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* **IN THEHIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 23.03.2022

% **Judgment delivered on: 31.05.2022**

\+ **FAO(OS) (COMM) 69/2022 & CM APPL. 14275/2022**

NATIONAL SEEDS CORPORATION LTD ..... Appellant

Through: Mr Anil Airi, Sr. Advocate with Mr Yashvardhan, Ms Smita Kant, Ms Kritika Nagpal, Ms Bhavya Bhatia, Mr Akshay Joshi, Mr Savyasachi Rawat, Advocates

Versus

NATIONAL AGRO SEEDS CORPORATION (INDIA) THROUGH ITS PROPRIETOR SATYA KETU ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH, J.

1. The present appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015 challenging the impugned judgment dated 05.01.2022 passed by the learned Single Judge of this Court in O.M.P. (COMM) 432 of 2019 titled '*National Seeds Corporation Ltd. vs. National Agro Seeds Corporation (India)*'.

2. Briefly stating the facts giving rise to filing of the present appeal are as under:

2.1 The State of Uttar Pradesh had floated various subsidy schemes such as scheme for popularization of cultivation of hybrid paddy in the State of

Uttar Pradesh. Under the schemes, farmers were eligible for distribution subsidy at the rate of about 50 % of the seed costs and the Appellant would receive the subsidy amount directly from the State Government. Under these subsidy schemes, the seeds were to be supplied to the farmer, where 50% of the cost of seeds was to come from the farmer which was to be received by the appellant through the dealers (respondent herein) and the remaining 50% costs of the seed was the subsidy component which was to be paid for by the State Government. The Appellant had accordingly entered into agreements with various dealers including the respondent for implementation of the subsidy schemes.

2.2 The appellant was involved in selling the seeds to the farmers through its dealers. The beneficiary list of farmers was to be verified by the concerned Local Agriculture Departmental Authority and then the claim for subsidy amount was to be submitted to the State Agriculture Department along with verified beneficiary list for release of subsidy amount by the State Government to the appellant.

2.3 With this objective in mind, the appellant and the respondent entered into a Distributorship Agreement dated 24.10.2009, which was renewed by an Agreement dated 01.04.2010, which has been extended from time to time on the same terms and conditions.

2.4 As per the agreement, the respondent had agreed to sell certified seeds of approved varieties with subsidies at the retail price fixed by the appellant after reducing the admissible amount of subsidy.

2.5 In consideration for the same, the appellant had agreed to provide a trade discount to the respondent. As per the terms and conditions of the distributorship agreement, the respondent was also required to sell 25% of

the oil seeds and pulses and 30% of the wheat certified seeds to farmers from SC/ST category. In terms of its obligation contained in Clause 11 of the agreement, the respondent was obliged to collect all records, cash memos, registers and subsidized sale details in the approved format and submit the same to the Regional Office of the appellant after verification from the appropriate authority of the Agriculture Department.

2.6 The respondent submitted that it had complied with all its obligations under the agreement and had sold the seeds obtained from the appellant at the discounted price. Accordingly, it claimed that it was entitled to trade discount. The respondent quantified the outstanding commission/ trade discount against the seeds distributed as on the date of filing of statement of claim at Rs. 1,46,40,005.02/-and further claimed interest.

2.7 Since the Appellant did not make the said payment and disputed the amount, the Respondent herein invoked the arbitration clause in terms of clause 9 of the agreement dated 01.04.2010. The parties filed their respective claims, counter-claims, lead evidence before the Arbitral Tribunal of a sole arbitrator.

3. The Arbitral Tribunal framed the following issues for adjudication:

(i) Whether the claims of the claimant are barred by law of limitation?

(ii) Whether the Trade Discounts as provided for in the contract is payable to the Claimant only on receipt of the subsidies by the Respondent from the concerned State Government?

(iii) Whether respondent is entitled to counter claims?

4. The Arbitral Tribunal vide its award dated13.06.2019 was pleased to allow the claim of the respondent in its entirety and awarded a sum of Rs. 1,46,40,005.02along with interest at the rate of 12% per annum (w.e.f.

