

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 2157 of 2024
&
I.A. No. 7981 of 2024

**[Arising out of the Order dated 16.07.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Kolkata Bench, (Court-II), in C.P. (IB)/46(KB)2023]**

IN THE MATTER OF:

UCO BANK

Flagship Corporate Branch,
At-2, India Exchange Place,
Kolkata - 700001

...Appellant

Versus

**M/S PODDAR MECH TECH SERVICES
PVT. LTD.**

A company within the meaning of the
Companies Act, 2013
Having its registered office at 35,
Chittaranjan Avenue, Kolkata-700012

...Respondent

Present:

For Appellant : Mr. Sarfaraz Khan, Advocate.

For Respondent :

With
Company Appeal (AT) (Ins) No. 2158 of 2024
&
I.A. No. 7982 of 2024

**[Arising out of the Order dated 16.07.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Kolkata Bench, (Court-II), in C.P. (IB)/44(KB)2023]**

IN THE MATTER OF:

UCO Bank

Flagship Corporate Branch,
At-2, India Exchange Place,
Kolkata - 700001

...Appellant

Versus

**M/S SUANVI TRADING 85 INVESTMENT
COMPANY PRIVATE LIMITED**

Having its registered office at 35, C.R.

Present:

For Appellant : Mr. Sarfaraz Khan, Advocate.

For Respondent :

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

I.A. No. 7981 of 2024 and I.A. No. 7982 of 2024 have been moved in CA
(AT) (Ins) No. 2157 of 2024 and CA (AT) (Ins) No. 2158 of 2024

We notice that I.A. No. 7981 of 2024 and I.A. No. 7982 of 2024 have been moved in CA (AT) (Ins) No. 2157 of 2024 and CA (AT) (Ins) No. 2158 of 2024, respectively, praying to condone the delay of 65 days occurred in refiling of both the appeals. The explanation which has been provided in the application is that since the application for condonation could only be filed with the Affidavit of the authorised representative and he was on leave for 10 days and also that the defects were raised by the registry many times and in this background the delay of 65 days has occurred in refiling the appeals. The appeals however were filed within the stipulated limitation.

2. We find that the proceedings of these appeals are initiated ex-parte against the respondents. Keeping in view the explanation given in the applications we find the explanation provided by the appellant is sufficient.

3. In result both the aforesaid applications are allowed and the delay of 65 days caused in refiling the aforesaid appeals is hereby condoned.

CA (AT) (Ins) No. 2157 of 2024 and CA (AT) (Ins) No. 2158 of 2024

Aforesaid appeals are having a common issue and for the sake of convenience are being disposed of by passing this common order.

2. CA (AT) (Ins) No. 2157 of 2024 has been presented under Section 61 of the IBC, 2016 against the order passed by Ld. Adjudicating Authority dated 16.07.2024, with regard to an application filed by the appellant under Section 7 of the Code in CP (IB)/46 (KB) 2023 whereby the application moved by the appellant against the corporate guarantor/Respondent has been dismissed.

3. CA (AT) (Ins) No. 2158 of 2024 has also been filed by the appellant against the impugned order dated 16.07.2024, passed by Ld. Tribunal whereby an application moved by the appellant under Section 7 of the Code in CP (IB)/44 (KB) 2023 has been dismissed.

4. Brief factual matrix necessary for disposal of the above mentioned appeals is that the aforesaid petitions was preferred by the appellant-UCO Bank (Financial Creditor) against the Respondent/Corporate Guarantors of the Corporate Debtor (CD) i.e. Ankit Metal & Power Ltd. for initiation of Insolvency Process against them for the default committed by them in discharging their liability towards the financial creditor i.e. appellant.

5. The Principal Borrower Ankit Metal and Power Ltd. had entered into an agreement with the appellant wherein working capital facility of Rs. 65 crores including cash credit facility of Rs. 35 Crores with a sub-limit of Rs. 10 Crores for EPC/FBP/FBN/FBD and letter of credit of Rs. 30 Crore was extended to the Principal borrower.

