NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1294 of 2023

(Arising against the impugned order dated 04.07.2023 passed by the Hon'ble National Company Law Tribunal, New Delhi, Bench-II in CP (IB) No. 812/ND/2022)

IN THE MATTER OF:

Akzo Nobel India Ltd.

Registered office: Geetanjali Apartment,
1st floor, 8B Middleton Street, Kolkata,
West Bengal. **...Appellant**
Email id: investor.india@akzonobel.com

Versus

Stan Cars Pvt. Ltd.

Registered office: 58 Pocket E, Sector 1
Bawana DSIDC, New Delhi-110039. **...Respondent**
Email id: stancarsnexa@gmail.com

Present:
For Appellant: **Mr. A.S Likhari, Advocate.**
For Respondents: **Mr. Ashraf Belal, Advocate.**

J U D G M E N T
(3rd July, 2025)

INDEVAR PANDEY, MEMBER (T)

This Appeal has been filed under section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") against the Order dated 04.07.2023 passed by the National Company Law Tribunal (Adjudicating Authority), New Delhi Bench-II in C.P (IB)/812 (ND)/2022 in Akzo Nobel India Ltd. (**Financial creditor**) versus Stan Cars Private Ltd.

Cont'd..../

(**Corporate Debtor**), by which the Adjudicating Authority has rejected the Section 7 petition filed by the **Akzo Nobel India Ltd. /Appellant** solely on the ground of limitation.

2. The Appellant states that the Impugned order has been passed in a mechanical manner without truly appreciating the peculiar facts of the case. That the submissions made by the Counsel for the Appellant at the time of final arguments have also not been properly recorded by the Ld. Adjudicating Authority while passing the impugned order. Adjudicating Authority completely ignored the Email dated 27.12.2019 sent by the Director of the Respondent company acknowledging the debt of the Appellant which is directly covered by the proviso of Section 18 of Limitation Act and even if the date of default is taken from this date of email dated 27.12.2019 then also the petition is filed on 22.10.2022, which is well within the limitation period of 3 years. Hence this appeal.

Brief facts of the case:

3. The brief facts of the case are given below:

(i) That the Appellant company is engaged in the business of selling and distributing automotive paints and other automotive refinished products.

(ii) The Respondent is also a registered company engaged in the business of automotive body shop and paint booth.

(iii) An agreement was entered into between the Appellant and Respondent, on 21.11.2017, whereby the Appellant extended a trade advance of Rs.

2,40,50,000/- to the Corporate Debtor Respondent in the month of December 2017 and January 2018. This agreement was for a duration of five years i.e up till the year 2022 and further as per clause 10 of the said agreement the lock-in period' was agreed to be three years from the date of execution of the agreement.

(iv) That as per the agreement dated 21-11-2017, the Appellant had disbursed Trade Advance of Rs. 2,40,50,000/- in the bank account of the Respondent, which specifically was agreed to be adjusted over 5 years in lieu of sales of Rs. 6,50,00,000/- (Rupees Six Crores Fifty Lakhs Only). It was further specifically agreed that the unutilized/deficit amount in the predetermined yearly sales (as per the agreement) would attract interest @ 12% per annum. In terms of the agreement dated 21-11-2017, the Respondent Corporate Debtor had done business to the tune of Rs. 40 lakhs (approximately) in the year 2021.

(v) In pursuance of the agreement dated 21-11-2017, the Respondent also executed a Promissory Note dated 21.11.2017 in favour of the Financial Creditor, wherein the CD promised to pay a sum of Rs 2,53,50,000/- with interest @12% p.a in consideration of full value received.

(vi) Thereafter, several communications took place between the parties as the Respondent was not able to meet the yearly targets as per the Agreement dated 21-11-2017, which as per the said agreement resulted in a levy of interest @ 12% per annum on the unutilized amount. Till the third quarter of year 2021, the Respondent had

admittedly placed sale orders to the tune of only Rs. 2,48,30,686/- instead of Rs. 6,50,00,000/- as specifically agreed to in the agreement dated 21-11-2017.

(vii) The Respondent had also sent a mail dated 27.12.2019 acknowledging the debt of the Appellant Financial Creditor.

