

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.543 of 2022

(Arising out of Order dated 20.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Court No.V, Mumbai Bench in Company Petition No.1118(IB)-MB-V/2020)

IN THE MATTER OF:

Mr. Nishit Patel
Having office at : 101, Wing-B,
Gharkul Co-Op. Society, Azad Road,
Misquitta Street, Vile Parle (E) Mumbai
Mumbai City MH 400057

... Appellant

Versus

1. Manjulaben Mahdulal Karelia
A-5 Shakti Sadan Opp Navjivan Society
Falakland Road, Lamington Road
Mumbai 400007

Through its Authorized Representative
Mrs. Rina Birla
505, Arcadla Building, 195 NCPA Marg,
Nariman Point, Mumbai 400 021
Email: rinabirla03 @gmail.com

2. Pooja Land and Premises Pvt. Ltd.
Through the Interim Resolution Professional
Mr. Jitendra Palande
Having its address at 38, 5-3/D,
New Ajanta Avenue,
Paud Road Kothrud Pune 411038

... Respondents

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Mahesh Agarwal, Mr. Ankur Saigal, Mr. Shivam Shukla, Mr. Shadab S. Jan, Advocates

For Respondent : Mr. Zeeshan Hashmi, Mr. Ankit Parashar, Mr. Saurav Sapra, Advocates for R-1.

Mr. Shikhil Suri, Sr. Advocate with Ms. Vidhi Kapoor, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging order dated 20.04.2022 passed by National Company Law Tribunal, Court No.V, Mumbai Bench, admitting Section 7 Application filed by the Financial Creditor (Respondent herein).

2. The brief facts necessary to be noticed for deciding the Appeal are:

- (i) The Corporate Debtor - Pooja Land and Premises Pvt. Ltd. is a registered Company, incorporated on 07.02.2007. The Financial Creditor - Manjulaben Mahdulal Karelia has extended loan to the Corporate Debtor of Rs.2 crores on 23.06.2010. Apart from Financial Creditor, her other family members also granted loan to the Corporate Debtor. A Loan Agreement dated 31.12.2010 came to be entered into between the Respondent – Financial Creditor and other family members with the Corporate Debtor, which Loan Agreement contemplated payment of interest @ 12% per annum compounded annually. The loan was repayable along with interest on or before 23.06.2020.
- (ii) The Corporate Debtor refunded certain amount to other members of the family namely – Krishna Karelia and Dilip Karelia in the

year 2015. However amount of Rs.2 crores, which was disbursed by Respondent on 23.06.2010 was not refunded. The Financial Creditor issued Notice dated 18.12.2019 to the Corporate Debtor, claiming an amount of Rs.2 crores, principal amount and Rs.3,92,49,406 as interest. The Notice required the Corporate Debtor to make payment within 15 days, failing which Financial Creditor shall initiate proceedings in appropriate Tribunal and civil proceedings, including but not limited to Insolvency and Bankruptcy Code, 2016 (hereinafter referred to the “**IBC**”).

- (iii) No payment having been made, an Application under Section 7 was filed by the Financial Creditor (Respondent herein) on 22.04.2020 claiming an amount of Rs.5,94,03,811/-, which included principal and interest. The date of default was mentioned as December 18, 2019.
- (iv) In the Application, notice was issued to the Corporate Debtor. The Corporate Debtor appeared and filed reply to Section 7 Application. The Corporate Debtor denied the execution of Loan Agreement dated 31.12.2010 and alleged that documents is forged and fabricated document. In the reply, the Corporate Debtor further stated that by Share Purchase Agreement entered into on 29.11.2014 shares have been purchased, which were held by earlier Directors of the Corporate Debtor by one M/s Romell

Real Estates Pvt. Ltd. and the earlier Directors resigned in the year 2015 and new Directors were appointed including the Appellant herein (who joined as Director on 30.06.2018).

