

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**KOLKATA BENCH, KOLKATA**

**CP (IB) No.23/KB/2019**

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

In the Matter of:

Asset Reconstruction Company (India) Limited , a Company incorporated under the Companies Act, 1956 and as a securitization and asset reconstruction company under section 3 of the SARFAESI Act having its registered office at The Ruby, 10<sup>th</sup> Floor, 29, Senapati Bapat Marg, Dadar (West), Mumbai 400028.

... Applicant/Financial Creditor

And

In the Matter of:

Corporate Power Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at FE-83, Sector III, Salt Lake City, Ground Floor, Kolkata 700106 ,

And





Principal Office Knowledge Hub, 5<sup>th</sup> Floor, DN 23, Section V,  
Salt Lake City, Kolkata , West Bengal – 700091.

And

Controlling office at Grace Building, Yashovardham Enclave,  
Near FCI Godown, Behind Mount Carmel High School,  
Prashant Nagar, Ajni, Nagpur, Maharashtra.

... Respondent/Corporate Debtor

Date of Hearing: 12<sup>th</sup> February, 2020

Order Delivered on: 19<sup>th</sup> February, 2020

**Coram:**

**Jinan K.R., Hon'ble Member (Judicial)**  
**Harish Chander Suri, Hon'ble Member (Technical)**

For the Financial Creditor : 1. Mr. R. Banerjee, Advocate  
2. Mr. Pratik Ghose, Advocate,  
3. Mr. Rahul Auddy, Advocate  
4. Mr. Avishek Roy Chowdhury, Advocate

For the Corporate Debtor : 1. Mr. Manik Bose, Advocate  
2. Mr. M.S.Tiwari, Advocate  
3. Mr. S.Ganguly, Advocate

**ORDER**

**Jinan K.R., Hon'ble Member (Judicial)**

1. Asset Reconstruction Company (India) Limited /  
Financial Creditor (FC) has filed this application under Sec.7 of  
the Insolvency and Bankruptcy Code, 2016 (in short IB Code)  
read with Rule 4 of the Insolvency and Bankruptcy Code





(Application to Adjudicating Authority) Rules, 2016 for initiation of corporate insolvency resolution process as against the Corporate Debtor (CD) / Corporate Power Limited alleging that the Corporate Debtor has committed default in repayment of Rs.5997,80,02,973/- (Five Thousand Nine Hundred Ninety-Seven crore Eighty Lakhs Two Thousand Nine Hundred Seventy Three) due and payable to the Financial Creditor.

2. The brief facts for the consideration of this application are the following: -

The applicant/Financial Creditor is an assignee of financial debt assigned by IIFCL and other bankers as per various Assignment deeds dated 31<sup>st</sup> March, 2015. The debt claimed in this case originally owed to Infrastructure Finance Company Limited (IIFCL); State Bank of Hyderabad, State Bank of Bikaner and Jaipur, State of Bank of India, State Bank of Patiala and State Bank of Travancore. The above said lenders have assigned their respective parts of the debt in favour of the Financial Creditor as per various Assignment deeds ( **Ext. 10 to 15**).

3. The Corporate Debtor had availed the loan from the Consortium lenders 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 lenders bank referred to above. The Corporate Debtor had further availed loan facilities aggregating to Rs. 2175,00,00,000/- ( Rs. Two Thousand One Hundred Seventy Five Crore only) for the Phase-I Project and availed Rs. 2387,00,000/- ( Two thousand Three Hundred Eighty-Seven Crores) for Phase-II Project for setting up another 540 MW coal based plant from the various bankers referred to above and loan agreements have been executed in between the Corporate Debtor and the above referred Banks. Copy of common loan agreements are produced and marked as **Exhibit 3,4, & 8**. These common loan agreements were subsequently amended as per agreements **Exhibits 5, 6, 7 & 9**. However, the Corporate Debtor failed to repay the dues under the facilities granted by the above said banks, therefore, SBI issued a loan recall notice dated 27<sup>th</sup> March, 2015 Exhibits-41. To the said notice though replied to by the Corporate Debtor on 28<sup>th</sup> March 2015, but it failed to

