



CASE STUDY

An Analysis of the NCLT's
Landmark Ruling in Real Estate Insolvency

Sabari Realtors Pvt. Limited



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1.0 Executive Summary: A Landmark Ruling in Real Estate Insolvency

1.1 Overview

The order of the National Company Law Tribunal (NCLT), Chennai, dated July 31, 2025, in the matter of **Sabari Realtors Pvt. Ltd.** (IBA/471/2019), stands as a seminal judgment in the jurisprudence of real estate insolvency under the Insolvency and Bankruptcy Code, 2016 (IBC). This ruling extends beyond the mere approval of a resolution plan; it provides critical clarity on several contentious issues, including the limits of judicial intervention, the paramount status of homebuyers' interests, the treatment of third-party security interests, and the procedural validity of modifying a resolution plan. By navigating a complex web of creditor disputes, failed mediation attempts, and successive plan revisions, the Tribunal delivered a verdict that upholds the principles of the IBC while adapting them to the unique challenges of a stalled real estate project.

1.2 Key Findings and Legal Precedents

The Tribunal's decision, while deferring to the commercial wisdom of the reconstituted Committee of Creditors (CoC), establishes a more proactive role for the judiciary in safeguarding public interest. It directly addressed and dismissed key objections from a secured financial creditor, HDFC Ltd., and a dissenting allottee, Usha K. Jolly Charitable Trust. The court's reasoning reinforced the "clean slate" doctrine, ensuring that the new management can take over a debt-free entity, and solidified the finality of an approved resolution plan. A central finding was the Tribunal's justification for permitting a second addendum to the resolution plan, a move that went against a prior CoC vote and seemed to challenge a regulatory provision. The Tribunal rationalized this action by emphasizing its duty to facilitate a resolution and prevent the project's liquidation, a decision that underscores the heightened judicial concern for the interests of a large body of homebuyers.

2.0 Introduction & Case Background

2.1 The Corporate Debtor and the Project

The case involves M/s. Sabari Realtors Private Limited, a corporate debtor engaged in the civil construction business. Its flagship project, "Sabari Serenity," is a large-scale real estate development located in Siruseri Village, Chennai, spanning approximately 9 acres. The project was originally conceived to include 13 residential towers and one commercial tower. At the time of the company's financial distress, five of the towers had been completed and occupied, while two others, Ekambara and Margosa, were partially constructed with 144 flats. The remaining land was undeveloped and constituted a significant asset for future construction. The project's failure to meet its obligations to creditors and homebuyers led to the initiation of insolvency proceedings.

2.2 Initiation of CIRP and Key Parties

The Corporate Insolvency Resolution Process (CIRP) was initiated against Sabari Realtors on September 30, 2019, following an application filed by Rakesh P. Sheth, a financial creditor, under Section 7 of the IBC. The primary parties involved in the complex litigation included the Corporate Debtor, its appointed Resolution Professional (RP) Mr. S. Amarendran, and the prospective Resolution Applicant (SRA), Mr. Sumit Kumar Khanna. The creditor matrix was multifaceted, comprising:

- **HDFC Limited:** A major secured financial creditor.
- **Homebuyers:** A large class of financial creditors, represented by an Authorized Representative (AR), whose claims formed the vast majority of the admitted debt.
- **Landowners:** The original owners of the 9-acre land parcel who had entered into a Joint Development Agreement with the corporate debtor.
- **Operational Creditors:** Including M/s. Stephen Constructions, a civil construction firm with a significant claim for unpaid work.
- **Usha K. Jolly Charitable Trust:** A dissenting allottee and financial creditor who held units in an unconstructed tower.

The resolution of this case required the NCLT to balance the competing interests of these diverse stakeholders within the confines of the IBC framework.



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3.0 Procedural History of the Corporate Insolvency Resolution Process (CIRP)

3.1 Chronology of Events

The CIRP for Sabari Realtors was marked by a series of events and transitions that underscore the challenges inherent in resolving real estate-related insolvencies. Following the CIRP's initiation, the Tribunal initially appointed Mr. Swarnamani Ramasamy as the Interim Resolution Professional (IRP). He was subsequently replaced by Ms. Geetha Sridhar on January 13, 2020, and then by the current Resolution Professional, Mr. S. Amarendran, on June 15, 2020. The IRP and RP collated claims, appointed valuers, and initiated a process to find a resolution applicant. A resolution plan submitted by Mr. Sumit Khanna was approved by the CoC on February 16, 2022, with a 96.62% vote. However, this was not the end of the matter, as subsequent objections, mediations, and revisions prolonged the process until the final order on July 31, 2025.

