2026 INSC 1263

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3006 OF 2020

UV Asset Reconstruction Company Ltd. .....Appellant(s)

Versus

Gautam Sinha & Ors. ..... Respondent(s)

J U D G M E N T

K. V. Viswanathan, J.

1) The present appeal calls in question the correctness of the judgment dated 25.02.2020 passed by the National Company Law Appellate Tribunal [for short "the NCLAT"], New Delhi, in Company Appeal (AT) (Insolvency) No. 1382 of 2019. By the said judgment, the NCLAT, while allowing the appeal of Respondent No. 1 herein, dismissed the Section 7 application filed by UV Asset Reconstruction Company Ltd.-

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Reason:

the appellant-Company herein under the Insolvency and Bankruptcy Code, 2016 (for short 'the IBC') as being barred by time.

Brief Facts:-

2) United Bank of India - the assignor, predecessor-in-interest of the appellant-Company, sanctioned and extended loan facility of Rs.12,26,00,000/- to M/s Kalpataru Cold Storage Private Limited, the Corporate Debtor (CD), vide Loan Sanction Letter dated 28.03.2013.

3) According to the appellant-Company, the first default occurred on 31.12.2013 in the repayment of loan to the United Bank of India.

4) On 27.02.2014, the Corporate Debtor made a payment of Rs. 18,00,000/- to the United Bank of India.

5) On 31.03.2014, the account of the Corporate Debtor was declared as a Non-Performing Asset (NPA).

6) The appellant-Company claims that on 08.10.2014, the Corporate Debtor submitted a One-Time Settlement (OTS) proposal to the United Bank of India acknowledging the debts due.

7) On 10.10.2014, the United Bank of India informed the Corporate Debtor that the OTS proposal was not acceptable and sought for an upgradation of the proposal.

8) On 16.10.2014, the Corporate Debtor requested reconsideration of the earlier OTS proposal.

9) The appellant-Company submits that in the Balance Sheet of the Corporate Debtor for the Financial Year 2015-16, the loan amount was reflected as an outstanding liability. It is the claim of the appellant-Company that the OTS proposal and the balance sheet entries constituted acknowledgement of debt. When the matter stood thus, on 29.03.2017, by a registered Assignment Agreement, executed between the United Bank of India and the appellant-Company, the debts of the United Bank of India, pertaining to M/s Kalpataru Cold

Storage Pvt. Ltd., were assigned in favour of the appellant-Company.

10) It is the appellant's further case that such acknowledgement in the balance sheet entries were available in the Balance Sheet for the Financial Year 2016-17 also.

11) Further, the appellant-Company submits that, on 30.06.2017, the OTS offer was repeated whereby the Corporate Debtor agreed to offer an amount of Rs.10,50,00,000/-

12) According to the appellant-Company, further, the Balance Sheet for the Financial Year 2017-18, also acknowledged the debt.

13) It was at this stage that the appellant-Company filed a petition on 26.10.2018 under Section 7 of the IBC in C.P. (IB) No. 1498/KB/2018 before the National Company Law Tribunal, Kolkata Bench (hereinafter 'Adjudicating Authority') setting out total outstanding debt of Rs. 21.61 crores.

14) The Adjudicating Authority set out two questions for consideration; (1) whether the applicant-(the appellant-Company herein) can be said to be financial creditor on the basis of the Deed of Assignment dated 29.03.2017; and, (2) whether the debt was time-barred.

15) The Adjudicating Authority answered question no. 1 in the affirmative and held the appellant-Company to be a financial creditor. On the contention of the debt being time-barred, it held as follows: -

> "16. However, there is one more dimension as far as case in hand is concerned. The financial creditor and even corporate debtor have produced on record the corporate debtor's balance-sheet for the year ending March, 2016 (page no.300 onwards in paper book). From the perusal of those financial papers of the corporate debtor, it is seen that corporate debtor noted that they have to pay the debt of United Bank of India. Their account is declared as NPA. In short, in the year 2016, the corporate debtor in its balance-sheet acknowledged the debt to be payable by them which is claimed herein by the financial creditor. This acknowledgement of debt in its balance-sheet by the corporate debtor in the year 2016 has brought the claim of financial creditor within period of limitation. It is filed well within period of limitation. We hold that the debt is not time-barred. We answer point no.2 in the negative."

