resolution with prior approval of the committee of creditors in such manner and subject to such conditions as may be specified:

Provided that where the corporate guarantor is undergoing a corporate insolvency resolution process or the liquidation process, transfer of the asset under this sub-section shall take place upon approval of the committee of creditors of the corporate guarantor, by a vote of not less than sixty-six per cent. of the voting share, and the amount received pursuant to the transfer

shall form part of the corporate insolvency resolution process or the liquidation estate of the corporate guarantor, as the case may be:

Provided further that during the liquidation process of the corporate guarantor, the approval of the committee of creditors under the first proviso is required only where the creditor has relinquished such asset to the liquidation estate under section 52:

Provided also that where the personal guarantor is undergoing an insolvency resolution process or the bankruptcy process and the creditor has forfeited or surrendered his right in relation to an asset, the transfer of such asset under this sub-section shall take place upon approval by a majority of more than three-fourths in value of the creditors of the personal guarantor, and the amount received pursuant to the transfer shall form part of the insolvency resolution process or the bankruptcy process of the personal guarantor, as the case may be.

(*2*) The transfer of an asset referred to in sub-section (*1*) under a resolution plan shall vest in the transferee all rights in, or in relation to the asset, as if the transfer had been made by the owner of such asset.

(*3*) The amount received pursuant to the transfer of the asset shall be adjusted towards the amount of debt owed by the guarantor in accordance with the applicable law, subject to any costs, charges and expenses incurred in respect of the preservation and protection of the asset before its transfer, and where such amount is more than the debt owed, the surplus shall be paid to the guarantor.".

Amendment of section 30.

18. In section 30 of the principal Act, in sub-section (*2*),—

(*a*) in clause (*b*), in the long line, the portion beginning with ", and provides for the payment of debts of financial creditors", and ending with "liquidation of the corporate debtor" shall be omitted.

(*b*) after clause (*b*), the following clause shall be inserted, namely:—

"(*ba*) provides for the payment of debts of the financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified, which shall not be less than the lower of the amount––

(*i*) to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(*ii*) that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed, in accordance with the order of priority in sub-section (*1*) of section 53,

as the case may be.

Explanation I.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation II.—For the purposes of this sub-section, it is hereby declared that the provisions of this sub-section as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall not apply to the corporate insolvency resolution process where any of the following acts have first occurred,—

(*i*) the committee of creditors has approved a resolution plan under sub-section (*4*) **(**)**;

(**) (*ii*) the Adjudicating Authority has passed a liquidation order under sub-section (*1*) of section 33,

(**) (*iii*) the committee of creditors has approved intimation

to the Adjudicating Authority to initiate the liquidation under sub-section (*2*) of section 33; or

as the case may be, on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025;".

(*c*) for clause (*d*), the following clause shall be substituted, namely:—

"(*d*) provides for the implementation and supervision of the resolution plan **(**)** and **(**)** constitution of a committee for this purpose **consisting of a resolution professional or any other insolvency professional, representatives of a class or classes of creditors and the resolution applicant**, subject to such conditions and in such manner as may be specified;".

Amendment of section 31.

19. In section 31 of the principal Act,—

(*a*) in sub-section (*1*), after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that the Adjudicating Authority may, on an application made by the resolution professional, with the approval of the committee of creditors, by a vote of not less than sixty-six per cent. of the voting share, in such form and manner, and subject to such conditions as may be specified, first approve the implementation of the resolution plan and thereafter approve the manner of distribution provided therein within a period of thirty days from the date of approval of implementation of such resolution plan.";

(*b*) in sub-section (*2*), the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority may, before rejecting the resolution plan, give notice to the committee of creditors to rectify any defects in the resolution plan.";

(*c*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) The Adjudicating Authority shall pass an order under sub-section (*1*) or (*2*), within a period of thirty days from the date of receipt of the resolution plan:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.";

(*d*) in sub-section (*4*), in the proviso, for the words "prior to the approval of such resolution plan by the committee of creditors", the words, brackets and figures "before the resolution plan is submitted to the Adjudicating Authority under sub-section (*6*) of section 30" shall be substituted;

(*e*) after sub-section (*4*), the following sub-sections shall be inserted, namely:—

"(*5*) Notwithstanding anything contained in any other law for the time being in force and subject to sub-section (*6*), where a resolution plan has been approved under sub-section (*1*), a licence, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, associated with such resolution plan, shall not be suspended or terminated during the subsistence of the remaining period of such grants or rights, if the corporate debtor or, if applicable, the person whose resolution plan is approved under sub-

section (*1*), complies with the obligations in respect of the remaining period of such grants or rights.

(*6*) Where the Adjudicating Authority approves the resolution plan under sub-section (*1*),—

(*a*) unless otherwise provided in the resolution plan, any claim, against the corporate debtor and its assets under any other law for the time being in force, prior to the date of approval, shall be extinguished; and

(*b*) no proceedings shall be continued or instituted against the corporate debtor or its assets on the basis of such claims, including proceedings for assessment of the claims.

Explanation I.—For the purposes of this section, it is hereby clarified that nothing in this section shall affect a claim or any proceeding in respect of a person who was a promoter or in the management or control of the corporate debtor, a guarantor of the corporate debtor or any person having a joint liability or a joint and several liability with the corporate debtor, as the case may be.

Explanation II.—For the purposes of this section, it is hereby clarified that if a person has a joint liability or a joint and several liability with the corporate debtor for payment of debt owed to a creditor before the approval of resolution plan, and such person makes a payment for such debt after the approval of the resolution plan, then any right of such person to be indemnified by the corporate debtor shall be extinguished.

Amendment of section 33.

***Explanation III.* — For the removal of doubts, sub-sections (5) and (6) are clarificatory in nature and codify the original legislative intent of the Act.**

Save as otherwise expressly provided or decided through judicial pronouncements, the provisions of this section shall apply from the date of the commencement of the Principal Act".

20. In section 33 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), the words and figures "or the fast-track corporate insolvency resolution process under section 56" shall be omitted;

(*ii*) in clause (*b*),—

(*I*) in sub-clause (*ii*), after the words "in liquidation,", the word "and" shall be omitted;

(*II*) after sub-clause (*iii*), the following sub-clauses shall be inserted, namely:—

"(*iv*) subject to the provisions of section 52, declare a moratorium for the purposes referred to in clauses (*a*) and (*c*) of sub-section (*1*) read with sub-section (*3*) of section 14, which shall, *mutatis mutandis*, apply to the proceedings under this Chapter:

Provided that provisions of this sub-clause shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

and

(*v*) pass an order appointing a liquidator for the liquidation process in accordance with section 34.";

(*b*) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-section (*1*), where the Adjudicating Authority is satisfied that the grounds mentioned in clause (*a*) or clause (*b*) of sub-section (*1*) of this section exist, it shall, before passing the liquidation order, consider an application made by the committee of creditors, in such manner and subject to such conditions as may be specified, by not less than sixty-six per cent. of the voting share, for restoring the corporate insolvency resolution process, and after considering such application, it may, by an order—

(*a*) if the ground mentioned in clause (*a*) of sub-section (*1*) exists, restore the corporate insolvency resolution process to be completed within such duration as it deems fit, but not exceeding one hundred and twenty days; or

(*b*) if the ground mentioned in clause (*b*) of sub-section (*1*) exists,—

(*i*) restore the corporate insolvency resolution process to the stage of invitation for submission of a resolution plan, which shall be completed in such manner and subject to such conditions as **may be** specified; and

(*ii*) provide the duration for completion of such restored corporate insolvency resolution process as it deems fit, but not exceeding one hundred and twenty days.

Explanation.—For the purposes of this section, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025, the provisions of sub-sections (*1A*) and (*1B*) shall also apply to the corporate insolvency resolution process of a corporate debtor initiated under Chapter II before such date of commencement, where the Adjudicating Authority has not passed a liquidation order under sub-section (*1*) of this section, and shall not apply where the liquidation order is passed.

(*1B*) The corporate insolvency resolution process of a corporate debtor may be restored in accordance with sub-section (*1A*) only once.

