

IBC tweaks valid, says SC, rejects homebuyers' plea

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New Delhi: The Supreme Court on Tuesday upheld the amendments in Insolvency and Bankruptcy Code (IBC) under which it has been made mandatory that a minimum 100 or 10% of the total homebuyers of a project were needed to initiate insolvency proceedings against a builder for not delivering flats or commercial shops on time.

A bench of Justices R F Nariman, K M Joseph and Navin Sinha ruled that the amendment in the law is valid and there was no illegality. The court dismissed a batch of petitions filed by homebuyers from across the country questioning the validity of the amendment.

After the homebuyer was brought within the ambit of financial creditors under IBC, insolvency proceedings could be triggered off by even one aggrieved buyer. It was alleged that the law could be misused and even one aggrieved homebuyer could initiate insolvency proceedings which could affect the interest of other homebuyers. The law thereafter was changed and Sections 3, 4 and 10 were amended.

Approving the new law, the court said, "It is, as if, the legislature intended to apply its brakes in the form of asking the applicants to obtain the consensus of a minimum number of similar stakeholders, before the applications



'NO ILLEGALITY'

could be further processed."

The bench also upheld the validity of Section 32A of IBC as per which the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under Section 31.

"The boundaries of this court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code... the interests of all stakeholders including the imperative need to attract resolution applicants who would not shy away from offering reasonable value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this court to interfere," the bench said. "The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away," it said in its 465-page verdict.

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