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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
IN ITS INSOLVENCY JURISDICTION

INSOLVENCY PETITION NO.12 OF 2023

**Re:**

1. M/s. M. A. Castle Infrastructure Company,  
A Partnership firm having its registered  
office address at Office No.12, Minar  
Tower, Ground Floor, Behind Aksa  
Bakery, Off. S. B. Road, Jogeshwari  
(West), Mumbai – 400 102
  
  2. Manan Jabbar Shaikh  
Partner, residing at C/o. Jabbar Shaikh  
A/803, 804, 12<sup>th</sup> Floor, EE Heights,  
Bandivali Hill Road, S. V. Road,  
Opp. Malika Hospital, Above Hotel  
Delhi Darbar, Jogeshwari (West),  
Mumbai – 400 102
  
  3. Aftab Manan Shaikh  
Partner, residing at C/o. Jabbar Shaikh  
A/803, 804, 12<sup>th</sup> Floor, EE Heights,  
Bandivali Hill Road, S. V. Road,  
Opp. Malika Hospital, Above Hotel  
Delhi Darbar, Jogeshwari (West),  
Mumbai – 400 102
- ...Judgment Debtors**

**Ex-parte:**

Anil Kainya,  
Adult, Indian Inhabitant of  
Mumbai, having his Office at  
Business Park, S. V. Road,  
Malad (West), Near Bajaj Hall,  
Mumbai – 400 064.

**...Petitioning Creditor**

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Mr. Darshit Jain a/w Ms. Dhvani Desai for the Judgment Debtors.  
Ms. Neeta Jain a/w Ms. Simeen Shaikh, Ms. Gayatri Sharma & Ms.  
Anamika Singh i/b. S. K. Srivastav & Co. for the Petitioning Creditor.

Ms. C. J. Bhatt, Official Assignee a/w Mr. D. B. Iswalkar, I/c.  
Insolvency Registrar present.

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**CORAM : JITENDRA JAIN, J.**

**DATE : 2 APRIL 2026**

**JUDGMENT:-**

1. As per the earlier order dated 20 February 2026, the parties were heard on the preliminary point on various dates with respect to the limitation. The issue which arises for my consideration is whether the Insolvency Petition No.12 of 2023 filed during Covid-19 Pandemic is barred for non-satisfaction of condition precedent as prescribed by Section 12(1)(c) of the Presidency Towns Insolvency Act, 1909 ?

**BRIEF FACTS:-**

2. The petitioning-creditor (original plaintiff) had filed a suit being Short Cause Suit No.1279 of 2015 against judgment debtor no.1-partnership firm (original defendant no.1) for specific performance of the obligation under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ('MOFA'). In the suit originally filed, the partners of judgment debtor no.1 were not made parties.

3. On 20 August 2019, the above suit came to be decreed by the Bombay City Civil Court, Dindoshi by virtue of parties entering into consent terms, wherein it was agreed that judgment debtor no.1 would hand over four flats on or before 25 December 2019 and in the event of the failure to do so would pay a sum of Rs.7.45 crores on or before 31 March 2020 alongwith interest to the petitioning creditor (original plaintiff). In the said consent terms, judgment debtor no.2 and judgment debtor no.3, who were partners of judgment debtor

no.1 were also made parties though they were not parties to the original suit as filed. Resultantly, by virtue of this consent decree, judgment debtor nos.1, 2 and 3 were required to deliver the flats or in the alternative to pay Rs.7.45 crores alongwith interest on or before the specified date mentioned therein.

4. Since the judgment debtors nos.1 to 3 did not hand over the flats on or before 25 December, 2019, they became liable to make payment of Rs.7.45 crores alongwith interest to the petitioning creditor (original plaintiff) on or before 31 March, 2020. However, judgment debtor nos.1 to 3 failed to make the payment as per the consent decree and therefore, on **8 April, 2021**, petitioning creditor served insolvency notice in Form 1B on judgment debtor nos.1 and 3 through the bailiff. Judgment debtor no.2 could not be served on that day.

5. As per the aforesaid notice, judgment debtors nos.1 and 3 were directed to make payment of the sum specified therein within 35 days to the petitioning creditor.

6. The above 35 days period expired on **13 May, 2021**. Judgment debtor nos.1 and 3 did not challenge the above insolvency notice under Section 9(2) of the Presidency-Towns Insolvency Act, 1909 ('Insolvency Act') by filing motion before the Insolvency Court.

7. On **8 November, 2021**, insolvency notice was served by the bailiff on judgment debtor no.2 calling upon him to make the payment within 35 days. The said period of 35 days expired on 13 December, 2021, on which day, judgment debtor no.2 filed Notice of Motion (L) No. 29127 of 2021 for setting aside the said insolvency notice. The issue whether this motion was filed by all the three judgment debtors or only by judgment debtor no.2 has been decided

by the Insolvency Court in its order passed on 20 December 2023 in the said notice of motion. The Court has held that the said notice of motion is filed only by judgment debtor no.2 and not by all. The said order was challenged in Appeal No.45 of 2026 which came to dismissed for non-appearance in application seeking condonation in filing the appeal.

8. On 29 January, 2022, petitioning-creditor filed Insolvency Petition No.12 of 2023 against all judgment debtors, praying for judgment debtor nos.1, 2 and 3 be declared as insolvents. A copy of the said petition was served on 19 March 2022 upon judgment debtor nos.2 and 3 and on 26 March 2022 on judgment-debtor no.1.

9. On 20 March, 2024, petitioning-creditor filed second Insolvency Petition No.4 of 2024 for declaring judgment debtor nos.1, 2 and 3 as insolvents.

10. Judgment-debtors have raised preliminary objection on maintainability of the Insolvency Petition No.12 of 2023 on the ground of same having been filed beyond three months from the act of insolvency, on premature basis, etc.

11. It is on the above backdrop that the counsel for judgment debtors and the petitioning-creditor are heard on the said preliminary issue.

**SUBMISSIONS OF JUDGMENT DEBTORS NOS.1 TO 3:-**

12. The judgment-debtor nos.1 and 3 submits that the provisions of Section 12(1)(c) of the Insolvency Act is couched in negative and it does not prescribe period of limitation but it is a condition precedent before presentation of the petition and if same is not complied with then the petition is not maintainable. It is submitted

that act of insolvency should have occurred within three months from the date of presentation of petition.

13. The judgment debtor nos.1 and 3 further submits that the decision of the Hon'ble Supreme Court in case of **Cognizance For Extension of Limitation, In Re.**,<sup>1</sup> suo motu extending the limitation period during Covid-19 is only restricted to the provisions of Limitation Act, 1963 or limitation provisions specified in general or special laws and not to the time for complying with the condition precedent before filing the petition. The judgment debtor nos.1 and 3, therefore, submits that the decision of the Hon'ble Supreme Court extending time on account of Covid-19 would not be applicable to the facts of this case.

14. In this case, the act of insolvency was committed on 13 May 2021 when 35 days' period specified in the insolvency notice for making the payment expired. Insolvency Petition No.12 of 2023 was filed on 29 January 2022 which is beyond the period of three months from the act of insolvency.

15. The judgment debtor nos.1 and 3 submitted that there is no power conferred upon the Court under the Insolvency Act to extend the period specified under Section 12(1)(c) of the Insolvency Act or to condone the period. Therefore, it is submitted that Insolvency Petition No.12 of 2023 is to be dismissed for want of non-compliance of condition precedent provided by Section 12(1)(c) of the Insolvency Act.

