

THEME

**Strengthening Professional capacity: Advancing
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Bibliographic Analysis of Real Estate Bankruptcy Process in India: Lessons from Commonwealth Nations

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Abstract

The Bankruptcy Process in India has streamlined and fast tracked with the introduction of Insolvency and Bankruptcy Code of India – 2016, still the process for Corporate Insolvency Resolution for real estate has one of the highest numbers of Unresolved cases with 54% of all cases still ongoing. [1] The high number of ongoing cases are attributed to 2 major factors: COVID & the greater time it takes to evaluate and resolve real estate insolvencies amongst other issues that plague the real estate industry. The Insolvency Resolution process for real estate entities is plagued with various challenges that hinder the proper realization of value for distressed assets, from Valuation of the said assets to the type of CIRP (Corporate Insolvency Resolution Process). A proper framework for real estate insolvency is paramount to protect the interests of the stakeholders, the consequences of improper valuation or delay in resolution process can have massive impact on the actual realizable value under a debt recovery plan. By reviewing between various commonwealth countries like UK, Canada, Australia & Singapore and their Real estate Insolvency and Bankruptcy process with that of India and review impactful bankruptcy proceedings and precedencies set for Real estate insolvencies under Insolvency and Bankruptcy Code 2016 (IBC 2016). Like the vast regulatory overlap of Prevention of Money Laundering Act, 2005 (PMLA 2005) and IBC 2016 and to identify other such gaps in the current insolvency framework for an efficient insolvency and bankruptcy process for Real Estate projects in India.

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1 Introduction

The Companies Act, 1956 (later modified to the companies Act, 2013) oversaw the liquidation process for companies in India prior to the implementation of the Insolvency and Bankruptcy Code (IBC). The Companies Act, 1956 was largely focused on the winding up of businesses. If a corporation was unable to pay its debts, creditors could petition the High Court (later the National company Law Tribunal) to wind it up. This approach, which was rooted in a conventional perspective, gave judges considerable power in deciding whether to wind up a business and broad discretion in areas concerning bankruptcy procedures.

Apart from being a laborious and protracted procedure, the Companies Act regime just addressed liquidation and left the possibility of a company's revival or resolution. To solve this, the Sick Industrial Companies Act of 1986 (SICA) was created. A Board for Industrial and Financial Reconstruction was established by SICA with the authority to authorize a plan for the recovery of "sick companies," which are defined as businesses that have accrued losses at the conclusion of a given fiscal year that equal or surpass their total net worth. A key feature of SICA was the imposition of a moratorium on legal proceedings against the company during the preparation and approval of the rehabilitation scheme. However, SICA proved largely ineffective, as many companies remained under the protection of the moratorium for extended periods without successful rehabilitation schemes being devised.

1.1 Need for the Study

The peculiar nature of Real estate Projects, the involvement of various shareholder and construction stages that determine different values at various stages makes proper standards for Real estate under Insolvency and Bankruptcy Code, an onus as critical as the existence of the Code.

It is generally acknowledged that the liquidation value established by the valuation experts is quite accurate. [2] The Insolvency and Bankruptcy Board of India (the "IBBI") or the Code do not, however, provide any specific technique or method for choosing a standard valuation method, which may result in intentional malpractice and misevaluation of assets to serve deceitful purposes. There are many such dynamics in the real estate sector that can be compared with other commonwealth nations and investigation of their legal framework can help us better understand the gaps in the Indian insolvency framework.

1.2 Objectives of the Study

1. To identify and review the legal and regulatory frameworks governing real estate asset insolvency and bankruptcy processes in India and selected Commonwealth nations.
2. To analyze the unique challenges faced by stakeholders during the insolvency and bankruptcy processes for real estate projects in India, United Kingdom, Canada, Australia & Singapore
3. To evaluate and review the impactful/ successful bankruptcy proceedings for Real estate projects in India under IBC 2016.
4. To identify gaps in the insolvency and bankruptcy process for Real Estate projects in India, considering the lessons learned from Commonwealth nations.

