NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 260 of 2023

[Arising out of the Order dated 15.02.2023, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench) in C.P. 1358 of 2020]

IN THE MATTER OF:

Sarang Kumar Wadhawan
(Shareholder of Privilege Power and
Infrastructure Private Limited)
Presently in Judicial Custody
At Mumbai Central Prison, Mumbai
Mobile No. +91-9167688370
Email ID: dish@sdsadvocates.com **...Appellant**

Versus

1. **Unity Small Finance Bank Ltd.**
(Erstwhile Punjab and Maharashtra
Co-Operative Bank Limited).
A Small Finance Bank incorporated in India
under the Companies Act, 2013 (18 of 2013),
having its registered office at:
40, Basant Lok, Vasant Vihar, New Delhi-110 057,
Corporate office at:
2nd Floor, Centrum House, C.S.T Road, Vidyanagari
Marg Kalina, Santacruz East, Mumbai – 400098 **...Respondent No.1**

2. **Mr. Anurag Kumar Sinha**
Interim Resolution Professional
of the Corporate Debtor
(Privilege Power and Infrastructure Private Limited)
IBBI/IPA-001/IP-P00427/2017-18/10750
75/76, Mittal Court, Wing-C, Nariman Point,
Mumbai – 400 021 **...Respondent No.2**

Present:

For Appellant : Ms. Menaka Guruswamy, Sr. Advocate with Ms. Disha Shah, Ms. Bhumika Yadav, Mr. Rohan Talwar and Mr. Avinash Mathew, Advocates.

For Respondent : Mr. Gourav Mitra, Ms. Ranuka Iyer and Mr. Arpit Paul, Advocates for R-1.

Mr. Dhananjaya Sud, Advocate for R-2.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is being preferred by the Appellant, Mr. Sarang Kumar Wadhawan, in the capacity of a shareholder of the Corporate Debtor, under Section 61 (1) of the Insolvency & Bankruptcy Code, 2016 ("IB Code") against the Impugned Order dated 15.02.2023, passed by the National Company Law Tribunal, Mumbai (Bench - V) in Company Petition (IB) No. 1358 of 2020 filed by the Respondent No.1 under Section 7 of the IB Code for initiation of Corporate Insolvency Resolution Process against Privilege Power Infrastructure Limited ("PPIL")

Submissions of the Appellant

2. NCLT overlooked the fact that it was the Financial Creditor /Respondent No. 1 who had made the averments in Form 1 (Application by Financial Creditor) that credit facility of ₹81.50 Cr. was disbursed on 12.03.2007. But no such amount was disbursed on 12.03.2007. Only the sum of ₹11,81,66,116.90 was disbursed from **12.03.2007 - 31.03.2007** to the Corporate Debtor for which no sanction letter was issued nor were the terms of disbursal with respect to time value and money. Date of NPA pleaded by the Financial Creditor, Respondent No.1 herein was 31.08.2012.

3. But the Financial Creditor issued sanction letter on 16.08.2018 for an amount of ₹81.50 Crores to correct the fraud of Financial Creditor for not being able to issue the same beforehand, which was never disbursed to the Corporate

Debtor, yet the Financial Creditor pleaded before the NCLT that the loans were disbursed pursuant to the sanction letter dated 16.08.2018.

4. Financial Creditor / Respondent No. 1 took a plea that the FIR discloses that the officials of the Financial Creditor played an active fraud. These illegalities were not considered by the NCLT.

5. Any Company Petition under IB Code must be filed within 3 years from the date of default and the transactions that are 'Fraudulent' in nature do not fall within the ambit of the definition of 'Financial Debt' as defined under Section 5(8) of the IB Code and hence, the same cannot be admitted to the Corporate Insolvency Resolution Process ("CIRP") under the provisions of IB Code. However, in the instant case, the date of default is 31.08.2012 and the Company Petition was filed before the NCLT in the year 2020, without any valid acknowledgment of debt. In addition to the above, the Financial Creditor itself sets up the case of Fraud and alleges that since the bank officials were involved in fraud, therefore the said Company Petition could not be filed within time. The Financial Creditor himself has submitted before the NCLT that, there was a fraud in the bank/Financial Creditor because of which the account of the Financial Creditor was recast and re-audited in the year 2019. As admitted by the Financial Creditor, the account of Corporate Debtor was declared as Non-Performing Asset ("NPA") in the year 2019 w.e.f. 31.08.2012 and the Company Petition was filed in the year 2020 with the Hon'ble NCLT.

6. The Impugned Order is contrary to Section 17 of the Limitation Act, 1963 that deals with the 'effect of fraud or mistake'. Financial Creditor claims it came to know about the fraud only in the year 2019. This fact is untenable as all the Statement of Account were readily available with the Financial Creditor and the Corporate Debtor never stopped the Financial Creditor from taking any legal action. Therefore, reliance by the Financial Creditor that it only came to know about the accounts of Corporate Debtor are NPA only on 27.12.2019 was and is a moonshine defense. NCLT overlooked Section 17 (d) of the Limitation Act which categorically states that Section 17 would only come into play and rescue the limitation in the event the document required for taking appropriate legal action against the Corporate Debtor is fraudulently concealed by the other party. In this case, all the documents required for taking any legal action were readily available with the Financial Creditor and the question that arose was - why the bank/Financial Creditor did not take any action in F.Y. 2012 when the account of the Corporate Debtor was NPA. These are the internal policy decisions of the Financial Creditor and certainly the Corporate Debtor had no role to play.

7. Financial Creditor itself has filed an FIR before the EOW and has alleged collusion / conspiracy between the Corporate Debtor and management of the Financial Creditor. This certainly is not the object of the legislature which has been relied by NCLT in the present case. Even the EOW in C.R. No. 86/2019 (Bhandup Police Station C.R. No. 375/2019) of the Chargesheet explicitly states that the loan documents executed by the Financial Creditor are invalid and that

the RBI norms and conditions were not followed by the Financial Creditor while sanctioning and disbursing the loan to the Corporate Debtor.

8. Impugned Order suffers from non-application of mind and is in complete contravention to the provisions of the IB Code. The Petition was barred by law of limitation and according to the Financial Creditor itself the transaction was a fraudulent transaction. Being aggrieved by the said Impugned Order, the Appellant has preferred the present Appeal before this Hon'ble Tribunal.

And read with Section 18, 19 of the Contract Act, 1872.

Submissions of Respondent

9. Appellant is merely seeking to stall, delay and defeat the Corporate Insolvency Resolution Process of PPIL, by inter alia raising bogus contentions and allegations, which have no basis in fact or in law. Appellants are guilty of suppresio veri and/or suggestion falsi. The fact is that Corporate debtor had availed facility and there was default in payment.

