

Reviewing Evolution of Applicability of Limitation Act, 1963 on IBC, 2016

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The question of applicability of Limitation Act, 1963 (“Act”) to the proceedings under Insolvency and Bankruptcy code, 2016 (“Code”) has now been put several times before the court. With the first approval in the case of *Neelkanth Township* [2017] [ibclaw.in 40 NCLAT](#) to insertion of Section 238 A in the code, it is well settled that the act is applicable on the proceedings of the code. But, the intrigue around applicability of specific provisions of Limitation act to code does not seem to rest.

Recently on 22nd March, 2021, the apex court in the case of *Sesh Nath Singh vs Baidyabati Sheoraphuli Co-operative Bank Ltd.* (2021) [ibclaw.in 49 SC](#), cleared the dust around the interplay between the Insolvency and Bankruptcy code, 2016 (“Code”) and Limitation Act, 1963 (“Act”). The Hon’ble court, by recognizing the intent of legislature gave a very wide and most liberal interpretation to Section 238 A of the code, a section introduced by a clarificatory amendment which says that provisions of Limitation Act shall apply to the IBC proceedings “as far as may be”. The judgement settled the extent of applicability of Act to Code and explicitly recognized that Section 5, 14 and 18 of the act will apply to the proceedings under the code.

Through this article the authors explain the rationale behind the applicability of section 5, 14 and 18 of the limitation act to the code and how in the light of recent judgments, the law has evolved with regards to other specifics of the afore-mentioned sections.

Section 18 of the Act and IBC proceedings

[Section 18](#) of the act recognizes **acknowledgement of debt** within the existing limitation period as the renewal of new limitation period of 3 years. Amidst a series of contradictory rulings of the recent past, *Sesh Nath* judgement by unequivocally upholding the application of S 18 on the IBC proceedings has rendered a much needed clarity to applicability of the afore-mentioned section on the IBC proceedings. Notably, SC itself in the case of *Veer Gurjar* [2020] [ibclaw.in 16 SC](#) denied the benefit of Section 18 to the financial creditor. In *Veer Gurjar*, court placed reliance on the case of *BK Educational Services* [2018] [ibclaw.in 32 SC](#), and remarked that in the said case it is clearly established that limitation period which commences from date of default is extendable **only** by application of Section 5 of the act. Further, the illustrative reference on the subject taken in another SC case of *Jignesh Shah* [2019] [ibclaw.in 19 SC](#) was not recognized.

Now since applicability of S 18 is recognized with respect to proceedings of the code, it is pertinent to discuss the specifics of such rule in the light of previous judgements:

1. *Laxmi Pat* (2021) [ibclaw.in 53 SC](#) case held that such acknowledgement by debtor also extends the limitation period against the guarantor.
2. *Gouri Prasad* [2019] [ibclaw.in 22 NCLAT](#) and *Manesh Agarwal* [2020] [ibclaw.in 241 NCLAT](#) observed that **one time settlement offer** with regards to debt can be regarded as acknowledgement and new beginning of limitation period.
3. In cases where dues are paid in part, such **date of last payment** can be considered as acknowledgement of debt. *Rajendra Sheth* case observed that this rule will also hold true in

cases where debt is declared as a NPA.

4. [Sudarshan Cargo](#) case recognized acknowledgement via email as valid and legal when acknowledgment is sent by an 'originator' to the 'addressee' by e-mail, without any intermediary.
5. Recently in *Bishal Jaiswal (2021) ibclaw.in 55 SC*, SC held that balance sheet entries can be considered as valid acknowledgement of debt in cases where there exist auditor's report and balance sheet notes to qualify such entries. The said case settled the buzz created by the controversial judgment of NCLAT in the case of *Padmakumar [2020] ibclaw.in 255 NCLAT*.
6. Cheques, [even if dishonoured](#); Debentures creating or acknowledging debt; [insufficiently stamped document](#) are also considered as valid acknowledgement.

Section 5 of the Act and IBC proceedings

Section 5 of the act allows an appeal or application even after limitation period in cases where "sufficient cause" for such delay could be established. *BK Education*, recognized the discretion of adjudicating authority with regards to applicability of the aforesaid section on proceedings of the code. It shall be noted that the purpose of the section is to [safeguard substantial justice](#) and thus anything which can advance such object can be considered as a sufficient cause. Taking precedence from the various cases on the subject, the bench in the *Sesh Nath* case went on to elaborate that adjudicating authorities shall consider the situation in a more liberal and humane way, thereby ensuring a balance between the legitimate rights of the parties. The bench also held that there is no mandatory requirement of a written application to ask for benefits under Section 5.

