

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH**

CP (IB) - 1382/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of

State Bank of India,
Stressed Assets Management Branch- II,
Raheja Chambers, ground floor, Wing- B,
Free Press Journal Marg, Nariman Point,
Mumbai- 400021

....Petitioner

vs.

Shreem Corporation Limited,
Flat No. 101, OG-III, Oberoi Garden,
Thakur Village, off western Expressway
Highway, Kandivali (East), Mumbai-
400101

.... Corporate Debtor

and

I.A. 2508/2021

in

C.P. (IB) - 1382/MB/2020

Under Section 5 of the Limitation Act,
1963 read with Sections 238A and 60(5)
of I&B Code, 2016

In the matter of

State Bank of India

....Applicant

vs.

Shreem Corporation Limited

.... Respondent

Order Pronounced on 22.09.2021

Coram: Hon'ble Suchitra Kanuparthi, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant/Financial Creditor : Senior Counsel Zal Andhyarujina a/w
Adv. Revati Desai, a/w Adv. Abdullah Qureshi a/w Adv. Nishitha Nambiar a/w
Adv. Maithili Prabhu i/b Indialaw LLP

For the Respondent: Taruna A. Prasad along with Vandana S. Mishra,
Advocates

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. State Bank of India (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Shreem Corporation Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default to the extent of Rs. 681.87 Crores including applicable interest as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Contentions of the Petitioner:

2. The Corporate Debtor approached the Petitioner at their Eastern Express Highway Branch to grant it credit facilities/ term loans and the Petitioner sanctioned three term loans vide Letter of Arrangements dated 27.08.2010, 26.11.2010 and 24.11.2011 which were duly accepted by the Corporate Debtor by executing various documents, agreements and deeds from time to time to secure the said facilities/ loans.
3. The Corporate Debtor defaulted in repaying the principal, interest and other monies on due dates as agreed in terms of documents, agreements and deeds. The Petitioner then classified the Corporate Debtor's loan account as Non-Performing Asset (NPA) on 28.06.2013. Thereafter, the

Petitioner had issued a demand notice under Section 13 of SARFAESI Act, 2002 dated 02.07.2013 to the Corporate Debtor demanding the outstanding debt amount. The Petitioner then again issues a Legal Notice dated 02.05.2014 calling upon the Corporate Debtor to repay the total sum o Rs. 322,08,61,560/- due and payable as on 31.03.2014 within 7 days from receipt of Legal Notice. Also, an Original Application No. 726/2014 was filed before the Hon'ble Debts Recovery Tribunal- III, Mumbai on 03.06.2014 against the Corporate Debtor for recovery of its entire dues.

4. The Mumbai Debt Recovery Tribunal-III in the said Original Application No. 726/2014 on 08.01.2015 granting interim relief to the Petitioner by restraining the Corporate Debtor to create any third party rights on the secured assets. The said Order of the Mumbai Debts Recovery Tribunal- III was extended vide Order dated 19.05.2016 with few modifications which is in operation till date.
5. Later, the loan account of the Corporate Debtor was declared as fraud and a FIR bearing no. RC0682016E0014 was lodged with Central Bureau of Investigation (CBI) on 30.09.2016 by the Petitioner against the Corporate Debtor. The Petitioner also filed a Securitisation Application bearing No. 416 of 2014 under Section 14 of the SARFAESI Act, 2002 before the Hon'ble District Magistrate, Palghar, at Palghar for taking physical possession of certain secured assets mortgaged in favor of the Petitioner and the said Application was allowed vide Order dated 09.03.2017.
6. The Counsel for the Petitioner further submits that the Directors of the Corporate Debtor vide Letter dated 16.05.2019 had approached the Petitioner with a Compromise Offer to settle the loan account of the Corporate Debtor. However, after detailed discussion, the Compromise Offer of the Corporate Debtor was rejected by the Petitioner. The Petitioner had also put one of the mortgaged immovable property of the Corporate Debtor for sale through auction on 12.12.2019 and 26.02.2020, however, no bids were received for the same. Till date, the Corporate Debtor has

failed to pay the outstanding debt amount to the Petitioner. Therefore, the Petitioner filed the Company Petition under Section 7 of the Code.

7. The Counsel for the Petitioner then submits that the date of default in the present case was 31.03.2013 and the Company Petition No. 1382 of 2020 was filed on 22.01.2020 with the delay of 1392 days, whereas, the limitation period of three years has already expired on 31.03.2016. It is further submitted that the Code was passed by the Parliament in May, 2016 and became effective only from December, 2016. Section 238A of the Code was inserted vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 with effect from 06.06.2018. Therefore, the delay from 31.12.2015 to 06.06.2018 was beyond the control of the Petitioner. Although, the Petitioner had initiated various other proceedings against the Corporate Debtor for recovery of its dues. The IA 2508 of 2021 in CP 1382 of 2020 has been filed by the Petitioner under Section 5 of the Limitation Act, 196 to condone the delay in filing the Company Petition 1382 of 2020.
8. The Counsel for the Petitioner submits that the intention of the Code is to provide a justified balance between an interest of all stakeholders of the Company so that they can enjoy the availability of credit and the loss that a creditor might have to bear on account of default. Therefore, it is absolutely necessary that the delay of 1392 days in filing the Company Petition be condoned by exercising the power that the Tribunal has under Section 5 of the Limitation Act, 1963 in the interest of both the parties as well as other stakeholders.

Contentions of the Corporate Debtor:

9. The Counsel for the Corporate Debtor submits that the Company Petition No. 1382 of 2020 is extensively time barred and liable to be dismissed at the outset as the Petitioner/ Applicant itself admits in the IA that there is an enormous delay of 1392 days in filing the Company Petition. The Petitioner/ Applicant has also completely failed to explain the 'sufficient cause' for delay in filing the Company Petition beyond the prescribed

limitation period of three years as required under Section 5 of the Limitation Act, 1963 and now, without any sufficient cause and in complete abuse of the process of law, the Petitioner is trying to get the delay condoned to recover a time barred debt against the Corporate Debtor. It is a settled law that when a debt is barred by time, the right to a remedy is also time barred. In the present case, the cause of action arose on the date of default, i.e., 31.03.2013 and hence, the limitation period ended on 31.03.2016 which is three years from the date of default.

