
RESIDUAL STAKEHOLDER PROTECTION IN CORPORATE INSOLVENCY: A CRITICAL ANALYSIS OF SMALL SHAREHOLDERS' RIGHTS AND THE SECTION 53 DISTRIBUTION WATERFALL UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) reorganised Indian corporate insolvency around a time-bound, creditor-led process directed towards resolution and value maximisation. This structure has significant consequences for small and dispersed shareholders. Although they remain legal owners of equity, they do not obtain membership of the Committee of Creditors merely by holding shares, and their existing equity may be diluted, restructured or extinguished through a resolution plan. Where resolution fails and liquidation follows, section 53 places equity shareholders or members at the bottom of the statutory waterfall. The resulting position separates formal ownership from procedural participation and residual economic entitlement. This paper examines that position through doctrinal analysis of the IBC, the Companies Act, relevant regulations and leading judicial decisions, supported by a comparative study of the United States, United Kingdom and Germany. It argues that creditor primacy and the residual ranking of equity are integral to insolvency law; the stronger legal question is whether small shareholders receive sufficient disclosure, valuation transparency and limited procedural visibility before their residual interest is treated as having no value. The paper proposes targeted safeguards, including a clear statement of the treatment of existing equity in materially adverse resolution plans, equity-impact valuation disclosure, collective representation of dispersed public shareholders, a narrow and time-bound right of representation before the adjudicating authority, and improved disclosure by liquidators regarding any surplus available to equity. These measures are designed to protect legitimate residual interests without altering creditor priority or conferring a veto over the commercial wisdom of the CoC.¹

Keywords: Insolvency and Bankruptcy Code, small shareholders, residual interests, Section 53, Committee of Creditors, resolution plan, creditor primacy, shareholder protection.

¹ The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, Preamble.

CHAPTER I

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) marked a fundamental shift in India's corporate insolvency framework by consolidating fragmented insolvency laws into a time bound creditor-led process directed towards resolution, value maximisation, availability of credit and balancing stakeholder interests. This framework substantially changed the relationship between the corporate debtor, creditors, shareholders and other stakeholders. Under the earlier regime, insolvency proceedings were distributed across different statutes and institutions; the IBC sought to replace that fragmented structure with a unified process centred on the resolution of financial distress. Once the Corporate Insolvency Resolution Process (CIRP) commences, the powers of the Board of Directors are suspended and management of the corporate debtor vests in the resolution professional. The Committee of Creditors (CoC), composed principally of financial creditors, assumes a central role in considering and approving resolution plans. Shareholders retain their shares as a matter of legal ownership, but their ordinary influence over management and restructuring is substantially curtailed. The distinction between ownership and participation in the insolvency process therefore becomes particularly important. This issue is especially significant for small and dispersed shareholders. Under the Explanation to Section 151 of the Companies Act, 2013, a “small shareholder” is identified by reference to the nominal value of the shares held, presently ₹20,000 or such other amount as may be prescribed. The IBC, however, does not create a separate insolvency classification or procedural category for small shareholders. For the purposes of this study, the term therefore refers principally to dispersed or relatively small equity holders whose individual bargaining power, access to information and capacity to influence restructuring decisions may be limited. Their vulnerability is heightened because they remain exposed to the economic consequences of insolvency without corresponding representation in the CoC.

Two stages of the insolvency process illustrate this vulnerability. Where CIRP results in an approved resolution plan, Section 30(2)(e), together with its Explanation, facilitates implementation by deeming shareholder approvals otherwise required under applicable law to have been given. The plan may consequently alter, dilute or extinguish existing shareholding without a separate shareholder vote.

Judicial decisions such as *K. Sashidhar v. Indian Overseas Bank and Committee of Creditors*

of Essar Steel India Ltd. v. Satish Kumar Gupta have reinforced the centrality of the CoC's commercial wisdom in resolution decisions, while *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.* demonstrates that existing shareholder interests may be affected by an approved plan satisfying the Code's requirements.

Where CIRP fails and liquidation follows, Section 53 places equity shareholders or members at the bottom of the statutory waterfall, after the specified categories of insolvency costs, employee and creditor claims, government dues and preference shareholders.⁷ Equity therefore represents a residual interest that receives value only after higher-ranking claims have been satisfied. The central research concern is accordingly not whether small shareholders should rank above creditors, but whether the IBC provides sufficient procedural, informational and valuation safeguards before their residual interests are diluted or extinguished. This study examines whether such targeted protection can be developed without weakening creditor primacy, value maximisation and the time-bound objectives of the insolvency framework.

