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UPDATE

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Analysing developments impacting business

RELAXATION TO HOMEBUYERS FROM REGULATORY FEE PAYMENT

01 August 2023

Introduction

The Insolvency and Bankruptcy Board of India (IBBI) had previously via the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2022 (Fifth Amendment) inserted Regulation 31A(1) which introduced a regulatory fee payable to IBBI. Such fee was made applicable for resolution plans approved on or after 1 October 2022 and is to be calculated at the rate of 0.25% of the realisable value paid to creditors under the resolution plan, in the event the realisable value is more than the liquidation value of the corporate debtor.

The IBBI has further on 20 July 2023 via the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2023 (Amendment) added an explanation to Regulation 31A(1) which clarifies that the above regulatory fee shall not be payable in case the resolution plan concerns a real estate project and is submitted by an association or group of allottees of such project.

Comments

In order to balance the scale of equity, the Adjudicating Authority has consistently held a sympathetic view of the real estate allottees whose interests are significantly impacted during the corporate insolvency resolution process (CIRP) of a real estate project. Resultantly, the real estate allottees and real estate insolvencies have through judicial intervention been placed on a different footing that standard CIRPs. The Amendment is a step towards regulatory recognition of such special position of real estate CIRPs.

Further, it was noted that with the introduction of the Fifth Amendment, many resolution applicants were hesitant to offer a realisable value above the liquidation value of the corporate debtor, so as to avoid payment of the regulatory fee. While the regulatory fee imposed by the IBBI has the effect of reducing the end payout received by the committee of creditors in all insolvency projects, its removal for real estate insolvencies will lead to value maximisation of such projects. This in turn shall prove beneficial for both the secured creditors and the homebuyers acting as the resolution applicant for a real estate entity. It shall also have the effect of reducing the cost associated with the insolvency process which may then be utilised towards project completion.

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