10. The Counsel for the Corporate Debtor submits that during the implementation of Insolvency and Bankruptcy Code, 2016, the statute was silent on the applicability of principles of limitation for filing of applications/ claims under the Code. But, after the inclusion of Section 238A in the Code from 06.06.2018, this anomaly was resolved. However, the Code was not legislated to renew the time barred claim, therefore, right to apply did not arise then also when the Code was introduced and became effective. The contentions of the Petitioner that from 06.06.2018 till 22.01.2020, it was exploring the options available under law for recovery of its legitimate dues cannot be entertained because even after the Code came into effect from 01.12.2016, the Petitioner did not take any steps to initiate action for recovery of debt.

11. The Corporate Debtor pointed out that the conduct of the Petitioner clearly shows that the Petitioner did not take any steps to initiate any action against the Corporate Debtor within the prescribed limitation period. It is not that the Petitioner was remedy less during the time of default, but the Petitioner chose not to take any steps at the right time and has now, with an extensive and unexplained delay of 1392 days, filed the Company Petition for recovery of a time barred debt. The Petitioner cannot be allowed to walk in the court as per its own whims and fancies ignoring all laws of limitation. It is therefore submitted that the Tribunal should dismiss both the Company Petition and Interlocutory Application.

Written Submissions by the Petitioner

12. Submission No. 1: The Limitation Act in its entirety is applicable to proceedings under the Code, particularly to petitions under Section 7 of the Code

- i. Section 238-A of the Code, which was inserted in the Code vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 provides for applicability of the Limitation Act to proceedings before the Adjudicating Authority under the Code. The said provision is reproduced below for ease of reference:

"238A. Limitation. -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"

- ii. The language '*as the case may be*' is to be construed to mean '*respectively*', and therefore, Section 238-A would include within its ambit, all proceedings before the Adjudicating Authority under the Code.
 - iii. The petitions under Section 7, being proceedings before the *Adjudicating* Authority, would also be covered under Section 238-A of the Code, and accordingly, the provisions of Limitation Act are applicable to petitions under Section 7 of the Code.
13. Submission No. 2: The period of limitation for filing petition under Section 7 of the Code is 3 years from the date of default
- i. Article 137 of the Schedule to the Limitation Act is the residuary provision for computing the period of limitation for 'Other Applications'. Under Article 137, the period of limitation for filing any other application for which no period of limitation is otherwise provided, is 3 years from when the right to apply accrues. The

said Article is reproduced hereinbelow for ease of reference:

PART II- OTHER APPLICATION

*137. Any other application for which Three years When
the right to apply
no period of limitation is accrues
provided elsewhere in this Division.*

- ii. In *B. K. Educational Services Pvt. Ltd. v Parag Gupta and Associates* and thereafter, in *Babulal Vardharji Gurjar v Veer Gurjar Aluminium*, the Supreme Court has held that the period of limitation for filing petitions under Section 7 of the Limitation Act would be governed by Article 137 of the Limitation Act. Accordingly, the period of limitation would be three years from the date of default. Relevant extracts of the judgments are reproduced below for ease of reference:

B. K. Educational Services Pvt. Ltd.

"42. It is thus clear that since the Limitation Act is applicable to applications filed under Section 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. 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 "Emphasis Supplied]

Babulal Vardharji Gurjar v Veer Gurjar Aluminium

"30. When Section 238-A of the Code is read with the above-noted consistent decisions of this Court in Innoventive Industries, B. K.

Educational Services, Swiss Ribbons, K. Sashidhar, Jignesh Shah, Vashdeo R. Bhojwani, Gaurav Hargovindbhai Dave and Sagar Sharma respectively, the following basics undoubtedly come to the fore: (a) that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation; (b) that CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor; (c) that intention of the Code is not to give a new lease of life to debts which are time-barred; (d) that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues; (e) that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the right to apply under the Code accrues on the date when default occurs; (f) that default referred to in the Code is that of actual nonpayment by the corporate debtor when a debt has become due and payable; and (g) that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and (h) an application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application. "[Emphasis Supplied]

- iii. The *Limitation* Act is applicable to petitions under Section 7 and 9 of the Code;
- iv. Article 137 of the Limitation Act applies for the purpose of computation of the period of limitation;
- v. The right to sue accrues when the default occurs;
- vi. Limitation will start to run from the date on which the debt

became due and *payable*;

vii. If the default occurred three years prior to the date of filing of the application, the application would be time barred;

viii. Article 62 of *the* Limitation Act does not apply to petitions under Section 7 of the Code

ix. Section 5 of the Limitation Act applies to applications under the Code.

x. The CIRP is not an adversarial procedure, and is intended to protect the *interests* of the corporate debtor by giving it a chance of revival.

