NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1411 of 2019

[Arising out of Impugned Order dated 03rd October 2019 passed by the Hon'ble National Company Law Tribunal, Cuttack Bench, Cuttack in C.P.(IB) No.54/CTB/2019]

IN THE MATTER OF:

Ashish Kumar
S/o Rajendra Kumar Jain
22, Prem Pushp, Jal Vihar Colony
Civil Lines, Raipur (CG) - 492001 **...Appellant**

Versus

1. **Mr. Vinod Kumar Pukhraj Ambavat**
   Resolution Professional
   D-511, Kanakia Zillion, Junction of LBS Road
   And CST Road, BKC Annexe, Kurla West
   Mumbai, PIN – 400070 **...Respondent No.1**

2. **M/s ASREC (India) Limited**
   Unit No.201, 200A, 202 & 200B, Ground Floor,
   Build No.2, Solitaire Corporate Park
   Andheri (E) Kurla Road
   Mumbai – 400059 **...Respondent No.2**

Present:

For Appellant : Mr Anurag, Mr Sushil, Advocates

For Respondent : Mr R.P. Agarwal, Advocate for R-1
Mr Manish K. Bishnoi, Mr Narendra Singh, Advocates for R-2

J U D G M E N T

[Per; V. P. Singh, Member (T)]

This Appeal emanates from the Order passed by the Adjudicating Authority/National Company Law Tribunal, Cuttack Bench, Cuttack in C.P. (IB) No.54/CTB/2019, whereby the Adjudicating Authority has admitted the

Application for initiation of Corporate Insolvency Resolution Process ('CIRP') against the 'Corporate Debtor', filed under Section 7 of the Insolvency and Bankruptcy Code (in short **'I&B Code'**) on 03rd October, 2019 in the case of M/s ASREC (India) Limited Vs. Mr R.K. Jain Construction (India) Pvt. Ltd. The parties are represented by their original status in the company petition for the sake of convenience.

The Appellant has filed this appeal mainly on two grounds, firstly on limitation; secondly, the order has been passed ex-parte; which is illegal, arbitrary, and passed mechanically through a non-speaking order.

2. Brief facts of the case are as follows:

The 'Corporate Debtor' was granted a loan by the Allahabad Bank in 2008. The loan amount was extended/increased until the year 2010. The account was declared NPA by the Bank on 29th August 2012. Notice under Section 13(2) of the SARFAESI Act was issued against the Corporate Debtor on 03rd October 2012, after that, the notice under Section 13(4) of the SARFAESI Act was issued on 05th December 2012. The Adjudicating Authority has observed that:

> "*the Respondent/Corporate Debtor was served notice. However, there were no representations. Notice was also taken by way of publication dated 20th August 2019 in English newspaper "Central Chronicle" and Hindi newspaper "Swadesh". However, there was no representation for the Corporate Debtor. Hence, called absent & set ex-parte on 04th September 2019.*"
>
> (Quoted verbatim)

3. It is stated that the Appellant had availed the loan facility way back in the year, 2008 and the said facility was enhanced time and again till the year, 2010. On 29th August 2012, the account of the corporate debtor was classified as NPA, and Allahabad Bank issued a notice under Section 13(2) of the SARFAESI Act on 03rd October 2012.

> "Regarding the ex-parte order, it is stated by the Respondent financial creditor, that there was proper service on the Corporate Debtor, by the publication of notice in two newspapers. Copy of the order sheet of the Adjudicating Authority dated 17th June 2019, 02nd July 2019, 06th August 2019 and 04th September 2019 is annexed with the Reply by the respondent. On perusal of the order sheet dated 17th June 2019,it appears that the Adjudicating Authority has noted that "No one appears for the Financial Creditor, however, issue notice to the Corporate Debtor. Notice is returnable on 02nd July 2019."

4. Again, on 02nd July 2019 Adjudicating Authority had noted that "Learned Counsel for the Financial Creditor appeared. Affidavit of dispatch of notice is filed without track report. Financial Creditor to produce Track report. Notice is received by Corporate Debtor. Matter to appear on 06th August 2019".*It is also noted by the Adjudicating Authority on dated 06th August 2019that:*

> *"Learned Counsel for the Financial Creditor is present. Notice served to the Corporate Debtor. But there is no representation for the Corporate Debtor. Petitioner to take notice by way of publication in one English newspaper and one vernacular newspaper having wide circulation.*

Post the matter on 04th September 2019 for filing publication and further hearing".

