NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Ins.) No. 05 of 2021
&
I.A. No. 614 of 2021

[Arising out of Order dated 06.01.2021 passed by the Adjudicating Authority/National Company Law Tribunal, Division Bench-I, Chennai in IBA/1178/2019]

IN THE MATTER OF:

M/s. State Bank of India
Reg. Office at State Bank Bhavan,
Madame Cama Road, Nariman Point,
Mumbai – 400021.

...Appellant

Versus

M/s. Hackbridge Hewittic and Easun Limited
6/1A1 & 6/1B1, Sy. No. 6, Behind Escorts Ltd.,
Ernavur Village,
Tiruvottiyur,
Chennai – 600019.

...Respondent

Present:

For Appellant : Mr. Ramji Srinivasan, Sr. Advocate
For Mr. A. Chatterjee, Advocate.

For Respondent : Mr. Prem Kumar Pothina, Advocate.

J U D G M E N T
(Virtual Mode)
(10.04.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

The present `Appeal', is filed against the 'impugned order' dated 06.01.2021 passed in IBA/1178/2019 by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench-I, Chennai), whereby, the 'Adjudicating Authority' dismissed the Petition filed under the Insolvency & Bankruptcy Code, 2016 (in short '**I &B Code, 2016**).

2. Counsel for the Appellant submitted that the application under Section 7 has been dismissed only on the ground of the 'limitation' without considering the other relevant facts including 'One time settlement' (in short '**OTS**') proposal of the 'Respondent'.

3. The 'Appellant' also submitted that the 'Respondent' itself had no objection to admission of the Application under Section 7 of the I & B Code, 2016 and initiation of the 'Corporate Insolvency Resolution Process' as the 'Respondent' was inclined for Resolution of the company under I & B Code, 2016.

4. The Counsel for the Appellant stated that the 'Adjudicating Authority' erred in calculating the limitation period.

5. Aggrieved by the 'impugned order' dated 06.01.2021, the present appeal has been filed before this 'Appellate Tribunal'.

6. Heard the Counsel for the Parties and perused the records made available including cited judgments of the Hon'ble Supreme Court of India (and earlier orders of this 'Appellate Tribunal').

7. It is the case of the 'Appellant' that he is a 'Secured Financial Creditor' in term of Section 5(8) r/w Section 5(7) of the I & B Code, 2016, in respect of 'Corporate Insolvency Resolution Process' of M/s Victory Electricals Ltd. (Principal Borrower). It is further case of the 'Appellant' that as per terms and conditions of the said `Loan', the `Loan', was secured by way of Guarantee, Indemnity, Hypothecation of Moveable Assets and Mortgage of Immovable Assets, by the 'Respondent'.

8. The Counsel for the Appellant stated that on account of default on the principal borrower, the account of the Principal Borrower was declared as 'Non-Performing Assets' ('NPA') on 06.06.2012 in respect of default of working capital facilities being on 09.03.2012 and default in terms of loan facilities being on 31.05.2012. The Counsel for the Appellant also stated that the principal borrower had been availing credit facilities from the 'Appellant' since 2006 and in order to secure the loans of the Principal Borrower, the 'Respondent' herein, being 100% subsidiary of the Principal Borrower, created security interest on immovable assets of the 'Respondent' as security for loans of the principal borrowers and similarly, vide declaration-cum-indemnity dated 16.12.2009, the 'Respondent' agreed and undertaken to pay all the loans of principal borrower with interest to the 'Appellant' and also agreed to be jointly and severally responsible along with the discharge of all dues of principal borrower.

9. The Counsel for the Appellant mentioned that the principal borrower defaulted in meeting its obligation and committed default on 09.03.2012 on account of working capital facilities and further committed default on account of term loan facilities on 31.05.2012, however on 01.06.2016 the 'Respondent' along with the principal borrower executed a revival letter under Section 18 of the Limitation Act, 1963 for a debt of Rs. 38.62 Crores and loan agreement was executed on 07.11.2016 and modified/ extended supplementary agreement were signed on 31.12.2008 and 16.11.2009 which were acknowledged by principal borrower as well as the 'Respondent' herein. The Counsel for the Appellant submitted that executing the revival letter tantamounted to 'an acknowledgment of debt' for purpose of calculation of

limitation period in terms of Section 18 r/w Article 137 of the 'Limitation Act, 1963'.

