

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 846 of 2022

[Arising out of order dated 06.06.2022 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench, Court-II in CP(IB) No.345/ND/2020]

IN THE MATTER OF:

**M/s. G.L. Shoes
27, Sulehkul Nagar, Near Maruti Estate Crossing,
Shahganj Bodla Road,
Agra, U.P. 282010**

...Appellant

Versus

**M/s. Action Udhyog Private Limited
98, Shahzada Bagh,
Industrial Area, Old Rohtak Road,
New Delhi – 110 035**

...Respondent

Present:

For Appellant: Mr. Nitin Kaushik, Mr. Mayank Kshirsagar, Ms. Abha Goel, Advocates

For Respondent: Ms. Varsha Banerjee, Mr. Udit Singh, Mr. Kaushik Khetan, Advocates

J U D G M E N T

[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 06.06.2022 (hereinafter referred to as “**Impugned Order**”) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Court-II) in CP (IB) No. 345 (NB)/2020. By the Impugned Order, the Adjudicating Authority

has dismissed the Section 9 application filed by the Operational Creditor-M/s G.L. Shoes (the present Appellant) seeking initiation of Corporate Insolvency Resolution Process (**'CIRP'** in short) against Corporate Debtor-Action Udhog Private Limited (the present Respondent). Aggrieved by this impugned order, the present appeal has been preferred by the Operational Creditor.

2. Making his submissions the Learned Counsel for the Appellant submitted that the Operational Creditor used to supply footwear and related products to the Corporate Debtor/Respondent on the basis of purchase orders received from them. It was also submitted that the invoices stipulated payment to be made 75 days from the date of invoice. Goods were supplied between April – June 2016 and payment fell due on 08.07.2016. The date of default on the part of the Corporate Debtor as submitted by the Appellant is 08.07.2016. The Operational Creditor issued a demand notice to the Corporate Debtor on 02.07.2019 demanding payment of Rs.22.26 lakhs as unpaid operational debt including interest @ 18% per annum. However, the Corporate Debtor did not issue any notice of dispute. The Operational Creditor thereafter filed a Section 9 application before the Adjudicating Authority.

3. The Learned Counsel for the Appellant contended that the Section 9 application was erroneously dismissed by the Adjudicating Authority on grounds of having been barred by limitation. It was submitted that the impugned order took note of date of default to be 08.07.2016 as mentioned in Part IV of the Demand Notice and held that the Section 9 application having been filed on 22.01.2020 which was well after three years from the aforementioned date of default, the same was barred by limitation.

4. It was vehemently contended that the Corporate Debtor had clearly acknowledged the debt in their email dated 05.05.2017 which therefore extended the period of limitation. The Learned Counsel for the Appellant stated that the Adjudicating Authority has erred in holding that acknowledgement of debt by email cannot be accepted on the ground that the statement of account was contained in an external file attachment to the main body of the email and that it was not duly authenticated by the signature of an authorized person and did not bear the company seal. Dilating on the issue of limitation, it was submitted that the Hon'ble Karnataka High Court in the matter of **Sudarshan Cargo Pvt. Ltd. Vs. M/s Techvac Engineering Pvt. Ltd, 2013 SCC OnLine Kar 5063** ('**Sudarshan**' in short) has held that an email acknowledging the debt constitutes a valid and legal acknowledgment of debt, despite the fact that it is not a strictly "signed" document for the purposes of Section 18 of the Limitation Act, 1908. The email, being a legally recognized form of communication under the provisions of Information Technology Act, 2000 (**IT Act** in short), it is a valid acknowledgement under Section 18 of the Limitation Act, 1908.

5. Refuting the submissions made on behalf of the Appellant, it has been strongly contended by the Learned Counsel for the Respondent that the claim of the operational debt is clearly time-barred. It has been contended that the date of default mentioned by the Appellant in Part IV of the application is 08.07.2016 whereas the Section 9 application was filed before the Adjudicating Authority on 22.01.2020. Hence, the application having been filed after three years from the date of default, it was clearly barred by limitation and hence not maintainable.

