



CIVIL

Building a Better Insolvency Framework for Real Estate: A Look at IBBI's Discussion Paper

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The Insolvency and Bankruptcy Board of India (IBBI) has released a comprehensive discussion paper addressing critical challenges in the real estate insolvency sector. This paper, aimed at enhancing the Corporate Insolvency Resolution Process (CIRP) for real estate companies, incorporates insights from the Indian Institute of Insolvency Professionals of ICAI (IIPI), as well as consultations with key stakeholders, such as resolution applicants, insolvency professionals, and homebuyers. The proposed regulatory adjustments reflect IBBI's commitment to creating a responsive insolvency framework that addresses sector-specific needs and enhances the resolution process.

Here's an overview of the primary proposals and the intended improvements in real estate insolvency processes.

1. Key Areas of Focus in the IBBI's Discussion Paper

The paper outlines seven major proposals to improve efficiency and transparency in the real estate CIRP:

1. Inclusion of land authorities in CoC (Committee of Creditors) meetings,
2. Managing cancelled land allotments,
3. Empowering CoC to enable allottee association participation as resolution applicants,
4. Clarifying interest inclusion in homebuyers' claims,
5. Representation through facilitators for large classes of creditors,
6. Disseminating CoC meeting minutes to all creditors in real estate projects, and
7. Simplifying possession handovers in real estate projects.

These proposals collectively aim to strengthen stakeholder representation, increase transparency, and accelerate resolution processes.

2. Inclusion of Land Authorities in CoC Meetings

Real estate projects are often heavily regulated by land authorities, which are central to managing land allotments and compliance requirements. However, as land authorities are classified as operational creditors, they are generally not included in CoC meetings. This lack of representation can create misalignment with regulatory standards, causing delays or complications in implementing resolution plans.

The discussion paper recommends including land authorities as special invitees in CoC meetings, without voting rights. This proposal ensures that land authorities can provide regulatory input and address land-related compliance issues, helping the CoC avoid unforeseen challenges and ensuring project alignment with local regulations. This adjustment is expected to encourage greater transparency and build trust among all stakeholders.

3. Addressing Issues with Cancelled Land Allotments

Cancelled land allotments present a significant challenge in real estate insolvencies. If the allotment of a property is cancelled before the insolvency commencement date, the main asset of the corporate debtor (CD) may be unavailable, creating uncertainty and complicating the CIRP. There is currently no specific regulatory provision to address this issue, which may lead to unsuccessful resolutions or the need for liquidation.

To manage this issue, the paper proposes that the insolvency professional (IP) should report any cancellations to the CoC and adjudicating authority, enabling them to make informed decisions on the future of the insolvency case. With timely information on asset availability, the CoC can better assess the viability of continuing with the CIRP or consider other options, such as early liquidation or alternative resolutions.

4. Empowering CoC to Support Allottee Associations as Resolution Applicants

In real estate projects, homebuyers (allottees) are financial creditors with a vested interest in the project's completion. Currently, however, strict eligibility criteria, earnest money requirements, and performance security obligations may prevent genuine allottee associations from applying as resolution applicants. This exclusion can limit direct participation by stakeholders most affected by project outcomes.

The paper proposes to allow the CoC discretion in relaxing specific requirements for associations representing a minimum of 10% of allottees or at least 100 allottees. This flexibility would enable genuine allottee associations to actively engage in the resolution process, promoting more practical solutions that reflect the interests of those invested in project completion.

5. Improving Representation through Facilitators for Large Creditor Classes

In large real estate projects, the number of homebuyers (creditors) can be overwhelming for a single Authorized Representative (AR) to manage effectively. This often leads to communication challenges and inadequate representation of all creditors' interests. Currently, the IBC provides only one AR per class, regardless of class size.

To enhance communication and representation, the IBBI proposes appointing additional facilitators to work alongside the AR. These facilitators would support communication between creditors and the CoC, helping to relay information, answer questions, and ensure that diverse views are represented. This amendment aims to alleviate bottlenecks and improve overall creditor satisfaction.

6. Disseminating CoC Meeting Minutes to All Real Estate Creditors

The CoC's decisions significantly impact project outcomes and creditor interests. In many real estate cases, gaps in communication between the AR and homebuyers lead to misinformation and misunderstandings. For real estate creditors, transparent access to CoC meeting minutes can reduce uncertainty and instil confidence in the insolvency process.

The discussion paper recommends that CoC meeting minutes be made accessible to all real estate creditors via a secure online portal. This would provide a reliable source of information on project progress, financial updates, and any significant decisions made. Ensuring consistent access to this information would help maintain creditor trust, prevent rumours, and keep all stakeholders well-informed.

7. Streamlining the Possession Handover Process

In many real estate insolvency cases, buyers have paid in full, and units are ready but awaiting formal handover due to regulatory ambiguities. Delays in formal possession transfer leads to frustration among homebuyers and can impact the going-concern value of the corporate debtor.

The paper proposes that the resolution professional (RP), with CoC approval, be allowed to enable the handover of completed units to homebuyers who have met their contractual obligations. In cases where units are incomplete, homebuyers could opt for possession on an "as-is, where-is" basis, paying any remaining balance if required. This simplified handover approach prioritizes the rights of homebuyers while ensuring that creditors' interests are balanced in the process.

Invitation for Public Comments

The IBBI is seeking public comments on these proposals to ensure they align with the needs of stakeholders. The deadline for submitting feedback is November 27, 2024. The feedback collected will be essential in shaping the final regulatory amendments that aim to optimize the insolvency resolution framework for real estate projects.

A copy of the proposed amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) (Fifth Amendment) Regulation, 2024 can be reviewed as part of annexure to the discussion paper.

Conclusion

The IBBI's discussion paper addresses real estate-specific challenges in the CIRP by proposing amendments that enhance transparency, strengthen stakeholder representation, and simplify processes. These changes reflect the IBBI's commitment to evolving India's insolvency framework to meet sector-specific demands while prioritizing the rights and interests of real estate creditors. By refining these proposals based on stakeholder feedback, the IBBI hopes to enable smoother, more effective real estate insolvency resolutions, ultimately bolstering confidence in India's insolvency landscape.

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