10. The Counsel for the Appellant stated that since both principal borrower and Respondent herein failed to pay the amount of credit facilities, the 'Appellant' issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to the Principal Borrower on 28.06.2013 and the other obligors which was not denied by the Principal Borrower or the Respondent herein.

11. The Counsel for the Appellant stated that the Principal Borrower furnished an 'OTS' proposal on 13.03.2014 for Rs. 50 Crores, which was not accepted by the 'Appellant' being a lower offer. Subsequently, the Principal Borrower gave several 'OTS' proposals, modified 'OTS' proposals and each such 'OTS' proposal tantamounted to fresh 'acknowledgment of debt' in terms of Section 18 of Limitation Act, 1963 and further this liability of the 'Respondent' was always coextensive with the Principal Borrower in terms of Section 128 of Indian Contract Act, 1872 and therefore a deemed acknowledgement of liability by the Guarantor/ Respondent herein.

12. The Counsel for the Appellant mentioned that a suit for recovery was filed by the 'Appellant' before the Debt Recovery Tribunal, Hyderabad, being OA No. 925/2014, *inter-alia* against the Principal Borrower and the 'Respondent'. The Counsel for the Appellant further stated that the 'Respondent' had categorically disclosed in its financial statement for the year 2015 that security has been furnished by the 'Respondent' in favour of

the 'Appellant', which also tantamounted to fresh acknowledgment of the debt by the 'Respondent' herein.

13. The Counsel for the Appellant informed that on 06.10.2016, the 'OTS' sanction letter was issued by the 'Appellant' for Rs. 59.50 Crores which was duly accepted/ acknowledged by the Principal Borrower as well as the 'Respondent' herein, which again should have been treated as fresh acknowledgment of the debt.

14. The Counsel for the Appellant submitted that since payments were not made in terms of 'OTS' sanctioned letter dated 06.10.2016, the 'OTS' failed and the 'Appellant' issued a letter dated 03.05.2018 cancelling the 'OTS'. As per the 'Appellant', due to cancellation of the 'OTS' a fresh default occurred on 03.05.2018, therefore, giving the fresh right to the 'Appellant' to take legal action against the Principal Borrower as well as the 'Respondent' herein.

15. The Counsel for the Appellant stated that initially an 'Operational Creditor' of the Principal Borrower filed an 'Application' under Section 9 of the I & B Code, 2016 which was allowed by the 'Adjudication Authority' vide order dated 10.04.2019 and the 'Corporate Insolvency Resolution Process' was initiated and the 'Appellant' filed its claim with the Resolution Professional for an amount of Rs. 321.39 Crores which was admitted. However, subsequently on 19.11.2019, the liquidation order was passed in the 'Corporate Insolvency Resolution Process' of the Principal Borrower and again the 'Appellant' filed its claim for Rs. 348.68 Crores before the 'Liquidator'. The Counsel for the Appellant further submitted that the

liquidation value of the Principal Borrower was only Rs. 27.95 Crores thus there was a huge gap between amount due and amount payable.

16. The Counsel for the Appellant submitted that he filed an 'Application' under Section 7 of the I & B Code, 2016 before the 'Adjudicating Authority' against the 'Respondent' herein as guarantor for his claims and the 'Respondent' appeared and filed its 'Reply' on 20.11.2019 and prayed for admission of Section 7 application. The Counsel for the Appellant further stated that in the teeth of the admission reply of the 'Respondent' herein, the 'Adjudicating Authority' should have accepted the application of the 'Appellant' filed under Section 7 of the I & B Code, 2016, however, the 'Adjudicating Authority' dismissed wrongly his application vide 'impugned order' dated 06.01.2021 only on ground of limitation.

17. The Counsel for the Appellant emphasised that the 'Adjudicating Authority' has committed grave error in reckoning the limitation period taking date of default as 31.05.2012 and erroneously recording 'OTS' letter dated 06.10.2016 as acknowledgment of debt and ignoring various 'OTS' proposals of the Principal Borrower prior to acceptance of the 'OTS'.

18. The Counsel for the Respondent admitted that the 'Respondent' herein along with three Ex- Directors had extended the guarantee on behalf of the Principal Borrower M/s Victory Electrical Ltd.

