

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1054 of 2023

[Arising out of order dated 17.05.2023 passed by the Adjudicating Authority
(National Company Law Tribunal, Allahabad Bench, Prayagraj) in C.P. (IB)
No. 19/ALD/2021]

IN THE MATTER OF:

Protech Impex Pvt. Ltd. & Anr.

...Appellants

Versus

Uttar Pradesh Rajkiya Nirman Nigam Ltd.

...Respondent

Present:

For Appellants : Mr. Sohaib Alam, Mr. Rajesh Ranjan & Mr. Anuj Sharma, Advocates.

For Respondent : Mr. Shivank Pratap Singh, Ms. Priya Singh, Mr. Samyak Jain and Mr. Sanandika Pratap Singh, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by the appellant an operational creditor challenging the order dated 17.05.2023 passed by the National Company Law Tribunal (NCLT), Allahabad Bench, Prayagraj rejecting Section 9 application filed by the appellant.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The respondent No. 1 M/s. Uttar Pradesh Rajkiya Nirman Nigam Ltd. has issued work order in favour of the appellant to carry different work orders starting from 19.10.2012.
- ii. The appellant carried out work for National Institute of Occupational Health, Ahmedabad under work order issued by respondent No. 1. The work was completed by the appellant and the work completion certificate dated 15.01.2016 was issued in favour of the appellant.
- iii. Appellant issued a demand notice dated 23.12.2019 claiming an outstanding amount of Rs.3,65,75,820/-. Appellant filed a Section 9 application on 20.02.2020 claiming an amount of Rs.3,65,75,820/-.
- iv. The corporate debtor filed a counter affidavit denying the claim. Corporate debtor in the reply pleaded that amount against the work done has been paid. It was pleaded that 23 work orders were given to the appellant. It was further pleaded that application is barred by limitation. It was pleaded that no amount is due except the security amount of Rs.36,14,500/- which is withheld by NIOH Ahmedabad which shall be released after amount is received from NIOH.
- v. Rejoinder affidavit was filed by the operational creditor.
- vi. Adjudicating by the impugned order has dismissed the application filed under Section 9 as barred by limitation.
- vii. Challenging the order passed by the adjudicating authority, this appeal has been filed.

3. We have heard learned counsel for the appellant as well as learned counsel appearing for the respondent.

4. Learned counsel for the appellant challenging the impugned order submits that adjudicating authority committed an error in rejecting Section 9 application as barred by limitation. It is submitted that in the reply filed by the corporate debtor, payment to operational creditor on 16.10.2017 has been admitted. It is submitted that appellant was entitled for extension of limitation under Section 19 of the Limitation Act, 1963 on the strength of last payment made on 16.10.2017. Appellant shall have period of limitation of three years from 16.10.2017 hence application filed on 02.02.2022 was not barred by time. It is submitted that adjudicating authority erroneously treated the submission of the appellant that appellant is praying for shifting/change of the date of default. Appellant has never asked for change of date of default which was 15.01.2016 rather by extending the benefit of Section 19 of the Limitation Act, 1963. Appellant will have fresh period of three years from 16.10.2017.

5. Learned counsel for the respondent refuting the submissions of the counsel for the appellant submits that there were 23 work orders given to the appellant from 2012 and appellant according to Section 9 application has shown date of default as 15.01.2016, principal amount claimed to be due for payment was calculated from 15.01.2016. In the Section 9 application there was no pleading for extension of limitation on any ground including any payment by the corporate debtor. The corporate debtor has filed its ledger

which mentioned payment of security cheque on 16.10.2017 on basis of which no benefit of Section 19 of the Limitation Act, 1963 can be extended by the appellant. It is submitted that in the demand notice no invoices has been either referred or filed by the operational creditor, the application was defective and deserved to be rejected.

6. Learned counsel for the parties placed reliance on certain judgments of this Tribunal and the Hon'ble Supreme Court, which we shall refer while considering the submissions in detail.

