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## INTERSECTION OF ARTICLE 142 AND IBC: A UNIQUE PRECEDENT IN CORPORATE INSOLVENCY

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### ABSTRACT

This article is based on the recent order of the Honourable Supreme Court with reference to the corporate insolvency resolution process of Supertech Realtors. What made this order unique was the application of Article 142 of the Constitution of India by the Honourable Supreme Court, regarding a court-constituted committee to oversee the corporate insolvency resolution process of the corporate debtor. This article provides a brief discussion of the CIRP and the application of Article 142. What makes this case worth discussion is a rare application of the inherent powers of the Supreme Court in a corporate insolvency process. This order of the Supreme Court has created a unique precedent where it bypasses standard statutory procedure, i.e. creation of a Committee of Creditors to do complete justice.

**Keywords:** Article 142, Insolvency and Bankruptcy Code, Corporate Insolvency Resolution Process, Supertech Realtors.

The Hon'ble Supreme Court on December 16<sup>th</sup>, 2025, while hearing the matter of *Ram Kishor Arora Vs State of Maharashtra*<sup>1</sup> ordered for the constitution of a committee to oversee the Corporate Insolvency Resolution Process of Supertech Realtors Pvt. Ltd., which is caught in a series of matters with homebuyers and creditors. The Supreme Court said that the committee will discharge all the functions of the board of directors of the Supertech Realtors. What made this constitution of a committee a unique one is that the Supreme Court exercised its power under Article 142 of the Constitution of India, which empowers it to take any step necessary to do complete justice.

Before the enactment of the Insolvency and Bankruptcy Code, 2016, the winding up of a company was done as per the provisions of the Companies Act 2013. After the enactment of the IBC code in 2016, a new process was introduced, namely the Corporate Insolvency Resolution Process, i.e. CIRP. CIRP mainly focuses on resolving the defaulting companies in a time-bound manner and maintains the company as a going-concern status. Chapter 1, Part II of the IBC code talks about this insolvency resolution process.

Any financial creditor or operational creditor or corporate applicant or corporate debtor can file an application to initiate the CIRP<sup>2</sup> if any corporate debtor defaults on payment. The minimum amount of default should be 1 Crore or more Indian rupees. The minimum amount of default for initiating the process in the original code was only 1 Lakh Indian rupees, but the same was increased to 1 Crore by the notification by the Government of India on 24th March 2020.

When an insolvency procedure is initiated under the code there can be two consequences arising out of it, firstly, the revival of the corporate debtor or secondly, liquidation. All attempts are made to resolve the insolvency of the debtor by either coming up with a restructuring plan or a new ownership plan. If none of these work, the company's assets are then liquidated. Therefore, the main aim of the code is to revive and save the corporate debtor from insolvency.

The process of CIRP involves several stages. The first stage of course is initiation of the process, post that a moratorium is declared and then an insolvency professional is appointed who acts as the interim resolution professional. Once the process of CIRP is initiated, all the control and power of the debtor comes into the hands of the Interim Resolution

<sup>1</sup> Ram Kishor Arora Vs State of Maharashtra, Civil Appeal No(s). 11052/2025

<sup>2</sup> Insolvency and Bankruptcy Code, 2016, S. 7, No. 31, Acts of Parliament, 2016 (India)

Professional (IRP)<sup>3</sup> and all the powers of the board of directors of the corporate debtor stands suspended. A public announcement is made by the IRP to invite creditors with claims<sup>4</sup> against the debtor.

Once the claims are verified, a committee of creditors is constituted, and a complete list of creditors is prepared. The report is filed with the adjudicating authority (NCLT) certifying the constitution of the committee of the creditors<sup>5</sup> and the list of the creditors. The committee is bound to hold its first meeting within 7 days of filing the report. Since it is the investment and the interest of these creditors that is at stake, this committee of creditors is the decision-making body of the corporate debtor.

A public announcement is made by the resolution professional, which states that the corporate debtor is undergoing an insolvency resolution, and all the bidders who have an interest in the corporate debtor must submit a resolution plan. Once all the bids are made, the resolution professional checks the eligibility of the resolution plans of the bidders and conducts due diligence. The plan proposed by the bidders must deal with the cost of the CIRP, Payment to operational creditors and management of the corporate debtor compulsorily. The resolution professional must ensure that the plan so submitted must abide by the 2016 code. The resolution professional shall then submit the plan to the committee of creditors, which shall vote on all such resolution plans simultaneously.

If the resolution plan so submitted is approved by more than 66% of the committee of creditors, the resolution professional shall file an application to the adjudicating authority (NCLT) for the approval of the plan. The adjudicating authority may upon its discretion, accept or reject the same. If it is accepted, the resolution plan becomes legally operative, and if it is rejected, the judicial authority may order the liquidation of corporate debtor.

