NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 991 of 2025

[Arising out of Order dated 05.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Indore, Special Bench, Court No. 1), in C.P. (IB) No. 55/MP/2024]

IN THE MATTER OF:

IDBI Bank Ltd. **...Appellant**

Versus

Hemangi Patel **...Respondent**

Present:

For Appellant : Mr. Vaibhav Gaggar and Shreedhar Gaggar, Advocates.

For Respondent :

WITH

Company Appeal (AT) (Insolvency) No. 992 of 2025

[Arising out of Order dated 05.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Indore, Special Bench, Court No. 1), in C.P. (IB) No. 54/MP/2024]

IN THE MATTER OF:

IDBI Bank Ltd. **...Appellant**

Versus

Noopur Patel **...Respondent**

Present:

For Appellant : Mr. Vaibhav Gaggar and Shreedhar Gaggar, Advocates.

For Respondent :

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed by the IDBI Bank, challenging the two identical orders passed on 05.05.2025 by the National Company Law Tribunal (NCLT), Indore Special Bench, Court – I in C.P. (IB) No.55/MP/2024 and C.P. (IB) No.54/MP/2024, rejecting Section 95 application filed by the IDBI Bank against the respondent, the personal guarantor herein.

2. Both the respondents in these appeals being personal guarantor of the same corporate debtor – Great Logistic and Parking Services Pvt. Ltd., it shall be sufficient to refer to the pleadings in Comp. App. (AT) (Ins.) No. 991/2025 for deciding both the appeals.

3. Brief facts of the case necessary to be noticed for deciding the appeals are:

i. The IDBI Bank extended credit facilities to corporate debtor – Great Logistic and Parking Services Pvt. Ltd., the respondent herein stood personal guarantor and executed a personal guarantee in favour of the creditor on 28.10.2010.

ii. The corporate debtor had defaulted in repayment of the cash credit facilities on 31.03.2016 leading the classification of the account as NPA.

iii. The creditor issued a guarantee invocation notice to the personal guarantor on 24.10.2016 and an OA was also filed before the Debt Recovery Tribunal (DRT) on 31.03.2017 and recovery certificate was

issued in favour of the creditor on 25.01.2019, after issuing demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, (herein after referred to as '2019 Rules') on 19.03.2024. The application under Section 95 was filed by the IDBI Bank on 02.09.2024.

iv. The adjudicating authority by the impugned order rejected the application as barred by time. It was held that from recovery certificate dated 25.01.2019, 3 years will expire on 25.01.2022 and even giving benefit of order of the Hon'ble Supreme Court in **Suo Moto WP (Civil) No. 3 of 2022** in ***'Re: Cognizance for Extension of Limitation',*** the limitation period would extend only till 11.01.2024 and the application having been filed on 02.09.2024 is beyond limitation period. Adjudicating authority by the impugned order rejected C.P. (IB) No.55/MP/2024 ad C.P. (IB) No.54/MP/2024, aggrieved by which orders, IDBI Bank has filed this appeal.

4. We have heard learned counsel for the appellant.

5. Learned counsel for the appellant challenging the order raised only one submission. Learned counsel for the appellant based his submissions relying on the judgment of the Hon'ble Supreme Court in the matter of ***'Tottempudi Salalith' Vs. 'State Bank of India & Ors.'*** reported in **[(2024 1 SCC 24]** decided on 18.10.2023. Learned counsel for the appellant submitted that Hon'ble Supreme Court in the above case has held that decree passed by

Court shall remain valid for a period of 12 years and during which claim can be filed in the IBC. It is submitted that in view of the judgment of the Hon'ble Supreme Court in the above case, limitation for filing Section 95 application has to be treated as 12 years hence the application filed was not barred by time.

