NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 752 of 2023

(Arising against the impugned order dated 06.03.2023 passed by the Hon'ble National Company Law Tribunal, Chandigarh Delhi Bench in CP (IB) No. 54/Chd/J&K/2019)

IN THE MATTER OF:

Puneet Resutra
Son of Sh. Sham Lal Resutra Resident of 113,
Rehari Colony,Jammu – 180005. **...Appellant**
Mobile No: 9419100276

Versus

Jammu & Kashmir Bank Ltd.
Address at: M.A.Road, Srinagar, Jammu-190001 and
having its branch officeat Phase 2, Sector 54,
Mohali, Punjab-160055
Through its authorised representatives **...Respondent**

Present:

For Appellant:	**Mr. Amar Vivek & Mr. Aditya Jain, Advocates.**
For Respondent:	**Mr. Syed Arsalan, Mr. Prateek Khaitan, Mr. Chatanya Sharma and Mr. Shitij Chakravarty, Advocates.**

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

INDEVAR PANDEY, MEMBER (T)

The present appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code'), by the Appellant, Mr. Puneet Resutra (erstwhile Director of M/s Ace Engineering (India) Private Limited), challenging the impugned order dated 06.03.2023 passed by the National Company Law Tribunal (Adjudicating Authority), Chandigarh Bench, in CP (IB) No. 54/Chd/J&K/2019 titled *Jammu &*

Cont'd..../

Kashmir Bank Ltd. v. M/s Ace Engineering (India) Private Limited. By the said impugned order, the Adjudicating Authority admitted the application filed by the Jammu & Kashmir Bank Ltd./Financial Creditor under Section 7 of the Code and initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s Ace Engineering (India) Private Limited.

2. The Appellant, Mr. Puneet Resutra, who is the erstwhile Director and Shareholder of the said Corporate Debtor, has contended that the said order is legally unsustainable, as the financial debt, which formed the basis of the Section 7 application, stood fully discharged through a one-time settlement with the guarantors in the year 2017–2018. Despite the Appellant's assertion that the loan account stood settled and the property mortgaged for securing the loan had already been released by the Bank, the Adjudicating Authority failed to consider these facts and proceeded to admit the Section 7 petition, thereby giving rise to the present appeal.

Brief facts of the Case:

3. Brief facts of the case are given below:

(i) The Corporate Debtor, M/s Ace Engineering (India) Private Limited, had availed two separate credit facilities from the Respondent Bank, namely (a) a Cash Credit facility amounting to Rs.9,00,00,000/- (Rupees Nine Crores), and (b) a Secured Overdraft facility amounting to Rs.4,00,00,000/- (Rupees Four Crores).

(ii) The aforesaid credit facilities were secured by (i) personal guarantees executed by Shri Siddharth Bhatia and Shri Munish Bhatia—both

sons of Shri Madan Mohan Bhatia and Directors of the Corporate Debtor; and (ii) by way of mortgage over immovable properties, including 12 Marlas of land situated at Apsra Road, Gandhi Nagar, Jammu, owned by the aforesaid guarantors, and a factory unit measuring 12 Kanals of land located in SIDCO Industrial Area, Bari Brahmana, Samba, Jammu & Kashmir, belonging to the Corporate Debtor.

(iii) On 31.03.2016, both loan accounts, i.e., the Rs.9 Crore Cash Credit facility and the Rs.4 Crore Overdraft facility, were classified as Non-Performing Assets (NPAs) by the Respondent Bank due to default in repayment.

(iv) Subsequently, on 20.04.2016, an Agreement to Sell and corresponding Power of Attorney, both dated the same day, were executed between the Appellant and the two personal guarantors, wherein, in lieu of full repayment of the outstanding dues of the Corporate Debtor to the Respondent Bank, the Appellant agreed to transfer immovable property measuring approximately 175 Kanals located in Village Ghaink, Khasra No. 2210, Tehsil Bhalwal, District Jammu, to the guarantors. The Guarantors Siddarth Bhatia and Munish Bhatia thereby took upon themselves the responsibility to discharge the entire outstanding liabilities of the Corporate Debtor under the said loan accounts.

(v) The said Agreement to Sell and Power of Attorney were registered before the office of the 3rd Additional Munsiff, Jammu (Sub-Registrar),

and included express recitals stipulating that the guarantors would be solely responsible for discharging the entire loan liability of the Corporate Debtor to the Respondent Bank.

(vi) The Respondent on 10.04.2017 issued a demand notice under Section 13(2) of the SARFAESI Act, 2002, calling upon the Corporate Debtor and the guarantors to clear the outstanding dues within 60 days, failing which further enforcement measures would be taken.

(vii) Thereafter, on 15.06.2017, following negotiations and based on the proposal submitted by the guarantors, the Respondent Bank accepted a One-Time Settlement (OTS) offer of Rs.10,00,00,000 (Ten Crores) and issued a formal letter addressed to the guarantors, recording the terms of settlement and absolving them from any further liability, subject to payment of the said amount. It was further recorded that the property mortgaged as security would be released upon completion of payment.

(viii) The Respondent Bank issued a possession notice on 18.08.2017 under Section 13(4) of the SARFAESI Act, purporting to take symbolic possession of the mortgaged properties, including those which were already agreed to be released under the OTS.

