

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Jain Heights and Structures Pvt. Ltd. VS. Bheemasamudra Land Developers and Builders

Brief Facts

The present Appeal is filed against the Order dated 16.04.2021 passed by the 'Adjudicating Authority' (NCLT, Bengaluru Bench, Bengaluru) whereby the 'Adjudicating Authority' admitted the Application filed by the Respondent herein under Section 9 of IBC. Aggrieved by the same, the Appellants preferred the present Appeal.

The Corporate Debtor purchased a plot of land admeasuring 8 Acres and 13 Guntas. It is submitted that after the purchase of the said property, it was revealed that the Respondent had suppressed the following disputes pertaining to the said land viz. pendency of O.S. No.381 of 2015 filed by B.K. Rajashree and Ors. against the Respondent herein seeking declaratory and injunctory relief as to the said property. It is submitted that prior to finalizing the purchase of the said land the Corporate Debtor had given some cheques to show its bonafide to the Respondent herein. It is also submitted that there is no record of a debt being due as per the financial records of either the Corporate Debtor or the Operational Creditor.

Further it is again submitted that the disputed agreement cannot be proved to be genuine and did not know of its existence until the Respondent issued a reply on 06.10.2016 in reply to the legal notice dated 28.09.2016. Further the claim is barred by limitation.

Decision

The Learned Counsel appearing for the Respondent submitted that the Respondent /Operational Creditor is a partnership firm engaged inter alia in the business of land development, construction, and other incidental activities.

The Learned Counsel also appeared for the respective parties, perused the pleadings, documents and citations relied upon by them. After analyzing the pleadings, the issue felt for consideration is whether the Respondent is an Operational Creditor and whether the debt is an Operational Debt or not.

The Corporate Debtor purchased the above land from all the partners of the Operational Creditors vide Sale Deed dated 08.06.2015. While so, the Operational Creditor rendered certain services for the said property sold to the Corporate Debtor. The Operational Creditor issued reply to the Legal Notice denying all allegations and confirmed that it is defending the Corporate Debtor as per the undertaking under the Deed of Indemnity. It is pertinent to mention that there was no whisper about the service fee in the legal notice and the Operational Creditor reserved its rights to recover the service fee from the Corporate Debtor.

The Learned Adjudicating Authority rightly admitted the application and the Appellant has not made out any case seeking to set aside the said admission order. Therefore, it is prayed that the Appeal may be dismissed.

Link of the Order

<https://ibbi.gov.in/uploads/order/5f194ef45bd5f7073b0d8f1f6da3330a.pdf>



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