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EFFECTS AND IN SITUATION OF THE INSOLVENCY AND BANKRUPTCY CODE 2016 ON REAL ESTATE REGULATION AND DEVELOPMENT ACT (RERA)

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ABSTRACT:

Prior to the Insolvency and Bankruptcy Act 2016 and Amendment 2017 and 2018 the home buyers were treated as an 'unsecured creditors' and they were not regarded as creditors . Due to which, the homebuyers were not capable of initiating insolvency proceedings against a defaulting Builder or Real Estate developer. The Developer or Builder was neither responsible nor answerable to any authority in our country and in case of default the Builder or Developer used to up his hands , leaving the buyers with tears in their eyes. Somehow The Insolvency and Bankruptcy Act brings the situation in some control and Buyers are treated as FINANCIAL CREDITORS like others.



KEYWORDS: : Insolvency and Bankruptcy code, RERA , National Company Law Tribunal NCLT Insolvency resolution professional , committee of creditors (COC).

INTRODUCTION

There was no single law dealing with insolvency and bankruptcy in India before 2016, The liquidation of companies and individuals were handled under various Acts (around 12 to 14 in number). Some of them were:

- Presidency Towns Insolvency Act, 1909
- The Provincial Insolvency Act, 1920
- Sick Industrial Companies Act
- The Securitization and Reconstruction of Financial Assets and Enforcement of Security

- Interest Act, 2002 (also known as the Sarfaesi Act)
- Companies Act 2013
- Recovery of debts due to banks and financial Institutions Act
- It led to an overlapping jurisdiction of different authorities like High Court, Company Law Board, Board for industrial and financial reconstruction (BIFR) and Debt recovery tribunal.
- This overlapping jurisdictions and multiplicity of laws made the process of insolvency resolution very cumbersome in India.
- Nearly 60,000 bankruptcy

cases are pending in India's courts. As per the World Bank data , it takes an average 4.5 years to wind up a company in India. The conclusion is , It is easier to start a business than to exit it.

The Insolvency and Bankruptcy Code 2016 AMENDED 2018 :

The Insolvency and Bankruptcy Code 2016 is an extensive law and covers all people, organizations, Limited Liability Partnerships (LLPs) and association firms. The mediating expert is National Company Law Tribunal (NCLT) for organizations and LLPs and Debt Recovery Tribunal (DRT) for

people and association .

The salient features of the Insolvency and Bankruptcy Code :

- 1) The mediating expert is National Company Law Tribunal (NCLT) for organizations and LLPs and Debt Recovery Tribunal (DRT) for people and association.
- 2) The Insolvency and Bankruptcy Code 2016 is a thorough law and covers all people, organizations, Limited Liability Partnerships (LLPs) and association firms .
- 3) The indebtedness goals procedure can be started by any of the partners of the firm: firm/account holders/leasers/workers.
- 4) If the mediating specialist acknowledges, an Insolvency goals expert or Insolvency Professional (IP) is designated. Who assumes a key job in goals, liquidation and chapter 11 forms.
- 5) The intensity of the administration and the leading group of the firm is moved to the board of lenders (CoC). They act through the IP.
- 6) The IP needs to choose whether to resuscitate the organization (indebtedness goals) or sell it (liquidation).
- 7) If they choose to resuscitate, they need to discover somebody willing to purchase the firm and They welcome open offers from the invested individuals to purchase the firm.
- 8) The lenders additionally need to acknowledge a critical decrease under water. The decrease is known as a hair style.
- 9) They pick the gathering with the best goals plan, that is satisfactory to most of the creditors to assume control over the administration of the firm. To synopses the abovementioned, the IP needs to choose whether to do indebtedness goals procedure or liquidation. They choose to do Insolvency goals when the firm can be made financially practical. They locate another purchaser for the firm to enable it to proceed with its tasks. The loan bosses acknowledge a hair style.

Note that a hair style is superior to recouping nothing or a negligible whole.

Note that a haircut is better than recovering nothing or a minimal sum.

- The law prescribes that this insolvency resolution process have to be completed within 180 days.
- It can be extended by 90 days if the case is complex.
- If a decision is not reached within the time frame, the firm will be liquidated.
- Insolvency professionals (IP) will be members of Insolvency Professional Agencies (IPA) created under the Bankruptcy Code. The IPAs will certify the IPs.
- The code will also address cross-border insolvency through bilateral agreements with other countries.
- Information utilities have also been created to collect, collate and give all information about debtors to make a database about serial defaulters.
- Insolvency & Bankruptcy Board will be set up to regulate insolvency professionals, insolvency professional agencies and information utilities.