16. The judgment-debtor nos.1 and 3 have relied upon following decisions amongst others for the above submissions :-

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<sup>1</sup> (2021) (18) SCC 250

- (i) *Chintaman Laxman vs. Ramgopal Raghunathdas & Ors.*<sup>2</sup>
- (ii) *Mokshamadanlal vs. Hariprasad Vishnuprasad*<sup>3</sup>
- (iii) *Krishna Ganpat Karekar, Apna Sahakari Bank, Mumbai vs. Pradip Janardan Mangaonkar*<sup>4</sup>
- (iv) *Industrial Development Bank of India Limited vs. Shashi Kumar Jain & Ors.*<sup>5</sup>
- (v) *G. R. Subbaiah Gowda & Ors. vs. Mohamed Alam & Ors.*<sup>6</sup>
- (vi) *Nanikaram Gellaram vs. Smt. Drupadiben*<sup>7</sup>

17. The judgment-debtor nos.1 and 3 further relied upon the decision of the Hon'ble Supreme Court in the case of *Paramjeet Singh Patheja vs. ICDS Ltd.*<sup>8</sup> in support of the submission that the Insolvency Act results into grave consequences of 'civil death' for a person sought to be adjudged as an insolvent and therefore, the Act has to be construed strictly. The Hon'ble Supreme Court further observed in paragraph 41 that issuance of an insolvency notice under the Insolvency Act is fraught with serious consequences which brings about a drastic change in the status of the person against whom such an insolvency notice is issued viz. to declare him an insolvent with all the attendant disabilities. It was, therefore, submitted that provisions adjudicating a person as insolvent should be strictly construed.

18. The judgment debtor nos.1 and 3 further submitted that decision of the Hon'ble Supreme Court extending time limit during Covid-19 applies only to the limitation and not to time required for any act to be done which is a condition-precedent. He relied upon following orders passed by the Hon'ble Supreme Court extending the

<sup>2</sup> AIR 1948 Nag 385

<sup>3</sup> 1956 SCC OnLine Bom 20

<sup>4</sup> 2013(1) Mh.L.J.749

<sup>5</sup> 2018 SCC OnLine Bom 12534

<sup>6</sup> 1962 SCC OnLine Kar 32

<sup>7</sup> 1972 SCC OnLine Guj. 51

<sup>8</sup> (2006) 13 SCC 322

time limit from time to time during Covid-19 in support of his submissions.

- (i) *Cognizance For Extension of Limitation, In Re.*<sup>9</sup>
- (ii) *Cognizance For Extension of Limitation, In Re.*<sup>10</sup>
- (iii) *Cognizance For Extension of Limitation, In Re.*<sup>11</sup>
- (iv) *Cognizance For Extension of Limitation, In Re.*<sup>12</sup>
- (v) *Cognizance For Extension of Limitation, In Re.*<sup>13</sup>

19. The judgment-debtor nos.1 and 3 further submitted without prejudice and in the alternative, that if the petitioning-creditor can issue insolvency notice during Covid-19 period, then there is no reason why the petitioner could not have filed the petition within three months of the act of insolvency. He submitted that the decision of the Hon'ble Supreme Court extending the time limit would apply only to vigilant litigants and not to the case of the petitioning-creditor in the present case. In support of this, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Sagufa Ahmed & Ors. vs. Upper Assam Polywood Products Private Limited & Ors.*<sup>14</sup> and in the case of *Love Chauhan vs. Ajay Kumar Kathuria*<sup>15</sup>.

20. The judgment-debtor nos.1 and 3 further submitted that the provisions of the Limitation Act, 1963 are expressly not made applicable to the Insolvency Act. In this connection, attention was drawn to Sections 101 and 101A of the Insolvency Act and Section 78 of the Provincial Insolvency Act, 1920.

21. To a query raised by the Court as to whether the provisions of Section 12(1)(c) of the Insolvency Act can be construed as not only

<sup>9</sup> (2020) 19 SCC 10

<sup>10</sup> (2021) 5 SCC 452

<sup>11</sup> (2021) 17 SCC 231

<sup>12</sup> (2021) 18 SCC 250

<sup>13</sup> (2022) 3 SCC 117

<sup>14</sup> (2021) 2 SCC 317

<sup>15</sup> 2021 SCC OnLine Del 4861

providing a condition-precedent but also time provided for presenting the insolvency petition, learned counsel for the judgment-debtor nos.1 and 3 submitted that the decision relied upon by him with regard to Section 12(1)(c) not being a limitation provision answers the said query and, therefore, it cannot be construed as a limitation provision.

22. The judgment-debtor nos.1 and 3 further submitted that Schedule to the Limitation Act, 1963 also does not provide for any period of limitation to present petition under Section 12(1)(c) of the Insolvency Act and this also indicates the intention of the legislature to exclude the applicability of the Limitation Act.

23. Learned counsel for judgment-debtor nos.1 and 3 relied upon the decision of the Hon'ble Supreme Court in the case of *Union of India & Ors. vs. Rajeev Bansal & Ors.*<sup>16</sup> and submitted that the decision of the Hon'ble Supreme Court extending the time limit on account of Covid-19 would not apply to provisions dealing with compliance of a condition precedent.

24. Learned counsel further relied upon the Full Bench decision of the Hon'ble Madras High Court in the case of *Kaku Chenchuramana Reddi vs. Palapu Arunachalam*<sup>17</sup> and submitted that the Full Bench has come to a conclusion with respect to Section 9(1)(c) of the Provincial Insolvency Act, 1920 which is *pari materia* to Section 12(1)(c) of the Insolvency Act and observed that three months period is a condition precedent and not a limitation provision. Learned counsel has also submitted that this view has been subsequently followed by various High Courts including Hon'ble Calcutta High

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<sup>16</sup> (2024) 469 ITR 46

<sup>17</sup> AIR 1935 Mad 857 (FB)

Court in the case of *Muradan Sardar vs. Secretary of State for India in Council*<sup>18</sup>.

25. Learned counsel for judgment-debtor nos.1 and 3 further submitted relying upon the decision in the case of *Firm Gobindram Kedarnath vs. Firm Parmanand Diwanchand*<sup>19</sup> that even if insolvency petition is filed within three months, post expiry of three months, amendment to such a petition cannot be carried out.

26. With respect to Full Bench decision of the Hon'ble Allahabad High Court in the case of *Raja Pande vs. Sheopujan Pande & Ors.*<sup>20</sup> learned counsel for judgment-debtor nos.1 and 3 submits that the lacuna brought out by this decision was subsequently remedied by the legislature by introducing proviso to Section 12(1)(c) of the Insolvency Act. He further submitted that subsequent decisions of this Court and other High Courts after referring to both, the Full Bench of Madras High Court and Allahabad High Court has adopted the view that the provisions of Section 12(1)(c) is not a limitation provision but a condition precedent. He, therefore, prayed this Court to adopt the same view and since in the instant case insofar as judgment-debtor nos.1 and 3 are concerned, the insolvency petition has been filed after the expiry of three months from occurrence of act of insolvency, same should be dismissed *qua* them.

27. Learned counsel for judgment debtor nos.1 and 3 further submitted that whenever legislature wanted express inclusion of the Limitation Act, the same has been provided and in this case there is no such express reference to the Limitation Act. Furthermore, by implication also the provisions of the limitation Act are excluded.

