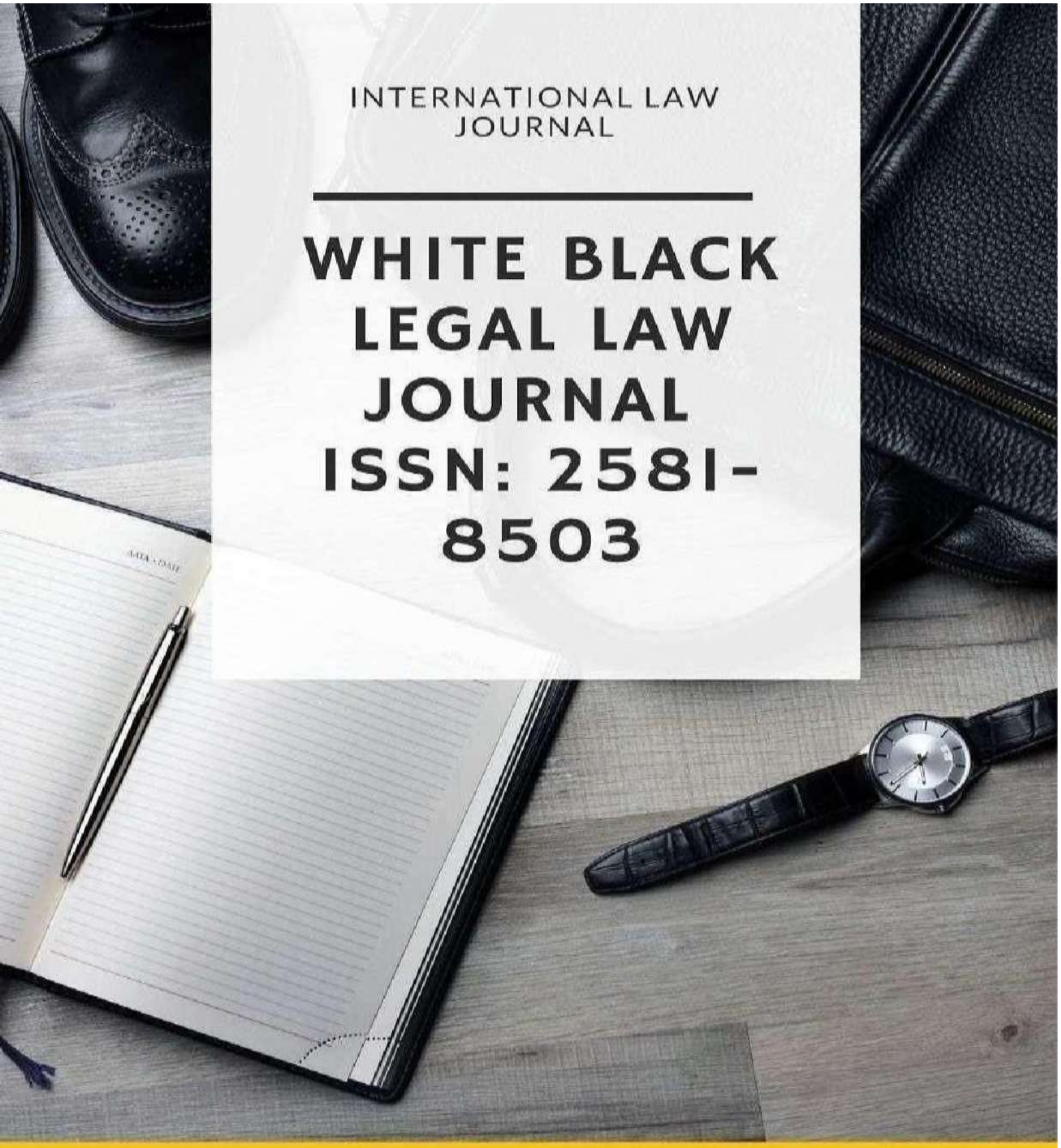

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refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A STUDY OF SEBI's FRAMEWORK FOR GRANTING PUBLIC EQUITY SHAREHOLDERS THE RIGHT TO ACQUIRE SHARES POST CIRP A PRUDENT PROTECTIVE MEASURE OR SHORT-SIGHTED DECISION