Having found that the debt was not time-barred, the Adjudicating Authority, by order dated 30.09.2019, admitted and allowed the Section 7 application of the appellant.

16) Respondent No.1 carried the matter in appeal to the NCLAT. By the impugned order dated 25.02.2020, the NCLAT held that there was no acknowledgement in the financial statements. It also held that since the first default occurred on 31.12.2013 and the CD was declared as NPA on 31.03.2014, the Section 7 application filed on 26.10.2018 was time-barred. So holding, the appeal of the first respondent was allowed and the impugned order (i.e. NCLT order dt. 30.09.2019) was quashed and set aside.

17) We have heard Ms. Vatsala Kak, learned counsel for the appellant-Company and Mr. Shivam Singh, learned counsel for the respondent no. 1.

18) Ms. Vatsala Kak, learned counsel for the appellant-Company submitted that Section 7 application was not barred by limitation. Learned counsel drew our attention to the

sequence of events and submitted that on 08.10.2014, the CD submitted an OTS proposal acknowledging the subsisting financial liability. Independent of the argument based on the OTS, it was submitted that the liability of the CD continued to be reflected and acknowledged in the Balance Sheets of the Corporate Debtor for the Financial Years 2015-16 and 2016-17. It was submitted that by a registered Assignment Agreement on 29.03.2017, the debts, together with the underlying rights, title and interest, were assigned in favour of the appellant by the United Bank of India. Learned counsel submitted that on 30.06.2017, a further OTS proposal was submitted by the CD in respect of the outstanding dues. It was argued that in the balance sheet of the CD for the Financial Year 2017-18, there was further acknowledgement of the subsisting liability. Learned counsel relied on the judgments of this Court to support the plea that acknowledgement of a debt in a balance sheet constitutes valid acknowledgement. Learned counsel further argued that while examining an acknowledgement under Section 18 of the Limitation Act,

1963, for proceeding under the IBC, this Court has held that such an acknowledgement cannot be construed with "pedantic rigidity".

19) Mr. Shivam Singh, learned counsel for Respondent No. 1 submitted that neither the audited Balance Sheets nor the OTS letters/proposals of the CD were valid acknowledgement of debts. Learned counsel submitted that as to whether a particular entry in the balance sheet, in a given case, constitutes an acknowledgement, has to be determined on a case-to-case basis. Learned counsel submitted that insofar as the Balance Sheet for the Financial Year 2015-16 was concerned, it carried two caveats. One was in the form of a Note i.e., Note 29 to the Auditor's Report, attached with the Balance Sheet, which recorded that no balance confirmation or bank statement was received from the United Bank of India for the period 01.04.2015 to 31.03.2016. Secondly, it was contended the annexures to the Auditor's Report for the Financial Year 2015-16 in Note 5 stated that the CD has not

defaulted in repayment of its payment to financial institutions. According to the learned counsel, financial institutions include the United Bank of India also. Learned counsel submitted that the balance sheet entry, unconfirmed by the creditor, read with the Auditor's statement that there is no default, is not an unequivocal admission of subsisting liability towards the United Bank of India. Learned counsel relied upon the finding of NCLAT that notes and remarks accompanying the balance sheets negated any acknowledgement of debt.

20) Learned counsel for Respondent No. 1 submitted that the Balance Sheet for the Financial Year 2016-17 stood on a weaker footing. Learned counsel submitted that it was not part of the record before the Adjudicating Authority or the NCLAT and has been produced for the first time before this Court. In any event, relying on Note 5 of the balance sheet which recorded that 'No default continuing or otherwise… in repayment of the loan', learned counsel contended that the said entry negated any acknowledgement of debt.

