Asset Reconstruction Company (India) ... vs Bishal Jaiswal on 15 April, 2021

Equivalent citations: AIRONLINE 2021 SC 267

Author: R.F. Nariman

Bench: Hrishikesh Roy, B.R. Gavai, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.323 OF 2021

ASSET RECONSTRUCTION COMPANY
(INDIA) LIMITED …APPELLANT

VERSUS

BISHAL JAISWAL & ANR. …RESPONDENTS

WITH

CIVIL APPEAL NO.3228 OF 2020

CIVIL APPEAL NO.3765 OF 2020

CIVIL APPEAL NO.3 OF 2021

CIVIL APPEAL NO. OF 2021
(@ SLP(C) No.1168 of 2021)

JUDGMENT

R.F. Nariman, J.

1. In 2009, Corporate Power Ltd. ["the corporate debtor"] set up a thermal power project in Jharkhand, and for so doing, availed of loan Reason:

> facilities from various lenders, including the State Bank of India ["SBI"]. The account of the corporate debtor was declared as a non-performing asset by SBI on 31.07.2013. On 27.03.2015, SBI issued a loan-recall notice to the corporate debtor in its capacity as the lenders' agent. On 31.03.2015, some of the original lenders of the corporate debtor, namely, India Infrastructure Finance Company Limited, SBI, State Bank of Hyderabad, State Bank of Bikaner and Jaipur, State Bank of Patiala, and State Bank of Travancore assigned the debts owed to them by the corporate debtor to the

appellant, the Asset Reconstruction Company (India) Limited. On 20.06.2015, the appellant issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ["SARFAESI Act"] on behalf of itself and other consortium lenders to the corporate debtor. On 01.06.2016, the appellant took actual physical possession of the project assets of the corporate debtor under the SARFAESI Act. On 26.12.2018, the appellant filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ["IBC"] before the National Company Law Tribunal, Calcutta ["NCLT"] for a default amounting to Rs.5997,80,02,973/- from the corporate debtor. As the relevant form indicating the date of default did not indicate any such date, this was made up by the appellant on 08.11.2019 by filing a supplementary affidavit before the NCLT, specifically mentioning the date of default and annexing copies of balance sheets of the corporate debtor, which, according to the appellant, acknowledged periodically the debt that was due. On 19.02.2020, the Section 7 application was admitted by the NCLT, observing that the balance sheets of the corporate debtor, wherein it acknowledged its liability, were signed before the expiry of three years from the date of default, and entries in such balance sheets being acknowledgements of the debt due for the purposes of Section 18 of the Limitation Act, 1963 ["Limitation Act"], the Section 7 application is not barred by limitation. In an appeal filed to the National Company Law Appellate Tribunal ["NCLAT"], the corporate debtor relied upon the Full Bench judgment of the NCLAT in V. Padmakumar v. Stressed Assets Stabilisation Fund, Company Appeal (AT) (Insolvency) No. 57 of 2020 (decided on 12.03.2020) ["V. Padmakumar"], in which a majority of four members [Justice (Retd.) A.I.S. Cheema, Member (Judicial), dissenting] held that entries in balance sheets would not amount to acknowledgement of debt for the purpose of extending limitation under Section 18 of the Limitation Act. After a preliminary hearing, a three-Member Bench passed an order on 25.09.2020 doubting the correctness of the majority judgment of the Full Bench and referred the matter to the Acting Chairman of the NCLAT to constitute a Bench of coordinate strength to reconsider the judgment in V. Padmakumar (supra).

2. A five-Member Bench of the NCLAT, vide the impugned judgment dated 22.12.2020, refused to adjudicate the question referred, stating that the reference to the Bench was itself incompetent.

3. Shri Ramji Srinivasan, learned Senior Advocate appearing on behalf of the appellant, has assailed the impugned judgment, arguing that the majority judgment of the Full Bench of the NCLAT in V. Padmakumar (supra) was clearly per incuriam as it has not considered various binding judgments of this Court and that the said judgment was wholly incorrect in rejecting the reference out of hand at a preliminary stage. For this purpose, he referred to a number of judgments of this Court in which it has been made clear that vide Section 238A of the IBC, Section 18 of the Limitation Act is applicable to a proceeding under Section 7 of the IBC. Also, according to the learned Senior Advocate, the judgments of the High Courts and the judgments of this Court have expressly held that entries made in signed balance sheets of the corporate debtor would amount to acknowledgements of liability and have, therefore, correctly been relied upon by the NCLT on the facts of this case. He argued, relying

upon certain judgments, that the reference made to the five-Member Bench by the three- Member Bench was perfectly in order and ought to have been answered on merits. He also argued that the constitution of the five-Member Bench which passed the impugned judgment was not in order as three out of the five members of the said Bench were members who assented with the majority opinion in V. Padmakumar (supra), the dissentient member not being made part of the Bench so formed. This, according to him, was contrary to the principles of natural justice. He also argued that the fact that a balance sheet has to be filed under compulsion of law does not mean that an acknowledgement of debt has also to be made under compulsion of law, and for this purpose, he referred to two High Court judgments.

4. Refuting the aforesaid submissions, Shri Abhijeet Sinha, learned Advocate appearing on behalf of the Respondents, argued that the Explanation to Section 7, read with the definition of "default" contained in Section 3(12) of the IBC, would preclude the application of Section 18 of the Limitation Act inasmuch as a default in respect of a financial debt would include a financial debt owed not only to the applicant-financial creditor, but to all other financial creditors of the corporate debtor. He then referred to the rationale for enacting Section 238A by referring to the Insolvency Committee Report which introduced the aforesaid Section and strongly relied upon the fact that in all these cases, recovery proceedings were ongoing before the Debt Recovery Tribunal and/or the appellate authority under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ["Recovery of Debts Act"] and that, by not applying Section 18 of the Limitation Act to the IBC, recoveries will not be thwarted. He also added that the main plank of the submission of the appellant was that a huge sum of Rs.12,000 crore would otherwise go down the drain if acknowledgements in balance sheets were not to be looked at, and stressed the fact that this would be relevant only in recovery proceedings and not in proceedings before the IBC, which are not meant to be recovery proceedings at all, as has been held in several judgments of this Court. He then relied upon two High Court judgments, from the Andhra Pradesh High Court and Gauhati High Court, to buttress his submission that via Section 18 of the Limitation Act, entries made in balance sheets do not amount to acknowledgement of debt. He also stressed the fact that no date of default has been mentioned in the original form that was submitted with the Section 7 application, and that this would, therefore, be a non-curable defect, on account of which the Section 7 application should have been dismissed at the threshold. He then took us to various judgments of this Court which made it clear that if a period of three years had elapsed from the date of declaration of the account of a corporate debtor as a non- performing asset, the claim filed by a creditor is a dead claim which cannot be resurrected having recourse to Section 18 of the Limitation Act. Finally, he argued that the balance sheets in the present case did not amount to acknowledgement of liability inasmuch as the auditor's report, which must be read along with the balance sheets, would make it clear that there was no unequivocal acknowledgement of debt, but that caveats had been entered by way of notes in the auditor's report.

5. After hearing counsel for both sides, it is important to first advert to the rationale for the enactment of Section 238A of the IBC, which was enacted by way of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06.06.2018. Section 238A of IBC reads as follows:

> "238A. Limitation.—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority,

> the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

6. In Jignesh Shah v. Union of India, (2019) 10 SCC 750, this Court referred to the Report of the Insolvency Law Committee of March, 2018, which led to the introduction of Section 238A, as follows:

> "8. In para 7 of the said judgment [B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633], the Report of the Insolvency Law Committee of March 2018 was referred to as follows: ([B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633], SCC pp. 644-45, para 11) "11. Having heard the learned counsel for both sides, it is important to first set out the reason for the introduction of Section 238-A into the Code. This is to be found in the Report of the Insolvency Law Committee of March 2018, as follows:
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> '28. Application of Limitation Act, 1963 28.1. The question of applicability of the Limitation Act, 1963 ("the Limitation Act") to the Code has been deliberated upon in several judgments of NCLT and NCLAT. The existing jurisprudence on this subject indicates that if a law is a complete code, then an express or necessary exclusion of the Limitation Act should be respected.

