NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 395 of 2020

[Arising out of Order dated 03rd March, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in CA No. 1161 of 2019 and C.P. (IB) No. 375/Chd/Pb/2018]

IN THE MATTER OF:

Sandeep Jindal,

(Suspended Director of the Corporate Debtor)

R/o B-1-980/2A, Civil Lines,

Ludhiana **...Appellant.**

Versus

State Bank of India,

Stressed Asset Management Brach,

Admin Office Building, Fountain Chowk,

Ludhinan - 141001 **...Respondent.**

Present:

For Appellant: **Mr. AS Chandhiok, Sr. Advocate with Shri Jayant Mehta, Mr. NPS Chawla, Mr. Surekh Kant Baxy, Mr. Nitin Mishra, Mr. Ankit Tripathi, Ms. Shweta Kakkad, Ms. Neelam Deol and Ms. Shruti Sharma, Advocates.**

For Respondent: **Mr. Dhruv Mehta, Sr. Advocate with Mr. PBA Srinivasan, Mr. Avinash Mohapatra, Mr. Neelkanthan (AR OF SBI),Ms. Icchha Kalash, Mr. Parth Tandon, Advocates.**

J U D G M E N T
(08th April, 2021)

A.I.S. Cheema, J.

1. Respondent-State Bank of India (Financial Creditor) filed Application C.P. (IB) No. 375/CHD/PB/2018 before the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench, Chandigarh) under Section 7 of

Insolvency and Bankruptcy Code, 2016 (IBC in short). The Corporate Debtor in the said Petition filed C.A. 1161 of 2019 claiming that the Application was time-barred. The Adjudicating Authority heard both sides and by the Impugned Order dated 3rd March, 2020, inter alia after considering Judgment of Hon'ble Supreme Court in the matter of "*A.V. Murthy Vs. B.S. Nagabasavanna" (2002) 2 SCC 642* considered the balance-sheets available on record and found that there were acknowledgments of debts under Section 18 of the Limitation Act, 1963 and rejected the Application filed by the Corporate Debtor and admitted the Application under Section 7 of IBC. Corporate Insolvency Resolution Process (CIRP in short) was thus started. Hence, the present Appeal by Director of the Suspended Board of Corporate Debtor.

2. In the Impugned Order, Adjudicating Authority considered the Application filed by the State Bank of India; contents of the format and the amount stated to be in default. The Corporate Debtor claimed in the C.A. No. 1161 of 2019 that date of default mentioned in the Application is on 01st January, 2014. The Corporate Debtor filed Reply in the Application to defend itself. The Copy of C.A. No. 1161 of 2019 is at Annexure A-8 (Page 126) and the Reply with annexures before Adjudicating Authority which was filed by State Bank of India is at Annexure A-9 (Page 132). The Corporate Debtor pointed out Rejoinder before Adjudicating Authority (Annexure A-7) of the State Bank of India to submit that the Account of the Corporate Debtor had been declared Non-Performing Assets (NPA in short) on 30.09.2012 and thus claimed that the Application was time-barred. State Bank in Annexure A-7 had explained how due to Statutory Audit the Date of N.P.A. was required to be treated from back date. The State Bank of India

pointed out balance-sheets for the year ending 31.03.2015 and 31.03.2016 which were signed by the Director of the Corporate Debtor and referred to entries of long-term borrowings to point out that there was acknowledgment under Section 18 (1) of the Limitation Act, 1963. The Corporate Debtor referred the Judgments of this Tribunal where it has been held that balance-sheets of the Corporate Debtor cannot be termed to be a document of an acknowledgment in terms of section 18. However, the Adjudicating Authority relied on the Judgment in the matter of A.V. Murthy (Supra) and concluded that the Application was within time.

3. We have heard the parties in this Appeal.

4. The Appellant for the Corporate Debtor claims that from 2008-2012, Corporate Debtor had taken loans in several tranches from the State Bank of India for total Rs. 69,67,00,000/-. As the Corporate Debtor was not able to repay the loan because of which Account of Corporate Debtor was declared as NPA by the State Bank of India on 30.09.2012. Reference is made to the Rejoinder filed by the State Bank of India before Adjudicating Authority (Annexure A-7 Page 115 at Page 119) in Paragraph 11 the State Bank of India mentioned as under:

> *"11. That the contents of para 14 and 15 are vehemently and specifically denied on the grounds that statutory audit of the account of the Corporate Debtor was conducted by the Statutory Auditor as on 31.03.2014, and from there it came to know about the fact that the Restructuring done in the account of the Corporate Debtor got failed, thus the account of the Corporate Debtor was declared as NPA backdated from 30.09.2012 instead of 31.12.2013."*

5. It is argued by the Appellant that State Bank of India initiated actions against the Corporate Debtor before DRT under SARFAESI Act. Subsequently, Application under Section 7 of IBC was filed. Paragraph 16 of the Impugned Order shows that Application under Section 7 was filed on 3rd October, 2018. Appellant is arguing that NPA declared is on 30.09.2012 and thus the Application was time-barred. According to the Appellant, in the Application under Section 7, the date of NPA mentioned was wrong and the Appellant had not relied on balance-sheet in the Application under Section 7. It is argued that the Application was thus defective and should have been rejected. According to the Appellant, the State Bank of India wrongly relied on One Time Settlement (OTS in short) issued by the Corporate Debtor on 20th January, 2017 and rejection of the same, to claim extension of period of limitation. Appellant claims that balance-sheet cannot be relied on for acknowledgment under Section 18. Reference is made to Judgment in the matter of "*Swiss Ribbons Vs. Union of India" MANU/SC/0079/2019* to submit that Hon'ble Supreme Court has observed that there is a shift in the legislative policy from the concept of "Inability to pay debts" to "Determination of default" and that IBC is not adversarial litigation but a beneficial legislation to put a dying Corporate Debtor back to its feet. It is argued that there is distinction between "Date of default" and cause of action and IBC is concerned only with determination of default which may be attributed to date of NPA and that the date of NPA does not shift. It is argued that thus reliance could not be placed on balance-sheet. Appellant has then placed reliance on "*B.K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates" MANU/SC/1160/2018* to submit that "right to sue" accrues only when a "default occurs" and that if default has occurred over

three years prior to date of filing the Application under Section 7 of IBC the Application would be barred under Limitation Act, 1963, save and except in the cases, where Application under Section 5 of Limitation Act is filed to condone the delay.

6. Appellant further placed reliance on Judgment in the matter of "*Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd & Anr." (Civil Appeal No. 6347 of 2019)* decided on 14th August, 2020 to submit that the Limitation under IBC is only three years which is triggered from date of default and it is submitted that in the said Judgment, the Hon'ble Supreme Court observed that while assuming Section 18 of Limitation Act was applicable, the concerned documents were required to be stated in the Application under Section 7; and that later on the arguments could not be allowed to be developed to extend period of limitation. Learned Counsel for Appellant referred to various other Judgments of this Tribunal to submit that in those Judgments it has been held that balance-sheet is not an acknowledgment of debt. It is also argued that in the present matter in balance-sheet Corporate Debtor had admitted the amount due towards State Bank of India with a qualification that the amounts are yet to be confirmed. Reference was made to the balance-sheet for the year ending 31st March, 2016 in this regard. Thrust of the arguments is Just count three years form date of NPA and if Section 5 of Limitation Act has not been filed, the Application must be treated as time-barred.

7. According to the Appellant, larger Bench of this Tribunal in the matter of "*V. Padmakumar vs. Stressed Assets Stabilisation Fund (SASF) & Anr." (Company Appeal (AT) (Ins.) No. 57 of 2020 dated 12.03.2020) has* held that

balance-sheet could not be relied on for acknowledgment under Section 18 of Limitation Act and that the same Judgment should be followed. Referring to Section 9 of the Limitation Act, the Appellant has argued that once time begins to run, no subsequent disability or inability to institute a suit or make an application stops the same. In answer to the query raised by this Tribunal at the time of arguments, Learned Counsel for the Appellant has submitted that Section 29 (2) of the Limitation Act cannot be relied on as legislative policy has provided that there is shift to "date of default" from "inability to pay" and this date of default does not shift. That there is only one default recognised under IBC. It is argued that legislation excluded all other provisions of Limitation Act including Section 4 to 24 to file an Application under Section 7. Appellant claims that Section 238 (A) of IBC which was included subsequently states that the Limitation Act "as far as may be" applied thus the argument is that the intention to not to include Section 4 to 24 of the Limitation Act is there. That, date of default is material and thus section 4 to 24 of the Limitation Act must be said to be excluded. Referring to Judgment in the matter of "*Babulal Vardharji Gurjar*" (Supra), it is claimed that the Hon'ble Supreme Court observed that "the intention of the law was not to give a new lease of life to debts which are time barred". The Appellant claims that the Judgments being relied on by the Respondent are not applicable.