6. As regards, the plea taken by the Appellant that the application was not hit by limitation since there was an email dated 05.05.2017 from the Corporate

Debtor acknowledging the debt, it was argued that the said email cannot be relied upon to extend the limitation since it was difficult to ascertain beyond doubt to which date the statement of account attached therein belonged to. Buttrressing their argument, it was pointed out that the said email was neither signed by the Corporate Debtor nor sent by any authorized person on behalf of the Corporate Debtor. More importantly, the statement of account attached to the email acknowledging the debt was unsigned and did not carry the stamp and seal of the Corporate Debtor. Hence, in the absence of any date and proper authentication thereof, the authenticity of the external file attachment containing an aged account statement of the Corporate Debtor cannot be ascertained beyond doubt. It was, therefore, argued that the Adjudicating Authority had rightly held that the Company Petition filed before it was barred by limitation.

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

8. We notice that the Corporate Debtor in their reply dated 09.03.2020 to the Section 9 application filed by the Appellant had raised several objections, inter-alia, non-maintainability arising out of the bar created by the Indian Partnership Act, 1932; invalidity of demand notice being in Form III and for not containing date of default; non-receipt of demand notice and non-service with the Information Utility; defective issue of demand notice; etc. We also notice that the Adjudicating Authority in the impugned order has dealt with the above contentions raised by the Corporate Debtor in the context of maintainability of Section 9 application and not being convinced had set aside these grounds. However, on the issue of limitation, it held that the Section 9 application has not been filed within three

years from date of default and in the absence of sufficient material on record to establish extension of limitation period, Section 9 application was dismissed.

9. It is the case of the Appellant that the email of 05.05.2017 from the office of the Corporate Debtor had acknowledged the operational debt. This email was an official communication since the email address saurabhsingh@actionshoes.com was generally used by the Corporate Debtor for corresponding with the Appellant. The said email acknowledged the liability and this mail having been issued before expiry of the limitation period of three years it had extended the limitation period. The Section 9 application was therefore well within limitation period.

10. It is further their contention that in terms of the definition clause contained in Section 2 of the IT Act, an e-mail is a communication addressed to a definite person who is intended by the 'originator' to receive such electronic message/record and the 'originator' means a person who sends any electronic message to any other person. In the present case, it was submitted that the statement of acknowledgment of accounts was sent by email to the Operational Creditor and that this email was transmitted by a person who was duly authorized by the Corporate Debtor without any intermediary. It was further asserted that the captioned subject of the email reads as "Aged Accounts Payable-Milano" which indicates that the purpose of sending the main email was to send a statement of account. This amounted to electronic communication of the statement of accounts of the Corporate Debtor by way of e-mail instead of transmitting by paper-based method of communication and that such electronic mode of transaction is legally recognized under Section 4 of the IT Act, 2000. It was further pointed out that in terms of Explanation to Section 66A of IT Act, 2000, electronic mail or electronic

mail message means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message. Hence, the attachment being part of the main body of email, it enjoyed the sanctity of being an electronic mail.

11. It is also submitted that with digital and new communication systems having become all pervasive, there is rampant use of computers to create, transmit, receive and store information in the electronic form substituting the use of traditional paper documents. It was further submitted that the preamble of the IT Act, 2000 also reinforces the adoption of electronic means of communication. Digital technology facilitates scope for creation, compression, storage, preservation of data and their easy transmission. That being so, if any party acknowledges by way of email that certain amounts are due then it amounts to an acknowledgement of debt. It was also pointed out that Section 18 of the Limitation Act does not provide that the acknowledgment has to be in any particular format and hence the email of 05.05.2017 and the file attachment which had been transmitted electronically must be construed as meeting the requirement of Section 18 of the Limitation Act.

12. This brings us to the counter argument advanced by the Learned Counsel for the Respondent that the issue in question is not whether the communication sent out electronically is legally valid or not but whether an unsigned document sent electronically is admissible and constitutes a valid acknowledgment for the purpose of extending the period of limitation in terms of Section 18 of the Limitation Act. It has also been submitted that the Hon'ble Rajasthan High Court in ***M/s. Babulal Rukmanand vs. The Official Liquidator, Bharatpur Oil Mills***

(Pvt.) Ltd. 1967 SCC OnLine Raj 20 held that unsigned books of accounts/statement of accounts do not constitute a valid acknowledgment under Section 18 of the Limitation Act, 1963. Therefore, any reliance placed on the said email of 05.05.2017 and statement of accounts attached therewith, is non-est in law since the alleged statement is unsigned and not authenticated by the Authorized Representative of the Corporate Debtor. The applicability of this ratio has however been questioned by the Learned Counsel for the Appellant on the ground that the judgment was passed prior to the IT Act, 2000.

