REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6347 OF 2019

BABULAL VARDHARJI GURJAR ……Appellant(s)

VS.

VEER GURJAR ALUMINIUM INDUSTRIES PVT. LTD. & ANR. ….Respondent(s)

JUDGMENT

Dinesh Maheshwari, J.

Introductory with brief outline and issue involved

1. This appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016[1] is directed against the judgment and order dated 14.05.2019 passed by the National Company Law Appellate Tribunal, New Delhi[2] in Company Appeal (AT) Insolvency No. 549 of 2018 whereby, the Appellate Tribunal has rejected the contention that the application made by respondent No. 2 under Section 7 of the Code, seeking initiation of Corporate Insolvency Resolution Process[3] in respect of the debtor company (respondent No. 1 herein), is barred by limitation; and has

1 Hereinafter also referred to as 'the Code' or 'IBC'.
2 Hereinafter also referred to as 'the Appellate Tribunal' or 'NCLAT'.
3 'CIRP' for short.

declined to interfere with the order dated 09.08.2018, passed by the National Company Law Tribunal, Mumbai Bench[4] in CP(IB)-488/I&BP/MB/2018, for commencement of CIRP as prayed for by the respondent No. 2.

2. A brief introduction of the parties and the subject matter as also a thumbnail sketch of the relevant orders passed in this matter and the issue involved shall be apposite at the very outset.

2.1. The appellant Shri Babulal Vardhaji Gurjar has been the director of the respondent No. 1 company viz., Veer Gurjar Aluminium Industries Pvt. Ltd.[5] On or about 21.03.2018, the respondent No. 2 JM Financial Assets Reconstruction Company Pvt. Ltd.[6], while stating its capacity as the financial creditor, for being the assignee of the loans and advances disbursed by creditor bank to the corporate debtor, filed the said application under Section 7 of the Code before the Adjudicating Authority and sought initiation of CIRP in respect of the respondent No. 1.

2.2. After having considered the submissions on behalf of the financial creditor and the corporate debtor, the Adjudicating Authority, by its order dated 09.08.2018, admitted the application so made by the financial creditor and appointed an interim resolution professional[7]. Consequent to this order dated 09.08.2018, the corporate debtor (respondent No. 1) is now represented by the interim resolution professional.

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4 Hereinafter also referred to as 'the Adjudicating Authority' or 'the Tribunal' or 'NCLT'.
5 Hereinafter also referred to as 'the corporate debtor'.
6 Hereinafter also referred to as 'the financial creditor'.
7 'IRP' for short.

2.3. Being aggrieved by the aforesaid order dated 09.08.2018, the appellant preferred an appeal before NCLAT and contended against maintainability of the application moved by the respondent No. 2. The appeal so filed by the appellant was summarily dismissed by the Appellate Tribunal by its order dated 17.09.2018. However, the order so passed by the Appellate Tribunal was not approved by this Court in the judgment dated 26.02.2019, passed in Civil Appeal No. 10710 of 2018, after finding that the issue relating to limitation, though raised, was not decided by the Appellate Tribunal. Hence, the matter was remanded to NCLAT for specifically dealing with the issue of limitation. After such remand, the Appellate Tribunal, by its impugned order dated 14.05.2019, has held that neither the application under Section 7 as made in this case is barred by limitation nor the claim of the respondent No. 2 is so barred and has, therefore, again dismissed the appeal. Being aggrieved, the appellant has approached this Court over again by way of the instant appeal.

3. In the impugned order dated 14.05.2019, the Appellate Tribunal has observed that the Code having come into force on 01.12.2016, the application made in the year 2018 is within limitation. The Appellate Tribunal has assigned another reason that mortgage security having been provided by the corporate debtor, the limitation period of twelve years is available for the claim made by the financial creditor as per Article 61 (b)

of the Limitation Act, 1963[8]-[9] and hence, the application is within limitation.

4. In this appeal, the order so passed by the Appellate Tribunal is in challenge. The appellant would contend that limitation period for an application under Section 7 of the Code is three years as per Article 137 of the Limitation Act, where the date of alleged "default" is the starting point of limitation; and in the present case, such date of default being specifically mentioned as 08.07.2011, the application filed by the respondent No. 2 in the month of March 2018 is barred by limitation. On the other hand, the respondents would argue that the liability in relation to the debt in question having been consistently acknowledged by the corporate debtor in its balance sheets and annual reports, fresh period of limitation is available from the date of every such acknowledgment and hence, the application is within time.

4.1. Thus, the basic issue involved in this matter is as to whether the application made by respondent No. 2 under Section 7 of the Code is within limitation.

5. On 09.08.2019, after having heard learned counsel for the appellant and the respondent No. 2 preliminarily, we issued notice to the

8 Hereinafter, the Limitation Act, 1963 is also referred to as 'the Limitation Act'.

9 Note: The Articles providing for different periods of limitation are contained in the Schedule to the Limitation Act, 1963 that is divided in three major Divisions viz., First Division (relating to suits); Second Division (relating to appeals); and Third Division (relating to applications). Each Division is further divided in parts with reference to the subject matter. However, the Articles in the Schedule are arranged *ad seriatim.* Hence, for brevity and continuity, the Articles are mentioned with reference to 'the Limitation Act' only. The Schedule and particular Part/Division have been referred wherever required contextually.

respondent No. 1 and by way of interim order, directed *status quo* in regard to the proceedings in question.

The relevant factual and background aspects: Application by the financial creditor

6. The substance of the relevant factual and background aspects, as emanating from the contents of the application under Section 7 moved by the respondent No. 2 and the observations made by NCLT and NCLAT in the impugned orders as also those noticed from the submissions made by the respective parties, could now be summarised as *infra*.

6.1. On or about 22.12.2007, the lender banks viz., Corporation Bank, Indian Overseas Bank and Bank of India sanctioned and extended various loans, advances and facilities to the corporate debtor viz., Veer Gurjar Aluminium Industries Pvt. Ltd., who was engaged in manufacturing of aluminium ingots from aluminium scrap. The corporate debtor executed various security documents in favour of the lender banks in the years 2008 and 2009, including those of equitable mortgage against the facilities so obtained. The Corporation Bank proceeded to rephase/enhance the facilities to the corporate debtor from time to time and lastly on 27.08.2010 wherefor, various additional security documents were executed by the corporate debtor. It has been asserted by the respondent No. 2 that the Corporation Bank had assigned to it the rights in relations to debts of the corporate debtor by way of Assignment Agreement dated 30.03.2013; and a deed of modification of charge over the assets of the corporate debtor was also executed on 26.04.2013.

6.2. The corporate debtor having defaulted in payment of the amount due against such loans, advances and facilities, its account with Corporation Bank was classified as Non-Performing Asset[10] on 08.07.2011 and that with Indian Overseas Bank was classified as NPA on 05.08.2011. Then, on 15.11.2011, demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002[11] was issued by Indian Overseas Bank to the corporate debtor and its guarantors. These steps were followed up with recovery proceedings against the corporate debtor by the consortium of lenders and respondent No. 2 in OA No. 172/2013 before the Debts Recovery Tribunal, Aurangabad[12] under Section 19 of the Recovery of Debts Due to the Banks and Financial Institution Act, 1993[13].

6.3. Even when the aforesaid proceedings were pending before DRT, on or about 21.03.2018, the respondent No. 2 moved an application before the Adjudicating Authority under Section 7 of the Code, in Form 1 as provided in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016[14], for initiation of CIRP in relation to the corporate debtor while stating its own capacity as the financial creditor, for being the assignee of loans and advances disbursed by Corporation Bank to the

10 'NPA' for short.
11 Hereinafter also referred to as 'the SARFAESI Act'.
12 'DRT' for short.
13 Hereinafter also referred to as 'the Act of 1993'.
14 Hereinafter also referred to as 'the Rules of 2016'.

corporate debtor[15]. Several details and particulars stated in the said application need not be recounted but, the particulars of amount claimed to be in default and the date when such default occurred, as stated in point No. 2 of Part III of the application, are relevant for the present purpose and could be usefully extracted as under[16]:-

"2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES* OF DEFAULT IN TABULAR FORM)	The aggregating amount of default is 1,011,573,308 (Rupees One Hundred and One Crore, Fifteen Lakh Seventy Three Thousand Three hundred and Eight only) as on 28-02-2018 including expenses with further interest @ 14.50% plus penal interest of 2% from 01-Mar-2018 till payment/or realization. Dates of default 8.7.2011 being the date of NPA The workings for computation of amount and days of default in tabular form is annexed hereto and marked as Exhibit B). The statement of Account along with Certificate under Bankers Book Evidence Act, 1891 is annexed hereto and marked as Exhibit B-1."

6.4. It may also be usefully indicated that Part-V of the application, drawn as per the format in Form 1, required the applicant to state the "Particulars of Financial Debt [Documents, Records and Evidence of

15 Note: In its written submissions, the respondent No. 2 has mentioned the date of filing this application as '28.02.2018' but the copy of application placed on record as Annexure A-5 (pp. 135-158) bears the date as '21.03.2018'.

16 Note: this extraction is from the copy of application placed on record as Annexure A-5 (at p. 140-142). The expression "DATES" marked with * in the second column is reproduced as found mentioned at p. 141 but, in the format appended to the Rules of 2016, this entry carries the expression "DAYS".

Default]". The applicant stated the particulars of various securities held, date of their creation etc., as also the particulars relating to the said O.A. No. 172 of 2013 before DRT and notices issued thereunder. In Point No. 5 of the said Part-V of the application, the applicant was required to attach "the latest and complete copy of the financial contract reflecting all amendments and waivers to date". In this regard, again, various agreements for loan, promissory notes, tripartite agreements, consortium agreements and supplemental agreements were mentioned by the applicant. In Point No. 8, the applicant was required to give out other documents "in order to prove the existence of financial debt, the amount and date of default". The contents on this Point No. 8 of Part-V of the application could be reproduced as under:-

> "8.LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT
>
> i. Registered notice dated 05.07.2011 issued by Indian Overseas Bank to the corporate debtor to repay the overdue amount. Hereto annexed and marked as Exhibit MM is the copy of said registered notice.
>
> ii. Demand notice dated 15.11.2011 issued under section 13 (2) of the Securitisation Act by Indian Overseas Bank being consortium leader. Hereto annexed and marked as Exhibit NN is the copy of said Demand notice.
>
> iii. Publication of Demand Notice issued in two newspaper i.e Business Standard and Saamna under the SARFEASI Act dated 28.12.2011. Hereto annexed and marked Exhibit OO is the copy of said Paper Publication.
>
> iii. (*sic*). Objection to the Demand Notice and the reply to the said Objections by IOB dated 14.01.2012 and 21.01.2012 respectively. Hereto annexed and marked as Exhibit PP and Exhibit QQ is the copy of said objection and reply letter.
>
> v. Registered Assignment Agreement dated 30.03.2013 between Corporation Bank and (Financial Creditor thereby Corporation Bank assigned the debt due

> from Corporate debtor along with the underlying securities in favour of the Financial Creditor/ Applicant. Hereto annexed and marked as Exhibit RR is the copy of said Registered Assignment Agreement dated 30.03.2013 between Corporation Bank and Financial Creditor."

