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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 04.07.2018

+ CO.PET. 465/2015

BIJAY PAPER TRADERS LTD. Petitioner

Through Mr.Rishi Sood and Mr.Anand
M.Mishra, Advs.

versus

ANA PRINT O GRAFIX PRIVATE LIMITED..... Respondent

Through Mr.Rajat Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This petition is filed under Section 433(e), 434(1) (a) & 439 of the Companies Act, 1956 for winding up of the respondent company. It is the contention of the petitioner that in April 2010 the respondent company had placed six purchase orders of paper on the petitioner company. The petitioner duly supplied the said products. The petitioner raised its invoices, namely, Bill No.38 dated 23.04.2010, Bill No.51 dated 11.5.2010, bill No.50 dated 11.5.2010, Bill No.81 dated 2.6.2010, Bill No. 82 dated 2.6.2010 and Bill No.130 dated 17.7.2010 for a total amount of Rs.12,10,022/-. It is stated that on various occasions the respondent made payment of Rs.7,86,435/- and an amount of Rs.4,23,407/- remains outstanding. Reliance is also placed on two separate C-Forms said to have been issued on 2.4.2012 by the respondent company acknowledging an amount of Rs.4,41,722/- in respect of bill No.130 and an amount of Rs.7,68,120/- in respect of Bill

Nos.38,50,51,81 and 82. On 10.9.2014 the petitioner company issued a notice under section 433 and 434 of the Companies Act. The said notice is said to have been returned back by the Postal Authorities with the comments that the respondent company has left the office. Hence, the present winding up petition.

2. The respondent has not filed a reply. However, learned counsel appearing for the respondent states that the basic objection is of limitation i.e. that the claim of the petition is barred by limitation. It is pleaded that the invoices are of the year 2010 and the present winding up petition has been filed on 4.4.2015. Hence, he pleads that the claims on the basis of which the winding up petition is filed are totally barred by limitation. He relies upon a judgment of this court in Co.Pet.441/2014 titled ***Professional Audio Video Pte. Ltd. vs. M-3 Media Private Limited***, dated 26.4.2018. He also relies upon judgments in the case of ***Taipack Limited and Ors vs. Ram Kishore Nagar Mal, 2007 (3) Arb.LR 402 (Delhi)*** and in the case of ***Hansa Industries (P) Limited vs. M/s.MMTC Ltd. & Anr., 113(2004) DLT 474*** to contend that C-Form is not an acknowledgement of his debt and will not **accept/exceed** territory limitation.

3. I may first look at the facts of the present case. The invoices on the basis of which the present winding up is filed are all of 2010. The winding up petition has been filed in 2015. It appears that the winding up petition has been filed beyond the period of limitation of three years. I may look at the judgment of this court in the case of ***Professional Audio Video Pte. Ltd. vs. M-3 Media Private Limited (supra)*** where this court has noted the legal position on limitation as follows:-

“6.The limitation period would be three years. Article 14 of the Limitation Act reads as follows:-

14.	For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Three years	The date of the delivery of the goods.
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7.This court in ***Interactive Media & Communication Solution Pvt. Ltd. v. Go Airlines Ltd.***(supra), held as follows:

“4. What is stated in the said paragraphs is that no period of limitation has been prescribed under the Limitation Act for filing of a winding up petition. However, Section 433(e) stipulates that a winding up petition is maintainable when a company is unable to pay the debt which is due and payable. We have already interpreted Section 434(1)(a), which incorporates the deeming provision. The debt should be one which is legally recoverable and is not barred under the law of limitation. In Niyogi Offset Printing Press Limited (supra), in paragraph 27, it was accordingly held as under:

“27. The claim of the petitioner for recovery of the amount has become barred by time. If the petitioner files a suit for recovery of the said amount, the suit will be dismissed as barred by time. If the claim of the petitioner to recover the amount has become barred by time, it will not be appropriate to initiate the process of winding up of the respondent company. Under Section 433(e) of the Companies Act, 1956 the machinery for winding up can not be allowed to be utilized merely as a means for realizing debts due from a company which is also barred by time. Consequently there are no grounds to initiate the winding up proceedings against the respondent company. The petition, therefore, is without merit is liable to be dismissed. The petition, therefore, is

dismissed.”

