

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

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CP (IB) No. 897/MB/2019
(Petition under section 7 of the Insolvency &
Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016)

In the matter of:

Edelweiss Assets Reconstruction Company
Limited,
at Edelweiss House, Off CST Road, Kalina,
Mumbai – 400 098.

... *Petitioner*

V/s

Nishiland Park Limited
Gala Woodworks Compound, Opp. B. D.
Chawl No.114, Worli, Mumbai – 400 018.

... *Respondent*

Order Dated: 08.04.2021

CORAM:

Hon'ble Janab Mohammed Ajmal, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

Appearance:

For the Petitioner: Mr. Mustafa Doctor, Senior Advocate with Mr. Ranjeev
Carvalho, Ms. Suchitra Valjee and Ms. Sharanya
Shivaraman, Advocates i/b Manilal Kher Ambalal and
Co.

For the Respondent: Mr. Shyam Kapadia with Mr. Alok Mishra, Advocates.

Per: V. Nallasenapathy, Member (Technical)

ORDER

- I. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (the Code) by the Petitioner, seeking initiation of Corporate Insolvency Resolution Process (CIRP) of the Respondent (hereinafter called as the Corporate Debtor), a Public Limited Company incorporated on 09.12.1981 under the Companies Act, 1956, with the Registrar of Companies, Mumbai, Maharashtra, alleging default in making payment of a financial debt of Rs.522,46,05,338/- comprising of principal amount of Rs. 3,25,82,265/- and interest and liquidated damages of Rs. 520,45,23,073/-.
- II. The Petitioner submits as below:
 - a. Initially Tourism Finance Corporation of India (TFCI), on 24.09.1996, sanctioned a term loan of Rs. 5,00,00,000/- to the Corporate Debtor, repayable in 20 quarterly instalments of Rs. 25,00,000/- each. However, the actual amount disbursed was Rs. 4,75,00,000/-. The Corporate Debtor executed a deed of hypothecation and other security documents in favour of TFCI.
 - b. On 14.01.2003, TFCI issued a demand notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) to the Corporate Debtor, demanding a sum of Rs. 17,09,00,000/- and on 09.08.2012 TFCI took symbolic possession of the Corporate Debtor's water park.
 - c. On 27.09.2013, TFCI (Assignor) executed an Assignment Agreement in favour of the Petitioner herein and assigned the debt of the Corporate Debtor. The Corporate Debtor and Mr. Paresh Shah (as Mortgagor) were confirming parties to the Assignment Agreement.
 - d. On 13.12.2014, the Petitioner issued Demand Notice under SARFAESI Act to the Corporate Debtor and its guarantor calling upon them to pay

the sum due and payable. On 28.08.2015, the Petitioner took possession of the Breach Candy Flat mortgaged by the Corporate Debtor, under Rule 8(1) of the SARFAESI Rules.

- e. On 05.12.2016 the Corporate Debtor addressed a letter to the Petitioner, confirming and acknowledging the debt of Rs. 112,30,00,000/-.
- f. In Part IV of Form-I appended to the Petition, the amount claimed is Rs.522,46,05,338/- and the date of default was mentioned as 1998. It is further mentioned that the Corporate Debtor's Balance Sheet for the year 2013-14 reflects this liability.
- g. The Corporate Debtor failed and neglected to discharge its debt. Hence, the Petitioner, on 04/03/2019, came up with the present Petition under Section 7 of the Code.

III. In reply to the pleadings the Corporate Debtor submitted the following:

- a. That the date of default is 23.06.1998 (mentioned in the Petition as 1998 only). Since the Petition having not been filed within 3 years of the date of default, would be barred by limitation.
- b. The Petitioner does not have any legal or enforceable and recoverable claim to initiate any present proceeding since cause of action accrued on 23.06.1998.
- c. Relying on the judgement of *B. K. Educational Services Private Limited v. Parag Gupta & Associates [2018 SCC online SC 1921]*, wherein the Hon'ble Supreme Court held that Article 137 of the Limitation Act is applicable to the Code, it is submitted that since default occurred more than 20 years prior to the filing of the Petition, the same is barred by limitation.
- d. Based on the mortgage executed by the Corporate Debtor, the Petitioner cannot seek extension of limitation on the basis of Article 62 of the Limitation Act, 1968 (the Limitation Act). To buttress the above proposition the Corporate Debtor relies on the Judgment of Hon'ble

Supreme Court in the case of *Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company [(2019) SCC online SC 1239]*. It is submitted that Article 62 of the Limitation Act does not apply to the proceedings under the Code and only Article 137 of the Limitation Act applies.

