

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1928 of 2024
& I.A. No.7115 of 2024**

In the matter of:

Super Floorings Pvt. Ltd.

...Appellant

Vs.

Napin Impex Ltd.

...Respondent

For Appellant: Mr. Anil Kaushik, Sr. Advocate with Mr. Uttam Datta, Ms. Sonakshi Singh, Mr. Kumar Bhaskar, Mr. Vishal Bansal, Advocates.

For Respondent: Mr. Avneesh Arputham, Mr. Ankit Sharma, Advocates.

J U D G M E N T
(3rd January, 2025)

Ashok Bhushan, J.

This Appeal by a Corporate Debtor has been filed challenging the order dated 05.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench (Court-I), Chandigarh in CP (IB) No.23/Chd/Hry/2024. By the impugned order, the Adjudicating Authority has rejected the preliminary objections raised by the Corporate Debtor that application under Section 9 filed by the Operational Creditor is barred by time. The Corporate Debtor aggrieved by the order has come up in this Appeal.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Operational Creditor is a manufacturer and exporter of all types of PVC vinyl floorings, multipurpose sheets and other insulation products for automotive and other industries. Various items were supplied by the Operational Creditor- Napin Inpex Limited (Respondent herein) to the Corporate Debtor during the period from 03.01.2018 to 16.08.2018. The payments were made by the Corporate Debtor on different dates. Last payment of Rs.3 Lakhs was made on 26.08.2019 by bank transfer. The notice under Section 8 dated 16.09.2022 was given by the Operational Creditor to the Corporate Debtor claiming an amount of Rs.2,14,16,735/-. Reply to demand notice was issued by the Corporate Debtor on 28.09.2022. Section 9 application was filed on 29.11.2023. When the application came for consideration, Corporate Debtor raised preliminary objection on the point of limitation. The Adjudicating Authority heard both the parties and directed parties to file notes on point of limitation. Both the parties filed their notes on point of limitation and Adjudicating Authority after hearing both the parties, by impugned order held that petition under Section 9 is within the limitation and the preliminary objection was rejected. Aggrieved by the said order, this Appeal has been filed.

3. We have heard Shri Anil Kaushik, Learned Senior Counsel for the Appellant and Shri Avneesh Arputham, Learned Counsel for the Respondent.

4. Learned Senior Counsel for the Appellant challenging the impugned order submits that the Adjudicating Authority committed error in holding that Section 9 application is not barred by limitation. It is submitted that the claim of the Operational Creditor was based on invoices from January 2018 to August 2018 which invoices were to be paid within 3 days. It is submitted that the Operational Creditor has pleaded that the last payment extend the period of limitation which payment was made on 26.08.2019 whereas there being no running account between the parties the last payment cannot extend the limitation within the meaning of Section 19 of the Limitation Act. It is submitted that Section 19 of the Limitation Act requires two conditions to be fulfilled namely that payment was made within the prescribed period of limitation and it must be acknowledged by some form of writing. The last payment made cannot be held to be in accordance with Section 19 of the Limitation Act permitting extension of limitation. It is submitted that the claim based on invoices is covered by Article 137 of the Limitation Act and the last date of payment is not relevant and cannot be relied by the Adjudicating Authority for giving benefit of Section 19 of the Limitation Act. Counsel for the Appellant in support of his submissions placed reliance on judgment of the Hon'ble Supreme Court in ***“Shanti Conductors Private Limited vs. Assam State Electricity Board and Ors.- (2019) 19 SCC 529”*** and four judgments of this Tribunal.

