2023 LiveLaw (SC) 914

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ANIRUDDHA BOSE; J., VIKRAM NATH; J.
CIVIL APPEAL NO.2348 OF 2021; OCTOBER 18, 2023
TOTTEMPUDI SALALITH *versus* **STATE BANK OF INDIA & ORS.**

Insolvency and Bankruptcy Code, 2016 - The 'Doctrine of Election' cannot be applied to prevent a Financial Creditor from approaching the National Company Law Tribunal (NCLT) for initiation of Corporate Insolvency Resolution Process ("CIRP") against a Corporate Debtor. *(Para 11)*

Insolvency and Bankruptcy Code, 2016 - Recovery of Debts and Bankruptcy Act, 1993 - The question of election between the fora for enforcement of debt under the 1993 Act and initiation of CIRP under the IBC arises only after a recovery certificate is issued. The reliefs under the two statutes are different and once CIRP results in declaration of moratorium, the enforcement mechanism under the 1993 Act or the SARFAESI Act gets suspended. In such circumstances, after issue of recovery certificate, the financial creditor ought to have option for enforcing recovery through a new forum instead of sticking on to the mechanism through which recovery certificate was issued. *(Para 11)*

Insolvency and Bankruptcy Code, 2016 - Recovery of Debts and Bankruptcy Act, 1993 - The enforcement mechanism for a recovery certificate is an independent course, which a financial creditor may opt for realisation of its dues crystalised under the 1993 Act, instead of chasing the mechanism under the 1993 Act. The IBC itself is not really a debt recovery mechanism but a mechanism for revival of a company fallen in debt, but the procedure envisaged in the IBC substantially relates to ensuring recovery of debts in the process of applying such mechanism. *(Para 11)*

Insolvency and Bankruptcy Code, 2016 - Right of the Financial Creditor to invoke the mechanism under the IBC after issue of recovery certificate stood acknowledged as a valid legal course. *(Para 11, Relied: Kotak Mahindra Bank Ltd. V. A. Balakrishnan, 2022 LiveLaw (SC) 534)*

Doctrine of Election - The Doctrine of Election is embodied in the law of evidence, which bars prosecution of the same right in two different fora based on the same cause of action. *(Para 11)*

For Appellant(s) Mr. K.Parameshwar, AOR Ms. Aarti Gupta, Adv. Ms. Kanti, Adv. Mr. Chinmay Kalgaonkar, Adv. Dhananjaya Naidu, Adv. Swaroop George, Adv.

For Respondent(s) Ms. Avrojyoti Chatterjee, AOR Mr. Rajiv S Roy, Adv. Ms. Jayasree Saha, Adv. Mr. Siddharth Dhingra, Adv.

J U D G M E N T

ANIRUDDHA BOSE, J.

The appellant before us has described himself as the managing director of the Respondent No.2, Totem Infrastructures Limited (corporate debtor) against whom proceedings have been initiated on account of default in repaying financial facilities extended to them by several banks in the form of loans and bank guarantees. The total claim on account of default as made before the National Company Law Tribunal (NCLT) was for a sum of Rs.613,27,01,598.23/-. Several banks had extended these facilities, being (i) Union Bank of India, (ii) IDBI, (iii) Oriental Bank of Commerce, (iv) Bank of

Baroda, (v) Karnataka Bank, (vi) Syndicate Bank and (vii) Punjab National Bank as also the State Bank of India, who is the first respondent in this appeal. The State Bank of Hyderabad, State Bank of Mysore, State Bank of Travancore, State Bank of Bikaner and Jaipur and State Bank of Patiala, had also extended such facilities, but they had merged with the State Bank of India on 01.04.2017. Hence, the State Bank of India is now prosecuting the composite claims of these banks. In the proceeding before the NCLT, out of which this appeal arises, it was the State Bank of India who had filed the application as financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).

