

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI  
(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (Insolvency) No.01 of 2021**

**(Under section 61 of the Insolvency and Bankruptcy Code 2016)**

**(Arising out of the Order dated 18.01.2021 in CP(IB) No.599/7/HDB/2019  
passed by the Hon'ble National Company Law Tribunal, Hyderabad Bench, Hyderabad)**

**In the matter of:**

Lakshmi Narayan Sharma,  
Promoter of Corporate Debtor,  
R/o Flat No.6113, Sector B-8,  
Vasant Kunj,  
New Delhi 110070.

Appellant

V.

1. Punjab National Bank,  
Large Corporate Branch,  
Represented by its Deputy General Manager,  
8-2-672, Sifi Chambers, Road No.1,  
Banjara Hills, Hyderabad 500034.

Respondent No.1

2. Mr.T.S.N.Raja,  
Interim Resolution Professional of Corporate Debtor,  
No.16 (11-20-18), Shop cum Flat,  
Huda Complex, Kothapet,  
Hyderabad 500035.

Respondent No.2

Present :

For Appellant : Mr. Rajashekar Rao, Sr. Advocate  
For Mr. Suraj Prakash, Mrinal Lotoria,  
Advocates

For Respondent No.1 : Shri T.Ravichandran, Advocate

For Respondent No.2 : Shri T.S.N.Raja, PCA  
(Interim Resolution Professional)

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

**Preface:**

1. The Appellant has preferred the present Appeal as an 'Aggrieved Person', against the 'Impugned Order' dated 18.01.2021 passed by the 'Adjudicating

Authority’ (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in C.P.(IB)No.599/7/HDB/2019.

2. The ‘Adjudicating Authority’ National Company Law Tribunal, Hyderabad Bench, Hyderabad while passing the ‘Impugned Order’ dated 18.02.2021 in C.P.(IB).No.599/7/HDB/2019 (filed by the 1<sup>st</sup> Respondent/Bank/Petitioner/Financial Creditor under Section 7 of the I & B Code) at Paragraph 10 had among other things observed that the ‘Financial Creditor’ had established the ‘debt and default’ through various documents filed along with the Applications and ultimately, admitted the ‘Application’ by declaring the ‘Moratorium’ and issued necessary directions thereto.

**Appellant’s Contentions:**

3. According to the Learned Counsel for the Appellant, the Appellant is the ‘Promoter/Suspended Director’ of ‘Corporate Debtor’, controlling the majority of shareholding 100% of the paid-up capital of Saptarishi Hotels Private Limited (‘Corporate Debtor’) through its holding Company, Maha Hotels Projects Private Ltd.

4. The Learned Counsel for the ‘Appellant’ submits that the ‘Corporate Debtor’/M/s.Saptarishi Hotels Private Limited is a ‘Special Purpose Vehicle’ incorporated to undertake a Public Private Partnership (PPP) project to develop and operate a Four Star Hotel on ‘Build Operate Transfer’ (BOT) Basis under Andhra Pradesh Infrastructure Development Enabling Act, 2001 with National Institute of Tourism and Hospitality Management (NITHM), ‘an undertaking of Telangana “Tourism Development Corporation Limited” (which is fully owned company of the Government of Telengana). As a matter of fact, the ‘Corporate Debtor’ along with Maha Hotels Projects Private Limited who is the lead

developer was to develop the project on its own cost and operate on revenue sharing with National Institute of Tourism and Hospitality Management and transfer back the project to National Institute of Tourism and Hospitality Management at the end of 33 years.

5. The Learned Counsel for the Appellant points out that the 'Corporate Debtor' was sanctioned 'Consortium Loan' by the 1<sup>st</sup> Respondent/Punjab National Bank and Punjab Sind Bank as per 'Consortium Loan Agreement' and 'Sanction Letters'. It is represented on behalf of the Appellant that the 1<sup>st</sup> Respondent/Punjab National Bank had sanctioned credit facilities amounting to INR 90 Crores and Punjab Sind Bank had sanctioned facilities totalling INR 80 Crores on 11.08.2011 as per 'Consortium Agreement' dated 11.08.2011.

6. Further, the date of 'CoD' was extended upto 01.02.2016 by the 'Consortium' on 26.12.2014 and that the 1<sup>st</sup> Respondent/Punjab National Bank on 04.04.2015, issued a 'Sanction Letter' for additional facilities to the tune of INR 18.67 Crores for which disbursal was to commence by 30.03.2015. Also that, the development of construction of the project was delayed due to delay in clearance by the Local Authorities and that the interest payment was defaulted by the 'Corporate Debtor'.

