REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9198 OF 2019

SESH NATH SINGH & ANR. .....Appellant(s)

versus

BAIDYABATI SHEORAPHULI CO-OPERATIVE BANK LTD AND ANR. .....Respondent(s)

JUDGMENT

Indira Banerjee, J.

This appeal under Section 62 of the Insolvency and Bankruptcy Code 2016, hereinafter referred to as the 'IBC', is against a judgment and order dated 22nd November 2019, passed by the National Company Law Appellate Tribunal (NCLAT), dismissing Company Appeal (AT) (Insolvency) No.672 of 2019, filed by the Appellants, challenging an order dated 25th April 2019, of the National Company Law Tribunal (NCLT), Kolkata Bench, admitting the application filed by the Respondent No.1 as Financial Creditor, under Section 7 of the IBC being CP(IB) No.1202/KB/2018, thereby initiating

the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, Debi Fabtech Private Ltd.

2. The Corporate Debtor was *inter alia* engaged in the business of export of textile and garments. On or about 8th February 2012, the Corporate Debtor requested the Financial Creditor for cash credit facility of Rs.1,00,00,000/- (Rupees One Crore).

3. By a letter of sanction dated 15th February, 2012, the Financial Creditor granted Cash Credit Facility of Rs.1,00,00,000/- to the Corporate Debtor, after which a Cash Credit Account No.482 was opened in the name of the Corporate Debtor. The Corporate Debtor duly executed a hypothecation agreement with the Financial Creditor on 17th February, 2012.

4. According to the Financial Creditor, in May 2012 itself the Corporate Debtor defaulted in repayment of its debt to the Financial Creditor, in terms of cash credit facility granted by the Financial Creditor to the Corporate Debtor. The said Cash Credit Account No.482 became irregular. The Financial Creditor declared the said Account of the Corporate Debtor a Non Performing Asset (NPA) on 31st March 2013.

5. On or about 18th January 2014, the Financial Creditor issued notice to the Corporate Debtor under Section 13(2) of the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 hereinafter referred to, in short as the 'SARFAESI Act', calling upon the Corporate Debtor to discharge in full, its outstanding liability of Rs.1,07,88,536.00 inclusive of interest as on 28.09.2013 to the Financial Creditor within sixty days from the date of notice, failing which action would be taken under Section 13(4) of the said Act.

6. The Corporate Debtor made a representation dated 3.3.2014 to the Financial Creditor under Section 13(3A) of the SARFAESI Act objecting to the notice under Section 13(2) of the SARFAESI Act.

7. By a letter dated 15th July 2014, the Financial Creditor rejected the aforesaid representation of the Corporate Debtor and once again requested Corporate Debtor to clear the outstanding amount of Rs.1,07,88,536.00 as claimed in the notice dated 18th January 2014 under Section 13(2) of the SARFAESI Act, within 15 days from the date of receipt of the said letter, with further interest and other charges till date of payment and to regularize the Cash Credit Account No.482 in order to avail better services from the Financial Creditor.

8. On 13th December 2014, the Financial Creditor issued a notice being Ref No. HC/1180/14-15 dated 13.12.2014 to the Corporate Debtor under Section 13(4)(a) of the SARFAESI Act, calling upon the

Corporate Debtor to handover peaceful possession of the secured immovable assets as detailed in the schedule, failing which the Financial Creditor would be forced to seek the assistance of the District Magistrate, Hooghly for taking possession of the aforesaid secured assets.

9. On or about 19th December 2014, the Corporate Debtor filed writ application in the Calcutta High Court under Article 226 of the Constitution of India being W.P. No.33799 (W) of 2014 *inter alia* challenging the said notices issued by the Financial Creditor under Section 13(2) and 13(4) of the SARFAESI Act.

10. While the said writ petition was pending in the High Court, the Authorized Officer of the Financial Creditor issued a notice dated 24th December 2014, notifying the Corporate Debtor, the guarantors and the public in general, that the Authorized Officer of the Financial Creditor had taken possession of the secured assets of the Corporate Debtor, as specified in the Schedule to the said notice, on 24th December 2014, under Section 13(4) of the SARFAESI Act.

11. On 11th May 2017, the District Magistrate Hooghly issued an order under the SARFAESI Act for possession by the Financial Creditor of the assets of the Corporate Debtor hypothecated to the Financial Creditor.

12. On 24th July 2017, the High Court passed an interim order restraining the Financial Creditor from taking steps against the Corporate Debtor under the SARFAESI Act until further orders. The High Court was of the *prima facie* view that the Financial Creditor being a Cooperative Bank, it could not invoke the provisions of the SARFAESI Act. It appears that the Writ Petition is still pending consideration in the High Court.

13. On or about 10th July 2018, the Financial Creditor filed an application in the Kolkata Bench of NCLT for initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under Section 7 of the IBC.

