NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1197 of 2023

Arising out of Order dated 01.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II in C.P.(IB) No.877/IBC/MB/2022)

IN THE MATTER OF:

Paresh K. Mehta Investment Pvt. Ltd. …Appellant

Versus

State Bank of India & Anr. …Respondents

Present:

For Appellant	**:**	**Mr. Ramji Srinivasan, Sr. Advocate with Mr. Manish Kumar Shekhari, Ms. Anisha Mahajan, Mr. Sanjay Chaturvedi, Ms. Shefali Munde, Mr. Arjun Bhatia, Advocates.**
For Respondents	**:**	**Mr. Girish Utangale, Mr. Saurabh Utangale, Mr. Sarthak Utangale, Advocates for R-1.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Suspended Director of the Corporate Debtor ("**CD**") – M/s MKM Diamonds Pvt. Ltd. has been filed challenging the order dated 01.09.2023 passed by National Company Law Tribunal ("**NCLT**"), Mumbai Bench, Court-II admitting Section 9 application filed by the State Bank of India ("**SBI**") (Respondent No.1 herein).

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) The CD – M/s MKM Diamonds Pvt. Ltd. (formerly known as 'Eurostar Diamonds India Pvt. Ltd.') is a company registered under the Companies Act, 1956. The sister company of the

CD – Eurostar Diamond Traders NV, Antwerp Belgium (Eurostar Diamond Traders NV) is a company registered at Belgium.

(ii) The SBI, Antwerp Branch, Belgium granted a financial facilities in the nature of bill discounting facility to the Eurostar Diamond Traders NV. The sister concern of the CD has business transaction under which raw and polished diamonds are transacted between the parties. An Invoice No.9001602957 dated 03.10.2016 was issued by Eurostar Diamond Traders NV to Eurostar Diamonds India Pvt. Ltd. (earlier name of the CD), with regard to polished natural diamonds for an amount of USD 1394214.56, which was payable by 31.01.2017. Another invoice issued by Eurostar Diamond Traders NV to Eurostar Diamonds India Pvt. Ltd. vide Invoice No.9001602984 for polished natural diamonds for an amount of USD 14191407.00, which was payable by 02.02.2017. Invoices were accepted and endorsed by the CD.

(iii) The SBI, Antwerp, Belgium discounted the Invoices and made the payment to Eurostar Diamond Traders NV. The CD being bearer of the Invoices, who has endorsed the Invoices, made part payments towards the above Invoices. With respect to Invoice No.9001602957 dated 03.10.2016, the CD made part payment of USD 174214.56 to loan account of Eurostar Diamond Traders NV and another part payment was made by

the CD for Invoice No.9001602984 dated 05.10.2016 for an amount of USD 1491407 on 26.09.2017.

(iv) The CD having not made the full payment to the SBI, Antwerp, Belgium, a demand notice was issued on 09.10.2020 to the CD, demanding total amount in default of Rs.16,77,17,132.21 with interest. The CD sent a reply dated 05.11.2020 denying the claim and raising of the demand notice. In the reply to demand notice, part payment made on 15.05.2017 and another part payment made on 26.09.2017 was stated. Reply, however, stated that the sister concern, i.e. Eurostar Diamond Traders NV has set off various outstanding Invoices of CD raised on Eurostar Diamond Traders NV, hence, there are no dues payable by the CD. It was pleaded that CD does not owe any amount to Eurostar Diamond Traders NV, hence demand notice does not hold any water. There is no debt or default under the IBC.

(v) The SBI filed Section 9 petition being C.P.(IB) No.877/IBC/MB/2022 claiming total amount and default as Rs.21,28,72,302.48/-, which included principal amount of Rs.16,77,1.7,732.21/- and interest. The date of default mentioned was 15.02.2017. Section 9 application referred to part payments made by the CD on 15.05.2017 and 26.09.2017. The CD filed its counter statement and the Operational Creditor filed a rejoinder to the reply.

(vi) The Adjudicating Authority heard both the parties and by the impugned order dated 01.09.2023, admitted Section 9 application and appointed one Ms. Diplti Amit Thite as IRP. The Operational Creditor was directed to deposit an amount of Rs.5.00 lakhs towards the initial Corporate Insolvency Resolution Process ("**CIRP**") cost by way of a demand draft. The Adjudicating Authority in the impugned order rejected the submissions of the CD that there is no operational debt or default on the part of the CD. The ground raised by the CD that application is barred by time, having been filed three years' after the amount became due on 31.01.2017 and 02.02.2017 and the application having been filed on 12.07.2022, the submission on the ground raised by the CD on limitation was not accepted by the Adjudicating Authority and it was held that application is not barred by time.

(vii) Aggrieved by the said order, this Appeal has been filed.

3. Present Appeal was filed by the Appellant on 06.09.2023. The Appeal was taken for consideration on 27.09.2023 and on that date of hearing, learned Counsel appearing for SBI made a statement that Bank has already received the principal amount and with regard to other amount of interest, the Bank is already negotiating with the CD. Recording the said statement, this Tribunal passed an interim order directing that impugned order shall not be given effect to, till the next

date. In the Appeal, reply and rejoinder have been filed by the parties. The Appellant has also filed an additional affidavit on 13.09.2023.

