

## Case Snippets

### Volume 2, Number 4 (December 04 , 2019)

#### Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Supreme Court] [18<sup>th</sup> September, 2019]

The company accounts were declared NPA on 21/7/2011. Special leave petition was filed before the Gujrat High Court. The SLP was dismissed on 25/3/2017. Independent proceeding was then begun by the respondent no 1 (Asset reconstruction Company Ltd) being in form of Section 7 application filed under IBC in order to recover the original debt.

NCLT reached the conclusion that since the limitation period was 12 years from the date on which money suit has become due, the claim was filed within limitation and admitted under section (7) of IBC application. NCLAT however held that time of limitation would begin running for the purpose of limitation only and from the date on which the IBC was brought into force (i.e. 1.12.2016). Consequently the Hon'ble Appellate Court dismissed the appeal.

The case being “an application” which was filed under section (7) of IBC would fall only within the residuary Article 137 (provides for the period of limitation in case of “any other application for which no period of limitation is provided elsewhere” as three years from the time when the right to apply accrues). The Application filed under section 7 would clearly be time barred. SC concluded that it cannot interpret commercially or otherwise articles of Limitation Act when it is clear that a particular article gets attracted. The appeal was allowed and the Judgement of NCLT and NCLAT was set aside.



## Ved Prakash Abbot Vs. Kishore K. Avarsekar & Ors. [High Court of New Delhi] [9<sup>th</sup> August, 2019]

The petitioner Ved Prakash filed a suit for the recovery of money due for the supplies made to the respondent. The respondent failed in making payment and the petitioner filed an application under section 10 which was admitted and IRP was appointed on 20<sup>th</sup> June, 2017. The respondent failed again in making payment after a decree passed by trial court .

A contempt petition before the HC was filed by the petitioner against the key officers/directors for wilful disobedience of the settlement dated 21st April 2017 and compromise decree dated 10th July 2017. The HC observed that in order to hold a person guilty of civil contempt, it has to be established that the alleged contemnor was guilty of a wilful breach or a wilful disobedience of a decree of any Court. In this case, the IRP can't break the queue and allow preferential treatment to the petitioner, over the other financial and operational creditors, to discharge their liability under the compromise decree. The disbursement of payments by the respondent to clear the liabilities towards its creditors, including the petitioner, is governed by the proceedings under the Code and thus the respondents are prevented by law to satisfy the decree in favour of the petitioner and there is no wilful disobedience of the compromise decree and hence the respondents cannot be punished for civil contempt. It further observed: "Any direction by this Court in contempt proceedings would virtually amount to overriding the proceedings under the IBC which are the appropriate proceedings for determining the settlement of claims of the petitioner in the order of priority amongst the list of claimants therein."

