

**National Company Law Appellate Tribunal,**  
**Principal Bench**  
**Company Appeal (AT) (Ins) No. 15 of 2021**

**IN THE MATTER OF:**

1. **Mr. Anuj Gupta**  
**CBG 7-51,**  
**Ghirongi Industrial Area,**  
**Malanpur, Dist. Bhind,**  
**MP**

**...Appellant**

**Versus**

1. **Stressed Assets Stabilisation Fund**  
**Having address (as per Memo of Parties**  
**appearing at Page 1):**  
**Survey No. 459, At Post Tajpur (Oran)**  
**Nr Majara Chokdi**  
**Ta: Prantij**  
**District: Sabarkantha**  
[zip\\_crb@yahoo.co.in](mailto:zip_crb@yahoo.co.in)  
**(Address as per Page 9 for Respondent**  
**Services)**  
**Having address at IDBI Tower, 3<sup>rd</sup> Floor,**  
**WTC Complex, Cuffe Parade,**  
**Mumbai-40005**  
**Charandeep.bhatia@idbi.co.in**
2. **Hotline Glass Ltd.**  
**Represented through the IRP (As per Memo**  
**of Parties appearing at Page 2)**  
**Mr. Ketulbhai Ramubhai Patel**  
**R.S. Patel & Company Chartered Accountants**  
**801, Popular House,**  
**Nr. Income Tax Circle,**  
**Ashram Road, Ahmedabad,**  
**Gujarat- 380009**  
[ketul@rspatelca.com](mailto:ketul@rspatelca.com)  
**(Address as per Page 9 for Respondent**  
**Services)**  
**Represented through the Resolution**

**Professional**

**Mr. Jigar Pradipchandra Shah**  
**Jigar P Shah & Associates,**  
**B/801 Gopal Palace,**  
**Nr. Shiromani Complex,**  
**Nehrunagar Cross Road,**  
**Nehrunagar, Ahmedabad**  
[ip.jigar@gmail.com](mailto:ip.jigar@gmail.com)

**...Respondents**

**Present:**

**For Appellant: Mr. Arvind Kumar Gupta, Ms. Henna George, Ms. Shivani Sharma, Advocates.**

**For Respondents: Mr. Sidharth Barua, Mr. Praful Jindal, Advocates for R-1.**

**Mr. Jigar P Shah, CA/RP of R-2.**

**J U D G M E N T**

**Dr. Ashok Kumar Mishra, Technical Member**

The Appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as 'Code') against the impugned order dated 13.03.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad, Indore Bench) in TP No. 152/2019 CP (IB) No. 99/2019. The Adjudicating Authority has admitted the petition under Section 7 of the 'Code'.

2. The Appellant has sought the following relief:

*“pass appropriate order to set aside and quash the impugned admission order dated 13.03.2020 (communicated on 01.07.2020) passed by the Hon’ble AA, Ahmedabad (Indore Bench) in the case of TP No. 152 of*

*2019 [CP (IB) No. 99 of 2019]], and be pleased to pass order releasing the Corporate Debtor from the rigor of 'Corporate Insolvency Resolution Process'. etc".*

3. It is the case of the Appellant that the IDBI has provided financial assistance to the Corporate Debtor (Hotline Glass Ltd.)/R-2 in the form of restructuring and private placement of Non-Convertible Debentures (NCD) amounting to Rs. 31.71 Crore allotted on 24.03.1999 pursuant to sanction letter dated 18.02.1999 (appeal paper book page 56).

4. R-1/(SASF) has got the assignment in its favor from IDBI. Total amount of debt as per Form no. I- application made by financial creditor to initiate CIRP appearing at pg- 54 filed under Section 7 of the Code reflects total amount of debt disbursed Rs. 31.71 Crore on 24.03.1999. The corresponding Sanction Letter is dated 18.02.1999, letter no. is CFD-III/HGL/4082 issued by IDBI. The amount claimed to be in default as reflected in part (IV) of the form-I is Rs. 600,10,01,165/- (over Rs. 600 Crore) which includes unpaid interest & penalty.