[Ravula Subba Rao v. CIT, AIR 1956 SC 604] In light of the confusion in this regard, the Committee deliberated on the issue and unanimously agreed that the intent of the Code could not have been to give a new lease of life to debts which are time-

barred. It is settled law that when a debt is barred by time, the right to a remedy is time-barred.

[Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499 : 1993 SCC (Cri) 149] This requires being read with the definition of "debt" and "claim" in the Code. Further, debts in winding-up proceedings cannot be time-barred [Interactive Media and Communication Solution (P) Ltd. v. GO Airlines Ltd., 2013 SCC OnLine Del 445 : (2013) 199 DLT 267] , and there appears to be no rationale to exclude the extension of this principle of law to the Code.

28.2. Further, non-application of the law on limitation creates the following problems: first, it re-opens the right of financial and operational creditors holding time-barred debts under the Limitation Act to file for CIRP, the trigger for which is default on a debt above INR one lakh. The purpose of the law of limitation is 'to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches' [Rajender Singh v. Santa Singh, (1973) 2 SCC 705]. Though the Code is not a debt recovery law, the trigger being "default in payment of debt" renders the exclusion of the law of limitation counter-

intuitive. Second, it re-opens the right of claimants (pursuant to issuance of a public notice) to file time- barred claims with the IRP/RP, which may potentially be a part of the resolution plan. Such a

resolution plan restructuring time-barred debts and claims may not be in compliance with the existing laws for the time being in force as per Section 30(4) of the Code.

28.3. Given that the intent was not to package the Code as a fresh opportunity for creditors and claimants who did not exercise their remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific section applying the Limitation Act to the Code. The relevant entry under the Limitation Act may be on a case-to-case basis. It was further noted that the Limitation Act may not apply to applications of corporate applicants, as these are initiated by the applicant for its own debts for the purpose of CIRP and are not in the form of a creditor's remedy.'" (emphasis in original) A perusal of the above would show that considering that the Limitation Act applies only to courts, unless made statutorily applicable to tribunals, the Committee was of the view that such Act should be made to apply to the IBC as well, observing that though the IBC is not a debt recovery law, the trigger being "default in payment of debt" would render the exclusion of the law of limitation "counter-intuitive". Thus, it was made clear that an application to the IBC should not amount to resurrection of time-barred debts which, in any other forum, would have been dismissed on the ground of limitation.

7. From the above, it is clear that the principle of Section 9 of the Limitation Act is to be strictly adhered to, namely, that when time begins to run, it cannot be halted, except by a process known to law. One question that arises before this Court is whether Section 18 of the Limitation Act, which extends the period of limitation depending upon an acknowledgement of debt made in writing and signed by the corporate debtor, is also applicable under Section 238A, given the expression "as far as may be" governing the applicability of the Limitation Act to the IBC.

8. The aforesaid question is no longer res integra as two recent judgments of this Court have applied the provisions of Section 14 and Section 18 of the Limitation Act to the IBC. Thus, in Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd., Civil Appeal No. 9198 of 2019 (decided on 22.03.2021), after setting out the issues that arose in that case in paragraph 57, and after referring to Section 238A of IBC, held:

> "66. Similarly under Section 18 of the Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgement is signed. However, the acknowledgement must be made before the period of limitation expires.
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> 67. As observed above, Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and the NCLAT. The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT. All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible.

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

9. Nearer home, in Laxmi Pat Surana v. Union Bank of India, Civil Appeal No. 2734 of 2020, a judgment delivered on 26.03.2021, this Court, after referring to various judgments of this Court, including the judgment in Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1 ["Babulal"], then held:

"35. The purport of such observation has been dealt with in the case of Babulal Vardharji Gurjar (II) [Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1]. Suffice it to observe that this Court had not ruled out the application of Section 18 of the Limitation Act to the proceedings under the Code, if the fact situation of the case so warrants. Considering that the purport of Section 238A of the Code, as enacted, is clarificatory in nature and being a procedural law had been given retrospective effect; which included application of the provisions of the Limitation Act on case-to-case basis. Indeed, the purport of amendment in the Code was not to reopen or revive the time barred debts under the Limitation Act. At the same time, accrual of fresh period of limitation in terms of Section 18 of the Limitation Act is on its own under that Act. It will not be a case of giving new lease to time barred debts under the existing law (Limitation Act) as such.

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

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

(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian

Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.–For the purposes of this section,–

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

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

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

37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" - not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-

payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgements, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgement in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgement, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgement of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgement must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code."

10. Given the aforesaid, it is not possible to accede to the arguments made by Shri Sinha that Section 18 of the Limitation Act cannot be made applicable by reason of the arguments put forth by him. As

has been held in Ambika Prasad Mishra v. State of U.P., (1980) 3 SCC 719, every argumentative novelty does not undo a settled position of law. Krishna Iyer, J., speaking for a Bench of five learned Judges, stated thus:

> "5. ... But, after listening to the Marathon erudition from eminent counsel, a 13-Judge Bench of this Court upheld the vires of Article 31-A in unequivocal terms. That decision binds, on the simple score of stare decisis and the constitutional ground of Article 141. Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. In this view, other submissions sparkling with creative ingenuity and presented with high pressure advocacy, cannot persuade us to reopen what was laid down for the guidance of the nation as a solemn proposition by the epic Fundamental Rights case [(1973) 4 SCC 225 : 1973 Supp SCR 1]. From Kameshwar Singh [AIR 1952 SC 252 : 1952 SCR 889 : 1952 SCJ 354] (1952) and Golak Nath [I.C. Golak Nath v. State of Punjab, AIR 1967 SC 1643 : (1967) 2 SCR 762 : (1967) 2 SCJ 486] (1967) through Kesavananda [(1973) 4 SCC 225 : 1973 Supp SCR 1] (1973) and Kanan Devan [Kanan Devan Hills Produce Co.

Ltd. v. State of Kerala, (1973) 1 SCR 356 : (1972) 2 SCC 218 :

> AIR 1972 SC 2301] (1972) to Gwalior Rayons [State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg). Co. Ltd.(1973) 2 SCC 713 :
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> (1974) 1 SCR 671] (1976) and after Article 31-A has stood judicial scrutiny although, as stated earlier, we do not base the conclusion on Article 31-A. Even so, it is fundamental that the nation's Constitution is not kept in constant uncertainty by judicial review every season because it paralyses, by perennial suspense, all legislative and administrative action on vital issues deterred by the brooding threat of forensic blow up. This, if permitted, may well be a kind of judicial destabilisation of State action too dangerous to be indulged in save where national crisis of great moment to the life, liberty and safety of this country and its millions are at stake, or the basic direction of the nation itself is in peril of a shake-up. It is surely wrong to prove Justice Roberts of the United States Supreme Court right when he said: [Smith v. Allwright, 321 US 649, 669, 670 (1944)] "The reason for my concern is that the instant decision, overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket good for this day and train only.... It is regrettable that in an era marked by doubt and confusion, an era whose greatest need is steadfastness of thought and purpose, this Court which has been looked to as exhibiting consistency in adjudication, and a steadiness which would hold the balance even in the face of temporary ebbs and flows of opinion, should now itself become the breeder of fresh doubt and confusion in the public mind as to the stability of our institutions." (emphasis supplied)

11. Section 18 of the Limitation Act reads as follows:

> "18. Effect of acknowledgement in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.
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> (2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.
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> Explanation.—For the purposes of this section,—
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> (a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,
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> (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and
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> (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

12. In an illuminating discussion on the reach of Section 18 of the Limitation Act, including the reach of the Explanation to the said Section, this Court, in Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad, (1962) 1 SCR 140 ["Shapoor Fredoom Mazda"], after referring to Section 19 of the Limitation Act, 1908, which corresponds to Section 18 of the 1963 Act, held:

> "It is thus clear that acknowledgement as prescribed by Section 19 merely renews debt; it does not create a new right of action.

It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgement must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the

statement. In construing words used in the statements made in writing on which a plea of acknowledgement rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in Section 19, and there is really no substantial difference between the parties as to the true legal position in this matter." (at pages 144-145)

13. The next question that this Court must address is as to whether an entry made in a balance sheet of a corporate debtor would amount to an acknowledgement of liability under Section 18 of the Limitation Act.

14. Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act. Thus, in Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402, this Court held:

> "12. The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability to M/s Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt. ..."

