

MR. SANIL PRAKASH SAHU VS. KOTAK MAHINDRA BANK LIMITED & ANR.

Mr. Sanil Prakash Sahu,

Erstwhile Director of Gwalior Polypipes Limited,

E-238, 2nd Floor, Greater Kailash Part-1,

New Delhi – 110 048

...Appellant

Vs.

Kotak Mahindra Bank Limited,

27 BKC C-27,

G Block, Bandra Kurla Complex,

Bandra (East), Mumbai – 400 051

...Respondent No.1

Mr. Satyen Saraswat,

Interim Resolution Professional of

Gwalior Polypipes Limited,

B 2602, DB Woods,

Krishna Vatika Marg,

Goregaon (East), Mumbai – 400 063

...Respondent No.2

Case No: **Company Appeal (AT)(Insolvency) No. 1281 of 2023**

Date of judgement: 17.11.2023

Judges: **[Justice Ashok Bhushan] Chairperson, [Barun Mitra] Member (Technical)**

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Rajat Sinha and Mr. Sanjeev Choudhary, Advocates.

For Respondents: Mr. Amit Mahaliyan, Advocate for R-1.

Facts:

State Bank of India (SBI) had granted various financial assistance to Gwalior Polypipes Ltd (Corporate Debtor) from 1984, which was renewed/enhanced/reduced from time to time. SBI sanctioned reduced credit facilities of Rs.3.95 crores on 02.02.2002 to the Corporate Debtor. The Corporate Debtor executed an Agreement of Hypothecation of Goods and Assets in favour of SBI. The Corporate Debtor was declared NPA in 2001 for failing to pay interest due. SBI issued a Legal Notice on 18.08.2003 recalling the loan facility for non-payment of dues. SBI filed recovery application against the Corporate Debtor before Debt Recovery Tribunal (DRT) in 2004. Assignment Agreement executed between SBI and Kotak Mahindra Bank Ltd (KMBL, Respondent 1) on 16.01.2006. DRT passed order on 15.03.2007 directing Corporate Debtor to pay Rs.1.81 crore and issued Interim Recovery Certificate. KMBL issued Demand Notice under Section 13(2) of SARFAESI Act on 06.07.2007 to Corporate Debtor. Debt Recovery Appellate Tribunal (DRAT) dismissed Corporate Debtor's appeal against DRT order on 26.08.2009. KMBL took symbolic possession of mortgaged properties under Section 13(4) of SARFAESI Act on 29.11.2011. KMBL filed Section 7 application against Corporate Debtor on 11.10.2019.

Arguments:

Appellant:

Section 7 application filed in 2019 was beyond 3-year

limitation period under Section 18 of Limitation Act. Right to sue arose on 31.03.2004 when limitation expired regarding default on 31.03.2001. Adjudicating Authority incorrectly relied on balance sheet entries to extend limitation from 2001 to 2019. Auditor's report caveats disputing liability in balance sheets cannot be taken as unqualified acknowledgment of debt. Adjudicating Authority wrongly assumed OTS letter was dated 09.07.2018 while it was 09.07.2010. Reliance was misplaced.

Respondent 1:

SBI assigned debts and securities to KMBL. DRT substituted KMBL for SBI on 11.10.2006. DRT order based on Corporate Debtor's admission of liability of Rs.1.81 crore in 2004-05 balance sheet. Corporate Debtor acknowledged outstanding dues in audited balance sheets from 2005 to 2018. Fresh periods of limitation arose by each acknowledgment. Section 7 application in 2019 was within limitation. OTS letter of 2010 not pressed to claim extended limitation.