10. In respect of the First Sanction Limit, the absence of a sanction letter would not indicate that there is no 'financial debt'. A financial contract is not a pre requisite for admitting an application under Section 7 of the IBC as long as the Adjudicating Authority is subjectively satisfied that there were a debt and default. The definition of "financial debt" as prescribed under Section 5(8) and (f) of IBC means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised under any transaction having commercial effect of a borrowing. Further 'financial debt'

means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt.

11. In the instant case, it is evident from the record that from FY 2006-07 till FY 2012-13, the Corporate Debtor had raised funds from PMC Bank under a transaction that has the 'commercial effect of borrowing'. The same is undisputed by the Appellant. As the Corporate Debtor failed to repay the facility availed till FY 2012-13, it is evident that there was a default. Thus, there being a debt and default, the Appellant cannot contend that the Impugned Order ought to be set aside and as such, the Appeal ought to be dismissed on these grounds alone.

12. Respondent also claims that the company petition is not time barred under the Limitation Act 1963. The period of limitation will not run against Financial Creditor-USFBL, till the date USBFL discovered the default of PPIL, along with the documents evidencing such default, which were fraudulently concealed by erstwhile management of PMC Bank as well as the Appellant. In or around 23 September 2019, on account of the irregularities in conduct of business of PMC Bank, RBI took over the charge of PMC Bank's management by way of supersession of Board of Directors under Section 36AAA of the Banking Regulation Act, 1949. An Administrator was appointed by the RBI in exercise of the powers conferred on RBI India under Sub-sections 1 & 2 of Section 36AAA

read with Section 56 of the Banking Regulation Act, 1949. Moreover, an Advisory Committee comprising of senior bankers/ chartered accountant was also appointed to assist the Administrator. Further, PMC Bank was placed under All-Inclusive Directions (AID) under Sub-section (1) of Section 35-A read with Section 56 of the Banking Regulation Act, 1949 with effect from on 23 September 2019 *vide* RBI's Directive DCBS.CO.BSD-I/D-1/12.22.183/2019-20 dated 23 September 2019 on account of fraud which led to steep deterioration in the net-worth of the bank. Further, the Administrator appointed an auditor to re-audit and re-cast the financial statements of PMC Bank for the financial year ending on 31 March 2020. The notes from the re-casted financial statements categorically record the following:

> "(i) Note No.1,9 and 29 regarding Fraud of substantial amount detected at the Bank during the year whereby certain advance accounts relating to Housing Development Infrastructure limited (HDJL) Group having outstanding of Rs. 6212. 46 crores and other credit facilities aggregating to Rs.428.58 crores as on March 31, 2020 remained unreported and were not properly classified in accordance with the asset classification norms issued by RBI... "
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> "B. "(i) To the extent identified, the outstanding amount as on 31/03/2020 in credit facilities availed by M/s Housing Development & infrastructure Ltd. (HDJL) and its associates amounted to Rs.6212.46 crores which formed 73.28% of its credit portfolio of" 8477. 16 crores. The group also has non fund based facilities (Bank Guarantee) outstanding to aggregate balance outstanding of Rs. 428.58 crores (to the extent identified), that were also not classified as NPA on the date these facilities has turned NPA, and was in violation of provisions contained in Section 46(2) of Banking Regulation Act, 1949 (As Applicable to Cooperative Societies (AACS))."
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> "(iii) The then management of the bank did not disclose appropriately and completely the credit facilities granted to HDIL group and certain other accounts which had turned Non performing in earlier years. During the year all these accounts with aggregate outstanding Rs.6641.04 crores have been classified as Non-performing from their respective back date of becoming NPA. There

is no claim on the outstanding Bank Guarantees of Rs. 19.17 crores and hence no provision has been made for the same."

13. The above re-audit and re-casting of PMC Bank's balance sheets was concluded on 27 December 2019, and as such prior to such date, the Financial Creditor, the RBI or the Administrator did not have knowledge of the default and NPA status of Corporate Debtor's accounts. Pursuant to the aforesaid, the account of the Corporate Debtor was classified as a NPA account with effect from 31 August 2012. Subsequently, PMC Bank merged with USFBL by way of scheme of amalgamation approved and notified by the Ministry of Finance, Department of Financial Services, Government of India on 25 January 2022. By way of the scheme of amalgamation, the Financial Creditor took over the assets and liabilities of PMC. An Interim Application being 624 of 2022 was preferred before this Hon'ble Tribunal to substitute the name of PMC with the Respondent herein in the Company Petition *vide* order dated 11 March 2022.

14. Respondent also contends that there exists valid acknowledgements and part payment of debt. The statement of accounts reveal that on or around 25 February 2013, the Corporate Debtor availed a facility of INR 6,79,00,000/- (Rupees Six Crores Seventy Nine Lakhs). It is settled law that as per Article 21 of the Limitation Act 1963, that in the case of a simple overdraft facility, the limitation period of 3 years will run from the date on which the last overdraft facility was availed. Therefore, the period of limitation would begin to run at least from 25 February 2013.

15. Section 18 of the Limitation Act, 1963 prescribes that before the expiration

of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. The Explanation to the Section provides that an acknowledgement may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not yet come or is accompanied by a refusal to pay, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the right.

16. Further, Section 19 of the Limitation Act, 1963 deals with the effect of payment on account of a debt or of interest on a legacy made before the expiry of the period prescribed by a person liable to pay. It is only in such circumstances that a fresh period of limitation shall be computed from the time when the payment is made. Moreover, it is settled law that Sections 18 and 19 of the Limitation Act, 1963 have to be construed liberally.

17. It is settled law that balance confirmations constitute as an unconditional acknowledgement of its liability by the defendant under Section 18 of the Limitation Act, 1963. It contains an implied promise that the amount stated to be the closing balance would be paid by the defendant and as such is a promise to pay. For the disbursals made by PMC Bank, balance confirmations letters were sent to the Corporate Debtor, and were signed and acknowledged by the Appellant. The balance confirmations are tabulated herein below for ease of

reference for this Hon'ble Tribunal:

Sr. No.	Date	Outstanding Amount
1.	31 March 2011	INR 30,36,82,307.41
2.	26 June 2011	INR 29,99,61,736.20
3.	30 June 2018	INR. 101,69,36,070.27
4.	31 March 2019	INR 115,25,89,280.27
5.	30 June 2019	INR 120,07,71,521.27

18. Moreover, part payments continued to be received by PMC Bank in the Overdraft Account as demonstrated hereinbelow:

Sr. No.	Date	Payment received by
1.	22 October 2013	Credit transaction by Bharti Airtel (INR 22,428)
2.	10 July 2014	RTGS Shop No 6 of Ground Floor (INR 2,07,000)
3.	28 August 2014	Credit transaction by Bharti Airtel (INR 22,428)
4.	17 February 2016	Credit transaction by Bharti Airtel (INR 2,61,000)

19. The aforesaid balance confirmations provided by the Corporate Debtor and part payments made by vendors, were in respect of the Overdraft Account and no other account is maintained with the PMC Bank. The part payments received from vendors were also towards discharge of the debt availed by the Corporate Debtor, and were on behalf of the Corporate Debtor, who used to periodically authorize third party vendors to transfer monies to the Overdraft Account. The same is evident from a bare perusal of the statement of accounts of the Overdraft Account. Moreover, the Corporate Debtor knowing that it had not availed further facility from PMC Bank after 2013, continued to provide balance confirmations

even in 2018 and 2019. This shows unequivocal intent of the Corporate Debtor to acknowledge an existing debt and liability, prior to expiration of the limitation period to file a suit. As such, the Corporate Debtor provided valid acknowledgement of debt till 2019, and given that the Company Petition was filed in 2020 itself, it cannot be said that the Company Petition was barred by limitation.

