



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 1233/KB/2018

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

UCO Bank

... Financial Creditor/ Applicant.

Versus

Xenitis Infotech Limited

... Corporate Debtor/ Respondent.

Date of Pronouncement: 26.06.2025.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
CMDE SIDDHARTH MISHRA, HON'BLE MEMBER(TECHNICAL)**

Appearance:

For the Financial Creditor:

Mr. Jishnu Chaudhury, Sr. Adv.

Mr. Orijit Chatterjee, Adv.

Ms. Swati Dalmia, Adv.

Mr. Shubham Raj, Adv.

Mr. S.Sen, Adv.

For Corporate Debtor:

Mr. Kamlesh Jha, Adv.

Mr. Sanat Kumar Das, Adv.

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ORDER

PER Bidisha Banerjee, Member (Judicial):

1. This Court is congregated through hybrid mode.
2. Heard the Learned Counsels.
3. This application is being heard on remand from the Hon'ble Apex Court.

4. *Factual Matrix:*

4.1 The petition UCO Bank/ Financial Creditor filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Code Rules, 2016 for initiation of corporate insolvency resolution process as against the corporate debtor/Xenitis Infotech Ltd. alleging that the Corporate Debtor (CD in short).

4.2 It is alleged that the CD had availed various credit facilities of diverse nature from the consortium bank to the tune of Rs. 428.52 Crores committed default in repayment of the entire outstanding amount due to the consortium bank and thereby the consortium bank issue demand notice recalling the debt and initiated proceedings under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the Debts Recovery Tribunal No. I, Kolkata as O.A. No. 204 of 2015.

4.3 The CP was dismissed by this Adjudicating Authority on 19th of March 2020 on the ground of bar of limitation excerpts from the said order is extracted verbatim hereunder for clarity.

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27.02.2013.

24. It is now well settled law that Article 137 of Limitation Act is applicable to the applications filed under the provisions of the Code. In **B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates, MANU/SC/1160/2018**, the Hon'ble Supreme Court has held that:

"27. The Limitation Act is applicable to applications filed Under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred Under Article 137 of the Limitation Act..."

25. Applying Article 137 of the Limitation Act, the right to file the application in the case in hand accrued from 06.03.2010. That being so, the 3 years period starting from 06.03.2010 would expires on 06.03.2013. However, the SL. No. 3rd to 5th documents referred to in the list of dates necessarily falls within the purview of section 18 of the Limitation Act. So according to me, the period of limitation would be extended till 27.02.2013. The document referred to as SL. No 5 and 6 being not a proof of acknowledgement as stated above and the letter dated 19.12.2016 being out dated not fall under section 18 of the Limitation Act. As per the last acknowledgement, the period of limitation would extend till 27.02.2016. So, filing of this application on 31.08.2018 is not in time and, therefore, I have no hesitation in holding that this application is not maintainable as barred by law of limitation.

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26. In view of the law discussed herein with respect to Section 18 of Limitation Act and law laid down in judgments referred herein-before, this application is found not maintainable. Accordingly, the present application of the Financial Creditor is liable to be dismissed.

27. In the result, the Application **CP (IB) No.1233/KB/2018** dismissed. No order as to cost.

28. Certified copy/Free Copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


**(Jinan K.R.)
Hon'ble Member (J)**

Signed on 19th March,2020

PJ

4.4 When the order dated 19.03.2020 was assailed before the Hon'ble NCLAT, the order passed by this Adjudicating Authority was set aside with the following observation:

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“5. We have heard Counsel for the parties and perused the record.

6... The issue is involved in this case travels into a narrow compass as to whether a promise made by the debtor to pay the time barred debt would fall within the purview of Section 25(3) of the Indian Contract Act, 1872 and as to whether the limitation is to start running from the date promise is made, for a period of three years as required under Article 137 of the Act?

7. Before this question is answered we would like to refer to the provisions of Section 25(3) which read as follows:-

25(3). Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law:-

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits."

8. In order to bring his case within the four corners of the Section 25(3) of the Indian Contract Act, he has read out Annexure A-5, i.e. letter dated 25.10.2019 written by the Corporate Debtor to the Appellant in which not only there is a reference to the payments having been made during the period starting from 31.08.2017 to 24.10.2019 but also a commitment (promise) has been made to continue to make payments towards the repayments of the bank debts as approved in the JLM.

