

# Bishal Jaiswal vs Asset Reconstruction Company India ... on 10 December, 2021

**Author: Ashok Bhushan**

**Bench: Ashok Bhushan**

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 385 of 2020  
(Arising out of Order dated 19.02.2020 passed by the Adjudicating Authority  
(National Company Law Tribunal), Kolkata Bench, in CP(IB) No.23/KB/2019)

IN THE MATTER OF:

Bishal Jaiswal  
Balarampur, Purulia,  
Rangadih, West Bengal-723143.

.... Appellant

Vs

1. Asset Reconstruction Company  
(India) Ltd.  
The Ruby, 10th Floor, 29,  
Senapati Bapat Marg,  
Dadar (West), Mumbai - 400028
2. Corporate Power Limited  
Through Interim Resolution Professional  
Shri Pankaj Dhanuka  
FE 328, Sector III, Salt Lake City,  
Kolkata - 700106, West Bengal.

Having its registered office:  
FE-83, Sector - III, Salt Lake City,  
Ground Floor, Kolkata-700106,  
West Bengal.

.... Respondents

Present:

For Appellant: Mr. Abhijeet Sinha, Mr. Sandeep Bajaj and  
Mr. Devansh Jain, Advocates

For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr.  
Abhirup Das Gupta, Mr. Ishaan Duggal and  
Ms. Bhawana Sharma, Advocates for R-1

Mr. Abhishek Swaroop, Mr. Swarnendu  
Chatterjee, Mr. Naman Kamdar, Mr. Palash  
Agarwal, Advocates for R-2

Company Appeal (AT) (Insolvency) No. 903 of 2021  
(Arising out of Order dated 08.10.2021 passed by the Adjudicating Authority  
(National Company Law Tribunal), Kolkata bench, in IA (IB) No.431/KB/2021 in

C.P. (IB) No.23/KB/2019)

Company Appeal (AT) (Insolvency) No. 385 of 2020 with  
Company Appeal (AT) (Insolvency) No. 903 of 2021

1

IN THE MATTER OF:

Bishal Jaiswal  
Balarampur, Purulia,  
Rangadih, West Bengal-723143.

.... Appellant

Vs

1. Asset Reconstruction Company  
(India) Ltd.  
The Ruby, 10th Floor, 29,  
Senapati Bapat Marg,  
Dadar (West), Mumbai - 400028

2. Corporate Power Limited  
Through Liquidator:  
Shri Pankaj Dhanuka  
FE 328, Sector III, Salt Lake City,  
Kolkata - 700106, West Bengal.

Having its registered office:  
FE-83, Sector - III, Salt Lake City,  
Ground Floor, Kolkata-700106,  
West Bengal.

.... Respondents

Present:

For Appellant: Mr. Abhijeet Sinha, Mr. Sandeep Bajaj and  
Mr. Devansh Jain, Advocates

For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr.  
Abhirup Das Gupta, Mr. Ishaan Duggal and  
Ms. Bhawana Sharma, Advocates for R-1

Mr. Abhishek Swaroop, Mr. Swarnendu  
Chatterjee, Mr. Naman Kamdar, Mr. Palash  
Agarwal, Advocates for R-2

JUDGMENT

ASHOK BHUSHAN, J.

These two Appeals by the Appellant (Director of Corporate Debtor, Respondent No.2) have been filed challenging order dated 19th February, 2020 passed by the National Company Law Tribunal, Kolkata Bench in Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 2 Company Petition (IB) No.23/KB/2019 and order dated 08.10.2021 passed by National Company Law Tribunal, Kolkata Bench in IA (IB) No.431/KB/2021 in C.P. (IB)

No.23/KB/2019, respectively.

2. We need to notice first the facts of the case and sequence of the events giving rise to filing of these two Appeals by the Director of the Corporate Debtor (Respondent No.2). Corporate Debtor decided to setup a Thermal Power Plant in the State of Jharkhand having capacity of 540 megawatt in two phases. Subsequently increased to 1080 MW (Project). Between 2009 to 2011 (starting from 05.12.2009), the Corporate Debtor executed Loan Agreement and other financing documents with the Consortium of Lenders and availed loan facilities from the Consortium aggregating to INR 2175 crores for phase-1 of the project and INR 2387 crores for phase-II of the project. Due to continuous default in payment, the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) by the State Bank of India on 31st July, 2013. On 27.03.2015, the State Bank of India issued a loan recall notice to the Corporate Debtor in its capacity as the Lenders' Agent. Some of the Lenders of the Corporate Debtor including State Bank of India assigned their debts from the Corporate Debtor to the Asset Reconstruction Company (India) Ltd., Respondent No.1.

3. Owing to the continuous default of the Corporate Debtor, the Respondent No.1 initiated proceeding under Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') by issuing a notice under Section 13(2) of the said Act for an outstanding amount of Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 3 INR 5997,80,02,973. In pursuance of notice under Section 13(2) of the SARFAESI Act, physical possession was taken of the assets of the Corporate Debtor on 1st June, 2016 by Respondent No.1.

