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Reconceptualising the Minimum Threshold for Real Estate Allottees: Retain? Rationalise? Remove?

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ABSTRACT

This paper is an academic attempt to reconceptualise an aspect of the amendment introduced in the Insolvency and Bankruptcy Code, 2016. The ascertainment of allottees under the Real Estate (Regulation and Development) Act, 2016, as 'financial creditors' under the Code had a relieving effect upon all allottees. With this acknowledgement, there ensued a plethora of litigation. In response to this, the legislature adopted a restrictive qualifier for allottees to get their proceedings admitted by way of a proviso to section 7(1) of the Code. The Supreme Court was faced with a multiplicity of constitutional challenges against these amendments but answered them all in the affirmative. The authors, in light of the aforementioned circumstances, attempt to closely evaluate the implications of this provision and submit their critique on the same. After having pointed out the practical fallacies in the provision, the authors then adopt a pragmatic approach and propose a host of solutions, which, in their opinion, can ease the plight of allottees. The authors propose a three-pronged argument, wherein they begin by arguing in favour of 'retaining' the threshold

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requirement, given that the same is supplemented by adequate changes in the scheme of law. Further, the paper proceeds on to argue in favour of 'rationalising' the bar created by law by diluting the rigid threshold requirement in light of other similar legislations and proposes an additional framework reconciling the concepts of debt-equity & default-credit ratio. Finally, the paper argues in favour of the 'removal' of the bar, by replacing it with a novel mechanism of "Reverse Project Specific CIRP" to adequately accommodate the needs of the allottees within the purpose and framework of the Code. The authors challenge the established jurisprudence around class action suits in India and attempt to reenvision the insolvency framework, which is not fenced by numbers and figures, but expanded in pursuit of equity and justice.

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I. INTRODUCTION

The Insolvency and Bankruptcy Code (**Code**),[1] enacted in the year 2016, ushered in a new era of creditor-driven resolution mechanism in the country.[2] Liquidation or winding up of a corporate entity has far-reaching consequences on those associated with it and simultaneously on society. When the same dawned upon the legislators, the need for a resolution-centric legislation that prioritised revival along with recovery was realised, thus was the Code conceived.[3] Over the course of years, the courts, through judicial innovation have curated various nuances in the Code, that have attempted to fill the void, as and when it surfaced. One of the principal innovations was the outcome of the *Nikhil Mehta,*[4] and *Chitra Sharma* cases,[5] wherein the Supreme Court (**SC**) recognised the allottees of real estate projects as *financial creditors* under the Code. Thereby, elevating the allottees to a pedestal equal to other financial creditors, allowing them to move the National Law Company Tribunal (**NCLT**) to initiate the corporate insolvency resolution process (**CIRP**) against the defaulting company.

The Insolvency Law Committee in, its 2018 report, recommended giving statutory recognition to the judicial amendment under section 5(8) of the

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[1] Insolvency and Bankruptcy Code 2016.
[2] Priyanshu Fauzdar, 'Comparative Analysis of the Two Insolvency Framework Models' (IBC Laws, 24 July, 2023) <https://ibclaw.in/comparative-analysis-of-the-two-insolvency-framework-models-i-e-creditor-in-control-and-debtor-in-possession-priyanshu-fauzdar/> accessed on 31 July, 2025.
[3] Insolvency and Bankruptcy Board of India, *Understanding the IBC: Key Jurisprudence and Practical Considerations* (2022) 11.
[4] *Nikhil Mehta v AMR Infrastructure Ltd* (CA No 811(PB)/ 2018 in (IB)-02(PB)/2017).
[5] *Chitra Sharma v Union of India* (2018) 18 SCC 615.

Code.[6] The legislators acted upon this and crystallised the remedy of the allottees through the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018,[7] which was held *intra vires* the Constitution in the *Pioneer Urban Development* case.[8] This recognition also provided the allottees the right of participation and voting in the committee of creditors (**COC**) alongside other financial creditors.

