
THE EMERGING PARADIGM OF PROJECT-SPECIFIC RESOLUTION IN IBC: TRACING THE GENESIS, EVOLUTION AND JUDICIAL TRENDS

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ABSTRACT

This article traces the evolution of the project-specific corporate insolvency resolution process, a judicially developed model not expressly provided for in the Insolvency and Bankruptcy Code, 2016, but crafted to address the unique concerns of homebuyers. It begins by examining the rationale behind recognizing homebuyers as financial creditors, a foundational shift that acknowledged their vulnerability in real estate insolvencies. Unlike traditional lenders, homebuyers seek possession of a home rather than monetary repayment, necessitating a distinct legal and practical treatment.

The article then explores how adjudicatory bodies, especially the National Company Law Appellate Tribunal, developed the project-specific model as a tailored mechanism that confines insolvency to the specific defaulting project. This innovation preserves asset value and directly serves the interests of homebuyers, who often represent the majority of stakeholders in such cases.

By analyzing key judicial pronouncements, the article shows how courts themselves have observed that this approach aligns with the objectives and legislative vision of the Code, particularly in ensuring fairness, protecting stakeholders, and maximizing asset utility. Finally, the article examines the technical and procedural contours of implementing project-specific resolution, offering a comprehensive account of its legal foundation, operational framework, and judicial legitimacy.

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC), was enacted with the primary objective of reviving the corporate debtor as a going concern. Maximisation of the corporate debtor's assets is instrumental in achieving this goal. The legislation ensures that the insolvency resolution process is conducted in a time-bound manner, while balancing the interests of all stakeholders. Notably, the initial version of the Code did not recognise homebuyers or allottees as either financial creditors or operational creditors.

This issue came up for consideration before the Hon'ble Supreme Court in ***Chitra Sharma v. Union of India***¹. In this case, the Court was urged to examine a constitutional grievance under Article 32, alleging that the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC), failed to safeguard the interests of a crucial stakeholder group homebuyers, who had invested their life savings in the pursuit of owning a home.

The petitioners contended that while the IBC protected corporate debtors, financial creditors, and operational creditors, it left homebuyers without an effective remedy, despite their rights being duly recognized under the Consumer Protection Act, 1986, and the Real Estate (Regulation and Development) Act, 2016 (RERA). To protect the interests of homebuyers who had been left in the lurch, this Hon'ble Court issued notice on 4-9-2017 in a batch of writ petitions in *Chitra Sharma v. Union of India*², directing that proceedings before the NCLT, Allahabad, be stayed until further orders. It was further directed that a copy of the proceedings be served on the office of the learned Attorney General for India. In this case, the Court recognised the necessity of protecting the interests of homebuyers, as they are vital stakeholders and the need to include them in the insolvency resolution process. Their concerns were subsequently addressed through the Insolvency and Bankruptcy (Amendment) Ordinance, 2018, which came into force on 6-6-2018. The Ordinance brought homebuyers within the ambit of 'financial creditors' under the Insolvency and Bankruptcy Code, 2016, thereby ensuring their participation and protection in the corporate insolvency resolution process.

¹ *Chitra Sharma v. Union of India*, (2018) 18 S.C.C. 575 (India)

² *Chitra Sharma v. Union of India*, (2018) 18 S.C.C. 610 (India).

This article examines the classification of homebuyers as a distinct category of financial creditors under the Insolvency and Bankruptcy Code, 2016, and explores how the judiciary has emphasised the need for project-specific resolution plans to safeguard their interests. It further analyses the benefits, necessity, and the legal and practical parameters considered while adopting such project-specific resolution frameworks.

1. How are homebuyers technically distinct from other financial creditors?

*In Pioneer Urban Land and Infrastructure Ltd. v. Union of India*³, the Hon'ble Supreme Court rejected the argument that treating allottees as financial creditors is discriminatory and lacks an intelligible differentia or a rational nexus with the object of the Insolvency and Bankruptcy Code, 2016. The Court held that Section 5(8)(f), as originally enacted, being a residuary provision, always encompassed allottees of flats or apartments, the Explanation introduced by the Amendment Act was deemed clarificatory, intended to resolve doubts regarding the inclusion of homebuyers/allottees within the ambit of financial creditors. It was observed that the Explanation did not expand the scope of the original provision, as homebuyers were already covered under Section 5(8)(f) in its original form.