20. Respondents also contends that Overdraft Account was a mutual and a current account. The balance in the Overdraft Account was a constantly moving one and the balances reflected in the said account were momentary in nature and subject to frequent changes, thus the Overdraft Account were in the nature of a mutual and current account. Overdraft Account was in the nature of a current account as mutually acknowledged by the parties in the balance confirmation letter dated 27 June 2011 in which it was categorically stated that "*balance in your* ***current account*** *No. 1407/1790 as on 26 June 2011 is INR 29,99,61,736.20 Debit.*" It is settled law that a current account of the bank in which overdraft limit is granted, is an open mutual and current account in terms of Article 1 of the Limitation Act,1963 and limitation for filing of the suit is three years from the end of the financial year in which the last entry is admitted or proved. The last proved entry in the account is dated 10 October 2019 when the debit entries were put in the account for interest payable by the Corporate Debtor. The end of the financial year with respect to the entry dated 10 October 2019 will be 31 March 2020 and thus in terms of Article 1 of the Limitation Act, 1963 the Company Petition could have been filed till 31 March 2023 whereas the suit

has been filed in 2020 itself. As such, for these reasons also the Company Petition can be said to have been filed within limitation. Even assuming that the last proved entry in the account is dated 17 February 2016 when the credit entries were put in the account for amounts paid by Bharti Airtel, the end of financial year with respect to such entry will be FY 2015-16. Thereafter, the Corporate Debtor has provided valid acknowledgements of debt in the year 2018 and 2019 as seen above. Therefore, it cannot be said the Company Petition is barred by limitation and has been filed well within the limitation period. In light of the aforesaid, it is opposed that the Company Petition was barred by limitation. A bare perusal of the averments made by the Appellant indicate that the even though he has admitted the disbursal of facility from FY 2007 till at least FY 2013, the Appellant is only opposing the Company Petition on the grounds that it is barred by limitation. The Appellant has failed to consider the various acknowledgement of debt and part payments made in respect of the Overdraft Account which have revived the limitation period in respect of the facility availed by the Corporate Debtor.

21. Appellant is also seeking to take advantage of its own wrong by concealing the default from the Financial Creditor and thereafter, contending that the Company Petition is barred as the Financial Creditor failed to initiate action in relation to the default on a prior date. It is well known that the erstwhile management of PMC Bank acted collusively with the Appellant to not even identify and report the default of the Corporate Debtor, let alone file proceedings for the same. The Financial Creditor herein is merely attempting to safeguard

the interests of depositors of PMC Bank who have been greatly prejudiced by siphoning of the funds by the erstwhile management of PMC to the Corporate Debtor and its group companies.

22. Immediately after supersession of the management of PMC Bank, attempts were made by Financial Creditor to recover their dues from the Appellant:

i. a notice dated 7 October 2019 registered under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI); and

ii. a recall letter issued to the Appellant dated 12 June 2020; and

iii. a record of default was registered on 1 July 2020 with National E- Governance Services Limited (NESL).

23. Appellant's have wrongly contended that the 'Charge Sheet' as annexed by the Appellants clearly suggests the loan documents executed between the Appellant and PMC are invalid as the 'Charge Sheet' clearly takes into account the fact that money was disbursed by PMC towards the Appellant which was not repaid.

Appraisal

24. Heard counsels of both sides and also perused material on record.

25. Before proceeding further, we note that the Appellant is a shareholder of the corporate debtor. We note that only the sum of ₹11,81,66,116.90 was disbursed from 12.03.2007 - 31.03.2007 to the Corporate Debtor. No sanction letter was issued nor were the terms of disbursal with respect to time value and money. The date of NPA as pleaded by the Financial Creditor, FC-Respondent No.1 herein is 31.08.2012. The Financial Creditor issued sanction letter dated

16.08.2018 for an amount of ₹81.50 Crores and Appellant claims that it was to correct the fraud of Financial Creditor for not issuing the same beforehand. Financial Creditor pleads before the NCLT that the loans were disbursed pursuant to the sanction letter dated 16.08.2018. Appellant also contends that Financial Creditor / Respondent No. 1 took a specific plea that the FIR discloses that officials of the Financial Creditor played an active fraud. Further Appellant contends that the petition was barred by limitation as it must be filed within 3 years from the date of default. Appellant also contends that the transactions that are fraudulent in nature do not fall within the definition of Financial Debt under Section 5(8) of the IB Code and hence cannot be admitted to CIRP. In this case, the date of default was 31.08.2012, and the Company Petition was filed in 2020, without any valid acknowledgment of debt. Appellant also contends that Financial Creditor itself alleges fraud by its officials as a reason for delay and as there was fraud in the bank because of which the account was recast and re-audited in 2019 and therefore, the account of Corporate Debtor was declared NPA in 2019 w.e.f. 31.08.2012 and the Company Petition was filed in 2020. Appellant claims that the Impugned Order is contrary to Section 17 of the Limitation Act, 1963 that deals with 'effect of fraud or mistake'. Appellant also contends that the plea of Financial Creditor that it came to know about the fraud only in 2019 is untenable because all Statements of Account were readily available with the Financial Creditor. Appellant-Corporate Debtor never stopped the Financial Creditor from taking legal action. The plea that Financial Creditor came to know only on 27.12.2019 is a moonshine defense, especially since it

itself pleaded that its own management was involved in fraud. Section 17 applies only if documents required for taking legal action are fraudulently concealed by the other party. In this case, all documents were readily available with the Financial Creditor. The question arises why the Financial Creditor did not take action in F.Y. 2012 when the account was NPA as per its own case. These were internal policy decisions of the Financial Creditor, in which the Corporate Debtor had no role. Appellant also contends that the Financial Creditor filed an FIR before EOW alleging collusion/conspiracy between Corporate Debtor and its own management. This is not the object of the legislature relied upon by NCLT. Even the EOW in C.R. No. 86/2019 (Bhandup Police Station C.R. No. 375/2019) in the Chargesheet explicitly states the loan documents executed by the Financial Creditor are invalid and RBI norms and conditions were not followed by the Financial Creditor while sanctioning and disbursing the loan to the Corporate Debtor.

