

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 215 of 2021

[Arising out of Order dated 19th February, 2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No. 5 in C.P. (IB) No. 4666/IBC/NCLT/MB/MAH/2019]

IN THE MATTER OF:

Ravindra G. Sapkal

(Promoter/erstwhile Chairman and MD
of Corporate Debtor – Kalyani Education Pvt. Ltd.)
Shop No. 22, 1st Floor, Shubhada Tower,
Sir Pochhanwala Road, Opposite to RTO Office
Worli, Mumbai – 400 030.

...Appellant

Versus

Samata Nagari Sahkari Patsantha Maryadit,

Kopargaon Samata Marg, Khandaknal,
Main Road, Kopargaon,
Dist. Ahmednagar – 423 601.

...Respondent

For Appellant: Mr. Ritin Rai, Sr. Advocate with Ms. Divya Parab, Mr. R. P. Agarwal and Ms. Vidhisha Haritwal, Advocates.

For Respondent: Mr. Raghunath Sarangapani, Mr. Kushank Sindhu, Mr. Abhinav Goyal, Ms. Seeta Swamy, Ms. Gazal Ghai and Mr. Tushar Bhardwaj, Advocates.

J U D G M E N T
[20.09.2021]

A. I. S. Cheema, J.

The Appellant – Promoter / erstwhile Chairman and MD of Corporate Debtor – ‘Kalyani Education Pvt. Ltd.’ has filed this Appeal against Impugned Order dated 19th February, 2021 passed by the Adjudicating Authority (National

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Company Law Tribunal), Mumbai Bench, Court No. 5 in C.P. (IB) No. 4666/IBC/NCLT/MB/MAH/2019. By the Impugned Order the Adjudicating Authority admitted the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'IBC') filed by the Respondent – 'Samata Nagari Sahkari Patsantha Maryadit'. As the Application under Section 7 was admitted and CIRP initiated, being aggrieved the present Appeal has been filed.

2. The Respondent has filed reply vide Dy. No. 26448. Parties have filed brief written submissions and also made oral submissions.

3. The Appeal claims and it is argued for the Appellant that the Respondent – Financial Creditor is a Cooperative Credit Society registered under Maharashtra State Co-operative Societies Act, 1960. The Corporate Debtor had availed of credit facilities i.e. Working Capital Term Loan of Rs.5 Crore for expansion of educational institution of the Corporate Debtor. The Financial Creditor granted consortium loan vide sanction letter dated 25.10.2013. Out of the amount sanctioned Rs.2.25 Crore was disbursed by the Financial Creditor. Rs.1.75 Crore was disbursed by Shivkrupa Sahakari Padpedhi, Nashik and balance Rs.1 Crore was disbursed by Janalaxmi Gramin Bigarsheti Patsanstha Maryadit, Akole. The Corporate Debtor mortgaged properties of the educational facilities. The Corporate Debtor expected to receive grant-in-aid from Government of Maharashtra which was to be released by 30.09.2018 but was not released. The Financial Creditor on 22.11.2019 filed Application under Section 7 of IBC alongwith Annexures (Annexure A-2 Colly).

4. The Appellant claims that Respondent had filed one MA No. 452/2020 seeking amendment in the petition. This MA was however withdrawn on 07.02.2020. Thus, it is claimed that the petition was not amended and inspite of defects the petition/Application has been admitted. The Appeal has referred to certain dates of hearing and gist of proceedings as claimed by the Appellant which may be reproduced:

Date of Hearing	Gist of Proceedings
01.01.2020	<i>Notice was issued to the Corporate Debtor</i>
15.01.2020	<i>The Respondent sought time to file Affidavit regarding service of Corporate Debtor.</i>
27.01.2020	<i>The Respondent again sought time to file proof of service the Respondent also submitted that there are some mistakes in FORM 1 and sought time to file an amended FORM 1.</i>
05.02.2020	<i>The Counsel for the Corporate Debtor appeared and sought time to file the reply to the Petition.</i>
07.02.2020	<i>The Respondent withdrew MA No. 452/2020 which had been filed for seeking amendment in FORM 1.</i>
21.02.2020	<i>The Counsel for Corporate Debtor sought time to file reply in the main Company Petition on or before 02.03.2020.</i>
12.03.2020	<i>The Counsel for the Corporate Debtor sought two weeks' time at arriving amicable settlement. Matter was adjourned to 07.04.2020.</i>
<i>No hearing took place between 07.04.2020 and 24.11.2020 due to Covid-19 lockdown</i>	
24.11.2020	<i>No representation on behalf of Corporate Debtor. However, in para 3 it is sated that the Corporate Debtor has filed its</i>

