

A SAGAR SHARMA & ANR.
v.
PHOENIX ARC PVT. LTD. & ANR.
(Civil Appeal No. 7673 of 2019)

B SEPTEMBER 30, 2019

[R. F. NARIMAN AND V. RAMASUBRAMANIAN, JJ.]

Insolvency and Bankruptcy Code: s.7 – Limitation – An application under s.7 of the Code does not purport to be an application to enforce any mortgage liability – It is an application made by a financial creditor stating that a default, as defined under the Code, has been made, which default amounts to Rs. 1,00,000/- or more which then triggers the application of the Code – The date of coming into force of the IBC Code does not and cannot form a trigger point of limitation for applications filed under the Code – Equally, since “applications” are petitions which are filed under the Code, it is Art.137 of the Limitation Act which will apply to such applications – The judgment under appeal set aside and matter remitted for determination afresh – Limitation Act – Art.137.

B. K. Educational Services Private Limited v. Parag Gupta and Associates **2018 SCC OnLine SC 1921 – relied on.**

Case Law Reference

2018 SCC OnLine SC 1921 relied on Para 1

F CIVIL APPELLATE JURISDICTION: Civil Appeal No.7673 of 2019

From the Judgment and Order 05.09.2019 of the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Ins) No. 177 of 2019

G Mukul Rohatgi, Dr. A. M. Singhvi, K. V. Viswanathan, Sr. Advs., Mahesh Agarwal, Rishi Agrawala, Himanshu Satija, Shadab Jan, Ms. Komal Khushalani, Arshit Anand, E. C. Agrawala, Nishant Rao, Divyang Gobind Chandiramani, Advs. for the Appellants.

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Rakesh Dwivedi, Sr. Adv., Suresh Dutt Dobhal, Nirmal Goenka, A
Kunal Vajani, Kunal Mimani, Varun Ahuja, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. F. NARIMAN, J.

1. By our judgment dated 11.10.2018 in *B.K. Educational Services* B
Private Limited vs. Parag Gupta and Associates (2018 SCC OnLine
SC 1921 in paragraphs 2, 20, 38, 43, 48 & 49) we had made it clear that
the Insolvency and Bankruptcy Code's coming into force on 01.12.2016
is wholly irrelevant to the triggering of any limitation period for the
purposes of the Code. However, we find that in the impugned judgment
the following statement is made: C

“13. Admittedly, ‘I&B Code’ has come into force since
1st December, 2016, therefore, the right to apply accrued to
1st Respondent on 1st December, 2016. Therefore, we hold that
the application under Section 7 was not barred by limitation.” D

2. We had also made it clear beyond any doubt that for applications
that will be filed under Section 7 of the Code, Article 137 of the Limitation
Act will apply. However, we find in the impugned judgment that Article
62 (erroneously stated to be Article 61) was stated to be attracted to the
facts of the present case, considering that there was a deed of mortgage
which was executed between the parties in this case. We may point out
that an application under Section 7 of the Code does not purport to be an
application to enforce any mortgage liability. It is an application made
by a financial creditor stating that a default, as defined under the Code,
has been made, which default amounts to Rs. 1,00,000/- (one lakh) or
more which then triggers the application of the Code on settled principles
that have been laid down by several judgments of this Court. E
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3. Article 141 of the Constitution of India mandates that our
judgments are followed in letter and spirit. The date of coming into
force of the IBC Code does not and cannot form a trigger point of
limitation for applications filed under the Code. Equally, since
“applications” are petitions which are filed under the Code, it is Article
137 of the Limitation Act which will apply to such applications. G

4. Accordingly, we set aside the judgment under appeal and direct
that the matter be determined afresh. It will be open for both sides to

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A argue the case on facts on the footing that Article 137 of the Limitation Act alone will apply.

5. The appeal is allowed in the aforesaid terms.

6. The NCLT order dated 29.01.2019 shall remain stayed until further orders from the NCLAT.

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7. Mr. Rakesh Dwivedi, learned Senior Counsel, wishes to raise a plea based on Section 22 of the Limitation Act before the NCLAT. We record this statement.

Devika Gujral

Appeal allowed.