Explanation.—For the purposes of this section, it is hereby clarified that where the Adjudicating Authority does not receive a resolution plan under sub-section (*6*) of section 30 within the period provided under clause (*a*) or clause (*b*) of sub-section (*1A*) or rejects the resolution plan received by it during such period under sub-section (*2*) of section 31, it shall pass a liquidation order under sub-section (*1*).";

(*c*) in sub-section (*2*),—

(*i*) after the word "liquidate", the words "or dissolve" shall be inserted;

(*ii*) for the brackets, **(**) figures** and word "(*ii*) and (*iii*)", the brackets, **(**) figures** and word "(*ii*), (*iii*), (*iv*) and (*v*)" shall be substituted;

(*iii*) for the words, brackets and figure "of sub-section (*1*).", the words, brackets, figures and letter "of sub-section (*1*) or a dissolution order under sub-section (*2A*) of section 54, as the case may be:" shall be substituted;

(*iv*) the following proviso shall be inserted, namely:—

"Provided that the committee of creditors shall, before taking the decision to dissolve the corporate debtor, comply with such conditions, as may be specified.";

(*v*) in the *Explanation*, after the word "liquidate", the words "or dissolve" shall be inserted;

(*d*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) The Adjudicating Authority shall pass a liquidation order under this section within a period of thirty days from the date of receipt of an intimation or application, as the case may be, to initiate the liquidation process under this section:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.";

(*e*) in sub-section (*3*), for the brackets, letters and word "(*ii*) and (*iii*)", the brackets, letters and word "(*ii*), (*iii*), (*iv*) and (*v*)" shall be substituted;

(*f*) in sub-section (*4*),—

(*i*) for the words, brackets, letters and figure "sub-clauses (*i*), (*ii*) and (*iii*) of clause (*b*) of sub-section (*1*)", the words, brackets, letters and figure "sub-clauses (*i*), (*ii*), (*iii*), (*iv*) and (*v*) of clause (*b*) of sub-section (*1*) and pass any other order as it deems fit" shall be substituted;

(*ii*) the following proviso shall be inserted, namely:—

"Provided that where an application under sub-section (*3*) is made, the Adjudicating Authority may, if it deems fit, reinstate the corporate insolvency resolution process and pass appropriate orders.";

(*g*) sub-section (*5*) shall be omitted;

(*h*) for sub-section (*6*), the following sub-section shall be substituted, namely:—

"(*6*) Where a liquidation order has been passed, no suit or other legal proceeding shall be commenced, or if pending at the date of the liquidation order, shall be proceeded with by the liquidator, on behalf of the corporate debtor, except with the leave of the Adjudicating Authority and subject to such terms as the Adjudicating Authority may impose.".

Amendment of section 34.

21. In section 34 of the principal Act,—

(*a*) for sub-section (*1*), the following **sub-section (**)** shall be substituted, namely:—

"(*1*) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, it shall refer to

the Board for making recommendation of an insolvency professional to be appointed as the liquidator and on recipt of the recommendation, appoint such insolvency professional as the liquidator.";

(*b*) for sub-sections (*3*), **(***4*), (*5*) and (*6*), the following sub-sections shall be substituted, namely:—

"(*3*) Any person who is or has been a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the liquidator as may be required by him for the purposes of managing the affairs of the corporate debtor or performing the duties conferred on him under this Chapter and the provisions of section 19 shall apply in relation to liquidation and voluntary liquidation process as they apply in relation to corporate insolvency resolution process with the substitution of references to the liquidator for references to the interim resolution professional and resolution professional and references to the corporate insolvency resolution process with liquidation and voluntary liquidation process, respectively.

(*4*) Notwithstanding anything contained in this section and section 34A, an insolvency professional appointed as a resolution professional for the corporate insolvency resolution process under Chapter II, shall not be appointed or replaced as the liquidator for the liquidation process of such corporate debtor.

(*5*) After an order of liquidation has been passed, the resolution professional shall forward to the liquidator, all records relating to the conduct of the corporate insolvency resolution process.

(*6*) The Board shall propose the name of an insolvency professional, other than the resolution professional appointed for the corporate insolvency resolution process under Chapter II, along with written consent from such insolvency professional in the specified form, within ten days of the reference made by the Adjudicating Authority under sub-section (*1*).";

(*c*) in sub-section (*7*), the words "by an order" shall be omitted.

Insertion of new section 34A.

22. After section 34 of the principal Act, the following section shall be inserted, namely:—

Replacement of liquidator by committee of creditors.

"34A. (*1*) Where, at any time during the liquidation process, the committee of creditors is of the opinion that a liquidator appointed under section 34 or this section is required to be replaced, it may, by a vote of not less than sixty-six per cent. of the voting share, resolve to replace the liquidator with another insolvency professional, subject to a written consent from such proposed liquidator in such form as may be specified.

(*2*) Where the committee of creditors resolves under sub-section (*1*) to replace a liquidator, it shall apply to the Adjudicating Authority for the appointment of the proposed liquidator, and if no disciplinary proceedings are pending against him, the Adjudicating Authority shall, by an order, replace the liquidator appointed under section 34 or this section and appoint the proposed liquidator as the liquidator.".

Amendment of section 35.

23. In section 35 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) to maintain an updated list of claims of creditors in such manner as may be specified;";

(*ii*) in clause (*j*), the words "invite and" shall be omitted;

(*iii*) for clause (*l*), the following clause shall be substituted, namely:—

"(*l*) continue or institute proceedings in respect of an avoidance transaction or fraudulent or wrongful trading;";

(*iv*) the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the purposes of this Chapter, it is hereby declared that the provisions of clauses (*a*) and (*j*) of this sub-section and sections 38 to 42 as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall not apply to the liquidation process and voluntary liquidation process initiated on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.";

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) The committee of creditors shall supervise the conduct of the liquidation process by the liquidator under Chapter III in such manner as may be specified.".

Amendment of section 36.

24. In section 36 of the principal Act, in sub-section (*3*), in clause (*f*), for the words "proceedings for avoidance of transactions in accordance with this Chapter", the words and figures "proceedings in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47" shall be substituted.

Omission of sections 38 to 42.

25. Sections 38, 39, 40, 41, and 42 of the principal Act shall be omitted.

Amendment of section 43.

26. In section 43 of the principal Act, in sub-section (*4*), in clauses (*a*) and (*b*),—

(*i*) for the words "period of", the words "period starting from" shall be substituted;

(*ii*) for the words "insolvency commencement date", the words "initiation date and ending on the insolvency commencement date" shall be substituted.

Amendment of section 46.

27. In section 46 of the principal Act,—

(*a*) in the marginal heading, for the word "avoidable", the word "undervalued" shall be substituted;

(*b*) in sub-section (*1*),—

(*i*) for the words "avoiding a transaction at undervalue", the words "avoidance of an undervalued transaction" shall be substituted;

(*ii*) in clauses (*i*) and (*ii*),—

(*A*) for the words "period of", the words "period starting from" shall be substituted;

(*B*) for the words "insolvency commencement date", the words "initiation date and ending on the insolvency commencement date" shall be substituted.

Substitution of new section for section 47.

28. For section 47 of the principal Act, the following section shall be substituted, namely:—

Application by

creditors, member or partner in case of certain transactions or trading.

"47. (*1*) Where—

(*a*) a preferential transaction under section 43;

(*b*) an undervalued transaction under section 45;

(*c*) an extortionate credit transaction under section 50; or

(*d*) fraudulent **(**)** or wrongful trading under section 66,

has occurred and the liquidator or the resolution professional, as the case may be, has not reported it to the Adjudicating Authority, a creditor, either by itself or jointly with other creditors, a member, or a partner of the corporate debtor, as the case may be, may make an application to the Adjudicating Authority to pass orders in accordance with the respective provisions of this Chapter or Chapter VI, as the case may be.

(*2*) Where the Adjudicating Authority, after examination of the application made under sub-section (*1*), is satisfied that the relevant transaction or trading under clause (*a*) or (*b*) or (*c*) or (*d*) of sub-section (*1*) has occurred, it shall pass an order, for the avoidance of such transaction or trading, as the case may be, as if such an application had been filed by a liquidator or a resolution professional in accordance with the relevant provisions of this Chapter or Chapter VI.

(*3*) After passing an order under sub-section (*2*), where Adjudicating Authority is satisfied that the liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transaction or trading, did not report such transaction or trading to the Adjudicating Authority, it shall pass an order requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional, as the case may be.".

Amendment of section 49.

29. In section 49 of the principal Act, in the proviso, in clause (*a*), after the words "corporate debtor", the words "or a related party of the corporate debtor, as the case may be," shall be inserted.

