

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

COMPANY APPEAL (AT) (CH) (INS.) NO. 159/2023

(IA Nos. 527 & 967/2023)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of the Impugned Order dated 24/03/2023 in
CP(IB) No. 574/7/HDB/2019, passed by the ‘Adjudicating Authority’
National Company Law Tribunal, Hyderabad Bench, Hyderabad)**

In the matter of :

D. Srinivasa Rao, aged 73 years

S/o. Sri D. Simhabaludu,

Promoter and suspended Vice Chairman and

Director of M/s. Priyaranjani Fibres Limited,

D. No. 7-1-79/A, Dharam Karan Road,

Ameerpet, Hyderabad – 500016

Email: priyaranjanifibresltd@gmail.com

...Appellant

Versus

1. Stressed Assets Stabilisation Fund

Represented by its DGM,

Mr. Santosh V, Shinde

3rd Floor, IDBI Tower, WTC Complex,

Cuffe Parade, Mumbai – 400 005

Email : sv.shinde@idbi.co.in

...Respondent No. 1

2. M/S. PriyaranjaniFiber Limited (in insolvency resolution)

Represented by its Interim Resolution Professional

Sr. Raghu Babu Gunturu,

Raipole village, Ibrahimpatnam Mandal,

Rangareddy District 501508

Email: raghu@ezresolve.in

...Respondent No. 2

Present :

For Appellant : Mr. D. Srinivasa Rao, Party-in-Person
For Respondents : Mr. T. Ravichandran, Advocate, For R1
Mr. A.G. Sathyanarayana, Advocate, For RP/R2

J U D G M E N T

(Virtual Mode)

[Per: ShreeshMerla, Member (Technical)]

1. Challenge in this Company Appeal (AT) (CH) (Ins) No. 159/2023 is to the Impugned Order dated 24/03/2023 in CP(IB) No. 574/7/HDB/2019, passed by the ‘Adjudicating Authority’, National Company Law Tribunal, Hyderabad Bench – I, by which Order the ‘Adjudicating Authority’ has admitted the Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘Code’), observing that the Application is within the period of Limitation.

Submissions of the Appellant :

2. Mr. D. Srinivasa Rao, the Promoter and Suspended Vice Chairman and Director of the Corporate Debtor Company, preferred this Appeal and also argued in person. It is submitted by Mr. D. Srinivasa Rao that the Application dated 19/08/2019 is barred by limitation since admittedly the default was committed on 01/04/1997 and it is argued that no acknowledgements were made before the expiry of the limitation of three years and therefore, Section 18 of the Limitation Act, 1963 is not attracted; that the decision of this Tribunal in the matter of **‘Ramdas Dutta Vs. IDBI Bank Limited & Anr.’** dated 26/04/2023 in **Company**

Appeal No. 1286/2022, is applicable to the facts of the case, in which matter this Tribunal has observed that *‘Thus, the limitation counted from the date of default i.e. 30.06.2011 had expired on 30.06.2014 and there is no acknowledgement of debt during this period in terms of Section 18 of the Act. The Bank did not place on record the balance sheet prior to 2014 and the only balance sheets placed on record are from 31.03.2015 to 31.03.2018 and the OTS also took place on 21st January, 2019 much beyond the period of three years’*. A three Member Bench of the Hon’ble Supreme Court in the matter of **‘Kotak Mahindra Bank Vs. A. Balakrishna’** reported in **AIR 2022 SC 2652** has also reiterated that *‘“Right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing the application, the application would be barred under Article 137 of Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application’*.

3. It is submitted by the Party-in-Person that the Financial Creditor is only entitled to initiate CIRP within 3 years of issuing the Recovery Certificate which is dated 19/11/2009, whereas the Section 7 Application was filed after a lapse of 10 years of issuance of the Recovery Certificate by DRT in DRC No. 116, which is dated 20/11/2009. It is argued that the ‘Adjudicating Authority’ has erroneously ignored the fact of issuance of Notice, dated 29/08/2006, under Section 13 (2) of the SARFAESI Act, 2002, by the Financial Creditor to the Corporate Debtor in which second date of becoming the NPA was reiterated.

Therefore, the Limitation is to be calculated from 30/08/2009. In support of his argument, the Party-in-Person placed reliance on the Judgment of this Tribunal dated 05/01/2023 in the matter of '**Amanjyot Singh Vs. Navneet Kumar Jain (RP)**' in **Company Appeal (AT) (Ins) No. 961/2022**, in which it is held that '*The learned Counsel for the Appellant may be right in his submission that by virtue of notice issued under Section 13, sub-section (2) dated 04.10.2013, the Appellant was also asked to make the payment of dues, but the undisputed fact is that apart from notice dated 04.10.2013, no steps have been taken by the Bank to recover any dues from the Appellant. The default, if any, committed by the Appellant was in October 2013, when notice was received by the Appellant....*'

4. It is vehemently argued by the Suspended Director that when DRT cannot shift forward the date of default, the 'Adjudicating Authority' has erred in not taking into consideration the ratio laid down by this Tribunal in the matter of '**Mr. Ashish Kumar Vs. Mr. Vinod Kumar Pukhraj Ambavat, Resolution Professional**', dated 17/02/2020 in **Company Appeal (AT) (Ins) No. 1411/2019** in which this Tribunal held that '*Admittedly, in this case, the account of the Appellant/Corporate Debtor was classified as NPA on 29th August, 2012 thereafter, demand notice under Section 13(2) of the SARFAESI Act, was issued on 03rd October, 2012. In view of the law laid down by Hon'ble Supreme Court in case of Jignesh Shah (supra), it is clear that period of limitation will be computed from the date when the account of the Corporate Debtor was classified*

as NPA. Thus, the limitation available for initiation of CIRP under Section 7 or 9 of the I&B Code was available up to 02nd October, 2015... ’

5. It is also strenuously argued by Mr. Srinivasa Rao that the letters of acknowledgement cannot be considered as acknowledgement under Section 18 of the Limitation Act, 1963, because they are not ‘concluded contracts’ as the ‘offer’ made by the Corporate Debtor Company was not accepted by the Financial Creditor and vice versa. Therefore, the additional offer / proposals sent between 2008 and 2022, specifically on 22/11/2008, 17/12/2008, 25/12/2008, 27/12/2008, 12/04/2010, 15/11/2012, 02/04/2013, 03/07/2017, 08/09/2017, 27/10/2017, 11/12/2017, 17/02/2018, 28/04/2018, 06/04/2019, 02/07/2019, 16/08/2019, 26/08/2019, 17/09/2019, 21/09/2019, 11/10/2019, 18/12/2019, 20/02/2021, 07/08/2021, 02/10/2021, 23/04/2022, 15/06/2022 & 22/08/2022, cannot be taken into consideration. It is submitted that there are no letters of acknowledgement issued by the Corporate Debtor either during the period from 01/04/1997 to 01/04/2000 and also the period of limitation from 21/04/2013 to 02/07/2017, specifically keeping in view that the Financial Creditor has rejected the OTS Proposal through various letters dated, 07/05/2018, 16/09/2019, 30/08/2021, 18/10/2021 and 20/07/2022. Since there were no fresh concluded Contracts entered into by the Financial Creditor and the Corporate Debtor after the expiry of the prescribed period of Limitation that is from 01/04/2000, the Application is barred by limitation. The suspended Director, Mr. D. Srinivasa Rao, placed reliance on the Judgment of the Hon’ble Supreme Court in the matter of **‘SBI Vs.**

Krishidhan Seeds Pvt. Ltd.’ reported in **2023 1 SCC 209** in which matter the Hon’ble Supreme Court held that ‘...*Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgement, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgement of the debt, from time to time, for institution of the proceedings under Section 7 IBC...*’ and also referred to the decision of the Hon’ble Supreme Court in the matter of ‘**Bank of India Vs. Bimalkumar Manubhai Savalia & Ors.**’, dated 05/03/2020 in **Civil Appeal No. 2988/2020** in which the Hon’ble Apex Court held that ‘*The Impugned judgment/order rightly records that the proceedings under the SARFAESI Act and the DRT Act would not extend the period of limitation.*’ and that ‘*It is accepted that the OTS proposal is within three years from the date the debt was declared to be NPA i.e. on dt. 30.09.2014*’.