Section 14 of the Act and IBC proceedings

[Section 14\(2\)](#) excludes the time period in computing the limitation period for any application if Applicant has been prosecuting with due diligence another civil proceeding; the proceedings is against the same party for same relief and the court is unable to entertain due to defect in jurisdiction or cause of like nature.

The court has been called upon several times to decide to what extent section 14 of limitation act applies to proceedings under the code. In past court has dealt with applicability of section 14 of limitation act as to whether time taken for other proceedings should be excluded or not.

It was observed in *Bimalkumar Manubhai Savalia v. Bank of India [2020] ibclaw.in 247 NCLAT* that IBC being a "complete code" in itself and would prevail over other laws. Proceedings initiated or pending in Debt Recovery Tribunal (DRT) under SARFAESI act cannot be taken into account for purposes of limitation. Same was reiterated in *Ishrat Ali v cosmos cooperative [2020] ibclaw.in 253 NCLAT*, that in an application under Section 7 of IBC the applicant cannot avail the benefit under section 14 as the proceedings under SARFAESI act are not civil proceedings and shall be excluded for computation of limitation period.

However in the case of *Sesh Nath* Supreme Court upheld the application of section 14 of limitation act. In the present case the financial creditor had initiated proceedings under the insolvency and bankruptcy code after seven years of debt becoming due. It held that delay was due to proceedings initiated under Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (**SARFAESI Act**). The National Company Law Appellate Tribunal (**NCLAT**) held that **SARFAESI proceedings were excluded for computing the limitation period under**

section 14 of the limitation act and the same was upheld by the Supreme Court. The following has been observed by the court with regards to section 14 of limitation act and its applicability:

- It was held by Supreme Court in [P. Housing Board and Ors. v. Mohanlal & Co](#) that Section 14 of the limitation Act needs to be interpreted liberally to advance the cause of justice. Section 14 is applicable in cases of mistaken remedy or selection of a wrong forum.
- All the provisions of the act will apply to the code “to the extent possible” and does not specifically bars the application of section 14 of the act.
- Proceedings under **SARFAESI are civil proceedings. The Bench relying on [A.L. Narayan Rao and Anr. v. Ishwarlal Bhagwandas and Anr](#)** held that civil proceedings have a wide meaning and covers all proceedings where there is infringement of civil rights which are conferred by law and statute. The bench further held that the Chief Metropolitan Magistrate or the Judicial Magistrate shall exercise the powers under section 14 of SARFAESI act and would function as a civil or executing court.
- Proceeding in another court of first instance, appeal or revision against the same party for same relief would also be considered as civil proceedings in the forum with regards to section 238A of the code which may as far as apply to NCLT/NCLAT.
- With respect to proceedings under IBC before NCLT/NCLAT, the expression ‘Court’ in section 14 would be deemed to be any forum for a civil proceeding including any Tribunal or any forum under SARFAESI.
- In any case the provision of section and section 14 are not mutually exclusive. Even if section 14 does not apply, the principles of the section can be invoked to grant relief to applicant under section 5 for sufficient cause.
- While the NCLT under IBC is not a substitute forum for collection of debt barred by law or for resolving disputes; however, the ultimate objective of an application under IBC is to realise debt by invoking corporate insolvency resolution process.

In a nutshell the recent ruling of the Supreme Court in the *Sesh Nath* has upheld the applicability of section 14 of the limitation act to IBC “as far as may be”. However, though SARFAESI proceedings are civil proceedings and even if they were not the court would be justified in excluding time spent in initiating a bonafide prosecution for computation of time period as per the broad interpretation of section 14 of the act.

Conclusion

In summation, these judgments in the recent past have upheld the application of section 5, 14 and 18 of the limitation act to IBC as long as they are not inconsistent with the code and settles the dispute with regards to interpretation of section 238A of the code. The approach taken for exclusion of time period with regards to civil proceedings already initiated in other courts, acknowledgment of debt and condoning delay will be beneficial for financial creditors in instituting proceedings under the code.

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