NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1439 of 2024

[Arising out of order dated 07.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench – IV), in I.A. No. 969/2023 in C.P. (IB) No. 1264/MB/2021]

IN THE MATTER OF:

Mr. Jagdishchandra Mansukhani
43, Aadhya Building, JVPD Scheme,
10^{th} N. S. Road, Vile Parle (W),
Mumbai – 400056.
Email: jc@jcmangroup.com **...Appellant**

Versus

1. STCI Finance Limited
A/B1-802, "A" Wing, 8th Floor,
Marathon Innova,
Marathon NextGen Compound,
Off Ganpatrao Kadam Marg,
Lower Parel (W),
Mumbai – 400 013.
Email: legal@stcionline.com **...Respondent No. 1**

2. Mr. Rajendra R. Agrawal
Resolution Professional of the Appellant
1306, Oberoi Woods Tower B,
Mohan Gokhale Road, Goregaon East,
Mumbai-400063.
Email: rajendra.agrawal29@gmail.com **...Respondent No. 2**

Present:

For Appellant	:	**Mr. Atul Singh, Ms. Mitika Agrawal, Advocates**
For Respondents	:	**Ms. Ferzana Behramkamdin, Ms. Surekha Raman, Ms. Bharti Bhansali, Ms. Riya Seth, Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Personal Guarantor has been filed challenging the Order dated 07.06.2024 passed by the Learned Adjudicating Authority

(National Company Law Tribunal, Mumbai Bench, Court – IV) by which Order, Section 95 Application filed by the STCI Finance Ltd. against the Appellant, has been admitted under Section 100 of the Insolvency and Bankruptcy Code, 2016, (for short `The Code' or `The IBC'). Order admitting Section 95 Application is challenged by the Personal Guarantor in this Appeal.

2. Brief facts necessary to be noticed for deciding the Appeal are:

i. STCI Finance Ltd. sanctioned a corporate short-term loan of ₹10 Crores to Man Tubinox Ltd. (Borrower No. 1) and Man Infraprojects Ltd. (Borrower No. 2).

ii. The Loan Agreement was executed on 01.12.2015 by the Financial Creditor and Borrower No. 1 and Borrower No. 2.

iii. A Deed of Guarantee dated 01.12.2015 was executed by the Appellant in favour of the STCI Finance Ltd. guaranteeing the repayment of the loan.

iv. On 17.01.2017, a Notice was issued by the Financial Creditor to the Borrower No. 1 and 2 as well as Guarantors including Appellant demanding the payment of ₹8,52,72,832/- as on 08.01.2017, together with the interest till payment.

v. Another Notice dated 01.06.2017 was issued by Financial Creditor under Section 13(2) of SARFAESI Act, 2002, calling upon the Borrower No. 1 and 2 to make the payment of ₹7,38,80,553/–. Notice was also endorsed to Personal Guarantors including the Appellant demanding the said amount within seven days of receipt of Notice.

vi. The Appellant replied the Notice dated 01.06.2017 vide letter dated 12.06.2017 stating that borrowers are at advance stage of discussion with number of lenders and expect to close the loan very shortly. It was requested to grant time till 31.07.2017 and withhold any further action under SARFAESI Act.

vii. The Financial Creditor thereafter issued a Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor), Rules, 2019 to the Appellant and thereafter filed a C.P. 1264/2021 under Section 95.

viii. Adjudicating Authority on 19.04.2022, appointed Rajendra R. Agarwal as a Resolution Professional (`RP'). On 07.05.2022, RP filed a Report under Section 99 of the IBC. Appellant also filed his Affidavit pointing out various discrepancies in the proceedings. Adjudicating Authority, heard the Company Petition and by Order dated 07.06.2024, admitted Section 95 Application.

ix. Aggrieved by which Order, this Appeal has been filed.