9. In our considered opinion letter dated 25.10.2019 is a sufficient evidence of the promise made by the Respondent to the Appellant to make the payments which are due, approved in the JLM held on 19.05.2017 and thus, would fall within the purview of Section 25(3) of the Indian Contract Act, which provides a promise and that too in writing. Undoubtedly, if the period of limitation is to be counted from the date of the default (NPA) and the application under Section 7 having been filed, it would be barred by limitation if it is to be seen in terms of Section 18 of the Act. But keeping in view the fact that after the expiry of period of limitation of three years,

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prescribed under Article 137 of the Act, if the Respondent has made the promise (commitment) to make the payments of the unpaid time barred debt, approved in the JLM then it is a sufficient evidence to show the intention of the Respondent for creating a new agreement with the Appellant for the purpose of making payments of the unpaid debts.

10. Insofar as, the written arguments of the Respondent are concerned, suffice it to say that the whole emphasis in the written arguments is upon the expiry of limitation in view of the provision of Section 18 of the Act, on which no argument has been addressed by Sr. Counsel for the Appellant who has changed the face of the case altogether during the course of hearing.

11. In view of the aforesaid discussion, we find the appeal to be meritorious and thus, the same is hereby allowed and the impugned order is hereby set aside. The matter is remanded back to the Adjudicating Authority to consider the application filed under Section 7 of the Code, having been filed within the period of limitation and decide the same in accordance with law.

12. The parties are directed to appear before the Adjudicating Authority on 21st September, 2022.

The registry is directed to send a copy of this order to the concerned Adjudicating Authority for information”.

4.5 The said order of the NCLAT was taken to the Hon’ble Supreme Court when the Hon’ble Supreme Court noted as under:

“After hearing the learned counsel appearing for the parties, we find that the NCLAT has relied upon a letter dated 25th October, 2019 for coming to the conclusion that Section 25(3) of the Indian Contract Act, 1872 will apply and in view of the promise contained in the same letter, the petition under Section 7 of the IB Code was within the limitation.

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However, the admitted position is that the letter dated 25th October, 2019 was not produced by the respondent before the NCLT and it was produced for the first time in the appeal preferred by the respondent before the NCLAT. The finding on the issue of bar of limitation has been upset by the NCLAT mainly relying upon the letter dated 25th October, 2019.

As the said letter was not produced by the respondent before the NCLT, the present appellant could not deal with the said letter before the NCLT therefore, the direction of remand issued in paragraph 11 of the impugned judgment needs modification.

Accordingly, we modify the order of remand contained in paragraph 11 of the impugned judgment by clarifying that it will be open for the respondent to produce the letter dated 25th October, 2019 before the NCLT.

We also clarify that the **issue of limitation which was concluded by the NCLAT under the impugned judgment will remain open to be considered by the NCLT in accordance with law.**

Subject to the above modification, the appeal partly allowed by leaving open all questions for consideration of the NCLT.”

4.6 Thus on remand this Adjudicating Authority is supposed to deal with the merits as well as *the issue of limitation in the context of applicability of Section 25(3) of the Indian Contract Act in regard to Letter dated 25.10.19.*

5. We have heard the Learned Senior Counsel Jishnu Chaudhury for the Financial Creditor and Counsel Kamlesh Jha for the Corporate Debtor.

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6. In course of arguments Learned Senior Counsel Mr. Jishnu Chaudhury for Financial Creditor would submit that the letter dated 25.10.19 was brought on record by the Financial Creditor and despite opportunity the CD choose not to deal with it, thereby admitting its contents.

7. Learned Senior Counsel would place **Section 25(3) of Indian Contract Act 1872** which reads as under:

Section 25. *Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.*

An agreement made without consideration is void, unless

(1) it is expressed in writing and registered under the law for the time being in force for the registration of 1[documents], and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;

(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

Placing the above Learned Senior Counsel for FC would submit that the CD having agreed to repay a time barred debt is bound by the promise. He would place the Annexure A/3 which reads as under:

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Xenitis Infotech Ltd.

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Annexure A-7
25.10.2019 **139**

To
The Asst General Manager
UCO Bank
Flagship Corporate Branch
2, India Exchange Place
Kolkata - 700001

Sub: Repayment of Bank Debt as Agreed in the JLM dated 19.05.2017 – M/s Xenitis Infotech Ltd
in continuation with our letter dated 16.09.2019

Dear Sir,

With reference to the Joint Lenders Meeting held on 19.05.2017 wherein you have approved the repayment of bank debt of the company by way of 5% cutback from the sale proceeds. It may please be noted that the company has received an e-mail from the bank on 31.08.2017 communicating the bank account details with clear instructions to deposit money towards repayment of the bank debt in the said account. However, it may also be informed that the bank's communication dated 31.08.2017 was in response to the several letters issued by the company earlier dated 04.08.2017, 16.08.2017 and 29.08.2017 to the bank to provide the bank account details so that the company can repay its bank debt as approved in the Joint Lenders Meeting dated 19.05.2017 but in the communication sent by the bank dated 31.08.2017 it was erroneously written that the company had been informed earlier about the same, which is absolutely incorrect.

