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**RECONCILING INSOLVENCY RESOLUTION WITH
MERGER CONTROL: THE EVOLUTION OF CCI
APPROVAL REQUIREMENTS UNDER SECTION 31(4)
OF THE IBC, 2016 - FROM THE NCLAT'S DIRECTORY
APPROACH TO INDEPENDENT SUGAR CORPORATION
AND THE IBC (AMENDMENT) ACT, 2026**

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Abstract

Section 31(4) of the Insolvency and Bankruptcy Code, 2016 sits at the fault line of two statutory regimes that pursue different first principles: the Code's commitment to time-bound, value-maximising resolution, and the Competition Act, 2002's commitment to ex-ante control of market structure. For nearly six years after the 2018 amendment inserted a proviso requiring approval of the Competition Commission of India for resolution plans involving a "combination", the National Company Law Appellate Tribunal treated the sequencing requirement - CCI approval prior to consideration of the plan by the Committee of Creditors - as merely directory, permitting approval at any point up to the Adjudicating Authority's sanction. The Supreme Court's decision in *Independent Sugar Corporation Ltd. v Girish Sriram Juneja*, 2025 repudiated that line of authority, holding the proviso mandatory and restoring antitrust review to its intended place ahead of the Committee of Creditors' commercial vote. Parliament has since responded through the Insolvency and Bankruptcy Code (Amendment) Act, 2026, which relocates the point of mandatory CCI approval to a stage after the Committee's vote but before the Adjudicating Authority's sanction. This paper traces that doctrinal and legislative arc, evaluates the competing institutional logics that produced it, and asks whether the 2026 amendment restores workable coordination between insolvency and competition law or merely defers the tension the Supreme Court sought to resolve.

I. Introduction

The Insolvency and Bankruptcy Code, 2016 (“Code”)¹ was conceived as a single, time-bound window through which a distressed corporate debtor could either be rescued through a resolution plan or sent to liquidation. Speed and certainty were its organising virtues: the Code prescribes strict timelines for the corporate insolvency resolution process (“CIRP”), vests the Committee of Creditors (“CoC”) with wide commercial discretion, and generally treats external regulatory approvals as matters to be tidied up within a year of the plan’s sanction rather than as conditions precedent to it. Yet where a resolution plan proposes the acquisition of a corporate debtor by an existing market player, the transaction is also a “combination” for the purposes of the Competition Act, 2002², and falls within the jurisdiction of the Competition Commission of India (“CCI”), whose mandate is to prevent transactions that are likely to cause an appreciable adverse effect on competition. These two statutory schemes do not merely coexist; in resolution plans involving combinations, they must operate sequentially, and the sequencing itself decides how much weight competition policy is given relative to the exigencies of insolvency resolution.

The statutory hinge on which this relationship turns is the proviso to Section 31(4) of the IBC, inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018. It provides that where a resolution plan contains a provision for combination, the resolution applicant must obtain the approval of the CCI prior to the approval of such resolution plan by the CoC.³ Read literally, the proviso subordinates the CoC’s commercial vote to prior antitrust clearance. Yet between 2019 and 2025, the NCLAT consistently declined to read the proviso literally, holding in a line of decisions beginning with *Arcelor Mittal India Pvt. Ltd. v Abhijit Guhathakurta, 2019*⁴ that the requirement of obtaining CCI approval before the CoC’s vote was directory rather than mandatory, so long as approval was secured before the resolution plan reached the Adjudicating Authority. This “directory approach” became settled practice, was twice left undisturbed by the Supreme Court on appeal, and shaped the deal-making behaviour of resolution applicants, insolvency professionals and lenders for the better part of six years.

The Supreme Court’s decision in *Independent Sugar Corporation Ltd. v Girish Sriram Juneja & Ors., 2025*⁵ unsettled that consensus. Arising out of the competitive bidding for Hindustan

¹ Insolvency and Bankruptcy Code 2016.

² The Competition Act 2002.

³ Insolvency and Bankruptcy Code 2016, s 31(4) proviso, inserted by the Insolvency and Bankruptcy Code (Amendment) Act 2018, s 15.

⁴ *Arcelor Mittal India Pvt Ltd v Abhijit Guhathakurta* (2019) SCC OnLine NCLAT 920.

⁵ *Independent Sugar Corporation Ltd v Girish Sriram Juneja*, Civil Appeal No 6071 of 2023, (2025) INSC 124 (SC).

National Glass and Industries Ltd. (“HNGIL”), the case squarely presented the question of whether the CoC could approve a resolution plan involving a combination before the CCI had cleared it. By a 2:1 majority, the Court held that the proviso to Section 31(4) is mandatory, that prior CCI approval is a jurisdictional fact without which the CoC lacks the competence to vote on a plan involving a combination, and that the NCLAT’s directory reading over the preceding six years had been wrong. The judgment was immediately controversial: hailed by competition law scholars as a restoration of ex-ante merger control, and criticised by insolvency practitioners as a source of delay, forum uncertainty and disincentive to bidding for distressed assets with market power implications.

