SHOULD THE INSOLVENCY AND BANKRUPTCY CODE BE SHADOWED BY LIMITATION

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Aims: The aim of this paper is to critically analyse the applicability of the Limitation Act' 1963 on the Insolvency and Bankruptcy Code, 2016.

Objectives: The objective of this paper is to find out what will be the ramifications of excluding the Insolvency and Bankruptcy Code from the ambit of the Limitation Act and whether such complete exclusion is jurisprudentially right based on the fundamental principles of law.

Scope and Limitations: The scope of this paper is restricted to analysing the scenario in India, and specially concentrates on the applicability of the doctrine of Limitation and Prescription on the Insolvency and Bankruptcy Code and not any other enactments.

The limitation of this paper is that it lacks in empirical data, and relies on secondary sources in order to look at the applicability of Limitation Act to the Insolvency and Bankruptcy Code.

Mode of citation: The OSCOLA, 4th Edition mode of citation has been used uniformly.

Sources: The paper has used primary sources like case laws and legislative enactments, and secondary sources like books, websites, and articles.

Style of Writing: The style of writing is both descriptive and analytical.

ABSTRACT

The research paper will mainly focus on the application of the Limitation Act' 1963 on the Insolvency and Bankruptcy Code'2016. It will deal with the types of Insolvency laws of India. The basic features of corporate insolvency along with the recommendations of the Balakrishna committee has been dealt in the paper.

The paper further goes on to describe what the main controversy behind the applicability of the Limitation Act and how it originated. The jurisprudence of the Limitation Act and whether all statutes are governed by the Limitation Act has also looked into. The reasons why some statutes are not covered by the Limitation Act has also been explained. Case analysis of the National Company Law Appellate Tribunal's recent judgement in the matter of M/s Speculum Plast Pvt. Ltd. v. PTC Techno Pvt. Ltd. has been done. Lastly, the paper deals with whether the National Company Law Appellate Tribunal was right in exempting the Insolvency and Bankruptcy Code' 2016 from the shackles of the Limitation Act' 1963. By doing this, whether any of the fundamental principles of jurisprudence and public policy has been violated? Finally, recommendations have been made on whether or not the Hon'ble Supreme Court should reverse the judgement, and if not what alternatives are available.

INTRODUCTION

Insolvency laws of India can be categorized into 2 distinct heads:

- Personal Insolvency covering individuals and partnership firms were governed by the Provisional Insolvency Act, 1920.[1] And the[2], and
- Corporate Insolvency dealing with winding up of Presidency Towns Insolvency Act, 1908 companies used to be covered by the Companies Act, 1956[3].

The basic principles of corporate insolvency are:

- To help the debtor company to reinstate itself into a profitable state, if possible.
- To ensure that the creditors get the maximum return possible, in case the company cannot be saved.
- To ensure that a fair and equitable system is adopted through a redistribution of rights so that there is just distribution of assets among the creditors based on the ranking of their claims.
- To find out the causes of failure and to reprimand those guilty of mismanagement.
- To place the assets of the company under external control to prevent their unauthorized transfer.
- To avoid fraudulent transactions, dissolution and winding up.[4]

According to the data available till 2015, it took almost 4.3 years on an average for an insolvency resolution to end. If compared with other countries like United Kingdom (1 year) and United States of America (1.5 years), it can be noticed that the time required is significantly higher in India which bears evidence to the cumbersome and archaic insolvency procedure pursued by the Indian courts. A reading of the previous legislations dealing with the bankruptcy will convey that these delays were mostly caused due to the time taken to resolve cases in courts, the confusion that prevailed due to ambiguous provisions relating to the bankruptcy framework.[5]

The committee headed by Justice V.B. Balakrishna Eradi, which had been set up by the Government of India, to revamp the existing insolvency laws and to acclimate them to the present

