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THE INNOVENTIVE CASE (PART II)

This edition of the Knowledge Bank is in continuance of the Knowledge Bank issued on 27.11.2017, which covered the proceeding before the Hon'ble NCLT and NCLAT. This edition deals with the detailed ruling by the Apex Court in the matter of Innoventive Case^[1] on some of the substantive legal issues under the IBC.



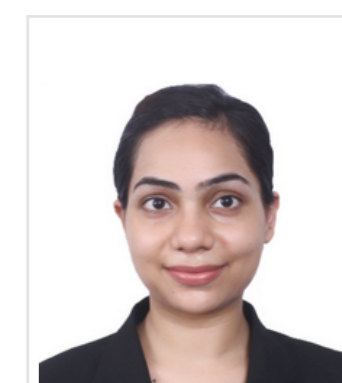
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GLOSSARY

S.NO.	ABBREVIATION	FULL TITLE
1	ICICI	ICICI Bank (Industrial Credit and Investment Corporation of India).
2	Innoventive	Innoventive Industries Limited
3	Innoventive Case	M/s. Innoventive Industries Ltd. -versus-ICICI Bank & Anr
4	IBC	The Insolvency and Bankruptcy Code, 2016
5	MRU Act	Maharashtra Relief Undertaking (Special Provisions) Act, 1958
6	CIRP	Corporate Insolvency Resolution Process
7	IRP	Insolvency Resolution Professional
8	NCLT	National Company Law Tribunal
9	NCLAT	National Company Law Appellate Tribunal

The Apex Court on 31.08.2017 in the matter of Innoventive Case delivered its first extensive/ detailed judgment on the operation and functioning of the newly enacted IBC.

[1] 2017 SCC OnLine SC 1025

BRIEF SUMMARY OF THE INNOVENTIVE CASE (PART I)

(1) ICICI filed an application under Section 7 of the IBC on 07.12.2016 against Innoventive before the Hon'ble Mumbai Bench of NCLT and prayed that the CIRP ought to be initiated against the Innoventive, as the Innoventive was a defaulter under the IBC.

(2) The main contention of Innoventive was that the debts of Innoventive had been temporarily suspended for two years pursuant to the notifications issued under the MRU Act.

(3) The NCLT vide its order dated 17.01.2017 held that the IBC would prevail against the MRU Act in view of the non-obstante clause in Section 238 of the IBC. It was further held that the parliamentary statute (the IBC) would prevail over the state statute (the MRU Act) and accordingly, application of the ICICI was admitted by the Hon'ble NCLT to initiate the CIRP as per the provisions of the IBC and a moratorium was declared.

(4) An appeal was filed before the Hon'ble NCLAT against the above order which met with the same fate and vide the order dated 15.05.2017, the Hon'ble NCLAT dismissed the appeal of Innoventive and held that Innoventive cannot derive any advantage from the MRU Act to stall the CIRP under Section 7 of the IBC. Thereafter, an appeal was filed before the Hon'ble Supreme Court.

ISSUES BEFORE THE APEX COURT

(1) Whether the appeal filed before the Apex Court was maintainable, as the appeal was filed by the directors of the Innoventive who were no longer in management, after an IRP was appointed and moratorium was declared?

(2) Whether there was any repugnancy between the IBC and the MRU Act?

(3) Whether the non-obstante Clause contained in Section 238 of the IBC (Parliamentary enactment) will prevail over the non-obstante Clause contained in Section 4 of the MRU Act (State statute)?

OBSERVATIONS

The Apex Court in detail examined the legislative history, scope, object and scheme of the IBC which is briefly summarized below:

IBC

The IBC received the assent of the President on 28.05.2016. The objective of the IBC is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets, to promote entrepreneurship, availability of credit and balance the interests of all stakeholders including alteration in the priority of payment of government dues and establishment of Insolvency and Bankruptcy Fund.

The IBC focuses on facilitating the assessment of viability of the enterprise at an early stage in a time bound manner to preserve economic value and to protect the rights of all stakeholders in resolving bankruptcy.

CIRP

The Apex Court observed that the scheme of the IBC is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the Insolvency Resolution Process begins. The CIRP may be triggered by the corporate debtor itself or a financial creditors and operational creditors. That when the CIRP is initiated by the financial creditors, Section 7 becomes relevant.

The adjudicating authority within 14 days of the receipt of the application has to ascertain the existence of a default from the records of the information utility or on the basis of evidence. The entire CIRP is to be completed within a period of 180 days from the date of the admission of the application to initiate CIRP.

The Apex Court observed that the adherence to time-frame specified in the IBC is critical to the effectiveness of the IBC.

The Apex Court while interpreting section 17(1)(b) of the IBC which provides that "the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the Interim Resolution Professional", and regarding the issue that whether the erstwhile directors of the Innoventive who were no longer in management of the Innoventive could maintain an appeal on behalf of the Innoventive after an IRP was appointed to manage the Innoventive, observed that once an IRP is appointed to manage the company, the erstwhile directors who are no longer in management cannot maintain an appeal on behalf of the company. Therefore, the present appeal is obviously not maintainable.

ISSUE OF REPUGNANCY

On the issue of repugnancy, the Apex Court discussed in detail various case laws and constitutional principles to test whether there is any repugnancy between the IBC and the MRU Act and laid down (amongst others) the following propositions:

(a) That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

(b) Repugnancy must exist in fact and not depend upon a mere possibility.

(c) The inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other.

(d) If the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation and the repugnant legislation by the state is void only to the extent of repugnancy.

Based on the above test, the Apex court observed that the State law (i.e. the MRU Act) is repugnant to the latter Parliamentary enactment (i.e. the IBC) as under the MRU Act, the State Government may take over the management of the relief undertaking, after which a temporary moratorium takes place under Section 4 of the MRU Act in the same manner as that contained in Sections 13 and 14 of the IBC.

ISSUE OF NON-OBSTANTE CLAUSE

Interpreting the non-obstante clause in section 238 of the IBC, the Apex Court observed that the non-obstante clause of the Parliamentary enactment (i.e. the IBC) will prevail over the limited non-obstante clause contained in Section 4 of the MRU Act being a state statute. Therefore, the Innoventive is not entitled to derive any advantages under the MRU Act to stall the CIRP under section 7 of the IBC.

JUDGMENT

The Hon'ble Apex Court held as follows:

(1) Once an insolvency professional is appointed to manage the company, the erstwhile directors who are no longer in

management cannot maintain an appeal on behalf of the company. Hence, in the present case, the appeal was not maintainable and was therefore dismissed.

(2) It was held that the MRU Act was repugnant to the IBC.

(3) That the non-obstante clause of the IBC will prevail over the limited non- obstante clause contained in Section 4 of the MRU Act.

(4) That the later central enactment (i.e. the IBC) being repugnant to the earlier State enactment (i.e. the MRU Act), by virtue of Article 254 (1) of the Constitution of India, would operate to render the MRU Act void vis-a- vis action taken under the later Central enactment.

(5) The Apex Court held that the Hon'ble NCLT and the Hon'ble NCLAT were right in admitting the application filed by the financial creditor ICICI.

CONCLUSION

The judgment provides much needed enlightenment/guidance on how the IBC is to be interpreted including in case of a conflict with prior laws, and also opines on the ability of an erstwhile director of the insolvent company to file an appeal once an IRP has been appointed for the company. The Apex Court extensively interpreted the IBC with a message: "we thought it necessary to deliver a detailed judgment so that all Courts and Tribunals may take notice of a paradigm shift in the law. Entrenched managements are no longer allowed to continue in management if they cannot pay their debts."