(ix) The Corporate Debtor on 23.11.2017 filed an application under Section 17-A of the SARFAESI Act before the Learned Court of 1st Additional District Judge, Jammu, which passed an order restraining the Respondent Bank from selling or auctioning the mortgaged

property of the Corporate Debtor, noting the pending civil dispute and the claim of full settlement.

(x) On 05.01.2018, the entire OTS amount of Rs.10 Crores was paid by the guarantors, and the Respondent Bank, which accepted full and final settlement of the Guarantors. The Bank also released the mortgaged property of the guarantors alone, but not that of the Corporate Debtor.

(xi) In total, the Bank received payments aggregating more than Rs.11.30 Crores from the guarantors towards the settlement of the outstanding dues, which was in line with the Bank's own OTS Policy and well within the knowledge and records of the Bank.

(xii) The Respondent Bank on 05.06.2018 filed a civil recovery suit against both the Corporate Debtor and the guarantors, claiming recovery of the very same dues that had already been discharged under the OTS settlement. The Bank later amended its civil suit and dropped its claim against the guarantors. This suit is still pending adjudication before the competent civil court.

(xiii) Thereafter, the Respondent Bank issued a Loan Recall Notice dated 01.10.2018, demanding repayment of the entire outstanding dues by the Corporate Debtor. A Statement of Account dated 31.10.2018 was also issued by the Financial Creditor, reflecting the total outstanding dues. The statement showed a total outstanding balance of Rs. 10,11,23,983.19 (Rupees Ten Crores Eleven Lakhs Twenty-Three

Thousand Nine Hundred and Eighty-Three and Nineteen Paise Only), comprising Rs. 8,90,88,599.72 under one loan facility and Rs. 1,20,35,383.47 under another. The said outstanding amount is claimed along with further interest at the rate of 12.15% per annum and 12.65% per annum, respectively, on the aforesaid amounts, calculated from 31.10.2018 onwards.

(xiv) The Appellant also initiated a separate suit against the guarantors in relation to the Agreement to Sell executed on 20.04.2016. However, this suit was withdrawn based on legal advice, as the OTS payments had already been made.

(xv) The Respondent Bank initiated insolvency proceedings under Section 7 of the IBC in the year 2019 against the Corporate Debtor. The NCLT, Chandigarh Bench, by order dated 06.03.2023, admitted the said Section 7 application and initiated CIRP against M/s Ace Engineering (India) Pvt. Ltd.

(xvi) Aggrieved by the impugned order the appellant has filed this appeal challenging the impugned order passed by the Adjudicating Authority on 06.03.2023.

Submissions of the Appellant

4. Ld. Counsel for the Appellant submits that the Bank has deliberately failed to disclose a crucial fact—that the entire loan liability, comprising a Cash Credit facility of Rs.9 Crores and a Secured Overdraft facility of Rs.4 Crores, had already been fully and finally settled much before the filing of the

Section 7 application. The Appellant states that the Bank had received a total of more than Rs.11.30 Crores under the One-Time Settlement (OTS), yet this was not disclosed to the Hon'ble Tribunal.

5. Ld. Counsel for the Appellant also submitted that both loan accounts had been declared Non-Performing Assets (NPAs) and were secured by personal guarantees executed by Shri Siddharth Bhatia and Shri Munish Bhatia, who had also mortgaged their immovable property in favour of the Bank. On 20.04.2016, an Agreement to Sell and Power of Attorney was executed, through which the Corporate Debtor transferred its land measuring 175 Kanals at Village Ghaink to the said guarantors. This was done as part of an internal arrangement, whereby the guarantors agreed to take full responsibility for repaying the Bank's dues. The terms of the agreement clearly show that the loan repayment obligation was undertaken entirely by the guarantors. This arrangement was made with full knowledge of the Bank.

6. On 10.04.2017, the Bank issued a notice under Section 13(2) of the SARFAESI Act to the borrower and guarantors. Subsequently, on 15.06.2017, the Bank wrote a formal letter to the two guarantors, stating that if Rs.10 Crores was paid in full and final settlement, their liability would stand discharged.

7. The Appellant has submitted that while SARFAESI proceedings continued, the Bank issued a possession notice dated 18.08.2017 for the mortgage property of the Corporate Debtor. The Appellant, aggrieved by the said action, filed an application under Section 17A of the SARFAESI Act. The Hon'ble Court of 1st Additional District Judge, Jammu, by its order dated

23.12.2017, restrained the Bank from proceeding to auction or sell the mortgaged property.

8. Counsel for appellant further submitted that by 05.01.2018, the entire OTS amount had been paid by the guarantors. Following this, the Bank released their guarantees and also released their mortgaged property, thereby acknowledging that the account stood settled. Although the Bank now claims that the release was only in respect of the guarantors, the documents on record contradict this. The Bank issued a release letter to the guarantors and released the mortgaged property. The Appellant submits that the Bank had no authority to release the mortgaged property, unless the entire loan account stood satisfied, particularly since the mortgage was a tripartite arrangement among the Borrower, Bank, and Guarantors. Such a release could not have been done unilaterally by the Bank, without any notice to or consent from the Corporate Debtor.

