**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Ins) No. 246 of 2025**

**23.09.2025**

**Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)**
**MR. ARUN BAROKA, MEMBER (TECHNICAL)**

**STATE BANK OF INDIA ....Appellant**

**Vs**

**1. RAKESH HARIRAM AGARWAL ....Respondent No.1**

**2. MR. BIRENDRA KUMAR AGRAWAL ....Respondent No.2**

(Arising out of Impugned Order dated 09.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-IV, Mumbai) in C.P. (I.B) No. 15/MB/2023)

**With**

**Company Appeal (AT) (Ins) No. 282 of 2025**

**STATE BANK OF INDIA ....Appellant**

**Vs**

**1. SARVESH HARIRAM AGARWAL ....Respondent No.1**

**2. MR. BIRENDRA KUMAR AGRAWAL ....Respondent No.2**

(Arising out of Impugned Order dated 09.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-IV, Mumbai) in C.P. (I.B) No. 62/MB/2023)

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| For Appellant: | Mr. Harshit Khare and Mr. Prafful Saini, Advocates |
| For Respondents: | Mr. Pranjit Bhattacharya and Ms. Salonee Shukla, Advocates for Respondents |

**JUDGEMENT**

**Per Justice N. Seshasayee, Member (Judicial)**

Challenging two separate Orders of the Adjudicating Authority (NCLT – IV, Mumbai), both dated 09.12.2024 in C.P (IB) 15 of 2023 and C.P.(IB) 62 of 2023, dismissing the aforesaid two petitions filed by the appellant/Financial Creditor under Sec.95 IBC for initiating insolvency proceedings against two personal guarantors of the principal borrower (the 1st Respondent in both the cases) on the ground of limitation, these appeals have been preferred.

1.2 Except for the date of filing the petition under Sec.95 (with a difference of about one month between them), the facts in both the cases are the same. Therefore, the narration and discussion in this Order will be the same and wherever the date of filing of the petition before the Adjudicating Authority is relevant it will be indicated.

**Facts:**

2. The material facts which are relevant for the current purpose are bullet

pointed as below:

a) The appellant is a Nationalised Bank. On 23.09.2009 it advanced a loan of Rs.10.50 Crores to a certain Asis Global Limited, to which the 1st respondent in both the appeals had given a personal guarantee. The loan limit to the principal borrower was subsequently enhanced to Rs. 18.0 crores and then to Rs. 20.0 crores. The personal guarantors had duly executed supplementary personal guarantee agreements dated 30.07.2010 and 28.06.2012.

b) The principal borrower however, did not repay the loan amount promptly and the loan was notified by the appellant as NPA. In these circumstances on 31.12.2013 the appellant issued a notice under Sec 13 (2) of SARFAESI Act, 2002 both to the principal borrower and also to the personal guarantor. Subsequently the appellant laid O.A 1819/2016 before DRT, Mumbai.

c) During the pendency of O.A. 1819 of 2016, on 09.08.2017, the borrower and the personal guarantor made an OTS proposal. On 31.10.2017 this proposal was accepted by the appellant, as per which the total loan-liability was fixed at Rs. 9.10 crores. Eventually based on the terms so agreed, on 22.03.2018, the DRT issued a recovery certificate in O.A 1819 of 2016.

d) Between the date of acceptance of the OTS on 31.10.2017 and the date of decree of the DRT, the borrower had paid Rs. 2.50 crores in five different instalments.

e) Be that as it may, after the DRT had passed its decree, both the borrower and the personal guarantor stopped making any further payments. Instead, the principal borrower namely Asis Global Limited laid a debtors Insolvency petition in C.P (IB) 4442 of 2018 under section 10 IBC. Significantly, the principal borrower had admitted and acknowledged its liability to the appellant in its petition.

f) Subsequently, the appellant had issued a notice dated 30.11.2018 (not seen to have been produced by the appellant) to which the personal guarantors had issued their separate replies, both dated 27.12.2018 (which is produced) in which they have stated that bonafide efforts were being made to repay the debts.