5. Date of Default is 10.09.2003. Total days of default is 5,500 days, in the part (IV) of the application of Form-I appearing at pg. 56 reflects various hypothecation of moveable properties apart from personal guarantee agreement etc. as appearing at pg. 56-57 of the 'Appeal Paper Book'.

6. The application form also reveals that due to non-payment of installment and interest the loan accounts were categorized as NPA with effect from 10.09.2003.

7. The Demand Notice dated 17.06.2008 was also issued under Section 13(2) of the SARFAESI ACT, 2002. The details are available in the Appeal Paper Book at reference page no. 57 onwards.

8. The Form No. I filed by the Respondent before the Adjudicating Authority reflects various documents attached to the said application to prove the existence of the financial debt and the same are reflected as below:

No.....295.....)

8. LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT :

- i) Corporate Debtor's Board Resolution dated 26.02.1999 accepting the terms and conditions of sanction and authorizing its Director to execute various security documents as stated in the resolution.
- ii) Lease Deed of Industrial Land dated 21.06.1993 between the Corporate Debtor and Madhya Pradesh Audyogik Kendra Vikas Nigam
- iii) No Objection Certificate bearing No.AKVN(G)/Ind./94/10761 dated 01.03.1994 from MP Audyogik Kendra Vikas Nigam (Gwalior) for assigning lease hold rights in favour of financial institution.
- iv) Letter dated 03.03.1994 from MP Audyogik Kendra Vikas Nigam (Gwalior) Ltd. Giving permission to assign the lease hold right of the Corporate Debtor in favour of IDBI.
- v) Certificate dated 10.03.1999 from S.S.Kothari & Co., Chartered Accountant certifying the borrowings of the Corporate Debtor from IDBI.
- vi) Letter of OTS dated 20.04.2005 issued by the applicant to the Corporate Debtor.
- vii) Letter of revocation of OTS dated 17.08.2006 issued by the applicant to the Corporate Debtor.
- viii) Notice dated 17.06.2008 issued by the applicant to the Corporate Debtor u/s 13(2) of the SARFAESI Act 2002.
- ix) Reply dated 26.08.2008 from the Corporate Debtor against applicant's notice dated 17.06.2008
- x) Applicant's letter dated 02.09.2008 to the Corporate Debtor.
- xi) Corporate Debtor's letter dated 22.09.2008
- xii) Recall Notice dated 17.02.2018 issued by the applicant to the Corporate Debtor
- ~~xiii) Corrigendum dated 29.09.2018 regarding recall notice dated 17.02.2018~~
- xiv) Trust Deed dated 24.09.2004 regarding constitution of the applicant as a Trust
- xv) Central Government Gazette Notification under S.O.No.2505 dated 29.09.2004 specifying the SASF Trust as a financial institution.
- xvi) Transfer Deed dated 30.09.2004 showing the transfer of debts of Corporate Debtor in favour of the applicant.

xvii) Balance Sheet of the Corporate Debtor for the year ending 31<sup>st</sup> December 2006.

xviii) MCA Master Data of Corporate Debtor

xix) Schedule of Mortgaged Properties

xx) List of Related Parties

9. The Appellant has filed the Appeal primarily on two grounds:
- (i) The Insolvency Petition filed by Stressed Assets Stabilisation Fund ('SASF') (Respondent No. 1) against M/s. Hotline Glass Ltd. (Corporate Debtor Company) is time barred.
  - (ii) The Insolvency Petition was filed by SASF without the requisite authority.
- (a) The Appellant has also stated that the Petition filed under Section 7 by Respondent No.1/SASF is time barred.
  - (b) The Ld. Counsel for the Appellant has stated that the date of default is fixed and the sacrosanct even in IBC and the date of loan recall notice does not extend the limitation.
  - (c) The Petition under the Code has been filed on 19.01.2019 which is clearly filed beyond three years from the date of default. Accordingly, the Insolvency petition is time barred and hit by limitation.
  - (d) The Hon'ble Apex Court has repeatedly held that Article 137 of the Limitation Act, 1963, will apply to the insolvency proceedings which means that Limitation period applicable to the code is three years. This three years begins to run from the date of default and the date of default is fixed.
  - (e) The various judgments cited by the Appellant are stated below:
    - *"B.K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates" (2019) 11 SCC 633.*
    - *"Sagar Sharma vs. Phoenix ARC Pvt. Ltd." (2019) 10 SCC 353.*

- “*Gaurav Hargovindbhai Dave vs. Asset Reconstruction Co. (India) Ltd.*” (2019) 9 SCC 158.
- “*Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.*” (2020) 15 SCC 1.