- e. Relying on judgement of *Jignesh Shah vs. Union of India [2019 SCC online SC 1254]*, it is submitted that the SARFAESI proceedings taken by the Petitioner/Assignor will not save limitation.
- f. Relying on the judgment of the Hon'ble Supreme Court in *Sampuran Singh vs. Niranjana Kaur [(1999) 2 SCC 679]*, it is submitted that the acknowledgment has to be prior to the expiration of the prescribed period of limitation for filing the Petition.
- g. Relying on the judgment in *V. Hotels Limited vs. Asset Reconstruction Company (India) Limited [2019 SCC Online NCLAT 911]*, it is submitted that the acknowledgment of liability in books of accounts of the Corporate Debtor for the year 2013-14 is of no avail to the Petitioner.
- h. The Petitioner's reliance on Section 25(3) of the Indian Contract Act, 1872 (the Contract Act) is not tenable for the following reasons:
 - i. Assuming while denying, the Assignment Agreement dated 27th September 2013 constitutes fresh agreement or give rise to fresh cause of action even then the present Petition filed on 4th March 2019 after a period of three years from the date of execution of Assignment Agreement, is barred by law of limitation.
 - ii. Bare perusal of the Petition would demonstrate that the Petition is filed on the basis of default dated 23rd June 1998 and not on the basis of any subsequent Assignment Agreement dated 27th September 2013 or any default on the basis of any alleged subsequent agreement. There is no pleading of any fresh cause of action in the context of section 25(3) of the Contract Act in the Application.

- iii. If the default is to be determined in the context of fresh agreement dated 27th September 2013 which according to the Petitioner gives rise to fresh cause of action, then in that event, default has to necessarily occur after 27th September 2013 and it could not be 23rd June 1998 as pleaded by the Petitioner; and
- iv. The “default” for the purposes of the Code is actual non-payment of the debt. Neither the provisions for extension of limitation nor the agreement as relied by the Petitioner would extend the date of default.
- v. The Assignment Agreement dated 27/09/2013, deed of mortgage dated 24/03/2014 or letter of acknowledgement dated 05/12/2016 and books of accounts / balance sheet as on 31/03/2014 relied by the Petitioner for the purpose of acknowledgement under Section 18 of the Limitation Act, came into existence after a period of 3 years of accrual of cause of action on 23/06/1998. Section 18 of the Limitation Act says that acknowledgement shall be before the expiration of the period of limitation prescribed for Suit or Application in respect of any property or right. All the above said documents are subsequent to 3 years of the date of default i.e., 23/06/1998. Hence this Petition is barred by limitation.

IV. The learned Senior Counsel for the Petitioner submits as below:

- i. The Corporate Debtor is a party to the Assignment Agreement, wherein it had confirmed the liability of Rs. 154,54,30,204/- to TFCI which had been assigned to the Petitioner.
- ii. On 19.11.2013, the Corporate Debtor filed a modification of charge under Section 132 read with Section 135 of the Companies Act, 1956 in favour of the Petitioner with the Registrar of Companies concerned. On 24.03.2014, a Deed of Mortgage was executed by the Corporate Debtor in favour of the Petitioner.

- iii. The Corporate Debtor on 05.12.2016 acknowledged the liability in writing and also the liability is reflecting in the Balance sheet of 2013-14 of the Corporate Debtor.
- iv. After the execution of Assignment Agreement, the Corporate Debtor made payment of Rs. 75,00,000/- on 12.06.2015 and Rs.50,00,000/- on 24.06.2015 to the Petitioner.
- v. The Hon'ble NCLAT in *Yogeshkumar Jashwantlal Thakkar vs. Indian Overseas Bank and others* (MANU/NL/0341/2020), considered the Judgement of the Hon'ble Supreme Court in *Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd.* (2020 SCC Online SC 647) and its judgement in the case of *Jagdish Prasad Sarada vs. Bank of Allahabad* (MANU/NL/0234/2020) and held that:

“the requirement of Section 18 and 19 of the Limitation Act are independent and not cumulative” [Para 29]

and that,

“...Section 18 of the Limitation Act, 1963 is applicable both for ‘Suit’ and ‘Application’ involving ‘Acknowledgment of Liability’, creating a fresh period of limitation, which shall be computed form the date when the ‘Acknowledgement’ was so signed.” [Para 36].

Based on such finding the NCLAT ultimately dismissed the appeal by holding that,

“...In view of the fact, that ingredients of Section 18 of the Limitation Act, 1963 are quite applicable both for ‘Suit’ and ‘Application’ and the debit confirmation letters in the instant case were duly acknowledged in accordance with Law laid down on the subject the instant Appeal deserves to be dismissed...” [Para 38.]

