



## **Admission of CIRP in Real Estate Projects and Participatory Rights of Homebuyers: Supreme Court Clarifies Section 7 IBC**

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### **INTRODUCTION**

The Supreme Court's decision in *Elegna Co-operative Housing & Commercial Society Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*<sup>1</sup>, along with the connected appeal involving Takshashila Heights India Pvt. Ltd. provides important doctrinal clarity on the admission of insolvency proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") and the participatory rights of homebuyers in such proceedings. The ruling reaffirms that insolvency admission is triggered by default rather than equitable considerations and delineates the limits of third-party intervention prior to admission.

### **FACTS**

Takshashila Heights India Pvt. Ltd., the corporate debtor, availed financial assistance aggregating ₹70 crores in 2018 for development of a residential-cum-commercial project. The facilities were secured through mortgage and personal guarantees. Persistent defaults led to classification of the account as a non-performing asset in December 2021. The debt was subsequently assigned to Edelweiss Asset Reconstruction Company Ltd. (EARCL)-Financial Creditor, which initiated recovery proceedings under the SARFAESI Act and before the Debts Recovery Tribunal.

In May 2023, the parties executed a restructuring and one-time settlement arrangement fixing liability at ₹55 crores payable in instalments. Partial payments were made, but further defaults resulted in revocation of the arrangement. The financial creditor thereafter filed an application under Section 7 of the IBC seeking initiation of the Corporate Insolvency Resolution Process (CIRP).

During the proceedings, a cooperative society representing homebuyers sought intervention, asserting that initiation of CIRP would adversely affect the proprietary and contractual rights of its members.

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<sup>1</sup> 2026 INSC 58



## FINDINGS OF THE NCLT

The National Company Law Tribunal declined to admit the Section 7 petition. It reasoned that the project was substantially complete and commercially viable, and that initiation of CIRP would severely prejudice homebuyers and other stakeholders. The tribunal further observed that the IBC was being invoked as a recovery mechanism rather than as a tool for insolvency resolution.

The NCLT therefore exercised restraint and dismissed the petition, prioritising stakeholder impact and project viability.

## FINDINGS OF THE NCLAT

The National Company Law Appellate Tribunal reversed the NCLT's decision and directed admission of CIRP. It held that once financial debt and default are established, admission under Section 7 follows as a matter of law. Considerations relating to project completion, viability, or hardship to stakeholders were held irrelevant at the admission stage.

The NCLAT also rejected the intervention application filed by the homebuyers' society, holding that it lacked locus standi as it was not a party to the financial transaction forming the subject matter of the proceedings.

## ISSUE-WISE FINDINGS OF THE SUPREME COURT

### **Issue I: Whether admission of CIRP was justified**

The Supreme Court reaffirmed the settled position that the Adjudicating Authority's enquiry under Section 7 is confined to determining the existence of financial debt and the occurrence of default. The Court reiterated that, as established in *Innoventive Industries Ltd. v. ICICI Bank*<sup>2</sup>, the insolvency process is triggered upon default and admission must follow once the adjudicating authority is satisfied that a debt is due and unpaid. This principle was reinforced by the Court's reasoning in *E.S. Krishnamurthy v. Bharath Hi-Tech Builders Pvt. Ltd.*<sup>3</sup>, where it was clarified that no equitable discretion survives once default is proven.

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<sup>2</sup> (2018) 1 SCC 407

<sup>3</sup> (2022) 3 SCC 161



The corporate debtor relied upon *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*<sup>4</sup> to argue that admission under Section 7 is discretionary. The Court clarified that the Vidarbha ruling was confined to exceptional facts involving a realizable claim in favour of the corporate debtor and does not dilute the ratio of *Innoventive Industries*. This position has been authoritatively reaffirmed in *M. Suresh Kumar Reddy v. Canara Bank*<sup>5</sup>, which cautions against reading Vidarbha as conferring broad discretion to refuse admission.

The Court further held that considerations such as project viability, receivables from unsold inventory, stage of completion, and potential prejudice to homebuyers are extraneous at the admission stage. Questions of feasibility and revival fall within the commercial domain of the Committee of Creditors (CoC), whose business decisions are insulated from judicial review except on limited statutory grounds, as emphasised in *K. Sashidhar v. Indian Overseas Bank*<sup>6</sup> and reaffirmed in *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*<sup>7</sup>.

The contention that the creditor's simultaneous pursuit of recovery proceedings rendered the insolvency petition mala fide was rejected. The Court reiterated that proceedings under SARFAESI or before the DRT do not bar invocation of the IBC, and that upon admission the moratorium under Section 14 stays such proceedings. This position is consistent with the principles articulated in *Kotak Mahindra Bank Ltd. v. A. Balakrishnan*<sup>8</sup> and later reaffirmed in *Tottempudi Salalith v. State Bank of India*.<sup>9</sup> Allegations of misuse must satisfy the statutory threshold under Section 65 and cannot be inferred merely from recovery-oriented conduct.

Applying these principles, the Court found that debt and default were undisputed, restructuring obligations had been breached, and financial distress persisted. The NCLAT was therefore correct in admitting CIRP.

## **Issue II: Whether the homebuyers' society had locus standi to intervene**

The Court acknowledged that individual homebuyers are recognised as financial creditors following *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*<sup>10</sup>,

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<sup>4</sup> (2022) 8 SCC 352

<sup>5</sup> 2023 SCC Online SC 608

<sup>6</sup> (2019) 12 SCC 150

<sup>7</sup> (2020) 8 SCC 531

<sup>8</sup> (2022) 9 SCC 186

<sup>9</sup> (2024) 1 SCC 24

<sup>10</sup> (2019) 8 SCC 416



which affirmed the statutory status of allottees in real estate projects.<sup>6</sup> However, the Court distinguished between statutory participation mechanisms and intervention by third parties lacking recognised legal standing.

Proceedings under Section 7 remain **in personam** until admission. At this stage, neither the Adjudicating Authority nor the Appellate Tribunal is required to hear unrelated third parties. Participation of homebuyers is structured through statutory mechanisms such as authorised representatives and representation in the CoC. Jurisprudence concerning participation in insolvency proceedings, including the principles articulated in *GLAS Trust Co. LLC v. BYJU Raveendran*<sup>11</sup>, indicates that broader rights of audience arise primarily once proceedings assume an **in rem** character post-admission.

On facts, the society failed to demonstrate statutory representative capacity, authorisation from allottees, or privity in the financial transaction. In the absence of demonstrable representative authority, it could not claim locus standi to intervene. The rejection of its application was therefore upheld.

## CONCLUSION

The judgment reinforces the foundational principle that the IBC is a default-triggered resolution mechanism and not an equitable forum for balancing stakeholder hardship at the admission stage. By reaffirming that admission follows upon proof of debt and default, limiting the scope of judicial discretion, and clarifying that third-party intervention is impermissible prior to admission, the Court strengthens procedural certainty within insolvency law. At the same time, it underscores that protection of homebuyers lies within the statutory framework of representation and safeguards under the IBC rather than through intervention by unrecognised associations. The decision thus provides much-needed clarity for real estate insolvencies, where competing interests frequently converge.

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<sup>11</sup> (2024) INSC 811 : (2025) 3 SCC 625