g) In the meantime, on 18.03.2021, in the principal borrower initiated CIRP proceedings in C.P.4442 of 2018, the Adjudicating Authority had ordered liquidation.

h) It is in this background, on 30.05.2022, the appellant had issued a demand notice in terms of Sec.95(4)(b) of IBC read with Rule 7 of the Sec.95(4)(b) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority, etc.,) Rules, 2019. In this notice, reference indeed was made to the Order of the Adjudicating Authority ordering liquidation of the principal borrower. This was responded to by the first respondent (in both the cases) with their reply dated 10.06.2022, in which they took up a position that the Order of the NCLT in C.P.4442 of 2018 will not have the effect of enlarging the limitation against him.

i) Eventually, on 30.11.2022, the appellant had laid the two petitions petition under Sec.95 IBC against the personal guarantors for initiating PIRP. The first was filed on 30.11.2022 (against the first respondent in C.A.246 of 2025) and the other on 28.12.2022 (against the first respondent in C.A.282 of 2025) In Part III of these petitions the appellant had indicated that the debt fell due for payment on 28.02.2014. However, while explaining the nature of debt the appellant had provided two information: (a) that in the CD initiated CIRP, the claim of the appellant had been accepted; and (b) the demand notice dated 30.05.2022 that it had issued under Rule 7 (referred to above) as well as the reply of the personal guarantors to the same.

3. Before the Adjudicating authority the 1st respondent (in both the cases) appeared and contested. Their principal line of defence was that in Part III of the petition, the appellant had indicated the date of default in paying the debt as 28.02.2017. If this date is reckoned as the *terminus a quo,* debt will become time barred on 28.02.2017. If 31.10.2017, the date on which the OTS was accepted by the appellant limitation would end by 31.10.2020. If the date of the consent decree of the DRT (22.03.2018) is taken as the commencing date of limitation, the debt would be time barred on 21.03.2021. According to it, even if the period from 25.03.2020 to 28.02.2021, the period exempted vide Order of the Hon'ble supreme Court in *Suo motu W.P.(C) 3/2020* is excluded, the period of limitation for initiation of a CIRP Proceedings would expire by 30.05.2022. However, the petitions in the two cases were laid only on 30.11.2022 and 28.12.2022, as the case may be.

4. As outlined earlier the Adjudicating Authority has dismissed the Application under section 95 of IBC on the ground of limitation. It may be mentioned that in its order the Adjudicating Authority had only reckoned 31.10.2017, the date of acceptance of OTS proposal by the appellant, as the commencing date for computing the period of limitation. Very evidently it has not taken into account either 22.03.2018, the date on which DRT had passed the consent decree, nor 20.11.2018, the date on which the principal borrower had laid its petition under Sec.10 IBC for computing limitation.

**Arguments**

5.1 The arguments advanced by the rival parties were along predictable lines, and it essentially revolved around the point of limitation. The learned counsel for the appellant was focusing more on how the Adjudicating Authority had fallen in error when it did not apply the Order of the Hon'ble Supreme Court in W.P.(C) 3 of 2020 the way it should have been applied. According to him in all cases where the unexpired period of limitation is more than 90 days from 15.03.2020, then the actual number of such unexpired number of days must be reckoned from 01.03.2022. Reliance was placed on the ratio in ***Prakash Corporates Vs Dee Vee Projects Ltd.,*** [(2022)5 SCC 112].

