

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



ICICI Bank Ltd. & Ors.

Vs.

Era Infrastructure (India) Ltd. & Ors.

Brief Facts

The present batch of appeals arises from orders passed by the National Company Law Tribunal and the National Company Law Appellate Tribunal concerning the initiation of Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 against principal borrowers and their corporate guarantors. In the lead matter, ICICI Bank had extended credit facilities to certain group entities of Era Infra Engineering Pvt. Ltd., including ERA Infrastructure (India) Ltd., with the parent entity furnishing corporate guarantees securing such facilities. Upon default in repayment, CIRP was initiated against the guarantor, and the financial creditor's claim, founded upon the guarantee, came to be admitted.

Subsequently, the financial creditor instituted a separate application under Section 7 of the Code against the principal borrower on the basis of the same underlying debt. The Adjudicating Authority rejected the said application, placing reliance upon the decision in *Vishnu Kumar Agarwal v. Piramal Enterprises Ltd.*, holding that once an application in respect of a particular claim stands admitted against one corporate debtor, a subsequent application founded on the same cause of action against another corporate debtor is not maintainable. Similar questions arose in the connected appeals, wherein divergent views were expressed by the tribunals on the permissibility of simultaneous proceedings against the principal debtor and the guarantor.

The principal issue, therefore, pertained to the maintainability of parallel CIRP proceedings against

both the principal borrower and the corporate guarantor in respect of the same debt, and the allied concerns relating to election of remedies, duplication of claims, and the possibility of unjust enrichment.

Decision

The Supreme Court held that the initiation of simultaneous or parallel insolvency proceedings against the principal borrower and the corporate guarantor is permissible under the Insolvency and Bankruptcy Code, 2016. Construing Section 60(2) of the Code in conjunction with the established principle under the law of contracts that the liability of a guarantor is co-extensive with that of the principal debtor, the Court observed that the statutory framework does not impose any embargo on the institution of such proceedings.

The Court expressly negated the applicability of the doctrine of election, holding that the remedies against the principal borrower and the guarantor are neither inconsistent nor mutually exclusive so as to compel a financial creditor to elect between them. It was further observed that compelling a creditor to restrict or apportion its claim would be contrary to the very nature of a contract of guarantee and may result in the extinguishment of a portion of the debt upon culmination of the insolvency process, having regard to the “clean slate” principle.

With respect to the apprehension of double recovery, the Court clarified that while the creditor is entitled to pursue remedies against multiple obligors, it cannot recover amounts in excess of the total debt due. The statutory scheme, including the obligation to update claims and the supervisory role of the Resolution Professional, provides adequate safeguards to obviate the possibility of unjust enrichment.

The Court further reiterated that although the Code is not intended to operate as a mere recovery mechanism, the existence of a financial debt and default constitutes sufficient ground for admission of an application under Section 7, subject to the limited discretion vested in the Adjudicating Authority. Accordingly, it was held that the rejection of applications solely on the ground that CIRP had already been initiated against another corporate debtor in respect of the same debt is unsustainable in law.

Link of the Order

<https://ibbi.gov.in/uploads/order/460a1bbdc0d286dd6c0c8168f395693f.pdf>

