

# *De Jure*

*November 28, 2025*

## Reforms Proposed Under Insolvency Process: Enhanced Protection for Homebuyers along with other Disclosures and Safeguards



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## Introduction

As part of the stakeholder consultation process, the Insolvency and Bankruptcy Board of India ("**IBBI**") has issued a Discussion Paper for "***Strengthening safeguards and transparency in the CIRP***" on November 17, 2025.

Ever since the Insolvency and Bankruptcy Code, 2016 ("**Code**") has been enacted, there have been considerable revisions to the same along with rules, regulations and guidelines made thereunder. The revisions to the Code have been testimony to the regulator taking cognizance of need for regulatory intervention necessitated from the various real life case studies, taking note of the feedback from the stakeholders as well as judicial proceedings which have emphasised various aspects of the Code which require further clarification apart from raising pertinent questions. Ever since its enactment, the Code has been evolving towards a more robust legal reform with a view to be ever relevant to the ground realities.

The Code was introduced essentially to deal with the ever-increasing number of NPAs, protecting the interest of the creditors, emphasizing on resolution of the entity (*rather than forcing it into liquidation*), promoting the sense of business, streamlining corporate governance. The evolution of the Code has been both continuous and substantial, with key developments including increased thresholds, a ban on the backdoor entry of ex-promoters and the introduction of protections for homebuyers. As is the case with any evolving legislation, the review and revision of the same is warranted to factor in the challenges that come across from the peculiarities of each case.

While IBBI has been coming out with reforms concerning the Corporate Debtors engaged in the real estate business, there is always a need felt to further streamline and refine the processes, especially concerning the real estate sector. This need can be attributed considering the various complexities and practical difficulties involved in the real estate sector. The Discussion Paper issued by the IBBI, deals with the following proposals:

- Disclosure of allottees in the Information Memorandum and their treatment in the Resolution Plan.
- Disclosure of receivables, JDAs and information on assets which are under attachment, in the Information Memorandum.
- Safeguard where no financial institution is represented in the CoC.
- Mandatory recording of reasons by CoC for recommending liquidation

## Disclosure of allottees in the Information Memorandum and their treatment in the Resolution Plan

The aspect of treatment of allottees of real estate projects has come a long way with various landmark judicial precedents. Information Memorandum ("**IM**") is a document containing the factual aspects concerning a Corporate Debtor and which forms the principal document

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based on which the proposed bidders submit their interest to acquire a Corporate Debtor. It forms a basis for preparing the resolution plan and consists of information of corporate debtor, including list of creditors and the amount of claims admitted, debt due from related parties, number of workers and employees and liabilities due to them, details of material litigation, latest audited financial statements, provisional financial statements upto a date which is not earlier than fourteen days from the date of application, liquidation value etc.

There have been various instances where the prospective bidders/resolution applicants are faced with the claims from creditors who did not submit their claims and by virtue of which did not form part of the list of claims of creditors, as part of the IM. What this does is that it opens the floodgates to several litigation proceedings and causes delay to the resolution process. The prospective Resolution Applicants are all of a sudden faced with claims which did not factor and which shakes the commercial premise of submission of their resolution plan. In such a scenario, the bidders find it difficult to assess the feasibility and viability of the project. The presence of hidden or uncertain risks could discourage potential acquirers and may delay the resolution plan implementation process or ultimately drive the entity into liquidation. This predicament is more so peculiar with real estate allottees/ homebuyers who fail to submit their claims in the prescribed manner within the stipulated timeline. Hon'ble NCLAT, *Puneet Kaur vs. K V Developers Private Limited & Ors.*<sup>1</sup> Inter alia noted that *'we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan...'* However, in situations where the resolution plan does not provide for claims recorded in the corporate debtor's books (and which may not form part of the list of creditors or the IM), or where homebuyers have failed to submit their claims to the resolution professional before the plan is approved by the CoC, at such a juncture, the risk of litigation and uncertainty for both the claimants and the resolution applicant is extremely high.

Considering the above, the IBBI has proposed to include more granular details of the allottees in the IM, including their names, amounts due and units allotted, as reflected in the corporate debtor's records, irrespective of whether such allottees have filed claim. Also, it is proposed that the Resolution Applicant needs to provide for treatment of claims of such allottees as part of its Resolution Plan. This proposed change is expected to provide much required clarity to the prospective Resolution Applicants as regards their commercial proposal for acquisition of the Corporate Debtor as they would expect less unpleasant surprises in future as regards some undisclosed claims, especially those belonging to the allottees. This change is also expected to provide added comfort and assurance to the homebuyers as disclosure of additional details to the prospective Resolution Applicant augurs well for their claim resolution effectively. This is more so with respect to the allottees who may not have filed their claims with the Resolution Professional. Having said so, where allottees have entered into a further sale without informing the Corporate Debtor, the purchasers of such sale ought to be extremely vigilant and submit their respective claims, as in the event the record of the Corporate Debtor has not been updated, the former allottees will be provided treatment under the resolution plan.

