



Admission Of Time-Barred Debt Under Insolvency & Bankruptcy Code

A Case of Limitless Limitation?

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1. INTRODUCTION

- 1.1 Applicability of provisions of Limitation Act, 1963 ('**Limitation Act**') to the proceedings under the Insolvency and Bankruptcy Code, 2016 ("**Code**") in so far as initiation of corporate insolvency resolution process ("**CIRP**") based on time-barred debt, has elicited divergent responses from different benches of National Company Law Tribunal ('**NCLT**') and the National Company Law Appellate Tribunal ('**NCLAT**'). Whilst the benches of NCLTs have generally favored a construction which imbibe the provisions of the Limitation Act to the Code to dismiss the applications based on time-barred debts, the approach of NCLAT has been quite the opposite, with NCLAT authoritatively dismissing such application in its decision in *Speculum Plast Private Limited v. PTC Techno Private Limited* ("**Speculum Plast**") on November 7, 2017¹.
- 1.2 The aforesaid decision of NCLAT in *Speculum Plast* has, however, been stayed by the Supreme Court in its order dated January 10, 2018, in the matter of *B K Educational Services Private Limited v. Parag Gupta*², bringing attention back to the vexed issue of the interplay between the Limitation Act and the Code, in the context of time-barred debts.
- 1.3 With the focus being back on the issue, this paper aims to trace the development of the jurisprudence through the decisions rendered by different benches of the NCLT and NCLAT and critically analyse the decision of NCLAT in *Speculum Plast* case to assess the soundness of such a decision.

2. APPLICABILITY OF LIMITATION ACT TO PROCEEDINGS BEFORE NCLT

- 2.1 The Supreme Court, in the case of *M P Steel Corporation v. Commissioner of Central Excise*³, after analyzing the scheme of the Limitation Act, had noted that Limitation Act applies only to courts and not to quasi-judicial tribunals. An exception to the aforesaid principle would be where the special statute expressly makes the Limitation Act applicable to such tribunal.
- 2.2 To ascertain the applicability of Limitation Act to the proceedings before NCLT and NCLAT, it may not be out of context to recollect that both NCLT and NCLAT owe their origin to the Companies Act, 2013 ("**CA 13**")⁴. In the context of applicability of Limitation Act, special emphasis may be made to Section 433 of CA 13, which reads as follows:

"Section 433. *The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.*"

¹ *Speculum Plast Private Limited v. PTC Techno Private Limited* [Company Appeal (AT) (Insolvency) No. 47 of 2017, decided on November 7, 2017 (NCLAT)].

² *B K Educational Services Private Limited v. Parag Gupta* [Civil Appeal No(s). 23988/2017, order dated January 10, 2018 (SC)].

³ *M P Steel Corporation v. Commissioner of Central Excise* [Civil Appeal No.4367 of 2004, decided on April 23, 2015 (SC)]

⁴ **Section 408.** The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

Section 410. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal.

- 2.3 Whilst Section 433 of CA 13 makes the provisions of the Limitation Act to be applicable to proceedings or appeals before the NCLT or NCLAT, as the case may be, the applicability of such provision, when the NCLT discharges the function under the Code as *Adjudicating Authority* has elicited mixed responses, especially in absence of any provision making either Limitation Act or Section 433 of CA 13 applicable to a proceeding under the Code. In the subsequent paragraphs, an attempt has been made to discuss the development of the jurisprudence through various orders of the different benches of NCLT and NCLAT, in so far as admission of time-barred debts is concerned.

3. ADMISSION OF TIME BARRED DEBT- VIEWS OF NCLT

- 3.1 One of the first NCLT decisions to discuss the admission of time-barred debt is the decision of the Principal Bench of the NCLT in *M/s. Prowess International Private Limited v. Action Ispat and Power Private Limited*.⁵ In the said decision, the Principal Bench held that the provisions of the Limitation Act would be applicable to proceedings under the Code, and a claim that was time-barred, being unenforceable, could not be considered by the NCLT. It was held: -

“In order to ascertain as to whether there is a default in making payment of the operational debt, the tribunal is required to examine that the claim made before it is within time. In case of revenue recovery the limitation period is three years from which the debt has fallen due or the claim has arisen. Law of limitation has to be applied with all its rigor and tribunal has no power to extend the period of limitation. A live claim after lapse of limitation period becomes a stale claim unenforceable in law. Accordingly, it is to be seen whether the tribunal has been moved within the maximum period of three years prescribed under the Indian Limitation Act, 1963 from the date on which the debt has fallen due or the claim has arisen.” (emphasis supplied)

- 3.2 Similar view was echoed again by the Principal Bench in the matter of *Deem Roll-Tech Limited v. R.L. Steel Energy Limited*⁶, where the NCLT noted that in the absence of any specific bar on the application of the Limitation Act to proceedings under the Code, and given that section 433 makes the Limitation Act applicable to the NCLT, the provisions thereof would be applicable even in relation to proceedings under the Code.
- 3.3 The decision in *Deem Roll* was followed and relied upon again by the Principal Bench in the matter of *Sanjay Bagrodia v. Sathyam Green Power Pvt. Ltd.*⁷, to deny the claim of an operational creditor filing its claim which was barred by time as on date of application. The NCLT drew support from Section 60(6) of the Code⁸, to argue that *there is broad indication implicit in the Code for the application of the Limitation Act, itself.*
- 3.4 Later, the NCLT at Ahmedabad extensively considered the applicability of the Limitation Act with regard to an application moved by a financial creditor under Section 7 of the Code in

⁵ *M/s. Prowess International Private Limited v. Action Ispat and Power Private Limited* (C.A. No. (I.B.) 18(PB)/2017), order dated March 15, 2017.

⁶ *M/s. Deem Roll-Tech Limited v. R.L. Steel Energy Limited* (Company Application No.(IB)-24/PB/2017), order dated March 31, 2017.

