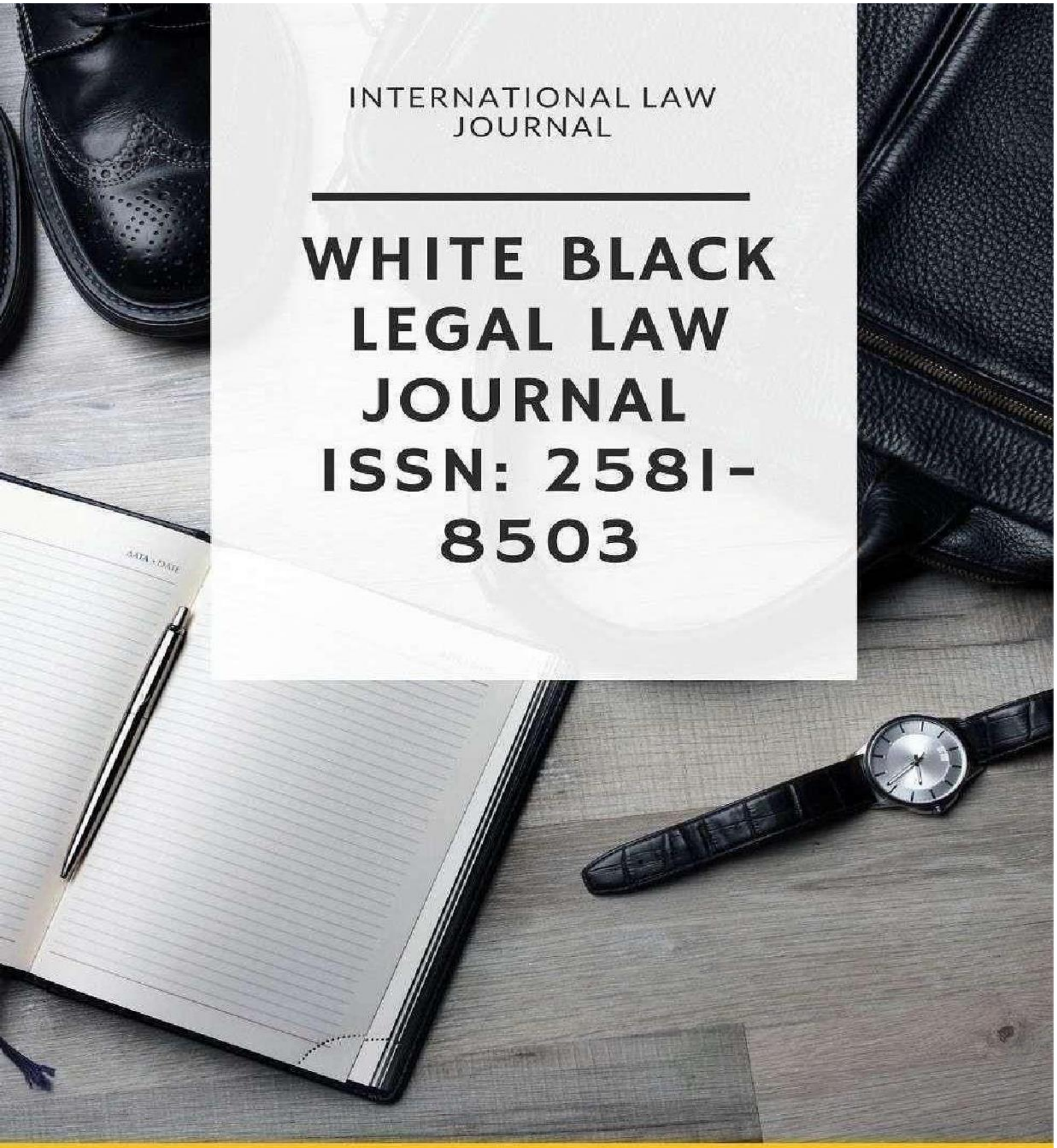


INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

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www.whiteblacklegal.co.in
Volume 4 Issue 2 | Oct 2026 ISSN: 2581-8503