6. We have considered the submission raised by the counsel for the appellant and perused the record.

7. We need to first notice the judgment of the Hon'ble Supreme Court in ***'Tottempudi Salalith' (Supra)*** to find out the ratio of the judgment and as to whether counsel for the appellant is correct in his submission that Hon'ble Supreme Court in the said judgment has held that limitation for filing an application under IBC is 12 years. The above judgment of the Hon'ble Supreme Court arose from proceeding under Section 7 initiated by State Bank of India as lead bank. Consortium of Banks including the State Bank of India has extended various facilities to the corporate debtor – Totem Infrastructure Ltd. Notice under Section 13(2) was issued. An application was also filed before the DRT Hyderabad. OA No.154/2014, OA No.221/2014 & OA No.1653/2017 and one OA was filed before the DRT Bengaluru being OA No.1930/2014. Two recovery certificates was issued by the DRT Hyderabad on 08.09.2015, 17.10.2017 and another recovery certificate was issued on 04.08.2017. Application under Section 7 was filed on 06.09.2019 before NCLT based on three recovery certificates. On 12.01.2021, adjudicating authority admitted Section 7 application and declared moratorium and appointed the RP. The Managing Director of the corporate debtor filed an

appeal before the NCLAT and point urged was point of limitation. The appellate tribunal did not accept the submission of the appellant that debt is barred by limitation. Appeal was dismissed. The appellant before the Hon'ble Supreme Court challenging the order of the NCLT & NCLAT raised two submissions including that the application was barred by limitation. Hon'ble Supreme Court relying on the earlier judgment in ***'Kotak Mahindra Bank Ltd.' Vs. 'A. Balakrishnan'*** reported in [**(2022) 9 SCC 186]** in respect of recovery certificate issued by DRT has been examined and it was held that limitation shall be 3 years. In paragraph 9 of the judgment, following was laid down:

> ***"9.*** *In [Kotak Mahindra Bank Ltd. v. A. Balakrishnan, (2022) 9 SCC 186 : (2022) 4 SCC (Civ) 548] , a three-Judge Bench of this Court had examined the question of limitation from the perspective of issue of recovery certificates in terms of provision of the Recovery of Debts and Bankruptcy Act, 1993 (the 1993 Act). We shall refer to this judgment henceforth as Kotak Mahindra-1 [Kotak Mahindra Bank Ltd. v. A. Balakrishnan, (2022) 9 SCC 186 : (2022) 4 SCC (Civ) 548] . It was opined by this Court in this judgment : (SCC pp. 203, 210, 214 & 218, paras 28, 56, 71 & 86)*
>
> > *"28. It could thus be seen that this Court in Dena Bank v. C. Shivakumar Reddy [Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330] in SCC paras 136 and 141, has in unequivocal terms held that once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of recovery is also issued authorising the creditor to realise its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the recovery certificate. It has further been held that issuance of a certificate of recovery in favour of the financial creditor would give rise to a fresh cause of action to the financial creditor, to initiate*

proceedings under Section 7 IBC for initiation of the CIRP, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid.

***

56. Insofar as the contention of the respondents with regard to clause (a) of sub-section (1) of Section 14 IBC is concerned, we do not find that the words used in clause (a) of sub-section (1) of Section 14 IBC could be read to mean that the decree-holder is not entitled to invoke the provisions of IBC for initiation of CIRP. A plain reading of the said section would clearly provide that once CIRP is initiated, there shall be prohibition for institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority. The prohibition to institution of suit or continuation of pending suits or proceedings including execution of decree would not mean that a decree-holder is also prohibited from initiating CIRP, if he is otherwise entitled to in law. The effect would be that the applicant, who is a decree-holder, would himself be prohibited from executing the decree in his favour.