The Court further interpreted sub-clause (f) of Section 5(8) to include within its scope not only conventional loan transactions but also any transaction having the commercial effect of a borrowing. Referring to the definitions of “borrow” and “commercial” from Collins English Dictionary & Thesaurus⁴, the Court clarified that a borrowing need not always involve repayment in the form of money. An advance made by homebuyers to a developer for temporary use i.e., for funding construction constitutes a borrowing if the agreement contemplates something equivalent to money being returned, such as the delivery of a flat or apartment. The expression “commercial effect” was interpreted broadly to include transactions intended to yield profit or commercial outcomes, thereby justifying the treatment of homebuyers as financial creditors.

Though the above-mentioned judgments have brought homebuyers or allottees within the broader ambit of financial creditors, a nuanced distinction in equating them with other financial creditors has been recognised, an aspect that is highlighted across various judicial

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

⁴ *Collins English Dictionary & Thesaurus* (2d ed. 2000)

pronouncements.

In this case of *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*⁵, the Court reasoned that differential treatment of various classes of creditors is not only permissible but necessary, and is in consonance with the UNCITRAL Legislative Guide. The Guide recognises that equitable treatment in collective insolvency proceedings requires creditors with similar legal rights to be treated fairly, in accordance with their relative ranking and interests. The Court emphasised that adopting a strict “equality for all” approach which mandates uniform payment to all creditors would disincentivise secured creditors from supporting resolution plans, as they would be better protected in liquidation. Such a scenario would frustrate the primary objective of the IBC, which is the revival and resolution of distressed entities, rather than their liquidation. Accordingly, the Court upheld that differential treatment based on the nature and security of claims is both justified and essential for the effective functioning of the resolution process.

In *Flat Buyers Association Winter Hills-77, Gurgaon v. Umang Realtech Pvt. Ltd.*⁶, it has been observed that although allottees or homebuyers fall within the definition of financial creditors and are granted voting rights under the Code, they do not possess the same level of commercial wisdom or financial expertise as institutional creditors such as banks or financial institutions. In terms of the 'I&B Code' and the decisions of the Hon'ble Supreme Court, the 'Resolution Plan' must maximise the assets of the Corporate Debtor and balance the stakeholders (secured and unsecured creditors- Financial Creditors/ Operational Creditors). The Court also noted that

“The infrastructure that is constructed for the allottees by the Corporate Debtor (Infrastructure Company) is an asset of the Corporate Debtor. The assets of the Corporate Debtor as per the Code cannot be distributed, which are secured for 'Secured Creditors'. On the contrary, allottees (Homebuyers) who are 'Unsecured Creditors', the assets of the Corporate Debtor, which are the infrastructure, are to be transferred in their favour ('Unsecured Creditors') and not to the 'Secured Creditors' such as Financial Institutions/ Banks/ NBFCs”.

⁵ *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531 (India).

⁶ *Flat Buyers Ass'n Winter Hills 77, Gurgaon v. Umang Realtech Pvt. Ltd.*, Comp. App. (AT) (Insolvency) No. 926 of 2019 (NCLAT Feb. 4, 2020) (India).

“Normally, the Banks/ Financial Institutions/ NBFCs also would not like to take the flats/ apartments in lieu of the money disbursed by them. On the other hand, the 'unsecured creditors' have a right over the assets of the Corporate Debtor; i.e., flats/apartments, assets of the Company”.

“In most cases, the Committee of Creditors takes a 'haircut'. The Resolution Applicants satisfy them most of the time with a lesser amount than the amount determined. In the case of allottees (Financial Creditors), there cannot be a haircut of assets/ flats/apartments”.