AUTHORED BY - DWAIPAYAN RAY

ABSTRACT

This particular paper examines the regulatory framework surrounding the compliance and protection of public shareholders in listed companies undergoing the corporate insolvency resolution process in India. It delves into the key legislative provisions under The Securities Contracts Regulation Act of 1956, The Securities Contract (Regulation) Rules of 1957 and The Insolvency And Bankruptcy Code 2016 highlighting the obligations imposed on listed entities regarding minimum public shareholding and the complexities that arise during insolvency proceedings. Moreover, this paper discusses the necessity for a legal framework that safeguards the minority shareholders rights while ensuring compliance with IBC's creditor first model. This Paper also analysis the critical requirements for maintaining a minimum public shareholding of 25% the regulatory mechanism system published by the SEBI and the specific challenges faced by minority shareholders in the context of corporate insolvency. Emphasising the importance of equitable treatment of public investors during the resolution process. Through a detailed review of recent judicial precedents and regulatory measures it aims to highlight the ongoing issues surrounding the protection of public equity shareholders particularly in light of SEBI's efforts to implement a framework that grants these shareholders of Fair opportunity to the resolution process.

Keywords: *Minimum public shareholding, Creditor rights, public equity shareholders, Insolvency and Bankruptcy Code.*

I. INTRODUCTION

According to the residual equity theory it is considered equity shareholders are recognised as the true owners of the company. Equity shareholding can be categorised into primarily two groups which include: (1) Promoters Group and (2) Non Promoters Group.[1]

Retail shareholders are those people who typically invest in equity, and they have two main objectives that is earning dividends and achieving capital growth. Unlike other institutional investors retail shareholders generally show less interest in the company's long term economic growth, focusing instead on safeguarding their future and immediate financial returns.[2] The definition of a ***"public shareholding"*** is defined under Section 2 (e) of the SCRR, 1957-

> *"public shareholding" means equity shares of the company held by public and shall exclude shares which are held by custodian against depository receipts issued overseas.*

The framework that is proposed by SEBI re-visits the Link between IBC and SEBI again. The new framework proposes or rather boosts the primary goal of the regulator that is *protection of the interest and investment of retail investor.* The Insolvency and Bankruptcy Code governs the relationship between creditors and debtors while the Securities and Exchange Board of India safeguards the interest of investors in the securities market. The proposal outlined in the notification is commendable particularly given the increasing number of listed companies entering liquidation since 2016 which adds complexity to the issues addressed by the code. Furthermore, this proposal elevates the burden on the new corporate debtor or resolution applicant regarding capital raising for the new entity. It aims to facilitate a similer flow of capital for the post CIRP entity without the risk of dilution.[3]

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[1] Arunima Sao & Vinit Bachwani**,** *Equity Shareholders in case of Listed Companies undergoing CIRP: A necessity or unnecessary interference by SEBI?,* IBC Law Blog, https://ibclaw.blog/framework-for-protection-of-public-equity-shareholders-in-case-of-listed-companies-undergoing-cirp-a-necessity-or-unnecessary-interference-by-sebi-arunima-sao-vinit-bachwani/

[2] *What's the Difference Between Retail and Institutional Investors*, YIELDSTREET, (Jan 18, 2024)https://www.yieldstreet.com/resources/article/retail-vs-institutional-investors/

[3] Ayush Shandilya, *Opportunity for public equity shareholders to acquire shares after CIRP- a measure for protection or an instance of myopia*, Tax Guru (Jun 10, 2023) https://taxguru.in/corporate-law/acquire-shares-cirp-opportunity-public-equity-shareholders.html#goog_rewarded