6. The Principal Borrower failed to pay the money in pursuance of the terms of the agreement and the account of the principal borrower was classified as a Non-Performing Asset (NPA) by the appellant however, in the meantime, a Master Restructuring Agreement (MRA) was also executed between the Principal Borrower and all CDR lenders under the Consortium Arrangement on 25.09.2014, but the Principal Borrower again failed to comply with the terms and conditions of this restructuring agreement.

7. It is further reflected that on 11.08.2017, the Principal Borrower executed a letter of revival and has acknowledged its debt towards the consortium lenders and on failure to repay the debt the appellant filed petition under Section 7 of the IBC to initiate CIRP of the Principal Borrower i.e. Ankit Metal and Power Ltd. and vide order dated 20.12.2023, the Principal Borrower was admitted into the CIRP.

8. The aforesaid applications filed by the appellant to initiate CIRP against the Corporate Guarantors of the Principal Borrower has been dismissed by passing the above mentioned impugned orders.

9. Ld. Counsel for the appellant submits that it is not in dispute that the Principal Borrower namely, Ankit Metal and Power Ltd. had committed default and was admitted into the CIRP vide order dated 20.12.2023, passed by the adjudicating authority under Section 7 of the Code.

10. It is further submitted that it is also not in dispute that the Principal Borrower was declared NPA on 28.08.2014, and on 11.08.2017 the Principal Borrower executed a letter of revival and acknowledge its debt towards the consortium lenders and made several payments from time to time thereafter after the revival arrangement.

11. It is further submitted that the appellant had proceeded against the Principal Borrower and the Corporate Guarantors by issuing a demand notice under Section 13 (2) of the SARFAESI Act, 2002 on 07.04.2018 for an outstanding dues amounting to Rs. 1,054,500,000/- as on 07.04.2018 however both the principal borrower and corporate debtor failed to pay and as such they were jointly and severally liable to pay the outstanding dues.

12. It is further submitted that even after default on the part of principal borrower the financial creditor received several payments from the principal borrower from 2014 to 2018 and the last payment by the principal borrower was made on 23.08.2018 for an amount of Rs. 2,49,157/- and further the principal borrower has acknowledged its debt towards the financial creditor in its audited balance sheets for the years 2019-2020, 2020-2021 and 2021-2022.

13. It is also submitted that appellant has filed an original application bearing OA No. 72 of 2021 before the DRT-I Kolkata on 11.03.2019, under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 against the principal borrower and its guarantors including the corporate debtor which is still pending.

14. It is vehemently submitted that the adjudicating authority has committed manifest illegality in dismissing the application of the appellant on the plea of it being time barred as it was evident that the principal borrower had earlier executed a letter of revival and acknowledged its debt on 11.08.2017, and thereafter from 08.11.2014 till 23.08.2018 had made periodical payments and also acknowledged its debt in the audited balance sheet of it for the year 2019-2020, 2020-2021 and 2021-2022 and therefore

there was a clear cut acknowledgement of the debt by the principal borrower in its financial statements till 2021-2022 and therefore there was no question of the debt being time barred as the liability of principal borrower and the corporate guarantor is co-extensive and the period of limitation was extended due to the acknowledgement of the debt by the principal borrower.

15. It is further submitted that Ld. Tribunal has failed to consider that the corporate guarantee given by the corporate guarantors (Respondents herein) was invoked simultaneously with the recalling of loan from the principal borrower and also that upon acknowledgment of debt in balance sheet of the principal borrower till the financial year 2020-2021, the limitation has extended for a further period of three years i.e. till 2024 and since the petitions aforesaid under Section 7 of the Code were filed by the appellant in the year 2023 they were within the limitation period. Thus, there was no occasion for the Ld. Tribunal to have declared the petition filed by the appellant as 'time barred'.

16. It is further submitted that Ld. Tribunal has also failed to consider clause 29 of the guarantee deed executed by the guarantors and has also not considered that the responsibility/liability of the guarantor is co-extensive with the principal borrower.

17. It is further submitted that though the instant applications have been dismissed by the Ld. Tribunal on the issue of limitation however, the two other applications of the appellant bearing CP (IB) No. 43 (KB) /2023 and CP (IB) No. 45 (KB)/2023 which were also moved against the two other corporate guarantors under Section 7 of the Code have been admitted against the guarantors vide order dated 19.12.2024 and 02.09.2025 and the

insolvency process has been started against the other two corporate guarantors of the CD.