- (v) The Financial Creditor filed a rejoinder affidavit to the reply of the Corporate Debtor, where it pleaded that Loan as extended by Financial Creditor is reflected in the balance sheet of the Corporate Debtor. Copy of Certificate issued by the Information Utility was enclosed along with the rejoinder affidavit. It was pleaded that in the Share Purchase Agreement the liability as on 31.03.2014 was also undertaken to be discharged. It was pleaded that loan is reflected in the balance sheet, i.e., for the year 31.03.2011 and subsequent balance sheets. The balance sheets for the year as on 31.03.2014 and subsequent balance sheets were also brought on record along with the rejoinder affidavit.
- (vi) The Adjudicating Authority after hearing the parties and considering the submissions, held that debt and default is clearly proved. The Adjudicating Authority held that there is acknowledgment of the liability by the Corporate Debtor in the balance sheet ending on 31.03.2014. It was held that Loan Agreement was executed and stamp duty paid on the Loan Agreement of Rs.100/- was as per the provisions of Maharashtra Stamp Act, 1958. The debt and default was clearly established

and the debt was also within limitation. The Adjudicating Authority by the impugned order admitted Section 7 Application. Challenging the order, this Appeal was filed by the suspended Director of the Corporate Debtor.

3. When the Appeal was heard on 01.11.2022, the learned Counsel for the Appellant prayed for time to file an additional affidavit seeking details of amount paid of Rs.10,01,16,474/- as reflected in the balance sheet of 2017-18. In response to the order dated 01.11.2022, an additional affidavit was filed by the Appellant dated 17.01.2023, to which affidavit in reply dated 25.02.2023 has also been filed by the Respondent.

4. We have heard Shri Krishnendu Datta, learned Senior Counsel for the Appellant and Shri Seeshan Hashmi, learned Counsel appearing for Financial Creditor.

5. The learned Counsel for the Appellant challenging the impugned order submits that no debt was due or payable as the Application was filed on 28.04.2020. The Application filed under Section 7 was premature. The Adjudicating Authority arrived at erroneous finding that there is acknowledge of liability of the Corporate Debtor in the balance sheet of 2017-18. The Loan Agreement is insufficiently stamped. The Loan Agreement is a fabricated document. The Loan Agreement contemplated that the Corporate Debtor would secure the loan by creation of mortgage. The Demand Notice mentions

the loan as 'unsecured loan', whereas Information Utility Certificate mentions the loan as 'secured loan'. It is submitted that amount of Rs.10,01,16,474/- which is reflected as long term borrowing in the balance sheet of 2017-18 is amount of loan, which was extended by M/s Romell Real Estates Pvt. Ltd. Hence, the said amount cannot be treated to be acknowledgement of any debt due to the Financial Creditor. The Appellant has brought on record the materials to indicate that amount of Rs.10 crores was paid by Romell Real Estates Pvt. Ltd. on the request of Corporate Debtor to one Mr. Vijay Kamdar between 29.07.2015 to 04.06.2016 and which loan amount having been paid at the request of the Corporate Debtor, there is no debt due to the Financial Creditor.

6. The learned Counsel for the Respondent (Financial Creditor) refuting the submissions of learned Counsel for the Appellant submits that the disbursement of loan of Rs.2 crores is not even denied by the Corporate Debtor, which is proved by the Bank statement filed along with Section 7 Application, which Bank statement from HDFC Bank, proves that disbursement of Rs.2 crores on 23.06.2010 was made to the Corporate Debtor by the Financial Creditor. It is submitted that the balance sheet for the year 2010-11, duly reflected the loan, where the name of Financial Creditor Manjulaben Karelia is also mentioned against the amount of Rs.2 crores. It is submitted that the balance sheets of the Corporate Debtor from 2010-11 to 2017-18 reflected the amount under the heading 'Long term borrowing', which

