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IBC for Financial Creditors & Promoters



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Section 7 Triggers, CoC Dynamics, Resolution Plan Structuring & Promoter Re-Entry — The Complete Practitioner's Guide

Booklet II of VI — Indian Banking & Finance Sector Legal Series

Advocates & Legal Consultants — Ultra-Premium Client Advisory Series

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CHAPTER ONE

Section 7 Trigger: Filing Strategy, Default Evidence & the Supreme Court's Admission Jurisprudence

IBC 2016 Section 7, NCLT Admission Criteria, Minimum Default Threshold, Debt & Default Documentation & Pre-Admission Injunctions

A Section 7 application before the NCLT is not merely a debt recovery tool — it is the most consequential legal instrument that a financial creditor can deploy against a corporate debtor in India today. The moment of admission triggers the moratorium, displaces the board, and sets in motion a process that ends either in the corporate debtor's transfer to a resolution applicant or its

liquidation. For the financial creditor, the admission hearing is the gateway to a process that may ultimately produce significantly higher recovery than debt enforcement. For the promoter, it is the moment at which control of the enterprise, built over decades, passes to an Insolvency Resolution Professional and a Committee of Creditors whose interests are entirely different from those of the founding family. Understanding every element of the admission jurisprudence is, accordingly, the first obligation of counsel on either side of the Section 7 application.

1.1 The Section 7 Threshold: Debt, Default and the Rs. 1 Crore Floor

A financial creditor's right to file a Section 7 application requires the existence of: (i) a "financial debt" as defined in Section 5(8) of the IBC — a debt disbursed against the consideration for the time value of money, including loans, bonds, debentures, certificates, notes, bills of exchange, guarantees, indemnities, and derivative transactions; and (ii) a "default" in the payment of that debt — defined in Section 3(12) as non-payment of a debt when whole or any part or instalment of the debt has become due and payable and is not repaid. The minimum default threshold — Rs. 1 crore (as revised from the initial Rs. 1 lakh by the IBC Amendment Ordinance 2020) — is a jurisdictional precondition: the NCLT lacks jurisdiction to admit a Section 7 application where the debt in default is below this threshold, and a financial creditor seeking to use IBC as a collection tool for small debts is outside the statute's ambit. For large corporate debtors with multi-bank debt of hundreds of crores, the minimum threshold is entirely academic — but the threshold has significance in two situations: where the entire debt is contested and only a small component is unambiguously due, and where the corporate debtor argues that partial payments have reduced the outstanding below the Rs. 1 crore floor.

1.2 Proving Default: The Evidence Architecture

The NCLT's admission of a Section 7 application requires only a prima facie satisfaction that a financial debt exists and is in default — a low evidentiary threshold that is deliberately minimal to ensure that the NCLT does not become a forum for summary adjudication of complex disputed debt claims. The documentary record for proving default at Section 7 admission typically includes: the loan sanction letter and agreement; the board resolution authorising the loan; the mortgage deed or security document; the most recent NPA classification communication; the account statement showing the outstanding balance and the default date; and any demand notice or Section 13(2) notice previously issued. The corporate debtor's defence at admission stage is correspondingly narrow — the NCLT in a Section 7 admission proceeding is not equipped to determine: whether the bank has mis-applied payments; whether a contested restructuring agreement modifies the repayment schedule; whether the NPA classification was premature; or whether the bank itself has breached the loan agreement. These defences go to the merits of the debt dispute, not to the existence of a default, and the Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* (2018) 1 SCC 407 — the seminal admission jurisprudence decision — held that the NCLT's sole function at admission stage is to determine:

is there a financial debt? Is there a default? If both questions are answered affirmatively, admission is mandatory — the NCLT has no residual discretion to decline admission on grounds of equity, hardship, or the corporate debtor's submission that the default will soon be remedied.

