

*De Jure*  
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## Streamlining of CIRP of Real Estate Companies



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simple solutions

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## Introduction

IBBI has published a discussion paper on November 7, 2024 ("**Discussion Paper**"), inviting comments from various stakeholders on the issues faced while conducting the Corporate Insolvency Resolution Process of a Corporate Debtor involved in real estate business. The genesis of the Discussion Paper can be attributed to the various challenges experienced in the insolvency resolution process of companies engaged in real estate sector. Through the discussion paper, IBBI aspires to enhance efficiency and effectiveness and intends to resolve the issues and roadblocks faced during the insolvency proceedings of real estate entities under the Insolvency and Bankruptcy Code, 2016 ("**Code**").

It is an undisputed fact that real estate projects, especially the bigger projects, are extremely complex in nature which are predominantly driven by the sentimental aspects of delivering the homes to the homebuyers since it involves a substantial capital investment by the homebuyers. As such, the insolvency process of real estate companies has its peculiarities unlike insolvency process of entities engaged in other businesses. Taking cognizance of the difficulties faced, the IBBI, in this Discussion Paper, has made certain proposals with a view to address the pain points pertaining to the insolvency process of real estate entities and in the process assist in achieving the objective of the Code. The proposals contained in the Discussions Paper are discussed below:

- Proposed inclusion of Land Authorities in Committee of Creditors (CoC) Meetings;
  - Handling cancelled Land Allotments in Real Estate Insolvency Cases;
  - Empower CoC to facilitate participation of Associations of Allottees as Resolution Applicants;
  - Clarification about inclusion of Interest in Homebuyers' Claims in CIRP;
  - Representation of large numbers of creditors through facilitators;
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- Proposal to disseminate Committee of Creditors (CoC) minutes of the meeting to all creditors in class of real estate projects; and
  - Streamlining Possession Handover in Real Estate Projects.

## **Proposed inclusion of Land Authorities in Committee of Creditors (CoC) Meetings**

As per the current regulations, the CoC of real estate companies includes financial creditors and an authorized representative of the homebuyers. Projects pertaining to real estate involve various complexities and involve various authorities such as MHADA, Slum Rehabilitation Authority, MIDC, the relevant municipal corporation including, any other land-owning authorities, which currently do not have any representation in the CoC. The Discussion Paper proposes to involve the participation of such Competent Authorities (as defined under the Real Estate Regulation Act, 2016), without granting them voting rights, as an observer.

This inclusion will provide confidence and clarity to the stakeholders, aid the financial creditors to understand the project better, combat unforeseen regulatory challenges and accordingly take decisions for its revival. It will also assist the CoC to factor in the observation of the Competent Authorities on the regulatory issues. The inputs of the Competent Authorities would provide some visibility on the insolvency process to the stakeholders, more particularly to the homebuyers.

## **Handling Cancelled Land Allotments in Real Estate Insolvency Cases**

Real estate companies involve a lot of uncertainty which is only truly understood by the resolution professional after analyzing the issues of the corporate debtor who in turn conveys it to the CoC. The CoC prior to the initiation of the CIRP

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has limited information that has been shared by the corporate debtor, which makes it difficult in situations where lease/allotment of a particular land units have been cancelled. The situation becomes more precarious where such land/land parcels constitute the only or the primary asset of the Corporate Debtor. Currently, there is no provision to combat such an issue. The Discussion Paper proposes an amendment the CIRP Regulations to such an extent where the resolution professional is obligated to report a situation where land allotment/lease/license has been cancelled and the possession is no more with the corporate debtor.

This will assist the CoC to understand the feasibility and the viability of the CIRP of the concerned corporate debtor in the early stage of the CIRP itself. This obligation to report will also provide a clear picture to the resolution applicants and aid them in making an informed decision as to whether continue with the insolvency process or collectively decide for liquidation.

## **Empower CoC to Facilitate Participation of Association of Allottees as Resolution Applicants**

With a view to have participation of competent, pedigreed and financially sound resolution applicants, the CoC provides for certain qualifications/criteria for the entities to act as resolution applicants. As of now although the association of allottees are permitted to submit a plan as a resolution applicant, the eligibility of the association of allottees is also benchmarked to the criteria set for other prospective resolution applicants. Making the association of allottees subject to the same set of eligibility criteria generally does not seem to be feasible since the allottees are the most directly affected parties and their eligibility for submission of resolution plan need to be analysed accordingly. The Discussion Paper proposes to empower the CoC with the discretion to relax certain qualifications such as eligibility criteria, earnest money deposit, performance security in order to enable the allottees association to participate in the submission of the resolution plan.

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This proposal will allow the association of allottees to participate in the acquisition of the corporate debtor having said that these association of allottees do have a direct interest in the project and where such association of allottees generally do not possess experience for handling complex projects and if backed by some renowned player in the industry it can ease the complexities and aid in completing the project.

