IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

CP (IB) No. 1117/(MB)/2025

Company Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016

Omkara Assets Reconstruction Private Limited,
registered office at No. 9, M.P. Nagar, First Street,
Kongu Nagar Extn., Tirupur - 641 607
Also, having its corporate office at
Kohinoor Square, 47th Floor, N.C.
Kelkar Marg, R.G. Gadkari Chowk,
Dadar (W), Mumbai - 400 028 **... Petitioner/Financial Creditor**

VERSUS

Mrs. Ritu Jankiprasad Shah
201 - Lila Villa, Indulal Bhavan,
Margh, Wadala, Mumbai 400 031 **... Respondent/Personal Guarantor**

Order delivered on ***13.07.2026***

CORAM:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearance:

For the Petitioner/ Financial Creditor	**:**	Mr. Prateek Seksaria, Sr. Advocate a/w Mr. Rohit Gupta and Ms. Mitali Bhatt, Advocates
For the Respondent/ Personal Guarantor	**:**	Mr. Chirag Mody, Advocate a/w Ms. Pooja Batra and Ms. Sandhya Yadav, Advocates
For the Resolution Professional	**:**	Ms. Mily Ghoshal, Advocate a/w Ms. Sophia Hussain, Advocate

ORDER

Per : CORAM

1) The present Company Petition is filed u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016/Code") r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **Omkara Assets Reconstruction Private Limited** ("hereinafter referred to as Petitioner/Financial Creditor") for initiating Insolvency Resolution Process against **Ritu Jankiprasad Shah** ("hereinafter referred to as Personal

Guarantor/Respondent") of the Corporate Debtor/ **M/s Maharashtra Steel Pvt. Ltd.** for having committed default in repayment of the Loan Amount Guaranteed by the Personal Guarantor even after invocation of Guarantee and Demand.

2) The brief facts leading to the filing of the present Company Petition are as follows:

i. State Bank of India (SBI) through its Sterling Branch, sanctioned and disbursed various Credit Facilities aggregating to Rs. 45 Crores in favour of the Borrower *vide* Sanctioned Letter dt. 19.11.2009. Having executed various documents by the Corporate Debtor to secure the above said Credit facilities, the Personal Guarantee was also executed by Janki Prasad Shah and Ritu Janki Shah and the Corporate Guarantee by Maharashtra Steel Rolling Mills Pvt. Ltd. and Maharashtra Steels Investments Pvt. Ltd.

ii. The Corporate Debtor failed to make payments towards various Financial Facilities availed by them and as a result account of the Corporate Debtor was classified as the Non-

Performing-Asset (NPA) on 31.01.2014. SBI initiated action against the provision of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and issued Notice under Section 13(2) of the said Act for the default Amount of Rs. 41,43,72,431/- on 02.07.2014.

iii. SBI took physical possession of the factory property at Wada on 22.11.2014 Corporate Debtor. Subsequently, vide Assignment Agreement dated 28.11.2019, · the account has been assigned to ASREC (India) Limited by SBI and further ASREC (India) Limited assigned the debt to Omkara Assets Reconstruction Pvt Ltd as on 17.03.2022. Vide SARFAESI Notice dt. 02.07.2014, to the Corporate Debtor, the Personal Guarantee vide the same Letter was also invoked and the demand was made to the Personal Guarantor to make the repayment of the Loan. In spite of that, no repayment was made.

iv. It is the case of the Applicant that the Corporate Debtor after availing the Loan has duly acknowledged the Debt from time to time and the debt was also acknowledged in the Financial Statement for the Year 2016-17. It is contended that no further Financial Statements were prepared and uploaded by the Corporate Debtor or else debt would have been further acknowledged by the Corporate Debtor. Meanwhile, the Company Petition No. 1187 of 2015 was filed before the Hon'ble High Court of Bombay and the Hon'ble High Court of Bombay admitted the said Petition and appointed Official Liquidator on 03.05.2018.

