NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 78 / 2024
(IA. Nos. 226, 227, 228, 1084 & 1182 / 2024)

In the matter of :

Ravi Raman
R/o. 54, Beach Road, Kalakshetra Colony,
Chennai – 600090, Tamilnadu **…. Appellant**

V

1. RR Info Park Private Limited
Having its registered office:
RR Skyline, Ambattur Industrial Estate,
Ambattur, Chennai – 600058 **…. Respondent No. 1**

2. JM Financial Asset Reconstruction Company Limited
Through its Authorised Representative
7th Floor, Cnergy, Appasaheb
Marathe Marg, Prabhadevi,
Mumbai – 400025
Maharashtra **…. Respondent No. 2**

Present:

For Appellant : Mr. Arvindh Pandian, Senior Advocate
For Mr. Kumar Anurag Singh, Mr. Zain A. Khan &
Mr. Shailendran, Advocates

For Respondents : Mr. E. Omprakash, Senior Advocate
For Ms. Abitha Banu, Advocate for R1
Mr. Srinath Sridevan, Senior Advocate
For Mr. Surya Teja Nalla, Advocate for R2
Ms. Sujata Chattopadhyay, RP

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

Per : Justice Sharad Kumar Sharma, Member (Judicial):

1. The Appellant to the instant Company Appeal (AT) (CH) (INS) No. 78 / 2024, who is the Suspended Director of the Corporate Debtor i.e. RR Info Park Private Limited, puts the challenge to the Impugned Order dated 12.12.2023, as it was rendered in IBA / 930 (CHE) / 2019. By virtue of the Impugned Order, the learned Adjudicating Authority had proceeded to admit Section 7 proceedings as against the present Appellant, the Respondent therein, in the Company Petition.

2. The prime question which has been argued by the Learned Counsel for the Appellant is that, as to whether, the proceeding under Section 7 of the I & B Code, 2016, could at all be sustained when the claim, which formed the basis for institution of the proceeding under Section 7 of the Code, is allegedly a Time-barred claim.

3. According to the arguments extended by the Learned Counsel for the Appellant, the date of default is that of 21.05.2013 and since, the proceedings under Section 7 of the Code was initiated, thereafter, in 2019, the same would be barred by Limitation, owing to the bar created by Section 18 to be read with Article 137 of the Limitation Act.

4. The precise facts which are required to be dealt with and which had not been brought to the notice of the Court during the course of the argument by the Learned Counsel for the Appellant is that, according to the pleadings which has

come on record, the Respondent No. 2 claims himself to be the Financial Creditor who had filed the Application u/s 7 of I & B Code, 2016, against the Corporate Debtor which has been admitted by learned Adjudicating Authority on 12.12.2023.

5. It is the case of the Appellant that the Respondent No. 1 i.e. RR Info Park Pvt. Ltd., which is now represented by IRP, availed the financial facility from the Consortium of Banks to the sum of Rs.270 Crores, the breakup of which is the following:

(a) Rs.70 Crores, taken from Oriental Bank of Commerce. It has subsequently been assigned to 2nd Respondent i.e. JM Financial Assets Reconstruction Company Limited;

(b) Rs. 50 Crores, taken from the Indian Bank, which has subsequently been assigned to ARCIL;

(c) Rs. 50 Crores taken from Corporation Bank has now become Union Bank of India, after merger of the two Banks.

(d) Rs.50 Crores taken from Bank of Maharashtra, which has been assigned to the Edelweiss ARC; and

(e) Rs.50 Crores taken from Indian Overseas Bank, which now stands assigned to ARCIL.

6. According to the Respondents, the Respondent No. 1 had created a Security Interest in favour of the Assignor ``Oriental Bank of Commerce'' (expansion), by way of a Memorandum of Deposit of Title Deed (MODT) on 01.06.2007. Based on such MODT, in 2011, the Assignor along with the Consortium of Banks on 03.06.2011, had initiated a proceedings under Section 19 of the Debt Recovery Act, by way of institution of OA No. 121 / 2011 before the DRT III, Chennai, as the Respondent No. 1 / Corporate Debtor, defaulted on loan repayments.