6. It is repeatedly argued by him that the OTS proposals were ‘additional’ and ‘conditional’ and also made after the expiry of three years of the date of default that is 01/04/1997 and therefore ought to have been rejected. The Party-in-Person placed reliance on the Judgment of the Division Bench of the Hon’ble Gujarat High Court in the matter of ‘**Gujarat Maritime Board Vs. Jogadia Polymers**’ reported in **R/First Appeal No. 2623/2018** in which it is held that ‘...*This was thus, a conditional offer and not an unconditional promise to pay. In terms of this offer, if the plaintiff had accepted the terms only then the same would result*

*into a concluded contract. In any case, the offer for payment was not unconditional and therefore, could not be seen as a promise... ’ and also referred to the decision of the Hon’ble Andhra Pradesh High Court in ‘**MNMR Cotton Industries Vs. Jyothi Chit Fund Company**’, dated 04/05/2022 reported in **Appeal Suit No. 742/2006** in which it is observed that ‘...*There is no separate agreement between the parties in connection with payment of balance amount. Thus, even the ‘part payment’ made under Ex A-9 without any specific agreement may not be useful to the plaintiff in saving limitation*’. It is the case of the Appellant that even a ‘part payment’ cannot be construed as acknowledgment of debt in the light of the aforementioned Judgment of the Hon’ble Andhra Pradesh High Court. It is also the case of the Appellant that the OTS proposals were signed by unauthorised personnel of the Company who are not the Directors of the Company and therefore no jural relationship can be attributed between the Corporate Debtor and the Financial Creditor.*

7. On 15/11/2012, the Corporate Debtor Company on behalf of the shareholders had requested the Financial Creditor to keep the OTS offer open which was earlier sanctioned by them on 22/11/2008 since the Financial Creditor had revoked the several OTS offer on 21/09/2012 without issuing Notice to the Corporate Debtor Company, but this was done after the ‘expiry period of 3 years’ and thereafter the conditional offer dated 15/11/2012 is an unqualified acknowledgment without admitting subsisting liability and therefore does not attract Section 18 of the Limitation Act, 1961. The Party-in-Person placed

reliance on the Judgment of the Hon'ble Supreme Court in the matter of '**Lakshmi Ratan Cotton Mills Vs. Aluminium Corporation of India Limited**' reported in [1970 INSC 222] in which the Hon'ble Supreme Court held as follows:

“The admission of liability was conditional, and therefore, cannot operate as an acknowledgement. In this connection the decision of judicial commission in Maniram v. Rupchand(1) was relied on and in particular the famous dictum of Mellish, L.J., in River Steamer Co. v. Mitchell (2) approvingly cited therein. The dictum was that an acknowledgement to take the case out of the statute of limitation must be either one from which an absolute promise to pay can be inferred, or secondly, an (1) L.R. 33 1. A. 165. (2) L.R. 6 Ch. App. 822, at 828. unconditional promise to pay the specific debt, or thirdly, that there must be a conditional promise to pay the debt and evidence that the condition has been performed.”

8. It is vehemently argued that the 'Adjudicating Authority' has erred in including the period between 21/02/2012 to 15/02/2017 due to the pending BIFR proceeding under the SICA Act, 1985. The DRT had granted decree on 10/08/2009 and issued the Certificate on 19/11/2009 and held that 'in the event of pendency of Proceedings before BIFR, Applicant is directed to obtain leave of BIFR, before executing the Recovery Certificate'. It is submitted that a Financial Creditor cannot avail benefit of the SICA Act, 1985 and placed reliance on the Judgment in the matter of '**M/s. Invent Assets Securitisation and Reconstruction and Pvt. Ltd. Vs. M/s. Girnar Fibres Ltd**' in **Company Appeal (AT) (Ins) No. 556/2020**, wherein this Tribunal held as follows:

“The BIFR reference was abated as the Corporate Debtor did not modify the pending reference therefore the deemed date of abatement of reference relates back to 13.08.2015. Section 22(5) of SICA, 1968 is not attracted to the present case since the period of limitation i.e. 3 years had already expired before the BIFR reference was made by the Corporate Debtor. Any reference before the BFIR is abated, if secured creditors have taken measures under Section 13(4) of the SARFAESI Act, 2002 as provided for under Section 41 of the SARFAESI Act, 2002. The period between 25.04.2006 when the Corporate Debtor was declared sick by BIFR under SICA and 04.05.2016 when the reference was dismissed cannot be excluded from computing the limitation period.”

9. This was upheld by the Hon’ble Supreme Court vide Order dated 25/04/2022 in **Civil Appeal No. 3033/2022**, in which the Hon’ble Apex Court has held as follows:-

“The Appellate Tribunal has inter alia, pointed out that as per the averments and allegations, right to sue accrued when the default occurred way back on 28.02.2002; and that the material on record does not evidence any acknowledgment of liability in terms of Section 18 of the Limitation Act, 1963.”

Submissions of the Respondents :

10. The Learned Counsel for the Respondent Mr. T. Ravichandran submitted that the default was committed by the Corporate Debtor on 01/04/1997; the revised date of default before BIFR in Case Number 366/2001 under SICA Act, 1985 is 01/03/2000; and drew our attention of this Bench to the List of dates and events filed by him in support of his case. It is submitted that the Corporate Debtor Company was declared as sick Industry by BIFR on 27/12/2004 under

Section 3 (1) (o) of the Act and appointed IDBI is an Operating Agency to examine the availability of the Corporate Debtor and to formulate a Draft Rehabilitation Scheme. Thereafter, there were a series of letters from the Corporate Debtor seeking One Time Settlement beginning from 04/11/2008. On 17/12/2008 a deposit of Rs. 19,00,000/- was made towards OTS and on 25/12/2008 the Corporate Debtor issued another letter informing the Financial Creditor about remittance of down payment of Rs. 20,00,000/- through RTGS. On 26/12/2008, the Corporate Debtor requested the Financial Creditor about the remittance of Rs. 76,00,000/- towards part payment of OTS, which was accepted by the Financial Creditor on 27/12/2008. On 19/11/2009, the Debt Recovery Certificate was issued by the DRT. In paragraph 5 it is categorically mentioned that in the event of pendency of proceedings before BIFR, the Applicant is directed to obtain the leave of BIFR before executing Recovery Certificate and therefore, the fresh date of default / limitation starts but is in the exclusion period from 01/03/2000 to 01/12/2016 on which date the SICA Act was repealed. On 16/02/2010 a letter was addressed by the Corporate Debtor acknowledging the making of some payments. On 30/06/2010, a Demand Letter was sent by the Financial Creditor to the Corporate Debtor. On 22/11/2011, BIFR dismisses the Application of the Corporate Debtor. On 21/02/2012, AIFR granted stay of all proceedings. On 21/09/2012, a letter was addressed by the Respondent to the Corporate Debtor revoking the OTS settlement. On 15/11/2012, a letter was addressed by the Corporate Debtor requested OTS settlement and to take a

sympathetic view. Similar requests were made on 02/04/2013 and on 20/04/2013 by the Executive Vice Chairman, but the Financial Creditor had rejected its OTS request on 13/08/2013. On 04/04/2016, the Appeal before AIFR was last listed, but no Order was passed. On 01/12/2016, SICA was repealed. Since the cause of action accrued to the Financial Creditor on 19/11/2009 during the SICA Moratorium, the Limitation commenced afresh from 01/12/2016. There was a continuous acknowledgement of debt by way of OTS proposals on 10/01/2017, 03/07/2017, 08/09/2017, 27/10/2017. On 10/11/2017, the Financial Creditor rejected the OTS proposal offered by the Corporate Debtor. On 11/12/2017, once again, Executive Vice Chairman acknowledged the payment and sought for granting of 3 months time and on 17/02/2018, once again a letter was addressed requesting the Financial Creditor to accept the OTS offer of Rs. 5,00,000/-. On 07/05/2018, the Financial Creditor had rejected the OTS offer. On 06/04/2019, a letter was addressed by the Appellant suggesting Rs. 9,00,00,000/- as the OTS amount. It is submitted by the Learned Counsel Mr. Ravichandran that the Company Petition was filed by the Respondent on 19/08/2019 and is therefore, within the Limitation period considering the ex-chequered history of the Appellant and the continuous letters on OTS proposals which even continued after the expiry of the Section 7 Application, right up to 26/09/2022

