



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Resurrecting Real Estate with Reverse Insolvency Process - An Imaginative Offbeat Case Study of Lavasa Hill City

Harshita Mathur^a Prateek Singh^b

^{ab}CHRIST (Deemed to be University) Pune Lavasa Campus, India ^bCHRIST (Deemed to be University) Pune Lavasa Campus, India

Received 21 June 2024; Accepted 24 July 2024; Published 29 July 2024

Real estate companies or businesses are indeed the builders of modern nations. But when these companies are placed under the gavel of the bankruptcy system due to the failure of one or a few projects, it hinders the realization of other capable projects, thereby crushing the dreams of the masses and the country. However, to ensure that creditors are kept and the country's economy upgrades, India has charted an unconventional path by deviating slightly from the Bankruptcy Code. Drawing on the experience of the Supreme Court of India in the famous Swiss Ribbon case, the Indian judiciary introduced a novel concept of 'Reverse Corporate Insolvency Resolution Process' to revive real estate projects and rescue distressed developments. By operationalizing the above concepts, this article attempts to examine the fate of Lavasa – an innovative municipal initiative that ran into serious financial difficulties. Through a detailed analysis of the Lavasa revitalization case and a number of comparative analyses, this study explores the effectiveness of reverse bankruptcy as a means of promoting the reversal of real estate projects. This article explores the historical background of Lavasa, its origins, development and financial challenges. It then examines the steps that can be taken to initiate reverse insolvency proceedings, including restructuring, renegotiating debt obligations and seeking new investment. The study identifies key insights gained from previous real estate work through comparative analysis. Therefore, this article comprehensively examines this reverse strategy of loss reduction, outlining its advantages and disadvantages, while focusing on the legal and regulatory structures that govern this strategy. It also endeavoured to distinguish this concept from almost similar concepts of pre-packaged insolvency resolution proceedings. Therefore, the study ultimately cited will deepen the understanding of reverse bankruptcy

as a strategic tool for real estate companies, providing recommendations to policymakers, practitioners, and investors addressing real estate revitalization challenges.

Keywords: *reverse insolvency, revitalization, lavasa bill city, real estate.*

INTRODUCTION

The real estate industry is the second largest employer in India after the agriculture industry. Therefore, the sector is crucial to the economic growth of the country and the growth of the different stakeholders involved in the sector. Among the different stakeholders in the real estate industry, investors bear the greatest risk. In the end, investors also obtained the greatest economic benefits. These investors can be developers developing real estate projects or anyone investing money.

Rapid urbanization has been a key driver of India's economic growth over the past few decades, with urban centers such as Bengaluru, Mumbai, NCR, Pune and Hyderabad attracting human and economic capital and masses. The real estate industry has played a key role in this transformation along with local governments, private developers and infrastructure companies. High-quality real estate projects and the companies involved in their construction are now attracting strategic and foreign investments in India as the critical infrastructure provided by the real estate sector remains critical in driving India's economic growth. However, there are hundreds of factors that influence the Indian real estate market, such as the cost of building materials, loan interest rates, population, spending power, changes in lifestyle, economic conditions, etc.

The Indian real estate industry is an important economic pillar with significant forward and backward correlations. It is estimated that nearly 50% of India's gross domestic product (GDP) is related to the domestic real estate industry.¹ Although the government has been committed

¹ 'How the Indian real estate sector drives the nation's economy' *Financial Express* (21 March 2023) <<https://www.financialexpress.com/money/how-the-indian-real-estate-sector-drives-the-nations-economy-3017285/>> accessed 08 June 2024

to promoting India to become a global manufacturing hub, it generally does not consider the contribution of the domestic real estate industry in creating jobs, adding value to the real economy, and its spillover effects on different industries.

According to conservative estimates, nearly 70 million Indians will be working in the real estate industry by 2022, and the entire industry is expected to cross the \$1 trillion mark by 2030.² More than 270 related industries rely on the real estate industry to sustain their business, and this important sector has important spin-off effects on the entire supply chain. Examples of key ancillary service sectors include design, contracting, facilities management, leasing and property consulting. Major supply industries include steel, cement, timber and construction materials.

The collapse of the industry is therefore both a national and personal nightmare for many, so one way to support the industry is to strengthen recovery plans should any real estate company go bankrupt. But as a result, CIRPs for real estate developers face numerous challenges, including regulatory issues, multiple ongoing litigations, numerous claimants, limited role of authorized representatives, limited scope of resolution on a project-by-project basis, lack of investor interest and significant ongoing nature of the operation so as not to interfere with other projects.

All these factors combine to halt or delay projects and property transfers, potentially leading to insolvency proceedings. It has also resulted in lower investor interest in distressed assets. In this case, maintaining operations requires significant capital and labour investments, making it difficult for solutions professionals to obtain the necessary funding. The limited role of the authorized representative is critical to effective communication with home buyers. The Bankruptcy Code does not allow for project-by-project resolutions, which could lead to the liquidation of the entire business.³ Therefore, there is now a need to find solutions to the hidden

² Sandhya Keelery, 'Real Estate Industry in India - Statistics & Facts' (*Statista*, 19 December 2023) <<https://www.statista.com/topics/7562/real-estate-industry-in-india/#topicOverview>> accessed 08 June 2024

³ Mehreen Garg and Arjya B. Majumdar, 'The Homebuyers Conundrum in Real Estate Insolvency' (*Insolvency Law Academy*, 28 February 2024) <<https://insolvencylawacademy.com/the-homebuyers-conundrum-in-real-estate-insolvency/>> accessed 08 June 2024

termite problem in India's economic growth, possibly through the application of a reverse insolvency regime.

INSOLVENCY IN THE REAL ESTATE SECTOR

There have been many bankruptcies in the real estate industry. According to data provided by IBBI, out of 2,298 CIRP cases, 518 cases involved the real estate sector. Notably, of the 611 approved resolution plans, only 78 were for real estate.⁴ This means that while allocators have not fared much better under the Code, real estate remains the second largest sector under CIRP.