1.1 Research Problem

The central research problem arises from the tension between the IBC's creditor-oriented institutional design and the residual position of equity shareholders. When CIRP commences, control moves away from the existing management and towards the insolvency professional and the CoC. Shareholders remain owners in company-law terms, but their ordinary managerial influence is displaced. For small and dispersed shareholders, this creates an information and bargaining asymmetry: they may bear the full economic consequences of restructuring without a corresponding institutional role in the decision-making process. The issue becomes more serious where a resolution plan materially dilutes or extinguishes existing equity, or where liquidation leaves shareholders only a residual claim under section 53. The unresolved question is therefore not whether creditors should rank ahead of shareholders, but whether the law provides an adequate minimum level of disclosure, valuation transparency and procedural opportunity before existing equity is treated as worthless.

1.2 Research Questions

1. What is the legal and conceptual position of small shareholders as residual stakeholders in corporate insolvency under the IBC?

2. To what extent does the creditor-oriented structure of the IBC affect the participation and protection of small shareholders during CIRP?
3. How do resolution plans under section 30 affect the existing shareholding, rights and residual interests of small shareholders?
4. How have Indian courts approached the relationship between CoC commercial wisdom and shareholder interests in leading insolvency decisions?
5. How does section 53 determine the residual economic entitlement of equity shareholders in liquidation?
6. To what extent does the present framework address the interests of small shareholders where residual value survives?
7. What principal legal and practical difficulties do small shareholders face in protecting their interests during CIRP and liquidation?
8. What lessons do the United States, United Kingdom and Germany provide concerning shareholder participation and residual interests?
9. What legal and regulatory reforms can improve small-shareholder protection without undermining creditor primacy, value maximisation and the time-bound nature of the IBC?

1.3 Research Objectives

1. To examine the legal and conceptual status of small shareholders as residual stakeholders in corporate insolvency under the IBC.
2. To assess the effect of the creditor-oriented structure of the IBC on the participation and protection of small shareholders during CIRP.
3. To analyse the impact of resolution plans under section 30 on existing shareholding, rights and residual interests.
4. To examine judicial approaches to balancing creditor primacy with shareholder interests.

5. To analyse the section 53 liquidation waterfall and its effect on the residual economic entitlement of equity shareholders.
6. To assess the adequacy of the existing framework where genuine residual value may survive.
7. To identify the principal legal and practical difficulties faced by small shareholders during CIRP and liquidation.
8. To evaluate the feasibility of procedural, disclosure and valuation safeguards consistent with IBC objectives.
9. To formulate appropriate legal and regulatory reforms for balancing residual shareholder interests with insolvency objectives.

1.4 Research Hypothesis

Primary Hypothesis: The existing IBC framework, while effective in promoting creditor primacy, timely resolution and value maximisation, does not provide adequate procedural or economic safeguards for small and dispersed shareholders, particularly given their limited participation in CIRP and their residual position under section 53.

Alternative Hypothesis: The existing framework already achieves an adequate balance between residual shareholder rights and the objectives of timely resolution, value maximisation and efficient distribution of liquidation proceeds, and therefore requires no substantial additional statutory protection for small shareholders.

1.5 Methodology

This study adopts a doctrinal and analytical methodology. Primary materials include the IBC, the Companies Act, 2013, IBBI regulations and circulars, and Supreme Court decisions. Secondary materials include scholarly articles, the Bankruptcy Law Reforms Committee Report and comparative insolvency literature. The study traces the position of small shareholders from the commencement of CIRP through resolution planning and, where resolution fails, liquidation. The comparative component examines the United States, United Kingdom and Germany as representative systems. No survey, interview or other primary empirical methodology is employed.

1.6 Scope of the Study

The study focuses on small and dispersed shareholders in corporate insolvency, particularly their participation during CIRP, treatment of existing equity under resolution plans and residual entitlement under section 53. Company-law and securities-law provisions are considered only insofar as they affect insolvency-related shareholder rights. Personal insolvency, pre-packaged insolvency and voluntary liquidation are outside the principal scope except where necessary for context. The international comparison is limited to the United States, United Kingdom and Germany.

CHAPTER II

LITERATURE REVIEW

2.1 Development of the Literature

Literature on the IBC has developed along several overlapping lines. One strand examines the institutional shift from debtor or manager control towards creditor-led resolution. Another addresses stakeholder protection and the position of minority or public shareholders. A third, increasingly empirical strand studies the effects of bankruptcy reform on financing, ownership and investment. Together, these studies show that insolvency reform changes both governance and capital-allocation incentives, but they do not always follow the specific position of small and dispersed equity holders from the beginning of CIRP through resolution and liquidation.