The aforesaid issue directly affects the present case.

- vi. The only argument made on behalf of the Corporate Debtor, basing reliance on principle decided in *Babulal Vardharji Gurjar* (*supra*) and

Jagdish Prasad Sarada (supra), is that the Petition is barred by limitation.

The said argument is entirely fallacious for the following reasons:

- i. The Corporate Debtor is a party to the Assignment Agreement and the same is binding under section 25(3) of the Contract Act and the said section is an exception to the provisions of Section 18 of the Limitation Act.
- ii. To buttress his submissions the learned Senior Counsel relied on the following cases.

Dinesh Chokshi vs. Rahul Vasudeo Bhaat (2012 SCC Online Bom 1585)

R. Suresh Chandra & Co. vs. Vadnere Chemical Works and Ors. (AIR 1991 BOM 44)

Madishetti Shekhar vs. Pulivala Komureli (AIR 2008 AP 131)
- iii. The aforesaid Judgments reiterate the position when an acknowledgement was accompanied by an express promise to pay a time barred debt; such acknowledgment revives the time barred debt, despite being made beyond the prescribed period of limitation. Such acknowledgment constitutes an agreement to pay the time barred debt. Such a debt continued to be enforceable by virtue of Section 25(3) of the Contract Act.
- iv. The judgements in *Babulal Vardharji Gurjar's case (supra)* and *Jagdish Prasad Sarada's case (supra)*, does not deal with Section 25(3) of the Contract Act and reliance on those judgements by the Counsel for the Corporate Debtor is entirely misplaced.
- v. Based on the ratio laid down in *Thakkar's case (supra)*, it is no longer open for the Corporate Debtor to argue that the provisions of Section 18 of the Limitation Act are not applicable to a Petition under Section 7 of the Code.
- vi. Since the date of default is proved in this case, the Petition is to be admitted against the Corporate Debtor.

V. Upon perusal of the pleadings and on hearing the Counsel for both sides, the following are the observations of this Bench:

- i. The Hon'ble Supreme Court in the case of *B.K. Educational Services Private Limited* (supra) held as below:

“34. 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.

...

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.”

- ii. The Hon'ble Supreme Court in the case of *Babulal Vardharji Gurjar (supra)*, after considering the following Judgments exhaustively:
- i. *Innoventive Industries vs. ICICI Bank (MANU/SC/1063/2017) (Para 27)* (Wherein it was held that the Scheme of the Code is to ensure that when default takes place in the sense debt becomes due and is not paid, the Insolvency Resolution Process begins ---- The Code gets triggered when the amount defaulted is Rs. 1,00,000/- or more ---- 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 a default has not occurred in the sense that "debt" which may also include disputed claim is not due. A Debt may not be due if it is not payable in law or in fact.)
 - ii. *B.K. Educational Services Private Limited (supra) (Para 42)* (Wherein it was held it is thus clear that since the Limitation Act is applicable to Application filed under Section 7 and 9 of the Code from the inception of the Code, article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when the default occurs. If the default occurred over 3 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.)
 - iii. *Swiss Ribbons Private Limited and Another vs. Union of India and Others (MANU/SC/0079/2019) (Para 64)* (Wherein it was held that the trigger for the Financial Creditor's Application is non-payment of dues when they arise under loan agreement. It is for this reason that Section 433(e) of the Companies Act, 1956 has been repealed by the Code and change in approach has been brought about. Legislative policy now is to move away from the concept of "inability to pay debt to determination of default". The said shift enables the Financial Creditor to prove based upon solid documentary evidence thus there was obligation paid debt and the debtor has failed in such obligation ----)
 - iv. *K. Shashidhar vs. Indian Overseas Bank (Para 56) (MANU/SC/0189/2019)* (Wherein the Hon'ble Supreme Court undoubtedly restated principles laid down in *B.K. Educational*