Initially, the Bankruptcy Code, 2016 (the Code) did not contain any specific provisions dealing with the rights of transferees of real estate projects. Subsequently, following a judicial judgment holding that all the advances had the commercial effect of borrowing, Section 5(8)(f) of the Code was amended in 2018 to expressly include alleges as 'Financial Creditors'.⁵

The authorized allottee has the power to initiate a Corporate Insolvency Resolution Process ('CIRP') against a defaulting real estate developer and attend meetings of the developer's Committee of Creditors ('CoC'). Clause 7 of the Code was subsequently further amended in 2020 to provide for thresholds for allocators to initiate CIRP to limit frivolous applications.⁶ Despite these legal provisions, low success rates prevent the prompt and effective resolution of stressed real estate projects.

When it comes to the bankruptcy of real estate companies, there is a lot of policy uncertainty in the legislation. Despite several revisions, allottees have largely been marginalized in real estate firm CIRP. Relatedly, in some quarters, it is felt that the Code may not be the best mechanism to address the multiple grievances of allottees and that an authority such as the Real Estate Regulatory Authority (RERA) may be better suited for the purpose. However, the rights of

⁴ Abhishek Arya, 'Insolvency in Real Estate Sector: Issues and Challenges' (*IBC Laws*, 24 July 2023) <<https://ibclaw.in/insolvency-in-real-estate-sector-issues-and-challenges-by-abhishek-arya/>> accessed 08 June 2024

⁵ *Vishal Chelani and others v Debashis Nanda* (2023) 10 SCC 395

⁶ Sandeep Bhuraria & Parijat, 'The Paradigm Of Real Estate Insolvencies: Judicial Trends, Roadblocks, And The Way Ahead' *Live Law* (27 March 2024) <<https://www.livelaw.in/law-firms/law-firm-articles-/paradigm-of-real-estate-insolvencies-judicial-trends-challenges-and-roadblocks-cirp-ibbi-253531#footnote-2>> accessed 08 June 2024

allottees under RERA and the rights of creditors under the Code may need to be balanced through legislation.

Insolvency resolution proceedings in the real estate industry face several challenges, including time-consuming deliberations and information asymmetries among allocators. Many allocators were unaware of the time-sensitive nature of the code and did not live in the area where the project was taking place. This led them to later petition the NCLT for inclusion of their claims, thereby hampering the CIRP and defeating the 'time-bound' objective of the Code. The allottees are a diverse group of financial creditors (FCs) with different interests, such as project completion and possession of the property. This approach does not address complexities such as the applicability of the moratorium at the entity level and the treatment of creditor claims at the entity level.

NCLAT made it clear that the moratorium would only apply to specific projects undergoing CIRP, contrary to the stance taken in the Supertech Limited (2022) bankruptcy case.⁷ The Transfer of Property Act 1882 allows the buyer to charge the property against the purchase amount plus interest, but this right is not included in the builder-buyer agreement or the model sale agreement recommended by most RERAs (including Maharashtra) middle. In summary, insolvency resolution proceedings in the real estate industry face several challenges, including time-consuming deliberations, information asymmetries, and the lack of specific exemptions for allottees.

REVERSE CORPORATE INSOLVENCY RESOLUTION PROCESS: AN OVERVIEW

The financial difficulties faced by real estate companies can have far-reaching consequences, not only for their own survival but also for the investors, creditors, employees, and other stakeholders involved⁸. When a real estate company experiences financial distress, it is crucial for them to take active actions to improve their operation and management efficiency. This can be done through reintegrating management, restructuring assets, and restructuring debts.

⁷ *Supertech Ltd v Union of India* (2022) Company Appl (AT) (Insolvency) No 406/2022

⁸ Marjan Marandi Parkinson, 'Financial Distress, Insolvency and Business Rescue', *Corporate Governance in Transition* (Palgrave Macmillan 2018)

Reverse insolvency, also known as turnaround or reorganization, refers to the process of revitalizing a financially distressed company and restoring it to profitability. Reverse insolvency in real estate companies involves implementing strategies and measures to address financial difficulties and improve the overall performance of the company. And, the aim of the regime of IBC encapsulated in section 12 is to deal with the insolvency of the companies in time bound manner in order to preserve the benefactions of businesses. Thus, reserve insolvency is a step taken in the consensus of this, to protect the business that holds the eager dreams of many.

Another primary goal of the IBC Code is the maximisation of assets of the corporate debtor and timely resolution of the insolvency process not with the aim to facilitate an early winding up process but to help the entity go on as a going concern with the aim of its revival by designing strong process of resolutions for it.⁹ But to achieve this, traditional CIRP through section 29A aims to keep corporate debtor miles away from this process so they don't try to indulge in back to regain their positions in such precarious financial situations. However, the judiciary has realised that application of this traditional viewpoint is insufficient in case of insolvency of real estate companies to cater to the dream of home buyers and is instead a wound over them, this is probably because of the nature of the asset that is the subject matter in case of real estate insolvency.

Unlike traditional CIRP which prioritizes the secured financial creditors like banks and other financial institutions, reverse CIRP prioritizes the needs of unsecured financial creditors as well i.e. of homebuyers. While the repayment of loans and monetary contributions are the main subject of consideration in the traditional process, the allotment of flats and properties promised is the actual matter of concern for homebuyers which is the primary goal for the application of reverse CIRP in the case of real estate.

