

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.276 of 2021

IN THE MATTER OF:

**Mr.CH Ravindra Babu
Promoter Director and Shareholder of
Chadalavada Infratech Limited
8-3-988/19, SBH Colony, Near
Satyasai Nigamagamam Srinagar Colony,
Khairatabad, Hyderabad
Telengana – 560 073**

...Appellant

Vs.

**1. State Bank of India
(Financial Creditor)
Stressed Assets Management Branch
Secunderabad Branch, 5th Floor,
Rear Block of HMWSSB Compound
Hyderabad – 500 004**

...Respondent No.1

**2. Chadalavada Infratech Limited (Corporate Debtor)
Represented by Shri G.Madhusudhan Rao
8-3-988, SBH Colony,
Sri Nagar Colony (Post)
Hyderabad – 560 073**

...Respondent No.2

Present:

For Appellant : Mr.P.H.Arvinth Pandian, Sr. Advocate

**For Respondents : Ms. Vidyalakshmi Vipin, Advocate for R1
Ms. Mummaneni Vazra Laxmi, Advocate for R2**

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The Appeal has been filed by the Appellant under Section 61 R/w Section 7 of the 'Insolvency and Bankruptcy Code 2016' (the Code) against the impugned order dated 23.09.2021 passed by the 'National Company Law Tribunal, Hyderabad Bench' (the Adjudicating Authority) in CP No. 1/7/HDB/2020.
2. The impugned order was passed on 23.09.2021 by the Adjudicating Authority and certified copy was received by the Appellant on 30.09.2021 and the Appeal has been filed before this Tribunal on 26.10.2021.
3. The Appellant is the Promoter, & Director of the Corporate Debtor(CD) – M/s Chadalavada Infractech Limited. The 1st Respondent - Financial Creditor is a State bank of India and the 2nd Respondent is a Resolution Professional (RP) representing the CD which has been admitted into CIRP vide the above stated order.
4. The Appellant has sought the following reliefs:
 - a. To allow the Appeal and set aside the impugned order dated 23.09.2021 passed by the National Company Law Tribunal, Hyderabad Bench in CP(IB) No. 1/7/HDB/2020.

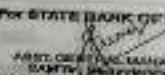
- b. To set aside the commencement of Corporate Insolvency Resolution Process initiated against the Corporate Debtor and appointment of the Interim Resolution Professional and all actions taken further to the impugned order dated 23.09.2021 etc.
5. The 1st Respondent -SBI has filed the petition under Section 7 of the Code stating that the CD has availed a loan facility for an amount of Rs.281.23 Crore. The CD was unable to repay the loan and the SBI in accordance with relevant banking provisions declared the loan facilities as 'Non-Performing Assets' (NPA) due to failed restructuring and date of default is 15.04.2011. As per Form-1 Part-IV, the amount claims to be in default is Rs.216,95,55,314.55 and date of default as stated in Form-1 is 15.04.2011 as per the Part-IV of the Form-1 of the Application filed by the SBI and appearing at page 44 of the Appeal Paper book.
6. The particulars of security held and certificate of registration of charges issued by ROC is stated in Form-V appearing at page 45 to 47. For brevity and clarity, the same is depicted below:

4.	Details of Succession Certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (Attach a copy)	Not Applicable
5.	The latest and complete copy of the financial contract reflecting all amendments and waivers to date (attach a copy)	Not Applicable
6.	A record of default as available with any credit information company.	
7.	Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) (Attach a copy)	
8.	List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default	<ol style="list-style-type: none"> 1. Sanction Letter dated 10.05.2014 for total limits of Rs. 157,27,00,000/- (Rupees One Hundred Fifty Seven Crores Twenty Seven Lakhs Only); 2. Letter from Corporate Debtor acknowledging sanction of loan bearing reference No. CIL/SAMB/2014-15/05-2 dated 12.05.2014; 3. Restructuring Package Agreement dated 24.05.2014; 4. Letter regarding grant of individual limits within overall limits dated 24.05.2014; 5. Link letter dated 24.05.2014; 6. Pledge Agreement dated 28.11.2014; 7. Board Resolution of the Corporate debtor dated 24.05.2014; 8. Board Resolution of the Corporate debtor dated 11.07.2014; 9. Sanction Letter dated 24.12.2015 for total limits of Rs. 281,23,00,000/- (Rupees Two Hundred Eighty One Crores Twenty Three Lakhs Only); 10. Supplemental Agreement of Loan dated 03.02.2016 for increase in the overall limit of Rs. 281,23,00,000/-