KEY PROVISION

Section 7(5), IBC 2016: "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 insolvency resolution professional; it shall, by order, admit such application; or (b) default has not occurred or the application under sub-section (2) is incomplete, it shall, by order, reject such application: 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 of date of receipt of such notice from the Adjudicating Authority."

1.3 Pre-Admission Defence: Jurisdiction Challenges and the Pre-Existing Litigation Bar

The corporate debtor's available pre-admission defences — though deliberately limited by the IBC's scheme — include: challenging the NCLT's territorial jurisdiction (NCLT Bench having jurisdiction over the corporate debtor's registered office); disputing that the creditor is a "financial creditor" within Section 5(8) (relevant where the debt is characterised as operational rather than financial); demonstrating that the alleged debt is entirely fictitious or does not exist (which goes to the existence of the debt, not merely its quantum); and raising the defence under Section 10A (inserted by the IBC Amendment Ordinance 2020) that the default occurred during the COVID-19 suspension period (1 March 2020 to 25 March 2021 for the initial suspension, with subsequent extensions). The availability of a pre-existing SARFAESI or RDDBFI proceeding — where the same debt is already before a DRT — does not bar a Section 7 application: the IBC's remedies are concurrent with SARFAESI and RDDBFI remedies (as confirmed in *Innoventive Industries*), and a corporate debtor cannot use a pending DRT proceeding to challenge NCLT jurisdiction. Post-admission, the pending DRT proceeding is stayed by the Section 14 moratorium — but the DRT's pre-admission exercise of jurisdiction is not retroactively invalidated by the NCLT's subsequent admission.

LEADING CASE

E. S. Krishnamurthy & Ors. v. Bharath Hi Tecch Builders Pvt. Ltd. (2021) 9 SCC 281: The Supreme Court held that the NCLT's jurisdiction under Section 7 is premised on a "debt and default" — the NCLT has no jurisdiction to examine whether the debt has been validly created, whether the lender has performed its obligations, or whether the borrower's default was caused by the lender's own breach. This ruling significantly curtails the scope of pre-admission defence available to corporate debtors who claim the default was "forced" by the bank's conduct in denying restructuring, reducing credit limits, or mis-applying payments — such defences are claims that survive as counter-claims in the resolution process but cannot prevent NCLT admission.

1.4 The IRP Appointment: Practical Considerations and Challenges

Upon admission of the Section 7 application, the NCLT appoints an Interim Insolvency Resolution Professional (IRP) — proposed by the financial creditor in its Section 7 application — to manage the corporate debtor during the initial forty-five days of the Corporate Insolvency Resolution Process (CIRP). The IRP's appointment is a critical strategic decision for the financial creditor: the IRP takes over management of the corporate debtor, controls its banking operations, convenes the first CoC meeting, and effectively sets the tone for the entire CIRP. A financial creditor that nominates a commercially experienced and professionally aggressive IRP — typically from the pool of IBBI-registered insolvency professionals with sector expertise in the corporate debtor's industry — gains a significant information and management advantage in the CIRP. The corporate debtor (through its former management) can challenge the IRP's appointment on grounds of conflict of interest (Section 16(3) — the IRP cannot be related to the corporate debtor), lack of IBBI registration, or prior undisclosed relationship with the financial creditor. The NCLT's IBBI-prescribed fees for IRPs and Resolution Professionals are a matter of negotiation between the CoC and the RP — there is no statutory maximum — and in large CIRPs, RP fees in the range of Rs. 50 lakh to Rs. 2 crore per month are not uncommon, a cost that is borne by the corporate debtor's estate and reduces the resolution amount available for distribution.