13. Analyzing the facts of the present case, we find that the Corporate Debtor had asked the Appellant/Operational Creditor on 23.03.2017 to send their ledger account to one of the officers of the Corporate Debtor as seen at page 228 of Appeal Book. The Appellant responded by sending a reply email on the same date along with an attachment containing statement of accounts as seen at page 230 of Appeal Book. This email was responded to by the Corporate Debtor on 05.05.2017 with the remarks 'FYI' as seen at page 231 of Appeal Book. This email has been held by the Appellant as an acknowledgment of debt on the part of the Corporate Debtor.

14. At this stage it may be useful to notice the findings of the Adjudicating Authority which is to the following effect: -

33. That in order to ascertain the facts, we feel it necessary to visit the email dated 05.05.2017, the scanned copy of which is reproduced overleaf:



Nitin Kaushik <advnitinkaushik@gmail.com>

Fwd: Fw: Fwd: Aged Accounts Payable - milano

GAURAV R <gaurav.r2019@gmail.com>

Sat, Jan 4, 2020 at 6:34 PM

To: advnitinkaushik@gmail.com, Gaurav Rajoriya <gaurav.rajoriya@yahoo.com>

----- Forwarded message -----

From: **Pradeep Chugh** <chugh23@rediffmail.com>
 Date: Sat, 4 Jan 2020, 18:27
 Subject: Fw: Fwd: Aged Accounts Payable - milano
 To: <gaurav.r2019@gmail.com>

Sent from RediffmailNG on Android

From: Pradeep Chugh <pradeep.chugh@mankindpharma.com>
 Sent: Sat, 4 Jan 2020 15:45:41 GMT+0530
 To: "chugh23@rediffmail.com" <chugh23@rediffmail.com>
 Subject: Fwd: Aged Accounts Payable - milano

Get Outlook for Android

From: Ritesh Chugh <glshoesagra@gmail.com>
Sent: Friday, January 3, 2020 5:54:35 PM
To: Pradeep Chugh <pradeep.chugh@mankindpharma.com>
Subject: Fwd: FW: Aged Accounts Payable - milano

FYI,

Regards

Ritesh Chugh / Kunal Chugh
 Mob. 9808973481 / 9319691068
 M/s G.L. Shoes
 27, Sulehkul Nagar, Shahganj-Bodla Road,
 Agra - 282 010 [U.P.]

----- Forwarded message -----

From: <saarabhisingh@actionshoes.com>
 Date: Fri, 5 May 2017 at 10:55
 Subject: FW: Aged Accounts Payable - milano
 To: <madan_sandy2004@yahoo.co.in>, <srilaxmifootwear123@gmail.com>, <glshoesagra@gmail.com>, <abhaymittal1977@gmail.com>, <pushpashoefactory@gmail.com>, <sanjay_madan2004@yahoo.co.in>, <santoshlamos@gmail.com>, Shankar Asrani <shankarasrani@gmail.com>

True copy

<https://mail.google.com/mail/u/0?ik=c7c7f9fcf&view=pt&search=all&permmsgid=msg-f%3A1654802932893000096&simpl=msg-f%3A165480293289...> 1/2

1/21/2020

Gmail - Fwd: Fw: Fwd: Aged Accounts Payable - milano

27

Fyi.

From: Sanjeev Kumar [mailto:sanjeev.kumar@actionshoes.com]
Sent: Thursday, February 02, 2017 2:48 PM
To: saurabhsingh@actionshoes.com
Subject: Aged Accounts Payable - milano

 Aged_Accounts_Payable.xls
28K

Aged Accounts Payable

ACTION UDHYOG PVT. LTD.

