

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-V**  
**IA-854/ND/2021 & IA-2242/ND/2020**  
**In**  
**IB-630/ND/2020**

**(IB) 630 (ND)/2020**  
**IA/854(ND)2021**

**IN THE MATTER OF:**

**M/s RAVIIRON LIMITED**  
**CIN: U27106DL1997PLC085272**  
**THROUGH ITS AUTHORIZED REPRESENTATIVE:**  
**MR. DEEPAK AGGARWAL**  
**REGD. OFFICE: 257, CYCLE MARKET, JHANDEWALAN, NEW DELHI,**  
**110055**  
**GHAZIABAD OFFICE: 67, NAVYUG MARKET, GHAZIABAD - 201001**

**...APPLICANT/OPERATIONAL CREDITOR**

**VERSUS**

- 1. JIA LAL KISHORI LAL PVT LTD**  
**CIN- U74899DL1994PTC062690**  
**REGD. OFFICE: 06/6006/1 VASANT KUNJ, NEW DELHI, 110070**  
**....RESPONDENT-1/ CORPORATE DEBTOR**
  
- 2. KUNAL MEHRA**  
**DIRECTOR OF JIA LAL KISHORI LAL PVT LTD**  
**DIN-00419785**  
**D-6/6006/1 G.F. VASANT KUNJ NEW DELHI 110070 DL IN**  
**.....RESPONDENT-2**
  
- 3. BRIJ MEHRA**  
**DIRECTOR OF JIA LAL KISHORI LAL PVT LTD**  
**DIN-00419862**  
**HOUSE NO. 28 AKASHNEEM MARG, DLF PHASE 2,**  
**DLF QE GURGAON 122002 HR IN**  
**...RESPONDENT-3**

**SECTION: Rule 11 of NCLT Rules, 2016**

**(IB) 630 (ND)/2020**  
**IA/2242(ND) 2020**

**IN THE MATTER OF:**

**M/S RAVI IRON LIMITED**  
**CIN: U27106DL1997PLC085272**  
**THROUGH ITS AUTHORIZED REPRESENTATIVE:**  
**MR. DEEPAK AGGARWAL**



REGD. OFFICE: 257, CYCLE MARKET, JHANDEWALAN, NEW DELHI, 110055

GHAZIABAD OFFICE: 67, NAVYUG MARKET, GHAZIABAD - 201001

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

4. JIA LAL KISHORI LAL PVT LTD

CIN- U74899DL1994PTC062690

REGD. OFFICE: 06/6006/1 VASANT KUNJ, NEW DELHI, 110070

....RESPONDENT-1/ CORPORATE DEBTOR

5. KUNAL MEHRA

DIRECTOR OF JIA LAL KISHORI LAL PVT LTD

DIN-00419785

D-6/6006/1 G.F. VASANT KUNJ NEW DELHI 110070 DL IN

.....RESPONDENT-2

6. BRIJ MEHRA

DIRECTOR OF JIA LAL KISHORI LAL PVT LTD

DIN-00419862

HOUSE NO. 28 AKASHNEEM MARG, DLF PHASE 2,

DLF QE GURGAON 122002 HR IN

...RESPONDENT-3

SECTION: U/S 5 OF LIMITATION ACT, 1963 R/W SECTION 238A OF IBC, 2016

Order delivered on: 24.09.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)

PRESENT: -

For the Applicant: Adv. Arun Agarwal, Vipin Garg and Krishna Goel

For the Respondent: Adv. Jia Lal Kishori

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. Since the facts and averments of both the applications i.e. IA/854/2021, IA/2242/2020 are common and the prayers made therein are similar, therefore we would like to dispose off both of these applications by a

common order. For the sake of convenience, we shall take up the facts of IA/854/2021 first.

