
AUTHORISED REPRESENTATIVES AND HOMEBUYERS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016: A DOCTRINAL CRITIQUE

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC)¹ changed India's insolvency system by introducing a process driven by creditors. A major reform was recognizing homebuyers as financial creditors through the Insolvency and Bankruptcy Code (Amendment) Act, 2018². As homebuyers are numerous and spread out, the Code added Authorised Representatives (ARs) to help them participate collectively in the Committee of Creditors (CoC). Although the AR framework aimed to balance efficiency with inclusion, it faces challenges in terms of transparency, accountability and true representation. This paper analyses the laws and regulations related to ARs alongside important court developments. This paper argues that the current system focuses too much on procedural efficiency, which limits meaningful participation from homebuyers and risks reducing their representation to a mere formality. The paper suggests specific regulatory and procedural changes to improve the AR mechanism without jeopardizing the IBC's time-sensitive goals.

Keywords: Insolvency and Bankruptcy Code, Homebuyers, Authorised Representative, Committee of Creditors, Insolvency Law.

¹ *Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).*

² *Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, No. 26, Acts of Parliament, 2018 (India).*

1. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to ensure a timely and efficient resolution of corporate insolvency. It aims to balance the interests of all stakeholders and maximize the value of the assets of the corporate debtor. To achieve this, the Code primarily gives decision-making power to the Committee of Creditors (CoC), which is made up of financial creditors whose business judgment is prioritized. However, the original IBC framework did not adequately consider the position of homebuyers. These individuals had invested significant amounts in real estate projects but were excluded from the formal insolvency process and without remedies if a developer became insolvent.

The Insolvency and Bankruptcy Code (Amendment) Act, 2018 aimed to fix this gap by recognizing homebuyers as financial creditors. It classified the amounts raised from allottees in real estate projects as financial debt. The Supreme Court upheld this legislative change in the case *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*³, noting that homebuyers effectively fund real estate projects and therefore deserve to take part in the insolvency resolution process. This ruling gave homebuyers the right to start insolvency proceedings and participate in the CoC.

Since homebuyers are a large and scattered group of creditors, it was impractical and undesirable for every allottee to participate directly in CoC meetings. To solve this issue, Section 21(6A)⁴ of the IBC introduced the role of an Authorised Representative (AR). This person represents an entire class of creditors, such as homebuyers, in the CoC. The AR attends meetings, gathers voting instructions from the class, and votes according to the majority decision of the creditors they represent. This system aims to maintain efficient procedures while allowing for collective participation.

Despite its good intentions, the AR mechanism has raised serious concerns in practice. The rules governing ARs, mainly Sections 21(6A) to 21(6C) of the IBC⁵ and Regulations 16A and 25A of the CIRP Regulations⁶, set out general duties but provide little guidance on accountability, transparency and how to collect and verify voting instructions. Recent court

³ *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.

⁴ *Insolvency and Bankruptcy Code, 2016*, § 21(6A), No. 31, Acts of Parliament, 2016 (India).

⁵ *Insolvency and Bankruptcy Code, 2016*, §§ 21(6B)–(6C), No. 31, Acts of Parliament, 2016 (India).

⁶ *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016* [hereinafter *CIRP Regulations*], reg. 16A; *id.*, reg. 25A.

decisions affirming that minority homebuyers cannot contest an AR's vote after a majority decision; further emphasize the conflict between efficient collective action and fairness for individuals.

This paper argues that while the AR framework formally includes homebuyers in the insolvency process, it does not ensure meaningful representation. The lack of clear procedural protections, communication standards, and safeguards for minorities risks making homebuyers' involvement merely symbolic. Through an analysis of the legal framework and important court rulings, this paper evaluates how effective the AR mechanism is and suggests specific reforms to enhance accountability; and real representation without compromising the efficiency of the insolvency resolution process.

2. LEGAL FRAMEWORK GOVERNING AUTHORISED REPRESENTATIVES

The statutory framework governing the representation of homebuyers in corporate insolvency proceedings is primarily located in the Insolvency and Bankruptcy Code, 2016 (IBC), as amended in 2018, and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). Together, these provisions recognise homebuyers as financial creditors and prescribe a collective mechanism for their participation in the Committee of Creditors (CoC) through an Authorised Representative (AR).