1.3 Relevance of the Study

This study holds profound significance in addressing the persistent challenges within the Corporate Insolvency Resolution Process (CIRP) for real estate entities as governed by the Insolvency and Bankruptcy Code of India – 2016. Given that a considerable proportion of cases remains unresolved, constituting 54% of all cases, [1] there exists a critical imperative to meticulously scrutinize and enhance the efficiency of the insolvency and bankruptcy procedures for real estate projects. Even the recent insolvency of Mantri Developers [3], Supertech [4] and ATS [5] has brought the unstable nature of the real estate business to the forefront. It has also sparked the discussions for a customised insolvency & bankruptcy code resolutions for real estate companies based on the nature and stage of the project [6]

Through a comparative analysis with the bankruptcy frameworks of Commonwealth countries such as the UK, Canada, Australia, and Singapore, this study seeks to derive pertinent insights and lessons. The relevance of this research lies in its potential to articulate practical recommendations and delineate best practices that can streamline real estate insolvency proceedings in India. Ultimately, the study aims to safeguard the interests of stakeholders, expedite resolution, and ensure the judicious realization of distressed assets' value. The anticipated outcomes of this study are poised to significantly contribute to the refinement of the existing legal framework, adeptly addressing the unique intricacies inherent to the real estate industry and fostering a more resilient and efficient insolvency resolution process.

2 Research Methodology

The Insolvency Landscape of India is a riddled with many precedents set as we matured as an economy and understood the intricacies of Real Estate Business [7].

By adopting a qualitative approach, this research endeavors to provide a comprehensive understanding of real estate insolvency dynamics, offer insights into potential areas for improvement in legal and regulatory frameworks and contribute to the body of knowledge aimed at enhancing the effectiveness of insolvency resolution mechanisms in the real estate sector. The research paper follows the methodology flow as mentioned below:

2.1 Overview of Research Approach

Literature Review:

- To get a thorough understanding of the legal and regulatory frameworks governing real estate asset insolvency and bankruptcy proceedings in India and the chosen Commonwealth countries (UK, Canada, Australia, and Singapore), start with a thorough literature review.
- Find and evaluate current scholarly works, official reports, courts, and case studies that deal with bankruptcy and real estate insolvency.

Comparative Analysis:

- Compare and contrast the legal and regulatory systems in India with the chosen Commonwealth countries.
- Compare the main clauses, their advantages and disadvantages, and historical trends.
- Determine the legal systems' differences and similarities and how they impact real estate bankruptcy processes.

Case Study Analysis:

- Analyze Insolvency and Bankruptcy Code (IBC) 2016 real estate bankruptcy cases that had a significant influence or were successful.
- Examine these instances in-depth, focusing on the elements that contributed to their success, the legal tactics used, and the results obtained.

Gap Identification:

- Identify gaps from the comparative analysis, case analysis and lessons from the Commonwealth countries that can be used in the Indian context to increase the efficacy and efficiency of real estate bankruptcy and insolvency processes.

3 Literature Review

A Body of Peer Reviewed research papers is already at one’s disposal on the Internet. Many researchers have pondered the efficacy of the new Insolvency and Bankruptcy Code compared to the countries. The goal of this paper is to focus on aspects that are prudent to the insolvency success of Real Estate Projects/ Companies.

Since the enactment of IBC 2016, the Insolvency resolution rates have gone up significantly. By comparing World Bank Ease of Doing Business Data from 2017 to 2023, it can ascertain how far the Indian Ranking for Ease of Doing Business has gone up from Rank 130 in 2017 to Rank 63 in 2023. Although far behind other countries in our analysis. This clearly shows the bounds India has taken since 2016 to making India a better Business hub. The ease of Resolving Insolvency Ranking has also risen from Rank 136 in 2017 to Rank 52 in 2023. [8]

Table 1. Ease of Doing Business Ranking 2023

Country	Ease of Doing Business	Starting Business	Dealing with Construction Permits	Registering Property	Enforcing Contracts	Resolving Insolvency
Singapore	2	4	5	21	1	27
United Kingdom	8	18	23	41	34	14
Australia	14	7	11	42	6	20
Canada	23	3	64	36	100	13
India	63	136	27	154	163	52

Source: World Bank EODB 2023 Ranking, Author's Compilation

The above table shows how India fares against other countries in our analysis. The Ease of Doing Business reports posit ongoing reforms in policies and legislations for ease of business activities. Even though India was in the back of the line in 2017, the reform with Policies like RERA and GST which added transparency and improved confidence in the regulatory landscape of India.