Parliament has since intervened. The Insolvency and Bankruptcy Code (Amendment) Act, 2026⁶ - assented to by the President on 6 April 2026 and, insofar as it touches Section 31, in force from 26 May 2026, recalibrates the timing requirement that the Supreme Court had just settled. Rather than requiring CCI approval before the CoC’s vote, the amended provision permits CCI approval to be obtained after the CoC approves the resolution plan, so long as it precedes the Adjudicating Authority’s approval under Section 30(6)/31 of the Code. In substance, Parliament has legislated around the Supreme Court’s reading without disturbing the proposition that CCI approval is mandatory; what has changed is only where, in the sequence of CIRP milestones, that approval must be procured.

This paper examines that full arc, from the NCLAT’s directory jurisprudence, through the Supreme Court’s mandatory reading in *Independent Sugar*, to the 2026 legislative recalibration, and asks two connected questions. First, doctrinally, what values did each stage of this evolution prioritise, and on what interpretive grounds? Second, and more normatively, does the 2026 amendment achieve a durable reconciliation between the IBC’s commitment to time-bound resolution and the Competition Act’s commitment to ex-ante merger control, or does it merely relocate the point of institutional friction while diluting the substantive protection the Supreme Court sought to secure? Part II sets out the statutory architecture. Part III traces the NCLAT’s directory jurisprudence. Part IV analyses *Independent Sugar Corporation* in detail. Part V offers a critical assessment of the judgment. Part VI examines the IBC (Amendment) Act, 2026. Part VII asks whether the amendment reopens the sequencing gap the Supreme Court closed. Part VIII draws broader lessons for institutional coordination between the IBBI

⁶ Insolvency and Bankruptcy Code (Amendment) Act 2026 (Act No 6 of 2026), received Presidential assent on 6 April 2026; ss touching Section 31 in force from 26 May 2026. See ibclaw.in, ‘President Assents to Insolvency and Bankruptcy Code (Amendment) Act 2026’ (7 April 2026); LKS Attorneys, ‘Insolvency and Bankruptcy Code (Amendment) Act, 2026’ (13 April 2026).

and the CCI, before Part IX concludes.

II. The Statutory Framework: Section 31(4) of the IBC and Its Interface with the Competition Act, 2002

A. The 2018 Amendment and the Proviso to Section 31(4)

As originally enacted, Section 31(4) of the IBC required a resolution applicant, where the resolution plan approved by the Adjudicating Authority required any approval from a person under any law for the time being in force, to obtain such approval within one year of the approval of the resolution plan or within the period specified in such law, whichever is later. The provision thus treated regulatory approvals, of whatever kind, as post-sanction formalities, consistent with the Code's underlying preference for keeping the resolution timeline uncluttered by external regulatory processes.

The 2018 amendment carved out a specific exception for combinations. It inserted a proviso stating that where the resolution plan contains a provision for combination, as defined under Section 5 of the Competition Act, 2002, the resolution applicant must obtain the approval of the Competition Commission of India prior to the approval of such resolution plan by the Committee of Creditors. This was a deliberate legislative departure from the general “approve now, comply later” architecture of Section 31(4), and it reflected a specific policy judgment: that antitrust review of transactions altering market structure should occur before, not after, the CoC commits itself to a particular resolution applicant. The Report of the Insolvency Law Committee⁷ that preceded the amendment had flagged the risk that allowing combinations to proceed without prior competition scrutiny could permit anti-competitive concentrations to be effected under the shelter of the insolvency process, effectively converting the CIRP into a route around ordinary merger control.

B. “Combination” under Section 5 of the Competition Act, 2002

A transaction qualifies as a combination under Section 5 of the Competition Act where it crosses specified asset or turnover thresholds and involves the acquisition of control, shares, voting rights or assets, or a merger or amalgamation of enterprises. Combinations exceeding these thresholds must be notified to the CCI under Section 6 and cannot ordinarily be given effect until approved.⁸ Where a resolution plan proposes that a bidder, often an existing

⁷ Government of India, Ministry of Corporate Affairs, Report of the Insolvency Law Committee (March 2018) paras 8.1-8.7.

⁸ Competition Act 2002, ss 5-6.

competitor, supplier or customer of the corporate debtor in the same or an adjacent market, will acquire control of the debtor's business, the plan is a combination in substance even though it arises through an insolvency process rather than an ordinary share purchase agreement. The Competition Act does not carve out an insolvency exemption from the requirement of notification and approval; the only accommodation the statute makes for distressed transactions is the CCI's "green channel" mechanism for combinations unlikely to raise competition concerns, and expedited timelines that are, in practice, still measured in weeks rather than days.