CoC Architecture: Voting Dynamics, Related Party Exclusions & Dissenting Creditor Rights

Committee of Creditors Constitution, Section 21 Voting Rights, Exclusion of Operational Creditors, Related Party Disqualification & Dissenting Financial Creditor Protections

2.1 CoC Constitution: Who Gets Voting Rights and Who Does Not

The Committee of Creditors (CoC) — the collective decision-making body that governs the corporate debtor during the CIRP and ultimately votes on resolution plans — is constituted under Section 21 of the IBC from all "financial creditors" of the corporate debtor whose claims have been admitted by the IRP/RP. The CoC's constitution is the most consequential structural feature of the CIRP for all stakeholders: the voting share of each financial creditor (proportionate to the admitted claim amount) determines the creditor's power to approve or veto resolution plans, replace the RP, and decide on liquidation. Operational creditors (trade creditors, government dues, employees) are not CoC members and have no voting rights — they may appoint a representative on the CoC in a non-voting capacity if their admitted claims exceed 10 per cent of total admitted claims. This structural exclusion of operational creditors from CoC governance is the most commercially significant feature of India's IBC architecture for large corporate debtors with complex stakeholder structures: workmen, suppliers, and government tax authorities — whose claims may run to hundreds of crores — have zero influence over the resolution plan's terms.

2.2 Related Party Exclusions: Section 21(2) and NARCL Implications

Section 21(2) of the IBC excludes a financial creditor from CoC membership (and thereby from voting on resolution plans) where the financial creditor is a "related party" of the corporate debtor — defined in Section 5(24) of the IBC as including promoters, directors, partners, key managerial personnel, holding/subsidiary/associate companies, and their respective relatives. The related party exclusion prevents the promoter group from using CoC voting to influence or block the resolution process — a critical anti-abuse mechanism designed to prevent the promoter from using related-party financing to dominate the CoC and engineer a resolution plan that restores control to the promoter in a form that Section 29A would otherwise prohibit. The National Asset Reconstruction Company Limited (NARCL), established in 2021 as the "bad bank" to acquire stressed assets from the banking sector, creates a new dimension in CoC dynamics: where NARCL has acquired the major banks' exposure to a corporate debtor by purchasing their NPAs at a discount, NARCL's voting share in the CoC may be dominant — and NARCL's commercial incentives (to maximise recovery on the discounted acquisition price) differ from

those of the original lenders (who are focused on the haircut from face value). Practitioners advising minority CoC members — foreign banks, NBFCs, or smaller PSU banks whose voting share is insufficient to block resolution plans — must understand the specific protections available to dissenting financial creditors and the scope for challenging CoC decisions that have been driven by a dominant creditor's interests at the expense of minority CoC members.

2.3 Voting Thresholds and the 66 Per Cent Supermajority

The IBC Amendment Act 2019 reduced the voting threshold for CoC approval of resolution plans from 75 per cent to 66 per cent of the CoC's voting share — a change that significantly altered the practical dynamics of resolution negotiations. With a 66 per cent threshold, a creditor holding 35 per cent or more of the admitted claims has an effective veto over resolution plan approval — a blocking minority position that gives the blocking creditor significant leverage in negotiating resolution plan terms, including the amount and timing of payments to financial creditors, the treatment of security interests, and the haircut to be absorbed. For a promoter's counsel seeking to negotiate a resolution plan that preserves some residual value for the former promoter (through a shareholding in the resolved entity, a management role, or a purchase consideration component), identifying the creditor whose blocking minority position gives them disproportionate negotiating leverage — and engaging with that creditor's specific recovery objectives — is the most productive resolution negotiation strategy. Certain CoC decisions require a 90 per cent supermajority: the decision to liquidate the corporate debtor (Section 33(1)(b)(ii)) requires 90 per cent approval — a threshold that protects against premature liquidation decisions driven by a dominant creditor's desire to realise security quickly at the expense of the overall estate's going-concern value.

