



2023INSC820



REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2085 OF 2022

AXIS BANK LIMITED **...APPELLANT(S)**

VERSUS

NAREN SHETH & ANR. **...RESPONDENT(S)**

J U D G M E N T

VIKRAM NATH, J.

This appeal, under Section 62 of the Insolvency and Bankruptcy Code, 2016,¹ has been filed assailing the correctness of judgment and order of National Company Law Appellate Tribunal² dated 04.01.2022, whereby the Company Appeal (AT) (Insolvency) No.930 of 2021 filed by the appellant was dismissed

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Reason:

¹ In short, "IBC"

² NCLAT

upholding the judgment and order dated 22.09.2021, passed by the Adjudicating Authority, admitting the application under Section 7 of the IBC after condoning the delay.

2. Relevant facts giving rise to the present appeal are briefly summarized as under:

2.1. The appellant entered into a leave and license agreement with Universal Premises and Textiles Private Limited³ for the premises being Ground to 10th floor in the building named Solaris “C”. A security deposit of Rs. 87,56,24,381/- was furnished by the appellant between the period 23.06.2007 to 03.11.2008. Universal Premises executed a simple mortgage without possession in favour of the appellant for seven floors on 06.11.2008.

2.2. On 02.05.2011, Universal Premises executed a sale deed in favour of Rajput Retail Ltd.⁴. The sale deed was for the land admeasuring 5123.90 sq. meters which included the land beneath the aforesaid building - Solaris “C” also. The Leave and License Agreements in favour of the appellant were duly

³ The Universal Premises

⁴ RRL

acknowledged, reserved, and protected under the sale deed.

2.3. RRL, having availed credit facilities from the State Bank of India⁵ (Respondent No.2), created an equitable mortgage on 29.06.2011 with respect to the land underneath the building-Solaris “C” to secure the said credit facilities.

2.4. In 2012, Universal Premises was merged with RRL under the orders of the High Court of Bombay and it was renamed as Shreem Corporation Limited⁶, which is the Corporate Debtor. Between June, 2012 and 17.10.2013, the appellant issued notices for the refund of Security Deposit under the Leave and License agreement. However, as the said amount was never paid, the appellant filed eight summary suits before the Bombay High Court for refund of the Security Deposit, along with interest, during the period from 14.12.2012 to 24.12.2013.

2.5. In the meantime, Respondent No.2 declared the Corporate Debtor as Non-Performing Asset⁷ in view of the default as on 31.03.2013, vide communication dated 28.06.2013.

⁵ In short, “State Bank of India”

⁶ In short, “SCL”

⁷ In short, “NPA”

2.6. The High Court of Bombay on 27.07.2015 passed a common conditional order in all the Summary Suits granting leave to defend to the Corporate Debtor subject to deposit of the Security Deposit. Later, the suits were decreed on 02.12.2015 and 15.12.2015.

2.7. According to the appellant, the Corporate Debtor was shown as an inactive Company since 2016 and the date of last Annual General Meeting⁸ was shown to be 26.09.2016.

2.8. The appellant had applied before the High Court of Bombay for recovery of its dues in which objections were filed by respondent No.2. However, the same were rejected on 18.03.2019 and a proclamation of sale was ordered in favour of the appellant.

2.9. In the meantime, the respondent No.2 moved separate applications at different times for lifting of attachment from ground floor and 2nd to 5th floors in Solaris “C”, which was withdrawn in October 2016.

2.10. On 08.11.2019, respondent No.2 filed fresh interim applications again seeking lifting of

⁸ AGM

attachment orders on the 11 floors of Solaris “C” and also for stay of the sale process for the seven floors.

2.11. Respondent No.2 filed a Company Petition No.1382/MB/2021 under Section 7 IBC against the Corporate Debtor on 22.01.2020 without intimating or making the appellant a party to the said proceedings. Application under Section 5 of the Limitation Act was also filed along with the petition for condoning delay of 1392 days. Later on, respondent No.2 filed an additional affidavit stating that the delay was only of 662 days in view of the acknowledgement in the Balance Sheet of the Corporate Debtor for the financial year ending 31.03.2015.

2.12. On 22.09.2021, the Adjudicating Authority condoned the delay of 662 days and passed an order of admission and appointment of Interim Resolution Professional (IRP).