repay the debt, thereby the consortium lenders issued notice on 20<sup>th</sup> June, 2015 under section 13(2) of the Securitization and Asset Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) 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). Copy of the demand notice is produced and marked as Exhibits-43. To the said notice a reply was sent by the Corporate Debtor and copy of the said reply is Exhibits-44. Despite demand, the Corporate Debtor failed to repay and therefore, the applicant has filed this application for initiating corporate insolvency resolution process as against the Corporate Debtor under section 7 of the I. & B Code 2016.

4. The Respondent/Corporate debtor (CD) entered appearance and filed reply affidavit contending mainly the following grounds :-

- a. This learned Tribunal does not have the jurisdiction to hear, try and determine the said application.
- b. The said application is hopelessly barred by limitation, which fact is evident from the allegations made in the

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application.

- c. In order to allege that the said application is filed within the period of limitation prescribed in law, the applicant financial institution has made a valiant attempt to make allegation, which are erroneous both on facts and in law.
- d. The said application is barred by principle of waiver, estoppel and acquiescence.
- e. The alleged dispute that has been raised by the financial creditor cannot be tried by this learned Tribunal as the same is grossly hit by the principles of *res judicata*.
- f. The corporate debtor states that the financial creditor has no cause of action to initiate and/or proceed against the corporate debtor. The instant proceeding is bad for misjoinder and non-joinder of the necessary parties.
- g. The financial creditor has raised their claim against the corporate debtor, who is alleged to have borrowed sums and for repayment of all the monies advanced to the corporate debtor.

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- h. The said application is not properly affirmed and/or verified and thus the same is liable to be dismissed.
  - i. The said application is not filed in terms of the provision of the section 7 of the Insolvency and Bankruptcy Code, 2016 and thus liable to be dismissed.
  - j. The purported amount claimed by the alleged FC are yet to be ascertained and proceedings in that regard are already pending before the DRT Kolkata.
  - k. There are various disputes exist between the parties which have occurred due to the default on the part of the FC and other consortium lenders in failing to fulfil the obligations in terms of the documents on the strength of which the FC is claiming the purported dues.
  - l. Various other contentions are also seen taken by the Corporate Debtor, which are not stated here for convenience and since the Corporate Debtor at the stage of hearing not pressed any grounds other than grounds Nos. (b) and (c).
5. The Financial Creditor also filed Rejoinder denying the

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contentions raised by the Corporate Debtor in the reply affidavit and further contended that the application filed is maintainable and the attempt of the Corporate Debtor is to delay in repayment of the debt due and payable by the Corporate Debtor. On the other hand, the Corporate Debtor has admitted his default in reply affidavit and therefore this application is maintainable and is liable to be admitted.

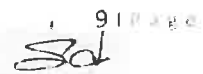
6. Heard both sides perused the records and the citations referred to on both side.

7. This application was filed by the Financial Creditor on the strength of various assignment deeds executed by consortium lenders from whom the Corporate Debtor admittedly availed loan 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 lenders bank referred to above. The Corporate Debtor has availed loan facilities aggregating to Rs. 2175,00,00,000/- (Rs. Two Thousand One Hundred Seventy Five Crore only) for the Phase-I Project and availed Rs. 2387,00,000/- (Two Thousand Three Hundred Eighty-Seven Crores) for Phase-II Project for

