

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 991 of 2020
& I.A. No. 2706 of 2020

[Arising out of Order dated 17.03.2020 passed by the Adjudicating Authority/National Company Law Tribunal, Kolkata Bench, Kolkata, in CA (IB) No. 1441/KB/2019 in CP (IB) No. 1593/KB/2018]

IN THE MATTER OF:

**Asset Reconstruction Company (India)
Limited**

Having its Registered Office At:
The Ruby, 10th Floor,
29 Senapati Bapat Marg,
Dadar (West),
Mumbai - 400028.

...Appellant

Versus

Uniworth Textiles Limited

Having Its Registered Office At:
Rawdon Chambers, 4th Floor,
11A Sarojini Naidu Sarani,
Kolkata - 70007

...Respondent

Present:

**For Appellant : Mr. Abhiroy Dasgupta, Mr. Ishaan Duggal,
Advocates.**

**For Respondent : Mr. N.M Sharma, Mr. Ankur Sood, Ms.
Shubhangi Tiwari, Mr. Utkarsh Sharma,
Advocates**

J U D G M E N T

(10.07.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short '**Code**') against the Impugned Order

dated 17.03.2020 passed in CA (IB) No. 1441/KB/ 2019 CP (IB) No. 1593/KB/2018 by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata), whereby the Adjudicating Authority dismissed the application filed by the Appellant under Section 7 of the Code against Uniworth Textile Limited (in short '**UTL**') ('Corporate Debtor').

2. Heard the Counsel for Parties and perused the records made available including cited judgments.

3. Learned Counsel for the Appellant gave the background of the case and circumstances which led to the present appeal. The Appellant i.e. Asset Reconstruction Company (India) Limited (in short '**ARCIL**') is registered with RBI under Section 3 of SARFAESI Act, 2002. It is the case of the Appellant that the Corporate Debtor/ UTL had taken loans originally from Industrial Finance Corporation of India Limited ('**IFCIL**') and Investment Corporation of India Limited ('**ICICI**') in 1992 of an amount of Rs. 41.50 crores and the loan documents were registered on 09.03.1995 and 12.12.1996 between the Corporate Debtor, IFCIL and ICICI respectively. ICICI assigned the debt to the 'Appellant' on 31.03.2004 and IFCIL assigned the debt on 12.01.2007 and therefore, the underlying securities and incidental rights thereto are vested in favour of the Appellant herein.

4. It is further the case of the Appellant that the Corporate Debtor initiated proceedings under Sick Industrial Companies (Special Provisions Act, 1985) (in short '**SICA**') before the Board for Industrial and Financial Reconstruction (in short '**BIFR**') in 2004. The 'Appellant' issued notice under Section 13(2) of SARFAESI Act, 2002 on 20.11.2007 and the account

of the Corporate Debtor was declared as non-performing assets (in short 'NPA') as on 31.08.2007. The proceedings continued till 2013 and were abated vide order dated 22.05.2013 passed by the 'Appellate Authority' for Industrial Financial Re-Construction (in short 'AAIFR'). The 'Appellant' filed an Application to the Debt Recovery Tribunal, Nagpur (in short 'DRT') under Section 19 of the Recovery of Debt to the Banks and Financial Institution Act, 1993 (in short 'RDB Act') on 05.09.2014 and the same was allowed on 04.12.2018 by DRT in Application No. 162 of 2014.

5. Learned Counsel for the Appellant has stated that the Corporate Debtor came forward for settlement with the Appellant and sent a proposal on 19.09.2016 to clear its dues submitted by five companies, namely, Uniworth Limited, Uniworth International Limited, Indoworth Limited, Textprint Overseas Limited and Uniworth Textiles Limited.

6. Learned Counsel for the Appellant further stated that the Corporate Debtor has already paid Rs. 51.10 Crores which have been adjusted i.e. Rs. 50 Crores for Uniworth Limited and Rs. 1 Crore for Indoworth Limited and Uniworth International Limited Rs. 0.1 Crore. Learned Counsel for the Appellant stated that the Corporate Debtor acknowledged its debt to the Appellant vide letter dated 11.11.2016 and submitted that the Respondent made part payments accordingly and as per terms of settlement, the charges on assets were to be released by the Appellant on payment of all dues by the Respondent. The Corporate Debtor on 22.01.2018, on behalf of the Group Companies, confirmed the settlement amount and further paid Rs. 1.10 Crores towards outstanding dues.

7. Learned Counsel for the Appellant submitted that on 11.11.2016 the Corporate Debtor issued a letter acknowledging the debt to the Appellant along with the details of the assets which had charge of the Appellant for loan. Similarly, on 28.02.2018 the Corporate Debtor again wrote an email to the 'Appellant' acknowledging the debt dues.

8. It is the case of the Appellant that the Corporate Debtor has been acknowledging the outstanding dues towards the 'Appellant' in their own Annual Financial Statements from the financial year 2006-07 to 2017-18.

9. Learned Counsel for the Appellant stated that despite all efforts, the 'Appellant' was not getting payment of outstanding dues from the Corporate Debtor. Hence, on 22.11.2018, the Appellant issued a letter for Revocation of Terms of Settlement due to non-compliance on the part of Corporate Debtor. On 27.11.2018, the Appellant filed an application under Section 7 bearing No. CP (IB) No. 1953/KB/2018 for an amount of Rs. 2,05,83,38,883/-, however, the Adjudicating Authority, vide Impugned Order dated 17.03.2020, dismissed the Company Petition, filed under Section 7 of the Code, primarily on the ground of limitation. Learned Counsel for the Appellant assailed the Impugned Order wherein the Adjudicating Authority did not consider the exclusion of period from limitation period in terms of Section 22(5) of SICA and misinterpreted the judgment of the Hon'ble Supreme Court of India in the matter of **Jignesh Shah & Ors. Vs. Government of India** and also ignored the provisions of Section 29 of the Limitation Act, 1963.

