

AMIT YOGESH SATWARA SUSPENDED DIRECTOR OF SUUMAYA INDUSTRIES LIMITED THROUGH POWER OF ATTORNEY HOLDER USHIK GALA VS INCRED FINANCIAL SERVICES LIMITED

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Summary of the Case

1. Details of the Parties

- **Appellant:** Amit Yogesh Satwara, Suspended Director of Suumaya Industries Limited (formerly known as Suumaya Lifestyle Limited), through Power of Attorney Holder Ushik Gala.
- **Respondent:** IncRED Financial Services Limited, a financial creditor based in Mumbai.

2. Facts of the Case

1. Loan Sanction and Agreement:

- On 15.10.2020, the Respondent sanctioned a working capital facility/loan of ₹5 crores to the Corporate Debtor (CD), backed by a Master Facility Agreement executed on 24.10.2020.
- A loan recall notice was issued on 02.06.2022 for an amount of ₹4,61,51,597.

2. Filing of Section 7 Application:

- On 20.06.2022, the Respondent filed an application under Section 7 of the Insolvency and Bankruptcy

Code (IBC) for the recovery of a total debt of ₹4,40,53,481, which included ₹3.80 crores as principal and ₹60,36,961 as interest.

3. Subsequent Developments:

- An MoU was entered between the parties on 17.09.2022, followed by a Share Pledge Agreement on 19.09.2022. The pledge of shares was invoked on 29.11.2022.
- The Corporate Debtor filed an interim application (IA No.4400 of 2023) seeking dismissal of the Section 7 application, but the National Company Law Tribunal (NCLT), Mumbai Bench-VI, admitted the Section 7 petition on 02.08.2024.

4. Appeal and Interim Orders:

- The Appellant appealed against the NCLT's order, claiming partial payments were made and expressing intent to settle with the Respondent.
- Interim relief was granted on 12.08.2024, halting further proceedings under the NCLT's order to facilitate negotiations. However, no final settlement was reached.

3. Issues Involved

1. Whether the financial debt and default, as claimed by the Respondent, were adequately proven.
2. Whether the pledged shares were sufficient to clear the outstanding liability, and whether the Financial Creditor acted appropriately in realizing the pledged shares.
3. Whether the Corporate Debtor had grounds to seek dismissal of the Section 7 application.

4. Judgement

▪ Debt and Default Established:

- The NCLT found sufficient evidence of financial debt and default, including the Sanction Letter,

Master Facility Agreement, Loan Recall Notice, and Record of Default from NeSL, which the Corporate Debtor did not dispute.

- The pledged shares invoked by the Financial Creditor fetched ₹1,94,10,790.14, which was insufficient to discharge the debt.

▪ **Appeal Dismissed:**

- The National Company Law Appellate Tribunal (NCLAT) upheld the NCLT's findings, confirming the existence of financial debt and default. It observed that the Appellant's attempts to settle the matter indicated acknowledgment of the liability.

▪ **Option for Settlement:**

- The NCLAT noted that any settlement reached between the parties could be pursued under Section 12-A of the IBC for withdrawal of the Corporate Insolvency Resolution Process (CIRP).

5. Conclusion

The appeal was dismissed, and the CIRP initiated against Suumaya Industries Limited was upheld. The Tribunal reiterated that the financial debt and default were sufficiently proven, and the Appellant's inability to settle the dues affirmed the need for CIRP. However, the Tribunal left the door open for settlement under Section 12-A of the IBC. No costs were awarded.