NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

15.10.2025

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

MR. ARUN BAROKA, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.293 of 2025

Shankar Khandelwal, **...Appellant**
Erstwhile Director of Sanwariyaji Business Ventures Pvt Ltd.

Vs.

1. Omkara Asset Reconstruction Pvt. Ltd. **...Respondent No.1**

2. Interim Resolution Professional of Sanwariyaji Business Ventures Pvt Ltd. **...Respondent No.2**

(Arising out of Impugned Order dated 22.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Jaipur Bench) in C.P. (I.B) No.94/7/JPR/2024)

With

Company Appeal (AT) (Ins) No.294 of 2025

Shankar Khandelwal, **...Appellant**
Erstwhile Director of Shrinathji Business Ventures Pvt Ltd.

Vs.

1. Omkara Asset Reconstruction Pvt. Ltd. ...Respondent No.1

2. Interim Resolution Professional of Shrinathji Business Ventures Pvt Ltd. ...Respondent No.2

(Arising out of Impugned Order dated 22.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Jaipur Bench) in C.P. (I.B) No.93/7/JPR/2024)

For Appellant : Mr. Sunil Fernandes, Sr. Advocate with Mr. Prakul Khurana and Mr. Gourav Asati, Advocates

For Respondent : Mr. Gaurav Agarwal, Sr. Counsel and Mr. Ayush J. Rajani, Advocate for R-1

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

These appeals are preferred by the erstwhile director of the Corporate Debtor challenging the Order of the Adjudicating Authority (NCLT), Jaipur, dated 22.01.2025 in C.P IB 94/7/JPR/2024, and C.P.93/7/JPR/2024 admitting two independent petitions for initiating CIRP IBC against the same financial creditor. The financial creditor appeared to have considered it fit to file two separate petitions under Sec.7 IBC for each of the two loans it had advanced.

1.2 Before the Adjudicating Authority, the CD neither denied nor disputed either the debt or default, but defended the action on the ground that the debts were time barred. This defence was negatived by the Adjudicating Authority.

Facts:

2.1 Except for the two separate loans advanced to the CD, rest of the facts, more particularly that which are relevant in the context of the line of defence adopted by the appellant before the Adjudicating Authority, are identical.

2.2 Two loans were advanced by M/s Diwan Housing Finance Corporation Ltd (DHFL) to the CD, and the details are:

a) On 10.09.2014, a loan of Rs.12.0 crores was sanctioned as against which Rs.11.50 crores was advanced on various dates to the CD. (Ref: C.A.293 of 2025). This loan was to be repaid in 24 EMI and the first instalment was to commence on the expiry of 24 months from the date of disbursements.

b) On 25.09.2014, the second loan of Rs. 11.0 crores was sanctioned out of which Rs.9.50 crores was disbursed. This loan was to be repaid in 36 EMI and as in the earlier loan, the first instalment fell due for payment after 24 months from the date of payment of loan amount to the CD.

2.3 As stated earlier, other facts in both the cases are identical, and they are stated below: (Note: The paper book containing copies of the petition filed before the Adjudicating Authority under Sec.7 IBC vis-à-vis the appeal in C.A.293 of 2025 was of least assistance to this tribunal and hence dates as given in the pleadings are relied on for factual narration)

a) The CD defaulted in repaying both the loans. This prompted DHFL to issue separate notices, one dated 16.11.2016 (relevant to C.A.93 of

2016) and 15.11.2016 (related to C.A.94 of 2016) and recalled the loans and required the borrower to repay the loan dues within 7 days.

b) The CD did not repay the loan and the default continued. Eventually on 06.12.2016 DHFL classified both the loans as NPA. This was followed by issuance of notices dated 08.12.2016 under Sec. 13(2) of the SARFAESI Act on the CD.

c) While things stood thus, DHFL, the creditor, itself was sucked into a CIRP proceedings when the same was admitted vide the order of the Adjudicating Authority dated 03.12.2019. The resolution process of the DHFL was successful with the resolution plan of certain Piramal Capital and Housing Finance Ltd. (SRA) obtaining the approval of the Adjudicating Authority on 07.06.2021.

d) On 10.01.2023, Piramal Capital, the SRA, assigned the two loans which DHFL had advanced to the CD to the respondent herein.

