

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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FROM JUDICIAL CRAFT TO LEGISLATIVE RECOGNITION: THE TRAJECTORY OF PROJECT- WISE CIRP IN INDIA

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INTRODUCTION

The real estate sector in India has a standalone share of around 7.3% of the GDP and is expected to reach 15% by 2030¹. It accounts for nearly 55 million jobs and is the second largest employer after agriculture². From the perspective of homebuyers, investing in real estate is often the culmination of a lifetime of savings and not a mere sectoral investment. However, the sector is characterized by fragmented land holdings, regulatory divergence across jurisdictions and a debt-intensive project financing model, leading to a marked increase in insolvency proceedings since the enactment of the IBC in 2016. By December 2024, nearly 22% of all CIRP admissions were from the real estate developers³. The sector finds itself at the nexus of economic significance and systemic fragility, where the collapse of a single project threatens macroeconomic factors, devastates individual home buyers and challenge the efficacy of existing insolvency frameworks.

Rationale behind Project Wise CIRP

Real estate development projects often operate as conglomerates of separate discrete projects, each with its own financial structures, contractual obligations and pool of allottees, a stark deviation from companies dealing in manufacturing or services. This project-specific architecture of real estate companies has triggered a doctrinal conflict in India: whether the insolvency of a real estate corporate debtor should entail the insolvency of the entire company, which has multiple solvent projects under its umbrella, or whether the resolution should be restricted to the specific defaulting project. While the former leads to significant value destruction and increases the affected pool of stakeholders, the latter option comes with unprecedented legal and regulatory hurdles. Through a pragmatic and innovative interpretation

¹ Cushman and Wakefield Report on Indian Real Estate 2030
[<https://www.cushmanwakefield.com/en/india/insights/indian-real-estate-2030>]

² <https://mchi.net/how-the-indian-real-estate-sector-powers-employment-and-touches-millions-of-lives/>

³ <https://www.mondaq.com/india/real-estate/1590472/cirp-amendment-regulations-2025-streamlining-resolution-processes-and-protecting-homebuyer-interests>

of the IBC, 2016, the NCLT pioneered a solution to this doctrinal conflict through the introduction of ‘asset specific CIRP’ which fulfilled the aim of asset maximization, homebuyer protection and revival.

This paper aims to explore the evolution, challenges and statutory recognition of project wise CIRP by analyzing precedent, development and policy consultation.

JUDICIAL DEVELOPMENTS

The IBC is highly comprehensive in its treatment of corporate insolvency; however, it does not have any express statutory provision for asset wise resolution in sectors like real estate. This regulatory lacuna compelled the NCLT to creatively interpret the Code, leading to the evolution of project wise CIRP. This section shall examine each landmark judgement that crystallized this framework, examining the judicial reasoning and subsequent regulatory amendments that collectively legitimized this innovation within the broader structure of India’s insolvency regime.

Hindustan Photo Films Manufacturing Co.

The case *Hindustan Photo Films Manufacturing Co*⁴ served as a precursor to the project wise CIRP, where a public sector undertaking had remained in financial distress for over 3 decades. The CoC in consultation with the Resolution Professional instead opted to pursue a resolution at the asset level. The NCLT permitted the demerger of viable assets from the rest of the corporate debtor, and allowed independent resolution of only the ‘sick’ units.

This solution enabled asset value maximization without triggering the death of the corporate entity, enabling successful revival and resolution. While not related to the real estate sector, this was the first case that signaled judicial openness to asset level segregation, and the prioritization of revival over rigid application of statute.

Flat Buyers Association v. Umang Realtech Pvt. Ltd⁵

This was the first case where the NCLAT made the landmark departure from whole entity CIRP

⁴ CA M. Suresh Kumar, Resolution Professional of Hindustan Photo Films Mfg. Co. Ltd., IA (IBC) No. 99 of 2023 in TCP No. 1 of 2021, NCLT Chennai

⁵ Flat Buyers Association Winter Hills -77 Gurgaon vs. Umang Realtech Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 926 of 2019, NCLAT New Delhi

to recognizing the need for and allowing the execution of project wise CIRP for a real estate company with multiple parallel housing projects. The case arose from a Section 7 IBC petition filed by the allottees of Winter Hills 77 project, seeking insolvency proceedings for delay in possession. Instead of admitting CIRP against the whole company, the Tribunal restricted the process within the Winter Hills 77 project only.