19. The Counsel for the Respondent stated that the 'Appellant' filed an Application under Section 7 of the I & B Code, 2016 on 27.08.2019 against the 'Respondent' herein, prior to which the moratorium was declared in 'Corporate Insolvency Resolution Process' started against the Principal

Borrower M/s Victory Electrical Ltd. under Section 9 of the I & B Code, 2016 in CP/1499/IB/2018 on 24.04.2019. The 'Corporate Insolvency Resolution Process' with regard to holding company M/s Victory Transformers and Switchgears Ltd. (in short '**VTSL**') of the Principal Borrower- M/s Victory Electrical Ltd. was also initiated vide 'order' dated 01.05.2019 in CP/1515/IB/2018 by the 'Adjudicating Authority'.

20. The Counsel for the Respondent stated that the joint lenders i.e. the 'Appellant Bank' herein, Bank of Baroda and Bank of India are in the same group of 'Committee of Creditors' as in the holding company M/s VTSL, albeit, with different voting percentage and the 'Appellant' having highest percentage of voting shares of 40% in both the cases. Counsel for the Respondent further stated both Section 7 Applications (1499 and 1515) were moved by the 'Appellant' herein and recommended name of Mr. Chinnam Poorna Chandra Rao who was appointed as 'Interim Resolution Professional' for both the companies by the 'Adjudicating Authority'. The 'Interim Resolution Professional', common to both companies informed that he would pursue the book debts as well as actionable claims on behalf of Principal Borrower which were approximately Rs. 649.47 Crores.

21. The Counsel for the Respondent submitted that they were under genuine impression that since 'Interim Resolution Professional'/'Liquidator' would be in position to recover Rs. 649.47 Crores of the Principal Borrower in due course and therefore, the 'Respondent' herein, filed "one liner counter" on 20.11.2019 in Section 7 Application under I & B Code, 2016 in IBA/1178/2019 filed by the 'Appellant' herein, supporting admission of the 'Application'.

22. The Counsel for the Respondent emphasised that situation subsequently changed completely and became prejudicial to the 'Respondent' as well as the Principal Borrower as the 'Interim Resolution Professional'/ 'Liquidator' failed to pursue the recovery as required due to dereliction of duties, 'negligence', 'wilful default' on the part of 'Interim Resolution Professional'/'Liquidator' to recover the dues of the Principal Borrower. Aggrieved by the same, the erstwhile management had approached the Hon'ble High Court of Telangana in W.P. 11156/2021 and in W.P. 11479/2021 against the fraud committed by the 'Interim Resolution Professional'/ 'Liquidator' and the 'Appellant' herein and the same are pending before the Hon'ble High Court of Telangana.

23. Counsel for the Respondent submitted that in case of ***A.V. Papayya Sastry vs. Govt. of AP*** *[(2007) 4 SCC 221]* the Hon'ble Supreme Court of India held that *"Fraud-Vitiates all judicial acts whether in rem or in personal-Judgment, decree or order obtained by fraud has to be treated as non est and nullity".*

24. The Counsel for the Respondent emphasised that in view of the changed circumstances, the 'Respondent' modified its instance now denying, no objection to admission of the 'Application' filed under Section 7 of the 'Appellant' before the 'Adjudicating Authority' agreed earlier.

25. The Counsel for the Respondent submitted that this 'Appellate Tribunal' had also held in ***Bank of India Chennai vs. Coastal Oil Gas Infrastructure Pvt. Ltd.*** *[(2020) SCC OnLine NCLAT 1095]* dated 21.09.2020, where it had remanded case back to the 'Adjudicating

Authority' to entertain the Application under Section 7 after issuing notice and examining all other aspects under Section 7 of the I & B Code, 2016.

26. The Counsel for the Respondent stated that in the present changed circumstances, the 'Respondent' requests this 'Appellate Tribunal' to remand the case back to the 'Adjudicating Authority' (NCLT Bench-II, Chennai) directing the 'Adjudicating Authority' to give a fresh opportunity to the 'Respondents' to file its detailed 'Reply Statement' and examine the facts therein, and for the better appreciation of the grievances of both the parties under the changed circumstances.