This concludes the first segment of fact-narration.

2.4 To continue the fact-narration, in this segment the following facts are relevant:

a) Prior to the aforesaid assignment of debt to the respondent herein by the SRA of DHFL, on 23.12.2021, CD was drawn to face a CIRP proceedings when the Adjudicating Authority admitted C.P.161 of 2020 at the instance of some third party. This order was later set aside by the Adjudicating Authority vide its order dated 29.07.2024 under Sec. 65 of the Code.

b) On 17.03.2022, Piramal, the SRA of DHFL preferred its claim to the resolution profession appointed in the CIRP of the CD. This was admitted by the RP as he uploaded in the portal of the IBBI on 02.05.2022 and updated the same on 21.02.2024.

c) Subsequently on 23.09.2024 the respondent herein laid both C.P.93 of 2024 and C.P.94 of 2024 (which respectively relate to C.A.294 of 2025 and C.A.293 of 2025) under Sec.7 IBC. In part IV of the petition, the respondent had given the date of default as 06.12.2016 and also had referred to 29.07.2024, the date on which the first CIRP proceedings against the CD was set aside.

3. As outlined earlier, the appellant's only line of defence was limitation. Since the same formed the arguments in this appeal, they are not detailed. Suffice to state, the Adjudicating Authority has found the appellant's defence untenable and admitted both the petitions to CIRP process vide separate Orders. These orders are now under challenge in these appeals.

Arguments

4. Before adverting to the rival arguments few dates are contextually pertinent are collated as below:

a) In Part IV of the petitions to initiate both the CIRP, 16.11.2016 is stated to be the date of default.

b) Between 03.12.2019 and 07.06.2021 there was moratorium vis-à-vis the creditor DHFL.

c) From 23.12.2021 till 29.07.2024, CD was under first CIRP, and it was under moratorium during this period.

d) In between, from 15.03.2020 to 28.02.2022 limitation was in eclipse thanks to the order of the Hon'ble Supreme Court in suo motu W.P.(C) 3 of 2020.

5. The counsel for the appellant argued:

a) DHFL had issued a notice dated 16.11.2016 recalling the loan and granted the CD 7 days time to repay. Effectively the default had occurred on 23.11.2016. If it is so, then limitation for instituting a CIRP would expire on 22.11.2019. And, inasmuch as the creditor relies on 16.11.2016 as the date of default in part IV of its petition, limitation for initiating a CIRP would expire on 22.11.2019 (three years from the date on which the CD was required to make repayment pursuant to the notice dated 16.11.2016)

b) If 06.12.2016, the date on which loan was notified as NPA is reckoned as *terminus a quo*, limitation would expire on 06.12.2019. But, since from 03.12.2016, moratorium for the creditor-DHFL had commenced, barely two days remained before limitation could intervene. The moratorium of DHFL ended on 07.05.2021 when Piramal's plan was approved by the Adjudicating Authority. Therefore, limitation vis-à-vis the original debt revived on 08.05.2021 and expired two days later, on 10.05.2021. However, since the limitation period expired during the period covered by the Order of the Hon'ble Supreme Court in *suo motu* W.P.(C) 3 of 2020. But from 23.12.2021 till 29.07.2024 there was moratorium of the CD and hence the two days which remain for the expiration of the limitation period will have to be added after

29.07.2024. Accordingly, on 31.07.2024 limitation period would expire. However, the present set of petitions under Sec.7 were filed only 30.11.2024 and 28.12.2024, few months after the expiry of the period of limitation.

c) Inasmuch as the balance two days period as explained above fell during Covid days and is covered by the aforesaid Order of the Hon'ble Supreme Court, and since period is less than 90 days, in terms of the Order dated 10.01.2022 of the Court, a period of 90 days could be reckoned only from 01.03.2022 and not from 29.07.2024.

