

# Axis Bank Limited vs Naren Seth & Anr on 4 January, 2022

**Author: Ashok Bhushan**

**Bench: Ashok Bhushan**

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 930 of 2021  
(Arising out of Order dated 22.09.2021 passed by the Adjudicating Authority  
(National Company Law Tribunal), Court No.5, Mumbai Bench in  
CP(IB)1382/MB/2020)

IN THE MATTER OF:

Axis Bank Limited,

Axis house, C-2, Wadia International Centre,

P.B. Marg, Worli, Mumbai-400025.

.... Appellant

Vs

1. Mr. Naren Sheth,  
Resolution Professional for  
Shreem Corporation Limited  
1014-1015 Prasad Chamber,  
Tata Road No.1,  
Opera House, Charni Road (East),  
Mumbai - 400004.

2. State Bank of India,  
Stressed Assets Management Branch-II,  
Raheja Chambers, Ground Floor,  
Wing 'B', Free Press Journal Road,  
Nariman Point, Mumbai - 400021.

.... Respondents

Present:

For Appellant:

Mr. Arun Kathpalia, Sr. Advocate  
with Mr. Akash Khurana, Mr. Neerav  
Merchant and Mr. Ujjal Banerjee,  
Advocates

For Respondents:

Mr. Ashwini Kumar Singh,  
Mr. Sumant Batra and Mr. Abdullah  
Qureshi, Advocates (R-2)

JUDGMENT

ASHOK BHUSHAN, J.

This Appeal has been filed against the judgment dated 22nd September, 2021 passed by the Adjudicating Authority admitting an Company Appeal (AT) (Insolvency) No. 930 of 2021 1 Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'IB Code') filed by Respondent No.2 - State Bank of India after condoning the delay in filing the Application under Section 5 of the Limitation Act, 1963

2. Brief facts of the case and sequence of the events, which necessary to be noted for deciding this Appeal are:

(i) The State Bank of India granted credit facilities/ term loans vide letter dated 22.08.2010, 26.11.2010 and 24.11.2011 to the Corporate Debtor - Shreem Corporation Limited. The Corporate Debtor had executed various Agreements and Deed to secure the above credit facilities/ term loans.

(ii) The account of Corporate Debtor was classified as Non-

Performing Asset (NPA) on 28.06.2013.

(iii) The State Bank of India issued notice under Section 13 sub-

section (2) of SARFAESI Act, 2002. An Application being O.A. no.726 of 2014 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was filed by the State Bank of India against the Corporate Debtor before the Debt Recovery Tribunal.

(iv) State Bank of India also filed Application under Section 14 of the SARFAESI Act, 2002 for taking physical possession for certain secured assets, which was allowed by the District Magistrate by order dated 09.03.2017.

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(v) In the balance sheet of the Corporate Debtor for the year ending 31st March, 2015, the debt liability of the Financial Creditor was mentioned.

(vi) The State Bank of India filed its Application under Section 7 being CP(IB)1382/MB/2020 on 22nd January, 2020 before the Adjudicating Authority. An Application under Section 5 of the Limitation Act was also filed praying for condonation of delay by the Applicant. Section 5 Application stated that there was delay of 1392 days in filing the Application.

(vii) The Application under Section 7 of the IB Code was filed by the State Bank of India on the ground that Corporate Debtor committed default to the extent of Rs.681.87 crores. The State Bank of India has also lodged an FIR with the Central Bureau of Investigation on 30.09.2016 against the Corporate Debtor after declaring the account of Corporate Debtor as fraud.

(viii) The Directors of the Corporate Debtor had by letter dated 16.05.2019 approached the State Bank of India with a compromise offer to settle the loan account, which offer was rejected by the Bank.

(ix) The State Bank of India had put up Corporate Debtor's one of the property for sale through auction on 12.12.2019 and 26.02.2020, but no bids were received.

(x) Notice was issued in the Section 7 Application to the Corporate Debtor, who appeared before the Adjudicating Authority and Company Appeal (AT) (Insolvency) No. 930 of 2021 3 opposed the Application filed under Section 7. Corporate Debtor submitted that the account having being declared NPA on 31.03.2013, the limitation of three years came to an end on 31st March, 2016. The Applicant having not taken any steps at the right time has filed the Application with a delay of 1392 days for recovery of time barred debt.

