



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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PROJECT-WISE RESOLUTION OR JUDICIAL OVERREACH? TESTING THE STATUTORY VALIDITY OF ‘REVERSE CIRP’ IN REAL ESTATE INSOLVENCIES

~ Tanisha Chauhan

ABSTRACT

Reverse corporate insolvency resolution process (‘Reverse CIRP’) is a judicially fashioned mechanism under which the promoter of a distressed real estate corporate debtor is permitted to remain outside the committee of creditors and fund a stalled project as a lender, so that allottees obtain possession without the induction of a third-party resolution applicant. Conceived by the National Company Law Appellate Tribunal in 2020 to rescue a single housing project, the doctrine has since been invoked, qualified, and in places rejected by tribunals across the country, generating sustained uncertainty about its statutory foundation. This paper asks whether Reverse CIRP is a legitimate purposive construction of the Insolvency and Bankruptcy Code, 2016, or an unauthorised judicial reconstruction of its architecture. Using doctrinal and statutory-interpretive methods, it tests the doctrine against the provisions governing moratorium, resolution-professional control, promoter eligibility, and creditor equality, and argues that it cannot be reconciled with the Code’s textual design, that its survival depends on unanimous consent rather than statutory entitlement, and that recent legislative and regulatory movement toward codified, professional-administered project-wise resolution vindicates rather than answers the overreach critique.

INTRODUCTION

When the National Company Law Appellate Tribunal directed a promoter of a defaulting real estate company to remain outside the corporate insolvency resolution process while simultaneously financing its completion as a lender, it inaugurated a mechanism that no single provision of the Insolvency and Bankruptcy Code, 2016 (‘IBC’ or ‘the Code’) expressly

authorises.¹ The mechanism, termed ‘Reverse Corporate Insolvency Resolution Process’ or ‘Reverse CIRP’, permits the erstwhile promoter of a corporate debtor to fund completion of a stalled housing project from outside the committee of creditors, while the interim resolution professional retains nominal oversight of receipts and disbursements, and the process concludes without invitation, evaluation, or approval of a resolution plan by a third-party resolution applicant.² Where the ordinary corporate insolvency resolution process (‘CIRP’) displaces the board of directors, vests management in an independent professional, and resolves the corporate debtor’s affairs through a competitively sourced resolution plan voted upon by a committee of creditors, Reverse CIRP does substantially the opposite: it keeps the promoter in effective control of construction, permits an actor whom section 29A renders ineligible to reacquire the corporate debtor to instead fund its rescue, and dispenses with the resolution plan altogether.³

The doctrine did not emerge from a legislative committee, a Bill, or a notified regulation. It emerged, project by project, from the docket of the NCLAT and tribunals subordinate to it, confronted with a species of corporate debtor, the real estate developer, for which the Code’s asset-maximising architecture sits uneasily.⁴ Allottees are financial creditors,⁵ yet the moratorium designed to protect the corporate debtor’s estate under section 14 freezes the one outcome they actually want: possession of a completed flat.⁶ Confronted with this asymmetry, the NCLAT in *Flat Buyers Association Winter Hills-77, Gurgaon v. Umang Realtech Pvt Ltd* fashioned a bespoke remedy that has since travelled, with varying success, to the insolvencies of Supertech Limited, Antriksh Infratech, Sheltrex Developers, and a growing docket of stalled residential projects across the National Capital Region and beyond.⁷ Most recently, an NCLAT

¹ *Flat Buyers Association Winter Hills-77, Gurgaon v. Umang Realtech Pvt Ltd*, Company Appeal (AT) (Insolvency) No 926 of 2019 (NCLAT, 4 February 2020).

² *Id.*

³ *Insolvency and Bankruptcy Code 2016* (India), §§ 17, 20, 29A and 30.

⁴ Vidhi Chetnani, “Project-Wise Insolvency under the IBC: Judicial Innovation, Case Law, and Recent Amendments” (IBC Laws, 30 October 2025).

⁵ *Insolvency and Bankruptcy Code 2016* (India), § 5(8)(f), Explanation, inserted by the Insolvency and Bankruptcy Code (Amendment) Act 2018 (Act 26 of 2018), § 3, with effect from 6 June 2018.

⁶ *Insolvency and Bankruptcy Code 2016* (India), § 14; *Pioneer Urban Land and Infrastructure Ltd v. Union of India* (2019) 8 SCC 416.

⁷ See *Ram Kishor Arora (Suspended Director of Supertech Ltd) v. Union Bank of India*, Company Appeal (AT) (Insolvency) No 406 of 2022 (NCLAT, 10 June 2022); *Anand Murti v. Soni Infratech Pvt Ltd*, Civil Appeal No 7534 of 2021 (SC), noted in Cyril Amarchand Mangaldas, “The Mansi Brar Judgment - Reaffirming the Pioneer Principle and a Push Towards Crucial Reforms in Real Estate Insolvency” (India Corporate Law, 30 September

bench has declined to treat the mechanism as an entitlement at all, describing it as a discretionary arrangement available only where every stakeholder consents.⁸

