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**STRICT INTERPRETATION OR  
REASONABLE APPLICATION  
OF THE PROVISIONS OF  
LIMITATION ACT  
IN THE MATTERS OF  
INSOLVENCY AND  
BANKRUPTCY CODE –  
AN ANALYSIS (CASE STUDY)**

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# Strict Interpretation Or Reasonable Application Of The Provisions Of Limitation Act

In The Matters of  
Insolvency And Bankruptcy Code - An Analysis



## PARTICULARS OF THE CASE

<b>Title and Citation of the Case</b>	Bimalkumar Manubhai Savalia v. Bank of India Company Appeal (AT) (Insolvency) No. 1166 of 2019
<b>Order Passed By</b>	National Company Law Appellate Tribunal
<b>Appellant</b>	Bimalkumar Manubhai Savalia Shareholder and Director of M/s Radheshyam Agro Products Private Limited
<b>Respondent</b>	1) Bank of India 2) Chandra Prakash Jian Interim Resolution Professional of M/s Radheshyam Agro Products Private Limited
<b>Date of the Order</b>	March 05, 2020

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## BRIEF FACTS OF THE CASE

- The Corporate Insolvency Resolution Process (“CIRP”) was initiated against the Corporate Debtor, i.e., M/s Radheshyam Agro Products Private Limited vide an order dated 20th September 2019 passed by the Hon’ble National Company Law Tribunal, Ahmedabad Bench in CP (I.B.) No. 459/7/NCLT/AHM/2018].
- This Appeal was filed by one of the Directors of the Corporate Debtor on the ground that the application filed by the Bank of India against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) was time barred.
- The date of default is January 05, 2014 and the application under Section 7 of the Code was filed on August 30, 2018

## PRIME ISSUE

Whether the Application filed by Bank of India, against the Corporate Debtor under Section 7 of the Code through which the CIRP initiated, was time barred or not in terms of the provisions of the Limitation Act, 1963?

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## RELEVANT SUBMISSIONS MADE RELATED TO THE ISSUE

- It was submitted on behalf of the Respondent that the Corporate Debtor issued a letter dated April 28, 2016 and a second letter on June 01, 2016 with regard to the settlement. Further, the letter dated April 28, 2016 was issued 'without prejudice'. However, in the second letter the word 'without prejudice' was not used and therefore the letter dated June 01, 2016 can be treated as an acknowledgement of debt by the Corporate Debtor.
- It was submitted on behalf of the Respondent that the Guarantor paid the amount of Rs. 1,26,619/- and Rs. 1,28,645/- on April 01, 2017 on behalf of the Corporate Debtor and in terms of the Deed of Guarantee executed by the Guarantor on behalf of the Corporate Debtor, the transfer of amount can be treated as an acknowledgement for the purposes of limitation.
- It was further submitted by the Respondent that the date of creation of mortgage is November 18, 2010 and respective proceedings before DRT and under SARFAESI Act was also initiated against the Corporate Debtor in 2017.

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## SUMMARY OF THE ORDER

- SARFAESI and DRT proceeding will not extent the period of limitation since those proceedings are independent and as per section 238 of IBC, the Insolvency and Bankruptcy Code is a complete Code and will have overriding effect on other laws.
- The Respondent did not accept the Settlement, therefore, the same cannot be treated as an acknowledgement in view of Section 18 of the Limitation Act, 1963.
- With respect to the payment made by the Guarantor on behalf of the Corporate Debtor, the NCLAT in the paragraph number 10 of the Order referred **Section 19 of the Limitation Act**, which states about the effect of payment on account of debt or of interest on legacy. However, in the paragraph number 11 of the Order, NCLAT held that **Article 19 of the Limitation Act** would fall under the category of first division of schedule which applies to the suits and considering the fact that the application filed under section 7 is not a suit, therefore Article 137 would be applicable in the present appeal to ascertain the fact that the application filed was time barred or not.

