



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

Date of decision: 02nd JULY, 2025

IN THE MATTER OF:

+ **RFA(COMM) 182/2023**

PLANET ADVERTISING PRIVATE LIMITEDAppellant

Through: Mr. Nalin Kohli, Sr. Advocate with
Mr. Suraj Raj Kesharwani, Mr. Manu
Kumar, Ms. Kavya Kumar, Ms.
Nimisha Menon, Advocates
Mr Akash Sharma, Advocate

versus

MS AMBIENCE PVT LTD & ORSRespondents

Through: Mr P. K. Agrawal, Ms Sanjoli Gupta,
Mr Akshay Chitkara, Mr Rishabh
Tomar, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present appeal under Section 13 of the Commercial Courts Act, 2015 has been filed by the Appellant challenging the Order dated 28.04.2023, passed by the learned District Judge, Commercial Courts – 02, South District, Saket Court, in CS DJ 862/2018. Vide the impugned Order, the learned District Judge has dismissed the Suit on the ground that the Suit is barred by limitation.

2. Shorn of unnecessary details, the facts, leading to the present Appeal, are as under:



- a. It is the case of the Plaintiff/Appellant herein that the Defendants/Respondents herein placed a purchase order dated 10.06.2014 with the Plaintiff/Appellant to display their advertisements. It is the case of the Plaintiff/Appellant that pursuant to the purchase order, the Plaintiff/Appellant prepared the campaign and updated the Defendants/Respondents with the campaign held in the month of June, 2014 by sending them emails along with the complete set of photographs for each of the sites displayed. It is stated that Plaintiff/Appellant raised its first invoice for the month of June, 2014 vide Bill No.187 dated 02.07.2014 amounting to Rs.18,73,667/-. It is stated that against the said Bill, the Defendants/Respondents paid Rs.16,18,960/- by way of cheque and the remaining amount of Rs.2,54,707/- was not paid.
- b. It is stated that the Defendants/Respondents being satisfied with the work of the Plaintiff/Appellant, placed another purchase order dated 16.07.2014 with the Plaintiff/Appellant adding a few more sites for display of advertisement within Delhi NCR. It is stated that the campaign continued and the Plaintiff/Appellant continued sending invoices to the Defendants for the work completed between July, 2014 and December, 2014. It is stated that the Defendants/Respondents kept assuring the Plaintiff/Appellant that the invoices would be cleared. Details of the invoices raised by the Plaintiff/Appellant for the work done between July, 2014 to December, 2014, as



reflected in the impugned Order, is being reproduced herein and the same reads as under:

Ambience Pvt. Ltd.			
S. No.	Bill Particulars	Date	Amount (in Rs.)
1.	305	22.08.2014	14,79,598/-
2.	306	22.08.2014	3,50,000/-
3.	370	20.09.2014	14,52,000/-
4.	371	20.09.2014	9,75,000/-
5.	417	30.09.2014	8,09,678/-
6.	418	30.09.2014	3,83,333/-
7.	438	11.10.2014	7,61,351/-
8.	439	11.10.2014	6,64,797/-
9.	480	07.11.2014	16,31,467/-
10.	543	07.11.2014	16,31,467/-
Total			1,01,38,691/-

- c. It is the case of the Plaintiff/Appellant that apart from Rs.1,01,38,691/- the Defendants/Respondents have also not cleared Rs.2,54,707/- pertaining to Bill No.187 dated 02.07.2014 and, therefore, the total amount due and payable by the Defendants/Respondents is Rs.1,03,93,398/-.
- d. It is stated that Defendant No.2 called Plaintiff at its registered office for a meeting and handed-over back-dated cheques to the Plaintiff for Order No. Ambience/14-15/121 and Ambience/14-15/225 with amended dates being 01.7.2014 & 01.08.2014. It is stated that when the Plaintiff asked as to why these back-dated



purchase orders have been prepared, it was informed by the Defendant No.2 that since there was a shortage of funds in the group company, i.e. Ambience Pvt. Ltd., the Plaintiff was requested to raise fresh invoices in the name of Ambience Projects and Infrastructure Pvt. Ltd., where the funds were available. It is stated that the Defendant No.2 assured the Plaintiff that the payment would be released within two days of the Plaintiff raising fresh invoices. It is stated that the Plaintiff accepted the offer of the Defendant No.2 and handed-over the back-dated purchase orders amounting to Rs.53,66,278/- in lieu of the following invoices:

