

Conditional Award by the Arbitration to be fulfilled to initiate Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code (IBC), 2016?

B E Billimoria and Company Limited “Operational Creditor or OC”	Tidel Park Coimbatore Limited “Corporate Debtor or CD”
<ul style="list-style-type: none"> ◆ OC filed an application for initiating Corporate Insolvency Resolution Process (“CIRP”) against CD, as CD made default in payment of retention money (“RM”) of Rs. 38,38,18,085/- ◆ The OC and the CD entered into an agreement dated 05.09.2008 for the construction of Tidel Park at Coimbatore. ◆ The OC deposited RM to the CD, later when differences arose, the parties, invoked Arbitration Clause of the said agreement, in pursuance thereof, an Arbitral Award was passed on 12.07.2014 asking to pay 50% of RM within 15 days from the date of award and balance of 50% of RM shall be payable by the CD to the OC after the fulfilment of their obligations in respect of the snag works. Before release of RM, CD would issue final completion Certificate. ◆ On Completion of snag work OC demanded balance retention money, but CD contended that the work wasn’t complete thus CD is not entitled to pay balance RM; ◆ OC contended, part of RM was already paid after issuance of Award, thus CD cannot say there is a dispute between the parties; ◆ CD submitted the part of the snag work to be completed, and stated that both the parties held a joint inspection of the site, wherein as per the inspection report, it was evident that there were some work to be completed by OC. CD have also sent list of work not completed via email. ◆ Tribunal on looking all the facts, three things were clear which are- <ul style="list-style-type: none"> • OC has not attended to the incomplete snag work as mentioned by the CD; • OC has not sent any letter stating anything to be completed from their side; • CD has not issued Completion Certificate. ◆ Also the Arbitral Award was a qualified award putting a condition upon OC to complete snag work before refunding balance RM by the CD; ◆ Arbitral Award is <i>not an “unconditional Award”</i> directing CD to pay RM, thus Tribunal hereby dismissed the application initiating CIRP, giving liberty to OC to go for other remedy available. 	

Please feel free to reach out to us!!!

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Thanks and Regards

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