However, this legal clarity was soon complicated by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019,[9] later given permanent effect through the IBC (Amendment) Act, 2020, which introduced a significant restriction on the remedy conceived in 2018.[10] The Act required the allottees to move the NCLT, only if a hundred or ten percent of them, whichever was lesser, came together and initiated the proceedings.[11] While this came off as *prima facie* discriminatory, the SC in *Manish Kumar* case found the same to be constitutionally sound. This paper shall attempt to traverse the impugned terrain.[12]

The authors found this distinction in the treatment of allottees and other financial creditors to be inequitable and unjustified. The home buyers, already ailing with unfulfilled promises, unmet claims and loss of capital, were now subject to the misery of an inaccessible remedy. Their position was, virtually, even more vulnerable than the pre-2018 position of law, wherein no remedy existed, since now they had a mechanism at their

[6] Ministry of Corporate Affairs, *Report of the Insolvency Law Committee* (March 2018) paras 1.1-1.9.
[7] Insolvency and Bankruptcy Code (Second Amendment) Act 2018, s5(8).
[8] *Pioneer Urban Land & Infrastructure Ltd. v Govindan Raghavan* (2019) 5 SCC 725.
[9] Insolvency and Bankruptcy Code (Amendment) Ordinance 2019.
[10] Insolvency and Bankruptcy Code (Second Amendment) Act 2020.
[11] Insolvency and Bankruptcy Code (Amendment) Act 2020, s 7.
[12] *Manish Kumar v Union of India* (2021) 5 SCC 1.

disposal, but it was practically out of their reach. The authors have attempted to lay the rationale of this paper in this part of the paper, a critique of the threshold requirement in case of allottees in Part II and then attempted to treat the said threshold with varying degrees of *erosion*, specifically by retaining, rationalising and removing the said requirement in parts III, IV and V, respectively. The paper concludes, in part VI, with closing remarks from the authors.

II. CRITIQUE OF THE THRESHOLD INTRODUCED IN 2019

The real estate sector has historically been characterised by systemic irregularities, most of which existed at the cost of home buyer's interests. With a much higher access to resources, financial, intellectual and legal, promoters used to ride high on the horses of their fortune, while the lesser endowed, home buyers continued to grapple. Though the adoption of the Real Estate (Regulation and Development) Act, 2016,[13] (**RERA**) has attempted to traverse this space by enabling the buyers to rise to an equitable level, unfortunately, the problem persists.

A. Information Asymmetry

In the course of empirical research undertaken by the authors, it was found that while the law imposes a mandatory duty on promoters to disclose 'all' information relating to a project, including information about the allottees, the requirement has only scarcely been met. Promoters were found merely disclosing technical information like the size of the project, facilities provided, available parking space etc., the more crucial data like the credentials of promoters, allottees, registered

[13] Real Estate (Regulation and Development) Act 2016.

agents were found to be erratic throughout the portals of West Bengal,[14] Uttar Pradesh,[15] Maharashtra,[16] to name a few.

The statutory protection in the form of section 19 of RERA fails to account for such circumstances.[17] While there does exist the right to obtain information regarding the project and its stage-wise development, recognised by the SC in *Manish Kumar,*[18] there exists no mechanism to remedy the parallel information asymmetry that exists. The law, rather than attempting to even out the accessibility issues, goes on to exacerbate the state of affairs by placing onerous burdens of first finding all other allottees, collating their claims and then proceeding before the adjudicating authority under the Code. This very argument was put forth by a parliamentarian in his dissenting note against the impugned amendment;[19]another parliamentarian in the same dissenting note went on to state that such an amendment was brought in to serve the interests of '*real estate oligarchs*.'

B. Inequitable treatment of allottees under the Code

The allottees, as a class have been irrationally treated under the law by establishing a minimum numerical cap for them to qualify. The report of

[14] West Bengal Real Estate Regulatory Authority <https://rera.wb.gov.in/> accessed 31 July, 2025.
[15] Uttar Pradesh Real Estate Regulatory Authority, uttar pradesh rera website accessed 31 July, 2025.
[16] Maharashtra Real Estate Regulatory Authority <https://maharera.maharashtra.gov.in/> accessed 31 July, 2025.
[17] Real Estate (Regulation and Development) Act 2016, s 19.
[18] Insolvency and Bankruptcy Code (Amendment) Act 2020, s 7 (n 11).
[19] Ministry of Corporate Affairs, *Insolvency and Bankruptcy (Second Amendment) Bill, 2019*, Sixth Report, 31-36.

the Insolvency law committee, 2020,[20] states the rationale behind this move was to uphold the time-bound resolution manner of the Code, avoid putting 'undue pressure' on the CD and overburdened adjudicating authorities. Such reasoning behind a provision that fundamentally translates to denial of the remedy under the Code to a particular class seems highly myopic, reductionist and in contravention of the objective of IBC which is "to balance interests of all the stakeholders."[21] It is reflective of the legislators' preference to 'protect' the promoters than to remedy the wronged home buyers.