4. We have heard Shri Ramji Srinivasan, learned Senior Counsel appearing for the Appellant and Shri Girish Utangale, learned Counsel for the Respondent No.1.

5. Shri Ramji Srinivasan, learned Senior Counsel appearing for the Appellant challenging the order submitted that the application filed by the SBI was barred by time. It is submitted that two Invoices with regard to which dues have been claimed, i.e. Invoice dated 03.10.2016 and 05.10.2016, the amount became due on 31.01.2017 and 02.02.2017. Hence, Section 9 application filed by the SBI on 12.07.2022 was barred by time. It is further submitted that the entire principal amount of Rs.16,77,1.7,732.21/- has been paid to the Bank by bank draft on 26.09.2023, i.e. before passing of the interim order in the present Appeal. It is, however, submitted that the said amount was paid by the Appellant on account of CIRP having commenced and Appellant being in duress. It is submitted that the claim of the SBI in Section 9 application, claiming interest is unfounded. Under the Facility Agreement with the Bank, there was no condition for payment of interest with respect to bill discounting amount, nor CD have ever agreed to pay any interest to the Operational Creditor. There being no Agreement between the parties for payment of interest, the claim of the Operational Creditor by adding interest totaling amount of Rs.21,28,72,302.48/- is incorrect. The principal amount being Rs.16,77,1.7,732.21/- having already been paid, no amount is due on the

CD and the Appellant is not under any obligation to pay any further amount. The claim raised by the Bank for paying fee of the Counsel and interest is unfounded.

6. Learned Counsel appearing for the SBI, refuting the submissions of learned Counsel for the Appellant submits that application filed by the Operational Creditor was well within time. It is true that amount under the two Invoices dated 03.10.2016 and 05.10.2016 became due on 31.01.2017 and 05.02.2017, but the CD had made part payments on 15.05.2017 and 26.09.2017 to the Operational Creditor, which is clear acknowledgement on the part of the CD extending the period of limitation for further period of three years from the date of part payments. It is submitted that from the date of part payments, the default fell between Covid-19 period and giving the benefit of order of the Hon'ble Supreme Court in ***Sue Motu Writ Petition (Civil) No.3 of 2020***, the application filed by the Operational Creditor was well within time. It is submitted that the CD was obliged to pay interest amount, which became due on non-payment by the CD on the Invoices, which were discounted by the Bank and the SBI is entitled for interest. It is submitted that although the principal amount of Rs.16,77,1.7,732.21/- has been paid to the Operational Creditor, but the amount of interest is still due, hence the CIRP against the CD be allowed to continue.

7. We have considered the submissions of learned Counsel for the parties and have perused the records.

8. Learned Counsel for the Appellant during submissions has raised only two grounds for challenging the proceedings initiated by Operational Creditor, firstly, the application filed by the Operational Creditor was barred by time and secondly, no interest is payable on the principal amount and the claim of the Operational Creditor by adding interest in the principal amount is unsustainable. Learned Counsel for the Appellant has not raised any other ground to challenge the impugned order.

9. In view of the submissions of learned Counsel for the parties and the materials on record, following two issues arise for consideration in the Appeal:

(I) Whether the application filed by the Operational Creditor on 12.07.2022 relying on two invoices dated 03.10.2016 and 05.10.2016, which became due for payment on 31.01.2017 and 02.02.2017, was barred by limitation.

(II) Whether the Operational Creditor was entitled to add interest as operational debt along with principal amount claimed of Rs.16,77,1.7,732.21/-.

10. Before we consider the two issues as framed above, we need to notice the pleadings in Section 9 application filed by the Operational Creditor. In Part-IV of the application, details of transactions and amount of debt, which fell due are contained. Part-IV of the application is as follows:

"**Part IV**
Particulars of Operational Debt

1.	Total amount of Debt	Rs. 21,28,72,302.48/- (Rupees Twenty One Crore Twenty Eight Lakhs Seventy Two Thousand Three Hundred and Two and Forty Eight Paise) as on 15 February 2017
	Details of transactions on account of which Debt fell due	State Bank of India, Antwerp had granted certain credit facilities to Eurostar Diamond Traders NV, Antwerp. During the course of business, said Eurostar Diamond Traders NV (Drawer) had drawn two Invoices on MKM Diamonds Private Limited. MKM Diamonds Private Limited has duly accepted the bills drawn on them and promised to pay the said invoice amount on the respective due dates to State Bank of India, Antwerp and accordingly State Bank of India, Antwerp have discounted the said bills and Paid the amount to Eurostar Diamond Traders NV. However, MKM Diamonds Private Limited has failed to pay the invoice amount on its respective due date and despite repeated requests the Drawer and the Drawee the Drawee have both failed to make the payment and as such MKM Diamonds Private Limited is now liable to Pav the said amount with interest to State Bank of India, Antwerp.
	The date from which such Debt fell due	Rs. 21,28,72,302.48/- (Rupees Twenty One Crore Twenty Eight Lakhs Seventy Two Thousand Three Hundred and Two and Forty Eight Paise) as on 15 February 2017.
2.	Amount Claimed to be in Default	Rs. 21,28,72,302.48/- (Rupees Twenty One Crore Twenty Eight Lakhs Seventy Two Thousand Three Hundred and Two and Forty Eight Paise) as on 15

		February 2017
	The Date on which the Default Occurred	Rs. 21,28,72,302.48/- (Rupees Twenty One Crore Twenty Eight Lakhs Seventy Two Thousand Three Hundred and Two and Forty Eight Paise) as on 15 February 2017."

