NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 236 of 2020

[Arising out of Order dated 19.12.2019 passed by the National Company Law Tribunal, Ahmedabad Bench in C.P.No. (IB) 257/7/NCLT/AHM/2019].

IN THE MATTER OF:

Yogeshkumar Jashwantlal Thakkar
Suspended Director
A/501, Palak-2, Opp. Shreeji Enclave,
Ramdevnagar Road, Satellite, Jodhpur,
Ahmedabad – 380015 (Gujarat) ...Appellant

Versus

Indian Overseas Bank,
Asset Recovery Management Branch, Ground Floor,
Sharad Shopping Centre, Chirubhai Tower,
Ashram Road, Ahmedabad – 380009(Gujarat)

Jason Dekor Pvt. Ltd.
Through Insolvency Resolution Professional
George Samuel, Having registration no. IBB/IPA-003/IP-N00043/2017-18/10319
9B Vardan Tower, Nr. Vimal House,
Lakhudi Circle,
Ahmedabad – 380014 (Gujarat) ...Respondents

Present:

For Appellant: Mr. Udit Gupta, Mr. Vishwas Shah, Advocates

For Respondent: Ms. Sangya Negi, Advocate for R-1
Mr. Madhusudan Sharma (IRP), Advocate for R-2.

J U D G M E N T

Venugopal M. J

Heard the Learned Counsel for the Appellant / Applicant in I.A. No. 612/2020, seeking to condone the delay of six days in curing the defects and in respect of preferring the present Appeal. According the Appellant / Applicant there has occasioned a delay of six days in filing the instant Company Appeal (AT)(Ins.) 236/2020 because of the reason that certain defects, (as pointed by the registry of this Tribunal) were to be cured by 30.01.2020 and hence the said delay took place beyond the control of the Appellant / Applicant, in obtaining the Documents / Affidavits required for finalisation of the Appeal. On being subjectively satisfied as to the reasons ascribed on behalf of the Appellant / Applicant, this Tribunal, condones the delay of six days in furtherance of substantial cause of justice and accordingly the IA No. 612/2020 stands disposed of.

2. The Appellant/Suspended Director of 2nd Respondent has filed the present Appeal being aggrieved against the impugned order passed by the Adjudicating Authority passed by the ('National Company Law Tribunal, Ahmedabad Bench) in admitting the Section 7 Application of the 'I&B' Code filed by the 1st Respondent / Bank.

3. The Adjudicating Authority while passing the impugned order C.P. No. (IB) 257/7/NCLT/AHM/2019] at paragraph 16 and 17 had observed the following: -

> "16. *In the instant application, from the material placed on record by the applicant, this authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the financial debt to the applicant and the Respondent Company has acknowledged the debt.*
>
> *17. In the instant case, the documents produced by the financial creditor clearly establish the debt and there is default on the part of the Corporate Debtor in payment of the 'financial debt."*

and resultantly admitted the application after finding that the 1st Respondent / Bank had fulfilled all the requirements of Section 7 of the Code.

4. Challenging the validity, propriety and legality of the impugned order passed by the Adjudicating Authority ('National Company Law Tribunal, Ahmedabad Bench), the Learned Counsel for the Appellant submits that the application filed by the 1st Respondent / Bank ('Financial Creditor') is time barred and in fact, the said application was filed on 01.04.2019 but the date of default mentioned in Section 7 application before the Adjudicating Authority was

on 01.01.2016, therefore, it is the stand of the Appellant that the application filed by the 1st Respondent / Bank after the expiry of three years is hit by the plea of 'Limitation'.

5. The Learned Counsel for the Appellant contends that the Balance confirmation dated 02.09.2016 and 'Revival Letter' 31.03.2017 being the acknowledgements relied on by the 1st Respondent / Bank before this Tribunal were not placed before the Adjudicating Authority.

6. The contention advanced by the Learned Counsel for the Appellant is the 1st Respondent / Bank has specified 31.03.2017, the debit balance confirmation as the date of default in Section 7 application of the code than the implications would have been at different one. In this connection, the stand of the Appellant is that the conspicuous absence of 31.03.2017, as date of default in Section 7 application filed by 1st Respondent/Financial Creditor is a 'Clincher'.

