

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.276 of 2021

IN THE MATTER OF:

**Mr.CH Ravindra Babu
Promoter Director and Shareholder of
Chadalavada Infratech Limited
8-3-988/19, SBH Colony, Near
Satyasai Nigamagamam Srinagar Colony,
Khairatabad, Hyderabad
Telengana – 560 073**

...Appellant

Vs.

**1. State Bank of India
(Financial Creditor)
Stressed Assets Management Branch
Secunderabad Branch, 5th Floor,
Rear Block of HMWSSB Compound
Hyderabad – 500 004**

...Respondent No.1

**2. Chadalavada Infratech Limited (Corporate Debtor)
Represented by Shri G.Madhusudhan Rao
8-3-988, SBH Colony,
Sri Nagar Colony (Post)
Hyderabad – 560 073**

...Respondent No.2

Present:

For Appellant : Mr.P.H.Arvinth Pandian, Sr. Advocate

**For Respondents : Ms. Vidyalakshmi Vipin, Advocate for R1
Ms. Mummaneni Vazra Laxmi, Advocate for R2**

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The Appeal has been filed by the Appellant under Section 61 R/w Section 7 of the 'Insolvency and Bankruptcy Code 2016' (the Code) against the impugned order dated 23.09.2021 passed by the 'National Company Law Tribunal, Hyderabad Bench' (the Adjudicating Authority) in CP No. 1/7/HDB/2020.
2. The impugned order was passed on 23.09.2021 by the Adjudicating Authority and certified copy was received by the Appellant on 30.09.2021 and the Appeal has been filed before this Tribunal on 26.10.2021.
3. The Appellant is the Promoter, & Director of the Corporate Debtor(CD) – M/s Chadalavada Infracore Limited. The 1st Respondent - Financial Creditor is a State bank of India and the 2nd Respondent is a Resolution Professional (RP) representing the CD which has been admitted into CIRP vide the above stated order.
4. The Appellant has sought the following reliefs:
 - a. To allow the Appeal and set aside the impugned order dated 23.09.2021 passed by the National Company Law Tribunal, Hyderabad Bench in CP(IB) No. 1/7/HDB/2020.

- b. To set aside the commencement of Corporate Insolvency Resolution Process initiated against the Corporate Debtor and appointment of the Interim Resolution Professional and all actions taken further to the impugned order dated 23.09.2021 etc.
5. The 1st Respondent -SBI has filed the petition under Section 7 of the Code stating that the CD has availed a loan facility for an amount of Rs.281.23 Crore. The CD was unable to repay the loan and the SBI in accordance with relevant banking provisions declared the loan facilities as 'Non-Performing Assets' (NPA) due to failed restructuring and date of default is 15.04.2011. As per Form-1 Part-IV, the amount claims to be in default is Rs.216,95,55,314.55 and date of default as stated in Form-1 is 15.04.2011 as per the Part-IV of the Form-1 of the Application filed by the SBI and appearing at page 44 of the Appeal Paper book.
6. The particulars of security held and certificate of registration of charges issued by ROC is stated in Form-V appearing at page 45 to 47. For brevity and clarity, the same is depicted below:

4.	Details of Succession Certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (Attach a copy)	Not Applicable
5.	The latest and complete copy of the financial contract reflecting all amendments and waivers to date (attach a copy)	Not Applicable
6.	A record of default as available with any credit information company	
7.	Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) (Attach a copy)	
8.	List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default	1. Sanction Letter dated 10.05.2014 for total limits of Rs. 157,27,00,000/- (Rupees One Hundred Fifty Seven Crores Twenty Seven Lakhs Only); 2. Letter from Corporate Debtor acknowledging sanction of loan bearing reference No. CIL/SAMB/2014-15/05-2 dated 12.05.2014; 3. Restructuring Package Agreement dated 24.05.2014; 4. Letter regarding grant of individual limits within overall limits dated 24.05.2014; 5. Link letter dated 24.05.2014; 6. Pledge Agreement dated 28.11.2014; 7. Board Resolution of the Corporate debtor dated 24.05.2014; 8. Board Resolution of the Corporate debtor dated 14.07.2014; 9. Sanction Letter dated 24.12.2015 for total limits of Rs. 281,23,00,000/- (Rupees Two Hundred Eighty One Crores Twenty Three Lakhs Only); 10. Supplemental Agreement of Loan dated 03.02.2016 for increase in the overall limit of Rs. 281,23,00,000/-