Thus, reverse CIRP tries to achieve this aim by deviating from this traditional proceeding and allowing the promoters of the company to act as an external lender so that they can infuse funds

⁹ 'Understanding the IBC: Key Jurisprudence And Practical Considerations' (*Insolvency and Bankruptcy Board of India*, 30 October 2020) <<https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>> accessed 08 June 2024

for the completion of the project in order to deliver the dreams of the homebuyers.¹⁰ This unconventional approach also helps to deal with project-based insolvency and prevents the shutdown of all the other probably Vibal projects together. However, in such cases of homebuyers, COC has no haircut option due to a change in subject issue.¹¹ Thus, the Judiciary of many jurisdictions recognised this concept as a deal maker for all the involved parties, as it ensures the allotment of property to homebuyers, and the infusion of funds by the promoter of the company and returns will escalate the financial health of the entity which will further allow it to repay the debts to other claimants like secured financial creditors as well.

NCLAT however, puts certain restrictions on the applicability of this concept stating that the effect of reverse CIRP initiated due to default in a certain project will only be there on that particular project and not on other projects of corporate debtor. Second, in case of refund towards flat allotment is not a permissible request (provided in section 18 of RERA),¹² homebuyers can either enter an agreement with the promoter or can request RP or promoter to fetch a third party for the purchase of allotted property.

ANALYSIS OF THIS JUDICIAL MUSTER UNDER THE SLAB OF APPLICABILITY

Swiss Ribbons case of 2019 holds the crown of putting in bold the intricacies and objectives of the IBC regime in India.¹³ It emerged as an influential ruling towards reverse insolvency framework propounded by NCLTs in India. It outlined the significance of achieving a balance between stakeholder interests and the prompt and effective resolution of insolvencies was underscored by the court. It underscored the importance of adopting a strategy that is favourable to debtors and the preservation of business operations as opposed to liquidation. The reverse insolvency mechanism of the NCLT is designed to assist financially troubled companies in reestablishing themselves and resuming operations by permitting them to present resolution plans and act as investors and external lenders in their own projects to encompass debt

¹⁰ Devashish Bhattacharyya, 'Reimagining Insolvency Resolution: Reverse Cirp a Game-Changer for India's Real Estate Sector' *Live Law* (28 October 2023) <<https://www.livelaw.in/articles/reimagining-insolvency-resolution-reverse-cirp-a-game-changer-for-indias-real-estate-sector-241056>> accessed 08 June 2024

¹¹ *Flat buyers Association Winter Hills v Umang Realtech Pvt Ltd & Ors* (2020) Company Appl (AT) (Insolvency) No 926/2019

¹² The Real Estate (Regulation and Development) Act 2016, s 18

¹³ *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17

repayment and operational revitalization. By promoting economic growth, protecting employment, and optimising asset value, this mechanism benefits all parties involved. The objective is to establish a feasible course of action for organisations to surmount financial challenges and sustain operations, thereby safeguarding stakeholder interests and preserving business value. The primary objectives of the NCLT's ruling were to facilitate economic expansion, protect employment opportunities, and optimise the worth of assets for all parties concerned. Thus, following the light shredded on this path, NCLT started observing the need to have specific project-based insolvency under the concept of reverse CIRP¹⁴.

Although the RERA u/s 18 and CPA both talk about refunds to the homebuyers in case of default. Moreover, the RERA Act also makes it compulsory for the builder and the real estate companies to deposit 70 percent of the total proceeds in a separate account specifically for the completion of the project and for the refund to the homebuyers in case of a default¹⁵. But the legislations like RERA and CPA were futile in helping the home buyers considering long delays and in no case gave options to the home buyers who preferred possession of flats in place of refund.

Furthermore, through Section 14, Mortarium period of the IBC these claims of the home buyers and allottees under CPA or RERA were put on stay if CIRP was initiated by the creditors of the company.¹⁶ Also, the home buyers on the other hand had no locus standi whatsoever to approach the NCLT in case of any default as the homebuyers were not considered eligible under sections 7, 8 and 10 of the IBC and until the Chitra's Case¹⁷ they were classified under the category of other creditors which also left them with almost no say in the committee of creditors. This led to the amendment of the code in the form of the insertion of homebuyers as financial creditors under section 5(8)(f). Subsequently, the Supreme Court reaffirmed the view.¹⁸ However, by the end of 2020, a statutory restriction was imposed on homebuyers: a 10%

¹⁴ *Ram Kishor Arora v Union Bank of India & Anr* (2024) Company Appl (AT) (Insolvency) No 406/2022

¹⁵ Real Estate (Regulation and Development) 2016, s 4(2)(I)(D)

¹⁶ Kriti Vardhan Pandey and Akash Kumar, 'Reverse CIRP: A Reform for The Future or A Challenge for The Present: An Overview' (*Taxman*, 09 February 2024) <<https://www.taxmann.com/research/ibc/top-story/10501000000023720/reverse-cirp-a-reform-for-the-future-or-a-challenge-for-the-present-an-overview-experts-opinion>> accessed 08 June 2024

¹⁷ *Chitra Sharma v Union of India* (2018) 265 (SC)

¹⁸ *Pioneer Urban Land & Infrastructure Ltd v Union of India* (2019) 8 SCC 416

threshold or 100 allottees of a project, whichever is less, was established to prevent meritless and fraudulent cases brought by individual homebuyers. This judicial interpretation provided homebuyers with remedies under three legislations—CPA, RERA, and IBC—yet the remedy under IBC remained inadequate to address the issue at hand.

However, it is a great experiment and innovative approach to provide a shield to the collapsing tower of real estate businesses in India. NCLT lacks in paying heed to the statutory provision of Section 29A¹⁹ without structuring any statutory support under which it would give a link to its authority, not even under Section 11 of NCLT rules for making such deviation.

