

Srei Equipment Finance Ltd vs Kalpataru Properties Pvt. Ltd on 18 April, 2023

Author: Ashok Bhushan

Bench: Ashok Bhushan

COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

I.A. No. 130 of 2023 in
Company Appeal (AT) (Insolvency) No.37 of 2023

[Arising out of order dated 08.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court I in I.A. No. 1921 of 2021 in CP (IB) No. 494/(MB) 2019]

IN THE MATTER OF:

SREI Equipment Finance Limited
Represented by the Associate Vice
President - Legal, Pradeep Faujdar
D-2, 5th Floor, Southern Park,
Saket Place, Saket,
New Delhi - 110017.

...Appellant

Vs.

1. Kalpataru Properties Pvt. Ltd.
Having its registered office
At 101, Kalpataru Synergy,
Opp. Grand Hyatt, Santacruz (East)
Mumbai - 400 055.

2. Shree Ram Urban Infrastructure Limited
Represented by the Resolution Professional,
Pankaj Ramandas Majithia
Having office at:
Suite No.301304, Metro Avenue,
Opposite Gurunanak Petrol Pump,
Near Magicbricks Weh Metro Station,
Andheri East, Mumbai City,
Maharashtra - 400 069.

3. Official Liquidator, Bombay High Court
Having office at: 5th Floor,
Bank of India Building,
Mahatma Gandhi Road,

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Present:

For Appellant: Mr. Nakul Dewan, Sr. Advocate with Mr. Anirban Bhattacharya, Mr. Siddhant Buxy, Ms. Priyanka Vora, Mr. Krishna Sumanth, Mr. Rohan Naik, Mr. Sathvik Chandrasekaran, Advocates.

For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Dr. Sunil Mittal, Ms. Anu Tiwari, Ms. Geetika Sharma, Mr. Sudhir Kumar, Mr. Arshit Anand, Advocates for R-1.

Mr. Abhijeet Sinha, Mr. Shahan Ulla, Mr. Nikunj Mahajan, Advocates for Proposed Intervenor.

JUDGMENT

ASHOK BHUSHAN, J.

This is an application filed by the Appellant praying for condonation of delay in filing the Appeal. The Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 has been filed in this Tribunal on 07.01.2023 (e-filed) challenging the order dated 08.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No.-I in I.A. No. 1921 of 2021 in C.P. (IB) No. 494/MB/2019. The limitation for filing an Appeal under Section 61 is 30 days and under proviso to Section 61(1) the jurisdiction of this Tribunal to condone the delay is of only 15 days. In the application for condonation of delay, condonation of delay has been sought relying on Section 14 of the limitation Act.

I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023

2. Before we consider the respective submissions of learned counsel for the parties, brief facts giving rise to this Appeal and application for condonation of Appeal needs to be noted:

i. A Memorandum of Understanding dated 28.06.2004 was executed between the Shree Ram Urban Infrastructure Ltd.

(Corporate Debtor), Kalpataru Properties Pvt. (Respondent No.1 to this Appeal) and Vijay Infrastructure Technology Pvt. Ltd. (a sister concern of the Corporate Debtor) for sale of a plot of land measuring 20,955.40 sq. m. situated at Plot No. 5A of Lower Parel Division of District Mumbai City.

ii. An Arbitral Award dated 29.08.2016 was passed directing the Corporate Debtor to specifically perform the Agreement i.e. for the sale, transfer, assignment and conveyance of the subject property to 'Kalpataru Properties', the Respondent No.1.

iii. Respondent No.1 file Commercial Execution Application No. 134 of 2017 before the Hon'ble Bombay High Court seeking execution of the Award as a decree for specific performance on 14.11.2017.

iv. The Appellant, 'SREI Equipment', filed an application under Section 7 of the I&B Code in the year 2019 against the Corporate Debtor before the Adjudicating Authority. By order dated 06.11.2019, the Adjudicating Authority admitted C.P. No. 494 of I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 2019 and commenced CIRP proceedings against the Corporate Debtor.

v. The Corporate Debtor as well as its Promoter have challenged the award dated 29.08.2016 before the High Court and before Hon'ble Supreme Court.

vi. The Hon'ble Supreme Court, on 16.10.2020, dismissed the three Special Leave Petitions challenging the Arbitral Award. vii. The Respondent No.1, 'Kalpataru Properties' filed I.A. No. 1921 of 2021 before the Adjudicating Authority praying for direction to the Resolution Professional to join in the execution of conveyance deed to transfer the subject property to Kalpataru in the execution proceedings of the Arbitral Award against the Corporate Debtor against payment of balance sale consideration of Rs.75,30,00,000/-. The Interim Resolution Professional of the Corporate Debtor filed an affidavit in I.A. No. 1921 of 2021 consenting to the transfer of the subject property to the Respondent No.1.

viii. The Appellant filed an I.A. No. 2205 of 2021 being member of the Committee of Creditor (CoC) praying for dismissal of the application I.A. No. 1921 of 2021 filed by the Respondent No.1. ix. The Adjudicating Authority passed an order on 08.10.2021 disposing of I.A. No. 1921 of 2021 filed by the Respondent No.1 I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 by allowing the prayer (b), directing the Resolution Professional to execute the conveyance deed to sell, transfer, convey and assign the subject property in favour of the Respondent No.1, Kalpataru.

x. Aggrieved by the order dated 08.10.2021, Indiabulls Housing Finance Limited claiming to be member of the CoC filed an Appeal under Section 61 of the Code before this Tribunal being Company Appeal (AT) (Ins.) No. 880 of 2021.

xi. In Company Appeal (AT) (Ins.) No. 880 of 2021, an interim order was passed by this Tribunal on 28.10.2021. Challenging the interim order dated 28.10.2021, the Respondent No.1 filed Civil Appeal

No. 7050 of 2022 before the Hon'ble Supreme Court, where the Hon'ble Supreme Court disposed of the Appeal on 14.11.2022. Following order was passed by the Hon'ble Supreme Court:

Learned senior counsel for the appellant, on instructions states that the appellant is willing to bring in the money in terms of the arbitral award, approximately Rs.75.30 crores in the corporate debtors' account and the Resolution Professional will execute the sale deed on the said amount being so deposited. He submits on instructions that the amount will be deposited within 10 days.