This paper asks whether that migration is doctrinally sound. Its central research question is whether the judge-made doctrine of Reverse CIRP amounts to a legitimate purposive interpretation of the IBC, or whether it constitutes judicial overreach: the fashioning of a resolution mechanism unsupported by, and in material respects contrary to, the statutory framework Parliament enacted. The paper's thesis is that Reverse CIRP, however defensible as an equitable improvisation addressing genuine hardship, cannot be reconciled with the Code's foundational design. It dilutes the independence mandated for the resolution professional, permits promoters excluded by section 29A to regain functional control, dispenses with the resolution-plan machinery that Chapter II makes the exclusive route to revival, and disturbs the equality among similarly situated creditors the Code's distributional scheme presupposes. That the doctrine survives only where every stakeholder consents, a qualification the NCLAT itself has acknowledged, confirms rather than answers the overreach critique: a mechanism operating only through unanimous variation of statutory rights is, definitionally, not a rule derived from the statute at all.

The analysis proceeds in eight further parts. Part II traces the doctrine's evolution from Winter Hills through Supertech to its most recent judicial qualifications. Part III sets out the statutory provisions against which the doctrine must be tested. Part IV undertakes close doctrinal analysis of the leading decisions. Part V advances the central critique. Part VI examines the doctrine's implications for creditor equality and the related but distinct concept of project-wise resolution. Part VII considers its effect on the resolution professional's statutory role. Part VIII situates the debate within the jurisprudence of judicial restraint and purposive interpretation, with brief comparative reference to other insolvency systems. Part IX considers the case for legislative codification, including the Insolvency and Bankruptcy Code (Amendment) Act, 2026. Part X concludes.

EVOLUTION OF REVERSE CIRP

The doctrine's origin lies in a narrow and, on its facts, sympathetic dispute. Two allottees of the Winter Hills-77 project in Gurugram had invoked section 7 of the Code against Umang

2025) n.26; *N Kumar (Resolution Professional) v. Tata Capital Housing Finance Ltd* (2022) ibclaw.in 329 NCLT.

⁸ "NCLAT Delhi: Reverse CIRP Not a Statutory Right; Upholds Insolvency Proceedings Against Supertech Realtors" (24law.in, 14 August 2025).

Realtech Private Limited; the National Company Law Tribunal admitted the application and appointed an interim resolution professional.⁹ The Flat Buyers Association then appealed, not because it opposed the CIRP as such, but because it opposed a third-party resolution applicant's plan displacing a project that was, on its own case, substantially complete.¹⁰ One of the corporate debtor's promoters, Uppal Housing Private Limited, offered to remain outside the CIRP while injecting funds as a financial creditor, effectively as a lender, enabling the interim resolution professional to complete construction and hand over possession.¹¹ A financial institution agreed to cooperate on condition that it would recover a share of amounts paid by allottees at registration.¹² The NCLAT accepted this arrangement, directed a time-bound schedule for completion, and held, as a related proposition, that a CIRP against a real estate company in respect of one project should be confined to that project's asset pool and should not engulf the developer's other, unrelated projects.¹³ The Tribunal drew on the Supreme Court's characterisation of the Code as an economic experiment deserving of judicial restraint, and reasoned by analogy that an equally experimental, project-tailored solution was permissible for real estate insolvencies.¹⁴

The order was carried in appeal to the Supreme Court, which declined to interfere.¹⁵ That refusal has since been characterised, not always accurately, as Supreme Court affirmance of Reverse CIRP; in fact the Court's order recorded only that it found no ground to disturb the NCLAT's directions, without engaging the doctrine's statutory basis. The distinction matters, because an order declining special leave to appeal, unaccompanied by reasons on the merits, does not carry the precedential weight of a considered judgment, and the Supreme Court has itself repeatedly cautioned that dismissal of a special leave petition in limine does not amount to affirmation of the reasoning below.¹⁶ The doctrine thus entered Indian insolvency practice

⁹ Winter Hills supra note 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*; *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta* (2020) 8 SCC 531.

¹⁵ *Narendra Singh v. Umang Realtech Pvt Ltd*, Civil Appeal No 2942 of 2020 (SC), noted in Cyril Amarchand Mangaldas supra note 7, n.26.

¹⁶ *Cf. Kunhayammed v. State of Kerala* (2000) 6 SCC 359 (dismissal of a special leave petition without reasons does not, without more, amount to affirmance of the reasoning of the order appealed against).

with an unusually thin claim to authority: a single NCLAT order, applied to a company that had, by the time of the order, already substantially finished construction.

The doctrine's second major elaboration arose in the insolvency of Supertech Limited, a developer with some twenty concurrent projects across the National Capital Region, only one of which, Eco Village II, was linked to the debt on which the Union Bank of India had triggered section 7.¹⁷ The suspended director sought a wholesale application of Winter Hills, but the NCLAT's interim order was considerably narrower: it directed constitution of a committee of creditors only for Eco Village II, while permitting the corporate debtor's other projects to continue under the interim resolution professional's supervision, assisted by the erstwhile management.¹⁸ On appeal by dissenting financial creditors, the Supreme Court substantially upheld this project-wise segregation, reasoning that constituting a single committee across all twenty projects would cause serious hardship to homebuyers unrelated to the specific default.¹⁹ Yet even here, the Court confined its intervention to what it termed project-wise resolution, a description it preferred to the more radical Reverse CIRP nomenclature, cautioning that no process beyond voting on a plan for Eco Village II should proceed without further orders.²⁰