After receiving the communication from the bank dated 31.08.2017 with the bank account details for repayment of bank debt by way of cutback arrangement, the company immediately started repayment of bank debt from 31.08.2017 and has been paying continuously on regular basis. The following payments has already been made by the company in the account as communicated by the bank towards repayment of bank debt as approved in the Joint Lenders' Meeting held on 19.05.2017:

Date	Amount in Rs	Date	Amount in Rs
31.08.2017	10,000.00	11.09.2017	10,000.00
01.09.2017	10,000.00	12.09.2017	10,000.00
04.09.2017	10,000.00	13.09.2017	10,000.00
05.09.2017	10,000.00	14.09.2017	10,000.00
06.09.2017	10,000.00	15.09.2017	10,000.00
07.09.2017	10,000.00	16.09.2017	10,000.00
08.09.2017	10,000.00	18.09.2017	10,000.00

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Date	Amount in Rs	Date	Amount in Rs
19.09.2017	10,000.00	23.11.2017	20,000.00
20.09.2017	10,000.00	24.11.2017	20,000.00
21.09.2017	10,000.00	27.11.2017	20,000.00
22.09.2017	10,000.00	28.11.2017	20,000.00
25.09.2017	10,000.00	29.11.2017	20,000.00
26.09.2017	10,000.00	01.12.2017	25,000.00
04.10.2017	15,000.00	02.12.2017	25,000.00
06.10.2017	15,000.00	05.12.2017	25,000.00
07.10.2017	15,000.00	06.12.2017	25,000.00
09.10.2017	15,000.00	08.12.2017	25,000.00
10.10.2017	15,000.00	12.12.2017	25,000.00
11.10.2017	15,000.00	13.12.2017	25,000.00
12.10.2017	15,000.00	14.12.2017	25,000.00
13.10.2017	15,000.00	18.12.2017	25,000.00
16.10.2017	15,000.00	19.12.2017	25,000.00
17.10.2017	15,000.00	20.12.2017	25,000.00
18.10.2017	15,000.00	22.12.2017	25,000.00
20.10.2017	15,000.00	26.12.2017	25,000.00
21.10.2017	15,000.00	27.12.2017	25,000.00
23.10.2017	15,000.00	28.12.2017	25,000.00
24.10.2017	15,000.00	29.12.2017	25,000.00
25.10.2017	15,000.00	01.01.2018	30,000.00
26.10.2017	15,000.00	04.01.2018	30,000.00
27.10.2017	15,000.00	05.01.2018	30,000.00
30.10.2017	15,000.00	08.01.2018	30,000.00
31.10.2017	15,000.00	10.01.2018	30,000.00
01.11.2017	20,000.00	11.01.2018	30,000.00
02.11.2017	20,000.00	15.01.2018	30,000.00
03.11.2017	20,000.00	16.01.2018	30,000.00
06.11.2017	20,000.00	17.01.2018	30,000.00
07.11.2017	20,000.00	18.01.2018	30,000.00
08.11.2017	20,000.00	24.01.2018	30,000.00
09.11.2017	20,000.00	25.01.2018	30,000.00
10.11.2017	20,000.00	29.01.2018	30,000.00
13.11.2017	20,000.00	30.01.2018	30,000.00
14.11.2017	20,000.00	31.01.2018	30,000.00
15.11.2017	20,000.00	05.02.2018	35,000.00
16.11.2017	20,000.00	06.02.2018	35,000.00
17.11.2017	20,000.00	07.02.2018	35,000.00
20.11.2017	20,000.00	12.02.2018	35,000.00
22.11.2017	20,000.00	20.02.2018	35,000.00
22.02.2018	35,000.00	23.02.2018	35,000.00
27.02.2018	35,000.00	28.02.2018	35,000.00
02.03.2018	40,000.00	05.03.2018	40,000.00
10.04.2018	20,000.00	17.04.2018	20,000.00
11.04.2018	20,000.00	19.04.2018	20,000.00
12.04.2018	20,000.00	20.04.2018	20,000.00
16.04.2018	20,000.00	23.04.2018	20,000.00