15. Likewise, in a case concerning the dishonour of a cheque under Section 138 of the Negotiable Instruments Act, 1881, this Court, in A.V. Murthy v. B.S. Nagabasavanna, (2002) 2 SCC 642 ["A.V. Murthy"], held:

> "5. ... It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Moreover, in the instant case, the appellant has submitted before us that the respondent, in his balance sheet prepared for every year subsequent to the loan advanced by the appellant, had shown the amount as deposits from friends. A copy of the balance sheet as on 31-3-1997 is also produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the Magistrate by way of defence of the respondent." The judgment in A.V. Murthy (supra) was followed in S. Natarajan vs. Sama Dharman, Crl. A. No. 1524 of 2014 (decided on 15.07.2014) as follows:

> "7. In this connection, we may usefully refer to a judgment of this Court in A.V. Murthy v. B.S. Nagabasavanna [A.V. Murthy v. B.S. Nagabasavanna, (2002) 2 SCC 642] where the accused had alleged that the cheque issued by him in favour of the complainant in respect of sum advanced to the accused by the complainant four years ago was dishonoured by the bank for the reasons "account closed". The Magistrate had issued summons to the accused. The Sessions Court quashed the proceedings on the ground that the alleged debt was barred by limitation at the time of issuance of cheque and, therefore, there was no legally enforceable debt or liability against the accused under the Explanation to Section 138 of the NI Act and, therefore, the complaint was not maintainable. While dealing with the challenge to this order, this Court observed that Under Section 118 of the NI Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. This Court further observed that Section 139 of the NI Act specifically notes that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the NI Act for discharge, in whole or in part, of any debt or other liability. This Court further observed that under Sub-section (3) of Section 25 of the Contract Act, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. ..."

16. An exhaustive judgment of the Calcutta High Court in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115 ["Bengal Silk Mills"] held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt as follows:

> "9. In support of the contention that the balance-sheets do not amount to acknowledgements of liability, because they were prepared under compulsion of law Mr. Banerji relies upon the decision in Kashinath v. New Akot Ginning and Pressing Co. Ltd., I.L.R. 1950 Nag. 562 at 568 : A.I.R. 1951 Nag. 255. It is true that the balance-sheets were required to be made both by the Indian Companies Act, 1913 as also by the articles of association of the defendant company. There was a compulsion upon the managing agents to prepare the documents but there was no compulsion upon them to make any particular admission. They faithfully discharged their duty and in doing so they made honest admissions of the Company's liabilities. Those admissions, though made in discharge of their duty, are nevertheless conscious and voluntary admissions. A document is not taken out of the purview of section 19 of the

> Indian Limitation Act merely on the ground that it is made under compulsion of law, see Venkata v. Partha Saradhi, 1892 I.L.R. 16 Mad. 220 at 222, Udaya Thevar v. Subrahmania Chetti, (1896) 6 M.L.J. 266, 269, Good v. Jane Job, 120 E.R. 810 at
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> 812. I am unable to agree with the reasoning of the Nagpur decision that a balance-sheet does not save limitation because it is drawn up under a duty to set out the claims made on the company and not with the intention of acknowledging liability.

The balance-sheet contains admissions of liability; the agent of the company who makes and signs it intends to make those admissions. The admissions do not cease to be acknowledgements of liability merely on the ground that they were made in discharge of a statutory duty. I notice that in the Nagpur case the balance-sheet had been signed by a director and had not been passed either by the Board of Directors or by the company at its annual general meeting and it seems that the actual decision may be distinguished on the ground that the balance-sheet was not made or signed by a duly authorized agent of the company.

10. Mr. Banerji next contends that none of the balance-sheets contains an admission of liability subsisting on the date of which it is made. According to him the balance-sheet for the year ended 30-11-1936 which was made on 1-6-1937 contains an admission of past liability as on 30-11-1936 but not an admission of liability existing on 1-6-1937. Mr. Banerji contends that such an admission does not satisfy the test of an acknowledgement under section 19 of the Indian Limitation Act. His contention is supported by Jwala Prasad v. Jwala Bank Ltd., A.I.R. 1957 All. 143 at 145. In that case the Allahabad High Court held that the balance-sheet did not contain any acknowledgement of an existing liability and therefore could not be treated as an acknowledgement under section 19. Mr. Banerji also relied upon the decisions in Kandasami Reddi v. Suppammal, I.L.R. 45 Mad. 443, Venkata v. Partha Saradhi, I.L.R. 18 Mad. 220, Rustomji on Limitation, 6th Edition, pages 191–193 and the cases collected therein. Now it is well settled that in order to satisfy the test of an acknowledgement under section 19 the admission of liability must be an admission of subsisting liability. In Kandasami Reddi v. Suppammal, I.L.R. 45 Mad. 443 at 445, Ayling J. said, “Liability can only signify present liability at the time of acknowledgement and this is clearly laid down in Venkata v. Parthasaradhi, (1893) 16 Mad.

220.” In Venkata v. Parthasaradhi, I.L.R. 16 Mad. 220 at 223 Muttasami Ayyar, J. said, “It is therefore necessary that upon a reasonable construction of the language used by the debtor in writing the relation of debtor and creditor must appear to be distinctly admitted, that it must be admitted also to be a subsisting jural relation, and then an intention to continue it until it is lawfully determined must also be evident.” The section requires a definite admission of liability in respect of the debt, but even an admission that the debt existed at a previous date may, having regard to the language used and the surrounding circumstances, amount to an implied representation that the debt is still subsisting (see Maniram Seth v. Seth Rupchand, I.L.R. 33 Cal. 1047 P.C.). In my opinion the balance-sheets satisfy the test of an acknowledgement under section 19. Each of them contains an admission that balances have been struck at the end of the previous year and that a definite sum has been found to be the balance then due to the creditor. The natural inference to be drawn from

the balance-sheet is that the closing balance due to the creditor at the end of the previous year will be carried forward as the opening balance due to him at the beginning of the next year. In each balance-sheet there is thus an admission of a subsisting liability to continue the relation of debtor and creditor and a definite representation of a present intention to keep the liability alive until it is lawfully determined by payment or otherwise. There is necessarily a time lag between the date of the signing of the balance-sheet and the end of the previous year. The balance-sheet contains no admission of the amount due on the date of the signature, that amount may be and often is different from the amount shown as due at the end of the previous year, but that fact alone does not take the document out of the purview of section

19. Take the case of a banker and its depositor. Suppose the banker sends to the depositor a monthly statement of account made for the month of February 1961 and signed on March 15, 1961. The statement gives the balance due on February 28, 1961. The amount due on March 15 may be quite different; the banker might have been made payments for the customer, nevertheless the statement amounts to a sufficient acknowledgement under section 19. I am therefore unable to agree with the decision in Jwala Prasad v. Jwala Bank Ltd., A.I.R. 1957 All. 144.

11. To come under section 19 an acknowledgement of a debt need not be made to the creditor nor need it amount to a promise to pay the debt. In England it has been held that a balance-sheet of a company stating the amount of its indebtedness to the creditor is a sufficient acknowledgement in respect of a specialty debt under section 5 of the Civil Procedure Act, 1833 (3 and 4 Will — 4c. 42), see Re: Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd., 1928 Ch. 836 under section 1 of Lord Tentenden's Act, 1828 (9 Geo. 4, c. 14) read with section 13 of the Mercantile Law Amendment Act, 1856 (19 and 20 Vict. c. 97), see Re: The Coliseum (Burrow) Ltd., (1930) 2 Ch. 44 at 47 and under sections 23 and 24 of the Limitation Act, 1939 (c. 21), see Ledingham v. Bermejo Estancia Co. Ltd., (1947) 1 A.E.R. 749 and Jones v. Bellgrove Properties Ltd., (1949) 2 K.B. 700, on appeal from (1949) 1 A.E.R. 498. Section 5 of the Civil Procedure Act, 1833 did not require that the acknowledgement should be given to the claiming creditor and consequently a balance-sheet containing an admission of indebtedness to the debenture holders was a sufficient acknowledgement of liability in respect of the debentures under that section, though it was sent only to the debenture holders who happened to be the shareholders of the company and not to the other debenture holders, see Re:

> Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd., (1928) 1 Ch. 836. Under Tentenden's Act, 1828 as also under the Limitation Act, 1939 (c. 21) the acknowledgement must be made to the creditor or his agent and if the balance- sheet is sent to a shareholder who is also a creditor the requirements of those Acts were satisfied, see Re: The Coliseum (Burrow) Ltd., (1930) 2 Ch. 44 at 47, Jones v. Bellgrove Properties Ltd., (1949) 1 A.E.R. 498 at 504 affirmed (1949) 2 K.B. 700. The decision in the last case has been followed in India and it has been held that an admission of indebtedness in a balance-sheet is a sufficient acknowledgement under section 19 of the Indian Limitation Act, see Raja of Vizianagram v. Official Liquidator, Vizianagram Mining Co. Ltd., (1951) 2 M.L.J. 535 at 550-1 : A.I.R. 1952 Mad.