6.5. The application so made by respondent no. 2 came to be registered as CP(IB)-488/I&BP/MB/2018 before the Adjudicating Authority (NCLT). On being noticed, the corporate debtor submitted its reply in opposition and raised various objections on the contents and frame of the application. It was also contended that various proceedings had been initiated with the sole aim of browbeating the corporate debtor and forcing it to pay the unrealistic claim of the applicant. With specific reference to the proceedings under the SARFAESI Act, it was contended that as per the notice under Section 13 (2), the account of corporate debtor with Indian Overseas Bank was classified as NPA on 05.08.2011 but, it was not mentioned as to when the loan account with Corporation Bank was classified as NPA. The corporate debtor also contended that its loan account had not been properly maintained by the respective banks due to the defect in accounting system and it was clear that the claim was arbitrary, inflated and not recoverable. With reference to the proceedings pending before DRT in OA No. 172/2013, it was also contended that IBC would not apply to cases where the bank has approached DRT or has adopted the proceeding under the SARFAESI Act and, for this reason, the present proceedings were not maintainable before the Adjudicating Authority.

6.6. The applicant financial creditor filed a rejoinder and refuted all the objections of the corporate debtor while asserting*, inter alia*, that the Corporation Bank declared the account of the corporate debtor as NPA on 08.07.2011 and this fact was mentioned in the demand notice issued under Section 13(2) of SARFAESI Act, as sent by Indian Overseas Bank on behalf of the consortium of banks.

Initiation order dated 09.08.2018

7. The Adjudicating Authority, in its order dated 09.08.2018, dealt with the submissions of the parties and, while rejecting the objections of corporate debtor in relation to the frame of application and the correctness of loan accounts, held that the applicant was entitled to initiate CIRP under Section 7 of the Code when there was a debt and there was default; and that being a statutory remedy available to the financial creditor, the corporate debtor cannot question its maintainability only for the applicant having adopted other proceedings under other enactments. As regards the question of debt and default, the NCLT, *inter alia*, observed and held as under:-

> "16. The Corporate Debtor contended that demand notice issued under the SARFAESI Act, by Indian Overseas Bank does not contain the date of NPA of the loan of Corporation Bank. The petitioner in the rejoinder submitted that the date of NPA of Corporation Bank was mentioned as 08.07.2011 in the SARFAESI Notice. This Bench has gone through the SARFAESI Notice and the date of NPA of Corporation Bank is mentioned as 08.07.2011 at pg. no. 579. Hence this contention of the Corporate Debtor fails. Further the explanation to Section 7(1) of IB Code provides that a default includes a default in respect of a financial debt owed not only

to the Applicant Financial Creditor but also to any other Financial Creditor of the Corporate Debtor. In view of admission of date of NPA of Indian Overseas Bank by the Petitioner in the reply this case squarely falls under the ambit of explanation to Section 7(1) of the Code which is a proof of debt and default of debt due to another Financial Creditor. This Petition can be admitted based on the reply filed by the Corporate Debtor."

7.1. The Adjudicating Authority also referred to the decision of this Court in the case of ***Innoventive Industries Ltd. v. ICICI Bank: (*2018) 1 SCC 407** as regards the scheme of the Code and the requirements of Section 7 thereof and observed,-

"21…..The rational and reasoning which can be drawn from the above lines of the citations clearly indicate mainly two aspects and that is existence of debt and the default which the present facts of the case clearly demonstrate. So any amount of argument that deals with issues which are not pertinent and trivial to the main issues concerned does not or cannot come in the way of adjudication of the lis in favour of the Petitioners. The present facts of the case are fully and comprehensively covered by the wordings of the above citations.

22. The above discussion clearly shows that there is a debt owed by the Corporate Debtor in favour of Corporation Bank and subsequently on assignment of the debts by the said bank to the Petitioner, the Corporate Debtor is liable to make the payment to the Petitioner. Further there is ample proof to come to the conclusion that the Corporate Debtor defaulted in making payment to Corporation Bank and thereafter to the assignor, the Petitioner herein.

23. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete…."

7.2. Accordingly, the Adjudicating Authority (NCLT) admitted the application for consideration; passed necessary order of moratorium; and appointed the interim resolution professional.

Previous round of proceedings in appeal

8. Aggrieved by the aforesaid order dated 09.08.2018, the appellant, erstwhile director of the corporate debtor, approached the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 549 of 2018 under Section 61 of the Code, challenging admission of the application made by the respondent No. 2.

8.1. The appeal so filed by the appellant was considered and summarily dismissed by the Appellate Tribunal by way of its order dated 17.09.2018. The Appellate Tribunal took note of the contention urged on behalf of the appellant that a petition under Section 19 of the Act of 1993 was pending before DRT wherein question had been raised as to whether the amount was payable to the assignee or not. As regards this, the Appellate Tribunal observed that initiation of CIRP cannot be annulled merely for pendency of a petition under Section 19 of the Act of 1993; and in terms of Section 14 of the Code, all such pending matters cannot proceed during the period of moratorium.

8.2. It was also contended on behalf of the appellant that there was no debt payable. After noticing this contention, the Appellate Tribunal called upon the appellant to file an affidavit that no amount was received or the amount received had already been paid and therefore, there was no debt

or default. In response, learned counsel for the appellant expressed inability to file any such affidavit for the reason that the corporate debtor had indeed availed the loan from the bank/s. After noticing this stand of the appellant, the Appellate Tribunal felt disinclined to interfere with the order passed by the Adjudicating Authority and hence, dismissed the appeal while observing as under:-

> "2. Learned counsel appearing on behalf of the Appellant submitted that a petition under Section 19 of 'The Recovery of Debts Due to Banks and Financial Institutions Act, 1993' is pending before Debt Recovery Tribunal, Aurangabad. Wherein question has been raised is whether the amount is payable to the assignee or not.
> 3. However, the initiation of Corporate Insolvency Resolution Process cannot be annulled merely on the ground of pendency of a petition under Section 19 of 'The Recovery of Debts Due to Banks and Financial Institutions Act, 1993'. In fact in terms of Section 14 of I&B Code all such pending proceeding cannot proceed during the period of moratorium.
> 4. Learned counsel appearing on behalf of the Appellant contended that there is no debt payable. However, when we asked the counsel to file an addition affidavit signed by the Appellant making specific statement that they have not received any amount or amount received has already been paid and therefore there is no debt or there is no default, it is informed by the counsel for the Appellant that such affidavit cannot be filed by the Appellant as the Corporate Debtor had taken loan from the Bank.
> 5. In view of the aforesaid stand taken by Appellant, we are not inclined to interfere with the impugned order dated 9th August, 2018. In absence of any merit, the appeal is dismissed. No costs."

9. Aggrieved by the aforesaid order dated 17.09.2018, the appellant approached this Court under Section 62 of the Code in Civil Appeal No. 10710 of 2018, which was considered and decided by way of the order dated 26.02.2019.

9.1. In the order dated 26.02.2019, this Court took note of the fact that in appeal before the Appellate Tribunal, one of the grounds agitated was that the claim of the respondent was barred by time for, admittedly, the default was committed on 08.07.2011 whereas the application was filed in the month of March, 2018.

9.2. After noticing that the principal issue relating to limitation, though raised by the appellant, was not even decided by the Appellate Tribunal; and after referring to the decision in ***B.K. Educational Services Pvt. Ltd. v. Paras Gupta & Associates*: AIR 2018 SC 5601**, wherein it was held that the Limitation Act is applicable to application filed under Section 7 of the Code, this Court remanded the matter to the Appellate Tribunal for deciding the issue of limitation with respect to the application in question in accordance with law while setting aside the impugned order dated 17.09.2018 and while granting liberty to the parties to submit additional affidavit/s in support of their respective contentions. This Court observed and ordered, *inter alia*, as under:-

> "Although, we find that the ground articulated in the appeal memo is vague, but, as the objection regarding limitation goes to the root of the matter and touches upon the jurisdiction of the National Company Law Tribunal to proceed with the claim of the respondent; and since the recent decision of this Court in B.K. Educational Services Pvt. Ltd. Vs. Paras Gupta & Associates – AIR 2018 SC 5601 has held that the question of limitation is applicable even the applications filed under Section 7 of the I. & B. Code, it would be just and necessary to answer the said objection appropriately, in accordance with law.
>
> Indisputably, neither the National Company Law Tribunal nor the National Company Law Appellate Tribunal, in the present case, has examined the said contention. Indeed,

> according to the respondent, the plea of claim being barred by limitation is unstatable and, to buttress this argument, the respondent has relied upon the entries in the books of account of the appellant and other related documents. However, that is a matter which ought to be agitated before the National Company Law Appellate Tribunal in the first place.
>
> Accordingly, we relegate the parties before the National Company Law Appellate Tribunal for fresh consideration of the objection raised by the appellant that the claim of the respondent is barred by limitation….."

The impugned order dated 14.05. 2019 by NCLAT after remand

10. In compliance of the aforesaid order of this Court dated 26.02.2019, the Appellate Tribunal (NCLAT) took up the said appeal for consideration afresh and proceeded to dismiss the same by way of its impugned order dated 14.05.2019 while holding that the application in question is not barred by limitation.

10.1. In the introductory paragraphs 1 to 4 of the impugned order dated 14.05.2019, the Appellate Tribunal referred to the subject matter of appeal as also the orders passed in the previous round of proceedings; and in paragraphs 5 and 6, took note of the rival contentions. Thereafter, in paragraphs 7 to 14, the Appellate Tribunal took note of the background facts including those pertaining to the loans taken by the corporate debtor and creation of securities by way of mortgage of immovable properties and hypothecation of stock-in-trade and plant and machinery; the assignment in favour of respondent No. 2 by the lender bank; the loan having been shown by the corporate debtor in its annual reports; pendency of the petition under Section 19 of the Act of 1993 for recovery

of the due amount of loan; and a letter dated 31.07.2018 said to have been sent on behalf of the corporate debtor to the respondent No. 2 for one time settlement[17].

10.1.1. In paragraph 15 of the impugned order, the Appellate Tribunal referred to the decision of this Court in the case of ***B. K. Educational Services*** (supra) as also Section 238-A of the Code to notice that law of limitation is applicable to the application under Section 7 of the Code. However, in paragraph 16, the Appellate Tribunal made the observation that '*for filing the application under Section 7 of the I&B Code, Article 132 of Part 2 (other application) is applicable';* and proceeded to reproduce the said Article 132 of the Limitation Act.[18] Thereafter, in paragraphs 17 to 19, the Appellate Tribunal referred to the frame of Schedule to the Limitation Act and its Divisions, dealing with suits, appeals and applications respectively. Coming to the crux of the matter, in paragraph 20 of the impugned order, the Appellate Tribunal referred to Article 137 dealing with 'OTHER APPLICATIONS', as occurring in Part II of Third Division of Schedule to the Limitation Act and reproduced the same while observing that this Article 137 is applicable to the application/s under Section 7 or Section 9 or Section 10 of the Code.