However yes there is no provision in the IBC that addresses reverse CIRP. Furthermore, in light of the circumstances, it is evident that liquidation did not serve the homebuyers' best interests. Under such circumstances, the sole viable course of action would have been to devise a strategy that circumvented the liquidation's consequences, distinct from the provisions outlined in the IBC. Legislation that is equivocal or silent may be resolved by the courts through the application of common law or equitable principles, according to a Supreme Court ruling.²⁰ However, it has also been noted that instances of this nature will be rare. The courts are obligated to implement the legislative intent as demonstrated by the challenged legislation in its entirety. The court may find the disqualification of promoters from submitting a resolution plan to be more significant.

ROLE AND STRATEGIES OF PROMOTERS IN REVERSE CIRP

The infusion of new capital from promoters into real estate firms experiencing reverse insolvency is crucial for enhancing financial stability and restoring stakeholder confidence.²¹ Frequently, these investments manifest as equity infusions, loans, or guarantees, with the objective of promptly resolving liquidity issues and bolstering restructuring endeavours. Case law and legal provisions offer direction regarding the structure and ramifications of such investments. For example, shareholder approval and regulatory compliance may apply to

¹⁹ Insolvency and Bankruptcy Code, 2016, s 29A

²⁰ *The Board of Trustees of the Port of Bombay v Sriyanesh Knitters* (1998) 1 SCC 142

²¹ Mohanish Shukla, 'Navigating Corporate Distress: An in-Depth Analysis of Reverse Corporate Insolvency Resolution Process (CIRP) Under IBC, 2016' (*Mondaq*, 19 January 2024)

<<https://www.mondaq.com/india/insolvencybankruptcy/1414362/navigating-corporate-distress-an-in-depth-analysis-of-reverse-corporate-insolvency-resolution-process-cirp-under-ibc-2016#authors>> accessed 08 June 2024

equity infusions, taking into account pricing and disclosure standards. The examination of promoter-issued loans and guarantees for conflicts of interest and compliance with fiduciary obligations guarantees the integrity and openness of business transactions. The obligation of promoters to act in the company's and its stakeholders' best interests is underscored by the courts, especially during periods of financial hardship. Insolvency proceedings also accord priority to the rights of creditors within legal frameworks; promoter investments have an influence on the allocation of proceeds and the recovery of creditors. Adequate disclosure of promoter transactions and potential conflicts of interest is mandated by disclosure and transparency requirements, which uphold the fundamental tenets of corporate governance and safeguard the interests of investors. In general, new investments made by promoters are of significant importance in the process of reverse insolvency. These investments are governed by legal regulations and judicial precedents that serve to protect the interests of stakeholders and facilitate fair resolution of financial difficulties.

Also, throughout the reverse insolvency procedure, stakeholder participation is essential for ensuring that interests are aligned, managing expectations, and gaining support for the restructuring efforts. Real estate firms may have creditors, investors, tenants, suppliers, employees, regulatory authorities, and local communities as stakeholders. Efficient stakeholder communication entails furnishing consistent updates regarding the organization's advancements, promptly attending to concerns and inquiries, and actively seeking input on proposed reorganisation endeavours.²² By actively involving stakeholders in the decision-making process, especially with respect to asset sales, lease renegotiations, and workforce restructuring, it is possible to reduce opposition and enhance the execution of the reorganisation strategy. Moreover, the inclusion of stakeholders in the process of developing a common vision for the organization's future can cultivate a sense of ownership and nurture a collective dedication to its achievements.

Typically, real estate firms that are confronted with reverse insolvency have property-tied assets, which can confound the reorganisation procedure. **The following is an examination of**

²² *Ibid*

the reverse insolvency procedure and the potential strategies that real estate companies may implement:

Evaluation of the Financial Circumstances: It is imperative for real estate firms to undertake a comprehensive evaluation of their financial condition, encompassing an analysis of their assets, liabilities, cash flow, and debt commitments. This evaluative process aids in comprehending the fundamental factors contributing to financial hardship and pinpointing domains that necessitate urgent resolution.

Determination of Critical Stakeholders: Stakeholders of real estate enterprises include lenders, investors, tenants, suppliers, and personnel. During the reorganisation, it is critical to identify and prioritise the interests of these stakeholders.

Restructuring Methods: Debt restructuring involves engaging in negotiations with creditors in order to modify the terms of the debt. Possible restructured debt options include extending repayment periods, decreasing interest rates, or converting the debt into equity. Selling non-core or underperforming assets in order to generate liquidity and alleviate debt obligations. Renegotiating lease agreements with tenants in order to bring rental rates or terms into closer conformity with prevailing market conditions.

Cost Reduction: Executing cost-cutting strategies, such as optimising operations and decreasing administrative expenses, in order to increase profitability.

Operational Improvements: The process of recognising and executing tactics to optimise revenue generation from current assets while enhancing operational efficiency.

Negotiation Strategies for Debt: Maintaining transparent and open communication with creditors in order to negotiate solutions that are mutually beneficial.²³

²³ 'Idea, Impressions and Implementation' (*Insolvency and Bankruptcy Board of India*, 29 September 2022) <<https://ibbi.gov.in/uploads/whatsnew/b5fba368fbd5c5817333f95fbb0d48bb.pdf>> accessed 07 June 2024

Seeking Professional Guidance: Employing financial advisors, attorneys, and restructuring experts who possess expertise in the real estate sector to assist in navigating intricate debt negotiations.

Motivating Creditors: Foster their cooperation in debt restructuring by providing them with incentives, such as equity interests or profit-sharing arrangements.

Placing Secured Debt Repayment as a Priority: Placing repayment of secured debt as a priority safeguards valuable assets against foreclosure or liquidation.

An Analysis of Government Programmes: An investigation into government-sponsored initiatives or incentives that aim to aid real estate firms experiencing financial difficulties. These may include initiatives such as tax relief or loan guarantees.

Implementation and Observation: Ensuring the diligent monitoring of the agreed-upon restructuring plan's implementation. Constantly assessing and modifying strategies in response to emergent opportunities or challenges.

