

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 388 of 2021

[Arising out of Order dated 28.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-V in (IB) 881(ND)/ 2020]

IN THE MATTER OF:

**G.S. Buildtech Pvt. Ltd.
A-4, Front LGF,
Malviya Nagar,
New Delhi- 110017
E-mail Id: accounts@gsbuildtech.com**

...Appellant

Versus

**Ardee Infrastructure Venture Pvt. Ltd.
17th Floor, Dr. Gopal Das Bhawan,
28 Barakhamba Road,
New Delhi- 110001.
rajnish_m@theardeeschool.com**

...Respondent

Present:

**For Appellant: Mr. Anirudh Wadhwa, Mr. Bhargav Thali,
Advocates.**

For Respondent: None.

**J U D G M E N T
(23rd December, 2021)**

Ashok Bhushan, J.

1. This Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) challenging the judgment and order dated 28.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-V by which Application filed by the Appellant under Section 7 of the 'I&B Code' has been rejected. The Appellant

disbursed an amount of Rs.1,30,00,000/- to the Corporate Debtor. Certain repayments were made by the Corporate Debtor on 11.06.2015, 29.06.2015 and lastly on 15.03.2016. Appellant sent communication dated 09.08.2019 and 20.09.2019 to the Corporate Debtor seeking confirmation of accounts between the parties which was not answered by the Corporate Debtor. Communication dated 16.01.2020 and legal notice dated 30.01.2020 were issued for repayment which also remained unanswered. An Application under Section 7 of the 'I&B Code' was filed by the Appellant on 20.03.2020 before the Adjudicating Authority claiming that the Corporate Debtor owed an amount of debt amounting to Rs.39 Lacs. The Application was rejected by the Adjudicating Authority on two grounds firstly that last repayment having been made on 15.03.2016 and the Application under Section 7 having been filed on 20.03.2020 i.e. beyond three years, Application is barred by time. Secondly, the Appellant/ Applicant does not come within the definition of 'Financial Creditor' since there is no document to show any interest has ever been paid to the Applicant by the Corporate Debtor in lieu of the amount. Challenging the impugned judgment this Appeal has been filed. Notices were issued in the Appeal on 04.06.2021 although the Respondents were served but neither any one appeared for the Respondents nor filed any reply. At the time of hearing also, no one appeared for the Respondents.

2. Learned Counsel for the Appellant challenging the impugned judgment contends that the balance sheet for the Financial Year ending 31.03.2017, which was signed by the Corporate Debtor on 01.09.2017 contains an acknowledgment with regard to sum of Rs. 39 Lakh by the Corporate Debtor.

Hence, the Application filed by the Appellant was not barred by time. Appellant was entitled for fresh period of limitation due to the above acknowledgment. Learned Adjudicating Authority committed error in not considering the said objection. It is further submitted that the finding of the Adjudicating Authority that Appellant is not a Financial Creditor is also incorrect. The mere fact that there is no proof for payment of interest does not take away the debt owed by the Corporate Debtor as a financial debt.

3. We have considered the submissions of the Learned Counsel for the Appellant and perused the record.

4. The Adjudicating Authority has returned a finding that last payment was received by the Appellant/ Applicant on 15.03.2016 and the Application was filed on 20.03.2020, in paragraph 10 of the judgment. The Adjudicating Authority has also noted the Balance Sheet for the Financial Year 2016-17 ending 31.03.2017. However, the Adjudicating Authority rejected the submission of acknowledgment observing that Appellant has not placed any law before it that amount mentioned in the Balance Sheet comes under the definition of acknowledgment of debt under Section 18 of the Limitation Act, 1963.

5. The Balance Sheet for the Financial Year 2016-17 having been signed on 01.09.2017 and the above Application having been filed on 20.03.2020, it is well within three years' period from acknowledgment of debt as claimed by the Appellant. It is now well settled that acknowledgment in the Balance Sheet is sufficient acknowledgment under Section 18 of the Limitation Act, 1963.

We may refer to the judgment of the Hon'ble Supreme Court in "**Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Anr.-(2021) 6 SCC 366**". After referring to the earlier judgment of the Hon'ble Supreme Court on the question and noticing the provisions of the Companies Act regarding preparation of the Balance Sheets, following was laid down in paragraphs 35 and 40:-

"35. A perusal of the aforesaid Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgements made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills (supra), that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.

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40. In *CIT-III v. Shri Vardhman Overseas Ltd.*, 2011 SCC OnLine Del 5599 : (2012) 343 ITR 408, the Delhi High Court held:

“17. In the case before us, as rightly pointed out by the Tribunal, the assessee has not transferred the said amount from the creditors' account to its profit and loss account. The liability was shown in the balance sheet as on 31st March, 2002. The assessee being a limited company, this amounted to acknowledging the debts in favour of the creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgement in writing. It says where before the expiration of the prescribed period for a suit in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall commence from the time when the acknowledgement was so signed. In an early case, in England, in *Jones v. Bellgrove Properties*, (1949) 2KB 700, it was held that a statement in a balance sheet of a company presented to a creditor-share holder of the company and duly signed by the directors constitutes an acknowledgement of the debt. In *Mahabir Cold Storage v. CIT* (1991) 188 ITR 91 : 1991 Supp (1) SCC 402, the Supreme Court held:

“12. The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability to Messrs. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963, and extend

the period of limitation for the discharge of the liability as debt.”

