Michael Hart Vs. Ninestars Information Technologies Ltd.

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SooperKanoon Citation : sooperkanoon.com/964605

Court : Chennai

Decided On : Apr-30-2013

Judge : M.Jaichandren

Appellant : Michael Hart

Respondent : Ninestars Information Technologies Ltd.

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

30. 04/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN AND THE HONOURABLE MR.JUSTICE M.M.SUNDRESH O.S.A.No.11 of 2013 Michael Hart .. Appellant Versus M/s.Ninestars Information Technologies Ltd. A company registered under the Companies Act, 1956, 72, Greams Road, Thousand Lights, Opposite Greams Road Post Office, Chennai-600 006, Represented by its Managing Director, Mr.Gopal Krishnan .. Respondent Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Section 483 of the Companies Act, 1956 read with Clause 15 of Letters Patent, against the order, dated 29.6.2012, made in C.P.No.2 of 2009, on the file of the High Court. For Appellant : Ms.Jayna Kothari for Mr.B.N.Suchindran For Respondent : Mr.P.Govindarajan JUDGMENT (Judgment of the Court was made by M.Jaichandren,J.) This Original Side Appeal has been filed against the order and decreetal order, dated 29.6.2012, made in C.P.No.2 of 2009, on the file of this Court.

2. The company petition, in C.P.No.2 of 2009, had been filed by the petitioner therein, the appellant in the present original side appeal, under Section 433(e) and (f) of the Companies Act, 1956, praying for an order directing the winding up of the respondent company and for an order appointing the liquidator attached to this court, as the liquidator of the respondent company, with all the necessary powers under the provisions of the Companies Act, 1956, including the power to take possession of all affairs, assets, management, books, papers and vouchers and to award costs.

3. It had been stated that the respondent company is an information technology company involved in the field of archiving and data conversion from analog to digital mode. The respondent company has its registered office at Chennai and it also has a corporate office in Bangalore. The respondent company has international presence in the United States of America, Singapore and Australia.

4. It had been further stated that, in the year, 2003-2004, the respondent company was desirous of promoting its sales and for making its presence in the United States of America. The petitioner possessed the necessary marketing expertise and the know-how and he had a high reputation and credibility in the information technology industry in the United States of America. Therefore, the respondent company had sought the services of the petitioner, as a consultant for the respondent company. Accordingly, the respondent company had engaged the petitioner, as a consultant, by executing a Consulting Agreement, dated 21.5.2004. Under the said agreement, the respondent company had appointed the petitioner, as a consultant on a non-exclusive basis and had required him to market the respondent company's services, as listed therein, in the regions of North and South America. As a consultant, the petitioner was required to source and negotiate a new business for the respondent company and to provide all the necessary and related assistance. The consulting fee agreed to be paid by the respondent company to the petitioner, for the services to be rendered by him, was a sum of US$ 10,460 per month. In addition to the said amount, the respondent company was also liable to pay the petitioner other incidental expenses such as work related travel expenses, expenses relating to the use of his phones, office supplies and health insurance.

5. It had been further stated that the Consulting Agreement had been entered into for a period of six months, upto the month of November, 2004. The agreement had been renewed for a further period of six months, by another Consulting Agreement, dated 19.11.2004. The second agreement was in force upto the month of May, 2005. The terms of the second agreement were similar to those of the first agreement.

6. It had been further stated that the respondent company was irregular in making the payments to the petitioner. By the month of March, 2005, a sum of s US $ 1,64,500 was due to be paid by the respondent company to the petitioner. Inspite of the persistent attempts by the petitioner to persuade the respondent company, to release the payments due to him, the respondent company had failed to do the same. In such circumstances, the appellant had tendered his resignation, on 28.3.2005. Thereafter, the respondent company started negotiating with the petitioner. The respondent company has stated that it was unable to pay the entire amount that was due to the petitioner, as it did not possess sufficient funds for the same. However, as a gesture of good faith the petitioner had agreed to settle the amounts due to him and had agreed to receive a sum of US $ 1,40,000/-. As the respondent company was not in a position to pay the said amount it had executed a promissory note in favour of the appellant, on 31.3.2005. In the said promissory note it had been stated that the amount of US $ 1,40,000/- was due and payable to the appellant, without interest, on or before 31.10.2005.