Recognition of Homebuyers as Financial Creditors

Section 5(8)(f)⁷ of the IBC defines "financial debt" to include any amount raised under a transaction having the commercial effect of a borrowing. The 2018 amendment clarified that amounts raised from allottees under real estate projects fall within this definition. Consequently, homebuyers qualify as "financial creditors" under Section 5(7)⁸ of the Code. This statutory recognition entitles homebuyers to initiate corporate insolvency resolution proceedings under Section 7⁹ of the IBC and to participate in the CoC.

The constitutionality of this classification was upheld by the Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, where the Court observed that homebuyers

⁷ *Insolvency and Bankruptcy Code, 2016, § 5(8)(f), No. 31, Acts of Parliament, 2016 (India).*

⁸ *Insolvency and Bankruptcy Code, 2016, § 5(7), No. 31, Acts of Parliament, 2016 (India).*

⁹ *Insolvency and Bankruptcy Code, 2016, § 7, No. 31, Acts of Parliament, 2016 (India).*

provide crucial finance to developers and are therefore akin to lenders. The judgment cemented the legal position that homebuyers are not merely consumers but stakeholders with enforceable rights under the insolvency regime.

Constitution of the Committee of Creditors and Class Representation

Section 21¹⁰ of the IBC governs the constitution of the CoC. While financial creditors ordinarily participate individually, Section 21(6A) introduces a special mechanism for situations where financial creditors are numerous and belong to a distinct class, such as homebuyers. In such cases, these creditors are required to be represented by an Authorised Representative.

Under Section 21(6A), the Interim Resolution Professional (IRP) is mandated to identify three insolvency professionals and present their names to the creditors in the class. The creditors then choose one of the proposed professionals to act as their AR. This provision reflects legislative intent to balance inclusivity with administrative efficiency, ensuring that large creditor classes can participate meaningfully without impeding the resolution process.

Role, Voting Rights and Remuneration of the AR

Once appointed, the AR performs a central role in representing the class of creditors. Section 21(6B) stipulates that the AR shall attend meetings of the CoC and cast his vote in accordance with the decision taken by a majority of the voting share of the creditors he represents. The AR does not exercise independent commercial discretion; his role is limited to conveying and implementing the collective will of the class.¹¹

Section 21(6C)¹² further provides that the remuneration payable to the AR shall form part of the insolvency resolution process costs. This ensures that individual homebuyers are not burdened with the cost of representation and reinforces the institutional character of the AR's role.

¹⁰ *Insolvency and Bankruptcy Code, 2016, § 21, No. 31, Acts of Parliament, 2016 (India).*

¹¹ SCC Online Blog, Commercial Wisdom of the Committee of Creditors Consisting of Homebuyers (Nov. 27, 2024), <https://www.scconline.com/blog/post/2024/11/27/commercial-wisdom-of-the-committee-of-creditors-consisting-of-homebuyers/>.

¹² *Insolvency and Bankruptcy Code, 2016, § 21(6C), No. 31, Acts of Parliament, 2016 (India).*

In addition, Section 24(6)¹³ of the IBC expressly entitles the AR to attend and participate in CoC meetings on behalf of the class of creditors. The vote cast by the AR contributes to the voting thresholds prescribed under Section 30(4)¹⁴ of the Code, which requires a resolution plan to be approved by a minimum of sixty-six per cent of the voting share of financial creditors.¹⁵

Regulatory Framework under the CIRP Regulations

The CIRP Regulations supplement the statutory scheme by detailing the appointment and functioning of ARs. Regulation 16A lays down the procedural requirements for identifying creditors in a class, selecting an AR, replacing the AR upon request of the class, and determining the AR's fee structure. Regulation 16A(8)¹⁶ prescribes a fixed fee per CoC meeting, linked to the number of creditors represented, and payable as part of the CIRP costs.

Regulation 25A¹⁷ outlines the rights and duties of the AR. It obligates the AR to circulate agendas, seek preliminary views of the creditors he represents, and cast votes strictly in accordance with the majority decision of the class. Regulation 26¹⁸ governs the electronic voting process, providing the mechanism through which creditors in a class communicate their voting instructions to the AR.

Finally, the conduct of the AR is subject to the general duties of insolvency professionals under Section 208¹⁹ of the IBC, which requires adherence to standards of integrity, independence, and due diligence.

Together, these provisions constitute a comprehensive legal framework intended to ensure collective representation of homebuyers in insolvency proceedings. However, as the subsequent analysis demonstrates, gaps within this framework raise important questions regarding accountability, transparency, and the substantive effectiveness of such representation.