Table 2. Factors for Analysis for Comparison of Insolvency Laws

S.No.	Factors for Analysis	Description
1	Initiation of Process	In insolvency due to financial issues, triggering/ initiating a legal process to address financial distress.
2	Timeframe of Insolvency	The insolvency process varies in duration based on case complexity and jurisdictional laws governing its stages.
3	Resolution Plan	Proposed strategies to acquire and revive distressed companies, critical for restoring financial stability.
4	Valuation Standards	Assessing asset and liability values to determine the company's financial health and worth during insolvency proceedings.
5	Priority of Debt Repayment	Creditors' hierarchy dictates the order in which they receive repayments, influencing the allocation of available assets.
6	Role of Resolution Professionals & Courts/ Tribunals	Resolution professionals manage proceedings, while courts and tribunals oversee compliance and protect stakeholders' interests throughout the corporate insolvency process.

Source: Author's Compilation

With the understanding of the strides India must make, it is prudent to examine the insolvency and bankruptcy framework in other jurisdictions. The understanding of the legal structure in these countries may give us a better understanding of the gaps in our system. [9]

The logic behind choosing these 4 countries i.e., United Kingdom, Canada, Australia, and Singapore is because Common law, legislative systems, and legal practices from the United Kingdom are regularly adopted or modified by Commonwealth nations. It is possible to compare legal systems based on their similarities, which makes it possible to analyse their structures, procedures, and results more thoroughly. [10]



Fig. 1. Map showing the Common law countries

Source: <https://pmworldjournal.com/article/on-the-subject-of-contracts-and-legal-systems,2022>

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Table 3. Comparison Table of Insolvency Laws in Chosen Commonwealth Countries

Parameters	Singapore	United Kingdom	Australia	Canada	India
Insolvency Law	Insolvency, Restructuring and Dissolution Act 2018, came into force in 2020 [11]	Insolvency Rules 1986 and Corporate Insolvency and Governance Act 2020, also Companies Act 2006 [12]	Corporations Act 2001 and Bankruptcy Act 1966, currentl Australian Parliament is in discussion to revamp the whole insolvency process [13]	- the Bankruptcy and Insolvency Act (BIA) - 1985 [14] - the Companies' Creditors Arrangement Act (CCAA) - 1933 - the Winding-Up and Restructuring Act (WURA) – 1985	- Insolvency and Bankruptcy Code 2016 [15] - Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act)
Types of Initiation	Voluntary, Compulsory and Scheme of Arrangements are Available. [16]	Voluntary, Compulsory and Scheme of Arrangements are Available. [17]	Voluntary, Compulsory and Scheme of Arrangements are Available. [18]	Voluntary, Compulsory and Scheme of Arrangements are Available. [19]	Voluntary, Compulsory and Scheme of Arrangements are Available.
<i>Creditor's Voluntary Liquidation</i>	Allowed	Allowed	Allowed	Allowed	Allowed
<i>Compulsory liquidation</i>	Allowed	Allowed	Allowed	Allowed	Allowed
<i>Scheme of Arrangement</i>	Allowed	Allowed	Allowed	Allowed	Known as Pre-Packaged Insolvency Process
<i>Statuary Demand Term</i>	3 weeks	21 days	21 days	21 days	14 days

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<i>Outstanding Due Limit</i>	SGD 10,000 (~6,07,825.19 Indian Rupees as on October, 2023) [20]	£750 (~75,958.34 Indian Rupee as on October, 2023) [21]	A\$4,000 (~2,10,446 Indian Rupee as on October, 2023) [22]	CAD 1,000 (~61,097.83 Indian Rupee as on October, 2023) [23]	Corporate Firms - INR 1,000,000 Individuals and partnership firms – INR 1,000 [15]
Timeframe of Insolvency	No set timeline for Insolvency process set by the law.	12 months with creditors consents / court's approval it can be extended up to 6 more months [24]	The Australian Federal Parliament introduced a bill on October 19th, 2017, that would shorten the three-year bankruptcy period to one year.	There is no set timetable for corporate bankruptcy procedures, unlike a BIA proposal. The BIA proposal proceedings follow set deadlines.	Resolution Process must conclude in 180 days, except for one special 90-day extension. [15]
Resolution Plan	Majority vote of 75% from all creditors. No Court approval needed. [25]	Support of at least 75% of the voting members of a class of stakeholders. No Court approval needed [26]	Voluntary Administration: - Approval of creditors who are more than 50% in both number and value. Approval of each class of creditors representing more than 50% in number and 75% in value is required for the scheme of arrangement/ Involuntary. Needs court approval. [27]	A plan made in accordance with the BIA requires the consent of both the debtor's creditors and the court. The proposal must receive the approval of at least 66.6% in value and most of the creditors, including secured creditors to whom it was made. Need Court approval. [28]	66% of the financial creditors in vote share (including secured and unsecured) must vote in favor of the resolution plan for it to be approved. Needs Court approval (NCLT/DRT as needed) [29]