I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 On the aforesaid statement taken on record, learned counsel for respondent no. 1 who is the appellant before the NCLAT submit that if the amount is brought in, the sale deed can be executed by the Resolution Professional and the appeal filed by the Respondent No. 1 before the NCLAT would stand withdrawn.

In view of the aforesaid, we direct as under:

- 1) The amount be deposited within a period of 10 days stipulated, as aforesaid;
- 2) On the amount being deposited, the

Company Appeal (AT) Ins. No. 880/2021 before the NCLAT, filed by Respondent No. 1 shall stand dismissed as withdrawn;

3) The Resolution Professional shall execute the sale deed in favour of the appellant within a period of 10 days of the deposit of the amount;

4) In view of the aforesaid agreement arrived at, no impediment should be created to the execution of the same.

The Appeal stands disposed of in terms aforesaid." xii. In Company Appeal (AT) (Ins.) No. 880 of 2021, Appellant filed an application being I.A. No. 2623 of 2021 on 17.11.2021, where Appellant sought intervention in Company Appeal (AT) (Ins.) No. 880 of 2021. The Appellant also filed Miscellaneous Application No. 2064 of 2022 in Civil Appeal No. 7050 of 2022 before the I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 Hon'ble Supreme Court, in which Miscellaneous Application following order was passed on 09.12.2022:

"Miscellaneous Application No.2064/2022 In We have heard learned counsel for parties at length.

What emerges is that in the proceedings before the NCLAT in Company Appeal (AT) (Insolvency) No.880/2021 an order was passed on 26.09.2022.

The matter was being adjourned apparently repeatedly and that is what persuaded the appellant in the Civil Appeal before us to approach this Court. The counsel stated that the appellant before us being the appellant before the NCLAT seeks to withdraw the appeal on the deposit of certain amounts by respondent No.1. It is this what persuaded us to accept the request and dispose of even the Company Appeal pending before the NCLAT as nothing would survive in view of the withdrawal by the appellant itself.

The present appellant before us is actually an intervener before the NCLAT. He seeks to make a grievance that the order passed by the NCLT which was in appeal before the NCLAT, he also had some grievances. On our query, he concedes that he did not file an appeal against the order of the NCLT. That being the position, his status as claimed before the NCLAT was of an intervener. Learned senior counsel submits that at least he should have been given I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 liberty to be heard even as the status as an intervener before the NCLAT.

We do believe that this controversy should be resolved by the NCLAT itself i.e. whether on the appellants seeking to withdraw the appeal, there can be any impediment in withdrawal of the appeal and is the NCLAT really required to comment on the merits of the order of the NCLT at the behest of an intervener. We further make it clear that we are not expanding the array of parties before the NCLAT as a number of entities seems to have jumped into the picture as the matter has gone on before this Court. We make it clear that only the parties/existing interventionist before the NCLAT will have the right of hearing.

In view of the orders passed in Civil Appeal No.9062/2022, this appeal will also to be listed before the Bench presided over by the Chairman.

In view thereof, the final picture which would emerge would be before the NCLAT and to that extent the order passed by us on 14.11.2022 would be kept in abeyance till the NCLAT resolves the issue.

List on 07.02.2023."

xiii. In pursuance of the order passed by the Hon'ble Supreme Court dated 09.12.2022, the Company Appeal (AT) (Ins.) No. 880 of 2021 alongwith I.A. No. 2623 of 2021 was heard by this Tribunal and decided by judgment dated 03.01.2023. By judgment dated 03.01.2023, Company Appeal (AT) (Ins.) No. 880 of 2021 was dismissed as withdrawn and I.A. No. 2623 of 2021 was rejected. I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 xiv. Against the judgment of this Tribunal dated 03.01.2023, the Appellant filed an Appeal before the Hon'ble Supreme Court being Civil Appeal No. 385 of 2023, which Appeal was dismissed by order dated 27.01.2023 by the Hon'ble Supreme Court. xv. This Appeal being Company Appeal (AT) (Ins.) No. 37 of 2023, as noted above, was filed in this Tribunal on 07.01.2023 alongwith I.A. No. 130 of 2023

praying for condonation of delay.

3. We have heard learned counsel for the parties on the application I.A. No. 130 of 2023 praying for condonation of delay.

4. From the facts as noted above, it is clear that against the order dated 08.10.2021 passed by the Adjudicating Authority by which I.A. No. 1921 of 2021 filed by the Respondent No.1 was allowed, Company Appeal (AT) (Ins.) No. 880 of 2021 was filed by Indiabulls Housing Finance Limited claiming to the member of the CoC in which Appeal I.A. No. 2623 of 2021 was filed by the Appellant on 17.11.2021. Both Company Appeal (AT) (Ins.) No. 880 of 2021 as well as I.A. No. 2623 of 2021 have been rejected on 03.01.2023.

5. In the application filed for condonation of delay the ground taken for condoning the delay is that Appellant has been prosecuting the civil remedy by way of filing I.A. No. 2623 of 2021, which was rejected only on 03.01.2023 and thereafter immediately the Appeal has been filed on 07.01.2023 challenging order dated 08.10.2021, hence, the period during I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 which the Appellant was prosecuting his I.A. No. 2623 of 2021 be excluded giving the benefit of Section 14 of the Limitation Act.