Subsequent NCLAT practice has continued to qualify the doctrine rather than extend it. In proceedings connected to the original Winter Hills matter, the Appellate Tribunal observed in 2023 that the mechanism operates as an exception to the ordinary process, applied only after careful, fact-specific consideration, language that concedes its exceptional, non-generalisable character.²¹ The Supreme Court has since permitted comparable arrangements in at least two further matters, again without engaging the underlying statutory question.²² Meanwhile, benches of the NCLT have declined to follow the doctrine altogether. In one Chennai Bench decision, the Tribunal refused an application to constitute a project-based committee of creditors on the Winter Hills model, holding that a plain reading of the Code and the CIRP Regulations discloses no concept of a CIRP confined to a specific project, and that the Winter

¹⁷ *Ram Kishor Arora* supra note 7.

¹⁸ *Id.*

¹⁹ *Indiabulls Asset Reconstruction Co Ltd v. Ram Kishore Arora*, 2023 SCC OnLine SC 612 (order dated 11 May 2023).

²⁰ *Id.*

²¹ *Vijay Kumar Pasricha v. Manish Kumar Gupta*, Company Appeal (AT) (Ins) No 926 of 2019, order dated 24 March 2023 (NCLAT), noted in Cyril Amarchand Mangaldas supra note 7, n.26.

²² *Narendra Singh* supra note 15; *Anand Murti* supra note 7.

Hills mechanism was too peculiar to its facts to found a general precedent.²³ The Supertech insolvency, notwithstanding the Supreme Court's 2023 endorsement of project-wise segregation, has continued to generate fresh litigation, including a dispute over assigning construction work to a public-sector contractor without following Code-prescribed procedure, which reached the Supreme Court again in 2025.²⁴ Most recently, the NCLAT has declined to treat Reverse CIRP as an entitlement at all, holding in the Supertech Realtors matter that it is a discretionary mechanism available only where stakeholders unanimously consent.²⁵ The doctrine has travelled from an innovative equitable remedy to an acknowledged exception whose exceptionality is now judicial orthodoxy, a trajectory that itself supports the overreach critique developed in Part V.

STATUTORY FRAMEWORK UNDER THE IBC

The Code's architecture for corporate insolvency resolution is not a residual arrangement from which tribunals may depart upon a showing of hardship; it is close to exhaustive. Section 6 identifies who may initiate a CIRP and section 7 governs initiation by a financial creditor, including, since 2018, allottees under a real estate project, who are financial creditors by virtue of the Explanation to section 5(8)(f).²⁶ Following the 2019 Amendment Ordinance, an application by allottees must be filed jointly by not fewer than one hundred allottees of the same project, or ten per cent of the total allottees, whichever is lower, a threshold the Supreme Court upheld as a permissible safeguard against strategic filings.²⁷ Once an application is admitted, section 13 requires the Adjudicating Authority to declare a moratorium and appoint an interim resolution professional; section 14 prohibits, among other things, the transfer of the corporate debtor's assets and the continuation of suits against it, for the duration of the CIRP.²⁸

Sections 17 and 18 are the pivot on which the present critique principally turns. Section 17(1)(a) provides, without qualification, that from the date of appointment of the interim

²³ *N Kumar (Resolution Professional) v. Tata Capital Housing Finance Ltd* (2022) ibclaw.in 329 NCLT.

²⁴ "SC Stays NCLAT Order Directing NBCC to Take Over Supertech Projects" (M&A Critique, 22 February 2025).

²⁵ "NCLAT Delhi: Reverse CIRP Not a Statutory Right" supra note 8.

²⁶ *Insolvency and Bankruptcy Code 2016* (India), §§ 6-7; *Insolvency and Bankruptcy Code (Amendment) Act 2018* (Act 26 of 2018).

²⁷ *Insolvency and Bankruptcy Code 2016* (India), § 7(1), proviso, inserted by the *Insolvency and Bankruptcy Code (Amendment) Ordinance 2019* with effect from 28 December 2019 and continued by the *Insolvency and Bankruptcy Code (Amendment) Act 2020* (Act 1 of 2020); *Manish Kumar v. Union of India* (2021) 5 SCC 1.

²⁸ *Insolvency and Bankruptcy Code 2016* (India), §§ 13-14.

resolution professional, the management of the corporate debtor's affairs vests in that professional, and section 17(1)(b) correspondingly suspends the powers of the board of directors.²⁹ Section 18 obliges the interim resolution professional to collect and verify claims, constitute the committee of creditors, and take control and custody of the corporate debtor's assets; section 20 requires management of operations as a going concern, empowering the professional, and not the erstwhile promoter, to raise interim finance, enter into contracts, and direct personnel; and section 25 imposes an equivalent, non-derogable duty on the resolution professional once appointed.³⁰ Nowhere in this sequence does the Code contemplate a corporate debtor whose promoter, rather than the resolution professional, directs and finances construction, subject only to the professional's counter-signature on cheques.

