

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 385 of 2020

IN THE MATTER OF:

Bishal Jaiswal

Residing at:

Balarampur, Purulia

Rangadih, West Bengal – 723143

...Appellant

Versus

1. Asset Reconstruction Company (India) Ltd

Having its Registered Office at:

The Ruby, 10th Floor

29, Senapati Bapat Marg

Dadar (West), Mumbai – 400028

E-mail: cs@arcil.co.in

Phone Number: 022-66581300

Respondent No.1

2. Corporate Power Limited

Through Interim Resolution Professional

Shri Pankaj Dhanuka

Residing at:

FE 328, Sector-III, Salt Lake City

Kolkata – 700 106, West Bengal

E-mail: pankajdhanuka@gmail.com

Registration Number:

IBBI/IPA-001/IP-P-01205/2018-19/11911

Having its Registered Office:

FE 83, Sector-III, Salt Lake City

Ground Floor, Kolkata – 700106

West Bengal

Respondent No.2

Present:

For Appellant : Mr Abhijeet Sinha, Mr Sandeep Bajaj and Mr Devansh Jain, Advocates for Appellant.

For Respondent : Mr Ramji Srinivasan, Sr. Advocate, Mr Abhirup Das Gupta and Mr Rishub Kapoor, Mr Varun Gupta, Advocates for R1.

Mr Sanjeev Kumar, Sr. Advocate, Mr Pankaj Dhanuka, Mr Anshul Sehgal, Advocates for R2.

ORDER

25.09.2020 We have heard the arguments in this Appeal. During the course of argument, a Judgment rendered by Five Hon'ble Members of this Appellate Tribunal in the Case of V. Padamakumar Vs. Stressed Assets Stabilization Fund (SASF) & Anr. in Company Appeal (AT) (Ins) No. 57 of 2020 has been cited before us. After hearing the arguments of Learned Counsel for the parties, we with the great respect to the Hon'ble Members of the Judgment thought it proper to refer V. Padmakumar's Case for reconsideration.

We shall proceed further in this Appeal, after receiving answer of the reference.

The Registrar is directed to place the attached reference alongwith V. Padmakumar's Case (Supra) before the Hon'ble Acting Chairperson for constituting appropriate Bench.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

(V.P. Singh)
Member (Technical)

**Before Hon'ble National Company Law Appellate Tribunal,
New Delhi.**

Reference: -

Three Members Bench of NCLAT.

Reference

We Three Members Bench of this Appellate Tribunal heard the arguments in Company Appeal (AT) (Ins) No. 385 of 2020. During the course of arguments, a Judgment rendered by Five Hon'ble Members of this Appellate Tribunal in the Case of V. Padma Kumar Vs. Stressed Assets Stabilization Fund (SASF) & Anr. in Company Appeal (AT) (Ins) No. 57 of 2020 has been cited before us. After hearing the arguments of Learned Counsel for the parties. We with the great respect to the Hon'ble Members of the Judgment thought it proper to refer the V. Padmakumar's case for reconsideration. The issue is of great importance which is as follows:-

“Hon'ble Supreme Court and various Hon'ble High Courts have consistently held that an entry made in the Company's Balance Sheet amounts to an acknowledgement of debt under Section 18 of the Limitation Act, 1963, in view of the settled law, V. Padmakumar's Case requires reconsideration.”

2. Brief facts of the case are that the Corporate Debtor (Corporate Power Ltd.) had availed the loan from the Consortium Lenders (Infrastructure Finance Co. Ltd., State Bank of Hyderabad, State Bank of Bikaner & Jaipur State Bank of India, State Bank of Patiala and State Bank of Travancore) for setting up 1080 MW coal-based plant at Chandwa of Latehar District in the State of Jharkhand in two phases comprising of 2x270 MW in each phase by executing common loan agreement with the lender's bank. The Corporate

