

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2017**

***[under Article 32 of the Constitution of India]***

**IN THE MATTER OF :**

**Amrapali Silicon City Flat Owners'  
Welfare Society**

**... Petitioner**

**Versus**

**Union of India & Ors**

**... Respondents**

**With**

**IA No. \_\_\_\_\_ OF 2017  
(APPLICATION FOR STAY )**

**PAPER BOOK**

***(FOR INDEX PLEASE SEE INSIDE)***

**ADVOCATE FOR THE PETITIONER: ASHWARYA SINHA**

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**PROFORMA FOR FIRST LISTING**

SECTION: PIL

**The case pertains to (Please tick/ check the correct box):**

- ☐ Central Act: (Title):
- COI
- ☐ Section:
- Sec. 14,19,21 & 32
- ☐ Central Rule : (Title)
- NA
- ☐ Rule No(s):
- NA
- ☐ State Act: (Title)
- NA
- ☐ Section:
- NA
- ☐ State Rule: (Title)
- NA
- ☐ Rule No(s):
- NA
- ☐ Impugned Interim Order: (Date)
- NA
- ☐ Impugned Final Order/ Decree: (Date)
- NA
- ☐ High Court : (Name)
- NA
- ☐ Names of Judges:
- NA
- ☐ Tribunal/ Authority: (Name)
- NA
- ☐

1. Nature of matter: ☐ **Civil** ☐ **Criminal**

2. a) Petitioner/ appellant No. 1:
- Amrapali Silicon City Flat Owners’ Welfare Society
- b) e-mail ID:
- ashwarya.sinha@gmail.com
- c) Mobile phone number:
- 9818911510

3. a) Respondent No.1:
- UOI &Ors
- b) e-mail ID:
- NA
- c) Mobile phone number:
- NA
4. a) Main category classification:
- 08 PIL matters
- b) Sub classification:
- 0812 Others
5. Not to be listed before:
- NA

6. Similar/ Pending matter: NA
7. **Criminal Matters:** NA
- a) Whether accused/ convict has surrendered: ☐ Yes ☐ No
- b) FIR No. NA
- c) Police Station: NA
- d) Sentence Awarded: NA
- e) Sentence Undergone: NA
8. **Land Acquisition Matters:** NA
- a) Date of Section 4 notification:
- b) Date of Section 6 notification:
- c) Date of Section 17 notification:
9. **Tax Matters:** State the tax effect: NA
10. **Special Category** (first petitioner/ appellant only): NA
- ☐ Senior Citizen > 65 years
- ☐ SC/ST
- ☐ Woman/ Child
- ☐ Disabled
- ☐ Legal Aid case
- ☐ In Custody
11. Vehicle Number (in case of Motor Accident Claim matters): NA
12. Decided cases with citation: NA

Date: .10.2017

**AOR for Appellant (s)/ Appellant (s)**

Name: Ashwarya Sinha

Registration No.: 2084

Email: ashwarya.sinha@gmail.com

Mob: 9818911510

## **SYNOPSIS & LIST OF DATES**

The present writ petition, in public interest, under Article 32 of the Constitution of India has been preferred challenging the vires of Section 6,7,10,14 and 53 of the Insolvency and Bankruptcy Code, 2016 as the same are *ultra vires* being arbitrary, illegal, discriminatory and violative of Article 14,19 & 21 of the Constitution of India. It is stated that thousands of people /home buyers from all over the Country had booked the flats who were not only denied their rightful prayer of getting possession of the flat booked but were also illegally and arbitrarily stopped/ restrained from invoking their statutory legal remedy available in law in view of the moratorium order passed by NCLT, New Delhi under Section 14 of the Insolvency and Bankruptcy Code, 2016 without even complying with the cardinal principles of natural justice.

The Petitioner society being a registered society under the Societies Registration Act, 1860 having registered office at 11-C, Pocket B, Mayur Vihar Phase 2, Delhi 110091. The petitioner society represents the interests of 445 members. It represents the interest of thousands of flat buyers of projects as floated by Amrapali Silicon City Pvt. Ltd. It is respectfully submitted that the regime brought about by the Insolvency and Bankruptcy Code, 2016 and the order as have been passed by the New Delhi Bench of the National Company Law Tribunal in the Petition titled '*Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*' C.P.No. IB-121-PB/2017', have left the flat buyers remediless. The actions as have been taken under the code has led to a situation, wherein the lifelong savings



of the flat owners will go to waste with no prospects of them recovering the same, if this Hon'ble Court does not save their interests.

This is a classic case of discrimination as well as denial of access to justice to home buyers and utter disregard to their rights as consumers in view of the provisions of the Insolvency and the Bankruptcy Code, 2016, specifically section 6, 7, 10, 14(1)(a) and 53 of the Code. The entire action flows from the collusive petition preferred by Bank of Baroda for a debt of an amount of Rs.72 crores approx.

A Petition bearing C.P. No. IB-121-PB/2017 titled '*Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*' was filed before the Ld. National Company Law Tribunal, New Delhi by the Respondent no. 11 (Bank of Baroda) in its capacity as financial creditor, u/s 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process in respect of Respondent no. 3 company i.e. Amrapali Silicon City Pvt. Ltd. The aforesaid application was allowed by the NCLT New Delhi leading to initiation of corporate insolvency resolution process and Mr. Rajesh Samson appointed as the Interim Resolution Professional (IRP) as contemplated under Sections 16, 17, 18, 20 & 21 of the Code. Pursuant to this, order of moratorium u/s 14 of the Code was passed whereby moratorium was imposed on institution of suits and continuation of all pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

The Respondent no. 3 herein was incorporated in February, 2010 as a special purpose company for development of residential real estate. The Respondent no. 3 company was created by a consortium consisting of the following

<i>S. N</i>	<i>Name of Share-holder</i>	<i>Percentage of Share holding</i>	<i>Status</i>
1	M/S Ultra Home, Construction Private Limited	50%	Lead Member
2	M/S Jotindra Steel and Tubes Limited	21.43%	Relevant Member
3	M/S Vidya Shree Buildcon Private Limited	14.28%	Relevant Member
4	M/S Rinku Clothing Creation Private Limited	14.29%	Relevant Member
	Total	100%	

Further the Respondent no 3 company consists of the following directors:

1	Mr. Anil Kumar Sharma, 83, AGCR Enclave, Delhi 110092.
2	Mr. Shiv Priya, Flat No. 803, Amrapali Exotica, E-08, Sector-50.

As a result of this in July, 2010 Plot No. GH-01/A admeasuring 1,76,758.70 sq metres was allotted in sector 76, Noida to the Respondent no 3 as the lessee, by NOIDA, i.e. Respondent no 15 under group housing scheme GH-2009-VIII for a period of 90 years for a premium of Rs.360,95,89,412. Subsequently, in the same year, applications were invited from prospective home buyers in the proposed hi-tech townships consisting of luxurious 2bhk/3bhk/4bhk and other amenities. The proposed apartment units were to be delivered for possession between 30-46 months of allotment. The proposed townships consist of

Phase 1, Phase 2 and Phase 3 (known as Crystal Homes) . The proposed Phase 1 has a total of 21 towers out of which over 600 flats are yet to be delivered for possession. The proposed phase 2 and 3 are totally unconstructed and Phase 2 alone has all of its 871 flats yet to be delivered for possession. It is pertinent to note that most of the flat buyers of Phase -II have paid 90% of the total consideration of the flats as early as between July - October, 2013, hoping to receive their allotted flats by 2014, however the Respondent no 3 has indefinitely extended the time period of delivery of the flats, causing great injustice to the present Petitioner society and other home buyers. Aggrieved by the inordinate delay in handing over the flats, the Petitioner society filed a consumer complaint titled 'Amrapali Silicon City Flat Owners Welfare Society vs. Amrapali Silicon City Pvt. Ltd' CC.No. 2022/2016 before the Hon'ble NCDRC, wherein notice has been issued and is awaiting further adjudication.

In the month of August, 2017 the Bank of Baroda initiated corporate insolvency resolution process against the Amrapali Silicon City Pvt Ltd for an alleged default of Rs. 71,15,43,682 (Rs. 59,38,00,000 being the principal amount) before the NCLT, New Delhi The aforesaid application was admitted by the NCLT New Delhi leading to initiation of corporate insolvency resolution process against Amrapali Silicon City Pvt Ltd. The entire action of Respondent No. 3 (M/s Amrapali Silicon City Pvt. Ltd.) and Respondent no 11 (Bank of Baroda) is on the face of it collusive, malafide as for a small amount the Respondent no 11 initiated corporate insolvency resolution process against the Respondent no 3. It is

submitted that the same was done without even affording an opportunity to the home buyers such as the Petitioner society to object to the insolvency resolution process before it was initiated, in spite of the fact that the Respondent no. 3 herein has defaulted in timely delivery of the flats as obligated under the respective Agreements or refunding the amount to the home buyers, which is much larger in quantum as compared to the claim amount of the Bank of Baroda. It is submitted that despite having sufficient personal guarantees against the Loan Agreement between the Respondent no 11 bank and the Respondent no 3 company, corporate insolvency resolution procedure has been initiated against the Respondent no 3.

The entire action is not only unjust, unfair and unreasonable, but also illegal and discriminatory qua the consumers such as the Petitioner society and other similarly situated persons. It amounts to denial to access to justice to consumers who hold a major stake in the business of the Respondent no. 3 Company. It is submitted that the Hon'ble Supreme Court in catena of decisions has held that access to justice is a human right and aggrieved person cannot be left without a remedy. Access to justice is a human right and in certain situation it may be a fundamental right. Refer (2006) 1 SCC 442, (2007) 4 SCC 241, (2009) 2 SCC 784.

It is submitted that the Insolvency and Bankruptcy Code of 2016 caters to only three category of persons i.e. corporate debtor, financial creditor, and operational creditor. It neither includes nor provides for any other major stakeholders such as the flat buyers or home owners.

Thus, the Code can by no stretch of imagination be made applicable to home buyers and/or flat owners. It must be stated here that the rights of consumers are statutorily protected by way of beneficial legislations and special acts addressing their grievances under the Consumer Protection Act and the Real Estate (Regulation and Development) Act, 2016.

Further, it is relevant to point out that NCLT as well as NCLAT in the case of *Col. Vinod Awasthi v. AMR Infrastructure Limited*, C.P. No.(IB) 10/PB of 2017 while dismissing the petition instituted under Section 9 of the Insolvency and Bankruptcy Code (hereinafter referred to as 'IBC Code') at the admission stage itself held that a flat purchaser does not fall either in the category of financial creditor or an operational creditor as defined under Section 5 (7), (8), (20) & (21) of the IBC Code. Furthermore, it must be noted that even under section 6 of the Code, which provides who may initiate corporate insolvency resolution proceedings, the Code does not consider a consumer as a creditor who may initiate such proceedings. On the other hand, the provision specifically provides that only a financial creditor, operational creditor or the corporate debtor itself may initiate such proceedings. Thus if the IBC does not apply to the purchasers then how Section 14 can be imposed against them.

It is noteworthy that under section 10 of the Code, a Corporate Debtor may himself file an application to initiate corporate insolvency resolution process and if the application is admitted, get a moratorium on all other proceedings pending against him. This may result in scrupulous corporate person to use the provisions of the Code in such a

way, which may cause colossal damage to persons who have transactions other than in the nature of debtor-creditor, with the corporate person; for instance the consumers.