10. Learned Counsel for the Appellant stated that their application is within Limitation. Learned Counsel for the Appellant submitted that in terms of Section 22 (5) of SICA, the limitation for making any claim by the 'Appellant' would start on or after 22.05.2013. Further, the 'Corporate Debtor' has acknowledged the debts in the balance sheets till 2017-18 and through letters/ e-mails have also acknowledged the outstanding dues, which are to be treated as acknowledgements of debt in terms of Section 25 (3) of the Indian Contract Act, 1872. It is further the case of the Appellant that the Adjudicating Authority ignored the vital facts that the Corporate Debtor had acknowledged the outstanding debts vide the letter dated 11.11.2016 in addition to the acknowledgments in the balance sheets which extended the period of limitation in terms of Section 18 of the Limitation Act, 1963.

11. Learned Counsel for the Appellant stated that in terms of the Code, the Adjudicating Authority is required to ascertain the existence of debt and default thereof and once satisfied should have admitted the application under Section 7 of the Code.

12. Learned Counsel for the Appellant also stated that the Adjudicating Authority wrongly construed the letter dated 11.11.2016 of the Corporate Debtor to be as a group settlement which in fact was provided for a company by company settlement with specific amount item wise mentioned therein.

13. Learned Counsel for the Appellant further submitted that the Impugned Order did not consider the relevant facts that the Appellant has given No-dues Certificates for the amount received by him in terms of the

settlement letter dated 22.11.2018 and only cancelled the settlement pertaining to companies wherein amount agreed upon were not paid. Similarly, the Adjudicating Authority has not considered that the claims of the Appellant which have also been adjudicated earlier by DRT and which were not challenged by the Corporate Debtor in the Appeal.

14. Learned Counsel for the Appellant relied upon a judgment of this Appellate Tribunal dated 08.11.2019 in the matter of **Mr. Gouri Prasad Goenka Vs. Punjab National Bank (2019 SCC OnLine NCLAT 1137)** in which in Para 9, it was clearly held that period of reference under SICA before the BIFR or AAIFR would stand excluded while computing the period of limitation for the purpose of filing Company Petition under Section 7 of the Code.

15. Learned Counsel for the Appellant emphasised that the Adjudicating Authority did not consider that acknowledgment in balance sheets come within the purview of Section 18 of Limitation Act, 1963 and the 'Appellant' relied upon the Judgment in **M/s Mahabir Cold Storage Vs. C.I.T. Patna [(1991 Supp (1) SCC 402), A.V. Murthy Vs. B.S. Nagabasavanna [(2002) 2 SCC 642], Usha Rectifier Corporation (India) Limited Vs. Commissioner of Central Excise, New Delhi [(2011) 11 SCC 571]** and **S. Natarajan Vs. Sama Dharman [MANU /SC/0698/2014]** to support his case.

16. Learned Counsel for the Appellant also assailed the order of the Adjudicating Authority who did not take into account submissions made by the Respondents that they were willing to pay Rs. 21 Crores to the Appellant

which clearly established the fact regarding debt and due and therefore his application under Section 7 of the Code should have been accepted.

17. Summarising his arguments, Learned Counsel for the Appellant stated that his appeal should be allowed and Impugned Order be set aside.

18. Per-contra, Learned Counsel for the Respondents denied all the averments of the Appellant.

19. Learned Counsel for the Respondents stated that the loan account of Respondents (UTL) was classified as NPA prior to 20.11.2007, as the notice under Section 13(2) of SARFAESI Act, 2002 was issued to UTL on 20.11.2007, however no record of default was furnished with Form A and therefore no definite date of default could be ascertained which is a pre-requisite.

20. Learned Counsel for the Respondents submitted that the Appellant (ARCIL) indicated the date of default as 05.09.2020 in OA No. 162 of 2014 under Section 19 of the RDB Act, before the Adjudicating Authority treating as a date of default for alleged financial debt. Learned Counsel for the Respondents further submitted that the said OA No. 162 of 2014 has been decreed on 06.02.2019 the same has been challenged in DRT, Nagpur and is sub-judice pending consideration after issuance of notice to the Appellant by DRT.

21. Learned Counsel for the Respondents emphasised that prior to issue of the said decree, Uniworth Group of Companies initiated talks for global settlement with the Appellant and then the Appellant had given in principal consent to the settlement offer of Rs. 75 Crores and Rs. 51.10 Crores out of

consolidated settlement of Rs. 75 Crores were paid to the Appellant, which unfortunately was recalled/ revoked by the letter dated 22.11.2016 by the Appellant.

22. Learned Counsel for the Respondents stated that the present appeal is not maintainable as the original application filed by the Appellant was based on loan documents with alleged debt of Rs. 205.83 Crores, whereas the Appellant in the present appeal has changed the amount to Rs. 75 Crores.

23. Learned Counsel for the Respondents alleged that the Appellant concealed deliberately vital facts including the fact regarding global settlement with Uniworth Group and receipt of Rs. 51 Crores through “White Knight”. Learned Counsel for the Respondents further stated that the Appellant also concealed the material fact that it obtained an *ex-parte* decree by playing fraud upon Hon’ble DRT pending its application under the Code.

24. Learned Counsel for the Respondents pleaded that the claims of the Appellant are barred by limitation as the account of UTL was classified as NPA on or before 20.11.2007 and three years period should start running from the date of declaration of NPA which in present case got over long back. Learned Counsel for the Respondents also stated that the proceeding under the Code cannot be initiated for a time barred debt. Learned Counsel for the Respondents cited the judgment of the ***B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates*** [(2019) 11 SCC 633], ***Innoventive Industries Ltd. Vs. ICICI Bank*** [(2018) 1 SCC 407], ***Jignesh Shah & Anr.***

Vs. Union of India & Anr. [(2019) 10 SCC 750] and ***Sagar Sharma Vs. Phoenix ARC (P.) Ltd. [(2019) 110 Taxmann 50 (SC)]***.