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setting up another 540 MW coal based plant from the various bankers referred to above. Execution of various loan agreements in between the Corporate Debtor and the above referred Banks as referred to in the applications are also not in dispute. Default in repayment of debt is also admitted by the Corporate Debtor in its reply but raised various disputes mainly alleging failure on the side of the lenders in fulfilling their part of obligations which are not liable to be entertained in an application filed under section 7 of the Code. The Hon'ble Supreme Court of India in **Innoventive Industries Ltd v. ICICI Bank Ltd** has declared the law as regards the scope and extent of enquiry at admission of insolvency application and what is the scope of hearing to be provided to a Corporate Debtor in a case default can be ascertained. Herein, this case default in repayment was not under challenge. But raised a dispute regarding cause of the default. The Hon'ble Supreme court also detailed in the said judgement as to what is the concept of default and extent of enquiry so as to ascertain the default to be entertained in an application of this nature. Bearing in mind the said proposition of law regarding the scope of enquiry in a case of this nature the Ld. Counsel for

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the Corporate Debtor fairly admits that he is not pressing the Corporate Debtor's contentions regarding the disputes relating to ascertaining default in repayment by the Corporate Debtor. Being satisfied that the Corporate Debtor has committed default in repayment of the outstanding amount as claimed by the Financial Creditor, the question is whether the application filed is barred by law of limitation?

8. When this case was taken up for hearing, the learned counsel appearing for and on behalf of the Corporate Debtor has argued only the question of limitation and not raised any other grounds raised in the reply affidavit. According to him the application filed under section 7 of I & B Code is hopelessly barred by limitation, which fact is evident from the allegations made in the application. He further would submit that the application was filed not within the period of limitation prescribed in law and contentions regarding filing this application in time are erroneous both on facts and in law.

9. In view of the above said submission the only point that arises for determination is as to whether the application under section 7 of I & B 2016 filed by the Financial Creditor was barred by Law of limitation.



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10. The Financial Creditor has stepped in the shoes of the Bankers by executing assignment deeds on 31<sup>st</sup> March, 2015. The Corporate Debtor has allegedly committed default in repayment of the loan availed from the consortium banks as on 20<sup>th</sup> June, 2015. This application was filed on 26.12.2018. Application of law of limitation in a case of this nature is now settled. As per Article 137, the right to sue accrues on the date of default. The date of default according to the Financial Creditor was on 20<sup>th</sup> June, 2015. Applying Article 137, this application would have been filed on 19<sup>th</sup> June, 2018. On the other hand it was filed on 26.12.2018. So it was seen filed not within the time. In view of the said circumstances whether the financial statement/Balance sheet of the Corporate Debtor for the financial year ending 31.03.2017 wherein the Corporate Debtor admitted its liability towards Bankers and Financial institutions can be relied upon as an acknowledgement under Section 18 & 19 of the Limitation Act, 1963?.

11. The Ld. Sr. Counsel for the Financial Creditor has taken us through a copy of the financial statement approved by the board of directors of the Corporate Debtor and signed by two of its directors on 29<sup>th</sup> May, 2017 and submits that the said

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financial statement is an admissible document under section 18 of the Limitation Act as a proof to prove the acknowledgement of liability. He stressed his said argument by citing **SCC (2011) 11 Supreme Court Cases in USHA RECTIFER CORPORATION (INDIA) VS. COMMISSIONER OF CENTRAL EXCISE NEW DELHI; 1961 SCC Online Cal 128: (1960-61) 65 CWN 856 :AIR 1962 Cal 115 in Bangal Silk Mills Co. (In Liquidation) Vs Ismail Golam Hossain Ariff and an England citation 1974 WLR 515 in the case of Re Gee &Co.(Woolwich) Ltd.**

12. The learned counsel appearing for the Corporate Debtor submits that there is no time wise indication of whose liability it would be. According to him, the proceeding before the Debt Recovery Tribunal (DRT) is still pending. The loan has been assigned by the consortium banks to the applicant herein was in the year 2015 and assignment was not related to the whole loan availed by the Corporate Debtor. He further would submit that the acknowledgement has to be unequivocal and that the acknowledgement of debt in balance sheets cannot be a proof of acknowledgement of debt by the Corporate Debtor. He

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referred to the judgement of Hon'ble Appellate Tribunal in **Sh G Eswara Rao Vs. Stressed Assets Stabilisation Fund and M/s Saritha Synthetics & Industries Ltd. (Company Appeal (AT) (Insolvency) No. 1097 of 2019**. The learned counsel referred to paras 4,14,15,16, 22 and 24 of the said judgment. Relying upon the above said judgment, he would submit that the entry in the balance sheet cannot be treated as acknowledgement.

