

The Strategic Architect: ESG Value-Maximization and the IBC Amendment Bill, 2025

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025, represents a foundational shift from judicial discretion to procedural velocity. While the Bill's primary "surgical" interventions—the 14-day mandatory admission, the Section 28A guarantor pooling, and the Creditor-Initiated Insolvency Resolution Process (CIIRP)—are designed to arrest value erosion through speed, they simultaneously create a "Governance Vacuum" that only a specialized professional can fill. This article argues that in a regime where admissions are near-automatic and the "Clean Slate" is absolute, the role of the Company Secretary (CS) must evolve into that of a Strategic Architect. By weaving Environmental, Social, and Governance (ESG) metrics into the resolution framework, the CS transitions from a compliance custodian to a value-creator. Through a critical analysis of the 2025 Bill's provisions and historical case studies like Jet Airways and ABG Shipyard, this guide demonstrates how ESG Value-Maximization is the only viable path to a sustainable "Second Life" for corporate entities in the IBC 2.0 era.



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INTRODUCTION

VELOCITY AS A CATALYST FOR VALUE

The first decade of the Insolvency and Bankruptcy Code (IBC) was a period of transformative credit discipline, yet it was frequently hamstrung by the "Admission Lag." By 2024, the average time to admit a Section 7 application had reached a record high of over 600 days^[1], leading to significant "melting of the ice cube"—the rapid erosion of enterprise value while a company sat in legal limbo.

The IBC (Amendment) Bill, 2025, introduced in the Lok Sabha on August 12, 2025^[2], is the legislative answer to this erosion. It is designed to restore the Code's original promise: "Resolution in Real-Time." However, for the CS fraternity, velocity is merely the engine; **Sustainable Enterprise Value (SEV)** is the destination. Speed without sustainability results in "Fire Sales" rather than "Resolutions." The 2025 Bill necessitates a **Strategic Architect**—a professional who can leverage the Bill's new mechanics to ensure that the corporate "Second Life" is underpinned by both financial solvency and the **"Green Start"** vision of ESG compliance.

RE-ARCHITECTING ADMISSION: THE 14-DAY "DIGITAL DECREE"

One of the most profound shifts in the 2025 Bill is the elimination of judicial discretion regarding defaults. The landmark ruling in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (2022)* inadvertently slowed the system by allowing the NCLT to reject petitions even if a default was proven.

The 2025 Bill decisively amends Section 7(5), replacing the discretionary "may" with the mandatory "shall"^[2]^[5].

- **The Legislative Mandate:** If a debt and default are established specifically through a record from an **Information Utility (IU)** like National E-Governance Services Limited (NeSL), the NCLT **must** admit the application within 14 days^[4].
- **The CS as Data Architect:** In this high-speed environment, the CS's role in maintaining real-time IU parity is the first line of defense in Value-Maximization. A default record is now effectively a "Digital Decree." The CS must ensure that the company's "Health Dashboard" is reconciled daily. Preventing an "ambush" admission through precise data governance preserves the company's "Governance (G)" rating and prevents the panic-induced value drop that follows a sudden insolvency filing.

WATERFALL INTEGRITY AND THE "CLEAN SLATE" FINALITY

The 2025 Bill provides the "certainty of exit", which global investors demand. It restores the "Waterfall Mechanism" (Section 53) by legislatively overriding the *State Tax Officer v. Rainbow Papers Ltd. (2022)* judgment, which had temporarily blurred the lines between crown debts (*i.e. government dues like taxes*) and secured credit.

a. Redefining “Security Interest” - the Consensual vs. Involuntary Divide

To restore the sanctity of the Section 53 waterfall, the 2025 Bill explicitly decouples involuntary statutory charges from the definition of “Security Interest,” ensuring that tax arrears and government dues are strictly categorized as unsecured debt unless they are underpinned by a voluntary, consensual contractual agreement [3][8].

