

Vivek Malik vs Punjab National Bank on 30 June, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 224 of 2021

[Arising out of Order dated 11th March, 2021 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, New Delhi, Court-III in CP (IB)- 2058(ND)/2019]

In the matter of:

Vivek Malik, Suspended Director of
Amzen Machines Pvt. Ltd.
8-D, Pocket-06, Site-2, Phase-1,
Sector 1A, Nasirpur, Dwarka,
DMC, Palam Village,
Delhi, India- 110045

....Appellant

Vs.

1) Punjab National Bank
Having its Registered Office at
Punjab National Bank
Large Corporate Branch,
Tolstoy House, Tolstoy Marg,
New Delhi-110001
EMAIL: care@pnb.co.in

2) Anurag Goel
Interim Insolvency Professional
Address: 10/349, First Floor,
Surender Vihar, Paschim Vihar,
New Delhi- 110087
EMAIL: agoel@caanurag.com

....Respondents

For Appellant:	Mr. Abhijeet Sinha, Ms. Varsha Banerjee and Mr. Mr. Mukund Rawat, Advocates.
For Respondents:	Mr. Apoorv Sarvaria, Mr. Yash Tomar, Advocates for R-1. Mr. Anurag Goel, IRP (R-2)

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JUDGMENT

(30th June, 2021) A.I.S. Cheema, J.

1. The Appellant, Suspended Director of Corporate Debtor- 'Amzen Machines Pvt. Ltd.' has filed this Appeal against the impugned order dated 11th March, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, New Delhi, Court-III) in CP (IB)-2058(ND)/2019. By the Impugned Order, the Adjudicating Authority admitted the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by the Respondent No.1- 'Punjab National Bank' against the Corporate Debtor.

2. The Respondent No.1- 'Punjab National Bank' (hereinafter referred to as "Bank") filed the Application under Section 7 of the 'I&B Code' on 11th September, 2019. The Bank claimed that it advanced a term loan of Rs. 200 Crores on 17th March, 2011 to the Corporate Debtor. The Bank referred to further documents including common Loan Agreement executed on 5th April, 2014 and another Working Capital Consortium Agreement and Deed of Hypothecation dated 20th August, 2014. The Bank claimed that the account of the Corporate Debtor became NPA on 15th March, 2016. On 10th May, 2016, Notice under Section 13(2) of the SARFAESI Act, 2002 was issued to the Corporate Debtor demanding Rs. 173,80,62,160/- as on 31st March, 2016 plus interest. On 10th July, 2018, the Corporate Debtor acknowledged debt outstanding by a letter sent to the Bank. The Application was thus filed on Company Appeal (AT) (Insolvency) No.224 of 2021 11th September, 2019 before the Adjudicating Authority claiming debt due and in default of Rs. 268,37,90,311/-. The date of default was intimated in Form is 15th March, 2016.

3. Before the Adjudicating Authority, the Corporate Debtor put up a defence that under Section 238A of the 'I&B Code' read with Article 137 of the Limitation Act, 1963, the period of limitation was three years and the account having been declared NPA on 15th March, 2016, the Application filed in 2019 was time barred. The other reasons were also submitted by the Corporate Debtor for the default mentioning that the cost of the project had increased; that in the Common Loan Agreement, the Bank had to provide Rs. 200 Crores and Bank of India to provide Rs. 116 Crores but the amount disbursed was less and only Rs. 280.94 Crores. The other issues were also raised like interest being usurious.

4. The Adjudicating Authority, after hearing the parties, observed in Para- 8 of the impugned order as under:-

"8. Heard the parties and perused the records. The documents are sufficient to ascertain the default on the part of the Corporate Debtor. It is pertinent to note that the Applicant/ Financial Creditor can be categorized as a financial creditor as provided under Section 5(7) of IBC, 2016 and the loan disbursed as a financial debt as provided under Section 5(8) of IBC, 2016. Further, the Corporate Debtor vide its letter dated 10.07.2018 has acknowledged its liability in favour of the Applicant/ Financial Creditor which proves that the debt is due and payable therefore; the application filed is within the period of limitation as it gives fresh lease of limitation from the date of such acknowledgement and the Corporate Debtor has failed/ defaulted in repaying the loan as per agreed terms and conditions. The objection(s) of the Company Appeal (AT) (Insolvency) No.224 of 2021 Corporate Debtor is nothing but mere bluster therefore stand rejected."

