



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

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K. Paramasivam Vs. The Karur Vysya Bank Ltd. & Anr.

Civil Appeal No. 9286 of 2019

Date of Supreme Court's Judgement: September 6, 2022.

Financial Creditor is free to proceed against the guarantor without first suing the Principal Borrower.

Facts of the Case: -

Karur Vysya Bank Ltd., the Financial Creditor, had advanced credit facilities to three entities, namely (i) Sri Maharaja Refineries, a Partnership Firm; (ii) Sri Maharaja Industries, a proprietary concern of K. Paramasivam; and (iii) Sri Maharaja Enterprises, a proprietary concern of P. Sathiyamoorthy. The Appellant, Maharaja Theme Parks and Resorts provided corporate guarantees for all these three credit facilities. On default by borrowers, the Financial Creditor filed an application before Adjudicating Authority (AA) to initiate insolvency proceedings against the Corporate Guarantor under Section 7 of the IBC. However, the Appellant relied on Section 3 (8) of the IBC which states that 'a corporate person is one who owes a debt to any person' and argued that it did not owe any financial debt to the Financial Creditor. Furthermore, the Appellant also contended that it was not covered within the definition of 'Corporate Guarantor' as per Section 5 (5A) of the IBC which reads 'Corporate Guarantor means a corporate person who is the surety in a contract of guarantee to a corporate debtor'.

The AA considered the Appellant as 'Corporate Guarantor' and ordered initiation its insolvency process via an order on April 08, 2019. The appeal of Maharaja Theme Parks and Resorts against this order of AA was dismissed by the NCLAT. The appellant filed the appeals in Supreme Court under Section 62 of the IBC and raised the question that whether CIRP can be initiated against a corporate person for corporate guarantee given on behalf of non-corporate person.

Supreme Court's Observations: -

The Court relied on a previous judgement of the Supreme Court in the matter of Laxmi Pat Surana Vs. Union Bank of India and Another in which these issues were settled. The Court observed that as per this judgement "under Section 7 of the IBC, CIRP can be initiated against a corporate entity who has given a guarantee to secure the dues of a



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non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it once the borrower commits default. The guarantor is then, the Corporate Debtor”. On the question of whether CIRP can be initiated against the Corporate Guarantor without proceeding against the principal borrower, relying on the Laxmi Pat Surana (supra), the Court observed that the financial creditor is well within his rights to proceed against the principal borrower, as well guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. Besides, corporate debtor can also be a corporate person assuming the status of corporate debtor having offered guarantee. In conclusion, the Court observed that the liability of the guarantor is co-extensive with that of the Principal Borrower. Furthermore, the Financial Creditor is free to proceed against the guarantor without first suing the Principal Borrower.

Order: - The Court did not find ground to interfere with the concurrent findings of the Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT).

Case Review: - Appeal Dismissed.