IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
INDIRA BANERJEE; J., J.K. MAHESHWARI; J.
CIVIL APPEAL NO. 2176 OF 2020; AUGUST 05, 2021
Kotak Mahindra Bank Limited *VERSUS* **Kew Precision Parts Private Limited & Ors.**

Insolvency and Bankruptcy Code, 2016; Section 7(5)(b) - when the Adjudicating Authority is satisfied that default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application - provided it shall, before rejecting the application, give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority - the provision would extent to appeals - appeal is the continuation of original proceedings. *(Para 70)*

Indian Contract Act 1872; Section 25(3) - it is clear that any agreement to pay a time barred debt, would be enforceable in law, within three years from the due date of payment, in terms of such agreement.

Insolvency and Bankruptcy Code 2016 -There is no specific period of limitation prescribed in the Limitation Act, 1963, for an application under the IBC, before the Adjudicating Authority (NCLT). An application for which no period of limitation is provided anywhere else in the Schedule to the Limitation Act, is governed by Article 137 of the Schedule to the said Act. Under Article 137 of the Schedule to the Limitation Act, the period of limitation prescribed for such an application is three years from the date of accrual of the right to apply. *(Para 55)*

Insolvency and Bankruptcy Code 2016 - There can be no dispute with the proposition that the period of limitation for making an application under Section 7 or 9 of the IBC is three years from the date of accrual of the right to sue, that is, the date of default. *(Para 56)*

Limitation Act, 1963; Section 18 - As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired. *(Para 62)*

For Appellant(s) Mr. Aravindh S., AOR Mr. A. Lakshminarayanan, Adv. Mr. Muthuvel Palani M., Adv. For Respondent(s) Mr. Mohit Chaudhary, Adv. Ms. Puja Sharma, AOR Mr. Kunal Sachdeva, Adv. Mr. Chowdhary Zulfkar Ali, Adv. Mr. Mahima Ahuja, Adv. Mr. Balbir Singh Suri, Adv. Mr. Parkhayat Gargasya, Adv.

J U D G M E N T

INDIRA BANERJEE, J.

This appeal filed by the Appellant Financial Creditor, Kotak Mahindra Bank Limited under Section 62 of the Insolvency and Bankruptcy Code, 2016, hereinafter referred to as the 'IBC', is against the judgment and order dated 8th January, 2020 of the National Company

Law Appellate Tribunal, New Delhi (NCLAT) allowing Company Appeal (AT) Insolvency No. 1349 of 2019 filed by the Respondent-Corporate Debtor, against an order dated 6th September, 2019 passed by the Adjudicating Authority/National Company Law Tribunal (NCLT) admitting the application being Company Petition No.(IB) 672/ND/2019 filed by the Appellant Financial Creditor under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporator Debtor.

2. The Corporate Debtor carries on business of manufacture of tempo and tractor components. In or about 2012-2013, the Corporate Debtor decided to expand its business and operations and entered into negotiations with bankers for finance for the proposed expansion.

3. According to the Corporate Debtor, some-time in JulyAugust 2012, some employees of the Appellant Financial Creditor approached the Corporate Debtor, offering financial assistance at lesser rate of interest than the then existing bankers of the Corporate Debtor, and better facilities and business support.

4. The Appellant Financial Creditor has, since November 2012 sanctioned loan facilities to the Corporate Debtor from time to time. At the meeting of the Board of Directors of the Corporate Debtor held on 29th November 2012 and on 15th March 2013, resolutions were adopted, inter alia, authorizing Mr. Munish Kumar Bhunsali to execute loan and security documents on behalf of the Corporate Debtor.

5. On or about 29th November, 2012, necessary documents with regard to the loans/credit facilities were executed by and between the Appellant Financial Creditor and the Corporate Debtor. Between 23rd November, 2012 and 31st December, 2013, loan amounts were disbursed.

6. The following loan and security documents were executed between the Appellant Financial Creditor and the Corporate Debtor on 29th November 2012:-

(i) "Master Fund Based Facility Agreement
(ii) Deed of Hypothecation
(iii) Deed of guarantee by Muhish Kumar Bhunsali (iv) Demand Promissory Note
(v) Take Delivery Letter for the Demand Promissory Note.
(vi) Supplementary cum Modification Agreement
(vii) End Use Undertaking"

7. On 27th May 2013, further loan and security documents were executed between the Appellant Financial Creditor and the Corporate Debtor, namely:-

(i) "Memorandum of deposit of title deeds
(ii) End Use Undertaking
(iii) Undertaking (Mortgage) by Mr. Munish Kumar Bhunsali
(iv) Power of Attorney (Mortgage) by Kew Precision Parts Pvt. Ltd.
(v) Declaration (Mortagage) by Mr. Munish Kumar Bhunsali"

8. By a Memorandum of Deposit dated 13th December 2013 executed by the Corporate Debtor through Mr. Munish Kumar Bhunsali, the Corporate Debtor mortgaged its assets in favour of the Appellant Financial Creditor.