Resolution Plan Structuring: Section 30 Requirements, Haircut Negotiations & Promoter Re-Entry under Section 29A

Section 30 Mandatory Contents, Operational Creditor Minimum, Waterfall Compliance, Resolution Applicant Due Diligence & CoC Approval Strategy

3.1 Section 30 Compliance: The Mandatory Resolution Plan Contents

A resolution plan submitted by a resolution applicant for CoC approval under Section 30(2) of the IBC must — as mandatory content requirements — provide for: payment of the CIRP costs (which have absolute priority over all creditor payments); payment of at least the liquidation value to operational creditors (the minimum protection for trade and government creditors); and payment to financial creditors who do not vote in favour of the plan of at least the amount they would have received in liquidation (the "fair and reasonable" dissenting creditor protection inserted by the Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) 2 SCC 1). The liquidation value — determined by a registered valuer as the break-up value of the corporate debtor's assets in an orderly liquidation — is the floor: CoC members and resolution applicants cannot agree on plan terms that pay financial creditors less than this floor. In practice, the gap between liquidation value and the resolution applicant's offered consideration is the "haircut" — the percentage reduction from the outstanding claim that financial creditors must accept to approve the plan. Haircut negotiations between the resolution applicant and the dominant CoC members are the central commercial dynamic of the CIRP: the resolution applicant offers the minimum that the CoC will accept; the CoC pushes for the maximum the applicant will pay; and the resolution applicant's walk-away point (below which it will withdraw its plan) and the CoC's walk-away point (below which it will reject the plan and vote for liquidation) define the negotiating range.

3.2 The Essar Steel Precedent: Pro-Rata Distribution and Judicial Review of CoC Decisions

The Supreme Court's decision in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) — the most commercially significant IBC ruling to date — established several doctrines of lasting importance for resolution plan structuring: (i) the CoC has commercial wisdom in approving a resolution plan, and the NCLT/NCLAT's power of review over a CoC-approved plan is limited to verifying compliance with the Section 30 mandatory requirements — courts cannot substitute their judgment for the CoC's commercial decision on the adequacy of the plan; (ii) a resolution plan that differentiates between operational and

financial creditors, or between different classes of financial creditors, is permissible — the IBC does not require equal treatment of all creditors, only that the minimum protection thresholds (liquidation value for operational creditors, dissenting financial creditor protection) are met; and (iii) the NCLT/NCLAT cannot impose additional distribution requirements (such as directing pro-rata distribution among all financial creditors) that override the CoC's approved distribution waterfall. For resolution applicants, the Essar Steel precedent provides significant structuring flexibility: a plan that offers 100 per cent recovery to secured financial creditors, 40 per cent to unsecured financial creditors, and liquidation value to operational creditors is judicially permissible — provided the dissenting financial creditor protection and operational creditor minimum thresholds are met.

Promoter Defence: Section 29A Disqualifications, SPV Structures & Retrospective Challenges

Section 29A Eligibility Criteria, NPA Disqualification, Related Entities, Judicial Challenges to 29A & Legitimate Structuring for Resolution Applicant Eligibility

4.1 Section 29A: The Architecture of Promoter Exclusion

Section 29A of the IBC — inserted by the IBC (Second Amendment) Act, 2018 — is the legislative mechanism designed to prevent defaulting promoters from reacquiring their own companies through the IBC resolution process at a discount to the outstanding debt, thereby profiting from their own default. Section 29A disqualifies a person from submitting a resolution plan or acting as a resolution applicant if that person: (i) is an undischarged insolvent; (ii) is a wilful defaulter as per RBI guidelines; (iii) has an NPA account that has been outstanding for more than one year (as on the date of the resolution plan submission); (iv) has been convicted of an offence punishable with imprisonment for two years or more; (v) has been disqualified as a director under the Companies Act; (vi) is prohibited by SEBI from trading in securities; or (vii) has executed a guarantee in favour of a creditor in respect of a corporate debtor that is undergoing CIRP or has undergone liquidation in the preceding three years. The NPA disqualification under Section 29A(c) is the most practically significant for promoter applicants: a promoter whose personal loan accounts (or whose other corporate ventures' loan accounts) have been NPA for more than one year is ineligible to submit a resolution plan for the corporate debtor undergoing CIRP — even if the promoter is otherwise the most commercially logical resolution applicant (having built the business, having operational expertise, and having offered the highest consideration).

