



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

No. 205

(January 06, 2025)



China Development Bank Vs. Doha Bank Q.P.S.C. & Ors.
CIVIL APPEAL NO. 7298 OF 2022 with 7407, 7615 and 7328 of 2022 & 7434 of 2023
Date of Supreme Court Judgement: December 20, 2024

Facts of the Case

The current appeal is filed by the China Development Bank (hereinafter referred as 'Appellant') against Doha bank Q.P.S.C & Ors. (hereinafter referred as Respondents). The appeals, Civil Appeal Nos. 7298, 7407, 7615 and 7328 of 2022, and 7434 of 2023, challenge the judgment dated 09.09.22 passed by the Appellate Tribunal.

The CIRP of Reliance Infratel Limited (RITL)/Corporate Debtor, part of the RCom entities (including RCom, RCIL, and RTL), was initiated by Ericsson India Pvt. Ltd. u/s 15 of the IBC. The appellants submitted claims as Financial Creditors, relying on the Master Security Trustee Agreement (MSTA) and the Deeds of Hypothecation (DoH). The claims were admitted by the RP, and the appellants were included in the CoC. The Respondents contested this classification before the AA, arguing that the appellants were not direct lenders to the CD and that the DoH merely created a charge without constituting a "guarantee" u/s 126 of the Contract Act.

While the AA approved the Resolution Plan on 03.12.20, it did not decide on the appellants' status. The Appellate Tribunal later held that the DoH was not a deed of guarantee, lacking the essential three-party structure and a covenant by the CD to discharge RCom or RTL's liabilities. It ruled that the appellants' claims were contingent and unenforceable due to the moratorium u/s 14 of the IBC. The appellants argued that Clause 5(iii) of the DoH obligated the CD to cover shortfalls in debt realization, qualifying as a "guarantee" under Section 126. They claimed this established their debts as financial debt u/s 5(8) of the IBC. Then the appeal was filed before the Supreme Court for final adjudication.

The core issues arising before the Apex court are: (i) Whether the appellants, including, Industrial and Commercial Bank of China, and other financial institutions, qualify as "Financial Creditors" under sub-section (7) of Section 5 of the IBC, and if not then in that case, (ii) Whether they are entitled to payments as "Secured Creditors."



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Supreme Court observations:

The Apex Court emphasized that financial debt involves a debt disbursed against consideration for the time value of money. It reviewed the Deeds of Hypothecation (DoH), specifically Clause 5(iii), which required the CD to pay any shortfall in debt recovery after the realization of hypothecated assets and held that this provision constituted a "guarantee" under Section 126 of the Indian Contract Act, 1872.

The Apex Court observed while citing *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited & Ors. (2020)*, the Court reiterated that mere creation of a charge or security interest does not qualify as financial debt unless it includes a guarantee or disbursement against time value of money. Referring to *Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel (2021)*, the Apex Court further highlighted that a guarantee entails a promise to discharge a third party's liability in case of default.

The Apex Court concluded that the CD had agreed to discharge RCom and RTL's liabilities, meeting the conditions of a guarantee. It rejected the argument that the moratorium under Section 14 extinguished claims, clarifying that the liability under agreements like the DoH remains valid during the moratorium.

The Apex Court also relied on *Vistra ITCL (India) Ltd. & Ors. v. Dinkar Venkatasubramanian & Ors. (2023)* to reaffirm secured creditors' rights in CIRP and cited *Kotak Mahindra Bank Ltd. v. A. Balakrishnan (2022)* and *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd. (2023)* to emphasize that financial debt need not be directly disbursed to the CD to qualify a creditor as a Financial Creditor. It clarified that the DoH created a contractual obligation for the CD to pay shortfalls, rendering the appellants' claims financial debt under Section 5(8).

Order/Judgement: The Supreme Court overturned the Appellate Tribunal judgment, restoring the AA decision to classify the appellants as Financial Creditors. The Apex Court held that the DoH created a guarantee within the meaning of the IBC and the Contract Act, entitling the appellants to Financial Creditor status. It directed the AA to proceed with implementing the Resolution Plan, taking into account the appellants' claims.

Case Review: The Appeals are accordingly *allowed*.