13. The learned counsel appearing for the Financial Creditor, on the other hand, submitted that Balance Sheet as a proof of acknowledgement of debt of a company is an admission of indebtedness as sufficient acknowledgement under Indian Limitation Act. According to him, the limitation period is calculated from the date of signing of financial statement and the Balance Sheet of Corporate Debtor for the period ending 31.02.2017 signed by its directors on 29<sup>th</sup> May 2017, produced on the side of the Financial Creditor is a document, which could be safely relied upon as the proof of acknowledgement under Section 18 of the Limitation Act and therefore this application filed on 26<sup>th</sup> December, 2018 is perfectly within time. According to him the Hon'ble Appellate Tribunal's view



that a Balance Sheet of a Corporate Debtor cannot be taken as an acknowledgement of liability, is contrary to the proposition laid down by the Hon'ble Supreme Court and therefore the proposition as held in the Hon'ble Supreme Court has to be followed by this Tribunal. Referring to the citations referred to above, he submitted that a Balance Sheet is a sufficient acknowledgement in respect of a debt under consideration in the case in hand.

14. By referring to the Balance Sheet produced along with supplementary affidavit for the financial year ending 31<sup>st</sup> March, 2017 he referred to Note 3, wherein under the heading **Long Term Borrowing**, Secured loans of Banks and Financial Institutions are referred and reiterated that the above said entry in the Balance Sheet signed by the Directors and approved by the AGM is a valid and legal acknowledgement of debt. So undoubtedly the Corporate Debtor has admitted its liability owed to the Banks and Financial institutions. Non mentioning of the name of assignee/ ARCIL appears to us to be not at all significant to hold that the liability due to the ARCIL is not admitted. Admittedly the Financial Creditor/ARCIL has stepped into the shoe of the bankers and IFCL from whom the



Corporate Debtor had availed the loan facility. Naming of the said Bankers and IFCL from whom the Financial Creditor derived the Corporate Debtor's liability would certainly come within the purview of acknowledgement of liabilities towards to creditors.

15. The above said Balance Sheet is not at all disputed by the learned counsel appearing for the Corporate Debtor. All the requirements to be meted out in order to authorise the Balance Sheet seen meted out in respect of the Balance Sheet referred to us. It has been signed by two Directors on 29<sup>th</sup> May 2017. So, According to the learned counsel appearing for the Financial Creditors fresh period of limitation shall be computed from the date when the acknowledgement/balance sheet was so signed and the said date being 29<sup>th</sup> May 2017 filing of this application is within time. He further would submit that the financial statement being prepared for the financial year ending 31<sup>st</sup> March 2017 and signed within the period of expiry of limitation from the date of default the financial statement is a valid and legal acknowledgement.

16. He further would submit that all the Banks and Financial Institutions have assigned the debt and the debt outstanding

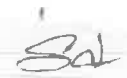
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is secured and that the Financial Creditor is only assignee to claim of loan. As on the date the debt is due and payable according to the Financial Creditor. According to him, the main issue considered by the Hon'ble Appellate Tribunal in the above said judgment of **Sh G Eswara Rao Vs. Stressed Assets Stabilization Fund & Anr.** is whether the date of Decree passed by the Debt Recovery Tribunal can be taken as a date of default. According to him the below mentioned judgements laid down the proposition of law regarding the acceptance of Balance Sheet as a sufficient proof of acknowledgement.