¹³ *Insolvency and Bankruptcy Code, 2016, § 24(6), No. 31, Acts of Parliament, 2016 (India).*

¹⁴ *Insolvency and Bankruptcy Code, 2016, § 30(4), No. 31, Acts of Parliament, 2016 (India).*

¹⁵ *Ibid-11*

¹⁶ *CIRP Regulations reg. 16A(8).*

¹⁷ *CIRP Regulations reg. 25A.*

¹⁸ *CIRP Regulations reg. 26.*

¹⁹ *Insolvency and Bankruptcy Code, 2016, § 208, No. 31, Acts of Parliament, 2016 (India).*

3. CRITICAL ISSUES IN THE AR FRAMEWORK

While the introduction of Authorised Representatives (ARs) under the IBC was intended to facilitate effective participation of homebuyers in the insolvency resolution process, the practical operation of this mechanism reveals several structural and procedural deficiencies. These shortcomings raise concerns about whether the AR system delivers substantive representation or merely satisfies formal requirements of inclusion.

A. Deficit of Accountability and Transparency

A central weakness of the AR framework lies in the absence of robust accountability mechanisms. Although Regulation 25A²⁰ mandates that the AR circulate agendas and seek preliminary views of the creditors he represents, the regulations do not prescribe any standardised method for documenting or verifying compliance. There is no requirement for the AR to maintain a record of communications, responses received, or the basis on which a “majority decision” is determined.

This lack of transparency becomes particularly problematic given that the AR’s vote is binding on all members of the class. Homebuyers have limited means to ascertain whether their views were duly considered or whether the AR accurately reflected the collective decision. In effect, the framework relies heavily on the professional integrity of the AR, without institutional safeguards to audit or challenge procedural lapses. While Section 208 of the IBC subjects ARs to general standards of conduct applicable to insolvency professionals, these obligations are broadly framed and reactive rather than preventive.²¹

B. Procedural Constraints and Communication Gaps

The effectiveness of collective decision-making depends on meaningful participation by creditors. However, the timelines prescribed under the CIRP Regulations often undermine this objective. Regulation 25A read with Regulation 26 contemplates circulation of agendas and collection of voting instructions within limited timeframes. For a class comprising hundreds or

²⁰ CIRP Regulations reg. 25A.

²¹ SCC Online Blog, Streamlining Real Estate Insolvency: IBBI's Blueprint for Transparent, Inclusive Resolutions (July 9, 2025), <https://www.scconline.com/blog/post/2025/07/09/streamlining-real-estate-insolvency-ibbis-blueprint-for-transparent-inclusive-resolutions/>.

thousands of homebuyers often dispersed across jurisdictions and varying in legal awareness, these timelines may be unrealistic.

In practice, homebuyers may remain unaware of voting windows or may be unable to respond within short deadlines, resulting in passive or uninformed consent. The regulations do not distinguish between sophisticated institutional creditors and individual allottees when prescribing procedural timelines. Consequently, the AR's vote may reflect the responses of a small, active subset of the class rather than the informed will of the majority in a substantive sense.

C. Majority Rule and the Marginalisation of Minority Interests

Section 21(6B) of the IBC explicitly requires the AR to vote in accordance with the majority decision of the creditors in the class. This principle was reinforced by the National Company Law Appellate Tribunal in *Ashmeet Singh Bhatia v. Rakesh Verma*²², where it was held that an individual homebuyer cannot challenge the vote cast by the AR once the majority decision of the class has been taken.

While majority rule is essential for efficiency in insolvency proceedings, the current framework offers no procedural safeguards for minority dissent. There is no provision for raising objections on grounds of procedural irregularity, misinformation, or lack of adequate consultation. As a result, minority homebuyers may find themselves bound by decisions that they neither supported nor had a fair opportunity to oppose. This rigid application of majority rule risks undermining the fairness component of insolvency resolution, particularly in cases where resolution plans significantly affect the proprietary interests of homebuyers.²³

D. Limited Guidance on Fiduciary Nature of the AR's Role

The AR occupies a position of trust, acting as an intermediary between the insolvency process and a vulnerable class of creditors. Despite this, the IBC and the CIRP Regulations do not explicitly articulate the fiduciary character of the AR's duties towards the creditors he

²² *Ashmeet Singh Bhatia v. Rakesh Verma*, Comp. App. (AT) (Insolvency) No. 1924 of 2024, ¶¶ 15–18 (NCLAT Jan. 16, 2025).