C. The Rationale for Ex-Ante Merger Review inside a Time-Bound Insolvency Process

The tension embedded in the proviso to Section 31(4) is structural rather than incidental. The IBC's efficacy is measured substantially by the speed and finality of resolution: the statute prescribes a maximum CIRP period, empowers the CoC to approve a plan by a defined majority of voting share, and, through the judicially developed "clean slate" doctrine, extinguishes claims not part of the approved plan so that the resolution applicant takes over the corporate debtor free of historical liabilities. Competition law, by contrast, is indifferent to the urgency of a particular transaction; its concern is the durable effect of a change in market structure on consumers and rivals, a concern that does not diminish merely because the target company is under financial stress. Requiring CCI clearance before the CoC votes forces the two temporalities to collide at the earliest possible point, before the CoC has committed itself, financially and politically, to a resolution applicant, so that a doomed combination is filtered out before it can consume further CIRP time. Requiring it only after the CoC has voted, or only before the Adjudicating Authority's sanction, defers that collision to a later point, by which time the CoC's commercial position, and the market's expectations around the winning bidder, are substantially settled. The entire doctrinal history recounted in this paper is, in an important sense, an argument about which of these two moments should carry the weight of antitrust scrutiny.

III. The NCLAT's Directory Approach: Genesis and Consolidation

A. Arcelor Mittal India Pvt. Ltd. v Abhijit Guhathakurta, 2019

The foundational precedent for the directory reading arose out of the CIRP of Essar Steel India Ltd., one of the earliest and most closely watched insolvency resolutions under the Code. ArcelorMittal's resolution plan received CCI approval only after the CoC had already approved the plan, prompting a challenge that the sequence violated the proviso to Section 31(4). The

NCLAT rejected the challenge, holding that the proviso, though requiring CCI approval as a mandatory element of a valid resolution plan, did not mandate that such approval necessarily precede the CoC's vote; it was sufficient, in the Tribunal's view, that CCI approval be secured before the plan reached the Adjudicating Authority for sanction under Section 31(1). The Tribunal's reasoning rested on the practical difficulty that a resolution applicant does not control the CCI's timeline, and that treating the proviso as a rigid precondition to the CoC's vote risked stalling the CIRP indefinitely while an application for combination approval remained pending before an independent regulator with its own statutory clock.

B. Consolidation: Vishal Vijay Kalantri, Makalu Trading and Related Decisions

The Arcelor Mittal position was not an isolated aberration; it hardened into settled NCLAT doctrine over the following years. In *Vishal Vijay Kalantri v Shailen Shah*⁹, the Tribunal reaffirmed that a resolution plan remains compliant with Section 30(2) and the other provisions of the Code so long as CCI approval is obtained at any point before the Adjudicating Authority grants sanction, even if that approval post-dates the CoC's vote. In *Makalu Trading v Rajiv Chakraborty*¹⁰, the NCLAT similarly held that a plan does not violate the proviso to Section 31(4) as long as CCI clearance is secured before the plan is placed before the Adjudicating Authority. Notably, in both *Vishal Vijay Kalantri* and *Makalu Trading*, the Supreme Court declined to disturb the NCLAT's view on appeal, a fact that resolution applicants and insolvency professionals reasonably treated as tacit endorsement of the directory approach at the highest judicial level, even though the Court had not in either case engaged with the interpretive question on the merits with the depth it would later bring to bear in *Independent Sugar Corporation*.

C. The Underlying Logic of the Directory Approach

Three threads run through the NCLAT's directory jurisprudence. First, an argument from practical control: because the CCI's decision-making timeline is outside the resolution applicant's control, and because the Competition Act itself allows for a review period that can, in a contested case, extend well beyond the ordinary window, treating prior approval as an absolute precondition risked converting a regulatory delay into an existential threat to the CIRP itself, given the Code's own outer time limits. Second, an argument from statutory purpose: the

⁹ *Vishal Vijay Kalantri v Shailen Shah*, Company Appeal (AT) (Insolvency) No 466 of 2020, (2020) SCC OnLine NCLAT 1013.

¹⁰ *Makalu Trading Ltd v Rajiv Chakraborty* (2020) SCC OnLine NCLAT 643.

Tribunal repeatedly invoked the IBC's core objective of maximising the value of the corporate debtor's assets through timely resolution, reasoning that a rigid reading of the proviso, one that could force the CIRP to lapse or a viable plan to be discarded merely because CCI clearance was still pending, would defeat rather than serve that objective. Third, an argument from analogy to other IBC timelines: drawing on the Supreme Court's own treatment of the 330-day outer limit for CIRP completion in *Committee of Creditors of Essar Steel v. Satish Kumar Gupta*, 2020¹¹ as directory rather than mandatory, the NCLAT reasoned that Parliament's use of prescriptive language elsewhere in the Code had not always been read literally where a literal reading would frustrate the statute's central purpose, and that the proviso to Section 31(4) should be approached in the same spirit.

