**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**Coram:**
**Madan B. Gosavi, Member (Judicial), and**
**Virendra Kumar Gupta, Member (Technical)**

**CP (IB) No. 978/KB/2019**

**In the matter of:**

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

**~ And ~**

**In the matter of:**

**Indian Overseas Bank**, having its Head Office at 763, Anna Salai, Chennai - 600 002 and branch office at Asset Recovery Branch, 3, Chowringhee Approach, Kolkata - 700 072.

**… … … Financial Creditor**

**~ Versus ~**

**Shree Ram Saw Mill Private Limited** [U51909WB1997PTC085985], having its registered office at 67/10, Strand Road, Kolkata - 700 006.

**… … … Corporate Debtor**

Counsels on Record:

1. Mr. Ramesh Ch. Prusti, Advocate
2. Ms. Mahuya Ghosh, Advocate

} For the Financial Creditor

3. Mr. Naseeb Khanjoy, Advocate
4. Mr. MahimSasmal, Advocate

} For Corporate Debtor

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Date of Hearing: 11th March, 2020

Date of pronouncement: 16th March, 2020

**ORDER**

Per Virendra Kumar Gupta, Member (T)

1. This application under Section 7 of IBC, 2016 has been filed by the Financial Creditor namely Indian Overseas Bank to initiate Corporate Insolvency Resolution Process ("CIRP") against Corporate Debtor namely Shree Ram Saw Mill Private Limited as Corporate Debtor has committed default in payment of outstanding debt. The amount claimed to be in default is Rs.66,43,73,975.00 including unapplied interest.

2. The facts, in brief, are that the Financial Creditor granted loan to the Corporate Debtor firstly on 30th July 2002. Subsequently, limits were increased. However, on 24th September 2014 the account became NPA and is still continuing as NPA.

3. The Ld. Counsel appearing on behalf of the Financial Creditor after narrating the facts as stated above, submitted that the moot question in this application was to see whether the debt was barred by limitation or not as question of debt being due and default was not at all in dispute. In support of his claim that debt was not barred by limitation, he stated that Financial Creditor had submitted various proposals from time to time and gave particular reference to letters dated 05/03/2018, dated 17/03/2018, dated 26/07/2018. Thereafter, a query was raised by the Bench that all these letters pertain to a period after expiry of a period of three years from the date of declaration of account as NPA, hence, the requirements of section 18 of the Limitation Act, 1963 were not met. To counter this point, the Ld. Counsel drew our specific attention to letter dated 5th March 2018, wherein Corporate Debtor had referred to its earlier letter dated 11th January 2016, wherein the same proposal had been made. Hence, it was contended that on this basis the requirements of Section of Limitation Act stood satisfied.

4. The Ld. Counsel for the Corporate Debtor, on the other hand, submitted that all the letters were marked "without prejudice" and for this reason the same could not be

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considered as letter of acknowledgement. It was further pleaded that there was a change in Counsel, hence, permission be granted for submission of written notes of argument which was granted.

5. We have considered the submissions made by both sides and material on record. It is not in dispute that Corporate Debtor has written a number of letters wherein a request has been made to restructure the loan. In the letter dated 5th March 2018, a reference of letter dated 11th January 2016 on the same subject has been given. We have also perused the contents of this letter wherein the Corporate Debtor has acknowledged the fact of loan taken, non-payment of the same and request for restructuring of the debt. Thus, from the date of NPA or even considering 90 days period prior to that date, the first letter is well within three years period of expiry of limitation. Thereafter, all letters have been written within a period of three years from the date of letter dated 11th January 2016 and, this being an instance of continuing cause of action, so, the limit for filing of application gets extended accordingly. In view of the matter, we hold that the debt is not barred by limitation. We further consider it pertinent to reproduce our relevant findings in the case of *Asset Reconstruction Co. (I) Ltd. Vs. Raigarh Properties Pvt. Ltd., in CP(IB) No.432/KB/2019, Order dated 27.02.2020,* as under:

> *"9. As regards the nature of acknowledgment, this Bench had dealt with the same in a few decisions on earlier occasions, hence, we consider it pertinent to reproduce the findings given therein as under :*
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> *"..... As regard to the contention that it is time barred, both sides have cited decisions wherein opposite views have been expressed in respect of suit for recovery. Hence, in our considered view, this aspect has to be looked into in the context of IBC 2016. Further, the decision of the Hon'ble NCLAT cited by the Corporate Debtor is not applicable as in that case, the issue was not whether Form C issued by Corporate Debtor amount to acknowledgement of liability or not but the issue was whether issuance of Form "C" amounted to settlement of dispute / claim. Hence, this decision does not come to the rescue of the Corporate Debtor. We are further of the view that in Form C name of the Operational Creditor is mentioned and supply of goods by Operational Creditor and receipt of goods by Corporate Debtor is acknowledged. If the stand of the*

