

Victory Iron Works Ltd. v. Jitendra Lohia and Another

Civil Appeal No. 1743 of 2021 / Civil Appeal No. 1782 of 2021

[2023] 7 SCR 1021 | 2023-03-14

Whether the corporate debtor's development rights and associated interests in land were assets to be disclosed and protected in CIRP, and whether the tribunals exceeded jurisdiction when protecting that possession while preserving the licensee's defined area.

102(2)

Two-judge bench | V. Ramasubramanian, J. | Pankaj Mithal, J.

Assessment years: See the source-scope notes; no year inferred.

IBC decision: section 102(2) used only as an interpretive aid

Victory Iron Works uses the Income-tax Act's asset definition to illuminate development rights in insolvency proceedings. It decides no GAAR issue, tax liability, capital-gains transfer or deduction. The protected asset is the debtor's development-right bundle, with the licensee's specified area retained.

01 FACTS OF THE CASE

Energy Properties held registered title to approximately 10.19 acres in Howrah. Avani Towers, the corporate debtor, had financed the purchase, obtained 40% of Energy Properties' shares and secured exclusive development rights under linked agreements. The arrangements contemplated ₹12 crore of financial accommodation, including ₹2.70 crore for the purchase and ₹9.30 crore for other financial needs. A June 2008 development agreement and two 2010 possession memoranda recorded delivery of the property to Avani. These documents, rather than title alone, were central to the dispute (paragraphs 3-5, 11-12 and 28-33).

Under an August 2011 leave-and-licence agreement, Avani permitted Victory to use 10,000 square feet for ₹5,000 per month; Energy Properties joined as confirming party. Victory later claimed permission to use the whole property. When CIRP commenced against Avani in October 2019, the resolution professional sought protection after alleged removal of the corporate debtor's security guards. Victory separately sought protection for its business while contesting the insolvency tribunals' jurisdiction (paragraphs 4-9 and 12).

NCLT directed that the professional's possession and CIRP activities not be obstructed, while protecting Victory's activities in the area covered by its licence. NCLAT maintained that balance and required disclosure that the corporate debtor held development rights over the property. Victory and Energy Properties appealed. The Court did not treat Victory's asserted possession of the whole land as an established licence entitlement (paragraphs 9-16).

Source: [reported judgment / paragraphs 3-12 / PDF pages 6, 7, 8, 9, 10, 11 / judgment](#); [reported judgment / paragraphs 28-34 / PDF pages 18, 19, 20 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The IBC defines property broadly in section 3(27), including present, future, vested and contingent interests, but does not separately define asset. The Court examined section 3(37)'s seven referenced enactments and found no controlling asset definition there either. Section 18(f) concerns custody of assets over which the debtor has ownership rights, while section 25 requires the resolution professional to preserve and protect its assets (paragraphs 17-25).

At paragraph 26 the Court referred to section 102(2) of the Income-tax Act, which includes property or a right of any kind within asset. It expressly acknowledged that this definition applies to Chapter X-A of the tax statute. It used the definition as an interpretive aid to the general asset concept before returning to the IBC and the contractual rights. It did not import the GAAR chapter into insolvency law or decide the tax treatment of a development agreement (paragraphs 26-27).

The documents created a valuable bundle of rights for consideration: funding the purchase, shareholding, exclusive development rights, delivery and confirmation of possession, limits on the owner's ability to deal with the land without consent, and the developer's role as licensor. The development arrangements also contemplated allocation of constructed area. The rights were property under section 3(27) and assets within sections 18(f) and 25(2)(a). Sushil Kumar Agarwal supported the distinction between different development agreements and the possibility of parting with incidents of ownership. The resolution professional had to disclose and protect the rights actually held; this did not convert registered title to the entire land into the corporate debtor's ownership (paragraphs 28-37).

The third-party-asset exclusion in the Explanation to section 18 is expressly limited to that section and was not extended to section 25. The Court additionally observed that the consideration-backed arrangements might amount to an agency coupled with interest under section 202 of the Contract Act. That was expressed as a possible additional rationale, not an adjudication that every development agreement creates an irrevocable agency (paragraphs 38-40).

Embassy Property, Gujarat Urja and Tata Consultancy involved different jurisdictional settings, including mining-lease renewal and contract termination. They did not resolve the present bundle of immovable-property rights. Rajendra K. Bhutta was closer in addressing development rights and the distinction between occupation and possession, though its own operative moratorium setting remained distinct (paragraphs 41-46).

On the evidence, Victory's application did not properly establish occupation beyond its licensed area, and records supported the presence of the corporate debtor's security guards. The tribunals had balanced the interests by preserving Victory's 10,000-square-foot licence area while protecting the debtor's possession and development assets. Victory was a licensee, not a lessee with an interest in the immovable property. The local-administration assistance under Regulation 30 was therefore upheld (paragraphs 47-50).

02 DISCUSSION BY THE HON'BLE COURT

Source: [reported judgment / paragraphs 16-25 / PDF pages 12, 13, 14, 15, 16, 17, 18 / judgment](#); [reported judgment / paragraphs 26-27 / PDF pages 18 / judgment](#); [official signed judgment / paragraphs 26 / PDF pages 20 / judgment](#); [reported judgment / paragraphs 28-37 / PDF pages 18, 19, 20, 21, 22 / judgment](#); [reported judgment / paragraphs 38-46 / PDF pages 22, 23, 24 / judgment](#); [reported judgment / paragraphs 47-50 / PDF pages 24, 25 / judgment](#)

03 JUDICIAL DECISION

Both appeals were dismissed. The Court left the NCLT/NCLAT protection of the corporate debtor's possession and the resolution professional's activities intact, together with the protection of Victory's defined licence area and disclosure of the debtor's development rights. No costs were awarded and pending applications were disposed of (paragraphs 49-51). No tax assessment, GAAR consequence, capital-gains charge, depreciation claim or quantified recovery was decided.

