



IBC, 2016 IN THE LIGHT OF LIMITATION LAW

LIMITATION ACT

- What do we mean by Limitation ?

When ones' right is violated, in how much period of time, one goes to the court, is called limitation.

LIMITATION ACT

- A bit of history ...

- **In 1859, for the first time Limitation Act was passed in India, applicable under the Civil Procedure Code. This Act came into operation in 1862.**
- **This Act was replaced by new Act of 1871 which provided for the Limitation of suits, appeals and certain applications to courts.**
- **The Act of 1871 was replaced by Act of 1877.**
- **After that in 1908, it was repealed and replaced by Act IX of 1908.**
- **The current Act of 1963 got the presidential assent on 5th Oct, 1963 and came into force**

LIMITATION ACT

- The legal principles ...

- ***Interest Republicae ut sit finis litium***- in the interest of society as a whole, there should be an end to litigation.
- ***Vigilantibus non dormientibus jura subveniunt***- law serve the vigilant, not those who sleep.

LIMITATION ACT

- How the Act is arranged

- **There are 32 sections in total out of which two are repealed i.e. Sections 28 & 32.**
- **Articles- 137 in total, divided into 3 parts-**
 - **1. Description of Suits (Article 1-113)**
 - **2. Appeals (Articles 114-117)**
 - **3. Applications (Articles 118-137).**

LIMITATION ACT

- Some readings from Selected judgements

In *S.C. Parashar v. Vasant Sen2*, the Supreme Court observed that the statute of limitation is a statute of repose, peace and justice. The intention of the law of limitation is not to give a right where there is not one, but to interpose a bar after certain period to a suit to impose an existing right. The object is to compel the litigant to be diligent in seeking remedies in the courts of law.

The courts have expressed at least three different reasons supporting the existing of the statutes of limitation namely:

- i. That long dormant claim have more of cruelty than justice in them.**
- ii. That a defendant might have lost the evidence to dispute the stated claims.**
- iii. That person with good cause of action should pursue them with reasonable diligence.**

IBC AND LIMITATION ACT

To the surprise of many, the concept of limitation found no mention in the Insolvency & Bankruptcy Code, 2016 (“IBC”) at the time when it was notified in December 2016.

Naturally, this led to a significant amount of debate ...

IBC AND LIMITATION ACT

- The Confusion Begins ...

In one of its early judgments on this point, the National Company Law Tribunal (“NCLT”) discussed the question of time barred debts and held that provisions of the Limitation Act, 1963 (“Limitation Act”) will be applicable to proceedings under IBC and a claim which was time barred, could not be considered by NCLT, as the same is unenforceable.

This was later followed by a series of judgements by various other Benches of NCLT. Thereafter, the National Company Law Appellate Tribunal (“NCLAT”) entered the arena and while it held that the Limitation Act is applicable to IBC, it left certain aspects uncertain and open to debate

IBC AND LIMITATION ACT

Section 238 A

With effect from 06.06.2018

[238A. Limitation. –The provisions of the Limitation Act, 1963 (36 of 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.]

IBC AND LIMITATION ACT

In 2019

BK Educational Services Pvt. Ltd. v Parag Gupta & Associates (2019)

The Supreme Court, in a landmark judgment, was faced with the question of retrospective applicability of the aforesaid amendment and held that the Limitation Act has been applicable from the inception of IBC in 2016

IBC AND LIMITATION ACT

In 2020 it really became 50:50 !

A series of judgements of NCLAT which went back and forth on the question of whether all the provisions of the Limitation Act will be applicable to proceedings under IBC.

Key Issues:

- Whether the date of declaration of NPA would determine limitation ? and
- Whether acknowledgment of debt in a balance sheet would extend limitation for the purposes of IBC actions ?

IBC AND LIMITATION ACT

2020 : Confusion Galore

V Padmakumar vs. Stressed Assets Stabilisation Fund (SASF) & Anr. 2020 The NCLAT held that entries in a balance sheet do not constitute acknowledgement of liability under the provisions of the Limitation Act

G Eswara Rao vs. Stresses Asset Stabilisation Fund & Another 2020 First a Three Member and then a Five Member NCLAT Bench adjudicated that Sections 14 (providing for exclusion of time lost in bonafide proceedings before another Court) and Section 18 (providing for extension of limitation on acknowledgment of liability) have no applicability to proceedings under IBC

This led to a totally confusing scenario !

IBC AND LIMITATION ACT

2021: The Supreme Court clears the confusion

In Lakshmi Pat Surana vs. Union Bank of India & Another

The Supreme Court adjudicated that The concept of extension of limitation on acknowledgment of debt applies to IBC as well

In Sesh Nath Singh & Another vs. Baidyabati Sheoraphuli Co-Operative Bank Limited & Anr

The Supreme Court adjudicated that the time spent by a creditor in pursuing remedies under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the “SARFAESI Act”) or The Recovery of Debts and Bankruptcy Act, 1993 (the “RDB Act”), would stand excluded

IBC AND LIMITATION ACT

2021: The Supreme Court clears the confusion

In Asset Reconstruction Co. (India) Ltd. vs. Bishal Jaiswal

The Supreme Court adjudicated that entries in the books of accounts and/or balance sheets of a debtor would amount to an acknowledgement of liability for the purposes of limitation¹⁴. This means that if a debtor acknowledges a debt in its balance sheet year on year, a fresh period of limitation commences every year.

Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr

The Supreme Court adjudicated that a Recovery Certificate issued by DRT gives a fresh lease of life to a claim of a financial creditor and extends the period limitation to initiate proceedings under IBC.

LANDMARK JUDGEMENTS

*Dena Bank (now Bank of Baroda)
vs. C. Shivakumar Reddy and Anr*

BACKGROUND

- Dena Bank gave Term Loan and Letter of Credit to the CD in 2011.
- In Dec 2013, the Bank declares the account as NPA.
- In Dec, 2014, Bank issues notice to CD to make payment of Rs.52 Cr.
- On 1st Jan 2015, Bank files an application under Sec 19 of Recovery of Debts and Bankruptcy Act, 1993 with DRT.
- On March 27th, 2017, DRT passes final judgement and gives Recovery Certificate to the Bank.
- CD in it's Annual Reports for FY 2016-17 and 2017-18 acknowledges the liability towards the Bank.
- On 12th Oct, 2018, the Bank filed a Sec 7 application under IBC against the CD before the NCLT.
- On 21st March, 2019, the NCLT allows the application and initiates CIRP.
- On 6th April the promoter of CD files an appeal against the initiation of CIRP in NCLAT.
- NCLAT sets aside the order of NCLT and dismissed the Petition filed by the Appellant Bank under Section 7 of the IBC, holding that the said application was barred by limitation

LANDMARK JUDGEMENTS

*Dena Bank (now Bank of Baroda)
vs. C. Shivakumar Reddy and Anr*

KEY ISSUES

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

LANDMARK JUDGEMENTS

*Dena Bank (now Bank of Baroda)
vs. C. Shivakumar Reddy and Anr*

KEY ISSUES

- Whether a final judgment and decree of the DRT in favour of the Financial Creditor, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action to the Financial Creditor to initiate proceedings under Section 7 of the IBC within three years from the date of the final judgment and decree, and/or within three years from the date of issuance of the Certificate of Recovery.
- Whether there is any bar in law to the amendment of pleadings, in a Petition under Section 7 of the IBC, or to the filing of additional documents, apart from those filed initially, along with the Petition under Section 7 of the IBC in Form-1.

LANDMARK JUDGEMENTS

*Dena Bank (now Bank of Baroda)
vs. C. Shivakumar Reddy and Anr*

SC's Observations

- An application to the Adjudicating Authority (NCLT) under Section 7 of the IBC in the prescribed form, cannot be compared with the plaint in a suit.
- The application does not lapse for non-compliance of the time schedule. Nor is the Adjudicating Authority obliged to dismiss the application. On the other hand, the application cannot be dismissed, without compliance with the requisites of the Proviso to Section 7(5) of the IBC.
- Unlike coercive recovery litigation, the Corporate Insolvency Resolution Process under the IBC is not adversarial to the interests of the Corporate Debtor, as observed by this Court in *Swiss Ribbons Private Limited v. Union of India*.

LANDMARK JUDGEMENTS

*Dena Bank (now Bank of Baroda)
vs. C. Shivakumar Reddy and Anr*

SC's Observations

- On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.
- There is no penalty prescribed for inability to cure the defects in an application within seven days from the date of receipt of notice, and in an appropriate case, the Adjudicating Authority may accept the cured application, even after expiry of seven days, for the ends of justice.

LANDMARK JUDGEMENTS

*Dena Bank (now Bank of Baroda)
vs. C. Shivakumar Reddy and Anr*

SC's Order

- **An acknowledgment of liability that is made in a balance sheet can amount to an acknowledgment of debt. Thus, entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. Such acknowledgment need not be accompanied by a promise to pay expressly or even by implication as long as the acknowledgment is made within the period of limitation.**
- **Order/decreed of the DRT and the Recovery Certificate gave a fresh cause of action to the Appellant Bank to initiate a petition under Section 7 of the IBC.**

LANDMARK JUDGEMENTS

*Dena Bank (now Bank of Baroda)
vs. C. Shivakumar Reddy and Anr*

SC's Order

- **An offer of One Time Settlement of a live claim, made within the period of limitation, can be construed as an acknowledgment to attract Section 18 of the Limitation Act..**
- **No bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with the application under Section 7 of the IBC in Form-1.**

**Upholding the Appeal, the Apex Court sets
aside the NCLAT Order**

LANDMARK JUDGEMENTS

*Kotak Mahindra Bank Ltd. V.
A. Balakrishnan & Anrs*

BACKGROUND

- In 1993-94, Ind Bank Housing Ltd. (IBHL), sanctioned credit facilities to three entities and M/s Prasad Properties and Investments Pvt. Ltd. stood as Corporate Guarantor / Mortgager.
- IBHL declared the accounts as NPA in 1997.
- IBHL filed Civil Suits in High Court of Madras.
- In 2006, IBHL enters in to a deed of Assignment with Kotak Mahindra Bank Ltd. (KMBL) and assigned all rights, titles, interest, estate, claim and demand to debts due from borrower to KMBL.
- KMBL and borrowing entities enter into a compromise on 7th Aug 2006 and The High Court recorded the compromise vide common judgement dated 26th March, 2007.
- KMBL claimed that borrowing entities failed to make payments as per the compromise and issued a demand notice to M/s Prasad Properties (Corp Guarantor) on 26th Sept, 2007 under SARFAESI Act.