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	<p>(Rupees Two Hundred Eighty One Crores Twenty Three Lakhs Only)</p> <p>11. Supplemental Agreement of Hypothecation of Goods and Assets dated 03.02.2018 for increase in the overall limit for Rs. 281,23,00,000/- (Rupees Two Hundred Eighty One Crores Twenty Three Lakhs Only).</p> <p>12. Restructuring package agreement dated 03.02.2018.</p> <p>13. Letter of Consent dated 03.02.2018.</p> <p>14. Letter regarding grant of individual limits within overall limits dated 03.02.2018.</p> <p>15. Omnibus Counter Guarantee dated 03.02.2018.</p> <p>16. Board Resolution of the Corporate Debtor dated 28.12.2018.</p> <p>17. Letter dated 19.09.2018 by Corporate Debtor addressed to Financial Creditor requesting favourable consideration of CTS proposal bearing reference number CH\SMB\2018-19\09-01.</p> <p>18. Notice under Section 13(2) of the SARFAESI Act, 2002 dated 26.09.2017.</p> <p>19. Letter dated 09.11.2018 by Corporate Debtor addressed to Financial Creditor requesting favourable consideration of CTS proposal bearing reference number CH\SMB\2018-19\11\01.</p> <p>20. Letter dated 09.11.2018 by Corporate Debtor addressed to Financial Creditor requesting favourable consideration of CTS proposal bearing reference number CH\SMB\2018-19\11\02.</p> <p>21. Letter dated 15.07.2019 by Corporate Debtor addressed to Financial Creditor requesting favourable consideration of</p>
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<p>OTS proposal bearing reference number CIL/MSI/2019-20/02-01 22 Search Report of the Corporate Debtor dated 20.10.2019.</p>	
<p>State Bank of India has paid the requisite fee for this application through _____</p>	
<p>COUNSEL FOR THE APPLICANT</p>	
<p>Yours sincerely,</p>	
<p>Signature of Person authorized to act on behalf of the financial creditor</p>	<p>For STATE BANK OF INDIA  ASST. GENERAL MANAGER SMTM, Hyderabad</p>
<p>Name in block letters</p>	<p>JVIJAYA KUMAR</p>
<p>Position in relation to the financial creditor</p>	<p>Assistant General Manager</p>
<p>Address of person signing</p>	<p>Stressed Assets Management Branch Secunderabad, Door No. 2-918, 8th Floor, Near Block, HMDWSB Compound, Chaitanyabud, Hyderabad-500 084</p>

7. The above stated details reflect the details of sanctioned letter dated 10.05.2014 and restructuring 'Package Agreement' dated 24.05.2014 and other supplementary agreements and letter of consents apart from omnibus counter guarantee. It is also stated that the CD vide its letter dated 19.09.2018 and 15.07.2019 has requested SBI/Financial Creditor for favorable consideration of its OTS facilities and other OTS related letter.

8. The Ld. Sr. Counsel for the Appellant has stated that the CD was declared NPA on 15.04.2011 whereas the Financial Creditor/SBI has filed an application before the Adjudicating Authority under Section 7 of the Code on 25.11.2019 and hence this is hopelessly time barred under the relevant provisions of the Limitation Act, 1963. It was fairly stated by the Ld. Sr. Counsel for the Appellant that the Financial creditor/SBI has justified its proposal for not being falling under the trap of limitation Act as the CD has provided OTS proposal to the Financial Creditor on 19.09.2018, 09.11.2018 and 15.07.2019 and the same amounts to acknowledgment of Debt under Section 18 of the Limitation act, 1963. What the Ld, Sr. Counsel for the Appellant has stated that the date of default on 15.04.2011 is undisputed and the Financial creditor itself has stated the reason due to failed restructuring as appearing at page 45 of the Appeal Paper book.
9. The ld. Sr. Counsel for the Appellant has stated that their case is falling under the Limitation Act as even the acknowledgment of debt has been provided after the expiry of limitation period i.e. within three years from the date of default which lapses on 15.04.2015 and all the letters or correspondences for OTS proposals are started from 2018 onwards. It was also fairly stated by the Ld. Sr. Counsel for the Appellant that the Financial Creditor has shifted its reliance from the acknowledgement of debt based on OTS proposal to the Financial Statement of the CD as on 31.03.2018

reflecting the debt outstanding towards the financial creditor/ SBI. However, the Financial creditor has not placed the same before the Adjudicating Authority nor this Tribunal. If it is looked from otherwise the acknowledgment of financial statements for the year 2018 will still miserable failed to establish within the purview of the Limitation Act considering that the limitation period ended on 14.03.2014. The Appellant has relied upon the various judgment as depicted below:

- B.K.Educational Services Pvt. Ltd. Vs. Parag Gupta and Ors. MANU/SC/1160/2018 para 12 to 22, 30 & 34 to 42
- BabulaVardharjigurjar V.Veer GujarAluminium Industries Pvt. Limited & Ors. AIR 2000 SC 4668 paras 20 to 32, 35, 35.1, 38.1, 39.1, 39.3 & 40
- V.Hotels Limited Vs. Asset Reconstruction Company India Limited 2019 SCC Online NCLAT91 paras 17 to 28
- Sumeet Maheshwari V.Navbharat Press (Bhopal) Pvt. Ltd. and Ors. MANU/NL/0253/2020 paras 19, 23 to 25
- Stressed Asset Stablization Fund Vs. Royal Bushes Pvt. Ltd. NCLAT New Delhi, Comp.Appeal (AT) (Ins) 949 of 2020 para 3 to 6
- UCO Bank Vs. Degree Orchards Pvt. Ltd 2020 SCC Online NCLT 662. Para 12 to 21

Based on the above submissions, the Ld. Counsel for the Appellant is seeking the relief of allowing the present appeal and setting aside the impugned order dated 23.09.2021 passed by the Adjudicating Authority and other consequential actions etc.

10. The Id. Counsel for the Respondent No.1/ Financial Creditor has submitted that the CD is not disputing that the credit facilities was not sanctioned and also admitting that the bank has sanctioned the credit facility on the request of the CD and thereby the admission of debt and extending the period of limitation is beyond doubt accepted by the Appellant. It was also stated by the Ld. Counsel for the Respondent No.1 that after the account of the Corporate Debtor was declared NPA on 15.04.2011, the Corporate Debtor vide letter dated 18.07.2011 requested the SBI/Respondent No.1 to allow it to operate the accounts within Rs. 1,85,29,00,000/-, while acknowledging its liability. Subsequently, the Corporate Debtor vide letter dated 24.12.2013, had requested the SBI/Respondent No.1 for restructuring the account. Thereafter a rehabilitation package was granted by the SBI/Respondent No.1 on 10.05.2014. A Restructuring Package Agreement was entered on 19.12.2015. Thereafter vide Sanction letter dated 24.12.2013 additional credit facilities were granted and limits were enhanced. A Restructuring Package Agreement was entered on 03.02.2016. Subsequently a Demand Notice on 26.09.2017 under Section 13(2) of SARFAESI Act, 2002 was sent to the Corporate Debtor' Thereafter, Corporate Debtor had vide letters dated

19.09.2018, 09.11.2018 and 15.07.2019 submitted One Time Settlement (OTS) proposals with the SBI/Respondent No.1. It is submitted that there has been an acknowledgement by the corporate Debtor within three years from date of account of the corporate Debtor being declared NPA and the acknowledgement continued from time to time which is also evident from the OTS proposal submitted by the corporate in 2018 and 2019 which would be an acknowledgement within the meaning of Section 18 of Limitation Act, giving the fresh period of limitation for filing an application under section 7, of the Code. Therefore, the application filed under Section 7 of the Code is within the period of limitation. It is submitted that this Appellate Tribunal, Principal Bench in Mr. Gauri Prasad Goenka Vs. Punjab National Bank & Anr. (Company Appeal (AT) (Ins) no. 28 of 2019) has held, as given below, that OTS is clear acknowledgement of debt:

“10. That apart, there is acknowledgement of the outstanding debt on the part of the Corporate Debtor, a fact not disputed by the Corporate Debtor. This comes to fore from the letter dated 04th August, 2018 emanating from the Corporate Debtor and addressed to the Financial Creditor wherein the Corporate Debtor agreed to settle all outstanding dues of the Financial Creditor on OTS basis (refer pages 692-693 Vol.III of the Appeal Paper Book). This is a clear acknowledgment of the outstanding debt in writing and the Corporate Debtor cannot wriggle out of the

liability so acknowledged. It is not in controversy that on the date of such acknowledgement, the debt was not time barred and the Insolvency Resolution Process was triggered within the period of limitation in terms of Article 137 of the Limitation Act, computed for such date...”