25. Learned Counsel for the Respondent also assailed the conduct of the Appellant who is seeking to exclude the period during which reference under Section 15 r/w Section 16 of SICA was pending before the BIFR in relation to the Respondent which was abated in 2013 and as per the limitation period need to be computed from the year 2016 i.e., coming into existence of the Code. Learned Counsel for the Respondent stated that such interpretation will lead to absurdity. In this regard, Learned Counsel for the Respondents cited judgment of ***Jignesh Shah & Anr. (Supra)*** where it was held that ability or inability of financial creditor to avail separate independent remedy cannot, in any manner, impact the limitation for the purpose of period of limitation for initiating proceeding under Section 7, hence, Learned Counsel for the Respondent submitted that mere operation of Section 22 (1) of SICA would not stop the period of limitation running during the pendency of reference under SICA.

26. Learned Counsel for the Respondents also stated that the mere reflection of amount of loan in the balance sheet of the Debtor with caveat and rider does not constitute valid and legal acknowledgments within the meaning of Section 18 of the Limitation Act, 1908. Learned Counsel for the Respondents further submitted that the entries in balance sheets indicating liability is to be read along with director's report to take a comprehensive view. Learned Counsel for the Respondents stated that board of Directors of the Respondent has categorically disputed the alleged debt due to the

Appellant and therefore such mention of debt in the balance sheets cannot be construed as admission of debt or acknowledgment of the same. In this regard, Learned Counsel for the Respondents took recourse to the ratio to the judgments of *Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr.* [Appeal (Civil) No. 323 of 2021], *Gautam Sinha Vs. UV Asset Reconstruction Company Ltd. & Ors.* [Company Appeal (AT) (Ins.) No. 1382 of 2019] and *V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & Anr.* [Company Appeal (AT) (Insolvency) No. 57 of 2020].

27. Learned Counsel for the Respondent also refuted the letter of UTL/Uniworth Group dated 11.11.2016 to be relied upon as admission or acknowledgment of alleged debt under Section 18 of the Limitation Act, 1963 since this letter was issued “without prejudice” and such claims of the Appellant is also contrary to claims of the DRT. Learned Counsel for the Respondents further assailed the conduct of the Appellant who admittedly, unilaterally cancelled and revoked settlement arrived at in pursuance to the letter of UTL dated 11.11.2016. Learned Counsel for the Respondents stated that such genuine attempt of compromise on their part cannot be treated as acknowledgment and the Appellant cannot be allowed the benefits of the same treating as acknowledgement.

28. Learned Counsel for the Respondents stated that pendency of an original application under the provisions of RDB Act do not in any manner affect the period of limitation for the purpose of initiating proceeding under the Code.

29. Learned Counsel for the Respondents reiterated that there has been no acknowledgement or admission of the alleged debt of UTL and such admission, if any, have to be within the expiry period of three years from the date of default, which in the present case is long back and therefore it is barred by limitation.

30. Concluding his averments, Learned Counsel for the Respondents pleaded for dismissal of this appeal with cost.

31. From the averments by both the parties, this Appellate Tribunal noted the following issues which are required to be deliberated to decide the present appeal. These main issues are as under :-

(I) Whether the application of the Application under Section 7 of the Code before the Adjudicating Authority was barred by limitation or otherwise.

(II) Whether the entries in the balance sheets tantamount to acknowledgments of debt for purpose of extending the limitation.

(III) Whether the letter dated 11.11.2016 of UTL/ Uniworth Group can be relied upon as an admission of acknowledgment of alleged dues.

32. Since, all these three issues are interconnected, we will deal with them jointly in following discussions.

- It is the case of the Appellant that the Corporate Debtor filed the proceedings before BIFR in 2004 which remained pending till 2013 and subsequently were abated by AAIFR vide order dated 22.05.2013.

- We also take into account the averment of the Respondents that Appellant's contention for exclusion of period during reference under Section 15 r/w Section 16 of SICA is erroneous and misconceived and such contentions would tantamount to decades old pending references under SICA would invariably be counted from 2016 when the Code came into the existence. We also take note of the averments of the Respondent in this regard where, the Respondent has relied the judgment of Jignesh Shah (Supra) according to which an independent remedy cannot impact the period of limitation for initiating proceeding under Section 7 of the Code. The Respondent has also cited other judgments as noted earlier.
- In this connection, we take into account the order dated 22.05.2013 of AAIFR in Appeal No. 176/ 11 which was filed by M/s Uniworth Textile ltd. (UTL) against the Appellant under Section 25 of SICA challenging the Order of BIFR dated 14.03.2011, wherein the BIFR has, inter-alia, directed IDBI to advertise for change of management of the Corporate Debtor. In the same appeal, the Appellant herein i.e., M/s ARCIL had filed MA No. 525/ 2011 praying for abatement of the reference of the Appellant company under third proviso to Section 15 of SICA.

This Appellate Tribunal has taken into consideration the Para 21 of the said order by AAIFR dated 14.03.2011 which reads as under :-

"21. On considering the submissions made by the parties and the material on record as well as the various rulings on the subject as brought out above, we reject the objections raised by the

appellant and R-23 against MA No.525/11 filed by R-22 and allow the said application. Accordingly, the reference of the appellant company stands abated under third proviso to Section 15(1) of SICA. In consequence, we also order that the present appeal No.176/11 filed by the appellant company along with all the proceedings relating to the reference of the appellant company pending before the BIFR also stand abated.

(Emphasis Supplied)

From above, it is clear that the proceedings were consciously allowed to be abated by AAIFR.

- In this connection, it will be desirable to refer to relevant section 22(1) & 22 (5) of SICA which reads as under :-

“22(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, 1936 (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.

(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."