The tribunal recognized how each project has a separate set of land, approvals, financing structure and creditor sets, and warned of cross contamination of claims if the whole entity is made to undergo CIRP. It also pointed out how homebuyers, although unsecured creditors have a unique right over the assets (the flats) built for them. The bench made a distinction between the end goal of resolution for banks and allottees – while banks may accept haircuts in resolution plan, no such haircut is permissible or possible when handing over flats.

This judgement became the cornerstone of project wise CIRP, assuring asset level value maximization within the isolated defaulting project.

Other Judgements

The principle of asset wise CIRP was reinforced by the Supreme Court in *Manish Kumar v. UOI*⁶, where the court acknowledged the distinct nature of defaults and grievances across various projects undertaken by the same developer. The Court noted that aggregating solvent projects into the CIRP would be impractical and unfair. The same position was adopted in various cases such as *Whispering Tower Flat Owner Welfare Association vs. Abhay Narayan Manudhane*⁷ and *RP of Corporate Debtor Ram Kishor Arora, Suspended Director of M/s. Supertech Ltd. v. Union Bank of India & Another*.⁸

However, this emerging trend was questioned in *N. Kumar, RP of Sheltrex Developers Pvt. Ltd. v. Tata Capital Housing Finance Ltd*⁹, where the NCLAT deviated from the earlier Winterhills ruling, stating that it cannot serve as a binding precedent due to its fact specific context. The Tribunal went back to rigidly interpreting the Code, pointing out that no provision exists for project wise resolution.

⁶ Manish Kumar v. UOI, 2021 SCC OnLine SC 30

⁷ Company Appeal (AT) (Insolvency) No. 896 of 2021

⁸ I.A. No. 2387 of 2023 in Company Appeal (AT) (Insolvency)

⁹ (2022) ibclaw.in 329 NCLT

Indiabulls Asset Reconstruction Co. Ltd. v. Ram Kishore Arora and Other¹⁰

The dispute in this case arose from the insolvency of Supertech Ltd., a real estate developer engaged in the construction of various housing projects across Delhi NCR. The company had received credit for the development of Eco Village II, which it defaulted on, leading to the account being declared as an NPA. One of the respondents filed an appeal in NCLAT against the order of NCLT to initiate CIRP. The tribunal stayed the constitution of the CoC and limited the CoC to be constituted only specifically to Eco Village II. All other projects were to be continued as ongoing projects, in order to protect the interests of stakeholders unrelated to Eco Village II. The case reached the Supreme Court after the financial creditors of the Corporate Debtor were aggrieved by NCLAT's decision.

The Supreme Court upheld NCLAT's order, highlighting the importance of a solution that benefits all parties, especially the homebuyers, as the ongoing projects which are solvent within their structures would be halted. Unlike other financial creditors, the ideal resolution for homebuyers would be the completion of ongoing work, as opposed to financial recovery of funds. Recognizing this fact, the court allowed the interim financing of the CD, and directed the IRP to maintain a separate account for it, allowing the ongoing project to be completed. Although violative of Section 29A¹¹, this solution highlighted the objective of the IBC, which is the revival of the CD, and using creative interpretation to do so, instead of focusing on accurate statutory application.

STATUTORY AND REGULATORY FRAMEWORK SUPPORTING PROJECT WISE CIRP

Recognition of Homebuyers as Financial Creditors

The statutory support that enabled the development of project wise CIRP was introduced in 2018 via the amendment to the IBC. Homebuyers were granted the status of financial creditors under Section 5(8)(f)¹² enabling them to initiate the CIRP and participate in the CoC. The constitutional validity of this particular amendment was challenged in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*,¹³ and was subsequently upheld by the SC, affirming the legislative intent to safeguard the interests of homebuyers.

¹⁰ Indiabulls Asset Reconstruction Company Limited v. Ram Kishore Arora and Others., 2023 SCC Online SC 612

¹¹ Insolvency and Bankruptcy Code, No. 31 of 2016, § 29A

¹² Insolvency and Bankruptcy Code, No. 31 of 2016, § 5(8)(f)

¹³ AIR 2019 SUPREME COURT 4055

However, the commercial reality of this amendment did not live up to the legislative intent. Although they had a seat at the table, the homebuyers often found themselves outvoted by the CoC, who prioritized financial recovery as opposed to project completion.