[1] Provisional Insolvency Act 1920
[2] Presidency Towns Insolvency Act 1908
[3] Companies Act, 1956
[4] Rohan Bagai, 'Corporate Insolvency Laws in India' (Legal Services India) http://www.legalservicesindia.com/articles/corin.htm accessed 30 November 2017

[5] 'The Insolvency and Bankruptcy Code: All you need to know' (the PRS Blog) http://www.prsindia.org/theprsblog/?p=3642 accessed 30 November 2017

international practices, submitted its report in 2000. Following were the recommendations as proposed by the committee[6]:

- National Company Law Tribunal needs to be vested with the jurisdiction, power, and authority related to winding up of companies along with the functions and power regarding the rehabilitation and revival of sick industrial companies.
- The power of the High Courts to hear insolvency proceedings needs to be shifted to the tribunals. The pending winding-up proceedings also needed to be shifted to the tribunals.
- The international trends in corporate bankruptcy laws should be incorporated in the Indian laws.
- To perform an in-depth assessment of the office of Official Liquidators, to find out the inadequacy and incompetency in manpower and latest office equipment and technologies.
- Setting up of a liquidation committee comprising of the creditors of the company to help the Liquidator. Guidance in this regard should be taken from Section 141 of the Insolvency Act, 1986.
- Recommended repealing of SICA and to integrate the ameliorative, revival and reconstructionist procedures under it in a suitably amended form according to the structure of the 1956 Act.
- Part VII of the Companies Act' 1956 should be amended to include the UNCITRAL Model Law as approved by the United Nations. The Model law itself may be inserted as a schedule to the Companies Act' 1956 to be applied to all cases of Cross-Border insolvency.
- In order to bring the Companies Act' 1956 in line with international practices, the necessary principles categorized under the heading "Legal Framework", "Orderly and Effective Insolvency Procedures - Key issues" need to be adopted.

According to the Preamble to the Code[7], *"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."*

[6] 'Report of the High Level Committee on Law Relating to Insolvency and Winding up of Companies 2000' http://reports.mca.gov.in/Reports/24-Eradi%20committee%20report%20of%20the%20high%20level%20committee%20on%20law%20relating%20to%20insolvency%20&%20winding%20up%20of%20Companies,%202000.pdf accessed 30 November 2017

[7] Insolvency and Bankruptcy Code 2016, Preamble.

The Preamble clearly states that the legislative intent to incorporate this code is

Firstly, to remove the ambiguity that had been prevailing in the previous legislations;

Secondly, to prevent unnecessary delays and to ensure fast dismissal of matters, i.e., within 180 days;

Thirdly, to prevent loss to corporate creditors due to depreciation of assets of the insolvent company;

Fourthly, to establish a balance among the interests of the various stakeholders; and

Lastly, to create a common forum to deal with such matters.[8]

[8] V.S. Wahi, *Treatise on Insolvency and Bankruptcy Code* (Page 18,1st Edition, Bharat Law House Pvt. Ltd. 2017)

IS IBC GUIDED BY THE LIMITATION ACT?

The schedule to the Limitation Act[9] states that money claims cannot be raised beyond a period of 3 years from the date on which cause of action arises.

The issue whether applications to initiate corporate insolvency under sections 7, 8, 9 and 10 of the IBC is barred limitation was considered by National Company Law Appellate Tribunal (NCLAT) in the matter of **Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructure Trustee Ltd.** The Hon'ble NCLAT held that that provisions of the IBC cannot be shackled by the Limitation Act. It observed that:

"*There is nothing on the record that Limitation Act, 2013 is applicable to I&B Code. Learned Counsel for the appellant also failed to lay 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 relates to the initiation of Corporate Insolvency Resolution Process. If there is a debt which includes interest and there is default of debt and having a continuous course of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted.*"

However, when the parties appealed before the Hon'ble Supreme Court, it dismissed the appeal and opted not to give its view regarding the applicability of the Limitation Act.

