



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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***SLB Welfare Association Vs. M/s PSA IMPEX Pvt Ltd, M/s Rudra Buildwell Constructions Pvt. Ltd
Company Appeal (AT) (Insolvency) No.642 of 2022
Date of NCLAT's Judgement: November 4, 2022.***

Facts of the Case: -

SLB Welfare Association hereinafter referred as ("Appellant") filed appeal against the orders dated 18.04.2022 and 25.07.2022 passed by the AA. M/s PSA IMPEX Pvt Ltd, the "CD", launched a House Building Project in the year 2012 to be completed within 36 months. Being delayed, the homebuyers approached the RERA and the latter conducted an inspection of the Project site on 18.02.2019 and found that only 10% of the work has been started and from March 2016 work was abandoned. CD, on 04.08.2019 sent a mail to the buyers that the Project has been handover to M/s. Rudra Buildwell Constructions Pvt. Ltd. The RERA passed an order on 30.09.2019, cancelling the registration of the Project. A letter dated 26.06.2020 was issued by the Secretary of RERA to the CD for handing over the site to the Appellant.

M/s. Rudra Buildwell Constructions Pvt. Ltd. claiming to be an Operational Creditor filed an Application under Section 9 which was later withdrawn on the submission that Application is hit by Section 10A of the Code. Within a week from the withdrawal, a notice under Section 8 of the Code was issued by the Operational Creditor dated 06.12.2021 to the CD demanding payment of Rs.5,39,60,674/- including interest. The date of default mentioned in the Application was 31.03.2020. The AA being prima facie of the view that the Application is hit by Section 10A, permitted the Operational Creditor to file an additional affidavit. The AA vide order dated 18.04.2022 admitted Section 9 Application and appointed an IRP. Pursuant to the application filed by IRP, AA vide its order dated 25.07.2022 directed the Appellant to handover possession of the project in question to the IRP within two weeks.

Aggrieved by the order, the Appellant filed appeal in NCLAT submitting that insolvency proceedings were fraudulently initiated by the Operational Creditor in collusion with the CD. The invoices filed in support of Section 9 Application were only proforma invoices and does not have any invoices number and GST number and are self-prepared documents. The Appellant contended that rights of the Project vests in the Appellant by virtue of order passed by RERA and by virtue of Section 14(1) Explanation, there is no conflict with the order passed by the RERA and those of proceedings under IBC.

The Respondent submitted that proforma invoices are issued at the time of work being carried out and thereafter while raising final invoices, GST payments are made. The provisions of IBC shall override the provisions of RERA and order passed by RERA cannot come in the way of initiation of CIRP.

The question raised before the NCLAT is that whether the order of AA directing the Appellant to handover the Project to IRP is justified or not.



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NCLAT's Observations:-

The Appellate Tribunal after considering the submission of both the parties held that the facts of the case make it amply clear that object of filing Section 9 Application by the Operational Creditor was not for resolution of insolvency of CD, but was an attempt to stop the implementation of RERA order. The invoices are not claimed to have been issued within one month from the date of supply of goods, material or services and also does not mention the GST number or amount of tax, which proves the contention of the Appellant that they have been prepared for the purposes of the case.

Further, the ledgers of Corporate Debtor maintained by M/s. Rudra Buildwell Constructions Pvt. Ltd. indicate that ledgers are not prepared in an ordinary course of business.

It is further relevant to notice that RERA has made inspection of the site on February 2019 and at that time of inspection, no work was found to be going on and the work has stopped for last two years. The Project was handed over to the Appellant on 29.06.2019 and the Operational Creditor has claimed the amount from August 2019 to May 2021.

The Appellate Tribunal held that the entire case of the Operational Creditor to supply materials, goods and services appears to be false and concocted only for the purpose of filing Section 9 Application and thus penalty is liable to be imposed on the Operational Creditor under Section 65 of the Code. The initiation of CIRP itself being vitiated in law, all subsequent orders passed in the proceedings have to be automatically set aside.

Order: - The orders are set aside, and the company petition is dismissed as having been filed malifide for purposes other than resolution of insolvency of the CD. A penalty of Rs. 25,00,000/- (Rupees twenty-five lakhs) is imposed on M/s. Rudra Buildwell Constructions Pvt. Ltd. through its owner Shri Raj Kumar.

Case Review: - Appeals Allowed.