8. Against the above, Learned Counsel for Respondent-State Bank of India has submitted that when IBC was enacted there was no provision with regard to Limitation. Subsequently, Section 238 A was inserted applying the Limitation Act, 1963 with effect from 06th June, 2018. It is argued that Section 238 A stipulates that the Limitation Act as far as may be, will apply

to the proceedings before Adjudicating Authority and this Tribunal. Making reference to Judgment in the matter of B.K. Educational Services Pvt. Ltd. (Supra) where Section 238 A was interpreted, it is argued that the Hon'ble Supreme Court of India has observed that the Limitation Act was applicable from the inception of the Code and that Article 137 of Limitation Act gets attracted and that "the right to sue" accrues when a default occurs. The Learned Counsel submitted that when Limitation Act applies Section 3 (1) of the Limitation Act would be applicable. The Adjudicating Authority derives its power to dismiss Application as time-barred under this Section 3 (1). Section 3 (1) provides that subject to provisions contained in Section 4 to 24 every suit instituted, Appeal preferred and Application made after prescribed period shall be dismissed although Limitation has not been set up as a defence. The Learned Counsel argued that Section 3 (1) is subject to provisions under Section 4 to 24. The Learned Counsel for the Appellant painstakingly referred to various provisions of the Limitation Act to submit that in order to apply Article 137 of the Limitation Act, other provisions of Limitation Act in the part of Sections cannot be ignored. Reliance is also placed on section 29 (2) of Limitation Act and it is argued that IBC has not excluded specifically or by implication any of these sections of Limitation Act and thus this Tribunal cannot ignore documents which amount to acknowledgment in law. The Learned Counsel for State Bank of India referred to Judgment in the matter of "*B. K. Education Services Pvt. Ltd."* to submit that the Hon'ble Supreme Court itself while referring to Article 137 of Limitation Act stated that Section 5 of the Limitation Act can be invoked when delay is to be condoned. It is argued that this shows that Section 4 to 24 of the Limitation Act cannot be excluded. Reference is also made to

Judgment in the matter of "Jignesh Shah" (2019) 10 SCC 750 and Paragraph 21 in the said Judgment where it was observed that when time begins to run it can only be excluded in the manner provided in the Limitation Act and for example it was observed that an acknowledgment of liability under Section 18 of the Limitation Act would certainly extend the limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from remedy of winding up would, in no manner, impact the limitation. The Learned Counsel for the State Bank of India referred to other Judgments also where entries in balance-sheets and books of accounts have been held to be acknowledgment under Section 18 of the Limitation Act by the Hon'ble High Courts as well as the Hon'ble Supreme Court of India.

9. We have gone through the Judgments, specially of the Hon'ble Supreme Court which are being relied on by both the parties.

Ref: Judgment of this Tribunal in "Rajendra Narottamdas Vs. Chandra Prakash"

10. We have earlier dealt with similar averments being made by the parties in present matter with regard to the Limitation. In our Judgment dated 18th December, 2020 passed in Company Appeal (AT) (Insolvency) No. 621 of 2020 in the matter of *"Sh. Rajendra Narottamdas Sheth & Anr. Vs. Sh. Chandra Prakash Jain & Anr."* we had observed in Paragraphs 22-24 as under:

> *"**22.** The Learned Counsel for the Appellant has relied on Judgment in the matter of Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (Civil Appeal No. 4952/2019) (2019 SCC OnLine 1239) to argue that the residuary Article 137 of the Limitation Act shall be applicable to Application under Section 7*

of the Code and the time begins to run from the date of default i.e. date of NPA. It is argued that the date of NPA does not shift. Relying on the Judgment in the matter of Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company it is stated that the Hon'ble Supreme Court referred to its Judgment in the matter of B.K. Educational Services Pvt. Ltd. (2018) SCC Online SC 1921 to observe that the Report of Insolvency Law Committee itself stated that the intention of Code could not have been to give new lease of life to debts which are time-barred. Reference was also made to Judgment in the matter of Babulal Vardharji Gurjar Vs. Veer Gurjar (Civil Appeal No. 6347 of 2019) dated 14.08.2020 (2020 SCC OnLine SC 747) where also Supreme Court of India has held that under Section 7 the period of limitation starts running from Date of Default and the same is considered to be the date of NPA.

23.1. *Section 238-A was inserted in the IBC by way of Amendment Act No. 26 of 2018 which was given retrospective effect from 06th June, 2018. Section 238-A reads as under:*

> *"238-A. Limitation. - The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."*
>
> *(Emphasis Supplied)*

It is clear from the above Section that the provisions of Limitation Act, 1963 shall apply "as far as may be" to the proceedings or Appeals before the Adjudicating Authority or this Tribunal. Thus it is necessary to look into the Limitation Act to consider how far Limitation Act may be, or could be applied.

23.2. *Validity of Section 238-A were examined by the Hon'ble Supreme Court of India in Judgment dated 11.10.2018 in the matter of B.K. Educational Services Vs. Parag Gupta – MANU/SC/1160/2018 where reference was made to the Report of Insolvency Law Committee and Paragraph 6 read as under:*

> *"6. Having heard the learned counsel for both sides, it is important to first set out the reason for the introduction of Section 238-A into the Code. This is to be found in the Report of the Insolvency Law Committee of March 2018, as follows:*
>
> ***"28 APPLICATION OF LIMITATION ACT, 1963***
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> *28.1. The question of applicability of the Limitation Act, 1963 (the Limitation Act) to the Code has been deliberated upon in several judgments of NCLT and NCLAT. The existing jurisprudence on this subject indicates that if a law is a complete code, then an express or necessary exclusion of the Limitation Act should be respected. In light of the confusion in this regard, the Committee deliberated on the issue and unanimously agreed that the intent of the Code could not have been to give a new lease of life to debts which are time-barred. It is settled law that when a debt is barred by time, the right to a remedy is time-barred. This requires being read with the definition of "debt" and "claim" in the Code. Further, debts in winding-up proceedings cannot be time-barred, and there appears to be no rationale to exclude the extension of this principle of law to the Code.*
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> *28.2. Further, non-application of the law on limitation creates the following problems; first, it re-opens the right of financial and operational creditors holding time-barred debts under the Limitation Act to file for CIRP, the trigger for which is default on a debt above INR one lakh. The purpose of the law of limitation is 'to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches'. Though the Code is not a debt recovery law, the trigger being "default in payment of debt" renders the exclusion of the law of limitation counter-intuitive. Second, it re-opens the right of claimants (pursuant to issuance*

of a public notice) to file time-barred claims with IRP/RP, which may potentially be a part of the resolution plan. Such a resolution plan restructuring time-barred debts and claims may not be in compliance with the existing laws for the time being in force as per Section 30 (4) of the Code.

28.3. Given that the intent was not to package the Code as a fresh opportunity for creditors and claimants who did not exercise their remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific section applying the Limitation Act to the Code. The relevant entry under the Limitation Act may be on a case-to-case basis. It was further noted that the Limitation Act may not apply to applications of corporate applicants, as these are initiated by the applicant for its own debts for the purpose of CIRP and are not in the form of a creditor's remedy."