26. Looking into the sequence of events as brought out by the Respondent-FC we note that in 2007, PMC Bank advanced financial assistance to PPIL by way of an overdraft facility (Account No. 002140700001790). Statement of accounts shows:

- Sanction limit: ₹40 crores,
- Secured by mortgage,
- Interest rate: 16%,
- Effective sanction date: 22 February 2013.

27. Corporate Debtor began withdrawing from 12 March 2007, and by 31 March 2007, overdraft utilized was ₹11.81 crores. Board resolutions dated 6

December 2008 increased the overdraft limit from ₹15 crores to ₹20 crores, authorised Appellant to execute loan documents, and mortgaged Property 1 (Plot No. 1, Juhu Tara Road, Juhu). Interest unpaid for over six months by 31 August 2012. The account should have been classified as NPA, but irregularities at PMC Bank prevented reporting. By 25 February 2013, outstanding dues was ₹39.99 crores and total amount disbursed till 31 March 2013 was ₹80.99 crores.

28. FC-Respondent argues that in 2017, Corporate Debtor-Appellant applied to renew sanction limit to ₹81.50 crores. PMC Bank sanctioned as below:

- 3 April 2017 – ₹10 crores secured by Property 2 (Shirgaon, Thane, 50,575 sq. m.)
- 5 April 2017 – Enhanced to ₹81.50 crores against Property 2.

Mortgage deeds (13 April 2017) were executed over Property 2 by the Appellant as below:

- executed Mortgage Deed 1 (₹10 crores)
- Mortgage Deed 2 (₹81.50 crores)

29. Further Sanction letter dated 6 January 2018 required mortgage of Property 3 (Ranolli & Padmala, Vadodara) and on 2 May 2018 – Mortgage over Property 4 (Village Doliv, Vasai, Palghar) was done. Further Sanction dated 16 August 2018 reaffirmed ₹81.50 crores against Properties 2 & 4. And on 16 August 2018 – Demand Promissory Note -DPN and undertaking were executed by the Appellant. These documents reaffirm Corporate Debtor's acknowledgment of indebtedness and subsisting debtor–creditor relationship.

30. Respondent also claims financial debt under Section 5(8)(f) of the IBC as from FY 2006–07 to FY 2012–13, Corporate Debtor borrowed funds, which is admitted by Appellant. Corporate Debtor defaulted in repayment; hence existence of debt and default is established. Respondent also contends that Company Petition is within limitation as knowledge of default was concealed by PMC management and Appellant. Fraud was exposed after RBI superseded PMC Board on 23 September 2019 under Section 36AAA, Banking Regulation Act. Re-audit was concluded on 27 December 2019 revealed defaults and NPAs. Later PMC Bank merged with USFBL on 25 January 2022; Respondent substituted (IA 624/2022). As per Section 17, Limitation Act 1963: limitation begins from discovery of fraud or concealed documents. Hence limitation runs only from 27 December 2019.

31. Respondent also contends that the last overdraft facility was availed on 25 February 2013 (₹6.79 crores). Limitation under Article 21 runs from that date. Section 18 & 19 Limitation Act, 1963 provide that acknowledgements and part payments revive limitation. Here in this case balance confirmation letters were signed by Appellant on various dates which are noted as below:

> "31 March 2011 – ₹30.36 crores,
> 26 June 2011 – ₹29.99 crores,
> 30 June 2018 – ₹101.69 crores,
> 31 March 2019 – ₹115.25 crores,
> 30 June 2019 – ₹120.07 crores"

32. Further part payments received in the OD account, showing acknowledgements, are noted as below:

"22 Oct 2013 – ₹22,428 (Bharti Airtel),
10 Jul 2014 – ₹2,07,000 (RTGS),
28 Aug 2014 – ₹22,428 (Bharti Airtel),
17 Feb 2016 – ₹2,61,000 (Bharti Airtel)"

Thus, acknowledgments are valid till 2019; and therefore, petition in 2020 is within limitation.

33. Respondent further argues that Overdraft Account is in the nature of current account. Balance confirmations (27 June 2011) describe it as a "current account." Further Article 1, Limitation Act provides that limitation runs three years from end of FY in which last entry is admitted/proved. Last debit entry was on 10 October 2019 (interest). Therefore, Limitation exists till 31 March 2023. Even if last credit entry (17 Feb 2016) is considered, acknowledgements in 2018–2019 revive limitation.

34. FC-Respondent also claims that Appellant cannot rely on Charge Sheet since it acknowledges disbursal of money by PMC which was not repaid. Furthermore, it is the contention of the FC-Respondent that Appellant colluded with PMC Bank's management to conceal default and Appellant cannot take advantage of own fraud and Financial Creditor had acted to protect PMC Bank depositors' interests.

35. Furthermore, Financial Creditor claims to have issued SARFAESI notice (7 Oct 2019), Recall letter (12 Jun 2020), Record of default with NESL (1 Jul 2020).

Issues before us:

36. The Appellant has sought to argue that the Section 7 petition filed in 2020 is belated and is barred by limitation, given the date of disbursement being 12.03.2007 and the date of NPA being 31.08.2012 and that is the main issue before us.

37. We first delve into the conspectus of the case in hand to find out the validity of the arguments and whether Adjudicating Authority was correct in establishing debt and default. In CP IB No. 1358 of 2020 Unity Small Finance Bank- USBFL (Formerly PMC Bank)-FC, filed for a debt of ₹138,48,08,867/- under Section 7 of the Code, thereby initiating Corporate Insolvency Resolution Process against the CD-Privilege Power Infrastructure Limited-PPIL.

Whether the OD facility 0f 2007 is different than 2017-2018?

38. First we look into the issue whether the OD facility of 2007 is different than 2017-2018? Appellant a shareholder of Privilege Power Infrastructure Limited ("PPIL") contends that the overdraft facility availed in 2007 is separate and distinct from the purported overdraft facility sanctioned in 2017-2018. The latter is fictitious, devoid of any 'disbursal' and has been artificially created by the Financial Creditor in an attempt to circumvent the statutory bar of limitation applicable to a Section 7 Application, IBC. Further Appellant contends that Overdraft Account No. 02140700001790 was opened by Punjab and Maharashtra Co-operative Bank Ltd. (now Unity Small Finance Bank Ltd.)/ Financial Creditor, and a sum of ₹11.81 Crores was disbursed to Privilege Power and Infrastructure Pvt. Ltd./ Corporate Debtor between 12.03.2007 and

31.03.2007. Appellant contends that this disbursal was not supported by any sanction letter, loan agreement, or security documentation and in the absence of the said documentation, the 'disbursal' pursuant to the 2007 facility was not made in consideration for the time value of money and therefore did not fall within the definition of 'financial debt' under Section 5 (8) of the Insolvency and Bankruptcy Code, 2016. Further the account of the CD was classified as a "non-performing asset" in the 3rd quarter of the financial year 2019-2020, with effect from 31.08.2012. The same was done in pursuance of a re-audit instructed on behalf of the RBI. Appellant contends that the FC was aware about the NPA status of the account of the CD from 2012 but never classified it as such in a timely manner. Appellant also contends that the Hon'ble Supreme Court has unequivocally held that Article 137[1] is applicable to proceedings under Section 7 of the IBC and that a period of 3 years for calculating the limitation would begin from the 'date of default'. In the present case, the 3-year period to file the present Section 7, IBC application commenced on 31.08.2012 (date of default) and expired in August 2015 and is thus barred as per Article 137. To circumvent the bar of limitation, the FC sought to artificially create a purported overdraft facility in 2017-2018 and to conflate the same with facility availed in 2007, thereby seeking to depict both as a single, continuous transaction for the purpose of limitation.

