OPERATIONAL CREDITORS - LOST IN THE BYLANES OF EQUALITY

by

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ABSTRACT

Since the existing legal machinery dealing with debt defaults was not in line with global norms and the existing laws failed to produce the desired outcomes, the introduction of the Insolvency and Bankruptcy Code, 2016 (hereinafter, referred to as "IBC" or "the Code") is one of the boldest reforms Indian capitalism has ever witnessed in recognising itself at the Global platform and preventing industrial sickness. IBC, which seeks to unify the existing legal system by creating a basic law for insolvency and bankruptcy, is undoubtedly one of the most important developments in Indian capitalism. Despite being a promising legislation, like most existing laws, IBC too is underlined with its own set of provisions that violate the basic principles of equality enshrined in the Indian Constitution. According to IBC, Financial Creditors are designated with more powers and are given more emphasis compared to Operational Creditors in the Corporate Insolvency Resolution Process. Beginning with the right to participate and vote in Committee meetings, these powers include the right to the allocation of debts due under Sec. 53 of the IBC as well. The IBC was enacted to boost the revival of the reorganisation framework in India by giving Creditors more control. On the contrary, it fails to defend the interests of operating Creditors and depicts a clear case of inequality. Hence, there is an extreme necessity to create equal opportunities by amending the existing Legislation i.e., the IBC. This paper studies one of the most important aspects of insolvency laws, the loophole relating to the prioritization of claims. In line with that, the paper tries to establish the dire need to amend the existing insolvency law in order to protect the interest of Operational Creditors. The study is descriptive in nature.

Keywords – IBC (Insolvency & Bankruptcy Code), Operational Creditor, Financial Creditor Right to Equality, Section 53, Committee meeting

INTRODUCTION

The Corporate Insolvency Resolution Procedure (hereinafter, referred to as "CIRP") in India requires the application of many legislative instruments, i.e., Sick Industrial Companies Act of 1985, Recovery of Debt Due to Banks and Financial Institutions Act of 1993, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002, and the Companies Act of 2013 among them. These laws, in general, provided for a disjointed mechanism of debt restructuring, asset takeover, and awareness in order to encourage the repayment of outstanding debts.

As it can be seen, the inadequate treatment of insolvency and liquidation created a great deal of uncertainty in the legal system, possibly requiring a greater need to reform the insolvency Process. All of these legal processes have resulted in a large pile-up of non-performing assets in India, with Creditors waiting years to get their money back. IBC is a major reform to Indian Capitalism that has ever been witnessed as an attempt to reform the insolvency process for companies allowing credit to move more freely. Although it unifies the existing Legislation on corporate insolvency and personal insolvency, it has its own set of flaws.

IBC distinguishes between Operational Creditors and Financial Creditors. According to IBC, an individual to whom an operational debt is owed, as well as any person to whom such debt has been legally delegated or transferred, is referred to as an Operational Creditor. Whereas, an individual who owes a financial debt, including a person to whom the debt has been legally allocated or transferred, is called a Financial Creditor.

According to section 53 of the Code, Unsecured Financial Creditors have been placed above government obligations, while Unsecured Operational Creditors have been reduced to a residual entry which depicts a clear violation of the Right to Equality enshrined under Article 14 of the Indian Constitution. There can, indeed, be distinctions but the question of the hour is, should those distinctions extend to priorities in distributions during liquidation?

OBJECTIVES OF THE STUDY

The study has been undertaken to understand the position of Operational Creditors through the evolution of judgements and to establish the necessity of the amendment to provide Justice & Equity to Operational Creditors.

NEED OF THE STUDY

The purpose of the study is to examine the position of the Operational Creditors through Section 53 of the IBC. This paper highlights the loopholes in relation to the provisions of IBC differentiation and discrimination of Operational Creditors and proposes amendments to the law of insolvency.

METHODOLOGY

To explain the status of Operational Creditors and to establish their discrimination, a doctrinal and descriptive methodology has been followed.

SOURCES OF DATA

Secondary sources like articles, editorials, websites, and legislations framed by the Parliament of India have been used.

ANALYSIS

I. Operational Creditors and Financial Creditors–

An Operational Creditor is described as "an individual to whom an operational debt is owed, including any person to whom such debt has been legally assigned or transferred" in Section 5 (20) of the IBC. To be classified as an operational debt, the sum of the amount must fall within the definition of "claim" as specified in Section 3 (6) of the Code, and such a claim must fall within the definition of "debt" as defined in Section 3 (11) of the Code. Further, such debt must fall into one of the four categories set out in Section 5 (21) of the Code – Goods, Services, Employment & Government.

