

A validly terminated contract, which ceased to exist before insolvency proceedings began, cannot be treated as an “asset” or “property”, and the moratorium under Section 14 of the IBC, 2016, does not revive terminated contracts or protect rights that have ceased to exist before insolvency

The Supreme Court in the case of **AA Estates Private Limited vs Kher Nagar Sukhsadan Cooperative Housing Society [SLP (C) No. 10758 of 2025]** dated November 28, 2025, has held that a validly terminated contract, which ceased to exist before insolvency proceedings began, cannot be treated as an “asset” or “property.” Once a contract stands lawfully terminated, no revived contractual rights or protections under moratorium flow in its favour. What remains, if at all, is only a claim for damages (an unsecured monetary claim), not a proprietary right.

Thus, the Court clarified that the insolvent developers or corporate debtors cannot use a moratorium as a shield to block redevelopment or contractual termination consequences. This restraint will maintain the sanctity of lawful termination and ensure that creditors or counterparties are not unduly restrained by insolvency protections.

The Court observed that the termination in the present case was not occasioned by the insolvency of the corporate debtor but by its persistent non-performance. Letters issued by the Society record that continuation of the agreement was conditional upon compliance by the developer, failing which the contract would stand cancelled. These defaults occurred well before the initiation of the CIRP. Thus, the termination was based on legitimate grounds unrelated to insolvency.

The Court also observed that the so-called “development rights” of the Corporate Debtor constitute, at best, a contractual permission and not an “interest in property” within the meaning of Section 14(1)(d) of the IBC. Further, for the purposes of Section 14, only such property or assets which form part of the Corporate Debtor’s estate as on the insolvency commencement date are protected, and mere expectant, contingent or uncrystallized contractual rights do not constitute ‘assets’ within the meaning of the IBC.

The Court observed that no actual, constructive, or juridical possession was ever transferred to the Appellant, and the developer never commenced demolition, construction, or payment of rent and compensation as required under the agreement. In the absence of possession or any incident of ownership, Section 14(1)(d) has no application. The Development Agreement and the Supplementary Agreements do not constitute “assets” or “property” of the corporate debtor within the meaning of Section 14 of the IBC, as the same stood terminated before initiation of the second CIRP.

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