(Emphasis Supplied)

- These sections of SICA are important reflection for computing the period of limitation especially where the proceedings for enforcement remain pending under SICA and is required to be excluded for counting limitation period and according to Section 22 (1) of SICA as seen above, the exclusion period continue till such time an appeal under Section 25 of SICA is pending.
- We have seen from the averments that application was filed by the Corporate Debtor before BIFR in 2004 and hence the time period between 2004 till the pronouncement of order by AAIFR dated 22.05.2013, may be considered for exclusion from counting the limitation period as per clear order dated 22.05.2013 of AAIFR noted earlier, which is in accordance with Section 22(5) of SICA.
- We also note that the Appellant filed an original application No. 162/2014 before DRT, Nagpur, against the Corporate Debtor under Section 19 of RDB Act.
- It has been brought out that on 19.09.2016 Uniworth Group of Companies of which Corporate Debtor is a member group Companies

made one time settlement offer (OTS) to the Appellant for Rs. 75 Crores and the said letter prescribes Company wise settlement amount. Similarly, on 11.11.2016, Uniworth Group, including Corporate Debtor, acknowledged the debt due and stated that as part of OTS, the Corporate Debtor was liable to pay Rs. 21 Crore. In continuation, the Corporate Debtor wrote a letter on 22.01.2018 to the Appellant acknowledging that NOCs and personal guarantees would be discharged post full and final payments of outstanding dues and Rs. 1.10 Crore was being made towards outstanding dues as per terms of OTS. On 28.02.2018, another group company i.e. Tristar Intercontinental Pvt. Ltd. issued an email to the Appellant mentioning outstanding amount of Rs. 21 Crore and 60 Lakhs as delayed payment remained pending on behalf of the Corporate Debtor.

- It is the case of the Appellant that he revoked the terms of settlement due to non-compliance and default in the payment on part of Corporate Debtor, vide his letter dated 22.11.2018 and subsequently filed Section 7 application under the Code on 27.11.2018.
- It is further case of the Appellant that on 04.12.2018, DRT allowed the OA in favour of the Appellant and issued a decree.
- The Appellant seeks to rely on various acknowledgments of debt due in the books of the Corporate Debtor and entries reflected in the Balance Sheet from the period 31.03.2007 to 31.03.2019.
- Per contra, the Respondent has denied that he made any acknowledgments in its books/Balance Sheets. It is the case of the

Respondent that merely mentioning of alleged debt cannot and should not be construed as acknowledgments since the same was disputed in the Directors report. As per the Respondent pendency of an original application under the Provision of RDB Act could not in any manner affect the running of period of limitation for initiating proceedings under Section 7 of the Code.

- We note from the impugned order that the Adjudicating Authority has discussed applicability of Section 14(1) of the Limitation Act, 1963, according to which the Financial Creditor had to prove that reference to BIFR by the Corporate Debtor was a wrong forum. The Adjudicating Authority held that BIFR was a correct forum and therefore, Section 14(1) and 14(2) of the Limitation Act, 1963 are not satisfied which would entitle the Appellant herein, to exclude the period of limitation. The Adjudicating Authority also referred to Judgment of '*Jignesh Shah*' (*supra*) wherein it was held that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy and the time can be extended in the manner only as provided in the Limitation Act. The Adjudicating Authority held that the time started in the present case from 20.11.2007 and time taken before the BIFR and DRT could not stop the time to run in this case.
- We have noted from Section 14 (1) of the Limitation Act, 1963 that in computing the period of limitation for any suit during which the plaintiff having prosecuting him in the court in good faith with due

diligence against the defendant (the Respondent herein/ Corporate Debtor) shall be excluded.

- Hence, the moot point is to decide whether filing a Petition by the Corporate Debtor before BIFR and subsequently order of AAIFR would be considered as appropriate forum or not and its subsequent impact on Limitation period. We observe that it was the Corporate Debtor and not the Appellant herein, who moved the petition before the BIFR in 2004. There is no dispute that the Code came into existence only in 2016, hence the only forum available for the aggrieved party was BIFR initially and AAIFR as Appellant forum later. The Corporate Debtor moved the petition in 2004 and the same was dismissed by AAIFR vide order dated 22.05.2013. We have already noted that AAIFR in its order categorically mentioned that the appeal No. 176/11 filed by the Corporate Debtor along with all proceedings relating to the reference of the Corporate Debtor pending before the BIFR stand abated.
- It is pertinent to note that in terms of Section 22 (5) of SICA, 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 therefore remains suspended under the Section shall be excluded. By virtue of Section 22 of the SICA, sick industrial units get protection with respect to suspension of those legal proceedings.
- In this connection we would like to take help from one recent Judgment of the Hon'ble Supreme Court of India pronounced on

04.01.2023 in the case of **Sabarmati Gas Limited vs. Shah Alloys Ltd.** Reported as [(2023) 3 SCC 229], it was observed

“2. In the captioned appeal mainly, twin questions of law call for consideration id est :-

(i) Whether in computation of the period of limitation in regard to an application filed under Section 9, IBC the period during which the operational creditor’s right to proceed against or sue the corporate debtor that remain suspended by virtue of Section 22 (1) of the Sick Industrial Companies (Special Provisions Act, 1985) (SICA) can be excluded, as provided under Section 22 (5) of SICA?

39. *When the limitation period for initiating CIRP under the section 9, 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 238A, 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)

- It is therefore, clear that the period of petition before BIFR and AAIFR, once abated by the competent Judicial Forum (AAIFR in present case) such period ought to have been excluded by the Adjudicating Authority. Based on this analysis the period up to the order by AAIFR dated 22.05.2013 should be excluded from counting the relevant period under Limitation Act, 1963.