(f) It was also stated by the Ld. Counsel for the Appellant that the period during which the proceedings were pending before the BIFR cannot extend/ be excluded for computing limitation period. He went on to further clarify even if the said period is excluded i.e. the period from 20.01.2007 till 14.05.2012, no recovery action was taken by the R-1 for 616 days prior to filing of second reference before BIFR. However, the second reference was registered by BIFR on 21.01.2014.

(g) The Ld. Counsel for the Appellant stressed that even if we exclude the period before second reference to BIFR from 21.01.2014 till 01.12.2016 no recovery action was taken by Respondent no.1 for 778 days. From the date of abatement of BIFR proceeding as the petition under the Code has been filed only on 19.01.2019. No action was taken by R-1 for 1394 days, this clearly reflects that the application is hopelessly time barred.

(h) The Respondent no.1 /Financial Creditor cannot seek any benefit under Section 18 of the Limitation Act as there is no acknowledgment of debt in the present case. OTS proposal was also withdrawn on 17.08.2006. The Balance Sheet of the Corporate Debtor/R-2 do not acknowledge or admit any debt and cannot be relied for the purpose of Section 18 of the Limitation Act as the

Balance Sheet mentions that the balances are subject to confirmation/reconciliation reference page no. 256 to 365 reply filed by R-1.

(i) The Ld. Counsel for the Appellant has also stated that the R-1 has filed the petition without requisite authority. It is a trust created under the Indian Trust Act, 1882 and the Trust does not have an object of permitting initiation of insolvency proceedings.

(j) In view of above facts and circumstances, the Ld. Counsel sought the above stated relief.

10. The Ld. Counsel for the Respondent No. 1 took the Tribunal through the important dates and events for computing period of limitation under the Limitation Act, 1963 and for brevity and clarity the same are reproduced below:

<b>Dates</b>	<b>Events</b>
18.02.1999/ 16.03.1999	IDBI Bank Ltd. agreed to provide financial assistance to M/s. Hotline Glass Ltd. ("Corporate Debtor")/("Respondent No. 2") in terms of the Sanction Letter dated 18.02.1999 and subscribed to Non-Convertible Debentures (NCDs) aggregating to sum of Rs. 31.71 Crores issued by the Corporate Debtor under the Subscription Agreement dated 16.03.1999.
24.03.1999	Corporate Debtor allotted NCDs to the IDBI Bank Ltd.
10.09.2003	Corporate Debtor defaulted in its repayment obligations under the Subscription Agreement and IDBI Bank Ltd. declared the account of the Corporate Debtor as a Non- Performing Asset ("NPA").
30.09.2004	IDBI Bank Ltd. transferred and assigned the facilities with all rights, titles and interest, therein with the underlying securities in respect of the facilities availed by Corporate Debtor in favour of the Respondent No.1.
19.03.2005	Corporate Debtor submits a One Time Settlement ("OTS") thereby acknowledging outstanding dues payable to the