²³ Empowering Homebuyers in the Insolvency Regime: Amendments to the CIRP Regulations, MONDAQ (Mar. 12, 2025), <https://www.mondaq.com/india/insolvencybankruptcy/1595462/empowering-homebuyers-in-the-insolvency-regime-amendments-to-the-cirp-regulations>.

represents. Regulation 25A outlines procedural obligations but does not clarify the standard of care, diligence, or loyalty expected of an AR in discharging his functions.

This ambiguity weakens the normative foundation of the AR's role. Unlike company directors or trustees, whose fiduciary obligations are well-defined, ARs operate within a framework that emphasises mechanical compliance over substantive responsibility. The absence of express fiduciary standards dilutes accountability and limits the scope for remedial action in cases of neglect or misrepresentation.

E. Fee Structure and Incentive Misalignment

Regulation 16A(8) prescribes a fixed fee per meeting for ARs, determined by the size of the creditor class. While this ensures predictability and prevents excessive costs, it also disconnects remuneration from the quality of representation. There is no linkage between the AR's fee and the extent of engagement with creditors, the complexity of the issues involved, or the outcomes achieved for the class.²⁴

Moreover, the regulations do not require advance disclosure of the AR's remuneration to the creditors he represents, nor do they provide for any performance-based evaluation. This can lead to a perception that the AR's role is largely procedural, focused on attending meetings and casting votes rather than actively facilitating informed decision-making among homebuyers.

F. Tension Between Efficiency and Substantive Participation

At a broader level, the challenges associated with the AR framework reflect a structural tension within the IBC itself. The Code prioritises speed and certainty in insolvency resolution, often at the expense of participatory depth. While collective representation through ARs is necessary to avoid procedural paralysis, the current framework leans excessively towards efficiency, risking the dilution of stakeholder protection.

The recognition of homebuyers as financial creditors was premised on the need to protect a vulnerable class that often lacks bargaining power. However, without adequate procedural

²⁴ Empowering Homebuyers: A Deep Dive into the IBC 2025 Amendments, VK BANSAL & ASSOCIATES (June 2, 2025), <https://www.vkbansalandassociates.com/empowering-homebuyers-a-deep-dive-into-the-ibc-2025-amendments/>.

safeguards, the AR mechanism may reduce this recognition to a formal status rather than ensuring meaningful influence over insolvency outcomes.²⁵

4. SUGGESTED REFORMS AND WAY FORWARD

The deficiencies in the Authorised Representative (AR) framework do not warrant a fundamental restructuring of the insolvency regime. Rather, they call for targeted and proportionate reforms that enhance accountability and participation without undermining the efficiency that the Insolvency and Bankruptcy Code, 2016 (IBC) seeks to achieve. The following suggestions aim to strengthen the AR mechanism while remaining faithful to the legislative design of collective representation.

A. Standardisation of Communication and Documentation

One of the most pressing reforms required is the standardisation of communication between the AR and the creditors he represents. While Regulation 25A obligates the AR to circulate agendas and seek voting instructions, it does not prescribe any documentary trail to demonstrate compliance. This gap can be addressed by mandating the maintenance of a basic communication log by the AR, recording the dates and modes of circulation of agendas, minutes, and e-voting notices.

Such a requirement would not impose a significant administrative burden, particularly given the digital nature of insolvency proceedings. Instead, it would introduce a minimal evidentiary safeguard, enabling creditors and adjudicatory authorities to verify whether procedural obligations were duly fulfilled. The introduction of a uniform communication standard by the Insolvency and Bankruptcy Board of India (IBBI) through a circular or amendment to the CIRP Regulations would significantly enhance transparency.

B. Introduction of a Standardised Voting Instruction Format

To ensure that voting by the AR reflects informed consent, the IBBI should prescribe a standard voting instruction format for creditors in a class. This format could clearly set out the agenda

²⁵ Resolving Real Estate Insolvency: Safeguarding Homebuyers' Interests, IBC LAWS (Apr. 24, 2025), <https://ibclaw.in/resolving-real-estate-insolvency-safeguarding-homebuyers-interests-while-ensuring-project-completion-by-adv-navya-shekhar/>.

item, the implications of the proposed decision, and the available voting options exercisable; approval, rejection or abstention.