The IBC is a self-enabling Code, bundled with enough fencing mechanisms to prevent assertion of frivolous claims. The Code allows the tribunal to impose penalties up to one crore rupees for aggravating frivolous and malicious litigations.[22] This, in itself is a sufficient deterrent for the allottees who in most cases are not as rich as other financial creditors to sustain such penalties.

In a developing nation like ours, it is important to ensure ease of business, but such ease can in no way be justified at the cost of aggrieved allottees. It is pertinent to note that the additional requirement for the allottees was brought at the time when the statutorily prescribed threshold of minimum default was rupees one lakh. However, since 2020 itself, this threshold has been pushed to rupees one crore, weakening the justification behind introducing the additional requirements for the allottees. What further heightens the disability is that, despite having qualified the minimum monetary threshold of one crore, the allottees are

[20] Ministry of Corporate Affairs, *Report on Insolvency Law Committee* (February 2022).
[21] *Statement of Objects and Reasons*, Insolvency and Bankruptcy Code 2016.
[22] Insolvency and Bankruptcy Code 2016, s 65.

absolutely prohibited from raising their claims, unless they find ninety-nine others. The supporting regulations of the Code also maintain a conspicuous silence on this irrational dissemination, which on a doctrinal analysis violates the principle of 'e*jusdem generis*.'

C. Chequebook Closures

Another pertinent issue is the possibility of '*chequebook closures*.' The defaulting promoters, in order to avoid entering the insolvency proceedings, may begin 'buying' off allottees, who might've planned to consolidate their claims and initiate CIRP. While this may seem frivolous from a policy perspective, its likelihood cannot be negated. This too was one of the concerns raised in the dissenting note of Mr. T.K. Rangarajan,[23] in his letter to the chairperson of the standing committee on finance. A preferential innovation of law to benefit the strong lobby of builders, is what this provision has turned out to be. Not only may the promoter propose to buy off the allottees from within the prescribed threshold, but some allottees may also even voluntarily propose this to the promoter, as an out of court settlement, aligning with the apprehensions against pursuing litigation.

Cash compromises of such nature can eventually become an exit mechanism for the allottees and protect the defaulting promoter from being subjected to the due procedure under law, which inter alia, may often include change in management and thereby losing control over the business. Such a settlement cannot be equated to the remedy under RERA, for providing compensation to the allottees. There, the builder acknowledges the default and follows the letter of law to return the

[23] Insolvency and Bankruptcy Code (Amendment) Act 2020, s 7 (n18).

allottee to his original position had the default never occurred, but in the latter, the cash is offered to circumvent the law and sidestep the fate that he would have otherwise met.

D. Inefficiency of remedies under other laws

The principal challenge that is raised by proponents of this amendment stems from the fact that while a remedy under the Code may have been made difficult to avail, there always exists the possibility of pursuing remedies under other laws like the Consumer Protection Act,[24] RERA etc. The factum of the argument cannot be denied, but the viability, definitely can and should. IBC proposes a time bound manner of adjudication with the upper limit being a maximum of three hundred thirty days from the date of admission of the proceedings.[25] Such a stringent timeline does not exist in either of the alternatives proposed to home buyers. Furthermore, the effect of deterrence, present in IBC, does not emanate from other legislations. The pursuit under the Code can lead to outcomes like change in management of the builder entity, restructuring of the organisation, and at times even liquidation, this is what coerces the builder to either remedy the wrong or comply with the demands of the allottees. Furthermore, allowing the allottees a seat in the committee of creditors gives the allottees a greater say in the decisions of the CD.[26] No other law provides any similar conclusive say to the aggrieved party; all that they attempt is to compensate for the loss and restore to the original position.

[24] Consumer Protection Act 2019.
[25] Insolvency and Bankruptcy Code 2016, s 12.
[26] Insolvency and Bankruptcy Code 2016, s 7(1).