The consequence of six years of this jurisprudence was a settled market practice: resolution professionals routinely structured expressions of interest and requests for resolution plans on the understanding that CCI approval could be obtained in parallel with, or even after, the CoC's deliberation and vote, provided it preceded final sanction. Competing resolution applicants who secured CCI clearance early, as a matter of prudence or competitive positioning, gained no formal procedural advantage over rivals who left clearance for later, a state of affairs that the facts of Independent Sugar Corporation would throw into sharp relief.

IV. Independent Sugar Corporation Ltd. v. Girish Sriram Juneja: Facts, Holding and Reasoning

A. Facts

The dispute arose out of the CIRP of Hindustan National Glass and Industries Ltd. ("HNGIL"), then India's largest glass packaging manufacturer with roughly sixty per cent of the domestic market, admitted into insolvency on an application by DBS Bank under Section 7 of the Code in October 2021. Two resolution applicants emerged as serious contenders: AGI Greenpac Ltd., itself the second-largest player in Indian glass packaging, and Independent Sugar Corporation Ltd. ("INSCO"). Because AGI Greenpac was an existing competitor of HNGIL in the same relevant market, its proposed acquisition of HNGIL plainly constituted a combination likely to raise appreciable adverse effects on competition in the glass packaging sector; INSCO's plan, by contrast, involved a diversification acquisition by a company outside that market and posed no comparable structural concern.

The request for resolution plan issued by the resolution professional had itself stipulated that

¹¹ *Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta* (2020) 8 SCC 531.

CCI approval was a mandatory requirement to be obtained prior to the CoC's consideration of a plan. Notwithstanding that stipulation, the resolution professional subsequently relaxed the requirement by way of an email clarification, permitting CCI approval to be obtained after the CoC's vote but before the Adjudicating Authority's sanction. Acting on that relaxation, the CoC proceeded to approve AGI Greenpac's resolution plan with roughly ninety-eight per cent voting share before AGI Greenpac had secured CCI clearance for the combination. INSCO's competing plan, which had already obtained prior CCI approval, received a lower but still qualifying vote share of approximately eighty-eight per cent. INSCO challenged the CoC's approval of AGI Greenpac's plan before the NCLT and, on appeal, the NCLAT, arguing that the CoC lacked the competence to vote on a plan involving a combination in the absence of prior CCI clearance.

B. Proceedings Below

Both the NCLT and, on appeal, the NCLAT ruled against INSCO, applying the settled directory reading traceable to Arcelor Mittal. The NCLAT held that while CCI approval was itself a mandatory requirement for any resolution plan involving a combination, the timing requirement, that such approval precede the CoC's vote, was merely directory, and that the resolution professional's relaxation permitting post-vote approval, so long as clearance was obtained before the Adjudicating Authority's sanction under Section 31(1), was consistent with the Code. INSCO appealed to the Supreme Court.

C. The Majority Opinion

A three-judge bench comprising Justices Hrishikesh Roy, Sudhanshu Dhulia and S.V.N. Bhatti heard the appeal. By a 2:1 majority, with Justice Roy writing for himself and Justice Dhulia, the Court allowed INSCO's appeal and set aside the NCLAT's judgment. The majority's reasoning proceeded along several connected lines.

First, on plain meaning, the Court held that the language of the proviso – “the resolution applicant shall obtain the approval of the Competition Commission ... prior to the approval of such resolution plan by the committee of creditors” - was unambiguous and left no room for a directory construction. The use of “prior to” fixed a specific sequential relationship between two identifiable events, the CCI's approval and the CoC's vote, and the majority declined to read that sequencing requirement out of the statute merely because compliance might, in a given case, prove administratively inconvenient.

Second, the majority invoked the doctrine of jurisdictional fact, reasoning that prior CCI

approval was not a mere procedural nicety but a precondition to the CoC's very competence to vote on a resolution plan involving a combination. Absent that jurisdictional fact, the CoC's purported approval of AGI Greenpac's plan was, in the majority's view, a nullity rather than a mere irregularity capable of subsequent cure, a materially stronger consequence than the NCLAT's treatment of the defect as a curable procedural lapse.

Third, the majority engaged directly with the practical concern that had driven the NCLAT's directory jurisprudence, namely, that CCI's own timelines are unpredictable and could stall the CIRP. The Court found this concern to be substantially overstated on the record, observing that CCI ordinarily disposes of combination applications well within the statutory outer limit, with no instance before it of a combination review under the Competition Act extending anywhere close to the maximum period permitted by that statute. On the facts, the majority also noted specific procedural infirmities in the CCI's own handling of AGI Greenpac's application, including a failure to issue the mandatory show-cause notice to HNGIL as the target company, and a failure to obtain the target's concurrence to a voluntary modification involving divestment as required under the CCI's own regulation, findings that reinforced the majority's conclusion that antitrust review in this case had not, in substance, been completed at all by the time the CoC voted.