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<sup>18</sup> 1938 SCC OnLine Cal 289

<sup>19</sup> 1934 SCC OnLine Sind JC 6

<sup>20</sup> ILR 1943 All 84

**28.** The judgment-debtor nos.1 and 3, therefore, prayed that insofar as Insolvency Petition No.12 of 2023 is concerned, same should be dismissed.

**29.** Insofar as the issue of complying with the pre-condition provided under Section 12(1)(c) of the Insolvency Act is concerned which is discussed above, same would not be applicable to the judgment-debtor no.2 since the insolvency notice was served on judgment-debtor no.2 on 8 November 2021 and the insolvency petition was filed on 29 January 2022 and the judgment debtor no.2 had challenged the insolvency notice on 13 December 2021 by filing notice of motion.

**30.** Learned counsel for judgment-debtor nos.1 and 3 submitted that every limitation is a time period, but every time period is not a limitation. Therefore, when the provisions of Section 12(1)(c) of the Insolvency Act refers to three months, it should be treated as time period and not as limitation and therefore, the decision of the Hon'ble Supreme Court extending the time limit on account of limitation does not apply.

**31.** Insofar as judgment-debtor no.2 is concerned, learned counsel submits that the insolvency notice under Section 9(2) of the Insolvency Act was served on 8 November, 2021 and the period of 35 days specified therein to make the payment expired on 13 December 2021. However, on that very day i.e., on 13 December 2021, a notice of motion was filed before the Insolvency Court challenging the said insolvency notice. The said motion, according to the learned counsel, was filed by all the three judgment-debtors.

**32.** The above motion was heard by the Insolvency Court, wherein the petitioning-creditor submitted that the motion was valid only so

far as the judgment-debtor no.2 is concerned and not for judgment-debtor nos.1 and 3 are concerned because so far as these two judgment-debtors are concerned, the motion was filed beyond 35 days, which is not permissible. This submission of the petitioning-creditor was accepted and the Insolvency Court passed an order on 20 December 2023 dismissing the motion *qua* all the three judgment-debtors.

**33.** Insofar as the three months period *qua* judgment-debtor no.2 is concerned, pursuant to clause (b) of first proviso to Section 9(2) of the Insolvency Act, three months from act of insolvency would expire on 20 March 2024 and the second Insolvency Petition No.4 of 2024 was filed by the petitioning-creditor against all the three judgment-debtors on 20 March 2024 but first insolvency petition *qua* judgment debtor no.2 petition filed is pre-mature.

**34.** Learned counsel for judgment-debtors submitted that the order passed on 20 December 2023 by the Insolvency Court dismissing the motion has been challenged in appeal by all the three judgment-debtors. At this point of time, after verifying the case status, it was brought to my attention by the counsel for the petitioning-creditor that by order dated 6 February 2026, the Appeal Court has dismissed the application for condonation of delay in filing the said appeal for non-appearance and consequently, the said appeal also came to be dismissed.

**35.** Learned counsel for judgment-debtor no.2 submitted that insofar as Insolvency Petition No.12 of 2023 is concerned, the act of insolvency *qua* judgment debtor no.2 happened on 20 December 2023, when the Insolvency Court passed an order dismissing the motion and therefore, Insolvency Petition No.12 of 2023 filed on 29

January 2022 was pre-mature *qua* judgment-debtor no.2 is concerned and therefore, on this ground the Insolvency Petition No.12 of 2023 against judgment-debtor no.2 should be quashed.

36. To summarise, submissions of judgment debtors insofar as Insolvency Petition No.12 of 2023 is concerned, learned counsel submits that insofar as judgment-debtor nos.1 and 3 is concerned, the petition has been filed after the expiry of three months and therefore, not maintainable and insofar as judgment-debtor no.2 is concerned, same is filed pre-maturely and therefore, not maintainable. Therefore, Insolvency Petition No.12 of 2023 should be dismissed.

**SUBMISSIONS OF PETITIONING CREDITOR:-**

37. Learned counsel for the petitioning creditor submits that on a reading of Section 2(b) of the Insolvency Act, Sections 70, 95, 13, 9 read with Rule 2(4) of the Bombay (Presidency Towns) Insolvency Rules, 1910 and Section 13 of the General Clauses Act, 1897, an act of insolvency will get completed only upon the last date, when all the judgment debtors are served. It is her submission that in case of a partnership firm, the partners and the firm are jointly and severally liable and, therefore, when it comes to the act of insolvency one has to consider the date which is last in point of time of service. It is her submission that if the notice is served on different dates and the last out of all judgment debtors makes the payment within the specified time then the question of any act of insolvency would not arise. This is so because under the provisions referred to hereinabove and the provisions of the Indian Partnership Act, 1932 and more particularly Section 25 of the said Act, the partners are jointly and severally liable. She further submits that the debt is “one” to be recovered jointly and severally from either/or judgment debtor nos. 1, 2 and 3

or either from one of them.

**38.** It is, therefore, her contention that in the instant case, the last insolvency notice was served on judgment debtor no.2 on 8 November 2021 and, therefore, three months period for presenting the insolvency petition would start from 8 November 2021 and not from 8 April 2021.

**39.** It is further submitted that the motion filed by judgment debtor no.2 on 13 December 2021 was not served within the time prescribed by Rule 17 and 18 of the Bombay (Presidency Towns) Insolvency Rules, 1910 and, therefore, petitioning creditor never had any knowledge of such motion before filing Insolvency Petition No.12 of 2023 on 29 January 2022. It is, therefore, her submission that Insolvency Petition No.12 of 2023 has been filed after the satisfaction of the pre-condition specified by Section 12(1)(c) of the Insolvency Act since three months period of act of insolvency would begin from the expiry of 35 days from 8 November 2021 i.e. on 13 December 2021 and the insolvency petition is filed on 29 January 2022 which is before 13 March 2022. It is, therefore, her submission that Insolvency Petition No.12 of 2023 has been filed in accordance with the provisions of Section 12(1)(c) of the Insolvency Act.

**40.** Learned counsel for the petitioning creditor has relied upon the following two decisions in support of her submissions that for one debt when there are more than one debtor, date of last served debtor should be considered for the purpose of Section 12(1)(c) of the Insolvency Act :-

*(i) Bharat National Bank Ltd. vs. Bishan Lal & Ors.*<sup>21</sup>

*(ii) Maung Kyi Oh & Ors. vs. S.M.A.L. Arunchallam Chetty*<sup>22</sup>

<sup>21</sup> AIR 1932 Lah 212

<sup>22</sup> ILR (1924) 2 Rang 309

41. Learned counsel for the petitioning creditor relied upon the dictionary meaning for explaining “period of limitation” phrase used by the Hon’ble Supreme Court in Covid-19 extension matter and also the decision of the Allahabad High Court in the case of *Drigpal Singh vs. Pancham Singh & Ors.*<sup>23</sup> and laid emphasis upon the observation made by Sir John Thom, CJ that if the result of a statutory provision is in substance to fix a period between which a person must take appropriate and necessary action, if he desires to assert his rights in a Court of law that provision prescribes a period of limitation. It is her submission that Section 12(1)(c) provides for filing of the petition within three months from the act of insolvency and, therefore, when the Hon’ble Supreme Court in case of *Cognizance for Extension of Limitation (supra)* uses the phrase “period of limitation”, the extension is sought to be granted even in the facts of the present case to file the insolvency petition under Section 12(1)(c).