14. Notice of the petition under Section 7 of the IBC was duly served on the Corporate Debtor. The Corporate Debtor appeared through one Sesh Nath Singh, being the Appellant No.1, and opposed the petition. On behalf of the Corporate Debtor, it was contended that the Writ Petition filed by the Corporate Debtor, challenging the maintainability of the proceedings under the SARFAESI Act, was pending adjudication in the High Court.

15. The maintainability of the application under Section 7 of IBC was also opposed before the NCLT, on the purported ground that a Special Officer had been appointed as Administrator over the Financial Creditor, only to hold elections. Such Special Officer could

not, therefore, initiate any proceeding on behalf of the Financial Creditor. The Corporate Debtor did not oppose the application under Section 7 of the IBC in the NCLT on the ground of the same being barred by limitation.

16. By an order dated 25th April 2019, the Kolkata Bench of NCLT admitted the application filed by the Financial Creditor under Section 7 of IBC, initiated the CIRP, appointed Mr. Animesh Mukhopadhyay as Insolvency Resolution Professional (IRP) and declared a moratorium for the purposes referred to under Section 14 of the IBC.

17. Being aggrieved by the order dated 25th April, 2019 passed by the Kolkata Bench of NCLT, the Corporate Debtor filed an appeal before the NCLAT under Section 61 of the IBC, contending that the application filed by the Financial Creditor should not have been entertained, the same being barred by limitation.

18. It was only in appeal before the NCLAT, that the Corporate Debtor, for the first time contended, that the account of the Corporate Debtor had been declared NPA on 31st March, 2013 whereas the application under Section 7 of IBC had been filed on 27th August, 2018, after almost five years and five months from the date of accrual of the cause of action, and was therefore barred by limitation.

19. After considering the submissions of learned counsel, the NCLAT dismissed the appeal, with the observation that the ground of limitation had been taken by the Corporate Debtor for the first time, in the appeal. There was no finding of the Adjudicating Authority on this issue.

20. The NCLAT examined the issue of limitation and held that the Respondent had *bona fide*, within the period of limitation, initiated proceedings against the Corporate Debtor under the SARFAESI Act and was thus entitled to exclusion of time under Section 14(2) of the Limitation Act. The NCLAT, after exclusion of the period of about three years and six months till the date of the interim order of the High Court, during which the Financial Creditor had been proceeding under SARFAESI Act, found that the application of the Financial Creditor, under Section 7 of the IBC, was within limitation. The appeal was accordingly dismissed.

21. As pointed out by Mr. Sai Deepak appearing for the Financial Creditor, the Financial Creditor had, in its application filed in the NCLT under Section 7 of the IBC, enclosed a synopsis of relevant facts and significant dates, with supporting documents, which included the date of sanction of the loan, the date when the Cash Credit Account was declared NPA, the dates of the Demand Notice under Section 13(2) of the Act and the notice under Section 13(4), notice of date of possession under Section 13(4), the date on which possession order

was issued by the District Magistrate, Hooghly, West Bengal and the date of the interim order of the High Court.

22. The relevant dates reveal that the Cash Credit Account of the Corporate Debtor was declared NPA with effect from 31st March, 2013. Proceedings under the SARFAESI Act commenced on 18th January 2014, when a Demand Notice was issued under Section 13(2) of the SARFAESI Act. In other words, proceedings were initiated under the SARFAESI Act, 2002, approximately 9 months and 18 days after the date of accrual of the right to issue. The proceedings under the SARFAESI Act, 2002 were stayed by the Calcutta High Court, by an order dated 24th July 2017, on the ground of want of jurisdiction. About 11 months thereafter, while the writ petition filed by the Corporate Debtor was still pending in the High Court, and the interim stay of SARFAESI Act proceedings still continuing, the Financial Creditor initiated the application under Section 7 of the IBC.

23. Mr. Siddhartha Dave appearing on behalf of the Appellant submitted that the application of the Financial Creditor, under Section 7 of IBC, was barred by limitation and should have been dismissed on that ground.

24. Mr. Dave argued that the judgment and order under appeal was contrary to the law as declared by a larger Bench of the NCLAT in Company Appeal (AT) (Insolvency) No. 1121 of 2019 titled ***Ishrat Ali***

v. Cosmos Cooperative Bank Limited and Anr., where the NCLAT held that in an application under Section 7 of the IBC, the applicant is not entitled to the benefit of Section 14 of the Limitation Act, 1963 in respect of proceedings under the SARFAESI Act.

