

RERA BETTER SUITS HOMEBUYERS THAN IBC TO SOLVE ISSUES

Relevant for: Economy | Topic: Issues relating to Growth & Development - Industry & Services Sector incl. MSMEs and PSUs

Real estate remains the second biggest sector in which IBC petitions were filed

The Insolvency and Bankruptcy Code (IBC) was enacted to ensure a cultural transformation in the insolvency and bankruptcy landscape. It established a new architecture for insolvency resolution and liquidation. Strict timelines were introduced and a code for judicial restraint was built into the law at every step of the process. It also established the Insolvency and Bankruptcy Board of India (IBBI) as an independent regulator. There was a belief that the IBC would revolutionize the insolvency and bankruptcy regime in India; after completing five years, the jury is still out on whether IBC did succeed in achieving its objectives.

In many ways, the IBC made a good beginning. It created new classes of professionals who were unrestrained by the baggage of the past, and a new jurisprudence for insolvency resolution evolved in India. The government and IBBI have been alive to the challenges in implementation, clarifying and resolving issues as and when they appear. Yet, they failed to make IBC fully operational even after five years of its enactment in 2016.

The National Company Law Tribunal (NCLT), which was the dispute resolution forum under the companies' law was also designated as the adjudicating authority for corporate insolvency resolution process (CIRP) and liquidation. Data suggests that post 2016, NCLT has pre-eminently become the forum for insolvency resolution and liquidation. As per government's data for the financial year 2019-20, a whopping 19,733 cases were filed in NCLT, of which more than 61% were IBC cases. Such an exponential rise in cases at NCLT could be handled only by setting up of regional benches across various states and an increase in bench strengths at NCLT. However, at present, of the sanctioned strength of 63 members, 40% are vacant. Many regional benches are not fully functional, leading to a diversion of resources of other benches. Eventually, the Supreme Court has been forced to interfere and direct the government to fill the vacancies.

IBC's success was premised on judicial discipline, and to an extent it has fared better than its predecessor SICA (Sick Industrial Companies Act). For the CIRP, the IBC prescribed a strict timeline of 180 days, extendable by 90 days at the discretion of the adjudicating authority (AA). This was further extended to 330 days by an amendment to the IBC in 2019. However, IBBI's reports suggest that the average time taken for CIRPs, which resulted in resolution plans, was 406 days (after excluding time permitted by AAs), while those which ended up in liquidation took an average of 351 days for conclusion. Many cases took much longer.

The delays may have contributed to significant erosion in value and larger haircuts for creditors. A consequence of the delays has been more liquidations than resolution plans. According to available data, of the 2,653 CIRPs closed, in 48.13% of cases the AA passed orders for liquidation. The number of corporate debtors going forward with a resolution plan was a low 13.12%.

The delays in most cases have been caused by repeated judicial interventions. Timelines in the IBC have been rarely adhered to, and attempts to fix deadlines under it have been repeatedly thwarted by courts, with Supreme Court reading down the word "mandatory" in the 330-day

timeline as mere advisory in nature.

In the real estate sector, the law has seen significant policy confusion. Despite several amendments and policy flip-flops, homebuyers have largely been on the fringes in the CIRPs of real estate companies. Today, homebuyers are reported to have difficulty in reaching the threshold of 10%, or 100 homebuyers. However, such a threshold is necessary to ensure that projects are not stalled at the behest of a single disgruntled homebuyer, given the number of stakeholders in some of these cases.

Arguably, IBC may not be the best mechanism to resolve diverse grievances of homebuyers, and authorities such as RERA may be better suited for the purpose. However, the law may need to create a balance between the rights of homebuyers under RERA and the rights of creditors under IBC. Despite the fact that homebuyers have not fared much better under IBC, real estate remains the second biggest sector in which IBC petitions were filed.

IBC's report card may not be as rosy as one would have expected it to be. However, it has done much better than the earlier attempts. IBC brought a cultural shift, and cultural changes require patience and tenacity. To that extent, it is a work in progress. Each of the various stakeholders in the process, such as the government, the regulator, courts, creditors and corporate debtors, need to work in tandem to derive optimum outcome of the process. While some have risen to the occasion, one hopes that others join the rally, too.

Abhishek Tripathi is managing partner, Sarthak Advocates & Solicitors.

Never miss a story! Stay connected and informed with Mint. [Download](#) our App Now!!

Log in to our website to save your bookmarks. It'll just take a moment.

Oops! Looks like you have exceeded the limit to bookmark the image. Remove some to bookmark this image.

Your session has expired, please login again.

You are now subscribed to our newsletters. In case you can't find any email from our side, please check the spam folder.

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com