5. Further, on 04th September 2019,the Adjudicating Authority had noted that:

"*Learned Counsel for the Petitioner is present. Notice is by way of publication in one edition of "Central Chronicle" and "Swadesh" dated 20th August 2019 is filed. There is no representation for the Respondent. Respondent called absent and set ex-parte. Post the matter on 18th September 2019 for further hearing.*"

(Quoted verbatim)

6. On perusal of the above document, it is clear that notice was issued against the Corporate Debtor, but there was no representation from the Corporate Debtor side. Therefore, the Adjudicating Authority passed an order for publication of notice in the newspaper, and after the publication of notice in the newspaper, when no response was received from the Corporate Debtor, the Adjudicating Authority proceeded ex-parte against the Corporate Debtor.

7. The Corporate Debtor/Appellant had taken the plea that the impugned order was passed Ex-parte. But we find that the Adjudicating Authority had proceeded ex-party, when the Corporate Debtor made no representation, despite, service of notice.

8. Regarding the limitation issue, the Appellant contends that the 'Loan Facility' from Allahabad Bank was availed by the Corporate Debtor in 2008. The account of the Corporate Debtor was classified NPA on 29th August 2012. Therefore, the petition should have been filed within three years from

the date, when the account was declared NPA. Since the petition has been filed beyond the statutory period of limitation, as per Art 137 of the Limitation Act 1963, therefore petition is time-barred.

9. The counsel for the Appellant has placed reliance on the following cases of the Hon'ble Supreme Court.

In the case of ***Vashdeo R. Bhojwani v. Abhyudaya Coop. Bank Ltd.*, (2019) 9 SCC 158: 2019 SCC OnLine SC 1159 at page 159** Hon'ble Supreme Court has held that:

"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.* vs. *Parag Gupta and Associates* [*B.K. Educational Services (P) Ltd.* vs. *Parag Gupta and Associates*, (2019) 11 SCC 633], para 42 of which reads as follows: (SCC p. 664)

"*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."**

Learned Counsel for the Corporate Debtor placed reliance on thecase of ***Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.*, (2019) 10 SCC 572: 2019 SCC OnLine SC 1239 at page 574.** In this case, Hon'ble Supreme Court has held that:

"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 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr Banerjee's reliance on para 11 of *B.K. Educational Services (P) Ltd.* [*B.K. Educational Services (P) Ltd.* vs. *Parag Gupta and Associates*, (2019) 11 SCC 633], suffice it to say that the Report of the Insolvency Law Committee [**Ed.**: Report of the Insolvency Law Committee (March 2018), Ministry of Corporate Affairs, Government of India] 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."**

In the case of ***B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*, (2019) 11 SCC 633 : (2018) 5 SCC (Civ) 528: 2018 SCC OnLine SC 1921at page 656** Hon'ble Supreme Court held that:

> **"30.** Shri Dholakia also referred to and relied upon Sections 60 and 61 of the Contract Act, which are set out hereunder:
>
> > "**60. *Application of payment where debt to be discharged is not indicated***.—Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.
> >
> > **61. *Application of payment where neither party appropriates***.—Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order

of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately."

These sections also recognise the fact that limitation bars the remedy but not the right. In the context in which Section 60 appears, it is interesting to note that Section 60 uses the phrase "actually due and payable to him...." whether its recovery is or is not barred by the limitation law. The expression "actually" makes it clear that in fact a debt must be due and payable notwithstanding the law of limitation. From this, it is very difficult to infer that in the context of the Contract Act, the expression "due and payable" by itself would connote an amount that may be due even though it is time-barred, for otherwise, it would be unnecessary for Section 60 to contain the word "actually" together with the later words, "whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits".