The present case of *Ram Kishore Arora vs State of Maharashtra* is a civil appeal made by one of the suspended directors of M/s Supertech Realtors Pvt. Ltd. (Corporate Debtor) against a judgment dated 13.08.2025 of the National Company Law Appellate Tribunal, which upheld the Order of the adjudicating authority admitting the corporate debtor into the corporate insolvency resolution process. What makes this issue complex is multiple competing claims

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<sup>3</sup> Insolvency and Bankruptcy Code, 2016, S. 16, No. 31, Acts of Parliament, 2016 (India)

<sup>4</sup> Insolvency and Bankruptcy Code, 2016, S. 15, No. 31, Acts of Parliament, 2016 (India)

<sup>5</sup> Insolvency and Bankruptcy Code, 2016, S. 21, No. 31, Acts of Parliament, 2016 (India)

and interests of multiple stakeholders, which include the supernova apartment owners association, various financial institutions, several homebuyers, Noida authority, the suspended director and the interim resolution professional (IRP). In view of the same, the honourable Supreme Court, on its order dated 29th August 2025, had appointed Adv. Rajiv Jain as *amicus curie* to assist the court.

Adv. Rajiv Jain submitted his report to the Hon'ble Supreme Court, according to which he has suggested for a court-monitored resolution process and hence has recommended the constitution of a court-appointed committee to oversee the resolution process. In furtherance of the same, the Hon'ble Supreme Court was of the opinion that the present case is fit for the exercise of its power under Article 142<sup>6</sup> of the Constitution of India to do complete justice. Accordingly, the Supreme Court suspended the interim resolution professional (IRP), the committee of creditors, the board of directors of the corporate debtor with immediate effect and directed that the CIRP of the corporate debtor shall now be overseen by a court-appointed committee, which will also discharge all the functions of the board of directors. The committee consists of-

1. Justice M.M. Kumar, former Chief Justice of the J&K High Court, former president of NCLT and former member of NHRC as Chairperson.
2. Dr Anoop Kumar Mittal, an expert in the field of construction, civil engineering and project management.
3. Mr Rajeev Mehrotra, an expert in the field of financial management.

The chairperson of the committee is given the liberty to appoint further members to the committee if it deems fit. The committee shall also appoint a suitable person to implement the approved project schemes and supervise the overall functioning. The main aim of the committee is to appoint a new developer after inviting proposals in time bound manner. The court specifically mentioned that no new developer that in any way is associated with the corporate debtor can take part in the said process.

**Article 142- “Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.—**

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<sup>6</sup> INDIA CONST. art. 142.

(1) *The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order<sup>1</sup> prescribe.*

(2) *Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.”*

Article 142 of the Indian Constitution is the inherent power of the Supreme Court, which empowers the hon’ble court to take any necessary measure to do complete justice. There are several case laws that have set the precedent with respect to this article. In the case of *Prem Chand Garg V. Exercise Commissioner, UP (1963)*<sup>7</sup>, it was held that the Supreme Court cannot pass any such decree or order which is inconsistent with the fundamental rights or any other constitutional provision. In another case of *I.C. Golak Nath V State of Punjab & Anr. (1967)*<sup>8</sup>, the Hon’ble Supreme Court stated that Article 142 is wide and elastic and enables the Supreme Court to formulate any legal doctrine to meet the ends of justice. In the recent case of *Shilpa Sailesh V. Varun Srineevasan (2023)*<sup>9</sup>, the Supreme Court stated that it can depart from procedural as well as substantive law while exercising its power under Article 142.

This collusion of Article 142 with the Corporate Insolvency Resolution Process is a one-of-a-kind order by the Hon’ble Supreme Court. What caused the Supreme Court to exercise its inherent power was the competing interest of multiple stakeholders of the Supertech Supernova building, which includes corporate creditors, homeowners, Noida, Banks, etc. The two-judge bench, consisting of the CJI, Justice Suryakant, and Justice Joymalya Bagchi, while considering the suggestion of the Amicus Curiae, Adv. Rajeev Jain arrived at the conclusion of passing the order to constitute a committee for the supervision of the CIRP process of Supertech Realtors Pvt. Ltd.

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<sup>7</sup> Prem Chand Garg V. Exercise Commissioner, AIR 1963 SC 996

<sup>8</sup> I.C. Golak Nath V State of Punjab & Anr., AIR 1967 SC 1643

<sup>9</sup> Shilpa Sailesh V. Varun Srineevasan, AIR 2023 SC 231