4. On 26.12.2018, Respondent No.1 filed Company Petition No.(IB)23/KB/2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'IBC') before National Company Law Tribunal, Kolkata Bench for a debt of INR 5997,80,02,973 from the Corporate Debtor. In the Company Petition, large number of documents pertaining to Loan Agreements, mortgage, declaration-cum-undertaking, Bank Guarantee, facility agreement Statement of Accounts of the Respondent were filed along with the application. In the Application under Section 7 of the IBC in the relevant column, however, no date of default was mentioned. Before the Adjudicating Authority, Respondent No.1 filed a supplementary affidavit wherein, it was stated that loan was recalled by the State Bank of India on 27th March, 2015 and the Corporate Debtor was called upon to pay the outstanding amount within two days as the date of default took place immediately after 31st March, 2015. Along with the supplementary affidavit, Respondent No.1 also filed the balance sheet of the Corporate Debtor, duly approved by the Corporate Debtor and filed with the Registrar of Companies for the year 31st March, 2017 acknowledging the liability owed to all Banks and Financial Institutions.

5. A reply to the Application under Section 7 of the IBC was filed by the Corporate Debtor, taking various pleas, raising various grounds to oppose the Application. However, when the case was taken up before the Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 4 Adjudicating Authority, the Corporate Debtor argued only the question of limitation and did not raise any other ground as raised in the reply affidavit. The Adjudicating Authority considered the submissions of both the parties and took the view taking the

date of default as 20th June, 2015 and held that the balance sheet for the financial year ending 31st March, 2017 signed on 29st May, 2017 contained acknowledgement, which was within the period of expiry of limitation. Hence, the Application was not barred by limitation. The Adjudicating Authority vide its order dated 19th February, 2020 admitted the Application filed by Respondent No.1 under Section 7 of the IBC and declared Moratorium under Section 14 of the IBC. Aggrieved against the order dated 19th February, 2020, the Director of the Corporate Debtor has filed Company Appeal (AT) (Insolvency) No.385 of 2020.

6. Company Appeal (AT) (Insolvency) No.385 of 2020 was taken up by this Appellate Tribunal and notices were issued by order dated 04.03.2020. Respondent No.1 filed its reply. A request was made on behalf of the learned Counsel for the Appellant to stay the CIRP proceedings, which was declined by the Appellate Tribunal by order dated 31st July, 2020. A three Member Bench of the Appellate Tribunal heard the matter on 02.09.2020 and reserved the judgment. Before the three Member Bench, a judgment of five Members' Bench of Appellate Tribunal in V. Padma Kumar vs. Stressed Assets Stabilization Fund (SASF) & Anr. in Company Appeal (AT) (Insolvency) No.57 of 2020 was cited, where five Member Bench had held that balance sheet of the Company cannot be treated to be an Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 5 acknowledgement of the debt for the purposes of Section 18 of the Limitation Act, 1963.

7. The Three Members' Bench while making a reference sought reconsideration of the five Members' judgment in V. Padma Kumar's case. The five Member Bench heard the parties and vide judgment dated 22nd December, 2020, held the reference to be incompetent and directed the Company Appeal (AT) (Insolvency) No.385 of 2020 to be listed for regular hearing. The Five Member Bench had taken the view that the remedy under the Companies Act is distinct from the recovery mechanism and the limitation cannot be impacted by acknowledgement of liability under Section 18 of Limitation Act to keep the debt alive for the purpose of winding up proceedings. Before the Five Member Bench, it was contended that reference to Five Member Bench by Three Member Bench is incompetent, which argument was ultimately accepted by Five Member Bench, which resulted in rejection of reference.

8. The judgment dated 22nd December, 2020 was challenged by Respondent No.1/ Financial Creditor in Civil Appeal No.323 of 2021 in the matter of Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr., which Appeal was allowed by setting aside the judgment dated 22nd December, 2020. The Hon'ble Supreme Court has also set aside majority judgment of the full Bench dated 12th March, 2020 in V. Padma Kumar vs. Stressed Assets Stabilisation Fund (ASAP) & Anr. The Apex Court remanded the matter to the NCLAT to be decided in accordance with law laid down in the judgment. The Company Appeal (AT) (Insolvency) Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 6 No.385 of 2020 thus has been placed before this Bench for hearing consequent to remand by Hon'ble Supreme Court judgment dated 15th April, 2021.

9. The Company Appeal (AT) (Insolvency) No.903 of 2021 has been filed against the order dated 08.10.2021, by which order, the Application IA (IB) No.431/KB/2021 in C.P. (IB) No.23/KB/2019

filed by Resolution Professional praying for direction for the liquidation of the Corporate Debtor, since Corporate Insolvency Resolution Process (CIRP) period had expired and no Resolution Plan was approved by the Committee of Creditors. The Adjudicating Authority by its order dated 08.10.2021 has allowed the prayers in the Application and Corporate Debtor was ordered to be liquidated in terms of Section 33(2) of the IBC r/w sub-section (1) thereof. Aggrieved by the order dated 08.10.2021, the Director of the Corporate Debtor has filed this Appeal.

10. Both these Appeals have been heard together and are being decided by this common judgment.

11. We have heard Shri Abhijeet Sinha, learned Counsel for the Appellant and Shri Ramji Srinivasan, learned Senior Counsel appearing for Respondent No.1.