(Quoted verbatim)

Coming to the next argument that, in any case, Section 238-A, being clarificatory of the law and being procedural in nature, must be held to be retrospective, it is necessary to refer to a few judgments of this Court. In *M.P. Steel Corpn.* vs. *CCE* [*M.P. Steel Corpn.* vs. *CCE*, (2015) 7 SCC 58: (2015) 3 SCC (Civ) 510], this Court held: (SCC pp. 97-101, paras 54-60)

"*54.* It is settled law that periods of limitation are procedural in nature and would ordinarily be applied retrospectively. This, however, is subject to a rider. In *New India Insurance Co. Ltd.* Vs. *Shanti Misra* (1975) 2 SCC 840], this Court held: (SCC p. 844, para 5)---

56. **Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the**

commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. *Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation*' law was referred to with approval in *Vinod Gurudas Raikar* vs. *National Insurance Co. Ltd.* [*Vinod Gurudas Raikar* vs. *National Insurance Co. Ltd.*, (1991) 4 SCC 333] as follows: (SCC p. 337, para 7)----------

A perusal of this judgment would show that limitation, being procedural in nature, would ordinarily be applied retrospectively, save and except that the new law of limitation cannot revive a dead remedy. This was said in the context of a new law of limitation providing for a longer period of limitation than what was provided earlier. In the present case, these observations are apposite in view of what has been held by the Appellate Tribunal. An application that is filed in 2016 or 2017, after the Code has come into force, cannot suddenly revive a debt which is no longer due as it is time-barred."

In case of ***Jignesh Shah vs. Union of India*, (2019) 10 SCC 750: (2020) 1 SCC (Civ) 48: 2019 SCC OnLine SC 1254 at page 764** Hon'ble Supreme Court held that:

"*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."----------

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."

10. Thus in the case mentioned above, the Hon'ble Supreme Court has held that for an application U/S 7 or 9 of Insolvency and Bankruptcy Code 2016, Art 137 of the Limitation Act will be applicable. But the said period of limitation can only be extended in the manner provided in the Limitation Act. For example, an acknowledgement of liability under Section 18 of the Limitation Act would certainly extend the limitation period.

11. In reply to the above, the Learned Counsel for the Respondent financial creditor submits that there are various acknowledgements of liability by the Corporate Debtor from time to time, within the meaning by Section 18 of the Limitation Act, and there are also part payments by the Corporate Debtor over the period from 2013 to 2017. Therefore, the period of limitation is extended in the light of Section 19 of the Limitation Act. The Respondent/Applicant has given the details regarding the acknowledgement of liability, which is as follows:

Date of Acknowledgement of Liability	*Mode of Acknowledgements*	*The page Nos. of the Appeal Book where the said OTS letter is available*
26.11.2012	*This is the letter of CD to Allahabad Bank. In this letter, the CD has expressed his commitment and resolve to pay the outstanding dues and regularize the account.*	*215*
01.08.2013 and 04.09.2013	*The CD had filed SA No.123/2013 in DRT, Jabalpur. On 01.08.2013, the DRT had granted an opportunity to the CD to liquidate 25% of the dues of the Bank within 15 days and the remaining dues in 5 equal instalments of 45 days each.*	*219 and 221*

	On 04.09.2013, the said SA was dismissed for non-appearance and non-appearance of the order dated 01.08.2013.	
25.10.2013	*The CD submitted a letter for OTS offering the payment of Rs.13.75 Crores.*	*293*
25.05.2014, 05.06.2014 and 20.06.2014	*The CD had submitted these cheques to the Bank under settlement offer. These cheques also amount to an acknowledgement of their respective dates.*	*294*
13.09.2016	*The CD filed SA No.263/2016 on 13.09.2016 in DRT, Jabalpur. In para 5.5 of the said SA, the CD has stated that they had approached the Bank vide letter dated 25.10.2013 giving their offer to pay the dues of the Bank under OTS. They had offered to pay Rs.13.75 Crores towards a full and final settlement of their liability and had also submitted three post-dated cheques of Rs.5.00 Crores each to show their bonafide.*	*SA is at pages 247-259. Para 5.5 is at page 251*

22.09.2016	*By this letter, CD requested Allahabad Bank to freeze the e-auction process and that in the meanwhile, they are trying to start repayment by the sale of the property to the active buyer.*	*310*
04.03.2018	*By this letter, CD offered the payment of Rs.13.51 Crores towards a full and final settlement of their liability.* *Note: In this letter, the CD has stated that they had offered OTS of Rs.12.50 Crores on 25.01.2018.*	*117-119*
15.10.2018	*The Bank had filed OA No.823/2018 in DRT, Jabalpur for recovery of Rs.28,64,67,561/- which is pending adjudication.*	*320-352*
30.10.2019	*By this letter, CD offered the payment of Rs.22.00 Crores towards a full and final settlement of their liability.*	*48-49*
01.11.2019	*By this letter, CD offered the payment of Rs.25.00 Crores towards a full and final settlement of their liability.*	*51-52*

By the OTS described in letters mentioned above, the Corporate Debtor had offered the payment of varying amounts to Allahabad Bank/Respondent No.2 herein for full and final settlement of their liability and thereby admitted the Jural Relationship of Debtor-Creditor or between them and the Bank. Section 18 of the Limitation Act is given below for ready reference:

*Sec. "**18. Limitation Act 1963***

Effect of acknowledgement in writing.