18. It is further submitted that Ld. tribunal has not considered that the Hon'ble Supreme Court of India in the matter of *Suo Motu W.P (C) NO. 3 OF 2020* with M.A No. 21 of 2022; M.A No. 665 of 2021; M.A No. 29 of 2022 has directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings and thus committed a patent illegality.

19. We have heard Ld. counsel for the parties and It is recall that despite the sufficient service of the notice on the Respondents they did not appear before this Appellate Tribunal and vide order dated 17.10.2025 the proceedings of this appeal were initiated ex-parte against them. Therefore, this appellate tribunal did not have any occasion to hear the submissions which may be advanced on behalf of the Respondents.

20. Perusal of the record would reflect that the Ld. Tribunal has dismissed the applications filed by the appellant against the corporate guarantors under Section 7 of the Code on the score that the corporate guarantee was invoked in March 2019 and the application for recovery of debt due from corporate guarantor under recovery of debts due to Banks and Financial Institution Act, 1993 was filed by the petitioner before Ld. DRT in March 2019 and the applications aforesaid under Section 7 of the Code has been moved on 21.09.2023, which is beyond the period of limitation. It is also considered by Ld. Tribunal that proceedings under Section 13 (2) of the SARFAESI Act against the Respondent was initiated in March 2019 and in

the intervening period, no proceeding have been instituted against the corporate guarantors (Respondent herein).

21. Having perused the record, we find that the account of the principal borrower was classified as NPA on 28.08.2014 and the date of default has been claimed as on 31.05.2014. It is also evident that payments were made in part by the principal borrower on 08.11.2014, 27.01.2015, 30.06.2015, 05.10.2015, 09.02.2018, 25.06.2018 and last payment was made on 23.08.2018 which was for an amount of Rs. 2,49,157/-.

22. Section 18 of the Indian Limitation Act, 1963 is relevant here and is reproduced 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."

23. We notice that the principal borrower in its balance sheet for the year ending 2020-2021 and 2021-2022 has acknowledged his liability and the debt towards the appellant (financial creditor). There is no quarrel with the proposition that the acknowledgement made by the principal borrower will tantamount to be an acknowledgment made by the guarantor and any acknowledgement made in writing within the limitation period already existing would further extend the period of limitation under Section 18 of Indian Limitation Act, 1963.

24. In this regard the law laid down by the Hon'ble Supreme Court in ***Laxmi Pat Surana vs. Union Bank of India, (2021) Vol 8 SCC page 481*** may be recalled and paragraph 44 of the same is reproduced as under:

*“44. In the present case, NCLT as well as NCLAT have adverted to the acknowledgments by the principal borrower as well as the corporate guarantor-corporate debtor after declaration of NPA from time to time and lastly on 08.12.2018. **The fact that acknowledgment within the limitation period was only by the principal borrower and not the guarantor, would not absolve the guarantor of its liability flowing from the letter of guarantee** and memorandum of mortgage. The liability of the guarantor being coextensive with the principal borrower under Section 128 of the Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and memorandum of mortgage, unless it expressly provides to the contrary”.*

(Emphasis Added)

25. In ***Pooja Ramesh Singh vs. SBI, in CA (AT) (Ins) No. 329 of 2023***, the NCLAT observed that:

*“24. **The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only***

against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression 'due' occurring in Section 3(11) uses two additional expressions i.e. "payable" and "is not paid by the debtor or corporate debtor". The expression 'is not paid by the debtor' has to be given some meaning. **As laid down by the Hon'ble Supreme Court "Syndicate Bank vs. Channaveerappa Beleri & Ors." (supra), a guarantor's liability depends on terms of his contract.** There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."