3.2 The Committee of Creditors (CoC) Evolution

The composition of the CoC was a central point of contention in the proceedings, ultimately leading to a significant legal finding.

Formation of the Initial CoC

The first CoC was constituted with HDFC Limited (3.38% voting share), Rakesh P. Sheth (0.20%), and the Authorized Representative for the homebuyers (96.42%). It is notable that the claims of the landowners, categorizing them as part of financial creditors in a class (home buyers) with a substantial 57.35% voting share were also part of the first CoC. This inclusion became the subject of vigorous legal challenges.

The Landowner Controversy

The core of the dispute revolved around the legal status of the landowners. This dispute was brought to RP's attention by home buyers only the day before the Resolution Plan submitted by Sumit Khanna was being placed in CoC meeting on 17 Feb 2022 and submitted to NCLT just before CIRP ended on 28 Feb 2022. The homebuyers, along with HDFC Ltd. in a separate application, argued that the landowners were not financial creditors as defined under Section 5(8) of the IBC.

Reconstitution of the CoC

In an affidavit filed on January 3, 2025, the Resolution Professional detailed how the CoC was reconstituted on December 15, 2024, by removing the landowners based on affidavits they had provided. This procedural step effectively resolved a major legal objection to the CoC's composition and paved the way for the resolution plan's final approval. The reconstituted CoC's voting share was 100% among financial creditors,

with HDFC Ltd. holding 7.92%, Rakesh P. Seth 0.46%, and the financial creditors in a class (homebuyers) holding a dominant 91.62%.

3.3 The Failed Mediation and Judicial Intervention

The case's protracted nature led the NCLT to explore alternative dispute resolution.

Mediation Attempts

Recognizing the complex and emotionally charged nature of the dispute, particularly with numerous homebuyers involved, the NCLT appointed a senior advocate, Mr. A.L. Somayaji, as a mediator on October 19, 2022. The objective was to find an amicable and viable solution that would prevent liquidation and protect the interests of all parties.

Outcome

After several meetings, the mediator filed a final report on August 10, 2023, informing the Tribunal that the mediation had failed. The report indicated that a consensus could not be reached due to the stance taken by the homebuyers, who insisted on a one-time fee of INR 1 crore from the SRA for the use of existing infrastructure, a demand to which the SRA and landowners did not agree. The failure of mediation put the onus back on the Tribunal to adjudicate the approval of the resolution plan on its merits.

3.4 The Addendum Controversy and NCLT's Direction

The procedural history of the resolution plan itself was marked by a series of revisions and judicial guidance. The NCLT Bench was also reconstituted three times and started hearings afresh after each such reconstitution, this also added to delay. After the reconstitution of the CoC, the first addendum to the resolution plan was placed for consideration in the 32nd CoC meeting on December 28, 2024. The CoC voted overwhelmingly to reject it, with a 99.54% vote against the plan.

This rejection presented a critical juncture. Ordinarily, such a decisive vote might lead to the initiation of liquidation proceedings. However, the NCLT, on January 8, 2025, issued a significant order directing the RP to convene another CoC meeting to "explore all the possibilities/eventualities and to discuss the pros & cons and thereafter take an informed decision". This decision was made in the "paramount interest of the homebuyers," whose rights the Tribunal deemed essential to protect.

The NCLT's action is a departure from the principle of strict judicial non-interference with the CoC's commercial wisdom, especially since it directed the CoC to reconsider a plan it had already rejected. It also navigated around a procedural limitation in the IBC, as Regulation 39(1A) of the IBBI Regulations curtails the RP's power to allow more than one modification of a resolution plan. The court's order effectively overrode this restriction, asserting its inherent authority to ensure the CIRP leads to a resolution rather than liquidation, which would be detrimental to the homebuyers. This proactive judicial stance highlights the

evolving nature of IBC jurisprudence in India, where courts are willing to exercise their supervisory powers to achieve the IBC's core objective of business revival, especially in socially sensitive cases involving a large number of homebuyers.

4.0 Analysis of Creditor Claims and the Resolution Plan

4.1 Summary of Admitted Claims

A foundational aspect of any CIRP is the accurate collation and admission of claims, which determines the distribution of proceeds under a resolution plan. The following table, extracted directly from the order, provides a comprehensive overview of the claims received and admitted by the Resolution Professional in the Sabari Realtors case.