In order to solve this issue, and to prevent excessive triggering of CIRP, the IBC (Amendment) Act, 2020 introduced a threshold requirement of needing 100 homebuyers or 10% of total allottees to be able to trigger CIRP.

Policy Endorsement

Strong institutional support was also received in the form of the MCA's policy paper on Real Estate Insolvency¹⁴ in section 8 (Improving outcomes in real estate cases). It proposed a tailored approach to insolvency in cases of real estate, allowing the AA to confine the CIRP to only those projects of a CD where default has occurred. This enables the resolution of stressed assets without disrupting the functioning of solvent ones.

The Policy Paper also asked for a reimagination of Section 28, that would allow the RP to transfer completed units to allottees during CIRP, despite the moratorium, addressing a critical gap in consumer relief. This suggestion found its way to the 2025 regulations, but an amendment to the IBC is expected soon.

Evolution of CIRP Regulations

The CIRP (Third Amendment) Regulations, 2022 introduced two regulations that provided statutory backing to support the execution of Project wise CIRP:

- Regulation 36B(6A) enables the Resolution Professional (RP), if no plans are received for the corporate debtor as a whole, to invite resolution plans for one or more specified assets, upon approval of the Committee of Creditors (CoC). ¹⁵In the Jaiprakash Associates Limited case¹⁶, it was clarified by NCLT Allahabad that while Regulation 36B(6A) allows the invitation of separate plans for each asset, the provision does not

¹⁴<https://www.mca.gov.in/bin/dms/getdocument?mds=%252F%252BvFPv8K3F2phOvVgShgDA%253D%253D&type=open>

¹⁵ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 36B(6A)

¹⁶ Sunil Kumar Sharma v. Mr. Bhuvan Madan (Resolution Professional of Jaiprakash Associates Limited), IA NO.27/2025 IN CP(IB) No.330/ALD/2018, NCLT Allahabad.

state the initial application of this measure without first inviting plans for the CD as a whole. Only once this fails can the RP move to asset wise resolution.

- Regulation 37(m) allows a Prospective Resolution Applicant (PRA) to submit a resolution plan focused on one or more assets, reinforcing the notion of asset-specific insolvency resolution.¹⁷

The 2025 amendment¹⁸ further strengthened the statutory foundation of asset wise resolution by introduction the following regulations:

- Regulation 4E empowers the RP to handover possession of flats or plots to allottees during CIRP, with prior CoC approval of at least 66%. This has the effect of protecting homebuyers by allowing flat handover regardless of the company's CIRP
- The Regulations also now allow CoC to relax certain conditions for associations or group of homebuyers to participate as resolution applicants in the resolution process, such as relaxations in eligibility criteria, performance security and deposits for submitting resolution plans.
- The Regulations also mandate that CoC must consider forming a monitoring committee to supervise implementation of resolution plan. This would be highly relevant in the CIRP of real estate developers where the plan includes completing construction

REVERSE CIRP

Reverse CIRP is another judicial innovation in regards to real estate insolvency that runs parallel to project wise CIRP. Unlike standard CIRP where the management is taken over by the RP, Reverse CIRP allows the existing management to be involved to ensure construction continues without disruption. It also allows developers/creditors to infuse funds in an insolvent project to complete them, regardless of CIRP. This aims to ensure that the concern of homebuyers is validated and addressed, without allowing the change in control to devalue their assets.

A central question during Reverse CIRP has been the source and treatment of infused funds. Under RERA, 2016, developers are required to deposit 70% of amounts collected from allottees into a dedicated escrow account, to be used only for the costs of that specific project. However, courts have often refrained from the strict enforcement of this provision during Reverse CIRP.

¹⁷ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 37(m)

¹⁸ <https://ibbi.gov.in/uploads/press/f56716ecf9231742a5a4e79c1f703502.pdf>

In the *Umang Realtech Case*, the Tribunal directed the RP to use funds from lenders and allottees to complete the construction but did not reference the 70% escrow mandate. Similarly in the *Whispering Towers case*, the Supreme Court upheld Reverse CIRP without specifying whether or how the RERA escrow requirement would apply.

