Himachal Pradesh National Law University, Shimla (India)
HPNLU JOURNAL OF LAW, BUSINESS AND ECONOMICS (HPNLU JLBE)

JOURNAL ARTICLES *ISSN: 2584-0436* **HPNLU JLBE**

Volume III (2024)

RECKONING WITH DISSENT: ENTITLEMENTS, ENFORCEMENT, AND RESOLVING JUDICIAL UNCERTAINTY IN THE TREATMENT OF DISSENTING FINANCIAL CREDITORS UNDER THE INSOLVENCY FRAMEWORK

Anand Kumar Singh & Satyaveer Singh

CONTENTS

Essay & Comments

RECKONING WITH DISSENT: ENTITLEMENTS, ENFORCEMENT, AND RESOLVING JUDICIAL UNCERTAINTY IN THE TREATMENT OF DISSENTING FINANCIAL CREDITORS UNDER THE INSOLVENCY FRAMEWORK

Dr. Anand Kumar Singh* & Satyaveer Singh**

Abstract

The distribution and payouts among dissenting financial creditors (hereinafter, DFC) have been contentious for quite some time now. This issue creates an obstacle to the successful settlement of the resolution process. Section 30(2)(b)(ii) of the code mandates payment to secured dissenting financial creditors for a minimum amount, which shall not be less than the amount to be paid to such creditors by sub-section (1) of section 53 in the event of liquidation. Similarly, section 30(4) of the code provides for the committee of creditors to assess the feasibility and viability of the resolution plan, in which an assessment of the value of the security interest vis-à-vis payment to financial creditors needs to be made. The latter provision has been held to be directory in nature.

The main issue is determining the minimum liquidation value mandated for payment to secured dissenting financial creditors under these provisions. Can the code be interpreted to create a statutory right in favour of the dissenting financial creditors to demand payment of the minimum value of their secured interest under the resolution plan? The implications of the treatment of dissenting financial creditors are cascading. This issue is perhaps one of the most contentious topics under the IBC, with two contrasting supreme court judgements; the law remains unsettled, oscillating between ensuring fair treatment for all creditors (including dissenting creditors) and maintaining an efficient resolution process.

This paper aims to critically analyse the journey of the treatment of dissenting financial creditors in the Indian insolvency framework. This paper also appraises the legislature's intention in determining the rights of dissenting financial creditors. The paper follows a step-by-step analysis by expanding on the issue at hand, tracing legislative intent through relevant provisions of the IBC, judicial interpretation evident through landmark judgments, and international jurisprudence.

Keywords: Insolvency Law; Dissenting Financial Creditors; IBC 2016; Corporate Insolvency Resolution Process (CIRP); Secured Creditors; Commercial Wisdom.

I
Understanding the DFCs and their Position under IBC 2016

The concept of Dissenting Secured Financial Creditors' treatment is interesting. The financial creditors who vote against the resolution plan or those who abstain from voting on the resolution plan, approved by the CoC, become Dissenting Financial Creditors.[1] The IBC makes the resolution plan binding on every stakeholder, including dissenting financial creditors. The only criterion that has to be fulfilled is approval of the resolution plan by at least 66% (sixty-six per cent) of the vote.[2] Then the plan is sent to the NCLT. If NCLT approves the plan, it makes the resolution plan binding on all stakeholders, including the dissenting minority of financial creditors.[3] This is called "cramdown of a resolution plan" on dissenting creditors. India does not provide for a cross-class cramdown.[4] For the first time, cramdown of dissenting financial creditors was recognised in the *Essar Steels* case.[5] This practice is widespread globally. However, what is essential is that the safeguards provided to dissenting creditors are under the legislature. The March 2018 Report of the Insolvency Law Committee[6] stated that the most prudent way to resolve the entitlement owed to DFCs may perhaps not be attained "by tinkering with what minimum must be guaranteed to such creditors statutorily, but by sustained efforts of regulatory bodies at improving the quality of resolution plans overall." Regulation 38(1)(c) of the Report mandates that the dissenting financial creditors get paid at least the amount proportionate to the assenting financial creditors.[7] However, no specific provision was inserted into the IBC.

