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# Empowering Homebuyers: Judicial Evolution in Insolvency & Bankruptcy Law

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## ABSTRACT

*This research paper delves into the intricate landscape of the Insolvency and Bankruptcy Code, 2016 (IBC) in India, with a specific focus on the status of homebuyers within this framework. This paper navigates through the categorization of creditors into Financial Creditors (FC), Operational Creditors (OC), and others, elucidating the amendments that redefine funds from homebuyers as a commercial form of borrowing. Pre-amendment challenges and conflicting National Company Law Tribunal (NCLT) rulings are scrutinized, emphasizing judicial interventions that empower homebuyers. In landmark cases of Supreme Court decision has thoroughly analysed, establishing that homebuyers seeking remedies under real estate regulations maintain their status as financial creditors under the IBC. The article concludes by highlighting the transformative impact of IBC amendments, ensuring legal clarity and safeguarding the varied interests of stakeholders in the realm of insolvency resolution.*

**Keywords:** *IBC, Homebuyer's Rights, Financial Creditors (FC), Operational Creditors (OC) & Real Estate Regulations.*

## I. INTRODUCTION

The implementation of the Insolvency and Bankruptcy Code, 2016 (IBC), stands as a crucial initiative by the Indian government to improve the business environment in the country. India is actively working towards establishing a mature market economy, necessitating well-crafted laws that align with current market dynamics and the elimination of outdated regulations. The IBC, introduced in 2016, consolidates and amends various laws related to the reorganization and insolvency resolution of corporate entities, partnership firms, and individuals. The objective is to achieve timely resolution within defined timeframes for maximizing assets. The evolving nature of this law is evident in the government's vigilance in addressing legal loopholes. In this article, the author aims to analyse the position of homebuyers under the IBC regime, with a focus on different creditor categories and the amendments made to address the rights and concerns of homebuyers.

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## II. EVOLUTION OF HOMEBUYER'S STATUS UNDER IBC

### (A) Categorization and Prioritization of Creditors under Code

Initiating insolvency resolution processes under the IBC encompasses various creditor types, each possessing unique rights and motivations. The IBC classifies creditors into three main categories, prioritized as follows: Financial Creditors (FC), Operational Creditors (OC), and other creditors. As per the Code, financial debt is defined as any disbursed amount associated with the time value of money, covering borrowed funds with interest, bonds, debentures, and other financial transactions resembling borrowing. This legal framework establishes a structured hierarchy, delineating the distinct roles and priorities of these creditor categories during insolvency resolution proceedings.<sup>2</sup>

### (B) Amendment Impacting Homebuyer's Claims and Operational Debts

A significant amendment in this context involves considering funds obtained from homebuyers in a real estate project as having the commercial effect of borrowing. The terms 'allottee' and 'real estate project' are defined in accordance with the **Real Estate (Regulation and Development) Act, 2016**.<sup>3</sup> Operational debt, on the other hand, encompasses claims related to goods, services, employment dues, payments due under laws, or owed to the government or local authorities.<sup>4</sup> This amendment aligns with the legal definitions specified in relevant legislation, providing clarity on the nature of financial transactions involving homebuyers in the insolvency resolution processes.

### (C) Pre-Amendment Challenges and NCLT Rulings

Before the amendment in the IBC, **Section 6** permitted a Corporate Debtor (CD), in the event of default, to initiate the Corporate Insolvency Resolution Process (CIRP) through a Financial Creditor (FC), Operational Creditor (OC), or the CD itself. In the matter of **Col. Vinod Awasthy Vs. A.M.R Infrastructure Ltd.**,<sup>5</sup> the National Company Law Tribunal (NCLT) dismissed a petition for insolvency proceedings against a developer, asserting that homebuyers did not qualify as OCs under the Code. The payments made to the developer did not meet the criteria for operational debt as defined by the Code. However, if the contract ensured assured returns to homebuyers, they were categorized as financial creditors. In many instances, homebuyers were not acknowledged as either financial or operational creditors, restricting their legal options. The

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<sup>2</sup>Insolvency & Bankruptcy Code 2016, s 5.

<sup>3</sup>Real Estate (Regulation and Development) Act 2016, s 2.

<sup>4</sup>Insolvency & Bankruptcy Code 2016, s 5.

