

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 625 of 2020

[Arising out of order dated 27.02.2020 in C.P. (I.B.) No. 432/KB/2019
passed by National Company Law Tribunal, Kolkata Bench, Kolkata.]

IN THE MATTER OF:

Pawan Kumar Agarwal

Suspended Director of Raigarh Properties Pvt. Ltd.

R/o 1, Kyd Street, Near MLA Hostel

38 Palace Court, Kolkata – 700016.

.....Appellant
(Corporate Debtor)

Versus

1. Asset Reconstruction Company (India) Limited

The Ruby, 10th Floor, 29 Senapati Bapat Marg,

Dadar (West), Mumbai,

Maharashtra - 400028

.....Respondent No. 1
(Financial Creditor)

2. Raigarh Properties Private Limited

Through Resolution Professional – Mr. Kamal Nayan Jain

1 Kyd Street, 2nd Floor,

Room No. 16A, Kolkata,

West Bengal – 700016.

.....Respondent No. 2

Present: -

For Appellant: Mr. Abhijeet Sinha and Mr. Saikat Sarkar, Advocates.
Mr. Pawan Kumar Agarwal.

For Respondent: Mr. Kunal Tandon, Ms. Megha Tyagi, Ms. Smriti
Churiwal, Mr. Jaivir Sidhant and Mr. Vinay Tibrewal,
Advocates for R-1.

Mr. Kamal Nayan Jain, Advocate for R-2 (RP).

Mr. Varun Gupta, Advocate.

J U D G M E N T

Justice Anant Bijay Singh:

The instant Appeal Company Appeal (AT) (Insolvency) No. 625 of 2020 preferred by Pawan Kumar Agarwal, Suspended Director of Raigarh Properties Pvt. Ltd. against the order dated 27.02.2020 in C.P. (I.B.) No. 432/KB/2019 passed by Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, Kolkata was heard along with Company Appeal (AT) (Insolvency) No. 03 of 2020 preferred by Pawan Kumar Agarwal, Suspended Director of Mohan Jute Mills Ltd., but both the Appeals are disposed of by two separate Judgments.

2. This appeal has been preferred by Appellant- Pawan Kumar Agarwal Suspended Director of Raigarh Properties Pvt. Ltd. being aggrieved and dissatisfied by the impugned order dated 27.02.2020 in C.P. (I.B.) No. 432/KB/2019 passed by Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, Kolkata, whereby and whereunder admitted the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**in short IBC**) filed by Respondent No. 1 / Financial Creditor the main elements of impugned order is as under:

- i. The Application filed by the Operational Creditor under Section 7 of the IBC, 2016 for initiating the CIRP against the Corporate Debtor, Raigarh Properties Pvt. Ltd. is hereby admitted.
- ii. We declare a moratorium and cause public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. Moratorium is declared for the purpose referred to in Section 14 of the IBC. The IRP shall cause a public announcement of the initiation

of CIRP and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of Sub-Section 15 of the IBC shall be made immediately.

- iv. Moratorium under Section 14 of the IBC prohibits the following:
 - (a) The institution of suits of continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.
 - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein
 - (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the securitization and reconstruction of financial assets and enforcement of security interest Act, 2002 (54 of 2002)
 - (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- vii. The order of moratorium shall have effect from the date of admission till the completion of the CIRP.
- viii. Provided that where at any time during the CIRP period, if the Adjudicating Authority approves the resolution plan under sub-Section (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix. Necessary public announcement as per section 15 of the IBC, 2016 may be made.
- x. Mr. Kamal Nayan Jain, IRP Registration No. IBBI/IPA-001/IP-P00029/2016-17/10065 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi. The Financial Creditor to pay a sum of Rs. 3,00,000/- to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which shall be adjusted from final bill.
- xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xiii. List the matter on 09th April, 2020 for the filing of the progress report.
- xiv. Registry is hereby directed under Section 7(7) of the IBC, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the IRP by speed post as well as through e-mail.

- xv. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisites formalities.

3. The facts giving rise to the instant Appeal lie in narrow compass as follows:

- i) The Appellant -Corporate Debtor, in the year 2008, had availed loan from Union Bank of India in respect of which the Corporate Debtor had created security in form of hypothecation and other securities in favour of the Union Bank of India. On account of failure of the Corporate Debtor to repay the loan amount, the account of the Appellant- Corporate Debtor was declared as NPA in 2009.
- ii) In the year 2010, the securities in form of hypothecation and other securities were again renewed by the Appellant-Corporate Debtor in respect of the loan availed from Union Bank of India.
- iii) Subsequently, vide a Deed of Assignment dated 31st December, 2012, Union Bank of India had assigned the debt of the Appellant-Corporate Debtor to Asset Reconstruction Company (India) Limited - Respondent No. 1.
- iv) After Deed of Assignment, the Respondent No. 1 pursuant to its discussion with the Appellant - Corporate Debtor, restructured the loan of the Appellant vide letter dated 21st March, 2013. In this regard, a Term Sheet dated 21st March, 2013 was entered into by Mohan Jute Mills Ltd. which is one of the group companies of the Corporate Debtor and the Respondent No. 1.
- v) The Appellant -Corporate Debtor failed to repay the loan amount to Respondent No. 1, the Respondent No. 1 issued a Notice for Revocation of the Settlement Package of the Appellant on 3rd February, 2015 whereby the Appellant was directed to pay the loan amount within one week.