11. Under Part-V of the application, under the heading 'List of other Documents attached to this Application in order to prove the existence of Operational Debt and the amount in default', the Operational Creditor has pleaded extension of credit facilities to Eurostar Diamond Traders NV, who had drawn two Invoices dated 03.10.2016 and 05.10.2016 of Eurostar Diamonds India Pvt. Ltd. (now known as M/s MKM Diamonds Pvt. Ltd.). It was pleaded that the CD has accepted the said bills drawn upon them by endorsing their signatures thereon and promised to pay the said Invoice amount. It is useful to notice following statement made under Column-8 in Part-V, which is in paragraph-3:

> "Part-V
>
> 8.1 & 8.2 xxx xxx xxx
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> 8.3 State Bank of India, Antwerp ("Applicant") had granted certain credit facilities to one Eurostar Diamond Traders NV, Antwerp. During the course of business, said Eurostar Diamond Traders NV (Drawer) had drawn two Invoices bearing invoice no. 9001602957 dated 3 October 2016 and 9001602984 dated 5 October 2016 respectively on Eurostar Diamonds India Pvt. Ltd. now known as MKM Diamonds Private Limited ("Corporate Debtor"). The Corporate Debtor has duly accepted the said bills drawn upon them by Eurostar Diamond Traders NV, Antwerp by endorsing their signature thereon and promised to pay the said invoice

amount on the respective due dated 31 January 2017 and 2 February 2017 respectively to State Bank of India, Antwerp (Applicant) and accordingly the Applicant has discounted the said bills and paid the amount of said bills to Eurostar Diamond Traders NV. The copies of the said invoices are hereto annexed as Exhibit "C".”

12. Under Part-V, Column-8, it was also pleaded that in terms of the above two Invoices, the total amount of Rs.16,77,1.7,732.21/- became due on 15.02.2017. It was further stated that part payments were made on 15.05.2017 and 26.09.2017, which are also part of statement made in Part-V in Column-8 at paragraph 4 of the pleadings. Part-V, Column-8, paragraph 4 of Section 7 applications is as follows:

“Part-V, 8.1, 8.2 & 8.3 xxx xxx

8.4. The Applicant states that under the terms of the said invoices, the Applicant was to be paid a total amount of Rs. 16,77,17,132.21/-(Rupees Sixteen Crore Seventy Seven Lakh Seventeen Thousand One Hundred and Thirty Two and Twenty One Paise), both of which became due on 15 February 2017. The aforesaid was a clear understanding between the parties and specifically on the part of the Corporate Debtor, as they have accepted the said invoices at that time and on account of such acceptance by the Corporate Debtor, the applicant bank has discounted the said bills and remitted the amount to Eurostar Diamond Traders NV, Antwerp. In fact, an initial payment of Rs.1,58,10,599.10/- has been made by the Corporate Debtor on 15 May 2017 in respect of the invoice no.9001602957 dated 3 October 2016 and in respect of the invoice no. 9001602984 dated 5 October 2016 an initial payment of Rs. 2,98,16,200/- has been made by the Corporate Debtor on 26 September 2017. This goes on to show that the Corporate Debtor is aware about and admits its obligation to pay the amounts in respect of the said invoices to the Applicant.

However, the Corporate Debtor has failed and neglected to pay any further amounts in respect of the said invoices to the Applicant."

13. Now we proceed to examine issues as framed above.

Question No.(I)

14. Section 9 application was filed on the basis of two Invoices dated 03.10.2016 and 05.10.2016 for the amount by which Invoices were raised by Eurostar Diamond Traders NV to Eurostar Diamonds India Pvt. Ltd. (earlier name of the CD) and Invoice No.9001602957 dated 03.10.2016 was issued for USD 1394214.56, which was payable by 31.01.2017. Another Invoice No.9001602984 for an amount of USD 14191407.00, which was payable by 02.02.2017 was issued. The submission of the Appellant is that from the date when payment became due, limitation was only three years and the application having been filed after the period of three years from the due date, the application is clearly barred by time. On the other hand, the submission of the learned Counsel for the Respondent is based on part payments made by the CD on 15.05.2017 and 26.09.2017, as noted above. The Operational Creditor in his Section 9 application has pleaded the part payments in Part-V, Column-8 in paragraph-4 of the application, as extracted above. The submission, which has been raised by learned Counsel for the Appellant is that payments were not made to the SBI, hence, the conditions, which are required to be fulfilled for acknowledgment within the meaning of Section 19 of the Limitation Act, 1963, are not fulfilled.