(viii) As per the books and accounts of the Appellant, a total sum of Rs 3,88,18,142/- including an interest @12% pa till 25.04.2022 was due and unpaid by the Respondent to the Appellant, which the Respondent failed to pay as a material breach of contract, pursuant to which the Appellant issued legal notice dated 04.05.2022 through courier as well as email to the Respondent for demand of money.

(ix) Appellant filed a petition under Section 7 of the code against the Respondent Corporate Debtor on 28.10.2022.

(x) Adjudicating Authority in the Impugned Order decided that the Appellants qualify as financial creditors of the Respondent in the given set of facts and circumstances on record, but rejected the insolvency petition of the Appellant on the sole ground of limitation erroneously. The present appeal has been filed against the said dismissal of Section 7 petition.

Submissions of the Appellant

4. Ld. Counsel submitted that the Appellant being the Financial Creditor of the Corporate Debtor i.e., Stan Cars Pvt Ltd, is aggrieved by the impugned order dated 04-07-2023 passed by the Ld. Adjudicating Authority in the CP (IB) 812 (ND) of 2022 under Section 7 of the Code filed

by the Appellant.

5. Ld. Counsel for the Appellant submitted that his Company is in the business of selling and distributing of automotive paints and other automotive refinish products under the brand name “Sikkens”. The Respondents are carrying out the business of automotive paint shop and paint booth under the name and style of M/s Stan Cars Pvt Ltd.

6. Ld. Counsel stated that on 21.11.2017, the parties entered into a contract, whereby the Respondent was to purchase substantial of the products from Appellant over an agreed period of time, against which the Appellant was extending a trade advance to the Respondent. Accordingly, the Respondent received a trade advance for purchasing and installing paint booth, baking oven and other equipments at its work shop.

7. The Appellant submitted that it was mutually decided that out of the trade advance, an average monthly order of Rs.10,83,333/- was to be placed by the Respondent with the Appellant. It was further agreed that the Respondent shall make the payment to the appellant within 30 days of the purchase of the products and penal interest shall be payable upon the default thereon.

8. Ld. Counsel stated that the Appellant company transferred Rs.1,62,50,000/- to the Respondent on 21/12/2017 and Rs. 78,00,000/- on 31/1/2018. This amount was to be utilised by the respondent for purchasing and installing paint booth, baking oven, and other equipment required at its workshop to carry the business with new and improved means. The term of agreement was 5 years or till the material produced

by the petitioner for a value of Rs. 6,50,00,000/- could be purchased except otherwise dominated. In terms of clause 7 of the Agreement, the amount of trade advances, which could remain unadjusted, was to be treated as loan extended by the petitioner to the respondent, for which the respondent could be liable to pay interest @ 1 percent per month (12% per annum). In the event of non-payment of the trade advance by the respondent to the petitioner, the unpaid amount was to be treated as a charge on the asset of the respondent. The respondent had executed a promissory note dated 21st November 2017 in favour of the petitioner, in terms of which he promised to pay the petitioner a sum of Rs. 2,53,50,000 with interest @ 12 percent per annum.

9. It is the submission of the Ld. Counsel that by virtue of the impugned order, the Insolvency Petition filed by the Appellant company was erroneously dismissed by the Adjudicating Authority on the sole ground of limitation, without taking into consideration the terms & conditions of the agreement dated 21-11- 2017 and the Communication inter se the parties.

10. Ld. Counsel further submitted that the Tribunal has not considered the communication dated 27th December 2019 received from the respondent assuring the appellant that sales, which were brought down due to the slowdown in the auto industry, were bound to recover and the respondent shall carry out the sales as per the terms of agreement, which categorically states that the respondent is referring to the aforementioned agreement, wherein the default had occurred in the very first year of its existence that is 21.11.2018. It is the submission of the Appellant that in

view of acknowledgement vide email dated 27.12.2019, as per section 18 of the Limitation Act, the time period was bound to be computed from 27.12.2019.

