NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1121 of 2019

IN THE MATTER OF:

Ishrat Ali **...Appellant**

Vs.

Cosmos Cooperative Bank Ltd. & Anr. **...Respondents**

Present: **For Appellant: - Mr. Avishkar Singhvi, Mr. Dhruv Surana, Mr. Ashish Choudhury and Mr. Nipun Katyal, Advocates.**
For Respondents: - Mr. Gourab Banerji, Senior Advocate with Mr. Ninad Laud, Mr. Sahil Tagotra, Ms. Ananyaa Mazumdar and Ms. Raka Chatterjee, Advocates for R-1.
Mr. P.K. Mittal, Advocate for Resolution Professional.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

'M/s. Cosmos Co-Operative Bank Limited'- ('Financial Creditor') filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'Micro Dynamics Private Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 23rd September, 2019 admitted the application.

2. The Appellant, Director and Shareholder of the 'Corporate Debtor' challenged the impugned order on the ground that the application under Section 7 was barred by limitation.

3. Learned counsel for the Respondents appeared and relied on the decision of this Appellate Tribunal in ***"Sesh Nath Singh & Ors. v. Baidyabati Sheoraphuli Cooperative Bank Ltd.— Company Appeal (AT) (Insolvency) No. 672 of 2019"***. In the said Judgment, a Bench of three Hon'ble Members of this Appellate Tribunal held that the 'Financial Creditor' bonafidely prosecuted his application under SARFAESI Act, 2002 and therefore, as per Section 14(2) of the Limitation Act, 1963 in computing the period of limitation the time during which the Respondent has been prosecuting with due diligence another civil proceedings against the 'Corporate Debtor' for the same relief shall be excluded.

4. The aforesaid Judgment was doubted, the matter was referred to Larger Bench to decide the issue.

5. The application of Article 137 of Limitation Act, 1963 for moving application under Sections 7 or 9 of the I&B Code, fell for consideration before the Hon'ble Supreme Court and this Appellate Tribunal in number of cases. In ***"B.K. Educational Services Private Limited vs. Parag Gupta and Associates* – (2018) SCC Online SC 1921"**, the Hon'ble Supreme Court held that the Limitation Act, 1963 has in fact been applied from the inception of the Code.

6. In ***"Vashdeo R. Bhojwani vs. Abhyudaya Co-operative Bank Limited and another – (2019) 9 SCC 158"***, the Hon'ble Supreme Court referring to ***B.K. Education*** (Supra) observed: -

> *"**3.** Having heard the learned counsel for both parties, we are of the view that this is a case covered by our recent judgment in B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, para 42 of which reads as follows:*
>
> > *"42. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 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, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."*

Dealing with Section 23 of the Limitation Act, 1963, the Hon'ble Supreme Court observed:

> *"xxx xxx xxx*
>
> *Following this judgment, 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"

7. In ***"Jignesh Shah and another vs. Union of India and another – (2019) 10 SCC 750"***, the Hon'ble Supreme Court taking into consideration the fact of filing of an application under Sections 433 and 434 of the Companies Act, 2013 observed as follows:

"13. Dr Singhvi relied upon a number of judgments in which proceedings under Section 433 of the Companies Act, 1956 had been initiated after suits for recovery had already been filed. These judgments have held that the existence of such suit cannot be construed as having either revived a period of limitation or having extended it, insofar as the winding-up proceeding was concerned. Thus, in Hariom Firestock Ltd. v. Sunjal Engg. (P) Ltd., a Single Judge of the Karnataka High Court, in the fact situation of a suit for recovery being filed prior to a winding-up petition being filed, opined:

"8. … To my mind, there is a fallacy in this argument because the test that is required to be applied for purposes of ascertaining whether the debt is in existence at a particular point of time is the simple question as to whether it would have been permissible to institute a normal recovery proceeding before a civil court in respect of that debt at that point of time. Applying this test and dehors that fact that the suit had already been filed, the

question is as to whether it would have been permissible to institute a recovery proceeding by way of a suit for enforcing that debt in the year 1995, and the answer to that question has to be in the negative. That being so, the existence of the suit cannot be construed as having either revived the period of limitation or extended it. It only means that those proceedings are pending but it does not give the party a legal right to institute any other proceedings on that basis. It is well-settled law that the limitation is extended only in certain limited situations and that the existence of a suit is not necessarily one of them. In this view of the matter, the second point will have to be answered in favour of the respondents and it will have to be held that there was no enforceable claim in the year 1995, when the present petition was instituted."