- **The Strategic Impact:** This amendment clarifies that a “Security Interest” is an affirmative, bargained-for right, not a default state of law. By stripping statutory liens of their “secured” status, the Bill eliminates the risk of a “statutory ambush,” where state departments claim priority at the eleventh hour, often upending the financial viability of a resolution plan.
- **The CS as Strategic Architect:** For the Resolution Applicant (RA), this clarity is a significant value-driver. The CS should proactively recommend a Lien Audit as part of the due diligence process. By certifying that government dues do not possess the “consensual” characteristics required under the 2025 definition, the CS provides the Committee of Creditors (CoC) with a clean, risk-mitigated recovery roadmap. This ensures that the limited resolution pool is distributed to the financial creditors who fuelled the company’s growth, rather than being drained by legacy tax arrears.
- **Strategic Advisory:** This clarity is a boon for Resolution Applicants (RAs). The CS must recommend excluding these “statutory ambush” claims from the resolution plan. By ensuring that financial creditors maintain their prioritized recovery, the CS increases the likelihood of a successful, high-value resolution bid.

The Company Secretary is the architect who provides that roadmap by transitioning from a compliance officer to a Strategic Architect.

b. Codifying the Clean Slate: Eliminating “Hydra-Headed” Litigation

The Supreme Court of India specifically used this term “hydra-headed litigation” to describe the chaotic multiplicity of claims that can destroy a company’s chance to a second life, and thereby to establish the Clean Slate Doctrine. In the landmark case of Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2020), the Court famously stated:

“A successful resolution applicant cannot suddenly be faced with ‘undecided’ claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant.”

This was later reaffirmed in Ghanashyam Mishra (2021), where the court “cauterized” the wounds by ruling that once a plan is approved, all old claims are permanently extinguished.

This 2025 Bill moves beyond judicial precedents (like *Essar Steel* and *Ghanashyam Mishra*) to provide legislative finality to the Clean Slate doctrine. By amending Section 31, the Bill clarifies that an approved Resolution Plan is a “statutory reset button,” extinguishing all undisclosed or unfiled claims—including those of the Central Government, State Governments, or any local authority—that are not part of the plan.

THE STRATEGIC “SHIELD” OF SECTION 32A

The Bill reinforces the immunity granted under Section 32A, ensuring that the Corporate Debtor and its assets are shielded from criminal prosecution for offenses committed prior to the CIRP.

- **The Strategic Architect’s Pivot:** For the CS, this is not just a legal protection; it is a commercial valuation tool. A “Clean Slate” certificate from the NCLT acts as an insurance policy for the Resolution Applicant (RA), justifying a higher bid because the risk of “successor liability” is eliminated.

The “Ironclad Information Memorandum” (IM) under the 2025 regime, the “Clean Slate” is only as strong as the Information Memorandum.

- **The CS as the Gatekeeper of Disclosures:** As a Strategic Architect, the CS must ensure that the IM is exhaustive. Any “latent liability”—be it an unresolved environmental fine, a pending labour dispute, or a “ghost” tax claim—must be identified and “frozen” during the 14-day admission window.
- **Value-Maximization Logic:** By proactively disclosing and subsequently “extinguishing” these liabilities through the plan, the CS prevents “Hydra-Headed Litigation”—where multiple government agencies revive old claims post-resolution. This “Finality of Exit” ensures a “Green Start,” where the company is handed over as a pristine, sustainable asset, free from the “legacy ghosts” that historically deterred high-value global bidders.

SECTION 28A: POOLING GUARANTOR ASSETS FOR MAXIMUM RECOVERY [13]

The introduction of **Section 28A** is the Bill’s most potent tool for value-maximization. It allows for the integration of **Personal and Corporate Guarantor assets** directly into the Corporate Debtor’s (CD) resolution estate.

a. From Bifurcation to Unified Resolution

Historically, separate proceedings for the company and its promoters—as seen in the *Reliance Communications* and *Essar Steel* cases—led to “Litigation Fatigue.” Creditors recovered pennies on the dollar because the assets were fragmented.