(Emphasis supplied)

The Report of the Committee would indicate that it has applied its mind to judgments of NCLT and NCLAT. ***It has also applied its mind to the aspect that the law is a complete Code and the fact that the intention of such a Code could not have been to give a new lease of life to debts which are time-barred."***

(Emphasis supplied)

In the same Judgment of B.K. Educational Services, in Paragraph 27 it was observed as under:

*"27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "****The right to sue", therefore accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing*** *such application."*

(Emphasis supplied)

23.3. *From the above it can be seen that there was no intention to give new lease of life to debts which are time-barred. Thus, the consideration is whether a given debt is time-barred. It is also clear from the above that for Applications under Section 7 of IBC the Hon'ble Supreme Court found that residuary Article 137 in the Third Division of Limitation Act dealing with "Applications" was the Article applicable. The Judgment shows that if there is delay in filing of Application one has to go to the Sections where Section 5 would apply. Section 5 would be relevant if an Application which is time-barred and extension of prescribed period is sought showing sufficient cause for not filing the Application within prescribed period.*

23.4 *In subsequent Judgments in the matter of "Gaurav Hargovindbhai Dave" & "Babulal Vardharji Gurjar", it is argued this factum was reiterated that for Section 7 application time begins to run from date of default, i.e. date of NPA and Period of Limitation is three years as prescribed in Article 137 of the Limitation Act.*

23.5. *Limitation Act, 1963 Part I deals with the short title, extent and commencement of the Limitation Act, 1963 and contains the Definitions. Part II deals with Limitation of Suits, Appeals and Applications and contains Sections 3 to 11. Part III deals with "Computation of Period of Limitation" and contains Sections 12 to 24. Part IV relates to "Acquisition of Ownership by Possession" and Part V is Miscellaneous.*

We are concerned with "Limitation of Applications".

23.6 *"The Schedule" prescribes "Periods of Limitation" and is divided into various Divisions. First Division deals with Suits, Second Division deals with Appeals and Third Division deals with "Applications". There is no difficulty that the*

Applications under Section 7 and 9 of IBC fall under Article 137 of the Limitation Act, 1963.

23.7 *When we go to Sections, Section 2 (j) is relevant which reads as under:*

> *"(j) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;"*

23.8 *Thus, when Article 137, for such Applications "prescribes" "Period of Limitation" as "Three Years" triggered "When the right to apply accrues", Section 2 (j) provides that "prescribed period" means period of limitation computed in accordance with the provisions of this Act.*

23.9 *Section 3 deals with "Bar of Limitation" and sub-Section 1 reads as under:*

> *"Bar of Limitation.-(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."*

Thus to consider, if given debt is or not barred by Limitation Sections 4 to 24 are relevant. In B.K. Educational Services we have already seen that Hon'ble Supreme Court has held that to condone delay Section 5 will have to be applied. We need to see other sections now to consider whether the debt is not barred by Limitation considering the provisions as may be applicable.

23.10 *This takes us to sections 4 to 24. Relevant for the present matter are Sections 18 and 19 which read as under:*

> ***" 18: Effect of acknowledgement in writing:***

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation. – For the purposes of this Section,-

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

19. ***Effect of payment on account of debt or of interest on legacy.****-Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly Authorised in this behalf, a*

fresh period of limitation shall be computed from the time when payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January,1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by, the person making the payment.

Explanation.- For the purposes of this section,-

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a Court."

24. *Section 18 applies to not merely suits but also applications and where before expiry of the prescribed period for an Application an acknowledgment is made, the Section provides for computing fresh period of Limitation from the time when acknowledgment was so signed. Perusal of Section 19 shows that where payment is made on account of a debt or interest before expiration of the prescribed period by the person liable to pay, a fresh period of Limitation shall be computed from the time when the payment was made. The date of NPA will not shift. It will remain the foundational date and Period of Limitation gets triggered from that date. But when prescribed period is computed in accordance with the Limitation Act and facts of this matter, Section 18 and 19 do appear to be attracted."*

11. It was further observed by us in Paragraph 26 of our Judgment in "Rajendra Narottamdas" supra as under:

*"**26.** The Learned Counsel for the Appellant referring to Judgment in the matter of Jagdish Prasad Sharda referred (Supra.) of another bench of this Tribunal submitted that in that matter it was*

interpreted that even if the payments were made after the Account was declared NPA if the Account was not regularized benefit cannot be taken. It may be clarified that limitation issue is decided on facts and law both and it differs from case to case. In the instant case, when Bank declared NPA to recover dues, it moved DRT. If the Corporate Debtor made some payments, as a reasonable prudent person, Bank received the payments. Section 19 of the Limitation Act, 1963 is not subject to any qualification/exception that after Account is declared NPA, if the debtor makes payments on account of debt, the Section would not be applicable. The Adjudicating Authority found that there were not merely repayments but also Acknowledgments."

Ref: Judgment of this Tribunal in "A. Balakrishnan Vrs. Kotak Mahindra"

12. In the matter of *"A. Balakrishnan Vs. Kotak Mahindra Bank Limited & Anr."* (Company Appeal (AT) (Insolvency) No. 1406 of 2019) dated 24th November, 2020, we had in paragraph 12 reproduced paragraph 27 of the Judgment in the matter of "*B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates"* reproduced supra and discussed as under:-

13. In Judgment dated 18.09.2019 in the matter of ***Gaurav Hargovind bhai Dave vs Asset Reconstruction Company (I) Ltd. & Anr. (2019) SCC Online SC 1239,*** *the facts of that case show that in that matter of Gaurav Hargovind bhai Dave vs Asset Reconstruction Company (I) Ltd. & Anr. the Respondent No. 2 was declared NPA on 21.07.2011. At that point of time State Bank of India filed two OAs in DRT in 2012 to recover the total debt due in that matter. State Bank of India assigned its debt in 2014 to the Respondent No. 1/Asset Reconstruction Company. DRT by Judgment dated 10th June, 2016 held that the OAs were not maintainable. Against this,*

Applications were filed before Gujrat High Court. The High Court remanded the matter. The SLP filed in Supreme Court came to be dismissed. Thereafter the Respondent No. 1 on 03rd October, 2017 filed Application under Section 7 of IBC. The date of default was shown as 21.07.2011. NCLT applied Article 62 of Limitation Act relating to mortgage to hold the matter in Limitation. This was challenged before NCLAT and this Tribunal had held that Limitation would run only from 01st December, 2016 when IBC came into force and dismissed the Appeal. With such set of facts, the observations of the Hon'ble Supreme Court in Paragraph 7 of the Judgment were as under:

"7. Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr. Banerjee's reliance on para 7 of B.K. Educational Services Private Limited (Supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred."

It can be seen that in spite of filing of OAs within Limitation, the Hon'ble Supreme Court accepted the submissions that the time of Limitation when it began running on 21.07.2011, the Application under Section 7 filed on 03.10.2017 was time-barred. Thus, it appears to us that the filing of OAs and pendency of the same did not extend the time for the Financial Creditor, in independent proceeding under IBC.

14. Then, there is Judgment in the matter of ***Jignesh Shah. Vs. Union of India*** *(2019) SCC Online SC 1254. In Paragraph 4 of the Judgment, the Hon'ble Supreme Court of India initially referred to the controversy as was arising in the Writ Petition No. 455 of 2019.*

14.1. Briefly the facts may be referred from the Judgment. What appears is that on 20th August, 2009 a Share Purchase Agreement was executed between Multi Commodity Exchange India Ltd. (MCX), Multi Commodity Stock Exchange Ltd. (MCX-SX) and IL&FS whereby IL&FS had agreed to purchase 442 lakh equity shares of MCX Stock Exchange Ltd. from MCX. Pursuant to the Agreement La-Fin Group Company of MCX issued "Letter of Undertaking" on 20th August, 2009 stating that La-Fin or its appointed nominees would offer to purchase from IL&FS the shares of MCX Stock Exchange after a period of one year but before a period of three years, from date of investment. Hon'ble Supreme Court of India observed that on facts, this period of three years would expire in August, 2012.

14.2. It was noticed that IL&FS by Letter dated 03rd August, 2012 exercised the option to sell its entire holding of shares to MCX Stock Exchange and called upon La-Fin to purchase the shares as per the "Letter of Undertaking". On 16th August, 2012 La-Fin replied that it was under no legal or contractual obligation to buy the said shares.

14.3. Subsequent to this, on 19th June, 2013 IL&FS filed suit before Bombay High Court showing cause of action as dated 16.08.2012. On 3rd November, 2015 Statutory Notice under Section 433 and 434 of the Companies Act, 1956 was issued by IL&FS to La-Fin and on 21st October, 2016 a Winding up Petition came to be filed under Section 433 (e) of the Companies Act, 1956.

