

**Insolvency and Bankruptcy Board of India**  
**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi -110 001**

2<sup>nd</sup> August, 2022

*Subject: Judgment<sup>1</sup> dated 1<sup>st</sup> August, 2022 of the Hon'ble Supreme Court of India in the matter of Asset Reconstruction Company (India) Limited Vs. Tulip Star Hotels Limited & Ors. [Civil Appeal Nos. 84-85 of 2020]*

The Hon'ble Supreme Court in its judgment dated 1<sup>st</sup> August, 2022 while allowing the appeal observed that the NCLAT erred in law in holding that the books of account of a company could not be treated as acknowledgement of liability in respect of debt payable to a Financial Creditor (FC), made following important observations:

<b>Sl. No.</b>	<b>Issue / Theme</b>	<b>Observation / Ruling</b>	<b>Para / Page No.</b>
1.	Objective and interpretation of the Code	(a) The provisions of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) are designed to ensure that the business and/or commercial activities of the Corporate Debtor (CD) are continued by a Resolution Professional (RP), upon imposition of a moratorium, to give the CD some reprieve from coercive litigation, which could drain the CD of its financial resources.  (b) The Code is not just a statute for recovery of debts. It is also not a statute which only prescribes the modalities of liquidation of a corporate body, unable to pay its debts. It is essentially a statute which works towards the revival of a corporate body, unable to pay its debts, by appointment of a RP.  (c) The Code is a beneficial legislation for equal treatment of all creditors of the CD, as also the protection of the livelihoods of its employees/workers, by revival of the CD through the entrepreneurial skills of persons other than those in its management, who failed to clear the dues of the CD to its creditors. It only segregates the interests of the CD from those of its promoters/persons in management.	46/29  55/33  59/34-35

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Sl. No.	Issue / Theme	Observation / Ruling	Para / Page No.
		(d) Relegation of creditors to the remedy of coercive litigation against the CD could be detrimental to the interests of the CD and its creditors alike. While multiple coercive proceedings against a CD in different forums could impede its commercial/business activities, deplete its cash reserves, dissipate its assets, moveable and immoveable and precipitate its commercial death, such proceedings might not be economically viable for the creditors as well, because of the length of time consumed in the litigations, the expenses of litigation, and the uncertainties of realisation of claims even after ultimate success in the litigation. It is, therefore, imperative that the provisions of the IBC and the Rules and Regulations framed thereunder be construed liberally, in a purposive manner to further the objects of enactment of the statute.	60-61/35
2.	Application under section 7	<p>(a) An application to the Adjudicating Authority under section 7 of the Code, in the prescribed form, cannot, be compared with the plaint in a suit, and cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a Court of law.</p> <p>(b) On a careful reading of the provisions of the Code and in particular the provisions of Section 7(2) to (5) of the Code read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, 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.</p> <p>(c) The time stipulation of fourteen days in Section 7(4) to ascertain the existence of a default is apparently directory not mandatory.</p> <p>(d) In the absence of any prescribed penalty in the IBC for inability to cure the defects in an application within seven days from the date of receipt of notice, in an appropriate case, the Adjudicating Authority may accept the cured application, even after expiry of seven days, for the ends of justice.</p>	<p>49/31</p> <p>62/35</p> <p>63/35</p> <p>64/36</p>
3.	Limitation vis-à-vis IBC	(a) There is no specific period of limitation prescribed in the Limitation Act, 1963, for an application under the IBC, before the Adjudicating Authority. An application for which no period of limitation is provided anywhere else in the Schedule to the Limitation Act, is governed by Article 137 of the Schedule to the said Act. Under Article 137 of the Schedule to the Limitation Act, the period of limitation prescribed for such an application is three years from the date of accrual of the right to apply.	68/37-38

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		<p>(b) <i>Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. &amp; Anr. (Civil Appeal No. 6347 of 2019)</i> is not an authority for the proposition that the books of accounts of a CD could not be treated as acknowledgement of liability to a FC. Nor does the judgment lay down the proposition that any affidavits or documents filed during the pendency of the proceedings cannot be taken into consideration.</p> <p>(c) There is no reason to suppose that Sections 14 or 18 of the Limitation Act do not apply to proceedings under Section 7 or Section 9 of the IBC.</p> <p>(d) Section 18 of the Limitation Act speaks of an acknowledgment in writing of liability, signed by the party against whom such property or right is claimed. Even if the writing containing the acknowledgment is undated, evidence might be given of the time when it was signed. The explanation clarifies that an acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. ‘Signed’ is to be construed to mean signed personally or by an authorised agent.</p> <p>(e) An application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the CD as NPA, if there were an acknowledgement of the debt by the CD before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.</p>	<p>80/43-44</p> <p>81/44</p> <p>93/51</p> <p>97/55</p>
4.	Conclusion	As the CD had acknowledged its liabilities in its financial statements from 2008-09 till 2016-17 and the application under Section 7(2) of the IBC was filed on 3 <sup>rd</sup> April 2018, same is well within the extended period of limitation.	98/55