Thus, a piquant situation has arisen for a large section of flat/home buyers which involves public injury and public interest by denying them to be included under the definition and interpretation of 'Creditor' and at the same time denying them their statutory and legal right of a consumer as defined under Section 2(d) for invoking or proceeding with the pending suits under the Consumer Protection Act which is a beneficial legislation. There is another Parliamentary enactment which is also a special act and a beneficial legislation known as the Real Estate (Regulation and Development) Act, 2016 (hereinafter to be referred as 'RERA'), which is meant for the benefit of flat or home purchasers. It protects in an efficient and transparent manner the interest of consumers in real estate sector and has provided statutory adjudicating mechanism for speedy redressal of home buyer grievances. It has also established appellate tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and Adjudicating Officer and for matters connected therewith.

RERA Act, 2016 further safeguards ongoing projects also and has made it mandatory under Section 4(2)(D) to deposit 70% of the amount realized from allottees in a separate account which can be utilized only for the construction of the said project and the same cannot be deviated. It also provides under Section 7(4)(b) & (c) to facilitate the remaining development work for completing the project under Section 8. Under

Section 18, the RERA Act fastened the liability of promoter/builder to refund the amount deposited by the home buyers along with interest and further to compensate them. This act also has an overriding effect under Section 89.

However, the Insolvency and Bankruptcy Code by virtue of Section 14 (1)(a) suspends the rights to seek redressal even from the consumer forum which includes pending suits and decrees etc. At the same time Section 238 gives an overriding effect to the Code, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having an effect by virtue of such law. There is a conflict between RERA Act 2016 which also under Section 79 read with Section 89 provides for bar of jurisdiction of civil court and gives an overriding effect in identical terms.

Be that as it may, the vulnerability stems from the fact that the home buyers being outside the scope of the Insolvency and Bankruptcy Code will not even be considered for payment of dues under the Insolvency Code. Section 53 of the IBC code speaks about the distribution of assets in the order of priority and the home buyers do not figure from 'A to H' when it comes to distribution pursuant to the sale of the liquidated assets. Thus, the provisions of the Code will become a device to defeat the rightful statutory and legal claim of large numbers of flat owners/buyers, as consumers, who have invested thousands of crores of life savings, by initiating collusive proceedings such as in the present matter at hand.

The home buyers who are yet to get possession of their houses are further put to double jeopardy and are asked to continue to pay the EMI to the banks, from which they may have taken loan to purchase the houses proposed to be sold by the Respondent no. 3 along with interest without any assurance of completion of the project. The fact remains that the financial experts are in the know-how that the Respondent No.3's, books of account clearly reflect that it does not have enough money to complete the project. The remedy lies either in amending the code to create a separate category of home buyers and to bring in new definition that clubs the home buyers as a secured creditor.

It is also relevant to point out that on 16<sup>th</sup> August 2017 the Insolvency and Bankruptcy Board of India through its Chairperson in exercising its power conferred by Clause (T) of Sub Section (1) of Section 196 read with Section 240 of the IB Code, 2016 brought about an amendment to the Regulation 2017 and inserted Regulation 9(A) to include claims by "other creditors". It also issued form (F) to be filled up by creditors other than financial creditors and operational creditors. However, it must be submitted here that nowhere in the Code or the notification dated 16.08.2017 has the term "other creditor" been defined to include consumers such as the Petitioner society and other home buyers.

In a nutshell, the home buyer and an allottee of flat can, therefore, neither proceed before the consumer forum nor can he/she initiate insolvency proceeding against the real estate companies against corporate debtors nor is a consumer declared to be a secured creditor



and thus the consumer is left remediless which is illegal, arbitrary and against the settled principles of law and thus violates Article 14 & 21 of the Constitution of India.

The petitioner society are denied their statutory, legal and vested right which is in violation of Article 14 of the Constitution of India and at the same time defeats the beneficial legislation and the protection as provided under the Consumer Protection Act, 1986 and RERA Act, 2016 which is impermissible in law. It is submitted that, in any case, it is settled position of law that harmonious construction is to be given to legislations.

The rights of home buyers/flat owners/allottees are proprietary rights and they have legal rights on the flats allotted to them. They cannot be equated as a creditor who only has an interest in the profit or loss of the company and return of their investment in the company. The flat buyers such as the Petitioner society and the others similarly situated are persons who advanced money to the Respondent company to eventually be able to use the houses constructed by the Respondent as their homes.

That a similar writ petitioned titled 'Chitra Sharma vs. Union of India' W.P.(C) 744/2017 was filed before the Supreme Court by numerous flat buyers against defaulting company namely, M/S Jaypreet Infratech Limited. The Hon'ble Supreme Court keeping in mind the interest of the buyers was pleased to direct the following

*“a) The IRP shall forthwith take over the Management of JIL. The IRP shall formulate and submit an Interim Resolution Plan within 45 days before this*

*Court. The Interim Resolution Plan shall make all necessary provisions to protect the interests of the home buyers;*

*b) Mr. Shekhar Naphade, learned senior counsel along with Ms. Shubhangi Tuli, Advocate-on-Record, shall participate in the meetings of the Committee of Creditors under Section 21 of the Insolvency and Bankruptcy Code, 2016 to espouse the cause of the home buyers and protect their interests;*

*c) The Managing Director and the Directors of JIL and JAL shall not leave India without the prior permission of this Court;*

*d) JAL which is not a party to the insolvency proceedings, shall deposit a sum of Rs. 2,000 crores (Rupees two thousand crores) before this Court on or before 27.10.2017. For the said purpose, if any assets or property of JAL have to be sold, that should be done after obtaining prior approval of this Court. Any person who was a Director or Managing Director of JIL or JAL on the date of the institution of the insolvency proceedings against JIL as well as the present Directors/Managing Director shall also not leave the country without prior permission of this Court. The foregoing restraint shall not apply to nominee Directors of lending institutions (IDBI/ICICI/SBI);*

*e) All suits and proceeding instituted against JIL shall in terms of Section 14(1)(a) remain stayed as we have directed the IRP to remain in Management.*

*Be it clarified that we have passed this order keeping in view the provisions of the Act and also the interest of the home buyers”*

The Constitution Bench in *National Textile Workers Union v. P R Ramakrishna & Ors.* reported at (1983) 1 SCC 228 in a similar situation in a winding up petition has held as under:-

*“It would be contrary to every recognised principle of fair judicial procedure and violative of the rule of audi alteram partem which constitutes one of the basic principles of natural justice, to deny to the workmen the right to be heard before an order is made by the Company Judge prejudicially affecting their interest.*

*Natural justice is not exclusively a principle of administrative law. It is first a universal principle and is that part of the judicial procedure which is imported into the administrative process because of its universality. It is of the essence of most systems of justice and courts, even more than administrators, must observe it. It will be a travesty of justice to deny natural justice on the ground that courts know better.”*

The aforesaid ratio applies to the flat owners/allottees. The denial of the cardinal principles of natural justice, to be heard, is clearly in violation of Article 14 of the Constitution. The decision of the NCLT, New Delhi and the provisions of the Insolvency and Bankruptcy Code, 2016 as they exist, are liable to cause severe and irreparable loss to thousands of home buyers who have booked properties with the Respondent no. 3 company by investing their hard-earned money and life-long savings. The order of the Ld. National Company Law Tribunal and the provisions of the Insolvency and Bankruptcy Code, 2016 will deprive the consumers such as the Petitioner society of their rights, their property and its operation will be contrary to public interest.

#### **LIST OF DATES**

1986	The Consumer Protection Act, 1986 was enacted with a view to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for the matter connected therewith. Among the many objects and reasons for the enactment of the act, the most essential object was to promote the right of the consumers to be heard and to be assured that consumer interests will receive due consideration at appropriate forums; and the right of consumers to seek redressal against unfair trade practices or unscrupulous
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exploitation of consumers

- 5.2.2010 Acceptance letter issued by Respondent 15, NOIDA for allotment of Group Housing Plot no. GH-01/A in Sector 76, Noida vide letter no. Noida/GHP/2009-(VIII)/2010/4929 to the Respondent no 3, Amrapali Silicon City Pvt Ltd.
- 20.2.2010 Respondent No. 3, Amrapali Silicon City Pvt. Ltd. was incorporated by a consortium of companies under the Companies Act, 1956 having authorized share capital of Rs. 2,00,00,000 and paid up share capital of Rs. 1,03,69,820.
- 3.3.2010 Allotment of Group Housing Plot no. GH-01/A, Sector-76, Noida by Respondent 15, NOIDA to Respondent 3, Amrapali Silicon City Pvt Ltd under Group Housing scheme code-GH-2009-VIII vide letter no. Noida/GHP/2009-(VIII)/2010/5085.
- 29.7.2010 - 30.7.2010 Respondent no 15, NOIDA approved the name and status of Respondent no 3, 'M/S Amrapali Silicon City Private Limited' on the request of consortium members in accordance with the Clause C8(e) of the brochure of the scheme, to develop and market the project on demarcated plot no. GH-01/A, Sector 76, NOIDA measuring 1,76,758 sq mtr vide letter no.

NOIDA/GHP/GH-2009(VIII)/2010/9581 and letter no.  
NOIDA/GHP/GH-2009(VIII)/2010/9601.

- 30.7.2010 Plot admeasuring 1,76,758.70 sq mtr was allotted in sector 76, Noida to the Respondent no 3, Amrapali Silicon City Pvt Ltd as the lessee, by NOIDA, i.e. Respondent no 15 under group housing scheme GH-2009-VIII for a period of 90 years for a premium of Rs.360,95,89,412.
- 5.8.2010 Issuance of Resolution no. ASCPL/CFO/2010/0003 authorizing Mr. Anil Shamra, and Mr. Rajesh Malhotra, i.e. Respondent nos 8 and 10 respectively to sign on behalf of the Respondent 3 company property papers/flat buyers agreement/permission to mortgage/TPT Agreement or any other documents required by bank for processing the loan of customer in respect of property of Respondent 3 at project named 'Amrapali Silicon City' situated at Plot no. GH-01/A, Sector 76, Noida.
- 2010 Various residential hi-tech townships proposed by the Respondent no 3 in the NCR region consisting of 2bhk/3bhk/4bhk apartment units with added luxurious facilities of golf course, sports complex, gym, club etc and issued brochure to allure prospective buyers. The proposed townships were to be ready for possession

with 30-46 months of booking by the prospective buyer. Numerous prospective buyers believing the guarantee of the Respondent no 3 invested their hard earned money and made timely payments in order to receive their homes within the stipulated time frame.

- The Respondent no 3, Amrapali Silicon City Pvt Ltd inspite of subsequent time lapse failed to deliver the proposed apartments to the buyers and unilaterally extended the time period for delivery. It is pertinent to mention that most apartments were to be delivered as early as 2013 however the said apartments are still not delivered and the construction is still at a nascent stage.
- Subsequent to the rampant delay in handing over the possession of the flats numerous flat owners like the present Petitioner society filed consumer complaints against defaulting builder corporations such as the Respondent no. 3 herein before various State consumer dispute commissions and National consumer dispute redressal commission seeking refund of their money or speedy possession of their allotted apartments. The aforesaid consumer complaints were filed by the flat owners either in their individual capacity or as part of resident welfare associations.