9. Ld. Counsel submitted that despite this full settlement and release, the Bank filed a recovery suit on 05.06.2018 against both the Appellant company and the guarantors. In that suit, the other Respondents filed a written statement admitting that the loan had already been settled. Therefore, it is submitted that the dispute is already pending before a civil court of competent jurisdiction, and the matter involves disputed questions of fact regarding whether the loan was finally settled or not.

10. Ld. Counsel further stated that while the Bank initially filed the suit against both the guarantors and the borrower, it later amended the suit to remove the names of the guarantors. This action clearly proves that the Bank treated the guarantors as having been discharged from all liability. It is also

important to note that the Deed of Guarantee dated 22.03.2013 makes it evident that the guarantors were not only liable but also directly involved in the utilisation of the loan. Therefore, the Bank could not have settled the loan with just the guarantors while leaving the borrower out, especially when all three parties were part of the security and mortgage structure.

11. It was the submission of the Ld. Counsel that the instrument of mortgage also shows that the mortgage arrangement was tripartite in nature. The mortgaged property was pledged to secure repayment of the entire loan—not merely the guarantors' part. The property could not have been released unless the entire loan account was fully settled. This issue too is currently pending in the civil suit filed by the Bank.

12. Ld. Counsel for the Appellant further submitted that the Corporate Debtor is a fully operational and running company. It is carrying out several important government projects, including construction of a military hospital in Kargil and Army accommodation in various districts of Ladakh. Around seven government contracts worth Rs.38 Crores are presently ongoing. The Corporate Debtor is fully capable of discharging its liabilities and is awaiting clearance of payments from government departments. In such a situation, admitting the company to insolvency under CIRP will serve no useful purpose and will irreparably harm ongoing public infrastructure projects.

13. Finally, Ld. Counsel relied on the judgment of the Hon'ble Supreme Court in '*Vidarbha Industries Power Ltd. vs. Axis Bank Ltd.'* [Civil Appeal No. 4633 of 2021]. In that case, the Court held that under Section 7(5)(a) of the IBC, the Adjudicating Authority has the discretion not to admit a case, even if a default is shown, where there are strong surrounding circumstances. The

Appellant submits that this principle squarely applies to the present case, where the debt has already been settled and the Corporate Debtor is a going concern executing critical government work. Ld. Counsel submitted that in view of the above submissions the impugned order admitting the insolvency application be set aside and the application filed by the Bank be dismissed.

Submissions of the Respondent

14. Per contra, the learned counsel appearing on behalf of the Respondent–Jammu & Kashmir Bank Ltd. respectfully submits that the present appeal is devoid of merit and is liable to be dismissed in limine, as the impugned order dated 06.03.2023 passed by the Hon'ble NCLT, Chandigarh Bench, rightly admitted the application under Section 7 of the IBC after being satisfied that a financial debt was due and payable and that the Corporate Debtor had committed default.

15. The Respondent submitted that the Corporate Debtor had availed various credit facilities from the Respondent Bank. Initially, in the year 2012, a Cash Credit facility of Rs.9 Crores was sanctioned vide letter dated 12.12.2012. This amount included a takeover of Rs.7.5 Crores from Indian Overseas Bank. Simultaneously, a Bank Guarantee facility of Rs.5 Crores was also sanctioned, which included a Rs.4 Crore takeover from Indian Overseas Bank. Later, in the year 2015, a further credit facility in the form of a one-time SOD of Rs.4 Crores was sanctioned for a term of six months, or until completion of a supply order worth Rs.16.14 Crores, whichever was earlier, under sanction letter dated 11.09.2015.

16. The Respondent states that after availing of the above facilities, the Corporate Debtor failed to service its accounts, and consequently, both the loan accounts were classified as Non-Performing Assets (NPA) on 31.03.2016, in compliance with RBI guidelines pertaining to Income Recognition and Asset Classification. The date of NPA, i.e., 31.03.2016, therefore stands as the legally recognized "date of default" for purposes of Section 7 of the IBC.

17. The Respondent further submitted that the law on this point is now settled, and the classification of an account as NPA constitutes default under the IBC. He placed reliance on the judgment of the Hon'ble NCLAT in *Jagdish Prasad Sarada v. Allahabad Bank* [Company Appeal (AT)(Insolvency) No. 183 of 2020], which held that the limitation for filing a Section 7 application begins from the date of default, i.e., the NPA date. Similar view has been taken by the Hon'ble Tribunal in *Rajendra Kumar Tekriwal v. Bank of Baroda* and *Milind Kashiram Jadhav v. State Bank of India* [Company Appeal (AT)(Insolvency) No. 1589 of 2023], wherein it was held that the NPA date is decisive even if partial payments were made thereafter.

18. It is further submitted that the application under Section 7 was filed by the Bank on 07.01.2019, well within three years from the date of NPA. Additionally, the Corporate Debtor, in its balance sheet for FY 2017–2018, duly acknowledged the liability, thereby extending the limitation period under Section 18 of the Limitation Act. The relevant acknowledgment appears in Note C of the financial statements of the Corporate Debtor annexed as Annexure R-1/2 to the Bank's reply.

19. The Respondent places reliance on the judgment of the Hon'ble Supreme Court in *Axis Bank Ltd. v. Naren Seth* [(2024) 1 SCC 679], which

authoritatively held that balance sheets and other acknowledgment documents can be filed even at the appellate stage to claim benefit under Section 18 of the Limitation Act. The Supreme Court reiterated that such documents—if executed prior to expiry of the initial limitation period—would extend the limitation period by a further three years.

