

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1379 of 2024

**[Arising out of the Impugned Order dated 16.05.2024 passed by the
Adjudicating Authority, National Company Law Tribunal, Guwahati
Bench in C.P.(IB) No. 02/GB/2024]**

In the matter of:

IL&FS Financial Services Limited

Through its Senior Manager &
Authorised Signatory

Mr. Keshav Das

Address:

IL&FS Financial Centre 8th Floor
Plot C-22 'G' Block, Bandra Kurla Complex
Bandra (East) Mumbai 400051
India

Also at:

1st Floor, Plot no. 815
Udyog Vihar Phase – V
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...Appellant

Versus

Adhunik Meghalaya Steels Private Limited

Through its Authorized Signatory

Address:

Plot No. 19 23E P I P Zone Byrnihat
Jaintia Hills, Meghalya 793101

...Respondent

Present:

For Appellant : Mr. Krishnendu Dutta, Sr. Advocate with Ms. Niharika
Sharma and Ms. Kiran Sharma, Advocates.

For Respondent : Mr. Ramji Srinivasan, Sr. Advocate with Mr. Swarnendu
Chatterjee (AOR), Mr. Nilay Sengupta, Mr. D.N. Sharma, Mr.
Sujit Banerjee, Ms. Deepakshi Garg and Ms. Harshita Rawat,
Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellant arises out of the Order dated 16.05.2024 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Guwahati Bench) in C.P.(IB) No.02/GB/2024. By the impugned order, the Adjudicating Authority has dismissed Section 7 application filed by the Financial Creditor-Appellant on the grounds of being time-barred. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant- IL&FS Financial Services Limited.

2. Coming to the brief factual matrix, we notice that a Loan Agreement had been executed between the IL&FS Financial Services Ltd.-Financial Creditor and the Adhunik Meghalaya Steels Pvt. Ltd.-Corporate Debtor on 27.02.2015 for a loan of Rs 30 Cr. against which an amount of Rs 24.44 Cr. was disbursed on 17.03.2015. This loan was also secured by way of pledge of 8,10,804 shares of Adhunik Metals Ltd. (**"Adhunik"** in short) in favour of the Financial Creditor. This pledge of share was reflected both in the Charge Form and in the Pledge Agreement. Since the Corporate Debtor failed to repay the outstanding debt in terms of the loan facility documents, the Financial Creditor declared the account of the Corporate Debtor as NPA on 01.03.2018. Subsequently, on 10.07.2018, the Financial Creditor issued a notice of default to the Corporate Debtor and followed it up with a Recall Notice on 10.08.2018. Since the Corporate Debtor did not make good the debt liability, the

Financial Creditor filed a Section 7 application on 15.01.2024 for a claim amount of Rs 55.45 Cr. The Section 7 application was rejected by the Adjudicating Authority on the grounds of being time-barred and assailing the impugned order, the Appellant-Financial Creditor has come up in appeal.

3. We have heard Shri Krishnendu Dutta, Ld. Senior Advocate for Appellant and Shri Ramji Srinivasan, Ld. Senior Advocate representing Respondent.

4. Making his submissions, Shri Krishnendu Dutta, the Ld. Sr. Counsel for the Appellant-Financial Creditor submitted that the Adjudicating Authority has erroneously held that the Section 7 application had been filed beyond the permissible period of limitation of three years. It is submitted that though the Account of the Corporate Debtor had been declared NPA on 01.03.2018, however, as the Corporate Debtor continued to acknowledge their debt liability in their Balance sheets even after the date of default, the period of limitation continued to be extended in terms of Section 18 of the Limitation Act. It was added that the Balance sheet of the Corporate Debtor for FY 2019-20 clearly recorded an amount of Rs 24.41 Cr. under “secured borrowings” which was a clear acknowledgement of liability. Reliance was placed on the judgement of the Hon’ble Supreme Court in ***Vidya Sagar Vs UCO Bank 2024 SCC OnLine SC 2993*** wherein it held that an acknowledgment of debt in a balance sheet constitutes an acknowledgement of liability even if it does not specify the exact nature of the liability or a name of particular creditor. Further attention was adverted to the ratio contained in ***L.C. Mills v. Aluminium Corpn. of India Ltd. (1971) 1 SCC 67*** wherein it held that the statement on which the plea of acknowledgment is founded must relate to a

subsisting liability and indicate the existence of jural relationship between the parties though the statement need not indicate the exact nature or the specific character of the liability.