Category	No. of Claims	Amount Claimed	Amount Admitted	Note
Secured FC	1	20,65,84,048/-	5,16,22,274/-	HDFC Limited
Financial Creditors in a Class	117	1,76,60,48,525/-	59,71,90,419/-	Buyers of incomplete residential units
Unsecured FC	1	30,20,283/-	30,20,283/-	
Operational Creditors (Employee & Statutory)	1	1,89,290/-	1,89,290/-	Employees Provident Fund Organisation
Operational Creditors (other than workmen and employees and Statutory)	2	9,71,59,032/-	1,92,76,878/-	
Total	122	2,07,30,01,178/-	67,12,99,144/-	

The table clarifies the total admitted debt and creditor hierarchy, which is essential for understanding the proposed payouts. It is noteworthy that the total amount of admitted claims was significantly less than the amount claimed as Land owners claims of INR 87 Cr were excluded by RP based on their affidavit in Dec 2024

4.2 The Resolution Plan's Structure and Financials

The resolution plan submitted by Sumit Kumar Khanna and approved by the CoC is a complex framework designed to revive the project by dividing it into distinct parts to cater to different stakeholders.

Project Partition



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The plan's core is the division of the "Sabari Serenity" project into three parts:

- **Part I:** Comprising the five completed towers and the two partially constructed towers (Ekambara and Margosa). Allottees of the latter two towers will complete construction at their own cost.
- **Part II:** The balance land where the SRA will undertake fresh residential or commercial development.
- **Part III:** A new tower to be constructed for the remaining homebuyers whose units were not in the two partially completed towers. These allottees are given three options: a refund of INR 1000 per sq. ft. of UDS, self-construction through an association, or SRA-assisted construction at a cost of INR 4000 per sq. ft..

Proposed Payouts

The plan outlines a clear distribution mechanism for various creditor classes.

- **Operational Creditors:** Admitted and verified claims of employees and workmen, along with statutory dues, shall be paid in full up to INR 1,89,290. However, for all other operational creditors, the plan explicitly proposes a "NIL" payment, extinguishing their claims upon approval. This provision has significant implications for creditors like M/s. Stephen Constructions, whose application to the Tribunal was to admit a claim of over INR 4.8 crore. While the Tribunal's order in a separate application (IA/IBC)/1205(CHE)/2021) correctly pointed out that the RP cannot adjudicate a claim based on a pre-existing dispute, this legal finding is rendered moot by the NIL payout for operational creditors in the approved resolution plan. This outcome starkly illustrates the principle of the waterfall mechanism under IBC, where operational creditors often receive minimal to no recovery.
- **Financial Creditors:** The plan includes specific provisions for HDFC Ltd. and the homebuyers. HDFC, as a dissenting financial creditor, will be paid the higher of INR 25 lakhs or its liquidation value, which was determined to be INR 1,07,954. The allottees of the Ekambara and Margosa towers will settle their claims by completing construction at their own cost, while those in the unconstructed towers must choose from the three specified options.



Financial Summary

The resolution plan's financial viability is summarized in the following table, which directly addresses the project's economics.

Outflows	Per Resolution Plan INR Crore	Current Estimates INR Crore
Pay out of CIRP cost	0.36	1.50
Pay out of workmen & employees claim	0.02	0.02
Pay out of HDFC claim	0.50	[*]
Pre-construction/ approval expenses (incl. RERA fee)	1.00	1.00
Construction cost - Part 2 of Project Land	60.00	65.00
Other operating expenses	4.50	4.50
Revenue share with Landowner	18.00	19.63
Interest cost	6.45	6.45
Tax	5.01	5.47
Total	95.84	103.58

Inflows	INR Crore	INR Crore
New sale of units - Part 2 of Project Land	110.00	120.00
Upfront equity infusion	0.01	0.01
Total	110.01	120.01
Surplus/(Deficit)	14.16	16.42

The table demonstrates a projected surplus, indicating the plan's economic feasibility and its capacity to generate a return for the SRA. This data is a crucial element for justifying the CoC's decision to approve the plan.

5.0 Analysis of Objections and NCLT's Legal Reasoning

5.1 HDFC Limited's Objections

HDFC Ltd., a secured financial creditor, filed multiple applications, including one to reject the resolution plan and another to set aside the second addendum, raising fundamental questions about the fairness and legality of the plan.

Argument

HDFC argued that the payout proposed to them was unfairly reduced from an initial INR 2.58 crores to INR 0.25 crores without justification. Furthermore, they contended that the resolution plan was illegally extinguishing their mortgage on the project land, which belonged to the landowners and not the corporate debtor. This, they claimed, violated the principles laid down in Supreme Court judgments, which protect third-party assets not owned by the corporate debtor.