17. Learned Sr. Counsel has then taken us to para 9 and 10 of (2011) 11 SCC 571 in the case of **USHA RECTIFIER CORPORATION (INDIA) VS. COMMISSIONER OF CENTRAL EXCISE NEW DELHI.** The paragraph 9 & 10 of the above said judgement read as under:-

*" 9. The demand for payment of Central Excise duty in the present case appears to have been made on the basis of statement made by the appellants in their balance sheet to the effect that there is an addition to plant and machinery including testing equipments worth Rs. 31.26 lakhs which have been made in the Company by capitalisation of the expenditure on (i) raw material, (ii) stores and spares, and (iii) salary/ wages and other benefits. The aforesaid statement and details were mentioned in Schedule Q appended to notice of balance sheet and profit and loss account of the appellant for the year ending December*

1987. Serial No. 6 of the said schedule reads as follows:

“Addition to plant and machinery includes testing equipments worth Rs. 31.26 lakhs fabricated in the company by capitalisation of following expenditure:

- (i) Raw material Rs. 26.31 lakhs,
- (ii) Stores and spares Rs. 0.02 lakh, and
- (iii) Salary/Wages and other benefits Rs. 4.93 lakhs (On the basis of estimated time spent)”.

10. The aforesaid position is further corroborated by the Director's 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 submissions which are contrary to their own admissions. (See Calcutta Electric Supply Corpn. V. CWT, SCC para 8.) Moreover, they have also clearly taken a stand in their reply to the aforesaid show cause notice that they bought various parts and components to develop the testing equipments for use within the factor and that such steps were undertaken to avoid importing of such equipments from the developed countries with a view to save foreign exchange”.

18. It is submitted that the said judgement interprets Section 18 of the Limitation Act. Learned Counsel further referred to and relied upon the Calcutta High Court judgement in the case of **Bangal Silk Mills Co. (In Liquidation) Vs Ismail Golam Hossain Ariff reported in 1961 SCC Online Cal 128: (1960-61) 65 CWN 856 :AIR 1962 Cal 115** and submitted that now the cause of action starts from the date of default and relied

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upon paras 9,12 and 13 of the judgement and it reads as under:

*“ 9. In support of the contention that the balance- sheets do not amount to acknowledgement of liability, because they were prepared under compulsion of law Mr. Banerji relies upon the decision in Kashinath V. New Akot Ginning and Pressing Co. Ltd. (1) I.L.R. 1950 Nag. At 568 : A.I.R. 1951 Nag. 255. It is true that the balance-sheets were required to be made both by the Indian Companies Act, 1913 as also by the articles of association of the defendant company. There was a compulsion upon the managing agents to prepare the documents but there was no compulsion upon them to make any particular admission. They faithfully discharged their duty and in doing so they made honest admissions of the company’s liabilities. Those admissions, though made in discharge of their duty, are nevertheless conscious and voluntary admissions. A document is not taken out of the purview of section 19 of the Indian Limitation Act merely on the ground that it is made under compulsion of law, see Venkata v. Partha Saradhi, (2) 1892 I.L.R. 16 Mad. 220 at 222, Udaya Thevar v. Subrahmania Chetti, (3) (1986) 6 M.L.J. 266 Good V. Jane Job, (4) 1 E1 and E1 6 at 11: 120 E.R. 810 at 812. I am unable to agree with the reasoning of the Nagpur decision that a balance sheet does not save limitation because it is drawn up under a duty to set out the claims made on the company and not with the intention of acknowledging liability. The balance-sheet contains admissions of liability; the agent of the company who makes and signs it intends to make those admissions. The admissions do not cease to be acknowledgments of liability merely on the ground that they were made in discharge of a statutory duty. I notice that in the Nagpur case the balance sheet had been signed by a director and had not been passed either by the Board of Directors or by the company at its annual general meeting and it seems that the actual decision may be distinguished on the ground that the balance sheet was not made or signed by a duly authorised agent of the company.*