Debtor has availed loan facilities aggregating to Rs.2175,00,00,000/- (Rupees Two Thousand One Hundred Seventy-Five Core only) for the Phase-I project and availed Rs.2387,00,000/- (Rupees Two Thousand Three Hundred Eighty-Seven Crores only) for Phase-II project for setting up another 540 MW coal-based plant from the various bankers referred above and loan agreements have been executed between the Corporate Debtor and the above-referred Banks. However, the Corporate Debtor failed to repay the dues under the facilities granted by the above mentioned Banks. Thereafter, State Bank of India issued a loan recall notice dated 27th March 2015 which was replied by the Corporate Debtor on 28th March 2015. The Consortium Lenders issued notices on 20th June 2015 under Section 13(2) of the SARFAESI Act, 2002 demanding a total amount of Rs.5997,80,02,973/- (Five Thousand Nine Hundred Ninety-Seven Crore Eighty Lakhs Two Thousand Nine Hundred Seventy-Three only) but the Corporate Debtor failed to repay the loan amount. The above mentioned Banks had assigned the debt in favour of Asset Reconstruction (Respondent No. 1 referred as Financial Creditor) Therefore, the Financial Creditor has filed the Application for initiation of CIRP against the Corporate Debtor under Section 7 of the I&B Code.

3. The Corporate Debtor contends that the Financial Creditor has no cause of action to initiate and proceed against the Corporate Debtor. The purported amount claimed by the Financial Creditor is yet to be ascertained, and proceedings in that regard are already pending before the DRT, Kolkata. The Corporate Debtor has also raised the issue of Limitation.

4. The Adjudicating Authority has admitted the Application on the ground that the debt and default are not under-challenge and the Application is filed within Limitation. Being aggrieved with the order the Corporate Debtor filed the Appeal.

5. The Appeal is filed mainly on the ground that the Learned Adjudicating Authority has failed to consider that the State Bank of India, the predecessor in interest of Financial Creditor (Respondent No. 1) had declared the accounts of the Corporate Debtor (Respondent No.2) as NPA on 28th February 2014. The Application under Section 7 of the I&B Code was filed in December 2018, i.e. after a delay of almost five years. The Application is barred by Limitation. The Adjudicating Authority has failed to appreciate that the Balance Sheet produced by Financial Creditor (Respondent No.1) does not hold the Corporate Debtor in any way liable, as there is no categorical mention of the name of the Financial Creditor therein.

6. Learned Counsel for the Corporate Debtor (Appellant) submitted that the Application is barred by Limitation. The Corporate Debtor's balance sheet cannot be considered as an acknowledgement under Section 18 of the Limitation Act, 1963. The issue was considered explicitly by the Five Hon'ble Members of this Appellate Tribunal in the case of V. Padamakumar (Supra) and held that the Books of Accounts are required to be prepared under the obligation casted under Section 92 of the Companies Act, 2013. Therefore, it cannot amount to an acknowledgement for Section 18 of the Limitation Act, 1963. The acknowledgement to extend the period of limitation should be

voluntary and cannot be given under the compulsion of law or with the threat of any penalty/punishment.

7. Learned Counsel for the Corporate Debtor (Appellant) submitted that the Judgment passed in V. Padmakumar Case does not require reconsideration because in the dissenting Judgment by one of the Hon'ble Members of the Bench has referred the Judgment of Hon'ble Supreme Court in the case of M/s Mahavir Cold Storage Vs. CIT Patna, A.V. Murthi Vs. B.S. Nagabasavanna and S. Natrajan Vs. Sama Dharman. Hence, it cannot be said that these precedents are not brought to the notice of the Bench. Therefore, the Judgment still holds the field and is binding on this Bench.

8. Learned Counsel for the Corporate Debtor further submitted that Hon'ble Supreme Court in the case of Babulal Vardharji Gurjer Vs. Veer Gurjer Aluminium Industries Pvt. Ltd. & Anr. (2020) SCC Online SC 647 finally settled that Section 18 of the Limitation Act, 1963 is not applicable to Insolvency Cases. Therefore, there is no question for referring V. Padmakumar's case for reconsideration.

9. The Learned Counsel for the Financial Creditor contends that in this case, the right to sue for the first time accrued upon the classification of the account as NPA on 31st July 2013. Thereafter, the Corporate Debtor has time and again admitted and unequivocally acknowledged its debt in the Balance Sheets for the years ending 31st March 2015, 31st March 2016 and 31st March 2017. Hence, the right to sue stood extended in terms of Section 18 of the Limitation Act, 1963.