TEN YEARS OF THE IBC: EXAMINING JUDICIAL ACTIVISM, STRUCTURAL FLAWS, AND RESOLUTION REALITIES

AUTHORED BY - CHIDANSH RAWAT

Abstract

The Insolvency and Bankruptcy Code 2016 (IBC) completed its ten years in 2026. This paper evaluates the decade along five axes: the Code's resolution rate and recovery record; its principal structural and practical difficulties; patterns of misuse; the judge-made devices of reverse and project-wise insolvency in real estate; and the homebuyer jurisprudence that produced them. It argues that the headline claim of a 58 per cent 'rescue' rate conflates three different outcomes, that only about one in five closed processes ends in an approved plan, and that the Code's value-preservation record is stronger than its speed or recovery-against-claims record. It further argues that the Insolvency and Bankruptcy Code (Amendment) Act 2026 is best read as Parliament's reversal of several judicial gloss-lines (discretionary admission, statutory first-charge claims), while the project-wise model for real estate still lacks a firm statutory footing.

1 Introduction

The IBC was enacted on 28 May 2016, and its corporate insolvency provisions came into force on 1 December 2016. It was designed to replace a fragmented regime in which prolonged delay eroded enterprise value and left creditors with only a few paise on the rupee, with a creditor-driven and time-bound process aimed at revival and value maximization.

That regime had no single framework. The winding up of companies was largely a matter for the High Courts under the Companies Act 1956; the rehabilitation of 'sick' industrial companies lay with the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act 1985 (SICA); and banks and financial institutions pursued recoveries before Debt Recovery Tribunals under the Recovery of Debts Due to Banks and Financial Institutions Act 1993, or enforced their security under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. The insolvency of individuals was governed by two colonial-era statutes, the Presidency-Towns

Insolvency Act 1909 and the Provincial Insolvency Act 1920. The Code repealed those two statutes, and the repeal of SICA took effect on 1 December 2016, which dissolved the BIFR and its appellate authority.

The Code's design derives from the report of the Bankruptcy Law Reforms Committee (BLRC), which the Ministry of Finance constituted in August 2014 under the chairmanship of T. K. Viswanathan. The BLRC submitted its report, with a draft bill, on 4 November 2015. It recommended a single statute for the insolvency of companies, limited liability entities, partnerships and individuals, together with an insolvency regulator, a regulated profession of insolvency professionals, information utilities and a specialized adjudicator. The Bill was introduced in the Lok Sabha on 21 December 2015 and referred to a Joint Committee of both Houses of Parliament, which presented its report on 28 April 2016. The Lok Sabha passed the Bill on 5 May 2016 and the Rajya Sabha on 11 May 2016.

At the core of the Code is a transfer of control. On default, a financial creditor, an operational creditor or the corporate debtor itself may apply to the National Company Law Tribunal (NCLT), the adjudicating authority for corporate persons, to start a corporate insolvency resolution process (CIRP). Once the application is admitted, a moratorium bars proceedings against the debtor, an interim resolution professional takes charge of its management, and a committee of creditors (CoC) made up of the financial creditors decides whether to approve a resolution plan. A plan approved by the CoC binds all stakeholders once the NCLT approves it. If no plan is approved in time, or the CoC resolves to liquidate, the debtor goes into liquidation and the proceeds are distributed in the order of priority set by section 53. The regulator, the Insolvency and Bankruptcy Board of India (IBBI), was established on 1 October 2016.

The Code has since been amended repeatedly and reinterpreted by the Supreme Court on points of fundamental design. Section 29A, which bars specified persons, including defaulting promoters, from submitting resolution plans, was inserted in 2017. In *Swiss Ribbons Pvt. Ltd. v. Union of India*[1], decided on 25 January 2019, the Supreme Court upheld the constitutional validity of the Code, including its classification of creditors into financial and operational creditors. Later amendments and decisions, discussed in the Parts that follow, have reshaped the Code on questions such as discretion at the admission stage, the priority of statutory dues, the finality of approved plans and the position of homebuyers. The latest amendment received assent on 6 April 2026.

[1] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (Jan. 25, 2019).