27. This 'Appellate Tribunal' will like to consider relevant law reading to this 'Appeal' which are discussed as under :-

Section 18 of the Limitation Act, 1963

> *"**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."

Section 128 of the Indian Contract Act, 1872

*"**128. Surety's liability.**—The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.*

Illustration

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

(emphasis supplied)

Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgement in writing. Subsection (1) thereof provides that where, before the expiration of the prescribed period for a suit or application in respect of any right, an acknowledgement of liability in respect of such right has been made in writing signed by the party against whom such right is

claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was signed.

28. This 'Appellate Tribunal' has gone through all the submissions made by the Counsel for the Parties as well as the 'impugned order' dated 06.01.2021. The 'Adjudicating Authority' has also taken cognizance of various judgments of this 'Appellate Tribunal' held in the matters of :-

- ***Laxmi Pat Surana vs. Union of India,*** *[(2021) SCC OnLine SC 267]* (Judgment dated 26.03.2021)
- ***Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal****, [(2021) SCC OnLine SC 321)* (Judgment dated 15.04.2021)
- ***Manesh Agarwal vs. Bank of India & Anr.*** *[Company Appeal (AT) (Insolvency) No. 1182 of 2019)* (Judgment dated 28.02.2020)
- ***Ashish Kumar vs. Vinod Kumar Pukhraj Ambavat & Anr.*** *[Company Appeal (AT) (Insolvency) No. 1411 of 2019)* (Judgment dated 17.02.2020)

The 'Corporate Insolvency Resolution Process' can be initiated simultaneously against the Corporate Guarantor or for that matter in relation to Principal Borrower and Corporate Guarantor as in present case and therefore there was no issue on proceeding against the Guarantor/Respondent herein.

29. This 'Appellate Tribunal' further notes that the 'Adjudicating Authority' however has taken the date of default as 09.03.2012 and 31.05.2012 w.r.t working capital facilities and term loan on the part of Principal Borrower and also taken into account the 'OTS' proposal or the

Principal Borrower dated 18.05.2016 which was approved by the 'Appellant' herein on 06.10.2016. This 'Appellate Tribunal' observes that sanctioning of 'OTS' was finally cancelled by the 'Appellant' on 03.05.2018 dues to non-payment.

Looking into these facts, the 'Adjudicating Authority' has decided to reckon the period of limitation from 01.06.2012 onwards i.e. when the 'Appellant' obtained a copy of revival letter as per Section 18 of the Limitation Act, 1963 and therefore the 'Adjudicating Authority' held that three years period from 01.06.2012 was long back over prior to 'OTS' proposal dated 06.10.2016.

30. We note that the 'Adjudicating Authority' has taken a stand that the OTS proposal does not extend the limitation period and has further recorded that even for argument's sake even if the, 'OTS' letter dated 06.10.2016 is taken into consideration, the Limitation period would have exceeded the permissible three years period from the date of default on 31.05.2012 and therefore the 'Adjudicating Authority' considered the claims of the 'Appellant' as time-barred debt. Based on limitation alone and without going into the merit of the case and other aspects as pleaded by the 'Appellant', the 'Adjudicating Authority' dismissed the 'Application' of the 'Appellant' filed under Section 7 of the I & B Code, 2016 against the 'Respondent' herein.

31. The moot questions therefore are as to what is the date of default and from what date law of limitation would start. It also raises the issues whether acknowledgment of debt should be considered from the date of 'OTS' proposal submitted by the 'Respondent' herein or from the date of

acceptance of 'OTS' proposal or from the date of cancellation of the sanctioned 'OTS' proposal.

32. There is no dispute that the default occurred on 31.05.2012 in respect of term loan facilities and in respect of working capital facilities on part of the Principal Borrower default occurred on 09.03.2012. This 'Appellate Tribunal' has noticed from the submissions of the 'Appellant' as well as from the 'Respondent' along with documents made available that revival letter dated 01.06.2012 was executed by the Principal Borrower and the Respondent herein. It is also observed that various 'OTS' proposal was furnished by the Principal Borrower w.e.f 13.03.2014 till 18.05.2016 and the liability being admitted by the Principal Borrower and hence the deemed acceptance by the Guarantor/ Respondent herein in terms of provision of Section 128 of the Indian Contract Act, 1872.