Court's Opinions:

Section 18 of Limitation Act provides for acknowledgment of debts in writing signed by debtor, giving creditor fresh limitation period. Balance sheets can be looked into to find acknowledgment under Section 18, but it depends on facts of each case as per Bishal judgement. Caveats/auditor's report qualifying balance sheet entries may indicate denial of liability. Bishal ratio requires examining if balance sheet entries are unequivocal or with caveats. Impugned order considered caveats in balance sheets while holding acknowledgments extended limitation. Bishal ratio not violated. Notes/caveats did not negate acknowledgment of liability. They only narrated litigation stages regarding unsecured loan. Acknowledgment of debt from SBI assigned to KMBL present in balance sheets. Uniworth and Abhiruchi judgments do not apply. Adjudicating Authority correctly held Section 7 application was not time barred due to continuous

acknowledgment in balance sheets. Limitation could not be extended based on OTS letter of 2010. But it showed acknowledgment of debt assigned from SBI to KMBL. Corporate Debtor's solvency per Vidarbha judgment did not ipso facto apply. Debt and default established, so no grounds to not admit Section 7 petition.

Sections:

Section 7 of Insolvency and Bankruptcy Code, 2016; Section 18 of Limitation Act, 1963; Section 13(2) and 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act)

Cases Referred:

Asset Reconstruction Company (India) Ltd v. Bishal Jaiswal (2021) 6 SCC 366 (Bishal); Vidarbha Industries Power Ltd v. Axis Bank (2022) 8 SCC 352 (Vidarbha); ARCIL v. Uniworth Textiles Ltd, CA (AT) (Ins.) 991 of 2020 (Uniworth) ; Abhiruchi Vision Pvt. Ltd. v. Jayaswal Neco Industries Ltd., CA (AT) (Ins.) No. 350 of 2023 (Abhiruchi); Jumbo Chemical & Allied Industries Pvt. Ltd. v. Arjun Industries Ltd, CA(AT) (Ins.) 948 of 2022; M. Suresh Kumar Reddy v. Canara Bank & Ors, Civil Appeal No. 7121 of 2022

Relevant Laws:

Insolvency and Bankruptcy Code, 2016; Limitation Act, 1963; Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002

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Court

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Full Text Of Judgement:

1. The present appeal filed under Section 61 of Insolvency and Bankruptcy Code, 2016 ("**IBC**" in short) by the Appellant arises out of the Order dated 01.09.2023 (hereinafter referred to as "**Impugned Order**") passed by the Adjudicating Authority (National Company Law

Tribunal, Indore Bench) in CP (IB) No.06/MP/2019. By the impugned order, the Adjudicating Authority has admitted the application under Section 7 of the IBC filed by Kotak Mahindra Bank Ltd-present Respondent No.1 and initiated Corporate Insolvency Resolution Process (“**CIRP**” in short) of the Corporate Debtor – M/s Gwalior Polypipes Ltd. Aggrieved by this impugned order, the present appeal has been filed by the erstwhile Director of the Corporate Debtor.

2. The factual matrix of the present matter is as outlined below:

- State Bank of India (“**SBI**” in short), the original lender granted various financial assistance to the Corporate Debtor from the year 1984, which came to be renewed/enhanced/reduced from time to time. SBI vide its Arrangement Letter sanctioned renewed/reduced credit facilities aggregating to Rs.3.95 crores on 02.02.2002.

- The Corporate Debtor executed an Agreement of Hypothecation of Goods and Assets in favour of the Financial Creditor.

- The Corporate Debtor was declared to be NPA in 2001 having failed to pay the interest due. SBI issued a Legal Notice on the Corporate Debtor on 18.08.2003 recalling the loan facility for non-payment of dues and in 2004 filed an application against the Corporate Debtor before DRT.

- Assignment Agreement came to be executed by and between SBI and Kotak Mahindra Bank Ltd. (“**KMBL**” in short), the Financial Creditor/Respondent No.1 on 16.01.2006.

- DRT passed an order dated 15.03.2007 inter-alia directing the Corporate Debtor to pay Rs.1.81 crore and issued Interim Recovery Certificate.

- KMBL issued a Demand Notice upon the Corporate Debtor under Section 13(2) of the SARFAESI Act on 06.07.2007.

