A FASTER ROUTE TO THE SAME GATE: *VIDARBHA*, SECTION 7(5)(A), AND THE PARADOX OF CIIRP

Hiya Darpan Sonchhatra[1]

I. INTRODUCTION

When the Parliament is of the opinion to displace a judicial interpretation, the usual way is to amend the statutory language on which that interpretation rests. The Insolvency and Bankruptcy Code (Amendment) Act, 2026[2] follows that familiar path. It has added section 7(5)(a) in the Insolvency and Bankruptcy Code, 2016 that the Adjudicating Authority must admit an application if there are three conditions that the default has been met: the application is complete and no disciplinary action is pending for the proposed resolution professional. The word "may" which the Supreme Court has allowed to be used in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd***[3], means 'the Adjudicating Authority has the final say'. Chapter IV-A (58A to 58K)[4] has been introduced.

The new provisions allow a notified class of financial creditors (of which at least 51 per cent is in value) to start a Creditor-Initiated Insolvency Resolution Process (CIIRP) without filing an application to the NCLT. The process starts with a public announcement issued by a resolution professional appointed by the creditors. It is now mandatory as long as the statutory conditions are met and under 14 days but the main basis for an out-of-court alternative is weakened. Second, that redundancy could be more than written bad. It indicates that Parliament itself does not expect the amended admission mechanism to work. That expectation is not without reason, as delays at the admission stage have never been a result of statutory language alone; they have also reflected docket congestion, registry deficiencies, listing practices, and limited adjudicatory capacity. Third, CIIRP does not remove the system of adjudicatory

[1] LLM IBL, IICA, hiyasonchhatra@nalsar.ac.in, 9300988653.
[2] The Insolvency and Bankruptcy Code (Amendment) Act, 2026, No. 6 of 2026, INDIA CODE (2026) [hereinafter 2026 Amendment Act]. The Bill was passed by the Lok Sabha on 30 March 2026 and received Presidential assent on 6 April 2026. The Act comes into force on such date as the Central Government may appoint by notification, and different dates may be appointed for different provisions.
[3] Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 S.C.C. 352 (India).
[4] 2026 Amendment Act, ch. IV-A, §§ 58A–58K. See also Insolvency & Bankruptcy Board. of India, Discussion Paper on the Framework for Creditor-Initiated Insolvency Resolution Process (Apr. 15, 2026).

discretion. It merely shifts the point at which that discretion is exercised. A single admission hearing before the NCLT is replaced by several later opportunities for challenge, review, intervention, and enforcement entry points that may be spread out and thus more difficult to control by statutory timelines.

The result is not a clean choice between judicial admission and creditor-led initiation, but an unstable duplication of both. Section 7(5)(a) promises certainty without guaranteeing institutional capacity, and Chapter IV-A promises speed by postponing the tribunal's involvement rather than eliminating it. Without addressing the underlying reason for delay, the amendment could give the impression of reform without delivering on the practical goal of a prompt, predictable, and properly supervised transition into insolvency resolution.

II. DISCRETION PROBLEM: FROM INNOVENTIVE TO VIDARBHA AND BACK.

The orthodox position was established early on in the case ***of Innoventive Industries Ltd. v ICICI Bank***[5], the Supreme Court held that an application under Section 7 comes down to two things: whether a financial debt exists and whether a default has been made. If the Adjudicating Authority is satisfied of these two things, the corporate debtor's broader circumstances are not relevant to the admission decision. The case of ***E.S. Krishnamurthy v Bharath Hi-Tech Builders (P) Ltd***[6], reinforced this limited inquiry and held that the Adjudicating Authority cannot turn insolvency proceedings into a forum for compelling the parties to solve their dispute.

Vidarbha disrupted that position. Focusing on the word "may" in Section 7(5)(a) and contrasting this word to the mandatory language in Section 7(5)(a) that we have in the Code and its mandatory language elsewhere, the two-judge Bench of the Adjudicating Authority has the power to refuse admission even when the debt and the default have been declared at once. While the Court made it very clear that this power was not to be exercised arbitrarily, the Authority had to examine on its own merits the reasons for the corporate debtor's case against admission. There was immediate and foreseeable discord

[5] *Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 S.C.C. 407, ¶ 28 (India).*
[6] *E.S. Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd., (2022) 3 SCC 161 (India).*

between the NCLT and NCLAT benches, and corporate debtors had a new line of defence that might be very effective at the point of entry.