6. We have heard Shri Nakul Dewan, learned senior counsel for the Applicant/ Appellant and Shri Arun Kathpalia, learned senior counsel appearing on behalf of the Respondent No.1. Shri Abhijeet Sinha, learned counsel has also appeared for the Intervenor.

7. Shri Nakul Dewan, learned senior counsel submits that the Appeal having been filed with delay of 13 days, it is well within 15 days period during which this Tribunal can condone the delay. It is submitted that the period from 17.11.2021 to 03.01.2023 during which I.A. No. 2623 of 2021 filed by the Appellant was pending in Company Appeal (AT) (Ins.) No. 880 of 2021 had to be excluded giving benefit of Section 14 of the Limitation Act. It is submitted that the earlier proceeding which was initiation by the Appellant by I.A. No. 2623 of 2021 was a civil proceeding which was being prosecuted in due diligence and good faith, in which no relief could be granted by this Tribunal, hence, the order passed by this Tribunal on 03.01.2023 in I.A. No.2623 of 2021 is covered within the expression 'other cause of like nature' occurring in Section 14 of the Limitation Act.

8. Shri Arun Kathpalia, learned senior counsel for the Respondent No.1 refuted the submissions of learned counsel for the Appellant and submits that Appellant cannot claim benefit of Section 14 of the Limitation Act in facts of the present case. Order dated 08.10.2021 was passed by the Adjudicating Authority allowing the application filed by the Respondent No.1 I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 directing for execution of the sale deed by the Resolution Professional, which was well within knowledge of the Appellant. Appellant chose not to file an appeal against the said order in this Tribunal and only filed an Intervention Application, which Intervention Application came to be rejected by this Tribunal on 03.01.2023. It is submitted that the Appellant is not entitled for claiming any benefit under Section 14 of the Limitation Act. Ingredients of Section 14 of the Limitation Act are not attracted in the present case. The Appellant cannot be said to be prosecuting the I.A. bona fide or with due diligence. The Appellant, a Finance

Company which has a large team of legal consultants, cannot be said to be unaware of difference between filing an appeal or filing an Intervention Application. Appellant having not chosen to file an appeal against the order earlier, it cannot be allowed to file an appeal after expiry of more than 400 days. The appeal is clearly barred by time and deserves to be dismissed. It is submitted that there was no defect of jurisdiction or other cause of like nature when this Tribunal passed order on 03.01.2023.

9. Learned counsel for the both the parties have relied on judgment of Hon'ble Supreme Court and this Appellate Tribunal in support of their respective submissions, which we shall consider while considering the submissions in detail.

10. The question which needs to be considered in this Appeal is as to whether the Appellant is entitled to claim benefit of exclusion of period from 17.11.2021 till 03.01.2023 during which Intervention Application filed by the I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 Appellant being I.A. No. 2623 of 2021 in Company Appeal (AT) (Ins.) No. 880/2021 was pending.

11. We have noted while noticing the facts that the order dated 08.10.2021 was passed by the Adjudicating Authority in I.A. No. 1921 of 2021 filed by the Respondent No.1 seeking direction to the Resolution Professional to join in the execution of conveyance deed in pursuance of the Arbitral Award passed in its favour, which application was allowed by the Adjudicating Authority directing the Resolution Professional for transfer of the subject property. The Appellant who was a member of the CoC was well aware of the order dated 08.10.2021 who chose not to file an appeal under Section 61 challenging the order rather filed I.A. No. 2623 of 2021.

12. Section 14 of the Limitation Act, 1963 provides as follows:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction. -- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.-- For the purposes of this section,--

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

13. When we look into the provisions of Section 14, it is clear that Sub- section (1) deals with computing of period of limitation for any suit and Sub- section (2) deals with computing the period of limitation for any application. The Limitation Act, 1963 in several sections has used the word 'suit', I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 'application' and 'appeal'. Section 12 which provides for 'exclusion of time in legal proceedings' uses all three expressions i.e. 'suit, appeal or application', whereas Section 13 uses expression 'suit or appeal'. But in contradiction to above, provision of Section 14 uses only two expressions 'any suit' or 'any application'. Non-use of the expression 'appeal' in Section 14 was due to legislative design and intendment. A plain reading of provisions of Section 14 indicate that Section 14 does not apply to appeal, however, the Hon'ble Supreme Court had occasion to consider as to whether even if Section 14 of Limitation Act does not expressly apply to appeal, whether the principles underlying Section 14 are applicable to appeal or not.

14. The Hon'ble Supreme Court in "(2015) 7 SCC 58, M. P. Steel Corporation vs. Commissioner of Central Excise" in para 38 has laid down that where Section 14 may not apply, the principles on which Section 14 is based, would nevertheless apply. Para 38 of the judgment is as follows:

"38. We have already held that the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply. We must never forget, as stated in Bhudan Singh & Anr. v. Nabi Bux & Anr., (1970) 2 SCR 10, that justice and reason is at the heart of all legislation I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 by Parliament. This was put in very felicitous terms by Hegde, J. as

follows:

"Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the lawmakers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on Statutory Constructions the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law- makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent.""