11. It is also submitted by the SBI/Respondent No.1 that Hon’ble Apex Court in *Innoventive Industries Ltd Vs. ICICI bank & Anr* (Civil Appeal Nos. 8337-8338 of 2017), it has held that:

“28. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

12. It is also submitted by the SBI/Respondent No.1 that Hon'ble Apex Court in Asset Reconstruction Company Vs. Bishal Jaiswal and Anr. (Civil Appeal No. 323 of 2021) has held that for the purposes of Insolvency and Bankruptcy Code, 2016 Balance Sheet entries could constitute an acknowledgement of debt under Section 18 of the Limitation Act, 1963:

Section 18 of the Limitation Act is applicable to the IBC by virtue of Section 238A of the IBC

Relying on the recent judgments of the Supreme Court in Sesh Nath Singh (2021 SCC Online SC 244) and Laxmi Pat Surana (2021 SCC Online SC 267), the SC observed that the rationale for introducing Section 238A of the Code is to make the Limitation Act applicable to proceedings under the Code "as far as may be". It was stated that there is no reason why Section 18 of the Limitation Act would be excluded from being applicable to the Code, provided that the acknowledgment of debt is made before expiry of limitation.

13. It is also submitted by the SBI/Respondent No.1 that Hon'ble Apex Court in Laxmi Pat Surana Vs. Union of Bank of India & Anr. (Civil Appeal No. 2734 of 2020) has held that Section 18 of the Limitation Act applies to extend the period of limitation for filing an application under Section 7 of the Code.:

“37. Ordinarily, upon declaration of the loan account/ debt as NPA that due can be reckoned as the date of default of enable the financial creditor to initiate action under section 7 of the Code. However, Section 7 comes into play when the CD commits “default”. Section 7, consciously uses the expression “default”- not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of debt when whole or nay part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate Debtor, as the case may be. In cases where the Corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgements, it is not possible to extricate them from the renewed limitation accruing due to the effect of

Section 18 of the Limitation Act. Section 18 of the Limitation act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (CD), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code.”

14. It is also submitted by the SBI/Respondent No.1 that Hon’ble Apex Court Judgment of Dena Bank (Now bank of Baroda) Vs. C.Shivakumar Reddy & Anr. (Civil Appeal No. 1650 of 2020) delivered on 04.08.2021, the Hon’ble Apex Court, while deciding on the issue, “Whether a petition under Section 7 of the Code would be barred by limitation, on the sole ground that it had been filed beyond a period of three years from the date of

declaration of the loan account of the Corporate Debtor as NPA, even though the CD may have subsequently acknowledged the liability held that:

“114. In Sesh Nath Singh and Anr. v. Baidyabati Sheoraphuli Cooperative Bank Ltd. (supra) this Court, speaking through one of us (Indira Banerjee J.) held that the IBC does not exclude the application of Section 14 or 18 or any other provision of the Limitation Act. There is therefore no reason to suppose that Sections 14 or 18 of the Limitation Act do not apply to proceedings under Section 7 or Section 9 of the IBC.

116. In Asset Reconstruction Company (India) Limited. v. Bishal Jaiswal and Anr. (supra) where this Court speaking through Nariman J. relied, inter alia, on Sesh Nath Singh (supra) and Laxmi Pat Surana (supra) and held that the question of applicability of Section 18 of the Limitation Act to proceedings under the IBC was no longer res integra.”

15. The SBI/Financial creditor/ R1 has also stated that the CD has informed the Bank that in June 2019 there was a steep rise in the three

properties in comparison to February/March, 2019 and the total fresh value for the three properties are as follows:

- A. Fair market value Rs. 86.23 crore
- B. Realizable value of Rs.73.29 Crore
- C. Distress sale value of RS. 60.36 crore.