Management of Stakeholders and Communication: Ensuring open and honest communication with all relevant parties during the reverse insolvency procedure in order to cultivate confidence and effectively handle anticipations. Stakeholders will be provided with consistent updates on the organization's development and any concerns or inquiries will be promptly addressed.

In summary, real estate firms experiencing reverse insolvency are required to implement a blend of debt negotiation and restructuring tactics that are customised to their unique financial conditions and asset holdings. Navigating the reverse insolvency process and reinstating financial stability necessitates the implementation of proactive measures, strategic planning, and effective communication.

REIMAGINING THE FATE OF LAVASA – AN ARID CHARMER PROJECT

About: Lavasa, India's first private hill town, is one of the large real estate projects undertaken by Hindustan Construction Corporation, a division of Ajit Gulabchand. This is a strategic project built near key locations in Pune and Mumbai. It was supposed to be India's largest urban

infrastructure project and was modelled after the Italian town of Portofino. This appears to be a major economic opportunity for the region as it has many firsts such as being the first city in India to leverage GIS, technological leadership, e-governance, and utilizing innovative technologies such as hydroseeding. Therefore, with such a promising idea, a residence for about 300,000 people and a tourist attraction for about 2 million people per year are planned.²⁴ Spread over 25,000 acres of land, Lavasa is planned to be developed in multiple phases, including residential complexes, commercial spaces, hotels, educational institutions and recreational facilities. Initially, Lavasa received significant attention and investment, promising a luxurious lifestyle in a picturesque setting. The project has received support from various parties, including the Maharashtra government, which provided necessary permissions and infrastructure support.

But unfortunately, this large-scale private urbanization project failed spectacularly. After the Ministry of Environment and Forests ordered a halt to the project on the grounds that it had violated environmental laws by failing to obtain environmental clearance from the federal ministry, the company responded that it had obtained the necessary permissions from state authorities. However, the company applied for a post permit from the Ministry of Finance after violating all environmental and real estate regulations established for construction in hilly areas.

The Impact of Political Sponsorship on the Project: Despite all these obstacles, the project successfully advanced for some time thanks to strong political support. Lavasa's development company had board members like Supriya Sule, the daughter of Sharad Pawar, leader of the then-ruling NCP party. Even her husband is closely related, with the couple holding a combined 21.97% stake in the company that dominates the structure of the project.²⁵ But even as they withdraw their stake from the company, support remains as current member of the Pawar family-run trust, Vishal Maniyar, remains a board member of LCL. In addition, Ajith Pawar, the nephew of the NCP leader who is also the Minister of Water Resources, also expressed support

²⁴ Responsible Infrastructure, *The seventh annual sustainability report of Hindustan Construction Company's (HCC Engineering & Construction business)* (2015-16)

²⁵ Shoumojit Banerjee, 'Pawar family at heart of Lavasa scam: ex-IPS officer' *The Hindu* (18 October 2016) <<https://www.thehindu.com/news/national/Pawar-family-at-heart-of-Lavasa-scam-ex-IPS-officer/article12562621.ece>> accessed 08 June 2024

for the project and diverted a large area of river water originally intended for public use for private use for the development of the Lavasa project.²⁶

However, the shift in power changed the game and fate of the project as regulatory compliance issues with the project led to its development being stalled for a longer period of time, ultimately leading to high bills for basic and non-essential facilities such as power, water, etc. question. - Pay off loans and debts, turning it into an indelible ghost town of insolvency and bankruptcy.

Lavasa's Brief Bankruptcy: The CIRP application of Lavasa Corporation Limited was admitted by the Mumbai Bench of NCLT in August 2018 and subsequently, the same CIRP was adopted by other subsidiaries of LCL namely DCCL, WAML, WPSL and DRL.²⁷

At the same time, many resolution applicants proposed resolution plans, but all were rejected by the COC. However, when the current plans of the Darwin Group surfaced, the applicant received a performance bank guarantee of INR 25 crore from ICICI Bank. The Supreme Court ordered a revision of the resolution plan, directing the General Committee to re-examine the funds and distribute them equally among secured financial creditors.²⁸ The COC approved by a majority of 84.05% the amendments to the resolution plan made by the applicant Darwin Platform Infrastructure Limited (DPIL). The applicant made an application for approval of the resolution plan, citing challenges such as the completion time of the current phase and the expiry of environmental clearances. The corporate debtor had submitted an extension application to the EC and it was approved by the CoC members. The plan includes an upfront payment of INR 50 crore, disbursements of INR 702.6 crore and INR 1,371,240 crore over 9 years. Cash funding will come from project cash flow, external investments and internal accruals.

The resolution plan outlines the payment of CIRP costs, operational creditors and government and statutory body dues. Unpaid fees will be paid upfront with additional amounts adjusted for past-due amounts. The plan also includes a creditors contingency fund of Rs 673 crore for

²⁶ 'Stake Holder' (Lavasa) <<http://www.lavasa.com/corporate/stake-holder.aspx>> accessed 08 June 2024

²⁷ 'Status Of The Consolidated Lavasa Cirp' (Lavasa, 29 June 2021)

<<http://www.lavasa.com/pdf/CIRP%20Status%20Intimation.pdf>> accessed 08 June 2024

²⁸ Sailesh Sharma, *RP for LCL v Darwin Platform Infrastructure Ltd* (2023) 1765(MB) 2018 (NCLT)

additional payments.²⁹ The resolution plan proposes distributing funds to secured financial creditors in proportion to the claims recognized by each creditor and delivering fully built properties to homebuyers within five years.

Analysis: The Lavasa project was a marshmallow in the eyes of many, but issues such as environmental degradation, land acquisition obstacles, Treasury directives to halt construction and repayment issues became hazards on the road, some of which remained even after approval. Solutions for the Darwin complex. Financial creditors such as large banks and financial institutions are still able to operate their businesses. But those who still live in darkness are the locals and residents of the villages where the projects are located, as well as the homebuyers who have invested money in this shiny and anticipated project.

