*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 18th February 2025***

Pronounced on: 04th April 2025

+ CS(COMM) 754/2022, I.A. 17665/2022 & I.A. 2378/2024

SEITZ GMBH .....Plaintiff

Through: Ms. Shivambika Sinha, Advocate with Ms. Nimita Kaul, Advocate.

versus

SIMRAN TECHNOLOGIES PVT LTD .....Defendant

Through: Mr. Varun Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

I.A. 2378/2024 (*Application under Section 14 of Limitation Act, 1963*)

1. This application has been filed by the plaintiff seeking to exclude the period from 13th March 2018 to 26th November 2019, basis Section 14 of the Limitation Act, 1963, in computing the period of limitation applicable to filing of the suit.

2. The suit was filed seeking *inter alia* recovery of Rs. 2,66,18,235/- (*Rupees Two Crore Sixty-Six Lakhs Two Hundred Thirty-Five rupees*) along with interest. Initially, an application had been moved being ***I.A.***

17665/2022, for condonation of delay in refiling, which was considered by the Court on 21st November 2023.

3. The Court noted that one of the pleas of the plaintiff was that the period undergone during pendency of the petition, filed prior to the Suit, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**'), has to be excluded from computing the limitation. Liberty, therefore, had been given to the plaintiff to file an application under Section 14 of the Limitation Act, 1963. Notice was issued in the present application on 31st January 2024.

4. The brief facts in this regard are as under:

(i) Defendant placed orders for supply of *Seitz* products from time to time. The supply was made to the defendant in India. Invoices were raised and parties made a running account. The latest invoice raised by the plaintiff against supply of goods was on 21st December 2016. On 05th July 2017, a credit-note of EUR. 90256.78/- was issued by the plaintiff, in favor of the defendant. Despite the issuance of credit note, defendant started defaulting in payments under various invoices. Plaintiff issued a demand notice dated 31st January 2018 in terms of Section 8 of IBC, which was replied to, by the defendant on 12th February 2018.

(ii) On 13th March 2018, plaintiff filed an application under Section 9 of the IBC before the National Company Law Tribunal ('**NCLT**'), New Delhi. The Section 9 IBC application was

dismissed *vide* order dated 03rd July 2019, basis, that there were "*pre-existing disputes*" between the parties. Liberty was given to the plaintiff, by the NCLT, to pursue remedies in law before an appropriate forum. Relevant para of the order dated 03rd July 2019, passed by the NCLT, reads as under:

> 20. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Applicant before any other forum shall not be prejudiced on account of dismissal of instant application.

(iii) Thereafter, plaintiff filed an appeal before the National Company Law Appellate Tribunal ('**NCLAT**') under Section 61 of the IBC, being, ***Company Appeal (AT) (Insolvency) No. 776/2019***. The said appeal was dismissed by NCLAT *vide* order dated 26th November 2019, on the same grounds as those contained in the order of 03rd July 2019, passed by the NCLT.

(iv) Thereafter, the plaintiff filed the present suit on 31st December 2021.

<u>Submissions on behalf of the plaintiff</u>

5. Plaintiff asserts that the period from 13th March 2018 to 26th November 2019, i.e. the period spent before the NCLT/NCLAT in proceedings under the IBC, ought to be excluded by virtue of Section 14 of the Limitation Act.

6. It is submitted that proceedings under Section 9 and Section 61 of the IBC are civil proceedings and pertain to the same matter in issue as the captioned suit and relate to the recovery of outstanding dues.

7. The said proceedings had been prosecuted with due diligence and in good faith and were a result of diligent exercise of plaintiff's rights and remedies.

8. The plaintiff relied upon the decision of the Supreme Court in ***Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd.*** (2021) 7 SCC 313, to contend that there cannot be a total exclusion of requirements of Section 14 of the Limitation Act, 1963, which requires a liberal, contextual and purposeful interpretation, and therefore, will be applicable to proceedings under IBC.

9. Reliance was also placed on the decision in ***M.P. Steel Corpn. v. CCE*** (2015) 7 SCC 58, in that, the word "*Court*" in Section 14 of the Limitation Act, 1963, takes its color from the preceding word "*civil proceedings*", which need not be confined to suits, appeals and applications, which are made only in Courts *stricto sensu*, and can also apply to proceedings before a *quasi*-judicial tribunal under a particular statute.