7. It had also been stated that if the amount was not paid, within the period stipulated, the respondent company shall be considered to be in default and it shall pay interest at the rate of 1.5% per month. The promissory note had been signed by the Chairman/Managing Director of the respondent company and it had been faxed to the petitioner, on 6.4.2005. In spite of the signing of the promissory note, the respondent company had failed to make the payments to the petitioner. The petitioner had sent several representations and had made several requests to the respondent company to clear the dues. However, there was no response from the respondent company. Initially, the petitioner had issued a legal notice to the respondent company, on 22.2.2008, demanding the payment of the amount due to him, under the promissory note, along with the interest of 1.5% per month. The

legal notice had been received by the respondent company, on 29.2.2008. On receiving the legal notice the Managing Director of the respondent company had contacted the petitioner. An E-mail, dated 1.4.2008, had been sent on behalf of the respondent company requesting the appellant to settle for an amount of US $ 1,00,000/-, to be paid in three or four phases. The Managing Director of the respondent company had accepted and acknowledged that the promissory note was issued to the petitioner in good faith and that the respondent company had intended to pay the amount due to him. However, no payment had been made by the respondent company. In such circumstances, the petitioner had sent a statutory notice to the respondent company, as required under Section 434 of the Companies Act, 1956, on 15.9.2008. The said notice had been sent to the registered address of the respondent company in Chennai and to its office in Bangalore. In the said notice it had been stated that the respondent company was due to pay an amount of Rs.2,16,000, to the petitioner. The said notice had been received by the respondent company, on 22.9.2008. In spite of the legal notice having been received by the respondent company no payment had been received by the petitioner.

8. It had been further stated that, in the facts and circumstances of the case, it was clear that the respondent company was deemed to be unable to pay off its debts of US $ 2,17,700, being the amount due under the promissory note, along with the interest, upto the month of November, 2008, and the other expenses incurred by the petitioner, including the legal expenses, arising in the usual and ordinary course of the business. In effect, the respondent company had become commercially insolvent. The respondent company had clearly admitted its indebtedness and its failure to pay back the amount of US $ 2,17,700/-, along with the other expenses. In such circumstances, it is just, necessary and imperative for the respondent company to be wound up, by an order passed by this Court, as per the provisions of Section 433(e) of the Companies Act, 1956. Therefore, the appellant had filed the company petition, in C.P.No.2 of 2009, before this Court, seeking the reliefs, as prayed for therein.

9. The learned single Judge had passed the order, dated 29.6.2012, dismissing the said petition stating that the claim of the petitioner is time barred, as the E-

mail, dated 1.4.2008, based on which the petitioner had made the claim would not amount to acknowledgment, as it had been given after the expiration of the period of limitation of the claim of the petitioner and therefore, the respondent company cannot be wound up, as prayed for by the petitioner, in respect of the legally unenforceable claim made by him.

10. The learned counsel appearing on behalf of the petitioner had submitted that, though the respondent company had denied the execution of the promissory note, as well as the E-mail, dated 1.4.2008, the respondent company had admitted the existence of the Consulting Agreements entered into between the petitioner and the respondent company. She had also submitted that the respondent company had agreed to pay the remuneration, as per the said agreements. Having agreed to pay a sum of US $ 10,460, to the petitioner, the respondent company is bound to pay the said amount. Further, the respondent company had also admitted their liability and had agreed to pay a sum of US $ 1,40,000, as full and final settlement of the remuneration payable to the petitioner. Accordingly, the respondent company had executed a promissory note for the said amount, on 31.3.2005, and had sent the same through fax. The promissory note was also given as a security for the amount payable by the respondent company. The respondent company had also admitted its liability, by way of an E-mail, dated 1.4.2008, wherein the respondent company had admitted the execution of the promissory note. As the respondent company had failed to make the payment, despite the statutory notice issued to it, it is liable to be wound up.

11. The learned counsel appearing on behalf of the petitioner had further submitted that there is no question of the claim of the petitioner being time barred, as the respondent company had admitted and acknowledged its liability, by way of an E-mail, dated 1.4.2008. The learned counsel had further submitted that, during the pendency of the petition filed on behalf of the petitioner, the respondent company had filed C.A.No.1722 of 2010, to stay the proceedings, in C.P.No.2 of 2009, till the completion of the arbitral proceedings between the petitioner and the respondent company. The respondent company had also filed C.A.No.40 of 2011 for the dismissal of C.P.No.2 of 2009, on the ground that this court had no territorial jurisdiction and there was no original cause of action for the petitioner to

institute the petition before this Court. However, this court had dismissed both the petitions filed by the respondent company, by a common order, dated 10.6.2011. In fact, this Court had already given a finding that the E-mail, dated 1.4.2008, amounts to an acknowledgment of the liability of the respondent company. The said finding had become final and therefore, it cannot be re-agitated by the respondent company. The learned counsel had further submitted that it was not open to the respondent company to raise the plea that the promissory note in question is inadmissible in evidence for want of sufficient stamp duty and that the E-mail, dated 1.4.2008, would not amount to an acknowledgment of the liability of the respondent company.