Amendment of section 50.

30. In section 50 of the principal Act, in sub-section (*1*), for the **words** (**) "period within **two years preceding**" **(**)**, the words "period starting from two years preceding the initiation date and ending on" shall be substituted.

Amendment of section 52.

31. In section 52 of the principal Act,—

(*a*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Where the secured creditor intends to realise the security interest under clause (*b*) of sub-section (*1*), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised within a period of fourteen days from the liquidation commencement date, and if he fails to do so, such security interest shall be deemed to be relinquished to the liquidation estate:

Provided that where more than one secured creditor has any security interest over an asset of the corporate debtor, no secured creditor shall be entitled to realise its security interest, unless the realisation is agreed upon by the secured creditors representing not less than sixty-six per cent. of the value of all claims that are secured by such security interests.";

(*b*) for sub-section (*8*), the following sub-section shall be substituted, namely:—

"(*8*) The amount of insolvency resolution process, costs and the liquidation costs, and workmen's dues as referred to in clause (*a*) and sub-clause (*i*) of clause (*b*) of sub-section (*1*) of section 53, respectively, shall be deducted from the proceeds of any realisation by the secured creditors who realise their security interests in the manner provided in this section, and they shall transfer such amounts to the liquidator to be included in the liquidation estate in such manner, within such period and subject to such conditions to secure the payment as may be specified.";

(*c*) after sub-section (*9*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the purposes of this section, it is hereby declared that the provisions of sub-section (*2*) as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, shall not apply to the liquidation process initiated on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.".

Amendment of section 53.

32. In section 53 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*b*), in sub-clause (*ii*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that where the value of the security interest relinquished by the secured creditor is less than the total debt owed to such secured creditor by the corporate debtor, he shall be a secured creditor to the extent of the value of such security interest, determined in such manner as may be specified, and for the remaining value of such debt, he shall be considered to be an unsecured creditor;";

(*ii*) in clause (*e*), in sub-clause (*i*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that any amount, whether or not a security interest is created to secure such amount **by an act of two or more parties or merely by operation of law**, due to the Central Government and the State Government, in respect of the whole or any part of the period of two years preceding the liquidation commencement date, shall be distributed under this sub-clause and any remaining amount, whether or not **(**) such** security interest is created to secure **(**) the** amount, due to the Central Government and the State Government, shall be distributed under clause (*f*);";

(*b*) in sub-section (*2*), the following *Illustrations* shall be inserted, namely:—

"*Illustration* I.

The workmen and the secured creditors of the corporate debtor have a contractual arrangement which provides that in the event of insolvency or liquidation of the corporate debtor, all debt owed to the

secured creditors shall be cleared before clearing any debt owed to the workmen. Such a contractual arrangement shall be disregarded.

Illustration II.

"X", a secured creditor of the corporate debtor, has a contractual arrangement with "Y", another secured creditor of the corporate debtor. As per the contractual arrangement, in the event of insolvency or liquidation of the corporate debtor, the debt owed to "X" shall be cleared before clearing any debt owed to "Y". Such a contractual arrangement shall not be disregarded.".

Amendment of section 54.

33. In section 54 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) The liquidator shall completely liquidate the assets of the corporate debtor and make an application for its dissolution to the Adjudicating Authority within a period of one hundred and eighty days from the liquidation commencement date in such manner as may be specified:

Provided that the Adjudicating Authority may, on an application by the liquidator along with sufficient reasons, extend the stipulated time by such period as it deems fit, but not exceeding a period of ninety days.

(*1A*) Where a proceeding in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47 is pending before an application is made under sub-section (*1*) or a decision is made to dissolve the corporate debtor under sub-section (*2*) of section 33, the committee of creditors shall determine the manner of pursuing such proceedings and the distribution of the proceeds arising out of such proceedings, in such manner and subject to such conditions as may be specified.

(*1B*) Where any suit or other legal proceeding against the corporate debtor in respect of any proceeds to be distributed under section 53 is pending before application is made under sub-section (*1*) or a decision is made to dissolve the corporate debtor under sub-section (*2*) of section 33, the committee of creditors shall make appropriate arrangements for pursuing such suit or proceeding, and distribution of proceeds to the parties in such suit or proceedings, in such manner and subject to such conditions as may be specified.";

(*b*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*2A*) Without prejudice to the provisions of sub-section (*2*), the Adjudicating Authority may, on receipt of the decision of the committee of creditors to dissolve the corporate debtor under sub-section (*2*) of section 33, order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly:

Provided that if, on the passing of an order under this sub-section, any asset of the corporate debtor remains with it, such asset may be disposed of in such manner as may be specified, and the proceeds

thereof shall be distributed for payment of the insolvency resolution process costs and any surplus remaining after payment of such costs shall be credited to the Insolvency and Bankruptcy Fund formed under section 224.

(*2B*) Notwithstanding anything contained in sub-section (*2*) and sub-section (*2A*), the passing of the dissolution order shall not affect the continuation of proceedings referred to in sub-section (*1A*) and (*1B*).";

(*c*) in sub-section (*3*), after the words, brackets and figure "sub-section (*2*)", the words, brackets, figure and letter "or sub-section (*2A*)" shall be inserted;

(*d*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The Adjudicating Authority shall pass a dissolution order under this section within a period of thirty days from the date of receipt of the application under sub-section (*1*) or the intimation of the decision of the committee of creditors to dissolve the corporate debtor under sub-section (*2*) of section 33:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.".

Amendment of section 54A.

34. In section 54A of the principal Act (**),—

(*a*) in sub-section (*2*),—

(*i*) in clause (*a*), for the words "pre-packaged insolvency resolution process or", the words "pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process, or" shall be substituted;

(*ii*) in clause (b), after the words "resolution process", the words "or a creditor-initiated insolvency resolution process" shall be inserted.

(*iii*) in clause (*e*), for the words "sixty-six per cent.", the words "fifty-one per cent." shall be substituted;

(*b*) in sub-section (*3*), for the words "sixty-six per cent.", the words "fifty-one per cent." shall be substituted.

Amendment of section 54C.

35. In section 54C of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The corporate applicant shall, along with the application, furnish such information as may be specified.".

Amendment of section 54F.

36. In section 54F of the principal Act, for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) Any person who is or has been a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (*2*) and (*3*) of

section 19 shall, *mutatis mutandis*, apply in relation to the proceedings under this Chapter.".

Amendment of section 54L.

37. In section 54L of the principal Act,—

(*a*) in sub-section (*2*), for the word, brackets and figure "and (*4*)", the brackets, figures and word ", (*4*), (*5*) and (*6*)" shall be substituted;

(*b*) in sub-section (*3*), the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority may, before rejecting the resolution plan, give notice to the committee of creditors to rectify any defects in the resolution plan.";

(*c*) in sub-section (*4*), in clause (*b*), for the brackets, **figures (**)** and word "(*ii*) and (*iii*)", the brackets, **figures (**)** and word "(*ii*), (*iii*), (*iv*) and (*v*)" shall be substituted.

Amendment of section 54N.

38. In section 54N of the principal Act, in sub-section (*4*), in clause (*a*), for the brackets, **figures (**)** and word "(*ii*) and (*iii*)", the brackets, **figures (**)** and word "(*ii*), (*iii*), (*iv*) and (*v*)" shall be substituted.

Omission of Chapter IV of Part II.

39. In Part II of the principal Act, Chapter IV shall be omitted.

Insertion of new Chapter IV-A in Part II.

40. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IV-A

CREDITOR-INITIATED INSOLVENCY RESOLUTION PROCESS

Corporate debtors eligible for creditor-initiated insolvency resolution process.

58A. (*1*) A creditor-initiated insolvency resolution process may be initiated in respect of the following corporate debtors under this Chapter, namely:—

(*a*) a corporate debtor with assets or income or both, below such levels;

(*b*) a corporate debtor with such class of creditors or such amount of debt; or

(*c*) such other category of corporate debtors,

as may be notified by the Central Government.

(*2*) Without prejudice to sub-section (*1*), a creditor-initiated insolvency resolution process shall not be initiated in respect of a corporate debtor—

(*a*) for which an insolvency resolution or liquidation proceeding has been commenced and is still undergoing under the provisions of Part II; and

(*b*) that has undergone a creditor-initiated insolvency resolution process, pre-packaged insolvency resolution process or completed a corporate insolvency resolution process, during the period of three years preceding the creditor-initiated insolvency commencement date.