10. Further, reliance was placed on ***P. Sarathy v. State Bank of India*** (2000) 5 SCC 355, wherein it was held that Section 14 of the Limitation Act, 1963, uses the term "*Court*" and not "*Civil Court*" and could include any

forum having the trappings of a Civil Court i.e. having the authority to adjudicate upon the rights of the parties.

Submissions on behalf of the defendant

11. The defendant contended that the application is untenable and the exclusion, as claimed by the plaintiff, cannot be sustained. It was stressed that the captioned suit has been filed, relating to outstanding recoveries with respect to invoices of the year(s) 2014, 2015 and 2016 and limitation period, therefore, stood expired in the year(s) 2017, 2018 and 2019.

12. Defendant submitted that issuance of the credit note would not extend the period of limitation and that there was no running account. The application has been moved almost two years after registration of the suit in an attempt to make the suit maintainable.

13. It is contended that in an application under Section 14 of the Limitation Act, 1963, the parties have to satisfy the Court as regards the following aspects:

i. The plaintiff was prosecuting other civil proceeding with proper diligence;

ii. The earlier proceedings relate to the same matter and issue;

iii. Former proceedings were prosecuted in good faith, which could not be entertained, due to defect in jurisdiction and other causes of like nature.

14. It is contended that the phrase "*cause of like nature*" is to be read *ejusdem generis*, with the expression, "*defect of jurisdiction*", and therefore, defect of jurisdiction must be a reason of rejection of the proceedings by the other Court. It was, therefore, contended that the benefit of Section 14 of the Limitation Act, 1963 would not be applicable to a proceeding which was not rejected due to the defect of jurisdiction or some other defect of like nature. Counsel for the defendant submitted that the plaintiff had failed in the proceedings before the NCLT/ NCLAT, on merits, and not on the basis of defect of jurisdiction. Further, the relief sought in an insolvency case is very different from a suit for recovery and, therefore, cannot be said to be the "*same matter in issue*".

Analysis

15. For the purposes of assessment of the plea in the application, the Court must first extract the provisions which are relevant to the submissions made by the parties:

i. **Section 14 of the Limitation Act, 1963:**

> "*14. Exclusion of time of proceeding bona fide in court without jurisdiction-*
>
> *(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from*

defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction"

(emphasis supplied)

ii. **Section 9 of IBC, 2016:**

"*9. Application for initiation of corporate insolvency resolution process by operational creditor-*

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of Section 8, if the operational creditor does not

receive payment from the corporate debtor or notice of the dispute under sub-section (2) of Section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven

days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section."

(emphasis supplied)

iii. **Section 238A of IBC 2016**:

"*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."

16. A bare perusal of Section 14 of the Limitation Act, 1963 would incontrovertibly bear out that the requirements for exclusion of time, in computing the period of limitation, are as under:

(i) Plaintiff ought to have prosecuted another "*civil proceeding*";

(ii) Plaintiff must have done so with "*due diligence*";

(iii) Such proceeding could be before a Court of first instance or of appeal or revision;

(iv) The other proceeding should relate to the "*same matter in issue*";

(v) The other proceeding should have been "*prosecuted in good faith*";

(vi) Said proceeding failed due to "*defect of jurisdiction*" or "*other cause of a like nature*".

17. In this context, the assessment now moves to the analysis of the decisions which have been cited before this Court:

(i) In ***P. Sarathy*** (*supra*), the Court was dealing with an application under Section 14 of the Limitation Act, 1963, with respect to a suit filed by a party claiming benefit on the ground that he had been removed from service, by way of a departmental inquiry, against which he filed an appeal, which was dismissed and then he had filed another appeal which was also dismissed by the Madras High Court. The decision was subsequently upheld by the Supreme Court. The opposing party contended that benefit of Section 14 of Limitation Act, 1963 can be given only in cases where the proceedings were "*civil proceedings*" and were pending in a Court, and thus, the proceedings under the *Tamil Nadu Shops and Establishments Act, 1947*, was not a "*civil proceeding*", thereby, the benefit of Section 14 of Limitation Act, 1963, could not be granted to the party. The Supreme Court highlighted that Section 14 of the Limitation Act, 1963 does not speak of a "*civil court*" but only of a "*court*" and any authority having the trappings of a Court would be included. The relevant paragraphs from the said decision are extracted as under, for ease of reference:

> "*12. It will be noticed that Section 14 of the Limitation Act does not speak of a "civil court" but speaks only of a "court". It is not necessary that the court spoken of in*

Section 14 should be a "civil court". Any authority or tribunal having the trappings of a court would be a "court" within the meaning of this section.