- vi) In reply to the said Notice for Revocation of the Settlement Package, Mohan Jute Mills Ltd. a separate legal entity and one of the parties to the Settlement Package, sent a letter dated 23rd July, 2015 to the Respondent No. 1, *inter alia*, detailing out the reasons for the default in payment of the outstanding dues and further requesting for rescheduling of the outstanding amount payable by them as per the Term Sheet dated 21st March, 2013.
- vii) The Respondent No. 1 rejected the said proposal of Mohan Jute Mills Ltd. vide letter dated 9th November, 2015 without providing any reasons for the same.
- viii) Again on 5th April, 2016, Mohan Jute Mills Ltd. sent a letter to the Respondent No. 1 proposing a revised proposal for rescheduling of the outstanding dues. However, the said proposal was rejected by the Respondent No. 1 vide letter dated 7th April, 2016.
- ix) Pursuant to the letter dated 5th April, 2016 the Respondent No. 1 sent a Letter / Notice dated 20th May, 2016 calling upon the Appellant to pay the outstanding amount of Rs. 9,71,79,501/-
- x) However, on account of purported failure of the Appellant to repay the outstanding amount, the Respondent No. 1 filed Application under Section 7 of the IBC seeking initiation of CIRP in respect of the Appellant-Corporate Debtor and the impugned order was passed.

Submissions on behalf of the Appellant

4. The Appellant during the course of the argument and his Written Submissions submitted that the Adjudicating Authority has failed to appreciate that the Appellant - Corporate Debtor had availed loan from Union Bank of India in the year 2008 and that it was declared NPA in the year 2009.

5. It is further submitted that the Application under Section 7 of the IBC was filed on 14th March, 2019 by Respondent No. 1 at Annexure-2 page 55 to 340, Vol-I & II of the Appeal Paper Book. It was further submitted that the date of NPA was declared on 31st December, 2009 but the Application under Section 7 of the IBC was not filed within three years of Limitation.

6. It is further submitted that the Application under Section 7 of the IBC barred by limitation in view of the judgment of Hon'ble Supreme Court of India reported in **2020 SCC OnLine SC 647 'BABULAL VARDHARJI GURJAR V/s. VEER GURJAR ALUMINIUM INDUSTRIES PVT. LTD. & ANR.'** wherein Hon'ble Supreme Court has held as follows:

- a) that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation;
- b) that CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor;
- c) that intention of the Code is not to give a new lease of life to debts which are time-barred;
- d) that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues;
- e) that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the right to apply under the Code accrues on the date when default occurs;
- f) that default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable;

g) that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and

h) an application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application.

7. It is further submitted that the Section 18 of the Limitation Act by its very nature is adversarial and since proceedings under the Code are aimed at protecting the interests of the Corporate Debtor therefore the principles of Section 18 of the Act cannot be made applicable for the purposes of the IBC.

8. It is further submitted that OTS / Settlement Offer(s) cannot be considered as acknowledgment of debt. The alleged acknowledgement of debts were issued on:

i) Prior to Assignment of Debt: on 29th November, 2011 (page 17 of the Convenience Compilation, Page 291, Vol-II of the Appeal Paper Book) and 23rd July 2012 (page 18-19 of Convenience Compilation, page 292 Vol-II of Appeal Paper Book).

ii) Post Assignment of Debt: on 23rd July, 2015 (page 77-82 of Convenience Compilation: page 304, Vol-II of the Appeal Paper Book), 14th August, 2015 (page 83-88 of Convenience Compilation: page 310 Vol-II of the Appeal Paper Book), 1st September, 2015 (page 89-94 of Convenience Compilation: page 316, Vol-II of Appeal Paper Book) and 5th April, 2016 (page 95-98 of Convenience Compilation: page 323, Vol-II of the Appeal Paper Book).

Pertinently, these OTS / Settlement Offer(s) were rejected by the Respondent No. 1 on 9th November, 2015(at page 322, Vol-II of the Appeal

Paper Book) and finally thereafter on 7th April, 2016 (at page 327, Vol-II of the Appeal Paper Book).