(Emphasis Added)

26. In **Asset Reconstruction Co. (India) Ltd. vs. Bishal Jaiswal, (2021)**

6 SCC 366, observed that:

"**40.** In *CIT v. Shri Vardhman Overseas Ltd.* [*CIT v. Shri Vardhman Overseas Ltd.*, 2011 SCC OnLine Del 5599: (2012) 343 ITR 408], the Delhi High Court held: (SCC OnLine Del para 17)

"17. In the case before us, as rightly pointed out by the Tribunal, the assessee has not transferred the said amount from the creditors' account to its profit and loss account. The liability was shown in the balance sheet as on 31-3-2002. **The assessee being a limited company, this amounted to acknowledging the debts in favour of the creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgment in writing.** It says where before the expiration of the prescribed period for a suit 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, a fresh period of limitation shall commence from the time when the acknowledgment was so signed. In an early case, in *England, in Jones v.*

*Bellgrove Properties Ltd. [Jones v. Bellgrove Properties Ltd., (1949) 2 KB 700: (1949) 2 All ER 198 (CA)], **it was held that a statement in a balance sheet of a company presented to a creditor shareholder of the company and duly signed by the Directors constitutes an acknowledgment of the debt.** In *Mahabir Cold Storage v. CIT [Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402]*, the Supreme Court held: (*Mahabir Cold Storage case (Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402]*, SCC p. 409, para 12) '12. The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to Messrs. Prayagchand Hanum anm al within the meaning of Section 18 of the Limitation Act, 1963, and extend the period of limitation for the discharge of the liability as debt.'*

In several judgments of this Court, this legal position has been accepted. In *Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma [Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma, 1997 SCC OnLine Del 238: (1997) 67 DLT 13]*, S.N. Kapoor, J. applied the principle in a case where the primary question was whether a suit under Order 37 CPC could be filed on the basis of an acknowledgment. In *Larsen & Toubro Ltd. v. Commercial Electric Works [Larsen & Toubro Ltd. v. Commercial Electric Works, 1997 SCC OnLine Del 144: (1997) 67 DLT 387]* a Single Judge of this Court observed that **it is well settled that a balance sheet of a company, where the defendants had shown a particular amount as due to the plaintiff, would constitute an acknowledgment within the meaning of Section 18 of the Limitation Act.** In *Rishi Pal Gupta v. S.J. Knitting & Finishing Mills (P) Ltd. [Rishi Pal Gupta v. S.J. Knitting & Finishing Mills (P) Ltd., 1998 SCC OnLine Del 360: (1998) 73 DLT 593]*, the same view was taken. The last two decisions were cited by Geeta Mittal, J. in *S.C. Gupta v. Allied Beverages Co. (P) Ltd. [S.C. Gupta v. Allied Beverages Co. (P) Ltd., 2007 SCC OnLine Del 655: (2009) 163 DLT 495]* and **it was held that the acknowledgment made by a company in its balance sheet has the effect of extending the period of limitation for the purposes of Section 18 of the Limitation Act.** In *Ambica Mills Ltd. v. CIT [Ambica Mills Ltd. v. CIT, 1963 SCC OnLine Guj 26: (1964) 54 ITR 167]*, **it was further held that a debt shown in a balance sheet of a company amounts to an acknowledgment for the purpose of Section 19 of the Limitation Act and in order to be so, the balance sheet in which such acknowledgment is made need not be addressed to the creditors.** In

light of these authorities, it must be held that in the present case, the disclosure by the assessee company in its balance sheet as on 31-3-2002 of the accounts of the sundry creditors' amounts to an acknowledgment of the debts in their favour for the purposes of Section 18 of the Limitation Act. The assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law."

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44. In *Zest Systems (P) Ltd. v. Center for Vocational & Entrepreneurship Studies* [*Zest Systems (P) Ltd. v. Center for Vocational & Entrepreneurship Studies*, 2018 SCC OnLine Del 12116], the Delhi High Court held: (SCC Online Del paras 5-6)

"5. In *Shahi Exports (P) Ltd. v. CMD Buildtech (P) Ltd.* [*Shahi Exports (P) Ltd. v. CMD Buildtech (P) Ltd.*, 2013 SCC OnLine Del 2535: (2013) 202 DLT 735] this Court held as follows:

7. It is hardly necessary to cite authorities in support of the well-established position that an entry made in the company's balance sheet amounts to an acknowledgment of the debt and has the effect of extending the period of limitation under Section 18 of the Limitation Act, 1963. However, I may refer to only one decision of the learned Single Judge of this Court (Manmohan, J.) in *Bhajan Singh Samra v. Wimpy International Ltd.* [*Bhajan Singh Samra v. Wimpy International Ltd.*, 2011 SCC OnLine Del 4888: (2011) 185 DLT 428: (2012) 173 Comp Cas 455] for the simple reason that it collects all the relevant authorities on the issue, including some of the judgments cited before me on behalf of the petitioners. This judgment entirely supports the petitioners on this point.'