[1] Under the Limitation Act, 1963

39. FC-Respondent has controverted the above arguments by providing the backdrop of the case which is noted hereinafter. In the year 2007, Punjab and Maharashtra Co-operative Bank had advanced financial assistance to PPIL in the nature of an overdraft facility. Due to irregularities in the business of PMC, no sanction letters are available with the Financial Creditor i.e., Unity Small Finance Bank Limited ("Financial Creditor" / "USFBL Bank"). However, perusal of the statement of accounts for the Overdraft Account reveals that (a) the overdraft facility was for INR 40,00,00,000/- (Rupees Forty Crores), (b) the overdraft facility was being availed against mortgage security, and (c) the rate of interest was 16%. Moreover, the effective date of the sanction limit, as seen in the statement of accounts, was 22 February 2013. Pursuant to the opening of the Overdraft Account, starting from 12 March 2007, the Corporate Debtor withdrew substantial amounts and availed overdraft facility from PMC Bank. By the end of the financial year ending on 31 March 2007, the outstanding debit amount indicated the extent of overdraft facility availed by the Corporate Debtor to the tune of INR 11,81,66,116. Respondent contends that while the sanction letters are not available with the Financial Creditor, but the board of directors of the Corporate Debtor, including the Appellant herein, passed necessary board resolutions dated 6 December 2008 to increase the limit for the overdraft facility from INR 15,00,00,000 to INR 20,00,00,000 in relation to the Overdraft Account. The aforesaid resolution also shows that the Corporate Debtor had authorized the Appellant to make the necessary loan applications and executed the sanction letters for the overdraft facility from PMC Bank, and such facility was being

availed against mortgage of Plot No 1 Juhu Tara Road, Juhu village Juhu, Taluka Andheri, bearing CTS No 956, 956/1 to 956/83, village Juhu admeasuring 550 sq. yards ("Mortgaged Property 1"). Moreover, in around 31 March 2012, interest was being levied for the facility availed by the Corporate Debtor. However, the Corporate Debtor failed to make payments towards interest for a period of over 6 months, and at-least till 31 August 2012, and as such the Overdraft Account of PPIL ought to have been classified and reported as a Non-Performing Asset (NPA) to Reserve Bank of India ("RBI"). However, owing to the irregularities in the conduct of business of PMC Bank, the Overdraft Account of PPIL was not reported to the RBI. Despite the same, the Corporate Debtor continued to avail financial assistance from PMC Bank at least till 25 February 2013 (which was beyond the effective date for sanction limit). The outstanding amount payable by the Corporate Debtor as on 25 February 2013 was INR 39,99,22,689. Since then, the Overdraft Account remained active, and certain minor amounts were being credited to the Overdraft Account by third parties and under their respective agreements with the Corporate Debtor. As seen in the statement of accounts, at-least till FY 2012-2013, the total amounts disbursed to the Corporate Debtor were to the extent of INR 80,99,73,539.27 as on 31 March 2013.

40. Thereafter, in 2017, the Corporate Debtor, through the Appellant, had sought for renewal of the First Sanction Limit to INR 81.50 crores, vide a loan application. The renewal of sanction limit was approved by PMC Bank and various documents were executed pursuant to the same:

- Vide sanction letter dated 3 April 2017, the mortgage overdraft

limit of INR 10,00,00,000 (Rupees Ten Crores) was sanctioned by PMC Bank for the Overdraft Account, in favour of the Corporate Debtor for which security by way of mortgage was provided over the property situated Village Shirgaon, Taluka Vasai, District Thane, admeasuring 50,575 sq. mts. ("Mortgaged Property 2").

- Vide sanction letter dated 5 April 2017, the sanction limit for the Overdraft Account was enhanced to INR 81,50,00,000 (Rupees Eighty One Crores and Fifty Lakhs). For this sanction, security by way of mortgage over Mortgaged Property 2 was provided to PMC Bank. Notably these enhancements to the sanction limit were being provided, despite the outstanding amounts due and payable under the Overdraft Account.

- Pursuant to this, deed of mortgage dated 13 April 2017 ("Mortgage Deed 1") was inter alia executed by the Corporate Debtor and the Appellant, in favour of PMC Bank, to create security by way of mortgage over the Mortgaged Property 2 for sanction limit of INR 10,00,00,000. Further, subsequently, deed of mortgage dated 13 April 2017 ("Mortgage Deed 2") was inter alia executed by the Corporate Debtor and the Appellant, in favour of PMC Bank, to create security by way of mortgage over the Mortgaged Property 2 (for sanction limit of INR 81,50,00,000. Both Mortgage Deed 1 and Mortgage Deed 2 provide that the security under the said agreements is in the nature of a continuing security, for the "existence of credit balance or NIL balance in the loan accounts at any time or any partial payment or inflection of accounts".

- Subsequently, vide the sanction letter dated 6 January 2018, the Corporate Debtor agreed to furnish additional security for the sanction of INR 81.50 crores, by way of mortgage over the

property at village Ranolli and Padmala at Sub-District Baroda admeasuring 45 Hectors, 92 Acres, 21 Pratlares standing in the name of Housing Development and Infrastructure Limited ("Mortgaged Property 3").

- Pursuant to above, further security was provided by Corporate Debtor and vide the sanction letter dated 2 May 2018, PMC Bank accepted additional security over the land at Village Doliv, Dahisar, Kasrali, Khardi, Taluka Vasai, District Palgar ("Mortgaged Property 4"). By way of deed of mortgage dated 24 May 2018, the Corporate Debtor created mortgage over the Mortgaged Property 4 in favour of PMC Bank for sanction of INR 81.50 crores. Thereafter, the sanction letter dated 16 August 2018 was issued by PMC Bank inter alia approving the sanction limit of INR 81,50,00,000 crores against the security over Mortgage Property 2 and Mortgaged Property 4.

- The Corporate Debtor also executed Demand Promissory Note ("DPN") and Undertaking dated 16 August 2018 inter alia for the sanction of INR 81.50 crores.

41. FC-Respondent contends that the aforesaid sanction documents were executed in lieu of the amounts already disbursed to the Corporate Debtor till 31 March 2013 which were to the tune of INR 80,99,73,539.27, and in light of the fact that the Corporate Debtor had failed to clear the entire outstanding dues and/or make payment towards the interest and the overdraft facility in respect of the Overdraft Account.