II. COMPLIANCE AND PROTECTION OF PUBLIC SHAREHOLDERS IN LISTED COMPANIES: REGULATORY MANDATES UNDER SCRA, SCRR AND IBC

The Securities Contract Regulation Act of 1956 (*hereinafter* referred to as **"SCRA"**) is one of the earliest legislation for the securities markets. The provisions of SCRA are involved with the regulation of contracts in the securities and the stock exchanges in India. The SCRA applies to certain transactions, prevents certain undesirable transactions and sets up rules so that the market has a fair and transparent process and the investors are protected and also provides for ancillary matters that promote a healthy stock market[4]. Section 21 of the SCRA talks about the mandatory compliance by all listed companies to follow the conditions of the listing agreement of the stock exchange[5]. It is this necessity of a mandate that has been provided by the SCRA that the central government framed the Security Contract (Regulation) Rules of 1957 (*hereinafter* referred to as **"SCRR"**).

A. ANALYZING MINIMUM PUBLIC SHAREHOLDING REQUIREMENTS.

A listed entity has to mandatorily comply with the requirements related to minimum public shareholding that has been specified under Rule 19(2) and Rule 19A of the SCRR, 1957. *Regulation 38* of the listing regulations mentions the same. The two most important points to ensure are that the public shareholding for a listed entity is not less than 25% and also to ensure that this level of public shareholding has been reached within a specified time limit in such manner and procedure prescribed by the SEBI.

> *Rule 19 (2) (b) (i) At least twenty five per cent. of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document; or*
>
> *(ii) At least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document if the post issue capital of the company calculated at offer price is more than four thousand crore rupees*

[4] *[FAQs] on Securities Contracts Regulation Act (SCRA) – Objects | Applicability | Definitions***,** TAXMANN BLOGS, (Feb 16, 2024), https://www.taxmann.com/post/blog/faqs-on-securities-contracts-regulation-act-scra.
[5] Securities Contract Regulation Act, No. 42 of 1956, §21 (Ind.)

(c) Notwithstanding anything contained in clause (b), a public sector company, shall offer and allot at least ten per cent, of each class or kind of equity shares or debentures convertible into equity shares to public in terms of an offer document.

***Rule 19A**. (1) Every listed company other than public sector company shall maintain public shareholding of at least twenty five per cent.: Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India. Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent, public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.*

(2) Where the public shareholding in a listed company falls below twenty five per cent. at any time, such company shall bring the public shareholding to twenty five per cent. within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.

(3) Notwithstanding anything contained in this rule, every listed public sector company shall maintain public shareholding of at least ten per cent.: Provided that a listed public sector company-

(a) which has public shareholding below ten per cent, on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of three years from the date of such commencement; (b) whose public shareholding reduces below ten per cent, after the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public

shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of twelve months from the date of such reduction,.

Rule 19 (2) (b) mentions the limit of minimum offer and the allotment to the public. The offer that is to be made to the public should be at least 25% of certain class or kind of equity shares or debentures that are convertible into equity shares that are issued by the company. The quoted provisions as stated above have a compulsory requirement on all listed companies to achieve and maintain the minimum public shareholding of 25%. Those companies that have less than the stated 25% of the minimum public shareholding has to achieve the same within three years. Further aligning with the requirements of Rule 19 (2) (b) [6]and Rule 19 A of SCRR [7]and Regulation 38 of the Listing Obligations [8]the method/manner in which the Minimum Public Shareholding is to be raised has been stated in two circulars issued by the SEBI [9]that pointed out the methods. Certain methods/manners are mentioned below:

1. Shares that are issued to the public through a prospectus;
2. Shares that are held by the Promoter/Promoter group been issued to the public through a prospectus;
3. Rights issue to public shareholders or Bonus issue to public shareholders along with a specific condition that the Promoter/Promoter Group has to mandatorily forgo their portion of entitlement to equity shares;
4. An increase in public holdings as a result of option and shares allotment under the Employee stock option scheme *(hereinafter referred to as "***ESOP")**, up to 2% of the listed company paid-up equity share capital. The specific condition stated in the circular issued by SEBI states that The ESOP Scheme must comply with the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 and no shares would be allotted to the Promoters.

