THE INTERSECTION BETWEEN THE INSOLVENCY AND BANKRUPTCY CODE 2016, LIMITATION ACT 1963 AND SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985: BUILDING NEW DIMENSIONS FOR INDIAN INSOLVENCY JURISPRUDENCE

Abstract

Whenever a new legislation replaces the previous one, various issues such as, what will be the fate of cases pending under the previous legislation or how the new legislation will merge with the existing legislation, gain importance. Similar was the situation with the coming into effect of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016). In the beginning, it seemed to be pretentious, though later, when it was tested on the anvil of constitutionality, it was found to be constitutionally valid. Applicability of the Limitation Act, which has a direct bearing on the outcome of any insolvency proceedings initiated under IBC, 2016, requires careful consideration. In the *first* part of the paper, the interaction of the Limitation Act, 1963 and IBC, 2016 has been examined. In the *second* part, various aspects of the judgment passed by the Supreme Court in the case of *Sabarmati Gas Limited* have been analysed at length, which revolve around IBC, 2016, Limitation Act, 1963 and SICA, 1985. This judgment also throws light on the issue of the pre-existence of disputes. Accordingly, the *third* part evaluates the benchmark of a dispute which is sufficient enough to deny relief to operational creditors under IBC, 2016.

1 Introduction

WHEN THE Insolvency and Bankruptcy Code, 2016 (IBC, 2016) came into effect, the Indian economy was already crumbling and witnessing tremendous pressure due to sky-rocketing of Non-Performing Assets (NPAs). Various legislations such as Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), Recovery of Debts and Bankruptcy Act, 1993 (RDB Act)and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) were enacted but these laws could not achieve the much desired result of bringing public monies back to the banks and financial institutions. But, as the English proverb goes, *every cloud has a silver lining*. IBC, 2016 was that ray of hope which focused at resolving the insolvency issues of the financially distressed companies within a particular time frame. This would not only rehabilitate these ailing companies but will also have a positive impact on the economy of the country, at large. It was realized that the revival of the Companies which were registered under the previous Act *i.e.*, Sick Industrial Companies Act, 1985 (SICA) had turned out to be long-drawn-outexercise due to the complex legal framework, which at the initial stage itself, set the lethargic and languid tone for the casesto carry on for years to come. This proved fatal to the business environment which is quite sensitive and needed immediate attention.When IBC, 2016 was enacted,

its provisions could be invoked against an entity[1] on a small default of Rs. 1 lakh.[2] The promoters and board of directors lose their control as on the date of admission of the insolvency petition. The same thus poses adverse consequences and ought to be initiated with caution and after following the principles of natural justice.[3] The insolvency proceedings under IBC, 2016 are conducted in terms of a step-wise process termed as Corporate Insolvency Resolution Process[4] (CIRP). This includes the appointment of an Interim Resolution Professional (IRP)[5] and the constitution of a Committee of Creditors (CoC)[6] which consists of banks and financial institutions who lend monies to the distressed company. The IRP, takes over the responsibility to run the affairs of the insolvent company with the assistance of the previous management and board of directors of the company. As the IRP may not have the expertise to run the company engaged in a particular business so he can appoint other professionals to assist him in carrying out various steps contemplated under IBC, 2016. The banks and financial institutions being capable of judging the feasibility and viability of a company, collectively take all the key decisions of the company. These provisions marked a departure from the erstwhile SICA, 1985. IBC, 2016 also stipulates provisions related to the Moratorium[7] and process of waterfall mechanism[8], *etc.* to fulfil the objective of resolving the insolvency issues of the company in an efficient and time-bound manner.[9] Though the moratorium under IBC, 2016 is akin to the protection granted to sick companies under the erstwhile SICA, 1985[10] but it has wider connotation and helps to preserve the assets of the company so that the same can be utilized at the time of settling the creditors. It is interesting to note that at the time of the passing of IBC, 2016, there were many companies whose cases were pending under the provisions of SICA 1985 at various stages. It is therefore, necessary to understand the fate of such companies on the repeal of SICA, 1985 and coming into force of IBC, 2016. It is necessary to take note of such companies, who are interplaying the rules of the game,

1 The company/entity against which insolvency proceedings are sought to be initiated, is known as corporate debtor and is defined under s. 3(8) of the IBC, 2016.

