M/S RELIANCE ASSET RECONSTRUCTION COMPANY LTD.

v.

M/S HOTEL POONJA INTERNATIONAL PVT. LTD.

(Civil Appeal No. 4221 of 2020)

JANUARY 21, 2021

[INDIRA BANERJEE* AND SANJIV KHANNA, JJ.]

Insolvency and Bankruptcy Code, 2016 – s.62 – The Assignor Bank, along with Corporation Bank sanctioned a term loan of Rs.40 lakhs to the corporate debtor – The corporate debtor failed to repay loan – The Assignor Bank declared the account of corporate debtor as an "Non-Performing Asset" (NPA) on 01.04.1993 – Assignor Bank filed application before the Debt Recovery Tribunal for recovery of dues – A settlement was reached between the Assignor Bank and the corporate debtor – Accordingly, DRT issued a Recovery Certificate on 27.03.2003 – Corporate debtor again failed to comply with the settlement – Thereafter, an agreement between the Assignor Bank and the appellant was entered into, the appellant was substituted as applicant in place of the Assignor Bank in DRT and an amended Recovery Certificate was issued on 13.12.2012 – On 27.07.2018, the appellant filed application u/s. 7 of the IBC against the corporate debtor for initiation of Corporate Insolvency Resolution Process (CIRP) before the NCLT, which was dismissed – The NCLAT also found that application u/s.7 was barred by limitation – Before the Supreme Court, appellant adverted to two documents, that is, (i) the Balance sheet of the corporate debtor dated 16.08.2017 and (ii) a letter dated 23.04.2019 issued by the corporate debtor in the Paper Book to contend that the proceedings u/s. 7 of the IBC are not barred by limitation, as limitation would start running afresh for a period of three years u/s.18 of the Limitation Act – Held: The right to sue accrues when a default occurs, and if that default has occurred over three years prior to the date of filing of an application u/s. 7 of the IBC, the application would be barred u/Art.137 of the Limitation Act – The right to sue accrued on 01.04.1993 when the amount of the corporate debtor with the Assignor Bank was declared NPA – In Part IV of its application u/s. 7 of the IBC, the appellant itself declared the date of default as 01.04.1993 – Thus,

* Author

the claim is apparently barred by limitation – Even the application u/s.7 of the IBC was filed almost 6 years after issuance of the amended Recovery Certificate (issued on 13.12.2012) – As far as two documents referred by the appellants are concerned, the two documents cannot be construed as admissions that amount to acknowledgment of the jural relationship and existence of liability – The balance sheet dated 16.08.2017 does not acknowledge or admit any debt – Further, the letter dated 23.04.2019 again is not an acknowledgment and admission of liability – The language and tone of the letter makes it absolutely clear that the liability was denied – The Balance Sheet of the corporate debtor dated 16.08.2017 and the letter dated 23.04.2019, do not constitute any acknowledgment of liability and were not even referred to by the appellant in its application under IBC – The NCLAT, rightly held that the application u/s.7 of the IBC is barred by limitation.

Limitation Act, 1963 – Art. 137 – Insolvency and Bankruptcy Code, 2016 – ss. 7 and 9 – In B.K. Educational Services Private Ltd. v. Parag Gupta and Associates (2009) 11 SCC 633: [2018] 12 SCR 794 held that 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.

Limitation Act, 1963 – Art. 137 – Insolvency and Bankruptcy Code, 2016 – s. 7 – Held: In Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. and Ors. (2019) 10 SCC 572, it was held that "an application" which is filed u/s. 7, would fall only within the residuary Art. 137.

Dismissing the appeal, the Court Held:

1. It is well settled by a catena of decisions of this Court, that Article 137 of the Limitation Act gets attracted to applications filed under Sections 7 and 9 of the IBC. The right to sue accrues when a default occurs, and if that default has occurred over three years prior to the date of filing of an application under Section 7 of the IBC, the application would be barred 6 under Article 137 of the Limitation Act. At the highest, limitation started ticking on 27th March 2003, when a Recovery Certificate was issued by the DRT. The appellant has not disclosed any material in its application under Section 7 of the IBC to demonstrate that the application is not barred by limitation. [Para 19]

