

'Moratorium' in terms of Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) on the land of 'Maharashtra Housing and Area Development Authority' has been rejected.

2. The land in question originally belonged to 'Bombay Housing & Area Development Board', which was vested in the 'Maharashtra Housing and Area Development Authority' in the year 1966 pursuant to 'Maharashtra Housing and Area Development Authority Act, 1966' with all rights, liabilities and obligations.

3. The land admeasuring 40 acres was allotted in favour of a society on 8th February, 1988. The society in its Annual General Meeting decided to enter into an agreement with 'Guru Ashish Construction Private Limited'-'(Corporate Debtor)' and a 'Joint Development Agreement' was executed between the Society, 'Corporate Debtor' and 'Maharashtra Housing and Area Development Authority' on 10th April, 2008 for construction of building by the 'Corporate Debtor' and thereafter, to hand over to the Society for rehousing of 672 tenants and the area earmarked for the 'Maharashtra Housing and Area Development Authority'.

4. The 'Corporate Debtor' had taken Rs. 200 Crores Term Loan Facility from the 'Union Bank of India' on 25th March, 2011. Subsequently, the permission was granted by the 'Maharashtra Housing and Area Development Authority' to sell the 'free sale component' without the

signature of the officers of 'Maharashtra Housing and Area Development Authority'. However, NOC for the occupation certificate 'for free sale component' could not have been issued by the 'Maharashtra Housing and Area Development Authority' unless and until proportionate share of built up area is handed over to the 'Maharashtra Housing and Area Development Authority'.

5. On 20th March, 2017, a suit was filed before the Hon'ble High Court of Bombay being Suit No. 40 of 2017 by flat purchasers, for revised timeline for construction of 'Rehab Component', 'Maharashtra Housing and Area Development Authority Component' and 'Free Sale Component'. On 24th April, 2017, the 'Maharashtra Housing and Area Development Authority' issued a letter informing the 'Corporate Debtor' that they are revoking the agreement followed by 'Stop Work notice' issued in the year 2015.

6. On 30th April, 2017, the 'Corporate Debtor' defaulted to pay Rs. 254,53,85,278/- towards the loan facility provided by the 'Union Bank of India'. In this background, the application under Section 7 of the 'I&B Code' was filed by the 'Union Bank of India' against the 'Corporate Debtor' on 15th May, 2017 which was admitted on 24th July, 2017.

7. Pursuant to the order of termination letter, in terms of clause 6.1 of 'Joint Development Agreement', on 12th January, 2018, the 'Maharashtra Housing and Area Development Authority' asked to handover the land. The

'Resolution Professional' who had taken over the management of the 'Corporate Debtor' by his letter dated 15th January, 2018 intimated the 'Maharashtra Housing and Area Development Authority' that the 'Corporate Debtor' is under 'Moratorium' and thereby requested not to proceed in terms of notice of termination, and not to terminate the 'Joint Development Agreement'.

8. Having received no reply, on 22nd February, 2018, the 'Resolution Professional' filed Miscellaneous Application being MA 137 of 2018 for carrying out amendment in MA 96 of 2018 to which reply was filed by the 'Maharashtra Housing and Area Development Authority'.

9. The Adjudicating Authority by impugned order dated 2nd April, 2018, rejected the application filed by the 'Resolution Professional' for amendment and thereby refused to apply provision of Section 14(1) (d) of the 'I&B Code' in respect to the property in question which belongs to the 'Maharashtra Housing and Area Development Authority'.

10. During the course of hearing, it is informed that 270 days' period of 'Corporate Insolvency Resolution Process' has been completed on 19th April, 2018, and 'Resolution Plan' submitted.

11. Learned Senior Counsel appearing on behalf of the 'Resolution Professional' placed reliance on 'Agreement' dated 9th November, 2011 and the 'Joint Development Agreement' dated 10th April, 2008 to suggest that

the 'Corporate Debtor' has right over the land in question. Reliance has also been placed on letter of termination issued by the 'Maharashtra Housing and Area Development Authority'.

12. Learned Senior Counsel for the 'Resolution Professional' referring to Section 14(1)(d) of the 'I&B Code' and submitted that the 'Moratorium' is applicable to the land in question.

13. On the other hand, according to the learned Senior Counsel for the Respondent- ('Maharashtra Housing and Area Development Authority'), no right was created in favour of the 'Corporate Debtor', who is merely a developer of the land, the 'Corporate Debtor' sold its right to the third party.

14. On perusal of record, we find that pursuant to the 'Joint Development Agreement' the land of the 'Maharashtra Housing and Area Development Authority' was handed over to the 'Corporate Debtor' and 'except for development work' the 'Corporate Debtor' has not accrued any right over the land in question. The land belongs to the 'Maharashtra Housing and Area Development Authority' which has not formally transferred it in favour of the 'Corporate Debtor'. Hence, it cannot be treated to be the asset of the 'Corporate Debtor' for application of provisions of Section 14(1) (d) of the 'I&B Code'.

15. This apart, as we find that 270 days' period has already lapsed on 19th April, 2018 and the period of 'Moratorium' in any case come to an end,

the question raised has become academic. We find no merit in this appeal.
It is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

14th December, 2018

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