



# 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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**Edelweiss Asset Reconstruction Company Limited v. Perfect Engine Components Pvt. Ltd**  
**Company Appeal (AT) (Ins.) No. 840 of 2021**  
**Date of NCLAT's Judgement: December 22, 2022**

### Facts of the Case: -

Edelweiss Asset reconstruction Company Limited (hereinafter “Appellant”) preferred the appeal under Section 61 of IBC against the AA’s order wherein their Section 7 application against Perfect Engine Components Pvt Ltd. (hereinafter “Respondent”) was dismissed. The Respondent had outstanding liability of Rs 62,96,33,561.36 towards SBI, which the latter transferred to the Appellant by executing Assignment Agreement. The AA was of view that the cause of action arose on 31.03.2009/28.06.2012 but the petition was filed on 08.03.2020 which is beyond three years and therefore the same was barred by Limitation Act, 1963.

The Appellant contended that, though the date of Respondent being NPA is 30.06.2009, the letter of acknowledgement letter dated 31.03.2010 to 31.03.2012 should be taken into consideration together with the Demand Notice dated 06.08.2012 issued under Section 13(2) of SARFAESI Act, 2002 to the Respondent by SBI. The Appellant asserted that the Respondent acknowledged its liability by signing the Restructuring Package sanctioned by the Appellant, firstly on 07.11.2014 and secondly on 30.06.2017. Later, Both the Restructuring was cancelled due to various default by the Respondent and consequently Recovery Certificate was issued by DRT Pune in favor of the Appellant on 22.11.2016 and secondly on 26.07.2017. It was further highlighted that the Respondent has acknowledged the liability in the Balance Sheets from FY 2014-15 to FY 2018-19.

The Appellant contended that the sale notice was issued on 06.12.2019 against which reply was filed by the Respondent on 31.01.2020. Subsequently, the Section 7 application was filed on 07.08.2020 and therefore the application is well within the period of Limitation. Citing the judgements in ‘*Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. & Anr.*’, ‘*Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr.*’ the Appellant stated that the AA has erroneously dismissed the application.

The Respondent citing the judgements in ‘*Innovative Industries Ltd. Vs. ICICI Bank & Anr.*’, ‘*Reliance Asset Reconstruction Co. Ltd. Vs. Hotel Pooja International (P) Ltd.*’ stated that ‘letter of acknowledgements’ between 31.03.2010 and 31.03.2012 cannot be relied upon as there is no evidence on record to show that they were signed prior to the expiry of the three years Limitation from 2009. Further, there is absolutely no ‘default’ and that the Appellant originally was acting as an intermediary in working out a proposal of OTS to be offered by SBI and hence was aware of the financial condition of the ‘Corporate Debtor’.

The question raised before the Appellate Tribunal is that the whether the AA was justified in dismissing the Application filed under Section 7 of the Code as ‘barred by Limitation’ and also holding that there was no ‘default’.



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## NCLAT's Observations: -

The Appellate Tribunal referring to the '*Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr*' was of view that an offer of one-time settlement of a live claim, made within the period of limitation, should also be construed as an acknowledgment to attract Section 18 of the Limitation Act. Moreover, a judgment or decree for money or the issuance of a certificate of recovery in favor of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7, within three years from the date of the judgment or decree for money or the issuance of a certificate of recovery if the dues of the corporate debtor to the financial creditor remains unpaid.

Referring to the '*Laxmi Pat Surana Vs. Union Bank of India & Anr*' case the Appellate Tribunal held that Section 7 of IBC comes into play when the corporate debtor commits "default". Section 7 consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA. Section 18 of the Limitation Act would come into play every time when the Corporate Debtor acknowledge their liability to pay the debt.

The Appellate Tribunal held that record shows that the Respondent has been consistently acknowledging its 'debt' from 31.03.2010 onwards by way of letters in Restructuring Packages, and also by way of communication the Appellant/'Financial Creditor' for Restructuring, apart from the liability being shown in the Balance Sheets.. Therefore, Section 7 Application is not 'barred by Limitation', and that there is a 'debt' and 'default'.

**Order/Judgement:** The Impugned Order dated 10.08.2021 is set aside and the AA is directed to proceed in accordance with law.

**Case Review:** - Appeal is Allowed.