42. In the above background wherein the aforesaid documents indicate that the Corporate Debtor had acknowledged the subsisting relationship between the

Corporate Debtor and PMC Bank of that being a debtor and creditor, and continued to maintain an overdraft account with PMC Bank under which it had continued to avail facility from PMC Bank, we cannot agree with the arguments of the Appellant that the OD facility of 2007 is different than 2017-2018 OD facility.

Extension of limitation period by S.18 of the Limitation Act, 1963

43. Now we delve into the argument canvassed as to whether limitation can be extended under Section 18 of the Limitation Act 1963. For better appreciation Section 18 is reproduced as below:

> **"Section 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.
> (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.
>
> Explanation. — 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, and
> (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

44. Appellant contends that the limitation period in the present case cannot be revived or extended by the operation of Section 18 of the Limitation Act, 1963.

We note that Section 18, Limitation Act, 1963, brings out that if the debtor makes an acknowledgment of their liability towards the creditor, during the period of limitation, it gives rise to a fresh limitation to the creditor from the date of such acknowledgment. Subsection one of section 18 prescribes that such an acknowledgment has to be *"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"*. Thus, as per Section 18, Limitation Act, 1963, if the debtor makes an acknowledgment of their liability towards the creditor, during the period of limitation, it gives rise to a fresh limitation to the creditor from the date of such acknowledgment. The Financial Creditor relied on sanction letters, balance confirmations, and other documents related to the purported overdraft facility of 2017–2018, to advance the contention that these materials constitute acknowledgments of debt under Section 18 of the Limitation Act, 1963 and thereby initiate a fresh period of limitation. Appellant claims that an acknowledgment under Section 18 must be made before the expiry of the original limitation period. But the aforesaid documents were executed only after the expiration of the prescribed three-year limitation period commencing from the date of the account being declared NPA (31.08.2012), and as such, cannot be regarded as valid acknowledgments for the purpose of extending limitation under Section 18 of the Limitation Act, 1963.

Had we applied the provisions of Section 18 alone in this particular case, we could have arrived at final conclusion that three years of limitation was over and therefore, the respondent was barred under the Limitation Act to proceed against the Appellant. But conspectus of this case does not allow us to conclude relying solely on Section 18 of the Limitation Act, 1963, which is being dealt in hereinafter.

45. Another argument which has been canvassed by the Financial Creditor is with respect to part payments, which have extended the limitation under Section 18 and 19. Respondent had given the date of default to be 31.08.2012 i.e., the date of classification of CD as a Non-performing Asset ("NPA"), which has not been disputed by the Appellant. After such declaration, the CD has given various part- payments and acknowledged the debt, thus, extending the period of limitation from time to time. The following events are relied upon by the Respondent to canvass that the petition is within the date of limitation:

Date	**Event**	**Expiry of Limitation**
31.08.2012	Date of default/ date of declaration of NPA	**30.08.2015**
17.07.2013 and 22.10.2013	Part Payment under Section 19: Part payment was made in the CD's account by its vendor namely, Bharti Airtel, as seen by the transaction of Bharti Airtel, - "NEFT Bharti Airtel Ltd 000" (INR 2,07,000) and "NEFT Bharti Airtel Ltd 000" (INR 28,428).	21.10.2017
28.08.2014	Part Payment under Section 19: Part payment was made by Bharti Airtel for ₹28,428/-.	27.08.2017

17.02.2016	Part Payment under Section 19: Part payment was made by Bharti Airtel for ₹2,61,000/-	16.02.2019
03.04.2017	Acknowledgment under Section 18: PMC Bank issued a formal sanction letter for additional overdraft facility of ₹10 crores under overdraft account no 1407/1790, in favour of CD.	02.04.2020
06.04.2017	Acknowledgment under Section 18: In clear acknowledgment of its debt, Letter of Continuing Security were issued by CD (signed by Rakesh Wadhawan & Sarang Wadhawan) in favor of PMC Bank for amounts of INR 10 crore and INR 71.50 crore (total INR 81.50 crore)	05.04.2020
11.07.2018	Acknowledgment under Section 18: Balance confirmation provided by CD for an amount of INR 101,69,36,070.27.	10.07.2021
07.08.2019	Acknowledgment under Section 18: Balance confirmation provided by CD for an amount of INR 115,25,89,280.27.	06.08.2022
08.08.2019	Acknowledgment under Section 18: Balance confirmation provided by CD for an amount of INR 120,07,71,521.	07.08.2022

46. The CD has given various part- payments and acknowledged the debt, thus, extending the period of limitation from time to time. Even though small payments and from various vendors, the arguments canvassed by the financial creditor gain lot of credibility, particularly in the overall context which is noted herein after.

Can the financial creditor invoke Section 17 of the Limitation Act?

47. Now we look into the issue of extension of limitation under Section 17 of the Limitation Act. Appellant contends that the financial creditor cannot invoke Section 17 of the Limitation Act, 1963 to extend limitation as it was fully aware of the purported 'fraud' as early as 2012. Further, the 'fraud' was not perpetrated

upon the Financial Creditor, but rather by the financial creditor itself. Appellant contends that Section 17, Limitation Act gives rise to fresh limitation when a party has been prevented from initiating proceedings due to 'fraud' or concealment of facts by the opposite party. But herein the material on record demonstrates that the FC was fully aware that the CD had turned NPA (purported 'fraud') as early as 2012, and any claim of discovery in 2019 is an afterthought to extend limitation. These documents unambiguously establish that no 'fraud' was committed by the CD. Rather, it was the FC who engaged in the 'fraud' and concealed information. Appellant has also placed its reliance on:

- **Pallav Sheth v. Custodian, (2001) 7 SCC 549**
- **P. Radha Bai v. P. Ashok Kumar (2019) 13 SCC 445**
- **Santosh Devi V. Sunder 2025 (SC) 534 and**
- **Gopi Vs. H. David and another reported in 2011-1-L.W.806**

48. The appellant also presents an argument that the transactions between parties were fraudulent transactions and hence could not be classified as 'financial debt' under Section 5 (8), IBC. Section 5(8), IBC defines "financial debt" as a debt disbursed against the consideration for the time value of money. It is a well-established principle of law that a collusive, sham, or fraudulent transaction does not fall within the ambit of "financial debt" under Section 5(8). The Hon'ble Supreme Court held that a fraudulent or collusive transaction does not qualify as financial debt, and that the adjudicating authority must look beyond form and into the substance of the transaction. The FC admits that, due to fraud committed by it, no sanction letter or security documents were issued prior to the loan disbursement. The Charge Sheet in C.R. No. 86/2019 reveals

that the Managing Director of the FC deliberately suppressed the NPA classification, and RBI guidelines were flagrantly violated at the time of sanction and disbursal. These factors cumulatively render the transactions fraudulent in nature, and incapable of forming the basis for any claim under Section 7 of the IBC. Since IBC proceedings are not a substitute for debt recovery but are intended for the resolution of genuine defaults, the nature and origin of the alleged debt are crucial. In the present case, the transactions are cumulatively tainted by fraud and illegality, rendering them incapable of constituting a valid 'financial debt' under Section 7 of the Code. The remedy, if any, lies in a civil court and not through the IBC mechanism, which cannot be invoked to enforce disputed or fraudulent claims.