10.2. After the aforementioned observations and overview of the facts and the law applicable, the Appellate Tribunal, in paragraph 21 of the

17 'OTS' for short.

18 Such a reference by the Appellate Tribunal to Article 132 of the Limitation Act appears to be entirely inapt because that relates to the application to High Court for certificate of fitness to appeal to this Court and provides for the limitation of sixty days from the date of decree or order. Be that as it may, the observation with extraction of Article 132 appears to be a matter of accidental slip; and we would leave the said Paragraph 16 of the impugned order at that only.

impugned order, stated the first reason for its conclusion that the application in question is not barred by limitation in the manner that the right to apply under Section 7 of the Code accrued to the respondent financial creditor only on 01.12.2016 when the Code came into existence. The Appellate Tribunal said, -

> "21. The I&B Code has come into existence on 1st December, 2016 and thereafter the right to apply accrued to respondent – 'Financial Creditor' under Section 7 of the I&B code only on 1st December, 2016. The application having filed in the year 2018, we hold that the application under Section 7 is not barred by limitation."

10.3. Thereafter, in paragraph 22, the Appellate Tribunal extracted the relevant passages from the decision in ***Innoventive Industries*** (supra) wherein this Court has explained as to how the CIRP is triggered in the scheme of IBC; and has underscored the requirement of existence of "default" on the part of the corporate debtor wherefor and whereby a financial creditor could maintain an action under Section 7 of the Code as also the essential elements of the process of such an action, including the form and manner of moving the application in conformity with the Rules of 2016 and initial enquiry by the Adjudicating Authority on the question as to whether a default has occurred. Then, in paragraph 23 of the impugned order, the Appellate Tribunal also took note that in ***Innoventive Industries***, this Court has further held that during such consideration by the Adjudicating Authority, the corporate debtor is entitled to point out that default has not occurred in the sense that the "debt" is not due; and that a debt *'may not be due if it is not payable in law or in fact'.*

10.4. Thereafter, in paragraph 24, the Appellate Tribunal, with reference to its own decision in **Company Appeal (AT) (Insolvency) No. 82 of 2018: *Binani Industries Ltd. v. Bank of Baroda and Anr.***, observed that the Code does not relate to litigation nor the proceedings were of suit or money suit; and the period of limitation prescribed in First Division of the Limitation Act is not applicable to the proceedings under the Code. However, thereafter in paragraph 25 of the impugned order, the Appellate Tribunal observed that though the law of limitation as prescribed in First Division, Second Division and Part I of Third Division of the Schedule to the Limitation Act is not applicable, the corporate debtor could take a plea that "debt" is not due, as it is not payable in law being barred by limitation. These paragraphs 24 and 25 of the impugned order read as under: -

> "24. In **'Binani Industries Ltd. vs. Bank of Baroda & Anr.'** – *Company Appeal (AT) (Insolvency) NO. 82 of 2018'* this Appellate Tribunal held that 'Insolvency & Bankruptcy Code' does not relate to litigation nor it is a suit or money suit. In that background the period of limitation prescribed in the First Division is not applicable through I&B Code proceedings.
> 25. Though we have held that the law of limitation for filing a suit (First Division) or Appeals (Second Division) or application under Part I (Third division) are not applicable, the 'Corporate Debtor' can take a plea that 'debt' is not due, as it is not payable in law being barred by limitation."

10.5. After the aforementioned observations, the Appellate Tribunal indicated the question to be examined in the matter in paragraph 26 and proceeded to decide the same in the ensuing paragraphs. In paragraphs 27 and 28 of the impugned order, the Appellate Tribunal referred to the undisputed fact that the financial creditor had already filed a petition

under Section 19 of the Act of 1993 that was pending; and also observed that the appellant has suppressed the fact that on 31.07.2018, the corporate debtor approached the financial creditor for one time settlement. After these observations, the Appellate Tribunal referred to the facts that nine properties of the corporate debtor had been mortgaged with the financial creditor and that the financial creditor had adopted the proceedings for enforcement of mortgage security and had recovered possession pursuant to the order passed by DRT. Having thus referred to the other proceedings and particularly the enforcement of mortgage security, the Appellate Tribunal referred to the limitation period of twelve years for recovery of possession of mortgaged property as per Article 61(b) of the Limitation Act in paragraphs 29 and 30 and concluded that the property having been mortgaged, the claim is not barred by limitation as the period of limitation is twelve years with regard to the mortgaged property. These considerations, observations and findings led the Appellate Tribunal to hold and conclude in paragraph 31 of the impugned order that the application under Section 7 of the Code is not barred by limitation. These paragraphs 26 to 31 of the impugned order read as under:-

> "26. In the present case, it is to be noticed whether the 'debt' is not payable in law by the 'Corporate Debtor' and/or the 'default' being barred by limitation.
>
> 27. We have noticed that immediately on 'default', Respondent No. 2 – 'Financial Creditor' has already moved before the DRT under Section 19 of the 'The Recovery of Debts Due to the Banks and Financial Institution Act, 1993'

and O.A. No. 172 of 2017 which is still pending. This fact has also been accepted and pleaded by the Appellant.

28. The Appellant has suppressed the fact that recently the 'Corporate Debtor' by letter dated 31st July, 2018 approached Respondent No. 2 (Financial Creditor) for one time settlement. There is a finding that there is a continuous cause of action. The appellant has not disputed that 9 properties i.e. land and building have been mortgaged by the 'Corporate Debtor' with Respondent No. 2 - 'Financial Creditor'. Respondent No. 2 also preferred a criminal proceeding on 27th June, 2017 as the enforcement mortgage of which possession was taken by 2nd Respondent after the order passed by the DRT, Aurangabad.

29. Part V (First Division) of Limitation Act relates to 'Suits relating to immovable property' to recover possession of the property mortgaged and afterwards transferred by the mortgagee for a valuable consideration. The period of limitation is 12 years since the transfer becomes known to the plaintiff [Article 61(b)].

30. In view of the aforesaid position of law, the property having mortgaged, we also hold that the claim is not barred by limitation as the period of limitation is 12 years with regard to mortgaged property and in terms of Section 5 (7) read with Section 5(8) as the property is mortgaged, Respondent No. 2 also comes within the meaning of 'Financial Creditor'.

31. Therefore, we hold that the application under Section 7 is not barred by limitation nor the claim of Respondent No. 2 is barred by limitation. We reject the plea that no 'debt' is payable by the 'Corporate Debtor' in the eyes of law. We find no merit in this appeal. It is accordingly dismissed. No costs"

11. For what has been noticed hereinabove, it could be reasonably deciphered that the Appellate Tribunal has rejected the plea of bar of limitation essentially on two major considerations: One, that the right to apply under Section 7 of the Code accrued to the respondent financial creditor only on 01.12.2016 when the Code came into force[19]; and second, that the period of limitation for recovery of possession of the

19 Paragraph 21 of the impugned order *ibid.*

mortgaged property is twelve years[20]. Noticeably, though the Appellate Tribunal has referred to the pendency of the application under Section 19 of the Act of 1993 as also the fact that corporate debtor had made a prayer for OTS in the month of July, 2018 but, has not recorded any specific finding about the effect of these factors.

Broad features of rival submissions

12. Assailing the orders so passed by NCLAT and asserting that the application made by the respondent No. 2 is barred by limitation, the erstwhile director of the corporate debtor has preferred this appeal which has been duly opposed by the applicant financial creditor (respondent No. 2) as also the IRP for the corporate debtor (respondent No. 1). The broad features and substance of the rival submissions could be noticed as *infra.*

The Appellant

13. The learned senior counsel for the appellant has contended that in the impugned order dated 14.05.2019, the NCLAT has failed to apply the law declared by this Court in a series of decisions to the effect that for an application under Section 7 of the Code, Article 137 of Limitation Act is applicable and not Article 61 (b); and the limitation for such an application is three years from the date of the alleged default. According to the learned senior counsel, neither Article 61 (b) of Limitation Act applies nor even Section 18 thereof and, therefore, on the admitted date of default as stated by the respondent No. 2, the application in question remains hopelessly barred by limitation.

20 Paragraphs 29 and 30 of the impugned order *ibid.*

13.1. The learned senior counsel has elaborated on the submissions with reference to the decision of this Court in the case of ***B.K. Educational Services*** (supra) and has contended that therein, it is categorically held that Article 137 of the Limitation Act applies to the application under Section 7 of the Code and hence, the limitation period is of three years, which is to be counted from the date of default.

13.2. With reference to the process envisaged by the Code and the Rules of 2016, where the financial creditor is required to mention the date of default in the application and also to adduce evidence of default, the learned senior counsel has argued that in the application under consideration, which was filed on 21.03.2018, the respondent No. 2 mentioned the date of default as 08.07.2011 and, for the evidence of default, only the documents pertaining to the NPA were attached i.e., until the year 2011. Hence, according to the learned counsel, on the averments as taken and evidence as adduced, the application so filed by the respondent No. 2 is clearly barred by limitation and deserves to be rejected outright.

13.3. The learned senior counsel has further referred to the decision in ***K. Sashidhar v. Indian Overseas Bank*****: 2019 SCC Online SC 257**[21] and has submitted that therein, this Court has reaffirmed the position that right to sue under the Code accrues on the date when default occurs and if the default had occurred three years prior to the date of filing of the application, the same would not amount to debt due and payable under the Code. The

21 Now reported in **(2019) 12 SCC 150**

learned counsel has yet further submitted that in **Civil Appeal No. 11020 of 2018: *Vashdeo R. Bhojwani v. Abhyudaya Co-operative Bank Ltd. & Anr.***[22], where default had occurred in the year 2001 when the Recovery Certificate was issued and the NCLT and NCLAT held that the claim was not time-barred for the cause of action being a continuing one, this Court has held that there was no doubt that the claim was due and payable, but the same was barred by limitation as applicable under IBC. Proceeding further, the learned senior counsel has referred to the decision rendered by a three-Judge Bench of this Court in **Civil Appeal No. 4952 of 2019: *Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. & Anr.***[23] to submit that therein, it is specifically held that the application under Section 7 of IBC would fall within the purview of Article 137 of the Limitation Act and the time of three years begins to run from the date of default and no new life would be given to the time-barred debts. The learned senior counsel has also referred to the order of NCLAT dated 02.05.2019 in Company Appeal (AT)(Insolvency) No. 655 of 2018, which was in challenge before this Court in ***Gaurav Hargovindbhai Dave*** (supra), to point out that NCLAT had taken the application under Section 7 of IBC to be within limitation also because of OTS offers made by the corporate debtor to the financial creditor and even this proposition did not meet with approval of this Court. The learned counsel would submit that in ***Vashdeo R.Bhojwani*** (supra), this Court has taken the date of default to be that of

22 Now reported in **(2019) 9 SCC 158**
23 Now reported in **(2019) 10 SCC 572**

issuance of Recovery Certificate and in ***Gaurav Hargovindbai Dave*** (supra), this Court has taken the date of NPA to be the date of default; and this Court has construed the date of default to be the one when the debt became due and payable strictly as per Section 3(12) of IBC whereunder, default means '*non-payment of debt when whole or any part of 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*.'

