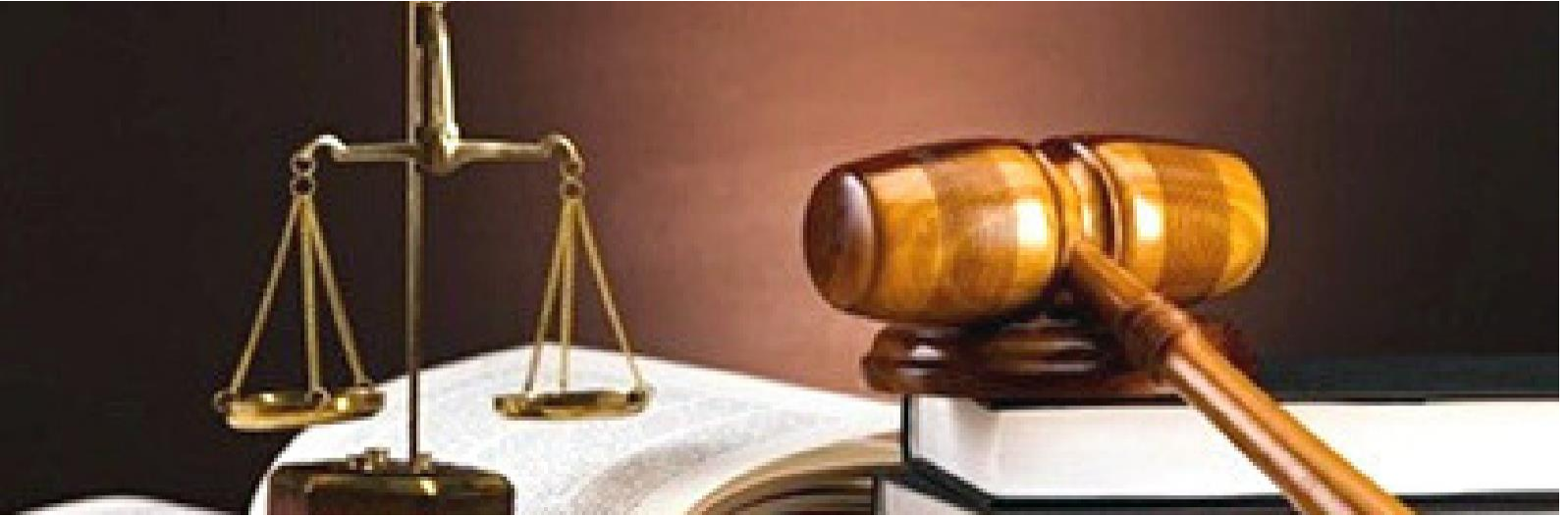


# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## Bharat Aluminium Co. Ltd. Vs. J.P Engineers Pvt. Ltd. and Anr.

### **Brief Facts**

The Operational Creditor 'M/s Worldwide Metals Pvt. Ltd.' filed application under Section 9 of the IBC for initiation of CIRP against the Corporate Debtor 'M/s J.P. Engineers Pvt. Ltd.'

The Appellant had entered into an Agreement with the Corporate Debtor for Sale and Purchase of Aluminum Products for the period of 01.04.2019 to 31.03.2020. For ensuring the payments the Corporate Debtor had issued a bank guarantee dated 22.04.2019 executed by Respondent No. 2. Thereafter, the Respondent No. 2 extended the validity of aforesaid bank guarantee till 21.04.2020. The Corporate Debtor defaulted in making of payments, therefore, the Appellant for invoking bank guarantee has written a letter dated 03.03.2020 to the Respondent No. 2 bank and also deposited the original bank guarantee to the concern branch. The Respondent No. 2 sent a reply to the Appellant that they can encash the bank guarantee only after taking approval from the IRP. Thereafter, the Appellant had sent a legal notice on 20.03.2020 to the Respondent No. 2 seeking encashment of bank guarantee dated 22.04.2019 in favour of the Appellant. The Respondent refused to allow the invocation of the bank guarantee on the ground of enforcement of moratorium under Section 14 (1) of the IBC against the Respondent No. 1. In view of the same, Respondent No. 2 filed an application before adjudicating authority seeking a direction that bars appellant to invoke bank guarantee on account of section 14 of IBC.

Therefore, the issue before NCLAT is whether the financial bank guarantee can be invoked after issuance of moratorium under Section 14 of the IBC.

## **Decision**

The NCLAT observed that Sub Section 3 of Section 14 of the IBC substituted by the Insolvency and Bankruptcy Code (second Amendment) Act 26 of 2018 with retrospective effect from 06.06.2018 **(Para 26)**

After substitution of Sub-Section 3(b) the provision of Section 14(1) of the IBC shall not apply to surety in the contract of guarantee to a Corporate Debtor. **(Para 30)**

The bank guarantee is irrevocable and unconditional and payable on demand without demur. The assets of the surety are separate from those of the corporate debtor, and proceedings against the corporate debtor may not be seriously impacted by the actions against assets of third party like surety. Bank guarantee can be invoked even during moratorium period issued under section 14 of the IBC in view of the amended provision under section 14 (3)(b) of the IBC. **(Para 37)**

## **Link of the Order**

<https://ibbi.gov.in//uploads/order/c9f8c461fed7cfa38985cf0ea4ca87d0.pdf>



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