

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

In the Supreme Court of India

Writ Petition (Civil) No. 26 of 2020 & connected cases

Manish Kumar

..... **Petitioner**

Versus

Union of India and Another

.....**Respondent**

Petitioners challenged before the SC the following Sections of the IBC (Amendment) Act, 2020: Sections 3, 4 and 10.

Sec. 3, amended Sec.7(1) of the IBC, 3 provisos to Sec 7(1).

Under the impugned provisos inserted in Section 7(1) of the Code, an application by an allottee, can be made only if there are hundred allottees or a number representing one-tenth of the total number of allottees, whichever is less, with a further rider that the allottees must be part of the same real estate project.

“Insisting on a threshold in regard to these categories of creditors would lead to the halt to indiscriminate litigation which would result in an uncontrollable docket explosion as far as the authorities which work the code are concerned. The debtor who is apparently stressed is relieved of the last straw on the camel’s back, as it were, by halting individual creditors whose views are not shared even by a reasonable number of peers rushing in with applications. Again, in the case of the allottees, this is not a situation where while treating them as financial creditors they are totally deprived of the right to apply under Section 7.

Section 4 of the impugned amendment, incorporates an additional Explanation in Section 11 (Explanation II) IBC.

It could never had been the intention of the legislature to create obstacle in the path of the corporate debtor, in any of the circumstances contained in Section 11, from maximization its assets by trying to recover the liabilities due to its from others. Not only does it go against the basic commonsense view but it could frustrate the very object of the code, if a corporate debtor is prevented from invoking the provisions of the code either by itself or through his resolution professional, who at a later stage, may, don the mantle of its liquidator.

Section 10 of the impugned amendment inserts Section 32-A in IBC.

Section 32A provides immunity to the CD and its property when there is approval of the resolution plan resulting in the change of management of control of CD. This is subject to the Successful Resolution applicant being not involved in the commission of offense.