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*Corporate Debtor is accepted, this will amount to unjust enrichment i.e., on one side the Corporate Debtor takes benefit of reduced rate of taxes and on the other side do not want to make payment of money which is due to the supplier of goods. Further, in the absence of the books of accounts/ financial statements it cannot be said that liability to pay has not been disclosed either in financial statements or as contingent liability which should be there because Form "C"s have been issued. It has been further brought to our notice that the Operational Creditor has been awarded work subsequently as well. Hence, considering this fact that in real life situation, small entrepreneurs wait for an amicable settlement of issues so that they can continue to work with the entity of the size of Corporate Debtor as it gives them continuity of business with the said entity and on this basis they also get empanelled for work with other business entities that are as large as the Corporate Debtor and to the extent possible do not take any legal action unless compelled to do so. Considering these facts and contents of Form "C" we are of the view that the issue of Form "C" amounts to acknowledgement of debt / liability in respect of goods supplied by Operational Creditor and received by the Corporate Debtor. As regards to the nature of acknowledgement of debt in terms of explanation (a) of section 18 of Limitation Act, 1963, we reproduce the findings of the Tribunal in the case of Hari Om Transport vs MSP Metallics Ltd. CP(IB) No. 116/KB/2019 Order dated 15.10.2019 wherein the Tribunal held as under :*

*"8. It is not in dispute that the Operational Creditor has supplied material during the Financial Year 2014-15. It is also not in dispute that there were agreed deduction out of the bills raised by the Operational Creditor to the tune of Rs. 12,43,281/- resulting into impugned sum remaining unpaid. It is also noteworthy that thereafter there have been no supplies or payment by the respective parties. As far as Corporate Debtor is concerned the main plea is that the debt is barred by limitation. For this purpose, the e-mail dated 19th April, 2016 has been claimed as not a proper acknowledgement of debt under Section 18 of Limitation Act,1963. It has been claimed so far the reason that the said e-mail was addressed to Baba Gora Transport and not to the Financial Creditor. On perusal of the records, it is noted that the said e-mail is, in fact, has been addressed to mail ID i.e. babagoratransport@gmail.com which is not of the Financial Creditor but statement of account of Financial Creditor has been attached. To express our view about the validity of such e-mail is an acknowledgement of that we consider it necessary to reproduce Section 18 of the Limitation Act, 1963 as under:*

*Section 18(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 time when the acknowledgement was so signed.*

*Section 18(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 (a 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, 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.*

9. *From the perusal of Section 18(1), it is apparent that acknowledgement of liability must be made before expiry of limitation period for filing the suit. If limitation has already expired, it would not revive under section 18. In the present case, last payment has been made in July, 2015 and e-mail has been sent in April, 2016, which is well before the expiry period of three years. Hence, first hurdle is crossed. Now, we have to look whether such e-mail can be construed as acknowledgement of debt as it has been claimed that such mail has not been addressed to the Operational Creditor. From the perusal of the explanation (a) above, it is clear that the claim of the Corporate Debtor is not valid because such explanation clearly states that a communication may be addressed to a person other than a person related to the property or right. The Corporate Debtor has also not been able to produce any record to show that such person was not authorised to send such e-mail.Though such claim has been made, the e-mail ID contains particulars of the Corporate Debtor, hence, it cannot be said that e-mail has not been sent for and on behalf of the Corporate Debtor. Another aspect which needs to be considered is that though said e-mail to statement of account has only sent and no other facts have been mentioned, hence, can it be said to be an acknowledgement of debt. This question again leads us to explanation (a) above wherein it has been stated that an*

*acknowledgement may be sufficient though it omits to specify exact nature of property or right."*

*Further, in case of Trinetra Electronics Ltd. Vs McNally Bharat Engineering Co. Ltd. In CP (IB) No. 1506/KB/2018 Order dated 16.10.2019, Tribunal held as under :*