Initiation of creditor-initiated insolvency resolution process.

58B. (*1*) A financial creditor, belonging to such class of financial institutions as may be notified by the Central Government, in respect of which a default is committed by a corporate debtor, may initiate the creditor-initiated insolvency resolution process for such corporate debtor by appointing a resolution professional in accordance with the provisions of this

section, and subject to such conditions, as may be prescribed.

(*2*) The financial creditor seeking to initiate the creditor-initiated insolvency resolution process shall, before appointing the resolution professional,—

(*a*) obtain the approval of the financial creditors of the corporate debtor belonging to the class of financial institutions notified under sub-section (*1*), who represent not less than fifty-one per cent. in value of the debt due to such financial creditors, in such manner as may be specified;

(*b*) inform the corporate debtor of its intention to initiate the creditor-initiated insolvency resolution process and give it a period of at least thirty days to make any representation in such form and manner as may be specified; and

(*c*) after consideration of the representation received under clause (*b*), if any, where the financial creditor continues to pursue the initiation of the process, it shall obtain approval of the financial creditors of the corporate debtor belonging to such class as notified under sub-section (*1*), who represent not less than fifty-one per cent. in value of the debt due to such financial creditors, within a period of thirty days from the date of receipt of the representation, in such manner as may be specified:

Provided that where no approval is obtained under clause (*c*) within the stipulated period of thirty days, the financial creditor shall, if it seeks to initiate the creditor-initiated insolvency resolution process, obtain fresh approval under clause (*a*) and comply with the procedure under this sub-section.

Explanation.—For the purposes of this section, it is hereby clarified that where the corporate debtor does not make a representation within the period given by the financial creditor under clause (*b*), the financial creditor may, after the expiry of such period proceed to appoint the resolution professional in accordance with the provisions of sub-section (*3*).

(*3*) Where the financial creditor, who seeks to initiate the creditor-initiated insolvency resolution process, meets the requirements under sub-sections (*1*) and (*2*), it may appoint an insolvency professional as the resolution professional, if no disciplinary proceedings are pending against him, immediately after fulfilling all the requirements under sub-section (*2*).

(*4*) Where the resolution professional is appointed under sub-section (*3*), he shall—

(*a*) make a public announcement of the initiation of the creditor-initiated insolvency resolution process; and

(*b*) communicate the same along with a report confirming whether the financial creditor meets the requirements under sections 58A and 58B, to the Adjudicating Authority and the Board,

within such period and in such form and manner as may be specified, and the creditor-initiated insolvency resolution process shall be deemed to have commenced from the date of such public announcement.

(*5*) Notwithstanding anything contained in sections 7, 9, 10 and 54C, no application for initiation of the corporate insolvency resolution process or

the pre-packaged insolvency resolution process in respect of the corporate debtor shall be filed or admitted during the creditor-initiated insolvency resolution process period.

Explanation.—For the purposes of this Chapter,—

(*i*) "creditor-initiated insolvency commencement date" means the date of the public announcement referred to in sub-section (*4*) of section 58B; and

(*ii*) "creditor-initiated insolvency resolution process period" means the period beginning from the creditor-initiated insolvency commencement date and ending on the date on which an order is passed under sub-section (*1*) of section 58H or under sub-section (*1*) of section 58-I or under section 58J read with section 31.

Objections to commencement of process.

58C. (*1*) If the corporate debtor has any objection to the commencement of the process under section 58B, it may file an application to the Adjudicating Authority within a period of thirty days from the creditor-initiated insolvency commencement date in such form and manner as may be specified, accompanied with such fee as may be prescribed.

(*2*) Where the Adjudicating Authority, pursuant to an application under sub-section (*1*) is satisfied that—

(*a*) a default has not occurred or both a default has not occurred and the initiation of the creditor-initiated insolvency resolution process was in contravention of section 58A or 58B, it may, by order, declare the commencement of the process to be *void ab-initio*;

(*b*) a default has occurred, however, the initiation of the creditor-initiated insolvency resolution process was in contravention of sections 58A or 58B, it shall, convert the creditor-initiated insolvency resolution process to corporate insolvency resolution process and pass an order as referred to in sub-clauses (*i*) to (*v*) of sub-section (*1*) of section 58H.

(*3*) The Adjudicating Authority shall pass an order under sub-section (*2*), within a period of thirty days from the date of receipt of the application under sub-section (*1*):

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.

Period for completion of creditor-initiated insolvency resolution process.

58D. (*1*) Subject to sub-section (*2*), the creditor-initiated insolvency resolution process shall be completed within a period of one hundred and fifty days from the creditor-initiated insolvency commencement date.

(*2*) The Adjudicating Authority may, on the application made by the resolution professional, with the approval of the committee of creditors, by a vote of not less than sixty-six per cent. of the voting share, extend the period under sub-section (*1*), by a period of not more than forty-five days:

Provided that any extension of the period of the creditor-initiated insolvency resolution process under this section shall not be granted more than once.

(*3*) Where no resolution plan is approved by the committee of creditors within the period stipulated in sub-section (*1*) or the extended period under sub-section (*2*), the Adjudicating Authority shall pass an order under sub-section (*1*) of section 58H.

Duties and powers of resolution

58E. (*1*) The resolution professional, shall exercise and perform the following powers and duties during the creditor-initiated insolvency

professional.

resolution process period, in such manner and subject to such conditions as may be specified, namely:—

(*a*) call for the submission of claims;

(*b*) prepare the information memorandum;

(*c*) prepare a report in such form as may be specified, confirming whether the conduct of the creditor-initiated insolvency resolution process is in accordance with the procedural requirements and that the resolution plan, filed along with it, complies with the requirements of sections 29A and 30 which shall, *mutatis mutandis*, apply to the proceedings under this Chapter;

(*d*) duties referred to in clauses (*a*) to (*c*) of section 18 and clauses (*e*) to (*j*) of sub-section (*2*) of section 25 which shall, *mutatis mutandis*, apply to the proceedings under this Chapter;

(*e*) powers as referred to in sub-sections (*3*) and (*4*) of section 54F which shall, *mutatis mutandis*, apply to the proceedings under this Chapter;

(*f*) file such report and documents with the Board, as may be specified; and

(*g*) perform such other duties, as may be specified.

(*2*) Any person who is or has been a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the resolution professional, as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (*2*) and (*3*) of section 19 shall, *mutatis mutandis*, apply in relation to the proceedings under this Chapter.

Management of affairs of corporate debtors and cooperation of its personnel.

58F. (*1*) Subject to the provisions of this section, during the creditor-initiated insolvency resolution process period, the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, of the corporate debtor as the case may be, and the provisions of section 54H shall, *mutatis mutandis*, apply to the proceedings under this Chapter.

(*2*) Notwithstanding anything contained in any other law, from the creditor-initiated insolvency commencement date, the resolution professional shall attend meetings of members, Board of Directors and committee of directors, or partners, of the corporate debtor, and he shall have the right to reject any resolutions passed in these meetings, subject to such conditions and in such manner as may be specified, and once he rejects a resolution, it shall not be approved.

(*3*) The promoter and personnel of the corporate debtor shall provide relevant information related to the corporate debtor for preparing the information memorandum to the resolution professional in such form and manner and within such period as may be specified, and where any person has sustained loss or damage as a consequence of the omission of any material information or inclusion of any misleading information or false information provided by such persons, they shall be liable and in this regard, the provisions of sub-sections (*2*) to (*4*) of section 54G and section 77A, shall, *mutatis mutandis*, apply to the proceedings under this Chapter.

Moratorium.

58G. (*1*) During the creditor-initiated insolvency resolution process period, the resolution professional may, after obtaining the approval of the

committee of creditors, make an application to the Adjudicating Authority for a moratorium for the purposes referred to in sub-section (*1*) read with sub-section (*3*) of section 14, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter:

Provided that the resolution professional may file such application before the constitution of the committee of creditors, after obtaining approval of the financial creditors of the corporate debtor belonging to the class of financial institutions notified under sub-section (*1*) of section 58B, who represent not less than fifty-one per cent. in value of the debt due to such financial creditors, in such manner as may be specified.