Source: [reported judgment / paragraphs 49-51 / PDF pages 25 / judgment](#); [official signed judgment / paragraphs 49-51 / PDF pages 34, 35 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Resolution professional and corporate debtor on preservation/disclosure of development rights, with Victory's limited licence-area protection retained

Victory and Energy Properties appeals dismissed; tribunal orders maintained; no costs; pending applications disposed of

IBC asset and possession-protection issues decided on merits

The debtor's contractual development-right bundle is protected, not declared absolute title to all the land. The section 102(2) reference is an interpretive aid; no income-tax liability or GAAR holding.

Source: [official signed judgment / paragraphs 51 / PDF pages 35 / judgment](#)

05 AKHB REVIEW POINT

Identify and describe the asset actually held. A debtor may own valuable development and possession rights even though another party remains the registered landowner. Trace consideration, agreements, shareholding, possession memoranda, restrictions and licences; the information memorandum must describe those rights accurately rather than overstate title. Keep any protected third-party licence area and its limits visible.

For income-tax research, this is a qualified cross-law use of section 102(2), not a GAAR ruling or authority that the same rights receive identical treatment under every tax provision. The Court itself confines section 102 to its tax chapter before using it as an illustration. A capital-gains, transfer, ownership or deduction question requires its own statutory analysis.

Do not generalise the jurisdictional result into power to evict every third party or decide every contractual dispute in CIRP. The actual orders preserved the identified licence area, protected the debtor's possession and required disclosure of development rights. Verify later proceedings and applicable law before implementation; no automatic Income-tax Act, 2025 mapping or present-law certificate is supplied.

Source: [reported judgment / paragraphs 26-27; 35-40; 48-51 / PDF pages 18, 21, 22, 25 / judgment](#)

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 102(2)

Role: borrowed definitional aid in insolvency litigation

Basis: Paragraph 26 expressly recognises that the asset definition belongs to Chapter X-A, then uses its reference to property or rights to illuminate the undefined IBC term. No GAAR or tax-liability issue is decided.

2.

Act: Insolvency and Bankruptcy Code, 2016

Section: 3(27); 3(37); 18(f) and Explanation; 25(2)(a)

Role: principal property, asset and professional-duty provisions

Basis: Development-right bundle held to be an asset for preservation and information disclosure; section 18 Explanation not extended to section 25.

3.

Act: IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Section: Regulations 30; 36

Role: assistance and information memorandum

Basis: Protection of possession through local-administration assistance, and disclosure of actual development rights.

4.

Act: Indian Contract Act, 1872

Section: 202

Role: additional possible agency rationale

Basis: Paragraph 40 says the consideration-backed rights may amount to an agency coupled with interest; the note preserves the tentative formulation.

5.

Act: Insolvency and Bankruptcy Code, 2016

Section: 14(1)(d)

Role: cited Rajendra K. Bhutta comparator

Basis: Prior moratorium decision used to illuminate property and possession; not a separate new application to cancel a termination here.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

V. Ramasubramanian, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official signed judgment\)](#)

Identified source rendition: 35 PDF pages; SHA-256
8d4f8b3108014c1042b4d380dba621befd6c8b61d82b195dd232e20b38ac43d7. Original bytes preserved.
One common reportable judgment, paragraphs 1-51 on physical pages 1-35, with final disposition, signatures and date on page 35.

Official cover, paragraph 26, terminal reasoning and disposition checked against the fully read reported judicial text. No independent full rereading of every official-rendition page is claimed.

[Open cited source rendition](#)

The licence date appears as 11 August 2011 in the quoted lower order, 11 August 2021 in paragraph 10, and 19 August 2011 in the detailed contractual narrative. The note uses August 2011 and preserves the inconsistency without silently editing the source.

Energy Properties' registered title and the corporate debtor's development rights are distinct. The judgment does not make the land itself an unqualified freehold asset of the debtor.

Section 102(2) is explicitly limited to Chapter X-A in the Court's account and used as a cross-law aid, not incorporated by IBC section 3(37) or applied to assess tax.

The possible agency-coupled-with-interest observation is tentative. No universal rule about all development agreements or termination rights is inferred.

No individual assessment year, tax amount or current-law conclusion is supplied.

Reported citation verified from the cover. Catalogue neutral citation is not treated as independently printed or verified.

No assessment year applies to this insolvency-property dispute.

One common judgment in Victory's appeal and Energy Properties' connected appeal.

STATUTORY SCOPE

Section 102(2) as referred to and IBC provisions as analysed in this judgment; no comprehensive current statutory consolidation.

No extension of the GAAR definition beyond its statutory chapter as a freestanding tax rule; no 2025 Act mapping certified.

LATER TREATMENT

Source checked 2026-10-04. Subsequent insolvency proceedings, later treatment and changes in governing statutes have not been comprehensively checked. Prior authorities are described as examined in this judgment.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 35](#)

SHA-256: 8d4f8b3108014c1042b4d380dba621befd6c8b61d82b195dd232e20b38ac43d7

[reported judgment - PDF pages: 25](#)

SHA-256: f86172f82c11aa4cf194fb788177b663ef9fb7f2920482824061cade3e23301c

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