5. Learned Counsel for the Respondent refuting the submissions of the Appellant submits that the period of limitation would begun to run from the date of default which would be 26.08.2019 when the last payment was

made by the Corporate Debtor to the Operational Creditor. It is submitted that it is an admitted fact that the last payment was made by the Corporate Debtor on 26.08.2019 by bank transfer. The last payment was well within the period of limitation and there is acknowledgment by the Corporate Debtor which is reflected in the reply dated 28.09.2022 to the demand notice. It is submitted that both the conditions under Section 19 of the Limitation Act are fulfilled in the present case. The payment by bank transfer is also made on instructions by the Corporate Debtor, hence, the bank transfer which is on the instructions of the Corporate Debtor is also an acknowledgment within the meaning of Section 19 and any view of the matter acknowledgment in writing by the Corporate Debtor is reflected in the reply to the demand notice and it is well settled that acknowledgment which was subsequently made can also be relied for purposes of Section 19 of the Limitation Act. Section 9 application was filed on 29.11.2023 and giving the benefit of *suo motu* order of the Hon'ble Supreme Court in *Suo Moto Writ Petition (C) No.3 of 2020*, the period of limitation for filing Section 9 would have expired on 13.08.2024 and the application filed within the said time is valid.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. It is an admitted fact between the parties that invoices were raised from January, 2018 to August 2018. The copy of ledger has also been brought on the record which indicates that payments were made by the

Corporate Debtor from time to time. As per ledger, last payment was received by the Operational Creditor on 26.08.2019 through bank receipt. The only question which needs consideration is as to whether the Operational Creditor was entitled for the benefit of Section 19 of the Limitation Act to enable it to seek extension of time from 26.08.2019 i.e. the last date of receipt of the payment. The Adjudicating Authority has treated the date of default as 26.08.2019 which is a date of the last payment receipt. In paragraph 9(ii), following has been observed by the Adjudicating Authority:-

“ii. The second issue is whether the petition filed is within the period of limitation of three years.

The Ld. Counsel for the Respondent has raised a preliminary objection that under Article 137 of the Limitation Act of 1963, the petition is time-barred as the invoices were raised between the time period 03.01.2018 to 16.08.2018 by the Operational Creditor and the petition was filed on 04.01.2024. Thus, the period of limitation for filing the petition based on the last invoice dated 16.08.2018 expired in July 2023.

The period of limitation would commence when the default occurred. The Hon'ble NCLAT in the matter of In Style Fashion vs. Aditya Birla Fashion and Retail Limited, Company Appeal (AT) (Insolvency) No. 1679 of 2023, held that,

“12. In view of the last payment having been made on 28.04.2017 as noted above the fresh period

of imitation would start from that date and the Operational Creditor was entitled for taking benefit of 3 years' period of limitation from the date of the last payment....”

Thus, the period of limitation would begin to run from the date of default, which would be 26.08.2019 when the last payment was made by the Corporate Debtor to the Operational Creditor.

In view of the Hon'ble Supreme Court's verdict in M.A. No. 21 of 2022 in MA No. 665 of 2021 in Suo Moto Writ petition (C) No. 3 of 2020 titled as "In Re: Cognizance for Extension of Limitation" wherein the Hon'ble Supreme Court settled the law of limitation for all types of proceedings explicitly excluded the period from 15.03.2020 to 28.02.2022 for the purposes of calculation of any limitation period, for all cases irrespective of the type of case. In respect of the present matter, the petition could have been filed within a period of 1095 days beginning from the date of default i.e. 26.08.2019; out of which a total no. of 202 days has expired from 26.08.2019 till 15.03.2020. From 01.03.2022, the petitioner would get the remaining balance of 893 days, and the new date of expiration of the limitation would be 10.08.2024, which is calculated as below:

Date of default	26.08.2019
Extent of limitation expired till 15.03.2020	202 days
Exclusion period	15.03.2020-28.02.2022
Balance limitation as available on	893 days

01.03.2022	
893 days w.e.f. 01.03.2022	10.08.2024

8. The submission which has been pressed by Shri Kaushik is that the condition for extension of limitation as statutory prescribed under Section 19 of the Limitation Act are not attracted in the present case. Section 19 of the Limitation Act provides as follows:-

“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 the 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 handwriting 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.”