(*2*) Where an application has been made in sub-section (*1*), a moratorium for the purposes referred to in sub-section (*1*) read with sub-section (*3*) of section 14 shall commence from the date of the application and continue to be in operation during the creditor-initiated insolvency resolution process period, and the Adjudicating Authority may confirm the moratorium, if it is satisfied that the moratorium is required for the proper and efficient conduct of the creditor-initiated insolvency resolution process, or reject the application.

(*3*) The resolution professional shall make public announcement of the following, in such form and manner as may be specified, namely:—

(*a*) filing of application under sub-section (*1*); and

(*b*) order of the Adjudicating Authority rejecting the application under sub-section (*2*), if any.

Conversion of creditor-initiated insolvency resolution process to corporate insolvency resolution process.

58H. (*1*) Where the Adjudicating Authority,—

(*a*) does not receive a resolution plan for approval, within the period stipulated under section 58D;

(*b*) is satisfied that the corporate debtor or its personnel have failed to assist or cooperate with the resolution professional; or

(*c*) rejects the resolution plan under sub-section (*2*) of section 58J read with sub-section (*2*) of section 31,

it shall, by an order,—

(*i*) convert the creditor-initiated insolvency resolution process to corporate insolvency resolution process under Chapter II and provisions of such Chapter shall apply;

(*ii*) decide the stage from which the corporate insolvency resolution process shall commence, after considering any recommendation of the committee of creditors, made in such manner as may be specified;

(*iii*) appoint the resolution professional for the creditor-initiated insolvency resolution process, as the interim resolution professional or the resolution professional for the corporate insolvency resolution process, as the case may be;

(*iv*) declare a moratorium for the purposes referred to in section 14; and

(*v*) declare that the costs incurred during the creditor-initiated insolvency resolution process, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.

(*2*) Where the committee of creditors, at any time during the creditor-initiated insolvency resolution process period, by a vote of not less than sixty-six per cent. of the voting share, resolves to convert the creditor-

initiated insolvency resolution process to the corporate insolvency resolution process in respect of the corporate debtor, the resolution professional shall make an application for this purpose to the Adjudicating Authority in such form and manner as may be specified, and the Adjudicating Authority shall pass an order as referred to in sub-clauses (*i*) to (*v*) of sub-section (*1*).

(*3*) Where the Adjudicating Authority passes an order to convert the creditor-initiated insolvency resolution process to the corporate insolvency resolution process under Chapter II—

(*a*) the proceedings initiated for an avoidance transaction or fraudulent or wrongful trading or under section 47, if any, during the creditor-initiated insolvency resolution process shall continue during the corporate insolvency resolution process;

(*b*) such order shall be deemed to be an order of admission of an application under section 7 and the financial creditor who initiated the creditor-initiated insolvency resolution process under section 58B, shall be considered as the applicant for that purpose; and

(*c*) for the purposes of sections 43, 46 and 50, the references to "initiation date and ending on the insolvency commencement date" shall be construed as "creditor-initiated insolvency commencement date and ending on the insolvency commencement date.".

Withdrawal of public announcement made under section 58B.

58-I. (*1*) Subject to sub-section (*2*), the Adjudicating Authority may allow the withdrawal of the public announcement made under sub-section (*4*) of section 58B and close the creditor-initiated insolvency resolution process on an application made by the resolution professional with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.

(*2*) Notwithstanding anything contained in any law for the time being in force, the public announcement made under sub-section (*4*) of section 58B shall not be withdrawn—

(*a*) before the constitution of the committee of creditors; and

(*b*) after the first invitation for submission of a resolution plan has been issued by the resolution professional.

(*3*) The Adjudicating Authority shall pass an order under sub-section (*1*), within a period of fourteen days from the date of receipt of the application:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.

Application for approval of resolution plan.

58J. (*1*) Where the committee of creditors, by a vote of not less than sixty-six per cent. of the voting share, approves the resolution plan in accordance with the provisions of section 30, the resolution professional shall submit such approved resolution plan to the Adjudicating Authority, alongwith a report referred to in clause (*c*) of sub-section (*1*) of section 58E.

(*2*) On receipt of the resolution plan, the Adjudicating Authority, shall, pass an order in accordance with the provisions of section 31, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

Application of provisions of Chapters II, III, VI and VII to this Chapter.

58K. (*1*) Save as provided in this Chapter, the provisions of sections 21, 24, 25A, 26, 27, 28, 28A, 29, 32, 32A, 43 to 51, and the provisions of Chapters VI and VII of this Part shall, *mutatis mutandis* apply, to the creditor-initiated insolvency resolution process, subject to the modifications that the references to—

(*a*) "corporate insolvency resolution process" shall be construed

as reference to "creditor-initiated insolvency resolution process";

(*b*) "insolvency commencement date" shall be construed as reference to "creditor-initiated insolvency commencement date";

(*c*) "insolvency resolution process period" shall be construed as reference to "creditor-initiated insolvency resolution process period"; and

(*d*) the references to "period starting from" shall be construed as "period of" and "initiation date and ending on the insolvency commencement date" shall be construed as "creditor-initiated insolvency commencement date" under sections 43, 46 and 50.

(*2*) The creditor-initiated insolvency resolution process of a corporate person under this Chapter shall meet such conditions and procedural requirements as may be specified.'.

Amendment of section 59.

41. In section 59 of the principal Act,—

(*a*) in sub-section (*2*), for the words "procedural requirements as may be specified by the Board", the words "procedural requirements, and be completed within such period which shall not be more than one year, as may be specified" shall be substituted;

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(*b*) **(**)**

(*c*) in sub-section (*4*), for the word "notify", the word "inform" shall be substituted;

(*d*) after sub-section (*5*), the following sub-sections shall be inserted, namely:—

"(*5A*) Any time after the commencement of a voluntary liquidation proceeding under sub-section (*5*) but before an application under sub-section (*7*) is filed, the voluntary liquidation proceeding shall be terminated if the following conditions are satisfied, namely:—

(*a*) the members of the company have passed a special resolution for terminating the voluntary liquidation proceeding;

(*b*) where the company owes debt to any person on the date of the resolution under clause (*a*), creditors representing two-thirds in value of such debt have approved the resolution passed under clause (a) within a period of seven days of such resolution; and

(*c*) such other conditions as may be specified.

(*5B*) The liquidator shall intimate the Board and the Registrar of Companies regarding the special resolution under clause (*a*) of sub-section (*5A*) within a period of seven days of passing the resolution or subsequent approval of the creditors under clause (*b*) thereof, as the case may be.

(*5C*) A voluntary liquidation proceeding shall be deemed to have been terminated from the date on which the liquidator intimates the Registrar of Companies under sub-section (*5B*), and such termination shall bring the term of the liquidator to an end and have such other consequences as may be specified.";

(*e*) in sub-section (*6*), after the words "provisions of", the words, brackets, letter and figures "clause (*b*) of section 18 of Chapter II," shall be

Insertion of new Chapter VA.

inserted.

42. In the principal Act, in Part II, after Chapter V, the following Chapter shall be inserted, namely:—

Power to make rules for initiating proceedings for coordination and cooperation of corporate debtors of group.

'CHAPTER VA

GROUP INSOLVENCY

59A. (*1*) Notwithstanding anything to the contrary contained in this Code, the Central Government may, prescribe the manner and conditions for conducting insolvency proceedings under Part II, where these proceedings are initiated against two or more corporate debtors that form part of a group.

(*2*) Without prejudice to the generality of foregoing provision, such rules may, provide for all or any of the following matters, namely:—

(*a*) a common Bench for the insolvency proceedings of the corporate debtors that form part of a group and the manner of the transfer of pending proceedings of such corporate debtors to such Bench, and for proceedings under the rules made under this section;

(*b*) coordination between the insolvency proceedings of the corporate debtors that form part of a group, including the coordination between their committee of creditors and interim resolution professionals, resolution professionals, or liquidators;

(*c*) appointment and replacement of a common insolvency professional to facilitate coordination between the insolvency proceedings of the corporate debtors that form part of a group;

(*d*) formation of a committee comprising of the committee of creditors of the corporate debtors that form part of a group;

(*e*) making of an agreement that provides measures to coordinate and synchronise different aspects of the insolvency proceedings of the corporate debtors that form part of a group, which shall be binding on the corporate debtors approving the same including their committees of creditors, and the Adjudicating Authority may issue necessary orders to implement the approved agreement; and

(*f*) treatment of the costs incurred for taking measures to coordinate the insolvency proceedings of the corporate debtors that form part of a group.