Section 21 requires the interim resolution professional to constitute a committee of creditors comprising all financial creditors, and sections 28 to 30 prescribe the actions requiring the committee's prior approval, preparation of an information memorandum, and invitation and submission of resolution plans. Section 29A, inserted with retrospective effect from 23 November 2017, renders a wide category of persons, including promoters and persons connected with them, ineligible to submit a resolution plan, principally where the corporate debtor's account has been classified as a non-performing asset for a defined period.³¹ The Supreme Court in *Arcelor Mittal India Pvt Ltd v. Satish Kumar Gupta* explained that section 29A responds to the risk of erstwhile promoters, whose conduct precipitated the very insolvency from which they sought to profit, re-entering through indirect means, and directed a purposive construction of its disqualifying heads so as to defeat evasive structuring.³² Section 30 confines the universe of permissible outcomes for a CIRP to a resolution plan approved by not less than sixty-six per cent of the voting share of the committee of creditors and sanctioned under section 31; absent such a plan within the period fixed by section 12, section 33 mandates liquidation. The Code thus contemplates exactly two termini for an admitted CIRP: a committee-approved resolution plan, or liquidation, not a third route in which the corporate debtor is quietly restored to its promoter's operational control, financed by that promoter as an ostensible lender, without ever being tested through the resolution-plan process.

²⁹ *Insolvency and Bankruptcy Code 2016* (India), § 17(1)(a)-(b).

³⁰ *Insolvency and Bankruptcy Code 2016* (India), §§ 18, 20, 25.

³¹ *Insolvency and Bankruptcy Code 2016* (India), § 29A, inserted by the Insolvency and Bankruptcy Code (Amendment) Act 2018 (Act 8 of 2018), with retrospective effect from 23 November 2017.

³² *Arcelor Mittal India Pvt Ltd v. Satish Kumar Gupta* (2019) 2 SCC 1.

The Real Estate (Regulation and Development) Act, 2016 supplies the sectoral backdrop against which real estate insolvencies arise, principally through its project-wise registration regime and escrow requirements, which mandate that a substantial share of amounts realised from allottees be deposited in a separate account used only for that project's construction and land costs.³³ RERA's project-centred design is frequently invoked to justify project-wise treatment under the Code, but RERA neither purports to displace the IBC's insolvency machinery nor supplies an alternative resolution procedure; its escrow architecture explains why project segregation may be commercially sensible, but cannot, without more, authorise tribunals to read a project-wise or promoter-retained mechanism into a Code that nowhere provides for one.

JUDICIAL CONSTRUCTION OF REVERSE CIRP

The judicial reasoning underlying Reverse CIRP rests on three connected propositions, each traceable to Winter Hills. The first is that the ordinary asset-maximisation logic of CIRP is unsuited to a real estate corporate debtor, because the constructed flat cannot practically be liquidated or distributed to secured financial institutions as Chapter III contemplates: banks are typically unwilling to accept flats in lieu of money, and allottees, despite ranking as unsecured financial creditors, expect the specific asset rather than a monetary recovery.³⁴ The second is that allottees, dispersed and lacking the commercial sophistication of institutional lenders, are poorly placed to evaluate a competing resolution applicant's plan, such that the ordinary section 30 process may not serve their interests better than a negotiated, promoter-funded completion.³⁵ The third is that the Code's overriding object, captured in its preamble as maximisation of value balanced against stakeholder interests, authorises departure from specific provisions where a more tailored mechanism serves that object more efficiently.³⁶

Each proposition has intuitive force but does not survive close statutory scrutiny. The first describes a genuine structural difficulty, but a structural difficulty is an argument for legislative amendment, not for tribunals substituting an unwritten mechanism of their own design. The Supreme Court's own jurisprudence draws this distinction sharply: in *Swiss Ribbons Pvt Ltd v. Union of India*, the Court upheld the constitutional validity of the Code's distinctions between financial and operational creditors precisely because those distinctions were

³³ Real Estate (Regulation and Development) Act 2016, §§ 3, 4(2)(l)(D).

³⁴ Winter Hills *supra* note 1.

³⁵ *Id.*

³⁶ *Insolvency and Bankruptcy Code 2016* (India), preamble.

legislative judgments entitled to a strong presumption of constitutionality, reviewable only on recognised grounds, and not judicially recalibrated on a tribunal's own assessment of fairness.³⁷ If a legislative classification commands that degree of deference, a fortiori a legislative silence cannot be filled by tribunal-created machinery merely because the tribunal considers the result more equitable.

The second proposition proves too much. The Code addresses exactly this concern through section 25A, which provides for allottees to vote through an authorised representative owing them fiduciary and disclosure obligations, and it is that representative mechanism, not the wholesale removal of the resolution-plan process, that Parliament designed to compensate for any deficit in individual allottees' commercial expertise.³⁸ Where the NCLAT in *Winter Hills* reasoned that allottees lack the expertise to assess a resolution plan, it identified a real practical concern for which the Code already supplied an answer; instead of directing robust use of the authorised-representative mechanism, it dispensed with the resolution-plan process altogether, a solution considerably more drastic than the problem required.