9. It is further submitted that this Appellate Tribunal in **Company Appeal (AT) (Insolvency) No. 407 of 2019 "C. Shivkumar Reddy V/s Dena Bank & Anr."** para 7 has held as follows:

"7. In the present case, there is nothing on record to suggest that the 'Corporate Debtor' acknowledged the debt within three years and agreed to pay the debt. The application moved by 'Corporate Debtor' to restructure the debt or payment of the interest, does not amount to acknowledgement of debt. There is nothing on record to suggest that the 'Corporate Debtor' or its authorized representative by its signature has accepted or acknowledged the debt within three years from the date of default or from the date when the account was declared NPA, i.e., on 31st December, 2013. The Balance Sheet of the 'Corporate Debtor' for the year 2016-2017 filed after 31st March, 2017 cannot be termed to be a document of acknowledgement in terms of Section 18 of the Limitation Act."

10. It is further submitted that the Adjudicating Authority has failed to appreciate that once the OTS / Settlement Offers has failed or rejected, as happened in the present case, the OTS / Settlement Offers cannot be relied upon because it is only in the realm of proposal. So, based on this submission impugned order cannot be sustained in the eye of law and it is fit to be set aside.

Submissions on behalf of the Respondent No. 1

11. Learned Counsel for the Respondent No. 1 during the course of argument submitted that as the Appellant - Corporate Debtor failed in

repayment of debt on 31.12.2009, the Principal Lender- Union Bank of India declared the account of the Appellant - Corporate Debtor as NPA.

12. It is further submitted that after the declaration of account as NPA by the Principal Lender- Union Bank of India, Overseas Branch, Kolkata Branch which is at page 190 of the Appeal Paper Book, the Appellant- Corporate Debtor upon request was granted fresh sanction of loan by the Principal Lender while referring to pages 190 to 216 of the Appeal Paper Book Vol-I. This composite Hypothecation through fresh agreement "Credit Facilities" with a total limit of Rs. 3,13,00,000/- was extended to Raigarh Properties Private Limited – Appellant and fresh agreement was executed between the Principal Lender- Union Bank of India and Raigarh Properties Private Limited - Appellant on 19.01.2010.

13. It is further submitted that on 1st September, 2012 the Appellant - Corporate Debtor offered to settle the account with the Principal Lender- Union Bank of India and vide letter dated 29.11.2011 (Annexure -A/2 at page 291 of the Appeal Paper Book, Vol-II) it was agreed between the parties with the Appellant which pay Rs. 27,50,00,000/- subject to the other conditions mentioned in the letter.

14. It is further submitted that the Appellant despite specifically agreeing to pay the amount under the settlement, miserably failed to comply with the terms of settlement and further on 10.07.2012 and 23.07.2012 respectively requested the Principal Lender- Union Bank of India for modification of the conditions of said settlement. The letter dated 23.07.2012 is marked as Annexure- 2 at page 292, Vol.-II of the Appeal Paper Book.

15. It is further submitted that on 30th July, 2012 the Principal Lender- Union Bank of India informed the Appellant - Corporate Debtor with the requests for modification in conditions of the settlement proposal dated 02.07.2012 has been accepted which is at page 293, Vol-II of the Appeal Paper Book.

16. It is further submitted that on 31.12.2012 an Assignment Agreement at pages 114 to 139, Vol-I of the Appeal Paper Book, was executed between the Principal Lender- Union Bank of India and Respondent No. 1 whereby Principal Lender- Union Bank of India assigned the loan granted to the Corporate Debtor in the year 2010 along with other loans to Respondent No. 1. In pursuance thereof, the Respondent No. 1 stepped into the shoes of the Principal Lender- Union Bank of India and accordingly, all the rights for recovery of loan along with the right to contest subsequent litigations were also transferred by the said Agreement.

17. It is admitted that vide letter dated 21.03.2013, the Respondent No. 1 informed the Corporate Debtor regarding proposal for restructuring the scheme of Mohan Jute Mills Ltd. and Raigarh Properties Pvt. Ltd. and further term sheet dated 21.03.2013 was drawn between the Respondent No. 1 and Corporate Debtor which is at Annexure – A/2 Vol-II, pages 221 to 243 of the Appeal Paper Book.

18. It is further submitted that on 30th June, 2013 and 31st July, 2013, the Appellant - Corporate Debtor once again defaulted in making payments and accordingly, the Respondent No. 1 was constrained to issue reminder letters dated 17.07.2013, 08.08.2013, 12.09.2013, 11.11.2013, 12.12.2013 and

19.06.2014 respectively. These letters are part of Annexure - A/2 at pages 296 to 301, Vol-II of the Appeal Paper Book.

19. It is further submitted that vide letter dated 23.07.2015, the Appellant - Corporate Debtor referring to the Term Sheet dated 21.02.2013, requested the Respondent No. 1 for reschedulement of payment as the earlier schedule of payment had not been complied with. In the said letter the Appellant - Corporate Debtor acknowledged the present dues and future outstanding of interest due up to 31.07.2015 as Rs. 6,55,56,000/- and outstanding of principal dues till 31.12.2015 as Rs. 16,89,63,000/-.

