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**INTEC CAPITAL LIMITED V. ARVIND GAUDANA IRP OF**  
**VRUNDAVAN CERAMIC PVT LTD.**

Vaibhav Chaudhari<sup>1</sup>

| <b><u>CASE SUMMARY</u></b> |   |
|----------------------------|---|
| <b>Case Name:</b>          | Intec Capital Limited v. Arvind Gaudana IRP of Vrundavan Ceramic Pvt Ltd. |
| <b>Citation:</b>           | 2021 SCC Online NCLT 166  |
| <b>Name of Court:</b>      | NCLT, Ahmedabad   |
| <b>Date of Judgement:</b>  | 05.02.2021  |
| <b>Judge (s)/ Bench:</b>   | Hon'ble Justice M.B. Gosavi & Virendra Kumar Gupta                        |

**INTRODUCTION**

With the increase in industrialization and the Start-Up culture in India, the need for Insolvency laws increased, and thus, on the 28<sup>th</sup> May 2016, the Indian judicial system witnessed one of the most crucial and required corporate laws, “Insolvency and Bankruptcy Code 2016”. One of the main intents behind the act was that the companies are prevented from getting wound up due to the financial crunch and thereby to keep it alive; the concept of CIRP, i.e., “Corporate Insolvency Resolution Process”, was introduced. According to the process, a person as, Interim Resolution Professional got appointed to administer the affairs of the Corporate Debtor and, following the finalization of the list which described the Operational and financial creditors, made a “Committee of Creditors”. The constituted committee, as mentioned earlier, appoints the Resolution Professional who takes over the business of the Corporate Debtor. The most important obligation that the Resolution Professional has is that he has to invite for Resolution Plan and to present them before the Committee of Creditors, and the committee has to decide upon the plan by way of voting.

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The plan that gets 66% or more votes gets passed, and the discussion over the same shall proceed. One of the crucial points of discussion is to decide what claims to be included in the plan and discussion and whether the claims that are time-barred can become part of the Corporate Insolvency Resolution Process (*hereinafter referred to as CIRP*). The present matter reached the National Company Law Tribunal (*hereinafter referred to as NCLT*) of Ahmedabad, where the tribunal answered the question of incorporating a time-barred claim under the CIRP process.<sup>2</sup>

### **FACTUAL BACKGROUND**

On dated 21<sup>st</sup> January 2021, the NCLT, Ahmedabad (*hereinafter referred to as Adjudicating Authority*) issued an order to initiate the process of CIRP against the Corporate Debtor in an application filed under Insolvency and Bankruptcy Code, 2016, section 7. The application was moved by one of the Non-Banking Financial Institutions (*hereinafter referred to as NBFC*), duly registered with the RBI i.e. the “Reserve Bank of India” & thus the applicant in the present case. According to the Applicant, the Corporate Debtor had issued a Corporate Guarantee in the favour of the Applicant against the finance provided by the Applicant to 2 companies, namely M/s Gokul Ceramics Pvt. Ltd. & M/s. Umiya Ceramic Pvt. Ltd. in the year of 2013. The applicant also put forth the fact that the Corporate Guarantor had also taken credits from various other financial institutions. One of the financial institutions was one of the government banks, namely, SBI i.e., “the State Bank of India” has also filed the application under section 7 of the IBC, 2016, on the grounds that the Corporate Debtor failed to repay the credit amount and declared him as Non-Performing Asset on dated 31.07.2013. As per the application made, the concerned Adjudicating Authority initiated the CIRP process via an order dated 21.02.2020, and thus, IRP was appointed to initiate the process of CIRP thereafter. Later, on an application was filed by one of the financial creditors in 2020 where the applicant wanted that the claims which were time-barred as per the Limitation Act, 1963 should also be taken into consideration as those claims were also mentioned in the memorandum of information provided to the prospective Applicant of the Resolution. On the basis of this application, an interim stay was passed by the Adjudicating authority, where they have stayed the process of CIRP via an order dated 11.11.2020. Hence, the present matter.

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<sup>2</sup>Intec Capital Limited v. Arvind Gaudana IRP of Vrundavan Ceramic Pvt Ltd., 2021 SCC Online NCLT 166.