14.4. IBC came into force on 01st December, 2016 and as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 the Winding up Petition was transferred to NCLT as a Section 7 Application indicating the date of default as on 19th August, 2012. The Application came to be admitted and the Appeal to this Tribunal was dismissed holding that bar of limitation would not be attracted as Winding up Petition was filed within three years of the date on which

the Code came into force. Against such Judgment of this Tribunal matter was carried to the Hon'ble Supreme Court.

14.5. In this matter of Jignesh shah. Vs. Union of India the Learned Sr. Advocate Dr. Abhishek Manu Singhvi raised issue of the statutory bar of Limitation. The Hon'ble Supreme Court has recorded submissions of the Counsel in Paragraph 5 of the Judgment. Part of the submissions may be reproduced for context. The same are as under:

".....Inasmuch as the Winding up Petition that has been transferred to the NCLT was filed on 21st October,2016, i.e. beyond the period of three years prescribed (as the cause of action had arisen in August, 2012), it is clear that a time-barred Winding up Petition filed under Section 433 of the Companies Act, 1956 would not suddenly get resuscitated into a Section 7 petition under the Code filed within time, by virtue of the transfer of such petition....."

14.6. After referring to arguments of Advocates for IL&FS the Hon'ble Supreme Court first adverted to the decision in the matter of B.K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates in which Section 238 A of the Code relating to the Limitation was considered. The Hon'ble Supreme Court in Paragraph 8 to 11 of the Judgment in the matter of Jignesh Shah Vs. Union of India reproduced portion from Judgment in the matter of B.K. Educational Services Pvt. Ltd. and after referring to the said Judgment observed in Paragraph 12 and 13 as under:

"12. This Judgment clinches the issue in favour of the Petitioner/Appellant. With the introduction of Section 238 A into the Code, the provisions of the Limitation Act apply to applications made under the Code. Winding up Petitions filed before the Code came into force are now converted into petitions filed under the Code. What has, therefore, to be decided is whether the Winding up Petition, on the date that it was filed, is barred by lapse of time. If such petition is found to be time-barred, then Section 238 A of the Code will not give a new lease of life to such a time-barred petition. On the facts of this case, it is clear that as the Winding up Petition was filed beyond three years from August, 2012 which is when, even according to IL&FS, default in repayment had occurred, it is barred by time.

13. Dr. Singhvi relied upon a number of judgments in which proceedings under Section 433 of the Companies Act, 1956 had been initiated after suits for recovery had already been filed. These judgments have held that the existence of such suit cannot be construed as having either revived a period of Limitation or having extended it, insofar as the winding up proceeding was concerned."

(Emphasis Supplied)

14.7. The Hon'ble Supreme Court in Paragraphs 13 to 20 of the Judgment in the matter of Jignesh Shah Vs. Union of India made brief reference to those Judgments in context as underlined above and Paragraph 21 observed as under:

"21. The aforesaid judgments correctly hold that a suit for recovery based upon a cause of action that is within Limitation cannot in any manner impact the separate and independent remedy of a winding up proceeding. In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgment of liability under Section 18 of the Limitation Act would certainly extend the Limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the Limitation within which the winding up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding up proceeding."

(Emphasis Supplied)

14.8. It was then observed and held in Paragraph 27 of the Judgment as follows:

"27. It is clear that IL&FS pursued with reasonable diligence the cause of action which arose in August, 2012 by filing a suit against La-Fin for specific performance of the Letter of Undertaking in June, 2013. What has been lost by the aforesaid party's own inaction or laches, is the filing of the Winding up Petition long after the trigger for filing of the aforesaid petition had taken place; the trigger being the debt that became due to IL&FS, in repayment of which default has taken place."

For such and other reasons, the Hon'ble Supreme Court allowed the Appeal which was filed before it and held that Winding up Petition filed on 21st October, 2016 being beyond the period of three years mentioned in Article 137 of the

Limitation Act was time-barred and cannot be proceeded with any further.

15. It is quite clear from the above that although the suit was filed in time the Winding up Petition was beyond three years of the default and when such Winding up Petition was transferred in view of the Rules to the NCLT to convert the same into a proceeding under Section 7 of IBC, it was found that as the Winding up Petition itself was time-barred from the date of default, the same could not be proceeded further as Application under Section 7."

13. Further, we had discussed in our Judgment in the matter of "A. Balakrishnan" supra paragraphs 19 to 21 as under:

"19. It has already been held by the Hon'ble Supreme Court that when there is default and the Account is classified as NPA the time would start running. When this is so, if filing of the suit or filing of OAs did not extend the time, the question is whether consequential issuing of Recovery Certificate would trigger a fresh cause of action for filing Application under Section 7 of IBC. Clearly this is not so keeping in view above Judgments. The Learned Counsel for the Respondent No. 1 appears to be not properly reading the Judgment in the matter of Vashdeo R Bhojwani Vs. Abhyudaya Co-operative Bank Ltd. & Anr. To complete the narration it would be appropriate to reproduce the Judgment as it is, as the same is not very long. The Judgment in the matter of ***Vashdeo R Bhojwani Vs. Abhyudaya Co-operative Bank Ltd. & Anr.*** *reads as under:*

> *"1. In the facts of the present case, at the relevant time, a default of Rs. 6.7 Crores was found as against the Respondent No. 2. The Respondent No. 2 had been declared a NPA by Abhyudaya Co-operative Bank Limited on 23.12.1999. Ultimately, a Recovery Certificate dated 24.12.2001 was issued for this amount. A Section 7 petition was filed by the Respondent No. 1 on 21.07.2017 before the NCLT*

claiming that this amount together with interest, which kept ticking from 1998, was payable to the respondent as the loan granted to Respondent No. 2 had originally been assigned, and, thanks to a merger with another Cooperative Bank in 2006, the respondent became a Financial Creditor to whom these moneys were owed. A petition under Section 7 was admitted on 05.03.2018 by the NCLT, stating that as the default continued, no period of Limitation would attach and the petition would, therefore, have to be admitted".

2. An appeal filed to the NCLAT resulted in a dismissal on 05.09.2018, stating that since the cause of action in the present case was continuing no Limitation period would attach. It was further held that the Recovery Certificate of 2001 plainly shows that there is a default and that there is no statable defence.

3. Having heard learned Counsel for both parties, we are of the view that this is a case covered by our recent judgment in "B.K. Educational Services Private Limited vs. Parag Gupta and Associates", 2018 (14) Scale 482, para 27 of which reads as follows: -

> *"27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."*

4. In order to get out of the clutches of para 27, it is urged that Section 23 of the Limitation Act would apply as a result of which Limitation would be saved in the present case. This contention is effectively answered by a judgment of three learned Judges of this Court in "Balkrishna Savalram Pujari and Others vs. Shree Dnyaneshwar Maharaj Sansthan& Others", [1959] supp. (2) S.C.R. 476. In this case, this Court held as follows:

> *"… … . In dealing with this argument it is necessary to bear in mind that S. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the*

wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterized as continuing wrongs that S. 23 can be invoked. Thus considered it is difficult to hold that the trustees, act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued…."
(At page 496)

Following this judgment, it is clear that when the Recovery Certificate dated 24.12.2001 was issued, this Certificate injured effectively and completely the appellant's rights as a result of which Limitation would have begun ticking.
5. This being the case, and the claim in the present suit being time barred, there is no debt that is due and payable in law. We allow the appeal and set aside the orders of the NCLT and NCLAT. There will be no order as to costs."

(Emphasis supplied)

20. The Learned Counsel for Financial Creditor appears to us to be trying to misread the last part of the paragraph 4 of the above Judgment to submit that right to sue is triggered when Recovery Certificate is issued and non-payment of debt after issuance of the Recovery Certificate would not be regarded as a continuing wrong to give rise to continuing cause of action. We are unable to read the last part as saying that right to sue is triggered when recovery certificate is issued. It is rather speaking of cessation of right, rather than trigger. Perusal of the Judgment in the matter of Vashdeo R Bhojwani Vs. Abhyudaya Co-operative Bank Ltd. & Anr. shows that in that matter the Respondent No. 2 had been

declared NPA by the Co-operative Bank on 23rd December, 1999. Recovery Certificate dated 24th December, 2001 was issued for such amount. Section 7 Application was filed on 21st July, 2017 claiming that the amount together with the interest which "Kept ticking from 1998" was payable. (Default in that matter appears to have been of 1998). It is these words which have reflected in the final part of the Judgment where it was observed that the Certificate injured effectively and completely the right of Appellant which "would have begun ticking" as a result of the Limitation Act, Rights, as a result of which Limitation "would have begun ticking" were injured effectively and completely when Recovery Certificate was issued. This is what appears to us from reading the Judgment.

