

Learning Curve-772

May 31 2022

A liability in respect of a claim arising out of a Recovery Certificate under the Recovery of Debts and Bankruptcy Act, 1993 would be a "financial debt" under IBC.

CASE TITLE	Kotak Mahindra Bank Limited Vs. A. Balakrishnan & Anr. ¹
CASE CITATION	CIVIL APPEAL NO.689 OF 2021
DATE OF ORDER	30.05.2022
COURT/ TRIBUNAL	Supreme Court of India
SECTION/ REGULATION REFERRED	Section 5(8), 5(7) of IBC
CASE LAWS REFERRED	<ul style="list-style-type: none">• Jignesh Shah And Anr. v. Union of India And Anr.• Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Limited And Anr

Brief of the case:

Recovery certificates were issued on 07.06.2017 and 20.10.2017. On 05.10.2018, KMBL filed an application under Section 7 of the IBC before the NCLT seeking initiation of the CIRP against the Corporate Debtor claiming an amount of Rs. 835,93,52,369. It was admitted by the NCLT on 20.09.2019. An appeal was filed by the Director of the Corporate Debtor before NCLAT on the ground that the application under Section 7 was filed after the expiry of the limitation period. The appeal was allowed by NCLAT. The present appeal challenged the order of NCLAT allowing the appeal filed by the director of corporate debtor.

Decision:

Hon'ble Supreme Court observed that Considering the object and purpose of the statute, the Court was of the view that Section 5(8) would include a debt which has crystallised in the form of a decree and held that,

"...we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate

... the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under Section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation."

QR CODE FOR FULL ORDER/JUDGEMENT:



¹ https://main.sci.gov.in/supremecourt/2021/3887/3887_2021_5_1501_36111_Judgement_30-May-2022.pdf