NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

I.A. No. 6700 of 2025
In
Company Appeal (AT) (Insolvency) No. 1375 of 2019

(Arising out of the Impugned Order dated 10.10.2019 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Principal Bench in C.P. (IB) 1076(ND)/2019)

IN THE MATTER OF:

Sunil Kumar Dahiya
Tihar Jail No.1
Through Power of Attorney Holder: Himisha Dahiya **...Appellant**

Versus

1. **Lavkash Verma**
C-64, Millennium Apartment
Sector – 18, Rohini
New Delhi – 110089 **...Respondent No.1**

2. **Sunder Khatri**
Interim Resolution Professional
of Vigneshwara Developers Pvt. Ltd.
GF – 124 & 113, World Trade Centre,
Lalit Hotel, Babar Road
New Delhi – 110001 **...Respondent No.2**

Present:

For Appellant	:	Ms. Anannya Ghosh, Ms. Kashish Chhabra and Mr. Sabeeh Akhter, Advocates.
For Respondent	:	Ms. Purti Gupta, Ms. Heena George, Ms. Sunidhi Sah and Ms. Khushi Sharma, Advocates for R-1.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an appeal against the order dated 10.10.2019 ("Impugned Order") passed by the Ld. Adjudicating Authority, Principal Bench, New Delhi, in CP (IB) No. 1076(ND)/2019, by which M/s Vigneshwara Developers Pvt.

Ltd. ("VDPL") was directed to be admitted into insolvency under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC").

Submissions of the Appellant

2. The Appellant is the Ex-director/Promoter of M/s. VDPL/Corporate Debtor and also the Ex-director/Promoter of M/s Vigneshwara Developwell Pvt. Ltd. ("VDWPL") and claims that Adjudicating Authority has disregarded that Hon'ble High Court of Delhi and had reserved judgment of the Second Motion Application of compromise, arrangement and the consequential revival of the Corporate Debtor. The Adjudicating Authority has in effect, commenced proceeding which are in direct overlap (and potential conflict) with the proceedings pending before the Hon'ble High Court. This has resulted in carrying out parallel proceedings for the same set of facts and that too in a scenario where the Hon'ble High Court is not only seized of the matter but has in fact reserved final judgment, on the above proceedings.

3. The Appellant further claims that as per order dated 18.11.2013, the Company Court of the Hon'ble High Court, had issued notice in a winding up Petition filed against the Corporate Debtor by one M/s Intercontinental Consultant and Technocrats Pvt. Ltd. Thereafter, several other winding up petitions were also filed against the Corporate Debtor and in one such petition being Sh. Naresh Ch. Gupta & Anr. Vs. M/s Vigneshwara Developers Pvt. Ltd., i.e. Company Petition No. 534/2015, the Hon'ble High Court vide order dated 22.07.2016 appointed Official Liquidator as the Provisional Liquidator of the Corporate Debtor. During the pendency of the aforesaid winding up proceedings, as per orders of the Hon'ble High Court, the Appellant along with

the other Ex-directors who were engaged in mediation proceedings with various unit buyers before the Mediation Centre of the Hon'ble High Court. These mediation proceedings culminated into a Composite scheme for Compromise and Arrangement among the Corporate Debtor, VDWPL and their respective members and creditors ("Revival Scheme"). This Revival Scheme was supported by 387 out of total 466 Allottee-Creditors, representing 81.52% by value of the debt due, as far as the Corporate Debtor is concerned and in case of VDWPL the Revival Scheme was supported by 843 Allottee-Creditors out of a total of 971 such Allottee-Creditors, representing 85.64% (approx..) by value of the debt due.

4. The Appellant further brings to our notice that the revival scheme was filed before the Hon'ble High Court for sanction / approval. The First Motion for approval of the Revival Scheme was passed by Hon'ble High Court vide an order dated 12.10.2018. Thereafter, the Revival Scheme was duly advertised and objections were received. After hearing the objectors at length, the Hon'ble High Court was pleased to reserve orders on the Second Motion on 13.05.2019.