	<i>reply.</i> <i>Vide para 4, Registry was directed to issue Court notice to the Corporate Debtor and intimate the next date of hearing to the Corporate Debtor.</i>
<i>08.01.2021</i>	<i>No representation on behalf of the Corporate Debtor. The Respondent/ Financial Creditor was granted time to file their Written Submissions and the matter was adjourned to 05.02.2021</i>
<i>05.02.2021</i>	<i>No representation on behalf of the Corporate Debtor. In para 2 it is noted that notice of hearing was duly served on the Corporate Debtor on 04.04.2020. Orders reserved.</i>
<i>19.02.2021</i>	<i>Impugned order was passed.</i>

5. Copies of the orders have been attached with Annexure A-3 of the Appeal. The Appellant claims that although on 24.11.2020, the Adjudicating Authority directed the Registry to inform the Corporate Debtor the next date of hearing still no Court Notice was issued. Thus, it is claimed that the Corporate Debtor remained unrepresented in subsequent proceedings and impugned order came to be passed on the basis that the Corporate Debtor has filed Reply. Appellant claims in proceedings dated 05.02.2021, Adjudicating Authority recorded that the Corporate Debtor has been served with the notice with date of hearing on 04.04.2020 but according to the Appellant it was not possible as there was nationwide lockdown in the country from 24.03.2020 till 31.05.2020. Thus, Appellant claims that there was violation of Principles of Natural Justice. It is claimed that the Reply filed by the Corporate Debtor was to MA No. 452/2020 and that the Adjudicating Authority wrongly mentioned that the Corporate Debtor

has filed Reply to the main Petition. The other ground raised by the Appellant on behalf of the Corporate Debtor is that the date of default in the present matter is stated to be 30.11.2013 and the Company Petition filed on 22.04.2019 should be held as time barred considering judgment in the matter of *“Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminum Industries Ltd. & Anr.”*, Civil Appeal No. 6347 of 2019 dated 14.08.2020 passed by Hon’ble Supreme Court of India. According to the Appellant the judgment lays down that the period of limitation start from the date of default, and the period of limitation would be three years and it cannot be enlarged on the basis of subsequent acknowledgements.

6. Against this, Reply filed by the Respondent – Financial Creditor claims and it is argued on behalf of the Respondent that the Financial Creditor had granted credit facilities to the Corporate Debtor and Rs.2.25 Crores were disbursed. The date of default is 30.11.2013 and on 25.10.2019 the amount in default was Rs.1,67,82,786.76/-. The Respondent is relying on the Customer Ledger Account of the Corporate Debtor filed at Annexure R-1. Respondent claims that subsequent to the filing of application under Section 7 the Financial Creditor had filed MA No. 452/2020 as at Annexure R-3 (Reply page 31). There is a copy of Additional Affidavit filed by the Financial Creditor at Annexure R-4. According to Respondent the Reply filed by the Corporate Debtor was to the main petition itself as can be seen from copy of Reply which was filed by the Corporate Debtor which is at Annexure R-5 (Reply page 97). According to the Respondent the Appellant purposely has not filed the reply referred in Appeal with the Appeal, although the

Appellant is claiming that the Reply was to MA NO. 452/2020 and not to the application under Section 7. Referring to Annexure R-5 Counsel for the Respondent has pointed out that if the reply is seen it referred to the Miscellaneous Application in para 1. Said MA had already been withdrawn. The reply has then in Para 3 specifically stated that the affidavit was being filed for opposing the Company Petition and the reply met various claims as were made in the Application under Section 7 of IBC.