was the loan extended by the Financial Creditor and her other family members and which loan was reflected in the balance sheets from year to year. The Share Purchase Agreement was executed by the then Directors of the Corporate Debtor in the year 2014. After Share Purchase Agreement by Romell Real Estates Pvt. Ltd. with the Corporate Debtor, the earlier Directors resigned and new Directors have come into place. Share Purchase Agreement also acknowledges the liability as existed by 31.03.2014. The submission of the Appellant that amount of Rs.10,01,16,474/- reflected in the balance sheet of 2016-17 and thereafter is the amount, which is a loan, which was extended by Romell Real Estates Pvt. Ltd. to the Corporate Debtor and does reflect the loan, which was extended by the Financial Creditor and her other family members is incorrect. In pursuance of the order dated 01.11.2022 passed by this Court to file relevant documents to prove that loan has been extended to the Corporate Debtor by the Romell Real Estates Pvt. Ltd., the Appellant has filed additional affidavit, where no document to prove that loan was extended by Romell Real Estates Pvt. Ltd. has been brought on the record. Only document which has been brought on the record are the letters signed by authorised representative of the Corporate Debtor from 29.07.2015 to 04.01.2016, under which request was made to the Romell Real Estates Pvt. Ltd. to make the payment of different amount to one Mr. Vijay Kamdar. The documents filed by the Appellant in support of the alleged loan by Romell Real Estates Pvt. Ltd. is wholly insufficient and Appellant has filed the letters,

which does not prove any loan transaction between the Corporate Debtor and Romell Real Estates Pvt. Ltd. It is submitted that Respondent No.1 Financial Creditor has brought on the record the balance sheet of Romell Real Estates Pvt. Ltd. of the years 2015-16 and 2016-17, which do not refer to any long term or short term loan advanced to the Corporate Debtor, nor Vijay Kamdar has been mentioned as any creditor of the Romell Real Estates Pvt. Ltd.. The plea of the Appellant that amount of Rs.10,01,16,474/- is the loan given by Romell Real Estates Pvt. Ltd. is wholly false and incorrect. The said amount is nothing but long term borrowing, which included borrowing by the Financial Creditor with interest.

7. We have considered the submission of learned Counsel for the parties and have perused the record.

8. The first question need to be considered is as to whether Financial Creditor has been able to prove disbursement of loan to the Corporate Debtor. The Bank statement has been filed by the Financial Creditor, where disbursement of Rs.2 crores to the Corporate Debtor on 23.06.2010 is reflected. The Corporate Debtor in his reply at no point of time had denied the disbursement. The immediate balance sheet after disbursement is balance sheet for the year 2010-2011, reflects the amount as unsecured loan. Unsecured loans are mentioned in two categories, i.e. (1) From Directors; and (2) From Others. It is useful to extract balance sheet as on 31.03.2011, which is filed by the

Appellant himself in the Appeal. At page 77 of the paperbook, the balance sheet reads as under:

"Pooja Land and Premises Pvt. Ltd.
SCHEDULES FORMING PART OF THE BALANCE SHEET

Particular	As at 31-Mar-11	As at 31-Mar-10
Share Capital		Schedule 1
Authorised		
10,00,000 Equity Shares of Rs.10/- each	1,00,00,000	1,00,00,000
Total	1,00,00,000	1,00,00,000
Issued, Subscribed and Paid up		
20,500 Equity Shares of Rs.10- each	205,000	205,000
Total	205,000	205,000
Reserves and Surplus		Schedule 2
Profit and Loss A/c		
Opening Balance	(204,731)	(125,945)
Add: Profit/ (Loss) during the year	(152,754)	(78,786)
Closing balance	(357,485)	(204,731)
Total	(357,485)	(204,731)
Unsecured Loans		Schedule 3
From Directors		
Chandramahi dubey	1,150,000	1,150,000
Raplesh Shah	1,290,000	2,15,80,000
PrakshchandDubey	135,000	135,000
Rushpa Dubey	135,000	135,000
Vishal Dubey	135,000	135,000
Rajkumari Dubey	125,000	125,000
Suketu Shah	8,900,000	
Rahul K. Shah	120,000	
	11,990,000	25,180,000
From Others		
Nityanand Dubey	135,000	135,000