2 The threshold limit stands enhanced to Rs.1 crore with effect from Mar. 24, 2020.

3 *Innoventive Industries Ltd.* v. *ICICI Bank* 2017 SCC OnLine NCLAT 70.

4 The process is triggered by the creditors under s. 7 and 9 of IBC, 2016 and by the Debtor Company itself under s. 10, IBC, 2016.

5 Interim Resolution Professional ('IRP') is appointed under s. 16 of the IBC, 2016.

6 Committee of Creditors ('CoC') is formed under s. 18 of the IBC, 2016.

7 Moratorium is imposed under s.14, IBC, 2016 on admission of any insolvency petition against the company. It bars initiation of any recovery proceedings against such company and also all recovery proceedings already pending against the company, stand stayed.

8 See IBC, 2016, s.53: provides the sequence in which different creditors of the Company shall be paid in case of liquidation of the Company.

9 *Id.*, s.12.

10 See Sick Industrial Companies (Special Provisions) Act, 1985) (SICA), s.22 (1).

as it is necessary to push things further and it has to be constantly borne in mind that the ultimate objective is to rehabilitate such companies.

II Limitation Act, 1963 and IBC, 2016

At the inception of IBC, 2016, it had no reference to the Limitation Act, 1963. This automatically directed towards the creation of various presumptions and assumptions, such as to whether the Limitation Act is applicable to proceedings under IBC, 2016 and whether stale claims of more than three years old can also be filed under IBC, 2016. Because of this chaos, the 'belated claims' against companies, which were more than three years old, were also being filed which goes against the principles enshrined under the Limitation Act 1963. Subsequently, section 238A[11] was added to IBC, 2016. But, it was not clear as to whether this provision was to be applied retrospectively or prospectively. This issue was finally resolved in *B.K. Educational Services*[12] case, where, Justice Rohinton Nariman observed that the stale claims are barred as per the object of IBC 2016.[13] He further clarified that Limitation Act is applicable to the insolvency proceedings initiated by the creditors under IBC 2016, since the enactment of IBC, 2016 in view of the fact that article 137, Limitation Act comes into play.[14] The court also granted indulgence under section 5 of the Limitation Act. This means that an application for condonation of delay can be filed on there being a sufficient cause and delay can be condoned in filing of the insolvency petitions under the IBC, 2016 even if the debt accrued three years' prior in time. The Supreme Court also clarified that the date on which IBC, 2016 came into effect *i.e.*, December 1, 2016 does not set up any criteria to determine the limitation period. This judgment cleared the air over the objection raised to the claim being hit by delay. It is incumbent to have a default to make a cause of action to apply under IBC, 2016 and as per this judgment, the 'date of default' would be the benchmark for applying three years' period. But, it also opened a Pandora's box and the date of default now being the topic of debate. The Supreme Court thereafter came to the conclusion that the date on which an account turned Non- Non-Performing Asset (NPA) is the default date.[15]Even in the context of IBC, 2016, the Supreme Court held that limitation is a mixed question of law and fact. It also emphasized that in order to avail benefit of the provisions of Limitation Act, the party has to plead all the relevant facts and place on record, the relevant evidence to support its plea of limitation.[16] Subsequently, the law with respect to the Limitation

11 S. 238A was added to IBC, 2016, *vide* Insolvency and Bankruptcy Code (Second Amendment) Act, 2018.

12 *B.K. Educational Services (P.) Ltd.* v. *Parag Gupta and Associates* (2019) 11 SCC 633.

13 Reliance was placed by the Supreme Court on The Insolvency Law Committee Report of March, 2018, *available at*: prsindia.org/policy/report-summaries (last visited on Dec 1, 2023).

14 It gives three years' time to raise claims.

15 See *Gaurav Hargovindbhai Dave* v. *Asset Reconstruction Co. (India) Ltd.*, (2019) 10 SCC 572.

16 *Babulal Vardharji Gurjar* v. *Veer Gurjar Aluminium Industries Pvt. Ltd.*, 2020 15 SCC 1.