14. Submission No. 3: Section 18 of the Limitation Act is application to petitions under Section 7 of the Code, and entries in balance sheets of the Corporate Debtor amount to acknowledgment of debt

i. Section 18 of the Limitation Act provides for computation of a fresh period of limitation from the date of acknowledgement of debt. The said provision is reproduced below for ease of reference:

"18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) *an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off or is addressed to a person other than a person entitled to the property or right,*

(b) *the word "signed" means signed either personally or by an agent duly authorised in this behalf, and*

(c) *an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."*

- ii. The Supreme Court, in *Asset Reconstruction Company (India) Ltd. v Bishal Jaiswal & Anr.*, has held that Section 18 of the Limitation Act is applicable to petitions filed under Section 7 of the Code. Relevant extract is reproduced below for ease of reference:

"10. Nearer home, in Laxmi Pat Surana v. Union Bank of India, Civil Appeal No. 2734 of 2020, a judgment delivered on 26.03.2021, his Court, after referring to various judgments of this Court, including the judgment in Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1 ["Babulall, then held:

"35. The purport of such observation has been dealt with in the case of Babulal Vardharji Gurjar (II) [Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1]. Suffice it to observe that this Court had not ruled out the application of Section 18 of the Limitation Act to the proceedings under the Code, if the fact situation of the case so warrants. Considering that the purport of

Section 238A of the Code, as enacted, is clarificatory in nature and being a procedural law had been given retrospective effect; which included application of the provisions of the Limitation Act on case-to-case basis. Indeed, the purport of amendment in the Code was not to reopen or revive the time barred debts under the Limitation Act. At the same time, accrual of fresh period of limitation in terms of Section 18 of the Limitation Act is on its own under that Act. It will not be a case of giving new lease to time barred debts under the existing law (Limitation Act) as such.

36. Notably, the provisions of Limitation Act have been made applicable to the proceedings under the Code, as far as may be applicable. For, Section 238 A predicates that the provisions of Limitation Act shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the NCLAT, the DRT or the Debt Recovery Appellate Tribunal, as the case may be. After enactment of Section 238A of the Code on 06.06.2018, validity whereof has been upheld by this Court, it is not open to contend that the limitation for filing application under Section 7 of the Code would be limited to Article 137 of the Limitation Act and extension of prescribed period in certain cases could be only under Section 5 of the Limitation Act. There is no reason to exclude the effect of Section 18 of the Limitation Act to the proceedings initiated under the Code. Section 18 of the Limitation Act reads thus:

"18. Effect of acknowledgement in writing.-(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation. -For the purposes of this section,- (a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right;

(b) the word "signed" means signed either personally or by an agent duly authorized in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right." 37. Ordinarily, upon declaration of the loan account/ debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" - not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of an transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge

their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgements, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgement in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to any the debt. Such acknowledgement, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgement of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgement must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code."

11. Given the aforesaid, it is not possible to accede to the arguments made by Shri Sinha that Section 18 of the Limitation Act cannot be made applicable by reason of the arguments put forth by him."

- iii. The Supreme Court, thereafter, considered the law in respect of entries in balance sheets amounting to acknowledgment of debt under Section 18 of the Limitation Act. The judgment of the Hon'ble NCLAT in *V. Padmakumar v Stressed Assets Stabilisation Fund*, which held that entries in balance sheets would not amount to acknowledgement of debt, was then set aside by the Supreme Court. The Supreme Court, has therefore, inter alia, held that an entry made in a balance sheet of a corporate debtor would amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act. The relevant extract is reproduced below for ease of reference:

"43. It is, therefore, clear that the majority decision of the Full Bench in V. Padmakumar (supra) is contrary to the aforesaid catena of judgments. The minority judgment of Justice (Retd.) A.I.S. Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We, therefore, set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020."

- iv. The judgment of the Supreme Court in *Bishal Jaiswal* has also held that the auditor's report filed as part of the financial statements of the Company should also be considered for any caveats with regard to acknowledgments made in the books of accounts including the balance sheet. The relevant extract is reproduced below for ease of reference:

*"32. A perusal of the aforesaid Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognized by Section 134(7). Equally, the auditor's report may also enter, caveats with regard to acknowledgments made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in *Bengal Silk Mills (supra)*, that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act."*

- v. In view of the aforesaid acknowledgment of debt in the Corporate Debtor's balance sheets for the financial year 2014-15, which is within the limitation period of 3 years from the date of

default of 31.3.2013, a fresh period of limitation commenced from 31.3.2015. The said period of limitation continued till 31.3.2018.

- vi. Therefore, the initial period of 1392 days that was sought to be condoned, now stands reduced to 662 days, which is the period after 31.3.2018 till the date of filing of the petition on 22.1.2020. the said period is now sought to be condoned under Section 5 of the Limitation Act, as set out in the following submissions.

15. Submission No. 4: Section 5 of the Limitation Act is applicable for condonation of delay in filing petition under Section 7 of the Code

- i. Whereas Section 5 would therefore apply to all applications and petitions such as petitions/applications under Section 7 of the Code, it is settled that the same does not apply to suits. (See *Smt. Arti Devi v District Judge, Siddharthnagar and Others*)

Smt. Arti Devi v District Judge, Siddharthnagar and Others- Para 5 "Section 5 applies to the stages subsequent to institution of a valid suit and those proceedings which are construed as continuation of suit and not for seeking condonation of delay in filing time barred suit. The applicability of Section 5 has been excluded specifically to applications which fall under Order XXI, C.P.C. It shows that even when the suit proceedings have come to an end, in execution proceedings also section 5 shall not be applicable. A suit if otherwise is barred by time and is not saved by other provisions of sections 4 and 6 to 24 of Act, 1963 then it shall not be entertainable by the Court and has to be dismissed in view of the obligation created vide Section 3 of Act, 1963. Section 5 specifically says that it is applicable to an appeal or in application but not to a suit. The suit instituted by filing a plaint and a plaint, in my view, would not be covered by the term "application".

16. Submission No. 4: Uncertainty in the law concerning application of the Limitation Act to the Code is "sufficient cause"

- i. The provisions contained in Part II of the Code (IBC) pertaining to Insolvency for Corporate Persons, entitling the Applicant to file petition under Section 7 of the Code, came into force on 1.12.2016.
- ii. However, since the inception of the Code in 2016 till 2018, various conflicting judgments regarding the applicability of the Limitation Act to proceedings under the Code were passed by various benches of the Hon'ble NCLT and NCLAT.
- iii. Details of instances of such conflicting judgments are also set out in the List of Dates. The NCLT, in *Sanjay Bagrodia v Satyam Green Power Pvt. Ltd* (NCLT, Principal Bench) and *State Bank of India, Colombo v. Western Refrigeration Pvt. Ltd.* (NCLT, Ahmedabad) held that the Limitation Act was applicable to proceedings under the Code, whereas the NCLAT, vide its judgment in *Neelkanth Township & Construction Pvt. Ltd. v. Urban Infrastructure Trustees Ltd. and Speculum Plast Private Limited v. PTC Techno Private Limited* held that the provisions of the Limitation Act were not applicable to proceedings under the Code. NCLT Chandigarh thereafter relied on *Neelkanth Township & Construction Pvt. Ltd. v. Urban Infrastructure Trustees Ltd.* while passing orders in *Visa Drugs and Pharmaceuticals Private Limited v M/s Swan Aluminiums Private Limited*.