7. The Learned Counsel for the Appellant submits that 'Debit Balance Confirmation' dated 31.03.2017 does not bear seal/the stamp of the Corporate Debtor and there is one debit confirmation dated 31.03.2017 which was placed on record before the Adjudicating Authority. However, the 1st Respondent/Bank has not placed the revival letter dated 31.03.2017 on record, before the Adjudicating Authority.

8. The other contention projected by the Learned Counsel for the Appellant before the Tribunal is that the Appellant in para 4 of its Rejoinder filed before this Tribunal in the instant appeal had categorically denied the execution of acknowledgements by inter-alia mentioning that as 'old debit confirmation letter'

dated 31.03.2017 did not bear stamp/seal of the 'Corporate Debtor', to wriggle out of it, new debit confirmation letter dated 31.03.2017 was placed bearing the stamp of 'Corporate Debtor' and further that it is unusual for the 1st Respondent / Bank to obtain two 'Debit Confirmation Letters' etc. and in this backdrop, the Acknowledgements' are not established and they are of no avail to the 1st Respondent / Bank.

9. The Learned Counsel for the Appellant refers to the judgement of **Hon'ble Supreme Court in 'Babulal Vardharji Gurjar' V. 'Veer Gurjar Aluminium Industries Pvt. Ltd. and Anr.' (Civil Appeal no. 6357 of 2019 - decided on 14.08.2020)** and submits that an 'Acknowledgement' cannot revive default in insolvency proceedings under IBC regime and can only revive limitation for 'cause of action'.

10. The Learned Counsel for the Appellant cites the following decisions of Hon'ble Supreme Court: -

(i) In the decision **'Vashdeo R.Bhojwani' V. 'Abhyudaya Co-Operative Bank Limited and Anr.' (2019) 9 Supreme Court Cases at page 158 at special page 159 and 160 wherein at paragraph 4** it is observed as under:-

"4. *In order to get out of the clutches of para 27, it is urged that section*

23 of the Limitation Act would apply as a result of which limitation would be saved in the present case. This contention is effectively answered by judgement of three Learned Judges of this Court in 'Balakrishna Savalram Pujari Waghmare' v. 'Shree Dhyaneshwar Maharaj Sansthan'(AIR 1959 SC page 798). In this case, this Court held as follows:-

"31……In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an Act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues than the Act

constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterized as continuing wrong that section 23 can be invoked. Thus, considered it is difficult to hold that the trustees' Act in denying altogether the alleged rights of the Guravs as hereditary Worship and in claiming and obtaining possession from them by their suit in 1920 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the Appellant' rights though the damage caused by the said decree subsequently continued."

Following this judgement it is clear that when the recovery certificate dated 24.12.2001 was issued, this certificate injured effectively and completely the

appellant's rights as a result of which limitation would have begun ticking."

(ii) In the decision ***'Gaurav Hargovindbhai Dave' V. 'Asset Reconstruction Company (India) Ltd. & Anr.' (2019)10*** *Supreme Court Cases at page 572 at special page 574 wherein at paragraph 6 it is observed as under: -*

"6. Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would apply to suits. The present case being 'an application' which is filed u/s 7 would fall only within the residuary Article 137. As rightly pointed out by the Learned counsel appearing on behalf of the Appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time barred. So far as Mr. Banerjee's reliance on para 11 of B.K. Educational Services (P)Ltd. (2019) 11 SCC 633, suffice it to say that the Report of the Insolvency Law Committee itself stated

that the intent of the court could not have been to give a new lease of life to debts which are already time-barred."

(iii) In the decision Sagar Sharma and Another V. Phoenix ARC Private Limited and Another (2019) 10 Supreme Court Cases at page 353 at special page 354 wherein at paragraph 2 to 4 it is observed as under: -

"2. We had also made it clear beyond doubt that for applications that will be filed under section 7 of the Code Article 137 of the Limitation Act will apply. However, we find in the impugned judgement (Sagar Sharma V. Phoenix ARC (P) Ltd., 2019 SCC online NCLAT 617) that article 62 (erroneously stated to be article 61) was stated to be attracted to the facts of the present case, considering that there was a deed of mortgage which was executed between the parties in this case. We may point out that an application under section 7 of the Code does not purport to be an application to enforce mortgaged liability. It is an application by a financial creditor stating that a default as

defined under the Code, has been made, which default amounts to Rs. 1,00,000 (Rupees one lakh) or more which then triggers the applications of the code on settled principles that have been laid down by several judgements of this court.

