

Uco Bank vs Deegee Orchards Private Limited on 18 April, 2022

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National Company Law Appellate Tribunal
Principal Bench, New Delhi
COMPANY APPEAL (AT) (Ins)No. 709 of 2020
(Arising out of Order dated 06th July, 2020 passed by National
Company Law Tribunal, Mumbai Bench-IV, Mumbai in CP
(IB)No.3402/MB.IV/2019).

IN THE MATTER OF:

UCO Bank,
A body corporate duly constituted under the
provisions of the Bank Companies (Acquisition
and Transfer of Undertakings) Act, 1970 having
one of its Branch at Nagar Amravati, Branch,
Vachanalaya Building Nagar, Vachanalaya Road,
Tehsil Amravati, District Amravati,

Maharashtra 444601

...Appellant

Versus

Deegee Orchards Private Ltd,
Having its Controlling and Admn Office at
Deegee House,
Rallies Road,
Amravati 444601 and Registered Office
At Central Building No.3,
4th Floor,
Boomanji Master Lane,
Kalbadevi
Mumbai 400002

...Respondent

For Appellant: Mr. Partha Sil and Mr. Tavish Bhushan Prasad,
Advocates.

For Respondent No. 1 to 7: Mr. Vikas Mehta, Mr. Surjan Singh Shekhawat, Mr.
Adith Nair and Apoorv Khator, Advocates.

JUDGEMENT

Company Appeal (AT)(Ins) No.709/2020 Per; Shreesha Merla, Member (T)

1. Dissatisfied with the impugned order dated 06.07.2020 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench IV, Mumbai in CP (IB) No.3402/MB.IV/2019 dismissing the Application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code'), M/s UCO Bank/Financial Creditor has preferred this Appeal under Section 61 of the I&B Code.

2. Succinctly put, the facts in brief are that vide Sanction Letter dated 03.05.2005, M/s UCO Bank/Appellant herein approved a Cash Credit of Rs.10.35 crores, warehouse funding of Rs.12.50 crores and Bank Guarantee of Rs.0.80 Crore in favour of M/s Deegee Orchards Pvt Ltd, Corporate Debtor. On 04.10.2006, the Appellant renewed the sanction of a total of Rs.20.35 crores. On 07.03.2008, 05.11.2008, 25.11.2011 and 23.12.2011 the Appellant remodified the terms of sanction and renewed the Credit Facilities extended to the Corporate Debtor. The agreed rate of interest was 11.70% per annum. On 30.06.2014, it is averred that a sum of Rs. 43,04,08,269.00 was due and payable and the account of the Corporate Debtor was declared as NPA. By the impugned order, the Adjudicating Authority, while dismissing the 'Application' has observed as follows:-

"22. In sum -

- (a) The date of default is 30.06.2014.
- (b) The balance confirmation letter placed on record is dated 30.06.2013/
- (c) The letter informing the Corporate Debtor about

the accounts having become NPA is dated 13.11.2014.

(d) There is nothing on record to show that there is any acknowledgement of debt after the accounts were declared as NPA on 13.11.2014.

(e) The OTS proposal is dated 01.08.2018 i.e. long after the expiry of the prescribed period of limitation.

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23. Applying the ratio of the judgements of the Hon'ble Supreme Court in BK Educational Services (supra), Gaurav Hargovindbhai Dave (supra), Jignesh Shah (supra), Vashdeo R Bhojwani (supra), Sagar Sharma (supra) and Sampuran Singh (supra), and those of the Hon'ble NCLAT in Ishrat Ali (supra), Munish Kumar Bhunsali (supra) and V Hotels Limited (supra) and the fact that the judgement in Sesh Nath (supra) no longer represents the correct law, we hold that the present petition filed by UCO Bank against Deegee Orchards Private Ltd is barred by limitation.