7. The Reply of Respondent in Appeal has referred to various dates and developments to claim that the Corporate Debtor had appeared in the proceedings and subsequently inspite of notice from the Adjudicating Authority the Corporate Debtor did not appear after filing the reply. The Counsel for Respondent has pointed out copy of Court Notice and email sent informing dates of the proceeding. It is argued that inspite of keeping the Corporate Debtor informed the Corporate Debtor did not choose to appear and participate in subsequent proceedings and thus cannot claim any violation of Principles of Natural Justice. The Learned Counsel for the Respondent has relied on the various payments made by the Corporate Debtor from time to time and also relied on the proceedings which took place before the Co-operative Court Authorities and the Recovery Certificate issued under Section 101 of the Maharashtra Co-operative Societies Act and reliance has been placed on the provisions of the Limitation Act and judgments in the matter of "*Sesh Nath Singh & Anr. vs. Bidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.*", Civil Appeal No. 9198 of

2019 dated 22.03.2021 passed by the Hon'ble Supreme Court of India. It is argued that the claim before the Adjudicating Authority was within limitation and that it has been rightly admitted.

8. As regards the claim of the Appellant that the Principles of Natural Justice were violated, Appellant has filed copies of orders at Annexure A-3. We have gone through the orders. The order dated 27.01.2020 reads as follows:

"7. C.P.(IB)-4666(MB)/2019

The counsel for the petitioner is present and seeks time to file proof of service and also submits that there are some mistakes in the Form 1 and requests time to file an amended Form 1. Permitted. The counsel for the petitioner is directed to file amended Form 1 within 7 days.

List the matter on 05.02.2020."

9. It is clear from above order that the Adjudicating Authority had permitted the Financial Creditor to file amended Form 1. It appears that the Financial Creditor had filed MA No. 452 of 2020 for amendment. After the order dated 27.01.2020, the Financial Creditor appears to have withdrawn the MA No. 452 of 2020 and requested that he wanted to amend petition and file certain other documents. The order dated 07.02.2020 reads as under"

"1. M.A. 452/2020 is being withdrawn by the professional representing the petitioner.

2. *The professional representing the petitioner is present. None for the Corporate Debtor.*
3. *The professional representing the petitioner mentions that certain amendment is required in the petition also certain other documents is also to be attached with the petition.*
4. *In view of this, the Bench directs that the same should be filed by the way of an additional affidavit.*
5. *The matter is adjourned to 21.02.2020.”*

10. What appears is that although MA No. 452/2020 was withdrawn, it was mentioned that certain amendment in petition is required and certain documents have to be filed. The Bench directed that the same should be filed by way of an additional affidavit. Thus, instead of Amendment, substitution of Amended Form 1 by way of Additional Affidavit was allowed. Reply shows that the Financial Creditor filed Additional Affidavit on 18.02.2020, which is at Annexure – R-4 (page 69 of Reply in the Appeal, Dy. No.26448). With this Additional Affidavit the amended Form 1 has been filed which is at page 74 of the Reply in this Appeal. Subsequently, the matter came up before the Adjudicating Authority on 21.02.2020 and the order passed reads as under:

- “1. *Both sides present. It is reported that Misc. Application No. 452/2020 was withdrawn by an order dated 07.02.2020 and it is wrongly on board.*
2. *Counsel for Respondent seeks time to file reply in the main CP. Counsel for Respondent may file the reply*

on or before 02.03.2020 and serve a copy to the other side.

3. *It is made clear that even if, Respondent fails to file reply, the matter will be heard on merits.*
4. *List this matter on 12.04.2020.”*

[Emphasis supplied]

11. From the above order it is clear that the Adjudicating Authority reiterated that the earlier MA No. 452/2020 was already withdrawn on 07.02.2020 and is wrongly on board and Counsel for the Corporate Debtor sought time to file reply in the main Company Petition. Now in the Appeal, Appellant is harping upon the fact that the reply was to the MA and not to the petition. This deserves to be rejected. If one peruses Annexure A-5 (page 97), it shows that in para 1 of the Reply (see pg. 99 of Dy. No. 26448) although the Corporate Debtor referred to Miscellaneous Application (which was already withdrawn), the Corporate Debtor in para 3 stated that the Appellant was filing this affidavit for the purpose of opposing the Company Petition. In said reply the contentions of the company petition are met for the purpose of opposing the company petition. The reply goes on to answer averments of the petition. The receipt of the loan is admitted. It is stated in Para 6 of the Reply as under:

“6. I state that I have intentions to paying the debts of the Petitioner, as even during pendency of section 101 of Maharashtra Co-operative Societies Act proceedings also we have paid much amount.”