⁷ *Sanjay Bagrodia v. Sathyam Green Power Pvt. Ltd.* [C.P. No. (IB)108(PB)/2017, order dated May 25, 2017 by NCLT Principal Bench]

⁸ **Section 60(6)** Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

- State Bank of India, Colombo v. Western Refrigeration Pvt. Ltd.*⁹ In this case, the NCLT noted the absence of a specific provision in the Code that makes the Limitation Act applicable to the Code. However, the NCLT also took note of Section 433 of CA 13 and observed that Section 433 does not limit its applicability to proceedings under CA 13 alone, but must include within its purview all decisions passed by the NCLT, in its capacity of being the Adjudicating Authority under the Code.
- 3.5 Similarly, the NCLT at Chandigarh in *M/s ACE Build Pvt. Ltd. v. The A2 Z Powercom Limited*¹⁰, held the provisions of the Limitation Act to be applicable to a winding up proceeding filed under Section 433(e) of the Companies Act, 1956, which was subsequently transferred to the NCLT in terms of Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 as an application moved by an operational creditor under Section 9 of the Code. The NCLT held that the petition was hopelessly time-barred under the Limitation Act and that the process of initiation of CIRP cannot be invoked for any debt that has become time-barred.
- 3.6 The aforesaid trend was briefly broken after NCLAT had in *Neelkanth Township and Construction Pvt. Ltd. v. Urban Infrastructure Trustees Limited*¹¹, made an observation to the effect that *there was nothing on record to suggest that the Limitation Act is applicable to Code*. Naturally, this observation led to a spate of subsequent decisions by various benches of the NCLTs attempting to follow, understand or distinguish such position.
- 3.7 The NCLT at Chandigarh in *M/s. Visa Drugs & Pharmaceuticals Private Limited v. M/s Swan Aluminums Private Limited*¹², considered the admissibility of time-barred debts by the NCLTs under the Code in light of the NCLAT's observation in *Neelkanth* (supra), and held that the plea of the corporate debtor therein regarding the claim being barred by limitation is not based on law, as there is no provision in the Code to suggest that the laws of limitation are applicable to the Code.
- 3.8 The *Neelkanth* (supra) decision was however, distinguished by NCLT at Mumbai in *Machhar Polymer Pvt. Ltd. v. Sabre Helmets Pvt. Ltd.*¹³, which had extensively dealt with the applicability of Limitation Act to the Code with reference to the decision in *Neelkanth* (supra). The point of contention before the NCLT was whether or not the application could be admitted when one of the invoices was ordinarily time-barred by the time the application before the NCLT was filed. The NCLT observed that, *although the Code does not envisage the application of Limitation Act to itself, the Code also does not specifically exclude its application*. The NCLT observed:-

“10. By reading all the sentences of the para quoted in tandem, it appears that Hon'ble NCLAT categorically held that since it is a continuous course of action, the argument of the Appellant saying debt is barred by Limitation cannot be accepted, therefore, ratio decided by Hon'ble NCLAT cannot be stretched out to say that Limitation Act is not applicable to the Code. If limitation is not mentioned as applicable, it does not mean that courts get a right to set out prescription of limitation period on its own.” (emphasis supplied)

Consequently, the NCLT went on to hold that the Limitation Act is applicable to the Code, in the following terms: -

⁹ *State Bank of India, Colombo v. Western Refrigeration Pvt. Ltd.* (C.P. (I.B.) No. 17/7/NCLT/AHM/2017), order dated May 26, 2017.

¹⁰ *M/s ACE Build Pvt. Ltd. v. The A2 Z Powercom Limited* (CP No. 133/Chd/Hry/2017), order dated July 26, 2017

¹¹ *Neelkanth Township and Construction Pvt. Ltd. v. Urban Infrastructure Trustees Limited* (C.A. (AT) (Insolvency) No. 44 of 2017), judgment dated August 11, 2017.

¹² *M/s. Visa Drugs & Pharmaceuticals Private Limited v. M/s Swan Aluminums Private Limited* (CP (IB) No. 58/Chd/CHD/2017), order dated September 4, 2017.

¹³ *Machhar Polymer Pvt. Ltd. v. Sabre Helmets Pvt. Ltd.* (C.P. No. 1333/I&BP/2017), order dated October 3, 2017.

“In view of the reasons mentioned above, in whatever line so far limitation is applied to winding up cases, in the same line, prescription of limitation is applicable to the Code as well. As long as limitation is not prescribed under any specific enactment, it goes without saying Limitation Act is automatically applicable to the Code as well.” (emphasis supplied)

- 3.9 In this context it may be mentioned that the NCLT at New Delhi in *M/s. PCI Limited v. M/s Ashimori India (P) Limited*¹⁴, also had the occasion to distinguish the decision in *Neelkanth* (supra). It was clarified that the petitioner could not escape the ground of delay and laches in preferring an application before the NCLT, when there is a delay of more than five years without explanation. It was thus concluded that: -

“Thus, hereto we find that the position quite apposite as even though the provisions of Limitation Act may not be applicable to IBC, 2016 yet the petition suffers from doctrine of delay and laches as the silence on the part of the petitioner to enforce its claim for a period of more than 5 years without approaching any judicial forum defeats the claim and the petitioner cannot take recourse or embargo to the provisions of IBC, 2016 with a view to initiate CIRP to recover the amounts alleged to be due to it from the respondent Company.” (emphasis supplied)

4. ADMISSION OF TIME BARRED DEBT - VIEWS OF NCLAT

- 4.1 As mentioned hereinabove, the NCLAT had the opportunity to address the applicability of Limitation Act, to proceedings under the Code in its decision in *Neelkanth Township and Construction Pvt. Ltd. v. Urban Infrastructure Trustees Limited* (supra). The NCLAT held therein:-

“The next ground on behalf of the appellant is that the claim of the respondent is barred by limitation, as the Debentures were matured between the year 2011 – 2013 is not based on Law. There is nothing on record that the Limitation Act, 2013 (sic) is applicable to I & B Code. Learned Counsel for the appellant also failed to any hand on any of the provision of I & B Code to suggest that the Law of Limitation Act, 1963 is applicable. The I & B Code, 2016 is not an Act for recovery of money claim, it related to initiation of Corporate Insolvency Resolution Process. If there is a debt which includes and there is default of debt and having continuous course of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted.” (emphasis supplied)

Pertinent to note that, in appeal, whilst the Supreme Court did not interfere with the decision of the NCLAT, the appeal was dismissed, keeping the question of law viz. whether the Limitation Act would apply to this proceeding, open¹⁵.