14. Likewise, a Single Judge of the Patna High Court in Ferro Alloys Corpn. Ltd. v. Rajhans Steel Ltd. also held:

"12. … In my opinion, the contention lacks merit. Simply because a suit for realisation of the debt of the petitioner Company against Opposite Party 1 was instituted in the Calcutta High Court on its original side, such institution of the suit and the pendency thereof in that Court cannot ensure for the benefit of the present winding-up proceeding. The debt having become time-

barred when this petition was presented in this Court, the same could not be legally recoverable through this Court by resorting to winding-up proceedings because the same cannot legally be proved under Section 520 of the Act. It would have been altogether a different matter if the petitioner Company approached this Court for winding-up of Opposite Party 1 after obtaining a decree from the Calcutta High Court in Suit No. 1073 of 1987, and the decree remaining unsatisfied, as provided in clause (b) of sub-section (1) of Section 434. Therefore, since the debt of the petitioner Company has become time-barred and cannot be legally proved in this Court in course of the present proceedings, winding up of Opposite Party 1 cannot be ordered due to non-payment of the said debt."

Finally, the Hon'ble Supreme Court after taking into consideration the date of default observed: -

"21. The aforesaid judgments correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding-up proceeding. In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgment of liability under Section 18 of the Limitation Act would certainly extend the limitation period, but 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, by somehow keeping the debt alive for the purpose of the winding-up proceeding.

xxx xxx xxx

28. A reading of the aforesaid provisions would show that the starting point of the period of limitation is when the company is unable to pay its debts, and that Section 434 is a deeming provision which refers to three situations in which a company shall be deemed to be "unable to pay its debts" under Section 433(e). In the first situation, if a demand is made by the creditor to whom the company is indebted in a sum exceeding one lakh then due, requiring the company to pay the sum so due, and the company has for three weeks thereafter "neglected to pay the sum", or to secure or compound for it to the reasonable satisfaction of the creditor. "Neglected to pay" would arise only on default to pay the sum due, which would clearly be a fixed date depending on the facts of each case. Equally in the second situation, if execution or other process is issued on a decree or order of any court or tribunal in favour of a creditor of the company, and is returned unsatisfied in whole or in part, default on the part of the debtor company occurs. This again is clearly a fixed date depending on the facts of each case. And in the third situation, it is necessary to prove to the "satisfaction of the

> *Tribunal" that the company is unable to pay its debts. Here again, the trigger point is the date on which default is committed, on account of which the company is unable to pay its debts. This again is a fixed date that can be proved on the facts of each case. Thus, Section 433(e) read with Section 434 of the Companies Act, 1956 would show that the trigger point for the purpose of limitation for filing of a winding-up petition under Section 433(e) would be the date of default in payment of the debt in any of the three situations mentioned in Section 434."*

8. Similar issue fell for consideration before the Hon'ble Supreme Court in ***"Gaurav Hargovindbhai Dave vs. Asset Reconstructions Company (India) Limited and another – (2019) 10 SCC 572"***. In the said case, the Hon'ble Supreme Court has noticed that the Respondent was declared NPA on 21st July, 2011. The Bank had filed two OAs before the Debts Recovery Tribunal in 2012 to recover the total debt. Taking into consideration the facts, the Supreme Court held that the default having taken place and as the account was declared NPA on 21st July, 2011, the application under Section 7 was barred by limitation.

For proper appreciation, it is better to note the facts of the judgment as follows: -

> *"In the present case, Respondent 2 was declared NPA on 21-7-2011. At that point of time, State Bank of India filed two OAs in the Debts Recovery Tribunal in 2012 in order to recover a total debt of 50 crores of*

rupees. In the meanwhile, by an assignment dated 28-3-2014, State Bank of India assigned the aforesaid debt to Respondent 1. The Debts Recovery Tribunal proceedings reached judgment on 10-6-2016, the Tribunal holding that the OAs filed before it were not maintainable for the reasons given therein.