**Facts of IA/854/2021:-**

2. The present application has been filed under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking amendment of original petition IB-630/2020 and praying to allow to correct the date of default in Part-IV of Application under section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") in IB 630/2020, which may be read as 31.12.2016 in terms of the Mediation Order/POC, which has duly been relied upon in terms of Part-V of the said Application u/s 9 of the Code in IB-630/2020.

3. The facts mentioned in the application in brief are as follows:

- i. That the Applicant M/s Ravi Iron Limited is the Operational Creditor and the Respondent No. - 1, M/s Jia Lal Kishori Lal Pvt Ltd. is the Corporate Debtor who placed Purchase Orders for supply of steel and issued a Post Dated Cheque (PDC) No. 286473 dt 11.1.2008 of Rs. 27,33,000/-.
- ii. That the Applicant supplied Iron & Steel through proper invoices, and the receivables as on 31.03.2008, Rs. 27,01,320/- . However, the payment of the said receivables was defaulted by the Corporate Debtor and the PDC of Rs. 27,33,000/- was dishonoured.
- iii. That the Applicant was having a Bank Guarantee of Rs. 10,00,000/-, which was invoked and thus part payment of Rs.10,00,000/- was realised on 02.05.2008, after which the receivables amounted to Rs. 17,01,320/-.
- iv. That the Applicant filed legal proceedings u/s 138 of Negotiable Instruments Act, before ACJ-III, Ghaziabad on 06/06/2008. Later on the proceedings got transferred to the court of CMM, Karkardooma Court, Delhi on 30/09/2014. Then the case was referred to Mediation Centre and a settlement was arrived and

Mediation Order was passed on 16/11/2015 to which the Corporate Debtor and the Applicant/Operational Creditor, both were signatories, whereby the case was settled at Rs. 11,00,000/- subject to timely payment of four post-dated cheques of different dates i.e. Rs. 3,00,000/- dt 29.02.2016; Rs. 3,00,000/- dt 30.05.2016; Rs. 2,50,000/- dt 30.08.2016; Rs.2,50,000/- dt 30.11.2016; which were to be delivered in the Court on 30.11.2015. The Mediation Order and the aforesaid PDC thus amounted to acknowledgement of debt in terms of Sec-25(3) of the Indian Contract Act, 1872.

- v. However, the period of four cheques of Rs. 11,00,000/- agreed as above was further extended by one month and the details of actual four cheques delivered, drawn on State Bank of India, is as per table below, all of which were dishonoured and in lieu thereof only an amount of Rs. 3,00,000/- was realised through Demand Drafts given by the Corporate Debtor.

Cheque No.	Date	Amount	Remarks
491301	29.03.2016	3,00,000/-	Cheque Dishonoured. Amount paid through two Demand Drafts of Rs. 2,00,000/- & Rs. 1,00,000/- each
491302	30.06.2016	3,00,000/-	Cheque Dishonoured on 06/08/2016 & again on 26/09/2016
491304	30.09.2016	2,50,000/-	Cheque Dishonoured on 01/10/2016
491305	30.12.2016	2,50,000/-	Cheque Dishonoured on 31/12/2016

On default of settlement mediation the original outstanding of Rs. 17,01,320/- after realisation of above Demand Drafts of Rs. 3,00,000/- comes at Rs. 14,01,320/-.

- vi. That the Applicant reported the Non-compliance of Mediation Order to the court of CMM, Karkardooma, Delhi and the Court issued Non-Bailable Warrants (NBW) on 18/01/2017 fixing the date appearance on 02/03/2017. Thereafter the case was transferred from the Court of CMM, Delhi to the Court of

Ghaziabad. The Ghaziabad Court issued NBW on 09/11/2017, 09/01/2018, 23/03/2018, 04/05/2018, 27/06/2018, 18/09/2018, 16/11/2018, 08/12/2018, 05/03/2019, 25/05/2019, 19/08/2019, 14/10/2019. The Corporate Debtor never appeared before the Court.

