

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **M/s IFCI Limited Vs. Sutanu Sinha & Ors.**

### **Brief Facts**

In the present case, for a highway project, IVRCL Chengapalli Tollways Ltd. (ICTL/Corporate Debtor) and the National Highways Authority of India (NHAI) signed a concession agreement. For the project, ICTL was established as a fully owned subsidiary of IVRCL Ltd (IVRCL/Sponsor). To finance the project, ICTL received a term loan from a consortium of lenders as part of the debt component, and IVRCL was to provide the remaining funds through equity infusion, a portion of which was to be obtained through CCDs, which amount was invested by IFCI Ltd., the Appellant (IFCI/Appellant).

A Debenture Subscription Agreement (DSA) was used by IFCI to subscribe to the CCDs. The DSA required IVRCL (rather than the Corporate Debtor) to make coupon payments, provide security, and grant a 'put option' that allowed IFCI to sell the CCDs to a third party in the case of default. As a result, the project ran into financial difficulties, and IFCI was not paid. ICTL had proposed a one-time payment, which was later rescinded, and IFCI exercised the corporate guarantee provided by IVRCL. Following that, both the IFCI and the State Bank of India launched the IBC's Corporate Insolvency Resolution Process (CIRP).

IFCI filed a claim at the CIRP of ICTL, claiming a financial debt. On August 9, 2022, the Resolution Professional (RP) denied the sum sought, citing that CCDs were to be recognized as equity under all project contracts, particularly the Concession Agreement, which supersedes all agreements. Also, all payment commitments were to IVRCL, not ICTL and the notes to ICTL's balance statement include IVRCL's payback obligations.

IFCI only filed an application before the NCLT Hyderabad in November 2022 to appeal the RP's denial of its claim, but it was unsuccessful. On appeal, the NCLAT confirmed the NCLT's ruling, adding that the obligation to repay the interest was that of IVRCL and that the CCDs in this case did not fit under the description of 'financial debt' under Section 5(8) of the IBC. Thereafter, an appeal was preferred before the Hon'ble Supreme Court.

## **Decision**

The apex court observed that According to the Court, a study of the DSA and the Concessionaire Agreement shows that IFCI was offered security under the DSA, but the duties were always those of the Sponsor, i.e., IVRCL, and not the Corporate Debtor. Unless the debt is confirmed to be of ICTL, IFCI cannot seek a recovery of the amount as an ICTL creditor. The Court also noted that IFCI has not denied that it did not exercise its put option.

The Court upheld the NCLAT's order, stating that the issue of whether CCDs could be treated as a debt rather than an equity instrument had been correctly crystallized, and that the decision that treating CCDs as debt would be a breach of the common loan agreement, particularly the Concession Agreement, has an overriding effect. The Court particularly held that the investment was obviously in the nature of debentures that were compulsorily convertible into equity and that there was no condition saying that these CCDs would take on the character of financial debt if a specified occurrence occurred.

While dismissing the appeal, the Court clarified that its Section 62 jurisdiction is limited to an issue of law, similar to a second appeal. The law under IBC does not allow for endless levels of scrutiny, and each level of scrutiny has its own set of limits. It decided that the current appeal did not pose any such legal challenge and that the lower courts' decisions were consistent with recognized legal principles.

## **Link of the Order**

<https://ibbi.gov.in/uploads/order/550508b8d1c37bec30ef23a0e338782c.pdf>



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