

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

Company Appeal (AT) (Insolvency) No. 948 of 2022

IN THE MATTER OF:

JUMBO CHEMICAL & ALLIED INDUSTRIES PVT LTD

Registered Office At:-

D-42, First Floor, Part-I,
South Extension, New Delhi – 110049

Also At:-

F-296(C), Industrial Area,
Bhiwadi, Rajasthan - 301019

...Appellant

Versus

Arjun Industries Limited,

Registered Office At:

C-9/9366, Vasant Kunj,
New Delhi - 110070

...Respondent

Present:

For Appellant: Mr. Ramji Srinivasan and Mr. Arvind Verma, Sr. Advocates, Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Sajal Jain, Mr. Supriyo Banerjee, Mr. Kartik Pandey, Ms. Namrata Saraogi, Advocates.

For Respondent: Mr. Virender Ganda, Sr. Advocate with Mr. Ayandeb Mitra, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J:

1. This Appeal by the Financial Creditor has been filed against the Order dated 06.06.2022 passed by National Company Law Tribunal, New Delhi, Bench-II, by which order Section 7 Application filed by the Appellant has been dismissed as barred by time. The Appellant aggrieved by the said Order has come up in this Appeal.
2. Brief facts of the case giving rise to this Appeal are as follows:

- The Corporate Debtor-Arjun Industries Limited was sanctioned a Rupee Term Loan by the Industrial Development Bank of India (IDBI in short) on 11.09.1996. IDBI disbursed an amount of Rs. 367 Lakhs. IDBI also entered into another Foreign Currency Loan Agreement with Corporate Debtor sanctioning Rs. 183 Lakhs.
- After availing the above credit facilities from IDBI, the Respondent Company failed and neglected to make the payment. A legal notice dated 10th June, 1998 was given by the IDBI.
- IDBI filed Original Application being O.A. No. 445/1998 before the Debt Recovery Tribunal, Delhi (DRT in short) for recovery of amount of Rs. 6,19,93,815/- together with pendente lite and future interest.
- During pendency of the O.A. before the DRT, the Corporate Debtor approached the IDBI offering a One-Time Settlement for a sum of Rs. 225 Lakhs. IDBI asked the Corporate Debtor to increase the amount to Rs. 250 Lakhs out of which Rs. 225 Lakhs was to be paid by a particular date in June, 2006.
- The amount being not paid by the Corporate Debtor, the OTS was not implemented.
- IDBI assigned the debt to Kotak Mahindra Bank Limited on 31st March, 2006. After assignment, Kotak Mahindra Bank Limited was substituted in O.A. No. 445 of 1998 filed by the IDBI as an Applicant. On 16.04.2008, Kotak Mahindra Bank Limited assigned the debt in favour of the Appellant-Company –Jumbo

Chemicals and Allied Industries Pvt. Ltd. by registered deed on assignment.

- The Corporate Debtor filed a writ petition in the High Court restraining the assignment which was dismissed.
- Appellant issued a statutory notice under Section 433 and 434 of the Companies Act, 1956 to the Corporate Debtor to pay a sum of Rs. 28,99,00,000/- as on 31st December, 2005. Respondent Company sent a Reply dated 14.01.2011 opposing the claim of the Appellant.
- The Appellant filed Company Petition 221/2012 before the Delhi High Court for winding up of the Respondent Company. Before the Learned Single Judge, the Respondent Company made an offer to deposit amount of Rs. 2.5 Crores, the Appellant company claimed before the Company Judge that amount payable is much more than Rs. 250 Lakhs. Learned Company Judge vide its Judgment dated 22nd May, 2014 dismissed the company petition against which an Appeal being CO. APPL No. 41/2014 was filed by the Appellant which too was dismissed by the Judgment and Order dated 2nd March, 2016 by Division Bench of Delhi High Court.
- A meeting was held on 12.10.2018 between Appellant and Respondent Company where an agreement was arrived for disinvestment of the mortgaged property of the Respondent Company. Appellant and Respondent Company entered into a

Settlement Agreement dated 27th August, 2019 whereby it was agreed between the parties to sell the mortgaged property and distribute the realised value as per settlement agreement between the parties.