4.2 Connected Persons and the Attribution Problem

Section 29A's disqualification extends not just to the resolution applicant directly but also to "connected persons" — defined in the Explanation to Section 29A as including persons acting in concert, holding companies, subsidiary companies, associate companies, and the relatives of the resolution applicant. This connected person attribution creates complex structuring problems for promoter groups seeking to participate in the CIRP of one of their companies through a special purpose vehicle: if the SPV's promoter has a connected person (parent company, sibling group company) with a one-year-old NPA, the SPV itself is disqualified under Section 29A even though the SPV has no NPA exposure. The Supreme Court in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* (2019) 2 SCC 1 held that the connected person attribution under Section 29A requires a factual examination of actual control and management relationships — nominee

shareholders, dormant holding companies, and entities without genuine operational connection may be distinguished from the resolution applicant for Section 29A attribution purposes. For promoters structuring resolution bids through new special purpose vehicles, the key due diligence is a careful mapping of all connected person relationships under the Section 29A Explanation, clearing NPA accounts in the connected person network (through settlement or regularisation) before the resolution plan submission date, and documenting the ring-fencing between the SPV and any disqualified connected entity through independent management, separate board composition, and arm's length commercial arrangements.

Liquidation Waterfall, Security Interest Priority & the Secured Creditor's Strategic Election

Section 53 Waterfall, Workmen Dues Priority, Secured Creditor Relinquishment Election, CIRP Cost Priority & Government Dues Treatment

5.1 The Section 53 Waterfall: Distribution Priority in Liquidation

The Section 53 waterfall — which governs the distribution of a liquidating corporate debtor's assets among its creditors — is the foundational priority structure that every IBC financial creditor must understand when deciding whether to vote for a resolution plan or liquidation. The Section 53 priority order is: (i) CIRP costs and liquidation costs (absolute priority, paid first from the estate); (ii) workmen's dues for the twenty-four months preceding liquidation commencement, ranking *pari passu* with secured creditors who have relinquished their security; (iii) other employee wages and any unpaid dues for twelve months; (iv) financial debts owed to unsecured creditors; (v) Government dues for the two years preceding liquidation commencement; (vi) remaining unsecured creditors; (vii) preference shareholders; and (viii) equity shareholders. A secured financial creditor that has "relinquished" its security interest to the liquidation estate — surrendering its in rem rights over the secured asset in exchange for participating in the Section 53 waterfall at the secured creditor priority level — ranks at tier (ii) *pari passu* with workmen's dues, ahead of government dues and unsecured creditors. The strategic election between relinquishment (participation in the waterfall) and enforcement of security outside the liquidation estate (where the secured creditor realises the secured asset independently and receives the proceeds up to the claim amount, returning any surplus to the estate) is the most commercially critical decision a secured financial creditor makes upon liquidation commencement.

5.2 Government Dues and the IBC Override

One of the most commercially impactful features of the Section 53 waterfall — and a major departure from pre-IBC Indian insolvency law — is the subordination of government dues (including income tax, GST, custom duties, and state government dues) to financial debts owed to unsecured creditors. Prior to the IBC, Indian law conferred Crown priority on government dues in insolvency proceedings, meaning government tax authorities ranked ahead of private creditors. Section 53 reverses this: financial debts to unsecured creditors are paid before government dues. The Supreme Court in *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.* (2021) 9 SCC 657 confirmed that an approved resolution plan extinguishes all government dues not provided for in the plan — including tax dues that

were not admitted in the CIRP and were not addressed in the plan — providing a clean slate to the resolution applicant free from government tax claims that would otherwise follow the company into the post-resolution period. This ruling is of enormous practical value for resolution applicants and their counsel: it confirms that the resolution plan's approval by the NCLT creates a final and binding settlement of all claims against the corporate debtor, including government tax claims, and that tax authorities cannot pursue the resolved company for pre-resolution dues that were not paid under the plan.