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<i>Majority Vote Cutoff</i>	75% in number	75% in number	Voluntary - 50% in both number and value. Scheme of arrangement/ Involuntary - more than 50% in number and 75% in value	At least 66.6% in value and more than 50% of the creditors	66% in vote share
Valuation Standards	No standards have been recommended by the Government for valuation, Standards set by the Singapore Institute of Surveyors and Valuers if the properties are located in Singapore are recommended, or by international bodies or the relevant authority in the country if the properties are overseas. [30]	No standards have been recommended by the Government for valuation, it is advised to use RICS and IVS valuation standards while valuing In distress assets. [31]	Professionals providing valuation services are obliged to follow the mandatory requirements of APES 225 Valuation Services/AES-2 Independent Business Valuation Engagements. [32]	The Canadian Institute of Chartered Business Valuators ("CICBV") formed a Practice Standards that set out the minimum requirements with which all Chartered Business Valuators (—CBVs") must comply but Court doesn't recommend any Valuation standards.	No standards have been prescribed under IBC to conduct the valuations. The uniform valuation standards with international acceptance are under discussions. [33]
Priority of Debt Repayment	(a) secured creditors; (b) The fees and compensation of the liquidator, as well as the expense of realizing chargeable assets; (c) preferential creditors (who, if there are insufficient unencumbered assets, may be paid from floating charge assets); (d) Unsecured creditors,	(a) secured creditors; (b) expenses in the insolvency proceedings; (c) preferential creditors; (d) prescribed part creditors; (e) floating charge holders; (f) unsecured creditors; (g) statutory interest on provable debts;	(a) secured creditors (b) expenses in the insolvency proceedings; (c) employee entitlements to wages, superannuation contributions/guarantees and various other payments (d) unsecured creditors; (e) shareholders. [36]	(a) Secured creditors (b) Reasonable memorial and burial costs for a deceased bankrupt. (c) Estate-related administrative charges, such as the trustee's costs and fees (d) A deduction from dividend payments made to unsecured, preferential, and secured creditors (e) A variety of unsecured but "preferred creditor" claims	(a) IRPC and liquidation expenses; (b) Secured creditors and workmen's compensation, with a two-year cap (c) employee dues, which are limited to one year; (d) Amounts owed to unsecured creditors for money; (e) sums owed to the federal, state, and local governments (limited to two years),

	as well as (e) Company employees [34]	and (h)shareholders. [35]		(f) Unsecured creditors who lack a special priority. (g) Shareholders [37]	(f) any outstanding debt (operational debt would be repaid here); (g)preference shareholders; and (h) equity shareholders or partners. [38]
Role of Resolution Professionals / Courts	<p>Receivership: Management is replaced by a receiver and manager under a receivership.</p> <p>Judicial Management: Management is replaced by judicial management.</p> <p>Scheme of Arrangement: Subject to the conditions of the scheme, current management retains control.</p> <p>Liquidation: Management is replaced by the liquidator.</p> <p>Every Step Requires Court Intervention. [39]</p>	<p>Licensed insolvency practitioners (IPs) - appointed to oversee the administration, liquidation, or other insolvency processes and act in the best interests of creditors.</p> <p>The UK has specialized courts and tribunals for insolvency matters like India. [40]</p>	<p>Administration: Management is replaced by administration.</p> <p>Liquidation: Management is replaced by the liquidator.</p> <p>Receivership: A receiver and manager take over management.</p> <p>Court overview over all roles. [27]</p>	<p>Trustee - In BIA proposal procedures, the trustee's duties include keeping an eye on the debtor's activities, helping the debtor construct the proposal and come to an agreement with its creditors, and notifying the court if something materially detrimental changes. [18]</p>	<p>An association of regulated insolvency professionals (or "IPs") established by the IBC. The NCLT may appoint an IP during the CIRP who is registered with the Insolvency and Bankruptcy Board of India ("IBBI"), the regulator formed under the IBC. Such IP is given the authority to successfully operate and manage the entity, along with its assets, as a going concern throughout the CIRP Period, allaying worries about asset-stripping or siphoning. [41]</p>

Source: Author's Compilation

3.1 Inferences from Comparative Study of Insolvency Laws of Countries

Other than India, no other country has defined real estate allottees as financial creditors, due to the robust customer protection laws and the absence of pre-sales in the matured real estate market.