- vii. That the copy of Mediation Order dt. 16.11.2015 has been filed and relied upon in terms of Part-V of application u/s 9 of the Code in IB 630/2020. It is evident from above stated facts that the last cheque no. 491305 dt. 30.12.2016 was dishonoured on 31.12.2016 and a return memo was issued by bank. Thus, the date of default in terms of the Mediation Order/PDC was 31.12.2016, however in Part-IV of Application u/s 9 of the Code, it was inadvertently mentioned to be 10.01.2008 (as per original invoices) instead of 31.12.2016. The present application is being filed to pray before this Tribunal to allow to correct the date of default in Part-IV of application u/s 9 of the Code in IB 630/2020 and the same may kindly be read as 31.12.2016.
- viii. That the period of Limitation from the aforesaid date of default being 31.12.2016 expire on 31.12.2019 whereas the IB 630/2020 was filed on 26.02.2020 and thus there was a delay of 56 days for which a condonation application u/s 5 of Limitation Act 1963 was filed by the Applicant/Operational Creditor in terms of IA 2242/2020

**Facts of IA/2242/2020:-**

4. The present application has been filed under Section 5 of the Limitation Act, 1963 r/w Section 238A of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") praying for condonation of delay of 56 days in filing application under section 9 of the Code.

5. The facts mentioned in the application are almost similar to the facts of IA/854/2021 except the following:

- i. That the Applicant issued a Demand Notice (Form-3) on 22/11/2019 in terms of Rule-5(l)(a) r/w Sec.8 of the Code at the

registered office of the Corporate Debtor, which was returned on 28/11/2019 with the remarks "Addressee left"

- ii. Further, the Applicant served the Demand Notice on the registered email id of the Corporate Debtor on 28/11/2019.
- iii. Further, the Applicant also served a hard copy of Demand Notice by speed post through the Director Shri Brij Mehra which was duly received by him on 14/12/2019.
- iv. No Notice of any dispute of unpaid Operational Debt was received by the Applicant within the period of 10 days from the date of delivery of Demand Notice on 14/12/2019, u/s 9 of the Code. The period of 10 days expired on 24/12/2019.
- v. Thus, the Applicant proceeded to file the Application (Form-5) in terms of Rule-6(1) r/w sec. 9 of the Code.
- vi. After collecting the aforesaid records/documents from that counsel, the Applicant immediately compiled the Application (Form-5) and filed the same on 26/02/2020.
- vii. That the grounds for Condonation of Delay in terms of sec.5 of Limitation Act, 1963 are as follows:
  - a. The Return Memo of dishonour of cheque no. 491305 was issued on 31/12/2016 and there from the period of three years expired on 31/12/2019 whereas the Application (Form-5) u/s 9 of the Code was filed on 26/02/2020. So computed, the delay in filing present Application u/s 9 of the Code amounts to 56 days, which the Applicant/Operational Creditor pray to be condoned u/s 5 of The Limitation Act 1963. The Applicant pleads that there exist sufficient cause/grounds to condone the aforesaid delay of 56 days as detailed herein.
  - b. The Applicant was under a bonafide belief that the statutory Demand Notice (Form-3) under Rule- 5(1)(a) r/w Sec.8 of the Code initiates the CIRP Process and is part and parcel of Application u/s 9 of the Code and thus believed that serving Demand Notice u/s 8 of the Code is



sufficient compliance of the Law of Limitation in terms of Article 137 under the Limitation Act, 1963.

- c. The Return Memo dt. 31/12/2016 issued by the bank was received by the Applicant in the second week of Jan 2017. The court of CMM, East KKD was informed about the dishonour of cheque and non-compliance of Mediation Order on 18/01/2017. The Court issued NBW on 18/01/2017 against the accused to appear before the Court on 02/03/2017.
- d. The Applicant was of bonafide belief that the limitation in terms of Article 137 of the Limitation Act, 1963 would accrue on non-appearance of the Corporate Debtor before the Court. The Corporate Debtor never appeared before the Court on 02/03/2017 and thereafter on various dates fixed, and the Applicant was under bonafide belief that on each such occasion, fresh cause of action arose and thus fresh limitation period started in terms of the provisions of the Limitation Act, 1963.

