

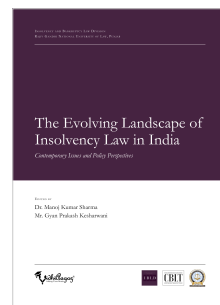
CHAPTER 20

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CHAPTER 20

The Creditor Conundrum: An Analysis of the Treatment of Dissenting Creditors during Insolvency Proceedings of Financial Institutions in India

KARMANNYA SINGH RAIZADA* AND AYAN VERMA**

This research paper explores the Indian legal framework including Insolvency and Bankruptcy Code (IBC) 2016, Companies Act 2013, Reserve Bank of India (RBI) Act, and associated regulations governing treatment of dissenting creditors in financial institution insolvencies. It highlights the critical distinctions in treatment between key creditor classes like financial vs. operational, secured vs. unsecured and across different types of companies including those limited by shares vs. those limited by guarantee.

The paper analyses the regulatory frameworks covering four categories of financial institutions, viz., Non-Banking Financial Companies (NBFCs), Fintech Entities, Public Financial Institutions, and Statutory Financial Institutions. NBFCs are governed under the ambit of RBI's regulations and fall under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (FSP Rules), with insolvency initiated solely by the regulators. Fintech entities, lacking dedicated legislation, are subject to RBI's scale-based regulatory framework, with their digital asset structures posing unique challenges. Public and statutory financial institutions, such as SIDBI, are primarily governed by institution-specific statutes, though IBC provisions may apply during debt restructuring.

Furthermore, the paper delves into judicial contradictions concerning dissenting creditors, particularly the unresolved tension between allowing secured creditors to enforce security interests and prioritizing proportional recoveries. Judicial interpretation in cases like Jaypee Kensington Boulevard v. NBCC and India Resurgence ARC Private Limited v. Amit Metaliks Limited illustrates these ambiguities, with the pending DBS Bank v. Ruchi Soya Industries Ltd. case poised to clarify whether dissenting creditors can claim security value. Lastly, the paper draws a comparative analysis with best international practices, referenced to highlight lacunas.

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Key regulatory gaps identified include asymmetric protections for operational creditors, inconsistent security rights, institutional fragmentation for fintechs, and limitations in cross-class cramdown tools. The paper concludes by advocating for reforms that integrate security value assessments into Section 30(2)(b) of the IBC, enhance operational creditor representation in the Committee of Creditors (CoC), and align FSP Rules with global best practices to foster a more equitable and efficient insolvency ecosystem in India.

Keywords: Insolvency and Bankruptcy Code, Dissenting Creditors, Financial Institutions

1 INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC)¹ has radically reformed India's insolvency regime by centring creditor rights and ensuring time-bound resolution of defaults.² While the IBC treats most corporate debtors uniformly, financial institutions occupy a special place as they are regulated entities whose failures can threaten systemic stability. When a financial institution undergoes insolvency, its creditors, which are classified variously as financial, operational, secured, or unsecured, often face a complex interplay of statutory rights. Of particular concern are dissenting creditors, i.e., those who do not agree with a proposed resolution plan. The Code's requirement that a majority of the Committee of Creditors (CoC) must approve any plan, usually 66% by value, means that minority creditors can be effectively "crammed down" by the majority plan.

This raises fundamental issues vis-a-vis

- (i) How must dissenting creditors be treated under law?
- (ii) What entitlements do they have if a plan is approved?
- (iii) How does this vary by creditor type and by type of institution?

This paper explores these questions in depth. It surveys the statutory landscape of IBC's definitions of creditors and its provisions on resolution, particularly Section 30(2)(b)³ and the liquidation waterfall in Section 53,⁴ as well as any sector-specific adaptations. It then examines judicial interpretations, especially recent cases affecting dissenting financial creditors and secured creditor rights. It also undertakes a cross jurisdictional comparison and identifies the practical challenges, such as asymmetric protection of operational creditors or ambiguities in security rights, that appear under the current legal regime. Finally, based on this international analysis, it suggests reforms and best practices that could better balance creditor protection and the Code's goal of maximizing value for all stakeholders.

¹ The Insolvency and Bankruptcy Code, 2016.

² CMS IndusLaw, *Swiss Ribbons and Its Implications – The Supreme Court on the Constitutionality and Key Provisions of the Insolvency & Bankruptcy Code*, MONDAQ (Feb. 12, 2019), <https://www.mondaq.com/india/insolvencybankruptcy/781154/swiss-ribbons-and-its-implications-the-supreme-court-on-the-constitutionality-and-key-provisions-of-the-insolvency-bankruptcy-code>.

³ The Insolvency and Bankruptcy Code, 2016, § 30(2)(b).

⁴ *Id.* § 53.