- DRAT vide its judgment dated 26.08.2009 dismissed the Appeal

filed by the Corporate Debtor challenging the DRT order.

- KMBL took symbolic possession of the mortgaged properties under Section 13(4) of the SARFAESI Act on 29.11.2011. On the directions of the Hon'ble High Court of Madhya Pradesh dated 07.05.2012, the Corporate Debtor filed a Securitisation Application before the DRT

challenging the action taken by KMBL under the SARFAESI Act which is pending.

- KMBL filed a Section 7 application against the Corporate Debtor on 11.10.2019 which was admitted by the Adjudicating Authority on 01.09.2023. Assailing the impugned order, the Appellant has come up in appeal.

3. The Learned Counsel for the Appellant making his submissions admitted that SBI had advanced working capital loan to the Corporate Debtor, last renewed on 02.02.2002, for a total limit of Rs.3.95 crore. Having failed to pay the interest due, the Corporate Debtor was declared to be NPA in 2001 and SBI initiated DRT proceedings against the Corporate Debtor. Though SBI had assigned the debt in favour of KMBL on 16.01.2006 vide an Assignment Agreement, KMBL was not substituted in place of SBI in the DRT proceedings and none of the securities lying with SBI were ever transferred to KMBL. KMBL however filed a Section 7 application against the Corporate Debtor on 11.10.2019 though the right to sue arose on 31.03.2004 when the period of limitation expired qua the default which arose on 31.03.2001. Thus, the Section 7 application which was filed after 18 years in October 2019 was way beyond the prescribed limitation period of 3 years under Section 18 of the Limitation Act, 1963 and thus the petition stood barred by limitation.

4. It was also asserted that the Adjudicating Authority

incorrectly relied upon entries in the balance sheet of the Corporate Debtor to extend the limitation period from 2001 to 2019. The caveats which formed part of the balance sheets disputing the said liability have not been taken cognizance of by the Adjudicating Authority. Such caveats disputing a liability forming part of the balance sheet cannot be taken as an unqualified acknowledgment of debt. Moreover, the Adjudicating Authority has relied upon a One Time Settlement ('OTS' in short) letter to extend the limitation by wrongly assuming that the said OTS was dated 09.07.2018 while it was actually dated as 09.07.2010. Thus, reliance placed on this document was misplaced and incorrect.

5. Rebutting the submissions made by the Appellant, it was submitted by the Learned Counsel for Respondent No.1 that though the financial facility was extended by SBI originally, SBI had assigned the debts along with the underlying securities in favour of KMBL. Based upon the said assignment of debt, KMBL was substituted in place of SBI by the DRT which passed its orders on 11.10.2006 which was not challenged by the Corporate Debtor. The DRT in its order had issued interim recovery certificate which order was based on the admission of liability in the balance sheet in the books of accounts for the year 2004-05 wherein the Corporate Debtor had categorically admitted that an amount of Rs.1.81 crore was due and payable by them. It has been further contended that since 2005 onwards, the Corporate Debtor has been acknowledging the outstanding dues in their audited balance sheet without fail. Since the acknowledgment has been continuing, till 2018, the Section 7 application having been filed on 11.10.2019, the said application fell within the prescribed limitation period. As regards the OTS letter, it was admitted by the Respondent No. 1 that the same being dated 09.07.2010 and not 09.07.2018, and hence not pressed to claim extended limitation.

6. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.
7. The primary issue before us is whether the impugned order is erroneous since the claim on which Section 7 application was admitted had become barred by limitation since the default had arisen on 31.03.2001 and the three year limitation period had exhausted. It also needs to be examined whether the Adjudicating Authority erred in relying upon the balance sheets of the Corporate Debtor to grant extension of limitation without taking note of the caveats in the Auditor's Report which qualified the balance sheets thus putting to dispute the acknowledgement of debt.
8. It is the case of the Appellant that the Respondent No. 1 has brought forth a claim before the Adjudicating Authority which no longer survived for the limitation period of three years had already expired since the declaration of its account as a non-performing asset. It was pointed out that the date of default in Part IV of the Section 7 application is shown as 31.03.2001. The right to sue therefore came to an end on 31.03.2004 when the period of limitation expired qua the default which arose on 31.03.2001. It was also argued that Respondent No.1 while annexing the balance sheets with entries to support their claim of dues against the Corporate Debtor had deliberately suppressed the caveats which formed part of the balance sheets disputing the said liability. It has been vehemently contended that the Adjudicating Authority by relying upon the balance sheets of the Corporate Debtor as placed by the Respondent No. 1 committed an error in holding that there is a continuous acknowledgment of the outstanding dues by the Corporate Debtor.
9. It was pressed that at best the balance sheet up to FY 2005-06 can be treated as unequivocal acknowledgment of

debt since there was no caveat attached thereto. This would have at the utmost extended the limitation upto 2008. However, there is nothing on record in the balance sheets of the subsequent years which contained any unequivocal acknowledgment of debt which could have given rise to any fresh periods of limitation by each such acknowledgment and therefore the Adjudicating Authority committed error in rejecting the Section 7 application as barred by time.

10. In support of their contention, it was pointed out that the Hon'ble Supreme Court in the judgment of ***Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal (2021) 6 SCC 366*** ('***Bishal***' in short) has categorically held that entries made in the balance sheet would amount to acknowledgment only if it is an unequivocal and unconditional entry without any note/caveat attached thereto. It has been further submitted that in the judgment of this Tribunal in ***CA (AT) (Ins.) 991 of 2020*** in ***ARCIL v. Uniworth Textiles Ltd.*** ('***Uniworth***' in short) it has also been held that a caveat in the Director's Report disputing a liability forming part of the balance sheet cannot be taken as an unqualified acknowledgment of debt. Reference was also made to the judgment of this Tribunal in ***CA (AT) (Ins.) No. 350 of 2023*** in

Abhiruchi Vision Pvt. Ltd. v. Jayaswal Neco Industries Ltd. ('***Abhiruchi***' in short) where it has been held that the presence of a caveat corresponding to the entry of liability in the balance sheet of the Corporate Debtor does not amount to acknowledgment of debt. Stating that in the present case, the notes appended to the balance sheets reveals that there is a denial of the liability,

hence, the entries relied upon by the Respondent No. 1 to substantiate their claim cannot be relied upon for the purposes of extending limitation. The three years' period

after 31.03.2001 having long expired there is no justified cause of action to file a Section 7 Application in 2019.

11. The Learned Counsel for the Respondent No. 1 rebutting the averments made by the Appellant submitted that there is a continuous acknowledgment of the outstanding dues by the Corporate Debtor in its balance sheet from 2005 onwards till 2018 as has been correctly noted in paras 4.3 and 4.4 of the impugned order. These balance sheets of the Corporate Debtor contain clear acknowledgement of debt which was initially owed to SBI and later assigned to KMBL which acknowledgments continuously give rise to a fresh period of limitation by each acknowledgment. Since the acknowledgment of debt has been continuing, the Section 7 application having been filed on 11.10.2019, the said application fell within the prescribed limitation period.
12. The Learned Counsel for the Respondent No.1 has relied on the judgment of this Tribunal in the matter of ***Jumbo Chemical & Allied Industries Pvt. Ltd. v. Arjun Industries Ltd. in CA(AT) (Ins.) 948 of 2022*** and stated that in view of the continuous acknowledgment of the outstanding dues in the balance sheets of the Corporate Debtor from 2005 to 2018 there is an acknowledgment within the meaning of the Section 18 of the Limitation Act extending the period of limitation by fresh period of limitation by each acknowledgment and therefore the Adjudicating Authority committed no error in holding the Section 7 application to be within the limitation period. It was also added that the contention raised by the Appellant that the acknowledgments in the balance sheets were accompanied by a caveat does not carry substance since the contents of the caveat do not negate the fact that the Corporate Debtor had clearly acknowledged the outstanding dues.
13. Before we start answering as to whether limitation for filing Section 7 application had already come to an end

in the present facts of the case when Section 7 petition was filed by the Appellant on 11.10.2019, it may be constructive to have a glance at Section 18 of the Limitation Act which is as reproduced below:

“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 authorized 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.”