13.4. The learned senior counsel has further submitted that the reasonings adopted by NCLAT stand thoroughly disapproved by this Court in the decisions above-referred as also that in **Civil Appeal No. 7673 of 2019: *Sagar Sharma & Anr. v. Phoenix Arc Pvt. Ltd. & Anr.***[24] and, therefore, the impugned order cannot be sustained from any angle.

13.5. The learned senior counsel has yet further referred to the three-Judge Bench decision in the case of ***Jignesh Shah and Anr. v. Union of India and Anr*. : 2019 SCC Online 1254**[25] and has submitted that therein too, this Court has analysed in detail the applicability of the Limitation Act to the applications of winding up being transferred to NCLT and has held that enforcement of 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.

13.6. The learned senior counsel has argued that the debt shown in the balance sheet does not revive the limitation period of three years as

24 Now reported in **(2019) 10 SCC 353**
25 Now reported in **(2019) 10 SCC 750**

applicable to the IBC under Article 137 of the Limitation Act for the reasons that the debt as shown in the balance sheet is not covered by Section 18 of the Limitation Act; and even otherwise, Section 18 of the Limitation Act cannot revive the "default" relevant for IBC and could only revive limitation with respect to the cause of action. The learned senior counsel has emphasised on the submissions that Section 18 of the Limitation Act could revive limitation in some cases but not for every remedy which is separate and distinct; and when limitation period of three years under Article 137 of the Limitation Act, in relation to the application under Section 7 of the Code, starts from the date of default, acknowledgment of the debt in the balance sheet will not give any fresh date of default because default occurs only once and cannot be continuing. The learned counsel has also submitted that the NCLAT has wrongly relied on the alleged proposal for OTS which was never filed before NCLT and also was denied by the appellant herein; and in any case, the proposal for OTS, if at all made on 31.07.2018, cannot revive the date of default as per declaration of NPA on 08.07.2011 nor does it attract Section 18 of the Limitation Act.

13.7. As regards relevant considerations and approach, the learned senior counsel for the appellant has submitted, with reference to paragraph 64 of the decision in ***Swiss Ribbons Private Limited and Anr. v. Union of India and Ors.*: (2019) 4 SCC 17**, that the legislative policy has moved from "cause of action" to determination of "default" and in the present case,

default having occurred when the account became NPA as on 08.07.2011, the application remains barred by limitation.

Respondent No. 2

14. *Per contra,* the learned senior counsel appearing for the financial creditor (respondent No. 2) has contended that this appeal is devoid of substance and is liable to be dismissed on merits as also on conduct of the appellant.

14.1. The learned senior counsel would maintain that the debt of the corporate debtor, payable to the respondent No. 2, has neither been disputed nor denied by the appellant; rather it is stated in ground P in the memo of appeal (page 36 of paper-book) that the corporate debtor is and has always been willing to settle the amount of outstanding loan in one time settlement with the respondent No. 2. The learned counsel would submit that the late attempt on the part of the appellant to dispute the OTS letter issued by the respondent No. 1 is baseless and fallacious because such a contention has been raised for the first time in this second round of appeal in this Court; and that the appellant is rather guilty of taking false pleadings and of perjury in his attempts to mislead.

14.2. While refuting the submissions made on behalf of the appellant, it has been strenuously argued by the learned senior counsel for the respondent No. 2 that the application under Section 7 of the Code is not barred by limitation only because of initial date of default being mentioned therein as 08.07.2011. The learned counsel would submit that the

contentions on behalf of the appellant are unsustainable since the debt in question had been legally and unequivocally admitted to be due and payable in writing by the respondent No. 1 all throughout from the year 2011 until 2017 in its balance sheets filed along with annual returns before the Registrar of Companies; and the debt had been shown as the loan amount outstanding to Corporation Bank, who had assigned the same to the respondent No. 2.

14.3. While heavily relying on the observations in ***Jignesh Shah*** (supra), learned senior counsel has contended that as per the law declared by this Court, the provisions of Section 18 of the Limitation Act certainly extend the period of limitation under the Code on any acknowledgment of debt by the corporate debtor. The learned counsel has referred to the provisions of the Companies Act, 2013[26], particularly Section 95 thereof, as also to the observations of this Court in ***M/s. Mahabir Cold Storage v. CIT, Patna*****: 1991 Supp (1) SCC 402** to submit that the registers of a company are of *prima facie* evidence; and the balance sheet disclosing loans and borrowings and forming part of annual returns, indeed constitute the admission and acknowledgment of the corporate debtor of its indebtedness. Therefore, according to the learned counsel, the loan amount acknowledged to be due and payable by the corporate debtor in the balance sheets and annual reports, continuously from the year 2011 and until the year 2017, becomes an admitted fact of evidence and thereby, the

26 Hereinafter also referred to as 'the Companies Act'.

period of limitation is extended by dint of applicability of Section 18 of the Limitation Act.

14.4. The learned senior counsel has re-emphasised on the submissions that the suggestions of the appellant, that no extension of limitation period under Section 18 of the Limitation Act is permissible in the Code because date of default is sacrosanct and only three years period from that date is permissible, remain untenable in law. The learned counsel has contended that at the time of filing such application by the respondent No. 2, there was no provision in the Code importing any defined period of limitation and neither there was any mandatory legal requirement of stating in the application format as to how the claim was within limitation nor there was any statutory requirement to furnish any specific evidence thereof and therefore, the Section 7 application as framed and filed by respondent No. 2 was well within the period of limitation.

14.5. As regards the requisite approach in applying the law of limitation to the application under Section 7 of the Code, the learned senior counsel has strenuously argued that the amendment applying the provisions of the Limitation Act to the Code came into force with effect from 06.06.2018 but only after filing of the application by respondent No. 2; and testing a *post facto* applicable statutory provision of retrospective nature in a watertight stringent manner would result in a fatal flaw in equity and the same may also prejudice scores of legal recourse by many other banks and financial institutions currently in Courts/Tribunals on mere technicality that was

unforeseen and unconceived in past and hence, the documents making out a case for extension of limitation period could not be filed. Other way round, according to the learned counsel, the unrestrained applicability of Section 238-A of the Code in an anomalous manner suggested on behalf of the appellant would compel all the financial institutions to immediately proceed and file the application under Section 7 before the expiry of three years exactly from the date of default, in spite of the fact that any borrower, in order to overcome its financial constraints to repay might be ready and willing to comply with the requirements of Section 18 of the Limitation Act for extension of period of limitation. The learned counsel has relied on the decision of this Court in ***N.Balakrishnan v. Krishnamurthy*** **: (1998) 7 SCC 123** to submit that the rules of limitation are not meant to destroy the rights of the parties.

14.6. The learned senior counsel has, therefore, submitted that the application filed by respondent No. 2 under Section 7 of the Code as financial creditor is within the period of limitation as prescribed and as extended legally by application of the relevant provisions of the Limitation Act. Thus, according to the learned counsel, the application has rightly been admitted by NCLT and the present appeal deserves to be dismissed.

Respondent No. 1

15. The learned counsel appearing for the IRP (respondent No. 1) has more or less argued on the same lines and has submitted that the

application in question is well within the period of limitation when examined in the light of the applicable provisions of the Code and the Limitation Act.

15.1. According to the learned counsel, the application filed by the respondent No. 2 remains within limitation for the reasons: (a) that the liability of loan is long standing and same is recorded in the balance sheets of corporate debtor for the Financial Years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17; (b) that by way of letter dated 31.07.2018, request for OTS was made on behalf of the corporate debtor; and (c) OA No. 172/2013 was filed before DRT well within the stipulated time period and the same is still pending. It has been contended that in view of these indisputable facts, the claim of the financial creditor cannot be said to be dead or stale claim and hence, is not barred by limitation, particularly when the financial creditor has been availing of another civil remedy available to it and had filed the application under Section 19 of the Act of 1993 well within limitation.

15.2. The learned counsel has further contended that the impugned order of NCLAT is correct on facts and is in consonance with the intent and spirit of law laid down by this Court in ***B.K.Educational Services*** (supra) that the claim of the creditor should not be a dead or a stale claim. The learned counsel has further contended that mere date of default or date of classification of an account as NPA does not put a full stop on 'further cause of action' or 'continuing cause of action' available to the financial creditor. The learned counsel would submit that on the settled principle of law, the

interpretation of statute should always be in furtherance to its objective and to give effect to the intent of legislature; and if, for the sake of arguments, the contention of the appellant is accepted that an application under Section 7 of IBC could be filed only within three years from the date of NPA, it would frustrate the objective of IBC to restructure the stressed assets and ensure maximisation of the value of stressed assets.

15.3. The learned counsel has again relied on Section 18 of the Limitation Act and the aforesaid decisions in ***Jignesh Shah*** and ***Mahaveer Cold Storage*** to submit that the contention of the appellant that cause of action arose in 2011 and right to sue started ticking in the said year is baseless, as the corporate debtor had continuously admitted its liability in its audited balance sheets until the year 2017 and further admitted its liability with an offer for OTS. Therefore, according to the learned counsel, the contention that the debt is barred by limitation cannot be taken by the corporate debtor in the given facts and circumstances besides that such a contention is contrary to the undisputed facts and admission of liability.

15.4. The learned counsel for the respondent No. 1 has also attempted to refer to the proceedings already undertaken in this matter pursuant to the order of admission by NCLT, including the meetings of, and resolutions by, CoC; and consequent moving of application by IRP before NCLT for liquidation of the corporate debtor before passing of the interim order in this appeal.

16. In distillation of what has been noticed hereinabove, it is apparent that while not disputing the basics on the applicability of law of limitation to the application in question, the main plank of submissions of the learned counsel for respondents has been that the applicability of Section 18 of the Limitation Act, providing for extension of the period of limitation upon making of acknowledgment by the party against whom a right is claimed, is not taken away and, for such acknowledgments (of liability) having been consistently and continuously made in the balance sheets and annual reports by the corporate debtor as also in its offer for OTS, the fresh period of limitation would be available from the date of every such acknowledgment. Hence, with heavy reliance on the principles relating to "acknowledgment" under Section 18 of the Limitation Act, the learned counsel for the respondents would assert that the application in question is not barred by limitation. On the other hand, the gravamen of submissions on behalf of the appellant has been that looking to the scheme of the Code and the decisions of this Court, the application in question is governed by Article 137 of the Limitation Act; that three years' time period prescribed therein commences from the date of default; and that acknowledgment of debt in the balance sheet or annual report does not give any fresh period of limitation because default occurs only once and does not furnish a continuing right to apply.