5.2 Refuting the same, the counsel for the first respondent in both the appeals argued:

a) That Rule 7 notice cannot be equated to a notice invoking personal guarantee as per the ratio in ***SBI Vs Deepak Kumar Singhania*** [2025 SCC OnLine NCLAT 461], and notice issued under Sec.13(2) of IBC cannot be construed as the notice of demand invoking personal

guarantee vide ratio of this tribunal in ***Amanjyot Singh Vs Navneet Kumar Jain*** [2023 SCC OnLine NCLAT 1621]. In effect there is no proper invocation of personal guarantee.

b) On 25.10.2024, the appellant had issued a second notice under Sec.13(2) of the SARFAESI Act by which it inter alia had withdrawn the earlier notice, dated 31.12.2013 issued under the same provision. When the first notice is thus withdrawn, there is no demand, even if Sec.13(2) notice is presumed to be a notice invoking personal guarantee. Reliance was placed on the ratio in ***Canara Bank Vs Hides International Ltd.,*** [Manu/DA/0003/2015]

c) that in Part III of the petition filed under Sec.95 IBC, the date of default is mentioned as 28.02.2014, and hence the appellant cannot alter this date to reckon the *terminus a quo*.

d) that the appellant now relies on three additional documents before this tribunal namely, the reply to the show cause notice dated 31.12.2018; the balance sheet of the CD for the year ending 31.03.2019, and the offer letter of ITS dated 31.07.2021, which have not been produced before the Adjudicating Authority which cannot be considered as per the ratio the Hon'ble Supreme Court in ***Xentis Infotech Ltd., Vs UCO Bank*** [C.A.9325 of 2022].

e) That the appellate tribunal cannot go beyond ascertaining the correctness of the line of reasoning of the tribunal below.

5.3 In response the learned counsel for the appellant submitted that the personal guarantors herein had neither pleaded this fact nor produced this

document before the Adjudicating Authority, when they could have produced it, since the impugned orders were passed only on 09.12.2024.

**Discussion & Decision**

6. The Adjudicating Authority has chosen not to admit both the petitions for initiating PIRP against the personal guarantors only on a point of limitation. The issue appears straight forward, but if the nature of the arguments of the first respondent in both the appeals is analysed, the issue is bit layered. It involves an examination of the effect of the second notice issued under Sec.13(2), more particularly the effect of withdrawal of the first notice vis-à-vis the date of default as mentioned in Part III of the petition. How to reckon the *terminus a quo*?

**On Receiving Additional Documents**

7. The foundation for the ancillary issues raised above is the second notice which the appellant has issued under Sec.13(2), dated 24.10.2024. Interestingly, the personal guarantors have produced this document only before this tribunal, something they could have produced before the Adjudicating Authority. But the same respondents who require this tribunal to consider certain additional documents before this appellate tribunal are seen canvassing a case that the appellant's additional documents should not be looked into. Not an irony that it is, but a classic case of pot calling kettle black. If the judgement of the Hon'ble Supreme Court in ***Xentis Infotech Ltd.***, is to be understood the way these respondents require this tribunal to understand it, then the additional document produced by the personal guarantors also do not merit consideration.

8.1 But, does ***Xentis Infotech case*** prohibit this appellate tribunal from considering any additional documents that litigants may produce? First, it was not brought to the notice of this tribunal that production and consideration of additional documents at the appellate stage are statutorily barred. Secondly, ***Xentis Infotech case*** also does not restrain this appellate forum from considering any additional documents. ***Xentis*** was a case where the bank initiated a CIRP proceeding and it came to be dismissed on a point of limitation. The bank, the financial creditor, took up the matter in appeal before this tribunal where it produced a certain letter of the appellant as an additional document, acting on which this tribunal found that the CIRP was initiated in time. This order was challenged by the CD before the Hon'ble Supreme Court. The argument before the Hon'ble Supreme Court was that the CD did not get an opportunity to defend this letter. It is in that context the Hon'ble Supreme Court has noted that the document has been produced before the appellate tribunal and that the respondent has not got an opportunity to defend it. This judgement was more an authority in aid of the maxim *audi alterem partem* and procedural fairness, and not an authority for the proposition that the appellate tribunal shall not receive or consider additional documents, for that was not even an issue before the Hon'ble Supreme Court. On the other hand, Part XII Rule 73 of the NCLAT Rules enables the appellate tribunal to allow production of documents in terms of the provisions of the CPC, which implies that documents could be received at the appellate stage broadly on the same principles enunciated in Order XLI Rule 27 CPC. However, since the proceeding under the IBC is summary in

nature, XLI Rule 28 may not apply, even though Part XIII of the NCLAT Rules provides for recording of even oral evidence by this tribunal.