14. A plain reading of Section 18 of the Limitation Act, 1963 shows that it provides for the admission of debts owed by a debtor to its creditor if a written acknowledgement, duly signed by him or his authorized agent has been provided. Any such acknowledgement marks the commencement of a fresh period of limitation for the creditor for making an enforceable claim seeking repayment of the debts due from the debtor. Thus, the three-year period for recovering debts under Limitation Act can be extended if the debtor acknowledges the debt within that period. This brings us to the present question whether the balance sheet of a company can be looked upon as valid acknowledgement of debts for the purposes of Section 18 of the Limitation Act in the context of IBC.
15. The law is well settled that for finding out acknowledgement within the meaning of Section 18 of the Limitation Act, balance sheets can be looked into. Hon'ble Supreme Court in **Bishal** supra has extensively examined the question in reference to Section 18 of the Limitation Act and upheld the consideration of balance sheets as a valid acknowledgment of debts but also observed that it would depend on the facts of each case as to whether an entry made in a balance sheet qua, any particular creditor, is unequivocal or has been entered into with caveats. It spelt out in its judgement that the annexed notes and the auditors' reports, both of which are to be read with the balance sheets, can clearly state with reasons that a particular entry in the balance sheet does not constitute an acknowledgment of debt. Therefore, the status of balance sheets as valid acknowledgment of debts needs to be examined depending upon the facts of each case while considering the mention of such non-acknowledging statements in the annexed notes or the auditor's report.
16. In the **Bishal** judgment, the Hon'ble Supreme Court after

examining the issue of entry made in the balance sheet in the context of the Limitation Act held at paragraphs 14, 35 and 46 as follows:-

*“14. Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act. Thus, in **Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402**, this Court held:*

“12. The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to M/s Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt....”

35. A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in *Bengal Silk Mills [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115]*, that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an

acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.”

36. *It is, therefore, clear that the majority decision of the Full Bench in V. Padmakumar [V. Padmakumar v. Stressed Assets Stabilisation Fund, 2020 SCC OnLine NCLAT 417] is contrary to the aforesaid catena of judgments. The minority judgment of Justice (Retd.) A.I.S. Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We, therefore, set aside the majority judgment of the Full Bench of NCLAT dated 12-3-2020 [V. Padmakumar v. Stressed Assets Stabilisation Fund, 2020 SCC OnLine NCLAT 417].”*

17. The ratio that can be culled from the **Bishal** judgement is that the facts and circumstances of each case essentially determines whether an entry in a balance sheet related to a particular creditor is unequivocal or has been entered with caveats to extend the limitation. In the light of the said judgment of Hon'ble Supreme Court, we may now begin by examining whether the Adjudicating Authority while holding that entries in balance sheet, in the facts of the present case, had qualified as acknowledgement of debts enabling extension of limitation period, it also conducted due diligence in scrutinizing entries in balance sheets and the notes annexed thereto while passing the impugned order.

18. At this stage, it would be useful and relevant to reproduce the relevant excerpts from the impugned order which is as follows:

“4.2.....Now, we will examine the relevant entries made in the balance sheet.

