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INSOLVENCY

INSIGHT

Whether Special Court established under Companies act, 2013 has jurisdiction to
try offence under IBC, 2016?

Whether Corporate Debtor can file additional documents along-with rejoinder in a
Section 7 petition IBC?



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Whether Special Court established under Companies act, 2013 has jurisdiction to try offence under IBC, 2016?

The Hon'ble Supreme Court in the case of IBBI v. Satyanarayan Bankatalal Malu & Ors., Criminal Appeal no. 3851 of 2023 held that the special court established under Section 435 of the Companies Act, 2013 is competent to try offence under Section 73(a) and Section 235A of the IBC, 2016.

This is a case where IBBI lodged a complaint against the company before Special Court. The learned Special Court issued process. The Hon'ble High Court in appeal set aside the Special Court's order.

Challenging the aforesaid, IBBI went in appeal before Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the High Court's order.

The Hon'ble Supreme Court held that the reference of provisions of companies act in IBC is not general but specific. The reference is only to the fact that the offences under the Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act.

The Hon'ble Supreme Court further held that this is a case of 'legislation by incorporation' and not a case of 'legislation by reference'. The effect would be that the provision with regard to Special Court has been bodily lifted from Section 435 of the Companies Act, 2013 and incorporated in Section 236(1) of the Code.

The Hon'ble Supreme Court concludes that once a finding is recorded that an Act is a self-contained code, then the application of either of the doctrines i.e. "legislation by reference" or "legislation by incorporation" would lose their significance particularly when the two Acts can coexist and operate without conflict.

Whether Corporate Debtor can file additional documents along-with rejoinder in a Section 7 petition IBC?

The Hon'ble NCLAT in the case of Krystal Stone Exports Ltd. v. Stressed Assets Stabilization Fund, Company Appeal (AT) (Insolvency) No. 661 of 2024 held that the corporate debtor can file additional documents along- with rejoinder to the reply of section 7 petition.

This is a case where Bank has filed a section 7 petition. The corporate debtor in its defense raised a plea of limitation. The bank annexed OTS and financials along-with its rejoinder to contend that petition is within the limitation. The Learned adjudicating authority (NCLT) allowed the Bank's petition and held that petition is within the limitation.

The Hon'ble NCLAT in appeal held that mere fact that the said documents were not referred to in the Section 7 application cannot disentitle the Financial Creditor to bring on record the said documents when plea was raised in the Reply by the Corporate Debtor that application is barred by time.

The Hon'ble NCLAT further held that the power of the Court to accept the rejoinder and document is not being questioned.

When the issue of limitation is raised, it is duty of the Court to decide the question of limitation even if no defence is raised and for deciding the question of limitation party are at liberty to file relevant documents.

The Hon'ble NCLAT concludes that when the Corporate Debtor questioned the application as barred by time, it was open for the Financial Creditor to bring on record the relevant documents claiming acknowledgment of the Corporate Debtor



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