11. Ld. Counsel further submitted that the above mentioned correspondence received from the respondent clearly attract section 18 of the limitation act. which is reproduced here in under for the kind perusal of this Hon'ble Tribunal:

> *"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.*
>
> .
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> .
>
> *—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, …"*

12. Ld. Counsel submitted the limitation calculated on the basis of the communication sent by the respondent to the Appellant in Tabulated form:

Date of Agreement	21.11.2017
Date of Default	21.11.2018
Email Communication in reference at Page 89 of Paper Book	27.12.2019
Date of end of Limitation	27.12.2022
Date of filing Application U/s 7 IBC	22.10.2022 (within Limitation)

13. Ld. Counsel further submitted that the Ld. Tribunal erred in not taking into consideration the time excluded by the Hon'ble Apex Court due to the exclusion of time on account of COVID-19. Taking the exemption period on account the Limitation calculation would be as follows:

Event	**Limitation**
Date of default calculated as 21.11.2018 as per agreement dated 21.11.2017	Three years from date of default is 21.11.2021
Supreme court *suo moto* in WP/3/2020 excluded from 15.03.2020 to 28.02.2022	After exclusion of the mentioned time, the date of end of limitation is 05.11.2023
Date of Filing Application U/s 7 IBC	28.10.2022 (within Limitation)

14. Ld. Counsel placed reliance upon the Judgement of Hon'ble SC in '*Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria, 1962 SC*',

wherein the Hon'ble Supreme Court held that:

> *"Para 6. It is thus clear that acknowledgment as prescribed by Section 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 acknowledgment 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 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 Section 19, and there is really no substantial difference between the parties as to the true legal position in this matter."*

15. Ld. Counsel further cited the judgment of this Appellate Tribunal in '*Vidyasagar Prasad vs. UCO Bank & Anr. Company Appeal (AT) (Ins.) No. 238 of 2020 (2021) ibclaw.in 472 NCLAT'* wherein it was held that:

> *"**11.10.....** However, it may not necessarily specify the exact nature of the liability. But it indicates the jural relation between the parties, and in any event, the same can also be derived by implication. Further, the said Letter is not "without prejudice" basis and, therefore, amounts to an unequivocal acknowledgement of liability of the Corporate Debtor. A reading of the documents above reveals that the Corporate Debtor has acknowledged/subsisting liability to attract the provisions of Section 18 of the Limitation Act, 1963."*

16. Ld. Counsel stated that the aforesaid judgement of this Appellate Tribunal was affirmed by the Hon'ble Supreme Court in Civil Appeal No. 1031 of 2022. Hon'ble SC.

17. Summing up his arguments Ld. Counsel argued that the Petition filed by the Appellant under section 7 is not barred by the limitation period and prayed for allowing the appeal and admit the Respondent in insolvency proceedings.

Submission of the Respondent

18. Ld. Counsel for the Respondent refuted all the contentions of the Appellant. He stated that the claim of appellant is barred by limitation and the same has been correctly held by the Adjudicating Authority. The claim of the Appellant emanates from the Agreement dated 21.11.2017. The present Application has been filed before the Hon'ble Adjudicating Authority on October 3, 2022, i.e., approximately after 5 years of the date of Agreement, way beyond statutory period of 3 years. The alleged Promissory note dated November 21, 2017, is also unenforceable as per the law of limitation. The alleged transfers of Rs. 2,40,50,000 (Rs. 1,62,50,000 transferred on December 21, 2017, and Rs. 78,00,000 transferred on January 31, 2018), are also barred by limitation as they were made in the years 2017 and 2018.

19. Ld. Counsel further submits that the email dated December 27, 2019, will not amount to the admission of debt as there is no admission of any outstanding amount as debt by the Respondents herein, and it is misrepresented by the Appellant as admission by the Respondent.

20. Ld. Counsel submits that the alleged claim of the Appellant emanates entirely from the agreement dated November 21, 2017. He stated that the agreement dated November 11, 2017 being relied upon by the appellant is not

validly executed; as there are the Appellant, the Respondent and the Third Party' as mentioned in the Recital, namely M/s P.R. Hardware & Paint Store. The Agreement was however not signed by the Third Party', namely M/s P.R. Hardware & Paint Store and no "witnesses' have signed the Agreement, rendering the Agreement invalid.