33. This 'Appellate Tribunal' also takes into consideration that the 'Respondent' herein acknowledged the liability vis-à-vis guarantee furnished for the loans of the Principal Borrower in its financial statement for the year ending 31.03.2015. Similarly, the 'OTS' proposal was sanctioned by the 'Appellant' on 06.10.2016 (Duly accepted by the Principal Borrower and the Respondent herein) and subsequent cancellation of the same for non-payment vide Appellant's letter dated 03.05.2018.

34. In catena of the Judgments, it has been held that an application under I & B Code, 2016 would not be barred by limitation if there was acknowledgment of debt before expiry of the period of limitation of three

years and in such case the period of limitation would get extended by the further period of three years.

35. This 'Appellate Tribunal' also takes into account the following cited judgment regarding above which support the same point. These judgment were delivered by the Hon'ble Supreme Court of India.

(a). In the case of ***Vashdeo R. Bhojwani v. Abhyudaya Coop. Bank Ltd.***, *(2019) 9 SCC 158: 2019 SCC OnLine SC 1159* at page 159 Hon'ble Supreme Court of India has held that:

> *"**3.** Having heard the learned counsel for both parties, we are of the view that this is a case covered by our recent judgment in B.K. Educational Services (P) Ltd. vs. Parag Gupta and Associates [B.K. Educational Services (P) Ltd. vs. Parag Gupta and Associates, (2019) 11 SCC 633], para 42 of which reads as follows: (SCC p. 664)*
>
> *"**42.** It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing"*
>
> *(emphasis supplied)*

(b). In the case of ***Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.,*** *(2019) 10 SCC 572: 2019 SCC OnLine SC 1239*, where the Hon'ble Supreme Court of India has held that:

> *"**6.** Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary Article 137. As rightly pointed out by the learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr Banerjee's reliance on para 11 of B.K. Educational Services (P) Ltd. [B.K. Educational Services (P) Ltd. vs. Parag Gupta and Associates, (2019) 11 SCC 633], suffice it to say that the Report of the Insolvency Law Committee [Ed.: Report of the Insolvency Law Committee (March 2018), Ministry of Corporate Affairs, Government of India] itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred."*
>
> *(emphasis supplied)*

(c). In case of ***Jignesh Shah vs. Union of India,*** *(2019) 10 SCC 750 (2020) 1 SCC (Civ) 48: 2019 SCC OnLine SC 1254* at page 764, the Hon'ble Supreme Court of India held that:

> *"**8.** … To my mind, there is a fallacy in this argument because the test that is required to be applied for purposes of ascertaining whether the debt is in existence at a particular point of time is the simple question as to whether it would have been permissible to institute a normal recovery proceeding before a civil court in respect of that debt at that point of time. Applying this test and dehors that fact that the suit had already been filed, the question is as to whether it would have been permissible to institute a recovery proceeding by way of a suit for*

enforcing that debt in the year 1995, and the answer to that question has to be in the negative. That being so, the existence of the suit cannot be construed as having either revived the period of limitation or extended it. It only means that those proceedings are pending but it does not give the party a legal right to institute any other proceedings on that basis. It is well- settled law that the limitation is extended only in certain limited situations and that the existence of a suit is not necessarily one of them…"

(emphasis supplied)

(d). This 'Appellate Tribunal' also take notes of the Hon'ble Supreme Court of India in case of ***C. Budhraja vs. Chairman, Orissa Mining Corpn. Ltd.,*** *(2008) 2 SCC 444: (2008) 1 SCC (Civ) 582* on page 456 has held that:

"20. *Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgement in writing. Sub-section (1) thereof provides that where, before the expiration of the prescribed period for a suit or application in respect of any right, an acknowledgment of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. The explanation to the section provides that an acknowledgment may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not yet come or is accompanied by a refusal to pay, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the right. Interpreting Section 19 of the Limitation Act, 1908 (corresponding to Section 18 of the Limitation Act, 1963) this Court in Shapoor Freedom*

Mazda vs. Durga Prosad Chamaria [AIR 1961 SC 1236] held: (AIR p. 1238, paras 6-7)

*"**6.** … acknowledgment as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. … Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. … In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence*

has been expressly excluded but surrounding circumstances can always be considered.