- Respondent Company vide Email dated 26th July, 2021 cancelled the settlement agreement. On 01.10.2021, the Appellant Company filed Section 7 Application against the Respondent Company claiming an amount of Rs. 1438.95 Crores till 30th June, 2021. Date of Default mentioned in Section 7 Application was 26th July, 2021 which was a date when Settlement Agreement was cancelled by the Respondent Company.
- In Section 7 Application, Appellant has given the details beginning from sanctioning the said loans by the IDBI on 11.09.1996 and details of proceedings before the DRT and Delhi High Court, Detail of Company Petition filed by the Appellant and other litigations. The Adjudicating Authority by the Impugned Order dismissed the Section 7 Application as barred by time. The Adjudicating Authority in the Impugned Order held that after notice of winding up petition was given by the Appellant, Reply was given by the Respondent Company on 14.01.2011 and the Settlement Agreement between the parties was entered on 27th August, 2019, limitation of 3 years expired before entering into settlement agreement and there was no acknowledgement after 14.01.2011 hence the case of the Appellant that the date of

default is 26th July, 2021 cannot be accepted and Section 7 Application was dismissed as barred by time.

- The Order was passed by the Adjudicating Authority without issuing notice to the Corporate Debtor.

3. This Appeal was heard by this Tribunal on 10th August, 2021 on which date notices were issued to the Corporate Debtor and following order was passed:

“10.08.2022: Appellant has filed application I.A. No. 2689/2022 for condonation of delay. 14 days delay in filing the Appeal is condoned. I.A. No. 2689/2022 stands disposed of.

counsel for the Appellant submits that the Adjudicating Authority committed error in rejecting the application filed by the Appellant as barred by time whereas there was acknowledgment in the balance sheets which was sufficient to grant benefit of Section 18 of the Limitation Act. Submission needs scrutiny.

Issue notice. Requisites alongwith process fee be filed within three days. Reply be filed by the Respondent within three weeks. Rejoinder be filed within two weeks thereafter.

List this Appeal on 19.09.2022.”

4. The Respondent (Corporate Debtor) has filed its Reply to which Rejoinder has also been filed by the Appellant. Respondent has also filed ‘Compilation of Documents’ dated 26th April, 2023 in three volumes. Both the parties have also filed their notes of submissions/written submissions.

5. We have heard Mr. Ramji Srinivasan and Mr. Arvind Verma, Learned Sr. Counsel for the Appellant and Mr. Virender Ganda, Learned Sr. Counsel for the Respondent.
6. The only question which needs to be considered in this Appeal is as to whether the Application filed by the Appellant under Section 7 was barred by time?
7. We need to first notice the reasons given by the Adjudicating Authority for rejecting the Application under Section 7 of the Code. The Adjudicating Authority has noted the statutory notice given by the Appellant for winding up of the Respondent Company on 23.12.2010 and the Reply to Notice received from Respondent on 14.01.2011. The Adjudicating Authority has also noticed the Settlement Agreement dated 27th August, 2019 and has come to the conclusion that three years' period even after 14.01.2011 has long expired hence the Settlement Agreement dated 27th August, 2019 shall not give any cause of action to file a Section 7 Application. In Paragraph 18-20, following has been held by the Adjudicating Authority:

“18. Before considering these submissions, we would like to refer to another date as referred by the Applicant by filling additional affidavit. On perusal of that, we observe that on 23.12.2010, the Petitioner had issued a statutory notice under Section 434(1)(a) of the Companies Act 1956 and according to the petitioner, the Respondent Company vide its reply dated 14.01.2011 had admitted its liability, therefore, a cause of action for this Applicant, who stepped into the shoes of the IDBI on the basis of assignment,

arose on 23.12.2010 or 14.01.2011, when the liability was admitted by the Corporate Debtor.