- Now, we would factor into the subsequent events post 22.05.2013 impacting the Limitation period till the Section 7 application was filed on 11.10.2018. The Law of Limitation give 3 years period for initiating the legal remedy. Thus, the Appellant has to cross the hurdle post 22.05.2016 i.e., 3 years period from AAIFR order dated 22.05.2013 to 11.10.2018.
- The Appellant has sought assistance of various acknowledgments in the Balance Sheet of the Corporate Debtor beginning from the Financial Year 2006-2007 to 2018-2019. In particular, the Appellant relies on the Financial Statement of 2016-2017 which has also shown acknowledgment of entire dues under the loan agreement by the Corporate Debtor. It is the case of the Appellant that the Annual Report of 2016-2017, in Annexure-A to the Auditors Report in (VIII). Following is recorded:

"The Company has defaulted in repayment of dues to financial institutions, banks and debenture holders as under: As per Original Agreement, all the following loans have become due for repayments. However, the Company's negotiations with the term lenders for rescheduling/restructuring is in process:

| <i>Nature of Financial Assistance</i> | <i>Amount (Rs. In Lakhs)</i> |
|---------------------------------------|------------------------------|
|---------------------------------------|------------------------------|

| | |
|--|----------------------------|
| <i>Term loan Financial Institution <u>ICICI</u> Principal Interest <u>IFCI</u></i> | <i>2010.26 2737.21</i> |
| <i>Principal Interest</i> | <i>1472.26 2919.18</i> |

In the same Annual Report of 2016-17 under Notes to the Financial Statements in Note No. 28 following is recorded:

a) The Board for Industrial and Financial Reconstruction (BIFR) stands dissolved with effect from 1st December, 2016. Hence all references made by the company to the BIFR/AAIFR and the matters relating the rate and/ or arising of stands cancelled. However, the Company is exploring possibilities of registering with the National Company Law Tribunal (NCLT) with a suitable resolution scheme.

b) The Secured lenders of the Company have assigned their debts, together with all security interests and rights, to Asset Reconstruction Company (India) Ltd, (ARCIL). As part of overall settlement, ARCIL has agreed to settle its claims and an agreement to this effect between the Company and the ARCIL is in the process of being executed.

c) Pending final disposal of above matters, the Financial Statements have been prepared on going concern basis as the management is of the opinion that the going concern assumption is not vitiated in view of facts stated above.

(Emphasis Supplied)



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➤ Per contra on this point, the Respondent has stated that the Balance Sheet merely recorded the outstanding dues and should not be construed as acknowledgment of the debt. It is the case of the Respondent that in the Directors Report, it was indicated that management is disputing the debt. Following is the relevant portion of the Director's Report in Balance Sheet of 2016-17 as filed in Affidavit.

*“***The Company has disputed the repayment of due. The loss and damages caused to the borrower by the lender is much more than the amount lent. Hence, the figures of the borrowed amount shown in the balance sheet after due adjustments with the said loss and damages may result in entitlement to recover substantial amount from the lender. Under these facts and circumstances, the figures of borrowed amount in this balance sheet cannot be considered as admission, if any, of the claim of lender(s)”.*

➤ Hence, the issue to be decided now is whether the mere entry in the Balance Sheet of the amount of the outstanding debt should be taken as acknowledgment or only debt without any stigma or adverse note denying the liability should be taken as acknowledgment. In this regard, the Respondent has quoted Judgments namely ***Bishal Jaiswal & Anr. (supra)***.

➤ As against above position taken by the Respondent regarding denial of acknowledgement purely based on entry in the Balance Sheet which is attached with some adverse notes by the management in the same Balance Sheet, it is the case of the Appellant that there are several

judgements of this Appellate Tribunal as well as Hon'ble Supreme Court of India, which enables the judicial forum to recognise such entries in the Balance Sheet as acknowledgement. In this connection, he referred to the same judgment pointed out by the Respondent i.e. ***Bishal Jaiswal (Supra)***, where it has been held that entries in the Balance Sheet may amount to an acknowledgement of debt for the purpose of extending limitation under Section 18 of the Limitation Act.

➤ We would like to, therefore, take into consideration the relevant paragraphs from the ***Bishal Jaiswal (Supra)***, where the issue whether an entry made in a balance-sheet of a Corporate Debtor would amount to an acknowledgment of liability under Section 18 of the Limitation Act was considered and the Hon'ble Supreme Court in this case decided the issue of acknowledgment in the same case and observed as follows:-

“14. Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act. Thus, in Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402, this Court held:

12. The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to M/s 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....”

*“22. 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 expressly recognised by Section 134 (7). Equally, the auditor’s report may also enter caveats with regard to acknowledgments made in 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 of 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 acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.”*

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 acknowledgments 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 [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115], 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 acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.”

46. It is, therefore, clear that the majority decision of the Full Bench in V. Padmakumar [V. Padmakumar v. Stressed Assets Stabilisation Fund, 2020 SCC OnLine NCLAT 417] is contrary to the aforesaid catena of judgments. The minority judgment of Justice (Retd.) A.I.S. Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We, therefore, set aside the majority judgment of the Full Bench of NCLAT dated 12-3-2020 [V. Padmakumar v. Stressed Assets Stabilisation Fund, 2020 SCC OnLine NCLAT 417].

(Emphasis Supplied)

➤ In this connection, since the above judgment of Hon'ble Supreme in Bishal Jaiswal (Supra) upheld the minority view of Justice A.I.S. Cheema, it would be desirable to note the relevant paras of minority judgement of Justice A.I.S. Cheema in NCLAT Judgement which reads as under :-

“40. Thus, I find it is settled law appearing from the Judgments of the High Court of Delhi and other High Courts that Balance Sheets can be looked into to see if there is acknowledgement of debt. Perusing Judgments of Hon'ble Supreme Court I find that even Hon'ble Supreme Court has looked into Balance Sheets and Books of Account to see if there is Acknowledgement of Liability. If the amount borrowed is shown in the Balance Sheet, it may amount to Acknowledgement. I find the Judgments of Hon'ble Supreme Court of India are binding and Balance Sheets cannot be outright ignored.