7. The OA No. 121 / 2011 was decided by the DRT - III, Chennai on 13.12.2012 and while allowing the same, the DRT – III, determined the dues payable from Respondent No. 1 to the Assignor, Oriental Bank of Commerce, as Rs.86,28,43,082/- together with the interest on it @ 16% per annum from the date of the order till complete repayment.

8. As a consequence of the aforesaid determination of liability made by the DRT vide its Judgment of 13.12.2012, the DRT - III, Chennai issued a Recovery Certificate on 21.05.2013, bearing No. DRC No. 73 / 2013, carrying a recoverable debt of Rs.107,46,91,420.28/-, along with an interest payable on it @ 16% per annum from the date of issue of the Certificate till completion of recovery / repayment.

9. It would be relevant to point out at this juncture itself, that the date of 21.05.2013, i.e. date on which Recovery Certificate was issued, will be playing

a pivotal role in the instant controversy pertaining to the determination to be made, as to what would be the cut off date, for admission of the claim, for the purposes of initiation of the proceedings under Section 7 of I & B Code, 2016.

10. On 07.03.2014, the Assignor Bank (Oriental Bank of Commerce) assigned the debt of the Respondent No. 1 in favour of the Respondent No. 2, and Respondent No. 2, had intimated the fact of such assignment of the debt in its favour to Respondent No. 1 vide its communication dated 29.04.2014.

11. Other dates, which would be relevant and which has been also canvassed by the learned counsel for the Respondent No. 2, taking them as to be the basis on which the Respondent No. 2 has initiated the CIRP proceedings are the entries which has been made in the Balance Sheets of the Respondent No. 1, pertaining to the Financial Year 2014-15 to 2017-18, where the Respondent No. 1 is shown to have acknowledged the loan liability of the Consortium Banks.

12. In 2019, the Respondent No. 2, brought the Secured Assets through a Public Auction as per the provisions contained under the SARFAESI Act, 2002, on the basis of the Judgment of the DRT dated 13.12.2012 and the Recovery Certificate issued on 21.05.2013.

13. The Respondent No. 1 proceeded to file an Appeal in SA No. 42 / 2019 before DRT – III, Chennai, challenging the auction proceedings, which was initiated on the basis of the issuance of the Recovery Certificate on 21.05.2013.

14. In the said proceedings of SA No. 42 / 2019, where Respondent No. 1 challenged the auction proceedings, he had admitted the liability to Respondent No. 2 and the Consortium of Banks. Simultaneously, to escape from the auction proceedings and to stop it from proceeding further, the Respondent No. 1 deliberately, proposed a `One Time Settlement' for the outstanding liability towards the Consortium of Banks including Respondent No. 2 and offered the proposal of the O.T.S. on 30.01.2019.

15. The Consortium of Lenders rejected the O.T.S. proposal on 06.02.2019, consequent to which, the Respondent No. 2 filed the Application under Section 7 of I & B Code, 2016, on 27.06.2019. When these proceedings were drawn on 27.06.2019, a certain set of events, which have not been brought to the knowledge of this Tribunal by the Appellant, took place thereafter.

16. Firstly, the Respondent No. 1 in February 2020 is said to have approached the Respondent No. 2 herein / Applicant, in the Section 7 proceedings, with a settlement proposal admitting its liability. The Respondent No. 2 herein, with the other Consortium Members, had accepted the said settlement proposal, on 18.03.2020, consequent to which, Respondent No. 2 filed a Memorandum of Compromise with the settlement document, before learned NCLT on 21.12.2020. As a result of the compromise, the learned NCLT, Chennai, by an order of 22.12.2020, had permitted Respondent No. 2 to

withdraw Section 7 Application, with liberty to restore the same in the event the 1st Respondent defaults on payment terms as per the compromise.

