

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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## Learning Curve-1032

March 20, 2024

**Insolvency Proceedings u/s 7 of the IBC can be initiated against the Auction Purchaser in proceedings under SARFAESI even though the disbursement was not done to it directly.**

CASE TITLE	Anjani Kumar Prashar Vs. Manab Datta & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No.1366 of 2023
DATE OF ORDER	March 14, 2024
COURT/ TRIBUNAL	NCLAT, New Delhi

### BRIEF FACTS:

The respondent allottees of a real estate project filed an application u/s 7 of the IBC for initiation of CIRP against the CD. The AA by impugned order admitted the application. The Appellant aggrieved by the order has come up in this Appeal submitting that there was no financial debt owed by the CD. The CD was an auction purchaser in proceedings under the SARFAESI Act, 2002 and there was no disbursement in favour of the CD. The Respondents cannot be held to be FC of the CD.

### DECISION:

The Hon'ble NCLAT, New Delhi held that,

*“In cases of amalgamation and demerger under the Companies Act, 2013 of a Corporate Debtor with another entity is obviously considered as Corporate Debtor on account of transfer/ vesting of assets and liabilities to the amalgamated/ transferee Company. Transferee Company cannot be permitted to escape the rigours of the Code by claiming that disbursement was not done to it directly. In the present case, where Grandstar Reality Pvt. Ltd. has taken over the Project under the SARFAESI Act, cannot escape the rigours of the Code and defeat the rights of the homebuyers under the Code. We, thus, are satisfied that there is a financial debt and the filing of the Application by the allottees under Section 7 cannot be faulted on this ground...*

*We find substance in the submission of learned Counsel for the Respondent that since the Project has been taken over by the Grandstar Reality Pvt. Ltd. in 2016 and it is now the obligation of Grandstar Reality Pvt. Ltd. to continue the Project, the filing of the claim by the allottees against the CIRP of Akme Project, cannot preclude the allottees from agitating their claim by filing Application under Section 7 against the Grandstar Reality Pvt. Ltd., who has taken over the Project.*

*In view of the foregoing discussions and conclusions, we are satisfied that there is no error in the order of the Adjudicating Authority admitting Section 7 Application. The Appeal is dismissed.”*