v. Due to pandemic Covid -19, the Limitation Period from 15.03.202 to 28.02.2022 was excluded and 90 days thereafter was available to file the Petition, till 31.05.2022. Thereafter, the Personal Guarantor Ms. Ritu Shah, addressed various Letters acknowledging debt due and payable to the Petitioner on 27.05.2024, 08.07.2024 and 16.01.2025. The Borrower through ex-Directors and Guarantor have acknowledged the Debt. The last Letter from the Personal Guarantor to the Corporate Debtor was received on 16.01.2025, though there is a break in chain of continuous acknowledgement of debt by the Corporate Debtor/Personal Guarantor. It is contended that the acknowledgement of liability even after expiry of original period of Limitation constitutes a fresh promise and gives rise to renewed cause of action, accordingly, any acknowledgement of debt made after the expiry of prescribed three years of Limitation rendering the claim maintainable from the date of such acknowledgement. Reliance is placed on the judgment in the case of *Kotak Mahindra Bank Limited….vs….Kew Precision Parts Private Limited and Others (2022) 9 Supreme Court Cases 364,* in Civil Appeal No. 2176 of 2020.

vi. It is submitted that the Hon'ble Supreme Court contemplates the Criteria required to be fulfilled i.e. a promise to pay whole or part of the Debtor in writing and signed by the respective party and such debt is of nature which Creditor will enforce but for the reasons of Limitation is unable to enforce the Payment. Thus, the promise to pay essentially must be treated as a contract and does not require an explicit acceptance of the same. Section 25(3) of the Contract attracted in the present case extending the Limitation.

vii. It is therefore submitted that the Petition is within Limitation and there is debt and default established by the Petitioner and therefore Personal Insolvency Resolution Process against the Personal Guarantor is required to be initiated.

3) The Respondent Personal Guarantor, pursuant to the Report under Section 99 of the Insolvency and Bankruptcy Code, 2016 filed by the Resolution Professional, appeared and filed their Reply and contended that the Petition is barred by Limitation and without going into the merits of the Case, the Petition is required to be dismissed. The account of the Corporate Debtor, **M/s**

Maharashtra Steel Pvt. Ltd., was classified as Non-Performing-Asset (NPA) on 31.01.2014, thereafter, the Personal Guarantee was invoked *vide* Notice dt. 02.07.2014, consequently, the cause of action for filing the Petition against the Respondent herein crystalised at the latest on 02.07.2014. Accordingly, the Limitation for initiating proceedings against Respondent expires on 02.07.2017. Reliance of Financial Statements of the Corporate Debtor for the Financial Year 2016-17 is an attempt to contend that the debt stood acknowledged and consequently, the Limitation period stood extended.

4) Even if it is assumed to constitute the valid acknowledgement of debt by the Personal Guarantor, Petition would still remain barred by Limitation. The fresh period of Limitation would be commenced from the date of such acknowledgement i.e. 31.03.2017 and the period of 3 years would expire on 01.04.2020. Even if the exclusion of Limitation during Covid-19 Pandemic is taken and also 90 days period from 01.03.2022 is taken into consideration, the period of Limitation would still expire on

29.05.2022. The present Petition is filed admittedly on 15.10.2025, i.e. more than 3 years after the outer most period of Limitation available to the Petitioner, which is expired. It is therefore contended that the Petition is ex-facie barred by Limitation.

Submissions of Respondent/Personal Guarantor

5) It is submitted that the Petition is ex-facie barred by Limitation even after excluding Covid-19 Pandemic period and period of further 90 days as per the Judgment of the Hon'ble Supreme Court in the case of *IL&FS Financial Services Ltd…vs…Adhunik Meghalaya Steels Pvt. Ltd., (2025) SCC OnLine SC 1567* is considered.

6) The reliance on Directors' Report 03.09.2018 is wholly misconceived. Firstly, the document is neither signed nor stamped and its authenticity is therefore seriously disputed. Secondly, the said document does not pertain either to the Corporate Debtor or to the Respondent herein. It is a document of an altogether different entity and cannot constitute an acknowledgement on behalf of either the Corporate Debtor or the

Respondent. Thirdly, the report does not contain any acknowledgement whatsoever of the alleged outstanding amounts claimed by the Petitioner. The Independent Auditors' Reports for the Financial Years 2017-18 to 2020-21 are not the Reports of the Corporate Debtor or of the Respondent. They pertain to Maharashtra Steels Investment Pvt. Ltd., which is a separate Legal entity. The acknowledgement capable of extending Limitation must be clear, unambiguous and made by the person against whom the right is sought to be enforced. Documents of a third-party entity cannot operate as an acknowledgment on behalf of the Respondent.