49. Refuting these contentions of the Appellant, the Respondent contends that Section 17 of the Limitation Act, 1963 *inter alia*, provides that where, in the case of any suit or application for which a period of limitation is prescribed by the Limitation Act 1963, *the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of the defendant or his agent* [section 17(1)(b)] or *where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him* [Section 17(1)(d)], the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. It contends that the aforesaid provision of Section 17 of the Limitation Act 1963,

embodies the fundamental principles of justice and equity, viz., that a party should not be penalized for failing to adopt legal proceedings when the facts or material necessary for him to do so have been willfully concealed from him and also that a party who has acted fraudulently should not gain the benefit of limitation running in his favour by virtue of such fraud. Respondent further contends that on account of the active concealment and fraud by the erstwhile management of PMC Bank and the Appellants, of the default of the Corporate Debtor, the document establishing the right or claim of the Financial Creditor could only be discovered with reasonable diligence in or around 27 December 2019. The press release by RBI as well as the re-audited financial statements of PMC Bank clearly state that fraud was conducted by the erstwhile management of PMC Bank. Moreover, the same has also been confessed and acknowledged publicly by the erstwhile management of PMC Bank. As such, the right and claim of Financial Creditor and the documents establishing so, were concealed from it, and could only be discovered by the Financial Creditor, after the re-casting and re-auditing of the financial statements on 27 December 2019. Therefore, the period of limitation of 3 years, in respect of the Company Petition could not run against the Financial Creditor on or prior to 27 December 2019. Given that the Company Petition was filed in 2020, it is clear that the Company Petition was not barred by limitation and was filed at the earliest instance. Appellant being an active participant in the concealment of fraud and default of the Corporate Debtor, cannot be permitted to take advantage of its' own wrong and has approached this Hon'ble Tribunal with unclean hands. The Appellant along with

the Corporate Debtor, has acted collusively to conceal default, and as such, only after obtaining the knowledge of the default and its right to sue, the Financial Creditor could have initiated the proceedings under Section 7 of the IBC. Therefore, any contention that the suit is barred by limitation is merely a ploy by the Appellant to take advantage of its own fraud on the Financial Creditor and ought not to be permitted.

50. For better appreciation Section 17 is reproduced as below:

> "**Section 17. Effect of fraud or mistake**.
>
> (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—
>
> (a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or
> (b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or
> (c) the suit or application is for relief from the consequences of a mistake; or
> (d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:
>
> Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—
>
> (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or
>
> (ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or
> (iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and,

did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

51. Basis the materials placed on record we find that in the present case, RBI completed an inspection of the credit exposure of PMC Bank to HDIL Group on 02.11.2019, and found that PMC Bank officials committed fraud in collusion with Appellant/CD. It was found that sanction letters were not executed by CD, borrowings were not reported in the financial statements by CD, and default was concealed by CD. The management of PMC Bank i.e., Waryam Singh, acted in collusion with management of CD i.e. Rakesh Wadhawan and his son Sarang Wadhawan. Accordingly, on 27.12.2019, a charge sheet was prepared by the EOW against inter-alia the Appellant, and RBI directed PMC to recast its books to reflect the true picture of the CD. Finally, when the re-audit and recasting of erstwhile PMC Bank's books of accounts as on 31.03.2019 was concluded by the auditor appointed by RBI, date of default/NPA of the CD was identified as 31.08.2012. Thus, we are inclined to agree with the arguments of the Financial Creditor that in view of Section 17 of the Limitation Act 1963, period of limitation ought not to run till the discovery of date of default when the Administrator appointed an auditor to conduct re-audit and recasting of PMC Bank's books of accounts which concluded on 27.12.2019. And thereafter, the Petition was filed within the one year of finding

of fraud and therefore, not barred under Section 17 of the Limitation Act, 1963 and is permissible to be filed.

Can Section 25(3) of Contract Act be invoked to link or revive the original 2007 disbursement?

52. Appellant also contends that the security documents executed in 2017–2018 pertain to a separate and distinct contract under which no disbursement was made; hence, Section 25(3) cannot be invoked to link or revive the original 2007 disbursement, for which no sanction or security documents exist. Appellant claims that the FC seeks to conflate two distinct transactions in an attempt to mislead the issue of limitation before this Hon'ble Tribunal. In the facts of the present case, the security documents executed were towards new sanction letters dated 05.08.2017 and 16.08.2018, admittedly against which there has been no disbursement whatsoever. The appellant also claims that FC's reliance on the **Edelweiss Assets Reconstruction Company Limited vs. Nishiland Park Limited [Company Appeal (AT) (Insolvency) No. 528 of 2021]** is entirely misplaced as that case involved a full debt assignment with the Corporate Debtor as a confirming party, along with part-payments on 12.06.2015 and 24.06.2018, and an acknowledgment dated 05.12.2016 each extending limitation. Appellant also contends that even if the alleged acknowledgment or artificially created documents are considered, there exists no written promise to pay a time-barred debt. The appellant also claims that that mere silence, non-dispute, or willingness to settle does not satisfy the threshold under Section 25(3) of the Contract Act. The present case involves no disbursal and no part-payments, thereby failing to meet the fundamental

requirement of a 'Financial Debt' under Section 5(8) of the Code. The 2017–2018 security documents pertain to an enhanced facility that was never disbursed and cannot give rise to any enforceable debt. While Section 25(3) of the Indian Contract Act permits a written promise to pay a time-barred debt, such a promise must relate to an existing and enforceable liability, which is absent here.

53. Refuting these claims, the Respondent contends that under Section 25(3) of the Indian Contract Act, 1872, any **"promise"** in **writing** to pay a debt which is otherwise barred by time can be enforced as a fresh cause of action. This is because a "promise to pay" causes novation, thereby granting a fresh period of limitation of 3 years in terms of Article 137 of the Limitation Act, 1963.

54. For better appreciation of this provision it is being reproduced herein:

> **Section 25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.**
>
> An agreement made without consideration is void, unless
>
> (1) it is expressed in writing and registered under the law for the time being in force for the registration of 1[documents], and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
> (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;
> (3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.
>
> In any of these cases, such an agreement is a contract.
>
> Explanation 1. Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.
> Explanation 2. An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the

inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.
(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.
(c) A finds Bs purse and gives it to him. B promises to give A Rs. 50. This is a contract.
(d) A supports Bs infant son. B promises to pay As expenses in so doing. This is a contract.
(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.
(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. As consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.
(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not as consent was freely given."