2.2 Creditor Primacy and Stakeholder Balance

Shakti Deb and Indrajit Dube² examine the transition created by the IBC from a manager-driven framework towards a creditor-controlled model. Their analysis is useful because it treats control as a central consequence of insolvency law rather than focusing only on final distribution. The significance for the present study is that shareholders can be affected before liquidation merely because the governance structure changes once CIRP begins. Ayushman Das and Samiksha Pandey similarly emphasise the need to consider the interests of stakeholders whose bargaining strength is weak. These works support the broader proposition that formal legal equality does not eliminate differences in information, organisation and

² Shakti Deb and Indrajit Dube, “Insolvency and Bankruptcy Code 2016: Revisiting with Market Reality” 63(1) International Journal of Law and Management 125 (2021).

economic power among stakeholders.³

2.3 Minority and Small Shareholders

Vedhika Gupta and Shashank Shekhar Kunwar directly examine the stake of minority shareholders during CIRP and highlight the limited role available to them within the creditor-controlled process. Their work is important because it identifies the gap between ownership and participation. The present research builds on that analysis by separating the concept of a small shareholder from the wider category of a minority shareholder. A small shareholder is defined by holding size under company law, whereas minority status generally describes lack of control. The two categories may overlap, but they are not identical; treating them as interchangeable can obscure the particular difficulties faced by dispersed retail investors.⁴

2.4 Regulatory Literature and Public-Equity Protection

SEBI's 2022 consultation paper on listed companies undergoing CIRP recognised that public shareholders may need a specific mechanism to participate in the post-restructuring entity. The proposals considered continued public ownership and participation in the restructured capital. Academic commentary by Devansh Dixit and Abhimanyu Pathania highlights the tension between shareholder protection and the operational demands of insolvency resolution. This regulatory literature is significant because it shifts the discussion from abstract minority rights to the practical consequences of delisting, dilution and the treatment of public equity in listed corporate debtors.⁵

2.5 Empirical Literature on Financing, Ownership and Capital Allocation

Recent empirical studies broaden the inquiry. Vishnu K. Ramesh, Reshma K. Ramesh and Jithesh T. report that strengthened creditor rights under the IBC affected borrowing and investment behaviour, particularly in firms with concentrated promoter ownership. Shivangi Agarwal and Bhavya Singhvi find changes in financing composition following creditor-

3 Ayushman Das and Samiksha Pandey, "Balancing Interests of Stakeholders under the Insolvency and Bankruptcy Code (2016): With Special Emphasis on Oppression of Stakeholders" 2(2) International Journal of Legal Science and Innovation 406 (2020).

4 Vedhika Gupta and Shashank Shekhar Kunwar, "Stake of Minority Shareholder during CIRP" 6 International Journal of Law Management & Humanities 2560 (2023).

5 Securities and Exchange Board of India, "Framework for protection of interest of public equity shareholders in case of listed companies undergoing Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC)", Consultation Paper (10 November 2022).

controlled insolvency. Bitan Chakraborty, Sanjay Kallapur, Srinivas Mahapatro and Prasanna Tantri provide evidence linking stronger creditor-control bankruptcy law with greater inflows of new equity capital, including investment from non-controlling shareholders. Jyoti Ranjan Sahoo and Ajay Kumar Mishra associate strengthened creditor rights with improved capital-allocation efficiency in firms with greater long-term debt exposure. These findings suggest that creditor-oriented insolvency law can affect equity markets in more complex ways than simply reducing shareholder value.

2.6 Insolvency Architecture, Incentives and Research Gap

Akshaya Kamalnath's analysis of corporate insolvency resolution law focuses on the initiation problem and incentives of promoters and managers at the onset of financial distress. Its relevance to this study lies in demonstrating that insolvency rules shape behaviour before the formal distribution stage. The literature, taken together, supports four conclusions: the IBC deliberately shifts control towards financial creditors; public and minority shareholders can face significant consequences without equivalent procedural influence; insolvency reform changes financing and ownership incentives; and regulators have recognised public-equity concerns. The principal research gap is therefore both definitional and structural. Existing work frequently uses small and minority shareholders interchangeably, while the IBC itself creates no distinct insolvency category for either. Further, scholarship often treats non-participation during CIRP and final subordination under section 53 as separate problems. This research links them as stages of one legal journey: a shareholder may have limited influence over the restructuring decision and, if liquidation follows, occupy the final position in the distribution hierarchy. The unresolved issue is whether minimum disclosure, valuation transparency and limited procedural representation can be introduced without disturbing creditor priority.⁶

CHAPTER III

CONCEPTUAL AND LEGAL FRAMEWORK

3.1 Analytical Foundation

The central analytical distinction in this paper is between economic priority and procedural

⁶ Akshaya Kamalnath, "Corporate Insolvency Resolution Law in India – A Proposal to Overcome the 'Initiation Problem'" 88(3) University of Missouri-Kansas City Law Review 631 (2019).

participation. Insolvency law can legitimately subordinate equity because shareholders are residual claimants, but the same rationale does not necessarily require that affected shareholders be denied basic information about the process that determines whether their residual interest survives. The two dimensions should therefore be assessed separately. Economic subordination answers the question of who is paid first; procedural protection answers the question of whether an affected stakeholder can understand and, within defined limits, contest the legality or transparency of the process. This distinction is important for small shareholders because their inability to influence commercial decisions is compounded by information asymmetry and collective-action costs. A carefully designed procedural mechanism can recognise that vulnerability without converting equity into a creditor-equivalent class.