6. In view of the legal position spelt out in judgments noted above, the acknowledgment of the debt in the balance sheet extends the period of limitation. The acknowledgment is as on 31-3-2015. This suit is filed in 2017. The suit is clearly within limitation. The present application is allowed."

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48. On the facts of this case, NCLT, by its judgment dated 19-2-2020, recorded **that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor.** As a result, NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already 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], and the impugned judgment of NCLAT dated 22-12-2020 [*Bishal Jaiswal v. Asset Reconstruction Co. (India) Ltd. Company Appeal (AT) (Insolvency) No. 385 of 2020*, decided on 22-12-2020 (NCLAT)] in paras 46 and 47. This appeal is, therefore, allowed, and the matter is remanded to NCLAT to be decided in accordance with the law laid down in our judgment."

(Emphasis Added)

27. Thus, in ***Asset Reconstruction Co. (India) Ltd. vs. Bishal Jaiswal, (2021) 6 SCC 366***, Hon'ble Supreme Court held that the question of applicability of Section 18 of the Limitation Act on IBC is no longer *res Integra* as two recent judgments (***Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd., (2021) ibclaw.in 49 SC***, decided on **22.03.2021** and ***Laxmi Pat Surana v. Union Bank of India (2021) ibclaw.in 53 SC***, decided on **26.03.2021**) have applied the provisions of Section 14 and Section 18 of the Limitation Act to the IBC and that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act.

28. The aforesaid legal citations are sufficient to conclude that any acknowledgment made by the principal borrower would be deemed to be an acknowledgment by the corporate guarantor also. Since, it appears to be an admitted situation that up to the financial year 2019-2020, 2020-2021, 2021-2022 the debt was shown by the principal borrower in his financial statements and the acknowledgment made by the principal borrower is as good as the acknowledgment made by the guarantor, therefore, by virtue of

Section 18 of Indian Limitation Act, 1963 the limitation to file an application under Section 7 of the IBC was available to the appellant till 2024 while the applications aforesaid under Section 7 of the Code have been filed in the year 2023. Therefore, in our considered opinion a patent illegality has been committed by the Id. Tribunal in rejecting the application filed by the appellant under Section 7 of the Code.

29. We also notice that applications with regard to the four guarantors of the CD namely, CP (IB) No. 43 (KB)/2023, CP (IB) No. 44 (KB)/ 2023, CP (IB) No. 45 (KB)/2023, CP (IB) No. 46 (KB)/2023 were filed and while the application bearing CP (IB) No. 43 (KB)/2023 and 45(KB)/2023 have been allowed and the CIRP process has been initiated against the corporate guarantors vide orders dated 19.12.2024 and 02.09.2025 and the identical applications moved by the appellant mentioned herein above have been dismissed.

30. It is also evident that Ld. Tribunal has not at all considered the applicability of the law propounded by the Hon'ble Supreme Court in the matter *Suo Motu W.P (C) NO. 3 OF 2020* with M.A No. 21 of 2022; M.A No. 665 of 2021; M.A No. 29 of 2022 wherein due to the surge of the virus on public health and adversities faced by litigants in the prevailing conditions the order passed earlier on date 23.03.2020 was restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings with other Consequent directions.

31. Thus keeping in view all the facts and circumstances, of the case and for the reasons aforesaid, in our considered opinion, the impugned orders may not be sustained and are hereby **set aside**.

32. Resultantly the appeals filed by the appellant are **allowed**. The matter is remanded back to the Ld. Tribunal for decision afresh after providing opportunity of being heard to the parties.

33. For this purpose, the CP (IB) No. 46 (KB)/2023 and CP (IB) No. 44 (KB)/2023 filed by the appellant before the Ld. Tribunal are hereby revived.

34. No order as to costs.

35. Pending IA's, if any, shall also disposed of.

36. The parties shall appear before the Ld. Tribunal on 19.01.2026.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
23.12.2025.

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