<sup>5</sup>Col. Vinod Awasthy Vs. A.M.R Infrastructure Ltd. (CP No. (IB) 10 (PB) 2017).

challenge was compounded by the Insolvency and Bankruptcy Board of India's (IBBI) regulations, which initially only allowed claims to be filed by financial and operational creditors, placing homebuyers in the category of 'other creditors.'

#### **(D) Judicial Intervention and Homebuyer Empowerment**

The drive to amend the IBC to include homebuyers as financial creditors stemmed from the challenges faced by numerous homebuyers nationwide, particularly in the National Capital Region (NCR), dealing with uncertainties about the possession of their properties. Some faced substantial delays, extending over a decade. In a landmark judgment, the Supreme Court in the case of **Bikram Chatterji Vs. Union of India**.<sup>6</sup> addressed the concerns of distressed homebuyers in the Amrapali Group's projects in Noida and Greater Noida. The court identified these homebuyers as victims of collusion involving statutory authorities, banks, and the developer. To remedy the situation, the court directed the National Buildings Construction Corporation (NBCC) to complete pending projects and annulled the Amrapali Group's registration under RERA. A similar situation unfolded for homebuyers in projects developed by Jaypee Infratech Ltd. (JIL) under the auspices of Jayprakash Associates Ltd. (JAL).

#### **(E) Advantages of the IBC Amendment for Homebuyers**

The amendment had a significant impact on homebuyers, offering several advantages:

- Homebuyers were elevated from an uncertain position to that of recognized financial creditors.
- Funds invested by homebuyers in a real estate project were redefined as a type of financial debt. This allowed them to initiate insolvency proceedings without the necessity of a dispute with the builder.
- Homebuyers were granted representation in the Committee of Creditors (CoC)<sup>7</sup> with corresponding voting rights proportionate to their financial stake.
- In the event of liquidation, homebuyers would be treated equally with other financial creditors, ensuring fair distribution of assets.
- Further amendments were made to the IBC. Notably, a proviso was introduced in Section 7, specifying a minimum threshold for allottees to initiate insolvency proceedings. This required either a minimum of one hundred allottees from the same real estate project or not less than ten percent of the total allottees from the project,

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<sup>6</sup>Bikram Chatterjee and Ors. vs. Union of India and Ors. (Writ Petition No.940 of. 2017)

<sup>7</sup>Insolvency & Bankruptcy Code 2016, s21.

whichever figure was lesser, to initiate the insolvency resolution process against a resistant real estate corporate entity.

### **(F) Homebuyer's Classification as Secured or Unsecured Creditors**

A crucial aspect revolves around categorizing homebuyers as either secured or unsecured financial creditors. As per the Code, a "**secured creditor**"<sup>8</sup> is someone for whom a security interest is established, covering various forms of encumbrances on property. Recent legal decisions and interpretations have tended to classify homebuyers as unsecured creditors, particularly in instances where banks possess a secured interest in residential units.

## **III. IMPACT OF IBC AMENDMENTS ON RERA & NCLT**

The amendments to the IBC have reshaped the dynamics between RERAs and NCLT, providing clarity in their respective roles. The amendments aim to streamline the resolution process, ensuring that RERAs focus on consumer grievances and real estate regulation, while NCLT handles corporate insolvency matters, particularly those related to real estate developers. This harmonized approach seeks to enhance efficiency and minimize conflicts in addressing issues concerning homebuyers within the broader framework of insolvency and real estate regulation.

The IBC (Second Amendment) Act, 2018, marked a significant shift by including homebuyers within the definition of financial creditors, a move that faced challenges from real estate companies. However, the Supreme Court's ruling in *Pioneer Urban Land and Infrastructure Limited and Anr. v. Union of India*<sup>9</sup> upheld the constitutionality of this amendment, solidifying homebuyers' position as financial creditors under the IBC. This granted them the authority to initiate insolvency proceedings against real estate companies, presenting a notable change in dynamics.

Under the IBC, both operational and financial creditors have the right to initiate insolvency proceedings against a corporate debtor. With homebuyers classified as financial creditors, even a single dissatisfied homebuyer could trigger the entire insolvency process for a real estate company. This led to a surge in insolvency petitions filed by homebuyers between June 2018 and November 2019, totalling more than 1800 cases. Courts consistently held that delays in real estate projects constituted a default under the IBC, prompting challenges for both developers and homebuyers.<sup>10</sup>

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<sup>8</sup>Insolvency & Bankruptcy Code 2016, s3(30).