19. *We further observe that after 14.01.2011 and before the date of settlement arrived between the parties on 27.08.2019, there was no acknowledgement of debt on the part of the Corporate Debtor, therefore, the settlement agreement was made much after the expiry of period of 3 years, when the acknowledgement of debt was made by the Respondent. Therefore, we are unable to accept the contention of the Applicant that cause of action arose only when the deed of settlement was cancelled on 25.07.2021 because that deed of settlement was made much after the period of expiry of the limitation.*

20. *Apart from that, we also notice that the loan was recalled by the IDBI on 26.08.1998, whereas the deed of assignment was executed on 31.03.2006, much after the period of limitation, therefore, we are unable to accept the contention of the Applicant that cause of action arose on 26.07.2021. Hence, we are of the considered view the present application is barred by limitation.”*

8. We thus need to answer whether limitation for filing Section 7 Application had already come to an end when Section 7 Application was filed by the Appellant on 01.10.2021.
9. Mr. Ramji Srinivasan, Learned Sr. Counsel for the Appellant submits that there being continuous acknowledgement by the Corporate Debtor in its balance sheets since the financial year 1998-99 till the financial year 2020-21 within meaning of Section 18 of the Limitation Act, 1963, the Application was not barred by time. It is submitted that the Adjudicating Authority committed error in coming to the conclusion

that the Application is barred by time. Appellant in the Appeal has also brought on record the balance sheets for the financial year 2005-06 till 2020-21. In the rejoinder affidavit also, the Appellant has brought on record the balance sheets for the year 1998-99 till 2004-05 of the Corporate Debtor. Learned Counsel for the Appellant submits that balance sheets of the corporate debtor contain acknowledgement of debt which was initially owed to IDBI and assigned to Kotak Mahindra Bank Limited and thereafter to Appellant Company which acknowledgment continuously gives a fresh period of limitation by each acknowledgment and the Adjudicating Authority committed error in rejecting the Application as barred by time. It is submitted that entering into Settlement Agreement on 27th August, 2019 by the Corporate Debtor with the Appellant itself indicates that Corporate Debtor has acknowledged the debt and has entered into settlement to make the payment.

10. Mr. Virender Ganda, Learned Sr. Counsel refuting the submissions of Learned Sr. Counsel for the Appellant, submits that Application under Section 7 was barred by time and the balance sheets which were sought to be relied by Learned Sr. Counsel for the Appellant for the extension of the limitation does not extend limitation under Section 18 of the Limitation Act, 1963. It is submitted that notes of balance sheets which are part of balance sheets have to be looked into to consider as to whether it contains an acknowledgment or not. It is submitted that a perusal of the notes to account makes it clear that Respondent has

disputed the liability since the financial year 2008-09. It is further submitted that Division Bench of Hon'ble Delhi High Court in its Judgement dated 02nd March, 2016 in C.A. No. 41 of 2014 has noted the balance sheets and has noted that liabilities were disputed. It is further submitted that in view of the Judgment of Delhi High Court which has been pronounced on the issue of balance sheets, the balance sheets cannot be held to contain any acknowledgment within the meaning of Section 18 of the Limitation Act. It is submitted that financial statement which was filed by the Appellant did not contain the notes hence the Respondent has filed all the balance sheets for the financial year 2008-09 till 2021-22 with notes on accounts which need to be perused by this Court.

11. Looking to the aspects which have come up for consideration in this Appeal is question of limitation of Section 7 Application, we have permitted the parties to bring relevant balance sheets on record and permitted them to refer to the relevant balance sheets in respect of their respective contentions.
12. The law is well settled that for finding out acknowledgement within the meaning of Section 18 of the Limitation Act, balance sheets can be looked into. Hon'ble Supreme Court in **Asset Reconstruction Company India Limited Vs. Vishal Jaiswal & Anr., (2021) 6 SCC 366** has examined the question in reference to Section 18 of the Limitation Act and held that it depends on the facts of each case as to whether an entry made in a balance sheet made in accordance with law, qua any

particular creditor is unequivocal or has been entered into with caveats.