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Date	Amount in Rs	Date	Amount in Rs
24.04.2018	20,000.00	25.04.2018	20,000.00
26.04.2018	20,000.00	27.04.2018	20,000.00
02.05.2018	20,000.00	03.05.2018	20,000.00
04.05.2018	20,000.00	05.05.2018	20,000.00
10.05.2018	20,000.00	11.05.2018	20,000.00
14.05.2018	20,000.00	15.05.2018	20,000.00
19.05.2018	20,000.00	22.05.2018	20,000.00
24.05.2018	20,000.00	25.05.2018	20,000.00
28.05.2018	20,000.00	11.06.2018	20,000.00
13.06.2018	20,000.00	14.06.2018	20,000.00
15.06.2018	20,000.00	18.06.2018	20,000.00
19.06.2018	20,000.00	21.06.2018	20,000.00
22.06.2018	20,000.00	25.06.2018	20,000.00
28.06.2018	20,000.00	03.07.2018	20,000.00
04.07.2018	20,000.00	05.07.2018	20,000.00
06.07.2018	20,000.00	07.07.2018	20,000.00
10.07.2018	20,000.00	11.07.2018	20,000.00
13.07.2018	20,000.00	16.07.2018	20,000.00
18.07.2018	20,000.00	23.07.2018	20,000.00
25.07.2018	20,000.00	30.07.2018	20,000.00
07.08.2018	20,000.00	26.10.2018	10,000.00
29.10.2018	10,000.00	31.10.2018	10,000.00
01.11.2018	10,000.00	02.11.2018	10,000.00
05.11.2018	10,000.00	08.11.2018	10,000.00
12.11.2018	10,000.00	13.11.2018	10,000.00
14.11.2018	10,000.00	15.11.2018	10,000.00
16.11.2018	10,000.00	17.11.2018	10,000.00
19.11.2018	10,000.00	21.11.2018	10,000.00
22.11.2018	10,000.00	26.11.2018	10,000.00
27.11.2018	10,000.00	28.11.2018	10,000.00
29.11.2018	10,000.00	30.11.2018	10,000.00
03.12.2018	10,000.00	04.12.2018	10,000.00
05.12.2018	10,000.00	06.12.2018	10,000.00
15.12.2018	10,000.00	17.12.2018	10,000.00
27.12.2018	10,000.00	30.01.2019	10,000.00



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Date	Amount in Rs	Date	Amount in Rs
01.02.2019	10,000.00	02.02.2019	10,000.00
04.02.2019	10,000.00	06.02.2019	10,000.00
07.02.2019	10,000.00	08.02.2019	10,000.00
11.02.2019	10,000.00	12.02.2019	10,000.00
13.02.2019	10,000.00	14.02.2019	10,000.00
15.02.2019	10,000.00	18.02.2019	10,000.00
19.02.2019	10,000.00	20.02.2019	10,000.00
21.02.2019	10,000.00	22.02.2019	10,000.00
25.02.2019	10,000.00	26.02.2019	10,000.00
27.02.2019	10,000.00	28.02.2019	10,000.00
01.03.2019	10,000.00	04.03.2019	10,000.00
05.03.2019	10,000.00	06.03.2019	10,000.00
07.03.2019	10,000.00	08.03.2019	10,000.00
11.03.2019	10,000.00	12.03.2019	10,000.00
13.03.2019	10,000.00	14.03.2019	10,000.00
15.03.2019	10,000.00	16.03.2019	10,000.00
18.03.2019	10,000.00	19.03.2019	10,000.00
20.03.2019	10,000.00	22.03.2019	10,000.00
25.03.2019	10,000.00	26.03.2019	10,000.00
27.03.2019	10,000.00	29.03.2019	10,000.00
30.03.2019	10,000.00	20.04.2019	10,000.00
22.04.2019	10,000.00	23.04.2019	10,000.00
24.04.2019	10,000.00	25.04.2019	10,000.00
26.04.2019	10,000.00	10.06.2019	10,000.00
10.06.2019	10,000.00	11.06.2019	10,000.00
12.06.2019	10,000.00	13.06.2019	10,000.00
14.06.2019	10,000.00	15.06.2019	10,000.00
17.06.2019	10,000.00	18.06.2019	10,000.00
19.06.2019	10,000.00	20.06.2019	10,000.00
21.06.2019	10,000.00	24.06.2019	10,000.00
25.06.2019	10,000.00	26.06.2019	10,000.00
27.06.2019	10,000.00	28.06.2019	10,000.00
29.06.2019	10,000.00	01.07.2019	10,000.00
02.07.2019	10,000.00	03.07.2019	10,000.00
05.07.2019	10,000.00	06.07.2019	10,000.00
08.07.2019	10,000.00	18.07.2019	10,000.00
19.07.2019	10,000.00	20.07.2019	10,000.00
16.08.2019	10,000.00	17.08.2019	10,000.00
19.08.2019	10,000.00	20.08.2019	10,000.00
21.08.2019	10,000.00	22.08.2019	10,000.00
27.08.2019	10,000.00	28.08.2019	10,000.00