2 ISSUES RAISED

Insolvency of financial-sector debtors raises multiple interlinked issues:

- A. *Creditor classification and voting rights*: The IBC classifies financial creditors (FCs) and operational creditors (OCs) differently.⁵ Only financial creditors like banks, NBFCs, bondholders, etc. sit on the CoC and vote on plans, whereas operational creditors, like suppliers, vendors, tax authorities, etc. have limited rights. How this difference affects dissent is a key concern.⁶
- B. *Secured vs. unsecured status*: Secured creditors can enforce collateral under Sections 52⁷ and 53⁸ of the Code, while unsecured creditors cannot. During CIRP, the moratorium prevents enforcement, however, after liquidation, secured creditors may choose either to relinquish security to the estate or to realize it outside the estate.⁹ This, however, begs the question as to how a dissenting secured creditor should be treated if a plan purports to extinguish its security.
- C. *Minimum payment guarantees*: Section 30(2)(b)(ii) was amended in August 2019¹¹ to guarantee dissenting financial creditors at least the value they would receive under liquidation as per section 53.¹² This “*liquidation value*” protection is fraught with issues, i.e., should it be measured on a collective or per-creditor basis, and, what if the creditor enforces security outside of liquidation?
- D. *Financial vs. operational creditor priorities*: Historically, operational creditors often fared poorly under insolvency laws. The IBC initially gave operational creditors a limited guarantee, at least the higher of 15% of liquidation value or liquidation share, but the Supreme Court clarified that financial creditors have no similar statutory minimum beyond what their security yields.¹³ This asymmetry between Operational Creditors and Financial Creditors has been highly controversial.
- E. *Financial institutions (FIs)*: Different categories of financial institutions have different legal natures. Banks are typically regulated by the RBI and use special resolution tools,

⁵ *Id.* § 30(2)(b).

⁶ Katyayni Singh & Arijit Mishra, *From Right to Dissent to Success of the Resolution Process: Reinforcing Cramdown with Fairness and Equitability* (Apr. 11, 2025), <https://rmlnlulawreview.com/2025/04/11/from-right-to-dissent-to-success-of-the-resolution-process-reinforcing-cramdown-with-fairness-and-equitability/>.

⁷ The Insolvency and Bankruptcy Code, 2016, § 52.

⁸ *Id.* § 53.

⁹ Trilegal, *Treatment of Secured Creditors During CIRP*, LEXOLOGY, <https://www.lexology.com/library/detail.aspx?g=eea13235-68a9-4519-9cf6-fa14c7e1343c> (last visited July 20, 2025).

¹⁰ *India Resurgence ARC Private Limited v. Amit Metaliks Limited*, 2021 SCC OnLine SC 409.

¹¹ The Insolvency and Bankruptcy Code (Amendment) Act, 2019, § 6.

¹² Bharucha & Partners, *Protection of Dissenting Financial Creditors on Insolvency*, LEXOLOGY, <https://www.lexology.com/library/detail.aspx?g=987189cd-6c80-48d7-8284-bb62f2200341> (last visited July 21, 2025).

¹³ *Jaypee Kensington Boulevard Apartments Welfare Ass’n v. NBCC (India) Ltd.*, (2022) 1 SCC 401.

whereas NBFCs (Non-Banking Financial Companies), Fintech Lenders, Public Financial Institutions, like IFCI and SIDBI, and Statutory Financial Institutions, like EXIM Bank and NABARD, may be corporate debtors under IBC or subject to tailored rules. The question arises as to how these distinctions affect the rights of dissenting creditors.

These issues create a conundrum for dissenting creditors in financial-institution insolvency. The rest of this paper analyses each facet, drawing on legislation, regulations, case law, and comparative practices to fully flesh out the challenges and practical solutions.

3 STATUTORY ANALYSIS

3.1 Types of Creditors

The IBC's definition of "creditor" is extremely broad as it includes financial creditors, operational creditors, secured creditors, unsecured creditors, and decree-holders.¹⁴ In practice, the key categories are:

- A. *Financial Creditors (FCs)*: Those Creditors to whom a "financial debt"¹⁵ is owed (e.g. loans, bonds, deposits, guarantees).¹⁶ Banks, NBFCs, PFIs and other lenders typically fall here. All FCs of the debtor constitute the Committee of Creditors (CoC) and exclusively vote on plans.¹⁷
- B. *Operational Creditors (OCs)*: Entities owed for goods/services provided, like, trade creditors, or for other statutory dues, i.e., "Operational Debt"¹⁸ fall under the definition of OCs.¹⁹ OCs are not members of the CoC. They have limited participatory rights including the right of being paid or having their interests provided for in the plan, but they cannot block a plan by voting against it.^{20,21}
- C. *Secured vs Unsecured Creditors*: A secured creditor has a security interest, like a mortgage, pledge or charge,²² over a debtor's asset.²³ The Code recognises secured creditors may

¹⁴ The Insolvency and Bankruptcy Code, 2016, § 3(10).

¹⁵ *Id.* § 5(8).

¹⁶ *Id.* § 5(7).

¹⁷ *Id.* § 21.

¹⁸ *Id.* § 5(21).

¹⁹ *Id.* § 5(20).

²⁰ Swarnendu Chatterjee, Hussanpreet Kaur Dhaliwal & Shivani Kumar, *Fair and Equitable Distribution Clauses in Resolution Plans – Is Section 30(2)(B) of Insolvency and Bankruptcy Code, 2016 Being Illusory for Operational Creditors*, 2022 SCC OnLine Blog Exp 52.

²¹ Vidushi Puri, *Distinction in Treatment of Financial Creditors vs. Operational Creditors*, IBC LAWS (Jan. 9, 2023), <https://ibclaw.in/distinction-in-treatment-of-financial-creditors-vs-operational-creditors-by-vidushi-puri/?print-posts=print&print=pdf>.

²² The Insolvency and Bankruptcy Code, 2016, § 3(31).

²³ *Id.* § 3(30).

enforce or relinquish collateral.²⁴ An unsecured creditor has no collateral. Operational creditors are typically unsecured, but financial debt can also be unsecured, e.g. unsecured bonds.

