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# Insolvency and Bankruptcy Code Conflict with Special Statues

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*The Government of India with its ambition to make doing business in India easier, enacted the Insolvency and Bankruptcy Code, 2016, an Umbrella legislation to deal with the bankruptcy and Insolvency of Companies, Individuals and Partnership. However, since the code tries to seize the laws regarding to insolvency and bankruptcy and the Supreme Court verdict that it's a complete code in itself creates an apparent conflict between IBC and SARFESI and Limitation Act.*

*The author in this paper will deal with the various conflicts between IBC and Limitation Act and SARFESI, the inclination of judiciary while interpreting such conflict in past, challenges while interpreting two special statutes and will summarize the findings by giving a conclusion.*

## I. INTRODUCTION

After Independence, the Indian economy emerged as an agrarian economy and its initial Five-year plans were mainly focused upon the development of agriculture. However, in the year 1991, the country decided to liberalized its economy and opens the doors of economy for international organization.<sup>3</sup> According to C. Rangarajan, the then Governor of Reserve Bank of India, *"The new economic Policy comprises various policy measures and changes introduced since 1991. There is a common thread running through all these measures. The objective is simple and that is to improve the efficiency of the mechanism involving multitudes of controls, fragmented capacity and reduced competition even in the private sector"*.<sup>4</sup>

In order to facilitate the investment and make doing business easier, the Govt. brought in the recovery of debts due to banks and Financial Institution Act, 1993 (hereinafter referred as RDBFI) in order to establish tribunals for recovery of debt. Later in the year 2002, the Govt. enacted the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as SARFESI),<sup>5</sup> to provide a remedy to

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<sup>3</sup> One More Push, *The Economist*, 21/07/2011, <https://www.economist.com/node/18988536>

<sup>4</sup> C. Rangarajan, Governor of RBI (1991), 'Comments on New Economic, Policy'. P.2.

<sup>5</sup> *Why is the sarfaesi act of critical importance to lenders*, Dvara Trust, <https://www.dvara.com/blog/20>

creditor to enforce his secured interest without the interference of Courts and tribunals.<sup>6</sup> Recently for the purpose of ease of doing business, the Govt. brought in one of the major reforms i.e. The Insolvency and Bankruptcy Act, 2016 (hereinafter referred as IBC).<sup>7</sup> However, the problem arises as there is a lot of overlapping between abovementioned three acts and also the conflict of others existing laws such as Limitation Act, 1963 with the IBC.

## II. LIMITATION ACT AND INSOLVENCY AND BANKRUPTCY CODE, 2016

### PURPOSE OF LIMITATION ACT

Acc to Salmond, the learned author described the doctrine in the following words:

*“In order to avoid the difficulty and error that necessarily result from lapse of time the presumption of the coincidence of fact and right is rightly accepted as final after a certain number of years. **Whoever wishes to dispute this presumption must do so within the period, otherwise his right, if has one will be forfeited as a penalty for his neglect, vigilantibus non dormientibus jura subvenient (Laws come to the assistance of the vigilant and not of the sleepy)**”<sup>8</sup>*

Abbott CJ in *Battley v. Faulkner*,<sup>9</sup> the Court observed that *“the statute of limitation was intended for relief and quiet of the defendant and to prevent the persons from being harassed at a distant period of time after the committing of the injury complained of”*

The object of fixing time-limit for litigation is based on Public Policy, fixing a life span of legal remedies for the purpose of general welfare. In the case of *N. Balakrishnan v. M.A. Krishnamurthy*,<sup>10</sup> inter alia observed:

*“the rules of limitation are not meant to destroy the rights of the parties but are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly and the law of limitation fixes a life span for legal injury suffered and that it is enshrined in the maxim interest **reipublicae Ut sit finis litum i.e. it is for the general welfare that a period to be put to litigation and this is not meant to destroy the rights of the parties,** but they are meant to see that the party do not resort to dilatory tactics but seek their remedy promptly because the idea is that every legal remedy must be alive for a legislatively fixed period of*

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11/11/07/why-is-the-sarfaesi-act-of-critical-importance-to-lenders/ (Last accessed on 30/4/2018)

<sup>6</sup> *United Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110, ¶8

<sup>7</sup> *Insolvency Code to boost entrepreneurship, ease of doing business*, Business Standard, [http://www.business-standard.com/article/news-ians/insolvency-code-to-boost-entrepreneurship-ease-of-doing-business-117072801667\\_1.html](http://www.business-standard.com/article/news-ians/insolvency-code-to-boost-entrepreneurship-ease-of-doing-business-117072801667_1.html) (Last accessed on 30/4/2018)

<sup>8</sup> Salmond: Jurisprudence 12th Ed. Page 438 and 439

<sup>9</sup> [(1820) 3 B & Aid 288]

<sup>10</sup> (1998) 7 SCC 123

time.”

