



Innoventive vs. ICICI Bank: SC rules Insolvency Code prevails over state law

Introduction

The Insolvency and Bankruptcy Code, 2016 (“IBC”) came into force on 1 December, 2016. The Supreme Court has passed a landmark judgment dated 31 August 2017 in the case of Innoventive Industries Ltd. vs. ICICI Bank (pursuant to the first application moved under the IBC) noting the paradigm shift in law brought about by the IBC and putting to rest certain interpretational issues in case of conflict of statutes.

Brief Facts

1. An application was filed before the Mumbai Bench of National Company Law Tribunal (“NCLT”) by ICICI Bank against Innoventive Industries Ltd. (“Innoventive”) for the insolvency resolution process to be set in motion since Innoventive was stated to be a defaulter under the IBC.
2. Innoventive’s main contention was that no debt was legally due since all liabilities of Innoventive and remedies for enforcement were temporarily suspended for 2 years pursuant to notifications[1] issued under the Maharashtra Relief Undertaking (Special Provisions Act), 1958 (“Maharashtra Act”).
3. The NCLT on 17 January 2017 held that the IBC would prevail against the Maharashtra Act in view of the non-obstante clause in Section 238 of the IBC. It held that the Parliamentary statute would prevail over the State statute and hence Innoventive had defaulted in making payments and accordingly the application was admitted and a moratorium was declared.
4. An appeal was filed before the NCLAT against the above order which met with the same fate and from there an appeal was filed before the Supreme Court.

Main Contentions

1. Whether the appeal was maintainable as it had been filed by the erstwhile directors of Innoventive after an insolvency professional was appointed to manage the company?
2. Whether there was any repugnancy in fact between the IBC and the Maharashtra Act?
3. Whether the non-obstante Clause contained in Section 238 of the IBC of the Parliamentary enactment under IBC will prevail over the non-obstante Clause contained in Section 4 of the Maharashtra Act?

Held

The Hon’ble Supreme Court ruled as follows:

1. Once an insolvency professional is appointed to manage the company, the erstwhile directors who are no longer in management cannot maintain an appeal on behalf of the company. Hence, in the present case, the appeal was not maintainable. However, the Supreme Court did not incline to dismiss the appeal on this score alone. Since this was the very first application that was moved under the IBC, the judges thought it necessary to deliver a detailed judgment so that all Courts and Tribunals may take notice of a paradigm shift in the law.
2. Default is defined in Section 3(12) of the IBC in very wide terms as meaning non- payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date.
3. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor.
4. On repugnancy, the Supreme Court discussed in detail various case laws and constitutional principles to test whether there is any repugnancy between the IBC and the Maharashtra Act and laid down (amongst others) the following propositions:
 - a. The inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.
 - b. Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code... One test of seeing whether the subject matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law.
 - c. If the subject matter of the State legislation or part thereof is identical with that of the Parliamentary

legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation.

5. Based on the above test, the earlier State law (i.e. the Maharashtra Act) was held to be repugnant to the later Parliamentary enactment (i.e. the IBC) as under the Maharashtra Act, the State Government may take over the management of the relief undertaking, after which a temporary moratorium takes place under Section 4 of the Maharashtra Act in the same manner as that contained in Sections 13 and 14 of the IBC.
6. Unless the Maharashtra Act was out of the way, the IBC would be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the IBC.
7. It is clear that the later non-obstante Clause of the Parliamentary enactment will prevail over the limited non-obstante Clause contained in Section 4 of the Maharashtra Act.
8. As a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-a-vis action taken under the later Central enactment.
9. The Supreme Court was of the view that the Tribunal was correct in appreciating that there would be repugnancy between the provisions of the two enactments. The judgment of the Appellate Tribunal was not correct on this score because repugnancy does exist in fact.
10. The Supreme Court therefore held that the Tribunal and the Appellate Tribunal were right in admitting the application filed by the financial creditor ICICI Bank Ltd.

ALMT Analysis

Some of the key takeaways from the above judgement are summarised as follows:

1. Once an insolvency professional is appointed in respect of a company, the erstwhile directors cannot file any appeal on behalf of such company.
2. The term default has been given wide interpretation in the IBC. Even non-payment of disputed debt would be a default so long as it is "due".
3. The Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.
4. The non-obstante clause of IBC will prevail over the non-obstante clause of the Maharashtra Act.
5. The judgement explains the importance of IBC and the reason for giving birth to a new code in detail and to bring the insolvency law under a single umbrella with the object of speeding up the insolvency process. The timelines and the procedure have to be properly adhered to so that the actual outcome of IBC is achieved.

[1] Notifications dated 22 July 2015 and 18 July 2016

DISCLAIMER

This news flash has been written for the general interest of our clients and professional colleagues and is subject to change. This news flash is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this news flash. For further clarification and details on the above, you may write to Ms. Kruti Desai (Partner) at kdesai@almtlegal.com and Mr. Vinit Shah (Associate) at vshah@almtlegal.com.