

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



M/S Tech Sharp Engineers Pvt. Ltd. Vs. Sanghvi Movers Limited

Brief Facts

In the present case, the respondent lent the appellant a crane, and the respondent/operational creditor issued invoices against the appellant for a total of Rs. 38,84,709/-. After then, the appellant received notices from the respondent regarding unpaid expenses and a statutory notice under Sections 433(e), 434, and 439 of the Companies Act of 1956 regarding the winding up of the Appellant-Company, which was recognized by the appellant. Additionally, the respondent filed a winding petition with the Madras High Court, which then sent the petition back to the respondent for correction of any errors. After the IBC went into effect on December 1st, 2016, the Respondent sent the Appellant a demand notice under Section 8(1) for payment of its debts. The Respondent also filed a petition under Section 9 of the IBC with the Corporate Insolvency Resolution Process (CIRP) in the NCLT, but the Adjudicating Authority (NCLT) rejected the application because it was time-barred, citing this Court's decision in B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates. The adjudicating authority's decision was then challenged before the NCLAT, and the NCLAT overturned the ruling.

Decision

The apex court took into account the decisions in the cases *B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates*, *Radha Export (India) Private Ltd. v. K.P. Jayaram and Anr*, *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Ltd. and Anr*, *Ramlal, Motilal & Chhotelal v. Rewa Coalfields Ltd.*, and depending on the specifics of each instance, it will be possible to determine if the justification provided for the delay qualifies as “sufficient cause.” The justification provided by the appellant/applicant for the delay in commencing action cannot be accepted or rejected using a rigid formula. Furthermore, it is the responsibility of the appellant to establish a valid reason for the application's delay when a request for review of a judgment rejecting it on grounds of limitation is made. When calculating the period of limitation, it is irrelevant whether the IBC went into effect on a certain date or when the first application may have been submitted in accordance with it. It would be absurd to hold that, even though the right to sue may have accrued decades ago, the CIRP may be started by applying Section 7 or Section 9 of the IBC, within three years of the date on which an application under those provisions of the IBC could have first been made before the NCLT.

According to the court, the deadline for starting winding-up proceedings in the Madras High Court expired on the day the petition for winding up was filed. The start of proceedings before the Madras High Court would not prevent the NCLT from starting the CIRP procedures in accordance with Section 7 of the IBC. Limitations may not preclude a claim. The remedy for the claim's realization is what the statute of limitations bars. The NCLAT's challenged order could not stand up in court.

Therefore, the Respondent was allowed to pursue any other remedy for which the Respondent was eligible in accordance with the law.

Link of the Order

<https://ibbi.gov.in/uploads/order/2fd174e3c1fd5c187b1fc19997861c76.pdf>



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