10. Regarding the issue of Limitation in the present matter, it is pleaded that entries in the Balance Sheet amounts to an acknowledgement of debt in terms of Section 18 of Limitation Act. The Adjudicating Authority observed that in the Balance Sheet the Corporate Debtor, admitted its liability, which was signed before the expiry of three years from the date of default. It is an acknowledgement of debt in terms of Section 18 of the Limitation Act and is therefore, not barred by Limitation. Therefore, the Adjudicating Authority admitted the Application for initiation of CIRP of the Corporate Debtor.

11. Learned Counsel for the Financial Creditor submitted that in Babulal Vardharji Gurjerji case Hon'ble Supreme Court formulated a question, whether Section 18 of the Limitation Act, 1963 could be applied to the present case? After elaborate discussion Hon'ble Supreme Court held that the Respondent No. 2 has not pleaded in regard to an acknowledgment. Therefore, Hon'ble Supreme Court declined the benefit of Section 18 of Limitation Act, 1963. Hon'ble Supreme Court has not said that the provisions of Section 18 of Limitation Act, 1963 are not applicable to the Insolvency cases.

12. The Learned Senior Counsel for the Financial Creditor submitted that it is settled law that the entries made in the Balance Sheet of the Company amounts to an acknowledgement of debt under Section 18 of the Limitation Act, for the same he placed reliance on the law laid down by Hon'ble Supreme Court in case of Mahavir Cold Storage Vs. CIT 1991 Supp (1) SCC 402

"12. The entries in the books of accounts of the appellant would amount to an acknowledgement 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 or — [clauses (iii) to (vi) are not relevant hence omitted].”

13. In the case of *A.V. Murthy v. B.S. Nagabasavanna*, (2002) 2 SCC 642 at page 644 Hon'ble the Supreme Court of India held;

“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 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.”

14. In the Case of *Usha Rectifier Corporation (I) Ltd. Vs. CCE*, (2011) 11 SCC 571: (2011) 4 SCC (Civ) 387 at Page 574 Hon'ble Supreme Court held that;

“10. The aforesaid position is further corroborated by the Directors Report appearing at P.2 of the annual report for the year ending December 1988, wherein it was mentioned that during the year the Company developed a large number of testing equipments on its own for using the same for the testing of semi-conductors. Once the appellants have themselves made admission in their own balance sheet, which was not rebutted and was further substantiated in the Director's Report, the appellant now cannot turn around and make submission which are contrary to their own admissions.”

15. In Case of *S. Natarajan Vs. Sama Dharma*: MANU/SC/0698/2014 Hon'ble the Supreme Court of India held that;

“Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet,

it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. After highlighting further facts of the case, this Court held that at this stage of proceedings, to say that the cheque drawn by the accused was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous. In the circumstances, this Court set aside the order passed by the High Court upholding the Sessions Court's order quashing the entire proceedings on the ground that the debt or liability is barred by limitation and, hence, the complaint was not maintainable. It is, therefore, clear that the contention urged by the Appellant herein can be examined only during trial since it involves examination of facts."

16. The Learned Counsel for the Financial Creditor further placed reliance on Judgments of various Hon'ble High Courts.

17. In the case of *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff*, 1961 SCC Online Cal 128: (1960-61) 65 CWN 856 : AIR 1962 Cal 115 at page 862 Hon'ble High Court of Calcutta has held;