41. For the above reasons, I am of the opinion that Annual Returns/Audited Balance Sheets, one time settlement proposals, proposals to restructure loans, by whatever names called, cannot be simply ignored as debarred from consideration and in every given matter, it would be a question of applying the facts to the law and vice versa, to see whether or not the specific contents, spell out an acknowledgement under the Limitation Act.”

(Emphasis Supplied)

➤ It is therefore evident that mere entry in the Balance Sheet cannot be taken as unqualified acknowledgment of the debt. However, it may also not be correct to take every note or caveat regarding entries made in the Balance Sheet as ground to denying acknowledgement of debt in order not to extend the limitation period from such acknowledgment period. It is therefore desirable that while looking such entries of debt amounting to acknowledgment, one has to consider

the overall scenario which may be evident from Director's Report, Auditor's Report, notes to the accounts etc. It may also be relevant to consider the entire series of events starting from such loans/ debts to the filing of application under section 7 of the Code, to gauge the true intent of such entries and caveats, if any, which impact the intended acknowledgements or genuine denial of liability on part of the Corporate Debtor. While doing this examination, it may be worthwhile to look into the overall eco system of such transactions which may help in understanding the impact on limitation period based on such acknowledgements.

➤ From the entries in the Balance Sheet of 2016-17 and Director's Report it is clear that the debt indeed finds place in the Balance Sheet with admission as a Corporate Debtor that they are in process of negotiation with the term lenders for rescheduling/ restructuring. This establishes that the loan/ debt has been taken and acknowledged by the Corporate Debtor. We also take into consideration the Director's Report where it has been indicated that company is exploring possibility for a suitable resolution scheme through NCLT and also exploring other options available in the law. The Director's Report further also recorded that they are disputing the repayment of dues and therefore figures of borrowed amount in the Balance Sheet could not be considered as of the claims of lender.

➤ On the face of these facts and recording by the management, it cannot be straight away considered as clear unconditional

acknowledgement of debt. Therefore, this Appellate Tribunal would like to go into further records connected with the same debt i.e., pre 2016-17 Balance Sheet and post 2016-17 Balance Sheet with a view to understand whether such dispute has been recorded by the management from day one or can be construed as single/ few/ stray/ isolated caveats.

➤ In the said Balance Sheet of 2015-16 in Annexure A to the Auditor's Report to the members of Uniworth Textile Ltd. for the period ended 31st March, 2016 in Para VIII, the Corporate Debtor has recorded *'the company has defaulted in repayment of dues through financial institutions, banks and debenture holders as under:-*

"As per original agreement, all the following loans have become due for repayments. However, the company's negotiations with the term lenders for rescheduling/ restructuring is in process.' In the same, in para VIII, the name of ICICI has been clearly recorded. In the same Balance Sheet, in the Notes to the Financial Statements, in Note No. 4 (iii) it has been recorded *"The Company has received an intimation from the accrued lenders that financial assistance together with all security interest in respect thereof and its right in respect thereof have been absolutely assigned by the said lender to Asset Reconstruction Company Limited, accompany formed under the Companies Act, 1956 and registered with Reserve bank of India as a scrutinised and reconstruction company pursuant to necessary provisions of Securitisation and reconstruction of financial assets and enforcement of Security Interest Act, 2002".*

We also take into account that in Director's Report of the same Balance Sheet of 2016-17

"BOARDS VIEW :

Due to abolition of BIFR & AAIR, company is exploring the possibility of registering with NCLT with a suitable resolution scheme & is also exploring other options available under the law. The Company has disputed the repayment of due. All compliances with the stock exchanges are updated and in respect of the status of the company being shown as 'Suspended' by BSE Limited and the Calcutta Stock/ Exchange Limited, the company has taken up the matter with both the exchanges as the company is in compliance with the Listing Agreement. The Company has disputed the repayment of due. The loss and damages caused to the borrower by the lender is much more than the amount lent. Hence, figures of the borrowed amount shown in the balance sheet after due adjustment with the said loss and damage may result in No Debt Due, rather the borrower is entitled to recover substantial amount from the lender. Under these facts and circumstances, the figures of borrowed amount in this balance sheet cannot be considered as admission, if any, of the claim of lender(s)."

- Here we intend to look into relevant portion of the Balance Sheet of 2015-16 and other Balance Sheets referred by both the parties in order to understand if there was continuity of admission and depiction of debts in Balance Sheets or the same was denied and disputed by the Corporate Debtor from the beginning. Following are excerpts from

various balance sheets of the Corporate Debtor as noted from record placed before us.

- On a quick perusal of perusal of various Balance Sheets from 2006-07 to Balance Sheets of 2013-14, this Appellate Tribunal do not find any apparat denial of debts by the Corporate Debtor.
- Therefore, we take into account following excerpts from the Balance Sheets from 2014-15 to 2018-19 (excerpts taken from various documents marked in Appeal Paper Book):-