20. It is further submitted that the Appellant - Corporate Debtor requested to Respondent No. 1 for a moratorium of 18 months on capitalization of dues as on 31.07.2015 and proposed that the repayment will be made in 6 equal quarterly instalments starting from 30.04.2017 till 31.07.2018. The aforementioned letters are part of Annexure-A/2 Vol-II, at pages 304 to 309 of the Appeal Paper Book.

21. It is further submitted that again on 14.08.2015 a similar letter referring to the Term Sheet dated 21.03.2013 and also referring the discussions held on 06.08.2015 with the Respondent No. 1 was sent requesting for the reschedulement of payment. The Appellant - Corporate Debtor again acknowledged its liability and the revised the proposal by offering upfront payment of Rs. 1,00,00,000/- subject to the sanction of the proposal.

22. It is further submitted that the Appellant - Corporate Debtor requested for a moratorium of 12 months on the balance capitalized interest and principal amount from 01.08.2015 and also the Corporate Debtor proposed

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for 8 equal quarterly instalments for repayment starting from 31.10.2016 till 31.07.2018. The aforesaid letters form part of Annexure-A/2 at pages 310 to 315, Vol-II, of the Appeal Paper Book.

23. It is further submitted that though a letter dated 1st September, 2015, the Appellant-Corporate Debtor referring to term sheet dated 21.03.2013 and the discussions held on 06.08.2015 requested the Respondent No. 1 for the reschedulement of the outstanding principal dues of Rs. 16,89,63,000/- and interest dues to the tune of Rs. 6,71,35,000/- up to 31.08.2015 and to capitalize the same as on 31.08.2015. The fresh proposal was made by the Appellant – Corporate Debtor to the Respondent No. 1 for repayment of outstanding with upfront payment of Rs. 1,50,00,000/- quarterly instalments starting from 30.11.2016 till 31.08.2018 after the moratorium of 12 months on the balance capitalized interest and principal amount from 01.09.2015. The letter written by the Appellant – Corporate Debtor is at Annexure- A/2 at pages No. 316 to 321, Vol-II of the Appeal Paper Book.

24. It is further submitted that on 09.11.2015 (Annexure –A/2 at page No. 322, Vol-II of the Appeal Paper Book), the Respondent No. 1 responded to the requests of the Corporate Debtor and informed the Corporate Debtor that it would need to improve the offer substantially in terms of upfront payment and a shorter repayment term for the Respondent No. 1 to consider a settlement again, whereby an amount of Rs. 1,50,00,000/- was to be paid upfront.

25. It is further submitted that the Appellant - Corporate Debtor again acknowledged the outstanding of Rs. 24,85,27,000/- (including interest and Principal) as on 31.03.2016 and requested the Respondent No. 1 for a further

reschedulement in terms of repayment and further it was proposed to pay Rs. 50,00,000/- per month starting from April 2017 till the entire dues are settled i.e. from September, 2018 and thereafter. The letter sent by the Appellant in this regard is at Annexure- A/2, Vol-II, Pages 323 to 326 of the Appeal Paper Book.

26. It is further submitted that the Appellant – Corporate Debtor failed to make any payments and on 07.04.2016 (Annexure – A/2, Vol-II, page 327 of the Appeal paper Book) the Respondent No. 1 informed the Appellant – Corporate Debtor that adequate time had already been given to the Corporate Debtor to make repayment as per the terms of the Term Sheet but the Corporate Debtor had failed to do the same.

27. It is further submitted that the Corporate Debtor once again failed to comply with the terms of settlement and accordingly on 20th May, 2016 the Respondent No. 1 issued a recall notice for an outstanding of Rs. 26,61,47,046/- as on 18.05.2016. The Respondent No. 1 also invoked the personal guarantees of the Guarantors to the loans including the Appellant.

28. It is further submitted that on 28th February, 2019 the Respondent No. 1 computed the total dues of the Corporate debtor which came to be Rs. 42,33,36,044/- payable by the Corporate Debtor to the Respondent No. 1 and informed the same to the Corporate Debtor which is at pages 247 to 249, Vol-II of the Appeal Paper Book.

29. It is further submitted that as the payments failed to pay the outstanding dues only on 13.03.2019 the Respondent No. 1 filed Application under Section 7 of the IBC before the Adjudicating Authority, in view of the

acknowledgement of debt dues made by the Appellant, it is not correct to say that the debt of the Respondent No. 1 is time barred.