136 at 145, Lahore Enamelling and Stamping Co. Ltd. v. A.K. Bhalla, A.I.R. 1958 Punjab 341 at 347, First National Bank Ltd. v. The Mandi (State) Industries Ltd., (1957) 59 Punjab Law Reports 589 and in an unreported decision of S.R. Das Gupta, J. in matter No. 449 of 1955 Re: Vita Supplies Corporation Ltd. decided on December 7, 1956." Importantly, this judgment holds that though the filing of a balance sheet is by compulsion of law, the acknowledgement of a debt is not necessarily so. In fact, it is not uncommon to have an entry in a balance sheet with notes annexed to or forming part of such balance sheet, or in the auditor's report, which must be read along with the balance sheet, indicating that such entry would not amount to an acknowledgement of debt for reasons given in the said note.

17. Bengal Silk Mills (supra) also dealt with the judgment in Kashinath Sankarappa v. New Akot Cotton Ginning & Pressing Co. Ltd., 1949 SCC OnLine MP 123 : AIR 1951 Nag 255 ["Kashinath"] by distinguishing the said judgment on the ground that the balance sheet in that case was not made or signed by a duly authorised agent of the company. Quite apart from this, if the said judgment is perused, what becomes clear is that the observation made in paragraph 20 is really an obiter observation, as the High Court went on to hold in paragraph 26 that the balance sheets that were produced were never proved in accordance with law, apart from being validly rejected by the shareholders, as a result of which, such balance sheets could not, therefore, operate as acknowledgements of liability under Section 19 of the Limitation Act, 1908.

18. In an appeal to the Supreme Court in Kashinath Sankarappa Wani v. New Akot Cotton Ginning and Pressing Co. Ltd., 1958 SCR 1331, this Court referred to Section 3(b) of the Commercial Documents Evidence Act (XXX of 1939) and then held that under the said Act, the balance sheet of the respondent company for the year 1940-1941 should have been admitted in evidence. This Court held that, unfortunately, the provisions of the said Act had not been brought to the attention of the High Court. However, having so held, this Court then went on to hold that on the facts of that case, no presumption that the balance sheet was duly made under Section 3(b) could be raised, as a result of which there could be no acknowledgement of liability on the facts of that case.

19. Two other judgments – of the Andhra Pradesh High Court and the Gauhati High Court – were also relied upon by the counsel for the respondents. So far as the Andhra Pradesh High Court is concerned, in Vijayalakshmi v. Hari Hara Ginning and Pressing, Nandigaon, OS A No. 40 of 1998 (decided on 03.03.1999), Liberhan, C.J. differed from a Karnataka High Court judgment which stated that showing of an amount in a balance sheet would amount to an acknowledgement under Section 18 of the Limitation Act. This was done as follows:

> "5. The learned Counsel for the appellant relied on a decision of the Karnataka High Court in State Bank of India v. Hegde and Golay Ltd., 1985 SCC OnLine Kar 428 : ILR 1987 Kar 2673, wherein it is observed that showing of an amount in a balance sheet amounts to an acknowledgement in terms of the Indian Limitation Act. Consequently, the amount having been admitted and the respondent having not paid the same, the petition required admission as laid down by the said judgment that civil suit as well as legal proceedings can continue simultaneously. Without expressing our opinion on the law laid down in the said judgment, though it cannot be categorically

laid down that mere showing a debt due in a balance-sheet would amount to acknowledgement, we may observe that it is a well-established law that for giving an acknowledgement, a person has to be conscious of his act to the knowledge of the other person. Merely showing a debt in a balance-sheet cannot, prima facie, as presently advised, be termed to be an acknowledgement in terms of the Indian Limitation Act. The acknowledgement as envisaged by the Limitation Act categorically had to be with the intention of accepting the debt with the object of extending the limitation for recovery, which is not the case herein. Thus, we do not find the case in hand to be covered by the law laid down by the said judgment though we have our own doubts with respect to correctness of the law laid down in the said judgment." This judgment does not, in any manner, even purport to lay down the law. That apart, the statement that an acknowledgement, as envisaged by the Limitation Act, has to be with the intention of accepting the debt with the object of extending the limitation for recovery is de hors Section 18 of the Limitation Act and directly contrary to Shapoor Fredoom Mazda (supra) which is, in fact, referred to in the very next paragraph of the aforesaid judgment. Shapoor Fredoom Mazda (supra) had made it plain that all that was necessary was that the acknowledgement establishes a jural relationship of debtor and creditor, which undoubtedly was established on the facts of that case. This judgment, therefore, cannot avail the respondents.

20. Reliance was also placed on a judgment of the Gauhati High Court in Ajit Chandra Bagchi v. Harishpur Tea Company (P.) Ltd., 1990 SCC OnLine Gau 24 : AIR 1991 Gau 92. In particular, paragraphs 9 and 10 were relied upon by learned counsel for the respondents. These paragraphs state:

"9. I may now turn to the next submission of learned counsel for the appellants - defendants that the plaintiff failed to prove that the amounts in question were due from the defendants. The contention of the counsel is that the plaintiff simply produced before the court certain books of account and balance sheets. No effort was made even to prove the individual entries in the said books of account. The claim was sought to be established by the plaintiff simply on the basis of the balance appearing in the books of account of plaintiff itself as outstanding against the Tea Estates of the defendants. It was submitted that the books of account or the balance sheets showing the amount due from the defendants are not sufficient without other evidence to prove the debt. The learned counsel in this connection relied on section 34 of the Evidence Act, which provides that even entries in the books of account regularly kept in the course of business, which are relevant, are alone not sufficient evidence to charge any person with liability. Learned counsel also relied on the Illustration given to the said section, which is as follows:

"A sues B for Rs. 1000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt." On the basis of the aforesaid provision it

> was submitted that the entries in the books of account showing the defendants to be indebted to the plaintiff for certain amount might be relevant but are not sufficient to prove the debt. In the instant case, the learned counsel submitted, even the entries have not been proved. What is sought to be proved is the balance appearing in the accounts or in the balance sheet as due from the defendants. Such a course is not permissible except in a case of "accounts stated". Admittedly, the present case is not one of "accounts stated".
>
> 10. I have carefully considered the submissions. I find that neither the individual entries have been proved by the plaintiff nor there is any material whatsoever other than the books of account or the balance sheet to prove that the transactions in question in fact took place. No decree can therefore, be obtained by the plaintiff merely on the basis of certain entries in the account books or the balance shown to be due at the end of the year in such accounts or in the balance sheets. The admitted position in the instant case is that no evidence has been adduced by the plaintiff to prove the transactions which had been categorically denied by the defendants in their written statement. In that view of the matter even on facts it has to be held that the plaintiffs failed to prove that the amount claimed in the suit was due from the defendants. In view of the aforesaid finding, I am of the opinion that the learned trial court was not justified in decreeing the suit. The suit was barred by limitation except in so far as it relates to recovery of a sum of Rs. 30/-.

Besides, the plaintiff also failed to prove the debt in accordance with law. Under the circumstances, the suit should have been dismissed." This judgment also does not take the case of the respondents any further as, like the Nagpur High Court judgment in Kashinath (supra), the entries in the books of accounts were not proved on the facts of that case.

21. We must now examine the position under the Companies Act, 2013 ["Companies Act"] qua any compulsion of law for filing of balance sheets and acknowledgements made therein. Section 2(40) of the Companies Act defines financial statement as follows:

> "2. Definitions.—In this Act, unless the context otherwise requires,— xxx xxx xxx (40) "financial statement" in relation to a company, includes—
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> (i) a balance sheet as at the end of the financial year;
>
> (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
>
> (iii) cash flow statement for the financial year;
>
> (iv) a statement of changes in equity, if applicable;
>
> and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

xxx xxx xxx" Under Section 92, every company is to prepare an annual return containing certain particulars as follows:

"92. Annual return.—(1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

(c) [* * *];

(d) its members and debenture-holders along with changes therein since the close of the previous financial year;

(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

(f) meetings of members or a class thereof, Board and its various committees along with attendance details;

(g) remuneration of directors and key managerial personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors; and

(k) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company:

Provided further that the Central Government may prescribe abridged form of annual return for "One Person Company, small company and such other class or classes of companies as may be prescribed.

