

Case Snippets

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PR. Commissioner of Income Tax v. Monnet Ispat and Energy Ltd. (Supreme Court) (10th August, 2018)

In this case, the Supreme Court has categorically held that the provisions of the Insolvency and Bankruptcy Code, 2016 (Code) will override any enactment which is inconsistent with the provisions of the Code.

The Apex Court while referring to statutory provision under Section 238 of the Code held that the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.

Section 238 of the Code states that the provisions of the Code shall override other laws.

In the foresaid context, the Supreme Court also made reference to its judgment in the case of Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co. & Ors., to hold that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.

A similar observation was made by the NCLAT in a recent case, whereby the Tribunal while referring to Apex Court's judgment in the case of Innoventive Industries Ltd. v. ICICI Bank held that the provisions of the Code prevail over the provisions of the SARFAESI Act.



Canara Bank v. Sri Chandramoulisvar Spg. Mills (P) Ltd. (NCLAT) (3rd August, 2018)

In the case, the NCLAT while referring to Supreme Court's verdict in Innoventive case has ruled that when two proceedings are initiated, one under the Insolvency and Bankruptcy Code, 2016 (I&B Code) and the other under the SARFAESI Act, 2002, then the proceeding under the I&B code shall prevail.

The appeal in the case was preferred by the Financial Creditor i.e. Canara Bank against the NCLT's (National Company Law Tribunal) order, whereby the application preferred by Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (application for initiation of corporate insolvency resolution process by operational creditor) against the Corporate Debtor i.e. M/s. Sri Chandra Moulisvar Spinning Mills Private Limited was admitted by the Tribunal.

The Appellant's main grievance in the case was that he had already initiated proceedings under the SARFAESI Act, 2002 for recovery against the Corporate Debtor.

The NCLAT in view of the issue involved in the case, made reference to Supreme Court's verdict in the case of Innoventive Industries Ltd. v. ICICI Bank, whereby the Apex Court was of the view that if the application under Section 9 is complete and there is no 'existence of dispute' and there is a 'debt' and 'default' and then the Adjudicating Authority is bound to admit the application.

Thus, NCLAT upheld NCLT's decision and also noted that such action cannot continue as the I&B code will prevail over SARFAESI Act, 2002.