3.2 Small Shareholder as a Residual Stakeholder

The legal concept of a small shareholder must be distinguished from minority shareholding. The Companies Act, 2013 defines a small shareholder by the nominal value of the holding, while minority status is ordinarily linked to the absence of control. The categories may overlap, but neither receives a separate insolvency status under the IBC. Equity is therefore treated principally as a residual interest. The shareholder assumes the final economic risk of corporate failure while also receiving the potential upside of successful enterprise. This explains the subordinate position of equity, but it does not resolve the separate question of procedural protection. A shareholder can be last in economic priority and still have a legitimate interest in knowing how the residual value of the enterprise has been assessed.⁷

3.3 CIRP and the Committee of Creditors

Section 17 transfers management powers from the Board to the interim resolution professional, while section 21 provides for the constitution of the CoC. Section 30(4) entrusts approval of the resolution plan to the CoC by the statutory voting threshold. The Bankruptcy Law Reforms Committee justified creditor participation on the ground that financial creditors are better placed to make informed decisions concerning a distressed enterprise because they bear the risk of non-recovery.⁸ For shareholders, the consequence is an information and bargaining asymmetry. Large institutional creditors can obtain professional advice and monitor the process

⁷ The Companies Act, 2013, No. 18 of 2013, Explanation to Sec 151.

⁸ The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, Sec 17(1).

continuously, while an individual shareholder normally cannot. The relevant reform question is therefore not whether shareholders should receive creditor voting rights, but whether a collective shareholder interest should have a defined channel for information and limited representation when existing equity is materially affected.⁹

3.4 Resolution Plans and Existing Equity

Section 30(2)(e) requires a resolution plan to comply with applicable law, while its Explanation provides that approvals otherwise required under law for implementation of the plan are deemed to have been given. The provision prevents ordinary company-law approval requirements from obstructing implementation of an approved insolvency plan. As a result, pre-CIRP shareholder approval does not operate as an independent veto. A plan may preserve existing shares, dilute them, convert them, cancel them or otherwise restructure the capital. The legal difficulty is not the existence of this power but the quality of information available to affected shareholders concerning the proposed treatment. Where existing equity is substantially reduced or extinguished, transparency about the pre-CIRP structure, post-resolution capitalisation, dilution, consideration and valuation basis becomes central to meaningful procedural protection.¹⁰

3.5 Section 53 and the Residual Economic Position

Section 53 applies when the corporate debtor enters liquidation. Its waterfall places insolvency resolution and liquidation costs first, followed by specified workmen and relinquishing secured creditors, employee dues, unsecured financial creditors, specified government and other claims, preference shareholders, and finally equity shareholders or members. Section 52 separately permits a secured creditor either to relinquish its security to the liquidation estate or to realise it outside the estate subject to the statutory framework. Equity's final position reflects the residual nature of ownership: shareholders participate only after senior claims have been satisfied. The present research therefore does not propose moving equity above creditors. The concern is instead whether the existence or absence of residual value is sufficiently visible to small shareholders, particularly where the enterprise retains going-concern value or where

⁹ The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, Sec 21, 30(4).

¹⁰ The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, Sec 30(2)(e) and Explanation; Ministry of Corporate Affairs, General Circular No. IBC/01/2017 (25 October 2017).

liquidation may produce a surplus.¹¹

The shareholder's experience should not be divided artificially between CIRP and liquidation. During CIRP, the principal concern is the treatment of existing capital within the restructuring process. If the plan fails and liquidation follows, the concern shifts to the amount, if any, that remains after statutory priorities are satisfied. In both stages, however, the decisive issue is the residual value of equity. A shareholder who receives no meaningful information about the restructuring may also be unable to understand why liquidation, rather than resolution, occurred or whether any surplus could remain. Treating the two stages as connected therefore provides a more complete basis for evaluating shareholder protection under the IBC.

3.6 Current Legal and Regulatory Context

The insolvency framework has continued to evolve during 2026 through amendments to the IBC and further IBBI regulatory and valuation developments. These changes improve the administration and transparency of the broader insolvency process, but they do not create a dedicated procedural status for small shareholders. The continuing evolution of the framework therefore leaves open a narrower policy question: whether shareholder-specific disclosure and representation mechanisms can be added without changing the basic allocation of commercial authority between the resolution professional, CoC and adjudicating authority.¹²

CHAPTER IV

INTERNATIONAL PERSPECTIVE

4.1 Comparative Principle

Across major insolvency systems, equity ordinarily remains the residual layer of the capital structure. The comparative issue is therefore not whether shareholders should outrank creditors but how the law identifies affected equity holders, informs them of the treatment of their interests and provides procedural mechanisms that remain compatible with efficient restructuring.