- 4.2 Whilst the observation in *Neelkanth* could be considered as an obiter dicta having no bearing with the factual scenario, the observation was expanded by NCLAT in *Black Pearl Hotels Pvt. Ltd. v. Planet M Retail Ltd.*¹⁶, and held that:-

“11. In this case even if it is accepted that the Limitation Act is applicable for initiation of Corporate Insolvency Resolution Process, in such case Article 137 of the Limitation Act will be applicable....

¹⁴ *M/s. PCI Limited v. M/s Ashimori India (P) Limited* ((IB)- 297(ND)/2017), order dated October 10, 2017.

¹⁵ *Neelkanth Township and Construction Pvt Ltd v. Urban Infrastructure Trustees Ltd* [Civil Appeal No. 10711 of 2017, decided on August 23, 2017 (SC)]

¹⁶ *Black Pearl Hotels Pvt. Ltd. v. Planet M Retail Ltd.* [(CA (AT)(Insolvency) No. 91 of 2017)], judgment dated October 17, 2017.

12. Insolvency and Bankruptcy Code, 2016 has come into force with effect from 1st December 2016 and not before the said date (1st December 2016). As the right to apply under section 9 of the I&B Code accrued to appellant since 1st December, 2016, the application filed much prior to three years, the said application cannot be held to be barred by limitation." (emphasis supplied)

- 4.3 Finally, in *Speculum Plast Pvt. Ltd. v. PTC Techno Pvt. Ltd.*¹⁷, NCLAT clarified its view on the admissibility of time-barred debts by the NCLTs under the Code. Salient observations of NCLAT in this regard are summarized herein below:
- 4.3.1 Re-iterating the non-applicability of the Limitation Act to the Code, the NCLAT relied on the recent decision of the Supreme Court in *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr.*¹⁸ to contend that the Code being a complete code in itself, the provisions of the Limitation Act are not applicable to the Code.
- 4.3.2 On the point of applicability of Section 433 of CA 13 to the Code, the NCLAT observed that while certain Sections like Section 425 of CA 13 have been specifically incorporated into the Code through reference, the same is not the case with Section 433 of CA 13, which shows specific legislative intent to exclude such provision from applying to the Code.
- 4.3.3 The NCLAT also made an observation, similar to one made in its earlier decision in *Black Pearl* (supra) that even if the Limitation Act is applicable to proceedings under the Code, the applicable provision would be Article 137¹⁹ of the Schedule to the Limitation Act, whereby the period of limitation would begin to run only from the time the right to apply accrues to the financial creditor/operational creditor/corporate applicant, and not earlier. In this regard, the NCLAT held that the right to apply accrues from the date of promulgation of the Code, i.e. December 1, 2016. The NCLAT went on to hold that as the limitation period as prescribed in the aforesaid Article 137 had not expired as yet, the petition will not be barred by limitation.
- 4.3.4 However, at the same time, the NCLAT held that the doctrine of limitation and prescription is necessary to be looked into for determining the question whether an application preferred by a financial creditor or an operational creditor under the Code can be entertained after such application has been filed subsequent to a long and undue delay, which might be due to laches on part of such creditor and thereby lead to forfeiture of such claim.
- 4.4 As has been noted earlier, in an appeal filed before the Supreme Court against the NCLAT judgment in *Speculum Plast* (supra), the Supreme Court, on January 10, 2018, has stayed such order of the NCLAT and issued notices.

¹⁷ *M/s. Speculum Plast Pvt. Ltd. v. PTC Techno Pvt. Ltd. [(CA (AT) (Insolvency) No. 47 of 2017)]*, judgment dated November 7, 2017.

¹⁸ *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr.*, AIR2017 SC 4084.

¹⁹ Article 137 of the Schedule to the Limitation Act reads as follows:-

"Other applications

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
137.	Any other application for which no period of limitation is provided elsewhere in this Division.	3 yrs	When the right to apply accrues.

- 4.5 Whilst it is hoped that the Supreme Court would provide the much-needed clarity on admissibility of time-barred debts by the NCLTs under the Code, an attempt has been made in the following section to critically analyse NCLAT's decision in *Speculum Plast*.

5. SPECULUM PLAST- A CRITIQUE

- 5.1 As has been discussed herein above, in the *Speculam Plast* decision, NCLAT came to a somewhat confusing conclusion about the admissibility of time-barred debts by the NCLTs under the Code. Whilst on one hand, it held that the provisions of Section 433 of CA 13 would not be applicable to NCLTs discharging role of *adjudicating authority* under the Code, on the other hand, it argued that, even if Limitation Act is presumed to be applicable to the provisions of the Code, the relevant provision would be Article 137 and commencement of the limitation period would be from the date of the Code coming into force. It is especially the later part of the observation, which has the potential of opening the flood-gates of time-barred debts being summoned to initiate CIRP against debtors.

- 5.2 With the aforesaid context in mind, let us analyse decision of *Speculum Plast* in the following three touchstones, namely:

5.2.1 *applicability of Section 433 to the proceedings before NCLT discharging the role of adjudicating authority under the Code;*

5.2.2 *applicability of Article 137 of Limitation Act to the proceedings before NCLT discharging the role of adjudicating authority under the Code; and*

5.2.3 *Irrespective of whether or not the Limitation Act is applicable to NCLTs discharging the role of adjudicating authority under the Code, whether time-barred debts can be revived by the introduction of the Code.*

- 5.3 ***Applicability of Section 433 to the proceedings before NCLT discharging the role of adjudicating authority under the Code***

5.3.1 Section 433 of the CA 13 states that the Limitation Act is applicable to proceedings before the NCLT and the NCLAT²⁰.

