

PRACTICE AREAS

- Corporate Laws
- Antitrust, Unfair Competition & Trade Practices
- Mergers & Acquisitions
- Real Estate Laws
- Labour Laws
- Intellectual Property Laws
- Arbitration & Litigation
- Commercial Contracts
- Environmental Laws
- Taxation
- Banking & Finance
- Media & Broadcasting Laws
- Shipping Laws
- Electricity Laws
- Insurance Laws
- Company Formation
- Joint Ventures & Technical Collaborations
- Regulatory Approvals
- Construction & Engineering
- Professional Negligence

REAL ESTATE LAWS

➤ Realty developer's advance to a property owner amounts to operational debt under the insolvency law of India

Recently, a precedent was laid down by the National Company Law Tribunal (“NCLT”), Mumbai which ruled that an advance paid by a real estate developer to a property owner qualifies as an operational debt under the Insolvency & Bankruptcy Code, 2016 (“IBC”).

Goodwill Theatres Private Limited, the Corporate Debtor (“GTPL”) and Sunteck Realty Limited, a real estate developer (“SRL”) in 2018 executed a term sheet whereunder SRL had agreed to provide its services for re-development of Novelty Talkies, a property owned by GTPL. As per the term sheet, SRL was obligated to pay an advance to GTPL. Further, a Development Management Agreement (“Agreement”) was also sought to be executed and failure to execute the same would entail cancelation of the project along with refund of the advance so paid.

Failing to execute the Agreement in a timely manner triggered the termination of the time sheet which compelled SRL to initiate insolvency proceedings under IBC against GTPL. GTPL challenged the maintainability of the petition filed by SRL before the NCLT *inter alia* on the ground that no goods or services have been provided by SRL and thus SRL does not qualify as an operational creditor under IBC. In opposition, SRL *inter alia* submitted that an advance payment would be construed as an *ex facie* debt under the Code.

NCLT while admitting the petition observed that the act of executing a binding term sheet clearly indicated that SRL was engaged to provide its services towards re-development of the property subject to the payment of fees as contemplated between the parties. The scope of services, financial obligations and other covenants of the parties were clearly laid down in the binding term sheet thereby demonstrating the services to be performed by SRL to GTPL.

Flowing from above, NCLT held that the advance so paid by SRL was a part service rendered to GTPL under the term sheet and therefore would qualify as an operational debt and accordingly, an order of moratorium under IBC was passed by NCLT.

➤ Mutation entries ipso facto do not confer title over a property

In a dispute over a land or a property, often parties are seen to rely on the revenue records to establish their title. Can this be regarded as a correct approach to establish one's title

PRACTICE AREAS

- Corporate Laws
- Antitrust, Unfair Competition & Trade Practices
- Mergers & Acquisitions
- Real Estate Laws
- Labour Laws
- Intellectual Property Laws
- Arbitration & Litigation
- Commercial Contracts
- Environmental Laws
- Taxation
- Banking & Finance
- Media & Broadcasting Laws
- Shipping Laws
- Electricity Laws
- Insurance Laws
- Company Formation
- Joint Ventures & Technical Collaborations
- Regulatory Approvals
- Construction & Engineering
- Professional Negligence

REAL ESTATE LAWS

over a land or property, Supreme Court (“Court”) has once again provided the much-needed clarity in this regard.

The Court while hearing a petition filed by Bruhath Bangalore Mahanagara Palike (“BBMP”) assailing an order passed by the Karnataka High Court, observed that mutation entries do not *ipso facto* confer title and the same is required to be established independently in a declaratory suit.

The Karnataka High Court while dismissing a writ petition filed by BBMP directed them to mutate the property in question in the name of some other parties. BBMP assailed the aforesaid order of Karnataka High Court *inter alia* on the ground that a title suit qua the property is pending for adjudication and that such direction is bad in law.

BBMP prayed for injunction qua any third party rights being created on the property in question. The Court while refusing to grant such relief took note of a clarification provided by the Karnataka High Court which stated that the direction of mutation is subject to the pursuit of any other remedy available to BBMP under the Karnataka Municipal Corporation Act 1956.

The only sequitur from the aforesaid judgment is that the mutation entries neither create nor extinguish the title over a property, however, it enables a person whose name is mutated in the revenue records to be charged with land revenues by the authorities.

For any queries or details, contact us at legal@mumbai.kochhar.com

DISCLAIMER: The purpose of this communication is to provide information and update on development in Laws & Regulations and does not in any way be construed as legal advice nor relied upon in lieu of specific advice.