| Year | Directors Report (Objection) | | | | | | | | | | |
|-------------|--|------------------|-------------------|--|--------------------------------|------------------|-------------------|-------------|--------------|--|--|
| 2014-15 | <p>Pg.- 1554</p> <p>Director's Report (Board View):</p> <p><u>During the year Under Review the Company continued to be under BIFR as a Sick Industrial Undertaking. The matter is sub-judice before the Court of Law. All compliances with the stock exchanges are updated and in respect of the status of the company being shown as "Suspended" by BSE Limited and the Calcutta Stock Exchange Limited, the company has taken up the matter with both the exchanges as the company is in compliance with the Listing Agreement. <i>The Company has disputed the repayment of due. The loss and damages caused to the borrower by the lender is much more than the amount lent. Hence, figures of the borrowed amount shown in the balance sheet after due adjustments with the said loss and damages may result in entitlement to recover substantial amount from the lender. Under these facts and circumstances, the figures of borrowed amount In this balance sheet cannot be considered as admission, if any, of the claim of lender(s).</i></u></p> <p>Pg- 1586</p> <p>Annexure to Auditor's Report:</p> <p>(ix) The Company has defaulted in repayment of dues to financial institutions, banks and debenture holders as under:</p> <p><u>As per Original Agreement, all the following Loans have become due for repayments. However, the Company's negotiations with the term lenders for rescheduling / restructuring Is In process:</u></p> <table border="1"> <thead> <tr> <th></th> <th>Nature of Financial Assistance</th> <th>Amount (In Lacs)</th> <th>Period of Default</th> </tr> </thead> <tbody> <tr> <td>Whether the</td> <td>a. Term Loan</td> <td></td> <td></td> </tr> </tbody> </table> | | | | Nature of Financial Assistance | Amount (In Lacs) | Period of Default | Whether the | a. Term Loan | | |
| | Nature of Financial Assistance | Amount (In Lacs) | Period of Default | | | | | | | | |
| Whether the | a. Term Loan | | | | | | | | | | |

| | | | | |
|--|-------------|----------------------------------|---------|-------------------|
| | company has | (I) Financial Institution | | Not Ascertainable |
| defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported : | | Principal | 3440.47 | |
| | | Interest | 4934.12 | |
| | | b. Debenture | | |
| | | Zero Coupon Redeemable Debenture | 4750.00 | Sept., 2014 |
| <p>Pg-1595</p> <p>Notes to the financial statements</p> <p><i>a) The Company <u>has received an Intimation from the secured lenders that financial assistance together with all security Interest in respect thereof and its right in respect thereof have been absolutely assigned by the said lender to Asset Reconstruction company limited, a company formed under the Companies Act, 1956 and registered with Reserve Bank of India as a scrutinized and reconstruction company pursuant to necessary provisions of Securitization and reconstruction of financial assets and enforcement of Security Interest Act , 2002.</u></i></p> <p><i>b) The outstanding balance of borrowings from the banks and Financial Institutions for Term Loans are subject to receipt of confirmation/statements which could not be obtained due to restructuring belong in progress.</i></p> | | | | |

| | |
|---------|---|
| 2015-16 | <p>Pg- 1630</p> <p>Director's Report (Boards View) -</p> <p><i>During the year under Review the <u>Company continued to be under BIFR as a Sick Industrial Undertaking. The matter is sub-judice before the Court of Law. All compliances with the stock exchanges are updated and in respect of the status of the company being shown as "Suspended" by BSE Limited and the Calcutta Stock Exchange Limited, the company has taken up the matter with both the exchanges as the company is in compliance with the Listing Agreement. <u>The Company has disputed the repayment of due. The loss and damages caused to the borrower by the lender is much more than the amount lent. Hence, figures of the borrowed amount shown in the balance sheet after due adjustments with the said loss and damages may result in Do Debt Due, rather the borrower is entitled to recover substantial amount from the lender. Under those facts and circumstances, the figures of borrowed amount in this balance sheet cannot be considered as admission, if any, of the claim of lender(s).</u></u></i></p> <p>Pg- 1665</p> <p>Independent Auditor's Report</p> |
|---------|---|



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| | <p>(viii) The Company has defaulted in repayment of dues to financial institutions, banks and debenture holders as under: As per Original Agreement, all the following Loans have become due for repayments. However, the Company's negotiations with the term lenders for rescheduling / restructuring is In process:</p> <table border="1" data-bbox="370 398 1401 976"> <thead> <tr> <th></th> <th>Nature of Financial Assistance</th> <th>Amount (In Lacs)</th> <th>Period of Default</th> </tr> </thead> <tbody> <tr> <td rowspan="10">Whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided).</td> <td>a) Term Loan</td> <td></td> <td></td> </tr> <tr> <td>i) Financial Institution</td> <td></td> <td></td> </tr> <tr> <td>ICICI</td> <td></td> <td>Not Ascertainable</td> </tr> <tr> <td>Principal</td> <td>3504.44</td> <td></td> </tr> <tr> <td>Interest</td> <td>5295.66</td> <td></td> </tr> <tr> <td>b) Debenture</td> <td></td> <td></td> </tr> <tr> <td>Zero Redeemable Debenture</td> <td>4750.00</td> <td>Sept,2014</td> </tr> <tr> <td>c) Loan Repayable on Demand (Working Capital Loan)</td> <td></td> <td></td> </tr> </tbody> </table> <p>Pg-1676</p> <p>Notes to the Financial Statements</p> <p>iii) <i>The Co. has received an intimation from secured lenders that financial assistance together with all security interest in respect thereof and its right in respect thereof have been absolutely assigned by the said lender to Asset Reconstruction Company Limited, a company formed under the Companies Act, 1956 and registered with Reserve of Bank of India as a scrutinised and reconstruction company pursuant to necessary provisions of securitisation and reconstruction of financial assets and enforcement of security interest act 2002</i></p> | | Nature of Financial Assistance | Amount (In Lacs) | Period of Default | Whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided). | a) Term Loan | | | i) Financial Institution | | | ICICI | | Not Ascertainable | Principal | 3504.44 | | Interest | 5295.66 | | b) Debenture | | | Zero Redeemable Debenture | 4750.00 | Sept,2014 | c) Loan Repayable on Demand (Working Capital Loan) | | |
|---|---|---|--------------------------------|------------------|-------------------|---|--------------|--|--|--------------------------|--|--|-------|--|-------------------|-----------|---------|--|----------|---------|--|--------------|--|--|---------------------------|---------|-----------|--|--|--|
| | Nature of Financial Assistance | Amount (In Lacs) | Period of Default | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided). | a) Term Loan | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | i) Financial Institution | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | ICICI | | Not Ascertainable | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Principal | 3504.44 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Interest | 5295.66 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | b) Debenture | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Zero Redeemable Debenture | 4750.00 | Sept,2014 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | c) Loan Repayable on Demand (Working Capital Loan) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <p>2016-17</p> | <p>Pg-1709</p> <p>Director's Report -</p> <p><i>Due to abolition of BIFR & AAIFR, company is exploring the possibility of registering with NCLT with a suitable resolution scheme & is also exploring other options available under the law. The company has disputed the repayment of due. All compliances with the stock exchanges are updated and in respect of the status of the company being shown as "Suspended" by BSE Limited and the Calcutta Stock</i></p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Exchange Limited, The company has taken up the matter with both the exchanges as the company is in compliance with the Listing Agreement. The Company has disputed the repayment of due. The loss and damages caused to the borrower by the lender is much more than the amount lent. Hence, figures of the borrowed amount shown in the balance sheet after due adjustments with the said loss and damages may result in No Debt Due, rather the borrower is entitled to recover substantial amount from the lender. Under these facts and circumstances the figures of borrowed amount in this balance sheet cannot be considered as admission, if any, of the claim of lender(s).