7. The Learned Counsel for the Appellant comes out with a plea that the 1<sup>st</sup> Respondent/Bank projected the application under Section 7 of the I & B Code which was served on the 'Corporate Debtor' by the Learned Counsel for the 1<sup>st</sup> Respondent/Bank on 18.07.2019. Besides this, it is the version of the Appellant that the application under Section 7 of the I & B Code, 2016 was filed before the 'Tribunal' on 18.07.2019 or any subsequent date.

8. The Learned Counsel for the Appellant takes a stand that since the 'Date of Default' for all the facilities by the 1<sup>st</sup> Respondent/Punjab National Bank as per Part-IV of the Application under Section 7 of the Code was on 30.03.2016 and that the limitation lapsed on 29.03.2019. In any case, the date of 'Non-Performing Asset' was on 30.06.2016. The limitation period resting upon 'NPA' expired on 29.06.2019. As such, it is the submission of the Learned Counsel for the Appellant that the Application filed by the 1<sup>st</sup> Respondent/Punjab National Bank (under Section 7 of the I & B Code) is barred by 'Limitation', as the same was filed on 18.07.2019 or any date thereafter.

9. The Learned Counsel for the Appellant emphatically contends that if the 'Date of Default' is considered as the date from which the limitation starts running then, the Petition under Section 7 of the I & B Code is barred by 111 days or more and if date of 'NPA' is considered to be date from which the limitation starts running then, the Petition is barred by 19 days or more.

10. The Learned Counsel for the Appellant submits that the 'Adjudicating Authority' has no jurisdiction to admit the 'Corporate Debtor' for 'Corporate Insolvency Resolution Process' in spite of the fact the same being barred by 'Limitation'.

11. The Learned Counsel for the Appellant points out that the impugned order was passed in violation of the principles of 'Natural Justice', since no finding was rendered on the issue of Section 7 Application being barred by 'Limitation'.

12. The Learned Counsel for the Appellant projects an argument that 'CIRP' is a proceeding for 'Resolution of Insolvency' and not for repayment of 'Debt'

and therefore, an ‘Acknowledgement of Debt’ will not help the cause of the ‘Applicant’.

13. The Learned Counsel for the Appellant submits that the ‘impugned order’ is a ‘nullity’ in the eye of Law, because of the fact that the ‘Adjudicating Authority’ had not decided the ‘issue of limitation’.

**Appellant’s Decisions:**

14. The Learned Counsel for the Appellant cites the Hon’ble Supreme Court decision in BabulalVardharji Gurjar v Veer Gurjar Aluminium Industries Pvt. Ltd. & anr reported in (2020) SCC Online SC 647 wherein under the caption ‘whether Section 18 Limitation Act could be applied to the present case’ at Paragraphs 91 to 93 it is observed as under:

“91. 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).

92. 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 proceedings 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. 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.

93. Even in the later decisions, this Court has consistently applied the declaration of law in B.K. Educational Services (supra). As noticed in the case of Vashdeo R. Bhojwani (supra), this Court rejected the contention suggesting continuing cause of action for the purpose of application under Section 7 of the Code while holding that the limitation started ticking from the date of issuance of recovery certificate dated 24.12.2001. Again, in the case of Gaurav Hargovindbhai Dave (supra), where the date of default was stated in the application under Section 7 of the Code to be the date of NPA, i.e., 21.07.2011, this Court held that the limitation began to run from the date of NPA and hence, the application filed under Section 7 of the Code on 03.10.2017 was barred by limitation.”

### **1<sup>st</sup> Respondent’s Submissions:**

15. The Learned Counsel for the 1<sup>st</sup> Respondent/Bank contends that the Appellant had not filed two vital documents viz. the ‘Balance and Security Confirmation Letter’ dated 20.02.2018 executed by the ‘Corporate Debtor’. Further, on behalf of the 1<sup>st</sup> Respondent/Bank, attention of this ‘Tribunal’ drawn to the ‘Balance Security Confirmation Letter’ dated 20.02.2018 for

Rs.78,74,73,945/- and the 'Balance and Security Confirmation Letter' dated 20.02.2018 for Rs.4,15,03,499.06, both of them duly signed by the 'Guarantor(s)'.

16. The Learned Counsel for the 1<sup>st</sup> Respondent/Bank brings to the notice of this 'Tribunal' that on 15.10.2018, a sum of Rs.15,262.75 was paid by the 'Corporate Debtor' to the Credit of the 'Loan Account' and the above facts will clearly establish that there was an 'Acknowledgement of Debt' as contemplated under Section 18 and 19 of the Limitation Act 1963.