Therefore, there still exists a lack of clarity regarding how the minimum payout to the dissenting financial creditors would be made, with various security interests. About the issue, two views are prevalent–

---

* Assistant Professor of Law, National Law University, Jodhpur, India.
** Student of 5th year B.A.LL.B., National Law University, Jodhpur, India.

[1] Section 2(f), *IBBI Regulations*, 2017.

[2] The Insolvency and Bankruptcy Code, 2016, S. 30(4)

[3] *Id.*

[4] Pooja Mahajan, *Cramdown under Indian Insolvency Law*, Global Restructuring Review (9 October 2024) *available at* < https://globalrestructuringreview.com/review/asia-pacific-restructuring-review/2025/article/cramdown-under-indian-insolvency-law> (last visited Jan. 21, 2025).

[5] *Committee of Creditors of Essar Steel India Limited* v. *Satish Kumar Gupta*, (2020) 8 S.C.C. 531 (India).

[6] Ministry of Corporate Affairs, REPORT OF THE INSOLVENCY LAW COMMITTEE 58 (2018) *available at*: https://ibbi.gov.in/ILRReport2603_03042018.pdf. (22 Jan. 22, 2025).

[7] *Id.*

a. Whether the dissenting financial creditors receive value depending on the value of their respective security interests, especially when the security is exclusive; or
b. Whether they receive value assuming they have relinquished their security interests and therefore, receive a pro rata value as all other secured creditors. The nature of their security interests does not matter.

Courts have shown divergent views concerning these two aspects, and significant judgments have shaped mainly this discourse. These decisions highlight the intricate legal framework governing the resolution of insolvency proceedings. Specifically, it examines the delicate equilibrium required to deter strategic dissent by secured creditors seeking preferential treatment while ensuring all creditors' equitable treatment, including those with minority interests. The analysis delves into relevant legal precedents and explores how equitable distribution and commercial wisdom can be harmonised to facilitate a peaceful, efficient insolvency resolution process.

The exposition of this subject is carried out in five parts. ***Part I*** *outlines the concept of DFC and its position in IBC, along with addressing the issues.* ***Part II*** *analyses the whole issue at hand concerning legislative intention. In light of the recent developments in the protection of DFC,* ***Part III*** *analyses case laws related to the subject matter and traces the journey taken by Indian courts. The authors analyse the entire situation in* ***Part IV*** *and propose their suggestion to resolve the seemingly contradictory position in* ***Part V*** *of the paper.*

II

Provisions given under the IBC: Tracing the Legislative Intent

To understand the intricacies of the matter and trace the legislative intent, it is essential to discuss the relevant provisions of the IBC.

Section 30(2)[8] It requires that the resolution professional ensure that the insolvency resolution process costs are prioritised, operational creditors receive an amount not less than their liquidation entitlement, and dissenting financial creditors receive at least the liquidation value of their claims.

30(2)(b)(ii) got amended in 2019. The amendment was brought as beneficial legislation in favour of the DFCs to propose "mandatory minimum payments" to the DFCs. The interpretation of this section is the central issue in these cases. The amended provision mandates that dissenting financial creditors shall not receive an

[8] The Insolvency and Bankruptcy Code, 2016, S. 30(28)

amount less than the liquidation value of the Corporate Debtor under Section 53(1) of the IBC. This provision "forfends the dissenting financial creditor from settling for a lower amount payable under the resolution plan. The amended 30(2)(b) is a beneficial provision for dissenting financial creditors, as it safeguards them against "blanket cramdown".[9] Before this amendment, the said benefit was only available to operational creditors. This amendment ensured that, along with operational creditors, dissenting financial creditors are also not left in the lurch. The amendment also added an explanation to the Section. It mandates the distribution to be fair and equitable to dissenting financial creditors and operational creditors. Essentially, the objective behind amending the section was to protect the interests of the dissenting financial creditors, so that their rights are not violated because of the decisions taken by the assenting creditors. Hence, minimum payment to the dissenting financial creditors has been mandated.

Section 30(2)(b)(ii) refers to Section 53 for some limited purposes of making distribution to the secured creditors in "the proportion of their outstanding debt."

The main issue concerning this amended section is whether the amended Section 30(2)(b)(ii) of the Code entitles the dissenting financial creditor to be paid the minimum value of its security interest. Regarding addressing this issue, various judgments have taken divergent views.

