

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Kotak Mahindra Bank Limited Vs. Kew Precision Parts Private Limited & Ors.

Brief Facts

The Corporate Debtor used to carry on business of manufacture of tempo and tractor components. In or about 2012-2013, the Corporate Debtor decided to expand its business and entered into negotiations with bankers for finance for the proposed expansion. The Appellant-Financial Creditor had, since November 2012 sanctioned loan facilities to the Corporate Debtor from time to time. The Appellant Financial Creditor sanctioned credit/loan facilities aggregating Rs2036.00 lakh to the Corporate Debtor.

According to the Appellant Financial Creditor, the Corporate Debtor defaulted in making repayment of its dues to the Financial Creditor. The Appellant Financial Creditor, therefore, declared the Account of the Corporate Debtor as non-performing asset (NPA) and the Appellant-Financial Creditor issued statutory notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.

Thereafter, the Corporate Debtor admitted its liability to the Appellant Financial Creditor and offered a one-time settlement and the Corporate Debtor offered to settle the outstanding dues at a lump sum amount of Rs.24,55,00,000. The offer was accepted by the Appellant Financial Creditor.

The Corporate Debtor defaulted in payment of the said sum to the appellant Financial Creditor as agreed.

The Creditor's application was admitted by the NCLT. The Adjudicating Authority admitted the petition and imposed a moratorium in terms of Section 14 of the IBC. The suspended Directors of the Corporate Debtor filed the appeal contending that the petition filed by the Appellant Financial Creditor under Section 7 of the IBC was patently barred by limitation.

Through the impugned judgment of the NCLAT, the Court noted that it was clear that any agreement to pay a time barred debt, would be enforceable in law, within three years from the due date of payment, in terms of such agreement. It appears that Section 25(3) of the Indian Contract Act was not brought to the notice of the NCLAT. The NCLAT also did not consider the aforesaid Section, the Court noted.

There is no specific period of limitation prescribed in the Limitation Act, 1963, for an application under the IBC, before the Adjudicating Authority (NCLT). 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, the Court stated.

Decision

There can be no dispute with the proposition that the period of limitation for making an application under Section 7 or 9 of the IBC is three years from the date of accrual of the right to sue, that is, the date of default the Court remarked. It was further observed by the Top Court The Appellate Tribunal (NCLAT) also did not notice the terms of settlement stated to have been executed on December 20, 2018, possibly because the attention of the NCLAT was not drawn to any terms of the settlement. The Appellate Tribunal (NCLAT) did not, therefore, have the occasion to consider whether Section 25(3) of the Contract Act would be attracted.

Hence, the Bench opined that the NCLAT erred in closing the CIRP proceedings without giving the Appellant-Financial Creditor the opportunity to explain if there was sufficient cause for the delay in approaching the NCLT. An appeal being the continuation of original proceedings, the provision of Section 7(5) (b) of the IBC, of notifying the Financial Creditor before rejection of a claim, would be attracted. Thus, the appeal was allowed and the impugned judgment and order of the NCLAT was set aside to the extent that the CIRP proceedings were closed.

Link of the Order

<https://ibbi.gov.in/uploads/order/2bd7908ae442cd1dc967f4693c74ed68.pdf>