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement 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 acknowledgement 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 or 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 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.*

Notes:
Introduction. –The section correspondents to Section 19 of the repealed Act IX of 1908 in all respects. It lays down the law as to effect of acknowledgement in writing on the computation of the period of limitation for institution of a suit or making an application."

12. Learned Counsel for the Respondent has further relied on the case-law of Hon'ble Supreme Court in case of ***J.C. Budhraja vs. Chairman, Orissa Mining Corpn. Ltd.*, (2008) 2 SCC 444: (2008) 1 SCC (Civ) 582 on page 456** has held that:

"20. Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgement in writing. Sub-section (1) thereof provides that where, before the expiration of the prescribed period for a suit or application in respect of any right, an acknowledgment of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. The explanation to the section provides that an acknowledgment may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not yet come or is accompanied by a refusal to pay, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the right. Interpreting Section 19 of the Limitation Act, 1908 (corresponding to Section

18 of the Limitation Act, 1963) this Court in *Shapoor Freedom Mazda vs. Durga Prosad Chamaria* [AIR 1961 SC 1236] held: (AIR p. 1238, paras 6-7).

> "*6.* **... acknowledgment as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. ... Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. ... In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly**

excluded but surrounding circumstances can always be considered.

7. **...The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document...."**

13. It is now well settled that a writing to be an acknowledgment of liability must involve an admission of a subsisting jural relationship between the parties and a conscious affirmation of an intention of continuing such relationship in regard to an existing liability. The admission need not be in regard to any precise amount nor by expressed words. If a defendant writes to the plaintiff requesting him to send his claim for verification and payment, it amounts to an acknowledgement. But if the defendant merely says, without admitting liability, it would like to examine the claim or the accounts; it may not amount to acknowledgement. In other words, a writing, to be treated as an acknowledgement of liability should consciously admit his liability to pay or admit his intention to pay the debt. Let us illustrate. If a creditor sends a demand notice demanding payment of Rs 1 lakh due under a promissory note executed by the debtor and the debtor sends a reply stating that he would pay the amount due, without mentioning the amount, it will still be an acknowledgment of liability. If a writing is relied on as an acknowledgment for extending the period of limitation in respect of the amount or right claimed in the suit, the acknowledgment should necessarily be in respect of the subject-matter of the suit. If a person executes a work and issues a demand letter making a claim for the amount due as per the

final bill and the defendant agrees to verify the bill and pay the amount, the acknowledgment will save limitation for a suit for recovery of only such bill amount, but will not extend the limitation in regard to any fresh or additional claim for damages made in the suit, which was not a part of the bill or the demand letter. Again, we may illustrate. If a house is constructed under the item rate contract and the amount due in regard to work executed is Rs two lakhs and certain part-payments say aggregating to Rs 1,25,000/- have been made and the contractor demands payment of the balance of Rs 75,000/- due towards the bill and the employer acknowledges liability, that acknowledgment will be only in regard to the sum of Rs 75,000/-, which is due. If the contractor files a suit for recovery of the said Rs 75,000/- due in regard to work done and also for recovery of Rs 50,000/- as damages for breach by the employer and the said suit is filed beyond three years from completion of work and submission of the bill but within three years from the date of acknowledgment, the suit will be saved from bar of limitation only in regard to the liability that was acknowledged, namely, Rs 75,000/- and not in regard to the fresh or additional claim of Rs 50,000/- which was not the subject-matter of acknowledgment. **What can be acknowledged is a present subsisting liability. An acknowledgment made with reference to a liability, cannot extend limitation for a time-barred liability or a claim that was not made at the time of acknowledgment or some other liability relating to other transactions. Any admission of jural relationship in regard to the ascertained sum due or a pending claim, cannot be an acknowledgment for a new additional claim for damages."**

(Quoted verbatim)

Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgement in writing. Sub-section (1) thereof provides that where, before the expiration of the prescribed period for a suit or application in respect of any right, an acknowledgement of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. The explanation to the section provides that an acknowledgement may be sanctioned though it omits to specify the exact nature of the right or avers that the time for payment has not yet come or is accompanied by a refusal to pay, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the right. Interpreting Section 19 of Limitation Act, 1908 (corresponding to Section 18 of 1963) this Court in **Shapoor Freedom Mazda Vs. Durga Prasad Chamaria (AIR 1961 SC 1238)** held that *"..... acknowledgement as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgement is based must* relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgement must, however, indicate the existence of a jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is

fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended so refer to a subsisting as at the date of the statement. **.....The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document. It is now well settled that a writing to be an acknowledgement of liability must involve an admission of a subsisting jural relationship between the parties and a conscious affirmation of an intention of continuing such relationship in regard to an existing liability. The admission need not be in regard to any precise amount nor by expressed words."**

(Quoted verbatim)

In the decision ***Lakshmirattan Cotton Mills Co. Ltd. vs. Aluminium Corpn. of India Ltd.*, (1971) 1 SCC 67at page 71** the Hon'ble Supreme Court had held that:

> ***"7.*** *The question, therefore, that really arises for our determination is whether the said letter contains an acknowledgment, which its writer, Subramanyam, had the authority, express or implied, to make. Even that question gets reduced in extent and scope as it was never the case of the appellant-company at any stage that the corporation had clothed its Secretary with such authority expressly. Such a case Mr Gupte did not make out even before us and proceeded in fact to argue that the evidence on record showed that he had such authority given to him impliedly.*
>
> ***8. Section 19(1) of the Limitation Act, 1908, provides that where, before the expiration of the period prescribed for a suit in***

respect of any property or right, an acknowledgement 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, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. The expression 'signed' here means not only signed personally by such a party, but also by an agent duly authorised in that behalf. Explanation 1 to the section then provides that an acknowledgment would be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment has not yet come, or is accompanied by a refusal to pay or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right. The new Act of 1963, contains in Section 18 substantially similar provisions.

9. It is clear that the statement on which the plea of acknowledgment is founded must relate to a subsisting liability as the section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgment does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course does not mean that where a statement is made without intending to admit the existence of jural relationship, such

intention should be fastened on the person making the statement by an involved and far-fetched reasoning. *(See Khan Bahadur Shapoor Fredoom Mazda vs. Durga Prasad Chamaria [1962 (1) SCR 140] and Tilak Ram vs. Nathu [AIR 1967 SC 935 at 938, 939]). As Fry, L.J., Green vs. Humphreys [(1884) 26 Ch D 474 at 481] said* ***"an acknowledgment is an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute there must upon the fair construction of the letter, read in the light of the surrounding circumstances, be an admission that the writer owes the debt". As already stated, the person making the acknowledgment can be both the debtor himself as also a person duly authorised by him to make the admission.*** *In Khan Bahadur Shapoor Fredoom Mazda case the Court accepted a statement in a letter by a mortgagor to a second mortgagee to save the mortgaged property from being sold away at a cheap price at the instance of the prior mortgagee by himself purchasing it as one amounting to an admission of the jural relationship of a mortgagor and mortgagee, and therefore, to an acknowledgment within Section 19. Also, an agreement of reference to arbitration containing an unqualified admission that whoever on account should be proved to be the debtor would pay to the other has been held to amount to an acknowledgment. Such an admission is not subject to the condition that before the agreement should operate as an acknowledgment, the liability must be ascertained by the arbitrator. The acknowledgment operates whether the arbitrator acts or not. (See Tejpal Saraogi vs. Lallanjee Jain [CA No. 766 of 1962, decided on February, 8, 1965], approving Abdul Rahim Oosman & Co. v. Ojamshee Prushottamdas & Co. [1928 ILR 56 Cal 639]).*

10. *The letter (Exh. 1) relied on as an acknowledgment was written to the appellant company by Subramanyam signing it "for Aluminium*

Corporation of India Ltd.". It consists of several paragraphs dealing with diverse items relating to different amounts claimed by the appellant-company in a statement of claim previously sent by it to the corporation, some of which are refuted by the writer, while the others are accepted. The penultimate paragraph, which is said to contain the admission, reads as follows:

"After all the above adjustments, the position will be as per statement attached. Interest has been provided on some balances and on others it has not been provided. We request you to confirm the balance of Rs 1,07,477,13.11, so that we may proceed with the calculation of interest and settle your claim once and for all immediately.