2 The resolution rate and recovery record

2.1 The headline numbers

To 30 June 2026, 9,166 corporate insolvency resolution processes (CIRPs) had been admitted. Of these, 7,301 had closed and 1,865 were ongoing. Of the 7,301 closed processes, 1,484 (20.3 per cent) ended with the approval of a resolution plan; 1,410 (19.3 per cent) closed on appeal, review or settlement; 1,333 (18.3 per cent) closed through withdrawal under section 12A; and 3,074 (42.1 per cent) ended in an order for liquidation. These percentages are derived by dividing each category by the total number of closures.

The IBBI characterizes 4,227 corporate debtors (about 58 per cent of closures) as 'rescued', counting plans, appeals, reviews, settlements and withdrawals together. On the value side, plans have yielded Rs 4.35 lakh crore: 30.52 per cent of admitted claims, 166.58 per cent of liquidation value and 94.72 per cent of fair value (the last measured over 1,359 cases in which fair value was estimated).

2.2 How the rate should be read

First, the denominator matters. Measured against all admissions, plans account for about 16.2 per cent (derived); against closures, about 20.3 per cent. The 58 per cent figure is therefore not a plan-based resolution rate. It includes some 2,743 cases (1,410 plus 1,333) that ended through settlement or withdrawal, which may reflect credible creditor leverage but are not outcomes of the market-discovery process that the Code's architecture is built around.

Second, entry quality drives outcomes. About 42 per cent of the plans (612 of the 1,454 cases with data) concerned debtors that had earlier been before the Board for Industrial and Financial Reconstruction (BIFR) or were defunct; creditors realized 17.52 per cent of claims there, against 33.30 per cent for the remaining cases. Conversely, about 78 per cent of liquidations (2,359 of 3,013) involved BIFR or defunct debtors whose assets averaged around 5 per cent of outstanding debt. The Code is thus frequently a last-stage mechanism, and its recovery statistics partly reflect the condition of the cases it inherits.

Third, the 'haircut' depends on the benchmark. Against admitted claims, the creditor haircut is about 69 per cent; against fair value it is about 5 per cent, and the IBBI notes that its realization figures exclude equity upside, guarantee recoveries, avoidance recoveries and post-plan capital infusion. That is a fair point. A caution is nonetheless warranted: fair value is itself estimated by registered valuers, so it is not an independent yardstick. The IBBI's amendments of 2026 (two sets of valuers under a coordinating valuer, with a third set where estimates diverge by 25

per cent or more) acknowledge the concern.

Fourth, volume is falling. Admissions peaked at 1,991 in 2019-20 and were 668 in 2025-26. ICRA reports only 43 plan approvals in the March 2026 quarter, a fall linked to lower admissions. The IBBI reads the pre-admission trend as deterrence: it reports that more than 30,000 NCLT cases, involving roughly Rs 14 lakh crore, were resolved before admission, and it points to a fall in gross NPAs from nearly 11.8 per cent in 2017 to 1.8 per cent in March 2026, citing the Reserve Bank of India. The IBBI also cites RBI data that about 52.4 per cent of scheduled commercial bank recoveries in 2024-25 came through the IBC. These are institutional claims drawn from different datasets and should not be read as directly comparable with the 30.52 per cent plan-recovery figure.

3 Key issues in the Code and practical aspects

3.1 Delay and institutional capacity

Section 12 caps a CIRP at 180 days, extendable by 90 days, and the 2019 amendment introduced an outer limit of 330 days including litigation. The Supreme Court treated that outer limit as directory rather than mandatory in *Essar Steel*.[2] Practice diverges sharply from the statutory design: plans approved to 30 June 2026 took an average of 633 days after excluding time excluded by the Adjudicating Authority. For the 1,415 plans approved to March 2026, the average from insolvency commencement to approval was 744 days including excluded time and 619 days excluding it. In *Mansi Brar Fernandes* the Supreme Court directed the Union to fill vacancies at the NCLT and NCLAT and to report on infrastructure.[3] Delay is thus partly a problem of tribunal capacity, not merely of statutory drafting.