"11. To come under section 19 an acknowledgement of a debt need not be made to the creditor nor need it amount to a promise to pay the debt. In England it has been held that a balance-sheet of a company stating the amount of its indebtedness to the creditor is a sufficient acknowledgement in respect of a specialty debt under section 5 of the Civil Procedure Act, 1833 (3 and 4 Will — 4c. 42), see *Re: Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd.*, (8) 1928 Ch. 836 under section 1 of Lord Tentenden's Act, 1828 (9 Geo. 4, c. 14) read with section 13 of the Mercantile Law Amendment Act, 1856 (19 and 20 Vict. c. 97), see *Re: The Coliseum (Burrow) Ltd.*, (9) (1930) 2 Ch. 44 at 47 and under sections 23 and 24 of the Limitation Act, 1939 (c. 21), see *Ledingham v. Bermejo Estancia Co. Ltd.*, (10) (1947) 1 A.E.R. 749 and *Jones v. Bellgrove Properties Ltd.*, (11) (1949) 2 K.B. 700, on appeal from (1949) 1 A.E.R. 498. Section 5 of the Civil Procedure Act, 1833 did not require that the acknowledgement should be given to the claiming creditor and consequently a balance-sheet containing an admission of indebtedness to the debenture holders was a sufficient acknowledgement of liability in respect of the debentures under that section, though it was sent only to the debenture holders who happened to be the shareholders of the company and not to the other debenture holders, see *Re: Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd.* (8) (1928) 1 Ch. 836. Under Tentenden's Act, 1828 as also under the Limitation Act, 1939 (c. 21) the

acknowledgement must be made to the creditor or his agent and if the balance-sheet is sent to a shareholder who is also a creditor the requirements of those Acts were satisfied, see Re: The Coliseum (Burrow) Ltd., (9) (1930) 2 Ch. 44 at 47, Jones v. Bellgrove Properties Ltd., (11) (1949) 1 A.E.R. 498 at 504 affirmed (1949) 2 K.B. 700. The decision in the last case has been followed in India and it has been held that an admission of indebtedness in a balance-sheet is a sufficient acknowledgement under section 19 of the Indian Limitation Act, see The Rajah of Vizianagram v. Official Liquidator, Vizianagram Mining Co. Ltd., (12) (1951) 2 M.L.J. 535 at 550-1 : A.I.R. 1952 Mad. 136 at 145, Lahore Enamelling and Stamping Co. Ltd. v. A.K. Bahalla (13) A.I.R. 1958 Punjab 341 at 347, First National Bank Ltd. v. The Mandi (State) Industries Ltd., (14) (1957) 59 Punjab Law Reports 589 and in an unreported decision of S.R. Das Gupta, J. in matter No. 449 of 1955 Re: Vita Supplies Corporation Ltd. (15) decided on December 7, 1956."

18. In Case of South Asia Industries (P) Ltd. vs. Krishna Shamsheer Jung Bahadur Rana and Ors. (14.07.1972-DELHC): MANU/DE/0372/1972 Hon'ble High Court of Delhi has held that;

"46. Shri Rameshwar Dial argued that statements in the balance-sheet of a company cannot amount to acknowledgment of liability because the balance-sheet is made under compulsion of the provisions in the Companies Act. There is no force in this argument. In the first place, section 18 of the Limitation Act, 1963, requires only that the acknowledgment of liability must have been made in writing, but it does not prescribe that the writing should be in any particular kind of document. So, the fact that the writing is contained in a balance-sheet is immaterial. In the second place, it is true that section 131 of the Companies Act, 1913 (Section 210 of the Companies Act, 1956) makes it compulsory that an annual balance sheet should be prepared and placed before the Company by the Directors, and section 132 (section 211 of the Companies Act, 1956) requires that the balance-sheet should contain a summary, inter alia, of the current liabilities of the company. But, as pointed out by Bachawat, J. in Bengal Silk Mills v. Ismail Golam Hossain Ariff, MANU/WB/0033/1962: A.I.R. 1962 Calcutta 115 although there was statutory compulsion to prepare the annual balance-sheet. there was no compulsion to make any particular admission, and a document is not taken out of the purview of section 18 of the Indian Limitation Act 1963 (section 19 of the Indian Limitation Act, 1908) merely on the ground that it is prepared under

compulsion of law or in discharge of statutory duty. Reference may also be made to the decisions in Raja of Vizianagaram v. Vizianagaram Mining Co. Ltd. MANU/TN/0116/1952: A.I.R. 1952 Madras 136. Jones v. Bellegrove Properties Ltd., (1949) 1 All E.R. 498; and Lahore Enamelling and Stamping Co. v. A.K. Bhalla. MANU/PH/0099/1958: A.I.R. 1958 Punjab 341, in which statements in balance-sheets of companies were held to amount to acknowledgments of liability of the companies.