Section 30(4),[10] empowers the CoC to approve the resolution plan, considering the order of priority amongst creditors and the value of security *interests*. Such discretion is immune from judicial review unless "similarly situated creditors are not accorded a fair and equitable treatment."[11] This is inserted to ensure that the process is concluded in a timely manner.

Regulation 38(1)(c)[12] The CIRP Regulations, 2016, mandate "a resolution plan to specify the amount payable to a dissenting financial creditor, and indicate that it shall be paid in priority over the assenting financial creditor."

III
Landmark Decisions and the Interpretive Shift in Dissenting Creditor Treatment

[9] *DBS Bank Ltd Singapore* v. *Ruchi Soya Industries Ltd.*, (2024) 1 S.C.R. 14 (India).
[10] *Supra* 2.
[11] *Supra* 5.
[12] Regulation 38(1)(c), IBBI *(Insolvency Resolution Process of Corporate Persons), Regulations*, 2016.

Recent judgments have largely shaped the discussion on dissenting financial creditors' rights. The issue has seen various judicial interpretations, giving contrary views. This section traces the journey of interpreting the treatment of dissenting secured financial creditors, focusing on the impact of the recent decisions. This section is divided into two parts. Firstly, the cases support the view that dissenting financial creditors should receive the value equivalent to their security interest. Secondly, the cases that support the view that dissenting financial creditors should get value proportionate to their voting shares in the CoC.

View 1: Entitlement Equivalent to a Security Interest

1. ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta***[13]

In this case, the payout issue to dissenting financial creditors was raised for the first time. This case did not accept the "equality for all" approach. The argument for the same is that doing so would encourage the dissenting creditors to vote for liquidation, rather than the resolution process, because in the case of liquidation, they would get a better value for their security interests. "The concept of equitable treatment of creditors, including the observations that equitable treatment of creditors meant equitable treatment only within the same class; and that protection of creditors in general was important but it was also imperative that the creditors be protected from each other". It observed that the amended 30(2)(b) is a beneficial provision for dissenting financial creditors, as it safeguards them against "blanket cramdown". The view was also validated in various cases.[14] This case also discussed the limited scope of judicial review evident from the joint reading of Section 31, Section 32 and Section 61(3) of the Code.

2. ***Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd***[15]

The court noted that, within the context of Section 30(2)(b) of the IBC, "payment" refers exclusively to monetary transactions and excludes any form of exchange resembling barter. Furthermore, the court stipulated that a resolution plan must stipulate either direct monetary payment or, if the Dissenting Financial Creditors (DFCs) are secured creditors, the enforcement of their security interest, up to the

[13] *Supra* 5.

[14] *Pratap Technocrats Pvt. Ltd.* v. *Reliance Infratel Ltd (Monitoring Committee)*, (2021) 10 S.C.C. 623 (India).

[15] *Jaypee Kensington Boulevard Apartments Welfare Association* v. *NBCC (India) Ltd.*, (2022) 1 S.C.C. 40 (India).

value receivable, as an alternative to direct payment. Consequently, the liquidation value owed to the DFCs under Section 53 of the IBC must be discharged preferentially, exclusively through cash payment or the enforcement of a security interest. The court, however, did not preclude DFCs from pursuing alternative methods of debt discharge.

3. ***DBS v. Ruchi Soya Industries Limited and Another***[16]

The Court in *Ruchi Soya* validated the view taken in the cases of *Jaypee Kensington* and *CoC of Essar.* It interrupted the view taken in *Amit Metaliks,*[17] and held that it is only "partially correct".[18] *Ruchi Soya* is a landmark judgment that extended benefits to the dissenting financial creditors. A two-judge bench of the Apex Court took a contrary view from its previous stand vide an order dated January 3, 2024. In this case, the Court observed that "the language in Section 30(2)(b)(ii) (by referring to Section 53(1)) protects the position of a Secured DFC by assuring that they are at least paid an amount equivalent to the value of their security interest".[19]

The Court believed that amended 30(2)(b) aims to protect the DFC and Operational Creditors. They do so by ensuring that at the time of liquidation of the corporate debtor, both DFC and OC get at least a "minimum amount". Such an amount should not be less than what they would receive in the event of the liquidation of the corporate debtor.

