



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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VICTORY IRON WORKS LTD. Vs. JITENDRA LOHIA & ANR.
CIVIL APPEAL NO.1743 OF 2021
Date of Supreme Court Judgement March 14, 2023

Facts of the Case: -

This appeal was preferred by M/s Victory Iron Works Ltd. (hereinafter referred as 'Appellant') before the Supreme Court after being aggrieved by the impugned order passed by NCLAT dated 08.04.2021.

M/s Sesa International Ltd., a financial creditor, filed an application of CIRP u/s 7 of IBC against Avani Towers Private Limited (Corporate Debtor/CD), which was admitted for CIRP by the Adjudicating Authority (AA) dated 15.10.2019. Energy Properties, in its capacity as an 'ostensible owner' purchased a land of 10.19 acres from UCO bank which was funded by the CD under a MoU dated 24.01.2008. The CD also entered into an agreement with Energy Properties dated 16.06.2008 for the joint development of the said property wherein exclusive rights regarding the development of the property were handed over to the CD. Thereafter, the CD executed a Leave and License Agreement dated 19.08.2011 under which a license was granted for the use of 10,000 sq. ft. land out of 10.19 acres to M/s Victory Iron Works Ltd (Appellant).

The suspended Board of Directors of the CD informed the RP that 'Energy Properties' was forcefully removing the security guards from the property. Therefore, RP filed an application before the AA under Section 25 of IBC read with Regulation 30 of IBBI (CIRP) Regulations, 2016 for seeking appropriate action. After that, the AA directed the Appellant and Energy Properties not to obstruct the possession and activities of the RP and also held at the same time that the order would not prevent the appellant from carrying on their activities in the portion of the land given to them under the Leave and License Agreement.

Aggrieved by the said order of the AA, Appeals were filed, by the Appellant and Energy Properties, before the NCLAT and the same were dismissed. But NCLAT also confirmed the decision of NCLT that the Appellant could use that part of the land on which it had licensed right. However, the Appellant wanted the entire land and opposed the RP's claim that "development rights are held by the CD that forms it an intangible asset of the CD and must be protected" and argued that AA does not have the power under the IBC to evict a licensee in possession of the property.

Namely, two issues raised before the Supreme Court, *firstly*, what is the nature of the interest that the CD has over the property in question? *Secondly*, whether the jurisdiction exercised by the AA and Appellate Tribunal is vested in them or not?



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Supreme Court Observations:

The Supreme Court observed that a bundle of rights arising from the MoUs and various agreements entered into by the CD related to the property in question constitute an 'asset' in common parlance denotes 'property of any kind' within the meaning of Section 18(f) and Section 25(2)(a) of IBC. The Court relied on a previous judgement of the Apex Court in the matter of *Sushil Kumar Aggarwal Vs. Meenakshi Sadhu & Ors. (2019)* to conclude that some of this bundle of rights and interests partake the character and shades of ownership rights. Therefore, the RP is duty-bound to include the property in question in CIRP, take custody, and control of the same.

In addressing the second issue, the Supreme Court cited its judgment in *Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority & Anr. (2020)*, stating that there is no record of the Appellant occupying any land in excess of what was permitted under the Lease and License Agreement. Therefore, the AA, as well as the Appellate Authority, was right in exercising their jurisdiction.

Order/Judgement: The impugned orders do not call for any interference.

Case Review: *Appeals Dismissed.*