Ultimate Guide to Secured Creditors' Rights under the IBC post the 2026 Amendment Act

Trilegal

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BACKGROUND

The legislature has enacted the Insolvency and Bankruptcy Code (Amendment) Act, 2026 (**Amendment Act 2026**) on 6 April 2026 which introduces certain key changes to the Insolvency and Bankruptcy Code, 2016 (**IBC**) from the perspective of payouts to secured creditors. The three primary questions from a secured creditor's perspective are:

i. Is a creditor's *secured* status under Section 53 measured by the value of its security interest or by the entirety of its admitted debt?
ii. Do *inter se* arrangements among *pari passu* charge-holders survive within the Section 53 waterfall?
iii. Is a dissenting financial creditor (**DFC**) entitled, as its minimum entitlement under Section 30(2)(ba), to the value of its security interest, or only to a *pro rata* share of resolution proceeds?

AMENDMENT ACT 2026

Section 30(2)(ba) - DFC Entitlement

The Amendment Act 2026 introduces a significant modification to the statutory safeguard available to DFCs through the insertion of an additional stipulation under section 30(2) of the IBC, which prescribes the minimum entitlement payable to DFCs. The amended provision mandates that a resolution plan *shall ensure that DFCs receive not less than the lower of:*

i. *the amount receivable in liquidation under section 53 of the IBC (**Liquidation Waterfall**); or*
ii. *the amount that would have been paid if the resolution plan proceeds are distributed in accordance with the Liquidation Waterfall**[1]**.*"

The protection of a DFC's minimum entitlement has been a feature of the resolution framework since the recommendations of the Bankruptcy Law Reform Committee in its Interim Report of February 2015. The stated objective is resolution-plan certainty and the reduction of value-destructive litigation while narrowing the leverage that dissent previously carried.

In liquidation, a DFC holding an exclusive charge over a key asset of the corporate debtor could elect to realise its security interest outside the liquidation estate and retain the proceeds, rather than relinquish the asset to the liquidation estate for distribution. The question is whether this security-linked value carries through to the minimum payable under a resolution plan. In the case of *DBS Bank Ltd., Singapore v. Ruchi Soya Industries Ltd.**[2]* (**Ruchi Soya Case**), the Supreme Court (**SC**) while analysing Section 30(2)(b) concluded that DFCs are entitled to a minimum value in monetary terms equivalent to the value of its security interest.

Significantly, the Amendment Act, 2026 does not alter the statutory language interpreted in *Ruchi Soya*, with limb (i) retaining its original formulation. As a result, the interpretative framework established in that decision, particularly its security-linked approach to creditor entitlements, continues to apply. The innovation of the amendment lies in limb (ii) and the introduction of the "lower of" threshold. Unlike limb (i), which engages Section 52 and the value of the security interest, limb (ii) adopts only the order of priority under the liquidation waterfall as a template for distributing plan proceeds, reflecting a narrower and deliberately calibrated approach.

The amendment introduces an inherent asymmetry between the two limbs. While limb (i) preserves the security-linked entitlement, limb (ii) limits recovery to the creditor's priority-based share of resolution proceeds. By mandating payment of the lower of the two, the provision effectively retains the *Ruchi Soya* principle in form, but constrains its operation in substance. Consequently, the security-linked entitlement operates as a ceiling rather than a floor, capping a dissenting financial creditor's recovery at its Section 53-aligned share of the plan proceeds, even where liquidation realisation would have been higher.

Section 53(1)(b)(ii) - Extent of Secured Status

The newly inserted explanation to Section 53 of the IBC clarifies that the status of a creditor as a secured creditor is limited to the extent of the realisable value of its security interest, with any excess claim ranking as unsecured[3].

