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Amit Meharia

Managing Partner, MCO Legals

LLB (Hons) King's
College London

Solicitor (Supreme Court of
England & Wales)

Expertise:

Corporate Due Diligence &
Corporate/Commercial Arbitration

✉ amit.m@mcolegals.co.in



Rupali Bansal

Associate, MCO Legals

B.A., LLB (Hons.), LLM

Vivekananda Institute of
Professional Studies

GGSIU

Expertise:

Corporate Due Diligence and
Corporate/Commercial Arbitration

✉ rupali.b@mcolegals.co.in

RE-STARTING LIMITATION WITH BALANCE SHEET :: A PERSPECTIVE

1 Introduction

1.1 The law of limitation revolves around the basic concept of fixing or prescribing the time period for institution of legal actions and the same is enriched in the Limitation Act, 1963 (for short “**the said Act**”).

1.2 The legal action being within the Limitation period or not, has been a regular point of determination by the Courts, with parties contenting as to what actions may or may set the limitation period in motion. One such dispute has been the Acknowledgment of debts in the Balance Sheet of the parties.

1.3 In layman language, Acknowledgement of Debt in Balance Sheet generally means the acceptance or admission of the debt/liability.

1.4 For an acknowledgement to be valid it is essential that it must be in writing, signed, unqualified, unambiguous, in clear terms and must be made before expiry of limitation period for filing the suit.

2 Effect of Acknowledgement of Debt in Balance Sheet:

2.1 Section 18 of the said Act provides for the effect of acknowledgement in writing and it uses the term “acknowledgement” to mean an admission of an existing liability/debt and the same shall constitute a fresh starting point for calculation of Limitation period.

2.2 Section 18 (1) of the said Act states that:

“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.**”

2.3 The question that now arises is whether Acknowledgement of Debt in Balance Sheet shall be constituted as acknowledgment under Section 18 of the said Act?

2.4 The Hon’ble Calcutta High Court in Bengal Silk Mills Co. vs. Ismail Golam Hossain Arif, AIR 1962 Cal 115 held that Balance sheets are deemed to be the most substantive admission of indebtedness and sufficient acknowledgment under the said Act.

2.5 However, it is essential that such balance sheet must be a duly signed one, failing which it shall not be considered as an authenticated document, and as such shall not stand as a valid acknowledgment under section 18 of the said Act. (Babulal Rukmanand vs. Official Liquidator, Bharatpur Oil Mills Pvt. Ltd., AIR 1968 Raj 214).

2.6 Below Judicial precedents establishes that the entry made in the company’s balance sheet amounts to an acknowledgment of the debt and has the effect of extending the period of limitation under Section 18 of the said Act:

- Mahabir Cold Storage vs. C.I.T. Patna, 1991 Supp (1) SCC 402
- Shahi Exports (P) Ltd. vs. CMD Buildtech (P) Ltd., 2013 SCC OnLine Del 3739
- The Commissioner of Income Tax-III vs. Shri Vardhman Overseas Ltd., 2011 SCC OnLine DEL 5599
- Zest Systems (P) Ltd. vs. Centre for Vocational Entrepreneurship Studies, 2018 SCC OnLine Del 12116

2.7 The Hon’ble Supreme Court further observed that acknowledgment, if any, must be done prior to the expiration of the prescribed period for filing the suit (as mentioned in the said Act), failing which it shall not lead to a fresh trigger of limitation period (Sampuran Singh and Ors. v. Niranjana Kaur and Ors., (1999) 2 SCC 679).

2.8 Therefore, a fresh acknowledgement shall imply a fresh start of limitation period, wherein as per section 12 (1) of the said Act, the date on which the acknowledgment is made shall not be included in computing the period of limitation.

2.9 When an acknowledgement is made in favour of a minor, then the fresh period of limitation is to be computed from the date when the minor attains the majority.