Fourth, the majority situated the 2018 amendment within its legislative history, treating the deliberate departure from the general "approve within one year" architecture of Section 31(4) as clear evidence that Parliament intended combinations to be treated differently from other regulatory approvals precisely because of the risk that an anti-competitive combination could otherwise be effected as a *fait accompli* before any competition authority had passed judgment on it. Reading the proviso as directory, the majority reasoned, would collapse this deliberate distinction and return combinations to the default post-sanction compliance regime that Parliament had specifically legislated to displace. The majority accordingly overruled the line of NCLAT authority beginning with *Arcelor Mittal*, set aside the CoC's approval of AGI Greenpac's plan, and remanded the matter to the NCLT for reconsideration of the competing resolution plans in a manner consistent with the mandatory reading of the proviso.

D. The Dissenting Opinion

Justice S.V.N. Bhatti dissented, favouring a purposive over a literal construction of the proviso. Drawing on the established Anglo-Indian canon that a statute should be interpreted so as to be workable rather than self-defeating, the dissent argued that treating the sequencing requirement as mandatory could, in appropriate cases, force the CIRP to run aground on a regulatory

timeline over which none of the insolvency stakeholders had any control, undermining the Code's objective of maximising the value of the corporate debtor's assets through timely resolution and continued operation as a going concern rather than liquidation. The dissent relied on the same body of NCLAT precedent the majority overruled, and reasoned that the consequences of any non-compliance with the combination-approval requirement were more appropriately assessed at the stage of the Adjudicating Authority's sanction under Section 31(1), where both the Code's timelines and the Competition Act's procedural requirements could be reconciled without the more drastic consequence of invalidating a CoC vote already taken. On the facts, the dissent also took the view that the procedural steps taken before the CCI, including notice to the acquirer and consideration of the divestment proposal, were sufficient, and that the alleged defects identified by the majority did not warrant setting aside the CoC's approval.

V. Critical Analysis of Independent Sugar Corporation

A. The Case for the Majority's Approach

The majority's reading has significant merit as a matter of both text and policy. Textually, the proviso's use of "prior to" is difficult to reconcile with a construction that permits approval to be secured at any point up to sanction; if Parliament had intended CCI approval merely to precede the Adjudicating Authority's order, it could readily have said so, particularly given that the general rule in Section 31(4) already addresses post-sanction approvals and the proviso was inserted specifically to depart from that default. As a matter of policy, the mandatory reading also better protects the ex-ante character of merger control. Once a CoC has voted overwhelmingly in favour of a particular resolution applicant, the CoC's own incentives, commercial commitment to the winning bidder, and reluctance to reopen a hard-won consensus among diverse financial creditors, make it structurally difficult for the CoC, the resolution professional or even the Adjudicating Authority to treat a subsequent adverse CCI finding as anything other than a crisis to be worked around, rather than a substantive veto to be respected. Requiring clearance before the vote removes that structural bias by forcing the market-structure question to be answered while the CoC's position remains genuinely open. The majority's finding that CCI review typically concludes well within CIRP timelines, and its identification of specific procedural shortcuts in AGI Greenpac's own CCI process, further undercut the empirical premise, chronic, unpredictable CCI delay, on which the entire directory line of authority had rested for six years.

B. The Case for Caution: Costs to the Insolvency Process

The judgment nonetheless imposes real costs on the resolution process that commentators have not been slow to identify.¹² First, it introduces a sequencing rigidity that assumes resolution applicants can, and will, seek CCI approval for a transaction whose final commercial terms, and indeed whose ultimate viability as against competing plans, are not yet settled, since the CoC has not yet voted.¹³ A resolution applicant may be reluctant to commit the time and expense of a full combination filing, including any divestment or modification proposals the CCI may require, before knowing whether its plan will in fact secure the requisite CoC majority; conversely, requiring every serious combination-implicated bidder to file in parallel, on a purely contingent basis, multiplies regulatory cost across a competitive process in which only one bidder will ultimately prevail. Second, the ruling deepens the practical entanglement of two regulators, the Insolvency and Bankruptcy Board of India's overall CIRP architecture and the CCI's independent statutory timeline, without any corresponding mechanism for institutional coordination between them; the absence of any protocol for expedited or insolvency-specific review before the CCI, beyond its general green-channel mechanism, means that the burden of reconciling the two timelines falls entirely on resolution applicants and resolution professionals rather than on the regulators themselves. Third, by treating the defect as jurisdictional rather than curable, the majority's approach risks unwinding CoC votes taken in good-faith reliance on six years of settled NCLAT practice, generating exactly the kind of retrospective uncertainty and relitigation of concluded processes that the Code's finality-oriented architecture is designed to prevent, a concern the Court sought to manage through remand rather than outright annulment, but one that persisted for pending and recently concluded resolutions structured on the old understanding.