Relevant extracts from the aforesaid judgments are reproduced below for ease of reference:

- iv. judgment of NCLT (Principal Bench) (25.05.2017) in *Sanjay Bagrodia v Satyam Green Power Pvt. Ltd*:

'10.... claim made before the NCLT must also be within the period of limitation as prescribed by the Limitation Act, 1963'

- v. judgment of NCLT (Ahmedabad Bench) (26.05.2017) in *State Bank of India, Colombo v. Western Refrigeration Pvt. Ltd.:*

'26.1 There is no provision in the Insolvency Code providing limitation for triggering Insolvency Resolution Process by Financial Creditor, Operational Creditor or Corporate Debtor....

The wording used in Section 433 is that the provisions of the Limitation Act, 1963 are applicable to all proceedings before the Tribunal. It is not stated in Section 433 that the provisions of Limitation Act are applicable for the proceedings before the Tribunal in respect of the provisions of the Companies Act, 2013 alone'.

- vi. Judgment of NCLAT in *Neelkanth Township & Construction Pvt. Ltd. v. Urban Infrastructure Trustees Ltd.* (11.08.2017):

"24.There is nothing on record that Limitation Act, 2013 is applicable to I&B Code. Learned Counsel for the Appellant also failed to lay hand on any of the provision of I& B Code to suggest that the law of limitation act, 1963 is applicable. If there is a debt which includes interest and there is default of debt and having continuous cause of action, the argument that the claim of money by Respondent is barred by limitation cannot be accepted"

- vii. Judgment of NCLAT in *Speculum Plast Private Limited v. PTC Techno Private Limited* (7.11.2017):

"46.... we find that the scheme of the 'Special Act, i.e. the 786B Code', and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it.

47.we hold that Section 433 which relates to limitation of the Companies Act, 2013 ipso facto will not be applicable to I &B Code'

60. ...the right to apply accrues under Section 7 or Section 9 or Section 10 only with effect from 1st December, 2016 when 786B Code' has come into force, therefore,...such applications cannot be rejected on the ground that the application is barred by limitation"

viii. Judgment of NCLT Chandigarh in Visa Drugs and Pharmaceuticals Private Limited v M/s Swan Aluminiums Private Limited (04.09.2017):

"26. With regard to the plea of limitation, the Hon'ble National Company Law Appellate Tribunal has held in "Neelkanth Township and Construction Pvt. Ltd. Vs. Urban Infrastructure Trustees Limited" Company Appeal (AT) (Insolvency) No.44 of 2017, decided on 11.08.2017, that the plea of claim being barred by limitation under the Code, is not based on law. It was further held that there is no provision under the Code to suggest that the law of limitation, 1963 is applicable to I &B Code. The Hon'ble Appellate Tribunal further held that the IB Code, 2016 is not an Act for recovery of money claim, it relates to initiation of Corporate Insolvency Resolution Process.

27. In view of the above, the aforesaid contention, therefore,

cannot be accepted"

- ix. Amidst this controversy regarding the applicability of the Limitation Act, on 6.6.2018, vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, Section 238-A inserted in the IBC, whereby provisions of Limitation Act were made applicable to proceedings under the Code.
- x. Further, the Supreme Court, on 11.10.2018, vide its judgement in *B. K. Educational Services Pvt. Ltd. v Parag Gupta and Associates* held that the provisions of Limitation Act were applicable to petitions filed under Sections 7 and 9 of the Code. The judgment also held that the period of limitation for filing such petitions was three years from the date of default under Article 137 of the Schedule to the Limitation Act.
- xi. Judgment of NCLAT in *Sagar Sharma & Another v PhoenixARC Private Limited* (05.09.2019)

"13. Admittedly, 'I&B Code' has come into force since 1st December, 2016, therefore, the right to apply accrued to 1st Respondent on 1st December, 2016. Therefore we hold that the application under Section 7 was not barred by limitation"

"15. The 'Financial Creditor' has right to get immoveable property mortgaged and thereafter may transfer the mortgage assets for a valuable consideration for which 12 years of limitation has been prescribed for filing a suit relating to immovable property under Article 61 of Part V of the First Division of the Schedule of Limitation Act. Therefore, we hold that the claim of the 1st Respondent is not barred by limitation"

- xii. Judgment of NCLAT in Sesh Nath Singh & Others v Baidyabati Sheoraphuli Cooperative Bank Ltd. (22.11.2019)

"10. We have carefully examined the issue of limitation. The Respondent has bonafidely prosecuted within limitation period under SARFEASI Act. Therefore, the Respondent is entitled for the exclusion of time period under Section 14(2) of Limitation Act i.e. the period of 3 years and 6 months. After exclusion of this period the application filed under Section 7 of I&B Code is within limitation period.