- D. *Companies limited by shares vs. guarantee*: This corporate form affects capital structure. A company limited by shares has equity share capital, whereas a company limited by guarantee has members who promise to contribute a nominal amount upon winding up. In insolvency, a guarantee company has no equity shareholders to absorb losses, so all surplus goes to creditors. However, the IBC treats both forms similarly, both types of creditors are defined irrespective of company form,²⁵ and the usual voting thresholds of 66% of financial creditor value for plan approval shall apply.²⁶ The practical difference is only that a guarantee company usually has no equity. The Code's waterfall in liquidation simply flows through to creditors with no equity distribution step.²⁷

4 TYPES OF FINANCIAL INSTITUTIONS

- A. *NBFCs (Non-Banking Financial Companies)*: Under RBI regulation, NBFCs (including housing finance companies) accept deposits or lend and are licensed by RBI. As of 2019, NBFCs/HFCs with assets more than or equal to ₹500 crore have been notified as “financial service providers” (FSPs) for insolvency purposes.²⁸ This means if such an NBFC defaults, its insolvency resolution is governed by the FSP Rules (2019) rather than the standard corporate rules.²⁹ The FSP Rules modify terminology, e.g., “corporate debtor”, “financial service provider”, “resolution professional”, “administrator”,³⁰ and procedures and involve the RBI as “appropriate regulator”.³¹ The Rules also contemplate special treatment of third-party client assets held by FSPs.³² However, apart from those notified NBFCs, other NBFCs would go through normal CIRP. In any case, as lenders they are financial creditors with voting power; as debtors they are

²⁴ Bharucha & Partners, *supra* note 12.

²⁵ The Insolvency and Bankruptcy Code, 2016, § 3(12).

²⁶ *Id.* § 30.

²⁷ Manisha Arora & Pranav Ashutosh, *Swiss Ribbons Pvt. Ltd. v. Union of India: The Constitutionality of IBC Upheld, Understanding the Procedural Aspect and the After-Effects*, IBC LAWS (Feb. 22, 2021), <https://ibclaw.in/swiss-ribbons-pvt-ltd-v-union-of-india-the-constitutionality-of-ibc-upheld-understanding-the-procedural-aspect-and-the-after-effects-by-ms-manisha-arora-and-mr-pranav-ashutosh/>.

²⁸ Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, G.S.R. 852(E).

²⁹ *Id.* r. 5.

³⁰ *Id.* r. 4.

³¹ *Id.* r. 3(c).

³² *Id.* r. 10.

corporate debtors subject to IBC, without separate deposit insurance or priority as NBFC depositors are treated as unsecured financial creditors.³³

- B. *Fintech Companies*: There is no single legal definition of “Fintech” under Indian law. In practice, many Fintech lenders, e.g., digital lending apps, peer-to-peer platforms, etc., operate under existing frameworks such as NBFC registrations, payment bank licenses, or SEBI/NPCI registrations. A Fintech engaged in lending will usually be treated as an NBFC or similar entity if RBI-licensed; otherwise, it is an ordinary corporate debtor. As creditors, Fintech firms, if they hold financial debts, count as financial creditors. As debtors, they have no special insolvency provisions beyond IBC or limited segments as has been illustrated in the new Digital Lending Guidelines which impose obligations on recovery practices but do not alter insolvency rights.³⁴ The key point is that the Code’s treatment of creditors applies equally, whether a lender is a traditional bank or a Fintech NBFC, it is a “financial creditor” if it holds a financial claim.
- C. *Public Financial Institutions (PFIs)*: PFIs are defined under Companies Act, to include entities like the Life Insurance Corporation, India Infrastructure Finance Co., NABARD, SIDBI, EXIM Bank, etc., i.e., Central or state-government-owned FIs or FIs established by statute.³⁵ Such institutions often act as lenders to industry and would be financial creditors under IBC. The IBC specifically includes “public financial institution” in its definition of financial institution.³⁶ As creditors in any insolvency, PFIs have no special privileges beyond being financial creditors. If a PFI itself became insolvent, it would also be treated as a corporate debtor under the Code, although their government ownership means any resolution likely involves government intervention.
- D. *Statutory Financial Institutions (SFIs)*: These are entities constituted by specific Acts of Parliament, e.g., EXIM Bank, SIDBI, SBI, etc. They are typically government-owned banks. In insolvency, SFIs are treated as financial creditors. For instance, State Bank of India (a scheduled bank) can be a financial creditor and CoC member. If an SFI itself were a debtor, its statutory status might raise complexities. For example, in the case of banks, RBI-driven frameworks usually handle failures, but if IBC applied, the FSP Rules could be invoked under Section 227.³⁷

³³ Shaktikanta Das, *Insolvency and Bankruptcy Code – Towards Achieving Full Potential* (Jan. 11, 2024), <https://www.bis.org/review/r240117f.pdf>.

³⁴ Reserve Bank of India (Digital Lending) Directions, 2025, RBI/2025-26/36, Reserve Bank of India, 2025.

³⁵ Companies Act, 2013, § 2(72).

³⁶ The Insolvency and Bankruptcy Code, 2016, § 3(14)(c).

³⁷ *Id.* § 227.

