IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH

COMPANY PETITION (IB) NO. 672/ND/2019

AND

IA No. 515/2026

IN

COMPANY PETITION (IB) NO. 672/ND/2019

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and an Application under Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

CP (IB) No. 672/2019

KOTAK MAHINDRA BANK LIMITED
REGISTERED OFFICE AT:
27 BKC, C 27, G BLOCK,
Bandra Kurla Complex,
Bandra (E), Mumbai - 400051

…Applicant Bank/Financial Creditor

Versus

KEW PRECISION PARTS PRIVATE LIMITED
REGISTERED OFFICE AT:
41, DLF Industrial Area,
Kriti Nagar, New Delhi - 110015

…Respondent/Corporate Debtor

AND

IN THE MATTER OF:
IA 515/ 2026

KEW PRECISION PARTS PRIVATE LIMITED …Applicant

Versus

KOTAK MAHINDRA BANK LIMITED … Respondent

Order Delivered on: 15.07.2026

CORAM:

SHRI MAHENDRA KHANDELWAL **HON'BLE MEMBER (JUDICIAL)**	**MS. ANU JAGMOHAN SINGH** **HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant in IA 515/2026:	Mr. Gaurav Mitra, Mr. Prakhar Mithal, Mr. Arjun Katyal, Advs.
For the Applicant in CP(IB) 672/2019:	Mr. Ravi Gupta, Sr. Adv., with Mr. Aman Vasisth, Ms. Muskaan Mehra, Ms. Lakshika Chawla, Mr. Mahip Datta Parashar, Advs.
For the Respondent in CP(IB) 672/2019:	Mr. Gaurav Mitra, Mr. Prakhar Mithal, Mr. Arjun Katyal, Advs.

ORDER

1. The C.P. (IB) No. 672/2019 has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **KOTAK MAHINDRA BANK LIMITED** (hereinafter referred to as 'Applicant/Financial Creditor'), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **KEW PRECISION PARTS PRIVATE LIMITED** ("Corporate Debtor").

2. The I.A 515/2026 has been filed under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following directions against the Respondent, Financial Creditor:

    i. *Reject and dismiss the captioned Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 as being barred by limitation, even on the basis of the* *alleged "fresh contract" dated 20.12.2018 under Section 25(3) of the Indian Contract Act, 1872; AND/ OR*

ii. *Pass any other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

3. Since the issue involved in both the cases are similar, by a common order we are considering the Section 7 Petition along with Rule 11 Application.

Facts and submissions of the case as submitted by the Applicant in CP IB NO. 672/2019: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:

a) In the present case, the Financial Creditor sanctioned financial facilities of exposure up to Rs. 20.36 Crores to the Corporate Debtor. The Financial Creditor and the Corporate Debtor executed various Loan Documents based on mutually agreed terms and conditions on between 23.11.2012 to 05.03.2014. Further, from June, 2015, the Corporate Debtor started default in make payment and the instalments became due for payment, and the Corporate Debtor loan account(s) were classified as NPA as per RBI guidelines on 30.09.2015.

b) The Financial Creditor issued a Loan Recall Notice recalling a sum of Rs. 18,19,40,434/- as on 09.10.2015 and also issued the Demand Notice under Section 13(2) of the SARFAESI Act, 2002 on 19.11.2015, which was later withdrawn. Resultantly, the Corporate Debtor issued 10 Cheques of Rs. 19,34,00,000/- as on account payment, however the same were dishonoured and the proceedings initiated under Section 138 of the NI Act, 1881 proceedings are still pending adjudication.

c) Thereafter, a notice was issued to the Corporate Debtor under Section 13 (2) of the SARFAESI Act for an amount of Rs. 34,79,70,950/- on 13.12.2017. On 12.12.2018, the Corporate Debtor acknowledged its default and proposed an OTS for a sum of Rs. 13 crores. On 19.12.2018, the Corporate Debtor once again proposed an OTS for an amount of Rs. 20.76 Crores and promised to pay within 15 days of acceptance by the Financial Creditor. On 20.12.2018, Corporate Debtor once again offers revised OTS for an amount of Rs. 25.55 Crores and promised to pay before 31.12.2018. Thereafter, the Financial Creditor accepted the OTS proposed by the Corporate Debtor and accepted the promise of the Corporate Debtor to pay a sum of Rs. 25.55 Crores towards the settlement of the Total Outstanding amount as on the date to be paid on or before 31.12.2018. Furthermore, both the parties signed the Acceptance in writing along with Board Resolution and complete authority.

d) On 07.03.2019, Financial Creditor filed the present Section 7 Petition before this Adjudicating Authority for the Corporate Debtor having failed to honour its promise to pay, after the OTS proposal being accepted by the Financial Creditor. On 06.09.2019, the Adjudicating Authority admitted the Section 7 petition thereby initiating the CIRP against the Corporate Debtor. This Adjudicating Authority while passing Order dated 06.09.2019 had relied upon the OTS to hold that Section 7 is within limitation.