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Date	Amount in Rs	Date	Amount in Rs
29.08.2019	10,000.00	30.08.2019	10,000.00
03.09.2019	10,000.00	04.09.2019	10,000.00
05.09.2019	10,000.00	06.09.2019	10,000.00
09.09.2019	10,000.00	11.09.2019	10,000.00
12.09.2019	10,000.00	16.09.2019	10,000.00
24.09.2019	10,000.00	25.09.2019	10,000.00
26.09.2019	10,000.00	27.09.2019	10,000.00
30.09.2019	10,000.00	01.10.2019	10,000.00
03.10.2019	10,000.00	04.10.2019	10,000.00
10.10.2019	10,000.00	11.10.2019	10,000.00
14.10.2019	10,000.00	15.10.2019	10,000.00
16.10.2019	10,000.00	17.10.2019	10,000.00
18.10.2019	10,000.00	19.10.2019	10,000.00
21.10.2019	10,000.00	23.10.2019	10,000.00
24.10.2019	10,000.00	25.10.2019	10,000.00

Thus It is evident from the above facts that the company has not defaulted, in any manner, on repayment of the bank debt as the company has been repaying the bank debt as approved by the consortium banks in the Joint Lenders' Meeting held on 19.05.2017 and immediately on receiving the bank account details. The company is further committed to continue to make payments towards repayment of bank debts approved in the Joint Lenders' Meeting held on 19.05.2017.

Thanking you and look forward to your continued support.

Sincerely




Santanu Ghosh

Chairman

CC: All Consortium Banks

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Placing the above Learned Senior Counsel would argue that the CD having agreed to repay a time barred debt, is estopped to claim otherwise.

7. Submissions advanced by the Learned Counsel appearing on behalf of the Respondent:

Per Contra, Learned Senior Counsel for the respondents would submit the following:

7.1 That a sum of Rs. 89,89,19,366.26/- is not due and payable by the Corporate Debtor to the bank as alleged or at all.

7.2 Annexure – B, B-1 and B-2 have been manufactured by the bank for maintaining the application which in the normal course of events, would not have been maintainable.

7.3 The alleged Power of Attorney executed by the bank in favour of Shri Bijitendra Mondal is an unstamped document dated 29th January 2007, though the deponent has claimed that the said document has been executed on 12th February 2007.

7.4 The list of dates and internal documents of the banks furnished by Financial Creditor are Internal documents of the bank. Some documents are that of the corporate debtor which are admitted. Only one document in the said list being a letter dated August 27, 2017 at page 18 has never been served upon the Corporate Debtor.

7.5 It would appear from the said list of dates that the account was declared as an NPA on 6th of March 2010. Restructuring agreement does not save limitation for the financial creditor.

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7.6 The Corporate debtor admits that there has been no payment made by the Corporate Debtor after the date of declaration of NPA of the account on 6th of March 2010 within three years thereafter. The Corporate debtor began repayment only in August 2017 when the Corporate Debtor was requested by the bank to make payment of the outstanding dues.

8. Rejoinder

In the Rejoinder to the Reply, the Financial Creditor has specially stated that the present application has been filed pursuant to and in compliance of a Circular dated 12th February 2018 issued by the Reserve Bank of India.

9. Sur Rejoinder

The Corporate debtor would submit that Circular dated 12.02.2018 of the RBI has been set aside by the Hon'ble Supreme Court in the matter of Dharani Sugars and Chemicals limited vs. Union of India and others.

10. We have heard the Learned Counsels for parties and perused records and noted the rival contentions.

Analysis and Findings:

11. Issues

The issues that fell for determination in this CP are the following:

- 11.1** Whether the original petition under section 7 of IBC was filed within 3 years of date of default (Section 137 of Limitation Act) or 3 years from the part payment/acknowledgment (Section 18 of the Limitation Act) and was maintainable?

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- 11.2** If not, whether CD has promised to repay the FC the debt it owes to the FC and whether such promise after expiry of the original period of limitation under section 137 of limitation an extended period of limitation under section 18 of the Act, constitutes a promise to pay a time barred under section 25(3) of the Indian Contract Act?
- 11.3** If the answer is in the affirmative, whether such promise to pay a time barred debt which give a fresh cause of action, would cure the defect of filing of a time barred petition under section 7 of the IBC?

12. Applicable Legal provisions:

12.1 Section 18 of the Limitation Act. The provision envisages the following:

18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

A bare perusal of the provision, would exemplify that the acknowledging of liability has to be in writing, made before the

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original period of limitation expires, when a fresh period of limitation would begin, and suit can be filed.