17. The order of 22.12.2020, becomes relevant for consideration because, the learned Adjudicating Authority while permitting to withdraw Section 7 proceedings, by the said order, had reserved the rights of the Applicant / Respondent No. 2 herein, that in an event, if the terms of the Memorandum of Compromise dated 21.12.2020, which was offered on 18.03.2020, is not complied with, then it is left open for the Applicant to the proceedings under Section 7 of the I & B Code, 2016, to restore back the proceedings, if Respondent No. 1 commits a default in remittance of the amount, or complying with the terms of the settlement.

18. The Respondent No. 1, defaulted in making payment, as scheduled under the terms of the settlement and the Memorandum of Compromise dated 21.12.2020. Consequently, the Respondent No. 2, filed the Restoration Application before the learned NCLT on the ground that, since Respondent No. 2 has not adhered to the payment schedule as per the terms of settlement on 15.11.2021 and a default has been committed by Respondent No. 1, for the purposes of revival of the proceedings under Section 7 of I & B Code, 2016, by Respondent No. 2.

19. The said application was registered as RST No. 2 of 2022, in IBA / 930 (CHE) / 2019. The said Restoration Application was allowed on 04.03.2022 and

the proceedings were restored back and Respondent No. 1 was admitted to the CIRP, by an order of 12.12.2023.

20. The revival of the proceedings by recall of the order had been in pursuance to the liberty granted by the learned NCLT on 22.12.2020. One aspect which needs deliberation is that, when the request was made for settlement of the dues by way of an O.T.S. proposal, whether it will amount to be an acknowledgment of due, for the purposes of Section 18 of the Limitation Act, for the purpose of action under I & B Code, 2016, and whether the Memorandum of Compromise of 21.12.2020, which was acted upon and formed the basis for passing of the order dated 22.12.2020, will it amount to be a contract to pay the time barred debt under Section 25(3) of the Contract Act.

21. It was further argued by the Respondents that, as soon as there is an Acknowledgment of Debt, either at the time of entering into a Memorandum of Settlement or even at the stage of submission of the one time Settlement Proposal, the said Acknowledgment will be deemed to satisfy the requirements under Section 18 of the Limitation Act, 1963, and it would be sufficient enough for the purposes of invocation of Section 7 of I & B Code, 2016, and that the Limitation ought not to be construed from the date of issuance of the Recovery Certificate i.e. 21.05.2013 which is being insisted upon by the learned counsel for the Appellant who has contended that, since the Recovery Certificate was issued on 21.05.2013, the default will be construed from that date and

accordingly, the CIRP proceedings under Section 7 of the Code, revived on 04.03.2022 and admitted on 12.12.2023, being beyond 3 years from 21.05.2013, would be barred by limitation.

22. The Appellant has contended that the date of default will be 21.05.2013, the date on which the Recovery Certificate was issued and the dues to be paid by Respondent No. 1 was determined to be Rs.198,31,59,760/-, that the Section 7 Application was filed by Respondent No. 2 on 27.06.2019 before the Tribunal, that during the proceedings, the parties have expressed that they are in the process of settlement, and that on 22.12.2020, the matter of settlement was reported to the Tribunal, on the basis of the Settlement Agreement, consequent to which, the Hon'ble Tribunal, had proceeded to close the proceedings, owing to the terms of settlement.

23. Thus, in view of these eventualities and the peculiar facts and circumstances of the case, the admission of default for the purposes of Section 18 of Limitation Act, so far as the Appellant is concerned, at first stage, arose at the time when there was a Recovery Certificate issued by the Debts Recovery Tribunal i.e. on 21.05.2013, being DRC No. 73 / 2013.

24. The learned counsel for the Appellant proceeds to argue that, this date of 21.05.2013, would be taken as to be the cut off date for the purposes of reckoning of default, for the purposes of initiation of the proceedings under Section 7 of I & B Code, 2016, that

the proceedings under Section 7 of I & B Code, 2016, was only revived on 04.03.2022 and was ultimately allowed on 12.12.2023 and that, since both these dates are beyond 3 years from 21.05.2013, the same would be barred by limitation, under Article 137 of the Limitation Act.