C. A Comparative Note

The tension the Court confronted is not unique to India. Merger-control regimes elsewhere generally do not create bespoke insolvency exceptions from ex-ante notification requirements, though several build in expedited procedures or substantive accommodations for distressed transactions. The European Union's merger control framework permits, in appropriate circumstances, a "failing firm" defence under which a transaction that would otherwise raise

¹² Anwesh Nanda and Suprava Sahu, 'A Hollow Victory? IBC vs CCI: How the SC Ruling May Complicate Resolution' (IBC Laws, 2 April 2025).

¹³ 'Supreme Court Ruling Shakes Up Insolvency and Competition Approvals in India' (Kluwer Competition Law Blog).

competition concerns may nonetheless be cleared where the target would in any event have exited the market absent the merger and no less anti-competitive alternative purchaser existed; the doctrine, however, operates within the Commission's ordinary ex-ante review rather than by dispensing with prior clearance altogether. United States antitrust enforcers likewise generally insist on compliance with the Hart-Scott-Rodino pre-merger notification regime even for acquisitions arising out of Chapter 11 proceedings, while accommodating the bankruptcy court's own timeline through expedited review where the target's ongoing viability is genuinely at risk. The broad international pattern, in other words, favours preserving ex-ante review while building institutional flexibility into its timing and substantive tests - a pattern that lends comparative support to the Independent Sugar Corporation majority's insistence on the primacy of prior clearance, even as it also suggests that India's framework, both before and after the 2026 amendment, remains comparatively under-developed in the mechanisms available to reconcile that primacy with insolvency's own time pressures.

VI. The Legislative Response: The IBC (Amendment) Act, 2026

A. Legislative Background

The Insolvency and Bankruptcy (Amendment) Bill, 2025 was introduced in the Lok Sabha on 12 August 2025, roughly eighteen months after Independent Sugar Corporation was decided, as part of a broader package of reforms addressing admission timelines, CoC oversight, liquidation supervision, avoidance transactions, and new mechanisms for creditor-initiated resolution and group and cross-border insolvency.¹⁴ The Bill received the assent of both Houses of Parliament and was signed into law by the President on 6 April 2026 as Act No. 6 of 2026, styled the Insolvency and Bankruptcy Code (Amendment) Act, 2026.¹⁵ The provisions touching Section 31 and the CCI-approval sequencing requirement came into force on 26 May 2026.

B. The Amendment to the Section 31(4) Proviso

The central change, for present purposes, is a recalibration of the timing requirement that Independent Sugar Corporation had just settled. Rather than requiring CCI approval before the CoC's vote, the amended framework permits a resolution applicant to obtain CCI approval after the CoC has approved the resolution plan, provided that such approval is secured before

¹⁴ Insolvency and Bankruptcy (Amendment) Bill 2025, Bill No 107 of 2025, introduced in the Lok Sabha on 12 August 2025.

¹⁵ AZB & Partners, 'IBC 2.0: Major Reforms to Insolvency and Bankruptcy Code' (3 April 2026).

the Adjudicating Authority grants its approval to the plan.¹⁶ Commentary on the amendment has described this change interchangeably as an amendment to the proviso to Section 31(4) itself and as the insertion of a new sub-section (5) dealing specifically with the timing of CCI approvals¹⁷; the underlying substance, however, is consistent across accounts, Parliament has moved the mandatory point of CCI clearance from before the CoC's vote to before the Adjudicating Authority's sanction, restoring, in effect, the sequencing that the NCLAT's directory jurisprudence had permitted as a matter of judicial interpretation, but now doing so as a matter of express statutory text rather than contested construction.

The amendment also codifies, in newly inserted provisions associated with Section 31, the "clean slate" doctrine that the Supreme Court had earlier articulated in *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, 2021¹⁸, namely, that upon the Adjudicating Authority's approval of a resolution plan, all claims not forming part of the approved plan stand extinguished, and no proceeding in respect of such claims may thereafter be initiated or continued against the corporate debtor or the resolution applicant. Related provisions clarify that licences, permits, registrations, quotas, concessions and similar statutory grants held by the corporate debtor are not to be suspended or terminated on account of the insolvency process, so long as the corporate debtor or the resolution applicant continues to comply with the applicable conditions, a change directed at a separate but related practical difficulty long faced by resolution applicants in regulated sectors. Notably, the amendment provides for retrospective application of the clean-slate provisions to resolution plans approved on or after 28 May 2016, the date the Code itself came into force, except in respect of matters that have already attained finality, a deliberate legislative attempt to stabilise the legal position for the very large number of resolutions concluded over the Code's first decade.