In light of the relevant jurisprudence such as ***Shri Saroj Kumar Poddar, Kolkata vs Dcit, Circle - 6(1), Kolkata , Kolkata on 16 November, 2018 (Income Tax Appellate Tribunal Kolkata)*** [10]it is evident that the SCRR, 1957 was amended in June, 2010 to mandate that listed companies

[6] Securities Contracts (Regulation) Rules, 1957, Gazette of India, pt. II sec.3(i), Rule 19(2)(b) (Feb 21, 1957).
[7] Securities Contracts (Regulation) Rules, 1957, Gazette of India, pt. II sec.3(i), Rule 19A (Feb 21, 1957).
[8] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 4, Reg. 38 (Sept 2, 2015)
[9] Manner of achieving minimum public shareholding, Circular No.: SEBI/HO/CFD/PoD2/P/CIR/2023/18, (Feb 03, 2023).
[10] *Shri Saroj Kumar Poddar, Kolkata vs Dcit, Circle - 6(1), Kolkata, ITA No.1695/Kol/2017.*

maintain minimum public shareholding threshold of 25%. Companies that have minimum public shareholding below the stated threshold as of June 4, 2010 were obligated to achieve compliance within a statutory period of three years.

In Khoday India Ltd. And Others vs Sebi on 4 September, 2019 It was held that the company was mandated to adhere to the minimum public shareholding (MPS) requirement as stipulated under Rule 19(2) and Rule 19A of the SCRR. However, it disregarded the directive issued by SEBI circulars dated February 2013 and May 2013, which provided specific mechanism for ensuring compliance with the MPS obligations prescribed under the aforementioned rules.

B. THE PROTECTION OF MINORITY SHAREHOLDERS THROUGH LEGAL FRAMEWORKS.

Before the enactment of the Insolvency and Bankruptcy Code of 2016, India lacked a unified legal framework to effectively address insolvency and bankruptcy issues. A fragmented structure comprised of multiple laws and forums, such as the Companies Act of 1956, The Sick Industrial Companies Act of 1985 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act of 2002 that governed the insolvency proceedings leading to inefficiencies and delays in resolving corporate distress. Recognising the need for a comprehensive and streamlined approach the IBC was enacted, coming into force on the 1st of December 2016 with the intent to consolidate and simplify insolvency and liquidation proceedings across corporate, partnership and individual levels.

Corporate restructuring under the IBC aims to reorganise a financially distressed entity's capital structure to enhance its operational and financial viability. This restructuring is often necessitated by severe liquidity issues, asset inadequacies or inability to meet debt obligations. [11]Within a corporation, diverse stakeholders exist such as the majority shareholders, minority shareholders, management, employees and creditors and they possess varied interests leading to inevitable conflict over corporate cash flow and asset control during insolvency proceedings. Shareholders seek to maximise returns on invested capital while the creditors prioritise adequate capital reserves to fulfil outstanding obligations. Determining the extent of shareholder participation in the corporate insolvency process has long posed a significant

[11] Himanshi Sanjaykumar Sharma, *Corporate restructuring under IBC*, IBC Laws (June 7. 2021) https://ibclaw.in/corporate-restructuring-under-ibc-by-ms-himanshi-s-sharma/

challenge as it requires balancing shareholder's financial stakes with creditor's protection. Disputes frequently arise particularly between shareholders and unsecured creditors who also hold claims on corporate assets regarding the extent to which shareholders should retain a financial interest in a restructured company.[12]

The framework that is provided by IBC prioritises creditors' interest through its creditor-in-control model. This framework is built from the principle of creditors in control of the business of the corporator. After the commencement of the CIRP, the management of the company is possessed with a resolution professional who is under the supervision of a committee of creditors because the intervention of the promoter and the board of directors are reduced.[13]