9. By a letter of sanction dated 7th February 2014, the Appellant Financial Creditor sanctioned credit/loan facilities aggregating Rupees Rs.2036.00 Lakhs to the Corporate Debtor as per the particulars given below:-

"i. Cash credit : Rs.1000.00 lakhs

ii. WCDL (Sub Limit of CC : Rs.680.00 Lakhs
iii. Invoice Finance discounting : Rs.680.00 Lakhs (submit of CC)
iv. Term Loan – I : Rs.240 Lakhs
v. Term Loan – II : Rs.334.00 Lakhs
vi. Term Loan – III : Rs.426.00 Lakhs
iv. Conditional WCDL : Rs.200.00 Lakhs
Total Exposure : Rs. 2036 Lakhs"

10. According to the Appellant Financial Creditor, the Corporate Debtor defaulted in making repayment of its dues to the Financial Creditor. The Appellant Financial Creditor, therefore, declared the Account of the Corporate Debtor as "non-performing asset" (NPA) on 30th September 2015. On 9th October, 2015, the loan was recalled by the Appellant Financial Creditor.

11. On 19th November 2017, the Appellant Financial Creditor issued statutory notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, hereinafter referred to as the SARFAESI Act.

12. On 12th December 2018, the Corporate Debtor admitted its liability to the Appellant Financial Creditor and offered a one time settlement for a sum of Rs.15,00,00,000/- (Rupees fifteen crores only) to be paid within 31st December, 2018. On 19th December 2018 , the Corporate Debtor again admitted its liability to the Appellant Financial Creditor and offered a one time settlement for a sum of Rs.20,00,00,000/- (Rupees twenty crores only) to be paid within 31st December, 2018. On 20th December, 2018, the Corporate Debtor revised its offer for one time settlement. The Corporate Debtor offered to settle the outstanding dues at a lumpsum amount of Rs.24,55,00,000/- (Rupees twentyfour crores and fifty five lakhs only). The offer was accepted by the Appellant Financial Creditor.

13. On the same day, i.e., 20th December, 2018, terms of settlement were signed and executed by the Corporate Debtor and the Appellant Financial Creditor in terms whereof a sum of Rs.24,55,00,000/- (Rupees twenty four crores and fifty five lacs only) was to be paid on or before 31st December, 2018.

14. The Corporate Debtor alleges that there were deficiencies in the banking services rendered by the Appellant Financier. Be that as it may, the Corporate Debtor availed credit facilities from the Appellant Financial Creditor, defaulted in repayment thereof and acknowledged liability to the Appellant Financial Creditor by making offers of one time settlement. When an application is filed by a Financial Creditor under Section 7 of the IBC for initiation of CIRP, all that the Adjudicating Authority is required to see is, whether there is a financial debt owed by the Corporate Debtor to the Financial Creditor and whether the amount of the debt exceeded Rs.1,00,000/- (Rupees one lac only) on the date of filing of the company petition, the said amount being the threshold limit for initiation of CIRP at the material time. The Adjudicating Authority also has to examine if the application is barred by limitation.

15. Pre-existing disputes, if any, between the Corporate Debtor and the Financial Creditor are of no consequence to an application of a Financial Creditor, under Section 7 of the IBC for initiation of CIRP, unlike an application of an Operational Creditor for initiation of CIRP under Section 9 of the IBC which may have to be dismissed if there is a pre-existing dispute.

16. The proceedings initiated by the Appellant Financial Creditor under the SARFAESI Act are not material to the issue in this appeal, of whether the application of the Appellant Financial Creditor before the NCLT was barred by limitation. Suffice it to mention that in computing the period of limitation for initiation of CIRP proceedings, the time spent in pursuing remedy under the SARFAESI Act or any other recovery law cannot be excluded. It is also well settled that initiation of proceedings under SARFEASI or any other recovery law does not affect the right of a Financial Creditor to initiate CIRP unless its debt is repaid.