In paragraph 35 of the Judgment, following has been laid down:

*“35. A perusal of the aforesaid Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor’s report may also enter caveats with regard to acknowledgements made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in *Bengal Silk Mills (supra)*, that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.”*

13. We thus now proceed to examine the balance sheet which have been brought on record. We shall refer to the balance sheets which have been brought on record by the Corporate Debtor himself through Compilation of Documents. The Adjudicating Authority has rejected Section 7 Application holding that after 14.01.2011, there is no acknowledgement within three years period hence the Application filed in 2021 is barred

by time. The Respondent has brought on record the balance sheets from the financial year 2008-09 till 2021-22. We may first notice the balance sheets for the year 1998-1999 which is the balance sheet reflecting the secured loans. As noted above, the IDBI has sanctioned the loan on 11.09.1996 which was disbursed in the year 1996 itself. In the balance sheet of 1998-99 as on 31st March, 1999, under heading, Schedule 2 – Secured Loans, both the loans i.e. Rupee Term Loan and Foreign Currency Loan have been mentioned which are to the following effect:

“SCHEDULE – 2 – SECURED LOANS

RUPEE LOAN	32,900,000	32,900,000
FCL LOAN	11,817,747	11,817,747
INTEREST ACCRUED AND DUE	6,768,543	6,768,543
	<u>51,486,290</u>	<u>51,486,290</u>

FOR ARJUN INDUSTRIES LIMITED

DIRECTOR

DIRECTOR”

14. Now we come to the Financial Year 2008-09 which also mentions Rupee Term Loan of Rs. 3,29,00,000/- and Foreign Currency Loan of Rs. 1,18,17,747/- which entries have been continuing from previous year. In the Financial Statement of 2008-09, “NOTES TO THE ACCOUNT” have been relied on by Learned Counsel for the Respondent. We may refer to paragraph 11 which gives the details of loan and the litigation regarding it. Paragraph 11 is as follows:

“11. a) That the company is not repaying term loan amount taken from the financial institution and the matter is pending with Debt Recovery Tribunal as well Delhi High Court.

b) The company is in dispute with IDBI over the amount of secured loan due to them in the Balance Sheet amounting to Rs. 447 Lacs (Principal Amount), has been reflected as payable. The IDBI was approached for one time settlement (OTS) vide application dated 10.03.2006. The bank did not communicate the decision to the Company and hence, the company approached IDBI under RTI Act, 2005 on 11.09.2006. In reply to the Company's RTI Application, IDBI has furnished the minutes of their Northern Zone Committee dated 27.03.2006 in which OTS proposal of Rs. 250 lacs was sanctioned, but no letter of intent as stipulated in the minutes was issued in favour of the company. In the mean time, IDBI assigned the loan account to Kotak Mahindra Bank Ltd. (KMBL) without any information to the company. Thereafter Kotak Mahindra Bank filed an application before the Debt Recovery Tribunal Delhi for substitutions of their name on place of IDBI. The Hon'ble DRT passed an order on 12.12.2006 substituting the name of KMBL in place of IDBI. The company filed an appeal in DRAT and the DRT order was stayed on 05.02.2007 against the order of DRAT, KMBL filed a writ petition no. 3535 of 2007 in the High Court of Delhi. The Hon'ble High Court passed an order on 23.05.2007 on the above WP No. 3535 of 2007 and issued directions that DRT to examine afresh the defense of the company on merits including its contention that KMBL were bound by the purported decision of IDBI to accept the OTS proposal of the Company and KMBL had not to be objection to the same. The company have filed counter claim with reply before DRT as per the direction of the Hon'ble High Court. In the mean time company filed a writ petition in 2007 in Delhi High Court against IDBI/ KMBL for

not to create any third party right and accept our OTS proposal. The Hon'ble High Court granted stay against IDBI/KMBL for not to create third party claim till the disposal of the writ petition."