3.2 Discretion at the admission stage

Early authority treated admission as near-automatic once debt and default were shown.[4] For operational creditors, *Mobilox* required the adjudicator to ask whether a genuine pre-existing dispute existed.[5] In *Vidarbha*, the Supreme Court held that the word 'may' in section 7(5) left room for discretion even where default was established.[6] The 2026 Amendment now requires admission or rejection within 14 days, with reasons recorded for delay, and makes admission mandatory where default is established, the application is complete and no disciplinary

[2] Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.
[3] Mansi Brar Fernandes v. Shubha Sharma, Civil Appeal No. 3826 of 2020 (Sup. Ct. India, Sept. 12, 2025).
[4] Innoventive Indus. Ltd. v. ICICI Bank, (2018) 1 SCC 407.
[5] Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353.
[6] Vidarbha Indus. Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352.

proceeding is pending against the proposed resolution professional. Parliament has therefore legislatively displaced *Vidarbha*. Whether tribunals will treat the 14-day window as mandatory is an open empirical question, since the Supreme Court had previously read similar timelines as directory.

3.3 Commercial wisdom and its limits

The Supreme Court has consistently protected the Committee of Creditors' (CoC) commercial wisdom from judicial second-guessing, while retaining review for compliance with the Code.[7] *Essar Steel* also held that the Code requires equitable, not necessarily equal, treatment of classes of creditors.[8] In practice this has left operational creditors and small stakeholders heavily dependent on the CoC's goodwill. The IBBI's June 2026 CIRP amendments respond in three ways: operational creditors and statutory authorities may attend CoC meetings as non-voting observers in specified cases where non-bank lenders hold more than 66 per cent of votes; the resolution professional must present a going-concern assessment report and obtain prior CoC approval for costs; and the CoC must record its basis for choosing a plan, including feasibility, realizable value against fair and liquidation value, and adequacy of market discovery.

3.4 Priority of statutory dues

In *Rainbow Papers* the Supreme Court held that the State, as a secured creditor under the Gujarat Value Added Tax Act 2003, could rank alongside other secured creditors, and later dismissed review petitions.[9] The 2026 Amendment is reported to narrow 'security interest' to interests created by contract, which commentators regard as reversing that line of authority; the text of the relevant provisions should be consulted for any pinpoint proposition.

3.5 Finality of approved plans

Ghanashyam Mishra gave the Code a 'clean slate' principle: claims not part of an approved plan stand extinguished.[10] Finality was shaken in *Kalyani Transco v. Bhushan Power and Steel Ltd*, where on 2 May 2025 a two-judge bench set aside an implemented plan and ordered

[7] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150; Essar Steel, supra note 2.
[8] Essar Steel, supra note 2.
[9] State Tax Officer v. Rainbow Papers Ltd., (2023) 9 SCC 545 (judgment of Sept. 6, 2022); review petitions dismissed on Oct. 31, 2023.
[10] Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstr. Co. Ltd., (2021) 9 SCC 657.

liquidation.[11] A three-judge bench recalled that judgment on review and, on 26 September 2025, dismissed the appeals and reinstated the plan.[12] Separately, the IBBI reports that 55 CIRPs previously recorded as yielding plans have since moved into liquidation and 31 have restarted, which indicates a continuing implementation problem.

3.6 Liquidation, personal guarantors and newer routes

Of 3,074 liquidation orders, 1,757 had closed with final reports, taking an average of 704 days; these debtors had claims of Rs 5.11 lakh crore but assets valued at Rs 0.22 lakh crore. Personal guarantor processes, brought into force in December 2019 and upheld in *Lalit Kumar Jain*, show weak outcomes: of 5,186 applications, 64 repayment plans had been approved, yielding around 1 per cent of admitted claims.[13] Pre-packaged insolvency (2021) has had limited uptake: 18 applications admitted and plans approved in eleven.

4 Misuse of the Code

The following are patterns identified in the data and case law, and are not allegations against any named party.

(a) The Code as a collection lever. About 80 per cent of CIRPs with an underlying default below Rs 1 crore were initiated by operational creditors, and nearly three-quarters of s 12A withdrawals involved claims below Rs 10 crore. Of the closed CIRPs initiated by operational creditors, about 51 per cent ended through appeal, review or withdrawal. The NCLAT, recording Supreme Court principles, has stressed that the Code is a forum of last resort for revival, not for debt recovery.[14] The IBBI treats pre-admission settlements as deterrence; a more skeptical reading is that for small claims the threat of admission works as leverage.