OBJECTIVES OF THE STUDY :

- 1) To study the effects of insolvency and bankruptcy code 2016 on real estate regulation and development act (rera)
- 2) To study the implication of insolvency and bankruptcy code 2016 on real estate regulation and development act (rera)

RESEARCH METHODOLOGY:

Research Design: To have a better understanding of the issue the Descriptive Research design was used. To get the Primary and Secondary data a well structured studies were carried out through comparing the actual situation of Real Estate Industries prior and Post to the Act and conclusion was drawn.

ANALYSIS OF PERCEPTION :**REAL ESTATE AND THE INSOLVENCY AND BANKRUPTCY CODE 2016 AMENDED 2018**

Real Estate Sector in India is one of the few sectors that have witnessed exponential growth in the last Twenty Five Years. It has drawn in huge investments from the people who put in their hard earned life savings to unlock their dream homes. The last years where things were promising for the real estate sector. Experts have opined that the real estate sector is actually going through transitional phase and things will sort out with time. Government acknowledging this problem vide amendment No. 26 of 2018 6th June, 2018, came up with the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2016 granting homebuyers a status of "Financial creditor" It Works as a blessings for Home buyers and it s a great relief to the home buyers. The Insolvency and Bankruptcy code strengthens the position of homebuyers putting them on the same footing as any other stakeholder participating in the real estate project. Under the code the creditors are categorized in two types: Financial or Operational. Financial creditors includes person who have lent money to the debtor against the payment of interest whereas Operational Creditors includes person who have established certain types of relationship with the debtor company such as the provision of goods and services, employment or government dues. Therefore prior to the amendment "Home buyers" were treated as an orphan meaning thereby, they were considered to be neither financial creditors nor operational creditors as they haven't lent out money against the payment of interest nor were they operational creditors as that the code does not contemplate immovable property and refers to the provision of "goods and services". Therefore, the homebuyers were getting only limited reliefs/benefits as they were treated under a third class of creditors created by the Insolvency and Bankruptcy Board of India.

The Real Estate (Regulation and Development) Act, 2016 (RERA) and the Insolvency and Bankruptcy Code, 2016 :

Real Estate (Regulation and Development) Act, 2016 (RERA) came into effect from May, 1, 2017. It was brought in with an intent to protect the interest of homebuyers and improve simplicity in the real estate sector. RERA was enacted with the purpose to set in motion the process of making necessary operational rules and creation of institutional infrastructure for the promotion and growth of real estate sector. The Insolvency and Bankruptcy code was amended to cover the loopholes in the Insolvency and Bankruptcy Act along with the Real Estate (Regulation and Development Act), 2016. The amendment incorporates the key recommendations of the Insolvency Law reform Committee's ("ILRC") report. The amendment to the code was brought with a view to balance the interest of the Home buyers. This amendment treats the Home Buyer as financial creditors under the code. This amendment was made in cognizance of the fact that since, money is raised from homebuyers as a means to finance construction, and thus they should be treated as any other financial creditor.

SITUATION PRIOR TO IBC (The Insolvency and Bankruptcy code) AMENDMENT :

Prior to the Insolvency and Bankruptcy Amendment, Home buyers were treated as an 'unsecured creditors' and they were not regarded as "financial creditors" or as "operational creditors". Due to which, the homebuyers were not capable of initiating insolvency proceedings against a defaulting Builder or Real Estate developer.

SITUATION POST IBC AMENDMENT :

Now after this amendment, the Home Buyers are treated as "allottee" under a 'real estate project'. The term "allottee" is defined under Real Estate (Regulation and Development) Act as "a person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent." According to IBC amendment, if an allottee raises sum under a real estate project then that sum will be considered to have an impact similar to the commercial impact of borrowing. Therefore, the sums paid by the Home

Buyers to a builder will be considered as financial debt and homebuyers will be categorized as financial creditors. This helps the home buyer to file a petition to start insolvency proceedings against a defaulting builder company. If an allottee raises sum under a real estate project then that sum will be considered to have an impact similar to the commercial impact of borrowing. Therefore, the sums paid by the Home Buyers to a builder/ Developer will be considered as financial debt and homebuyers will be categorized as financial creditors. This helps the home buyer to file a petition to start insolvency proceedings against a defaulting builder company.

