

**National Company Law Appellate Tribunal**

**Principal Bench, New Delhi**

**COMPANY APPEAL (AT) (INSOLVENCY) No. 325 of 2021**

(Arising out of Order dated 02<sup>nd</sup> March, 2021 passed by National Company Law Tribunal, Cuttack Bench, Cuttack, in C.P. (IB) No.- 152/CTB/2019).

**IN THE MATTER OF:**

**Unigold System, a proprietorship concern  
Through its Proprietor, Rajesh Kumar Gupta**

**Having its Registered Office at:  
143, Karl Max, Sarani,  
Kolkata – 700023**

**...Appellant**

**Versus**

**Fortune Spirit Limited**

**Having its Registered Office at:  
Plot No. 31, Kharavala Nagar,  
Unit-III, Bhubaneswar, Khordha  
Odisha-751001**

**...Respondent**

**Appellant: Mr. Anirudh Wadhwa, Mr. Rohit Sharma &  
Mr. Bhargav Thali, Advocates.**

**Respondent: Mr. Philomon Kani, Ms. Rajdipal Behura, Ms. Neha  
Lingwal, Ms. Hansika Sahu, Mr. Swayamthosh Rath &  
Mr. Ashray Behura, Advocates.**

**J U D G E M E N T**

**[Per; Shreesha Merla, Member (T)]**

1. Aggrieved by the Order dated 02.03.2021 in CP (IB) No. 152/CTB/2019 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Cuttack Bench, Cuttack), 'M/s. Unigold Systems'/the 'Operational Creditor' preferred this Appeal. The Adjudicating Authority dismissed the Application preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short the '**Code**') on the ground that it was 'barred by Limitation'.

2. By the Impugned Order, the Learned Adjudicating Authority has observed as follows:-

*“From the perusal of the Bank Statements, this is clear that Bank Statement for the period from 05.05.2017 to 29.05.2017 and 25.02.2019 to 16.10.2019 only have been filed in the support of the claim. The invoices are from the period of 19.05.2015 to 09.1.2.2016 but no Bank Statements pertaining to this period have been enclosed along with the petition. Ld. Counsel for the Petitioner state that Rs. 2,00,000/- (Two Lakh) received from the Corporate Debtor on 17.05.2017 was already adjusted towards dues and therefore only the balance amount is claimed in the application.*

*Ld. Counsel for the respondent brings to the notice of this Adjudicating Authority that there is no basis for the claiming of interest by the petitioner. The petitioner in the application has claimed 18 % as the interest per annum though he is not entitled to any interest. The petitioner has failed to satisfy this Adjudicating Authority on the total amount due and payable. It is clearly a time barred debt. Since, the period of the invoices is from the date 19.05.2015 to 09.12.2016 and 16 out of 17 invoices filed by the petitioner are clearly time barred the argument of the Ld. Counsel for the petitioner on the issue of limitation that Rupees two lakh has been received on 17.05.2017 is negated. As per the judgement of the Hon'ble High Court and Hon'ble NCLAT this application ought to have been filed within the period of three years from the date of default of invoices.*

*Ld. Counsel for the respondent state that the statutory pecuniary jurisdiction of NCLT has been raised from Rupees One Lakh to Rupees One Crore and in this context also the application is not maintainable. However, this point is declined. The application was filed much before the pecuniary jurisdiction of the NCLT was raised to One Crore. At the given point of time when application was filed on 18.11.2019, any debt due and payable above Rs. 1,00,000/- (One Lakh) under Section 7, 9 and 10, this adjudicating authority had jurisdiction to adjudicate. The amendment does not stopple this Adjudicating Authority to hear the application filed prior to the amendment. Hence, this application is clearly barred*

*by limitation. Furthermore, petitioner has not filed the Statement of Account for the entire period of transactions to satisfy this Adjudicating Authority that the amount was due and payable. Accordingly, this CP (IB) No. 152/CTB/2019 is **DISMISSED.***