9. Counsel for the Appellant has relied on the judgment of the Hon’ble Supreme Court in **“Shanti Conductors Private Limited”** (*supra*). Shanti Conductors was a case where the Hon’ble Supreme Court had occasion to examine Section 19 of the Limitation Act. Considering Section 19 of the

Limitation Act, following was observed by the Hon'ble Supreme Court in Paragraphs 15 and 16:-

“15. Order 7 Rule 6 uses the words “the plaintiff shall show the ground upon which exemption from such law is claimed”. The exemption provided under Sections 4 to 20 of the Limitation Act, 1963 are based on certain facts and events. Section 19, with which we are concerned, provides for a fresh period of limitation, which is founded on certain facts i.e. (i) whether payment on account of debt or of interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, (ii) an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

16. We may notice the judgment of this Court dealing with Section 20 of the Limitation Act, 1908, which was akin to present Section 19 of the Limitation Act, 1963. In Sant Lal Mahton v. Kamla Prasad [Sant Lal Mahton v. Kamla Prasad, 1951 SCC 1008 : AIR 1951 SC 477] , this Court held that for applicability of Section 20 of the Limitation Act, 1908, two conditions were essential that the payment must be made within the prescribed period of limitation and it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. This Court further held that for claiming benefit of exemption under Section 20, there has to be pleading and proof. In paras 9

and 10, the following has been laid down : (AIR p. 479)

“9. It would be clear, we think, from the language of Section 20, Limitation Act, that to attract its operations two conditions are essential : first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. We agree with the Subordinate Judge that it is the payment which really extends the period of limitation under Section 20, Limitation Act; but the payment has got to be proved in a particular way and for reason of policy the legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail. The Subordinate Judge, however, is right in holding that while the section requires that the payment should be made within the period of limitation, it does not require that the acknowledgment should also be made within that period. To interpret the proviso in that way would be to import into it certain words which do not occur there. This is the view taken by almost all the High Courts in India and to us it seems to be a proper view to take. (See Mohd. Moizuddin Mia v. Nalini Bala Devi [Mohd. Moizuddin Mia v. Nalini Bala Devi, 1937 SCC OnLine Cal 20 : AIR 1937 Cal 284 : ILR (1937) 2 Cal 137] ; Lal Singh v. Gulab Rai [Lal Singh v. Gulab Rai, 1932 SCC OnLine All 265 : ILR (1933) 55 All 280] , Venkata Subbhu v. Appu

Sundaram [Venkata Subbhu v. Appu Sundaram, ILR (1894) 17 Mad 92] , Ram Prasad Babu v. Mohan Lal Babu [Ram Prasad Babu v. Mohan Lal Babu, 1922 SCC OnLine MP 10 : AIR 1923 Nag 117] and Vishwanath Raghunath Kale v. Mahadeo Rajaram Saraf [Vishwanath Raghunath Kale v. Mahadeo Rajaram Saraf, 1933 SCC OnLine Bom 3 : ILR (1933) 57 Bom 453] .)

10. ... If the plaintiff's right of action is apparently barred under the statute of limitation, Order 7 Rule 6, Civil Procedure Code makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act, upon which he relies to exclude its operation; and if the plaintiff has got to allege in his plaint the facts which entitle him to exemption, obviously these facts must be in existence at or before the time when the plaint is filed; facts which come into existence after the filing of the plaint cannot be called in aid to revive a right of action which was dead at the date of the suit. To claim exemption under Section 20, Limitation Act the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part-payment of the principal, but that such payment had been acknowledged in writing in the manner contemplated by that section."

10. There can be no two opinions to the law declared by the Hon'ble Supreme Court in the above judgment. Two conditions need to be fulfilled for extending the benefit of Section 19 of the limitation which are:

- (i) Whether payment on account of debt or of interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy;
- (ii) an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

11. In the present case, there is no dispute regarding fulfilment of condition (i) as noted above. Invoices were from January 2018 to August 2018 and last payment was made on 26.08.2019 i.e. well within period of 3 years from date when payment under invoices fell due. The bone of contentions between the parties is regarding fulfilment of condition (ii) i.e. whether there is an acknowledgment of the payment appears in the handwriting of, or in writing signed by, the person making the payment.