The Court relied on the Committee of Creditors of Essar Steel v Satish Kumar Gupta & Ors case[20] to observe that the amended Section 30(2)(b)(ii) provides assurance that secured dissenting financial creditors would receive value equivalent to their security interest. The bench gave an independent reading to Sections 30(2)(b)(ii) and 30(4) and observed that the commercial wisdom of the Committee of Creditors to include the value of security interests does not extend to the security interest of the dissenting creditor. It is limited only to the assenting creditors. The Court also conjointly read Sections 52 and 53 to hold that "a dissenting secured creditor would be entitled to a minimum value in monetary terms equivalent to the value of the security interest."

View II: Entitlement Proportionate to voting share in the CoC

---

[16] *Supra* 9.
[17] *ARC Private Limited* v. *Amit Metaliks Ltd.,* (2021) 19 S.C.C. 672 (India).
[18] *Id.*, ¶38.2.
[19] *Supra* 9, ¶33.
[20] *Supra* 5.

4. ***India Resurgence ARC Private Limited v. Amit Metaliks Limited***[21]

A coordinate bench of the Supreme Court in *Amit Metaliks* believed that the DFC would be entitled to payment of the amount by the resolution plan. *Pari passu* principle dictates that all secured financial creditors, irrespective of their assent to the insolvency resolution plan, are treated equally. Dissenting secured creditors are entitled to receive *pro rata* payments under the plan proportionate to their respective shares in the aggregate secured debt. This principle applies regardless of the individual security interests' specific nature or priority. This approach, prevalent in most Indian insolvency proceedings, has generated considerable apprehension among secured lenders, particularly those who had extended credit based on the expectation of preferential treatment afforded by superior or higher-ranking security interests granted by the debtor." The scope of the amended 30(2) was discussed in detail in this case. The resolution plan could only determine the minimum liquidation value, notwithstanding the security interest realised by the dissenting financial creditors. The Court noted that "it has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above the other financial creditors to enforce the entire of the security interest and, thereby bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors."[22]

Therefore, the Court observed that 'the Minimum Liquidation Value paid to dissenting financial creditors must be determined based on exposure of the concerned creditor in the corporate debtor and in proportion to the voting share enjoyed by such creditor in the CoC.' Therefore, seeking entitlement to the value of a security interest is not a group for dissenting creditors to challenge a resolution plan. It held that dissenting creditors will have to share recoveries of the amount on a *pari passu* basis with assenting creditors. Every secured creditor was treated similarly. This is the position of law as a larger bench delivered it compared to the Ruchi Soya judgment.

Such interpretation of the Section would put the assenting creditors in a better position than they would have if the pay-out were dependent on their security interest, which is of inferior value. However, this interpretation of co-mingling the assets of all secured creditors would be detrimental to the dissenting creditors, as they would receive a lesser payout than the value of their security interests. As it was the scenario in *Amit Metaliks*. This case set a precedent in which the assenting creditors not only got more than what they would have received but also decided

[21] *Supra* 17.
[22] *Id.*, ¶ 22.

on the manner of distribution. It can also force the dissenting creditors to receive a payout less than the liquidation value. This would mean that dissenting creditors face the risk of "unfairly crammed down under a resolution plan" even with exclusive claim over the security.[23]

This case had a cascading effect on the jurisprudence of dissenting financial creditors. Various NCLT and NCLAT judgments followed the view.[24] The findings of the decision can be summarised as:

a. Dissenting Financial Creditors could only enforce their payout to the extent of the value under the resolution plan as decided by the commercial wisdom of the CoC.

b. Outside the CIRP, dissenting financial creditors cannot pursue their claim individually or exclusively.

c. Dissenting financial creditors would get priority and be paid the value they are entitled to under the resolution plan formulated.

d. Section 53(1) of the IBC does not suggest any hierarchy based on security interest; it depends on the outstanding debt.

e. "The treatment of any debt or asset must be left to the wisdom of the CoC".

This view was further upheld by a Full Bench of the Supreme Court's order dated July 10, 2024, in the case of *Paridhi Finvest*.

