

Balance 12/31/17	
Happiness	Trunkles
	367.20
	Defects
	27.00
	Downfalls
	27.00
	Mistakes
	176.11
	616.40
X Stress @ 17.8%	109.71

Balance 12/1/17	
Happiness	Trunkles
	367.20
	Defects
	27.00
	Downfalls
	27.00
	Mistakes
	176.11
	616.40
X Stress @ 17.8%	109.71

Balance 12/1/17	
Happiness	Trunkles
	367.20
	Defects
	27.00
	Downfalls
	27.00
	Mistakes
	176.11
	616.40
X Stress @ 17.8%	109.71

The charter of the Insolvency and Bankruptcy Code, 2016 (“the Code”) did not contain an explicit provision on the application of the Limitation Act, 1963. It is only in the case of Innoventive Industries Ltd. Vs ICICI Bank Limited[1], the Apex Court ruled out that “a debt may not be due if it is not payable in law or in fact” and after that Section 238A was introduced in the Code which reads as follows:

"The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or Appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Appellate Tribunal, as the case may be."

After the introduction of Section 278A in the Code, the conundrum on acknowledgement of debt under ibc started and in the case of *Syndicate Bank v. Bothra Metals and Alloys Limited*^[2], the National Company Law Tribunal (NCLT) held that “an acknowledgement in the Balance Sheet of the company satisfies the requirements of Section 18 of the Limitation Act, 1963, leading to a fresh period of limitation commencing from each such acknowledgement.” A contrasting view was taken in various other judgements of NCLAT. In *Gautam Sinha vs. UV Asset Reconstruction Company Limited*^[3], the Tribunal ruled that though a default in the form of NPA is reflected in the Balance Sheet, it was not an acknowledgement of the debt under ibc by the Corporate Debtor and the default was time-barred for filing of an application under Section 7 of the IBC.

Different views were taken by various NCLT creating a lot of confusion pertaining to the acknowledgement of debt in the Balance sheet, and finally in the landmark judgement of Asset Reconstruction Company (India) Limited vs Bishal Jaiswal[4] (“Case”), a 3 member bench of Hon’ble Supreme Court comprising Justice Nariman, Justice BR Gavai and Justice Hrishkesh Roy delivered a judgement against an order of 5 member bench of NCLAT in V Padmakumar vs. Stressed Assests Stablisation Fund[5] and it was held “Entries in the Balance Sheet will amount to Acknowledgement of Debt”.

The Chronology so far - Debt Under IBC

In the case of *Mahabir Cold Storage vs Commissioner of Income Tax, Patna*, the Supreme Court held that if the amount borrowed by the respondent is shown in the Balance Sheet, it may amount to acknowledgement and the creditor will have a fresh period of limitation from such date of acknowledgement. In another case of *Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Private Limited & Anr* [6] the court held that if the acknowledgement of debt under IBC is within the limitation period, then such acknowledgement extends or enlarges the limitation period under Section 18 for filing of an application.

Another view was taken by the Kerala High Court in the case of *P. Sreedevi*

v. P Appu[7], where the court held that acknowledgement of debt through Balance Sheet would not create a new right of action but would merely extend the period of limitation. Therefore, it can be concluded that filing of annual returns by the company would not amount to arising of a fresh cause of action every year.

Furthermore, in the case of *Dainik Finance and Chit Fund Co. P. Ltd. v. Agricultural Industries*[8] it was held by Punjab and Haryana High Court that if the statement of the Balance Sheet is fairly clear in subsisting liability, then it can be implied that there exists a jural relation between the creditor and debtor. Moreover, the liabilities mentioned in the statement of the Balance Sheet will amount to a valid acknowledgement of debt under ibc for the purposes of Section 18 of the Limitation Act, 1963.

After a careful perusal of the aforementioned case laws, Companies Act, 2013 mandates filing of Annual Returns in terms of Section 92, also, Balance Sheet holds high evidentiary value and is considered to put forth the true and fair financial statement of the company. Not taking into consideration the Balance sheet will affect the jural relation between the creditor and the debtor.

The End of Saga - Debt under ibc 2016

Despite all the judgements rendered by various Courts, the issue of acknowledgement of debt under ibc again came up before NCLAT in *V. Padmakumar vs Stressed Assets Stabilisation Fund (SASF) & Anr*[9]. In this case the question that came up for consideration was whether an application filed under Section 7 of the IBC would be barred by limitation even if the claim has been acknowledged by the debtor subsequently in its Balance sheets.

The NCLAT observed that accepting an argument in favour of acknowledgement of debt in the Balance sheet/annual return of the corporate debtor would be erroneous as in such a case, there would be no limitation which would be applicable as the Balance sheet/annual returns have to be filed by the corporate debtor every year to comply with the provisions of Companies Act, 2013. Accordingly, the limitation cannot be extended for each subsequent year.

Dissenting view was given by Justice AIS Cheema he said that "it is settled law that Balance sheets and books of accounts can be looked into to see if there is acknowledgement of debt under IBC."

Accordingly, it can be observed that the majority view was taken in V Padmakumar's case contrary to the settled law. The matter came up for reconsideration before the bench of members of the NCLAT on 22nd December 2020 and the NCLAT opined that for computing the limitation period under Section 7 of the Code, the date of default would be the date on which the debtor has been classified as a non performing asset.

The judgment passed by the NCLAT was challenged before the Supreme Court on 10th February 2021 and the Supreme Court placed reliance on various precedents of NCLT, NCLAT, High Courts and Supreme Court while deciding on the issue of whether Section 18 of the Limitation Act, which extends the period of limitation depending upon an acknowledgement of debt made in writing and signed by the Corporate Debtor, is also applicable under Section 238A, given the expression "as far as may be" governing the applicability of the Limitation Act to the IBC.