12. We look into the ledger which is part of the demand notice dated 16.09.2022 with regard to payment dated 26.08.2019 particulars mentioned are “bank receipt”. The demand notice was replied by the Corporate Debtor vide reply dated 28.09.2022. In paragraph 3 of the reply, the factum of last payment on 26.08.2019 is admitted fact. In paragraph 3, following has been stated:-

“3. In any event, last transaction involving supply of goods had taken place on 16.08.2018, while the last payment towards price of goods was made on 26.08.2019”

13. We also need to notice judgments of this Tribunal which have been relied by the Appellant. Appellant has placed reliance on the judgment of this Tribunal on **“S.M. Ghogbhai vs. Schedulers Logistics India Pvt. Ltd.- 2022 SCC OnLine NCLAT 216”**. In the above case, the question of limitation for filing Section 9 application came for consideration. The Operational Creditor in the above case has claimed that both the parties were maintaining a running account, hence, the limitation shall be governed by Article 1 of the Limitation Act, 1963. The question which came for consideration has been noticed in paragraph 12 of the judgment which is as follows:-

“12. The question to be considered in the present case is as to whether Appellant can take benefit of Article 1 of the Limitation Act, 1963. Hon'ble Supreme Court in the matter of 'B.K. Educational Services Pvt. Ltd. v. Parag Gupta' (2019) 11 SCC 633 after considering the provisions of IBC and the Limitation Act had laid down that for filing application under Section 7 and 9, it is Article 137 which is attracted. In Paragraph 42 of the Judgment, following has been laid down:

“42. 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.”

14. This Tribunal ultimately in paragraphs 15 and 16 held that Section 9 application is not to be governed by Article 1 of the Limitation Act rather limitation shall be computed as per Article 137. In paragraphs 15 and 16, following was held:-

“15. In the present case, the Appellant has placed reliance on Article 1 of the Limitation Act which we have extracted above. A similar provision akin to Article 1 of the Limitation Act came for consideration before the Hon'ble Supreme Court in Hindustan Forest Company case. Article 1 is in Part-I of the Schedule of the Limitation Act dealing with suits, under the “suit relating to accounts”. The Application filed under Section 9 by the Appellant cannot be said to be a suit relating to accounts.

16. We have noticed the contents of the Application under Section 9 which have been brought on record. The Ledger of Operational Creditor has been brought on record including the Bank Statement which clearly mentions that last payment received by the Appellant was on 26th September, 2016. From the last payment, the Application could have been filed within three years. Application under Section 9 filed by the Appellant was on the basis of 174 invoices as has been noticed by the Adjudicating Authority in the Impugned Order. We are satisfied that for the limitation for filing Section 9 application it is Article

137 of the Limitation Act, 1963 which is attracted. Under Article 137, time from which period begins to run is “when the right to apply accrues” the right to apply accrues when invoices issued by the Appellant to the Corporate Debtor were not paid. Invoices on the basis of which payment is claimed are more than three years earlier from the date of filing of Section 9 Application which is the basis for rejection of the Application of the Appellant by the Adjudicating Authority. We are not persuaded with the submissions of Learned Counsel for the Appellant that present is the case where Article 1 is applicable and limitation should be counted from 31st March, 2017. Limitation as per Article 137 will begin to run from the date when the right to apply accrues and the Application filed on the basis of 174 invoices and all invoices being prior to much before three years period from filing of Section 9 Application, the Adjudicating Authority has rightly rejected the Application. We do not find any merit in the Appeal, the Appeal is dismissed.”

15. It is further relevant to notice that in the above judgment of this Tribunal in paragraph 16 has held:-

“.....From the last payment, the Application could have been filed within three years.”

16. Thus, the above observations do support the application to have been filed within three years from the last payment.

17. In the present case, the question as to whether Article 1 or Article 137 of the Limitation Act shall govern Section 9 application has been answered by the Adjudicating Authority in paragraph 9(i) holding that Section 9 application shall be governed by Article 137 hence, the above judgment of this Tribunal does not help the Appellant in the present case.

18. The next judgment relied by the Appellant is judgment of this Tribunal in **“Ramdas Dutta vs. IDBI Bank Ltd. & Anr- 2023 SCC OnLine NCLAT 1306”**. In the above case, this Tribunal noted the fact that the application under Section 7 was filed on 18.10.2019 whereas the date of default was 31.08.2013 and period of three years expired on 31.08.2016. The case of the Operational Creditor was based on date of default as 31.03.2013 and payment of Rs.2.75 lakhs on 29.03.2017. The argument was raised on the basis of payment of Rs.2.75 lakhs on 29.03.2017.

