Subhash Chandra Case Part II – Aftermath: IBBI's proposed changes to the IBC

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Key Takeaways

- Subhash Chandra case exposed a gap in the IBC, allowing **alleged** related parties of the debtor to vote on his repayment plan. Will the IBBI's proposed regulatory changes fix this?
- IBBI's proposed fix – assign related parties a nil voting share at creditors' meetings. But why not exclude them entirely?
- Proposed mandatory valuation for assets is helpful. But will it give creditors the complete picture?
- Should creditors be able to prepare a repayment plan for the debtor?

In Part I of this series on the Subhash Chandra case, we examined how the Subhash Chandra proceedings exposed a loophole in the personal insolvency regime – creditors allegedly connected to Chandra voted on his repayment plan as they were not his "associates". There were also concerns on how Chandra's assets were valued for his proposed repayment plan.

The IBBI appears to have recognised this gap. Its September 2026 discussion paper proposes four safeguards: assigning related parties nil votes, enabling earlier scrutiny of suspect transactions, mandating independent asset valuation, and requiring the resolution professional to record the creditors' commercial rationale for approving repayment plans.

But do these proposals go far enough? Firstly, rather than assigning related parties a nil voting share, why not exclude them from deliberations (as in CIRP)? Similarly, though an independent valuation of the assets may establish what disclosed assets of the debtor are worth, this may not address if the debtor has actually disclosed all his recoverable assets.

There is also a more fundamental legal question: should the IBC also include a scheme where the creditors propose a repayment plan for the debtor?

We examine:

Changes proposed by IBBI

a. Nil voting rights for related parties

Today, Section 109(4)(b) of the IBC prevents an "associate" of the guarantor from voting on the repayment plan. We discussed the loophole this creates in Part I, with respect to the wider "related party" definition. The IBBI now proposes two specific changes to the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019:

- Identification of related parties. Under Regulation 9(1), the RP's list of creditors, which already sets out each claim, the admitted amount and any security, must additionally identify whether each creditor is a "related party" of the guarantor under Section 5(24A) of the IBC.

- Nil voting share for related parties. Under Regulation 11(2), a new proviso would assign a "Nil" voting share to every creditor classified as a Section 5(24A) related party. Such a creditor could still have an admitted claim, but that claim would carry no voting weight on the repayment plan.

This would supplement, not replace, the existing statutory prohibition on voting by "associates" under Section 109(4)(b). The IBBI relies on Section 109(2), which permits it to prescribe how voting shares are determined, rather than proposing an amendment to the IBC itself.

Our view

This change directly addresses the central controversy in Chandra's case. Five creditors of Chandra, alleged to be related to him, held 61.78% of the voting share and supported his repayment plan. If these votes were excluded, the plan would not have cleared the approval threshold. However, to note – the NCLT's August order approving the repayment plan was subsequently stayed by a five-member bench.

By relying on Section 5(24A) to identify related parties, the law naturally casts a wider net than the current "associate" construct. It examines, among other things, LLP connections and whether an entity ordinarily acts on the debtor's directions, all of which are directly relevant in the Chandra case.

However, one question remains – rather than assigning related parties a nil voting share, why not simply exclude them from deliberations as under CIRP?

For instance, under Section 21(2), a related-party financial creditor in a corporate insolvency generally loses the right of representation, participation and voting in the committee of creditors. The IBBI's personal-guarantor proposal deals expressly with voting share. It does not similarly say whether a connected creditor may attend, negotiate or influence the deliberations before votes are counted.

The paper does not indicate whether a statutory amendment is contemplated. Nevertheless, the proposed fix seems slightly convoluted.

b. Avoidance transactions – investigating assets before creditors vote

As explained in Part I, in Chandra's case, the repayment plan was premised on his assertion that he had very few personal assets available for recovery. Dissenting creditors questioned whether this reflected his true financial position and sought further investigation into his assets. However, the existing personal insolvency framework does not expressly require the resolution professional to investigate preferential, undervalued or other avoidable transactions at the repayment-plan stage. The wider statutory powers to investigate and challenge such transactions are largely available only after bankruptcy proceedings commence.

This creates a practical problem for lenders. They must decide whether to accept the guarantor's repayment plan without necessarily knowing whether additional assets could be recovered. Alternatively, they can reject the plan and pursue bankruptcy, which brings its own costs and delays, to investigate whether further recoveries are possible.

The IBBI now proposes to address this gap by introducing Regulation 10A, which would bring the examination of avoidable transactions, and potentially the remedies against them, forward to the resolution stage itself. Specifically:

- Examination of preferential, undervalued, fraudulent and extortionate transactions (PUFE) by RP

  The resolution professional would be required to examine whether the guarantor has entered into PUFE transactions. The resolution professional must record his findings, along with supporting particulars, and place them before creditors before they consider the repayment plan.

