



# 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 46

(November 18, 2021)

HEMANSHU JAMNADAS DOMADIA VS. CENTRAL BANK OF INDIA & ORS.  
COMPANY APPEAL (AT) (INSOLVENCY) NO. 623 OF 2020 ARISING OUT OF ORDER PASSED IN CP (IB)  
No. 554/7/NCLT/AHM/2018  
DATE OF NCLAT JUDGMENT: 10<sup>TH</sup> NOVEMBER 2021

### Facts of the Case: -

The present appeal results from the impugned order passed by the National Company Law Tribunal, Ahmedabad bench (Adjudicating Authority 'AA') whereby the AA admitted the Application filed under Section 7 of the IBC, 2016.

The facts of the case are that the Appellant is the Ex-Director and Shareholder of Silver Proteins Pvt Ltd (Corporate Debtor 'CD'), aggrieved by the Impugned Order passed by the AA against the order of admission of an Application filed under Section 7 of the IBC 2016. The CD had availed credit facilities worth Rs. 19,12,50,000/- from the Respondent Bank. However, as the CD was facing a liquidity crunch and had defaulted to repay the loan amount. Consequently, the Respondent Bank classified the account of the CD as 'Non-Performing Asset'.

The CD resisted the Application on two grounds, Firstly, the Application filed by the Respondent Bank was barred by limitation as the Application was filed after the prescribed limitation period, i.e. three years, under Article 137 of the Limitation Act, 1963, and Secondly, the Application was not filed by a duly authorized person of the Respondent Bank hence not maintainable. Hence this instant appeal.

### NCLAT's Observations: -

The Appellate Tribunal regarding the issues of Whether the Application/Petition is filed by an Authorised Person? referred the judgement of **Hon'ble Supreme Court** in the case of *Rajendra Narottam Das Sheth and Another* stating that in the present case, the Application under section 7 of the Code was filed by the Assistant General Manager of the Respondent, who also happens to be the principal officer. Hence, authorised through a General Power of Attorney in his favour, under which he is authorised to grant loan, execute documents for and on behalf of the bank, recover loans, if necessary and further, entitled to initiate proceedings under the IBC.

Additionally, Respondent Bank has filed a copy of the permission letter, which categorically allows the



## INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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



bank to file the present Application. Hence, the signatory to the Application is well authorised to sign the Application.

Further, regarding the Whether the Application/Petition filed u/s 7 of the I& B Code is barred by limitation? it stated that the burden of prima facie proving occurrence of the default and that the Application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor 'FC' and the decision to admit an application is 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. Undoubtedly, 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.

The plea of Section 18 of the Limitation Act not having been raised by the FC in the Application cannot come to the rescue of the Appellants in the facts of this case. 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.

### **Order: -**

The Appellate Tribunal in view of the above dismissed the appeal and stated that AA had rightly admitted the Application and the Appeal filed by the Appellant has no merit and deserves to be dismissed.

**Case Review: - Appeal Dismissed**