15. Learned Counsel for the Appellant relying on the judgment of Hon'ble Supreme Court in ***Shanti Conductors Pvt. Ltd. vs. Assam State Electricity Board and Ors. – (2020) 2 SCC 677*** submits that the Appellant neither issued acknowledgment in writing, nor payment was made to the Operational Creditor. Hence, benefit of Section 19 of the Limitation Act cannot be extended. The dispute between the parties, thus, centers around Section 19 of the Limitation Act, as to whether by virtue of the said two part payments, the Operational Creditor shall be entitled for the benefit of extension of limitation under Section 19. Section 19 of the Limitation Act provides as follows:

> "**19. Effect of payment on account of debt or of interest on legacy.—** Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:
>
> *Provided* that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.
>
> *Explanation.*—For the purposes of this section,—
>
> (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;
>
> (b) "debt" does not include money payable under a decree or order of a court."

16. Learned Counsel for the Appellant although has contended that payment was not made to the Operational Creditor directly and payment was made to the sister concern Eurostar Diamond Traders NV, but the said submission is not substantiated from the materials on record and is clearly contrary to pleading. The Respondent has referred to the reply to the demand notice submitted by the Appellant dated 05.11.2020, where the payment made in USD 174214.56 to the SBI on 15.05.2017 has been admitted. It is useful to extract following part of the reply notice, which contained the admission of part payment to the SBI:

> "In this matter, I would like to inform you that the aforesaid invoices were raised by Eurostar on MKM. As regards invoice no. 9001602957 for USD 13,94,214.56, it may be noted that the first payment of USD 1,74,214.56 was made to SBI on 15th May, 2017. Thereafter, at the instance of instruction from the Eurostar vide intimation dated 25th March, 2018 USD 11,82,022 was set off against various outstanding invoices of MKM raised on Eurostar and the balance payment of USD 37,978 was remitted on 4th April, 2018 to SBI wherein the remittance request letter clearly mentioned about set off of USD 11,82,022."

17. Further, when we look into the pleadings, in the Appeal itself, there is a clear pleading by the Appellant with regard to part payments. It is useful to extract following part of the Synopsis given by the Appellant in support of the Appeal. In Synopsis, following two statements have been made by the Appellant at pages-B and C:

> "Page-B xxx xxx xxx
>
> .....Vide Invoice No.900I602957 dated 3.10.2016, Belgium Company sent polished diamonds to appellant-company worth USD 1394214.56.I1 was completely transaction and document

outside India i.e. admittedly at Belgium. SBI, Antwerpen, Belgium Branch allowed discounting of the same invoice No.900I602957 to Belgium Company (Eurostar). Appellant Company on 15.5.2017 made part payment of USD 174214.56 in the aforesaid loan account of Belgium Company Eurostar meted with SBI, Antwerpen, Belgium Branch.

Page-C xxx xxx xxx

Same way, Belgium Company (Eurostar) supplied polished diamonds worth USD 1491407 vide Invoice No.900I602984 dated 5.10.2016 to appellant-company. Belgium Company (Eurostar) got discounted the said invoice from SBI, Antwerpen, Belgium Branch. Out of the due amount, appellant company on26.9.2017 made part payment of USD 400000 to SBI, Antwerpen, Belgium Branch."

18. The above statements given in Synopsis is fully corroborated by the List of Dates given in support of the Appeal. At page-F, with regard to date 15.05.2017, following has been stated:

"15.5.2017 Since Eurostar Diamond Traders N.V., Belgium discounted the aforesaid Invoice No.9001602957 dated 3.10.20I6 from SBI, Antwerpen, Belgium Branch, therefore, towards the payable amount,' appellant-company transferred USD 174214.56 to Loan Account of Eurostar Diamond Traders N.V., Belgium maintained with SBI, Antwerpen, Belgium Branch"

19. The above paragraph clearly mentions that it is an admitted case of the Appellant that part payments were made on 15.05.2017 and 26.09.2017. Further, it is even in the reply to the demand notice, as noted above the Appellant has made a submission that amount was paid to the SBI. Thus, when amount is directly paid to the creditor and there

is acknowledgement in writing the conditions as provided in Section 19 are fulfilled.

20. Learned Counsel for Appellant has relied on paragraphs 16 to 18, 20 and 23 of the judgment of **Shanti Conductors Pvt. Ltd.** (supra). In paragraph 16, where two conditions have been noticed by the Hon'ble Supreme Court. Paragraph-16 of the judgment of the Hon'ble Supreme Court is as follows:

> "**16.** We may notice the judgment of this Court dealing with Section 20 of the Limitation Act, 1908, which was akin to present Section 19 of the Limitation Act, 1963. In *Sant Lal Mahton* v. *Kamla Prasad* [*Sant Lal Mahton* v. *Kamla Prasad*, 1951 SCC 1008 : AIR 1951 SC 477] , this Court held that for applicability of Section 20 of the Limitation Act, 1908, two conditions were essential that the payment must be made within the prescribed period of limitation and it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. This Court further held that for claiming benefit of exemption under Section 20, there has to be pleading and proof. In paras 9 and 10, the following has been laid down : (AIR p. 479)
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> > "*9.* It would be clear, we think, from the language of Section 20, Limitation Act, that to attract its operations two conditions are essential : first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. We agree with the Subordinate Judge that it is the payment which really extends the period of limitation under Section 20, Limitation Act; but the payment has got to be proved

in a particular way and for reason of policy the legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail. The Subordinate Judge, however, is right in holding that while the section requires that the payment should be made within the period of limitation, it does not require that the acknowledgment should also be made within that period. To interpret the proviso in that way would be to import into it certain words which do not occur there. This is the view taken by almost all the High Courts in India and to us it seems to be a proper view to take. (See *Mohd. Moizuddin Mia* v. *Nalini Bala Devi* [*Mohd. Moizuddin Mia* v. *Nalini Bala Devi*, 1937 SCC OnLine Cal 20 : AIR 1937 Cal 284 : ILR (1937) 2 Cal 137] ; *Lal Singh* v. *Gulab Rai* [*Lal Singh* v. *Gulab Rai*, 1932 SCC OnLine All 265 : ILR (1933) 55 All 280] , *Venkata Subbhu* v. *Appu Sundaram* [*Venkata Subbhu* v. *Appu Sundaram*, ILR (1894) 17 Mad 92] , *Ram Prasad Babu* v. *Mohan Lal Babu* [*Ram Prasad Babu* v. *Mohan Lal Babu*, 1922 SCC OnLine MP 10 : AIR 1923 Nag 117] and *Vishwanath Raghunath Kale* v. *Mahadeo Rajaram Saraf* [*Vishwanath Raghunath Kale* v. *Mahadeo Rajaram Saraf*, 1933 SCC OnLine Bom 3 : ILR (1933) 57 Bom 453] .)

10. … If the plaintiff's right of action is apparently barred under the statute of limitation, Order 7 Rule 6, Civil Procedure Code makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act, upon which he relies to exclude its operation; and if the plaintiff has got to allege in his plaint the facts which entitle him to exemption, obviously these facts must be in existence

> at or before the time when the plaint is filed; facts which come into existence after the filing of the plaint cannot be called in aid to revive a right of action which was dead at the date of the suit. To claim exemption under Section 20, Limitation Act the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part-payment of the principal, but that such payment had been acknowledged in writing in the manner contemplated by that section.""

21. Further in paragraph 18, the Hon'ble Supreme Court held that there should be pleading by the Plaintiff claiming any start of fresh period of limitation. In paragraph 18, the Hon'ble Supreme Court held as follows:

> "**18.** There being no specific pleading by the plaintiffs claiming any start of fresh period of limitation, there was no occasion for the defendants to raise any reply in reference to Section 19. Shri Abhishek Manu Singhvi, learned Senior Counsel has relied on two judgments of this Court, which need to be noticed : (*i*) *Jiwanlal Achariya* v. *Rameshwarlal Agarwalla* [*Jiwanlal Achariya* v. *Rameshwarlal Agarwalla*, AIR 1967 SC 1118] , and (*ii*) *Kamla Devi* v. *Mani Lal Tewari* [*Kamla Devi* v. *Mani Lal Tewari*, (1976) 4 SCC 818] . In *Jiwanlal Achariya* [*Jiwanlal Achariya* v. *Rameshwarlal Agarwalla*, AIR 1967 SC 1118] , this Court had occasion to consider Section 20 of the Limitation Act, 1908, which was akin to present Section 19 of the Limitation Act, 1963. The Court was considering the question as to what shall be the date of a postdated cheque, whether it shall be the date on which cheque bears or the date the cheque is handed over to compute the start of fresh period of limitation. The Court held that the date which postdated cheque bears subject to payment by the bank shall be treated as a date for start of

the fresh period of limitation. In para 8 of the judgment, it was observed that the proviso to Section 20 shall be treated to be complied with for the cheque itself is an acknowledgment of the payment in the handwriting of the person giving the cheque. Para 8 of the judgment is as follows : (*Jiwanlal Achariya case* [*Jiwanlal Achariya* v. *Rameshwarlal Agarwalla*, AIR 1967 SC 1118] , AIR p. 1122)

> "*8.* This brings us to the question of limitation. The facts are not in dispute now. The promissory note was executed on 4-2-1954. On the same date a postdated cheque bearing the date 25-2-1954 was given by the defendant-appellant to the plaintiff-respondent, the intention being that on being realised it would be credited towards part payment. It was realised sometime after 25-2-1954 and was credited towards part payment, the appellant himself having made an endorsement admitting this part payment. But it is contended on behalf of the appellant that as the postdated cheque was given on 4-2-1954, that must be held to be the date on which part payment was made. It has been held by the High Court that the acceptance of the postdated cheque on 4-2-1954 was not an unconditional acceptance. Where a bill or note is given by way of payment, the payment may be absolute or conditional, the strong presumption being in favour of conditional payment. It followed from the finding of the High Court that the payment was conditional i.e. that the payment will be credited to the person giving the cheque in case the cheque is honoured. In the present case the cheque was realised and the question is what is the date of payment in the circumstances of this case for the purpose of Section 20 of the Limitation Act. Section 20 inter alia lays down that where payment on