2. In its application under Section 7 of the Insolvency Bankruptcy Code, 2016, the Appellant has not shown that the debt due to the Appellant from the Corporate Debtor is not barred by limitation. The right to sue accrued on 1st April 1993 when the amount of the Corporate Debtor with the Assignor Bank was declared NPA. In Part IV of its application under Section 7 of the IBC, the Appellant declared the date of default as 1st April, 1993. The claim is apparently barred by limitation. Even the judgment of the DRT was dated 09.04.2001 and the Recovery Certificate was dated 27th March 2003. The Appellant's own statement of accounts as on 18th July 2018 is not material to the question of limitation for making an application under Section 7 of the IBC, which is three years from the date of accrual of the right to sue. [Para 23]

3. Under Section 18 of the Limitation Act, 1963, the acknowledgement of liability in writing, signed by a party in respect of any right or property claimed by such party within the prescribed period of limitation to file a suit and/or application, leads to computation of the period of limitation afresh, from the time when the acknowledgement is so signed. [Para 24]

4. In this case, the Corporate Debtor has not signed any acknowledgement in writing after the settlement of 30th June 2001, on the basis of which, a Recovery Certificate was issued by the DRT on 27th March 2003. An arrangement between the Assignor Bank and the Appellant and the consequential substitution of the Appellant as party to the Execution/ Recovery proceedings in the DRT does not save limitation to initiate proceedings under Section 7 of IBC. In any case, even the amended Recovery Certificate, relied upon by the Appellant, is dated 13th December, 2012. The application under Section 7 of the IBC was filed almost 6 years after issuance of the amended Recovery Certificate. [Para 25]

5. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need

not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired. [Para 30]

Khan Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria and Others, **AIR 1961 SC 1236 : [1962] 1 SCR 140 – relied on.**

6. **In the present case, reliance ought not to be placed on the balance sheet dated 16th August 2017 and letter dated 23rd April 2019 primarily for two reasons. First, there is no evidence or material to show that the documents were signed before the expiry of the prescribed period of limitation. There is no pleading to the said effect in the application under Section 7 of the IBC filed by the appellant in the statutory form. In fact, the two documents were never relied upon. Secondly, the two documents cannot be construed as admissions that amount to acknowledgment of the jural relationship and existence of liability. The balance sheet dated 16th August 2017 does not acknowledge or admit any debt. Rather, the Corporate Debtor has disputed and denied its liability. The letter dated 23rd April 2019 again is not an acknowledgment and admission of liability. The language and tone of the letter makes it absolutely clear that the liability was denied. [Paras 32, 33 and 34]**

7. **The Balance Sheet of the Corporate Debtor dated 16th August, 2017 and the letter dated 23rd April, 2019, as observed, do not constitute any acknowledgment of liability and were not even referred to by the Appellant in its application under IBC. It is, therefore, not necessary for this Court to delve into the question of whether Section 18 of the Limitation Act is attracted in the case of a petition under Section 7 of the IBC. [Para 35]**

B.K. Educational Services Private Limited v. Parag Gupta and Associates **(2019) 11 SCC 633: [2018] 12 SCR 794;** *Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. and Ors.* **(2019) 10 SCC 572;** *Radha Export (India) Private Limited v. K.P. Jayaram* **(2020) 10 SCC 538;** *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan* **[1959] Supp (2) SCR 476;** *Khan*

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Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria and Others, **AIR 1961 SC 1236 : [1962] SCR 140 – relied on.**

Vashdeo R. Bhojwani v. Abhyudaya Cooperative Bank Ltd. & Anr., **(2019) 9 SCC 158 : [2019] 12 SCR 75 ;** *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* **(2018) 1 SCC 353 : [2017] 10 SCR 1006;** *Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited* **(2019) 12 SCC 697 : [2018] 13 SCR 1067 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4221 of 2020.

From the Judgment and Order dated 05.02.2020 of the National Company Law Appellate Tribunal, New Delhi in Company Appeal(AT) (Insolvency) No. 1011 of 2019.

Siddharth Dave, Sr. Adv., Ms. Ruchi Kohli, Adv. for the appellant.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

This appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 hereinafter referred to as "IBC", is against a judgment and order dated 5th February 2020 passed by the National Company Law Appellate Tribunal, New Delhi, hereinafter referred to as the "NCLAT", dismissing the Company Appeal (AT) (Insolvency) No. 1011 of 2019 filed by the Appellant, whereby the Appellant had challenged an order dated 20th August 2019 passed by the Adjudicating Authority, i.e. the National Company Law Tribunal, Bengaluru Bench, hereinafter referred to as the "NCLT" rejecting an application being CP (IB) No.170/BB/2018 filed by the Appellant under Section 7 of the IBC.