30. Learned Counsel for the Respondent No. 1 while referring to Application under Section 7 of the IBC, wherein Part-IV particulars of the financial debt is mentioned as 28.02.2019, further submitted that the Application under section 7 of the IBC was filed within the period of limitation, so in view of the judgment of Hon'ble Supreme Court of India reported in **2020 SCC OnLine SC 647 'BABULAL VARDHARJI GURJAR V/s. VEER GURJAR ALUMINIUM INDUSTRIES PVT. LTD. & ANR.'** is not applicable in the facts of this case.

31. Learned Counsel for the Respondent No. 1 further while referring on a judgment of this Appellate Tribunal in **Company Appeal (AT) (Insolvency) No. 236 of 2020 "Yogeshkumar Jashwantlal Thakkar V/s Indian Overseas Bank"** decided on 14th September, 2020 wherein this Tribunal as held as follows:

“.....

25. In the decision of **Hon'ble Supreme Court in 'Babulal Vardharji Gurjar' V. 'Veer Gurjar Aluminium Industries Pvt. Ltd. and Anr.'** (Civil Appeal no. 6357 of 2019 - decided on **14.08.2020**) at paragraph 33.1 it is observed as under:-

“33.1 Therefore, on the admitted fact situation of the present case, where only the date of default as '08.07.2011' has been stated for the purpose of maintaining the application u/s 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgement or any other date of default, in our view, the submissions sought to be developed on

behalf of the respondent no. 2 at the latest stage cannot be permitted. It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced. Indisputably, in the present case, the respondent No. 2 never came out with any pleading other than stating the date of default as '08.07.2011' in the application. That being the position, no case for extension of period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under consideration in the present case looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgement. In this view of the matter, reliance on the decision in Mahaveer Cold Storage Pvt. Ltd. does not advance the cause of the respondent No.2."

26. Moreover, in the judgement of **Hon'ble Supreme Court of India 'Mahabir Cold Storage' v. 'Commissioner of Income Tax, Patna' Civil Appeal No. 469(NT) of 1976 (decided on 07.02.1990)(MANU/SC/0320/1991)** wherein at paragraph 12 it is observed as under:-

"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. Section 2(47) of the Act defines 'transfer' in relation to a capital asset under clause (i) the sale, exchange or relinquishment of the asset or (ii) the extinguishment of any right thereof – (Clauses (iii) to (vi) are not relevant hence omitted). Unfortunately, the assessee did not bring on record the necessary material fact to establish that he became owner by any non-testamentary instrument acquiring right, title and interests in the plant and machinery nor the point was argued before the High Court and we do not have the benefit in this regard either of the Tribunal or of the High Court. In this view We decline to go into the question but confine to the 1st question and agree with the High Court answering the reference in favour of the revenue and against assessee that the appellant is not entitled to the development rebate u/s 33(1) of the Act. The appeal is accordingly dismissed with costs quantified at Rs. 5,000.”

27. In the judgement of **Hon'ble Supreme Court 'A.V. Murthy' V. 'B.S. Nagabasavanna' (Criminal Appeal No. 206 of 2002 – decided on 8.2.2002) (MANU/SC/0089/2002)** at paragraph 5 it is observed as under:-

“....Moreover, in the instant, the appellant has submitted before us that the respondent in his balance sheet prepared for every year subsequent to the loan advanced by the appellant had shown the amount as deposits from friends. A copy of the balance sheet as on 31st March, 1997 is also

produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgement. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the magistrate by way of defense of the respondent.”

and that the judgements of the Hon'ble Supreme Court under Article 141 of the Constitution of India are binding on the Courts / Authorities/ Tribunal(s) in the *territory of India*.

28. It is not out of place for this Tribunal to relevantly point out that the period of Limitation in case of acknowledgement in writing' starts running from the date of signing the acknowledgement and not after two months from the date of signing as per decision '**B.Narayana Rao' V. 'M.Govinda'** AIR **2004 Andhra Pradesh page 218**. Besides this, in the decision '**K.Jayraman' V. 'Sundaram Industries'** reported in AIR **2008 (NOC) Mad.** it is observed that '*acknowledgement of liability should be made before the expiry of the prescribed period for instituting a suit on the basis of original cause of action*'.

29. It is to be pointed out that the requirement of Section 18 and 19 of the Limitation Act are independent and not cumulative. Further, the actual payment of money is not an essential one under Section 18 of the Limitation Act, 1963, but it is an essential one under Section 19 of the Act, as per

decision '**Hanuman Mal' V. 'Jatan Mal' AIR 2005 (Raj.) page 71 (DB).**

30. An acknowledgment of debt interrupts the running of prescription. An acknowledgement only extends the period of limitation as per decision '**P.Sreedevi' V. 'P.Appu' AIR 1991 ker page 76.** It is to be remembered that a mere denial will not take sheen off the document and the claim of creditor remains alive within the meaning of Section 18 of the Limitation Act. Besides this, an acknowledgement is to be an 'acknowledgement of debt' and must involve an admission of subsisting relationship of debtor and creditor; and an intention to continue it and till it is lawfully determined must also be evident as per decision in 'Venkata' V. 'Parthasarathy' 16 Mad page 220. An acknowledgement does not create a new right.