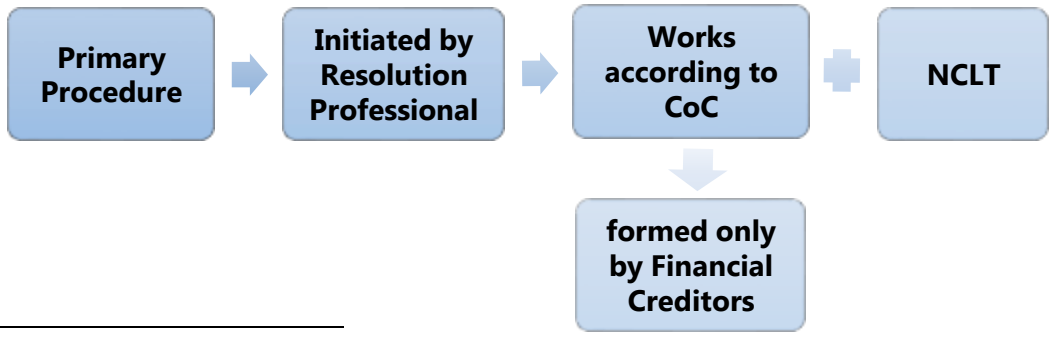
In the case of ***Innoventive Industries Ltd. v/s ICICI Bank***[1], it was held that the Operational Creditors are those Creditors to whom an operational debt is owed. An operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority.

Financial Creditor as defined in Section 5(7) of the Code, 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."

II. Differentiation & Discrimination of Creditors under IBC

For the first time, IBC differentiates between Operational Creditors and Financial Creditors based on the recommendations of the Banking Law Reforms Committee (hereinafter, referred to as "BLRC"). In general, Financial Creditors are those that have a purely financial arrangement with the entity, such as a loan or debt security. Operational Creditors are those that owe the Company money because of a business transaction.

The powers vested in Financial Creditors under Section 21 of the Code are broad enough to dominate & discriminate against Operational Creditors. This is because Section 21 establishes a Committee of Creditors (hereinafter, referred to as "CoC"), which will be formed by the Insolvency Resolution Professional after the Insolvency Resolution Professional has gathered all of the claims against the corporate debtor. Thereafter, the CoC will vote on an insolvency resolution and Repayment Plan against the corporate debtor. Section 21(2) of the Code specifically excludes Operational Creditors and requires all Financial Creditors of the concerned corporate debtor as members of the CoC, with the exception of certain groups of Financial Creditors or their representatives who are associated parties to the corporate debtor.



[1]Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407.

III. Powers of Committee of Creditors that is made up of Financial Creditors

1. Section 21(9) - The CoC has the right to provide some financial details to the Resolution Professional (hereinafter, referred to as "RP") during the CIRP procedure, as long as the information is specifically relevant to the corporate debtor.
2. Section 22(2) - The CoC may appoint a new interim resolution professional or substitute the current interim resolution professional at their first meeting by a majority vote of not less than 66 percent of the total voting share of the Financial Creditors who are all members of the CoC.
3. Financial Creditors who are members of the CoC have the right to vote at CoC meetings depending on their voting share and the amount of financial debt owed by the corporate debtor.
4. The Financial Creditors' CoC will vote on and approve the Resolution and Repayments Plan, subject to the final approval of the NCLT in question.
5. Prior approval of the CoC by a vote of not less than 66 percent of the total voting shares is needed to be obtained by the resolution professional during the course of CIRP, for the purposes of carrying out the acts outlined in Section 28(1): -
    - To collect excess interim finance in excess of the sum agreed at the CoC meeting,
    - To provide interests as a form of protection over the properties of the corporate debtor,
    - Where the corporate debtor is a corporation, to restructure the resources of the corporate debtor by buybacks, the issuance of new classes of securities, or additional securities or the redemption of securities already issued.
    - To keep track of the improvements the corporate debtor has made in terms of ownership.
    - To conduct related party transactions and issue guidance to the corporate debtor's financial institutions in the event of a debit transition in excess of the agreed-upon volume.
    - To make adjustments to the corporate debtors' Board of Management and Administration, as well as modifications to the corporate debtors' or subsidiaries' constitutional nature of instruments.
    - To assign financial or operating debts, as well as rights under material contracts, to someone other than in the ordinary course of business.