3. **Submissions on behalf of the Learned Counsel appearing for the**

**Appellant:**

- The Learned Counsel submitted that the Appellant/‘Operational Creditor’ supplied mono cartons and labels to the Respondent/‘Corporate Debtor’ pursuant to the purchase orders raised by the ‘Corporate Debtor’ in the period between 2015 and 2016. 17 Invoices amounting to Rs.36,29,968/- were raised in this period and as per the terms of the invoices, the ‘Corporate Debtor’ was liable to pay interest at 18% per annum for any delayed payments.
- The first of such invoices which forms part of the Section 9 Application is dated 19.05.2015 and the last of such invoices is dated 09.12.2016. An amount of Rs.4 Lakhs/- was paid to the Appellant on 16.03.2017 and thereafter another block payment of Rs.2 Lakhs/- was made on 17.05.2017. After adjustment of these payments, a principal sum of Rs.33,27,709/- remained outstanding as can be seen in the Ledger Accounts for the period between 01.04.2015 and 31.03.2018.
- Despite repeated communication to the ‘Corporate Debtor’, the outstanding payment was not cleared. On 10.05.2018, the ‘Corporate Debtor’ issued an email acknowledging the outstanding debt of Rs.33,27,708/- together with the statement of account.

- The Appellant issued a Demand Notice under Section 8 of the Code on 25.02.2019 seeking payment of the principal amount together with interest at 18% per annum, for which the 'Corporate Debtor' did not choose to issue any Reply or make any payment towards the outstanding debt.
- It is contended by the Counsel that pursuant to the part payment made by the 'Corporate Debtor' on 17.05.2017, there is a default of an outstanding debt of Rs.33,77,708/-. By way of email dated 10.05.2018, the 'Corporate Debtor' issued a Statement of Account admitting and acknowledging this outstanding debt. Hence, the period of Limitation calculated from 10.05.2018 ends on 10.05.2021 and therefore the Section 9 Application is within the Limitation period.
- Additionally, the Limitation period should extend on account of part payment made by the 'Corporate Debtor' on 17.05.2017 which is evident from the Ledger Statement maintained by the Appellant *Qua* the 'Corporate Debtor'.
- The Learned Counsel placed reliance on the following Judgements in support of his case:-
  - i. *'Laxmi Pat Surana' Vs. 'Union Bank of India & Anr.'*, 2021 SCC OnLine SC 267.
  - ii. *'Lakshmi Narayan Sharma' Vs. 'Punjab National Bank & Ors.'* 2021 SCC OnLine NCLAT 155.
  - iii. *'Hussan Kadri' Vs. 'Edelweiss Asset Reconstruction Co. Ltd. & Anr.'*, 2020 SCC OnLine NCLAT 1077.

4. **Submissions on behalf of the Learned Counsel appearing for the**

**Respondent:**

- Learned Counsel appearing for the Respondent vehemently contended that the Adjudicating Authority has rightly dismissed the Section 9 Application on the ground of Limitation as there was never any express acknowledgement of debt of any kind to the Appellant. The Counsel denied that the amount of Rs.2 Lakhs/- paid on 17.05.2017 was towards the alleged running account or towards the invoices submitted alongwith the Application.
- The Counsel denied that there was any running account between the parties; that the Appellant did not produce any documentary evidence before the Adjudicating Authority to establish that there was any 'running account' maintained between the parties; that the Appellant filed the Bank Statements only for the period between 05.05.2017 to 29.05.2017 and 25.02.2019 to 16.10.2019 and submitted that there was no part payment made towards any running account.
- Email dated 10.05.2018 cannot be an 'acknowledgement of debt' as the 'Corporate Debtor' never admitted that it owed an outstanding amount of Rs.33,27,708/-.
- The Learned Counsel placed reliance on the Judgement of the Hon'ble Supreme Court in '**Khan Bahadur Shapoor Freedom Mazda' Vs. 'Durga Prasad Chamaria & Ors.'** (1962) 1 SCR 140, and submitted that the key ingredient of an acknowledgement is admission and existence of a jural relationship, which in the instant case is absent.

- In the absence of any running account or any other acknowledgement of debt and any jural relationship between parties, there is no acknowledgement of debt made and hence this Appeal is dismissed.