30.9.2016	The petitioner society is registered for the welfare of its members under Societies Registration Act, 1860 having registered office at 11-C, Pocket B, Mayur Vihar Phase 2, Delhi 110091 and the petitioner society represents the interests of 445 members.
2016	The Insolvency and Bankruptcy Code enacted. The said act was enacted in order to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner.
30.11.2016	The petitioner society filed a Consumer Complaint No. 2022/16 before the National Consumer Disputes Redressal Commission, New Delhi against Respondent No. 3 herein for possession of the apartments with interest upon delay.
23.01.2017	The NCLT principal bench at New Delhi in Nikhil Mehra vs. AMR Infrastructure Limited C.P. No. (ISB)-03(PB)/2017 held that flat buyers awaiting possession cannot be construed as Financial Creditors under S.5(7) of the IBC, 2016.
20.2.2017	The NCLT, New Delhi in <i>Col. Vinod Awasthy v. AMR Infrastructure Ltd.</i> CP No. (IB)10 (PB)/2017 held that the flat buyers awaiting possession cannot be construed as

Operational Creditors within the meaning of S. 9 read with S.5(7) and S.5(8) of the IBC, 2016.

- 25.5.2017 A criminal complaint is filed by the present Petitioner society against the Respondent no 3, Amrapali Silicon City Pvt. Ltd and its Directors before the Economic Offences Wing, New Delhi for misappropriation, fraud and breach of trust.
- 31.5.2017 In consumer complaint titled 'Amrapali Silicon City Flat Owners Welfare Society vs. Amrapali Silicon City Pvt. Ltd' CC. No. 2022/2016 filed by the present Petitioner society against Respondent no 3 for possession of the apartments with interest upon delay. In the abovementioned consumer complaint notice has been issued by the Hon'ble NCDRC directing Respondent no 3, Amrapali Silicon City Pvt. to file written statement within 30 days from the date of issuance of notice.
- 16.08.2017 The Insolvency and Bankruptcy Board of India through its Chairperson in exercising its power conferred by Clause (T) of Sub Section (1) of Section 196 read with Section 240 of the IBC Code, 2016 brought about an amendment to the Regulation 2017 and inserted Regulation 9(A) to include claims by "other creditors". It also issued form (F) to be filled up by creditors other than financial creditors and operational creditors.



Sept., 2017	An application bearing C.P. No. IB-121-PB/2017 filed by Respondent 11, Bank of Baroda against Respondent no 3 for initiation of Corporate Insolvency Resolution Process under section 7 of the Insolvency and Bankruptcy Code, 2016 and rule 4 of the Insolvency and Bankruptcy Rules before NCLT New Delhi Bench for default of a total sum of Rs. 71,15,43,682crore by Bank of Baroda being the financial creditor, with Rs. 59,38,00,000 crore being the principal amount in default and Rs. 11,77,43,681crore being the default amount towards the overdue interest and penal interest aggregate.
4.9.2017	Application titled 'Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.' C.P. No. IB-121-PB/2017 admitted by the NCLT at New Delhi, leading to initiation of corporate insolvency resolution process and Mr. Rajesh Samson appointed as the Interim Resolution Professional (IRP).As a consequence of the aforesaid order the Hon'ble Tribunal issued a moratorium under Section 14 of the IBC whereby institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority is prohibited till the completion of the

corporate insolvency resolution process or until the Bench approves the resolution plan under Section 31(1) or passes an order for liquidation of corporate debtor under Section 33.

7.9.2017 Pursuant to the order dated 4.9.2017, the Interim Resolution Professional namely Respondent no 13 called for submissions of claim by the creditors by way of forms on their website. It is pertinent to note that the aforesaid call for submission of claims was only for financial creditors under form C, operational creditors under for B, workmen/employees under form E and creditors apart from financial and operational creditors under form F.

11.09.2017 In similar Writ Petition (Civil) No.744 of 2017 titled 'Chitra Sharma vs. Union of India' whereby insolvency proceedings were initiated against Jaypee Infratech Limited, this Hon'ble Court was pleased to direct the Interim Resolution Professional to formulate and submit Interim Resolution Plan within 45 days, further directing that the plan shall make all necessary provisions to protect the interest of the home buyers.

14.9.2017 The Interim Resolution Professional released FAQ whereby flat buyers are given no clear indication with regard to their classification as creditors further adding to the ambiguity regarding the status of the flat buyers.

19.9.2017	Last date for submission of claims by various creditors to the appointed Interim Resolution Professional.
3.10.2017	Hence, this Writ Petition

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2017**

*[under Article 32 of the Constitution of India]*

**IN THE MATTER OF:**

1. Amrapali Silicon City Flat Owners  
Welfare Society, 11-C, Pocket B,  
Mayur Vihar Phase 2, Dehi-110091  
through its President Sh. M.S. Rathore ..... PETITIONER

**Vs.**

1. Union of India, through its Secretary,  
Ministry of Finance, 3rd Floor, Jeevan  
Deep Building, Sansad Marg  
New Delhi-110001
2. Union of India, through its Secretary,  
Ministry of Corporate Affairs,  
5<sup>th</sup> floor, Shastri Bhawan, Dr. R P  
Road, New Delhi-110001
3. Amrapali Silicon City Pvt. Ltd.,  
Through Its Managing Director,  
Registered office at 307, 3<sup>rd</sup> floor,  
Nipun Towers, Community Centre,  
Karkardooma, Delhi-110092
- 4 M/s Ultra Home Construction Private  
Limited, Through its Managing  
Director, Registered office at 307, 3<sup>rd</sup>

floor, Nipun Towers, Community Centre, Karkardooma, Delhi-110092

- 5 M/s. Jotindra Steel and Tubes Limited, Through its Managing Director, Registered office at 14/3, Mathura Road, Near Mewla Maharajpur Village, Sector 45, Faridabad-121003, India
- 6 M/s Vidya Shree Buildcon Private Ltd, Through it's director, H. No. 195, IInd floor, Back side Ram Vihar, Delhi 110092.
- 7 M/s Rinku Clothing Creation Private Ltd, Through Director, M-30, Greater Kailash- II New Delhi.
- 8 Mr. Anil Kumar Sharma, Director, Amrapali Silicon City Pvt. Ltd., 83, AGCR Enclave, Delhi-110092
- 9 Mr. Shiv Priya, Flat No, 803, Director, Amrapali Silicon City Pvt. Ltd Amrapali Exotica, E-08, Sector 50, Noida, UP
- 10 Mr. Rajesh Malhotra, Vice President, Amrapali Silicon City Pvt. Ltd Registered office at 307, 3<sup>rd</sup> floor, Nipun Towers, Community Centre, Karkardooma, Delhi-110092

- 11 Bank of Baroda through its Managing Director, Corporate Financial Services Branch, 1<sup>st</sup> Floor, Bank of Baroda Building, 16 Parliamentary street, New Delhi.
- 12 Insolvency and Bankruptcy Board of India, 7<sup>th</sup> floor, Mayur Bhavan, Shankar Market, Connaught Circus, New Delhi -110001 through its Chairperson
- 13 Sri Rajesh Samson, Interim Resolution Professional, Deloitte Touche Tanmatsue India LLP, 7<sup>th</sup> Floor, Building 10, Tower B, DLF CYBER CITY, DLF Phase 2, Gurgaon, Haryana
- 14 Reserve Bank of India, through CGM, 16th floor, Central Office Building Shahid Bhagat Singh Marg, Mumbai - 400 001 Maharashtra
- 15 NOIDA Authority, Administrative Complex, Sector 6, Noida – 201301 District. Gautam Budh Nagar, UP through its CEO.
- 16 State of Uttar Pradesh, Through Chief Secretary, Urban Development Department, Room No. 824, Bapu Bhawan, Lucknow, UP

.... .... Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE**  
**CONSTITUTION OF INDIA**

To

The Hon'ble Chief Justice of India and His  
Lordship's Companion Justices of the  
Supreme Court of India.

The Humble Petition of the Petitioners above named  
**MOST RESPECTFULLY SHOWETH :**

1. That The present writ petition, in public interest, under Article 32 of the Constitution of India has been preferred challenging the vires of Section 6,7,10,14 and 53 of the Insolvency and Bankruptcy Code, 2016 as the same are *ultra vires* being arbitrary, illegal, discriminatory and violative of Article 14,19 & 21 of the Constitution of India. It is stated that thousands of people /home buyers from all over the Country had booked the flats who were not only denied their rightful prayer of getting possession of the flat booked but were also illegally and arbitrarily stopped/ restrained from invoking their statutory legal remedy available in law in view of the moratorium order passed by NCLT, New Delhi under Section 14 of the Insolvency and Bankruptcy Code, 2016.
2. The Petitioner Society is a consumer defined under Consumer Protection Act, 1986 who is affected by the order dated 04.09.2017 passed by the National Company Law Tribunal, New Delhi. The Petitioner society is registered as a

society for the welfare of its members under Societies Registration Act, 1860 having registered office at 11-C, Pocket B, Mayur Vihar Phase 2, Delhi 110091. The petitioner society represents the interests of 445 members. The Petitioner society is duly represented by its President Mr. M.S.Rathore, and the PAN no. of the society is AAEEAA9783F. There is no pending civil, criminal or revenue litigation involving the Petitioner society, which could have legal nexus with the issues involved in the present public interest litigation. The Petitioner society has not moved any government authority to seek the relief sought in the present petition. There is no personal gain or private motive or private interest in filing this PIL.

3. The challenge is being made particularly against Section 6, 7, 10, 14 and 53 of the Code in light of the recent order dated 4.09.2017 passed by the NCLT New Delhi Bench whereby the Hon'ble Tribunal was pleased to initiate Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code(IBC), 2016 and Rule 4 of the Insolvency and Bankruptcy Rules, 2016, against Amrapali Silicon City Pvt. Ltd. in the Petition titled '*Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*' C.P.No. IB-121-PB/2017', by virtue of which the present Petitioners/consumers and thousands of other similarly situated flat buyers have been rendered remediless.



4. That the Petitioners herein and the many others situated similarly are common consumers, who have invested their hard-earned life time savings in the housing projects being undertaken by the Respondent Builders. It is a common knowledge that the Housing Sector of the country is blighted with inordinate delays in completion of the projects, owing to the large-scale mismanagement of the funds as received by the construction companies from the flat buyers. It is respectfully submitted that this Hon'ble Court on various occasions has taken note of the plight of the "home buyers" and have directed strict actions to be taken against some of the constructions companies, along with order of refund of the amount as received from the buyers. The said orders have been passed by this Hon'ble Court under the Consumer Protection Act, 1986. As a result, the petitioner society and other similarly situated flat buyers have moved various State Consumer Dispute Redressal Commissions as well as the National Consumer Disputes Redressal Commission to seek possession of their apartments or in the alternate seeking refund of the total payment made by them.
5. That Respondent No. 1 & 2 are the Union of India, Ministry of Finance and Corporate Affairs which are the concerned Ministries for the purposes of the present PIL.