***

71. We have already hereinabove, done the exercise of considering the relevant provisions of IBC afresh and come to a conclusion that a liability in respect of a claim arising out of a recovery certificate would be a "financial debt" within the meaning of clause (8) of Section 5 IBC and a holder of the recovery certificate would be a "financial creditor" within the meaning of clause (7) of Section 5 IBC. We have also held that a person would be entitled to initiate CIRP within a

> *period of three years from the date on which the recovery certificate is issued. We are of the considered view that the view taken by the two-Judge Bench of this Court in Dena Bank [Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330] is correct in law and we affirm the same.*
>
> ***
>
> *86. To conclude, we hold that a liability in respect of a claim arising out of a recovery certificate would be a "financial debt" within the meaning of clause (8) of Section 5 IBC. Consequently, the holder of the recovery certificate would be a financial creditor within the meaning of clause (7) of Section 5 IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the recovery certificate."*

8. Hon'ble Supreme Court, however, held that claim of acknowledgment under Section 18 on basis of letter dated 29.01.2020 cannot be accepted since the said acknowledgement was subsequent to expiry of 3 years. Hon'ble Supreme Court relied on earlier judgment of Hon'ble Supreme Court in the matter of ***'B.K. Educational Services Pvt. Ltd.' Vs. 'Parag Gupta & Associates',*** reported in **[(2019) 11 SCC 633],** where Article 137 of the Limitation Act was held to be applicable and limitation as 3 years. Hon'ble Supreme Court held that recovery certificate will give a fresh cause of action and application brought within 3 years of issue of recovery certificate is well within time. With regard to two recovery certificates, with respect to which Section 7 was initiated within 3 years, Hon'ble Supreme Court held the same to be within limitation relying on Article 137 of the Limitation Act. In the above context, following was laid down in paragraph 24:

> ***"24.*** *What has been filed before NCLT is a composite application based on three recovery certificates, two of which have been instituted within the three-year period as postulated in Article 137 of the Limitation Act. The third recovery certificate was issued in the year 2015. Thus, there is more than three years' gap between the date of issue thereof and the date of filing of the application before NCLT. But a recovery certificate under the 1993 Act is also clothed with the character of a deemed decree. The provisions of Section 19(22-A) of the 1993 Act specifies:*
>
> > *"**19. Application to the Tribunal**.—(1)-(22) * * **
> >
> > *(22-A) Any recovery certificate issued by the Presiding Officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding-up proceedings against a company registered under the Companies Act, 2013 (18 of 2013) or limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009) or insolvency proceedings against any individual or partnership firm under any law for the time being in force, as the case may be."*

9. Hon'ble Supreme Court noticed Article 136 of the Limitation Act for execution of any decree where limitation is 12 years which was noticed in paragraph 25. Hon'ble Supreme Court, however, categorically held that limitation for filing an application under Section 7 is 3 years under Article 137 which has been clearly held in paragraph 26. Hon'ble Supreme Court in paragraph 27 & 28 by noticing provisions of 19(22-A) of the 1993 Act has held that for lodging a claim in IBC shall retain the character of decree. The argument of appellant that application under Section 7 was barred by time was rejected which was clearly held in paragraph 30, which is to the following effect:

> ***"30.*** *We are otherwise not satisfied with the argument of the appellant about maintainability of the*

application out of which this appeal arises on the ground of the application being barred under limitation. The application with respect to the two recovery certificates issued in the year 2017 is maintainable. In the event the Appellate Tribunal is of opinion that the CIRP could not lie so far as the recovery certificate of 2015 is concerned, as the decree would be still alive, the claim based on the said recovery certificate could be segregated from the composite claim and the Committee of Creditors shall, in that event, treat the sum reflected in the said recovery certificate as part of the claims made in pursuance of the public announcement. This direction we are issuing in exercise of our jurisdiction under Article 142 of the Constitution of India."

10. From the above it is clear that Hon'ble Supreme Court in the above case which is relied by the appellant relying on the earlier judgment in the matter of ***'Kotak Mahindra Bank Ltd.' (Supra)*** held that limitation for filing Section 7 application is only 3 years as per Article 137. We, thus are of the view that submission of the appellant relying on the above judgment that Hon'ble Supreme Court held that limitation will be 12 years with respect to a decree is wholly incorrect and is not borne out from the judgment.