¹¹ The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, SecSec 52, 53(1)(a)-(h).

¹² Insolvency and Bankruptcy Board of India, Legal Framework, notifications, regulations and circulars, including the Insolvency and Bankruptcy Code (Amendment) Act, 2026 and valuation guidance issued on 15 June 2026.

The United States, United Kingdom and Germany illustrate three different techniques: formal participation and disclosure, class-based restructuring with judicial sanction and cross-class cram-down, and express statutory treatment of shareholder rights within the insolvency plan.

4.2 United States: Chapter 11

Chapter 11 formally recognises equity security holders as participants in reorganisation. Where the relevant class is entitled to vote, equity holders can vote on a plan, and the disclosure statement must contain adequate information to permit an informed judgment. The framework nevertheless preserves the residual character of equity. Under the absolute-priority and cram-down structure, a junior class cannot retain value contrary to the statutory protection of senior claims.¹³ Thus procedural participation does not produce guaranteed recovery. For small shareholders, formal rights may still be weakened by collective-action costs: an individual investor may lack the economic incentive to obtain specialised advice, analyse valuation evidence or coordinate with a dispersed group of other investors. The US model is consequently most relevant to India for its emphasis on disclosure and recognition of affected equity, rather than for altering distributional priority.¹⁴

4.3 United Kingdom: Part 26A Restructuring Plans

Part 26A of the Companies Act 2006 permits a restructuring plan to bind creditors or members and gives the court power to sanction arrangements affecting member classes. Approval ordinarily depends on the statutory class threshold, but the cross-class cram-down mechanism permits the court, subject to statutory safeguards, to bind a dissenting class. Members are therefore recognised as potentially affected participants without enjoying an absolute veto. A key safeguard is the comparison with the relevant alternative: the court must be satisfied that dissenting members would not be worse off than in the alternative most likely to occur if the plan were not sanctioned. This creates a procedural structure in which classification, disclosure and judicial supervision operate together while preserving restructuring flexibility. For India, the principal lesson is the possibility of a limited judicial checkpoint based on defined procedural and comparative criteria rather than a general review of commercial wisdom.¹⁵

¹³ 11 U.S.C. SecSec 1111, 1125, 1126.

¹⁴ 11 U.S.C. Sec 1129(b)(2)(C).

¹⁵ Companies Act 2006 (UK), pt 26A, ss 901F-901G.

4.4 Germany: Insolvency Plan and Shareholder Rights

German insolvency law expressly addresses shareholder and membership rights within the insolvency plan. Section 225a of the Insolvenzordnung provides that share and membership rights remain unaffected unless the plan provides otherwise, and permits measures including capital reduction or increase, exclusion of subscription rights and compensation for departing shareholders. The framework also recognises shareholder groups according to equivalent economic interests and can contemplate a separate group for minor shareholders in defined circumstances. This makes shareholder treatment a more explicit object of insolvency planning than under the Indian framework. At the same time, the German approach does not immunise shareholders from dilution or restructuring; recognition coexists with powers to alter capital and, where provided by the plan, to arrange compensation or exit. The relevance for India lies in the possibility of explicit statutory identification of shareholder treatment rather than in transplantation of German procedural structures.¹⁶

The relevance of these international approaches is especially visible in listed companies, where thousands of dispersed investors may be affected simultaneously. Formal recognition of an affected shareholder class can reduce the information deficit created by dispersion, but it need not convert every investor into a separate negotiating party. The comparative models also show that procedural rights are generally paired with mechanisms that prevent those rights from becoming indefinite vetoes. This balance is important for India because the IBC's effectiveness depends upon speed and certainty. The useful comparative lesson is therefore not stronger shareholder control as such, but a structured means of making the effect of restructuring decisions visible to the affected equity class.

4.5 Comparative Assessment

The three jurisdictions preserve creditor priority but employ different methods of procedural recognition. The United States emphasises notice, disclosure and voting where equity is entitled to participate. The United Kingdom emphasises stakeholder classes, court sanction and a controlled cram-down mechanism. Germany expressly accommodates shareholder rights within the insolvency plan and permits defined grouping of affected stakeholders. None treats equity as a senior economic class. Their common lesson is that procedural visibility can coexist

¹⁶ Insolvenzordnung (German Insolvency Code), SecSec 222, 225a.

with residual economic ranking.