6. We have heard Ld. Counsel for the applicant and perused the averment made in the application.

7. Ld. Counsel for applicant submitted that the applicant has filed an application under Section 9 of IBC, 2016 and in part IV of that application, the applicant has mentioned the date of default is of 10.01.2008 i.e. after 30 (thirty) days credit period.

8. He further contended that the applicant in Part V of the application also enclosed the order passed by Mediation Centre, Karkardoma Courts, Delhi (hereinafter referred as 'Mediation order') dated 16.11.2015.

9. He further contended that the aforesaid mediation order was duly signed by the applicant and the corporate debtor and as per the mediation order, the corporate debtor had issued 4 (four) post dated cheques but all the cheques were dishonoured. Therefore, the date of default is 31.12.2016.

10. He further contended that due to inadvertently on the basis of original invoice, the date of default was of 10.01.2008. So, the same may be permitted to be corrected.

11. In the light of submissions, now, we consider the prayer of the applicant. We observed that the applicant has annexed mediation order dated 16.11.2015 in Case Number 425/14 (from page 9 of the application).

12. On perusal of the said order dated 16.11.2015, we observed that the said matter was referred to Mediation Centre, Karkardoma Courts, Delhi in Case Number 425/14.

13. We further observed that an agreement was arrived in between the parties and thereafter, the copy of the settlement was signed by both the parties and was sent to concerned court, the parties are directed to appear before concerned court on 03.12.2015.

14. We further notice that the applicant has not enclosed the order passed by the concerned court in terms of settlement arrived in between the parties at mediation centre.

15. At this juncture, we would like to refer to Rule 20 and 25 of Mediation and Conciliation Rules, 2004 and the relevant portion of aforesaid rules are quoted below: -

**Rule 20: Confidentiality, disclosure and inadmissibility of information.**

**(a) When a mediator/conciliator receives factual information concerning the dispute(s) from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate.**

**Provided that, when a party give information to the mediator/conciliator subject to a specific condition that it be kept confidential, the mediator/conciliator shall not disclose that information to the other party.**

**(b) Receipt or perusal, or preparation of records, reports or other documents by the mediator/conciliator, while serving in that capacity shall be confidential and mediator/conciliator shall not be compelled to divulge information regarding**



those documents nor as to what transpired during the mediation/conciliation before any court of tribunal or any other authority or any person or group of persons.

(c) Parties shall maintain confidentiality in respect of events that transpired during the mediation/conciliation and shall not rely on or introduce the said information in other proceedings as to :

(i) views expressed by a party in the course of the mediation/conciliation proceedings;

(ii) documents obtained during the mediation/conciliation which are expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator/conciliator;

(iii) proposals made or views expressed by the mediator/conciliator;

(iv) admission made by a party in the course of mediation/conciliation proceedings;

(v) that fact that a party had or had not indicated willingness to accept a proposal;

(d) There shall be no audio or video recording of the mediation/conciliation proceedings.

(e) No statement of parties or the witnesses shall be recorded by the mediator/conciliator.

*Rule 25 : Court to fix a date for recording settlement and passing decree.*

(a) On receipt of any settlement, the court shall fix a date of hearing normally within seven days but in any case not beyond a period of fourteen days. On such date of hearing, if the court is satisfied that the parties have settled their dispute(s), it shall pass a decree in accordance with terms thereof.



**(b) If the settlement dispose of only certain issues arising in the suit or proceeding, on the basis of which any decree is passed as stated in Clause (a), the court shall proceed further to decide remaining issues.**

16. On perusal of aforesaid rules, we notice that as per Rule 20 (c) (i), (iii) & (iv), views expressed by a party in the course of the mediation/conciliation proceedings or the proposals made or views expressed by the mediator/conciliator and admission made by a party in the course of mediation/conciliation proceeding shall not rely on or introduce the said information in other proceedings.