<sup>9</sup> Writ Petition (Civil), 43 of 2019.

<sup>10</sup> Alka Agarwal Vs. Parsvanath landmark Developers Pvt. Ltd. (IB)-1229(PB)/2018 and Neeraj Gupta Vs. Emmar MGF Land Ltd. (IB) – 1403(PB)/2018.

To address challenges arising from the rapid increase in insolvency petitions, the government introduced the IBC (Second Amendment) Bill, 2019. This amendment imposed additional requirements for homebuyers to initiate the insolvency resolution process, mandating that either 10% of homebuyers or 100 homebuyers, whichever is less, must jointly file an application. This amendment aimed to prevent frivolous applications and provide relief to real estate companies. Despite these changes, the IBC has left a significant impact on the real estate sector. The legislation provided a remedy for investors and homebuyers grappling with non-payable assets and unclear dues. The insolvency resolution rate has shown a consistent increase over the past three years, indicating the effectiveness of the IBC in addressing bankruptcy and insolvency issues in the real estate sector.

However, questions arise about the necessity of bringing homebuyers under the ambit of the IBC, given the existence of the Real Estate (Regulation and Development) Act, 2016 (RERA). RERA primarily deals with delays in real estate projects, mandating developer registration and imposing penalties for project delays. The coexistence of two legislations addressing the same issue may lead to confusion, forum shopping, and an increased burden on authorities. While the IBC has proven effective, the government needs to consider whether it is necessary alongside RERA or if adjustments to the existing regulatory framework would suffice.

The amendments to the IBC have redefined the roles of Real Estate Regulatory Authorities (RERAs) and the National Company Law Tribunal (NCLT) in addressing homebuyer-related matters and insolvency proceedings. The amendments have brought about a clearer distinction, allowing RERAs to focus on real estate regulation and consumer protection, while the NCLT takes the lead in handling corporate insolvency issues. This streamlined approach aims to enhance efficiency and reduce conflicts in resolving issues concerning homebuyers within the broader framework of insolvency and real estate regulation.

#### **IV. CONSTITUTIONAL IMPLICATIONS OF RECENT AMENDMENTS TO IBC**

The right to equality under **Article 14**<sup>11</sup> ensures that all individuals are treated equally under the law, and there should be no discrimination. In the context of the IBC amendments related to homebuyers, the question arises as to whether these amendments treat homebuyers equally with other financial creditors. In the **Vishal Chelani & Ors. vs. Debasish Nanda case**, the Supreme Court clarified that homebuyers seeking remedies under real estate regulations, who fall under the category of financial creditors, must be treated equally under the IBC. The court

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<sup>11</sup>Constitution of India 1949, a 14.

rejected any artificial distinctions among different classes of homebuyer allottees for the purpose of drawing a resolution plan. This decision reinforces the principle of equality and non-discrimination among homebuyers within the insolvency resolution framework.

**Article 300A**<sup>12</sup> of the Constitution deals with the right to property. It states that no person shall be deprived of his or her property save by authority of law. In the context of IBC amendments, it is important to assess whether the rights of homebuyers as property owners are adequately protected during insolvency proceedings. The Vishal Chelani case also touches upon property rights indirectly. Homebuyers, by investing in real estate projects, have property rights in the form of the homes they have purchased. The court's decision to treat homebuyers as financial creditors ensures that their property rights are considered and protected in the insolvency resolution process. By being classified as financial creditors, homebuyers gain a say in the resolution plan and are entitled to a share in the distribution of assets, thus safeguarding their property-related interests.

## **V. COMPARATIVE ANALYSIS OF HOMEBUYERS AS CREDITORS IN INSOLVENCY**

While the Supreme Court and tribunals are shaping the jurisprudence concerning the priority mechanism for secured creditors, it is crucial to analyse the legal constraints imposed on these creditors in light of the best international practices. The essence of the Insolvency and Bankruptcy Code (IBC) is largely drawn from international insolvency regimes, such as the UNCITRAL model law and English insolvency laws. The World Bank recognizes and supports the priority rights of secured creditors to ensure greater predictability.