e) On 08.01.2020, the Hon'ble Appellate Authority set aside the admission order on the grounds of limitation. On 05.08.2022, the Hon'ble Supreme Court set aside the Hon'ble Appellate Authority order and remanded back the petition to be reconsidered by this Adjudicating Authority and to take into account the provision of Section 25 (3) of the Contract Act. Thereafter, the Financial Creditor on 10.10.2022 filed the Application bearing IA No. 4852 of 2022 for seeking restoration and this Adjudicating Authority was pleased to restore the complete company petition for reconsideration in accordance with the Hon'ble Supreme Court.

f) While relying on the Order dated 06.09.2019, the Hon'ble Supreme Court also observed that rigor of Section 25(3) would come into play to protect the limitation of this Company Petition. This issue is left open to be answered by this Adjudicating Authority in the present proceeding.

g) The Corporate Debtor filed I.A. No. 6309/2022 in CP (IB) No. 672/2019 on 21.12.2022, seeking dismissal of the Section 7 Petition as there was non-compliance in terms of order passed by the Hon'ble Supreme Court. This

Adjudicating Authority vide order dated 23.02.2023 dismissed I.A. No. 6309/2022. Aggrieved by the order dated 23.02.2023, the Corporate Debtor preferred an Appeal before the Hon'ble NCLAT in CA (AT) (Insolvency) No. 305/ 2023. The Hon'ble NCLAT, in its order dated 15.03.2023 observed:

> *"We are of the view that the application under Rule 11 was misconceived, all issues are to be decided when the Section 7 application is heard and decided."*

h) This Adjudicating Authority, dismissed Section 7 application via Order dated 29.08.2023 holding that the original debt of the petitioner is already time-barred. The petitioner's claim can only survive on the basis of OTS dated 20.12.2018. The Applicant filed appeal before Hon'ble NCLAT as CA (AT) (Insolvency) No. 1405/2023, in which the Appellate Tribunal vide order dated 17.07.2025, allowed to set aside the Order dated 29.08.2023 of this Tribunal. It revived the original claim relying on the OTS revival clause. The Civil Appeal filed by the Corporate Debtor No. 40748/2025 before the Hon'ble Supreme Court was dismissed as not pressed vide Order dated 11.08.2025.

i) The existence the financial debt, as well as the default committed by the Corporate Debtor, was conclusively recorded by this Tribunal in its order dated 06.09.2019 while admitting the Section 7 Application. Further, the issue of limitation was independently examined and determined by the Hon'ble NCLAT, which, vide its order dated 08.01.2020, held that the Section 7 application had been filed within the prescribed period of limitation. Based on these concurrent findings on debt, default, limitation, no question of adjudication on these aspects survives for consideration.

j) The Hon'ble Supreme Court allowed the appeal and held that the implications of Section 25(3) of the Indian Contract Act has not been duly appreciated while directing the Closure of the CIRP. The Hon'ble Supreme Court accordingly set aside the NCLAT's order on that aspect and directed this Tribunal to reconsider the Application qua the implication of Section 25(3) of the Indian Contract Act.

k) The Hon'ble NCLAT while setting aside the order dated 29.08.2023, has upheld Clause 6(i) of the OTS dated 20.12.2018 which says that upon default by the Corporate Debtor, all the reliefs, concessions, or sanctions granted under the

OTS would stand withdrawn and the terms and conditions of the original agreement(s) and loan and security documents would revive and come into full force. The Hon'ble NCLAT observed that there is continuous cause of action while relying upon provision of Section 25(3) of the Contract Act.

Submissions of learned Counsel appearing for the Corporate Debtor in CP IB NO. 672/2019 are as under:

5. The details of the submissions made by the Corporate Debtor are as follows:

   a) The Corporate Debtor submits that the issue of limitation applicable to the Bank's claim founded on Section 25(3) of the Indian Contract Act, 1872, remains open and undecided. It was submitted that in the earlier round of proceedings, the Adjudicating Authority did not adjudicate the issue of limitation under Section 25(3), having rejected the applicability of the said provision on the facts of the case due to absence of pleadings. The Appellate Tribunal has since held Section 25(3) to be applicable, and therefore the question whether the Bank's claim founded on the alleged fresh contract dated 20.12.2018 is within limitation necessarily arises for consideration.

   b) That even assuming the OTS Agreement dated 20.12.2018 constitutes a fresh contract under Section 25(3), the effect thereof is only to reset the period of limitation from the date of the fresh promise and not to extend limitation indefinitely. The alleged fresh contract is dated 20.12.2018, the default under the arrangement crystallised on or before 31.12.2018, and consequently the period of limitation expired on 31.12.2021. However, the Bank sought to introduce Section 25(3) as the foundation of its claim only by way of an Additional Affidavit dated 23.11.2022, beyond the prescribed period of limitation.