6. That the Respondent no. 3 ‘Amrapali Silicon City Pvt. Ltd.’ is a defaulting builder company who is also the primary corporate debtor in the order of the NCLT New Delhi Bench dated 4.9.2017 whereby the Hon’ble Tribunal was pleased to initiate Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code(IBC), 2016 and Rule 4 of the Insolvency and Bankruptcy Rules, 2016, against Respondent no. 3 for having a total default amount of Rs. 71,15,43,682, in the Petition titled ‘*Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*’ C.P.No. IB-121-PB/2017’
7. The Respondent no. 3 was incorporated in February, 2010 as a Special Purpose Company for the development of real estate projects and hi tech residential townships in Sector 76 Noida, Uttar Pradesh. The Respondent no. 3 was created by a consortium of companies that are Respondents 4 to 7 in the present petition having shareholding in the following manner

S.N	Name of Share-holder	Percentage of Share holding	Status
1	M/S Ultra Home, Construction Private Limited	50%	Lead Member
2	M/S Jotindra Steel and Tubes Limited	21.43%	Relevant Member
3	M/S Vidya Shree Buildcon Private Limited	14.28%	Relevant Member
4	M/S Rinku Clothing Creation Private Limited	14.29%	Relevant Member
	Total	100%	

8. The present Respondent nos. 8 and 9 in the present petition are the Directors in the Respondent no. 3 company, whereas

the Respondent no. 10 is the vice president of the company being the authorized person along with Respondent no 8 to sign on behalf of the Respondent no 3 company, property papers/flat buyers agreement/permission to mortgage/TPT Agreement or any other documents required by bank for processing the loan of customer in respect of property of Respondent no 3 at project named 'Amrapali Silicon City' situated at Plot no. GH-01/A, Sector 76, Noida.

9. The Respondent no 11 in the present petition is the Financial Creditor on the instance of whom the petition titled '*Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*' C.P. No. IB-121-PB/2017' was filed before the NCLT, New Delhi leading to initiation of corporate insolvency resolution process against the Respondent no 3 company.
10. The Respondent no 13 in the present petition is the appointed Interim Resolution Professional by the NCLT, New Delhi in the petition *Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*' C.P. No. IB-121-PB/2017' for performance of functions contemplated by Sections 15,17,18,19,20 and 21 of the Code. The Respondent no 13 is duly registered with the Respondent no 12, i.e. the Insolvency and Bankruptcy Board of India.
11. It is respectfully submitted that the provisions of the Code of 2016 are violative of the Fundamental rights of the common

citizens of this Country, guaranteed under Article 14 of the Constitution. As a consequence of the aforesaid order the Hon'ble Tribunal issued a moratorium under Section 14 of the IBC whereby institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority is prohibited till the completion of the corporate insolvency resolution process or until the Bench approves the resolution plan under Section 31(1) or passes an order for liquidation of corporate debtor under Section 33 of the IBC, 2016. Due to the issuance of this moratorium the present Petitioner society as well as other flat buyers who have invested their hard earned money with the Respondent no 3 are left without any remedy to approach any Court to compel the defaulting Respondent no. 3 to deliver them the flats as guaranteed or refund their money with interest.

12. It is submitted that in the light of the provisions as have been brought into effect by the IBC, 2016, the Petitioner society and similarly placed citizens of this Country have been left remediless. It is apposite to mention that the Section 14 of the IBC not only bars initiation of suits against the corporate debtor but also stays execution of decree against the corporate debtor. As a result, flat buyers who have already

been granted refund by courts such as this court or the National Consumer Disputes Redressal Commissions or the various State Consumer Dispute Commissions and District Consumer Dispute Redressal Forum cannot obtain their refund due to the stay on execution.

13. The grievances of the Petitioners/ flat buyers is further aggravated as the NCLT as well as NCLAT in judgements such as *Col. Vinod Awasthy v. AMR Infrastructure Limited* C.P. No (IB)10 (PB)/2017 and *Nikhil Mehra v. AMR Infrastructure Limited* C.P. No. (ISB)-03(PB)/2017 have held that the Petitioners/ flat buyers are neither financial creditors nor operational creditors under the IBC.

14. It is further submitted that subsequent to the insolvency resolution procedure, if the corporate debtor company is directed to be liquidated, Section 53(1) of the IBC states the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, viz.:

(a) *The insolvency resolution process costs and the liquidation costs paid in full,*

(b) *The following debts which shall rank equally between and among the following :—*

(i) *Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*

(ii) *Debts owed to a secured creditor in the event*

*such secured creditor has relinquished security in the manner set out in section 52;*

*(c) Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*

*(d) Financial debts owed to unsecured creditors;*

*(e) the following dues shall rank equally between and among the following: —*

*(i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*

*(ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*

*(f) Any remaining debts and dues;*

*(g) preference shareholders, if any; and*

*(h) equity shareholders or partners, as the case may be.*

15. It is humbly brought to the attention of this Hon'ble Court that the flat buyers are not covered under the category of any of the creditors recognised by the IBC, 2016 and therefore even upon liquidation of assets of the Company, they do not have right over the funds generated and would possibly receive no refund of the money paid by them because they do not fall within the ambit of section 53 of the Code. The cumulative effect of the provisions of the IBC, 2016 is that the common citizens of the country who have invested their hard-earned

money have been left remediless and the interests of the big financial institutions have been given primacy over the interests of the public at large.

16. The facts in brief are narrated as under:

- i. That subsequent to the independence and during the “licence-raaj” the consumers of the Country were blighted by unfair trade practices and exploitation by the goods and service providers in the Country. The statutory mechanism as available at the said point of time, was inadequate to meet the grievances and interests of the Consumers. The Union Legislature in its wisdom and keeping in mind the interests of the Consumers at Large, enacted the Consumer Protection Act, 1986. The preamble of the Consumer Protection Act states as follows :-

*“An act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer’s disputes and for matters connected therewith.”*

- ii. That this Hon’ble Court in *Ludhiana Improvement Trust v. Shakti Coop. House Building Society Ltd.* reported in (2009) 12 SCC 369 has held that the Consumer Protection Act, is a benevolent piece of Legislation

intended to protect the consumers from exploitation and the provisions of the Act are required to be interpreted broadly.

- iii. That with the advent of liberalisation a host of services have been included within the ambit of Consumer Protection Act, 1986. One of the sectors which was covered by judicial pronouncement by the Consumer Protection Act, was the housing Sector. The Hon'ble National Consumer Dispute Redressal Commission and this Hon'ble Court in a catena of judgments has held that inordinate delay in handing over possessions of the flats will amount to deficiency in service and thereby directed payment of refund with interest or expedient delivery of flats to the consumers.
- iv. The judgements of various courts awarding relief in form of refund or possession of flats was directed in light of numerous builder corporations, like the present Respondent no. 3, failing to hand over the possession of the flats despite the Petitioners/ flat buyers making 90% of the payments and despite lapse of the stipulated time frame for delivery of the flats as guaranteed by the builders like the present Respondent no. 3.



v. In the present matter, on 5.2.2010, Acceptance letter was issued by Respondent no 15 to the Respondent no 3 for allotment of Group Housing Plot no. GH-01/A in Sector 76, Noida vide letter no. Noida/ GHP/ 2009-(VIII)/ 2010/4929. True copy of the acceptance letter for allotment of GHP dated 5.2.2010 is annexed as **ANNEXURE P1 (page**

vi. Subsequently, the Respondent no.3 was incorporated in February, 2010 as a special purpose company for development of residential real estate. by a consortium of companies under the Companies Act, 1956 having authorized share capital of Rs. 2,00,00,000 and paid up share capital of Rs. 1,03,69,820. The Respondent no 3 company was created by a consortium consisting of the following:

S.N	Name of Share-holder	Percentage of Share holding	Status
1	M/S Ultra Home, Construction Private Limited	50%	Lead Member
2	M/S Jotindra Steel and Tubes Limited	21.43%	Relevant Member
3	M/S Vidya Shree Buildcon Private Limited	14.28%	Relevant Member
4	M/S Rinku Clothing Creation Private Limited	14.29%	Relevant Member
	Total	100%	

vii. Subsequent to its inception, Allotment of Group Housing Plot no. GH-01/A, Sector-76, Noida by Respondent no 15, NOIDA to Respondent no 3,

Amrapali Silicon City Pvt Ltd under Group Housing scheme code-GH-2009-VIII vide letter no. Noida/GHP/2009-(VIII)/2010/5085 was made in the month of March, 2010. True copy of the Allotment of Group Housing Plot dated 3.3.2010 is annexed as **ANNEXURE P2 (page**

viii. That in the month of July, 2010, Respondent no 15, NOIDA approved the name and status of Respondent no 3, 'M/S Amrapali Silicon City Private Limited' on the request of consortium members in accordance with the clause C8(e) of the brochure of the scheme, to develop and market the project on demarcated plot no. GH-01/A, Sector 76, NOIDA measuring 1,76,758.70 sq metres vide letter no. NOIDA/GHP/GH-2009(VIII)/2010/9581 and letter no. NOIDA/GHP/GH-2009(VIII)/2010/ 9601.

ix. Subsequently in July, 2010 Plot admeasuring 1,76,758.70 sq metres was allotted in sector 76, Noida to the Respondent no 3, Amrapali Silicon City Pvt Ltd as the lessee, by NOIDA, i.e. Respondent no 15 under group housing scheme GH-2009-VIII for a period of 90 years for a premium of Rs.360,95,89,412. True copy of the Lease Deed dated 30.7.2010 between Respondent

no 3 and Respondent no 15 is annexed as **ANNEXURE P3 (page**

x. That on 5.8.2010, Resolution no. ASCPL/CFO/2010/0003 was issued authorizing Mr. Anil Shamra, and Mr. Rajesh Malhotra, i.e. Respondent nos 8 and 10 respectively to sign on behalf of the Respondent no 3 company property papers/flat buyers agreement/ permission to mortgage/ TPT Agreement or any other documents required by bank for processing the loan of customer in respect of property of Respondent no 3 at project named 'Amrapali Silicon City' situated at Plot no. GH-01/A, Sector 76, Noida. True copy of the Resolution dated 5.8.2010 is annexed as **ANNEXURE P4 (page**

xi. In the year 2010 the Respondent no.3 allured purchasers into investing in their property with promises of a high tech residential township consisting of 2/3/4bhk apartment units. The Respondent no 3 proposed a luxurious township in sector 76, Noida consisting of over 43 sanctioned towers. Collectively, the proposed township were to consist of close to 4500 flats, with luxurious facilities such as gym, sports complex etc which was to be delivered within 30-46 months. The projects were heavily marketed by the

Respondent no 3 using celebrities and sports persons, inducing numerous purchasers in the country as well as abroad relying on to invest their hard-earned money into the proposed apartments as early as in 2010. True copy of the brochure dated nil provided by the Respondent no 3 to prospective buyers is annexed as **ANNEXURE P5 (page** and true copy of the Allotment cum flat buyer agreement dated 20.2.2012 executed at the time of provisional allotment of apartment between the buyers and Respondent no.3 is annexed as **ANNEXURE- P6 (page**

- xii. That it is submitted that most buyers are citizens belonging to the middle-income group who had to opt for home loans with considerable interest in order to secure a home for their families.
- xiii. The petitioner society is registered for the welfare of its members under Societies Registration Act, 1860 since 30.9.2016 having registered office at 11-C, Pocket B, Mayur Vihar Phase 2, Delhi 110091. The petitioner society represents the interests of 445 members. True copy of the Certificate of Registration dated 30.9.2016 is annexed as **ANNEXURE- P7 (page** and true copy of the Member's list dated nil is annexed as **ANNEXURE- P8 (page** respectively.