2. Prior to bringing the action under the IBC, notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) was issued to the corporate debtor and recovery proceedings were instituted against them before the Debt Recovery Tribunal (DRT). Three applications were filed by the exposed lending banks, two before the DRT, Hyderabad being OA No.154 of 2014 and OA No.221 of 2014, the former having been renumbered as OA No.1653 of 2017. The third application was filed before the DRT, Bengaluru which was registered as OA No.1930 of 2014. Three recovery certificates were issued by the respective Tribunals covering the claims of the lending banks. Two recovery certificates by the Hyderabad Tribunal were issued on 08.09.2015 and 17.10.2017 for a sum of Rs.14,50,06,349.23/- and Rs.1408,03,14,857.40/- respectively. In the case registered as OA No.221 of 2014, the State Bank of Hyderabad was the applicant bank. In OA No. 154 of 2014, all these banks filed a composite application. In OA No.1930 of 2014, the proceeding brought by State Bank of Bikaner and Jaipur, recovery certificate was issued on 04.08.2017 for a sum of Rs.5,22,21,750/-. In respect of the recovery certificate issued on 17.10.2017, the State Bank of India claimed to be entitled to Rs.368,22,13,348.59/-.

3. The State Bank of India's application under Section 7 of the IBC was filed on 06.09.2019 before the NCLT, founded on all the three recovery certificates in which the first respondent had substantial stake. In its order passed on 12.01.2021, the adjudicating authority admitted the application and declared moratorium in terms of Section 14 of the IBC. By this order, one G. Satyanarayana Murty was appointed as Interim Resolution Professional (IRP). The appellant, who was the managing director of the corporate debtor, appealed against the said decision of the NCLT admitting the application and declaring moratorium primarily on the ground of limitation. Before the National Company Law Appellate Tribunal (the Appellate Tribunal), a point was urged, apart from the issue of limitation, that the application had been initiated as per the Reserve Bank of India circular dated 12.02.2018 which was held to be ultra vires the provision of Section 35AA of the Banking Regulation Act, 1949 by this Court in the case of **Dharani Sugars and Chemicals Ltd. -vs- Union of India and Others** [(2019) 5 SCC 480]. This circular essentially laid down norms for, inter-alia, invoking IBC in relation to stressed assets. The NCLT had taken into consideration a letter issued by the corporate debtor on 29.01.2020 addressed to the Union Bank and the State Bank of India, agreeing in principle to repay the amount due to the financial creditors. The same letter requested the banks to support the corporate debtor during the financial crises being faced by them and sought waiver of penal interest levied. A request for one time settlement was also made in this communication. The NCLT treated this letter to be an acknowledgement of debt. In its decision taken on 12.01.2021 while admitting the application, it was, inter-alia, observed:-

"….We, are therefore, of the view that by accepting liability vide their letter dated 29.01.2020, agreeing to repay the debt, the Corporate Debtor now cannot take a stand that the debt is barred by limitation. Acknowledgement of debt and agreeing to repay the same amounts to liability and it automatically extends the limitation period."

The Appellate Tribunal broadly agreed with the reasoning of the NCLT and sustained the decision delivered on 12.01.2021.

4. The pleas of the appellant before the Appellate Tribunal were mainly on procedural grounds. Apart from the question of limitation, arguments were advanced that the application before the NCLT was barred under the doctrine of election, the borrower having chosen the SARFAESI mechanism first and having applied before the DRT. Point of limitation was also reiterated. On the issue involving the RBI Circular dated 12.02.2018 the case of the appellant was that the banks had approached the forum under the IBC, on the basis of the aforesaid circular. The said circular was, however, quashed in the case of **Dharani Sugars and Chemicals Ltd.** (supra). On this ground, the appellant argued that the application was not maintainable. The Appellate Tribunal held, inter-alia:-

"56. In regard to the plea of the Appellant that the Adjudicating Authority in the impugned order even though at paragraph 12 had mentioned that the Corporate Debtor had raised two fold contention (1) that the petition is barred by limitation (2) the petition has been initiated as by the RBI Circular 12.02.2018 which was held ultra virus of section 35 AA of the Banking Regulation Act by the Hon'ble Supreme Court, this Tribunal ongoing through the impugned order is of the considered view that the Adjudicating Authority had not adverted to the same and the said order in this regard has not spelt out reasons. Therefore, this Tribunal is of the earnest opinion that it is desirable that an 'Adjudicating Authority' is to disclose its mind in future so that the compulsion of disclosure, guarantees consideration apart from the fact, that the duty to assign reasons introduces clarity and minimizes arbitrariness. Also, it will enable the superior authority to evaluate the order so passed on legal plane. However, this Tribunal being an 'Appellate Authority' over the Adjudicating Authority in the present Appeal has dealt with the aspect of limitation concerning the section 7 application and the aspect of RBI circular dated 12.02.2018 and answered the same at the relevant of this Judgment. As such, the Appellant cannot be an aggrieved person in this regard, in the considered opinion of this Tribunal.

