

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Pratima P. Shah Vs. IDBI Bank

Brief Facts

Amar Remedies Limited (Company) filed Form-6 for initiation of CIRP against it. The NCLT, Mumbai Bench treated the Form-6 as an application under Section 10 of the Code showing Amar Remedies Limited as 'Corporate Applicant' and admitted the application vide order dated 16th June, 2017. NCLT, Mumbai Bench heard the parties and noticed the submissions made on behalf of the IDBI Bank Limited that Hon'ble High Court of Bombay has already passed order of 'Liquidation' of the Company. The NCLT held that since liquidation order has been passed by HC the application would be barred by section 11(d). Hence the present appeal.

Decision

- a. Fast Tract CIRP under Section 55 is exempt from prohibitions under Section 11. **[Para 23]**



b. The substituted sub-section (b) of Section 4 of SIC Repeal Act, 2003 provides relief to the Company in respect of which appeal or reference or inquiry stands abated, to make reference under sub-section (b) of Section 4 to NCLT under the Code for initiation of CIRP. Since no form has been prescribed even for initiation of Fast Track CIRP under Sections 55 and 56 of the Code, in the Application to Adjudicating Authority Rules. Thus, it was open to the Company/ 'CD' to suitably draft the format of reference. If the 'CD' chose the Form 6 for the purpose of reference, it will continue to be a reference by a Company/ 'CD' under subsection (b) of Section 4 and such reference will not be hit by Section 11. Similarly, for initiation of the CIRP by reference under subsection (b) of Section 4 of SIC Repeal Act, 2003, the prohibition under Section 11 is not applicable. Such a reference should be treated as a CIRP by reference under subsection (b) of Section 4 of SIC Repeal Act, 2003. **[Para 24 & 25]**

Link of the Order

<https://ibbi.gov.in/uploads/order/30c7ecda59640aad1b6800448f6b88a6.pdf>



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