3. We have heard, Learned Counsel for the Appellant and Learned Counsel for the Respondent.

4. Learned Counsel for the Appellant have challenged the Order on the ground that Application filed by Financial Creditor under Section 95 was barred by time. It is submitted that Bank Guarantee issued by the Appellant in favour of the Financial Creditor was invoked by Letter dated 17.01.2017, hence, three years period of Limitation expired on 16.01.2020 and the Application filed on 30.09.2021 under Section 95 was clearly barred by time and deserves to be rejected. It is submitted that Adjudicating Authority committed error in relying on the Letter dated 12.06.2017 written by the

Appellant to the Financial Creditor as acknowledgement within meaning of Section 18 of the Limitation Act, whereas the said Letter cannot be read as acknowledgement nor on the strength of the said Letter, fresh Limitation period can be given to the Financial Creditor with effect from 12.06.2017. Adjudicating Authority committed an error in admitting Section 95 Application which was barred by time.

5. Learned Counsel for the Respondent refuting the submissions submits that Letter 12.06.2017 is acknowledgement by the Appellant and the acknowledgement by the Appellant has effect of extending the Limitation under Section 18 of the Limitation Act and the Application filed on 30.09.2021 was well within time since the period of three years from acknowledgement was to come to an end on 11.06.2020 and in view of the Order of Hon'ble Supreme Court in ***`Re: Cognizance for Extension Of Limitation'*** in ***Suo Motu Writ Petition (Civil) No. 03/2020*** period from 15.03.2020 till 25.03.2021 has to be excluded.

6. We have heard Counsel for the Parties and perused the record.

7. The only question which needs to be considered in the present case is as to whether Letter dated 12.06.2017 which was written by the Appellant to the Financial Creditor had effect of extending the Limitation for a period of three years from 12.06.2017 or the Letter cannot be treated an acknowledgement within meaning of Section 18 of the Limitation Act. Section 18 of the Limitation Act contains heading effect of acknowledgement in writing. Section 18 of the Limitation Act provides as follows:

> ***"18. Effect of acknowledgment in writing.—****(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or*

right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

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

Explanation.—For the purposes of this section,—

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

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

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

8. It is well settled that acknowledgement whether by Borrower or by Guarantor has effect of extending the limitation under Section 18 of the Limitation Act. The above proposition was laid down by the Hon'ble Supreme Court in the matter of ***`Laxmi Pat Surana' Vs. `Union Bank of India & Anr.',*** reported in ***(2021) 8 SCC 481***. In Paragraph 48 of the Judgment, Hon'ble Supreme Court held that a fresh period of Limitation be required to be computed from the time when the acknowledgement so signed by the Principal Borrower or the Corporate Guarantor. Paragraph 48 of the Judgment is as follows:

"48. *Indeed, this communication has been sent without prejudice by the corporate guarantor (corporate* *debtor). Nevertheless, it does acknowledge the liability of M/s Mahaveer Construction (principal borrower); and of corporate guarantee having been offered by the corporate debtor in that behalf. As aforesaid, the liability of the corporate guarantor (corporate debtor) is coextensive with that of the principal borrower and it gets triggered the moment the principal borrower commits default in paying the debt when it had become due and payable. The liability of the corporate debtor (corporate guarantor) also triggers when the principal borrower acknowledges its liability in writing within the expiration of prescribed period of limitation, to pay such outstanding dues and fails to pay the acknowledged debt. Correspondingly, right to initiate action within three years from such acknowledgment of debt accrues to the financial creditor. That however, needs to be exercised within three years when the right to sue/apply accrues, as per Article 137 of the Limitation Act. This is the effect of Section 18 of the Limitation Act. In that, a fresh period of limitation is required to be computed from the time when the acknowledgment was so signed by the principal borrower or the corporate guarantor (corporate debtor), as the case may be, provided the acknowledgment is before expiration of the prescribed period of limitation. Thus, the conclusion reached [Union Bank of India v. Surana Metals Ltd., 2019 SCC OnLine NCLT 9859] by NCLT and affirmed [Laxmi Pat Surana v. Union Bank of India, 2020 SCC OnLine NCLAT 217] by Nclat on the basis of the asservation in the application under Section 7 IBC, read with the relevant undisputed correspondence, is a possible view."*