### IBC IS A COMPLETE CODE IN ITSELF

In the case of *Ms. Innoventive Industries Ltd. v. ICICI Bank & Anr*,<sup>11</sup> the very first decision of Hon'ble Supreme Court on IBC, Justice Fali. S. Nariman held that,

*“It is settled law that a consolidating and amending act like the present Central enactment forms a code complete in itself and is exhaustive of the matters dealt with therein.”*<sup>12</sup>

The court further held that, *“There can be no doubt, therefore, that the Code is a Parliamentary law that is an exhaustive code on the subject matter of insolvency in relation to corporate entities, and is made under Entry 9, List HI in the 7th Schedule which reads as under. - '9. Bankruptcy and insolvency’”*<sup>13</sup>

## **III. LAW REGARDING APPLICABILITY OF OTHER ACTS ON A COMPLETE CODE**

### ANALYSIS OF AVAILABLE SETTLED PRINCIPLE

The General law regarding the applicability of other acts on a complete code has been laid down by the Hon'ble Supreme Court in the case of *Girnar Traders (3) v. State of Maharashtra & Ors*,<sup>14</sup> wherein two legislations fell for consideration before the Apex Court, namely the 'Maharashtra Regional and Town Planning Act, 1966 (MRTP Act)', and the 'Land Acquisition Act, 1894'. The respondent had, in contradiction, taken plea that MRTP Act was a 'self-contained Code' in itself and as such the provisions of Land Acquisition Act could not be referred to. The Hon'ble Court held that,

*“For an Act to be a "self-contained code", it is required to be shown that it is a complete legislation for the purpose for which it is enacted. The provisions of the MRTP Act relate to preparation, submission and sanction of approval of different plans by the authorities concerned which are aimed at achieving the object of planned development in contradistinction to haphazard development.”*<sup>15</sup>

## **IV. APPLICABILITY OF LIMITATION ACT ON SPECIAL STATUTE**

FAVORING LIMITATION ACT: In the case of *Mukri Gopalan v. Cheppilat Puthanpuravil*

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<sup>11</sup> 2017 SCC OnLine SC 1025

<sup>12</sup> Ibid, ¶60

<sup>13</sup> ¶63

<sup>14</sup> (2011) 3 SCC 1

<sup>15</sup> Ibid, ¶69

*Aboobacker*,<sup>16</sup> the Hon'ble Supreme Court examined the question whether Limitation Act, 1963 will apply to the Kerala Buildings (Lease and Rent) Control Act, 1965. Though, the Court noticed that the Act prescribes a period of limitation, which is different from the period of limitation under the Limitation Act, 1963, in absence of any exclusion of Sections 4 to 24 of the Limitation Act 1963, the Hon'ble Supreme Court held that those Sections 4 to 24 of Limitation Act, 1963 shall be applicable to the Kerala Buildings (Lease and Rent) Control Act, 1965.

In the case of *State of Kerala v. V.R. Kalliyankutty*,<sup>17</sup> the Hon'ble Supreme Court held that,

**“The Kerala Revenue Recovery Act does not create any new right.... Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act.”**

#### FAVORING SPECIAL STATUE (WITH LIMITATION CLAUSE)

In the case of *Commissioner of Customs and Central Excise v. Hongo India Pvt. Ltd.*,<sup>18</sup> while dealing with the question of whether the High Court in the reference application under Section 35-H(1) of the unamended Act, has power under Section 5 of the Limitation Act, 1963 to condone the delay beyond the period prescribed under the main statute i.e. the Central Excise Act”. The Court held that,

*“In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.”*

#### FAVORING THE SPECIAL STATUE (WITHOUT SPECIFIC PROVISION FOR LIMITATION)

In the case of *Union of India v. Popular Construction Co.*,<sup>19</sup> the Hon'ble Supreme Court While dealing with the applicability of Limitation act to Arbitration and Conciliation Act, 1996 held that,

