



Case Snippets

Volume 03, Number 13 (March 25, 2020)

Rakesh Kumar Gupta Vs. Mahesh Bansal & others [Company Appeal (AT) (Insolvency) No. 1408 of 2019 decided on 20-02-2020 (NCLAT)]

Section 238 read with Section 7 and Section 14 of the Insolvency & Bankruptcy Code, 2016 - Provisions of this Code to override other laws

The Appeal has been filed by the Appellant in view of admission of an Application under Section 7 of Insolvency and Bankruptcy Code 2016, (in short IBC) which was filled by the Respondent No. 2 Punjab National Bank (Financial Creditor) against Gupta Marriage Hall Private Limited (Corporate Debtor). The Application of the Financial Creditor was admitted by the Adjudicating Authority.

The ground raised by Appellant is that the Bank/Financial Creditor had already resorted to various proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and had also resorted to proceeding under Recovery of Debts due to Banks and Financial Institutions Act, 1993 (DRT Act).





The Counsel for Appellant further states that, as the Bank resorted to those remedies, the Bank could not have filed an Application under Section 7 of IBC and the Application should have been rejected.

NCLAT held that IBC is subsequent Code to SARFAESI Act of 2002 & DRT Act with provision of Moratorium under Section 14 and Section 238 giving the Provisions of the Code overriding effect on other laws.

NCLAT further observed that the pendency of actions under the SARFAESI Act or actions under the DRT Act does not create obstruction for filling an Application under Section 7 of IBC, especially in view of Section 238 of IBC. The Application is more to bring about a Resolution of Corporate Debtor than any penal action or any recovery proceedings.

