sNATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1625 of 2024 & I.A. No. 2175, 2176 of 2025
IN THE MATTER OF:

Suyog Jain
...Appellant

Versus

Arvind Kumar, Resolution Professional & Ors. ...Respondents

Present:

For Appellant	**:**	**Mr. Sumesh Dhawan, Vatsala Kak, Shaurya Shyam, Adv.**
For Respondent	**:**	**Mr. Ankur Mittal, Muskan Jain, Adv. for SBI** **Mr. Iswar Mohapatra, Markandey Kr. Singh, Animesh Pandey, Adv. for R1/RP** **Mr. V.K Sachdeva, Gaurav Goel, Tarlok Singh, Adv. for R3 and 4**

With
Comp. App. (AT) (Ins) No. 1626 of 2024 & I.A. No. 2177, 2178 of 2025
IN THE MATTER OF:

Rajinder Singh Gujral
...Appellant

Versus

Arvind Kumar Resolution Professional & Ors. ...Respondents

Present:

For Appellant	**:**	**Mr. Sumesh Dhawan, Vatsala Kak, Shaurya Shyam, Adv.**
For Respondent	**:**	**Mr. Ankur Mittal, Muskan Jain, Adv. for SBI** **Mr. Iswar Mohapatra, Markandey Kr. Singh, Animesh Pandey, Adv. for R1/RP** **Mr. V.K Sachdeva, Gaurav Goel, Tarlok Singh, Adv. for R3 and 4**

With
Comp. App. (AT) (Ins) No. 1728 of 2024 & I.A. No. 6321, 6322, 6323 of 2024
IN THE MATTER OF:

Vivek Gupta
...Appellant

Versus

Arvind Kumar Resolution Professional & Ors. ...Respondents

<u>Present</u>:

For Appellant	**:**	**Mr. Sumesh Dhawan, Vatsala Kak, Shaurya Shyam, Adv.**
For Respondent	**:**	**Mr. Ankur Mittal, Muskan Jain, Adv. for SBI** **Mr. Iswar Mohapatra, Markandey Kr. Singh, Animesh Pandey, Adv. for R1/RP** **Mr. V.K Sachdeva, Gaurav Goel, Tarlok Singh, Adv. for R3 and 4**

<u>O R D E R</u>
<u>(Hybrid Mode)</u>

<u>Per: Justice Rakesh Kumar Jain: (Oral)</u>

<u>11.08.2025</u>: This order shall dispose of three appeals bearing CA (AT) (Ins) No. 1625 of 2024 titled as 'Suyog Jain Vs. Arvind Kumar, Resolution Professional & Ors.' (herein after referred to as the first appeal), CA (AT) (Ins) No. 1626 of 2024 titled as 'Rajinder Singh Gujral Vs. Arvind Kumar, Resolution Professional & Ors.' (herein after referred to as the second appeal) and CA (AT) (Ins) No. 1728 of 2024 titled as 'Vivek Gupta Vs. Arvind Kumar, Resolution Professional & Ors.' (herein after referred to as the third appeal) as the issue involved in these appeals is common because the application filed by all three appellants who happened to be the personal guarantor of the Corporate Debtor, under Section 94 of the Insolvency And Bankruptcy Code, 2016 (in short 'Code'), has been dismissed on the issue of limitation.

2. Brief facts of this case are that the Principal Borrower, namely, Vardhman Chemtech Pvt. Ltd. obtained a loan from consortium of Banks including State Bank of Patiala, State Bank of Hyderabad, IDBI Bank and

Allahabad Bank vide sanction letter dated 06.09.2012 amounting to Rs. 170 Cr.

3. One of the members of the consortium Banks i.e. Indian Bank (Erstwhile Allahabad Bank) filed an application bearing CP (IB) No. 103/Chd/Chd/2023 under Section 7 of the Code for initiation of the CIRP proceedings against the CD which was admitted on 25.09.2018 by the Tribunal.

4. The CoC was constituted with three financial creditors, namely, Indian Bank (erstwhile Allahabad Bank) of the admitted amount of Rs. 1,17,05,67,246.00/- (28.42% voting share), State Bank of India (earlier State Bank of Patiala) of the admitted amount of Rs. 1,97,97,17,774.59/- and State Bank of India (earlier State Bank of Hyderabad) of the admitted amount of Rs. 31,25,31,519.54/-(55.64% voting share) and IDBI Bank of the admitted amount of Rs. 65,64,79,144.00/- (15.94% voting share).

5. The resolution plan submitted by one M/s DPB Antibiotics Pvt. Ltd. was approved by the CoC in its 11th meeting and was further approved by the Tribunal on 12.01.2021.

6. In so far as the present appellants are concerned, they gave personal guarantee qua the credit facility given by the banks to the CD. In so far as the State Bank of India is concerned, outstanding amount of credit facility demanded from the guarantors was Rs. 1,54,88,26,604.50/-, the Indian Bank (earlier Allahabad Bank) outstanding amount of credit facility, demanded from the guarantors, was Rs. 83,10,72,467.80/- and the IDBI Bank outstanding amount of credit facility, demanded from the guarantors, was Rs. 52,78,40,163.00/-.

7. It is not in dispute that all the banks initiated proceedings under the SARFAESI Act, 2002 (in short 'Act, 2002') by issuance of notice under Section 13(2) of the Act, 2002 and the proceedings initiated at the instance of the consortium banks are pending before the DRT, Chandigarh in which OA. No. 4524 of 2007 is filed by IDBI Bank, OA No. 5546 of 2017 is filed by State Bank of India and OA No. 4494 of 2017 is filed by Indian Bank (earlier Allahabad Bank).