12.2 Section 25(3) of the Indian Contract Act. Juxtaposed to the above section 25(3) of the Indian Contract Act stipulates as under:

Section 25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

An agreement made without consideration is void, unless

(1) it is expressed in writing and registered under the law for the time being in force for the registration of [documents], and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

The provision thus allows a fresh cause of action or fresh lease of life in case there is a written promise to pay a “time-barred debt”.

12.3 We have noted the words that Section 25(3) of the Contract Act employs. It allows enforcement of “a written promise to

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pay a time barred debt” even after the original limitation has expired. The new promise would then establish a fresh period limitation which is three years from the date of promise within which a creditor can file a suit, provided it is filed within 3 years of such promise.

12.4 Such “written promise to pay a time barred debt” which give rise to a fresh cause of action, entitles a creditor to sue by way of a freshly instituted suit. Section 25(3) of the Indian Contract Act does not extend limitation in a proceeding that has been already initiated and was barred under laws of limitation as on the date of institution. Section 25(3) supra does not cure the defect of limitation in a time barred petition.

12.5 While an acknowledgment under Section 18 of the Limitation Act must occur within the limitation period, a promise to pay under Section 25(3) of the Indian Contract Act does not require acknowledgment within the limitation period as its obligation and eventually give rise to a fresh cause of action.

12.6 Implication of provisions at noted in the judgments in ***Manju Agarwal v. Prayag Polytech Pvt Ltd*** reported in 2022 SCC OnLine Del 3596, where Hon’ble Delhi HC while explaining the true import of Section 25(3) of the Indian Contract Act 1872, has noted as under:

“20. A reading of the aforesaid paragraphs would show that a written promise to pay a time barred debt is a valid contract in law and such a promise can form an independent basis for a suit. Noting the distinction between the acknowledgement under Section 18 of the

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Limitation Act, 1963 and a promise under Section 25(3) of the Contract Act, the Supreme Court observed that acknowledgement under Section 18 of the Limitation Act has to be within the period of limitation and need not be accompanied by a promise to pay. On the other hand, Section 25(3) of the Indian Contract Act is attracted only when there is an express promise to pay a time-barred debt and the said promise should be clear and unconditional and can be inferred on scrutinising the documents”.

(Emphasis added)

12.7 Further, for an agreement to be enforceable under section 25(3) of Indian Contract Act it must refer to a debt that the creditor would enforce but for the limitation period and there must be a distinct promise to pay, which can be express or implied but should be clear and unequivocal. In **M/S.Saravana Global Holdings Ltd vs N.Jayamurugan** reported in (2023) ibclaw.in 623 HC it has been held that:

“20. The **remedy provided in law** to the creditors for recovery of their monies **comes with an expiration date**. When the time provided under the law of limitation for recovering such debt lapses, the debt becomes barred due to passage of excess time. Such debts being barred by the statute of limitation, their liability still subsists even though the remedy perishes. This principle is based on ethical principle that a debt does not extinguish and facts of a case may stop operation of the clock of limitation fixed by law or entirely revive a debt barred by the law of limitation, as set out in Section 18 of the Limitation Act, 1963 ("Limitation Act") and Section 25 (3) of the <https://www.mhc.tn.gov.in/judis> Indian Contract Act ("Contract Act"), respectively.

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Consideration is an essential requisite of a contract. However, Section 25 of the Contract Act

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provides certain exceptions when agreements without any consideration are deemed to be valid and binding. One such exception is Section 25 (3) of the Indian Contract Act, 1872, wherein it is considered a valid contract when a person to be charged or his agent, makes a promise to the creditor, in writing, to pay the debt partly or wholly, of which the creditor might have enforced payment, but the debt has become barred due to the law of limitation.

xxx xxx xxx

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits."

23. In order to satisfy the requirements of Section 25 (3) of the Indian Contract Act, the following essentials must be present:

- a) There must be a promise to pay a debt;
- b) The creditor might have enforced payment but the debt is barred by limitation;
- c) The promise must be made in writing, and;
- d) It should be signed by the person to be charged therewith or his agent.

24. In the decision relied upon by the learned counsel for the petitioner in the case of N.Ethirajulu Naidu Vs. K.R.Chinnikrishnan Chettiar reported in AIR 1975 Mad 333, it has been held by the Division Bench of this Court that an agreement to be valid under Section 25 (3) of the Indian Contract Act requires an express promise made in writing and signed by the person to be charged therewith. As per the said decision, nothing short of an express promise will provide a fresh period of limitation and that an implied promise is not sufficient.