5. ***Paridhi Finvest Private Limited v. Value Infracon Buyers Association and Another***[25]

While the reference to Ruchi Soya is still pending in the Supreme Court, in *Paridhi Finvest*, the Apex Court endorsed the view of *Amit Metaliks*. The Court held that the

---

[23] Suharsh Sinha, *Dilution of Secured Creditor Rights under the Indian Insolvency Regime*, Faculty of Law Blogs, University of Oxford (22 June, 2022) *available at* < https://blogs.law.ox.ac.uk/business-law-blog/blog/2022/06/dilution-secured-creditor-rights-under-indian-insolvency-regime> (last visited Feb. 20, 2025).

[24] *See, ICICI Bank Limited* v. *BKM Industries Limited*, NCLAT, Company Appeal no. 405 of 2023(India); *Jet Aircraft Maintenance Engineers Welfare Associate* v. *Aashish Chhawchharia, RP of Jet Airways (India) Ltd.*, 2022 SCC Online NCLAT 418 (India); *Oriental Bank of Commerce* v. *Atlantic Projects Limited*, 2023 SCC OnLine NCLT 1379 (India).

[25] *Paridhi Finvest Private Limited* v. *Value Infracon Buyers Association,* (2024) SCC Online SC 1977 (India).

dissenting financial creditors should not get the payout calculated based on the value of the security interest they have. *Paridhi Finvest* considered that "unless a lender chooses to realise the security interest as per Section 52, every asset is deemed part of the liquidation estate, and subject to recovery and distribution as per Section 53. No extraordinary rights are vested in any individual lender." *Paridhi Finvest* emphasises that exclusivity of creditors' security is likely to be ignored during a CIRP process; therefore, their security interests do not guarantee greater protection.

6. ***Beacon Trusteeship Ltd. Vs. Jayesh Sanghrajka, RP of Radius Estates and Developers Pvt. Ltd. and Ors***.[26]

This judgment reaffirmed the findings of *Paridhi Fintech* and gave primacy to the CoC's decision based on equitable and fair distribution. This judgment underscored that no special treatment should be given to dissenting financial creditors based on their security interests. This view also aligns with the observation given by the Bankruptcy Law Reforms Committee, which proposed payment to dissenting financial creditors based on the security held by their security interests. The Report noted that "the only correct forum for deciding the fate of a defaulting entity is a CoC where all financial creditors have votes in proportion to the magnitude of debt they hold".[27] The tribunal further declared that the law laid down in *Amit Metaliks* can be relied upon until the Hon'ble Supreme Court expresses a different view in the reference pending before it.

IV
Analysing the Practical Fallout of Ruchi Soya's Reasoning

The UNCITRAL Legislative Guide on Insolvency Law provides special protection to dissenting financial creditors, which "the law might provide, for example, that dissenting creditors cannot be bound unless assured of specific treatment. Generally, the treatment might be that the creditors will receive at least as much under the plan as they would have received in liquidation proceedings.[28] This is the primary premise on which the court relied in *Ruchi Soya*.[29] Reinforcing the interest of dissenting financial creditors. The court's judgement looked primarily into the legislative intent of introducing section 30(2)(b)(ii) and applied the law directly to the situation at hand which our opinion is what adherence to a sound judicial approach entails, however the court completely distanced itself from the practical

[26] *Beacon Trusteeship Ltd.* v. *Jayesh Sanghrajka, RP of Radius Estates and Developers Pvt. Ltd*. and CP (I.B.) No: 1390 of 2020 (India).
[27] Debanranjan Goswami, *India's Journey towards Cross- Border Insolvency Law reform*, I AJCL 205, 197-215 (2024).
[28] UNCITRAL Legislative Guide on Insolvency Law 86 (2005)
[29] *Supra* 9, ¶32.

consequences of such an approach. The court's strict adherence to the letter of the law is problematic at least on three fronts.