- Home allottees are a good distinction, shows a faster redressal system for home buyers who have locked their net worth in stuck insolvent projects.
- The Residential markets in these countries are not supply deficient markets and cases of real estate Insolvency due to inability to deliver flats/ units are rare to none.

The Statutory Demand Term is 14 days in India, although in all other countries the term is 3 weeks, maybe taken as a bulwark to protect the interest of the debtors in India, no creditor's take this term as a serious threat due to the Indians' ignorance of the law and their aversion to Court proceedings, due to the time it takes to resolve disputes and cases.

The Priority of Debt Repayment after liquidation is similar in all countries other than India where the expense of the liquidation takes priority then, secured creditors get paid. Whereas, in all other countries the secured creditors have the first right to the liquidation proceeds then the expense of the liquidation gets cleared.

All countries require court intervention and approvals to proceed with liquidation of assets, the major difference lies in the approval of resolution plan where some countries like Singapore and UK don't need approval of Resolution plan from the adjudicating authority, while in India, Canada, and Australia even after approval of resolution plan needs approval from adjudicating authority.

In India and UK, the Government has approved a group of professionals for the interim management of Bankrupt Companies. Other countries don't have government approved professionals for insolvency administration, professionals are appointed by the consensus of insolvent company and Committee of Creditors.

The comparison of legal insolvency frameworks among Commonwealth countries reveals striking similarities in their fundamental principles and procedural mechanisms. However, the challenges encountered within the Indian real estate insolvency landscape are not solely attributable to deficiencies within its legal framework. Rather, they stem from the intricate interplay of socio-economic factors unique to the Indian context.

To elucidate these complexities, a detailed case comparison of real estate insolvencies becomes imperative. Such an analysis promises to unearth nuanced insights into the challenges faced by stakeholders, shedding light on the multifaceted dynamics that

influence the efficacy of insolvency resolution processes within the Indian real estate sector. By delving into specific cases, this approach allows for a granular examination of the contextual factors at play, thereby providing a holistic understanding of the root causes underlying real estate insolvencies in India.

3.2 Case Analysis of Real Estate Insolvencies

Taking 3 Indian Real Estate Insolvency Cases to understand the intricacies of Insolvency of Real estate projects/ developers. The criteria taken for analysis of Real Estate Insolvency Cases are:

Table 4. Parameters for Study of Real Estate Insolvency Cases

Parameters for Study	Description
Company Track Record	The history of the real estate entity and their foothold before the start of the insolvency proceeding.
Initiation of Insolvency	Understand how the insolvency proceedings started and the circumstances that led to it
Debt - Financial/ Operational	The extent of Financial and Operational Debt in the real estate entity
Legal Issues	Other Legal issues that plagued the insolvency proceeding
Insolvency Resolution Process	The overall insolvency process and any special characteristics with the process.
Resolution Plan	The Resolution Plan approved and the intricacies around the same.
Current Status	The status of the insolvency proceeding.

Source: Author's Compilation

The selection of these three companies for comparison is based on their considerable impact on the real estate insolvency framework, thereby setting precedents for subsequent real estate insolvencies. A comparative analysis of these insolvent entities is considered crucial to identify existing gaps within the framework and to evaluate the tangible consequences of established legal provisions more effectively. This methodology aims to offer a thorough understanding of the deficiencies within the legal framework and to enable a more nuanced assessment of the practical implications of the regulatory measures implemented.