Subsequently, this issue once again popped up before the NCLAT in the matter of Black Pearl Hotels Pvt. Ltd. v. Planet M Retail Ltd. In this matter, the Hon'ble NCLT bench of Mumbai had rejected to admit an application by an operational creditor to initiate insolvency proceedings on the ground that the claim is barred by limitation.

The NCLAT observed that even if it is considered that the Limitation Act does apply to the IBC, then also the period of limitation will start from 1st December 2016, i.e., from the date the rights conferred by the enactment accrued.

"Insolvency and Bankruptcy Code, 2016 has come into force with effect from 1st December 2016. Therefore, the right to apply under I&B Code accrues only on or after 1st December 2016 and not before the said date (1st December 2016). As the right to apply under section 9 of 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."

The Hon'ble NCLAT has thereby bestowed a second opportunity on those creditors who had lost all hopes of recovering their debts due to vaporization of their rights over time. This might lead

[9] Limitation Act 1963, Schedule

to a filing of numerous insolvency applications, which otherwise had been barred by limitation, thereby increasing the caseload of the tribunals.[10]

[10] Swaroop George, 'Limitation of claims under the IBC: Final opportunity for creditors?' (Bar and Bench) https://barandbench.com/limitation-claims-ibc-creditors/ accessed on 30 November 2017

JURISPRUDENCE BEHIND THE LIMITATION ACT

The Law Commission of India in its 3rd report has explained the reason behind the implementation of the Act in the following words: *"The utility of a statute of limitation has never been a matter of serious doubt or dispute. It has been said that the statute of limitation is a statute of repose, peace, and justice. It is one of repose because it extinguishes stale demands and quiets title; in the words of John Voet, controversies are restricted to a fixed period of time lest they should become immortal while men are mortal. It secures peace as it ensures the security of rights, and it secures justice, as by lapse of time evidence in support of rights may have been destroyed. There can thus be no doubt that it rests on sound policy. The operation of the law of prescription has been explained by Lord Plunket in a striking metaphor. He stated that Time holds in one hand a scythe and in the other, an hour-glass. The scythe mows down the evidence of our rights, while the hour-glass measures the period which renders that evidence superfluous. Commenting on this, a learned author observes that the metaphor could have been contemplated by adding, so far as India is concerned, that the frame-work of the hour-glass would certainly decay, the glass be broken, and the sand escape."*[11]

The Doctrine of Limitation and Prescription was thoroughly described by the Hon'ble NCLAT recently in the Matter concerning **M/s. Speculum Plast Pvt. Ltd. v. PTC Techno Pvt. Ltd.**[12] The first principle that needs to be considered in this matter is "a right not exercised for a long time is non-existent." According to Salmond[13], to prevent the error that accrues with time which might lead to wrong presumptions of the facts of the matter, it is necessary that the matter is disposed of as quickly as possible or the rights of the parties cannot be dealt with effectively. The party who wants to challenge this presumption must do so within a reasonable time, otherwise hi right shall be forfeited because of his neglect (*vigilantibus non dormientibus jura subvenient).*

The tribunal went on to further state that rights enjoyed by a person regarding his property or debt or any other right, in general, cannot stay uncertain and doubtful for a long period of time. They need to be settled for the convenience of both the parties. In the case of **Rajinder Singh v. Santa Singh**,[14] the Hon'ble Supreme Court had observed that the Limitation Act ensures that a right acquired by a person over time due to long enjoyment is not disturbed or tampered with.

In the matter of **N. Balakrishnan v. M.A. Krishnamurthy[15],** the Hon'ble Supreme Court had observed that by implementing the limitation act the rights of parties are thereby not destroyed

[11] Law Commission, *Limitation Act, 1908 (*Third Report, 1956) para 1
[12] *M/s. Speculum Plast Pvt. Ltd. v. PTC Techno Pvt. Ltd.* [2017], 2017 SCC OnLine NCLAT 319
[13] Salmond, *Jurisprudence* (Pages 438,439, 12th Edition)
[14] *Rajinder Singh v. Santa Singh* [1973], AIR 1973 SC 2537
[15] *N. Balakrishnan v. M.A. Krishnamurthy* [1998], AIR 1998 SC 3222

but it puts a check on the dilatory tactics resorted to by the parties. Thereby to uphold public interest the Limitation Act fixes a life span for the legal injury suffered. Since the time of the court is precious every legal remedy should be available for a fixed period of time.