   c) That the Additional Affidavit, in substance and effect, amounts to an amendment of pleadings as it introduces a new legal foundation and a new starting point of limitation, neither of which were pleaded in Part-IV of the original Section 7 Application. That the limitation is a substantive right and that a time-barred claim cannot be revived through belated pleadings styled as an additional affidavit. Reliance was placed on the judgment of the Hon'ble Supreme Court in

L.C. Hanumanthappa v. H.B. Shivakumar, (2016) 1 SCC 332, to contend that where a new relief or cause of action is introduced by way of amendment after expiry of limitation, the amendment cannot relate back so as to defeat a vested right accrued in favour of the opposite party.

d) That the Financial Creditor's claim under Section 25(3) must be deemed to have been instituted only on the date of filing of the Additional Affidavit and was, therefore, ex facie barred by limitation. It was further argued that Section 25(3) does not override the Limitation Act and that, despite liberty granted by the Hon'ble Supreme Court, the Financial Creditor neither amended Part-IV of the Application nor filed any application for condonation of delay. On the aforesaid basis, it was contended that even on the Bank's own case under Section 25(3), the Section 7 Application is barred by limitation and liable to be rejected.

e) Further, the present Section 7 Application has been filed with the predominant object of recovery rather than insolvency resolution. It was contended that the Financial Creditor had earlier invoked remedies under the SARFAESI Act, 2002 against the alleged mortgaged property; however, the Hon'ble DRT, Lucknow, vide judgment dated 10.04.2017, set aside the SARFAESI measures and directed restoration of possession to the Corporate Debtor. Thereafter, the Financial Creditor obtained a Recovery Certificate from the Hon'ble DRT, Delhi, and execution proceedings are presently pending before the Recovery Officer, wherein repeated auction attempts have not culminated in any sale.

f) It was averred that, having failed to realise its dues through SARFAESI proceedings and while continuing execution proceedings, the Financial Creditor is seeking to invoke the Code as a parallel recovery mechanism. It was further contended that material facts relating to the SARFAESI proceedings and pending execution proceedings were not disclosed and, therefore, the present proceedings constitute an abuse of the insolvency process attracting Section 65 of the Code.

g) That the Financial Creditor cannot derive any benefit of limitation from the ten PNB security cheques relied upon by it. According to the Corporate Debtor, the said cheques were furnished as security at the time of sanction of the loan, while the concerned PNB account was closed on 03.06.2013 pursuant to the terms of the sanction letters. Reliance was placed upon the No Dues Certificate, account closure documents and the letter dated 18.01.2019 issued by Punjab National Bank recording the cheque book numbers surrendered at the time of closure, which allegedly correspond to the cheques relied upon by the Financial Creditor.

h) It was submitted that the Hon'ble Supreme Court, in its judgment dated 05.08.2022, had already taken note of the absence of payment details and observed that acknowledgements made beyond three years from the date of default would not save limitation. Accordingly, it was contended that the said cheques cannot be relied upon to extend limitation and the contrary reliance placed by the Hon'ble NCLAT is misplaced.

i) The Hon'ble Supreme Court, vide judgment dated 05.08.2022, has already held the Section 7 Application to be barred by limitation and, therefore, the issue cannot be reopened by relying upon Clause 6(i) of the OTS Agreement dated 20.12.2018. It was contended that the said clause cannot revive a time-barred debt, extend limitation, or override the statutory requirements under the Limitation Act and the IBC. According to the Corporate Debtor, the Hon'ble Supreme Court granted liberty only to examine the applicability of Section 25(3) of the Indian Contract Act, 1872, and not to revive the original cause of action through contractual stipulations.

j) Further the Clause 6(i) merely permits the Financial Creditor to proceed with the Original Application before the DRT upon revocation of the OTS and does not contemplate revival of proceedings under the IBC. The Financial Creditor having already availed the benefit of the said clause in the DRT proceedings, its reliance thereon for revival of the present proceedings is misconceived.

Submissions of learned Counsel appearing for the Applicant in I.A. NO. 515/2026 are as under:

6. The details of the submissions made by the Applicant are as follows-

a) That the Hon'ble Supreme Court, vide judgment dated 05.08.2022, held the Section 7 Application to be barred by limitation notwithstanding the OTS proposals dated 12.12.2018 and 19.12.2018, the OTS Agreement dated 20.12.2018, the alleged issuance of cheques and the SARFAESI proceedings. It was submitted that although the Hon'ble Supreme Court granted liberty to the

Financial Creditor to amend its pleadings in Part-IV of the Section 7 Application and/or seek condonation of delay, neither course was adopted.

b) That despite the absence of foundational pleadings, the Financial Creditor subsequently sought to invoke Section 25(3) of the Indian Contract Act, 1872. It was further contended that the issue of limitation applicable to the claim founded on Section 25(3) remains open and un-adjudicated, as this Adjudicating Authority in the earlier round rejected the applicability of Section 25(3) itself and, therefore, did not examine the question of limitation, whereas the Appellate Tribunal has subsequently held the provision to be applicable.