Table 5. Comparison Table of Insolvency Cases

	Amrapali Group	Supertech Ltd.	Premia Group
Company Track Record	<p>50 projects spanning across 24 cities at its height in 2015.</p> <p>Residential projects in Noida and Ghaziabad, commercial hubs, townships, a multiplex mall, and an IT cluster combined with a five-star hotel were all part of its real estate portfolio.</p> <p>Amrapali Group ventured into the FMCG (Amrapali Mums), entertainment (Amrapali Media Vision), and hospitality (3-star hotels) industries [42]</p>	<p>50+ Projects all over India</p> <p>Ventured into hospitality and tied-up with Carlson Group of Hotels, Starwood Hotels & Resorts Worldwide and JW Marriot and has also launched their own hospitality brand - Hyphen.</p> <p>More than 80,000 units and 120 million sq.ft. of real estate under construction. [43]</p>	<p>In 2013, Premia Group at its peak was a diversified corporate group with a turnover of 2300 crores in real estate, healthcare, energy and hospitality.</p> <p>Premia launched its first Corporate City "Premia Corporate City" in Greater Noida West, which was the buzz of the town in 2012. [44]</p>

Initiation of Insolvency	<p>Amrapali Silicon City Pvt. Ltd. (ASC) was executing a project at sector 76, Noida.</p> <p>In September 2017, Bank of Baroda took ASC to NCLT over dues, which was contested by a group of home buyers in September 2017 would trigger the liquidation of Amrapali real estate group.</p>	<p>Supertech was admitted into CIRP for non-payment of dues to Union Bank of India, which had provided line of credit to select projects - Eco Village II (Phase I & Phase II), Eco Village III and Romano</p>	<p>Initiated by a Commercial Space allottee who had invested in an assured returns plan till completion of Premia Corporate City, about 587 claimants joined the CIRP under real estate allottees since ICD in 2018.</p>
Debt Financial/Operational	<p>- Dues of ₹ 712 Mn, eventually all projects of Amrapali were clubbed together and more than 40,000 home allottees claimed financial creditors from multiple stuck projects.</p>	<p>₹ 13.4 Bn in Financial debt and ₹ 33.6 Mn in Operational Debt claimed and admitted with Real estate allottees making 63.1% of financial creditors.</p>	<p>Initiated with claims of ₹ 30 Mn, after admission of other real estate allottees the total claims rose to ₹ 1.15 Bn and operational claims of ₹ 1.8 Mn.</p>

Legal Issues	SC took special interest in this case and ruled in favor of the home buyers, setting aside claims of the state land authority and the banks.	ED arrested the chairman in a money laundering case, allegedly the funds received from buyers and banks was used to buy land and then land was mortgaged to pay back the banks.	ED has attached several properties and assets under PMLA due to older complaints from real estate allottees,
		Loans worth ₹ 15 Bn turned out to be NPA.	Resolution applicants' plan is contingent on release of CD's assets from PMLA.
Insolvency Resolution Process	NBCC was handed the construction as Court ordered the project to be handed to a PSU specialized in construction activity, the project was called "ASPIRE" (Amapali Stalled Projects and Investments Reconstruction Establishment).	The Hon'ble Court has passed the directions that CIRP be limited to Eco-Village II as home buyer filed interlocutory applications that construction be allowed for the other projects. The 'suspended director' also assured that substantial repayment has been done and have positive	The Resolution Professional has called for proposal from resolution applicants and will be voting on the same.

No resolution voting took place as the project of this scale was the first of its kind. net worth, only requiring last mile funding.

Resolution Plan

SC further appealed the RBI to consider relaxation to banks and regulatory authorities to get clearances and approvals quickly to provide the homeowners some respite. NBCC submitted a plan to construct and complete 44,000 flats by 2023 in 2020.

The resolution plan is still under process with Non-Eco Village II Projects monitored separately by the IRP and their consultants. Eco-Village II calling for Proposals from Asset Reconstruction Companies.

Resolution is contingent on merger of subsidiary company owning land to the CD and the release of Assets attached under PMLA.

But, due to COVID and inability to get funds in a timely manner the timeline for the projects have been revised.

The real estate allottees will get an option to exit out of their homes or continue to fund their

allotment and receive the finished real estate.

Current Status	9000 flats have been released to the homeowners in May 2023. The major problem that NBCC faced is the inability to collect dues from home allottees to complete their flats, Unresponsive home allottees and sale of the remaining flats to recover dues for the banks.	The Resolution Process is still underway. The other ventures of Supertech likely won't be affected unless there is a change in the situation.	The Resolution Process is still underway. Premia Projects has seized operations since 2018.
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Source: Author's Compilation

** Data for the above table is collected from Court receiver Websites, public information on the internet and some anonymous creditors who are part of the current insolvency procedure*

3.3 Gathering Data for Resolution Process/ Plan

Multiple stakeholders are involved for a real estate project. Resolution applicants require specific and valid information with respect to the project for proposal of a relevant resolution plan although IRPs are mandated to provide all necessary information to the applicants, it requires them to source information from multiple authorities, banks and consultants which is quite cumbersome and causes delays. Most of whom won't be as corporative once the project goes into insolvency.