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<sup>1</sup> CA(AT)(Ins.) No. 390 of 2022

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## **Disclosure of receivables, JDAs and information on assets which are under attachment, in the Information Memorandum**

The lack of information shared with the bidders leads to uncertainty which tantamount to litigation proceedings thereby directly affecting the resolution of the corporate debtor. There have been various instances where the details of the joint venture partners, the nature of the stake of such partners, the details of the receivables as per such JV agreement were not disclosed as part of the IM. Due to this, there is information gap with the prospective Resolution Applicant, and which directly affects the basis of the commercial proposition of the Resolution Applicant. Such information gap may cause the bidder to believe that the entire project is undertaken by the Corporate Debtor, thereby inviting litigation on multiple fronts. Understandably, this does not bode well for the revival process as the process lacks transparency and due to which the Resolution Applicant is not able to submit Resolution Plan factoring the complete set of facts. This in turn adversely affects the value maximization for the stakeholders of the Corporate Debtor. In order to combat such uncertainty, the IBBI has proposed to include in the IM the details of receivables, details of JDAs and other similar collaboration and information on the assets of the Corporate Debtor which are under attachment by enforcement agencies. This will not only ensure transparency but may also attract bidders with complete knowledge of the assets of the Corporate Debtor along with the potential to maximise the value of the assets and the revenue potential as well as existence of any attachment on the assets, if any. Such incorporation will also avoid suboptimal/ distorted valuations and may assist the prospective resolution applicant to arrive at the correct estimated value.

## **Safeguard where no financial institution is represented in the CoC**

There have been various instances where there is no regulated financial creditor as part of the Committee of Creditors (CoC) such as banks or NBFCs, and where such unregulated financial creditor controls all the decision-making process. IBBI is of the view that such situation affects the decision-making process of the CoC as there is lack of discipline and democracy in arriving at any decisions by the CoC.

Considering this aspect, the IBBI has proposed that the resolution professional shall invite five largest operational creditors (*by claim value*) to attend the meetings of the CoC where there is no financial institution (*as per section 3(14) of the Code-includes scheduled bank*) and where any other unregulated financial creditor solely holds more than sixty six percent of the voting share to attend such meetings of the committee. Such operational creditors shall be entitled to deliberate in such meetings but shall not have any voting rights and only act as observers. Such operational creditors shall be entitled to receive the notice, agenda and minutes of such meetings.

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## Mandatory recording of reasons by CoC for recommending liquidation

Although it is a settled principle in law that the commercial wisdom of the committee of creditors is paramount, there have been instances where despite having received viable resolution plan, the committee has proceeded with liquidation of the corporate debtor without providing adequate reasons for deciding to liquidate the Corporate Debtor. Despite receiving a commercially viable Resolution Plan, pushing a Corporate Debtor into liquidation is not what is envisaged under the Code, especially where such attempt involves malafide intention on part of the persons in charge of the resolution process. With few or no rationale being recorded, it is difficult to assess the actual progress in resolution process of such corporate debtor. This is more so considering that Code provides for resolving an entity and liquidation option is resorted only as a last option.

As of now, the liquidation regulations suggest that such reasons may be recorded for deciding to liquidate, without making it compulsory for the committee/resolution professional to record such a rationale. However, pursuant to the proposed suggestions in the Discussion Paper, it will be mandatory to record reasons where compliant resolution plans were received and where value offered under such resolution plans were more than the liquidation value prior to resolving the corporate debtor to be liquidated.

## Concluding thoughts

The suggestions proposed in the Discussion Paper are encouraging as it further safeguards the interests of the stakeholders, increases transparency and accountability on all concerned and promotes more discipline and fairness which aims at expediting the resolution process by providing more clarity to the prospective bidders. This would assist the committee of creditors, prospective bidders, stakeholders to get a clear understanding of the insolvency process. The changes proposed reflect the forwarding looking approach of the regulator and provides an assurance that the regulator is very well cognizant with the ground reality and that it is ever more willing to introduce required measures to effectively and efficiently attain the end objective.

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