5. Submission was further pressed that the Adjudicating Authority wrongly calculated the extension of limitation from the date of signing of the Balance sheet by the Corporate Debtor i.e. from 12.08.2020 instead of calculating it from the date it was uploaded on the MCA website i.e. on 14.02.2021. It was asserted that the filing of Balance sheet with RoC serves as the formal acknowledgment of debt by the debtor. Since there was deliberate failure on the part of the Corporate Debtor to file the Balance sheets with RoC in a timely manner, they cannot be allowed to seek benefit on account of their own act of omission in arguing that the limitation period should commence from the date of signing the Balance sheet and not from the date of filing of Balance sheet. The impugned order passed by the Adjudicating Authority was further assailed on the ground that the Adjudicating Authority had erroneously interpreted the order of the Hon'ble Supreme Court delivered in ***Suo Moto Writ Petition(C) No. 03 of 2020*** (hereinafter referred to as the "***suo moto orders***"). The Adjudicating Authority had wrongly applied paragraph 5.III of the *suo moto* orders of the Hon'ble Supreme Court in computing the limitation period. In the instant case, the applicable paragraph is paragraph 5.I of the *suo moto* orders which paragraph specifically provides that the entire period between 15.03.2020 and 28.02.2022 is to be excluded in calculating the limitation period and by applying this yardstick the filing of the Section 7 petition on 15.01.2024 fell

squarely within the limitation period. In support of their contention, reliance was placed on the judgment of the Hon'ble Supreme Court in **Arif Azim Co. Ltd. V. Aptech Ltd. (2024) 5 SCC 313** and **Prakash Corporates v. Dee Vee Projects Limited (2022) 5 SCC 112**.

6. Refuting the contentions of the Appellant, Shri Ramji Srinivasan, Ld. Sr. Counsel for the Respondent submitted that the date of default in the present case is 01.03.2018 and computing the limitation period from this date of default, the three years period for filing the Section 7 application ended on 28.02.2021. Since 28.02.2021 fell within the Covid period, this period was covered by the *suo moto* orders of the Hon'ble Supreme Court. Hence the benefit of Para III of the *suo moto* order would become available and applying para 5.III of the *suo moto* order, the limitation period would be extended by 90 days until 30.05.2022. However, the present petition was filed on 15.01.2024, which was much after the 90 days period allowed under para 5.III. Hence, the Section 7 application was clearly hit by limitation and therefore been correctly dismissed by the Adjudicating Authority as time-barred.

7. It was further contended that even if for arguments sake, the contention of the Appellant is accepted that the acknowledgement of the liability in the balance sheet of the Corporate Debtor of FY 2019-20 extended the period of limitation, even in such an event, since the said balance sheet was signed on 12.08.2020, the three years limitation period would have commenced from 12.08.2020 and the exclusion period under *suo moto* orders does not come to the rescue of the Appellant. As the

Section 7 petition was filed on 15.01.2024, it was clearly hit by limitation. On the stand taken by the Appellant that the trigger point for limitation is to commence not from the date when the Balance sheet was signed but from the date it was uploaded on the MCA Portal and registered with the RoC, it was vehemently opposed by the Respondent as fallacious and bereft of legal basis. In support of their contention, the Respondent has relied on the judgment of the Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Ltd. Vs Tulip Star Hotels Ltd. & Ors in Civil Appeal Nos. 84-85 of 2020*** wherein the Hon'ble Supreme Court held that the Section 7 application filed in that case on 03.04.2018 was within the limitation as it was filed within three years of signing of balance sheet. The Hon'ble Supreme Court took into reckoning the date of signing of balance sheet and not date of filing of balance sheet with MCA. It has been further contended that mere entries in Balance sheet cannot be taken as unequivocal and unqualified acknowledgment of debt particularly so when the name of Financial Creditor is not found to be specifically mentioned in the Balance sheet of FY 2019-20. The admission in a Balance sheet has to be qua the particular creditor for Balance sheet acknowledgement. It has been vehemently contended that the Appellant-Financial Creditor has failed to establish any jural relationship between the Financial Creditor and Corporate Debtor and the ***Bishal Jaiswal*** judgment clearly states that the Adjudicating Authority cannot get into investigations to find out the borrower in respect of whom the credit amount stands reflected in the Balance sheet of the Corporate Debtor.

8. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

9. Considering the facts and circumstances in the present case, the narrow compass for our consideration is to decide whether the Section 7 application filed by the Appellant-Financial Creditor was time-barred or otherwise.

10. Before we proceed to analyse the facts of the present case, it may be useful to draw our attention to the suo moto orders of the Hon'ble Supreme Court on which reliance has been placed by both the rival parties. In the judgement of Hon'ble Supreme Court in ***Re: Cognizance for Extension of Limitation in Suo Motu Writ Petition (C) No. 3 of 2020*** it has been held:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

11. It is the case of the Appellant-Financial Creditor that though the account of the Corporate Debtor had been declared NPA on 01.03.2018 and the date of default of 01.03.2018 on the part of the Corporate Debtor as 01.03.2018 is officially recorded with the Information Utility as also uploaded on NeSL, however, as the Corporate Debtor continued to acknowledge their debt liability in their Balance sheets even after the date of default, the period of limitation continued to be extended in terms of Section 18 of the Limitation Act. Elaborating this standpoint, it was pointed out that the Balance sheet of the Corporate Debtor for the FY 2016-17 acknowledged the loan from the Financial Creditor amounting to Rs 24.57 Cr. secured by the pledge of 8,10,804 shares of Adhunik. The Balance sheet for FY 2017-18 similarly recorded the pledge of same number of shares besides reflecting an amount of Rs 23.68 Cr. under the heading of “secured borrowings”. Though the Balance sheet for FY 2018-19 had not been filed by the Corporate Debtor with the Registrar of Companies (“**RoC**” in short), it was added that the Balance sheet for the subsequent FY 2019-20 recorded an amount of Rs 24.41 Cr. under “secured borrowings”. Since the financial statements of the Corporate Debtor consistently acknowledged the debt owed to the Financial Creditor, the period of limitation got extended each time. These acknowledgements in the financial statements of the Corporate Debtor constituted sufficient basis for extending the period of limitation. Taking into account the extension of the limitation period which was triggered upon by the successive acknowledgement of the debt by the Corporate Debtor in their

Balance sheets, the filing of Section 7 application fell very much within the extended period of limitation.

12. It is also the case of the Appellant that the Adjudicating Authority had erroneously interpreted the *suo moto* orders of the Hon'ble Supreme Court and wrongly applied paragraph 5.III of the *suo moto* orders while computing the limitation period in the instant case. It was submitted that paragraph 5.III of the *suo moto* orders is applicable only in those cases where the original limitation period would have expired between 15.03.2020 and 28.02.2022. In the present case, since the Balance sheet of FY 2019-20 of the Corporate Debtor was filed on 14.02.2021, paragraph 5.III of the *suo moto* order is inapplicable. Instead, the applicable paragraph in the present situation is paragraph 5.I of the *suo moto* orders which paragraph specifically provides that the entire period between 15.03.2020 and 28.02.2022 is to be excluded in calculating the limitation period since the original balance limitation period was more than 90 days available with the Financial Creditor. Wherever a longer period is available, then such longer period would apply. Computed accordingly, the filing of the Section 7 petition on 15.01.2024 fell squarely within the limitation period.

13. Per contra it is the case of the Respondent submitted that the date of default in the present case is 01.03.2018 and computing the limitation period from this date of default, the three years period for filing the Section 7 application ended on 28.02.2021. Since 28.02.2021 fell within the Covid period, this period was covered by the *suo moto* orders of the Hon'ble Supreme Court. Hence only the benefit of Para III of the *suo moto* order would become available and applying para 5.III of the

suo moto order, the limitation period would be extended by 90 days until 30.05.2022. However, the present petition was filed on 15.01.2024, which was much after the 90 days period allowed under para 5.III. Hence, the Section 7 application was clearly hit by limitation and therefore been correctly dismissed by the Adjudicating Authority as time-barred. It was contended that the reliance placed by the Appellant on the ratio of the ***Vidyasagar Prasad*** judgment supra is misconceived since the facts in that case were distinguishable since in that case there was an OTS proposal given by the Appellant which was considered to be an acknowledgement. In the present case, the Corporate Debtor had not only denied the debt but the entries of debt in the Balance sheet also did not specify the lender and therefore no jural relationship of debtor and creditor can be established. It was reiterated that mere entry in the Balance sheet cannot be construed to be acknowledgement of debt if it fails to mention the name of the Financial Creditor specifically. It has also been contended that the charge form filed by the Corporate Debtor was dated 27.02.2015 and since more than 10 years have elapsed this charge form cannot be relied upon either.