12. Shri Abhijeet Sinha, learned Counsel for the Appellant submits that the judgment of the Hon'ble Supreme Court dated 15th April, 2021 has only decided the question of law, holding that IBC does not exclude the application of Section 6, 14 or 18 or any other provisions of the Limitation Act to proceedings in the IBC. It also held that entries made in the balance Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 7 sheet may amount to acknowledgement, so as to attract Section 18 of the Limitation Act and whether particular entry made in balance sheet is unequivocal or has been entered into with caveats has to be determined 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. Shri Abhijeet Sinha, learned Counsel for the Appellant submits that Hon'ble Supreme Court in its judgment dated 15th April, 2021 has not adverted to the evidence on the record of the present Appeal nor has returned any finding as to whether balance sheets, which are being relied by Respondent No.1 contain acknowledgement so as to extend the period of limitation under Section 18 of the Limitation Act and this Tribunal is obliged to consider the materials on record. Shri Abhijeet Sinha, learned Counsel for the Appellant further submits that in the Application filed under Section 7, no date of default was given and in the supplementary affidavit, which was filed before the NCLT, the date of default was mentioned as immediately after 31st March, 2015 and in view of now admitted position by Respondent No.1, date of default is 31st July, 2013, on which date the Corporate Debtor account was declared as NPA. He submits that before the NCLT, Kolkata Bench, balance sheet of only 2016-17 as on 31st March, 2017 was filed. The Section 7 Application was never amended by Respondent No.1 to include balance sheets of the year 2014-15 and 2015-16. Hence, although balance sheets of the year 2014-15 and 2015-16 have been filed before this Appellate Tribunal along with the reply affidavit, the same cannot be looked into, since Section 7 Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 8 Application was never amended to incorporate relevant balance sheets. It is submitted that date of default being 31st July, 2013, the balance sheet as on 31st March, 2017, which was the only balance sheet available before the Adjudicating Authority, does not help the Respondent No.1 to claim extension of period of limitation under Section 18 of the Limitation Act. Shri Abhijeet Sinha, learned Counsel for the Appellant further submits that there is no unequivocal acknowledgement in the balance sheets, so as to give the benefit under Section 18 of the Limitation Act to the Appellant. There has never been any unequivocal acknowledgement of its liability by the Corporate Debtor. Rather, Corporate Debtor has duly incorporated a note/ caveat in its balance sheets. The Corporate

Debtor had disputed its liability to make any payment to the Banks and Financial Institutions, hence, the balance sheets cannot amount to an acknowledgement within the meaning of Section 18 of the Limitation Act. It is also submitted that the Corporate Debtor has filed its counter claim before the Debt Recovery Tribunal in O.A. No.712 of 2016 and O.A. No.705 of 2016. In order to claim benefit of Section 18 of the Limitation Act, the facts need to be pleaded and foundation is to be laid down in Section 7 Application. Shri Abhijeet Sinha submits that Application having filed after more than three years of account being declared NPA i.e. 31st July, 2013, the Application is clearly barred by time and Adjudicating Authority committed error in admitting the Application.

13. Coming to the Company Appeal (AT) (Insolvency) No.903 of 2021, learned Counsel Shri Abhijeet Sinha submits that the admission of Section Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 9 7 Application being barred by limitation, subsequent proceedings including order dated 08.10.2021 directing for liquidation of the Corporate Debtor deserves to be set aside.

14. Shri Ramji Srinivasan, learned Senior Counsel appearing for Respondent No.1 opposes the submissions of Shri Abhijeet Sinha. On the materials which have been brought on record in the present case by Respondent No.1, he states that Respondent No.1 has made out a case for extension of period of limitation under Section 18 of the Limitation Act and the Application filed under Section 7 by Respondent No.1 was well within time. The learned Senior Counsel submits that balance sheets for the year ending with 31st March, 2015, 31st March, 2016 and 31st March, 2017 are all public documents required to be maintained under the law. All three balance sheets being on record in this Appeal, the same cannot be ignored or refused to be looked into. It is submitted that the balance sheets for the year ending with 31st March, 2015, 31st March, 2016 and 31st March, 2017, which are on the record, have not been denied by the Appellant. All the aforesaid three years' balance sheets contain unequivocal acknowledgment of the debt and each acknowledgement gave a fresh period of limitation to Respondent No.1 to file Application. The date of default been 31st July 2013, and acknowledgement of debt by the Corporate Debtor within expiry of period of three years, can be construed as fresh period of limitation by virtue of Section 18 of the Limitation Act. Shri Ramji Srinivasan, learned Senior Counsel submits that balance sheets for the year ending with 31st March, 2015 and 31st March, 2016 have been filed along with the reply by Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 10 Respondent No.1, to which no rejoinder affidavit has been filed by the Appellant. The balance sheets for the years ending with 31st March, 2015 and 31st March, 2016 and 31st March, 2017 have not been disputed by the Corporate Debtor or by the Appellant. All the three balance sheets can be looked into taking into consideration, which contain unequivocal acknowledgement of debt by the Corporate Debtor, hence, Section 7 Application was filed within limitation and no error has been committed by the Adjudicating Authority in admitting Section 7 Application. The stay of CIRP has been refused by this Appellate Tribunal and now in view of the fact that order for liquidation has already been passed on 08.10.2021, where further proceedings are already on, there is no merit in both the Appeals, which are liable to be dismissed.

15. From the submission of learned Counsel for the parties and perusal of record, following are the issues, which arise for consideration in these Appeals:

(1) Whether the relevant column in Section 7 Application having not been amended by Respondent No.1, other materials can be looked into for the purposes of finding an acknowledgement within the meaning of Section 18 of the Limitation Act?

(2) Whether the balance sheet as on 31st March, 2017, which was filed along with supplementary affidavit before the NCLT, can only be looked into and balance sheets for the year 2015 and 2016 cannot be looked into?

Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 11 (3) Whether balance sheets for the years 2015, 2016, 2017 contain an unequivocal acknowledgement of debt by the Corporate Debtor, which is a sufficient acknowledgement within the meaning of Section 18 of the Limitation Act? Question No.(1)

16. An Application under Section 7 of the IBC can be filed by a Financial Creditor in such form and manner and accompanied by such fee as may be prescribed as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Application is to be filed in Form- 1, accompanied with documents and records as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Form-1 is statutory Form under which the Application is to be submitted. An Application in Form-1 is not akin to a plaint in a Civil Suit. The Application should elicit relevant details regarding Applicant, Corporate Debtor, Financial Debt and Particulars of Financial Debt.

17. The NCLT Rules, 2016 defines 'pleadings' in a very distinct manner. Rule 2 of the sub-Rule (19), which defines 'pleadings' provides as follows:

"(19) 'pleadings' means and includes application including interlocutory application, petition, appeal, revision, reply, rejoinder, statement, counter claim, additional statement supplementing the original application and reply statement under these rules and as may be permitted by the Tribunal;"

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18. Even supplementary affidavit or additional affidavit filed before Adjudicating Authority will be covered by the definition of 'pleadings'. The present case is a case where there was no mention about the date of default in Section 7 Application, nor under Part-IV or Part-V of Form-1, no balance sheets of the Corporate Debtor was mentioned. When pleading can be amplified by filing supplementary affidavit or additional affidavit by way of rejoinder statement etc., it is not necessary that unless Application in Form-1 is amended, additional affidavits and materials cannot be looked into. Admittedly, the balance sheet ending as on 31st March, 2017 was filed before the Adjudicating Authority along with supplementary affidavit of the Financial Creditor. There is no statutory prohibition in looking into the supplementary affidavit, nor it is incumbent that Part-V of Form-1 is to be necessarily amended by adding balance sheet as on 31st March, 2017 for placing reliance on the relevant documents.

19. In the above context, we may refer to a judgment of Hon'ble Supreme Court reported in 2021 SCC OnLine 543 - Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy and Anr. It was held by the Hon'ble Supreme Court that Form-1, under which an Application under Section 7 is to be filed is only a statutory Form and does not contain elaborate pleadings. In paragraph 73, following was laid down:

"73. Since a Financial Creditor is required to apply under Section 7 of the IBC, in statutory Form 1, the Financial Creditor can only fill in particulars as specified Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 13 in the various columns of the Form. There is no scope for elaborate pleadings. An application to the Adjudicating Authority (NCLT) under Section 7 of the IBC in the prescribed form, cannot therefore, be compared with the plaint in a suit. Such application cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a Court of law."

20. Further, the Hon'ble Supreme Court in the above judgment laid down that there is no bar in filing document at any time before the Adjudicating Authority until a final order is passed. In paragraph 91, following has been laid down:

"91. On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed."

21. The filing of an Application under Section 7 in Form-1 is procedural requirement. The requirement in procedural rule has not to read in a manner, which may preclude an affected party from bringing other materials on record to bring home his point. The procedure prescribed in the Rules are with an intent to capsule the relevant information in prescribed column. But that is not to shut out any other relevant information, if brought subsequently. The Hon'ble Supreme Court in Dena Bank (supra) has laid down that IBC Rules and Regulations have to be Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 14 construed liberally, in a purposive manner to further the objects of enactment. In paragraph 88, following has been said:

"88. It is, therefore, imperative that the provisions of the IBC and the Rules and Regulations framed thereunder be construed liberally, in a purposive manner to further the objects of enactment of the statute, and not be given a narrow, pedantic interpretation which defeats the purposes of the Act."

22. We, thus, answer Question No.1 in following manner; Without amending the relevant column in Section 7 Application, a Financial Creditor can bring relevant materials on record before the Adjudicating Authority by way of supplementary affidavit, rejoinder affidavit and the additional affidavit, which materials can be looked into and non-amending of relevant column in Form-1 shall not preclude the admissibility of the materials brought subsequently by way of supplementary



affidavit or additional affidavit.

Question No.(2)

23. There is no dispute between the parties that balance sheet as on 31st March, 2017 was filed before the Adjudicating Authority by means of an affidavit of one Shri Nishith Doshi, Chief Manager of the Financial Creditor along with which affidavit, balance sheet of the Corporate Debtor, duly approved by the Corporate Debtor and filed with the Registrar of Companies was annexed. The balance sheets for the year ending Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 15 31st March, 2015 and 31st March, 2016 were not filed before the Adjudicating Authority, but have been filed before this Appellate Tribunal along with the reply of Financial Creditor. Reply in Company Appeal (AT) (Insolvency) No.385 of 2020 has been filed in pursuance of order dated 04.03.2020 and 04.06.2020 passed by this Appellate Tribunal. Reply was also accompanied by an affidavit of authorized representative of Respondent No.1. Balance sheet of Corporate Debtor as on 31st March, 2015 along with the Director's Report for the said year was annexed along with the reply as Annexure R-1, whereas balance sheet of the Corporate Debtor as on 31st March, 2016 along with the Director's Report was annexed as Annexure R-2 (Colly.).

