

SC UPHOLDS THRESHOLD FOR FILING INSOLVENCY PLEA AGAINST REALTY DEVELOPERS

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The Supreme Court on Tuesday upheld amendments in the Insolvency and Bankruptcy Code which prescribe that at least 100 allottees from the same real estate project should support the initiation of corporate insolvency resolution process in the National Company Law Tribunal (NCLT) against their property developer.

The Insolvency and Bankruptcy Code (Amendment) Act of 2020 had introduced a threshold that required a minimum of 100 allottees, or 10% of the total allottees of a project, whichever was less, to jointly apply for corporate insolvency resolution in the 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 third amendment had given a 30-day deadline 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of 100, else their plea pending in the tribunal even before the commencement of the 2020 Act would be deemed as withdrawn.

Under the erstwhile regime, even a single allottee could initiate the corporate insolvency resolution process against his property developer. There was no need to garner support from other allottees.

A three-judge Bench led by Justice Rohinton F. Nariman found none of the amendments vague or arbitrary.

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.

'Against others' interest'

"There can be hundreds or even thousands of allottees in a project. If a single allottee, as a financial creditor, is allowed to move an application, the interests of all the other allottees may be put in peril... Other allottees may have a different take of the whole scenario. Some of them may approach the Authority under the Real Estate (Regulation and Development) Act of 2016. Others may, instead, resort to the Consumer Protection Act. The remedy of a civil suit is, no doubt, not ruled out," Justice K.M. Joseph, who authored the judgment for the Bench, reasoned.

The court said allottees of a real estate project are a heterogeneous group. A majority of them may want to give more time to the developer to complete the project.

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