7. *…The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document.…"*

(emphasis supplied)

(e). In the decision ***Lakshmirattan Cotton Mills Co. Ltd. vs. Aluminium Corpn. of India Ltd.,*** *(1971) 1 SCC 67* at page 71, the Hon'ble Supreme Court of India had held that:

"7. *The question, therefore, that really arises for our determination is whether the said letter contains an acknowledgment, which its writer, Subramanyam, had the authority, express or implied, to make. Even that question gets reduced in extent and scope as it was never the case of the appellant-company at any stage that the corporation had clothed its Secretary with such authority expressly. Such a case Mr Gupte did not make out even before us and proceeded in fact to argue that the evidence on record showed that he had such authority given to him impliedly.*

8. *Section 19(1) of the Limitation Act, 1908, provides that where, before the expiration of the period prescribed 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 be computed from the time when the acknowledgement was so signed. The expression "signed" here means not only signed personally by such a party, but also by an agent duly authorised in that behalf.*

Explanation 1 to the section then provides that an acknowledgment would be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment has not yet come, or is accompanied by a refusal to pay or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right. The new Act of 1963, contains in Section 18 substantially similar provisions.

9. *It is clear that the statement on which the plea of acknowledgment is founded must relate to a subsisting liability as the section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgment does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given.…"*

(emphasis supplied)

36. In above cited judgments, the Hon'ble Supreme Court of India has held that for an 'Application' under Section 7 or 9 of I & B Code 2016 and Artticle 137 of the Limitation Act, 1963 will be applicable and this period of

limitation can only be extended in the manner provided in the Limitation Act. For example, an acknowledgement of liability under Section 18 of the Limitation Act would certainly extend the limitation period.

37. This 'Appellate Tribunal' notes that in the present case, the date of default, would automatically get extended from the date of 'OTS' proposal submitted by the Principal Borrower which will also be deemed proposal by the 'Respondent'. Significantly and admittedly, the first 'OTS' proposal was submitted by the Principal Borrower on 13.03.2014, which was followed by modified OTS or submissions/ clarification on the 'OTS' to the 'Appellant' vide letters of the Principal Borrowers dated :- 18.04.2014, 21.07.2014, 09.10.2014, 08.01.2015, 14.01.2015, 29.01.2015, 25.05.2015, 19.06.2015, 20.02.2016, 07.03.2016, 19.03.2016, 18.05.2016.

38. This 'Appellate Tribunal' notes that there are various acknowledgements of liability by the Corporate Debtor from time to time, total 13 'OTS' letters from the 'Respondent' to the 'Appellant' within the meaning by Section 18 of the Limitation Act, and there are also part payments by the 'Corporate Debtor', therefore, the period of limitation is extended in the light of Section 19 of the Limitation Act. By the 'OTS' described in letters mentioned above, the Principal Borrower i.e. M/s Victory Electricals Ltd. had offered the payment of varying amounts to the 'Appellant' herein for full and final settlement of their liability and thereby admitted the Jural Relationship of Debtor-Creditor or between them and the Bank/ 'Appellant' herein.

39. This 'Appellate Tribunal' does not find any discussions by the 'Adjudicating Authority' on these dates of 'OTS' proposal of the Principal Borrowers in the finding/ decisions proceeding in the 'impugned order' by the 'Adjudicating Authority' and the reason for the same are also not available in the 'impugned order'. In fact, the 'impugned order' takes into account only on 06.10.2016 when the Principal Borrower gave its 'OTS' proposal to the 'Appellant' which was accepted by the 'Appellant' herein issuing the sanction letter of Rs. 69.50 Crores. The 'Adjudicating Authority' therefore clearly erred in not considering that submission of the 'OTS' is clearly acknowledgement of debt by the Principal Borrower and any fresh or subsequent/ modified 'OTS' would further extend the limitation period by three years. It is therefore clear that the 'Application' under Section 7 by the Appellant was not debarred by the Limitation Act, 1963 and the 'impugned order' is therefore wrong on this account itself. It is also established fact that the in terms of the Section 128 of the Indian Contract Act, 1872 the liability of the Respondent was always co-extensive with debt of Principal Borrower and therefore the acknowledgment of debt by various 'OTS' proposals, as discussed earlier, were also deemed acknowledgements by the Respondent herein of the liability as guarantors on behalf of the Principal Borrowers.