ARE ALL STATUTES GOVERNED BY THE LIMITATION ACT?

Section 29 of the Limitation Act[16] inter alia states that:

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

Sub-section 2 states that, if any special or local enactment prescribes a different period of limitation than that mentioned in the schedule for any suit, appeal or application, then section 3 needs to be applied as per the period prescribed by the special or local enactment. And sections 4 to 24 (inclusive) will apply to that extent unless expressly excluded by the said special or local enactment.

By a bare reading of the provision, it can be inferred that every legislative enactment, be it central or state legislation, is guided by the Limitation Act unless such enactment expressly excludes itself from the clutches of the Limitation Act. However, the Supreme Court has time and again defined the term "expressly excluded" and has broadened its scope over time.

In the matter of **Hukumdev Narain Yadav vs. Lalit Narain Mishra[17],** the Hon'ble Supreme Court observed that whether or not the sections of the Limitation Act are applicable to a particular legislative enactment should not be decided by a mere reading of the words of the relevant sections of the Limitation Act; but the said enactment needs to be viewed holistically to come to a conclusion whether it attracts one or more of the sections of the Limitation Act. Even if there is no explicit mentioning of the exclusion of the Limitation Act in the said enactment, as mandated by section 29(2), the said enactment on being a complete code in itself would be freed from the shackles of the Limitation Act.

Recently in the matter of **Patel Brothers vs. State of Assam and Ors.[18],** the Hon'ble Supreme Court further clarified its previous stance by stating in paragraph 35 that if the legislative intent behind an enactment is to provide a complete code which shall govern the matters provided in it in all aspects, then it cannot be considered that such matters also come under the ambit of the Limitation Act. If it can be inferred from an analysis of the relevant provisions of the impugned

[16] Limitation Act 1963, Section 29
[17] *Hukumdev Narain Yadav vs. Lalit Narain Mishra* [1973], AIR1974SC480
[18] *Patel Brothers vs. State of Assam and Ors.* [2017], AIR2017SC383

enactment that the remedies provided therein directly or indirectly solve the problem of limitation, then the remedies provided in the Limitation Act cannot be substituted for these provisions. Even if no explicit exclusion of the applicability of Sections 4 to 24 of the Limitation Act has been made in the special enactment, it is up to the judiciary to determine how and to what extent the nature of the subject-matter and scheme of the special law exclude their operation. Their Lordships further observed that whether or not the Limitation Act has been excluded needs to be decided by a careful analysis of the provisions of the impugned enactment and not by analyzing the provisions of the Limitation Act.

The Supreme Court has thereby broadened the scope of the term "expressly excluded" and has included an implicit exclusion of the Limitation Act which is evident from a reading of the provisions of the special or local enactment.

IS IBC A COMPLETE CODE?

The Hon'ble Supreme Court in the recent case of **M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr.[19],** after analyzing various provisions of the IBC and the legislative intent behind the incorporation of the Code along with the factors that led to its formulation unanimously held that "There can be no doubt, therefore, that the Code is a Parliamentary law that is an exhaustive code on the subject matter of insolvency in relation to corporate entities, and is made under Entry 9, List III in the 7th Schedule which reads as under: "9. Bankruptcy and insolvency"."

Therefore, by this decision of the apex court, it is settled that the IBC is a complete code in itself and the remedies provided by it holistically covers all the matters under it. Thus IBC cannot be guided by other legislative enactments.