- Change the appointment or terms and conditions of the corporate debtor's statutory or interim auditors, or any other stated staff.

In the Code, an Operational Creditor's privileges are restricted to initiating a corporate insolvency procedure against the corporate debtor and include notice and attendance at each CoC meeting if the Operational Creditors' total dues are 10% or more of the debt. The final right is to appeal an Order authorising a Resolution Plan under Section 31 of the Code on the grounds that the corporate debtor's debts owed to Operational Creditors have not been adequately addressed in the resolution plan in the manner stated by the Board.

Hence, it is very much evident that an Operational Creditor is discriminated against as he cannot be a member of CoC and doesn't enjoy any of the above-discussed rights of Financial Creditors. In addition, Section 24(3)(c) limits the right of an operational creditor to attend such a CoC meeting, stating that Operational Creditors whose aggregate dues are at least 10% of the total debt payable by the corporate debtor may attend the CoC meeting but not participate or vote, as per Section 24(4).

IV. Justification of Discrimination by BLRC

The difference in their rights is justified by Banking Law Reforms Committee in its report as, the drafters aim was to protect the interest of all stakeholders through a process that focuses on the restructuring of the debt and revival of the Company first and only when it fails that the seek to liquidate all its assets. And Operational Creditors are generally uninterested in the revival of the Company but keen on liquidation.[2]

While the Banking Law Reforms Committee explains why the Code differentiates between Financial and Operational Creditors in terms of powers and priority, it remains silent when we see instances, where such broad powers granted to Financial Creditors, are improperly used and fail to protect the interests of Operational Creditors by imposing an arbitrary resolution.

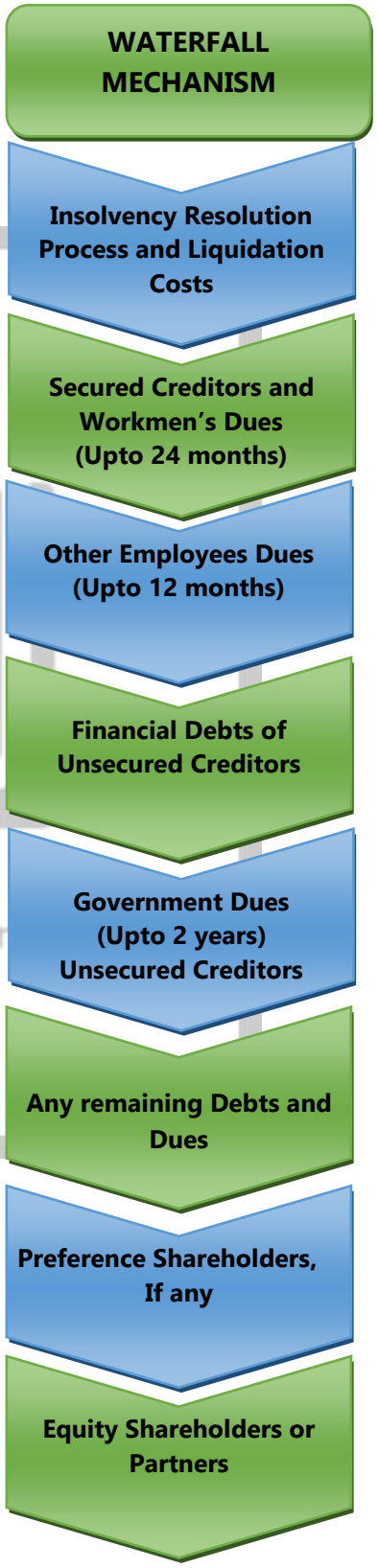
Even, when the sum owed exceeds the liquidation value and the liquidation value is completely depleted while paying Financial Creditors and other groups ranking higher in the

[2] *The report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design*, IBBI (Jan. 11, 2022, 10:04 AM), http://ibbi.gov.in/BLRCReportVol1_04112015.pdf.

order than the Operational Creditor, who receives no payment at all, the Code remains silent.