account of debt is made before the expiration of the prescribed period by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made. Where, therefore, the payment is by cheque and is conditional, the mere delivery of the cheque on a particular date does not mean that the payment was made on that date unless the cheque was accepted as unconditional payment. Where the cheque is not accepted as an unconditional payment, it can only be treated as a conditional payment. In such a case the payment for purposes of Section 20 would be the date on which the cheque would be actually payable at the earliest, assuming that it will be honoured. Thus if in the present case the cheque which was handed over on 4-2-1954 bore the date 4-2-1954 and was honoured when presented to the bank the payment must be held to have been made on 4-2-1954, namely, the date which the cheque bore. But if the cheque is postdated as in the present case it is obvious that it could not be paid till 25-2-1954 which was the date it bore. As the payment was conditional it would only be good when the cheque is presented on the date it bears, namely, 25-2-1954 and is honoured. The earliest date, therefore, on which the respondent could have realised the cheque which he had received as conditional payment on 4-2-1954 was 25-2-1954 if he had presented it on that date and it had been honoured. The fact that he presented it later and was then paid is immaterial for it is the earliest date on which the payment could be made that would be the date where the conditional acceptance of a postdated cheque becomes actual payment when honoured. We are, therefore, of opinion that as a postdated cheque was given on 4-2-1954 and it was

> dated 25-2-1954 and as this was not a case of unconditional acceptance, the payment for the purpose of Section 20 of the Limitation Act could only be on 25-2-1954 when the cheque could have been presented at the earliest for payment. As in the present case the cheque was honoured it must be held that the payment was made on 25-2-1954. It is not in dispute that the proviso to Section 20 is complied with in this case, for the cheque itself is an acknowledgment of the payment in the handwriting of the person giving the cheque. We are, therefore, of opinion that a fresh period of limitation began on 25-2-1954 which was the date of the postdated cheque which was eventually honoured.""

22. In the present case there is specific pleading in the application under Section 9, regarding above two part payments. The present is also a case where acknowledgment in writing is there on behalf of the CD, which acknowledgment can be noticed from the reply to the demand notice, which was prior to filing of Section 9 application. Thus, both the conditions required for claiming Section 19 benefit are fulfilled. Hence, we find that the Operational Creditor shall be entitled to treat the dates 15.05.2017 and 26.09.2017 with regard to two Invoices as fresh start period of the limitation and when three years period is counted from the said date, the period falls within the Covid-19 period of the limitation, for which Hon'ble Supreme Court in Sue Motu Writ Petition (Civil) No.3 of 2020 has directed for exclusion of the entire period and excluding the said period, the application filed under Section 9, is well within time. It is useful to refer to paragraph 41 of the Adjudicating Authority, where a

finding has been returned that application filed was well within limitation.

Paragraph 41 of the impugned order is as follows:

> "**4I.** Lastly, it has been argued on behalf of the Corporate Debtor that the instant Application u/s 9 of the Code is palpably barred by time. In this regard it has been pointed out that the due date of the two invoices was 03.10.2016 and 05.10.2016. The due date of the invoices was 31.01.2017 and 02.02.2077 respectively. Admittedly part payment of Rs.1,58,10,599.70/- was made by the Corporate Debtor on 15.05.2017 in respect of invoice dated 03.10.2016. The Corporate Debtor further made a payment of 2,98,16,200/ - on 26.09.2017. It cannot be disputed that any part payment made within the period of limitation amounts to an acknowledgment on the part of the debtor" That being so, the limitation period began to run in respect of the two invoices on 15.05.2017 and 26.09.2017 respectively when the part payments were made by the Corporate Debtor. Taking that into account, the instant Application u/s 9 should have been filed within a period of three years from 15.05.2017 and 26.09.2017 i.e. up to 14.05.2020. It cannot be disputed that on 14.05.2020 lockdown had been due to Covid pandemic. The Hon'b1e Supreme Court in the suo-moto writ petition no. 3 of 2020 decided on 10.01.2022 has held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general law or special laws in respect of all judicial or quasi-judicial proceedings. Consequently, the period from 14.05.2020 to 28.02.2022 shall stand excluded from taking into consideration, the aforesaid order of the hon'ble Supreme Court, if a period from 15.03.2020 till 28.02.2022 is excluded from reckoning, the instant Petition which was filed in L2.07 .2022 cannot be said to be barred by limitation

by any stretch of imagination. Therefore, the plea that the Application is barred by time also deserves to be repelled."

23. In view of the aforesaid we answer Question No.(I) in following manner:

(I) The application filed by Operational Creditor was well within time. The Operational Creditor was entitled for extension of limitation under Section 19 of the Limitation Act along and the benefit of order of the Hon'ble Supreme Court in Sue Motu Writ Petition (Civil) No.3 of 2020.

