NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 770 of 2020

IN THE MATTER OF:

MANOJ JAYASWAL
Member of the Suspended Board of Directors
of Jas Infrastructure and Power Limited (in Liquidation)
Address: 801, Shivalok, AB-Wing, JP Heights Building,
Byramji Town, Nagpur
Email Address: ceo.office@abhijeet.in
Phone No: +91 9823066633 **...Appellant**

Versus

PUNJAB NATIONAL BANK
Having Its Registered Office at:
Plot No. 4, Sector 10, Dwarka,
New Delhi – 110075
Email Address: Not available
Phone No: 011-28044907
Achyut.banerjee@pnd.co.in
karmi@pnd.co.in **...Respondent No. 1**

JAS INFRASTRUCTURE AND POWER LIMITED
Through Liquidator
Having Its Registered Office At:
FE-83, Sector – III, Salt Lake City,
Ground Floor, Kolkata-700 106, West Bengal

Liquidator: CA. Kannan Tiruvengadam
Registration No. IBBI/IPA-001/IP-P00253/2017-18/10482

Registered Office of Liquidator:
Netaji Subhas Villa, Flat No. 3C, 3rd Floor,
18 Karunamoyee Ghat Road, Near Dharapara,
Tollygunge Area, Kolkata- 700082
Mobile No. 9836969699
Phone No. 033-2420-2487
Email: calkannan@gmail.com

...Respondent No. 2

Present:

For Appellant:	**Mr. Abhijeet Sinha, Mr. Sandeep Bajaj, Mr. Devansh Jain, Mr. Aditya Shukla, Advocates**
For Respondents:	**Ms. Arti Singh, Mr. Aakash Deep Singh Roda, Mr. Basant Pal Singh, Ms. Pooja Singh, Advocates for R1** **Mr. Rishav Banerjee, Mr. Pratik, Advocates for R2**

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 17.07.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) by which an application bearing I.A. (IB) No. 569/KB/2020 filed in CP (IB) No. 1290/KB/2018 by the Resolution Professional under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') requiring the Corporate Debtor i.e. 'Jas Infrastructure and Power Limited' to be liquidated in terms of the provisions of Chapter III, Part II of the Code has been allowed.

2. In brief, the Corporate Debtor, in order to set up a 1320 MW (2x660 MW) supercritical Coal based Thermal Power Project at Siriya Village, Baunsi Block of Banka District, Bihar approached Punjab National Bank (Respondent No. 1) for grant of a term loan facility with the sanction limit of Rs. 500 Crores. The loan agreement dated 24.03.2012 was executed as per which a consortium of

eleven banks, led by Axis Bank, sanctioned term loans aggregating to Rs. 5920 Crores to part finance the said project of Respondent No. 2 with total cost of Rs. 7400 Crores to be funded by debt (Rs. 5920 Crores) and equity (Rs. 1480 Crores) with a DER of 80:20. To cut the long story, as per Respondent No. 2, due to non-disbursement of funds from the consortium lenders, it could not meet its obligation towards the lenders and hence, its accounts were declared as NPA by Respondent No. 1 on 15.06.2015 and an application under Section 7 of the Code was filed by Respondent No. 1 on 11.09.2018 to initiate the Corporate Insolvency Resolution Process (CIRP) alleging that the total amount of debt due is Rs. 689,19,83,028.19/-

3. The Respondent No. 2 contested the application filed under Section 7 of the Code on the ground that the same is barred by limitation as the account was declared as NPA on 15.06.2015 whereas the application under Section 7 was filed on 11.09.2018 after a gap of three years whereas the limitation to file such an application, as provided under Article 137 of the Limitation Act, 1963 (in short 'Act') is three years from the date when the right to apply accrues. However, the contention of Respondent No. 2 was rejected by the Adjudicating Authority on the ground that the outstanding amount of default has been reflected in the balance sheet of the Respondent No. 2 as on 31.03.2016 which amounts to acknowledgment in terms of Section 18 of the Act and thus, the limitation would start running from 31.03.2016 and since the application under Section 7 was filed on 11.09.2018, therefore, the same was within the period of limitation and hence, the application was admitted and further proceedings in terms of Section 13 and 14 were initiated.

4. It has come on record that the Appellant had filed an application i.e. I.A (IB) No. 360/KB/2020 for recalling of the order dated 16.10.2019 but the same was dismissed on 02.03.2020 on the ground that the Tribunal had no power to recall its own order.

5. The order dated 02.03.2020 was challenged by the Appellant by way of CA (AT) (Ins) No. 771 of 2020 which was withdrawn by the Appellant on 16.10.2020 and the following order was passed:

> "16.10.2020 Mr. Abhijeet Sinha, learned counsel for the Appellant, under instructions from Mr. Sandeep Bajaj, seeks to withdraw the instant appeal with liberty to agitate the grounds therein in another 'Company Appeal (AT) (Insolvency) No. 770 of 2020'.
> The appeal is accordingly dismissed as withdrawn. The Appellant shall be at liberty to pursue the legal remedy in respect of the impugned orders as may be available under the law"

6. Counsel for the Appellant in the present appeal has basically challenged the order dated 16.10.2019 only on the ground that the application filed under Section 7 of the Code was barred by limitation because the limitation was to be counted from the date when the account was declared as NPA i.e. 15.06.2015 and the application under Section 7 of the Code was filed on 11.09.2018, beyond the period of three years.