In the aforesaid judgment this Appellate Tribunal further held in paras

31 and 32 as follows:

31. The judgement was passed in OA 470 of 2017 (filed on 18.08.2017 by the 1st Respondent / Bank) on 18.2.2019, directing the defendants 1 to 3 therein to pay the dues within two months from the date of judgement etc. and in fact the relief sought for by the 1st Respondent / Bank in the said application praying for issuance of recovery certificate to the tune of Rs. 19,25,81,173.31 only together with interest at 13.20% p.a. with monthly rests and costs was granted etc.

32. It transpires that Director of the 2nd Respondent / Jason Dekor Pvt. Ltd. had confirmed the correctness of the

balance of Rs. 14,34,42,101.00 dated 15.10.2013, on 01.11.2013 and over the revenue stamp had affixed his signature. Likewise, the Director of the 2nd Respondent had confirmed the correctness of the balance dated 05.06.2016 and had affixed his signature on 05.06.2016 itself. Likewise, on 20.05.2015 the Director of the 2nd Respondent had confirmed the correctness of the balance in respect of the credit facilities availed by it and the signature was affixed on 20.05.2015. On 02.09.2016 the Director of the 2nd Respondent / 'Corporate Debtor' had executed the revival letter to and in favour of the 1st Respondent / Bank. Similarly, on 31.03.2017, on behalf of the 2nd Respondent the borrower(s) / guarantor had affixed his signature over the revenue stamp. All these balance 'Confirmation Letters' were issued / given to and in favour of the 1st Respondent / Bank and they belie the stance of the Appellant.

33. It is to be relevantly pointed out that a judgement of the court has to be read in the context of queries which arose for consideration in the case in which the judgement was delivered. Further, an '*obiter dictum*' as distinguished from a '*ratio decidendi*' is an observation by the court on a legal question suggested in a case before it not arising in such manner as to require a determination. An '*obiter*' may not have a binding precedent as the observation was not necessary for the decision pronounced. Even though, an '*obiter*' may not

have a binding effect as a 'precedent', it cannot be denied it is of immense considerable weight.

34. It is not out of place for this Tribunal to make a significant mention that in the decision **'Quinn' V. 'Leathem' (1901) AC 495 at 596** the **dicta of Lord Halsbury** is *'.....every judgement must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides'*.

35. In the decision in **'Osborne' V. 'Rowlett' (1880) 13 Ch. D 774 Sir George Jessel** observed that *'the only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided'*.

36. The Present case centres around mixed question of 'Facts' and 'Law'. The 1st Respondent/Bank, as per the format, as mentioned at para 20 of this judgement, had given the date of 'Default' / 'NPA' as 01.01.2016 and that the Section 7 of the application of 'I&B' Code was filed before the Adjudicating Authority 01.04.2019, by the 1st Respondent / Bank. Prima facie, the Appeal needs to be allowed, if this is the single ground. However, in the instant case, the 1st Respondent/Bank had obtained balance confirmations certificate, the last one being 31.03.2017 as mentioned elaborately in Para 20 of this judgement. Although, this Appellate Tribunal had held in **'Rajendra Kumar Tekriwal' Vs. 'Bank of Baroda' in Company Appeal (AT) (Ins) No. 225 of 2020 and in Jagdish**

Prasad Sarada Vs. Allahabad Bank in Company Appeal (AT) (Ins) No. 183 of 2020, (both being three Members Bench)

had taken a stand that the Limitation Act, 1963 will be applicable to all NPA cases provided, they meet the criteria of Article 137 of the Schedule to the Limitation Act, 1963, the extension of the period can be made by way of Application under Section 5 of the Limitation Act, 1963 for condonation of delay; however, the peculiar attendant facts and circumstances of the present case which float on the surface are quite different where the 1st Respondent / Bank had obtained Confirmations/Acknowledgments in writing in accordance with Section 18 of the Limitation Act periodically. As a matter of fact, Section 18 of the Limitation Act, 1963 is applicable both for 'Suit' and 'Application' involving 'Acknowledgment of Liability', creating a fresh period of limitation, which shall be computed from the date when the 'Acknowledgment' was so signed.

