

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **Atibir Industries Company Limited & Ors. Vs. Indian Bank**

### **Brief Facts**

In the present case, a Show-cause Notice was based on a supposed classification of petitioner No. 1's account as a Non-Performing Asset (NPA). However, in a writ petition filed against such classification, this Court issued an order of injunction preventing the respondent from proceeding on the grounds that the classification of petitioner no. 1's account as NPA was patently contrary to the relevant RBI Circulars issued during the Covid-19 pandemic. The respondent authorities then issued a Show-cause Notice on March 1, 2024, finding the petitioners to be wilful defaulters, which prompted the current petition.

The learned counsel arguing on behalf of the Petitioner contended that the respondent issued the impugned Show-cause Notice after failing multiple times to vex the petitioners over the same purported default. He contended that the current Show-cause Notice, which is essentially a debt collection action, violates Section 96 of the IBC. He also claimed that no copies of the Forensic Audit Report (FAR) or other documents cited

by the respondent in the Show Cause Notice were provided to the petitioners.

The learned counsel acting on behalf of the Respondent contended that writ petitions are typically not heard at the Show Cause stage. There has been no ruling on the merits of the allegations. As a result, the petitioners' legal rights have not been violated, and they can seek recourse under Article 226 of the Indian Constitution.

## **Decision**

The Bench observed that if a wilful defaulter proceeding falls outside the scope of Section 14 of the IBC, Section 96 of the same cannot be used to prevent it. The yardsticks for declaring a wilful defaulter under the Master Circular differ from those for a recovery proceeding or a relatable proceeding; such declaration is simply to disseminate credit information pertaining to wilful defaulters in order to warn banks and financial institutions that further bank financing will not be made available to them. The pending of a procedure under Section 95, IBC does not automatically result in a moratorium under Section 96 on a wilful defaulter proceeding.

The Court further stated that it was the respondent bank's duty to deliver a copy of the Forensic Audit Report together with the Show-cause Notice on the petitioners, but that the Show-cause Notice, which is otherwise lawful in law, cannot be set aside solely on this basis.

The court ordered the respondent bank to serve a copy of the Forensic Audit Report or any other document on which the bank plans to rely to establish the show-cause charges.

## **Link of the Order**

<https://ibbi.gov.in/uploads/order/0ef6824c83ed17b1a85979d82be9e415.pdf>



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