2. The Appellant is a company incorporated under the Companies Act, 1956 and registered as a Securitisation and Asset Reconstruction Company, pursuant to Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

3. The Respondent M/s Hotel Poonja International Pvt. Ltd., hereinafter referred to as the "Corporate Debtor", was granted credit/loan facilities *inter alia* by Vijaya Bank, hereinafter referred to as the "Assignor Bank". Pursuant to an agreement executed between the Assignor Bank and the Appellant on or about 3rd May 2011, the Assignor Bank has assigned its dues from the Corporate Debtor to the Appellant.

4. By a letter dated 20th May 1986, the Assignor Bank, along with Corporation Bank, sanctioned a term loan of Rs.40 Lakhs to the Corporate Debtor. Loan documents were duly executed by the Corporate Debtor through its authorized directors and guarantors, in favour of the Assignor Bank and Corporation Bank, for securing the loan as aforesaid, availed by the Corporate Debtor.

5. By a *pari pasu* agreement executed by and between the Assignor Bank, Corporation Bank, and the Corporate Debtor on 23rd November 1987, a *pari pasu* charge was created on the movable and immovable properties of the Corporate Debtor, in favour of the two banks.

6. The Corporate Debtor failed to repay the loan obtained from the Assignor Bank. The Assignor Bank, therefore, declared the account of the Corporate Debtor as a "Non Performing Asset" (NPA) on 1st April 1993.

7. On or about 18th May 1998, the Assignor Bank filed an Original Application No. 547 of 1998 under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before the Debt Recovery Tribunal (DRT), Andhra Pradesh and Karnataka at Bangalore for recovery of its dues aggregating Rs.2,61,88,403.05/- odd from the Corporate Debtor.

8. It is the case of the Appellant that during the pendency of the said original application, the Corporate Debtor acknowledged and admitted its debt to the Assignor Bank and approached the Assignor Bank for a settlement, subject to payment of a consolidated amount of Rupees 1 Crore, less Rs.25 Lakhs that had already been paid. The Corporate Debtor agreed to pay the balance Rs.75 Lakhs in instalments, along with interest. Accordingly, a settlement was executed between the Assignor Bank and the Corporate Debtor on 30th June 2001, on the basis of which the DRT issued a Recovery Certificate on 27th March 2003.

9. The Appellant contends that since the Corporate Debtor failed to pay the settlement amount, the Assignor Bank became entitled to recover the decretal amount from the Corporate Debtor. The Assignor Bank, therefore, filed an application for execution in the DRT, for recovery of the decretal amount of Rs.2,61,88,403.05, after deducting Rs.25 lakhs already paid by the Corporate Debtor. After the execution of the agreement dated 03rd May 2011, between the Assignor Bank and the Appellant, the Appellant was substituted as applicant in place of the Assignor Bank, in the proceedings before the DRT, and an amended Recovery Certificate was issued on 13th December, 2012.

10. On or about 27th July 2018, the Appellant filed a petition before the NCLT, Bengaluru bearing No.CP(IB) No.170/BB/2018 under Section 7 of the IBC against the Corporate Debtor, for initiation of Corporate Insolvency Resolution Process (CIRP).

11. By an order dated 20th August 2019, the NCLT, dismissed the said petition under Section 7 of the IBC, holding that it was the settled proposition of law that the provisions of the IBC could not be invoked for recovery of outstanding dues, but could only be invoked to initiate CIRP for just reasons.

12. The NCLT, Bengaluru took note of the following relevant facts:

"In the instant case, it is not in dispute that Vijaya Bank had sanctioned loan of 40 lakhs to Corporate Debtor on 20.05.1986 and it has defaulted in making payment of the loan as per the terms of the loan agreement. The account of the Corporate Debtor was classified as NPA on 1.04.1993. Vijaya Bank also filed original application OA No.547/1998 before DRT, Bangalore and DRT has decreed and issued a recovery certificate by issuing an order dated 9th April, 2001. Further, due to non-repayment of the amount as per the order dated 9th April, 2001, DRT, Bangalore issued another recovery certificate vide DCP no.2691 dated 27.03.2003 directing the Recovery Officer to recover the amount of debt as stated therein. Subsequently, Vijaya Bank assigned the loan disbursed in favour of the Corporate Debtor to the Petitioner/Financial Creditor herein vide Assignment Agreement dated 3rd May, 2011. Consequently, an amended recovery certificate dated 13th May, 2011 was issued by the DRT, Bangalore recognizing the assignment to the petitioner/Financial Creditor and vesting rights of recovery with it."