**Assessment:**

5. At the outset we address to the contention raised by the Learned Counsel for the Respondent that the Appellant herein is a propriety concern and therefore does not have a locus standi to initiate CIRP. Section 2(f) of the Code reads as hereunder:-

***“2. Application.—The provisions of this Code shall apply to—***

*(a) any company incorporated under the Companies Act, 2013 (18 of 2013) or under any previous company law;*

*(b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;*

*(c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009);*

*(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf;*

*(e) personal guarantors to corporate debtors;*

***(f) partnership firms and proprietorship firms;  
and***

*(g) individuals, other than persons referred to in clause (e)”*

*(Emphasis Supplied)*

It is evident from Section 2(f) that proprietorship firms also can initiate CIRP Proceedings.

6. It is not in dispute that the Appellant supplied mono cartons and labels to the 'Corporate Debtor' during the period 2015 to 2016 and the last payment of Rs.2 Lakhs/- was made by the 'Corporate Debtor' to the Appellant on 23.05.2017. It is the case of the Appellant that there is an outstanding principal amount of Rs.33,27,708/- to be paid by the 'Corporate Debtor' towards the invoices raised for the supply of mono cartons and labels. In this background we address to the contention raised by the Learned Counsel for the Respondent that there was never any 'running account' between the parties and therefore the part payment made on 23.05.2017 should not be construed as any payment made towards 'supply of mono cartons and labels' by the Appellant to the 'Corporate Debtor'. A brief perusal of Annexure-6, the Ledger Account of the Appellant for the period 01.04.2015 to 31.03.2018 shows that there were periodical transactions between the parties and an amount of Rs.4 Lakhs/- was paid on 16.03.2017 and a further amount of Rs.2 Lakhs/- was paid on 07.05.2017. Email communication dated 20.02.2018, 28.05.2018, 07.05.2018 and 28.11.2017 between the parties shows that repeated request were made by the Appellant to the 'Corporate Debtor' to settle the outstanding amount.

7. At this juncture, it is relevant to reproduce the email dated 10.05.2018 sent by the 'Corporate Debtor' to the Appellant herein, wherein the Statement of Account for the period 2017 to 2018 was appended.

ANNEXURE:- 8 141



Mamta Binani & Associates <mamtabinaniandassociates@gmail.com>

**w: Statement of account for 2017-18**

messages

nigold system <unigoldsystem@rediffmail.com>  
o mamtabinaniandassociates <mamtabinaniandassociates@gmail.com>

Sat, Feb 16, 2019 at 1:35 PM

Rajesh Gupta  
Unigold System  
143, Karl Marx Sarani  
KOLKATA - 700 023  
Mbl : 93305 93277 / 62901 65548

Sent from RediffmailNG on Android

Fortune Spirit <fortunesprittd@yahoo.com>  
Sent: Thu, 10 May 2018 13:19:46 GMT+0530  
To: unigold system <unigoldsystem@rediffmail.com>  
Subject: Re: Statement of account for 2017-18

On Thursday, 10 May, 2018, 1:13:42 PM IST, unigold system <unigoldsystem@rediffmail.com> wrote:

Please send me the statement of account for the financial year 2017-18

Rajesh Gupta  
Unigold System  
143, Karl Marx Sarani  
KOLKATA - 700 023  
Mbl : 9330593277/6290165548

Sent from RediffmailNG on Android

Tally.xls  
22K

Sat, Feb 16, 2019 at 2:18 PM

unigold system <unigoldsystem@rediffmail.com>  
To: mamtabinaniandassociates <mamtabinaniandassociates@gmail.com>

Rajesh Gupta  
Unigold System  
143, Karl Marx Sarani  
KOLKATA - 700 023  
Mbl : 93305 93277 / 62901 65548

For UNIGOLD SYSTEM  
*R. n. Gupta*  
Proprietor.

For UNIGOLD SYSTEM  
*R. n. Gupta*  
Proprietor.



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Fortune Spirit Ltd. (2017-18)						
Unigold Systems						
Ledger Account						
1-Apr-2017 to 31-Mar-2018						
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
01/04/2017	By Opening Balance				3527708.00	
17/05/2017	To Idbi A/C (0042655100000578)	Payment	039549	200000.00		
				200000.00	3527708.00	
	To Closing Balance			3527708.00		

For UNIGOLD SYSTEM  
*R. N. Singh*  
Proprietor.