26.08.2017 i.e. the date of notice claiming interest on outstanding sum) and rejected the contentions of the appellant, primarily, for the following reasons: -

4.1 With regard to the aspect of limitation, the Arbitral Tribunal noted that the Appellant herein acknowledged its liability towards the Claimant/Respondent "*in its ledger accounts at the end of every financial year w.e.f. 2009-2010 till 2015-2016 by carrying forward the outstanding balance at the end of every financial year to the subsequent financial year and as per the above admitted ledger accounts it continued till March, 2016 and, as claimed by claimant, even thereafter, which amounts to acknowledgement of dues within the meaning of Section 18 of Limitation Act and extend the period of limitation*".

It was also noted by the Tribunal that Section 29 of Limitation Act contains a saving clause in respect of Section 25 of Indian Contract Act. The letter dated 29.06.2017 of the Appellant herein contained a clear acknowledgement by the Appellant and the same would be treated as '*promise to pay*' within the meaning of Section 25(3) of Indian Contract Act. In support, the Arbitral Tribunal relied on the judgment of this court in *State Bank of India v. Kanahiya Lal* [2016 SCC OnLine Del 2639].

4.2 With regard to the second issue, it was the contention of the Appellant that it is not required to make any payment to claimant (Respondent herein) until the subsidy amount is received by it from the concerned State Government. The Arbitral Tribunal held that this contention cannot be sustained and was rejected being contrary to the terms of contract between the parties. The Arbitral Tribunal observed that *"…the claimant who is a distributor and has discharged its part of obligation under the*

contract, cannot be expected to wait for its lawful dues/outstanding payment endlessly without any provisions in the contract to this effect. Respondent has not placed on record any documentary evidence to show that claimant has not discharged its part of obligation under the contract. Thus, the claimant is entitled to receive it admitted outstanding amount as claimed by it in the present statement of claim."

4.3 As regards the counter claim, the Arbitral Tribunal noted that the Appellant had not brought on record any evidence to show that the Claimant had contravened any of the provisions of the agreement. The Arbitral Tribunal also observed that the reliance placed by the appellant on Clause 8 of the agreement was also misplaced as much as there was no evidence at all that sales made by claimant under the agreement between them were against the provisions of the schemes as mentioned in the agreement.

5. That the appellant filed its objections under Section 34 of the Arbitration and Conciliation Act, 1996 and assailed the award essentially on four grounds:-

(i) Firstly, the decision of the Arbitral Tribunal to reject the Appellant's contention that the claims were barred by limitation, was *ex facie* erroneous. The respondent's claim included claims for arrears of trade discount in respect of seeds that were sold three years prior to the filing of the Statement of Claims. He submitted before the single judge that it was clear that part of the claim was barred by limitation and, thus, was liable to be rejected. Further that the Arbitral Tribunal had erroneously held that the amounts due to the respondent had been acknowledged by the Appellant and submitted that the

Appellant had merely stated that it would pay the trade discount on receipt of subsidy and the said statement could not be construed as an unequivocal acknowledgment of liability.

(ii) Secondly, the Appellant submitted before the Single Judge that the Arbitral Tribunal had misinterpreted Clause 8 of the Agreement to infer that the Appellant was liable to pay the trade discount despite non-receipt of subsidies from the State Government of Uttar Pradesh.

(iii) Thirdly, the Appellant submitted before the Single Judge that the interest awarded by the Arbitral Tribunal was excessive and harsh and thus, patently illegal. For this contention, the Appellant relied on the decision of *Jaiprakash Associates Ltd. Through Its Director v. Tehri Hydero Development Corporation India Ltd. Through Its Director: 2019 SCC OnLine SC 143*.

(iv) Lastly, it was contended that the Arbitral Tribunal had erred in rejecting the counter-claim on the ground that the Appellant had not established the same. He submitted that the Appellant had not received subsidies from the State Government, and it must be presumed that the same was on account of deficiency in the documents submitted by the respondent. He referred to Clause 11 of the Agreement and submitted that the respondent was liable to furnish the documents and therefore, the onus to establish that it has done so was entirely on the respondent. He contended that the Arbitral Tribunal had proceeded on an erroneous premise that the burden of proof in support of the counter-claim rested on the Appellant. He had raised a counter claim for an amount of Rs. 7,68,96,959/- claiming that it had suffered losses in respect of the

seeds supplied by the respondent.

