

**Acknowledgement of debt in Balance Sheet and Annual Return amounts to Acknowledgement of Debt under the India's Limitation Act, 1963?**

Acknowledgment – In general sense “acceptance of existence of something”

**ACKNOWLEDGEMENT OF DEBT UNDER LIMITATION ACT?**

It means an admission of an existing liability in lieu of which the period of limitation is extended.

Section 18 of the Limitation Act, 1963 (“Act”) deals with the effect of acknowledgment

Acknowledgement of liability must be:

- ✓ In writing;
- ✓ Made before expiry of limitation;
- ✓ Signed by the person or his authorised agent admitting liability;
- ✓ Within period for filing the suit. If limitation has already expired, it would not be revived;
- ✓ Unqualified, unambiguous and clear in terms.

The Act grants a fresh period of limitation only in cases where *acknowledgement is before expiry of limitation period.*

**APPLICABILITY OF THE ACT TO THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (“IBC”)**

The Limitation Act is applicable to applications filed under Sections 7 and 9 of the Insolvency and Bankruptcy Code, 2016 *as held by Supreme Court in judgment of B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates.*

Sr. No	Particulars
1.	<p>The Hon’ble Supreme Court in the case of <i>BK Education Services Private Limited v. Parag Gupta and Associates</i> held that an application filed after the IBC came into force in 2016 cannot revive a debt which is no longer due as it is time-barred. The expression “debt due” in the definition sections of IBC mean debts that are “due and payable” in law, i.e., the debts that are not time-barred. Since the Act is applicable to applications filed under sections 7 and 9 of the IBC from inception, article 137 of the Limitation Act is evoked, which provides the period of limitation in case of “any other application for which no period of limitation is provided elsewhere” as <b>three years</b> from the time when the right to apply accrues.</p> <p><i>The right to sue</i>, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under article 137 of the Act, save and except in those cases where, on the facts of the case, section 5 of the Act may be applied to condone the delay in filing such applications.</p>
2.	<p>The Hon’ble Supreme Court in <i>Sampuran Singh and Ors. v. Niranjan Kaur and Ors.</i> held that the acknowledgment has to be prior to the expiration of the prescribed period for filing the suit, failing which fresh trigger of limitation period</p>

would not accomplish.

Therefore, *a fresh acknowledgement shall imply a fresh start of limitation period*, wherein the date on which the acknowledgment is given shall not be included.

**DOES THE STATEMENT OF BALANCE SHEET INDICATING LIABILITY AMOUNTS AND BOARDS REPORT AMOUNTS TO ACKNOWLEDGEMENT OF DEBT UNDER SECTION 18 OF THE ACT?**

**REQUIREMENTS OF VARIOUS ENACTMENT**

*As per section 92 of the Companies Act, 2013, every company is required to prepare and file its Annual Return with Registrar of Companies ("ROC"). This is the statutory requirement to be fulfilled by the Company and filing of financial statements is mandatory pursuant to Section 137 of the Companies Act, 2013*

*Even as per the Income Tax Act, 1961 and various accounting standards, the Balance Sheet including Assets and Liabilities is to be filed in the income tax returns.*

**Various Judgments that have considered the effect of Section 18 of the Act**

In **V Padmakumar v. Stressed Assets Stabilization Fund (SASF)** it was held that reflection of debt in the Balance Sheet cannot be considered as an acknowledgement of debt under the Act due to the following:

- ❖ As the filing of Balance Sheet/Annual Return being mandatory requirement under the Companies Act, 2013, failing of which attracts penal action;
- ❖ If the statement of Balance Sheet indicating liability amounts to an acknowledgement of debt under the Act, *then no limitation would be applicable, because every year, it is mandatory for the Company to file Balance Sheet/Annual Return, which is not the law.*

In the matters of "**Sheetal Fabrics versus Coir Cushions Ltd.**" and "**Padam Tea Company Ltd.**" it was held that the Balance Sheet would be required to be read with Directors' Report. In the Directors Report, there does not appear to be any acknowledgement of debt. The statement recorded by the Auditor with regard to the pending litigation in the facts of the present matter, they find, cannot be read as an acknowledgement by Company under Section 18 of the Act.

The Adjudicating Authority did not go into the particulars. In present matter, we are not deliberating whether entry in Balance Sheet can be termed Acknowledgement in law. In their view, even if they are to consider that contents in Balance Sheet could be read as acknowledgment even then if we read the contents in Balance Sheet in the matter, for reasons stated above, they do not find that the Company acknowledged as such the liability to pay the alleged outstanding debt.

**Conclusion: -**

1. *The Limitation Act, 1963 is applicable to the application filed under IBC;*

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2. *As such merely including of debt in the Balance Sheet and Annual return does not amount to acknowledgement of dues. There should be a strict proof of debt and default.*

Please feel free to reach out to us to know more.

E-mail us at	➤ <a href="mailto:kbaglacs@gmail.com">kbaglacs@gmail.com</a> ➤ <a href="mailto:maheshgbagla@gmail.com">maheshgbagla@gmail.com</a>
Call us on	➤ +91-9049000431 ➤ +91-7249136913 ➤ +91-7875795779

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