42. Learned counsel for the petitioning creditor further relied upon the decision in the case of *Prakash Corporates vs. Dee Vee Projects Limited*<sup>24</sup> and contended that the decision relied upon by the counsel for the judgment debtor in the case of *Sagufa Ahmed & Ors. (supra)* is not applicable because in the case of *Sagufa Ahmed & Ors. (supra)*, the limitation had expired much prior to 15 March 2020 and it was in that context that benefit of decision in the case of *Cognizance for Extension of Limitation (supra)* was not extended.

43. Learned counsel for the petitioning creditor further laid emphasis on paragraphs 36.3 and 36.5 of *Prakash Corporates (supra)* and contended that from 15 March 2020 till 28 February 2022, the Courts were not actually working and, therefore, she submitted that

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<sup>23</sup> 1939 SCC OnLine All 273

<sup>24</sup> (2022) 5 SCC 112

by relying upon first proviso to Section 12(1)(c), the present insolvency petition has been filed in time because as per the said proviso, petitioning creditor could have filed it on 1 March 2022 as per the proviso but Insolvency Petition No.12 of 2023 was filed much before that day i.e. on 29 January 2022.

44. Learned counsel for the petitioning creditor further contended that the time prescribed by any Act, for doing any act whether condonable or not gets extended on a reading of the decision of the Hon'ble Supreme Court in the case of *Cognizance for Extension of Limitation (supra)* read with *Prakash Corporates (supra)*. The learned counsel for the petitioning creditor has also relied upon various paragraphs of *Prakash Corporates (supra)* to bring out the grave situation which affected the world on account of Covid-19 Pandemic.

45. Learned counsel for the petitioning creditor further submitted that though online filing was permitted by the High Court during Covid-19, insofar as the insolvency petitions are concerned, they had to be filed physically and even today there is no online mechanism to file the insolvency petition. She, therefore, submitted relying upon paragraph 36.3 of *Prakash Corporates (supra)* that it was not possible for the petitioning creditor to file the insolvency petition physically during Covid-19 period and, therefore, she is entitled to the benefit of extension of time granted by the Hon'ble Supreme Court. She submitted that period from 15 March 2020 to 28 February 2022 should be deemed that the Court did not sit for doing routine judicial work but were taking only urgent matters.

46. Learned counsel for the petitioning creditor further distinguished the judgments relied upon by the counsel for judgment debtors on the interpretation of Section 12(1)(c) by submitting that

those decisions were in the context of whether the provisions of the Limitation Act would be applicable for the purpose of Section 12(1)(c). It is her submission that it is not her contention that provisions of Limitation Act are applicable to the facts of the present case but it is her submission that the extension granted by the Hon'ble Supreme Court on account of Covid-19 should be made applicable to the present case for the limited purpose of filing the insolvency petition within three months from the act of insolvency having been committed.

47. To summarise, it is the submission of the petitioning creditor that the last service date of the insolvency notice should be considered in case of service on firm and its partners for the purpose of Section 12(1)(c) of the Insolvency Act and in the alternative benefit of extension of time granted by the Hon'ble Supreme Court should be made applicable to the present case.

**REJOINDER OF THE JUDGMENT-DEBTORS:-**

48. Learned counsel for the judgment-debtors, in-rejoinder, submitted that by virtue of provisions of Sections 101 and 101A of the Insolvency Act, it is clear that these are the only provisions dealing with limitation or Limitation Act. Therefore, it is his submission that Section 12(1)(c) cannot be treated as limitation provision. He further submitted that the decision in the case of *Cognizance for Extension of Limitation (supra)* and more particularly paragraph 5.4 is in the context of those provisions where the remedies are fully barred which is not the case here. In the present case, the petitioning creditor can issue a fresh notice which would entitle him to file a fresh petition. Therefore, paragraph 5.4 cannot come to the rescue of the petitioning creditor. Learned counsel for the

judgment-debtors ultimately relied upon the decision of the Insolvency Court in Notice of Motion (L) No.29127 of 2021 to submit that it is now admitted position that judgment-debtor nos.1 and 3 did not challenge the notice. He further submitted that if the benefit of extension of time is to be granted to the petitioning creditor in the present case, then same should have been accorded in the order disposing of the motion. However, he fairly states that this extension based on the Hon'ble Supreme Court decision was never argued in the motion since according to them, the decision of the Hon'ble Supreme Court granting extension did not apply. He, therefore, submitted that Insolvency Petition No.12 of 2023 should be dismissed for non-compliance of pre-condition specified in Section 12(1)(c) of the Insolvency Act.

49. The submissions of both the counsel have been recorded in their presence in the open Court.

**ANALYSIS AND CONCLUSIONS:-**

50. Relevant provisions of the Presidency Towns Insolvency Act, 1909 are reproduced hereinafter :-

***Section 9. Acts of insolvency.—***

*(1) .....*

*(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section(3) and the debtor does not comply with that notice within the period specified therein:*

*Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice—*

*(a) In a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub-section ; and*

*(b) In a case where such application is rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later:*

*Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the Court therefor.*

**Section 12. Conditions on which creditor may petition.**—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and*
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and*
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:*

*Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court reopens.*

*(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor."*

***“Issue 1 : Whether where the judgment debtors is a firm and its partners, the date of service of notice should be the last of the dates of service, if service is on different dates on the firm and its partners for the purposes of Section 12 (1) (c) of the Insolvency Act ?”***

51. The contention of the petitioning creditor is that for the purposes of Section 12(1)(c) of the Insolvency Act to determine whether the condition specified therein viz, that the act of insolvency on which the insolvency petition is grounded has occurred within three months before the presentation of the insolvency petition, date

of the last of service should be considered as starting point, when notice is served on different dates. In the instant case, judgment debtor nos.1 and 3 were served with insolvency notice on 8 April 2021, whereas the insolvency notice on judgment debtor no.2 was served on 8 November 2021. The petitioning creditor was not served with the notice of motion filed on 13 December 2021 by judgment debtor no.2 to challenge the said notice within the time specified by Rule 18 of the Bombay (Presidency Towns) Insolvency Rules, 1910 i.e. within four days and judgment debtor nos.1 and 3 had not challenged the notice. If the last of the date of service is considered i.e. 8 November 2021, then act of insolvency occurred on 13 December 2021 and, therefore, Insolvency Petition No.12 of 2023 filed on 29 January 2022 is within three months starting from 8 December 2021, being an act of insolvency.

**52.** The above submission is based on the principle that the partners and the firm are jointly and severally liable and because they are jointly and severally liable, and therefore unless process of serving all the partners including the firm is satisfied, the time limit does not start. To enforce separate liability, all the partners have to be personally served separately. This, in my view, is contrary to Rule 152 of the Bombay (Presidency Towns) Insolvency Rules, 1910.

**53.** Rule 152 provides that any notice or petition for which personal service is necessary shall be deemed to be duly served on all the members of a firm if it is served upon any one or more of the partners or at the principal place at which the partnership business is carried on within India, upon any person having at the time of service the control or management of the partnership business there; and such service shall be deemed good service upon the firm whether all

or any of the partners are within or without India. Rule 154 of the said Rules states that an order of adjudication made against a firm shall operate as if it were an order of adjudication made against each of the persons who on the date of the order is a partner in that firm.

**54.** Rule 152 of the Bombay (Presidency Towns) Insolvency Rules, 1910 is based on settled principles of the partnership law, which is also enshrined in the Insolvency Act, that the firm and its partners are jointly and severally liable.