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12.8 In the case of ***Tradewel Spares (I) Pvt. Ltd vs M/S Scl Infratech Limited*** reported in MANU/DE/3712/2018 it has been held that:

“8. Counsel for the appellant/plaintiff has rightly argued that the Agreement dated 24.11.2012 is not an acknowledgment for increasing limitation but the Agreement is an agreement enforceable by law because by this Agreement dated 24.11.2012/Ex. PW1/54, the respondent/defendant agreed to pay the time barred debt as provided in Section 25(3) of the Contract Act, 1872.

xxx

xxx

xxx

10. In my opinion, the Agreement dated 24.11.2012/Ex. PW1/54 squarely falls within Section 25(3) of the Contract Act and this agreement can be said to be an agreement to pay the time barred debt by the respondent/defendant, and therefore, the same is legally enforceable as per Section 25(3) of the Contract Act. The subject suit therefore could have been filed within three years from 24.11.2012, and since the subject suit has been filed on 13.03.2015 i.e. before expiry of three years from 24.11.2012, therefore, the subject suit filed was very much within limitation”.

13 Sequence of events

A sequence of events would be relevant to discern whether the present CP was maintainable at its inception and whether a “time barred debt” has been given a fresh lease of life:

List of Dates and Events

Sl.No	Date	Particulars/Event
1.	24/07/2003	Date of Initial Sanction

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2.	05/07/2008	Date of Final Sanction
3.	30/11/2009	Date of First Default in Servicing of Interest
4.	06/03/2010	Date on which the Account was Declared as NPA
5.	29/05/2012	Execution of Master Restructuring Agreement (MRA)
6.	26/12/2012	Execution of Amended Master Restructuring Agreement
7.	03/01/2013	Renewed the Pledge Agreement entered between CD, Pledger, and FC re: MRA & its Amendment
8.	27/02/2013	Letter from Corporate Debtor to Financial Creditor for Compliance of CDR Terms
9.	31/12/2013	Letter from Financial creditor to corporate debtor.
10.	07/09/2012	Trust and Retention Account Agreement (Annexure - S)
11.	27.08.2014	The FC had issued a demand notice.
12.	19.12.2016	CD admitting and acknowledging the jural relationship between the parties and also promised to repay bank dues.
13.	11.11.2016	DRT allowed the FC took physical possession of the secured assets in the terms section 14 of the SARFAESI Act.

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14.	21/02/2017	Order of Debt Recovery Tribunal (Annexure U)
15.	23/08/2018	Certificate on Credit Facilities and Outstanding Balances by FC (Annexure V)
16.	28/08/2018	Demand Draft of ₹25,000/- filed with Ministry of Corporate Affairs (Annexure - DD)
17.	31.08.2018	Application under section 7 of the IBC.
18.	25/10/2019	Letter submitted (referred by Supreme Court for reconsideration by NCLT)
19.	07/01/2025	Supreme Court Judgment in Civil Appeal No. 9325/2022 remanding matter to NCLT
20.	06/02/2025	NCLT hearing post-Supreme Court remand; order passed taking SC directions on record
21.	06/03/2025	NCLT order allowing supplementary affidavit; response time of 7 days granted
22.	24/03/2025	Next date of hearing before NCLT



14 Discussions on Issues

A. Whether the CP was maintainable at its inception-

- 14.1** It is evident that the CD's account was declared as an NPA on 06.03.2010. There was no payment from the CD nor acknowledgment of its debt in three years hence.
- 14.2** However, on 29.05.2012, a Master Restructuring Agreement (MRA) was executed, which was subsequently amended on 26.12.2012 and thereafter, on 03.01.2013. The Pledge Agreement was renewed between the Corporate Debtor, the Pledger, and the Financial Creditor in reference to the (Master Restructuring Agreement) MRA and its amendment, followed by a letter dated 27.02.2013 from the Corporate Debtor to the Financial Creditor regarding compliance with the terms of the Corporate Debt Restructuring (CDR) package.
- 14.3** It is evident from Pages 19-20 of Supplementary Affidavit that before the petition was filed in 2018, the last acknowledgement of debt by CD was of 27.02.13, which would have extended the limitation till 27.02.16. Thus, the CP filed on 31.08.18 was clearly hit by bar of limitation that Article 137 of the Limitation Act imposes as there was no acknowledgment of debt/liability between 27.02.13 to 27.02.16 to further extend the period of limitation beyond 27.02.16 under Article 18 of the Limitation Act. Thus, the CP when it was filed on 31.08.18 was itself not maintainable. The First issue is thus answered.
- 14.4** On 19.12.2016, the Corporate Debtor admitted and acknowledged the jural relationship between the parties and also undertook to repay the outstanding dues of the Bank, which constitutes an

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acknowledgment beyond three years from the last acknowledgment dated 27.02.2013 hence it does not save limitation.