17. The Learned Counsel for the 1<sup>st</sup> Respondent/Bank cites the Judgment of this Tribunal in Yogeshkumar Jashwantlal Thakkar v Indian Overseas Bank & anr. (Company Appeal (AT)(Insolvency) No.236 of 2020 reported in 2020 SCC Online NCLAT 636 wherein at Paragraphs 23, 25, 30, 33, 34, 36 and 38, it is observed and held as under:

“23. It is to be pertinently pointed that that in the decision of Hon'ble Supreme Court 'Sampuran Singh' v. Naranjan Singh', AIR 1999 SC 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'.

25. In the decision of Hon'ble Supreme Court in 'Babulal Vardharji Gurjar' v. 'Veer Gurjar Aluminium Industries Pvt. Ltd.' (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 suggestions 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 provisions 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 principle 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.

30. An acknowledgement 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 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 220. An acknowledgement does not create a new right.

33. It is to be relevantly pointed out that a judgment of the Court has to be read in the context of queries which arose for consideration in the case in which the judgment 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) A.C. 495 at 596 the **dicta of Lord Halsbury** is ..... every judgment 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’.

36. The present case centres around mixed question of ‘Facts’ and ‘Law. The 1<sup>st</sup> Respondent/Bank, as per the format, as mentioned at para 20 of this judgment, 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 1<sup>st</sup> Respondent/Bank. Prima facie, the Appeal needs to be allowed, if this is the single ground. However, in the interest case, the 1<sup>st</sup>

Respondent/Bank had obtained balance confirmations certificate, the last one being 31.03.2017 as mentioned elaborately in Para 21 of this judgment. Although, this Appellate Tribunal had largely held in ‘Rajendra Kumar Tekriwal’ v. ‘Bank of Baroda’ in Company Appeal (AT) (Ins) No.225 of 2020 and in Jagdish Prasad Sarada v. 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 1<sup>st</sup> Respondent/Bank had obtained Confirmations/Acknowledgements 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 ‘Acknowledgement’

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 acknowledgement 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 purpose of this section –

- (a) an acknowledgement 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, delivery, 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 1<sup>st</sup> 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 1<sup>st</sup> 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."

18. The Learned Counsel for the 1<sup>st</sup> Respondent/Bank submits that the order of the Three Members Hon'ble Bench made in Bishal Jaiswal v Asset Reconstruction Company (India) Ltd. and Another (Company Appeal (AT) INS 385 of 2020 on the file of National Company Law Appellate Tribunal, New Delhi relates to the reference for reconsideration of the Judgment of the 'Appellate Tribunal' rendered in the case of V. Padmakumar vs. Stressed Assets Stabilisation Fund and in the said Judgment, the issue that arose with the 'Tribunal' was whether an 'Acknowledgement of Debt' in the 'Balance Sheet' can be treated as a valid acknowledgement for an extension of limitation period.

## Discussions:

19. In the Application filed by the 1<sup>st</sup> Respondent/Punjab National Bank ('Financial Creditor') [under Section 7 of the I & B Code r/w Rule 4 of the Insolvency and Bankruptcy (Application to 'Adjudicating Authority') Rules, 2016] to initiate CIRP in respect of M/s. Saptarishi Hotels Private Limited, the Bank under Part-IV 'Particulars of the Financial Debt' had mentioned the following:

|   |  |   |
|---|--|---|
| 1 | TOTAL AMOUNT OF DEBT GRANTD DATE(S) OF DISBURSEMENT  | 17/06/2011 – Rs.90.00 crs and 30/03/2015 – Rs.18.67 crs.  |
| 2 | AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURD (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM) | Rs.78,74,73,945/- as on 31.03.2016 against Term Loan-1 and Rs.4,15,03,499.06 as on 31.03.2016 against Term Loan-II total Rs.82,89,77,444/-.<br><br>Presently total memorandum dues as at 30.06.2019 is Rs.144,02,51,063.009 |

20. It comes to be known that the 1<sup>st</sup> Respondent/Applicant/'Financial Creditor' together with 'Punjab and Sind Bank' had sanctioned to the 'Borrower', a 'Financial Assistance' of an aggregate amount of Rs.170 Crores on 11.08.2011. In the aggregate sum of Rs.170 Crores, the share of the 'Financial Creditor' is Rs.80 Crores in respect of the 'Term Loan' and Rs.10 Crores against the 'Bank Guarantee Ltd.'

21. As a matter of fact, the Corporate Debtor/ M/s.Saptarishi Hotels Private Limited, had agreed to avail letters of an aggregate sum of Rs.15 Crores by means of sub limits within the overall limits of the 'Term Loan' of Rs.80 Crores and an aggregate sum of Rs.10 Crores, in respect of 'Additional Bank Guarantee', based on the terms and conditions specified in the concerned 'Sanction Letters'.