*"5. We have considered submissions made by both sides and have also perused the materials on record. The question for our consideration arises is that (i) whether debt is barred by limitation or not; (ii) whether the letters dated 29/1/2018 and 30/7/2018 constitute acknowledgement as per provision of Sec.18 of the Limitation Act, 1963. It is not in dispute that these letters have been written by the corporate debtor regarding confirmation of outstanding balance of ICD as on 31/12/2017 and 30/6/2018 as per the books of account of Financial Creditor. The confirmation of outstanding balance is to be given to the statutory auditors of the corporate debtor. This exercise cannot be considered in a light manner because reliance on the accuracy of the books of account and financial statement is based upon such standard auditing practice. In the letter dated 29/1/2018 it has been clearly mentioned that such confirmation was in respect of amounts payable in respect ICD as on 31/12/2017 which by itself establishes the fact of acknowledgement of debt beyond any doubt. To deal with the contention of the corporate debtor that such emails do not constitute acknowledgement of debt within the meaning of provision of Sec.18 of the Limitation Act, 1963, we consider it necessary to reproduce the Sec.18 of the said Act as under:-*

*"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 of its contents shall not be received.*

*Explanation: For the purposes 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, 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*

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*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."*

*From perusal of the explanation (a) to the said section it can safely be concluded that such letters constitute acknowledgement of debt by the corporate debtor, as it is not necessary that the letter should be written to the financial creditor only. It is further noteworthy that explanation (a) takes into its ambit the generally accepted commercial practices of communication between the parties whereby acknowledgement of debt can be inferred as no specific format has been prescribed.*

*8.* ***Having stated so, we also take into consideration the provision of Sec.238A of the Insolvency & Bankruptcy Code, 2016 which is re-produced as under:-***

***"The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."***

***9. Before looking into the ambit and scope of this section, it is stated that this provision was incorporated in Insolvency & Bankruptcy Code, 2016 with the object that stale claims cannot be made alive through the mechanism of Insolvency & Bankruptcy Code, 2016. This is also so because Insolvency & Bankruptcy Code, 2016 is not a recovery mechanism rather a comprehensive code for insolvency resolution old and stale claims cannot be considered as a source or detecting of signs impending insolvency at an early stage. Hence, for this reason also the necessity was felt to make provision of Limitation Act, 1963 applicable to Insolvency & Bankruptcy Code, 2016. It has been settled judicially that Sec.238A is applicable since the implication of Insolvency & Bankruptcy Code, 2016. It is evident that Sec.238A the word "as far as may be" have been used which means that the provisions of Limitation Act, 1963 would apply to the extent possible and any provision of Limitation Act, 1963 being inconsistent to the provisions of Insolvency & Bankruptcy Code, 2016 will not be applicable. Further, the technicalities of Limitation Act, 1963 would not be applicable as Insolvency & Bankruptcy Code, 2016 is an economic legislation and functions on the principles of summary procedure. As discussed earlier that explanation (a) of Sec.18 of Limitation Act, 1963 provides much flexibility and takes into consideration various factors/situations for explaining as to what would constitute acknowledgement and in view of Sec.238 and 238A of the Insolvency & Bankruptcy Code, 2016, such provision has to be read further in conjunction with the wider meaning given to the term "claim" in Sec.3(6) of the Insolvency & Bankruptcy Code, 2016 which includes right to payment even on equitable ground. (Emphasis supplied).***

*10. In view of above discussion, we hold that there is no merit in the claim of the corporate debtor that the said emails cannot be said to be an acknowledgement within the meaning of provision of Sec.18 of Limitation Act, 1963. Accordingly, we reject the same."*

*In the case of Asset Reconstruction Company (India) Ltd. vs. Dagcon (India) Private Limited, Order dated 20/11/2019 in CP(IB) No.1198/KB/2018, the Tribunal held as under:-*

*"11. Coming to the aspect of limitation, we are of the view if averment made before a court of law or any statutory authority cannot be constituted as an acknowledgment of debt then that would render such averment meaningless. Legally such averment bind party making them. Doctrine of estoppel applies without any restriction in commercially and legally. Accordingly, we hold that such statement constitute acknowledgment. In this regard, we further take the assistance of the provision of explanation (a) of Sec.18(1) of Limitation Act, 1963 wherein scope of acknowledgment has been given in a widest possible manner. It is also to be noted that writ petition was filed within a period of 3 years from the date of issue of recall notice and, hence, for this reason also provisions of Sec.18 of the Limitation Act, 1963 are applicable. Even otherwise, in our considered view, such averments made before the Hon'ble High Court amount to promise within the meaning of provisions of Sec.25(3) of the Indian Contract Act, 1872 and, therefore, if such promise is made after expiry of original limitation period also, the limitation period gets extended as condition of acknowledgement before expiration exists only under Sec.18 of the Limitation Act, 1963."*

21. *From the perusal of the above judicial decisions, it may be noted that the explanation (a) of Sec.18 of Limitation Act, 1963 is wide in scope and has to be interpreted in the background of the current commercial environment and in accordance with the nature of proceedings of Insolvency & Bankruptcy Code, 2016".*

Thus, from the perusal of the above decisions, it is apparently clear that such letters constitute acknowledgement in terms of provisions of Explanation A to Section 18 of the Limitation Act, 1963.