5. Aggrieved by such impugned order, the Appeal has been filed claiming that Section 7 Application was clearly beyond three years' period of limitation in accordance with Section 3 read with Article 137 of the Limitation Act, 1963. The Appeal refers to the Judgment in the matter of "Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.- [2020 SCC Online 647]". Referring to the Judgment, it has been claimed in the Appeal that the judgment had referred to the earlier Judgments of the Hon'ble Supreme Court on the question of limitation in matters of 'I&B Code' and then reiterated the position that the limitation began to run from the date of NPA and Application filed under Section 7 of the 'I&B Code' after expiry of the period of three years from the date of NPA was barred by law of limitation. Relying on the Judgment in the matter of "Babulal Vardharji Gurjar"

(supra), it is claimed in the Appeal that the Judgment in the case of "Jignesh Shah & Anr. vs. Union of India- (2019) 10 SCC 750" held that Section 18 of the Limitation Act, 1963 is not applicable to an Application under Section 7 of the 'I&B Code'. Thus, according to Appeal, the Adjudicating Authority could not have relied on the acknowledgment dated 10th July, 2018. It is claimed that the date of default cannot be shifted and that Section 7 of the 'I&B Code' was not a recovery proceeding.

6. We have heard Learned Counsel for the Appellant and the Bank. It may be mentioned that the question with regard to applicability or non- applicability of Section 18 of the Limitation Act, 1963 is now settled by the Company Appeal (AT) (Insolvency) No.224 of 2021 Hon'ble Supreme Court in recent judgments such as in the matter of "Sesh Nath Singh & Anr. vs. Baidyabati Sheoraphuli Co-Operative Bank Ltd. & Anr."- [Civil Appeal No. 9198 of 2019] passed on 22nd March, 2021 and then in Judgement in the matter of "Laxmi Pat Surana vs. Union Bank of India & Anr."- [Civil Appeal No.2734 of 2020] dated 26th March, 2021 and in "Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr"- [Civil Appeal No. 323 of 2021] (with other Appeals) dated 15th April, 2021. The Hon'ble Supreme Court has dealt with its earlier judgments, and now it is quite clear that Sections 18 & 19 of the Limitation Act, 1963 and the other provisions of the Limitation Act, as far as may be apply to the proceedings under the 'I&B Code'.

7. In the matter of "Sesh Nath Singh & Anr." (supra), the Hon'ble Supreme Court mentioned, as under:-

"63. Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.

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64. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.

.....

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 acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires.

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 Company Appeal (AT) (Insolvency) No.224 of 2021 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 acknowledgment.

.....

88. An Adjudicating Authority under the IBC is not a substitute forum for a collection of debt in the sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time barred. The Adjudicating Authority does not resolve disputes, in the manner of suits, arbitrations and similar proceedings.

However, the ultimate object of an application under Section 7 or 9 of the IBC is the realization of a 'debt' by invocation of the Insolvency Resolution Process. In any case, since the cause of action for initiation of an application, whether under Section 7 or under Section 9 of the IBC, is default on the part of the Corporate Debtor, and the provisions of the Limitation Act 1963, as far as may be, have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation.

.....

92. In other words, the provisions of the Limitation Act would apply mutatis mutandis to proceedings under the IBC in the NCLT/NCLAT. To quote Shah J. in *New India Sugar Mill Limited v. Commissioner of Sales Tax, Bihar*, "It is a Company Appeal (AT) (Insolvency) No.224 of 2021 recognised rule of interpretation of statutes that expression used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature".

Thus, it is clear that Section 18 of the Limitation Act applies.

