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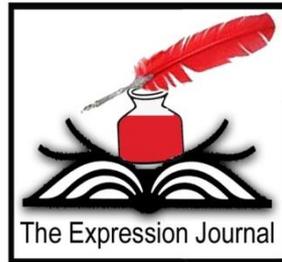
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LIMITATION UNDER INSOLVENCY AND BANKRUPTCY CODE 2016

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Abstract

Applicability of provisions of Limitation Act, 1963 in the Insolvency and Bankruptcy Code, (“IBC”) 2016 proceedings play a very important role to understand the time limitation of all the proceedings in the initiation of the corporate insolvency resolution process (“CIRP”) under section 7 and 9 of IBC which is based on time-barred debt. The code doesn’t give a new lease of life to debts that are time-barred and could not be considered by National Company Law Tribunal (“NCLT”) / National Company Law Appellate Tribunal (“NCLAT”). However, various ambiguities gradually being resolved by delivering judicial pronouncements from time to time. Before the applicability of the Limitation Act in IBC, various questions were raised on time-barred debts and NCLAT held that the limitation act does not apply to the IBC, 2016. Hence, this question first came in the case of ‘*M/s Neelkanth Township and Construction Pvt. Ltd. Vs Urban Infrastructure Trustees Limited*’ [Com Appeal (AT) (Ins.) No. 44 of 2017] wherein NCLAT has categorically held that Limitation Act 1963 is not applicable to the IBC, 2016 for the reason that the code is not meant for recovery claim but to initiate CIRP.

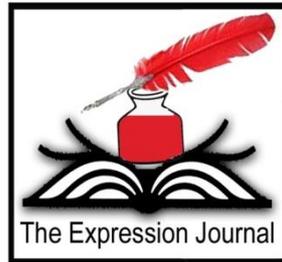
Keywords

Limitation Act, Insolvency and Bankruptcy Code (IBC), Corporate Insolvency Resolution Process (CIRP), COVID -19.

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INTRODUCTION

Ultimately, Section 238A was inserted by the IBC (Second Amendment) Act, 2018, w.e.f. 06.06.2018 through the judgment passed by the Supreme Court in the matter of '*B.K. Education Services Pvt. Ltd. Vs/ Parag Gupta and Associates*' [(2019) 11 SCC 633] wherein Supreme Court acknowledged the question of applicability of the Limitation Act in Insolvency and Bankruptcy Code, 2016 and held that the Limitation Act, 1963 applies to applications filed under Section 7 and 9 of the IBC from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore accrues when a default occurs i.e., if a default has occurred over 3 years prior to the date of filing of the application, the application would be barred under Article 137. Section 5 of the Limitation Act may be applied to condone the delay in filing such an application.

Section 238A: "The provisions of Limitation Act, 1938 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 Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

Hence, Section 238A of the IBC clearly stated that the provisions of the Limitation Act would apply to the proceedings or appeals before the NCLT, NCLAT, Debt Recovery Tribunal ("DRT") & Debt Recovery Appellate Tribunal ("DRAT").

Further, it is held very clear that Limitation Act cannot be made applicable for CIRP under Section 10 of the Code, as such applications do not carry specific claims or debt, the same being voluntary.

LANDMARK JUDGEMENTS BY SUPREME COURT ON LIMITATION:

- The NCLAT in a landmark judgment was faced with the question of Whether Article 1 of the Limitation Act, 1963 applies to proceedings under IBC in the matter of '*S.M. Ghoghai vs. Schedulers Logistics India Pvt. Ltd.*' [Com. Appeal (AT) Ins. No. 281 of 2022]. In the said decision, the Principal Bench held that Article 1 of the Limitation Act is not applicable to the Appellant filed under Section 9 of the code on dated 24th Oct 2019 for the reason that the

Application was based on 174 invoices on which payment is claimed are more than 3 years earlier from the date of filing application under section 9 of the Code.

The NCLAT observed: “Article 1 deals with suits relation to accounts, and an application under section 9 of the Code cannot be said to suit relating to accounts. Whereas the Limitation works as per Article 137 will begin to run from the date when the right to apply accrues in case of Application filed under section 9 of the Code.”

- The Supreme Court on limitation passed further judgment in the matter of **‘Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd & Ors.’ [Civil Appeal No. 6347 of 2019]** wherein the Corporate Debtor was declared as an NPA (non-performing assets) and the application was filed under section 7 of the code. It was held by the court that as per Article 137 of the Limitation Act, three years will be applicable from the date of default occurs to initiate the CIRP. It would be extendable under section 5 only if the application for condonation of delay was made so. It was further stated that the limitation period can be extended under Section 18 of the Limitation Act, but it extends only to the recovery actions and not to initiate of the CIRP.