**55.** In the instant case, admittedly, judgment debtor no.1–firm and judgment debtor no.3–partner of the firm were served with an insolvency notice on 8 April 2021 and 35 days to make payment as per the insolvency notice expired on 13 May 2021 and there was no challenge to this insolvency notice within 35 days. Therefore, by virtue of Rule 152 of the Bombay (Presidency Towns) Insolvency Rules, 1910 it is deemed that the service is complete not only against judgment debtor no.1–firm and judgment debtor no.3–partner on whom the service was made, but also against judgment debtor no.2 who could not be served on that day. It is also important to note that the addresses of judgment debtor nos.2 and 3–partners of the firm are same. The petitioning creditor had to undergo the process of paper publication and pasting of notice since the service of notice was being avoided by judgment debtor no.2.

**56.** Section 99 of the Insolvency Act provides that any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of firm. Similarly, Section 70 of the Insolvency Act provides that where one partner in a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with

the other partners in the firm or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

**57.** Section 49(4) of the Insolvency Act which deals with priority of debts in the distribution of insolvent's property, provides that in the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of the partnership debts and the separate debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

**58.** Section 95 provides for filing petition against all the partners or any one or more partners.

**59.** Section 11(d) of the Insolvency Act which provides restrictions on jurisdiction states that the Court shall not have jurisdiction to make an order of adjudication unless, in the case of a petition by or against a firm of debtors the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits.

**60.** Provision of Rule 60(c) of the Bombay (Presidency Towns) Insolvency Rules, 1910 dealing with service on more than one person would not be applicable to the case where the petition is filed against

a firm. Rule 60 is a general provision whereas Rule 152 is a special provision *qua* the firm and, therefore, Rule 152 would be applicable in the facts of the present case.

**61.** Section 2(a) of the Indian Partnership Act, 1932 defines an “act of a firm” to mean any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm. Section 24 of the Indian Partnership Act provides that notice to a partner operates as notice to the firm and Section 25 provides that every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

**62.** On an analysis of all the above provisions of the Indian Partnership Act, 1932, Insolvency Act and Insolvency Rules, I am of the view that the contention raised by the petitioning creditor that for the purpose of Section 12(1)(c) of the Insolvency Act, in case of firm, last of the service on firm/partner should be considered to determine whether the petition has been filed within three months from the act of insolvency cannot be accepted. Once it is served on firm and/or any of partner, it is deemed to have been served on all and petition can thereafter be filed against any one or all the partners.

**63.** In this connection, it is also important to note that in the following decisions, the Courts have taken the view that notice to one partner is sufficient notice to other :-

*(i) P. B. Lakshmana Sah & Bros vs. J. N. Sivaraj & Ors.*<sup>25</sup>

*(ii) Jayantilal Mohanlal vs. Narandas & Sons*<sup>26</sup>

*(iii) Firm Mukund Lal Veerkumar & Anr. vs. Purushottam Singh & Ors.*<sup>27</sup>

*(iv) Chanahalu Siva Reddi & Anr. vs. The Official Receiver of Bellary & Ors.*<sup>28</sup>

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<sup>25</sup> (1993) SCC OnLine Mad 217

<sup>26</sup> 1982 SCC OnLine Bom 247

<sup>27</sup> 1968 SCC OnLine SC 211

<sup>28</sup> 1936 SCC OnLine Mad 158

*“Issue 2 : Whether decision of the Hon’ble Supreme Court in the case of Cognizance for Extension of Limitation is applicable, if provisions of Section 12(1)(c) of the Insolvency Act is not a limitation provision ?”*

64. This brings me to the next issue as to whether the petitioning creditor is entitled to the benefit of the decision of the Hon’ble Supreme Court in the case of *Cognizance for Extension of Limitation (supra)* to contend that the time of three months provided under Section 12(1)(c) of the Insolvency Act from the act of insolvency before the presentation of the petition gets extended. For this, I propose to proceed on a footing as contended by the learned counsel for the judgment debtors that Section 12(1)(c) is not a limitation provision, but a condition precedent (though I have my own reservation on this proposition inspite of the judgments cited by the learned counsel for the judgment debtors, which I have discussed later on). Both the learned counsel were unable to show me any provision in the Insolvency Act or the Limitation Act which provides time limit for presenting the insolvency petition for declaring judgment debtor as an insolvent.

65. In every Act, a time limit for filing proceeding is provided which is known as “limitation”. If in a particular Act, there is no limitation period provided, then it is settled position that the same has to be filed within a reasonable time and what constitutes a reasonable time has to be analysed by examining the Scheme of the Act with which the Court is concerned. In the instant case, Section 12(1)(c) of the Insolvency Act states that the act of insolvency should have occurred within three months before the presentation of the insolvency petition. If that be so, then this provision gives a clue that the reasonable period within which a creditor should file insolvency petition would be three months.

66. The Hon'ble Supreme Court in the case of *Global Technologies and Research vs. Principal Commissioner of Customs, New Delhi (Import)*<sup>29</sup> was posed with similar facts in the context of Section 129A(2) of the Customs Act, 1962 which did not provide for time within which power should be exercised to decide whether to file appeal or not. The Hon'ble Supreme Court held that where law does not provide for specific period for taking particular action, it has to be performed within reasonable time and thereby extended such reasonable period by following decision in the case of *Cognizance for Extension of Limitation (supra)* since reasonable period was falling within 15 March 2020 to 28 February 2022. Applying the ratio of this decision to the facts of the present case and by accepting judgment debtors submission, that Section 12(1)(c) of the Insolvency Act is not a limitation provision and no where else any limitation is provided, the petitioning creditor is entitled to the benefit of the decision in the case of *Cognizance for Extension of Limitation (supra)*.

*“Issue 3 : Whether the decision of the Hon'ble Supreme Court in the case of Cognizance for Extension of Limitation (supra) is applicable to Section 12(1)(c) of the Insolvency Act, which provides for compliance of condition within certain time before filing petition for insolvency?”*

67. This takes me to examine the present issue from another angle on which both the learned counsel have made extensive submission. It is the contention of the judgment debtors that the Hon'ble Supreme Court has not extended the time limit for compliance of pre-condition for filing the petition whereas it is the contention of the petitioning creditor that the Hon'ble Supreme Court decision is squarely applicable to the compliance of pre-condition providing time before filing the petition.

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<sup>29</sup> (2024) 19 SCC 337

68. The relevant paragraphs of the decision of the Hon'ble Supreme Court in the case of ***Cognizance for Extension of Limitation (supra)*** is reproduced herein :-

*5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:*

***5.1. The order dated 23-3-2021 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021, it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.***

*5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.*

*5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.*

***5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the a Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.***

*(emphasis supplied)*

69. Section 23(4) of the Arbitration and Conciliation Act, 1996 provides that the statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators as the case may be, received notice, in

writing of their appointment. Section 29A of the said Act provides for time limit within which the arbitral award should be made and if the award is not made within the period specified then the mandate of the arbitrator shall stand terminated unless the Court has extended the period.

**70.** Section 12A of the Commercial Courts Act, 2015 provides for pre-institution mediation and settlement. Sub-section (1) provides that a suit shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation. Section 12A(3) of the said Act provides that the process of mediation should be completed within a period of 120 days from the date of application made by the plaintiff under sub-section (1). This period of 120 days may be extended by a further period of 60 days with the consent of the parties. Second proviso to Section 12A(3) provides that the time period taken for completion of mediation shall be excluded for the purpose of limitation.