25. On the contrary, it has been argued by the learned counsel for the Respondent that, the contentions of the learned counsel for the Appellant is not acceptable for the reason being that, after the determination of the dues to be recovered vide the Recovery Certificate DRC No. 73 / 2013, on the basis of the Judgment of the DRT dated 13.12.2012, the debts were continuously acknowledged in the Balance Sheet entries of 2014 - 2015 to 2017 - 2018, and hence, 21.05.2013 cannot be taken as to be the basis for determining the limitation period for initiation of the proceedings under Section 7 of I & B Code, 2016. Further, the Respondent No. 1 initiated the proceedings of SA No. 42 / 2019, challenging the auction proceedings where he acknowledged the liability and during the pendency of said proceedings, he himself had extended the proposal for O.T.S. for the outstanding liability to the Consortium Lenders on 30.01.2019 which was rejected. Thus, the period from 21.05.2013 till 30.01.2019, would stand waived off, for the purpose of computing limitation, owing to the admission / acknowledgment of liability at different times within this period, especially when the said acknowledgments meet the requirements stipulated under the provisions contained under Section 18 of the Limitation

Act. Further, the admission of liability was acknowledged at various stages, even after filing of Section 7 Application in form of another O.T.S. proposal on 18.03.2020 and settlement agreement on 21.12.2020.

26. For the said purpose, the determination of the implications of Section 18 of the Limitation Act, becomes relevant, which is extracted hereunder:

> *``**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.*
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> *(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.*
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> *Explanation.—For the purposes of this section,—*
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> *(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 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,*
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> *(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and*
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> *(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.''*

27. On a simpliciter reading of the aforesaid provision of Section 18 of the Limitation Act, the cause of action or the reason for initiation of the proceedings would be the acknowledgment of liability at the behest of the Appellant, which in the instant case, took place on 30.01.2019, during the course of the proceedings of SA No. 42 / 2019, where Respondent No. 1 sought to challenge the auction. Subsequent thereto, after the filing of the application under Section 7 of I & B Code, on 27.06.2019, the Respondent No. 1 had approached the Respondent No. 2 and other Consortium Members, with a Settlement Proposal and admitted his liability in his communication dated 18.03.2020, accepting the Settlement Proposal and in the Memorandum of Compromise dated 21.12.2020.

28. In fact, it is based upon this Settlement Proposal of 21.12.2020, that the learned NCLT, thought to be worthwhile to permit 2nd Respondent herein to withdraw the proceedings of Section 7 of I & B Code, because the reckoning of default has been admitted by the Appellant on 21.12.2020 and agreed to repay the amount. Since the order of 22.12.2020, had given liberty to the Respondent No. 2, to revive the proceedings under Section 7 of I & B Code, in case of further defaults, hence, in that eventuality, the start date of the prescribed period of limitation for the purposes of initiation of Section 7 under I & B Code proceedings, would be determined, not from the date of issuance of the Recovery Certificate dated 21.05.2013, but rather, from the date on which the Appellant himself has acknowledged the debt, by entering into a Settlement on

21.12.2020, which formed to be the basis of withdrawal of the CIRP proceedings and its consequential revival by an order passed on a Restoration Application on 04.03.2022. Hence, the proceedings under Section 7 of I & B Code, cannot be held to be time barred by implications of the Limitation Act, contrary to the argument by the learned counsel for the Appellant.