C. Other Related Timeline Reforms

The 2026 Amendment Act makes several further changes to Section 31 that bear on the same underlying concern with process certainty.¹⁹ A new proviso permits phased approval of a resolution plan, allowing the Adjudicating Authority, on an application made by the resolution professional together with CoC approval by the requisite voting threshold, to approve the operative or implementation portions of a plan first and the manner of distribution of assets

¹⁶ CMS Induslaw, 'The Insolvency And Bankruptcy Code (Amendment) Act, 2026' (13 April 2026).

¹⁷ LKS Attorneys, 'Insolvency and Bankruptcy Code (Amendment) Act, 2026' (13 April 2026); see also Lexology, 'Insolvency and Bankruptcy Code (Amendment) Act, 2026' (13 April 2026).

¹⁸ *Ghanashyam Mishra & Sons (P) Ltd v Edelweiss Asset Reconstruction Co Ltd* (2021) 9 SCC 657.

¹⁹ MHCO Law, 'The Insolvency and Bankruptcy Code (Amendment) Act, 2026' (13 April 2026).

separately within a subsequent thirty-day window, a mechanism aimed at preventing distribution-related disputes from holding up the substantive handover of the corporate debtor's business. A newly inserted sub-section requires the Adjudicating Authority to approve or reject a resolution plan within thirty days of receiving the resolution professional's application, and to record reasons for any delay beyond that period. The amendment further requires the Adjudicating Authority to give the CoC notice and an opportunity to rectify defects in a resolution plan before rejecting it outright, reducing the risk that curable procedural infirmities, of exactly the kind identified in Independent Sugar Corporation itself, result in the wholesale collapse of an otherwise viable resolution.

VII. Does the 2026 Amendment Reopen the Sequencing Gap the Supreme Court Closed?

The central analytical question posed by the 2026 amendment is whether it restores, by statute, the very sequencing that Independent Sugar Corporation held to be unlawful, or whether it strikes a materially different and more defensible balance. The answer is qualified. On one view, the amendment simply reinstates the NCLAT's directory position under a different formal label: CCI approval is once again permitted after the CoC has committed itself to a resolution applicant, meaning that the moment at which the Committee's incentives are most likely to favour rationalising or working around an adverse or delayed CCI outcome, after, rather than before, its vote, is restored as the operative sequence. Recent commentary on the amendment has characterised this as an erosion of the ex-ante character of antitrust scrutiny that the Supreme Court had insisted upon, arguing that moving substantive competition review to a point after the CoC's commercial position is already settled reduces merger control, in practical effect, to a confirmatory rather than a genuinely gatekeeping function, even though it remains, formally, a precondition to the Adjudicating Authority's final sanction.²⁰

On another view, however, the amendment is meaningfully different from the pre-Independent Sugar Corporation position in at least two respects. First, unlike the NCLAT's directory construction, which rested on judicial interpretation of ambiguous statutory language and could, as the Supreme Court itself demonstrated, be revisited and overturned, the 2026 amendment fixes the sequencing requirement in clear statutory text, removing at a stroke the interpretive uncertainty that had made the pre-2025 position vulnerable to exactly the kind of

²⁰ 'Legislating Around The Court: The IBC Amendment Act, 2026 And The Erosion Of Ex-Ante Antitrust Scrutiny In Insolvency Resolution' (IJLLR).

challenge INSCO successfully mounted. Second, and more substantively, the amendment preserves a genuine backstop: because CCI approval remains mandatory before the Adjudicating Authority's sanction, a combination that the CCI ultimately declines to approve, or approves only subject to conditions the CoC's chosen applicant is unwilling or unable to meet, cannot be given legal effect through the insolvency process regardless of how emphatically the CoC has voted in its favour. The Adjudicating Authority, unlike the CoC, is a judicial body less susceptible to the sunk-cost dynamics that make it structurally difficult for creditors to walk back a concluded commercial vote, and vesting it with the task of confirming CCI compliance before final sanction retains at least the formal capacity to prevent an anti-competitive combination from being consummated.

The more persuasive reading, on balance, is that the 2026 amendment does not simply restore the pre-Independent Sugar Corporation status quo, but it does dilute the substantive protection the Supreme Court's ruling was designed to secure. The practical reality of insolvency resolution is that once a CoC has voted with an overwhelming majority for a particular resolution applicant, considerable institutional, financial and reputational momentum accumulates behind that choice; an adverse or heavily conditioned CCI decision arriving only after that vote, however formally decisive at the Adjudicating Authority stage, will predictably generate pressure, from the CoC, from the resolution applicant, and from the exigencies of the Code's own timelines, to seek accommodation with the CCI's concerns rather than to discard a resolution plan the creditors have already endorsed by an overwhelming margin. In this sense, the amendment trades the doctrinal clarity and behavioural discipline of ex-ante gatekeeping, which Independent Sugar Corporation sought to install, for the administrative convenience of allowing resolution applicants to defer costly and contingent regulatory filings until their plans have secured a measure of commercial validation, a trade Parliament was entitled to make, but one that should be understood for what it is, rather than described merely as a technical timing adjustment.