B. Whether a promise was made to pay a Time barred Debt

14.5 Coming to letter dated 25.10.19 we find that it talks of “*Repayment of Bank Debt as Agreed in the JLM dated 19.05.2017- M/s. Xenitis Infotech Ltd in continuation with our letter dated 16.09.2019*”.

Thus, it is evident that the letter dated 25.10.19, allegedly written on behalf of CD, refers to a previous letter dated 16.09.19 which is however nowhere to be found.

14.6 Further the letter at Page 28 of Supplementary Affidavit states that “*Thus it is evident from the above facts that the company has not defaulted , in any manner, on repayment of the bank debt as the company has been repaying the bank debt as approved by the consortium banks in the Joint Lender’s Meeting held on 19.05.2017 and immediately on receiving the bank account details. The company is further committed to continue to make payments towards repayment of bank as approved in the joint Lender’s meeting held on 19.05.2017.*”

It is evident that as on the date of filing of the CP 1233/KB/2018 the CD was continuing to make repayments on a regular basis, pursuant to the terms of the repayment agreed to at the joint lenders meeting held on 19.05.17.No default in making such payment is noted. The CP when filed on 31.08.18 was already hit by the bar of limitation.

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- 14.7** Further, the letter dated 25.10.19 even if issued, is a post filing one and cannot under any stretch of imagination cure the defect of limitation that existed as on the date of filing on 31.08.2018. Thus Section 25(3) of Indian Contract Act will have no role to play here.
- 14.8** Had it been a case where such purported acknowledgement and promise to pay a time barred debt was made before filing of the CP the matter would have been otherwise as a fresh cause of action would have been available as on the date of filing the CP, given the fact that the debt had become a time barred one long before filing.
- 14.9** Further it discernible that the letter dated 25.10.19 which the creditor attempts to seek advantage of claiming that it as a promise to pay a time barred debt is not a “promise to pay a time barred debt”. In fact, it refuses to acknowledge any default and says that the CD is repaying in terms as agreed upon in the JLM meeting held on 19.05.17.

C. Whether a promise to pay a time barred debt would cure the debt in a time barred petition.

- 14.10** In **S. Suresh Kr.v. Prakash Chand Jain** Civil Suit No. 63 of 2021 and Application No. 621 of 2021 it has been held that:

“24. In the instant case, the plaintiff claims, the notice of the defendant’s lawyer is an acknowledgement. The said notice is dated 20/03/2015. The said submission is legally acceptable. The said notice is prior to the alleged last transaction. Therefore, obviously the said notice is within the period of 3 years limitation

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prescribed under the law. Section 18 of the Limitation Act alone gets attracted and not Section 25(3) of the Contract Act.

*25. An acknowledgement of debt given in writing signed by the debtor or his Agent, need not necessarily be with a promise to repay. Mere acknowledgement of debt will give a fresh period of limitation under Section 18 of the Limitation Act, if the acknowledgement is made within the period of limitation. **If the acknowledgement of debt is with a promise to pay, such acknowledgement will be a fresh contract even if the acknowledgement is made beyond the period of limitation.***

It further clarifies as under:

26. It is to pertinent to emphatically clarify that, in case of acknowledgement of a debt with a promise to pay the debt on a future date, fresh period of limitation shall run from the date of acknowledgement and not from the future date the debtor promise to pay the debt, unless such extension is mutually agreed and form part of a written document, which will impede the plaintiff from filing suit prior to the expiry of the said period”.

In the present matter the written promise to pay may be of a “time barred debt” but the payment schedule over a period of time is not yet expired. As such no default in repayment as per fresh proposed terms could be deciphered.

14.11 Even if the promise to pay is clear and unconditional, it may not satisfy the requirement of Section 25 (3) of the Indian Contract Act, potentially leading to dismissal of suit as being time barred as laid down by the Hon’ble Apex Court in **Indian Bank Vs. ABS Marine Products Pvt. Ltd. (2017)** ibclaw.in 545 SC.

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Conclusion

15. Thus, on both the counts absence of “a promise to pay a time barred debt” as well as “filling a time barred petition” defective at its very inception, the CP fails.

16. In the aforesaid backdrop the ***Company Petition (IB) No. 1233/KB/2018*** is **dismissed**, with liberty to file a fresh one in accordance with law. No costs.

17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Cmde Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the **26th day of June 2025.**

V. Tiwari (LRA)