Assessment :

11. It is not in dispute that the default was committed by the Corporate Debtor on 01/04/1997 and that an OA 222/2000 was filed on 01/02/2000. On 13/09/2001 after the filing of the OA by IDBI, the Corporate Debtor had approached BIFR under Section 15 (1) of the SICA Act, 2002. On 17/09/2002, BIFR appointed IDBI as the Operating Agency under Section 16(2) of the Act. On 27/12/2004, the Corporate Debtor was declared as a sick industry by BIFR under Section 3 (1) (o) of the Act and appointed IDBI as the Operating Agency under Section 17 (3) of the Act with a direction to examine the validity of the Corporate Debtor and to formulate a draft rehabilitation scheme. On 19/11/2009, a Debt Recovery Certificate was issued by the DRT. On 16/02/2010, a letter was addressed by the Corporate Debtor to the Financial Creditor acknowledged making of certain payments. On 12/04/2010, there is a letter addressed by the Corporate Debtor addressing to some pending issues between existing management and the Appellant herein. On 22/11/2011, BIFR dismissed the Application of the Corporate Debtor and on 21/02/2012 AIFR had granted stay of proceedings. On 04/04/2016, the Appeal before AIFR was last listed, but no Order was passed. While so, on 01/12/2016, the SICA Act was repealed. It is an admitted fact that the Corporate Debtor had not moved any Application within 180 days for continuation of the Proceedings before AIFR and as such the AIFR proceedings stood as abated by February 2017. It is the main case of the Appellant herein that the Limitation period of 3 years from the date of issuance of the Recovery

Certificate by DRT has expired by the date of filing of the present Application and that the period spent between 2009 and 2016 cannot be excluded for the purpose of limitation.

12. Whether while computing limitation, the period during which the Financial Creditor's right to proceed against the Corporate Debtor, which remained suspended by virtue of Section 22 (1) of the SICA Act, 1985 (SICA) can be excluded, is to be examined. Section 22 (1) SICA, reads as follows:'

“22. Suspension of legal proceedings, contracts, etc.-(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority.”

Section 22 (5) SICA is also to be seen for excluding a certain period for limitation.

“22. Suspension of legal proceedings, contracts, etc.- (1)-(4)

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

17. Thus, Section 22(1) SICA as extracted above, would make it clear that there was a statutory bar to take to any proceeding for realisation of a right referred to in the said section against an industrial company when once an enquiry under Section 16 SICA is pending against it or any scheme referred to under Section 17 thereof is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, except with the consent of the Board or the appellate authority, as the case may be. As noticed earlier, SICA came to be repealed and IBC came into force (Sections 7 to 9 and various other Sections), on the same day viz. on 1-12-2016.”

13. Section 22 (1) SICA makes it clear that there is a bar for realisation of a right referred to in this Section against the Corporate Debtor when once an enquiry under Section 16 SICA is pending against it or any scheme referred to under Section 17 thereof, is being considered or an Appeal under Section 25 is pending, an exception being with the consent of the Board or that of the Appellate authority. The Hon’ble Apex Court in the matter of **‘Sabarmathi Gas Limited Vs. Shah Alloys Ltd.’** reported in [(2023) 3 SCC 229] referred to a three judge Bench Judgment in the matter of **‘KSL & Industries Limited Vs. Arihant Threads Ltd.’** reported in [(2015) 1 SCC 166] in which the issue whether a Recovery Application under the RDDB Act, 1963 would lie or be proceeded with against a sick company in view of the bar contained in Section 22 (1) of SICA,

was addressed to. The Hon'ble Apex Court in the matter of '***Sabarmathi Gas Limited Vs. Shah Alloys Ltd.***' (Supra) held as follows:-

23. *In view of the provisions under Section 22(1) of SICA and the decisions in Paramjeet Singh case [Paramjeet Singh Patheja v. ICDS Ltd., (2006) 13 SCC 322] and in KSL & Industries [KSL & Industries Ltd. v. Arihant Threads Ltd., (2015) 1 SCC 166 : (2015) 1 SCC (Civ) 462] , it is worthwhile to note that in the case on hand it was the industrial company (the respondent herein) that approached BIFR under the provisions of SICA and got it declared as "sick company" by filing Case No. 13 of 2010; that it is thereafter that the appellant filed Miscellaneous Application No. 432 of 2013 thereon praying, inter alia, to permit it under Section 22 of SICA to approach a civil court of appropriate jurisdiction for recovery of the abovementioned dues along with interest; that the said application was disposed of only on 9-9-2015, as per Annexure A-40 proceedings, that too, only with a direction to the respondent company to incorporate the dues of the applicant in the DRS and that as per Annexure A-40, Case No. 13 of 2010 and MA No. 292 of 2014 filed thereon, were then, posted for hearing.*

24. *In short, Case No. 13 of 2010 was pending before BIFR when SICA was repealed w.e.f. 1-12-2016 and Sections 8 and 9 IBC took its effect from 1-12-2016. Thus, obviously, proceedings under SICA were then pending before BIFR when the default from the part of the respondent allegedly occurred and by virtue of Section 22(1) SICA and the decisions referred above, the appellant could not have, then, resorted to any legal proceedings for enforcing any right which may result in recovery from the properties of the respondent company. For the same reasons, the contention of the respondent that pending the proceedings before BIFR the appellant could have resorted to arbitration proceedings also has to fail.*

25. Now, we will have to consider the purported intent of Section 22(5) SICA. The intention appears to be to protect the interest of such a party who was prevented from lawfully enforcing the right to seek for recovery of dues during the operative period of the bar under Section 22(1) SICA, if it is otherwise available even after the conclusion of proceedings before BIFR, to the extent specifically mentioned therein. According to us, any other understanding of the provisions under Section 22(5) would be wholly pointless and purposeless. When the appellant being a party to BIFR in the sense, on intervention obtained an order to the respondent company to incorporate its dues in the Draft Rehabilitation Scheme (“DRS”) in an application seeking permission to effect recovery of the dues and such a stage had not reached till 1-12-2016, whether there would be any justification to hold that on the repeal of SICA it could not claim the benefit flowing from the provisions under Section 22(5) of SICA, subject to the provisions under the relevant laws governing the appropriate forum chosen?”

(Emphasis Supplied)

14. Though the matter in *‘Sabarmathi Gas Limited Vs. Shah Alloys Ltd.’*

(Supra) pertained to the issue of Limitation under Section 9 Application, it goes without saying that the same ratio is also applicable to Section 7 Application under the Code.

“39. When the limitation period for initiating CIRP under Section 9 IBC is to be reckoned from the date of default, as opposed to the date of commencement of IBC and the period prescribed therefor, is three years as provided by Section 137 of the Limitation Act, 1963 and the same would commence from the date of default and is extendable only by application of Section 5 of the Limitation Act, 1963

it is incumbent on the adjudicating authority to consider the claim for condonation of the delay when once the proceeding concerned is found filed beyond the period of limitation.

40. As relates Section 5 of the Limitation Act showing “sufficient cause” is the only criterion for condoning delay. “Sufficient cause” is the cause for which a party could not be blamed. We have already taken note of the legal bar for initiation of proceedings against an industrial company by virtue of Section 22(1) SICA and obviously, when a party was thus legally disabled from resorting to legal proceeding for recovering the outstanding dues without the permission of BIFR and even on application permission therefor was not given, the period of suspension of legal proceedings is excludable in computing the period of limitation for the enforcement of such right in terms of Section 22(5) SICA. In the absence of provisions for exclusion of such period in respect of an application under Section 9 IBC, despite the combined reading of Section 238-A IBC and the provisions under the Limitation Act what is legally available to such a party is to assign the same as a sufficient cause for condoning the delay under Section 5 of the Limitation Act. In such eventuality, in accordance with the factual position obtained in any particular case viz. the period of delay and the period covered by suspension of right under Section 22(1) SICA, etc. the question of condonation of delay has to be considered lest it will result in injustice as the party was statutorily prevented from initiating action against the industrial company concerned. The first question formulated hereinbefore is accordingly answered.”