8.2 What may now be deduced is that where the genuineness of the documents is not disputed and where they have a bearing on the outcome of the appeal, then there can be no bar on the appellate tribunal to consider any additional documents. The only requirement will be that no document may not be considered without hearing the other side on such document. After all, every remedial fora under the Constitution, be it the court or the tribunal, or by whatever name they may be called, are not created to discipline the litigants endlessly, but to do justice. It would be an outrageous travesty of justice to ignore a piece of evidence when it is available right before the tribunal and still to decide an issue without it, especially when such document can influence the outcome of the appeal. This tribunal is conscious of its Constitutional obligations to the litigants before it.

9. Here is a scenario where neither side have denied the genuineness of the additional or new documents which the other side has produced. Turning to the appellant it has produced the additional documents only to sustain its initial pleadings, whereas only the personal guarantors, with the new document which they have now produced, attempt to help them with an alternative ground of defence. However, this alternative line of defence based on the effect of the second notice under Sec.13(2) of the SARFAESI Act withdrawing the first notice throws only a legal plea, and since the issuance of the second notice was not disputed by the appellant, there is hardly any harm in considering this notice.

**Effect of Second Notice u/sec.13(2) of SARFAESI Act**

10. The defence of the personal guarantors founded on the second notice under Sec.13(2) of the SARFESI Act, and the arguments based on it appears more of a distraction from the main issue, for, unless the date of terminus a quo is confined to the date of the first notice under Sec.13(2) of the SARFAESI Act issued sometime in 2013, the second notice under the said provision withdrawing the first notice will be of zero consequence. So far as the case of the appellant goes, from the date of the first notice under Sec.13(2) of the SARFAESI Act in 2013 to issuance of Rule 7 notice on 30.05.2022, several facts have happened, which continuously shifted the dated of commencement of limitation from the date of the first notice under Sec.13(2). This incidentally will involve the argument on the unalterability of the date of default as has been provided in Part III of the petition under Sec.95 IBC for the purpose of computing limitation.

11. Was the bank guarantee invoked by the appellant? Here personal guarantors contend that a notice under Sec.13(2) of the SARFAESI Act cannot amount to invocation of personal guarantee based on the ratio of this tribunal in ***Amanjyot Singh case*** [2023 SCC OnLine NCLAT 1621]. That this judgement does not intend to make a proposition as was widely believed has since been clarified by this tribunal in ***Asha Basantilal Surana Vs SBI and others*** [C.A.(AT) (Ins) 84 of 2025, dated 15.05.2025]. Indeed, in ***Shantanu Jagadish Prakash Vs SBI & another*** [(2025)ibclaw.in 73 NCLAT] this tribunal has held that a notice under Sec.13(2) of the SARFAESI Act is adequate enough demand for invoking personal guarantee. This has to be

understood in the context of the ratio in ***Mahdoom Bava Bahrudeen Noorul Ameen Vs SBI & another*** [(2025) ibclaw.in 108 NCLAT], where this tribunal has held that invocation of personal guarantee must precede notice under Rule 7 issuing which is a statutory pre-condition for invoking Sec.95 IBC. Therefore, there must first be a communication or notice to the personal guarantor demanding payment of debt which the principal debtor has not paid. This notice does not have any prescribed statutory form. All it requires is a demand especially where the contract of guarantee provides that the liability of the guarantor commences with a demand for payment. If the statutory setting in which Se.13(2) notice is positioned is considered, it is a pre-condition before the creditor bank lay its hands physically on the security interest. Under Sec.13(2) the bank only makes a demand for repayment of debt. And, even if there is a default in payment despite the notice under Sec.13(2), it was not obligatory for the bank to invoke Sec.13(4) and take physical possession of the secured assets of the debtor. It has an option there. But it all starts with a demand for repayment. As stated earlier, as long as the statute does not prescribe any particular form for making the demand for repayment, which is what the invocation of personal guarantee is all about, there is hardly any reason not to construe the notice under Sec.13(2) of the SARFAESI Act as a notice invoking personal guarantee.