In *Whispering Towers Flat Owners Welfare Association v. Abhay Narayan Manudhane & Ors.*⁷, accepted the contention that in event the Corporate Debtor is thrown to liquidation, the most sufferer will be the Homebuyers, who are thousands in numbers in different Projects and belong to lower middle-class Society, who by collecting necessary finances and after taking loans from different Banks have made payments to the Corporate Debtor for allotment of flats.

2. The need and genesis of project specific resolution plan

In *Chitra Sharma v. Union of India*⁸, the Hon'ble Supreme Court took note of the fact that liquidation would leave homebuyers facing an uncertain and precarious future. The sale of assets, it was apprehended, would deprive them of their right to obtain the homes for which they had contracted. The Court was confronted with a situation of human distress arising from the developers' failure to fulfil their contractual obligations.

Additionally, the Court recorded the data submitted by the Amicus Curiae, collected through a dedicated web portal, which revealed that only 8% of homebuyers had sought a refund, whereas an overwhelming 92% expressed their preference for possession of their respective homes. This empirical evidence underscored the need to preserve the projects and ensure delivery of possession rather than proceed with liquidation.

In *Flat Buyers Association Winter Hills-77, Gurgaon v. Umang Realtech Pvt. Ltd.*⁹, where the court reiterating the position held in *Committee of Creditors of Essar Steel India Limited*

⁷ *Whispering Towers Flat Owners Welfare Ass'n v. Abhay Narayan Manudhane & Ors.*, Company Appeal (AT) (Insolvency) No. 896 of 2021, NCLAT (Principal Bench, New Delhi), Jan. 4, 2022 (India).

⁸ *Chitra Sharma*, supra note 1.

⁹ *Flat Buyers Ass'n*, supra note 5.

*v. Satish Kumar Gupta & Ors.*¹⁰, the Hon'ble Supreme Court emphasized that the Insolvency and Bankruptcy Code, 2016 is a dynamic economic legislation and held that

To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation."

The Court acknowledged that the Code's framework permits innovation in its implementation, noting that earlier legislative experiments, having failed the test of efficacy through repeated trial and error, ultimately culminated in the enactment of the Code. Since then, amendments have been introduced both to the Code and its subordinate legislation. This remains an evolving process, engaging continuous input from all stakeholders.

This endorsement of economic experimentation laid the conceptual foundation for the NCLAT's innovation in *Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Real tech Pvt. Ltd.*¹¹, where, recognizing the unique realities of real estate insolvency, the Tribunal introduced the Reverse Corporate Insolvency Resolution Process. In that case, the promoter voluntarily agreed to fund the completion of the project while staying outside the CIRP, and the homebuyers consented to this arrangement, prioritizing possession over resolution through third-party bidders.

Further, embracing a project-specific approach, the NCLAT held:

"The CIRP is to be confined to the particular real estate project under default and cannot affect other projects of the same corporate debtor. The assets of that specific project alone are to be maximized to balance the claims of creditors related to that project."

Thus, the judicially evolved Reverse CIRP and project-wise resolution planning reflect the very economic flexibility and stakeholder-responsive experimentation that the Supreme Court in *Essar Steel* recognized as essential to the effective working of the Code.

In *Indiabulls Asset Reconstruction Co. Ltd. v. Ram Kishore Arora*¹², the Supreme Court considered a challenge to the constitution of the Committee of Creditors (CoC) restricted to a specific project. The Court declined to interfere with the project-specific approach adopted by

¹⁰ *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, 2019 SCC OnLine SC 1478 (India).

¹¹ *Flat Buyers Ass'n*, supra note 5.

¹² *Indiabulls Asset Reconstruction Co. Ltd. v. Ram Kishore Arora*, 2023 SCC OnLine SC 612 (India).

the Appellate Tribunal, noting that constituting a CoC for the corporate debtor as a whole at that stage could adversely impact ongoing projects and cause significant hardship to homebuyers. It was observed that such a step could lead to uncertainty across various projects