The third proposition confuses purposive interpretation with purposive override. Purposive interpretation permits a court, faced with genuine textual ambiguity, to prefer the construction that best advances the statute's evident object; it does not permit a court to disregard unambiguous, mandatory language merely because an alternative arrangement might advance that object more efficiently in a particular case.³⁹ Section 17(1)(a)'s command that management vests in the resolution professional is not ambiguous. Section 29A's disqualification of promoters connected with default is not ambiguous. Section 30's confinement of CIRP outcomes to an approved resolution plan is not ambiguous. Where a tribunal invokes a statute's preambular objects to override, rather than construe, its unambiguous operative provisions, the exercise ceases to be interpretation and edges toward legislation by another name, a line the Supreme Court has itself drawn when confining the scope of adjudicatory intervention in the commercial core of the resolution process.⁴⁰

³⁷ *Swiss Ribbons Pvt Ltd v. Union of India* (2019) 4 SCC 17.

³⁸ Insolvency and Bankruptcy Code 2016, § 25A, inserted by the Insolvency and Bankruptcy Code (Amendment) Act 2018 (Act 26 of 2018).

³⁹ *cf. Reserve Bank of India v. Peerless General Finance and Investment Co Ltd* (1987) 1 SCC 424 (a statute must be read as a whole, its provisions construed to give effect to its evident purpose, but a court may not, on that account, disregard language that is otherwise clear).

⁴⁰ *K Sashidhar v. Indian Overseas Bank* (2019) 12 SCC 150.

DOCTRINAL CRITIQUE

Assembled together, the difficulties canvassed above amount to a cumulative departure from the Code's design. First, Reverse CIRP dilutes the mandatory, non-derogable vesting of management in the resolution professional under sections 17 and 20. Although the interim resolution professional retains a nominal counter-signing role in the Winter Hills template, functional control, sourcing finance, directing construction, negotiating with contractors, reverts to the promoter, precisely the actor sections 17 and 20 were drafted to displace.⁴¹ Second, the doctrine permits promoters whom section 29A renders ineligible to achieve, through the back door of a lender designation, the very re-acquisition of control that section 29A's disqualifying heads were designed to foreclose. The Supreme Court's insistence in *Arcelor Mittal* that section 29A be construed to defeat evasive structuring sits uneasily with a doctrine that achieves an economically equivalent outcome, promoter retention of the insolvent enterprise, by relabelling the promoter's contribution as a loan rather than a resolution plan.⁴² Third, the doctrine bypasses the statutory CIRP in the most literal sense: no resolution plan is ever invited, evaluated, or voted upon, notwithstanding that sections 29 to 31 make it the exclusive statutory route to revival short of liquidation. Fourth, as developed in Part VI, the doctrine's project-wise variant disturbs the equality of similarly situated creditors, both within the ring-fenced project and across the developer's other projects and general creditors. Fifth, and most fundamentally, the doctrine creates a species of insolvency proceeding, confined to a single asset pool, terminating without a resolution plan, and reversible upon the promoter's default, that Parliament has nowhere authorised, and that differs so markedly from the CIRP Parliament enacted that its provenance in judicial rather than legislative choice can no longer fairly be described as interpretive.

It is important, in fairness to the NCLAT, to recognise what the doctrine is not. It is not judicial legislation in the sense of creating rights enforceable against unwilling parties; every reported instance of a successful Reverse CIRP has depended on the consent of the committee of creditors, the promoter, and, functionally, the allottees.⁴³ Consent-based deviation from a statutory scheme is a familiar feature of insolvency practice, most visibly in the Code's own provision for withdrawal of an admitted application under section 12A upon ninety per cent

⁴¹ Winter Hills *supra* note 1.

⁴² *Arcelor Mittal* *supra* note 32.

⁴³ Ram Kishor Arora *supra* note 7; "NCLAT Delhi: Reverse CIRP Not a Statutory Right" *supra* note 8.

committee approval.⁴⁴ The difficulty is that section 12A withdraws the corporate debtor from CIRP altogether, restoring the pre-admission status quo; Reverse CIRP does something the Code does not authorise even by analogy, keeping the corporate debtor within CIRP, sheltered by the moratorium, while excusing it from the resolution-plan discipline that CIRP membership otherwise entails, an attempt to enjoy the shelter of section 14 without the burden of section 30 for which no committee of creditors, however unanimous, possesses the power to contract, since the moratorium's scope and the resolution plan's mandatory character are matters of statutory, not contractual, entitlement.⁴⁵

CREDITOR EQUALITY AND PROJECT-WISE RESOLUTION

'Reverse CIRP' and 'project-wise resolution' are frequently conflated, including in the Supreme Court's own treatment of Supertech, but they raise distinct doctrinal difficulties and deserve to be disaggregated.⁴⁶ Project-wise resolution, confining the CIRP's asset pool, claims process, and committee of creditors to a single project of a multi-project developer, responds to a genuine risk that a default linked to one project should not freeze the completed or substantially completed units of allottees in unrelated projects who had no dealings with the defaulting project's lenders.⁴⁷ Reverse CIRP goes further: it removes the promoter from the disqualified category and restores functional control, a step project-wise resolution does not itself require. A CIRP can, in principle, be confined to one project while still being conducted by an independent resolution professional through a conventional resolution plan; the Supertech order itself contemplated exactly this for Eco Village II, directing constitution of a committee of creditors for that project rather than reinstating the promoter.⁴⁸

Even project-wise resolution, however, sits uneasily with the equality among financial creditors that underlies the Code's distributional scheme. Section 21 constitutes a single committee of creditors for the corporate debtor, not one per project; section 53's waterfall operates upon the liquidation or resolution proceeds of the corporate debtor as a single legal person.⁴⁹ Ring-fencing one project's claims and assets from the corporate debtor's other

⁴⁴ Insolvency and Bankruptcy Code 2016, § 12A, inserted by the Insolvency and Bankruptcy Code (Amendment) Act 2018 (Act 26 of 2018).