20. The Respondent also refers to '*Dena Bank v. C. Shivakumar Reddy*' [(2021) 10 SCC 330] and '*Kotak Mahindra Bank v. Kew Precision Parts Pvt. Ltd.*' [(2022) 9 SCC 364] to emphasize that the benefit of Section 18 accrues even if documents were filed later during the hearing or appeal stage, provided the acknowledgments were made in time.

21. On the issue of alleged OTS settlement, the Respondent submitted that the amount recovered by the Bank was from the guarantors, and the Bank took a commercial call to release them upon receiving Rs.10 Crores in accordance with the agreed settlement. The property situated at Gandhi Nagar, Jammu, belonging to the guarantors, was released. However, this in no way implies that the principal borrower/Corporate Debtor was absolved of its liability.

22. The learned counsel submits that the Deed of Guarantee executed by the guarantors and the Loan Agreement executed by the Corporate Debtor are separate and distinct legal instruments. Discharge of one does not automatically extinguish the other. The liability of the Corporate Debtor continued to be recorded in the statement of accounts, and it is incorrect to suggest that the debt was extinguished merely due to the Bank releasing the guarantors.

23. The Respondent categorically submitted that the letter dated 05.01.2018 (JKB/TIU/ADV/2017-18/600) specifically recorded that while the guarantors stood released and the "*remaining outstanding amount in the account of M/s Ace Engineering India Pvt. Ltd., together with interest, costs and expenses thereupon shall be payable by and recoverable from the said borrower and not from you (the guarantors).*" Thus, the Corporate Debtor remained liable, and this letter was incorrectly interpreted by the Appellant as implying full and final settlement.

24. The Respondent further submitted that the property mortgaged by the Corporate Debtor situated at SIDCO Industrial Complex, Samba, was never released by the Bank. In fact, that property was sold by the Bank under the SARFAESI Act for recovery of dues. The only property released was that of the guarantors.

25. The Respondent further stated that the alleged Agreement to Sell dated 20.04.2016 executed between the Corporate Debtor and the guarantors was entirely an inter se transaction to which the Bank was not a party and had no knowledge or consent. The Bank was not privy to the said agreement and is therefore not bound by its terms. Any arrangement between the Corporate Debtor and its directors/guarantors cannot bind the Financial Creditor.

26. The Respondent submitted that the Appellant's reliance on an OTS proposal dated 25.10.2019 is misplaced. In fact, it further demonstrates that the Corporate Debtor itself admitted that its dues were never fully settled and continued to make attempts to arrive at a fresh settlement with the Bank. Thus, the submission that the account was settled in 2018 is clearly false and contradictory to its own conduct.

27. The Respondent further pointed out that the Corporate Debtor also filed Writ Petition (C) No. 1685 of 2022 before the Hon'ble High Court of Jammu & Kashmir and Ladakh at Jammu on 10.08.2022, seeking a direction to the Bank to accept a full and final settlement. If the liability had already been settled, there would have been no occasion to file such a writ. This shows that the Appellant and the Corporate Debtor have themselves treated the loan account as unsettled even as late as 2022.

28. The Respondent Bank also submits that the mere pendency of a civil suit for recovery or SARFAESI proceedings does not bar initiation of CIRP under Section 7. The Hon'ble NCLAT in '*Harkirat S. Bedi v. Oriental Bank of Commerce'* [Company Appeal (AT)(Insolvency) No. 499 of 2019] and *Karan Goel v. Pashupati Jewellers* [Company Appeal (AT)(Insolvency) No. 1021 of 2019] has held that CIRP can proceed independently, even if, the recovery proceedings are pending in civil or DRT forums.

29. The Respondent further relies on the landmark judgment of the Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* [(2018) 1 SCC 407], which laid down that if the Adjudicating Authority is satisfied on the basis of documents and records that there exists a financial debt and default has occurred, it must admit the application under Section 7.

30. The counsel further refers to *Swiss Ribbons Pvt. Ltd. v. Union of India*, which clarified that a financial creditor must prove "default" as opposed to mere "claim" and that the triggering point for CIRP is the non-payment of an enforceable debt, not a final adjudication on quantum. He also submitted that judgments such as *Mrs. Bela Juneja v. India Bulls Housing Finance Ltd.* [Company Appeal (AT)(Insolvency) No. 640 of 2019], *Naveen Luthra v. BCL*

Finvest India Ltd. [Company Appeal (AT)(Insolvency) No. 336 of 2019], and *V.R. Hemantraj v. Stanbic Bank Ghana Ltd.* have consistently held that once debt and default are established, Section 7 must be given effect to.

31. The Respondent submitted that the application under Section 7 of the IBC was legally maintainable, supported by financial statements, recovery efforts, statements of accounts, and judicial precedent. The debt remained due and payable despite partial recovery from the guarantors. The Corporate Debtor committed a continuing default and no legal bar existed for the initiation of insolvency proceedings. Therefore, the present appeal filed by the Appellant is frivolous and misconceived. The impugned order dated 06.03.2023 was passed after full consideration of material on record and is in consonance with the IBC. The Respondent sought the dismissal of appeal with costs.