	(Rupees Two Hundred Eighty One Crores Twenty Three Lakhs Only);	
	11. Supplemental Agreement of Hypothecation of Goods and Assets dated 03.02.2016 for increase in the overall limit for Rs. 281,23,00,000/- (Rupees Two Hundred Eighty One Crores Twenty Three Lakhs Only);	9
	12. Restructuring package agreement dated 03.02.2016;	
	13. Letter of Consent dated 03.02.2016;	
	14. Letter regarding grant of individual limits within overall limits dated 03.02.2016;	
	15. Omnibus Counter Guarantee dated 03.02.2016;	
	16. Board Resolution of the Corporate Debtor dated 28.12.2015;	
	17. Letter dated 19.09.2018 by Corporate Debtor addressed to Financial Creditor requesting favourable consideration of OTS proposal bearing reference number CIL\SAMB\2018-19\09\01;	
	18. Notice under Section 13(2) of the SARFAESI Act, 2002 dated 26.09.2017;	
	19. Letter dated 09.11.2018 by Corporate Debtor addressed to Financial Creditor requesting favourable consideration of OTS proposal bearing reference number CIL\SBI\2018-19\11\01;	
	20. Letter dated 09.11.2018 by Corporate Debtor addressed to Financial Creditor requesting favourable consideration of OTS proposal bearing reference number CIL\SBI\2018-19\11\02;	
	21. Letter dated 15.07.2019 by Corporate Debtor addressed to Financial Creditor requesting favourable consideration of	

	OTS proposal bearing reference number CIL\SBI\2019-20\07-01; 22. Search Report of the Corporate Debtor dated 26.10.2019.
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(10)

State Bank of India has paid the requisite fee for this application through _____.

COUNSEL FOR THE APPLICANT

Yours sincerely

Signature of person authorized to act on behalf of the financial creditor	For STATE BANK OF INDIA  ASST. GENERAL MANAGER SAMPB, Secunderabad.
Name in block letters	J.VIJAYA KUMAR
Position in relation to the financial creditor	Assistant General Manager
Address of person signing	Stressed Assets Management Branch Secunderabad, Door No.6-2-915, 5 th Floor, Rear Block, HMWSSB Compound, Khairthabad, Hyderabad-500 004.



7. The above stated details reflect the details of sanctioned letter dated 10.05.2014 and restructuring 'Package Agreement' dated 24.05.2014 and other supplementary agreements and letter of consents apart from omnibus counter guarantee. It is also stated that the CD vide its letter dated 19.09.2018 and 15.07.2019 has requested SBI/Financial Creditor for favorable consideration of its OTS facilities and other OTS related letter.

8. The Ld. Sr. Counsel for the Appellant has stated that the CD was declared NPA on 15.04.2011 whereas the Financial Creditor/SBI has filed an application before the Adjudicating Authority under Section 7 of the Code on 25.11.2019 and hence this is hopelessly time barred under the relevant provisions of the Limitation Act, 1963. It was fairly stated by the Ld. Sr. Counsel for the Appellant that the Financial creditor/SBI has justified its proposal for not being falling under the trap of limitation Act as the CD has provided OTS proposal to the Financial Creditor on 19.09.2018, 09.11.2018 and 15.07.2019 and the same amounts to acknowledgment of Debt under Section 18 of the Limitation act, 1963. What the Ld, Sr. Counsel for the Appellant has stated that the date of default on 15.04.2011 is undisputed and the Financial creditor itself has stated the reason due to failed restructuring as appearing at page 45 of the Appeal Paper book.
9. The ld. Sr. Counsel for the Appellant has stated that their case is falling under the Limitation Act as even the acknowledgment of debt has been provided after the expiry of limitation period i.e. within three years from the date of default which lapses on 15.04.2015 and all the letters or correspondences for OTS proposals are started from 2018 onwards. It was also fairly stated by the Ld. Sr. Counsel for the Appellant that the Financial Creditor has shifted its reliance from the acknowledgement of debt based on OTS proposal to the Financial Statement of the CD as on 31.03.2018

reflecting the debt outstanding towards the financial creditor/ SBI. However, the Financial creditor has not placed the same before the Adjudicating Authority nor this Tribunal. If it is looked from otherwise the acknowledgment of financial statements for the year 2018 will still miserable failed to establish within the purview of the Limitation Act considering that the limitation period ended on 14.03.2014. The Appellant has relied upon the various judgment as depicted below:

- B.K.Educational Services Pvt. Ltd. Vs. Parag Gupta and Ors. MANU/SC/1160/2018 para 12 to 22, 30 & 34 to 42
- BabulaVardharjigurjar V.Veer GujarAluminium Industries Pvt. Limited & Ors. AIR 2000 SC 4668 paras 20 to 32, 35, 35.1, 38.1, 39.1, 39.3 & 40
- V.Hotels Limited Vs. Asset Reconstruction Company India Limited 2019 SCC Online NCLAT91 paras 17 to 28
- Sumeet Maheshwari V.Navbharat Press (Bhopal) Pvt. Ltd. and Ors. MANU/NL/0253/2020 paras 19, 23 to 25
- Stressed Asset Stablization Fund Vs. Royal Bushes Pvt. Ltd. NCLAT New Delhi, Comp.Appeal (AT) (Ins) 949 of 2020 para 3 to 6
- UCO Bank Vs. Degree Orchards Pvt. Ltd 2020 SCC Online NCLT 662. Para 12 to 21

Based on the above submissions, the Ld. Counsel for the Appellant is seeking the relief of allowing the present appeal and setting aside the impugned order dated 23.09.2021 passed by the Adjudicating Authority and other consequential actions etc.

10. The Id. Counsel for the Respondent No.1/ Financial Creditor has submitted that the CD is not disputing that the credit facilities was not sanctioned and also admitting that the bank has sanctioned the credit facility on the request of the CD and thereby the admission of debt and extending the period of limitation is beyond doubt accepted by the Appellant. It was also stated by the Ld. Counsel for the Respondent No.1 that after the account of the Corporate Debtor was declared NPA on 15.04.2011, the Corporate Debtor vide letter dated 18.07.2011 requested the SBI/Respondent No.1 to allow it to operate the accounts within Rs. 1,85,29,00,000/-, while acknowledging its liability. Subsequently, the Corporate Debtor vide letter dated 24.12.2013, had requested the SBI/Respondent No.1 for restructuring the account. Thereafter a rehabilitation package was granted by the SBI/Respondent No.1 on 10.05.2014. A Restructuring Package Agreement was entered on 19.12.2015. Thereafter vide Sanction letter dated 24.12.2013 additional credit facilities were granted and limits were enhanced. A Restructuring Package Agreement was entered on 03.02.2016. Subsequently a Demand Notice on 26.09.2017 under Section 13(2) of SARFAESI Act, 2002 was sent to the Corporate Debtor' Thereafter, Corporate Debtor had vide letters dated

19.09.2018, 09.11.2018 and 15.07.2019 submitted One Time Settlement (OTS) proposals with the SBI/Respondent No.1. It is submitted that there has been an acknowledgement by the corporate Debtor withing three years from date of account of the corporate Debtor being declared NPA and the acknowledgement continued from time to time which is also evident from the OTS proposal submitted by the corporate in 2018 and 2019 which would be an acknowledgement within the meaning of Section 18 of Limitation Act, giving the fresh period of limitation for filing an application under section 7, of the Code. Therefore, the application filed under Section 7 of the Code is within the period of limitation. It is submitted that this Appellate Tribunal, Principal Bench in Mr. Gauri Prasad Goenka Vs. Punjab National Bank & Anr. (Company Appeal (AT) (Ins) no. 28 of 2019) has held, as given below, that OTS is clear acknowledgement of debt:

“10. That apart, there is acknowledgement of the outstanding debt on the part of the Corporate Debtor, a fact not disputed by the Corporate Debtor. This comes to fore from the letter dated 04th August, 2018 emanating from the Corporate Debtor and addressed to the Financial Creditor wherein the Corporate Debtor agreed to settle all outstanding dues of the Financial Creditor on OTS basis (refer pages 692-693 Vol.III of the Appeal Paper Book). This is a clear acknowledgment of the outstanding debt in writing and the Corporate Debtor cannot wriggle out of the

liability so acknowledged. It is not in controversy that on the date of such acknowledgement, the debt was not time barred and the Insolvency Resolution Process was triggered within the period of limitation in terms of Article 137 of the Limitation Act, computed for such date...”