17. The Corporate Debtor defaulted in payment of Rs.24,55,00,000/- to the appellant Financial Creditor as agreed. In these circumstances, the appellant Financial Creditor filed the said application being Company Petition No. (IB) 672/MD/2019 in the NCLT.

18. The said application was admitted by an order dated 6th September, 2019 of the Adjudicating Authority (NCLT). The Adjudicating Authority found that the account of the Corporate Debtor with the Appellant Financial Creditor had been declared NPA on 30th September 2015. The Appellant Financial Creditor was, however, relying on the proposal for one time settlement given by the Corporate Debtor on 12th December, 2018 to contend that the existence of financial debt had been admitted by the Corporate Debtor.

19. From the order dated 6th September, 2019 of the Adjudicating Authority, it appears that the Financial Creditor had been relying on Article 62 of the Limitation Act, 1963, under which suits relating to immoveable property to enforce payment of money secured by a mortgage, or otherwise charged upon immoveable property, is 12 years from the time when the money sued for, becomes due.

20. The Adjudicating Authority found :-

"Given the facts and circumstances that the Corporate Debtor vide its letter dated 12.12.2018 approached the Financial Creditor for one time settlement of an amount of Rs.15 Crore, thereby admitting its default, there is a finding that there is a continuous cause of action.

As per the averments of the petition no payment has been made by the Corporate Debtor after the default occurred in June, 2015 and as on dated 27.11.2018, an amount of Rs.46,63,35,337.31 is due and outstanding. The present petition being filed in January 2019 is within limitation, being within three years from the date of the cause of action. Further even though an attempt was made on the part of the Corporate debtor to project certain inconsistencies in relation to claim amounts, however it is seen that the amount in default in excess of Rs.1,00,000/- being the minimum threshold limit fixed under IBC, 2016."

21. The Adjudicating Authority admitted the petition and imposed a moratorium in terms of Section 14 of the IBC and also confirmed the appointment of Mr. Ashwani Kumar Gupta, as the Interim Resolution Professional (IRP).

22. The suspended Directors of the Corporate Debtor filed the appeal being Company Appeal (AT) Insolvency No. 1349 of 2019 in the NCLAT contending that the petition filed by the Appellant Financial Creditor under Section 7 of the IBC was patently barred by limitation.

23. The NCLAT held :-

"33. The 1st Respondent or Bank's plea is that there was continuous and recurring cause of action from both sides i.e. the borrower and the 'Corporate Debtor' and the Bank also, that if any decree is passed by any civil court is pending or in existence of execution, it would amount to a 'continuous cause of action'. In fact the 1st Respondent / Bank projects the plea that the 'continuous cause of

action' means the 'cause of action' which arise from repetition of acts or omission of the same kind is that for which the action was brought.

34. A perusal of the application in form I part II filed by the 1st Respondent / Bank to initiate 'Corporate Insolvency Resolution Process' under 'I&B' shows that the amount claimed to be default as on 17.11.2015 was Rs. 18,65,05,035.86 and that the default took place in June, 2015. However, as on 27.11.2018 the outstanding balance was mentioned as Rs. 46,63,35,337.31. xxx xxx xxx

38. It must be borne in mind and Article 62 of the Limitation Act, 1963 relates to enforcing the payment of money procured by mortgaged or otherwise charged upon the immoveable property. A suit to enforce a mortgage is governed by Article 62 and has to be filed within 12 years from the date when the money became due unless the limitation period prescribed was extended under any other provision of the Limitation Act. Article 137 of the Limitation Act constitutes the residuary article as regards the application. To put it succinctly, Article 113 pertains to the 'Suits', the Article 137 relates to 'Applications'. The language of Article 137 clearly postulates that the applicability of the said article will be restricted to the applications not mentioned in the 3rd division of the schedule to the Limitation Act, 1963.

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41. In so far as Section 18 of the Limitation Act 1963 pertaining to the effect of acknowledgement in writing under Limitation Act is concerned, it is to be taken note of that an acknowledgement of liability must be in writing and also to be signed by a party against whom the property or right is claimed and that too, the same must be within the Limitation period. It cannot be gainsaid that an acknowledgement given after the expiry of the usual period is not sufficient to keep the 'debt' alive. If a claim is barred, the fact that there was an acknowledgement of liability will not resuscitate a barred claim because of the reason that in any Law, there can only be an acknowledgement of an existing / subsisting liability.

42. In law, the onus is always on the Creditor to establish that an acknowledgement was made within time. Further, the acknowledgement does not create any new right and it only extends the limitation period as per decision P.Sreedevi Vs. P.Appu AIR 1991 Ker page – 76.