2. As against the aforesaid judgment, Special Civil Application Nos. 10621-622 were filed before the Gujarat High Court which resulted in the High Court remanding the aforesaid matter. From this order, a special leave petition was dismissed on 27-3-2017.

3. An independent proceeding was then begun by Respondent 1 on 3-10-2017 being in the form of a Section 7 application filed under the Insolvency and Bankruptcy Code in order to recover the original debt together with interest which now amounted to about 124 crores of rupees. In Form-I that has statutorily to be annexed to the Section 7 application in Column II which was the date on which default occurred, the date of the NPA i.e. 21-7-2011 was filled up. The NCLT applied Article 62 of the Limitation Act which reads as follows:

"Description of suit	*Period of limitation*	*Time from which period begins to run*
62. To enforce payment of money secured by a mortgage or otherwise charged upon	*Twelve years*	*When the money sued for becomes due."*

immovable property		

Applying the aforesaid Article, the NCLT reached the conclusion that since the limitation period was 12 years from the date on which the money suit has become due, the aforesaid claim was filed within limitation and hence admitted the Section 7 application. The NCLAT vide the impugned judgment held, following its earlier judgments, that the time of limitation would begin running for the purposes of limitation only on and from 1-12-2016 which is the date on which the Insolvency and Bankruptcy Code was brought into force. Consequently, it dismissed the appeal.

4. Mr Aditya Parolia, learned counsel appearing on behalf of the appellant has argued that Article 137 being a residuary article would apply on the facts of this case, and as right to sue accrued only on and from 21-7-2011, three years having elapsed since then in 2014, the Section 7 application filed in 2017 is clearly out of time. He has also referred to our judgment in B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates [B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633] in order to buttress his argument that it is Article 137 of the Limitation Act which will apply to the facts of this case.

5. Mr Debal Banerjee, learned Senior Counsel, appearing on behalf of the respondents, countered this by stressing, in particular, para 11 of B.K. Educational Services (P) Ltd. and reiterated the

finding of the NCLT that it would be Article 62 of the Limitation Act that would be attracted to the facts of this case. He further argued that, being a commercial Code, a commercial interpretation has to be given so as to make the Code workable.

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 only apply to suits. The present case being "an application" which is filed under Section 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 21-7-2011, 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., suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.

7. This being the case, we fail to see how this para could possibly help the case of the respondents. Further, it is not for us to interpret, commercially or otherwise, articles of the Limitation Act when it is clear that a particular article gets attracted. It is well settled that there is no equity about limitation - judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature.

8. This being the case, the appeal is allowed and the judgments of the NCLT and NCLAT are set aside."

9. In ***"Sagar Sharma & Anr. vs. Phoenix ARC Pvt. Ltd. & Anr. – Civil Appeal No.7673 of 2019 – (2019) 10 SCC 353"***, the Hon'ble Supreme Court vide its judgment dated 30th September, 2019, referring to the decision in ***B.K. Educational Services Private Limited*** (Supra) reminded this Appellate Tribunal that for application under Section 7 of the Code, Article 137 of the Limitation Act, 1963 will apply. Article 62, which relates to deed of mortgage executed between the parties, cannot be taken into consideration for counting the period of limitation. The Hon'ble Supreme Court specifically observed that Article 141 of the Constitution of India mandates that its judgments are followed in letter and spirit. The date of coming into force of IBC Code does not and cannot form a trigger point of limitation for application filed under the Code. Equally, since "applications" are petitions, which are filed under the Code, it is Article 137 of the Limitation Act, 1963 which will apply to such applications.

10. This Appellate Tribunal also considered the same issue in ***"V Hotels Limited vs. Asset Reconstruction Company (India) Limited – Company Appeal (AT) (Insolvency) No.525 of 2019"*** decided on **11th December, 2019,** by referring to the aforesaid judgment of the Hon'ble Supreme Court observed: -

> *"17. In the present case, in fact the default took place much earlier. It is admitted that the debt of the*

'Corporate Debtor' was declared NPA on 1st December, 2008 as has been noticed by the Adjudicating Authority.