12. In the present case, after issuing notice under Sec.13(2) the appellant had instituted OA 1819 of 2016. Therefore, the entire debt became the subject matter of a litigation and therefore, no bar of limitation could intervene. And, it is not in dispute that on 22.03.2018, the DRT concerned had issued a

recovery certificate based on the OTS as approved by the appellant, and it pushes *terminus a quo* for computing limitation for initiating an action under the IBC to the date of this recovery certificate. Subsequently, on 20.11.2018, the principal debtor had filed C.P.4442 of 2018 under Sec.10 IBC wherein it had admitted its liability to the appellant. This constitutes an acknowledgement of debt in law, and it pushes the date of commencement of limitation to 20.11.2018. This was followed by the balance sheet of the principal borrower for the year ending 31.03.2019 signed by the board of its directors on 05.09.2019 where it has acknowledged its debt to the appellant.

13. Now, what consequence can the second notice under Sec.13(2) dated 24.10.2024 have, even if it purports to withdraw the first notice issued in 2013. The demand part necessary for invoking the bank guarantee is complete when it is first made. After all, how many times a personal guarantee can be invoked? The second notice under Sec.13(2) and its legal consequence may concern the DRT but not this tribunal when it deals with issues under the IBC. For instance, can the second notice under Sec.13(2) invalidate the effect of the recovery certificate which the DRT has passed? Very obviously it cannot. And, when the recovery certificate has crystalised the liability of the personal guarantor, a mere issuance of another notice under Sec.13(2) cannot have any effect on the validity of the original demand for repayment. The purpose behind the second notice may be entirely different, which as stated above, must concern only the DRT.

14.1 Few relevant facts are now collated:

a) The date of default as mentioned in Part III of the petition under Sec.95 is 28.02.2014, whereas the limitation for instituting the PIRP would commence from 20.11.2018, the date on which the principal borrower laid its own CIRP under Sec.10 IBC, or could be from 05.09.2019, the date on which the board of directors of the principal borrower approved its balance sheet for the year ending 31.03.2019.

b) The PIRP, however were filed only on 30.11.2022 and 28.12.2022 as the case may be, some three years after 20.11.2018.

14.2 This now requires an understanding on two aspects:

a) Given the fact that the *terminus a quo* for commencing limitation is on 20.11.2018, whether the tribunals created under the IBC must be pinned down to 28.02.2014, the date of default as mentioned in Part III of the petition under Sec.95 IBC for computing the period of limitation? To state it differently, can the tribunal act on the date for commencement of limitation as could be gathered from the facts pleaded and the documents produced without any amendment of date of default of Part III?

b) How the Order of the Hon'ble Supreme Court in Suo Motu W.P.(C) 3 of 2020 must be understood in the factual context of this case?

**Date of Default in Part III & Limitation**

15.1 A distinction between date of arising of cause of action for filing a petition under Sec.7,9 or Sec. 95 IBC and the date relevant for computation of limitation is now required to be understood. As is well known cause of action (to understand it better, cause for an action) are the bundle of facts which are

required to be proved by a litigant to succeed in an action. So far as the law of limitation is concerned, it does not act on the cause of action, but acts on the right to maintain an action – it acts on the remedy. Thus, even though there may be a cause for initiating an action, the action can be instituted till the last date on which limitation prescribed for initiating the intended action intervenes.