NCLT's Reasoning

The Tribunal addressed these arguments with a clear and legally sound rationale.

- **Deference to Commercial Wisdom:** The court rejected HDFC's claim of unfair payout by reaffirming the principle of commercial wisdom, as established in precedents like **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta**. It held that the NCLT's jurisdiction is limited to ensuring the plan complies with Section 30(2) of the IBC, not to interfere with the commercial merits of the CoC's decision. The plan, in providing HDFC with a payment that is not less than the liquidation value, fully satisfied the legal requirement for a dissenting financial creditor.
- **Insight on Mortgage Extinguishment:** This is arguably the most significant legal finding in the judgment. The NCLT distinguished HDFC's case from others by noting that the mortgage was created to secure a loan *to the corporate debtor*. The order states that based on Joint Development agreement executed by CD and Land owner, the characteristics of the nature of land changes and transcends into a development right with proportionate ratio of units to be shared amongst the landowners and developers. The valuers also did valuation exercise considering development rights of CD over land. The Tribunal reasoned that the SRA, upon taking over the company, has the power to extinguish such security interests under the resolution plan to ensure a "clean slate". By classifying the security interest as an asset of the CIRP, the court dismissed HDFC's reliance on precedents that protect bona fide third-party assets unrelated to the corporate debtor's debt.

5.2 Usha K. Jolly Charitable Trust's Objections

Usha K. Jolly Charitable Trust, which had been allotted 11 apartments in a proposed, unconstructed tower, also objected to the plan.

Argument

The Trust's primary objection was that the options provided in the resolution plan—a nominal refund, self-construction, or a high-cost SRA-assisted construction—were not in its best interest, particularly as a charitable trust. It contended that the plan was unfair to allottees of the new tower and that their interests had been overlooked.

NCLT's Reasoning

The Tribunal dismissed these objections by invoking the well-established "drag-along" or "sail-along" principle. The court's order referenced the Supreme Court's decision in **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.**, which asserts that the collective commercial wisdom of the majority of the CoC is supreme. The Tribunal held that a minority creditor, no matter how dissatisfied, must adhere to the majority's decision if it is made in good faith and in compliance with the IBC. The court's role is not to substitute its own commercial judgment or to entertain the grievances of a minority creditor when the plan has been approved by an overwhelming majority.

6.0 Broader Legal and Commercial Implications

6.1 The Power of Judicial Proactivity in IBC

This case represents a nuanced shift in the judicial approach to IBC proceedings. While a hands-off approach to the CoC's commercial wisdom is the norm, the NCLT demonstrated its willingness to intervene procedurally to ensure a successful resolution. The order directing a second CoC meeting, despite the rejection of the first addendum, was a pivotal move. This action, while seemingly in contravention of Regulation 39(1A) which limits the RP to one modification, was justified by the court's overarching duty to achieve a resolution and prevent the liquidation of a project with a large homebuyer base. This proactive stance suggests that in cases with significant social and economic implications, the judiciary will exercise its inherent powers to ensure the IBC's objectives are not thwarted by procedural deadlocks.

6.2 The Clean Slate Doctrine and Stakeholder Finality

The NCLT's approval of the resolution plan is a strong endorsement of the "clean slate" doctrine. The plan includes a multitude of reliefs and concessions that protect the SRA from all pre-existing liabilities, including those related to taxes, statutory dues, and civil or criminal proceedings against the previous management. This ensures that the new owner is not burdened by the legacy of the corporate debtor's past

failures, providing the certainty required for a successful revival. The Tribunal's decision to grant these sweeping reliefs, including the extinguishment of claims not filed or admitted during the CIRP, aligns with the Supreme Court's position that an approved resolution plan is binding on all stakeholders and provides finality to the process.

6.3 A New Framework for Real Estate Insolvencies

The Sabari Realtors case provides a clear, actionable roadmap for addressing the complexities of distressed real estate projects under the IBC:

- **Correct CoC Constitution:** It reconfirms that landowners are not financial creditors unless there is a clear disbursement for the time value of money, as per the NCLAT ruling in **Ashoka Hi-Tech Builders**.
- **Homebuyer Protection:** It reinforces the paramount importance of safeguarding the interests of homebuyers, demonstrating a judicial willingness to go beyond standard procedures to ensure their investments are protected.
- **Project Segmentation:** The plan's success hinges on its innovative structure, which separates the project into distinct parts to manage the varying needs of different allottee groups. This provides a new model for resolving large, multi-phase projects.
- **Extinguishment of Third-Party Mortgages:** The ruling clarifies that a security interest on a third-party asset can be extinguished if it was created for the corporate debtor's benefit, thereby strengthening the SRA's claim on the asset and simplifying the revival process.