4.3. We have perused these financial statements. The balance

sheet of the Corporate Debtor as on 31.03.2006 (for FY 2005-06) clearly reflects the secured loan from State Bank of India at Rs. 1,81,40,225/-. In the notes of accounts thereof (Note No. 5), it is mentioned that the State Bank of India at Gwalior with whom the company was enjoying as credit facilities for its working capital requirement have since cancelled the limit and recalled the facility for its working capital requirement on 18.08.2003; and that the bank has filed a suit for a recovery of the loan before the DRT Jabalpur and the proceedings are in progress before the DRT. The same balance sheet of FY 2005-06 also reflects the corresponding figures as on 31.03.2005 also. Though the balance sheet for FY 2004-05 has not been enclosed, it has been stated that the Hon'ble DRT had issued an interim recovery certificate dated 15.03.2007 on the basis of the balance sheet for FY 2004-05. Even otherwise it is also noted that the default date is stated to be since 31.03.2001. Following that, on 02.02.2002, the Financial Creditor had revised limits and reduced that to Rs. 3.5 crores only. On 05.02.2002, the Board of Directors of Corporate Debtors had also given its ascent. But then due to further default, the Financial Creditor had issued on 18.08.2003 the recall notice for the entire facility and thus the default date for balance amount (on reduced limit) can be taken as 18.08.2003 also. Thus on consideration of these facts, acknowledgement as per balance sheet as on 31.03.2006 extends the limitation till that day and as such there is no ambiguity.

Then the balance sheet as on 31.03.2007 (for FY 2006-07) reflects the secured loan at Rs. 1,81,40,225/- [the same amount] in the name of Kotak Mahindra Bank Limited. In the notes of financial statements (Note No.1), the facts of having taken the working capital facilities from State Bank of India is mentioned. Moreover, the facts that in August 2003 State Bank of India had cancelled the limits and recalled facility and filed a suit before DRT is also mentioned therein in the same notes. The fact of assignment of the loan

from State Bank of India to Kotak Mahindra Bank Limited is also mentioned. It also shows that the outstanding from bank and interest thereon had been provided on the basis of statement of account received from the State Bank of India which is under dispute and that interest of cash credit from bank has not been provided for the year as the Directors are of the view that the provisions made till the last year, as a matter of prudence, are more than sufficient to cover the interest till 31.03.2007.

4.4 We also noted that the same amount is reflected as a secured loan from Kotak Mahindra Bank Limited in the balance sheet as on 31.03.2008 (for FY 2007-08). Also in the notes on account the similar fact as mentioned in the balance sheet as on 31.03.2007 is given. But then the balance sheet as on 31.03.2009 (for FY 2008-09) reflects the same loan in the name of Kotak Mahindra Bank Limited as **unsecured** loan. In the notes on financial statements it is stated that following deed of assignment of the loan from State Bank of India to Kotak Mahindra Bank Limited, no documents were executed for transfer of charge and, therefore, in view of the received legal advice, the loan assigned to Kotak Mahindra Bank Limited has been reclassified as unsecured loan. Thereafter the balance sheet as on 31.03.2010, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.06.2016 shows the debt at the same amount of Rs. 1,81,40,225/- as short-term borrowing. It is noted that the Corporate Debtor had submitted a letter dated 09.07.2018 to Kotak Mahindra Bank Limited for settlement of its dues whereby it had proposed to enter into an OTS (One Time Settlement) by making a lump sum amount payment of Rs. 90 Lac. We also find that the said amount has also reflected in the balance sheet as on 31.03.2017 also and as per note No. 4.2 given in the disclosure of significant accounting policies, it has stated that the interest on unsecured loan payable to Kotak Mahindra Bank Limited has not been provided for the year as the liability amount and transfer of a security interest has been disputed. For a

ready reference the entire note at 4.2 (b) is reproduced here as under:

4.2 (b) (i) **Financial liabilities and borrowings:** – Working capital facilities were originally sanctioned by State Bank of India Gwalior. The said loan was secured by first on all assets of the company and a personal guarantee by Managing Director, a Promoter and two Former Directors of the Company. The said working capital facilities were further secured by mortgage of land, building and plant and machinery of the units of the company.