6. Per contra, the learned counsel for the respondent- the financial creditor contended:

a) 06.12.2016 is the date on which DHFL had notified both the loans of the CD as NPA. However, it was followed by notices under Sec.13(2) of the SARFAESI Act, dated 08.12.2016. And, in terms of Sec.13(4) right of action commences only after the expiry of 60 days stipulated therein, and hence actual default which is essential to be reckoned for computing limitation 07.02.2017. Reliance was to the ratio of this tribunal in ***Shantanu Jagdish Prakash Vs SBI*** [2025 SCC OnLine NCLAT117] and ***Mavjibhai Nagarbhai Patel Vs SBI*** [2024 SCC OnLine NCLAT 2014]. This apart, limitation being a legal question it can be considered at any stage by the courts or tribunal. Reliance was placed on the ratio in ***R. Kandasamy Vs T.R.K.Sarawathy*** [(2025) 3 SCC 513], ***S. Shivraj Reddy Vs S. Raghuraj Reddy*** [2024 SCC OnLine SC

963] and ***National Textile Corporation Ltd., Vs Nareshku*** [(2011)12 SCC 695]

b) Secondly as per Sec.60(6) of the IBC, for computing the period of limitation for suit or application by or against the corporate debtor, the period during which the CD was under moratorium should be excluded. Here, there was moratorium both against DHFL, the original creditor of the CD and also the CD itself. These periods have to be eventually added. Reliance was placed on the ratio of the Hon'ble Supreme Court in ***New Delhi Municipal Council Vs Minosha India Pvt., Ltd.,*** [(2022)8 SCC 384].

c) Thirdly, on 17.03.2022, Piramal, the SRA of DHFL preferred its claim to the resolution profession appointed in the CIRP of the CD. This was admitted by the RP as he uploaded in the portal of the IBBI on 02.05.2022 and updated the same on 21.02.2024. This fact was not denied by the CD. Necessarily, the debt was alive as on 21.02.2024, and it amounted to acknowledgement which gave a fresh *terminus a quo for* computing limitation, and the petitions under Sec.7 was filed in November and December, 2024, which is well within the period of limitation. Reliance was placed on the ratio in ***Laxmipat Surana Vs Union Bank of India & another*** [(2021) 8 SCC 421].

d) This apart the period from 15.03.2020 to 28.02.2022 (the period covered by the Order of the Hon'ble Supreme Court in Suo motu W.P. 3 of 2020) must also be required to be excluded.

7. The counsel for the appellant would now contend that:

a) So far as shifting the *terminus a quo* to 21.02.2024, the date on which the RP in the first CIRP commenced against the CD updated the claim in the official portal of IBBI, is concerned, law makes a distinction between the limitation for initiating a CIRP under Sec.7 of the IBC and the limitation for preferring a claim. While the former is governed by Article 137 of the Limitation Act, the residuary provision which prescribes a limitation period of 3 years for initiating an action for which no period of limitation is specifically provided for, the limitation for a creditor secured by a mortgage to initiate an action for recovery is 12 years under Article 62 of the Act. Accordingly, if a secured creditor only intends to make a claim for recovery of his debts, then he will have 12 years to claim, whereas if the same creditor intends to initiate a CIRP under sec.7 of the IBC, even though the cause of action may be the same, yet the limitation would be only three years.

b) Secondly, a Resolution Professional is not statutorily empowered to make acknowledgement of debt on behalf of the CD. Indeed, all such admission of claims must be approved by the CoC in terms of Sec.28 of the IBC. At any rate for an acknowledgement of debt to be legally cognizable under Sec.18 of the Act, it must have been made before the period of limitation has expired. DHFL had issued a notice dated 16.11.2016 recalling the loan and granted the CD 7 days time to repay. Effectively the default had occurred on 23.11.2016. If 23.11.2016, is reckoned as the date of commencement of limitation, it necessarily ends

on 23.11.2019. But RP had admitted the claim of the creditor long after the expiry of the limitation period.

Discussion & Decision

8. The arguments have been carefully assessed for their respective merits. Before adverting to the specifics of the arguments, it is necessary to set right few aspects:

a) Contrary to the contention of the respondent, limitation is not a pure question of law, but is a mixed question of law and fact. This has long been settled.

b) The second aspect relates to Sec.238A of the Act. It provides that the provisions of the Limitation Act would apply, as for as may be, to the proceedings or appeals before the Adjudicating Authority, the NCLAT, the DRT or DRAT as the case may be. Here Sec. 3(1) of the Limitation Act becomes most relevant. It reads:

> *Sec.3 Bar of limitation:*
> *Subject to the provisions contained in Sec.4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."*

c) Therefore, issue of limitation can neither be depended on any concession of parties, nor is it made depended on any defence of bar of limitation. On the other hand, determining the issue of limitation falls within the exclusive domain of the Court or the tribunals, as the case may be. It is the duty of these remedial fora to compute limitation from

the facts placed before it. Therefore, while discharging its statutory obligation, the tribunals cannot be guided solely by what the parties may believe but may have to travel beyond. If it were to be held otherwise, it would defeat the legislative purpose behind Sec.3 of the Limitation Act.

d) The next aspect is the significance of date of default as provided in Part IV of the petition under sec.7 for computing limitation. In ***SBI Vs Rakesh Hariram Agarwal*** [Comp.A. (AT)(Ins) No.246 of 2025, dated 23.09.2025], this tribunal has held:

> *"15.1 A distinction between date of arising of cause of action for filing a petition under Sec.7,9 or Sec. 95 IBC and the date relevant for computation of limitation is now required to be understood. As is well known cause of action (to understand it better, cause for an action) are the bundle of facts which are required to be proved by a litigant to succeed in an action. So far as the law of limitation is concerned, it does not act on the cause of action, but acts on the right to maintain an action – it acts on the remedy. Thus, even though there may be a cause for initiating an action, the action can be instituted till the last date on which limitation prescribed for initiating the intended action intervenes.*
>
> *15.2 In the context of a CIRP or a PIRP, for initiating an action, the creditor is required to establish two facts which provides the cause for initiating it: existence of a debt and the default in repaying it. The default in paying the debt, therefore, provides one of the facts constituting the cause of action for initiating any of these proceedings. The date of default which is required to be provided in Part IV of a petition under Sec.7 or 9, or Part III of a petition 95 only indicates the date on which one of the facts constituting the cause of action has arisen. As earlier stated, limitation for initiating a CIRP or a PIRP is not about constituting a cause of action, for about enforcing a cause of action. Therefore,*

> *the date of commencement of limitation need not necessarily be the same, and it depends on the facts of each particular case. To explain, if the IBC has not prescribed any Form of pleadings, or if it had suggested that it may assume the form of a plaint, then the factum of default in repaying the debt would have to be indicated as one of the facts constituting a cause of action and so is the date as to when this fact has happened. Merely because the IBC has prescribed a Form of pleading, that does not ipso facto imply that the date of default in paying the debt and the date of commencement of limitation for commencing a CIRP or PIRP should not be different. And, this distinction should neither be lost sight of, nor should they be confused."*

The date of default (in repaying the debt) in Part IV of the Statutory Form of pleading is part of the cause of action and not part of the remedy. To explain, every action requires a cause for instituting it, and any action founded on such a cause must be within the period of limitation. This tribunal, therefore, holds that while the date of default in payment of the debt as mentioned in Part IV of the petition under Sec.7 IBC deserves to be factored in for the purpose of computation of limitation in instituting the petition, yet it is not always bound by it, as it has a statutory duty to perform under Sec.3 of the Limitation Act.

9. Now, turning to the argument of the appellant's counsel, it appears absolutely impressive when he contended that as a secured creditor appellant had 12 years period under Article 62 of the Limitation Act to make a Claim but if it were to institute a proceeding under Sec.7 IBC, it has only 3 years to go from the date of initial default. According to him, what is relevant for preferring a Claim before the IRP in a CIRP proceeding may not be relevant for instituting a CIRP, and hence 16.11.2016 the date on which the appellant had

issued the notices recalling the loans or latest by 23.11.2016 (the date on which the seven days period given in those notices for repayment had expired), will gain relevance, and *terminus a quo* would be either of 16.11.2016 or 23.11.2016.

10. Now, if the moratorium of the financial creditor DHFL between 03.12.2019 and 07.06.2021 and the Covid days and the Order of the Hon'ble Supreme Court in the Suo Motu W.P.(C) 3 of 2020 are kept aside for the present, the latest date which may save limitation for the respondent to institute the present set of CIRP petitions with least difficulty is 02.05.2022, the date on which the RP had admitted the Claim of the respondent in the first CIRP proceedings against the CD. Therefore, if the date on which the IRP/RP in the first CIRP against the CD had admitted the claim of the respondent marks the beginning of a fresh period of limitation, then it can settle the issue without any need to sit with a calendar and a calculator to count the days for ascertaining if the present batch of petitions were laid in time.

