



# ILS BRIEFS

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## **SUPREME COURT RULES STATEMENT MADE UNDER AUDITOR'S REPORT AMOUNTS TO AN ACKNOWLEDGMENT OF DEBT UNDER IBC**

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Aforesaid proposition was first considered and negated by NCLAT in the case of *Gautam Sinha Vs UV Asset Reconstruction Company Limited Company Appeal (AT) (Ins) No. 1382 of 2019* dated 25.02.2020. In this case, the petition of the Financial Creditor presented to the Adjudicating Authority in October 3018, was contended to have stood time barred at the time of presentation, as the claim had accrued to the Financial Creditor against the Corporate Debtor as early as in March 2014 itself. In response, the statement made under Auditor's report for the FY 2015- 16 was produced before the NCLAT, wherein the auditor on the basis of information received from the Corporate Debtor, had crystalized the list of debts availed by the said Corporate Debtor along with the information that in which all of these debts, the company had defaulted. The auditor's statement had specifically figured out the default, further resulting in declaration of the account as NPA by the Union Bank, a Financial Creditor of the Corporate Debtor.

The statement of auditor was used as a shield to seek extension of limitation, under Section 18 of the Limitation Act, claiming the statement to be an acknowledgment of the debt. The contention was defended on the ground that the report constituted a third-party opinion and therefore cannot be termed as acknowledgment on part of the Corporate Debtor. NCLAT held that auditor's statement does not amount to acknowledgment and therefore application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) is time barred.

Said ruling was directly not in consonance with settled proposition and various precedents for instance dictum passed in "*Sheetal Fabrics versus Coir Cushions Ltd.*" 2005 SCC OnLine DEL 247; "*The Commissioner of Income Tax-III v. Shri Vardhman Overseas Ltd.*" 2011 SCC OnLine DEL 5599 and "*M/s Mahabir Cold Storage Versus C.I.T., Patna*" 1991 Supp (1) Supreme Court Cases 402.



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A careful perusal of these precedents would yield that Section 18 of Limitation Act is required to be liberally and widely interpreted and it's a trite law that there is no particular standard, format or manner prescribed for a particular content to successfully qualify as an "acknowledgment" within the meaning of Section 18 of Limitation Act. Rather what essentially has to exist is an acceptance, whether made casually or in a formal language, of a jural relationship between the maker of the statement and his creditor, clearly reflecting the existence of liability in favour of the creditor. Furthermore, the relevant portion of the Auditor's Report is a statement made solely on basis on information provided by none other than the Corporate Debtor itself and therefore such statement is reflective of an acknowledgement by the Corporate Debtor as to its liability towards the Financial Creditor.

Said conundrum was soon made to rest by Supreme Court, in the case of *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Another*, Civil Appeal No.323 of 2021 *vide judgement dated 15.04.2021*, wherein it is held that the entries of balance sheet may amount to an acknowledgment for the purpose of Section 18 of the Limitation Act, depending upon the facts, as to whether the entries are unconditional statements. Not only this but the appellant was also permitted to amend the pleadings so to incorporate the contentions as to the acknowledgment on account of a statement under Auditor's Report, which impliedly mean that auditor's statement if its unconditionally indicative a jural relationship between the debtor and the creditor, may amount to an acknowledgment for the purpose of Section 18 of the Limitation Act.