c) It was contended that, even if the OTS Agreement dated 20.12.2018 is treated as a fresh contract under Section 25(3) of the Indian Contract Act, 1872, the claim based thereon would still be barred by limitation. It was submitted that the default under the said arrangement occurred on or before 31.12.2018 and the limitation period expired on 31.12.2021, whereas Section 25(3) was invoked as the foundation of the claim only by way of an Additional Affidavit dated 23.11.2022, thereby introducing a new legal basis for the claim after the expiry of limitation.

d) Relying upon *L.C. Hanumanthappa v. H.B. Shivakumar*, (2016) 1 SCC 332, it was submitted that a time-barred claim cannot be revived through belated pleadings and that the doctrine of relation back cannot defeat a vested right accrued by limitation. It was therefore contended that, even on the Financial Creditor's own case under Section 25(3), the Section 7 Application remains barred by limitation and is liable to be rejected.

<u>Analysis in CP (IB) No. 672/2019</u>

7. We have heard the Learned Counsels for the Applicant/ Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and the written submissions presented by the parties. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for

initiation of Corporate Insolvency Resolution Process in respect of the Respondent/Corporate Debtor under Section 7 of the Code.

8. In the present Application, the Financial Creditor seeks initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on account of default in payment of the amount agreed under the One Time Settlement ("OTS") dated 20.12.2018. It is the case of the Financial Creditor that despite execution of the OTS and acceptance of the liability thereunder, the Corporate Debtor failed to honour the terms of the settlement, thereby committing default. Consequently, the Financial Creditor instituted the present Application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

9. The Application was admitted by this Adjudicating Authority vide order dated 06.09.2019. While passing the said order, this Adjudicating Authority noted that the account of the Corporate Debtor had been classified as Non-Performing Asset ("NPA") on 30.09.2015. The Financial Creditor, however, relied upon the OTS proposal submitted by the Corporate Debtor on 12.12.2018 to contend that the liability towards the Financial Creditor stood unequivocally admitted. Relevant Para of the Admission Order dated 06.09.2019 is reproduced herein below:

> *"5. Oral arguments were also heard on 17.10.2019 by this Hon'ble Tribunal and the prayer made in this petition were impugned by the Corporate Debtor on various grounds viz. Attestation of the affidavit, pendency of alternate proceeding under SARFAESI and the claim of the Financial Creditor being barred by limitation. It is being confirmed by the Ld. Counsel for the Financial Creditor that the account of the Corporate Debtor had been declared NPA in September 2015. The Financial Creditor relied upon the "One Time Settlement" dated 12.12.2018 given by the Corporate Debtor in acknowledgment of the interest liability. Ld. Counsel for the Financial Creditor has relied upon the provision of Article 62 of the Limitation Act. Both the parties were granted liberty to file citation in support of their arguments.*
>
> *6. Given the facts and circumstances that the Corporate Debtor vide its Letter dated 12.12.2018 approached the Financial Creditor for one-time settlement of an amount of Rs. 15 crores, thereby admitting its default, there is a finding that there is a continuous cause of action."*

10. Aggrieved by the order of admission, the Suspended Directors of the Corporate Debtor preferred Company Appeal (AT) (Insolvency) No. 1349 of 2019 before the Hon'ble National Company Law Appellate Tribunal ("NCLAT"), primarily contending that the Application under Section 7 of the Code was barred by limitation. The Hon'ble NCLAT, vide judgment dated 08.01.2020, allowed the appeal and set aside the admission order passed by this Adjudicating Authority. The Hon'ble NCLAT held that the OTS proposal dated 12.12.2018 had been submitted beyond a period of three years from the date of default and, therefore, could not save limitation. The relevant observations of the Hon'ble NCLAT are extracted hereinbelow:

> *"47. In regard to the plea of the 1st Respondent/Bank that on 26.03.2016, a complaint was made by the 'Corporate Debtor' against the Bank for not rejecting their debts and in the said letter there was an admission of debt liability, it is to be pointed out that the same cannot come to the rescue of the Bank because of the fact that the debt of non-payment of dues by the 'Corporate Debtor' took place in June, 2015 and Section 7 application was filed by the 1st Respondent / Bank before the Adjudicating Authority on 30.01.2019 which is beyond the period of limitation as enshrined in Article 137 of the Limitation Act. Also that in the decision Kalpana Trading Co. Vs. Executive Officer Town Panchayat AIR 1999 Mad37, it is observed that just sending a letter to the higher authorities to settle the issues does not amount to an 'Acknowledgement'."*

11. The Order dated 08.01.2020 of the Hon'ble NCLAT, was challenged before the Hon'ble Supreme Court by the Financial Creditor. The Hon'ble Supreme Court allowed the appeal and held that the effect and applicability of Section 25(3) of the Indian Contract Act, 1872 had not been duly considered while directing closure of the CIRP. Accordingly, the judgment of the Hon'ble NCLAT was set aside to that extent and the matter was remitted for reconsideration of the issue in the light of Section 25(3) of the Indian Contract Act, 1872. The relevant Para of the Judgment dated 05.08.2022 passed by the Hon'ble Supreme court is reproduced herein below:

