

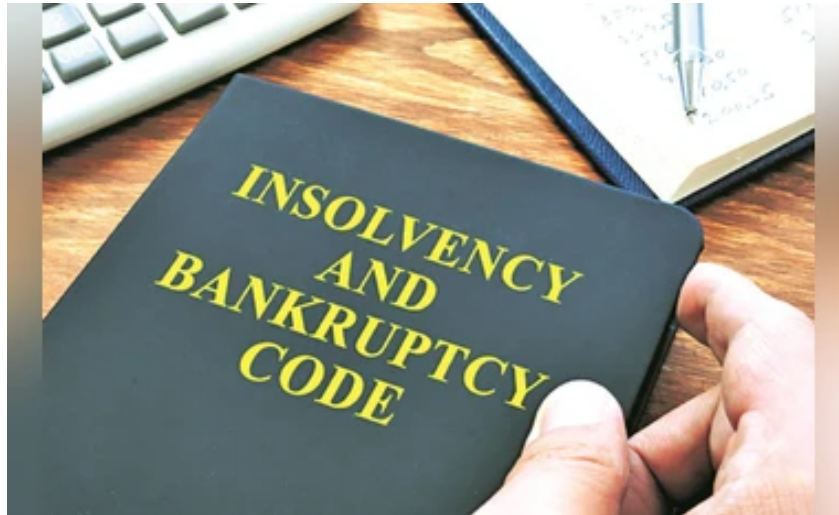
IBC requires urgent reforms to meet demands across various sectors

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May 18, 2025

Court orders and reforms do not compensate for the legislative clarity needed in IBC for sector-specific insolvency processes



The Insolvency and Bankruptcy Board of India's recent amendment signals an intent to bridge the disconnect between the IBC and sectoral authorities

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4 min read Last Updated : May 18 2025 | 10:30 PM IST

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According to the newly amended extant regulations for the corporate insolvency resolution process, a committee of creditors (CoC) is entitled to invite a 'competent authority' under Section 2 of the Real Estate (Regulation and Development) Act, 2016 (RERA) to participate in CoC meetings. But the amendment only scratches the surface of a much larger structural issue within the insolvency regime.

Resolution of stressed assets in real estate is complex due to its intricate regulatory landscape and the involvement of multiple stakeholders. By allowing RERA authorities to be present at CoC meetings, the amendment acknowledges the critical role they play in real estate insolvencies. However, the scope of the amendment is largely consultative. It stops short of granting a

decision-making role to RERA authorities within the insolvency framework. The amendment's sector-specific nature leaves unresolved similar challenges that persist across other regulated sectors.

Industries such as power, aviation, roads and urban infrastructure often require mandatory approvals from sectoral regulators or government authorities when there is a change in control of the requisite entity. Under Section 31(4) of the Insolvency and Bankruptcy Code (IBC), resolution applicants are required to obtain approvals under any law for the time being in force. That is to be done within a period of one year of approval of the resolution plan or within the timeframe prescribed under the relevant law, whichever is later.

This provision, however, does little to resolve the practical hurdles in sector-specific insolvencies, where key approvals from regulators are essential for consummating acquisitions and require proactive engagement and coordination. In practice, resolution applicants specify conditions precedent (CPs) in their resolution plans. Such plans are to take effect once approvals from the relevant authorities are obtained.

The Supreme Court (SC) and the National Company Law Appellate Tribunal have in certain cases permitted the retention of such CPs in resolution plans. However, the SC's decision in *Ebix Singapore vs CoC of Educomp Solutions* cast doubts on the legality of such plans given these conditions holding that resolution plans are required to be unconditional. While Section 238 of the IBC states that the provisions under the IBC will have an overriding effect over other laws, this override applies only in cases of inconsistency between the IBC and other statutes. Therefore, in the absence of such inconsistency, sectoral regulations and approval requirements continue to apply, limiting the protective scope of Section 238 in cases where regulatory engagement is essential for implementing a resolution plan.

To some extent, the judiciary has stepped in to clarify the primacy of the IBC. In recent rulings, the SC has affirmed that once a resolution plan is approved it binds all stakeholders, including governmental and regulatory bodies. For instance, the SC in *Noida Special Economic Zone Authority vs Manish Agarwal and Ors* upheld the primacy of the IBC over Special Economic Zone Act 2005 to exempt payment of fees and penalties for renewal of sub-leases and transfer charges due to change of shareholding in favour of the resolution applicant. Yet, these decisions, while affirming the supremacy of the IBC, do not compensate for the lack of legislative clarity on how the resolution applicants should obtain such sector-specific approvals. They provide relief on a case-by-case basis but fall short of establishing a consistent and predictable framework.

The Insolvency and Bankruptcy Board of India's recent amendment signals an intent to bridge the disconnect between the IBC and sectoral authorities. However, without formal decision-making powers granted to such authorities or a clear statutory mechanism to deal with approvals required to resolve cases under the IBC, the amendment is a half measure. What is urgently needed are broader reforms. This includes authorities instituting sector-specific processes for dealing with cases under IBC from claim filing to attending CoC meetings to granting approvals for acquisitions under the IBC.

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First Published: May 18 2025 | 10:29 PM IST