3. Article 141 of the Constitution of India mandates that our judgements are followed in letter and spirit. The date of coming into force of the 'I&B' Code does not and cannot form a trigger point of limitation for applications filed under the code. Equally, since "applications" or petitions which are filed under the code, it is article 137 of the Limitation Act which will apply to such applications".

(iv) In the decision 'B.K.Educational Services Pvt. Ltd.' V. 'Parag Gupta and Associates' (2019) 11 Supreme Court case at page 633 at special page 664 wherein at paragraph 42 it is observed as under:-

"42. It is thus clear that since the limitation act is applicable to applications filed u/s 7 and 9 of the code from the inception of the code, Article 137

of the Limitation Act gets attracted. "The right to sue", therefore, 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 saved and accept in those cases wherein the facts of the case, section 5 of the Limitation Act may be applied to condone the delay in filing such application."

(v) In 'Jignesh Shah & Another' V. 'Union of India and Another' (2019) 10 Supreme Court Cases at page 750 at special page 777 wherein at paragraph 37 and 38 it is observed as under:

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"37. In the winding-up petition itself, what is referred to is the fall in the assets of La-Fin to being worth approx. INR 200 crores as of October, 2016, which again does not corelate with 3.11.2015, being the date on which the statutory notice was itself issued. This again is only for the purpose of appointing an officer in the court as official liquidator in order to manage the day-today affairs and otherwise secure and

safeguard the assets of the respondent Company.

38. We therefore allow civil Appeal (Diary No. 16521 of 2019) and disposed of writ petition (civil) No. 455 of 2019 by holding that the winding up petition filed on 21.10.2016 being beyond the period of three years mentioned in Article 137 of the Limitation Act is time barred and therefore cannot be proceeded with any further. Accordingly, the impugned judgement of the NCLAT (Pushpa Shah v. IL&FS Financial Services Ltd; 2019 SCC online NCLAT 572) and the judgement of the NCLT (IL&FS Financial Services Ltd. v. La-Fin Financial Services (P) Ltd. (2018)SCC online NCLT 11437) are set aside."

11. The Learned Counsel for the Appellant refers to the decision of **Hon'ble Supreme Court in 'Babulal Vardharji Gurjar' V. 'Veer Gurjar Aluminium Industries Pvt. Ltd. and Anr.' (Civil Appeal no. 6357 of 2019)** wherein at paragraphs 11, 13.1, 13.6 and para 31 to 33 wherein it is observed as under: -

"11.....it could be reasonably deciphered that the Appellate Tribunal has rejected the plea of bar of limitation

essentially on two major considerations; (i) that the right to apply u/s 7 of the Code accrued to the Respondent financial creditor only on 1.12.2016 when the code came into force(19 paragraph 21 of the impugned order) and second, that the period of limitation for recovery of possession of the mortgaged property is twelve years.(20 paragraphs 29 and 30 of the impugned order). Noticeably, though the Appellate Tribunal has referred to the pendency of the application under Section 19 of the Act of 1993 as also the fact that corporate debtor had made a prayer for OTS in the month of July, 2018 but, has not recorded any specific finding about the effect of these factors.

13.1 The learned senior counsel has elaborated on the submissions with reference to the decision of this Court in the case of ***B.K. Educational Services*** *(supra) and has contended that therein, it*

is categorically held that Article 137 of the Limitation Act applies to the application under Section 7 of the Code and hence, the limitation period is of three years, which is to be counted from the date of default.