⁴⁵ Insolvency and Bankruptcy Code 2016, §§ 14, 30.

⁴⁶ *Indiabulls Asset Reconstruction Co Ltd v. Ram Kishore Arora* supra note 19.

⁴⁷ *Ram Kishor Arora* supra note 7.

⁴⁸ *Id.*

⁴⁹ Insolvency and Bankruptcy Code 2016, §§ 21, 53.

projects necessarily means that a financial institution which extended credit against the consolidated balance sheet, rather than a specific charged project, may find its claim effectively subordinated to allottees in a project it never financed, simply because the tribunal has drawn the CIRP's boundary around that project alone. Creditors in the later Supertech litigation made precisely this argument, contending that diverting surplus funds from a solvent project to a deficit one does violence to the priority secured creditors are entitled to under section 53.⁵⁰ Project-wise resolution thus trades one equality problem for another: treating a multi-project developer's entire enterprise as a single undifferentiated estate to the detriment of allottees in healthy projects, or treating each project as juridically separate from the debtor that in fact owns and is liable for all of them, to the detriment of general creditors. The first departure is one Parliament chose; the second is one tribunals have chosen for it. The Supreme Court's own 2025 intervention in *Mansi Brar Fernandes v. Shubha Sharma*, though directed principally at distinguishing genuine allottees from speculative investors, nonetheless illustrates the same underlying anxiety: that a mechanism built around the sympathetic figure of the homebuyer can be exploited by claimants whose real interest lies in an assured return rather than possession of a dwelling, underscoring the case for a legislatively calibrated rather than tribunal-improvised test for admission and relief.⁵¹

ROLE OF THE RESOLUTION PROFESSIONAL

The Code conceives the resolution professional as an independent fiduciary answerable to the committee of creditors and the Adjudicating Authority, not as an agent of the corporate debtor's erstwhile promoters.⁵² Reverse CIRP inverts this relationship without formally altering it: the resolution professional remains nominally in office, continues to countersign cheques and file compliance reports, but the substantive decisions that define management under section 17, which contractors to engage, which units to prioritise, how to sequence construction finance, migrate to the promoter acting in the guise of an external lender. The professional's role contracts from management to a species of escrow administration, a function the Code nowhere assigns to a resolution professional and one considerably narrower than the custodial and going-concern duties sections 18, 20, and 25 impose.

This matters beyond the individual case, because the resolution professional's independence is the structural premise on which the Code's entire creditor-in-control philosophy rests. The

⁵⁰ "SC Stays NCLAT Order Directing NBCC to Take Over Supertech Projects" *supra* note 24.

⁵¹ *Mansi Brar Fernandes v. Shubha Sharma*, 2025 INSC 1110 (SC, 12 September 2025).

⁵² Insolvency and Bankruptcy Code 2016, §§ 17, 18, 20, 25.

Bankruptcy Law Reforms Committee, whose 2015 report supplied the Code's original design rationale, deliberately departed from a debtor-in-possession model of the kind found in the United States, reasoning that Indian promoters' historical control over distressed enterprises had itself been a principal cause of value destruction under the pre-2016 regime.⁵³ A resolution mechanism that restores functional, if informal, promoter control, even with creditor consent, reintroduces precisely the incentive structure the Committee considered Indian insolvency law needed to leave behind. The point is not that promoters are inevitably self-interested; it is that the Code deliberately chose not to rely on a case-by-case judicial assessment of good faith, opting instead for the categorical exclusion codified in section 29A. Reverse CIRP substitutes exactly the case-by-case, discretionary trust the Code's drafters declined to extend.⁵⁴

JUDICIAL INNOVATION VERSUS JUDICIAL LEGISLATION

Locating the line between legitimate judicial innovation and judicial legislation requires attention to the specific interpretive act performed, not merely to the innovation's motivation or outcome. Purposive interpretation, properly understood, operates upon a text: it selects, among genuinely available readings of an ambiguous provision, the reading that best serves the enactment's discernible purpose.⁵⁵ Judicial legislation, by contrast, arises where a tribunal, faced with unambiguous statutory silence or command, supplies an entirely new mechanism unrelated to any available reading of the existing text, on the ground that it better serves the statute's general objects. The distinction tracks the separation-of-powers concern the Supreme Court has repeatedly voiced in the insolvency context: that the commercial wisdom of the committee of creditors is non-justiciable precisely because Parliament allocated that judgment to creditors and not to courts, and that tribunals exercising jurisdiction under section 60 possess no inherent power to rewrite the resolution outcomes the Code specifically assigns to that commercial process.⁵⁶

Reverse CIRP does not select among available readings of an ambiguous IBC provision. No provision speaks, even elliptically, to a promoter's re-entry as an external lender in lieu of a resolution plan; sections 17, 20, 29A, and 30 are, as demonstrated in Part III, unambiguous on the points the doctrine displaces. The NCLAT's own reliance on the Essar Steel

⁵³ Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design (Ministry of Finance, November 2015).