Krishna Karelia	6,498,871	
Manjula Karelia	21,662,904	
Nayana Karelia	4,332,581	
Pooja Construction	1,435,000	1,435,000
Sachidanand Dubey	85,000	85,000
Vijay Bhai	1,500,000	1,500,000
Vivek Dubey	135,000	135,000
ISMF Builders	(27,888)	
Pratha Developers Pvt. Ltd.	3,000,000	3,000,000
	38,756,468	6,290,000
Total	50,746,468	31,470,000"

9. It is relevant to notice that against the name of the Financial Creditor Manjula Karelia amount mentioned on 31.03.2011 is as Rs.21,662,904 and further in the previous year, no amount was mentioned against Manjula Karelia, which clearly proves that amount reflected in the balance sheet included the interest, since disbursement was only of Rs.2 crores. At this juncture, we may also notice the balance sheets as on 31.03.2014. The balance sheet as on 31.03.2014 refer to long term borrowing of the current year as well as the previous year, which is as follows:

"Pooja Land and Premises Pvt. Ltd.

B, 1st Floor, Eastern Court, Vile Parle (***)

BALANCE SHEET AS AT 31ST MARCH 2014

Particular	Note No.	Current Year		Previous Year
		Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
EQUITY & LIABILITIES				
Shareholders funds				
Share Capital	2	205,000		205,000
Reserve and Surplus	3	<u>(28,897,554)</u>		<u>(24,556,848)</u>
			(28,692,554)	(24,351,8480)

Non Current Liabilities

Long Term Borrowings	4	97,834,545	97,834,545	95,081,053"
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10. Note 4 of the same balance sheet divides long term borrowings in two categories, i.e., - (a) Loans and Advances from Related Parties; and (b) Other Loans and Advances, which Note 4 is as follows:

"NOTE NO. 4 - LONG TERM BORROWINGS**Unsecured**

(a) Loans and Advances from related parts	42,730,221	40,093,011
(B) Other Loans and Advances	55,101,324	54,988,042
Total	97,831,545	95,081,053"

11. Share Purchase Agreement is dated 29.12.2014. The balance sheet as on 31.03.2015 is also on the record, in which with respect to long term borrowing amount of Rs.10,01,16,474 has been mentioned. Balance sheet as on 31.03.2015 continue long term borrowing, which is as follows:

"POOJA LAND AND PREMISES PRIVATE LIMITED**BALANCE SHEET AS AT 31ST MARCH 2015**

Particular	Note No.	Current Year Amount (Rs.)	Previous Year Amount (Rs.)
EQUITY & LIABILITIES			
Shareholders funds			
Share Capital	2	2,05,000	2,05,000
Reserve and Surplus	3	(2,70,64,372)	(2,88,97,554)
		(3,18,50,172)	(2,86,92,554)
Non Current Liabilities			
Long Term Borrowings	4	10,01,16,474	9,78,31,545"

12. It is relevant to notice that long term borrowings, which was reflected in the previous year, i.e. year ending as on 31.03.2014 was totaling to Rs.95,081,053/- and the said amount as on 31.03.2014 was shown as Rs.9,78,31,545/-, which amount is reflected in the balance sheet of 31.03.2015 as a previous year amount and the amount as on 31.03.2015 has been mentioned as Rs.10,01,16,474/- in the subsequent balance sheet, i.e. 2016-17 and 2017-18. The amount reflected in the balance sheet under the long term borrowings is the same amount i.e., Rs.10,01,16,474/-. In the Appeal, submission was advanced by the learned Counsel for the Appellant that the said amount of Rs.10,01,16,474/- is the amount, which was given by Romell Real Estates Pvt. Ltd. as loan and the balance sheet of the year 2015-16, 2016-17 and 2017-18, which reflects the said amount is the loan given by Romell Real Estates Pvt. Ltd. and Adjudicating Authority committed error in noticing the same as acknowledgement of debt by the Corporate Debtor. In view of the rival stand taken by the parties, this Tribunal on 01.11.2022, passed the following order:

“01.11.2022: Learned Counsel for the Appellant prays for time to file additional affidavit seeking details of the amount paid of Rs. 10,01,16,474/- as reflected in the balance sheet of 2017-2018.