13. Being aggrieved by the judgment and order of NCLT, Bengaluru dismissing the application of the Appellant under Section 7 of the IBC, the Appellant filed an appeal therefrom, being Company Appeal (AT) (INS.) No.1011 of 2019, before the NCLAT. The Appeal has been dismissed by the judgment and order impugned.

14. The NCLAT also found that the application filed by the Appellant under Section 7 of the IBC was barred by limitation. The NCLAT, however, made it clear that the dismissal of the application under Section 7 of the IBC, would not preclude the appellant from availing the appropriate remedy for redressal of its grievances, in accordance with law, before the competent forum.

15. The application of the Appellant in Statutory Form 1 under Section 7 of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process (CIRP) is included in the Paper Book filed in this appeal, as Annexure P-7. Part IV of the application relating to the particulars of the financial debt claimed to be due to the Appellant from the Corporate Debtor is extracted hereinbelow:-

PART - IV

PARTICULAR OF FINANCIAL DEBT

1. TOTAL AMOUNT OF DEBT GRANTED DATE(s) OF THE DISBURSMENT *

   Debt granted by Vijya Bank Assignor)- Rs 40,00,000 (Rupees Forty Lakhs)

   Nature of Facility – Term Loan

   Date of Sanction – 20.05.1986

2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)

   Total outstanding – Rs. 145,44,46,651.32 (Rupees One Hundred Forty Four lakhs Forty Six Thousand Six Hundred Fifty One and Paisa Thirty Two Only) as on 18.07.2018

(Amt in Rs.)

Facility	Principal Outstanding	Interest	Total Outstanding
Term Loan	40,00,000	145,04,46651.32	145,44,46,651.32
	Date of NPA – 01.04.1993		

16. The particulars of the financial debt with documents, records and evidence of default are given in Part V of the application. In support of its claim, the Appellant relied on the judgment of the DRT in O.A. No.547/1998, dated 9th April, 2001, the Recovery Certificate issued by the DRT dated 27th March 2003 and an order dated 14th December 2017 in the Execution/ Recovery Proceedings before the DRT, as will appear from Sl. No.2 of Part V of the application before the DRT.

17. The Appellant also relied on the Assignment Agreement dated 3rd May 2011 (Serial No.5 of Part V); a Statement of Accounts of the Appellant as on 8th July 2018 along with Certificate under the Bankers Books Evidence Act, 1891 (Serial No.7 of Part V); a memo of the Recovery Officer dated 3rd June 2011 in the DRT, regarding assignment of the decretal dues of the judgment debtor in favour of the Appellant, and an amended Recovery Certificate dated 13th December 2012 (Serial No.8 of Part V).

18. Admittedly, as stated in Part IV of the application filed by the Appellant in the NCLT under Section 7 of the IBC, the account of the Corporate Debtor was declared as Non Performing Asset on 1st April, 1993, that is, over 15 years before the application under Section 5 was filed in the NCLT.

19. It is well settled by a catena of decisions of this Court, that Article 137 of the Limitation Act gets attracted to applications filed under Sections 7 and 9 of the IBC. The right to sue accrues when a default occurs, and if that default has occurred over three years prior to the date of filing of an application under Section 7 of the IBC, the application would be barred under Article 137 of the Limitation Act. At the highest, limitation started ticking on 27th March 2003, when a Recovery Certificate was issued by the DRT. The appellant has not disclosed any material in its application under Section 7 of the IBC to demonstrate that the application is not barred by limitation.