(2) The annual return, filed by a listed company or, by a company having such paid up capital or turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act. (3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report. (4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.

(5) If any company fails to file its annual return under sub-

section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default. (6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a penalty of two lakh rupees." Vide Section 128, every company shall prepare and keep at its registered office, books of accounts and financial statements for every financial year, as follows:

"128. Books of account, etc., to be kept by company.—(1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with

the Registrar a notice in writing giving the full address of that other place:

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

xxx xxx xxx" Section 129, which is of importance, refers directly to financial statements and states as follows:

"129. Financial statement.—(1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under Section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938), or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949 (10 of 1949);

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003 (36 of 2003);

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. xxx xxx xxx (5) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the

> accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation. xxx xxx xxx (7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act." Likewise, under Section 134, financial statements are to be approved by the Board of Directors before they are signed, and the auditor's report, as well as a report by the Board of Directors, is to be attached to each financial statement as follows:

> "134. Financial statement, Board's report, etc.—(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon. (2) The auditors' report shall be attached to every financial statement.
>
> (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include— xxx xxx xxx
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> (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
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> (i) by the auditor in his report; and
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> (ii) by the company secretary in practice in his secretarial audit report;
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> (g) particulars of loans, guarantees or investments under Section 186;

xxx xxx xxx Provided that where disclosures referred to in this sub- section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

> xxx xxx xxx (4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report

containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report. xxx xxx xxx (7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

(a) any notes annexed to or forming part of such financial statement;

(b) the auditor's report; and

(c) the Board's report referred to in sub-section (3). (8) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees." Under Section 137, copies of financial statements are then to be filed with the Registrar of Companies as follows:

"137. Copy of financial statement to be filed with Registrar. —(1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed: Provided that where the financial statements under sub- section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub- section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose:

Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed:

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year:

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

> Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English. (2) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed. (3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees."

22. 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.

23. The judgment in Bengal Silk Mills (supra) has been referred to with approval in various other judgments. Thus, in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana, 1972 SCC OnLine Del 185 : ILR (1972) 2 Del 712, the Delhi High Court held:

"46. Shri Rameshwar Dial argued that statements in the balance-sheet of a company cannot amount to acknowledgement of liability because the balance-sheet is made under compulsion of the provisions in the Companies Act. There is no force in this argument. In the first place, section 18 of the Limitation Act, 1963, requires only that the acknowledgement of liability must have been made in writing, but it does not prescribe that the writing should be in any particular kind of document. So, the fact that the writing is contained in a balance-sheet is immaterial. In the second place, it is true that section 131 of the Companies Act, 1913 (section 210 of the Companies Act, 1956) makes it compulsory that an annual balance sheet should be prepared and placed before the Company by the Directors, and section 132 (section 211 of the Companies Act, 1956) requires that the balance-sheet should contain a summary, inter alia, of the current liabilities of the company. But, as pointed out by Bachawat J. in Bengal Silk Mills v. Ismail Golam Hossain Ariff, A.I.R. 1962 Calcutta 115 although there was statutory compulsion to prepare the annual balance-sheet, there was no compulsion to make any particular admission, and a document is not taken out of the purview of section 18 of the Indian Limitation Act, 1963 (section 19 of the Indian Limitation Act, 1908) merely on the ground that it is prepared under compulsion of law or in discharge of statutory duty. Reference may also be made to the decisions in Raja of Vizianagram v. Vizianagram Mining Co. Ltd., A.I.R. 1952 Madras 136, Jones v. Bellgrove Properties Ltd., (1949) 1 All E.R. 498; and Lahore Enamelling and Stamping Co. v. A.K. Bhalla, A.I.R. 1958 Punjab 341, in which statements in balance-

sheets of companies were held to amount to acknowledgements of liability of the companies.

47. Shri Rameshwar Dial referred to the decision of the Privy Council in Consolidated Agencies Ltd. v. Bertram Ltd., (1964) 3 All. E.R. 282. We shall advert to this decision presently when we deal with another argument of Shri Rameshwar Dial, and it is sufficient to state so far as the argument under consideration is concerned that even in this decision of the Privy Council it has been recognised that balance-sheets could in certain circumstances amount to acknowledgements of liability. It cannot, therefore, be said as a general proposition of law that statements in balance-sheets of a company cannot operate at all as acknowledgements of liability as contended by Shri Rameshwar Dial.

48. The learned counsel next argued that the words used in the entry in the balance-sheet in the present case did not amount to any acknowledgement of liability. We do not think so. The words used in the entry apparently show that in explaining its current liabilities and the provisions made for the same, it was stated that there was a sum of Rs. 7,87,150.42 held in share-

holders' suspense account for payment to the share-holders of the Indian National Airways Limited (in voluntary liquidation — since dissolved). The words used clearly acknowledge the liability. The learned single Judge also took the same view as regards the words used in the balance-sheet. In

Lahore Enamelling and Stamping Co. Ltd. v. A.K. Bhalla, Tek Chand J. held that "debts due to creditors not mentioned by name but included in the item relating to "Loans (unsecured)" or as due to "Sundry Creditors" mentioned in the balance-sheet amount to an "acknowledgement" of liability for the purposes of section 19 of the Indian Limitation Act, 1908. There was thus no force in the argument of the learned counsel.

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51. The next argument was that the balance-sheet was no doubt signed by two Directors, but they did not sign as duly authorised agents of the transferee company as required by explanation (b) to section 18 of the Limitation Act. There is no substance in this argument. The Companies Act, 1956, came into force in 1956. Section 210 of the Act requires the Board of Directors to lay a balance-sheet before the company at the Annual General Meeting. Section 211 prescribes the form and contents of a balance-sheet. The form of balance-sheet is given in Part 1 of Schedule VI to the Act, and according to it the current liabilities and provisions have to be set out in the balance-sheet. Section 215(i)(ii) requires that the balance-sheet should be signed on behalf of the Board of Directors, inter alia, by the Secretary of the Company and by not less than two Directors of the company. Section 215(3) provides that a balance-sheet shall be approved by the Board of Directors before it is signed on behalf of the Board of Directors in accordance with section 215(i)(ii) and before it is submitted to the Auditors for their report thereon. Thus, the statement of current liabilities and provisions in the balance-sheet has to be approved by the Board of Directors before it is signed by the Secretary and two Directors on behalf of the Board. In other words, the balance-sheet is signed by the Secretary and two Directors at the instance and on the approval of the Board of Directors of the company. After the balance-sheet is audited, section 216 requires that the Auditors' report should be attached to the balance-sheet, and section 217 requires the Board of Directors also to make a report. The balance-sheet together with the Auditors report and the Board's report are then required to be placed before the company at the annual general meeting for adoption of the balance-sheet. After the balance- sheet has been so laid before the company at the annual general meeting, section 220 requires that three copies of the balance-sheet should be filed with the Registrar. In the present case, the balance-sheet (Schedule D to Annexure J) was signed by the Secretary and two Directors, and Annexure J contains the Auditors' report and the Board's report. It was stated in the judgment of the learned single Judge that the balance-sheet was adopted by the company and the same was not disputed before us. It is thus quite clear that the balance- sheet was signed by duly authorised agents of the company."