19. Hon'ble High Court of Karnataka in the case of Hedge and Golay Limited Vs. State Bank of India, (MANU)/KA/0225/1985 held as under:-

“The acknowledgement of liability contained in the balance-sheet of a company furnishes a fresh starting point of Limitation. It is not necessary, as the law stands in India, that the acknowledgment should be addressed and communicated to the creditor.

We are in respectful agreement with the view taken by the Learned Company Judge on the point. The position of law that an acknowledgment of debts in the balance-sheets of a Company does furnish fresh starting point of limitation is too well settled to need any elaborate discussion. (See: Jones-v-Bellegrove Properties Ltd. 1949 (1) All. ER 498 In Re. Compania de Electric dad 1980 Ch. Dn. 146, Babulal Rukmanand- v. – Official Liquidator Manu/RH/0043/1968 and Bengal Silk Mills Co. –v- Ismail Golam Hossain Ariff. Manu/WB/0033/1962: AIR 1962 Cal 115.”

20. In case of Bhajan Singh Samra v. Wimpy International Ltd., 2011 SCC OnLine Del 4888. Hon'ble High Court of Delhi has held that;

“13. Having heard the parties, this Court is of the opinion that the petitioning-creditor has to satisfy the Court that the debt on which the petition is based was due and payable on the date of the petition. Certainly a time barred debt cannot be the basis of a winding up petition. However, admission of a debt either in a balance sheet or in the form of a letter duly signed by the respondent, would amount to an acknowledgement, extending the period of limitation. Section 18(1) of the Limitation Act, 1963 incorporates the said principle. Section 18(1) of the Limitation Act, 1963 reads as under:-

15. The Calcutta High Court in the case of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, AIR 1962 Cal. 115 held that in

an appeal arising from a money decree against a company, even statement of a liability in the balance-sheet of the company amounted to admission/acknowledgement of a debt giving rise to a fresh period of limitation, notwithstanding the fact that the balance-sheet was prepared under 'compulsions of statute and of the articles of association of the company'.

16. In *Vijaya Kumar Machinery & Electrical Stores v. Alaparthi Lakshmikanthamma*, (1969) 74 ITR 224 (AP), the Andhra Pradesh High Court after following *Bengal Silk Mills Co. (supra)*, *Rajah of Vizianagaram v. Official Liquidator, Vizianagaram Mining Company Limited*, AIR 1952 MAD. 1361, *Lahore Enamelling and Stamping Co. Ltd. v. A.K. Bhalla*, AIR 1958 Punj. 341 and *Jones v. Bellgrove Properties Ltd.*, (1949) 2 All.ER 198 held, "What emerges from a consideration of the above decision is that the date of signing the balance-sheet by the second defendant started a fresh period of limitation".

21. In case of the *Commissioner of Income Tax v. Shri Vardhman Overseas Ltd.*, 2011 SCC Online Del 5599. Hon'ble High Court of Delhi has held that ;

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

22. Hon'ble High Court of Delhi in the case of *Shahi Export Pvt. Ltd. Vs. CMD Built Tech Pvt. Ltd.* (2013) SCC Online Del 2535 held as under:-

“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 acknowledgement 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. 185 (2011) DLT 428 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.”

23. In the case of N.S. Atwal v. Jindal Steel and Power Ltd., 2013 SCC Online Del 3902. Hon'ble Delhi High Court has held that;

“11. Indeed, that was also the plea taken by JSPL: that the exchange of letters in this case establishes an agreement for the amount claimed. Not only have these letters not been contested by the appellant, but, instead of probing this route further in order to establish the debt (no doubt based, ultimately, on the exchange of letters), the learned Single Judge relied on the admission in the balance sheets presented by the defendant before the Court. On that question, of admissions of debt through balance sheet, while the circumstance surrounding the entry may be relevant for other purposes, the fact that the amount claimed in the present suit is admitted as a debt due, as a loan, from JSPL, is sufficient in order for the Court to reach a finding that the liability is established.

12. This Court in ESPN Software India (P) Ltd. v. Modi Entertainment Network Ltd., [2012] 173 Comp Cas 465 (Delhi), noted that:

"17. Admission in balance-sheet is per-se an admission of liability.....