9. The Hon'ble Supreme Court in several cases has laid down that acknowledgement under Section 18 has to be liberally construed and the intention of the Party writing acknowledgement has to be looked into to find out as to whether debt is acknowledged or not. In this context, we may refer to the Judgment of the Hon'ble Supreme Court in the matter of ***`Laxmiratan Cotton Mills Company Ltd.' Vs. `Aluminium Corp. of India Ltd.'*** reported in ***(1971) 1 SCC 67.*** Hon'ble Supreme Court was considering the *pari materia* provision of Section 19(1) Limitation Act, 1908 and while explaining the acknowledgement as occurring in the statutes following observations were made in Para 9:

> ***"9.*** *It is clear that the statement on which the plea of acknowledgment is founded must relate to a subsisting liability as the section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgment does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course does not mean that where a statement is made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. (See Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria [1962 (1) SCR 140] and Tilak Ram v. Nathu [AIR 1967 SC 935 at 938, 939]). As Fry, L.J., Green v. Humphreys [(1884) 26 Ch D 474 at 481] said "an acknowledgment is an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute there must upon the fair construction of the letter, read in the light of the surrounding circumstances, be an admission that the writer owes the debt". As already stated, the person making the acknowledgment can be both the debtor himself as also a person duly authorised by him to make the admission…"*

10. Now we come to the Letter which is sheet anchor of the submission of the Appellant. Letter dated 12.06.2017, which is filed as Annexure A-14 is as follows:

"June 12, 2017

To

Ms. Archana Bhide

STCI Finance Limited

A/B1 802, 8th Floor, A-Wing, Mararhon Innova

Marathon Nextgen Compound

Off. Ganpatrao Kadam Marg

Lower Parel (West), Mumbai 400013

Dear Madam,

Ref: Notice U/s 13(2) of SARFAESI Act dated June 1, 2017

With reference to your above notice, I wish to inform you that the borrower companies i.e. Man Tubinox Limited (Borrower 1) and man Infraprojects Limited (Borrower 2) are in advance stage of discussion with a number of lenders and expect to close your loan shortly. You are therefore requested to grant time till July 31, 2017 and withhold any further actions under the said notice / SARFAESI Act.

Thanking you,

Jagdish Mansukhani"

11. It is to be noted that Letter dated 12.06.2017 was written by Appellant in response to the Notice dated 01.06.2017 issued by Financial Creditor under Section 13(2). Notice dated 01.06.2017 was addressed to Man Tubinox Ltd., Borrower No. 1 and Man Infraprojects Ltd., Borrower No. 2 demanding an amount of ₹7,38,80,553/-. The Notice was also endorsed to Appellant and another Guarantor, Anita Jagdish Mansukhani and with regard to Personal Guarantors following was endorsed in the Notice:

"Date: 01/06/2017

CC: 1. Mr. Jagdish Mansukhani

Aadhya Bungalow, Plot No. 43,

N.S. Road 10, JPVD Scheme,

Vile Parle (W),

Mumbai – 400056.

2. Anita Jagdish Mansukhani

R/o-17, Joy Builders Colony,

Saket Nagar, Indore,

Madhya Pradesh

Sir/Madam

Re: NOTICE U/s 13(2) OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENCORCEMENT OF SECURITY INTEREST ACT 2002 (SARFAESI ACT)

1. *You are aware that STCI Finance Limited (Herein after referred to as Financial Institution) has granted credit facility for an amount of Rs.10,00,00,000/·(Rupees Ten Crore Only) to Man Tubinox Limited(Borrower 1) & Man lnfraprojects limited(Borrower 2) (Principal Debtors), for which You No 1 stood as guarantor and executed letter of guarantee dated 01/12/2015 and You No. 2 stood as guarantor and executed letter of guarantee dated 08/02/2016 guaranteeing the due repayment of the said amount by the Principal Debtor and all interest, cost, charges and expenses due and accruing thereon. The details of credit facility granted by financial institution and the amounts outstanding dues thereunder as on the date of notice:*