3. The learned Adjudicating Authority noticed the oral as well as written submissions of both the parties and held that there is delay of only 662 days in filing the Application. Since there was acknowledgement by the Corporate Debtor about the debt in the balance sheet as on 31st March, 2015, hence the limitation period shall be extended till 31st March, 2018 in accordance with Section 18 of the Limitation Act. The Adjudicating Authority held that the Applicant had not been negligent in the exercise of its rights for recovery of its debt. The Adjudicating Authority also observed that Applicant being public sector undertaking of Government of India representing the collective cause of the community and in public interest the delay in filing the Application deserves to be condoned and it was held that Applicant having acted with due diligence and have shown sufficient cause to condone the delay of 662 days, which is less than two years, the delay was condoned on payment of Rs.6,00,000/- to be paid in Bharat Kosh by the Bank.

4. The present Appeal has been filed by Axis Bank Limited, which was not a party before the Adjudicating Authority in Application under Section Company Appeal (AT) (Insolvency) No. 930 of 2021 4 7 of the IB Code. The Appellant's case in this Appeal is that the Appellant on leave and license basis had taken 11 floors of the building Solaris 'C' on the immovable property namely situated at Survey No.46(pt), 47(pt) and bearing city survey No.98(A), 98(A) PT, 100(1), 101(1), 100(1), 101/1 totally admeasuring 5213.90 sq. meters lying at Village Tungwa, Taluka Kurla, Sakivihar Road, Andheri (E), Mumbai. The property was owned by Universal Premises and Textiles Limited, which in the year 2012 merged with Rajput Retail Limited, which was renamed as Shreem Corporation Limited - the Corporate Debtor. In the year 2010 Rajput Retail Limited availed credit facilities from State Bank of India and created equitable mortgage of the land beneath the building Solaris 'C' in favour of State Bank of India to secure the credit facilities. The Appellant claiming to be mortgagee has filed this Appeal challenging the order of Adjudicating Authority admitting Section 7 Application of the State Bank of India against the Corporate Debtor.

5. The learned Counsel for the Appellant submits that there was no explanation for condoning the delay of 1392 days in filing Section 7 Application. By Section 238A, which was inserted in the IB Code from 06.06.2018, the applicability of principles of limitation for filing applications under Section 7 was more than clear and the contention of the Respondent that from 06.06.2018 to 22nd

January, 2020, it was exploring the options available under the law for recovery of this dues cannot be accepted. The Adjudicating Authority has wrongly observed that delay is only 662 days, whereas the delay in filing the Application is 1392 days. Company Appeal (AT) (Insolvency) No. 930 of 2021  
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6. The State Bank of India has filed a reply. It is submitted on behalf of the State Bank of India that Appellant was not party in the proceedings before the Adjudicating Authority and it has filed the Appeal solely with the purpose of stalling the CIRP proceedings in respect of Corporate Debtor, as being one of the creditors, it is entitled to file its claim with the Resolution Professional. It was submitted that during the period from 2018 to 2020 the Bank was on one hand, exploring all the options available under law for recovery of its legitimate due and on other hand was also negotiating for settlement with the Corporate Debtor. Reference to the letter dated 16.05.2019 addressed by the Directors of the Corporate Debtor to the Bank setting out a compromise offer to settle the loan account has also been referred. Learned Counsel further submits that Limitation Act is fully applicable for condonation of delay in proceedings under Section 7 of the IB Code. It is submitted that liberal approach should be adopted by Courts under Section 5 of the Limitation Act to do substantial justice to parties. It is further submitted that consideration should be given to the fact that answering Respondent is a public sector undertaking of the Government of India a liberal approach should be adopted in considering any delay in filing legal proceedings by any such public sector undertaking for the advancement of public interest.

7. There is no denying that that Application under Section 5 of the Limitation Act was filed with delay. One submission, which has been raised by the learned Counsel for the Appellant is that delay in filing the Application was 1392 days and Adjudicating Authority has wrongly Company Appeal (AT) (Insolvency) No. 930 of 2021 6 computed the delay as 662 days. The Adjudicating Authority has noted the fact that in filing the Application under Section 7, there was delay of 1392 days. However, a finding has been returned in paragraph 33 of the judgment relying on the balance sheet for the year 31st March, 2015 filed by the State Bank of India before it, where liability of the Financial Creditor is shown. The Adjudicating Authority has taken a view that fresh period of limitation shall accrue from 31st March, 2015 and continues till 31.03.2018, therefore, the period of delay is reduced from 1392 days to 662 days.

8. We fully endorse the above view of the Adjudicating Authority. An acknowledgement of liability in balance sheet is the acknowledgement within the meaning of Section 18 of the Limitation Act, which is no more res-integra.