24. The main thrust of submission of Shri Abhijeet Sinha, learned Counsel for the Appellant is that balance sheets as on 31st March, 2015 and 31st March, 2016, which were not before the Adjudicating Authority cannot be looked into and the only balance sheet which can be looked into is that of the year as on 31st March, 2017 filed before the Adjudicating Authority. We may first consider as to whether before the Appellate Tribunal any document which was not before the Adjudicating Authority can be filed or looked into.

25. We may look into the National Company Law Appellate Tribunal Rules, 2016 for the purpose. Rule 11 of NCLAT Rules, 2016 relates to inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary to meet the ends of justice or to prevent abuse of process of the Appellate Tribunal.

Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 16

26. Part-XII of the NCLAT Rules, 2016 provides for "Discovery, Production and Return of Documents". On an application for summon and producing of documents, an order can be passed by the Appellate Tribunal and the documents can also be suo-moto summoned by the Appellate Tribunal.

27. The Companies Act, 2013 Section 424 provides for Procedure before Tribunal and Appellate Tribunal is to the following effect:

"424. Procedure before Tribunal and Appellate Tribunal.-- (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the

case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872),

Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 17 requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed (3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,--

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

28. It is relevant to note that both by order dated 4th March, 2020 and 4th July, 2020 passed by this Tribunal, the Respondents were granted time to file reply affidavits and Appellant was granted time to file rejoinder. Reply Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 18 affidavit was filed by the Respondent No.1 annexing balance sheets as on 31st March, 2015 and 31st March, 2016, but no rejoinder was filed by the Appellant either disputing document of balance sheets brought on record by Respondent No.1 or raising any objection regarding the aforesaid two balance sheets. We may also notice that when the Appellate Tribunal after hearing the parties passed a reference order on 25.09.2020, in paragraph 9 of the judgment the statement of learned Counsel for the Financial Creditor was noticed, where it was submitted that Corporate Debtor has time and again admitted and unequivocally acknowledged its debt in the balance sheets for the year ending 31st March, 2015, 31st March, 2016 and 31st March, 2017. The relevant observation of the Appellate Tribunal in this regard in paragraph 9 of the order dated 25.09.2020 is as follows:-

"9. The Learned Counsel for the Financial Creditor contends that in this case, the right to sue for the first time accrued upon the classification of the account as NPA on 31st July 2013. Thereafter, the Corporate Debtor has time and again admitted and unequivocally acknowledged its debt in the Balance Sheets for the years ending 31st March 2015, 31st March 2016 and 31st March 2017. Hence, the right to sue stood extended in terms of Section 18 of the Limitation Act, 1963."

29. It is also relevant to note that when five Member Bench of this Tribunal delivered judgment dated 22nd December, 2020 against which an Appeal was filed before the Hon'ble Supreme Court, this Tribunal also noticed the submission of the learned Counsel for the Financial Creditor Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 19 relating to balance sheets for the year ending as on 31st March, 2015, 31st March, 2016 and 31st March, 2017. It is useful to extract the following observation made in paragraph 3 of the judgment, which is as follows:

"3. ....Financial Creditor, on the other hand, contended that the right to sue for the first time accrued to it upon classification of the account as NPA on 31st July, 2013 but thereafter, the Corporate Debtor had admitted, time and again, and unequivocally acknowledged its debt in the Balance Sheets for the years ending 31st March, 2015, 31st March, 2016 and 31st March, 2017. Hence, according to the Financial Creditor, the right to sue stood extended in terms of Section 18 of the Limitation Act, 1963."

30. Shri Abhijeet Sinha, learned Counsel for the Appellant has also submitted that in the judgment dated 15th April, 2021, deciding the Civil Appeal No.323 of 2021 (2021 SCC OnLine SC 321), the Hon'ble Supreme Court has only referred to the balance sheet of the year 2017, hence that is the only balance sheet which can be looked into. While referring to the balance sheet for the year 2016-17, the Supreme Court in paragraph 35, noted the judgment of the NCLT only. It is useful to extract paragraph 35 of the judgment, which is to the following effect:

"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 Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 20 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."

31. The reference of the balance sheet of 2016-17 in the above paragraph was made by the Hon'ble Supreme Court in context of referring to the judgment of NCLT. The judgment of Hon'ble Supreme Court in no manner can be read to hold that it is only the balance sheet of 2016-17, which can be looked into and balance sheets of 2014-15 and 2015-16, which have been filed before this Appellate Tribunal cannot be looked into. Thus, reference of the Hon'ble Supreme Court in paragraph 35 was in the context of NCLT judgment and does not help the Appellant to contend that balance sheet of only 2016-17 can be looked into.

32. As noted above, argument of the Financial Creditor on the basis of balance sheets for the year 2014-15 and 2015-16 have been noticed by this Tribunal in its previous orders and balance sheets of the year 2014-15 and 2015-16 having been brought along with the reply affidavit, which was not disputed by filing a rejoinder, we are of the view that the balance sheets of the year 2014-15 and 2015-16 cannot be disregarded from consideration. Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 21 There are two more reasons for taking into consideration the balance sheets for the year 2014-15 and 2015-16 - (i) In the order of the NCLT dated 19th February, 2020, admitting Section 7 Application, the question of Application being barred by limitation was gone into and in that context the Adjudicating Authority referred to the balance sheet of 2016-17. In the supplementary affidavit, which was filed before the Adjudicating Authority, the date of default was mentioned as immediately after 31st March, 2015. The date of default was claimed as 31st March, 2015, hence the balance sheet as on 31st March, 2017, which according to the Financial Creditor contain acknowledgement was sufficient to give fresh period of limitation before expiry of three years from the date of default. The submission raised before this Tribunal by both the learned Counsel for the parties is that the date of default is 31st July, 2013; (ii) Thus, on the date of default as claimed before the Adjudicating Authority, the filing of the balance sheet as on 31st March, 2017 was sufficient to give fresh period of limitation as was held by the

Adjudicating Authority. The Financial Creditor in his Appeal having realized that date of default is the date when the account became NPA i.e., 31st July, 2013, has brought on record the balance sheets of the previous years' i.e. as on 31st March, 2015 and 31st March, 2016 to contend and prove that acknowledgment contained in the balance sheets, makes the Application filed on 26.12.2018 well within time.

