

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-510

March 8, 2021

**The period spent in proceedings under SICA will not be excluded for the purpose of computation of limitation under IBC.**

<b>CASE TITLE</b>	Mazda Agencies Vs. Hemant Plastics & Chemicals Ltd <sup>1</sup>
<b>CASE CITATION</b>	Company Appeal (AT) (Insolvency) No.763of 2020
<b>DATE OF ORDER</b>	05.03.2021
<b>COURT/TRIBUNAL</b>	NCLAT, New Delhi
<b>CASES REFERRED</b>	Gouri Prasad Goenka Vs. Punjab National Bank &Anr; Zenith Ltd. Vs. Grand Foundry Ltd
<b>SECTION/REGULATION REFERRED</b>	Section 22(1) &(5) of the SICA Section 9and Section 61 of IBC, 2016

**Brief of the case:**

Adjudicating Authority (NCLT) examined the legal question and after elaborate discussion rejected the application on the ground that the provision of Section 22(5) of the SICA is applicable to suits and not proceedings under Section 9 of the Code. The Operational Creditor is not part of reference therefore, he cannot claim exclusion of period under section 22(5) of the SICA for the purpose of computation of limitation. Thus, NCLT dismissed the application under section 9 of the Code as time barred. Being aggrieved with the order, the Operational Creditor preferred the instant appeal.

**Decision:**

Hon'bleNCLAT dismissed the appeal and held as below:

*“24. We are of the view that Ld. Adjudicating Authority has rightly held that the Appellant is not entitled for exclusion of the period which spent during the pendency of proceedings under SICA. Thus, the Application under Section 9 of the I&B Code is barred by Limitation.*

*25. With the aforesaid, we find no ground to interfere in the impugned order passed by the Ld. Adjudicating Authority. Hence, the Appeal is dismissed, however, no order as to cost.”*



**QR CODE FOR FULL ORDER/JUDGEMENT:**

<sup>1</sup><https://nclat.nic.in/Useradmin/upload/208341021460421c88e9f20.pdf>