8. In the matter of "*Laxmi Pat Surana*" (supra), the Hon'ble Supreme Court in para 35 of the Judgment mentioned, as under:-

"35. The purport of such observation has been dealt with in the case of *Babulal Vardharji Gurjar (II)* (supra). 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."

9. Thus, the claim made in the Appeal that in judgment in the matter of "*Babulal Vardharji Gurjar*" (supra), the Hon'ble Supreme Court has held that Section 18 of the Limitation Act, 1963 is not applicable to an Application under Section 7 of the 'I&B Code' is misconceived.

10. In the judgment in the matter of "*Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr*" (supra) also, the Hon'ble Supreme Court mentioned in Para 8, as under:-

Company Appeal (AT) (Insolvency) No.224 of 2021 "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....."

After observations made as above, the Hon'ble Supreme Court referred to the Judgment passed in the matter of "Sesh Nath Singh & Anr." (supra).

11. Thus, now it is quite clear that Section 18 of the Limitation Act, 1963 applies.

12. Learned Counsel for the Appellant being aware of the fact that the Hon'ble Supreme Court has now made the law clear, at the time of arguments, did not try to submit regarding applicability of Section 18 of the Limitation Act, 1963 which was the basis on which the present Appeal was filed. He however, submitted that in the Judgment in the matter of "Babulal Vardharji Gurjar" (supra) in para 96, the Hon'ble Supreme Court had in the facts of that matter observed that if in Application under Section 7 of the 'I&B Code' foundation has not been laid for suggesting any acknowledgment or any other date of default, the submission sought to be developed at the later stage cannot be permitted. Learned Counsel has then referred to different directions given by the Hon'ble Supreme Court in other Appeals which were Company Appeal (AT) (Insolvency) No.224 of 2021 decided with Civil Appeal No. 323 of 2021 in the above Judgment of "Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr" dated 15th April, 2021. Learned Counsel for the Appellant submitted that along with Civil Appeal No. 323 of 2021, the Hon'ble Supreme Court in the same Judgment disposed Civil Appeal No. 3 of 2021, Civil Appeal No. 3765 of 2020 and Civil Appeal No. 3228 of 2020. Referring to the orders passed with regard to these Appeals, Learned Counsel submitted that the Hon'ble Supreme Court passed orders of remand and the opportunity to amend the pleadings and even imposed costs. The argument is that Appeals like the present Appeal deserve to be remanded to the NCLT giving opportunity to the parties to amend their pleadings so as to incorporate pleadings with regard to acknowledgment and then the matter should be decided.

13. The Learned Counsel for the Bank has argued and supported Judgment passed by the Adjudicating Authority and claimed that the Appeal deserves to be dismissed. According to the Counsel for the Bank, the Bank had made necessary pleadings and the issue of limitation was also discussed and decided and thus, there is no question of remanding the matter.

14. Considering the submissions made by the Learned Counsel for the Appellant, we have seen the observations, findings and directions of the Hon'ble Supreme Court with regard to other Appeals disposed with the matter of "Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr". (A) In Civil Appeal No. 3 of 2021 which was before the Hon'ble Supreme Court, what appears is that the NCLT had admitted Application under Section 7 of the 'I&B Code'. This Appellate Tribunal held

that the entry in Balance Company Appeal (AT) (Insolvency) No.224 of 2021 Sheet will not amount to an acknowledgment. The Hon'ble Supreme Court in Civil Appeal No. 323 of 2021 found that the Balance Sheet could be looked into for the purpose of acknowledgment. The Counsel for the Appellant- Financial Creditor in Civil Appeal No. 3 of 2021 argued that the Appeal should be remanded to NCLAT for decision on the point of limitation. In Para Nos. 2 & 3, the Hon'ble Supreme Court observed as under:-

"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."

Thus, it is clear that the Hon'ble Supreme Court sent back the matter to NCLT for a de novo hearing and in the process allowed the parties to amend their pleadings, if necessary.