- **The CS Recommendation:** The CS should architect a “**Unified Settlement Plan**” under Section 28A. By pooling the promoter’s high-value personal assets with the company’s operational assets, the CS creates a more attractive “Resolution Package.”

- **Value Logic:** A unified pool increases the CoC's recovery percentage, which in turn incentivizes them to accept a "Going Concern" resolution rather than opting for a destructive liquidation. For the promoter, the CS facilitates a "Fresh Start" that settles both personal and corporate liabilities in one stroke.
- **The CS Recommendation:** The CS should architect a "**Social Impact Resolution**" within the plan. Proactively addressing employee transitions using the 2025 Bill's faster timelines prevents the "litigation overhang" that destroyed *Jet's* brand equity. Value is maximized when the "Social License to Operate" is handed over intact to the buyer.

CIIRP AND GROUP INSOLVENCY: MODULAR RECOVERY

The 2025 Bill introduces modular resolution frameworks for complex corporate structures.

a. CIIRP: Creditor-Initiated Insolvency Resolution Process

Under the new **Chapter IV-A**, CIIRP allows financial creditors (51% voting power) to initiate a "debtor-in-possession" resolution [1][4].

- **The 30-Day Representation Window:** Creditors must provide a **30-day notice** to the debtor [5].
- **CS Role:** The CS acts as the **Notice Strategist**, facilitating representations that can lead to a restructuring plan *without* the company losing management control to an RP.

b. Group Insolvency (Chapter V-A)

The Bill finally addresses "Group Enterprise" defaults, enabling common NCLT benches and joint CoC meetings [3.1]. The CS must lead "Group Asset Mapping" to identify intra-group guarantees early, preventing the "cross-default" contagion that often destroys value in conglomerates.

ESG INTEGRATION: THE CORE OF STRATEGIC ARCHITECTURE [11]

While the 2025 Bill provides the *speed*, ESG provides the *substance*. A CS must frame ESG not as a compliance burden, but as a **Commercial Recommendation** to increase the entity's terminal value.

a. Environmental (E) and the ABG Shipyard Lesson

In the *ABG Shipyard* insolvency, the prolonged duration of the process led to the physical decay of vessels and environmental hazards at the dockyards. Global buyers viewed these as "toxic liabilities," leading to a massive haircut for creditors.

- **The CS Recommendation:** Recommending an **Environmental Preservation Budget (EPB)** as a "CIRP Cost" under the 2025 Bill. By preserving the ecological integrity of the assets during the resolution process, the CS ensures the company remains an attractive "Green Asset" for global "Impact Funds" that prioritize carbon-neutrality.

b. Social (S) and the Jet Airways Litigation Trap

The *Jet Airways* resolution was nearly derailed by "Social Risks"—unresolved employee dues, provident funds, and gratuities [14].

c. Governance (G) and the "Green Start" Vision

The 2025 Bill's CIIRP track is essentially a "Governance Test."

- **The CS Recommendation:** During the **30-day CIIRP notice window**, the CS must recommend a "Governance Reset." By demonstrating board independence and transparency *before* admission, the CS can convince creditors to support a restructuring that retains existing management, preserving the "Institutional Memory" of the company—a critical intangible asset.

THE "DIGITAL ESG" FRONTIER FOR NEW-AGE BUSINESSES

As the IBC 2025 transition moves toward a **Single Integrated Portal** for all filings, the intersection of Technology and ESG emerges as the new frontier. For tech-heavy startups (SaaS, Fintech), value is trapped in data and IP.

a. Tech-ESG Recommendations

- **Environmental (Green Cloud):** Recommend a Carbon Footprint Audit of digital infrastructure. Proactively switching to "Green Hosting" makes the entity attractive to "Green Tech" buyers.
- **Social (Data Responsibility):** With the **DPDP Act, 2023** in force, the CS must recommend a **Data Privacy Impact Assessment (DPIA)** as part of the Information Memorandum. A buyer will pay a "Data Premium" for a company that is ethically and legally compliant with privacy laws.
- **Governance (Cyber-Resilience):** Recommend a Cybersecurity Governance Audit. In the 2025 landscape, a cyber-secure company is a "Low-Risk Asset," commanding higher resolution bids.

