

5. The Financial Creditor has placed a termination come a arbitration notice dated 06.05.2016 through which the Financial Creditor appointed a sole arbitrator to execute the dispute, difference and controversy in terms of Clause 32 of Loan Agreement. Vide this letter the Financial Creditor had also called upon the Corporate Debtor to pay a sum of Rs. 43026106/- within 7 days from the date of receipt of the Notice. From the perusal of the Arbitration award, it emerges that the Corporate Debtor attended the arbitral proceedings. Further this fact is admitted by the Corporate Debtor in the Petition u/s 34 of Arbitration and Conciliation Act, 1996 seeking setting aside of the arbitral award. The Arbitrator delivered award dated 05.12.2020 for a sum of Rs.42544196/- along with interest less 11375000.
6. Ld. Counsel for the Financial Creditor further relied on the Arbitral Award dated 05.12.2020 and submits that this case is a fit case for admission.
7. The Corporate Debtor has opposed present application on the ground of limitation; debt being disputed; and financial difficulty vide its reply filed on 05.09.2022. The Corporate Debtor has also placed before us copy of the Order dated 05.08.2022 passed by the Hon'ble Delhi High Court by which the operation of arbitral award has been stayed.
8. We have heard both the parties and perused the material on records.
9. The present petition has been filed beyond three years from the date of default which occurred on 30.09.2015 as per record of default with Information utility. However, the Financial Creditor's case is that the Corporate Debtor had issued cheque No. 115261 which was not honoured by the Banker of the Corporate Debtor. The Ld. Arbitrator has given a finding at Clause No.105 of the Arbitral Award that the Financial Creditor has not filed any document to show that the cheques were presented and thereafter dishonoured and no cheque return advice of bank has been placed on record. In view of finding of Ld. Arbitrator, we find no substance in the plea of financial creditor on this count.

10. We have given thoughtful consideration to the facts. In the case ***Sabarmati Gas Limited Vs. Shah Alloys Limited (2023) ibclaw.in 02 SC*** the Hon'ble Supreme Court has held that the period limitation under IBC is three years from the date right to apply accrues and the delay is condonable on the sufficient ground. It is undisputed law that right to apply accrues on the date when the default occurs.
11. In the present case, the Financial Creditor has not brought on record any evidence making a case for condonation of delay u/s 5 of Limitation Act. The Financial Creditor has relied heavily on arbitral proceeding. Further the recourse to this Court under IBC appears to be in nature of recovery proceeding rather than an attempt to seek resolution of the Corporate Debtor.
12. In view of the above discussion, we hold that this Company Petition is not maintainable as being barred by law of limitation in the absence of sufficient ground for condonation of delay u/s 5 of Limitation Act having been shown before us. In our view, the Petition is also not maintainable as it is not in accordance with the spirit of Code which was enacted for the resolution of the Corporate Debtor rather than providing a forum for recovery of debts due to creditors.
13. In view of above, C.P. (IB)/1228(MB)2021 is **dismissed** with no costs.

Sd/-
PRABHAT KUMAR
Member (Technical)

/Dubey/

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

