

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## Manish Kumar v. Union of India (UoI) and Ors.

### **Brief Facts**

The petitioners in the present case challenged the constitutional validity of Sections 3, 4 and 10 of the Insolvency and Bankruptcy Code (Amendment) Act, 2020 (Impugned Amendment). The Impugned Amendment, *inter alia*, required at least 100 allottees or 10 per cent of the total allottees, whichever is less, as a pre-condition to file an application under Section 7 of the IBC against a real estate company of the same project. It was argued by the petitioners that since the homebuyers were deprived of the rights under Section 7 of the IBC, the Impugned Amendment violates the constitutional right of the home buyers and is arbitrary in nature.

### **Decision**

The Hon'ble Supreme Court noted that the new threshold had its basis in the recommendations in a report of an experts committee. (Para 38)

It was observed that the rationale behind setting a minimum number of allottees and confining them to the same real estate project to initiate insolvency proceedings against real estate developers successfully. It was held that the new threshold was crucial to form the critical homogenous mass that the legislature had envisaged. If allottees from all projects were allowed to proceed against a real estate developer, the task of the applicants in the insolvency resolution process would become more cumbersome. This, in turn, would impact the timeliness of the entire insolvency resolution process. Further, allowing an individual allottee with a high level of subjectivity in decision-making would also defeat the object of balancing the interest of all stakeholders involved in the insolvency resolution process. The Hon'ble Supreme Court held that the requirement of the minimum number of allottees and such allottees being drawn from the same project stands to reason and does not suffer from any constitutional blemish. (Para 140)

It was noted that apart from proceedings under the IBC, some of the allottees may seek remedy under the RERA, and others may resort to the consumer protection laws or a civil suit. In such circumstances, if the legislature distinguishes the allottees from other financial creditors, the Hon'ble Supreme Court held that it is not for the Court to sit in judgment over the wisdom of such a measure. (Para 192)

With respect to intelligible differentia in the Impugned Amendment, the Hon'ble Supreme Court held that the Allottees were distinguished from other financial creditors due to the sheer numerosity, heterogeneity, and individuality in decision making. (Para 193)

Further, by imposing a threshold limit of a hundred allottees or one-tenth of the total, the problem of heterogeneity should be resolved. Insisting on the similar treatment of such allottees as other financial creditors would lead to indiscriminate litigation which would result in an uncontrollable docket explosion. (Para 220)

It was also noted that the legislature is clothed with competence to make retrospective laws. It is open to the legislature, while making retrospective law, to take away vested rights. If a vested right can be taken away by a retrospective law, there can be no reason why the legislature cannot modify the vested rights. (Para 333)

Therefore, the imposition of a threshold requirement being a mandatory and irreducible minimum constitutes an intrusion into the substantive right of action vested in an individual creditor. Imposing the threshold requirement under the 3rd proviso is not a mere matter of procedure. It impairs vested rights. (Para 346)

In view of the above made observations, it was concluded that prescribing a time limit of 30 days to modify the pending applications to comply with the threshold requirement, cannot be, per se, described as arbitrary, as otherwise, it would be an endless and uncertain procedure. The applications would remain part of the docket and become a Damocles Sword overhanging the CD and the other stakeholders with deleterious consequences. (Para 366)

### **Link of the Order**

<https://ibbi.gov.in/uploads/order/e501b1edf529aa6e4148b63d28e19078.pdf>



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