2.13. The IRP on 05.10.2021 published a notice as required under the IBC for commencement of the resolution process.

2.14. Before the Bombay High Court on 20.10.2021, the counsel for the Respondent No.2 filed a copy of the order dated 22.09.2021 admitting its petition

under Section 7 IBC passed by the Adjudicating Authority.

2.15. The appellant, aggrieved by the order of admission dated 22.09.2021, preferred an appeal before the NCLAT under Section 61 of IBC which was registered as Company Appeal (AT) (Ins.) No.930 of 2021. By the impugned order dated 04.01.2022, NCLAT dismissed the said Company Appeal, giving rise to the present Civil Appeal.

3. This Court, while entertaining the appeal, issued notices on 01.04.2022 and passed an order of status quo. Pleadings have been exchanged and we have heard the learned counsel for the parties and perused the material on record.

4. Before proceeding further with the respective submissions, certain dates which were not mentioned by the appellant, however, the same having been disclosed by the respondent No.2, needs to be referred to.

4.1. The change in the number of days for which delay had been caused from 1392 to 662 days by

the Respondent No.2 was based upon the Balance Sheet for the Financial year ending 31.03.2015, wherein the debt of Respondent No.2 was acknowledged in the Balance Sheet of the Corporate Debtor.

4.2. Before this Court, Respondent No.2 has placed certain documents to further justify the delay by referring to two One-Time Settlement⁹ proposals submitted by the Corporate Debtor which were duly considered. The first proposal of OTS is dated 16.03.2017 and the second proposal is dated 01.01.2018. Copies of both the proposals have been filed as Annexures-A1 and A2 along with I.A. No.26982 of 2023 seeking permission to place additional documents on record.

4.3. Respondent No.2 relies upon these two OTS proposals as also the Balance Sheet for the Financial Year closing 31.03.2015 to plead that the limitation would start running from each of these three dates and would be three years corresponding to each date.

⁹ OTS

4.4. In brief, although NPA was declared on 28.06.2013, but within three years thereof, the Corporate Debtor acknowledged the debt in its Balance Sheet for the Financial Year ending 31.03.2015, which was within three years from the date of NPA.

4.5. Again, before the expiry of three years, an OTS proposal was submitted within three years by the Corporate Debtor on 16.03.2017 and again before expiry of three years from the said date, a fresh OTS proposal was submitted on 01.01.2018. Taking the last date of OTS proposal dated 01.01.2018 acknowledging the debt, the limitation for initiating Insolvency proceedings would run up to 31.12.2020. The petition under Section 7 IBC having been filed on 22.01.2020, which was well within time.

5. The arguments advanced on behalf of the appellant by Shri Sanjiv Sen, learned Senior Counsel are summarized as under:

- a) Respondent No. 2 admitted in its Section 7 petition that there was a delay of 1392 days. According to it, the Corporate Debtor was declared as NPA on 28.06.2013, with effect from 31.03.2013, as per the Balance Sheet. Accordingly, applications seeking condonation of delay were filed by State Bank of India. The period of limitation, which is three years, would thus expire on 31.03.2016.
- b) As per the website of the Ministry of Corporate Affairs, the Corporate Debtor was shown as an inactive company since 2016 with the last date of the AGM being 26.09.2016.
- c) Respondent No. 2 relied upon the Balance Sheet of the financial year ending 31.03.2015, in which the date was acknowledged by the Corporate Debtor and as such the limitation would run up to three years from the said date of the balance sheet, which would extend up to 31.03.2018, and it was on this premise that Respondent No. 2 made an application stating that the actual delay was not 1392 days but 662 days.

- d) Respondent No. 2, apart from declaring the Corporate Debtor as NPA on 28.06.2013, had further participated before the High Court of Bombay by moving applications objecting to the said proceedings, where it had failed. Section 7 petition was filed thereafter on 22.01.2020.
- e) Before the NCLAT, the Respondent No. 2 further improved its case by referring to an OTS proposal dated 16.02.2019 as an acknowledgement of the debt. However, this was objected to on the ground that even if it is assumed that the Corporate Debtor acknowledged the debt as per the Balance Sheet of the financial year ending 31.03.2015, the period of limitation from the said date having expired on 31.03.2018, the OTS proposal dated 16.05.2019 would be beyond the period of limitation and, as such, would be of no assistance to the Respondent No. 2.
- f) The Respondent No. 2, before this Court, filed documents which were not presented either before the National Company Law Tribunal¹⁰ or

¹⁰ NCLT

the NCLAT, relating to two other OTS proposals dated 16.03.2017 and 01.01.2018. These documents were introduced for the first time by way of additional evidence before this Court. However, such documents as additional evidence should not be entertained nor were admissible before this Court in a Civil Appeal.