19. This Tribunal in **“Ramdas Dutta”** (supra) has held that no advantage can be given to the bank entry dated 29.03.2017. It is useful to notice paragraphs 20, 21 and 22 of the judgment which is as follows:-

“20. In so far as, the issue regarding the payment of Rs. 2.75 lakhs on March 29, 2017 by the appellant in their account is concerned, it has now been well-settled by the three-Judge Bench of the hon'ble Supreme Court in the case of Shanti Conductors P. Ltd. v. Assam State Electricity Board [(2020) 2 SCC 677.] , that section 19 would come into play if the payment is acknowledged in the handwriting of, or in

a writing signed by the person making the payment. In this regard, paragraphs 15 and 16 of the judgment is reproduced as under (see page 684 of [2020] 2 SCC):

“15. Order 7, rule 6 uses the words ‘the plaintiff shall show the ground upon which exemption from such law is claimed’. The exemption provided under sections 4 to 20 of the Limitation Act, 1963 are based on certain facts and events. Section 19, with which we are concerned, provide for a fresh period of limitation, which is founded on certain facts, i.e., (i) whether payment on account of debt or of interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, (ii) an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

16. We may notice the judgment of this court dealing with section 20 of the Limitation Act, 1908, which was akin to present section 19 of the Limitation Act, 1963. In Sant Lal Mahton v. Kamla Prasad [1951 SCC 1008 : AIR 1951 SC 477.] , this court held that for applicability of section 20 of the Limitation Act, 1908, two conditions were essential that the payment must be made within the prescribed period of limitation and it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. This court further held that for claiming benefit of exemption under section 20, there has to be pleading and proof. In paragraphs 9 and 10, following has been laid down:

'9. It would be clear, we think, from the language of section 20 of the Limitation Act, that to attract its operation two conditions are essential : first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. We agree with the subordinate judge that it is the payment which really extends the period of limitation under section 20 of the Limitation Act; but the payment has got to be proved in a particular way and for reason of policy the Legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail. The subordinate judge, however, is right in holding that while the section requires that the payment should be made within the period of limitation, it does not require that the acknowledgment should also be made within that period. To interpret the proviso in that way would be to import into it certain words which do not occur there. This is the view taken by almost all the High Courts in India and to us it seems to be a proper view to take (See Muhammad Moizuddin Mia v. Nalini Bala Devi [AIR 1937 Cal 284; ILR (1937) 2 Cal 137.] , Lal Singh v. Gulab Rai [ILR (1933) 55 All 280.] , Venkata Subbhu v. Appu Sundaram [ILR (1894) 17 Mad 92.] Ram Prasad Babu v. Mohan Lal Babu [AIR 1923 Nag 117.] and Vishwanath Raghunath Kale v. Mahadeo Rajaram Saraf [ILR (1933) 57 Bom 453.]).

10.... If the plaintiff's right of action is apparently barred under the statute of limitation, Order 7, rule 6 of the Civil Procedure Code makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act, upon which he relies to exclude its operation; and if the plaintiff has got to allege in his plaint the facts which entitle him to exemption, obviously these facts must be in existence at or before the time when the plaint is filed; facts which come into existence after the filing of the plaint cannot be called in aid to revive a right of action which was dead at the date of the suit. To claim exemption under section 20 of the Limitation Act, the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part payment of the principal, but that such payment had been acknowledged in writing in the manner contemplated by that section....”