57. It is to be pointed out that in our 'Justice Delivery System', 'Law' is to be decided with reasons which carry convictions within the Codes/Tribunals/Lawyers/Stakeholders and Litigants to make it, stable, predictable and consistent with a view to have certainty and clarity to the benefit of one and all. It cannot be gainsaid that the judgment/order of a Tribunal is to be written only after deep travail and positive vein. Also that, the procedure for developing the law has to be one of evolution. In this connection it is significant to point out that the exception to rule of 'Stare decisis' is that a Court/Tribunal is not bound to follow the decision(s) reached 'per incuriam'.

58. As matter of fact, in the instant case when once theCompany has/had defaulted and after the initiation of legal proceedings as available to the Lender on that date (Before the Debt Recovery Tribunal) and when the Financial Creditor/Lender had obtained the order(s) in the 'Original Applications' and later recovery certificates were issued, and when the Original Applications filed before the Debt Recovery Tribunal(s) had attained finality, thereafter it is for the Lender/Financial Creditor/Decree Holder as matter of 'Election' to pursue the recovery mechanism for his/its personal benefits before a 'competent forum' or to initiate Insolvency Proceedings for the benefit of 'stakeholders' and 'one and all'. In the event of the Decree Holder/Lender/Financial Creditor has/had resorted to the initiation of Insolvency Proceedings under relevant section of the I & B Code (after coming into force of the Code) he/it cannot be found fault with, since there is no fetter in 'Law', in this regard.

59. It is pointed out that the decisions cited on behalf ofthe Appellant before this Tribunal, in the instant case are not applicable to the facts and the circumstances of the present case, hence they are neither considered, nor discussed.

60. Be that as it may, in view of the detailed upshot, thisTribunal taking note of the respective contentions projected by the Learned Counsels appearing for the parties, considering the facts and circumstances of the present case in a proper perspective, comes to a resultant conclusion that the instant case there is a 'Financial Debt' which is due and payable by the 'Corporate Debtor'.

Moreover, as against the Corporate Debtor/Totem Infrastructure Limited, orders were passed by the Debt Recovery Tribunal(s) and the three 'Recovery Certificates' dated 17.10.2017, 04.08.2017 and 08.09.2015 clearly establish the factum of Financial Debt, due and payable, and that default being committed by the 'Corporate Debtor'. To put precisely, the onus of proving the 'debt' and 'default' on the part of the First Respondent/Bank in the instant case, has been duly discharged. Looking at from any angle, the 'admission order' of the section 7 application as against the 'Corporate Debtor' by the Adjudicating Authority, ('National Company Law Tribunal', Hyderabad Bench in an application filed by the First Respondent/Bank) as Financial creditor on 12.01.2021 in CP (IB) No. 625/7/HDB/2019 does not suffer from any material irregularities and patent illegalities in the eye of Law. Resultantly, the Appeal fails.

CONCLUSION: In fine, the Comp App (AT)(CH)(Ins) No. 04/2021 is dismissed. No costs. The I A No. 09/2021 and 10/2021 are closed."

5. In the case of **Kotak Mahindra Bank Limited -vs- A. Balakrishnan and Another** [(2022) 9 SCC 186], 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 (1993 Act). We shall refer to this judgment henceforth as **Kotak Mahindra I**. It was opined by this Court in this judgment:-

*"**28.** It could thus be seen that this Court in Dena Bank [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.*

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***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 the 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.*

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***71.** We have already hereinabove, done the exercise of considering the relevant provisions of the 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.*

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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."*