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<sup>16</sup> (1995) 5 SCC 5

<sup>17</sup> (1999) 3 SCC 657

<sup>18</sup> (2009) 5 SCC 791

<sup>19</sup> (2001) 8 SCC 470

*“As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.”*

However, in ***Hukumdev Narain Yadav v. Lalit Narain Mishra***,<sup>20</sup> a three Judges Bench of the Hon'ble Supreme Court, while examining the question as to whether the Limitation Act, 1963 would be applicable to the provisions of Representation of People Act, held as under:

*“but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.”*

## **V. APPLICABILITY OF LIMITATION ACT ON IBC**

### PROVISION REGARDING LIMITATION IN IBC

However, at this juncture, it is pertinent to mention that IBC, 2016 didn't specifically have any provision with respect to limitation though the IBC prescribed some time limits such as Under Section 12,<sup>21</sup> of the 'I&B Code', one hundred and eighty day time has been prescribed for completion of 'Insolvency Resolution Process' though it is open to the Adjudicating Authority to extend the period, but not exceeding ninety days' (Total 270 days), For preferring appeals under Section 61,<sup>22</sup> while thirty day time has been allowed, the Appellate

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<sup>20</sup> (1974) 2 SCC 133

<sup>21</sup> Sec. 12(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process(Contd.)

<sup>22</sup> Sec.61(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal. (Contd.)

Tribunal has been allowed only fifteen day time beyond thirty days to condone the delay, Under Section 62,<sup>23</sup> of the IBC, against order of Appellate Tribunal, an appeal can be preferred by aggrieved person to the Hon'ble Supreme Court but such appeal is required to be preferred within forty-five days and the Hon'ble Supreme Court has been allowed to condone the delay but not exceeding fifteen days.

#### PROVISION FAVORING THE APPLICABILITY OF LIMITATION ACT

Sec. 60(6),<sup>24</sup> of the IBC, mentions about the limitation Act. The plain reading of the provision makes it very clear that the intent of the legislature is to include the applicability of Limitation upon the IBC and that's the reason why the moratorium period was provided protection while computing the period of limitation for initiation of any suit or proceedings and only the applicability of limitation act was restricted to that aspect.

The maxim "*Expressio unius est exclusio alterius*" will not be applicable in this case as was pointed out by Wills, J., in *Colguoboun v. Brooks*,<sup>25</sup> this maxim "is often a valuable servant, but a dangerous master....". The rule is subservient to the basic principle that Courts must endeavor to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these.<sup>26</sup> Before the principle can be applied at all the Court must find an express mode of doing something that is provided in a statute, which, by its necessary implication, could exclude the doing of that very thing and not something else in some other way.<sup>27</sup>

Earlier, the issues regarding the insolvency was being governed by the RDDBFI and SARFESI, both these acts have included the applicability of limitation act to the proceedings under these acts by the virtue of Sec.24,<sup>28</sup> and Sec.36,<sup>29</sup> respectively.

#### TRANSITION FROM COMPANIES ACT TO IBC (FAVORING THE APPLICABILITY OF LIMITATION ACT)

<sup>23</sup> Sec. 62(1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order. (Contd.)

<sup>24</sup> (6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

<sup>25</sup> [(1888) 21 QBD 52, 62]

<sup>26</sup> CCE v. National Tobacco Co. of India Ltd., (1972) 2 SCC 560, ¶ 29

<sup>27</sup> State of Karnataka v. Union of India, (1977) 4 SCC 608, ¶80

<sup>28</sup> Sec. 24. Limitation. - The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an application made to a Tribunal."

<sup>29</sup> Sec. 36. Limitation. - No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963)."

Furthermore, Acc. to Sec.5(1),<sup>30</sup> of the IBC, the adjudicating authority is defined as the National Company Law Tribunal as constituted under Sec.408 of the Companies Act, 2013. Now, Acc. to Sec.433,<sup>31</sup> of the Companies Act, the limitation Act is applicable to the proceedings of the National Company Law Tribunal or the appellate tribunal as the case may be. Also, in the case of *Seema Gupta v. Supreme Infrastructure Pvt. Ltd.*,<sup>32</sup> the NCLT Mumbai had taken the view that IBC has to be seen as a constituent of Companies Act and thereby limitation act will apply to it.

