

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi -110001

15th August, 2020

Subject: Judgment¹ dated 14th August, 2020 of the Hon'ble Supreme Court of India in the matter of Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Private Limited & Anr. [Civil Appeal No. 6347 of 2019]

While setting aside the Order dated 14th May, 2019 of the NCLAT in Company Appeal (AT) Insolvency No. 549 of 2018 and Order dated 9th August, 2018 of the National Company Law Tribunal, Mumbai Bench in CP(IB)-488/I&BP/MB/2018, on the ground that the application filed under Section 7 of the Code is barred by limitation, the Hon'ble Supreme Court made the following observations:

Sl. No.	Issue / Theme	Ruling	Para / Page No.
1.	Objectives of the Code	<p>a. The Code came to be enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, other entrepreneurs and even of partnership firms and individuals in a time bound manner; the objectives, <i>inter alia</i>, being maximisation of value of assets of such persons and to balance the interest of all the stakeholders.</p> <p>b. As regards CD, 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.</p>	18.1,19/38-39, 43-44
	i. Code <i>vis a vis</i> CD	CIRP is not intended to be adversarial to the CD but is essentially to protect its interests.	19/44
	ii. Purpose of CIRP of CD	In relation to an FC, the trigger for CIRP is default by the corporate debtor of rupees one lakh or more against the debt/s. (Note: Presently, it is Rs. 1 Cr.)	19.1/44
			19.2/44

¹ Prepared by Legal Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice, if it intends to take any action or decision using the material covered here.

	iii. Trigger of CIRP	When seeking initiation of CIRP <i>qua</i> a CD, the FC is required to make the application in conformity with the requirements of Section 7 of the Code while divulging the necessary information and evidence.	19.2/44
	iv. Satisfaction of AA as to occurrence of 'default' before admitting	After completion of all other requirements, for admitting such an application of the financial creditor, the AA has to be satisfied, as per subsection (5) of Section 7 of the Code, that "default" has occurred and, in this process of consideration by the AA, the CD 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.	19.2/44
	v. Legislative policy of IBC	The legislative policy now is to move away from the concept of "inability to pay debts" to "determination of default".	19.2/45
2.	Operation of law of limitation over IBC proceedings	When Section 238A of the Code is read with the consistent decisions of the SC in <i>Innoventive Industries</i> , <i>B.K. Educational Services</i> , <i>Swiss Ribbons</i> , <i>K. Sashidhar</i> , <i>Jignesh Shah</i> , <i>Vashdeo R. Bhojwani</i> , <i>Gaurav Hargovindbhai Dave and Sagar Sharma</i> , 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	30/59-60

		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.	
3.	Applicability of Section 18 of Limitation Act to CIRP proceedings under Section 7 of the Code	<p>a. It has been clearly 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.</p> <p>b. 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.</p> <p>c. 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.</p> <p>d. 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 <i>non-est</i> and could only be annulled.</p>	<p>32/61-62</p> <p>33.1/63</p> <p>33.1/63-64</p> <p>34/64-65</p>
4.	Date of enforcement of Code as starting point for application of limitation	<p>a. The question as to whether the 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 if the application in question made in the year 2018 is within limitation, is not even worth devoting much time.</p>	36/65

		<p>b. 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.</p> <p>c. The date of the Code’s coming into force on 01.12.2016 is wholly irrelevant to the triggering of any limitation period for the purposes of the Code.</p> <p>d. The property having been mortgaged and the claim being not barred by limitation because of the period of limitation of twelve years with regard to mortgaged property, is erroneous.</p> <p>e. 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.</p>	<p>36/66</p> <p>36.1/66</p> <p>37/67</p> <p>37.1/67</p>
5.	Summary	<p>a. The application under Section 7 of the Code in the month of March 2018, seeking initiation of CIRP in respect of the CD 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.</p> <p>b. 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.</p>	38/69

6.	Other proceedings not to be affected	<p>a. All the proceedings shall stand annulled.</p> <p>b. The moratorium in terms of Section 14 of the Code is lifted and, the stalled proceedings should now be taken up and dealt with by the respective Courts/Tribunals/Authorities.</p> <p>c. Nothing in the judgment shall have bearing on any other proceeding that shall be dealt with on its own merits and in accordance with law.</p>	39/70
7.	Conclusion	All the proceedings undertaken in the said application under Section 7 of the Code, including appointment of IRP, stand annulled.	40/71