

**National Company Law Appellate Tribunal, New Delhi**

**Principal Bench**

**COMPANY APPEAL (AT) (Insolvency) No. 03 of 2020**

(Arising out of Order dated 21.10.2019 passed by National Company Law Tribunal,  
Kolkata Bench, Kolkata in C.P. (I.B.) No. 393/KB/2019.

**IN THE MATTER OF:**

**Pawan Kumar Agarwal  
(Suspended Director of  
M/s Mohan Jute Mills Limited)  
R/o 1, KYD Street, Near MLA Hostel,  
38 Palace Court  
Kolkata-700016.**

**.....Appellant**

**Versus**

**Asset Reconstruction Company  
(India) Limited  
Ruby, 10<sup>th</sup> Floor, 29,  
Senapati Bapat Marg, Dadar (west),  
P.O. & P.S. Dadar (West)  
City and District, Mumbai-400028.**

**...Respondent**

**Appellant: Mr. Abhijeet Sinha and Mr. Saikat Sarkar, Advocates.  
Mr. Pawan Kumar Agarwal.**

**Respondent: Mr. Kunal Tandon, Ms. Megha Tyagi, Ms. Smriti  
Churiwal, Mr. Jaivir Sidhant and Mr. Vinay Tibrewal,  
Advocate, for R-1.  
Mr. Kamal Nayan Jain, Advocate for R-2 (RP).  
Mr. Varun Gupta, Advocate.**

**J U D G E M E N T**

**Anant Bijay Singh (J)**

1. The Instant Appeal bearing Company Appeal (AT) (Insolvency) No. 03 of 2020 filed on behalf of Pawan Kumar Agarwal (Suspended Director of M/s Mohan Jute Mills Limited) aggrieved by the Order dated 21<sup>st</sup> October, 2019 and

Company Appeal (AT) (Insolvency) No. 625 of 2020 filed by the Pawan Kumar Agarwal (Suspended Director of Raigarh Properties Pvt. Ltd.) were heard together but they are being disposed off by two separate Judgements.

2. The present Appeal has been preferred under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') by the Appellant Pawan Kumar Agarwal (Suspended Director of M/s Mohan Jute Mills Limited) challenging the order dated 21<sup>st</sup> October, 2019 passed by the Learned National Company Law Tribunal, Kolkata Bench, Kolkata in C. P. (IB) No. 393/KB/2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy Code (Application to the Adjudicating Authority) Rules, 2016 is the Respondent, Asset Reconstruction Company (India) Limited.

3. Learned Adjudicating Authority while admitting the Pawan Kumar Agarwal Vs. Asset Reconstruction Company (India) Limited, passed the following orders:-

- (i) *"The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Mohan Jute Mills Limited** is hereby admitted.*
- (ii) *Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.*
- (iii) *Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-*
  - (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority.*

- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- (v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate Insolvency Resolution Process.
- (vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- (viii) **Mr. Arun Kumar Gupta**, of P-15, Bentinck Street, Kokata 700001. an Interim Resolution Professional having **Registration No. IBBI/IPA-001/IP-P00013/2016-2017/10037**, Email: [guptaarunkumar2001@yahoo.com](mailto:guptaarunkumar2001@yahoo.com), is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of

- creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.*
- (ix) *The interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.*
  - (x) *The Registry is hereby directed under Section 7(4) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.*
  - (xi) *List the matter on **22<sup>nd</sup> November, 2019** for filing of the progress report.*
  - (xii) *Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.”*

4. The facts of this case lie in narrow compass, that on 15<sup>th</sup> March, 2019 Appellant received a legal notice dated 15<sup>th</sup> March, 2019 sent to him as the Suspended Director of M/s Mohan Jute Mills Limited, whereby the Appellant was informed that Respondent is filing an Application under Section 7 of the IBC Code, 2016 before the NCLT, Kolkata Bench. Copy of the Legal Notice is marked at Annexure-B at Page-45 of the Appeal.