24. The judgment of Sabyasachi Mukharji, J. (as His Lordship then was), sitting singly in the Calcutta High Court, has, in Pandam Tea Co. Ltd., In re, 1973 SCC OnLine Cal 93 : AIR 1974 Cal 170, held as follows:

> "4. Now the question is whether the statements, which are contained in the profits and loss accounts and the assets and liabilities side indicating the liability of the petitioning creditor along with the statement of the Directors made to the shareholders as Directors' report should be read together and if so whether reading these two statements together these amount to an acknowledgement as contemplated

> under Section 18 of the Limitation Act, 1963, or Section 19 of the Limitation Act, 1908. In my opinion, both these statements have to be read together. The balance-sheet is meant to be presented and passed by the shareholders and is generally accompanied by the Directors' report to the shareholders. Therefore in understanding the balance-sheets and in explaining the statements in the balance-sheets, the balance-sheets together with the Directors' report must be taken together to find out the true meaning and purport of the statements. Counsel appearing for petitioning creditor contended that under the statute the balance-sheet was a separate document and as such if there was unequivocal acknowledgement on the balance-sheet the statement of the Directors' report should not be taken into consideration. It is true the balance-sheet is a statutory document and perhaps is a separate document but the balance-sheet not confirmed or passed by the shareholders cannot be accepted as correct. Therefore, in order to validate the balance-sheet, it must be duly passed by the shareholders at the appropriate meeting and in order to do so it must be accompanied by a report, if any, made by the Directors.

Therefore, even though the balance-sheet may be a separate document these two documents in the facts and circumstances of the case should be read together and should be construed together. It was held by the Supreme Court in the case of L.C. Mills v. Aluminium Corpn. of India Ltd., (1971) 1 SCC 67 : AIR 1971 SC 1482, that it was clear that the statement on which the plea of acknowledgement was founded should relate to a subsisting liability as the section required and it should be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay for an acknowledgement did not create a new right of action but merely extended the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question must, however, relate to a present subsisting liability and indicate the existence of a jural relationship between the parties such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not, however, be in express terms and could be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course did not mean that where a statement was made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. In order to find out the intention of the document by which acknowledgement was to be construed the document as a whole must be read and the intention of the parties must be found out from the total effect of the document read as a whole. ..."

25. In Hegde & Golay Limited v. State Bank of India, 1985 SCC OnLine Kar 428 : ILR 1987 Kar 2673, the Karnataka High Court held as follows:

> "43. Re. Point (e). The acknowledgement of liability contained in the balance-sheet of a company furnishes a fresh starting point of limitation. It is not necessary, as the law stands in India, that the acknowledgement should be addressed and communicated to the creditor.

> We are in respectful agreement with the view taken by the Learned Company Judge on the point. The position of law that an acknowledgement of debts in the balance-sheets of a Company does furnish fresh starting point of limitation is too well settled to need any elaborate discussion (See: Jones v. Bellgrove Properties Ltd. [1949 (1) All ER 498], In Re:
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> Campania de Electricidad [1980 Ch D 146], Babulal Rukmanand v. Official Liquidator [AIR 1968 Rajasthan 214] and Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff [AIR 1962 Calcutta 115]). We see no substance in this contention either."

26. In Bhajan Singh Samra v. M/s. Wimpy International Ltd., 2011 SCC OnLine Del 4888 : (2011) 185 DLT 428, the Delhi High Court held:

> "13. Having heard the parties, this Court is of the opinion that the petitioning-creditor has to satisfy the Court that the debt on which the petition is based was due and payable on the date of the petition. Certainly a time barred debt cannot be the basis of a winding up petition. However, admission of a debt either in a balance sheet or in the form of a letter duly signed by the respondent, would amount to an acknowledgement, extending the period of limitation. Section 18(1) of the Limitation Act, 1963 incorporates the said principle. Section 18(1) of the Limitation Act, 1963 reads as under:
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> "18. Effect of acknowledgement in writing. (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

xxx xxx xxx"

14. The Allahabad High Court in the case of Fortis Financial Services Ltd. v. KHSL Industries Ltd., (1999) 95 Company Cases 622 (All) held that an acknowledgement by an Assistant Vice-President of the debtor company was sufficient for computing a fresh period of limitation from the date of such acknowledgement.

15. The Calcutta High Court in the case of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, AIR 1962 Cal. 115 held that in an appeal arising from a money decree against a company, even statement of a liability in the balance-sheet of the company amounted to admission/acknowledgement of a debt giving rise to a fresh period of limitation, notwithstanding the fact that the balance-sheet was prepared under 'compulsions of statute and of the articles of association of the company'.

16. In Vijaya Kumar Machinery & Electrical Stores v. Alaparthi Lakshmikanthamma, (1969) 74 ITR 224 (AP), the Andhra Pradesh High Court after following Bengal Silk Mills Co. (supra), Raja of Vizianagram v. Official Liquidator, Vizianagram Mining Company Limited, AIR 1952 Mad. 1361, Lahore Enamelling and Stamping Co. Ltd. v. A.K. Bhalla, AIR 1958 Punj. 341 and Jones v. Bellgrove Properties Ltd., (1949) 2 All.ER 198 held, "What emerges from a consideration of the above decision is that the date of signing the balance-sheet by the second defendant started a fresh period of limitation".

17. Consequently, in the present case, the acknowledgement of the petitioner's loan of Rs. 50,000/- by Chartered Accountant of respondent-company vide letters dated 23 rd February, 2002 and 21st November, 2002, as well as in the respondent-company's balance sheets for the years ended 31 st March, 2004, 31st March, 2005 and 31st March, 2006 not only extends the period of limitation but also constitutes fresh cause of action for filing a winding up petition. Accordingly, the present winding up petition is within limitation."

27. In CIT-III v. Shri Vardhman Overseas Ltd., 2011 SCC OnLine Del 5599 : (2012) 343 ITR 408, the Delhi High Court held:

> "17. In the case before us, as rightly pointed out by the Tribunal, the assessee has not transferred the said amount from the creditors' account to its profit and loss account. The liability was shown in the balance sheet as on 31 st March, 2002. The assessee being a limited company, this amounted to acknowledging the debts in favour of the creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgement in writing. It says where before the expiration of the prescribed period for a suit in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall commence from the time when the acknowledgement was so signed. In an early case, in England, in Jones v. Bellgrove Properties, (1949) 2KB 700, it was held that a statement in a balance sheet of a company presented to a creditor-share holder of the company and duly signed by the directors constitutes an acknowledgement of the debt. In Mahabir Cold Storage v. CIT (1991) 188 ITR 91 : 1991 Supp (1) SCC 402, the Supreme Court held:
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> "The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability to Messrs. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963, and extend the period of limitation for the discharge of the liability as debt." In several judgments of this Court, this legal position has been accepted. In Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma 67 (1997) DLT 13, S.N. Kapoor J. applied the principle in a case where the primary question was whether a suit under Order 37 CPC could be filed on the basis of an acknowledgement. In Larsen & Toubro Ltd. v. Commercial Electric Works 67 (1997) DLT 387 a Single Judge of this Court observed that it is well settled that a balance sheet of a company, where the defendants had shown a particular amount as

> due to the plaintiff, would constitute an acknowledgement within the meaning of Section 18 of the Limitation Act. In Rishi Pal Gupta v. S.J. Knitting & Finishing Mills Pvt. Ltd. 73 (1998) DLT 593, the same view was taken. The last two decisions were cited by Geeta Mittal, J. in S.C. Gupta v. Allied Beverages Company Pvt. Ltd. (decided on 30/4/2007) and it was held that the acknowledgement made by a company in its balance sheet has the effect of extending the period of limitation for the purposes of Section 18 of the Limitation Act. In Ambika Mills Ltd. Ahmedabad v. CIT Gujarat (1964) 54 ITR 167, it was further held that a debt shown in a balance sheet of a company amounts to an acknowledgement for the purpose of Section 19 of the Limitation Act and in order to be so, the balance sheet in which such acknowledgement is made need not be addressed to the creditors. In light of these authorities, it must be held that in the present case, the disclosure by the assessee company in its balance sheet as on 31 st March, 2002 of the accounts of the sundry creditors' amounts to an acknowledgement of the debts in their favour for the purposes of Section 18 of the Limitation Act. The assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law."

28. In Shahi Exports Pvt. Ltd. v. CMD Buildtech Pvt. Ltd., 2013 SCC OnLine Del 2535 : (2013) 202 DLT 735, the Delhi High Court held:

> "7. It is hardly necessary to cite authorities in support of the well-established position that an entry made in the company's balance sheet amounts to an acknowledgement of the debt and has the effect of extending the period of limitation under section 18 of the Limitation Act, 1963. However, I may refer to only one decision of the learned single judge of this Court (Manmohan, J.) in Bhajan Singh Samra v. Wimpy International Ltd. 185 (2011) DLT 428 for the simple reason that it collects all the relevant authorities on the issue, including some of the judgments cited before me on behalf of the petitioners. This judgment entirely supports the petitioners on this point."