7.0 Conclusion: The Finality of Resolution and a Path Forward

The NCLT's order in the Sabari Realtors case is a comprehensive and multi-layered judgment that addresses a myriad of complex issues under a single, cohesive framework. It is a testament to the evolving jurisprudence of the IBC, which is increasingly focused on balancing the letter of the law with the social and economic realities of real estate projects and the protection of vulnerable stakeholders. The case offers a clear, binding precedent on the sanctity of an approved resolution plan and the limits of judicial intervention. By granting a "clean slate" to the new management while ensuring a path to resolution for the homebuyers, the Tribunal has provided a powerful and practical framework for future real estate insolvencies.

The following table summarizes the reliefs and concessions granted by the Tribunal, which highlight the extent of the "clean slate" doctrine as applied in this case and provide a crucial reference for practitioners and investors.

SL. No.	Relief and/or Concessions and Approvals Sought by Resolution Applicant	Orders Thereon
1.	Licenses/Approvals/Contractual Rights and Benefits - The resolution applicant sought that all leases,	Granted for a period of 12 months from the date of plan approval, as per



	consents, licenses, approvals, etc., be deemed to continue for the benefit of the Corporate Debtor and the Resolution Applicant for a period of 60 months or until renewed by relevant authorities, whichever is later.	Section 31(4) of IBC, 2016.
1.2	The period of non-operation, i.e., from the shutdown date of construction work to the Effective Date, shall not be counted.	Granted.
1.3	All relevant governmental authorities shall grant relief from payment of stamp duty, registration charges, and applicable fees, and waive non-compliances for successful plan implementation.	This is for the appropriate authorities to consider, keeping in view the clean slate principles enshrined under IBC, 2016.
1.4	The Registrar of Companies, Chennai, to take on record and implement the Plan without any further compliances.	Granted.
1.5	All Governmental Authorities to waive the Non-Compliances of the Corporate Debtor prior to the Insolvency Commencement Date.	Granted in view of the clean slate principles enshrined under IBC, 2016.
5.1	All Claims against the Corporate Debtor as on the Approval Date, whether filed or not, admitted or not, shall stand extinguished upon the SRA fulfilling its financial obligations under the Plan.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.
5.2	All outstanding negotiable instruments issued by the Corporate Debtor shall stand terminated and the liability extinguished.	Granted.
5.4	The Resolution Applicant, its directors, officers, and employees shall have immunity from any actions and penalties for non-compliance prior to the Effective Date for a period of 12 months.	Granted.
5.6	The Resolution Applicant shall not be liable to honor unevolved bank guarantees or letters of credit.	Granted.
5.7	All agreements/arrangements between the Corporate Debtor and related parties shall stand terminated.	Granted.
5.8	Prior approval of counterparties shall not be required for change in control/constitution.	Granted, subject to the provisions of the Companies Act, 2013 and other applicable laws.
6.6	All dues including taxes/cess/interest/penalty and other liabilities outstanding towards GST/VAT/Service Tax/Sales Tax, Income Tax, RoC, etc., existing as on Approval Date, shall stand	Granted.



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	extinguished.	
7.1	All ongoing investigations and proceedings, whether civil or criminal, against the Corporate Debtor shall stand withdrawn or dismissed.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.
8.1	No creditor/stakeholder shall be entitled to institute or continue any suits or proceedings against the Corporate Debtor after the Approval Date.	Granted.
8.2	All existing Security Interests with respect to the Claims in respect of the assets of the Company shall stand cancelled and discharged.	Granted.
8.3	Any event of default having occurred on the part of the Corporate Debtor shall be waived in its entirety.	Granted.
9.	The Resolution Applicant shall be allowed to undertake redesigning of the Project Site.	Granted as per the resolution plan.
10.	Any additional FAR/Ground coverage shall vest with the Corporate Debtor without further payments to authorities.	Appropriate authorities to consider.
13.	Moratorium provisions under the Code shall apply for the period from the Approval Date till the Effective Date.	Not Granted. This is for the appropriate authorities to consider.
14.	Relevant Govt. Authorities to issue structural stability certificate.	This is for the appropriate authorities to consider.

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