6. The learned Single Judge in the impugned order dated 05.01.2022 rejected the objections of the appellant for the following reasonings:-

6.1 The Single Judge noted that the "*ledger/statement of accounts for the financial year beginning from 01.04.2009 to 11.12.2017 produced before the Arbitral Tribunal duly reflected the amounts as outstanding and payable to the respondent. The sums so reflected amounted to Rs. 1,46,42,853.06/- which was almost similar to the amounts as claimed by the respondent.*" Additionally, the single judge also noted that the "*Arbitral Tribunal found that NSCL had acknowledged the liability in its various letters forwarded to the respondent along with a statement of accounts. The finding of the Arbitral Tribunal that NSCL had acknowledged its liability is a finding of fact and this Court finds no ground to fault the same.*"

6.2 The Single Judge also observed that the contentions advanced on behalf of the Appellant in this regard, in the proceedings are inconsistent, observing that, "*On one hand, it is NSCL's case that its liability to pay the trade discount was contingent upon receipt of subsidy and since it had not received the same, the amounts claimed were not due and payable. Thus, the respondent's claim was pre-mature. Inconsistent with the stand, it also contended that the claims made by respondent are barred by limitation.*"

6.3 As regards erroneous interpretation of Clause 8 of the Agreement, the Single Judge noted that it was clear from the plain language of Clause 8 of the Agreement that it did not provide that disbursal of trade discount to the respondent was contingent upon receipt of subsidy as contended by

Mr. Nayar. It observed that "*the Arbitral Tribunal found that in terms of Clause 8 of the Agreement, the trade discount disbursed would be recovered in the event it was found that the respondent had breached its obligations to supply the seeds in the notified districts. The decision of the Arbitral Tribunal cannot be faulted.*"

6.4 As regarding exorbitant interest, the single judge noted that the Arbitral Tribunal has awarded interest at the rate of 12% per annum and the same could not be considered exorbitant. The Single Judge further placed reliance on the decision of the Supreme Court in ***Punjab State Civil Supplies Corporation Limited (PUNSUP) and Anr. v. Ganpati Rice Mills: SLP (C) 36655 of 2016, decided on 20.10.2021***, where the court has held that the Arbitral Tribunal has wide discretion in awarding interest under Section 31(7)(a) of the Arbitration and Conciliation Act and the impugned award cannot be interfered with except on the ground as set out in Section 34 of the A&C Act. The Single Judge differentiated the decision in *Jaiprakash Associates Ltd. Through Its Director v. Tehri Hydero Development Corporation India Ltd. Through Its Director*(Supra).

6.5 As regards rejection of counter-claim of the Appellant, the Single Judge observed that "*a plain reading of Clause 11 of the Agreement, as set out above, does not support the contentions advanced on behalf of NSCL. Although, the respondent was required to submit the documents to NSCL after getting them verified from the concerned authorities, there is no assertion that the respondent had failed to submit any specific document to NSCL as required. NSCL's counter-claim is premised on the basis that the respondent had failed to perform its obligation under Clause 8 of the*

Agreement. There is not material to support the said claim. Thus, the Arbitral Tribunal had concluded – and rightly so – that NSCL had failed to substantiate its counter-claim."

7. It is this order and the above reasonings which have been challenged before us in the present appeal. It has been argued by the learned senior counsel Mr. Anil Airi appearing for the appellant that the Arbitral Tribunal as well as the learned Single Judge had totally failed to appreciate the terms of the contract. It is his submission that the respondent, in the case set up before the Arbitral Tribunal, would receive its trade discount only after the appellant receives its subsidy from the State Government.

8. The appellant despite writing numerous letters and reminders to the State Government has not received its share or subsidy and hence, could not be faulted with non-payment of the amounts to the respondent.

9. It has further been stated that by the learned counsel for the appellant that in the entire documents submitted before the Arbitral Tribunal, there is no admission by the appellant of the amount due and payable to the respondent.

10. The learned senior counsel has further submitted that the claims of the respondent are barred by limitation as they are relatable to subsidies for the year 2010 -11, 2011 – 12, 2012 – 13, 2013 - 14and 2014-15 and the statement of claim has been filed on 13.03.2018. Accordingly, the respondent could only claim amounts going back 3 years in terms of the Limitation Act, 1963.

