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Supreme Court of India lays down the criteria for identifying 'speculative investors' in the real estate sector, disentitles them from availing the provisions of Insolvency and Bankruptcy Code, 2016

The Supreme Court of India ("**Supreme Court**"), in *Mansi Brar Fernandes vs. Shubha Sharma and Anr.*¹ *inter alia* held that 'speculative investors' cannot be permitted to initiate Corporate Insolvency Resolution Process ("**CIRP**") under the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and has laid down certain key principles and criteria for determining who a 'speculative investor' would be.

Brief facts

Mansi Brar Fernandes ("**Appellant No. 1**"), the purchaser, and Gayatri Infra Planner Private Limited ("**CD-1**"), the developer, executed a Memorandum of Understanding ("**MoU**") for purchase of 4 (four) flats. However, the MoU provided for CD-1 to buyback the flats at its sole discretion.. Appellant No. 1 paid part consideration of INR 35,00,000 (Indian Rupees thirty-five lakh) and was entitled to receive the possession of the flats without any additional payment in the event of CD-1 not exercising its buy-back option. CD-1 did not deliver the flats. CD-1 also failed to honour post-dated cheques worth INR 1,00,00,000 (Indian Rupees one crore) that it had issued to Appellant No. 1.

Consequently, Appellant No. 1 as an allottee/financial creditor filed an application under Section 7² of IBC before the National Company Law Tribunal ("**NCLT**") for initiation of CIRP against CD-1. The NCLT passed an order initiating CIRP proceedings against CD-1. CD-1 filed an appeal before the National Company Law Appellate Tribunal ("**NCLAT**"), which passed an order allowing the appeal and setting aside the CIRP proceedings against CD-1 ("**Impugned Order-1**").

Similarly, in a separate matter, an MoU was executed between Sunita Agarwal ("**Appellant No. 2**") and Antriksh Infratech Private Limited ("**CD-2**") whereby Appellant No. 2 paid INR 25,00,000 (Indian Rupees twenty-five lakh) for purchase of a residential unit in a housing project to be developed by CD-2. The MoU contemplated a buy-back plan and provided a return of 25% per annum at the end of the agreed period. However, CD-2 failed to commence the construction or acquire the land for the project. Given the same, Appellant No. 2 filed an application under Section 7 of IBC before the NCLT for initiation of CIRP against CD-2. The NCLT passed an order admitting the application against CD-2. CD-2 filed an appeal before the NCLAT which set aside the NCLT's admission order ("**Impugned Order-2**").

¹ 2025 SCC OnLine SC 1569 (decided on September 12, 2025)

² Section 7 of IBC provides financial creditors with a right to initiate CIRP against an entity that has defaulted on a debt owed to such creditor.

Being aggrieved by Impugned Order-1 and Impugned Order-2, Appellant No. 1 and Appellant No. 2 (“**Appellants**”) filed civil appeals before the Supreme Court *inter alia* contending that the Appellants who are homebuyers/allottees under the real estate sector qualify as financial creditors under Section 5(8)(f) of IBC.

Issue

Whether the Appellants fell within the purview of ‘speculative investors’ so as to disentitle them from initiating CIRP proceedings under Section 7 of IBC?

Findings and analysis

The Supreme Court dismissed the civil appeals and *inter alia* observed as follows:

1. there exists an intelligible differentia between ‘speculative investors’ and genuine homebuyers, a distinction initially made in *Pioneer Urban Land and Infrastructure Limited vs. Union of India*³. This distinction protects *bona fide* homebuyers, deters misuse of IBC by speculative investors, and prevents dishonest developers from exploiting systemic loopholes. Strict adherence to IBC is imperative to ensure revival and completion of stalled projects for the benefit of genuine homebuyers, and curb speculative activity which has functioned as a ‘*slow poison*’ for the residential real estate sector;
2. the determination of whether an allottee is a speculative investor is contextual and guided by the intent of the parties to the transaction. The criteria for such determination must have regard for the terms of the agreement/allotment letter, payment terms and overall conduct of the allottee. Immediate or eventual possession of the dwelling unit remains the *sine qua non* of a genuine homebuyer’s intent;
3. speculation is characterised by expectation of unusually high profits and activity in the nature of business or trade, which aligns with the ratio laid down in *Pioneer Urban (supra)* wherein speculative investors were described as those parties seeking refund or profit without an intention to occupy premises;
4. there are certain non-exhaustive indicators suggestive of a speculative intent which are: (a) substitution of possession with buy-back or refund options or any other special arrangements in the agreement; (b) insistence on refund with high interest coupled with refusal to accept possession; (c) purchase of multiple units (especially double digits), inconsistent with intent of residential use; (d) special rights or preferential treatment or unusual privileges to an allottee; (e) deviation from the model agreement provided under the Real Estate (Regulation and Development) Act, 2016; and (f) unrealistic interest rates and promises of 20-25% returns over a short time period; and
5. the distinction between speculative investors and genuine homebuyers is relevant only at the stage of initiation of CIRP. Such allottees/speculative investors are neither barred from filing claims from the principal amount invested nor pursuing remedies before other fora in accordance with the law.

In light of the foregoing, the Supreme Court held that the Appellants were ‘speculative investors’ and that their claims were in the nature of recovery of their investments.

Conclusion

This decision underscores the distinction between genuine homebuyers and speculative investors. It clarifies that a holistic review of the intent, structure of transaction, and conduct of parties will determine whether an allottee under a real estate project can be construed as a financial creditor under IBC. This ruling may aid in preventing speculative investors from misusing IBC process as a refund or recovery mechanism.

³ AIR 1961 SC 21

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