The proceedings undertaken in IBC are assailed to be *in rem* while, those under other laws like consumer laws are generally *in personam*, what this entails is that the resolution is made binding against the entire world in the former, but only against the parties in the latter. This makes the remedy executable for all stakeholders and avoids multiplicity of litigation on an identical subject matter. To sum up, complicating the remedy afforded to the allottees under the Code pushes them to the fringes, where they're forced to make do with the little that law offers to them.

In the present section, the authors have extensively critiqued the very threshold introduced in the case of allottees seeking a remedy under the IBC. The authors argue that it prevents effective realisation of the objective of the amendment. In the next three sections of the paper, the authors will deal with the viability of the threshold in the current scheme of things and make suggestions from three lenses: *retaining* the threshold; where the authors argue for retention of the threshold under amended circumstances ; *rationalising* the threshold; where they suggest mechanisms to rationalise the threshold in favour of the allottees and finally, *removing* the threshold; and replacing it with an alternate mechanism in the interest of the allottees.

III. RETAINING THE THRESHOLD: ADDRESSING INFORMATION ASYMMETRY AND CONSOLIDATION OF ALLOTTEES

The role of the legislature is not confined to merely drafting laws; it also extends to creating an environment for the conducive execution of such laws. Where the legislature fails in the latter, laws become infructuous. In such a case, the problem might not necessarily

be in the provision itself, but the problem must necessarily be associated with the realisation of the provision. The case of allottees as financial creditors under the IBC is an example of the aforementioned scenario. The course of legal development has provided them the right in the shape of a remedy under IBC. However, the environment created around the law for the exercise of right makes it difficult to exercise the right.

A. Addressing Information Asymmetry

In this section of the paper, rather than contesting the threshold's validity, the authors advocate for the creation of an environment wherein the envisioned right can be effectively actualised. The authors argue that the additional qualification that has been brought in has created a barrier in the exercise of the right previously bestowed upon the allottees because the allottees do not have the requisite information about the other allottees, and more so they lack information about the allottees whose debts have been defaulted upon. Such information asymmetry clearly impedes the allottees from exercising their right under Section 7 of the Code. [27]

Section 11(1)(b) of the RERA provides that promoter must regularly upload data of the number of the allottees on the RERA website which can be helpful to determine the total number of allottees, yet this does not provide any personal information of the allottees such as names.[28] Section 11(4)(e) creates an obligation upon the promoter to create an association of allottees after the majority of units are allotted.[29] This means that when less than the majority of units are allotted, no

[27] Insolvency and Bankruptcy Code 2016, s.7.
[28] Real Estate (Regulation and Development) Act 2016, s 11(1)(b).
[29] Real Estate (Regulation and Development) Act 2016, s 11(4)(e).

association is formed. Additionally, there are local laws in states like Haryana and Uttar Pradesh where the association can be formed after the completion of projects.[30] The cumulative effect of these laws is that the beneficiaries, in this case, the allottees are being kept away from the information that is vital for them to initiate action under the IBC.

The previously referred empirical study undertaken by the authors leads to the conclusion that these websites though fancy in appearance clearly lack data, thereby impairing the rights of the allottees. Consequently, the authors suggest that the regulatory authority created under RERA on a regular basis must conduct due diligence checks of such real estate companies and impose penalties where they fail to satisfactorily comply with the legal mandate. Additionally, the government must amend the RERA to ensure that information about other allottees including their names and contact details are mandatorily available. It should provide sufficient remedies in case the real estate developer fails to make statutorily mandated disclosures on the website. This would ensure that the allottees have requisite information to move to the NCLT.

B. Consolidation of allottees across all projects of the Corporate Debtor

The amendment of 2020 added the words "*same real estate project*."[31] This criterion of allottees belonging to the same project aggravates the problem of aggregating the allottees. The SC has further restricted the interpretation of the clause in rulings like *Pankaj Mehta v. Ansal Hi-*

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[30] Mitali Ingawale and Sumit Kulkarni, 'Deconstructing the threshold requirements for homebuyers under IBC' (SCC Online Blog, 20 June 2021) <https://www.scconline.com/blog/post/2021/06/20/homebuyers/> accessed 31 July 2025.

[31] Insolvency and Bankruptcy Code (Amendment) Ordinance 2019 (n 9).

Tech Townships,[32] where each RERA registration was considered to constitute a separate project despite belonging to the same township. Cumulatively, these work to limit the scope of the right given to the allottees.