21. *Therefore, no advantage can be given to the bank of the entry dated March 29, 2017.*

22. *As regards the one-time settlement, it has come on record that the one-time settlement has occurred much after the expiry of period of limitation, therefore, it cannot be taken into consideration for the purpose of section 18 to extend the period of limitation.”*

20. Counsel for the Appellant has relied on the judgment of this Tribunal in **“Laxmi Trading Corporation vs. Hindustan Construction Company Ltd.- 2024 SCC OnLine NCLAT 282”**. The above was a case where this Tribunal rejected the argument that for Section 9 application, Article 1 of

the Limitation Act shall not be applicable. In paragraph 22 of the judgment, following was held:-

“22. It is well settled that the period of limitation for application under Section 9 of the IBC, would be governed by Article 137 of the Limitation Act, 1963. The claim of the Operational Creditor that they were having running account and are covered under Article 1 of the Limitation Act cannot be accepted. Since their claim of a running account cannot be accepted, therefore, the limitation does not get extended as claimed. Accordingly, the time from which period of limitation begins is when the right to apply accrues and right to apply accrues when the invoices were to be paid. In the instant case in most of the claims, as noted by the Adjudicating Authority they are time barred. Specifically, out of 234 invoices 224 are ex-facie time barred and for the remaining 10 invoices the total does not make it more than the threshold of Rupees one crore and therefore the claims of the Operational Creditor cannot be accepted. Accordingly, the Appeal is dismissed. No orders as to the cost.”

21. Another judgment relied by the Appellant is **“Murphy Steel vs. Gujarat Wedge Wire Screens Ltd.- (2024) SCC OnLine NCLAT 290”** was a case where this Tribunal held that invoices were more than three years old and therefore, time barred except one invoice which was within time did not satisfy the threshold. Following was held in paragraph 6:-

“6. Having perused the material on record and after hearing the submissions of learned counsel for the

appellant, we also do not find any document/agreement between the two parties which evidence running account payment underlying their business operations. In the absence of any documentary evidence which provides foundational basis to the claim of the appellant that there was a running account, the reliance placed on the judgment of this Tribunal in Abhinandan Jain v. Tanaya Enterprises P. Ltd. [2021 SCC OnLine NCLAT 102.] in Company Appeal (AT) (Insolvency) No. 1017 of 2020 does not come to the aid of the appellant. Furthermore, on perusal of the reply to the section 8 demand notice sent by the corporate debtor on January 7, 2020, as placed at pages 127 to 136 of appeal paper book it comes to our notice that it has been categorically denied that any operational debt was due qua the operational creditor. Moreover, it was also stated in the said reply that the operational creditor has failed to explain as to why he continued to supply material if his payment was pending for nearly 8 years. The same contention has been reiterated by the corporate debtor in their reply affidavit to section 9 application that the invoices were more than three years old and therefore time-barred except for one invoice dated January 7, 2017 which carried invoice value of Rs. 8,849 only which did not satisfy the threshold limit of Rs. 1 lakh as prescribed under section 4 of the Insolvency and Bankruptcy Code to trigger the corporate insolvency resolution proceedings. We thus do not find any merit in the argument advanced by learned counsel for the appellant that since the last invoice did not attract

limitation, the other 26 invoices which have been submitted along with it also escapes the bar of limitation on the unsubstantiated pretext of running account of payments.”

22. The above judgment does not help the Appellant in the present case.

23. The judgment of the Hon’ble Supreme Court in **“Shanti Conductors Private Limited”** (*supra*) which we have noted above where the Hon’ble Supreme Court has noted with approval the earlier law laid down by the Hon’ble Supreme Court in AIR 1951 SC 477- *“Sant Lal Mahton vs. Kamla Prasad”* in which judgment the Hon’ble Supreme Court held that while requirement is that payment should be made within the period of limitation. However, it does not require that acknowledgment should also be made within that period.

24. In the present case, last payment was admittedly made on 26.08.2019 i.e. within the period of three years and there is also acknowledgment by the Corporate Debtor in writing which is reflected from the reply to demand notice as noted above. When there is clear acknowledgment by the corporate debtor of last payment made on 26.08.2019 which payment was within the period of three years, we are of the view that the operational creditor was clearly entitled for the benefit of extension of limitation under Section 19 of the Limitation Act and both the conditions which are required to be fulfilled under Section 19 were fulfilled. We, thus, do not find any error in the order of the Adjudicating Authority rejecting the objection of the corporate debtor that application under Section 9 was barred by time. Giving the benefit of

last date of payment on 26.08.2019, the application was well within limitation. We do not find any merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi

Anjali