21) Insofar as the OTS letters/proposals were concerned, learned counsel submitted that before the Adjudicating Authority, the appellant-Company relied only on the balance sheets and no OTS letter/proposal formed part of the record. The aspect of OTS constituting acknowledgement was brought up for the first time in the reply of the appellant-Company before the NCLAT. In any event, it was argued that the OTS letters were not relied upon in the arguments before the NCLAT and the case was squarely placed on the anvil of the balance sheets having constituted valid acknowledgement. It was further argued by the learned counsel that the OTS letters were marked "without prejudice".

22) Learned counsel contended that Section 18 of the Limitation Act requires an unequivocal admission of a subsisting liability and the Courts must look at the surrounding circumstances to decide whether an acknowledgement existed in law or not. Learned counsel argued that acknowledgement must not only indicate the jural

relationship between the parties, but must admit the said jural relationship. Learned counsel submitted that Section 18 requires the acknowledgement to be made "before the expiration of the prescribed period". According to the learned counsel, limitation expired on 31.12.2016 and the OTS letters fell beyond the said period.

23) Alternatively, it was submitted that in the event of this Court being inclined to hold that the Section 7 application is within time, the matter may be remitted back to the Adjudicating Authority for deciding the other questions. Learned counsel submitted that the CD never placed its defence on merits for consideration.

24) The question that arises for consideration is whether the Section 7 application filed by the appellant-Company against the CD was within time?

25) At the outset, we shall examine whether the Balance Sheets for the Financial Years 2015-16, 2016-17 and 2017-18 constitute acknowledgement of liability.

26) The relevant portions of the balance sheets for the years 2015-16, 2016-17 and 2017-18, as was relied upon, have been extracted hereinbelow: -

"KALPATARU COLD STORAGE PRIVATE LIMITED
BALANCE SHEET AS AT MARCH 31, 2016

Amount in Rs.

1. EQUITY AND LIABILITIES:	Note No.	March 31, 2016	March 31, 2015
(1) Shareholders' Funds:			
(a) Share Capital	3	1,09,21,300	1,09,21,300
(b) Reserves and Surplus	4	(6,74,42,243)	(127,09,634)
		(5,65,20,943)	(17,88,334)
(2) Non Current Liabilities:			
Long Term Borrowings	**5**	**617,32,832**	**626,13,961**

	31st March, 2016	31st March, 2015
5. Long Term Borrowings:		
Secured:		
Term Loan		
#From Banks	**4,11,62,832**	**4,11,62,832**
Unsecured:		
Deposit Received	**1,00,000**	
Loans and Advances from related parties (Refer to Note 23)	**204,70,000**	**214,51,129**
	617,32,832	**626,13,961**

#I. The above loans are secured with assignment of CSR's and Loan Bonds, assignment of rental income, equitable mortgage of Land & Building and hypothecation of Plant & Machinery of the Cold Storge Unit, Bhanjipur, P.O. Tarakeswar Hooghly and also hypothecation debts and moveable assets, personal guarantee of all the Directors of the Company.

II. Terms of repayment of term loans are starting from within 31.12.2012 and last instalments falling due on within 31.12.2016. There is no default continuing or otherwise, as at the Balance Sheet date, in payment of term loan.

29. No balance confirmation/Bank Statement in respect of Term Loans and Other Loans obtained from United Bank of India, Lohapatty Branch, Kolkata has been received by the Company for the period from 01.04.2015 to 31.03.2016, the Company has not provided interest on these loans in the books of account.

Company's accounts were declared non performing assets (NPA) earlier on certain defaults in repayment of loans installments and interest dues thereon to the Bank. A Notice under Section 13(2) of the SARFAESI Act,2002 has been served by Bank on 03.04.2014 and date of declaration of NPA is 31.03.2014, the matter is sub judice before the Debts Recovery Tribunal (DRT).