21. Ld. Counsel stated that the authenticity of the agreement already challenged by way of a Civil Suit by the Respondent. The veracity and authenticity of the Agreement has been challenged by instituting a civil suit before the Ld. Civil Judge (Senior Division). Ludhiana way back on November 10, 2021, namely Stan Cars Pvt. Ltd. v. Akzo Nobel India Ltd. bearing CS/8944/2021 ("Civil Suit"). The Civil Suit had been filed seeking grant of 'Declaration to the effect that the Agreement allegedly entered into by the Appellant and the Respondent as illegal, null and void' and 'Grant of Permanent Injunction against the Appellant from initiating any action on the basis of the Agreement.

22. The Appellant is duly aware of the Civil Suit and has been duly appearing before the Ld. Civil Judge. (Senior Division), Ludhiana. Copy of the case status along with the orders till date including the memo of appearance entered into by the Appellant dated April 27, 2022 has been produced before the Tribunal. However, appellant has failed to apprise this Hon'ble Appellate Authority of the Civil Suit and the present Appeal is only a method to arm twist the Respondent to paying alleged claim amount.

23. It is the submission of Ld. Counsel that the debt under question is not a Financial Debt under Section 5(8) of the Code. As per the purported

Agreement, the Appellant was to extend a trade advance of up to Rs. 2.53,50,000 to the Respondent, in return of which, the Respondent was to place yearly purchase orders of such description and value as mentioned in Schedule I of the Agreement. If the Respondent continued to make the purchases as stipulated in the Agreement, the Respondent shall be entitled to adjustment of the trade advance as trade discount, in terms of clause 7 of the Agreement. The said trade advance was not transferred with any time value of money and was to be adjusted by meeting target purchase of goods in terms of the purported Agreement. In the purported Agreement and the letters exchanged by the parties, nowhere has the trade advance been termed as a loan.

24. Ld. Counsel relies on the Judgment of Hon'ble Supreme Court in '*M/s Consolidated Construction Consortium Limited vs. Mis Hitro Energy Solutions Private Limited [Civil Appeal No. 2839 of 2020]*' had held that trade advance is an operational debt. An Operational debt will include a debt arising from a contract in relation to the supply of goods or services from the Respondent.

25. Appellant's petition to initiate CIRP before Hon'ble Adjudicating Authority was incomplete as the Appellant has failed to comply with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which requires the Financial Creditor to comply with Form-1. The Appellant has failed to provide particulars of financial debt (Documents, records and evidence of default) as required by part-V of Form-1 and has stated that the requirements of Part-V are "Not Applicable on the Petition

before Hon'ble Adjudicating Authority, without providing any reasoning for such non-applicability.

26. The Ld. Counsel further submits that incomplete financial details have been given in the petition filed under Section 7. The amount stipulated in the purported Agreement does not coincide with the payment allegedly made, as seen from the following:-

(i) Clause I of the purported Agreement requires the Appellant to extend a trade advance of up to Rs. 2,53,50,000/-.

(ii) Clause 3 of the purported Agreement requires the Respondent to execute a promissory note payable on demand amounting to Rs.2,53,50,000/-.

(iii) However, the amount allegedly paid by the Appellant sums up to only Rs. 2,40,50,000 (Rs. 1,62,50,000 paid on December 21, 2017 and Rs. 78,00,000 paid on January 31, 2018).

(iv) The account statements furnished at in the appeal reflecting transfer of Rs. 2,40,50,000 are extracts of larger documents. The said larger documents have not been annexed, which makes the authenticity of the annexed account statements questionable.

27. Ld. Counsel states that relevant clauses of the agreement, have not been complied with by the appellant. Without prejudice, even if the Agreement was valid, there has been a gross non-compliance of the Agreement by the Appellant itself and is therefore unenforceable, as summarized hereinbelow:

S.No.	Clause No.	Summary of the Clause FC-Financial Creditor CD-Corporate Debtor	Response
1.	Clause 1 (@Pg. 65)	• FC to extend a trade advance of Rs. 2,53,00,000 within 7 days of receipt of written request by CD. • Agreement valid for business value of Rs. 6,50,00,000.	• No written request made by CD • Amount of Rs. 2,53,00,000 not duly extended by the FC and only a sum of Rs. 2,40,50,000 extended by the FC
2.	Clause 2 (@Pg. 65)	• Trade advance to be extended for the purpose of purchasing and installing Paint booth, baking oven and other equipment at workshops	• The understanding for extending trade advance was for purchasing equipment and therefore falls under the ambit of OC
3.	Clause 3 (@Pg. 65)	• CD to extend a Promissory Note of Rs. 2,53,00,000 upon receiving the entire amount of the trade advance.	• It is an admitted position of the FC that the entire amount of trade advance was not disbursed • The Promissory Note was executed in good faith, however FC failed to extend the entire amount • Since the entire amount against which the Promissory Note was executed was not disbursed, Promissory Note becomes invalid
4.	Clause 4 (@Pg. 65)	• CD to place an average monthly purchase order of Rs. 10,83,333 and the annual purchase from the FC shall be in terms of Schedule-I	• No purchase orders made by the CD and placed on record by the FC
5.	Clause 5 (@Pg. 65)	• CD to make payment of purchase orders within 30 days of receiving of invoice • In case of event of default" by CD. Penal interest to be paid by CD @1% per month till actual payment.	• No invoices raised and placed on record by the FC.
6.	Clause 6 &9 (Clause 6 @ Pg 20 and	• Event of default	• No event of default has occurred in terms of the Agreement • CD has always duly paid the FC in terms

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<td>Clause 9 @Pg. 66)</td>
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<td>of the business understanding between the parties
• FC seeking specific performance of a contract (Agreement) while alleging breach of the same.
• Furthermore FC cannot seek specific performance of a contract under the guise of the Code.</td>
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<td>7.</td>
<td>Clause 7 (@ Pg. 66)</td>
<td>• Trade advance to be adjusted as trade discount as follows-
<table>
<tr><th>Year</th><th>Target (Rs.) as per Schedule I</th><th>Discount (%)</th><th>Amount adjusted from trade advance of Rs.2,53,00,000</th></tr>
<tr><td>1</td><td>70,00,000</td><td>11</td><td>27,83,000</td></tr>
<tr><td>2</td><td>1,08,00,000</td><td>18</td><td>40,48,000</td></tr>
<tr><td>3</td><td>1,30,00,000</td><td>20</td><td>50,60,000</td></tr>
<tr><td>4</td><td>1,55,00,000</td><td>24</td><td>60,72,000</td></tr>
<tr><td>5</td><td>1,87,00,000</td><td>29</td><td>73,37,000</td></tr>
<tr><td>Total</td><td>6,50,00,000</td><td>100</td><td>2,53,00,000</td></tr>
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<td>• Trade advance extended, to be adjusted as a Trade Discount. It is only an adjustment and does not have the commercial effect of a borrowing</td>
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28. Ld. Counsel submitted that Appellant cannot seek specific performance of the contract under the guise of the code. The Appellant has sought specific performance of the purported Agreement, for having claimed a sum of amount arising out of the purported Agreement. The Appellant has time and again sent emails to the Respondent dated August 9, 2018, September 19, 2018. November 21, 2018, February 8, 2019 and July 22, 2019 alleging 'Target versus Achievement status of the purchase orders to be placed by the Respondent. The Appellant with an intention to arm-twist the Respondent, has sought Specific Performance of the contract, when there may be breach of contract at best. The Code is not a platform for specific performance of a contract, much less a forum for recovery of any damages arising out of breach of contract, if any.

29. Ld. Counsel submitted that Hon'ble Adjudicating Authority is not a Debt Recovery Forum. The dispute between the parties in the present matter is in the nature of a contractual dispute and is beyond the purview of the provisions of the Code. The averments made by the Appellant with respect to failure of the Respondent to meet purchase targets is a restricted question pertaining to agreement between the parties and should be resolved under the relevant contract laws.

30. Appellant is attempting to use this Hon'ble Appellate Authority as a debt recovery forum. The Apex Court in Swiss Ribbons Private Limited & Anr. Vs. Union of India & Ors. (2019) 4 SCC 17 observed that the aim of the Code to ensure revival and continuation of companies and to put them back on their feet. The Petitioner has illegally invoked the jurisdiction of this Hon'ble Adjudicating Authority with the sole purpose of recovery. In this regard, Ld. Counsel cites the Judgment of this Tribunal in the case of *'M/s Agurysal Veneers, v. Fundtortic Service Pvt. Lid. [CA (AT) (Ins.) 968 of 2020]'* where it has held that the Code is not a recovery forum.