XXXXXX XXXXXXXXXXXXX

19. This entry clearly states that an amount of Rs. 8,00,04,000/- is due and payable by the respondent in accordance with the terms of the contract. This document has been signed by the directors of the company and its Company Secretary on 31.10.2002."

24. In the case of Al-Ameen Limited v. K.P. Sethumadhavan, 2017 SCC

Online Ker 11337. Hon'ble High Court of Kerala at Ernakulam has held

that;

"7. The inclusion of a debt in a balance sheet duly prepared and authenticated would amount to admission of a liability and therefore satisfies the requirement of law for a valid acknowledgment under Section 18 of the Act. We may recapitulate the words of Mr. Justice P. Subramonian Poti in Krishnan Assari v. Akilakerala Viswakarma Maha Sabha [1980 KLT 515 (DB)] and the following is the extract:

"10. How far the balance sheets could be acted upon in deciding the claim of the appellant is the next question. The appellant relies on the balance sheets as acknowledgment of liability contemplated in S. 18 of the Limitation Act, 1963. Under S. 18 an acknowledgment of liability signed by the party against whom the right is claimed gives rise to a fresh period of limitation. Under Explanation (b) to the Section the word 'signed' means signed either personally or by an agent duly authorized. A company being a corporate body acts through its representatives, the Managing Director and the Board of Directors. Under S. 210 of the Companies Act it is the statutory duty of the Board of Directors to lay before the Company at every annual general body meeting a balance sheet and a profit and loss account for the preceding financial year. S. 211 directs that the form and contents of the balance sheet should be as set out in Part I of Schedule VI. The said form stipulates for the details of the loans and advances and also of sundry creditors. The balance sheet should be approved by the Board of Directors, and thereafter authenticated by the Manager or the Secretary if any and not less than two directors one of whom should be the Managing Director. (See S. 215). The Act also provides for supply of copies of the balance sheet to the members before the company in general meeting. Going by the above provisions, a balance sheet is the statement of assets and liabilities of the company as at the end of the financial year, approved by the Board of Directors and authenticated in the manner provided by law. The persons who authenticate the document do so in their capacity as agents of the company. The inclusion of a debt in a balance sheet duly prepared and authenticated would amount to admission of a liability and therefore satisfies the requirements of law for a valid acknowledgment under S. 18 of the Limitation Act, even though the directors by authenticating the balance sheet merely discharge a statutory duty and may not have intended to make an acknowledgment."

25. Hon'ble High Court of Delhi in the case of Zest Systems Pvt. Ltd. Vs. Center for Vocational and Entrepreneurship Studies & Anr. (2018) SCC Online Del 12116 held as under:-

“ 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 acknowledgement 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 Vs. Wimpy International Ltd., 185 (2011) DLT 428 for the simple reason that it collects all the relevant authorities on the issue, including some of the 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 31.03.2015. This suit is filed in 2017. The suit is clearly within limitation.”

26. In case of Agni Aviation Consultants and Ors. vs. State of Telangana and Ors. (21.04.2020 - TLHC): MANU/TL/0077/2020 Hon'ble High Court of Telangana has held that;

"100. In several cases, various High Courts have held that an acknowledgment of liability in the balance sheet by a Company registered under the Companies Act, 1956 extends the period of limitation though it is not addressed to the creditor specifically. (Zest Systems Pvt. Ltd., Vs. Center for Vocational and Entrepreneurship Studies and Another MANU/DE/4093/2018:, Bhajan Singh Samra Vs. Wimpy International Ltd. MANU/DE/6446/2012, Vijay Kumar Machinery and Electrical Stores Vs. Alaparthi Lakshmi Kanthamma MANU/AP/0150/1968 : (1969) 74 ITR 224 (AP) and Bengal Silk Mills Company, Rajah of Vizianagaram Vs. Official Liquidator, Vizianagaram Mining Company Limited AIR 1952 Madras 1361).

101. Therefore it is not necessary that the acknowledgment of liability must be contained in a document addressed to the creditor i.e. the petitioners in the instant case.”