5.3.2 However, the NCLAT in *Speculum Plast* (supra) has held that Section 433 is not applicable to the Code. The reasoning relied upon by NCLAT in this context is as follows: -

"In so far as, the application under Section 433 of the Companies Act, 2013 is concerned, we are of the view that the said provision is not applicable for the following reasons:-

Under Section 255 of the 'I & B Code', certain provisions of the Companies Act, 2013 have been amended in the manner specified in the Eleventh Schedule of the 'I & B Code'. There under Section 424 of the Companies Act, 2013 has been made part of the 'I & B Code' for the purpose of following procedural or principles of natural justice.

.....

However, Section 433 of the Companies Act, 2013 has not been amended to make it as a part of the 'I & B Code', therefore, we hold that Section 433 which relates to limitation of the Companies Act, 2013, ipso facto will not be applicable to 'I & B Code'." (emphasis supplied)

²⁰ See supra note at 4.

5.3.3 In this regard, if we analyse the nature of amendments introduced to Section 424 of CA 13 by the Code, we note that the amendments were as follows:

- (i) *in sub-section (1), after the words, "other provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016" shall be inserted;*
- (ii) *in sub-section (2), after the words, "under this Act", the words "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted.
(emphasis supplied)*

In other words, post such amendment, the language of sub-section (1) and (2) of Section 424 would be as follows:

424. (1) *The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act or of the Insolvency and Bankruptcy Code, 2016 and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.*

(2) *The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act or under the Insolvency and Bankruptcy Code, 2016, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—*

(insertions are underlined)

5.3.4 As would be apparent from the aforesaid extract, the legislature felt the need of amending Section 424 of CA 13 to specifically include the reference of the Code, in view of the specific reference to '*this Act*' in the section, referring to CA 13. Had the language of Section 424 had not referred to '*this Act*' at all, there may not have been any requirement of specifically incorporating reference of the Code to ensure that, the provisions pertaining to natural justice is applicable to also the proceedings under the Code (as opposed to only the proceedings under CA 13). As Section 433 did not specify the applicability of the Limitation Act to proceedings or appeals under CA 13 (only), obviously, no requirement was felt to incorporate the reference of Code therein. In other words, it might be argued that, what the legislature intended to achieve by amending Section 424 was not required in the context of Section 433, as the legislature had intended the provision to be applicable to any proceeding before NCLTs or NCLAT, irrespective of whether the proceedings have its genesis under CA 13 or the Code.

5.3.5 This takes us to the more critical issue of whether, it was intended that the functions discharged by NCLTs as *adjudicating authority* are different from the role that they play under CA 13.

5.3.6 The genesis of this line of thinking can be noted in an earlier decision of NCLAT being *J.K. Jute Mills v. Surendra Trading Company*²¹, wherein the NCLAT had held that the NCLT is the 'Adjudicating Authority' for the purposes of the Code only by virtue of Section 5(1) of the Code, which notifies the NCLT as the Adjudicating Authority. Following observation of NCLAT is of much significance:

²¹ *J.K. Jute Mills v. Surendra Trading Company, (Company Appeal (AT) No. 09 of 2017)*, order dated May 1, 2017.

“37. We have noticed that Code, empowers ‘adjudicating authority’ to pass orders under Section 7, 9 and 10 of the Code, 2016 and not the NCLT. It is by virtue of the definition under sub-section (1) of Section 5 of the Code, the NCLT plays its role as “adjudicating authority” and not that (of) a Company Law Tribunal. Therefore, in strict sense, mandate under Section 420 of the Companies Act, 2016 cannot be transposed in Code 2016 by reading ‘orders of Tribunal, as “Order of Adjudicating Authority.” (emphasis supplied)

In other words, as per NCLAT, merely because the provisions of Limitation Act are made applicable to the proceedings before NCLT would not *ipso facto* imply that, such provisions would be applicable where NCLT is discharging the role of an *‘adjudicating authority’* under the Code.

- 5.3.7 With due respect, the NCLAT seems to have overlooked the fact that, it is not only by virtue of Section 5(1) of the Code that the NCLT, for the purposes of Part – II of the Code, has been appointed as the Adjudicating Authority. In fact, as submitted by the amicus curiae in *Speculum Plast* (supra), Section 60 of the Code clearly specifies that the Adjudicating Authority for the purposes of insolvency proceedings against corporate persons and their personal guarantors would be the NCLT. It may be noted that the legislature in sub-section (5) of Section 60 has not used the expression ‘Adjudicating Authority’, but retained the word ‘National Company Law Tribunal’ which also clarifies the intent that Section 433 of the CA 13 is applicable for triggering a CIRP under sections 7 or 9 or 10 of the Code. In fact, this has been recognized by the Learned NCLT at Ahmedabad in its decision in *State Bank of India, Colombo v. Western Refrigeration Private Limited* (supra) where it was observed:-

“26.2 “National Company Law Tribunal” is the Adjudicating Authority under the Insolvency Code in view of Section 60 of the Insolvency and Bankruptcy Code, 2016. Therefore any proceeding initiated under the provisions of the Insolvency Code before the Adjudicating Authority shall be treated as the proceeding before the National Company Law Tribunal...”
(emphasis supplied)

- 5.3.8 Therefore, arguably there is no reason why principles of law which are made applicable to the NCLT in general by CA 13 should cease to apply to proceedings under the Code.

5.4 **Applicability of Article 137 of Limitation Act to the proceedings before NCLT discharging the role of adjudicating authority under the Code**

- 5.4.1 From a perusal of the aforesaid decisions delivered by the NCLAT, it can be seen that the NCLAT has reached the conclusion that the provisions of the Limitation Act, are not applicable to proceedings under the Code *and even if the same are applicable*, such period of limitation, *following Article 137 of the Schedule to the Limitation Act, would begin to run from the time the right to apply accrues to the financial creditor/operational creditor/corporate applicant, which would in this case be the date of promulgation of the Code, i.e. December 1, 2016.*
- 5.4.2 Before delving into whether the provisions of the Limitation Act are at all applicable to the Code, let us first examine that assuming the Limitation Act is applicable to the Code, whether Article 137 of the Limitation Act will be applicable to the proceedings before the NCLT, functioning in its capacity of the Adjudicating Authority under the Code.
- 5.4.3 It has always been the consistent view of the Supreme Court that Article 137, of the