**ISSUE:**

1. Can the time-barred claims be addressed during the CIRP?
2. Does the Resolution Professional have the power to assess whether the claim is time-barred or not?

**RULES/LAW APPLICABLE IN THE CASE**

**1) Limitation Act, 1963**

The act prescribes a time period within which a right is required to be enforced, depending upon the matter in question. The act aims to prevent unnecessary litigation from being dragged endlessly for long and to facilitate quicker disposal of cases.

Since the NCLT in the instant case was dealing with the issue of admissibility of time-barred debts, it became necessary for the tribunal to decide whether the Limitation Act, 1963 is applicable to the CIRP process. As it is only on the basis of this, will it be decided whether to admit time-barred claims or not?

**2) Section 238A of IBC, 2016**

This provision was added to the code vide the IBC (Second Amendment) Act, 2018, which made the Limitation Act, 1963, applicable to all the proceedings that take place under the code before the authorities prescribed in it.

This section required an interpretation of NCLT to decide whether section 238A, apart from proceedings before the authorities, also applies to the CIRP process or not.

**3) Regulation 13(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016**

The regulation prescribed certain duties for Interim Resolution Professional and Resolution Professional with regard to claims received from creditors. They are required to verify the claims received and maintain a list containing names of creditors along with the amount they claim.

The regulation was considered by the court to decide whether the regulation also authorizes the RP is bound to reject time-barred claims, considering a number of authorities that state that an RP cannot adjudicate on claims.

#### 4) Section 7(1) of the Insolvency and Bankruptcy Code, 2016

As per the section, any financial creditor or group of financial creditors, individually or jointly, can file an application to initiate the process of CIRP against the corporate debtor if the corporate debtor has made a default before the competent Adjudicating Authority. In the present case, the application was filed by the Applicant, an NBFC, and the State Bank of India against the Corporate Debtor, on which the Adjudicating Authority has given the decision in this case.

### **ANALYSIS AND REASONING**

#### **CAN TIME-BARRED CLAIMS BE ADDRESSED DURING CIRP?**

The term “debt” has been defined under section 3(11) of the IBC, 2016, as “*a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.*” Hence, if we contrast the definition of “default” defined under Sec. 3(12) and “dispute” under section 5(6), respectively, with the meaning of “claim” as mentioned under Sec. 3(6), it will appear that even though the term “claim” refers to the Payment Right, the definition of “debt” and “default” refers to liability in respect to claim which is due, i.e., the debt shouldn’t be barred by time and debts that are barred by limitation, that is time-barred debts are not due in the eyes of law.

Such an interpretation as discussed above was also discussed by the Hon'ble SC in “***Swiss Ribbons vs. Union of India***”<sup>3</sup>, where the court interpreted the term “debt” and “claim” by stating that “*whereas a “claim” gives rise to a “debt” only when it becomes “due,” a “default” occurs only when a “debt” becomes “due and payable” and is not paid by the debtor.*”<sup>4</sup> Also, in “***B.K Educational Services Pvt. Ltd. vs. Parag Gupta and Associates***,”<sup>5</sup> the Hon'ble Supreme Court (SC) opined that the term “debt due,” as used in the definition sections of the code, would obviously refer to the “*debts that are “due and payable” in law*

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<sup>3</sup> Swiss Ribbons vs. Union of India, (2019) 4 SCC 17.

<sup>4</sup>Id.

<sup>5</sup>B.K Educational Services Pvt. Ltd. vs. Parag Gupta and Associates, AIR 2018 SC 5601.

*and debts that are not time-barred.*<sup>6</sup>It is well established in law that “*when a debt is barred by time, the right to a remedy is time-barred,*”<sup>7</sup> and a “*debt may not be due if it is not payable in law or in fact.*”<sup>8</sup>

Hence, in light of the definitions provided in the code and their interpretation by the Hon'ble SC in two different instances, it could be concluded that the ruling of NCLAT in the instant case that time barred claims cannot be admitted during CIRP is valid and well-reasoned.