5. In that, during the pendency of Second Motion before Hon'ble Delhi High Court, Respondent No.1 – Lavkash Verma - a Financial Creditor of the Corporate Debtor had filed an application under Section 7 of the Code before the Adjudicating Authority. The Appellant claims that despite the fact that the Hon'ble High Court was in seisen of the Revival Scheme and had reserved final judgment on 13.05.2019, the Adjudicating Authority passed the

impugned order initiating Corporate Insolvency Resolution Proceeding against the Corporate Debtor.

6. The Appellant further claims that since the Company Court of the Hon'ble High Court was already seized of the mater, the Appellant approached the same by way of CA No. 1091/2019 in Company Petition No. 885/2015 praying that Respondent No.2/IRP be restrained from taking over the affairs of the Corporate Debtor. However, the Company Court of the Hon'ble High Court expressed its difficulty in staying the CIR Process and granted liberty to the Appellant to take appropriate steps.

7. Accordingly, the Appellant approached the Hon'ble High Court by way a Writ Petition (C) No. 11706/2019, which issued the following directions on 08.11.2019:

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> "a) That a lot of time and effort went into the mediation proceedings which culminated into the Revival Scheme and that the said effort would go into vain if the Impugned Order is allowed to stand;
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> b) That while there is a statutory remedy available, the High Court could exercise its jurisdiction under Article 227 of the Constitution of India.
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> c) Accordingly, the Impugned Order of the Adjudicating Authority was kept in abeyance with liberty to the Appellant to approach this Hon'ble Appellate Tribunal within four weeks.
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> d) It was further directed that the Impugned Order would be kept in abeyance till such time the Company Court of the Hon'ble High Court

disposes off Co. Pet. No. 885 of 2015 (and connected matter) or this Hon'ble Appellate Tribunal disposes off the present Appeal, whichever is earlier."

XXX.

8. In pursuance of the liberty granted by Hon'ble High Court as per above-noted order of 08.11.2019, the Appellant approached this Appellate Tribunal.

9. Appellant in this Appeal had claimed that the impugned order is against the very object of the Code and also initiates a parallel and on overlapping proceedings. The objective of the Code is to seek revival of a distressed Corporate Debtor. The Hon'ble Delhi High Court through the Revival Scheme was attempting to revive the Corporate Debtor. However, the impugned order by allowing the Section 7 Application of Respondent No. 1 has completely derailed that process and that too for a claim, which is time barred. The Appellant contends that the Hon'ble Supreme Court in a catena of decisions including in **Innoventive Industries Limited Vs. ICICI Bank, (2018) 1 SCC 407, Swiss Ribbons (P) Ltd. Vs. Union of India, (2019) 4 SCC 17** has unequivocally held that the objective of the Code is to ensure revival, which cannot be achieved if parallel proceedings are allowed to operate. This view has also been reiterated in the Delhi High Court judgment in **Action Inspat vs. Shyam Vetallics and Energy Ltd.** (Company Appeal No. 11/2019 decided on 10.10.2019). However, the Ld. Adjudicating Authority ignored this vital aspect. Appellant claims that reliance placed on **Jaipur Metals and Electricals,** is misplaced as in that case, there was no question of a revival scheme that was pending before the Hon'ble High Court. It was in that context

and background that the Supreme Court held a Section 7 Application would lie. But in the present case, the Company court had reserved Judgment on the Second Motion of the Revival Scheme.

