

From Chairperson's Desk

Reviving Real Estate

As the Insolvency and Bankruptcy Code, 2016 (IBC/Code) completes eight years, it has significantly transformed the insolvency landscape in India, offering a streamlined and efficient resolution mechanism for distressed entities. Since enactment, the Code has rescued 3293 corporate debtors (CDs) (1005 through resolution plans, 1192 through appeal or review or settlement and 1096 through withdrawal) till June, 2024. It has referred 2547 CDs for liquidation. The resolved CDs resulted in realisation of more than 32% as against the admitted claims and more than 161% as against the liquidation value. Resolution plans on average are yielding 84.93% of fair value of the CDs.

The introduction of IBC has brought a glimmer of hope, offering a structured mechanism for resolving insolvency and reviving real estate projects. Insolvency resolution of real estate companies presents a unique set of challenges for the standardized corporate insolvency resolution process (CIRP). With the help of measures as introduced from time to time, several real estate companies have been successfully resolved under the IBC. As of June 2024, around 1400 real estate/construction companies were admitted into the insolvency resolution process under the IBC. Out of it, 645 companies were successfully rescued (through withdrawals, resolution or closure of process) and 261 were liquidated. The rescued companies are around 2.5 times of those liquidated. The Economic Survey 2023-24 noted that IBC has been the most favoured among the three available remedies for real estate sector, the other two being Consumer Protection Act, 2019 and Real Estate (Regulation and Development) Act, 2016 (RERA Act).

The large size real estate cases such as Jaypee Infratech Limited, Kohinoor CTNL Infrastructure Company Pvt. Ltd., SARE Gurugram Pvt. Ltd., among several others, have yielded recovery of more than 60% of the claims admitted. The successful resolution of Jaypee Infratech Limited has provided relief to more than 20,000 home buyers by way of continuing construction of ongoing projects and handing over possession of completed projects. The resolution framework for real estate sector sends a signal to distressed homebuyers that they can seek recourse through the IBC.

The following are the series of reforms undertaken in the real estate sector under IBC:

(a) **Status of home buyers as financial creditors (FCs):** Recognizing the unique nature of this sector, the Insolvency Law Committee in its March, 2018 Report recommended that the funds raised from homebuyers be considered as financial debt. This recommendation was based on the fact that these funds constitute a significant portion of the finances raised by real estate companies and have the commercial effect of borrowing. Consequently, the IBC was amended in August, 2018 to designate home buyers as a distinct class of creditors. Hon'ble Supreme Court in the matter of *Pioneer Urban Land and Infrastructure Limited v. Union of India* declared this amendment constitutional and affirmed the inclusion of real estate allottees as FCs. The said amendment included the home buyers in the committee of creditors (CoC) and enabled their direct participation in the decision-making process.

(b) **Keeping possessed units out of liquidation estate:** Hon'ble NCLAT in the matter of *Alok Sharma & Ors. v. M/s I. P. Construction Pvt. Ltd.* vide its judgment dated June 17, 2022 held that 'The

Registration of all these houses is the 'procedural requirements', in case of 'Real Estate Company' where the Appellants are already in possession of these spaces.....the rights of home buyers cannot be affected adversely in the 'Corporate Insolvency Resolution Process' and their interest is to be appropriately preserved and protected within the parameters of the I & B Code, 2016'. Moreover, in majority of CIRP resolutions, the plan involves delivery of completed housing units to the home buyers.

To safeguard the interests of homebuyers during the liquidation process, the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) were amended to mandate the exclusion of units from the liquidation estate if possession has already been handed over to the allottees. By excluding these possessed units from the liquidation estate, the regulations provide a layer of security for homebuyers, virtually guaranteeing that they cannot be dispossessed of their homes.

(c) **Project-wise resolution:** Real estate companies typically have multiple projects at various stages of construction: some completed, some partially finished, and others in the initial phase. These projects require different solutions. Often, resolution applicants are interested in specific projects rather than the entire CD. Keeping this in mind, the IBBI (Insolvency Resolution Process for Corporate Persons), 2016 (CIRP Regulations) were amended to issue a clarification that the Insolvency Professional (IP) with the approval of the CoC may invite a resolution plan for each real estate project or group of projects of the CD. This amendment allows for the submission of project-specific resolution plans, thereby increasing the chances of resolution and maximizing the value of the CD.

(d) **Role of Authorised Representative (AR):** The CIRP Regulations provides a framework for decision-making through consensus voting by a majority of homebuyers, with an IP serving as their AR. The Regulations were further amended to expand the role of AR to ensure that he assists the home buyers by helping them understand CoC discussions and decisions, reviewing and commenting on the minutes, aid in asset marketing strategies, evaluating resolution plans, ensuring access to necessary information, providing regular updates on progress of CIRP, suggesting modifications to the resolution plan, recording proceedings and preparing minutes of the meetings with such creditors in class, and representing them before various authorities.

(e) **Home buyers can act as resolution applicants:** The Code permits FCs to submit resolution plans for the CD. Consequently, home buyers are also eligible to submit resolution plans for distressed real estate projects. This empowers them to actively participate in the resolution process of their own real estate investments.

The IBC has emerged as a critical tool in reviving the Indian real estate sector. By providing a structured framework for insolvency resolution, empowering homebuyers, and ensuring time-bound process, IBC has instilled a sense of hope and confidence among stakeholders. Despite ongoing challenges, its success in resolving high-profile real estate cases highlights its potential to bring positive change to the sector.

(Ravi Mital)