9. We may refer to the judgment of Hon'ble Supreme Court in Asset Reconstruction (India) Company Ltd. Vs. Bishal Jaiswal and Dena Bank (now Bank of Baroda) Vs. C Shivkumar Reddy and Anr., where it has been held that acknowledgement of liability in balance sheet, in the acknowledgement is within the meaning of Section 18 of the Limitation Act. We, thus, do not find any error in the finding of Adjudicating Authority that delay is only 662 days.

10. The Adjudicating Authority has returned a finding that Applicant- State Bank of India had acted with due diligence and had shown sufficient cause.

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11. Before proceeding further, we need to notice the expression 'sufficient cause' as occurs in Section 5 of the Limitation Act, 1963. The Hon'ble Supreme Court in (1987) 2 SCC 107 - Collector, Land Acquisition, Anantnag and Anr. vs. Mst Katiji and Ors., has held that the expression 'sufficient cause' is adequately elastic to enable the Courts to apply the law in a meaningful manner, which subserves the ends of justice, following has been laid down in paragraph 3:

3. The legislature has conferred the power to condone delay by enacting Section 5 [ Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice -- that being the life-

purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

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2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State"

which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of Company Appeal (AT) (Insolvency) No. 930 of 2021 9 delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing- on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

12. A three Judge Bench of the Hon'ble Supreme Court in (1996) 3 SCC 132 - State of Haryana vs. Chandra Mani and Ors. has elaborately considered the expression "sufficient cause", after referring to earlier judgments of Hon'ble Supreme Court, it was held that expression "sufficient cause" should receive a liberal construction. It held that Company Appeal (AT) (Insolvency) No. 930 of 2021 10 although an application be it by private party or the State when barred by limitation, equal treatment is to be accorded to both. It was held that expression "sufficient cause" should be considered with pragmatism in justice-oriented approach rather than technical direction of sufficient cause. When the Government is an Applicant, considerable delay is caused due to procedural red-tape in the process of their making decision. The State Bank of India also being a statutory body, under the control of Government, process of taking decision consumes considerable time is a known feature. Following principles have been laid down by the three Judge Bench for finding out "sufficient cause", in paragraph 4 and 11 following has been laid down:

"4. The learned counsel appearing on behalf of the appellants have argued, relying upon the Report of the Insolvency Law Committee of March 2018, that the object of the Amendment Act which introduced Section 238-A into the Code was to clarify the law and, thus, Section 238-A must be held to be retrospective. Further, according to

them, in any case, the law of limitation, pertaining to the domain of procedure, must be held to apply retrospectively in any case. For this proposition, they cited several judgments which will be referred to later in this judgment. They also referred to and relied upon the definitions under Sections 3(11), 3(12) and Section 5(6) of the Code, which, when contrasted with Section 3(6), would show that though "claim" in Section 3(6) refers to a right to payment, the definitions of "debt" and "default" in Sections 3(11) and 3(12) respectively, refer to liability or obligation in respect of a claim which is "due" and this being the case, a time-barred debt cannot be said to be "due" so as to trigger the Code.

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11. Having heard the learned counsel for both sides, it is important to first set out the reason for the introduction of Section 238-A into the Code. This is to be found in the Report of the Insolvency Law Committee of March 2018, as follows:

"28. application of limitation act, 1963 28.1. The question of applicability of the Limitation Act, 1963 (the Limitation Act) to the Code has been deliberated upon in several judgments of NCLT and Nclat. The existing jurisprudence on this subject indicates that if a law is a complete code, then an express or necessary exclusion of the Limitation Act should be respected. [Ravula Subba Rao v. CIT, 1956 SCR 577 : AIR 1956 SC 604] In light of the confusion in this regard, the Committee deliberated on the issue and unanimously agreed that the intent of the Code could not have been to give a new lease of life to debts which are time-barred. It is settled law that when a debt is barred by time, the right to a remedy is time-barred. [Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499 : 1993 SCC (Cri) 149 : AIR 1992 SC 1815] This requires being read with the definition of "debt" and "claim" in the Code. Further, debts in winding-up proceedings cannot be time-barred [Interactive Media and Communication Solution (P) Ltd. v. Go Airlines Ltd., 2013 SCC OnLine Del 445 : (2013) 199 DLT 267] , and there appears to be no rationale to exclude the extension of this principle of law to the Code. 28.2. Further, non-application of the law on limitation creates the following problems: first, it re-opens the right of financial and operational creditors holding time-barred debts under the Limitation Act to file for Company Appeal (AT) (Insolvency) No. 930 of 2021 12 CIRP, the trigger for which is default on a debt above INR one lakh. The purpose of the law of limitation is 'to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches' [Rajender Singh v. Santa Singh, (1973) 2 SCC 705 : AIR 1973 SC 2537] . Though the Code is not a debt recovery law, the trigger being "default in payment of debt"