Analysis and Findings

32. We have heard learned counsel for both parties and carefully perused the documents placed on record. On a comprehensive examination of the matter, the following three consolidated issues arise for our consideration:

i. Whether a legally enforceable financial debt was due and payable by the Corporate Debtor on the date of filing of the Section 7 application, in light of the One-Time Settlement (OTS) executed with the guarantors?

ii. Whether the application filed by the Bank under Section 7 of the IBC was within the limitation period?

iii. Whether the Adjudicating Authority rightly exercised its discretion under Section 7(5)(a) of the IBC in admitting the application?

We now examine these issues in detail.

Issue 1: Whether a legally enforceable financial debt was due and payable by the Corporate Debtor on the date of filing of the Section 7 application, in light of the One-Time Settlement (OTS) executed with the guarantors?

33. To initiate insolvency proceedings under Section 7 of the IBC, the Bank (or any financial creditor) must prove that (i) a financial debt is due from the Corporate Debtor, and (ii) the Corporate Debtor has failed to pay, i.e., has committed a default. If there was no debt or no default, then the application must fail.

34. The case of the Appellant is that no financial debt was due from the Corporate Debtor on 07.01.2019 (the date when the Bank filed the Section 7 application), because the debt had already been settled and satisfied under a One-Time Settlement (OTS) arrangement with the personal guarantors. The resolution of this issue requires us to examine the underlying loan transaction, the OTS arrangement, the Bank's conduct post-settlement, and whether the Corporate Debtor was discharged from liability.

35. The Corporate Debtor, M/s Ace Engineering (India) Pvt. Ltd., had availed two credit facilities from the Jammu & Kashmir Bank Ltd. — (i) a Cash Credit (CC) Facility of Rs.9 Crores, and (ii) a Secured Overdraft (SOD) Facility of Rs.4 Crores, aggregating to Rs.13 Crores. The accounts were declared Non-Performing Assets (NPA) on 31.03.2016.

36. These credit facilities were secured not only by the assets of the Corporate Debtor but also by personal guarantees and immovable properties of two directors of the company—Shri Siddharth Bhatia and Shri Munish Bhatia. These two individuals executed separate Deeds of Guarantee and mortgaged their personal land at village Ghaink, Tehsil Bhalwal, Jammu, in favour of the Bank. They were also shareholders and directors of the Corporate Debtor.

37. It is undisputed that on 20.04.2016, an Agreement to Sell and Power of Attorney was executed between the Corporate Debtor and the guarantors. Under this arrangement, the Corporate Debtor purportedly agreed to transfer 175 Kanals of land in lieu of the guarantors taking over responsibility for repayment of the outstanding dues to the Bank.

38. Subsequently, the Bank issued an OTS approval letter dated 14.06.2017, addressed to the two guarantors, agreeing to accept Rs.10 Crores in full and final settlement of the dues. The letter contained the condition that upon full payment of the settled amount, the guarantors would be absolved of their personal liability. Thereafter, the guarantors remitted a total sum of Rs.11,30,00,000/- (i.e., Rs.1.30 Crores more than the settled amount) to the Bank by January 2018. On 05.01.2018, the Bank issued a formal letter releasing the mortgaged property of the guarantors.

39. The Appellant argues that this sequence of events constitutes full and final satisfaction of the debt and that the Bank was legally barred from initiating insolvency proceedings thereafter. The OTS approval letter dated 14.06.2017 is extracted below:

The Jammu & Kashmir Bank Limited
Corporate Headquarters
M A Road, Srinagar 190001
Kashmir, India
T +91 (0)194 248 1930
F +91 (0)194 250 2653
E waseem.ahmad@jkbmail.com
W www.jkbank.net

J&K Bank

IMPAIRED ASSET PORTFOLIO MANAGEMENT DEPARTMENT
Ref: JKB/IAPMD/2017- 260

June 14, 2017

Vice President,
IAPM,
Zonal Office Jammu Central I.

Reg:- Release of property in case of NPA account of M/s Ace Engineering Infratech P ltd BU Trikuta Nagar Jammu.

Sir,

This has reference to your note dated 25.05.2017 regarding the captioned account.

In this context as recommended & approved by the competent authority, sanction is hereby accorded to accept an amount of Rs 1000.00 lacs towards release of one of the mortgaged property besides absolving Mr. Sidharth Bhatia and Mr. Munish Bhatia as mortgagors/guarantors in the account. However the approval shall be on the following terms & conditions:-

- *That the mortgaged property being residential house over land measuring 65' x 45' bearing no. 292/A situated at Gandhi Nagar, Jammu standing jointly in the name of Mr. Sidharth Bhatia and Mr. Munish Bhatia, is released only after full payment of Rs 1000.00 lacs is received by the BU.*
- *That BU shall ensure that the said property is not charged in any other loan account.*
- *That the amount is deposited by the party by or before 31.12.2017 in the following manner:-*
  - *(i) Rs 0.50 crores already deposited on 26.05.2017.*
  - *(ii) Rs 1.50 crores by or before 30.06.2017.*
  - *(iii) Rs 4.00 crores by or before 30.09.2017 &*
  - *(iv) Rs 4.00 crores by or before 31.12.2017.*
- *That no other property/security is released.*
- *That BU shall not release any margin in favor of the borrowers held in case of expired/live bank guarantees. However the same shall be appropriated towards liquidation of the loan.*
- *That BU shall ensure that payment with regard to various work orders executed by the company is routed through the loan account/s.*
- *That BU/IAPMD Jammu Central I shall initiate/continue to pursue recovery proceedings against the borrowers for realization of the remaining bank dues.*