KALPATARU COLD STORAGE PRIVATE LIMITED
BALANCE SHEET AS AT MARCH 31, 2017

Amount in Rs.

1. **EQUITY AND LIABILITIES:**	Note No.	March 31, 2016	March 31, 2017
(1) Shareholders' Funds:			
(a) Share Capital	3	1,09,21,300	1,09,21,300
(b) Reserves and Surplus	4	(6,74,42,243)	(6,90,63,277)
		(5,65,20,943)	(5,81,41,977)
(2) Non Current Liabilities:			
Long Term Borrowings	**5**	**6,17,32,832**	**6,08,32,832**

	31st March, 2017	31st March, 2016
5. Long Term Borrowings:		
Secured:		
Term Loans		
#From Banks	**4,11,62,832**	**4,11,62,832**
Unsecured:		
Deposit Received	**1,00,000**	**1,00,000**
Loans and Advances from related parties (Refer to Note 24)	**1,95,70,000**	**2,04,70,000**
	6,08,32,832	**6,17,32,832**

#I. The above loans are secured with assignment of CSR's and Loan Bonds, assignment of rental income, equitable mortgage of Land & Building and hypothecation of Plant & Machinery of the Cold Storge Unit at Chandrakona Road, Paschim Medinipur, Extension of Equitable mortgage of household property at 62/1-A Beadon Street, Kolkata, hypothecation of debts and moveable assets and personal guarantee of all the Directors.

II. Terms of repayment of term loans are starting from within 31.12.2012 and last instalments falling due on within 31.12.2016. There is no default continuing or otherwise, as at the Balance Sheet date, in repayment of term loan.

29. No balance confirmation/Bank Statement in respect of Term Loans and Other Loans obtained from United Bank of India, Lohapatty Branch, Kolkata has been received by the Company for the period from 01.04.2016 to 31.03.2017, the Company has not provided interest on these loans in the books of account.

Company's accounts were declared non performing assets (NPA) earlier on certain defaults in repayment of loans installments and interest dues thereon to the Bank. A Notice under Section 13(2) of the SARFAESI Act,2002 has been served by Bank on 03.04.2014 and date of declaration of NPA is 31.03.2014, the matter is sub judice before the Debts Recovery Tribunal (DRT).

KALPATARU COLD STORAGE PRIVATE LIMITED
BALANCE SHEET AS AT MARCH 31, 2018

Amount in Rs.

1. **EQUITY AND LIABILITIES:**	Note No.	March 31, 2018	March 31, 2017
(1) Shareholders' Funds:			
(a) Share Capital	3	1,09,21,300	1,09,21,300
(b) Reserves and Surplus	4	(7,03,50,269)	(6,90,63,277)
		(5,94,28,969)	(5,81,41,977)
(2) Non Current Liabilities:			
Long Term Borrowings	**5**	**6,08,32,832**	**6,08,32,832**

	31st March, 2018	**31st March, 2017**
5. Long Term Borrowings:		
Secured:		
Term Loan		
#From Banks	**4,11,62,832**	**4,11,62,832**
Unsecured:		
Deposit Received	**1,00,000**	**1,00,000**
Loans and Advances from related parties (Refer to Note 24)	**1,95,70,000**	**1,95,70,000**
	6,08,32,832	**6,08,32,832**

#I. The above loans are secured with assignment of CSR's and Loan Bonds, assignment of rental income, equitable mortgage of Land & Building and hypothecation of Plant & Machinery of the Cold Storage Unit at Chandrakona Road, Paschim Medinipur, Extension of Equitable mortgage of household property at 62/1-A Beadon Street, Kolkata, hypothecation of debts and Moveable Assets and personal guarantee of all the Directors.

II. Terms of repayment of term loans are starting from within 31.12.2012 and last instalments falling due on within 31.12.2016. There is no default continuing or otherwise, as at the Balance Sheet date, in repayment of term loan.