LANDMARK JUDGEMENTS

*Kotak Mahindra Bank Ltd. V.
A. Balakrishnan & Anrs*

BACKGROUND ... Contd

- The demand notice was followed by Possession Notice dated 10th Jan, 2008.
- Aggrieved by continuous default, KMBL files application with DRT under Recovery of Debt and Bankruptcy Act, 1993.
- The said applications were allowed by DRT vide orders dated 31st March, 2017 and 30th June, 2017 and Recovery Certificates dated 7th June, 2017 and 20th Oct, 2017 were issued.
- On 5th Oct, 2018 KMBL files Section 7 Application under IBC.
- NCLT admits the application and CIRP starts on 20th Sept, 2019.
- The Director of CD files an Appeal with NCLAT against the order of NCLT with the ground that Sec 7 application was filed after the expiry of the Limitation Period.
- NCLAT allows the appeal on 24th Nov, 2020.

LANDMARK JUDGEMENTS

*Kotak Mahindra Bank Ltd. V.
A. Balakrishnan & Anrs*

Key Issue

- **Whether a liability in respect of a claim arising out of a Recovery Certificate would be included within the meaning of the term “financial debt” as defined under clause (8) of Section 5 of the IBC.**

LANDMARK JUDGEMENTS

*Kotak Mahindra Bank Ltd. V.
A. Balakrishnan & Anrs*

SC's Observation

- **Taking into consideration the object and purpose of the IBC, the legislature could never have intended to keep a debt, which is crystallized in the form of a decree, outside the ambit of clause (8) of Section 5 of the IBC.**
- **The liability in respect of a claim arising out of a Recovery Certificate would be a “financial debt” within the ambit of its definition under clause (8) of Section 5 of the IBC, as a natural corollary thereof, the holder of such Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, such a “person” would be a “person” as provided under Section 6 of the IBC who would be entitled to initiate the CIRP.**

LANDMARK JUDGEMENTS

*Kotak Mahindra Bank Ltd. V.
A. Balakrishnan & Anrs*

Key Issue

- Whether the SC judgment in the case of ***Dena Bank*** (supra) is contrary to the judgments of three Judge Bench of this Court in the cases of ***Jignesh Shah*** (supra) and ***Gaurav Hargovindbhal Dave*** (supra).

LANDMARK JUDGEMENTS

*Kotak Mahindra Bank Ltd. V.
A. Balakrishnan & Anrs*

SC's Observation

Jignesh Shah(Supra)

- **The cause of action arose in the month of August, 2012. The winding up petition, which was transferred to the learned NCLT, was filed on 21st October, 2016, i.e., after a period of three years from the date on which cause of action arose. This Court in the said case was considering a question that, if a winding up petition was barred by limitation on the date it was filed, whether Section 238A of the IBC will give a new lease of life to such a time barred petition. This Court held that Section 238A of the IBC would not extend the period of limitation for filing winding up petition. On the facts of the said case, it was found that on the date on which the winding up petition was filed, it was barred by lapse of time and Section 238A of the IBC would not give a new lease of life to such a time barred petition.**

LANDMARK JUDGEMENTS

*Kotak Mahindra Bank Ltd. V.
A. Balakrishnan & Anrs*

SC's Observation

Gaurav Hargovindbhai Dave (Supra)

- **The respondent therein was declared NPA on 21st July, 2011 and an application under Section 7 of the IBC was filed in the year 2017 while IBC was brought into force on 1st December, 2016. The three Judge Bench of this Court in the said case held that the time began to run from the date when the respondent was declared NPA and as such, the application under Section 7 of the IBC, which was filed beyond the period of three years, was barred by limitation. The question, as to whether a person would be entitled to file an application for initiation of CIRP within a period of three years from the date on which the decree was passed or a Recovery Certificate was granted did not fall for consideration in the said case**

LANDMARK JUDGEMENTS

*Kotak Mahindra Bank Ltd. V.
A. Balakrishnan & Anrs*

SC's Order

- **That a liability in respect of a claim arising out of a Recovery Certificate would be a “financial debt” within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.**

THANK YOU

Rohit Sehgal,
Founding Partner - TruPro Insolvency Services LLP
Email: iamrs101@gmail.com | rohit.sehgal@truproinsolvency.com | Phone: +91-9810185184



27 CIRP/Liquidation Cases |

80+ Years of Collective Experience |

Resolutions and Asset Sales