11. It is also submitted by the SBI/Respondent No.1 that Hon’ble Apex Court in *Innoventive Industries Ltd Vs. ICICI bank & Anr* (Civil Appeal Nos. 8337-8338 of 2017), it has held that:

“28. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

12. It is also submitted by the SBI/Respondent No.1 that Hon'ble Apex Court in Asset Reconstruction Company Vs. Bishal Jaiswal and Anr. (Civil Appeal No. 323 of 2021) has held that for the purposes of Insolvency and Bankruptcy Code, 2016 Balance Sheet entries could constitute an acknowledgement of debt under Section 18 of the Limitation Act, 1963:

Section 18 of the Limitation Act is applicable to the IBC by virtue of Section 238A of the IBC

Relying on the recent judgments of the Supreme Court in Sesh Nath Singh (2021 SCC Online SC 244) and Laxmi Pat Surana (2021 SCC Online SC 267), the SC observed that the rationale for introducing Section 238A of the Code is to make the Limitation Act applicable to proceedings under the Code "as far as may be". It was stated that there is no reason why Section 18 of the Limitation Act would be excluded from being applicable to the Code, provided that the acknowledgment of debt is made before expiry of limitation.

13. It is also submitted by the SBI/Respondent No.1 that Hon'ble Apex Court in Laxmi Pat Surana Vs. Union of Bank of India & Anr. (Civil Appeal No. 2734 of 2020) has held that Section 18 of the Limitation Act applies to extend the period of limitation for filing an application under Section 7 of the Code.:

“37. Ordinarily, upon declaration of the loan account/ debt as NPA that due can be reckoned as the date of default of enable the financial creditor to initiate action under section 7 of the Code. However, Section 7 comes into play when the CD commits “default”. Section 7, consciously uses the expression “default”- not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of debt when whole or nay 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 NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgements, 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 Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (CD), 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 Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code.”

14. It is also submitted by the SBI/Respondent No.1 that Hon’ble Apex Court Judgment of Dena Bank (Now bank of Baroda) Vs. C.Shivakumar Reddy & Anr. (Civil Appeal No. 1650 of 2020) delivered on 04.08.2021, the Hon’ble Apex Court, while deciding on the issue, “Whether a petition under Section 7 of the Code would be barred by limitation, on the sole 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, even though the CD may have subsequently acknowledged the liability held that:

“114. In Sesh Nath Singh and Anr. v. Baidyabati Sheoraphuli Cooperative Bank Ltd. (supra) this Court, speaking through one of us (Indira Banerjee J.) held that the IBC does not exclude the application of Section 14 or 18 or any other provision of the Limitation Act. There is therefore no reason to suppose that Sections 14 or 18 of the Limitation Act do not apply to proceedings under Section 7 or Section 9 of the IBC.

116. In Asset Reconstruction Company (India) Limited. v. Bishal Jaiswal and Anr. (supra) where this Court speaking through Nariman J. relied, inter alia, on Sesh Nath Singh (supra) and Laxmi Pat Surana (supra) and held that the question of applicability of Section 18 of the Limitation Act to proceedings under the IBC was no longer res integra.”

15. The SBI/Financial creditor/ R1 has also stated that the CD has informed the Bank that in June 2019 there was a steep rise in the three

properties in comparison to February/March, 2019 and the total fresh value for the three properties are as follows:

- A. Fair market value Rs. 86.23 crore
- B. Realizable value of Rs.73.29 Crore
- C. Distress sale value of RS. 60.36 crore.

16. The CD has requested that vide its letter dated 15.07.2019 to consider favorably CD exit route through OTS amount of Rs.53 core against the realization value of 73.29 crore by increasing our offer from Rs.45 crores. The CD also requested the Bank /FC to adhere to the one-time settlement proposal and to permit to pay balance amount over a period of six months from the date of approval given by the Bank. It was also stated by the R1 that the Appellant raised the question of limitation rehabilitation letter issued by them and part payment paid by them satisfies the requirement in question of limitation. As the said letter and payment has been made in the period of 2011-12 and the letter 2013 which is admission of debt in itself will satisfy the question of limitation. It is pertinent to note the link letter and this Restructuring Agreement has been signed by the CD and that the CD has never challenged these two documents. The Bank has also attached with the Written Submission Statement of transaction for Account No.:30043104575 (appearing at page no. 94 of the Written Submission of Respondent No.1) for the period from

02.04.2011 to 13.05.2015. For clarity, extract of first page of the statement appearing at page 94 and the last page of transaction (appearing at page 129 of the Written Submission of Respondent No.1) is extracted below for a clarity :

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State Bank of India, Branch: 04106