33. The balance sheets are to be maintained as per statute and Corporate Debtor was obliged to prepare financial statements as per the Companies Act, 2013 and submit to the Registrar of Companies. It is not the case Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 22 before us that the balance sheets as on 31st March, 2015 and 31st March, 2016 of the Corporate Debtor brought before us by Respondent No.1 (Financial Creditor) are incorrect or were not the balance sheets, which were filed by the Corporate Debtor before the Registrar of Companies. As per the law laid down by the Hon'ble Supreme Court, financial statements of a Corporate Debtor are relevant and may contain an acknowledgement within the meaning of Section 18 of the Limitation Act. The balance sheets for the year 2014-15 and 2015-16 cannot be refused to be looked into on submissions of learned Counsel for the Appellant that they having not been filed before the Adjudicating Authority cannot be looked into. We are satisfied that the balance sheets, which have been filed along with the reply affidavit of Respondent No.1 are to be looked into and we grant leave to bring the balance sheets and Director's Report for the year 2014-15 and 2015-16 on record.

34. The Question No.(2) is thus answered in the following words; "The balance sheets as on 31st March, 2015 and 31st March, 2016, which have been filed along with the reply affidavit of Respondent No.1 before this Appellate Tribunal, can be looked into along with the balance sheet as on 31st March, 2017, which was already on record before the Adjudicating Authority".

Question No.(3)

35. Now coming to the crucial question as to whether the balance sheets for the year as on 31st March, 2015, 31st March, 2016 and 31st March, 2017 contains an unequivocal acknowledgement of the debt by the Corporate Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 23 Debtor within the meaning of Section 18 of the Limitation Act. Section 18 of the Limitation Act provides:

"18. Effect of acknowledgment in writing.-- (1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment 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 acknowledgment was so signed.

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

Explanation.--For the purposes of this section,--

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

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

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

36. In the judgment dated 15th April, 2021 of the Hon'ble Supreme Court in Civil Appeal No.323 of 2021, which was filed against the judgment of this Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 24 Appellate Tribunal dated 22nd December, 2020, the Hon'ble Apex Court elaborately considered the law pertaining to the applicability of Section 18 of the Limitation Act in the IBC proceedings. In Asset Reconstruction Company (India) Ltd. vs. Bishwal Jaiswal and Anr. (supra), most of the earlier judgments on applicability of Section 18 has been referred to and relied. Section 18 of the Limitation Act, 1963, which was pari materia of Section 19 of Limitation Act, 1908, came for consideration before the Calcutta High Court in Bengal Silk Mills Co. vs. Ismail Golam Hossain Ariff [1961 SCC OnLine Cal 128], the Division Bench of Calcutta High Court had occasion to consider the acknowledgement of liability in balance sheets of the Corporate Debtor in reference to Section 19 of the Limitation Act, 1908 and following was held in paragraph 9:

"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. (1) 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 Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 25 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, (2) 1892 I.L.R. 16 Mad. 220 at 222, Udaya Thevar v. Subrahmania Chetti, (3) (1896) 6 M.L.J. 266, 269, Good v. Jane Job, (4) 1 E1 and E1 6 at 11: 120 E.R. 810 at 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.

37. The Calcutta High Court has relied on an earlier judgment of Madras High Court in Venkata vs. Partha Saradhi, I.L.R. 16 Mad. 220 at 222, where Muttasami Ayyar, J. said:

"It is therefore necessary that upon a reasonable construction of the language used by the debtor in writing Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 26 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) (7) 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 Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 27 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.* (5) A.I.R. 1957 All. 144."

38. 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.

39. In *Bengal Silk Mills Co.* (supra), the Division Bench ultimately concluded the following in paragraph 11:

"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.*, (8) 1928 Ch. 836 under section Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 28 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.*, (9) (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.*, (10) (1947) 1 A.E.R. 749 and *Jones v. Bellgrove Properties Ltd.*, (11) (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.* (8) (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.*, (9) (1930) 2 Ch. 44 at 47, *Jones v. Bellgrove Properties Ltd.*, (11) (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 *The Rajah of Vizianagram v. Official Liquidator*, Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 29 *Vizianagram Mining Co. Ltd.*, (12) (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. Bahalla* (13) A.I.R. 1958 Punjab 341 at 347, *First National Bank Ltd. v. The Mandi (State) Industries Ltd.*, (14) (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. (15) decided on December 7, 1956."

40. In Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr., the Hon'ble Supreme Court after review, approvingly quoted the Calcutta High Court judgment in Bengal Silk Mills and in paragraph 21, the following was laid down:

"21. Importantly, this judgment in Bengal Silk Mills [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115] holds that though the filing of a balance sheet is by compulsion of law, the acknowledgment 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 acknowledgment of debt for reasons given in the said note."

