



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

Volume 04 | Number 40

(October 08, 2021)

**RAJENDRA NAROTTAMDAS SHETH & ANR. VS. CHANDRA PRAKASH JAIN & ANR  
CIVIL APPEAL NO.4222 OF 2020**

**DATE OF SUPREME COURT JUDGMENT: 30<sup>th</sup> SEPTEMBER 2021**

### **Facts of the Case: -**

This Appeal has been filed by the suspended directors (Appellants) of R.K. Infratel Ltd. (Corporate Debtor 'CD'). The Facts of the case are that Respondent filed an application 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 CD has a business of setting up underground fiber network and related services. The Union Bank of India (Respondent No. 02 and Financial Creditor 'FC'), had sanctioned two loans of Rs. 8 crore which was cleared by the CD resulting in granting further loan to the CD but CD was unable to settle the dues of the FC in time. Subsequently, the account of the CD was declared as nonperforming asset (NPA). Thereafter, FC issued notice for recovery of all dues payable by the CD by filing an application before the Debt Recovery Tribunal 'DRT', which is still pending consideration.

Later, the FC filed an application under Section 7 of the IBC, which was admitted. The FC stated in the application that the CD owed an amount of Rs. 24.62 crore and submitted documents in support of its claim, including a debit balance confirmation letter signed by the CD. On the other hand, the CD contended that the application was time-barred and that the application filed by the FC was legally untenable, as proceedings before the DRT were still pending. The AA 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. The AA rejected the contention of the CD that the application filed by the power of attorney holder on behalf of the FC was not maintainable. Subsequently, the CD reiterated its stand before NCLAT wherein the Appellate Tribunal dismissed the appeal of the CD and affirmed the order of the AA.



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



The two issues pertaining in this Appeal are the maintainability of the application under Section 7 of the Code filed by a power of attorney holder and the question of limitation.

## Supreme Court's Observations

The Apex Court was of the view that in regard to maintainability of the application under Section 7 IBC filed by power of attorney holder, the same had been given general authorization by FC 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 FC. While the decision to admit the application is typically made on the basis of material furnished by the FC, the AA 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.

## Order: -

The Apex Court in view of the above observations dismissed the appeal.

**Case Review:** - *Appeal Dismissed*