



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

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(April 04, 2022)

SVG FASHIONS PVT. LTD. VS. RITU MURLI MANOHAR GOYAL & ANR. & ORS.  
CIVIL APPEAL NO.4228 OF 2020  
DATE OF SUPREME COURT'S JUDGMENT: 29<sup>TH</sup> MARCH 2022

**“THE FAILURE OF NCLAT AS THE FIRST APPELLATE AUTHORITY TO LOOK IN TO A VERY VITAL ASPECT ON WHICH NCLT HAD RECORDED A SPECIFIC FINDING, VITIATES ITS ORDER.”**

### Facts of the Case: -

This Appeal was filed by Appellant (Operation Creditor 'OC' of the Corporate Debtor) aggrieved by the order of the NCLAT whereby it reversed the order of the NCLT (Adjudicating Authority 'AA') and held that the application filed under Section 09 of the IBC, 2016 was barred by limitation.

The facts of the case are that the Appellant filed an application under Section 9 of IBC on 20.04.2018 against M/s Arpita Filaments Pvt. Ltd. (Corporate Debtor 'CD') stating that the CD had started dealing with them from 2013 by selling and delivering various fabrics to the CD. The CD was irregular in making payments of the bills raised. Hence a demand notice under section 08 of IBC read with Rule 05 was issued to the CD to which there was no response.

The CD raised 04 major objections before AA, one of which was that the claim was barred by limitation. The AA found on a basis of letter dated 28.09.2015 produced by OC that six cheques had been issued in favour of OC, which returned dishonoured when presented for payment. The CD had taken stand that those cheques were lost by the CD in March, 2017 and it had already issued stop payment instructions to the bank on 04.03.2017. He also claimed that the letter dated 28.09.2015 relied upon by OC was issued by Shree Adeshwar Textiles and the same cannot be relied upon. However, the AA by its order dated 26.09.2019 overruled the objections and held that there was acknowledgement of liability on the part of CD, therefore the application was within the period of limitation and ordered the admission of same.

On appeal, the NCLAT reversed the decision of the NCLT on the ground that the acknowledgment of



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liability in terms of Section 18 of the Limitation Act ought to have been on or before 07.10.2016 for the dues that arose between 11.08.2013 to 02.09.2013, but the cheques were dated December, 2017.

### **Supreme Court's Observations: -**

The Apex Court observed that the NCLAT had not considered the letter dated 28.09.2015. It noted that the cheque numbers mentioned in the letter were the same as the ones allegedly lost by the CD in March, 2017. Further the 01<sup>st</sup> respondent had claimed in his affidavit that the CD had issued stop payment instructions, he had conceded later that the acknowledgement issued by the banker was dated 01.01.2018.

The Apex Court further stated that the failure of the NCLAT as the first appellate authority to look into a very vital aspect such as this, vitiates its order, especially when NCLT has recorded a specific finding of fact on this.

The Apex court also stated its judgment in *Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and Anr.* whereby it had held that while applying Section 18 of the Limitation Act, it had even went to the extent of holding that an entry in the balance sheet of the company could also be treated as an acknowledgement in writing. Further, the Apex Court also stated that the law as it has developed on the applicability of Section 18 of Limitation Act and the circumstances in which it would apply were also not examined by NCLAT.

### **Order: -**

The Apex Court in view of the above observations allowed this appeal and remanded back the matter for fresh consideration to NCLAT. The impugned order of NCLAT was set aside.

**Case Review: - Appeal Allowed.**

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