13.6 The learned senior counsel has argued that the debt shown in the balance sheet does not revive the limitation period of three years as applicable to the IBC under Article 137 of the Limitation Act for the reasons that the debt as shown in the balance sheet is not covered by Section 18 of the Limitation Act; and even otherwise, Section 18 of the Limitation Act cannot revive the "default" relevant for IBC and could only revive limitation with respect to the cause of action. The learned senior counsel has emphasized on the submissions that Section 18 of the Limitation Act could revive limitation in some cases but not for every remedy which is separate and distinct; and when

limitation period of three years under Article 137 of the Limitation Act, in relation to the application under Section 7 of the Code, starts from the date of default, acknowledgement of the debt in the balance sheet will not give any fresh date of default because default occurs only once and cannot be continuing. The learned counsel has also submitted that the NCLAT has wrongly relied on the alleged proposal for OTS which was never filed before the NCLT and also was denied by the appellant herein; and in any case, the proposal for OTS, if at all made on 31.07.2018, cannot revive the date of default as per declaration of NPA on 08.07.2011 nor does it attract Section 18 of the Limitation Act.

31. While the aforesaid principles remain crystal clear with the consistent decisions of this Court, the only area of dispute, around which the contentions of learned counsel for the parties have

revolved in the present case, is about applicability of Section 18 of the Limitation Act and effect of the observations occurring in paragraph 21 of the decision in ***Jignesh Shah*** *(supra).*

32. We have noticed all the relevant and material observations and enunciations in the case of ***Jignesh Shah*** *hereinbefore. Prima facie, it appears that illustrative reference to Section 18 of the Limitation Act, in paragraph 21 of the decision in* ***Jignesh Shah,*** *had only been in relation to the suit or other proceedings, wherever it could apply and where the period of limitation could get extended because of acknowledgement of liability. Noticeably, in contradistinction to the proceeding of a suit, this Court observed that a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceeding is to be filed (what has been observed in relation to the*

proceeding for winding up, perforce, applies to the application seeking initiation of CIRP under IBC). It is difficult to read the observations in the aforesaid paragraph 21 of ***Jignesh Shah*** *to mean that the ratio of* ***B.K. Educational Services*** *has, in any manner, been altered by this Court. As noticed in* ***B.K. Educational Services****, it has clearly been held that the limitation period for application under Section 7 of the Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of Limitation Act, if any case for condonation of delay is made out. The findings in paragraph 12 in* ***Jignesh Shah*** *makes it clear that the Court indeed applied the principles so stated in* ***B.K. Educational Services****, and held that the winding up petition filed beyond three years from the date of default was barred by time.*

33. Apart from the above and even if it be assumed that the principles relating to acknowledgement as per Section 18 of the Limitation Act are applicable for extension of time for the purpose of the application under Section 7 of the Code, in our view, neither the said provision and principles come in operation in the present case nor they enure to the benefit of respondent No. 2 for the fundamental reason that in the application made before NCLT, the respondent No. 2 specifically stated the date of default as '8.7.2011 being the date of NPA'. It remains indisputable that neither any other date of default has been stated in the application nor any suggestion about any acknowledgement has been made. As noticed, even in Part-V of the application, the respondent No.2 was required to state the particulars of financial debt with documents and evidence on record. In the variety of descriptions which could have been given by the applicant in the said Part V of the application and even in residuary

Point No. 8 therein, nothing was at all stated at any place about the so called acknowledgement or any other date of default."

12. *Per contra,* it is the submission of the Learned Counsel for the 1st Respondent / Bank submits that in the present case, even though the 'Default' on the part of the 2nd Respondent / 'Corporate Debtor' took place on 01.01.2016, in part V of Section 7 Application filed before the Adjudicating Authority by the 1st Respondent / Bank make it clear that there existed an acknowledgement on the part of the 'Corporate Debtor' (vide page 53 of the paper book) and further that the execution of numerous 'Revival Letters' dated 31.03.2015, 30.04.2015 and 31.03.2017 unerringly point out that the Debt was duly acknowledged by the 'corporate Debtor' to the 1st Respondent / Bank for the purpose of Section 18 of the Limitation Act, 1963. Moreover, it is the stand of the 1st Respondent / Bank that several Debit Confirmation Letters dated 02.04.2013, 14.10.2013, 15.10.2013, 30.09.2014, 20.05.2015, 05.06.2015, 02.09.2016 and 31.03.2017 clearly exhibited that debt due and payable to the 1st Respondent / Bank was confirmed and there existed a continuous cause of action' in favour of the Bank to lay its claim, as the acknowledgement of debt' was made before the expiration of the limitation period, calculated from the date of default i.e. 01.01.2016. In fact, the said legal position is affirmed in the decision of this Tribunal in **'Vivek Jha' V. 'Daimler Financial Services India Private Ltd. and Anr.' (Company Appeal (AT)(Ins.) No. 756 of 2018.**

