



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Volume 06 | Number 44

(October 30, 2023)

TOTTEMPUDI SALALITH. Vs. STATE BANK OF INDIA & ORS.
CIVIL APPEAL NO. 2348 OF 2021
Date of Supreme Court Judgement: October 18, 2023

Facts of the Case: -

The present appeal is filed by Mr. Tottempudi Salalith (hereinafter referred as 'Appellant'), in the capacity of MD of Totem Infrastructures Ltd. ('CD'), after being aggrieved by the order of Appellate Tribunal.

The CD was facing insolvency proceedings due to default on financial obligations to multiple banks. The total claim against the CD was approximately ₹ 613 crore. The State Bank of India (hereinafter referred as 'Respondent'), representing several other banks, initiated the insolvency proceedings U/s 7 of the code.

Earlier, the Respondent also pursued recovery proceedings under the SARFAESI Act, 2002 and obtained recovery certificates from the Debt Recovery Tribunals. The Respondent's application under the IBC was based on these recovery certificates. The Adjudicating Authority admitted the application and appointed an IRP.

The Appellant appealed against the decision, primarily arguing that the petition u/s 7 of IBC was barred by limitation since one of the Recovery Certificates dated back to 2015 and the Section 7 petition was filed in 2019. Moreover, the Appellant asserted that the date of default should be the date when the CD's account was declared NPA and not from the date of Recovery Certificate.

Furthermore, the Appellant stated that the Respondents, having chosen the SARFAESI mechanism first and having approached the DRT, were barred, under the doctrine of election, from approaching the AA for the recovery of the same set of debts.

The Appellate Tribunal dismissed the appeal. Consequently, the Appellant filed an appeal before the Supreme Court.



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Supreme Court Observations:-

The Apex court while citing the judgement delivered in *Kotak Mahindra Bank LTD. Vs A Balakrishnan*, held that liability in respect of a claim arising out of recovery certificate would be a financial debt with-in the meaning of section 5(8) of IBC. This makes the holder of a recovery certificate a financial creditor entitled to initiate CIRP.

On the issue of applicability of Doctrine of Election, the Apex Court stated that recovery proceedings began before the DRT in 2014 i.e., prior to the IBC's implementation. The Kotak Mahindra (Supra) established that the issuance of a recovery certificate creates a new cause of action, allowing financial creditors to initiate CIRP. The Doctrine of Election doesn't prevent financial creditors from approaching the AA for CIRP after obtaining a recovery certificate. Further, the court held that a recovery certificate is also clothed with the character of a deemed decree and life of a decree is twelve years for enforcement as per Article 136 of the schedule of Limitation Act.

Further, the Apex Court held that the IBC primarily focuses on company revival but also aids debt recovery. Once CIRP results in a moratorium declaration, the enforcement mechanisms under the 1993 Act or the SARFAESI Act are suspended. The financial creditor, after receiving a recovery certificate, has the option to pursue debt recovery through a different forum, rather than sticking to the one through which the certificate was issued. This aligns with the decision in the *Transcore vs. UOI*, where SARFAESI mechanisms were considered permissible even if the initial proceedings were instituted under the 1993 Act.

Order/Judgement: The Appeal is dismissed. Interim order, if any, stands dissolved.

Case Review: Application stands disposed of. No order to costs.