10. Appellant had also claimed that the impugned order has been passed in utter disregard of the decisions of the Supreme Court in: (a) **B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates, 2018 SCC OnLine SC 1921**; (b) **Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. & Anr., C.A. No. 4952 of 2019**, decision dated 18 September 2019; and (c) **Sagar Sharma & Anr. v. Phoenix ARC Private Limited, C.A. No. 7673 of 2019**, decision dated 30 September 2019. Appellant claims that the aforesaid judgments clearly provide that the limitation period for preferring a claim under Section 7 of the IBC is governed by Article 137 of the Limitation Act, i.e., 3 years which is reckoned from the date of the alleged default. However, in the present case, admittedly, the cause of action to prefer the Petition arose in or around 2010. The Impugned Order completely ignores this legal position despite being made aware of the same.

Submissions of the Respondent No1/ Lavkesh Verma

11. On 11.08.2010, a Developer-Anchor Unit Agreement was executed between Lavkash Verma (Respondent No. 1) and M/s Vigneshwara Developers Pvt. Ltd. Thereafter, the default occurred for the first time in the year 2015 when the Company failed to repay the monthly assured return payable to Respondent No. 1. As per the List of Dates of the captioned Appeal, at page 8 under the heading "April, 2019," specifically admits that, according to the Appellant itself, the cause of action had arisen on 10.08.2015. The said

default was continuous and consequently, the period of limitation stood extended on account of such continuing default.

12. Thereafter, the Winding-Up Petition was admitted on 22.07.2016. By virtue of Section 446 of the old Companies Act, upon admission of the winding-up petition, no coercive proceedings could have been initiated against the Company. Thus, the limitation period ceased to run.

13. In March, 2018, a Scheme of Arrangement was propounded by the Promoters of the Company before the Delhi High Court on the basis of the dues and claims of various allotees. The claim of Respondent No. 1 formed part of the Scheme of Arrangement filed before the High Court at S. No. 1067. Therefore, as in March 2018, the Appellant, who is the promoter of M/s Vigneshwara Developers Pvt. Ltd., had categorically acknowledged that Respondent No. 1, Lavkash Verma, was a creditor of the Company. The Appeal itself at para 7.12 internal page 17 records as under: -

> "The Appellant most respectfully submits that the mediation proceedings were conducted over a span of 18 months and which culminated into the settlement of claims of over 843 unit buyers. Moreover, in the event, the Hon'ble High Court were to allow the revival scheme, the same would be binding on all stakeholders including Respondent No.1. ...."

This clearly tantamount to acknowledgment of debts and also extended limitation period under Section 18, Limitation Act. This is without prejudice to the basic argument that there is a continuous cause of action as the unit was not handed over to the Respondent No.1 who was an allotee.

14. Further Paragraph 7.1 of the Appeal records that Respondent No. 1 had participated in the mediation proceedings. The relevant extract of para 7.1 at internal page 12 of the Captioned Appeal records as under:-

> ".... Pertinently, even though Respondent No.1 claimed to have participated in the mediation proceedings, he failed to disclose to the Adjudicating Authority the pendency of the Revival Scheme before the Hon'ble High Court...."

15. On 30.01.2019, Section 446 of the erstwhile Companies Act stood repealed by virtue of Section 465 of the Companies Act, 2013 and, accordingly, stay on any sort of proceedings qua the company stood lifted only on 30.01.2019. Consequently, the Section 7 Petition was filed on 24.04.2019 in terms of Section 7 of the IBC.

16. The initiation of the insolvency proceedings was well within the period of limitation, particularly in view of (a) the continuous nature of the default, (b) the subsequent acknowledgment of the debt, and (c) the legal impediment operating during the pendency of the winding-up proceedings in terms of Section 446 of the Companies Act, 1956.

17. Admittedly, possession had not been handed over till date. There was, thus, a continuous cause of action and a continuous and subsisting debt and default, which was also acknowledged by the Appellant. The scheme of arrangement expressly acknowledged the debt and default payable to Respondent No. 1, thereby constituting an acknowledgment of liability. Since the Company/Appellant remains in continuous default until the unit is

provided to the Respondent, the Section 7 Petition was filed well within the prescribed period of limitation. Further, the Appellant itself relied upon and admitted the existence of the Scheme of Arrangement, which included the dues of allotees, including the Respondent. The scheme was subsequently declared unworkable on 4 January 2023, and therefore the Appellant cannot contend that the Section 7 Petition was time-barred. Accordingly, in view of the continuous default and express acknowledgment of the debt under the scheme and mediation, there is no question of the Section 7 Petition being barred by limitation.

