



SC Upholds Validity of IBC Amendment Act, 2020

Why in News

Recently, the [Supreme Court \(SC\)](#) has upheld the constitutional validity of the [Insolvency and Bankruptcy Code \(IBC\) \(Amendment\) Act, 2020](#).

Key Points

▪ Background:

- In its August 2019 order, the SC had **upheld the government decision to grant home-buyers the status of financial creditors**.
 - **Financial creditor:** It means any person to whom a 'financial debt' is owed and includes a person to whom such debt has been legally assigned or transferred to.
- Subsequently, the **government introduced the IBC (Amendment) Act, 2020, that mandated a threshold of at least 10% of home-buyers (or allottees) in a project or 100 of the total allottees** for initiating insolvency proceedings against the real estate developer.
 - It means that **a single home-buyer is barred from approaching the [National Company Law Tribunal \(NCLT\)](#)** under Section 7 of the IBC to initiate insolvency proceedings against the real estate developer/builder.
 - Section 3 of the Amendment Act allows **home-buyers to seek the [Corporate Insolvency Resolution Process \(CIRP\)](#)** against builders **only when 100 allottees or at least 10% of allottees** make a joint application to NCLT.
 - The **allottees should be from the same real estate project**. Aggrieved allottees drawn from different projects of the same developer cannot form the 100.
 - A **30-day deadline** was given for existing applicants to find the requisite number of supporters to meet the threshold of 100, **else their plea pending in the tribunal even before the commencement of the 2020 Act would be deemed as withdrawn**.
- This was **done to prevent real estate projects from being stalled by few disappointed home-buyers/investors**.

▪ SC's Ruling:

- **Threshold:**
 - SC said that insisting on a threshold in regard to these categories of creditors would **stop indiscriminate litigation**.
 - The court agreed with the legislature that **having a single allottee approach the tribunal would be risky**, considering that a corporate insolvency resolution may also entail a complete overhaul or replacement of the developer's company management.

- Such an initiative by a lone allottee would **derail the plans of other allottees**, who still had faith in the existing developer or were pursuing other legal remedies.
- The amendment reflects an attempt at **shielding corporate debtors (Real Estate Developers) from what it considers would be either for frivolous or avoidable applications.**
- **Consensus of Creditors:**
 - The amendment is likely to ensure that the filing of the application is preceded by a **consensus at least by a minuscule percentage of similarly placed creditors.**
- **Allotment:**
 - It does not matter whether a person has one or more allotments in his name or in the name of his family members.
 - **As long as there are independent allotments made to him or his family members, all of them would qualify as separate allottees and they would count both in the calculation of the total allotments**, as also in reckoning the figure of hundred allottees or one-tenth of the allottees.

Insolvency and Bankruptcy Code

▪ Enactment:

- The IBC was enacted in **2016**.

▪ Objective:

- To **streamline and speed up the resolution process** of failed businesses.
- To **consolidate provisions of the existing legislative framework** to form a common forum for debtors and creditors of all classes to resolve insolvency.
- To stipulate that the resolution process of a stressed company will have to be completed in a maximum of **270 days**.

▪ Threshold Amount for Invoking Insolvency:

- In March 2020, the government raised the threshold for invoking insolvency under the IBC to **Rs. 1 crore from Rs. 1 lakh** with a view to prevent triggering of such proceedings against small and medium enterprises that are facing the heat of the Covid-19 pandemic.

▪ Institutions to Facilitate Resolution of Insolvency:

◦ Insolvency Professionals:

- These professionals **administer the resolution process, manage the assets of the debtor, and provide information for creditors to assist them in decision making.**

◦ Insolvency Professional Agencies:

- The agencies **conduct examinations to certify the insolvency professionals and enforce a code of conduct for their performance.**

◦ Information Utilities:

- Creditors will report financial information of the debt owed to them by the debtor. Such information will include records of debt, liabilities and defaults.

◦ Adjudicating Authorities:

- The proceedings of the resolution process is **adjudicated by the NCLT**, for companies; and the **Debt Recovery Tribunal (DRT)**, for individuals.
- The duties of the authorities will include **approval to initiate the resolution process, appoint the insolvency professional, and approve the final decision of creditors.**

◦ Insolvency and Bankruptcy Board:

- The Board **regulates insolvency professionals, insolvency professional agencies and information utilities** set up under the Code.
- The Board consists of representatives of the **Reserve Bank of India**, and the

Note:

- **Insolvency:** It is a situation where individuals or companies are unable to repay their outstanding debt.
- **Bankruptcy:** It is a situation whereby a court of competent jurisdiction has declared a person or other entity insolvent, having passed appropriate orders to resolve it and protect the rights of the creditors. It is a legal declaration of one's inability to pay off debts.

[Source:IE](#)

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