THE HEIGHTENED DESCRIPTIVE ROLE OF THE COMPANY SECRETARY

The 2025 Bill transforms the CS into a "**Governance Navigator**." The following table describes the significance of this role in the updated landscape.

The Descriptive Role of CS as Strategic Architect

Domain	2025 Strategic Role	Value-Maximization Significance
Admission	IU/NeSL Custodian	Prevents "lightning admissions" through real-time data parity, preserving reputation.
Guarantors	Sec 28A Asset Strategist	Increases the "Recovery Pool" by integrating promoter assets into a unified plan.

Negotiation	CIIRP Notice Strategist	Orchestrates the 30-day window to avoid the “Moratorium Vacuum” and retain control.
Sustainability	ESG Value Recommender	Embeds carbon and social resilience into the IM to attract “Impact Capital.”
Global	Jurisdictional Architect	Evaluates “COMI” to secure NCLT recognition for global assets under Sec 240C.
Exit	Clean Slate Designer	Proactively identifies legacy liabilities to ensure the “Green Start” is truly absolute.

- **The 14-Day Readiness Mandate:** Shift to a **pre-insolvency digital readiness** model to meet the Bill’s strict 14-day mandatory admission window and prevent value erosion.
- **Surgical Resolution (CIIRP):** Utilize **Component-wise Insolvency (CIIRP)** to save viable business units independently, preserving jobs and economic value during a crisis.

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AVOIDANCE TRANSACTIONS AND THE “INTEGRITY PREMIUM”

The 2025 Amendment tightens the scrutiny on Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transactions. The look-back period now explicitly includes the window between the filing of the application and the admission date [1].

- **The CS as Vigilance Architect:** The CS must recommend an annual **Transaction Integrity Audit**. In a high-velocity environment, there is no “litigation shield” to hide assets while a petition is pending. Proving transaction integrity increases the “Governance Premium” of the company, making it a “clean” asset for institutional investors.

CONCLUSION: THE “GREEN START” MANDATE [12]

The **IBC (Amendment) Bill, 2025**, provides the Indian corporate sector with a high-performance resolution engine. By stripping away judicial delays and clarifying creditor rights, the Bill creates a “speedway” for recovery. However, speed without a roadmap leads to value erosion.

The **Company Secretary** is the architect who provides that roadmap. By transitioning from a Compliance Officer to a **Strategic Architect**, the CS ensures that corporate recovery is not merely a financial accounting exercise but a transformation into a resilient, ESG-aligned entity. In the corporate “Second Life,” the **“Green Start”** is your strategic recommendation for excellence—ensuring the entity is not only solvent but sustainable for the decades to come.

The **IBC (Amendment) Bill, 2025**, marks the end of the Company Secretary as a mere procedural gatekeeper and the birth of the **Strategic Architect**, who must now leverage legislative precision and ESG principles to transform corporate insolvency into sustainable value creation.

5 KEY TAKEAWAYS FROM THIS ARTICLE

- **From Compliance to Strategy:** Transition from a “rule-follower” to a **Strategic Architect** who designs value-driven recovery plans using IBC 2025 tools.
- **ESG as the North Star:** Integrate **Environmental, Social, and Governance** metrics into resolution plans to ensure long-term sustainability rather than just short-term debt recovery.
- **Asset Maximization via Section 28A:** Master the new **Guarantor Pooling** provisions to prevent the fragmentation of assets and maintain the entity’s “going concern” value.

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