16.1. Apart from the aforesaid, as noticed, the Appellate Tribunal has concluded in favour of the respondents for different reasons viz., that the

right to apply under Section 7 of the Code accrued only on 01.12.2016 when the Code came into force and hence, the application filed by the financial creditor in the year 2018 is not barred by limitation; and that the period of limitation is twelve years for recovery of possession of the mortgaged property and, therefore, the claim is not barred by limitation.

The relevant provisions of the Code and the Limitation Act

17. For determination of the core issue as to whether the application made by respondent No. 2 before NCLAT under Section 7 of the Code is within limitation and for dealing with the submissions made by the respective learned counsel as also the reasonings adopted by the Appellate Tribunal, at the first it would be appropriate to take note of the relevant statutory provisions in the Insolvency and Bankruptcy Code, 2016 and the Limitation Act, 1963.

17.1. The expressions generally used in the Insolvency and Bankruptcy Code, 2016 are defined in Section 3 thereof. The relevant definitions occurring in Section 3 of the Code are as under: -

> **"3. Definitions**. —In this Code, unless the context otherwise requires,—
> **** **** ****
> (6) "**claim**" means—
> (*a*) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
> (*b*) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

(8) "**corporate debtor**" means a corporate person who owes a debt to any person;

**** **** ****

(10): "**creditor**" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;

(11) "**debt**" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) "**default**" means 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][27] by the debtor or the corporate debtor, as the case may be;

**** **** ****

(30): "**secured creditor**" means a creditor in favour of whom security interest is created;

**** **** ****"

17.2. Part II of the Code deals with insolvency resolution and liquidation of corporate persons and the extent of application of this Part II is specified in Section 4 that reads as under:-

> **"4. Application of this Part**. - (1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees:
>
> Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees."

17.3. The expressions employed in Part II of the Code are defined in Section 5 thereof. The relevant definitions are as under:-

> **"5. Definitions**.—In this Part, unless the context otherwise requires,—
>
> **** **** ****
>
> (6) "**dispute**" includes a suit or arbitration proceedings relating to—.
>
> (*a*) the existence of the amount of debt;

27 The expression in parenthesis was substituted for "repaid" by Amendment Act No. 26 of 2018 with retrospective effect from 06.06.2018.

(*b*) the quality of goods or service; or

(*c*) the breach of a representation or warranty;

(7): "**financial creditor**" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

**** **** ****"

17.4. The provisions relating to initiation of CIRP, with which we are primarily concerned in this matter, are contained in Section 7 of the Code and read as under:-

> **"7. Initiation of corporate insolvency resolution process by financial creditor**.— (1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,][28] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.
>
> *Explanation*.— For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.
>
> (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.
>
> (3) The financial creditor shall, along with the application furnish—
>
> (*a*) record of the default recorded with the information utility or such other record or evidence of default as may be specified;
>
> (*b*) the name of the resolution professional proposed to act as an interim resolution professional; and
>
> (*c*) any other information as may be specified by the Board.
>
> (4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).
>
> (5) Where the Adjudicating Authority is satisfied that—

28 The expressions in parenthesis were substituted for "other financial creditors" by Amendment Act No. 26 of 2018 with retrospective effect from 06.06.2018.

(*a*) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(*b*) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (*b*) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(*a*) the order under clause (*a*) of sub-section (5) to the financial creditor and the corporate debtor;

(*b*) the order under clause (*b*) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

17.5. Section 238-A, inserted in the Code by way Amendment Act No. 26 of 2018, is deemed to have come into effect from 06.06.2018. This Section 238-A, being directly relevant for the present purpose, could also be usefully reproduced as under:-

"**238-A. Limitation. -** The provisions of the Limitation Act, 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."

17.6. Section 18 of the Limitation Act, providing for the extension of period of limitation on acknowledgment of the liability, which is strongly relied upon by the respondents, reads as under:-

"**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."

17.7. As regards the period of limitation for the application in question, Article 137, as contained in Part II of Third Division of the Schedule to the Limitation Act (relating to the applications not otherwise provided for), shall have bearing in the matter and may be taken note of as under[29]:-

29 It may be usefully observed that the Appellate Tribunal has referred to Article 61(b) of the Limitation Act that relates to suits on mortgages. As shall be noticed hereafter later, such a reference does not fit in the issue at hand from any angle. However, we may extract Articles 61(b) and 62 of the Limitation, just for the sake of reference, as under:-

"**PART V - SUITS RELATING TO IMMOVABLE PROPERTY.**

29 "Description of suit	29 Period of Limitation	29 Time from which period begins to run
29 61. By a mortgagor- *** *** ***	29 Twelve years	29 When the transfer becomes known to the plaintiff.

"Description of application	Period of limitation	Time from which period begins to run
137. Any other application for which no period of limitation is provided elsewhere in this division	Three years	When the right to apply accrues."

The relevant basics of the Insolvency and Bankruptcy Code, 2016

18. Now, a brief insight into the expositions of this Court on the reasons, purport, meaning and effect of the provisions of IBC and changes brought about by it to the then existing law, particularly those having bearing on the questions at hand, shall be useful.

18.1. As noticed from Preamble, the Code came to be enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons and even of partnership firms and individuals in a time bound manner; the objectives, *inter alia*, being for

---

When the money sued for becomes due."

Twelve years

(b) to recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration

*** *** ***

62.To enforce payment of money secured by a mortgage or otherwise charged upon immovable property

maximisation of value of assets of such persons and balance of interest of all the stakeholders.[30]

18.2. One of the earliest decisions, wherein this Court dealt with the provisions of IBC in sufficient detail while explaining the *raison d'être* for this enactment and a paradigm shift in law, had been in the case of ***Innoventive Industries*** (supra) that was decided on 31.08.2017. Therein, this Court, *inter alia*, pointed out that *'one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process'.*

18.2.1. In the case of ***Innoventive Industries,*** this Court was essentially concerned with the question as to whether the proceedings under IBC could be stalled where there was a moratorium to the company concerned under the Maharashtra Relief Undertakings (Special Provisions) Act, 1958. Amongst other aspects, this Court ruled, with reference to the non obstante clause contained in Section 238 of the Code that the same being of Parliamentary enactment, would prevail over the limited non obstante clause of the State enactment; and thus, the Maharashtra Act cannot stand in the way of Corporate Insolvency Resolution Process under the Code[31].

30 As observed by this Court in **Civil Appeal Nos. 8512-8527 of 2019 etc.: *Anuj Jain v. Axis Bank Limited and Ors***., decided on 26.02.2020.

31 Section 238 of the Code reads as under: -

> "**238. Provisions of this Code to override other laws.** —The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

During the course of an extensive examination of the relevant provisions, this Court also analysed the scheme of Corporate Insolvency Resolution Process under the Code and, in relation to the initiation of such CIRP by the financial creditor, exposited as follows: -

> **"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins.** Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. **The Code gets triggered the moment default is of rupees one lakh or more (Section 4)**. The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.
>
> **28.** When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to *any* financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1

accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. **It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact.** The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

(emphasis in bold supplied)

18.3. The other decision in which this Court again traversed through the historical background and scheme of the Code had been in the wake of challenge to the constitutional validity of various of its provisions in the case of ***Swiss Ribbons*** (supra), decided on 25.01.2019.

18.3.1. In ***Swiss Ribbons,*** while upholding the constitutional validity of IBC, this Court took note, *inter alia*, of the pre-existing state of law as also the objects and reasons for enactment of the Code; and while observing that the focus of the Code was to ensure revival and continuation of the

corporate debtor, where liquidation is to be availed of only as a last resort, this Court pointed out that on its scheme and framework, the Code was a beneficial legislation to put the corporate debtor on its feet, and not a mere recovery legislation for the creditors. This Court said, -

> **"27.** As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. (See *ArcelorMittal*[32] at para 83, fn 3).
>
> **28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the**

32 ***ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta & Ors*: (2019) 2 SCC 1**

> **corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors.** The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. **Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests.** The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."
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> (emphasis in bold supplied)

18.3.2. In ***Swiss Ribbons***, this Court again explained the connotations as also contours of the provisions relating to initiation of CIRP by the financial creditor in the following passage:-

> **"64.** The trigger for a financial creditor's application is non-payment of dues when they arise under loan agreements. It is for this reason that Section 433(*e*) of the Companies Act, 1956 has been repealed by the Code and a change in approach has been brought about. **Legislative policy now is to move away from the concept of "inability to pay debts" to "determination of default".** The said shift enables the financial creditor to prove, based upon solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed in such obligation…."
>
> (emphasis in bold supplied)

19. The expositions abovementioned make it clear that the Insolvency and Bankruptcy Code, 2016 has been enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons and other entrepreneurs in a time bound manner so as to ensure

maximisation of value of assets of such persons and to balance the interest of all the stakeholders. As regards corporate debtor, the primary focus of the Code is to ensure its revival and continuation by protecting it from its own management and, as far as feasible, to save it from liquidation. As tersely put by this Court in ***Swiss Ribbons*** (supra), *the Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors*.

19.1. When the Corporate Insolvency Resolution Process is understood on the anvil of the aforementioned fundamentals on the spirit and intent of IBC, it is also evident that such a process is not intended to be adversarial to the corporate debtor but is essentially to protect its interests.

19.2. In relation to a financial creditor, the trigger for CIRP is default by the corporate debtor of rupees one lakh or more against the debt/s. When seeking initiation of CIRP *qua* a corporate debtor, the financial creditor is required to make the application in conformity with the requirements of Section 7 of the Code while divulging the necessary information and evidence, as required by the Rules of 2016. After completion of all other requirements, for admitting such an application of the financial creditor, the Adjudicating Authority has to be satisfied, as per sub-section (5) of Section 7 of the Code, that "default" has occurred and, in this process of consideration by the Adjudicating Authority, the corporate debtor is entitled to point out that default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is

not payable in law or in fact. As observed by this Court*, the legislative policy now is to move away from the concept of "inability to pay debts" to "determination of default*".

Operation of law of limitation over IBC proceedings

20. Having taken note of the rudiments that the Code is a beneficial legislation intended to put the corporate debtor on its feet and it is not a mere money recovery legislation for the creditors; and having also noticed that CIRP is not intended to be adversarial to the corporate debtor but is essentially to protect its interests and that CIRP has its genesis in default on the part of the corporate debtor, we may now examine the operation of law of limitation over the proceedings under the Code.