14. Having noted the rival submissions of both the parties, we would like to confine ourselves to find out whether the Balance sheets of the Corporate Debtor from 2016-17 onwards constitute sufficient ground for allowing extension of the period of limitation and the applicability of the *suo moto* orders of the Hon'ble Supreme Court.

15. When we look at the material placed on record, we notice that the name of the Financial Creditor appears under the heading of “Secured borrowings” in the balance sheet of F.Y. 2016-17 as may be seen at page 370-371 of Appeal Paper Book (“**APB**” in short). This entry of “Secured borrowings” continues in subsequent balance sheets as well up to F.Y. 2019-20 as at page 558 of APB. We also notice that the F.Y. 2019-20 balance sheet was approved by the Board of Directors and signed by the authorised signatory on 12.08.2020 and uploaded on the portal of MCA on 14.02.2021. It is however also pertinent to note that the Corporate Debtor has contended that unlike in the Balance sheet of FY 2016-17, the name of the Financial Creditor does not appear in the Balance sheet of FY 2019-20. Be that as it may at this stage, we do not wish to enter into the issue as to whether the entries in the Balance sheet of FY 2019-20 clearly established a jural relationship between the Appellant and Respondent as Financial Creditor and Corporate Debtor.

16. It is well settled that if a corporate debtor acknowledges its debt in writing before the expiration of the three-year period, the limitation period would be extended by another three years. This is in conformity with Section 18 of the Limitation Act, which allows for the revival of the limitation period based on the acknowledgment of debt. The question of acknowledgement of liability made in a Balance sheet as acknowledgement of debt has been considered by the Hon’ble Supreme Court in ***Tulip Star supra*** wherein it has been held that balance sheet entry can be regarded as an acknowledgment of liability for the purpose of limitation law. The relevant excerpts from the above judgment is as extracted below:

“83. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgment need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgment must be made before the relevant period of limitation has expired.”

*85. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In **Bishal Jaiswal** (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Calcutta High Court in **Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff**, and **Pandem Tea Co. Ltd.**, the judgment of the Delhi High Court in **South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana** and the judgment of Karnataka High Court in **Hegde Golay Ltd. v. State Bank of India** and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.”*

17. Coming to our analysis, even if the argument of the Appellant is accepted that the acknowledgement of the liability in the balance sheet of the Corporate Debtor of FY 2017-18 extended the period of limitation, even in such an event, since the balance sheet was signed on 02.09.2018, the three years period would have ended on 01.09.2021. Since the date 01.09.2021 fell within the excluded period as provided under the suo moto orders, this would clearly have attracted para 5.III of the suo moto orders and the last date for filing for Section 7 petition would still have been a date on or before expiry of 90 days from 01.03.2022. Thus, the limitation period would have extended until 30.05.2022 and therefore the Section 7 application filed on 05.01.2024 would have been hit by limitation.

18. If we now take the argument canvassed by the Appellant that there is acknowledgement of debt in the balance sheet for FY 2019-20, we notice that the said balance sheet of FY 2019-20 was signed on 12.08.2020, Even in this case, para 5.III of the suo moto orders would have been attracted and the last date for filing of Section 7 petition would have continued until expiry of 90 days from 01.03.2022. Since the Section 7 petition was filed on 15.01.2024, it, therefore, stood clearly time-barred. The Adjudicating Authority has correctly held that the exclusion period under *suo moto* orders does not come to the rescue of the Appellant even in this case.