Limitation Act is applicable to proceedings before a Civil Court. In fact, in *Sha Mulchand and Company v. Jawahar Mills Limited*²², while analyzing Article 181 of the Limitation Act, 1908, the erstwhile provision corresponding to Article 137 of the Limitation Act the Supreme Court held that Article 181 of the Limitation Act, 1908 governs only applications under the Code of Civil Procedure 1908 ('CPC'). It was observed therein as follows: -

"15. Learned advocate, however, strongly relies on Article 181 of the Limitation Act. That article has, in a long series of decisions of most, if not all, of the High Courts, been held to govern only applications under the Code of Civil Procedure. It may be that there may be divergence of opinion even within the same High Court but the preponderating view undoubtedly is that the article applies only to applications under the Code." (emphasis supplied)

- 5.4.4 After the Limitation Act came into force, the Supreme Court has held that though Article 137 of the Limitation Act may not only be confined to be applicable to proceedings which are governed by the CPC, the provision must be applicable to proceedings before a 'civil court'. In *Kerala State Electricity Board v. T.P. Kunhaliumma*²³, the Supreme Court held that: -

"19. The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the CPC. In the 1908 Limitation Act there was no division between applications in specified cases and other application as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to the applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the court and he had sufficient cause for not preferring the appeal or making the application during such period." (emphasis supplied)

The same was re-affirmed by the Hon'ble Supreme Court in *Asia Resorts Ltd. v. Usha Breco Limited*²⁴:-

"There is not much controversy that the residuary article 137 of the Limitation Act applies so far as the period of limitation is concerned for an application under Section 20 of the Arbitration Act, 1940. The residuary article 181 of the Limitation Act, 1908 was replaced by Article 137 in the Limitation Act, 1963. Earlier, Article 181 was applicable only in respect of application to be filed under the Civil Procedure Code. This Article was replaced by Article 137 in the Limitation Act, 1963 in a modified form. By insertion of Article 137, it cast a wider net so as to include any application for which no period of limitation was provided elsewhere in that division. The third division of the Limitation Act, 1963 deals with various applications to be filed under various special statutes. The definitions of applicant and application are also inserted in the Limitation Act, 1963.

²² *Sha Mulchand and Company v. Jawahar Mills Limited*, AIR1953 SC 98.

²³ *Kerala State Electricity Board v. T.P. Kunhaliumma*, AIR 1977 SC 282.

²⁴ *Asia Resorts Ltd. v. Usha Breco Limited*, AIR 2002 SC 55.

Therefore, it is clear that the intention of the legislature was to provide a residuary article prescribing period of limitation for filing petitions and applications under the various special laws. This Court in Kerala State Electricity Board vs. T.P. Kunhaliumma AIR 1997 SC 282 held that Article 137 would apply to any petition or application filed under any Act to a civil court and it cannot be confined to applications contemplated by or under the Code of Civil Procedure...” (emphasis supplied)

- 5.4.5 From the above observations of the Hon’ble Supreme Court, it may be concluded that Article 137 of the Limitation Act is applicable only to proceedings before civil courts and not to proceedings before a quasi-judicial body which is not a ‘court’. In this context, it may be relevant to *examine whether the NCLT, while discharging its functions under the Code, can be said to be ‘court’.*
- 5.4.6 In *MSD Chandrasekar Raja v. M/s. Jayabharath Textiles Pvt. Ltd.*²⁵, the Madras High Court considered whether the Company Law Board (‘CLB’), which was the erstwhile adjudicatory body *in seisin* of certain matters under the Companies Act, 1956 (“CA 56”) and was subsequently replaced by the NCLT, was a ‘court’ or not. In that case, the Madras High Court laid down certain tests to determine whether a tribunal or a quasi-judicial body is a ‘court’. The relevant portion of the said judgment is quoted hereinbelow:-

“54. If we are lucky enough not to get lost in the quicksand of these judicial precedents, it is possible to cull out the following tests, to find out if a Tribunal or a quasi judicial body, is a Court or not:-

- (i) Whether it is created by a special law, to adjudicate certain disputes carved out for adjudication under such special law itself;*
- (ii) Whether it is to be manned exclusively by Judges or by other persons either individually or sitting along with a judicial member;*
- (iii) Whether it is empowered to regulate its own procedure, including the power to apply some provisions of the Code of Civil Procedure, but without being restricted by the strict rules of the Evidence Act.*

55. While applying the above tests, which we could call as positive tests, the Court is also obliged to apply the negative tests formulated by Sankey L.C., in Shell Co. of Australia. They are: that a Tribunal is not necessarily a Court in the strict sense: (i) merely because it gives a final decision; (ii) or because it hears witnesses on oath; (iii) or because two or more contending parties appear before it between whom it has to decide; (iv) or because it gives decision which affects the rights of subjects; (v) or because there is an appeal to a Court.

56. If the aforementioned 3 positive tests and 5 negative tests are applied to the Company Law Board, it would be clear-

- (i) that it was created by a special law viz., the Companies Act, 1956 to adjudicate only certain disputes that are earmarked by the Act itself;*
- (ii) that it is not to be manned exclusively by Judges, but predominantly manned by non-judicial members, either technical or otherwise; and*
- (iii) that the Company Law Board is vested with the power under Section 10-E(6) to regulate its own procedure.*

57. Though the procedure to be followed by the Company Law Board is

²⁵ *MSD Chandrasekar Raja v. M/s. Jayabharath Textiles Pvt. Ltd.*, [2013] 181 CompCas 472 (Mad).

also well laid out in the Company Law Board Regulations 1991, the Board is vested with the power under Regulation 48 even to dispense with the requirement of any of the Regulations. This is a power that is not available even to a Civil Court. Therefore, merely because the Company Law Board is empowered to give a final decision and merely because it can hear witnesses and give a judgment that could affect the rights of parties and merely because its orders are appealable to this Court, it cannot be contended that the Company Law Board is a Court. Therefore, I hold that the Company Law Board is not a Court either within the meaning of the expression "Court" appearing in the Companies Act, 1956 or within the meaning of the expression appearing in the Code of Civil Procedure." (emphasis supplied)