The authors suggest for the deletion of this phrase from the law and allottees across different real estate projects be allowed to move the NCLT. The adjudicating authority, while looking into whether the allottees satisfy the threshold, should pierce the corporate veil and check if the promoters of the different real estate project are promoters of the same CD. In cases where the corporate debtor across different real estate projects, the allottees of which are before the tribunal, happens to be the same corporate person, the tribunal may then allow the allottees' prayer for initiation of CIRP. On the other hand, if the piercing reveals the same corporate person underneath, the tribunal shall be entitled to reject the prayer of the allottees. These changes, in the opinion of the authors, shall make the environment more conducive for the realisation of the rights afforded to the allottees under the Code.

IV. Rationalising the Threshold: Comparative Analysis of the Threshold and Introducing the Concept of Default-Credit Ratio

Rationalising the threshold entails accommodating the impugned concept of class action suits while simultaneously arguing on the rationality threshold provided for it. Therefore, the authors, in this

[32] *Pankaj Mehta v Ansal Hi-Tech Township Ltd* (2021) SCC OnLine NCLT 23691.

section discuss, not the removal but rationalisation of the already existing threshold.

A. Comparative Analysis of the Threshold

The allottees under the amendment have been treated as a class, presumably due to commonality of interests and logistical efficiency. This recognition as a class endows onto them a right of class action under the Code. While the proponents may argue that this gives the allottees a better bargain before builders due to consolidation of claims, the reality speaks otherwise. Had the law provided this as an option, as is done under the Civil Procedure Code under Order 1, Rule 8 at the ease and convenience of plaintiffs, it still would have commanded acquiescence.[33] Setting this as the qualifying mechanism at the very threshold, is what disrupts the interests of the aggrieved allottees. The purpose of law remains, as was envisaged by *Locke*, to "preserve and enlarge freedom rather than to abolish or restrain."[34]

Class action suits, regardless of their benefits come bundled with their own set of challenges. Section 7(1) is indeed an illustrative example.[35] The very requirement of pursuing a class action suit is to ensure parties with similar interests and pleas approach the adjudicating authority as a singular force thereby exerting greater assertion, while preventing undue burden on an already burdened judicial system. In conflicts involving real estate, the challenge may lie not simply in balancing the interests of all allottees, but at a more fundamental level i.e., to identify and collate

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[33] Code of Civil Procedure 1908, O 1 r 8.
[34] John Locke, *2nd Treatise on Government: Of Civil Government*, Ch 6 Paternal Power, <https://www.bartleby.com/lit-hub/two-treatises-on-government/chapter-i-the-introduction-2/> accessed 31 July 2025.
[35] Insolvency and Bankruptcy Code 2016, s 7(1) (n 26).

the interests to qualify as a class under the Code, the challenges of which have been already dealt with in this paper.

The authors contend that the current requirement of 100 allottees or ten percent of the total class needs rationalisation. The Companies Act, 2013 under section 245,[36] provides for class action suits at the dispense of members or depositors if the conduct of the business of the company is done prejudicially to their interests. Section 245(3) attempts to operationalise this provision by legitimising the notification of the threshold by NCLT Rules, 2016.[37] In the year 2019, the National Company Law Tribunal (Second Amendment) Rules, 2019 were notified by way of which the threshold requirement of section 245 was clarified.[38] Through the insertion of sub-rules (3) and (4) to Rule 84, the qualifying criteria of class action suits were recognised as five percent or one hundred of the total members, whichever is lesser.[39]

Across the borders, first conceived in the United States of America, other nations, including some of the common law regimes have rapidly adopted the mechanism of class action suits.[40] Though not as comprehensive, class action suits, find mention in part IVA of the Australia's Federal Court of Australia Act, 1976;[41] Part 19 of the Civil Procedure Rules, 1998 of United Kingdom;[42] and Rule 23 of the Federal Rules of Civil Procedure in United States.[43] The Australian law only

[36] Companies Act 2013, s 245.
[37] National Company Law Tribunal Rules 2016.
[38] National Company Law Tribunal (Second Amendment) Rules 2019, s 2.
[39] National Company Law Tribunal Rules 2016, r 84.
[40] Federal Rules of Civil Procedure 1938, r 23.
[41] Federal Court of Australia Act 1976, PtIV, s 33A, 33B.
[42] Civil Procedure Rules 1998, Pt 19.
[43] National Company Law Tribunal Rules 2016, r 84 (n 39).