(B) The other Appeal referred by Learned Counsel for the Appellant is Civil Appeal No. 3765 of 2020. The observations by the Hon'ble Supreme Court in the Judgment of "Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr" while dealing with this Appeal shows that in that matter, the Company Appeal (AT) (Insolvency) No.224 of 2021 NCLT had by order dated 14th December, 2018 held that there was a continuing cause of action in the facts of the case and so it had admitted the Application under Section 7 of the 'I&B Code'. In Appeal, this Tribunal (NCLAT) held on 26th September, 2019 that relevant date from which limitation must be determined is 1st December, 2016 i.e., the date on which 'I&B Code' came into force, and dismissed the Appeal. The matter had at that occasion gone to the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 21st October, 2019 set aside the NCLAT order and remitted back matter to NCLAT to re-examine question of limitation having regard to judgments in the matter of "B.K. Educational Service (P) Ltd. vs. Parag Gupta & Associates" (2019) 11 SCC 633 and "Sagar Sharma vs. Phoenix Arc (P) Ltd."- (2019) 10 SCC 353. After such remand, it appears that this Tribunal by Impugned Order dated 14th October, 2020 held that the date of NPA of 28th May, 2014, had been changed to 31st January, 2010 when attempt to restructure account of Corporate Debtor failed. As such, this Tribunal for such and other reasons recorded that the claim was barred by limitation and had allowed the Appeal. It appears that against such order Civil Appeal No. 3765 of 2020 was filed before the Hon'ble Supreme Court. The Learned Senior Counsel Shri Rohatgi submitted before the Hon'ble Supreme Court that in the written submissions filed before this Tribunal after judgment was reserved, it was pointed out acknowledgment of liability in Balance Sheet for the year 2014-15

was there. It was claimed that written submissions were not taken into consideration. Learned Senior Counsel for the Respondent Shri C.A. Sundaram argued that the written submissions can never be substituted for pleadings, and if pleadings are deficient, there ends the matter. The Learned Company Appeal (AT) (Insolvency) No.224 of 2021 Senior Counsel for the Appellant Shri Rohatgi presented an application before the Hon'ble Supreme Court to amend the pleadings, stating that this can be allowed even at this stage, as per the judgments of the Hon'ble Supreme Court. The Hon'ble Supreme Court directed in Paras 6 and 7 of the Judgment, as under:-

"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."

(C) In the matter of "Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr", the Hon'ble Supreme Court further dealt with Civil Appeal No. 3228 of 2020 where the Learned Senior Advocate appearing for the Respondent argued that no pleading qua acknowledgment of liability was made before either the NCLT or the NCLAT. It was claimed that the only pleading was that the date of default was the date on which the DRT decree was passed, which is wholly incorrect in law and Section 7 application is hopelessly time barred and no opportunity should be given to the Appellant to renege on this pleading. The Hon'ble Supreme Court observed as under:-

Company Appeal (AT) (Insolvency) No.224 of 2021 "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."

15. What is clear from the above is that if there was deficiency in pleading, the same could be corrected by giving opportunity before this Appellate Tribunal to amend the pleadings. In Appeal naturally pleadings could be by filing Application and reply supported by documents. Thus, we do not agree with the Learned Counsel for the Appellant that the Appeal should be remanded back to NCLT.

16. (A) In the matter of "Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr." (supra), the Hon'ble Supreme Court dealt with the relevant factual and background aspects of the Application of Financial Creditor in

that matter. The Hon'ble Supreme Court referred to the format which was filed and contents of the format in that matter and the defence raised by the Corporate Debtor (in Para 15 of the Judgment) and the orders which were passed by the Adjudicating Authority for initiating CIRP. It was noticed that the matter was carried in Appeal to this NCLAT but was summarily dismissed (See Para 21 of the Judgment) which led to the filing of the Civil Appeal No. 10710/2018 before the Hon'ble Supreme Court. The Hon'ble Supreme Court observed in Paras 24 & 25, as under:-

Company Appeal (AT) (Insolvency) No.224 of 2021 "24. In the order dated 26.02.2019, this Court took note of the fact that in appeal before the Appellate Tribunal, one of the grounds agitated was that the claim of the respondent was barred by time for, admittedly, the default was committed on 08.07.2011 whereas the application was filed in the month of March, 2018.

