

## **Insolvency and Bankruptcy Board of India**

**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

**16<sup>th</sup> March 2023**

***Subject: Judgment<sup>1</sup> dated 14<sup>th</sup> March, 2023 of Supreme Court in the matter of Victory Iron Works Ltd. Vs. Jitendra Lohia & Anr. [Civil Appeal No.1743 and 1782 of 2021]***

### **I. Brief Background:**

Following the AA's order to initiate CIRP against the CD i.e., Avani Towers Private Limited (ATPL) on 15.10.2019, the RP during the conduct of processes; amongst other activities, started compiling information memorandum (IM), taking custody of assets / intangible assets over a piece of land in which CD had complete development rights. Earlier, the CD had arranged finance to Energy Properties Private Limited (EPPL) for purchase of the said piece of land and holds 40% of share capital in it. Both ATPL and EPPL hold joint development agreement for development of said parcel of land. Subsequently, part of the said land was given to Victory Iron Works Limited (VIWL) on leave and License basis for 11 months.

During the processes, upon the information by the suspended director of the CD about the obstruction caused by EPPL to the said land, RP had filed an application before AA seeking direction to EPPL & VIWL not to cause obstruction and sought direction to local district administration for assistance to RP in taking possession of the property. In this regard, both AA and NCLAT its orders held that CD had the development right to the extent of land excluding the part of land given to VIWL on leave and license agreement; and the said asset should be preserved and included in the IM. Aggrieved by the order of NCLAT, EPPL and VIWL have filed an appeal filed before the SC.

### **II. Issues:**

1. What is the nature of the right or interest that the CD has over the property in question, for the purpose of inclusion of the same in the IM prepared by the RP under regulation 36 of the CIRP Regulation?
2. Whether NCLT and NCLAT have exercised a jurisdiction not vested in them in law on the applications of CD seeking direction against EPPL from protection and possession of the land?

### **III. Findings & Observations of the Hon'ble Supreme Court –**

a) Hon'ble SC, while dismissing the appeals, upheld the order of AA as well as NCLAT. It was observed that on the basis of series of documents executed in favour of CD by the respective parties, bundle of rights and interests including the development rights over the land created in favour of CD, constitute "property" within the meaning of section 3(27) of the Code. Further, SC held that the bundle of rights that the CD has over the property in question would constitute "asset" within the meaning of Section 18(f) and Section 25(2)(a) of Code. Therefore, the rights and interests of CD in the immovable property should be included by the RP in the IM. Thus, in terms of section 25(2)(a) of the Code, RP has the duty to take custody and control of the same.

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b) As regards the issue of exercise of jurisdiction by the Tribunals on the disputes between the CD, EPPL and VIWL which are not amenable with in the purview of AA and NCLAT, SC observed that both the Tribunals have done a delicate act of balancing, by protecting the interests of VIWL to the extent of the land permitted to be occupied. VIWL is not a lessee but licensee only; as such does not create any interest in the immovable property.

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