12. The learned counsel appearing on behalf of the appellant had relied on the decision of the Supreme Court, in Syndicate Bank Vs. R.Veeranna, (2003) 2 SCC 15.wherein it had been held as follows: "We may add that in the light of the acknowledgment of their liability by the defendants in 1978, it is not open to them to deny to make payment of the amount due to the Bank on the ground that higher rate of interest could not be charged. It is clear from the judgment of this Court in Hirala Vs. Badkulal that an unqualified acknowledgment of liability as in the present case by a party not only saves the period of limitation but also gives a cause of action to the plaintiff to base its claim." 13. The learned counsel had also relied on the decision of the Supreme Court, in Kamala Devi Vs. Mani Lal, AIR 197.SC 1187.wherein it had been held as follows: "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 given 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 was 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 later depends upon appropriate article of Limitation Act which applied 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, 31.8.40. In this view, there is no merits in the plea of limitation either." In such circumstances, the learned single Judge had erred in holding that the E-mail, dated 1.4.2008, is not an unconditional acknowledgment of the liability, by the respondent company, as per Section 18 of the Limitation Act, 1963.

14. The learned counsel for the appellant had relied on the decision of the Supreme Court, in Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and others, AIR 196.Supreme Court 1236(1), wherein it had been held as follows: "Section 19(1) says, inter alia, that where before the expiration of the period prescribed for a suit in respect of any right, an acknowledgment of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. It would be noticed that some of the relevant essential requirements of a valid acknowledgment are that it must be made before the relevant-period of limitation has expired, it must be in regard to the liability in respect of the right in question and it must be made in writing and must be signed by the party against whom such right is claimed. Section 19(2) provides that where the writing containing the acknowledgment is undated oral evidence may be given about the time when it was signed but it prescribes that subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received; in other words, though oral evidence may be given about the date oral evidence about the contents of the document is excluded. Explanation 1 is also relevant. It provides, inter alia, that for the purpose of s. 19 an acknowledgment may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not yet come, or is accompanied by a refusal to pay, or is coupled with &.,claim to a set off, or is addressed to a person other than the person entitled to the right. It is thus clear that acknowledgment as prescribed by s. 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly

or even by implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledge judgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly G. without intending to admit the existence of jural relationship such intention could' be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in s.19, and there is really no substantial difference between the parties as to the true legal position in this matter." 15. In Mosenthals Wool and Mohair Vs. M/s.C.L.Jain Woolens Mills Pvt, (C.P.No.205 of 2002, dated 1.2.2013, Punjab and Haryana High Court), it had been held as follows: [20]. Section 18 of the Limitation Act says that where before the expiry of the prescribed period of limitation 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, "a fresh period of limitation shall be computed from the time when the acknowledgment was so signed". In Tilak Ram Vs. Nathu, AIR 196.SC, 935, the Hon'ble Supreme Court deciphered the following requirements to attract Section 18 of the Limitation Act:- [i] an admission or acknowledgment; [ii] such acknowledgment must be in respect of a liability regarding a property or right; [iii] acknowledgment must be made before the expiry of limitation period ; CP No.