### **Clarification about inclusion of Interest in Homebuyers' Claims in CIRP**

Homebuyers were facing a roller coaster ride till they were classified as a class of creditors and admitted as a part of the CoC (through their representative). As on date the regulations provide an interest rate at 8% per annum for such homebuyers. The Discussion Paper proposes to clarify the inconsistencies that the homebuyers face. Many a times, the prescribed interest rate is applied only to determine the voting shares in the CoC and not for calculating the actual claim due towards the homebuyers due to which the homebuyers have to initiate litigation and approach various forums to include the interest component in their claim amount. It is proposed to clarify that the 8% interest should also form a part of the claim for the purpose of resolution plans apart from determination of their voting share.

This clarification would most likely iron out issues faced while verifying and preparing the claim list and would reduce potential litigation.

### **Representation of large numbers of creditors through facilitators**

Presently, the provisions permit one representative per class of creditors in the CoC, which is irrespective of the size of such class of creditors. Quite often, the number of the members of the class of creditor is humungous and as a result it

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tends to get challenging for one authorized representative to deal with the concerns, queries and disturbs the communication channel with all such members of the class. The Discussion Paper proposes to allow appointment of facilitators for large classes of creditors to improve communication.

This is aimed at reducing the burden on one single authorized representative and streamline the communication by bifurcating the onus enabling the authorized representatives to effectively understand and communicate the concerns to the larger group.

### **Proposal to disseminate Committee of Creditors (CoC) minutes of the meeting to all creditors in class of real estate projects**

The Code mandates the minutes of the CoC meeting to be shared with the financial creditors within 48 hours of the conclusion of the meeting. This includes recording and sharing of all critical information such as status of the project, challenges pertaining to the CIRP, litigation details, timeline of the CIRP, discussions pertaining to valuation, PUF transactions, resolution plans etc. The challenge lies where there are large number of allottees represented by one authorized representative and where there arises communication errors between the authorized representatives and the allottees. In such situation, it would be very helpful, if the minutes of the CoC are easily accessible to the allottees for them to have a complete picture of the proceedings of such meetings. Owing to the same, the proposal is to circulate the minutes to share the minutes of the meeting of the CoC on the website of the corporate debtor to facilitate and provide a single authentic source of information thereby increasing transparency and reducing the risk of any rumors. The allottees will be able to access such minutes with secured login credentials provided to them.

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## Streamlining Possession Handover in Real Estate Projects

Units/flats are an integral part of the business of an entity involved in the real estate business. Courts have faced situations where the units/flats are ready for handing over possession to the allottees, however, owing to some or the other formality the handover has been delayed and during such a delay, the corporate debtor has been admitted into CIRP. For instance, the Hon'ble NCLAT in *Alok Sharma and Ors v M/s. I.P. Constrictions Private Limited* while observing that the units/flats are not the assets of the corporate debtor but it forms as a recurrent business activity the moratorium under section 14 of the Code will not be maintainable. The handover of the units assumes more significance where the allottees have fulfilled their part of the obligation and the Corporate Debtor has also completed the construction, and the allotment is pending due to the ongoing CIRP process. The Discussion Paper proposes to empower the resolution professional to handover such units on an 'as-is-where-is' basis or on payment of the balance amount (where applicable) after factoring in the funds that are due and payable towards the unit. This proposal is likely to bring a lot of cheer to the allottees since the allotment process is expected to be expedited.

This will facilitate and ease out the concerns of the allottees.

## Our Preliminary Views

Needless to state that the Discussion Paper does propose suggestions to streamline the CIRP of a corporate debtor engaged in the real estate business. No doubt some of the proposals have been a long-awaited demand from the homebuyers such as modification to eligibility criteria for association of allottees, clarification on inclusion of interest in

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homebuyers claims, easy accessibility of minutes of CoC to homebuyers through secured login system and streamlining possession handover and even handover of ownership of plot, apartment or building to the allottees during insolvency resolution process and the Discussion Paper surely gives a ray of hope to the homebuyers in this regard.

However, the practical difficulties surrounding some of the proposals need to be well and thoroughly looked into. For instance, considering that CIRP is a time bound process and the representatives of the Competent Authorities may have their own difficulties in attending CoC meetings of many real estate corporate debtors. Further, observations from facilitators and/or representatives of Competent Authorities may have conflicting opinions/agendas vis-à-vis secured financial creditors of the relevant project. Many associations of allottees may have their own agendas and vested interests and identifying a genuine association of allottees who would actually represent true and bonafide interests of all allottees may prove to be an uphill task. The issue may be further complicated in the event there is infighting amongst the facilitators/ association of allottees where there are multiple associations of allottees within a project or in case of multiple projects in a corporate debtor, as the case may be.

Considering this, the proposals pertaining to inviting the Land Authorities and facilitators as part of the CoC Meeting, albeit in an advisory position, appears to be an overwhelming proposition on the face of it but may have surely practical difficulty for resolution professional to conduct the meeting with expanding members of CoC. These additional compliances may also lead to addition to filing of applications with adjudicating authority(ies). This may also delay the timelines of the insolvency resolution process of real estate companies.

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Having said that, IBBI has no doubt always been proactive in updating laws, from time to time, for addressing any concerns faced by stakeholders during insolvency and liquidation process. This time, it has again taken proactive steps to address issues relating to real estate companies, which is truly commendable.

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