Contrary to appearances, residents of Dudvan, one of eighteen villages whose land has been acquired for the Lavasa development project, lament the lack of basic utilities so close to the posh metropolis of the Italian hill town.

Lavasa Corporation owes dues of Rs. 22 Crore to MSEDCL. Therefore, for the same reasons and backed by the NCLT order which allowed it to terminate or suspend the power supply for non-payment of dues, MSEDCL cut off the power supply to the hill town of Lavasa and restored it only after the Supreme Court order.

In line with this, the plight of Lavasa homebuyers is extremely puzzling. For them, the long-held dream of investing in property in a modern town has not come true. Even Darwin's new solution would make them wait another five years before getting all the permits. Despite this promise, newfound obstacles such as the withdrawal of applications have people worried about waiting many more years to complete their home projects. This, therefore, forces them to resort to unconventional means such as issuing request letters to RPs and authorities for repayment of principal despite having already received tax refunds.

So, all of this is a concrete reflection of the confidence that homebuyers lose along the way. Taken together, all such dues from homebuyers, creditors big and small, government authorities, etc.,

²⁹ *Ibid*

show the toll this and many other mega projects have taken individually and collectively on the country's economy.

IMAGINATIVE PROGRESS BY FOLLOWING REVERSE CIRP

Since Lavasa is not a piece of chickpea in the real estate market, but a whole piece of meat, its promoters are also quite influential names. The important promoter of the project is Hindustan Construction Company, which holds a 68.72% equity stake in the project. HCC Real Estate is a comprehensive real estate developer that has built many iconic projects such as the Mumbai-Pune Expressway, the Bandra-Worli Sea Link, and Kolkata's first metro. It can be said to be a multi-billion-dollar profit-generating entity of the asset. The project is associated with many eminent personalities such as Vinay Maniar (qualified director of many entities), Avantha Reddy and Venkateshwara Hatcheries (as stakeholders in the project).

Thus, reverse insolvency emerged as a concept in the context of Lavasa in the NPA space and required its promoters, headed by Ajit Gulabchand, the wealthy chairman of Hindustan Construction Corporation (HCC), to Make significant financial commitments. Unlike traditional bankruptcy proceedings, which involve an outside entity acquiring troubled assets, reverse bankruptcy gives current stakeholders the power to save a project.

Prospective Methods and Consequences: Imposing reverse bankruptcy could facilitate a comprehensive restructuring of Lavasa's finances. By leveraging their financial expertise, owners can bring in significant capital to meet obligations, renegotiate terms with creditors, and provide sufficient funding for ongoing business activities. Implementing this well-thought-out course of action will enhance investor trust and relieve the project of debt, creating a more robust framework for long-term expansion.

To revive the company, Lavasa's operational infrastructure had to be redesigned. Armed with industry knowledge and resources, entrepreneurs are able to execute rigorous cost optimization strategies, streamline administrative procedures and improve operational efficiency. Additionally, strategic alliances with infrastructure developers and hotel chains have the

potential to enhance the city's attractiveness to investors and tourists by generating additional revenue.

Infrastructure Development: Lavasa's development potential is hampered by infrastructural deficiencies, including inadequate connectivity and basic facilities. Sponsors may allocate resources to infrastructure development initiatives, including but not limited to road expansion

Effective marketing and branding play a vital role in promoting Lavasa's revitalization as a leading tourist destination. By leveraging its extensive network of contacts and astute marketing capabilities, the promoter can organize targeted promotional campaigns to re-establish Lavasa's position in the domestic and global tourism landscape. By showcasing its unique landscapes, leisure activities, cultural gatherings and other features, it may be able to reignite consumer curiosity and increase the number of tourists, thus stimulating the regional economy.

Stakeholder Engagement: Reverse insolvency provides regulators, investors and residents with the opportunity to reconnect with stakeholders. Fostering trust and collaboration, as well as establishing community-focused initiatives and transparent communication channels, will jointly promote sustainable development. By putting stakeholders' interests first and paying attention to their concerns, sponsors can build lasting relationships and build support for Lavasa's revitalization efforts.

Legal Remedies: Lavasa's progress has been hampered by legal disputes, including land acquisition disputes and environmental compliance issues. Through reverse insolvency, sponsors can reallocate funds to facilitate the progress of legal proceedings, harmoniously resolve any outstanding disputes, and ensure compliance with regulatory standards. By settling out of court and working with legal professionals, the project may be able to reduce legal risks and improve its reputation among investors and stakeholders.

On reflection, the imposition of reverse insolvency may have the power to change the course of Lavasa and provide critical support to struggling undertakings. By leveraging the financial clout, industry knowledge and strategic vision of its sponsors, Lavasa may be able to undergo a radical transformation and become a thriving, environmentally conscious urban enclave. While

the prospects for reversing insolvency are promising, its success depends on regulatory support, effective enforcement and stakeholder cooperation. In essence, the theoretical situation highlights the critical importance of proactive intervention and strategic management in changing the course of events in Lavasa. It illustrates the complex relationship that exists between operational revitalization and financial restructuring when troubled assets are rehabilitated.

TRIUMPHS OF REAL ESTATE REVERSE INSOLVENCY PROJECTS

The Supreme Court delivered a landmark judgment in *Swiss Ribbons Private Limited and Anr v Union of India and Ors.*³⁰ held – ‘Continuing experimentation in the economic field is a great responsibility and deprivation of the right to experiment would have serious consequences for the country.’ Hence, inspired by this, the NCLT approved the resolution of many real estate projects in India applying the reverse insolvency resolution process.