12. Mr. Banerjee next contends that the balance-sheets are not signed by any person duly authorised by the company to acknowledge on its behalf the debt due to the plaintiff. The balance-sheets are signed by Hashim Ariff Brothers and Co. the managing agents of the defendant company. Now the managing agents had authority to borrow moneys from G.H.C. Ariff and to repay them. The authority to repay the debt implies an authority to acknowledge it, "... for if he could pay the amount of the claim, he could plainly also arrange to prevent time from becoming a bar to it", see *Raja Braja Sundar Deb V. Bholanath* (16) 24 C.W.N. 153: A.I.R. 1919 P.C. 120 Besides they had the general power to manage the affairs of the company and to do all acts and things in the name and on behalf of the company. But Mr. Banerji contends that the prima facie authority of the managing agents is taken away because in this case the creditor is one of its partners. Now it has been held that a director cannot make an acknowledgement of a debt due to himself so as to bind the company, see *Re: Transplanters (Holding Company) Ltd.* (17) (1958) 2 A.E.R. 711 and *Re: the Coliseum (Burrow) Ltd.* (9) 1930 3 Ch. 44. Similarly the managing agency firm cannot make an effective acknowledgement of a debt due to one of its partners so as to bind the company. The reason is that the managing agents are interested in the loan and by reason of their fiduciary capacity they are not competent to make the acknowledgement without the express consent and knowledge of the company. The company is entitled to repudiate an acknowledgment given by the managing agents in its own favour without its express consent. In the instant case the company did not repudiate the acknowledgment. Instead the company passed the balance-sheet at the annual general meeting of its shareholders. The company therefore elected to ratify the acts of the managing agents. The effect of the ratification is that the acknowledgement has the same effect as if it had been made with the express authority of the company. In these circumstances the managing agents must be held to have been duly authorised by the company to acknowledge the liability of the company in respect of the debt due to one of its partners, see *Ledingham v. Bermejo*

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*Estancio Co. Ltd., (10) (1947) 1 A.E.R. 749 at 753. In view of this finding it is not necessary to consider the further question whether the auditors acknowledged the debt and if so, whether they had any authority to make any acknowledgement on behalf of the company.*

*13. It must follow that the balance sheets in question was sufficient acknowledgements within the meaning of section 19 of the Indian Limitation Act and consequently the claim of the plaintiff is not barred by the law of limitation”.*

19. The learned counsel further referred to the judgement reported in **1974 WLR 515 in the case of Re Gee & Co. (Woolwich) Ltd.** and relied upon page 527 para D ,E & F and which reads as under:

*“ D- I see nothing in that particular paragraph which amounts even to a tentative view that in English law an acknowledgement, to be effective, must be of a debt which is actually existing at the date when the acknowledgement is written. In my judgement there is nothing in the decision in Consolidated Agencies Ltd. v. Bertram Ltd. [1965] A.C. 470 which entitles me to depart from the clear current of*

*E English authority. I shall accordingly decide this case on the footing that a balance sheet, if duly signed by the directors, is capable of being an effective acknowledgement of the state of indebtedness as at the date of the balance sheet and that, in an appropriate case, the cause of action will be deemed to have accrued at the date of the balance sheet, being the date to which the signature of the directions relates. In my judgement the balance sheet of the company as at December 31, 1965, signed by the Directors on November, 25*

*F. 1966, would have been an effective acknowledgement as at December 31,1965, of the liability of the*

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*company so as to take the matter out of the Limitation Act, 1939, if the acknowledgement had not been made by the directors in favour of one of themselves.*

20. In answering the above said submission and relying upon the judgement, the learned counsel for the Corporate Debtor submitted that the judgement of the Hon'ble Supreme Court referred to is not applicable to the fact in this case. It is further stated that it was not discussed in the said judgement whether Section 18 of the Limitation Act would apply when the claim is otherwise barred by time.