In *Ram Kishore Arora v. UBI*¹⁹, the Supertech case, the Tribunal adopted a vigilant approach and directed receivables from the project be maintained in a separate account – however, the trajectory of judgements in this regard indicates that the requirement is a matter of judicial discretion instead of statutory obligation as envisaged by RERA.

SECTION 8 RERA AS AN ALTERNATIVE TO PROJECT WISE CIRP

The RERA 2016 envisaged to provide a resolution mechanism for stalled projects. Under Section 7, the RERA authority has been granted the power to penalize developers by revoking their registration if they default in any requirement under the act²⁰. Under Section 8, RERA is empowered to take necessary actions for the completion of development projects through a competent authority²¹. The existence of these provisions begets questioning the necessity of the judiciary innovating project-wise CIRP and reverse CIRP, considering that Section 8 should ideally serve the same functional purpose.

In many cases, resolution under Section 8 was successful. In *Jaypee Kalypso*, Uttar Pradesh RERA invoked section 8 and passed an order to complete the project, and pursuant to a partnership between the promoter and the AoA, the project was completed. In *DSK Sadaphuli*, the court transferred authority to AoA to complete the project, which was then completed under a new contractor appointed by the AoA.

However, all successfully revived projects under Section 8 were near completion when RERA took over. Section 8 is not expansive enough to be functional in scenarios where the project is still skeletal or a huge portion is left; the AoA would not have the required expertise to lift the project off the ground.

For complex scenarios comprising of financial gaps, RERA's framework lacks the structure to

¹⁹ I.A. Nos. 307, 862, 927, 1082 of 2025 in Comp. App. (AT) (Ins) No. 406 of 2022

²⁰ Real Estate (Regulation and Development) Act, No. 16 of 2016, § [7]

²¹ Real Estate (Regulation and Development) Act, No. 16 of 2016, § [8]

undertake resolution. Project wise CIRP, backed by the Bankruptcy Code and ability to attract third party resolution applicants fills this void, making it a necessary complementing framework to the RERA regime.

COMPARATIVE GLOBAL PRACTICES IN REAL ESTATE INSOLVENCY

United Kingdom

The Corporate Insolvency and Governance Act, 2020 (CIGA) introduced a standalone moratorium procedure that grants distressed companies temporary relief from creditor action, allowing them to explore restructuring options without the immediate threat of litigation²².

The process follows a debtor-in-possession model, with directors retaining control of the company under the oversight of a court-appointed monitor. This model is particularly instructive for India, a similar moratorium tailored for real estate developers could allow them to focus on project completion, while shielding ongoing construction from creditor disruptions. Such a structure balances asset preservation with operational continuity—a goal central to India's reverse CIRP jurisprudence.

Singapore

In parallel, regulatory frameworks governing escrow accounts in jurisdictions like Singapore²³ and Malaysia mandate 100% deposit of buyer payments into escrow, coupled with rigorous oversight by housing authorities. These mechanisms have effectively ring-fenced consumer funds and insulated them from developer-level insolvency. Although India has a similar statutory structure, enforcement remains weak.

CONCLUSION

India's flexibility towards the adoption of project wise CIRP and reverse CIRP indicates a shift in insolvency jurisprudence. Although the IBC has not been applied rigidly, these innovative solutions are more in line with the legislative intent of preserving insolvent companies as going concerns. The real estate sector in its unique nexus of economic systemic risk and consumer vulnerability demanded a departure from the letter of law to legal creativity. Its evolution

²² Corporate Insolvency and Governance Act 2020, Section 1 (inserting Part A1 into the Insolvency Act 1986)

²³ Section 13(3)(g), Section 13(7) Housing Developers (Control and Licensing) Act 1965 (Singapore)

signals the possibility of a much more flexible insolvency regime for sectors such as EPC, mining, Urban Infrastructure etc; all industries where project specific architecture is in place.

However, for effective application, the judicial innovation must be backed by statutory recognition and harmonization with parallel frameworks. The legislature must codify the judicial creativity that is already in place in order to ensure a robust insolvency regime. The expected IBC Amendment shall ideally institutionalize project wise CIRP as a formal mechanism, provide clarity on procedural triggers and ensure seamless integration with the Regulations and RERA 2016.

