

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi - 110001

9th August, 2022

Subject: Judgment¹ dated 5th August, 2022 of the Hon'ble SC in the matter of Kotak Mahindra Bank Limited Vs. Kew Precision Parts Private Limited & Ors. [Civil Appeal No. 2176 of 2020].

The Hon'ble SC vide its order dated 5th August, held that an appeal being the continuation of original proceedings, the provision of section 7(5)(b) of the Code, for intimating the Financial Creditor (FC) before rejection of a claim, would be attracted. It also made some important observations as under:

Sl. No.	Subject / Issue	Ruling	Para / Page No.
1	Scheme of IBC	<p>(a) The provisions of the Code are designed to ensure that the commercial activities of the CD are continued by a Resolution Professional, post imposition of a moratorium, which would give the CD some reprieve from coercive litigation, which could drain the CD of its financial resources.</p> <p>(b) The Code is not just another statute for recovery of debts. Nor is it a statute which merely prescribes the modalities of liquidation of a corporate body, unable to pay its debts.</p> <p>(c) IBC is a beneficial legislation for equal treatment of all creditors of the CD, as also the protection of the livelihoods of its employees/workers, by revival of the CD through the entrepreneurial skills of persons other than those in its management, who failed to clear the dues of the CD to its creditors.</p>	<p>35/16</p> <p>42/20</p> <p>46/21</p>
2	Distinction between acknowledgement under the Limitation Act,	<p>(a) An acknowledgment under the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay.</p> <p>(b) Section 25(3) of the Contract Act is only attracted when there is an express promise to pay a</p>	<p>33/15-16</p> <p>33/16</p>

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	and promise under the Contract Act	debt that is time barred. Promise to pay can be inferred on scrutinising the document.	
3	Application under section 7 of the Code	If the AA has not ascertained the existence of default and passed an order within the stipulated period of time of fourteen days, it shall record its reasons for the same in writing. The application does not lapse for non-compliance of the time schedule. Nor is the AA obliged to dismiss the application. The application cannot be dismissed, without compliance with the requisites of the Proviso to section 7(5) of the Code.	39/19
4	Applicability of the Limitation Act, 1963, to Section 7 of the Code	<p>(a) Section 5 of the Limitation Act enables the court to admit an application or appeal if the applicant/appellant satisfies the court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. The court may exercise its discretion to condone delay, even in the absence of a formal application.</p> <p>(b) As per section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication.</p> <p>(c) Even entries in books of accounts and/or balance sheets of a CD would amount to an acknowledgment under section 18 of the Limitation Act.</p>	<p>53/23</p> <p>62/27</p> <p>64/29</p>
5	Conclusion	<p>(a) NCLAT, proceeded on the basis that the CIRP proceedings were barred by limitation in the absence of any acknowledgement of debt within the period of limitation, and closed the CIRP proceedings in the NCLT, without considering the question of applicability of section 5 of the Limitation Act for condonation of delay.</p> <p>(b) An appeal being the continuation of original proceedings, the provision of section 7(5)(b) of the Code, of notifying the FC before rejection of a claim, would be attracted. If notified of the proposal to close the proceedings, the FC might have got the opportunity to rectify the defects in its application under section 7 by filing additional pleadings.</p>	<p>69/31</p> <p>70/31</p>