The principle of equitable treatment, emphasized by the Bankruptcy Law Reforms Committee (BLRC), which led to the enactment of the IBC, aligns with the global notion that creditors of the same nature or with similar rights should be treated similarly. The UNCITRAL legislative guide outlines three approaches to deal with secured creditors: libertarian principles granting creditors freedom to enforce their security without voting rights, a group solution approach creating a separate class for exclusive creditors, and a third approach allowing creditors with unsatisfied claims to vote like unsecured creditors. While the IBC has incorporated aspects of the first approach, it stands out for its unique approach to secured creditors during the Corporate Insolvency Resolution Process (CIRP). Despite providing an alternative debt recovery method under the SARFAESI Act for both CIRP and liquidation, the IBC addresses remaining claims only in the case of relinquishment.<sup>13</sup>

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<sup>12</sup>Constitution of India 1949, a 300A.

<sup>13</sup> Insolvency and Bankruptcy Code, 2016, s 52(1)(a) & (b).

In contrast to the US Bankruptcy Code's Chapter 11, which bifurcates creditors into secured and unsecured based on their claims, the IBC adopts a more flexible and debtor-centric position. The IBC allows creditors the liberty to reject the plan unless the right of retention of the security interest or proceeds is granted to them. The law is also opposed to the second approach, treating exclusive charge-holders and second charge holders in the same category.

In the UK, priority rights of secured creditors are protected by restricting the administrator's power to impede the enforcement of securities during the resolution and safeguarding the open choice of securitization during liquidation. Secured creditors participating in the resolution process, even if dissenting, are protected under the UK Companies Act, requiring satisfaction through a settlement or compromise beneficial or neutral to their interests.

Despite the majoritarian principles in the IBC and the overarching goal of company revival, the creditor-centric approach, in line with international positions, calls for more certainty. Notably, the IBC provides for at least the liquidation value of dissenting financial creditors, akin to the US Code, UK laws, and EU Directives. However, evolving jurisprudence and uncertain judgments have rendered this provision practically invisible.

In the United States under **Chapter 11** bankruptcy, homebuyers are classified as unsecured creditors, and their claims are typically treated alongside other unsecured claims during the distribution of assets.<sup>14</sup> They have the right to participate in creditors meetings, vote on proposed bankruptcy plans, and may negotiate with the debtor for favourable terms or propose their own plans.<sup>15</sup> Homebuyers can be involved in the Committee of Unsecured Creditors, influencing key decisions related to the bankruptcy plan.

Similarly, in the United Kingdom under the Insolvency Act 1986, homebuyers are considered unsecured creditors<sup>16</sup>, with their claims treated similarly to other unsecured claims in the order of priority.<sup>17</sup> They have the right to vote on certain matters, participate in negotiations, and may be part of the Committee of Unsecured Creditors, playing a crucial role in approving or rejecting the insolvency plan. **Vishal Chelani & Ors. vs. Debasish Nanda<sup>18</sup> & Pioneer Urban Land and Infrastructure Limited & Anr v. Union of India & Ors.<sup>19</sup>** highlights a significant development in the treatment of homebuyers under the Insolvency and Bankruptcy Code (IBC). In this case, homebuyers sought remedies under real estate regulations and were classified as

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<sup>14</sup> Bankruptcy Code, 1978, USC, T 11, s 506(a)(1).

<sup>15</sup> Bankruptcy Code, 1978, USC, T 11, s 727.

<sup>16</sup> Insolvency Act, 1976, (UK) c. 45, Sch. B1 para 73, 1976.

<sup>17</sup> Companies Act, 2006, (UK), c. 46, s 901-G.

<sup>18</sup> Vishal Chelani v. Debashis Nanda, 2023 SCC OnLine SC 1324.

<sup>19</sup> Writ Petition (Civil), 43 of 2019.



financial creditors under the IBC. The Supreme Court's decision clarified that homebuyers pursuing remedies under real estate regulations should be considered financial creditors, ensuring their equal treatment. This aligns with international practices and promotes equality among different classes of homebuyer allottees. The practical impact of the Vishal Chelani case has been substantial, elevating homebuyers to the status of financial creditors under the IBC. As a result, homebuyers now have representation in the Committee of Creditors, allowing their active participation in decision-making processes during insolvency resolution.