**71.** Section 138 of the Negotiable Instruments Act, 1881 provides for dishonour of cheque for insufficiency of funds in the account with an imprisonment for a term which may extend to two years or with fine. However, clause (b) of the proviso to Section 138 provides that nothing contained in Section 138 shall apply unless the payee or the holder in due course makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information regarding the return of the cheque as unpaid and the drawer fails to make the payment of the said amount within 15 days from the receipt of the said notice. No proceedings under Section 142 of the said Act can be initiated unless these conditions are satisfied.

72. The provisions of Section 12-A of the Commercial Courts Act, 2015, Section 138 of the Negotiable Instruments Act, 1881 and Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, are condition precedent provisions, as observed by the Hon'ble Supreme Court in the following cases :-

*(i) M/s. Patil Automation Private Limited & Ors. vs. Rakheja Engineers Private Limited*<sup>30</sup>, *(ii) Rahul Builders vs. Arihant Fertilizers & Chemicals & Another*<sup>31</sup> and *(iii) Yashovardhan Sinha HUF & Anr. vs. Satyatej Vyapaar Private Limited*<sup>32</sup>.

73. All the above three provisions provides for conditions to be satisfied before any proceedings are initiated. For example, for initiating proceedings under Section 142 of the Negotiable Instruments Act, 1881, condition prescribed by proviso to Section 138 has to be satisfied. Before filing a commercial suit, pre-condition of exhausting mediation within the time specified therein should be satisfied. Similarly, Section 23(4) of the Arbitration and Conciliation Act, 1996 provides for a time limit within which the statement of claim and defence should be filed and Section 29A of the said Act provides for time limit to make the award before the mandate is terminated. All the above provisions have been construed by the Hon'ble Supreme Court in the case of *Cognizance for Extension of Limitation (supra)* as prescribing period of limitation for instituting proceedings, outer limits (within which the Court or Tribunal can condone delay) and termination of proceedings. In paragraph 5.4, the Hon'ble Supreme Court clarified that the period from 15 March 2020 till 28 February 2022 shall stand excluded in computing the periods prescribed under the above provisions and **any other laws**

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<sup>30</sup> (2022) 10 SCC 1

<sup>31</sup> (2008) 2 SCC 321

<sup>32</sup> (2022) SCC OnLine Cal 2386

which prescribe period of limitation for instituting proceedings, outer limits and termination of proceedings. These time bound pre-conditions before institution of proceedings have been considered by the Hon'ble Supreme Court as limitation provisions.

74. Paragraph 5.1 of the said decision excludes the period of limitation from 15 March 2020 to 28 February 2022 in respect of all judicial and *quasi-judicial* proceedings and paragraph 5.4 further clarifies that time limit for compliance of pre-condition is also extended by the said period. Paragraph 5.4 specifically deals with pre-conditions time for instituting proceedings whereas paragraph 5.1 deals with limitations.

75. In my view, on a reading of paragraph 5.4, the Hon'ble Supreme Court has construed the time required for satisfying the pre-condition as a period of limitation for instituting proceedings. The Insolvency Act will fall within the phrase "any other laws" and the time provided by Section 12(1)(c) of the Insolvency Act, that the act of insolvency, on which the insolvency petition is grounded has occurred within three months before the presentation of the petition if construed as pre-condition for instituting proceedings as contended by judgment debtors, then by applying the ratio of paragraph 5.4 of the Hon'ble Supreme Court, the period of three months would also get extended.

76. The contention that the Hon'ble Supreme Court has extended only the limitation period and not the time required for complying with pre-condition cannot be accepted based on paragraph 5.4 and on the analysis made by me above. Therefore, even on this count insolvency petition is in compliance with pre-condition required to be satisfied under Section 12(1)(c) of the Insolvency Act.

77. The issue whether time limit provided for compliance of pre-condition has also been extended by the Hon'ble Supreme Court came up for consideration in the case of *Maa Bhagwati Construction vs. State of Chhattisgarh*<sup>33</sup>, wherein before the arbitration proceedings could be commenced, the parties were required to exhaust the alternate resolution mechanism provided in the contract. The Chhattisgarh High Court applied the ratio of the decision in the case of *Cognizance for Extension of Limitation (supra)* for calculating the period of limitation within which the proceedings were to be filed.

*“Issue 4 : Whether provisions of Section 12(1)(c) of the Insolvency Act is a limitation provision or condition precedent?”*

78. It is also possible to contend that the provisions of Section 12(1)(c) of the Insolvency Act when read with the proviso thereto plays dual role. On one hand, it provides for conditions to be satisfied before filing the insolvency petition and at the same time it also provides for the time within which the insolvency petition has to be filed. This is so because of the phrase “within three months”, in my view would be applicable to the act of insolvency as well as for the time limit for presenting the petition. The decisions relied upon by the learned counsel for the judgment debtors submitting that the provision of Section 12(1)(c) of the Insolvency Act is not a limitation provision has to be construed in the facts of those cases, where the issue was on applicability of certain provisions of the Limitation Act and it is in that context, the observation was made that Section 12(1)(c) of the Insolvency Act is not a limitation provision. In none of these decisions, the issue whether Section 12(1)(c) of the Insolvency Act can be construed as both condition precedent as well as time for

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<sup>33</sup> 2025 SCC OnLine Chh.12818

presenting the petition was considered. Also, none of these decisions were dealing with Covid-19 and have been rendered much before the decision of the Hon'ble Supreme Court extending time limit an account of Covid-19. In my view, based on my reading of paragraph 5.4 of the decision of the Hon'ble Supreme Court extending time limit by treating as limitation, the decisions relied by judgment debtors on Section 12(1)(c) of the Insolvency Act, as not a limitation provision may not be a good law.

79. I am conscious that, I am taking a view contrary to the decisions of Single Judges of this Court, but I have given reasons for the same. In any case, rather than referring to Larger Bench, the parties are entitled to challenge in appeal, which will be heard by the bench of equal strength as that of Larger Bench. Therefore, I do not think it appropriate to refer to Larger Bench since correctness of view can certainly be decided by Appeal Bench of same strength.

80. I am conscious that the marginal note of Section 12 of the Insolvency Act provides for conditions to file the insolvency petition. But, it is settled position that marginal note does not control the body of the Section. In my view, the reasonable construction of Section 12 (1)(c) would be that it not only provides for condition to be satisfied before filing the insolvency petition but it also provides for time limit within which the petition should be filed. I am not suggesting that the provisions of the Limitation Act are applicable but, it is possible to contend that limitation is provided specifically in Section 12(1)(c) of the Insolvency Act itself. This would also absolve the uncertainty of deciding reasonable time which I have analysed above.

81. The Full Bench decision of the Madras High Court in the case of *Kaku Chenchuramana Reddi (supra)* and the Full Bench of the

Allahabad High Court in the case of *Raja Pande (supra)* were decided prior to insertion of the first proviso to Section 12(1)(c) of the Insolvency Act. The decisions relied upon by the learned counsel for the judgment debtors that Section 12(1)(c) is not a limitation provision but a condition precedent have followed the decision of the Madras High Court. In my view, proviso to Section 12(1)(c) gives a clue that Section 12(1)(c) should be read not only as a provision providing for condition precedent but also a provision which provides for time limit to file the petition. This is so because, proviso states that where the period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens. The time specified in the proviso read with Section 12(1)(c) gives a clue that Section 12(1)(c) does provide a limitation period within which the insolvency petition has to be presented. In any case, if two Full Bench are contrary to each other and I am concerned with Covid-19 period, then the view favourable to the petitioning creditor as held by Allahabad Full Bench that Section 12(1)(c) is a limitation provision should be adopted, so that benefit of extension of time can be accorded to pursue the remedy, rather than to abort the remedy should be taken. I certainly agree that the provisions of the Limitation Act are not made applicable to the Insolvency Act since Sections 101 and 101A of the Insolvency Act specifically provides for limitation which clearly shows exclusion of the provisions of the Limitation Act to the Insolvency Act. The limitation is provided in the Insolvency Act itself. Therefore, even on this count, since the Hon'ble Supreme Court has extended the period of limitation specified under any other law, in my view, the petitioning creditor is justified in contending that the Insolvency Petition No.12 of 2023 has been filed within the extended

time granted by the Hon'ble Supreme Court.