⁵⁴ Insolvency and Bankruptcy Code 2016, § 29A.

⁵⁵ *cf.* Peerless General Finance *supra* note 39.

⁵⁶ K Sashidhar *supra* note 40; Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta (2020) 8 SCC 531.

characterisation of the Code as an economic experiment is instructive: that characterisation concerned deference to Parliament's own experimental choices, counselling judicial restraint in second-guessing them, not licence to conduct experiments of a tribunal's own.⁵⁷ Reading it to authorise Reverse CIRP inverts the very restraint it was written to instil.

None of this denies that the NCLAT confronted a genuine lacuna. Real estate insolvency presents structural difficulties the 2016 Code, drafted with an industrial and financial-sector corporate debtor primarily in mind, did not anticipate. But a lacuna is an argument for Parliament to legislate, or the IBBI to regulate within its delegated authority, not for tribunals to legislate in Parliament's place. The Supreme Court's own subsequent preference for project-wise resolution over Reverse CIRP, together with the NCLAT's later description of the mechanism as an exception rather than a general doctrine, suggests that appellate courts have grown uneasy with the doctrine's original, more expansive articulation, retreating toward a narrower, consent-contingent practice that lacks the generality a genuine rule of law requires.⁵⁸

A brief comparative glance confirms how anomalous the Indian position is. Under Chapter 11 of the United States Bankruptcy Code, debtor-in-possession financing and continued management by incumbent officers are express statutory features, subject to detailed conditions Congress itself enacted.⁵⁹ The United Kingdom's administration regime under Schedule B1 to the Insolvency Act 1986 likewise specifies, in the statute itself, the circumstances in which pre-packaged sales to connected parties, the closest analogue to a promoter-funded rescue, may proceed.⁶⁰ Singapore and Australia legislate similarly for judicial management and voluntary administration respectively, preserving, by statute, a defined role for existing management under external supervision.⁶¹ ⁶² What unites these systems is that wherever incumbent management displaces the ordinary creditor-controlled process, the displacement is the legislature's own design choice, not a tribunal's ad hoc substitute. India's Parliament made the opposite choice in 2016, creditor control through an independent professional, promoter

⁵⁷ Essar Steel *supra* note 56; Winter Hills *supra* note 1.

⁵⁸ Ram Kishor Arora *supra* note 7; Vijay Kumar Pasricha *supra* note 21.

⁵⁹ Title 11, United States Code, §§ 1107-1108 (Chapter 11, debtor in possession).

⁶⁰ Insolvency Act 1986, sch B1; Association of Business Recovery Professionals, Statement of Insolvency Practice 16 (pre-packaged sales in administration).

⁶¹ Insolvency, Restructuring and Dissolution Act 2018 (Singapore), Part 7 (judicial management).

⁶² Corporations Act 2001 (Cth), Part 5.3A (voluntary administration).

exclusion through section 29A, and it is that choice, not an oversight, that Reverse CIRP unsettles.

NEED FOR LEGISLATIVE CLARIFICATION

The most persuasive evidence that Reverse CIRP exceeds interpretive bounds is the direction of subsequent policy. Rather than endorsing the doctrine as declaratory of existing law, the Ministry of Corporate Affairs and the IBBI have each moved toward express codification of a narrower, project-wise, and notably not promoter-control, alternative. The Ministry's discussion paper of January 2023 proposed introducing project-wise CIRP as a statutory mechanism, while conspicuously declining to propose any statutory equivalent for Reverse CIRP itself.⁶³ The IBBI's insertion of regulation 4E into the CIRP Regulations in February 2025 empowered the resolution professional, with committee approval by not less than sixty-six per cent voting share, to hand over possession of completed units to allottees during the pendency of CIRP, a targeted response to the hardship that first prompted Winter Hills, achieved without displacing the professional's control or dispensing with the resolution plan.⁶⁴

More significant still is the legislative and regulatory activity of 2025 and 2026, which postdates every reported judicial articulation of Reverse CIRP: having identified a genuine gap, the appropriate institutional response has been legislative, not judicial. The Supreme Court's decision in *Mansi Brar Fernandes*, delivered on 12 September 2025, directed the IBBI, in consultation with the Real Estate Regulatory Authorities, to frame sector-specific guidelines for real estate insolvency, including timelines for project-wise resolution and safeguards for allottees, an explicit acknowledgment that the task belongs to a rule-making body operating under delegated legislative authority, not to case-by-case tribunal improvisation.⁶⁵ The IBBI accordingly constituted a committee which examined fifty-five issues and, in its report of April 2026, made one hundred and fifty-five recommendations shifting the framework's orientation from company-wide recovery toward project-centric, completion-driven resolution coordinated with RERA, rather than achieved by displacing the resolution professional.⁶⁶

⁶³ Ministry of Corporate Affairs, Proposed Amendments to the Insolvency and Bankruptcy Code, 2016 for Stressed Real Estate Companies (Discussion Paper, 18 January 2023), discussed in Cyril Amarchand Mangaldas, "Proposed Amendments to the Insolvency and Bankruptcy Code - A Real Solution for Real Estate Insolvencies?" (India Corporate Law, 21 June 2023).