"68. The Appellate Tribunal (NCLAT) found that there was no acknowledgment of debt within the period of limitation of three years. Holding the application of the applicant financial creditor, under Section 7 IBC, to be barred by limitation, the appellate authority (NCLAT) allowed the appeal.
69. The Appellate Tribunal (NCLAT) also did not notice the terms of settlement stated to have been executed on 20.12.2018, possibly because the attention of NCLAT was not drawn to any terms of the settlement. The Appellate Tribunal (NCLAT) did not, therefore, have the occasion to consider whether Section 25(3) of the Contract Act would be attracted. The Appellate Tribunal (NCLAT), as observed above, proceeded on the basis that debt within the period of limitation, and closed the CIRP Proceedings in the NCLT, without considering the question of applicability of Section 5 of the Limitation Act, for condonation of delay, to proceedings under Section 7 IBC.
70. This Court is of the view that the Appellate Tribunal (NCLAT erred in closing the CIRP proceedings without giving the Appellant Financial Creditor the opportunity to explain if there was sufficient cause for the delay in approaching the NCLT. An appeal being the continuation of original proceedings, the provision of Section 7(5)(b) of the IBC, of notifying the Financial Creditor before rejection of a claim, would be attracted. If noticed of the proposal to close the proceedings, the Appellant Financial Creditor might have got the opportunity to rectify the defects in its application under Section 7 by filing additional pleadings and/or documents."

12. While remanding the matter, the Hon'ble Supreme Court further observed that the Financial Creditor ought to be afforded an opportunity to place additional documents on record, amend its pleadings, if necessary, and take appropriate steps for curing defects in the proceedings. The Hon'ble Supreme Court also observed that the issue of applicability of Section 25(3) of the Indian Contract Act, 1872 as well as the question of limitation required fresh consideration by the Adjudicating Authority.

13. Subsequently, the matter was carried in appeal against the order dated 29.08.2023 passed by this Adjudicating Authority. Though this Adjudicating Authority had accepted the applicability of Section 25(3) of the Indian Contract Act, 1872 and held that the claim was not barred by limitation, the Section 7 Application came to be dismissed on the ground that the Financial Creditor had claimed the outstanding

amount under the original loan documents instead of the OTS amount of Rs. 24.55 Crores.

14. The Hon'ble NCLAT, vide judgment dated 17.07.2025, set aside the said order and upheld Clause 6(1) of the OTS dated 20.12.2018, which provided that upon failure of the Corporate Debtor to comply with the terms of the OTS, all concessions granted thereunder would stand withdrawn and the original loan and security documents would revive and become enforceable. The Hon'ble NCLAT accordingly held that the Financial Creditor was entitled to enforce its rights under the original loan documents and also considered the effect of Section 25(3) of the Indian Contract Act, 1872 while examining the rights arising from the OTS.

The relevant Para of the Order of NCLAT dated 17.07.2025 is reproduced herein below:

> *"24. The facts mentioned herein above are not in dispute that there was a previous round of litigation between the parties till the Hon'ble Supreme Court when the Hon'ble Supreme Court noticed Section 25(3) of the Act and remanded the matter back to the Tribunal for considering the OTS between the parties dated 20.12.2018 as per which the Respondent was to pay the entire agreed amount before 31.12.2018 which had not been paid at all. In the past also, when the Respondent was given a recall notice qua Rs. 18,19,40,434/- on 07.10.2015 by the bank, it had issued 10 cheques of Rs. 19,34,00,000/-, however, all cheques were dishonoured and criminal proceedings had to be initiated by the Bank against the respondent which are still pending. We are not commenting much upon the conduct of the Respondent who had been playing hide and seek with the Appellant regarding payment of its dues but ultimately the bank believed the Respondent when it came with the proposal of the payment of OTS amount of Rs. 24.55 Cr. when the Bank was proceedings against it under the provision of the SARFAESI Act. The Bank showed its magnanimity and agreed to the OTS amount of Rs. 24.55 Cr. which was to be paid by the Respondent before 31.12.2018 but again there was a default.* ***Thus, there is a continuous default by the Respondent in paying the dues of the Bank.*** *However, this time when the OTS documents were executed, the Bank was little careful and therefore it provided clause* ***6(i) in the said documents in which it was categorically mentioned that "(1) the Appellant reserves the right to revoke the present approval and in such an event***

of revocation, the decision of the Appellant shall be final and binding on the Borrower and on the guarantors. In case of Appellant exercising the right of revocation, all the reliefs and concessions/sanctioned/granted shall be treated as withdrawn and all the terms and conditions of the original agreement(s)/loan and security documents shall come into force"