*“Issue 5 : Whether the petitioning creditor is justified in contending that the Courts should be deemed to be closed during Covid-19 and, therefore, benefit of proviso to Section 12(1)(c) of the Insolvency Act would accrue to him ?”*

82. Now I propose to deal with the contention of petitioning creditor on interpretation of proviso to Section 12(1)(c) of the Insolvency Act. The proviso to Section 12(1)(c) of the Insolvency Act provides that where the period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens. The learned counsel for the petitioning creditor is justified in contending that the period from 15 March 2020 to 28 February 2022 was a period when the people were avoiding physical contact of animate as well as inanimate objects and the Courts were taking only urgent matters. It is known fact that during this period, the world had come to a standstill. The insolvency petition in this Court has to be filed physically even today and not online. The Courts were virtually closed except for very urgent matters and that too virtually and not physically.

83. The learned counsel for the petitioning creditor is justified in laying emphasis on paragraphs 36.3 and 36.5 of the decision in the case of *Prakash Corporates (supra)* which reads as under to contend that the Courts will not be working under normal situation during the above period :-

*36.3. In P. Ramanatha Aiyar's Law Lexicon the concept of dies non juridicus is explained, inter alia, in the following terms:  
"Dies non. (Lat.) A day which is regarded by the law as one on which no judicial act can be performed, or legal diligence used.  
(Trayner)*

*(Shortened form of dies non juridicus). A day not juridical, a day exempt from court proceedings, such as a holiday or a Sunday.*

*A day on which the courts do not ordinarily sit or carry on business; a day on which general business may not lawfully be transacted.*

*A day on which a law-court is not held.*

*A day that is not counted for some purpose. For example, Saturday and Sunday are not counted as days of the working week.*

*An abbreviation of the phrase "dies non juridicus", non-judicial days-days during which the courts do not transact any business-as Sunday or the legal holidays. (Havens vs. Stiles) It is frequently said that Sunday is "die non juridicus", but this means only that process cannot ordinarily issue or be executed or returned, and courts do not usually sit, on that day. It does not mean that no judicial action be had on that day. On the contrary, it is laid down in books of authority that warrants for treason, felony and breach of the peace may be issued and executed on that day.....*

***36.5. It is thus beyond cavil that if the prescribed period for any suit/appeal/application expires on day when the court is considered "closed", such proceedings may be instituted on the reopening day. Significantly, the Explanation to Section 4 of the Limitation Act, 1963 makes it clear that a day when the court may not as such be closed in physical sense, it would be "deemed" to be closed, if during any part of its normal working hours, it remains closed on that day for any particular proceedings or work."***

*(emphasis supplied)*

**84.** This Court had issued various notices and standard operating procedure (SOP) during Covid-19 period and directed litigants to avoid coming to Court physically. Even physical filing was restricted to urgent matters by dropping the papers in boxes. Circulars dated 14 March 2020, 19 March 2020, 24 June 2020, 8 October 2020, 27 November 2020, 21 January 2021, 2 July 2021, 2 August 2021, 24 September 2021, 11 January 2022 and 25 January 2022 were issued during Covid-19 period to that effect. As per notice of SOP dated 27

November 2020, instructions with respect to physical filing, there was restriction of only two matters to be filed by one advocate in addition to other restrictions.

85. Based on the above paragraphs i.e. 36.3 and 36.5 and the fact that the world had come to a standstill and the Courts were taking only urgent matters virtually, the petitioning creditor is justified in contending that in the facts of the present case with which we are concerned i.e. the period of Covid-19 should be interpreted to mean that the Court was closed during the period from 15 March 2020 to 28 February 2022 and if the petition could be filed validly within the time provided by the proviso on 1 March 2022, then in the present case, the petition was filed on 29 January 2022 much before the time prescribed by the proviso. Therefore, even on this count, the insolvency petition is said to be filed within the time provided by the proviso. There is force in this contention of the petitioning creditor.

**OTHER CONTENTIONS:-**

86. The learned counsel for the judgment debtors has relied upon the decision in the case of *Sagufa Ahmed & Ors. (supra)* and *Love Chauhan (supra)* to contend that the petitioning creditor was not vigilant to file the petition within three months and, therefore, the benefit of the decision of the Hon'ble Supreme Court in the case of *Cognizance for Extension of Limitation (supra)* should not be accorded to the petitioning creditor. In my view, the decision in the case of *Sagufa Ahmed & Ors. (supra)* is distinguishable on facts inasmuch as in that case, the period of limitation had expired much before 15 March 2020 and it was in that context, the Hon'ble Supreme Court observed that the party should have been a vigilant litigant to initiate proceedings within the period of limitation

prescribed by the law and further what was sought to be canvassed by the litigant before the Hon'ble Supreme Court was the extension of condonation period. In my view, this decision is distinguishable on facts and cannot be made applicable to the present case. The issue before me is different than what was before the Hon'ble Supreme Court. It is settled position that decision cannot be relied de hors the context in which it was rendered.

87. The second decision relied upon by the judgment debtors in the case of *Love Chauhan (supra)* is also not applicable to the facts of the present case for more than one reason. In that case, the defendant failed to file the written statement even after the extension granted by the Commercial Court after the expiry of 120 days and what was sought to be canvassed is the reason for seeking condonation of delay. It was in that context, the Delhi High Court observed that the defendant has been cavalier throughout in conducting the litigation by committing repeated and blatant lapses. The decision of Delhi High Court even if made applicable is not a good law post the decision of the Hon'ble Supreme Court in the case of *Prakash Corporates (supra)*, wherein the time limit for filing written statement was extended by following the decision of the Hon'ble Supreme Court in the case of *Cognizance for Extension of Limitation (supra)*.

88. The case of *Sagufa Ahmed & Ors. (supra)* came up for consideration before the Hon'ble Supreme Court in the case of *Prakash Corporates (supra)*. The learned counsel for the judgment creditor is justified in contending that the decision of the Hon'ble Supreme Court in the case of *Sagufa Ahmed & Ors. (supra)* and the decision of Delhi High Court in the case of *Love Chauhan (supra)* is

not applicable to the facts of the present case and more particularly in the light of subsequent decision of the Hon'ble Supreme Court in the case of *Prakash Corporates (supra)*.