205 of 2002. ::-8-:: [iv] it should be in writing and signed by the party against whom such right is claimed. [21]. The limitation period to institute proceedings against the respondent as on 31.08.1998 when it lastly acknowledged its debt liability had not admittedly expired for the obvious reason that the respondent had prior thereto also acknowledged such liability on 08.08.1997 and 19.01.1998 and meanwhile even made part payment as well. The letter dated 31.08.1998 [P-8], thus, fully satisfies the ingredients of Section 18 of the Limitation Act. [22]. The afore-said conclusion nonetheless falls short of answering the real issue, namely, should the renewed period of limitation be counted from 31.08.1998 or from February, 1999? [23]. Whenever a debtor acknowledges his liability and promises to pay the due amount on a future date and the creditor accepts such offer, the cause of action to take legal action for the recovery of such due amount stands suspended. It is only if the debtor fails to honour his promise to make payment on the consented date that the cause of action will arise afresh or revive in favour of the creditor. The respondent though acknowledged its liability on 31.08.1998 but it was preceded with a promise to make the due payment by way of four installments, commencing from September, 1998 onwards. The cause of action that arose in favour of the petitioner was in September, 1998 only when the respondent failed to pay the first agreed installment. [24]. Since the respondent-Company volunteered to split its debt liability in four parts and promised to pay each part of the due amount on different future dates and since none of the part was contingent or subject to or dependent upon the previous part, it appears to me that every default would give rise to a fresh cause of action in favour of the petitioner to the extent of the defaulted installment. ..... [28]. It is equally well settled that the winding-up jurisdiction of a Company Court cannot be invoked for realizing debts due from the Company though a Company in debt can be ordered to be wound-up if it is incapable to repay the admitted debt. It would be wholly immaterial whether the substantial part of the petitioner's claim is time-barred and only a part thereof is legally recoverable. The acknowledgment of its debt by the respondent-Company in communications one after the other clearly establishes that the extensions were sought by the respondent-Company as it was in financial crisis and unable to pay the due amount." 16. In ESPN Software India (P) Ltd., Vs. Modi Entertainment Network Limited, (2012) 173 Company Cases 465 (Delhi. "18. Admission in

balance-sheet is per-se an admission of liability and it is not equivalent to an entry in the books of account as has been sought to be argued by the learned senior counsel appearing on behalf of the respondent.

19. A coordinate Bench of this Court in 1 (2012) BC 50.Bhajan Singh Samra Vs. M/s.Wimpy International Ltd. Has held that admission of debt either in the balance sheet or in the form of a letter/communication would amount to an acknowledgement extending the period of limitation in terms of Section 18(1) of the Limitation Act, 1963." 17. In Prahlad Singh Vs. Col.Sukhdev Singh, AIR 198.SC 1145.it had been held as follows: "We think that the High Court was not right in brusihing aside in this fashion the findings arrived at in the proceedings to set aside the ex-parte order. That the decision given by a Court at an earlier stage of a case is binding at a later stage is well settled, though interlocutory judgments are open for adjudication by an appellate authority in an appeal against the final judgment. In Satyadhyam Ghosal v. Deorajin Debi1, this Court said, the principle of res judicata applies also between two stages in the same litigation to this extent that a court, whether a trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings." 18. In Balu Vs. Dhanam and three others, 1999 (III) CTC 374.it had been held as follows: "5. In this connection, it is necessary to refer to the rulings reported in Satyadhyan Ghosal v. Smt.Deorain Debi, AIR 196.SC 941.and Hindustan Petroleum Corporation Ltd. & Another Vs. K.M.Yakub (Died) and others, 1996(2) L.W. 817, The Apex Court has held as follows: "The principle of res judicata applies also as between two stages in the same litigation to this extent that a court whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding."" 19. The learned counsel had further submitted that the learned single Judge had failed to appreciate the fact that this Court, vide its order, dated 10.6.2011, made in C.A.No.1722 of 2010, and C.A.No.40 of 2011, had held that the E-mail, dated 1.4.2008, would act as an acknowledgment of the liability on the part of the respondent company. However, in the final orders passed by the learned single Judge, he had brushed aside the said observations and had held that the claim of the appellant was barred by limitation. She had further submitted

that the learned single Judge had failed to appreciate the fact that the respondent company had not preferred an appeal against the order of the learned single Judge, dated 10.6.2011. As such, the issue relating to the limitation had already been decided by the learned single Judge, in favour of the appellant and therefore, it was not open to him to dismiss the claim of the appellant by stating that the claim was time barred. Further, the appellant had been allowed to withdraw a sum of Rs.5,00,000/- that had been deposited by the respondent company, pursuant to the order passed by this court. In such circumstances, the finding of the learned single Judge that the claim of the appellant was time barred cannot be sustained in the eye of law.

20. Per contra the learned counsel appearing on behalf of the respondent had submitted that the original cause of action, as per the Consulting Agreement, dated 21.5.2004, and the Consulting Agreement, dated 19.11.2004, arises only at Bangalore and not at Chennai. Further, the appellant had agreed for arbitration, with Bangalore as the venue. Therefore, the appellant is estopped from agitating his claim before this Court.