15. In the judgment of Hon'ble Supreme Court which arose out of Insolvency and Bankruptcy Code, 2016 i.e. "(2021) 10 SCC 401, Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd. & Anr.", Hon'ble Supreme Court while considering the question of applicability of principles under Section 14 of the Limitation Act in an appeal filed under Section 61 of I&B Code has held that principles underlying Section 14 are applicable in an appeal filed under Section 61. In the above case, after order of the Adjudicating Authority an Writ Petition was filed in the High Court which was being bonafidely prosecuted in good faith with due diligence. High Court has dismissed the Writ Petition on the ground that petitioner has an alternative I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 and equally efficacious remedy available. Thereafter, an appeal was filed in this Tribunal. In the above background following was observed by the Hon'ble Supreme Court in Para 78:

"78. In the present case, perusal of the writ petition would reveal, that it was the specific case of KIAL, that its application, objecting to the application of RP for approval of the resolution plan was heard by a Member (Judicial), whereas, the final orders were passed by a Bench consisting of Member (Judicial) and Member (Technical). It has specifically averred, that though an alternate remedy was available to it, it was invoking the jurisdiction of the High Court since the question involved was also with regard to the manner in which the jurisdiction was exercised by NCLT. It could thus be seen, that KIAL was bona fide prosecuting the proceedings before the High Court in good faith. Perusal of the dates referred to herein above would also reveal, that KIAL was prosecuting the proceedings before the High Court with due diligence. Even before the availability of the certified copy, it had knocked the doors of the High Court. The matter before the High Court was hotly contested and ultimately, the petition was dismissed by an elaborate judgment relegating KIAL to the alternate remedy available to it in law. As such, the conditions which enable a party to invoke the provisions of Section 14 of the Limitation Act are very much available to KIAL. If the period during which KIAL was bona fide prosecuting the writ

petition before the High Court and that too with due diligence, is excluded I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 applying the principles underlying Section 14 of the Limitation Act, the appeals filed before NCLAT would be very much within the limitation. We find, that KIAL would be entitled to exclusion of the period during which it was bona fide prosecuting the remedy before the High Court with due diligence."

16. The law laid down by the Hon'ble Supreme Court is that even if Section 14 of the Limitation Act does not apply in an appeal, however, the principles underlying Section 14 can be applied while considering exclusion of period under Section 14. Thus, we proceed to examine the contentions of the parties on the premise that principles underlying Section 14 are also attracted in an appeal filed under Section 61 of I&B Code.

17. For taking benefit of Section 14 of the Limitation Act several conditions need to be fulfilled cumulatively. In Kalpraj Dharamshi (supra), the Hon'ble Supreme Court relying on its earlier judgment in "(2008) 7 SCC 169, Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and others", in Para 59 has noted conditions which may be satisfied before Section 14 can be pressed into service, which is to the following effect:

"59. The conditions that are required to be fulfilled for invoking the provisions of Section 14 of the Limitation Act have been succinctly spelt out in various judgments of this Court including the one in Consolidated Engineering Enterprises vs. I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 Principal Secretary, Irrigation Department and others, which read thus:

"21. "Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and (5) Both the proceedings are in a court."

18. One of the condition which required to be fulfilled for applicability of Section 14 is that the earlier proceeding failed "from defect of jurisdiction or other cause of like nature". The provision further provides that earlier Court where the proceedings from defect of jurisdiction or other cause

of like nature cannot be entertained. The expression used in Section 14 Sub-section (1) and (2) is "is unable to entertain it". Thus, defect of jurisdiction and other cause of like nature should result in inability of the Court to entertain it.

19. We now need to look into the precedents cited by learned counsel for the Appellant in support of his submission that rejection of I.A. filed by the Appellant being I.A. No. 2623 of 2021 by judgment dated 03.01.2023 is I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 carried within the expression 'other cause of like nature'. The judgment which has been relied by counsel for the Appellant is judgement of the Hon'ble Supreme Court in "1971 (1) SCC 24, India Electric Works Ltd. vs. James Mantosh & Anr.", wherein the Hon'ble Supreme Court had occasion to consider the ambit and scope of Section 14 of the Limitation Act and both the expressions, "from defect of jurisdiction" or "other cause of like nature" came for consideration. The Hon'ble Supreme Court held that if the above words are read alongwith expression "is unable to entertain it", they would denote that the defect must be of such a character as to make it impossible for the Court to entertain the suit or application either in its inception or at all events as to prevent it from deciding it on the merits. Para 5 of judgment of the Hon'ble Supreme Court is as follows:

"5. Section 14 in so far as it is material for our purpose runs as follows:-

"S. 14(1) - In computing the period of limitation prescribed for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of Appeal, against the defendant shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2)

Explanation I.....

Explanation II

Explanation III. - For the purpose of this section misjoinder of parties or of causes of I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 action shall be deemed to be a cause of a like nature with defect of jurisdiction."

The High Court having found that the present claim of the plaintiffs was also included in the previous suit the condition that the previous proceeding should be founded upon the same cause of action must be held to have been satisfied. The High Court has further held that the previous suit had been prosecuted in good faith and with due diligence. In order to attract the applicability of Section 14(1), therefore, all that has to be determined is whether the court in which the previous suit was filed was unable to entertain the claim relating to future mesne profits "from defect of jurisdiction" or "other cause of a like nature". It is common ground and indeed cannot be argued nor has any attempt been made to urge such a contention before us that the court trying the previous

suit was unable to entertain it from defect of jurisdiction. The only question for determination is whether the court was unable to entertain the previous suit from "other cause of a like nature". In *Jai Kishan Singh v. The Peoples Bank of Northern India* it was pointed out that Section 14 of the Act will have no application where failure on the part of the petitioner or the plaintiff to get the reliefs which he asked for was not attributable to anything connected either with the jurisdiction of the court or with some other defect which was like that of jurisdiction. It was observed that the words "or other cause of a like nature", however, liberally construed must be read so as to convey something ejusdem generis or analogous to the preceding words relating to the defect of I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 jurisdiction. If these words were read along with the expression "is unable to entertain", they would denote that the defect must be of such a character as to make it impossible for the court to entertain the suit or application in its inception or at all events as to prevent it from deciding it on the merits. In other words, if the defects were of such a nature that they had to be decided before the case could be disposed of on merits or if they did not necessitate an examination of the merits of the case they would be defects of a "like nature". The cases which were decided on the principle that if 'a plaintiff or a petitioner failed to establish a cause of action in himself no deduction of time could be allowed under Section 14 were noticed and it was accepted that they proceeded on a correct view. Illustration of the facts which would be covered by the words "or other cause of a like nature" as given in the decided cases were :

