



Case Snippets

Volume 3, Number 2 (January 8, 2020)

M/s Embassy Property Development Pvt Ltd. Vs State of Karnataka & Ors. (Supreme Court)(3rd Dec, 2019)

Wherever the corporate debater has to exercise a right that falls outside the purview of IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.

NCLT has jurisdiction to enquire into allegations of fraud. As a corollary, NCLAT will also have jurisdiction. Hence, fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in section 61.

Though NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes such as those arising under MMDR Act, 1957 and the rules issued thereunder, especially when the dispute revolves around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action. Hence, the High court was justified in entertaining the writ petition.



Sesh Nath Singh and Anr. V. Baidyabati Sheoraphuli Coorporative Bank Ltd (NCLAT) (22nd November,2019)

If the application has been bonafidely prosecuted under the SARFAESI Act , then time spent for SARFAESI Proceedings can be excluded for computing Limitation under IBC.

In this case the account of Corporate debtor was declared NPA on 31.03.2013 whereas the application under Section 7 of I&B Code has been filed on 27.08.2018 i.e. after about 5 years and 5 months from the date of accrual of cause of action. The NCLT vide its order dated 25.04.2019 approve the CIRP process.

The Corporate debtor challenge the NCLT's order on the ground that application under Sec. 7 of I&B Code was time barred.

While deciding the issue whether application is time barred or not NCLAT held that it is true that the account was declared NPA on 31.03.2013 but the Respondent exercised his remedy under the existing law within the prescribed limit i.e. on 18.1.2014, when demand notice under Section 13(2) of SARFEASI Act was issued to the corporate debtor.

Thus, NCLAT held that the Respondent has bonafidely prosecuted within limitation period under SARFEASI Act. Therefore, Respondent is entitled for the exclusion of time period under Section 14(2) of Limitation Act i.e. the period of 3 years and 6 months. After exclusion of this period the application filed under Section 7 of I&B Code is within limitation period.