21. It had been further submitted that the appellant ought to have referred the dispute for arbitration, instead of filing a winding up petition, under Section 433(e) of the Companies Act, 1956. The Consulting Agreement, dated 21.5.2004, contains the stamp paper of the State of Karnataka. It had been printed in Kanada language. Thus, it is clear that the Consulting Agreement had been prepared to be used in the State of Karnataka. The Consulting agreement, dated 19.11.2004, had not been properly stamped, as per section 17 of the Registration Act, 1908, and the rules framed thereunder. Therefore, the Consulting Agreement, dated 19.11.2004, is inadmissible in evidence, under Section 91 of the Indian Evidence Act, 1872.

22. It had been further stated that the promissory note is also not stamped and therefore, it is inadmissible in evidence, under Section 35 of the Indian Stamp Act, 1899. Further, it is also inadmissible in evidence, under Section 91 of the Indian Evidence Act, 1872, as the appellant had not filed the original promissory note, along with the company petition in C.P.No.2 of 2009.

23. It has also been stated that the claim of the appellant is time barred, as the company petition had been filed only on 24.11.2008, and therefore, it is hit by Section 18(1) of the Limitation Act, 1963. The E-mail, dated 1.4.2008, had been issued only after the expiry of the promissory note. Further, an acknowledgment should be made in writing signed by the executant and it should be addressed only to the creditor. In the present case, the E-mail had been addressed only to M/s.Jayna Kothari, Advocate and it had not been addressed to the appellant. As such, the acknowledgment is not valid and it is not enforceable in law.

24. The learned counsel appearing on behalf of the respondent company had relied on the decision, in Kalpana Trading Co., Coimbatore Vs. Executive Officer, Town Panchayat, Thiruchirappalli and another, AIR 199.Madras 371, to substantiate his claim that, to constitute an acknowledgment of liability there must be an acknowledgment of liability signed by the party against whom such property or right is claimed. Such an acknowledgment must be before the expiry of the prescribed period. Only then a fresh period of limitation would start from the time of the acknowledgment of the liability.

25. The learned counsel had relied on Bajeswari Vs. Jagannath, AIR 193.Privy Council 55, wherein it had been held that a mere acknowledgment contained in a communication to a third party is not a declaration that could create title.

26. In K.Ganapathy Vs. Vidyalingam, AIR 197.Madras 425, it had been held that a mere acknowledgment of the execution of the promissory note, without anything more, cannot amount to an admission of a subsisting liability so as to give a fresh period of limitation for a suit on a pronote. The acknowledgment of execution of the document in itself will not throw the burden on the executant.

27. In Sampuram Singh Vs. Niranjan Kumar, AIR 199.SCC 1047.it had been stated that the acknowledgment, if any, has to be made prior to the expiration of the prescribed period for the filing of the suit. If the limitation had already expired the acknowledgment made thereafter would not revive the claim, as it would be hit by the law of limitation.

28. In Raja of Vizianagaram Vs. Official Liquidator, AIR 195.Madras 136it had been held that an acknowledgment of the liability made after the expiration of the period of limitation cannot give a cause of action for making a claim of a time barred debt. Acknowledgment can be only of a subsisting liability.

29. In Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao, AIR 197.SC 107.it had been held that secondary evidence, by way of oral evidence, evidence or a copy of the document, insufficiently stamped, is not admissible in a suit, even though an objection to its admissibility had not been taken when the document was marked.

30. The learned single Judge had rightly observed that though the second agreement came to an end, on 18.5.2005, the appellant had tendered his resignation, on 28.3.2005, and therefore, on the date of submitting his resignation, the amount payable by the respondent company, towards the consultation fee, became due and payable. Therefore, the claim ought to have been made within three years from the date of the tendering of his resignation i.e. on or before 27.3.2008. Admittedly, the company petition had been filed by the appellant, on 24.11.2008, beyond the period of limitation.

31. The learned single Judge had also observed that a reading of the E-mail, dated 1.4.2008, would make it clear that it is not an unconditional acknowledgment. As per Section 18 of the Limitation Act, 1963, the acknowledgment must be in writing and it must be unconditional in nature, admitting the liability. However, the E-mail, dated 1.4.2008, cannot be construed as an acknowledgment or a liability and therefore, the claim of the appellant was time barred.

32. The learned counsel appearing on behalf of the respondent had relied on the decision, in Lothamasu Sambasiva Rao Vs. Thadwarthi Balakotiah, wherein it had been held that if the promissory note embodies all the terms of the contract and the instrument is improperly stamped, no suit on the debt will lie, as it would be barred by Section 91 of the Indian Evidence Act, 1872, and Section 35 of the Indian Stamp Act, 1899.