21. Earlier in the matter of ***Digamber Bhondwe Vs. JM Financial Asset Reconstruction in Company Appeal (AT) (Ins.) No. 1379 of 2019*** *also the Learned Counsel therein had claimed that the date of NPA was to be ignored and Limitation was to be counted from the date of Recovery Certificate for Section 7 of IBC. We had at that time gone into details and for reasons recorded concluded that we are unable to accept the submissions that date of NPA was to be ignored and Limitation was to be counted from the date of Recovery Certificate. Even now, for reasons recorded by us in the Judgment of Digamber Bhondwe Vs. JM Financial Asset Reconstruction, when we have revisited the Judgment in the matter of Vashdeo R Bhojwani Vs. Abhyudaya Co-operative Bank Ltd. & Anr. we are unable to agree that the Judgment gives a fresh date to trigger Application under Section 7 of IBC."*

14. In this regard, now we have the advantage of Judgment of Hon'ble Supreme Court of India, dated 22.03.2021 in the matter of "*Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr." (Civil Appeal No. 9198 of 2019).* In the said matter, the Account of Corporate

Debtor was declared N.P.A. on 31st March, 2013. On 18th January, 2014, Financial Creditor issued notice to Corporate Debtor under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, in short) claiming the outstanding liability. Corporate Debtor made representation objecting to the notice. The representation was rejected by the Financial Creditor. Financial Creditor issued notice dated 13th December, 2014 to the Corporate Debtor under Section 13 (4) (a) of SARFAESI Act, 2002, calling upon Corporate Debtor to hand over possession of secured immovable assets. On 19th December, 2014, Corporate Debtor filed Writ Petition in the Calcutta High Court. While the Writ Petition was pending Financial Creditor issued notice dated 24th December, 2014, that authorized officer had taken possession of the secured assets. On 11th May, 2017, District Magistrate Hooghli issued order under SARFAESI Act, 2002 for possession by the Financial Creditor of the assets hypothecated. On 24th July, 2017, High Court passed interim orders restraining Financial Creditor from taking further steps under SARFAESI Act, 2002, until further orders. Financial Creditor on 10th July, 2018 filed Application under Section 7 of IBC. Corporate Debtor opposed the Application but ground of limitation was not there. Adjudicating Authority admitted the said application on 25th April, 2019. In Appeal to NCLAT issue of limitation was raised but the Appeal was dismissed. With such set of facts, when the matter was carried to Hon'ble Supreme Court, and ground of limitation was agitated, the issues considered by Hon'ble Supreme Court are as under:

"57. The issues involved in this appeal are:-

(i) Whether delay beyond three years in filing an application under Section 7 of IBC can be condoned, in the absence of an application for condonation of delay made by the applicant under Section 5 of the Limitation Act, 1963?

(ii) Whether Section 14 of the Limitation Act, 1963 applies to applications under Section 7 of the IBC? If so, is the exclusion of time under Section 14 available, only after the proceedings before the wrong forum terminate?

Hon'ble Supreme Court considered the law on the subject and earlier Judgments of Hon'ble Supreme Court and while dismissing the Appeal in Paragraphs 63, 64, 66, 67, 68, 88 and 92 of the Judgment in the matter of "*Sesh Nath Singh & Anr." (Supra)* observed as under:

"63. Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.

64. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay

beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.

…….

66. Similarly under Section 18 of the Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires.

67. As observed above, Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and the NCLAT. The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT. All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible.

68. We see no reason why Section 14 or 18 of the Limitation Act, 1963 should not apply to proceeding under Section 7 or Section 9 of the IBC. Of course, Section 18 of the Limitation Act is not attracted in this case, since the impugned order of the NCLAT does not proceed on the basis of any acknowledgment.

……

88. An Adjudicating Authority under the IBC is not a substitute forum for a collection of debt in the sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time barred. The Adjudicating Authority does not resolve disputes, in the manner of suits, arbitrations and similar proceedings. However, the ultimate object of an application under Section 7 or 9 of the IBC is the realization of a 'debt' by invocation of the Insolvency Resolution Process. In any case, since the cause of action for initiation of an application, whether under Section 7 or under Section 9 of the IBC, is default on the part of the Corporate Debtor, and the provisions of the Limitation Act 1963, as far as may be, have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation.

……

92. In other words, the provisions of the Limitation Act would apply mutatis mutandis to proceedings under the IBC in the NCLT/NCLAT. To quote Shah J. in New India Sugar Mill Limited v. Commissioner of Sales Tax, Bihar, "It is a recognised rule of interpretation of statutes that expression used therein should ordinarily be understood in a sense in which they best harmonise with the object of

the statute, and which effectuate the object of the Legislature"."

Thus, it is clear that Section 18 of the Limitation Act applies.

Balance-Sheets-Acknowledgment?

15. With regard to the Balance-Sheets, the Learned Counsel for the Appellant has relied on Judgment of larger Bench of this Tribunal in the matter of "V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & Anr." (Company Appeal (AT) (Insolvency) No. 57 of 2020).

16. In this regard, we find that there are various Judgements passed by various Hon'ble High Courts including High Court of Delhi and even Hon'ble Supreme Court of India which have dealt with the Balance Sheet/Annual Returns of Companies and entries in books of Account where entries in the same have been treated as "acknowledgement of debt" and even accepted the same for the purpose of Section 18 of the Limitation Act, 1963.

Ref: Judgment of this Tribunal in "Gautam Sinha Vrs. UV Asset"

17. In Judgement in the matter of **"Gautam Sinha Versus UV Asset Reconstruction Company Limited and others"** in Company Appeal (AT) (Ins) No.1382 of 2019 dated 25th February, 2020 passed by this Tribunal we had the occasion to deal with some of the Judgements relating to Balance Sheets/Annual Returns/Entries in books of accounts. we will extract portions of the analysis of those Judgements which we recorded in that Judgement of ours in "Gautam Sinha" (supra). The said portions are as under:-

"7. Before us, the learned Counsel for the Respondent No.1 (Respondent – in short) referred to the Judgements in the matters of ***"Sheetal Fabrics versus Coir Cushions***

Ltd." *reported as 2005 SCC OnLine DEL 247;* ***"The Commissioner of Income Tax-III v. Shri Vardhman Overseas Ltd."*** *reported as 2011 SCC OnLine DEL 5599 and* ***"M/s Mahabir Cold Storage Versus C.I.T., Patna"*** *reported as 1991 Supp (1) Supreme Court Cases 402. The argument is that acknowledgement of debt in the Balance Sheet also amounts to acknowledgement under Section 18 of the Limitation Act.*

*8. The Judgement in the matter of "**The Commissioner of Income Tax"** (supra) was in the context of provisions of the Income Tax Act. In Para – 17 of the Judgement, it was observed:-*

> *"17. In the case before us, as rightly pointed out by the Tribunal, the assessee has not transferred the said amount from the creditors' account to its profit and loss account. The liability was shown in the balance sheet as on 31st March, 2002. The assessee being a limited company, this amounted to acknowledging the debts in favour of the creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgement in writing. It says where before the expiration of the prescribed period for a suit in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall commence from the time when the acknowledgement was so signed. In an early case, in England, in Jones v. Bellgrove Properties, (1949) 2KB 700, it was held that a statement in a balance sheet of a company presented to a creditor- share holder of the company and duly signed by the directors constitutes an acknowledgement of the debt. **In Mahabir Cold Storage v. CIT** (1991) 188 ITR 91, the Supreme Court held:*
>
> *"The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability to Messrs. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963, and extend the period of limitation for the discharge of the liability as debt."*

In several judgments of this Court, this legal position has been accepted."

The Hon'ble High Court then referred to some of the Judgements.