5. Further, the Appellant received a copy of an Application filed by the Respondent under Section 7 of the IBC in C.P. (IB) No. 393/KB/2019 wherein Respondent herein is the ‘Financial Creditor’ and Appellant herein is a ‘Corporate Debtor’. The copy of the aforesaid Application under Section 7 of the IBC which is before the NCLT, Kolkata Bench is marked at Annexure - C with Pages 46 to 85 of the Appeal Paper Book.

6. It is further, asserted the transaction between Union Bank of India and the Appellant in the last renewal of the loan is of the year 2010.

7. Further, under Section 7 Application, Form 1 which deals with particulars of the financial debts reveals that total amount of debt granted and date of sanction has been mentioned as Rs. 15,34,00,000/- (Rupees Fifteen Crores Thirty-Four Lakhs Only) sanctioned vide letter dated 14<sup>th</sup> January, 2010.

8. Further, the amount claimed to be in default and date of default which is attached in a tabular form is Rs. 42,33,36,044/- (Rupees Forty-Two Crores Thirty-Three Lacs Thirty-Six Thousand and Forty-Four Only) as on February, 2019.

9. In the same column the date of declaring Non Performing Asset (in short "NPA") is mentioned as 31<sup>st</sup> December, 2009.

10. Further, it is also revealed that the Assignment Agreement dated 31<sup>st</sup> December, 2012 was entered between the Union Bank of India- the Principal Lender and Asset Reconstruction Company (India) Limited- Respondent whereby and the loan of the Union Bank of India to the Corporate Debtor was assigned to the Financial Creditor herein.

11. After the Deed of Assignment, the Respondent had discussion with the Appellant (Corporate Debtor) and thereafter the loan was restructured vide Letter dated 21<sup>st</sup> March, 2013.

12. Further, the term sheet dated 21<sup>st</sup> March 2013 was entered between Mohan Jute Mills Limited (**Appellant herein**) and Pawan Kumar Agarwal (Suspended Director of Raigarh Properties Pvt. Ltd.) and Appellant in Company

Appeal (AT) (Insolvency) No. 625 of 2020 and also the **(Respondent herein)** Asset Reconstruction Company (India) Limited.

13. The Appellant Corporate Debtor failed to repay the loan amount to Respondent and the Respondent issued a Notice for Revocation of the Settlement Package of Appellant which was sent on 3<sup>rd</sup> February, 2015 wherein the Appellant was directed to pay the loan amount within one week.

14. In Reply to the aforesaid notice for Revocation of the Settlement Package, the Mohan Jute Mills (Appellant herein) while referring to term sheet dated 31<sup>st</sup> March, 2013 [Asset Reconstruction Company (India) Limited (Respondent) and Raigarh Properties Private Limited, through said letter] specifically acknowledged the outstanding principal and interest. It has been stated in the reply as follows:-

*“The balance unpaid dues as per the above table is outstanding for payment as on date. The same is summarized as follows:-*

*a) Unpaid outstanding interest dues Rs. 639.77 Lacs*

*(After deducting the aforesaid payment)*

*Made directly to you and also the TDS deposits)*

*b) Unpaid outstanding principal dues Rs. 844.82 Lacs.”*

15. Respondent rejected the proposal of the Appellant vide letter dated 9<sup>th</sup> November, 2015.

16. Again on 5<sup>th</sup> April, 2016 Appellant sent a letter further acknowledging the debts and with request to revise a proposal for payment of outstanding dues.

The said proposal was rejected by Respondent vide Letter dated 7<sup>th</sup> April, 2016.

17. The Respondent further again send a letter/Notice dated 20<sup>th</sup> May, 2016 calling the Appellant to pay the outstanding amount of Rs. 9,71,79,501/-.

18. As the Appellant failed to pay the amount, instant case was filed.

19. **Submissions on behalf of the Appellant:**

(i) Learned Counsel for the Appellant during the course of the argument and also in his Written Submissions have taken the ground that as the debt in question was declared NPA on 31<sup>st</sup> December, 2009 and in view of the Limitation Act the cause of action is hit by Limitation.