Aged as of 2. February 2017

Aged by Posting Date

Vendor: Vendor Posting Group: MILANO

No.	Name	Currency Code	Balance	Aged by Posting Date				
				1 - 30 days	31 - 60 days	61 - 90 days	91 - 120 days	More than 120 days
V0070	KRIPA MANUFACTURER	INR	-1,277,257.62	0.00	0.00	0.00	-289,732.00	-987,525.62
V0078	PERRINIAL INDUSTRIES	INR	-1,052,613.64	0.00	0.00	0.00	0.00	-1,052,613.64
V0084	TRUST ENTERPRISES	INR	-1,029,478.29	0.00	0.00	0.00	0.00	-1,029,478.29
V0305	S. LAMOS SHOES	INR	-1,211,520.79	0.00	0.00	0.00	0.00	-1,211,520.79
V0488	LANDMARK OVERSEAS	INR	-2,405,770.65	0.00	0.00	0.00	0.00	-2,405,770.65
V0490	G.L.SHOES	INR	-1,466,039.60	0.00	0.00	0.00	0.00	-1,466,039.60
V0492	SHREE LAXMI FOOTWEAR	INR	-4,716,526.04	0.00	0.00	0.00	90,535.00	-4,807,061.04
V0493	Madan International	INR	-2,193,281.56	0.00	0.00	0.00	-134,708.74	-2,058,572.82
V0595	Sun Shines Footcare	INR	-807,217.86	0.00	0.00	-319,730.17	0.00	-587,487.69
V0598	MADAN SHOE CO.	INR	-1,395,520.57	0.00	0.00	-343,756.31	-794,272.51	-257,491.75
Total (LCY)			-17,655,226.62	0.00	0.00	-663,486.48	-1,128,178.25	-15,863,561.89

“34. That from perusal of the aforesaid email and attachment annexed therewith, it is observed that the main body of the e-mail does not contain any statement regarding acknowledgement of the debt by the corporate debtor and the attachment relating to Accounts attached therewith is neither signed by any authorized person nor bears the Company Seal. Further, we notice that the Applicant, for the acknowledgement of debt, has referred to and relied on the attachment containing Accounts statement of the Corporate Debtor, which as we have observed, is not duly authenticated.

35. We understand that there is no requirement or scope to sign the main body of the e-mail and at the same time, there is no possibility of tampering the date and time of the main body of e-mail, which is a major factor while considering the issue of limitation. Per contra, if acknowledgement of debt is made basing on the contents of an attachment, which is an external file exported/attached with the mail and if that attachment is not duly authenticated by signature of the authorized person and date or/and Company Seal, it is not possible to ascertain beyond doubt to which date the document is generated or belongs to.

36. Further, sending a communication by way of an attachment with an email can be understood like sending a communication by a virtual speed envelope. At the end, what matters is what is there inside the virtual envelop/ attachment. Just like an unsigned document sent via physical post cannot be construed a valid acknowledgement of debt in terms of Section 18 of the Limitation Act 1963, the same way in today’s technologically advanced world (where with the scanning software available, one can easily ask for / transmit Page 21 of 21 (IB)-345/(ND)/2020 G.L. Shoes Vs Action Udhyog Private Limited a signed and stamped document from one recipient to another without any difficulty), the necessary condition of signing/authenticating a document sent/received as an attachment with an e-mail cannot be

dispensed with for treating it as a valid acknowledgement in terms of Section 18 of the Limitation Act, 1963.

37. Further, the decision of the Hon'ble High Court of Karnataka in the *Sudarshan Cargo Pvt Ltd (Supra)* brings no guidance for us when the acknowledgement of debt is relied upon an external file of the attachment. Hence, the decision would be applicable in a situation, where the acknowledgement of debt is made in the main body of the e-mail and not in case of a document/file sent through an attachment.

38. Hence, the attachment containing accounts statement annexed with the e-mail dated 05.05.2017 without any signature and date or/and Company Seal cannot be held authenticated or valid in terms of Section 18 of Limitation Act for extending the period of Limitation."

(Emphasis supplied)

15. There can be no quarrel over the fact that with digital technology and electronic communication having become common-place, the use of electronic data as an alternative to conventional physical mode of communication is a well-accepted norm in the realm of business practice. Digital technology has transformed nearly every aspect of modern life and has revolutionized communication flow in recent times and this has been reinforced by Section 4 of IT Act, which contains a non-obstante clause.