43. It may not be out of place for this Tribunal to make pertinent mention that when a party claiming benefit of Section 14 of the Limitation Act, 1963 failed to secure relief in earlier proceeding not because of any defect in jurisdiction or some other cause of like nature, he cannot derive the benefit u/s 14 of the Limitation Act as per decision Z.Khan Vs. Board of Revenue, 1984 ALL LJ. However, in the decision 'Ajob Enterprises' V. Jayant Vegoiles & Chemicals AIR 1991, Bombay at page 35 it is held that the time taken to prosecute suit against the Company for recovery of debt, such proceedings cannot be excluded in calculating the limitation period because the matter in issue in suit and winding up proceedings is not the same.

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45. In the present case, the 1st Respondent / Bank/Financial Creditor was given the liberty in SA 250/2016 (filed by the 'Corporate Debtor' by the Debt Recovery Tribunal, Lucknow and another) Appellants on 10 /04/2017 to recover the dues from the Appellants by proceeding afresh under the provisions of SARFAESI Act, 2002 and the Rules made thereunder. Later the 1st Respondent/Bank filed OA 576 before the Debt Recovery Tribunal, Delhi against the 'Corporate Debtor' and others and obtained decree on 2.05.2019. Therefore, it is not open to the 1st Respondent/Bank to turn around and seek exclusion of time as per Section 14 of the Limitation Act. Undoubtedly, the 1st Respondent / Bank had invoked the right Forum viz. Debt Recovery Tribunal, Delhi for recovery of its dues and 'Corporate Debtor' etc. xxx xxx xxx

47. In regard to the plea of the 1st Respondent/Bank that on 26.03.2016, a complaint was made by the 'Corporate Debtor' against the Bank for not rejecting their debts and in the said letter there was an admission of debt liability, it is to be pointed out that the same cannot come to the rescue of the Bank because of the fact that the debt of non-payment of dues by the 'Corporate Debtor' took place in June, 2015 and Section 7 application was filed by the 1st Respondent / Bank before the Adjudicating Authority on 30.01.2019 which is beyond the period of limitation as enshrined in Article 137 of the Limitation Act. Also that in the decision Kalpana Trading Co. Vs. Executive Officer Town Panchayat AIR 1999 Mad37, it is observed that just sending a letter to the higher authorities to settle the issues does not amount to an 'Acknowledgement'."

24. The operative part of the judgment and order is set out hereinbelow :

"54. In the result, the 'Corporate Debtor' 'M/s Kew Precision Parts Pvt. Ltd.' is released from the rigour of the 'Corporate Insolvency Resolution Process'. All actions taken by the 'Interim Resolution Professional' / 'Resolution Professional' and 'Committee of Creditors', if any, are declared illegal and set aside. The 'Resolution Professional' is directed to hand over the records and assets of the 'Corporate Debtor' to the promoter/Directors of the 'Corporate Debtor' forthwith.

55. The matter is remitted to Adjudicating Authority ('National Company Law Tribunal') New Delhi Bench to determine the 'Fee and Cost' of 'Corporate Insolvency Resolution Professional' as incurred by him, which is to be borne and paid by 1st Respondent / Bank('Financial Creditor'). Before parting with the case, it is made crystal clear that the dismissal of the application filed by the 1st Respondent / Bank before the Adjudicating Authority will not preclude it from pursuing / seeking appropriate remedy before the Competent Forum for redressal of its grievances, if it so desires/advised.

The Appeal is allowed with aforestated observations and directions. No Costs. Connected IA No. 3842/19 and IA No. 3843/19 are closed. However, the Appellants are directed to file certified copy of the impugned order of the Adjudicating Authority ('NCLT'), New Delhi within one week from today."

25. In this appeal, it is contended that cheques given by the Corporate Debtor to the Financial Creditor bounced up to February 2017. Paragraph 2(vii) of the petition of appeal filed by the Corporate Debtor is extracted hereinbelow :-

"vii) That cheques given towards repayment of loan were presented for encashment and the said cheque bounced due to reason "funds insufficient" up to February, 2017 against which complaint u/s. 138 of the Negotiable Instruments Act, is pending before Court."