3.4 Non- Cooperation of Real Estate Allottees

It was observed in the Amrapali Case, that the home allottees even after getting their claims admitted were reluctant to finish their obligated payment for completion of their homes. Majority even became non-responsive at the time of Allotment. [46]

It is of importance for home allottees to have confidence in their co-buyers, and that they will cooperate for the completion of the resolution process. Due to the change in market outlook of real estate, real estate allottees in different demographics show regional variances in their behaviour.

3.5 Insolvency Resolution Professionals (IRPs) may not be well equipped to handle RE companies of large scale.

After Review of many cases, it has been observed that the regulatory oversight of IRPs is insufficient with the level of Authority given to them. The Interim management of the in-distress entity makes it a unique challenge in India as the existing management will find it hard to follow the interim IRP, with the popularity of Family Run Management in India.

Rashmi Housing, a company undergoing CIRP sold 82 flats during the Insolvency Proceeding. To ensure going concern, IRP retained several employees for day-to-day operations. The company comprised unsolved inventory of 393 units spread across 17 projects and 73 buildings located in various parts of Mumbai. Managing such a large inventory physically proved to be an impractical task for the resolution professional. [47]

Many employees have a personal/ private working relationships with these Family Run Management. This makes it a unique challenge for IRPs in India. More oversight and authority with set timelines may help mediate this.

3.6 Real Estate Market Dynamics

The biggest concern during the CIRP is the market condition of the real estate market, a project today may not be a good investment after the approval of Resolution Plan.

In the case of Amrapali, NBCC is finding it hard to dispose of the flats which were left unsold and has found it hard to fulfil its obligations to the other financial creditors.

A real estate project undergoing insolvency may take significant time to approve a successful resolution plan and furthermore a project which is stalled midway, will have its structure exposed to elements, posing questions on the integrity of the structures, and needing timely audits and costs for security and management. IBBI is in conversation to create a separate regime for real estate projects [6] [48]. It becomes relevant to understand that real estate is a unique beast that requires specific guidelines to necessitate a speedy and equitable insolvency process. Use of International Standards for Real Estate like RICS or IPMS can help Indian Real estate Insolvency framework to create better framework and process for a speedy valuation and standardization.

4 Limitations of the Study

Firstly, the focus solely on Commonwealth countries may overlook valuable insights from other jurisdictions, potentially limiting the comprehensiveness of the comparative analysis. Secondly, the analysis of only three real estate insolvencies may not fully capture the diverse range of challenges prevalent in the Indian real estate market, thereby restricting the generalizability of findings. Additionally, constraints related to data availability, particularly concerning real estate insolvencies, could hinder the depth and accuracy of the comparative assessment. Moreover, the study's timeframe may inadvertently overlook recent developments or reforms in insolvency laws, potentially impacting the relevance and applicability of the findings. These limitations underscore the need for cautious interpretation and acknowledgment of the study's scope constraints when drawing conclusions and making recommendations regarding the Indian insolvency framework.

5 Conclusion

After the comparison of the countries based on their insolvency laws, understanding the broad differences in functioning and framework of the law clearly has shown the gaps present in the current legal frameworks of India.

Comparative Analysis of the legal framework shows us that being a common law country, most of the legal aspects of a Corporate Insolvency Resolution Process in India are similar to the other countries, only a few aspects such as the Priority of Debt Repayment in India gives first right to proceeds to the expenses of the Insolvency then the secured creditors whereas, other countries give the first right to secured creditors then the insolvency expenses.

The comparative case analysis of the Indian real estate insolvency is where we find major flaws or points to address, the major redressal being the regulatory overlap of PMLA and IBC. Many real estate insolvencies are delayed due to the attachment of Assets under insolvency by the Enforcement Directorate, indefinitely delaying the insolvency process due to the unavailability of the assets for stressed liquidation.

The intricate nature of real estate, coupled with the unique challenges of insolvency, significantly impacts valuations. Factors such as market volatility, asset illiquidity, and the complex legal environment create an environment where valuations in real estate insolvency cases require careful consideration and expertise.

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