12. Then para 9 reads as follows:

“9. I state that for enhancing their business have obtained joint loan of 5,00,00,000/- (Five crores), from Samata Nagari Sahakari Patsanstha, Janlaxmi Gram Bigar Sheti Sahakari Patsanstha May, Akole and Shivkrupa Sahakari Patpedhi, Mumbai. The Respondent repaid the said loan amount, the Respondent had repaid till March 2016 deposited Rs.3,92,40,000/- (Rupees Three Crores Ninety Two Lakhs Forty Thousand). Thereafter Respondent had repaid till March 2016 deposited Rs.36,00,000/- (Rupees Thirty Six Lakhs) and Rs.4,00,000/- (rupees Four Lakhs) as on today the Respondent had paid rupees 4,32,40,000/- (Rupees Four Crores Thirty Two Lakhs Four Thousand).”

13. Thus, debt outstanding is not disputed and the re-payments made till March, 2016 are pointed out. The fact that the Financial Creditor has obtained Recovery Certificate under Section 101 of the Maharashtra Co-operative Societies Act on 21.01.2015 (Appeal page 297) is also not disputed if reply para 8 is seen.

14. Thus we discard the claim being made by the Corporate Debtor that he did not get opportunity to file reply to the petition.

15. The other ground raised by the Appellant to claim that Principles of Natural Justice are violated is that subsequent to filing of the Reply the Corporate Debtor did not get notice. In our view once the party has appeared in the proceeding in the original forum where the further dates are given in the proceedings, and

pendency of the proceeding is known to a party, it is the responsibility of the party also to keep track of the proceedings and to participate in future developments in the matter.

16. On record there is order dated 12.03.2020 (Page 366 of Appeal), which reads as under:

- “1. The learned counsel for both sides present. The counsel for the Corporate Debtor mentions that the Corporate Debtor requires two weeks’ time to arrive at an amicable settlement, failing which the matter will be heard on merits on the next date of hearing.*
- 2. The matter is adjourned to 07.04.2020.”*

17. Thus, the Corporate Debtor sought time to amicably settle the matter. It was recorded that failing settlement the matter will be heard on merits on next date of hearing and the matter came to be adjourned to 07.04.2020. The matter could not be heard on 07.04.2020 and was taken up on 24.11.2020 and the order dated 24.11.2020 shows that the Adjudicating Authority referred to hearings that took place on earlier dates and that the Corporate Debtor had filed reply. The Adjudicating Authority by way of abundant caution directed the Registry to send a court notice to the Corporate Debtor as although the Counsel for Petitioner was present nobody was present for the Corporate Debtor. Thus, if the Counsel for the Petitioner could be present there is no justification why Counsel for the Corporate Debtor was not present. On 08.01.2021 also Counsel for the Petitioner was present but Counsel for the Corporate Debtor did not

appear and the Adjudicating Authority adjourned the matter to 05.02.2021. On 05.02.2021, the order of the Adjudicating Authority is as follows:

- “1. *Heard the professional appearing on behalf of the petitioner. There is no representation on side of the Corporate Debtor.*
2. *However, the Corporate Debtor had appeared earlier and filed their reply and the notice of the date of hearing was duly served upon them on 04.04.2020.*
3. ***Reserved for Orders.***”

18. Although the Appellant is trying to say that it was not possible that a notice could be served on 04.04.2020 because of the lockdown, we will ignore this defence in electronic age. The proceeding dated 12.03.2020 shows that on that day the Corporate Debtor sought time to arrive at amicable settlement and matter was adjourned to 07.04.2020, when it could not be taken up. Apart from above, we have the advantage of reply filed by the Respondent in Appeal with which Respondent filed documents at Annexure R-6 and Annexure R-7 (Dy. No.26448 at page 105 to 112) regarding communications sent on behalf of the Financial Creditor to the Corporate Debtor with regard to the dates on which the matter is coming up. Tracking Reports have been filed to show delivery of the communications. Thus, the Corporate Debtor appears to have resorted to studied silence. We do not find that the Appellant makes out any case of violation of Principles of Natural Justice.