29. ***No Balance confirmation/Bank Statement in respect of Term Loans and Other Loans obtained from United Bank of India, Lohapatty Branch, Kolkata has been received by the Company for the period from 01.04.2017 to 31.03.2018, the Company has not provided interest on these loans in the books of account.***

Company's accounts were declared non performing assets (NPA) earlier on certain defaults in repayment of loans installments and interest dues thereon to the Bank. A Notice under Section 13(2) of the SARFAESI Act,2002 has been served by Bank on 03.04.2014 and date of declaration of NPA is 31.03.2014, the matter is sub judice before the Debts Recovery Tribunal (DRT)."

27) At this juncture, it is apt to refer to Section 18 of the Limitation Act, 1963, which reads as under:-

> "**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."

28) In ***Dena Bank (Now Bank of Baroda)*** vs. ***C. Shivakumar Reddy and Another***, (2021) 10 SCC 330, this Court held as under: -

> **"139. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC.** This Court sees no reason why an offer of one-time settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In *Gaurav Hargovindbhai Dave* v. *Asset Reconstruction Co. (India) Ltd.*, (2019) 10 SCC 572 cited by Mr Shivshankar, this Court had no occasion to consider any proposal for one-time settlement. Be that as it may, the balance sheets and financial statements of the corporate debtor for 2016-2017, as observed above, constitute acknowledgment of liability which extended the limitation by three years, apart from the fact that a certificate of recovery was issued in favour of the appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21-3-2019."
>
> [Emphasis supplied]

This Court held that Section 18 of the Limitation Act cannot be construed with pedantic rigidity in relation to proceedings under the IBC.

29) In ***Vidyasagar Prasad*** vs. ***UCO Bank and Another***, 2024 SCC OnLine SC 2993, this Court observed:-

> **"10. Having considered the specific facts and circumstances of this case, the Adjudicating Authority**

as well as the National Company Law Appellate Tribunal have concurrently held that the entries in the balance-sheets amount to clear acknowledgment of debt. We agree with the findings. Further, note 3.4 appended to said balance-sheet entry dated March 31, 2017 mentions that "company has made certain defaults in the repayment of term loans and interest." It further mentions of a continuing default. The entry also mentions long-term borrowings. The conclusions of the National Company Law Tribunal and National Company Law Appellate Tribunal that there is acknowledgment of debt are unimpeachable.

> 10.1. Following the principles as expounded in the case of *Asset Reconstruction Co. (India) Ltd.* v. *Bishal Jaiswal*, (2021) 6 SCC 366, the Adjudicating Authority as well as the National Company Law Appellate Tribunal have examined the case in detail and have come to the conclusion that the entry made in the balance-sheet coupled with the note of the auditor of the appellant clearly amounts to acknowledgment of the liability. We see no reason whatsoever to take a different view of the matter. Their findings are fortified when we examine the matter from another perspective."

[Emphasis supplied]

30) In ***IL & FS Financial Services Limited*** vs. ***Adhunik Meghalaya Steels Private Limited***, (2026) 3 SCC 794, this Court, after an exhaustive consideration of the law, held: -

> **"33. It was not disputed before us that entries in balance sheets could constitute a valid acknowledgement and in fact it could not have been disputed, in view of the categoric pronouncement of this Court in *Asset Reconstruction Co. (India) Ltd.* v. *Bishal Jaiswal*, (2021) 6 SCC 366. The only dispute was whether the entry in FY 2019-20 did or did not constitute a valid acknowledgement. Among the grounds**

canvassed was the aspect that the name of the appellant was not mentioned in the balance sheet of FY 2019-20.