13. In Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd. [AIR 1967 SC 1494 : 1967 Cri LJ 1380] this Court, while considering the question under the Contempt of Courts Act, held that the Registrar under the Bihar and Orissa Cooperative Societies Act was a court. It was held that the Registrar had not merely the trappings of a court but in many respects he was given the same powers as was given to an ordinary civil court by the Code of Civil Procedure including the powers to summon and examine witnesses on oath, the power to order inspection of documents and to hear the parties. The Court referred to the earlier decisions in Bharat Bank Ltd. v. Employees [1950 SCC 470 : AIR 1950 SC 188 : 1950 SCR 459] ; Maqbool Hussain v. State of Bombay [(1953) 1 SCC 736 : AIR 1953 SC 325 : 1953 SCR 730] and Brajnandan Sinha v. Jyoti Narain [AIR 1956 SC 66 : (1955) 2 SCR 955] . The Court approved the rule laid down in these cases that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

14. In Pritam Kaur v. Sher Singh [AIR 1983 P&H 363] the proceedings before the Collector under the Redemption of Mortgages (Punjab) Act (2 of 1913) were held to be civil proceedings. It was held that the "court", contemplated under Section 14 of the Limitation Act, does not necessarily mean the "civil court" under the Code of Civil Procedure. It was further held that any tribunal or authority, deciding the rights of parties, will be treated to

be a "court". Consequently, benefit of Section 14 of the Limitation Act was allowed in that case. This decision was followed by the Himachal Pradesh High Court in Bansi Ram v. Khazana [AIR 1993 HP 20] .

15. Applying the above principles in the instant case, we are of the opinion that the Deputy Commissioner of Labour (Appeals), which was an authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeals, was a "court" within the meaning of Section 14 of the Limitation Act and the proceedings pending before him were civil proceedings. It is not disputed that the appellant could file an appeal before the Local Board of the Bank, which was purely a departmental appeal. In this view of the matter, the entire period of time from the date of institution of the departmental appeal as also the period from the date of institution of the appeal under Section 41(2) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit in question. If the entire period is excluded, the suit, it is not disputed, would be within time."

(emphasis supplied)

(ii) In ***M.P. Steel Corpn.*** (*supra*), the Court was dealing with an action of a Collector of Customs, in encashment of a bank guarantee by the party who was engaged in ship breaking activity. An appeal had been preferred against the Collector's order, before the Customs, Excise and Gold (Control) Appellate Tribunal ('**CEGAT**'), which allowed the same. The Department filed an appeal before the Supreme Court, against the CEGAT order, which was allowed while holding that CEGAT has no

jurisdiction and the appeal would lie before the Commissioner (Appeals) under the Customs Act, 1962. An appeal filed before the appropriate authority was dismissed by the Commissioner of Customs, basis delay. A challenge to said dismissal was also dismissed by the Customs, Excise and Service Tax Appellate Tribunal ('**CESTAT**'). The Court considered the decision in ***P. Sarathy*** (*supra*) noting that a distinction had been made between "*civil court*" and "*court*" and the scope of Section 14 of the Limitation Act, 1963, was expanded to include any authority or tribunal having trappings of a civil court. The Court, however, went on to add a qualification that this refers only to proceedings which proved to be abortive. The Court highlighted that, proceedings, even if before a quasi-judicial tribunal, if they prove to be abortive, due to defect of jurisdiction or otherwise and where no decision could be rendered on merits, the time taken to participate in such proceedings ought to be excluded. It was made clear that civil proceedings need not be confined to suits, appeals or applications which are made only in a Court *stricto sensu*. The Court noted that the plaintiff must be put in the same position, as he was, when he started an abortive proceeding and all that is necessary is the absence of negligence or inaction and presence of *bona fides*. The following paragraphs of the said judgment may be instructive in this regard:

"*34. It now remains to consider the decision of a two-Judge Bench in P. Sarathy v. SBI [(2000) 5 SCC 355 : 2000 SCC (L&S) 699] . This judgment has held that an abortive proceeding before the appellate authority under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 would attract the provisions of Section 14 of the Limitation Act inasmuch as the appellant in this case had been prosecuting with due diligence another civil proceeding before the appellate authority under the Tamil Nadu Shops and Establishments Act, which appeal was dismissed on the ground that the said Act was not applicable to the nationalised banks and that, therefore, such appeal would not be maintainable. This Court made a distinction between "civil court" and "court" and expanded the scope of Section 14 stating that any authority or tribunal having the trappings of a court would be a "court" within the meaning of Section 14. It must be remembered that the word "court" refers only to a proceeding which proves to be abortive. In this context, for Section 14 to apply, two conditions have to be met. First, the primary proceeding must be a suit, appeal or application filed in a civil court. Second, it is only when it comes to excluding time in an abortive proceeding that the word "court" has been expanded to include proceedings before tribunals.*

35. This judgment is in line with a large number of authorities which have held that Section 14 should be liberally construed to advance the cause of justice—see Shakti Tubes Ltd. v. State of Bihar [(2009) 1 SCC 786 : (2009) 1 SCC (Civ) 370] and the judgments cited therein. Obviously, the context of Section 14 would require that the term "court" be liberally construed to include within it quasi-judicial tribunals as well. This is for the very good reason that the principle of Section 14 is that whenever a person bona fide prosecutes with due diligence another proceeding which proves to be abortive because it is

without jurisdiction, or otherwise no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the court in such proceeding would be penalised for no fault of his own. This judgment does not further the case of Shri Viswanathan in any way. The question that has to be answered in this case is whether suits, appeals or applications referred to by the Limitation Act are to be filed in courts. This has nothing to do with "civil proceedings" referred to in Section 14 which may be filed before other courts or authorities which ultimately do not answer the case before them on merits but throw the case out on some technical ground. Obviously the word "court" in Section 14 takes its colour from the preceding words "civil proceedings". Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are made only in courts stricto sensu. This is made even more clear by the explicit language of Section 14 by which a civil proceeding can even be a revision which may be to a quasi-judicial tribunal under a particular statute.

.....

49. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order

on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant-appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under Explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety-first day till the final appeal is ultimately dismissed. This example also goes to show that the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the

object sought to be achieved, thereby advancing the cause of justice.

.....

52. As has been already noticed, Sarathy case [(2000) 5 SCC 355 : 2000 SCC (L&S) 699] has also held that the court referred to in Section 14 would include a quasi-judicial tribunal. There appears to be no reason for limiting the reach of the expression "prosecuting with due diligence" to institution of a proceeding alone and not to the date on which the cause of action for such proceeding might arise in the case of appellate or revisional proceedings from original proceedings which prove to be abortive..."

(emphasis supplied)

(iii) Reliance was placed on ***Sesh Nath Singh*** (*supra*) where the Court was dealing with an appeal under Section 62 of IBC against a judgment and order passed by the NCLAT dismissing the appeal filed against the NCLT order. An objection had been taken that the application under Section 7 IBC was barred by limitation, however, was refuted on the ground that in the interregnum, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('**SARFAESI Act**') had been pending. NCLAT had held that the proceedings under the SARFAESI Act, entitled exclusion of time, under Section 14 of the Limitation Act 1963. In assessing this issue, the Court stated that the authority under the IBC is not the substitute forum for a collection of debt,

in the sense it cannot reopen debts barred by law and does not resolve disputes as in suits and arbitrations, but the ultimate object of an application with the IBC is realization of debt and the cause of action for initiation of such application is a default on part of the corporate debtor. Hence, there is no reason why Section 14 of the Limitation Act, 1963, would not apply for the purpose of exclusion of limitation. The relevant paragraphs of the said decision read as under:

> "*73. There can be little doubt that Section 14 applies to an application under Section 7 IBC. At the cost of repetition, it is reiterated that the IBC does not exclude the operation of Section 14 IBC. The question is whether prior proceedings under the SARFAESI Act do not qualify for the exclusion of time under Section 14, inasmuch as they are not civil proceedings in a court, as argued by Mr Dave.*
>
> *74. Even if it were to be held that the benefit of Section 14 would be available to an applicant under IBC, for proceedings initiated bona fide and prosecuted with due diligence under the SARFAESI Act, another question raised in this appeal is, whether exclusion of time under Section 14 of the Limitation Act, would only be available if the proceedings which could not be entertained for defect of jurisdiction, or other cause of a like nature, had ended, in view of the Explanation at the end of Section 14, which says that for the purposes of the said section, the day on which the earlier proceeding was instituted and the day on which it ended shall both be counted for exclusion of time. Much emphasis has been placed by Mr Dave on the Explanation at the end of Section 14, to argue that the financial creditor would not be entitled to the benefit of Section 14 of the Limitation Act since the proceedings*

under the SARFAESI Act are still pending, as also the writ petition in the High Court.