16. The CD has requested that vide its letter dated 15.07.2019 to consider favorably CD exit route through OTS amount of Rs.53 core against the realization value of 73.29 crore by increasing our offer from Rs.45 crores. The CD also requested the Bank /FC to adhere to the one-time settlement proposal and to permit to pay balance amount over a period of six months from the date of approval given by the Bank. It was also stated by the R1 that the Appellant raised the question of limitation rehabilitation letter issued by them and part payment paid by them satisfies the requirement in question of limitation. As the said letter and payment has been made in the period of 2011-12 and the letter 2013 which is admission of debt in itself will satisfy the question of limitation. It is pertinent to note the link letter and this Restructuring Agreement has been signed by the CD and that the CD has never challenged these two documents. The Bank has also attached with the Written Submission Statement of transaction for Account No.:30043104575 (appearing at page no. 94 of the Written Submission of Respondent No.1) for the period from

02.04.2011 to 13.05.2015. For clarity, extract of first page of the statement appearing at page 94 and the last page of transaction (appearing at page 129 of the Written Submission of Respondent No.1) is extracted below for a clarity :

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State Bank of India, Branch: 04100

Statement of transactions for A/c No: 30942104575

Date	Description	Dr/Cr	Withdrawal	Deposit	Balance
02-04-11	DIBHCHOUR CHRO	3099	100.00		074134751.30
02-04-11	DIBHCHOUR CHRO	3099	100.00		074134651.30
02-04-11	DIBHCHOUR CHRO	3099	100.00		074134551.30
02-04-11	DIBHCHOUR CHRO	3099	100.00		074134451.30
02-04-11	DIBHCHOUR CHRO	3099	100.00		074134351.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	525.00		074134251.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	70.00		074134151.30
02-04-11	TRF TO 2399963050550 / 0505510L0001772 / 0130820200001TF85015690143	3099	128175.00		074134051.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	3472.00		074133951.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	75.00		074133851.30
02-04-11	TRF TO 2399963050550 / 0505510L0001772 / 0130820200001TF85015690143	3099	133344.20		074133751.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	27237.00		074133651.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	75.00		074133551.30
02-04-11	TRF TO 2399963050550 / 0505510L0001772 / 0130820200001TF85015690143	3099	14865476.00		074133451.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	11170.00		074133351.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	75.00		074133251.30
02-04-11	TRF TO 2399963050550 / 0505510L0001772 / 0130820200001TF85015690143	3099	4467977.00		074133151.30
02-04-11	TRF TO 2399963050550 / 0505510L0001772 / 0130820200001TF85015690143	3099	25861.00		074133051.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	75.00		074132951.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	1000000.00		074132851.30
02-04-11	TRF TO 2399963050550 / 0505510L0001772 / 0130820200001TF85015690143	3099	9431.00		074132751.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	75.00		074132651.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099	2794284.00		074132551.30
02-04-11	TRF TO 2399963050550 / 0505510L0001772 / 0130820200001TF85015690143	3099	7427.00		074132451.30
02-04-11	TRF TO 0098741030987 / 0505510L0001772 / 0130820200001TF85015690143	3099			074132351.30

State Bank of India, Branch: 04106

Statement of transactions for A/c No: 30843104575

Date	Description	Dr/ Cr	Particulars	Debit	Credit
22-11-14	TRF TO 0032715448037 /TR TO C/A VIDE APPROVED NOTE DT 22.11.14			400000.00	
10-12-14	TRF FROM 310999004334 /RTGS MAHARASHTRA STATE ELEC	4430			146375.00
16-12-14	TRF TO 002995347889 /PLDT ADVOCATE SRIKANTH R. D. D. NO. 202013			7948.00	
18-12-14	CREDIT /TR FROM 1120820570	6784			128834.00
22-12-14	TRF TO 0032715448037 /TR TO C/A VIDE APPROVED NOTE DT 22.12.14			250000.00	
01-01-15	TRF TO 302400010000 /FTL- REPAYMENT VISA PRD LR 29.12.2014			287500.00	
02-01-15	TRF TO 0034034152050 /INT FOR 10.09.2014 TO 31.10.2014 FOR FTL1 RECEIV			884882.00	
02-01-15	TRF TO 0034034152050 /INT FOR 13.09.2014 TO 31.10.2014 FOR WCTL RECEIV			810687.00	
02-01-15	TRF TO 0032715448037 /TR C/A REC LR DT 30.12.14 & APPROVED NOTE 020115			146000.00	
02-01-15	TRF TO 0097887041005 /INT FTLL 1.11.14 TO 30.11.14			234073.00	
02-01-15	TRF TO 0097887041005 /INT WCTL 01.11.14 TO 30.11.14			156574.00	
02-01-15	TRF TO 0097887041005 /INT REC 03.11.14 TO 31.12.14			340717.00	
03-01-15	TRF TO 009620044913 /NET SBIN15000091500 R GUBRAMANIAN AND COMPANY			14542.00	
03-01-15	TRF TO 0032715448037 /TR VIDE REC DT 03.01.2015			107000.00	
05-01-15	TRF FROM 310999004334 /RTGS MAHARASHTRA STATE	4430			1274183.00
08-01-15	TRF FROM 0030650185922 /TR APDC ASSAM BILLS PAYMENT	97822			873380.00
08-01-15	TRF TO 0032715448037 /TR VIDE APPROVED NOTE DT 09.01.2015			1700000.00	
08-01-15	TRF TO 0032715448037 /TR VIDE APPROVED NOTE DT 09.01.2015			249485.00	
11-03-15	TRF FROM 0030650185922 /APDC GUWAHATI				31753816.00
13-03-15	TRF TO 0032715448037 /C/LBAMB0015-1800 ON DSM APP 12.03.2015			23070000.00	
13-03-15	TRF FROM 0032715448037 /INTL OF FTLL ACCOUNT			4800.00	
13-03-15	DEBIT /INTL OF FTLL FOR NOV&DEC 2014 REC			97167.00	
13-03-15	DEBIT /ACC INTT FRO JAN 15 AND FEB 15			300282.00	
13-03-15	DEBIT /FTLL INTT FOR DEC 2014			234649.00	
13-03-15	DEBIT /INTT C/A WCTL UP TO DEC 2014			1631685.00	