25. In the aforesaid case, the NCLAT held:-

> "*21. An action taken by the 'Financial Creditor' under Section 13(2)or Section 13(4) of the 'SARFAESI Act, 2002' cannot be termed to be a civil proceeding before a Court of first instance or appeal or revision before an Appellate Court and the other forum. Therefore, action taken under Company Appeal (AT) (Insolvency) No. 1121 of 2019 Section 13(2) of the 'SARFAESI Act, 2002' cannot be counted for the purpose of exclusion of the period of limitation under Section 14(2) of the Limitation Act, 1963.*
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> *In an application under Section 7 relief is sought for resolution of a 'Corporate Debtor' or liquidation on failure. It is not a money claim or suit. Therefore, no benefit can be given to any person under Section 14(2), till it is shown that the application under Section 7 was prosecuting with due diligence in a court of first instance or of appeal or revision which has no jurisdiction.*
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> *22. The decision rendered in "Sesh Nath Singh & Ors. v. Baidyabati Sheoraphuli Cooperative Bank Ltd." (Supra) thereby cannot be held to be a correct law laid down by the Bench.*
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> *23. In the present case, the account of the 'Corporate Debtor' was classified as NPA on 30th March, 2014. Thereafter, on 6th December, 2014, Demand Notice under Section 13(2) of the 'SARFAESI Act, 2002' was issued by the Respondent- 'Cosmos Co-operative Bank Ltd.' The Bank also initiated Arbitration under Section 84 of the Multi-State Cooperative Societies Act on 4th December, 2015. The Bank had also taken possession of the movable assets under Section 13(4) of the 'SARFAESI Act, 2002' as back as on 16th January, 2017.*
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> *24. In the circumstances, instead of remitting the case to the Bench, we hold that application under Section 7 filed by the 'Cosmos Co- Company Appeal (AT) (Insolvency) No. 1121 of 2019 Operative Bank Limited' was barred by limitation. We, accordingly, set aside the impugned order dated 23rd September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai."*

26. Mr. Dave submitted that the account of Corporate Debtor with the Financial Creditor had been declared Non-Performing Asset (NPA)

on 31st March, 2013. The cause of action thus accrued on 31st March 2013. The period of 3 years expired on 31st March, 2016. Mr. Dave argued that the application under Section 7 of the IBC, filed before the NCLT on 10th July, 2018, after five years and three months from the date of declaration of the account of the Corporate Debtor as NPA, was fatally time barred.

27. Mr. Dave further submitted that the Financial Creditor had not filed any application before the NCLT under Section 5 of the Limitation Act. The delay in filing the application under Section 7 of the IBC, could not, therefore, have been condoned.

28. Mr. Dave submitted that if the Corporate Debtors were unsuccessful before the High Court, the Financial Creditor which is in possession of the secured property, would be free to deal with it in a manner prescribed by law, to secure the defaulted amount. However, if the Financial Creditor is permitted to proceed with its time barred claim before the NCLT, the Corporate Debtor would have to contest proceedings in two different Forums, for the same defaulted amount. In the context of his submissions, Mr. Dave referred to the judgment of this Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***[1],

29. Mr. Dave drew our attention to a recent judgment of this Court

1. (2018) 1 SCC 353

dated 21st January, 2021 in Civil Appeal 4221 of 2020 in ***M/s. Reliance Asset Reconstruction Company Limited v. M/s. Hotel Poonja International Private Limited***[2], where this Court observed:-

> *"In **Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited** reported in (2019) 12 SCC 697, this Court followed its earlier judgment in **Mobilox Innovations Private Ltd. (supra)** and observed as hereunder:-*
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> > *"In a recent judgment of this Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353, this Court has categorically laid down that IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked……."*

30. Mr. Dave emphatically argued that the NCLT/NCLAT considering an application under Section 7 of the IBC, not being a forum for recovery of debt, Section 14 of the Limitation Act would not apply, as held by the larger Bench of NCLAT in ***Ishrat Ali's*** case.

31. Mr. Dave finally argued that, in any case, Section 14 of the Limitation Act could only be attracted, if any earlier proceedings initiated by the applicant were dismissed for want of jurisdiction, or other cause of like nature. Referring to the Explanation in section 14(2) of the Limitation Act, Mr. Dave argued that, since the proceedings initiated by the Financial Creditor under SARFAESI Act were still pending, it was not open to the Financial Creditor to take the benefit of Section 14(2) of the Limitation Act, 1963. The explanation in Section 14 of the Limitation Act, is extracted

hereinbelow:

2. 2020 SCC Online NCLAT 920

"Explanation: for the purposes of this section,-
(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;"

32. The IBC was enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of *inter alia* corporate persons in a time-bound manner, for maximisation of the value of assets of such corporate bodies, to promote entrepreneurship, availability of credit and to balance the interests of all stakeholders.

33. Prior to enactment of IBC, there was no single law in India that dealt with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy of companies were to be found in the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to in short as "SICA", the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, now known as the Recovery of Debts and Bankruptcy Act, 1993, and hereinafter referred to as the "Debt Recovery Act", the SARFAESI Act, and the Companies Act, 2013.