31. Summing up Ld. Counsel states that appeal is barred by limitation; the debt is not a financial debt and the matter relating to agreement between the parties is already pending in Civil Court. In view of these, the appeal has no merits and needs to be dismissed.

Analysis and findings

32. We have heard the Ld. Counsels in detail, gone through the records including the written submissions made by both the parties.

33. There are two issues in this case which needed to be decided by the Adjudicating Authority. The first issue related to status of the Appellant i.e. whether he is a Financial Creditor as claimed by the Appellant or Operational Creditor as claimed by the Respondent. This issue has been adjudicated by the Adjudicating Authority holding that the Appellant is a Financial Creditor. The impugned order is a well-reasoned order taking into the consideration submission of both the parties and their respective legal citations and based on the same it has held that the appellant is a Financial Creditor.

34. The second issue relates to the limitation period and Ld. Tribunal decided that the Section 7 petition filed by the Appellant under the Code was filed beyond the limitation period prescribed from the date of default and hence the said petition was not maintainable.

35. It is the submission of the Appellant that the limitation period has not been correctly computed by the Adjudicating Authority and it is their submission that their petition under Section 7 was filed well within time and the same should have been admitted.

36. We first take the issue of status of the Appellant i.e. whether the Appellant is Financial or Operational Creditor. The Adjudicating Authority has held that Appellant is a Financial Creditor as claimed by the Appellant. The Respondent on the other hand has again argued that the amount extended by the Appellant was in the nature of trade advance and as such it cannot be treated as Financial Debt.

37. In this regard, we have a look at the Agreement dated 21.11.2017 between the parties which decides the underlying nature of arrangement between the parties. The relevant paras 2,4 & 7 are extracted below:

> *"2. STAN CARS shall use the amount of trade advance for purchasing and installing Paint Booth, Baking Oven and other equipment's at its workshop/place of business to enable it to carry on business with new and improved means.*
>
> *4. STAN CARS shall place average monthly purchase order worth Rs. 10,83,333/- (Rupees Ten Lakhs Eighty Three Thousand Three Hundred and Thirty Three only) (excluding Sales Tax/VAT/GST) and after discount with AKZO for the "Sikkens" brand of Product manufactured and/or traded by AKZO during the tenure of this Agreement, provided however, that the yearly purchase of the Products by STAN CARS from AKZO shall be of such description and value as mentioned under Schedule 1, annexed hereto, forming integral part of this Agreement, provided further that the price at which the Products are sold by AKZO shall always conform to the AKZO's price list in force at the time of delivery of the said Products to STAN CARS.*
>
> *7. "The Parties agree that STAN CARS continuing to fulfil its obligations under this Agreement, would be entitled to the adjustment of the trade advance as "trade discount", per the following:*

Purchase targets as mentioned in Schedule I hereof	*% Adjustment of trade as discount advance trade*
Upon accomplishing purchase targets for the first year and having released the payment in respect thereof as per clause 5 of this Agreement.	*11%*
Upon accomplishing purchase targets for the second year and having released the payment in respect thereof as per clause 5 of this Agreement.	*27%*

Upon accomplishing purchase targets for the third year and having released the payment in respect thereof as per clause 5 of this Agreement.	*47%*
Upon accomplishing purchase targets for the fourth year and having released the payment in respect thereof as per clause 5 of this Agreement	*71%*
Upon accomplishing purchase targets for the fifth year and having released the payment in respect thereof as per clause 5 of this Agreement.	*100%*

Provided however, that STAN CARS would be entitled to carry forward the value of the excess Products purchase orders placed with AKZO (in respect of which payment has been received by AKZO in terms of clause 5 hereof) during a particular year, over and above the Product purchase order requirements as stipulated for that year under Schedule 1, to meet up with the deficit in the Product purchase order for any subsequent year(s)

Provided further that the amount of trade advance remaining unadjusted shall be deemed to be a loan extended by AKZO to STAN CARS, in respect of which, an interest @ 1% per month (12% per annum) shall be paid by STAN CARS to AKZO calculated from the date of release of the trade advance in terms of clause 1 hereof till the date of actual repayment thereof."

(Emphasis supplied)

38. The Clause 2 states the objective of the trade advance which is basically for installation of capital equipment at Respondent site so as to enable it to carry on its business with new and improved means.