A standardised format would reduce ambiguity, minimise the risk of miscommunication, and ensure uniformity across insolvency proceedings. It would also protect ARs from allegations of selective disclosure or manipulation, as the scope and content of the information shared would be pre-defined. Importantly, such a measure would enhance procedural fairness without interfering with the AR's obligation to follow the majority decision under Section 21(6B).

C. Limited Procedural Safeguards for Minority Creditors

While the principle of majority rule is indispensable to the insolvency framework, its rigid application in the context of class representation risks marginalising minority interests. Without diluting the finality of CoC decisions, the framework should recognise limited procedural safeguards for dissenting creditors.

A narrowly tailored mechanism could be introduced to allow a defined percentage of creditors in a class such as ten per cent of the voting share to approach the Adjudicating Authority on grounds of procedural non-compliance by the AR. Crucially, such a challenge should be confined to procedural defects, such as failure to circulate agendas or denial of a reasonable opportunity to vote, and should not reopen the merits of commercial decisions. This would strike a balance between efficiency and fairness while discouraging frivolous litigation.

D. Clarification of the Fiduciary Nature of the AR's Role

The regulatory framework would benefit from an explicit recognition of the fiduciary character of the AR's duties towards the creditors he represents. While Section 208 of the IBC imposes general duties on insolvency professionals, a specific articulation of the AR's duty of care, loyalty, and good faith would strengthen the normative foundation of the role.

Such clarification could be incorporated into Regulation 25A or the IBBI's Code of Conduct for Insolvency Professionals. Recognising the AR as a fiduciary would reinforce expectations of diligence and impartiality and provide clearer grounds for disciplinary action in cases of neglect or misrepresentation.

E. Enhanced Disclosure of Remuneration and Incentives

Although Regulation 16A(8) prescribes a fixed fee structure for ARs, greater transparency is required regarding remuneration. Creditors in a class should be informed of the AR's fee structure at the time of appointment, enabling them to make an informed choice among the proposed insolvency professionals.

Further, the IBBI may consider introducing non-monetary performance benchmarks; such as timely communication and compliance certifications, rather than linking remuneration to outcomes, which could distort incentives. Such disclosure-based reforms would promote accountability without compromising the neutrality of the AR.

F. Strengthening Oversight Through the Resolution Professional

Finally, the Resolution Professional (RP) can play a supervisory role in ensuring compliance with AR-related obligations. Requiring the RP to certify, as part of CoC records, that the AR has complied with Regulations 16A and 25A would integrate oversight into existing procedural checks. This would also align with the RP's broader duty to conduct the CIRP in accordance with the Code and regulations.

5. CONCLUSION

The recognition of homebuyers as financial creditors under the Insolvency and Bankruptcy Code, 2016 marked a significant shift in India's insolvency jurisprudence, acknowledging the economic reality that homebuyers are key financiers of real estate projects. The introduction of the Authorised Representative (AR) mechanism was a necessary institutional response to ensure their participation in the Committee of Creditors without compromising the efficiency of the insolvency resolution process. In theory, the framework balances collective representation with procedural practicality.

However, as this paper has demonstrated, the AR mechanism in its current form often delivers representation only in a formal sense. The statutory and regulatory provisions governing ARs emphasise majority rule and procedural efficiency but provide limited safeguards to ensure transparency, accountability, and meaningful participation of homebuyers. The absence of standardised communication requirements, weak documentation norms, and the lack of procedural remedies for minority creditors risk marginalising the very class the mechanism was designed to protect. Judicial endorsement of the binding nature of majority decisions, while

essential for finality, has further highlighted the vulnerability of dissenting homebuyers within the collective framework.

The issues identified do not necessitate a departure from the existing insolvency architecture. Instead, they call for targeted refinements that reinforce procedural integrity while preserving decisional efficiency. Measures such as standardised communication logs, uniform voting instruction formats, limited procedural review for non-compliance, clearer articulation of the fiduciary character of the AR's role, and enhanced disclosure obligations can substantially strengthen the framework.

By shifting the focus from mere formal compliance to substantive representation, these reforms would ensure that the AR mechanism functions as a genuine safeguard for homebuyers rather than a symbolic accommodation. Strengthening this framework is essential not only for protecting individual stakeholders but also for maintaining the legitimacy and fairness of the insolvency process as a whole.