41. The Hon'ble Supreme Court after referring to the provision of Section 92, 128, 129, 134 and 137 of the Companies Act, 2013, held that there is no doubt that filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory. Though, there is compulsion in law to Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 30 prepare a balance sheet, but there is no compulsion to make any particular admission, which was laid down in Bengal Silk Mills. The Hon'ble Supreme Court held that it would depend on the facts of each case, as to whether any 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 in case to case basis. Paragraph 35 is as follows:

"35. A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments 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 [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115] , 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 acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act."

Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 31

42. The law on the subject having been laid down in the above judgment of the Hon'ble Supreme Court between the parties, we need to proceed to examine the submissions before us in light of the law laid down above.

43. Submission of Shri Abhijeet Sinha before us is that the Hon'ble Supreme Court in judgment dated 15th April, 2021 did not enter into the examination of the materials and the evidence of the present case to decide as to whether acknowledgement as claimed by Respondent No.1 are acknowledgement within the meaning of Section 18 of the Limitation Act or not and has left the question to be decided on case to case basis. We are in agreement with the above submission of Shri Abhijeet Sinha. In the judgment dated 15th April, 2021, the Hon'ble Supreme Court has laid down the principles for determination of acknowledgement under Section 18 of the Limitation Act, but has not entered into the question as to whether in the facts of the present case, Respondent No.1 is entitled to claim extension of period of limitation on the strength of Section 18 of the Limitation Act. We, thus, have to look into the financial statements and the balance sheets of the Corporate Debtor to find as to whether they contain an acknowledgement within the meaning of Section 18 of the Limitation Act.

44. In the balance sheet as on 31st March, 2015 under Note 4, Long Term Borrowings has been mentioned. Note 4, which refers to Rupee Term Loans from Banks and Financial Institutions is as follows:

Particulars	As at 31.03.2015 in Lacs	As at 31.03.2014 in Lacs
SECURED LOANS		

Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 32 Rupee Term Loans from Banks Financial Institutions 286,702.85 286,702.85 137,091.99 137,091.99 423,794.83 423,794.83

45. Under the heading 'Security and term of Repayment' in Roman (i) and Roman (iv), it is mentioned as follows:

"Security and terms of Repayment

i) Rupee Term Loans amounting to 2,19,154 Lacs (Previous Year 2,19,154 Lacs), referred to in (1) above are secured by way of first mortgage and charge of immovable properties of the Company both present and future and hypothecation of all movable properties of the Company including movable plant and machinery, spares, tools and accessories, book debts, receivables etc. both present and future relating to first two units of 270 MW. These are further secured by way of creation of charge on all the right, title, interest, benefits etc. in the project documents and on Escrow Account, Trust and Retention Account all permitted investments or other securities, Debt

Service reserve Account, intangible assets including Goodwill, rights, undertakings and uncalled Capital, both present and future relating to first two units of 270 MW each aggregating to 540 MW.

These are further secured by way of pledge of shares representing 55% of the total paid up equity share capital of the Company held.

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iv) These loans are repayable in 44 equal quarterly instalments of Rs.329.55 lacs each commencing from 30th September, 2013 and ending on 30th June, 2024 and carry interest rate of Base rate of REC Loan Policy Circular (RLPC) with a spread ranging from 2% to 6% as the case may be."

46. With regard to Note 4, another reference has been made at under the heading 'Security and term of Repayment' in Roman (xiv), which is to the following effect:

"xiv) Notwithstanding what has been stated, recorded & disclosed in Note no.4 of the present audited balance sheet as on 31st March, 2016, the company do hereby, specifically, mention here that, owing to various omissions and commissions committed by the banks & Financial Institutions and due to arbitrary action taken by them and non adherence of applicable RBI guidelines by these banks & financial institutions, the company has sustained huge losses and damages. The company is in the process of working out damage claim against these banks & financial institutions against the above reasons.

The company has obtained legal advice from its counsels on legal position/tenability & realisation of such damage claims in accordance with the prevailing laws. On perusal of these opinions, the company is of the firm opinion that company shall succeed in getting damage claim against the banks & Is which may far exceed the amount Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 34 reflected above & at note no.5 as due to the banks & financial institutions.

We are also under preliminary legal advice that because of various omission and commissions of banks & FIs, and resultant possible damage claim due to the said lapses on the part of banks & FIs, all such securities as has been mentioned in the above mentioned notes and/ or other securities are also stand discharged to that extent.

However, as per the prudential accounting conventions, which requires company to make provisions for loss or liability even these are disputed, the company has reflected & shown above liabilities in the books of account since the damage claim has still not been finalized.

At the same time, in accordance with the Accounting standard 9 on 'Revenue Recognition' as has been issued by ICAI and made mandatory to companies u/s xxx OF Companies Act, 2013, which

prescribes that the revenue must be acknowledged only after upon realization or its utmost certainty, the company has not set off damage claim against the above liabilities since it is yet not been worked out."