17. It is further seen that as per Rule 25, after the settlement agreement had arrived under Rule 24 of the mediation rules, the settlement agreement was required to be placed before the concerned court and on receipt of any settlement, after hearing the parties, within seven days but in any case not beyond a period of fourteen days, if the court is satisfied that the parties have settled their dispute(s), it shall pass a decree in accordance with terms thereof.

18. In view of the aforesaid provision, when we consider the case in hand then we notice that although the settlement agreement was arrived in between the parties and the matter was referred to the concerned court under Rule 25 of the Mediation Rules but the applicant has failed to produce any document to show that the concerned court has passed any order as required under Rule 25 of the Mediation Rules. Therefore, in view of the Rule 25 of the Mediation Rules, unless an order has been passed by the concerned court, the settlement arrived in between the parties before the Mediator cannot be treated as a decree. And in view of Rule 20 of the Mediation Rules, views expressed by a party in the course of the mediation/conciliation proceedings or the proposals made or views expressed by the mediator/conciliator and admission made by a party in the course of mediation/conciliation proceeding shall not rely on or introduce the said information in other proceedings.



19. Therefore, we are unable to accept the contention of the applicant is that in view of mediation order dated 16.11.2015, the date of default is changed.

20. For the reasons discussed above, we are not inclined to allow the prayer of the applicant to make necessary amendment in the date of default in view of mediation order dated 16.11.2015 because under the law that agreement cannot be treated as an valid order/ decree as per Rule 25 of the Mediation Rules.

21. Hence, this prayer of the applicant is hereby rejected.

**22. Accordingly, with this order, the present application i.e. IA/854/2021 stands dismissed.**

23. Now, coming to the next application i.e. IA/2242/2020, in which the prayer of the applicant for condonation of delay under Section 5 of Limitation Act, 1963.

24. Before considering the prayer, we would like to refer to Section 5 of the Limitation Act, 1963 and the same is quoted below: -

**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.**

25. In course of hearing, Ld. Counsel for applicant refer to Section 25 of the Contract Act and submits that in view of Section 25 (3) of Contract Act, It is a promise, made in writing and signed by the person to pay wholly or in part a debt of which the creditor might have enforced payment but for the



law for the limitation of suits it cannot be enforced that date if the acknowledgment is made under Section 25(3) of Contract Act.

26. In this regard, Ld. Counsel for applicant has placed reliance upon the several decisions.

- i. **Nepal Airlines Corporation vs. Gulshan Kumar Singh. (Delhi High Court) CS (OS) 1402/2010.**
- ii. **Uniword Telecom Limited vs. Mis Taurus Exports Private Limited. NCLT (Jaipur bench) C.P No- (IB)-233/9/JPR/20 19.**
- iii. **Kotak Mahindra Bank Ltd. vs. Anuj Kumar Tyagi. (Delhi High Court) RFA 56/2014.**
- iv. **R. Madesh vs. M. Rathinam (Madras High Court) Civil Suit No- 250 Of 2007.**
- v. **Suresh Kumar Joon vs Mool Chand Motors & Ors (Delhi High Court) IAs No. 85611201 and 8562/2011 in CS(OS) 389/2009.**

27. He further contended that the admission of the corporate debtor during the mediation process is an acknowledgement of debt and that amounts to acknowledgement under Section 25(3) of Contract Act read with Section 18 of the Limitation Act.

28. Ld. Counsel for applicant also raised all the facts, which he has raised in support of IA/854/2021 and the payment made to the operational creditor and facts mentioned in both the applications referred to above. Hence it is needless to repeat the same.