(Emphasis Supplied)

15. In the instant case, BIFR, vide Order dated 22/12/2004 had permitted the Appellant herein, to continue the Recovery proceedings before DRT, Chennai

and ordered that ‘decree, if any, in favour of the Application shall not be executed without the prior permission of the Board’. Hence, DRT, Chennai while allowing OA No. 373/2007, had in its Order dated 18/10/2007 directed that in the event of pendency of Proceedings before BIFR, the Applicant ought to obtain leave of BIFR before executing the Recovery Certificate. This express direction is specific to the Recovery Certificate, dated 19/11/2009. Though the Corporate Debtor had preferred an AIFR against the Order dated 22/11/2011 on BIFR, AIFR against the Order dated 21/02/2012 had granted ‘stay on the proceedings till the main Appeal is disposed of’ but in the meantime, the SICA Act, 2002 had been repealed on 01/12/2016 and the Corporate Debtor did not choose to file an Application, before the NCLT for continuation of proceedings of AIFR within 180 days from 01/12/2016 and hence, the right to enforce the Recovery Certificate, dated 19/11/2009 has accrued only in February 2017. Therefore, keeping in view the ratio of the Hon’ble Apex Court in Sabarmati Gas Limited (Supra) specifically having regard to the fact that the Financial Creditor’s right to rely on the Recovery Certificate dated 19/11/2009 stood suspended till February 2017 by virtue of the Orders of BIFR and AIFR, the period during which the remedy for the enforcement, thereof remained stayed, ought to be excluded. Hence, this Tribunal is of the considered view that February 2017 is to be seen as the date on which fresh cause of action arises.

16. The applicability of the Judgment of NCLAT relied upon by the Appellant in the matter of *‘Invent Assets Securitisation Vs. M/s Girnar Fibres Limited’* in

Company Appeal (AT) (Ins) No. 556/2020, dated 18/11/2021 is to be seen with respect to the facts of this case. The facts are distinguishable as in *Invent Assets (Supra)*, there was no acknowledgment of liability under Section 18 of the Limitation Act, 1963 and further the dismissal of the BIFR reference was also dated beyond 3 years from the date of default. The other Judgments relied upon by the Appellant in support of his case that this period spent before the BIFR / AIFR cannot be excluded in the facts of the attendant case, cannot be accepted for the reason that the ratio in '***Sabarmathi Gas Limited Vs. Shah Alloys Ltd.***' (*Supra*) under the IBC Code, 2016 is squarely applicable to the case on hand.

17. Now, the next issue which is being addressed to is with respect to the contention of the Appellant that the OTS proposals being 'conditional' cannot be taken into consideration and also that they do not extend the period of limitation as they were given beyond three years from the date of default. The question of applicability of Section 8 of the Limitation Act, 1963 under IBC, 2016 is to be examined on the touch stone of the ratio laid down by the Hon'ble Apex Court in the matter of '***Dena Bank Vs. C. ShivaKumar Reddy***' reported in ***[(2021) 10 SCC 330]*** wherein it was held that issuance of a Recovery Certificate in favour of a Financial Creditor would rise to a fresh cause of action to initiate proceedings under Section 7 of the Code. The Hon'ble Court thus observed in paras 136 and 141 as follows:

“27. This Court further went on to observe thus: (Dena Bank case, SCC pp. 387-88, paras 136 & 141)

“136. A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of recovery is also issued authorising the creditor to realise its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the recovery certificate.

141. Moreover, a judgment and/or decreed for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decreed or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decreed and/or in terms of the certificate of recovery, or any part thereof remained unpaid.”

18. It is thus held by the Hon’ble Apex Court in the matter of **‘Dena Bank Vs. C. ShivaKumar Reddy’** (Supra) that once a Claim fructifies into a final Judgment, a Certificate of Recovery is issued which authorises the Creditor to realise its decretal dues and a fresh right accrues to the Creditor to recover the amount. At this juncture, we find it apposite to place reliance on the Judgment of the Hon’ble Supreme Court in the matter of **‘Kotak Mahindra Bank Vs. A. Balakrishnan’**

reported in [(2022) 9 SCC 186], in which case referring at length to ‘Dena Bank’, the Hon’ble Court concluded as follows:

“86. To conclude, we hold that a liability in respect of a claim arising out of a recovery certificate would be a “financial debt” within the meaning of clause (8) of Section 5 IBC. Consequently, the holder of the recovery certificate would be a financial creditor within the meaning of clause (7) of Section 5 IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the recovery certificate.”

19. We next address to whether subsequent to the issuance of the Debt Recovery Certificate on 19/11/2009, there was any acknowledgement which falls within the scope and ambit of Section 18 of the Limitation Act, 1961, by the Corporate Debtor within 3 years of 19/11/2009. It is seen from the record that several letters of OTS Proposals even prior to 19/11/2009, were exchanged between the Corporate Debtor Company and the Financial Creditor on 04/11/2008, 22/11/2008, 17/12/2008, 25/12/2008, 26/12/2008 and 27/12/2008. For ready reference, the Letter dated 27/12/2008 written by the Corporate Debtor to the Financial Creditor discussing the OTS Proposal given on 04/11/2008 and the payments to be made thereof, is detailed as hereunder:-



STRESSED ASSETS STABILIZATION FUND

IN DUPLICATE

'WITHOUT PREJUDICE'

Ref. No. SASF (PFL) /2008-09/2

December 27, 2008

Shri K.Sivananda Reddy
Managing Director,
Priyaranjani Fibres Ltd.
8-3-833/90 Plot No.90
Phase I, Kamalpuri Colony,
Sri Nagar Colony,
Hyderabad - 500 073

Dear Sir,

Priyaranjani Fibres Ltd - Settlement of SASF's dues

Please refer to your letter dated November 4,2008 and the subsequent discussions you had with us on the captioned subject. We advise that SASF is agreeable, in principle, to accept an amount of Rs.376 lakh by way of settlement of its dues, subject to the terms and conditions set out in the Appendix to this letter. The broad terms and conditions of the settlement is as under :

- i) Cut -off Date : March 31,2008
- ii) Settlement Amount : Rs.376 lakh
- iii) Terms of payment : a) Rs.76 lakh shall be payable on approval.
b) Rs.300 lakh shall be payable in 8 quarterly installments with interest @13% p.a. after 6 months from the date of approval.

2. This letter is being forwarded to you in duplicate. Please return the duplicate copy of the letter duly signed by an authorized Director of the

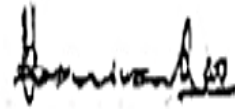


10th Floor, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai - 400 005.
Tel.: (Dir) 2218 6473, (Board) 2218 9111, 6655 3355, Fax : 2218 2056 Website : www.sasftrust.com

company as a token of acceptance of the terms and conditions of the settlement within one month.

