

# IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



## NAHAR BUILDERS LIMITED VS. HOUSING DEVELOPMENT AND INFRASTRUCTURE LTD.

### Brief Facts

In 2016, there were disputes between the two parties under a Memorandum of Understanding ("MoU") dated 11th August 2011 that pertained to the sale of some Term Deposit Receipt by the beleaguered Respondent, Housing Development and Infrastructure Limited ("HDIL") to the Applicant, Nahar Builders Limited ("Nahar Builders"). That MoU had an arbitration clause. Nahar Builders filed the present Arbitration Petition No. 74 of 2017 and sought inter alia an order against HDIL to provide security.

The High Court of Bombay vide its order dated 3rd February, 2017 provided HDIL to furnish an unconditional bank guarantee in the sum of Rs. 8 Crores payable on demand to the Petitioner. The terms of the bank guarantee will be as approved and will be to the satisfaction of the Prothonotary & Senior Master of this Court. There will be no extension of time and the Respondent agrees and undertakes not to apply for any such extension. This undertaking is accepted as one to the Court. HDIL failed to comply with the above order dated 3rd February, 2017. On 7th April 2017, when that Petition was called out HDIL furnished a Pay Order for Rs. 8 crores in favour of the Prothonotary & Senior Master and the deposit was accepted. Then the Arbitrator entered upon the reference to his arbitration and concluded the proceedings on 13th August 2019. He awarded Nahar Builders an amount of Rs. 8 Crores and directed HDIL to pay this amount with interest of 8% per annum from 23rd March 2016 and accordingly Nahar Builders filed an application before High Court of Bombay to permit the withdraw the deposited amount of Rs. 8 Crores.



INSOLVENCY PROFESSIONAL AGENCY  
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### **Decision**

The High Court of Bombay held that once an amount is deposited in this Court, it is placed beyond the reach of either party without permission of the Court. It is, therefore, not 'the property' of either party pending an adjudication as to entitlement by the Court. Once the Arbitrator held that it was Nahar Builders that was entitled to this amount, and that award became enforceable as a decree of this court, then no question remained of the amount being claimed by HDIL.

From the time the deposit was made until the time withdrawal is ordered, that amount is not the property of either party to the dispute. It is true that an execution against HDIL is presently stayed but this is not an application for execution, nor is it, within the meaning of Section 14(1)(d) of IBC,2016, an application for 'the recovery of any property by an owner or lessor where such property is occupied by or is in the possession of corporate debtor'. To read only the words 'recovery of any property', but not to read the rest of clause (d) is materially incorrect.

The provisions regarding a moratorium cannot possibly apply to such cash deposits made in this Court. Once it is deposited in Court no party can automatically claim any right to it without an adjudication by a Court. There is no dispute that there is an unchallenged and unsatisfied award in favour of Nahar Builders Ltd. against HDIL. There is also no dispute that an amount of Rs. 8 Crores is available with this Court. There is no bar to this application for withdrawal. The application for withdrawal cannot be conceivably be considered a suit, proceeding or execution within the meaning of Section 14(1)(a) of IBC,2016. The Prothonotary & Senior Master will effect the transfer by RTGS to the bank account to be communicated by the Advocates for Nahar Builders.

### **Link to the order**

<https://indiankanoon.org/doc/104605791/>

**We wish Insolvency Professionals all the success in their professional endeavours.**

**Thanks & Regards**

**Team IPA ICAI**



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