17. The Respondent No.1 through its written submission has also attached a copy of Annual Report for the year 2011-12 to 2013-14 appearing at page No. 7 to 93 of written submission of Respondent No.1. The last Balance Sheet is of 31.03.2014 and the same is extracted below:

CHADALAVADA INFRA TECH LTD.					
BALANCE SHEET AS AT MARCH 31, 2014					
I. EQUITY & LIABILITIES	S.No.	Figures as at end of 2013		Figures as at end of March 31, 2014	
		Rs.	Rs.	Rs.	Rs.
(1) Shareholders Funds:					
(a) Share Capital	1	17,35,21,500		17,35,21,500	
(b) Reserves & Surplus	2	(12,33,16,400)		18,24,85,413	
(c) Share Application Money pending Allotment	3		4,21,04,857	4,21,04,857	4,21,04,857
(2) Non-Current Liabilities:					
(a) Long-term Borrowings	4	22,14,98,504		19,21,49,000	2,27,32,744
(b) Non-Current Liabilities	5	1,04,81,787		1,19,22,279	
(c) Deferred Tax Liability (Net)	6	(14,02,382)		(12,75,733)	
(3) Current Liabilities:			20,06,03,838		20,18,85,847
(a) Short-term Borrowings	8	61,08,83,288		45,88,21,256	
(b) Trade Payables	7	31,08,71,104		34,14,03,112	
(c) Other Current Liabilities	9	27,94,09,563		34,77,38,263	
(d) Short-term Provisions	10	6,10,38,565		6,00,06,850	
Total:			121,33,42,086		121,33,42,086
			142,33,10,913		142,33,10,913
II. ASSETS					
(1) Non-Current Assets:					
(a) Fixed Assets:					
Tangible Assets					
(i) Land & Buildings	10	2,23,84,731		2,66,15,198	
(ii) Long-Term Loans & Advances	11	6,05,25,368		7,88,65,729	
(iii) Other Non-Current Assets	12	1,31,590		1,88,478	
			18,31,69,887		10,56,69,405
(2) Current Assets:					
(a) Inventories	13	19,45,35,200		19,47,83,000	
(b) Trade Receivables	14	14,03,05,000		17,07,55,107	
(c) Cash & Cash Equivalents	15	9,85,70,740		9,14,42,216	
(d) Short-term Loans & Advances	16	46,54,15,253		42,14,50,779	
(e) Other Current Assets	17	40,42,82,183		47,89,25,251	
Total:			121,33,42,086		121,33,42,086
			142,33,10,913		142,33,10,913
Significant Accounting Policies & Notes to Accounts	20				

Our Report attached,
 For VENUGOPAL & CHENNY,
 Chartered Accountants,
 FIRM 6046713
 (P.V. SREHARI)
 Partner
 Membership No.021951

Place: Hyderabad
 Date: 01.09.2014



For CHADALAVADA INFRA TECH LTD.