In several judgments of this Court, this legal position has been accepted. In Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma 67 (1997) DLT 13, S.N. Kapoor J. applied the principle in a case where the primary question was whether a suit under Order 37 CPC could be filed on the basis of an acknowledgement. In Larsen & Toubro Ltd. v. Commercial Electric Works 67 (1997) DLT 387 a Single Judge of this Court observed that it is well settled that a balance sheet of a company, where the defendants had shown a particular amount as due to the plaintiff, would constitute an acknowledgement within the meaning of Section 18 of the Limitation Act. In Rishi Pal Gupta v. S.J. Knitting & Finishing Mills Pvt. Ltd. 73 (1998) DLT 593, the same view was taken. The last two decisions were cited by Geeta Mittal, J. in S.C. Gupta v. Allied Beverages Company Pvt. Ltd. (decided on 30/4/2007) and it was held that the acknowledgement made by a company in its balance sheet has the effect of extending the period of limitation for the purposes of Section 18 of the Limitation Act. In Ambika Mills Ltd. Ahmedabad v. CIT Gujarat (1964) 54 ITR 167, it was further held that a debt shown in a balance sheet of a company amounts to an acknowledgement for the purpose of Section 19 of the Limitation Act and in order to be so, the balance sheet in which such acknowledgement is made need not be addressed to the creditors. In light of these authorities, it must be held that in the present case, the disclosure by the assessee company in its balance sheet as on 31st March, 2002 of the accounts of the

sundry creditors' amounts to an acknowledgement of the debts in their favour for the purposes of Section 18 of the Limitation Act. The assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law."

6. In another recent judgment of the Hon'ble Supreme Court in **"Dena Bank vs. C. Shivakumar Reddy and Ors.- Civil Appeal No. 1650 of 2020"**, after referring to the judgment of **"Asset Reconstruction Company (India) Limited"** (supra), the Hon'ble Supreme Court again reiterated that Section 18 of the Limitation Act, 1963 is fully applicable to proceedings under 'I&B Code' and 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 paragraph 118, following has been laid down:-

"118. 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 Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 18 ["Bengal Silk Mills"] and in Re Pandem Tea Co. 19 Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana 20 and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability that is made in a

balance sheet can amount to an acknowledgement of debt.”

7. The Adjudicating Authority, thus, committed error in not considering the balance sheet which was relied by the Appellant for the Financial Year 2016-17 ending 31.03.2017. The Adjudicating Authority after noticing the balance sheet did not advert to the balance sheet to find out as to whether there is an acknowledgment within the meaning of Section 18 of the Limitation Act or not.

8. We may notice that in **“Asset Reconstruction Company (India) Limited”** (supra) in paragraph 35, as extracted above, the Hon’ble Supreme Court has clearly laid down that whether acknowledgment in balance sheet is acknowledgment within the meaning of Section 18 depends on the facts of each case and as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis. The Adjudicating Authority having not examined the balance sheet for Financial Year 2016-17 ending on 31.03.2017. In the interest of justice, the Adjudicating Authority has to examine the balance sheet to find out as to whether it contain acknowledgment within the meaning of Section 18 of the Limitation Act or not.

9. Now we come to the second ground given by the Adjudicating Authority for rejecting the Application i.e. that there is no document to show that any interest has ever been paid to the Petitioner by the Corporate Debtor in lieu of the amount, hence, Appellant is not covered in the definition of ‘Financial

Creditor'. Without entering into the facts of the present case as to whether there was any evidence to show that any interest has ever been paid or not, suffice it to notice the definition of 'financial debt' as defined in Section 5(8).

Section 5(8) defines 'financial debt' in following words:-

(8) "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 non-recourse 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 purposes 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 clauses (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-clause (a) to (h) of this clause”

10. The definition begins with the expression ‘financial debt’ means a debt alongwith interest, if any. Thus a financial debt may be with interest, if any. The definition, thus, clearly contemplates that debt along with interest is not mandatory to be there it to be a financial debt. Interest will be a part of the debt only if there is interest in the transaction. Words ‘if any’ after the word interest clearly indicates that it is not mandatory that debt should be alongwith interest in all cases. We, thus, do not subscribe to the reason given by the Adjudicating Authority in paragraph 10 for holding that Applicant/

Appellant is not a Financial Creditor. We may further observe that consideration of the balance sheet for Financial Year 2016-17 may also be relevant for determining as to whether there was a financial debt or not. Thus, by taking into consideration the Balance Sheet, the Adjudicating Authority can re-consider the question of Applicant being Financial Creditor or not.

11. In view of the foregoing discussion, we set aside the order of the Adjudicating Authority and remit the matter to the Adjudicating Authority for fresh consideration of the Application under Section 7 after issuing fresh notice to the Corporate Debtor and after giving opportunity to the Corporate Debtor also.

The Appeal is allowed accordingly. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
Anjali