(ii) Counsel for the Appellant has further relied on the Judgment of the Hon'ble Supreme Court of India in ***Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminum Industries Pvt. Ltd. & Anr. , 2020 SCC OnLine SC 647*** wherein it was held as follows:-

*(a) "That the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation;*

*(b) That CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor;*

*(c) That intention of the Code is not to give a new lease of life to debts which are time-barred;*

*(d) That the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by*

*Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues;*

*(e) That the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the right to apply under the Code accrues on the date when default occurs;*

*(f) That default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable;*

*(g) That if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and*

*(h) An application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application”.*

(iii) It was submitted by the Learned Counsel for the Appellant that the case of the Appellant is squarely covered by the Judgement of the Hon'ble Supreme Court and the Impugned Order cannot be sustained and the Appeal should be allowed.

20. **Submissions on behalf of the Respondent: -**

(i) The Learned Counsel for the Respondent has submitted that the Assignment Agreement was executed on 31<sup>st</sup> December, 2012 (at Page-139 Volume-I of the Appeal Paper Book) which was submitted in Company Appeal (AT) (Insolvency) No. 625 of 2020. This Deed of Assignment was executed between the Principal Lender- Union Bank



of India and Asset Reconstruction Company (India) Ltd./ the Respondent. Through the Assignment Agreement the Principal Lender assigned the loan granted to the Appellant (herein) in the year 2010 along with other loans.

(ii) Further, on 21<sup>st</sup> March, 2013 pursuant to discussion between the parties the debt was restructured and the term sheet on the same date i.e. 21<sup>st</sup> March, 2013 was drawn between the (Respondent) Pawan Kumar Agarwal (Suspended Director of Raigarh Properties Pvt. Ltd. and the (Appellant) Mohan Jute Mills Limited.

(iii) Further, it was submitted that on 30<sup>th</sup> June, 2013 and 31<sup>st</sup> July, 2013 Appellant (Corporate Debtor) again defaulted in making payments of the installments due and accordingly the Respondent sent reminder letters dated 17<sup>th</sup> July, 2013, 8<sup>th</sup> August, 2013, 12<sup>th</sup> September, 2013, 11<sup>th</sup> November, 2013, 12<sup>th</sup> December, 2013 and 19<sup>th</sup> June, 2014 respectively and the letters are marked at Annexure A-2 at Page-296 to 301, Volume-II in Company Appeal (AT) (Insolvency) No. 625 of 2020.

(iv) It was further submitted by the Counsel for the Appellant vide letter dated on 23<sup>rd</sup> July, 2015, referring the Respondent about term sheet dated 21<sup>st</sup> March, 2013 requested that the Respondent for rescheduling of the payment as earlier schedule of payment had not been complied with.

(v) In the said letter, the Appellant (Corporate Debtor) acknowledged the present dues and future outstanding of the interest due up to 31<sup>st</sup> July, 2015 as Rs. 6,55,56,000/- (Rupees Six Crores Fifty-Five Lacs Fifty-Six Thousand Only) and outstanding principal dues till 31<sup>st</sup> December, 2015 is Rs. 16,89,63,000/- (Rupees Sixteen Crore Eighty-Nine Lacs Sixty-Three Only).

(vi) It was submitted by the Learned Counsel for the Respondent that the Appellant (Corporate Debtor) requested the Respondent for a moratorium of 18(eighteen) months on capitalization of dues as on 31<sup>st</sup> July, 2015 and proposed that the repayment will be made in 6 (six) equal quarterly instalments starting from 30<sup>th</sup> April 2017 till 31<sup>st</sup> July, 2018 and the aforementioned letters which are part of Annexure A-2, Volume-II at Pages-304 to 309 of the Appeal Paper Book in Company Appeal (AT) (Insolvency) No. 625 of 2020.

(vii) It was further submitted by Learned Counsel for the Respondent that earlier on 14.08.2015 a similar letter referring to discussion held between the Party in August, 2015 was sent with a request to reschedule the payment.