34. These statutes provided for multiple forums, such as the Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies was handled by the High Courts under the provisions of Sections 271 and 272 of the Companies Act, 2013 corresponding to Sections 433, 434 and 439 of the Companies Act, 1956. Individual bankruptcy and

insolvency was dealt with under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, which have been repealed by the IBC.

35. As stated in its Object and Reasons, the objective of the IBC is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner, for maximization of the value of the assets of such persons, to promote entrepreneurship, availability of credit and to balance the interest of all the stakeholders. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also ease business, and facilitate more investments leading to higher economic growth and development. The IBC seeks to designate the NCLT and DRT as the Adjudicating Authorities for resolution of insolvency, liquidation and bankruptcy.

36. Section 6 of the IBC provides that, when any corporate debtor commits a 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 such manner as provided in Chapter II of the IBC. The *sine qua non* for initiation of the corporate insolvency resolution process is the occurrence of default.

37. Section 7 of the IBC provides as follows:

*"**7. Initiation of corporate insolvency resolution process by financial creditor**.—(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6-A) of Section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), 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 under sub -section (3):

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) 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 clause (b) of sub-section (5), 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.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

38. A financial creditor may either by itself or jointly with other financial creditors, as may be notified by the Government, file an application for initiation of the corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, when a default has occurred. The trigger point for an application under Section 7 of the IBC is the occurrence of a default. The restrictions stipulated in the three provisos to Section 7 are not applicable in this case.

39. As observed by this Court (*Rohinton Nariman, J.*) in ***Innoventive Industries Limited v. ICICI Bank and Another***[3], the scheme of the IBC is to ensure that when a default takes place, in the sense that the debt becomes due and is not paid, the insolvency

3. (2018) 1 SCC 407

resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt, once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).

40. In ***Innoventive Industries Limited*** (supra), this Court further held that a debt may not be due if it is not payable in law or in fact. In the case of a corporate debtor, who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the financial creditor, to satisfy itself that a default has occurred. It is of no matter that the debt is disputed, so long as the debt is, "due" i.e. payable, unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the Adjudicating Authority that the Adjudicating Authority may reject an application and not otherwise.

41. The judgment of this Court in ***Mobilox Innovations Private Limited*** (supra) was rendered in the context of an application for initiation of Corporate Insolvency Resolution Process by an operational creditor, under Section 9 of the IBC.

42. Noticing the difference between Section 7 and Section 9 of the IBC, this Court held:-

> ***51.*** *It is clear, therefore, that once the operational creditor has filed an*

application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

43. In enacting the IBC, the legislature has, in its wisdom, differentiated between an application for initiation of corporate insolvency resolution process by a financial creditor, which is filed under Section 7 of the IBC, and an application for initiation of insolvency resolution process by an operational creditor, which is under Section 9 of the IBC, set out hereinbelow:-

***9. Application for initiation of corporate insolvency resolution process by operational creditor**.—(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of Section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of Section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.*

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub- clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from date of admission of the application under sub-section (5) of this

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44. Under Section 9(5)(i)(d) of the IBC, the Adjudicating Authority has to reject an application made by an operational creditor, if notice of dispute has been received by the operational creditor and there is no record of dispute in the information utility. There is no such provision in section 7 of the IBC.

45. The Limitation Act 1963, has been enacted to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The Limitation Act applies to "suits and other proceedings and for purposes connected therewith" as stated in its preamble. The expression "other proceedings" are necessarily proceedings arising out of and/or related to suits.

46. In ***K. Venkateswara Rao And Anr. v. Bekkam Narasimha Reddi & Ors***[4]***,*** this Court held that the Limitation Act did not apply to an election petition under the Representation of People Act, 1950, which is a complete Code. In ***Nityananda M. Joshi and Others v. The Life Insurance Corporation of India and others***[5]***,*** a three Judge Bench of this Court speaking through Sikri, J. held that Article

137 of the Limitation Act only contemplates applications to Courts.

47. Various statutes have, however, adopted the provisions of the Limitation Act, by incorporation or reference, either in its entirety or

to a limited extent. For example, Section 37 of the Arbitration Act,

4 AIR 1969 SC 872
5 (1969) 2 SCC 199

1940 provided that all the provisions of the Indian Limitation Act, 1908 would apply to arbitrations as they applied to proceedings in Court. Section 433 of the Companies Act, 2013 provides that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

48. The insolvency Committee of the Ministry of Corporate Affairs, Government of India, in a report published in March 2018, stated that the intent of the IBC could not have been to give a new lease of life to debts which were already time barred. Thereafter Section 238A was incorporated in the IBC by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (Act 26 of 2018), with effect from 6th June 2018. Section 238A 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."*

49. The language and tenor of Section 238A is significant. The Section reads that the provisions of the Limitation Act, 1963 shall, **as far as may be,** apply to proceedings or appeals *inter alia* before the NCLT/NCLAT.

