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INSOLVENCY & BANKRUPTCY

Supreme Court Affirms Society’s Right to Replace- Defaulting Developer in Insolvency Context

AUTHOR Ayush Shukla

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Introduction

The Supreme Court's ruling in A A Estates Pvt. Ltd. v. Kher Nagar Sukhsadan CHS Ltd. is a crucial judgment on how redevelopment disputes interact with insolvency law. The case involved a Society living in a dangerous, dilapidated building and a developer who failed to deliver the project for almost two decades. When the Society terminated the developer and appointed a new one, the old developer now under CIRP tried to use the IBC moratorium to block the redevelopment. The Court firmly held that IBC cannot shield a non-performing developer, especially when agreements were already terminated before insolvency and no property rights existed. The decision protects the rights of residents awaiting safe housing and clarifies that public welfare and timely redevelopment outweigh commercial claims under the IBC.

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Factual Background

The dispute arose from redevelopment of a 1956-constructed building belonging to the Kher Nagar Sukhsadan Co-operative Housing Society. In 2005 and 2014, the Society executed a Development Agreement and a Supplementary Agreement with A A Estates Pvt. Ltd. The developer was required to provide rent compensation, secure approvals, demolish the old building, and complete reconstruction within stipulated timelines. Despite nearly two decades, the developer failed to deliver. Out of 60 members, 41 never received any rent, and construction never commenced. Due to repeated delays and non-performance, the Society issued termination notices in 2019 and 2021 all before the second CIRP. Subsequently, in December 2023, the Society appointed Tri Star LLP as the new developer. The Resolution Professional of A A Estates objected, invoking moratorium under Section 14, which led the Society to approach the Bombay High Court. The High Court directed authorities to process redevelopment permissions in favour of the new developer, prompting the present appeal.

Issues Before the Supreme Court

The Court considered four key questions:

1. Whether termination of the 2005 and 2014 Development Agreements was valid.
2. Whether development rights under these agreements constituted "assets" protected by Section 14 of the IBC.
3. Whether the High Court proceedings were vitiated for breach of natural justice.
4. Whether the writ petition was maintainable despite an arbitration clause.

Court's Analysis

1. Validity of Termination

The Court held that the Society had lawfully terminated the developer's rights due to chronic delay and failure to fulfil essential obligations. The termination occurred well before the second CIRP in 2022 and was based purely on contractual defaults, not insolvency. Referring to Gujarat Urja v. Amit Gupta and TCS v. SK Wheels, the Court emphasized that NCLT cannot interfere with contractual

terminations unrelated to insolvency. Housing societies cannot be compelled to indefinitely tolerate non-performance when the developer repeatedly defaults.

2. Development Rights Not Corporate Debtor's Assets

The Court clarified that only existing, crystallised rights of the corporate debtor are protected by moratorium. Development rights in this case were merely a contractual licence, not a proprietary or possessory interest. The developer never had possession of the land; the Society and its members remained in occupation. Therefore, no "asset" existed on the insolvency commencement date. Moratorium under Section 14 cannot be invoked to revive long-terminated development agreements.

3. No Violation of Natural Justice

The appellants argued they were denied an opportunity to file a reply before the High Court. The Supreme Court rejected this argument, noting that the developer's counsel was present, did not seek time, and participated in the hearing. Hence, no prejudice occurred.

4. Maintainability of the Writ Petition

The Court found the writ maintainable because the Society sought directions only against statutory authorities (MHADA/MCGM). The reliefs did not require adjudication of inter-se contractual disputes. Moreover, the building had been declared C-1 (dangerous), demanding urgent action to protect residents' safety under Article 21.

Judgment

The Supreme Court delivered a clear and categorical judgment dismissing the appeal filed by A A Estates Pvt. Ltd. The Court held that the Housing Society had validly and lawfully terminated the developer long before the second CIRP began. Therefore, no subsisting development rights remained in favour of the corporate debtor on the insolvency commencement date. Crucially, the Court ruled that the alleged "development rights" did not qualify as assets or property protected under the IBC because the developer never had possession, never created any proprietary interest, and held only a contractual licence that lapsed with termination. The moratorium under Section 14, meant to safeguard existing assets, cannot revive expired contracts or prevent a society from protecting its members' safety.

The Court further emphasized that IBC is not a sanctuary for non-performing developers, especially where the building is dangerously unfit for habitation and residents' fundamental rights are at stake. Upholding the Bombay High Court's directions, the Supreme Court allowed redevelopment by the new developer to proceed, holding that the welfare of 60 families cannot be compromised due to a developer's prolonged default.

Key Takeaways

This judgment sends a strong message that public interest and timely redevelopment take precedence over commercial claims raised through insolvency proceedings. It clarifies that terminated development agreements do not become "assets" merely because the developer enters CIRP, and moratorium cannot be misused to obstruct redevelopment. The ruling strengthens the rights of Housing Societies to act against chronic non-performance and reinforces that IBC cannot override basic housing needs, safety concerns, or legitimate contractual termination. The decision will be an important precedent in disputes where insolvent developers attempt to stall redevelopment projects by invoking the moratorium.

Conclusion

This judgment reinforces that the IBC is not a tool for developers to stall redevelopment after years of non-performance. It protects the rights of vulnerable residents in unsafe buildings and upholds a society's power to replace a defaulting developer even in the backdrop of insolvency proceedings. By distinguishing between contractual licences and proprietary assets, the Supreme Court has clarified

the true scope of Section 14 moratorium and prevented its misuse.

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