The question posed at this moment is the necessity or the need for the protection of equity shareholders or minority shareholders. Taking a brief look at the ***Jaypee Kensington Boulevard v. NBCC (India) Limited***[14], this particular judgement pronounced by the Supreme Court addresses the key issues that were raised by the minority shareholders concerning their rights and financial interest when an insolvency resolution process is going on for a corporate debtor. The minority shareholders argued that their interest were disregarded in the approved resolution plan and the fair exit option was not provided to them. They also pointed out that such non-promoter shareholders had invested their hard earned money in the equity of the corporate debtor before the initiation of CIRP and such investments were made on the basis of the financial statements that were filed by the said corporate debtor. The Supreme Court considered the concerns of the minority shareholders and affirmed that there interest holds lower priority compared to the creditors. The Apex court also emphasised that the committee of creditors has an exclusive authority to assess and approve the resolution plan using it's commercial wisdom this decision making power is central to the IBC structure and does not subject to judicial review as long as procedural requirements are followed. The court also reiterated that once a resolution plan is approved under section 31 of IBC it binds all stakeholders that includes the dissenting shareholders also.

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[12] Suzzanne Uhland, George A. Davis, Adam J. Goldberg, Christopher Harris, *Insolvency Litigation*, Latham and Watkins LLP (Dec 21, 2021) https://www.lw.com/admin/upload/SiteAttachments/Insolvency%20Litigation.pdf

[13] Adv. Saprsh Pavan and CA. Sidharth S, *Shift in Paradigm: Debtor in possession to Creditor in Control*, IBC Laws, (Feb. 28, 2024) https://ibclaw.in/shift-in-paradigm-debtor-in-possession-to-creditor-in-control-by-adv-sparsha-pavan-ca-sidharth-s/

[14] Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., (2022) 1 SCC 401

The necessity or the need for protection of the minority shareholders can be understood by the strategy that has been taken by SEBI to shield the shareholders on the ground that resolution plan sometimes overlooks the investment that has been made by the public shareholder and often result to this investor losing their entire stake which is considered to be an unfair treatment. [15]The public shareholders who contribute their hard earned money and capital, they should not be left without nothing especially when the restructuring process favours creditors over equity holders. The opinion of SEBI is that these plans should be revised to incorporate fair treatment and offer some fair form of value or exit opportunity to public investors balancing their rights of all stakeholders involved.

Section 53 of IBC, 2016 reiterates that:[16]

> *(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—*
>
> *…..*
>
> *(h) equity shareholders or partners, as the case may be.*

Section 53 effectively set forth the distribution priority for proceeds obtained from the sale of a corporate debtor's assets. This provision takes precedence over any contradictory provisions in other laws establishing a strict hierarchical order for payment distribution.

Further, the equity shareholders occupy the lowest position in the hierarchy. They are eligible to receive payment only after satisfying all higher priority claims. This subordinate position of equity shareholders reflects the inherent risk in equity investment specially during insolvency aligning with the objective of IBC that is maximising recoveries for creditors. The equity shareholders are often left with limited or no returns underscoring the IBC's creditor first framework.

[15] Dhruv Kohli, *Shareholder Protection under IBC: A myth or a Possibility, IndiaCorpLaw (May 31, 2023)* https://indiacorplaw.in/2023/05/shareholder-protection-under-ibc-a-myth-or-a-possibility.html
[16] The Insolvency And Bankruptcy Code, 2016, No. 31 Of 2016, § 53 (Ind.)

Section 30(2)(e) [17] of IBC, 2016 further states that:

> *(2) The resolution professional shall examine[J2] each resolution plan received by him to confirm[J3] that each resolution plan—*
>
> *….*
>
> *(e) does not contravene any of the provisions of the law for the time being in force;*
>
> *….*
>
> *Explanation. -For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.*

Under the IBC, the rights of shareholders are effectively nullified during the resolution process. Even in cases where a proposed resolution plan would require a shareholder's approval under standard corporate governance procedure the IBC supersedes such requirements. This overrides any involvement the shareholders might normally have effectively excluding them from influencing the outcome of the corporate debtors restructuring. This approach puts emphasis on the focus that IBC has on its framework expediting resolution by granting decision making authority to the committee of creditors while significantly limiting the shareholders intervention regardless of their investment stake or prior involvement in the company.[18]

Under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, Regulation 3(2) [19]states that:

> *(2) Nothing contained in these regulations shall apply to the delisting of equity shares of a listed company—*
>
> *(a) that have been listed and traded on the innovators growth platform of a recognised stock exchange without making a public issue;*
>
> *(b) made pursuant to a resolution plan approved under section 31 of the Insolvency Code, if such plan provides for:*
>
> *(i) delisting of such shares; or*

[17] The Insolvency And Bankruptcy Code, 2016, No. 31 Of 2016, § 30(2)(e) (Ind.)