Learned Counsel for the Appellant in the affidavit may also indicate the relevant date with the balance sheet. Relevant documents

in support of the loan as claimed by the Appellant Romell should also be given.

Learned Counsel for the Resolution Professional as well as Respondent are also permitted to file the Reply to the Additional Affidavit giving other relevant details regarding the aforesaid amount.

List this Appeal on **12th December, 2022.**”

13. By order dated 01.11.2022, the Appellant was directed to file relevant documents in support of the loan as claimed by the Appellant, which is advanced by the Romell. The Appellant filed affidavit dated 17.01.2023, where to explain the loan from Romell Real Estates Pvt. Ltd., they have stated that it is at the request of the Corporate Debtor, amount between 29.07.2015 to 04.01.2016 was paid by Romell Real Estates Pvt. Ltd. to Vijay Kamdar Paragraphs 2 and 3 of the affidavit are as follows:

“2. The Corporate Debtor had addressed various letters to Romell Real Estate Private Limited requesting payments to be made on its behalf to Mr. Vijay C. Kamdar.

Sr. No.	Date	Amount (INR)
a.	29 th July 2015	50,00,000/-
b.	8 th August 2015	75,00,000/-
c.	18 th August 2015	75,00,000/-
d.	24 th August 2015	3,00,00,000/-
e.	3 rd December 2015	1,00,00,000/-
f.	26 th November 2015	50,00,000/-
g.	28 th December 2015	2,00,00,000/-

H	4 th January 2016	1,50,00,000/-
TOTAL		10,00,00,000

Hereto annexed and marked as Exhibit “A” to “H” is the copy of Letter dated 29th July 2015, Letter dated 8th August 2015, Letter dated 18th August 2015, Letter dated 24th August 2015, Letter dated 3rd September 2015, Letter dated 26th November 2015, Letter dated 28th December 2015, and Letter dated 4th January 2015 respectively.

3. Upon receipt of the above payment requests, Romell Real Estate Pvt. Ltd. has made payment of Rs.10,00,00,000/- (INR Ten Crore Only) to Mr. Kamdar in multiple tranches from it's a/c. no.04102320000179 by issuing cheques from time to time. Hereto annexed and marked as Exhibit “I” is the copy of Certificate issued by HDFC Bank Ltd. along with extract of bank statement.”

14. In the affidavit, no documents have been placed by the Appellant to prove any loan or any disbursement made by Romell Real Estates Pvt. Ltd. to the Corporate Debtor. The submission that the payment was made on the letters given by Corporate Debtor to one Mr. Vijay Kamdar, is a loan transaction to the Corporate Debtor, does not inspire any confidence. The stand of the Appellant that amount of Rs.10,01,16,474/- is reflected in balance sheets of the year 2015-16, 2016-17 and 2017-18 is the loan given by Romell Real Estates Pvt. Ltd. is false plea, which is apparent from the balance sheets of the Corporate Debtor on record. We have noticed the balance sheet for the year as on 31.03.2014, which balance sheet indicates

that long term borrowing as on 31.03.2014 was Rs.9,78,31,545/-, which figure is reflected in balance sheet as on 31.03.2015. The balance sheet as on 31.03.2015 has noted the figures of Rs.10,01,16,474/-, which we have already extracted above. According to the Appellant, the amount of Rs.10 crore was paid by Romell Real Estates Pvt. Ltd. from 29.07.2015 to 04.01.2016 at the request of the Corporate Debtor. The figure of Rs.10,01,16,474/- already find place in balance sheet of 31.03.2015 by that time the alleged payment by Romell Real Estates Pvt. Ltd. was not even made. In the balance sheet of 2016-17 and 2017-18, the said figure of long term borrowing of Rs.10,01,16,474/- of the previous year and of the year ending 31.03.2017 has been mentioned. It is useful to extract the balance sheet as on 31.03.2017, which is as follows:

“POOJA LAND AND PREMISES PRIVATE LIMITED

BALANCE SHEET AS AT 31ST MARCH 2017

Particular	Note No.	Current Year		Previous Year Amount (Rs.)
		Amount (Rs.)	Amount (Rs.)	
EQUITY & LIABILITIES				
Shareholders funds				
Share Capital	2	205,000		205,000
Reserves and Surplus	3	<u>(32,575,612)</u>		<u>(32,335,664)</u>
			(32,370,612)	(32,130,664)
Non Current Liaibilities				
Long Term Borrowings	4		100,116,474	100,116,474”

15. When the figure of Rs.10,01,16,474/- is continuing as long term borrowings from the balance sheet as on 31.03.2015 and which figure is the same figure, which is reflected in the balance sheet as on 31.03.2015, we fail to see how the loan of Romell Real Estates Pvt. Ltd. of Rs.10,01,16,474/- is reflected in the balance sheet. In event there is any amount of Rs.10,01,16,474/- loan advanced by Romell Real Estates Pvt. Ltd., the balance sheet ought to have reflected the same, in addition to Rs.10,01,16,474/-. Thus, the balance sheet of the Corporate Debtor itself makes it clear that the plea raised by the Appellant that the amount reflected in the balance sheet is not the amount, which was given by the Financial Creditor, rather it is the amount advanced by Romell Real Estates Pvt. Ltd., is false and misleading.

16. It is relevant to notice that in the present case, this Tribunal has directed the Appellant to file an affidavit and explain the entry of Rs.10,01,16,474. After the order of this Tribunal, an affidavit has been filed dated 17.01.2023, which is nothing but misleading affidavit containing false averments. We are satisfied that amount which was advanced to the Appellant by the Financial Creditor, was duly disbursed, which is proved by the Bank statement and is reflected in the balance sheet of 2010-11. The amount reflected in the balance sheet of year 2010-11 under the heading 'long term borrowing' have been increasing in subsequent years, which indicates that interest component was added in subsequent balance sheets, which fully

supports the case of the Financial Creditor that loan was with interest @ 12%. We, thus, reject the plea of the Appellant that amount of Rs.10,01,16,474/- reflected in the balance sheet of 2016-17 and 2017-18 are amount which was given by loan to the Corporate Debtor by Romell Real Estates Pvt. Ltd., which is false and misleading plea.

17. What we have stated above, i.e., the Appellant has filed false affidavit, the appeal could be dismissed on this ground alone. However, since learned Counsel for the Appellant has made various other submissions in support of the Appeal, we proceed to examine the submissions made by the Appellant.

18. Learned Counsel for the Appellant submits that there is no acknowledgement in the balance sheet of the year 2017-18, since name of Respondent No.1 Financial Creditor is not reflected in the balance sheet, hence, there is no acknowledgement within the meaning of Section 18 of the Limitation Act and Adjudicating Authority committed error in reading the acknowledgement. The loan according to the Financial Creditor having been disbursed on 23.06.2010 and the Application having been filed on 20.04.2020, the same is barred by time.

19. The submission of the Appellant that Application is barred by time cannot be accepted. After disbursement of loan on 23.06.2010, there is continuance reflection of the debt in the balance sheet from 2011-12 onwards till 2017-18. The submission of the Appellant is that balance sheet of 2017-