1	438	11.10.2014	7,61,351/-
2	439	11.10.2014	6,64,797/-
3	480	07.11.2014	16,31,467/-
4	543	07.11.2014	16,31,467/-

- e. It is stated that the Defendant No.2 induced the Plaintiff to raise back-dated invoices and split the total outstanding amount in two parts, i.e. Rs.45,11,305/- and Rs.53,66,278/- totalling to Rs.98,77,583/- excluding service tax, instead of original outstanding of Rs.1,03,93,398/- which included service tax, with the understanding that if the Defendants fail to make the payment of the back-dated invoices for a sum of Rs.53,66,278/- then the Defendants shall be liable to make the payment of Rs.1,03,93,398/- (Rs.98,77,583/- being the total of invoices + Rs.5,15,815/- being the service tax). It is stated that since no



payment was received by the Plaintiff/Appellant, the Plaintiff sent a legal notice dated 20.08.2015 to the Defendants under Sections 433/434/439 of the Companies Act, 1956 calling upon the Defendants to pay Rs.1,03,93,398/- along with interest @ 18% per annum. It is stated that in reply to the said notice, the Defendants raised frivolous allegations against the Plaintiff/Appellant.

- f. It is stated that the Plaintiff filed a Petition, being Company Petition No. 812/2015, before this Court under Section 433(e) and 434 of the Companies Act, 1956 for winding up of the company. The said Petition was admitted, however, this Court, vide Order dated 17.09.2018 deferred the appointment of the official liquidator by giving liberty to the Defendants to deposit a sum of Rs.53,66,278/-. This Court also gave liberty to the Plaintiff to withdraw the said amount. The said Petition was disposed of by this Court vide Order dated 17.09.2018 with liberty to the Plaintiff to approach the Civil Court by filing an appropriate suit for recovery of the balance amount.
- g. Thereafter, the Plaintiff filed Civil Suit No.862/2018 seeking recovery of Rs.1,03,93,398/- along with the interest thereon.
- h. In the Suit, summons were issued and were served on the Defendants on 01.02.2019. Defendants appeared before the Court and the learned District Judge referred the matter to Mediation Centre to enable the parties to explore the possibility of an amicable settlement. It is stated that the matter could not be settled in the Mediation Centre. Material on record further



indicates that the Defendants went into Corporate Insolvency Resolution Process (CIRP) and a Resolution Professional was appointed. Material on record further indicates that the CIRP proceedings ended and thereafter the proceedings in the Suit proceeded.

- i. In the Suit, Written Statements were filed by the Defendants. One of the defences taken by the Defendants in the Written Submission was that the suit was barred by limitation as the invoices filed by the Plaintiff were for a period between 02.07.2014 to 07.11.2014, which were beyond the period of limitation as the Suit was filed on 13/14.09.2018. It was contended in the Written Statement that the Suit is not maintainable as the Plaintiff had already withdrawn Rs.53,66,278/- deposited by the Defendants before this Court in Company Petition No. 812/2015 filed by Plaintiff against the Defendants for winding up of Defendant No.1 company.
- j. Before the learned District Judge, on the question of limitation, it was contended by the Plaintiff that the money was deposited by the Defendants before this Court in terms of the Orders passed by this Court in Company Petition No. 812/2015 and the act of depositing money before this Court amounts to acknowledgement of debt which will extend the period of limitation. The Plaintiff also pleaded that apart from Bill No.306 amounting to Rs.3,50,000/- the Defendants had deducted TDS for the rest of the invoices raised by the Plaintiff, and, therefore, the period of limitation would be extended for a



further period of three years from 24.09.2015. This contention of the Plaintiff was rejected by the learned District Judge by holding as under:

“31. This Court is of the view that deposit of TDS can prima facie be proof only of the tax deducted at source and not of the amount due to the plaintiff more so, what is the amount mentioned therein has not been shown or stated by the plaintiff as due to him. This is because no intention to acknowledge a liability can be inferred from the contents of TDS Certificates. In view of aforementioned reasons and law laid down in judgments referred herein before, the deposit of TDS are neither the evidence of the debt or liability of the defendants nor can be relied upon to amount to an acknowledgment so as to get the Benefit of Section 18 of Limitation Act and therefore, the suit of the plaintiff has to be held as barred by limitation.