Question No.(II)

24. The submission of the Appellant that there is no agreement with regard to payment of interest with respect to delay in discounting facility. The present is not a case that there is anything on record to prove that there was any agreement between the parties for payment of interest. There was also nothing on record to show that CD had made payment of interest to the Bank. In this context we may refer to a recent judgment of this Tribunal in ***Company Appeal (AT) (Insolvency) No. 386 of 2025 – M/s SNJ Synthetics Ltd. vs. M/s PepsiCo India Holdings Pvt. Ltd.*** decided on 07.05.2025 where this Tribunal was dealing with a case where interest was sought on delayed payments on the basis of Invoices. This Tribunal in paragraphs 12 and 13 laid down following:

"**12.** Since there has been no amendment of the Agreement, the terms agreed between the parties in the Supply Agreement prevail over unilateral invoices. Even though invoices can play a crucial role in defining the rights and

obligations between parties, however, there has to be an element of mutual consent, which can be discernible from conduct. When the ingredient of levy of interest on delayed payment is absent in the written contract, stipulation of interest payment in invoices can override the written contract only if there is mutual consent and mutual understanding between the parties in this regard which in the present case has not been demonstrated by conduct and practice. There is no evidence of payment of interest by the Respondent which has been substantiated by the Appellant. We are therefore inclined to agree with the Adjudicating Authority that unilaterally generated invoices signed by only one party cannot overrun or recast the terms of bi-partite agreements and create binding obligations on the other party to pay interest.

13. In this regard attention has been adverted by the Respondent to the judgement of this Tribunal in ***Krishna Enterprises vs. Gammon India Limited in CA (AT) (Ins) No. 144 of 2018*** wherein it has been held therein that if no interest was payable, in terms of the contractual agreement, then only the principal amount would constitute the claim, basis which Section 9 application can be filed. We find the ratio of the above judgment to be squarely applicable to the facts of the present case and for easy reference reproduce the relevant portion of the said judgment as below:

> *"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.*

> *5. In the present appeals, as we find that the principle amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer."*
>
> *(Emphasis supplied)"*

25. We may also refer to the judgment of this Tribunal in ***Shaitanshu Bipiin Vora Suspended Director of Exclusive Linen Fabrics P. Ltd. vs. Shree Hari Yarns P. Ltd. and Anr. – (2025) SCC OnLine NCLAT 694***, where considering the said issue regarding inclusion of interest by Respondent No.1, while raising its Invoices, this Tribunal in paragraphs 46, 47, 48 and 49 laid down following:

> "**46.** The respondent has also relied upon the judgment of this Tribunal in Prashat Agarwal v. Vikash Parasrampuria [2022 SCC OnLine NCLAT 3781.] in Company Appeal (AT) (Insolvency) No. 690 of 2022 decided on July 15, 2022, wherein this Tribunal has held that the total amount which includes both principal debt and interest on delayed payment as was stipulated in the invoices itself will become the total debt outstanding as per the requirements of section 4 of the Insolvency and Bankruptcy Code, 2016 in a section 9 application. The facts of each case are different. We note contrasting judgments relied upon by the respondent. The appellant has relied upon the judgment of this Tribunal in Rishabh Infra Through Hari Mohan Gupta v. Sadbhav Engineering Ltd. [2024 SCC OnLine NCLAT 1262.] in Company Appeal (AT) (Insolvency) No. 1881 of 2024 decided on November 4, 2024, wherein this Tribunal

has held that in the view that invoices which have been sent by the operational creditor containing the term of interest cannot be operated against the corporate debtor unless there is an agreement for interest or any other document showing that the corporate debtor has accepted the obligation for interest at paragraph 9. On this basis, this Tribunal has not accepted claim of the operational creditor for claiming interest in a section 9 application filed by the operational creditor.

47. Similarly, the Appellate Tribunal in the case of *S.S. Polymers* v. *Kanodia Technoplast Ltd.* [2019 SCC OnLine NCLAT 1310.] , had held that relying on the invoices to raise claims for payment of interest is against the principle of the Code. Relevant extracts from this judgment are reproduced hereinbelow:

> "4. Learned counsel for the appellant relied on 'invoices' to suggest that in the 'invoices,' the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'corporate debtor'.
>
> 5. Admittedly, before the admission of an application under section 9 of the Code, the 'corporate debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the Code, as it should be treated to be an application pursued by the applicant with malicious intent (to realise only Interest for any purpose other than for the resolution of insolvency, or liquidation of the 'corporate debtor' and which is barred in view of section 65 of the Code."
>
> (emphasis supplied)

Therefore, in the absence of any agreement between parties, regarding payment of interest on delayed payment,

the claim with respect to interest on pending invoices is not sustainable, and on this ground the captioned application is liable to be dismissed.