*9. In the Judgement in the matter of "Sheetal Fabrics" (supra), Hon'ble High Court of Delhi referred to Judgement in the matter of "**In re. Padam Tea Company Ltd."** AIR 1974 Calcutta 170 and referred to the said Judgement as under:-*

> *"10. Let me first deal with the case of Padam Tea Co. Ltd. (supra). This case relied upon by learned Counsel for the respondent company in support of his plea that acknowledgement contained in the balance sheet could not be relied upon by the petitioner. However, on going through this judgment, one would clearly notice that it does not lay down the proposition which is sought to be advanced by the learned Counsel. That was a case where balance sheet was not confirmed or passed by the shareholders. The Court observed that such a balance sheet, before it could be relied upon, must be duly passed by the shareholders at the appropriate meeting and must be accompanied by a report, if any, made by the Directors for its validation. The principle of law laid down was that statement in the balance sheet indicating liability is to be read along with the Directors' report to see whether both so read would amount to an acknowledgement. There is no dispute about this proposition of law. However, in that case, the Court refused to accept entry in the balance sheet as acknowledgement of debt because of two reasons:*
>
> *(a) The balance sheet was not passed by the shareholders at the appropriate meeting.*
>
> *(b) The Directors' report, in the balance sheet, contained the following statement:*
>
> *11. Your Directors are of the opinion that the liabilities shown in Schedules 'A' and 'B' of the balance sheet excepting those of United Bank of India, M/s. Goenka and Co. Private Ltd. and Caritt, Moran and Co. Pvt. Ltd. are barred by limitations, hence these liabilities are not confirmed by your Directors.*

12. These were the two considerations which led the Court to conclude that even the debt shown in the balance sheet in respect of the said petitioning creditor would not amount to an acknowledgement as contemplated under Section 18 of the Limitation Act and following observations in this regard are reported:

> *"Therefore, in understanding the balance sheets and in explaining the statements in the balance-sheets, the balance-sheets together with the Directors' report must be taken together to find out the true meaning and purport of the statements. Counsel appearing for petitioning creditor contended that under the statute the balance sheet was a separate document and as such if there was unequivocal acknowledgement on the balance-sheet is a statutory document and perhaps is a separate document but the balance sheet not confirmed or passed by the shareholders at the appropriate meeting and in order to do so it must be accompanied by a report, if any, made by the Directors. Therefore, even though the balance sheet may be a separate document these two documents in the facts and circumstances of the case should be read together and should be construed together.*

13. In the same breath, the High Court also explained as to what would constitute an acknowledgement under Section 18 of the Limitation Act by referring to the judgment of the Supreme Court and this discussion would be found in the following passage:

> *"It was held by the Supreme Court in the case of **L.C. Mills v. Aluminium Corpn. of India Ltd.**, (1971) 1 SCC 67 : AIR 1971 SC 1482, that it was clear that the statement on which the plea of acknowledgement did not create a new right of action but merely extended the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question must, however, relate to a present subsisting liability and indicate the existence of a jural relationship between the parties such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not, however, be in express terms and could be inferred by implication from the*

nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course did not mean that where a statement was made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. In order to find out the intention of the document by which acknowledgement was to be construed the document as a whole must be read and the intention of the parties must be found out from the total effect of the document read as a whole."

10. Then the High Court after referring to the Judgement in the matter of "Padam Tea Company" examined the case, which was before the Hon'ble High Court, and in the facts of that matter, found that the list of Creditors maintained by the Respondent Company before High Court or in the balance sheet, was without any conditions or any strings attached."

[Emphasis supplied]

18. Thereafter, this Tribunal in Judgement in the matter of "Gautam Sinha" discussed facts regarding the Balance Sheet as was relied on in that matter and concluded as under:-

"14. We have already referred to the Judgements in the matters of "Sheetal Fabrics" and "Padam Tea" which show that the Balance Sheet would be required to be read with Directors' Report. In the Directors Report which is before us, there does not appear to be any acknowledgement of debt. The statement recorded by the Auditor with regard to the pending litigation in the facts of the present matter, we find, cannot be read as an acknowledgement by Company under Section 18 of the Limitation Act."

19. In the above reference to our Judgement in the matter of "Gautam Sinha" while referring the Judgement of the Hon'ble High Court of Delhi in the matter of **"The Commissioner of Income Tax-III v. Shri Vardhman**

Overseas Ltd." reported as 2011 SCC OnLine DEL 5599, only part of Para – 17* of that Judgement was reproduced. In Judgement in the matter of **"Commissioner of Income Tax"** (supra), the Hon'ble High Court of Delhi after referring to Judgement of the Hon'ble Supreme Court in "M/s Mahabir Cold Storage Versus C.I.T." (supra) and the legal position in Para – 17, observed that in several Judgements of the High Court, the legal position has been accepted and added:-

> *"In Daya Chand Uttam Prakash Jain vs. Santosh Devi Sharma 67 (1997) DLT 13, S.N. Kapoor J. applied the principle in a case where the primary question was whether a suit under Order 37 CPC could be filed on the basis of an acknowledgement. In Larsen & Tubro Ltd. v. Commercial Electric Works 67 (1997) DLT 387 a Single Judge of this Court observed that it is well settled that a balance sheet of a company, where the defendants had shown a particular amount as due to the plaintiff, would constitute an acknowledgement within the meaning of Section 18 of the Limitation Act. In Rishi Pal Gupta v. S.J. Knitting & Finishing Mills Pvt. Ltd. 73 (1998) DLT 593, the same view was taken. The last two decisions were cited by Geeta Mittal, J. in S.C. Gupta v. Allied Beverages Company Pvt. Ltd. (decided on 30/4/2007) and it was held that the acknowledgement made by a company in its balance sheet has the effect of extending the period of limitation for the purposes of Section 18 of the Limitation Act. In Ambika Mills Ltd. Ahmedabad v. CIT Gujarat (1964) 54 ITR 167, it was further held that a debt shown in a balance sheet of a company amounts to an acknowledgement for the purpose of Section 19 of the Limitation Act and in order to be so, the balance sheet in which such acknowledgement is made need not be addressed to the creditors. In light of these authorities, it must be held that in the present case, the disclosure by the assessee company in its balance sheet as on 31st March, 2002 of the accounts of the sundry creditors amounts to an acknowledgement of the debts in their favour for the purposes of Section 18 of the Limitation Act. The assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law."*

20. Another Bench of this Tribunal has in the matter of **"Mr. Gouri Prasad Goenka Vs. Punjab National Bank and another"** in Company

Appeal (AT) (Insolvency) No. 28 of 2019 reported as MANU/NL/0518/2019 held that letter emanating from Corporate Debtor in that matter, addressed to the Financial Creditor where Corporate Debtor agreed to settle all outstanding dues of the Financial Creditor on "One Time Settlement (OTS) basis" amounted to acknowledgment of outstanding debt in writing.

21. In Judgement in the matter of **"ITC Limited Vs. Blue Coast Hotels Ltd. and Ors."** dated 19th March, 2018 reported as MANU/SC/0263/2018, Hon'ble Supreme Court was dealing with question whether Sub-Section (3A) of Section 13 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI - in short) was mandatory or directory in nature and in the context, dealt with the matter where the Creditor had not replied to debtors' representation and it was claimed that there was breach of Section 13(3A). In that context, Hon'ble Supreme Court dealt with attendant circumstances and the Notices which were issued by the Creditor and the different proposals debtor made including a "Letter of Undertaking" dated 25th November, 2013 and in Para – 35 of that Judgement observed:-

> ***Letter of Undertaking "Without Prejudice"***
>
> *35. Much was sought to be made of the words "without prejudice" in the letter containing the undertaking that if the debt was not paid, the creditor could take over the secured assets. The submission on behalf of the debtor that the letter of undertaking was given in the course of negotiations and cannot be held to be an evidence of the acknowledgement of liability of the debtor, apart from being untenable in law, reiterates the attempt to evade liability and must be rejected. The submission that the letter was written without prejudice to the legal rights and remedies available under any law and therefore the acknowledgement or the undertaking has no legal effect must likewise be rejected. This letter is reminiscent of a letter that fell for consideration in Spencer's case as pointed out by Mr. Harish Salve, "as a Rule the debtor who writes such letters has no intention to bind*

himself further than is bound already, no intention of paying so long as he can avoid payment, and nothing before his mind but a desire, somehow or other, to gain time and avert pressure."