In two steps, this position was narrowed. On September 22, 2022, the Supreme Court dismissed the review petition and made clear that Vidarbha was decided on the facts of that case. Then, in the case of ***M. Suresh Kumar Reddy v. Canara Bank***[7], the Court held that once default is established, the NCLT is ordinarily bound to admit the application, and specifically kept Vidarbha on its own facts. But it is important to be precise about what this has accomplished, as its effect can be overstated. A coordinate Bench cannot overrule another coordinate Bench, and confining an earlier decision to its facts is a technique of containment, not a formal overruling. Vidarbha was never declared "per incuriam" and was never removed from the list of Supreme Court authority. It was still available to cite. The conflict was managed and not resolved, and a definitive solution to it would have to be made by either a larger Bench or legislative action. Parliament entered that space in 2026.

III. The Frontal Response: The Amended Section 7(5)(a)

The textual override does three things. It replaces "shall" by "may". It lists all three issues that the Adjudicating Authority has to address before making admissions. It requires that if an admission order is not made within 14 days of application completion, the Adjudicating Authority must list its reasons. Taken together, these restore Innoventive to its original position and in this way align with what the Bankruptcy Law Reforms Committee had proposed, where it was not to be a matter of decision but of evidence and not evaluation. The difficulty is the timeline, and it is not a new one.[8] The 14-day period is not an innovation of the 2026 Act; it has been in the Code since 2016 and the Supreme Court has already ruled that it is toothless.

[7] *M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 S.C.C. 387, (India).*

[8] *THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE, VOL. I: RATIONALE AND DESIGN 82–86 (Nov. 2015).*

In ***Surendra Trading Co. v. Juggilal Kamlapat Jute Mills Co. Ltd***.[9], the Court held that both the fourteen-day period for admission and the 7-day period for removal of defects are directory and not mandatory inasmuch as a time limit directed by a tribunal for the performance of statutory activity is not mandatory, as the action would fall on the litigant rather than the defaulting authority. That reasoning does not change with the 2026 amendment. It gives reasons for delay, but is not in any way a consequence of the period itself breaking. A duty without a sanction is an exhortation. Nothing in the amended provision tells us what happens if the fourteenth day passes and no order is made; nothing makes the eventual order vulnerable; and nothing gives the applicant a remedy beyond the ordinary and slow one of appeal. With the help of Surendra Trading, a court in 2027 which asked whether the reconstituted fourteen-day period is mandatory is likely to answer as it answered in 2017. The evidence is not so hazy. Adjudicating Authorities have been taking well over four months to settle applications for commencement on average and the average time to close a corporate insolvency resolution process was about 744 days against a statutory outer limit of 330.[10] Delay on this scale is not explained by Vidarbha, which was good law for only ten months. It is a function of bench capacity, vacancies, listing practice and case load.

The amendment addresses the legal source of discretion while leaving the institutional source of delay untouched. There is also a residue the drafting cannot achieve: whether an application is "complete", and whether a "default" has taken place are findings, and a tribunal disinclined to admit has lots of room in them. Discretion suppressed at the level of outcome tends to reappear at the level of satisfaction.

IV. The Back Door: Chapter IV-A And The Architecture Of Avoidance

Chapter IV-A is limited to notified categories of corporate debtors and can only be initiated by financial creditors belonging to a notified class. The initiating creditor must have the approval of creditors representing at least fifty-one per cent of the debt owed to that class. The corporate debtor must also have at least thirty days to file its

[9] *Surendra Trading Co. v. Juggilal Kamlapat Jute Mills Co. Ltd., (2017) 16 S.C.C. 143, ¶ 23 (India) (Civil Appeal No. 8400 of 2017, decided Sept. 19, 2017).*

[10] *Reversing Vidarbha Is Good News for Financial Creditors, LAW.ASIA (Aug. 18, 2023) (recording an average of 133 days for disposal of applications for commencement); Rewriting the Rules of Distress: What the IBC Amendment Act, 2026 Actually Changes, MONDAQ (June 12, 2026).*

representations. If objections are raised, creditors' approval must be reaffirmed. The creditors appoint a resolution professional who will make a public announcement of the start of the process.

The corporate debtor's management is not moved in this process. The board continues to oversee the company, but the resolution professional is entitled to attend its meetings and veto resolutions passed by it. The process is to conclude within 150 days. It may be extended by 45 days if approved by creditors representing 66 per cent of the committee of creditors.[11]

Three aspects of this framework should be considered.