In *Flat Buyers Association Winter Hills – 77 v Umang Realtech Pvt. Ltd. by IRP and others.*³¹ In the above case, NCLAT admitted that the CIRP of real estate companies is unique and different from other industries. The NCLAT therefore considered whether corporate debtors involved in the real estate sector could be resolved without the need to approve a third-party resolution plan under the Code. These discussions laid the foundation for the highly innovative concept of reverse CIRP, in which promoters of a corporate debtor can come up with proposals to deliver their stalled projects, pending requisite stakeholder and creditor approvals, and complete the process under the RP and NCLT supervision, thereby overcoming the limitations imposed by Section 29A of the Code. Reverse CIRP allows promoters to inject capital as investors, thereby ensuring the completion of projects stalled by corporate debtors. This concept not only protects the interest of all creditors of the allottee and the corporate debtor but also provides an opportunity for the former management of the corporate debtor to re-establish its Control and management of the company and its return to financial health are subject to the satisfaction of all creditor claims.

³⁰ *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17

³¹ *Flat buyers Association Winter Hills v Umang Realtech Pvt Ltd & Ors* (2020) Company Appl (AT) (Insolvency) No 926/2019

NCLAT also applied the reverse CIRP principle in the case of *Rajesh Goyal v Babita Gupta and Others*.³² In this case, NCLAT, in the exercise of the powers conferred by Rule 11 of the NCLAT Rules, 2016, allowed the promoters to invest funds from external sources in the corporate debtor in the capacity of financial creditor. In the circumstances stated above, the Corporate Debtor continues to operate its affairs on a going concern basis to successfully complete and deliver the defaulted projects to its designated recipients.

The Supreme Court subsequently ruled in *Anand Murti v Soni Infratech Private Limited and Anr*.³³, the completion of the project by the corporate debtor to the proposed sponsor will be in the best interest of the allottee. Furthermore, the Supreme Court noted that if a standard CIRP were implemented, already alienated allocators would likely be required to pay for a larger escalation of the third-party resolution scheme. As a result, the promoters were allowed to invest again and complete the distressed housing project, this time under the supervision of the courts and RP.

CHALLENGES AHEAD IN REGULATORY COMPLIANCE

Amendments to the Indian Insolvency and Bankruptcy Commission (Insolvency Resolution Proceedings for Corporate Persons) Regulations, 2016 (CIRP Regulations) effective from February 15, 2024, provide that corporate debtors can submit multiple resolution plans for different projects, subject to COC approval.³⁴ Additionally, it provides for the establishment and maintenance of individual bank accounts for each real estate project to increase transparency.

The recent amendments to the CIRP Regulations are silent on both points regarding the resolution of corporate debtors in the real estate sector in a project-specific manner, or that CIRP procedures are limited to defaulting projects. Legislators may be particularly concerned that corporate debtors may use revolutionary measures, such as statutory provisions, to prevent them from engaging in less profitable activities. However, when these statutory safeguards are missing, real estate projects where the corporate debtor is solvent and healthy are more often

³² *Rajesh Goyal v Babita Gupta and Others* (2020) Company Appl (AT) (Insolvency) No 1056/2019

³³ *Anand Murti v Soni Infratech Private Limited and Anr* (2022) 8 SCC 234

³⁴ IBBI Insolvency Resolution Process for Corporate Persons (Amendment) Regulations 2016

mired in unjustified resolutions, which can lead to delays in the completion and delivery of the project to alienated allottees. Furthermore, in the absence of legal provisions, corporate debtors and assignees are forced to resort to judicial intervention as their only recourse. This allows CIRP proceedings to be project-specific and limited to projects that have defaulted.

It is critical to recognize the unique characteristics of real estate company CIRPs that fundamentally differentiate them from companies in other industries. Real estate companies often set up special purpose vehicles (SPVs) or subsidiaries to hold land interests in specific development projects. This strategic move aims to mitigate and spread business risks proportionately.³⁵ Therefore, in the above real estate business, although the parent company provided all the funds for the acquisition, development and construction of the project land and collected a large amount of funds from the allottees, the title and ownership of the land still belonged to its subsidiaries. Therefore, if a parent real estate company is admitted to the CIRP without launching its subsidiary CIRP, the exclusions outlined in Explanation (b) to Section 18 of the Code will apply³⁶, thereby excluding the project land which is the property of the subsidiary Assets, CIRP from the parent company. Therefore, by excluding the project land from the scope of the CIRP, the CIRP of the parent company becomes redundant.

When the developer of the project and the proprietor of the project land are separate entities that are third parties to the development agreements, comparable complications ensue. Once more, the incorporation of third-party assets held by the corporate debtor pursuant to contractual arrangements governed by CIRP is prohibited by Explanation (a) to Section 18. Despite the ruling by the Supreme Court in the *Victory Iron Works Limited v Jitendra Lohia and Anr.*³⁷ that development rights constitute a collection of intangible rights entrusted to the corporate debtor and are therefore an 'asset' of the corporate debtor, this reasoning may not offer a practical resolution to the current issue. The development rights are an asset of the corporate debtor; however, practical challenges arise in enforcing these rights and resuming the corporate debtor's suspended project in the absence of the project land, which is vested in a third

³⁵ 'Property Developers and the SPV Company' (Morr & Co, 19 May 2022)

<<https://www.morrlaw.com/article/property-developers-and-the-spv-company/>> accessed 08 June 2024

³⁶ Insolvency and Bankruptcy Code 2016, s 18(a)

³⁷ *Victory Iron Works Limited v Jitendra Lohia and Anr* (2023) SC 260

party. It goes without saying that in the absence of a joint CIRP between the developer and the landowner, the CIRP proceedings will be beset by numerous rounds of litigation. Therefore, the outcome of CIRP for real estate firms in which the developer and landowner are distinct entities is currently unknown.