- g) The Respondent No. 2, from time to time, had been improving its case, which is not permissible under law and amounted to an abuse of process of law and the same needs to be deprecated.
- h) The additional documents filed cannot be relied upon having been introduced at such a late stage and for the following reasons:
 - i. Veracity of documents unknown;
 - ii. Documents are inconsistent;
 - iii. No unequivocal acknowledgement by Corporate Debtor;
 - iv. No mention of quantum of debt;
 - v. No identification/ company seal of Corporate Debtor;
 - vi. No proper board resolution in support;

- vii. Address of Corporate Debtor wrongly mentioned in the Board Resolution;
- viii. No separate arrangement vis-à-vis Corporate Debtor was made;
- ix. Debt is disputed by the Corporate Debtor; and
- x. OTS was never accepted by State Bank of India itself.

6. Shri Sanjiv Sen, learned senior counsel, further placed reliance upon the following authorities for the propositions. (i) Firstly, that Section 7 application was not maintainable for time-barred claims; (ii) Secondly, Section 14 of the Limitation Act is applicable only if the first forum lacks the jurisdiction to entertain the proceedings; and (iii) Lastly, acknowledgment has to be made before the expiry of the period of limitation as per Section 18 of the Limitation Act:

- i. **Jignesh Shah & Anr. vs. Union of India & Anr.**¹¹,

¹¹ 2019(10) SCC 750

- ii. **M/s Invent Asset Securitisation & Reconstruction Pvt. Limited vs. M/s Girnar Fibres Ltd.**¹²,
- iii. **Invent Assets Securitization and Reconstruction Private Limited vs. Xylon Electrotechnic Private Limited**¹³,
- iv. **Vashdeo R. Bhojwani vs. Abhyudaya Co-Operative Bank Limited and Another**¹⁴,
- v. **B.K. Educational Services Private Limited vs. Parag Gupta and Associates**¹⁵,
- vi. **Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Limited & Anr.**¹⁶,
- vii. **Ome Prakash Verma vs. Amit Jain & Anr.**¹⁷,
- viii. **Insolvency Law Report** March 2018,
- ix. **Rajendra Narottamdas Sheth and Another vs. Chandra Prakash Jain and Another**¹⁸,
- x. **Gopal Sardar vs. Karuna Sardar**¹⁹, and
- xi. **Serish Maji vs. Nishit Kumar Dolui**²⁰.

¹² 2022 SCC Online SC 808

¹³ Civil Appeal No. 3783 of 2020

¹⁴ 2019 (9) SCC 158

¹⁵ 2019(11) SCC 633

¹⁶ 2020(15) SCC 1

¹⁷ In CA(AT) (Insolvency) No. 827 of 2020 passed by NCLT, (Principal Bench, Delhi).

¹⁸ (2022) 5 SCC 600

¹⁹ (2004) 4 SCC 252

²⁰ 1999 SCC Online Cal 58

7. On the other hand, Shri N. Venkataraman, learned Additional Solicitor General appearing for Respondent No. 2, in addition to the list of dates mentioned by the appellant, referred to the short list of dates in support of his arguments. Some of these dates are in addition to the list of dates mentioned and already incorporated in the earlier part of this order. A brief reference to the said dates relied upon by the Respondent No. 2 are as follows:

- a) The Corporate Debtor was classified as NPA by Respondent No.2 on 28.06.02013.
- b) Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002²¹ was issued on 02.07.2013.
- c) Notice under Section 13(4) of the SARFAESI Act was issued on 23.11.2013.
- d) Respondent No.2 filed an Original Application before the Debt Recovery Tribunal (DRT), Mumbai registered as Original Application No. 726 of 2014 on 03.06.2014.

²¹ In short, "SARFAESI Act"

- e) Corporate Debtor acknowledged their liability in the balance sheet dated 04.09.2015 for the financial year ending 31.03.2015.
- f) An order under Section 14 of the SARFAESI Act was passed by the competent Magistrate on 09.03.2017.
- g) The Corporate Debtor admitted a one-time settlement offer on 16.03.2017 (additional document before this Court).
- h) The Corporate Debtor once again admitted their liability and made a fresh compromise/one-time settlement offer dated 01.01.2018 (additional document before this Court).
- i) The Corporate Debtor again admitted their liability while submitting a fresh compromise/one-time settlement offer dated 16.05.2019 (additional document before NCLAT).
- j) The mortgaged property was put on auction sale on 12.12.2019, and again on 26.02.2020. However, no bids were received.
- k) Respondent No.2 filed an application under Section 7 of the IBC along with application

under Section 5 of the Limitation Act on 22.01.2020.