6. The Appellate Tribunal, in the impugned order had also treated the letter of the corporate debtor which was issued on 29.01.2020 to be acknowledgement of debt and on that basis proceeded to compute the limitation period. In our opinion, this reasoning was procedurally wrong. The appellant's stand on this position is founded on Section 18 of the Limitation Act, 1963 and he contends that any acknowledgment beyond the period of limitation would not revive the right to sue. Learned counsel for the appellant has relied upon a judgment of this Court in the case of **Jignesh Shah and Another -vs- Union of India and Another** [(2019) 10 SCC 750] in which it has been held that the limitation period provided in the Limitation Act would apply to the applications under the IBC as well. Section 238A of the IBC itself (introduced by way of an amendment to the Code made with effect from 06.06.2018) stipulates application of the statute of Limitation on IBC. Section 18 of the Limitation Act stipulates: -

*"**18. Effect of acknowledgment in writing.—**(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omitsto specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or byan agent duly authorised in this behalf, and

(c) an application for the execution of a decree or ordershall not be deemed to be an application in respect of any property or right."

Section 238-A of the IBC stipulates: -

***"Limitation.** --The provisions of the Limitation Act, 1963*

(36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

7. So far as the present proceeding is concerned, if we proceed on the basis that the date of initial default is the starting point of limitation, then lapse of three years from that date would have extinguished the bank's right to initiate action under the IBC. Secondly, even if the said letter dated 29.01.2020 is treated to be acknowledgement of debt, the same was made after institution of the proceeding under Section 7 of the IBC. In the

application thus, there could be no reference to such acknowledgement. In absence of amendment of pleadings, the Appellate Tribunal could not have taken such purported acknowledgement of debt for the purpose of extending the limitation period. Requirement of specific pleading on facts constituting acknowledgement or admission of claim has been recognised in the judgment of this Court in the case of **Reliance Asset Reconstruction Company Limited -vs- Hotel Poonja International Private Limited** [(2021) 7 SCC 352]. Broadly a similar view has been taken by this Court in the case of **Babulal Vardharji Gurjar -vs- Veer Gurjar Aluminium Industries Private Limited and Another** [(2020) 15 SCC 1]. In this judgment also, the necessity of averments to overcome the limitation question has been emphasised by this Court. The argument of the appellant on the basis of Section 25 (3) of the Contract Act, 1872 is anchored on the letter dated 29.01.2020. This letter reads:-

"*To*

The Assistant General Manager
Union Bank of India,
Industrial Finance Branch,
6-3-1090/B/4/101, 1st Floor, "The Grand" Raj Bhavan Road,
Somajiguda, Hyderabad-500 082.
Mail-ifbhyderabad@unionbankofindla.com

(Through to the Lead Bank)

Dear Sir,
Sub:- Request for OTS with Consortium Banks
Ref:- Totem Infrastructure Limited

We thank you very much for the support that has been extended by your bank throughout my business operations with your branch. With reference to your letter/Notice from your branch, we have taken note of it and we have discussed about this elaborately with our business partners.

In principle, we have agreed among ourselves to repay the amount due to your bank. As you are aware, we are undergoing through rough phase in our business activities along with financial crisis. At this juncture we require your bank support to come out of these problems and to repay the amounts due to your bank.

In this regard, we request you to inform us to the exact outstanding amount payable to your bank as on the date of our account became Non Performing Asset (NPA) in your bank. We also request you to waive off all the penal interests levied by your bank on the Loan outstanding amount from the date of account became irregular to till date of your notification to us

It would be of great relief to us, if you can waive off all the penal interests and penalties and other charges levied on our account and inform us to enable us to plan for repayments.

So in this regard we further request you to consider this as One Time Settlement (OTS) option extended to us. We also request you to allow us to repay the said amount in at least 4 to 6 Instalments spread over a period of one year.

We are highly indebted to your bank in supporting us in all our tough times and believing us.

We are always committed for repayment of your outstanding dues. Finally we request you not to issue any public notifications or such actions which will spoil our reputation as well as closes all options for us to raise funds or to make alternative arrangements to repay the loan outstanding amounts.

Kindly organise Consortium meeting or joint Lenders

Meeting at the earliest, preferably before 07th February 2020 to discuss and to come to an understanding.

We hope that you will consider our humble request.

Kindly do the needful and oblige.

Looking forward to your favourable response.