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19. Section 13(2) of the 'SARFAESI Act, 2002' reads as follows:

> *"**13. Enforcement of security interest**.— ……(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as nonperforming asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).*

20. Admittedly, the 'Financial Creditor' took action under the 'SARFAESI Act, 2002' in the year 2013. Therefore, the second time it become NPA in the year 2013 when action under Section 13(2) was taken."

Referring to Section 18 of the Limitation Act, 1963, this Appellate Tribunal further observed: -

"22. The aforesaid provision makes it clear that for the purpose of filing a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has to be made in writing duly signed by the party against whom such property or right is claimed.

23. In the present case, 'Asset Reconstruction Company (India) Ltd.'- ('Financial Creditor') has failed to bring on record any acknowledgment in writing by the 'Corporate Debtor' or its authorised person acknowledging the liability in respect of debt. The Books of Account cannot be treated as an acknowledgment of liability in respect of debt payable to the 'Asset Reconstruction Company (India) Ltd.'- ('Financial Creditor') signed by the 'Corporate Debtor' or its authorised signatory.

24. In ***"Sampuran Singh and Ors. v. Niranjan Kaur and Ors.— (1999) 2 SCC 679"****, the Hon'ble Supreme Court observed that the acknowledgment, if any, has to be prior to the expiration of the prescribed period for filing the suit. In the present case, the account was declared NPA since 1st December, 2008 and therefore, the suit was filed. Thereafter, any document or acknowledgment, even after the completion of the period of limitation i.e. December, 2011 cannot be relied upon. Further, in absence of any record of acknowledgment, the Appellant cannot derive any advantage of Section 18 of the Limitation Act. For the said reason, we hold that the application under Section 7 is barred by limitation, the accounts*

of the 'Corporate Debtor' having declared NPA on 1st December, 2008.

11. The aforesaid decisions of the Hon'ble Supreme Court and this Appellate Tribunal make it clear that for the purpose of computing the period of limitation of application under Section 7, the date of default is 'NPA' and hence a crucial date.

12. In ***"Jignesh Shah and another vs. Union of India and another – (2019) 10 SCC 750"***, the Hon'ble Supreme Court noticed the decision of the Hon'ble Patna High Court in ***"Ferro Alloys Corpn. Ltd. v. Rajhans Steel Ltd."***, wherein the Hon'ble Patna High Court held that simply because a suit for realisation of the debt of the petitioner Company against Opposite Party 1 was instituted in the Calcutta High Court on its original side, such institution of the suit and the pendency thereof in that Court cannot enure for the benefit of the present winding-up proceeding.

13. In the said case, Hon'ble Patna High Court further held that since the debt of the petitioner Company has become time-barred and cannot be legally proved in this Court in course of the present proceedings, winding up of Opposite Party 1 cannot be ordered due to non-payment of the said debt.

14. Appreciating the aforesaid Judgment of the Hon'ble Patna High Court, the Hon'ble Supreme Court in ***"Jignesh Shah and another vs.***

Union of India and another" (Supra) observed that the aforesaid judgments correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding-up proceeding.

Thus, while holding so, the Hon'ble Supreme Court says that the date of default is the date for the purpose of computing the period of limitation of application under Section 7. The same principle is applicable in the present case. Mere filing of a suit for recovery or a decree passed by a Court cannot be held to be deferment of default.

15. A suit for recovery of money can be filed only when there is a default of dues. Even if the decree is passed, the date of default does not shift forward to the date of decree or date of payment for execution. Decree can be executed within specified period i.e. 12 years. If it is executable within the period of limitation, one cannot allege that there is a default of decree or payment of dues.

16. Therefore, we hold that a Judgment or a decree passed by a Court for recovery of money by Civil Court/ Debt Recovery Tribunal cannot shift forward the date of default for the purpose of computing the period for filing an application under Section 7 of the 'I&B Code'.