7. Copy of the Section 9 application filed by the operational creditor has been brought on record by the respondent along with its reply affidavit. Part IV of the application amount claimed and date of default is mentioned as 15.01.2016. Part IV, Column 2 of the Section 9 application is as follows:

“PART – IV

PARTICULARS OF OPERATIONAL DEBT		
2	Amount Claimed to be in default and the date on which the default occurred.	Rs. 3,65,75,820/- (Three Crore Sixty Five Lakh Seventy Five Thousand Eight Hundred Twenty) which is due as principal amount and Rs 3,45,83,690/- (Three Crore Forty Five Lakh Eighty Three Thousand Six Hundred Ninety) as Interest @ 24% p.a Simple Interest till 23rd

		December, 2019 for the work done on credit basis. The default on payment occurred on 15th Jan, 2016. When completion certificate for the work done was granted to operational creditor.”
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8. In Section 9 application under Part V, Column 7, following has been stated:

9. “PART – V

PARTICULARS OF OPERATIONAL DEBT (DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT)		
7	Statement of Accounts where deposits are made or credits are received normally by the operational creditor in respect of the debt of the corporate debtor.	Bank statement from 04.09.2012 till 17.06.2016 from Canara Bank, Lajpat Nagar Branch, New Delhi showing that no payment has been received from the corporate debtor till date and also showing non-payment of Operational Debt.”

10. The case of the appellant under Section 7 was that no payment has been received from the corporate debtor till date, copy of work order and its bank statement was annexed along with Section 9 application. The

adjudicating authority found that date of default is 15.01.2016 and application having been filed on 20.02.2020, it is beyond three years hence it was dismissed as barred by time.

11. The submission which has been much pressed by the counsel for the appellant is that last payment having been made by corporate debtor on 16.10.2017, appellant shall have fresh period of limitation from 16.10.2017 hence application filed on 20.02.202 was not barred by time. Learned counsel for the appellant submitted that in the present case, the appellant was entitled for benefit of Section 19 of the Limitation Act, 1963.

12. Thus, the only submission which need to be considered in the present case is as to whether the appellant was entitled for benefit of Section 19 of the Limitation Act, 1963. Section 19 of the Limitation Act, 1963 provides as follows:

“19. Effect of payment on account of debt or of interest on legacy.—

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—

For the purposes of this section,—

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) “debt” does not include money payable under a decree or order of a court.”

13. Hon’ble Supreme Court in the matter of **‘Shanti Conductors Pvt. Ltd.’ Vs. ‘Assam State Electricity Board & Ors.’** reported in **[(2020) 2 SCC 677]** had occasion to consider Section 19 of the Limitation Act, 1963. Hon’ble Supreme Court held that two conditions were essential for extending the benefit of Section 19 of the Limitation Act, 1963 they are: (i) payment must be made within the prescribed period of limitation; (ii) and it must be acknowledged by some form of writing either in handwriting of payer himself or signed by him. Following was laid down in paragraph 16 of the judgment:

“16. We may notice the judgment of this Court dealing with Section 20 of the Limitation Act, 1908, which was akin to present Section 19 of the Limitation Act, 1963. In Sant Lal Mahton v. Kamla Prasad [Sant Lal Mahton v. Kamla Prasad, 1951 SCC 1008 : AIR 1951 SC 477], this Court held that for applicability of Section 20 of the Limitation Act, 1908, two conditions were essential that the payment must be made within the prescribed period of limitation and it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. This Court further held that for claiming benefit of exemption under Section 20, there has to be pleading and proof. In paras 9 and 10, the following has been laid down : (AIR p. 479)

“9. It would be clear, we think, from the language of Section 20, Limitation Act, that to attract its operations two conditions are essential : first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. We agree with the Subordinate Judge that it

is the payment which really extends the period of limitation under Section 20, Limitation Act; but the payment has got to be proved in a particular way and for reason of policy the legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail. The Subordinate Judge, however, is right in holding that while the section requires that the payment should be made within the period of limitation, it does not require that the acknowledgment should also be made within that period. To interpret the proviso in that way would be to import into it certain words which do not occur there. This is the view taken by almost all the High Courts in India and to us it seems to be a proper view to take. (See Mohd. Moizuddin Mia v. Nalini Bala Devi [Mohd. Moizuddin Mia v. Nalini Bala Devi, 1937 SCC OnLine Cal 20 : AIR 1937 Cal 284 : ILR (1937) 2 Cal 137] ; Lal Singh v. Gulab Rai [Lal Singh v. Gulab Rai, 1932 SCC OnLine All 265 : ILR (1933) 55 All 280] , Venkata Subbhu v. Appu Sundaram [Venkata Subbhu v. Appu Sundaram, ILR (1894) 17 Mad 92] , Ram Prasad Babu v. Mohan Lal Babu [Ram Prasad Babu v. Mohan Lal Babu, 1922 SCC OnLine MP 10 : AIR 1923 Nag 117] and Vishwanath Raghunath Kale v. Mahadeo Rajaram Saraf [Vishwanath Raghunath Kale v. Mahadeo Rajaram Saraf, 1933 SCC OnLine Bom 3 : ILR (1933) 57 Bom 453] .)