Act, 1963 and IBC, 2016 kept evolving, for example, the Supreme Court in *Sesh Nath Singh*[17]case held that section 14[18] of the Limitation Act,1963 is applicable to the insolvency proceedings under IBC, 2016. However, in the absence of relevant pleading and material on record, NCLAT declined to give benefit under section 14, Limitation Act.[19] In *Laxmi Pat Surana,*[20] the Supreme Court, however, clarified that the date of NPA may not always be the date of default. In this way, the provisions of the Limitation Act, 1963 have started influencing the insolvency proceedings actively and affecting the life span of the claims being made in the insolvency petitions. Essentially, the Limitation Act 1963 is a general law that is applicable to every statute. Still, because IBC, 2016 is a special legislation, it is necessary to see the legislative intent behind the applicability of the Limitation Act to IBC 2016. For example, statutes like the Arbitration Act, 1940 and later the Arbitration and Conciliation Act, 1996, clearly and expressly state about the applicability of the Limitation Act 1963. This means that as the Limitation Act applies to general court proceedings, it would apply in a similar fashion to the arbitration proceedings. Similarly, when section 238A of IBC, 2016 speaks about the applicability of the Limitation Act on the proceedings before the National Company Law Tribunal (NCLT)[21]/National Company Law Appellate Tribunal (NCLAT),[22] it uses the term 'as far as may be',[23] which also means to the extent they may be applied".[24] This clearly shows the presence of legislative intent and wisdom in choosing the term 'as far as may be', which in the context of the applicability of the Limitation Act clearly shows that the intent was not to apply the whole Limitation Act on 'as it is' basis, but, only 'as far as may be over NCLT/ NCLAT'. This conscious picking of the words also means that these words are not otiose but are carefully picked words which are helpful in understanding the intersection of the two laws, the Limitation Act, 1963 on the one hand and IBC, 2016 on the other. The jurisprudence of insolvency laws is altogether different from the jurisprudence of other laws such as, 'Arbitration laws' or the 'Criminal Laws'. At this juncture, it is not only necessary to understand the context of different types of laws at the time and spot of their intersection, but it is also necessary to read the legislative wisdom harmoniously so as to reach the best possible interpretation. There is a need to harmoniously read both (i) the subject matter of the

17 *Sesh Nath Singh* v. *Baidyabati Sheoraphuli Cooperative Bank Ltd.* (2021) 7 SCC 313.

18 Limitation Act 1963, s. 14 reads: which specifically excludes the time spent in court proceedings which were initiated in good faith and in a bona-fide manner but, in a court without jurisdiction.

19 *Vedika Credit Capital Limited* v. *Shriram Power and Steel Private Limited.* 147 taxmann.com 384 (2023).

20 *Laxmi Pat Surana* v. *Union Bank of India* (2021) 8 SCC 481.

21 The National Company Law Tribunal is the adjudicating authority under the IBC, 2016.

22 The National Company Law Appellate Tribunal is the appellate authority under the IBC, 2016.

23 See IBC 2016, s. 238A.

24 (2021) 7 SCC 313, para 90.

Act and (ii) the object behind it, which the Legislature was carrying in its mind at the time when the law was being drafted. Here, the duty of the courts, while interpreting such laws where two or three statutes intersect with each other, is not to interpret the laws to frustrate the purposes of all those laws altogether, rather, the courts should interpret the terms in such a way, so as to give harmonious meaning to it. In case of application of the Limitation Act, 1963 to IBC 2016, it is necessary, therefore, to harmoniously read section 238A of IBC, 2016 so that it does not frustrate the very purpose of the Limitation Act when it applies, 'as far as possible' to the proceedings before the NCLT/NCLAT. This also means that the Limitation Act would apply *mutatis mutandis* to the insolvency proceedings under IBC, 2016. The judicial precedents are those old lenses which many times offer new perspectives. The long judgements delivered by the courts should be read keeping in mind the purpose, scope and the view propounded by the judges. Judicial pronouncements are always in the context of a particular set of facts and the laws applicable to those facts. And, for interpreting the statute, the judges no doubt, deliberate and discuss various issues and their pros and cons, at length, but such discussions and analysis are meant to interpret the provisions and terms of the statutes but not define them. In other words, the judges are supposed to interpret the legislation and therefore, their words are effectively used to interpret the legislation only.[25] Justice J. Shah once stated that it is the fundamental rule of interpreting the statute that the expressions used in the Act should ordinarily be used in a best possible manner to harmonise with the legislative intent of the Act so as to effectuate the very object of the Legislature ultimately.[26]