[19] *M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr.* [2017], AIR 2017 SC 4084

CASE ANALYSIS:

M/S. SPECULUM PLAST PVT. LTD. V. PTC TECHNO PVT. LTD.[20], WITH PARAG GUPTA & ASSOCIATES V. B.K. EDUCATIONAL SERVICES PVT. LTD., WITH ASHLAY INFRASTRUCTURE PVT. LTD. V. LDS ENGINEERS PVT. LTD.

Matter in Issue: In all the above appeals the Hon'ble NCLAT had to decide "Whether Limitation Act, 1963 is applicable for triggering 'Corporate Insolvency Resolution Process' under Insolvency and Bankruptcy Code, 2016?"

Decision: The Hon'ble NCLAT held that an application to trigger a Corporate Insolvency Resolution Process cannot be barred by the provisions of the Limitation Act. However, the court also held that while admitting an application under section 7 and section 9 the Doctrine of Limitation and Prescription needs to be kept in mind and any deliberate delay needs to be penalized.

Reasoning: The Hon'ble tribunal first referred to the case of **M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr.,** where the Supreme Court had stated that IBC is a complete code in itself. Then the court referred to the case of **Hukumdev Narain Yadav vs. Lalit Narain Mishra,** where the Hon'ble Supreme Court had held that even an implicit exclusion evident from the provisions of the enactment would be enough to free it from the ambit of the Limitation Act.

Their lordships then referred to previous insolvency codes to find out the legislative intent behind the IBC.

Section 101 of the 'Presidency-Towns Insolvency Act, 1909' states that an appeal from any act or decision of the official assignee or from an order made by an officer of the Court empowered under section 6, should be made within 20 days from the date of such act, decision or order.

Section 78 of the 'Provincial Insolvency Act, 1920' states that all appeals and applications under this act shall be subjected to the limitation prescribed under sections 5 and 12 of the Indian Limitation Act' 1908.

Section 243 of IBC repeals The Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. However, any pending proceedings under the previous acts shall continue to be heard and disposed of under the provisions of those Acts. Even though these acts have

[20] *M/s. Speculum Plast Pvt. Ltd. v. PTC Techno Pvt. Ltd.* [2017], 2017 SCC OnLine NCLAT 319

repealed, no separate provision has been included in the IBC clearly stating the period of limitation for initiating corporate insolvency resolution procedure. It is here to be noted that in section 101of the 'Presidency-Towns Insolvency Act, 1909' or sub-section (1) of Section 78 of the 'Provincial Insolvency Act, 1920', clearly mentioned the period of limitation after which no claim could be raised.

However, the tribunal mentioned that section 60(2) of the code specifically explains how to compute period of limitation in case order of moratorium has been passed, which was previously governed by section 101A of the 'Presidency-Towns Insolvency Act, 1909' and section 78(2) of the 'Provincial Insolvency Act, 1920'. Therefore the tribunal reasoned that it was a deliberate omission on the part of the legislature not to incorporate a provision for limitation in the IBC, which conveys that its intent was to keep the IBC outside the ambit of the sections 4 to 24 of the Limitation Act.

The tribunal also brought to the notice the periods of limitation that have been mentioned under different sections of the IBC. Sections 7(4) and 10(4) has granted 14 days to the adjudicating authority to ascertain the facts and admit or reject the application. A similar provision has been mentioned under section 9(1), which states that an application under section 9 needs to be submitted within 10 days from the date of delivery of the invoice or notice demanding payment under section 8(1). Section 9(5) prescribes a period of 14 days for the adjudicating authority to admit or reject an application. It also states that before rejecting an application if incomplete, the applicant needs to be given 7 days to rectify the defects. Section 12 of the code prescribes a total of 120 days for the completion of the 'Insolvency Resolution Process'. However, the power to extend the proceedings to not more than 90 have been vested with the tribunals. If the Resolution plan is either rejected or not received within this period, then liquidation proceedings under section 33 would be initiated. Section 61 prescribes 30 days for filing an appeal. However, the Appellate Tribunal has the power to grant a leeway of 15 days. An appeal to the Supreme Court needs to be filed within 45 days and the Hon'ble Supreme Court has been allowed to condone the delay but not exceeding 15 days.

