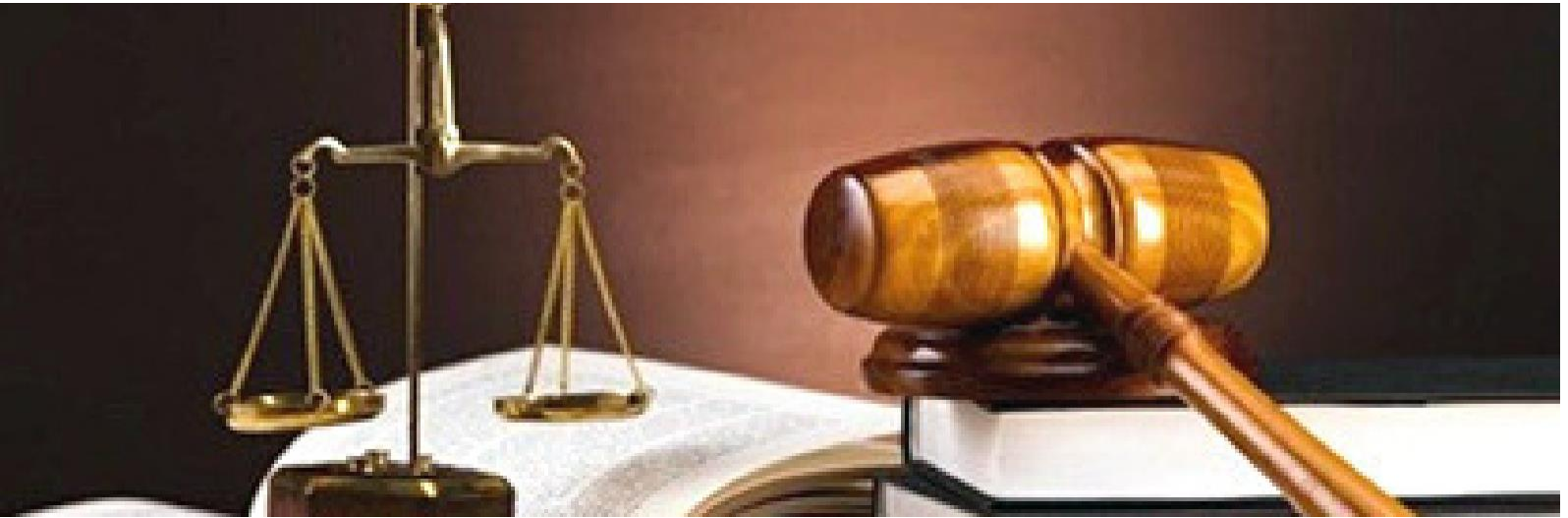


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



SSMP Industries Ltd. vs. Perkan Food Processors Pvt. Ltd.

Brief Facts

The Plaintiff had filed the present suit seeking recovery of Rs.1,61,47,336.44. The Plaintiff had placed an order on the Defendant for purchase of Totapari Mango pulp, as part of the said transaction. An agreement had been entered into, supplies were made and various amounts are due towards excess payments, damages and other costs. The Defendant filed its written statement/counter claim in which it avers that it is, in fact, entitled to recover a sum of Rs.59,51,548/- and no amount is due and payable by it to the Plaintiff. The Plaintiff company had gone into insolvency and a RP was appointed. The question has arisen as to whether the adjudication of the counter claim would be liable to be stayed in view of Section 14 of the Code.

Decision

- a. Citing the judgement of the Delhi HC in the case of Power Grid Corporation of India v. Jyoti Structures Ltd., it was held that the that until and unless the proceeding has the effect of endangering, diminishing, dissipating or adversely impacting the assets of CD, it would not be prohibited under Section 14(1)(a) of the Code. **[Para 5 & 6]**

- b.** Citing the NCLAT case of Jharkhan Bijli Vitran Nigam Ltd. V IVRCL Limited & Anr. it was held that until and unless the counter claim is itself determined the claim cannot be determined therefor, the claim and the counter claim deserve to be heard together and there is no bar on the same in the Code. **[Para 7]**
- c.** The role of the RP is merely adjudicatory in nature and cannot be determined with the burden of deciding the claim of the defendant as it is uncertain and the as the present suit is unlikely to endanger, diminish, dissipate or adversely impact the assets of the CD. Hence the counter claim was not stayed at this stage. **[Para 8 & 9]**

[Link of the Order](#)

[https://ibbi.gov.in//uploads/order/2019-07-27-203333 In the matter of SSMP Industries Ltd. Vs Perkan Food Processor Pvt. Ltd CS \(COMM\) 470 -2016 & 73-2017.pdf](https://ibbi.gov.in//uploads/order/2019-07-27-203333%20In%20the%20matter%20of%20SSMP%20Industries%20Ltd.%20Vs%20Perkan%20Food%20Processor%20Pvt.%20Ltd%20CS%20(COMM)%20470%20-2016%20&%2073-2017.pdf)



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA**