

# NCLAT

National Company Law  
Appellate Tribunal



Advocates  
& Solicitors

## Article 1 of Limitation Act, 1963 not applicable to proceedings under Insolvency and Bankruptcy Code, 2016

S.M. Ghogbhai v. Schedulers Logistics India Pvt. Ltd.

Case No.	Company Appeal (AT) Insolvency No. 281 of 2022
Date	23 May 2022
Tribunal	National Company Law Appellate Tribunal, Principal Bench, New Delhi
Coram	Hon'ble Justice Ashok Bhushan, Dr. Alok Srivastava, Member Technical

## 1. BRIEF FACTS:

- 1.1. S.M. Ghogbhai, (**"Appellant"**) (Operational Creditor) and Schedulers Logistics India Pvt. Ltd. (**"Respondent"**) (Corporate Debtor) were engaged in providing Transport Services.
- 1.2. On 26.09.2016, the Respondent made the last payment to the Appellant.
- 1.3. On 10.10.2017, vide email, the Respondent sought reconciliation of account in respect of the outstanding dues payable to the Appellant.
- 1.4. On 08.03.2019 a 'Demand Notice' under Section 8 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) was issued by the Appellant to the Respondent demanding outstanding debt of Rs. 76,04,050/-. Subsequently, on 26.03.2019 the Respondent, replying to the Demand Notice denied such dues.
- 1.5. On 24.10.2019, the Appellant filed an Application under Section 9 of the Code (**"Said Application"**) seeking Corporate Insolvency Resolution Process' (**"CIRP"**) of the Respondent before the National Company Law Tribunal, Mumbai Bench (**"The Learned Adjudicating Authority"**) vide C.P. No. 3857/I&B/2019 to which the Respondent filed its Reply-Affidavit refuting the claim of the Appellant.
- 1.6. On 16.11.2021 the Learned Adjudicating Authority by the Impugned Order rejected the Said Application thereby holding that all the invoices on basis of which Said Application were filed are earlier to three years period from the date of filing of the Said Application hence, the claim on the basis of total 174 invoices were barred by time and thereon, dismissed the Said Application.
- 1.7. Therefore aggrieved by the above, present Company Appeal (AT) Insolvency No. 281 of 2022 has been preferred before National Company Law Appellate Tribunal, Principal Bench, New Delhi (**"Hon'ble Court"**).

## 2. ISSUE RAISED:

- 2.1 Whether Appellant can take benefit of Article 1 of the Limitation Act, 1963 for its claim of outstanding dues from the Respondent under Section 9 of the Code?

## 3. SUBMISSIONS OF THE APPELLANT:

- 3.1 The Learned Counsel for the Appellant averred that both the parties were maintaining a running account and there have been transactions *inter se* that is well reflected in the Ledger Account filed by the Respondent.
- 3.2 It was further averred that in the facts and circumstances of the present case, Article 1 of the Limitation Act, 1963 (**"Limitation Act"**) was attracted therefore the limitation period would begin from 31.03.2017 being the close of the financial year in which the last item is entered and hence, Said Application filed on 24.10.2010 was within three years from 31.03.2017 and was not barred by limitation.
- 3.3 Thereon, it was averred that since there was mutual account between the parties, Article 1 of the Limitation Act is attracted and the Learned Adjudicating Authority committed an error in rejecting the Said Application as the same was barred by time.
- 3.4 The Learned Counsel for the Appellant, in its rejoinder, submitted that Adjudicating Authority ought to have exercised jurisdiction under Section 5 of the Limitation Act in condoning the short delay, if any.
- 3.5 The Learned Counsel for the Appellant further relied on the Supreme Court case of *Sesh Nath Singh v. Bidyabati Sheoraphuli Coop. Bank Ltd.*<sup>1</sup> To contend that the Code does not exclude the application of any other provisions of the Limitation Act to proceedings

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<sup>1</sup> (2021) 7 SCC 313.

under the Code before Hon'ble National Company Law Tribunal and/or Hon'ble National Company Law Appellate Tribunal.

- 3.6 Furthermore, Learned Counsel for the Appellant in support of his submissions submitted that there were mutual dealing between the parties and further reliance was placed on the Judgement of Hon'ble Supreme Court of India in the case of *Hindustan Forest Company v. Lal Chand and Ors*<sup>2</sup> wherein, Hon'ble Supreme Court considered Article 115 of Jammu and Kashmir Limitation Act that was pertaining to suit regarding the balance due on mutual, open and current account.

#### **4. SUBMISSIONS OF THE RESPONDENT:**

- 4.1 The Respondent refuting the submissions of the Learned Counsel for the Appellant contended that the claim raised *vide* the Said Application was only on the basis of 174 invoices therefore, Article 1 of the Limitation Act for the suit relating to the Accounts and the Application under Section 9 of the Code cannot be made applicable as the ongoing proceedings cannot be said to be suit relating to accounts, hence it is only Article 137 of the Limitation Act which is applicable, further reliance was put on catena of Hon'ble Supreme Court of India.
- 4.2 Therefore in pursuance of the above, it was vehemently contended by the Respondent that no case for applicability of Article 1 of the Limitation Act was taken by the Appellant before the Learned Adjudicating Authority.

#### **5. DECISION OF THE HON'BLE COURT:**

- 5.1 The Hon'ble Court found that it is well established law that the Limitation Act is applicable on Insolvency and Bankruptcy Proceedings (under the Code) and that the same does not exclude the application of Sections 6 to 14 or 18 and any provision of the Limitation Act.
- 5.2 The Hon'ble Court referred the cases of *B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Ors.*<sup>3</sup> and *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd*<sup>4</sup>, wherein the Hon'ble Supreme Court after considering the provisions of the Code and the Limitation Act has laid down that Article 137 of the Limitation Act will apply for filing application under Section 7 and 9 of the Code.
- 5.3 The Hon'ble Court opined that the Said Application by the Appellant cannot be said to be a suit relating to accounts. As Article 1 is in Part-I of the Schedule of the Limitation Act that deals with suits, under the "*suit relating to accounts*".
- 5.4 The Hon'ble Court stated that going through the contents of the Said Application which have been brought on record including the Bank statements that last payment received by the Appellant was on 26<sup>th</sup> September, 2016. Therefore from the last date of payment the Said Application could have been filed within three years.
- 5.5 The Hon'ble Court further opined that the Said Application filed by the Appellant was on the basis of 174 invoices and therefore, under the pretext of the same, the Hon'ble Court affirmed that limitation as per Article 137 will begin to run from the date when the right to apply accrues and the Said Application filed on the basis of 174 invoices and all invoices being prior to much before three years period from filing of Said Application, the Adjudicating Authority has rightly rejected the Said Application. Therefore, Hon'ble Court

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<sup>2</sup> AIR 1959 SC 1349

<sup>3</sup> (2019) 11 SCC 633.

<sup>4</sup> (2020) 15 SCC 1.

finding no merit in the Company Appeal (AT) Insolvency No. 281 of 2022, dismissed the same.

**6. PSL OPINION:**

- 6.1 The Hon'ble Court in delivering its judgement rightly clarified that applications filed under Section 9 of the Code will be interpreted under Article 137 of the Limitation Act, 1963 not under Article 1, the underlying reason being that Article 1 deals with Suit relating to Accounts and Said application wouldn't fall under the afore-stated categorization. Therefore, Appellant would have been wise to file the Said Application of the outstanding dues within the 03-years period from the date when the right to apply accrues for said Application to be admitted.