35. The other aspect which remains to be examined is the contention of the respondent that the name of the appellant is nowhere mentioned in the balance sheet of FY 2019-20 and as such the balance sheet of FY 2019-20 cannot be construed as an acknowledgement of any jural relationship between the parties. To counter this aspect, the appellant has drawn attention to the judgment of this Court in *Vidyasagar Prasad* v. *UCO Bank*, (2025) 17 SCC 234. In *Vidyasagar Prasad* this Court, at the outset, dealt with the earlier judgments in *Laxmi Pat Surana* v. *Union Bank of India*, (2021) 8 SCC 481, *Dena Bank* v. *C. Shivakumar Reddy*, (2021) 10 SCC 330 and *Rajendra Narottamdas Sheth* v. *Chandra Prakash Jain*, (2022) 5 SCC 600 to reiterate that Section 18 of the Limitation Act dealing with acknowledgment of debt applies to proceedings under the IBC in view of Section 238-A.

37. It will be noticed that even in *Vidyasagar Prasad* v. *UCO Bank*, (2025) 17 SCC 234 a similar argument about the name of creditor not being mentioned was repelled and additionally the aspect of the proposal given by the corporate debtor therein for a one-time settlement was taken into account as an additional aspect in favour of acknowledgment of debt.

39. We have independently examined the facts of the present matter to construe whether the entries in the balance sheet of FY 2019-20 constitute a valid acknowledgement. As to whether a certain document in a given case constitutes a valid acknowledgement would depend on the facts and circumstances of each case. We do no better than recall the observations of this Court in *Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prasad Chamaria*, 1961 SCC OnLine SC 147 wherein it was observed as under: (SCC OnLine SC para 7)

> "*7. It is often said that in deciding the question as to whether any particular writing amounts to an acknowledgment as in construing wills, for instance, it is not very useful to refer to judicial decisions on the*

point. 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, and so unless words used in a given document are identical with words used in a document judicially considered it would not serve any useful purpose to refer to judicial precedents in the matter."

40. Having said that, the legal principles as to what constitutes a valid acknowledgment as laid down in the precedents, have to be rigorously applied. It should also not be forgotten that this Court in *Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prasad Chamaria*, 1961 SCC OnLine SC 147 has held that surrounding circumstances could be considered and that a liberal construction should be favoured, though the process of reasoning should not be involved or far-fetched. This Court in *Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prasad Chamaria*, 1961 SCC OnLine SC 147 had considered the general tenor and context of the document. Further, as noticed in *Lakshmirattan Cotton Mills Co. Ltd.* v. *Aluminium Corpn. of India Ltd.*, (1971) 1 SCC 67, the previous correspondence and the surrounding circumstances were also taken into consideration. In *Asset Reconstruction Co. (India) Ltd.* v. *Bishal Jaiswal*, (2021) 6 SCC 366, this Court held that a case-to-case examination will be made with regard to entries made in balance sheets to decide the question of acknowledgment. In *Dena Bank* v. *C. Shivakumar Reddy*, (2021) 10 SCC 330, this Court held that in relation to proceedings under the IBC, Section 18 of the Limitation Act cannot be construed with pedantic rigidity. **In *Vidyasagar Prasad* v. *UCO Bank*, (2025) 17 SCC 234, this Court affirmed the finding of NCLAT in that case wherein NCLAT had held that the company's balance sheet is prepared in the statutory format as per Schedule III of the Companies Act which did not provide for giving the specific name of every secured or unsecured creditor.**

42. Keeping all these principles in mind, if we examine the facts of the present case, it will be clear that the balance sheet of FY 2019-20, viewed in the background

of the other admitted documents, including the financial statements of the previous years, clearly constitutes a valid acknowledgment of a subsisting liability and indicated the existence of a jural relationship and an admission as to the existence of such relationship. We say so for the following reasons:

42.1. The general tenor and context of the balance sheet of FY 2019-20 considered in the background of surrounding circumstances arising from the balance sheets of FY 2015-16, 2016-17 and 2017-18 clearly points to the fact that the entry in the balance sheet of FY 2019-20 constitutes a valid acknowledgement and pertains to the same borrowing as was reflected in the balance sheet of FY 2015-16, 2016-17 and 2017-18.