Another aspect that has to be considered is the fact that the Limitation Act, 1963, is also consistent to IBC, 2016. In “**M/s Deem Roll Tech Limited vs. M/s R.L Steel and Energy Ltd.**”<sup>9</sup>, the Hon'ble NCLT observed that, since there are underdefined sections or provisions that bars the bareness of the Limitation Act on IBC, it can be safely inferred that the legislature never intended to make Limitation Act, 1963 inapt to the proceedings of the tribunal which had arisen under IBC. This particular ruling of NCLT is strengthened further by the Insolvency Law Committee Report of March 2018, which states, “*intent of the code could not have been to give a new lease of life to debts which are time-barred.*”<sup>10</sup>The report discussed regarding the intent of the legislature behind introducing the code and stated that there was never an intention of the legislation to “*package the code as a fresh opportunity for creditors who did not exercise their remedy under the existing laws within the prescribed limitation period.*”<sup>11</sup>

In addition to the above, the report of 2018 emphasized the consequences of the non-applicability of the Limitation Act on proceedings under IBC. It would re-open the right of claimants to “*file time-barred claims with the IRP/RP, which will consequently become a part of the resolution plan.*”<sup>12</sup>As per Sec. 30(4) of the code<sup>13</sup>the restriction on the time barred debts, as a resolution plan do not comply. Hence, it can safely be inferred that in arguendo, if Limitation Act is made inapplicable to IBC, it would end up frustrating the main objective of the Limitation Act, which was based off the doctrine of “*visilantibus non dormientibus jura*

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<sup>6</sup>*Id.*

<sup>7</sup>Punjab National Bank vs. Surendra Prasad Sinha, 1993 Supp (1) SCC 499.

<sup>8</sup>Innoventive Industries Ltd. vs. ICICI Bank Ltd., (2018) 1 SCC 407.

<sup>9</sup>M/s. Deem Roll-Tech Limited v. M/s. R.L. Steel & Energy Ltd, Company Application No. (I.B.) 24/PB/2017.

<sup>10</sup>Ministry of Corporate Affairs, Government of India Report on the Insolvency Law Committee, (2018).

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>Ministry of Corporate Affairs, Government of India Report on the Insolvency Law Committee, (2018).

*subveniunt*”, that is, “*the parties who seek to uphold their legal right cannot sleep over the matter and at a later stage seek to enforce their rights which is likely to cause prejudice to other parties.*”<sup>14</sup>

It should also be noted that Section 238A was added to IBC, 2016 vide Second Amendment to Insolvency and Bankruptcy Code done in the year 2018, which made the provisions of Limitation Act applicable to proceedings under IBC. The intent behind bringing such an amendment was discussed by the Hon'ble SC in “***Laxmi Pat Surana vs. Union of India***”<sup>15</sup>

Where the court held that the insertion of section 238A was not done to re-open the time-barred claims against the corporate debts under the Limitation Act, 1963.

where it was observed that the purpose of introducing Section 238A was not to reopen the time barred debts under Limitation Act, 1963.

Furthermore, the NCLT in ***Intec Capital***<sup>16</sup> also ruled that time barred claims cannot be admitted during CIRP/liquidation proceedings. This particular observation too is a substantiated and well-reasoned one. For instance, in “***Meena V. Kothari vs. Maberest Hotels Pvt. Ltd.***”<sup>17</sup>, the Hon'ble NCLAT rejected an application filed under Sec. 7 of IBC, 2016, on grounds that the application was time-barred. In another case of “***Sumeet Maheshwari vs. Navbharat Press (Bhopal) Pvt. Ltd.***”<sup>18</sup>, the Hon'ble NCLAT, while dealing with the issue of whether the CIRP proceedings can be instated on the basis of time barred debts, it was observed that “*the IBC proceedings cannot be initiated based on time barred claims. Regardless of when IBC came into force if more than three years had elapsed from the date of default, a creditor is not entitled to maintain an application under the Code.*”<sup>19</sup> The Hon'ble SC too in “***Babulal Vardharji vs. Gurjar Aluminium Industries***”<sup>20</sup> had rejected an application filed under Sec. 7 of IBC on similar grounds, i.e., the application being barred by limitation.

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<sup>14</sup> Punjab National Bank vs. Surendra Prasad Sinha, 1993 Supp (1) SCC 499.