Personal Guarantors and Corporate Insolvency: Section 60(2), Simultaneous Proceedings & Cross-Border Insolvency

Insolvency of Personal Guarantors, Section 96 Moratorium, Simultaneous CIRP & PGCD Proceedings, Director Liability & Cross-Border Recognition

6.1 PGCD Framework: The Simultaneous Proceedings Dynamic

The IBC's framework for insolvency of personal guarantors to corporate debtors (PGCD), notified in 2019 and upheld by the Supreme Court in *Lalit Kumar Jain v. Union of India* (2021) 9 SCC 321, creates a mechanism for pursuing the personal guarantor's insolvency simultaneously with the corporate debtor's CIRP. Section 60(2) of the IBC enables the financial creditor to file the personal insolvency application against the personal guarantor before the same NCLT Bench that is adjudicating the corporate debtor's CIRP — creating a consolidated proceeding that allows the NCLT to assess the guarantor's liability in the context of the corporate debtor's debt and the resolution plan. The Supreme Court in *Lalit Kumar Jain* specifically held that the guarantor's liability is not extinguished by a resolution plan that provides for payment of part of the corporate debtor's debt — the guarantor remains liable for the full outstanding debt less the amount actually paid under the resolution plan, not less the plan amount that was agreed to be paid in full and final settlement of the financial creditor's claim against the corporate debtor. This ruling has dramatic implications for promoter-guarantors: approving a resolution plan that pays, say, 30 per cent of the bank's outstanding does not extinguish the promoter-guarantor's liability for the remaining 70 per cent — the bank can pursue the guarantor for the full unpaid 70 per cent even after the CIRP is concluded and the corporate debtor has been transferred to the resolution applicant.

6.2 Cross-Border Insolvency: UNCITRAL Model Law and India's Current Framework

India has not yet adopted the UNCITRAL Model Law on Cross-Border Insolvency — the internationally accepted framework for coordinating insolvency proceedings involving assets or creditors in multiple jurisdictions. This legislative gap creates significant practical complexity for Indian insolvency proceedings involving multinational corporate debtors: where a corporate debtor has assets in multiple jurisdictions (overseas subsidiaries, foreign bank accounts, aircraft registered abroad, or intellectual property registered in foreign countries), the IBC's CIRP does not automatically extend to these overseas assets — the RP must individually pursue recognition of the Indian CIRP in each relevant foreign jurisdiction under that jurisdiction's domestic insolvency recognition framework. The Ministry of Corporate Affairs' 2020 Cross-Border

Insolvency draft rules — which propose adoption of the UNCITRAL Model Law — have not yet been enacted, leaving Indian IPs and foreign creditors without a systematic framework for coordinating multi-jurisdictional proceedings. For practitioners advising financial creditors in high-value CIRP matters involving offshore assets — particularly the overseas holding company structure common among large Indian corporate groups — the absence of a Model Law framework requires a jurisdiction-by-jurisdiction analysis of recognition prospects and the deployment of concurrent foreign insolvency proceedings in key asset jurisdictions (Singapore, the UK, or the Cayman Islands, depending on where the group's offshore assets are held).

Booklet II Complete Summary: The IBC CIRP for financial creditors and promoters is a high-stakes, time-compressed process where admission strategy, CoC positioning, Section 29A eligibility navigation, and resolution plan structuring determine outcomes worth hundreds of crores. The Innoventive Industries admission doctrine, the Essar Steel CoC commercial wisdom principle, and the Lalit Kumar Jain guarantor liability ruling are the three Supreme Court decisions that define the current IBC landscape. For promoters, Section 29A's connected person attribution and the NPA clearance strategy are the pre-CIRP planning obligations that determine whether the promoter retains any pathway to resolution plan participation. For financial creditors, the CoC voting dynamics, the dissenting creditor protection, and the government dues subordination under Section 53 are the strategic variables that determine recovery maximisation.