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### *Landowners having the right to area sharing under a development agreement cannot claim to be financial creditors under IBC*

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The Hon'ble National Company Law Appellate Tribunal, in the matter of *Namdeo Ramchandra Patil & Ors. vs. Vishal Ghisulal Jain & Ors.*, and companion appeals, upheld the order of the Adjudicating Authority under IBC, that landowners in a development agreement, having an area sharing arrangement, are not financial creditors under the Insolvency and Bankruptcy Code, 2016 ("*IBC*").

The Hon'ble National Company Law Appellate Tribunal relying on the judgment of the Supreme Court of India in the matter of *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* ((2019) 8 SCC 416) amongst others, by its judgment dated September 19, 2022, opined that:

- ❖ As per Section 5(7) of the IBC, a financial creditor is one to whom a financial debt is owed. As per Section 5(8) of the IBC, there must be disbursement of money against the consideration for the time value of money for a debt to qualify as financial debt.
- ❖ The fact that one may be an 'allottee' within the meaning of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 alone is not sufficient to fall within the trappings of Section 5(8)(f) of the IBC, if no amount has been raised from such an allottee, as in the present case.
- ❖ Therefore, in view of the fact that, the present transaction was an area-sharing arrangement, the pre-condition set out in explanation (i) of Section 5(8)(f) of the IBC i.e., raising money from an allottee, not having been fulfilled, the landowners cannot be regarded as financial creditors.

The judgment of the National Company Law Appellate Tribunal dated September 19, 2022, can be accessed [here](#)