<sup>15</sup> Laxmi Pat Surana vs. Union of India, AIR 2021 SC 1707.

<sup>16</sup> *Supra* note 1.

<sup>17</sup> Meena V. Kothari vs. Maberest Hotels Pvt. Ltd., (Company Appeal (AT) No. 797 of 2019)

<sup>18</sup> Sumeet Maheshwari vs. Navabharat Press (Bhopal) Pvt. Ltd., MANU/NL/0253/2020.

<sup>19</sup> *Id.*

<sup>20</sup> Babulal Vardharji vs. Veer Gurjar Aluminium Industries, AIR 2020 SC 4668.

## Responsibility of RP in adjudication of claims and rejecting time barred claims

It is well settled by the Hon'ble SC in “*Swiss Ribbons Pvt. Ltd. vs. Union of India*”<sup>21</sup> that, RP doesn't have any adjudicatory powers.<sup>22</sup> Apart from this, that there are enough cases wherein it was observed that RP cannot adjudicate upon claims. For instance, in “*M/s Dynepro Private Ltd. vs. Mr. V Nagarajan*”<sup>23</sup> where the Hon'ble NCLAT noted that an RP does not have any jurisdiction to decide upon the claims of each and every creditor. Similar view was taken by Hon'ble NCLAT in “*Mr. S. Rajendaran, Resolution Professional of PRC International Hotels Pvt. Ltd. vs. Jonathan Muralidarane*”<sup>24</sup> where it was observed that “*we are of the opinion that the RP had no jurisdiction to determine the claim. He could have only collated the claim based on evidence and the record of the corporate debtor.*”<sup>25</sup>

But it should also be noted that due consideration has to be given to the fact that RP though merely being an administrative body, he is required to act judicially and hence, he is in a position to reject claims which are barred by limitation by virtue of his duty towards law.

In “*Mrs. Sahgal vs. State of UP*”<sup>26</sup>, the Hon'ble Allahabad High Court observed that “*administrative bodies may enjoy not only administrative but also quasi-judicial powers*”<sup>27</sup> The SC in “*A.K Kraipak vs. Union of India*”<sup>28</sup> observed that it is a duty of an administrative body to act judicially. The SC went on to observe that “*was considered as an administrative power some years back is now being considered as a quasi-judicial power.*”<sup>29</sup>

Hence, it can be safely inferred from the aforementioned judgements that RP, though being an administrative body under IBC, is required to act judicially.

Due regards must also be given to the statutory duty bestowed upon the RP by virtue of Regulation 13 of the CIRP Regulations,<sup>30</sup> which requires an RP to verify each and every claim

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<sup>21</sup> *Supra* note 2, *see also*, *Arcelor Mittal India Pvt. Ltd. vs. Satish Kumar Gupta & Ors.*, (2018) 2 SCC 1.

<sup>22</sup> *Id.*

<sup>23</sup> *M/s. Dynepro Private Limited vs. Mr. V. Nagarajan*, [Company Appeal (AT) (Insolvency) No. 229 of 2018]

<sup>24</sup> *Mr. S. Rajendaran, Resolution Professional of PRC International Hotels Pvt. Ltd. vs. Jonathan Muralidarane*, CA (AT)(Ins)1018/2019.

<sup>25</sup> *Id.*

<sup>26</sup> *Mrs. K.L Sahgal vs. State of UP*, AIR 1965 All 465.

<sup>27</sup> *Id.*

<sup>28</sup> *A.K Kraipak vs. Union of India*, AIR 1970 SC 150.

<sup>29</sup> *Id.*

<sup>30</sup> IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



as on the insolvency commencement date. Regulation 13 further requires the RP to “*maintain a list of creditors along with the amount claimed by them, the amount of their claims admitted and update it.*”<sup>31</sup> Hence, the regulation itself make a clear distinction between the amount which the creditors claim and their claims actually admitted. This provision in itself makes it obvious of the fact that there has to be some application of mind on behalf of the RP to admit claims which are legally tenable and not otherwise. Also, the term, “application of mind” is a dynamic principle of law according to which judicial or quasi-judicial or administrative decision, whatever the case may be, must have its natural delivery.<sup>32</sup> The principle envisages the full view, comprehension and understanding of facts of a given situation.<sup>33</sup>