The Issues

11. The issues that would now engage this tribunal are twofold: (a) whether admission of a Claim by the RP in an earlier CIRP proceeding against the CD would constitute an acknowledgement of debt by a CD to save limitation for the initiation of a fresh CIRP against that very CD; and (b) whether the RP has the authority to make an acknowledgement on behalf of the CD.

Authority of the IRP or the RP

12. The second question is considered first. When once a CIRP under Sec.7 IBC (also Sec.9) is admitted and the IRP is appointed, Sec.17(1) steps into

declare that the Board of Directors of the CD will stand suspended and that the entire management of the CD will stand vested in the IRP and that even the officers of the CD would have to report to the IRP and the financial institutions are required to act on his instructions. Sec.17(2)(a) authorises an IRP to "*act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any.*" Sec.18 expands and also explains the scope of an IRP's authority. Indeed, Sec.18(1)(b) authorises him to "*receive and collate all the claims submitted by creditors to him…*" Sec.20 of the IBC vests the IRP with the authority to make every endeavour to ensure that the CD is kept alive as a going concern. And, when an IRP is replaced by a RP post the constitution of the CoC, Sec.25 read with Sec.28 the IBC informs that RP would continue to discharge substantially the functions which the IRP has been hitherto performing, and more. In particular Sec.25(2)(e) mandates that a resolution professional "*shall update the list of claims*.". Thus, when the IRP at the initial stage of the CIRP proceeding and the RP at a later stage is required to perform the functions of the Board of Directors and also have been authorised to admit Claims from the creditors of the CD, to dispute the authority of the IRP or the RP to act for and on behalf of the CD would be fallacious.

13. When a claim is admitted either by the IRP or by the RP, the suspended Board of Directors cannot stop payment post a successful resolution process irrespective of what is actually paid. Once a CIRP is admitted, neither fraudulently nor maliciously, the former directors of the CD are substantially reduced to mere spectators, and unless the very admission of the CD to CIRP

is terminated or the CD is a MSME, these suspended directors do not have any prospects of getting control of the CD again. There is therefore, little difficulty in holding RP and only RP has the authority to act on behalf of the CD.

Admission of Claim Vs Acknowledgement of Debt

14. Now, to the principal issue: whether admission of a Claim by the IRP or RP in an earlier CIRP proceeding against the CD which was subsequently terminated can amount to an acknowledgement of liability as to provide the secured financial creditor a fresh *terminus a quo* for commencing a fresh CIRP proceeding against the CD? To enable an understanding of the issue in its deeper layers, let the basic premise be set:

a) It has been now firmly entrenched by a long catena of authorities that initiation of a CIRP proceeding is not a mechanism for realisation of debt by a creditor. In addition to the prevailing view on the matter, it may also be added that CIRP proceeding is fundamentally a class action, often set in motion by a creditor (and if the debt is financial debt, then creditors) for the benefit of the entire body of creditors (in which the other creditors may eventually join). Contrary to an action for repayment of the debt-dues, in a CIRP proceedings, the petitioning creditor makes a conscious choice to pool his or its individual right to repayment of debt with similar right of other creditors of the CD (whom the petitioning-creditor may or may not know), and share the consequence thereof with all the creditors out of the value which the assets of the CD

may fetch in the resolution process (or liquidation process) and in the manner contemplated under Sec.53 IBC.

b) It is also settled beyond debate that limitation for initiating a CIRP is three years from the date of default under Article 137 of the Limitation Act.

c) When a CIRP is admitted leading to the onset of the moratorium, its immediate legal implication is that the secured creditors will cease to have control over the security-assets but without losing their character as secured creditors. It now follows that, when a CIRP is terminated or the admission of the CD to CIRP is later negatived, the right of the secured creditors to exercise their right in relation to the security-assets gets restored to them.

15.1 Turning to a Claim, it *per se* cannot be equated to initiating a CIRP proceeding, something which the counsel for the appellant himself argued. Sec.3(6) of the IBC defines a Claim to broadly mean (a) either a right to payment, or (b) a right to remedy for breach of contract, and in either case a claim need not be based on a decree of the court. Accordingly, when a creditor makes a Claim it is founded on his or its right to payment, or more precisely right to repayment.