16. We may take a quick look at the provisions of Section 4 of the IT Act, 2000 which is to the effect: -

"4. Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is:-

- (a) rendered or made available in an electronic form; and*
- (b) accessible so as to be usable for a subsequent reference.”*

17. A plain reading of the above provision makes it clear that the intent of Section 4 of the IT Act is to allow any information which can be transmitted on paper by physical mode to also be henceforth transmitted in electronic form too. In other words, this section recognizes that a document sent and received electronically shall be deemed to have complied with the requirement of sending information in writing. Put differently, documents which were hitherto, transmitted by handwriting or in typewritten/printed form can now be transmitted in electronic form. Be that as it may, Section 4 of the IT Act, 2000 does not expressly or implicitly make any special dispensation for electronic messages. It follows therefrom that the prescribed format or procedural niceties which the paper-based communication is required to follow is ipso facto equally applicable to the electronic messages. We, therefore, agree with the Adjudicating Authority that merely because a document is sent via electronic mode instead of physical mode, the legal and mandatory requirements of authentication of documents will not change and cannot be dispensed away.

18. We also notice that the contents of the email of 05.05.2017 and the statement of accounts as placed at Para 33 of the impugned order shows that the main email merely contains one cryptic word 'FYI'. On a pointed query, it was clarified by the Learned Counsel for the Appellant that the acronym 'FYI' stands for 'For your Information' as is used in common parlance. For the purpose of Section 18 of the Limitation Act, 1963, an acknowledgment must be unambiguous and clear. That it is a matter of no dispute that the statement annexed to the email dated 05.05.2017 does not carry any signature let alone being signed

electronically. Section 18 of the Limitation Act also specifies that the acknowledgment should be in writing and signed by the party against whom such right is claimed though of course the word 'sign' or 'signed' has not been defined in the said section. This requirement is required to be met irrespective of whether it is in electronic or in physical form. Merely because a document is sent via e-mail, the mandatory requirements of Section 18 cannot be exempted.

19. It may be pertinent to observe here that the facts of **Sudarshan** supra are dissimilar to the present case in that in **Sudarshan** supra there was a commitment given to clear and settle all dues which was clearly expressed in the body of main email while in the present case there is no trace of any such element of unconditional acceptance or admission of liability in the main body of the email. Moreover, the statement of accounts having been attached as external file without any signature or authentication cannot be construed as acknowledgment. Furthermore, we are fully conscious of the fact that the Adjudicating Authority only exercises summary jurisdiction in admitting or rejecting the Application under Section 9 of the Code. In view of their limited jurisdiction, disputes of authenticity of the statement of accounts annexed to an email, cannot be adjudicated by the Adjudicating Authority. Hence, the Adjudicating Authority cannot be found to have committed any error in not entering into the issue of authenticity of the statement of accounts.

20. There is substance in the contention of the Respondent that the word 'FYI' therefore cannot be comprehended by any stretch of imagination to be an acknowledgment of debt. We are inclined to agree that by mere endorsement of the words 'FYI', it cannot be said that the Corporate Debtor had acknowledged the liability of operational debt. It may also be pertinent to add here that the Company Appeal (AT)(Insolvency) No. 846 of 2022

Corporate Debtor in their reply has also raised some dispute relating to quality of goods supplied by the Operational Creditor. Given the fact that the debt has not been acknowledged; that a dispute has also been raised on the quality of goods supplied in the Section 9 application and that the veracity of statement of accounts contained in the form of external attachment to the main body of the email has been questioned, we are persuaded to believe that the email of 05.05.2017 cannot be viewed as an acknowledgment of liability on the part of the Corporate Debtor and hence cannot help in extending the period of limitation.

21. In view of the foregoing discussions, we do not find merit in the submissions raised by the Learned Counsel for the Appellant to warrant any interference in the impugned order. We are of the view that the Adjudicating Authority did not commit any error in rejecting the Section 9 application filed by the Appellant on grounds of having been barred by limitation. There is no merit in the appeal. Appeal is dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 24.05.2023

PKM