	Respondent No.1.
20.04.2005	<p>Respondent No.1 accepts/approves the OTS dated 19.03.2005, as per the terms and conditions provided therein. (Annexure-R/5 @ Pg. No. 160; Vol I of Reply)</p> <p><b><u>N.B.</u></b>  <b>Prior to the expiry of limitation (on 10.09.2006), Corporate Debtor accepts and acknowledges-in writing- its obligations in view of OTS Letter/Approval. Thus, period of limitation further extends to a period of 03 years from 20.04.2005 till 20.04.2008.</b></p>
17.08.2006	<p>Respondent No. 1 withdrew the Settlement Package provided under as per OTS Sanction Letter dated 20.04.2005, since Corporate Debtor failed to comply with the terms and conditions thereof. (<b>Annexure- R/6 @ Pg. No. 162; Vol I of Reply</b>)</p>
26.02.2007	<p>Corporate Debtor filed Reference under Section 15 of the SICA, 1985, bearing Ref. Case No. 20/2007 ("<b>First Reference</b>"), before the Board for Industrial and Financial Reconstruction ("BIFR").</p> <p>In Form-A, as required for filing Section 15 Reference under SICA, filed by the Corporate Debtor before BIFR, Corporate Debtor records and acknowledges-in-writing its dues/outstanding against the Respondent No.1 (<b>Annexure-R/12 @ Pg. No. 187; Vol I of Reply</b>)</p> <p><b><u>N.B.</u></b>  <b>Prior to the expiry of limitation (on 20.04.2008), Corporate Debtor accepts and acknowledged-in-writing its obligations under the Form-A dated 26.02.2007. Thus, period of limitation further extends to a period of 03 years from 26.02.2007 till 26.02.2010.</b></p>
17.06.2008	<p>Respondent No. 1 issued statutory notice under Section 13(2) of SARFAESI Act, 2002 ("<b>Section 13(2) Notice</b>"), to enforce security interest provided by the Corporate Debtor. (Annexure – R/7 @ Pg. No. 163; Vol I of Reply)</p>
26.08.2008	<p>Appellant (Mr. Anuj Gupta) responds to Section 13(2) Notice, thereby acknowledge-in-writing that Corporate Debtor failed to repay the financial assistance/ debt and accordingly account of Corporate Debtor was classified as NPA. Further, stated that Corporate Debtor is keen for OTS with Respondent No.1. (Annexure –R/8 @ Pg. No. 171; Vol I of Reply)</p> <p><b><u>N.B.</u></b></p>

	<b>Prior to the expiry of limitation (on 26.02.2010), Corporate Debtor accepts and acknowledges-in-writing its obligations in Letter/reply dated 26.08.2008. Thus, period of limitation further extends to a period of 03 years from 26.08.2008 till 26.08.2011.</b>
02.09.2008	Respondent No.1 refuted the contentions raised by Corporate Debtor in its Letter dated 26.08.2008 and reiterated its right to enforce security interest as per law.(Annexure -R/9@ Pg. No. 177; Vol I of Reply)
22.09.2008/ 24.09.2008	Corporate Debtor issued letter stating that it has plans to settle its liabilities owed to Respondent No. 1 in an amicable matter and requested Respondent No. 1 to defer legal actions/proceedings. This Letter further highlights the jural relationship between the Corporate Debtor and Respondent No. 1 as 'debtor' and 'creditor'. (Annexure- R/10 @ Pg. No. 179; Vol I of Reply)
04.05.2009	BIFR dismissed the First Reference Case filed by the Corporate Debtor being "non-maintainable". (Annexure -R/11 @ Pg. No. 181; Vol I of Reply)
2009	Corporate Debtor aggrieved by the Order of BIFR, filed an Appeal before the Learned Appellate Authority for Industrial and Financial Reconstruction ("AAIFR").
21.06.2010	AAIFR remanded the matter/First Reference to BIFR for fresh consideration.
12.08.2011	Corporate Debtor has acknowledged-in-writing in its <u>Annual Balance Sheets</u> ("ABS") for the period from 2006 till 2018, debt outstanding and owed by it to the Respondent No. 1. (Annexure-R/14 @ Pg. No. 211; Vol II of Reply)  In view of ABS dated 12.08.2011 for FY 2010-11 (as on 31.03.2011), Corporate Debtor has acknowledged its debt owed and payable to Respondent No.1. All ABS have been duly signed by the Appellant in the capacity of Director of Corporate Debtor. (Annexure-R/14@ Pg. No. 242; Vol II of Reply)  <b><u>N.B.</u></b> <b>Prior to the expiry of limitation (on 26.08.2011), Corporate Debtor accepts and acknowledges-in-writing its obligations in ABS dated 12.08.2011 for FY 2010-11 (as on 31.03.2011). Thus, period of limitation further extends to a period of 03</b>

