Concerns with IBC Amendment

Why in news?

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Union Cabinet approved amendments to the Insolvency and Bankruptcy Code, 2016 (IBC).

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What is the significance of IBC ?

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- Insolvency and bankruptcy code 2016, was introduced to resolve the bankruptcy crisis in corporate sector.
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- According to IBC a financial creditor holds an important role in the corporate insolvency process.
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- The Committee of Creditors (CoC) includes all financial creditors of a corporate debtor.
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- The CoC will appoint and supervise the Insolvency Professional, and has the power to either approve or reject the resolution plan to revive the debtor, or can proceed to liquidate the debtor.
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- The entire process is time-bound and must be completed within a period of 180 days (a one-time extension of 90 days is possible after the completion of 180 days).
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What is the significance of RERA?

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- Real Estate Regulation Act (RERA), was enacted to promote the real estate sector and to ensure sale of plot, apartment or building, or sale of

real estate project in an efficient and transparent manner to protect the interest of home-buyers.
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- RERA also provides for an adjudication mechanism for speedy dispute redressal, and establishes an appellate tribunal to hear appeals.
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- The following are some of the protections offered by RERA to home-buyers:
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1. It mandates that the promoters should deposit 70 per cent of the money realised for the real estate project from the allottees in a scheduled bank to cover the cost of construction and the land cost, and shall be used only for that purpose;
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2. Every promoter should apply to the Real Estate Regulatory Authority ("Authority") for registration of real estate projects.
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3. Such registration can be revoked by the Authority if the promoter makes default in doing anything required by RERA (including time-bound completion of the project).
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4. Upon revocation of the registration, the Authority has the power to freeze the above mentioned bank account to ensure that the promoters do not siphon off money belonging to the allottees.
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5. Subsequently, upon revocation of the registration, the Authority may consult the government to take such action as it may deem fit including carrying out of the remaining development works by competent authority or by the association of allottees.
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6. If a promoter or a real estate agent fails to pay any interest or penalty or compensation imposed on him, it shall be recoverable from such persons as an arrears of land revenue.
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- Thus RERA treats home-buyers as consumers, and provides a consumer-friendly dispute resolution mechanism through an exclusive Authority and appellate tribunal for the home-buyers.

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What are the concerns with recent amendments?

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- Recent amendment to IBC has given home-buyers the status of “financial creditors” in the insolvency process under the IBC.
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- By doing so, the Union Cabinet has overlooked the recently enacted Real Estate (Regulation and Development) Act, 2016 (RERA), which is a special legislation to protect the interests of home-buyers.
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- Actually financial creditors largely consist of banks and financial institutions, which have the requisite expertise to actively participate in, and to contribute to the resolution process, which involves the crucial task of coming up with a resolution plan to revive the company.
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- Thus in reality home-buyers will have little interest in the company’s revival or the corresponding macro-economic implications, as their end-goal will be to simply recover their hard-earned money.
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- The recent representation of home-buyers will be a challenge to obtain consensus or a majority vote on various issues that need to be addressed at the CoC meetings.
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- Therefore, the inclusion of home-buyers in the category of “financial creditors” will only cause unnecessary delay in the corporate liquidation process, which will significantly reduce the value of the assets under liquidation.
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Source: Business Line

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