First, the admission hearing has been reversed instead of eliminated. Section 58C gives the corporate debtor the right to challenge the process before the NCLT within 30 days. If such a challenge is made, the Tribunal may declare the process void ab initio in case there is no default in place and the procedures are not followed. In case there is a default but the procedural requirements were not followed, then the Tribunal may make the process a corporate insolvency resolution process. In reality, it is an admission hearing that takes place retrospectively. The Tribunal must still determine a default has happened the same issue as in *Vidarbha*, but there is now a different procedure for it. The important difference here is the timing and the assignment of responsibility. The process starts first and is reviewed and the debtor should have to begin the challenge rather than contest it at the beginning. This will certainly help creditors, but it does not eliminate adjudication.

Second, the avenues for judicial intervention have become wider. Under Chapter IV-A, the Tribunal can ask for a moratorium under Section 58G, to consider a challenge under Section 58C, to order conversion under Section 58H, to withdraw under Section 58I and to approve a resolution plan under Section 58J. Avoidance applications are also preserved under Section 58K. Moreover, the statute does not address certain issues that may lead to further disputes, such as whether a particular creditor belongs to the notified

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[11] *2026 Amendment Act, §§ 58A–58B. Chapter IV-A is unavailable where the corporate debtor is already in a corporate insolvency resolution process, a pre-packaged insolvency resolution process or liquidation, or has undergone any of these within the preceding three years. § 58A.*

class, how the fifty-one per cent threshold is to be calculated, and whether the corporate debtor's representations were properly considered.[12]

There is also no possibility of writ jurisdiction at all. In ***Embassy Property Developments (P) Ltd. v. State of Karnataka***[13], the Supreme Court reaffirmed that Article 226 covers any person of public character. It also stated that the existence of an alternative remedy does not prevent judicial intervention where an authority has acted without jurisdiction. A resolution professional who initiates a statutory collective process in public through a public announcement without any prior judicial order could fall under this principle. Thus, a statutory framework to try to limit litigation may in fact spread it across many stages and forums.

Third, and most importantly, the two reforms seem to weaken the justification for one another. CIIRP is based on the idea that admission before the NCLT is slow and uncertain so that the value of the corporate debtor's assets will deteriorate while creditors wait for adjudication. If the amended Section 7(5)(a) actually requires admission to be decided through a straightforward determination within fourteen days, that justification loses much of its force.[14]

There are two interpretations possible. On the more favourable view, Parliament adopted a precautionary approach by creating an alternative mechanism in case the primary route proved ineffective. On a more critical and arguably more convincing view, the simultaneous introduction of both mechanisms is an implicit recognition that the fourteen-day requirement may not be effective because the problem was not restricted to the legal method of admission. The latter interpretation is stronger because both reforms were introduced simultaneously and on the same day. An alternative route is difficult to be created if the main route is believed to be perfect.

This concern is particularly evident from Section 58H. If no resolution plan is approved in the prescribed period, if management does not cooperate, and if the Tribunal rejects the proposed plan, the CIIRP becomes a corporate insolvency resolution process. Those

[12] *Id. §§ 58G–58K. Section 58K applies a substantial part of the CIRP machinery mutatis mutandis, including §§ 21, 24, 25A, 26, 27, 28, 29, 32 and 32A and the avoidance provisions in §§ 43–51.*
[13] *Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 S.C.C. 308, ¶¶ 26–39 (India*
[14] *INSOLVENCY & BANKR. BD. OF INDIA, REPORT OF THE EXPERT COMMITTEE ON CREDITOR-LED RESOLUTION APPROACH (May 2023), which recommended an out-of-court, creditor-led mechanism and supplies the direct policy foundation for Chapter IV-A; STANDING COMM. ON FIN., IMPLEMENTATION OF THE INSOLVENCY AND BANKRUPTCY CODE — PITFALLS AND SOLUTIONS, 32d Rep., Lok Sabha 21–24 (2021).*

costs incurred during the earlier process are then carried forward as insolvency resolution process costs.