Legislative intent and purpose for inserting the Explanations to Section 18 of the Code are circumvented in CIRP proceedings involving real estate companies in which the landowner and developer of the project are distinct entities. As a result, considering the well-established industry practices in the real estate sector, we believe that the prohibition on including subsidiary or third-party assets in the CIRP proceedings of the aforementioned corporate debtors, as stated in the Explanations to Section 18 of the Code, should be relaxed. The CIRP proceedings of the principal real estate company will be superfluous if the project land, in which ownership may vest with subsidiary companies or special purpose vehicles, is not included. Therefore, it is imperative that the Explanations to Section 18 of the Code that establish statutory exceptions for the real estate industry be revisited and clarified immediately.

It is widely accepted that the purpose of the Code is not to facilitate universal CIRP for solvent real estate projects, which would delay the delivery and completion of units to the project allottees. Hence, revisions to the Code and CIRP Regulations pertaining to the commencement of project-specific CIRP for a real estate firm would grant the essential legal support for a procedure that the NCLT and NCLAT have adopted in a multitude of instances: limiting CIRP to 'project in default' status and excluding healthy and viable projects.

INSPIRATION FROM PRE-PACKAGED INSOLVENCY REGIME

Pre-packaged insolvency is an approach to resolving financial distress that involves a company engaging in negotiations with its creditors to establish a restructuring plan prior to initiating the formal insolvency process. Typically, this strategy entails asset sales, debt restructuring, or a debt-for-equity exchange.³⁸ Prompted by the initiation of formal insolvency proceedings by the organization's management or extant stakeholders, pre-packaged insolvency endeavours to expedite the execution of the mutually agreed-upon restructuring strategy. One significant

³⁸ Insolvency and Bankruptcy Code 2016

benefit of this methodology is its effectiveness and promptness in resolving financial challenges; this is due to the fact that the restructuring strategy has been devised and approved prior to the commencement of insolvency proceedings.

On the contrary, reverse insolvency pertains to a situation where the promoters or current shareholders of a troubled company provide additional capital to support the enterprise's recuperation. Recapitalizing the company is prioritised over asset sales or debt restructuring as a means to enhance its financial standing and maintain operational activities. This endeavour is commonly led by the promoters or shareholders of the organisation, who are showcasing their dedication to rejuvenating the business. Reverse insolvency necessitates the company's capacity and inclination to make additional financial investments, be they in the form of loans or equity investments.

Reverse insolvency and pre-packaged insolvency have notably distinct mechanisms and objectives. In order to appease creditors, pre-packaged insolvency seeks to restructure debts or liquidate assets, whereas reverse insolvency emphasises the infusion of new capital to facilitate the recovery process.³⁹ Reverse insolvency is instigated by the proprietors or shareholders themselves, as opposed to pre-packaged insolvency, which is initiated by management or existing stakeholders in negotiations with creditors. Reverse insolvency seeks to preserve ownership and stabilise the financial position of the company, whereas pre-packaged insolvency frequently leads to substantial debt restructuring or changes in ownership.

In order to optimise the efficacy of reverse insolvency, a number of tactics may be adopted from the framework of pre-packaged insolvency. In the first place, capital injections can be executed rapidly with the objective of stabilising the company's finances and facilitating its recovery, with an emphasis on speed and efficiency. Additionally, in reverse insolvency, the negotiation and consensus-building processes that are intrinsic to pre-packaged insolvency can be utilised to secure support for capital injection from creditors or stakeholders. Furthermore, the regulatory approvals and streamlined court processes that have been established for pre-packaged insolvency can aid in the execution of reverse insolvency plans. In conclusion, consulting with

³⁹ Kumar (n 16)

financial advisors or insolvency practitioners who have experience with pre-packaged insolvency can offer significant insights into the efficient organisation and implementation of reverse insolvency transactions.

In conclusion, although pre-packaged insolvency and reverse insolvency fulfil distinct objectives, valuable insights and mechanisms can be derived from pre-packaged insolvency to improve the efficacy and efficiency of reverse insolvency procedures. Through the utilisation of these frameworks and tactics, reverse insolvency has the potential to expand as a feasible alternative for financially troubled organisations aiming to recapitalize and recuperate from their challenges.

CONCLUSION

In conclusion, the real estate industry in India is a significant contributor to the country's gross domestic product and employs millions of people, making it a vital pillar of economic expansion. Nevertheless, the industry faces a multitude of obstacles, most notably with regard to insolvency, a situation that can significantly impact various stakeholders and the economy as a whole.

Motivated by seminal cases such as *Swiss Ribbons*, the implementation of reverse corporate insolvency resolution processes (RCIRP) presents a prospective pathway to tackle the financial challenges encountered by real estate enterprises. RCIRP seeks to stabilise viable projects and avert project-based insolvency by giving precedence to the requirements of unsecured financial creditors, including home buyers.

The real estate industry is rife with inherent complexities and hazards, as illustrated by the *Lavasa Hill City* case study. *Lavasa* encounters a multitude of obstacles, including regulatory compliance concerns, environmental infractions, and creditor disputes, which emphasise the critical nature of inventive resolutions such as RCIRP. Concerning *Lavasa's* insolvency, resolution strategies and legal challenges illustrate the complexities of RCIRP implementation in practice. Effective stakeholder engagement, strategic marketing, and legal remediation are identified as critical elements in successfully navigating the reverse insolvency process.

The success of RCIRP is fundamentally dependent on the financial commitment and strategic management provided by promoters. Through leveraging their specialised knowledge and encouraging cooperation among stakeholders, promoters have the ability to guide troubled assets such as Lavasa towards recovery and sustained viability. Fundamentally, it is impossible to exaggerate the potential repercussions of reverse insolvency on endeavours such as Lavasa Hill City. Effective implementation, proactive intervention, and regulatory support are critical components in maximising the potential of RCIRP to reinvigorate troubled assets and regain confidence in the real estate industry. Innovative methodologies such as RCIRP are critical in enabling India to surmount the obstacles and fully harness the potential of the urban development and economic growth sector.