

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **AXIS TRUSTEE SERVICES LIMITED Vs. BRIJ BHUSHAN SINGAL & ANR.**

### **Brief Facts**

In the present case, two summary suits were filed by creditors of Bhushan Steel Limited against the former promoters of Bhushan Steel, namely Brij Bhushan Singhal and Neeraj Singhal, for the recovery of money.

The parties were previously heard by the single-judge bench of Justice Amit Bansal a number of times, and the verdict was reserved on September 5, 2022. After the judgment was reserved, Defendant No. 1 filed an application under Order VII Rule 11 of the Code of Civil Procedure, claiming that because he had also filed for insolvency before the National Company Law Tribunal in New

Delhi (NCLT) after the judgment was reserved, a suit against any of the Defendants was barred by the interim moratorium provided by Section 96 of the Code.

The said applications were opposed by the Plaintiffs on the grounds that, pursuant to Sections 78 and 79 of the Code, the Debt Recovery Tribunal is the adjudicating authority for personal guarantors, and as such, an application under Section 95 of the IBC cannot be filed before NCLT as it lacks jurisdiction to entertain the same. The Defendants raised the same objection before NCLT.

The Defendants also argued that no other parties or co-guarantors would be affected by the interim moratorium because it would only apply to all obligations owed by a specific co-debtor.

### **Decision**

The court after referring to the NCLAT's ruling in the case of India v. Mahendra Kumar Jajodia, the single-judge bench explained Sections 60(2) and 179 of the Code and held that “It is evident from the legal position described above that Section 179(1), which grants the DRT jurisdiction over insolvency matters involving both individuals and businesses, is subject to Section 60 of the IBC. The NCLT is designated as the Adjudicating Authority in relation to insolvency resolution for corporate individuals, including corporate debtors and personal guarantors, under Subsection (1) of Section 60 of the IBC.”

The Court further held that, despite the fact that both co-guarantors liability stems from the same debt, the other co-guarantor will not be protected by an interim moratorium against one of them: “The reference to ‘all the debts’ in Section 96(1)(a) has to be in reference to all debts of a specific debtor. The language employed in Section 96(1)(b)(ii), which states that the debtor's creditors “must not commence any action or procedure in respect of any debt,”

makes this obvious. As a result, the interim moratorium solely has an impact on the debts of a certain debtor. It cannot in any way be said to incorporate additional independent guarantors for the same amount owed by a corporate debtor. The other co-guarantor(s) would not be affected by an interim moratorium under Section 96 simply because it is applicable to one of the co-guarantors.

The court ruled that additional personal co-guarantors are not covered by the interim moratorium provided by Section 96 of the Insolvency & Bankruptcy Code, 2016 (IBC/Code), which applies to all debts of a single debtor.

However, when the verdict was reserved, insolvency proceedings were also brought against Defendant No. 1, therefore the High Court suspended the proceedings against both defendants.

### **[Link of the Order](#)**

<https://ibbi.gov.in/uploads/order/1560f333cdb5bbea86b7f84e152eb0cf.pdf>



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