13. The Learned Counsel for the 1st Respondent / Bank takes a plea that the Section 7 Application filed by the Bank before the Adjudicating Authority was well within the period of limitation and that the cause of action arose in favour of the Bank when the default was committed by the 'Corporate Debtor' on 01.01.2016. Apart from that, the execution of revival letter dated 31.03.2017 and balance confirmation letter dated 31.03.2017 by the 'Corporate Debtor' / Suspended Directors acknowledged the debt within three years from the date of default, which extended the limitation period to 31.03.2020. Also, on the 1st Respondent / Bank side, the decision **in 'Manesh Agarwal' v. 'Bank of India & Anr.' (Company Appeal (AT)(Ins.) No. 1182/2019** is referred to before this Tribunal.

14. The Learned Counsel for the 1st Respondent / Bank contends that the application u/s 7 of the 'I&B' Code was signed and filed by Mr. S.Koteshwara Rao, Chief Manager of the 1st Respondent / Bank at its *'asset recovery management branch, Ahmedabad'* holding the power of attorney dated 16.08.1999 after being duly authorized by the Board of Directors' of the Bank to act as an 'authorized Representative' of the Bank under 'I&B' code, as per authority dated 04.08.2018. In fact, in the decision **'Mr. Gouri Prasad Goenka' v 'Punjab National Bank & Anr.' Company Appeal (AT)(Ins.) No. 28/2019** it is observed that the Authority of 'Authorised Representative' cannot be challenged on the absurd ground that the 'Power of Attorney' does not empowering him to file the petition under the code.

15. The Learned Counsel for the 1st Respondent / Bank projects an argument that the 'One Time Settlement Proposal Letter' / OTS letter dated 12.09.2019 issued by the 2nd Respondent during the extended limitation period and that the same is not the basis and that the application before the Adjudicating Authority was within time, and the Adjudicating Authority had observed that it amounted to the admission of debt.

16. According to the Learned Counsel for the 1st Respondent / Bank in the present case, there is an acknowledgement of debt by means of executing a revival letter (executed u/s 18 of the Limitation Act) and the same had provided a continuous cause of action' and gave rise to fresh limitation period in favour of the Bank.

17. The Learned Counsel for the 1st Respondent / Bank contends that the judgement of the **Hon'ble Supreme Court in 'Babulal Vardharji Gurjar' V. 'Veer Gurjar Aluminium Industries Pvt. Ltd. and Anr.'** is inapplicable to the facts of the instant case. In short it is the submission of the Learned Counsel for the 1st Respondent / Bank that the facts of the present appeal are clearly supported with relevant materials and acknowledgement duly signed / stamped / executed by the Directors of the 'Corporate Debtor'.

18. The Learned Counsel for the 1st Respondent / Bank refers to the decision of **Hon'ble Supreme Court in 'Mobilox Innovations P. Ltd.' v. 'Kirusa Software (P) Ltd.,' 2018 1 SCC at page 353** wherein it is observed that if the Learned Adjudicating Authority is satisfied on the perusal of evidence produced by the 'Financial creditor' that at default has occurred and the debt is due, then

the application filed u/s 7 of the code is to be admitted, unless the contrary is proved.

19. This Tribunal has heard the Learned Counsels appearing for the parties and noticed their contentions.

20. It is to be pointed out that in form I of the application by the 'Financial Creditor(s)' to initiate 'Corporate Insolvency Resolution Process' under the 'I&B' Code, 2016 in caption part IV, the particulars of the financial debt are mentioned as under: -

1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Nature of Facility	Sanction Limit (Rs. in Crores) (Sanction letter dt/ 07.08.2012	Renewed 31.03.2015
		Term Loan (with Sub Limit of FLC/ILC)	16.75	10.83
		Letter of Guarantee fvg. Customs department	00.50	00.50
		Letter of Guarantee fvg. MGVCL	00.40	00.40
		Total Fund Based	**23.65**	**17.73**
2.	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form.		Date on which default occurred is 01.01.2016 on which the account was classified as 'Non-Performing Asset. (NPA)	