18. The Respondent No.1 further places reliance upon the judgments of this Hon'ble Tribunal. In the matter of **Shailendra Agarwal vs Asit Upadhyaya & Ors, 2025 SCC Online NCLAT 785**, the Ld. NCLAT was of the view that Section 22 Limitation Act, 1963 provides that in the case of a continuing breach, limitation runs afresh with each successive instance of default. The Hon'ble Appellate Tribunal further noted that the Corporate Debtor's failure to hand over possession of the flats and its continuing default in refunding amounts to the allottees constitute a continuous cause of action. Also Refer Para 13 of **Navin M Raheja vs Vipul Jain & Ors, 2026 SCC OnLine NCLAT 761.**

19. Dues of the Respondent were admitted by the Promoters of the Company in the Scheme of Arrangement (March, 2018). Thus, the limitation stood extended in terms of Section 18, Limitation Act.

20. Pursuant to admission of winding up proceedings, by virtue of Section 446, Old Companies Act, initiation of legal proceedings is barred. Thus, limitation ceased to run during the pendency of winding up proceedings. The stay on any sort of proceedings qua the Company stood lifted only on 30.01.2019.

21. The Appellant had raised an argument that post 2015, in the March, 2018, when the Scheme was filed, the limitation of 3 years had exhausted and the recognition of dues of the Respondent No.1 in the Scheme of Arrangement does not result in the Respondent No.1 getting the benefit of limitation. In this respect, it is an undeniable fact that there is a continuous cause of action as the matter related to the allotment of a unit. Secondly, the Appellant has itself admitted the default to be of August, 2015 whereas the Scheme of Arrangement was filed in March, 2018 within the period of limitation. However, without prejudice and only from an argumentative perspective, if it is presumed that the acknowledgement of debt was not within the three years from the date of default, despite that an acknowledgment given even after the lapse of three years gives rise to fresh cause of action and extends the limitation. (Refer: Section 25 (3), Contract Act.). Refer para 31, 33, 67 to 69 in the matter of **Kotak Mahindra Bank Limited vs Kew Precision Parts Private Limited, (2022) 9 SCC 364**.

22. It is pertinent to mention that on a transfer application, the Hon'ble Delhi High Court vide its order dated 24.09.2025 at Para 33, directed the

revival of the IBC proceedings against the Company. The relevant para 33 of the order dated 24.09.2025 is reproduced hereinbelow: -

> "In these circumstances, and in view of the large number of investors involved, it would be apposite and in public interest that proceedings under the IBC be revived."

23. The order having attained finality, the Appellant could not thereafter be permitted to agitate the issue or challenge the initiation of the insolvency proceedings. The Promoters were present before the Hon'ble Delhi High Court and the order dated 24.09.2025 of transfer and revival of insolvency proceedings was passed with their consent. Refer Para 15 of order dated 24.09.2025 which is reproduced hereinbelow: -

> "15. Learned Senior Counsel for the Ex-Directors reiterates his contention that in view of the Judgment passed by this Court on 12.09.2025 in matter Vigneshwara Developwell case he has no objection, if the prayer (a) and (b) of this Application are followed by this Court."

24. The order dated 24.09.2025 passed by the Hon'ble Delhi High Court has not been challenged and has thus attained finality. Accordingly, the Appellant is barred from challenging the revival/initiation of insolvency proceedings against the Company. The arguments in this Appeal are restricted to the issue of limitation since the Appellant had specifically stated that they are solely contesting the matter on the ground of limitation.