15.2 It now logically follows that where a default in repayment of a secured debt has continued for a period beyond three years, a secured financial creditor, even if it may not be able to institute a petition under Sec.7 IBC, can still make a Claim to the IRP or the RP in a pending CIRP, if the Claim itself is not barred by limitation under Article 62 of the Limitation Act. This distinction

is amply amplified In ***Babulal Vardharji Gurjar Vs Veer Gurjar Aluminimum Industries Pvt. Ltd., & another*** [(2020)15 SCC 1], where the Hon'ble Supreme Court, after collating and considering all the earlier authorities on the point of limitation, summed up its conclusion *inter alia* as below:

> *"32. When Section 238-A of the Code is read with the above noted consistent decisions of this Code in ……., the following basics undoubtedly come to the fore:*
>
> *(a) to (g) ……*
>
> *(h) an application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application."*

While, an application under Sec.7 of the Code is not an action for recovery of a secured debt but a class action as explained above, a Claim of a creditor indeed is akin to an action for recovery of debt for it can be made only pursuant to a pre-existing right to enforce a right of repayment. Indeed, even a petitioning creditor is required to prefer a claim, and his pleading for initiating a CIRP is not reckoned or treated as a Claim within the scheme of the IBC. Necessarily, the limitation for initiating a CIRP proceeding and making a Claim does not, need not, and cannot be the same. In ***Dena Bank (now Bank of Baroda) Vs C. Shivakumar Reddy*** [(2021)10 SCC 330] and ***Tottempudi Salalith Vs SBI and other*** [(2024) 1 SCC 24], the Hon'ble Supreme court has held that a recovery certificate issued by the DRT can provide a fresh *terminus a quo* for initiating a CIRP, but what could also be derived from those authorities is that, in case a recovery-certificate holder does

not initiate a CIRP proceeding, it can still prefer a Claim within 12 years since a recovery certificate is a deemed decree and Article 136 of the Limitation Act provides 12 years period for executing it. This would signify the keenness of both the Court and the legislature to preserve the right to repayment of debt-dues when the latter included Sec.238A of the Code and the former did not attempt to stretch the effect of Article 137 of the Limitation Act to obliterate the effect of its other provisions. Hence application of Article 62 of the Limitation Act is not disturbed vis-à-vis the situations where it can apply.

15.3 In the instant case, if the date of default is reckoned as 16.11.2016 or 23.11.2016, the SRA of the creditor has still made its Claim before the IRP or the RP in the first CIRP against the CD within 12 years, when the right to enforce the right to recover secured debt is still alive and not barred by limitation.

16.1 Does admission of a Claim by the RP in an earlier CIRP would amount to an acknowledgement of the debt? A financial creditor is required to prefer its Claim in terms of Regulation 8 of the CIRP Regulations, 2016, and in cases of a financial debt in terms of Regulation 12(3) the IRP or the RP, as the case may be, may not have an option but to admit the Claim. And, when the Claim is admitted, it only implies that the CD through the offices of IRP or the RP has admitted the pre-existing liability of the CD to pay the creditor who has an enforceable right to payment.

16.2 It is here, Regulation 12(3) which mandates that claims of all financial debt shall be admitted without a scrutiny may require a qualification, for *ex facie* it seems to suggest that even a Claim of a time barred secured financial

debt can be admitted. It is one thing to say that a claim of a financial creditor shall be admitted without proof of entitlement to make a claim, and it is entirely another thing to say that that even a time barred financial debt can be admitted. However, this issue may have to be tested in appropriate cases, for this case does not invite an opinion from this tribunal on this point.