29. The Learned Counsel for Respondent No. 2 has submitted that, the contention of the Appellant, to fix the date of default on 21.05.2013, for the purposes of computing the period of limitation, may not be acceptable as he has been, thereafter consciously and consistently participating in the proceedings till the stage when the settlement was arrived at between them and has been acknowledging the debt due, and hence, the determination of date of default for the purposes of computation of limitation with respect to Application under Section 7 of I & B Code, would be, when the learned Tribunal has reserved the rights of the Respondent No. 2, to revive the proceedings in the event of default by the Respondent No. 1 in remittance of the amount in terms of the Settlement dated 21.12.2020. Hence, the date of default for the purposes of the Section 7 Application which was admitted on 12.12.2023, for all practical purposes would be, when the Appellant has not complied with the condition, which he had agreed to adhere to, in the Settlement of 21.12.2020 and not with effect from the date of the issuance of Recovery Certificate on 21.05.2013 or even from the entries, which were made in the Balance Sheet of 2014-15 to 2017-18. He has

vehemently argued that the Appellant cannot be permitted to take the benefit of his own default, in complying the settlement conditions.

30. The learned counsel for the Respondent had submitted that, the contention of the Appellant, may not be acceptable owing to the aspect of limitation which has been considered in the matters of Dena Bank as reported in 2021 (Vol. X) SCC 330, wherein in Para 139 of the said Judgment, the Hon'ble Apex Court has determined the aspect, as to how the limitation, would be determined where there is a reckoning of the default. The relevant paragraph is extracted hereunder:

> ``***139.*** *Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of one-time settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave [Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd., (2019) 10 SCC 572 : (2020) 1 SCC (Civ) 1] cited by Mr Shivshankar, this Court had no occasion to consider any proposal for one-time settlement. Be that as it may, the balance sheets and financial statements of the corporate debtor for 2016-2017, as observed above, constitute acknowledgment of liability which extended the limitation by three years, apart from the fact that a certificate of recovery was issued in favour of the appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21-3-2019''*

31. The learned counsel for the Respondent has also referred to yet another Judgment as reported in 2022 (Vol. IX) SCC 364 Kotak Mahindra Bank and

Reliance has been placed upon Para 31 of the said Judgment which is extracted hereunder:

> *``31. Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay [Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay''*

32. Basically, the ratio given therein, postulates that a written contract to pay a time barred debt is a valid contract and constitutes as to be the basis, giving a cause of action for initiation of the proceedings under Section 7 of I & B Code, when the default is committed.

33. The instant Company Appeal is placed under identical set of circumstances. Upto the stage of the auction proceedings, which was proposed to be conducted in 2019, the liability is an admitted liability on part of the Appellant and he has admitted the liability committing of default and entered into a settlement promising to pay as per terms of the settlement, then, he does not honour the terms of the said settlement and intentionally commits a recurring default. In such a case, the Appellant cannot be permitted to take advantage of his own default. Therefore, the reckoning of the default has to be made from the date of such compromise or a contract of which Appellant is

Signatory in relation to the amount, which might have been otherwise barred by limitation, and the limitation for the purposes of Section 7 of I & B Code, will have to be construed from the date of the Contract, as it has been settled in the matters of Kotak Mahindra Bank (Supra). In addition, when the Appellant even after 21.05.2013, had been consciously acknowledging the admitted debt, had been participating in the proceedings and has been offering O.T.S. from time to time, he cannot be permitted to refer to the date of issue of Recovery Certificate as date of default and on that basis, to term the proceedings under Section 7 of I & B Code, as to be barred by limitation because, being an Appellate Tribunal, we have to consider the entire contours of the case in its totality where apparently and admittedly the Appellant himself has acknowledged the debt, till the settlement was arrived at on 21.12.2020. Hence, in the light of the ratio of Kotak Mahindra Bank, to be read with the ratio of Dena Bank Judgment, the initiation of proceeding under Section 7 of I & B Code, would not be barred by limitation, which has vehemently been argued by the learned counsel for the Appellant.

34. There is another aspect which has to be considered by this Appellate Tribunal. The learned counsel for the Appellant, has strongly harped upon the entries made in the Balance Sheet for the year 2014-2015 to 2017-2018, where there is no specific amount acknowledged in favour of Respondent No. 2 to prove his contention that since the date of issue of Recovery Certificate i.e.