Legislative Innovation: toning down 'shall' provision with 'as far as may be' in section 238A of the IBC 2016

Interestingly, section 238A of IBC, 2016 carries the term 'as far as may be', to tone down the term 'shall', which generally stands for the mandatory provision. This also means that the term 'shall' now cannot be read in the mandatory sense, rather when it will be read along with the expression 'as far as may be' and then it is indicative of the obligation that the Limitation Act may not as it is (verbatim) applicable over the cases pending under the IBC, 2016 especially when, the provisions are grossly inconsistent with IBC, 2016. But, this also means that the Limitation Act is not totally excluded from its application over the IBC, 2016. Therefore, wherever any provision of the Limitation Act is in conformity with the IBC 2016, those provisions would be applicable. Since section 14 of the Limitation Act is in conformity with the IBC, 2016, it can be permitted to be read in harmony as it also contextually allows much wider and liberal interpretation, with obligatory modifications, in complete harmony with IBC, 2016.[27]

25 See V. Sudhish Pai, *Constitutional Supremacy - A Revisit* (Oak Bridge Publications, 1st edn. India, 2021).

26 See *New India Sugar Mill Limited* v. *Commissioner of Sales Tax, Bihar*, AIR 1963 SC 1207 at 1213.

27 (2021) 7 SCC 313, para 94.

The benefit of section 14, Limitation Act was also granted by the Supreme Court when the party was prosecuting writ proceedings before the High Court of Bombay which writ proceedings were closed on the ground of availability of alternate remedy.[28] Following the Supreme Court, NCLAT recently condoned the delay in filing an appeal under section 61, IBC, 2016 while extending the benefit of section 14, Limitation Act to the appellant on ground of prosecuting writ proceedings.[29]

Interface of IBC 2016 with Limitation Act 1963: Building insolvency jurisprudence for the future

In this way, the Limitation Act, 1963 started playing an essential role in the insolvency proceedings under IBC, 2016. And the tribunals *i.e.*, NCLT/NCLAT also started rejecting belated claims under IBC, 2016. Recently, NCLT, Delhi rejected an insolvency petition filed by an operational creditor when the insolvency petition was filed beyond three years from the date of last invoice and default date and there was no unequivocal acknowledgement of debt by the corporate debtor.[30] The Supreme Court has also examined the applicability of section 18 of the Limitation Act 1963 on proceedings before the NCLT under the IBC, 2016 and held that any acknowledgement of the debt within the prescribed limitation period would directly extend the limitation period thereby, confirming the applicability of section 18 of Limitation Act, 1963 on the proceedings before the IBC 2016.[31] The Supreme Court also analysed the acknowledgements made in a balance sheet of a company in the case of *Bishal Jaiswal*.[32] It was held that a balance sheet can be seen for the purpose of ascertaining the existence of an acknowledged debt, however, the same is subject to certain caveats mentioned in the balance sheet which implies that the balance sheet has to be read as a whole to confirm the existence of an acknowledged debt.

SICA 1985, IBC 2016, and Limitation Act 1963: Sabarmati[33] and after

The Supreme Court in *Sabarmati Gas Limited* case, got the opportunity to examine the interplay between the erstwhile SICA 1985, the IBC 2016 and the Limitation Act, 1963 and delivered a judgement that is critical from two aspects. *Firstly*, the Limitation Act, 1963 is applicable to the legal proceedings which were earlier pending before the erstwhile SICA 1985 and had abated with the coming into effect of IBC 2016 on

28 *Kalpraj Dharamshi* v. *Kotak Investment Advisors Ltd.* (2021) 10 SCC 401.

29 *Vikram Bhawanishankar Sharma, Member of the Suspended Board of Directors of Supreme Vasai Bhiwandi Tollways Pvt. Ltd.* v. *SREI Infrastructure Finance Ltd.* 2023 SCC OnLine NCLAT 269.

30 *Suresh Yadav, Proprietor, Govind Shuttering Store.* v. *S.P Contracts Pvt. Ltd.* (decided on dated Mar. 28, 2023 passed by National Company Law Tribunal, Delhi in C.P (IB)/2004(ND)2019).

31 Acknowledgement of debt can have various aspects which can extend the limitation period under the Limitation Act, 1963.