8. Reference may also be had to the judgment of the Division Bench of this court in the *Fourseasns Marketing Pvt. Ltd. v. The Indure Ltd.*, Co.A.12/2005, decided on 22.11.2007, where the court held as follows:

“13. Therefore, in our considered opinion, the learned Single Judge was justified in holding that the aforesaid claim of the appellant was barred by limitation as the said claim was raised beyond the period of three years of the time specified in terms of the agreement. The winding up petition was filed on 21st March, 2001, whereas payment became due in July, 1997 and part payment was made on 10th July, 1997.”

9. The alleged claim by the petitioner is barred by limitation on the face of record. I see no reason to allow the present petition. The same is accordingly dismissed. All the pending applications, if any, are also dismissed.”

7. Hence, where on the facts of the case a claim is barred by limitation, a winding up petition would not lie. In this case, the petitioner claims or contends that the C-Form is an acknowledgement of debt and would extend the period of limitation. The bone of contention between the parties is whether the C-Form would extend the period of limitation? A perusal of the C-Forms attached would show that they show the Bill No. and the amount of the Bill against the entry in the C-Forms and signatures have been affixed on behalf of the respondent.

8. Section 18 of the Limitation Act reads as follows:-

18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of 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.”

9. This court in *Taipack Limited and Ors vs. Ram Kishore Nagar Mal, (supra)* has held that a C-Form is not an acknowledgement of debt in terms of section 18 of the Limitation Act. This court held as follows:-

“31. Now can it be said that the 'C' Form supplied by the Petitioner herein constitutes acknowledgment of debt owed to the Respondent No. 1 so as to give a fresh lease to the commencement of Limitation? The answer is plainly in the negative for the following reasons:

Firstly, there is no acknowledgement of a present and subsisting liability. The said form can at the most be treated as an acknowledgement of the goods received

under the contract of supply of goods and the price fixed to be paid for them. Whether or not payments were effected thereafter, or any amount remains due or outstanding cannot be inferred from the said 'C' form in the facts and circumstances of this case. Secondly, no intention to acknowledge a liability can be inferred from the contents of the said 'C' form. Thirdly, one cannot establish a jural relation of debtor and creditor from the contents of the said 'C' form. Thus, the essential requirements for a writing to constitute acknowledgment are missing from this document. (also see *Hansa Industries (P) Limited v. MMTC Ltd.* 2004 VI AD (Del) 222.

32. Thus, the Arbitrator clearly erred in treating 16.1.2000 as the date of commencement of limitation. In view of the provisions contained in The Limitation Act, and the authorities cited, I find no force in the contention of the Respondent that the claim before the Arbitrator was within the period of Limitation. The said 'C' Form does not constitute an acknowledgment within the meaning of Section 18 of the Limitation Act and the Arbitrator misapplied the law on this aspect as well.”

10. This court in *Hansa Industries (P) Limited vs. M/s. MMTC Ltd. & Anr.(supra)* had elaborated the above statutory provision as follows:-

“15. In the case of *Shapoor Freedom Mazda Vs . Durga Prosad Chamaria and others* reported in AIR 1961 SC 1236 the Apex Court while interpreting corresponding Section 19 of Limitation Act, 1908 which was identically worded, held that the relevant essential requirement of valid acknowledgment are: (a) It must be before the relevant period of limitation has expired, (b) it must be in regard to the liability and respect of the right in question and (c) it must be in writing and must be signed by the party against whom such right is claimed.”

11. Hence, for acknowledgement of a debt it must be an acknowledgment of liability in respect of such amount made in writing signed by the parties. It would be clear that what the Form-C indicates is a statutory averment which is given under the Central State Tax Act. It merely shows delivery of goods as per invoice. It cannot be termed to be an acknowledgement of debt within the meaning of Section 18 of the Limitation Act.

12. In view of the above, keeping in view the earlier judgment of this court, it is manifest that the claim which is subject matter of the present winding up petition was barred by limitation when the present winding up petition was filed. In view of the said facts the present petition has no merits and is liable to be dismissed.

13. Petition is dismissed. All pending applications, if any, stand disposed of accordingly.

JULY 04, 2018

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JAYANT NATH, J

Corrected and released
on 23.07.2018