10. ... If the plaintiff's right of action is apparently barred under the statute of limitation, Order 7 Rule 6, Civil Procedure Code makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act, upon which he relies to exclude its operation; and if the plaintiff has got to allege in his plaint the facts which entitle him to exemption, obviously these facts must be in existence at or before the time when the plaint is filed; facts which come into existence after the filing of the plaint cannot be

called in aid to revive a right of action which was dead at the date of the suit. To claim exemption under Section 20, Limitation Act the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part-payment of the principal, but that such payment had been acknowledged in writing in the manner contemplated by that section.”

14. Hon’ble Supreme Court in the said case had also occasion to observe that there need to be specific pleading claiming for benefit of Section 19. In the said case, the Court held that even without pleading all facts for claiming start of fresh period of limitation, plaintiff is not entitled for benefit of Section 19. In paragraph 20 of the judgment, following has been laid down:

“20. The judgment of this Court in Jiwanlal Achariya [Jiwanlal Achariya v. Rameshwarlal Agarwalla, AIR 1967 SC 1118] does not lay down that even without pleading all facts for claiming start of fresh period of limitation, the plaintiff is entitled for the benefit of Section 19. The next judgment relied on by Shri Singhvi is Kamla Devi [Kamla Devi v. Mani Lal Tewari, (1976) 4 SCC 818] , in which case, this Court was considering Section 19 of the Limitation Act, 1963. This Court relied on an acknowledgment of payment for holding that from the date of acknowledgment of order period of limitation shall start. In para 4 of the judgment the following has been laid down : (Kamla Devi case [Kamla Devi v. Mani Lal Tewari, (1976) 4 SCC 818] , SCC pp. 819-20)

“4. The last contention pressed was that the personal decree should not have been granted, because it was barred by limitation. The basis for this contention is that the payment of Rs 25, which has been acknowledged on the registered mortgage deed, was not itself by a registered endorsement and, therefore, the plaintiff was entitled to a period of three years only, even if Section 19 may give an extension of limitation. We see no merit in this contention. The function of Section 19 is to provide a later date to count the

period of limitation afresh, and that fresh period of limitation will be computed from the time when the acknowledgment is signed. Nothing turns on whether the acknowledgment is itself registered or not. The office of Section 19 being to postpone the date of reckoning limitation and not to create a different substantive period of limitation, the latter depends upon the appropriate article of the Limitation Act which applies to the suit. In this case, the mortgage document was registered and the personal covenant was contained in the registered deed. Therefore, Article 116, which gives a period of six years, applies. Thus, the fresh period of limitation will be six years and it has to be counted from the date of acknowledgment, namely, 31-8-1940. In this view, there is no merit in the plea of limitation either. This is obviously a case where the Revisional Court had missed a fact apparent upon the record and, therefore, thought it fit, in the exercise of its discretion to review its judgment. Justice has thereby been furthered rather than frustrated. We are not here concerned with an endorsement on the deed as constituting a cause of action.”

15. Copy of the Section 9 application has been brought on the record along with the reply as noted above there are no pleading with regard to extension of limitation under Section 19. Learned counsel for the appellant has fairly submitted that there was no pleading on the part of the appellant in Section 9 application and said plea was raised before the adjudicating authority on basis of reply received from corporate debtor, where the said payment was accepted. Learned counsel for the appellant has referred to paragraphs 6 & 10 of the reply to support his submission that there was admission for payment. Paragraphs 6 & 10 of the reply is as follows:

“6. That the amount of work done by the applicant against each work-order was computed as per the measurement book which was checked and verified by the concerned officer against the estimated value of work-order and which was final and this 'final value' was never objected by the applicant/contractor and contrarily he continued to work against further work-order as such he is no estopped to raise any grievance to the final amount which has been settled and paid to him each financial year from year 2012 to 31.03.2017.