(ii) During August, 2003, State Bank of India had cancelled the limits and recalled the loans and filed a suit before the DRT Jabalpur for recovery of the amount due. Subsequently, State Bank of India had assigned the said loan to Kotak Mahindra Bank Limited (KMBL), pursuant to the execution of a deed of assignment on 16.01.2006. (iii) The loan payable to KMBL has been consistently considered as unsecured, as no charge on the assets has ever been created/registered in its favour. KMBL had issued a notice dated 06.07.2007 to the Company under Section 13 (2) of SARFAESI Act 2002, despite being an unsecured creditor against which the company filed writ petition before the Hon'ble High Court of Judicature Jabalpur Bench at Gwalior on the ground that it assignee assigning of the debt is not a secured creditors and hence cannot take action under SARFAESI Act 2002. During the pendency of the case but before final hearing, KMBL took an action on 28/29-11-2011 purportedly under Section 13 (4) of SARFAESI Act 2002 and took the symbolic possession of the assets of the Company. On being approached by the Company against the said action of KMBL, an order dated 07.12.2011 was passed by the Hon'ble High Court directing KMBL that no coercive action be taken against the Company. Later the Hon'ble High Court directed the Company to file appropriate application before the DRT against the action of KMBL taken under SARFAESI Act 2002. The company has filed the

application before the DRT, which is being heard.

(iv) Interest on unsecured loans payable to KMBL has not been provided for the year as the liability amount and transfer of security interest has been disputed. Further that Directors are of the view that existing provisions in the books made earlier as a matter of prudence are more than sufficient to cover the interest liability, if held otherwise, and the shortfall shall be dealt with on cash basis at the time of settlement.

4.5. From the perusal of the various notes as appended to the financial statements as well as keeping in view the OTS proposal whereby it has proposed to pay an amount of Rs. 90 Lacs as against the principal amount of Rs. 1,81,40,225/- reflects that it does acknowledge the liability through its various balance sheets year after year and the dispute if any could be as regards the quantum of interest and as to whether the debt would be considered as secured or unsecured. The notes/ caveats in the balance sheets cannot be read as a categorical denial of the liability in full. We are thus of the view that there is a debt above threshold limit, the payment of which is defaulted by the Corporate Debtor. The acknowledgment through balance sheet does extend the limitation period and as such we hold that the application is well within the extended limitation period and the same is maintainable. The application otherwise is complete and is in order."

19. The Adjudicating Authority has concluded after scrutinizing the balance sheet and the caveats/notice attached thereto that acknowledgments contained in the balance sheet extends the limitation period and hence the Section 7 application is well within the extended limitation period and thus maintainable. We now proceed to examine whether this finding of the Adjudicating Authority is sustainable.

20. We notice that until 31.03.2007 the outstanding amount of Rs.1.81 crore was figuring in the balance sheet of the Corporate Debtor as 'Secured Loans' as at page 785 of Appeal Paper book ('APB' in short). In the balance sheet as on 31.03.2009, the same amount continues to be shown as part of Loan Fund but as 'Unsecured Loan' as at page 793 of APB. We also find that the reason for reclassifying the loan as unsecured loan has also been appended at the notes to Financial Statement at page 794 of APB. In the balance sheets of the Corporate Debtor for FY 2013-14, 2014-15, 2015-16 and 2016-17, the amount of Rs. 1.81 crore continues to be shown under the sub-heading of 'Short Term Borrowings' under the head of 'Current Liabilities'.
21. This brings us to the question whether the Adjudicating Authority took the precaution of also going through the other reports annexed to the balance sheets to find out if there were any caveats which negated the acknowledgement of debt. We notice that the impugned order at para 4.4, as extracted above, has clearly taken notice of the caveats attached to the balance sheets and duly considered its implications and thus the **Bishal** ratio cannot be said to have been flouted.
22. The copy of the balance sheet for the FY 2007-08 of the Corporate Debtor alongwith the other reports have been placed at pages 814-844 of the APB. The relevant portion of the balance sheet wherein a caveat has been attached at page 839 of APB is as reproduced below: –
"The secured loan from the State Bank of India and the interest thereon had been provided on the basis of statement of account received from the bank and as per the accounting policies, being disputed, not admitted as a liability by the management." The copy of the balance sheets of the FY 2016-17 to FY 2018-19 is placed at page 845-946 of the APB. It is noticed that the caveat contained in the Auditor's Report for 2016-17 as at page 859 of the APB against the entry of liability