(Signature)

Managing Director

(Signature)
 Director

The learned counsel for the Respondent No.1 has stressed that there is no question of limitation and the appeal is liable to be dismissed based on the above submissions.

18. The status report filed by Resolution Professional as on 18.12.2021 as presented through its learned counsel are as follows:

- a. CIRP has commenced on 23.09.2021- Mr. G.Madhusudan Rao was appointed IRP by the Adjudicating Authority.
- b. The IRP made a public announcement on 30.09.2021 intimating the commencement of CIRP against the CD and calling the creditors to submit their claim. He has published in both Telugu and English languages.
- c. The Ld counsel for the R2-RP has submitted that the IRP and his team visited CD's registered office, but there is no office in the address mentioned. It has also submitted by the RP that the suspended Directors of the CD through email ID provided in the MCA Master data about his appointment and furnished the copy of the CIRP admission order. The RP has constituted the Committed of Creditors (CoC) comprising of only State Bank of India having a claim of Rs. 250.90 Crore and received another claim of Rs. 75,836 which is under process of its examination. It was also stated by the RP that the lone member of the CoC confirmed IRP as RP with 100 % voting right.
- d. The RP has also stated that he has filed an IA before the Adjudicating Authority for non-cooperation by the CD – Suspended Directors. It has also informed that in the 2nd CoC meeting held on 10.12.2021 as reconstituted Committee of Creditors with the following combination

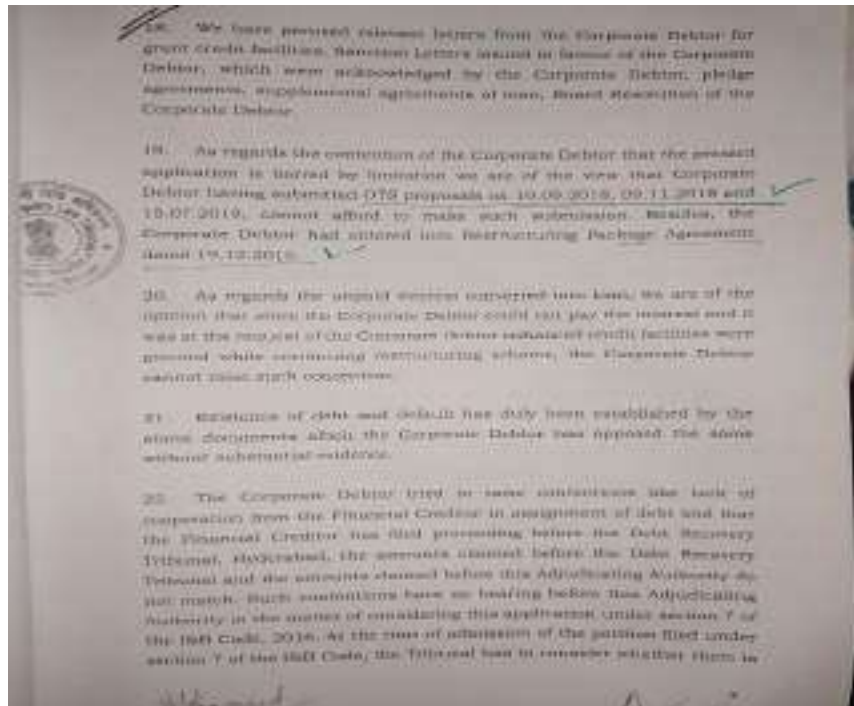
and the same is depicted below (appearing at page 53 of the status report filed by the RP):

The RP circulated the claims received from the various parties upto 8th December 2021. The list of claims given below

S.No.	Name of Creditor	Form	Amount Claimed (In Rs.)
1	State Bank of India	Form C	250,90,45,531
2	TATA Capital Financial Services Limited	Form C	23,20,01,043
3	Employee's State Insurance Corporation	Form F (But Form B submitted)	75,836
	Total		250,91,21,367

- e. The Ld counsel for the RP/R2 has also informed that the RP is waiting to get the handing over and assets and records and required information from the Promoters/Suspended Director to appoint valuers, prepare information memorandum to issue Expression of Interest report to Adjudicating Authority of preferential undervalued and fraudulent transaction under the provisions of the Code.

