

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-202
IB-832/ND/2020

IN THE MATTER OF:

High Ground Enterprise Limited
Vs.
ITE India Private Limited

....Applicant

.....Respondent

SECTION

U/s 9 IBC code 2016

Order delivered on 01.10.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Shantanu
For the Respondent :

ORDER (Dictated in open court)

As per Mr. Abni Ranjan Kumar Sinha Member (Judicial)

1. Heard, Ld. Counsel appearing on behalf of petitioner and perused the averments made in the application.
2. Ld. Counsel for the petitioner submitted that the last date of invoices were 31.03.2016, which is at Pg. 33 and the last payment was received from the Corporate Debtor on 15.03.2018 therefore, the limitation shall run from the date when the last payment was made in view of Section 19 of limitation Act. He further submitted that so far as the decision of the Hon'ble Apex Court in the matter Babulal is concerned, that decision is per incurium, because Section 18 of Limitation Act has not been discussed. He further submitted that in view of part payment made on 15.03.2018, the present application is within limitation period, so notice may be issued upon the respondent.



3. In the light for submissions made on behalf of the applicant , we have gone through the averments made in the application and we noticed that it is admitted fact that the last invoice was raised on 31.03.2016 and the present application has been filed by the petitioner on 03.03.2020, but in view of Article 137 of the Limitation Act, the petitioner was required to file the application within 3 years from the date when the right to apply accrues, i.e the date on which last invoice was raised , 31/03/2016 but the present application has been filed about one year after the limitation period.
4. At this juncture, we would like to refer the submissions made on behalf of the petitioner. In course of arguments, he submitted that since the payment was made by Corporate Debtor on 15.03.2018, therefore, in view of Section 19 of the limitation act the limitation shall run from the date when the part payment was made.
5. At this juncture, we would like to refer Section 19 of the Limitation Act and the same is quoted below:-

Section 19 in The Limitation Act, 1963

19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: 19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made\:" Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment."

Explanation.—For the purposes of this section,— Explanation.—For the purposes of this section,—"

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment; (a) where mortgaged land is in the



possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;"

(b) "debt" does not include money payable under a decree or order of a court. (b) "debt" does not include money payable under a decree or order of a court."

6. Application of Section 19 of the Limitation Act has been considered by the Hon'ble NCLAT in a case of Vimal Kumar Sabula Vs. Bank of India in Company Appeal (AT Insolvency) 1166 of 2019 decided on 05.03.2020 by three members Bench of the Hon'ble NCLAT. We have gone through the decision and we noticed that the Hon'ble NCLAT in para 11 of the judgment discussed the section 19 of the limitation Act and after considering the provisions of section 19 of the Limitation Act in para 11 Hon'ble NCLAT held that "It is to be seen that Article 19 of the Limitation Act will fall under the category of first division of schedule which applies to the suits. However, Section 7 of the IBC is not a suit and as held by Hon'ble Supreme Court, Section 7 is an Application under the IBC which falls under the category of Application in para II of 3rd division. Therefore, the Hon'ble Supreme Court held that the Article 137 will apply to the Applications filed under Section 7 & 9 of the IBC. Therefore, the stand of the Respondent No. 1 that the period of limitation will get extended from the date of payment of amount by the Guarantor on 01.04.2017 cannot be a ground and the limitation will not get extended. Therefore, the submission made by the Respondent no. 1 is negated."
7. In view of the aforesaid decision, when we shall consider the case in hand then we are unable to accept the contention of the petitioner that in view of section 19 of the Limitation Act, the period of limitation shall be extended from the date when the last payment was made that is from 15.03.2018 rather we are of the considered view period of limitation shall commence from the date when last invoice was raised, i.e. from 31/03/2016, but the present application is filed on 03/03/2020, hence it is barred by limitation.
8. **Therefore, we have no option but to dismiss the application on the point of limitation, accordingly, the present application is dismissed on the point of limitation.**

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(K.K. VOHRA)
MEMBER (T)

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(ABNI RANJAN KUMAR SINHA)
MEMBER (J)