- 5.4.7 Applying the aforesaid tests laid down by the Hon'ble Madras High Court, it may be difficult to maintain that the NCLT, discharging functions of the 'Adjudicating Authority' under the Code, is a 'civil court' and not a quasi-judicial body. The NCLT is constituted by a special law viz. the CA 13 to only adjudicate certain disputes as provided in the CA 13 or as specified in the Code. It is not manned exclusively by judges but also by technical members along with judicial members. The provisions of the CPC are not made applicable to the NCLT by either the CA 13 or by the Code, and it regulates its own procedure. Therefore, following the aforesaid principles laid down by the Hon'ble Madras High Court, it may be argued that the NCLT is a quasi-judicial body and not a 'court'. In fact, in the *MSD Chandrasekar Raja v. M/s. Jayabharath Textiles Pvt. Ltd.*²⁶, after noting the non-applicability of provision of CPC to NCLT, the Court had observed as follows:

26. The express provision contained in Section 10-FZA(1) specifically making the National Company Law Tribunal and the Appellate Tribunal not bound by the procedure laid down in the Code of Civil Procedure, is not to be found in Section 10-E. Though Section 10-FZA(2) contains provisions somewhat similar to those contained in Section 10-E(4-C), sub-section (1) of Section 10-FZA make things very clear in so far as the application of the provisions of the Code to the proceedings before the National Company Law Tribunal and the Appellate Tribunal are concerned. Therefore, if the National Company Law Tribunal and the Appellate Tribunal had come into existence, the first question that has arisen for consideration, would not have arisen at all.

Considering Section 10-FZA of the erstwhile CA 56 has been retained even in CA 13 in the form of Section 424, it is difficult to argue that NCLTs can be considered as 'courts' for the purpose of Article 137 to be applicable, even where the Limitation Act is presumed to be applicable.

- 5.4.8 In any case, it is doubtful as to whether the functions discharged by the NCLT under Section 7, 9 or 10 of the Code can be considered as *judicial functions*, in spite of the fact that, NCLAT had, in the case of *J.K. Jute Mills v. Surendra Trading Company*²⁷, noted that:

"...role of Adjudicatory Authority is judicial in nature particularly when it decides as to whether the 'Insolvency Resolution Process' to be initiated by admitting of (sic) the application or to reject the application." (emphasis supplied)

This is because, for the function to become judicial, it is not only relevant to apply

²⁶ *MSD Chandrasekar Raja v. M/s. Jayabharath Textiles Pvt. Ltd.*, [2013] 181 CompCas 472 (Mad).

²⁷ *J.K. Jute Mills v. Surendra Trading Company*, (Company Appeal (AT) No. 09 of 2017), order dated May 1, 2017.

the mind, but the sine qua non would be the existence of a *lis*. The issue was elaborated in detail by the Supreme Court in *Union of India v. Namit Sharma*²⁸, where the following was noted:

“21. In the judgment under review, this Court after examining the provisions of the Act, however, has held that there is a lis to be decided by the Information Commission inasmuch as the request of a party seeking information is to be allowed or to be disallowed and hence requires a judicial mind. But we find that the lis that the Information Commission has to decide was only with regard to the information in possession of a public authority and the Information Commission was required to decide whether the information could be given to the person asking for it or should be withheld in public interest or any other interest protected by the provisions of the Act. The Information Commission, therefore, while deciding this lis does not really perform a judicial function, but performs an administrative function in accordance with the provisions of the Act. As has been held by Lord Greene, M.R. in B. Johnson & Co. (Builders), Ltd. v. Minister of Health (supra):

“Lis, of course, implies the conception of an issue joined between two parties. The decision of a lis, in the ordinary use of legal language, is the decision of that issue. What is described here as a lis – the raising of the objections to the order, the consideration of the matters so raised and the representations of the local authority and the objectors – is merely a stage in the process of arriving at an administrative decision. It is a stage which the courts have always said requires a certain method of approach and method of conduct, but it is not a lis inter partes, and for the simple reason that the local authority and the objectors are not parties to anything that resembles litigation.” (emphasis supplied)

- 5.4.9 In this context, it may be useful to examine whether the NCLT, while deciding the *lis* between the parties in an application preferred by a financial creditor or operational creditor or corporate applicant under Sections 7, 9 or 10 of the Code respectively, performs a judicial function or a quasi-judicial function. From an examination of such provisions of the Code it is seen that there are specified and exhaustive conditions which guide the NCLT in admission or rejection of such an application. The NCLT is required to ascertain whether there is a ‘debt’ under Section 3(11)²⁹ of the Code, whether there has been a ‘default’ with regard to such debt by the corporate debtor in terms of Section 3(12)³⁰ of the Code and whether, in case of an application by an operational creditor, there exists a prior dispute, such as suit or arbitration, with regard to such default. If such conditions as provided under Sections 7, 9 and 10 of the Code are met, the NCLT is required to admit the application preferred by the financial creditor or operational creditor or corporate applicant respectively. The nature of functions performed by NCLT is more akin to quasi-judicial function, especially in view of the following principle summarized by Supreme Court in *Indian National Congress (I) v. Institute of Social Welfare*³¹, in the context of determination of whether a statutory authority would be discharging the role of quasi-judicial function:

²⁸ *Union of India v. Namit Sharma*, AIR 2014 SC 122.

²⁹ ‘Debt’ is defined at Section 3(11) of the Code as follows:-

“debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;”

³⁰ ‘Default’ is defined at Section 3(12) of the Code as follows:-

“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;”

³¹ *Indian National Congress (I) v. Institute of Social Welfare* [Civil Appeal No. 3320-21 of 2001, decided on May 10, 2002 (SC)].

“Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and subject and (d) the statutory authority is required to act judicially under statute, the decision of the said authority is quasi-judicial.” (emphasis supplied)

Therefore, in this specific context, it may be argued that the NCLT performs a quasi-judicial function when deciding the *lis* in an application preferred under Sections 7, 9 or 10 of the Code and not a judicial function.