25. After noticing that the principal issue relating to limitation, though raised by the appellant, was not even decided by the Appellate Tribunal; and after referring to the decision in B.K. Educational Services Pvt. Ltd. v.

Paras Gupta & Associates: AIR 2018 SC 5601, wherein it was held that the Limitation Act is applicable to application filed under Section 7 of the Code, this Court remanded the matter to the Appellate Tribunal for deciding the issue of limitation with respect to the application in question in accordance with law while setting aside the impugned order dated 17.09.2018 and while granting liberty to the parties to submit additional affidavit/s in support of their respective contentions. This Court observed and ordered, inter alia, as under:-

"Although, we find that the ground articulated in the appeal memo is vague, but, as the objection regarding limitation goes to the root of the matter and touches upon the jurisdiction of the National Company Law Tribunal to proceed with the claim of the respondent; and since the recent decision of this Court in B.K. Educational Services Pvt. Ltd. Vs. Paras Gupta & Associates - AIR 2018 SC 5601 has held that the question of limitation is applicable even the applications filed under Section 7 of the I. & B. Code, it would be just and necessary to answer the said objection appropriately, in accordance with law. Indisputably, neither the National Company Law Tribunal nor the National Company Law Appellate Tribunal, in the present case, has examined the said contention. Indeed, 14 according to the respondent, the plea of claim being barred by limitation is unstable and, to buttress this argument, the respondent has relied upon the entries in the books of account of the appellant and other related documents. However, that is a matter which ought to be agitated before the National Company Law Appellate Tribunal in the first place. Accordingly, we relegate the parties before the National Company Law Appellate Tribunal for fresh consideration of the objection raised by the Company Appeal (AT) (Insolvency) No.224 of 2021 appellant that the claim of the respondent is barred by limitation....."

(B) In compliance of the orders of the Hon'ble Supreme Court dated 26th February, 2019, this Appellate Tribunal had considered the matter on remand and dismissed the Appeal holding that the Application under Section 7 was not barred by limitation. The order was again carried in Appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court referred to the earlier judgments relating to limitation in 'I&B Code' and in that context observed in Para 96 that where only the date of default as "08.07.2011" has been stated for the purpose of maintaining the application under Section 7 "and not even a foundation is laid in the application for suggesting any acknowledgment or any other date of default", the submissions sought to be developed on behalf of the Respondent No.2 at the later stage it was held cannot be permitted. (C) What appears is that in the first round of litigation and upto the Hon'ble Supreme Court, the issue of limitation had not been agitated before the Adjudicating Authority and this Tribunal and when the matter was remanded by the order of the Hon'ble Supreme Court dated 26th February, 2019, this Tribunal had in order dated 14th May, 2019 dealt with the issue of limitation. The Hon'ble Supreme Court in these set of facts observed that the foundation with regard to acknowledgment had not been laid.

17. Now keeping in view the different orders passed by the Hon'ble Supreme Court while disposing the matter with regard to "Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr" it shows that the pleadings can be brought on record or amended even at the NCLAT stage.

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18. 'Law of Pleadings in India' by Mogha (18th Edition) shows that the pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial/hearing and giving all such details as his opponent needs to know in order to prepare his case in answer. According to learned Author, in pleadings, material facts should be stated 'in a concise form'. The pleadings should be concise as well as precise. Pleadings would include contentions raised in Application, Counter, Appeal, Reply, Rejoinder.

19. Keeping in view the principles with regard to pleadings, it would be necessary to see if in the Application or reply filed, issue with regard to limitation was raised and if the same was considered and discussed along with the documents so as to arrive at a decision.