11. We need to also refer to a 3 Judge bench judgment of the Hon'ble Supreme Court in the matter of ***'Gaurav Hargovindbhai Dave' Vs. 'Asset Reconstruction Ltd. & Anr.',*** reported in **[(2019) 10 SCC 572],** where Hon'ble Supreme Court had occasion to consider limitation on basis of decree passed by the DRT with respect to Section 7 application under the IBC. Article 62 was relied by NCLT holding that limitation will be 12 years against which order, the appeal was dismissed. Appeal was filed in the Hon'ble Supreme Court where the question was considered and it was held that limitation for filing Section 7 application under Article 137 of the Limitation Act is only 3

years and for the application under Section 7, Article 62 which provide for limitation 12 years is not applicable. It is useful to extract paragraphs 3, 6 & 7 of the judgment, which is as follows:

> ***"3.*** *An independent proceeding was then begun by Respondent 1 on 3-10-2017 being in the form of a Section 7 application filed under the Insolvency and Bankruptcy Code in order to recover the original debt together with interest which now amounted to about 124 crores of rupees. In Form-I that has statutorily to be annexed to the Section 7 application in Column II which was the date on which default occurred, the date of the NPA i.e. 21-7-2011 was filled up. The NCLT applied Article 62 of the Limitation Act which reads as follows:*
>
> | *"Description of suit* | *Period of limitation* | *Time from which period begins to run* |
> |---|---|---|
> | ***62.*** *To enforce payment of money secured by a mortgage or otherwise charged upon immovable property* | *Twelve years* | *When the money sued for becomes due."* |
>
> *Applying the aforesaid Article, the NCLT reached the conclusion that since the limitation period was 12 years from the date on which the money suit has become due, the aforesaid claim was filed within limitation and hence admitted the Section 7 application. The Nclat vide the impugned judgment [Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd., 2019 SCC OnLine NCLAT 329] held, following its earlier judgments [Pushpa Shah v. IL&FS Financial Services Ltd., 2019 SCC OnLine NCLAT 572] , that the time of limitation would begin running for the purposes of limitation only on and from 1-12-2016 which is the date on which the Insolvency and Bankruptcy Code was brought into force. Consequently, it dismissed the appeal.*

> ***6.*** *Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary Article 137. As rightly pointed out by the learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21-7-2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr Banerjee's reliance on para 11 of B.K. Educational Services (P) Ltd. [B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633] , suffice it to say that the Report of the Insolvency Law Committee [**Ed.** : Report of the Insolvency Law Committee (March, 2018), Ministry of Corporate Affairs, Government of India] itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.*
>
> ***7.*** *This being the case, we fail to see how this para could possibly help the case of the respondents. Further, it is not for us to interpret, commercially or otherwise, articles of the Limitation Act when it is clear that a particular article gets attracted. It is well settled that there is no equity about limitation - judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature."*

12. The above 3 Judge bench judgment clearly laid down that limitation for Section 7 application is only three years as per Article 137.

13. We thus do not find any substance in the submission of the counsel for the appellant that for filing an application under IBC 12 years limitation will apply. The judgment relied by the counsel for the appellant in ***'Tottempudi Salalith' (Supra)*** also does not lay down any such proposition as contended by the counsel for the appellant. The adjudicating authority in the impugned order come to the conclusion that Section 95 application filed by the IDBI Bank was filed after expiry of three years period of limitation even after giving

the benefit of judgment of the Hon'ble Supreme Court in **Suo Moto WP (Civil) No. 3 of 2022** in ***'Re: Cognizance for Extension of Limitation'.***

14. We do not find any error in the order of the adjudicating authority rejecting Section 95 application filed by the appellant as barred by time.

There is no merit in the appeals. Both the appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

08th August, 2025

himanshu