20. In ***B.K. Educational Services Private Limited v. Parag Guptaand Associates*** reported in (2019) 11 SCC 633, this Court held:

> ***"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,.."*

21. In ***Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. And Ors.*** reported in (2019) 10 SCC 572, where the account of the Corporate Debtor was declared NPA on 21.7.2011, this Court observed:

> ***"6.*** *…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 21-7-2011, as a result of which the application filed under Section 7 would clearly be time-barred…"*

22. In ***Radha Export (India) Private Limited v. K.P. Jayaram*** reported in (2020) 10 SCC 538, authored by one of us (Justice Indira Banerjee), this Court referred to ***B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*** (supra), and held:

> ***35.*** *It was for the applicant invoking the corporate insolvency resolution process, to prima facie show the existence in his favour, of a legally recoverable debt. In other words, the respondent had to show that the debt is not barred by limitation, which they failed to do.*

23. In its application under Section 7 of the IBC, the Appellant has not shown that the debt due to the Appellant from the Corporate Debtor is not barred by limitation. The right to sue accrued on 1st April 1993 when the amount of the Corporate Debtor with the Assignor Bank was declared NPA. In Part IV of its application under Section 7 of the IBC, the Appellant declared the date of default as 1st April, 1993. The claim is apparently barred by limitation. Even the judgment of

the DRT in OA No.547/98 was dated 09.04.2001 and the Recovery Certificate was dated 27th March 2003. The Appellant's own statement of accounts as on 18th July 2018 is not material to the question of limitation for making an application under Section 7 of the IBC, which is three years from the date of accrual of the right to sue.

24. Under Section 18 of the Limitation Act, 1963, the acknowledgement of liability in writing, signed by a party in respect of any right or property claimed by such party within the prescribed period of limitation to file a suit and/or application, leads to computation of the period of limitation afresh, from the time when the acknowledgement is so signed.

25. In this case, the Corporate Debtor has not signed any acknowledgement in writing after the settlement of 30th June 2001, on the basis of which, a Recovery Certificate was issued by the DRT on 27th March 2003. An arrangement between the Assignor Bank and the Appellant and the consequential substitution of the Appellant as party to the Execution/Recovery proceedings in the DRT does not save limitation to initiate proceedings under Section 7 of IBC. In any case, even the amended Recovery Certificate, relied upon by the Appellant, is dated 13th December, 2012. The application under Section 7 of the IBC was filed almost 6 years after issuance of the amended Recovery Certificate.

26. In ***Vashdeo R. Bhojwani v. Abhyudaya Cooperative Bank Ltd. & Anr.***, reported in (2019) 9 SCC 158, this Court had set aside the orders of the NCLT and the NCLAT, holding that the application under Section 7 of the IBC was time barred, as the loan account had been declared Non Performing Asset on 23rd December 1999 and thereafter the Debt Recovery Tribunal had issued a Recovery Certificate dated 24th December 2001. Insolvency proceedings before the NCLT were admitted on 5th March 2018.

27. In ***Vashdeo R. Bhojwani*** (supra), this Court rejected the contention that the default was a continuing wrong and Section 23 of the Limitation Act 1963 would apply, relying upon ***Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan*** reported in 1959 Supp (2) SCR 476.

28. To quote *P.B. Gajendragadkar, J* in ***Balakrishna Savalram Pujari Wagmare*** (supra):-

".....Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked. ....."

29. Counsel appearing on behalf of the Appellant has adverted to two documents in the Paper Book, that is, (i) the Balance sheet of the Corporate Debtor dated 16th August 2017 and (ii) a letter dated 23rd April 2019 issued by the Corporate Debtor in the Paper Book to contend that the proceedings under Section 7 of the IBC are not barred by limitation, as limitation would start running afresh for a period of three years from the respective dates of those documents as acknowledgement of liability. Reliance is placed upon Section 18 of the Limitation Act.

30. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.

31. In ***Khan Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria and Others***,reported in AIR 1961 SC 1236, this Court held :-

"6. It is thus clear that acknowledgment as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment 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 acknowledgment 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. 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. 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. Broadly stated that is the effect of the relevant provisions contained in Section 19, and there is really no substantial difference between the parties as to the true legal position in this matter."

32. In the present case, reliance ought not to be placed on the balance sheet dated 16th August 2017 and letter dated 23rd April 2019 primarily for two reasons. First, there is no evidence or material to show that the documents were signed before the expiry of the prescribed period of limitation. There is no pleading to the said effect in the application under Section 7 of the IBC filed by the appellant in the statutory form. In fact, the two documents were never relied upon.

