

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



H.D.F.C. BANK LIMITED Vs. KISHORE K. MEHTA (DEAD) THR. LRS.

Brief Facts

HDFC Bank initiated insolvency proceedings under Section 9(2) of the Presidency Towns Insolvency Act, 1909, relying on a recovery certificate issued by the Debts Recovery Tribunal (DRT), Mumbai, following a DRT order dated 26 October 2004 and a recovery certificate dated 30 November 2004 for Rs. 14,74,51,929.35. The bank sought an insolvency notice against Kishore K. Mehta (a director and personal guarantor for Beautiful Diamonds Ltd.), and the Insolvency Registrar issued Notice No. N/224 of 2006. The respondent challenged the notice before the Bombay High Court under Section 9(5), which held that a DRT recovery certificate could not form the statutory basis for an insolvency notice; the Division Bench upheld that view. The bank appealed to the Supreme Court; during pendency, the original respondent died, and his legal representatives were substituted.

Decision

The Supreme Court dismissed the appeal and affirmed that, as the law stood when the litigation commenced, a recovery certificate issued by a DRT prior to the 2016 amendment to the Recovery of Debts and Bankruptcy Act could not be treated as a “decree or order” for the purposes of Section 9(2) of the Insolvency Act. The Court applied the reasoning in *Paramjeet Singh Patheja v. ICDS Ltd.*—that the terms “decree or order” must be understood in light of the Civil Procedure Code and that insolvency provisions must be strictly construed because of their grave consequences—and held that Parliament’s later insertion of Section 19(22A) (2016), which deems recovery certificates to be equivalent to decrees/orders, demonstrates that such equivalence did not exist earlier and is not retrospective. The appeal was therefore dismissed; proceedings in the High Court’s notice of motion stand closed as to the deceased original respondent, and the bank remains free to pursue other remedies against co-debtors or guarantors in accordance with law.

Link of the Order

<https://ibbi.gov.in/uploads/order/cd17b760dedf3d68fd28ec9815426b47.pdf>



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