15. When we look into the above "notes to the account" it is clear that clause 'a)' especially mentions that Company is not repaying the term loan taken from the Financial Institution and the matter is pending before DRT as well as Delhi High Court. "Notes to the Accounts" in some of similar meaning have been repeated thereafter referring to the litigation pertaining to the loan taken from the Financial Institution (IDBI). Financial Statement of 2010-11 as on 31st March, 2011, paragraph 9, notes to the accounts reads as follows:

"9. a) That the company is not repaying term loan amount taken from the financial institution and the matter is pending with Debt Recovery Tribunal as well Delhi High Court.

b) The company is in dispute with IDBI over the amount of secured loan due to them in the Balance Sheet amounting to Rs. 447 Lacs (Principal Amount), has been reflected as payable. The IDBI was approached for one time settlement (OTS) vide application dated 10.03.2006. The bank did not communicate the decision to the Company and hence, the company approached IDBI under RTI Act, 2005 on 11.09.2006. In reply to the Company's RTI Application, IDBI has furnished the minutes of their Northern Zone Committee dated 27.03.2006 in which OTS proposal of Rs. 250 lacs was sanctioned, but no letter of intent as stipulated in the minutes was issued in favour of the company. In the mean time, IDBI assigned the loan

account to Kotak Mahindra Bank Ltd. (KMBL) without any information to the company. Thereafter Kotak Mahindra Bank filed an application before the Debt Recovery Tribunal Delhi for substitutions of their name on place of IDBI. The Hon'ble DRT passed an order on 12.12.2006 substituting the name of KMBL in place of IDBI. The company filed an appeal in DRAT and the DRT order was stayed on 05.02.2007 against the order of DRAT, KMBL filed a writ petition no. 3535 of 2007 in the High Court of Delhi. The Hon'ble High Court passed an order on 23.05.2007 on the above WP No. 3535 of 2007 and issued directions that DRT to examine afresh the defense of the company on merits including its contention that KMBL were bound by the purported decision of IDBI to accept the OTS proposal of the Company and KMBL had not to be objection to the same. The company have filed counter claim with reply before DRT as per the direction of the Hon'ble High Court. In the mean time company filed a writ petition in 2008 in Delhi High Court against IDBI/KMBL/Jambo Chemicals & Allied Industries Pvt. Ltd. for not to create any third party right and accept our OTS proposal. The Hon'ble High Court granted stay against IDBI/KMBL for not to create third party claim till the disposal of the writ petition."

16. In the Financial Statement for the year 2011-12, Notes to the Account, Paragraph 9 is as follows:

"9. The company is facing recovery suit from IDBI/KMBL regarding term loan against the security of assets of the company in the DRT, Delhi and corresponding petition filled by the company in Delhi High Court. Petition was disposed of asking the DRT to decide

the controversy considering the OTS proposal as approved along with the contention of the Applicant Bank. However thereafter, one Jumbo Chemicals & Allied Industries Pvt. Ltd., assignee of Loan Asset by Kotak Mahindra Bank, has filed a Company Petition for winding up of the company in March, 2012, which was heard on 24.05.2012 by Company Court and a view has been taken by the court that claim in the present petition should be restricted to the amount reflected in the minutes of IDBI dated 27.03.2006 i.e. Rs. 250 Lac only.”

17. We may also notice the Director's Report for the year 2015-16 i.e. after dismissal of Winding up Petition filed by the Appellant. That Director's Report with regard to above is as follows:

“RISKS, CHALLENGES AND CONCERNS

The company is facing recovery suit from IDBI/KMBL regarding term loan against the security of assets of the company in the DRT, Delhi and corresponding petition filled by the company in Delhi High Court. Petition was disposed of asking the DRT to decide the controversy considering the OTS proposal as approved along with the contention of the Applicant Bank. The recovery suit on IDBI/KMBL has been dismissed. However thereafter, one Jumbo Chemicals and Allied Industries Pvt. Ltd., assignee of Loan Asset by Kotak Mahindra Bank, has filed a Company Petition for winding up of the company in March, 2012, which was heard on 24.05.2012 by Company Court and a view has been taken by the court that entire claim in the present petition should be restricted to the amount reflected in the minutes of IDBI dated 27.03.2006 i.e. Rs. 250 lacs only. The company has deposited Rs. 250 lacs in favour of Registrar General of Delhi High Court as per

order by the Company Court, Delhi High Court. After hearing the honorable court dismissed the company petition filed by Jumbo Chemicals and asked the Registry to refund a sum of Rs. 250 Lacs along with interest, which has been received by the company during the relevant previous year. Jumbo Chemicals has filed an appeal before Delhi High Court (Appeal) which is pending.

There is also show cause notices from Custom Department, regarding deposit of custom duty, the company is taking appropriate legal actions on that.”

18. We may also notice the balance sheets of the Corporate Debtor for the year 2020-21 which was financial year prior to filing of Section 7 Application. In the Director's Report/Statement with respect to financial year 2020-21, following was stated:

“RISKS, CHALLENGES AND CONCERNS

The Company had availed the credit facilities (Rupees Term Loan & Foreign Currency Loan) from IDBI during the year 1996-1997, together with working capital margin.

IDBI, though disburse the Term Loan but failed to provide the working capital margin. The Trial Run/Commercial Production started in the year 1998-99, but had to be stopped for want to working capital. IDBI initiated the recovery proceedings before DRT-1 vide OA-No 445/98. The company filed its counter claimed more than the amount claimed by IDBI. While the company was in the process of OTS (One Time Settlement) with IDBI and made a offer of Rs. 225 Lakhs. IDBI Agreed for Rs. 250 Lakhs as recorded in the minutes of its board meeting held on March 2006. Before the issuance of letter of intent for OTS to the company, IDBI assigned its debt to Kotak Mahindra Bank Ltd. (KMBL) who in turn further assigned the debt to jumbo

chemical & fertilizer Private Limited. Since, Jumbo chemical & fertilizer Private limited was not a banking company in term of Banking Regulation Act, proceedings before DRT could not continue even though the counter claim by the company is technically still pending.

Meanwhile, however, Jumbo Chemical and fertilizer Private Limited being the successor in interest of IDBI filed winding up petition claiming the entire outstanding payable to IDBI but vide an order dated 24th May, 2012 of Delhi High Court limited it's claim to Rs. 250 Lakhs being the amount agreed by IDBI as OTS. The winding up petition was later dismissed by the single bench and an appeal by the division bench of Delhi High Court vide dated 2nd Mar 2016.

The SLP (Special Leave Petition) vide CC No-18626/2016 filed by Jumbo Chemical & fertilizer Private Limited was also dismissed on 6th Dec 2016.

The limitation period and technically there are no claim pending in respect of the borrowings and not the same will be maintainable as a prudent accounting policy, the liability provide in the accounts has been limited to Rs. 250 Lakhs being the last amount claimed by the lenders.

Keeping in view of the above facts the company has converted the Rupee loan and foreign currency loan into One Time Settlement (OTS) Rs. 250 Lacs.

All These details are as per court proceedings happened since long time. But recently the third party is continuously trying to disturb the activities of the company by pressurizing the representatives of the company and the auditors of the company.”

19. The question for consideration is as to whether the “notes to the account” or the “Director’s Report/Statement” as relied by Learned

Counsel for the Respondent some of which has been extracted above are sufficient to hold that there is no acknowledgement in the balance sheet of the debt.