V. Prioritisation under Sec 53 – Waterfall Mechanism

The income from the disposal of a corporate debtor's liquidation assets must be allocated in a certain order of priority, according to Section 53 of the IBC. The costs associated with the insolvency settlement process and liquidation are at the top of the list, followed by workmen's dues for the 24 months prior to the liquidation commencement date and debts owed to the secured creditor(s), which are tied for second place.



Unsecured Financial Creditors are prioritised over government claims under Section 53 of the Code. These Unsecured Financial Creditors could also be associated parties, so the underlying financial transaction could be in the form of the accommodation offered by promoters or majority owners, often at the request of lending banks. Simultaneously, there is no mention of Operational Creditors' priority status, leaving them in the residual group of "any remaining debts and dues,"

VI. Analysis of position of the Operational Creditor through judgements –

- **Binani Industries Judgement** –

In this case, the Financial Creditor, Dalmia Cements, submitted a resolution proposal against Binani Cements that was found to be discriminatory because it neglected the

interests of the Operational Creditor, Ultra Tech Cements. As a result, the NCLAT's ruling, which was upheld by the Supreme Court, stated that in a resolution phase, financial and operational debts must be treated equally, and any resolution plan found to be discriminatory or failing to safeguard the interests of Operational Creditors must be rejected by the adjudicating authority in violation of the code.

If the 'Operational Creditors' are ignored and provided with 'liquidation value' on the basis of misplaced notion and misreading of Section 30(2)(b) of the 'I&B Code', then in such case no creditor will supply the goods or render services on credit to any 'Corporate Debtor'. All those who will supply goods and provide services will ask for advance payment for such supply of goods or to render services which will be against the basic principle of the 'I&B Code' and will also affect the Indian economy. Therefore, it is necessary to balance the 'Financial Creditors' and the 'Operational Creditors' while emphasizing on maximization of the assets of the 'Corporate Debtor'. Any 'Resolution Plan' if shown to be discriminatory against one or other 'Financial Creditor' or the 'Operational Creditor', plan can be held to be against the provisions of the 'I&B Code'.[3]

Although the decision in the Binani Industries Case, as pronounced by the NCLAT, Delhi and upheld by the Supreme Court, is well-defined and seeks to address the nonsensical discrepancy between these two groups of Creditors, one question remains unanswered: whether Operational Creditors are prioritised over Financial Creditors to be paid on an immediate basis, and if Section 53 of the Code (waterfall mechanism) cannot be relied upon to authorise a resolution proposal, is it legally valid and in violation of Article 14 of the Constitution?

- **<u>Essar Steel Judgement</u> –**

In the following case, the Supreme Court ruled that the principle of "equality" should not be interpreted to mean that under a settlement agreement, all Creditors must be entitled to equal recovery. The Supreme Court stressed that operating Creditors were envisioned as a distinct class of Creditors in the IBC. Furthermore, certain safeguards were incorporated into the IBC to ensure equal and equitable treatment of Operational Creditors' dues, such as priority in recovery of dues and mandatory disclosure in a resolution plan regarding the treatment of Operational Creditors' interests.

[3] Binani Industries Ltd. v. Bank of Baroda & Anr., Company Appeal (AT) (Insolvency) No. 82 of 2018.

It was further held that the CoC could accept resolution plans that included differential payments to financial and Operational Creditors. While the Supreme Court in Essar Steel overturned the NCLAT's principle of fair treatment for all Creditors, it did recognise the Operational Creditors' position in holding the corporate debtor as a going concern. As a result, the Court recognised the importance of safeguarding their rights.

The decision in Essar Steel upholds the CoC's absolute independence in determining how funds are distributed. However, such a decision should demonstrate proper consideration of the IBC's goals, which are: (i) maximising the value of the corporate debtor's assets; and (ii) balancing the interests of all stakeholders. It's worth noting that Arcelor Mittal's final resolution strategy resulted in a 20% recovery for Operational Creditors with admitted claims, compared to an 89 percent recovery for almost all secured Financial Creditors. This was a major departure from the Supreme Court's decision in Swiss Ribbons, which based its decision on the "roughly fair" treatment of Operational and Financial Creditors' debts. It continues to be debatable whether such a large disparity in recovery may be deemed "equitable" for Operational Creditors.

The Supreme Court correctly upheld the principle of equality among "similarly placed Creditors" (rather than "all"), as well as the constitutionality of the amended Section 30(2)(b) of the IBC in Essar Steel. This included owing operating Creditors a minimum of liquidation value. The Supreme Court, on the other hand, has refused to properly recognise the interests of Operational Creditors and to establish accompanying guidelines to ensure that they are handled equally in an insolvency resolution phase under the IBC.