The Hon'ble SC in “*Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta*”<sup>34</sup> emphasized upon the duty of an RP and noted that all the claims submitted must be finalized by the RP so that the interested resolution applicant is made aware of precisely what must be paid in order for it to take over and manage the Corporate Debtor's company. The Bankruptcy Law Reforms Committee of 2015,<sup>35</sup> too, had emphasized upon the role of an RP. The report stated that “*the RP must provide the most updated information about the entity as accurately as is reasonably possible to this range of solution providers. In order to do this, the RP has to be able to verify claims to liabilities as well as the assets disclosed by the entity.*”<sup>36</sup>

Therefore, it can be concluded that by virtue of Sec. 238A read with regulation 13 of the CIRP regulations and the abovementioned authorities, it can be safely concluded that RP does have the authority to reject time-barred claims.

Lastly, even if RP rejects time-barred claims after verification as required to do under Regulation 13, the same can be indeed challenged before the adjudicating authority on merits by virtue of Section 60(5)(c), if at all one is aggrieved by this decision of RP. In “*ICICI Bank vs. Anuj Jain*”<sup>37</sup>, the Hon'ble Tribunal had upheld a decision of the RP but at the same time observed that “*if any Creditor is aggrieved by the decision of the Resolution Professional, he*

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<sup>31</sup> *Id.*

<sup>32</sup> Shailender Parihar vs. Sarmad Hafez, 2022 LiveLaw (JKL) 193.

<sup>33</sup> *Id.*

<sup>34</sup> Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta, (2020) 8 SCC 531.

<sup>35</sup> Vol I, The Report of the Bankruptcy Law Reforms Committee: Rationale and Design (2015).

<sup>36</sup> *Id.*

<sup>37</sup> ICICI Bank Ltd. vs. Anuj Jain, Company Petition No. (IB)77/ALD/2017, dated 2-4-2018.

*may challenge the same before the Adjudicating Authority.*<sup>38</sup> Furthermore, in “*Edelweiss Asset Reconstruction Co. Ltd. vs. Tecpro Systems Ltd.*”<sup>39</sup> the Hon'ble Tribunal had indeed upheld the decision of RP, which was with respect to exclusion of claims. Hence, it can be concluded that though the RP is vested with the power to decide and adjudicate on claims, the same can be challenged by those aggrieved before the adjudicating authority on merits.

## **CONCLUSION**

While concluding the case, the court observed the following aspects:

1. That in the present case, since there was no demand notice sent by the Applicant bank to the Corporate Debtor as mentioned under the Deed of Guarantee at point number 6, the Guarantee was not considered to be invoked, and thereby, the claim filed by the applicant cannot be ascertained and thus accrue no liability.
2. That the time-barred claims, also called contingent claims, could not be admitted during the Corporate Insolvency Resolution Process, despite the fact that the time-barred claims were part of the information memorandum provided to the prospective Resolution Applicant.
3. That the meaning of the various terms used at multiple times in the Statute as well as in the “Insolvency and Bankruptcy Board of India” (IBBI) Regulations such as “debt due,” “debt incurred,” “debt owed,” “debt due and payable”, “claim,” and “claim due” pertaining to the adjudication of amount for the purpose of ascertainment of liability with respect to such claims under CIRP would be considered as a due and payable debt, both in law and fact.
4. That the provisions of the Limitation Act of 1963 would also be applicable to the issue of debt involved in the CIRP process.
5. That the claims which were arising out of the time-barred debt, whether it's arising out of the principal contract or out of the contract of guarantee, would not be addressed during the CIRP or even at the time of Liquidation of the company.

On the basis of the same, the court dismissed the application of the Applicant and also revoked the interim order passed by the Adjudicating Authority on dated 11.11.2020, where the court had halted the CIRP process initiated by the Resolution Professional and

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<sup>38</sup> *Id.*

<sup>39</sup> *Edelweiss Asset Reconstruction Co. Ltd. vs. Tecpro Systems Ltd.*, MANU/NC/4587/2018.

ordered to proceed with the CIRP process and complete in a time bound manner as mentioned in the Insolvency and Bankruptcy Code.