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04th December, 2023

Subject: Judgment¹ dated 18th October 2023 of Hon'ble Supreme Court of India in the matter of Tottempudi Salalith Vs. State Bank of India [Civil Appeal No. 2348 of 2021]

Whether a debt against which recovery certificate was issued in year 2015 could form subject matter of an application under section 7 of Code filed on 06.09.2019?

Brief background-

Initially, the banks had filed three applications before two different benches of DRT against CD for recovery of its dues. Thereafter, three recovery certificates ("RC") were issued by DRTs. RCs dated 08.09.2015 & 17.10.2017 were issued by Hyderabad Bench and RC dated 04.08.2017 was issued by Bengaluru Bench of DRT. Subsequently, the FC consolidated the dues under these three RCs and filed one application for initiation of CIRP against the CD before AA, Hyderabad Bench. AA, on the basis of "One time settlement (OTS)" letter dated 29.01.2020, admitted FC's application *vide* order dated 12.01.2021. An appeal was preferred by suspended director of CD against the order of AA, on ground of limitation. NCLAT dismissed such appeal. Suspended director of CD, then approached SC challenging admission order dated 12.01.2021 of AA.

Findings & Observations of Hon'ble SC:

SC while dismissing the appeal made the following observation: -

- SC clarified that since the OTS was made after filing of application for initiating CIRP, thus, the same cannot be taken into consideration for deciding the question of admission or rejection of CIRP proceedings.
- The main issue raised by suspended director under such appeal was that admission was hit by limitation. SC observed that among all the three RCs, two RCs which were issued in year 2017 are well within limitation period of three years. Thus, issue for consideration before Hon'ble SC was whether a debt against which recovery certificate was issued in year 2015 could form subject matter of an application under section 7 of Code filed on 06.09.2019?
- SC observed that section 19(22A) of Recovery of Debts and Bankruptcy Act, 1993, provides that a recovery certificate is clothed with the characteristics of deemed decree and further, as per Article 136 of Limitation Act, life of a decree is 12 years. It further relied on judgment of *Kotak Mahindra Bank Ltd. Vs. Kew Precision Parts Private Limited and Others [(2022) 9 SCC 364]*,

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stating that the RC as decree/deemed decree gives rise to a fresh cause of action and held that “*It would retain the character of a decree to lodge a claim in an IBC proceeding.*”

- SC held that the admission of CIRP is valid as far as claims of 2017 are concerned but CIRP could not lie with regards to RC issued in year 2015 and thus, directed to segregate the claim of 2015 from composite claim filed for initiation of CIRP proceedings. It further clarified that the claim w.r.t RC issued in 2015 would be treated as part of claims made in pursuance of public announcement as the decree would be still alive.