21. However, in part V of the application beginning from copy of term loan agreement (F110C) dated 1.9.2012 and the balance confirmation dated 31.03.2017 document details are mentioned. As a matter of fact, the balance

confirmation dated 31.03.2017 was shown as Annexure "Z3" at S.No. 20 of part V of the application filed before the Adjudicating Authority. In fact, revival letter dated 30.04.2015 and 31.03.2015 was mentioned in the Form 1 application filed by the 1st Respondent / Bank at S.No. 13 as Annexure 'V'. Further, the balance confirmations dated 02.04.2013, 14.10.2013, 15.10.2013, 05.06.2015,20.052015,31.03.2017 were made mentioned of under part V of the application filed before the Adjudicating Authority as Annexure 'X' to 'Z3'. Moreover, in S.No. 8 of Part V of the application the copy of Balance sheets of 'Corporate Debtor' for the years ended 2015-16, 2016-17 and 2017-18 were mentioned as 'Z12' to 'Z14'.

22. Before the Adjudicating Authority, Section 7 application filed by the 1st Respondent / Bank was signed by Mr. D.Koteshwara Rao, Chief Manager at its 'Asset Recovery Management Branch, Ahmedabad based on the 'Power of Attorney' dated 16.08.1999 after being duly authorised by the Board of Directors of the Bank to act as an Authorised Representative of the 1st Respondent / Bank under 'I&B' Code as per letter of authority dated 04.08.2018. Therefore, it is quite clear that the application filed u/s 7 of the 'I&B' Code by the 1st Respondent / Bank before the Adjudicating Authority is free from any legal infirmity, as opined by this Tribunal.

23. It is to be pertinently pointed out that in the decision of **Hon'ble Supreme Court 'Sampuran Singh' V. Naranjan Singh' AIR 1999 SC at page 1047 at special page 1050** it is observed that Section 18 of sub-section (1) starts with the words '*where, before the expiration of the prescribed period for a suit or*

application in respect of any property or right and acknowledgement of liability in respect of such property or right has been made'.

24. Apart from that, in the decision of **Hon'ble Supreme Court 'J.C. Bhudharaja' V. 'Orissa Mining Corporation Ltd.', reported in 2008 2 SCC at page 444** it is observed that 'mere acknowledgement of the liability in respect of the right in question, it need not be accompanied by a promise to pay either express or even by implication the statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature of specific character of said liability may not be indicated in words'.

25. In the decision of **Hon'ble Supreme Court in 'Babulal Vardharji Gurjar' V. 'Veer Gurjar Aluminium Industries Pvt. Ltd. and Anr.' (Civil Appeal no. 6357 of 2019 - decided on 14.08.2020)** at paragraph 33.1 it is observed as under:-

> *"33.1 Therefore, on the admitted fact situation of the present case, where only the date of default as '08.07.2011' has been stated for the purpose of maintaining the application u/s 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgement or any other date of default, in our view,*

the submissions sought to be developed on behalf of the respondent no. 2 at the latest stage cannot be permitted. It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced. Indisputably, in the present case, the respondent No. 2 never came out with any pleading other than stating the date of default as '08.07.2011' in the application. That being the position, no case for extension of period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under

consideration in the present case looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgement. In this view of the matter, reliance on the decision in Mahaveer Cold Storage Pvt. Ltd. does not advance the cause of the respondent No.2."

26. Moreover, in the judgement of **Hon'ble Supreme Court of India 'Mahabir Cold Storage' v. 'Commissioner of Income Tax, Patna' Civil Appeal No. 469(NT) of 1976 (decided on 07.02.1990)(MANU/SC/0320/1991)** wherein at paragraph 12 it is observed as under:-

"12. *The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to M/s. Prayagchand Hanumanmal within the meaning of section 18 of the limitation act, 1963 and extend the period of limitation for the discharge of the liability as debt. Section 2(47) of the Act defines 'transfer' in relation to a capital asset under*

clause (i) the sale, exchange or relinquishment of the asset or (ii) the extinguishment of any right thereof – (Clauses (iii) to (vi) are not relevant hence omitted). Unfortunately, the assessee did not bring on record the necessary material fact to establish that he became owner by any non-testamentary instrument acquiring right, title and interests in the plant and machinery nor the point was argued before the High Court and we do not have the benefit in this regard either of the Tribunal or of the High Court. In this view We decline to go into the question but confine to the 1st question and agree with the High Court answering the reference in favour of the revenue and against assessee that the appellant is not entitled to the development rebate u/s 33(1) of the Act. The appeal is accordingly dismissed with costs quantified at Rs. 5,000."