26. If, as contended by the Appellant Financial Creditor, any cheque had been issued in February, 2017, the application of the Appellant Financial Creditor under Section 7 for initiation of CIRP filed on 2nd January, 2019 would clearly be within limitation. However, there are no details of the payment disclosed by the Appellant Financial Creditor either in the proceedings before the NCLT or NCLAT or before this court. However, if no payment had been made, after the account of the Corporate Debtor had been declared NPA in September, 2015, acknowledgment made on 12th December, 2018 or later, after expiry of over three years from the date on which the default occurred, would not save limitation.

27. It is the case of the Appellant Financial Creditor that on 12th December 2018 the Corporate Debtor made an offer of one time settlement at Rs.15 Crores. This offer was not accepted. On 19th December 2018, the Corporate Debtor revised its offer to Rs.20 Crores for one time settlement. This offer was also not accepted. On 20th December 2018, the Corporate Debtor again revised its offer for one time settlement. This time the Corporate Debtor offered to settle the outstanding dues of the Financial Creditor upon payment of Rs. 24,55,00,000/- to be paid within 31st December 2018. This offer was accepted, and terms of settlement were signed.

28. Section 25 of the Indian Contract Act provides as follows :-

"25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—An agreement made without consideration is void, unless—"

(1) It is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.
(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.
Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.
Explanation 2.—An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.
Illustrations
(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.
(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.
(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.
(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.
(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.
(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.
(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given." The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

29. From the above, it is clear that any agreement to pay a time barred debt, would be enforceable in law, within three years from the due date of payment, in terms of such agreement. It appears that Section 25(3) of the Indian Contract Act was not brought to the notice of the NCLAT. The NCLAT also did not consider the aforesaid Section.

30. In this appeal, it is contended that the last offer of 20th December, 2018 was followed by an agreement. Whether there was such agreement or not would have to be considered by the Adjudicating Authority. To invoke Section 25(3), the following conditions must be satisfied:-

(i) It must refer to a debt, which the creditor, but for the period of limitation, might have enforced;
(ii) There must be a distinct promise to pay such debt, fully or in part;
(iii) The promise must be in writing, and signed by the debtor or his duly appointed agent.

31. Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in **Bombay Dyeing and Manufacturing Company Limited** vs. **State of Bombay**[1].

[1] AIR 1958 SC 328

32. Section 25(3) applies only where the debt is one which would be enforceable against the defendants, but for the law of limitation. Where a debt is not binding on the defendant for other reasons, and consequentially not enforceable against him, there is no question of applicability of Section 25(3).

33. There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional.

34. The scheme of the IBC is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the Corporate Insolvency Resolution Process begins. Where any corporate debtor commits default, a financial creditor, an operational creditor or the corporate debtor itself may initiate Corporate Insolvency Resolution Process in respect of such corporate debtor in the manner as provided in Chapter II of the IBC.

35. The provisions of the IBC are designed to ensure that the business and/or commercial activities of the Corporate Debtor are continued by a Resolution Professional, post imposition of a moratorium, which would give the Corporate Debtor some reprieve from coercive litigation, which could drain the Corporate Debtor of its financial resources. This is to enable the Corporate Debtor to improve its financial health and at the same time repay the dues of its creditors.

36. Under Section 7(2) of the IBC, read with the Statutory 2016 Adjudicating Authority Rules, made in exercise of powers conferred, inter alia, by clauses (c) (d) (e) and (f) of sub-section (1) of Section 239 read with Sections 7, 8, 9 and 10 of the IBC, a financial creditor is required to apply in the prescribed Form 1 for initiation of the Corporate Insolvency Resolution Process, against a Corporate Debtor under Section 7 of the IBC, accompanied with documents and records required therein, and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, hereinafter referred to as the 2016 IB Board of India Regulations.

37. Statutory Form 1 under Rule 4(1) of the 2016 Adjudicating Authority Rules comprises Parts I to V, of which Part I pertains to particulars of the Applicant, Part II pertains to particulars of the Corporate Debtor and Part III pertains to particulars of the proposed Interim Resolution Professional. Parts IV and V which require particulars of Financial Debt with Documents, Records and Evidence of default, is extracted hereinbelow:-

PART IV

	PARTICULARS OF FINANCIAL DEBT	
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	

2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	

PART V

PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]	
1	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)
2	PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY (ATTACH A COPY OF THE ORDER)
3	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)
4	DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY)
5	THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE (ATTACH A COPY)
6	A RECORD OF DEFAULT AS AVAILABLE WITH ANY CREDIT INFORMATION COMPANY (ATTACH A COPY)
7	COPIES OF ENTRIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891) (ATTACH A COPY)
8	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL, DEBT, THE AMOUNT AND DATE OF DEFAULT

38. Section 7(3) requires a financial creditor making an application under Section 7(1) to furnish records of the default recorded with the information utility or such other record or evidence of default as may be specified; the name of the resolution professional proposed to act as an Interim Resolution Professional and any other information as may be specified by the Insolvency and Bankruptcy Board of India.