21.05.2013, he has not acknowledge the dues of Respondent No. 2. The same issue has been dealt by the Hon'ble Apex Court in a Judgment reported in ***2024 SCC OnLine SC 2993 Vidyasagar Prasad v. UCO Bank & Anr.***, where it was dealing with the issue as to when the loan amount has fallen due to be paid and when the proceedings under Section 7 of I & B Code, has been initiated after the acknowledgment of the debt by the Corporate debtor, whether at all, the Corporate Debtor can rely upon the interpretation of Balance Sheet entries to contend that the proceedings are barred by limitation. The answer would be definitely in negative, particularly owing to the admitted circumstances of the instant Company Appeal.

35. The Hon'ble Apex Court in Para 7 of the said Judgment of Vidyasagar Prasad which is extracted hereunder:

> *``**7.** The commencement of a fresh period of limitation from the time of acknowledgment of the debt is part of the statutory scheme. Section 238A of the Code extends the applicability of the provisions of the Limitation Act to the proceedings under the Code. With the extension of the Limitation Act to the provisions of the Code, the benefit of section 18 of the Limitation Act dealing with the effect of acknowledgment of a debt in writing applies. Considering the same issue in Laxmi Pat Surana v. Union Bank of India [(2021) 226 Comp Cas 145 (SC); (2021) 8 SCC 481; (2021) 4 SCC (Civ) 315.] , the court observed [See page 168 of 226 Comp Cas.] :*
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> *"Notably, the provisions of the Limitation Act have been made applicable to the proceedings under the Code, as far as may be applicable. For, section 238A predicates that the provisions of the Limitation Act shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, National Company Law Appellate Tribunal, the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal, as the case may be. After enactment*

of section 238A of the Insolvency and Bankruptcy Code on June 6, 2018, validity whereof has been upheld by this court, it is not open to contend that the limitation for filing application under section 7 of the Insolvency and Bankruptcy Code would be limited to article 137 of the Limitation Act and extension of prescribed period in certain cases could be only under section 5 of the Limitation Act. There is no reason to exclude the effect of section 18 of the Limitation Act to the proceedings initiated under the Code…

Ordinarily, upon declaration of the loan account/debt as non-performing assets that date can be reckoned as the date of default to enable the financial creditor to initiate action under section 7 of the Insolvency and Bankruptcy Code. However, section 7 comes into play when the corporate debtor commits 'default'. Section 7, consciously uses the expression 'default'—not the date of notifying the loan account of the corporate person as non-performing assets. Further, the expression 'default' has been defined in section 3(12) to mean non-payment of 'debt' when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of the non-performing assets but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under section 7 of the Insolvency and Bankruptcy Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under section 7 of the Insolvency and Bankruptcy Code. Further, the acknowledgment must be of a liability in *respect of which the financial creditor can initiate action under section 7 of the Insolvency and Bankruptcy Code."*

(emphasis supplied)

7.1. In Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy [(2021) 15 Comp Cas-OL 558 (SC); (2021) 10 SCC 330.] after reviewing the case law on the subject, this court held [See page 620 of 15 Comp Cas-OL.] :

"While it is true that default in payment of a debt triggers the right to initiate the corporate resolution process, and a petition under section 7 or 9 of the Insolvency and Bankruptcy Code is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of section 238A of the Insolvency and Bankruptcy Code read with article 137 of the Schedule to the Limitation Act, the delay in filing a petition in the National Company Law Tribunal is condonable under section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above sections 14 and 18 of the Limitation Act are also applicable to proceedings under the Insolvency and Bankruptcy Code…

To sum up, in our considered opinion an application under section 7 of the Insolvency and Bankruptcy Code would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as non-performing assets, if there were an acknowledgment of the debt by the corporate debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years."