20. The acknowledgement of debt in the balance sheets from 1998-99 is continuous. Notes to the account and the Director's Report/Statement at best can be treated to be account of litigation emanating from such date. We have noticed that in the notes to the account and the Director's Statement/Report, it has been categorically mentioned that Company failed to repay the loan. In the Financial Year 2020-21, there is reiteration of credit facility availed by the Company from the IDBI. The assignment in favour of Appellant has also been noticed in the notes to the account and director's statement. The notes to the account and director's report has repeatedly referred to that liability is limited to Rs. 250 Lakhs which is on the strength of Order passed in the Company Petition filed by the Appellant where Company Court directed the Respondent to deposit amount of Rs. 250 Lakhs in the Court which amount was deposited. We need to notice the Judgment of Learned Single Judge dated 22.05.2015 by which Company Petition filed by the Appellant was ultimately dismissed. It is useful to refer to last paragraph 18 of the Judgment which is to the following effect:

"18. In view of the above, the present petition is dismissed. The Registry is directed to refund a sum of Rs. 250 lacs along with interest, if any, to the respondent. The title documents deposited by the petitioner be also returned to the petitioner. It is further clarified that neither

this order nor anything stated during the present proceedings should be construed to mean that the petitioner has confined its claim only to a sum of Rs. 250 lacs and interest thereon. Similarly, neither this order nor the present proceedings should be construed to mean that the respondent has given up its counter claims against IDBI.”

21. When the Company Petition was dismissed with the observation as observed, we fail to see that how the Respondent can contend that claim of the Appellant is limited to only Rs. 250 Lakhs.
22. Be that as it may, in the present Appeal, we are only concerned with the question as to whether the Application was barred by limitation.
23. After perusing the relevant balance sheets and director's report, we are satisfied that balance sheets contain an acknowledgement of debt and the mere fact that details of litigation emanating from the loan and subsequent events are mentioned in the notes to the account and the director's report does not denude the value of the balance sheets for purposes of Section 18 of the Limitation Act.
24. We also refer to Judgment of this Tribunal in C.A. (AT) Ins. No. 991 of 2020, **Asset Reconstruction Company India Limited Vs. Uniworth Textiles Limited**, decided on 10th July, 2023 where this Tribunal had occasion to consider the balance sheets for purposes of finding out acknowledgement under Section 18 of the Limitation Act. This Tribunal also looked into the Director's Report. This Tribunal in the said Judgment has after noticing the Directors Report and certain disputes claimed by Corporate Debtor, made following observations:

*“Therefore, it may be inferred that only during the financial Year 2014-15 the Directors clearly disputed the debt of the Appellant, however in prior Balance Sheets no dispute was raised. In subsequent to Balance Sheets, the mention regarding their intent for resolution with dispute was indicated and in the Balance Sheet of 2018-19 no apparent dispute was recorded regarding the debt. From the entire series of record of such financial balance sheets from 2007-2008 to 2017-18 it can be presumed that the Corporate Debtor intended from time to time to acknowledge the debt in the Balance Sheet, however we cannot ignore the fact that in 2014-15, 2015-16 and 2016-17, the Corporate Debtor has disputed claims. On overall basis out of 13 Balance Sheets from 2006-07 to 2018-19, apparently in the three Balance Sheets, disputes were recorded as noted above and based on this, in balanced manner and keeping commercial/judicial fairness, such denial of acknowledgment cannot be taken as stout dispute regarding debt which would tantamount to absolute and continued denial of acknowledgments of debt by the Corporate Debtor. Keeping in view the ratio decidendi of **Bishal Jaiswal** (Supra), therefore, in light of this detailed analysis, this Appellate Tribunal has to consider that there were acknowledgements of due in the Balance Sheets and the acknowledgement letter of the Corporate Debtor which would extend the limitation period, in terms of Section 18 of Limitation Act, 1963.”*

25. That this Tribunal ultimately accepted the acknowledgment in the balance sheets to extend the benefit of Section 18 of the Limitation Act and allowed the Appeal and set aside the order of the Adjudicating Authority dismissing Section 7 Application.