27. In the judgement of **Hon'ble Supreme Court 'A.V. Murthy' V. 'B.S. Nagabasavanna' (Criminal Appeal No. 206 of 2002 – decided on 8.2.2002)(MANU/SC/0089/2002)** at paragraph 5 it is observed as under:-

> *".....Moreover, in the instant, the appellant has submitted before us that the respondent in his balance sheet prepared for every year subsequent to the loan advanced by the appellant had shown the amount as deposits from friends. A copy of the balance sheet as on 31st March, 1997 is also produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgement. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the magistrate by way of defense of the respondent."*

and that the judgements of the Hon'ble Supreme Court under Article 141 of the Constitution of India are binding on the Courts / Authorities/ Tribunal(s) in the *territory of India.*

28. It is not out of place for this Tribunal to relevantly point out that the period of Limitation in case of acknowledgement in writing' starts running from the date of signing the acknowledgement and not after two months from the date of signing as per decision '**B.Narayana Rao' V. 'M.Govinda' AIR 2004 Andhra Pradesh page 218.** Besides this, in the decision **'K.Jayraman' V. 'Sundaram Industries' reported in AIR 2008 (NOC) Mad.** it is observed that *'acknowledgement of liability should be made before the expiry of the prescribed period for instituting a suit on the basis of original cause of action'.*

29. It is to be pointed out that the requirement of Section 18 and 19 of the Limitation Act are independent and not cumulative. Further, the actual payment of money is not an essential one under Section 18 of the Limitation Act, 1963, but it is an essential one under Section 19 of the Act, as per decision **'Hanuman Mal' V. 'Jatan Mal' AIR 2005 (Raj.) page 71 (DB).**

30. An acknowledgment of debt interrupts the running of prescription. An acknowledgement only extends the period of limitation as per decision **'P.Sreedevi' V. 'P.Appu' AIR 1991 ker page 76.** It is to be remembered that a mere denial will not take sheen off the document and the claim of creditor remains alive within the meaning of Section 18 of the Limitation Act. Besides this, an acknowledgement is to be an 'acknowledgement of debt' and must involve an admission of subsisting relationship of debtor and creditor; and an

intention to continue it and till it is lawfully determined must also be evident as per decision 'Venkata' V. 'Parthasarathy' 16 Mad page 220. An acknowledgement does not create a new right.

31. The judgement was passed in OA 470 of 2017(filed on 18.08.2017 by the 1st Respondent / Bank) on 18.2.2019, directing the defendants 1 to 3 therein to pay the dues within two months from the date of judgement etc. and in fact the relief sought for by the 1st Respondent / Bank in the said application praying for issuance of recovery certificate to the tune of Rs. 19,25,81,173.31 only together with interest at 13.20% p.a. with monthly rests and costs was granted etc.

32. It transpires that Director of the 2nd Respondent / Jason Dekor Pvt. Ltd. had confirmed the correctness of the balance of Rs. 14,34,42,101.00 dated 15.10.2013, on 01.11.2013 and over the revenue stamp had affixed his signature. Likewise, the Director of the 2nd Respondent had confirmed the correctness of the balance dated 05.06.2016 and had affixed his signature on 05.06.2016 itself. Likewise, on 20.05.2015 the Director of the 2nd Respondent had confirmed the correctness of the balance in respect of the credit facilities availed by it and the signature was affixed on 20.05.2015. On 02.09.2016 the Director of the 2nd Respondent / 'Corporate Debtor' had executed the revival letter to and in favour of the 1st Respondent / Bank. Similarly, on 31.03.2017, on behalf of the 2nd Respondent the borrower(s) / guarantor had affixed his signature over the revenue stamp. All these balance 'Confirmation Letters' were issued / given to and in favour of the 1st Respondent / Bank and they belie the stance of the Appellant.