*10. As far as reliance placed by the corporate debtor on the decision of the Hon'ble NCLAT in the case of Dena Bank vs. Kavveri Telecom Infrastructure Ltd. is concerned, we find that in that case there is a clear finding that there was nothing on record to suggest that the corporate debtor had acknowledged the debt within 3 years and agreed to pay the debt, whereas in the present case, restructuring of the debt has already been done on 21st March 2013 and now the corporate debtor has acknowledged the fact of such restructuring with a further request to give*

*the corporate debtor additional time and reschedulement of loan. Hence, in our view, this fact is different from the facts of the case relied on by the corporate debtor. In the present case, the aspect whether presentation in balance sheet constitutes acknowledgement of debt/ liability or not is not before us, hence, such observations of the Hon'ble NCLAT in that case do not help the cause of the corporate debtor.*

*11. We further find that in a subsequent decision in the case of Anubhav Anilkumar Agarwal vs. Bank of India, in CP(AT)(Insolvency) No.1504 of 2019, Order dated 07.02.2020, Hon'ble NCLAT itself has held as under:*

> *"If Corporate Debtor has written the letter for due debt, the period of limitation stands shifted to the date on which the Corporate Debtor agreed to pay.*
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> *Bank of India moved an Application under Section 7 of the ICode, pursuant to which, by impugned order dated 26th November, 2019 the Adjudicating Authority (NCLT), Mumbai Bench initiated CIRP against RNA Corp. Pvt. Ltd. (Corporate Debtor), who was the Guarantor. The Appellant has challenged the impugned order on main ground that the Application under Section 7 of the Code was barred by limitation.*
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> *In the present case, the Corporate Debtor by its letter dated 18.03.2016/20.03.2019 has specifically stated that it will make an effort in reducing their outstanding dues and raise other funding to save their Bank account from getting NPA. The last three paragraphs of the aforesaid letter show that to save the Bank Account from getting NPA and citing the good reputation and goodwill, the 'Corporate Debtor' agreed to pay the amount and acknowledged the dues.*
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> *In view of the letter dated 18th March, 2016 written to the Bank, NCLAT has held that the period of limitation stands shifted to the date on which the Corporate Debtor agreed to pay and thus, held that the Application under Section 7 of the Code was not barred by limitation."*

*Thus, the Hon'ble NCLAT itself has reconsidered the issue and decided that such kind of letters / applications constitute acknowledgement of debt within the meaning of the provisions of Section 18 (explanation (a) to Section 18) of Limitation Act, 1963. Thus, in view of the subsequent decision, the case relied on by the corporate debtor is not binding on us.*

*12. Although we have already held that such kinds of letters constitute an acknowledgement of debt. However, considering the general importance of the issue and its recurring nature, we*

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*consider it pertinent to reproduce the findings of the Hon'ble Supreme Court in the case of C. Budhraja v. Chairman, Orissa Mining Corpn. Ltd., (2008) 2 SCC 444: (2008) 1 SCC (Civ) 582 in page 456, as under :*

> *"20. Section 18 of the Limitation Act, 1963 deals with 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 also signed. The explanation to the section provides that an acknowledgement 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 v. Durga Prosad Chamaria [AIR 1961 SC 1236] held: (AIR p. 1238, paras 6-7).*
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> *6. ... 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 gthe acknowledgement 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 fa-fetched process of reasoning. ... in construing words used in the statements made in writing on which a plea of acknowledgement 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. We are further of the view that the contents of letter clearly indicates the existence of jural relationship between the parties such as that of a debtor and a creditor and there is also an admission of the liability of a debt, hence, based on the parameters as set out by the Hon'ble Supreme Court in the aforesaid decision, there remains no iota of doubt that such letter constitutes an acknowledgement. This decision has not been considered by the Hon'ble NCLAT in the aforesaid decision relied on by the corporate debtor, hence, for this reason also, we most humbly submit that the decision of Hon'ble NCLAT relied on by the corporate debtor would not render any assistance to its cause.*

*14. A plea was also taken that such letter was "without prejudice", hence, no significance could be attached thereto. In this regard, we find that this aspect was considered by the Hon'ble Supreme Court in the case of "ITC Limited vs. Blue Coasts Hotel" [Civil Appeal Nos. 2928-2930 of 2018]-MANU/SC/0263/2018. The relevant findings in paragraph 35 of the said decision are reproduced as under:*