In comparing these international and Indian scenarios, commonalities emerge in the treatment of homebuyers as unsecured creditors and their involvement in decision-making bodies. The Vishal Chelani case signifies a convergence with international practices, acknowledging homebuyers as financial creditors, and underscores a positive shift in aligning Indian insolvency practices with global standards. While specific legal mechanisms may vary, the overall impact has been to enhance the rights and participation of homebuyers in insolvency resolution processes, reflecting the evolving nature of insolvency laws on a global scale.

## **VI. ANALYZING THE SUPREME COURT'S DECISION IN THE FOLLOWING CASES**

### **1) Vishal Chelani & Ors. vs. Debasish Nanda**

#### **Facts of the Case**

The appellants in this case are individuals who purchased homes in a real estate project operated by the respondent company, *Bulland Buildtech Pvt. Ltd.* Dissatisfied with the project's delayed completion, the appellants sought relief from the UPRERA. The UPRERA, through its orders, affirmed the appellant's right to receive a refund of the amounts they had deposited, along with interest.

Simultaneously, proceedings were initiated under the Insolvency and Bankruptcy Code, 2016 (IBC). During these proceedings, after consultations by the Committee of Creditors, a resolution plan was presented to the adjudicating authority. The plan distinguished between homebuyers who had pursued alternative remedies, such as filing applications before the RERA and obtaining favourable orders, and those who did not take such steps. Homebuyers who did not approach RERA were offered 50% better terms than those who sought relief through RERA or held decrees.

The appellants, dissatisfied with the decision, had their applications rejected by the adjudicating authority, and their appeals were also unsuccessful. Consequently, they have approached the Apex Court for redress.

### **Contention by the Appellant**

The definition of financial debt (**Section 5(8)(f)**) underwent an amendment in 2018, expanding to include homebuyer allottees in real estate projects. Post this amendment, all such homebuyer allottees fall within the broad category of financial creditors. It is emphasized that no distinction can be drawn between different groups of homebuyer allottees. This argument is supported by a decision from the NCLT, Mumbai Bench-IV, in the case of **Mr. Natwar Agrawal (HUF) vs. Ms. Ssakash Developers & Builders Pvt. Ltd.**<sup>20</sup>

### **Contention by the Respondent**

The respondent opposed the appeal, arguing that the appellants cannot enjoy two benefits simultaneously. By seeking relief from the UPRERA, they belong to a distinct subgroup of homebuyers entitled to specific amounts. As a result, they are considered unsecured creditors compared to allottees who did not pursue remedies under RERA. It is asserted that such homebuyers have waived their rights under **Section 18** of the RERA Act.<sup>21</sup>

### **Issue of the Case**

The issue before the court revolved around the classification of homebuyers and the appellant's entitlement to be treated as financial creditors under the Insolvency and Bankruptcy Code, 2016 (IBC).

### **Ratio Decidendi**

The ratio decidendi, or the legal reasoning and decision principle derived from the provided judgment, is that homebuyers who have sought remedies under the Uttar Pradesh Real Estate Regulatory Authority (UPRERA) and obtained a decree are to be considered financial creditors under **Section 5(8)(f)**<sup>22</sup> of the Insolvency and Bankruptcy Code, 2016 (IBC). The court emphasized that no distinction can be made between different classes of homebuyer allottees for the purpose of drawing a resolution plan under the IBC. The court rejected the notion that seeking remedies under the Real Estate (Regulation and Development) Act, 2016 (RERA) and obtaining a refund would disqualify homebuyers from being treated as financial creditors under the IBC. The court held that such a distinction is inequitable and amounts to "hyper-classification," violating **Article 14** of the Constitution.<sup>23</sup>

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<sup>20</sup>Mr. Natwar Agrawal (HUF) vs. Ms. Ssakash Developers & Builders Pvt. Ltd. (CP(IB) No.21/MB-IV/2023 dated 02.08.2023).

<sup>21</sup>Real Estate (Regulation and Development) Act 2016, s 18.

<sup>22</sup>Insolvency & Bankruptcy Code 2016, s 5(8)(f).