22. According to the 1<sup>st</sup> Respondent/Bank, the Applicant/Bank/'Financial Creditor' and the Punjab and Sind Bank had sanctioned additional limits of Rs.35 Crores and issued 'Sanction Letter' in this regard. Indeed, the Loans sanctioned

by the 1<sup>st</sup> Respondent/Bank/‘Financial Creditor’ along with the ‘Punjab and Sind Bank’ aggregating in all a loan amount of Rs.205 Crores runs as under:

| <b>Name of the Lender</b> | <b>Amount of Term Loan agreed to be availed by the Borrower (Rs.in Crores)</b> | <b>Amount of Letters of Credit agreed to be availed by the Borrower as sub-limits within the Term Loan facility</b> | <b>Amount of Bank Guarantees agreed to be availed by the Borrower (Rs. In Crores)</b> |
|---------------------------|--|---|---|
| Punjab National Bank      | 98.67  | (15.00)   | 10.00   |
| Punjab National Bank      | 86.33  | (15.00)   | 10.00   |
| <b>Total</b>              | <b>185.00</b>  | <b>(30.00)</b>  | <b>20.00</b>  |

23. The ‘Corporate Debtor’/M/s.Saptarishi Hotels Private Limited for securing the ‘Credit facilities’ of Rs.205 Crores had created a Mortgage on the land admeasuring Ac.3.00 together with buildings in Survey No.91, Telecom Nagar, Gachibowli, Ranga Reddy District, Hyderabad. To monitor the ‘Credit facilities’ in respect of M/s.Saptarishi Hotels Private Limited/‘Corporate Debtor’, the 1<sup>st</sup> Respondent/Punjab National Bank was nominated as the ‘Lead Bank’.

24. The clear cut stand of the 1<sup>st</sup> Respondent/Bank is that the ‘Corporate Debtor’ (as agreed) had failed in its repayment of the balance amount, inspite of repeated reminders given by the Bank/‘Financial Creditor’, in respect of the loan facilities availed by it.

25. It is brought to the fore that the 1<sup>st</sup> Respondent/Bank/‘Financial Creditor’ had issued a notice to the ‘Corporate Debtor’ on 02.06.2016, as per Section 13(2) of the SARFAESI Act and that the ‘Corporate Debtor’ had not paid the debt sum, despite the lapse of 60 days’ time given to it.

26. As on 30.06.2019, the outstanding amount due to be paid to the 1<sup>st</sup> Respondent/‘Financial Creditor’/Bank was Rs.144.03 Crores. The ‘Corporate

Debtor' and the 'Guarantors' had executed 'Balance and Security Confirmation Letters' dated 20.02.2018 in respect of the accounts of Saptarishi Hotels Pvt. Ltd. thereby acknowledging the 'debt' in unequivocal terms. Admittedly, a payment of Rs.15,262.75 was made by the 'Corporate Debtor' to the credit of the loan amount.

27. On behalf of the 'Appellant', the contention raised before this 'Tribunal' is that the Application filed by the 1<sup>st</sup> Respondent/Punjab National Bank ('Financial Creditor') is barred by limitation, because of the fact that the application was filed on 18.07.2019 or any date thereafter. Furthermore, it is projected that the 'Date of Default' for all the facilities given by the Punjab National Bank in terms of Part-IV of the Application (filed under Section 7 of the I & B Code) is 30.03.2016 and that the limitation came to an end on 29.03.2019. Moreover, the date of 'Non-Performing Asset' is 30.06.2013. As such, the Application (under Section 7 of the I & B Code, 2016) filed by the 1<sup>st</sup> Respondent/Punjab National Bank ('Financial Creditor') seeking initiation of 'CIRP' was admitted by the 'Adjudicating Authority' beyond the specified limitation period of 3 years.

28. The stand of the 'Appellant' is repelled by the 1<sup>st</sup> Respondent/Bank that the total amount of debt granted on 17.06.2011 was Rs.90 Crores and on 30.03.2015 was Rs.18.67 Crores and that the amount claimed to be in default was Rs.78,74,73,945/- as on 31.03.2016 against the 'Term Loan-1' and Rs.4,15,03,499.06 as on 31.03.2016 against the 'Term Loan-2', totalling in all, a sum of Rs.82,89,77,444/- and the total memorandum dues as on 30.06.2019 was Rs.144,02,51,063.09. Further, the guarantor(s) on 20.02.2018 had executed 'Balance and Security Confirmation Letters' for Rs.78,74,73,945/- in respect of the account of Saptarishi Hotels Pvt. Ltd. ('Corporate Debtor') in respect of the 'Term Loan Facility', which clearly point out that there was an

‘Acknowledgement of Debt’, in terms of Section 18 and 19 of the Limitation Act, 1963.