11. In such circumstances we find that the application under Section 7 is within limitation and there is no force in the argument of Learned counsel for the Appellant that the application is time barred"

- xiii. The Applicant's submission is supported by the following judgments in which courts/ tribunals have condoned the delay on account of uncertainty in the law under Section 5 of the Limitation Act, finding that the same was 'sufficient cause' for such delay:

- xiv. Bhagwan Swarup v Municipal Board, Ujhani [1970 All L.T 757 (FB)]

"2. The question involved in the case is one of limitation and it arises in this way. The applicant Bhagwan Swarup filed a suit against the opposite parties for the recovery of Rs. 600/- by way of damages on the allegation that he had been maliciously retrenched from his position as Commanding Officer of No. 229, U.P.N.C.C.R. Company of Municipal Intermediate College, Ujhani. The learned Munsif decreed the suit of the applicant against defendants Nos. 1 and 2 on May 25, 1967. The Civil Courts closed for the summer vacation on June 2, 1967 and reopened after the

vacation on July 3, 1967. The application for copies of the judgment and decree was made on the same date, that is to say on, July 3, 1967. Copies were ready and delivered on July 5, 1967 and the appeal was filed on July 6, 1967. A preliminary point was raised before the learned Civil Judge of Budaun to the effect that the appeal was barred by time. The learned Civil Judge, relying upon the cases of *Udairaj Singh v. Jugal Kishore Mehra*; *Munshi Mohton v. Lachmanlaland Devi Charan Lal v. Mehni Husain*, held that the appeal was within limitation."

"7. In *Siyadat-un-nissa v. Muhammad Mahmud*, a Division Bench of this Court, on facts similar to the facts of the present case, came to the conclusion that the appeal was within time. In *Mukat Beharilal Agarwal Vakil v. Additional District Magistrate (Executive)*, another Division Bench came to the conclusion that the cases decided prior to the decision of their Lordships of the Privy Council in *Maqbul Ahmad v. Onkar Pratap Namin Singh* were no longer good law."

"14. Our conclusion, therefore, is that, technically, the appeal filed in the Court below was barred by limitation. The question, however, is whether this is a fit case for interference in revision. In view of the conflicting decisions mentioned above, the defendant No. 1, Municipal Board of Ujhani, could very well have been misled into thinking that copies could be applied for on the reopening of the civil courts after the vacation and the time requisite for obtaining the copies would be excluded and its appeal would be within limitation. This would, therefore, have been a perfectly good ground for condoning the delay in filing the appeal under Sec. 5 of the Act. We, therefore, decline to interfere in revision."

- xv. Further, it is also relevant to note that the Applicant/ Petitioner has not allowed the Respondent's debt to become time-barred. In fact, as particularly set out in the List of Dates, the Applicant has taken various actions to recover the debt, namely:
 - xvi. The Applicant has instituted proceedings before the Debt Recovery Tribunal under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 vide the Original Application no. 726 of 2014. Interim orders in favour of the Applicant were passed in the said proceedings, whereby the Respondent was restrained from creating any third party rights on the secured assets.
 - xvii. The Applicant has also filed Securitisation Application under Section 14 of the SARFAESI Act bearing no. 416 of 2014 filed before the Hon'ble District Magistrate Palghar for taking physical possession of certain secured assets mortgaged in favour of the Applicant. Order in favour of the Applicant was passed in the said proceedings, whereby the Tahsildar was appointed to take physical possession of the secured assets.
 - xviii. The Applicant has conducted Forensic Audit on the Respondent's loan account, and based on the findings and observations in the Forensic Audit Report, the Respondent's loan account has been declared as Fraud. Accordingly, the Applicant has also lodged with the CBI, FIR bearing no. RC0682016E0014 against the Respondent.
17. Submission 5: A liberal approach should be adopted by courts under Section 5 of the Limitation Act to do substantial justice to parties
- i. The Applicant submits that courts have time and again adopted a liberal approach while condoning delay under Section 5 of the

Limitation Act. The leading judgment in this regard is the judgment of the Supreme Court in *Collector, Land Acquisition, Anantnag and Another v Mst. Katifi & Others*. Relevant extracts are reproduced below for ease of reference:

"3. The legislature has conferred the power to condone delay by enacting Section 5 [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 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.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "*merits*". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

6. there is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

7. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal....The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

18. Submission 6: Consideration should be given to the fact that the

Applicant is a public sector undertaking of the Government of India and a liberal approach should be adopted in considering any delay in filing legal proceedings by any such public sector undertaking for the advancement of public interest

- i. The Applicant submits that the Supreme Court of India, in *State of Haryana v Chandra Mani* ((1996) 3 SCC 132) has taken cognizance of the fact that State and its agencies are prone to red tapism and considerable delay of such procedural red tape in the process of decision making is a common feature. Further, as the State represents the collective cause of the community, 'sufficient cause' of delay by State should be approached with pragmatism, to ensure that public interest does not suffer. Relevant extracts from the judgment are reproduced below for ease of reference:

"7. In *O.P. Kathpalia v. Lakhmir Singh* [(1984) 4 SCC 66] , a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector, Land Acquisition v. Katiji*[(1987) 2 SCC 107 : 1989 SCC (Tax) 172) , a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all

the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational commonsense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned."

19. In *G. Ramegowda, Major v. Spl. Land Acquisition Officer* [(1988) 2 SCC 142] , it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be

condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, No person is individually affected; but what, in the ultimate analysis suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

Written Submissions of the Corporate Debtor

20. Therefore, it is settled law that section 238A of the Code was inserted on 06.06.2018 and has the prospective application and therefore where the matters are filed after the insertion of amendment, by the cause of action preceded the amendment, have been filed due to wrong interpretation of law of limitation under the Code. The Blacks Law Dictionary defines the time barred debt as “bar to a legal frame arising from the lapse of a defined length of time, especially contained the statue of limitations”
21. The present application has been filed on 10.07.2020 wherein, the date of default was 31.03.2013, the limitation period of 3 years as envisaged under article 37 of Limitation Act ended on 31.03.2016. Therefore, it is not in dispute whether the present claim is time barred by the statue of Limitations.
22. The Hon'ble Supreme Court in the judgement of B.K. Educational Services Pvt. Ltd. V. Parag Gupta & Associates (Civil Appeal No.

23988/2017) (2019) 11 SCC 633. Para-27g Pg-53, held that the law of limitation concerning applications filed u/s 7 & 9 of the IBC shall be governed by Article 137 of the Limitation Act, 1963, by which a period of three years has been prescribed as the limitation period for all other applications.