3. Meanwhile, please acknowledge receipt of this letter.

Yours faithfully,



[V. Srinivasa Rao]
Deputy General Manager

Accepted

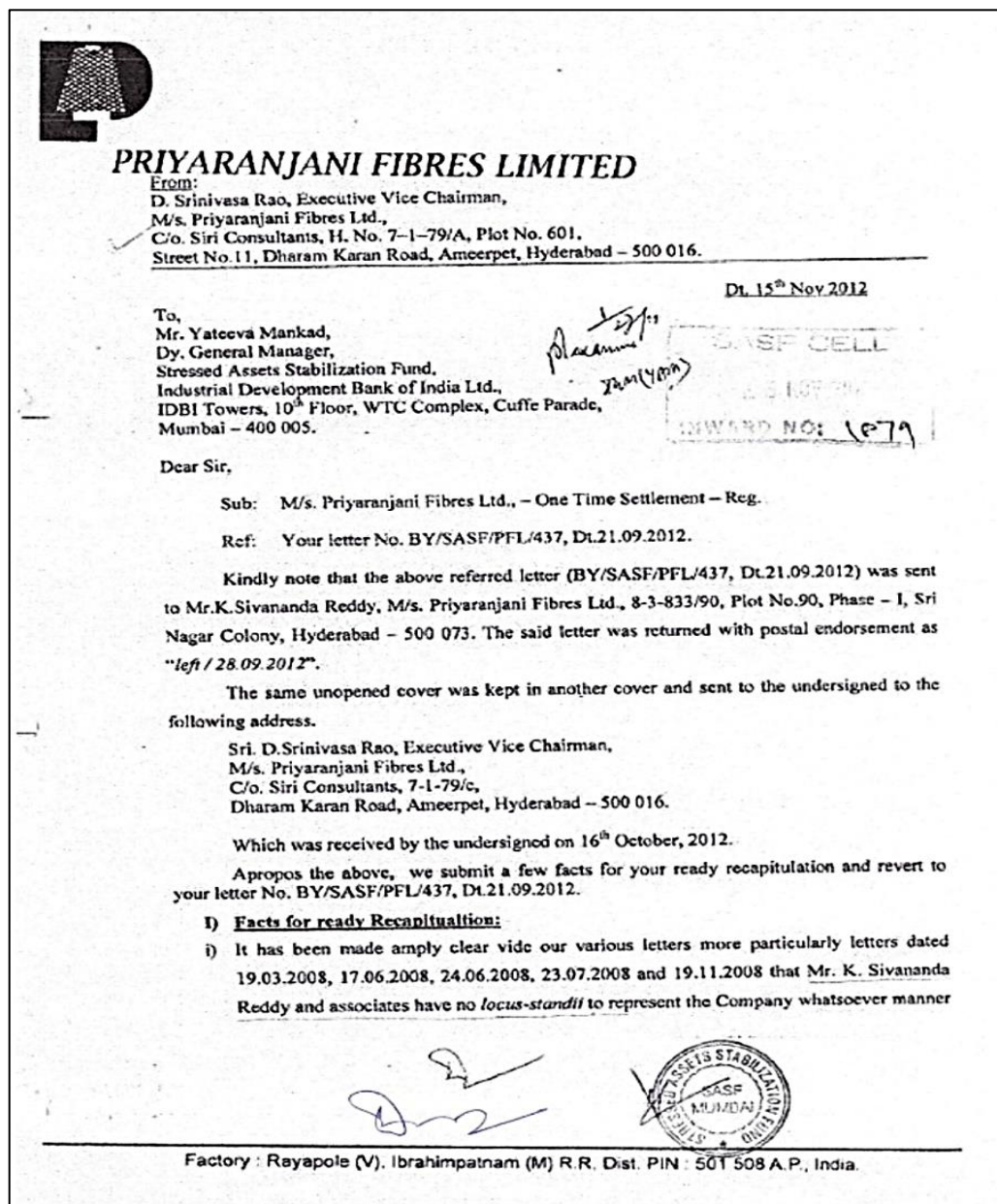
(Authorised Director)
For Priyaranjani Fibres Ltd



20. From the aforementioned letter, it is clear that there is a clear acknowledgement of the Debt together with the terms of payment. Even on 16/02/2010 an amount of Rs. 37,50,000/- was remitted to the bank in pursuance of the OTS settlement proposal. The said Letter is detailed as hereunder:

 PRIYARANJANI FIBRES LIMITED	Administrative Office : Flat No. 101, KORI Residency B-3-965/16, Nagarjuna Nagar Amberpet, Hyderabad - 73 Tel : 040-23745403 Fax : 040-23758094
To Stressed Assets Stabilization Fund, 23rd floor, IDBI Tower, Cuffe parade, Mumbai. 400 005 Fax No. 022-2218 2056	dt. February 16, 2010
Dear Sir, Sub : OTS of dues to SASF	SASF CELL 18 FEB 2010 WARD NO: 4027A
<i>Annex</i> In continuation of the discussions we had with your officials on 11.2.2010 at Mumbai. We have today remitted from our associates the following amounts.	
Amount remitted in IDBI Bank Cuddapah Branch to the account No. 00/640	12,50,000
Amount remitted in SBH Cuddapah through RTGS in UTR No.	10,00,000
10047300545	10,00,000
10047300531	15,00,000
Total	37,50,000 ✓
Please acknowledge receipt. We are separately organizing to get the debt of IDBI and IFCI assigned to an ARC the particulars of which will be inform^{at} shortly.	
Thanking you,	
Yours faithfully For Priyaranjani Fibres Ltd	
 (K. Ranganathan) Authorized Signatory	
Fegd. Office & Factory : Rayapole (Village), Ibrahimpatnam (Mandal), R.R. Dist. (A.P.) Pin : 501 508.	

21. For the sake of brevity only those OTS letters are being reproduced here where there is a 'promise' to pay and there is also a reference to a part payment made. The next letter dated 15/11/2012 refers in paragraph 2, the earlier OTS letters dated 27/06/2007, 31/08/2007, 02/01/2008 and 19/03/2008, thereby establishing that even prior to the issuance of Debt Recovery Certificate there were several attempts made to discharge the loan, thereby acknowledging the Debt. The letter dated 15/11/2012 reads as follows:



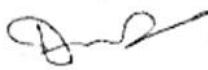
since they are not shareholders and they were restrained from functioning as MD & Directors of the company by Hon'ble Company Law Board on 16.07.2008. Subsequently the said orders were upheld by Hon'ble High Court on 28.01.2009 and reached finality as Hon'ble Supreme Court declined to interfere with the orders of Hon'ble High Court. The said facts were being brought to your kind notice by the undersigned. You are also aware of the fact that Hon'ble BIFR has recognized the undersigned as representative of the company in its orders dated 01.07.2008 and 10.07.2008.

ii) However, for obvious reasons the IDBI/SASF have invited Proposals for revival of the Unit (Priyadarabjani Fibres Ltd.,) from the undersigned as well as Mr.K. Sivananda Reddy and accordingly the undersigned submitted a proposal for revival of the Unit initially for Rs.247.00 lakhs as OTS, which was improved time and again on the insistence of the OA/SASF to Rs.400.00 lakhs, as detailed below:

- a. Our letter Dt.27.06.2007 – We offered Rs.247.00 lakhs as OTS.
- b. IDBI, Chennai letter No.2293/SASF/PRIYA, Dt.17.07.2007 – Requesting the undersigned to improve the offer.
- c. Our letter Dt.31.08.2007 – We further enhanced our offer from Rs.247.00 lakhs to Rs.260.00 lakhs as OTS.
- d. IDBI, Chennai letter No.4992/SASF/PRIYA, Dt.06.12.2007 – Requesting the undersigned to improve the offer.
- e. Our letter Dt.02.01.2008 – We once again enhanced our offer from Rs.260.00 lakhs to Rs.325.00 lakhs as OTS.
- f. IDBI, Chennai letter No.6162/SASF/PRIYA, Dt.13.02.2008 – Requesting the undersigned to improve the offer.
- g. Our letter Dt.19.03.2008 – We further enhanced our offer from Rs.325.00 lakhs to Rs.400.00 lakhs as OTS.

iii) It is submitted that besides the adverse orders of the Hon'ble Company Law Board dated 16.07.2008, shareholders of the company removed Mr.K.Sivananda Reddy and associates from directorship on 02.01.2008. The undersigned has brought to your kind notice the said developments for your favorable consideration of our OTS proposals in the above cited letters.