25. ***This condition in the OTS scheme is sufficient to knock down the case of the Respondent who has argued that a new contract came into being and in the absence of pleadings in Part IV, application under Section 7 was not maintainable.*** *The CD cannot escape from its lability by taking such hyper technical pleas. Suffice it to say that once the Hon'ble Supreme Court had found that provisions of Section 25(3) empowers the Appellant to continue with this application, filed under Section 7, when the amount of almost Rs. 40 Cr. was admitted at the time when the OTS was given. The Respondent was duty bound to pay the amount which was agreed to at Rs. 24.55 before 31.12.2018. The Appellant bank consciously made a provision in the OTS documents of reviving original loan agreement, therefore, there is no strength in the argument of the Respondent and the Tribunal has committed a patent error in dismissing the application filed under Section 7."*

15. In light of the averment made by the Financial Creditor and Corporate Debtor, and the observations made by the Hon'ble Supreme Court, this Adjudicating Authority needs to consider Section 25(3) of Indian Contract Act, 1872 in order to determine that whether the said debt falls within the period of limitation. Section 25 (3) of the Indian Contract Act, 1872 states that:

"*An agreement made without consideration is void, unless 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."*

16. In view of the foregoing, the principal issue that arises for consideration is as follows:

"Whether the present Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 is within limitation on the basis of the OTS dated

20.12.2018, being a fresh and enforceable contract within the meaning of Section 25(3) of the Indian Contract Act, 1872?"

17. This Adjudicating Authority shall now proceed to examine the aforesaid issue in light of the pleadings on record and the judgments of the Hon'ble Supreme Court and the Hon'ble NCLAT.

18. Admittedly, the account of the Corporate Debtor was classified as NPA in June, 2015 and a recall notice was issued on 07.10.2015. The OTS proposals dated 12.12.2018, 19.12.2018 and the final OTS dated 20.12.2018 were executed beyond a period of three years from the date of default. This offer was accepted, and terms of settlement were signed. The Section 25(3) of the Indian Contract Act recognises the validity of a written and signed promise to pay a debt which has become unenforceable solely by reason of limitation. Such a promise constitutes an enforceable contract independent of the original debt and furnishes a fresh cause of action.

19. In the present case, it is not disputed that the OTS dated 20.12.2018 was executed and accepted by the parties. Under the said OTS, the Corporate Debtor unequivocally acknowledged its liability and undertook to pay the settled amount of Rs. 24.55 Crores on or before 31.12.2018. The OTS, therefore, satisfies the requirements of Section 25(3) of the Indian Contract Act and constitutes a fresh and enforceable contract between the parties.

20. It is pertinent to note here again that a 'promise to pay', under Section 25(3) of the Contract Act, 1872, gives rise to a fresh contract, independent of the original debt, which may or may not have been acknowledged. In the instant case both parties are ad idem on the fact that the OTS proposal dated 20.12.2018 was accepted by the Applicant herein. Therefore, a fresh contract, independent of the original debt, was entered into by both the parties on acceptance of the OTS proposal by the Applicant Bank. The period of limitation for maintaining the present proceedings is therefore required to be reckoned with reference to the default under the OTS and not the original date of NPA.

21. As per the observations of the Hon'ble NCLAT, in its Order dated 17.07.2025 that '*Suffice it to say that once the Hon'ble Supreme Court had found that provisions of Section 25(3) empowers the Appellant to continue with this application, filed under Section 7, when the amount of almost Rs. 40 Cr. was admitted at the time when the OTS was given.*'

22. In view of the foregoing discussion, this Adjudicating Authority has come to the conclusion that the OTS dated 20.12.2018 constitutes a valid and enforceable contract within the meaning of Section 25(3) of the Indian Contract Act, 1872. The default committed by the Corporate Debtor thereunder furnished a fresh cause of action to the Financial Creditor. Consequently, the objection regarding limitation is unsustainable and stands rejected.

23. It is further noted that Clause 6(1) of the OTS provided that, upon default by the Corporate Debtor, all concessions granted under the settlement would stand withdrawn and the terms of the original loan and security documents would revive and come into full force and effect. The said clause has already been upheld by the Hon'ble NCLAT vide judgment dated 17.07.2025. Consequently, upon failure of the OTS, the Financial Creditor became entitled to enforce its rights under the original loan documents and claim the outstanding amount in accordance therewith.

24. The material placed on record establishes the existence of a financial debt and the occurrence of default on the part of the Corporate Debtor. This Adjudicating Authority is, therefore, satisfied that the requirements of Section 7 of the Insolvency and Bankruptcy Code, 2016 stand fulfilled.

25. Accordingly, **CP (IB) No. 672 of 2019** filed by the Financial Creditor under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Kew Precision Parts Private Limited, the Corporate Debtor, stands **admitted** and CIRP of Kew Precision Parts Private Limited is initiated.