<sup>23</sup>Constitution of India 1949, a 14.

## **Order**

The Supreme Court's order was that the appellants who are home buyers and have opted for allotment in a real estate project, challenged a decision by the National Company Law Appellate Tribunal (NCLAT). The NCLAT ruled that, as beneficiaries of a decree by the Uttar Pradesh Real Estate Regulatory Authority (UPRERA), the Resolution Professional's proposal to treat them differently from other home buyer allottees did not warrant interference. The Supreme Court, after considering the arguments presented, set aside the impugned order and declared the appellants as financial creditors within the meaning of **Section 5(8)(f)**<sup>24</sup> of the Insolvency and Bankruptcy Code, 2016. They are entitled to be treated as such, along with other home buyers/financial creditors, for the purposes of the resolution plan pending final decision before the adjudicating authority. Consequently, the appeal was allowed in favor of the appellants, establishing their status as financial creditors under the specified section of the Insolvency and Bankruptcy Code.

## **2) Pioneer Urban Land and Infrastructure Limited & Anr v. Union of India & Ors.**

### **Facts of the Case**

The case involved various writ petitions filed by Pioneer Urban Land and Infrastructure Limited challenging the constitutional validity of amendments made under Sections 5, 21, and 25 of the Insolvency and Bankruptcy Code, 2016 (I&B Code). The amendments, introduced through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, aimed to include homebuyers as financial creditors under the I&B Code.

NCLAT in *Nikhil Mehta and Sons (HUF) v. AMR Infrastructure Ltd.*<sup>25</sup> case held that amounts raised from homebuyers under an assured return scheme had the commercial effect of borrowing. The Supreme Court, in *Chitra Sharma & Ors. v. Union of India*,<sup>26</sup> had allowed homebuyers to participate in the Committee of Creditors.

An Insolvency Committee Report suggested amendments to clarify the status of homebuyers under the I&B Code, leading to the Amendment Ordinance. The writ petitions challenging these amendments were brought before the Supreme Court.

### **Contention by the Appellant**

The petitioner argues that despite the court's analysis, treating home buyers as financial creditors under the Insolvency and Bankruptcy Code (I&B Code) infringes on their constitutional rights,

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<sup>24</sup>Insolvency & Bankruptcy Code 2016, s 5(8)(f).

<sup>25</sup> *Nikhil Mehta and Sons (HUF) v. AMR Infrastructure Ltd.* (CA (AT) (Ins) No. 07 of 2017).

<sup>26</sup> Writ Petition (Civil) No. 744 of 2017.

specifically Article 14 (equality before law), Article 19(1)(g) (right to practice any profession, or to carry on any occupation, trade, or business), and Article 300-A (right to property).

The home buyers contend that the classification of home buyers as financial creditors creates an unequal treatment, as they are fundamentally different from traditional financial creditors such as debenture holders and fixed deposit holders. The argument may revolve around the assertion that their interests and positions are distinct.

The petitioners raise concerns about the concurrent remedies available to them, arguing that having remedies under Real Estate (Regulation and Development) Act (RERA), and I&B Code creates confusion and may lead to a situation where they are subjected to multiple legal processes simultaneously.

Home buyers argue that the I&B Code, with the inclusion of home buyers as financial creditors, could lead to situations where their individual rights and interests are subordinated to the broader objective of corporate resolution, potentially impacting the timely delivery of their homes.

### **Contention by the Respondent**

The respondent asserts that the amendment to the I&B Code, treating home buyers as financial creditors, is a valid exercise of legislative power and is in the public interest. They may argue that the amendment is intended to protect the rights of home buyers and ensure timely completion of real estate projects.

The respondent emphasizes the need for a harmonious construction of the I&B Code and RERA. They could argue that both statutes operate in different spheres and serve distinct purposes. The I&B Code aims at corporate resolution, while RERA focuses on protecting individual home buyers.

The respondent highlights the fact that the amendment to the I&B Code was introduced after the enactment of RERA, indicating a legislative awareness of both statutes. They could argue that the subsequent amendment demonstrates a deliberate decision to include home buyers in the I&B Code framework.

The respondent argues that including home buyers as financial creditors is essential for protecting the financial health of real estate developers, ensuring the completion of projects, and safeguarding the interests of all stakeholders, including home buyers.