21. Section 238-A, providing that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals, *inter alia*, before the Adjudicating Authority (NCLT) or the Appellate Tribunal (NCLAT), was not available in the Code when this Court delivered the decision in ***Innoventive Industries*** (supra) on 31.08.2017. However, this Court explained the scheme of the Code and nuances of CIRP by the financial creditor under Section 7, particularly as to when the process of insolvency resolution begins, the trigger moment being the default of rupees one lakh or more; and the requirement on the Adjudicating Authority to reach to the satisfaction that the required default has occurred. It appears that even when the applicable principles in relation to CIRP by the financial creditor were explained by this Court in ***Innoventive Industries*** (supra), the

question of applicability of the Limitation Act to the Code remained a matter of debate in various decisions of NCLT and NCLAT. Such a debate and the doubts generated thereby were dealt with by the Insolvency Law Committee who, in its report made in the month of March, 2018, recommended for introduction of the requisite provision in the Code so as to leave no room of doubt that the Limitation Act indeed applies to the proceedings under the Code. This ultimately led to the insertion of the said Section 238-A into the Code with retrospective effect from 06.06.2018. However, the validity of this Section 238-A was also questioned before this Court and this culminated into the elaborate decision of this Court in the case of ***B.K. Educational Services*** (supra) that was rendered on 11.10.2018.

22. In ***B.K. Educational Services*** (supra), while upholding the validity of Section 238-A of the Code, this Court took note of the said report of the Insolvency Law Committee and observed as under:-

> **"11.** Having heard the learned counsel for both sides, it is important to first set out the reason for the introduction of Section 238-A into the Code. This is to be found in the Report of the Insolvency Law Committee of March 2018, as follows:
>
> "**28. APPLICATION OF LIMITATION ACT, 1963**
>
> 28.1. The question of applicability of the Limitation Act, 1963 (the Limitation Act) to the Code has been deliberated upon in several judgments of NCLT and NCLAT. The existing jurisprudence on this subject indicates that if a law is a complete code, then an express or necessary exclusion of the Limitation Act should be respected. *In light of the confusion in this regard, the Committee deliberated on the issue and unanimously agreed that the intent of the Code could not have been to give a new lease of life to debts which are time-barred*. It is settled law that when a debt is barred by time, the right to a remedy is time-barred. This requires being read with the definition of "debt" and "claim" in the Code. Further, debts in winding-up proceedings cannot

be time-barred, and there appears to be no rationale to exclude the extension of this principle of law to the Code.

28.2. Further, non-application of the law on limitation creates the following problems: first, it re-opens the right of financial and operational creditors holding time-barred debts under the Limitation Act to file for CIRP, the trigger for which is default on a debt above INR one lakh. The purpose of the law of limitation is '*to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches*'. Though the Code is not a debt recovery law, the trigger being "default in payment of debt" renders the exclusion of the law of limitation counter-intuitive. Second, it re-opens the right of claimants (pursuant to issuance of a public notice) to file time-barred claims with IRP/RP, which may potentially be a part of the resolution plan. Such a resolution plan restructuring time-barred debts and claims may not be in compliance with the existing laws for the time being in force as per Section 30(4) of the Code.

28.3. *Given that the intent was not to package the Code as a fresh opportunity for creditors and claimants who did not exercise their remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific section applying the Limitation Act to the Code*. The relevant entry under the Limitation Act may be on a case-to-case basis. It was further noted that the Limitation Act may not apply to applications of corporate applicants, as these are initiated by the applicant for its own debts for the purpose of CIRP and are not in the form of a creditor's remedy."

(emphasis in original and supplied)

12. The Report of the Committee would indicate that it has applied its mind to judgments of NCLT and NCLAT. **It has also applied its mind to the aspect that the law is a complete Code and the fact that the intention of such a Code could not have been to give a new lease of life to debts which are time-barred**."

(emphasis in bold supplied)

22.1. Further, in ***B.K. Educational Services***, this Court extensively dealt with the issues as to whether the Code being exhaustive in nature, would result in overriding the Limitation Act and as to whether the object of the legislature was to apply the limitation prescribed under the Code

retrospectively. This Court, relying on a plethora of judgments and the said Insolvency Law Committee Report of March, 2018 stated the views in no uncertain terms that,-

> "**34**……. the legislature did not contemplate enabling a creditor who has allowed the period of limitation to set in to allow such delayed claims through the mechanism of the Code. The Code cannot be triggered in the year 2017 for a debt which was time-barred, say, in 1990, as that would lead to the absurd and extreme consequence of the Code being triggered by a stale or dead claim, leading to the drastic consequence of instant removal of the present Board of Directors of the corporate debtor permanently, and which may ultimately lead to liquidation and, therefore, corporate death. This being the case, the expression "debt due" in the definition Sections of the Code would obviously only refer to debts that are "due and payable" in law, i.e., the debts that are not time-barred. That this is the case has already been held by us in the *Innoventive Industries* Ltd. (supra)…..
>
> **** **** ****
>
> **36.** The definition of "default" in Section 3(12) uses the expression "due and payable" followed by the expression "and is not paid by the debtor or the corporate debtor…". "Due and payable" in Section 3(12), therefore, only refers to the whole or part of a debt, which when referring to the date on .which it becomes "due and payable", is not in fact paid by the corporate debtor. The context of this provision is therefore actual non-payment by the corporate debtor when a debt has become due and payable.
>
> **** **** ****
>
> **42.** It is thus clear that since the Limitation Act is applicable to applications filed under Sections 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 in bold supplied)

23. After the aforesaid decisions dated 31.08.2017 in ***Innoventive Industries*** and dated 11.10.2018 in ***B.K. Educational Services***, this Court again examined the overall scheme and spirit of the provisions of IBC in the case of ***Swiss Ribbons*** (supra) on 25.01.2019. The relevant enunciations in ***Swiss Ribbons*** have already been noticed hereinbefore.

24. Thereafter, the case of ***K. Sashidhar*** (supra) was decided on 05.02.2019. Therein, the principal issue related with the dispensation governing the process of approval or rejection of resolution plan by the Committee of Creditors[33] but, having regard to the variety of contentions urged, this Court took note of the decisions elaborately dealing with the legislative history of the Code including that in ***Innoventive Industries*** (supra). During the course of submissions, the said decision in ***B.K. Educational Services*** was also cited and hence, the same was referred to and the ratio therein was explained in the following passage*:*

> **"78.** As regards the decision in *B.K. Educational*, the Court was called upon to consider the question as to whether the Limitation Act, 1963 will apply to applications that are made under Section 7 and/or Section 9 of the Code on and from its commencement on 1-12-2016 till 6-6-2018. That question was examined in the context of Section 238-A inserted in the I&B Code by the self-same Amendment Act of 2018. **The Court after adverting to the contents of the report of the Insolvency Law Committee of March 2018 and other provisions of the Code and other enactments, opined that Section 238-A was clarificatory in nature and being a procedural law, came to hold that it had retrospective effect. The Court held that taking any other view would**

33 'CoC' for short.

> **result in an incongruous situation as the provisions of the Limitation Act would apply in some set of cases to be decided by the same Tribunal and not in other set of cases. Besides, the Court adverted to the principle that right to sue accrues on the date when default occurs and if the default occurred even three years prior to the date of filing of the application, the same cannot be treated as "debt that is due and payable**" or "debt" due."
>
> (emphasis in bold supplied)

25. As noticed, the abovementioned decision in ***K. Sashidhar*** was rendered on 05.02.2019 wherein, the principles in ***B.K. Educational Services*** were undoubtedly restated by this Court. However, thereafter, the case of ***Jignesh Shah*** (supra) came to be decided by a three-Judge Bench of this Court on 25.05.2019. A particular passage in this three-Judge Bench decision in ***Jignesh Shah*** (as occurring in paragraph 21, SCC p. 770) has been relied upon by both the parties to assert that the law so declared by this Court supports their case.

25.1 In order to comprehend the meaning and import of the referred observations in paragraph 21 of ***Jignesh Shah***, the text thereof is required to be read in its context. Therefore, it shall be worthwhile to take note of the relevant factual and background aspects of the case of ***Jignesh Shah***. Therein, IL&FS Financial Services Ltd. ('IL&FS') had filed a winding up petition against La-Fin Financial Services Pvt. Ltd. ('La-Fin') which was transferred to National Company Law Tribunal, Mumbai Branch and then, was heard as Section 7 application under the Code. The background had been that on 20.08.2009, a share-purchase agreement was executed, whereby IL&FS agreed to purchase 442 lakhs equity shares of MCX Stock

Exchange Limited ('MCX-SX') from Multi-Commodity Exchange India Limited ('MCX'). Pursuant to this agreement, La-Fin, as a group company of MCX, issued a letter of undertaking to IL&FS on 20.08.2009 stating that La-Fin or its appointed nominees would offer to purchase from IL&FS the shares of MCX-SX after a period of one year, but before three years, from the date of investment. Thereafter, on 03.08.2012, IL&FS proposed to sell its entire holding of shares in MCX-SX and called upon La-Fin to purchase these shares in terms of the undertaking. On 16.08.2012, La-Fin replied with denial of any legal or contractual obligation to buy the aforesaid shares. Ultimately, on 19.06.2013, IL&FS filed Suit No. 449 of 2013 in the Bombay High Court for specific performance of the letter of undertaking by La-Fin or, in the alternative, for damages while stating that the cause of action arose on 16.08.2012 when La-Fin refused to honour its obligation. Interim injunction was granted in the said suit on 13.10.2014. Thereafter, on 03.11.2015, a statutory notice under Sections 433 and 434 of the Companies Act, 1956 was issued by IL&FS to La-Fin while referring to the attachment of the properties of La-Fin by Economic Offences Wing of the Mumbai Police and stating that La-Fin was obviously in no financial position to pay the amount it owed to IL&FS. This notice was followed up by the winding up petition that was filed on 21.10.2016 by IL&FS against La-Fin in the Bombay High Court under Section 433(*e*) of the Companies Act, 1956. As noticed, this company petition was transferred to NCLT and was heard as an application under Section 7 of the Code. This transferred petition was

admitted by NCLT while forming the opinion that as per the share-purchase agreement and the letter of understanding, a financial debt had been incurred by La-Fin. The appeal filed by the appellant Jignesh Shah was also dismissed by NCLAT. Hence, the orders passed by NCLT and NCLAT were challenged in this Court. A writ petition was also filed challenging the constitutionality of certain provisions of the Code. This has been the backdrop in which, the statutory bar of limitation against the petition filed by IL&FS was argued before this Court with reference to Section 238-A of the Code and the decision in ***B.K. Educational Services*** (supra).