(i) if a suit had failed because it was brought without proper leave; (ii) if it had failed because no notice under Section 80, Civil Procedure Code, had been given; (iii) where it would fail for non-production of the Collector's certificate required by Section 7 of the Pensions Act. In each one of these cases the court did not lack jurisdiction in its inception but the suit could not be proceeded with and disposed of until the statutory conditions laid down had been satisfied or fulfilled."

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20. The Hon'ble Supreme Court in the same judgment further held that the words "or other cause of a like nature" must be construed liberally. In Para 7 following has been held:

"7. It is well settled that although all questions of limitation must be decided by the provisions of the Act and the courts cannot travel beyond them the words "or other cause, of a like nature" must be construed liberally. Some clue is furnished with regard to the intention of the legislature by the Explanation III in Section 14(2). Before the enactment of the Act in 1908 there was a conflict amongst the High Courts on the question whether misjoinder and non-joinder were defects which were covered by the words "or other cause of a like nature". It was to set at rest this conflict that Explanation III was added. An extended meaning was thus given to these words. Strictly speaking misjoinder or non-joinder of parties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it."

21. Next judgment to be noticed is judgment of Hon'ble Supreme Court in "(1975) 4 SCC 628, *Roshanlal Kuthalia and others vs. R. B. Mohan Singh Oberoi*", where interpreting Section 14 of the

Limitation Act the Hon'ble Supreme Court held that any circumstances legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits, comes within the scope of the section and a liberal touch must inform the interpretation. In Para 27 of the judgment following has been laid down:

I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 "27. Certainly, Section 14 is wide enough to cover periods covered by execution proceedings (See 1959 SCR 811 at 818). After all, Section 47 itself contemplates transmigration of souls as it were of execution petition and suits. The substantial identity of the subject matter of the lis is a pragmatic test.

Moreover, the defects that will attract the provision are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits, comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right [see (1971) 2 SCR 397 at 401]. In the Associated Hotels case (i.e. the very lis in its earlier round on the execution side this Court pointed out ([1961] 1 SCR 259 at 272) that the question was one of initial jurisdiction of the Court to entertain the proceedings. Thus in this very matter, the obstacle was jurisdictional and the exclusionary operation of Section 14 of the Limitation Act was attracted."

22. Same principles were again reiterated by Hon'ble Supreme Court in "(2004) 3 SCC 458, Union of India & Ors. vs. West Coast Paper Mills Ltd. & Anr. (III)", where in Para 14 following has been laid down:

"14. In the submission of Mr. Malhotra, placing reliance on The Commissioner of Sales Tax, U.P., Lucknow v. M/s Parson Tools and Plants, Kanpur, [(1975) 4 SCC 22], to attract the applicability I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 of Section 14 of the Limitation Act the following requirements must be specified.

"6. (1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party:

(2) the prior proceedings had been prosecuted with due diligence and in good faith:
(3) the failure of the prior proceedings was due to a defect of jurisdiction or other case of a like nature;

(4) both the proceedings are proceeding in a Court."

In the submission of the learned senior counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be "detect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the

Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression "Other cause of like nature" came up for the consideration of this Court in *Roshanlal Kuthalia and Ors. v. R.B. Mohan Singh Oberoi* [(1975) 4 SCC 628] and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 others more or less neighbours to such deficiencies. Any circumstances, legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the Section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has right."

23. Next judgment relied by learned counsel for the Appellant is judgment of Hon'ble Supreme Court in "*M. P. Steel Corporation vs. Commissioner of Central Excise*" (supra), where Hon'ble Supreme Court has laid down that that wherever Section 14 is not applicable, the principles on which Section 14 is based can be applied. In Para 35, Hon'ble Supreme Court has observed that civil proceedings are of many kinds and need not be confined to suits, appeals and applications which are made only in courts *stricto sensu*. Following has been laid down in Para 35:

"35. This judgment is in line with a large number of authorities which have held that Section 14 should be liberally construed to advance the cause of justice - see: *Shakti Tubes Ltd. v. State of Bihar*, (2009) 1 SCC 786 and the judgments cited therein. Obviously, the context of Section 14 would require that the term "court" be liberally construed to include within it quasi-judicial Tribunals as well. This is for the very good reason that the principle of Section 14 is that whenever a person bonafide prosecutes with due diligence another proceeding which proves to be abortive because it is without jurisdiction, or otherwise no decision could be I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the Court in such proceeding would be penalized for no fault of his own. This judgment does not further the case of *Shri Viswanathan* in any way. The question that has to be answered in this case is whether suits, appeals or applications referred to by the Limitation Act are to be filed in courts. This has nothing to do with "civil proceedings" referred to in Section 14 which may be filed before other courts or authorities which ultimately do not answer the case before them on merits but throw the case out on some technical ground. Obviously the word "court"

in Section 14 takes its colour from the preceding words "civil proceedings". Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are made only in courts *stricto sensu*. This is made even more clear by the explicit language of Section 14 by which a civil proceeding can even be a revision which may be to a quasi-judicial tribunal under a particular statute."

24. Last judgment relied by learned counsel for the Appellant is Kalpraj Dharamshi (supra), in which case after order of the NCLT dated 28.11.2019, KIAL filed a Writ Petition before the Bombay High Court, which Writ Petition was dismissed by the High Court on 28.01.2020 on the ground that KIAL had an alternate and efficacious remedy of filing an appeal before NCLAT. Thereafter, KIAL filed appeals before NCLAT on 18.02.2020. The Appeals were allowed by NCLAT vide its judgment dated 05.08.2020, which judgment was challenged before the Hon'ble Supreme Court in the Civil I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 Appeals, which were decided by the Hon'ble Supreme Court. One of the arguments which was raised before the Hon'ble Supreme Court was that appeal was barred by time, which argument was repelled holding that the KIAL was entitled to the benefit of principles underlying Section 14. In Para 65 and 78, the Hon'ble Supreme Court laid down following:

"65. In Consolidated Engineering Enterprises³¹, it has been observed, that while considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted, so as to advance the cause of justice, rather than abort the proceedings. It has been observed, that an element of mistake is inherent in the invocation of Section 14. The section, in fact, is intended to provide a relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. It has been observed, that the legislature has enacted Section 14 to exempt a certain period covered by a bona fide litigious activity. It has been held, that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded. It could thus be seen, that this Court has in unequivocal terms held, that when a litigant bona fide under a mistake litigates before a wrong forum, he would be entitled for exclusion of the period, during which he was bona fide prosecuting such a wrong remedy. Though strictly, the provisions of Section 14 of the Limitation Act would not be applicable to the proceedings before a quasi-judicial Tribunal, I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 however, the principles underlying the same would be applicable i.e. the proper approach will have to be of advancing the cause of justice, rather than to abort the proceedings."

"78. In the present case, perusal of the writ petition would reveal, that it was the specific case of KIAL, that its application, objecting to the application of RP for approval of the resolution plan was heard by a Member (Judicial), whereas, the final orders were passed by a Bench consisting of Member (Judicial) and Member (Technical). It has specifically averred, that though an alternate remedy was available to it, it was invoking the jurisdiction of the High Court since the question involved was also with regard to the manner in which the jurisdiction was exercised by NCLT. It could thus be seen, that KIAL was bona fide prosecuting the proceedings before the High Court in good faith. Perusal of the dates referred to herein above would also reveal, that KIAL was prosecuting the proceedings before the High Court with due diligence. Even before the availability of the certified copy, it had knocked the doors of the High Court. The matter before the High Court was hotly contested and ultimately, the petition was dismissed by an elaborate judgment relegating KIAL to

the alternate remedy available to it in law. As such, the conditions which enable a party to invoke the provisions of Section 14 of the Limitation Act are very much available to KIAL. If the period during which KIAL was bona fide prosecuting the writ petition before the I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 High Court and that too with due diligence, is excluded applying the principles underlying Section 14 of the Limitation Act, the appeals filed before NCLAT would be very much within the limitation. We find, that KIAL would be entitled to exclusion of the period during which it was bona fide prosecuting the remedy before the High Court with due diligence."

25. From the law laid down by Hon'ble Supreme Court, it is clear that principles underlying Section 14 can be claimed in appeal filed under Section 61 of I&B Code also by the Appellant.

26. After noticing the law on the subject, we now come to the condition which is required to be fulfilled for extending the benefit of Section 14 i.e. whether the Court in earlier proceeding prosecuted was unable to entertain it for defect of jurisdiction or other cause of like nature. The key words are "unable to entertain it".

27. We may first examine whether the I.A. No. 2623 of 2021, which was filed by the Appellant, was not entertained by this Tribunal while deciding the I.A. No. 2623 of 2021 by judgment dated 03.01.2023.

28. In the judgment dated 03.01.2023 of this Tribunal, there is detailed consideration of the I.A. No. 2623 of 2021 filed by the Appellant. The prayers made in I.A. No. 2623 of 2021 have been noted in para 16 of the judgment. In para 21 of the judgment while considering the right of the Intervenor following has been observed:

I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 "21. The intervener is well within its rights either to support the order dated 08.10.2021 or to oppose the said order. But when the Company Appeal (AT) Ins. No. 880 of 2021 which has been filed challenging the Order dated 08.10.2021 is sought to be withdrawn, there is no proceeding in which intervener can be heard in opposition of the Order dated 08.10.2021. Proceedings under the IBC are proceedings in a special statute with timeline where limitation prescribed under the Act is for a purpose.

The timeline which are prescribed in the IBC has to be given weight which principle has been reiterated by the Hon'ble Supreme Court in [2022 2 SCC 244] "V. Nagarajan Vs. SKS Ispat and Power Limited & Ors". Paragraph 28 of the Judgment, Hon'ble Supreme Court has laid down following:

"In this background, when timelines are placed even on legal proceedings, reading in the requirement of an "order being made available" under a general enactment (Companies Act) would do violence to the special provisions enacted under IBC where timing is critical for the workability of the mechanism, health of the economy,

recovery rate of lenders and valuation of the corporate debtor. IBC, as a prescriptive mechanism, affecting rights of stakeholders who are not necessarily parties to the proceedings, mandates diligence on the part of applicants who are aggrieved by the outcome of their litigation. An appeal, if considered necessary and expedient by an aggrieved party, is expected to be filed forthwith without awaiting a free copy which may be received at an indefinite stage. Hence, the omission of the words "from the date on which the order is made available" for the purposes of computation of limitation in Section 61(2) IBC, is a consistent signal of the intention of the I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 legislature to nudge the parties to be proactive and facilitate timely resolution."

29. The Intervention Application No. 2623 of 2021 was considered on merits in the judgment of this Tribunal, relevant case laws cited by the counsel for the Intervenor was noted and considered. After detailed consideration of judgment of Hon'ble Supreme Court relied by learned counsel for the Intervenor, ultimately, the following conclusion was recorded in Para 38 of the judgment, which is to the following effect:

"38. In view of the fore-going discussions, we are of the considered opinion that at the instance of intervenor, the order passed by the Adjudicating Authority dated 08.10.2021 cannot be set aside. We although have permitted the applicant to intervene in the Appeal but are unable to grant any relief to intervention as prayed in the Application. We are thus of the view that prayer of the appellant -Indiabulls Housing Finance Ltd. to withdraw the Appeal is to be allowed and the Appeal is to be dismissed as withdrawn."

30. The judgment dated 03.01.2023, thus, in result, dismissed the Company Appeal (AT) (Ins.) No. 880 of 2021 as withdrawn and has rejected the I.A. No. 2623 of 2021. The rejection of the I.A. was after consideration on the merit of the I.A. and entitlement of the Intervenor in the I.A. which was filed. Thus, present is not a case where it can be said that in earlier proceeding the Court was unable to entertain the I.A. The I.A. No. 2623 of 2021 was entertained, heard on merits and rejected. It is further to be noted I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 that the Appellate Tribunal which decided the I.A. No. 2623 of 2021 had no defect of jurisdiction nor its rejection was on "other cause of like nature". The civil proceeding which was initiated by the Appellant by I.A. No. 2623 of 2021 was prosecuted on merits and rejected. The condition as required to be fulfilled under Section 14(1) cannot be said to be fulfilled. We may in this context refer to two judgments of High Courts. In "AIR 1977 Cal 443, Corporation of Calcutta vs. Pulin Chandra Daw & Ors", the question of extending benefit of Section 14 of the Limitation Act arose. It was held by the Hon'ble High Court of Calcutta that when the prior suit being adjudicated upon and disposed of on merits, the conditions were not fulfilled. In Para 14 following has been laid down:

"14. On a careful consideration of the respective contention of the parties I find the defendant's case to be of more sub-stance. In my view the claim of the plaintiff in the prior suit having been ad-judicated upon and disposed of on merits, it can hardly be said that the previous suit filed in 1952 was altogether misconceived, or that the

Courts were under any infirmity or there was any defect of jurisdiction or any defect of like nature which prevented the Courts from entertaining the earlier suit."

31. Another judgment of the Madhya Pradesh High Court reported in "AIR 1958 MP 91, Kashiram vs. Santokhbai", where the Division Bench again reiterated the same principle in Para 4 and 5, which is to the following effect:

I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 "4. In this appeal the main contention of Mr. Chitale, learned counsel for the appellant, is that Section 14 of the Limitation Act could not be invoked in this case as the plaintiff's prior suit was dismissed; not on account of defect of jurisdiction or other cause of a like nature, but that it was entertained and then dismissed because the relief of the rendition of accounts was not available against the son of a deceased agent. Learned counsel relied on V.C. Thani Chettiar v. Dakshinamurthy Mudaliar, (S) AIR 1955 Mad 288 (A); Nakul Chandra Ghose v.

Shyamapada Ghose, AIR 1945 Cal 381 (B); and Ramanand Prasad v. Gaya Prasad Ram, AIR 1949 Pat 362 (C).

5. In our opinion, the contention advanced on behalf of the appellant must be given effect to. We have no doubt that Section 14 of the Limitation Act has no application to the facts of this case and the plaintiff is not entitled to the benefit of that section. Before that section can apply, the prior proceeding must have been founded upon the same cause of action as that on which the later suit is founded and the Court in which the prior proceeding was prosecuted must have been unable to entertain it for the reasons specified, namely, defect of jurisdiction or other cause of a like nature. Now the words 'which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it' which occur in Section 14(1) of the Limitation Act are very significant.

As pointed out by Mukherjee, J. (as he then was), in AIR 1945 Cal 381 (B), the word 'entertain' means to I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 admit for consideration. It does not mean giving relief, and that when a suit or proceeding is not thrown out in limine but the Court receives it for consideration and disposal according to law, it must be regarded as entertaining the suit or proceeding, no matter whatever the ultimate decision may be; and that a suit is to be regarded as not entertained by the Court only if it is thrown out at its inception and the Court does not decide it on its merits."

The learned Judge further observed that Section 14 of the Limitation Act speaks of the inability of the Court to entertain a suit or proceeding on certain specific grounds, which are of a formal nature and that inability to entertain a suit means not inability to grant relief to the plaintiff but inability to give him a trial at all. In our opinion when a suit is dismissed not because the Court had no jurisdiction to entertain it, or for any other cause of a like nature, but because it was misconceived or because the proceeding or the suit was not one recognised by law as legal in its initiation, then clearly Section 14 of the Act is not attracted to such a suit.

This view is amply supported by the cases cited by the learned counsel for the appellant and numerous other cases. Now, here, the plaintiff's prior suit was dismissed not because of any defect of jurisdiction or any other ground similar to it but it was entertained and dismissed because it was wholly misconceived and the relief of rendition of accounts could not be granted against the son of a deceased agent. The suit was dismissed because the proceedings according to I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 the trial Court were not recognised by law as legal in their initiation. If then Section 14 of the Limitation Act has no applicability to this case and the plaintiff's suit is governed by Article 89, then it is clearly barred by time and must be dismissed."

32. We, thus, are satisfied that the I.A. No. 2623 of 2021 came to be decided on merits and it cannot be said that the Court was unable to entertain the application due to defect of jurisdiction or other cause of like nature. This essential condition being not satisfied, the benefit of Section 14 cannot be extended.

