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INSOLVENCY & BANKRUPTCY

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AUTHOR Shivangi Dubey, Abdullah Qureshi, Arjun Sathees

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In what appears to be a huge relief for homebuyers, the Insolvency and Bankruptcy Board of India (IBBI) in its Discussion Paper titled 'Real-Estate Related Proposals- CIRP & Liquidation' has proposed five measures to smoothen the insolvency process for real estate projects by speeding up the processes under the Insolvency and Bankruptcy Code (IBC), and has invited public comments on the said proposals.

The IBBI has recommended five major changes that includes operating a separate bank account for every real-estate project, to execute registration/ sub-lease deed after seeking approval of Committee of Creditors (CoC) during the CIRP (Corporate Insolvency Regulation Process), permitting the CoC to examine and invite separate resolution plans for every project, and to exclude the assets in possession of the allottees from the liquidation estate of the Corporate Debtor.

The IBBI has proposed draft amendments to the IBBI (CIRP) Regulations, 2016 and the IBBI (Liquidation) Regulations, 2016 with an aim to expedite resolution of insolvent realty projects while providing much needed relief to the homebuyers.

Proposed changes by IBBI

The suggested changes by the IBBI are based on recommendations of the Amitabh Kant-led Committee. The Committee has suggested that *"the IBC needs to be reformed to better accommodate the complexities of the real estate sector."* IBBI's [Discussion Paper](#) dated 06th November 2023, deals with the following measures to smoothen Insolvency process pertaining to corporate debtors in the real estate sector:

1. Mandatory registration and extension of projects under RERA

According to Section 3 of the Real Estate (Regulation and Development) Act, 2016, (RERA Act), all real estate projects must be registered with the respective state's RERA where the proposed area to be constructed exceeds 500 sq. mt. or the number of apartments to be constructed are more than 8.

IBBI proposes that IRP or RP needs to ensure that all real estate projects that are underway during CIRP must be registered with RERA in accordance with Section 17(2)(e) of the IBC and must carry out necessary compliances such as obtaining the completion certificate and occupancy certificate.

2. Operating a separate bank account for each real estate project

Each project is registered separately and allotted a unique identification number under RERA. The approvals and filings are on a project-to-project basis. Developers need to maintain and provide detailed records of the projects. Currently, it has been observed that in many cases, project-wise bank accounts are not being maintained by RPs.

IBBI proposes that IRP/RP ought to maintain separate bank accounts for each project for greater transparency and to facilitate information about a particular project which may be useful for facilitating project-wise insolvency.

3. Execution of registration/sublease deeds by CoC's approval during CIRP

The IBBI recommends amendments to the IBBI (CIRP) Regulations, 2016 to enable the RP to handover the ownership of a plot, apartment, or building to the allottees during CIRP. Such handover would be done on 'as is where is' basis, or on payment of balance amount, after considering the funds due and funds required for completing the unit. The handovers would be carried out only after the 66 percent majority approval by the CoC.

4. CoC to examine and invite separate plans for each project

The IBBI proposes that in cases where a Corporate Debtor has undertaken multiple projects, the CoC may direct the RP to invite separate plans for each project or group of projects. This would encourage the association of allottees of the project to bring their own Resolution Plan and resolve issues in a specific project. Further, a project-wise approach will also aid quicker revival of those projects which were otherwise on schedule and were only stalled due to the initiation of CIRP of the Corporate Debtor that stemmed from a default arising from a completely unrelated and separate project.

5. Exclusion of property in possession of homebuyers from the liquidation estate

Section 36 of the IBC requires the liquidator to identify the assets of the Corporate Debtor and form a Liquidation Estate of the Corporate Debtor for facilitating sale and distribution of proceeds to stakeholders. Section 36(4) of the IBC provides a list of assets that shall not be included in liquidation estate and must not be used for recovery in the liquidation, and sub-clause (e) empowers the IBBI to specifically exclude certain assets from the liquidation estate.

IBBI has proposed the exclusion of assets in possession of the “allottee”, as defined under the RERA Act, to be excluded from the liquidation estate, under Section 36(4)(e) of the IBC, which would facilitate the easier transfer of ownership rights to the allottee without raising conflict of interest amongst allottees and other stakeholders of the Corporate Debtor.

Conclusion:

There has been a huge number of real estate cases that have not being resolved for a long period of time due to practical difficulties faced in conducting the CIRP, and the latest proposals of the IBBI appear to be a welcome step in strengthening the IBC framework to handle the sector specific issues surrounding real-estate projects.