48. The appellant has relied upon the judgments of this Appellate Tribunal in *Krishna Enterprises* v. *Gammon India Ltd.* [2018 SCC OnLine NCLAT 360.] wherein vide order dated July 27, 2018 it was held that "debt" in terms of the Code does not include interest, unless payable in terms of any agreement among parties. The relevant extract of the judgment passed by the Appellate Tribunal is reproduced below:

> "4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the operational or financial creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the corporate debtor."
>
> (emphasis supplied)

49. It is also contended that the respondent is attempting to misuse the provisions of the code to initiate the corporate insolvency resolution process against the appellant, which is a healthy and insolvent company and is regularly meeting all its obligation. In its support the appellant has relied on various judgments wherein it has been held that the primary objective of the code is resolution and not recovery. Some of these are extracted as below:

49.1. *Binani Industries Ltd.* v. *Bank of Baroda* [(2019) 5 Comp Cas-OL 28 (NCLAT); 2018 SCC OnLine NCLAT 521.] wherein it was held that the first order objective of the Code is resolution. The second order objective is maximisation of value of assets of the firm and the third order objective is to promote entrepreneurship, availability of credit and to

balance the interests of the stakeholders. The relevant extracts of the judgment are reproduced below (page 34 of 5 Comp Cas-OL):

> " The objective of the 'Insolvency and Bankruptcy Code' is resolution.
>
> The purpose of resolution is for maximisation of value of assets of the 'corporate debtor' and thereby for all creditors. It is not maximisation of value for a 'stakeholder' or 'a set of stakeholders' such as creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is 'resolution'. The second order objective is maximisation of value of assets of the 'corporate debtor' and the third order objective is 'promoting entrepreneurship, availability of credit and balancing the interests.' This order of objective is sacrosanct."
>
> (emphasis supplied)

49.2. *Swiss Ribbons P. Ltd.* v. *Union of India* [(2019) 213 Comp Cas 198 (SC); (2019) 4 SCC 17; 2019 SCC OnLine SC 73.] : The focus on maximising the value of the debtor's assets was further reiterated wherein the Supreme Court recorded the following observations (page 235 of 213 Comp Cas):

> "As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is affected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship

as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment."

(emphasis supplied)

49.3. *S.S. Engineers* v. *Hindustan Petroleum Corporation Ltd.* [(2022) 234 Comp Cas 95 (SC); 2022 SCC OnLine SC 1385.] wherein it was held that (page 109 of 234 Comp Cas):

"The National Company Law Tribunal, exercising powers under section 7 or section 9 of the Insolvency and Bankruptcy Code, 2016, is not a debt collection forum. The Insolvency and Bankruptcy Code tackles and/or deals with insolvency and bankruptcy. It is not the object of the Insolvency and Bankruptcy Code, that the corporate insolvency resolution process should be initiated to penalise solvent companies for non-payment of disputed dues claimed by an operational creditor."

(emphasis supplied)

49.4. *Transmission Corporation of Andhra Pradesh Ltd.* v. *Equipment Conductors and Cables Ltd.* [(2018) 4 Comp Cas-OL 532 (SC); (2019) 12 SCC 697; (2018) 5 SCC (Civ) 631; 2018 SCC OnLine SC 2113.] , and *Mobilox Innovations P. Ltd.* [*Mobilox Innovations P. Ltd.* v. *Kirusa Software P. Ltd.*, (2017) 205 Comp Cas 324 (SC); (2018) 1

SCC 353; (2018) 1 SCC (Civ) 311; 2017 SCC OnLine SC 1154.] : the hon'ble Supreme Court has held that the Code is not intended to be a substitute to a recovery forum and the object of the Code is efficient resolution of the corporate debtor and to bring the company out of distress."

26. In the present case, the Invoices are on the record, which have been filed along with the additional affidavit by the Petitioner itself, which are part of the record, in both the Invoices dated 03.10.2016 and 05.10.2016, there is no clause in the Invoices for payment of interest. Thus, the present is a case where neither there was an agreement between the parties for payment of interest, nor the Invoices, which have been issued by Eurostar Diamnond Traders N.V. contained any clause for the interest. We, thus, are of the view that the Operational Creditor was not entitled to add any interest in the operational debt. We, thus, answer Question No.(II) holding that Operational Creditor was not entitled for any interest.

27. In view of our above discussions and conclusions, we arrive at following conclusions:

(I) The application under Section 9 filed claiming principal amount of Rs. 16,77,17,132.21/- was well within time. The Adjudicating Authority has rightly taken the view that application filed under Section 9 was not barred by limitation.

(II) There was no agreement between the parties or any clause in Invoices to claim any interest on the delayed payments.

(III) The Appellant paid the principal amount to the SBI even prior to hearing of the Appeal and passing an interim order on

27.09.2023. In the order dated 27.09.2023, the statement on behalf of SBI has been noticed in following words:

> "Learned Counsel for the Bank submits that Bank has already received the principle amount and with regard to other amount of interest the Bank is already negotiating with the Corporate Debtor…."

Thus, the present is a case where principal amount has already been paid.

(IV) The SBI was not entitled to include any interest in the principal amount. Thus, the entire principal debt stands liquidated.

28. In view of our foregoing discussions and conclusions, we are of the view that entire principal amount having being liquidated, there is no necessity to continue the CIRP any further. The CIRP initiated against the CD is closed. The CD is freed from rigors of the CIRP. The Appeal is disposed of accordingly. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

18th August, 2025

Ashwani