

IBC DOSSIER

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IDBI Bank Ltd. Vs. Hemangi Patel

Brief Facts

This order relates to the events where IDBI Bank had extended credit facilities to Great Logistic & Parking Services Pvt. Ltd., for which Hemangi Patel (Respondent) stood as personal guarantor by executing a guarantee deed on 28.10.2010. The corporate debtor defaulted, and the account was classified as NPA on 31.03.2016, leading to invocation of the guarantee on 24.10.2016 and filing of an OA before the DRT on 31.03.2017. A Recovery Certificate was issued in favor of the bank on 25.01.2019. Subsequently, a demand notice under Rule 7(1) of the 2019 Rules was issued on 19.03.2024, and an application under Section 95 of the IBC was filed on 02.09.2024. The adjudicating authority rejected the application as time-barred, holding that the three-year limitation from the Recovery Certificate expired on 25.01.2022, and even after applying the Supreme Court's COVID-19 extension (Suo Motu WP (Civil) No. 3 of 2020), the extended period ended on 11.01.2024, rendering

the filing beyond limitation; the bank has appealed this rejection.

Decision

In its decision, the NCLAT upheld the adjudicating authority's rejection of IDBI Bank's Section 95 application, confirming it was barred by limitation. The tribunal cited *Tottempudi Salalith v. State Bank of India & Ors.* (2023), where the Supreme Court clarified that a recovery certificate gives rise to a fresh cause of action under IBC, allowing initiation of CIRP within three years from its issuance, in line with Article 137 of the Limitation Act—not twelve years (applicable only to execution of decrees under Article 136). The NCLAT also relied on precedents such as *Gaurav Hargovindbhai Dave v. ARCIL* (2019), holding that Section 7 applications fall under the residuary Article 137, not Article 62 providing twelve-year limitation for suits. As IDBI Bank filed its application well beyond the three-year period, even after considering the Supreme Court's COVID-19 extension, it was rightly held to be time-barred.

Link of the Order

https://www.livelaw.in/pdf_upload/9910106050632025-614693.pdf



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