(emphasis supplied)

7.2. A reference must also be made to a three judge Bench decision in Rajendra Narottamdas Sheth v. Chandra Prakash Jain [(2021) 16 Comp Cas-OL 241 (SC); (2022) 5 SCC 600.] which succinctly observed [See page 253 of 16 Comp Cas-OL.] :

"It is no more res integra that section 18 of the Limitation Act is applicable to applications filed under section 7 of the Code. In case the application under section 7 is filed beyond the period of three years from the date of default and the financial creditor furnishes the required information relating to the acknowledgment of debt, in writing by the corporate debtor,

before the Adjudicating Authority, with such acknowledgment having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained, if filed within this extended period."

(emphasis 3 supplied)

36. As observed, the Balance Sheet has to be prepared in a Statutory format as per the Schedule III of the Companies Act. If the provisions contained under the Schedule III of the Companies Act, is taken into consideration, since, it does not provide for noting down names of each and every Secured or Unsecured Creditor, absence of specific mention of the name of Respondent No. 2 and amount due to him will not alone constitute a ground for the purposes of determining the period of Limitation, for the purposes of drawing the proceedings under Section 7 of the I & B Code, 2016. The said entries with respect to the dues have to be taken in totality; the Balance Sheet entries give the total amount due; the Loan Agreements give individual break-up and the total figure of Rs.270 Crore tallies. Hence, the Balance Sheet entries in the instant case will serve the purpose of being an acknowledgment in writing.

37. It is observed therein that any delay which has chanced in initiation of the proceedings under Section 7 of the I & B Code, 2016, depending upon the facts and circumstances of the case, is not condonable under Section 5 of the Limitation Act, unlike the delay in filing of a Suit. However, Section 14 & 18 of the Limitation Act, will be applicable to the proceedings under Section 7 & 9 of the I & B Code, 2016.

38. Ultimately, in Para 140 of the Dena Bank Judgment, the Hon'ble Apex Court has observed, that the Application under Section 7 of I & B Code, could not be held to be time barred by limitation merely on the ground that, it has been filed beyond the period of 3 years from the date of the declaration of account of the Corporate Debtor as NPA. The relevant Para 138 & 140 of Dena Bank (Supra) are extracted hereunder:

> *``138. While it is true that default in payment of a debt triggers the right to initiate the corporate resolution process, and a petition under Section 7 or 9 IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238-A IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Sections 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.*
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> *140. To sum up, in our considered opinion an application under Section 7 IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgment of the debt by the corporate debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.''*

39. In the aforesaid Judgment of Vidyasagar Prasad (Supra), the Hon'ble Apex Court has also dealt with the ratio which was laid down in ***Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr.*** as reported in ***2021 Vol. 6 SCC 366***. In Para 35 of the said Judgment, it is provided that, the Balance Sheet, no doubt, is a relevant document, but which has to be prepared

in accordance with the III Schedule of the Companies Act, and filing and preparation of the Balance Sheet must be done strictly in accordance with the provisions of the Companies Act is also mandatory, and that in case of any transgression or non-compliance of the statutory procedure of preparation of the Balance Sheet, which has been particularly relied on in the instant case, the entries in the said Balance Sheet, cannot be taken into consideration as to be the basis to contend that the same could be taken, as to be an aspect for determining the limitation for drawing the proceedings under Section 7 of I & B Code. The implications of the Balance Sheet and its legal impact has been considered in Para 35 of the said Judgment of Bishal Jaiswal, which has been extracted hereunder:

> *``**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 acknowledgments 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 [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115] , 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 acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.''*