Citing the above provisions, the Tribunal reasoned that time limit has been prescribed for specific matters under various provisions, shows that the remedy provided in the code is complete in itself. The tribunal further went on to state that section424 of the Companies Act has been amended and included in section 255 of the Code for principles of natural justice. However, no such steps had been taken by the legislature to incorporate section 433 of the Companies Act in the Code. Thereby the Hon'ble appellate tribunal concluded that ipso facto it won't apply to IBC.

The 'Recovery of Debts Due to Banks and Financial Institutions Act, 1993' has been amended in the manner specified in the Fifth Schedule and has been incorporated under section 249 of the Code. However, section 24 of the Act which relates to limitation has not been included, therefore won't be applicable to IBC.

The relevant provisions of the SARFAESI Act have been amended and have been incorporated in section 251 of the IBC. Since there has been no mention of section 36 of the Act, which describes the period of limitation, in the IBC, it does not apply to IBC.

Even if Limitation Act is made applicable to the IBC, then only applications under sections 7 and 9 will be barred by limitation. However, an application under section 10 cannot be rejected on similar grounds as because the applicant here is the corporate debtor, who cannot be said to have money claims against itself. Even then, if the Limitation Act is applied to section 10, then it would be directly against the object of the code; as because then sick companies which have been closed for more than 3 years and unable to repay its debts will continue to remain in the same state, while the value of its assets go on depreciating.

The court then stated that if applications under sections 7, 9 and 10 are entertained due to public notice under section 15 of the code, then the 'Interim Resolution Professional' has to accept all the claims submitted by the creditors as specified by section 18(1)(b). Such claims cannot be rejected on the basis of limitation, as Limitation Act does not have the 'Interim Resolution Professional' within its ambit.

According to their lordships, even if the Limitation Act is made applicable to IBC, applications under section 7, 9 or 10 will be guided only by the provision under Article 137 of Part II. According to Article 137, the period of 3 years is to be counted after the right of seeking adjudication accrues to the person. Since the IBC was put into effect from 1st December 2016, the right to file an application for initiating Corporate Insolvency Resolution Process accrued from 1st December 2016. Therefore, such applications cannot be rejected on the grounds that it is barred by Limitation.

However, the learned Tribunal did not completely shun the idea of limitation. It said that while admitting an application initiating CIRP, the principles of limitation and prescription needs to be kept in mind. However, in case of continuing cause of action, the problem of limitation won't arise. In case the applicant is unable to provide the adjudicating authority with valid reasons or provides it with baseless reasons, his application should not be entertained. Even then, the same won't be applicable to an application under section 10 of the Code, i.e., when the applicant is the corporate debtor.

It will be up to the discretion of the 'Interim Resolution Professional' whether or not to admit a stale claim places before him. If the resolution plan has already been submitted, the committee of creditors will have a say on entertaining the claim. If the claim is not accepted, then the aggrieved person may approach the adjudicating authority. However, while deciding the matter, the tribunal needs to keep in mind the above laid principles.

After laying the aforementioned principles the Hon'ble tribunal dealt with the appeals accordingly.