18 cannot be read as any acknowledgement, since the name of Respondent No.1 is not mentioned in the balance sheet as creditor, hence there is no acknowledgement. The submission cannot be accepted, in the balance sheet of 2011-12, name of the creditor along with the amount disbursed to them including Respondent No.1 have been reflected in the column 'unsecured loans' and are subsequently reflected in the balance sheet, which is clear from the extract of balance sheet as noted above. The mere fact that name of Respondent No.1 is not mentioned as creditor in subsequent balance sheet including the balance sheet of 2017-18 is of no consequence, since the name of Respondent No.1 was mentioned as under the unsecured/ long term borrowings in 2011-12, which unsecured loan/ borrowings continued to be reflected in subsequent balance sheet of the Corporate Debtor. We have already noted the plea raised by the Appellant that amount of long term borrowings mentioned in balance sheet for the year 2017-18 is borrowing from Romell Real Estates Pvt. Ltd., which plea has not been accepted for reasons given above. We are satisfied that debt, which was reflected in 2011-12 of the Financial Creditor, continued to be reflected under the long term borrowing and there being continuous acknowledgement, the Application cannot be said to be barred by time.

20. The learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industry Pvt. Ltd. & Anr. – (2020) 15 SCC 1***. The Hon'ble

Supreme Court in the above case has laid down that acknowledgement under Section 18 of the Limitation Act provided for extension of limitation. In paragraph 35, following has been laid down:

“35. Apart from the above and even if it be assumed that the principles relating to acknowledgment as per Section 18 of the Limitation Act are applicable for extension of time for the purpose of the application under Section 7 of the Code, in our view, neither the said provision and principles come in operation in the present case nor do they enure to the benefit of Respondent 2 for the fundamental reason that in the application made before NCLT, Respondent 2 specifically stated the date of default as “8-7-2011 *being the date of NPA*”. It remains indisputable that neither has any other date of default been stated in the application nor has any suggestion about any acknowledgment been made. As noticed, even in Part V of the application, Respondent 2 was required to state the particulars of financial debt with documents and evidence on record. In the variety of descriptions which could have been given by the applicant in the said Part V of the application and even in residuary Point 8 therein, nothing was at all stated at any place about the so-called acknowledgment or any other date of default.

35.1. Therefore, on the admitted fact situation of the present case, where only the date of default as “8-7-2011” has been stated for the purpose of maintaining the application under Section 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgment or any other date of default, in our view, the submissions sought to be developed on behalf of Respondent 2 at the later stage cannot be permitted. It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced.

Indisputably, in the present case, Respondent 2 never came out with any pleading other than stating the date of default as “8-7-2011” in the application. That being the position, no case for extension of period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under consideration in the present case, looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgment. In this view of the matter, reliance on the decision in Mahabir Cold Storage [Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402] does not advance the cause of Respondent 2.”

21. We already having held that in the balance sheet, acknowledgement of debt for the Financial Creditor was reflected continuously from 2010-11 till 2017-18 and the Application, which was filed on 22.04.2020, cannot be held to be barred by time.

22. Learned Counsel for the Appellant further submitted that Application filed under Section 7 was premature. When one of the submissions of the Appellant is that Application was barred by time, we cannot accept the submission of the Appellant that Application was premature. The submission that Application is premature, is advanced on the basis of Loan Agreement dated 31.12.2010. The learned Counsel for the Appellant referred to Clause 4 of the Loan Agreement, to contend that loan was repayable only after 10 years, hence, the application was premature. The Appellant before the Adjudicating Authority has come with the categorical pleading that Loan Agreement dated 31.12.2010 is a manufactured document, which pleadings

have been made in the reply filed by the Corporate Debtor to Section 7 Application. In paragraph 7 of the reply affidavit, the Corporate Debtor has made following pleadings:

- “7.** I say that the present Petitioner alleges execution of a purported Loan Agreement dated 31.12.2010 between the Petitioner along with her relatives and Corporate Debtor. I say that the said document is a forged and fabricated document as no such document ever existed. It clearly appears to be an afterthought of the Petitioner.”