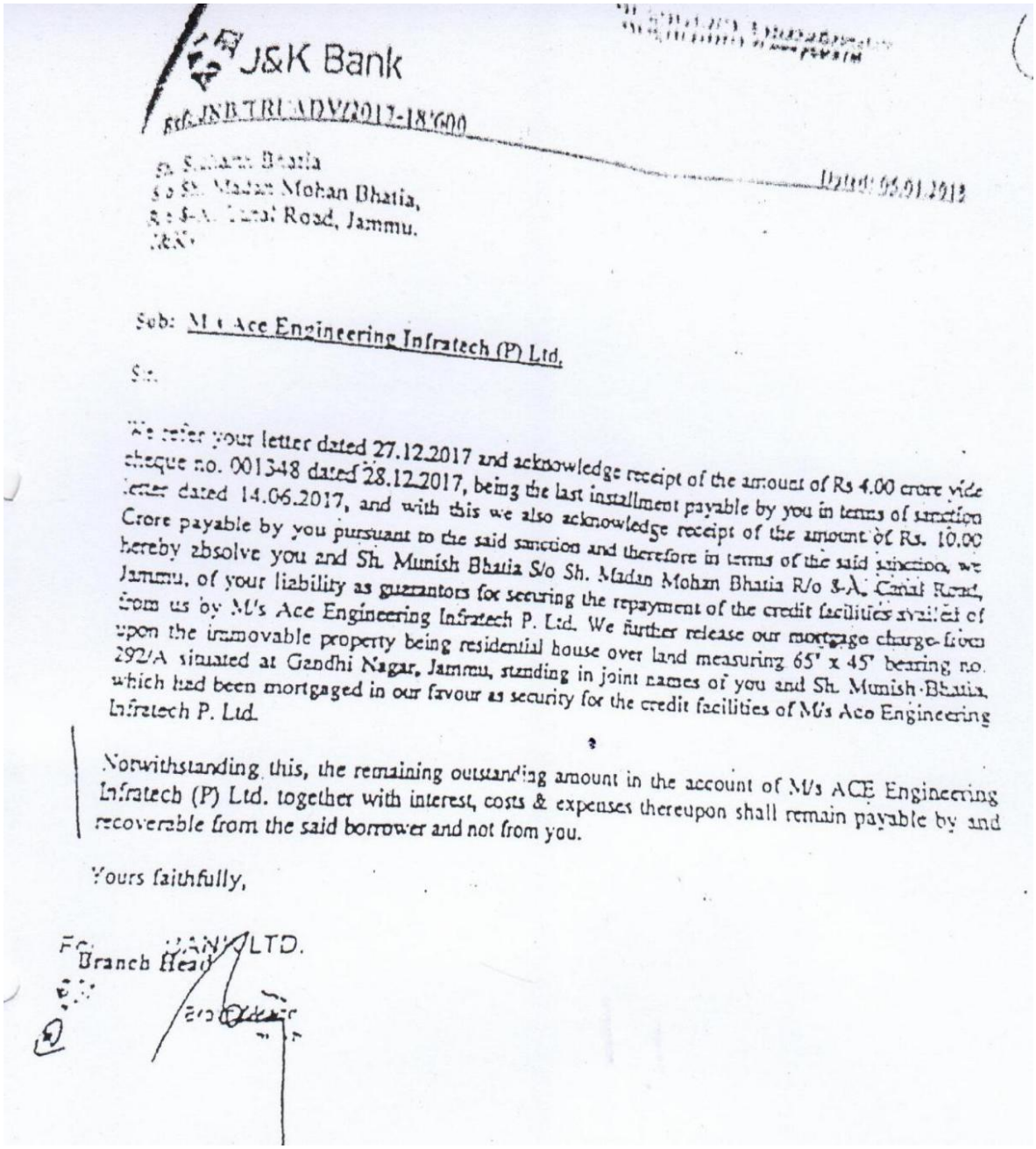
Further in case of expired guarantees, BU shall pursue the beneficiary for returning the original guarantee bond so that the entries are reversed.

Please proceed accordingly.

Yours faithfully,

Asstt Vice President,
IAPMD CHQ.

40. We have also examined the Bank's release letter dated 05.01.2018, which forms the core of this controversy. The contents of this letter are of critical importance. The same is extracted below:



J&K Bank

Ref: JNB/TRL/ADV/2017-18/600

Dated: 05.01.2018

Sh. Sanjeev Bhatia
S/o Sh. Madan Mohan Bhatia,
R/o 8-A, Canal Road, Jammu.
J&K.

Sub: M/s Ace Engineering Infratech (P) Ltd.