4.6 Lessons for India

The comparative experience suggests that the Indian framework can improve small-shareholder protection without changing section 53's basic priority. First, materially adverse resolution plans could disclose clearly how existing equity will be treated. Secondly, a collective representative mechanism could address the coordination problem of dispersed public investors. Thirdly, a narrow judicial checkpoint could test disclosure, procedural regularity and valuation-related conflicts without allowing the NCLT to substitute its commercial judgment for that of the CoC. Fourthly, liquidation could include a clear statement identifying whether a surplus remains for the equity class. These measures would strengthen procedural visibility while retaining creditor primacy.

4.7 Comparative Limitations

Comparative borrowing must remain cautious. Chapter 11 operates within a different federal judicial and financing environment; Part 26A is a restructuring mechanism rather than a direct replica of CIRP; and the German insolvency plan reflects a distinct statutory and institutional tradition. The comparison is therefore used only to identify adaptable techniques for reducing information asymmetry and procedural invisibility. It does not suggest that foreign law should be transplanted wholesale into the IBC.

CHAPTER V

JUDICIAL RESPONSE

5.1 General Judicial Approach

Indian insolvency jurisprudence has drawn a strong institutional boundary between judicial review and the commercial judgment of the CoC. Courts generally supervise statutory compliance and procedural legality but resist substituting their own assessment for commercial decisions entrusted to creditors. This approach protects speed, certainty and finality, but it also limits the extent to which shareholder protection can be built through judicial re-evaluation of the commercial merits of a plan.

5.2 K. Sashidhar v. Indian Overseas Bank

In *K. Sashidhar v. Indian Overseas Bank*, the Supreme Court held that the adjudicating authorities could not sit in appeal over the CoC's commercial decision to approve or reject a resolution plan. Matters such as feasibility and viability fall within the commercial domain of the CoC. For small shareholders, the case is important because it shows that a protection mechanism cannot realistically be based on a general judicial power to reopen the commercial allocation made by creditors. Any additional shareholder safeguard must therefore operate at the level of disclosure, statutory compliance or procedural fairness.¹⁷

5.3 Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta

Essar Steel reaffirmed the primacy of CoC commercial wisdom and clarified that the Code does not require identical treatment of differently situated creditors so long as the statutory structure is respected. Its significance here is indirect but important. A right of a shareholder to understand the treatment of equity must be distinguished from a right to insist upon a particular economic allocation. Procedural fairness and commercial outcome are related but not identical concepts.¹⁸

5.4 Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.

Jaypee Kensington is the leading Supreme Court authority most directly connected with shareholder interests in an IBC resolution plan. The case involved objections by minority shareholders where the plan contemplated measures affecting existing shareholding, including delisting and extinguishment. The Court considered the interaction between shareholder objections and the statutory resolution process and did not treat existing shareholders as possessing a separate veto over a plan otherwise compliant with the Code. The decision nevertheless demonstrates that affected shareholders can raise objections before the adjudicating authority. It therefore provides a basis for distinguishing limited procedural participation from commercial control.¹⁹

¹⁷ *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.

¹⁸ *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

¹⁹ *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.*, (2022) 1 SCC 401.

5.5 Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.

Ghanashyam Mishra emphasised the binding effect of an approved resolution plan and the clean-slate principle. Once a plan is approved, stakeholders must ordinarily accept the consequences incorporated within it, and claims not dealt with in the approved plan cannot be used to undermine the resolution applicant's certainty. For shareholders, this strengthens the case for disclosure before approval: the stronger the finality of the approved plan, the greater the importance of clearly identifying how existing equity will be treated before that finality attaches.²⁰

5.6 Valuation and Limits of Judicial Reassessment

Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh established that a resolution plan is not invalid merely because the amount offered is below the liquidation value. Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Ltd. and Ramkrishna Forgings Ltd. v. Ravindra Loonkar likewise reinforce the restricted scope of judicial interference in commercial decisions and valuation-related reassessment.

For small shareholders, these decisions indicate that reform should not create an unrestricted right to challenge the commercial valuation adopted by the CoC. A more workable approach is to improve the information available about valuation assumptions and the basis on which existing equity is regarded as having little or no residual value.²¹

5.7 Assessment of the Judicial Response

The case law reveals four recurring features. First, the IBC does not create a separate insolvency status for small shareholders. Secondly, shareholder exposure may be substantial even though participation is limited. Thirdly, valuation is central to the existence of residual equity but remains predominantly within the commercial field of the CoC. Fourthly, finality after approval narrows the scope for later challenges. Judicial doctrine has therefore preserved the architecture of insolvency while leaving a regulatory space for carefully designed disclosure and representation safeguards.

20 Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657.

21 Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467; Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Ltd., (2021) 10 SCC 623; Ramkrishna Forgings Ltd. v. Ravindra Loonkar, Resolution Professional of ACIL Ltd., 2023 INSC 1013.

