



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

Number 264

(February 23, 2026)



**State Bank of India Vs Union of India & Ors.**

**Civil Appeal No. 1810/2021**

**Date of Supreme Court's Judgment: 13<sup>th</sup> February 2026**

### Facts of the Case: -

The present batch of civil appeals arises from a judgment of the National Company Law Appellate Tribunal (“NCLAT”) concerning the treatment of spectrum under the Insolvency and Bankruptcy Code, 2016 (“IBC/the Code”). The NCLAT, while dealing with insolvency proceedings initiated against certain telecom service providers (TSPs), held that spectrum usage rights held by the corporate debtors constitute intangible assets and can be subjected to the corporate insolvency resolution process (“CIRP”) under the Code. It further held that dues payable to the Department of Telecommunications (“DoT”), including license fees and spectrum usage charges, fall within the ambit of “operational debt” under Section 5(21) of the Code.

The controversy arose in the backdrop of CIRP proceedings against telecom companies such as the Aircel Group and Reliance Communications, which had defaulted on substantial license fee and adjusted gross revenue (AGR) dues payable to the Union of India. Financial creditors, including State Bank of India and other lending institutions, contended that spectrum, though governed by statutory and contractual conditions, was reflected as an asset in the books of the corporate debtor and formed part of the overall business undertaking. Relying upon the Tripartite Agreement framework executed between DoT, lenders and the licensee, it was argued that the right to use spectrum could be treated as part of the insolvency estate and made available for resolution, including by way of transfer to a successful resolution applicant.

The Union of India, through DoT, assailed this position, asserting that spectrum is a scarce and finite natural resource vested in the State in trust for the public. It was submitted that license holders acquire only a limited, conditional and revocable right to use spectrum, without any proprietary or ownership interest. According to DoT, permitting spectrum to be dealt with under the IBC in a manner that extinguishes or dilutes governmental dues would undermine the statutory regime under the Telegraph Act and related laws. Aggrieved by the NCLAT’s findings on the nature of spectrum, its amenability to insolvency proceedings, and the characterization of DoT dues as operational debt, appeals were preferred before the Supreme Court by SBI, resolution professionals, successful resolution applicants, and the Union of India, culminating in the present adjudication.



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## Supreme Court's Observations:

After duly hearing both the parties, the Supreme Court framed certain issues for proper adjudication of the matter. At the outset, this Court examined the nature of spectrum and reiterated that it is a natural resource held by the Union of India in public trust. The conferment of a right to use spectrum under a licence granted under Section 4 of the Telegraph Act, 1885 does not vest ownership or proprietary interest in the telecom service providers (TSPs); ownership remains with the nation, with the Union Government acting as trustee. The Court distinguished between ownership, possession and occupation, observing that TSPs merely hold a limited right to use, subject to strict statutory and contractual conditions.

The Court then considered whether the right to use spectrum constitutes an “asset” within the meaning of Section 18 of the IBC. It analysed the interplay between the IBC and the Telegraph Act, Wireless Telegraphy Act, and TRAI Act, particularly in light of the revenue-sharing regime. The Court also addressed whether licence dues, including AGR dues and deferred spectrum instalments, could be characterised as operational debt, and whether such dues could be extinguished or diluted through a resolution plan. A significant part of the analysis concerned transferability of spectrum in insolvency proceedings vis-à-vis the Spectrum Trading Guidelines. The Court examined whether approval of a resolution plan could override or substitute the requirements of prior governmental approval and clearance of past dues under Guidelines 10, 11 and 12. It further considered whether licence conditions or tripartite agreements created any enforceable security interest in favour of lenders, and the mode of enforcement thereof.

Finally, the Court addressed concerns regarding bona fides in triggering CIRP, particularly where insolvency proceedings were initiated by TSPs facing substantial governmental dues. It underscored that CIRP cannot be invoked as a device to evade statutory liabilities or frustrate regulatory control over a scarce public resource.

**Order/Judgement:** Considering the facts and circumstances of the case as highlighted above, the Supreme Court ruled that spectrum allocated to TSPs and shown in their books of account as an “asset” cannot be subjected to proceedings under the IBC.

**Case Review:** *Appeal filed by the Banks/TSPs dismissed; Appeal of the Union of India through DoT allowed in part.*