requires 7 or more people to pursue a class action suit, while other laws do not carry even such a numeric qualifier.[44]

Problems begin to surface when class actions assume roles, other than being assistive. The SC of USA in *California Public Employees Retirement Systems* case held that initiation of class action suits does not extend the application of Statute of Repose.[45] Similarly, in the *Tyson Foods* case, the court stated that class action suits shall be established by way of individual evidence and not common for all members of the class.[46] Although it occurred in a completely different context, when analysing these rulings from standpoint of allottees under RERA, it can be inferred that while the law does provide one with the option to pursue class action suits, the legislative scrutinisation robs the mechanism of its very rationale i.e., ease of representation of common interests.

In light of the above discussions, we humbly submit that the requirement of ten percent or one hundred does not sit in tandem with, either the domestic or international framework. The authors propose the requirement of section 7(1) to be revised to five percent or hundred, whichever is lesser. The reason being that the requirement of 100 is relevant for projects with allottees more than 1000 in number and consolidation of claims is logistically impossible. On the other hand, for projects with less than 1000 members, the 10% rule would be adopted. It is submitted that 10% is too high a burden on an already aggrieved class of individuals, the revision of which to 5% will not only ease their agony

[44] Federal Rules of Civil Procedure 1938, r 23 (n 40).
[45] *California Public Employees Retirement Systems v. ANZ Securities Inc* 137 S Ct 2042 (2017).
[46] *Tyson Foods, Inc v. Bouaphakeo* 136 S Ct. 1036, 1045 (2016).

but also bring the position of the Code in consonance with the Companies Act and other international regimes.

B. Default-Credit Ratio

The vulnerabilities inherent in the current framework for allottees have been extensively analysed in the preceding sections. In this section, the authors extend the idea of rationalising the threshold by proposing a mechanism to be incorporated in the proviso of section 7(1) of the IBC.[47] The said proviso provides for class action suits. Similar to the threshold provided under section 245 of The Companies Act, 2013, the IBC also provides a threshold of hundred or ten percent of the total in case of allottees forming a similar class.[48]

In addition to providing the threshold of hundred members or five percent of the total members, the Companies Act also provides another criterion wherein members holding at least five percent of the issued share capital in unlisted companies or at least two percent of the issued share capital in listed companies are allowed to initiate a class action suit.[49]

The authors advocate for incorporating a similar rationalising mechanism into the proviso of Section 7(1) of the IBC, proposing a framework that reconciles the Corporate Debtor's debt-equity ratio with its default-credit ratio. In this framework, the range of debt-equity ratio of the companies in real estate sector needs to be ascertained. Similar studies have been conducted in USA which suggest that the same ranges

47 Insolvency and Bankruptcy Code 2016, s 7(1) *(n* 26).
48 Companies Act 2013, s 245 (*n*36).
49 *Ibid* .

from less than one to more than eight.[50] Subsequently, a rational threshold of debt equity ratio needs to be settled, such that beyond the given threshold the company in the real estate sector is more likely to default; while when the debt equity ratio of the company is within such pre-decided threshold the company is less likely to default. This should purely be based on an extensive study of the financial performance of the real estate companies, specifically after 2020.

The default-credit ratio of the CD is the ratio of the default of the CD to the total debt of the CD. Integrating the concept of debt-equity ratio with the concept of default-credit ratio, the authors propose that the allottees, in addition to the already existing criteria, should be allowed to initiate CIRP based on the default-credit ratio of the CD. To rationalise the formulae, the required default-credit ratio of the CD to initiate CIRP by the allottee, shall be depended on the debt-equity ratio of the CD.

When the debt-equity ratio of the CD is within the statutorily set threshold, the CD is less likely to default and that is why the default-credit ratio required to trigger CIRP should be set at a higher level. Whereas, when the debt-equity ratio of the CD is beyond the statutory threshold, the CD is more likely to default, and the default credit ratio required to trigger CIRP should be set at a lower level. The authors suggest that this criterion should be provided in addition to the pre-

[50] Andriy Blokhin, 'Typical Debt-to-Equity Ratios for the Real Estate Sector', (Investopedia, 16 September 2023) https://www.investopedia.com/ask/answers/060215/what-average-debtequity-ratio-real-estate-companies.asp#:~:text=The%20D%2FE%20ratio%20for,means%20more%20debt%20than%20equity. accessed 31July 2025.

existing criteria for class action suits under section 7(1) of the IBC. While having retained the existing structure, this would rationalise it further by providing an economically justifiable criteria for initiating insolvency against a CD.