For UNIGOLD SYSTEM  
*R. N. Singh*  
Proprietor.

8. In the aforementioned Ledger Account it is clearly stated that on 17.05.2017, an amount of Rs. 2 Lakhs/- was paid to the Appellants. Keeping in view the submissions made by the Respondent in their Reply read together with Ledger Account that mono cartons and labels 'were purchased from the Appellant from time to time and invoices were raised periodically', we are of the considered view that there was indeed continuous transactions vide purchased orders raised between the parties to establish a 'running account'.

9. It is the main case of the Respondents that this part payment and email cannot be construed as 'acknowledgement of debt' as provided for under Section 18 of the Limitation Act, 1963. Sections 18 and 19 of the Limitation Act, 1963 relevant for disposal of this Appeal are reproduced as hererunder:-

***“18. Effect of acknowledgment in writing.-***

*(1) 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) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

*Explanation.—For the purposes of this section,-*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."*

**"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 1<sup>st</sup> 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."*

10. The effect of Section 18 of the Limitation Act, 1963, is that an acknowledgement of liability in respect of a right made in writing and signed by the Debtor before expiration of the prescribed period for a Suit or Application would result in a fresh period of Limitation being computed from

the time when acknowledgement was so signed. It is seen from the aforementioned Ledger Account reproduced in para 7 read with Annexure-6, that an amount of Rs.32,27,708/- was due and liable to be paid by the Respondent to the Appellant. It is relevant to note that the part payment was made on 23.05.2017, the email sent by the 'Corporate Debtor' is dated 10.05.2018 and the Application was filed in November, 2019 well within the Limitation period.

11. It is significant to mention at this stage that on 23.02.2019, the Appellant issued a Demand Notice dated 25.02.2019 under Section 8 of the Code which was delivered to the 'Corporate Debtor' on 01.03.2019 but there was no Reply.

12. Section 8 of the Code reads as hereunder:-

**8. Insolvency resolution by operational creditor.**—(1) *An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

(2) *The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—*

*(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;*

*(b) the [payment] of unpaid operational debt—*

*(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

*(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred.*

13. In their Reply Affidavit filed before this Tribunal there is no whisper regarding the Section 8 Notice nor were any grounds raised for not replying to the same. Even in their Reply to the Section 9 Application filed before the Adjudicating Authority, the Respondent/‘Corporate Debtor’ does not deny receipt of the Section 8 Notice nor do they give any reasons for not replying to the same though in para 7 of the Reply the ‘Corporate Debtor stated that *‘the notice dated 25<sup>th</sup> February, 2019, issued under I.B. Code, 2016 is not in accordance with statutory provisions as mentioned in Section 8 of the Code hence the application is liable to be rejected’* which establishes that the ‘Corporate Debtor’ did receive the Notice under Section 8, but did not choose to Reply. Learned Adjudicating Authority has not addressed to this issue.

14. For all the aforementioned reasons, we are of the considered view that the part payment made on 17.05.2017 read together with the Ledger Account given by the ‘Corporate Debtor’ on 10.05.2018 vide email and also the Ledger Account on Annexure A-6, we are of the considered view that the right to sue has accrued. Section 18 of the Limitation Act, 1963 posits that a fresh period of Limitation shall be computed from the date when the party against whom the right is claimed acknowledges its liability. Hence, we are of the view that the fresh period of Limitation is required to be computed from the date of acknowledgement of debt by the principal borrower and part

payment made on 17.05.2017 read with the Ledger Account and the email dated 10.05.2018 evidences that the Application filed on 2019 is well within the period of Limitation. It is pertinent to mention that the 'Corporate Debtor' has not replied to the Demand Notice issued under Section 8 of the Code.

15. Hence, this Appeal is allowed and the Order of the Learned Adjudicating Authority is set aside. The Adjudicating Authority shall proceed in accordance with law.

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Ms. Shreesha Merla]**  
**Member (Technical)**

**NEW DELHI**  
**12<sup>th</sup> November, 2021**

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