29. He further contended that he received the return memo dated 31.12.2016 in the second week of January 2017 and that is the reason according to the applicant, there is a delay of 56 (fifty Six) days it was calculated from 31.12.2016 to the date of filing i.e. 26.02.2020.

30. In the light of that submission, we have perused the decisions upon which the applicant has placed reliance as well as the averments made in the application, we notice that the applicant has filed this application for condonation of delay under Section 5 of Limitation Act, which says that if a person is prevented by sufficient cause for not prefer an application within time then in that case, the delay may be condoned.

31. The applicant has also placed reliance upon the judgment of Hon'ble Supreme Court in the matter of B.K. Education Services Pvt Ltd.

32. On perusal of the averment made in Section 5 application, we notice that the applicant has prayed to condone the delay first on the ground that the matter was pending before the Criminal Court. Therefore, he was prevented by sufficient cause and the other ground is the applicant has made an admission before the mediation.

33. So far the mediation order is concerned, we have already discussed this issue and hold that In view of Rule 20 of the Mediation Rules, views expressed by a party in the course of the mediation/conciliation proceedings or the proposals made or views expressed by the mediator/conciliator and admission made by a party in the course of mediation/conciliation proceeding shall not rely on or introduce the said information in other proceedings.

34. Therefore, on the basis of that admission, it cannot be treated said that there is an acknowledgement of debt under Section 18 of the Limitation Act.

35. Apart from that, at this juncture, we would also like to refer Section 18 of the Limitation Act and the same is quoted below:-

Section 18 in The Limitation Act, 1963

18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of 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.

36. A bare perusal of Section 18 of Limitation Act shows that the acknowledgement must be in writing and it must be made before the expiration of prescribed period for suit or an application.

37. Admittedly, herein the case in hand, the applicant in Part-IV of the application has referred the date of default is of 10.01.2008 on the ground that the invoices are due and payable after 30 days credit period.

38. Whereas, the settlement agreement arrived in between the parties before the mediation on 16.11.2015. Admittedly, the acknowledgement is made after three years expiry of period of limitation as required under Article 137 of Limitation Act. Hence, it is not an acknowledgement of debt under Section 18 of the Limitation Act.

39. So far Section 25(3) of Contract Act is concerned, in view of Rule 20 of the Mediation Rules that proceeding shall not rely on or introduce the said information in other proceedings. Hence, it is not an acknowledgment under Section 25(3) of the Contract Act.

40. Now, coming to the next point, whether the pendency of the criminal proceeding before the Criminal Court can be treated as a proceeding and an exclusion of that period can be granted under Section 12 of the Limitation Act,

41. At this juncture, we would like to refer to Section 12 of the Limitation Act and the same is quoted below: -

### **Section 12 in The Limitation Act, 1963**

12. Exclusion of time in legal proceedings.—

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a

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judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment 1[\*\*\*] shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

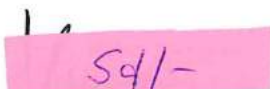
42. A bare perusal of the provision shows that a period shall be excluded in computing the period of limitation only during the pendency of suit, appeal or an application and not in criminal proceeding. Therefore, on this ground also that period cannot be excluded.

43. So far Section 5 of Limitation Act is concerned, the applicant has failed to convince what prevented the applicant not to not to file a civil suit or other application for the recovery of the amount or for taking legal recourse under the Companies Act prior to the enactment of IBC, 2016.

44. For the reasons discussed above, we are of the considered view that Section 5 of the Limitation Act is also not applicable in the case in hand because the applicant has failed to explain what prevented the applicant for not filing any case when the first date of default has occurred on 10.01.2008.

45. Hence, we find, no force in the contention raised on behalf of applicant.

46. ***Accordingly, the prayer of the applicant is hereby rejected and the application i.e. IA/2242/2020 stands dismissed.***

  
**K. K. VOHRA**  
**Member (T)**

  
**ABNI RANJAN KUMAR SINHA**  
**Member (J)**