ANALYSIS AND CONCLUSION

In the case of **The Board of Trustees of The Port of Bombay and Ors. v. M/s Sriyanesh Knitters**[21], the Hon'ble Supreme Court held that "Even if it is a codifying Act unless a contrary intention appears it is presumed not to be intended to change the law. [See Bennion's Statutory Interpretation, Second Edition page 444]

"*Furthermore where codifying statute is silent on a point then it is permissible to look at other laws. In this connection it will be useful to refer to the following observation of the House of Lords in Pioneer Aggregates (UK) Ltd. v. Secretary of State for the Environment and Ors. (1984) 2 All ER 358.nPlanning law, though a comprehensive code imposed in the public interest, is, of course, based on land law. Where the code is silent or ambiguous, resort to the principles of private law (especially property and contract law) may be necessary so that the courts may resolve difficulties by application of common law or equitable principles. But such cases will be exceptional. And, if the statute law covers the situation, it will be an impermissible exercise of the judicial function to go beyond the statutory provision by applying such principles merely because they may appear to achieve a fairer solution to the problem being considered. As ever in the field of statute law it is the duty of the courts to give effect to the intention of Parliament as evinced by the statute, or statutory code, considered as a whole.*""

Therefore, according to this judgement of the Hon'ble Supreme Court, since the IBC does not contain any specific provision relating to the period of limitation; and since the Limitation Act is applicable to all legislative enactments unless exclusively barred, the same should be made applicable to IBC, unless it goes against the provisions or the object of the Code. Previously, the law of the land was that money claims cannot be raised after a period of three years as by then the rights of the claimants wither off due to their negligent attitude, the same should be allowed to continue.

The reason given by the Hon'ble Tribunal is that the right to start insolvency proceedings accrued to applicants on the day the Code was put into force. However, this view does not hold ground as because the claimants did have a remedy to initiate their claims under some other statutory enactment. However, they did not choose to do so, thereby losing their right. If they are given a second chance then it will certainly be against public policy and against the corporate debtor as he will suddenly find himself stuck in corporate litigation. Moreover, according to the fundamental principles of law, the period of limitation is calculated from the day the cause of action arose. The same should be applied in case of insolvency proceedings also. If such is the case that a new right accrues with every subsequent special enactments, then it will give way to the filing of huge number of cases having stale claims. It will be a burden for both the judiciary as well as the respondents. It

[21] *The Board of Trustees of The Port of Bombay and Ors. v. M/s Sriyanesh Knitters* [1999], AIR1999SC2947

is also to be noted that the interest on the debt accrues with every year. So, getting a second chance to raise a stale claim will subsequently increase the disputed amount.

The court needs to keep in mind that corporate debtor seeking liquidation of the company and a corporate creditor forcefully trying to start insolvency proceedings against a company are two different scenarios. Both should not treated equally. Therefore, even if a corporate debtor can file an application for initiating CIRP any time, the same should not be allowed to corporate creditors raising stale claims.

According to section 238 of IBC, if there is any conflict between the provisions of IBC and any other existing law, then the provisions of IBC would prevail. Therefore, unless the provisions of the Limitation Act is clearly against the provisions of IBC, the same should be allowed to prevail.

The debts which have become time barred without recourse to law, by the own choosing of a party, also gives rise to an estoppel on such parties from being able to proceed under the provisions of the IBC.

The Hon'ble Supreme Court needs to clearly state whether or not the Insolvency and Bankruptcy Code will be subject to limitation. According to the present scenario, filing of a huge number of applications to initiate CIRP raising stale claims is highly probable, which will only lead to increase the backlog of cases of the Indian judiciary.

BIBLIOGRAPHY

BOOKS:

- Salmond, *Jurisprudence* (Pages 438,439, 12th Edition)
- V.S. Wahi, *Treatise on Insolvency and Bankruptcy Code* (Page 18,1st Edition, Bharat Law House Pvt. Ltd. 2017)

LAW COMMISSION REPORTS:

- Law Commission, *Limitation Act, 1908 (*Third Report, 1956) para 1

WEBSITES:

- http://reports.mca.gov.in/Reports/24-Eradi%20committee%20report%20of%20the%20high%20level%20committee%20on%20law%20relating%20to%20insolvency%20&%20winding%20up%20of%20Companies,%202000.pdf
- http://www.legalservicesindia.com/articles/corin.htm
- http://www.prsindia.org/theprsblog/?p=3642
- https://barandbench.com/limitation-claims-ibc-creditors/