17. Section 14 of the Limitation Act, 1963 prescribes 'exclusion of time of proceeding bona fide in court without jurisdiction', as follows:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction. *—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.— For the purposes of this section,—

> *(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;*
> *(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*
> *(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."*

18. Section 14(2) of the Limitation Act, 1963 makes it clear that in computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

19. Therefore, to take advantage of Section 14(2), the Applicant must satisfy:

(i) That the applicant has been prosecuting with due diligence in another civil proceeding, whether in a court of first instance or of appeal or revision.

(ii) against the same party; and

(iii) for the same relief.

20. Under the SARFAESI Act, 2002, once the account is declared as NPA, the 'Financial Creditor' can exercise its power under Section 13 of the SARFAESI Act, 2002 which is required to issue Demand Notice under Section 13(2) and reads as follows:

> ***"13. Enforcement of security interest.-*** *(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.*
>
> *(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as on-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to e ercise all or any of the rights under sub- section (4).*
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> *(3) The notice referred to in sub- section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non- payment of secured debts by the borrower.*

(4) In case the borrower fails to discharge his liability in full within the period specified in sub- section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt……"

21. An action taken by the 'Financial Creditor' under Section 13(2) or Section 13(4) of the 'SARFAESI Act, 2002' cannot be termed to be a civil proceeding before a Court of first instance or appeal or revision before an Appellate Court and the other forum. Therefore, action taken under

Section 13(2) of the 'SARFAESI Act, 2002' cannot be counted for the purpose of exclusion of the period of limitation under Section 14(2) of the Limitation Act, 1963.

In an application under Section 7 relief is sought for resolution of a 'Corporate Debtor' or liquidation on failure. It is not a money claim or suit. Therefore, no benefit can be given to any person under Section 14(2), till it is shown that the application under Section 7 was prosecuting with due diligence in a court of first instance or of appeal or revision which has no jurisdiction.

22. The decision rendered in ***"Sesh Nath Singh & Ors. v. Baidyabati Sheoraphuli Cooperative Bank Ltd."*** (Supra) thereby cannot be held to be a correct law laid down by the Bench.

23. In the present case, the account of the 'Corporate Debtor' was classified as NPA on 30th March, 2014. Thereafter, on 6th December, 2014, Demand Notice under Section 13(2) of the 'SARFAESI Act, 2002' was issued by the Respondent- 'Cosmos Co-operative Bank Ltd.' The Bank also initiated Arbitration under Section 84 of the Multi-State Cooperative Societies Act on 4th December, 2015. The Bank had also taken possession of the movable assets under Section 13(4) of the 'SARFAESI Act, 2002' as back as on 16th January, 2017.

24. In the circumstances, instead of remitting the case to the Bench, we hold that application under Section 7 filed by the 'Cosmos Co-

Operative Bank Limited' was barred by limitation. We, accordingly, set aside the impugned order dated 23rd September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai.

25. In effect, order(s), passed by the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 7 of the 'I&B Code' is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

26. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and 'Cosmos Co-Operative Bank Ltd.' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned.

The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

(Justice Venugopal M.)
Member(Judicial)

[Kanthi Narahari]
Member (Technical)

NEW DELHI

12th March, 2020

/AR/

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1121 of 2019

IN THE MATTER OF:

Ishrat Ali **...Appellant**

Versus

Cosmos Cooperative Bank Ltd. & Anr. **...Respondents**

J U D G E M E N T

(12th March, 2020)

A.I.S. Cheema, J. :

1. I have had the opportunity to go through the draft of erudite Judgement by the Hon'ble Chairperson.

2. With respect and humility, I agree with the Judgement, except the reliance on observations in Para – 23 of the Judgement in the matter of **"V Hotels Limited Vs. Asset Reconstruction Company (India) Limited"** – Company Appeal (AT) (Insolvency) No. 525 of 2019, where it was held that "the Books of Account cannot be treated as an acknowledgement of liability in respect of debt payable." My reasons regarding that observation are recorded by me in my Judgement in the matter of **"V. Padmakumar Versus Stressed Assets Stabilisation Fund (SASF) & Anr."** – Company Appeal (AT) (Ins) No.57 of 2020.

[Justice A.I.S. Cheema]
Member (Judicial)

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