21. The argument advanced on the side of the Corporate Debtor has not at all convinced us. The Hon'ble Supreme Court in the above referred judgement interpreted the effect of admission of a company in a balance sheet. The Hon'ble Supreme court in the said case observed that ***“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 submissions which are contrary to their own admissions”***.

22. It is pertinent to refer to one another judgement of Hon'ble

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*Supreme Court. A.V.Murthy Vs. B.S. Nagabasavanna (Manu/ SC/ 0089/2002)* is an equivalent citation appears to us to be applicable in the case in hand. The said case was instituted on the strength of a cheque under Sections 118,138 and 139 of Negotiable Instrument Act,1881. The Ld. Magistrate dismissed the complaint on the findings that the alleged borrowing was four years prior to the issuance of the cheque and hence that debt was not legally enforceable in view of bar of limitation. The complainant challenged the order before the Addl. Sessions Judge who had quashed the entire proceeding and aggrieved thereby, the complainant filed a Criminal Revision before the High Court of Karnataka and the Hon'ble High Court of Karnataka upheld the view and confirmed the order and thereby the complainant/Appellant filed **Criminal Appeal No.206 of 2002 before the Hon'ble Supreme Court.** The para Nos. 3 to 7 in the above said judgement is very relevant for our consideration as regards the admission of balance sheet as a proof of acknowledgement. It is reproduced hereunder.

3. We heard learned counsel for the appellant. Learned counsel contended that it was incorrect on the part of the Session Judge to hold that there was no legally enforceable debt or liability on

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the part of the respondent. He also contended that when a cheque is issued, under Section 118 of the Act, it has to be presumed that it was drawn for consideration. It was further contended that even though the appellant and his friends advanced the loan about four years back, the respondent had acknowledged this liability in his balance sheet and that even for the purpose of a civil suit, such debt or liability is not barred by limitation.

4 . The respondent refused to accept notice and we did not have the advantage of hearing him. The respondent seems to have contended that as the loan was advanced four years prior to the issuance of the cheque the debt or the liability for which the cheque was drawn by him had ceased to be legally enforceable and, therefore, no complaint could have been filed by the complainant under Section 138 of the Act.

5. As the complaint has been rejected at the threshold, we do not propose to express any opinion on this question as the matter is yet to be agitated by the parties. But, we are of the view that the learned Sessions Judge and the learned Single Judge of the High Court were clearly in error in quashing the complaint proceedings. Under Section 118 of the Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. Even under Section 139 of the Act, it is specifically stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. 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 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, is a valid contract. Moreover, in the instant, the appellant has submitted before us that the respondent, in his balance sheet prepared for every year subsequent to the loan advanced by the appellant,

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had shown the amount as deposits from friends. A copy of the balance sheet as on 31st March 1997 is also produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement 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.

6. This is not a case where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. If for example, the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that that debt or liability is not legally enforceable as it is a claim, which is prohibited under law. This case is not a case of that type. But we are certain that at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous.

7. Therefore, we set aside the order passed by the learned Single Judge of the High Court, allow this appeal and remand the matter to the Magistrate to proceed with the complaint in accordance with law. We make it clear that whatever has been stated by us regarding enforceability of the debt or liability is for the purpose of these proceedings and the respondent would be at liberty to set up all legally available defences.

**23.** Section 138 of Negotiable Instrument ACT primarily is of a quasi-civil and criminal nature. The Hon'ble Supreme Court accepted the balance sheets relied upon by the appellant and observed that "***If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh***

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***period of limitation from the date on which the acknowledgement was made.***

**24.** It is also significant to note here that the Hon'ble High Court of Delhi at New Delhi reported in **2018 SCC OnLine Del 12116** has taken the very same view that acknowledgement in the balance sheet by the defendants extends the period of limitation. Para 3, 5 and 6 in the said judgment is worth reading. It read as follows:-