26. That the petitioner in Part-III of the petition has proposed the name of Ashwani Kumar Gupta, as Interim Resolution Professional, having Registration Number

IBBI/IPA/001/IP-P00626/2017-18/11082 and E-mail ID akguptafca@gmail.com for the Corporate Debtor, which was filed in 2018. However the AFA of the proposed IRP has expired. Therefore, based on the list provided by the Insolvency and Bankruptcy Board of India (IBBI) vide its Letter dated 30.06.2026 for July 01, 2026 to December 31, 2026 and as per the serial no. in the list, Mr. Shashi Bhushan Prasad**,** Registration Number IBBI/IPA-002/IPN00676/2018-2019/12114, Email: shashibpd@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of Form AA, Disclosure and a valid Authorization for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The Interim Resolution Professional is directed to give his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration certificate as well as a valid AFA within 7 days of receipt of this order.

27. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
(c) Any action to foreclose, recover or enforce any security interestcreated by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar

grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

28. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

29. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

30. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Shashi Bhushan Prasad to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.

31. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

32. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

33. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

34. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

35. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **C.P. (IB) No. 672 (PB)/2019 stands admitted.**

Analysis in I.A. No. 515 of 2026

36. The Applicant, by way of the present Application under Rule 11 of the NCLT Rules, 2016, has sought dismissal of the Section 7 Application primarily on the ground that even if the OTS dated 20.12.2018 is treated as a fresh contract under Section

25(3) of the Indian Contract Act, 1872, the claim founded thereon is itself barred by limitation.

37. This Tribunal has already held that the OTS dated 20.12.2018 constitutes a valid and enforceable promise within the meaning of Section 25(3) of the Indian Contract Act, 1872 and that the default committed thereunder furnished a fresh cause of action to the Financial Creditor. The said finding has been arrived at in light of the observations of the Hon'ble Supreme Court and the subsequent judgment of the Hon'ble NCLAT dated 17.07.2025.

38. The Hon'ble Supreme Court had expressly granted liberty to the Financial Creditor to place additional documents on record and cure defects in the proceedings. Pursuant thereto, the pleadings and documents were brought on record and have been duly considered by the Appellate Forums as well as by this Adjudicating Authority. The additional affidavit did not give rise to a new proceeding but was filed in continuation of the already pending Section 7 Application.

39. Further, the effect of Clause 6(1) of the OTS dated 20.12.2018, providing for revival of the original loan and security documents upon failure of the settlement, has already been upheld by the Hon'ble NCLAT. The issues sought to be raised in the present Application substantially overlap with and are intrinsically connected to questions which already stand considered and determined in the course of the proceedings.

40. The contentions raised in I.A. No. 515 of 2026 filed under Rule 11 of the NCLT Rules, 2016 are devoid of merit. Therefore, the Application **I.A. No. 515 of 2026** is accordingly **dismissed**.

41. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT-V
(SPECIAL BENCH)

ITEM No. 210
IA-1476/2026 in IB-672/ND/2019

IN THE MATTER OF:

Kotak Mahindra Bank Ltd	....	Applicant
Vs.		
Kew Precision Parts Pvt. Ltd.	....	Respondent

Under Section 7 IBC

Order delivered on 15.07.2026

CORAM:
SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Applicant : Adv Prakhar Mittal in IA-1476/26
For the Respondent :

ORDER

IA-1476/2026:-

This is an application filed on behalf of Corporate Debtor under Section 60(5) read with Section 65 of the IBC alleging fraudulent and malicious intent of the Financial Creditor in filing Company Petition CP IB-672/ND/2019.

The Applicant/Corporate Debtor has made following prayers:-

a) Dismiss the present Company Petition bearing CP (IB) No. 672/ND/2019 as being fraudulent, malicious and an abuse of process, in terms of Section 65 of the Insolvency and Bankruptcy Code, 2016. AND/ OR;

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15.07.2026

b) Impose appropriate costs/penalty upon the Financial Creditor for initiating the present proceedings with mala fide intent and for purposes other than resolution of insolvency.

c) Pass any other order as this Hon'ble tribunal may deem fit.

Heard the Ld. Counsel on behalf of Applicant. The Section 7 petition was filed in the year 2019. This is the 3rd round of litigation in the present matter. Initials the Section 7 petition was admitted vide order dated 06.09.2019. However, the Hon'ble NCLAT vide order dated 08.01.2020, set aside the order of the admission. The matter travelled up to the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 05.08.2022 set aside the order of Hon'ble NCLAT and remanded back the petition to be reconsidered by this Adjudicating Authority and to take into account, the provisions of Section 25(3) of the Contract Act.

Thereafter, this Adjudicating Authority vide order dated 29.08.2023, dismissed the Section 7 petition. However, the Hon'ble NCLAT vide order dated 17.07.2025 set aside the order of this Adjudicating Authority dated 29.08.2023.