- xiv. That due to the rampant delay in delivery of possession by various builders including the Respondent no 3, the flat buyers like the present Petitioner society approached various State consumer dispute redressal commissions as well as the National Consumer Disputes Redressal Commission in order to get their refund along with interest or possession of the apartment units.
- xv. That approximately close to 4500 purchasers have invested their hard-earned money based on the assurances of Respondent nos. 3 that they would receive their flats within the stipulated time frame. The Respondent no.3 has collected huge sums from the hopeful buyers but failed to deliver on the its promises, leaving the consumers with no choice but to initiate consumer complaints against the Respondent nos.3, to get refund of the payments made by them or possession of flats. However, due to the recent order dated 4.9.2017 passed by the NCLT, New Delhi in the matter of '*Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*' C.P.No. IB-121-PB/2017', the prospects of the Petitioners/ flat buyers getting any relief by approaching various Consumer Disputes Redressal Commissions is diminished.

- xvi. That the Legislation with an intention to consolidate the insolvency and restructuring laws enacted the Insolvency and Bankruptcy Code, 2016. The preamble of the Act states as follows :-

*“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”*

- xvii. That the object and reasons of the Act makes it clear that it is aimed at maximisation of value of the assets of the corporate persons and to balance the interests of all the stakeholders. The act is therefore a special enactment with a specific purpose. The same cannot be held to be for the benefit for the citizens in general.
- xviii. However certain provisions of the Act, as drafted are in direct conflict with the Consumer Protection Act, and also in conflict with the interests of the Consumer in General.

xix. That Section 14 of the Act provides as follows:-

*“14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

- xx. That the effect of Section 14 of the Code is that once an order of moratorium is passed and till the time the same is in effect, no proceeding can be initiated against the “Corporate Debtor”. The said section further stays continuation of any proceeding which has already been issued prior to the order of Moratorium.
- xxi. That since the said provisions has not carved out any exception even the proceedings under the Consumer Protection Act, 1986 are covered within the definition of legal proceeding and therefore no new proceedings before the Consumer Forums can be instituted. Further, as an effect of the provisions of the Code, even the complaints which have already been initiated will also be stayed.
- xxii. That in addition to Section 14, Section 53 (1) of the IBC states that, *“notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds*



*from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—*

*(a) The insolvency resolution process costs and the liquidation costs paid in full,*

*(b) The following debts which shall rank equally between and among the following:—*

*(i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*

*(ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;*

*(c) Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*

*(d) Financial debts owed to unsecured creditors;*

*(e) the following dues shall rank equally between and among the following:—*

*(i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*

*(ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*

*(f) Any remaining debts and dues;*

*(g) preference shareholders, if any; and*

*(h) equity shareholders or partners, as the case may be.*

xxiii. The order of distribution of assets in the eventuality of liquidation of the assets of the Company, does not carve

out the classes of companies and has painted all the different types of Companies with the same brush. The said provision has not taken into consideration the operational realities of various sectors and therefore has failed to take into consideration the interests of the general consumer. Section 53 of the Code gives primacy of the interests of the Secured Creditors for example the Financial Institutions, without carving out any exception for the interests of consumers, who in case of a Construction Company are at the equal pedestal with the Financial Institution.

xxiv. That to further aggravate the misery of the Consumers Section 238 of the Code states that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

xxv. It is respectfully submitted that this court in numerous judgements has highlighted the welfare nature of the Consumer Protections Act, 1986 being in addition to all existing laws. In *Fair Air Engineers vs. NK Modi* (1996) 6 SCC 385 this court held that provisions of the Consumer Protection Act, 1986 are to be construed widely to give effect to the Act, as the provisions of the Act are in

addition to and not in derogation to any other law in force. Hence, the Act being an additional remedy the right of the consumer to secure justice under the Consumer Protection Act, 1986 should not be barred by the moratorium under S. 14 of the IBC.

- xxvi. It is respectfully submitted that most buyers of these construction companies are citizens belonging to the middle-income group who had to opt for home loans with considerable interest in order to secure a home for their families.
- xxvii. That the effect of the provisions of the Code is already visible with the hosts of orders passed under the IBC, 2016, which have had a direct impact on the interests of the Consumers.
- xxviii. That the Hon'ble National Company Law Tribunal in the case of the *Col. Vinod Awasthy v. AMR Infrastructure Limited*, C.P.No.(IB)10 (PB)/2017, while dismissing the Petition instituted under Section 9 of the Insolvency and Bankruptcy Code, 2016 (*IBC*) at the admission stage itself, decided the issue of whether a *flat purchaser* would fall within the definition of an '*Operational Creditor*' as defined under Section 5(20) of the IBC to whom an '*Operational Debt*' as defined under

Section 5(21) of the IBC is owed. The Hon'ble Tribunal observed that *the framers of the IBC had not intended to include within the expression of an 'operation debt' a debt other than a financial debt. Therefore, an operational debt would be confined only to four categories as specified in Section 5(21) of the IBC like goods, services, employment and Government dues.* The Tribunal held that *the debt owed to the Petitioner society (a flat purchaser in this case) had not arisen from any goods, services, employment or dues which were payable under any statute to the Centre / State Government or local bodies. Rather, the refund sought to be recovered by the Petitioner society was associated with the possession of immovable property.* The Hon'ble Tribunal while deciding the question of whether a flat purchaser could be considered an operation creditor considered the observations of the Bankruptcy Law Reforms Committee in paragraph no. 5.2.1 of the Final Report: "*Operational Creditors are those whose liability from the entity comes from a transaction on operations. Thus, the wholesale vendor of spare parts whose spark plugs are kept in inventory by car mechanics and who gets paid only after the spark plugs are sold is an operational creditor. Similarly, the lessor that the entity rents out space from is an operational creditor to whom*

*the entity owes monthly rent on a three-year lease.”* The Hon'ble Tribunal held that the Petitioner society had neither supplied goods nor had rendered any services to acquire the status of an 'Operational Creditor'. It was further held that it was not possible to construe Section 9 read with Section 5(20) and Section 5(21) of the IBC so widely to include within its scope, cases where dues were on account of advance made to purchase a flat or a commercial site from a construction company like the Respondent especially when the Petitioner society had other remedies available under the Consumer Protection Act and the General Law of the land. True copy of the order dated 23.1.2017 in CP No. (ISB)-03 (PB)/2017 is annexed as **ANNEXURE-P9** (page and true copy of order dated 20.2.2017 in CP No. (IB)-10 (PB)/2017 is annexed as **ANNEXURE-P10** (page

- xxix. That due to the unresponsive and elusive behaviour of the Respondent 3, the Petitioner society was compelled to file a criminal complaint on 25.5.2017 against the Respondent 3, Amrapali Silicon City Pvt. Ltd and its Directors before the Economic Offences Wing, New Delhi for mis-appropriation, fraud and breach of trust. True copy of the complaint dated

25.5.2017 before DCP, EOW, Delhi Police is annexed as

**ANNEXURE P11 (page**

xxx. On 31.5.2017 the Hon'ble NCDRC was pleased to issue notice in the consumer complaint titled 'Amrapali Silicon City Flat Owners Welfare Society vs. Amrapali Silicon City Pvt. Ltd' CC. No. 2022/2016 filed by the present Petitioner society against Respondent 3 for possession of the apartments with interest upon delay.

True copy of the order dated 31.5.2017 is annexed as

**ANNEXURE P12 (page**

xxxi. That on 8.6.2017 the Petitioner society again submitted additional information in support to the complaint vide diary no. D 4318 before DCP, EOW, Delhi police, New Delhi. True copy of the complaint dated 8.6.2017 before DCP, EOW, Delhi Police is annexed as

**ANNEXURE P13 (page**

xxxii. It is respectfully submitted that the provisions of the code are violative of the Fundamental rights of the common citizens of this Country insaofar as they discriminate against the consumers by not giving them a right to be heard and yet curtailing their legal and statutory rights. As a consequence of the aforesaid order the Hon'ble Tribunal issued a moratorium under

Section 14 of the IBC whereby institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority is prohibited till the completion of the corporate insolvency resolution process or until the Bench approves the resolution plan under Section 31(1) or passes an order for liquidation of corporate debtor under Section 33. Due to the issuance of this moratorium the present Petitioner society as well as other Petitioners/ flat buyers who have invested their hard-earned money with the Respondent no 3 are left without any remedy to approach any Court to compel the defaulting Respondent no 3 to deliver them the flats as guaranteed or refund of their money with interest.

- xxxiii. That in spite of the observation that a flat- buyer has an alternative remedy available under the Consumer Protection Act, 1986, the National Company Law Tribunal, New Delhi Bench vide its order dated 4.9.2017 was pleased to initiate Corporate Insolvency Resolution process under Section 7 of the Insolvency and Bankruptcy Code(IBC), 2016 and Rule 4 of the Insolvency and Bankruptcy Rules, 2016, against

Amrapali Silicon City Pvt. Ltd in the Petition titled 'Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.' C.P. No. IB-121-PB/2017'. The Hon'ble Tribunal has further passed an order of moratorium thereby staying any proceedings which have initiated against the said company. True copy of the order dated 4.9.2017 passed the NCLT, New Delhi in' C.P. No. IB-121-PB/2017 is annexed as **ANNEXURE- P14 (page**

xxxiv. That the reference to the order as passed by the Hon'ble Tribunal has been made to demonstrate the ill effects of the provisions of the IBC 2016, which have been enacted without carving out any safeguards for interests of the public at large.

xxxv. It is humbly submitted that the order of the NCLT dated 4.9.2017 and the various press releases by the Insolvency and Bankruptcy Board thereafter have been used to the disadvantage of the Petitioner. The insolvency and bankruptcy board has been circumventing the questions relating to the rights of the home buyers and putting the interests of the flat buyers below that of private banks.

xxxvi. That the provisions of the IBC 2016 giving effect to the NCLT order dated 4.9.2017 are depriving the flat



buyers from exercising their right to equality and right to life as enshrined in Article 14 and 21 of the Constitution of India.

xxxvii. It is submitted that once the Insolvency Resolution Process was initiated claims were invited only from the Financial Creditors, Operational Creditors, Workmen and Employees to be submitted to the Insolvency Resolution Professional and Forms B & C were introduced. Subsequently, a Form F was released to be filled by creditors other than Financial Creditor or operation creditor, which was not specific to flat buyers and does not address their specific situation. True copy of Form B, C & F dated nil are annexed as **ANNEXURE P15** (page       ), **ANNEXURE P16** (page       ) and **ANNEXURE P17** (page       ) respectively.

