



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

Case-Snippets

Volume 04 | Number 07

(February 19, 2021)

APARNA ENTERPRISE LTD. VS. SJR PRIME CORPORATION PVT. LTD.
COMPANY APPEAL (AT) (INSOLVENCY) NO. 632 OF 2020
DATE OF JUDGEMENT: 15TH FEBRUARY 2021

“The provision of the Code cannot be invoked for recovery of outstanding amount as well as it cannot be misused to drop the curtain on a healthy organization.”

Facts of the Case: -

The Appellant filed this appeal under Section 61 of the IBC, 2016 against the order passed by the AA. The AA had decided the case on the reason that the Company Petition has been filed with an intention to recover the disputed outstanding amount in question under arbitration proceeding. The Appellant raised the issue of creation of false disputes by the respondent.

NCLAT Observations: -

The Hon'ble NCLAT was of the view that OC had issued a Demand Notice which was duly received by the CD and replied within the stipulated period and further proved that there was an existence of dispute over quality of work and goods supplied etc. and had also raised issue to initiate arbitration proceedings for excess sum paid to the Appellant etc. The above meets the criteria of genuine dispute raised within stipulated period. Accordingly, under Section 9(5)(ii)(d) of the Code the Application was rejected. The Tribunal further stated that the Objective of the Code is to consolidate and amend the laws relating to reorganization and Insolvency Resolution of Corporate Persons. Using the platform of the Code and threatening the vendor to release disputed amount is not fair and equitable.

The Court affirmed the conclusion of the AA and dismissed the appeal accordingly.



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**UPENDRA CHOUDHURY VS. BULANSHAHAR DEVELOPMENT AUTHORITY & ORS
WRIT PETITION (CIVIL) NO 150 OF 2021 (SUPREME COURT)**

DATE OF JUDGMENT: 11TH FEBRUARY 2021

“A decision of a public authority which is entrusted with a public duty is amenable to judicial review. But it is quite another hypothesis to postulate that the decision making authority should be taken over by the court.”

Facts of the Case: -

The Appellant filed this petition under Section 32 of the Constitution seeking directions in respect of a real estate project which is being developed by the respondents. The relief sought was Cancellation of all the agreements, Refund of moneys to purchasers; and in the alternative ensuring that the construction is carried out and that the premises are handed over within a reasonable period of time. Further, incidental to the above reliefs, the petitioner sought constitution of a Committee headed by a former Judge of the Court together with other persons to monitor and handle the projects of the developer in the case. The petitioner also sought a forensic audit, an investigation by CBI and by other authorities such as the Serious Fraud Investigation Office and Enforcement Directorate.

Supreme Court Observations: -

The Hon'ble Court was of the considered opinion that the reliefs which have been sought would involve the Court in an adjudicative process. The writ petition under Article 32 has been filed by a singular home buyer without seeking to represent the entire class of home buyers. The petition proceeds on the implicit assumption that the interests of all the buyers are identical. There is no basis to make such an assumption. Further, it would be inappropriate to entertain a petition on reasons as there are specific statutory provisions holding the field, including The Consumer Protection Act 1986, The Real Estate (Regulation and Development) Act 2016 and The Insolvency and Bankruptcy Code 2016. Entertaining a petition of this nature will involve the Court in virtually carrying out day to day supervision of building project.

The Court disposed of the petition accordingly.