*“3. The learned senior counsel appearing for the plaintiff submits that as per the balance sheet of defendant No.1 there is an admission and as on 31.03.2015, defendant No.1 admitted a sum of Rs. 2,25,38, 966/- is payable to the plaintiff. He also relies upon the judgements of this court in Shahi Exports Pvt. Ltd. v. CMD Buildtech Pvt. Ltd. 2013(202) DLT 735 and Bhajan Singh Sharma v. Wimpy International Ltd., 2011 (185) DLT 428 to contend that acknowledgement in the balance sheet by the defendant extends the period of limitation.*

*5. In Shahi Exports Pvt.Ltd. v. CMD Buildtech Pvt. Ltd. (Supra) this court held as follows:-*

*“ 7. It is hardly necessary to cite authorities in support of the well-established position that an entry made in the company's balance sheet amounts to an 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(*

*Sd*

*Sd* 25 | Page

*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 judgements cited before me on behalf of the petitioners. This judgement entirely supports the petitioners on this point.”*


*6. In view of the legal position spelt out in judgements noted above, the acknowledgement of the debt in the balance sheet extends the period of limitation. The acknowledgement is as on 31.03.2015. This suit is filed in 2017. The suit is clearly within limitation. The present application is allowed.*

25. According to the Ld. Counsel for the Corporate Debtor the above referred citations not at all attracted in this case because the Hon'ble Supreme Court has not discussed in the said judgments whether Section 18 of the Limitation Act would apply when the claim is otherwise barred by time. The Hon'ble Supreme Court in the case of Jignesh Shah & Anr. Versus Union of India & Anr. (2019) 10 SCC 750, clearly stated that period of limitation can only be extended in the manner provided in the limitation Act and highlighted acknowledgment of liability under section 18. In the said judgement in paragraph 21, the Hon'ble Supreme Court states as follows:



*“21. The aforesaid judgements correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding up proceeding. In law, when time begins to run, it 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, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding up proceeding”.*

26. In view of the said position of law, as laid down by the Hon'ble Supreme Court, we are of the considered view that the balance sheet of the Corporate Debtor wherein the Corporate Debtor admitted its liability toward Bankers and to the financial institutions who assigned the debt to the Financial Creditor, which was signed before the expiry of 3 years from the date of default ie. on 29th May 2017 is an acknowledgment of the debt found due and payable by the Corporate Debtor and held that the claim is not barred by limitation. The Financial Creditor having succeeded in proving that the application filed under section 7 of the Code is not barred by law of limitation as attempted to be proved on the side of the Financial Creditor , and being satisfied that this application is

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complete, by satisfying all requirements under section 7(5) of the Code, that the default as alleged has occurred and that the insolvency professional proposed by the Financial Creditor has certified in his Form 2 that no disciplinary proceedings are pending against him, this application is liable to be admitted. Accordingly the same is admitted upon the following :-

### **O R D E R S**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **Corporate Power Limited** is hereby **admitted**.
- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.
- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
  - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or

*Sd/-*

*Sd/-*

order in any court of law, tribunal, arbitration panel or other authority;

- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

Sd /

- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) **Mr. Pankaj Dhanuka**, an Insolvency Professional registered with The ICSI Institute of Insolvency Professionals having registration number **IBBI/IPA-001/IP-P-01205/2018-2019/11911**, e-mail id: **pankajdhanuka@gmail.com** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution

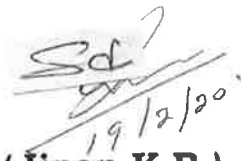


Applicant within 105 days from the insolvency commencement date.

- xi) The Registry is hereby directed under section 7(7) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xii) The matter be listed on 26<sup>th</sup> March, 2020, for filing of the progress report.
- xiii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Hon'ble Member (T)**



**(Jinan K.R.)**  
**Hon'ble Member (J)**

Signed on this, the 19<sup>th</sup> day of February, 2020.

PJ