However, you have sent the above letter dated 21.09.2012 addressing Mr. K. Sivananda Reddy, as Managing Director was returned without assigning the reasons. We once again reiterate that as per the above, no other person other than the shareholder, promoter Director Mr.D.Srinivasa Rao, Executive Vice Chairman (undersigned) is authorized to represent the company; and in that capacity, we reply to above cited letter as follows:




II) OUR REPLY:

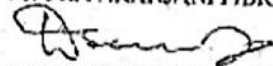
- i) We sincerely thank you that vide letter No. SASF/IDBI (OA) you have recognized that the undersigned is the real promoter and legally entitled to revive and operate the Plant (Priyaranjani Fibres Limited) by taking possession.
- ii) We have brought to your notice that Mr. K. Sivananda Reddy has removed vital production machinery like simplex machines, ring frames including DG Set from the factory premises and the undersigned has filed Criminal Complaint on the file of Municipal Court, Ibrahimpatnam. Further the entire production machinery was made to skeleton shape by removing vital electrical, mechanical parts including imported auto cones.
- iii) However, we hereby accept whatever offer of one time settlement you have agreed vide letter ref. no. SASF/PFL/2008-09/2, Dt. 27.12.2008. We agreed to pay the balance amount as per the terms agreed to and it is pertinent to bring to the notice that the amounts paid by Mr.K.Sivananda Reddy on behalf of the company are from part of generated amount out of the operation of the company.

We request you to kindly take sympathetic view in the interest of the workers and 2000 shareholders, and see that justice is done to main promoters who have spent considerable money for promoting the unit.

We have been repeatedly requesting you to accept our offer of one time settlement but we were not given opportunity. We therefore now request you to kindly keep open the OTS offer accepted by you with the amounts already paid by the Company without cancelling the same as we and our shareholders are ready to settle the dues by way of one time settlement. We are agreeable to pay the balance amount on mutually accepted terms of payment after discussions with you.

Yours faithfully,

For PRIYARANJANI FIBRES LTD.,



(D.SRINIVASA RAO)
Executive Vice Chairman



Copy submitted to:

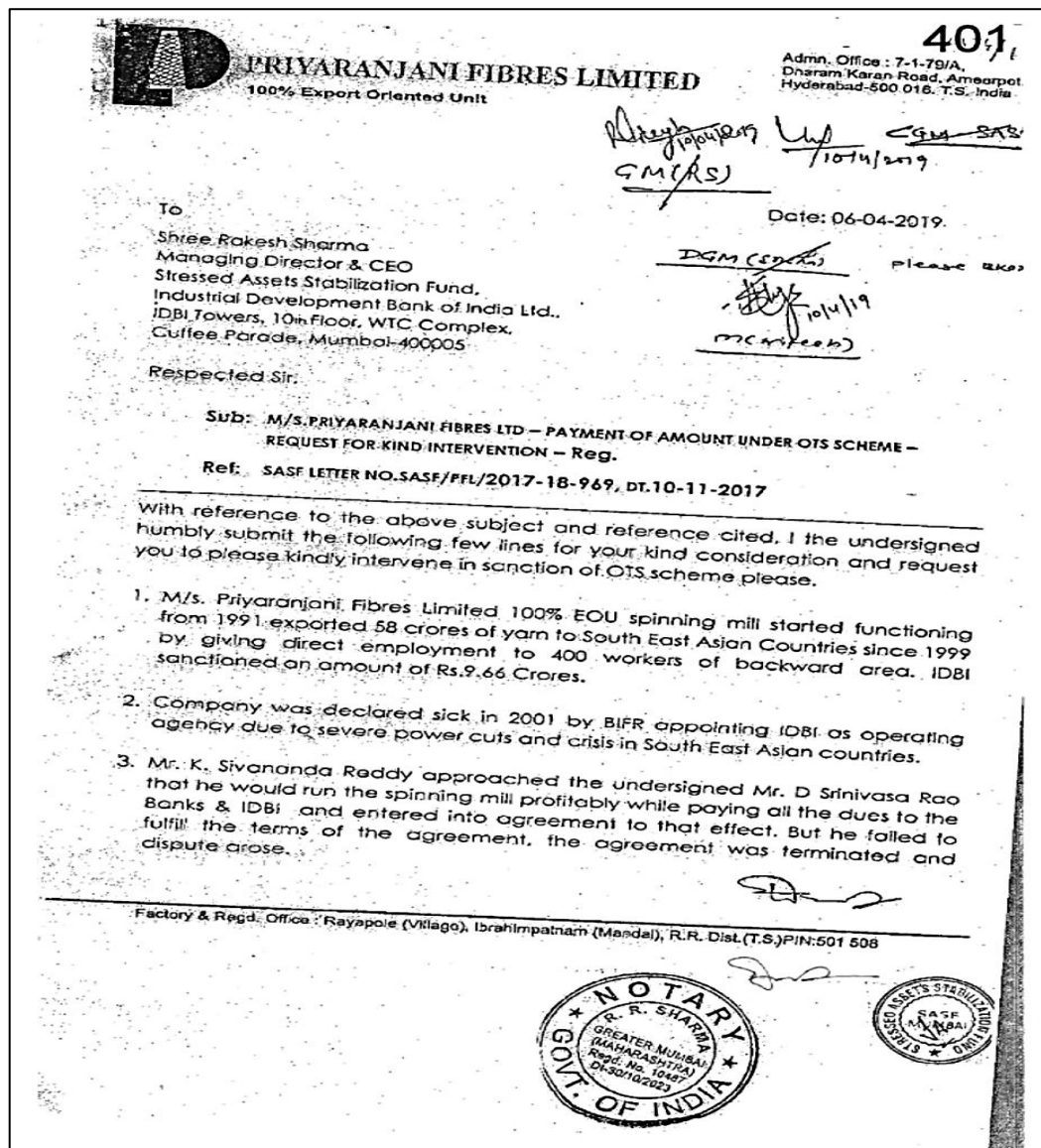
1. BIFR, New Delhi
2. AAIFR, New Delhi
3. [illegible]



22. Letter addressed by the Corporate Debtor on 20/04/2013 specifies part payments of Rs. 10 lakhs made on 18/04/2013 and 20/04/2013 respectively. The letter dated 27/10/2017 addressed by the Corporate Debtor shows the part

payments of Rs. 20 lakhs made vide cheque dated 30/10/2017 and the said letter refers to OTS proposals and approvals from 21/09/2012 onwards. A letter dated 17/02/2018 (PG. 473) reproduced below evidences the continued discussions with the bank and acknowledgment of payment to be made vis a vis the OTS proposals.

23. This Tribunal finds it pertinent to refer the letters dated 06/04/2019 & 02/07/2019, which are few months prior to the filing of the Section 7 Application, dated 19/08/2019. The said letters are reproduced as hereunder:-





PRIYARANJANI FIBRES LIMITED

402

Continuation Sheet No.

4. The IDBI (SASF) sanctioned OTS offer dt. 27.11.2008 for Rs.376 lakhs + 25 lakhs shares of the company on request of the original promoters only by waiver of balance principal outstanding of Rs.530 lakhs and other dues aggregately Rs.78.31 lakhs as on 31st March 2008. IDBI (SASF) communicated the OTS offer to Mr. K. Sivananda Reddy only on 27-12-2008 vide letter ref no. SASF/PFL/2008-09/2.

The letter was not communicated to original promoter Mr.D Srinivasa Rao despite being the fact that IDBI vide its letter dt.20-07-2009 communicated to BIFR that Mr.D.Srinivasa Rao may be recognized as representative of the company.

Mr. K. Sivananda Reddy on behalf of the company paid Rs.113 lakhs against OTS offer of 376.lakhs + 25 lakhs shares. But subsequently he failed to pay the balance amount.

5. Without notice to original promoters D.Srinivasa Rao & M.Visweswara Rao, OTS offer was terminated by IDBI and informed to D.Srinivasa Rao on 21.09.2012.

After receipt of the termination letter, Mr. D.Srinivasa Rao approached IDBI SASF for reconsideration. Consequent upon the aforesaid request, IDBI SASF in letter dt.08-04-2013 vide ref no.BY/SASF/PFL/957, asked to deposit Rs.30.00 lakhs in no-lien account to enable them to take a view on the proposal for reinstatement of OTS sanctioned to our Company. Accordingly Mr.D.Srinivasa Rao paid total of Rs.50.00 lakhs [On 02.04.2013 Rs.15.00 lakhs, on 20.04.2013 Rs.10.00 lakhs & on 20.02.2018 Rs.25.00 lakhs].