11. Mr. Anil Airi learned senior counsel has very fairly stated that he does not intend to argue the rejection of counter claims or on the levy of interest.

12. We have heard learned senior counsel for the appellant and have gone through the documents on record.

SCOPE OF ANALYSIS:-

13. Before we move to the analysis, it is necessary to highlight the scope of interference in an Appeal under section 37 of the Arbitration and Conciliation Act, 1996.

14. This Court in *Jhang Cooperative Group Housing Society Ltd. v. Pt. Munshi Ram*[1], has also laid down the extent of scrutiny.

> "***16.*** *If the Arbitrator has taken a view which the court finds reasonable and plausible, the court would certainly not interfere.*
> ***17.*** *The extent of judicial scrutiny under Section 34 of the Arbitration Act 1996 is limited and scope of interference is narrow. Under Section 37, the extent of judicial scrutiny and scope of interference is further narrower. An appeal under Section 37 is like a second appeal, the first appeal being to the court by way of objections under Section 34. Where there are concurrent findings of facts and law, first by the Arbitral Tribunal which are then confirmed by the court while dealing with objections under Section 34, in an appeal under Section 37, the Appellate Court would be very cautious and reluctant to interfere in the findings returned in the award by the Arbitral Tribunal and confirmed by the court under Section 34.*
> ***18.*** *As laid down by the Apex Court, the supervisory role of the court in arbitration proceedings has been kept at a minimum level and this is because the parties to the agreement make a conscious decision to exclude the courts jurisdiction by opting for arbitration as the parties prefer the expediency and finality offered by it.*"

[1] 2013 SCC OnLine Del 1886.

15. It is with this limited scope of scrutiny we will proceed with the case.

ANALYSIS:-

16. The issue to consider here is the acknowledgement of debt as well as the debt being within the limitation period.
17. It will be relevant to reproduce letters dated 21.05.2016 and 29.06.2017 of the appellant. The letters read as under:-

> *"Ref. No.NSC/SFCI/10/Dealer/RO/LKO/2014-15/2032-2033*
>
> *Dated: 21.05.2016*
>
> *To*
>
> *M/s National Agro Seed Corporation (India)*
> *Shop No.4, Basement, Rana Complex,*
> *Faizabad Road, Daliganj, Lucknow-20*
>
> *Sub: Regarding payment of Rs. l,51,28,677.06*
>
> *Sir,*
> *Kindly refer to your office letter dated 8.4.2016 and reminder letter dated 4.5.2016, by which request has been made for payment of Seed Seller Dealer commission of Rs. l,51,28,677.06. In this regard it is to inform you that during the period from Rabi 2011-12to 2014-15 certified seeds of Wheat, Paddy, Chana, Matar, Urd and other seeds provided by S.F.C.I. and N.S.C. were distributed to the farmers on the government subsidy in various districts of the State through your Company, for which the Grant Bills provided by you according to the farmers list were forwarded to the Deputy Director of Agriculture of the concerned districts for payment. But till today the payment of grant of Rs.7,83,62,896.50 (only S.F.C.I. Seed) in various Districts of the State, according to the enclosed detail, is still pending. This office is continuously making efforts for the above payment to Director of Agriculture, Uttar Pradesh and the concerned Deputy Directors of Agriculture of the State, but till date no payment has been received.*
> *Hence, it is requested to take action from your own level for payment of the above pending grant bills from the concerned districts according to the dealer appointment and agreement/consent letter of the seeds distributed on grant, so that all the pending payments can be received during the present financial year. S.F.C.I. has been continuously reminding you in writing and orally for the above balance payment, but payment of all the bills have not been received till now. Your dealership concession money and credit balance can be paid only after receiving of the above pending payment.*

Yours truly,
Sd/-
(Dr. P.K. Tyagi)
Regional Manager

Enclosure: As above.

Copy to:-

The Addl. General Manager & Head (Marketing), forwarded for information in reference to his e-mail letter dated 12.4.2016.