Appraisal

25. We have heard the rival contentions and also perused the materials on record.

26. The Appellant in its Appeal had argued that in the event the Company Court of the Hon'ble High Court allows the Second Motion and sanctions the Revival Scheme and, in the event, if no Resolution Applicant is forthcoming, forcing the Corporate Debtor into liquidation, the same would render the Hon'ble High Court's order, nugatory. It had further claimed that it would be against the objectives of the Code, which aims at revival of business. However, this didn't happen as the Hon'ble Delhi High Court on 24.09.2025 had rejected the Second Motion and allowed the matter to be taken up under the Code in Company Appeal No.608/2025 (Transfer of proceedings to NCLT) relying on order dated 12.09.2025 in CO. Pet No. 885/2015 captioned Col. P.K. Oeroi (Retd.) & Anr. Vs. M/s Vigneshwara Developwell Pvt. Ltd. & Ors.[1]

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[1] The **Hon'ble High Court in Company Appeal No. 608/2025 on 24.09.2025** had held that:

28. As discussed above, the Scheme was approved by the Court on 27.01.2020 and the Ex-Directors/Propounders of the Scheme were allowed by this Court to take steps to revive the Company. However, inspite of the lapse of 3 years, thereafter, the Court found that pre-requisites for the implementation of the Scheme had not been worked out. The statutory authorities were not paid nor were the claims of the land owners settled. The land for the projects could also not be handed over since the Propounders of the Scheme were in judicial custody. Since the Scheme had become unworkable, the Scheme was set aside by this Court on 04.01.2023.

29. Although the Official Liquidator has taken over the assets of the Company, it has confirmed in its Reply that no other irretrievable steps such as sale of the assets have been taken by the office of the Official Liquidator. The Official Liquidator has also averred that the Petition which was previously filed before the NCLT as a company Petition being C.P.(IB)-1076(ND)/2019 captioned Lavkash Verma v. Vigneshwara Developers Private Limited can be revived.

30. The IBC is a self-contained creditor driven framework, where the costs of the corporate insolvency resolution process are defrayed from recoveries, and in terms of the provisions of the IBC. The entire process is mandatory and to be undertaken in a time bound manner to

27. The Appellant had also claimed that the Application is vindictive and motivated one, as it is setting at naught the compromise and settlement which had the approval of more than 80% of the Creditors of the Corporate Debtor. Appellant had also claimed that the Applicant had not filed any objection to the revival scheme when objections through the revival scheme had been invited by Hon'ble High Court. We find that such objections are irrelevant as the Delhi High Court has rejected the Second Motion on the Revival Scheme for unrelated reason, vide its order of 24.09.2025.

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ensure preservation of assets as well as that the creditors are paid in a defined framework. The IBC also contains a framework for effective powers to deal with fraudulent transactions.

31. Concededly, this Petition has been pending before this Court for the last 10 years. During the proceeding, despite a Scheme for revival being approved, it could not fructify on account of lapses on the part of the Propounders. The Office of the Official Liquidator has also not started the process of disbursal of any claims. In addition, no actual sale of properties has taken place. As such, no irreversible steps have been taken in this matter, which could impede proceedings before the NCLT.

32. The claims of over 1250 creditors have been filed before the Official Liquidator. The Official Liquidator has also contended that the Claimant's claims have not been scrutinized since many were incomplete. The Official Liquidator has valued the assets of the Respondent Company and has averred that in view of the recurring expenditure towards security and preservation of assets, storage and safekeeping of voluminous records and compliance statutory obligations, expenses are being incurred from the common pool funds, reducing the distributable surplus for creditors and the claimants of the Respondent Company.

33. In these circumstances, and in view of the large number of investors involved, it would be apposite and in public interest that proceedings under the IBC be revived.

