

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 3849/2020

INDIAN BANK (ERSTWHILE ALLAHABAD BANK) **Appellant(s)**

VERSUS

JAGDISH PRASAD SARDA Respondent (s)

ORDER

The challenge in the present appeal is to an order dated 28.08.2020 passed by the National Company Law Appellate Tribunal, whereby an appeal filed by the respondent herein, the former Managing Director of the company, against an order dated 27.08.2019 passed by the National Company Law Tribunal was allowed.

The reason to allow the appeal was that non-performing asset was declared on 29.12.2015, whereas the proceedings as financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for Short "the IBC") were initiated on 31.12.2018. Therefore, the same was found to be beyond three years in terms of provisions of Article 137 of the Limitation Act, 1963.

The argument of Mr. Dama Seshadri Naidu, learned senior counsel, is that the company had paid a sum of Rs.49,50,000/- on 19.12.2016, amounting to acknowledgment of debt. Thus, the period of three years has to be calculated from the said date.

Reliance is placed on a Judgment of this Court reported as Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr., (2021) 7 SCC 313, wherein this Court has held as under:-

“65. As observed above, Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and the NCLAT. The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT. All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible.

66. We see no reason why Section 14 or 18 of the Limitation Act, 1963 should not apply to proceeding under Section 7 or Section 9 of the IBC. Of course, Section 18 of the Limitation Act is not attracted in this case, since the impugned order of the NCLAT does not proceed on the basis of any acknowledgment.

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89. The Legislature has in its wisdom chosen not to make the provisions of the Limitation Act verbatim applicable to proceedings in NCLT/NCLAT, but consciously used the words ‘as far as may be’. The words ‘as far as may be’ are not meant to be otiose. Those words are to be understood in the sense in which they best harmonise with the subject matter of the legislation and the object which the Legislature has in view. The Courts would not give an interpretation to those words which would

frustrate the purposes of making the Limitation Act applicable to proceedings in the NCLT/NCLAT 'as far as may be'."

The aforesaid judgment was also followed by this Court in a judgment reported as Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr., (2021) 10 SCC 330.

In view of the aforesaid judgments, we find that the order passed by the National Company Law Appellate Tribunal is clearly erroneous in law. The same is set aside and the order of the National Company Law Tribunal dated 27.08.2019 is restored. The appeal is, accordingly, allowed.

The Insolvency Resolution Professional (IRP) appointed by the National Company Law Tribunal shall take up the matter for further proceedings in accordance with law.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[SUDHANSHU DHULIA]

New Delhi;
SEPTEMBER 13, 2022

ITEM NO.10

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3849/2020

INDIAN BANK (ERSTWHILE ALLAHABAD BANK)

Appellant(s)

VERSUS

JAGDISH PRASAD SARDA

Respondent(s)

(FOR ADMISSION and IA No.123918/2020-STAY APPLICATION and IA No.123663/2020-INTERVENTION/IMPLEADMENT and IA No.123921/2020-INTERVENTION/IMPLEADMENT)

Date : 13-09-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellant(s) Mr. Dama Seshadri, Sr. Adv.
Mr. Atul Sharma, Adv.
Mr. Abhishek Sharma, Adv.
Ms. Ashly Cherian, Adv.
Ms. Anisha Mahajan, Adv.
Mr. Alok Tripathi, AOR
Ms. Shivali Chaudhary, Adv.
Mr. Hitesh Singh, Adv.

For Respondent(s) Mr. Piyush Singh, Adv.
Mr. Aditya Parolia, Adv.
Mr. Akshay Srivastava, Adv.
Mr. Rajesh Kumar, Adv.
Mr. Gaurav Goel, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)