The civil appeal baring No-40748/2025 filed by the Corporate Debtor before the Hon'ble Supreme Court was also dismissed vide order dated 11.08.2025. The Applicant/Corporate Debtor also filed an IA-515/2026 seeking dismissal of the Section 7 petition on the ground of limitation. The present Section 7 Petition was argued on 25.11.2025 and the parties were directed to file written submissions on 06.04.2026. Order on the main petition as well as IA-515/2026 was reserved and in the meantime, this Section 65 application has been filed.

It is the case of the Applicant that the Corporate Debtor is defunct and non-operational entity, has no functional assets and has no going concerned value. The only remaining asset is an immovable industrial property which is presently under attachment and possession of the Sales Tax Department.

It is the case of the Applicant that this present proceeding amounts to a misuse of the process. The Applicant has further stated that the Financial Creditor has already exhausted remedies under the SARFAESI Act, 2002 and presently, the Financial Creditor is proceeding under the recovery of debts due to the Bank and Financial Institutions Act, 1995.

In Para-8 & 9 of this IA, the Applicant is stated as under:-

> *8. In the present case, the invocation of Section 7 is not for resolution but is a clear attempt to:*
>
> *- bypass failed SARFAESI measures;*
>
> *- circumvent ongoing execution proceedings before the DRT;*
>
> *- bring the attached property within the fold of CIRP; and*
>
> *- ultimately control its sale and distribution.*
>
> *9. It is further submitted that the present proceedings are a calculated attempt to defeat the statutory attachment and claims of the Sales Tax Department. By invoking CIRP, the Petitioner seeks to secure a dominant position in the Committee of Creditors and thereafter dictate the distribution of sale proceeds under the guise of "commercial wisdom", thereby causing grave prejudice to statutory authorities.*

In Para-12 of this IA, the Applicant has also taken a point of limitation. The Applicant has also made certain averment regarding the merits of the Section 7 petition.

We have considered the submissions made by the Ld. Counsel on behalf of the Applicant and also perused the content of the IA and the documents filed along with them.

The present application has been filed under Section 65 of the Code alleging fraudulent and malicious intent of the Financial Creditor by initiating the proceeding. The Section 65 of the Code reads as under:-

Section 65. Fraudulent or malicious initiation of proceedings.

> *(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*
>
> *(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*
>
> *(3) If any person initiates the pre-packaged insolvency resolution process--*
>
> > *(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or*
> >
> > *(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

As provided in Section 65(1) this provision is attracted where a person initiate the insolvency or liquidation proceeding, "fraudulently or with malicious intent". No material has been placed on record to substantiate that the Financial Creditor which is a Bank has filed this petition which malicious fraudulently intent. The term fraudulently and malicious intent have already been interpreted by the Hon'ble Supreme Court and Hon'ble NCLAT. Mere allegation in this application without any substance does not make filing of Section 7 with fraudulent or malicious intent.

Hon'ble NCLAT in the case of **Canara Bank vs Bhavesh Mansukhbai Rathod, Interim Resolution Professional & Ors.** Company Appeal (AT) (Insolvency) No. 556/2025 in their judgment dated 17.04.2026 has observed that proceeding under Section 65 application has to be based on specific pleadings and materials to show that initiation of CIRP was malicious and fraudulent.

The conduct of the Applicant has also been discussed above also indicate that the Section 7 petition was filed in 2019 and the present application has been filed in the year 2026. The ground taken by the Applicant on the issue of limitation is a ground or merit of the case which is being separately dealt with the order which is being passed under Section 7 of the IBC.

The contention of the Applicant that the Applicant has no asset except a land which is under the attachment of the Sales Tax Department has no merit to consider the present application.

As per the settled law by the Hon'ble Supreme Court on the case of innovative and subsequent judgment while considering the Section 7 petition, this Adjudicating Authority is required to see whether there is a financial debt, and whether there is a default and whether the petition is complete in all respect including the issue of limitation. No other point whether Corporate Debtor is a solvent company or whether the Corporate Debtor is having asset or not is not required to be considered by this Adjudicating Authority at this stage.

To the contention of the Applicant that initiation of Section 7 petition would defeat the claim of the Sales Tax Department has no merit.

Ld. Counsel in his arguments has relied upon the decision of the Hon'ble High Court of Delhi dated 08.08.2022 passed in Writ Petition Civil-118/2022. We have perused the judgment of the Hon'ble High Court. The order of the Hon'ble High Court is in respect of DRT proceeding under RDB

Act, 1993. Any finding on those issues has no impact on Section 7 petition and specially in respect of application filed under Section 65 of the Code.

In view of this, we do not find any merit in the present application and the same is dismissed. The filing of the present application under Section 65 of the Code, at this stage, amounts to misuse the provision of the Code, therefore, the present application is **dismissed** with a cost of Rs. 50,000/- to be paid in the Prime Minister's National Relief Fund within a period of 10 days.

Sd/-	**Sd/-**
(ANU JAGMOHAN SINGH)	**(MAHENDRA KHANDELWAL)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Khushboo
15.07.2026