24. Therefore, for the reasons stated above, the present petition fails and the same is rejected."

3. Submissions of the Learned Counsel for the Appellant The Learned Counsel for the Appellant submitted that the account of the Corporate Debtor was declared NPA on 03.09.2014 and the Appellant Bank issued 'Statutory Notice' under Section 13(2) Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) demanding an amount of Rs.43,19,95,384.43 (Rupees Forty Three Crore Nineteen Lakh Ninety Five Thousand Three Hundred and Eighty Four and Paise Forty three only) within 60 days from the date of issue of the Notice. Proceedings against the Respondent/Corporate Debtor were initiated before the Debt Recovery Tribunal, Nagpur Bench vide OA/158/2015 for recovery of the dues.

The Respondent also filed SA/88/15, challenging the steps taken by the Appellant under the SARFAESI Act, 2002.

The Learned Counsel for the Appellant contended that the Respondent/Corporate Debtor has acknowledged its liability in the Balance Sheet for the Year Ending 31.03.2017 and also in the OTS Company Appeal (AT)(Ins) No.709/2020 letters dated 06.06.2018, 01.08.2018, 20.11.2018, 29.12.2018, 21.01.2019, 28.01.2019 and 22.08.2019. Hence the period of limitation is extended by virtue of 'admission of liability' made by the Corporate Debtor in its Balance Sheet for the Financial Year ending 31.03.2017. The Adjudicating Authority has not taken into consideration the cognizance of these OTS letters and rejected the same on the ground that these admissions were made beyond the applicability of the period of limitation.

By a letter dated 20.11.2018, the Corporate Debtor has made a 'Part Payment' of Rs.25 lakhs against the OTS proposal which squarely falls within Section 19 of the Limitation Act, 1963 as 'Part Payment' was made within three years from the last acknowledgement of liability made in the Balance Sheet of the Corporate Debtor for the Year ending 31.03.2017.

The Learned Counsel placed reliance on the judgements of the Hon'ble Supreme Court in Jignesh Shah V. Union of India (2019)10 SCC 750; V. Padmakumar V. Stressed Assets Stabilisation; Asset Reconstruction Company (India) Ltd V. Bishal Jaiswal 2021 SCC OnLine SC 321; Laxmi Pat Surana V Union Bank of India 2021 SCC OnLine SC 267 and Sesh Nath Singh V Baidyabati Sheoraphull Cooperative Bank Ltd 2021 SCC OnLine SC 244. The Learned Counsel for the Appellant contended that merely because of the word "Without Prejudice" in the OTS letters will not bar the Court from scrutinizing such letter and import the true purport and intent of the maker of such documents. In the instant case, the Corporate Company Appeal (AT)(Ins) No.709/2020 Debtor has acknowledged the subsisting liability and existence of a jural relationship between the parties and also intended to make payment of the outstanding dues of the Appellant. The Balance Sheet of the Financial Year 2016-17 were signed by the Director on 05.09.2017 which clarifies that there was an admission made within the period of limitation. The Corporate Debtor was obliged to submit its Annual Returns to the Appellant Bank regularly and in breach of such terms and conditions of 'Sanction Letter', the Respondent has not submitted their Annual Returns to the Appellant since 2014-15.

4. Submissions of Respondent.

The Learned Counsel strenuously contended that there is no material on record to establish that there is any acknowledgement of debt after the accounts were declared as NPA on 13.11.2014 and the OTS proposal is dated 01.08.2018 i.e after the expiry of the prescribed period of limitation of 3 years.

The Learned Counsel for the Respondent submitted that the Hon'ble Supreme Court in the case of B.K. Educational Services Pvt Ltd Vs Parag Gupta and Associates has held that "the right to sue" accrues when a 'default' occurs. If the 'default' has occurred over three years prior to the date of filing of the Application, the Application would be barred under Article 137 of the Limitation Act, 1963. The Hon'ble Supreme Court in the case of Jignesh Shah & Ors Vs Union of India and Others has held that the "object of the law of limitation is to prevent disturbance or deprivationwhat may have been lost by a party's own inaction. Negligence or laches."