### **Issues**

The issue revolves around the classification of homebuyers as "Financial Creditors" under the

Insolvency and Bankruptcy Code (I&B Code), specifically addressing the constitutional validity of the amendment made to include homebuyers in this category. Legal and constitutional aspects surrounding the inclusion of homebuyers as Financial Creditors and the relationship between the I&B Code and RERA.

### **Ratio Decidendi**

The Supreme Court held that homebuyers could be considered as financial creditors under the I&B Code. The court reasoned that the definition of "financial debt" was broad enough to include amounts raised from homebuyers, as they pay a substantial amount in advance for a project, receiving the benefit of time value of money.

The court rejected the argument that Section 5(8)(f) should be interpreted narrowly. It emphasized that Section 5(8)(f) is a residuary provision, covering any amount or transaction not covered under other clauses, and clarified that the amounts raised from homebuyers fell within its scope.

The court held that the I&B Code would have an overriding effect over RERA. It pointed to Section 88 of RERA, stating that RERA provisions are additional and not a relaxation for any other provision. The timing of amendments and the legislative intent supported the conclusion that the I&B Code prevails over RERA in case of a conflict.

The court rejected the argument that treating homebuyers as financial creditors violated constitutional provisions. It emphasized the intelligible differentia between homebuyers and operational creditors, asserting that the classification was not arbitrary. The court found no violation of Articles 14, 19(1)(g), and 300-A.

### **Order**

The Supreme Court's decision clarified the status of homebuyers as financial creditors under the I&B Code. The reasoning focused on interpreting statutory provisions, legislative intent, and harmonizing conflicting statutes. The court's analysis of constitutional validity provided a robust defence for the inclusion of homebuyers as financial creditors, emphasizing the unique characteristics of real estate transactions. The decision aimed at balancing the interests of various stakeholders and ensuring a streamlined resolution process for insolvent real estate companies.

## **VII. CONCLUSION & RECOMMENDATIONS**

In conclusion, the implementation of the Insolvency and Bankruptcy Code, 2016 (IBC), represents a significant stride by the Indian government in enhancing the business environment

and fostering a mature market economy. The IBC, since its inception in 2016, has undergone crucial amendments, particularly concerning the position of homebuyers. This comprehensive analysis has traced the evolution of homebuyers' status under the IBC, emphasizing key amendments, judicial interventions, and the subsequent impact on the Real Estate (Regulation and Development) Act, 2016 (RERA). The amendments to the IBC have not only redefined homebuyers as financial creditors but have also bestowed upon them significant rights and representation in insolvency proceedings. The Supreme Court's decisions provided a solid legal foundation for treating homebuyers as financial creditors. The court's rationale, grounded in statutory interpretation, legislative intent, and constitutional validity, ensures that homebuyers are accorded equal standing in the insolvency resolution process. The impact of these amendments extends beyond the IBC, influencing the jurisdictional dynamics between Real Estate Regulatory Authorities (RERAs) and the National Company Law Tribunal (NCLT). The clearer delineation of roles post-amendments aims to streamline the resolution process for distressed real estate companies and enhance efficiency in addressing homebuyer's concerns. Constitutional implications have been meticulously addressed, with the Supreme Court affirming that the amendments do not violate the fundamental rights of homebuyers. The principles of equality and the right to property are upheld, ensuring that homebuyers' interests are safeguarded within the insolvency resolution framework. A comparative analysis with international practices highlights the positive shift in aligning Indian insolvency laws, particularly regarding homebuyers, with global standards. The recognition of homebuyers as financial creditors parallels practices in the United States and the United Kingdom, enhancing their rights and participation in insolvency resolution processes.

In light of the above, it is recommended that stakeholders, including policymakers, legal practitioners, and real estate developers, continue to monitor and adapt to the evolving landscape of homebuyer's rights under the IBC. Further refinements and clarifications in the legal framework may be necessary to address emerging challenges and ensure the effective resolution of insolvency cases while balancing the interests of all parties involved. Ultimately, the ongoing collaboration between legislative initiatives, judicial decisions, and market dynamics will play a pivotal role in shaping the future trajectory of homebuyer's rights within the broader framework of the Insolvency and Bankruptcy Code.

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