Kindly acknowledge this letter and favour us with an immediate reply."

The letter speaks in the last sentence of a copy of it to be sent to Lala Purushottam Dasji Singhania "for information". The copy of the letter, as is clear from the other evidence as also the words "for information" was not sent for approval and was obviously not intended to be subject to such approval by Purushottam Singhania. The statement enclosed with the letter is headed "Account of M/s Lakshmiratan Cotton Mills Co. Ltd." and first sets out the balance of Rs 1,00,760.07 in favour of the appellant-company "as per our ledger", meaning the ledger of the corporation, and the first foot-note thereto states that that amount included interest of Rs, 26,490-11-10 calculated up to March 31, 1943. Several amounts due to other concerns payable to or by the appellant-company are then adjusted and finally the balance is struck at Rs 1,07,447,13.11 [which is the one mentioned in the letter (Exh. 1)], which if confirmed by the appellant-company, the corporation would 'settle' your claim once and for all immediately".

14. As per provision of Section 18(1) of the Limitation Act, acknowledgement generally refers to acceptance or admission of something

that exist hence it can be said that the act uses the "acknowledgement" to mean an admission of existing liability, by which the period of limitation is extended. The question that arises as to what shall constitute, as an acknowledgement of debt under Section 18 of the Act.

15. Admittedly, in this case, the account of the Appellant/Corporate Debtor was classified as NPA on 29th August, 2012 thereafter, demand notice under Section 13(2) of the SARFAESI Act, was issued on 03rd October, 2012. In view of the law laid down by Hon'ble Supreme Court in case of Jignesh Shah (supra), it is clear that period of limitation will be computed from the date when the account of the Corporate Debtor was classified as NPA. Thus, the limitation available for initiation of CIRP under Section 7 or 9 of the I&B Code was available up to 02nd October, 2015. It is also on record that the Corporate Debtor issued OTS/letter of acknowledgement dated 26th November 2012; 01st August 2013; 04th September 2013; 25thOctober, 2013; 25th May 2014; 05th June 2014; 20th June 2014; 13th September 2016; 22nd September 2016; 04th March 2018; 15th October 2018; 30th October 2019 and 01st November 2019. Thus, it is clear that by the OTS described above/letters, the Corporate Debtor had offered the payment of varying amounts to Allahabad Bank/Respondent No.2 for full and final settlement liability and thereby admitted the jural relationship of Debtor- Creditor between them and the bank.

16. Given the provision of Section 18 of the Limitation Act and the law laid down by Hon'ble Supreme Court in case ***J.C. Budhraja the letters of***

acknowledgement/OTS created fresh period of limitation with effect from the date when the OTS/letter of acknowledgement was signed.

17. Since the account of Corporate Debtor was classified as NPA on 29.08.2012 and after that three years period was available as the provision of Article 137 of Limitation Act and within that period on different dates, the Corporate Debtor submitted the OTS letter and acknowledged the liability, on different dates. The chart showing the acknowledgement is given in para 14 of this judgement. The OTS proposal/acknowledgement of debt was given regarding the subsisting liability of the Corporate Debtor. Given the provision of Section 18 of Limitation Act and law laid down by the Hon'ble Supreme Court, on the acknowledgement of liability, afresh period of limitation started. Therefore, it is clear that the petition is not barred by limitation.

18. In this case, it is clear that on the day of filing the petition U/S 7 of the Code, there was a subsisting liability on the corporate debtor, and due to the acknowledgement of debt in writing, though the account of the corporate debtor which was classified as NPA on 29th August, 2012, its validity got extended from time to time by acknowledgement of debt in writing and a fresh period of limitation started after the acknowledgement of debt as per provision of Sec 18 of the Limitation Act.

19. During the argument, the Learned Counsel for the Appellant has assailed the impugned order only on the Limitation point. Based on the discussion as above, we are of the considered opinion that the petition filed

by the Respondent Oriental Bank of Commerce is not barred by limitation.

Hence Appeal is rejected. No order as to costs.

[Justice Venugopal M.]
Member (Judicial)

[V. P. Singh]
Member (Technical)

NEW DELHI
17th FEBRUARY, 2020

pks/nn