	<b>years from 12.08.2011 till 12.08.2014.</b>
14.05.2012	<p>First Reference Case was again dismissed by BIFR.</p> <p><b><u>N.B.</u></b>  <b>During pendency of First Reference Case before BIFR (both round of litigation) and Appeal before AAIFR (from 26.02.2007 till 14.05.2012), in view of Section 22 of SICA, Respondent No. 1 was prevented from taking any recovery measures in respect of the Corporate Debtor.</b></p>
16.06.2012	<p>Corporate Debtor filed before the BIFR which was registered as Case No. 06/2014 (“Second Reference Case”).</p> <p>In Form-A dated 16.06.2012, as required for filing Section 15 Reference under SICA, filed by the Corporate Debtor before BIFR, Corporate Debtor records and acknowledges-in-writing its dues/outstanding against the Respondent No.1. (Annexure-R/13 @Pg. No. 198; Vol I of Reply)</p>
30.08.2013	<p>In view of ABS dated 30.08.2013 for FY 2012-13 (as on 31.03.2013), Corporate Debtor has acknowledged its debt owed and payable to Respondent No. 1 (Annexure-R/14 @ Pg. No. 282; Vol II of Reply)</p> <p><b><u>N.B.</u></b>  <b>Prior to the expiry of limitation (on12.08.2014), Corporate Debtor accepts and acknowledges-in-writing its obligations in ABS dated 30.08.2013 for FY 2012-13 (as on 31.03.2013). Thus, period of limitation further extends to a period of 03 years from 30.08.2013 till 30.03.2016</b></p> <p>.</p>
31.08.2015	<p>In view of ABS dated 31.08.2015 for FY 2014-15 (as on 31.03.2015), Corporate Debtor has acknowledged its debt owed and payable to Respondent No. 1 (Annexure-R/14 @ Pg. No. 318; Vol II of Reply)</p> <p><b><u>N.B.</u></b>  <b>Prior to the expiry of limitation (on 30.08.2016), Corporate Debtor accepts and acknowledges-in-writing its obligations in ABS dated 31.08.2015 for FY 2014-15 (as on 31.03.2015). Thus, period of limitation further extends to a period of 03 years from 31.08.2015 till 31.08.2018.</b></p>
25.11.2016/ 01.12.2016	<p>The Second Reference continued till SICA, 1985, was repealed in view of the Notification of the Government of India. (“SICA Repealed”)</p>

04.09.2017	<p>In view of ABS dated 04.09.2017 for FY 2016-17 (as on 31.03.2017), Corporate Debtor has acknowledged its debt owed and payable to Respondent No.1. (Annexure-R/14 @ Pg. No. 336; Vol II of Reply)</p> <p><b><u>N.B.</u></b>  <b>Prior to the expiry of limitation (on 31.08.2018), Corporate Debtor accepts and acknowledges-in-writing its obligations in ABS dated 04.09.2017 for FY 2016-17 (as on 31.03.2017). Thus, period of limitation further extends to a period of 03 years from 04.09.2017 till 03.09.2020 (Page No. 350 of Volume II of Appeal Paper Book enclosing Copies of the Balance-Sheets and Annual Reports for the years 2007-08,2008-09,2009-10,2010-11,2011-12,2012-13,2013-14,2014-15,2015-16,2016-17,2017-18).</b></p>
17.02.2018	Respondent No.1 recalled the loan facilities extended to the Corporate Debtor and same another/subsequent “date of default”. (“Recall Notice- Date of Default”)
10.01.2019	Respondent filed the Section 7 Petition against the Corporate Debtor before learned Adjudicating Authority, Ahmedabad Bench.

(a) The Ld. Counsel for the Respondent No.1 further stated that IDBI vide Registered Transfer Deed dated 30.09.2004 transferred and assigned the facilities with all rights, titles and interest therein with various securities in respect of facilities availed by R-2/CD in favor of R-1.

(b) It was also submitted by him that from 19.03.2005 till 18.03.2018 the Corporate Debtor submitted OTS regarding the outstanding dues and vouched to settle the debt owed to R-1 by expressly acknowledging its liability towards R-1.

(c) The Ld. Counsel also took us through various references and correspondence between R-1 & 2/ Corporate Debtor and the same are

appearing at Affidavit in Reply Paper Book from page – 160 to 210 furnished to the NCLAT vide diary no. 49730 dated 06.12.2021.