(*3*) The rules made by the Central Government under this section may provide that any of the provisions of the Code shall apply with such modifications, as may be required to administer and implement the provisions of this section.

Explanation.—For the purposes of this Chapter, the expressions—

(*a*) "control" includes the right to appoint majority of the directors or other key managerial personnel entitled to manage the affairs of the corporate person or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding, management rights, ownership interest, shareholders agreements, voting agreements, articles of association, limited liability partnership agreements or in any other manner;

(*b*) "group" means two or more corporate debtors that are

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interconnected by control or significant ownership, and include a holding company, a subsidiary company and an associate company of a corporate debtor, as defined under the Companies Act, 2013;

(*c*) "insolvency proceedings" means the corporate insolvency resolution process and liquidation process under Part II of this Code;

(*d*) "significant ownership" includes the right to exercise twenty-six per cent. or more voting rights.'

(*4*) Notwithstanding anything contained in section 241, a draft of every rule proposed to be issued under this section, shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if both Houses agree in disapproving the issue of rule or both Houses agree in making any modification in the rule, the rule shall not be notified or shall be notified only in such modified form, as may be agreed upon by both the Houses of Parliament.

(*5*) The period of thirty days referred to in sub-section (*4*) shall not include any period during which the House referred to in sub-section (*4*) is prorogued or adjourned for more than four consecutive days.

(*6*) Every rule notified under this section shall be laid, as soon as may be after it is made, before each House of Parliament.'.

Amendment of section 61.

42A. In section 61 of the principal Act, after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*6*) The National Company Law Appellate Tribunal shall dispose of the appeal within three months from the date of its receipt.".

Insertion of new section 64A.

43. After section 64 of the principal Act, the following section shall be inserted, namely:—

Penalty for initiating frivolous or vexatious proceedings under Part II.

"64A. If any person has initiated a frivolous or vexatious proceeding before the Adjudicating Authority under this Part, it may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to two crore rupees.".

Amendment of section 65.

44. In section 65 of the principal Act, in sub-section (*3*), for the words "pre-packaged insolvency resolution process" the words "pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process" shall be substituted.

Amendment of section 66.

45. In section 66 of the principal Act,—

(*a*) for the marginal heading, the following marginal heading shall be substituted, namely:—

"Fraudulent or wrongful trading.";

(*aa*) in sub-section (*1*), after the words "resolution professional", the words "or the liquidator," shall be inserted;

(*b*) in sub-section (*2*), after the words "during the corporate insolvency resolution process", the words "or by a liquidator" shall be inserted.

Amendment of section 67A.

46. In section 67A of the principal Act,—

(*a*) in the marginal heading, for the words "pre-packaged insolvency resolution process", the words "pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process" shall be substituted;

(*b*) for the words "pre-packaged insolvency commencement date", the

words "pre-packaged insolvency commencement date or creditor-initiated insolvency commencement date" shall be substituted.

Insertion of new sections 67B and 67C.

46A. After section 67A of the principal Act, the following sections shall be inserted, namely:—

Contravention of moratorium or resolution plan.

"67B. (*1*) Where a corporate debtor or any of its officer contravenes the provisions of section 14, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, as the case may be, impose penalty upon the officer, who committed or authorised or permitted such contravention, which shall not be less than one lakh rupees, but may extend to two crore rupees.

(*2*) Where any creditor contravenes the provisions of section 14, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, as the case may be, impose penalty upon any person who authorised or permitted such contravention by a creditor, which shall not be less than one lakh rupees, but may extend to two crore rupees.

(*3*) Where a corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, contravenes any of the terms of such resolution plan or abets such contravention, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, as the case may be, impose penalty upon such corporate debtor, officer, creditor or person, which shall not be less than one lakh rupees, but may extend to one crore rupees or twenty per cent. of the amount to be distributed under the resolution plan, whichever is higher.

Contravention for non-disclosure of dispute or payment of debt by operational creditor.

67C. Where—

(*a*) an operational creditor has concealed in an application under section 9, the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final payment thereof; or

(*b*) any person who authorised or permitted such concealment under clause (*a*); or

(*c*) any person who acted on such authorisation or permission,

the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, as the case may be, impose penalty upon such operational creditor or person, which shall not be less than one lakh rupees but may extend to two crore rupees.".

Omission of section 74.

46B. Section 74 of the principal Act shall be omitted.

Omission of section 76.

46C. Section 76 of the principal Act shall be omitted.

Amendment of section 96.

47. In section 96 of the principal Act, after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The provisions of this section shall not apply where an application is filed for initiating an insolvency resolution process in respect of a personal

guarantor to a corporate debtor.".

Amendment of section 99.

48. In section 99 of the principal Act,—

(*a*) in sub-section (*1*), for the words "ten days", the words "twenty-one days" shall be substituted;

(*b*) in sub-section (*10*), for the words "or the creditor, as the case may be", the words "and the creditor" shall be substituted.

Amendment of section 106.

49. In section 106 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Where no repayment plan is submitted within the period stipulated under sub-section (*1*), the resolution professional shall submit a report to the Adjudicating Authority, and the Adjudicating Authority shall pass an order terminating the insolvency resolution process of the debtor and the debtor or the creditors shall be entitled to file an application for bankruptcy under Chapter IV.";

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) Notwithstanding anything to the contrary contained in the provisions of sub-section (*2*) and sub-section (*3*), where the repayment plan is in respect of the debtor who is a personal guarantor to a corporate debtor, the resolution professional shall summon the meeting of the creditors by issuing a notice in writing specifying therein the date, time and place of such meeting.";

(*c*) in sub-section (*4*), after the words, brackets and figure "For the purposes of sub-section (*3*)", the words, brackets, figure and letter "and sub-section (*3A*)" shall be inserted.

Amendment of section 121.

50. In section 121 of the principal Act, in sub-section (*1*),—

(*a*) in clause (*c*), for the word and figures "section 118.", the words and figures "section 118; or" shall be substituted;

(*b*) after clause (*c*), the following clause shall be inserted, namely:—

"(*d*) where an order has been passed by an Adjudicating Authority under sub-section (*1A*) of section 106.".

Amendment of section 124.

51. In section 124 of the principal Act, after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The provisions of this section shall not apply where an application is filed for initiating a bankruptcy process in respect of a personal guarantor to a corporate debtor.".

Insertion of new section 164A.

52. After section 164 of the principal Act, the following section shall be inserted, namely:—

Transactions defrauding creditors.

"164A. Where the debtor has entered into an undervalued transaction as referred to in sub-section (*6*) of section 164 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such debtor—

(*a*) for keeping its assets beyond the reach of any person who is

entitled to make a claim against the debtor; or

(*b*) in order to adversely affect the interests of such a person in relation to the claim,

the Adjudicating Authority shall make an order,—

(*i*) restoring the position as it existed before such transaction, as if the transaction had not been entered into; and

(*ii*) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section—

(*a*) shall not affect any interest in property which was acquired from a person other than the debtor or his associate, as the case may be, and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest; and

(*b*) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum, unless he was a party to the transaction.".

Amendment of section 178.

53. In section 178 of the principal Act, in sub-section (*1*), in clause (*d*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that any amount, whether or not a security interest is created to secure such amount **by an act of two or more parties or merely by operation of law**, due to the Central Government and the State Government, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date, shall be distributed under this clause **(**)** and any remaining amount, whether or not **such (**)** security interest is created to secure **the (**)** amount, due to the Central Government and the State Government, shall be distributed under clause (*e*);".

Insertion of new section 183A.

54. After section 183 of the principal Act, the following section shall be inserted, namely:—

Penalty for initiating frivolous or vexatious proceedings under Part III.

"183A. If, any person has initiated a frivolous or vexatious proceeding before the Adjudicating Authority under this Part, it may impose upon such person a penalty which shall not be less than one lakh rupees but which may extend to two crore rupees.".

Amendment of section 196.

55. In section 196 of the principal Act, in sub-section (*1*),—

(*a*) for the words "insolvency professional agencies, insolvency professionals and information utilities", wherever they occur, the words "service providers" shall be substituted;

(*b*) for the words "insolvency professionals, insolvency professional agencies and information utilities", wherever they occur, the words "service providers" shall be substituted;

(*c*) in clause (*c*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For removal of doubts, it is hereby clarified that the levy of fee or other charges under this clause also includes any fee or other

charges levied by the Board in relation to the processes under this Code.";

(*d*) after clause (*s*), the following clause shall be inserted, namely:—

"(*sa*) specify the standards of conduct for the committee of creditors and its members**, including the timelines within which the committee of creditors shall take decisions,** while acting under Part II and Part III of this Code, as the case may be;";

(*e*) in clause (*t*), for the words "under this Code", the words "for the purposes of this Code" shall be substituted.