33. Secondly, the two documents cannot be construed as admissions that amount to acknowledgment of the jural relationship and existence of liability. The balance sheet dated 16th August 2017 does not acknowledge or admit any debt. Rather, the Corporate Debtor has disputed and denied its liability. Point (d) of the Report of the independent auditor at page 86 of the paper book reads:

"d) Note No. 28 Claims against the Company under adjudication not acknowledged as debts for reasons stated in point (b) and (c) above.

Our opinion is not modified in respect of these matters."

Point (d) quoted above read with the immediately preceding sub-paragraph (point c) makes it clear that the Balance Sheet cannot be treated as an acknowledgment of liability. This is also clear from the last sub-heading of Note 27 and Note 28 of the Balance Sheet at page 147 of the paper book, set out hereinbelow:

*"**As on the date of this report the matter is pending before the Hon'ble High Court of Karnataka, Bangalore**. The Board of Directors have decided that no interest be provided in the books of account for the year ended 31st March 2017. The Board is also of the opinion based on legal advice obtained by it in the matter that no interest be provided in the books till the matter acquires clarity and the entire amount demanded by Reliance except for a sum of Rs.40.00 lakhs be treated as "**contingent liability not provided for**".*

The Board is also of the opinion that developments subsequent to the decree of the DRT Bangalore have not been considered by Reliance while demanding the amount of Rs.97.12 crores. These developments have a substantial bearing on the case.

Note No. 28 Claims against the Company under adjudication not acknowledged as debt:

Commercial and other claims	*Rs. 113.85 crores*
Previous Year	*Rs. 72.92 crores"*

34. The letter dated 23rd April 2019 again is not an acknowledgment and admission of liability. The language and tone of the letter makes it absolutely clear that the liability was denied. The Corporate Debtor contended that it had paid more than the double the amount it had

borrowed. Nevertheless, the Corporate Debtor offered a one-time settlement seeking opinion/concurrence of the Appellant with regard to such offer to settle the dispute, which offer was not accepted by the Appellant. The relevant part of the letter dated 23rd April 2019 is extracted hereinbelow:

"Since we have agreed to clear the loan account under one time settlement scheme for a sum of Rs. 1.00 crore out of which we have already paid Rs. 40 lakhs, what has remained unpaid is Rs. 60 Lakhs. If you calculate the total amount paid by us till now, it is more than double the amount borrowed by us. Anyhow, we have now decided to offer Rs. 65 Lakhs in full and final settlement of our claim. We therefore, kindly request you to accept our offer for a sum of Rs. 65 Lakhs in full settlement of the claim and close the case. In the event of willingness on your part to accept our said offer for Rs. 65 Lakhs, we undertake to pay it off on or before 30.06.2019. Therefore, please let us have your opinion in the matter at the earliest."

35. The Balance Sheet of the Corporate Debtor dated 16th August, 2017 and the letter dated 23rd April, 2019, as observed above, do not constitute any acknowledgment of liability and were not even referred to by the Appellant in its application under IBC. It is, therefore, not necessary for this Court to delve into the question of whether Section 18 of the Limitation Act is attracted in the case of a petition under Section 7 of the IBC.

36. At the cost of repetition, it is reiterated that in its application under Section 7 of the IBC, the Appellant declared the date of default as 1st April, 1993. At the highest, limitation started running from 27th March, 2003, when the Recovery Certificate was issued by the DRT in favour of the Assignor. The NCLAT has rightly held that the application of the Appellant under Section 7 of the IBC barred by limitation.

37. In any case, there are pending proceedings in the DRT, in respect of the dues of the Corporate Debtor. The Appellant has been substituted in place of the Assignor Bank in the execution proceedings in the DRT. There is an amended Certificate issued by the DRT. Orders have, from time to time, been passed in the Execution Proceedings. The Appellant is not without remedy against the Corporate Debtor.

38. As held by this Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** reported in (2018) 1 SCC 353, the IBC is not intended to be a substitute to a recovery forum. In ***Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited*** reported in (2019) 12 SCC 697, this Court followed its earlier judgment in ***Mobilox Innovations Private Ltd.*** (supra) and observed as hereunder:-

"In a recent judgment of this Court in *Mobilox Innovations Private Limted v. Kirusa Software Private Limited (2018) 1 SCC 353, this Court has categorically laid down that IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked…."*

39. There is no infirmity in the judgment and order of the NCLAT under appeal that calls for interference of this Court. The appeal is therefore, dismissed.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal dismissed.