32 *Asset Reconstruction Company India Ltd.* v. *Bishal Jaiswal* 2021 SCC OnLine SC 321.

33 *Sabarmati Gas Limited* v. *Shah Alloys Limited* (2023) 3 SCC 229.

December 1, 2016. *Secondly*, this judgment also deals with the pre-existing dispute so as to reject the insolvency petition under section 9, IBC 2016, as non-maintainable. The insolvent company *i.e.,* Shah Alloys Limited in this case, was admitted to BIFR[34] and declared as a 'Sick Industrial Unit'. Consequently, blanket protection was available to it under section 22(1) of SICA, 1985, according to which no legal action could be taken against the company without prior permission from BIFR during the pendency of the proceedings before the BIFR. This is, in fact, a calm period that operates statutorily and comes into play immediately upon the registration of the company with BIFR. This process protects the assets of the company so as to support its revival at a later stage. And, when the matter of this company was pending before the BIFR, the operational creditor, Sabarmati Gas Limited who was the appellant in the case in hand before the Supreme Court, stopped its services (gas supply) to the corporate debtor and sought intervention in the pending proceedings before BIFR and sought permission from BIFR to take out recovery proceedings against the corporate debtor foran amount of approximately Rs. 4.71 crores. The operational creditor's application was disposed off by the BIFR, subject to the direction that its dues be incorporated in the 'Draft Rehabilitation Scheme',[35] which was to be finalised and sanctioned for the revival of the corporate debtor. Interestingly, during the pendency of the matter before the BIFR, SICA 1985 got repealed. As a consequence, all the proceedings before the BIFR stood abated and IBC, 2016 came into effect from December 1, 2016. Thereafter, the operational creditor issued a demand notice in terms of section 8 of the IBC[36] 2016 to the corporate debtor and raised its claim again. But, this time, the corporate debtor had given a response to the demand notice, by which it completely denied itsliability. It wasalso stated that because of the disconnection of the gas supply by the operational creditor, it is the corporate debtor, who had suffered the actual losses and damages.

34 Board for Industrial and Financial Reconstructionwas constituted under SICA, 1985. This statutory body stands dissolved with effect from Dec. 1, 2016 and all proceedings pending before it, stood abated.

35 SICA 1985 s. 18, provides for the Rehabilitation Scheme (which is to be prepared by the operating agency as sanctioned by the BIFR), which discharges the debt of the sick company under law. In *Navnit R. Kamani* v. *R.R. Kamani* (1988) 4 SCC 387, the Supreme Court ruled that once the rehabilitation scheme is sanctioned under SICA, 1985, the sick company is subject to a debt-free future and the company may use this as a second opportunity to launch a successful business.The rehabilitation plan pertains to both secured as well as unsecured creditors. And both parties must embrace the reduced value of their obligations stipulated by the rehabilitation plan (*Modi Rubber Limited* v. *Continental Carbon India Ltd.*, 2023 SCC OnLine SC 296.

36 This provision creates an obligation on the operational creditor to issue a demand notice prior to filing of insolvency petition under s. 9, IBC, 2016.

37 The insolvency petition was filed under s. 9 of the IBC 2016 as an operational creditor.

The operational creditor was then left with no other option but to file an insolvency petition before the NCLT, Ahmedabad[37] for initiating the insolvency proceedings.

Proceedings initiated by Sabarmati Gas Limited against Shah Alloys Limited under the IBC, 2016.

The corporate debtor opposed the insolvency petition and took the plea of limitation and stated that the insolvency petition filed in 2018 for a claim that dates back to 2012, is hit by limitation.[38] But, here, the corporate debtor also took the ground of pre-existing dispute and disputed the debt itself. The NCLTdecided both issues in favour of the corporate debtor. The appeal filed by the operational creditor also met the same fate before NCLAT and its claim stood rejected. Ultimately, the matter culminated in a civil appeal before the Supreme Court, filed by the operational creditor who had repeatedly lost earlier, both before NCLT and NCLAT.

