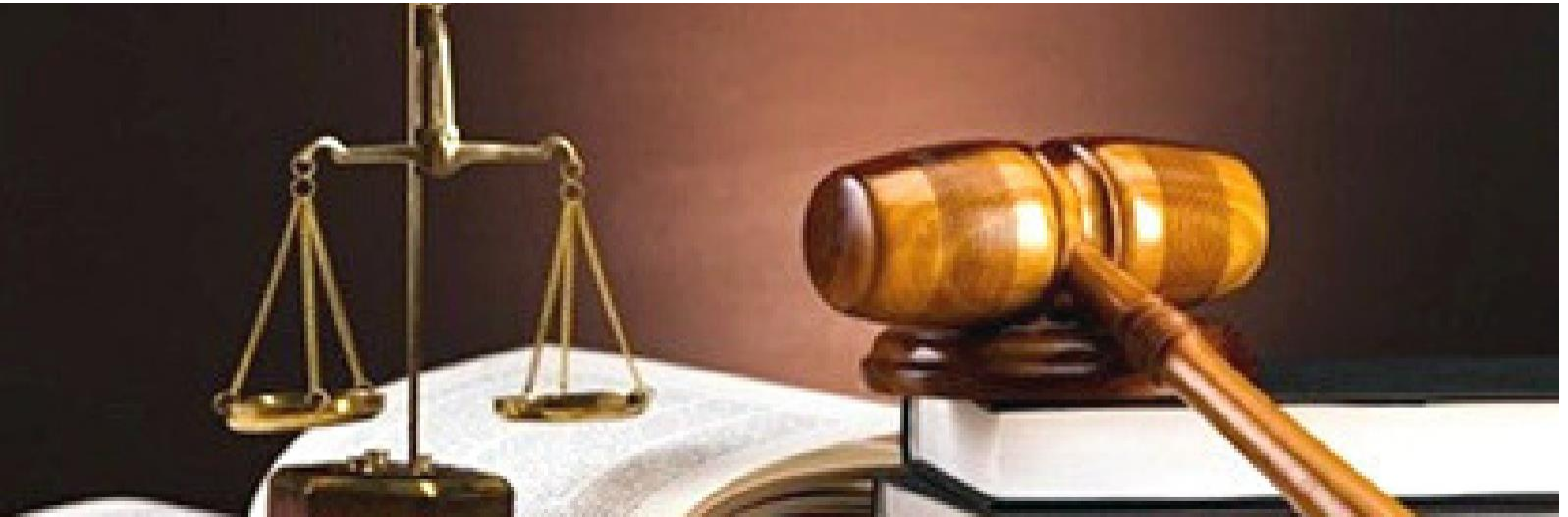


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Laxmi Pat Surana vs. Union Bank of India & Ars.

Brief Facts

1. Whether an action under Section 7 of the IBC can be initiated by the financial creditor against a corporate person (being a corporate debtor) concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a 'corporate person'?
2. Whether an application under Section 7 of the IBC filed after three years from the date of declaration of the loan amount as a NPA, being the date of default, is not barred by limitation?

Decision

The Supreme Court while dealing with the first issue clarified that in law, the status of the guarantor, who is a corporate person, metamorphoses into a corporate debtor, the moment principal borrower, regardless of not being a corporate person, commits default in payment of a debt which had become due and payable.

The Court added that in case of a default by the principal borrower, it is the liability of the company (corporate person) being the guarantor, and based on it the right of the financial creditor triggers to proceed against the corporate person being the corporate debtor.

The SC bench examined the definitions of terms including "financial creditor" "financial debt", "debt", "claim" and "default" as defined under the IBC. After examining the said definitions the Court held that a right or cause of action would accrue to the financial creditor to proceed against the principal borrower, and the guarantor in equal measure if default occurred in repayment of the amount of debt acting jointly and severally.

The SC draws support from Section 3(37) of the IBC and stated that it must follow that the lender would be a financial creditor within the meaning of the IBC. It further stated that even though the principal is not a corporate person, but if a corporate person extends a guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of the expression "corporate debtor" in Section 3(8) of the IBC.

The Supreme Court emphasized that the obligation of the guarantor is coextensive as that of the principal borrower as provisioned u/s 128 of the Contract Act. In case of default, the status of the guarantor transforms into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) of the IBC.

The Apex Court while dealing with the second issue rejected the argument of the appellant regarding the maintainability of the application filed by the financial creditor u/s 7 of the IBC on the ground of being barred by limitation. It clarified that a fresh period of limitation is required to be computed from the date of acknowledgment of the debt by the principal borrower from time to time.

The Court concluded, "The financial creditors has not only the right to recover the outstanding dues by filing a suit but also has a right to initiate a resolution process against the corporate person whose liability is coextensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability."

While dismissing the appeal the Court said that "There is no reason to limit the width of Section 7 of the Code despite law permitting initiation of CIRP against the corporate debtor, if and when the default is committed by the principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively."

[Link of the Order](#)

<https://ibbi.gov.in/uploads/order/4ed4a21540b05893704433eca2efade9.pdf>



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