23. The Hon'ble Supreme Court in the judgement of Babulal Vardhari Gurjar V. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No. 6347/2019, Para-30@ Pg-59), the Hon'ble Apex Court was pleased to hold that the intention of the code is *not to* give a new lease of life to debts which are time barred and that if a default had occurred over three years prior to the date of the filing of the application, the application would be time barred, save and except in those cases where, on facts, the delay in filing may be condoned and a similar view was adopted in the case of Gaurav Hargovindbhai Dave V. Asset Reconstruction Co. (India) Ltd. (Civil Appeal No. 4952 of 2019, Para6@Pg-3), wherein the Hon'ble Supreme Court stated that the *intent of the code could not have been to give a new lease of life to debts which are already time barred.*

24. The Hon'ble NCLAT in the judgement of Jagdish Prasad Sarada V. Allahabad, (Company Appeal (AT) (Insolvency) No. 183/2020, Para-11@Pg-6), wherein it was held that the determining factor is three years period from the date of default/NPA. The Applicant has admitted to the original date of default is 31.03.2013 whereas the Corporate Debtor's account was categorized as an NPA on 28.06.2013.

25. That in the Rajendra Kumar Tekriwal V. Bank of Baroda (Company Appeal (AT) (Insolvency) No. 225/2020, Para-11@Pg-6) the CIRP process was deemed to unsustainable as the same had been filed well beyond the period of three years from the date of the account of the corporate debtor being classified as an NPA.

26. The Hon'ble Supreme Court in the judgement of Jignesh Shah and Anr. v. Union of India and Anr. (2019) 10 SCC 750 stated that enforcement of the IBC in 2016 will not give a new life to the time-barred debts and if the

application is filed beyond three years from the date of default, then the same will be barred by time.

27. The Corporate Debtor also claimed that it is admitted position that the present application is filed by the delay of 662 days which is public sector bank. The Hon'ble Supreme Court in the matter of the Chief Postmaster General & Ors. V. Living Media India Ltd. & Ors. (2012) 3 SCC 563. Para 28 & 29. @Pg-574, wherein it was held that the law of limitation binds everyone equally including government and defence by Government of impersonal machinery and inherited bureaucratic methodology cannot be accepted in view of modern technologies being available.
28. The Petitioner has not shown sufficient cause to pursue the court in exercise of judicial discretion to treat the delay on an excusable one. The Hon'ble Supreme Court further in the matter of Esha Bhattacharjee V. Raghunathpur Nafar Academy (2013) 12 SCC 694 @ Para 21.1-22.3. Pg. 658-659, the Hon'ble Supreme Court was pleased to hold as under:

"Para 21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, or to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted.

That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9(ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the ground urged in the application are fanciful the courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

29. The Hon'ble NCLAT, Delhi in the matter of "Sri Kaustuv Ray vs. State

Bank of India & Anr." in Company Appeal (AT) (Insolvency) No. 804 of 2020, dated 20.01.2021, in it is again settled that a strict approach has to be followed on the point of limitation, and any application filed beyond the limitation period of three years will be time bared. The relevant portion reads as under:

"Heard learned counsel for the parties. The only issue raised in this appeal is that the claim of Respondent No.1- "State Bank of India" -("Financial Creditor") was barred by limitation as default occurred in the year 2013.

After hearing learned counsel for the parties briefly, we find that the account of Corporate Debtor was classified as NPA on 17th June, 2013. The Corporate Insolvency Resolution Process (CIRP) was triggered by the Financial Creditor by filing application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I & B Code" for short) on 1st April, 2019. It is by now well settled by a catena of judicial pronouncements from the Hon'ble Apex Court as also by this Appellate Tribunal that the application under Section 7 is governed by Article 137 of the Limitation Act providing for limitation period of three years which has to be reckoned from the date of default viz. the date on which the account of Corporate Debtor was classified as NPA. That being the position of law established through a series of Judgments of the Hon'ble Apex Court in "B.K. Educational Services Private Limited Vs. Parag Gupta and Associates- (2019) 11 Supreme Court Cases 633"; "Gaurav Hargovindbhai Dave. Vs. Asset Reconstruction 'Company (India) Ltd & Anr. -(2019) 10 Supreme Court Cases 572"; "Jignesh Shah & Anr. Vs. Union of India & Anr.-(2019) 10 Supreme Court Cases 750" and this Appellate Tribunal in "V. Padmakumar vs. Stressed Assets Stabilization Fund (SASD) & Anr.- Company Appeal (AT) (Insolvency) No. 57 of 2020" and with the latest pronouncement and dictum of the Hon'ble Apex Court in "Invent Assets Securitization and Reconstruction Private Limited vs.

Xylon Electrotechnic Private Limited- Civil Appeal No. 3783 of 2020 (decided on 7th January, 2021)". Respondent No.1 (Financial Creditor) could not have triggered CIRP by filing application under Section 7 of the "I&B Code" which was barred by limitation."

30. The Corporate Debtor further contended that the condonation of delay of 662 days is not only cause the grave injustice to the Corporate Debtor but also result in setting up the precedent which can be casually exploited who approached the Tribunal with their whims and fancies.

31. It is settled principle of law that right to sue accrued on the date of default as the default has occurred prior to the date of filing of application, the same could not amount to debt payable under the Code. In the instant case, the debt shown in the balance sheet on the year 31.03.2015, does not revive the limitation period beyond 31.03.2018 and is not covered under section 18 of the Limitation Act.