- Power to pursue avoidance transactions

  Where the resolution professional identifies PUFE transactions, he would be required to take actions available to him under the bankruptcy provisions, including approaching the NCLT for: (a) declaring such transactions as void, (b) reversing such transactions, (c) seeking protective orders for recoverable assets etc. Though the discussion paper mentions requiring creditor approval for such actions, draft Regulation 10A(3) does not expressly require it.

These changes are significant since creditors would no longer necessarily have to reject a repayment plan and initiate bankruptcy merely to investigate transactions that could materially increase their recoveries. Such findings could instead inform their assessment of the guarantor‘s repayment proposal before they vote on it.

Our view

This is a significant change since a repayment plan, which is dependent on the debtor's self-submitted statement of assets, would be difficult to assess if the lenders cannot identify and confirm the debtor's assets. Requiring the resolution professional to examine suspect transactions before the vote is therefore a material improvement.

However, the RP ‘s duty to review transactions is not the same as a power to discover them. The proposed Regulation 10A does not require a forensic audit, transfer control of the guarantor's assets to the RP or give the RP the bankruptcy trustee's full investigative powers. Creditors should be able to seek a targeted independent investigation, with appropriate safeguards to investigate the complete estate of the debtor.

c. Independent valuation – valuing assets is helpful, but still may not give a complete picture

The proposal is that a new Regulation 10B would require the resolution professional to appoint a registered valuer to determine both the fair value and the realisable value of the guarantor's assets, using valuation standards notified by the IBBI. The valuer must deliver the values and a written report before the repayment plan is placed before the creditors' meeting under Regulation 17A. The RP must then place the report and both values before creditors alongside the plan.

Our view

This is an important proposal, especially given what happened in Chandra's case. Chandra's repayment proposal depended on his claim that he only had a small pool of assets which could be used to repay creditors. Certain lenders questioned whether the disclosures made by Chandra about his assets captured the real picture of his recoverable assets. Therefore, an independent valuation could give creditors a good benchmark against which they can judge a repayment plan, instead of solely relying on the debtor's estimate of his own assets.

However, there is still one open issue – while a valuer prices the assets identified for valuation, this may not confirm that the list of assets of the debtor is complete. Property legally or beneficially held by the guarantor, and assets potentially recoverable through avoidance proceedings, may require separate verification. Additionally, assets owned by Essel group companies cannot be treated as Chandra's personal assets merely because he guaranteed group debt. Valuation must follow a credible determination of what belongs to, or can lawfully be recovered for, the estate.

d. Recording creditors' reasons for approving a plan

Currently, a resolution professional must record which creditors voted for, against or abstained from a resolution. A proposed amendment would require the existing minutes of the meeting to set out creditors' deliberations and the reasons for their decision on the repayment plan, including with

reference to:

- the admitted claims and payments proposed; the duration of the plan and certainty of payment; the guarantor's assets and liabilities, including the valuation; income and future repayment capacity; and the plan's feasibility and viability

- any transaction or conduct of the debtor that affects recoveries, including diversion, concealment or dissipation of assets

Where the proposed recovery is significantly below admitted claims or the estimated realisable value of assets, the resolution professional must specifically record why creditors consider the plan preferable to taking the guarantor into bankruptcy.

Our view

This could be an important inclusion, especially in dispute scenarios where certain creditors may wish to appeal against a repayment plan. For instance, in Chandra's case, the voting record showed that Indiabulls Housing Finance and Catalyst Trusteeship (representing CINDA FPI), supported the plan while several other institutional lenders opposed it. It would have been relevant in Chandra's case to know the rationale behind their decision to approve the plan. While a low recovery is not by itself abnormal or unlawful, it is still important to ensure transparency in determining how a repayment plan was considered and approved by creditors.

The larger question: should creditors also be able to propose repayment plans?

The four proposals discussed above address how creditors assess a guarantor's repayment offer. But they leave a more fundamental question unanswered: why should the debtor alone control the formulation of the plan that creditors are asked to accept?

Debtor-led repayment plans are not unique to India. The UK and Singapore follow similar models, allowing creditors to suggest modifications to repayment plans, but only with the debtor's consent. Australia requires an independent trustee to compare the proposed settlement with the likely outcome in bankruptcy. India also permits creditors to suggest modifications, subject to the debtor's consent. However, these safeguards do not necessarily give creditors the opportunity of putting a better proposal of their own on the table.

In contrast, Germany, under its insolvency framework, permits the creditors' assembly to direct the insolvency administrator to prepare an insolvency plan, rather than depend exclusively on one formulated by the debtor. In the Indian context, the question that this raises is that if creditors have reason to dispute a guarantor's disclosures or consider the proposed repayment inadequate, should they have the ability to propose their own alternative? Such a mechanism could allow creditors to explore a more beneficial settlement without immediately resorting to bankruptcy, while preserving adequate protections for the debtor's exempt assets and reasonable living expenses. For now, however, such a reform appears to fall outside the IBBI's proposals.

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