89. The decision of *Sagufa Ahmed & Ors. (supra)* has been explained in paragraph 33 of the decision in the case of *Prakash Corporates (supra)*. The relevant paragraphs are reproduced herein:-

*“33. So far as the decision of this Court in Sagufa Ahmed is concerned, a few relevant factors related with the said case need to be noticed. In that case, the appellants had moved an application before the Guwahati Bench of the National Company Law Tribunal for winding up of the respondent company. The petition was dismissed on 25-10-2019. The appellants applied for a certified copy of the order dated 25-10-2019 only on 21-11-2019 or 22-11-2019 and received the certified copy of the order through their counsel on 19-12-2019. However, the appellants filed the statutory appeal before the National Company Law Appellate Tribunal only on 20-7-2020 with an application for condonation of delay. The Appellate Tribunal dismissed the application for condonation of delay on the ground that it had no power to condone the delay beyond a period of 45 days. Consequently, the appeal was also dismissed. In that case, it was indisputable that even while counting from 19-12-2019, the period of 45 days expired on 2-2-2020 and another period of 45 days, for which the Appellate Tribunal could have condoned the delay, also expired on 18-3-2020. To overcome this difficulty, the appellants relied upon the aforesaid order dated 23-3-2020.*

*33.1. This Court observed that the appellants were not entitled to take refuge under the above order in SMWP No. 3 of 2020 because what was extended was only the period of limitation and not the period up to which delay could be condoned in exercise of discretion conferred by the statute. This Court said thus : (Sagufa Ahmed case, SCC 322 para 17)*

*“17. ... What was extended by the above order of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of*

*limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”*

**33.2.** *One of the significant facts to be noticed is that the said decision in Sagufa Ahmed case was rendered by a three-Judge Bench of this Court much before the aforesaid final orders dated 8-3-2021 in SMWP No. 3 of 2020 by another three-Judge Bench of this Court. In those final orders, this Court not only provided for the extension of period of limitation but also made it clear that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 to 2-10-2021 shall stand excluded. Such proposition of exclusion, which occurred in the later orders, was not before this Court in Sagufa Ahmed, which was decided much earlier i.e. on 18-9-2020.*

**33.3.** *Moreover, the extendable period in Sagufa Ahmed was up to 18-3-2020; and this Court found that lockdown was imposed only on 24-3-2020 and there was no impediment in filing the appeal on or before 18-3-2020. The present one is a case where the prescribed extendable time for filing of the written statement expired on 6-5-2021. It is not the case of the respondent nor is there any observation in the orders impugned that at the relevant point of time, the area in question was not a containment zone or that such a normalcy was available where the appellant could have filed its written statement.*

**33.4.** *Having regard to the orders subsequently passed by the three-Judge Bench of this Court in SMWP No. 3 of 2020 (and MA No. 665 of 2021 therein), as also having regard to the fundamental difference of facts and the surrounding factors, the said decision in Sagufa Ahmed, in our view, is also of no application to the present case.”*

**90.** In view of above, the decision relied upon by the judgment debtors are not applicable to the facts of the present case and more particularly in the light of the decision subsequently rendered by the Hon'ble Supreme Court in the case of ***Prakash Corporates (supra)***.

**91.** While deciding the issue raised for my consideration in the present insolvency petition, I have kept in mind, the situation faced

by the human beings at large on account of Covid-19. This has been brought out by paragraph 15.1 of the decision in the case of ***Prakash Corporates (supra)*** which reads as under :-

*15.1. The said suo motu petition was taken up by this Court in rather peculiar and extraordinary circumstances in the wake of the outbreak of COVID-19 Pandemic, where the normal functioning of almost all the institutions got disrupted due to serious illness of a large populace and due to various containment measures taken by the administrative authorities, including lockdowns. The functioning of courts and other juridical institutions also suffered setbacks and, in fact, with regular spike in COVID-19 cases, when the Governments announced lockdowns in the interest of public safety and health, it was obvious to this Court that the litigants and their authorised agents would be facing serious hardships and difficulties in relation to their litigations and more particularly, in relation to the period of limitation when it would be well-nigh impossible for them to file the proceedings within the prescribed period of limitation, if the same was expiring during the period of such health emergencies and enforcement of the measures of containment.*

92. The contention of learned counsel for the judgment debtors that insolvency provision should be strictly construed cannot be made applicable to the issue which is posed for my consideration today as to whether the insolvency petition has been filed in time or not. This is an issue touching the merits of the case which I do not propose to deal with at this stage. It is important to note that the interpretation which will aid a party to pursue his remedy should be adopted then an interpretation which will non-suit him from pursuing his remedy and more particularly, when the whole world was engulfed during Covid-19, where everything became inaccessible bringing to halt the world at large.

93. The contention of judgment-debtors that petitioning-creditors are not remediless since they can pursue remedies for execution of

consent decree under Code of Civil Procedure, 1908 and, therefore, adopting strict construction principle, present petition should be dismissed is to be rejected. Merely because a litigant has other remedy would not disentitle him to pursue other available remedy in law. The submission only indicates the conduct of judgment-debtors to drag the recovery proceedings and take undue advantage of the system after entering into consent terms. Doctrine of election is not available to judgment-debtors in the present case. If this contention is accepted then provisions of Section 9(2) of the Insolvency Act will become redundant which permits petitioning-creditor to pursue remedies under the Insolvency Act.

94. The decision of the Hon'ble Supreme Court in the case of *Rajeev Bansal (supra)* relied upon by the judgment-debtors would not be applicable to the facts of the present case and the issue raised before me. The Hon'ble Supreme Court has observed that in absence of any time provided reasonable time should be considered as reasonable period and therefore the contention raised in rejoinder on this issue is rejected. Merely because fresh notice can be issued to file fresh petition cannot be a ground to dismiss the present petition has time barred when it is covered by the Supreme Court decisions referred to hereinabove. Debtors thinking that Supreme Court decision is not applicable according to them and therefore same was not canvassed in motion cannot be considered in present matter where specific plea is taken by the petitioning creditor relying on the said decision.

95. I have tried to deal with the issue posed for my consideration by considering various entry points available to the petitioning creditor to examine whether the petitioning creditor made an entry

within the time provided or extended and after examining all the entry points, I am of the firm view that although there are various entry points to enter the hall of the Court, the petitioning creditor has entered the hall of the Court before the expiry of the time from all entry points and, therefore, cannot be now directed to be thrown out on the ground that the creditor entered beyond the time provided under the Act.

96. I make it clear that I have tried to analyse the issue from all the angles and the same should not be construed as having examined the issue by giving contradictory findings. If I accept judgment-debtors submission of no limitation being provided under Section 12(1)(c) then petition is in time by virtue of decision of the Hon'ble Supreme Court in case of *Global Technologies (supra)* and if I accept submission of petitioning-creditor then also it is covered by the decision of the Hon'ble Supreme Court in the case of *Cognizance for Extension of Limitation (supra)*. Therefore, in either case petition is held to have been filed within time and after complying with pre-condition.

97. To conclude:-

- (i) In the absence of any time limit provided under the Act, reasonable time should be considered for filing the petition which stands extended by the Hon'ble Supreme Court in the case of *Global Technologies and Research (supra)* ;
- (ii) The time limit for complying with the pre-condition has also been extended by the Hon'ble Supreme Court in the case of *Cognizance for Extension of Limitation (supra)* ;

(iii) The Hon'ble Supreme Court in the case of *Cognizance for Extension of Limitation (supra)* has construed the time for compliance of the pre-condition as falling within limitation provisions ;

(iv) The provision of Section 12(1)(c) of the Insolvency Act read with the proviso is not only a provision for compliance of pre-condition but also a provision providing for limitation period to file the petition ;

98. Before parting, I appreciate assistance provided by both counsel in deciding the present issue.

99. For all the above reasons and analysis looked from any angle, Insolvency Petition No.12 of 2023 is held to have been filed within the time extended by the Hon'ble Supreme Court against all the judgment debtors who are made parties to the said petition.

[ JITENDRA JAIN, J. ]