

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **Totempudi Salalith Vs. State Bank of India & Ors.**

### **Brief Facts**

In the present case, several banks, including the State Bank of Hyderabad, the State Bank of Mysore, the State Bank of Travancore, the State Bank of Bikaner, Jaipur, and the State Bank of Patiala, as well as others, have granted loans to Totem Infrastructures Ltd. On April 1, 2017, the State Bank of Hyderabad, the State Bank of Mysore, the State Bank of Travancore, the State Bank of Bikaner and Jaipur, and the State Bank of Patiala amalgamated to form the State Bank of India. The State Bank of India initiated proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016.

The SBI issued 13(2) notices under the SARFAESI Act before beginning Section 7 IBC proceedings, and then it submitted Original Applications to the DRT. One application was submitted to DRT Bengaluru and two to DRT Hyderabad. On September 8, 2015, and October 17, 2017, DRT Hyderabad granted two recovery certifications. On August 4, 2017, a recovery certificate was issued in another

application.

Based on these three recovery certificates, the State Bank of India submitted an application under Section 7 of the IBC, 2016. The Adjudicating Authority accepted the Application by order dated January 12, 2021. The NCLAT rejected the objection to the admission that was made there.

Mr. Tottempudi Salalith, the managing director of Totem Infrastructures Ltd., was incensed by this and appealed to the Supreme Court of India on mostly procedural grounds.

## **Decision**

The Bench observed that the doctrine of election is a rule of evidence that prohibits prosecution for the same offense in two separate forums. It was argued before the Supreme Court that because SBI had already begun legal action before the DRT, a procedure under Section 7 of the IBC could not be maintained before the NCLT.

By citing *Kotak Mahindra Bank Limited vs. A. Balakrishnan and Others* (2022) 9 SCC 186, the Supreme Court rejected this argument. The Supreme Court had ruled in this case that a recovery certificate would create a new cause of action allowing financial creditors to start the corporate insolvency resolution process. The enforcement of a recovery certificate is a separate course of action, and the financial creditor may choose to pursue legal action under the IBC rather than through the 1993 Act's pursuing system. The Supreme Court further noted that although the IBC is primarily intended to revive insolvent businesses, it is also a tool for debt recovery. Nevertheless, the procedure it specifies for doing so has a significant bearing on debt recovery.

The application for the commencement of insolvency proceedings was based on three recovery certificates. The Supreme Court ruled in *Vashdeo R. Bhojwani vs. Abhyudaya Cooperative Bank Limited and Others* (2019) 9 SCC 158 that the limitation period begins on the date the recovery certificate is issued.

The Supreme Court concluded in *Kotak Mahindra* (Supra) that the limitation term for recovery certificates is regulated by Article 137 of the Limitation Act.

Two of the three recovery certificates were time-limited, while the third was not. There were no limitations averments in the Application before NCLT.

The State Bank of India had relied on a letter dated January 29, 2020, as an admission of debt. The Appellant has challenged this on the grounds that any valid acknowledgment must be made within a certain time frame. State Bank has pushed for the letter to be treated under Section 25 (3) of the Indian Contract Act, 1872.

Based on *Reliance Asset Reconstruction Company Limited vs. Hotel Poonja International Private*

Limited (2021) 7 SCC 352 and Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Private Ltd (2020) 15 SCC 1, the Supreme Court determined that specific pleading regarding facts constituting acknowledgment or admission of claim must be provided, which was not done in this case.

Finally, the Supreme Court ruled that the application concerning the two recovery certificates issued in 2017 is maintainable. If the Appellate Tribunal determines that the CIRP could not lie in relation to the recovery certificate barred by limitation because the decree is still in effect, the claim based on the said recovery certificate can be separated from the composite claim, and the Committee of Creditors will treat the sum reflected in the said recovery certificate as part of the claims made in response to the public announcement. The Supreme Court issued this directive in accordance with Article 142 of the Constitution.

### **Link of the Order**

<https://ibbi.gov.in/uploads/order/aefe8c45d019d3b3faa8ba016d2b7a37.pdf>



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