



Clarifications

1. In Issue 2 on behalf of the side of the Bank, is there an error in stating that the enactment should be read prospectively, since in the case of SBI v. Ramakrishnan, the bank argued for retrospective interpretation of the amendment.

Point of law. Left to the participants to decide.

2. In Issue 2 on the side of the personal guarantors, did the bank classify the loan as a substandard asset or a doubtful asset?

Refer to the facts and make appropriate presumption based on the side which you are arguing.

3. Does the US subsidiary have a registered office in the US?

Question of law to be researched by the participants.

4. On what date did the meeting in Paragraph 8 of the factsheet happen?

Make appropriate presumptions while arguing for each side.

5. Are the assets secured by the personal guarantors sufficient to repay the entire outstanding loan amount, in case the bank is allowed to proceed against the personal guarantors?

Refer to the facts for details.

6. In issue 4 on behalf of the personal guarantors, are the personal guarantors claiming that they should be allowed to start a separate insolvency resolution process even before Part III of the code is notified?

Point to be researched and appropriate submissions to be made as per law.

7. The personal guarantors secured their movable and immovable assets towards the loan to be granted to the Indian and the US companies. Where were these immovable assets located?

In India.

8. Where are the movable and immovable assets of the personal guarantors situated?

In India.

9. Can extra arguments be prepared for issues which are not emerging from the Insolvency & Bankruptcy Code, 2016 but are related to the proposition, as paragraph 14 only states Insolvency & Bankruptcy Code, 2016?

Yes, very much. The case law itself encourages it as long as it is relevant to the case.

10. In the case at hand, what was the strength of the bench that gave the judgment in the Supreme Court?

Usual quorum of Judges.

11. Would the sincere efforts of the directors have eventually enabled them to repay the debt?

Hypothetical question. Make appropriate presumptions to support your case.

12. Was FLB a Tier-I or Tier-II bank?

Make appropriate assumptions while making your submissions.

13. I needed a clarification with respect to which bank disbursed the loan to the US company. The initial paragraphs mention a letter of credit by the Indian bank for the US company. The latter one mentions that recovery by an Indian lender from a foreign borrower is not easily possible. The final issues framed mention that the loan to the US company was by the US bank and in US currency. Kindly clarify whether the loan to the US company is by a foreign bank or the Indian one.

Please understand how LC works. The facts make it clear. It is a foreign currency loan by a foreign bank through LC model.

14. The proposition/case data of the 17th Surana and Surana Moot Court Competition mentions in **3rd reason for review on the behalf of the bank** that the supreme court ought to have decided on the contention of the personal guarantors they cannot be held liable for the loan granted to the US company since they did not hold 51% stake in the US company which is a requirement to be a guarantor under FEMA.

But it shall be brought to the notice of the organizers

- That under FEMA the condition of holding 51% stake to give a guarantee **applies only to Indian Party i.e. an Indian company and not to a natural person i.e. the personal guarantors.**
- Moreover, this condition requires to be fulfilled only in the case when the **guarantee is being extended to a second level step down subsidiary and not an immediate subsidiary.** Thus the condition of holding 51% equity in a foreign subsidiary is in no way related to the case of this moot.
- lastly this restriction is only for Corporate and not personal guarantees

Hence the 3rd reason for review on behalf of the bank should be reconsidered and re-framed. As the FEMA regulation being referred i.e. Clause B.1.2. (b) Master Direction – Direct Investment Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad (2016) to is not related to the present case in any manner.

Point of law. Please make appropriate submissions accordingly.