It was argued in a subsequent case that an acknowledgment made "without prejudice" in the case of negotiations cannot be used as evidence of anything expressly or impliedly admitted. The House of Lords observed as follows:

> *"But when a statement is used as acknowledgement for the purpose of Section 29 (5), it is not being used as evidence of anything. The statement is not an evidence of an acknowledgement. It is the acknowledgement."*

Therefore, the without prejudice Rule could have no application.

It said:

> *Here, the respondent, Mr. Rashid was not offering any concession. On the contrary, he was seeking one in respect of an undisputed debt. Neither an offer of payment nor actual payment.*

We, thus, find that the mere introduction of the words "without prejudice" have no significance and the debtor clearly acknowledged the debt even after action was initiated under the Act and even after payment of a smaller sum, the debtor has consistently refused to pay up."

[Emphasis supplied]

22. Carefully going through "ITC Ltd." Judgement, we are aware that the context there was not Limitation Act but the substance emanating is that even "Letter of Undertaking" issued "without prejudice" clause could contain an "acknowledgement of debt".

23. Going through the Judgements of Hon'ble High Courts of Delhi and other High courts, what appears to us is that it is well settled position of law that Annual Returns/Audited Balance Sheets can be referred to and relied on to see if contents therein amount to acknowledgement or not. The above discussion of the Judgements shows that even after referring to the Annual Reports/ Balance Sheets, there are instances where the contents are not

relied on to conclude that there is acknowledgement of debt. This is clear from Para – 11 of the Judgement in the matter of "In re. Padam Tea Company Ltd." (referred supra). There the Directors recorded their opinion with regard to the liabilities shown to say that the same are barred by limitations and hence, the liabilities are not being confirmed by the Directors. Thus contents recorded in Balance Sheet/Financial Statements are to be looked into on case to case basis.

24. Apart from Judgements of the High Courts, as referred, Judgement in the matter of "Mahabir Cold Storage" (supra) recorded that entries in the books of accounts would amount to an acknowledgement of the liability within the meaning of Section 18 of the Limitation Act, 1963. If books of accounts can be considered, we find it difficult to hold that the audited Balance Sheet prepared on the basis of books of accounts, need to be ignored. Apart from the above, in Judgement in the matter of **"Kashinath Sankarappa Wani Vs. New Akot Cotton Ginning &; Pressing Co., Ltd."** reported as MANU/SC/0007/1958, while dealing with Resolution of Board of Directors and while considering Balance Sheet with regard to question of limitation, Hon'ble Supreme Court examined the Resolution and also the Balance Sheet and in the context of the facts of that matter came to a conclusion that the Resolution or the Balance Sheet did not help the Appellant. It is not that it was held that for the purpose of limitation, Balance Sheet cannot be considered at all.

25. In the matter of **"A.V. Murthy Versus B.S. Nagabasavanna"** reported as (2002) 2 SCC 642, while dealing with a complaint under Section 138 of the Negotiable Instruments Act, 1881 when dispute came up whether the cheque drawn was in respect of a debt or liability not legally enforceable,

and the Additional Sessions Judge had held that there was error in taking cognizance of the offence, Hon'ble Supreme Court observed in Para – 5 as under:-

> *"Moreover, in the instant case, the appellant has submitted before us that the respondent, in his balance sheet prepared for every year subsequent to the loan advanced by the appellant, had shown the amount as deposits from friends. A copy of the balance sheet as on 31-3-1997 is also produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the Magistrate by way of defence of the respondent."*
>
> *[Emphasis supplied]*

26. Judgement in the matter of "A.V. Murthy" (supra) was relied on by the Hon'ble Supreme Court in the matter of **"S. Natarajan Vs. Sama Dharman"** reported as MANU/SC/0698/2014. Thus, what appears to us is that even the Hon'ble Supreme Court has observed that if the amount borrowed by the party is shown in the Balance Sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made.

27. Thus, we find it is settled law appearing from the Judgements of the High Court of Delhi and other High Courts that Balance Sheets can be looked into to see if there is acknowledgement of debt. Perusing Judgements of Hon'ble Supreme Court we find that even Hon'ble Supreme Court has looked into Balance Sheets and Books of Account to see if there is Acknowledgement of Liability. If the amount borrowed is shown in the Balance Sheet, it may amount to Acknowledgement. We find that the

Judgements of Hon'ble Supreme Court of India are binding and Balance Sheets cannot be outright ignored.

28. For the above reasons, we are of the opinion that Annual Returns/Audited Balance Sheets, one-time settlement proposals, proposals to restructure loans, by whatever names called, cannot be simply ignored as debarred from consideration and in every given matter, it would be a question of applying the facts to the law and vice versa, to see whether or not the specific contents, spell out an acknowledgement under the Limitation Act.

29. As mentioned there are Judgments especially of the Hon'ble Supreme Court which show that entries in the Balance-sheet may amount to acknowledgment. We are bound by the observations of the Hon'ble Supreme Court.

30. Apart from the above, reference needs to be made to Section 29 of the Limitation Act which reads as under:

> *"29 Savings (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).*
>
> *(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.*

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

It is clear that Insolvency and Bankruptcy Code is a special law. Section 238 A of IBC states that the provisions of the Limitation Act shall, as far as may apply to the proceedings or Appeals before the Adjudicating Authority and this Tribunal as the case may be. Article 137 of the Limitation Act applies to the applications filed under Section 7 and 9 of IBC has already been held by the Hon'ble Supreme Court. IBC has not excluded Application of Section 4 to 24 while determining Period of Limitation and Section 29 (2) appears to be applicable. This being so, Section 18 and 19 of Limitation Act must be said to be applicable.

31. When Section 18 and 19 of the Limitation Act appear to be applicable, now it is necessary for us to see if Section 18 of Limitation Act in the present matter is helpful in the context of set of present facts. The present reference shows that State Bank of India filed Application under Section 7 (Annexure A-3- Page 59) and in Part 4 page 71 referred to debt disbursed right up to 28 September, 2012. In Part 4 Column 2 "date of default" has been calculated from 01st January, 2014 the Corporate Debtor in C.A. No. 1161 of 2019 (Annexure A-8) Page 126 referred to the Rejoinder where State Bank of India accepted that account of the Corporate Debtor was declared NPA on 30.09.2012 having been backdated from 31st December, 2013. We have

already referred to Paragraph 11 from the Rejoinder (Annexure A7) where the State Bank of India under its procedures, on receipt of audit report was required to declare Corporate Debtor as NPA from backdate of 30.09.2012 instead of 31.12.2013.

32. We are not entering into the procedure required to be followed by the Bank with regard to the backdate of date of NPA when effort of restructure fails. We will give benefit to the Corporate Debtor by taking up the oldest date of NPA which is stated to be 30.09.2012 and treat is as date which will not shift.

33. Even if this date of 30.09.2012 as NPA is taken as the foundational date, on record there are balance-sheets for financial year ending 31st March, 2015 to 31st March, 2016. The State Bank of India had filed these copies along with its Reply (Annexure A-9 Page 132) as Annexure 4 and 5 of the said Reply. At page 160 of the Appeal, there is a balance-sheet for year ending 31st March, 2015 which document had been signed by the Director of the Corporate Debtor on 30.05.2015 (See Page 160). The entries at Page 167, 171 and 172 and the 167 read with 171 and 172 with regard to the long term borrowings and short term borrowing show amounts outstanding of the State Bank of India admitted in the balance-sheet. The short term borrowing has an endorsement with regard to the amount adding that it was secured by way of first charge of current assets of the Company.

34. There is similar document of balance-sheet at Page 181 (which was filed as Annexure R-5 of the Reply Annexure A9 before the Adjudicating Authority). In this document also, there are similar entries for the year ending 31st March, 2016. Learned Counsel for the Appellant referred to

auditor's report filed at Annexure A-10 (Page 202) and the observation of the Auditor at Page 204 which reads as under:

> *"c) Since all the accounts of the company have been declared sub-standard over a period of time.*
>
> *Pursuant to receipt of notice dated 12.01.2016 under section 13(4) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). The banks have started recovery action under SARFAESI Act. In the absence of any information on interest on outstanding dues to the bank, the provision of interest has been made on the basis of assumptions which are not certain. Hence balances with banks are subject to confirmation."*

35. Referring to such endorsement, the Appellant is arguing that even if the balance-sheet is to be looked into, the Corporate Debtor had admitted the amounts with qualification that the amounts are yet to be confirmed by the Corporate Debtor. We have already seen the provision of Section 18 reproduced (Supra). We do not accept such submission that the debt was not acknowledged. What the above endorsement recorded is that as Banks have started recovery action the provision of interest has been made on the basis of assumptions which are not certain and that the balances were subject to confirmation. This does not mean that amounts were due, was not acknowledged.

