

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



AXIS BANK LIMITED Vs. NAREN SHETH & ANR.

Brief Facts

In the present case, the appellant entered into a leave and license agreement with Universal Premises and Textiles Private Limited for the premises spanning from the Ground Floor to the 10th Floor of the building known as Solaris "C." Between June 23, 2007, and November 3, 2008, the appellant furnished a security deposit amounting to Rs. 87,56,24,381/-. Additionally, Universal Premises executed a simple mortgage without possession in favor of the appellant for seven floors.

Universal Premises executed a sale deed in favor of Rajput Retail Ltd. (RRL) for a land parcel measuring 5,123.90 sq. meters, which included the land beneath the building Solaris "C." The sale deed expressly acknowledged, reserved, and protected the Leave and License Agreements in favor of the appellant. Subsequently, RRL availed credit facilities from the State Bank of India (Respondent No.2) and, on June 29, 2011, created an equitable mortgage over the land beneath Solaris "C" to secure the said facilities.

In 2012, pursuant to orders of the High Court of Bombay, Universal Premises was merged with RRL and

renamed as Shreem Corporation Limited, now the Corporate Debtor. Between June 2012 and October 17, 2013, the appellant issued multiple notices seeking a refund of the security deposit under the Leave and License Agreement. However, upon non-payment of the dues, the appellant filed eight summary suits before the Bombay High Court between December 14, 2012, and December 24, 2013, claiming a refund of the security deposit along with interest. Meanwhile, Respondent No.2 classified the Corporate Debtor as a Non-Performing Asset (NPA).

The High Court of Bombay passed a common conditional order in all the summary suits, granting the Corporate Debtor leave to defend, subject to the deposit of the security deposit. Subsequently, the suits were decreed in favor of the appellant. The appellant filed an application before the High Court of Bombay for the recovery of its dues, which was met with objections from Respondent No.2. However, the objections were rejected, and a proclamation of sale was ordered in favor of the appellant.

Respondent No.2 filed interim applications seeking the lifting of attachment orders on all 11 floors of Solaris “C” and a stay on the sale process for the seven floors. Respondent no. 2 also filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code (IBC) against the Corporate Debtor without notifying or including the appellant as a party to the proceedings. Along with the petition, an application under Section 5 of the Limitation Act was submitted, seeking condonation of a 1,392-day delay.

Subsequently, Respondent No.2 filed an additional affidavit, revising the claimed delay to 662 days based on the acknowledgment in the Corporate Debtor’s balance sheet for the financial year ending March 31, 2015. The Adjudicating Authority condoned the 662-day delay and admitted the petition, appointing an Interim Resolution Professional (IRP). The IRP then published a notice as required under the IBC, announcing the commencement of the corporate insolvency resolution process.

Aggrieved by the admission order dated 22.09.2021, the appellant filed an appeal before the National Company Law Appellate Tribunal (NCLAT) under Section 61 of the IBC, registered as Company Appeal (AT) (Ins.) No. 930 of 2021. However, by the impugned order dated 04.01.2022, NCLAT dismissed the appeal, leading to this Civil Appeal.

Decision

The primary issue in this appeal was whether a petition under Section 7 of the IBC would be barred by limitation solely because it was filed beyond three years from the date the corporate debtor’s loan account was classified as a Non-Performing Asset (NPA). This question arose despite the corporate debtor having subsequently acknowledged its liability to the appellant bank within three years prior to the filing of the petition, either through a one-time settlement proposal or by recognizing the debt in its

statutory balance sheets and books of accounts.

The Supreme Court noted that the issue raised in this appeal could not be considered for two reasons:

- Both the Adjudicating Authority and the NCLAT found the explanation provided by Respondent No.2 for the delay in filing the Section 7 IBC petition to be satisfactory and accordingly condoned the delay.
- As the first and second One-Time Settlement (OTS) proposals submitted by the Corporate Debtor were not challenged by its suspended directors, there was no basis to question the authenticity of these documents at the instance of the appellant.

As the appeal lacked merit, it was accordingly dismissed.

Link of the Order

<https://ibbi.gov.in/uploads/order/a1d3adc3dce8fba5dc1e23ada05fa533.pdf>



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