

Real Estate and its insolvency proceeding in India

Story so far

On 9th August 2017, the Hon'ble National Company law Tribunal, Allahabad passed an order against one of the biggest conglomerate "Jaypee Infratech" (Jaypee Group).

Industrial Development Bank of India (IDBI) initiated the insolvency proceedings against "Jaypee Infratech" for an amount of Rs 5,26,11,40,827 (Five hundred twenty crore eleven lakh forty thousand eight hundred and twenty seven only) .That the Hon'ble National Company law Tribunal, Allahabad after being satisfied with all the prerequisites as mandated in IBC, Code admit the application and appointed an Insolvency Resolution Professional and applied the moratorium from 09.08.2017 till the the completion of Corporate Insolvency or till the bench approves the Resolution plan.

Now the question is whether the consumer can file their claim or not and whether their interest is safeguarded over the financial creditor.

The IBBI Board came up the new notification form "Form F" under which the consumer can file their respective claim before IRP.

On 4th September 2017, the Hon,ble Supreme Court stayed the order passed by the NCLT, Allahabad. The writ was filed by the group of consumers against union of India , IBBI Board, IDBI, Jaypee Infratech "JIL" and others.

On 11th September 2017, the interlocutory application was filed by one of respondent "IDBI Bank" to modify the order dated 4.9.2017. Union of India contended that if the insolvency proceedings be stayed the management of Jaypee Infratech would be restored, if the erstwhile of the said management continues it will affect the rights of the creditors and consumers as well, sometime shall be granted to IRP to atleast formulate a preliminary scheme in order to protect the interest of all the stakeholders. The Hon'ble Supreme Court held that - a) The IRP shal take over the management of the JIL and submit an Interim Resolution plan within 45 days, b) Senior counsel shall participate in the meetings of the COC to espouser the cause of homebuyers and protect their interest, c) The MD of JIL and JAL shall not leave india without the prior permission of this court, d) JAL "jaiprakash Associates limited" which is not a prty to a sit shall deposit a sum of Rs 2,000 crore before

this court on or before 27.10.2017. If an assets of JAL have to be sold only with the prior approval of this court, e) All suits and proceedings instituted against JIL in terms of Section 14 (1) (a) remain stayed as we have directed the IRP to remain in management.

The next date of hearing is 10th October 2017.

Delhi High Court challenge the constitutional validity of S375 and 376 of the IPC and seeking gender neutral rape provisions

The petitioner in his petition has contended that rape laws in 63 countries are written in gender-neutral language.

"..in one study, out of the 96 countries studied, 63 were found to have rape or sexual assault laws written in gender-neutral language, 27 had rape laws that were completely gender-specific (i.e., the perpetrator was defined as male and the victim as female) and 6 had partly genderneutral laws (the perpetrator was defined as male and the victims could be male or female) Annexure P-2

In most progressive nations, Rape(Sexual Assault) are Gender Neutral with respect to both Perpetrator as well as Victim of Rape/Sexual Assault."

The petitioner has relied on data from various countries to buttress his arguments that rape and sexual assault can be gender neutral. Regarding the argument that making rape laws gender neutral could undermine the fight against patriarchy, the petitioner submits,

"..it becomes very difficult to accept that there is a single reality in rape; that is, men rape women and men can never be victimized, or if they are, this act has a meaning so different for men that it cannot be labelled as rape. Another aspect of the backlash argument is the suggestion that gender neutrality undermines feminist conceptions of patriarchy.

As such, it is submitted that the recognition of male victimization does not undermine the notion of patriarchy; it merely acknowledges that sexual coercion can also, in a minority of cases, exist in other contexts. To deny this reality creates the danger of theoretical objections to gender neutrality in rape, overriding the reality of rape and sexual assault outside the male-on-female paradigm."

It is also contended that critics fail to acknowledge that gender-neutral reforms are not designed to make gender irrelevant in the understanding of sexual violence.

"..in fact, gender is central to any understanding of how and why sexual violence occurs.

What is clear, however, is that while females are the main victims of sexual violence and males the main perpetrators, one still has to consider how sexual assaults beyond the male-on-female paradigm are to be labelled by the criminal law."

The petitioner submits that the very notion of patriarchy is the reason why men don't come out in open to report sexual crimes against them.

"If a male alleges that female raped him, he is not seen as a "Real Man" because the stereotypical patriarchal assumption of "men are superior and stronger to women" comes into the picture. The same "male domination" and the notion of patriarchy is, in fact, the very reason males do not come out of the closet to report rapes."

Regarding Constitutional guarantees, the petitioner has submitted,

"Article 14 enshrines the right to equality before law and Article 15 provides for prohibition of discrimination on the grounds of sex. Men, therefore, must be entitled to the same rights as women. Even though male rape is a less frequent occurrence than female rape, they cannot be denied the right to equality".

Besides, Kkumaar has placed reliance on the **Right to Privacy judgment** delivered by Supreme Court last month.

"That, Hon'ble Supreme Court in Right to Privacy ruling has used the word "consent" 38 times. Consent and bodily integrity of each citizen are now fundamental rights and the cornerstone of the Privacy Ruling.

Privacy now being a Fundamental Right has changed the contour and validity of some existing Acts and Cr.P.C/IPC and made them(or some sections of them) Null, Void and Unconstitutional."

Based on the above, the petitioner has prayed that the Court issue directions to,

"..declare Gender Specific Sections of IPC 375 & IPC 376 null, void and unconstitutional as per Article 13(2) of Indian Constitution as in current form IPC 375 & 376 are ultra-vires Articles 21 and 14 of Constitution of India"

He has also prayed for a direction to be issued to the Centre to replace the current rape provisions with gender neutral provisions relating to rape, which were in force for a period of 58 days from February 3, 2013 to April 1, 2013, but were then replaced with gender specific provisions.

The case will now be heard on October 23.