15.2 In the context of a CIRP or a PIRP, for initiating an action, the creditor is required to establish two facts which provides the cause for initiating it: existence of a debt and the default in repaying it. The default in paying the debt, therefore, provides one of the facts constituting the cause of action for initiating any of these proceedings. The date of default which is required to be provided in Part IV of a petition under Sec.7 or 9, or Part III of a petition 95 only indicates the date on which one of the facts constituting the cause of action has arisen. As earlier stated, limitation for initiating a CIRP or a PIRP is not about constituting a cause of action, for about enforcing a cause of action. Therefore, the date of commencement of limitation need not necessarily be the same, and it depends on the facts of each particular case. To explain, if the IBC has not prescribed any Form of pleadings, or if it had suggested that it may assume the form of a plaint, then the factum of default in repaying the debt would have to be indicated as one of the facts constituting a cause of action and so is the date as to when this fact has happened. Merely because the IBC has prescribed a Form of pleading, that does not *ipso facto* imply that the date of default in paying the debt and the date of commencement of limitation for commencing a CIRP or PIRP should not be

different. And, this distinction should neither be lost sight of, nor should they be confused.

16.1 Here, two authorities of the Hon'ble Supreme Court need consideration. The first is the ratio in ***Ramesh Kyamal Vs Siemens Games A Renewable Power Pvt. Ltd.*** [(2021) 3 SCC 224] and it is believed to be an authority for the proposition that the date of default as provided in Part IV of a petition for commencing a CIRP alone must be construed as the date for computing the period of limitation. A close reading of this judgement nowhere shows that the Hon'ble Supreme Court has ever proposed to declare the ratio such as the one attributed to it. That was a case where the controversy was whether the date of default as specified in Part IV of the petition can be shifted to an anterior date to beat the consequence of Sec.10A of the IBC. If the facts of that case are considered, the appellant before the court was a certain employee of the respondent and he had tendered his resignation on 21st January, 2020. The respondent company however, required him to work for 60 more days and the appellant agreed to work till 30th April, 2020. On 28th April, 2020, the respondent issued the letter of termination and on 30.04.2020, the appellant issued his demand notice for certain monetary benefits due to him. It was Covid times when the appellant's service with the respondent came to an end, and the date of termination fell right during the period covered by Sec.10A of the IBC, which provided that no action under the IBC could ever be preferred where the default in payment of debt has occurred from 25.03.2020, for a period of six months which is extendable by another six months. The argument before the Supreme Court was that

inasmuch as the appellant had tendered his resignation even prior to 25.03.2020, the date of resignation must be reckoned as the date of default. This was negatived by the Court when it said that the date of default as given in Part IV of the petition cannot be retrospectively given effect to. Even on facts, the appellant was relieved from his service only on 28.04.2020, and therefore, the appellant was very much in service till then. And, his first demand for the monetary benefits was on 30.04.2020, to receive which he would be entitled to only on the termination of his service and not on the date he had tendered his resignation. Where does this judgement say that the date of default as mentioned in Part IV (which is similar to Part III of the petition under Sec.95 of the IBC) alone should be considered as the date of commencement of limitation?

16.2 The other authority is ***Vidyasagar Parasad Vs UCO Bank and another*** [2024 SCC OnLine SC 2993]. It could be gathered from the judgement of this tribunal (which was challenged before the Hon'ble Supreme Court), that the date of default in Form I was given as 05.11.2014 whereas the CIRP was laid only in 2019 based on certain acknowledgements of the debt by the CD, and no amendment was ever sought by the financial creditor. Still this tribunal acted on the acknowledgement of debt and held that the admission of the CD to the CIRP is valid. When the matter was taken before the Hon'ble Supreme Court it approved the ratio of this tribunal, and to fortify its opinion it relied on the ratio in ***Dena Bank (now Bank of Baroda) Vs C. Shivakumar Reddy*** [(2021)10 SCC 330], where the Supreme Court has relied on Sec.238A of the IBC which enabled the application of Limitation Act to any proceedings before

the tribunals constituted under the Code. Incidentally the document which the Court relied on as providing an acknowledgement of debt for extending the limitation is the balance sheet of the CD. The Court merely took note of this fact, and proceeded to apply the Limitation Act to the facts that were available before it and did not require the financial creditor to amend the date of default in Form I.