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33. As per article 15 of the Limitation Act referred by counsel for the defendants, the period of limitation is 3 years from the date when the period of credit expires in case of price of goods sold and delivered to be paid for or after the expiry of a fixed period of credit is the description of the suit. As per article 18, the period of limitation is 3 years from the date of work done, when the suit is filed for the price of work done by the plaintiff for the defendants at his request where no time has been fixed for the payment. When in any suit for which no period of limitation is provided elsewhere in the schedule r/w Section 2 (1) & 3 of the Limitation Act, the period of limitation is three years from the date when the right to sue accrues. Section 3 of the Limitation Act clearly says that subject to provisions of Section 4 to 24 (inclusive), every suit instituted, after the



prescribed period shall be dismissed. Section 14 of the Limitation Act will also not come into play in the present case as neither it has been pleaded nor any application was filed by the plaintiff and it is not a case when a party is pursuing the remedy before the forum not having the jurisdiction.

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36. To sum up, the Court is of the considered view neither deposit of TDS by the defendants nor mere grant of liberty to the plaintiff to approach the Civil Court will extend the period of limitation and therefore, this suit having been filed after three years of the work done as well as from the date when the right to sue accrued to the plaintiff is barred by limitation and therefore, deserves to be dismissed in view of Section 3 of Limitation Act. In the result, this issue no. 2 is decided in favour of defendants and against the plaintiff.”

k. It is this Order which is under challenge in the present Appeal.

3. Learned Counsel appearing for the Appellant submits that 11 invoices were raised by the Appellant between July 2014 to November 2014 for providing advertisement services to the Respondent. He states that payments with respect to those invoices were not made by the Respondents despite having given assurances. He states that even after the Appellant filed a Petition for winding up the Respondent Company, the Respondents kept giving assurances to the Appellant that the amount would be paid and, therefore, the period of limitation would extend beyond the dates of invoices. The Appellant on 20.08.2015 tendered a legal notice calling upon the Respondent to pay the pending dues. The Respondent for the first time



denied its dues towards the Appellant vide their reply dated 05.09.2015 to the legal notice. This reply was received by the Appellant on 12.09.2015. He states that applying Article 113 of the Limitation Act to the facts of the present case, the period of limitation will start from the date of denial, i.e. from 12.09.2015, and it is from that date the Appellant's right to sue first accrued. He places reliance on the Judgment of the Apex Court in M/s Geo Miller & Co Pvt Ltd v Chairman, Rajasthan Vidyut Utpadan Nigam Ltd, (2020) 14 SCC 643. Learned Counsel for the Appellant further states that the Appellant approached this Court *bona fide* by filing a petition for winding up the company instead of filing a civil suit and, therefore, the time spent in the winding up petition right from its filing till its disposal must be excluded from the period of limitation and benefit of Section 14 of the Limitation Act should be given to the Appellant. Learned Counsel for the Appellant places reliance on several judgments of the various High Courts to substantiate this contention. He further states that the Respondents/Defendants deposited TDS on the amount due and payable to the Appellant/Plaintiff and the same amounts to acknowledgment of debt and the same would extend the period of limitation from the date of deposit of the TDS under Section 19 of the Limitation Act. Learned Counsel for the Appellant places reliance on the Judgment of a co-ordinate Bench of this Court in Samyak Projects (P) Ltd v Ansal Housing Ltd, 2024 SCC OnLine Del 3778, to support his contention.

4. *Per contra*, learned Counsel appearing for the Respondents states that the argument of the learned Counsel for the Appellant that Article 113 of the Limitation Act would govern the present case, cannot be accepted. He states that the period of limitation starts running from the moment the invoices



were raised and the provisions of Article 18 of the Limitation Act would apply to the present case. He further contends that Section 14 of the Limitation Act cannot be invoked because a winding up Petition is never in the nature of recovery of money and, therefore, it cannot be said that the time lapsed in the winding up Petition should not be considered while calculating the limitation. He states that it cannot be said that the winding up Petition was filed *bona fide* as the object of the winding up petition is to tell the Court that a company, against whom the winding up petition is filed, is unable to pay its debts, and therefore, cannot be permitted to exist. He further states that winding up petition is filed only to see as to whether the debtor is unable to pay its debts or not and it is not a proceeding to recover money. Learned Counsel for the Respondents further contends that Section 19 of the Limitation Act will not apply to the present case only on the basis of Form 16 dated 24.09.2015. He states that the TDS on amount of Rs.24,27,000/- was deposited with the Income Tax Authority and not paid to the Appellant herein and, therefore, it cannot extend the period of limitation. He places reliance on the Judgment of the Bombay High Court in S.P. Brothers v. Biren Ramesh Kadakia, **2008 SCC Online Bom 1599**, to support his contentions. He states that a TDS certificate only shows a deduction of tax at source and does not amount to an acknowledgment of debt, or admission of liability.