[18] Sikha Bansal, *Minority Shareholder Under IBC*, Vinod Kothari Consultants Blog (Aug 25, 2021) https://vinodkothari.com/2021/08/minority-shareholders-under-ibc/

[19] Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021, Gazette of India, pt. III sec. 4, Reg. 3(2) (Jun 10., 2021).

(ii) an exit opportunity to the existing public shareholders at a specified price:

Provided that the existing public shareholders shall be provided the exit opportunity at a price which shall not be less than the price, by whatever name called, at which a promoter or any entity belonging to the promoter group or any other shareholder, directly or indirectly, is provided an exit opportunity

This Regulation specifies that delisting regulation will not apply to a company's delisting if it is conducted through a resolution plan approved under the IBC provided the plan includes an exit opportunity for public shareholder at stated price. The mandate that has been provided under the regulation is that this exit price cannot be lower than the price offered to promoters or entities associated with them. It can be said that it is the only protection that has been provided to the minority shareholder so that they are not treated worse manner than the Promoters.[20]

C. SEBI FRAMEWORK FOR PROTECTING PUBLIC EQUITY SHAREHOLDERS.

SEBI as the market regulator crafted a framework/plan to protect/rescue the public equity shareholders of those listed companies that undergo the CIRP Process. The Framework Tilted as a "**Framework for protection of public equity shareholders in case of listed companies undergoing Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016"**

This Consultation paper Highlighted the following objectives which are:

1. This paper focuses on understanding and distinguishing the rights available to both creditors and equity shareholders, which are different. In matters of claims during liquidation Creditors consistently hold a priority position under the waterfall mechanism as outlined under Section 53 of the IBC, 2016.
2. The objective behind this Framework to be developed by SEBI is the presence of multiple grievances that are faced by minority/public equity shareholders once a listed company undergoes CIRP. The concerns that were raised by the shareholders as highlighted in this paper include, (i) once the new promoter has taken over the debtor

[20] Sikha Bansal, *Minority Shareholder Under IBC*, Vinod Kothari Consultants Blog (Aug 25, 2021) https://vinodkothari.com/2021/08/minority-shareholders-under-ibc/

company, the market regulatory (SEBI) must mandatorily interfere and allot the shares of the new entity, (ii) the main concern is that the retail shareholders of the debtor company do not receive any consideration for their previous shareholding patterns and it is the heavyweight players that acquire the shareholdings of the debtor company at rock bottom prices and there are no pre-notification being provided to the public shareholders to articulate their position about such delisting procedure that leads to the nullified value of the equity shares. Such practices and procedures are perceived unfavourably by the public shareholders.

3. SEBI duly points out that the proposal intends to deliver to the minority shareholders a chance to engage in the resolution process on similar pricing terms and the Regulator is not in any manner or form relinquishing the effective CIRP process.
4. Under Para number 10 of the said proposal, it is the public equity shareholders of the corporate debtor company (that is undergoing insolvency proceedings), mandatorily provided with an opportunity so that they can acquire equity from the capital structure of the new entity. The minimum public shareholding percentage as mentioned in the proposal is 25% on the similar pricing terms that have been agreed upon by the resolution applicant. The said proposal also enlists a duty on the new entity to have at least 5% public shareholding through offers that are being made to the non-promoter public shareholders. Under the proposal what can be sorted out is that minimum acceptance has to be achieved to maintain listing status. In those cases where the resolution applicant fails to put forth the minimum 5% public shareholding then the company will undergo delisting. This would involve cancelling the offer made to existing public equity shareholders and the company must then refund the money received from these shareholders through the offer before moving forward with the corporate insolvency resolution process.