A failed CIIRP can then transfer the corporate debtor to the NCLT as much as 195 days after the initial process has started, after the costs of such a process have already been paid. During that time, the debtor is not entitled to automatic protection from enforcement proceedings, because the moratorium under Section 58G is not automatic and must be sought. This is a peculiar combination. In the USA, a debtor-in-possession model is coherent because Section 362 provides an automatic stay, and thus control is given in conjunction with protection. In Chapter IV-A, management is given control without automatic protection, but creditors are promised a quicker and faster process without any stay.[15]

V. COMPARATIVE AND CONSTITUTIONAL PERSPECTIVES

India is not the first jurisdiction to attempt out-of-court commencement, and the comparison is sobering. According to Schedule B1 of the Insolvency Act 1986, a qualified floating charge holder in England and Wales can appoint an administrator out of court by filing prescribed documents.[16] The process is certainly quick. It has also developed a huge and technical body of case law regarding the validity of appointments in which defects of form have been litigated with an energy that rather defeats the object. Speed at the entry stage was purchased with litigation about entry.

The United States took the opposite approach. An involuntary petition under Section 303 of the Bankruptcy Code retains judicial gatekeeping in full; Congress regulated the gate with standing requirements and costs, fees and damages against petitioners who filed in bad faith but not to remove it.[17] UNCITRAL does not specify who makes the decision. Its Legislative Guide considers the three main values that are at the beginning as certainty, transparency and predictability of the applicable standard. On that count, the

[15] *11 U.S.C. § 362 (2018).*
[16] *Insolvency Act 1986, c. 45, sch. B1, ¶¶ 14–21 (UK).*
[17] *11 U.S.C. § 303(b), (i) (2018).*

issue of Chapter IV-A is not whether a court is involved but whether the standard is determinate. A threshold as a percentage of debt held by a class yet to be notified, computed on the records of the initiating creditor, is not so obviously clear.

The constitutional issue merits more attention than it has. The Code survived challenge in ***Swiss Ribbons (P) Ltd. v. Union of India***[18], but the Court's reasoning was based on its adjudicative nature and the safeguards that accompany it. Chapter IV-A removes the judicial act from the beginning and replaces it with a post hoc argument in which the debtor has to move. If it fails to be seen in a way that is in good faith and arbitrariness is at least not apparent, then why does that matter? So too is the classification on which the Chapter rests. Financial creditors of notified classes can initiate; operational creditors, whose unpaid dues are often existential, are completely excluded. A classification of this sort requires an intelligible differentia which has a rational relationship with the object sought to be achieved, and the one that we are talking about here - speed - does not necessarily make sense why the excluded class is excluded.

VI. CONCLUSION AND SUGGESTIONS

The above discussions highlight that Chapter IV-A's effectiveness cannot be measured only by the speed a creditor can go through the process. Ultimately it must be judged by whether it can resolve insolvency in a timely, predictable manner and in a way that will protect the value of the corporate debtor's estate and in a legal way that is fair. And although the framework attempts to address the delays in admission to the NCLT, it does not eliminate adjudication. It disrupts the timing of judicial scrutiny and opens the door for disputes regarding default, procedural compliance, creditor eligibility, voting thresholds, and whether commencement is valid. It doesn't remedy the institutional problem; it postpones it. The link between the amended Section 7(5)(a) and Chapter IV-A is even more difficult to see. If the fourteen-day period for admission is being followed up on, then the case for a separate creditor-initiated process is much weaker. If admission is still held up, Chapter IV-A can be only a temporary substitute since if the process fails, the corporate debtor will be transferred back to the NCLT for some time and more money and without the guaranteed moratorium. The framework may give creditors a different route to start the process, but it is not necessarily an appropriate or

[18] Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 S.C.C. 17, ¶¶ 27–29, 43–50 (India).

reliable way of going about it. A process that keeps the management in charge with no protection from enforcement may also put the corporate debtor's assets at risk of precisely the kinds of problems that insolvency law is designed to address.

Moreover, the main lesson is that insolvency reform cannot be accomplished if there's another way through a system that is still too much to get through. Chapter IV-A may be useful as an additional mechanism when creditor action is a must and the corporate debtor's management can still keep value. But it is not a substitute for an organized and orderly admission process before the Adjudicating Authority. The system needs to be sharpened so that speed is not at the expense of legality and flexibility does not create uncertainty. A credible insolvency regime needs a clear threshold investigation, rapid and proper protection of the estate, and fewer procedural obstacles. But until these conditions have been guaranteed, the law will be in a limbo between formal efficiency and practical delay. Reform will therefore be measured not by whether the process starts earlier or later but by whether it leads without unnecessary cost, duplication, or uncertainty to a timely and legally sustainable resolution.