Sir,

We refer your letter dated 27.12.2017 and acknowledge receipt of the amount of Rs 4.00 crore vide cheque no. 001348 dated 28.12.2017, being the last installment payable by you in terms of sanction letter dated 14.06.2017, and with this we also acknowledge receipt of the amount of Rs. 10.00 Crore payable by you pursuant to the said sanction and therefore in terms of the said sanction, we hereby absolve you and Sh. Munish Bhatia S/o Sh. Madan Mohan Bhatia R/o 8-A, Canal Road, Jammu, of your liability as guarantors for securing the repayment of the credit facilities availed of from us by M/s Ace Engineering Infratech P. Ltd. We further release our mortgage charge-lien upon the immovable property being residential house over land measuring 65' x 45' bearing no. 292/A situated at Gandhi Nagar, Jammu, standing in joint names of you and Sh. Munish Bhatia, which had been mortgaged in our favour as security for the credit facilities of M/s Ace Engineering Infratech P. Ltd.

Notwithstanding this, the remaining outstanding amount in the account of M/s ACE Engineering Infratech (P) Ltd. together with interest, costs & expenses thereupon shall remain payable by and recoverable from the said borrower and not from you.

Yours faithfully,

For J&K BANK LTD.

Branch Head

41. From the above two letters, the following comes out very clearly:

i. The OTS dated 15.06.2017 was only between the Bank and the guarantors;

ii. The Corporate Debtor was not a party to the settlement and was never released from its obligations;

iii. The Bank expressly retained its right to recover the balance amount from the Corporate Debtor;

42. The Bank consciously preserved its right to proceed against the Corporate Debtor even after releasing the guarantors. While the personal guarantees and the mortgaged property of the guarantors were released, the balance debt as against the Corporate Debtor was not extinguished. This is consistent with banking practice where settlements with guarantors do not result in waiver of claims against the principal borrower unless explicitly agreed to.

43. The Appellant's contention that the debt was "discharged" because the guarantors paid a higher amount than the OTS value is legally unsustainable. The Bank never issued a No Dues Certificate to the Corporate Debtor, nor did it issue any letter waiving its claims against the borrower.

44. We also had a look at the Agreement to Sell dated 20.04.2016 executed between the Corporate Debtor and the guarantors. The was a transaction to which the Bank was not a party and had no knowledge or consent. The Bank was not privy to the said agreement and is therefore not bound by its terms. Any arrangement between the Corporate Debtor and its directors/guarantors cannot bind the Financial Creditor. Such transaction is irrelevant to the CIRP Proceedings. The Appellant can take resort to other judicial proceedings with regard to said agreement.

45. Moreover, the Bank continued to treat the loan as unpaid in its internal records and filed a civil recovery suit on 05.06.2018, seeking

Rs.4,47,46,912.48 from the Corporate Debtor, after adjusting the amounts received from the guarantors. This suit was pending when the Section 7 application was filed. The Bank also initiated SARFAESI proceedings against the Corporate Debtor's factory unit at SIDCO Industrial Area, Bari Brahmana, which had not been released under the OTS. These actions further reinforce that the debt had not been considered settled against the Corporate Debtor.

46. We have also considered the conduct of the Corporate Debtor post-OTS. It is not in dispute that in January 2019, the Corporate Debtor submitted a fresh OTS proposal, offering to pay a further Rs.1.85 Crores towards closure of the loan. This was followed by yet another proposal made before the High Court of Jammu & Kashmir and Ladakh in 2022, where the Corporate Debtor pleaded for a settlement. These steps show that the Corporate Debtor itself acknowledged the liability and never treated the debt as fully discharged.

47. This is relevant because under the law, an admission of liability, whether express or implied, can support the inference that debt continues to exist. The voluntary conduct of submitting multiple OTS proposals undermines the case that the loan stood extinguished.

48. We have also considered the relevant legal principles. Under Section 128 of the Indian Contract Act, 1872, the liability of the guarantor is co-extensive with that of the principal debtor unless otherwise agreed. However, the co-extensive nature does not imply automatic release of one upon settlement with the other.

49. In '*State Bank of India v. Indexport Registered*, [(1992) 3 SCC 159], the Hon'ble Supreme Court held the decree-holder bank can execute the decree against the guarantor without proceeding against the principal borrower. The guarantor's liability is coextensive with that of the principal debtor.

50. Further, in '*Laxmi Pat Surana v. Union Bank of India*, [(2021) 8 SCC 481], it was reaffirmed that the financial creditor may proceed against either the guarantor or the principal borrower unless there is an express waiver of rights.

51. In the present case, there is no document showing that the Bank agreed to waive its claims against the Corporate Debtor, rather the documents confirm the contrary that the bank specifically stated that the liability of Corporate Debtor for balance payment remains. The Bank continued to treat the debt as unpaid by the borrower and even filed a suit and initiated SARFAESI action against its assets. The Corporate Debtor submitted fresh settlement proposals even after the so-called discharge.

52. Therefore, we hold that a legally enforceable financial debt existed as on 07.01.2019, and the same was due and payable by the Corporate Debtor. The OTS with the guarantors did not amount to full and final satisfaction of the loan vis-à-vis the Corporate Debtor.