Statement of transactions for A/c No: 30043104575

Date	Description	BrCd	Withdrawal	Deposit	Balance
02-04-11	DISHONOUR CHEQ	3098	100.00		-574154793.36
02-04-11	DISHONOUR CHEQ	3098	100.00		-574154893.36
02-04-11	DISHONOUR CHEQ	3098	100.00		-574154993.36
05-04-11	DISHONOUR CHEQ	3098	100.00		-574155093.36
05-04-11	DISHONOUR CHEQ	3098	100.00		-574155193.36
05-04-11	TRF TO 0098343030980 /: 0505510LU0001789 01308202000001TF85015690143	5055	3325.00		-574158518.36
05-04-11	TRF TO 0098741030987 /: 0505510LU0001789 01308414000001TF85015690143	5055	75.00		-574158593.36
05-04-11	TRF TO 2399963050550 /: 0505510LU0001789 01308000000014TF85015690143	5055	1330139.00		-575488732.36
05-04-11	TRF TO 0098343030980 /: 0505510LU0001604 01308202000001TF85015690143	5055	3472.00		-575492204.36
05-04-11	TRF TO 0098741030987 /: 0505510LU0001604 01308414000001TF85015690143	5055	75.00		-575492279.36
05-04-11	TRF TO 2399963050550 /: 0505510LU0001604 01308000000014TF85015690143	5055	1388664.00		-576881143.36
05-04-11	TRF TO 0098343030980 /: 0505510LU0001786 01308202000001TF85015690143	5055	27231.00		-576908374.36
05-04-11	TRF TO 0098741030987 /: 0505510LU0001786 01308414000001TF85015690143	5055	75.00		-576908449.36
05-04-11	TRF TO 2399963050550 /: 0505510LU0001786 01308000000014TF85015690143	5055	10892476.00		-587800925.36
05-04-11	TRF TO 0098343030980 /: 0505510LU0001788 01308202000001TF85015690143	5055	11170.00		-587812095.36
05-04-11	TRF TO 0098741030987 /: 0505510LU0001788 01308414000001TF85015690143	5055	75.00		-587812170.36
05-04-11	TRF TO 2399963050550 /: 0505510LU0001788 01308000000014TF85015690143	5055	4467977.00		-592280147.36
05-04-11	TRF TO 0098343030980 /: 0505510LU0001773 01308202000001TF85015690143	5055	25981.00		-592306128.36
05-04-11	TRF TO 0098741030987 /: 0505510LU0001773 01308414000001TF85015690143	5055	75.00		-592306203.36
05-04-11	TRF TO 2399963050550 /: 0505510LU0001773 01308000000014TF85015690143	5055	10392500.00		-602698703.36
05-04-11	TRF TO 0098343030980 /: 0505510LU0001772 01308202000001TF85015690143	5055	69851.00		-602768554.36
05-04-11	TRF TO 0098741030987 /: 0505510LU0001772 01308414000001TF85015690143	5055	75.00		-602768629.36
05-04-11	TRF TO 2399963050550 /: 0505510LU0001772 01308000000014TF85015690143	5055	27940394.00		-630709023.36
05-04-11	TRF TO 0098343030980 /: 0505510LU0001777 01308202000001TF85015690143	5055	7827.00		-630716850.36