20. Keeping this in view when we have perused Annexure A-2 (Page 36 of the Appeal) where copy of the form has been submitted by the Bank before Adjudicating Authority, in Part V, Column-5, the Bank had mentioned as under:-

5. THE LATEST AND COMPLETE 1. Common Loan Agreement COPY OF THE FINANCIAL dated 05.04.2014 (Annexure-

CONTRACT REFLECTING ALL 6) AMENDMENTS AND WAIVERS TO 2. Deed of Hypothecation dated DATE 05.04.2014 (Annexure-7)

3. Inter Creditor Agreement dated 05.04.2014 (Annexure-8)

4. Lenders Agent Agreement dated 05.04.2014 (Annexure-

9)

5. Trust and Retention Account Agreement dated 05.04.2014 (Annexure-10)
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6. Working Capital Consortium Agreement dated 20.08.2014 (Annexure-11)

7. Deed of Hypothecation dated 20.08.2014 (Annexure-12)

8. Supplementary Agreement dated 27.11.2014 (Annexure-

13)

9. Balance and Security Confirmation Letter dated 31.03.2015, 31.03.2016 and
15.07.2019 (Annexure-14 colly.)

10. Letter of Acknowledgment by the Corporate Debtor dated 10.07.2018 (Annexure
15)

21. In the Application, the Bank has attached the letter of acknowledgment by the Corporate Debtor. Copy of the letter dated 10th July, 2018 is at Page 309 of the Appeal. It was attached as Annexure-15 at Page 268 before the Adjudicating Authority. The letter has been issued on the letter head of the Corporate Debtor and is dated 10th July, 2018. It is addressed to the Deputy General Manager of the PNB. The same reads as under:-

Company Appeal (AT) (Insolvency) No.224 of 2021 10.07.2018 "Dy. General
Manager, Punjab National Bank, Tolstoy House, Tolstoy Marg, New Delhi- 110001
Dear Sir, Sub: Credit facilities- A/c M/s. Amzen Machines Pvt. Ltd.

We would like to inform you the outstanding debit balance under various credit facilities availed by M/s. Amzen Machines Pvt. Ltd. are as under:-

Lender Nature Debit Balance (in As on date Whether of Rs.) interest is credit including facility upto date Punjab Term 2,15,74,43,221.01 31.03.2018 Yes National Loan Bank Bank of Term 1,28,12,35,576.47 31.03.2018 Yes India Loan Same had been shown in the Annual balance sheet for FY 2017- 18 ending as on 31.03.2018 as per table below:-

PARTICULARS	AMOUNT
Current Maturities of Long Term Debt*	2,54,17,53,662
Interest due but not paid	85,15,72,561
Instalment Due but not paid	66,40,78,936
Total	4,05,74,05,159

Note:*include secured loan of Rs.61,87,26,361 We hope you will find the above in order.

For Amzen Machines Pvt. Ltd.

Sd/-

Authorizes Signatory"

22. The reply filed by the Corporate Debtor (Annexure-3, Page 336) which was filed before the Adjudicating Authority clearly shows that the Corporate Debtor had specifically raised issue with regard to limitation and made Company Appeal (AT) (Insolvency) No.224 of 2021 reference to Section 348A as well as judgments on which the Appellant wants to rely and the issues were specifically raised and the Adjudicating Authority in impugned order considered the issue with regard to limitation and recorded finding as in para 8 (refers supra). Thus, it is not the case where foundation has not been laid. There were pleadings before the Adjudicating Authority.

The format has been prescribed by the statute and the Bank had clearly while filing details pointed out even the acknowledgment and had attached the documents. When all this is there, there is no substance in the arguments raised before us that the matter should be remanded back to the NCLT and there should be amendment of pleadings. The pleadings are already there.

The issues were dealt with and have been decided.

23. Term loan granted on 17th March, 2011 and other financial services were referred to the Corporate Debtor as per other agreements referred above.

When the account become NPA on 15th March, 2016 and there was default, the Corporate Debtor acknowledged liability on 10th July, 2018 as per the document at page 309 and thus, the application filed in 2019 could not be said to be time barred.

24. There is no substance in the Appeal. The Appeal is dismissed. No order as to costs.

[Justice A.I.S. Cheema] The Officiating Chairperson [Dr. Alok Srivastava] Member (Technical) New Delhi Anjali Company Appeal (AT) (Insolvency) No.224 of 2021