39. Section 7(4) of the IBC casts an obligation on the Adjudicating Authority to ascertain the existence of a default from the records of an information utility, or on the basis of other evidence furnished by the financial creditor, within fourteen days of the receipt of the application under Section 7. As per the proviso to Section 7(4) of the IBC, inserted by amendment, by Act 26 of 2019, if the Adjudicating Authority has not ascertained the existence of default and passed an order within the stipulated period of time of fourteen days, it shall record its reasons for the same in writing. The application does not lapse for noncompliance of the time schedule. Nor is the Adjudicating Authority obliged to dismiss the application. On the other hand, the application cannot be dismissed, without compliance with the requisites of the Proviso to Section 7(5) of the IBC.

40. Section 7(5)(a) provides that when the Adjudicating Authority is satisfied that a default has occurred, and the application under subsection (2) of Section 7 is complete and there is no disciplinary proceeding pending against the proposed resolution professional, it may by order admit such application. As per Section 7(5)(b), if the Adjudicating Authority is satisfied that default has not occurred or the application under sub-Section (2) of Section 7 is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application, provided that the Adjudicating Authority shall, before rejecting the application under sub-

section (b) of Section 5, give notice to the applicant, to rectify the defects in his application, within 7 days of receipt of such notice from the Adjudicating Authority.

41. The Corporate Insolvency Resolution Process commences on the date of admission of the application under sub-section (5) of Section 7 of the IBC. Section 7(7) casts an obligation on the Adjudicating Authority to communicate an order under clause (a) of sub-section (5) of Section 7 to the financial creditor and the corporate debtor and to communicate an order under clause (b) of sub-section (5) of Section 7 to the financial creditor within seven days of admission or rejection of such application, as the case may be. Sections 8 and 9 of IBC pertain to Insolvency Resolution by an operational creditor and are not attracted in the facts and circumstances of this case. Section 10 pertains to initiation of Corporate Insolvency Resolution Process by the Corporate Debtor itself, and is also not attracted in the facts and circumstances of the case.

42. The IBC is not just another statute for recovery of debts. Nor is it a statute which merely prescribes the modalities of liquidation of a Corporate body, unable to pay its debts. It is essentially a statute which works towards the revival of a Corporate body, unable to pay its debts, by appointment of a Resolution Professional.

43. In **Swiss Ribbons Private Limited & Anr. v. Union of India and Ors.**[2], authored by Nariman, J. this Court observed:-

"**28.** It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

44. IBC has overriding effect over other laws. Section 238 of the IBC provides that the provisions of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law, for the time being in force, or any other instrument, having effect by virtue of any such law.

45. Unlike coercive recovery litigation, the Corporate Insolvency Resolution Process under the IBC is not adversarial to the interests of the Corporate Debtor, as observed by this Court in **Swiss Ribbons Private Limited v. Union of India** (supra).

46. On the other hand, the IBC is a beneficial legislation for equal treatment of all creditors of the Corporate Debtor, as also the protection of the livelihoods of its employees/workers, by revival of the Corporate Debtor through the entrepreneurial skills of persons other than those in its management, who failed to clear the dues of the Corporate Debtor to its creditors. It only segregates the interests of the Corporate Debtor from those of its promoters/persons in management.

47. In construing and/or interpreting any statutory provision one must look into the legislative intent of the statute. The intention of the statute has to be found in the words

[2] . (2019) 4 SCC 17

used by the legislature itself. In case of doubt it is always safe to look into the object and purpose of the statute or the reason and spirit behind it. Each word, phrase or sentence has to be construed in the light of the general purpose of the Act itself, as observed by Mukherjea J., in **Popatlal Shah v. State of Madras**[3] and a plethora of other judgments of this Court.

48. When a question arises as to the meaning of a certain provision in a statute, the provision has to be read in its context. The statute has to be read as a whole. The previous state of the law, the general scope and ambit of the statute and the mischief that it was intended to remedy are relevant factors.