⁶⁴ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations 2025, reg 4E, notified 3 February 2025.

⁶⁵ *Mansi Brar Fernandes* supra note 51.

⁶⁶ Insolvency and Bankruptcy Board of India, Report of the Committee on Framing Guidelines for Insolvency Proceedings in Real Estate Sector (April 2026).

Parliament enacted the Insolvency and Bankruptcy Code (Amendment) Act, 2026, assented to on 6 April 2026, which, among its clauses reforming admission timelines, avoidance transactions, and group and cross-border insolvency, is reported to have codified aspects of project-wise resolution and possession during CIRP, among the clearest evidence that Parliament regards the underlying problem as one requiring statutory text, not judicial supplementation.⁶⁷ The IBBI's subsequent 2026 discussion paper proposed formal mechanisms for excluding individual projects from a CIRP, ring-fencing project-specific funds, and disclosing allottee preferences as between possession, registration, and refund.⁶⁸ None of this activity has proposed to codify Reverse CIRP's promoter-retention feature; the direction of travel has been toward professional-administered, project-segregated resolution, precisely the narrower alternative this paper's critique identifies as the statutorily defensible core of what the NCLAT was reaching for in Winter Hills.⁶⁹

This trajectory vindicates, rather than answers, the overreach critique. If Reverse CIRP were a legitimate purposive construction of existing statutory text, one would expect the legislature and the regulator to leave it undisturbed, or at most to fine-tune its procedural detail. Instead, the institutions vested with primary law-making authority over insolvency have treated the underlying problem as an occasion for fresh statutory and regulatory design, and have, notably, declined to adopt the doctrine's most controversial feature: the promoter's return to functional control. That declination is itself a form of legislative and regulatory judgment arrived at through the deliberative, consultative process, Select Committee scrutiny, IBBI stakeholder consultation, and sector-specific evidence-gathering, that the Code's own amendment mechanism contemplates, and that no NCLAT bench, however well-intentioned, can replicate through adjudication of an individual appeal.⁷⁰ Until Parliament or the IBBI expressly authorises a promoter-retained completion mechanism, tribunals confronting future real estate insolvencies would do well to confine themselves to the narrower, statutorily grounded tools now available, project-wise claims segregation conducted by an independent resolution professional and regulation 4E possession handovers, and to resist further extension of Reverse

⁶⁷ Insolvency and Bankruptcy Code (Amendment) Act 2026 (Act 6 of 2026), assented to 6 April 2026; Sachit Mathur, "Litigation Trends in Real Estate: Insolvency and Dispute Resolution" (Bar and Bench, 4 May 2026).

⁶⁸ Insolvency and Bankruptcy Board of India, Discussion Paper on Reforms in Real Estate Corporate Insolvency Resolution Process (2026), reported in "IBBI Proposes Real Estate CIRP Reforms for Stronger Protection for Homebuyers" (Taxguru, 5 July 2026).

⁶⁹ Report of the Committee on Framing Guidelines for Insolvency Proceedings in Real Estate Sector *supra* note 66.

⁷⁰ Insolvency and Bankruptcy Code (Amendment) Act 2026 *supra* note 67.

CIRP's promoter-control feature, however sympathetic the facts of the individual project before them.

CONCLUSION

Reverse CIRP answers a real and pressing problem with an instrument the Code does not supply. The doctrine's origins in *Winter Hills* reflect an understandable judicial impulse: confronted with a substantially complete housing project, allottees uninterested in a third-party resolution applicant, and a promoter willing to fund completion, the NCLAT reached for the tool that would get flat purchasers into their homes fastest. But the tool it fashioned, promoter re-entry disguised as external lending, resolution-plan discipline dispensed with by consent, a single project's assets and creditors ring-fenced from the corporate debtor's remaining estate, cannot be derived from sections 14, 17, 18, 20, 25, 29A, or 30 by any recognised technique of statutory construction. It dilutes the resolution professional's mandatory control, permits a category of person Parliament expressly excluded from resolution plans to achieve an economically equivalent outcome by another name, and substitutes ad hoc, consent-dependent practice for the general rules a statute is supposed to provide.

The doctrine's own subsequent evolution supplies the strongest evidence for this conclusion. Appellate courts have progressively narrowed its claimed generality, describing it as an exception rather than a rule; a bench of the NCLT has declined to follow it altogether; and the institutions actually vested with law-making authority over insolvency, Parliament, through the 2026 Amendment Act, and the IBBI, through regulation 4E and its 2026 proposals, have moved to codify a narrower, professional-administered alternative that conspicuously omits the doctrine's promoter-control feature. That is not the trajectory of a purposive interpretation settling into confirmed law; it is the trajectory of a judicial improvisation being quietly superseded by the deliberative processes that primary law-making over insolvency requires. Reverse CIRP, in its original and most consequential form, should accordingly be treated as a closed chapter of Indian insolvency jurisprudence: instructive for having identified a genuine gap in the Code's design, but not a precedent to be extended, and not, in the final analysis, a legitimate exercise of the interpretive function courts are constitutionally assigned to perform.