47. The Application filed by Financial Creditor under Section 7 of the IBC mentions in detail of the Rupee Term Loans taken from the Bank and Financial Institutions. The details as mentioned in the financial statement clearly indicate that Rupee Term Loans were taken with regard to power project of units of 270 MW each aggregating to 540 MW and for security of Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 35 which loan mortgage, charge of immovable properties of the Company for present and future as well as hypothecation of all movable properties of the Company including movable plant and machinery, spares, tools and accessories was made. Further, the statement as extracted above under the heading 'Security and terms of Repayment' indicates that the Corporate Debtor himself has acknowledged that these loans are repayable. Thus, the liability of Bank and Financial Institutions is expressly acknowledged, which is a sufficient acknowledgment within the meaning of Section 18 of the Limitation Act. The balance sheet indicates that it was signed on behalf of Board of Directors and bears the date of 2nd September, 2015.

48. The balance sheet as on 31st March, 2016 also refer to same figures under the heading 'Secured Loans' and reflects same figures of 423,794.83 lacs for Term Loans from Banks and Financial Institutions. However, all the details as mentioned in balance sheet of 2015 were also mentioned in the balance sheet as on 31st March, 2016. This balance sheet was mainly bears the date of 2nd September, 2016. The balance sheet for 2017 as on 31st March, 2017 also refers to same figure of 423,794.83 lacs with same statements as was contained in balance sheet as on 31st March, 2015.

49. The Hon'ble Supreme Court in Dena Bank (Now Bank of Baroda) vs. C. shivakumar Reddy and Anr. [2021 SCC OnLine SC 543] after referring to earlier judgment again reiterated that an acknowledgement of liability that is made in a balance sheet can amount to acknowledgement of debt. In paragraph 118, the following was laid down:

Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 36 "118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, ["Bengal Silk Mills"] and in Re Pandem Tea Co. Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt."

50. Further in paragraph 127, the following has been laid down:

"127. Section 18 of the Limitation Act speaks of an Acknowledgment in writing of liability, signed by the party against whom such property or right is claimed. Even if the writing containing the acknowledgment is undated, evidence might be given of the time when it was signed. The explanation clarifies that an acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. 'Signed' is to be construed to mean signed personally or by an authorised agent."

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51. The learned Counsel for the Appellant has referred to statement in balance sheet as contained in (xiv) as extracted above to contend that there was a caveat regarding the statements made in the balance sheet. It was further stated that Company has sustained huge losses and damages to the arbitrary action of the Banks and Company is in the process of claiming damages against these Banks and Financial Institutions.

52. The Section 18 of the Limitation Act as extracted above, Explanation

- (a) indicates that an acknowledgement may be sufficient though is accompanied by a refusal to pay or is coupled with a claim to set-off. The mere fact that it was stated in the statement that Company is in process of working out damages to claim from the Banks and Financial Institutions does not detract the acknowledgement within the meaning of Section 18 of the Limitation Act.

53. The learned Counsel for Respondent No.1 has further submitted that counter claim, which was filed by the Appellant before the Debt Recovery Tribunal in OAs has been dismissed on 14th July, 2021.

54. Be that as it may, mention of any claim of damages is inconsequential in so far as acknowledgement under Section 18 of the Limitation Act is concerned. The admission of liability in the balance sheet as noted above is unequivocal and has been repeated continuously in the balance sheets as on 31st March, 2015 and 31st March, 2016. The Corporate Debtor who was in custody of all the relevant balance sheets as on 2014-15, 2015-16 and 2016-17 cannot be allowed in contending that balance sheets be not looked into, especially when there is no objection brought on the record to Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 38 the correctness of the balance sheets, which have been brought on record by Respondent No.1. We thus, are of the considered opinion that balance sheets as on 31st March, 2015, 31st March, 2016 and 31st March, 2017 contain the acknowledgement within the meaning of the Section 18 of the Limitation Act and Respondent No.1 is entitled to claim that fresh period of limitation started after the acknowledgement. The date of default being 31st July, 2013 and balance sheet as on 31st March, 2015 having signed on 2nd September, 2015, the acknowledgement was made within expiry of three years' period of limitation from 31st July, 2013. The acknowledgement continues in balance sheets as on 31st March, 2016 and 31st March, 2017. Hence, the Application

under Section 7 of the IBC filed in 26th December 2018 is well within limitation and has rightly been admitted by the Adjudicating Authority.

55. We, thus, uphold the order of Adjudicating Authority admitting Section 7 Application filed by Respondent No.1 for the reasons as indicated above. There is no merit in the Company Appeal (AT) (Insolvency) No.385 of 2020, which is dismissed.

56. Coming to Company Appeal (AT) (Insolvency) No.903 of 2021, which has been filed against the order dated 08.10.2021 allowing the prayers in IA (IB) No.431/KB/2021 in C.P. (IB) No.23/KB/2019 filed by Resolution Professional for liquidation as no Resolution Plan was approved by the Committee of Creditors and CIRP period had expired, we find no error has been committed by the Adjudicating Authority for directing for liquidation Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 39 of Corporate Debtor and appointing the Liquidator. There is no merit in Company Appeal (AT) (Insolvency) No.903 of 2021, which is dismissed.

57. In result, both the Appeals are dismissed. No costs.

58. Before we close, we record our appreciation to learned Counsel for the parties for their valuable assistance to the Court, which helped us in deciding the Appeals in short span of time.

[Justice Ashok Bhushan] Chairperson [Justice Jarat Kumar Jain] Member (Judicial) [Dr. Alok Srivastava] Member (Technical) NEW DELHI 10th December, 2021 Ash/NN Company Appeal (AT) (Insolvency) No. 385 of 2020 with Company Appeal (AT) (Insolvency) No. 903 of 2021 40