III. EVALUATING INVESTOR PROTECTION: ASSESSING THE EFFECTIVENESS OF SEBI's SAFEGUARD FOR PUBLIC EQUITY SHAREHOLDERS.

A. SEBI's WEALTH CREATION EXERCISE

India due to its concentrated shareholding system, the minority shareholders always bear the burden to be in a position that is vulnerable and helpless. There are Regulations that in their limited way do enable the minority shareholders to challenge any such positions or actions

taken by the promoter or acquirer of a company.[21]

Though the stated provision of Section 241 to 246 of The Companies Act, 2013[22], for the minority shareholders to be protected against oppression and mismanagement a legal framework is provided that challenges those prejudicial procedures taken against the interest of the shareholders.[23]

This Framework that is proposed is a positive step taken by SEBI to protect the minority interest and there is a point we can agree to is that so-called minority shareholders can be looked upon as different resources for the Economy. [24]Every year continuous entities are created and investment is done through public issue by the retail investors so that the Promoters can unlock their capital and goodwill is created in the market. Retail shareholders invest their money and create wealth for the promoters.

Minority Shareholders are not organised and there must be a certain mechanism for such minority shareholders to manage so that in the future these shareholders can submit resolution plans. The reason for no such organisation is the mere absence of credibility and no record of accomplishment.

The plausible argument for institutionalising a minority shareholder is that under the Insolvency and Bankruptcy Code of 2016, section 29A has already prohibited any promoters from participating while the insolvency process is ongoing. The holdings of the minority shareholders were affected due to the actions taken by the promoter and majority shareholders write off their value.[25]

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[21] Harpreet Kaur, *Delisting Regulations in India and the Position of Minority Shareholders,* Oxford Business Law Blog (Sept. 27 2023) https://blogs.law.ox.ac.uk/oblb/blog-post/2023/09/delisting-regulations-india-and-position-minority-shareholders

[22] The Companies Act, No. 18 of 2013, § 241 to 246 (Ind.)

[23] Karan Anand and Bhaskar Vishwajeet, *Indian Shareholder Activism: Approaching a Turning Point?*, IndianCorpLaw (May 20, 2024) https://indiacorplaw.in/2024/05/indian-shareholder-activism-approaching-a-turning-point.html

[24] Arka Biswas, *Opportunity for Public Equity Shareholders to Acquire Shares After CIRP*, Center for Business and Financial Law (Jul 19, 2023) https://www.cbflnludelhi.in/post/opportunity-for-public-equity-shareholders-to-acquire-shares-after-cirp

[25] Daizy Chawla and Yukta Garg, *Balancing the scales: Empowering minority shareholders in India Insolvency landscape*, Economic Times (Sep. 30, 2023) https://economictimes.indiatimes.com/small-biz/legal/balancing-the-scales-empowering-minority-shareholders-in-indias-insolvency-landscape/articleshow/104059565.cms?from=mdr

The question about the legal empowerment of SEBI to put forth such a proposal for any protection today of minority shareholders is necessary or not. We have to take a look at the power and functions of SEBI under the SEBI Act of 1992, wherein it has been mentioned under section 11(1) of the aforementioned Act:

> *11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.*

It is quite evident that there is a duty that has been imposed on SEBI to impose/implement such policies that are aimed at the protection of the investors.[26]

B. RELEVANCE OF RESOLUTION APPLICANT

It is very important to understand the Role that a certain prospective resolution applicant has concerning this Code. The resolution applicant has a complete right to receive any information that is related to the corporate debtor or any of the debts that are being owned by the corporate debtor itself. Under Regulation 36 B that specifies that

> *(1) The resolution professional shall, within five days of the date of issue of the final list under sub-regulation (12) of regulation 36A, issue the information memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list:*
> *Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.]*