- 1) Referring to the above sequence of events, it was submitted by the learned senior counsel that at no point in time did Respondent No.2 lose its right to initiate the insolvency proceedings. It being a Secured Creditor/Financial Creditor with dues of more than Rs. 681 crores at the time of filing the Section 7 petition, cannot be non-suited by an unsecured creditor (appellant) having a liability of approx. Rs. 87 crores as on 30.11.2019. The total facilities provided are of Rs. 395 crores, and the principal outstanding amount as on 31.05.2013 was Rs. 283 crores.
- m) The limitation, in fact, never expired, and the petition filed under Section 7 of IBC was well within time. Even if the date of declaring the NPA is taken as the base for counting the limitation, the same continued to be extended in view of the developments subsequent to the said declaration of NPA, which entitled the Respondent No.2 to the benefit of Sections 5, 14 and 18 of the Limitation Act.

- n) There being repeated acknowledgments, not only by way of the debt being reflected in the balance sheet, but also repeated proposal for one-time settlement by the Corporate Debtor, which extended the limitation, Respondent No.2 would be entitled to the benefit of Section 18 of the Limitation Act.
- o) The NCLT as also the NCLAT rightly rejected the objection taken by the appellant regarding the petition being time-barred and further rightly proceeded to admit the petition under Section 7 of the IBC by initiating the CIRP. The appeal, being devoid of merits is liable to be dismissed.
- p) Reliance was placed upon the following judgements by learned senior Counsel appearing for Respondent No.2, in support of his submissions:

- (i). Kotak Mahindra Bank Limited vs. Kew Precision Parts Private Limited and Ors²²,**
- (ii). Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Another²³,**

²² (2022) 9 SCC 364

²³ (2021) 6 SCC 366

- (iii). **Dena Bank (Now Bank of Baroda) vs. C. Sivakumar Reddy and Another**²⁴, and
- (iv). **Sesh Nath Singh and Another vs. Baidyabati Sheoraphuli Co-Operative Bank Limited and Another**²⁵.

8. We have considered submissions advanced by learned counsels for the parties as also the materials placed on record.
9. Before dealing with the arguments advanced, it would be appropriate to refer to the statutory provisions. Section 3(1) of the Limitation Act creates bar for the institution of any suit, appeal, or application made after the prescribed period of limitation to be dismissed, even though limitation has not been set up as a defence. The said Section reads as follows:

“3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. ”

²⁴ (2021) 10 SCC 330

²⁵ (2021) 7 SCC 313

10. Section 5 of the Limitation Act provides for an extension for the prescribed period in certain cases where sufficient cause for not preferring the appeal or where the application could not be made within the prescribed time. Section 5 reads as follows:

“5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

11. Section 18 of the Limitation Act provides that where acknowledgment in writing of the liability is made by a party against whom any right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment is so signed. The said Section is reproduced hereunder:

“18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any

property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

- (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

12. The question in the present case is primarily whether Respondent No.2 would be entitled to the benefit of Section 18 of the Limitation Act and whether Section 5 of the Limitation Act thereof

would also be applicable. Although Section 14 of the Limitation Act has also been referred to, but in our opinion, Section 14 will have no application inasmuch as the proceedings under the SARFAESI Act before the DRT cannot be said to be before a Court or Tribunal having no jurisdiction. Respondent No.2, being a Secured Creditor, would definitely have a right to invoke the power under the SARFAESI Act and the said proceedings cannot be said to be without jurisdiction. Therefore, no benefit under Section 14 would be admissible to Respondent No.2 in the present case.

13. Coming back to the benefit available under Section 18 of the Limitation Act, the following sequence of events and the law thereon would be relevant. The State Bank of India declared the Corporate Debtor as an NPA on 28.06.2013. Therefore, the limitation period would be three years from the last date of the financial year previous to the declaration of NPA, which would be 31.03.2013, and would run up to 31.03.2016. If there were no further intervening circumstances or developments relating to acknowledgment, the contention raised by the

appellant that the petition under Section 7 of IBC having been filed much beyond 31.03.2016, in 2020 to be specific on 22.01.2020, the petition would be clearly barred by limitation.