- Excerpts taken from various documents marked in Appeal Paper Book:-

| | |
|----------------|---|
| 2017-18 | Pg-1792 Directors Report (Boards View) <i>The company is exploring other options available under the law for enforcement of specific performance of the argument on the same line as in the case of major lenders. The company has disputed the claims of the lenders or creditors being unsustainable.</i> |
| 2018-19 | Pg- 1890 Directors Report (Boards View) <i>The company has filed suit for enforcement of specific performance of the Agreement on the same line as in the case of major lenders. The company has disputed the claims of the lender or creditors being unsustainable.</i> |

- It is seen that in Balance Sheets from 2007-08 to 2013-14 apparently no dispute regarding that seem to have been recorded in absolute terms. We have already noted that in the Balance Sheet of the period 2014-15 to 2015-16, indeed in the Director's Report the amount was disputed in parallel to the recording the facts regarding intention of the Corporate Debtor to seek resolution of the dispute along with these denial of claim. In 2016-17 Balance Sheet Board of Directors took note of the fact regarding repealing of SICA and their intention to explore possibility of registering with the NCLT with a suitable

Resolution Scheme and the similar intent was express in the Balance Sheet of 2017-18.

- It is seen that there have been no remarks pertaining to debt being disputed in the Director's Report of the Financial Year 2018-19.
- Therefore, it may be inferred that only during the financial Year 2014-15 the Directors clearly disputed the debt of the Appellant, however in prior Balance Sheets no dispute was raised. In subsequent to Balance Sheets, the mention regarding their intent for resolution with dispute was indicated and in the Balance Sheet of 2018-19 no **apparent** dispute was recorded regarding the debt. From the entire series of record of such financial balance sheets from 2007-2008 to 2017-18 it can be presumed that the Corporate Debtor intended from time to time to acknowledge the debt in the Balance Sheet, however we cannot ignore the fact that in 2014-15, 2015-16 and 2016-17, the Corporate Debtor has disputed claims. On overall basis out of 13 Balance Sheets from 2006-07 to 2018-19, apparently in the three Balance Sheets, disputes were recorded as noted above and based on this, in balanced manner and keeping commercial/judicial fairness, such denial of acknowledgment cannot be taken as stout dispute regarding debt which would tantamount to absolute and continued denial of acknowledgments of debt by the Corporate Debtor. Keeping in view the ratio decidendi of ***Bishal Jaiswal (Supra)***, therefore, in light of this detailed analysis, this Appellate Tribunal has to consider that there were acknowledgements

of due in the Balance Sheets and the acknowledgement letter of the Corporate Debtor which would extend the limitation period, in terms of Section 18 of Limitation Act, 1963.

➤ Section 18 of the Limitation Act, 1963 makes it clear that any acknowledgement expiration of prescribed period for an application in respect of any acknowledgement of liability made in writing signed by the party against whom such right is claimed shall result into fresh period of limitation to be computed from such time.

➤ As regard, the plea of the Respondent regarding pending appeal by the Respondent against the order of DRT in OA No. 162 of 2014, we have noted that as on date no adverse order to the DRT order has been passed and therefore the DRT order in that particular OA is still hold good. Incidentally, the outcome of such pending appeal in DRT case does not debar the right the Appellant in pursuing legal remedy under Section 7 of the Code.

➤ We also note that the Respondent vide letters dated 19.06.2016, 11.11.2016, 22.01.2018, 28.02.2018 have acknowledged the debts and offered the settlement of Rs. 75 Crore out of which Rs. 51.10 Crores was paid. These letters were issued by the individual companies of the Uniworth Group, may be on behalf of all Group companies, however offering company wise specific settlement amount. In view of true spirit of such genuine desire to settle on behalf of the Corporate Debtor, the alleged difference between individual corporate settlement versus group settlement is found to be rather technical in nature and is not found

appropriate legal barrier in treating such letters as acknowledgement letters, thereby extending the limitation period fresh from issue of such letter.

33. In view of detailed analysis and taking into account the various judgments of Hon'ble Supreme Court of India, this Appellate Tribunal and various provisions of the relevant laws, we hold that the Adjudicating Authority erred in rejecting the application filed under Section 7 of the Code by the Appellant on the ground of limitation.

34. We also make it clear that we are not expressing any opinion(s) regarding the merit(s) of the case and the same need to be decided by the Adjudicating Authority uninfluenced by any of the observations of this Appellate Tribunal.

35. The Appeal therefore succeeds and the Impugned Order dated 17.03.2020 is set aside. The case is remanded back to the Adjudicating Authority for decision on the merit of the application in accordance with the law. Both the parties shall to appear before the Adjudicating Authority on 28.07.2023. No costs. Interlocutory Application(s), if any, are Closed.

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

**[Naresh Salecha]
Member (Technical)**

Simran