11. The Adjudicating Authority has admitted the present petition under Section 7 of the Code after making following observations which is quite elaborate and illustrative as follows:

*“22. The crucial point of limitation involved in this present I.B. Petition needs consideration and to be dealt with by this Court in the light of the Law settled by the Hon’ble Supreme Court and judicial precedents applicable.*

*23. It is now undisputed legal position that, while, filing the present Petition under Section 7 of the I.B. Code, only article 137 of the Limitation Act would attract which provides that the application can be filed within three years from the right to sue accrue i.e. the date of default from the date of non-performing asset declared by the lender bank.*

*24. Undisputedly, in the present matter, the date of default is 01.01.2008, while the present I.B. petition came to be filed before this Bench on 19.01.2019. However, by a careful examination of such issue of limitation, it is evident and the matter of record as being admitted position that the Corporate Debtor itself had wrote a letter offering one time settlement (“OTS”) to the present Financial Creditor on **19.03.2005** and such proposal was got approved by the Financial Creditor vide its letter dated 20.04.2005 for payment of 100% of principal amount of **Rs. 300 Lakh** within three months. It is also evident that the Corporate Debtor duly accepted by signing the above stated one-time proposal. This fact has been further admitted by the Corporate Debtor vide its reply dated 26.08.2008 to the statutory demand notice (under Section 13(2) of the SARFAESI Act) by the Petitioner, wherein, the Corporate Debtor took such plea that company is **still keen for OTS and was looking for alternative source of funding including sale of its surplus land. Further, the Company vehemently denied that it defaulted the payment of OTS, but made an attempt to explain that such payment could not be realised due to alleged non-cooperation from its banker, i.e. PNB who fall back from its assurance of finance. Therefore, the company was forced to default on OTS.** Hence, such accepting the terms*

of OTS by the company can be treated a valid and legal acknowledgment of debt under Section 18 of the Limitation Act.

25. Thus, it has held that the Corporate Debtor has accepted the settlement proposal OTS and again confirmed its debts due as per terms of OTS in its reply dated 26.08.2008 (Annexure 15, page 116-121) which can be considered as valid acknowledgement of its debt liability to the extent of certain sum of **Rs. 300 Lakhs** which is obviously more than of rupees one lakh. Hence, the Corporate Insolvency Resolution Process (C.I.R.P.) can very well be triggered in respect of the corporate debtor provided that such petition is filed within the limitation period.

26. As per record, it is further admitted position in the matter that having made proposal for settlement in 2005, the Corporate Debtor itself moved a reference in February, 2007 before the BIFR, under the provision of SICA and such BIFR reference was kept pending till 01.12.2016, when the present I.B. Code came in to force. By operation of this, the proceedings pending under the provision of SICA Act stood abated. Therefore, the commencement of limitation for the present matter would start from the date acknowledgment for debts due and payable under one time settlement, i.e. 26.08.2008 (the date of reply admitting of debt) or 20.04.2005 the date of OTS which was assured to be complied with by the Corporate Debtor. Further, the period spent in during the pendency of SICA proceedings is required to be excluded. It is further found that the present petition is filed within the remaining period of three years from 01.12.2016. Admittedly, the Petitioner/ Financial Creditor has filed the present petition on 10.01.2019, which is found to be filed within three years after exclusion of such period consumed in the SICA proceedings. Hence, the present petition is maintainable before this Adjudicating Authority.

27. Further, the Learned Counsel appearing for the Petitioner Bank drew our attention to the decision of co-ordinating Bench of NCLT, New Delhi having similar circumstances wherein, the NCLT, New Delhi took a view that such period needs to be excluded for the purpose of counting limitation and thus it pleased to admit the petition so as to trigger the CIRP against another Corporate Debtor Company namely M/s. Hotline Glass Limited vide IB-33/(ND)/2019 dated 27.08.2019. The relevant paragraphs 3 and 4 of the NCLT, New Delhi judgment is reproduced herein below:

*“3. The Petitioner has also filed a detailed rejoinder to the observations of the respondent, vide diary no. 071010203077201812, dated 15.03.2019 which are as follows:-*