40. The above said Judgments have laid down principally, that the compulsion of preparation of the Balance Sheet is a statutory mandate and its relevancy and evidentiary value will depend upon the facts and circumstances of the each case and particularly, the Balance Sheets, which are relied upon, for the purposes of deciding a statutory right, or a liability, should have been prepared in accordance with the procedural law and if that is not done, entries therein cannot be taken as to the basis to establish acknowledgment of debt due for the purpose of determination of limitation. In the instant case, Balance Sheet entries acknowledge the total debt due; even if specific mention of Respondent No. 2 is not there, that is deduced from other records placed before us. Hence, Balance Sheet entries commencing from 2014 to 2018 in respect of due to be paid to the Consortium of Banks, thereafter the ***participation in the O.T.S. Proposal and participation in the Memorandum of Compromise***, will constitute acknowledgment in writing by the Corporate Debtor. Further, the last `Acknowledgement' of debt, would be reckoned for the Appellant from the date of compromise and thereafter, admittedly the default has been committed, which has necessitated to file the Restoration Application, for revival of the proceedings, which stood admitted under Section 7 of I & B Code, on 12.12.2023.

41. In that eventuality, the proceedings under Section 7 of I & B Code which has been drawn herein, cannot be said to be barred by limitation, owing to the

ratios as laid down in the Judgment of Dena Bank (Supra) and particularly, owing to the peculiar facts and circumstances of the instant case, wherein there is an admitted contract to pay a time barred debt under Section 25(3) of the Contract Act. There is a very fine distinction, which has been drawn between the `acknowledgment' and `promise'. `Acknowledgment', is relevant for the purposes of determining the period of Limitation under Section 18 of the Limitation Act, while, for the purposes of a `promise', Section 25(3) of the Contract Act, will come into play, which may not be relevant for the purposes of determination of limitation under Section 18 herein. Thus, date of acknowledgment would be determined from the date, when the Settlement was entered into ensuring for remittance of the amount and thereafter when it was defaulted, it was on account of the default committed by the Appellant, despite of the settlement agreement. Because of the default, the proceedings of Section 7 of I & B Code stood revived on 04.03.2020, by filing of the Restoration Application, being Restoration No. 2 / 2022 in IBA No. 930 / 2019, on basis of liberty granted by the learned Adjudicating Authority, and the proceeding is very much within limitation period as it is to be reckoned from date of debt due will have to be the date of the Settlement i.e. 22.12.2020, where the Appellant has acknowledged the debt to be paid to the Respondent under the terms given therein of which he was a signatory. The Appellant cannot take the benefit of his promised defaults, caused recurringly.

42. In view of the aforesaid fact, it is made clear that, for the purposes of determining the limitation in the instant case, it would be the acknowledgment of dues, under the provisions of Section 18 of the Limitation Act, which is relevant and hence, the revival of the proceedings 04.03.2022 under Section 7 of I & B Code, which was left open by the learned NCLT, while permitting the withdrawal of Section 7 of I & B Code proceedings initiated on 27.06.2019 will be taken as to within the limitation period as the cut off date, for drawing the proceedings under Section 7 of I & B Code. Thus, the proceedings under Section 7 of I & B Code will be 22.12.2020 and not 21.05.2013 as contended by the Appellant. Thus, the proceedings under Section 7 of I & B Code, would not be barred by limitation.

43. Thus, we have no hesitation to hold that the proceedings drawn under Section 7 of I & B Code, 2016, owing to a peculiar facts and circumstances of the instant case, is well within the limitation period, because, the ``acknowledgment'' herein for the purposes of limitation, would be determined from the date of Memorandum of Compromise and not from the date of issuance of the Recovery Certificate and thus, the Company Appeal (AT) (CH) (INS) No. 78 / 2024 lacks merit and the same is accordingly dismissed.

44. All pending Interlocutory Applications; except for Exemption Application i.e. IA No. 228 / 2024, would stand disposed of, for the reason being that, the Appellant has filed an Exemption Application being IA No. 228 /

2024 for exemption from filing the Certified copy of the Impugned Order. The exemption has been preferred under Rule 31 and for the purposes of filing of the Appeal under Rule 22 (2) of the NCLAT Rules, the Appeal could be preferred, based on the Certified copy of the Impugned Order. Since, the same has not been supplied even till the date of the final hearing, the Company Appeal (AT) (CH) (INS) No. 78 / 2024, would stand dismissed on this ground too.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

06/01/2025
SR/TM/MS