14. However, there are four major acknowledgments made by the Corporate Debtor after the declaration of the NPA and within the expiry of three years from the said date, details of which have already been mentioned in the previous paragraphs. However, briefly the same are being referred to again.

a) The Corporate Debtor, in its balance sheet for the financial year 2014-15, which came to an end on 31.03.2015, had acknowledged the debt in its balance sheet for the said year. This acknowledgment of debt in the balance sheet has been held to be a valid acknowledgment for the benefit of Section 18 of the Limitation Act. From the above date the period of three years would run up to 31 March, 2018.

b) The first OTS proposal is dated 16 March, 2017, within a period of three years of the date of acknowledgment of debt in the balance sheet.

- c) The second OTS proposal is dated 1st January, 2018, again within a period of three years from the date of the first OTS proposal.
- d) The third OTS proposal is dated 16th May, 2019, once again within a period of three years from the date of the second OTS proposal.

15. The petition under Section 7 was filed on 22nd January, 2020 within three years from the date of the first, second and the third OTS proposals.

16. The question for consideration would be whether the debt acknowledged in the balance sheet of the financial year would end on 31st March, 2015 and whether the three OTS proposals would give a fresh life of limitation of three years from each of the respective dates. Section 18 of the Limitation Act is the provision on which strong reliance has been placed upon by the Respondent No.2 for seeking such extension of limitation.

17. A plain reading of Section 18(1) of the Limitation Act would reflect that where any acknowledgment of a liability has been made in writing by the party against whom any right is claimed, a fresh period of limitation would be computed from the time when the acknowledgment was so signed, subject to such

acknowledgment being made before expiry of the prescribed period for filing a suit or application in that respect.

18. Section 18(2) of the Limitation Act may not be applicable in the present case inasmuch as all the acknowledgements in the present case have a date and, therefore, there would be no question of leading any oral evidence to establish the date of the acknowledgement.

19. Learned Senior counsel for the appellant has strongly contended that all the acknowledgments were firstly, not filed along with the petition under Section 7 of the IBC but were subsequently filed one at the stage of appeal before the NCLAT and two of such acknowledgements have been filed before this Court, as such the same should not be entertained. This argument of the appellant may not have much force to disentitle a financial creditor from claiming its right to recover the dues and initiate proceedings under the IBC.

20. Further, learned Senior counsel for the appellant also expressed doubt and apprehension about the correctness and genuineness of such acknowledgments but we are afraid to accept such a

contention inasmuch as the same could be objected regarding its correctness by the Corporate Debtor and not by an unsecured creditor. It would be for the Adjudicating Authority to consider such a plea, if so raised by the Corporate Debtor.

21. Reference may be made to a recent judgement of this Court in the case of **Dena Bank** (supra) where facts were similar. The documents relating to acknowledgement claiming benefit of Section 18 were introduced at appellate stage, and such documents being balance sheets and settlement offers. It was held that the same could be accepted even at the appellate stage and a settlement offer akin to an OTS proposal would be an acknowledgment of debt for the purpose of Section 18 of Limitation Act. The only caveat was that such acknowledgments should be before the expiry of limitation prescribed under law. Para 22 of the said judgement refers to the facts in brief which are similar to the facts of the present case where the balance sheet and one-time settlement proposal were introduced. The same is reproduced herein:

“22. In other words, the main question involved in this appeal is, whether a petition under Section 7 IBC would be barred by limitation, on the sole ground that it had been filed beyond a period of 3 years from the date of declaration of the loan account of the corporate debtor as NPA, even though the corporate debtor might subsequently have acknowledged its liability to the appellant Bank, within a period of three years prior to the date of filing of the petition under Section 7 IBC, by making a proposal for a one-time settlement, or by acknowledging the debt in its statutory balance sheets and books of accounts.”

22. Ultimately, in paragraph 142 of the report, it was held that additional documents could be introduced at the stage of appeal also. The said para is reproduced hereunder:

“142. There is no bar in law to the amendment of pleadings in an application under Section 7 IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 IBC in Form 1. In the absence of any express provision which either prohibits or sets a time-limit for filing of additional documents, it cannot be said that the adjudicating authority committed any illegality or error in permitting the appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the adjudicating authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In

our considered view, the decision of the adjudicating authority to entertain and/or to allow the request of the appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.”