50. Section 238 gives overriding effect to the IBC, notwithstanding anything inconsistent therewith contained in any other law, for the time being in force, or any instrument having effect, by virtue of any

such law.

51. There is no specific period of limitation prescribed in the Limitation Act, 1963 for an application under the IBC before the NCLT. An application for which no period of limitation is provided anywhere else in the Schedule, is governed by Article 137 of the Schedule to the Limitation 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.

52. 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. And Anr.***[6]***,*** this Court held:-

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

53. Section 5 of the Limitation Act provides that 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 of limitation, 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. The explanation

6. (2019) 10 SCC 572

in Section 5 of the Limitation Act clarifies that, the fact that the appellant or the applicant may have been 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.

54. In ***B.K. Educational Services Private Limited v. Parag Gupta and Associates***[7], this Court 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 in-ception of the Code, Article 137 of the Limitation Act gets at-tracted. "The right to sue", therefore, accrues when a default oc-curs. 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."*

55. In ***Radha Export (India) Private Limited v. K.P. Jayaram and Anr.***[8], this Court referred to ***B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*** (supra) and held the application under Section 7 of the IBC to be barred by limitation.

56. In ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium In-dustries Pvt. Ltd. and another***[9]***,*** this Court held that limitation of three years as provided by Article 137 of the Limitation Act, which commenced from the date of the default, was extendable under Section 5 of the Limitation Act.

7. (2019) 11 SCC 633
8. (2020) 10 SCC 538
9. (2020) 15 SCC 1

57. The issues involved in this appeal are:-

(i) Whether delay beyond three years in filing an application under Section 7 of IBC can be condoned, in the absence of an application for condonation of delay made by the applicant under Section 5 of the Limitation Act, 1963?

(ii) Whether Section 14 of the Limitation Act, 1963 applies to applications under Section 7 of the IBC? If so, is the exclusion of time under Section 14 is available, only after the proceedings before the wrong forum terminate?

58. For the sake of convenience, and to avoid prolixity and unnecessary repetition, all the aforesaid issues are dealt with together. Section 238A of the IBC provides that the provisions of the Limitation Act shall, as far as may be, apply to proceedings before the Adjudicating Authority(NCLT) and the NCLAT.

59. 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 Private Limited v. Parag Gupta Associates and Ors.*** (supra) the NCLT/NCLAT has the discre-tion 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.

60. In ***Ramlal Motilal and Chhotelal v. Rewa Coalfields Ltd.***[10] this Court affirmed the view taken by Madras High Court in ***Krishna v. Chattappan***[11] and held that Section 5 of the Limitation Act gives the Courts a discretion, which is to be exercised in the way in which judicial power and discretion ought to be exercised, upon principles which are well understood. The expression 'sufficient cause' should be construed liberally to advance substantial justice, as held by this Court, *inter alia*, in ***Shakuntla Devi Jain vs. Kuntal Kumar***[12] and in

State of West Bengal v. Administrator, Howrah Municipality and Others[13].

61. 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 dependent upon facts of each case. There cannot be any straight jacket formula for accepting or rejecting the explanation furnished by the applicant/appellant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.

62. It is true that a valuable right may accrue to the other party

10. AIR 1962 SC 361
11. 1890 ILR Mad 269
12. AIR 1969 SC 575
13. (1972) 1 SCC 366

by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hyper technical view of the matter, causing thereby irreparable loss and injury to the party against whom the lis terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.

63. 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. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.

64. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would

have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the

application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the

appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.

65. As observed above, Section 238A makes the provisions of the Limitation Act applicable to proceedings under the IBC before the Adjudicating authority and the Appellate Authority (NCLAT) 'as far as may be'. Section 14(2) of the Limitation Act which provides for exclusion of time in computing the period of limitation in certain circumstances, provides as follows:

> *"14. Exclusion of time of proceeding bona fide in court without jurisdiction.* —
>
> *(1) …..*
>
> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such*

proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

66. Similarly under Section 18 of the 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 of a fresh period of limitation, from the date on which the acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires.

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

68. We see no reason why Section 14 or 18 of the Limitation Act, 1963 should not apply to proceeding under Section 7 or Section 9 of the IBC. Of course, Section 18 of the Limitation Act is not attracted in this case, since the impugned order of the NCLAT does not proceed on the basis of any acknowledgment.

69. In ***M/s. Reliance Asset Reconstruction Company Ltd.*** (supra), the petition under Section 7 of the IBC, filed by the Financial Creditor in July 2018 was found, on facts, to be hopelessly barred by limitation, as the account of the Corporate Debtor had been declared NPA in 1993, after which recovery proceedings had been initiated, a Recovery Certificate issued in 2003 and amended in 2001. This Court found that the documents relied upon by the Financial Creditor to claim the benefit of Section 18 of the Limitation Act, could not be con-strued as admission or acknowledgment of liability.