Amendment of section 208.

56. In section 208 of the principal Act, in sub-section (*1*), after clause (*ca*), the following clause shall be inserted, namely:—

"(*cb*) creditor-initiated insolvency resolution process under Chapter IVA of Part II;".

Amendment of section 214.

57. In section 214 of the principal Act, in clause (*e*), after the words "such information", the words "in such manner as may be specified" shall be inserted.

Amendment of section 215.

58. In section 215 of the principal Act,—

(*a*) for the marginal heading, the following marginal heading shall be substituted, namely:—

"Submission and authentication of financial information to information utilities.";

(*b*) in sub-section (*3*), for the words "An operational creditor may", the words and figure "An operational creditor shall, before filing an application under section 9 of the Code," shall be substituted;

(*c*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The corporate debtor or debtor, as the case may be, in respect of whom any information is submitted under this section, shall authenticate the information in such manner and within such period, as may be specified:

Provided that where the corporate debtor or debtor does not respond to the information submitted to the information utility in the manner and period as has been specified, such information shall be deemed to be authenticated.".

Amendment of section 217.

59. In section 217 of the principal Act,—

(*a*) for the marginal heading, the marginal heading "Complaints against service providers." shall be substituted;

(*b*) for the words "an insolvency professional agency or insolvency professional or an information utility", the words "a service provider" shall be substituted.

Amendment of section 218.

60. In section 218 of the principal Act,—

(*a*) for the marginal heading, the marginal heading "Investigation of service providers." shall be substituted;

(*b*) in sub-section (*1*), for the words "insolvency professional agency or insolvency professional or an information utility", occurring at both the places, the words "service provider" shall be substituted.

Substitution of

new section for section 219.

Show cause notice to service provider.

61. For section 219 of the principal Act, the following section shall be substituted, namely:—

"219. Where the Board, upon completion of an inspection or investigation under section 218 or on the basis of material available on record, is of the *prima facie* opinion that sufficient cause exists to take action under section 220, it may issue a show cause notice to a service provider in such manner, providing such period for giving reply, as may be specified.".

Amendment of section 220.

62. In section 220 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) The Board shall constitute one or more disciplinary committees consisting of one or more persons from amongst its Chairperson, whole-time members or officers not below the rank of the Executive Director for the purposes of this section.";

(*b*) after sub-section (*1*) as so substituted, the following sub-section shall be inserted, namely:—

"(*1A*) The show cause notice issued under section 219 shall be referred to a disciplinary committee constituted under sub-section (*1*).";

(*c*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Where the disciplinary committee, after giving the service provider an opportunity of being heard, is satisfied that sufficient cause exists, it may, impose a penalty as provided in sub-section (*3*), or suspend or cancel the registration of the service provider, or direct disgorgement under sub-section (*4*).";

(*d*) in sub-section (*3*),—

(*i*) for the opening portion, the following opening portion shall be substituted, namely:—

"Where any service provider has contravened any provisions of this Code or rules or regulations made thereunder, the disciplinary committee may impose penalty which shall be up to—";

(*ii*) in the proviso, for the words "more than one crore rupees", the words "two crore rupees" shall be substituted;

(*e*) in sub-sections (*4*) and (*5*), for the word "Board", wherever it occurs, the words "disciplinary committee" shall be substituted;

(*f*) after sub-section (*6*), the following sub-sections shall be inserted, namely:—

"(*7*) Any person aggrieved by an order of the disciplinary committee, under sub-sections (*2*) to (*5*), may prefer an appeal to the National Company Law Appellate Tribunal within a period of thirty days from the date of receipt of the order.

(*8*) The National Company Law Appellate Tribunal may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within thirty days, allow the appeal to be filed under

sub-section (*7*) within a further period not exceeding fifteen days.".

Amendment of section 224.

63. In section 224 of the principal Act,—

(*a*) in sub-section (*2*),—

(*a*) in clause (*c*), after the words "any other source;", the word "and" shall be omitted;

(*b*) in clause (*d*), for the word "Fund.", the words "Fund; and" shall be substituted;

(*c*) after clause (*d*), the following clause shall be inserted, namely—

"(*e*) amounts from such other sources as may be prescribed.";

(*b*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The sums credited to the Fund may be utilised—

(*a*) by a person who has contributed any amount to the Fund under clause (*b*) of sub-section (*2*), in the event of proceedings initiated in respect of such person under this Code before an Adjudicating Authority, by making an application to such Adjudicating Authority for withdrawal of funds not exceeding the amount contributed by it, for making payment to workmen, protecting the assets of such persons, meeting the incidental cost during the proceedings or such purposes as may be prescribed; and

(*b*) for such other purposes and in such manner as may be prescribed.".

Substitution of new section for section 235A.

64. For section 235A of the principal Act, the following section shall be substituted, namely:—

Power of Adjudicating Authority to impose penalties.

"235A. If a person has contravened any provision of this Code or any rules or the regulations made thereunder, the Adjudicating Authority may, on an application made by the Board or the Central Government or any person authorised by the Central Government in this behalf, impose upon such person, a penalty which shall not be less than one lakh rupees for each day during which the contravention continues, but which may extend up to—

(*a*) three times the amount of loss caused, or likely to have been caused, to persons concerned on account of such contravention;

(*b*) three times the amount of the unlawful gain made on account of such contravention,

whichever is higher:

Provided that where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed five crore rupees:

Provided further that where the Adjudicating Authority is of the opinion that sufficient cause exists to do so, it may, for reasons to be recorded in writing, impose a penalty which may be less than one lakh rupees for each day that the failure continues.

Explanation. I—For the removal of doubts, it is hereby clarified that

the Adjudicating Authority for the purposes of this section shall be the same as referred to in section 60 or section 179, as the case may be.

Explanation. II—For the purposes of this **(**) Code**, it is hereby declared that **the omission of sections 74 and 76, and** the amendment of this section by the Insolvency and Bankruptcy Code (Amendment) Act, 2025**,** shall not affect:—

(*i*) any prosecution instituted under **(**) these sections** (**) on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025 and pending immediately before such date of commencement before any court, which shall continue to be heard and disposed of by the said court as if the Insolvency and Bankruptcy Code (Amendment) Act, 2025 had not been enacted; and

(*ii*) any punishment imposed under (**) **these sections** (**) on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.".

Amendment of section 239.

65. In section 239 of the principal Act,—

(*a*) in sub-section (*1*), for the word "provisions", the word "purposes" shall be substituted;

(*b*) in sub-section (*2*),—

(*i*) clause (*ea*) shall be omitted;

(*ii*) after clause (*fe*), the following clauses shall be inserted, namely:—

"(*ff*) the conditions under sub-section (*1*) of section 58B;

(*fg*) the fee for filing an objection under sub-section (*1*) of section 58C;

(*fh*) the manner and conditions under sub-section (*1*) of section 59A;";

(*iii*) for clause (*zi*), the following clause shall be substituted, namely:—

"(*zi*) the other sources of amounts to be credited to the Insolvency and Bankruptcy Fund under clause (*e*) of sub-section (*2*) of section 224;";

(*iv*) after clause (*zi*) as so substituted, the following clauses shall be inserted, namely:—

"(*zia*) the purposes under clause (*a*) of sub-section (*3*) of section 224;

(*zib*) the other purposes and the manner under clause (*b*) of sub-section (*3*) of section 224;";

(*v*) after clause (*zm*), the following clause shall be inserted, namely:—

"(*zma*) the manner and conditions under sub-section (*1*) of section 240C;".

66. In section 240 of the principal Act,—

Amendment of section 240.