7. He has further submitted that the Adjudicating Authority has committed a patent error in extending the period of limitation w.e.f. 31.03.2016 on the ground that the outstanding amount has been reflected in the balance sheet of the Appellant. He has argued that the said amount has been shown as borrowings and not as debt and therefore, entry in the balance sheet as on 31.03.2016 cannot be relied upon to bring the case of the Respondent No. 1 within a period of limitation.

8. On the other hand, Counsel for Respondent No. 1 has submitted that once the outstanding amount has been shown in the balance sheet of the Appellant, the limitation would start from the said date on the premise that the debt has been acknowledged by the Appellant and in this regard reliance has placed upon the decision of the Hon'ble Supreme Court in the case of Asset Reconstruction Company Vs. Bishal Jaiswal & Anr. 2021 SCC Online SC 321.

9. We have heard Counsel for the parties and perused the record with their able assistance.

10. The only issue raised by the Appellant in this appeal is about the correctness of the approach of the Adjudicating Authority in opining that the period of limitation would start running from the date of acknowledgment of debt in the balance sheet by the Appellant.

11. In this regard, it would be relevant to refer to the said entry in the books of accounts of the Appellant as on 31.03.2016 which read as under:-

<u>3.2 Terms of Repayment of secured loan</u>

Bank wise maturity profile, period and amount of Instalments of Secured Term Loans from Banks are as under:

Bank Name	Instalment. Lacs	No of Quarterly Instalment	Payment from	Rate of Interest
Senior Debt				
UCO Bank	547.43	40	31.12.2015	Axis Bank Base Rate plus 4%
Bank of India	281.27	40	31.12.2015	Base Rate plus 2.75%
Axis Bank	1818.95	40	31.12.2015	Base Rate plus 4%
Punjab National Bank	1008.14	40	31.12.2015	Bass rate plus 3.25% .
Power Finance Corporation	569.91	42	30.09.2015	13.75%
Rural Electrification Corporation	64.91	48	30.06.2015	Axis Bank Base Rate plus 4%
State Bank of Bikaner and Jaipur	64.02	40	31.12.2015	Axis Bank Base Rate plus 4%
Oriental Bank of Commerce	118.48	40	31.12:2015	Base Rate plus 1.75%
India Infrastructure Finance	29.44	48	30.09.2015	Base Rats plus 4.35%
Sub Debt				

Rural Electrification 4.34 48 30.06.2015 Axis Bank Base Rate plus 6%
3.3 The Company has made certain defaults in payment of Interest. Details of continuing defaults in payment of interest as on

Period of delay	Rs. Lacs
Interest on Term Loans	
More than 20 days	39,155,58

12. We have no doubt about the fact that the aforesaid amount is an acknowledgement of debt and not just an entry of the borrowing. The Hon'ble Supreme Court in the case of Bishal Jaiswal (Supra) has pleased to hold that "In several judgments of this Court, this legal position has been accepted. In Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma 67 (1997) DLT 13, S.N. Kapoor J. applied the principle in a case where the primary question was whether a suit under Order 37 CPC could be filed on the basis of an acknowledgement. In Larsen & Toubro Ltd. v. Commercial Electric Works 67 (1997) DLT 387 a Single Judge of this Court observed that it is well settled that a balance sheet of a company, where the defendants had shown a particular amount as due to the plaintiff, would constitute an acknowledgement within the meaning of Section 18 of the Limitation Act. In Rishi Pal Gupta v. S.J. Knitting & Finishing Mills Pvt. Ltd. 73 (1998) DLT 593, the same view was taken. The last two decisions were cited by Geeta Mittal, J. in S.C. Gupta v. Allied Beverages Company Pvt. Ltd. (decided on 30/4/2007) and it was held that the acknowledgement made by a company in its balance sheet has the effect of extending the period of limitation for the purposes of Section 18 of the Limitation Act. In Ambika Mills Ltd. Ahmedabad v. CIT Gujarat (1964) 54 ITR 167, it was further held that a debt shown in a balance sheet of a company amounts to an acknowledgement for the purpose of Section 19 of the Limitation Act and in order to be so, the balance sheet in which such acknowledgement is

made need not be addressed to the creditors. In light of these authorities, it must be held that in the present case, the disclosure by the assessee company in its balance sheet as on 31st March, 2002 of the accounts of the sundry creditors' amounts to an acknowledgement of the debts in their favour for the purposes of Section 18 of the Limitation Act. The assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law."

13. No other point has been raised.

14. In view of the aforesaid facts and circumstances, the appeal is denuded of merits and the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi

11th October, 2022

Sheetal.