State Bank of India, Branch: 04106

Statement of transactions for A/c No: 30043104575

Date	Description	BrCd	Withdrawal	Deposit	Balance
22-11-14	TRF TO 0032715446037 /TR TO CA VIDE APPROVED NOTE DT.22.11.14		4000000.00		-201528784.06
10-12-14	TRF FROM 3199860044304 /RTGS SBHYR52014121000739630 MAHARASHTRA STATE ELEC	4430		1403776.00	-200125008.06
16-12-14	TRF TO 0020095397868 /PAID T ADVOCATE SRIKANTH REDDY/OA CP NO.20/2013		19660.00		-200144668.06
19-12-14	CREDIT /TR FROM 11205375239	6756		7285254.00	-192859414.06
22-12-14	TRF TO 0032715446037 /TR TO C/A VIDE APPROVED NOTE DT.22.12.14		2500000.00		-195359414.06
31-12-14	TRF TO 0034035728095 /FITL-II REPAYMENT VIDE REQ LR 29.12.2014		2675000.00		-198034414.06
02-01-15	TRF TO 0034034155590 /INTT FOR 13.08.2014 TO 31.10.2014 FOR FITLI RECOVER		5904852.00		-203939266.06
02-01-15	TRF TO 0034035804238 /INTT FOR 13.08.2014 TO 31.10.2014 FOR WCTL RECOVER		4106667.00		-208045933.06
02-01-15	TRF TO 0032715446037 /TR O/A REQ LR DT:30.12.14 & APPROVE NOTE 020115		1483000.00		-209528933.06
02-01-15	TRF TO 0097889041069 /INT FITLII 1.11.14 TO 30.11.14		2250373.00		-211779306.06
02-01-15	TRF TO 0097889041069 /INT WCTL 01.11.14 TO 30.11.14		1565074.00		-213344380.06
02-01-15	TRF TO 0097867041065 /INTT REC 03.11.14 TO 31.12.14		3601717.00		-216946097.06
03-01-15	TRF TO 0099506044303 /NEFT SBIN115003891908 R SUBRAMANIAN AND COMPANY		50562.00		-216996659.06
03-01-15	TRF TO 0032715446037 /TR VIDE REQ DT:03.01.2015		1855000.00		-218801659.06
05-01-15	TRF FROM 3199855044301 /RTGS MAHBR52015010500620805 THE MAHARASHTRA STATE	4430		12374185.00	-206427474.06
09-01-15	TRF FROM 0030650185929 /INB APDCL ASSAM BILLS PAYMENT	99922		6733893.00	-199693581.06
09-01-15	TRF TO 0032715446037 /TR VIDE PPROVED NOTE DT:09.01.2015		17800000.00		-217493581.06
09-01-15	TRF TO 0032715446037 /TR VIDE PPROVED NOTE DT:09.01.2015		2454635.00		-219948216.06
11-03-15	TRF FROM 0030650185929 /APDCL GUWAHATI			31753816.00	-188194400.06
13-03-15	TRF TO 0032715446037 /CIL/SAMB/2015-15/03-06 DGM APP 12/03/2015		23870000.00		-212064400.06
13-03-15	TRF FROM 0032715446037 /INTT OF FITL ACCOUNT			46000.00	-212018400.06
13-03-15	DEBIT /INTT.O/A FITL-II FOR NOV&DEC 2014 REC		97167.00		-212115567.06
13-03-15	DEBIT /CC INTT FRO JAN 15 AND FEB 15		3905282.00		-216020849.06
13-03-15	DEBIT /FITL1 INTT FOR DEC 2014		2346409.00		-218367258.06
13-03-15	DEBIT /INTT O/A WCTL UPTO DEC 2014		1631865.00		-219999123.06

17.The Respondent No.1 through its written submission has also attached a copy of Annual Report for the year 2011-12 to 2013-14 appearing at page No. 7 to 93 of written submission of Respondent No.1. The last Balance Sheet is of 31.03.2014 and the same is extracted below:

CHADALAVADA INFRA TECH LTD.					
BALANCE SHEET AS AT MARCH 31, 2014					
I. EQUITY & LIABILITIES	Note No.	Figures at the end of March 31, 2014		Figures at the end of March 31, 2013	
		Rs.	Rs.	Rs.	Rs.
(1) Shareholders' Funds:					
(a) Share Capital	1	17,35,21,500		8,01,96,000	
(b) Reserves & Surplus	2	(12,39,56,608)		(8,25,83,212)	
(c) Share Application Money pending Allotment				5,31,00,000	
(2) Non-Current Liabilities:			4,95,64,892		5,07,32,788
(a) Long-term Borrowings	3	22,14,98,561		19,21,46,020	
(b) Non-Current Liabilities	4	1,04,85,757		1,10,22,379	
(b) Deferred Tax Liability(Net)	5	(14,60,382)		(12,72,752)	
(3) Current Liabilities:			23,05,03,936		20,18,95,647
(a) Short-term Borrowings	6	51,08,20,269		46,88,01,936	
(b) Trade Payables	7	31,09,75,194		34,14,05,110	
(c) Other Current Liabilities	8	32,94,09,653		34,17,38,263	
(d) Short-term Provisions	9	6,28,36,980		5,33,36,980	
Total:			121,38,42,096		121,52,82,289
			149,39,10,925		146,79,10,726
II. ASSETS					
(1) Non-Current Assets:					
(a) Fixed Assets:					
Tangible Assets	10	2,23,64,731		2,66,19,195	
(b) Long-Term Loans & Advances	11	8,08,56,366		7,58,85,729	
(c) Other Non-Current Assets	12	1,31,590		1,88,478	
			10,31,52,687		10,26,93,403
(2) Current Assets:					
(a) Inventories	13	19,45,25,000		19,47,63,000	
(b) Trade Receivables	14	14,93,05,080		17,07,86,137	
(c) Cash & Cash Equivalents	15	9,65,70,740		9,14,42,210	
(d) Short-term Loans & Advances	16	46,54,15,253		43,14,00,775	
(e) Other Current Assets	17	48,49,42,165		47,68,25,201	
Total:			139,07,58,238		136,52,17,323
			149,39,10,925		146,79,10,726
Significant Accounting Policies & Notes to Accounts	26				

Our Report attached,
For VENUGOPAL & CHENOY,
Chartered Accountants,
FRN: 004671S

(Signature)
(P.V. SRI HARI)
Partner
Membership No.021961

Place: Hyderabad
Date: 04.09.2014

VENUGOPAL & CHENOY
Chartered Accountants
FRN: 004671S

For CHADALAVADA INFRA TECH LTD.,

(Signature)

Managing Director

(Signature)
Director

The learned counsel for the Respondent No.1 has stressed that there is no question of limitation and the appeal is liable to be dismissed based on the above submissions.