29. In N.S. Atwal v. Jindal Steel and Power Ltd., 2013 SCC OnLine Del 3902, the Delhi High Court held:

> "11. This Court in ESPN Software India (P) Ltd. v. Modi Entertainment Network Ltd., [2012] 173 Comp Cas 465 (Delhi), noted that:
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> "17. Admission in balance-sheet is per-se an admission of liability... xxx xxx xxx
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> 19. This entry clearly states that an amount of Rs.

8,00,04,000/- is due and payable by the respondent in accordance with the terms of the contract. This document has been signed by the directors of the company and its Company Secretary on 31.10.2002." Similarly, in Bhajan Singh Samra v. Wimpy International Ltd., [2012] 173 Comp Cas

455 (Delhi), the Court noted:

> "13. Having heard the parties, this Court is of the opinion that the petitioning-creditor has to satisfy the Court that the debt on which the petition is based was due and payable on the date of the petition. Certainly a time barred debt cannot be the basis of a winding up petition. However, admission of a debt either in a balance sheet or in the form of a letter duly signed by the respondent, would amount to an acknowledgement ..." Similar findings have also been recorded by the Calcutta High Court in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, AIR 1962 Cal 115, paragraph 12, and Raja of Vizianagram v. The Official Liquidator, Vizianagram Mining Company Limited, Vizagapatam, AIR 1952 Mad 136. Indeed, the entry admits such liability towards JSPL for the amount claimed, and no explanation that may be provided, or circumstance surrounding the entry, can alter the fact of that liability. Thus, while this admission establishes liability, the fact is traced to the exchange of letters mentioned above, thus bringing the case within Order XXXVII CPC."

30. In M/s. Al-Ameen Limited v. K.P. Sethumadhavan, 2017 SCC OnLine Ker 11337 : (2017) 4 KLJ 80, the Kerala High Court held:

> "7. The inclusion of a debt in a balance sheet duly prepared and authenticated would amount to admission of a liability and therefore satisfies the requirement of law for a valid acknowledgement under Section 18 of the Act. We may recapitulate the words of Mr. Justice P. Subramonian Poti in Krishnan Assari v. Akilakerala Viswakarma Maha Sabha [1980 KLT 515 (DB)] and the following is the extract:
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> "10. How far the balance sheets could be acted upon in deciding the claim of the appellant is the next question. The appellant relies on the balance sheets as acknowledgement of liability contemplated in S. 18 of the Limitation Act, 1963. Under S. 18 an acknowledgement of liability signed by the party against whom the right is claimed gives rise to a fresh period of limitation. Under Explanation (b) to the Section the word 'signed' means signed either personally or by an agent duly authorised. A company being a corporate body acts through its representatives, the Managing Director and the Board of Directors. Under S. 210 of the Companies Act it is the statutory duty of the Board of Directors to lay before the Company at every annual general body meeting a balance sheet and a profit and loss account for the preceding financial year. S. 211 directs that the form and contents of the balance sheet should be as set out in Part I of Schedule VI. The said form stipulates for the details of the loans and advances and also of sundry creditors. The balance sheet should be approved by the Board of Directors, and thereafter authenticated by the Manager or the Secretary if any and not less than two directors one of whom should be the Managing Director. (See S. 215). The Act also provides for supply of copies of the balance sheet to the members before the company in general meeting.

> Going by the above provisions, a balance sheet is the statement of assets and liabilities of the company as at the end of the financial year, approved by the Board of Directors and authenticated in the manner provided by law. The persons who authenticate the document do so in their capacity as agents of the company. The inclusion of a debt in a balance sheet duly prepared and authenticated would amount to admission of a liability and therefore satisfies the requirements of law for a valid acknowledgement under S. 18 of the Limitation Act, even though the directors by authenticating the balance sheet merely discharge a statutory duty and may not have intended to make an acknowledgement."

31. In Zest Systems Pvt. Ltd. v. Center for Vocational and Entrepreneurship Studies, 2018 SCC OnLine Del 12116, the Delhi High Court held:

> "5. In Shahi Exports Pvt. Ltd. v. CMD Buildtech Pvt. Ltd. (supra) this court held as follows:— "7. It is hardly necessary to cite authorities in support of the well-established position that an entry made in the company's balance sheet amounts to an acknowledgement of the debt and has the effect of extending the period of limitation under section 18 of the Limitation Act, 1963. However, I may refer to only one decision of the learned single judge of this Court (Manmohan, J.) in Bhajan Singh Samra v. Wimpy International Ltd., 185 (2011) DLT 428 for the simple reason that it collects all the relevant authorities on the issue, including some of the judgments cited before me on behalf of the petitioners. This judgment entirely supports the petitioners on this point."
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> 6. In view of the legal position spelt out in judgments noted above, the acknowledgement of the debt in the balance sheet extends the period of limitation. The acknowledgement is as on 31.3.2015. This suit is filed in 2017. The suit is clearly within limitation. The present application is allowed."
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> 32. In Agni Aviation Consultants v. State of Telangana, 2020 SCC OnLine TS 1462 : (2020) 5 ALD 561, the High Court of Telangana held:
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> "107. In several cases, various High Courts have held that an acknowledgement of liability in the balance sheet by a Company registered under the Companies Act, 1956 extends the period of limitation though it is not addressed to the creditor specifically. (Zest Systems Pvt. Ltd. v. Center for Vocational and Entrepreneurship Studies, 2018 SCC OnLine Del 12116, Bhajan Singh Samra v. Wimpy International Ltd., 2012 SCC OnLine Del 2939, Vijay Kumar Machinery and Electrical Stores v. Alaparthi Lakshmi Kanthamma, (1969) 74 ITR 224 (AP), and Bengal Silk Mills Company, Raja of Vizianagram v. Official Liquidator, Vizianagram Mining Company Limited, AIR 1952 Mad 1361).
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> 108. Therefore it is not necessary that the acknowledgement of liability must be contained in a document addressed to the creditor i.e. the petitioners in the instant

case."

> 33. It is, therefore, clear that the majority decision of the Full Bench in V. Padmakumar (supra) is contrary to the aforesaid catena of judgments.

The minority judgment of Justice (Retd.) A.I.S. Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We, therefore, set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020.

34. The NCLAT, in the impugned judgment dated 22.12.2020, has, without reconsidering the majority decision of the Full Bench in V. Padmakumar (supra), rubber-stamped the same. We, therefore, set aside the aforesaid impugned judgment also.

35. On the facts of this case, the NCLT, by its judgment dated 19.02.2020, recorded that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor. As a result, the NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020, and the impugned judgment of the NCLAT dated 22.12.2020 in paragraphs 33 and 34. This appeal is, therefore, allowed, and the matter is remanded to the NCLAT to be decided in accordance with the law laid down in our judgment.

1. This appeal raises a direct challenge to the majority judgment of the Full Bench of the NCLAT dated 12.03.2020. Suffice it to say that Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant-financial creditor, relied upon this Court's judgment in Vashdeo R. Bhojwani v. Abhyudaya Coop. Bank Ltd., (2019) 9 SCC 158, to argue that limitation starts running from the date a recovery certificate has been obtained pursuant to proceedings before the Debts Recovery Tribunal under the Recovery of Debts Act. On facts, he argued that such a certificate was issued on 31.08.2009 after which, there were several letters written by the corporate debtor, M/s Uttara Fashion Knitwear Ltd., acknowledging liability to pay loans that had been availed by it. He pointed out that whereas the NCLT had, by an order dated 21.11.2019, admitted the appellant's application under Section 7 of the IBC; the NCLAT had, vide the impugned judgment, set aside the NCLT order on the ground that an entry in a balance sheet cannot amount to an acknowledgement of liability for the purpose of Section 18 of the Limitation Act. As a matter of fact, he argued, in the alternative, that even if dues were stated to be recoverable on and from the loan-recall notice dated 31.10.2002, there were balance sheets right from 2002 up till 2010, followed by various letters from the corporate debtor, which would show a consistent course of acknowledgement of liability, thereby extending limitation until the Section 7 application was filed by the appellant on 24.06.2019. He, therefore, argued that the present appeal be remanded to the NCLAT for decision on the point of limitation.