8. The Appellants have invoked Section 94 of the Code and filed their respective applications on the same date i.e. 05.04.2023. The application was filed in terms of Rule 6(1) of the Insolvency And Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to CD) Rules, 2016 (in short 'Rules'). However, their application has been dismissed by the Tribunal on the ground that since the guarantees were invoked by all the three banks, namely, State Bank of India on 31.08.2016, Indian Bank (erstwhile Allahabad Bank) on 31.12.2017 and IDBI Bank on 24.04.2017 and the application has been filed by the three appellants through IRP in terms of Section 94 of the code on 05.04.2023 was found beyond the period of three years as stipulated under Article 137 of the limitation Act which provides for a period of three years.

9. Counsel for the Appellant, while challenging the finding recorded by the Tribunal in para 11 of the impugned order by which the application has been dismissed on the ground of limitation, has vehemently argued that since the OAs filed by the three banks are pending before the DRT, therefore, in view of the decision of the Hon'ble Supreme Court in the case of Sesh Nath Singh & Anr. Vs. Baidyabai Sheoraphuli Co-operative Bank Ltd. & Anr., (2021) 7 SCC

313 the reverse finding may be recorded. In this regard, he has referred to paras 81 to 85 which are also reproduced as under:-

> "83. To cite another example, if civil proceedings were initiated in a wrong forum in good faith and prosecuted with due diligence, but after the proceedings ended, time was wasted by making frivolous, meritless applications, the applicant would only be entitled to exclusion of time from the date of initiation till the end of the proceedings initiated in good faith and bona fide and pursued diligently, and no more. The applicant would not be entitled to exclusion of any further time spent in pursuing frivolous further proceedings, or otherwise.
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> 84. To sum up, Section 14 excludes the time spent in proceeding in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction, or other such cause. Where such proceedings have ended, the outer limit to claim exclusion under Section 14 would be the date on which the proceedings ended.
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> 85. In the instant case, the proceedings under the SARFAESI Act may not have formally been terminated. The proceedings have however been stayed by the High Court by an interim order, on the prima facie satisfaction that the proceedings initiated by the financial creditor, which is a cooperative bank, was without jurisdiction. The writ petition filed by the Corporate Debtor was not disposed of even after almost four years. The carriage of proceedings was with the Corporate Debtor. The interim order was still in force, when proceedings under Section 7 of the IBC were initiated, as a result of which the Financial Creditor was unable to proceed further under the SARFAESI Act.
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> 86. In the instant case, even if it is assumed that the right to sue accrued on 31.3.2013 when the account of Corporate Debtor was declared NPA, the financial creditor initiated proceedings under SARFAESI Act on 18th January 2014, that is the date on which notice under Section 13(2) was issued, proceeded with the same, and even took possession of the assets, until the entire proceedings were stayed by the High Court by its order dated 24th July 2017. The proceedings under Section 7 of the IBC were initiated on 10 th July 2018.
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> 87. In our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the initiation of proceedings under the SARFAESI Act could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act till the date of filing of the application

> under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High Court staying the proceedings under the SARFAESI Act, on the prima facie ground of want of jurisdiction is excluded, the proceedings under Section 7 of IBC are still within limitation of three years."

10. On the other hand, Counsel for the banks have jointly submitted that in so far as SBOP and SBH are concerned, the NPA was declared on 30.04.2014, India Bank declared NPA of the CD on 15.05.2014 and IDBI Bank declared the same on 31.03.2014. It is submitted that if the limitation of three years is counted from the date of NPA then it expired long back in 2017 and if the limitation is to be counted from the date of invoking the guarantee, which were invoked on 31.08.2016, 31.12.2017 and 24.04.2017, the limitation had still expired in 2020 only whereas the application under Section 94 was filed on 05.04.2023. It is also submitted that contention of the appellants that the same benefit has to be given to the Appellants because of the pendency of the OAs as has been given in the case of Sesh Nath Singh (Supra) cannot be accepted. It is submitted that the proceedings under the Act of 2002 and Code are independent of each other and secondly in the case of Sesh Nath Singh (Supra) the Court has dealt with Section 14 of the limitation Act which is invoked by a party who had wrongly prosecuted its case before the court having no jurisdiction.

11. We have heard Counsel for the parties and after examining the record, are of the considered opinion that there is no merit in the present appeals because, firstly, the application under Section 94 is filed when the debtor who had committed a default and is unable to pay the said amount can apply

through RP to the AA for initiation of the insolvency but limitation period of three years, as envisaged in Article 137 of the Act, has to apply to the said application as well.

12. In the present case, not only that the NPA was declared in the year 2013 and 2014 but also the guarantee was invoked in the year 2016 and 2017. At that time, the Appellants who had extended guarantee to the CD which was already in CIRP, knew about the fact that such kind of application can be filed within a period of three years yet they chose to file the same on 05.04.2023 after the expiry of almost of six years.

13. In such circumstances, the Tribunal had not committed any error in dismissing the application.

14. In so far as the decision in the case of Sesh Nath Singh (Supra) is concerned, the same is not applicable.

15. No other point has been raised.

16. All the three appeals are thus dismissed though without any order as to costs.

I.As, if any, are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Md. Faiz Alam Khan]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

Sc/RR