18.The status report filed by Resolution Professional as on 18.12.2021 as presented through its learned counsel are as follows:

- a. CIRP has commenced on 23.09.2021- Mr. G.Madhusudan Rao was appointed IRP by the Adjudicating Authority.
- b. The IRP made a public announcement on 30.09.2021 intimating the commencement of CIRP against the CD and calling the creditors to submit their claim. He has published in both Telugu and English languages.
- c. The Ld counsel for the R2-RP has submitted that the IRP and his team visited CD's registered office, but there is no office in the address mentioned. It has also submitted by the RP that the suspended Directors of the CD through email ID provided in the MCA Master data about his appointment and furnished the copy of the CIRP admission order. The RP has constituted the Committed of Creditors (CoC) comprising of only State Bank of India having a claim of Rs. 250.90 Crore and received another claim of Rs. 75,836 which is under process of its examination. It was also stated by the RP that the lone member of the CoC confirmed IRP as RP with 100 % voting right.
- d. The RP has also stated that he has filed an IA before the Adjudicating Authority for non-cooperation by the CD – Suspended Directors. It has also informed that in the 2nd CoC meeting held on 10.12.2021 as reconstituted Committee of Creditors with the following combination

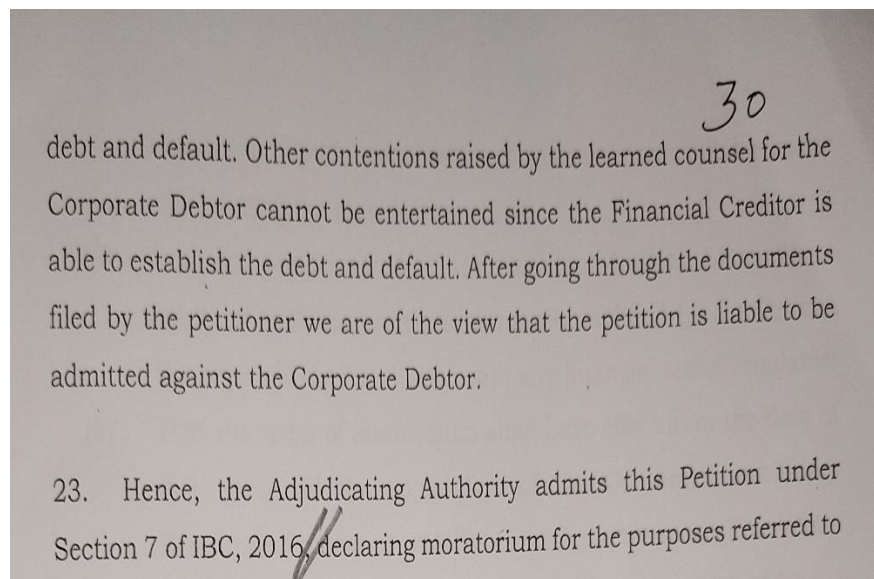
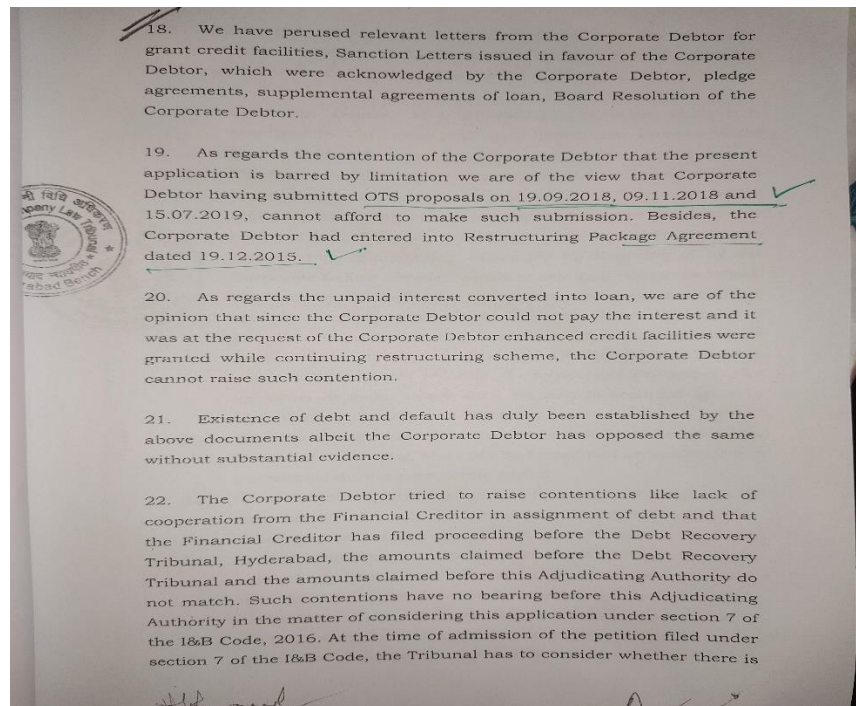
and the same is depicted below (appearing at page 53 of the status report filed by the RP):