(viii) It was submitted by the Learned Counsel for the Respondent that the Appellant (Corporate Debtor) again acknowledged his liability and revised the proposal by offering upfront payment of 1 crore (Rupees One Crore Only) subject to the sanction of the proposal.

(ix) It was submitted by the Learned Counsel for the Respondent that Appellant (Corporate Debtor) requested for a moratorium of 12 (Twelve) months on the balance capitalized interest and principal amount on 1<sup>st</sup> August, 2015 and also the Corporate Debtor proposed for an 8 (eight) equal quarterly instalments for repayment starting from 31<sup>st</sup> October, 2016 till 31<sup>st</sup> July, 2018.

(x) The said letter is part of Annexure A-2 from Pages- 310 to 315, Volume-II in Company Appeal (AT) (Insolvency) No. 625 of 2020.

(xi) It was submitted that on 1<sup>st</sup> September, 2015 the Appellant (Corporate Debtor) referring to term sheet dated 21<sup>st</sup> March, 2013 and the discussion held on 6<sup>th</sup> August, 2015 requested the Respondent for rescheduling the outstanding of principal dues of Rs. 16,89,63,000/- (Rupees Sixteen Crores Eighty Nine Lacs Sixty Three Thousand Only) and interest to the tune of Rs. 6,71,35,000/- (Rupees Six Crore Seventy One Lacs Thirty Five Thousand Only) up to 31<sup>st</sup> August, 2015 and to capitalised the same as on 31<sup>st</sup> August, 2015.

(xii) It was submitted by the Learned Counsel for the Respondent that a fresh proposal was made by Appellant (Corporate Debtor) to Respondent for repayment of outstanding with upfront payment of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lacs Only) and in 8 (Eight) quarterly instalments starting from 30<sup>th</sup> November, 2016 till 30<sup>th</sup> August, 2018 after the moratorium on 12 (Twelve) months on the balance capitalised interest and principal amount from 1<sup>st</sup> September,

2015. The aforementioned letter written by Appellant (Corporate Debtor) at Annexure A-2 from Pages- 316 to 321, Volume-II of Appeal Paper Book in Company Appeal (AT) (Insolvency) No. 625 of 2020.

(xiii) It was submitted by Learned Counsel for the Respondent on 9<sup>th</sup> November, 2015 at Annexure A-2 at Page- 322 in Company Appeal (AT) (Insolvency) No. 625 of 2020. The Respondent responded to the requests of the Corporate Debtor and informed the Corporate Debtor that it would need to improve the offer substantially in terms of the upfront payment and a shorter repayment terms for the Respondent to consider settlement again whereby amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lacs Only) to be paid as upfront payment.

(xiv) It was further submitted by the Learned Counsel for the Respondent that Appellant (Corporate Debtor) again acknowledged the outstanding of Rs. 24,85,27,000/- (Rupees Twenty-Four Crore Eighty-Five Lacs Twenty-Seven Thousand Only) including interest and principal as on 31<sup>st</sup> March, 2016, and further requested the Respondent for rescheduling of the payment and furthermore requested to capitalize the dues and proposal was made to pay Rs. 50,00,000/- (Rupees Fifty Lacs Only) per month starting from April, 2016 and Rs. 100 Lacs (Rupees Hundred Lacs Only) per month starting from April, 2017 till the entire dues are settled i.e. from September, 2018 and thereafter. The letter sent by the Appellant in

this regard is at Annexure A-2, Volume-II at Page-323 to 326 in Company Appeal (AT) (Insolvency) No. 625 of 2020.

(xv) It was further submitted by the Learned Counsel for the Respondent that on 28<sup>th</sup> February, 2019 the Respondent computed the total dues of Corporate Debtor which comes to Rs. 42,33,36,044/- (Rupees forty-Two Crores Thirty-Three Lacs, Thirty-Six Thousand and Forty-Four Only) and informed the same to the Corporate Debtor through letter which is at Pages 247 to 249 of the Appeal Paper Book, Volume-II.