36. Thus, if the NPA is counted even from 30.09.2012, the balance-sheets which were before the Adjudicating Authority for year ending 2015 to 2016 show acknowledgment of debt and the Application under Section 7 filed on 3rd October, 2018 cannot be said to be time-barred. The balance-

sheet for financial year ending 2015 was signed at 30.05.2015 and balance-sheet for financial year ending 31st March, 2016 was signed on 30.05.2016. Thus the Application under Section 7 was within limitation. The Learned Counsel for the State Bank of India has also relied on the One Time Settlement offer given by the Corporate Debtor vide letter dated 20th January, 2017 (Annexure 3 which was filed with the Reply, Present Annexure A-9). The Learned Counsel for the Appellant has argued that this letter only stated that the Corporate Debtor was trying to find investors. However, the letter also contains a sentence that the Bank should consider the OTS "So that we can finalise the deal with potential investors for repayment of dues of all the lending banks under OTS". This document read with the rejection letter at Page 159 shows that the Bank in the context of this letter stated that OTS of 23 Crores was very low considering the principle plus interest outstanding. Thus, OTS was declined. Even keeping this document in mind, if one was to keep in view the balance-sheet for year ending 31st March, 2015 and consider this OTS proposal and perused the date of filing of Application under Section 7 of IBC, still the claim must be held within limitation.

37. We find that the Adjudicating Authority rightly relied on Judgment of the Hon'ble Supreme Court to consider the balance-sheets which were pointed out.

38. The main thrust of the argument of Learned Counsel for the Appellant has been that in the matter of "Swiss Ribbons" Hon'ble Supreme Court has referred to the shift in the legislative policy and thus see date of default, simply calculate three years and hold the Application as time-

barred unless there is Application under Section 5 of Limitation Act. The paragraph concerned from Judgment in the matter of "Swiss Ribbons" which is relied on may be reproduced as a whole. In Paragraph 37 of the said Judgment Hon'ble Supreme Court observed as under:

> "37. The trigger for a financial creditor's application is non-payment of dues when they arise under loan agreements. It is for this reason that Section 433 (e) of the Companies Act, 1956 has been repealed by the Code and a change in approach has been brought about. Legislative policy now is to move away from the concept of "inability to pay debts" to "determination of default". The said shift enables the financial creditor to prove, based upon solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed in such obligation. Four policy reasons have been stated by the learned Solicitor General for this shift in legislative policy. First is predictability and certainty. Secondly, the paramount interest to be safeguarded is that of the corporate debtor and admission into the insolvency resolution process does not prejudice such interest but, in fact, protects it. Thirdly, in a situation of financial stress, the cause of default is not relevant; protecting the economic interest of the corporate debtor is more relevant. Fourthly, the trigger that would lead to liquidation can only be upon failure of the resolution process."

39. It is clear that the legislative policy moved from the concept of "inability to pay debts" to "determination of default" and one of the policy reasons for this was that "cause of default" is not relevant. We are unable to appreciate the submission made by the Learned Counsel for the Appellant that because of shift in legislative policy from "inability to pay debts" to "determination of default", it makes any difference to the

applicability or inapplicability of provisions of Limitation Act, as far as may be.

For the above reasons, we do not find any substance in the Appeal. The Appeal is dismissed. No order as to costs.

40. (The use of Plural "We" in the above Judgment may be read as Singular – "I" for me where required, and sentences framed accordingly, as my Learned Colleague Dr. Ashok Kumar Mishra, Member Technical is adding reasons separately with outcome of Appeal remaining the same.)

[Justice A.I.S. Cheema]
Member (Judicial)

Dr. Ashok Kumar Mishra, Member (T):

1. I have to further add the followings:

i. The Appellant never denied the commercial credit information report (CIBIL) dated 18.08.2018 and the CIBIL report as filed by the Respondent alongwith its reply and is appearing at page No.107, 110 to 113 which also reflects the default and outstanding amount. The defaults for the different sanctioned amounts are varying which is as old as September, 2013 and as recent as December, 2018. The loans are carrying different sanction date and different loan expiry month / date. Outstanding amounts are varying from few lakhs to few crores as per report Order No.W-22011503 dated 18.08.2018 available at the above pages. In Form

-1 filed by the Financial Creditor / Bank before the Adjudicating Authority at part -V Serial No.6 Financial Creditor/ Bank has mentioned about the CIBIL report of the corporate Debtor dated 18.08.2018 and at Serial No.7 they have provided copies of entries in bankers book in accordance with the Bankers Book Evidence Act, 1891.

ii. On going through the Application filed by the Financial Creditor/ Bank before the Adjudicating Authority in Form 1 of part -IV, Serial No.1 reflects multiple types of loans with multiple date of disbursement and at Serial No.2 the amount of default reflected is Rs. 132 Crore plus with date of default commencing from 01.01.2014. For One time Settlement ('OTS') the Corporate Debtor has requested the Bank vide its letter dated 20.01.2017 which also includes their earlier letters dated 12.04.2016 and 06.08.2016 regarding settlement / resolution of the account of the Company *(This is available at Page 61 of the Respondent reply / Annexure R-1 Colly vide NCLAT Diary No. 22364 dated 28.09.2020).*

2. Both the above issues supplement the coverage under Section 18 of the Limitation Act, 1963 particularly in view of the explanation (a) attached to the Section 18 of the Limitation Act, 1963.

3. However, Balance Sheet cannot be treated as acknowledgment of debt as held by this Tribunal in a larger Bench by a majority judgment in the case of *V Padmakumar Vs. Stressed Assets Stabilization Fund (SASF) & Anr., Company Appeal (AT)(Ins) No. 57 of 2020* and the same was fortified by the judgment dated 22.12.2019 passed by a five members bench of this Tribunal in reference in the matter of *Bishal*

Jaiswal Vs. ARC (India) Ltd & Anr. Company Appeal (AT) (Ins) No. 385 of 2020.

4. Hon'ble Supreme Court in Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd and Anr. in Civil Appeal No. 9198 of 2019 delivered on 22.03.2021 has observed as follows:

> *"Para 67 – As observed above, Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and NCLAT. The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT. All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible."*

5. Hon'ble Supreme Court in Laxmi Pat Surana Vs. Union Bank of India & Anr. In Civil Appeal No. 2734 of 2020 delivered on 26.03.2021 has observed as follows:

> *"Para 36. Notably, the provisions of Limitation Act have been made applicable to the proceedings under the Code, as far as may be applicable. For, Section 238A predicates that the provisions of Limitation Act shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the NCLAT, the DRT or the Debt Recovery Appellate Tribunal, as the case may be. After enactment of Section 238A of the Code on 06.06.2018, validity whereof has been upheld by this Court, it is not open to contend that the limitation for filing application under Section 7 of the Code would be limited to Article 137 of the Limitation Act and extension of prescribed period in certain cases could be only under Section 5 of the Limitation Act. There is no reason to exclude the effect of Section 18 of the Limitation Act to the proceedings initiated under the Code.*

6. In view of the above Hon'ble Apex Court Judgments, being law of land under Article 141 of the Constitution of India, Section 18 of the

Limitation Act, 1963 read with Article 137 of the Limitation Act, 1963 is *ab initio* applicable to Section 7 of the Insolvency and Bankruptcy Code, 2016.

7. Based on above observation and detailed analysis made by Mr. Justice A.I.S. Cheema, it is proved beyond doubt that 'Debt', 'Due', 'Default' and within 'Limitation' all are existing in this case. Hence, I agree with the observation made in para 39 and finally with his observation that there is no substance in the appeal and the appeal is dismissed.

(Dr. Ashok Kumar Mishra)
(Member) Technical

New Delhi
Basant B.