70. Section 14 (2) of the Limitation Act provides that in computing the period of limitation for any application, the time during which the petitioner had been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance, or of appeal or revision, against the same party, for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it. The conditions for exclusion are that the earlier proceedings should have been for the same relief, the proceedings should have been prosecuted diligently and in good faith and the proceedings should have been prosecuted in a forum which, from defect of jurisdiction or other cause of a like nature, was unable to entertain it.

71. In ***State of Goa v. Western Builders***[14], this Court held that Section 14 of the Limitation Act would apply to an application for setting aside of an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 by virtue of Section 43 of the said Act, which made the Limitation Act applicable to arbitrations as it applies to proceedings in Court. This Court found that in the absence of any provision in the Arbitration and Conciliation Act, 1996 excluding the applicability of Section 14, a party was legitimately entitled to exclusion of the time spent in *bona fide* prosecution of proceedings with due diligence in a wrong forum. Distinguishing the earlier judgment of this Court in ***Union of India v. Popular Construction Co.***[15]***,*** the Court held that exclusion of time under Section 14 of the Limitation Act in computation of limitation was different from condonation of delay under Section 5 of the said Act.

72. In ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Ors.***[16], a three-Judge Bench of this Court unanimously held that in the absence of any provision in the Arbitration and Conciliation Act, 1996 which excluded the applicability of Section 14 of the Limitation Act, there was no reason why Section 14 of the Limitation Act should not apply to an application for setting aside an arbitral award. This Court held:

> *"**19.** A bare reading of sub -section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside*

14 (2006) 6 SCC 239
15 (2001) 8 SCC 470
16 (2008) 7 SCC 169

the award on the grounds mentioned in sub-section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the court.

20. *Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.*

21. *Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:*

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court.

22. *The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded."*

73. In his separate concurring judgment Raveendran, J. said:-

"52. *Section 14 of the Limitation Act relates to exclusion of time of proceeding bona fide in court without jurisdiction.*

……..

53. *Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to*

period of extension, ***and has the effect of excluding Section 5 alone of the Limitation Act.****"*

74. As held by this Court in ***Commissioner, M.P. Housing Board and Ors. v. Mohanlal & Co.,***[17], Section 14 of the Limitation Act has to be interpreted liberally to advance the cause of justice. Section 14 would be applicable in cases of mistaken remedy or selection of a wrong forum.

75. There can be little doubt that Section 14 applies to an application under Section 7 of the IBC. At the cost of repetition, it is reiterated that the IBC does not exclude the operation of Section 14 of the IBC. The question is whether prior proceedings under the SARFAESI Act do not qualify for the exclusion of time under Section 14, inasmuch as they are not civil proceedings in a Court, as argued by Mr. Dave.

76. Even if it were to be held that the benefit of Section 14 would be available to an applicant under IBC, for proceedings initiated *bona fide* and prosecuted with due diligence under the SARFAESI Act, another question raised in this appeal is, whether exclusion of time under Section 14 of the Limitation Act, would only be available if the proceedings which could not be entertained for defect of jurisdiction, or other cause of a like nature, had ended, in view of the Explanation at the end of Section 14, which says that for the purposes of the said Section, the day on which the earlier proceeding was instituted and

17. (2016) 14 SCC 199

the day on which it ended shall both be counted for exclusion of time. Much emphasis has been placed by Mr. Dave on the explanation at the end of Section 14, to argue that the Financial Creditor would not be entitled to the benefit of Section 14 of the Limitation Act since the proceedings under the SARFAESI Act are still pending, as also the writ petition in the High Court.

77. Section 14 of the Limitation Act is to be read as a whole. A conjoint and careful reading of Sub-Sections (1), (2) and (3) of Section 14 makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain the same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of the time during which the applicant had been prosecuting such proceeding, in computing the period of limitation. The substantive provisions of Sub-sections (1), (2) and (3) of Section 14 do not say that Section 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith.

78. In ***Bihta Co-operative Development Cane Marketing Union Ltd. and Anr. v. Bank of Bihar and Ors.***[18], this Court held that the explanation must be read so as to harmonize with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

18 AIR 1967 SC 389

79. As held in ***S. Sundaram Pillai and Others v. V.R. Pattabiraman and Others***[19]***,*** it is well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but is meant to explain or clarify certain ambiguities, which may have crept into statutory provisions.

80. In ***Sundaram Pillai*** (supra), this Court referred to *Sarathi's Interpretation of Statutes; Swarup's Legislation and Interpretation, Interpretation of statues (5th edition) by Bindra* as also various judgments of this Court including those referred to above and held:-

> *"**53.** Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is—*
>
> *"(a) to explain the meaning and intendment of the Act itself,*
>
> *(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,*
>
> *(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*
>
> *(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*
>
> *(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."*

81. In our considered view, Explanation (a) cannot be construed in a narrow pedantic manner to mean that Section 14 can never be

19 (1985) 1 SCC 591

invoked until and unless the earlier proceedings have actually been terminated for want of jurisdiction or other cause of such nature. Explanation (a), which is clarificatory, only restricts the period of exclusion to the period between the date of initiation and the date of termination. An applicant cannot claim any further exclusion.