Thanking you,

Yours Faithfully

(Salalith Tottempudi)
Managing Director"

8. An argument based on Section 25(3) of the Contract Act, 1872 was examined by this court in **Kotak Mahindra Bank Ltd. -vs- Kew Precision Parts Private Limited and Others** [(2022) 9 SCC 364]. We shall refer to this judgment henceforth as **Kotak Mahindra II.** Analysing the provision of Section 25 (3) of the Contract Act, 1872 this Court has held in this judgment:-

"33. There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time-barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional."

9. We accept the submission of the appellant that this letter was a request to consider a one-time settlement. But again, in absence of averments or pleading, after initiation of insolvency proceeding, any promise made to pay the debt cannot be treated to have cured the fault of limitation in a pre-existing action. A promise of this nature would constitute an independent cause of action.

10. We shall now return to the point argued by the appellant that the date of default should go back to the date on which the loan account of the corporate debtor was declared as non-performing asset. In the cases of **B.K. Educational Services Private Limited -vs- Parag Gupta & Associates** [(2019) 11 SCC 633] and **Babulal** (supra), date of default has been treated to be the date on which the limitation period starts ticking. In **Gaurav Hargovindbhai Dave -vs- Asset Reconstruction Company (India) Limited and Another** [(2019) 10 SCC 572], the provision of Article 137 to the Limitation Act was applied for computing the period of limitation. But these authorities do not lay down a proposition of law which is contrary to that laid down by the three-Judge Bench judgment of this Court in the case of **Kotak Mahindra I** (supra). This Court, in the case of **Vashdeo R. Bhojwani -vs- Abhyudaya Co-operative Bank Limited and Another** [(2019) 9 SCC 158], on considering the facts involved in that case, came to the finding that when the recovery certificate was issued, the said certificate injured effectively and completely the appellant's rights, as a result of which limitation would have begun ticking. The recovery certificate there was issued on 24.12.2001 and the financial creditor filed an application under Section 7 of the IBC before the NCLT on 21.07.2017. But in the said judgment also the date of recovery certificate was treated to be the date on which the time of limitation began to tick.

11. On behalf of the appellant, submissions have been made that the banks having approached the DRT, were barred under the doctrine of election from approaching the

NCLT for recovery of same set of debts. This is a doctrine embodied in the law of evidence, which bars prosecution of the same right in two different fora based on the same cause of action. But so far as the present appeal is concerned, the recovery proceedings before the DRT had commenced in the year 2014. At that point of time, the IBC had not come into existence. Moreover, it has been held by this Court in **Kotak Mahindra I** (supra) that the recovery certificate itself would give rise to a fresh cause of action entitling a financial creditor to initiate Corporate Insolvency Resolution Process (CIRP). By this judgment, the right of the financial creditor to invoke the mechanism under the IBC after issue of recovery certificate stood acknowledged as a valid legal course. This Court, in that case also dealt with the question of instituting a CIRP on the strength of recovery certificate. Needless to add, such recovery certificate arose out of a proceeding from the DRT. The enforcement mechanism for a recovery certificate is an independent course, which a financial creditor may opt for realisation of its dues crystalised under the 1993 Act, instead of chasing the mechanism under the 1993 Act. The IBC itself is not really a debt recovery mechanism but a mechanism for revival of a company fallen in debt, but the procedure envisaged in the IBC substantially relates to ensuring recovery of debts in the process of applying such mechanism. The question of election between the fora for enforcement of debt under the 1993 Act and initiation of CIRP under the IBC arises only after a recovery certificate is issued. The reliefs under the two statutes are different and once CIRP results in declaration of moratorium, the enforcement mechanism under the 1993 Act or the SARFAESI Act gets suspended. In such circumstances, after issue of recovery certificate, the financial creditor ought to have option for enforcing recovery through a new forum instead of sticking on to the mechanism through which recovery certificate was issued. In the case of **Transcore -vs- Union of India and Another** [(2008) 1 SCC 125], application of SARFAESI mechanism was held permissible even though the subject-proceeding was instituted under the 1993 Act. Thus, the doctrine of election cannot be applied to prevent the financial creditors from approaching the NCLT for initiation of CIRP.

12. One factor which has come to our notice in course of hearing is that one of the recovery certificates was issued on 08.09.2015. We have already held that the letter dated 29.01.2020 cannot by itself revive the debt though it could create an independent cause of action. A question that arises now is as to whether the debts in connection with the recovery certificate issued in the year 2015 could form subject matter of an application under Section 7 of the IBC filed on 06.09.2019. In the case of **Kotak Mahindra I** (supra), it was held that CIRP could be brought within three years from the date of issue of recovery certificate.

