

## Case Snippets

### Volume 03, Number 14 (April 1, 2020)

**Rajendra K. Bhutta Vs Maharashtra Housing and Area Development Authority and Another (Civil Appeal No. 12248 of 2018), Decided on 19th February, 2020) (Supreme Court)**

**Section 14 read with Section 238 of the Insolvency and Bankruptcy Code, 2016 read with Sections 76 and 79 of the Maharashtra Housing and Area Development Authority Act, 1976 – Moratorium**

In this appeal there arises a question as to the correct interpretation of Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016.

#### **Facts of the case:-**

A Resolution was passed by the Maharashtra Housing and Area Development Authority (MHADA) on 01.11.2007, to execute a joint development agreement with the Corporate Debtor and Goregaon Siddharth Nagar Sahakar Griha Nirman Sanstha Limited (a Society for persons who are displaced and who are to be rehoused in the project for joint development of land, ad1 measuring about 40 acres), which envisaged re-development insofar as 672 tenements in Siddharth Nagar, Goregaon, Mumbai were concerned.

Above resolution plan was approved by the Maharashtra State Government on 03.03.2008 and Tripartite Joint Development Agreement was entered into between the three parties on 10.04.2008. On 25.03.2011, a Loan Agreement was entered into and executed between the Union Bank of India and the Corporate Debtor for a sum of Rs. 200 Crores. A Deed of Modification was entered into between the three parties to the Joint Development Agreement. An Insolvency Application under Section 7 of the Code, was filed on 15.05.2017, and the same was admitted on 24.07.2017. On 12.01.2018 - after the imposition of the moratorium period under Section 14 of the Code - MHADA issued a termination notice to the Corporate Debtor stating that upon expiry of 30 days from the date of receipt of the notice, the Joint Development Agreement as modified would stand terminated. It was further stated that the Corporate Debtor would have to handover possession to MHADA, which would then enter upon the plot and take possession of the land including all structures thereon. 180 days from the start of the CIRP, expired on 19.01.2018. The NCLT, by order dated 24.01.2018, extended the CIRP period by ninety days, as is permissible under the Code.





On 01.02.2018, the Appellant filed M.A, seeking a direction from the NCLT to restrain MHADA from taking over possession of the land till completion of the CIRP, contending that such a recovery of possession was in derogation of the moratorium imposed under Section 14 of the Code. The NCLT, by order dated 02.04.2018, dismissed the aforesaid application, stating that Section 14(1)(d) of the Code does not cover licenses to enter upon the land in pursuance of Joint Development Agreements, stating that such licenses would only be 'personal' and not interests created in the property. An appeal against this order was referred to the NCLAT.

Meanwhile, in a parallel proceeding, on 18.04.2018, the amount of time taken by the NCLT in deciding the application under Section 7 under the Code, being 55 days, was sought to be omitted from the total number of days allowable under the Code. This application was partially granted, excluding 38 out of 55 days. By order dated 09.05.2018, NCLAT allowed the appeal and allowed the entire 55 days so taken before the NCLT to be excluded. Ultimately, the NCLAT, by the impugned order dated 14.12.2018, stated that 270 days are over, as a result of which the entire discussion of Section 14(1)(d) would now become academic.

Hon'ble Supreme Court referred the Judgement *Ude Bhan and Others vs. Kapoor Chand and Others AIR 1967 P&H 53 (FB)* where the expression "occupied" was elaborated. Hon'ble SC, in this case, observed that the expression "occupied by" would mean or be synonymous with being in actual physical possession of or being actually used by, in contradistinction to the expression "possession", which would connote possession being either constructive or actual and which, in turn, would include legally being in possession, though factually not being in physical possession. Since it is clear that the Joint Development Agreement read with the Deed of Modification has granted a license to the developer (Corporate Debtor) to enter upon the property, with a view to do all the things that are mentioned in it, there can be no gain saying that after such entry, the property would be "occupied by" the developer.

It is clear that **Section 14(1)(d) of the Insolvency & Bankruptcy Code, when it speaks about the recovery of property "occupied", does not refer to rights or interests created in property but the only actual physical occupation of the property.**

Hon'ble SC further observed that, **when it comes to any clash between the MHADA Act and the Insolvency Code, on the plain terms of Section 238 of the Insolvency Code, the Code must prevail.**