xxxviii. The Insolvency and Bankruptcy Board of India through its Chairperson in exercising its power conferred by Clause (T) of Sub Section (1) of Section 196 read with Section 240 of the IBC Code, 2016 brought about an amendment to the Regulation 2017 and inserted Regulation 9(A) to include claims by “**other creditors**”. It also issued form (F) to be filled up by creditors other than financial creditors and operational creditors. True

copy of extract of Regulation 9(A) are annexed as **ANNEXURE P18** (page

xxxix. It is submitted that the consumers notwithstanding the huge financial burden cast upon them, made all the payments to the Respondent no 3 in a timely fashion even by procuring home loans, expecting to receive a home for themselves. However, the act of the insolvency board recognizing private banks as bigger creditors than homebuyers is unjust and violative of the buyer's right to equality. It is submitted that the Insolvency board has itself reiterated that the home buyers cannot be treated on par with financial and operational creditors and therefore cannot be part of the committee of creditors and stake a claim equivalent to the amount paid by them to the Respondent no 3. True copy of the Frequently Asked Questions (FAQs) dated 14.9.2017 is annexed as **ANNEXURE P19** (page

xl. It is submitted that by notification dt. 16.08.2017, the Insolvency and Bankruptcy Board of India notified that regulation 9A in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Under this regulation was inserted for claims by "other creditors". However, neither does the parent Code nor the Regulation define

other creditors to include Consumers. Thus, the provisions of the Code are in complete disregard to the interests of the Consumers.

xli. In similar Writ Petition (Civil) No.744 of 2017 titled 'Chitra Sharma vs. Union of India' whereby insolvency proceedings were initiated against Jaypee Infratech Limited, the Hon'ble Supreme Court on 11.9.2017 was pleased to direct the Interim Resolution Professional to formulate and submit Interim Resolution Plan within 45 days, further directing that the plan shall make all necessary provisions to protect the interest of the home buyers. True copy of the order dated 11.9.2017 passed by this Hon'ble Court is annexed as **ANNEXURE-P20** (Page

xlii. The Respondent no 3 after obtaining almost 90% of the payment amount towards the apartment units, failed to deliver the possession of the apartment units within the stipulated time and unilaterally extended the time of possession on one pretext or the other. Despite relentless follow up and efforts made by all the buyers, to contact the Respondent no.3 in order to enquire about the progress of the project and the handing over of the possession, Respondent no.3 in the most defiant manner either did not reply or constantly gave false

assurances of a possible delivery or/and given false reports of the alleged progress of construction. In spite of a lapse of more than 7 years the construction in Phase 1 and 2 of the proposed township is largely incomplete. The fact remains that there are a total of 2462 flats in phase 1 and out of which, 918 are still undelivered. Whereas, in Phase 2 there are 871 flats and all are undelivered. Further, phase 3 (known as Crystal Homes) has a total of 732 flats and all are undelivered. In view thereof, total flats in Phase 1,2 & 3 are close to 4500 and out of which 2521 flats are still undelivered). It is pertinent to note that phase -4 is known as Aadarsh Awas Yojna, which has not been approved by the Noida Authority. True copy of the photographs dated 24.9.2017 depicting the status of construction at the site of the proposed township is annexed as **ANNEXURE- P21 (page**

17. The Petitioner Society has preferred this Writ Petition on the following amongst other grounds:

**GROUND**

A. Because the Petitioner Society and many other similarly situated persons are consumers who entered into an agreement with the Respondent no. 3 for purchase of flat and accordingly, made an advance payment for it. The

Respondents have failed to give delivery and possession of the said apartments despite inordinate delay and have been using, inexplicably, the money provided by the Petitioner.

B. Because having been lured in by the real-estate companies with promises of hi-tech residential apartments delivered to them anywhere between 30 to 46 months, many persons invested their hard-earned money in projects such as the ones proposed and promoted by the Respondent no. 3. Most such purchasers of these properties belong to the middle income groups, who have had to obtained loans on interest to make timely payment to the builders. However, the builders have defaulted in delivering timely possession of the apartment units to buyers by several years despite the buyers complying with all the terms and conditions and the payment schedule of the builder corporations.

C. Because the Flat Buyers are being exploited from every direction. By following strict payment schedules, the real-estate companies, such as the Respondent no. 3, have already pocketed around 90% of the Value of the Flat from them. Additionally, despite the possession not being handed over to them the consumers keep on paying EMI to the Banks from whom they have taken financial loans. Common people who have invested in such properties are paying through

their nose, without any conformity about realisation of the end towards which they have been and continue to make the said payments.

D. Because the Petitioner society and many others similarly situated persons are consumers as defined under section 2(d) of the Consumer Protection Act, 1986 who have paid to the Respondent 3 company in advance for purchase of flats/ apartments. However, aggrieved by huge inordinate delay in getting delivery and possession of the said apartment, they have initiated proceedings at different fora under the provisions of the Consumer Protection Act, 1986.

E. Because certain aggrieved consumers attempted to initiate insolvency proceedings against certain real-estate companies by moving the Ld. National Company Law Tribunal as well as the Hon'ble National Company Law Appellate Tribunal against them. However, the Ld. NCLT in the case of the *Col. Vinod Awasthy v. AMR Infrastructure Limited* C.P.No.(IB)10 (PB)/2017 while dismissing the Petition instituted under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) at the admission stage itself, decided that a flat purchaser would not fall within the definition of an 'Operational Creditor' as defined under Section 5(20) of the IBC to whom an 'Operational Debt' as defined under Section 5(21) of the IBC is owed.

F. Because the Insolvency and Bankruptcy Code, 2016 defines a “creditor” in section 3(10) as “*any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder*”. This definition is in keeping with the rationale in the Report of the Bankruptcy Law Reforms (Vol-I), which observes that liabilities of an entity fall into two broad sets, viz financial liabilities, and operational liabilities, which may in turn be secured or unsecured. The Code defines “debt” in section 3(11) as, “*a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.*” The definitions of financial debt and operation debt as provided in section 5(8) and 5(21) respectively indicate that these refer to specific kinds of borrowings undertaken by an entity and purely in the nature of creditor-debtor transactions.

G. Because by definition and interpretation of “Creditor” in the Insolvency and Bankruptcy Code, 2016, the consumers are ousted from the purview of the statute, in their capacity as creditors to corporate entities such as real-estate companies of the like of Respondent no. 3. Thus, the Petitioner society and similarly situated consumers have been declared to have no locus standi to approach the adjudicating authority under

the Insolvency and Bankruptcy Code, 2016 to seek appropriate relief i.e. either the possession of the flat or refund of the amount along with interest , paid towards the purchase of the flats.

H. Because, however, in the light of the insolvency resolution process initiated against Respondent no. 3 pursuant to order dated 04.09.2017 passed by the Id. National Company Law Tribunal, New Delhi in the matter Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.' C.P. No. IB-121-PB/2017, an order has been passed by the NCLT under Section 14(a) of the Insolvency and Bankruptcy Code. This order declares moratorium prohibiting "the institution of suits or continuing of pending suit or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal arbitral panel or other authority." This provision would consequently stay all proceedings against the Respondent company at courts and before all authorities.

I. Because such a blanket moratorium on proceedings as proposed under section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 would inevitably affect the consumers who had earlier approached the National Consumer Dispute Redressal Commission and various State Commissions and/ or District Forum, under the Consumer



Protection Act, 1986 to seek redress of their grievance against defaulting builders.

J. Because owing to such a restriction on proceeding against the Respondent no. 3, pending insolvency resolution process, the consumers are being pushed below corporate institutions including banks, as creditors despite the flat buyers making timely payments and fulfilling their obligations towards Respondent no 3. Because the provisions of the IBC, 2016 are further aiding the exploitation of the General Consumer and therefore the same are in violation of the fundamental right guaranteed under the Constitution.

K. Because the insolvency resolution process of the Respondent no. 3 company is a pure and simple case of collusion between Bank of Baroda and the builder Respondent no 3. Bank's debt Claim was for 72 crores only, whereas the share of flat owners being thousands in number is 90% of the total project cost, which is much higher than the claim amount of the bank of the Board of Baroda. By taking undue advantage of the provisions of the Insolvency and Bankruptcy Code, 2016, the Respondent no. 3 company wants to escape the liabilities arising out of breach of contract on their part vis-à-vis consumers.

L. Because the provisions of the IBC 2016, in as much as they curtail the right of the consumers to approach the NCLT or the NCLAT, under section 6 of the Code, and put a blanket moratorium over the alternate remedy available to them, are in direct conflict with the provisions of the Consumer Protection Act, 1986. The effect of Section 14 of the IBC 2016 is that it suspends the right of the Consumer to seek redress even from the Consumer Forum. The Code has failed to carve out any provision for special cases like the real-estate companies, in which, apart from the financial and institutional investments, common citizens of this Country have made huge investments.

M. Because it is noteworthy that under provisions of section 10 of the Insolvency and Bankruptcy Code, 2016 where a corporate debtor has committed a default, he may himself file an application for initiating corporate insolvency resolution process with the Adjudicating Authority. This means that a Corporate Debtor may get his company declared insolvent to avoid addressing other legal obligations qua him. For instance, as in the present case, a real-estate developer may get insolvency resolution process initiated to avoid facing proceedings under Consumer Protection Act, 1986, against him for the deficiency in goods and services provided by him.

N. Because Section 238 of the Code gives an overriding effect to the provisions of the Code over all the existing statutes. It states, *“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”* As a result, a beneficial legislation like the Consumer Protection Act has been made subject to a financial/ special enactment whose primary aim is maximisation of value of the assets of the corporate persons.

O. Because the moratorium under section 14(a) of the IBC creates a conflict between two special enactments, which operate in different fields. A bare perusal of the preamble to the Insolvency and Bankruptcy Code, 2016 indicates that it is an act to consolidate and amend laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. On the other hand, Consumer Protection Act, 1986 is an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

P. Because the effect of conjoint reading of sections 14 and 238 of the IBC, 2016 is that the proceedings under the Code completely eclipse the proceedings under the Consumer Protection Act, 1986, without any constitutional sanction to do so. Such a provision of law falls foul of article 14 of the constitution in that it is arbitrary and unreasonable; and therefore, violates fundamental rights of the citizens.

Q. Because the cumulative effect of Section 14 r/w/ section 53 and 238 of the Code, is that the Banks and financial institutions who have invested in the Respondent companies are the real beneficiary from the Real Estate sector's insolvency process. The banks continue to get EMI along with interest and at the same time they have preferential rights over the assets of the Company in case of liquidation, considering they fall within the category of a Secured Creditor. It is not out of place to mention that in most of the cases the Bank which provides "financial help" to the Petitioners/ flat buyers are also the Banks which finance the Housing Project.

R. Because the case of an Infrastructure Company cannot be dealt in isolation from the rights of the consumers of such a company. However, a beneficial legislation protects these consumers, namely the Consumer Protection Act. This

Hon'ble Court in *Ludhiana Improvement Trust v. Shakti Coop. House Building Society Ltd.* reported in (2009) 12 SCC 369 has held that the Consumer Protection Act, is a benevolent piece of Legislation intended to protect the consumers from exploitation and the provisions of the Act are required to be interpreted broadly.

S. Because Section 3 of the Consumer Protection Act states that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force.

