

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Axis Bank Limited Vs. Naren Sheth and Anr.

Brief Facts

In the present case, Axis Bank signed a lease and license deal with Universal Premises and Textiles Pvt. Ltd. for space on the ground to the tenth floor of the Solaris C building. Universal Premises signed a sale agreement with Rajput Retail Ltd. The selling document properly recognized, reserved and preserved the appellant's Leave and Licence Agreements. Rajput Retail Ltd. obtained financing from the State Bank of India and mortgaged land beneath Solaris C to secure credit. Shreem Corporation Ltd. was formed by the merger of Universal Premises and Textiles Pvt. and Rajput Retail Ltd. Axis Bank initiated summary proceedings to reclaim the security deposit.

The Shreem Corporation Ltd. account was designated as non-performing by the State Bank of India. State Bank of India submitted an application for the commencement of a CIRP against Shreem Corporation Ltd., as well as an application for forgiveness of the delay of 1392 days. Later, an additional affidavit was presented, saying that the delay was just 662 days due to acknowledgment of the debt. The NCLT excused the 662-day delay and issued an admission order.

Axis Bank appealed the admission order to the NCLAT, which was dismissed. Axis Bank, incensed,

filed an appeal with the Supreme Court.

Decision

The Supreme Court noted that the limitation would have ended on March 31, 2016. However, there were four significant acknowledgments:

- (i) Balance Sheet as of March 31, 2015.
- (ii) First OTS dated March 16, 2017.
- (iii) The second OTS proposal dated January 1, 2018.
- (iv) Third OTS proposal dated May 16, 2019. The Section 7 petition was submitted on January 22, 2020, within three years of the dates of the first, second, and third OTS proposals.

The Supreme Court was asked if such OTS suggestions that were later brought before NCLAT or the Supreme Court might be considered.

The Supreme Court cited *Dena Bank vs. C. Sivakumar Reddy* (2021) 10 SCC 330 and *Kotak Mahindra Bank Limited vs. Kew Precision Parts Private Limited and Ors* (2 (2022) 9 SCC 364), which held that debt acknowledgment documents could be accepted even at the appellate stage.

The Supreme Court further ruled that Section 14 will not apply since proceedings under the SARFAESI Act before the DRT cannot be deemed to be before a Court or Tribunal with no authority. The State Bank of India, as a Secured Creditor, would unquestionably have a right to utilize the power under the SARFAESI Act, and the proceedings could not be deemed lacking jurisdiction. As a result, the State Bank of India would be ineligible for Section 14 benefits in this case.

The appeal was dismissed by the Supreme Court.

Link of the Order

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



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