13. What has been filed before the 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 the NCLT. But a recovery certificate under the 1993 Act is also clothed with the character of a deemed decree. The provisions of Section 19 (22A) of the 1993 Act specifies: -

*"**Section 19 Application to the Tribunal: -***

……..

(22A) 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.]"

Life of a decree is twelve years for enforcement as per Article 136 of the schedule of Limitation Act. The said provision stipulates:-

"Description of application	Period of limitation	Time from which period begins to run
136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years.	[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."

14. There is authority for the proposition that the time for computing limitation period for filing an application under Section 7 of the IBC would be guided by Article 137 of the Limitation Act. That is the ratio of this Court in the case of **Kotak Mahindra I** (supra). The same authority has also analysed the position of a recovery certificate as a deemed decree. It has been, inter-alia, held in this judgment:-

*"**79.** From the plain and simple interpretation of the words used in sub-section (22-A) of Section 19 of the Debts Recovery Act, it would be amply clear that the legislature provided that for the purposes of winding-up proceedings against a company, etc. a recovery certificate issued by the Presiding Officer under sub-section (22) of Section 19 of the Debts Recovery Act shall be deemed to be a decree or order of the Court. It is thus clear that once a recovery certificate is issued by the Presiding Officer under subsection (22) of Section 19 of the Debts Recovery Act, in view of sub-section (22-A) of Section 19 of the Debts Recovery Act it will be deemed to be a decree or order of the Court for the purposes of initiation of winding-up proceedings of a company, etc. However, there is nothing in sub-section (22-A) of Section 19 of the Debts Recovery Act to imply that the legislature intended to restrict the use of the recovery certificate limited for the purpose of winding-up proceedings. The contention of the respondents, if accepted, would be to provide something which is not there in sub-section (22-A) of Section 19 of the Debts Recovery Act.*

***80.** In any case, when the legislature itself has provided that any recovery certificate issued under sub-section (22) of Section 19 of the Debts Recovery Act will be deemed to be a decree or order of the court for initiation of winding-up proceedings, which proceedings are much severe in nature, it will be difficult to accept that the legislature intended that such a recovery certificate could not be used for initiation of CIRP, which would enable the corporate debtor to continue as an on-going concern and, at the same time, pay the dues of the creditors to the maximum. We, therefore, find no substance in the said submission."*

15. We have already referred to the provision of Section 19(22A) ofthe 1993 Act. This Court has construed the purpose of the said provision to include bringing an action under the IBC on the strength of Section 19(22) and (22A) of the 1993 Act. In the said provision, however, so far as bringing a winding-up action is concerned, the right of a recovery certificate-holder as a deemed-decree holder has been confined to companies registered under the Companies Act, 2013 and certain other entities with which we are not concerned here. But in relation to initiating proceeding under the IBC or making a claim under the said Code, the restriction does not remain confined to the Companies Act, 2013. The corporate debtor in this proceeding was incorporated under the Companies Act, 1956. In

the case of **Kotak Mahindra I** (supra), credit facilities were extended to the borrower entities in the years 1993-94. It is obvious that the three corporate entities involved in that case were incorporated under the Companies Act that prevailed prior to coming into operation of 2013 Act. The position of law to guide the subject proceeding should be the same. In the event a financial creditor wants to pursue a recovery certificate as a deemed decree, he would get twelve years' time. We are of this view as the extent of operation of a recovery certificate has been construed by this Court in **Kotak Mahindra I** (supra) to go beyond filing of winding-up petition alone. It would retain the character of a decree to lodge a claim in an IBC proceeding. But this point has not been examined by the Appellate Tribunal. We have already expressed our opinion on the reasons that weighed with the Appellate Tribunal as also the NCLT in entertaining the application. But since the first two fora did not test the legality of the 2015 certificate as a deemed decree, we are of the opinion that this question also ought to be addressed by the Appellate Tribunal. 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.

16. With these observations and directions, the appeal is dismissed. Interim orders, if any, shall stand dissolved.

17. Pending application(s), if any, shall stand disposed of.

18. There shall be no order as to costs.