23. When the Corporate Debtor’s case is that the Loan Agreement is fabricated and forged, it does not lie in the mouth of the Corporate Debtor to contend that as per Loan Agreement, the Application under Section 7 was premature. We further notice Clauses 4 and 5 of the Loan Agreement, on which the Appellant has placed reliance, which are as follows:

- “4.** The outstanding principal amount of the Lender Family as a whole will be repayable along with interest compounded as stated in clause 3 on the expiry of ten years from the date of first disbursement of the loan by any member of the Lender Family (i.e. 10 years from 23rd June 2010 i.e. on or before 23rd June 2020). However, the option to drawdown the loan shall be available only for a period of 5 years from the date of this agreement.”
- 5.** During the first five years of the loan i.e. till 23rd June 2015, the Borrower shall have the right to repay the loan or any part thereof and then seek disbursement again by giving a 3 days’ notice to the Lender family. At the end of 5 years, no further drawdown shall be available save and except the Lender family can replace

the loan from one Lender to another as stated in clause 2 above. The Borrower hereby confirms that if he makes any prepayment of the loan after 5 years, he shall not be entitled to draw it back again.”

24. Clauses 4 and 5 mentions that outstanding principal amount will be repayable along with interest on the expiry of 10 years from the date of first disbursement of the loan, which was explained in bracketed portion, which reads as “(i.e. 10 years from 23rd June 2010 i.e. on or before 23rd June 2020)”. Clause 5 also indicate that the Borrower has right to repay the loan in first five years, i.e. till 23rd June 2015. The above Clauses 4 and 5 when read together, makes it clear that loan could have been repaid by borrower before 23.06.2020 also. A Bank statement has also been brought on the record by the Appellant indicating that payment has been made by the Corporate Debtor to other family members of Respondent No.1 in the year 2015. We, thus, are not persuaded to accept the submission of the Appellant that Application filed under Section 7 of the Corporate Debtor was premature.

25. Learned Counsel for the Appellant has relied on the judgment of this Tribunal in ***Hyline Mediconz P. Ltd. vs. Anandaloke Medical Centre P. Ltd. – (2022) SCC OnLine 4286***, where this Tribunal held that relevant point for determination of maintainability of the Application under Section 7 is the date of filing. Further reliance has been placed on the judgment of the Hon’ble Supreme Court in ***Ramesh Kymal vs. Siemens Gamesa Renewable Power Pvt. Ltd. – (2021) 3 SCC 224*** and stated that the case of the Financial

Creditor has to be tested on its pleadings in the Form and cannot be allowed to prevaricate from the same. There can be no quarrel to the proposition laid down in the above cases. In Section 7 Application, which was filed by the Financial Creditor, the amount in default and date of default was mentioned as 18.12.2019. The repayment letter dated 18.12.2019 sent by Respondent No.1 to Corporate Debtor was also filed along with Section 7 Application, by which Financial Creditor demanded the repayment of the amount within 15 days and the principal amount along with interest was mentioned as Rs.3,25,22,787/-. The Appellant has in the Section 7 Application clearly pleaded about the Loan Agreement dated 31.12.2010 and the issuance of repayment notice. In the rejoinder affidavit filed by the Financial Creditor, the balance sheets of the Corporate Debtor were also brought on the record.

26. From the facts of the present case, as reflected from materials brought on the record, it is clear that the Corporate Debtor, who has not denied the disbursement of the amount in balance sheet of 2010-11 and subsequent balance sheet has not made any pleading or brought on record any material that amount at any time was paid to the Financial Creditor, although some repayment was made to the other family members of the Financial Creditor in 2015. Disbursement, reflection in the balance sheets and repayment to family members, who were part of the same Loan Agreement, are the materials on which conclusion can be drawn that loan was taken by the Corporate Debtor, but was not repaid and now the Appellant is making false and misleading

pleas to somehow get out from the liability from the debt and default, which has been committed by the Corporate Debtor. We, thus, are of the view that this Appeal deserved to be dismissed. Ordered accordingly. While dismissing the Appeal, we also impose cost on Appellant of Rs.1,00,000/- (Rupees one lakh) to be paid within four weeks to the Respondent No.1, in the facts and circumstances of the case specially keeping in view the Appellant's attempt of filing false and misleading affidavits in the Appeal.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

14th August, 2024

Ashwani