- **Swiss Ribbon Case** –

In the following case, the Supreme Court expressly considered whether the absence of representation of organisational Creditors on the CoC was a violation of Article 14 of the Indian Constitution in Swiss Ribbons (protection from discrimination). The Supreme Court based its decision on the reasoning for the exclusion of Operating Creditors from the CoC, which was based on the BLRC report, which was the precursor to the IBC. Financial Creditors, according to the BLRC, could determine the feasibility of a resolution plan because workers had been trained to do so.

Operational Creditors, on the other hand, are only interested in retrieving the money they owe for their goods and services and are usually unable to determine a Company's profitability and feasibility. However, such a reason seems flimsy. The BLRC assumes that, precisely because Financial Creditors have the ability to determine a plan's effectiveness and feasibility, they will do so and base their decision to accept or reject a plan primarily on those factors.

"*The NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the committee of Creditors, always gone into whether Operational Creditors are given roughly the same treatment as Financial Creditors, and if they are not, such plans are either rejected or modified so that the Operational Creditors 'rights are safeguarded. It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to Operational Creditors, being not less than liquidation value. Further, on 05.10.2018, Regulation 38 has been amended. The aforesaid Regulation further strengthens the rights of Operational Creditors by statutorily incorporating the principle of fair and equitable dealing of Operational Creditors 'rights, together with priority in payment over Financial Creditors. For all the aforesaid reasons, we do not find that Operational Creditors are discriminated against or that Article 14 has been infracted either on the ground of equals being treated unequally or on the ground of manifest arbitrariness".*[4]

The Binani & Essar Steel Judgements strike at the heart of the stated aim of IBC "to balance the interests of all the stakeholders", but the Supreme Court upheld the Constitutional validity of Sec 53 in Swiss Ribbons Pvt. Ltd. v Union of India and the claim of the distinction between financial Creditor and Operational Creditor was rejected on the basis of the grounds of intelligible differentia under Article 14 of Constitution of India, deteriorating the purpose of the Code.

Violation of Article 14 of the Constitution.

The differentiation leading to discrimination of Operational Creditors in the insolvency process is in contravention to the principles of natural justice and equality enshrined in the Constitution. The IBC's self-proclaimed mission is to "maximise the value of the corporate

[4]Swiss Ribbons Pvt. Ltd. v. Union of India, Writ Petition (Civil) No. 99 of 2018.

debtor's properties" and "balance the interests of all stakeholders." In light of this, the complete disenfranchisement and disrespect for the Operational Creditors' interests appear unjustifiable.

Unfortunately, rather than considering options to ensure that Operational Creditors are treated fairly, the Parliament has tried to further restrict their rights. This was accomplished by adding a statement that delivery in compliance with Section 30(2)(b) of the IBC would be considered "fair and equitable." Though the reasoning of BLRC in differentiating the Operational Creditors is understandable, the differentiation to the extent of prioritization under Section 53 of IBC is unjustifiable.

Home Buyers as Financial Creditors – Case Study.

In this case, Pioneer Urban Land and Infrastructure Limited (hereinafter referred to as "the Petitioner") filed various writ petitions in the Supreme Court of India against the Union of India (hereinafter referred to as "the Respondent") to challenge the constitutional validity of the amendments made under Sections 5, 21, and 25 of the I&B Code, 2016 in relation to the Insolvency Committee Report, which suggested home buyers of Real Estate projects to be co-owners of the projects.

In Nikhil Mehta and Sons (HUF) v. AMR Infrastructure Ltd., the NCLAT ruled that the money raised by the developer from allottees under the assured return plan had the commercial effect of borrowing. Furthermore, the sum raised by the developer was included in the annual return as commitment charges under the heading Financial Cost, indicating to the NCLAT that such allottees were "financial creditors" under Section 5(7) of the I&B Code. In the case of Chitra Sharma & Ors. v. Union of India, the Supreme Court also enabled home buyers to participate in creditor committees to protect their interests.

According to the Insolvency Committee Report, modifications to the I&B Code are needed to clarify the status of Home Buyers under the I&B Code, based on the foregoing decisions. As a result, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 (hereinafter referred to as "The Amendment Ordinance") was enacted, allowing Home Buyers to be treated as Financial Creditors and to be represented in Committees of Creditors by an Authorized Representative. And the said writ petitions were filed.