25.2. This Court accepted the contentions urged on behalf of the appellants and while reproducing the relevant passages from ***B.K. Educational Services***, held that the bar of limitation was operating over the application filed by IL&FS in the following words:-

> "**12**. This judgment clinches the issue in favour of the Petitioner/Appellant. With the introduction of Section 238A into the Code, the provisions of the Limitation Act apply to applications made under the Code. Winding up petitions filed before the Code came into force are now converted into petitions filed under the Code. What has, therefore, to be decided is whether the Winding up Petition, on the date that it was filed, is barred by lapse of time. If such petition is found to be time-barred, then Section 238A of the Code will not give a new lease of life to such a time-barred petition. **On the facts of this case, it is clear that as the Winding up Petition was filed beyond three years from August, 2012 which is when, even according to IL & FS, default in repayment had occurred, it is barred by time.**"
>
> (emphasis in bold supplied)

25.3. Though with the aforesaid finding, the matter stood concluded that the petition filed by IL&FS was barred by limitation but thereafter, the Court

also proceeded to examine another line of submissions of the parties as regards effect of the suit for recovery over the proceedings under Section 433 of the Companies Act, 1956, where it was argued on behalf of the appellants that existence of such a suit cannot be construed as having either revived the period of limitation or having extended it, insofar as concerning the proceeding for winding up. This Court accepted the said contention of the appellants and in that context, made the observations that are relied upon by the parties and read as under:-

> **"21.** The aforesaid judgments correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding-up proceeding. In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgment of liability under Section 18 of the Limitation Act would certainly extend the limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding-up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding-up proceeding."

25.4. Moreover, after reading the provisions contained in Sections 433*(e)* and 434 of the Companies Act, 1956, for winding up in case of company being unable to pay its debts, this Court made yet further observations in ***Jignesh Shah*** (supra) that the trigger for limitation in such an action occurs when a default takes place after which the debt remains outstanding; and that date alone is relevant for reckoning the period of limitation. After reproducing Section 433*(e)* and 434 of the Companies Act, 1956, this Court said,-

> "**28**. A reading of the aforesaid provisions would show that the starting point of the period of limitation is when the company is unable to pay its debts, and that Section 434 is a deeming provision which refers to three situations in which a Company shall be deemed to be "unable to pay its debts" Under Section 433(e). In the first situation, if a demand is made by the creditor to whom the company is indebted in a sum exceeding one lakh then due, requiring the company to pay the sum so due, and the company has for three weeks thereafter "neglected to pay the sum", or to secure or compound for it to the reasonable satisfaction of the creditor. "Neglected to pay" would arise only on default to pay the sum due, which would clearly be a fixed date depending on the facts of each case. Equally in the second situation, if execution or other process is issued on a decree or order of any Court or Tribunal in favour of a creditor of the company, and is returned unsatisfied in whole or in part, default on the part of the debtor company occurs. This again is clearly a fixed date depending on the facts of each case. And in the third situation, it is necessary to prove to the "satisfaction of the Tribunal" that the company is unable to pay its debts. Here again, the trigger point is the date on which default is committed, on account of which the Company is unable to pay its debts. This again is a fixed date that can be proved on the facts of each case. **Thus, Section 433(e) read with Section 434 of the Companies Act, 1956 would show that the trigger point for the purpose of limitation for filing of a winding up petition Under Section 433(e) would be the date of default** in payment of the debt in any of the three situations mentioned in Section 434."
>
> (emphasis in bold supplied)

26. Before examining the purport, effect and impact of the principles emanating from the aforesaid decision in ***Jignesh Shah,*** it is rather expedient to take note of the enunciations in a few later decisions of this Court, on the very same issue concerning the operation of law of limitation in regard to the application under Section 7 of the Code, which have been cited in the present appeal.

27. One such decision had been in the case of ***Vashdeo R. Bhojwani*** (supra) that was rendered on 02.09.2019. In that case**,** a default of Rs. 6.7 crores was found against the corporate debtor whose account was declared NPA by the lender bank on 23.12.1999 and ultimately, a recovery certificate dated 24.12.2001 was issued for this amount. Later on, the financial creditor filed an application under Section 7 of the Code before the Adjudicating Authority on 21.07.2017 claiming that the said amount together with interest, which kept ticking from 1998, was payable to it as assignee. The application under Section 7 was admitted on 05.03.2018 by the Adjudicating Authority stating that '*as the default continued, no period of limitation would attach and the petition would, therefore, have to be admitted'*. The Appellate Tribunal dismissed the appeal against the aforesaid order of admission while stating that *'since the cause of action in the present case was continuing, no limitation period would attach';* and while further holding that the recovery certificate of 2001 plainly showed that there was a default and there was no statable defence. After taking note of the relevant facts and the foundation of the orders passed by the Adjudicating Authority and the Appellate Tribunal, this Court disapproved the same while finding that the case was covered by the decision in ***B.K. Educational Services*** (supra) and while reiterating the passage above-noted. To get out of the rigour of the ratio of ***B.K. Educational Services***, a reference was made to the provisions of the Limitation Act providing for fresh period of limitation in the case of continuing cause of action and it

appears that Section 23 of the old Limitation Act of 1908 was referred to[34].

This Court rejected such contention while observing as under:

> **"4.** In order to get out of the clutches of para 27, it is urged that Section 23 of the Limitation Act would apply as a result of which limitation would be saved in the present case. This contention is effectively answered by a judgment of three learned Judges of this Court in *Balakrishna Savalram Pujari and Others vs. Shree Dhyaneshwar Maharaj Sansthan & Others,* [1959] Supp. (2) SCR 476. In this case, this Court held as follows:
>
> > " … In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act . causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that

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34 We have indicated the provision contained in Limitation Act, 1908 for the reason that in the cited decision, Section 23 has been referred and the decision of this Court reported in [1959] Supp. (2) SCR 476 has been cited. The corresponding provision, as regards continuing cause of action for specific category of cases is now contained in Section 22 of the Limitation Act, 1963 which is akin to the earlier Section 23 of the Limitation Act,1908 but with slight modifications. For the sake of reference, these provisions are extracted as under:

Section 23 of the Limitation Act, 1908

"**Continuing breaches and wrongs.-**In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

Section 22 of the Limitation Act, 1963

"**Continuing breaches and torts.-**In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues."

> Section 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued."
>
> Following this judgment, **it is clear that when the recovery certificate dated 24-12-2001 was issued, this certificate injured effectively and completely the appellant's rights as a result of which limitation would have begun ticking**.
>
> **5.** This being the case, and the claim in the present suit being time-barred, there is no doubt that is due and payable in law. We allow the appeal and set aside the orders of NCLT and NCLAT. There will be no order as to costs."
>
> (emphasis in bold supplied)

28. A few days after the decision in ***Vashdeo R. Bhojwani***, a three-Judge Bench of this Court had another occasion to apply and explain the ratio in ***B.K. Educational Services***. That was in the case of ***Gaurav Hargovindbhai Dave*** (supra), decided on 18.09.2019. Therein, the financial creditor had stated in the relevant column of Form No. 1 of the application under Section 7 of the Code the date of default to be the date of NPA i.e., 21.07.2011. The application under Section 7 was filed on 03.10.2017. The Adjudicating Authority applied Article 62 of the Limitation Act and reached to the conclusion that since the limitation period was twelve years from the date on which money sued has become due, the claim was within limitation and hence, admitted the application. The NCLAT applied another reasoning that the time of limitation would begin to run only from 01.12.2016, the date on which the Code was brought into force. This

Court took note of the contentions of both the parties and while accepting the submissions that time began to run on 21.07.2011 (the date of NPA), held that the application filed under Section 7 was time-barred. The relevant passages of the said decision in ***Gaurav Hargovindbhai Dave*** (supra) could be usefully reproduced as under:-

> "**4.** Mr Aditya Parolia, learned counsel appearing on behalf of the appellant has argued that Article 137 being a residuary article would apply on the facts of this case, and as right to sue accrued only on and from 21.07.2011, three years having elapsed since then in 2014, the Section 7 application filed in 2017 is clearly out of time. He has also referred to our judgment in *B.K. Educational Services Private Limited* v. *Parag Gupta and Associates, 2018 SCC OnLine SC 1921* in order to buttress his argument that it is Article 137 of the Limitation Act which will apply to the facts of this case.
>
> **5.** Mr Debal Banerjee, learned Senior Counsel, appearing on behalf of the respondents, countered this by stressing, in particular, para 7 of *B.K. Educational Services Private Limited* (supra) and reiterated the finding of the NCLT that it would be Article 62 of the Limitation Act that would be attracted to the facts of this case. He further argued that, being a commercial Code, a commercial interpretation has to be given so as to make the Code workable.
>
> 6. **Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary Article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred.** So far as Mr Banerjee's reliance on para 7 of *B.K. Educational Services Private Limited* (supra), suffice it to say that the Report of the Insolvency Law Committee itself 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.
>
> 7. This being the case, we fail to see how this para could possibly help the case of the respondents. Further, it is not for us to interpret, commercially or otherwise, articles of the

> Limitation Act when it is clear that a particular article gets attracted. **It is well settled that there is no equity about limitation** - judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature.
> 8**.** This being the case, the appeal is allowed and the judgments of the NCLT and NCLAT are set aside."
>
> (emphasis in bold supplied)

29. Close on the heels of ***Gaurav Hargovindbhai Dave*** (supra), this Court dealt with similar issue yet again in the case of ***Sagar Sharma*** (supra), decided on 30.09.2019. Therein, apart from disapproving the proposition that the date of commencement of the Code could be the starting point of limitation (as noticed hereinabove), this Court again pointed out the fallacy in applying the period of limitation related to mortgage liability to the application under Section 7 of the Code and said, –

> "**2**…..However, we find in the impugned judgment that Article 62 (erroneously stated to be Article 61) was stated to be attracted to the facts of the present case, considering that there was a deed of mortgage which was executed between the parties in this case. **We may point out that an application under Section 7 of the Code does not purport to be an application to enforce any mortgage liability.** It is an application made by a financial creditor stating that a default, as defined under the Code, has been made, which default amounts to Rs 1,00,000 (Rupees one lakh) or more which then triggers the application of the Code on settled principles that have been laid down by several judgments of this Court."
>
> (emphasis in bold supplied)

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 non-payment 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.

Whether Section 18 Limitation Act could be applied to the present case

31. While the aforesaid principles remain crystal clear with the consistent decisions of this Court, the only area of dispute, around which

the contentions of learned counsel for the parties have revolved in the present case, is about applicability of Section 18 of the Limitation Act and effect of the observations occurring in paragraph 21 of the decision in ***Jignesh Shah*** (supra).

32. We have noticed all the relevant and material observations and enunciations in the case of ***Jignesh Shah*** hereinbefore. *Prima facie*, it appears that illustrative reference to Section 18 of the Limitation Act, in paragraph 21 of the decision in ***Jignesh Shah,*** had only been in relation to the suit or other proceedings, wherever it could apply and where the period of limitation could get extended because of acknowledgment of liability. Noticeably, in contradistinction to the proceeding of a suit, this Court observed that a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceeding is to be filed[35]. It is difficult to read the observations in the aforesaid paragraph 21 of ***Jignesh Shah*** to mean that the ratio of ***B.K. Educational Services*** has, in any manner, been altered by this Court. As noticed, in ***B.K. Educational Services,*** it has clearly been held that the limitation period for application under Section 7 of the Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of Limitation Act, if any case for

35 What has been observed in relation to the proceeding for winding up, perforce, applies to the application seeking initiation of CIRP under IBC.

condonation of delay is made out. The findings in paragraph 12 in ***Jignesh Shah*** makes it clear that the Court indeed applied the principles so stated in ***B.K. Educational Services***, and held that the winding up petition filed beyond three years from the date of default was barred by time.