5.4.10 In view of the aforesaid discussion, it may be argued that the NCLT, in its capacity of the adjudicating authority under the provisions of the Code, does not function as a ‘civil court.’ By necessary implication, it would appear that Article 137 of the Limitation Act cannot be said to be applicable to proceedings before the NCLT, performing its functions under the Code.

5.5 ***Irrespective of whether or not the Limitation Act is applicable to NCLTs discharging the role of adjudicating authority under the Code, whether time-barred debts can be revived due the introduction of the Code?***

5.5.1 From the aforementioned decisions of the NCLAT, it can be observed that the NCLAT has held that even if the provisions of the Limitation Act do apply to proceedings under the Code, the *period of limitation shall begin to run only from the date of promulgation of the Code, i.e. December 1, 2016*, on the ground that there was no forum to institute such proceedings under the Code for the creditors prior to the promulgation of the Code. As such an interpretation has the potential of opening the flood-gates of hitherto time-barred debts, what would be critical to analyse is, whether, introduction of a new legislation (such as the Code) could revive an old and time-barred claim, even when there is no express provision of making the laws of limitation applicable to the statutory authorities discharging their roles under such new enactment.

5.5.2 Effect of change in law on the status of time-barred debts was discussed in *Pearey LaL v. Solu Gir*³², by the Allahabad High Court, where it was concerned with whether the amendment to the Limitation Act, 1908, carried by the Amending Act XVI of 1942, would revive the cause of action for certain debts which were ordinarily time-barred. There, the Court held as follows: -

“10. It is clear, therefore, that in the absence of anything to the contrary, if a claim is within limitation according to the old Act on the date when the new Act comes into force and a proceeding is commenced after the coming into force of the new Act it is the new Act which would govern all decisions on the point of limitation. If, however, the right to sue or the right to apply had already been barred by the provisions of the Limitation Act then in force, then unless there was something in the latter Act which could be deemed to apply retrospectively to revive claims which had already become barred, the new Act could not be availed of ‘or the purpose of saving limitation...” (emphasis supplied)

5.5.3 In *Serman (India) Road Makers Private Limited v. State of Madhya Pradesh*³³, the High Court of Madhya Pradesh dealt with the question whether the creation of new forum under a statute, which does not expressly prescribe applicability of the provisions of the Limitation Act, would revive claims which were ordinarily time-barred

³² *Pearey LaL v. Solu Gir*, AIR 1946 All 58.

³³ *Serman (India) Road Makers Private Limited v. State of Madhya Pradesh*, 2005 (2) MPJR 83.

as per the provisions of the said statute. The High Court answered such question in the negative and held as follows: -

“On a perusal of sub-section (5), it is graphically clear that the Tribunal has to be satisfied of a reference is fit case for adjudication. If the claims are barred by time the question dealing with the said category of claims for the purpose of adjudication is an exercise in futility. The Tribunal, a statutory forum, was not established or brought into existence to give a new lease of life to already time-barred claims. The purpose of the Adhinyam was not to imbibe a life-spark to the dead claims and make them come alive like a phoenix. If the claims were barred by time under the Limitation Act, 1963 and the right to agitate those claims had been extinguished under the remedies which were in vogue before the Adhinyam came into force, the same cannot be allowed to revive. If the claims are ex-facie barred by time, they are not to be entertained.” (emphasis supplied)

- 5.5.4 Therefore, following the principles laid down in the aforesaid judgments, it may be argued that mere creation of a new forum or promulgation of a new statute, which expressly does not provide for applicability of the laws of limitation, will not by itself serve to exclude the applicability of the Limitation Act, and in effect result in revival of cause of action for ordinarily time-barred claims.
- 5.5.5 Further, it is well recognized by the courts in India that even in the context of insolvency proceedings, the cause of action must relate to debts which are ‘*due and payable*’, i.e. the same must be legally recoverable and not barred by any provision of law. The same would be more apparent from an examination of the following decisions.
- 5.5.6 In *M/s. Prowers International Private Limited v. Action Ispat and Power Private Limited* (supra), the Principal Bench of the NCLT analyzed which debts are ‘due and payable’ and concluded that a debt which has become time barred cannot be said to be such a debt. The relevant observation of the Principal Bench is quoted hereinbelow:-

“18. ‘Debt’ has been defined in the Insolvency and Bankruptcy Code, 2016 as a liability or obligation in respect of a claim which is due and includes a financial debt and operational debt. “Default” has been defined in the Code as non-payment of debt which has become due and payable (Emphasis given). A debt which is not recoverable for any valid reason ceases to be an amount due and payable. Default arises for non-payment of an amount which could be recovered in law. Default is the event on the occurrence of which, the insolvency proceedings may be initiated under the Code.

19. Claims which are time barred are not amount due and cannot be recovered under law. Creditors have no right to recover claims of such due that become time barred. The debt in question has become more than three years old and was, therefore, not enforceable from respondent company in view of the law of limitation. Consequently in the present case, as discussed, there has been no default for initiation of insolvency proceedings.” (emphasis supplied)

- 5.5.7 In *Sree Prakash Mohta v. Prem Ratan Kothari*³⁴, the Calcutta High Court held as follows:-

“8. a. The first question is whether a debt which is barred by limitation at the

³⁴ *Sree Prakash Mohta v. Prem Ratan Kothari*, MANU/WB/0371/1987.

time of the presentation of the insolvency petition can be subject matter of insolvency petition. In our petition it cannot be so. The language of the Act makes it so clear. Section 12 makes it clear that there are three conditions which must be satisfied before a creditor shall be entitled to file an insolvency petition. Under Section 12(1) (a) the aggregate amount of debt "owing" by the debtor to the creditor must amount to five hundred rupees. Under Section 12(1) (b) the debt must be a liquidated sum "payable" either immediately or at some other future time. Under Section 12(1) (c) the act of insolvency relied upon must have occurred within three months before the presentation of the petition. Here the expression "the debt" or debt "owing" must mean a debt recoverable, i.e., due and payable. A debt which was barred at the time of presentation of the petition is no longer a debt recoverable, that is, owing or payable. In this context we fully agree with and respectively followed the observations made by the Bombay High Court in Modern Dekor case (ibid)." (emphasis supplied)

