

IBC DOSSIER

Bulletin on Landmark Judgements under IBC, 2016



RAJENDRA NAROTTAMDAS SHETH & ANR

VS

CHANDRA PRAKASH JAIN & ANR

Brief Facts

This appeal has been filed by the suspended directors of R.K. Infratel Ltd. (Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 'IBC' which was admitted by the NCLT, Ahmedabad Bench (Adjudicating Authority 'AA'). The Appellants filed an appeal which was rejected by the National Company Law Appellate Tribunal, Delhi 'NCLAT' resulting in this Appeal.

The R.K. Infratel Ltd. (Corporate Debtor) has a business of setting up underground fiber broadband, internet leased line, VPN, point-to-point, wi-fi and wiMAX connections and CCTV surveillance services to corporate entities. The Union Bank of India (Respondent No. 02 and Financial Creditor), had sanctioned two loans of Rs. 8 crore which was not settled in time. Subsequently, the account of the Corporate Debtor was declared as non-performing asset (NPA).

The Financial Creditor filed an application under Section 7 of the IBC, which was admitted. Also Financial Creditor stated in the application that the Corporate Debtor owed an amount of Rs. 24.62 crore and submitted documents in support of its claims, including a debit balance confirmation letter signed by the Corporate Debtor.

The Appropriate Authority passed an order stating that the application was not barred by limitation and referred to the debit balance confirmation letter and regular credit entries made to come to the

said conclusion. Further, AA also referred to the letter by the CD giving details of the amount repaid and acknowledging the outstanding amount. In addition, the reply of the CD was relied upon wherein payment of Rs. 16.17 lakh was admitted.

Decision

The Apex Court was of the view that regarding maintainability of the application under Section 7 IBC filed by power of attorney holder, the same had been given general authorization by Financial Creditor with respect to all the business and affairs of the FC, including commencement of legal proceedings before any court or tribunal with respect to any demand and filing of all necessary applications in this regard.

Further, the authorization having been granted by way of a power of attorney pursuant to a resolution passed by the FC's board of directors does not impair its authority to file an application under Section 7 of IBC. Hence, the application was filed by authorized person on behalf of the FC and the objection of the Appellants on the maintainability of the application on this ground were untenable.

In regard to question of limitation, the Apex Court was of the view that the burden of prima facie proving occurrence of the default and that the application filed under Section 7 of IBC is within the period of limitation, is entirely on the Financial Creditor. While the decision to admit the application is typically made on the basis of material furnished by the FC, the Appropriate Authority is not barred from examining the material that is placed on record by the CD to determine that such application is not beyond the period of limitation and there is sufficient material in the present case to justify enlargement of the extension period in accordance with Section 18 of the Limitation Act and such material has also been considered by the AA before admitting the application under Section 7 of the Code.

In the present case, if the documents constituting acknowledgement of the debt had not been brought on record by the CD, the application would have been fit for dismissal on the ground of lack of any plea by the FC before the AA with respect to extension of the limitation period and application of Section 18 of the Limitation Act.

Link of the Order

<https://ibbi.gov.in/uploads/order/6145c2e78acbb262d2b3e1327dd8db15.pdf>



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