(xvi) Counsel for the Respondent further submitted that Appellant has failed to pay the outstanding dues, on 15<sup>th</sup> March, 2019 the Respondent filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016

(xvii) Counsel for the Respondent further referring to the Judgment of this Appellate Tribunal in Company Appeal (AT) (Insolvency) NO. 236 of 2020 **“Yogeshkumar Jashwantlal Thakkar (Suspended Director) Vs. Indian Overseas Bank & Ors.”** on 14<sup>th</sup> September, 2020 wherein in this Tribunal held as follows:-

*“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."*

21. It was submitted by the Learned Counsel for the Appellant that in the given facts of this case, this case is squarely covered by the Judgement of the Hon'ble NCLT (Supra) and the ratio of the '**Babulal Vardharji Gurjar**' case is not applicable in the fact of this case, and there is no merit in the Appeal and it is fit to be set aside.

22. **FINDINGS**

(i) After hearing Learned Counsels for the Parties and the averments made in the Appeal Paper Book and the Reply Affidavit on behalf of the Respondent and Rejoinder by the Appellant and after going through the Written Submissions we are of the considered opinion that the following facts are admitted : -

(a) Pawan Kumar Agarwal who is a Suspended Director of Raigarh Properties Pvt. Ltd. and Appellant in Company Appeal

(AT) (Ins.) No. 625 of 2020. The Corporate Debtor availed loan from Union Bank of India and failed to pay the loan which was declared NPA by the Principal Lenders.

(b) Further, on 31.12.2012 an Assignment Agreement was executed between the Principal Lenders/ Union Bank of India and the Respondent/ Asset Reconstruction Company (India) Limited whereby Union Bank of India has assigned the said loan to Corporate Debtor along with other loans.

(c) It is also admitted that vide letter dated 21<sup>st</sup> March, 2013 sent by Respondent to Mohan Jute Mills (Appellant) mentions about restructuring of the Loan Amount and pursuant thereto a term sheet dated 21<sup>st</sup> March, 2013 was drawn between the (Respondent) Asset Reconstruction Company (India) Limited, Raigarh Properties Pvt. Ltd., Appellant in Company Appeal (AT) (Ins.) No. 625 of 2020 and Mohan Jute Mills Appellant in present Appeal. A Copy of the tripartite agreement is included at Annexure-A-2, Volume-II, Pages-221 to 243 in Company Appeal (AT) (Ins.) No. 625 of 2020.

(d) It is admitted that on 30<sup>th</sup> June, 2013 and 31<sup>st</sup> July, 2013 the Appellant (Corporate Debtor) again defaulted in making payments and Respondent was constrained to issue

reminder letters dated 17.07.2013, 08.08.2013, 12.09.2013, 11.11.2013, 12.12.2013 and 19.06.2014.

(e) It is admitted that vide letter dated 23.07.2015 the Appellant (Corporate Debtor) requested the Respondent for reschedulement of the payment as the earlier schedule of payment could not be complied with.

(f) In the said letter the Appellant (Corporate Debtor) acknowledged the present dues and future outstanding of interest dues upto 31.07.2015 as 6,55,56,000/- (Rupees Six Crores Fifty Five Lacs Fifty Six Thousand Only) and outstanding of principal dues till 31.12.2015 as 16,89,63,000/- (Rupees Sixteen Crore Eighty Nine Lacs Sixty Three Only) and further requested the Respondent for a moratorium of 18(eighteen) months on capitalization of dues as on 31.07.2015 and proposed that the repayment will be made in 6 (six) equal quarterly installments starting from 30.04.2017 till 31.07. 2018 and the aforesaid letters which is evident at Annexure A-2, Volume- II at Pages- 304 to 309 of the Appeal Paper Book in Company Appeal (AT) (Ins.) No. 625 of 2020.

(g) It is also admitted that on 14.08.2015 a similar letter was sent referring to term sheet dated 21<sup>st</sup> March, 2013 and also referring to discussion held on 06.08.2015. The request

was made to the Respondent for reschedulement of the payment. It is also admitted that the Appellant (Corporate Debtor) again acknowledged its liability and revised its proposal by offering upfront payment of Rs. 1 crore for the sanction of the proposal.

