

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **Insolvency and Bankruptcy Board of India Vs. Satyanarayan Bankatlal Malu & Ors.**

### **Brief Facts**

In the present case, on September 4, 2017, M/S SBM Paper Mills Pvt Ltd filed a petition under Section 10 of the Code to initiate the CIRP. The Petition was admitted by the NCLT's Mumbai Bench, and Sh. Amit Poddar was designated Interim Resolution Professional. Mr. Satya Narayan Malu, the Respondent/Ex-Director of the Corporate Debtor, submitted an application to withdraw the CIRP. The Resolution Professional also submitted an application for approval of the Resolution Plan. The NCLT approved the withdrawal application.

The terms and conditions of the OTS were not followed, hence the NCLT, Mumbai Bench deemed it a viable case for prosecution. The IBBI filed a complaint before the Sessions Judge under Sections 73(a) and 235A of the Code. The Sessions Judge issued a procedure against the Respondents.

The Respondent filed a Writ Petition before the High Court, and the High Court overturned the Sessions Judge's order on the grounds that the Sessions Judge lacked jurisdiction to hear the case.

## **Decision**

The Bench observed that Section 236 of the Code states that crimes against the Code would be tried in Special Courts established under Chapter XXXVIII of the Companies Act, 2013. Section 435 of the Companies Act of 2013 deals with the establishment of Special Courts. Section 435 initially provided for only one class of special courts i.e. the court was presided over by a Sessions Judge, but acts punishable by less than two years were tried by a Metropolitan Magistrate or a Judicial Magistrate of First Class. By the 2018 amendment, two types of special courts were established: Special Courts presided over by Sessions Judges and Special Courts presided over by Metropolitan Magistrates or Judicial Magistrate of the First Class.

The question in this case was whether the reference to the Special Court in Section 236 (1) of the Code is "Legislation by Incorporation" or "Legislation by Reference". If the reference is "legislation by incorporation," then later amendments to Section 435 of the Companies Act, 2013 will have no effect; if the reference is "legislation by reference," then subsequent amendments must be considered.

The Supreme Court noted that different judgements have held that the Insolvency and Bankruptcy Code, 2016, is a self-contained code. Section 236 of the Code refers specifically to Chapter XXXVIII. The term "legislation by incorporation" is used here, not "legislation by reference". The impact would be that Section 435 of the Companies Act of 2013 would be applied as it was at the time of the Code's passage. Any further amendments will be ineffective. At the time the Code was enacted, the Special Court was made up of those competent to be sessions judges or extra sessions judges. The clause relating to the Companies Act was frozen on the day of its enactment. The Supreme Court ruled that a Special Court chaired by a Sessions Judge or an Additional Sessions Judge has jurisdiction to hear the case under the Code.

The High Court's order was overturned, and the case was returned to it for further review on the merits.

## **Link of the Order**

<https://ibbi.gov.in/uploads/order/d41916d35075bc52aead0268b1974130.pdf>



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