26. Mr. Virender Ganda, Learned Sr. Counsel for the Respondent has also contended that balance sheets of the Corporate Debtor having been looked into by Delhi High Court in winding up petition filed by the Appellant and having not found any accepted liability, the said issue is not open for consideration and principle of *res judicata* shall apply and this Tribunal need not revisit the balance sheets. The reliance has been placed by Mr. Ganda on the Judgment of Division Bench of Delhi High Court dated 02nd March, 2016 by which Appeal filed by the Appellant against the dismissal of winding up petition has been dismissed. Learned Sr. Counsel for the Respondent has relied on Paragraph 11 of the Judgment which is to the following effect:

“11. In the present case, whilst there is no doubt that the respondent company had made an OTS offer, there is no material to suggest that this offer was accepted by the IDBI and so communicated. On the other hand, the IDBI in the fact assigned the debt to Kotak Mahindra Bank, which later assigned it to the present appellant. On the other hand, the company’s counter claim is still pending. The record also shows that the appellant got its “foot into the door” metaphorically speaking, by offering to the Court which was reluctant to entertain the winding up proceeding – that it would be content accepting the said sum of Rs. 250 Lakhs. However, the appellant was not agreeable for that amount and demanded a high rate of interest. This Court is unpersuaded by the submission that the Company Court overlooked the admissions, by way of the balance sheet issued by the respondent; it was shown during the hearing that the explanation for the so called

credit liabilities were found in the notes to accounts, which disputed the liability and stated that the matter was pending before the Debt Recovery Tribunal. In these circumstances, it cannot be said that the requirements for entertaining a winding up proceeding, so as to compel the Court to admit the petition, had been made out.”

27. We have noticed above that winding up petition filed by the Appellant being Company Petition No. 221/2012 was dismissed on 22nd May, 2014. Judgment of Learned Single Judge has been brought on record in volume II of the Appeal, page 194. Learned Single Judge held that the Company Petition is not the case where High Court should exercise its discretion to wind up the company. In paragraph 17, following observations were made:

“17. The respondent has submitted that it could not commence its business on account of failure on the part of the IDBI to adhere to its obligations. The respondent is also pursuing a counter claim against IDBI and it was contended that the company would be able to revive itself, once the said controversy is decided. It is also to be borne in mind that winding up of a company has serious consequences and the Courts have always leaned towards ensuring that the ailing companies are given a fair and reasonable opportunity to revive. In the present case, the company is pursuing its counter claim against IDBI and the question whether the company would be able to revive or not can only be considered after that controversy has concluded. Concededly, the jurisdiction to wind up a company under section 433(e) and 433(f) of the Act is discretionary. In my view, this is not a case where this court should exercise its discretion to wind up of the

company. Further, no prejudice has been caused to the petitioner by the existence of the respondent company.”

28. The observation made by the Division Bench in paragraph 11 with regard to balance sheets was that liabilities in the notes to the account were disputed and matter is pending before DRT hence it cannot be said that there is any requirement for entertaining winding up proceeding. The Division Bench of Delhi High Court has not considered the balance sheets qua acknowledgment within meaning of Section 18 of the Limitation Act nor such issue was before the winding up petition filed by the Appellant thus reliance of Mr. Ganda on paragraph 11 to hold that balance sheets have been looked into hence may not be revisited, cannot be accepted. Observation of Division Bench in paragraph 11 were with regard to not to entertain the winding up petition of the Appellant which Judgment confirmed the order of Learned Single Judge dismissing winding up petition.

29. In view of the foregoing discussions and conclusions, we are of the view that the Adjudicating Authority committed error in rejecting Section 7 Application filed by the Appellant as barred by time. The Application filed by the Appellant was not barred by time there being continuous acknowledgment in their respective balance sheets of the Corporate Debtor which acknowledgment was within the meaning of Section 18 of the Limitation Act extending the period of limitation by fresh period of limitation by each acknowledgment. In result, we allow the Appeal, set aside the Order of the Adjudicating Authority dated 06.06.2022. We revive the Section 7 Application before the Adjudicating

Authority to be heard afresh and decided in accordance with law. We further grant three weeks' time to the Corporate Debtor to file its Reply to Section 7 Application. The instant Appeal is allowed to the above extent. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
18th September, 2023

Basant/nn