*“If we look into section 243 of the IB Code speaking about Repeal of certain enactments and savings, .....it has not been mentioned about the repealed Companies Act 1956. The only silver lining is application of section 6 of the General Clauses Act 1897, but that application has already been distinguished stating that by the time IB proceeding is initiated the claim has gone beyond limitation, issuing legal notice on 6.10.2016 will not save the limitation and the petitioner did not initiate legal proceeding in continuation to the notice issued u/s. 434 of the old Act.”*

Therefore, the limitation act will be ipso facto applicable to the proceeding under the Insolvency and Bankruptcy Code, 2016.

## VI. IBC AND SARFESI & RDBFI

### OBJECT OF SARFESI

The SARFEASI Act was enacted to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected thereto.<sup>33</sup> The SARFEASI Act enables the banks and financial institutions to realise long term assets, manage problem of liquidity, asset liability mismatch and improve recovery by exercising powers to take possession of securities,<sup>34</sup> sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.<sup>35</sup>

### OBJECT OF IBC

The purpose of the Insolvency and Bankruptcy Code, 2015, is to consolidate and revise laws concerning the reorganization and resolution of insolvency for corporate entities, partnership

<sup>30</sup> Sec. 5(1) "Adjudicating Authority", for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013)

<sup>31</sup> Sec. 433. Limitation. - The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be."

<sup>32</sup> C.P.17/1 and BP/NCLT/MAH/17

<sup>33</sup> BPV Classic Tea Factory P. Ltd. v. Corporation Bank, 2007 SCC OnLine Mad 519, ¶11

<sup>34</sup> Criss Niryat Private Ltd. v. Naresh Kumar Agarwal, 2015 SCC OnLine Cal 5436, ¶8

<sup>35</sup> Union Bank of India v. State of Maharashtra, 2010 SCC OnLine Bom 919, ¶21



firms, and individuals within a stipulated timeframe. Its aim is to maximize the value of assets of such entities,<sup>36</sup> promote entrepreneurship, ensure access to credit, and balance the interests of all stakeholders. This includes revising the priority of payment for government dues and establishing an Insolvency and Bankruptcy Fund, along with associated matters.<sup>37</sup>

#### HARMONIOUS CONSTRUCTION OF IBC AND SARFESI

IBC by the virtue of Sec.251,<sup>38</sup> only seeks to amend Sec.13(9),<sup>39</sup> of SARFESI, which deals with the of group of secured creditors or more than one secured creditor but IBC is not only applicable with regards to group of secured creditors and same applies to SARFESI. Therefore, in the case where there is only one secured creditor which act will holds the ground. Acc. to Sec.52(1),<sup>40</sup> of the IBC, the secured creditor may relinquish his secured interest to IRP or otherwise can utilize the same. Hence, in a case where the secured creditor didn't exercise this option, the only law which will be applicable is SARFESI and thereby leads to a harmonious construction.

#### STATUTORY CONUNDRUM BETWEEN IBC AND SARFESI

However, the problem arises as the moratorium under Sec.14,<sup>41</sup> of IBC will be applicable to Proceedings under SARFESI and RDDBFI. The National Company appellant tribunal in the case of *M/s. Unigreen Global Private Limited v. Punjab National Bank and others*,<sup>42</sup>

*“Any proceeding under Section 13(4) of the SARFAESI Act, 2002 or suit under Section 19 of the DRT Act, 1993 pending before Debt Recovery Tribunal or appeal pending before Debt Recovery Appellate Tribunal cannot proceed in view of the order of moratorium as may be passed.”*

And also Sec. 238, of the Act contains a non-obstante clause with respect to all other laws in

<sup>36</sup> Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353,

<sup>37</sup> Ms. Innoventive Industries Ltd. v. ICICI Bank & Anr, 2017 SCC OnLine SC 1025

<sup>38</sup> Sec. 251: The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be amended in the manner specified in the Seventh Schedule.

<sup>39</sup> Sec. 13(9): Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than [sixty per cent.] in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors

<sup>40</sup> Sec.52 (1): A secured creditor in the liquidation proceedings may--

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section.

