



## 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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**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA Vs. SATYANARAYAN BANKATLAL MALU & ORS.**  
**CRIMINAL APPEAL NO.3851 OF 2023**  
**Supreme Court Judgement dated April 19, 2024**

#### **Facts of the Case: -**

The present appeal is filed by the Insolvency and Bankruptcy Board of India/IBBI (hereinafter referred to as the 'Appellant'), challenging the order dated 14.02.22, passed by the Hon'ble High Court, which allowed the petition filed by Mr. Satyanarayan Bankatlal Malu, the former Director of M/s SBM Paper Mills Pvt. Ltd./CD ( hereinafter referred to as the 'Respondent'), challenging the order dated 17.03.21, passed by the learned Additional Sessions Judge. The Sessions Judge had directed the issuance of process against the Respondent on account of a complaint filed by the Appellant u/s 236 of the Code, r/w Sections 190, 193, and 200 of the CrPc, 1973, for offenses punishable under Section 73(a) and 235A of the Code.

The CD initiated the CIRP for itself by filing a petition under Section 10 of the IBC on 04.09.17. The NCLT Mumbai/AA admitted the petition on 17.10.17, thereby commencing the moratorium as per Section 14 of the IBC. Mr. Amit Poddar was appointed as the RP by the AA. During the CIRP proceedings, the Respondent filed an application u/s 12A of the IBC seeking withdrawal of the petition under Section 10 due to a One Time Settlement (OTS) reached with the sole Financial Creditor, Allahabad Bank. The AA granted its approval on the application on 20.10.18, noting the Financial Creditor's consent to withdraw the petition.

However, subsequent to the withdrawal, the respondents failed to comply with the terms of the OTS, leading the AA to issue a Show-Cause Notice against them on 11.03.19. Furthermore, the AA deemed it appropriate to propose the prosecution of the Respondents on 20.08.19, following an application filed by the sole Financial Creditor seeking prosecution of the Respondents. On 22.09.20, the Appellant filed a complaint against the Respondents before the Sessions Judge in Special Case No. 853/2020 u/s 73(a), and 235A of the IBC, citing non-compliance with the OTS terms and failure to file M.A. No. 1396/2018 through the RP. The Sessions Judge, on 17.03.21, directed the issuance of process against the Respondents and summoned them for the next hearing.