CHAPTER VI

FINDINGS AND SUGGESTIONS FOR REFORM

The proposed reforms follow directly from the distinction between priority and process. There is no compelling reason, on the analysis undertaken here, to convert equity holders into a competing decision-making constituency against financial creditors. At the same time, the absence of a defined mechanism for explaining substantial dilution or extinguishment may leave dispersed shareholders unable to assess whether the statutory process has been followed. Reform should therefore target the point at which the informational deficit is created. A short, standardised and technology-enabled disclosure package could be incorporated into existing insolvency notices, reducing compliance costs while giving investors access to the same basic information concerning equity treatment. The objective is transparency rather than redistribution of insolvency value.

6.1 Principal Findings

The analysis supports five principal findings. First, the IBC deliberately subordinates shareholder influence during CIRP but does not distinguish between controlling, minority and small dispersed shareholders for insolvency purposes. Secondly, section 30 permits extensive restructuring of existing equity and the deeming mechanism reduces the practical significance of separate shareholder approval. Thirdly, section 53 correctly places equity last in liquidation, but it does not itself provide a mechanism for communicating whether any residual value remains. Fourthly, judicial decisions strongly protect CoC commercial wisdom and finality, leaving shareholder protection largely reactive. Fifthly, comparative systems demonstrate that procedural recognition can coexist with creditor priority.

6.2 Limited Statutory Recognition

A limited statutory or regulatory category for small public shareholders could be introduced for procedural purposes. The Companies Act definition can provide a starting point, while insolvency rules could clarify that the category does not create a new distribution class. The function of recognition would be to trigger enhanced disclosure and communication where existing public equity is materially affected, particularly in listed corporate debtors.

6.3 Equity Treatment Statement

A resolution plan that materially affects existing equity should contain a separate Equity Treatment Statement identifying the pre-CIRP shareholding, proposed post-resolution capital structure, degree of dilution, cancellation or extinguishment, consideration proposed to existing shareholders and the principal reasons for the treatment. Such a statement would supplement section 30(2)(e) and would convert a largely implicit shareholder consequence into an identifiable part of the resolution-plan disclosure.

6.4 Valuation Transparency

Where public equity is substantially diluted or extinguished, the insolvency process should provide concise equity-impact valuation disclosure. The disclosure need not reproduce confidential valuation reports, but it should identify the relevant going-concern and liquidation values, broad valuation methodology, major assumptions and the basis for concluding that residual equity has little or no value. The aim is to reduce information asymmetry rather than authorise the NCLT to substitute its own valuation.

6.5 Collective Representation

Dispersed shareholders face collective-action problems because the expected value of an individual investment may not justify professional fees or litigation costs. A collective representative mechanism could therefore be considered for listed corporate debtors. The representative could receive equity-related disclosure, communicate material concerns and make limited representations before the adjudicating authority. The representative should not become a CoC member or receive voting rights on commercial questions.

6.6 Limited Notice and Hearing

Where complete extinguishment of dispersed public equity is proposed, affected shareholders could receive a short and time-bound opportunity to make representations. The grounds should be confined to non-disclosure, material procedural irregularity, relevant conflicts in valuation or non-compliance with statutory requirements. A mere demand for a better commercial outcome should not reopen the plan. This would create a right to be heard without creating a shareholder veto.

6.7 Section 53 and Surplus Disclosure

Section 53 should continue to rank equity at the bottom of the liquidation waterfall. The more appropriate reform is informational: before final distribution and dissolution, the liquidator should state whether any surplus remains for equity and, if none exists, briefly explain the basis on which the residual entitlement is exhausted. This would make the operation of the residual principle more visible without altering economic priority.

6.8 Coordination with Securities Regulation

For listed corporate debtors, IBC disclosures should be coordinated with SEBI and stock-exchange requirements so that public investors receive consistent information concerning dilution, cancellation, conversion or extinguishment of equity. The objective is not to create a second shareholder-approval process but to establish a predictable communication pathway through existing market infrastructure.²²

6.9 Anti-Delay Safeguards

Any shareholder-protection measure should contain an explicit anti-delay design. Notices and representations should operate within the existing CIRP timetable; filing an objection should not automatically stay approval or implementation; and the NCLT should be able to reject objections that identify no statutory or procedural deficiency. The mechanism should be a narrow procedural checkpoint, not an additional merits appeal over the CoC.

Implementation should preferably occur through a coordinated framework issued by the IBBI, with SEBI involvement for listed entities. Standard forms would reduce discretion and make compliance easier to supervise. The proposed representative could communicate electronically with public shareholders, while the adjudicating authority could deal with objections on a paper or time-bound basis. Because the reform is procedural, it can be integrated with existing notices and resolution-plan documentation rather than creating a parallel insolvency process. Such an approach would also make it easier to evaluate the effectiveness of the reform after implementation by examining timeliness, frequency of objections and the clarity of equity-

²² Insolvency and Bankruptcy Board of India, Guidelines for Conducting Valuation under the Insolvency and Bankruptcy Code, 2016 (15 June 2026); Securities and Exchange Board of India, Consultation Paper (10 November 2022).

related disclosures.