Name of Facility	*Sanctioned Limit*	*Outstanding Dues*	
a. Corporate Loan against property	*Rs. 10,00,00,000/-*	*Rs. 7,00,00,000/-*	*towards Principal*
		Rs.33,80,553/-	*towards Interest (Upto 31/05/2017)*
		Rs. 7,33,80.553/	

2. *As the principal debtor has defaulted in repayment of its liabilities, the Financial Institution has classified the account as Non-Performing Asset on 31/03/2017 in accordance with the directions /guidelines issued by the Reserve Bank of India.*
3. *As stated herein above, in view of the default committed by the principal debtor, you as the guarantor became liable jointly and severally for the said debt.*
4. *For the reasons stated above, Financial Institution invokes your guarantee and hereby call upon you to discharge in full your liabilities by paying to the Financial Institution of Rs. 7,33,80,553/ (Rs. Seven*

Crore Thirty Three Lakh Eighty Thousand Five Hundred and Fifty Three only) (contractual dues upto the date of notice) with interest @ 13.75 % p.a with monthly rests plus penal interest @2% together with further interest thereon @13.75% p.a with monthly rests and additional/penal interest @2% from 01st June,2017 till payment/realisation within 7 days of receipt of the notice."

12. By Notice dated 01.06.2017 which was under Section 13(2), the Personal Guarantors were also called upon to discharge their liabilities by paying the financial institutions amount of ₹7,33,80,553/- thus when letter dated 12.06.2017 was written, it was in reference to the said Notice which is clearly mentioned in the Letter. The Letter thus clearly was in response to the Notice which Letter further mentioned that borrowers are at advance stage of discussion and the loan is expected to be closed shortly and further Financial Creditor were requested to grant time till 31.07.2017. When the letter is read along with the Notice dated 01.06.2017, it is clear that said Letter contain clear acknowledgement of debt with information that borrowers are discussion with the lenders and loan shall be shortly closed and further request was to grant time till 31.07.2017. Thus, the Letter contains clear acknowledgment of debt and Adjudicating Authority did not commit an error in giving the benefit of Section 18 of the Limitation Act. When the letter dated 12.06.2017 is treated to be acknowledgement, Limitation of three years will expire on 11.06.2020 and the period from 15.03.2020 to 25.03.2021 directed to be excluded by Hon'ble Supreme Court by its Order passed in ***Suo Motu Writ Petition No. 03/2020,*** Application filed on 30.09.2021 was well within time and Adjudicating Authority has rightly overruled the objection of the Appellant that Application is barred by time. In paragraph 14 of the Judgment Adjudicating Authority has made following observations:

> *"14. On the aspect of Limitation, the Financial Creditor drew to the attention of the Bench to letter dated 12.06.2017 of Mr. Jagdish Mansukhani stating that "they were at an advanced stage of discussion with the number of lenders and expect to closeyour loan shortly. You are therefore requested to grant time till July 31,2017 and withhold any further actions under the said notice/ SARFAESI Act". The Financial Creditor also relied on the decision of the Hon'ble Apex court in the case of Food Corporation of India versus Assam state Cooperative Marketing & Consumer Federation Limited and others wherein it was held that an acknowledgement of liability made in writing has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. The Financial Creditor submitted that the letter of Personal Guarantor admitting the debt thereby starts a fresh period of limitation from 12.06.2017. That the present petition having been filed on 30.09.2021, the same is within the period of limitation in view of the Judgement of Hon'ble Supreme Court passed in Suo Moto Writ Petition No. 3 of 2020."*

13. We thus do not find any error in the Order of the Adjudicating Authority, holding that Application is well within time.

There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

04th September, 2024

himanshu