19. As regards ground of limitation raised, the amended Form 1 mentions the date of default as 30.11.2013. The disbursement is shown as dated 29.10.2013. The amount was repayable in 36 monthly instalments. First instalment was due on 29.11.2013. At page 295 of the Appeal there is copy of Recovery Certificate issued in favour of the Financial Creditor by the Assistant Registrar, Cooperative Societies (Services). The translated document is at page 297. The Recovery Certificate was issued under Section 101 of Maharashtra Cooperative Societies Act, 1960 in favour of the Financial Creditor and against the Corporate Debtor for an amount of Rs.2,16,07,279/- and further interest was also to be paid till recovery. Recovery Certificate was issued on 21.01.2015 (Page 300 of Appeal).

20. The Corporate Debtor in Reply filed before the Adjudicating Authority pointed out in para 9 of the Reply (reproduced supra) the various amounts as had been paid till March, 2016. The Adjudicating Authority in Para 20 and 21 of the impugned order observed as under:

“20. In view of the above it is clear to the Bench that there is a ‘debt’ and there is a ‘default’. However, though not prayed by the Corporate Debtor, the only point to be seen by the Bench was whether the Petition is barred by Limitation Act. Here the Bench notes that this Petition was filed on 22.11.2019. the chronology of the dates of default and the instalments paid by the Corporate Debtor as per the Bank Statement submitted and which has been not denied by the Corporate Debtor is as under:-

PARTICULARS	DATE	AMOUNTS IN Rs.
DATE OF DEFAULT	30/11/2013	-
DATES AND AMOUNT WHICH THE INSTALMENTS WAS PAID BY THE CORPORATE DEBTOR	13/10/2014	8,10,000.00
	31/12/2014	8,10,000.00
	09/01/2015	8,10,000.00
	28/02/2015	8,10,000.00
	26/03/2015	8,10,000.00
REFER PAGE (252-256) OF THE BANK STATEMENT	11/06/2015	8,10,000.00
	07/07/2015	8,10,000.00
	30/07/2015	8,10,000.00
	03/11/2015	8,10,000.00
	29/01/2016	
	11/03/2016	16,20,000.00
	22/06/2016	8,10,000.00
		16,20,000.00
	08/06/2018	20,00,000.00

21. *It is clear from the above that though the date of default was 13.11.2013 (sic – should be 30.11.2013) the Petitioner has received payment on various dates in the year 2014, 2015, 2016 and the last date of payment by the Corporate Debtor was on 08.06.2018. Therefore, in accordance with Section 19 of the Limitation Act, 1963, a fresh period of limitation commences from the time when the last payment was made within the prescribed period.”*

21. The Financial Creditor is admittedly Cooperative Credit Society. The Cooperative Credit Society has filed its Customer Leger relating to the Corporate Debtor which has been relied on by the Adjudicating Authority. Copy of the same

in the Appeal is at page 289 to 294. The Corporate Debtor has not claimed in the Appeal that such instalments on dates mentioned had not been paid.

22. On such basis, the Adjudicating Authority came to a right conclusion that there was a debt which was in default and the debt outstanding was within limitation. The Appellant has relied on judgment in the matter of "*Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminum Industries Ltd. & Anr.*" (supra). The Hon'ble Supreme Court in subsequent judgment in the matter of "*Sesh Nath Singh & Anr. vs. Bidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.*" (supra) considered various judgments of the Hon'ble Supreme Court with regard to limitation as applicable to proceedings under IBC and observed in para 84 to 88 as under:

"84. To sum up, Section 14 excludes the time spent in proceeding in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction, or other such cause. Where such proceedings have ended, the outer limit to claim exclusion under Section 14 would be the date on which the proceedings ended.

85. In the instant case, the proceedings under the SARFAESI Act may not have formally been terminated. The proceedings have however been stayed by the High Court by an interim order, on the prima facie satisfaction that the proceedings initiated by the financial creditor, which is a cooperative bank, was without jurisdiction. The writ petition filed by the Corporate Debtor was not disposed of even after almost four years. The carriage of

proceedings was with the Corporate Debtor. The interim order was still in force, when proceedings under Section 7 of the IBC were initiated, as a result of which the Financial Creditor was unable to proceed further under the SARFAESI Act.