1. *Whether under the 2016 I&B Code, are home buyers deemed "financial creditors"?*

2. *Is the addition of an explanation to Section 5(b)(f) for the purpose of clarification or to broaden the scope of Section 5?*
3. *Whether I&B Code of 2016 will override the effect of RERA?*
4. *Whether treating a home buyer as a financial creditor violates the Indian Constitution's Article 14, 19(1)(g), and 300-A.*

Regarding the first issue, the Supreme Court ruled that, under Section 5 of the I&B Code, a home buyer can be designated a "financial creditor." A Financial Creditor is a person who owns Financial Debt under Section 5(7) of the Code, and "Financial Debt" is a debt that is paid against consideration for the "time value of money," which simply means that lenders lent money to the borrower to use, and after use, the borrower is required to repay the lender such money or equivalent of money under Section 5(8) of the Code.

In this case, Home Buyers/Allottees pay a significant sum of money to the Real Estate Developer in advance of the Project's completion in exchange for the Allottees receiving a Flat/Apartment. Allottees now pay a lower instalment for the completion of their flat than they would have to pay if they bought a premade flat, allowing them to gain more value for their money. As a result, the court determined that the current definition of "financial debt" is sufficient to include amounts obtained from home buyers/allottees under a real estate project and that they should be considered as Financial Creditors under the I&B Code.

Further, the court examined the recommendation contained in the Insolvency Committee Report, which stated that delays in the completion of flats/apartments have become a common occurrence, negatively affecting allottees/home buyers who contribute significantly to the construction of flats/apartments. As a result, it was felt necessary to define home buyers/allottees as "Financial Creditors" so that they can initiate CIRP under Section 7 of the I&B code and have a rightful place in the creditors' committee to decide the future of the building construction company in regards to the execution of Real Estate Projects.

The petitioner argued that Section 5(8)(f) should be interpreted in accordance with the principle of noscitur a sociis, which states that if a statute is defined loosely or ambiguously, it should be interpreted in accordance with the statutes surrounding it. As a result, the definition of "Financial Debt" should be interpreted as a loan of money given with or without interest that should be returned in the form of money only.

The Supreme Court, however, disagreed with the petitioner's argument, stating that Section 5(8)(f) is a residuary provision that is catch-all in nature, and that the words "any amount" or

"any transaction" not covered by any other clause will be considered "Financial Debt" if they have the effect of "Commercial Borrowing." As a result, the advance paid by the Home Buyer to the real estate developer in exchange for a flat or apartment will be regarded "borrowing." Furthermore, both parties have a commercial interest in this project because the Real Estate Developer will profit from the sale of such an apartment, and the Home Buyer will profit because he will receive a flat/apartment for a much lower price than a readymade flat, giving the allottee the time value for money.

As a result, even without resorting to the explanation supplied by the amendment, the monies raised from allottees by real estate developers under real estate projects are included within the scope of section 5(8)(f) of the Code. As a result, the explanation's deeming fiction serves to establish beyond a reasonable doubt that allottees are to be treated as financial creditors under Section 5(8)(f) of the Code. As a result, the clarification provided to Section 5(8)(f) of the Code by the modification does not increase the scope of the original Section; rather, it clarifies any potential ambiguity.

The petitioner stated that RERA is a special legislation since it deals with real estate development projects, but I&B Code is a general statute because it deals with insolvency, and so RERA will take precedence over I&B Code. The Supreme Court, on the other hand, did not agree with the petitioner's argument and gave two reasons why the I&B Code will take precedence over RERA.

To begin with, Section 88 of RERA states that the provisions of RERA are in addition to and not a relaxation of any other requirement, hence the remedies available under RERA will be in addition to the remedies provided under the I&B Code. Second, RERA's non-obstante clause took effect on May 1, 2016, whereas the I&B Code's non-obstante clause took effect on December 1, 2016. Furthermore, the modification that added an explanation to Section 5(8)(f) took effect on June 6, 2018, demonstrating that parliament was aware of RERA's provisions and nonetheless passed this amendment so that some definition of the I&B Code may be applied when necessary. As a result, both of the above tests are met, and because the I&B code was updated later in time, it will be given precedence over RERA.