19. The Adjudicating Authority, while passing the impugned order dated 23.09.2021 has observed the followings:



18. We have perused relevant letters from the Corporate Debtor for grant credit facilities. Relevant letters issued in favour of the Corporate Debtor, which were acknowledged by the Financial Creditor, pledge agreements, supplemental agreements of loan, Board Resolutions of the Corporate Debtor.

19. As regards the contention of the Corporate Debtor that the present application is barred by limitation we are of the view that Corporate Debtor having submitted DTS proposals on 10.09.2018, 09.11.2018 and 10.07.2019, cannot afford to make such submission. Besides, the Corporate Debtor had entered into Restructuring Package Agreement dated 19.12.2018.

20. As regards the amount interest converted into loan, we are of the opinion that since the Corporate Debtor could not pay the interest and it was at the disposal of the Corporate Debtor retained credit facilities were provided while continuing restructuring scheme, the Financial Creditor cannot raise such contention.

21. Existence of debt and default has duly been established by the above documents which the Corporate Debtor has opposed the same without substantial evidence.

22. The Corporate Debtor tried to raise contentions like lack of cooperation from the Financial Creditor in assignment of debt and that the Financial Creditor has filed proceeding before the Debt Recovery Tribunal, Hyderabad, the amounts claimed before the Debt Recovery Tribunal and the amounts claimed before this Adjudicating Authority do not match. Such contentions have no bearing before this Adjudicating Authority in the matter of considering this application under section 7 of the IBC, 2016. At the time of admission of the petition filed under section 7 of the IBC, 2016, the Tribunal has to consider whether there is

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debt and default. Other contentions raised by the learned counsel for the Corporate Debtor cannot be entertained since the Financial Creditor is able to establish the debt and default. After going through the documents filed by the petitioner we are of the view that the petition is liable to be admitted against the Corporate Debtor.

23. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016 declaring moratorium for the purposes referred to

20. We have carefully gone through the submissions made by the both the learned parties and extant provisions of the Code and we are having the following observations:

- a. It is undisputed fact that the Corporate Debtor has borrowed the funds from Respondent No.1 and the amounts claimed to be in default is approx. Rs. 216.95 Crore.
- b. Security held and certificate of registration of charges issued by Registrar of Companies is also not in dispute.
- c. The Corporate Debtor vide its letter dated 18.07.2011 requesting State Bank of India to allow to operate its accounts within a limit of Rs. 185 Crore approx.
- d. The petition was filed before the Adjudicating Authority on 25.11.2019 and the date of default is on 15.04.2011 which is due to failed restructuring. The Corporate Debtor vide letter dated 18.07.2011 requested R1/SBI to allow to operate the Account within Rs. 185 Crore approx. The Corporate Debtor vide letter dated 24.12.2013 had requested R1/SBI for restructuring the Account. Sanctioned order for total limit of Rs.157 Crore approx. is dated 10.05.2014. Pledge Agreement dated 28.11.2014. Hypothecation of goods for Rs. 281 Crore dated 03.02.2016. Supplemental Agreement

- of Loan for increase in overall limit is dated 03.02.2016. Restructuring Package Agreement is dated 19.12.2015/03.02.2016.
- e. The Corporate Debtor vide its letters dated 19.09.2018, 09.11.2018 and 15.07.2019 has submitted OTS proposals to the State Bank of India. The application filed before the Adjudicating Authority is on 25.11.2019.
 - f. The Financial Creditor has also submitted the Balance Sheet for the year 2013-14 which also reflects borrowings.
 - g. All the above suggests that at any point of time some acknowledgment of accepting its liability by Corporate Debtor exists & that too within stipulated time period of three years (Article 137 of the Limitation Act, 1963). Hence, Section 18 of the Limitation Act, 1963 provides for a fresh period of limitation shall be computed from the time when the acknowledgment was so signed and hence the stand of the Appellant does not seem to be correct.
 - h. Now, it is a settled law by the Hon'ble Apex Court that the Code does not exclude the Application of Section 14 or Section 18 or any other provisions of Limitation Act. Hence, we can firmly say that the provisions of Section 18 of the Limitation Act, 1963 are applicable to the proceedings under the Code and hence, the impugned order deserves to be upheld.

- i. Accordingly, we upheld the impugned order of the Adjudicating Authority. The Appeal fails & hence dismissed.

Interim order, if any, passed by this Tribunal stands vacated.

Pending application, if any, stands disposed of.

No order as to costs.

[Justice M.Venugopal]
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

10th June, 2022

New Delhi

Raushan.K