The One Time Proposal was made by the Corporate Debtor after the period of limitation was over and, therefore, it cannot be construed as an 'Acknowledgement' which falls within the three years of the date of 'default' and cannot be considered for extension of the limitation period. The OTS proposal of the Corporate Debtor was not accepted by the Appellant. The Hon'ble High Court of Allahabad in the case of Shibcharan Das Vs (Firm) Gulab Chand Chhotey Lal has held that "Negotiations were being conducted with a view to settlement, and that being so, are we bound to hold that these negotiations were being conducted without prejudice. In such circumstances it is not open for one of the parties to give evidence of an admission made by another." There is no material on record to establish that there was any acknowledgement under Section 18 of the Limitation Act, 1963. The Balance Sheet for the Financial Year 2016-17 filed by the Appellant for the first time before this Appellate Tribunal does not meet the essential conditions under Section 18 of the Limitation Act, 1963 to further extend the period of limitation.

The Hon'ble Supreme Court in the case of Asset Reconstruction Company (India) Ltd Vs Bisal Jaiswal and other 2021 SCC OnLine SC 321 has held that even though the Balance Sheet is not filed under the statutory requirements of the Companies Act, 2013, the parties can plead for amendment and file the same as an Additional Document. Company Appeal (AT)(Ins) No.709/2020 The AGM where the Balance Sheet was considered was held on 13.09.2017 and was filed with ROC much thereafter, beyond the expiry of three years from the date of the said 'default' and hence does not meet the essential requisites under Section 18 of the Limitation Act, 1963. Therefore, the Adjudicating Authority has rightly dismissed the Application filed under Section 7 of the Code as barred by Limitation. Assessment

5. The brief point that falls for consideration is whether the Learned Adjudicating Authority was justified in dismissing the Application filed under Section 7 of the Code, as barred by Limitation.

6. Admittedly the date of default is 30.06.2014 and the letter informing the Corporate Debtor about the accounts having become NPA is 13.11.2014. At the outset, we address to the contention of the Learned Counsel for the Appellant/UCO Bank that the OTS proposal dated 06.06.2018, 01.08.2018, 20.11.2018 and subsequently on 28.02.2019 should be taken into consideration as admission of

liability and acknowledgement of 'Debt' as provided for under Section 18 of the Limitation Act, 1963. Section 18 of the Limitation Act, 1963 reads as follows:

18. Effect of acknowledgment in writing.--(1) Where, before the expiration of the prescribed period for a suit or 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.

Company Appeal (AT)(Ins) No.709/2020 (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 (1 of 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.

7. In the instant case it is not disputed by the Appellant that First OTS letter offered by the Corporate Debtor was dated 06.06.2018 though it is the case of the Respondent that the OTS proposal is 01.08.2018. Be that as it may the First OTS proposal is beyond the period of three years and, therefore, it does not aid the case of the Appellant that this OTS is an acknowledgement of debt as provided for under Section 18 of the Limitation Act, 1963 as it is long after the expiry of the 'prescribed period' of three years of limitation.

8. While the OTS Proposals establish an existence of jural relationship between the Bank and the Corporate Debtor, the facts remains that First letter of the OTS proposal was made in June, 2018, whereas the "prescribed period"

of three years have already lapsed in June, 2017.

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9. The issue of acknowledgement in the Balance Sheet for the Financial Year 2016-17 is required to be decided on the touchstone of the ratio laid down by the Hon'ble Supreme Court in the case of

Asset Reconstruction Company (I) Ltd Vs Bishal Jaiswal, 2021 SCC OnLine SC 321.