5. Heard the learned Counsels for the Appellant and the Respondents and perused the material on record.

6. The Plaintiff/Appellant herein is seeking recovery of money which is due and payable to it by the Defendants/Respondents on account of work done by it. The contention of the learned Counsel for the Appellant that the



period of limitation will start from the date of denial of payment, which is the date of reply to the legal notice, i.e. 12.09.2015, cannot be accepted. In the opinion of this Court, Article 113 of the Limitation Act has no application to the present case as the present case falls squarely within Article 18 of the Limitation Act. Article 113 which is only a residuary clause, would not apply to the present case. Time would start running from the date of invoice and the suit has been filed beyond three years.

7. The contention of the learned Counsel for the Appellant regarding application of Section 14 of the Limitation Act to the facts of the present case also cannot be accepted. Section 14 of the Limitation Act reads as under:-

“Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction.

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of



1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

8. As rightly contended by the learned Counsel for the Respondents, the winding up proceedings and the recovery proceedings operate in two entirely different spheres. The winding up proceedings are initiated to wind up a company which is unable to pay its debts and it is now settled law that winding up proceedings are not in the nature of recovery proceedings. The Apex Court in Natesan Agencies (Plantations) v. State, (2019) 15 SCC 70, had held as under:

“21.4.4. We may also refer to a Division Bench decision of the Nagpur High Court in Kashinath Shankarappa v. New Akot Cotton Ginning and Pressing Co. Ltd. [Kashinath Shankarappa v. New Akot Cotton Ginning and Pressing Co. Ltd., 1949 SCC OnLine MP 123 : AIR 1951 Nag 255] wherein, on the question as to whether in an action for recovery of debt in the civil court, the time spent in the winding-up proceeding could be excluded, the High Court answered in the negative thus: (SCC OnLine MP para 30)



“30. The grounds on which a company can be wound up are set out in Section 162 of the Companies Act. There are a number of them. Even if it be assumed that the application was under Section 162(v), namely, that the company was unable to pay its debts, Section 163(1) shows that the expression “unable to pay its debts” embraces three distinct concepts. There is nothing to show that the application was confined to this particular debt. But even if it was, the cause of action in winding-up proceedings under Section 163(1) is the inability of the company to pay its debts and not as here, as the recovery of the debt. The question of recovery does not arise until the winding-up order has been made and a liquidator appointed. It is at that stage that the claims against the company are enquired into and decided. Therefore the cause of action in those proceedings and the cause of action here were not the same. It follows that Section 14 is not attracted.”

21.4.6. The common thread running through all the decisions abovereferred is that for the applicability of Section 14 of the Limitation Act and exclusion of the time spent in earlier proceeding, the matter in issue in both the earlier and the later proceedings must be the same. This is apart from the other requirements that the previous proceeding had been civil proceeding, which were being prosecuted by the plaintiff with due diligence and in a court which, from the defect of jurisdiction or other cause of like nature, was unable to entertain the same though the plaintiff had been prosecuting in that court in good faith.”

9. Since both – the winding up proceedings and the recovery proceedings operate in entirely different spheres, Section 14 of the



Limitation Act cannot be made use of. This leaves us with the last issue as to whether the fact that the issuance of a TDS certificate would extend the period of limitation or not. Section 19 of the Limitation Act reads as under:-

“Section 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.”

10. A learned Single Judge of this Court in Ansal Housing Ltd v Samyak Projects Private Limited, **2023 SCC OnLine Del 2387**, has very succinctly discussed the issue as to whether issuance of a TDS certificate would extend the period of limitation or not. In the said Judgment the learned Single Judge has observed as under:

“29. The learned senior counsel for the defendant has asserted that as the case of the plaintiff itself is that the last payment made against the Deed of Cancellation was received by the plaintiff from the defendant on 27.03.2015, the present Suit having been filed on 20.09.2018, is, therefore, barred by limitation. He has



submitted that the mere fact of the deposit of TDS on 30.09.2015 by the defendant would not extend the period of limitation.