(h) It is also submitted that the Appellant (Corporate Debtor) requested for a moratorium in 12 (twelve) months on the balanced capitalized interest and principal amount from 01.08.2015 and also the Corporate Debtor proposed for 8 (eight) equal quarterly installments for repayment starting from 31<sup>st</sup> October, 2016 to 31<sup>st</sup> July, 2018.

(i) The aforesaid letters are marked at Annexure A-2 at Pages- 310 to 315, Volume -II of the Appeal Paper Book in Company Appeal (AT) (Ins.) No. 625 of 2020.

(j) It is also admitted that the Appellant (Corporate Debtor) again acknowledged the outstanding of Rs. 24,85,27,000/- (Rupees Twenty-Four Crore Eighty-Five Lacs Twenty-Seven Thousand Only) (including interest and principal) as on 31.03.2016 and requested the Respondent for further reschedulement of payments and proposed to pay Rs. 50 Lacs (Rupees Fifty Lacs Only) per-month starting from April 2016 so that entire dues are settled i.e. from September, 2018 and thereafter. The said letter sent by the Appellant in this regard

is marked at Annexure A-2, Volume- II at Pages 323 to 326 of the Appeal Paper Book in Company Appeal (AT) (Ins.) No. 625 of 2020.

(k) It is submitted that the Corporate Debtor failed to make further payment as on 20<sup>th</sup> May, 2016 the Respondent issued a recall notice for an outstanding due of Rs. 26,61,47,046/- (Rupees Twenty-Six Crores Sixty-One Lacs Forty-Seven Thousand Forty-Six Only)

(l) It is admitted position that on 28.02.2019 the Respondent computed the total dues of Corporate Debtor which comes to Rs. 42,33,36,044/- (Rupees Forty-Two Crores Thirty-Three Lacs, Thirty-Six Thousand and Forty-Four Only) and informed the Appellant through letter which is marked at Annexure A-2, Volume-II from Pages-247 to 249 of the Appeal Paper Book.

(m) In view of the various acknowledgements made by the Appellant on different dates which is admitted fact through the various letters sent by the Appellant which has been discussed in detail (Supra), this Tribunal arrives at the conclusion that the debt was due and was in default of payment.



(n) Hence, the submissions made on behalf of the Counsel for the Appellant that debt in question was ‘time barred’ is not found to be correct and is hereby rejected.

(o) We are of the considered view that this case squarely is covered by the Judgement of this Tribunal in the case of Company Appeal (AT) (Insolvency) No. 236 of 2020 **“Yogeshkumar Jashwantlal Thakkar (Suspended Director) Vs. Indian Overseas Bank & Ors.”** on 14<sup>th</sup> September, 2020 which has also been discussed in detail (Supra).

(p) Viewed from all angles, we come to the conclusion that there is no illegality in the Impugned Judgement. The Impugned Judgement is hereby affirmed. We do not find any merit in the Appeal and the Appeal is dismissed.

(q) No order as to cost.

### **ORDER**

21. In view of the discussion made above there is no merit in the Appeal. Appellant has failed to demonstrate that Impugned Order suffered from vice of any illegality. The Appeal is hereby dismissed. No Order as to costs.

22. By the Order dated 27 January, 2012 passed by this Hon’ble Tribunal it was directed that the matter which is pending before the Committee of Creditors

(CoC) be decided and kept the decision in seal cover and not to communicate to the Adjudicating Authority.

23. The aforesaid direction is modified and the CoC is directed to send the decision taken by the Adjudicating Authority in the matter.

24. The time spent in pursuing the Instant Appeal is excluded from CIRP period.

25. The Registry is directed to upload this Judgement on the website of this Appellate Tribunal.

26. Registry is directed to send a copy of the Judgement to the National Company Law Tribunal, Kolkata Bench.

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

**NEW DELHI**  
**26<sup>th</sup> March, 2021**  
*Sim.*