(b) Promoter-side maneuvers. Corporate-debtor-initiated filings fell from 22 of 37 in 2016-17 to 47 of 668 in 2025-26. Section 29A, inserted in 2017, bars specified persons (including defaulting promoters) from bidding, and was upheld in application in *ArcelorMittal*.[15] Avoidance applications are the other safeguard: 2,132 had been filed to June 2026, involving Rs 4.65 lakh crore, of which 806 alleged fraudulent and 830

[11] Kalyani Transco v. Bhushan Power & Steel Ltd., 2025 INSC 621 (May 2, 2025).
[12] Kalyani Transco v. Bhushan Power & Steel Ltd., 2025 INSC 1165 (Sept. 26, 2025).
[13] Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321.
[14] Gagan Tandon v. IL&FS Fin. Servs. Ltd., Company Appeal (AT) (Insolvency) No. 500 of 2025 (NCLAT, Jan. 7, 2026).
[15] ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1.

combined categories. Related-party financial creditors are excluded from CoC representation and voting.

(c) Speculative investors presented as homebuyers.

(d) Process abuse. The 2026 CIRP amendments require that a s 12A withdrawal application be filed in a defined window and be backed by a bank guarantee or demand draft for process costs. Professional conduct is a further concern: of the registered insolvency professionals, the IBBI records 15 cancellations through disciplinary action and 235 for failure of the fit-and-proper requirement. The *Bhushan Power* litigation involved an objection that the resolution professional had relied on self-declarations regarding s 29A eligibility.

5 Judicial creations: Reverse CIRP

In *Flat Buyers Association Winter Hills-77 v. Umang Realtech*, the NCLAT (4 February 2020) faced a petition by two allottees against a developer whose promoter was prepared to fund completion.[16] The Tribunal devised a 'reverse' CIRP: the process was confined to the project, the promoter was treated as an 'intended lender' who stayed outside the process, and the resolution professional supervised completion so that allottees obtained possession without a third-party takeover. Later commentary identifies the usual conditions as a firm intention, a verifiable source of funds and allottee support.

The device is contested. Critics argue that it has no statutory source, that it is promoter-driven, and that it risks circumventing s 29A. Defenders point to the 'moratorium trap' in which half-built assets deteriorate while CIRP proceeds, and to the fact that homebuyers want homes, not refunds. The Supreme Court has not invalidated the device. In *Anand Murti v. Soni Infratech* (27 April 2022) it kept the CIRP in abeyance and allowed the promoter to complete the project on undertakings, noting that only 7 of 452 homebuyers objected.[17] The decision rests on the Court's extraordinary powers and the facts before it. Reverse CIRP is, in my assessment, best understood as a case-specific exception, not a general doctrine.

6 Homebuyer jurisprudence

The 2018 amendment added an explanation to s 5(8)(f) treating amounts raised from allottees as having the commercial effect of a borrowing, making allottees financial creditors. In *Pioneer*

[16] Flat Buyers Ass'n Winter Hills-77, Gurgaon v. Umang Realtech Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 926 of 2019 (NCLAT, Feb. 4, 2020).
[17] Anand Murti v. Soni Infratech Pvt. Ltd. (Sup. Ct. India, Apr. 27, 2022).

Urban Land the Supreme Court upheld the amendment and held that the IBC and the Real Estate (Regulation and Development) Act 2016 (RERA) operate together.[18] Against rising use of s 7 by allottees, the 2020 amendment inserted a threshold: at least 100 allottees or 10 per cent of allottees in the same project, whichever is less. The Court upheld it in *Manish Kumar*.[19] The Court also intervened in the Jaypee Infratech insolvency to protect allottees' interests and approved NBCC's plan with modifications in *Jaypee Kensington*.[20]

The latest stage is *Mansi Brar Fernandes v. Shubha Sharma* (12 September 2025). The Court held that appellants whose agreements contemplated an assured buy-back return rather than possession were investors, not genuine allottees, treating possession as the test of intent; such investors cannot trigger the IBC but may pursue other remedies for their principal.[21] The Court also described the right to housing as part of Article 21, ordered vacancies at the NCLT and NCLAT to be filled, required a high-level committee on reforms, directed the IBBI to frame real-estate guidelines in consultation with RERAs, and stated that resolution should proceed project by project and not company by company.