30. *The above submission is disputed by the learned senior counsel for the plaintiff contending that the TDS deposited is to the account of the plaintiff and, therefore, would extend the period of limitation.*

31. *Section 19 of the Limitation Act, 1963 reads as under:*

“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.”

32. *To attract the above provision and take benefit thereof, the plaintiff has to prove that:—*

(a) The payment on account of the debt was made by the defendant before the expiration of the prescribed period;

(b) The payment was acknowledged by some term of writing either in the handwriting of the payer or signed by the payer.

33. *Section 194A of the Income Tax Act obliges the person responsible for paying interest to another to*



deduct, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by an issue of a cheque or draft or by any other mode, whichever is earlier, income tax thereon at the rate in force. Explanation to Section 194A (1) further provides that where any income by way of interest is credited to any account in the books of account of the person liable to pay such income, such crediting shall also be deemed to be a credit of such income to the account of the payee making such person liable to deduct TDS.

34. Section 198 of the Income Tax Act further provides that all sums deducted shall, for the purpose of computing the income of the assessee, be deemed to be income received by such assessee.

35. In Baranagore Jute Factory PLC. Mazadoor Sangh (BMS) (supra), the Supreme Court observed that the amount deposited as TDS also partakes the character of compensation that was payable by NHAI in the said case.

36. In the present case, as the deposit of TDS was made on 30.09.2015, in terms of Section 198 of the Income Tax Act, it would be deemed to be an income received by the plaintiff. The said payment being made against the Cancellation Deed, which is not denied by the defendant, would in terms of Section 19 of the Limitation Act, extend the period of limitation. The issue of the TDS Certificate by the defendant shall satisfy the second condition of Section 19 of the Limitation Act as culled out above.

37. In Utility Powertech Limited (supra), the Court held that the deduction of TDS is not an admission of liability. The same was the ratio in Actal (supra) and in S.P. Brothers (supra). The said judgments would, however, have no application to the facts of the present



case. Though deposit of TDS may not act as an acknowledgment of debt by the defendant, it being a payment made by the defendant on account of the plaintiff and on account of a debt, would lead to a fresh period of limitation being computed from the date when the deposit of TDS was made.

38. The Suit therefore, cannot be said to be barred by limitation.”

11. The said Judgment was upheld by a co-ordinate Bench of this Court in Samyak Projects (P) Ltd v Ansal Housing Ltd, 2024 SCC OnLine Del 3778. Learned Single Judge of Punjab and Haryana High Court in Ranjiv Kumar v. Raksha Devi, 2018 SCC OnLine P&H 7940, has also held that payment of TDS amounts to acknowledgement of liability. However, in the said judgment, the learned Single Judge has relied on Section 18 of the Limitation Act.

12. Deposit of TDS is a payment by the Defendants to the Income Tax Authorities on account of a debt which the Defendants owe to the Plaintiff/Appellant, as affirmed by the Division Bench of this Court in Samyak Projects (supra). Undoubtedly, TDS certificate dated 24.09.2015 for deposit of TDS of Rs.48,450/- against the invoices No. 370 & 371, would extend the period of limitation and a fresh cause of action would arise from 24.09.2015. The Suit was filed by the Plaintiff/Appellant on 13.09.2018 and, therefore, the claim *qua* invoices No. 370 & 371 is within the period of limitation. As far as other invoices are concerned, their TDS was deducted before 24.09.2015 and, therefore, they are barred by limitation.

13. The learned District Judge has held that the Defendants owed money to the Plaintiff/Appellant herein, however, the right of the Appellant to



2025:DHC:5245-DB



recover money is not enforceable because of limitation. The Defendants have not filed any cross appeal/cross objection challenging the said finding which has attained finality. This Court is of the opinion that the invoices No. 370 & 371 for Rs.14,52,000/- and Rs.9,75,000/- respectively, are not barred by limitation.

14. Resultantly, the Appeal is allowed in part. The Defendants/Respondents herein are liable to pay Rs.24,27,000/- to the Appellant for which TDS of Rs.48,450/- has already been deposited by the Defendants/Respondents. The Appellant is also entitled to interest on Rs.24,27,000/- from the date of invoice till the payment of money at rate of 6% per annum.

15. With these observations and directions, the Appeal is disposed of, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHANSHANKAR, J

JULY 02, 2025

Rahul