33. It is to be relevantly pointed out that a judgement of the court has to be read in the context of queries which arose for consideration in the case in which the judgement was delivered. Further, an *'obiter dictum'* as distinguished from a *'ratio decidendi'* is an observation by the court on a legal question suggested in a case before it not arising in such manner as to require a determination. An *'obiter'* may not have a binding precedent as the observation was not necessary for the decision pronounced. Even though, an *'obiter'* may not have a bind effect as a 'precedent', but it cannot be denied it is of immense considerable weight.

34. It is not out of place for this Tribunal to make a significant mention that in the decision **'Quinn' V. 'Leathem' (1901) AC 495 at 596** the **dicta of Lord Halsbury** is '.....*every judgement must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides'*.

35. In the decision **'Osborne' V. 'Rowlett' (1880) 13 Ch. D 774 Sir George Jessel** observed that *'the only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided'*.

36. The Present case centres around mixed question of 'Facts' and 'Law'. The 1st Respondent/Bank, as per the format, as mentioned at para 20 of this judgement, had given the date of 'Default' / 'NPA' as 01.01.2016 and that the Section 7 of the application of 'I&B' Code was filed before the Adjudicating

Authority 01.04.2019, by the 1st Respondent / Bank. Prima facie, the Appeal needs to be allowed, if this is the single ground. However, in the instant case, the 1st Respondent/Bank had obtained balance confirmations certificate, the last one being 31.03.2017 as mentioned elaborately in Para 21 of this judgement. Although, this Appellate Tribunal had largely held in '***Rajendra Kumar Tekriwal' Vs. 'Bank of Baroda' in Company Appeal (AT) (Ins) No. 225 of 2020 and in Jagdish Prasad Sarada Vs. Allahabad Bank in Company Appeal (AT) (Ins) No. 183 of 2020, (both being three Members Bench)*** had taken a stand that the Limitation Act, 1963 will be applicable to all NPA cases provided, they meet the criteria of Article 137 of the Schedule to the Limitation Act, 1963, the extension of the period can be made by way of Application under Section 5 of the Limitation Act, 1963 for condonation of delay; however, the peculiar attendant facts and circumstances of the present case which float on the surface are quite different where the 1st Respondent / Bank had obtained Confirmations/Acknowledgments in writing in accordance with Section 18 of the Limitation Act periodically. As a matter of fact, Section 18 of the Limitation Act, 1963 is applicable both for 'Suit' and 'Application' involving 'Acknowledgment of Liability', creating a fresh period of limitation, which shall be computed from the date when the 'Acknowledgment' was so signed.

37. For better and fuller appreciation of the present subject matter in issue, it is useful for this Tribunal to make a pertinent reference to Section 18 of the

Limitation Act, 1963 which runs as under:

"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.

(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."

38. At this stage, this Tribunal, had perused the various confirmation letters as stated supra which are legally valid and binding documents between the *inter se* parties and the same cannot be repudiated on one pretext or other. Therefore, this Tribunal comes to an inevitable, inescapable and irresistible conclusion that the date of default i.e 01.01.2016 gets extended by the debit confirmation letters secured by the 1st Respondent/Bank from the Corporate Debtor (for making a new period run from the date of debit confirmation letters) towards the outstanding debt in 'Loan Account'. Indeed, the application under Section 7 of the I&B Code, 2016 was filed by the 1st Respondent/Bank on 01.04.2019 before the 'Adjudicating Authority' within the period of Limitation. Furthermore, in view of the fact, that ingredients of Section 18 of the Limitation Act, 1963 are quite applicable both for 'Suit' and 'Application' and the debit confirmation letters in the instant case were duly acknowledged in accordance with Law laid down on the subject, the instant Appeal deserves to be dismissed and accordingly the same is dismissed, since there being no legal infirmities found in the impugned order passed by Adjudicating Authority in admitting CP No. (IB)

257/7/NCLT/AHM/2019 and declaring moratorium etc. Resultantly, all connected Interlocutory Applications are closed. There shall be no order as to costs.

[Justice Venugopal. M]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

NEW DELHI

14th September, 2020

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