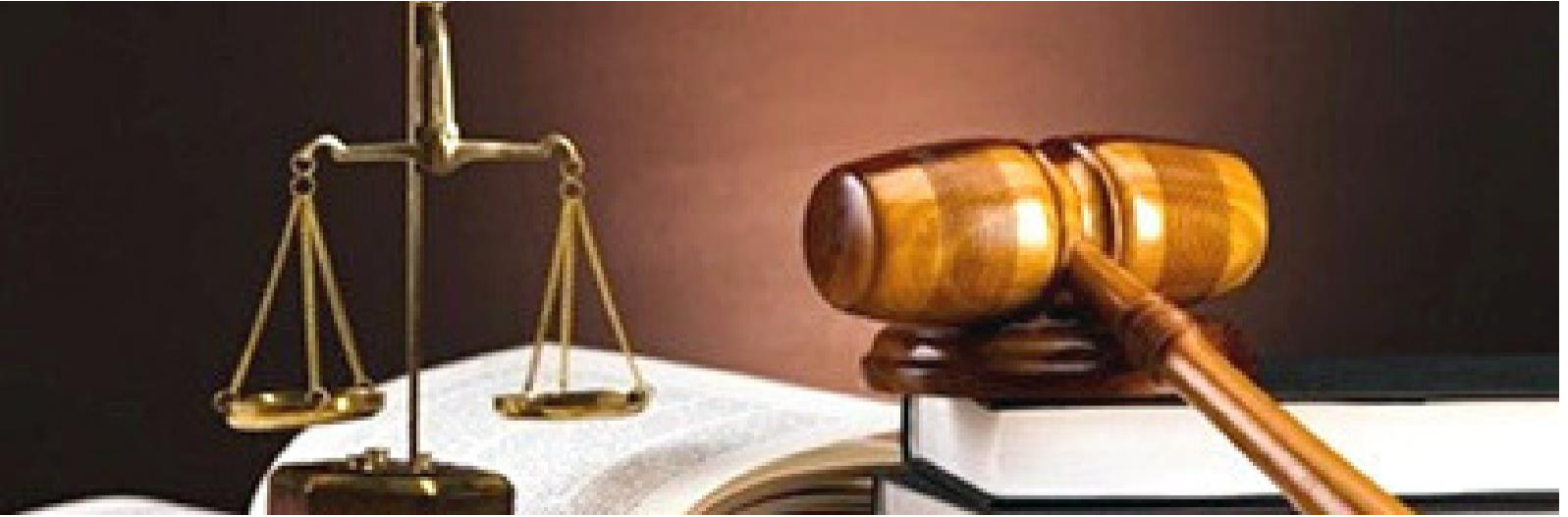


# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## Dharani Sugars and Chemicals Ltd. Vs Union of India & Ors.

### **Brief Facts**

The present batch of petitions and transferred cases raise questions as to the constitutional validity of Sections 35AA and 35AB of the Banking Regulation Act, 1949 ["Banking Regulation Act"] introduced by way of amendment w.e.f. 04.05.2017. The real bone of contention is a Reserve Bank of India ["RBI"] Circular issued on 12.02.2018, by which the RBI promulgated a revised framework for resolution of stressed assets.

The salient features of this circular are that restructuring in respect of borrower entities de hors the Code can only occur if the resolution plan that involves restructuring is agreed to by all lenders, i.e., 100 per cent concurrence. Secondly, what has been chosen to be the subject matter of the circular is debts with an aggregate exposure of INR 2000 crore and over on or after 01.03.2018. With respect to such debts, if default persists for 180 days from 01.03.2018, or if the date of first default is after 01.03.2018, then 180 days calculated with effect from that date, lenders shall file applications singly or jointly under the Code within 15 days from the expiry of the aforesaid 180 days. In short, unless a restructuring process in respect of debts with an aggregate exposure of over INR 2000 crore is fully implemented on or before 195 days from the reference date or date of first default, the lenders will have to file applications as FCs under the Code.

## **Decision**

- a. The Bank regulation amendment ordinance, 2017 & the banking regulation amendment act, 2017 were intra vires as the arguments of the Petitioners of Manifest arbitrariness held no water. The amendment was valid as the act itself had an extensive set of restrictions imposed on the RBI to check its power given in Section 35A in section 14A, 17, 18 & 20. **[Para 17]**
- b. As section 35AA has been inserted to give power to RBI to order banks to initiate insolvency against debtors, the RBI cannot do such act under powers given in Section 35A and hence the impugned circular was passed only under Section 35AA. As the Circular is causing a lot of damage to many specific industries the conditions given in Section 43L of the act which will be applicable to both Non-Banking Financial Institutions as well as banks, would not be satisfied. The impugned circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets. Thus, the circular was held to be ultra vires of the act itself and hence was set aside. **[Para 30, 31 & 45]**

## **Link of the Order**

[https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/2nd%20Apr%202019%20in%20the%20matter%20of%20Dharani%20Sugars%20and%20Chemicals%20Ltd.%20Vs.%20Union%20of%20India%20&%20Ors.%20Transferred%20Case%20\(Civil\)%20No.%2066%20of%202018%20In%20Transfer%20Petition%20\(Civil\)%20No.%201399%20of%202018\\_2019-04-02%2016:39:21.pdf](https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/2nd%20Apr%202019%20in%20the%20matter%20of%20Dharani%20Sugars%20and%20Chemicals%20Ltd.%20Vs.%20Union%20of%20India%20&%20Ors.%20Transferred%20Case%20(Civil)%20No.%2066%20of%202018%20In%20Transfer%20Petition%20(Civil)%20No.%201399%20of%202018_2019-04-02%2016:39:21.pdf)



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