7) The reliance on One Time Settlement (OTS) Proposals dt. 27.05.2024, 08.07.2024 and 16.01.2025 cannot revive a debt that had already become time-barred. It is a settled principle under Section 18 of the Limitation Act that an acknowledgement extends Limitation only if it is made before expiry of the prescribed period of Limitation. Once Limitation has expired, a subsequent acknowledgement cannot revive a barred claim. Reliance is placed on the Judgment of the Hon'ble Supreme Court in the case of *Laxmi Pat Surana…vs…Union Bank of India (2021) 8 SCC 481* and also in the case of *Small Industries Development Bank of India…vs…Sh. Krishnakant Bagree, (2025) ibclaw.in 2314 NCLT,* wherein it was held that an acknowledgement made after expiry of Limitation does not revive a time-barred debt.

8) It is further submitted that OTS proposal relied upon by the Petitioner were merely proposals made in the course of settlement discussions and never culminated into a concluded contract between the Parties. The said OTS proposals were in the nature of conditional offers made by the Respondent with a view to explore an amicable resolution of disputes. The proposals were at all times subject to acceptance by the Petitioner. The Petitioner has neither pleaded nor produced any document evidencing its unequivocal acceptance of the said OTS proposals. In the absence of acceptance, the essential requirements for formation of a binding and enforceable contract are not satisfied. In other words, the said OTS proposals cannot be construed as forming any contract between the Parties which can be regarded as enforceable in law. Hence, the reliance of Section 25(3) of the Contract Act is also misconceived and erroneous. The OTS proposal was conditional upon it being accepted by the Applicant in full and final settlement, and there is no express promise to make any payment in any of the OTS Proposals without the acceptance of OTS proposals by the Applicant. Therefore, the Section 25(3) of the Contract Act is not applicable in the present case.

9) The only question falls for consideration in the present case is whether the Petition is filed within the Limitation and whether the OTS proposal by the Respondent amounts to acknowledgment of time barred debt and whether the Petition as filed on the basis of Notice of invocation dt. 02.07.2014 would survive, in view of Section 25(3) of the Contract Act.

Findings:

10) It is trite Law that provisions of Limitation Act are applicable to the proceedings under Section 238A of the

Insolvency and Bankruptcy Code, 2016. Therefore, the Petition is required to be filed within a period of Three Years from the date of accrual of cause of action as contemplated under Section 137 of the Limitation Act. In the present case, undisputedly, the invocation of the Personal Guarantee was *vide* Notice dt. 02.07.2014, therefore, the cause of Action would first accrued on the expiry of the period stipulated under the Notice dt. 02.07.2014 (i.e. on 31.08.2014).

11) Therefore, the period of Limitation would expire on 31.08.2017. Admittedly, the present Petition is filed on 15.10.2025, therefore, the Petition would be barred by Limitation. However, it is the case of the Petitioner that there were acknowledgements of debt from time to time from the Corporate Debtor. The Corporate Debtor in its Financial Statements for the Year 2016-17 has acknowledged the Debt; therefore, the period of Limitation would stand extended till 31.03.2020. Now, since this period has fallen under the Covid-19 Pandemic period which taken from 15.03.2020 and ended on 28.02.2022, the Limitation after

15.03.2020 stands suspended and it would starts running after 28.02.2022 as held by the Hon'ble Supreme Court in the case of *IL&FS Financial Services Ltd…vs…Adhunik Meghalaya Steels Pvt. Ltd., (2025) SCC OnLine SC 1567,* further, period of 90 days would be available. Even excluding that period of 90 days, the Petition ought to have been filed on or before 29.05.2022 and the Petition is filed on 15.10.2025. Therefore, even on basis of acknowledgements of debt by the Corporate Debtor in its Financial Statement for the year 2016-17, the Petition would still fail on count of Limitation.

12) The submission of the Ld. Counsel for the Petitioner that there would have been further acknowledgment, had the Corporate Debtor filed its Financial Statements for the subsequent periods after 2017 does not holds any merit as they are admittedly not filed, which does not amount to acknowledgment of any debt thereafter.