33. The learned counsel had also relied on the decision of the Full Bench of this court, in Perumal Chettiar Vs. Kamakshi Ammal, AIR 193.Madras 785, wherein it had been held that no liability would arise based on an instrument, which was improperly stamped.

34. In Ajab Enterprises Vs. Jayant Vegoiles and Chemicals Pvt. Ltd., AIR 199.Bombay 35, it had been held that a mere deposit of Rs.20,000/- as a condition, cannot be considered as a valid acknowledgment.

35. As such the appeal filed by the appellant is devoid of merits and therefore, it is liable to be dismissed.

36. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned, and in view of the records available, and on considering the decisions cited supra, it is noted that the learned single Judge, in his impugned order, dated 29.6.2012, made in C.P.No.2 of 2009, had held that the promissory note produced by the appellant is only a copy of the said document and that it had been insufficiently stamped. The learned single Judge had lost sight of the fact that the said promissory note had been filed in the company petition, in which a direction had been prayed for, by the appellant herein, for winding up the respondent company, for non payment of the admitted debts. The requirement of filing the original promissory note, with the appropriate value of stamps having been affixed, would arise only in the suit filed before the trial court, for the recovery of money, based on the said promissory note.

37. It is also noted that the learned single Judge in his order, dated 10.6.2011, in C.A.No.1722 of 2010 and C.A.No.40 of 2011, had relied upon the copy of the promissory note filed by the appellant to hold that the argument advanced on the side of the respondent company, that the promissory note was not sufficiently stamped and that it is defective, are beyond the scope of company proceedings. Having held so, the learned single Judge ought not to have passed the impugned order, dated 29.6.2012, dismissing the company petition in C.P.No.2 of 2009, stating that it is not maintainable.

38. It is also noted that the E-mail, dated 1.4.2008, had been sent by the Managing Director, Gopalakrishnan, admitting the liability of the respondent company and the issuance of the promissory note is in favour of the appellant. In the said E-mail the respondent company had clearly admitted the fact that it could not make the payments, payable to the appellant, due to financial constraints. The admission of the Managing Director of the respondent company in the E-mail, dated 1.4.2008, relates to the issuance of the promissory note and to the fact that the respondent company owed an amount of US $ 1,40,000 to the appellant. While so, the learned single Judge had dismissed the company petition, in C.P.No.2 of 2009, as barred by limitation. The learned single Judge had held that the period of limitation had started to run from 28.3.2005, the date on which the appellant had tendered his resignation, as consultant in the respondent company. However, from the records available it could be seen that there were certain negotiations that had taken place between the appellant and the respondent company, based on which it had been agreed that the amount to be settled in favour of the appellant would be reduced to US $ 1,40,000. Only thereafter, the respondent company had issued a promissory note, dated 31.3.2005, promising to pay US $ 1,40,000 to the appellant, before 31.10.2005, without interest. Thus, it could be seen that the amount of US $ 1,40,000 had become due and payable by the respondent company, on 31.10.2005. Further, on a perusal of the promissory note, dated 31.3.2005, it could be noted that, if the agreed amount was not paid by 31.10.2005, interest would accrue to the amount payable, on a monthly basis, at the rate of 1.5%. As such, the respondent company was at liberty to make the payment of the agreed amount of US $ 1,40,000, before 31.10.2005. Accordingly, the period of limitation, with regard to the amount payable to the appellant, by the respondent company, would start running from 31.10.2005 and not from 28.3.2005, as held by the learned single Judge.

39. It is not in doubt that an E-mail, dated 1.4.2008, had been sent by the respondent company, acknowledging its debts, as required under Section 18 of the Limitation Act, 1963. As the acknowledgment of debt had been made by the respondent company, before the limitation period of three years from 31.10.2005 was over, a fresh limitation period had started from the date of such acknowledgment i.e. from 1.4.2008. Thus, the company petition, in C.P.No.2 of

2009, which had been filed by the appellant, on 24.11.2008, is within the period of limitation. However, the learned single Judge had held that the company petition, in C.P.No.2 of 2009 is not maintainable, as the period of limitation had expired. Thus, it could be seen that the learned single Judge had erred in dismissing the company petition filed by the appellant, in C.P.No.2 of 2009. In such circumstances, the order passed by the learned single Judge, dated 29.6.2012, in C.P.No.2 of 2009, is set aside. The matter is remitted back to the learned single Judge to be disposed of on merits and in accordance with law. Accordingly, the original side appeal stands allowed. csh