Findings:

32. The Applicant, State Bank of India, has filed the Company Petition No. CP 1382/2020 against the Respondent under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter called as "the Code") for an amount of Rs.681.87 crores as on 30.11.2019. It is an admitted position by the Applicant that there has been a delay of 1,392 days in filing the said Company Petition. The Applicant has filed an IA No.2508 of 2021 under Section 5 of the Limitation Act, 1963 r/w Section 238A of the Code for condonation of delay for filing the said Company Petition. The Petition was reserved for Orders on 12.03.2021 and the matter was heard on 30.04.2021 wherein the matter was de-reserved on the basis of the judgement of Hon'ble Supreme Court in Asset Reconstruction (India) Company Ltd. Vs. Bishal Jaiswal and Ors. The matter was again heard on 06.05.2021 and 17.06.2021 and was reserved for orders on 09.07.2021 after giving opportunity of filing additional affidavit to both the sides and hearing the counsels on record.

33. The Term Loan and Cash Credit Facility at the applicable rates of interest the total due as on 30.11.2019 stands at Rs.681.87Crores. The date of default is 31.03.2013 and date of NPA is 28.06.2013. This Bench notes that the facts relating to the amount of debt, the date of default and the date of NPA has not been disputed by the Respondent, i.e., M/s. Shreem Corporation Ltd. However, the only point of dispute is that the said Company Petition, i.e., CP No. 1382 of 2020, has been filed on 22.01.2020 after a delay of 1,392 days . The additional affidavit filed by the Petitioner however, sought to bring in the balance sheet for the year 31.03.2015 which records the liability of the Financial Creditor in the balance sheet. thus, a fresh period of limitation is accrued from 31.03.2015 and continues till 31.03.2018 therefore the period of delays is reduced from 1392 days to 662 days.
34. The delay in filing the application from 662 days was caused primarily due to uncertainty in law pertaining to the applicability of limitation Act to the proceedings under the Code, which prevented the applicant from preferring the Company Petition after the relevant provisions under the Code. Therefore, the applicant claims that the uncertainty in law is a sufficient cause in section 5 of the Limitation Act and hence sought for condonation of delay. The applicant have been diligent in exercising their legal rights and have filed the proceedings under the RRDB Act and SARFAESI Act.
35. The Corporate Debtor has filed reply with the additional affidavit and stated that the Petitioner has failed to give sufficient reasons to condone the days of 662 days and the Petition is liable to be dismissed. The Petitioner cannot be allowed to improve his case at the stage of judgement, which is not permissible as per settled principles of law. Therefore, the Corporate Debtor claimed that the Hon'ble Tribunal cannot look in to the additional affidavit filed by the petitioner in view of the recent judgement of the Hon'ble Supreme Court in Asset Reconstruction (India) Company Ltd. Vs. Bishal Jaiswal and Ors delivered on 15.04.2021. the financial

creditor could have brought these document on the records on the time of filing of application or even while filing of application of section 5 of Limitation Act.

36. The judgement of the Hon'ble Supreme Court in Asset Reconstruction (India) Company Ltd. Vs. Bishal Jaiswal and Ors. only clarified the section 18 of Limitation Act, applies to petition filed under IBC, 2016, but the extension of limitation or plea under section 18 of Limitation Act can be taken if the application is filed under section 7 of IBC within 3 years of extended period of limitation i.e. the date of acknowledgement of debt.
37. The Corporate Debtor also pointed out that the financial creditor has failed to show as to how the balance sheet captures the acknowledgment of debt due to the financial creditor, it casually states at para 8 that Corporate Debtor has acknowledged the dues to the Financial Creditor in its last audited balance sheet for the year 2014-15. The Petitioner has relied upon the audited balance sheet of 31.03.2015 and the limitation period in the present case extended till 31.03.2018 in accordance with section 18 of Limitation Act. Therefore, the Petition is barred by Limitation.
38. In view of the aforesaid narration of facts, the primary issues before this Bench are:
- (a) Whether the application under section 5 of the Limitation Act, seeking condonation of Delay is maintainable in an Application filed under Sec7 of IBC?
 - (b) Whether the Petitioner has shown sufficient cause for condonation of delay?
39. Keeping in view the fact that the 'debt' and 'default' have not been disputed by the Respondent side, the only issue of consideration before the Bench is as mentioned in the above paragraph, i.e. regarding applicability of limitation to the proceedings of the Code and if so, whether under Section 5 of the Limitation Act, 1963, there is sufficient cause to

condone the delay of less than 2 years in filing the Company Petition.

40. The Bench has no doubt in its mind that the Limitation Act, 1963 in entirety is applicable to the proceedings under the Code. Here, the Bench would like to draw attention to Section 238A of the Code which was inserted in the year 2018 and provides for applicability of Limitation Act, 1963 to the proceedings under the Code. The Section 238A of the Code reads as under:-

“Section 238A. Limitation: 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.”

41. It is relevant to refer to Sec.5 of Limitation Act, which grants extension of prescribed period of limitation in any appeal or application, if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making application within such period. Sec. 5 of Limitation Act is extracted below:

“Section 5 in The Limitation Act, 1963
5 Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, 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. Explanation.— The fact that the appellant or the applicant was 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.

42. The Hon’ble Supreme Court in BK Educational Society’s case have held that Limitation Act applies to applications filed under Sec7 & 9 of IBC and Article 137 gets attracted, the right to sue accrues when a default occurs,

if the default has occurred over three years prior to the date of filing of the application, the application would be barred by limitation under Article 137 of the Limitation Act, save and except in those cases where, in facts of the case, Sec.5 of the Limitation Act may be applied to condone the delay in filing such application.

43. Upon conjoint reading of provisions of Limitation Act 1963 read with Insolvency & Bankruptcy Code 2016 and settled principles of law in plethora of judgements, the question which remains to be answered is whether the Petitioner has established a sufficient cause to seek condonation of delay under Sec.5 of Limitation Act 1963.