T. Because this Hon'ble Court in the Case of *KSL Industries Ltd v. Arihant Threads Ltd.* reported in (2015) 1 SCC 166, while interpreting the meaning of the clause "in addition to and not in derogation" as used in section 34(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 vis-à-vis Sick Industries Companies (Special Provisions) Act, 1985 has held,

*"There is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the Legislature intends that such an enactment shall co-exist along with the other Acts. It is clearly not the intention of the Legislature, in such a case, to annul or detract from the provisions of other laws. The term "in derogation of" means "in abrogation or repeal of." The Black's Law Dictionary sets forth the following meaning for "derogation": "The partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force." It*

*is clear that sub-section (1) contains a non-obstante clause, which gives the overriding effect to the RDDB Act. Sub-section (2) acts in the nature of an exception to such an overriding effect. It states that this overriding effect is in relation to certain laws and that the RDDB Act shall be in addition to and not in abrogation of, such laws. The SICA is undoubtedly one such law.”*

U. Because more recently, in *Madras Petrochem Ltd. v. BIFR* reported at (2016) 4 SCC 1, this Hon’ble court per Nariman,J. reiterated the doctrine of harmonious construction of two apparently conflicting provisions in special statutes (SARFAESI Act, 2002) and held,

*“According to us, the two apparently conflicting sections can best be harmonized by giving meaning to both. This can only be done by limiting the scope of the expression “or any other law for the time being in force” contained in Section 37. This expression will therefore have to be held to mean other laws having relation to the securities market only, as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is the only other special law, apart from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dealing with recovery of debts due to banks and financial institutions. On this interpretation also, the Sick Industrial Companies (Special Provisions) Act, 1985 will not be included for the obvious reason that its primary objective is to rehabilitate sick industrial companies and not to deal with the securities market.”*

V. Because this Hon’ble court has had the occasion of interpreting the provision in section 3 of the Consumer Protection Act, 1986, which provides that the Consumer

Protection Act is in addition and not derogation of any other law for the time being in force. This Hon'ble court in the matter of *Fair Air Engineers Pvt. Ltd. & Anr. v. N K Modi*, reported at (1996) 6 SCC 385 had to determine whether proceedings under the consumer protection act would be stayed by operation of section 34 of the Arbitration and Conciliation act, 1996. Relying upon its judgment in *Lucknow Development Authority v. MK Gupta* (1994) 1 SCC 243, this Hon'ble court held,

*"It would thus be clear that, by invocation of Section 34, the party to the proceedings does not get an automatic right to have the proceedings pending before the judicial authorities stayed...it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. The Parliament is aware of the provisions of the Arbitration Act and the Contract Act and the consequential remedy available under Section 9 of the CPC, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy. It would, therefore, be clear that the Legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the CPC. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act."*

W. Because even though the consumers have been asked to fill one of the claimant forms i.e. Form F issued pursuant to

notification dated 16.08.2017 notifying Regulation 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, to establish their claim vis-à-vis the Respondent no. 3 company, the Code in its scheme does not contemplate anywhere compensation to the consumers. It is apposite to mention here that Regulation 9A very broadly covers the category of “other creditors” which has not been defined in the Code. The parties of interest as envisaged in the scheme of the code are ones who are in a relationship of the kind of creditor-debtor. On the other hand, Consumer Protection Act, 1986 specifically provides the platform for consumers to voice their grievances.

X. Because inspite of having sufficient bank guarantee against the loan agreement between Respondent 3 and Respondent 11, corporate insolvency resolution process was initiated against Respondent 3. It is pertinent to note that the same was done without even affording an opportunity to the home buyers such as the Petitioner society to object to the insolvency resolution process before it was initiated, in spite of the fact that the Respondent no 3 herein has defaulted in paying a much larger amount to the home buyers.

Y. Because in a similar writ petition titled ‘Chitra Sharma vs. Union of India’ W.P.(C) No 744/2017 was filed before this



Hon'ble Court by numerous flat buyers against defaulting company namely, M/S Jaypre Infratech Limited. This Hon'ble Court keeping in mind the interest of the buyers was pleased to direct the following

*“a) The IRP shall forthwith take over the Management of JIL. The IRP shall formulate and submit an Interim Resolution Plan within 45 days before this Court. The Interim Resolution Plan shall make all necessary provisions to protect the interests of the home buyers;*

*b) Mr.Shekhar Naphade, learned senior counsel along with Ms.Shubhangi Tuli, Advocate-on-Record, shall participate in the meetings of the Committee of Creditors under Section 21 of the Insolvency and Bankruptcy Code, 2016 to espouse the cause of the home buyers and protect their interests;*

*c) The Managing Director and the Directors of JIL and JAL shall not leave India without the prior permission of this Court;*

*d) JAL which is not a party to the insolvency proceedings, shall deposit a sum of Rs.2,000 crores(Rupees two thousand crores) before this Court on or before 27.10.2017. For the said purpose, if any assets or property of JAL have to be sold, that should be done after obtaining prior approval of this Court. Any person who was a Director or Managing Director of JIL or JAL on the date of the institution of the insolvency proceedings against JIL as well as the present Directors/Managing Director shall also not leave the country without prior permission of this Court. The foregoing restraint shall not apply to nominee Directors of lending institutions (IDBI/ICICI/SBI);*

*e) All suits and proceeding instituted against JIL shall in terms of Section 14(1)(a) remain stayed as we have directed the IRP to remain in Management.*

*Be it clarified that we have passed this order keeping in view the provisions of the Act and also the interest of the home buyers”*

Z. Because by allowing the creditors to stake their claim against a defaulting corporate entity by barring the consumers from seeking redress of their grievance against the faulting corporate person is discriminatory, arbitrary and devoid of reason, especially in the real estate sector wherein there is mass-investment.

AA. Because even if the Petitioners/ flat buyers do not own any shares of the Companies yet, in addition to the finance as provided by the Financial Institutions it is the investment of the Flat Buyers that facilitates the construction of the Project. Therefore, insofar as the IBC, 2016 does not equate the Flat Buyers with the Financial Institutions the same is violative of Article 14 of the Constitution of India, as equals have been treated unequally.

BB. Because it is trite position of law that an individual's rights are always superseded by the right of the public at large. However, the provisions of the IBC prioritises the right of the Financial Institution over the Right of the public at large and therefore the same are liable to be held ultra vires.

CC. Because issuing a complete moratorium against institution of a new suit or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority is contrary to the law laid down by this court.

DD. Because Insolvency and Bankruptcy Code, 2016 was preceded by the Sick Industries Companies Act, 1985. Section 22(1) of that statute provided that if an inquiry or reconstruction scheme against a sick industry company is pending, then all legal proceedings, contracts etc. against it would stand suspended. Nevertheless, that provision stipulated an exception in that such suspension could be avoided with the permission of the board. However, in the present statute there is no such exception carved out and a party not covered under the IBC, 2016 is rendered remedy-less because of moratorium u/s 14.

EE. Because this Hon'ble Court has repeatedly held in a number of cases including *Tashi Delek Gaming Solutions Ltd & Anr. v. State of Karnataka & Ors* reported at (2006) 1 SCC 442; *Bhagubhai Dhanabhai Khalasi & Anr. v. State of Gujarat & ors.* reported at (2007) 4 SCC 241 that access to justice is a human right.

FF. Because in Tamil Nadu *Mercantile Bank Shareholders Welfare Association Ltd. v. SC Sekar & Ors* reported at (2009) 2 SCC 784 has held,

*“An aggrieved person cannot be left without a remedy. Access to justice is a human right. In certain situations it may also considered to be a fundamental right.”*

GG. Because provision of the Insolvency and Bankruptcy Code, 2016 in section 14 and 238 are unconstitutional insofar as they discriminate against the consumers of a corporate entity undergoing Insolvency Resolution Process by neither taking their claim against the corporate entity into account at the time of initiating the corporate insolvency resolution process and by not allowing them to proceed against the corporate entity at an alternate forum to seek redress of their grievance.

HH. Because even the forms which have been issued, after public uproar, inviting the claims from all the interested persons under the Insolvency Proceedings are not consumer specific and are general in nature.

II. Because in order to safeguard the interests of the Consumer at large it is essential that an exception be carved out under Section 14 which permits continuation of a proceeding under the Consumer Protection Act, 1986, and to recognise a Decree Holder as a Secured Creditor. It is respectfully

submitted that the effect of the said provision will secure the interest of the consumers at large and will also not conflict with the restructuring or insolvency proceedings.

JJ. The Hon'ble Supreme Court in *Institute of law, Chandigarh & Ors. v .Neeraj Sharma & Ors.*, reported at 2015 (1) SCC 720 has clearly held that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provisions of the constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provisions.

KK. Because as the mechanism of bankruptcy is to deal with dispensing of what was owed to the creditors in an event of an insolvency proceeding. The mechanism lays out the know-hows of the apportionment scheme to various creditors. In the given facts and circumstances the homebuyers have paid up over 90% of the amount of the flats as well as the project cost. The act of receiving prepayment before the actual product/service is handed/ rendered over to the homebuyers in consonance with the express terms and conditions of the contract. The Respondent have retained the amount willingly even after falling short on their contractual obligations within the

stipulated frame can be construed as they have with intentionally held on to the monies of the homebuyers in the form of a trust for the homebuyers. As the project was to be developed and delivered within a set time frame and the failure of the respondent in carrying out the same and still continuing to issue demand letters and refusing to give timely possession of the flat or refund the amount to the homebuyers clearly elucidates the intention of the respondent to hold on to their kitty. Therefore, by interpreting that the amount was held by the respondent in the form of a constructive trust elevates the claim of the Petitioner association from bottom of the pile to the very top of it.

LL. Because it is an admitted fact that 95% of the payments have been received by the construction companies, and in effect a charge has been created on the flats in question. It is therefore submitted that Third Party Rights have been created in favour of the Petitioner and similarly situated individuals. Therefore, the flats in which charge has been created in favour of a buyer cannot be made subject to the liquidation process.

MM. Because sub-section 4 of Section 36 of the Code. It states that the assets owned by a third party which are in possession of the corporate debtor, including— (i) assets

held in trust for any third party shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.

NN. Because establishing a constructive trust relationship between the Petitioner Association and the respondents would aid in adopting harmonious construction by balancing rights of the consumers qua other creditors under the insolvency code. This interpretation would make sure that justice is not only done but is also seen to be done. Additionally, it is most humbly submitted that by adopting such an interpretation, there won't be any radical overhaul of the scheme.

18. The Petitioner submits that the present writ petition is being filed bonafide and in the interest of justice.
19. The petitioners state that they have no other alternative, equally efficacious remedy except by means of the present petition.
20. The petitioners submit that this Hon'ble Court has the requisite jurisdiction to entertain the present writ petition and adjudicate upon the issues arising there from.
21. The Petitioners has not filed any other Writ Petition before this Hon'ble Court or any other Court dealing with the subject matter of this petition.