19. This bring us to the next limb of the argument of the Appellant that the acknowledgement of liability in the Balance sheet for the FY 2019-20 is not to be computed from the date of signing of the Balance sheet but from the date on which the Balance sheet was filed with the RoC. Since the Balance sheet of FY 2019-20 was uploaded in the MCA website on 14.02.2021, the balance sheet could come to notice of the Appellant only on that date and hence this should be the effective date for computing limitation. Therefore, the period of limitation should commence from the date of filing of the Balance sheet before the MCA/RoC and not from the date of signing of the Balance sheet. Computing limitation period from 14.02.2021, the filing of Section 7 application on 15.01.2024 fell very much within the limitation period. It was also asserted that the Corporate Debtor had failed to file the Balance sheets on time with RoC in violation of the statutory obligations under Companies Act, 2013. Since the Balance sheet of FY 2019-20 was filed with the MCA only on

14.02.2021, the Balance sheet came to the knowledge of the Appellant on that date and hence the limitation is to be counted from 14.02.2021. It is the case of the Appellant that no party can be allowed to take undue advantage of their own wrong. The Adjudicating Authority completely missed out on this aspect that the Respondent was trying to take advantage of their own wrong by not filing the Balance sheet on time. Allowing this would enable the Corporate Debtor to evade their repayment obligations under the loan facility. It has been contended that the Balance sheet of FY 2019-20 was filed on 14.02.2021 and hence the filing of the Section 7 petition on 15.01.2024 was well within the limitation period of three years.

20. Per contra, the Respondent has contended that the stand taken by the Appellant that the trigger point for limitation is to commence from the date when the Balance sheet was uploaded on the MCA Portal and registered with the RoC and not from date of signing of the Balance sheet is fallacious. It was vehemently contended by the Respondent that the contention of the Appellant that the date of uploading on the MCA portal is the relevant date indicating acknowledgement for limitation purposes lacks legal basis.

21. This brings before us the moot question as to whether acknowledgment in Balance sheet for the purpose of limitation has to be counted from the date of signing of the Balance sheet or from the date of its uploading with the RoC on the MCA portal.

22. To arrive at our finding, at this stage, we may in the first instance, notice the provision contained in Section 18 of the Limitation Act, 1963 which reads as under:

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“18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation. —For the purposes of this section, —

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

23. A plain reading of the above provision shows that the conditionalities required for attracting Section 18 of the Limitation Act, 1963 are (i) an admission or acknowledgement of liability; (ii) such acknowledgement must be in respect of a property or right; (iii) that the acknowledgement must be made before the expiry of limitation and (iv) that it should be in writing and signed by the party against whom

such property or right is claimed. The Explanation clause thereto, however, provides that an acknowledgment may be sufficient though it may omit to specify the exact nature or the specific character of the said liability. However, the person acknowledging must be conscious of his liability and commitment should be made towards that liability. The plea of acknowledgment must relate to a present subsisting liability and indicate the existence of jural relationship between the parties such as that of debtor and creditor or the intention to admit such jural relationship. Any writing to be an acknowledgment of liability must entail an admission of a subsisting jural relationship between the parties and there should be a conscious affirmation of an intention of continuing such relationship in respect of this existing liability.

24. As to whether the clock of limitation starts ticking again from the date of signing or date of uploading of the Balance sheet, we are guided by the decision of this Tribunal in ***G.S. Buildtech Pvt. Ltd. Vs Ardree Infrastructure Venture Pvt. Ltd. in CA(AT) (Ins) No. 388 of 2021***. In this case, the fresh period of limitation was allowed in respect of Balance sheet for FY ending on 31.03.2017 when the same was signed by the Corporate Debtor on 01.09.2017. Thus, this Tribunal has already held in the affirmative in the above judgment that the acknowledgement of liability in the balance sheet arises once the balance sheet is signed by an authorised signatory.

25. It may be relevant to refer to the relevant portions of ***G.S. Buildtech judgment*** supra which is as under:

“5. The Balance Sheet for the Financial Year 2016-17 having been signed on 01.09.2017 and the above Application having been filed on 20.03.2020, it is well within three years’ period from acknowledgment of debt as claimed by the Appellant. It is now well settled that acknowledgment in the Balance Sheet is sufficient acknowledgment under Section 18 of the Limitation Act, 1963.

We may refer to the judgment of the Hon’ble Supreme Court in **“Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Anr.-(2021) 6 SCC 366”**. After referring to the earlier judgment of the Hon’ble Supreme Court on the question and noticing the provisions of the Companies Act regarding preparation of the Balance Sheets, following was laid down in paragraphs 35 and 40: -

“35. A perusal of the aforesaid Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor’s report may also enter caveats with regard to acknowledgements made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills (supra), that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.