- 5.5.8 In *Interactive Media and Communication Solution Pvt. Ltd. v. Go Airlines Ltd.*³⁵, the Delhi High Court held as follows:

"4. What is stated in the said paragraphs is that no period of limitation has been prescribed under the Limitation Act for filing of a winding up petition. However, Section 433(e) stipulates that a winding up petition is maintainable when a company is unable to pay the debt which is due and payable. We have already interpreted Section 434(1)(a), which incorporates the deeming provision. The debt should be one which is legally recoverable and is not barred under the law of limitation..." (emphasis supplied)

- 5.5.9 In a similar vein, the Bombay High Court in *Redstone Realtors v. State of Maharashtra*³⁶ held as follows:-

"13. The Respondents ought to be aware that it is a basic fact that only an amount and due or payable, can be recovered in the above manner. In the case of State of Kerala and Others v/s V.R. Kalliyankutty and Another reported in AIR 1999 SC 1305: (1999) 3 SCC 657, the Hon'ble Court held as under: -

"8. Looking to the object of Section 71 we have to examine whether time-barred claims of the State Financial Corporation and the banks can be recovered under it. Is the object only speed of recovery or is it also enlargement of the right to recover? The respondent-institutions rely on the words "amount due" in Section 71 as encompassing time-barred claims also. Now, what is meant by the words "amounts due" used in Section 71 of the Kerala Revenue Recovery Act as also in the notifications issued under Section 71? Do these words refer to the amounts repayable under the terms of the loan agreements executed between the debtor and the creditor irrespective of whether the claim of the creditor has become time-barred or not? Or do these words refer only to those claims of the creditor which are legally recoverable? An amount "due" normally refers to an amount which the creditor has a right to recover. Wharton in Law Lexicon defines "due" as anything owing; that which one contracts to pay to another. In Black's Law Dictionary, 6th Edn., at p. 499 the following comment appears against the word "due": "The word 'due' always imports a fixed and settled obligation or liability; but with reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined

³⁵ *Interactive Media and Communication Solution Pvt. Ltd. v. Go Airlines Ltd.*, 199 (2013) DLT 267.

³⁶ *Redstone Realtors v. State of Maharashtra*, 2017 (2) BomCR 589.

in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at sometime in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly and in the absence of any qualifying expressions, the word 'due' is restricted to the first of these meanings, the second being expressed by the term 'overdue' and the third by the word 'payable'."

There is no reference in these definitions to a time-barred debt. In every case the exact meaning of the word "due" will depend upon the context in which that word appears." (emphasis supplied)

- 5.5.10 The discussion would not be complete without discussing the relatively recent decision of the Supreme Court in the case of *A. P. Power Coordination Committee v. Lanco Kondapalli Power Limited*³⁷, which dealt with the applicability of Limitation Act to the State Commission under Section 86(1)(f) of Electricity Act, 2003. Ancillary issue deliberated upon by the Court was whether time-barred claims could be raised before the State Commission.
- 5.5.11 Interestingly, the Supreme Court noted that Limitation Act is inapplicable to proceeding or action brought before the State Commission. What is more interesting was, non-applicability of the Limitation Act was not held to have any effect on reviving the claims which were time-barred. Relevant extracts of the observations are as follows:

"29. The only other weighty contention of Mr. Giri that there is nothing in the Electricity Act 2003 to create a right in a suitor before the Commission to seek claims which are barred by law of limitation merits a serious consideration..... In such a situation it falls for consideration whether the principle of law enunciated in **State of Kerala v. V.R. Kalliyankutty** (supra) and in the case of **New Delhi Municipal Committee v. Kalu Ram** (supra) is attracted so as to bar entertainment of claims which are legally not recoverable in a suit or other legal proceeding on account of bar created by the Limitation Act. On behalf of respondents those judgments were explained by pointing out that in the first case the peculiar words in the statute – "amount due" and in the second case "arrears of rent payable" fell for interpretation in the context of powers of concerned tribunal and on account of aforesaid particular words of the statute this Court held that the duty cast upon the authority to determine what is recoverable or payable implies a duty to determine such claims in accordance with law. In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Section 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86(1)f nor this adjudicatory power of the Commission has been enlarged to entertain even the time barred claims, there is no conflict between the provisions of the Electricity Act and Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation on account of provisions in Section 175 of the Electricity Act or even otherwise the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of

³⁷ *A. P. Power Coordination Committee v. Lanco Kondapalli Power Limited* [Civil Appeal No. 6036 of 2012, decided on October 16, 2015 (SC)]

limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike Labour laws and Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.

30. We have taken the aforesaid view to avoid injustice as well as possibility of discrimination. We have already extracted a part of paragraph 11 of the judgment in the case of **State of Kerala v. V.R. Kalliyankutty** (supra) wherein Court considered the matter also in the light of Article 14 of the Constitution. In that case the possibility of Article 14 being attracted against the statute was highlighted to justify a particular interpretation as already noted. It was also observed that it would be ironic if in the name of speedy recovery contemplated by the statute, a creditor is enabled to recover claims beyond the period of limitation. In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor - electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court.....” (emphasis supplied)

- 5.5.12 Applying the aforementioned principles, it may be argued that mere enactment of the Code or appointment of NCLT as adjudicating authority under the Code cannot suffice to pave the way for operational creditors or financial creditors to claim debts which have already become time-barred under the extant laws of limitation in India.

6. PARTING THOUGHTS

- 6.1 The decision of NCLAT in *Speculum Plast* is a significant one due to the potential far reaching ramifications that the decision entails in so far as time-barred debts are concerned. As has been noted by us, applicability of the Limitation Act to NCLTs discharging the functions of adjudicating authority under the Code, may be argued to have no bearing on revival of time-barred debts, where the Code itself does not create any new right in favour of such creditors.
- 6.2 In this backdrop, it would be interesting to wait and see how the Supreme Court interprets the various issues that have arisen with regard to applicability of the Limitation Act to the proceedings before NCLTs and NCLAT under the Code in so far as admission of time-barred claims are concerned. Till then, the issue may continue to trouble all the stakeholders alike.

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