40. This 'Appellate Tribunal' also takes into account the submissions made by the 'Respondent' herein before the 'Adjudicating Authority' whereby they have filed the counter and submitted as under :-

ANNEXURE – A-II 194

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – II AT: CHENNAI
IN THE MATTER OF CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

COMPANY PETITION
C.P/ 1178 /(IB)/2019

BETWEEN:

STATE BANK OF INDIA .... PETITIONER
AND
HACKBRIDGE HEWITTIC AND EASUN LTD .... RESPONDENT

CONTER FILED BY THE RESPONDENT

The Respondent respectfully submit as follows :-

The respondent submits that they have No Objection in admitting the above C.P

It is therefore prayed that this Hon'ble Tribunal may be pleased to admit the above Insolvency Application and thus render justice.

Dated at Chennai this the 20th day of November 2019

For Hackbridge Hewittic and Easun Limited

RESPONDENT Authorised Signatory

VERIFICATION

I, Mahindra Vaddineni, Managing Director, Hackbridge Hewittic And Easun Ltd, the respondent herein, verify that the facts stated above are true to the best of my knowledge, information and belief.

Verified at Chennai this the 20th day of November 2019

For Hackbridge Hewittic and Easun Limited

RESPONDENT Authorised Signatory

Although, now the Respondent herein has taken a plea regarding changed circumstances of failure on part of the IRP/Liquidator in realising the dues and actionable claims of the Principal Borrowers and therefore has taken the stand that he is entitled to change his stand and further taken plea that it was fraud on part of the 'Interim Resolution Professional'/ 'Liquidator' in connivance with the Appellant herein which absorb him of any liability. Without going in detail examination of their submissions, prima-facie these submissions of the 'Respondent' herein do not stand on

merit and in any case it is entitled to seek suitable remedy, if any, before the suitable `legal forum', in accordance with the `Law'.

41. This 'Appellate Tribunal', also takes note of the `Additional Notes of Submissions', filed on behalf of the 'Respondent'

> *"This Hon'ble Tribunal had also held in* ***Bank of India Chennai vs. Coastal Oil Gas Infrastructure Pvt. Ltd.*** *[(2020) SCC OnLine NCLAT 1095] dated 21.09.2020, where it had remanded case back to thee 'Adjudicating Authority' to entertain the Application under Section 7 after issuing notice and examining all other aspects under Section 7 of the I & B Code, 2016.*
>
> *In the present changed circumstances the 'Respondent' begs this Hon'ble Tribunal to remand the case back to NCLT Bench-II, Chennai directing the Tribunal to give a fresh opportunity to the 'Respondents' to file its detailed 'Reply Statement' and examine the facts therein, and for the better appreciation of the grievances of both the parties under the changed circumstances."*
>
> *(emphasis supplied)*

42. Based on above detailed analysis, this 'Appellate Tribunal' has no option, but to set aside the 'impugned order' dated 06.01.2021 which is in contravention of I & B Code, 2016 and the Limitation Act, 1963 as discussed in the preceding paragraphs. The matter is remanded back to the 'Adjudicating Authority' (`NCLT', Chennai) and both the parties are required to appear before the 'Adjudicating Authority' on **28.04.2023**. With the above observations and directions, the instant Comp. App (AT) (CH) (Ins.) No. 05 of

2021, stands `**Disposed of**'. No costs. The connected pending `Interlocutory Applications', if any, are `**Closed**'.

43. This 'Tribunal', relevantly points out that it is not expressing its opinion on the `merits' or `demerits' of the case, and hence, remits back the case to the 'Adjudicating Authority' (`Tribunal'), with directions to look into all factual and legal aspects and decide the `Petition' Denovo, on `merits', by providing, an `adequate opportunity' of `Hearing', to the respective `Parties', and also, by adhering to the `Principles of Natural Justice'. It is reiterated that the 'Adjudicating Authority', shall decide on the `merits' of the main `Petition', in a `Fair', `Just', in a `Dispassionate Manner', by passing a `Speaking Reasoned Order' (in qualitative and quantitative terms), preferably within `**twelve weeks**' from today, of course, uninfluenced and untrammelled, with any of the `Observations', made by this `Tribunal'.

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Simran