23. The above discussion takes care of the arguments raised by the appellant regarding admissibility of documents in appeal to be without any merit. The judgement in the case of **Dena Bank** (supra) has been later on relied upon in the case of **Kotak Mahindra Bank Ltd.**(supra).

24. A balance sheet acknowledging debt is also a document relevant for calculating the limitation. This has already been held in case of **Asset reconstruction Company India Ltd.** (supra). In all the above cases, what has been elaborately discussed is the ‘purposive interpretation of the statute’ to advance the cause of justice.

25. The argument advanced on behalf of the appellant regarding the improvement made by Respondent No. 2- State Bank of India from stage to stage also is of no assistance inasmuch as if the OTS proposals are found to have been made by the Corporate Debtor and the balance sheet reflected the

debt in the financial year ending 31st March, 2015, then in fact, there would be no delay on the part of the Respondent No. 2- State Bank of India in initiating the proceeding as the same would be within the extended period of limitation provided under Section 18 of the Limitation Act.

26. Another argument raised by the counsel for the appellant was with respect to the genuineness of the OTS proposals giving several reasons to discard the same. All the said reasons will be tested in the proceedings before the Adjudicating Authority as and when raised by the Corporate Debtor or any other party having locus to raise such plea. Presently in this appeal the said issue cannot be taken up for two reasons: firstly, the Adjudicating Authority as well as NCLAT have accepted the explanation of Respondent No.2 for the delay caused in filing the Section 7 IBC petition to be satisfactory and have condoned the same. Secondly, in view of the first and second OTS proposals by the Corporate Debtor being not questioned by the suspended Directors, there is no reason to disbelieve or to cast any doubt on the said documents at the instance of the appellant.

27. The case laws relied upon on behalf of the appellant are on three points as already noted above. The same are briefly discussed hereunder:

- (a) First point on which case laws have been referred to is that a time barred application cannot be entertained under Section 7 IBC. The same would not be relevant or of any help to the appellant as it has already been held that the application of Respondent No.2 would be entitled to benefit of Sections 5 and 18 of the Limitation Act and, therefore, was within time.
- (b) The second point on which case laws have been referred to was that no benefit could be claimed under Section 14 of the Limitation Act. These case laws are also not of any relevance as it has been held above that no benefit could be claimed by Respondent No.2 under the said provision.
- (c) The third point on which case law is relied upon is that for benefit under Section 18 of the Limitation Act, the acknowledgment should be made within expiry of the limitation provided under law. On this point

it has been factually found that taking the date of acknowledgment of debt in Balance Sheet and the three OTS proposals the same were within the limitation under law or the extended limitation due to acknowledgments. Thus the case laws relied upon would have no relevance in the facts of the present case.

28. For all the reasons recorded above, we do not find any merit in the appeal. The same is accordingly dismissed.

APPLICATIONS BY THE RUBY MILLS LTD:

29. IA No. 153162 of 2022 has been filed by the Ruby Mills Ltd. seeking Intervention in the present proceedings on the ground that they had to pay balance advance amount of Rs 78,50,00,000 as full and final payment toward the claims made by Corporate Debtor which was not being accepted in view of the initiation of the present proceedings under IBC.

30. IA No. 153166 of 2022 was filed for issuing appropriate directions for depositing the aforesaid amount with State Bank of India for which it had filed

IA No. 1002 of 2022 in Company Petition No. 236 of 2022 before the NCLT.

31. IA No.19253 of 2023 was filed to take some additional documents on record.

32. IA Nos.97314 of 2023 and 121868 of 2023 were again filed for directions of similar nature as IA No. 153162 of 2022 to permit the applicant to deposit with the Registrar of this Court the deposit receipts in relation to the Fixed Deposits aggregating to Rs. 79 Crores.

33. Mr Jaideep Gupta, learned Senior Counsel, had been continuously requesting for appropriate directions being issued on the above applications but the same was being resisted by the appellant as also the State Bank of India.

34. Now that we have held that the IBC proceedings would continue as we are dismissing the present appeal, we leave it open for the applicant – the Ruby Mills Limited, to pursue its remedy before the Adjudicating Authority or any other forum as maybe appropriate.

35. The above applications are accordingly disposed of.

36. Any other pending application(s) shall also stand disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(AHSANUDDIN AMANULLAH)

NEW DELHI
SEPTEMBER 12, 2023