32.1. Even in the later decisions, this Court has consistently applied the declaration of law in ***B.K. Educational Services*** (supra). As noticed, in the case of ***Vashdeo R. Bhojwani*** (supra), this Court rejected the contention suggesting continuing cause of action for the purpose of application under Section 7 of the Code while holding that the limitation started ticking from the date of issuance of recovery certificate dated 24.12.2001. Again, in the case of ***Gaurav Hargovindbhai Dave*** (supra), where the date of default was stated in the application under Section 7 of the Code to be the date of NPA i.e., 21.07.2011, this Court held that the limitation began to run from the date of NPA and hence, the application filed under Section 7 of the Code on 03.10.2017 was barred by limitation.

32.2. In view of the above, we are not inclined to accept the arguments built up by the respondents with reference to one part of observations occurring in paragraph 21 of the decision in ***Jignesh Shah*** (supra).

33. Apart from the above and even if it be assumed that the principles relating to acknowledgement as per Section 18 of the Limitation Act are applicable for extension of time for the purpose of the application under Section 7 of the Code, in our view, neither the said provision and principles come in operation in the present case nor they enure to the benefit of

respondent No. 2 for the fundamental reason that in the application made before NCLT, the respondent No. 2 specifically stated the date of default as *'8.7.2011 being the date of NPA*'. It remains indisputable that neither any other date of default has been stated in the application nor any suggestion about any acknowledgement has been made. As noticed, even in Part-V of the application, the respondent No. 2 was required to state the particulars of financial debt with documents and evidence on record. In the variety of descriptions which could have been given by the applicant in the said Part-V of the application and even in residuary Point No. 8 therein, nothing was at all stated at any place about the so called acknowledgment or any other date of default.

33.1. Therefore, on the admitted fact situation of the present case, where only the date of default as '08.07.2011' has been stated for the purpose of maintaining the application under Section 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgement or any other date of default, in our view, the submissions sought to be developed on behalf of the respondent No. 2 at the later stage cannot be permitted. It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced. Indisputably, in the present case, the respondent No. 2 never came out with any pleading other than stating the date of

default as '08.07.2011' in the application. That being the position, no case for extension of period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under consideration in the present case, looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgement. In this view of the matter, reliance on the decision in ***Mahaveer Cold Storage Pvt. Ltd.*** does not advance the cause of the respondent No. 2.

34. The submissions made on behalf of respondents that the rules of limitation are not meant to destroy the rights of the parties and reference to the decision in ***N. Balakrishnan*** (supra) are also misplaced. Application of the rules of limitation to CIRP (by virtue of Section 238-A of the Code read with the above-referred consistent decisions of this Court) does not, in any manner, deal with any of the rights of respondent No. 2; it only bars recourse to the particular remedy of initiation of CIRP under the Code. Equally, the other submissions made on behalf of the respondents about any stringent application of the law of limitation which was introduced to the Code only after filing of the application by respondent No. 2; or about the so called prejudice likely to be caused to other banks and financial institutions are also of no substance, particularly in the light of the principles laid down and consistently followed by this Court right from the decision in ***B.K. Educational Services*** (supra)***.*** These contentions have only been noted to be rejected. Needless to add that when the application made by the

respondent No. 2 for CIRP is barred by limitation, no proceedings undertaken therein after the order of admission could be of any effect. All such proceedings remain *non-est* and could only be annulled.

The reasonings of NCLAT

35. The foregoing discussion practically concludes the principal part of contentions urged in this matter but, to put the record straight, we may also deal with the reasonings adopted by NCLAT in the impugned order dated 14.05.2019. As noticed hereinbefore, though NCLAT has referred to the pendency of the application under Section 19 of the Act of 1993 as also the fact that corporate debtor had made a prayer for OTS in the month of July, 2018 but, has not recorded any specific finding about the effect of these factors. Only two reasons essentially appear to have weighed with NCLAT to hold that the application in question is within limitation: One, that the right to apply under Section 7 of the Code accrued to the respondent financial creditor on 01.12.2016 when the Code came into force; and second, that the period of limitation for recovery of possession of the mortgaged property is twelve years. The reasonings so adopted by NCLAT do not stand in conformity with the law declared by this Court and could only be disapproved.

36. The question as to whether date of enforcement of the Code (i.e., 01.12.2016) provides the starting point of limitation for an application under Section 7 of the Code and hence, the application in question, made in the year 2018, is within limitation, is not even worth devoting much time. A bare

look at paragraph 21 of the impugned order leaves nothing to guess that such observations by the Appellate Tribunal had only been assumptive in nature without any foundation and without any basis. There is nothing in the Code to even remotely indicate if the period of limitation for the purpose of an application under Section 7 is to commence from the date of commencement of the Code itself. Similarly, nothing provided in the Limitation Act could be taken as the basis to support the proposition so stated by the Appellate Tribunal. In fact, such observations had been in the teeth of law declared by this Court in the case of ***B. K. Educational Services*** (supra).

36.1. It appears that at the given point of time, NCLAT had been readily adopting such a proposition in other cases too, so as to treat similar applications within limitation. This approach of NCLAT was specifically disapproved by this Court in ***Sagar Sharma*** (supra) where, after observing that in ***B. K. Educational Services*** (supra) it had already been made clear that the date of the Code's coming into force on 01.12.2016 was wholly irrelevant to the triggering of any limitation period for the purposes of the Code, this Court said,-

> "**3**. Article 141 of the Constitution of India mandates that our judgments are followed in letter and spirit. The date of coming into force of the IB Code does not and cannot form a trigger point of limitation for applications filed under the Code. Equally, since "applications" are petitions which are filed under the Code, it is Article 137 of the Limitation Act which will apply to such applications."

37. The other observations as made and the reasoning as adopted by the Appellate Tribunal in paragraphs 29 and 30 of the impugned order, that the property having been mortgaged, the claim is not barred by limitation because of the period of limitation of twelve years with regard to mortgaged property, had again been erroneous and do not stand in conformity with the dictum of this Court.

37.1. The Appellate Tribunal was conscious of the decision of this Court in ***B. K. Educational Services*** (supra) wherein it had been held in no uncertain terms that the limitation provided in Article 137 governs the application under Section 7 of the Code. When Article 137, being the residuary provision on the period of limitation for "other applications" is held applicable by this Court for the purpose of reckoning the period of limitation for an application under Section 7 of the Code, it remains rather inexplicable as to how the Appellate Tribunal could have applied any other Article of Limitation Act (and that too relating to suits) for the purpose of such an application?

37.2. In the totality of circumstances, we are also constrained to refer to paragraph 24 of the very same order wherein, the Appellate Tribunal has noticed its own decision in the case of ***Binani Industries****,* holding that the period of limitation prescribed in the First Division of the Schedule to the Limitation Act (providing limitation period for suits) is not applicable to the proceedings under the Code. However, the observations and findings in the

later part of the impugned order are contrary even to those occurring in the said paragraph 24 of the very same order.

37.3 It again appears that in other cases too, similar reasoning prevailed with the Adjudicating Authorities as also the Appellate Tribunal, where the Articles of the Limitation Act relating to the suits concerning mortgaged property (and thereby the period of limitation of twelve years) were sought to be applied to hold that similar applications under Section 7 of the Code were not barred by limitation. Such propositions were specifically disapproved by a three-Judge Bench of this Court in the case of ***Gaurav Hargovindbhai Dave*** (supra) decided on 18.09.2019. As noticed hereinbefore, in ***Gaurav Hargovindbhai Dave*** (supra) this Court disapproved the approach of Adjudicating Authority in applying Article 62 of the Limitation Act to such an application under Section 7 of the Code with the observations that Article 62 is out of way, for it applies only to suits; and application under Section 7 falls within the ambit of residuary Article 137. In ***Sagar Sharma*** (supra), this Court again pointed out the fallacy in applying the period of limitation related to mortgage liability for the purpose of application under Section 7 of the Code.

37.4. In view of the above, there remains nothing to doubt that the Appellate Tribunal had been in error in applying the period of limitation provided for mortgage liability for the purpose of limitation applicable to the application in question. The observations and findings in paragraphs 29 and 30 of the impugned order are also required to be disapproved.

Summation

38. The discussion foregoing leads to the inescapable conclusion that the application made by the respondent No. 2 under Section 7 of the Code in the month of March 2018, seeking initiation of CIRP in respect of the corporate debtor with specific assertion of the date of default as 08.07.2011, is clearly barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application. The NCLT having not examined the question of limitation; the NCLAT having decided the question of limitation on entirely irrelevant considerations; and the attempt on the part of the respondents to save the limitation with reference to the principles of acknowledgment having been found unsustainable, the impugned orders deserve to be set aside and the application filed by the respondent No. 2 deserves to be rejected as being barred by limitation.

Other proceedings not to be affected

39. Before concluding on this matter, we would hasten to observe that admittedly, at the time of moving of the application under Section 7 of the Code by the respondent No. 2, a petition under Section 19 of the Act of 1993 was pending before DRT against the corporate debtor. In view of admission of the application under Section 7 of the Code by NCLT, the

said petition under Section 19 of the Act of 1993 (and any other pending matter against the corporate debtor) could not have proceeded during the period of moratorium in terms of Section 14 of the Code. Now, by virtue of this judgment, the said application under Section 7 of the Code shall stand rejected for being barred by limitation and all the proceedings thereunder shall stand annulled. As a necessary consequence, the moratorium in terms of Section 14 of the Code shall get lifted and, therefore, those stalled proceedings should now be taken up and dealt with by the respective Courts/Tribunals/Authorities, of course, strictly in accordance with law. In the interest of justice, we also make it clear that the observations in this judgment are relevant only in regard to the issue determined that the application under Section 7 of the Code is barred by limitation and not beyond. In other words, nothing in this judgment shall have bearing on any other proceeding that shall be dealt with on its own merits and in accordance with law.

Conclusion

40. In view of the above, this appeal is allowed to the extent indicated and with the observations foregoing. The impugned orders dated 14.05.2019 as passed by the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) Insolvency No. 549 of 2018 and dated 09.08.2018 as passed by the National Company Law Tribunal, Mumbai Bench in CP(IB)-488/I&BP/MB/2018 are set aside; and the application made by the respondent No. 2 under Section 7 of the Code,

seeking initiation of Corporate Insolvency Resolution Process in respect of respondent No. 1 is rejected for being barred by limitation. Consequently, all the proceedings undertaken in the said application under Section 7 of the Code, including appointment of IRP, stand annulled. No costs.

……..……J.
(A.M.KHANWILKAR)

……..……..……J.
(DINESH MAHESHWARI)

New Delhi,
Dated: 14th August, 2020.