Sabarmati case and after

In *Sabarmati's* case, the Supreme Court had decided two broad issues, *firstly*, as to whether the claim raised by the operational creditor is hit by limitation and *secondly*, whether, in view of the dispute raised, the insolvency petition warrants dismissal. It is noteworthy thatboth the NCLT and the NCLAT did not exclude the time spent by the corporate debtor before the BIFR during which the operational creditor was legally barred under section 22(1) of the SICA from resorting to any coercive action for recovery of its claim. The Supreme Court, therefore, has dealt with both the issues at length. The court analysed various provisions of SICA, 1985, especially sections 22(1)[39] and 22(5).[40] Section 22(1), SICA, 1985 puts on ice any recovery action, pending or sought to be initiated against the sick entity till the time the company is before the BIFR. The intent here is to facilitate the revival of the company. Here, the Supreme Court in the *Sabarmati* (*supra*) case, *firstly*, held that because during the period in which the bar under section 22(1) of SICA 1985 was operating, the operational creditor could not have taken out

38 A person can invoke s. 5 of the Limitation Act 1963 only for a genuine and sufficient cause for which the party cannot be blamed.

39 SICA s. 22 (1), imposes a statutory bar on the realisation of a right specified in Section 22 of SICA 1985 against an industrial company,

(i) when an enquiry is pending against it under Section 16 of SICA 1985,

(ii) when a scheme is under preparation or consideration under Section 17 of SICA 1985,

(iii) when a scheme which is sanctioned is being implemented, or

(iv) when relating to an industrial company, an appeal is pending under Section 18 of SICA 1985, except with the consent of the BIFR or its Appellate Authority. It is important to note that both (i) SICA 1985 was repealed and (ii) IBC came into effect on Dec. 1, 2016.

40 According to s. 22 (5) of SICA, the period during which a right, privilege, duty, or responsibility is suspended under this section, it must be eliminated while calculating the term of limitation for enforcing it or the remedy for enforcing it.

any legal or coercive proceedings to recover its claim. *Secondly*, it noted that section 22(5) of SICA 1985, which duly gives an option to the creditor to proceed against the sick company after getting permission from the BIFR, could not have been enjoyed by the creditor in the present case since soon after it got the said permission in the year 2015, the reference of the corporate debtor stood abated on December 1, 2016 with the repeal of SICA. The Supreme Court thereafter, *thirdly*, considered the Eighth Schedule of IBC 2016, which amended the erstwhile SICA, 1985. The Eighth Schedule provides a window of 180 days to approach the NCLT after the abatement of the BIFR proceedings under the IBC, 2016. *Fourthly*, the Supreme Court clarified that this period of 180 days applies only to the sick company whose reference/proceedings were pending before the BIFR or its appellate body, Appellate Authority for Industrial and Financial Reconstruction[41] (AAIFR) under the SICA, 1985. And this bracket of 180 days does not apply to any creditor who wants to proceed against the sick company but, could not have proceeded earlier during the pendency of the matter before the erstwhile BIFR due to the statutory bar operating under section 22(1), SICA. *Fifthly*, the Supreme Court, in fact, held that if any entity falls under the category of the creditor, then the initiation of the proceedings at the behest of the said entity will be governed by the provisions of the Limitation Act 1963.[42] *Sixthly*, it was held that section 5[43] of the Limitation Act, 1963 is also applicable here and delay, if any, can be condoned on showing the existence of a sufficient cause. *Seventhly*, the Supreme Court held that in *B K Educational Services* (*supra)*, the day (December 1, 2016) when the IBC 2016 came into effect is not to be considered as the starting point for the three years-time limitation period, rather, the limitation shall begin to run from the date when the 'right to sue' accrued. It is pertinent to note that in this case, no scheme was sanctioned for the revival of the company and the matter was still at the stage of enquiry. Thus, in such cases, the creditor was permitted to take recourse to IBC, 2016 as the Supreme Court excluded the time period during which the creditor was legally disabled to take out any proceedings against the corporate debtor while calculating the three years' period. The insolvency petition was therefore held to be within the limitation period.

III Pre-existing Dispute and its implications on the proceedings under IBC, 2016

Pre-existing disputes make the insolvency petition filed by an operational creditor under section 9 of the IBC, 2016, liable to be rejected at the threshold itself. Since the enactment of IBC, 2016, various insolvency petitions were being filed by operational

41 This statutory body stands dissolved with effect from December 1, 2016 and all proceedings pending before it, stood abated.

42 It is pertinent to note that the incorporation of s. 238A of the IBC 2016 again clarifies the applicability of the Limitation Act 1963 on insolvency petitions.