However, NCLAT in the case of **‘Jagdish Prasad Sarada vs. Allahabad Bank’ [Com. Appeal (AT) (Ins.) No. 183 of 2020]**. Also stated that delay can only be condoned if an application under section 5 of Limitation Act is made and not through Section 18.

- The Supreme Court in the cases of **‘Laxmi Pat Surana vs. Union of India & Anr.’ [Civil Appeal No. 2734 of 2020]** has resolved the issue of the applicability of Section 18 of the Limitation Act, 1963 to the application made to initiation of CIRP under Sections 7 and 9 of the Code. In this case, the Hon’ble Supreme Court held that Section 18 of the Limitation Act starts a fresh period of limitation from the date when the acknowledgment of liability was so signed by the principal borrower or corporate debtor before the expiration of the prescribed period of limitation.
- The Hon’ble Supreme Court vide its Judgement in the matter of **‘State Bank of India vs. Krishidhan Seeds Pvt. Ltd’ [Civil Appeal No. 910 of 2021]** deals with the applicability of section 18 of Limitation Act to IBC Proceedings, wherein in this case NCLT rejected the application filed under section 7 of the Code on the ground of limitation i.e., beyond the period of 3 years as balance sheet cannot be treated as an acknowledgment of liability under section 18 of Limitation Act. While NCLAT also held that as per Section 18 of the Limitation Act effect of acknowledgment in writing was not available and limitation will only be calculated in accordance with Article 137 of the Limitation Act.

Hence, the Supreme Court observed that section 18 and made it applicable to proceedings under IBC as an acknowledgment in a balance sheet without qualification can furnish a legitimate basis for determining whether the period of limitation would stand extended, so long as the acknowledgment was within a period of three years from the original date of default. Moreover, the Appellant has relied upon documentary material to indicate that the acknowledgments of liability were made within a period of 3 years from the date of default.

- The Hon’ble Supreme Court passed a judgment on how to calculate the limitation period for proceedings under IBC in the matter of **‘V Nagarajan vs. SKS Ispat & Power Ltd. & Ors.’ [Civil Appeal No. 3327 of 2020]** where the Supreme Court answered two issues (i). when will the time for calculating the limitation period run to initiate the proceedings under the IBC, and (ii) Whether the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC and held that It is not open to a person

aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such construction will upset the timely framework of the IBC. The litigant has to file its appeal within the period of Thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause.

- Recently, the Hon'ble Supreme Court in a landmark judgement in the matter of '*Prakash Corporates vs Dee Vee Projects Limited.*' [Civil Appeal No(s). 1318 of 2022] wherein the appellant failed to submit the written statement within the prescribed time limit as per Order VII Rule 1 of CPC due to challenges faced by the country and difficulties of the litigants due to COVID- 19 Pandemic. However, Firstly Commercial Court of Chhattisgarh rejected the appeal of Appellant, then high court rejected the WP of Appellant in view of the proviso Order VII Rule 1 of CPC, that he had forfeited its rights to file the Written Statement.

Hence, Supreme Court held that concept of limitation not coming to an end on a day when court was closed. It is beyond cavil that if the prescribed period of any suit/ appeal/ application expires on day when court is closed such proceedings will continue when court will re-open.

Also, written statement already prepared and notarized by appellant deserves to be taken on record and to deal with the pending application without any further delay.

CONCLUSION & FINDINGS:

The judgment of *B.K. Education Services Pvt. Ltd. Vs Parag Gupta and Associates* has brought the required clarity on the questions and conflicts between the Limitation Act and Insolvency and Bankruptcy, 2016. Section 238A was inserted by the Supreme Court stating that the Act will be applicable to all the applications made under sections 7 and 9 of the IBC.

Hence, in above mentioned Laxmi Pat judgment Section 18 of the Limitation Act was interpreted by the Supreme Court on the question of whether S.18 is applicable for extension of the limitation period in the proceeding of IBC. Hence, where there is an acknowledgment of debt within the period of limitation i.e., 3 years by the corporate debtor then such acknowledgment would extend the time limitation to initiate the proceedings under IBC. Therefore, all the findings and analysis given by Supreme Court and NCLAT in various judgments have given a clear perspective on the applicability of the Limitation Act, 1963 in IBC, 2016.

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