



# ILS BRIEFS

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## **MINIMUM THRESHOLD FOR HOMEBUYER TO APPROACH NCLT IS VALID: SUPREME COURT**

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The Insolvency and Bankruptcy Code (Amendment) Act, 2020 has introduced a minimum threshold for the homebuyers and security holders to maintain an Application under Section 7 of the IBC and the same was challenged on the principles of equality under Article 14 before Hon'ble Supreme Court in a case titled *Manish Kumar vs. UOI WP (C) No. 26 of 2020*. The Hon'ble Apex Court after considering the contentions from all sides has upheld the validity of this Amendment Act, 2020.

Mainly, the question of law that came before the Hon'ble Apex Court was to decide whether the Proviso I and II introduced by Section 3 of Insolvency and Bankruptcy Code (Amendment) Act, 2020 was violative of Article 14 for the reason of being irrational and discriminatory. The petitioners argued that these provisos have wrongly created classes within category of Financial Creditors, wherein further, the class of homebuyers and security holders, being trusted with the minimum threshold of either numbering 100 of such creditors or 10% of them, whichever is lower, have been discriminately put on disadvantaged footing in comparison to other creditors falling within the category of Financial Creditors. This line of reasoning was countered by the Government, with the facts & figures, expressing the need for such threshold.

The Hon'ble Supreme Court while concluding in favour of the Government and holding the amendment to be valid noted that the Code being an economic legislation is meant to progress through experimentation and it is the Legislature only which is presumed to be aware of every concerned fact and therefore it has to be legislature only which through its legislative wisdom and power has to cure the mischief created by the law.

The Hon'ble Supreme Court further with the purpose to remove ambiguities held that if the same set of homebuyers or part of them along with others approached the Adjudicating Authority on same cause of action, then such application is bound to be protected by the way of Section 14 of the Limitation Act, 1963 and therefore delay if any, is to be condoned under Section 5 of that Act. Further deliberating upon court fee, the court held that waiver against court fees paid previously can be claimed only once by same set of applicants, whether homebuyers or security holders as the case may be, or part of them after complying with the proviso. Further to safeguard the interest of the litigants before the Tribunal two month period is provided to meet the threshold introduced by the legislature through Section 3 of the Insolvency and Bankruptcy Code (Amendment) Act, 2020.