The RP circulated the claims received from the various parties upto 8th December 2021. The list of claims given below

S.No.	Name of Creditor	Form	Amount Claimed (In Rs.)
1	State Bank of India	Form C	250,90,45,531
2	TATA Capital Financial Services Limited	Form C	23,20,01,043
3	Employee's State Insurance Corporation	Form F (But Form B submitted)	75,836
	Total		250,91,21,367

- e. The Ld counsel for the RP/R2 has also informed that the RP is waiting to get the handing over and assets and records and required information from the Promoters/Suspended Director to appoint valuers, prepare information memorandum to issue Expression of Interest report to Adjudicating Authority of preferential undervalued and fraudulent transaction under the provisions of the Code.

19. The Adjudicating Authority, while passing the impugned order dated 23.09.2021 has observed the followings:



20. We have carefully gone through the submissions made by the both the learned parties and extant provisions of the Code and we are having the following observations:

- a. It is undisputed fact that the Corporate Debtor has borrowed the funds from Respondent No.1 and the amounts claimed to be in default is approx. Rs. 216.95 Crore.
- b. Security held and certificate of registration of charges issued by Registrar of Companies is also not in dispute.
- c. The Corporate Debtor vide its letter dated 18.07.2011 requesting State Bank of India to allow to operate its accounts within a limit of Rs. 185 Crore approx.
- d. The petition was filed before the Adjudicating Authority on 25.11.2019 and the date of default is on 15.04.2011 which is due to failed restructuring. The Corporate Debtor vide letter dated 18.07.2011 requested R1/SBI to allow to operate the Account within Rs. 185 Crore approx. The Corporate Debtor vide letter dated 24.12.2013 had requested R1/SBI for restructuring the Account. Sanctioned order for total limit of Rs.157 Crore approx. is dated 10.05.2014. Pledge Agreement dated 28.11.2014. Hypothecation of goods for Rs. 281 Crore dated 03.02.2016. Supplemental Agreement

of Loan for increase in overall limit is dated 03.02.2016. Restructuring Package Agreement is dated 19.12.2015/03.02.2016.

- e. The Corporate Debtor vide its letters dated 19.09.2018, 09.11.2018 and 15.07.2019 has submitted OTS proposals to the State Bank of India. The application filed before the Adjudicating Authority is on 25.11.2019.
- f. The Financial Creditor has also submitted the Balance Sheet for the year 2013-14 which also reflects borrowings.
- g. All the above suggests that at any point of time some acknowledgment of accepting its liability by Corporate Debtor exists & that too within stipulated time period of three years (Article 137 of the Limitation Act, 1963). Hence, Section 18 of the Limitation Act, 1963 provides for a fresh period of limitation shall be computed from the time when the acknowledgment was so signed and hence the stand of the Appellant does not seem to be correct.
- h. Now, it is a settled law by the Hon'ble Apex Court that the Code does not exclude the Application of Section 14 or Section 18 or any other provisions of Limitation Act. Hence, we can firmly say that the provisions of Section 18 of the Limitation Act, 1963 are applicable to the proceedings under the Code and hence, the impugned order deserves to be upheld.

- i. Accordingly, we upheld the impugned order of the Adjudicating Authority. The Appeal fails & hence dismissed.

Interim order, if any, passed by this Tribunal stands vacated.

Pending application, if any, stands disposed of.

No order as to costs.

[Justice M.Venugopal]
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

10th June, 2022

New Delhi

Raushan.K