- Services and reaffirmed that the right to sue under the Code accrues on the date when default occurs and if the default occurred 3 years prior to the date of filing of the Application, the same would not amount to debt due and payable under the Code.)*
- v. *Jignesh Shah and Anr. vs. Union of India and Anr. (Supra) (Para 28:(It was held that under Section 433(e) r/w Section 434 of the Companies Act, 1956 would show that a trigger point for the purpose of limitation for filing of 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 of the Companies Act, 1956) (Para 31: Wherein it was held that the winding up Petition filed on 21.10.2016 being beyond the period of 3 years from date of default is barred by limitation, and cannot therefore be proceeded with any further.)*
 - vi. *Vashdeo R. Bhojwani vs. Abhyudaya Co-Op Bank Limited and Another (MANU/SC/1213/2019) (In this case NPA was declared on 23/12/1999 and Section 7 Petition was filed on 21/07/2017, saying that the default continued and no period of limitation would attach and therefore the Petition have to be admitted. The Hon'ble Supreme Court reversed the decision of NCLAT, where an Appeal filed against the NCLT order in admitting the Petition, was dismissed by NCLAT saying that Section 23 of old Limitation Act, 1908 provides fresh period of Limitation in case of continuing cause of action.)*
 - vii. *Gaurav Hargovindbhai Dave vs. Assets Reconstruction Company (India) Limited and Another (Supra) (In this case NCLT admitted a Section 7 Petition filed on 03.10.2017 wherein the date of default is 21.07.2011 by applying Article 62 of the Limitation Act wherein the period of limitation is 12 years from the date on which the debt has become due. The Hon'ble NCLAT applied another reason that the time of limitation would begin to run from 01/12/2016 i.e., the date on which the Code was brought into force. The Hon'ble Supreme Court allowed the Appeal and the Judgments of NCLT and Hon'ble NCLAT were set aside.)*
 - viii. *Sagar Sharma and Another vs. Phoenix ARC Private Limited and Another (MANU/SC/1357/2019) (The Hon'ble Supreme Court disapproved the proposition that the date of commencement of the Code can be the starting point of limitation and further Article 62 of the Limitation Act is not applicable.)*

held as below:

“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. 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 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”.

- iii. The ratio laid down in the above said case is squarely applicable to the facts of the case at hand. The date of default mentioned in the present Petition is 1998 (23/06/1998 as per the Corporate Debtor) and the Petition has been filed on 04/03/2019, after a period of more than 20 years.
- iv. Since the Assignment Agreement dated 27/09/2013 is much beyond 3 years after the date of default, the contention that Section 25(3) of the Contract Act would be an exception to the provisions of Section 18 of the Limitation Act, would not have any relevance as far as triggering of date of default is concerned. This argument may be appropriate in a recovery proceeding. This proceeding not being a recovery proceeding, this argument cannot be accepted.
- v. The date of default mentioned in the Petition relates to pre-assignment era and the said default cannot be related to post assignment proceedings.
- vi. The Hon'ble Supreme Court in *Babulal Vardharji Gurjar's case (supra)* on the applicability of Section 18 of the Limitation Act while referring to Para No. 21 of the decision in *Jignesh Shah case (supra)* categorically held that the same relates to the suits or other proceedings wherever it could apply and where the period of limitation gets extended because of acknowledgement of liability. This is not a suit for recovery and hence

Section 18 of the Limitation Act will in no manner impact the limitation within which winding up proceedings is to be filed. It has also been held that it is difficult to read observations in the aforesaid Para No. 21 of the *Jignesh Shah* to mean that the ratio laid down in *B. K. Educational Services (supra)* has, in any manner, been altered by the Court. It was further held that limitation period for an Application under Section 7 of the Code is 3 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 the Limitation Act, if any, for condonation of delay is made out.

- vii. Even assuming that Section 18 of Limitation Act is applicable, the letter of acknowledgement dated 05/12/2016 is beyond three years from 27/09/2013, the date of Assignment Agreement. The *sine qua non* for application of Section 18 of Limitation Act is that the acknowledgement of liability in writing must be before the expiration of the prescribed period (of limitation) for a Suit or Application. Thus, viewed from any perspective Section 18 of the Limitation Act would have no application. In that view of the matter the Petitioner's contention that Section 25(3) of the Contract Act would apply as an exception to Section 18 of Limitation Act would not come to the aid of the Petitioner as indicated supra.
- viii. The Hon'ble Supreme Court in the case of *Sagar Sharma K. (supra)* held at para 3 as below "*Article 141 of Constitution of India mandates our judgements are followed in letter and spirit. The date of coming into force of 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 Limitation Act which will apply to such Applications.*"

- ix. In view of the above categorical rulings by Hon'ble Supreme Court and considering the facts of the case on hand, the judgment in *Yogeshkumar Jaswantlal Thakkar (supra)* is distinguishable and hence the same is of no assistance to the Petitioner.
- x. In view of the above discussions, we are unable to accept any of the contentions raised by the Petitioner on the point of limitation. We hold that debt is grossly barred by limitation and cannot be held to be due for the purpose of the Petition under section 7 of the Code. Hence the Petition cannot be admitted. The Petition is accordingly rejected. No costs.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)