IDBI SASF kept pending the decision on the premise that there is a dispute between Mr.KSivananda Reddy and Mr.D.Srinivasa Rao before BIFR and NCLT etc. NCLT.





PRIYARANJANI FIBRES LIMITED

403

Continuation Sheet No.

After prolonged litigation in civil courts, ultimately the NCLT on 15.05.2017 put on end by passing a decree in favour of original promoters D.Srinivasa Rao & M.Visweswara Rao and it was communicated to IDBI SASF.

A letter was addressed to IDBI on 13.10.2017 that I am able to pay Rs.5.00 crores with necessary guarantees while intimating schedule of payments in order to achieve the mission of "Make In India" to boost the manufacturing.

IDBI again addressed a letter on 10.11.2017 rejecting our offer of Rs. 5.00 crores and requested to submit revised improved OTS with supported documents.

After consultation with share holders of the company, share holders have come forward to revive the unit and to give the livelihood by restoring the employment to hapless company workers and employees.

Shareholders hereby agreed to pay 9.00 crores minus amount already paid towards OTS and minus upfront fee towards one time settlement.

Therefore it is humble requested to intervene in the matter in accepting our aforesaid offer for revitalize the company providing employment to the Rural people in and around of Raipole Village, Telangana State.

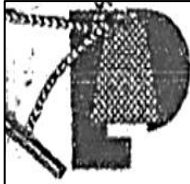
Thanking you Sir.,

Yours sincerely,

(D. SRINIVASA RAO)

V.C & M.D. M/s.PRIYARANJANI FIBRES LTD.,



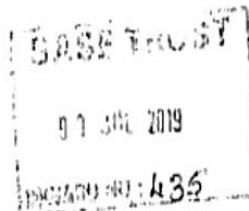


PRIYARANJANI FIBRES LIMITED

Administrative Office ;
Flat No. 101, KOR Resic
B-3-966/16, Nagarjuna N
Amberpet, Hyderabad - 1
Tel : 040-23745400
Fax : 040-23756094

Dt: 2.07.2019

To
Dy. Gen. manager,
Stressed assets stabilization fund,
3rd floor IDBI towers,
Cuff parade, Mumbai: 400005,



Dear sir,

Sub: Sale of shares pledged as security Notice u/s 176 of the Indian contract act of 1852

Ref: 1. Your letter SASF/PFL/2019-20-23 DT: 31.05.2019

2. your sanction OTS letter No: SASF(PFL)/2008.09/2 DT: 27.12.2008

We refer to the letter cited (1) informing us that the outstandings to SASF are not paid and hence you propose to dispose off the 5918670 equity shares pledged in your favour.

2. In this connection we invite your kind attention to the reference cited in (2) where in you agreed for a OTS of the dues to SASF on payment of Rs. 376 (Annexure-1)

3. In response to the above sanction of OTS we have also paid Rs 112.50 lacs.

4. Unfortunately Mr. D. Srinivasa Rao the earlier promoter who has committed defaults to IDBI and other banks, sold the majority holdings of equity shares approximately at about 80 lacs equity shares of Rs. 10/- each belonging to himself his relatives and friends and associates to us (Mr. K. Sivanand reddy and our group) as per agreement dt: 9.10.2003 (copy enclosed as Annexure-2)

5. The promoters have also paid Rs 100 lacs which is the consideration (vide Annexure-3).



Regd. Office & Factory : Rayapole (Village), Ibrahimpatnam (Mandal), R.R. Dist. (Telangana) PIN : 501 50



PRIYARANJANI FIBRES LIMITED

Administrative Office :
Flat No. 101, KOR Resh
B-3-966/16, Nagarjuna
Amberpet, Hyderabad -
Tel : 040-23745400

486

6. Sri D.S. Rao having received the full amount, did not transfer the equity shares of the company. A petition u/s 397&398 for oppression & mismanagement filed by his son, wife, daughter etc on the ground that Sri D.S. Rao cannot dispose off the shares without their consent where he made himself also as a respondent.

7. The petition u/s 397&398 was heard by NCLT, NCLAT and the Honourable supreme court of India and now a review petition in the Honourable supreme court of India is pending consideration Annexure-4

8. However as you are aware the management consisting of Mr. K.Sivanand reddy's group is continuing to run the company since 2003. All meetings of BOD, shareholders and all audited financial statements are being filed by the management consisting of directors of Mr. KSR group with ROC.

9. In the last 16 years the management has spent nearly Rs 12 crores as under by increasing the paid capital to Rs 23 crores by bringing in Rs 11.30 crores of fresh equity shares.

	(Rs in lakhs)
a) OTS to IFCI	263
b) OTS to SASF	113
(part payment)	
c) reconditioning of machinery & buildings	340
d) dues to statutory liability like arrears of PF, exit from 100% EOU status, electricity dues, dues to employees etc.	120
e) working capital	364
total	1200

10. The SASF has recognized us as the management and settled the OTS with us

11. As per letter dt:15.6.2009 of the SASF it has also agreed to assign the assets to our nominees (to overcome the litigation of management dispute Annexure-5)

12. However based as the reports of the independent company secretary report (copy enclosed) appointed by SASF. The SASF recommended to the Honourable BIFR to approve the revival / COM to us (vide status reports Dt: 11.2.2009 of SASF Annexure-6 & Annexure-7)



Regd. Office & Factory : Rayapole (Village), Ibrahimpatnam (Mandal), R.R. Dist. (Telangana) PIN : 501



PRIYARANJANI FIBRES LIMITED

487

Administrative Office :
Flat No. 101, KOR Residence,
B-3-966/16, Nagarjuna Naga
Ameerpet, Hyderabad - 73.
Tel : 040-23745403

FERT 8836873094

13. Under these circumstances the SASF was keeping the proposal of assignment of our nominee pending and was waiting for the orders of Honourable BIFR for COM.

14. The Honourable BIFR by a speaking order dt:22.11.2011 gave approval for the COM Annexure-8.

15. However by an order of Honourable AAIFR the implementation of the above order got stayed and hearings in AAIFR was proceeding.

16. Unfortunately the SICA got annulled on 1.12.2016 and the proceedings before Honourable BIFR and Honourable AAIFR got abated.

17. Under these circumstances we request you to reconsider your notice dt:31.5.2019 and give approval for the following at an early date.

18. a) confirm that you will assign the debt to us on payment of balance of Rs. 288 lacs (as per your OTS sanction letter)

b) Transfer the pledged equity shares as agreed to in the sanction letter dt: 15.6.2009.

19. We once again submit that the delay in remittance of balance of Rs. 288 lacs of the OTS amount was only due to the litigation on management dispute which is not settled till date.

20. We are sure that you will agree that the solution for this problem and closure of outstandings to SASF is only assignment of debt to our nominee.

21. On hearing from you we will arrange to remit the balance within 4 weeks.

22. We request you to kindly give us an opportunity to explain in person the situation on a suitable date in the next week.

Thanking you.



Yours faithfully,

For priyaranjani fibers ltd.

V K.Sivanand reddy,

Main promoter.

Regd. Office & Factory : Rayapole (Village), Ibrahimpatnam (Mandal), R.R. Dist. (Telangana) PIN : 501 5

24. In the aforementioned letter dated 06/04/2019, a reference has been made to the letter issued by the Financial Creditor on 10/11/2017, and a ‘promise to pay’ an amount of Rs. 9,00,00,000/- towards OTS has been made.

25. In the aforementioned letter which is just a month prior to the filing of the Section 7 Application by the Financial Creditor, the Corporate Debtor had acknowledged the OTS Proposals and the sanction letter, dated 27/12/2008 and the amounts paid thereafter. Keeping in view, the entire correspondence and the OTS proposals between the parties from 2008 to 2022, i.e. even after the filing of the Section 7 Application, the contention of the Appellant that there was no ‘acknowledgement of debt’ within 3 years of the date of the Debt Recovery Certificate pales into insignificance. The period from 21/04/2013 to 02/07/2017 is also covered in this correspondence.