55. The respondent has placed its reliance on **Kotak Mahindra Bank v. Kew Precision Parts Pvt. Ltd., (2022) 9 SCC 364**, wherein the Hon'ble Apex Court has held that unlike "acknowledgment" under Section 18 of the Limitation Act, 1963 a "promise to pay" under Section 25(3) need not be given before expiry of limitation, provided that it satisfies these 3 conditions:

a. It must refer to a debt, which the creditor, but for the period of limitation, might have enforced
b. There must be a distinct promise to pay such debt, fully or in part;
c. The promise must be in writing, and signed by the debtor or his duly appointed agent

We note that the above judgment supports the case of the Respondent and Section 25(3) o0f the Contract Act can very well be invoked to link or revive the

original 2007 disbursement.

56. We find that the **Demand Promissory Notes**, **Mortgage Deeds, Security Documents,** and **Balance Confirmations** were issued by the Corporate Debtor in 2017, 2018, and 2019, which makes the **Petition filed on 01.07.2020 well within the period of limitation**. There are many documents which constitute a valid "**Promise to Pay"**, and are listed hereunder:

Date	Document
16.08.2018	**Demand Promissory Note** given by CD (signed by Rakesh & Sarang Wadhawan), in favour of PMC Bank for an amount of INR 81.50 crores.
02.05.2018	**Mortgage Deeds and Other documents for creation of security for the said Loans** Letter issued by PMC Bank, bearing signature and clear acknowledgement of both Rakesh & Sarang Wadhawan acting on behalf of CD, confirming & accepting the additional security provided by CD over land at Village Dolv, Dahisar, Taluka Vasai, for the overdraft facility of INR 81.50 crore availed by CD under overdraft account no. 1407/1790.
16.08.2018	Letter issued by PMC Bank *inter alia* approving the renewal of mortgage overdraft limit to INR 81.50 crores. The letter was duly signed and accepted by Sarang Wadhawan on behalf of CD.
24.05.2018	Deed of Mortgage for additional security for the land at Village Doliv, Dahisar, Kasrali, Khardi, Taluka Vasai, District Palghar, for the overdraft facility of INR 81.50 crores. The said agreement is signed by Sarang Wadhawan, acting on behalf of CD.
11.07.2018	**Balance confirmation provided by CD** for an amount of INR 101,69,36,070.27. The said balance confirmation has the express signature & acknowledgement of Rakesh Wadhawan on behalf of CD.
07.08.2019	Balance confirmations provided by CD for an amount of INR 115,25,89,280.27. The said

	balance confirmation has the express signature & acknowledgement of Sarang Wadhawan on behalf of CD.
08.08.2019	Balance confirmations provided by CD for an amount of INR 120,07,71,521.27. The said balance confirmation has the express signature & acknowledgement of Sarang Wadhawan on behalf of CD.

57. From the materials placed on record we find that Petition filed on 01.07.2020 was well within the period of 3 years from the aforesaid "Promise to Pay".

58. Further we note that while deciding on the issue the Adjudicating Authority has given the following findings:

> "26. Therefore, in view of the above judgements cited by the Petitioner and perusal of Section 17 of the Limitation Act, 1963, coupled with the fact that the transaction documents executed between the parties and the fraud came to be discovered by the Petitioner in the year 2019. Along with this the execution of the transaction documents also obligates the Respondent to pay a time-barred debt as per provisions of Section 25(3).
>
> 27. In this regard it is noteworthy that, the Balance Confirmation is a promise to pay the debt and therefore it is within the period of limitation. The Petition further reveals that there is unconditional acknowledgment to make payment of the debt by virtue of executing the mortgage deeds as well as promissory notes and acknowledgment letters thereafter. of the Indian Contracts Act, 1872.
>
> 28. In any event the abovementioned documents are not taken as acknowledgment of debt or it is presumed that there is no acknowledgment of debt between 2013 and 2016, in that event also the transaction documents are in nature of contract between the parties to pay a time barred debt as per Section 25(3) of Indian Contract Act, 1872. It is thus submitted that the unconditional acknowledgment by the Respondent to repay the debt to the Petitioner is an express promise to pay. Therefore, even if Section 18 is not applicable, independently, the failure to make payment under subsequent

documents entitles · the Petitioner to maintain this Petition irrespective of the date of default. In support thereof, reliance is placed on the judgment of the Hon'ble NCLAT in the matter of Edelweiss Assets Reconstruction Company Limited Versus Nishiland Park Limited, Company Appeal (AT) (Insolvency) No. 528 of 2021, whereby the Petition was held to be within limitation · on the ground that the assignment agreement executed even fifteen years after the date of default amounts to an express promise to pay a time barred debt under Section 25(3) of Contract Act and it was therefore held that limitation period would begin to run afresh from the date of assignment agreement.

> "14. There are two issues in this appeal. The first issue is as to what is the import of Section 25(3) of the Indian Contract Act,1872 and the second issue is as to whether the period of limitation has been extended in view of Section 18 of the Limitation Act, 1961 with the time-to-time partial payment and admission of debt by the Corporate Debtor?
>
> 15. It is an admitted fact that the period of three years had expired from the alleged date of default occurred in the year 1998 but there is no denial to the fact also that the Assignment Agreement was executed on 27.09.2013 between TFCI and the Appellant, assigning their entire debt of the Corporate Debtor and in the said agreement the Corporate Debtor and one Mr. Paresh Shah (as mortgagor) were confirming parties to the Assignment Agreement. As a matter fact, with the execution of the Assignment Agreement dated 27.09.2013, a fesh agreement for the payment of dues came into being and a period of three years began from the said date."

Therefore, in view of the law laid down in the matter of Nishliand Park Ltd. (Supra), this Petition is well within the limitation. There is even otherwise no explanation that if the claim was barred and not payable, what was the reason for signing balance confirmation and executing mortgage deed as late as in 2018. It is pertinent to note that the Petitioner has also annexed a NeSL Certificate which is not disputed by the Respondent. In view of the above, the Ld. Counsel for the Petitioner has satisfied this Bench that the present Petition is not hit by the bar of limitation."

59. Adjudicating Authority has held that Balance confirmation is a promise to pay and unconditional acknowledgment is given by mortgage deeds, promissory note and acknowledgment letters. AA held that these documents

would give rise to an independent cause of action under Section 25(3) of the Contract Act.

Conclusions

60. Thus, we find that the Application under Section 7 was filed within limitation having been filed within 3 years of "Promise to pay" under Section 25(3) of the Indian Contract Act, 1872. We also find that the petition is filed within time contemplating the extension of limitation under Section 18 and 19 of the Limitation Act, 1963. We also find that the Petition is within the 1 (one) year of finding of fraud and therefore, permissible under Section 17 of the Limitation Act, 1963.

Orders

61. In the above noted background we don't find any infirmity in the findings of the Adjudicating Authority. Accordingly, the appeal is dismissed. No orders as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi.
October 17, 2025.

Pawan