POST-CIRP

Plan Implementation & Monitoring

Implementation is where "commercial wisdom" becomes cash, control and revival

CA Avil Menezes

IBC Conclave • 5 September 2026 • ICAI Centre of Excellence, Kolkata

02:15 PM – 03:00 PM

The implementation phase is a distinct compliance stage

Approval under Section 31 is the start of execution—not the end of insolvency governance.

1 Binding effect

Approved plan binds the corporate debtor, creditors, governments, guarantors and stakeholders.

2 Supervised execution

The plan must contain implementation / monitoring architecture, milestones and governance.

3 Tribunal visibility

Monitoring committee reporting makes implementation status visible to the Adjudicating Authority.

NCLT APPROVAL → **CLOSING / EFFECTIVE DATE** → **IMPLEMENTATION MILESTONES** → **HANDOVER / DISSOLUTION**

Core risk: a plan can be legally approved yet commercially fail if funding, approvals, handover and governance are not sequenced and enforced.

2026 Amendment Act: monitoring moves into the Code itself

The statute now expressly recognises a committee for implementation / supervision.

Section 30(2)(d) — amended

A resolution plan must provide for implementation and supervision and constitution of a committee comprising RP / other IP, representatives of class(es) of creditors and the resolution applicant, subject to prescribed conditions.

CIRP Reg. 38(4)(a) — CoC consideration

The committee shall consider setting up a monitoring committee for monitoring and supervising implementation of the resolution plan.

CIRP Reg. 38(4)(b) — Flexible composition

May include the RP / another IP / any other person, including rep. of the CoC and the resolution applicant. RP fee is capped at the monthly CIRP fee if retained.

CIRP Reg. 38(4)(c) — Quarterly reporting

The monitoring committee shall submit quarterly reports to the Adjudicating Authority on the status of implementation.

Implementation milestones should now be drafted as auditable obligations capable of being reported quarter-by-quarter

A workable Monitoring Committee: governance design

Creditor nominee(s)

Financial discipline • distributions • security release

SRA nominee

Funding • approvals • operational handover

MONITORING COMMITTEE

RP / other IP

Process memory • compliance • reporting

Independent/specialist

Sector, finance, legal or technical expertise

What should the Monitoring Committee actually monitor?

Funding & distributions

Equity/debt infusion, escrow, CIRP costs, FC/OC payments, dissenting creditor treatment

Approvals

sectoral / exchange-control / tax / environmental / listing approvals as applicable

Governance

Board reconstitution, key management, delegation matrix, signing authority and control transition

Assets & security

Title, charge satisfaction / creation, asset transfers, encumbrances and possession

Litigation & clean slate

Treatment of claims, legacy proceedings, Section 32A, avoidance / fraudulent trading proceedings

Operational revival

Working capital, licences, employees, vendors, insurance, plant restart and business continuity

Key governance ingredients in the plan for effective MC functioning

- ? What constitutes quorum, and is the Chairperson entitled to a casting vote?
- ? What happens in the event of a deadlock between members?
- ? Which matters are reserved — requiring unanimity or a super-majority — and which are ordinary business?
- ? Who controls the company's bank accounts and signing authority during transition?
- ? Who can approve payments, and who can invoke the performance security / bank guarantee?
- ? How frequently must the committee meet, and who prepares and circulates the minutes?
- ? What information is the SRA contractually obliged to supply, and at what intervals?
- ? What is the escalation route for a material implementation default?

Every one of these should be answered in the resolution plan itself — while the CoC still has negotiating leverage.

Default during implementation: escalation ladder

1	**Record**	Identify missed milestone and preserve evidence.
2	**Cure**	Invoke contractual cure period / funding call / guarantee.
3	**Escalate**	Monitoring Committee / creditor decision under the plan.
4	**Approach NCLT**	Seek directions / enforcement where jurisdiction exists.
5	**Liquidation risk**	Persistent failure may ultimately lead to Section 33 consequences in an appropriate case.

Do not improvise post-approval commercial terms unless the Code, the approved plan and the Tribunal permit it. Implementation governance is not a licence to rewrite the bargain.

Some pointers while drafting the plan to prevent implementation litigation?

- ✓ Milestone-linked, staggered payments tied to an objectively verifiable event, not a calendar date alone
- ✓ Escrow or trustee-controlled disbursement released only on independent certification of a milestone
- ✓ A fixed, bounded cure period and extension cap — not an open-ended ‘reasonable time’
- ✓ Performance security — value, duration, forfeiture triggers — fixed now, not negotiated later
- ✓ Conditions precedent that are objectively testable, never ‘to the satisfaction of’ a party
- ✓ A clear avoidance-proceeds waterfall distinguishing s.66 recoveries from s.43/45/49/50 recoveries
- ✓ Monitoring Committee powers spelled out in the plan — not left for the MC to invent post-approval
- ✓ A named forum for implementation disputes (ordinarily s.60(5)) to avoid parallel litigation
- ✓ A defined completion event — what exactly closes implementation and dissolves the MC
- ✓ Explicit treatment of undecided, contingent and late claims to avoid clean-slate disputes later

Can an approved resolution plan be amended or cured?

The core rule: implementation is not redrafting.

Binding finality

- Section 31 binds stakeholders
- Claims cannot be revived casually
- Commercial bargain protected

Permitted zone

- Clarify mechanics
- Act within express plan powers
- Rectify defects before rejection under 2026 s.31(2) proviso

Prohibited zone

- Change distribution
- Reduce consideration
- Extend contrary to plan
- Treat PBG as payment

RP’s role: no-gap handover to the SRA / MC

The RP becomes the transition steward after approval.

Before approval	At effective date	After handover
• Data room freeze • Claims and assets verified • Litigation tracker • Approvals status • Management cooperation plan	• Board/control transition • Bank mandates • Physical possession • Books and registers • IT access/passwords	• Exception list • Pending filings • Avoidance/litigation handover • Record preservation • Final confirmation to MC

Real estate insolvency — why monitoring is different

Implementation means construction and possession, not only payment.

General CIRP		Real Estate CIRP
• Funding infusion • Creditor distribution • Management takeover • Business revival	→	• Tower/project-wise construction • Homebuyer communication • RERA registration/updates • OC/CC, amenities and possession

- **Homebuyers are a financial creditors in a class, but their practical expectation is usually delivery of homes over time as agreed in the resolution plan**
- **Monitoring must therefore be project, construction and RERA sensitive**
- **Quarterly NCLT reports should cover physical progress and home buyer impact, not merely financial milestones**

Question and Answers