33. Shri Arun Kathpalia, learned senior counsel for the Respondent vehemently contended that present is also a case where it cannot be said that Appellant was prosecuting the I.A. with due diligence. Shri Kathpalia submitted that when the order was passed on 08.10.2021 by the Adjudicating Authority directing for execution of deed for the transfer of property by the Resolution Professional, any person who felt aggrieved of the order was free to avail right to appeal available under Section 61 of the I&B Code and challenge the said order. It is well settled that in Insolvency and Bankruptcy Code timelines have its own importance and relevance. When Section 61 provides that right to appeal to be exercised within a prescribed period of 30 days with power to condone the delay of only 15 days, the party who chose not to file an appeal, comes after 400 days for filing an appeal cannot be said to be acting with due diligence. The Appellant is a Financial Creditor of the Corporate Debtor who is an entity backed by large number of advisors and I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 consultants. The remedy of appeal and an intervention application in an appeal are entirely different. When Appellant chose not to file appeal challenging order dated 08.10.2021 and chose to file Intervention Application in an appeal filed by the another creditor it cannot be said that it was prosecuting the proceeding with due diligence.

34. By filing an Intervention Application, the Appellant could not have prayed for setting aside order dated 08.10.2021 it has already been held by this Tribunal in its judgment dated 03.01.2023, which also received approval of the Hon'ble Supreme Court. It is relevant that the status of the Appellant in I.A. No. 2623 of 2021 has been held to be of Intervenor only, which was also noted by the Hon'ble Supreme Court in its order dated 09.12.2021, as extracted above.

35. Learned counsel for the Respondent has also placed reliance on judgment of this Appellate Tribunal in "I.A. No. 3349 of 2022 in Company Appeal (AT) (Ins.) No. 1124 of 2022, Isolux Corsan India Engineering & Constructions Pvt. Ltd. through its Liquidator, CA Rajeev Bansal vs. Shailesh Verma, Erstwhile Resolution Professional of South East U.P. Power Transmission Company Ltd. & Ors.", where an application claiming condonation of delay in filing an appeal under Section 61, relying on Section 14 of the Limitation Act, was dismissed. In the above case benefit of Section 14 was claimed on the basis of I.A. No. 145/2022, which was filed before the Adjudicating Authority in the same Company Petition. This Tribunal after I.A. No. 130 of 2023 in Company Appeal (AT)

Insolvency No. 37 of 2023 considering the submission rejected the same in Paras 17 to 21, which are to the following effect:

"17. From the facts of the present case, it is clear that Appellant is claiming benefit of Section 14 on the basis of I.A. No. 145 of 2022 filed in the same proceeding i.e. C.P. IB No. 107/ALD/2019. In which proceeding, by Impugned Order, I.A. No. 79 of 2022 has been allowed. I.A. No. 145 of 2022 was filed by the Appellant. Subsequent to filing of I.A. No. 145 of 2022, this Application was ultimately withdrawn on 18th July, 2022 by the Learned Counsel appearing for the Applicant/Appellant. Following Order was passed on 18th July, 2022 in I.A. No. 318 of 2021 and I.A. No. 145 of 2022:

"IA No. 318/2021 & I.A. No. 145/2022 Ms. Jagriti Dosi, Advocate for the applicant. It is stated by Ld. Counsel for the applicant that since the Resolution Plan has already been approved by this Bench, both these applications are rendered infructuous and she wants to withdraw both these applications.

Keeping in view the statement made by the Ld. Counsel for the applicant IA No. 318/2021 & IA No. 145/2022 are dismissed as withdrawn."

18. Present is not a case where it is even contended that IA No. 145 of 2022 was not entertained due to any defect of the jurisdiction or other cause of like nature. The Adjudicating Authority before whom the Application was filed, was fully competent to entertain the Application. We however I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023 are of the view that the principle under Section 14 are attracted when a claimant is prosecuting "another civil proceeding" the use of expression "another civil proceeding" as occurring in Section 14(1) and 14(2) is for definite purpose and object.

19. We have already noticed above the Judgement of the Hon'ble Supreme Court in "Kalpraj Dharamshi" (supra) where it has been held that authority underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy in a wrong Court should be excluded. Present is not a case where Applicant can claim that he had filed I.A. No. 145/2022 in a wrong Court. The IA was filed before the same Adjudicating Authority in the same proceeding being CP (IB) No. 107/ALD/2019 in which Impugned Order was passed. The applicability of principle of res judicata may be invoked on different stages of the same proceedings but we have not come across any authority/precedent where it has been held that in same proceeding with regard to the Orders passed in different I.As, principles of Section 14 of Limitation Act can be invoked.

20. We thus are of the view that Judgement of "Kalpraj Dharamshi" (supra) quoted above, the benefit of Section 14 was extended on account of writ petition in the Hon'ble High Court, the said Judgment was on its own fact and the said Judgment does not help the Appellant in the present case.

I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023

21. We thus are satisfied that the Applicant is not entitled to claim benefit of Section 14 of the Limitation Act, 1963 on account of having filed an I.A. No. 145 of 2022 in the same proceeding i.e. CP(IB) No. 107/ALD/2019 which was dismissed as withdrawn on the request made by the Appellant."

36. In view of the foregoing discussion, we, thus, are of the considered opinion that Appellant is not entitled to claim benefit of Section 14 of the Limitation Act on the ground that I.A. No. 2623 of 2021 was pending in Company Appeal (AT) (Ins.) No. 880 of 2021. The Appellant being not entitled for benefit of Section 14 and this appeal being filed against order dated 08.10.2021 after 400 days, we see no reason to condone the delay in filing the appeal. Delay condonation application is dismissed. Consequently, Memo of Appeal is also rejected.

[Justice Ashok Bhushan] Chairperson [Barun Mitra] Member (Technical) NEW DELHI 18th April, 2023 Archana I.A. No. 130 of 2023 in Company Appeal (AT) Insolvency No. 37 of 2023