For SFIs that are banks, their insolvency and winding-up procedures are primarily governed by the Banking Regulation Act, 1949.³⁸ This Act provides a comprehensive set of provisions for the suspension of business and winding up of banking companies, with the High Court having jurisdiction and the RBI playing a crucial role. For Insurance companies, their insolvency framework is limited to the Insurance Act, 1938.³⁹ The Insurance Regulatory and Development Authority of India (IRDAI) is the primary regulator for the insurance sector, responsible for regulating and licensing insurance and reinsurance companies.⁴⁰

The Insurance Act, 1938, provides for the winding up process of insurance companies, which must be carried out in accordance with the provisions of the Companies Act, 2013. While insurance companies are indeed FSPs, they are not currently covered by the FSP rules notified under Section 227 for their own insolvency and thus remain primarily governed by the Insurance Act. The Act includes provisions for financial plans to rectify deficiencies, and in certain circumstances, allows for government acquisition of undertakings if management is detrimental to public interest.⁴¹ For other SFIs not explicitly covered by the Banking Regulation Act or the Insurance Act, their insolvency would typically be governed by their specific enabling statutes. If such statutes are silent on insolvency or winding-up, and the institution is incorporated as a company, the general winding-up provisions of the Companies Act, 2013, might apply. However, the IBC's primary focus remains on corporate debtors, and specialized financial institutions often fall under sector-specific regulatory frameworks for their own resolution.

In summary, all such institutions, whether NBFC or statutory bank, are “financial institutions” under IBC and their creditor claims fall under the Code’s creditor hierarchy without separate treatment.

5 GENERAL TREATMENT UNDER THE CODE

Under the IBC, all creditors of a defaulting corporate debtor (including financial institutions) are subject to the insolvency resolution process. The key statutory provisions are:

- A. *Initiation and CoC formation:* Any financial creditor (alone or jointly) can file for Corporate Insolvency Resolution Process (CIRP),⁴² and once admitted, the CoC is constituted of all financial creditors. Operational creditors cannot be CoC members.

³⁸ Banking Regulation Act, 1949.

³⁹ The Insurance Act, 1938.

⁴⁰ ICLG, <https://iclg.com/practice-areas/insurance-and-reinsurance-laws-and-regulations/india> (last visited July 10, 2025).

⁴¹ Pranav Prakash, *An Analysis of the Insolvency Framework for Insurance Companies in India*, IJ, <https://indialawjournal.org/an-analysis-of-the-insolvency-framework-for-insurance-companies-in-india.php> (last visited July 19, 2025).

⁴² The Insolvency and Bankruptcy Code, 2016, § 6.

- B. *Voting thresholds*: A resolution plan must be approved by 66% of the CoC (by voting share). This majority binds all creditors, including any dissenters.
- C. *Contents of resolution plan*: Section 30(2) mandates certain provisions, i.e., payment of insolvency costs, priority of operational creditors, etc.⁴³ Notably, after amendment, a plan must provide that dissenting financial creditors receive a payment not less than what they would get in liquidation.⁴⁴
- D. *Waterfall on liquidation*: If CIRP fails, liquidation under Section 53 governs distribution:⁴⁵
 - (a). insolvency and liquidation costs.
 - (b). secured creditors' debts (remaining amounts after enforcement).
 - (c). workmen's dues.
 - (d). employee wages.
 - (e). government dues.
 - (f). operational creditors.
 - (g). remaining unsecured creditors (often equity is last).

The Supreme Court has noted that this scheme accords primacy to secured claims (invariably the preserve of financial creditors), while unsecured claims (operational creditors) are given the lowest priority.⁴⁶

Because of the above, the “general” treatment of creditors depends on their classification. A few specific points of comparison:

- A. *Secured vs Unsecured*: Secured creditors may either relinquish their security to the liquidation estate and claim a share of proceeds or enforce it outside the liquidation estate.⁴⁷ If a resolution plan is approved, the moratorium halts enforcement, but after liquidation (or in the plan exit), secured creditors can still choose their path. Meanwhile, unsecured creditors (including many operational creditors) have no collateral and are only guaranteed liquidation-value-equivalent payment, but only if they are dissenting financial creditors. Operational creditors have a guaranteed share of proceeds up to 15% of liquidation value or actual claim higher, but that rule was effectively struck down by the Supreme Court where the Court held that only operational creditors have a right to liquidation value payment, not financial creditors.⁴⁸

⁴³ *Id.* § 30(2).

⁴⁴ The Insolvency and Bankruptcy Code (Amendment) Act, 2019, § 6.

⁴⁵ Harshit Gupta, *Waterfall Mechanism: Basic Structure of the Insolvency and Bankruptcy Code, 2016*, IBC LAWS (May 13, 2024), <https://ibclaw.in/waterfall-mechanism-basic-structure-of-the-insolvency-and-bankruptcy-code-2016-by-harshit-gupta/>.

⁴⁶ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

⁴⁷ The Insolvency and Bankruptcy Code, 2016, § 53.

⁴⁸ *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*, (2020) 11 SCC 467.