43 See, s.5 of the Limitation Act 1963, which provides for an extension of the limitation period in case of sufficient cause in some instances.

creditors for even meagre debts which proved fatal for huge corporates as they were vulnerable even to small unintentional and inadvertent defaults. The Supreme Court in the matter of *Mobilox Innovations Private Limited* [44] cleared the air and laid down the law for initiation of insolvency proceedings at the instance of an operational creditor. It clearly discouraged the filing of petitions by small operational creditors and also held that it is enough that a dispute[45] exists between the parties and the law does not permit to get into the merits of the dispute at the time of deciding as to whether an insolvency petition filed by an operational creditor deserves to be admitted or not. The Supreme Court held that, principally, documentary evidence is necessary to prove the fact that a dispute already existed between the parties prior to the filing of the insolvency petition. After the issuance of a demand notice (statutory) by the operational creditor, the corporate debtor in the *Sabarmati* case declined its liability and pointed out that it had suffered huge losses on account of the non-supply of gas by the operational creditor. And to prove this fact, the corporate debtor relied upon a communication addressed by it to the operational creditor as far as of 2013, when the matter was *sub-judice* before the BIFR. This communication became the bone of contention since the operational creditor relied on this communication and alleged it to be an admission of liability by the corporate debtor. However, the corporate debtor explained that the dues were not admitted and only reconciled dues were to be incorporated into the 'Draft Rehabilitation Scheme ('DRS'). The court carefully examined the contents of the aforesaid communication and observed that no reconciliation of the dues ever took place and the DRS was not sanctioned. This means that there was no admission on the part of the corporate debtor towards the dues of the operational creditor. At this juncture, the court placed reliance on the judgement of *Mobilox supra w*hich stated thatat the stage of considering the existence of a dispute between the corporate debtor and the operational creditor, NCLT is only required to see that the dispute must not be a mere feeble argument not supported by documentary evidence. It is not necessary to delve into the question as to whether the dispute will ultimately succeed or not. Thus, the Supreme Court concluded that the dispute raised by the corporate debtor is genuine and not fake or feeble. Accordingly, though the issue of limitation was decided in favour of the operational creditor but, in view of the existence of a dispute between the parties, the Supreme Court did not feel fit to remand the matter back to the NCLT on the ground of limitation. It was further noted that arbitration proceedings are pending between the parties. This is therefore hit by the definition of a disputeas contemplated under IBC, 2016.

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44 *Mobilox Innovations Private Limited* v. *Kirusa Software Private Limited*, (2018) 1 SCC 353

45 Dispute is defined under s. 5(6), IBC, 2016 and includes amount of debt, quality of goods or services and breach of any representation or warranty. It forms the basis for rejection of an insolvency petition filed by an operational creditor.

IV Conclusions

The facts of each case are distinct and the argument of limitation has to be carefully adjudicated on case to case basis by the courts. The claims which could not be satisfied when a company was trying to revive under the erstwhile SICA, 1985, cannot be outrightly rejected.In many ways, *Sabarmati's* judgment is a path-breaking judgement, especially in the context of the interplay between SICA,1985 and IBC 2016, in reference to the Limitation Act, 1963.The erstwhile BIFR had jurisdiction over the sick companyand therefore, the period during which the bar operated under SICA was rightly excluded or else the claims pending before the erstwhile SICA would have gone unaddressed. This also gives a sigh of relief to those creditors who could not take any legal steps of recovery against the sick entity in view of statutory bar operating under SICA, 1985 and accordingly, can now resort to IBC, 2016. Further, the law laid down in the matter of *Mobilox* (*supra*) has been reaffirmed as far as the limited jurisdiction of the NCLT to enquire into the genuineness of a dispute existing between the parties is concerned. It is again confirmed that operational creditors ought not to be accorded a right to level frivolous and arbitrary claims until and unless, their debts are undisputed. On one hand, it is indubitable that IBC, 2016 is not a recovery mechanism and frivolous claims ought not to be entertained, however, on the other hand, genuine claims should not be permitted to be defeated on the pretext of repeal of SICA, 1985.

Jasper Vikas[*]

* Assistant Professor of Law and Executive Director, Centre for Tax Laws, National Law University, Delhi.