Firstly, the court failed to note that if tribunals are to enforce such mandatory prescription of minimum payment of security interest to the dissenters in CoC, this would be tantamount to curbing the commercial wisdom of CoC. This is contrary to the legislative intent, as indicated by the use of the word 'may' in Section 30(4), rendering it merely directory for the CoC to consider the priority of creditors and the value of their secured assets when assessing the 'feasibility' and 'viability' of a resolution plan—an exercise rooted purely in commercial acumen. It is indisputable that a resolution plan involves far more than just the distribution scheme. Multiple other evaluation matrices must also be weighed, such as upfront cash recovery, equity infusion for operational improvement, infusion of fresh funds in the form of debt or equity, and other qualitative aspects of the applicant, like industry experience, financial strength, and the ability to turn around distressed entities. Therefore, imposing such a mandate would necessarily entail compromising on one or more of these matrices, thereby restricting the CoC's exercise of commercial discretion. This directly conflicts with the principle of the 'paramountcy of the CoC' in commercial matters, as consistently affirmed in several Supreme Court decisions.[30]

Secondly, the court also failed to consider the law as laid down in the *Essar Steel* case, on the contours of the concept of equitable treatment of creditors, which entails that equitable treatment of creditors meant equitable treatment only within the same class. Therefore, the right available to financial creditors to dissent while voting for a resolution plan cannot be grounds for creating another right, according to dissenting creditors with greater rights in a bankruptcy proceeding than they would enjoy under the general law. Statutorily mandating such a prescription of minimum entitlement would create a sub-class within the same class of financial creditors. Such a scenario would lead to inter-se priorities amongst the same class of financial creditors, something which NCLAT has explicitly declined.[31] To find any ground under the current insolvency regime.

Thirdly, such a mandate would directly encroach on the objectives of the IBC as noted by the court in *Amit Metaliks*.[32], such that the result would be that, rather than insolvency resolution and maximisation of the value of assets of the corporate

---

[30] *See, K. Sashidhar* v. *Indian Overseas Bank*, (2019) 12 SCC 150 (India); *Kalpraj Dharamshi* v. *Kotak Investment Advisors Ltd* (2021 (10) SCC 401 (India); *Maharashtra Seamless Limited* v. *Padmanabhan Venkatesh*, 2019 SCC OnLine SC 73 (India).

[31] *See*, *Ashutosh Koul* v. *DBS Bank Limited,* 2019 SCC OnLine NCLAT 148 (India); *Technology Development Board* v. *Anil Goel*, 2021 SCC OnLine NCLAT 349 (India).

[32] *Supra* 17, ¶16.

debtor, the processes would lead to more liquidations, with every secured financial creditor opting to stand on dissent. Such a result would be defeating the very purpose envisaged by the Code. Such a view was also expressed in *Essar Steel*,[33] wherein the court noted that if an "equality for all" approach recognising the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor were to be liquidated rather than a resolution plan being approved.

V

Proposing A Middle Path - Reconciling Commercial Wisdom and Creditor Protection

The core of the judicial tussle between *Ruchi Soya* and *Amit Metaliks* lies not merely in the outcome, but in the fundamentally divergent approaches adopted by the courts. The *Ruchi Soya* decision prioritises the protection of dissenting financial creditors, adopting an interpretative and policy-oriented approach aimed at upholding their entitlements. However, this reasoning overlooks the potential domino effect such a reading could trigger, undermining the broader objectives of the Code, particularly its emphasis on resolution over recovery. In contrast, *Amit Metaliks* adopts a more pragmatic lens, placing weight on the practical consequences of enforcing minimum entitlements in absolute terms. While it implicitly reads down a provision introduced with a protective intent, its foresight recognises the necessity of preserving the commercial efficacy of the resolution process. The authors believe much of this inconsistency can be attributed to a lack of legislative foresight. By rendering Section 30(4) merely directory—allowing the Committee of Creditors broad discretion—while simultaneously granting dissenting financial creditors a statutory right under Section 30(2)(b), the legislature has attempted to strike a balance between two competing interests: the space for commercial decision-making and the need to protect minority dissenters from the whims of the majority. The authors seek to carve out a workable middle ground within this tension through their proposed resolution.

The authors present three hypothetical scenarios to facilitate a clearer understanding of this proposal and its practical implications. Consider a corporate debtor undergoing CIRP with three secured financial creditors—A, B, and C—forming the Committee of Creditors. A resolution applicant submits a plan for their consideration. The following tabular representations illustrate how the legal

[33] *Supra* 5, ¶85.

positions laid down in *Amit Metaliks* and *Ruchi Soya* would operate in practice within these scenarios.

