



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Volume 05 | Number 23

(June 06, 2022)

KOTAK MAHINDRA BANK LIMITED VS. A. BALAKRISHNAN & ANR.
CIVIL APPEAL NO. 689 OF 2021
DATE OF SUPREME COURT'S JUDGMENT: 30TH MAY 2022

“THE HOLDER OF A RECOVERY CERTIFICATE WOULD BE A “FINANCIAL CREDITOR” UNDER SECTION 5 (7) OF THE IBC AND WOULD BE ENTITLED TO INITIATE CIRP, IF INITIATED WITHIN A PERIOD OF THREE YEARS FROM THE DATE OF ISSUANCE OF CERTIFICATE.”

Facts of the Case: -

The present appeal was preferred by the Appellant 'Kotak Mahindra Bank Ltd.' (KMBL) owing to the default of payment by the M/s Prasad Properties and Investments Pvt. Ltd. (Corporate Debtor 'CD') and three borrower entities. The Facts of the case are that Ind and Bank Housing Limited (IBHL) had sanctioned separate credit facilities to three borrower entities and due to default IBHL had classified the facilities availed as Non-Performing Asset in Nov. 1997. Subsequently, three civil suits were filed by IBHL before Hon'ble High Court of Madras against CD and borrower entities to recover the amounts due. Following the pendency of the suits, the Appellant and IBHL entered into a Deed of Assignment dated 13th October 2006, whereby IBHL assigned all its rights, interest, title, estate, claim and demand to the debts due from borrower entities to Appellant.

Subsequently, a compromise was entered between KMBL and borrower entities on 7th August 2006. The judgment dated 26th March 2007 of High Court had recorded the compromise between the parties and made CD liable to pay the amount of approx. ₹ 29 crores to KMBL, however the same was defaulted. Thereby KMBL issued a Demand Notice, Possession Notice and Winding up Notice under SARFAESI Act & Companies Act against the CD and Borrower entities. Further aggrieved by continuous defaults of payment, three applications under Debt Recovery Act for issuance of Debt recovery certificate were filed, which were allowed by Debt Recovery Tribunal.

Meanwhile other proceedings between the parties, with regard to a contempt petition filed by KMBL as well as dismissal of applications filed for issuance of Recovery Certificate, and subsequent grant of relief in a review application followed from 2008 to 2017. With respect to the aforementioned Recovery Certificates,



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



on 5th October, 2018, KMBL filed an application under Section 7 of the IBC, claiming to be a Financial Creditor, before the NCLT seeking the initiation of CIRP against the CD claiming an amount of approx. ₹ 836 crores.

The Appellant submitted that the court in the case of *Dena Bank vs. C. Shivakumar Reddy & Anr* had held that if a claim fructified into a final judgment and order/decreed, a fresh right may be accrued to the creditor to recover the amount specified in the Recovery Certificate. However, CD submitted that the cause of action had merged into the order of issuance of the Recovery Certificate by the DRT, thus, by application of the doctrine of merger, the debt does not survive.

Supreme Court's Observations: -

The Apex Court considered various provisions of the IBC and its earlier judgments in the matter of *Dena Bank vs. C. Shivakumar Reddy & Anr* and *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (Ltd.)* and stated that since the Limitation Act would be applicable to applications filed under Sections 7 and 9 of IBC, thus, the applications would fall within the residuary Article 137. It further stated that a final judgment and an order/decreed would be binding on the judgment debtor, and once a claim would be fructified into a final judgment and order/decreed, and a certificate of recovery would be issued authorizing the creditor to realize its decretal dues, a fresh right would be accrued to the creditor to recover the amount of the final judgment or as specified in the Recovery Certificate.

Further, the Court held that within the meaning of clause (8) of Section 5 of the IBC, a liability with respect to a claim arising out of a Recovery Certificate would be a "financial debt". Consequently, within the meaning of clause (7) of Section 5 of the IBC, the holder of the Recovery Certificate would be a "Financial Creditor", and the holder of such a certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

Order: -

The Apex Court allowed the present appeal and quashed and set aside the impugned judgment and order passed by the learned NCLAT. The Court further clarified that it has not touched the elaborate arguments advanced by the rival parties upon the merits of the matter and has only decided the legal issues.

Case Review: - Appeal Allowed.