- AND -

NATIONAL SEEDS CORPORATION LIMITED
(A government of India undertaking "Mini Ratna" Company)
CIN:U74899DL1963PLC003913
Regd. Office:
Beej Bhawan, Pusa Complex
New Delhi-110012 (INDIA)
(An ISO 9001:2008 & 14001:2004 Certified Company)
No. 13(101)/Mktg/NSC/2017-18/3021

Dated: 29th June, 2017

Sh. Satyaketu Singh
24-25 Basant Vihar
Picnik Spot Road,
Indra Nagar Uttar Pradesh,
Lucknow

Sub: Non payment of dealer discount.

Ref: Grievance Registration No. PMOPPG/D/2017/0140609 dated 27th March, 2017 of GOI Portal

Sir,

1. In reference to the above complaint NSC would like to inform as under- As per records of NSC, the below mentioned dealers commission is due for payment

S. No.	*Name & Address of the Party*	*Period of demand*	*Demand for dealers discount (Rs.)*
1.	*M/s National Agro Seeds Corporation (India), Shop No.4,Basement Rana Complex, Faizabad Road, Dalinganj, Lucknow*	*2011-2015*	*1,46,.....*

2.	*M/s Durga Agro Seed Farm, Faizabad Road, Dalganj, Lucknow*	*2011-2015*	*10,43,595/-*
	Total		*1,56,86,448/-*

2. *The payment is to be made the these dealers subject to receipt of payment from Agriculture Dept. Uttar Pradesh. The is in accordance to the Clause 8 of the Agreement executed by the dealers with NSC (Copy enclosed)*
3. *NSC is yet to receive the below mentioned due payment from Agri Dept. Uttar Pradesh on account of distribution subsidy of the seeds sold by utilizing the services of these dealers.*

S No.	*Name & Address of the Party*	*Demand for dealers discount (Rs.)*
1.	*M/s National Agro Seeds Corporation (India), Shop No.4, Basement Rana Complex, Faizabad Road, Dalinganj, Lucknow*	*…….*
2.	*M/s Durga Agro Seed Farm, Faizabad Road, Dallganj, Lucknow*	*8,63,612/-*
	Total	*7,92,26.408/-*

4. *We are pursuing with the Agriculture Dept. Uttar Pradesh to release the above deleted due payment vigorously. As soon as this payment is received from Agri. Dept. Uttar Pradesh. The dealers discount payment will be released by NSC to the dealers as per the terms of Agreement. This is for your information.*

Yours sincerely
(illegible)
Dy. Gen. Manager (Mking)"

सत्यमेव जयते

18. A bare perusal of the aforesaid letters clearly shows that the appellant has clearly admitted the amounts due and payable to the respondent. There is not a letter or document brought to our notice where the appellant has denied payment of this commission or the amount. In view of this clear admission, there is no doubt that commission is due and payable by the appellant to the respondent and hence, there is a clear acknowledgment of a debt by the Appellant.

19. Having said that, the next question which arises for our determination is with regard to the claims of the respondent being barred by limitation.

20. The ledger/ statement of accounts for the Financial Year beginning 01.04.2009 to 11.12.2017 produced before the Arbitral Tribunal duly reflects the amount outstanding and payable to the respondent. The same has been carefully examined by the Arbitral Tribunal. The relevant portion recording the finding of the Arbitral Tribunal is reproduced as under:-

> "*In the present case, the Claimant filed on record the ledger accounts of respondent in respect of the transactions in question for financial year 1st April, 2009 to 31st March, 2016 and also the ledger accounts of the claimant for 1st April, 2009 to 11th December, 2017 which are part of Exht. CW-1/9 series (Pg. No. 47 to 136 of SoC). The amounts as claimed by the claimant are duly reflected in the above said ledger accounts of respondent as outstanding. These ledger accounts further reveal that at the end of every year, the balance outstanding payable sum was carried forward and shown in the ledger accounts for following financial year acknowledging the outstanding sum payable to claimant. The Ledger Accounts/Statement of Accounts for the financial years beginning from 1st April 2009 upto 11th December 2017 (Exhibit CW1/9, colly) that reflect the said outstanding sums being carried forward from*

time to time, summing up to a total of Rs. 1,46,42,853.06/- (Rupees One Crore Forty Six Lakh Forty Two Thousand Eight Hundred Fifty Three and Six Paise Only) as on 31.03.2016 (Pg. No. 81 of SoC), which amount also matches with the outstanding amount as on 31.03.2016 as appearing in the ledger account of respondent filed by claimant (Pg. 136 of S0C). This figure of outstanding amount almost matches with the amount claimed in the present case i.e. Rs. 1,46,40,005.02 (Rupees One Crore Forty Six Lakh Forty Thousand and Five and two Paise Only)."