Case 1: Application of the Amit Metaliks Framework

Secured Financial Creditors	Admitted Claims	Secured Asset Fair Value	Asset liquidation value	Payment offered in the plan	Recovery percentage
A	15 crores	10 crores	7.8 crores	8 crores	53.33%
B	17 crores	12 crores	10.2 crores	9 crores	52.9%
C	8 crores	5 crores	3 crores	4.2 crores	52.5%

This distribution framework ensures 'equitable treatment' of financial creditors, as all creditors of the same class end up with nearly similar recoveries. However, it is unfair to Creditor B, who is offered only ₹9 crores—25% less than what B could have recovered had they realised their security interest under Section 52, compared to Creditor C, who faces only a 16% reduction. What makes this particularly problematic is that Creditor B would not have sufficient time to carry out such complex calculations, as the fair value of each secured asset is disclosed by the resolution applicant to the committee of creditors only after receipt of resolution plans, and only upon an undertaking by CoC members to maintain confidentiality and prevent undue gain or loss of such information. [34]

Case 2: Application of the Ruchi Soya Framework

Secured Financial Creditors	Admitted Claims	Secured Asset Fair Value	Asset liquidation value	Payment offered in the plan	Recovery percentage	Adjustments	Final Payment
A	15 crores	10 crores	7.8 crores	8 crores	53.33%	(-) 0.6 crores	7.4 crores
B	17 crores	12 crores	10.2 crores	9 crores	52.9%	(+) 1.2 crores	10.2 crores
C	8 crores	5 crores	3 crores	4.2 crores	52.5%	(-) 0.6 crores	2.4 crores

Under this framework, once Creditor B releases that he is at a disadvantage, he may choose to dissent, in that case, the resolution applicant will have to abide by the requirement under section 30(2)(b)(ii) and offer a positive adjustment of 1.2 crores to B, this adjustment in ordinary situations be deducted proportionately from the pay-outs offered to other creditors which would render Creditor A in a dilemma as

[34] Regulation 35(2), *IBBI (Insolvency Resolution Process of Corporate Persons) Regulations*, 2016.

A who was initially obtaining eight crores which is 20 lakhs more than the liquidation value, post adjustment for B would receive 7.4 crores which is 40 lakhs less than the liquidation value prompting him to dissent thereby creating a domino effect.

Case 3: Proposed Framework Based on Fair Value-Linked Distribution

Secured Financial Creditors	Admitted Claims	Secured Asset Fair Value	Asset liquidation value	Payment offered in the plan	Recovery percentage as % of secured assets fair value
A	15 crores	10 crores	7.8 crores	7.1 crores	71%
B	17 crores	12 crores	10.2 crores	8.52 crores	71%
C	8 crores	5 crores	3 crores	3.55 crores	71%

In Case 3, the authors propose a revised statutory framework whereby payments to secured financial creditors are made as a percentage of the fair value of their respective secured assets, rather than a fixed liquidation floor under Section 53 in case of dissent or tussle between the creditors. This approach better aligns the payout with the risk analysis and commercial judgment initially undertaken by each creditor at the time of extending credit to the corporate debtor. It also introduces greater predictability and fairness in the distribution mechanism. By proportionately linking recovery to the fair value of the security, this model reduces the likelihood of dissenting creditors opposing the resolution plan because the value offered is significantly lower than the market value of their collateral. The proposal thus seeks to harmonise the creditor's commercial expectations with the objectives of the resolution process.

VI

Conclusion

The treatment of dissenting financial creditors under the IBC continues to be a complex and evolving issue, shaped by competing judicial interpretations and legislative ambiguity. This paper has attempted to trace the contours of this legal uncertainty and offered a balanced proposal to reconcile commercial wisdom with creditor rights. The intention of the legislature to give a choice of relinquishment or non-relinquishment of security interest at the CIRP stage does not find any place in the Code. The assets have to be relinquished as part of the CIRP. Therefore, it isn't

easy to find support for the view that a creditor could enforce more rights to their security interests than other creditors. However, the authors believe that a fair value-linked recovery framework, as proposed, seeks to uphold the Code's objective of resolution while ensuring equitable treatment within creditor classes. As jurisprudence develops, a principled and pragmatic approach will be essential to maintain the delicate equilibrium between efficiency and fairness in insolvency proceedings.