

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

27th September, 2022

Subject: Judgment¹ dated 19th September, 2022 of the Hon'ble SC in the matter of M/s Tech Sharp Engineers Pvt. Ltd. Vs. Sanghvi Movers Ltd., [Civil Appeal No.296 of 2020].

The Hon'ble Supreme Court vide its order dated 19th September, 2022 held that the pendency of the proceedings in a parallel forum, is not a sufficient cause for the delay in filing an application under the Insolvency and Bankruptcy Code, 2016 (the Code). The Hon'ble SC made some important findings and observations as under:

Sl. No.	Subject / Issue	Ruling	Para / Page No.
1	Application barred by limitation	(a) Relying on its judgment in <i>B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates</i> , observed that the NCLT/NCLAT has the discretion to entertain an application/appeal after the prescribed period of limitation. (b) Whether the explanation furnished for the delay would constitute “sufficient cause” or not would be dependent upon facts of each case. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished by the applicant for the delay in taking steps. (c) When an appeal is filed against an order rejecting an application on the ground of limitation, the onus is on the appellant to make out sufficient cause for the delay in filing the application.	14/5 16/5 17/6
2	Limitation vis-à-vis IBC	(a) The date of enforcement of the IBC and/or the date on which an application could have first been filed under the IBC are not relevant in computation of limitation. It would be absurd to hold that the CIRP could be initiated by filing an application under section 7 or Section 9 of the	17/6

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		<p>IBC, within three years from the date on which an application under those provisions of the IBC could have first been made before the NCLT even though the right to sue may have accrued decades ago.</p> <p>(b) What is material is the date on which the right to sue accrues, and whether the cause of action continuous.</p> <p>(c) Under Section 18 of the Limitation Act, an acknowledgment of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires.</p> <p>(d) Proceedings in good faith in a forum which lacks jurisdiction or is unable to entertain for like nature may save limitation.</p>	<p>18/6</p> <p>24/8-9</p> <p>25/9</p>
3	Conclusion	<p>(a) The last acknowledgment, in this case was in 2013 and the Madras High Court neither suffered from any defect of jurisdiction to entertain the winding up application nor was unable to entertain the winding up application for any other cause of a like nature.</p> <p>(b) The initiation of proceedings in Madras High Court would not save limitation for initiation of proceedings for initiation of CIRP under the Code.</p> <p>(c) A claim may not be barred by limitation. It is the remedy for realisation of the claim, which gets barred by limitation.</p> <p>The appeal was allowed.</p>	<p>26/9</p> <p>28/9-10</p> <p>29/10</p>