34. Accordingly, and in view of the discussions above, the Application is allowed.

35. <u>The parties are at liberty to take appropriate steps in accordance with law for further proceedings before the NCLT</u>.

28. However, during the final arguments, the counsel on behalf of the Appellant has conceded that in the changed circumstances it relies mainly on the ground that the claim of Respondent No.1, was time barred at the time of initiation of the CIR proceedings.

29. To canvass this ground, the Appellant has relied on various judgments - **B.K. Educational Services Pvt. Ltd. (supra)**; **Gaurav Hargovindbhai Dave (supra)** and **Sagar Sharma & Anr. (supra)** and contend that the limitation period for preferring a claim under Section 7 of the IBC is governed by Article 137 of the Limitation Act, i.e., 3 years, which is reckoned from the date of the alleged default. Appellant claims that the cause of action to prefer the Petition arose in or around 2010. It has relied on part IV of Form 1 relating to Application by Financial Creditor to initiate Corporate Insolvency Resolution Process under the Code under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Part IV notes that the total claim of the Financial Creditor / Respondent No.1 in this case is to the tune of ₹29.25 lakhs including @ 18% interest, which was for a commercial technology unit measuring 250 sq. ft. for a total consideration of ₹ 18 lakhs. The amount was paid on 10.08.2010 vide Cheque No. 153886 and 153886 drawn on Bank of Baroda as noted in the Appeal Paper Book at page 70. The Appellant claims that the petition was filed in 2019 and therefore the claim is time barred at the filing of the petition.

30. Respondent No.1 – Lavkash Verma brings to our notice that the scheme of arrangement of VDPL was subjudice before the Hon'ble /Delhi High Court. The **Hon'ble Delhi High Court vide its order dated 08.11.2019[2] in Writ Petition (C) No. 11706/2019** being **Sunil Kumar Dahiya Vs. Union of India** stayed the operation of the order dated 10.10.2019 under Section 7 of the Code against the Corporate Debtor till the pronouncement of judgment in Company Petition No. 885/2015 or till the matter is finally decided by this Appellate Tribunal whichever was earlier. The matter was taken up by this Appellate Tribunal alongwith Company Appeal (AT) (Ins) No. 1263/2019 and on 17.11.2021 had ordered that since the "Settlement Scheme" is under consideration of Hon'ble Delhi High Court, proceedings in CA (AT) (Ins.) No.

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[2] **Delhi High Court order dated 08.11.2019 bearing Writ Petition (C) No. 11706/2019**

19. Though, there is no doubt that the jurisdiction of this Court is not to be exercised under Article 227 if there is an alternate remedy available, in order to avoid conflicting orders from operating in respect of the company, to the detriment of the creditors and other stakeholders, this Court is of the opinion that, while relegating the Petitioner to the NCLAT, the impugned order of the NCLT deserves to be kept in abeyance. In view of the remedy of appeal being available to the Petitioner, to approach the NCLAT, the Petitioner is permitted to approach the NCLAT within four weeks. In view of the peculiar facts and circumstances of the present case, it is directed that the order dated 10th October, 2019, passed by the NCLT, shall remain stayed until the pronouncement of the judgment by the Delhi High Court in Company Petition No. 885/2015 and connected petitions, or until the matter is finally decided by the NCLAT, whichever is earlier. The NCLAT shall consider the entire matter including the orders passed by the Company Court. All parties who are intervening before the Court today and any other affected parties are permitted to appear before the NCLAT. The NCLAT shall consider the Petitioner's plea in accordance with law. This Court has not given any opinion on the merits of the revival scheme pending before the Company Court or the order of the NCLT which is under challenge in the present case.

20. Ld. counsel for the Petitioner assures the Court that the Petitioner would approach the NCLAT on or before 30th November, 2019. Parties may place the present order before the Company Court where judgment is reserved.