37. For better and fuller appreciation of the present subject matter in issue, it is useful for this Tribunal to make a pertinent reference to Section 18 of the Limitation Act, 1963 which runs as under: "18. *Effect of acknowledgment in writing.* —

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment 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, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of

its contents shall not be received. Explanation. —For the purposes of this section, —

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

38. At this stage, this Tribunal, has perused the various confirmation letters as stated supra which are legally valid and binding documents between the *inter se* parties and the same cannot be repudiated on one pretext or other. Therefore, this Tribunal comes to an inevitable, inescapable and irresistible conclusion that the date of default i.e. 01.01.2016 gets extended by the debit confirmation letters secured by the 1st Respondent/Bank from the Corporate Debtor (for making a new period run from the date of debit confirmation letters) towards the outstanding debt in ‘Loan Account’. Indeed, the application under Section 7 of the I&B Code, 2016 was filed by the 1st Respondent/Bank on 01.04.2019 before the ‘Adjudicating Authority’ within the period of Limitation. Furthermore, in view of the fact, that ingredients of Section 18 of the Limitation Act, 1963 are quite applicable both for ‘Suit’ and ‘Application’ and the debit confirmation letters in the instant case were duly acknowledged in accordance with Law laid down on the subject, the instant Appeal deserves to be dismissed and

accordingly the same is dismissed, since no legal infirmities have been found in the impugned order passed by the Adjudicating Authority in admitting CP No. (IB) 257/7/NCLT/AHM/2019 and declaring moratorium etc. Resultantly, all connected Interlocutory Applications are closed. There shall be no order as to costs.

32. It is further submitted that the facts of this case is squarely covered by Judgment of this Appellate Tribunal (supra), there is no merit in the Appeal and it is fit to be dismissed.

Submissions on behalf of the Respondent No. 2

33. The Learned Counsel for the Respondent No. 2- Resolution Professional - Mr. Kamal Nayan Jain has filed the Status Report on 08.09.2020 which reveals that pursuant to the constitution of Committee of Creditors (for short CoC) a meeting was held on 27th March 2020 and again on 5th August, 2020. The Respondent No. 2 – Resolution Professional published brief particulars of the invitation for Expression of Interests for resolution plans in Form – G ‘Newspaper’ and pursuant thereof two EOIs (Expressions of Interest) were received on 20.08.2020, the last date of receiving the EOI was 20.08.2020 and the matter is pending due to interim order was passed by this Appellate Tribunal.

FINDING

34. We have perused the records of the case, considered the arguments advanced on behalf of the parties, Reply Affidavit filed on behalf of the Respondent No. 1, also the Status Report filed on behalf of the Respondent No. 2 and gone through the written submissions filed on behalf of the parties. The following facts are admitted.

- a) The Appellant – Corporate Debtor, in the year 2008, had availed loan from Union Bank of India and failed to pay loan, which was declared NPA on 31.12.2009 by the Principal Lender- Union Bank of India.
- b) The Appellant again requested the Principal Lender- Union Bank of India to sanction fresh loan and from the perusal of pages 190 to 216 of the Appeal Paper Book it shows that corresponding between the parties and further, on 19.01.2010 a composite Hypothecation cum fresh agreement was executed between the Principal Lender- Union Bank of India and Raigarh Properties Private Limited.
- c) It is admitted that on 1st September, 2012 the Appellant offered to settle the account with the Principal Lender- Union Bank of India and vide letter dated 29.11.2011 (Annexure -A/2 at page 291 of the Appeal Paper Book, Vol-II) it was agreed between the parties with the Appellant shall pay Rs. 27,50,00,000/- subject to the other conditions mentioned in the letter.
- d) Despite the settlement with the Corporate Debtor, the Corporate Debtor miserably failed to comply with the terms of settlement and further on 10.07.2012 and 23.07.2012 (Annexure- A/2, Vol-II, Page 291 of the Appeal Paper Book) respectively requested the Principal Lender- Union Bank of India for modification of the conditions of said settlement.
- e) It is admitted that on 30th July 2012 the Principal Lender- Union Bank of India informed the Appellant with request for modification in condition of settlement proposal dated 02.07.2012 has been accepted.
- f) It is admitted that on 31.12.2012 an Assignment Agreement (at pages 114 to 139, Vol-I of the Appeal Paper Book) was executed between the

Principal Lender- Union Bank of India and Respondent No. 1 – Asset Reconstruction Company (India) Limited whereby Principal Lender- Union Bank of India assigned the loan granted to the Corporate Debtor in the year 2010 along with other loans.

g) It is admitted that vide letter dated 21.03.2013 sent by Respondent No. 1 – Asset Reconstruction Company (India) Limited to Mohan Jute Mills Ltd. informing that proposal for restructuring the scheme of Mohan Jute Mills Ltd. and Raigarh Properties Pvt. Ltd. have been approved and terms sheet dated 21.03.2012 was drawn between the Respondent No. 1 – Asset Reconstruction Company (India) Limited, Mohan Jute Mills Ltd. and Raigarh Properties Pvt. Ltd. which is at Annexure – A/2 Vol-II, pages 221 to 243 of the Appeal Paper Book.