17. Returning to the point of discussion, if the entire management of the CD is vested with the IRP or the RP, as the case may be, and if they were statutorily authorised to admit a claim, in the absence of the board of directors to perform any function in relation to the CD, admission of a Claim either by the IRP or the RP would amount to admission of a liability of the CD to repay the creditor, to emphasis, based on a pre-existing and enforceable right of payment. And, acknowledgement of a debt within the meaning of Sec.18 of the Limitation Act in essence is but an admission of the liability to repay. A mere choice of expression such as 'acknowledgement' or 'admission' used in different statutory schemes cannot alter the fundamentals: existing of a liability, correlatable to a pre-existing and enforceable right to repayment. Therefore, where an IRP or a RP has admitted a claim, it does constitute an acknowledgement under Sec.18 of the Limitation Act. To state it differently, if the RP has the authority to admit a claim and if admission of a Claim also constitutes an acknowledgement of liability, it follows that the RP has the authority to acknowledge a liability on behalf of the CD.

18.1 Having stated thus, it must be said what has been discussed above is not without a rider. Where a CIRP proceeding itself is terminated, the suspended Board of Directors though may not have a right to challenge the

admission of Claim by an IRP or the RP in the earlier CIRP proceeding, may still obtain a right to challenge the admission of the said claim on the ground that the IRP or the RP, as the case may be, had admitted a time barred debt in the earlier proceeding. Therefore, even if Regulation 12(3) of the CIRP Regulation (whose validity can be suspect as it appears to enable admission of a time barred financial debt mandatorily) as it now exists is presumed to be valid, it, at the best, may apply to the particular CIRP in which a Claim is made, but not in any subsequent independent proceedings initiated by the financial creditor.

18.2 In the instant case, there is no case for the appellant that in the earlier CIRP proceeding against the CD, when the claim of the respondent was admitted, it has already become time barred. Indeed, the facts as have been presented does not even provide any opportunity to the appellant to take any such defence.

19. There is therefore, little difficulty in holding that the date of admission of a Claim by the IRP grants a fresh date for commencement of limitation and when the Claims are subsequently updated it pushes the date of *terminus a quo* to that date.

20. Here at least two judgements of the Hon'ble Supreme Court are required to be considered. In ***Dena Bank case*** [(2021)10 SCC 330], the question before the Court was whether limitation must be reckoned from the date of initial default or whether subsequent dates on which the CD has acknowledged the liability in its balance sheet and account books can be considered. The Court held it in the affirmative, and in so doing it has observed:

> *"140…….an application under Section 7 IBC would not be barred by limitation, on the ground that it had been filed byond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were* ***an acknowledgement of the debt by the corporate debtor before the expiry of the period of limitation of three years,*** *in which case the period of limitation would get extended by a further period of three years."*

The second authority is the one in ***SBI Vs Krishindhan Seed Pvt., Ltd.*** [(2023)1 SCC 209]. There, the Hon'ble Supreme Court had held in paragraph 14.2 as below:

> *"14.2. An acknowledgement in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgement was within a period of three years from the original date of default. However, the issue before the Hon'ble Supreme Court did not include whether a Claim of a secured creditor (mortgagee) which an IRP or the RP had admitted would constitute an acknowledgement within the meaning of Sec.18 read with Article 62 of the Limitation Act, and hence there no occasion for the Court to consider this aspect."*

It may be stated with utmost respect that in neither of these two cases the Hon'ble Supreme Court was invited to address an issue as to whether a Claim of a secured creditor (mortgagee) which an IRP or the RP has admitted would constitute an acknowledgement within the meaning of Sec.18 read with Article 62 of the Limitation Act, something which has visited this tribunal in this case. Consequently, the Hon'ble Supreme Court did not have an occasion to address the same in the cases before it.

21. In the end, the first impression which the appellant's counsel could make, on a deeper scrutiny turns out to be unsustainable. This tribunal holds that that the admission of the Claim by the RP in the first CIRP against the CD on 22.05.2022 constituted a valid acknowledgement and its subsequent updating on 21.02.2024 constituted the second acknowledgement, and if *terminus a quo is reckoned* from any of these dates, then both the petitions laid by the respondent are validly instituted as the debts are not time barred on the respective dates when they were so instituted. In view of the same, this tribunal does not find any need to consider the other modes of computation of limitation necessary.

Conclusion

22. In view of the discussion above, both these appeals are liable to be dismissed and are so dismissed, and the Orders of the Adjudicating Authority dated 22.01.2025 in C.P. C.P. (I.B) No.94/7/JPR/2024 and C.P. (I.B) No.93/7/JPR/2024 are hereby confirmed. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

rs/sk