

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



BRS Ventures Investments Ltd. Vs. SREI Infrastructure Finance Ltd. & Anr.

Brief Facts

In the present case, Gujarat Hydrocarbon and Power SEZ Ltd. (Corporate Debtor) received a Rs. 100 crore loan from SREI Infrastructure Finance Ltd. (Financial Creditor) to fund a SEZ project, which was secured by a leasehold land mortgage and a share pledge. M/s. Assam Company India Limited (ACIL) offered a corporate guarantee.

Following the corporate debtor's default, the financial creditor used ACIL's guarantee to submit an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). ACIL's Corporate Insolvency Resolution Process (CIRP) began on October 26, 2017, when the application was admitted. BRS Ventures, ACIL's Successful Resolution Applicant, paid Rs. 38.87 crore as complete and final satisfaction of the financial creditor's claim.

On February 10, 2020, the financial creditor filed another application under Section 7 of the IBC, this time

against the corporate debtor, seeking Rs. 1428 crores in balance payable. This application was accepted by the NCLT on November 18, 2020. The National Company Law Appellate Tribunal (NCLAT) dismissed BRS Ventures' appeal, prompting the current appeal at the Supreme Court.

The appellant argued that by paying Rs. 38.87 crores to the financial creditor, it had subrogation rights under Section 140 of the Indian Contract Act of 1872. This subrogation allowed the appellant to act as the financial creditor, acquiring rights to the corporate debtor's SEZ land mortgage. The appellant maintained that even partial payment can trigger subrogation rights, and that the corporate debtor's business was included in the insolvency plan.

The financial creditor asserted that the corporate debtor's liability remained despite the appellant's payment. It emphasised the legal distinctions between ACIL and its subsidiary, the corporate debtor, arguing that the resolution procedure of ACIL had no bearing on the corporate debtor's responsibilities.

Decision

The Supreme Court stated that under Section 128 of the Contract Act, the surety's liability is coextensive with that of the principal debtor, allowing the creditor to pursue repayment from either party without exhausting remedies against the other.

According to the court, a settlement reached by the creditor and surety without the borrower's permission has no bearing on the borrower's liability.

In *Lalit Kumar Jain vs IBBI (2021)*, the court ruled that the contract between the creditor and the surety is independent; consequently, adoption of a resolution plan in the principal borrower's CIRP does not release the surety. The same concept applies if the surety's resolution plan is approved; the surety is legally discharged, but the principal borrower's obligation remains, the court determined. Section 31 of the IBC specifies that an approved resolution plan is binding on all parties, including creditors and guarantors.

“such a resolution plan of the corporate guarantor will not affect the liability of the principal borrower to repay the loan amount to the creditor after deducting the amount recovered from the corporate guarantor or the amount paid by the resolution applicant on behalf of the corporate guarantor as per the resolution plan,” a court ruling stated.

According to Section 60 sub-sections (2) and (3), the IBC allows financial creditors to initiate separate or simultaneous proceedings against both the corporate debtor and the guarantor, with the caveat that if insolvency proceedings for both are pending before different Adjudicating Authorities, they must be

transferred to the NCLT handling the corporate debtor's case. Sections 18 and 36 of the IBC remove Indian subsidiaries' assets from the liquidation estate, in accordance with the notion that shareholders do not own company assets. As a result, the court ruled that ACIL's resolution plan did not include the corporate debtor's assets.

Section 140 allows a surety to recoup against the principal debtor after paying the guaranteed obligation. In this case, ACIL was obligated to return the entire amount of the corporate debtor. The appellant paid Rs. 38.87 crores to the financial creditor on behalf of ACIL, which discharged ACIL's liability but not that of the corporate debtor, according to the court.

"The subrogation will only be for the amount recovered by the creditor from the surety. Despite the subrogation to the extent of the money paid on behalf of the corporate guarantor by the resolution applicant, the financial creditor's entitlement to recover the balance debt payable by the corporate debtor is not waived," the court ruled.

Thus, the court upheld NCLAT's decision, and dismissed the appeal.

[Link of the Order](#)

<https://ibbi.gov.in/uploads/order/4688087e4e8ccbbc67df12eca3134f29.pdf>



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