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- There is no acknowledgement issued by Corporate Debtor prior to expiry of 3 years or from the date of default. Therefore, the application filed by the Bank of India against the Corporate Debtor under Section 7 of the Code through which the Corporate Insolvency Resolution Process (“CIRP”) initiated was time barred in terms of the Limitation Act, 1963. The CIRP initiated was set aside and directed Bank of India to pay the CIRP Cost.

## ANALYSIS OF THE ORDER

- The most relevant issue of the present case was to identify that whether the payments made by the Guarantor towards the liability of the Corporate Debtor would extend the period of limitation or not in terms of Section 19 of the Limitation Act. NCLAT in the paragraph number 10 of the Order referred Section 19 of the Limitation Act, however, went into discuss the Article 19 of the Limitation Act in the paragraph number 11 of the Order and held that Article 19 falls under division I of the Limitation Act and said division is not applicable on the applications filed under the Code as ruled by the Supreme Court in the case of BK Education Trust.

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- It is true to say that Article 19 of the Limitation Act is only applicable on Suits and not on Applications, however the issue herein was related to the part payment made on behalf of the Corporate Debtor and the same was required to be discussed in terms of Section 19 of the Limitation Act and not the Article 19 of the Limitation Act.
- The ruling given by the Supreme Court in the case of BK Education Trust would also not be applicable on the present issue because the said case was related to the Article 19 of the Limitation Act and it does not deal with the Section 19 of the Limitation Act, i.e., impact of part payment made on behalf of the Corporate Debtor on the limitation period.
- Section 19 of the Limitation Act states that if the payment is made on account of the default by the person liable to pay before the expiration of limitation period then the fresh period of limitation shall be computed from the said date of the payment. In the present case, the date of default is January 05, 2014 and the payment made by the Guarantor is about April 01, 2017, by strictly applying here, the ruling given by the Supreme Court in the case of BK Education Trust, it

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shows that the limitation period expired on January 05, 2017 and therefore Section 19 will not be applicable because the payment made by the Guarantor was after the expiration of the limitation period.

- The contents of the NCLAT order clearly shows there is clear mix-up between the section that was required to be examined and the article actually examined, however, considering the facts of the case the end result would have been the same.

## CONCLUSION AND VIEWS

The connection between the Code and Limitation Act is evolving, since the Inception of the Code. It is now undisputed that Article 137 of the Limitation Act would be applicable on the applications filed under the Code. However, the computation of limitation period should also be done by taking note to the background facts and circumstances of the case. In the present case, the Corporate Debtor had submitted a settlement letter, paid some amount of its debt and the recovery process had also been initiated against the Corporate Debtor under SARFAESI and before DRT in last three years prior to filing of the



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Application, still the present application was considered as time barred due to the strict interpretation of the Supreme Court's Ruling in the case of BK Education Trust

The Limitation Act is very significant so that one cannot just sleep over their rights and should take necessary steps to exercise its right within the reasonable period.

In the present case, the creditor was not sleeping over his rights, on the contrary, it had taken necessary steps to recover its due. However, due to the strict interpretation of the Law, they have been debarred to take appropriate actions under the Code. It is indeed a question of justice and fairness as well because the Corporate Debtor who has undisputedly made default in the repayment gets an escape route from the applicability of the Code. Therefore, for the Code to serve its purpose, it is very much required to examine the issue of limitation period by analyzing the related circumstances and the steps taken by the creditor to recover its dues because the strict interpretation might be the most lawful but the same may not serve justice in certain circumstances.

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Think Capital Insolvency Professionals LLP is a recognized Insolvency Professional Entity with Insolvency and Bankruptcy Board of India. Majority of the partners are registered as Insolvency Professional with Insolvency and Bankruptcy Board of India (IBBI) and are empanelled with leading banks and financial institutions. Our areas of expertise include Financial Turnarounds, Refinancing, Fund Raising, Cashflow Management and Monitoring, Debt Equity Swaps, Contingency Planning and providing formal Insolvency Solutions.

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