3 Conflict in the settled legal principle by the Hon'ble NCLAT

3.1 However, recently, the 5 Judges Bench of the Hon'ble National Company Law Appellate Tribunal (in short "NCLAT") in the matter of V Padmakumar vs. Stressed Assets Stabilisation Fund (SASF) & Anr., [- Company Appeal (AT) (Insolvency) No. 57 of 2020; Judgment dated 12.03.2020] held with a majority decision of 4:1 that the Filing of Balance Sheet is mandatory under Section 92 (4) of the Companies Act. Therefore, the same cannot be treated to be an acknowledgement under Section 18 of the said Act and as such, no fresh Limitation period shall start.

3.2 The majority decision of the Hon'ble NCLAT while ignoring the numerous judicial precedents as enlisted above, has based its reasoning mainly on the following :

- Date of default to be taken from the date when the Recovery Certificate issued under SARFESI, since the legal right accrued to it from that date itself. [Vashdeo R. Bhojwani vs. Abhyudaya Co-operative Bank Limited and another; (2019) 9 SCC 158]
- Based on the finding that the date of declaration of Non-Performing Assets is the crucial date for start of Limitation.
- Under Article 137 of the said Act, the same is three years for application under Section 7, 9 and 10 of IBC from the date when the right to recover debt first arose, i.e., date of recovery notice. [B.K. Educational Services Private Limited vs. Parag Gupta and Associates (2019) 11 SCC 633].
- Acknowledgment and filing of Balance Sheet only mandatory compliance as per provisions of Companies Act, 2013. [Section 94 (4); 92 (6) of the Companies Act, 2013]
- If Acknowledgment of Debt in Balance Sheet is deemed to start fresh limitation then the same shall mean to restart limitation each year when Balance Sheet filed.
- Minority Member in his disagreement with the majority placed reliance upon the law laid down by the Hon'ble Supreme Court in Mahabir Cold Storage vs. C.I.T. Patna [1991 Supp (1) SCC 402] and held that Acknowledgment of Debt in Balance Sheet is itself admission of Debt and as such a fresh right accrues each time an admission is made in Balance Sheet.

The Hon'ble NCLAT as well as all Hon'ble NCLT shall be bound by the said decision. However, some points to be considered are :-

- NCLAT discussed only SAFAESI Act, 2002 while the Hon'ble Supreme Court decided on the basis of the admission of Debt made by one party by one party in its Balance Sheet.
- Only reliance by the Hon'ble NCLAT that filing of balance sheet is mandatory for each year and no limitation can start each year while ignoring the fact that filing is compulsory but the admission of Debt is not.
- Complete disregard to the previous judicial precedents of the Hon'ble Supreme Court with no discussion of the same.

It shall be worthwhile to wait and watch as to what new developments of law shall be laid in the event an Appeal is preferred before the Hon'ble Supreme Court.

4 Conclusion:

- 4.1 The law pertaining to the acknowledgement of debt in the balance sheet is correctly reflected in the judgments passed by the Hon'ble Supreme Court of India and various other High Courts as discussed above.
- 4.2 Moreover, the Hon'ble Supreme Court in "AV Murthy vs. BS Nagabasavanna", (2002) 2 SCC 642 held that the amount borrowed and shown in the balance sheet, may amount to acknowledgement. On the same line the Hon'ble Bombay High Court in Deccan Chronicle Holdings Ltd v. Tata Capital Financial Services Ltd [2016 SCC Online Bom 5319] held that an admission in the balance sheet of a company would operate as an estoppel against disputing the debt and would be the decisive factor for passing a decree for admission.
- 4.3 The Acknowledgment of debt in the Balance Sheet, when substantiated with other records and documents, comes under the category of continuous cause of action and will give rise to the fresh start of the limitation period if done within the prescribed period from the last acknowledgement of the debt/liability.
- 4.4 Thus, it is safe to say that the acknowledgment of debt in the Balance Sheet constitute a fresh cause of action and a legal remedy under the prescribed period which is 3 years for money recovery shall start afresh on the Acknowledgment of Debt in the Balance Sheet.
- 4.5 It can be said that the period of limitation only bars the remedy but it does not extinguish the right. Therefore, provisions under Section 18 of the said Act aid in restoring such rights.