RESPIRE TO THE HOME BUYER DUE TO THIS INSOLVENCY AND BANKRUPTCY CODE ((IABC) AND AMENDMENT THERE OF :

The correction to the Insolvency and Bankruptcy code is useful to the purchasers confronting hardships because of inadequate land ventures. In India, around 26-38% of the undertakings face delay because of different reasons and the engineer end up in an obligation trap in light of that delay. There are a few cases in NOIDA , GURGAON , PUNE and even in the city of MUMBAI where the postponement in tasks influence the Home Buyers as they contribute a sizeable bit of their investment funds to make an up front installment for the property, pay an EMI on the advance and well beyond that keep on paying rent in the present spot of remain. This circumstance has now been changed by the new IABC correction. The homebuyers in the wake of achieving the status of budgetary leaser under the code reserve the option to conjure Section 7 of the IBC against a wayward engineer. By conjuring segment 7 of the IABC, the money related loan bosses can record an application in National Company Law Tribunal for starting corporate bankruptcy goals against a defaulting Builder's organization , the homebuyers have portrayal in the council of lenders through an approved delegate and they can expect optimizing of pending court arguments against driving land gatherings. The 2018 Ordinance has revised the meaning of 'monetary obligation' to incorporate sums raised from 'allottees' in regard of a land venture (as characterized under the Real Estate (Regulations and Development) Act, 2016 (RERA)). In like manner, homebuyers will presently be qualified for a seat on the 'advisory group of banks (COC) of the corporate indebted person. Be that as it may, given the enormous number of homebuyers for a task, they will be treated as a class of leasers and be spoken to in the CoC by an approved delegate' to be named by the National Company Law Tribunal (NCLT). The Section 18 of RERA give the privilege to allottees as to Demand a discount of the whole sum progressed by the allottee alongside enthusiasm at the endorsed rate or Be paid enthusiasm by the advertiser/designer for each long stretch of postponement till ownership is given over. In bankruptcy procedures, almost certainly, the allottees may document their cases for the whole development sum and collected premium. In such cases, it should be considered if, because of recording of such cases (for example for the development paid), the allottees would be esteemed to have pulled back from the task and if their case against the corporate indebted person can be constrained to financial cases just (for example the development sum and interest). In a most recent judgment where the Homebuyers, who were to get pads in Noida from Jaypee Infratech, moved toward the Supreme Court looking for a stay on the indebtedness procedures against the organization, as it would imperil the development of their condos. Already, all choices of the CoC should have been affirmed by 75% of the casting a ballot portion of the CoC individuals. This limit has now been brought down to 51% aside from when 90% endorsement for withdrawal of an indebtedness application post affirmation by the NCLT . It's about home purchasers as well as about huge number of lenders in a class. There are sure classes which have a formal plan for their portrayal. For instance, the debenture holders are spoken to by a debenture trustee. The guidelines give a course of action to portrayal of lenders in different classes. Where the corporate indebted person has in any event ten loan bosses in a class, the interval goals expert will offer a decision of three indebtedness experts and a lender in the class may show its decision of a bankruptcy proficient, from among the three, to go about as its approved agent. The indebtedness proficient, who is the decision of the most elevated number of loan bosses in the class, will be delegated as the approved agent of the lenders of the individual class. The approved agent will gather casting a ballot directions from banks go to the gatherings of the board

of leasers (CoC) and make his choice in regard of every loan boss as per the guidelines he has gotten. Anyway ,

CONCLUSION :

The most recent Ordinance on the Insolvency and Bankruptcy Code (IBC) has, just because, perceived home-purchasers as money related lenders yet whether they are verified or unbound budgetary leasers depends on the idea of their concurrences with realty engineers. M.S. Sahoo, the administrator of the Insolvency and Bankruptcy Board of India advised guidelines for corporate goals procedure a week ago, additionally says an indebtedness case can be pulled back from the NCLT with the endorsement of 90% of loan specialists just before any bidder/candidate presents his goals plan. The most recent Ordinance advances goals as opposed to liquidation of focused on resources, streamlines the ineligibility criteria to improve the quantity of bidders and parities the interests of different partners, including home purchasers and MSMEs.

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