In *S. Natarajan vs. Sama Dharman*, [10] under Section 138 of NI Act, it was held that: "Referring to the facts before it, this Court observed that the complainant therein had submitted his Balance sheet, prepared for every year

subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends.

This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. ...”

In South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana, [11] the Delhi High Court held that; “So, the fact that the writing is contained in a balance-sheet is immaterial. In the second place, it is true that section 131 of the Companies Act, 1913 (section 210 of the Companies Act, 1956) makes it compulsory that an annual balance sheet should be prepared and placed before the Company by the Directors, and section 132 (section 211 of the Companies Act, 1956) requires that the balance-sheet should contain a summary, inter alia, of the current liabilities of the company”.

But, as pointed out in Bachawat J. in Bengal Silk Mills v. Ismail Golam Hossain Ariff, [12] “although there was statutory compulsion to prepare the annual balance-sheet, there was no compulsion to make any particular admission, and a document is not taken out of the purview of section 18 of the Indian Limitation Act, 1963 (section 19 of the Indian Limitation Act, 1908) merely on the ground that it is prepared under compulsion of law or in discharge of statutory duty.”

Reference may also be made to the decisions in Raja of Vizianagram v. Vizianagram Mining Co. Ltd., [13] , Jones v. Bellgrove Properties Ltd., [14]; and Lahore Enamelling and Stamping Co. v. A.K. Bhalla, [15] , in which statements in balance sheets of companies were held to amount to acknowledgements of liability of the companies.

In Agni Aviation Consultants v. State of Telangana, [16] , the High Court of Telangana held:

“In several cases, various High Courts have held that an acknowledgement of liability in the balance sheet by a Company registered under the Companies Act, 1956 extends the period of limitation though it is not addressed to the creditor specifically.

(Zest Systems Pvt. Ltd. v. Center for Vocational and Entrepreneurship Studies, 2018 SCC OnLine Del 12116, Bhajan Singh Samra v. Wimpy International Ltd., 2012 SCC OnLine Del 2939, Vijay Kumar Machinery and Electrical Stores v. Alaparthi Lakshmi Kanthamma, (1969) 74 ITR 224 (AP), and Bengal Silk Mills Company, Raja of Vizianagram v. Official Liquidator, Vizianagram Mining Company Limited, AIR 1952 Mad 1361). 108. Therefore it is not necessary that the acknowledgement of liability must be contained in a document addressed to the creditor i.e. the petitioners in the instant case.”

Various other views were analysed by the Supreme Court and eventually it held that the present case is inspired from earlier precedents of Indian Courts all concluding on the same lines and held that acknowledgement of debt under ibc in the balance sheet will extent the period of limitation. Thus, for the purpose of Section 18 of the Limitation Act, the balance sheet can be considered to be a valid acknowledgement of the debt by the Corporate Debtor.

Conclusion

After the careful perusal of various orders, judgements, it is apt to say that a balance sheet is a financial statement that records and reports inter-

alia company's assets, liabilities and shareholders equity for a specific period of time. It also provides a basic calculation of the rates and return and helps in evaluating the capital structure. A financial statement provides a picture of what a company owns and owes in the form of debtors and creditors.

Ultimately, the Supreme Court came up with a judgement that ended the confusion and gave an answer to the moot question and held that "entries in the balance sheet of a corporate debtor will amount to acknowledgement of debt under ibc". This judgement of the Supreme Court will open a Pandora of fresh litigations and also the period from March 15th March 2020 to 14th March 2021 will be excluded from the period of limitation.

The Supreme Court set aside the majority judgement of NCLAT and concluded with the minority judgement given by Justice (Retd.) A.K. Cheema will bring relief to many Operational Creditors. Furthermore, the balance sheet should fulfil certain criteria like the balance sheet must be duly approved by the shareholders of the corporate debtor at an appropriate meeting since the balance sheet not confirmed or passed by the shareholders cannot be accepted as correct.

The second criterion is that the directors' report in the balance sheet must also acknowledge the debt under ibc. The balance sheet along with the directors' report must be taken together to find out the true meaning and purpose of the statements to acknowledge the debt. Nevertheless, when there is a *bona fide dispute* by a debtor regarding the entries in its account books such an acknowledgement may not be of much assistance.

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- [1] Civil Appeal no. 8337-8338 of 2017
 - [2] CP (IB) No.2579/MB.IV/2019
 - [3] *Company Appeal (AT) (Ins) No.1382 of 2019*
 - [4] *Civil Appeal no. 323 of 2021*
 - [5] *Company Appeal (AT) (Insolvency) No. 57 of 2020*
 - [6] *CIVIL APPEAL NO. 6347 of 2019*
 - [7] AIR 1991 Ker 76
 - [8] 1986 60 CompCas 180 P H
 - [9] *MANU/NL/0192/2020*
 - [10] *Crl. A. No. 1524 of 2014 (decided on 15.07.2014),*
 - [11] *1972 SCC OnLine Del 185 ; ILR (1972) 2 Del 712*
 - [12] *A.I.R. 1962 Calcutta 115*
 - [13] *A.I.R. 1952 Madras 136*
 - [14] *(1949) 1 All E.R. 498*
 - [15] *A.I.R. 1958 Punjab 341*
 - [16] *2020 SCC OnLine TS 1462 : (2020) 5 ALD 561*
 - [17] debt under ibc

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