<sup>41</sup> Sec. 14: Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

<sup>42</sup> Company Appeal (AT) (Insolvency) 81/2017

force, thereby having an overriding effect over both RDDBFI and SARFESI and also both the later acts contains non-obstante clause.<sup>43</sup> The Sec.54 of the IBC is itself contradicting the construction of Statute and the Legislature only repealed presidency Towns Insolvency act, 1909 and the Presidency Insolvency Act, 1920 and SARFESI and RDDBFI.

In *Ram Narain v. Simla Banking & Industrial Co. Ltd.*,<sup>44</sup>, two statutes, both containing non obstante clauses providing that the particular provisions of the Act shall have effect (notwithstanding anything inconsistent therewith contained in any other law for the time being in force) fell for consideration. The two Acts were the Banking Companies Act, 1949 and the Displaced Persons (Debts Adjustment) Act, 1951. This Court gave primacy to the Banking Companies Act. While doing so, this Court observed that,

*“ .... It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.”*

In the case of *Allahabad Bank v. Canara Bank*,<sup>45</sup> this Court held that with reference to the Companies Act, the RDDB Act should be considered as a “special law” though both laws could be treated as “special laws” in respect of recovery of dues by banks and financial institutions.

#### USE OF NON-DEROGATION CLAUSE COULD HAVE RESOLVED THE CONFLICT

The Situation created by the conflict of these acts can be avoided by the use of the non-derogation clause. The same was done with respect to the case of RDDB act and SICA. The conflict within the applicability of both these acts was challenged in the case of *KSL & Industries Ltd. v. Arihant Threads Ltd.*,<sup>46</sup> wherein the court ruled that,

*“Sub-section (2) was added to Section 34 of the RDDB Act w.e.f. 17-1-2000 by Act 1 of 2000. There is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the legislature intends that such an enactment shall coexist along with the other Acts. **It is clearly not the intention***

<sup>43</sup> Sec. 35, SARFESI: The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Sec. 34, RDDBFI: (1) Save as provided under subsection (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

<sup>44</sup> AIR 1956 SC 61

<sup>45</sup> (2000) 4 SCC 406

<sup>46</sup> (2015) 1 SCC 166

**of the legislature, in such a case, to annul or detract from the provisions of other laws. The term “in derogation of” means “in abrogation or repeal of”.** *The Black's Law Dictionary sets forth the following meaning for “derogation”:*

*“derogation.—The partial repeal or abrogation of a law by a later Act that limits its scope or impairs its utility and force.”*

*It is clear that sub-section (1) contains a non-obstante clause, which gives the overriding effect to the RDDB Act. Sub-section (2) acts in the nature of an exception to such an overriding effect. It states that this overriding effect is in relation to certain laws and that the RDDB Act shall be in addition to and not in abrogation of, such laws. SICA is undoubtedly one such law.”*

## VII. CONCLUSION

Limitation act, 1963 is not mere procedural legislation in addition to that it is carrying further the concept of public policy that one cannot sleep over his right and will act acc. to his whim and fancies to exercise the same. With regards to IBC, the Limitation act ought to be applied to IBC as a mere enactment of law cannot be led to a revival of a buried right. One of the underlying principle of functioning of judiciary is that every litigation must come to an end, which will be defeated if limitation act will not be applicable to the IBC, However the question is pending before the Supreme Court and will be decided in a near future.<sup>47</sup>

As far as the overlapping of IBC and RDDBFI & SARFESI is concerned, the court has to demarcate the fields in which these acts have to operate as the legislators failed to do so. The principle of *generalia specialibus non derogant* (general provisions will not abrogate special provisions),<sup>48</sup> will not be applicable here as all the three laws are special in nature and thus this doctrine is of no rescue. The overlapping is not apparent and there is no such conflict arises as such because of the reason IBC having much more simplified and speedy recovery of dues than the other two acts. However, the same has to be decided in future as the overlapping is clear and foreseeable even in the case of RDDFI and SICA, the matter was decided 16 years after the enactment of RDDBFI.<sup>49</sup>

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<sup>47</sup> <http://www.livelaw.in/sc-stays-nclat-order-said-limitation-act-doesnt-apply-proceedings-ibc-read-petition/>

<sup>48</sup> LIC v. D.J. Bahadur, (1981) 1 SCC 315

<sup>49</sup> KSL and Industries Ltd. v. Arihant Threads Ltd., (2008) 9 SCC 763