39. Para 4 basically provides the monthly quantum of purchase order to be placed with the appellant or its dealer.

40. Clause 7 of the agreement is most crucial which lays out the adjustment of trade advance through a trade discount mechanism and lays down year wise target for purchase from the appellant. The most important clause here

is the second proviso to Clause 7 which provides that the amount of trade advance remaining shall be deemed to be a loan extended by appellant to respondent in respect of which an interest @ 1% per month (12% per annum) shall be paid by STAN CARS (Respondent) to AKZO (Appellant) calculated from the date of release of the trade advance in terms of clause 1 hereof till the date of actual re-payment thereof.

41. The above proviso clearly shows that the trade advance gets converted into a debt with time value of money in case of default by the respondent, so the underlying contract shows the time value of money ingrained in the debt in case of default by the Respondent. We also note the Adjudicating Authority has discussed all the relevant provisions of the Code and related Judgments cited by either side and held that the aforesaid trade advance is a financial debt with time value of money. We find no reason to disagree with the findings of Adjudicating Authority.

42. We now have a look at the second issue relating to limitation. The Adjudicating Authority has held that the application under Section 7 of the Code was not filed within the prescribed period of limitation i.e. the same was not filed within three years from 01.12.2018 i.e. expiry of 1 year from the date on which the agreement dated 21.11.2017 came into effect.

43. It is the submission of the appellant that the Ld. Tribunal had erred in not taking into consideration the time excluded by the Hon'ble Supreme Court due to covid-19 epidemic. Accordingly, as per his calculations the application under Section 7 was filed well within the period of 3 years from the date of default after taking into account the period exempted by Hon'ble Supreme

Court. The computation of the same as per Appellant is given below:

Event	**Limitation**
Date of default calculated as 21.11.2018 as per agreement dated 21.11.2017	Three years from date of default is 21.11.2021
Supreme court *suo moto* in WP/3/2020 excluded from 15.03.2020 to 28.02.2022	After exclusion of the mentioned time, the date of end of limitation is 05.11.2023
Date of Filing Application U/s 7 IBC	28.10.2022 (within Limitation)

44. We have gone through the email dated 27.12.2019, a plain reading of the document does not show clear cut acknowledgement of debt by the Respondent, it only mentions about poor business conditions and other difficulties. We are not inclined to accept this email as acknowledgement of debt.

45. The second contention of the Appellant relates to the exemption of Covid-19 period by Hon'ble Supreme Court. We have noted that the limitation period from 15.03.2020 to 31.05.2022 has been excluded by the Hon'ble Supreme Court for all purposes vide their *suo motu* Writ Petition (C) No.-3 of 2020 vide their Order dated 10.01,2022. The directions of Hon'ble SC in the Suo-Motu case (supra) are extracted below:

> *"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

46. Based on the directions in the Suo-Motu Judgement (supra) the balance period of limitation from 15.03.2020 has to be added to 01.03.2022 to get the revised date of limitation. In the instant case the period is one year 8 months and 6 days. The revised end date of limitation would then be 06.11.2023. The section 7 application in this case was filed on 28.10.2022 which was well within limitation period.

47. The Respondent has raised the issue of validity of agreement and argued that questions about the same are under adjudication in Civil Court. He has also raised the issue of specific performance under the contract and also use of CIRP process by the Appellant for recovery of debt. We do not find merit in these contentions, as the very fact that the Respondent company

cannot meet its debt obligations makes it fit case for initiation of CIRP proceedings. The debt recovery through civil proceedings can go on independent of CIRP proceedings.

48. In view of the findings above, we hold that the Adjudicating Authority has rightly classified the Appellant as Financial Creditor. However, the issue of limitation has been decided by the Adjudicating Authority without taking into account the directions of Hon'ble SC in *suo motu* proceeding (supra) due to which the Section 7 application was not found maintainable. Whereas the same is well within the limitation period after applying a grace period as per Hon'ble SC's order.

49. In view of the above findings, the appeal is allowed and CP (IB) No. 812/ND/2022 is restored. Parties to appear before the NCLT, New Delhi, Bench-II on 17.07.2025. Pending I.As, if any, are closed. No order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

SA