22. The petitioners would rely upon documents a list whereof is hereto annexed.

### **PRAYER**

In the aforesaid facts and circumstances, the Petitioner society most humbly prays for the following amongst other prayers:

- a) Issue a writ of certiorari, mandamus or any other appropriate writ, order, or direction to declare that section 6, 7, 10, 14 and 53 of the Insolvency and Bankruptcy Code, 2016 are *ultra vires* being arbitrary, illegal, discriminatory and violative of Article 14 of the Constitution of India as it only recognises and allows financial creditor or an operational creditor or a corporate debtor to initiate corporate insolvency resolution process and completely disregards other stake holder such as the petitioners herein;
- b) Issue appropriate writ, direction, or order to declare the order dated 04.09.2017 passed by NCLT, New Delhi in the matter of Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.' C.P.No. IB-121-PB/2017, as null and void since the same is unjust, unreasonable and violative to Article 14 of the Constitution of India and completely against the cardinal principles of natural justice;
- c) Issue a writ of mandamus or any other appropriate writ or direction directing the Central Government to notify in terms



of section 14(3) that provision of moratorium as contained in section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 shall not apply to the consumers; and permit the petitioner and similarly situated consumers to exercise their statutory and legal rights as available and provided under Consumer Protection Act, 1986 and the Real Estate (Regulation and Development) Act, 2016 which are Special Acts and beneficial legislation;

- d) Issue a writ of mandamus or any other writ, order or direction for appointment of an independent auditor to conduct a thorough forensic audit of Respondent no. 3 from 2010 till 2017;
- e) Issue an appropriate writ, order of direction to the Respondent no.1 and the Respondent no. 2 to protect the interests of home-buyers/ flat owners in larger public interest.
- f) pass such other or further order as this Hon'ble Court may deem fit in the proper circumstances of the case.

Drawn & Filed by

Drawn On: 27. 9.2017  
Filed On: .10.2017

**(Ashwarya Sinha)**  
Advocate for the Petitioners

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2017**

**IN THE MATTER OF :**

Amrapali Silicon City Flat Owners'  
Welfare Society

... Petitioner

Versus

Union of India & Ors

... Respondents

**AFFIDAVIT**

I, Multan Singh Rathore, S/o Shri Roop Singh Rathore, aged about 62 years, Resident of 11C, Pocket B Mayur Vihar Phase II, Delhi - 110091, do hereby solemnly affirm and state as under:

1. That I am the President of the petitioner society in the aforesaid matter and being fully conversant with the facts and circumstances of the case, I am competent to swear this affidavit. I have also been authorized to affirm this affidavit.
2. I say that the contents of the accompanying Synopsis & List of Dates from page B to \_\_\_\_\_, Writ Petition from para 1 to \_\_\_\_\_, page 1 to \_\_\_\_\_ are true to the best of my knowledge and belief.
3. I say that the contents of IAs are true to the best of my knowledge and belief.

**IN THE SUPREME COURT OF INDIA**

CIVIL ORIGINAL JURISDICTION

IA No.        / 2017

IN

**WRIT PETITION (CIVIL) NO.        OF 2017**

**IN THE MATTER OF :**

Amrapali Silicon City Flat Owners'  
Welfare Society

... Petitioner

Versus

Union of India & Ors

... Respondents

**APPLICATION FOR STAY**

To

The Hon'ble Chief Justice of India and His  
Lordship's Companion Justices of the  
Supreme Court of India.

**MOST RESPECTFULLY SHOWETH :**

1. The present writ petition, in public interest, under Article 32 of the Constitution of India has been preferred challenging the vires of Section 6,7,10,14 and 53 of the Insolvency and Bankruptcy Code, 2016. As the same are *ultra vires* being arbitrary, illegal, discriminatory and violative of Article 14,19 & 21 of the Constitution of India. It is stated that thousands of people /home buyers from all over the Country had booked the flats who were not only denied their rightful prayer of getting possession of the flat booked but were also illegally and arbitrarily stopped/ restrained from invoking their

statutory legal remedy available in law in view of the moratorium order passed by Respondent No. 12 (Insolvency & Bankruptcy Board of India) under Section 14 of the Insolvency and Bankruptcy Code, 2016.

2. The Petitioner society being a registered society under Societies Registration Act, 1860 having registered office at 11-C, Pocket B, Mayur Vihar Phase 2, Delhi 110091. The petitioner society represents the interests of 445 members. It represents the interest of thousands of flat buyers of projects as floated by Amrapali Silicon City Pvt. Ltd. It is respectfully submitted that the regime brought about by the Insolvency and Bankruptcy Code, 2016 and the order as have been passed by the New Delhi Bench of the National Company Law Tribunal in the Petition titled '*Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*' C.P.No. IB-121-PB/2017', have left the flat buyers remediless. The actions as have been taken under the code has led to a situation, wherein the lifelong savings of the flat owners will go to waste with no prospects of them recovering the same, if this Hon'ble Court does not save their interests.

3. The Petitioners craves leave of this Hon'ble Court to refer to and rely upon the facts stated therein and the same is not being reiterated for the sake of brevity.

4. This is a classic case of discrimination as well as denial of access to justice to home buyers and utter disregard to their rights as consumers in view of the provisions of the Insolvency and the Bankruptcy Code, 2016, specifically section 6, 7, 10, 14(1)(a) and 53 of the Code. The entire action flows from the collusive petition preferred by Bank of Baroda for a debt of an amount of Rs.72 crores.
5. A Petition bearing C.P. No. IB-121-PB/2017 titled '*Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.*' was filed before the Ld. National Company Law Tribunal, New Delhi by the Respondent no. 11 (Bank of Baroda) in its capacity as financial creditor, u/s 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process in respect of Respondent no. 3 company i.e. Amrapali Silicon City Pvt. Ltd. The aforesaid application was allowed by the NCLT New Delhi leading to initiation of corporate insolvency resolution process and Mr. Rajesh Samson was appointed as the Interim Resolution Professional (IRP) as contemplated under Sections 16, 17, 18, 20 & 21 of the Code. Pursuant to this, order of moratorium u/s 14 of the Code was passed whereby moratorium was imposed on institution of the suits and continuation of all pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority The

challenge is being made particularly against Section 14, 53 and 238 of the Code in light of the recent order of the NCLT New Delhi dated 4.9.2017 whereby the Hon'ble Tribunal was pleased to initiate Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code(IBC), 2016 and Rule 4 of the Insolvency and Bankruptcy Rules, 2016, against Silicon City Pvt. Ltd. in the Petition titled 'Bank of Baroda vs. Silicon City Pvt. Ltd.' in CP No. IB-121/PB/2017, by virtue of which the present Petitioners/consumers and thousands of other flat buyers have been rendered remediless.

6. In pursuant to the order as passed by the NCLT, Allahabad Bench, initiating the proceedings against Jaypee Infrastructure Limited, Forms B and C were issued by IRP which expressly related to financial creditors and operational creditors. Thereafter some clarifications were issued by the IRP stating that the home owners can fill these forms. The said statement was made even though the said forms do not include the flat buyers at all. The chaos and ambiguity is further amplified by the fact that, another form i.e. Form F was introduced wherein the Ministry of Corporate Affairs made a statement that the flat buyers can fill the said forms.

7. That the Petitioners herein are the common consumers, who have invested their hard earned life time savings in the housing projects being undertaken by the Respondent Builders. It is a common knowledge that the Housing Sector of the country is blighted with inordinate delays in completion of the projects, owing to the large scale mismanagement of the funds as received by the construction companies from the flat buyers.
8. It is respectfully submitted that this Hon'ble Court on various occasions has taken note of the plight of the "home buyers" and have directed strict actions to be taken against some of the constructions companies, along with order to expeditious handover/ possession of the flats or refund of the amount as received from the buyers. The said orders have been passed by this Hon'ble Court under the Consumer Protection Act, 1986. As a result of this the petitioners and other similarly situated flat buyers have moved various state dispute redressal commissions as well as National consumer disputes redressal commission to seek possession of their apartments or in the alternate seeking refund of the total payment made by them.
9. That in spite of the observation that a flat- buyer has an alternative remedy available under the Consumer Protection Act, 1986, the National Company Law Tribunal, New Delhi

Bench vide its order dated 4.9.2017 was pleased to initiate Corporate Insolvency Resolution process under Section 7 of the Insolvency and Bankruptcy Code(IBC), 2016 and Rule 4 of the Insolvency and Bankruptcy Rules, 2016, against Amrapali Silicon City Pvt. Ltd in the Petition titled 'Bank of Baroda v. Amrapali Silicon City Pvt. Ltd.' C.P. No. IB-121-PB/2017'. The Hon'ble Tribunal has further passed an order of moratorium thereby staying any proceedings which have been initiated against the said company.

10. It is humbly submitted that the order of the NCLT dated 4.9.2017 and the various press releases by the Insolvency and Bankruptcy Board thereafter have been used to the disadvantage of the Petitioner. The insolvency and bankruptcy board has been circumventing the questions relating to the rights of the home buyers and putting the interests of the flat buyers below that of private banks.
11. That the provisions of the IBC 2016 giving effect to the NCLT order dated 4.9.2017 are depriving the flat buyers from exercising their right to equality and right to life as enshrined in Article 14 and 21 of the Constitution of India.
12. Forms 'B' and 'C' issued on 10.08.2017 followed by Form 'F' on 14.08.2017 by the Respondents making it mandatory to be filled up and signed by all the flat owners/ buyers on or



before 19.9.2017 in the present case. The aforesaid forms were in compliance with statutory time period of 14 days and which expired on 19.9.2017.

13. That under Section 38 of the Insolvency and Bankruptcy Code, 2016 the liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process only from a Financial Creditor, an Operational Creditor and a Creditor who is partly a financial creditor and partly an operational creditor.

14. This application is being moved bonafidely and in the interest of justice.

15. The Petitioners will suffer irreparable loss and injury if this application is not allowed.

### **PRAYER**

It is thus most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- i. Restraining the Respondent No. 13 (Interim Resolution Professional) from taking any final decision and/or passing any order for distribution of assets u/s. 53 of the Insolvency and Bankruptcy Code, 2016 during the pendency of the present Writ Petition.

- ii. pass such other or further order as this Hon'ble Court  
may deem fit in the proper circumstances of the case.

Filed by

New Delhi

**(Ashwarya Sinha)**

**+91 9818911510**

Filed On: .10.2017

Advocate for the Petitioners

## **Appendix**

### **The Constitution Of India 1949**

14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

19. Protection of certain rights regarding freedom of speech etc

[\(1\)](#) All citizens shall have the right

[\(a\)](#) to freedom of speech and expression;

[\(b\)](#) to assemble peaceably and without arms;

[\(c\)](#) to form associations or unions;

[\(d\)](#) to move freely throughout the territory of India;

[\(e\)](#) to reside and settle in any part of the territory of India; and

[\(f\)](#) omitted

[\(g\)](#) to practise any profession, or to carry on any occupation, trade or business

[\(2\)](#) Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

[\(3\)](#) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

[\(4\)](#) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

[\(5\)](#) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the

interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and ( 2 ), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause ( 2 )

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

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## **THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

6. Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.

7. (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish— (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; (b) the name of the resolution professional proposed to act as an interim resolution professional; and (c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that— (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application: Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate— (a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor; (b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be

10. (1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application furnish the information relating to— (a) its books of account and such other documents relating to such period as may be specified; and (b) the resolution professional proposed to be appointed as an interim resolution professional.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order— (a) admit the application, if it is complete; or (b) reject the application, if it is incomplete: Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

53. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

(a) the insolvency resolution process costs and the liquidation costs paid in full; Secured creditor in liquidation proceedings. Distribution of assets. SEC. 1] THE GAZETTE OF INDIA EXTRAORDINARY 31

(b) the following debts which shall rank equally between and among the following :—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors; (e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues; (g) preference shareholders, if any; and (h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation.—For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts

will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

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