26. Now, we address to the argument of the Appellant / Party-in-Person that a ‘conditional promise to pay’ and ‘part payments made’ do not fall within the ambit of definition of acknowledgement of Debt as defined under Section 18 of the Limitation Act, 1961. The Appellant placed reliance on the Judgment of Hon’ble Gujarat High Court in the matter of **‘Union of India Vs. Bikanir Textiles’** (supra) and also on the Judgment of the Hon’ble High Court of Andhra Pradesh in the matter of **‘MNMR Cotton Industries Vs. Jyothi Chit Fund Company’** (Supra) wherein it was held that a conditional promise to pay would result into a concluded contract only if the Plaintiff had accepted the terms and that even a part payment made without a specific agreement may not be useful to

the Plaintiff in saving limitation. At this instance, we find it apt to rely on the Judgment of the Hon'ble Supreme Court in the matter of '**Kotak Mahindra Bank Ltd. Vs. KEW Precision Parts Pvt. Ltd. And Ors.**' reported in [(2022) 9 SCC 364] in which the Hon'ble Apex Court addressed to the validity and effect of Section 25 (3) of the Contract Act, 1872 and the acknowledgement under Section 18 of the Limitation Act, 1963 and held as follows:

“31. Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay [Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay, AIR 1958 SC 328] .

32. Section 25(3) applies only where the debt is one which would be enforceable against the defendants, but for the law of limitation. Where a debt is not binding on the defendant for other reasons, and consequentially not enforceable against him, there is no question of applicability of Section 25(3).

33. There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of

limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time-barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional.

34. The scheme of the IBC is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the corporate insolvency resolution process begins. Where any corporate debtor commits default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided in Chapter II IBC.”

(Emphasis Supplied)

27. In the instant case, there is a continuous ‘promise to pay’ in the OTS proposals made by the Corporate Debtor Company and this communication clearly evidences a jural relationship between the Corporate Debtor and the Financial Creditor. It is observed in the aforementioned Judgment in para 33, that even if there is a ‘denial to pay’ it construes acknowledgement. Therefore, the question of an OTS proposal being a ‘concluded contract’, or having a ‘conditional offer’, or any ‘part payments made’ being distinguishable from an OTS Proposal without these ingredients, does not arise, for the ‘acknowledgement of amounts to be paid’ and / or ‘loans to be discharged’ to fall outside the scope of Section 18 of the Limitation Act, 1963. This Tribunal is of

the considered and earnest view that an OTS proposal with a promise to pay and part payments being made thereafter, positively construes an ‘acknowledgment of Debt’ as defined under Section 18 of the Limitation Act, 1963. At this point, it is significant to note the observations made by the Hon’ble Apex Court in the matter of **‘Kotak Mahindra Bank Ltd. Vs. KEW Precision Parts Pvt. Ltd. And Ors.’** (Supra) which is detailed as hereunder:

“62. As per Section 18 of the Limitation Act, an acknowledgment of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgment is signed. Such acknowledgment need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgment must be made before the relevant period of limitation has expired.

63. In Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria [Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria, AIR 1961 SC 1236] , this Court held : (AIR p. 1238, para 6)

“6. It is thus clear that acknowledgment as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship

between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in Section 19, and there is really no substantial difference between the parties as to the true legal position in this matter.”

64. It is well settled that even 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 *Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal* [Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366 : (2021) 3 SCC (Civ) 605 : (2021) 3 SCC (Cri) 23 : AIR 2021 SC 5249] authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff* [Bengal

Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115] and in *Pandam Tea Co. Ltd., In re [Pandam Tea Co. Ltd., In re*, 1973 SCC OnLine Cal 93 : AIR 1974 Cal 170] , the judgment of the Delhi High Court in *South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana [South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana*, 1972 SCC OnLine Del 185 : ILR (1972) 2 Del 712] and the judgment of Karnataka High Court in *Hegde & Golay Ltd. v. SBI [Hegde & Golay Ltd. v. SBI*, 1985 SCC OnLine Kar 428 : ILR 1987 Kar 2673] and held that an acknowledgment of liability that is made in a balance sheet can amount to an acknowledgment of debt. In this case, the appellant financial creditor has not relied on any books of accounts or balance sheets of the corporate debtor.

65. Section 18 of the Limitation Act speaks of an acknowledgment in writing of liability, signed by the party against whom such property or right is claimed. Even if the writing containing the acknowledgment is undated, evidence might be given of the time when it was signed. The Explanation clarifies that an acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. "Signed" is to be construed to mean signed personally or by an authorised agent".

(Emphasis Supplied)

28. From the aforementioned Judgment, it is crystal clear that entries in Books of Accounts and Balance Sheets would also amount to acknowledgment under Section 18 of the Limitation Act, 1963. In the instant case, the Respondent / Financial Creditor has not raised the question of entries in Books of Account and

therefore, is not being addressed to. The Judgment of the Apex Court in the matter of '*Khan Bahadur Shapoor Freedom Mazda Vs. Durga Prasad Chamaria*' reported in [(AIR) 1961 SC 1236] referred to '*Kotak Mahindra Bank Ltd. Vs. KEW Precision Parts Pvt. Ltd. And Ors.*' (Supra) has specified in clear terms that an acknowledgment need not be accompanied by a promise to pay either expressly or even by implication. It is held that a statement on which a plea of acknowledgement is based must relate to a present subsisting liability, which in the facts of the attendant matter is clear right from the year 2007/2008 onwards when the Corporate Debtor Company was trying to settle the matter through OTS proposals and making part payments pursuant to these proposals. The '*admission in question*' need not be expressed but must be made in circumstances and in words from which the Court can reasonably infer that the person making the Admission intended to refer to a subsisting liability as on the date of the statement. The admitted OTS Proposals between the Corporate Debtor Company and the Financial Creditor substantiate that a 'reasonable inference' can be made regarding the subsisting liability. In view of this considered opinion of this Tribunal, the Judgments relied upon by the Appellant are held to be not applicable to the facts of this case.

29. We find it apposite to place reliance on the recent Judgment of the Hon'ble Apex Court in the matter of '*Axis Bank Limited Vs. Naren Sheth & Anr.*' dated 12/09/2023 reported in [2023 SCC OnLine 1152], wherein in paras 14 to 17 the Hon'ble Supreme Court has addressed to whether the OTS proposals would be

construed as acknowledgment of Debt under Section 18 of the Limitation Act, 1963, placing reliance on Dena Bank (Supra) held that the three OTS proposals were within the period of limitation under Law. To reiterate, though the question of acknowledgment in balance sheets has not been raised by the Respondent herein, the OTS proposals dated 22/11/2008, 17/12/2008, 25/12/2008, 27/12/2008, 12/04/2010, 15/11/2012, 02/04/2013, 03/07/2017, 06/04/2019, 02/07/2019, 16/08/2019, 26/08/2019 are factually found to be within the period of limitation under Law. Even post filing of the Section 7 Application, OTS proposals dated 17/09/2019, 21/09/2019, 11/10/2019, 18/12/2019, 20/02/2021, 07/08/2021, 02/10/2021, 23/04/2022, 15/06/2022 and 27/08/2022 are part of the record filed. At the cost of repetition, keeping in view, the ratio of the Hon'ble Apex Court in the aforementioned Judgments under IBC, 2016 in the matters of 'Dena Bank Vs. C. Shivakumar Reddy (Supra), Kotak Mahindra Vs. A. Balakrishnan' (Supra), 'Kotak Mahindra Vs. KEW Precision Parts' (Supra), 'Sabarmati Gas Limited Vs. Shah Alloys' (Supra), the Judgments relied upon by the Appellant herein are not germane to the issues raised in this Appeal.

30. Further, the second Respondent / the Resolution Professional of the Corporate Debtor Company filed the Status Report in compliance of the direction of this Tribunal dated 11/08/2023 submitting that three Prospective Resolution Applicants submitted their respective Plans and the time for submission for the balance Applicants has been extended till 18/08/2023.

31. For all the foregoing reasons, this Company Appeal (AT) (CH) (Ins) No. 159/2023 fails and is accordingly dismissed. No Order as to Costs. All connected pending Interlocutory Applications, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

21/09/2023
SPR/TM