

A creditor cannot be forced to elect its remedy or apportion its claim between the principal debtor and the guarantor. A financial creditor is entitled to initiate and maintain simultaneous CIRP under the IBC

The **Supreme Court** in the case of **ICICI Bank Ltd vs Era Infrastructure (India) Ltd [Civil Appeal No. 6094 of 2019] dated February 26, 2026**, has held that a financial creditor is entitled to initiate and maintain simultaneous Corporate Insolvency Resolution Processes (CIRPs) under the Insolvency and Bankruptcy Code, 2016, against both the principal debtor and its corporate guarantor(s) for the same debt. This right stems from the principle of co-extensive liability of the surety as enshrined in Section 128 of the Indian Contract Act, 1872, which is not contradicted by the IBC.

The Apex Court held that a creditor cannot be forced to elect its remedy or apportion its claim between the principal debtor and the guarantor. The Court affirmed that the legal framework, particularly Section 60(2) of the IBC, envisages the possibility of concurrent proceedings and that any apprehension of unjust or double enrichment is addressed by existing regulatory safeguards that mandate the updating and revision of claims by the creditor and the Resolution Professional.

The Court observed that the question of whether simultaneous proceedings can be maintained is no longer *res integra* and is squarely covered by the decision in *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. [(2025) 1 SCC 456]*. The Court noted that Section 60(2) of the IBC itself contemplates separate or simultaneous insolvency proceedings against a corporate debtor and its guarantor. This provision, which requires that an application against a guarantor be filed before the same NCLT where the debtor's CIRP is pending, implicitly permits concurrent proceedings.

The Court reiterated that while recovery is not the primary object of the IBC, it is central to the insolvency resolution process. It observed that if an application under Section 7 or 9 meets the statutory requirements of 'debt' and 'default', its admission is inevitable, irrespective of the applicant's motive, such as recovery. While acknowledging the discretionary power of the Adjudicating Authority under Section 7(5)(a) as held in *Axis Bank Ltd. v. Vidarbha Industries Power Ltd. [(2022) 8 SCC 352]*, the Court clarified that this discretion cannot be exercised arbitrarily and that admission should be the ordinary course unless there are good reasons not to.

On the doctrine of election of claims, the Court found no merit in the argument that a financial creditor must be compelled to elect its claim, i.e., to claim a part of the debt from the principal debtor and the rest from the guarantor. It observed that forcing a creditor to elect would defeat the purpose of a guarantee, as the guarantor's liability is co-extensive with the principal debtor. The Court pointed out that the IBC contains no express provision for such an election, and imposing such a restriction would be an unwarranted judicial limitation on a statutory right.

On the apprehension of double enrichment, the Court addressed the concern that allowing simultaneous proceedings could lead to a creditor recovering more than its due. It found this apprehension to be far-fetched and observed that sufficient safeguards already exist within the IBC framework to prevent such an outcome. Specifically, Regulation 12A of the CIRP Regulations, 2016, obligates a creditor to update its claim upon satisfaction from any source, and Regulation 14 requires the Resolution Professional to revise the admitted claims based on new information.

Lastly, while acknowledging the submissions urging the Court to lay down guidelines for group insolvency and simultaneous proceedings, the Court declined to do so. It observed that the IBC is a well-researched policy framework and that venturing into laying down modalities would amount to judicial exploration and encroaching upon the legislative domain.