82. To cite an example, if a party were to file a suit in a wrong forum, to enforce payment of money secured by a mortgage or charge upon immovable property, for which the prescribed period of limitation is twelve years, after expiry of three years from the date of accrual of the right to sue, and then file an application under Section 7 of the IBC after dismissal of the suit for want of jurisdiction, that application under Section 7 of the IBC would be time barred since such party would not be entitled to exclusion of any period of time beyond the date of institution and date of termination of the earlier proceeding. If after exclusion of the time between the initiation and termination of the proceedings instituted *bona fide* and in good faith and prosecuted with due diligence, an application was still beyond three years, Section 14 would not help save limitation.

83. To cite another example, if civil proceedings were initiated in a wrong forum in good faith and prosecuted with due diligence, but after the proceedings ended, time was wasted by making frivolous, meritless applications, the applicant would only be entitled to exclusion of time from the date of initiation till the end of the

proceedings initiated in good faith and *bona fide* and pursued diligently, and no more. The applicant would not be entitled to exclusion of any further time spent in pursuing frivolous further proceedings, or otherwise.

84. To sum up, Section 14 excludes the time spent in proceeding in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction, or other such cause. Where such proceedings have ended, the outer limit to claim exclusion under Section 14 would be the date on which the proceedings ended.

85. In the instant case, the proceedings under the SARFAESI Act may not have formally been terminated. The proceedings have however been stayed by the High Court by an interim order, on the *prima facie* satisfaction that the proceedings initiated by the financial creditor, which is a cooperative bank, was without jurisdiction. The writ petition filed by the Corporate Debtor was not disposed of even after almost four years. The carriage of proceedings was with the Corporate Debtor. The interim order was still in force, when

proceedings under Section 7 of the IBC were initiated, as a result of which the Financial Creditor was unable to proceed further under the SARFAESI Act.

86. In the instant case, even if it is assumed that the right to sue accrued on 31.3.2013 when the account of Corporate Debtor was

declared NPA, the financial creditor initiated proceedings under SARFAESI Act on 18th January 2014, that is the date on which notice under Section 13(2) was issued, proceeded with the same, and even took possession of the assets, until the entire proceedings were stayed by the High Court by its order dated 24th July 2017. The proceedings under Section 7 of the IBC were initiated on 10th July 2018.

87. In our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the initiation of proceedings under the SARFAESI Act could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act till the date of filing of the application under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High Court staying the proceedings under the SARFAESI Act, on the *prima facie* ground of want of jurisdiction is excluded, the proceedings under Section 7 of IBC are still within limitation of three years.

88. An Adjudicating Authority under the IBC is not a substitute forum for a collection of debt in the sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time barred. The Adjudicating Authority does not resolve disputes, in

the manner of suits, arbitrations and similar proceedings. However, the ultimate object of an application under Section 7 or 9 of the IBC is the realization of a 'debt' by invocation of the Insolvency Resolution Process. In any case, since the cause of action for initiation of an application, whether under Section 7 or under Section 9 of the IBC, is default on the part of the Corporate Debtor, and the provisions of the Limitation Act 1963, as far as may be, have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation.

89. To quote V. Sudhish Pai from his book '*Constitutional Supremacy - A Revisit' "Judgments and observations in judgments are not to be read as Euclid's theorems or as provisions of statute. Judicial utterances/pronouncements are in the setting of the facts of a particular case. To interpret words and provisions of a statute it may become necessary for judges to embark upon lengthy discussions, but such discussion is meant to explain not define. Judges interpret statutes, their words are not to be interpreted as statutes."*

90. As observed above, unlike statutes like the Arbitration Act, 1940 and the Arbitration and Conciliation Act 1996, which make the provisions of the Limitation Act, as they apply to Court proceedings, also applicable to arbitration proceedings, Section 238A of the IBC

makes the Limitation Act applicable to proceedings in NCLT/NCLAT 'as far as may be' and/or in other words, to the extent they may be applied.

91. Legislature has in its wisdom chosen not to make the provi-sions 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'.

92. In other words, the provisions of the Limitation Act would ap-ply *mutatis mutandis* to proceedings under the IBC in the NCLT/NCLAT. To quote Shah J. in ***New India Sugar Mill Limited v. Commissioner of Sales Tax, Bihar***[20] , "It is a recognised rule of in-terpretation of statutes that expression used therein should ordinarily be understood in a sense in which they best harmonise with the ob-ject of the statute, and which effectuate the object of the Legisla-ture".