16.3 ***Vidyasagar case*** was decided a few months after the judgement in ***Ramesh Kymal case*** was delivered, and most appropriately the latter case was not even cited before the Court, for ***Ramesh Kymal*** did not declare any law that date of default as provided in Part IV of Form I alone must be reckoned for computing the period of limitation.

16.4 The proposition that could now be deduced is that irrespective of the date of default as provided in Part IV of a petition for CIRP or Part III of a petition for PIRP, period of limitation could be computed based on any fact which has the effect of enlarging the period of limitation from the date of default as given by the creditor without any need for amending such date of default. After all, as held in ***Shivakumar Reddy case*** [(2021)10 SCC 330], the pleadings under the IBC should not be read as a pleading in a civil suit, but even there the thumb rule is that pleadings must be read as a whole and not dissected to suit one's convenience. And, when Sec.238A stipulates that Limitation Act would apply to the proceedings under the IBC, necessarily Sec.3 thereof cast a statutory obligation on the tribunals to compute based on the facts before it even if limitation is not pleaded.

16.5 If the arguments of the personal guarantors here (which is not the first of its kind) is taken to its logical end, it insists in giving greater prominence to the form of pleading and not its substance. It should not be forgotten that parties to any CIRP or a PIRP are already in a jural relationship through contract, and they know the facts, and, as J.R.Midha J. of Delhi High Court had said, only courts are on trial. And pleadings in whatever form is but a notice to the other side about the cause on the basis of which an action is brought about, or the grounds on which an action is defended. Besides pleadings aids a neutral remedial forum, by whatever name it may be called, to ascertain the fact in issue.

17. Before moving to the next aspect, this tribunal intends to record that at least two cases were cited to fortify certain proposition, which they do not lay down. Care must be taken to ascertain the precedential value of any judgement and it requires that care must be bestowed to identify the ratio of a judgement. It has been long decided that a judgement is a precedent for what it actually decides. Very unfortunately, the art of filtering a judgement through the right legal filters for decocting its ratio appears to be fast disappearing from contemporary legal research, which appears to put premium on faster results over the need to ascertain the ratio of a judgement. There is also on display an increasing tendency to use a couple of sentences in a judgement, or a catch phrase which a judge may have coined for conveying his opinions, quite out of context. As has been pointed out ***Ramesh Kyammal case*** is said to have declared a certain ratio which it did not. Similar has been the experience with ***Amanjyot Singh Vs Navneet Kumar***

***Jain*** [2023 SCC OnLine NCLAT 1621], (which has been understood as declaring that a notice under Sec.13(2) of the SARFAESI Act cannot be the basis for initiating a CIRP or a PIRP) which invited a clarification in ***Asha Basantilal Surana case*** [C.A.(AT) (Ins) 84 of 2025, dated 15.05.2025] that no such proposition was ever declared in that case.

18. To conclude this point, it must be held that the *terminus a quo* for commencement of limitation is 20.11.2018, the date of which the principal borrower had laid its debtor initiated CIRP proceedings under Sec.10 IBC. The appellant has now produced a balance sheet of the principal borrower for the year ending 31.03.2019, which the board of directors had singed on 05.09.2019. If limitation period is computed from 05.09.2019, it would expire on 05.09.2022. The CIRP however, was laid 30.11.2022 (as regards C.A.246 of 2025) and 28.12.2022 (as regards C.A,282 of 2025) and here the counsel for the appellant relies on the Order of the Hon'ble Supreme Court in suo motu W.P.(C) 3 of 2020, dated 10.01.2022.

**Is the PIRP barred by time?**

19. Before adverting to this aspect, as outlined in paragraph 4 above, the Adjudicating Authority had reckoned 31.10.2017, the date of acceptance of OTS by the appellant, ignoring all subsequent events which have kept the debt alive. Very obviously this tribunal expresses its difficulty to adopt the approach of the Adjudicating Authority. If the Sec.10 IBC petition of the principal borrower constitutes an acknowledgement of debt, then the terminus a quo for commencement of limitation would be 20.11.2018 and would expire on 20.11.2021. If however, the date of signing of the balance

sheet for 2018-2019 by the Board is reckoned then period of limitation expires only on 05.09.2019. Of the two dates the former falls within Covid times when the Hon'ble Supreme Court has frozen time for limitation to run on any cause for an action whereas the latter falls outside it.