The Court in the case of *Whispering Towers Flat Owners Welfare Association v. Abhay Narayan Manudhane*,¹³ observed that the reviving of entire corporate debtor in the case of all the real estate projects is an onerous task and if resolution professional sees or the COC wish to revive it on the project wise basis, the same must be given priority

a. Scope of moratorium in project specific resolution plan

In its order dated 24 March 2023 in *Flat Buyers Association Winter Hills – 77 v. Umang Realtech Pvt. Ltd.*,¹⁴ the Appellate Tribunal clarified the scope and application of the moratorium under **Section 14 of the IBC** in the context of **real estate insolvency**. While the plain language of Section 14 mandates that once CIRP is initiated, a **moratorium applies to the entire corporate debtor**, the Tribunal emphasized that in exceptional circumstances, particularly where the **Reverse CIRP** model is applied, the conventional understanding of Section 14 must yield to a **project-specific approach**. The Tribunal reaffirmed that its earlier order introduced an alternative resolution mechanism for the first time, **Reverse CIRP**, where promoters could be permitted to bring in funds and complete the project without involving a third-party resolution applicant, **subject to IRP supervision**. Notably, the Tribunal held that this framework, though not explicitly envisioned in the Code, is consistent with its objective of ensuring resolution over liquidation and protecting the interests of homebuyers.

Accordingly, it clarified that the **moratorium** in the present case, though generally applicable to the whole corporate debtor, shall be deemed to be **confined only to the specific project** "Winter Hills-77" considering the peculiar facts, the near-completion status of the project, and the **tailored judicial innovation** of Reverse CIRP. This evolution is a product of the Tribunal's continuing role in adapting the Code's application to sector-specific realities and ensuring that the **Code's objectives are not defeated by rigid or mechanical interpretations**

¹³ *Whispering Towers Flat Owners Welfare Ass'n v. Abhay Narayan Manudhane*, Company Appeal (AT) (Insolvency) No. 896 of 2021 (NCLAT Jan. 4, 2022) (India).

¹⁴ *Flat Buyers Ass'n Winter Hills – 77 v. Umang Realtech Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 926 of 2019, NCLAT (Principal Bench, New Delhi), Mar. 24, 2023 (India).

b. Is financing by promoters is a pre requisite to adopt reverse corporate insolvency and project specific resolution plan?

In the case of *Konduru Prasanth Raju v. V. Suresh Kumar*¹⁵, The Tribunal clarified that the presence or willingness of the promoter to infuse funds into the project a condition relevant in *reverse CIRP* situations like in *Umang Realtech Pvt. Ltd*¹⁶. is not a prerequisite for undertaking a Project-specific insolvency. The principle of Project-wise Resolution is a distinct concept that stands independently, which has to be determined based on peculiar facts of each case.

c. The evolving scope and paramount importance of a project-specific resolution plan given by courts

Following the position laid down by the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors*¹⁷, it has been clarified that the rigid application of the outer timeline of 330 days for completion of the CIRP, including any extension or time consumed in legal proceedings, would be arbitrary and violative of Article 14 of the Constitution and impose an unreasonable restriction on the fundamental right to carry on business under Article 19(1)(g) of the Constitution of India.. The Court held that if the delay is attributable to factors beyond the control of the litigant, such as pendency before tribunals, then such a mandatory clause must be read down to prevent injustice. It further opined that if only a short period is required beyond 330 days to finalize the resolution plan, and if such extension is in the interest of all stakeholders to revive the corporate debtor instead of pushing it into liquidation, the Adjudicating Authority or Appellate Tribunal may allow such continuation.

In line with this principle, the NCLAT in *Whispering Towers Flat Owners Welfare Association v. Abhay Narayan Manudhane RP & Ors*¹⁸, held that if the Committee of Creditors (CoC), in exercise of its commercial wisdom, resolves to pursue a project-wise resolution even after the statutory period of CIRP has lapsed, such a decision must be respected and prioritized. This is because it aligns with the overarching objective of the Insolvency and

¹⁵ *Konduru Prasanth Raju (Resolution Professional of M/s Dreamz Infra India Ltd.) v. V. Suresh Kumar*, 2023 SCC OnLine NCLAT 1676 (India).

¹⁶ *Flat Buyers Ass'n*, supra note 5

¹⁷ *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.*, (2020) 8 S.C.C. 531 (India).