Furthermore, the goals of both the I&B Code and RERA are very distinct, as they operate in very different areas. The I&B Code governs in rem proceedings in which the goal is to rehabilitate the corporate debtor through a resolution plan so that it can be rescued and continue as a going concern, benefiting all parties involved. RERA, on the other hand,

safeguards the rights of individual investors in real estate developments by requiring the promoter to follow its requirements to the letter.

Concerning the fourth issue, the petitioner argued that treating allottees/home buyers as Financial Creditors is in violation of Article 14 of the Indian Constitution, because unequals are treated equally and equals are treated unequally because there is no discernible difference between Financial Creditor and Operational Creditor, and such differentiation has no bearing on the Code's goal. The Supreme Court, on the other hand, did not agree with the petitioner's argument, saying that it is impossible to say that there is no discernible difference that distinguishes a Home Buyer from other Financial Creditors, and provided several reasons why real estate developers are different from operation debtors.

In operational debt, the creditor is the one who provides the products and services, and the debtor is the person who must pay for them. In the case of a real estate developer, the debtor is the developer, who is the supplier of the flat/apartment, because the home funds his own apartment by paying sums in advance to the developer for the construction of the building in which his apartment will be situated. Furthermore, the corporate debtor has no interest or involvement in the operational creditor. In the instance of a real estate developer, the allottee of a real estate project is extremely concerned with the financial health of the corporate debtor, as the real estate project may not be finished on time otherwise.

Furthermore, the consideration for operational debt is just the items or services that are either sold or obtained from the operational creditor, therefore there is no consideration for the time value of money. In the case of a real estate developer, money is raised from the allottee against consideration for the time value of money, because even the total consideration agreed at the time when the flat/apartment is incomplete is significantly less than the price the buyer would have to pay for a ready flat, and thus the buyer gains the time value of money.

As a result of the ongoing reasoning, the court concluded that these are the fundamental differences on the basis of which a real estate developer is classified as a Financial Debtor, and that it is impossible to argue that the classification of a home buyer is not based on discernible differences. Furthermore, the court stated that in terms of unequals being treated equally, property buyers/allottees might be compared to other individual financial creditors such as debenture holders and fixed deposit holders who had provided the Corporate Debtor a certain amount. Thus, the classification of home buyers/allottees as individual Financial Creditors, such as debenture holders and fixed deposit holders, demonstrates that home

buyers are part of a larger class of Financial Creditors, and thus the classification of home buyers/allottees as Financial Creditors does not violate Article 14 of the Indian Constitution.

As a result of the above reasoning, it cannot be said that Article 19(1)(g) has been violated and is not protected by Article 19(6) because the amendment was made in the public interest, and thus it cannot be said to be an unreasonable restriction on the Petitioner's fundamental right under Article 19(1)(g). In addition, the court found that Article 300-A of the Indian Constitution was not breached because no one was dispossessed of their property without a valid constitutional law.

CONCLUSION -

Under the Code, the distinction between Financial and Operational Creditors is fundamental. When both Operational and Financial Creditors are unsecured it is evidently a case of discrimination and not differentiation. Any creditor's ultimate objective, whether financial or operational, is to maximise recovery. The IBC provides no incentive mechanism to promote such a shift and ensure that Financial Creditors do not behave exclusively in their own self-interest.

An economy is based on the provision of goods and services, not just the financial system. Operational Creditors emerge when goods and services are provided on credit. The supply of goods and services on credit becomes a part of the entity's working capital, serving the same function as financial lenders. The real sector of any country's economy is its foundation; the financial sector is significant, but not at the expense of the real sector. The real sector includes suppliers of goods and services.

In spite of serving the purpose of the Code i.e., to balance the economy, the Code deteriorates it by differentiating the Operational Creditors. The differentiation, discriminating Operational Creditors doesn't serve the purpose of the Code in any manner and the distinction based on the recommendations of BLRC is in no way intelligible, even if it is, it lacks economic rationale.

Mere Success of the development of the Law of Insolvency cannot be celebrated at the cost of the interests of Operational Creditors. The end of the war of priority between Financial and Operational Creditors is like Jackal waiting for grapes, unless and until these contradictory

viewpoints are confronted with a proper and clarified statute. Hence, there is a dire need for an amendment that would be fair and justifiable to Operational Creditors. Until then the Operational Creditors are lost in the by lanes of equality.

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