20.1 The ameliorative Order passed in the *suo motu* W.P.(C) 3 of 2020 to protect the right of action of the litigants during the Covid times had the effect of eclipsing the limitation. The Covid-eclipse, if this period may be so stated, ended in the manner delineated in the Order of the Hon'ble Supreme Court in M.A.21 of 2022. It reads:

> *"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
>
> *II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 0 1.03.2022.*
>
> *III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a Dena limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
>
> *IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for*

*instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*

The working of this Order is explained in ***Prakash Corporates Vs Dee Vee Projects Ltd.,*** [(2022)5 SCC 112] where the Hon'ble Supreme Court has equated the eclipsed period due to above extracted suo motu Order to the period of exclusion as provided in Sec.12 to 15 of the Limitation Act. It has held:

*"28.... A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government [ Vide Section 15 of the Limitation Act, 1963.] ). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed."*

The key to understand the Order in MA 21 of 2022 in Suo Motu W.P.(C) 3 of 2020, is provided in yet another judgement of the Hon'ble Supreme Court in ***IL & FS Financial Services Ltd., Vs Adhunik Meghalaya steels Pvt. Ltd.,*** [2025 SCC OnLine SC 1567]. There the facts are that the limitation for initiating a CIRP under Sec.7 commenced on 01.03.2018 and end on 28.02.2021. In between the CD came out with its balance sheet for the year 2019-2020, signed by the board of directors of the CD on 12.08.2020, disclosing its liability to the financial creditor which constituted an acknowledgement of its liability. The Court noted that this acknowledgement

had extended the period of limitation till 11.08.2023. The financial creditor however, initiated the CIRP on 15.01.2024, well beyond 11.08.2023. Taking note of the Order in Suo Motu W.P.(C) 3 of 2020, the Honble Court held:

> *"46. We have no manner of doubt that sub-para 1 of para 5 of the order of this Court dated 10.01.2022 would apply and the entire period from 15.03.2020 to 28.02.2022 would stand excluded, which would mean that the limitation would, reckoning the acknowledgement of 12.08.2020, commence on 01.03.2022 and continue till 28.02.2025."*

20.2 In the present case, as explained earlier, if limitation is reckoned from 20.11.2018 (the date on which the principal borrower had laid C.P.4442 of 2018 under Sec.10 IBC), then limitation would expire on 19.11.2021. And, even if the second part of paragraph 5 (II) of the order in the suo motu writ petition is applied such balance period which is in excess of 90 days should be available in entirety. However, in terms of the above authorities of the Hon'ble Supreme Court, the entire period when cause of action was in a state of eclipse (between 15.03.2020 to 28.02.2022) is required to be excluded and must be added after 28.02.2022, by bringing the entire case before it within para 5(I) of the said Order. The adjudicating authority has not only overlooked Para 5(I) of the above extracted suo motu order, but also applied the first part of Para 5(II) and from a wrong date as the *terminus a quo*.

21. Now, if the entire period from 15.03.2020 to 28.02.2022 (approximately two years), limitation would be available till March, 2024. However, both the petitions to initiate PIRP involved in this batch of appeals were filed respectively in November and December, 2022. Needless to state they are within time.

**Conclusion**

22. We have little hesitation in holding that both the PIRP were laid in time. Both the appeals are accordingly allowed, and the Orders of the Adjudicating Authority (NCLT – IV, Mumbai) in C.P (IB) 15 of 2023 and C.P.(IB) 62 of 2023, dated 09.12.2024 are set aside. The Adjudicating Authority is now required to admit both the petitions involved in this batch of appeals and to proceed with them in accordance with law. No costs.

**[Justice N. Seshasayee]**
**Member (Judicial)**

**[Arun Baroka]**
**Member (Technical)**

rs/sk