21. It was also noted by the Arbitral Tribunal that the Appellant herein has not denied the averments made by the claimant/Respondent or disputed the ledger accounts. Following is the response of the Appellant:

"That the contents of Para 6(ix) are barred by limitation. It is submitted that the claims of the Claimant are barred by limitation under the Limitation Act, 1973 for the sums claimed in financial years 2010-2011 for Rs. 32,42,394.55/-, 2011-2012 for Rs. 20,41,133.70/-, 2012-2013 for Rs. 39,61,496.80/-, 2013-2014 for Rs. 32,62,466/-, 2014-2015 for Rs. 26,21,186/for amounts due before 13.03.2015 i.e. 3 (three) years before filing of the Statement of Claim."

22. The letters which we have already reproduced acknowledge the amounts due and payable by the appellant to the respondent. The Appellant has admitted the amounts due and payable to the respondent in its ledger/ statement of accounts, the said entries constitute a fresh cause of action and extends the period of limitation. The witness of the Appellant, RW-1, Mr. Aseem Gangwar during cross-examination recorded on 24.01.2019 stated as under:

"*Ques. 13: Can you explain whenever any agreement is executed by NSC with distributor whether previous pending*

commissions of the distributors whether previous pending commissions of the distributors are carried forward and mentioned in such agreements?

Ans. 13: In the agreements no such provision is made, however, since the accounts are maintained by NSC at regional office level, which accounts reflects the outstanding commission of the distributor, NSC carried it forward in the account of the distributors in its books."

Once the ledger duly reflects the amount as outstanding and payable, the period of limitation would run from the said date.The same has also been observed in the Supreme Court judgment in ***Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal***[2]**,** holding the following:

> "***18.*** *Likewise, in a case concerning the dishonour of a cheque under Section 138 of the Negotiable Instruments Act, 1881, this Court in A.V. Murthy v. B.S. Nagabasavanna [A.V. Murthy v. B.S. Nagabasavanna, (2002) 2 SCC 642] ["A.V. Murthy"], held : (SCC p. 644, para 5)*
>
> > *"5. ... It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Moreover, in the instant case, 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*

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[2](2021) 6 SCC 366.

of the balance sheet as on 31-3-1997 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 acknowledgment was made.*** *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 defence of the respondent."*

26. *This judgment in Vijayalakshmi case [Vijayalakshmi v. Hari Hara Ginning & Pressing, 1999 SCC OnLine AP 1115] does not, in any manner, even purport to lay down the law. That apart, the statement that an acknowledgment, as envisaged by the Limitation Act, has to be with the intention of accepting the debt with the object of extending the limitation for recovery is dehors Section 18 of the Limitation Act and directly contrary to ShapoorFredoom Mazda [Khan Bahadur ShapoorFredoom Mazda v. Durga Prasad Chamaria, (1962) 1 SCR 140 : AIR 1961 SC 1236] which is, in fact, referred to in the very next paragraph of the aforesaid judgment. ShapoorFredoom Mazda [Khan Bahadur ShapoorFredoom Mazda v. Durga Prasad Chamaria, (1962) 1 SCR 140 : AIR 1961 SC 1236]* ***had made it plain that all that was necessary was that the acknowledgment establishes a jural relationship of debtor and creditor, which undoubtedly was established on the facts of that case.*** *This judgment, therefore, cannot avail the respondents.*

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."

