

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **Greater Noida Industrial Development Authority Vs. Roma Unicon Designex Consortium**

### **Brief Facts**

In the present case, through a letter of allocation, the Greater Noida Industrial Development Authority ("GNIDA") gave some land to a consortium that included M/s Earth Infrastructure Limited, M/s Raus infra Ltd., and M/s Shalini Holdings Limited. The Consortium was required under the Builders program to establish a distinct business; as a result, M/s Earth Towne Infrastructures Pvt. Ltd. was established. In accordance with a number of lease deeds that GNIDA had executed and development agreements it had signed, Earth Infrastructure Limited was authorized to build on property held by Earth Townee, M/s Neo Multimedia Ltd., and M/s Nishtha Software Pvt. Ltd.

There were three developments where numerous purchasers reserved residential

apartments. After that, a Financial Creditor filed an application under Section 7 of the IBC against M/s Earth Infrastructure Limited (the "Corporate Debtor"), which was accepted, and CIRP was started. In the same Corporate Insolvency Resolution Process launched against the Corporate Debtor Earth Infrastructure Limited, three appeals were filed against the rulings made by the NCLT, Delhi Bench.

It was contended by the appellant that because the Corporate Debtor lacked both ownership and leasehold rights over the properties, they could not have been included in the assets of the Corporate Debtor. The Resolution Plan that was accepted involved the Appellant's lands, which shouldn't have been permitted because it was outside the purview of the Resolution Professional.

It was contended by the respondent that the land belonged to the investors and not GNIDA. Further, the Appellant sent claims post approval of the resolution plans.

## **Decision**

The Tribunal observed that the assets of the Corporate Debtor and the assets of the Corporate Debtor's subsidiary were noted to be recognized separately under the IBC. According to Section 18(1) Explanation, Assets of the Corporate Debtor cannot include assets of the subsidiary firm. Therefore, when dealing with the assets of the Corporate Debtor, Earth Townee's assets were not to be taken into account. It was explained that because both firms have different legal positions, the subsidiary company's assets cannot be handled under the CIRP of a holding company.

The Bench further observed that after reading the information memorandum, it did not state that the Corporate Debtor was the owner of the Project property. It was made apparent in the lease instrument that the Appellant had signed in favor of the property holding firm that the lessor and lessee were the parties to the contract. The resolution plan attempted to transfer the ownership of the property and the development rights to a third party without the lessor's consent, which is not permitted.

The Appellate Authority observed that the leased property could not have been a part of the Resolution Plan without the Appellant's consent; as a result, the NCLT could not have ordered the transfer of the aforementioned lease land. Additionally, it was also argued that the assets of the landholding firms, which are corporate debtor subsidiaries, cannot be considered

corporate debtor assets. Finally, it was decided that the resolution plan cannot deal with lease land or include a clause allowing the lessor to transfer a leasehold interest without their consent.

The orders of the NCLT were set aside and accordingly, the appeal was disposed of.

### **Link of the Order**

<https://ibbi.gov.in/uploads/order/260a99f99d6dbc82d26acebd8bdda927.pdf>



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