1269/2019 alongwith CA (AT) (Ins.) No. 1263/2019 were adjourned sine die, and the order is extracted as below:

> "It is represented by the Learned Counsels appearing for the respective parties that Company Petition No. 885 of 2015 is coming up for Hearing before the Hon'ble High Court of Delhi on 30.11.2021.
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> Further, it is also brought to the notice of this tribunal that the 'settlement scheme' is also under consideration of the Hon'ble High Court.
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> Hence, this tribunal, adjourns the instant CA (AT) (Ins) No. 1263 of 2019 sine die, with liberty to the parties, to mention after passing of the necessary orders by the Hon'ble High Court Delhi in the subject matter.
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> The Interim Resolution Professional is directed to serve the Status Report to the Ld. Counsel appearing for the respective parties within one week from today through e-mail."

31. It is also brought to our notice that the scheme of revival was sanctioned by Hon'ble Delhi High Court on 27.01.2020, but the same was subsequently declared as unworkable on 04.01.2023 by the Hon'ble High Court in Company Petition No. 885/2015.

32. It is brought to our notice that the situation has changed now. The changed situation is brought to our notice through an IA No. 6700/2025 by Respondent No.1, that Hon'ble Delhi High Court vide its order dated 24.09.2025 in Company Petition No. 534/2015 in Naresh Ch. Gupta & Anr. Vs. Vigneshwara Developers Pvt. Ltd., has observed that proceedings under IBC be revived. It is also brought to our notice that since the scheme has failed and the very foundation on which the Appeal was preferred no longer

survives, therefore the Respondent No.1 – Lavkash Verma under Rule 31 of NCLAT Rules, 2016 is seeking to recall the order dated 17.11.2021 by which the matter was adjourned sine die [this order was noted by us herein earlier],

33. Vehemently refuting the arguments of the Appellant, the Respondent No.1 contends that this is a case of a continuing breach and limitation runs afresh with each successive instance of default and the Corporate Debtor's failure to handover possession of the flats and its continuing default in refunding amounts to the allottees constitute a continuous cause of action. It has relied upon the Judgement of this Appellate Tribunal in **Shailendra Agarwal (Suspended Director of M/s NHA Infrabuild Pvt. Ltd.) Vs Asit Upadhyaya & Ors., 2025 SCC OnLine NCLAT 785**, the relevant extract is reproduced herein below:

> "29. We also note that the limitation period under the Limitation Act, 1963, is governed by Section 22, which provides that in the case of a continuing breach, limitation runs afresh with each successive instance of default. The Corporate Debtor's failure to hand over possession of the flats and its continuing default in refunding amounts to the allottees constitute a continuous cause of action. The directions issued by UP RERA from time to time, including the refund order dated 13.10.2020, its amendment on 18.06.2022, and the project registration cancellation on 24.12.2022, reaffirm the subsistence of debt and the ongoing breach by the Corporate Debtor. Furthermore, the acknowledgement of debt in the Corporate Debtor's balance sheet on 30.06.2022 extends the limitation period under Section 18 of the Limitation Act, 1963. It is to be noted that an acknowledgement of liability within the limitation period gives rise to a fresh period of limitation. Therefore, the present petition, filed on

09.01.2024, is well within time. Thus we find that the Appellant's contention that the Company Petition is barred by limitation is misconceived."

34. Furthermore, Respondent No.1 relies on another judgment of this Tribunal in **Navin M. Raheja Vs. Vipul Jain & Ors. [Company Appeal (AT) (Ins.) No. 2168/2024]**[3], where it was observed that:

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"13. The Adjudicating Authority in the impugned order after considering the submissions of the parties on Question Nos.(b) and (c) has held that default on the part of the CD in not handing over the possession is proved and further essential ingredients of 'debt' and 'default' is also proved. After answering both the above questions, the Adjudicating Authority has held that debt and default is proved, the possession was to be given in the year 2012-2014 with a grace period of 6 months and the debt has been acknowledged by various emails and default is continuing. On the aforesaid findings, Section 7 application was admitted. We, thus, do not find any error in the order of Adjudicating Authority in initiation of CIRP against the CD."