- B. *Companies limited by shares vs by guarantee*: The Code makes no special distinction in most provisions for the company's form. Both types can undergo CIRP and liquidation. The practical difference is that a company limited by guarantee has no share capital and therefore usually no equity or debenture holders with all creditors in liquidation sharing the assets without equity super-priority. Approval thresholds apply to guarantee companies as well. Because there are no shares, the issue of "shareholders' residual rights" doesn't arise in a guarantee company. Otherwise, secured vs unsecured and priority rules work identically.
- C. *NBFCs (FSPs) vs others*: For notified NBFCs (large ones), the CIRP is run under the FSP Rules. These rules generally replicate the Code's provisions with some modifications. Crucially, however, Section 30(2)'s requirements still apply, unless specifically modified by notification. Thus, dissenting creditors of an NBFC have the same formal entitlements as under the Code, but the process is administered under the FSP Rules. The FSP Rules also address third-party assets, viz., customer funds in possession of the FI, the government is to notify how those are handled.⁴⁹
- D. *Public/Statutory FIs as debtors*: If a PFI or SFI (like EXIM Bank) were the corporate debtor, there is no explicit exemption in IBC. In practice, such institutions rarely fail because of government backing. Their winding up and liquidation is governed by their specific statutes, but if nothing as such is provided, then the Code does not preclude CIRP for them with any creditor applying for the same as is the case for any other corporate entity. The Code defines "corporate debtor" as any company, limited liability partnership, or partnership firm, so a statutory FI is covered. Thus, their creditors (many likely to be other FIs or governments) would fall under CoC vote. There is no separate "bankruptcy law" for DFIs akin to the BR Act for banks, so IBC would govern.

In summary, the IBC's statutory framework applies broadly across creditor types and FI types, subject to the FSP modifications. The key consequences for creditors are:

- A. CoC is in control with only financial creditors voting
- B. An inflexible majority rule: a plan approved by 66% of FCs binds all dissenting creditors. This negatively affects the dissenting creditors who may only get the guaranteed minimum.
- C. The Waterfall priority: secured and insolvency costs are paid first, while unsecured (operational) creditors are last; and

⁴⁹ Cyril Amarchand Mangaldas, *The Road to Resolution of Financial Service Providers: A Firm First Step*, INDIA CORPORATE LAW (Nov. 19, 2019), <https://corporate.cyrilamarchandblogs.com/2019/11/road-to-resolution-of-financial-service-providers-a-firm-first-step-ibc/>.

- D. statutory fixes for dissenters, notably, Section 30(2)(b)(ii) to protect dissenting FCs from receiving less than in liquidation.

These provisions set the stage for how courts have interpreted dissenting creditor rights, as discussed next.

6 JUDICIAL ANALYSIS

6.1 Dissenting Financial Creditors under Section 30(2)(b)

Prior to the August 2019 amendment, Section 30(2) of the Code did not explicitly protect dissenting financial creditors (DFCs). The original Code simply said a plan “shall provide for the payment” of operational creditor debts as specified by the Board, under Regulation 39⁵⁰, and other criteria⁵¹, without mentioning DFCs. In practice, this meant all financial creditors, whether dissenting or consenting, received plan payouts at the majority’s discretion. Early cases exploited this ambiguity.

For example, *Accord Life Spec. Pvt. Ltd. v. Orchid Pharma Ltd*⁵² held that a plan must not give any creditor less than liquidation value, but this was later overruled by the Supreme Court in *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*⁵³. The SC in *MahaSeamless* clarified that only operational creditors are guaranteed liquidation value under Section 30(2) as there is no statutory minimum for financial creditors beyond what their security yields. Thus, pre-2019, DFCs had no specific guarantee of value.

Recognizing this gap, the Parliament amended Section 30(2)(b) to require that a plan provide for the payment of DFCs “not less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation”⁵⁴. In other words, dissenting financial creditors must be paid at least their “liquidation value”. On liquidation, a secured creditor can either (i) relinquish security and get a pro-rata share of assets under Sec.53; or (ii) keep/enforce security under Sec.52 and Sec.53. The amendment thus protects DFCs by locking in the better of these options, preventing a majority from lopping their share.

⁵⁰ IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reg. 39, IBBI/2016-17/GN/REG004.

⁵¹ N. Arora & S. Bansal, *Securing the Rights of Dissenting Financial Creditors*, SNG & PARTNERS (Mar. 4, 2024), https://sngpartners.in/outside_perspective/securing-the-rights-of-dissenting-financial-creditors/.

⁵² *Accord Life Spec Pvt. Ltd. v. Orchid Pharma Ltd.*, Company Appeal (AT) (Insolvency) Nos. 761 & 762 of 2019 (NCLAT Nov. 13, 2019).

⁵³ *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*, AIR 2020 SC 3779.

⁵⁴ *Government Has Strengthened IBC with Six Amendments and 122 Regulatory Reforms Since Its Inception*, PIB (Apr. 1, 2025, 6:29 PM), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2117411>.

This amendment remains subject to judicial interpretation. The Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC India Ltd.*⁵⁵ clarified that payment to a DFC must be in money and limited to the liquidation value of the security interest only, not the entire debt. The Court struck down a plan clause that extinguished secured creditors' mortgages without payment, reiterating that security interests cannot be wiped out without compensation. However, the Court left open how exactly the "liquidation value" must be calculated or satisfied. In other words, DFCs are guaranteed the value of their security interest e.g. proceeds of sale, but not any deficiency beyond that.

Internationally, similar ideas prevail: e.g., UK and US law allow a plan to bind a dissenting class only if no dissenting member is "worse off" gets at least liquidation value⁵⁶. The OECD and World Bank principles stress treating dissenting classes fairly. India's amendment follows this global norm, but implementation issues persist.

7 JUDICIAL TREATMENT OF SECURED VS. UNSECURED RIGHTS

Several recent cases have clarified the scope of secured creditors' rights in insolvency. In *Anuj Jain v. Axis Bank*⁵⁷, the SC held that a third-party mortgage by a group company not indebted itself does not create a 'financial debt' on part of the debtor, so those mortgage-holders could not sit on the CoC as financial creditors. However, they were recognized as secured creditors of the debtor's assets. The Court did not prescribe their treatment in a plan, leaving them under the ambit of Sec.52 and Sec. 53 rights.