93. As held by this Court in ***Busching Schmitz Private Ltd. v. P.T. Menghani***[21], the Court should adopt an object oriented ap-

20 AIR 1963 SC 1207 (P.1213)
21 AIR 1977 SC 1569

proach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits. Needless to mention that the object oriented approach cannot be carried to the extent of doing violence to the plain language used, by rewriting the section or substituting words in place of the actual words used by Legislature.

94. 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 provi-sions 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 to-tal 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.

95. If, in the context of proceedings under Section 7 or 9 of the IBC, Section 14 were to be interpreted with rigid and pedantic adherence to its literal meaning, to hold that only civil proceedings in Court would enjoy exclusion, the result would be that an applicant would not even be entitled to exclusion of the period of time spent in

bona fide invoking and diligently pursuing an earlier application under the same provision of IBC, for the same relief, before an Adjudicating Authority, lacking territorial jurisdiction This could not possibly have been the legislative intent.

96. In our considered opinion, the judgment of the NCLAT in the case of ***Ishrat Ali*** is unsustainable in law. The proceedings under the SARFAESI Act, 2002 are undoubtedly civil proceedings. In ***S.A.L. Narayan Rao and Anr. v. Ishwarlal Bhagwandas and Anr.***[22], the Constitution Bench of this Court held:-

> *"…..The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal. But there is no warrant for the view that from the category of civil proceedings, it was intended to exclude proceedings relating to or which seek relief against enforcement of taxation laws of the State."*

97. On a parity of reasoning, there is no rationale for the view that the proceedings initiated by a secured creditor against a borrower under the SARFAESI Act for taking possession of its secured assets,

22. AIR 1965 SC 1818

were intended to be excluded from the category of civil proceedings. In this context, reference may be made to the judgment of this Court in ***United Bank of India v. Satyawati Tandon and Ors.***[23] cited by Mr. Deepak Sai, where this Court observed:

> ***"11.*** *….The Government of India accepted the recommendations of the two Committees and that led to enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), which can be termed as one of the most radical legislative measures taken by Parliament for ensuring that dues of secured creditors including banks, financial institutions are recovered from the defaulting borrowers without any obstruction. For the first time, the secured creditors have been empowered to take steps for recovery of their dues without intervention of the courts or tribunals."*

98. Even though Section 13 of the SARFAESI Act enables a secured creditor to enforce security interest created in its favour, without the intervention of the Court or Tribunal, the SARFAESI Act does not exclude the intervention of Courts and/or Tribunals altogether. Some relevant provisions of the SARFAESI Act are set out hereinbelow:

> *"14.* ***Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset****.—(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him—*
>
> *(a) take possession of such asset and documents relating thereto; and*
> *(b) forward such asset and documents to the secured creditor: Provided that any application by the secured creditor shall be accompanied by an*

23. (2010) 8 SCC 110

affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii)the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii)the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii)above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount; (v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section

(4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days. Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act. (1A) The District Magistrate or the Chief

Metropolitan Magistrate may authorise any officer subordinate to him,— (i)to take possession of such assets and documents relating thereto; and (ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate1 [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.

17. ***Application against measures to recover secured debts.****—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed,]to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:*

…….

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section

(4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-

section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause

(b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

***18. Appeal to Appellate Tribunal**.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed]to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.*

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower: Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less: Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

> *(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.*

99. The Chief Metropolitan Magistrate or the Judicial Magistrate, as the case may be, exercising powers under Section 14 of the SARFAESI Act, functions as a Civil Court/Executing Court. Proceedings under the SARFAESI Act would, therefore, be deemed to be civil proceedings in a Court. Moreover, proceedings under the SARFAESI Act under Section 13(4) are appealable to the DRT under Section 18 of the SARFAESI Act. Mr. Dave's argument that proceedings under the SARFAESI Act would not qualify for exclusion under Section 14 of the Limitation Act, because those proceedings were not conducted in a Civil Court, cannot be sustained.

100. Another civil proceeding whether in a Court of first instance or of appeal or revision, against the party, for the same relief, would have to be construed to include any civil Proceeding in a forum, whether of first instance, or appellate, or revisional, against the same party for similar relief, more so, having regard to the language and tenor of Section 238A of the Limitation Act which applies the provisions of the Limitation Act "as far as may be", to proceedings in the NCLT/NCLAT.

101. In our considered view, keeping in mind the scope and ambit of proceedings under the IBC before the NCLT/NCLAT, the expression 'Court' in Section 14(2) would be deemed to be any forum for a civil proceeding including any Tribunal or any forum under the

SARFAESI Act.

102. In any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause'. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay.

103. In our considered opinion, the NCLAT rightly refused to stay the proceedings before the NCLT. The judgment and order of the NCLT does not warrant interference. This appeal is accordingly dismissed.

.....J.
[INDIRA BANERJEE]

.....J.
[HEMANT GUPTA]

NEW DELHI
March 22, 2021