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We find both these judgments supports the case of Respondent No.1.

35. Furthermore, the Respondent No 1 relies on the settlement scheme, which was presented before the Hon'ble Delhi High Court and brings to our notice that the name of the Appellant was very much included as one of the beneficiaries in that list and which has been brought on record in I.A. No. 6700/2025. Respondent No.1 claims that this is very much an

[3] Navin M. Raheja Vs. Vipul Jain & Ors. [Company Appeal (AT) (Ins.) No. 2168/2024]

acknowledgment of its claim. On this ground also, we cannot consider the debt to be time barred and find that there is no merit in the contentions of the Appellant for setting aside the order of the Adjudicating Authority, which has admitted the Corporate Debtor into insolvency under Section 7 of the Code.

36. We also underscore that the order of Delhi High Court dated 24.09.2025 in Company Petition No. 534/2015, clearly notes the existence of ongoing proceedings under Section 7 of the IBC filed by Respondent No. 1 for seeking initiation of CIR Proceeding against the Appellant Company VDPL. Delhi High Court also takes note that the proceedings under the revival scheme had failed and Section 7 proceedings were being agitated before the NCLT. The Hon'ble High Court also observes that, it would be apposite and in public interest that proceeding under the IBC be revived, and accordingly the parties were given liberty to take appropriate steps in accordance with law for further proceedings before the NCLT.

37. In addition, Hon'ble Delhi High Court has noted that *"the Supreme Court in the A. Navinchandra case has held that the pendency of admitted winding up proceedings is not a bar to proceedings under Section 7 or Section 9 of the IBC. It was held that Section 7 of the IBC is an independent proceeding, which has to be tried on its own merits and that stands by itself. It was further held that the discretionary provision under the 5th proviso to Section 434(1)(c)*[4]

[4] **"434. Transfer of certain pending proceedings**

of the 2013 Act cannot prevail over the jurisdiction of the NCLT under the IBC, once the parameters of Section 7 of the IBC and the other provisions of the IBC have been met."

38. We find that in this case, when the Hon'ble High Court was seized of the matter, the Section 7 proceedings were also parallelly going on and Hon'ble High Court had also closed the matter relating to the revival scheme as noted in the Company Petition No. 534/2015, in para 28 wherein it observes as follows:

> "28. As discussed above, the Scheme was approved by the Court on 27.01.2020 and the Ex-Directors/Propounders of the Scheme were allowed by this Court to take steps to revive the Company. However, inspite of the lapse of 3 years, thereafter, the Court found that pre-requisites for the implementation of the Scheme had not been worked out. The statutory authorities were not paid nor were the claims of the land owners settled. The land for the projects could also not be handed over since the Propounders of the Scheme were in judicial custody. Since the Scheme had become unworkable, the Scheme was set aside by this Court on 04.01.2023."

39. Thus, we find that the revival scheme had failed at the level of the Hon'ble Delhi High Court itself and the parties were provided liberty to take

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(1) .....

(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government."

appropriate steps in accordance with law for further proceedings before the NCLT, which is in the form of on-going Section 7 proceedings.

Conclusions

40. Hon'ble Delhi High Court had provided liberty to take appropriate steps in accordance with law for further proceedings before the NCLT, which is in the form of on-going Section 7 proceedings under the Code, and moreover we do not find that the debt of the Appellant was time barred. Thus, in the facts and circumstances of this case, we don't find any merit in the Appeal. Further, the Appellant is trying to mislead this Appellate Tribunal and has no locus to file any appeal. Accordingly, the Appeal deserves to be dismissed.

Orders

41. Therefore, Company Appeal (AT) (Insolvency) No. 1375 of 2019 stands dismissed. All related IAs are also disposed of. No order as to cost.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
September 07, 2026.

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