V. REMOVING THE THRESHOLD: REVERSE PROJECT SPECIFIC CIRP

The IBC is silent on 'Reverse CIRP' or 'Project Specific CIRP.' These are judicial innovations to reconcile the interests of homebuyers and CDs. By virtue of the *fresh slate* doctrine established under Section 31(1) of the IBC,[51] and recognised by the SC in the *Essar Steel* case,[52] all encumbrances of the CD are deemed cleared after a successful CIRP. The successful resolution applicant gets hold of the CD, in our case the real estate company, free of any encumbrances. When the CD is subject to liquidation, the stakeholders face massive losses.[53] Both of these scenarios do not reconcile with the interests of the aggrieved homebuyers, who typically invest in projects to receive their promised properties.

Building upon this foundation, Hon'ble Justice S. J. Mukhopadhyay and Hon'ble Justice Bansi Lal Bhat pioneered the concept of 'Reverse CIRP' in their decision in *Flat Buyer's Association v. Umang Realtech*

[51] Insolvency and Bankruptcy Code 2016, s 31(1).
[52] *ArcelorMittal India Private Limited v. Satish Kumar Gupta* (2019) 2 SCC 1.
[53] Ayushi Agarwal & Jenul Bhati, 'The Concepts of Reverse CIRP and Recent Amendments to the IBC around the Real Estate Sector', (IBC Laws, 24 February 2025) <https://ibclaw.in/the-concept-of-reverse-cirp-and-recent-amendments-to-the-ibc-around-the-real-estate-sector-by-ayushi-agarwal-and-jenul-bhati/> accessed 31 July 2025.

Pvt. Ltd.[54] National Company Law Appellate Tribunal ('NCLAT') asserted that while the creditors take huge haircuts under resolution plans, the homebuyers cannot do the same as they are eligible to receive properties. Therefore, with an aim to balance the rights of the creditors against the realities of the real estate sector, NCLAT gave life to the reverse CIRP model. *In casu*, one of the promoters of the CD was allowed to raise interim finances and work alongside the Interim Resolution Professional ('IRP'). In the same decision, it was also held that CIRP would cease to operate, once the promised obligations are met and dues cleared, including those of the allottees. This model prevents the CD from undergoing CIRP. It ensures there is no change in ownership, alongside fulfilment of the needs of the real estate sector. The same was upheld in a subsequent decision of the NCLAT in *Asset Reconstruction Company India Ltd. v. DagconIndia Pvt. Ltd.*[55]

Reverse CIRP, though a respite to homebuyers, fails the test of legality in the current scheme of IBC. It was pointed out by the SC in *Indiabulls ARC v. Ram Kishore Arora*,[56] popularly known as the *Supertech Case*. The court pointed out that a resolution plan that allows the erstwhile defaulting management to continue, violates section 29A of the IBC, and settled judicial precedents. While striking down reverse CIRP, the court recognised another innovative framework of 'project-specific CIRP.' Herein, convenience and practical viability along with the principle of 'lower risk of injustice' was balanced to allow CIRP for a

[54] *Flat Buyer's Association v Umang Realtech Pvt. Ltd* (2020) SCC OnLine NCLAT 1199.
[55] *Asset Reconstruction Co (India) Ltd v Dagcon (India) (P) Ltd* (2021) 20 SCC 641.
[56] *Indiabulls Asset Reconstruction Co Ltd v Ram Kishore Arora* 2023 SCC OnLine SC 612.

specific project of the CD. This framework while preventing a total halt across multiple projects of the CD, ensures the resolution of only the defaulted projects.

Undoubtedly, a commendable step to protect the interests of the allottees, the aforementioned framework largely assists after the admission of default but is of no help in the process of initiating the CIRP. The purpose of this section, as already highlighted is to attack the process of initiation of the CIRP by the allottee and suggest an alternate framework for the same. Therefore, the authors propose a model named "Reverse Project Specific CIRP" ('RPSCIRP') containing elements of both 'Reverse CIRP' and 'Project-Specific CIRP.' While both these concepts exist in isolation the concomitant procedures remain in grey. The following framework outlines the operational mechanics of the proposed RPSCIRP model.