27. Firstly we have considered whether Section 18 of Limitation Act, 1963 is applicable to Insolvency Cases?

28. We have carefully gone through the Judgment of Hon'ble Supreme Court in the case of Babulal Vardharji Gurjar (Supra). Hon'ble Supreme Court has held as under:-

“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 under Section 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgment of any other date of default, in our view, the submissions sought to be developed on behalf of the respondent No. 2 at the later 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.”

29. With the aforesaid we are unable to convince with the argument of Learned Counsel for the Corporate Debtor that Section 18 of Limitation Act, 1963 is not applicable to Insolvency Cases.

Reasons for reconsideration of V. Padmakumar's Judgment.

30. We are of the view that the Judgment in V. Padmakumar's Case (Supra) requires reconsideration on following reasons: -

- I. There is consistent view of the Hon'ble Supreme Court and High Court of Allahabad, Calcutta, Delhi, Karnataka, Kerala and Telangana that the entries in the Balance Sheet of the Company be treated as an acknowledgement of debt for the purpose of Section 18 of Limitation Act, 1963. The majority view in V. Padmakumar's Case is just contrary to settled law.
- II. In V. Padamakumar's Case minority view is in the line of settled law that Balance Sheet of the Company, be treated as acknowledgement of debt for the purpose of Section 18 of the Limitation Act, 1963. In the majority Judgment no reasons have been assigned for disagreement with this view.
- III. In support of majority Judgment in V. Padamakumar's Case none of the precedent cited before us.
- IV. In V. Padamakumar's Case, it is discussed that the Balance Sheet of the Company is prepared pursuant to Section 92 of the Companies Act, 2013 and filing of Balance Sheet/Annual Return being mandatory under Section 92(4) of the Companies Act, 2013, failing of which attracts penal action under Section 92(5) and (6) of the Act. In our humble opinion Balance Sheet is not Annual Return but is a Financial Statement. Financial Statement is defined under Section 2(40) of the Companies Act, 2013.
- V. In V. Padamakumar's Case it is held that the Balance Sheet is required to be prepared under the obligation casted under Section 92 of the Companies Act, 2013. Therefore, it cannot amount to an acknowledgement for Section 18 of the Limitation Act, 1963. The

Acknowledgement should be voluntary and cannot be given under compulsion of law or with the threat of any penalty/punishment. Hon'ble Calcutta High Court in the case of Bengal Silk Mills Co. (Supra) and Hon'ble High Court of Delhi in the case of South Asia Industries Pvt. Ltd. (Supra) held that merely on the ground that the Balance Sheet of the Company is prepared under the compulsion of law or in discharge of statutory duty, it cannot be held that the Balance Sheet of the Company cannot amount to an acknowledgement of liability.

- VI. The Balance Sheet is a material document attached with sanctity that must be submitted to ROC and is used for obtaining a business loan or investments. Relevant provisions in regard to Balance Sheet of the Company provided in Section 129, 130, 131, 134, 137, 143 and 397 of the Companies Act. Section 130 and 131 provides that a Company cannot reopen its Books of Account and Financial Statement without the Order made by the Court of Competent Jurisdiction or the Tribunal. Directors of the Company after making Judgments and estimates that are reasonable and prudent cannot resile without permission of Tribunal.
- VII. Section 397 of the Companies Act, provides that the documents filed for the purpose of Companies Act, and Rules made thereunder by a Company with the Registrar shall be admissible in any proceedings thereunder. Without proof or production of original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

31. With the aforesaid reasons we are of the considered view with all great respect to the Hon'ble Five Members Bench of this Appellate Tribunal that V. Padmakumar's Judgment requires reconsideration. Hence, we are referring the matter.

32. Learned Senior Counsel for the Financial Creditor submitted that the Hon'ble Supreme Court in the case of Pradeep Chandra & Ors. Vs. Promod Chandra & Ors. (2002) 1 SCC 1 has dealt with a situation when the Bench of two learned Judges of Supreme Court has in the terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of Five Judges however, Judicial discipline and propriety demands that a Bench of Two Learned Judges should follow decision of a Bench of three learned Judges. But, if a Bench of two learned Judges concludes that an earlier Judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier Judgment.

33. With the aforesaid, we are of the view that the matter be referred to a Bench of Five Hon'ble Members of this Appellate Tribunal.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

[V.P. Singh]
Member (Technical)