For this purpose, the right to receive information from the resolution applicant is contained in the information memorandum and evaluation matrix as stated in the aforementioned provision. Thereafter, procedures must be provided by the resolution applicant that may be necessary for the insolvency resolution of the corporate debtor so that there is maximisation of the value of the asset which might include the transfer or sale of the asset[27]. This particular notion was upheld in the case of the ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar***

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[26] Dhruv Kohli, *Shareholder Protection under IBC: A myth or a Possibility, IndiaCorpLaw (May 31, 2023)* https://indiacorplaw.in/2023/05/shareholder-protection-under-ibc-a-myth-or-a-possibility.html

[27] Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others, (2020) 8 SCC 531.

Gupta &Ors.[28]**,** where it was also stated that the resolution plan might facilitate either modification or satisfaction of the security interest of a certain secured creditor and also a reduction in the amount payable to different classes of creditors.

The acknowledgement under this Code is that the said resolution applicant can propose such measures in the resolution plan that might be necessary for the insolvency resolution of the corporate debtor as to be understood from Section 5(26) of the Code and Regulation 37 of the CIRP Regulations[29] and the resolution applicant would offer such exceptional prices once it is provided clean rights over the corporate debtor's assets so that the Resolution Plan can be implemented efficiently[30]. During the formulation of the Resolution Plan, ample leeway is provided to the Resolution Applicant, meaning that freedom is provided to the Resolution Applicant in making such decisions necessary for managing the corporate debtor's business. [31]In light of the Proposal/Framework provided by SEBI, it is crucial for the framework to clearly indicate that any inability to satisfy the minimum public offer requirements will not diminish the resolution applicants obligation in addressing the creditors claims.[32]

IV. CONCLUSION.

SEBI's newly introduced framework aimed at safeguarding the interest of public equity holders in companies that are undergoing the insolvency resolution process is a commendable initiative that seeks to protect the minority shareholders in particular small shareholders who often find themselves at the disadvantage during these insolvency proceedings. The framework intend to enhance the transparency and fairness in acquisition process and addresses significant concerns regarding the treatment of public shareholders. However the implementation of this framework raises important questions in regards to its alignment with IBC. IBC which serves as a primary legislation that governs insolvency matters does not inherently provide protections to equity shareholders as they position the interest of the creditors as paramount. By the introduction of

[28] Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others, (2020) 8 SCC 531.
[29] Anoop Rawat and Ahkam Khan, *Treatment of Non-Promoter Public Shareholders Under IBC*, Mondaq *(Apr.11, 2023)* https://www.mondaq.com/india/insolvencybankruptcy/1302848/treatment-of-non-promoter-public-shareholders-under-ibc
[30] INSOLVENCY AND BANKRUPTCY BOARD OF INDIA, CORPORATE INSOLVENCY RESOLUTION PROCESS, https://ibbi.gov.in/Agenda_2_01122017.pdf
[31] State Bank Of India vs LEO Primecomp Private limited, IA/1239 (CHE)/ 2022 in IBA/578/2019.
[32] Mukesh Chand, *SEBI Consultative Paper For Framework For Protection (of Interest Of Public Equity Shareholders In Case Of Listed Companies During CIRP Under IBC,* Mondaq *(* Jan. 20, 2023)https://www.mondaq.com/india/shareholders/1273390/sebi-consultative-paper-for-framework-for-protection-of-interest-of-public-equity-shareholders-in-case-of-listed-companies-during-cirp-under-ibc

protections by SEBI there may be inadvertently a conflict within the provisions of IBC leading to potential legal ambiguities and oppositional inefficiencies. Moreover, the practical implication of this framework can be more challenging in nature. It is to be noted that there cannot be any delays related to the recovery prospect of creditors that would diminish the overall value of the company.

It is very important to acknowledge that there must be certain modifications regarding the treatment of public equity shareholders emanate from the Insolvency and Bankruptcy Borad of India (IBBI) as they are strategically positioned to develop frameworks that align with the IBC and also address the concerns of the equity shareholder. A collaborative approach from both the SEBI and IBBI would yield more effective and sustainable solutions.