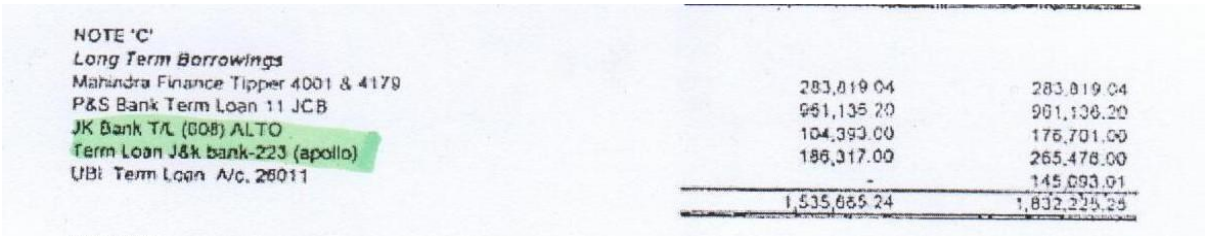
Accordingly, the issue is decided in affirmative.

Issue 2: Whether the application filed by the Bank under Section 7 of the IBC was within the limitation period?

53. This issue concerns whether the application filed on 07.01.2019 was within the prescribed limitation period of three years from the date of default and whether it was complete and valid under the IBC.

54. The Appellant submits that since the account became NPA on 31.03.2016, the limitation expired on 31.03.2019, and that the application was thus filed belatedly or at best prematurely, considering the Bank had already accepted payment from the guarantors.

55. The Bank, in reply, states that the application was filed well within the three-year window. Further, it points to Note C in the balance sheet of the Corporate Debtor for FY 2017–18, which acknowledged the outstanding loan liability, thus extending the limitation under Section 18 of the Limitation Act, 1963. The Note C as referred above is extracted below:



NOTE 'C'		
Long Term Borrowings		
Mahindra Finance Tipper 4001 & 4179	283,819.04	283,819.04
P&S Bank Term Loan 11 JCB	961,136.20	961,136.20
JK Bank T/L (008) ALTO	104,393.00	176,701.00
Term Loan J&k bank-223 (apollo)	186,317.00	265,476.00
UBI Term Loan A/c. 26011	-	145,093.01
	1,535,665.24	1,832,225.25

56. We have examined the date of NPA classification—31.03.2016—and the date of filing of the Section 7 application—07.01.2019. The application was filed within 2 years and 9 months, and is therefore squarely within the three-year period under Article 137 of the Limitation Act, 1963.

57. We also find that the Corporate Debtor acknowledged the outstanding debt in its audited balance sheet for FY 2017–18, which constitutes a valid acknowledgment of debt under Section 18 of The Limitation Act. The Hon'ble

Supreme Court in '*Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal*', [(2021) 6 SCC 366] and '*Dena Bank v. C. Shivakumar Reddy*', [(2021) 10 SCC 330] has clarified that such acknowledgment extends the limitation.

58. The Appellant has not placed on record any document showing that the Bank issued a No Dues Certificate or closed the loan account. On the contrary, the record reflects that the Corporate Debtor was still seeking restructuring and settlement as late as 2022.

59. In view of the above findings, we hold that the application under Section of the Code was filed within limitation and it complied with all procedural requirements.

Issue 3: Whether the Adjudicating Authority rightly exercised its discretion under Section 7(5)(a) of the IBC in admitting the application?

60. Section 7(5)(a) of the IBC provides that the Adjudicating Authority "may" admit an application if default is established. The issue is whether the Adjudicating Authority should have refused admission in view of the ongoing government contracts and claimed viability of the Corporate Debtor.

61. The Appellant relies on Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (supra) to argue that the NCLT was not bound to admit the application mechanically and should have considered that the company was a going concern engaged in executing defence contracts worth over Rs.38 Crores, including construction of military hospitals and Army accommodation in Ladakh and Kargil.

62. On the contrary, the respondent Bank contends that Vidarbha (supra) was an exception based on specific regulatory hurdles and that the general principle remains as laid down in *'Innoventive Industries Ltd. v. ICICI Bank'*, [(2018) 1 SCC 407] and *'E.S. Krishnamurthy v. Bharath Hi-Tech Builders Pvt. Ltd.'*, [(2022) 3 SCC 161]- i.e., once debt and default are proved, admission must follow.

63. We have considered the nature of the discretion under Section 7(5)(a). The judgment in Vidarbha (supra) does not give the Adjudicating Authority unrestricted power to reject applications where default is admitted. It must be shown that there exists a serious legal impediment, regulatory bar, or overriding public interest. The facts of Vidarbha (supra) are very different from the present case. In Vidarbha, the corporate debtor had defaulted on his debt obligations, but they had substantial receivables from Power Companies which were already crystalised and due shortly. The amount receivable was more than enough to meet the liabilities of the Corporate Debtor. The company was a going concern and in view of crystalised recoveries, the Hon'ble Supreme Court held that in such cases where the Corporate Debtor is solvent and only facing short-term liquidity crisis, such corporate debtors should not be brought into the CIRP.

64. In this case, the Appellant has claimed ongoing works to the tune of Rs. 38 crores for various works being executed by the corporate debtor. However, he could not produce any document, which shows that a certain amount of bills has been approved for payment to corporate debtor. Merely showing

ongoing contracts does not bring the present case under the purview of Vidarbha.

65. Thus, we are of the view that the present factual matrix is squarely covered by the principles laid down in Innoventive (supra). We find that there is no infirmity in the impugned order of NCLT. This issue is also decided in affirmative.

66. In view of the findings above, we affirm the order of Adjudicating Authority. The appeal is dismissed. No order as to costs. Pending IA's, if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)