



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

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**M/S. DREAMS INFRA INDIA PVT. LTD. VS. THE COMPETENT AUTHORITY, DREAMZ INFRA INDIA PVT. LTD., AND  
OTHER ALLIED COMPANIES/ENTITIES  
WRIT PETITION NO.13477/2020(GM-RES)  
DATE OF JUDGMENT: MAY 24<sup>TH</sup> 2021**

### **“IBC, 2016 PREVAILS OVER THE STATE ENACTMENTS.”**

#### **Facts of the Case: -**

This petition was filed under Articles 226 and 227 of the Constitution of India and Section 482 of Cr.P.C. to issue a writ of certiorari to quash the proceedings initiated against the petitioner pending in the Principal City Civil and Sessions Judge (Special Judge), Metropolitan Area, Bengaluru ‘Spl. Judge’ and direct the respondent to handover the properties to the RP as directed by Hon’ble NCLT, Bengaluru.

The facts of the case are that the petitioner (M/S. Dreams Infra India Pvt. Ltd) a real estate Company involved in the development of various housing and apartment projects. The petitioner had executed Agreement of Sale and MoU with many homebuyers for sale of apartments in its construction projects. After collection of certain amount as advance money to book apartments, the apartments were not handed over to the home buyers.

The respondent (constituted authority appointed by the Government of Karnataka) initiated proceedings under Section 7(1) of the Karnataka Protection of Interest of Depositors in Financial Establishment Act, 2004 ‘Act’, against the petitioner and the same was admitted by the Spl. Judge. The respondent stated that the petitioner accepted deposits from 3668 depositors to the tune of Rs. 385 Crores and failed to repay same. Subsequently, three homebuyers being aggrieved by the actions of the petitioner moved a petition before the Hon’ble NCLT ‘AA’ under Section 7 of IBC, 2016 seeking to declare the petitioner as insolvent. The AA admitted the petition and CIRP under IBC, 2016 was commenced.

It is contended that the respondent despite being informed about the proceedings under IBC, 2016 and that due to Section 14 of IBC, 2016 the proceedings in Spl. Judge against the petitioner has been stayed,



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the respondent did not hand over the properties as per law and initiated action under Section 7 of the Act.

### **High Court's Observations: -**

The Court stated that in its various Judgements it has discussed regarding the repugnancy of State law, regarding Sections 14 and Section 238 of the IBC, 2016 in respect of the moratorium which has got overriding effect over other laws and that the IBC, 2016 prevails over the State enactments.

It further stated that in the present case, the matter has been presented before the AA before initiating of the present proceedings. Further in its recent Judgment it has held that there cannot be any other civil proceedings when the matter has been ceased and already some homebuyers have approached the NCLT, and RP was also appointed. Under the circumstances, the Court was of the opinion that there is a force in the contention of the petitioner that the provisions of the IBC, 2016 have overriding effect over other laws and the same would prevail in view of Section 238 of the IBC, 2016 and that the proceedings initiated against the petitioner under the Act should be quashed.

### **Order: -**

The High Court allowed the writ petition and the proceedings initiated against the petitioner under the Act were quashed. Further, it stated that the other reliefs sought to hand over the properties to RP does not arise as he has already been replaced by the AA and the petitioner can seek appropriate order from the AA where the matter is still pending. Further, if need arise the respondent can also proceed in accordance with law after the disposal of the matter pending before AA.

**Case Review: -** *Writ Petition Allowed.*