

## Acknowledgement of debt in the balance sheet triggers a fresh period of limitation on each acknowledgement: NCLAT

### FACT OF THE CASE

1. In the instant case, the Appellant entered into a Letter of Intent (LoI) for disbursing advance for marketing/financial requirements of a development project to be undertaken by the respondent corporate debtor.
2. In pursuance of the agreement, the appellant had advanced different amounts to the corporate debtor. The balance sheet of the corporate debtor had acknowledged the receipt of financial assistance of Rs. 40.75 crores, which was duly reflected in the balance sheet. Later, the appellant addressed a letter to the corporate debtor stating that sum of Rs. 41.75 crores had been paid under the Memorandum of Understanding (MoU).
3. The corporate debtor sent a letter denying signing and executing MoU. It was also alleged that the appellant had failed to raise the required funds as promised. The appellant filed a Commercial Suit for recovery wherein an interim injunction order was issued expressing the opinion that there was a clear admission of liability. Thereafter, an application was filed under section 7 by the appellant claiming as a financial creditor for recovery of the amount of Rs. 41.75 crores together with interest accrued thereon at the rate of 18 per cent.
4. The Adjudicating Authority rejected an application filed under section 7, holding that arrangement between parties was in nature of business sharing and there was no 'financial debt'.
5. The Adjudicating Authority in its judgment observed that in continuation of the Letter of Intent, no MoU was formally executed between the parties. It was held that the arrangement between the parties was in the nature of business sharing and there was no 'financial debt'. The Adjudicating Authority further held that the claim of the appellant was barred by limitation.

### DECISION OF THE CASE

1. The NCLAT observed that on consideration of documents and correspondences, including balance sheets, it was evident that the amount paid to the corporate debtor as advance for marketing/financial requirements of the development project undertaken by the corporate debtor was nothing but a financial debt within the meaning of IBC. Therefore, the Adjudicating Authority committed an error in holding that appellant was not a financial creditor and rejecting the application filed by the appellant under section 7.
2. The NCLAT further held that where there was an acknowledgement of debt in the balance sheet, there shall be a fresh period of limitation on each acknowledgement, thereby, attracting provisions of section 18 of the Limitation Act, 1963. However, the balance sheet would have to be examined on a case-to-case basis to establish whether acknowledgement of liability in fact had been made.
3. The NCLAT further stated that where there was an acknowledgement of debt in the balance sheet, there shall be a fresh period of limitation on each acknowledgement, thereby, attracting provisions of section 18 of Limitation Act, 1963 however, balance sheet would have to be examined on a case-to-case basis to establish whether acknowledgement of liability, in fact, had been made.