*a. Financial Creditor submits that by virtue of transfer deed dated September 30, 2004 executed by IDBI in favour of the applicant i.e. SASF, IDBI unconditionally and irrevocably sold, assigned, transferred and released to and unto the SASF, the financial assistance sanctioned to the corporate debtor along with the underlying securities with an intent that the SASF shall be full and absolute legal owner and the only person to receive the amounts due and payable by the corporate debtor to IDBI.*

*b. That the corporate debtor based on the balance sheet as on 31.12.2006 filed an application under Section 15(1) of Sick Industrial Companies Act, 1985 before the Board of Industrial and Financial Reconstruction (BIFR) in January 2007 and the application was admitted as case No. 09/2007, which was pending before BIFR till SICA was repealed. In view of Section 22 of Sick Industrial Companies Act, 1985, the applicant could not take any steps against the Corporate Debtor for recovery.*

*c. It is further submitted that Corporate Debtor had submitted a settlement proposal which was accepted by applicant on 23.04.2005. However, the applicant vide its letter dated August 17, 2006 withdrew/revoked the same as the Corporate Debtor failed to comply with the terms and conditions of the settlement.*

*d. It is submitted that the Sick Industrial Companies Act, 1985 has been repealed by way of a notification dated 25.11.2016 published by the Government of India with effect from 01.12.2016. That the loan of Corporate Debtor was recalled on 09.04.2018 and O.A. was filed in DRT-II, Delhi for recovery against the Corporate Debtor.*

*4. Oral arguments were also heard and order was reserved on 23.07.2019. As directed vide order dated 23.07.2019 the petitioner have also filed written submissions. We have gone through the documents filed by both the parties and heard the arguments filed by both the parties and heard the arguments and perused written submissions made by both the Counsels. Respondent contends that the date of default in the present case is 01.04.2000 and 03.04.2000 and yet the petitioner is mute about the steps taken by IDBI and the petitioner during the period 2000 to 2019 for seeking recovery of the alleged dues. While going through the documents Tribunal observed*

*that based on the balance sheet of corporate debtor as on 31.12.2006 filed an application under Section 15(1) of Sick Industrial Companies Act, 1985 before BIFR in January 2007 which was admitted as case no. 09/2007 and was pending before BIFR till the SICA Act, 1985, was repealed and in view of the applicant could not take any steps against the corporate debtor for recovery. Further, SICA has been repealed by way of a notification dated 25.11.2016 published by the Government of India with effect from 01.12.2016 and thus the BIFR established under the provision of SICA was also abolished. As per Section 22(5) of SICA (since repealed), period from 15.01.2007 to 30.11.2016 is to be excluded for the purpose of limitation. Between 2004 to 2007 it is also seen that dispute settlement was arrived, however the same stood withdrawn subsequently. Thus "Right to Sue Survives" and the present petition being filed in December 2018 is within limitation, being within three years from the date, the cause of action for recovery proceedings arose. Further even though a feeble attempt was made on the part of the Corporate debtor to project certain inconsistencies in relation to claim amounts, however it is seen that the amount in default excess of Rs. 1,00,000/- being the minimum threshold limit fixed under IBC, 2016. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent."*

*28. It is also reported that the present Corporate Debtor belongs to the same group of company. Hence, we find no cogent reason to go for different stand and take a different view from what has been observed and taken by the Adjudicating Authority of NCLT, New Delhi because the fact and circumstances of both cases are based on similar footings. Hence, we follow and reiterate the same in the present matter also. Thus, the present I.B. Petition deserves for admission".*

12. We have carefully gone through the pleadings of the parties, the judgments cited by the parties, submissions made by the Ld. Counsels of the parties and are having following observations:

- (i) It is not in dispute that Non-Convertible Debentures (NCD) has not been taken by the Corporate Debtor/Appellant.
- (ii) It is also not in dispute that the Date of Default originally is 10.09.2003.

(iii) It is also not in dispute that the R-1/Financial Creditor the then existing - IDBI has taken up the matter under SICA to the BIFR for two times and thereafter even SARFAESI proceedings have been initiated.

(iv) What is in dispute is limited to the two factors that the trust deed of R-1/SASF does not permit initiation of filing for insolvency resolution cases & as also it is hopelessly time barred.