The Insolvency Law Committee (**ILC**) in its Report of February 2020 recommended that a secured creditor be treated as such only to the extent of the value of its underlying security, rather than its entire admitted claim.. While in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta**[4]* and *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.**[5]*, the SC favoured a security-linked approach, it adopted a contrary claims-based pro rata distribution in *India Resurgence ARC (P) Ltd. v. Amit Metaliks Ltd.**[6]* (**Amit Metaliks Case**). This inconsistency was acknowledged in Ruchi Soya Case where the SC expressed reservations about the *Amit Metaliks Case*, reaffirmed the security-linked reading, and referred the question to a larger bench, where it remains pending.

The Amendment Act 2026 introduces a crucial clarification to Section 53(1)(b)(ii), addressing this long-standing ambiguity over the extent to which a creditor may be regarded as a "secured creditor" for distribution. The amendment clarifies that a secured creditor shall be treated as a secured creditor only to the extent of the realisable value of the security interest relinquished, with the residual portion of its claim ranking as unsecured.

This may lead to the bifurcation of a single creditor's claim into secured and unsecured components, contingent upon the assessed value of the underlying security, thereby introducing potential challenges in claim verification, classification, and distribution. This dual character of claims may lead to disputes regarding valuation methodologies, timing of valuation, and the appropriate allocation of proceeds, particularly in cases involving fluctuating asset values or multiple secured creditors with competing security interests.

The clarification addresses only the extent to which a claim is treated as secured, without resolving the mechanics of distribution. While security value and priority now determine secured classification, allocation within each class continues to follow the proportion of admitted debt in that class. This creates a residual tension: although recognition is value-based, distribution remains debt-linked, leaving open the question of whether allocation within the secured class should instead reflect security value.

Section 53(2) - Preservation of *inter se* arrangements

The amendment to Section 53(2) of the IBC affirms that contractual arrangements inter se creditors of the same class shall not be disregarded[7]. This amendment is in line with the recommendation of the ILC in its Report of March 2018 wherein it noted that it may not be prudent to abrogate valuable proprietary rights vested with secured creditors. The arrangement so protected is one of payment priority, i.e. the order in which the respective debts are discharged. It is, in substance, a recognition of contractual turnover and subordination.

What the Illustration conspicuously does not address is priority of charge nor about how the secured pool is to be constituted or allocated when securities are relinquished to the liquidation estate. The amendment therefore enforces the sequencing of payment, but it does not statutorily recognise a creditor's senior charge in the distribution itself. This is a meaningful limitation, and it leaves the more consequential question untouched.

The SC in *ICICI Bank v. Sidco Leathers Ltd.**[8]* reaffirmed the priority of earlier charges based on the principle *qui prior est tempore potior est jure*, the NCLAT in *Technology Development Board v. Anil Goel**[9]* held that relinquishment under Section 53 equalises secured creditors regardless of inter se priority. If such equalisation applies, the senior creditor's entitlement is diluted at source, reducing the turnover to a mere sequencing mechanism rather than a safeguard of substantive priority. The Illustration preserves the order of payment, but not the quantum of the underlying fund. For a senior secured lender, that is only a partial protection, and arguably the less valuable part: the priority it most needs recognised, that its senior charge should command a larger share of the secured pool at source is precisely what the amendment declines to address.

The result is a curious half-measure. While the Amendment Act affirms the enforceability of contractual payment arrangements in insolvency, it does not address the antecedent issue of charge priority that determines their substantive effect. As a result, senior lenders must rely on robust inter-creditor arrangements, particularly turnover and subordination provisions, to preserve value post-distribution, rather than on statutory recognition of charge ranking.

The amendment's recognition of inter-creditor and subordination arrangements, while enhancing contractual certainty, is likely to intensify disputes over priority and valuation, particularly among subordinate creditors challenging their entitlements under Sections 30(2) of the IBC. Consequently, inter-creditor agreements assume heightened significance, as the burden of preserving a senior lender's economic priority shifts to contractual drafting. It is now essential that these agreements capture, unambiguously, the priority of payment and the turnover and subordination obligations *inter se* the lenders, since it is these provisions and not the ranking of charges that the amendment renders enforceable. Accordingly, clear and robust provisions on payment priority, turnover, and subordination are essential to replicate, through contract, the charge-priority outcomes not expressly addressed by the statute

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