VIII. Toward a Durable Reconciliation: Institutional Coordination between the IBBI and the CCI

The recurring lesson of this doctrinal history, from Arcelor Mittal through Independent Sugar Corporation to the 2026 amendment, is that sequencing rules alone, however carefully calibrated, cannot fully substitute for institutional coordination between the two regulators whose jurisdictions the proviso to Section 31(4) attempts to reconcile. Several structural

reforms, none of which the 2026 amendment attempts, would meaningfully reduce the recurring friction this paper has traced.

First, a statutory or regulatory protocol between the IBBI and the CCI, whether through a formal memorandum of understanding, a standing liaison mechanism, or amendments to the CCI's own regulations, could establish a genuinely expedited review track specifically for combinations arising out of insolvency proceedings, distinct from and faster than the CCI's general green-channel mechanism, with defined outer timelines calibrated to the Code's own CIRP milestones rather than to the Competition Act's ordinary review periods. Second, resolution professionals could be required, at the request-for-resolution-plan stage, to identify prospective bidders whose proposed acquisition would likely constitute a combination, prompting early and parallel engagement with the CCI well before the CoC's vote regardless of which sequencing rule technically governs the ultimate approval, so that the practical burden of dual-track compliance is distributed across the bidding process rather than concentrated at a single procedural chokepoint. Third, the CCI could be given express statutory standing to intervene, or to be heard, before the Adjudicating Authority at the sanction stage in any resolution plan involving a combination, rather than relying solely on the resolution applicant's own representations as to the status of CCI proceedings, a change that would strengthen precisely the backstop function on which the post-2026 sequencing now principally depends. Fourth, procedural failures of the kind the Court identified in Independent Sugar Corporation itself, a missed show-cause notice to the target company, or an unaddressed requirement of target concurrence to a divestment proposal, point to a need for the CCI to develop insolvency-specific procedural guidance addressing how its ordinary combination-review procedures should be adapted to the multi-party, competitively sensitive context of a CIRP, in which the target company's management is typically displaced by a resolution professional with divided loyalties among competing bidders.

None of these reforms require Parliament to revisit the sequencing question yet again; they operate instead at the level of institutional design, seeking to narrow the practical gap between the Code's insistence on speed and the Competition Act's insistence on prior scrutiny, regardless of precisely where in the CIRP timeline that scrutiny is formally required to occur. Absent such coordination, the sequencing debate this paper has traced is likely to recur in some new form, whether through further litigation over the 2026 amendment's own text, through renewed pressure for legislative revision should a high-profile combination be blocked or unwound late in the CIRP process, or through continued ad hoc accommodation by resolution professionals operating, as in Independent Sugar Corporation itself, at the margins of what the

statute strictly permits.

IX. Conclusion

The relationship between insolvency resolution and merger control under Section 31(4) of the IBC has moved through three distinct phases in less than a decade. The NCLAT's directory jurisprudence, consolidated across Arcelor Mittal, Vishal Vijay Kalantri and Makalu Trading, prioritised the Code's commitment to time-bound resolution, permitting CCI approval to be obtained at any point up to the Adjudicating Authority's sanction and treating the proviso's sequencing language as aspirational rather than binding. The Supreme Court's decision in Independent Sugar Corporation Ltd. v. Girish Sriram Juneja repudiated that approach on both textual and policy grounds, restoring the primacy of ex-ante antitrust review by holding that CCI approval must precede the CoC's vote as a jurisdictional precondition to that vote's validity, a holding that, whatever its costs in process certainty, took seriously Parliament's deliberate 2018 departure from the Code's general treatment of regulatory approvals. The Insolvency and Bankruptcy Code (Amendment) Act, 2026 has now legislated a third position: CCI approval remains mandatory, but the point at which it must be secured has been moved back to a stage after the CoC's vote and before the Adjudicating Authority's sanction, restoring much of the practical sequencing the Supreme Court had rejected while retaining, at least in form, a final regulatory backstop before any resolution plan involving a combination can take legal effect.

Whether this settlement proves durable will depend less on the precise wording of the amended proviso than on whether the institutional gap the entire saga has exposed, the absence of any structured coordination between the IBBI and the CCI, is finally addressed. Sequencing rules can allocate the burden of accommodating two incompatible timelines, but they cannot, by themselves, dissolve the underlying incompatibility between a resolution process built for speed and a competition regime built for deliberation. Until that institutional gap is closed, the pendulum traced in this paper, from directory to mandatory, to a legislated middle ground, is unlikely to have found its final resting point.