¹⁸ *Whispering Towers Flat Owners Welfare Ass'n*, supra note 12

Bankruptcy Code to ensure resolution over liquidation and serves the interests of justice and economic revival.

CONCLUSION

Project-specific resolution has emerged as a flexible and effective insolvency mechanism under the IBC framework. It is judicially recognised as a viable solution both in cases where only one project of the corporate debtor is in default and where all projects are under financial stress or insolvency.

In *Indiabulls Asset Reconstruction Co. Ltd. v. Ram Kishore Arora*¹⁹ and *Ambika Prasad Sharma v. Horizon Buildcon Pvt. Ltd.*²⁰, the NCLAT and Supreme Court restricted the CIRP to the specific project in default, to avoid disruption in ongoing projects and safeguard the interests of homebuyers.

Likewise, in *Ajai Kumar Gupta v. Ashwani Kumar Singla (IRP of Ansal Properties and Infrastructure Ltd.)*²¹, the CIRP was limited exclusively to the FernHill project, thereby reaffirming the principle of project-specific resolution.

Importantly, this approach is not limited to isolated defaults. Even in cases where major projects of the corporate debtor are insolvent, such as in the case of *Whispering Towers Flat Owners Welfare Association v. Abhay Narayan Manudhane*²², the resolution can still proceed in a project-specific manner, with the Committee of Creditors (CoC) being constituted independently for each project.

Thus, project-specific CIRP ensures tailored resolution without collapsing the entire company into liquidation, and its application depends on the facts and structure of the projects involved.

However, as noted in the case of *Chitra Sharma & Ors. v. Union of India & Ors*²³, while incorporating the concept of Reverse Corporate Insolvency within a project-specific resolution framework, the Court must be guided by the object of the 2018 amendment to the IBC.

¹⁹ *Indiabulls Asset Reconstruction Co. Ltd.*, supra note 11.

²⁰ *Ambika Prasad Sharma v. Horizon Buildcon Pvt. Ltd. & Anr.*, Company Appeal (AT) (Insolvency) No. 1398 of 2019, NCLAT (Principal Bench, New Delhi), Apr. 8, 2021 (India).

²¹ *Ajai Kumar Gupta v. Bibhuti Bhushan Biswas & Ors.* (IRP of Ansal Properties & Infrastructure Ltd.), Company Appeal (AT) (Insolvency) No. 41 of 2023, NCLAT (Chennai Bench), Jan. 13, 2023 (India)

²² *Whispering Towers Flat Owners Welfare Ass'n*, supra note 12

²³ *Chitra Sharma*, supra note 1

Parliament, by introducing Section 29A²⁴, sought to ensure that persons responsible for the insolvency of the corporate debtor are disqualified from participating in the resolution process

Parliament was evidently concerned that allowing such individuals to participate would undermine the very object and integrity of the Code. Accordingly, Section 29A²⁵ prescribes a list of disqualifications to exclude such persons from acting as resolution applicants. Thus, any project-specific resolution or reverse CIRP mechanism must strictly adhere to the disqualifications under Section 29A²⁶ to prevent those responsible for the debtor's downfall from regaining control of the corporate debtor.

As held by the three-member Bench of the NCLAT, Principal Bench, New Delhi in *Majestic Towers Flat Owners Association v. Housing Development and Infrastructure Ltd*²⁷, project-wise resolution serves as a more effective mechanism to facilitate resolution and avert liquidation, which would otherwise impose severe hardship on homebuyers

Furthermore, project-specific resolution attracts a wider pool of prospective resolution applicants and ensures that other viable and near-complete projects are not pushed into a state of uncertainty.

²⁴ Insolvency and Bankruptcy Code, No. 31 of 2016, § 29A, India Code (2016)

²⁵ Ibid.

²⁶ Ibid.

²⁷ *Majestic Towers Flat Owners Ass'n & Anr. v. Housing Development & Infrastructure Ltd. & Ors.*, Company Appeal (AT) (Insolvency) No. 980 of 2021, NCLAT (Principal Bench, New Delhi), Jan. 4, 2022 (India).