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

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

"46. Shri Rameshwar Dial argued that statements in the balance-sheet of a company cannot amount to acknowledgement of liability because the balance-sheet is made under compulsion of the provisions in the Companies Act. There is no force in this argument. In the first place, Section 18 of the Limitation Act, 1963, requires only that the acknowledgement of liability must have been made in writing, but it does not prescribe that the writing should be in any particular kind of document. So, the fact that the writing is contained in a balance-sheet is immaterial. In the second place, it is true that Section 131 of the Companies Act, 1913 (Section 210 of the Companies Company Appeal (AT)(Ins) No.709/2020 Act, 1956) makes it compulsory that an annual balance sheet should be prepared and placed before the Company by the Directors, and Section 132 (Section 211 of the Companies Act, 1956) requires that the balance-sheet should contain a summary, inter alia, of the current liabilities of the company. But, as pointed out by Bachawat J. in *Bengal Silk Mills v. Ismail Golam Hossain Ariff*, A.I.R. 1962 Calcutta 115 although there was statutory compulsion to prepare the annual balance-sheet, there was no compulsion to make any particular admission, and a document is not taken out of the purview of Section 18 of the Indian Limitation Act, 1963 (Section 19 of the Indian Limitation Act, 1908) merely on the ground that it is prepared under compulsion of law or in discharge of statutory duty. Reference may also be made to the decisions in *Raja of Vizianagram v. Vizianagram Mining Co. Ltd.*, A.I.R. 1952 Madras 136, *Jones v. Bellgrove Properties Ltd.*, (1949) 1 All E.R. 498; and *Lahore Enamelling and Stamping Co V. A.K. Bhalla*, A.I.R. 1958 Punjab 341, in which statements in balance-sheets of companies were held to amount

to acknowledgements of liability of the companies.

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

48. The learned counsel next argued that the words used in the entry in the balance-sheet in the present case did not amount to any acknowledgement of liability. We do not think so. The words used in the entry apparently show that in explaining its current liabilities and the provisions made for the same, it was stated that there was a sum of Rs. 7,87,150.42 held in share-holders' suspense account for payment to the share-holders of the Indian National Airways Limited (in voluntary liquidation -- since dissolved). The words used clearly acknowledge the liability. The learned Company Appeal (AT)(Ins) No.709/2020 single Judge also took the same view as regards the words used in the balance-sheet. In Lahore Enamelling and Stamping co Ltd V A.K. Bhalla, Tek Chand J.. held that "debts due to creditors not mentioned by name but included in the item relating to "Loans (unsecured)" or as due to "Sundry Creditors" mentioned in the balance-sheet amount to an "acknowledgement" of liability for the purposes of Section 19 of the Indian Limitation Act, 1908. There was thus no force in the argument of the learned counsel.

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51. The next argument was that the balance-sheet was no doubt signed by two Directors, but they did not sign as duly authorised agents of the transferee company as required by explanation (b) to section 18 of the Limitation Act. There is no substance in this argument. The Companies Act, 1956, came into force in 1956. Section 210 of the Act requires the Board of Directors to lay a balance-sheet before the company at the Annual General Meeting. Section 211 prescribes the form and contents of a balance-sheet. The form of balance-sheet is given in Part 1 of Schedule VI to the Act, and according to it the current liabilities and provisions have to be set out in the balance-sheet. Section 215(i)(ii) requires that the balance-sheet should be signed on behalf of the Board of Directors, inter alia, by the Secretary of the Company and by not less than two Directors of the company. Section 215(3) provides that a balance-sheet shall be approved by the Board of Directors before it is signed on behalf of the Board of Directors in accordance with section 215(i)(ii) and before it is submitted to the Auditors for their report thereon. Thus, the statement of current liabilities and provisions in the balance-sheet has to be approved by the Board of

Directors before it is signed by the Secretary and two Directors on behalf of the Board. In other words, the balance-sheet is signed by the Secretary and two Directors at the instance and on the approval of the Board of Directors of the company. After the balance-sheet is audited, section 216 requires that the Auditors' report should be attached to the balance-sheet, and section 217 requires the Board of Directors also to make a report. The balance-sheet together with the Auditors report and the Board's report are then required to be placed before the company at the annual general meeting for adoption of the balance-sheet. After the balance-sheet has been so laid before the company at the annual general meeting, Section 220 requires that three copies of the balance-sheet should be filed with the Registrar. In the present case, the balance-sheet (Schedule D to Annexure J) was signed by the Secretary and Company Appeal (AT)(Ins) No.709/2020 two Directors, and Annexure J contains the Auditors' report and the Board's report. It was stated in the judgment of the learned single Judge that the balance-sheet was adopted by the company and the same was not disputed before us. It is thus quite clear that the balance-sheet was signed by duly authorised agents of the company."