86. In the instant case, even if it is assumed that the right to sue accrued on 31.3.2013 when the account of Corporate Debtor was declared NPA, the financial creditor initiated proceedings under SARFAESI Act on 18th January 2014, that is the date on which notice under Section 13(2) was issued, proceeded with the same, and even took possession of the assets, until the entire proceedings were stayed by the High Court by its order dated 24th July 2017. The proceedings under Section 7 of the IBC were initiated on 10th July 2018.

87. In our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the initiation of proceedings under the SARFAESI Act could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act till the date of filing of the application under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High Court staying the proceedings under the SARFAESI Act, on the prima facie ground of want of jurisdiction is excluded, the

proceedings under Section 7 of IBC are still within limitation of three years.

88. An Adjudicating Authority under the IBC is not a substitute forum for a collection of debt in the sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time barred. The Adjudicating Authority does not resolve disputes, in the manner of suits, arbitrations and similar proceedings. However, the ultimate object of an application under Section 7 or 9 of the IBC is the realization of a 'debt' by invocation of the Insolvency Resolution Process. In any case, since the cause of action for initiation of an application, whether under Section 7 or under Section 9 of the IBC, is default on the part of the Corporate Debtor, and the provisions of the Limitation Act 1963, as far as may be, have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation."

23. In para 92 of the judgment the Hon'ble Supreme Court after referring to Section 238A of IBC observed that the provisions of the Limitation Act would apply *mutatis mutandis* to proceedings under the IBC in the NCLT/NCLAT.

24. In another judgment in the matter of "*Dena Bank vs. C. Shivakumar Reddy & Anr.*", *Civil Appeal No. 1650 of 2020*, the Hon'ble Supreme Court in judgment dated 04.08.2021 considered the following issues:

“23. The issue which arises for consideration of this Court, in this appeal is, whether the NCLAT has erred in law in arriving at the conclusion that, the Petition filed by the Appellant Bank under Section 7 of the IBC was barred by limitation, and setting aside the order dated 21st March 2019 passed by the Adjudicating Authority, admitting the said Petition.

24. In other words, the main question involved in this appeal is, whether a Petition under Section 7 of the IBC would be barred by limitation, on the sole ground that it had been filed beyond a period of 3 years from the date of declaration of the loan account of the Corporate Debtor as NPA, even though the Corporate Debtor might subsequently have acknowledged its liability to the Appellant Bank, within a period of three years prior to the date of filing of the Petition under Section 7 of the IBC, by making a proposal for a One Time Settlement, or by acknowledging the debt in its statutory Balance Sheets and Books of Accounts.

25. Another question which arises for the consideration of this Court is, whether a final judgment and decree of the DRT in favour of the Financial Creditor, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action to the Financial Creditor to initiate proceedings under Section 7 of the IBC within three years from the date of the final judgment and decree, and/or within three years from the date of issuance of the Certificate of Recovery.

26. *A third issue which arises for adjudication of this Court is, whether there is any bar in law to the amendment of pleadings, in a Petition under Section 7 of the IBC, or to the filing of additional documents, apart from those filed initially, along with the Petition under Section 7 of the IBC in Form-1.*”

25. The Hon’ble Supreme Court referred to the judgment of “*Sesh Nath Singh & Anr. vs. Bidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.*”, (Supra) in para 114 to observe that IBC does not exclude the application of Section 14 or 18 or any other provision of the Limitation Act. The Hon’ble Supreme Court in Para 138 of this judgment observed:

“138. A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.

139. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate. The Petition of the Appellant Bank, would not be barred by limitation at least till 24th May, 2020.”

26. It is quite clear that Certificate of Recovery issued would also give fresh right to recover the amounts for which the Recovery Certificate has been issued.

In the present matter the Recovery Certificate was issued on 21.01.2015. Then there are undisputedly part-payments made. Thus Section 19 of Limitation Act is also helpful to Financial Creditors. The Application filed under Section 7 on 22.11.2019 cannot be said to be time barred.

27. We do not find any substance in the Appeal. The Appeal is dismissed. Interim orders dated 22.03.2021 are vacated. I.A. No. 1507/2021 is disposed of with liberty to the Resolution Professional to move the Adjudicating Authority for appropriate reliefs.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[V. P. Singh]
Member (Technical)

Archana