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40. In CIT-III v. Shri Vardhman Overseas Ltd., 2011 SCC OnLine Del 5599 : (2012) 343 ITR 408, the Delhi High Court held:

“17. In the case before us, as rightly pointed out by the Tribunal, the assessee has not transferred the said amount from the creditors’ account to its profit and loss account. The liability was shown in the balance sheet as on 31st March, 2002. The assessee being a limited company, this amounted to acknowledging the debts in favour of the

creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgement in writing. It says where before the expiration of the prescribed period 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 commence from the time when the acknowledgement was so signed. In an early case, in England, in Jones v. Bellgrove Properties, (1949) 2KB 700, it was held that a statement in a balance sheet of a company presented to a creditor-share holder of the company and duly signed by the directors constitutes an acknowledgement of the debt.”

(Emphasis supplied)

26. We are also guided by the judgement of Hon’ble High Court of Andhra Pradesh in **Vijaya Kumar Machinery & Electrical Stores Versus Alaparathi Lakshmikanthamma 1968 SCC OnLine AP 219** wherein it has been held that that the date on which the balance-sheet was signed is material to constitute an acknowledgment. It may be useful to refer to the relevant portions of the said judgment which is as below:

“46. The first of them is that of a Bench of the Madras High Court in *Rajah of Vizianagaram v. Official Liquidator, Vizianagaram Mining Company Ltd.* One of the appeals considered therein was a case of a balance-sheet presented at an annual general meeting of the company. The relevant discussion is contained in paragraph 33 of the said judgment. A certain amount was claimed in the case. The objection as to bar of limitation in regard to the claim, was sought to be got over by relying upon the inclusion of the item in the balance-sheet presented to the annual general meeting of the limited company. The balance-sheet was signed by the agents of the company and it was also found that the amount claimed was included in the balance-sheet. Reliance was placed upon the decision in *Jones v. Bellegrave Properties Ltd.* Therein the Court of Appeal took the view that when a balance-sheet was presented to the annual general meeting, it was an acknowledgment that the debt was due on the date of the annual general meeting. This view of the Court of Appeal was approved and followed by the learned judge of the

Madras High Court. The principle that follows is that the date on which the balance-sheet was signed and presented is also material and that the presentation of the balance-sheet either to the general meeting of the company or to the Income-Tax authorities would constitute an acknowledgment of a subsisting liability as on the date of the signature and presentation of the balance-sheet.

47. *The Punjab High Court also took a similar view in Lahore Enamelling and Stamping Co. Ltd. v. A.K. Bhalla. In paragraph 37 it was laid down as follows:*

"Debts due to creditors not mentioned by name but included in the item relating to 'loans (unsecured)' or as due to 'sundry creditors' mentioned in the balance-sheet amount to an acknowledgment within the provisions of section 19 of the Indian Limitation Act, so as to extend the period of limitation with effect from the date of the signing of the acknowledgment."

48. *In coming to this conclusion, the learned judge of the Punjab High Court relied on the Madras decision in Rajah of Vizianagaram v. Vizianagaram Mining Co. Ltd. Thus, the Punjab High Court also took the view that the period of limitation is extended from the date of the signing of the balance-sheet.*

(Emphasis supplied)

27. Basis the above precedent, we do not find any error on the part of the Adjudicating Authority to have relied on the date of signing of the Balance sheet for extension of limitation period. We therefore do not find any substance in the contention of the Appellant that the period of limitation is to be counted from 14.02.2021. There is no merit in the argument of the Appellant that the Adjudicating Authority had wrongly calculated the extension of limitation from the date of signing of the Balance sheet by the Corporate Debtor i.e. on 12.08.2020 instead of calculating it from the date it was uploaded on the MCA website i.e. on 14.02.2021. There is no mandatory requirement for factorising the date of uploading of the balance sheet on the MCA portal for computing the period of limitation. Having already noted in the preceding paragraphs that the Balance sheet

of FY 2019-20 having been signed on 12.08.2020, the filing of Section 7 petition on 15.01.2024 was clearly time-barred, we do not consider it necessary to dwell upon the question as to whether the entries appearing in the Balance sheet of the Corporate Debtor clearly established a jural relationship between the two parties as debtor and creditor.

28. For the foregoing reasons, we do not find any merit in the Appeal. The Appeal is dismissed and the impugned order is upheld. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**Place: New Delhi
Date: 25.03.2025**

Abdul/Harleen