29. That apart, it is pertinently pointed out by this ‘Tribunal’ that the Hon’ble Supreme Court in the Judgment in Civil Appeal No.323 of 2021 with Civil Appeal No.3228 of 2020, Civil Appeal No.3 of 2021, Civil Appeal No. of 2021 (@SLP (C) No.1168 of 2021) dated 15.04.2021 in the matter of ‘Asset Reconstruction Company India Ltd. v Bihsal Jaiswal and Anr.’ had setaside the Full Bench Judgment of the NCLAT dated 12.03.2020 in V. Padmakumar v Stressed Assets Stabilisation Fund Case (Company Appeal (AT)(INS) No.57 of 2020) and the Full Bench Judgment of the NCLAT dated 22.10.2020 made in Bishal Jaiswal v Asset Reconstruction Company (India) Ltd. and Anr. Company Appeal (AT)(INS) No.385 of 2020 (vide paragraphs 33 and 34) and allowed the Appeal by remanding the matter to the NCLAT to be decided in accordance with law laid down in the Judgment.

**Insolvency and Bankruptcy Code, 2016:**

30. Section 3(6)(a) of the I & B Code, 2016, defines “claim” meaning ‘a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured’. Section 3(8) of the Code defines “Corporate Debtor” meaning ‘a Corporate person who owes a debt to any person’. Section 3(10) defines “Creditor” meaning ‘any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder.

31. Section 3(11) of the I & B Code, defines “debt” meaning ‘a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. Section 3(12) of the code, defines “default” meaning ‘non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.’



**Limitation Act, 1963:**

32. To be noted, that Section 18 of the Limitation Act, 1963 does not enjoin that an 'acknowledgement' has to be in any particular form or to be express. It must be borne in mind that an 'acknowledgement' is to be examined resting upon the attendant circumstances by an admission that the writer owes a 'Debt'. No wonder, an 'Unconditional Acknowledgement' implies a promise to pay because that is the natural inference if there is no other contrary material.

33. Further, to treat the writing signed by an individual as an 'Acknowledgement', the person acknowledging must be conscious of his liability and the commitment ought to be made in respect of that liability.

34. Be that as it may, on a careful consideration of respective contentions projected on either side, this 'Tribunal' considering the prime fact that the Guarantor(s) in respect of the Accounts of the 'Corporate Debtor'/M/s.Saptarishi Hotels Private Limited had executed the 'Balance and Security Confirmation Letters' dated 20.02.2018 for the due amount of Rs.78,74,73,945/- [Confirmation of Correctness of Debit Balance] and keeping in mind yet another fact that a sum of Rs.15,262.75 was paid by the 'Corporate Debtor' on 15.10.2018 and as on 30.06.2019 the due amount was Rs.144,02,51,063.09 comes to an irresistible, inevitable and inescapable conclusion that in respect of the loan account of the 'Corporate Debtor', there was an 'Acknowledgement of Debt' as per Section 18 and 19 of the Limitation Act, 1963. In fact, the Application filed by the 1<sup>st</sup> Respondent/'Financial Creditor' (Punjab National Bank) in July 2019 (vide intimation given by the 1<sup>st</sup> Respondent/Bank/Financial Creditor's Advocate through communication dated 18.07.2019 addressed to the Saptarishi Hotels Pvt. Ltd.[Corporate Debtor]) is perfectly maintainable in Law, of course, well within the period of Limitation. As such, the Contra Plea taken on behalf of the 'Appellant' that the Application filed by the 1<sup>st</sup> Respondent/'Financial Creditor' (Punjab National Bank) (under Section 7 of the I & B Code) is barred by

limitation is legally untenable and is rejected. In the present case, the 1<sup>st</sup> Respondent/Bank ('Financial Creditor') has proved the existence of 'Debt and Default' (vide documents) filed along with the Application under Section 7 of the Code against the 'Corporate Debtor' and that the conclusion arrived at in admitting the 'Application' by the 'Adjudicating Authority' is free from legal infirmities, as opined by this 'Tribunal'. Resultantly, the 'Appeal' fails.

**Conclusion:**

35. In fine, the Instant Company Appeal (AT)(CH)(INS) No.01 of 2021 is dismissed, but without costs. I.A.03 of 2021 (Stay Application) is closed.

**[Justice Venugopal M]  
Member (Judicial)**

**[V.P. Singh]  
Member (Technical)**

**12.05.2021  
SE**