10. That it is respectfully submitted that the claim of the applicant is based on the total estimated value of distinct workorders/ contract although the amount paid to him is the actual value of the work done by him arrived after its measurement, thus the claim is wholly unfounded and frivolous and is denied by the respondent no. 1. It is categorically stated that no amount is due except the Rs. 36,14,500/- which is the 'security' amount and too is withheld as the respondent no. 1's client, NIOH, Ahmedabad has withheld it and shall be released no sooner the respondent no. 1 get it.”

16. Along with the counter affidavit filed by the corporate debtor in Section 9 application, details of the payment made to the applicant has been filed as Annexure CA-1 in the tabular form, reliance placed on entry dated 16.10.2017. The payment which has been claimed by the appellant is payment of security amount. It is useful to notice the end of the statement at Page 208 of the reply where under the heading “security amount released” following entries were made:

Security Amount Released / Paid		
Date	Cheque No.	Amount (IN RS)
20.11.16	Cq. No. 000380 security	Rs. 15,00,000.00
28.08.17	Cq. No. 000472 security	Rs. 15,00,000.00
16.10.17	Cq. No. 000488 security	Rs. 10,00,000.00
	TOTAL (G)	Rs. 40,00,000.00

17. In the counter affidavit as noted above, there was no acknowledgement of any payment to the operational creditor and the payment which is referred into the tabular form in Annexure – CA was payment of security amount which was given by operational creditor. Thus, no payment of the outstanding claim of the debt which is claimed by the appellant in Section 9 application was paid, the appellant in Section 9 application has calculated his dues with effect from 15.01.2016 and the total outstanding as claimed by the appellant in Section 9 application of Rs.3,65,75,820/-. Out of the said defaulted amount, it is not the case of the appellant that he received any payment out of the bills which was raised by the operational creditor for work done. There being no pleading by the appellant regarding nature of payment on 16.10.2017 there was no occasion for respondent to give a reply or make any acknowledgment, essential conditions for extending the benefit of Section 19 as laid down by the Hon'ble Supreme Court in '**Shanti Conductors Pvt. Ltd.**' (*supra*) is not fulfilled. There is no acknowledgment by the corporate debtor of any payments made hence essential commodities as laid down by the Hon'ble Supreme Court is not fulfilled more so, as noted above there is no pleading by the appellant for extension of limitation under Section 19. From refund of security amount which was given by appellant for purposes of carrying out contract cannot be held to be acknowledgment of debt by the corporate debtor.

18. Learned counsel for the appellant has placed reliance on the judgment of this Tribunal in '**Super Floorings Pvt. Ltd.**' Vs. '**Napin Impex Ltd.**' in

Comp. App. (AT) (Ins.) No. 1928/2024. Above was the case where last payment was made on 26.08.2019 within period of three years and there was acknowledgement by the corporate debtor in writing which was reflected from the reply to the demand notice. In paragraph 24 of the judgment following was laid down:

“24. In the present case, last payment was admittedly made on 26.08.2019 i.e. within the period of three years and there is also acknowledgment by the Corporate Debtor in writing which is reflected from the reply to demand notice as noted above. When there is clear acknowledgment by the corporate debtor of last payment made on 26.08.2019 which payment was within the period of three years, we are of the view that the operational creditor was clearly entitled for the benefit of extension of limitation under Section 19 of the Limitation Act and both the conditions which are required to be fulfilled under Section 19 were fulfilled. We, thus, do not find any error in the order of the Adjudicating Authority rejecting the objection of the corporate debtor that application under Section 9 was barred by time. Giving the benefit of last date of payment on 26.08.2019, the application was well within limitation. We do not find any merit in the Appeal. The Appeal is dismissed.”

19. In the above case also this Tribunal has relied on the judgment of the Hon’ble Supreme Court in **‘Shanti Conductors Pvt. Ltd.’ (supra)** and on the facts of the said case held that there being acknowledgement in writing by the corporate debtor, conditions were fulfilled. In the present case, there is no acknowledgement by the corporate debtor rather the pleading of appellant in Section 9 application was that no payments have been received as noted in Part V of Section 9 application above. Certain other submissions were raised by the counsel for the respondent regarding maintainability of the application under Section 9. Adjudicating authority having held the application to be

barred by time which findings we have affirmed in the present appeal. We see no reason to enter into any other submission raised by the counsel for the appellant. In view of the above discussions, we do not find any ground to interfere with the order of the adjudicating authority.

The appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

25th August, 2025

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