44. The Adjudicating Authority while exercising the discretion to condone the delay must have a liberal approach and apply judicious mind to meet the ends of justice. In order to meet substantial justice this bench needs to carefully examine the sufficient reasons for delay in filing the present Application. In the instant case the petitioners have demonstrated sufficient causes/ reasons claiming condonation of delay as follows:

- a. Uncertainty in law with regard to applicability of the Limitation Act is a 'sufficient cause' under Section 5 of the Limitation Act. The provisions of part II of IBC came in to the force on 01.12.2016, a plethora of conflicting judgements of NCLT namely in Sanjay Bagrodia v Satyam Green Power Pvt. Ltd., wherein it was held that the limitation act was applicable and contrary to that view, the Hon'ble NCLAT in Neelkanth Township & Construction Pvt. Ltd. v. Urban Infrastructure Trustees Ltd., held that the provisions of the Limitation Act are not applicable under the proceedings of the Code. Further, section 238 -A was inserted on 06.06.2018 which provided that provisions of the Limitation Act, 1963, shall as far as may be, apply to the proceedings or appeals before the Adjudicating Authority. Later, the Hon'ble Supreme Court in B K Education Society case held that where the default has occurred over three years prior to the date of filing of the

application, the application could be barred under article 137 of the Limitation Act, save and except in those case where, in the facts of the case section 5 of the Limitation Act may be applied to condone the delay in filing such applications.

- b. The Applicant has not been negligent in the exercise of its rights for recovery of debt from the Respondent and there are no mala fides attributable to the Applicant. The applicant has further filed proceedings before the DRT under section 19 of RRDB Act vide OA No. 726 of 2014, initiated proceedings under section 14 of SARFAESI Act and filed petition bearing no. 416 of 2014 before the District Magistrate Palghar to take possession of secured assets, the applicant has conducted the forensic audit and has lodged CBI, FIR bearing no. RC0682016E0014 against the Corporate Debtor.
- c. The Petitioner being a public sector undertaking of Government of India and represent the collective cause of the community and in public interest. Therefore, if the delay in filing a Petition under section 7 is not condoned, there will be a great miscarriage of public justice and loss of public money.

45. In the present case, the total financial debt owed by the Corporate Debtor is Rs 681.87 crores to the Applicant who is a custodian of public money and public interest is at stake, CBI proceedings were instituted pursuant to FIR bearing No. RC068206E0014 and also with an element of fraud and involvement of certain officers of Applicant/Petitioner. The petitioner had taken steps and filed recovery proceedings before DRT and thus there is no negligence no lack of bonafides on the part of the Applicant in exercise of its legal rights.

46. This bench refers to the principles enunciated with regard to condonation of delay under sec.5 of Limitation Act 1963, in the judgement of Hon'ble Supreme Court in Collector (LA). v. Katiji [(1987)]

2 SCC 107: 1989 SCC (Tax) 172], a two-Judge Bench observed that:
(SCC p. 108, para 3)

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of courts."

47. It is also relevant to refer to the authority in Oriental Aroma Chemical Industries Ltd. V. Gujarat Industrial Development Corpn. Reported in (2010)SCC459, where a two-Judge Bench of this Court has observed that: (SCC p. 465, para 14)

"14. ... The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time."

48. This bench also relies on the settled principles of law as culled out by the Hon'ble Supreme Court in dealing with sufficient cause to condone the delay under sec.5 of Limitation Act, in B. Madhuri Goud v. B. Damodar Redely reported in (2012)12 SCC 693 and the same is extracted below:

(i) There should be a liberal, pragmatic,. justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise

injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part. of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure. of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in

the application are fanciful, the courts. should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation,

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

49. This bench also relies on the Hon'ble Supreme Court in the matter of Dena Bank(now Bank of Baroda) v. C Shivkumar Reddy and Anr. judgement dated 4.08.2021 at para 140 held as follows:

“while it is true that default in payment of a debt triggers the right to initiate the corporate Resolution Process, and a petition under Sec7 & 9 of IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of sEc.238 A of IBC read with Article 137 of the Schedule to the Limitation Act 1963, the delay in filing a petition in NCLT is condonable under Sec 5 of the Limitation Act unlike delay in filing suit.”

50. Drawing a reference to aforesaid principles of law and in BK Education Society's case, Babulal Gurjar case, Gaurav Hargovind Dave, Jignesh Shah and the recent judgement of Dena Bank on 04.08.2021, with regard to applicability of Limitation Act and Article 137 of Limitation Act 1963, this bench is bound to conclude that an application under Sec.7 is to be filed within three years as construed under Article 137 save and except in those cases where, in the facts of the case, sec.5 of Limitation Act may be applied to condone the delay in filing such application only on the ground that sufficient cause has been shown to condone such delay. It is well

settled expression “sufficient Cause” is to receive liberal construction and that the judicial discretion is to be exercised with vigilance and circumspection. It is not the case of the Respondent/ Corporate Debtor that grave injustice would be occasioned if the delay is condoned, this Bench is adopting a liberal approach considering that the applicant is a public sector undertaking of Government of India involving public interest/public money. This proceedings under Section 7 is not a recovery proceedings but to initiate Corporate Insolvency Resolution Process of the Corporate Debtor and as such this Adjudicating Authority is exercising its judicial discretion in condoning the delay in filing the petition under Sec.7 as an exceptional case.

51. It is therefore held that the petitioner has acted with due diligence and has shown sufficient cause and the delay of 662 days, which is less than two years in filing the present application is condoned and the I.A. 2508/2021 is allowed with a cost of Rs 6,00,000/ to be paid in Bharat Kosh by the Petitioner.
52. The petitioner has shown the debt and default of non-payment of monies by the Corporate Debtor and hence the petition is admitted.
53. This Bench, on perusal of the documents filed by the Financial Creditor, is of the view that the Premier Limited and the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-(I), namely:

- (I) (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the

Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Naren Sheth, having office at 1014-1015 Prasad Chamber Tata Road No.1.Opera House, Charni Road (East), Mumbai- 400004; having Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275 as Interim Resolution Professional to carry the

functions as mentioned under Insolvency & Bankruptcy Code.

54. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-

Chandra Bhan Singh
Member(Technical)

Sd/-

Suchitra Kanuparthi
Member(Judicial)