

State Bank of India vs V. Ramakrishnan & Anr – Case Analysis

Appellant: State Bank of India

Respondent: V. Ramakrishnan & Anr

Case No.: Civil Appeal No. 3595 Of 2018

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For Judgement: [Click Here](#)

Legislation:

- Section 2, 3, 5, 10, 14, 31, 33, 60, 96, 101, 179, 238, 243, 249 of Insolvency and Bankruptcy Code 2016
- Section 13, 31 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002
- Section 128, 133 of Indian Contract Act 1872
- Section 22 of The Sick Industrial Companies (Special Provisions) Act 1985

Facts:

- Veesons Energy Systems Private Limited acquired credit facilities from State Bank of India in February 2014.
- The managing director of the company, Mr V Ramakrishna, provided a personal guarantee to State Bank of India.
- The company failed to repay its debts, and its assets

were classified as non-performing assets on July 26, 2015.

- The bank initiated proceedings under the SARFAESI Act and issued a notice demanding the outstanding amount from the company and the personal guarantor.
- As the outstanding amount was not paid within the statutory period of 60 days, the bank issued a possession notice on November 18, 2016, symbolically taking possession of the secured assets of the company.
- On May 20, 2017, the company filed an application under section 10 of the Insolvency and Bankruptcy Code, 2016, before the NCLT, initiating the corporate insolvency resolution process against itself.
- The NCLT admitted the application and imposed a moratorium under section 14 of the IBC.
- Despite the imposition of a moratorium, the bank initiated action against the assets of the personal guarantor under the SARFAESI Act and issued a sale notice on July 12, 2017.
- The personal guarantor approached the NCLT seeking a stay of proceedings under the SARFAESI Act during the moratorium period.
- The NCLT, in its order dated September 18, 2018, prohibited the bank from proceeding against the property of the personal guarantor during the moratorium period.
- The bank filed an appeal before the NCLAT challenging the NCLT's order.
- The NCLAT ruled that the moratorium provided under section 14 of the Insolvency and Bankruptcy Code (IBC) would also extend to the personal guarantor. This decision was based on the interpretation of sections 60 and 31 of the Code.
- The State Bank of India appealed against the NCLAT's decision before the Supreme Court.
- The bank contended that the moratorium period specified

in section 14 of the Insolvency and Bankruptcy Code (IBC) is applicable solely to the corporate debtor and does not encompass the personal guarantor.

Issues:

Whether Section 14 of the Insolvency and Bankruptcy Code, 2016, applies to a personal guarantor of a corporate debtor?

Arguments from the Appellant:

- Section 14(1) of the Code does not explicitly mention individual guarantors, only referring to the corporate debtor. Hence, the moratorium period does not apply to personal guarantors.
- Sections 96 and 101 of Part III of the Code, which deal specifically with personal guarantors, contain separate provisions for a moratorium, which provide greater protection than Section 14.

Arguments from the Respondents:

- Section 14 should be interpreted broadly to include personal guarantors, considering the amendment to Section 2(e) of the Code that brought personal guarantors within the ambit of the Code.
- Section 60(1) of the Code, which designates the NCLT as the adjudicating authority for both corporate debtors and individual guarantors, supports the argument that the moratorium applies to guarantors as well.

Ratio Decidendi:

- Different provisions of the Insolvency and Bankruptcy Code were brought into effect on different dates, and some provisions were not yet in force at the time of the judgment.
- Section 14 of the Code authorises a moratorium on certain actions, but it does not explicitly mention personal guarantors.
- Sections 96 and 101 of the Code, which provide for a separate moratorium for personal guarantors, were not yet in force.
- In a contract of guarantee, the liability of the surety and the principal debtor is coextensive, and the creditor can proceed against the assets of either party.
- The Allahabad High Court's view in *Sanjeev Shriya v. State Bank of India*, which held that the guarantor's liability is not triggered until the liability of the corporate debtor is crystallised, was overruled.
- The Insolvency Law Committee's report clarified that the moratorium under Section 14 does not apply to personal guarantors.
- The Amendment Ordinance of 2018 specifically states that the moratorium under Section 14 is not applicable to personal guarantors.

Obiter Dictum:

The Supreme Court noted the different views on the matter and referred to the Allahabad High Court's judgment. It also considered the Insolvency Law Committee's report and the Amendment Ordinance of 2018.

Final Judgment:

The Supreme Court held that the moratorium period under Section 14 of the Insolvency and Bankruptcy Code, 2016, does

not apply to the personal guarantor of a corporate debtor. The Court overruled the contrary view of the Allahabad High Court and concluded that the liability of the surety and principal debtor in a contract of guarantee is coextensive. As Sections 96 and 101 were not yet in force and the Amendment Ordinance excluded personal guarantors from the moratorium, personal guarantors are not entitled to the moratorium period under the Code.