(v) However, Asset Management Company/R-1 which has acquired the debt from another financial creditor as in this case IDBI will naturally have all the rights and authorities to get the money realized through the legal process. Accordingly, the R-1 has initiated the CIRP. Hence, the objection/stand taken by Appellant regarding authority of R-1/SASF does not meet the scrutiny either in the law or through the judgments. If any loan has been taken/borrowing has been resorted to, it must be required to be repaid within the framework of available law of the land. The Code is also having the purpose for resolution of the insolvency process.

(vi) The Corporate Debtor has acknowledged in writing in its Balance Sheet till 2018 debt outstanding and owed to R-1. In between also the Corporate Debtor has repeatedly accepted and acknowledged in writing its obligations from 19.03.2005 till 26.08.2008 (as stated supra in the table) which itself has extended the period of limitation till 26.08.2011 and concurrently further extended by the acknowledgment by Corporate Debtor in its Balance Sheet till 31<sup>st</sup> March 2018 duly signed by Appellant as Director and Chartered Accountant on Sept. 4, 2018 (Page No. 349- Affidavit in Reply of R-1).

(vii) The Hon'ble Apex Court in its Judgment in Civil Appeal Nos. 84-85 of 2020 in "Asset Reconstruction Company (India) Ltd. vs. Tulip Star Hotels Ltd. & Ors." 2022 SCC Online SC 944 decided on 01.08.2022 has settled the issue in paragraph 85 and 97 of the Judgment as depicted below:

*"85. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under [Section 18](#) of the Limitation Act. In Bishal Jaiswal (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Calcutta High Court in [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff](#), and Pandem Tea Co. Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana and the judgment of Karnataka High Court in [Hegde Golay Ltd. v. State Bank of India](#) and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.*

*97. To sum up, in our considered opinion an application under Section 7 of the 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 acknowledgement 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."*

(viii) The above Hon'ble Apex Court Judgment has made it very clear that entries in the Books of Accounts or Balance Sheet of a Corporate Debtor would amount to an acknowledgement under Section 18 of the Limitation Act.

(ix) However, it is to be noted that 'Notes of Accounts' reflecting reconciliation is only depicting inter se tallying of the balances. In any case such large amount of debt will not have any impact on reconciliation. The Balance Sheet also reflects at page no. 357 of 'Affidavit in Reply' that the debentures non-payment appearing in Note-IV and long term borrowing inserting that the Company Appeal (AT) (Ins) No. 15 of 2021

debentures continuing in default in repayment of Principal including funded interest since November, 2003.

(x) The amount reflected in the Balance Sheet as on 31.03.2018 at page no. 357 of the 'Affidavit in Reply' reflects Principal amount of Rs. 30,11,22,262/- and interest outstanding Rs. 388,47,984/- the details of security are also reflected therein. In Note-VII interest accrued and due on borrowings of these non- convertible debentures is reflected in other current liabilities at Rs. 50,57,75,337/-. All these reflects that there is a large amount due as far as the job of reconciliation is concerned the code goes by the filing of claim and its scrutiny in accordance with the Code and related Regulation to be verified in primarily by the Interim Resolution Professional/Resolution Professional followed by the scrutiny and approval by Committee of Creditors and its acceptance by the Adjudicating Authority.

(xi) Hence, there is no iota of doubt that the debentures being a long term borrowing a debt under Section 5 (8) has depicted below:

*"Financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*

*(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

*[Explanation- for the purpose of this sub-clause,-*

*(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing ; and*

*(ii) the expressions, “allottee” and “Real Estate project” shall have the meanings respectively assigned to them in clause (d) and (zn) of Section 2 of the real estate (Regulation and development) Act, 2016 (16 of 2016);]*

*(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

*(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

*(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”*

(xii) From the above elaborate discussion it is very much clear that the debt is due and payable in law and the amount is exceeding the basic threshold of the Code and hence, we are in agreement with the order of Adjudicating Authority and accordingly, we uphold the order of Adjudicating Authority. The Appeal is accordingly dismissed. No order as to costs.

Interim order, if any, stands vacated.

**[Justice Rakesh Kumar]**  
**Member (Judicial)**

**[Dr. Ashok Kumar Mishra]**  
**Member (Technical)**

New Delhi  
22.09. 2022  
sr