The authors suggest that this model should be limited to aggrieved allottees and should replace the second proviso to Section 7(1) of the IBC, thereby removing the requirement of a minimum number of allottees to initiate a CIRP. Under this model, any allottee, individually or jointly, with a claim satisfying the statutorily set requirement of rupees one crore can move the adjudicating authority for initiating CIRP against a specific project of the CD. The adjudicating authority after admitting the default can appoint an IRP for the purposes of RPS CIRP. After the initiation, the IRP will invite claims but would restrict his invitation only to those financial creditors who are recognised as allottees under a real estate project. After having collated the claims, the IRP would form a committee of allottees ('COA') in place of a COC. The COA would comprise of the Authorised

Representative ('AR') of the allottees, along with facilitators (as proposed by IBBI Inner Discussion Paper on issues related to real estate insolvency)[57] to assist him. The AR would function in compliance with regulation 16A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.[58] The COA would either continue with the IRP as the Resolution Professional or appoint a new individual, who would then follow the procedure of a Reverse CIRP specific to the project. He would issue Expressions of Interest ('EOI'), again, limited only to the promoters of the CD inviting them to submit resolution plans along with performance guarantees that would include provisions for interim finances, timeline for completion of the project and strategies for clearing the dues of the allottees. The COA would vote on the plan, and a 66% majority would send the plan for the approval of the NCLT. If any of the non-allottee financial creditors, within 15 days of issuance of the EOI, move the tribunal for initiation of CIRP, the COA would stand dissolved, to make way for the COC. The COC would have the AR of the COA to ensure representation of the interests of the allottees.

When the COA approves the resolution plan in the scheme of RPS CIRP, the claims of other financial creditors would remain unchanged. The timelines of this model shall be in tandem with the timelines prescribed under the current regime of CIRP. In case, the successful resolution applicant fails to execute the plan, the performance guarantee would be

[57] Abhay Shrotia, 'Streamlining Real Estate Insolvency: IBBI's Blueprint for Transparent, Inclusive Regulations' (SCC OnLine Blogs, 9 July 2025) https://www.scconline.com/blog/post/2025/07/09/streamlining-real-estate-insolvency-ibbis-blueprint-for-transparent-inclusive-resolutions/ accessed 31 July 2025.

[58] IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, r 16A.

forfeited in favour of the erstwhile members of the COA, and the CD would undergo a complete CIRP or liquidation as the case may permit.

While the mechanism of RPSCIRP would face the same legal barrier faced by Reverse CIRP and as pointed out previously, the authors suggest that a bar created in law can be removed by another law. Hence, the legislators can carve out an exception in 29A in favour of the allottees such that the same CD is allowed to submit resolution plans before the COA. The authors suggest that this model shall be statutorily mandated as a first step in the insolvency of a real estate entity when initiated by the allottees. In case where the promoters of CD do not submit a resolution plan, a project specific CIRP as recognised by the SC in the *Supertech case,*[59] can be mandated by the legislators. This model would ensure balance between the perils that triggered the 2020 amendment alongside the perils that the amendment itself triggered, as pointed out throughout the paper.

VI. CONCLUSION

The legislators enacted the IBC in the spirit of promoting revival of the corporate debtor, in addition to ensuring recovery of the creditors of the corporate debtor. Very soon, the allottees of the real estate project were incorporated as financial creditors. This came as a huge relief to the allottees who were reeling under unethical activities of the real estate companies, who often resorted to diverting funds or other forms of mismanagement of funds, usually leading to delays in fulfilling the promises under the builder-buyer agreement. The allottees merely

[59] Indiabulls Asset Reconstruction Co Ltd v Ram Kishore Arora, 2023 SCC OnLine SC 612*(n* 56).

concerned with the completion of the project, in the wake of unequal bargaining power and lack of effective time bound remedies, are coerced into accepting unilateral amendments to their agreements.

The IBC changed the reality for the allottees by providing them with effective time bound remedies. The threat of resolution as well as liquidation also keeps the corporate entities in check. This remedy, the paper had argued, has been largely impaired by the additional burden imposed upon the allottees in the form a threshold. The authors have holistically analysed the threshold, critiqued the same and in the interest of repairing the remedy providing to the allottees, have made recommendations ranging from minor changes in the existing scheme of things to the extent of overhauling the entire framework.