49. In **Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddy and Another**[4], this Court held:-

89. On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed."

50. Section 238A of the IBC provides as follows:-

"**238A**. The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

51. It is well settled by a plethora of judgments of this Court as also different High Courts and, in particular, the judgment of this Court in **B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates**[5] (2019) 11 SCC 633 : (2018) 5 SCC (Civ) 528] NCLT/NCLAT has the discretion to entertain an application/appeal after the prescribed period of limitation. The condition precedent for exercise of such discretion is the existence of sufficient cause for not preferring the appeal and/or the application within the period prescribed by limitation.

52. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute "sufficient cause" or not would be dependent upon facts of each case.

53. Section 5 of the Limitation Act, 1963 does not speak of any application. The section enables the court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. A Court/Tribunal may exercise its discretion to condone delay, even in the absence of a formal application.

54. In **Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd.**[6], authored by one of us (Indira Banerjee, J.), this Court held:-

"**64**. Similarly under Section 18 of the Limitation Act, an acknowledgment of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from

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[3] AIR 1953 SC 274

[4] (2021) 10 SCC 330

[5] (2019) 11 SCC 633

[6] (2021) 7 SCC 313

the date on which the acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires.

65. As observed above, Section 238-A IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before NCLT and Nclat. The IBC does not exclude the application of Sections 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in NCLT/Nclat. All the provisions of the Limitation Act are applicable to proceedings in NCLT/Nclat, to the extent feasible.

66. We see no reason why Section 14 or 18 of the Limitation Act, 1963 should not apply to proceeding under Section 7 or 9 IBC. Of course, Section 18 of the Limitation Act is not attracted in this case, since the impugned order [Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd., 2019 SCC OnLine NCLAT 928] of Nclat does not proceed on the basis of any acknowledgment.

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89. Legislature has in its wisdom chosen not to make the provisions of the Limitation Act verbatim applicable to proceedings in NCLT/NCLAT, but consciously used the words 'as far as may be'. The words 'as far as may be' are not meant to be otiose. Those words are to be understood in the sense in which they best harmonise with the subject matter of the legislation and the object which the Legislature has in view. The Courts would not give an interpretation to those words which would frustrate the purposes of making the Limitation Act applicable to proceedings in the NCLT/NCLAT 'as far as may be'.

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92. The use of words 'as far as may be', occurring in Section 238A of the IBC tones down the rigour of the words 'shall' in the aforesaid Section which is normally considered as mandatory. The expression 'as far as may be' is indicative of the fact that all or any of the provisions of the Limitation Act may not apply to proceedings before the Adjudicating Authority (NCLT) or the Appellate authority (NCLAT) if they are patently inconsistent with some provisions of the IBC. At the same time, the words 'as far as may be' cannot be construed as a total exclusion of the requirements of the basic principles of Section 14 of the Limitation Act, but permits a wider, more liberal, contextual and purposive interpretation by necessary modification, which is in harmony with the principles of the said Section."

55. There is no specific period of limitation prescribed in the Limitation Act, 1963, for an application under the IBC, before the Adjudicating Authority (NCLT). An application for which no period of limitation is provided anywhere else in the Schedule to the Limitation Act, is governed by Article 137 of the Schedule to the said Act. Under Article 137 of the Schedule to the Limitation Act, the period of limitation prescribed for such an application is three years from the date of accrual of the right to apply.

56. There can be no dispute with the proposition that the period of limitation for making an application under Section 7 or 9 of the IBC is three years from the date of accrual of the right to sue, that is, the date of default. In **Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd.**[7] authored by Nariman, J. this Court held:-

"**6.** The present case being "an application" which is filed under Section 7, would fall only within the residuary Article 137."

57. In **B. K. Educational Services Private Limited** (supra), this Court speaking through Nariman, J. held:-

"**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

[7] (2019) 10 SCC 572

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."

58. In **Jignesh Shah v. Union of India**[8] this Court speaking through Nariman, J. reiterated the proposition that the period of limitation for making an application under Section 7 or 9 of the IBC was three years from the date of accrual of the right to sue, that is, the date of default.

59. In **Dena Bank** (supra), this Court relied upon the dictum of P.B. Gajendragadkar, J. in **Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan**[9]**,** and held:-

"31. … Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked.…"

60. It is well settled proposition of law, as laid down in the judgment of this Court in **Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd.** [10] , that limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension in enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced.

61. The judgment in **Babulal Vardharji Gurjar** (supra) was rendered in the facts and circumstances of that case where there were no pleadings at all. As held by this Court in **Dena Bank** (supra), an application under Section 7 of the IBC in statutory form which requires filling in of particulars cannot be judged by the same standards as a plaint or other pleadings in a court of law. Additional affidavits filed subsequent to the filing of the application, by way of additional affidavits or applications would have to be construed as pleadings, as also the documents enclosed with or relied upon in the application made in the statutory format. Furthermore, pleadings can be amended at any time during the pendency of the proceedings.

62. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.

63. In **Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria and Others**[11], this Court held:-

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[8] (2019) 10 SCC 750

[9] AIR 1959 SC 798

[10] (2020) 15 SCC 1

[11] AIR 1961 SC 1236

"6. It is thus clear that acknowledgment as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; **it need not be accompanied by a promise to pay either expressly or even by implication.** The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in Section 19, and there is really no substantial difference between the parties as to the true legal position in this matter."

64. It is well settled that even entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In **Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Anr.** [12] (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of **Bengal Silk Mills Co. v. Ismail Golam Hossain Arif**,[13] and in **Re Pandem Tea Co.** [13] Ltd., the judgment of the Delhi High Court in **South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana**[14] and the judgment of Karnataka High Court in **Hegde Golay Ltd. v. State Bank of India**[15]and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt. In this Case, the Appellant Financial Creditor has not relied on any books of accounts or Balance Sheets of the Corporate Debtor.

65. Section 18 of the Limitation Act speaks of an acknowledgment in writing of liability, signed by the party against whom such property or right is claimed. Even if the writing containing the acknowledgment is undated, evidence might be given of the time when it was signed. The explanation clarifies that an acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. "Signed" is to be construed to mean signed personally or by an authorised agent.

66. An acknowledgement made in writing within the period of limitation extends the period of limitation. In this case, there was no acknowledgement of debt within three years from the period on which the account of the Corporate Debtor was declared NPA or within three years from the date on which the loan facilities were recalled.

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[12] AIR 2021 SC 5249 13 AIR 1962 Cal 115

[13] AIR 1974 Cal 170

[14] ILR (1972) 2 Del 712

[15] ILR 1987 Kar 2673

67. The Adjudicating Authority proceeded on the basis that the offer of settlement made by the Corporate Debtor on 12th December 2018 and rejection thereof by the appellate showed the Corporate Debtor had conceded that there was a continuous cause of action. It is, however, the case of the Appellant Financial Creditor in this appeal that terms of settlement were executed on 20th December 2018 whereby the Corporate Debtor agreed to repay the amount of Rs.24,55,00,000/- within 31st December 2018. The Adjudicating Authority, however, did not refer to any settlement. Nor did it address the question of whether any agreement for repayment of debt came into existence in December 2018 and, if so, whether the agreement would attract Section 25(3) of the Contract Act.

68. The Appellate Tribunal (NCLAT) found that there was no acknowledgement of debt within the period of limitation of three years. Holding the application of the Appellant Financial Creditor, under Section 7 of the IBC, to be barred by limitation, the Appellate Authority (NCLAT) allowed the appeal.

69. The Appellate Tribunal (NCLAT) also did not notice the terms of settlement stated to have been executed on 20th December 2018, possibly because the attention of the NCLAT was not drawn to any terms of the settlement. The Appellate Tribunal (NCLAT) did not, therefore, have the occasion to consider whether Section 25(3) of the Contract Act would be attracted. The Appellate Tribunal (NCLAT), as observed above, proceeded on the basis that the CIRP proceedings were barred by limitation in the absence of any acknowledgement of debt within the period of limitation, and closed the CIRP proceedings in the NCLT, without considering the question of applicability of Section 5 of the Limitation Act for condonation of delay, to proceedings under Section 7 of the IBC.

70. This Court is of the view that the Appellate Tribunal (NCLAT erred in closing the CIRP proceedings without giving the Appellant Financial Creditor the opportunity to explain if there was sufficient cause for the delay in approaching the NCLT. An appeal being the continuation of original proceedings, the provision of Section 7(5)(b) of the IBC, of notifying the Financial Creditor before rejection of a claim, would be attracted. If notified of the proposal to close the proceedings, the Appellant Financial Creditor might have got the opportunity to rectify the defects in its application under Section 7 by filing additional pleadings and/or documents. As held in **Dena Bank** (supra), documents can be filed at any time until the application for CIRP is finally dismissed.

71. The appeal is, therefore, allowed. The impugned judgment and order of the NCLAT is set aside to the extent that the CIRP proceedings have been closed. The Adjudicating Authority shall consider the application for CIRP afresh, in accordance with law, in the light of the observations made above, after giving the Appellant and the Respondent opportunity to file additional affidavits disclosing documents/additional affidavit in response.