



# ILS BRIEFS

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## **CONUNDRUM AROUND PART PAYMENT WOULD EXTEND THE LIMITATION UNDER IBC OR NOT.**

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NCLAT in the case of *Bimalkumar Manubhai Savalia Vs. Bank of India Company Appeal (AT) (Insolvency) No. 1166 of 2019*, had got to deal with the set of facts, to which application of Article 19 of the Limitation Act i.e., the benefit of extension of the limitation on account of part payment, was sought.

NCLAT while discussing the applicability of Article 19 of the Limitation Act on proceedings Insolvency and Bankruptcy Code, 2016 (IBC) held 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. On said premises, NCLAT held that part payment will not extend the limitation under IBC.

That the NCLAT by holding that Article 19 of Limitation Act would not apply to the part payment for the purpose of IBC, has opened shaken the well settled and protected wisdom in law of limitation since long time and will surely have long standing impact on jurisprudence around the provision of Limitation Act while applying on IBC proceedings. Conundrum around said issue can be gauged from the fact NCLT after the dictum in *Bimalkumar(Supra)* opined conversely on same issue to be specific NCLT Mumbai vide its order dated 16.04.2021 in the case of *Samata Nagari Sahkari Patsantha Maryadit, Kopargaon vs. Yeshodeep Infrastructure Pvt. Ltd.*, CP No. 1072/(IB)-MB-V/2020, held that part payment by the debtor towards satisfaction of liability within the expiry of limitation period, is liable to fetch a benefit of Article 19 to the Creditor. Nonetheless, the NCLT being the subordinate authority to the NCLAT, cannot be said to have overruled the law on



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relevant point laid down by the later. Further, order in *Bimalkumar (Supra)* was passed on 05.03.2020 just a few months after dictum in *Vivek Jha Vs Daimler Financial Services India Private Ltd. & Anr. in Company Appeal (AT) Insolvency No. 756 of 2018 dated 13th January 2020* wherein NCLAT while speaking through J. Venugopal M. held that part payment will extend the limitation period in terms of Article 19 of the Limitation Act. Pertinently neither party before NCLAT in *Bimalkumar (Supra)* bring into the notice of the bench the dictum in *Vivek Jha(Supra)* which was prior in time and passed by bench having the same strength which would have either way clear the air. As if now *Bimalkumar (Supra)* is pending for final say before Supreme Court in Civil Appeal No. 2988 of 2020.