23. It is important to note that the court, while deciding objections, cannot re-appreciate the evidence, or the documents. If the Arbitral Tribunal has arrived at its findings on the basis of material placed before him, admissibility of a document is an aspect which is within the exclusive domain of the Arbitral Tribunal, and finding based thereupon should not be interfered with lightly. That being the position, the findings of the Arbitral Tribunal were rightly upheld by Single Judge. As far as we are concerned, the Arbitral Tribunal has correctly relied upon Section 18 of The Limitation Act to hold:

> "*It is settled law that acknowledgment of debt in the books of accounts/balance sheet extends the period of limitation. Hon'ble Supreme Court in Mahabir Cold Storage Vs. Commissioner of Income Tax AIR 1991 SC 1357 held that entries in the books of account amount to acknowledgment of liability within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge liability as debt…..*"

24. We also approve the reliance on Section 25 of the Indian Contract Act. Following are the findings and observations of the Arbitral Tribunal:

"*11.24 It is also pertinent to note that in addition to Section 18 of the Limitation Act, Ld. Counsel for Claimant has also relied on the provisions of Section 25 of the Indian Contract Act in support of the plea that claims of claimant are within the limitation period. It is contended by the Ld. Counsel for Claimant that letter dated 29.06.2017 of Respondent, which is part of Exht. RW/4 (Colly) (Pg. 32 of SoD), contains a clear acknowledgment by respondent in respect of outstanding amounts payable to claimant by it and the same would be treated as 'promise to pay' within the meaning of Section 25(3) of Indian Contract Act. Section 25 of Indian Contract Act reads as under:*

> *"25. Section 25 in The Indian Contract Act, 1872: Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—*
> *(1) it is expressed in writing and registered under the law for the time being in force for the registration of 1[documents], and is made on account of natural love and affection between parties standing in a near relation to each other; or unless*
> *(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.*
> *(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.*

11.26 The aforesaid proposition of law was reiterated by the Hon'ble Delhi High Court in the case of State Bank of India Vs. Kanahiya Lal & Anr. reported as 2016 SCC OnLine Del 2639,

while also explaining the distinction between the provision of Section 18 of Limitation Act and Section 25 of Indian Contract Act. The relevant para of said decision are reproduced below:

> ***"24.** No doubt, there is a distinction between an acknowledgement under Section 18 of the Limitation Act and a promise under Section 25(3) of the Indian Contract Act inasmuch as though both have the effect of giving a fresh lease of life to the creditor to sue the debtor, but, for an acknowledgement under Section 18 of the Limitation Act to be applicable, the same must be made on or before the date of expiry of the period of limitation whereas such a condition is nonexistent so far as the promise under Section 25(3) of the Indian Contract Act is concerned. A promise under Clause 3 of Section 25 of the Indian Contract Act, even made after the expiry of the period of limitation would be applicable and would cause revival of the claim, notwithstanding the limitation. Under Section 25(3) of the Indian Contract Act, a promise in writing to pay in whole or in part, a time barred debt is not void."*

25. Furthermore, the Ld. Single Judge, as noted above has correctly stated that the arguments of the Appellant are contradictory in nature. We are firmly of the view that none of the claims of the respondent are barred by limitation, in light of the discussion above and on account of Section 18 of the Limitation Act and Section 25 of the Indian Contract Act.
26. The next issue is whether the payment due and payable to the Respondent can be dependent on the appellant receiving its share of subsidy from the State Government of Uttar Pradesh.
27. The learned senior counsel has fairly stated that there is no Clause in the agreement which provides such a condition. However, he has relied on Clause 8 of the agreement which reads as under:-

"8. The second party fully agrees and undertakes to sell the seeds only in the notified Districts under NFSM/ISOPOM/MMA as per Guidelines of the appropriate authority. If any sales are made by the second party against the provisions of the said schemes and the subsidy is not released to the first party the losses incurred on this account will be compensated by the second party to the Corporation in addition to refund of subsidy."

28. A bare perusal of the said Clause clearly shows that it nowhere provides that disbursal of subsidy to the respondent, is contingent on receipt of subsidy by the appellant from the State Government of Uttar Pradesh. It is not the case of the appellant that the respondent had breached any of its obligations to supply the seeds in terms of the distributorship agreement. The same has also been correctly held by the Arbitral Tribunal and reaffirmed by the Single Judge.

29. In this view of the matter, we find no reason to interfere in the judgment dated 05.01.2022 and consequently, the appeal is dismissed.

JASMEET SINGH, J

RAJIV SHAKDHER, J

MAY 31, 2022/'ms'