

Insolvency and Banking Code, 2016 (31 of 2016), Section 238A - Another civil proceeding whether in a Court of first instance or of appeal or revision, against the party, for the same relief, would have to be construed to include any civil Proceeding in a forum, whether of first instance, or appellate, or revisional, against the same party for similar relief - More so, having regard to the language and tenor of Section 238A which applies the provisions of the Limitation Act “as far as may be”, to proceedings in the NCLT/NCLAT - Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and the NCLAT - The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT - All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible - We see no reason why Section 14 or 18 of the Limitation Act, 1963 should not apply to proceeding under Section 7 or Section 9 of the IBC - Section 238A of the IBC makes the Limitation Act applicable to proceedings in NCLT/NCLAT ‘as far as may be’ and/or in other words, to the extent they may be applied.

[Para 67, 68, 75, 90, 100]

Held,

85. In the instant case, the proceedings under the SARFAESI Act may not have formally been terminated. The proceedings have however been stayed by the High Court by an interim order, on the prima facie satisfaction that the proceedings initiated by the financial creditor, which is a cooperative bank, was without jurisdiction. The writ petition filed by the Corporate Debtor was not disposed of even after almost four years. The carriage of proceedings was with the Corporate Debtor. The interim order was still in force, when proceedings under Section 7 of the IBC were initiated, as a result of which the Financial Creditor was unable to proceed further under the SARFAESI Act.

86. In the instant case, even if it is assumed that the right to sue accrued on 31.3.2013 when the account of Corporate Debtor was declared NPA, the financial creditor initiated proceedings under SARFAESI Act on 18th January 2014, that is the date on which notice under Section 13(2) was issued, proceeded with the same, and even took possession of the assets, until the entire proceedings were stayed by the High Court by its order dated 24th July 2017. The proceedings under Section 7 of the IBC were initiated on 10th July 2018.

87. In our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the initiation of proceedings under the SARFAESI Act could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act till the date of filing of the application under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High Court staying the proceedings under the SARFAESI Act, on the prima facie ground of want of jurisdiction is excluded, the proceedings under Section 7 of IBC are still within limitation of three years.

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

92. In other words, the provisions of the Limitation Act would apply mutatis mutandis to proceedings under the IBC in the NCLT/NCLAT.

94. The use of words 'as far as may be', occurring in Section 238A of the IBC tones down the rigour of the words 'shall' in the aforesaid Section which is normally considered as mandatory. The expression 'as far as may be' is indicative of the fact that all or any of the provisions of the Limitation Act may not apply to proceedings before the Adjudicating Authority (NCLT) or the Appellate authority (NCLAT) if they are patently inconsistent with some provisions of the IBC. At the same time, the words 'as far as may be' cannot be construed as a total exclusion of the requirements of the basic principles of Section 14 of the Limitation Act, but permits a wider, more liberal, contextual and purposive interpretation by necessary modification, which is in harmony with the principles of the said Section.

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