42.2. Under the Indian Accounting Standards (Ind AS) 7, a cash flow statement is appended to the financial statement. The cash flow statement indicates that in FY 2018-19 there was proceeds from borrowings of Rs 72,30,902 and added to Rs 23,68,91,933, a figure of Rs 24,41,22,835 is arrived at.

42.3. More importantly, in the cash flow statement it was indicated that no part of cash flow proceeds was utilised in the repayment of existing borrowings under the financial activities since the amount under the head "cash flows from (used in) financial activities" is nil. This clearly indicates that the debt remained unpaid even in 2019-20."

[Emphasis supplied]

31) Applying the law to the present set of facts, the following scenario emerges. The Balance Sheet for the Financial Year 2015-16 ending 31.03.2016 clearly reflects long term borrowings to the tune of Rs.6,17,32,832/-. Further, it is shown

that long-term borrowings as on 31.03.2016 and borrowings from the bank are to the tune of Rs. 4,11,62,832/-.

32) We are satisfied that there is a clear acknowledgement of liability in terms of long-term borrowings in the balance sheets for the Financial Years 2015-16, 2016-17 and 2017-18. Respondent No. 1 does not dispute that what is on record is the correct Balance Sheet for the Financial Year 2016-17. Hence, the argument that Balance Sheet for the Financial Year 2016-17 was not placed before the Courts below, does not impress us. The Balance Sheets for the Financial Years 2015-16 and 2017-18 were admittedly on record.

33) The Notes relied upon also do not carry the case of the Respondent any further insofar as the acknowledgement of liability is concerned. In fact, there is a contradiction in the Notes. While Note 5 speaks of no default continuing or otherwise as on the date of Balance Sheet, Note 29 has a different story to tell, if the following para from the Note is perused: -

> "....Company's accounts were declared non performing assets (NPA) earlier on certain defaults in repayment of loans installments and interest dues thereon to the Bank. A Notice under Section 13(2) of the SARFAESI Act,2002 has been served by Bank on 03.04.2014 and date of declaration of NPA is 31.03.2014, the matter is sub judice before the Debts Recovery Tribunal (DRT)."

34) In view of the above, we are clearly of the opinion that Section 7 application was clearly within time. The NCLAT clearly erred in setting aside the order of the Adjudicating Authority. If the acknowledgements of the balance sheets of 2015-16 2016-17 and 2017-18 are taken, the Section 7 application filed on 26.10.2018 is clearly within time. The default admittedly occurred originally on 31.12.2013 and the account was declared NPA on 31.03.2014. The jural relationship subsisted when the balance sheets acknowledged the liability. The impugned judgment of the NCLAT is dated 25.02.2020. Much water has flown on the aspect of the entries in the balance sheets constituting valid acknowledgement of debt in law. Even on facts, we are

convinced that the NCLAT misread the balance sheets and the notes appended thereto.

35) In any event, by this judgment, we are only holding that the application is within time. As to whether as on the date of the application under Section 7, there was any default, is a matter which can be decided once the matter is remitted. Before the Adjudicating Authority, we find that only two contentions were raised viz., one with regard to the appellant-Company not being a financial creditor and the other as to whether the debt was time-barred. No argument was raised to the effect that assuming the debt to be within time, there was no default, as required under Section 7 of the IBC. However, since the same was canvassed before us, on the special facts of the case, we grant one opportunity to the respondent to place his case before the Adjudicating Authority on the aspect of default alone.

36) For the reasons stated above, the appeal is allowed and the impugned order passed by the NCLAT dated 25.02.2020 is set aside and we remit the matter to the Adjudicating Authority to consider the merits of the plea of the respondent on the aspect of occurrence of default under Section 7(5) of the IBC. We make it clear that all other aspects including the aspect of limitation in filing the Section 7 application stands concluded by the present judgment. In view of our holding on the aspect of valid acknowledgement in the balance sheets, we are not considering the aspect with regard to the OTS. No order as to costs.

.....J.
[**K. V. VISWANATHAN**]

.....J.
[**ARUN PALLI**]

New Delhi;
25th November, 2026