renders the exclusion of the law of limitation counter- intuitive. Second, it re-opens the right of claimants (pursuant to issuance of a public notice) to file time- barred claims with IRP/RP, which may potentially be a part of the resolution plan. Such a resolution plan restructuring time-barred

debts and claims may not be in compliance with the existing laws for the time being in force as per Section 30(4) of the Code.

28.3. Given that the intent was not to package the Code as a fresh opportunity for creditors and claimants who did not exercise their remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific section applying the Limitation Act to the Code. The relevant entry under the Limitation Act may be on a case-to-case basis. It was further noted that the Limitation Act may not apply to applications of corporate applicants, as these are initiated by the applicant for its own debts for the purpose of CIRP and are not in the form of a creditor's remedy."

13. We may also notice the judgment of Apex Court in B.K. Educational Services Private Limited vs. Parag Gupta and Associates (2019) 11 Company Appeal (AT) (Insolvency) No. 930 of 2021 13 SCC 633 where while considering the applicability of Limitation Act in IBC, the Hon'ble Supreme Court held that provisions of Limitation Act will be applicable to applications filed under Section 7 and 9 of the Code, following was laid down in paragraph 42:

"42. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."

14. When we look into the facts of the present case and advert to the reasons given by State Bank of India for seeking condonation of delay, we cannot lose sight of the fact that after the account of the Corporate Debtor was declared NPA on 28th June, 2013, immediately i.e. in the next month itself i.e. 22nd July, 2013 notice under Section 13 sub-section (2) of SARFAESI Act, 2002 was given by the State Bank of India to the Corporate Debtor and thereafter under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 being O.A. No.726 of 2014 was filed. An order dated 09.03.2017 was passed by the District Magistrate allowing Application under Section 14 of the SARFAESI Act to take physical possession of assets of the Corporate Debtor. The State Bank of India Company Appeal (AT) (Insolvency) No. 930 of 2021 14 cannot be held to be negligent in prosecuting its remedies for recovery of its debt. It was submitted on behalf of the Bank that during the period from 2018 to 2020 the Bank was on the one hand exploring all the options available under the law for recovery of its legitimate due and on the other hand was also negotiating for settlement with the Corporate Debtor. A letter dated 16.05.2019 was addressed by the Directors of the Corporate Debtor to the Bank setting out a compromise offer to settle the loan account of the Corporate Debtor, which however, was subsequently rejected by the Bank. Mortgaged property of the Corporate Debtor was also put on sale on 12.12.2019. The Adjudicating Authority after considering the submissions of the parties has exercised its discretion in condoning the delay in filing the Application under Section 5 of the Limitation Act, which order has been challenged in this Appeal.



15. To find out 'sufficient cause' for condonation of delay, all facts, circumstances and sequence of events have to be taken into consideration. In the present case, it cannot be held that Financial Creditor i.e. State Bank of India was negligent in prosecuting the proceedings for recovery of its debt. It did initiate the proceedings under SARFAESI Act and also filed an Application for recovery of debt under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in the year 2014. The Corporate Debtor having acknowledged the liability in its balance sheet as on 31st March, 2015, the Financial Creditor shall have a fresh period of limitation, which came to an end only on 31st March, 2018. In the facts and circumstances of the present case, the delay of less than two years' Company Appeal (AT) (Insolvency) No. 930 of 2021 15 period has been condoned by the Adjudicating Authority, exercising its discretion under Section 5 of the Limitation Act. It cannot be said that discretion exercised by Adjudicating Authority in condoning the delay is perverse or against any provisions of law or violates any principle of law for determining the 'sufficient cause' under Section 5 of the Limitation Act. We, thus, do not find any error in the order of the Adjudicating Authority condoning the delay in filing the Application under Section 7 of the IB Code by the State Bank of India. There is no merit in the Appeal, the Appeal is dismissed. No costs.

[Justice Ashok Bhushan] Chairperson [Justice Jarat Kumar Jain) Member (Judicial) [Dr. Alok Srivastava] Member (Technical) NEW DELHI 4th January, 2022 Ash/NN Company Appeal (AT) (Insolvency) No. 930 of 2021 16