6.10 Integrated Reform Model

The resulting model consists of four connected safeguards: disclosure, valuation, representation and limited review. Disclosure identifies how equity is treated; valuation disclosure explains the economic basis; representation addresses the collective-action problem; and limited review permits the Tribunal to test process without replacing commercial judgment. In liquidation, the same logic concludes with a surplus-or-no-surplus statement before final distribution and dissolution. The reform therefore improves visibility while preserving creditor priority and time-bound resolution.

CHAPTER VII

EXPLANATION OF THE CORE RESEARCH ARTICLE

7.1 Explanation of the Research Problem

The research problem is principally procedural rather than distributive. The IBC deliberately gives creditors a central role and places equity last. The unresolved space lies between these principles: small shareholders may have little influence over the restructuring decision even though their economic interest may be significantly altered. The legal gap is the absence of a dedicated mechanism for information, collective representation and limited review when existing equity is materially affected.

7.2 Explanation of the Research Questions

The first question is answered by treating small shareholders as residual equity holders without a separate insolvency classification. The second and third are answered by the CoC structure and section 30, which restrict direct participation and permit substantial restructuring of existing equity. The fourth is addressed by the judicial authorities, which protect CoC commercial wisdom while retaining limited supervisory review. The fifth and sixth are answered by section 53 and the absence of an explicit surplus-disclosure mechanism. The seventh concerns information asymmetry and collective-action costs. The eighth is answered by the comparative chapter, which demonstrates that procedural participation can coexist with creditor priority. The ninth supports targeted reforms directed to disclosure, valuation,

representation and limited review rather than a change in economic hierarchy.

7.3 Explanation of the Hypothesis

The doctrinal analysis supports the primary hypothesis. The IBC is structured to promote creditor primacy, resolution efficiency and value maximisation, but it does not contain a sufficiently developed shareholder-specific mechanism addressing the information, representation and valuation vulnerabilities of small and dispersed equity holders. The alternative hypothesis is therefore not supported by the legal framework examined. This conclusion is doctrinal: it identifies a structural gap in the law rather than claiming an empirical measurement of shareholder outcomes.

CHAPTER VIII

CONCLUSION AND RECOMMENDATIONS

Small shareholders occupy a distinctive position in corporate insolvency. They are owners in formal company-law terms, but once CIRP begins their ordinary managerial influence gives way to a creditor-oriented institutional structure. Existing equity may be diluted, converted or extinguished through a resolution plan and, where liquidation follows, section 53 places equity shareholders or members at the bottom of the statutory waterfall. The resulting position is economically residual and procedurally limited.

The analysis does not suggest that this priority structure should be reversed. The Supreme Court's insolvency jurisprudence consistently protects CoC commercial wisdom, the feasibility and viability of resolution plans and the finality of approved plans. *K. Sashidhar and Essar Steel* reinforce creditor control; *Jaypee Kensington* confirms that shareholder objections do not create an independent commercial veto; *Ghanashyam Mishra* strengthens finality; and the valuation cases restrict repeated judicial reassessment of commercial decisions. These principles are central to a functioning time-bound insolvency process.

The concern is instead one of procedural visibility. Small shareholders may bear the economic consequences of an insolvency decision while lacking an institutional channel to understand how the residual value of their equity has been assessed. This gap is especially relevant where a listed company is restructured and public shareholders are diluted or extinguished. The legal response can therefore remain narrow: affected shareholders need not receive control over the

insolvency process, but they can receive clearer information concerning the treatment of their equity and limited opportunities to raise process-based objections.

Accordingly, the paper recommends limited procedural recognition of small public shareholders; an Equity Treatment Statement for materially adverse resolution plans; concise equity-impact valuation disclosure; collective representation of dispersed public shareholders; a short and defined opportunity to make representations before the NCLT where complete extinguishment is proposed; a surplus-or-no-surplus statement from the liquidator before final distribution; coordination with securities-market disclosure requirements; and explicit anti-delay safeguards. These measures preserve the distinction between a right to be heard and a right to veto.

The central conclusion is that residual shareholder protection under the IBC should be strengthened principally through process rather than priority. Equity need not be elevated above creditors, and the commercial allocation of insolvency value need not be transferred from the CoC to the Tribunal. The law can nevertheless ensure that shareholders at the bottom of the hierarchy are not procedurally invisible. Better disclosure, focused valuation transparency and controlled representation would make the operation of the existing hierarchy more transparent, reasoned and capable of limited review without undermining the core objectives of the IBC.

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