75. Section 14 of the Limitation Act is to be read as a whole. A conjoint and careful reading of sub-sections (1), (2) and (3) of Section 14 makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain the same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of the time during which the applicant had been prosecuting such proceeding, in computing the period of limitation. The substantive provisions of sub-sections (1), (2) and (3) of Section 14 do not say that Section 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith.

.....

86. An adjudicating authority under IBC is not a substitute forum for a collection of debt in the sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time-barred. The adjudicating authority does not resolve disputes, in the manner of suits, arbitrations and similar proceedings. However, the ultimate object of an application under Section 7 or 9 IBC is the realisation of a "debt" by invocation of the insolvency resolution process. In any case, since the cause of action for initiation of an application, whether under Section 7 or under Section 9 IBC, is default on the part of the corporate debtor, and the provisions of the Limitation Act, 1963, as far as may be, have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation.

.....

> *93. If, in the context of proceedings under Section 7 or 9 IBC, Section 14 were to be interpreted with rigid and pedantic adherence to its literal meaning, to hold that only civil proceedings in court would enjoy exclusion, the result would be that an applicant would not even be entitled to exclusion of the period of time spent in bona fide invoking and diligently pursuing an earlier application under the same provision of the IBC, for the same relief, before an adjudicating authority, lacking territorial jurisdiction. This could not possibly have been the legislative intent*."
>
> (emphasis supplied)

18. Perusal of the aforesaid judgments by the Supreme Court would put the matter beyond the pale of controversy. While, ***P. Sarathy*** (*supra*) expands the definition of the term "*court*", to be not only, "*civil courts*", but also, to include *quasi*-judicial tribunals; ***M.P. Steel Corpn.*** (*supra*) focusses on the "*abortive procedure*" followed by the plaintiff before such a *quasi*-judicial forum; and ***Sesh Nath Singh*** (*supra*), specifically refers to the adjudicating authority under the IBC, to hold that the nature of proceedings under the IBC, is effectively similar and relates to, realization of debt.

19. With respect to the ingredients as culled out in para no. 9 above, there can be no doubt that proceedings under the IBC would be civil proceedings before a *quasi*-judicial tribunal, which were rendered abortive, due to the inability of the plaintiff to cross the threshold of not having a pre-existing dispute.

20. A dismissal on the ground of presence of a "*pre-existing dispute*" need not be assessed by this Court, as to, whether it was on merits or under

jurisdiction, but the fact that it is abortive, suffices for the purpose of this assessment. What is more important is that whether the proceeding was made in good faith and prosecuted with diligence.

21. There is no assertion by the defendant that such a proceeding could not have been maintained. It would be quite specious for the defendant to state that, only in order to stay the limitation, the plaintiff had proceeded under the IBC.

22. Proceedings under the IBC are routinely filed by operational creditors, fearing the inability of the corporate debtor to satisfy their debts. Section 8 of the IBC, itself allows an operational creditor to send a demand notice, on the occurrence of default [defined under Section 3(12) of IBC], in respect of a debt which has become due and payable, unless the corporate debtor brings to attention, existence of a prior dispute which would prevent further proceedings under the IBC.

23. A perusal of the petition under Section 8 of IBC, filed before the NCLT by the plaintiff, shows that there were amounts outstanding and demand notices were sent, pursuant to the default. Therefore, there is no reason to arrive at a conclusion that the proceedings before the IBC were not *bona fide*.

24. The orders passed by the NCLT and the NCLAT would also show that the proceedings were duly prosecuted with vigor and that the plaintiff was under the impression that they could pursue this legal remedy with success.

<u>Conclusion</u>

25. In view of the aforesaid facts, circumstances and position of law, the application is allowed. Thus, the time period from 13th March 2018 to 26th November 2019, be excluded in computation of limitation period applicable for filing of the present suit.

26. List CS(COMM) 754/2022 with I.A. 17665/2022, on 27th May 2025, date already fixed.

27. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 4, 2025/MK/*kp*