In *Jaypee Kensington v. NBCC* the SC refused to allow a plan to extinguish security without payment. This affirms that security rights survive CIRP unless fully accounted⁵⁸. The SC also reiterated that secured creditors must be given the option under Sec.52 and 53. In *Vistra ITCL v. Dinkar*⁵⁹ the Court stated that secured creditors "cannot be treated worse off or inferior to the treatment given to OCs or DFCs". In effect, a secured DFC may either relinquish and share liquidation proceeds or keep its collateral. The Court suggested that, minimally, a DFC should receive the liquidation value of its security interest, aligning with Section 30(2)(b).

These judicial developments illustrate a juxtaposition. On one hand, the insolvency process and CoC driven plan push for a collective settlement and on the other, secured lenders

⁵⁵ *Jaypee Kensington Boulevard Apartments Welfare Ass'n v. NBCC (India) Ltd.*, AIRONLINE 2021 SC 224.

⁵⁶ Scott Atkins, *The World Bank Insolvency Principles: A Framework to Build More Effective Insolvency and Restructuring Processes in Australia*, NORTON ROSE FULBRIGHT (Oct. 2021), <https://www.nortonrosefulbright.com/en-au/knowledge/publications/dcc93bca/the-world-bank-insolvency-principles-a-framework-to-build-more-effective-insolvency>.

⁵⁷ *Anuj Jain v. Axis Bank*, AIRONLINE 2020 SC 279.

⁵⁸ Trilegal, *supra* note 9.

⁵⁹ *Vistra ITCL (India) Ltd. v. Dinkar Venkatasubramanian*, Civil Appeal No. 3606 of 2020 (SC May 4, 2023).

demand that their statutory rights to collateral enforcement not be overridden. The current trend, as per the SC, is to allow secured creditors to enforce their security in liquidation even if they dissented, provided they still receive the liquidation-share guaranteed by law.

8 OPERATIONAL VS. FINANCIAL CREDITORS

Although not dissenting in the same sense since OCs have no vote, operational creditors' treatment is a frequent challenge. The IBC initially assured OCs of at least the liquidation value of their claims via Regulation 38⁶⁰ under Sec 30(2)(b) pre-amendment. However, the Supreme Court curtailed this, as stated above in *MahaSeamless* and held that such a guaranteed minimum value applies only to OCs⁶¹. The effect was that OCs could not demand more than their liquidation share and, in many plans, often received much less, or nothing, because plans allocate value to financiers.

Academics note this creates asymmetric protection: operational creditors cannot vote and have only a bare minimum guarantee, often not sufficient to recover all claims, whereas financial creditors enjoy full voting power and now a statutory floor for dissenters. This disparity has been criticized. Indeed, a recent study observed that the promise of liquidation-value payment to OCs, and to DFCs, can perversely incentivize creditors to liquidate a firm rather than restructure it⁶².

In summary, judicial analysis shows secured financial creditors have strong rights (they may enforce security and are guaranteed liquidation-value payment), while unsecured creditors (mainly operational) have weak rights (no vote, no secured lien, no equivalent guarantee). The Code's "fare" to dissenters is weighted heavily in favour of secured financial lenders. The Code and courts have tried to balance these interests by ensuring at least liquidation-value returns, but critics argue the balance still tilts toward financing institutions.

9 INTERNATIONAL BEST PRACTICES

Examining foreign insolvency regimes offers guidance. Two key principles emerge globally:

- A. *Class Fairness (No-Worse-Off Rule)*: Many jurisdictions allow a plan to bind dissenting classes only if each dissenting claimant would not receive less than in the next-best alternative, which is often liquidation. For example, the UK's restructuring plan procedure explicitly mandates that any dissenting class is "no worse off" under the plan

⁶⁰ IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reg. 38, IBBI/2016-17/GN/REG004.

⁶¹ *Jaypee Kensington*, (2022) 1 SCC 401.

⁶² Singh & Mishra, *supra* note 6.

than in the relevant alternative like usually winding up⁶³. Under UK Companies Act 2006 §901G⁶⁴, the court can sanction a cross-class cram-down if it finds that “none of the members of the dissenting class would be any worse off” than in liquidation⁶⁵. Similarly, under US Chapter 11, Section 1129(b)⁶⁶, dealing with the cram-down provision, requires that at least one impaired consenting class exists and that each dissenting class gets at least what it would in liquidation, i.e., the “best interest of creditors” test. A US debtor must pay secured dissenters in full (or provide indubitable equivalent) and must not treat any dissenting class unfairly⁶⁷.

- B. *Protected Collateral Treatment*: In many systems, secured creditors’ rights are protected during restructurings. For instance, US bankruptcy allows secured creditors to credit bid their liens in a sale or require adequate protection⁶⁸. In the EU Bank Recovery and Resolution Directive (BRRD), unsecured creditors and shareholders bear losses before insured deposits. The OECD/IMF “Key Attributes” for bank resolution also emphasize creditor write downs (bail-in) while depositors up to insured limits stay protected. The Indian FSP Rules’ approach (consulting regulators, possibly adopting modifications) reflects global practice of specialized regimes for financial firms.