h) It is admitted that on 30th June, 2013 and 31st July, 2013, the Corporate Debtor once again defaulted in making payments and the Respondent No. 1 was constrained to issue reminder letters dated 17.07.2013, 08.08.2013, 12.09.2013, 11.11.2013, 12.12.2013 and 19.06.2014 respectively, the letters are evident at Annexure - A/2 at pages 296 to 301, Vol-II of the Appeal Paper Book.

i) It is admitted that vide letter dated 23.07.2015, the Corporate Debtor referring to the Term Sheet dated 21.02.2013 requested the Respondent No. 1 for reschedulement of payment as the earlier schedule of payment had not been complied with. In the said letter the Corporate Debtor acknowledged the present dues and future outstanding of interest due up to 31.07.2015 as Rs. 6,55,56,000/- and outstanding of principal dues till 31.12.2015 as Rs. 16,89,63,000/- and further requested to Respondent No. 1 for a moratorium

of 18 months on capitalization of dues as on 31.07.2015 and proposed that the repayment will be made in 6 equal quarterly instalments starting from 30.04.2017 till 31.07.2018 the aforementioned letters which are evident at Annexure-A/2 Vol-II, at pages 304 to 309 of the Appeal Paper Book.

j) It is admitted that on 14.08.2015 a similar letter referring to the Term Sheet dated 21.03.2013 and also referring the discussions held on 06.08.2015 with the Respondent No. 1 requesting for the reschedulement of payment. The Appellant again acknowledged its liability and the revised the proposal by offering upfront payment of Rs. 1,00,00,000/- subject to the sanction of the proposal.

k) It is admitted that the Corporate Debtor requested for a moratorium of 12 months on the balance capitalized interest and principal amount from 01.08.2015 and also the Corporate Debtor proposed for 8 equal quarterly instalments for repayment starting from 31.10.2016 till 31.07.2018. The aforesaid letters part of Annexure-A/2 at pages 310 to 315, Vol-II, of the Appeal Paper Book.

l) It is admitted that the Corporate Debtor again acknowledged the outstanding of Rs. 24,85,27,000/- (including interest and Principal) as on 31.03.2016 and requested the Respondent No. 1 for a further reschedulement in terms of repayment and further it was proposed to pay Rs. 50,00,000/- per month starting from April 2017 till the entire dues are settled i.e. from September, 2018 and thereafter. The letter sent by the Appellant in this regard is at Annexure- A/2, Vol-II, Pages 323 to 326 of the Appeal Paper Book.

m) It is admitted that the Corporate Debtor failed to make any payment and only 20th May, 2016 the Respondent No. 1 issued a recall notice for an outstanding dues of Rs. 26,61,47,046/-.

n) It is admitted that on 20.02.2019 the Respondent No. 1 computed the total dues of the Corporate Debtor which came to Rs. 42,33,36,044/- and informed the Corporate Debtor through letter which is part of Annexure - A/2 Vol- II, pages 247 to 249 of the Appeal Paper Book.

o) In view of the categorical acknowledgement by the Corporate Debtor, acknowledging the dues and making requests for the rescheduled the payment of the instalments, we are of the clean opinion that in view of the Judgment of this Appellate Tribunal (supra) dated 14th September, 2020 the ratio of the judgment is applicable in the facts of this case and this case is squarely covered by the aforesaid judgment. At this stage the plea of the Appellant is that the Application under Section 7 of the IBC is barred by limitation, cannot be sustained in the eye of law.

p) The Adjudicating Authority while passing the impugned order dated 27.02.2020 in C.P. (I.B.) No. 432/KB/2019 has considered all these aspects of the matter, so we do not find any reason to interfere with the impugned order. Accordingly, we hereby affirm the impugned order and further came to conclusion that the Appeal is devoid of any merit. The Appeal is accordingly dismissed.

q) From the status report filed by the Respondent No. 2 it transpires that two EOIs (Expressions of Interest) have been received on 20th August, 2020 but matter is pending before this Appellate Tribunal there is no further progress in the resolution process.

ORDER

35. Having regard to the foregoing discussion, we find no merit in this Appeal. The Appellant has failed to demonstrate that the impugned order suffers from any legal infirmity. The Appeal is dismissed. No order as to costs.

36. In the Orders dated 27.01.2021 passed by this Appellate Tribunal it was directed that as the matter is pending before the Committee of Creditors (COC) they are directed to proceed and take a decision but not communicate its decision to the Adjudicating Authority and keep it in a sealed cover. This order is modified and the CoC is directed to take the decision and communicate it forthwith to the Adjudicating Authority in the matter.

37. The time spent in pursuing the instant Appeal shall be excluded from the CIRP period.

38. Registry to upload the Judgment forthwith on the website of this Appellate Tribunal.

39. Registry is directed to send the copy of this Judgment to the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, Kolkata, forthwith.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Dr. Alok Srivastava]
Member (Technical)**

26th March, 2021

NEW DELHI

R. N.

Company Appeal (AT) (Insolvency) No. 625 of 2020