7 Project-based CIRP

Winter Hills is the foundation of project-wise CIRP: where allottees or creditors of one project initiate CIRP, it should be confined to that project and not engulf the developer's other projects.[22] The NCLAT reaffirmed the position in *Gagan Tandon v. IL&FS Financial Services* (7 January 2026) and, applying it, confined a CIRP against Raheja Developers to the single project of the applicant homebuyers in *Navin M. Raheja v. Vipul Jain*.[23] A tribunal has also confined a Vatika CIRP to the 'Aspirations' project against which debenture financing was raised.

Two difficulties remain. First, the Code takes the corporate debtor, not the project, as the unit of insolvency; the model is therefore built from precedent and Article 142-style pragmatism rather than text. IBBI's summary of the 2026 Amendment lists 'asset-wise/part-wise resolution' among its reforms, but how far that covers project-wise resolution depends on regulations. Second, ring-fencing is only as good as accounting practice. On 30 June 2026 the IBBI issued

[18] Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416.
[19] Manish Kumar v. Union of India, (2021) 5 SCC 1.
[20] Chitra Sharma v. Union of India, (2018) 18 SCC 575; Jaypee Kensington Boulevard Apartments Welfare Ass'n v. NBCC (India) Ltd., (2022) 1 SCC 401.
[21] Mansi Brar Fernandes, supra note 3.
[22] Flat Buyers Ass'n Winter Hills-77, supra note 16.
[23] Gagan Tandon, supra note 14; Navin M. Raheja v. Vipul Jain (NCLAT Delhi, 2026).

a discussion paper proposing, among other things: project-wise assessment by the CoC of which projects need insolvency intervention; separate books and bank accounts per project; handover of completed units without prior CoC approval; an allottee-specific claim form (Form CA-R); an independent early cost-to-complete assessment; minimum plan contents; allottee and RERA representation on monitoring committees; and recorded reasons before any liquidation of a project. The paper reflects the Supreme Court's direction and, if adopted, would supply the regulatory scaffolding that the case law lacks.

8 The 2026 Amendment: a legislative response

The Insolvency and Bankruptcy Code (Amendment) Act 2026 (assent 6 April 2026) was brought into force from 26 May 2026, except for provisions on group insolvency, cross-border insolvency, the Creditor-Initiated Insolvency Resolution Process (CIIRP) and the Insolvency and Bankruptcy Fund. Its principal features are: mandatory 14-day admission (Part 3.2); a new Chapter IV-A (ss 58A-58K) providing for an out-of-court CIIRP for notified categories of debtors, to run for 150 days extendable once by 45 days, with conversion into CIRP if no plan is received, a plan is rejected, or the debtor's management does not cooperate; a restructured s 12A; continuation of the CoC into liquidation and carry-forward of verified claims; two-step approval of plans (implementation, then distribution); stronger avoidance provisions; and, in the Regulations, simplified single-valuer valuation for MSMEs. The CIIRP is the most significant innovation, but is not yet operative, and the IBBI has so far only consulted on its regulations.

9 Conclusion And Recommendations

The first decade shows a Code that preserves value (plans realize about 95 per cent of fair value and 167 per cent of liquidation value) but delivers modest recovery against claims (about 30.5 per cent), slow processes (633 days on average, against a 330-day outer limit) and a low plan-based resolution rate (about one in five closures). Judicial innovation has been indispensable in real estate but has outrun the statute. Following are some recommendations:

1. The IBBI should publish outcome data by cohort and separate plan-based resolution from settlements and withdrawals.
2. Delay should be treated as a capacity problem: the NCLT vacancies identified in *Mansi Brar* should be filled and the effect of the 14-day admission rule should be evaluated empirically.

3. Project-wise insolvency should be given express statutory or regulatory footing, with Section 29A safeguards written into any reverse-CIRP-style route.
4. Plan implementation should be monitored and reported, given the reversals recorded in the IBBI data.
5. Personal guarantor insolvency requires dedicated review, given its recoveries of about 1 per cent.

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