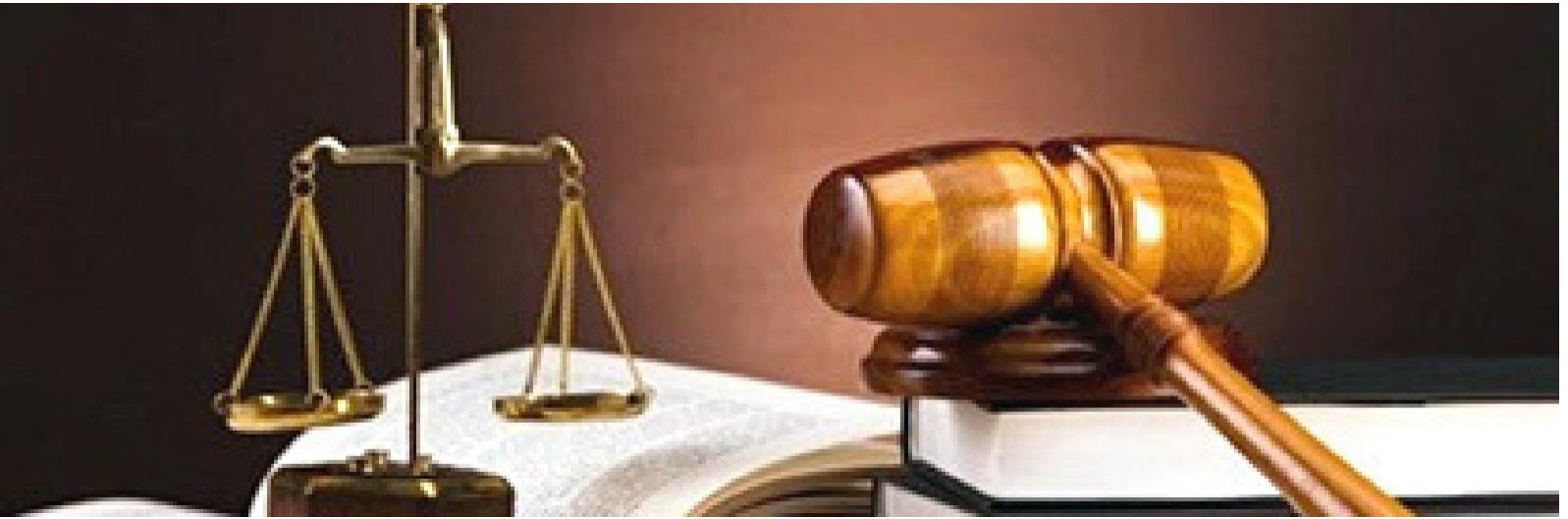


# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## Swaraj Infrastructure Pvt. Ltd. Vs Kotak Mahindra Bank Ltd.

### **Brief Facts**

The respondent, Kotak Mahindra Bank Limited, advanced various loans to the companies in question. The outstanding amount against these companies was stated to be INR 48 crores. The respondent approached the Debts Recovery Tribunal, Mumbai by filing three separate original applications to recover the debt owed. The Debts Recovery Tribunal delivered three separate judgments allowing the applications filed by the respondent bank. Subsequently, various attempts were made to auction the properties that were security for the loans granted, but these attempts yielded no results.

As no payments were forthcoming, the respondent issued statutory notices under Sections 433 and 434 of the Companies Act, 1956 and a company petition was filed before the Bombay High Court. The said petition was admitted and the appellant moved to high court challenging the order on the ground that once a secured creditor has obtained an order from the DRT, and a recovery certificate has been issued thereupon, such secured creditor cannot file a winding up petition as the Recovery of Debts Act is a special Act which vests exclusive jurisdiction in the DRT.

## **Decision**

- a. It was held that when an award for recovery is obtained from DRT by a secured creditor, A winding up Petition can still be filed by the secured creditor under Companies Act. **[Para 20]**
- b. On filing of winding up petition by the secured creditor, it is not necessary for secured creditor to give up his security at the time of filing petition. **[Para 17]**
- c. Section 434(1)(a) and Section 434(1)(b) are not mutually exclusive of each other, application of one sub clause does not cease the application of the other sub clause. **[Para 19]**

## **Link of the Order**

[https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/29th%20Jan%202019%20in%20the%20matter%20of%20Swaraj%20Infrastructure%20Pvt.%20Ltd.%20Civil%20Appeal%20No.%201291,1292,1293%20&%201294-2019\\_2019-02-08%2016:50:31.pdf](https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/29th%20Jan%202019%20in%20the%20matter%20of%20Swaraj%20Infrastructure%20Pvt.%20Ltd.%20Civil%20Appeal%20No.%201291,1292,1293%20&%201294-2019_2019-02-08%2016:50:31.pdf)



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