

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi - 110001

20th May, 2022

Subject: Judgment dated 18th May, 2022 of the Hon'ble Supreme Court of India in the matter of Indian Overseas Bank Vs. M/s RCM Infrastructure Ltd. and another [Civil Appeal No. 4750 of 2021]

The Hon'ble Supreme Court considered whether a Bank can continue the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) once the Corporate Insolvency Resolution Process (CIRP) is initiated and moratorium is ordered. The Hon'ble SC made some important findings and observations as under -

| Sl. No. | Subject / Issue | Ruling | Para / Page No. |
|---------|--|--|-----------------|
| 1. | Moratorium under section 14 – legislative intent | a) After the CIRP is initiated, there is moratorium for any action to foreclose, recover or enforce any security interest created by the Corporate Debtor (CD) in respect of its property including any action under the SARFAESI Act. b) Once the CIRP is commenced, there is complete prohibition for any action to foreclose, recover or enforce any security interest created by the CD in respect of its property. c) The words “including any action under the SARFAESI Act” are significant. The legislative intent is clear that after the CIRP is initiated, all actions including any action under the SARFAESI Act to foreclose, recover or enforce any security interest are prohibited. | 24/17 |
| 2. | Section 238 – override other laws. | The Insolvency and Bankruptcy Code, 2016 (Code/IBC) is a complete Code in itself and in view of the provisions of section 238, the provisions of the Code would prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force. | 27/18 |
| 3. | Security realization during the CIRP period | The provisions of section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the SARFAESI Act, is prohibited. | 35/23 |
| 4. | Conclusion | The Bank cannot continue the proceedings under the SARFAESI Act once the CIRP was initiated, and the moratorium was ordered. | 34/23 |