2. Shri Jayesh Dolia, learned advocate appearing on behalf of the respondents, argued that since service was not effected on the respondents, nobody was present before the NCLT when it passed an ex parte order admitting the Section 7 application. In any event, he argued, that on the facts of this case, time began to run at least in 2002, and an application filed in 2019 obviously cannot be said to

be within limitation, as the three-year period under Article 137 of the Limitation Act has long expired.

3. We have already set aside the Full Bench judgment dated 12.03.2020 in Civil Appeal No.323 of 2021. Given the argument of Shri Dolia that service was not properly effected upon the respondents, it would be in the fitness of things to send the matter back to the NCLT for a de novo hearing. Parties are allowed to amend their pleadings, if necessary. The Civil Appeal is allowed in the aforesaid terms.

1. In this appeal, Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of the appellant, assails a judgment dated 14.10.2020 passed by the NCLAT. On the facts of this case, he candidly admits that despite the fact that an application under Section 7 of the IBC was filed on 23.07.2018, and amended once, no plea qua any acknowledgement of liability was made. The NCLT, by an order dated 14.12.2018, held that despite the fact that the corporate debtor's account was declared to be a non-performing asset from 2010 onwards, since, according to the NCLT, there was a continuing cause of action in the facts of this case, the Section 7 application was admitted. In an appeal filed by the suspended Managing Director of the corporate debtor to the NCLAT, by an order dated 26.09.2019, the NCLAT held that the relevant date from which limitation must be determined is 01.12.2016, i.e. the date on which the IBC came into force, and therefore, dismissed the appeal. This Court, by its order dated 21.10.2019, set aside the order of the NCLAT and remanded the matter to the NCLAT to re-examine the question of limitation, having regard to the judgments in B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633 and Sagar Sharma v. Phoenix Arc (P) Ltd., (2019) 10 SCC 353.

2. The NCLAT, by the impugned order dated 14.10.2020, found that the appellant had classified the corporate debtor's account as a non-performing asset on 28.05.2014. However, the said date was changed to 31.01.2010 after an attempt to restructure the corporate debtor's account failed. The three other banks forming part of the consortium of lenders, viz., Punjab National Bank, Corporation Bank, and UCO Bank, had also classified the account of the corporate debtor as a non-performing asset on 30.06.2014, 31.12.2014, and 31.12.2014, respectively. Even if the date of default was taken to be the last of these dates, i.e. 31.12.2014, the NCLAT held that the three-year period under Article 137 of the Limitation Act had expired on 30.12.2017, and that since the amended application under Section 7 of the IBC had been filed only on 23.07.2018, it was barred by limitation. The NCLAT, therefore, allowed the appeal.

3. Shri Rohatgi pointed out that in the written submissions filed by the appellant on 21.09.2020, after judgment was reserved by the NCLAT on 17.09.2020, it was pointed out that the corporate debtor had acknowledged its liability in its balance sheet for the year 2014-2015, and that 31.01.2010 could not be taken to be the date of default for the reasons given in the written submissions. These written submissions were not taken into account when the NCLAT delivered the impugned judgment.

4. Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the respondents, has countered each of these submissions. According to him, written submissions can never be a

substitute for pleadings, and if pleadings are deficient, there ends the matter. Admittedly, on facts, there has never been a pleading before either the NCLT or the NCLAT that an acknowledgement of liability contained in any of the balance sheets extended limitation. He also argued that, on merits, if the auditor's report were to be seen, there is no acknowledgement of liability, as any so-called acknowledgement has, in fact, been qualified by notes made by the auditor. This being the case, no opportunity should now be given to the appellant to go back to the NCLAT, the appellant having already amended its pleadings once, and this Court having already remanded the matter to NCLAT, which, on the second round, decided the appeal in favour of the respondents.

5. Shri Rohatgi countered this by presenting an application before us to amend the pleadings, stating that this can be allowed even at this stage, as per the judgments of this Court.

6. There can be no doubt whatsoever that the appellant has been completely remiss and deficient in pleading acknowledgement of liability on the facts of this case. However, given the staggering amount allegedly due from the respondents, we afford one further opportunity to the appellant to amend its pleadings so as to incorporate what is stated in the written submissions filed by it before the NCLAT, subject to costs of Rs.1,00,000/- to be paid by the appellant to the respondents within a period of four weeks from today.

7. We, therefore, allow the appeal, set aside the judgment of the NCLAT dated 14.10.2020, and restore the appeal to the file to be decided in light of our judgment in Civil Appeal No. 323 of 2021.

8. Interim order passed by this Court on 16.12.2020 stands vacated.

1. In this appeal, the judgment of the NCLAT dated 07.02.2020 is assailed, in which the NCLAT has held that entries made in balance sheets of the corporate debtor for the years ending 2014-2015, 2015-2016, and 2016-2017 cannot amount to acknowledgements of liability, as a result of which the NCLT order admitting the appellant's application under Section 7 of the IBC was set aside.

2. Suffice it to say that the basis of the Section 7 application in this case was a DRT decree dated 17.08.2018, pursuant to which a recovery certificate dated 19.06.2019 was issued. The Section 7 application averred that the date of the DRT decree furnished the cause of action and, thus, was the starting point of limitation in this case.

3. Shri Sidhartha Barua, learned counsel appearing on behalf of the appellant, has argued that this appeal deserves to be allowed and the matter sent back to the NCLAT to be decided in accordance with our judgment delivered in Civil Appeal No.323 of 2021.

4. Shri Saurabh Kirpal, learned Senior Advocate appearing on behalf of the respondents, has argued that no pleading qua acknowledgement of liability was made before either the NCLT or the NCLAT. Instead, the only pleading that was made was that the date of default was the date on which the DRT decree was passed, which is wholly incorrect in law. The Section 7 application being hopelessly time barred, no opportunity should now be given to the appellant to renege on this pleading.

5. As decided by us in Civil Appeal No.323 of 2021, we give one more opportunity to the appellant in this case to amend its pleading on payment of costs of Rs.1,00,000/- to the respondents within four weeks from today. The NCLAT judgment dated 07.02.2020 is set aside and the matter is remanded to the NCLAT to decide the matter afresh in accordance with the law laid down in Civil Appeal No.323 of 2021.

Civil Appeal arising out of SLP (Civil) No.1168 of 2021

1. Leave granted.

2. This appeal is against the judgment dated 15.10.2020 of the Calcutta High Court which set aside two orders of the NCLT – (i) order dated 19.08.2019 whereby the NCLT admitted the appellant's application under Section 7 of the IBC, and (ii) order dated 20.02.2020, whereby the NCLT ordered liquidation of the corporate debtor.

3. Shri Sanjay Kapur, learned counsel appearing on behalf of the appellant, assailed the judgment of the Calcutta High Court, and argued that an efficacious alternative remedy was available to the respondent before the NCLAT, as a result of which the High Court ought not to have interfered with the judgment of the NCLT. On the other hand, Shri Poddar, learned counsel appearing on behalf of the respondent, has sought to support the judgment of the High Court with reference to Kamlesh Babu v. Lajpat Rai Sharma, (2008) 12 SCC 577, and paragraph 23 in particular, stating that a jurisdictional point was raised as to limitation, as a result of which the Calcutta High Court took up a petition filed under Article 227 of the Constitution of India and correctly set aside the orders of the NCLT.

4. There can be no doubt that the NCLT had, in its order dated 19.08.2019, stated that Article 63(a) of the Limitation Act would apply instead of Article 137, contrary to what has been held by us in several judgments. It cannot, therefore, be said that the Calcutta High Court wrongly exercised jurisdiction in setting aside this finding. However, the High Court then went on to refer to certain balance sheets that had been produced, thereby extending limitation under Section 18 of the Limitation Act, but held that given the judgment in Babulal (supra), such balance sheets could not extend limitation.

5. Given the judgment delivered in Civil Appeal No.323 of 2021, the impugned judgment in this appeal also deserves to be set aside. The appeal is, therefore, allowed. If the respondent wishes to file an appeal before the NCLAT against the orders of the NCLT dated 19.08.2019 and 20.02.2020, it may do so within a period of four weeks from the date of this judgment. The appeal will thereafter be decided on its merits, keeping in view the statement of the law laid down in Civil Appeal No.323 of 2021.

.....J. [ROHINTON FALI NARIMAN] .....J. [B.R. GAVAI] .....J. [HRISHIKESH ROY] New Delhi;

April 15, 2021.