10 CASE STUDY

UK and Singapore: Singapore’s restructuring plan law explicitly contemplates cross-class cram-down with a no-worse-off safeguard. The UK’s recent introduction of the “statutory restructuring plan”, similar to US Chapter 11 reorganization, shows that courts can override dissent if fairness is ensured. In practice, the UK courts have approved plans binding single dissenters when the plan provides the alternative liquidation share. For instance, in *Solar EPC Ltd* [2022], the High Court allowed cram-down because the one dissenting creditor got the same as in liquidation. The RMLNLU analysis notes that cross-class cram-down in US, UK, Singapore helps prevent holdouts and achieve reorganizations, provided dissenters’ interests are protected.

⁶³ Osborne Clarke, *When Are Dissenting Creditors ‘No Worse Off’ Under an English Restructuring Plan?*, OSBORNE CLARKE (Sept. 19, 2023), <https://www.osborneclarke.com/insights/when-are-dissenting-creditors-no-worse-under-english-restructuring-plan>.

⁶⁴ The Companies Act 2006, c. 46, § 901G (UK).

⁶⁵ Radhika Goel, *Cramming Down of Non-Consenting Class of Creditors: The UK Regime*, 4 INDIAN J.L. & LEGAL RSCH. (2022).

⁶⁶ 11 U.S.C. § 1129(b).

⁶⁷ P. Leake & S. Elberg, *Insolvency 2024: USA*, CHAMBERS & PARTNERS, <https://practiceguides.chambers.com/practice-guides/comparison/909/14700/23017-23018-23019-23020-23021-23022-23023-23024> (last visited Aug. 4, 2025).

⁶⁸ American Bankruptcy Institute, *The Indubitable Equivalent and Giving Debt for Dirt: Can a Debtor Force a Secured Creditor to Take Less than All of Its Collateral in Satisfaction of Its Debt* (2003), <https://www.abi.org/abi-journal/the-indubitable-equivalent-and-giving-debt-for-dirt-can-a-debtor-force-a-secured> (Aug. 5, 2025, 4:40 PM).

11 CRITICAL ANALYSIS – CHALLENGES AND OPPORTUNITIES

Even after reforms, several challenges and discrepancies persist for dissenting creditors in Indian insolvency:

11.1 Asymmetric Protection for Operational Creditors

Operational creditors fare relatively poorly. Not only can they not vote on plans, but their guaranteed recovery is minimal. Post-amendment, both DFCs and OCs have a statutory floor under Section 30(2)(b). Despite earlier rules under Regulation 38, the Supreme Court's interpretation means OCs are treated like ordinary unsecured creditors. In practice, OCs often get zero in approved plans, as seen in *Essar Steel*⁶⁹. Critics argue this imbalance is unfair: OCs supply the debtor's business yet have almost no clout under IBC. As stated above, assuring liquidation-value to OCs, as was once the case, was intended to protect them, but current law leaves them vulnerable and even incentivizes liquidation over rescue. Remedies proposed include giving OCs (even a small) voting stake or strengthening their liquidation-value guarantee.

11.2 Inconsistency in Security Rights

The Code's treatment of secured creditors is not fully aligned with theoretical expectations. On one hand, Sections 52 and 53 preserve enforcement rights. On the other, during CIRP the moratorium bars any foreclosure or sale until plan approval or liquidation. The Supreme Court's emphasis in *Jaypee Kensington and Vistra* judgement was that security cannot be wiped out by a plan without compensation.

However, practitioners point out scenarios where DFCs could still be disadvantaged: for example, if multiple creditors share collateral, unilateral enforcement by one may be hindered in practice. The phrase in *Jaypee Kensington* "extent of value receivable" suggests only actual realizable value counts. There is ambiguity: (i) if the CoC values the security at X, but actual market sale yields less, is the DFC's minimum X or actual sale price; and (ii) The Code's Section 30(4) that allows CoC to consider security value in voting provides little actual guidance on how to allocate security proceeds in a plan.

Critics have noted that without clearer rules, secured DFCs might end up effectively treated like unsecured if valuations are uncertain. The "integrated security value assessment" debate is whether liquidation-value guarantees should be computed on the full security value or on an admitted claim basis. The larger bench reference in *India Resurgence* indicates this

⁶⁹ *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

issue is unresolved, but commentators urge that at minimum the guaranteed payout should match the notional liquidation value.

12 INTEGRATED SECURITY VALUE ASSESSMENT UNDER SECTION 30(2)(B)

The Code's guaranteed payment to DFCs (Sec.30(2)(b)(ii)) is defined in terms of Section 53's distributions – but this presumes liquidation as the reference. The need to “integrate” security valuation (i.e. to ensure the secured DFC gets at least the liquidation value of its collateral) is underscored by recent analyses. The Supreme Court's Jaypee Kensington ruling hinted that DFCs only get the value of their security interest, not the full debt. But commentators observe that this should be interpreted per claim. Otherwise, a secured creditor could be left with a shortfall larger than planned, effectively penalizing them.

As stated above, compelling DFCs to accept below liquidation value of their security puts them “at par with unsecured creditors,” undermining lending confidence. A holistic or “integrated” view would calculate each DFC's entitlement by treating the hypothetical liquidation of the debtor, distributing sale proceeds pro rata as given under section 53, and ensuring the DFC gets that amount. This is arguably what the Code intends by Sec.30(2)(b), but practice has varied. Clarifying this, for example, by requiring plans to list the liquidation value per DFC could reduce conflict.