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

"4. Now the question is whether the statements, which are contained in the profits and loss accounts and the assets and liabilities side indicating the liability of the petitioning creditor along with the statement of the Directors made to the shareholders as Directors' report should be read together and if so whether reading these two statements together these amount to an acknowledgement as contemplated under Section 18 of the Limitation Act, 1963, or Section 19 of the Limitation Act, 1908. In my opinion, both these statements have to be read together. The balance-sheet is meant to be presented and passed by the shareholders and is generally accompanied by the Directors' report to the shareholders. Therefore in understanding the balance-sheets and in explaining the statements in the balance-sheets, the balance-sheets together with the Directors' report must be taken together to find out the true meaning and purport of the statements. Counsel appearing for petitioning creditor contended that under the statute the balance-sheet was a separate document and as such if there was unequivocal acknowledgement on the balance-sheet the statement of the Directors' report should not be taken into consideration. It is true the balance-sheet is a statutory document and perhaps is a separate document but the balance-sheet not confirmed or passed by the shareholders cannot be accepted as correct. Therefore, in order to validate the balance-sheet, it must be duly passed by the shareholders at the appropriate meeting and in order to do so it must be accompanied by a report, if any, made by the Directors. Therefore, even though the balance-sheet may be a separate document these two documents in the facts and circumstances of the case should be read together and should be construed together. It was held by the Supreme Court in the

case of L.C. Mills v. Aluminium Corpn. of India Ltd., (1971) 1 SCC 67 : AIR 1971 SC 1482, that it was clear that the statement on which the plea of acknowledgement was founded should relate to a subsisting liability as the section required and it should be made before the expiration Company Appeal (AT)(Ins) No.709/2020 of the period prescribed under the Act. It need not, however, amount to a promise to pay for an acknowledgement did not create a new right of action but merely extended the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question must, however, relate to a present subsisting liability and indicate the existence of a jural relationship between the parties such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not, however, be in express terms and could be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course did not mean that where a statement was made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. In order to find out the intention of the document by which acknowledgement was to be construed the document as a whole must be read and the intention of the parties must be found out from the total effect of the document read as a whole. ..."

10. It is the case of the Respondent that the Balance Sheet for the Financial Year 2016-17 was signed by the Directors on 05.09.2017, was adopted by the Members on 13.09.2017 and filed with the ROC on 13.09.2017. At this juncture, we find it relevant to rely on Note 27 of the Balance Sheet for the Year ending 2016-17 which is disclosed in the Auditor Report as hereunder:

"Textual Information (27) Disclosure in auditors report relating to default in repayment of financial dues As per the information and explanation given and representation made to us, the Company has defaulted in repayment of dues to the banks, the details are given below: Sl. Name of Bank. Nature of Facilities, Outstanding as on 31.03.2017 (in Crores), UCO Bank, Term Loan 36.70, 2 IDBI Bank Term Loan 7.19; 3. UCO Bank, Hinganghat Cash Credit 2.05, 4. UCO Bank Amravati Cash Credit 4.36, 5. SIDBI Amravati Cash Credit 19.93, 6 IDBI Bank Amravati Cash Credit Company Appeal (AT)(Ins) No.709/2020 (Interest) 2.26, 7. Shikshak Sahkari Bank Ltd Term Loan 1.92."

(Emphasis supplied)

11. This establishes that the acknowledgement in the Balance Sheet was with respect to the amount due and payable as on 31.03.2017. Therefore, the contention of the Respondent that the Balance Sheet of the Financial Year 2016-17 was filed on 13.9.2017, and hence is not within the 3 year period, cannot be sustained.

12. The Hon'ble Supreme Court in the case of Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Another (2021) 10 Supreme Court Cases 330 has observed as follows:

"138. While it is true that default in payment of a debt triggers the right to initiate the Corporate Resolution Process, and a Petition under Section 7 or 9 of the IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238A of the IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a Petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Section 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.

139. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.

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140. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

141. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.

142. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal."

(Emphasis supplied)

13. The Balance Sheet for the Year ending 31.03.2017 which is within three years from the date of NPA i.e. 13.09.2014 shows that there is an amount of Rs.366953917.45 depicted under secured term loan vis a vis a sanction limit Company Appeal (AT)(Ins) No.709/2020 of Rs.3383 lakhs. The amount in default is shown to be Rs.3692 lakhs. Expression of 'default' has been defined in Section 3(12) of the Code meaning non-payment of 'Debt' when a whole or part or any part or instalment of the amount of debit has become due and payable and is not paid by the Debtor or the Corporate Debtor, as the case may be. Section 18 of the Limitation Act, 1963 comes into play every time when the principal borrower/Corporate Debtor, as the case may be, acknowledged their liability to pay the debt, however, such acknowledgement must be before the expiration of the prescribed period of limitation, which in the instant case is within three years period.

14. The Learned Counsel for the Respondent submits that this Audited Balance was never filed before the Adjudicating Authority and, therefore, cannot be considered at this Appellate Stage. This argument is not sustainable keeping in view the ratio of the Hon'ble Supreme court in the case of Asset Reconstruction Company (I) Ltd Vs. Bishal Jaiswal & Anr (Supra) in which the Hon'ble Supreme court in Civil Appeal No.3765/2020, addressing to the submissions made by the Learned Counsel that no opportunity should be given to the Appellant to go back to NCLAT, the Appellant having already amended its pleadings once, and the Hon'ble Supreme Court having already remitted the matter to NCLAT, still gave one further opportunity to the Appellant to amend its pleadings so as to incorporate what was stated in the written submissions. Even in Civil Appeal No.3228/2020 the Hon'ble Apex Court had given an opportunity to the Appellant to amend its pleadings on payment of cost of Rs.1 lakh. Company Appeal (AT)(Ins) No.709/2020

15. The Hon'ble Supreme Court in Dena Bank (Supra) has noted that there is no bar in law with respect to amendment of pleadings or filing additional documents before the Adjudicating Authority. Though the Appellant has not brought the Balance Sheet on record before the Adjudicating Authority but instead has chosen to file an IA before this Tribunal, and has filed additional documents to bring on record the Balance Sheet of the Financial Year 2016- 17, it cannot

be said to be fatal to the issue. Having regard to the facts and circumstances of the case on hand and that the Section 7 Application is of the year 2019 and 3 years has lapsed, we do not find it a fit case to remit the matter back to the Adjudicating Authority with a direction to allow the Appellant to file the Balance Sheet by way of additional documents.

16. Keeping in view the catena of judgements of the Hon'ble Apex Court, this Tribunal is of the considered view that the Appellant having exercised their legal right to file an IA before this Tribunal to bring on record the Balance Sheet for the financial year ending 2016-17, instead of filing the same before the Adjudicating Authority, it cannot be said to be nonest specially in the light of the fact that the question of limitation per se has been argued/pleaded by the Appellant herein before the Adjudicating Authority in terms of acknowledgement of 'debt' under Section 18 of the Limitation Act, 1963 vide OTS proposals.

17. For the foregoing reasons, this Tribunal holds that 'Debt' has been duly acknowledged in the Balance Sheet for the Year 2016-17 which is also duly prepared and authenticated by the Auditors Report amounting to 'Admission of Liability' and, therefore, satisfies the requirements of liability for a valid acknowledgement under Section 18 of the Limitation Act, 1963. Company Appeal (AT)(Ins) No.709/2020

18. For all the aforementioned reasons, this Appeal is allowed and the impugned order is set aside and the matter is remitted back to the Adjudicating Authority to decide the admission of the Application in accordance with Law as expeditious as possible.

19. The Registry is directed to upload the Judgement on the website of this Tribunal and send a copy of this Judgement to the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Mumbai forthwith.

[Justice Anant Bijay Singh] Member (Judicial) [Ms. Shreesha Merla] Member (Technical) 18th April, 2022 Bm Company Appeal (AT)(Ins) No.709/2020