*... "<u>Letter of Undertaking "Without Prejudice"</u>*

*"35. Much was sought to be made of the words "without prejudice" in the letter containing the undertaking that if the debt was not paid, the creditor could take over the secured assets. The submission on behalf of the debtor that the letter of undertaking was given in the course of negotiations and cannot be held to be an evidence of the acknowledgement of liability of the debtor, apart from being untenable in law, reiterates the attempt to evade liability and must be rejected. The submission that the letter was written without prejudice to the legal rights and remedies available under any law and therefore the acknowledgement or the undertaking has no legal effect must likewise be rejected. This letter is reminiscent of a letter that feel for consideration in Spencer's case as pointed out by Mr. Harish Salve, "as a rule the debtor who writes such letters has no intention to bind himself further than is bound already, no intention of paying so long as he can avoid payment, and nothing before his mind but a desire, somehow or other, to gain time and avert pressure."*

*It was argued in a subsequent case that an acknowledgement made "without prejudice" in the case of negotiations cannot be used as evidence of anything expressly or impliedly admitted. The House of Lords observed as follows:*

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*"But when a statement is used as acknowledgement for the purpose of s. 29 (5), it is not being used as evidence of anything. The statement is not an evidence of an acknowledgement. It is the acknowledgement."*

*Therefore, the without prejudice rule could have no application. It said: "Here, the respondent, Mr. Rashid was not offering any concession. On the contrary, he was seeking one in respect of an undisputed debt. Neither an offer of payment nor actual payment." We, thus, find that the mere introduction of the words "without prejudice" have no significance and the debtor clearly acknowledged the debt even after action was initiated under the Act and even after payment of a smaller sum, the debtor has consistently refused to pay up."*

*In view of the above findings, we do not find any force in this contention of the corporate debtor.*

*15. The issue on hand can also be looked from other angle, i.e., whether such letter also constitutes a promise to pay within the meaning of Section 25(3) of Indian Contract Act, 1872. It is further to be noted that acknowledgement may not always be a promise to pay as to constitute such acknowledgement as promise to pay, there must be an express/explicit statement to pay. Thus, a promise to pay has element of acknowledgement and in addition to that, there must be an express confession to pay. Thus, considering this legal position as applicable to these letters, in our considered view, it is not merely an acknowledgement of debt but it also constitutes a promise to pay. It is also not in dispute that for the purpose of applicability of provisions of section 25(3) of Indian Contract Act, 1872, no condition of it being made within limitation period exists. Hence, for this reason also, the application filed under section 7 cannot be said to be barred by limitation.*

*16. We are further of the view that explanation (a) to section 18 of Limitation Act is very wide in its scope as such, hence, an acknowledgement is to be construed in that spirit only. Further, no strait jacket formula or format can be prescribed. There have been instances where Sale Deeds, Mortgage Deeds or Gifts Deed have been construed as acknowledgement of debt/liability within the meaning of provisions of section 18 of Limitation Act, 1963. It is also noteworthy that provisions of section 238A further relax the rigours of explanation (a) as provisions of Limitation Act, 1963 are applicable to the extent possible to IBC, 2016. Thus, in our view, considering the scheme of IBC, 2016 and specific provisions of section 3(6), the term 'acknowledgement' is to be read and interpreted in a liberal manner. "*

6. The name of the IRP has been proposed which we approve. The application is otherwise complete and free from defect. We order as under:

**ORDER**

(i) The application filed by the financial creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating corporate insolvency resolution process against the corporate debtor, Shree Ram Saw Mill Private Limited, is hereby admitted.

(ii) We declare a moratorium and cause public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

(iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

(vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

(viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

(x) **Mr. Kanchan Dutta**, IP Registration No. IBBI/IPA-001/IP-P002/2017-2018/10391, Chatterjee International Centre, 17th Floor, Flat No.13A, 33A, J.N. Road, Kolkata - 700 071 is appointed as interim resolution professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

(xi) The Financial Creditor to pay a sum of Rs.3,00,000/-(Rupees Three Lacs only) to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 which shall be adjusted from final bill.

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(xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

(xiii) List the matter on 22nd April, 2020 for the filing of the progress report.

(xiv) Registry is hereby directed under section 7(7) of the I & B Code, 2016 to communicate the order to the Financial Creditors, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.

(xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd/-
16/3/2020

**(Virendra Kumar Gupta)**
**Member (Technical)**

Sd/-
16/3/2020

**(Madan B. Gosavi)**
**Member (Judicial)**

Signed on this, the 16th day of March, 2020.

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