13 FSP RULES VS. GLOBAL BEST PRACTICES

The FSP Rules, 2019 align with global approaches that treat financial firms differently. For instance, the FSP Rules allow the government and RBI to specify modifications, acknowledging that a financial firm might need different treatment. So far, India's implementation has been limited.

In contrast, other jurisdictions ensure that critical functions like deposit-taking or payment systems are protected above other creditors. India's rules do not yet explicitly provide depositor preference or insurance, an area where global practice and Bank Resolution Directives could inspire reform. However, the FSP rules do require consultation with regulators, which could enable India to adopt features like “bail-in” of unsecured creditors if deemed systemic. Best global practice would also suggest maintaining separate resolution funds or insurance schemes to cover retail creditors akin to deposit insurance which India lacks.

In summary, the framework of the FSP Rules is consistent with international thinking, but India has an opportunity to further refine its approach by, for example, defining depositor priorities and coordination mechanisms.

14 WAY FORWARD BASED ON BEST PRACTICES

Drawing from the above analysis and international norms, we suggest the following reforms and practices:

Adopt Cross-Class Cram-Down Safeguards: Explicitly empower courts (or the tribunal) to sanction restructuring plans over dissenting classes provided no dissenting class is “worse off” than in liquidation. This principle already exists in other jurisdictions and is implicitly present in our Sec.30(2)(b) for secured DFCs. India could borrow language from the UK’s CA 2006 §901G or the US “best interest” test. For example, the NCLT could be directed to compare a dissenting class’s payout under the plan with the hypothetical liquidation share, ensuring fairness. The intent is to prevent holdouts while protecting dissenters’ minimum entitlements.

Clarify Security Value Guarantees: Legislation or regulations should clarify how to compute a dissenting secured creditor’s minimum payout. A clear rule would be: each dissenting secured creditor must receive at least the liquidation proceeds attributable to its security interest (i.e. its pro rata share if the debtor’s assets are sold and distributed under Sec.53). This guards against undervaluation. The NCLT/NCLAT could be given guidance (or the insolvency regs amended) to require plans to specify the liquidation value of each DFC’s security interest.

Incorporate Select Operational Creditor Protections: While full equalization is politically unlikely, modest tweaks could address OC grievances. For instance, granting operational creditors limited voting rights (perhaps a separate class vote on the plan) or enhancing their liquidation preference would reduce the sense of unfairness. The IBBI itself has proposed letting OCs vote on their share of proceeds. Alternatively, ensure that Section 30(2)(b)’s minimum payment rule covers all creditors (including operational), though with different calculations, as some have suggested.

Harmonize with Financial Regulatory Regimes: The government should continue to expand the FSP framework. As recommended by the IMF, important financial sector entities (public-sector banks, insurance companies, fintech payment companies, etc.) could be notified under Section 227 with tailored insolvency rules. At minimum, a Memorandum of Understanding between the MCA/IBBI and regulators (RBI/SEBI) should delineate how pending cases (like a scheduled bank’s default) are handled whether by IBC or under special acts. Incorporating elements like depositor insurance, resolution funds, and priority for small depositors (as seen in BRRD/FDIC) can ensure systemic stability.

Enhance Valuation Transparency: The insolvency process should strengthen asset valuation standards, especially for security. Requiring professional valuations and disclosure of liquidation estimates (as the Board’s CIRP Regulations do) helps all creditors understand

their positions. Section 30(2)(b) could explicitly reference valuation protocols. In international practice, independent appraisals are common for reorganization; India should continue enhancing the role of registered valuers.

Codify “No Vested Rights” Principle with Limits: The Supreme Court in *Swiss Ribbons* endorsed that no one has a vested right to property once CIRP begins. While this supports plan finality, it also underscores the need for statutory guarantees to dissenters (which Sec.30 now provides partially). India might codify that all creditors (not just operational) get at least their liquidation claims – either by expanding Sec.30(2)(b) or by refining the liquidation waterfall. This aligns with the fairness ethos and international standards.

Implementing such measures would make the IBC’s approach to dissenting creditors more predictable and equitable, while still maintaining the Code’s goal of creditor-driven reorganizations.

15 CONCLUSION AND SUMMARY OF RECOMMENDATIONS

The insolvency of financial institutions in India spotlights the delicate balance between facilitating corporate rescue and protecting creditor rights. As this analysis shows, the IBC has evolved to recognize the plight of dissenting financial creditors, most notably through Section 30(2)(b)(ii) guaranteeing liquidation value but gaps remain. Operational creditors are relatively under-protected, secured creditors face ambiguities in enforcement during resolution, and the interplay with sectoral regulation is still nascent. Courts have begun to fill these gaps (e.g. *Jaypee Kensington*, *Vistra ITCL*), but fundamental tensions persist.

In line with global best practices, reform should focus on ensuring that no dissenting creditor is left worse off by a resolution plan. This means codifying a clear “no worse off” test for all creditor classes, refining how security values are assessed, and harmonizing insolvency procedures with financial regulation (including explicit bail-in and depositor protections). Giving even limited participatory rights to operational creditors and clarifying FSP insolvency rules would further balance the scales.

Ultimately, the “creditor conundrum” cannot be solved by one side alone. A robust insolvency regime must allow efficient resolution of distressed financial firms and safeguard the legitimate entitlements of minority creditors. By continuing to learn from judicial experience and international norms, India can refine the IBC to achieve this equilibrium protecting lending institutions’ security interests and dissenting creditors’ claims without unduly hampering the collective resolution process.