(*a*) in sub-section (*1*), for the word "provisions", the word "purposes"

shall be substituted;

(*b*) in sub-section (*2*),—

(*i*) after clause (*ea*), the following clause shall be inserted, namely:—

"(*eb*) the conditions under *Explanation* to clause (*26*) of section 5;";

(*ia*) after clause (*f*), the following clause shall be inserted, namely:—

"(*fa*) other information under clause (*e*) of sub-section (*3*) of section 9;";

(*ii*) for clause (*h*), the following clause shall be substituted, namely:—

"(*h*) the other document or any other information under clause (*a*) of sub-section (*3*) of section 10;";

(*iii*) after clause (*h*), the following clause shall be inserted, namely:—

"(*ha*) the manner under sub-section (*1*) of section 12A;";

(*iv*) in clause (*n*), after the words, brackets and letter "of clause (*a*)," the words, brackets and letter "the manner under clause (*b*)," shall be inserted;

(*v*) after clause (*o*), the following clause shall be inserted, namely:—

"(*oa*) any other class or classes of creditors who may attend the meetings of committee of creditors under the proviso to sub-section (*11*) of section 21;";

(*vi*) after clause (*t*), the following clause shall be inserted, namely:—

"(*ta*) the manner and conditions under sub-section (*1*) of section 28A;";

(*vii*) in clause (*w*), for the words, brackets, letters and figures "the manner of payment of debts under clause (*b*), and the other requirements to which a resolution plan shall conform to under clause (*d*) of sub-section (*2*) of section 30;", the words, brackets, letters and figures "the manner of payment of debts of operational creditors under clause (*b*), the manner of payment of debts of financial creditors who do not vote in favour of the resolution plan under clause (*ba*), the conditions and manner for constitution of a committee under clause (*d*) and the other requirements to which a resolution plan shall conform to under clause (*f*) of sub-section (*2*) of section 30;" shall be substituted;

(*viii*) after clause (*wa*), the following clauses shall be inserted, namely:—

"(*wb*) the form, manner and the conditions under the second proviso to sub-section (*1*) of section 31;

(*wc*) the manner and conditions for making an application by the committee of creditors for restoring the corporate

insolvency resolution process and manner and conditions for completing the restored corporate insolvency resolution process under sub-section (*1A*) of section 33;

(*wd*) the conditions under the proviso to sub-section (*2*) of section 33;";

(*ix*) for clause (x), the following **clauses** (**)shall be substituted, namely:—

"(*x*) the form of written consent from insolvency professional under sub-section (*6*) of section 34;

(*xa*) the fee for the conduct of the liquidation proceedings and proportion to the value of the liquidation estate assets under sub-section (*8*) of section 34;";

(*x*) after clause ***(xa)*** (**) as so substituted, the following **clause (**)** , shall be inserted, namely:-

" **(**) (*xb*)** the form for giving written consent under sub-section (1) of section 34A**;";**

(*xi*) in clause (*y*), for the words, brackets and letter "the manner of evaluating the assets and property of the corporate debtor under clause (*c*)", the words, brackets and letters "the manner of maintaining an updated list of claims of creditors under clause (*a*), the manner of evaluating the assets and property of the corporate debtor under clause (*c*)" shall be substituted;

(*xii*) for clause (*z*), the following clause shall be substituted, namely:—

"(*z*) the manner in which the committee of creditors shall supervise the conduct of the liquidation process by the liquidator under sub-section (*2*) of section 35;";

(*xiii*) clauses (*ze*), (*zf*) and (*zg*) shall be omitted;

(*xiv*) after clause (*zi*), the following clause shall be inserted, namely:—

"(*zia*) the manner, period and conditions under sub-section (*8*) of section 52;";

(*xv*) after clause (*zj*), the following clauses shall be inserted, namely:—

"(*zja*) the period and the manner of distribution of proceeds of sale under sub-section (*1*) of section 53;

(*zjb*) the manner of determining the value of security interest under the *Explanation* to sub-clause (*ii*) of clause (*b*) of sub-section (*1*) of section 53;

(*zjc*) the manner in which the liquidator shall make an application to the Adjudicating Authority for the dissolution of the corporate debtor under sub-section (*1*) of section 54;

(*zjd*) the manner and conditions under sub-section (*1A*) of section 54;

(*zje*) the manner and conditions under sub-section (*1B*) of section 54;";

(*xvi*) for clause (*zk*), the following clause shall be substituted, namely:—

"(*zk*) the manner under the proviso to sub-section (*2A*) of

section 54;";

(*xvii*) for clause (*zke*), the following clause shall be substituted, namely:—

"(*zke*) the information to be furnished under sub-section (*3*) of section 54C;";

(*xviii*) clause (*zl*) shall be omitted;

(*xix*) after clause (*zl*) as so omitted, the following clauses shall be inserted, namely:—

"(*zla*) the manner under clause (*a*), the form and manner under clause (*b*), and the manner under clause (*c*) of sub-section (*2*) of section 58B;

(*zlb*) the period, form and manner under sub-section (*4*) of section 58B;

(*zlc*) the form and manner under sub-section (*1*) of section 58C;

(*zld*) the manner and conditions for exercising the powers and performing duties by the resolution professional under section 58E;

(*zle*) the form in which the report to be prepared under clause (*c*), the report and documents to be filed with the Board under clause (*f*), and such other duties to be performed under clause (*g*) of section 58E;

(*zlf*) the conditions and manner for the resolution professional to attend the meetings and exercise the right to reject under sub-section (*2*) and the form, manner and period under sub-section (*3*) of section 58F;

(*zlg*) the manner under the proviso to sub-section (*1*) of section 58G;

(*zlh*) the form and manner in which the resolution professional shall make public announcement under sub-section (*3*) of section 58G;

(*zli*) the manner under sub-clause (*ii*) of sub-section (*1*) of section 58H;

(*zlj*) the form and manner under sub-section (*2*) of section 58H;

(*zlk*) the manner under sub-section (*1*) of section 58-I;

(*zll*) the conditions and procedural requirements under sub-section (*2*) of section 58K;";

(*xx*) in clause (*zm*), for the words "conditions and procedural requirements", the words "conditions, procedural requirements, and period" shall be substituted;

(*xxi*) after clause (*zm*), the following clauses shall be inserted, namely:—

"(*zma*) the other conditions under clause (*c*) of sub-section (*5A*) of section 59;

(*zmb*) the other consequences under sub-section (*5C*) of

section 59;";

(*xxii*) in clause (*zv*), after the words, brackets and letter "utilities under clause (*r*)," the words, brackets and letters "standards of conduct of the committee of creditors and its members under clause (*sa*)," shall be inserted;

(*xxiii*) after clause (*zzs*), the following clause shall be inserted, namely:—

"(*zzsa*) the manner under clause (*e*) of section 214;";

(*xxiv*) after clause (*zzw*), the following clause shall be inserted, namely:—

"(*zzwa*) the manner and period under sub-section (*4*) of section 215;";

(*xxv*) for clause (*zzza*), the following clause shall be substituted namely:—

"(*zzza*) the manner and period under section 219;".

Insertion of new sections 240B and 240C.

67. After section 240A of the principal Act, the following sections shall be inserted, namely:—

Electronic portal for facilitating procedures.

"240B. Notwithstanding anything to the contrary contained in this Code, the Central Government may, by notification, provide an electronic portal and the procedures related to the insolvency and bankruptcy processes under this Code, which shall be carried out on such electronic portal.

Power to make rules for cross-border insolvency.

240C. (*1*) Notwithstanding anything to the contrary contained in this Code and the Companies Act, 2013, the Central Government may prescribe the manner and conditions for administering and conducting cross-border insolvency proceedings under **(**)** **this** Code, **including the process for recognition of proceedings, granting relief, judicial cooperation, assistance and coordination in connection with such proceedings, for such class or classes of debtors or corporate debtors involving such countries or territories outside India,** as may be notified by the Central Government **in this regard**.

(*2*) The rules made under this section may provide that any of the provisions of this Code or the Companies Act, 2013 shall apply with such exceptions, modifications and adaptations, as may be required to administer and implement the provisions of this section and rules made thereunder, including designating one or more Benches for dealing with proceedings under this section.

(*3*) A draft of every rule proposed under this section shall be laid before each House of Parliament in such manner as provided under sub-sections (*4*) to (*6*) of section 59A, which shall, *mutatis mutandis* apply, to the rules made under this section.

***Explanation*—For the purposes of this section, the expression "corporate debtor" shall also include any person incorporated with limited liability outside India.".**

Amendment of section 242.

68. In section 242 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-section (*1*), if any difficulty arises in giving effect to the provisions of this Code, as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2025, the Central Government may, by an order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code, as

may appear to it to be necessary or expedient for removing such difficulty:

Provided that no such order shall be made under this section after the expiry of a period of five years from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2025.".