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INSOLVENCY & BANKRUPTCY

IBC Ordinance Removes Uncertainty Regarding applicability of Limitation Act

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Insolvency & Bankruptcy Code (Amendment) Ordinance, 2018 (“Ordinance”) settled uncertainty regarding the applicability of Limitation Act 1963 over proceeding under the Insolvency and Bankruptcy Code 2016 (“Code”). The Ordinance introduced a new section 238 A to the Code, which categorically states that provision of Limitation Act would be applicable to proceedings before the Adjudicating Authorities and Appellate Authorities under the Code.

National Company Law Appellate Tribunal (“NCLAT”) on a couple of occasions held that the Limitation Act would not be applicable to proceedings under the Code. The question first came up before NCLAT in *Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructure Trustee Ltd*[1] where it was categorically held that the Limitation Act is not applicable to the Code. The reason given by the NCLAT was that the Code is not an act for recovery of money claim, but it relates to initiation of corporate insolvency resolution process. Hence, so long as debt is due including interest, the Code can be invoked even after the expiry of limitation period. NCLAT again reaffirmed the above view in *Black Pearls Hotel Pvt. Ltd v. Planet M Retail Ltd.****[2]*** NCALT, in this case, further went on to add that even if it is accepted that the Limitation Act is applicable to the Code, then Article 137 of the Limitation Act is applicable. Article 137 prescribes time period for filing application, where no specific period is provided under other provisions of Limitation Act. The Article provides a period three years from the date in which the right to file the application accrues. Applying Article 137, NCLAT held that right to initiate proceeding under the Code accrues on 1 December 2016 i.e. the date on which the Code came into effect. Hence, an applicant can initiate proceeding under the Code even if the debt is time barred provided he initiates the proceeding with in three years from 1 December 2016.

The above view of NCLAT was a departure from the traditional view that ‘*a time barred deb is not a debt at all’,* leading to a concern that NCALT is opening the floodgate of time barred debt due to the non-applicability of Limitation Act.[3] The Ordinance clears this uncertainty as it clearly states that Limitation Act is applicable to the proceeding under the Code. However, the uncertainty created by the judgment in *Black Pearls Hotel Pvt. Ltd* regarding the time from which period of limitation begin to operate is still looming over the Code. Hence, it may be still possible to approach NCLT even for time barred debt, if the applicant approaches NCLT with in three years from 1 December 2016.

[1] Company Appeal (AT) (Insolvency) No.44/2017

[2] Company Appeal (AT) (Insolvency) No.91 of 2017

[3] http://www.indialaw.in/blog/blog/limitation-act-will-not-apply-insolvency-proceeding/#_ftn1