qua the Respondent No.1 is continued in the subsequent balance sheets which reads as follows: – *“Interest on unsecured loans payable to KMBL has not been payable for the year as the liability amount and transfer of security interest with KMBL has been disputed. Further, the directors are of the view that the existing provision in the books made earlier as a matter of prudence, is considered sufficient to cover the interest liability, if held otherwise and the shortfall, if any, shall be dealt with on cash basis at the time of settlement.”* In the light of these entries in the balance sheets, the Adjudicating Authority has held that there has been an acknowledgement of debt.

23. After glancing through the above balance sheets and related reports thereto, we are satisfied that balance sheets contain an acknowledgement of debt from SBI, the original lender and assignment of the said debt to KMBL. To our mind, merely because the notes to the account and the director’s report narrate the different stages of subsequent litigation with respect to the said unsecured loan, it cannot be said that these notes in any manner diminish the relevance and import of the debt which finds mention in the balance sheets for the purposes of Section 18 of the Limitation Act. Such caveat/information, read together with the balance-sheet do not negate the acknowledgment of that liability. Hence, in view of the facts of this case we are of the considered opinion that the judgements of this Tribunal in *Uniworth* supra and *Abhiruchi* supra do not come to the aid of the Appellant.
24. The Adjudicating Authority therefore committed no error in holding that the Section 7 application filed by the Respondent No. 1 was not barred by time there being continuous acknowledgment in their respective balance sheets of the Corporate Debtor which acknowledgment was

within the meaning of Section 18 of the Limitation Act extending the period of limitation by fresh period of limitation by each acknowledgment.

25. We would however like to add that the Adjudicating Authority committed a mistake in inter alia predicating the extension of limitation period also on the basis of an OTS proposal from the Corporate Debtor to KMBL dated 09.07.2010 by wrongly holding it to be dated 09.07.2018. Since it is of 2010 vintage, it cannot be relied upon for extension of limitation until 2019. Be that as it may, it is clear that insofar as acknowledgement of debt is concerned it has been conceded in the OTS that the working capital facilities had been taken from SBI which subsequently had been assigned to KMBL and that for settlement of its dues it had proposed to enter into the OTS by making a lump sum amount payment of Rs. 90 lakhs.
26. This brings us to the issue raised by the Learned Counsel for the Appellant that the Corporate Debtor being a solvent company in good financial health, the Adjudicating Authority should have exercised discretion in not admitting the Section 7 application in terms of the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Ltd. v. Axis Bank (2022) 8 SCC 352*** ('***Vidarbha***' in short). We notice that the Adjudicating Authority has duly considered this contention and relying on the judgement dated 11.05.2023 of the Hon'ble Supreme Court in ***M. Suresh Kumar Reddy v. Canara Bank & Ors in Civil Appeal No. 7121 of 2022*** held that the Vidarbha judgement was passed in the context of a certain set of facts. We are inclined to agree with the Adjudicating Authority that the Vidarbha judgement was given under very specific set of facts where the realizable dues of the Corporate Debtor were more than the payable dues. The facts in the present case being clearly distinguishable, the Vidarbha judgement cannot be said to apply ipso facto as claimed by the

Appellant. Section 7 of the IBC allows a financial creditor to initiate an insolvency resolution process against the corporate debtor upon showing a default in debt owed by the corporate debtor. The trigger under Section 7 of IBC is non-payment of dues owed to creditors. In the given facts of the case, where debt and default on the part of the Corporate Debtor qua KMBL stands established, there were no cogent grounds for not admitting the Section 7 petition.

27. In fine, we do not find any error in the impugned order passed by the Adjudicating Authority admitting the Section 7 application. There is no merit in the Appeal. The Appeal is dismissed. No costs.