13) As regards reliance on audited Financial Statements of Maharashtra Steels Investment Private Limited, the Corporate

Guarantor to the facilities guaranteed by the Respondent, is concerned, it is noted that the said Financial Statements has neither acknowledged any liability towards the Petitioner Creditor in any of the year(s) in the said Financial Statements, nor any liability towards Petitioner Creditor is disclosed even as Contingent Liability therein. Accordingly, it can not be said that the debt, in question, has been acknowledged by such corporate guarantor binding the respondent herein in terms of clause 14 of the Guarantee Agreement, which provides that "*14. If the Guarantors be more than one Individual or entity, each one or any of them is hereby authorised by the others of them to admit and acknowledge their liability to the Bank by any payment Into the account or by way of writing or in any manner otherwise and any such acknowledgement of liability or part payment by any or more of them shall in addition to this / their personal capacity be deemed to have been made on behalf of each of them for the purposes of Sections 18 and 19 of the Limitation Act, 1963.*" Accordingly, we do not find merit in the reliance of these financial statements of corporate guarantor namely Maharashtra Steels Investment Private Limited. Nonetheless, the submission of the Ld. Counsel for the Respondent that the Financial Statements are prepared by some Third-Party and Independent Auditor and therefore it has no evidentiary value so far as the Corporate Debtor is concerned also does not have any substantial force and merits in view of clause 14 of Guarantee Agreement binding each of guarantor by the acknowledgement of other guarantor.

14) Only question that remains now is whether Section 25(3) of the Contract Act comes to the rescue of the Petitioner. It is the case of the Petitioner that the Personal Guarantor *vide* its Letter dt. 27.05.2024, which was received by the Petitioner on 16.01.2025, submitted an One Time Settlement proposal (OTS) offering to pay amounts due from the Principal borrower and such letter(s) are signed by the Respondent as "ex-director and guarantor" of Principal Borrower. Accordingly, it is submitted by the Petitioner that though there is break in chain of continuous acknowledgement of Debt by the Personal Guarantor/Corporate

Debtor, the acknowledgement of liability even after expiry of Original Period of Limitation constitutes fresh promise and give rise to renewed cause of action. As against this contention, it is submitted by the Respondent that the OTS proposal was just a proposal and it was not accepted and therefore, it cannot be considered to be a valid contract between the Parties and it cannot give any extension of Limitation.

15) It is further submitted that it is settled principal under Section 18 of the Limitation Act that an acknowledgement extends limitation only if it is made before expiry of the prescribed period of Limitation. Once Limitation has expired, a subsequent acknowledgement cannot revive a barred claim. Reliance is placed on the Judgment of the Hon'ble Supreme Court in the case of *Laxmi Pat Surana…vs…Union Bank of India (2021) 8 SCC 481* and also in the case of *Small Industries Development Bank of India…vs…Sh. Krishnakant Bagree, (2025) ibclaw.in 2314 NCLT.* It is therefore, submitted that the Petition is thus, barred by Limitation and the acknowledgment after the expiry of period of limitation would not revive the cause of action.

16) The Ld. Counsel for the Petitioner has placed reliance on the judgment in the case of *Kotak Mahindra Bank Limited….vs….Kew Precision Parts Private Limited and Others (2022) 9 Supreme Court Cases 364*, in Civil Appeal No. 2176 of 2020, wherein the Hon'ble Supreme Court held as under:

> *"31. Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in Bombay Dyeing and Manufacturing Company Limited vs. State of Bombay1.*
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> *32. Section 25(3) applies only where the debt is one which would be enforceable against the defendants, but for the law of limitation. Where a debt is not binding on the defendant for other reasons, and consequentially not enforceable against him, there is no question of applicability of Section 25(3).*

33. There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional".

17) The above Authority clearly lays down the difference between the provisions of Section 18 of the Limitation Act and Section 25(3) of the Contract Act. It is a trite Law that any acknowledgement of debt within the period of Limitation would attract Section 18 of the Limitation Act and the Limitation would stand extended for the further period as contemplated under the

Law. However, Section 25 deals with the acknowledgement of time barred debt.

18) The Hon'ble Supreme Court in the above said Authorities has held that there is distinction between acknowledgement of Section 18 of the Limitation Act and a promise within the meaning of Section 25 of the Contract Act. Both Promise and acknowledgement in writing signed by a party or its agent authorised in their behalf, have the effect of creating fresh starting of Limitation. The difference is that the acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by a promise to pay, and if an acknowledgement shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional. In the present case, the acknowledgement at exhibit "H" would show that there is a proposal sent by the Personal Guarantor for One-Time-Settlement of the debt, wherein willingness to Pay an amount towards the full and final settlement of the outstanding debt was made. Therefore, there is a promise to pay which is unequivocally made in writing with the signature of the Personal Guarantor; and this Letter is not disputed. However, such *promise has to be clear and unconditional.*

19) Therefore, what is required under Section 25(3) is only a promise to pay time barred debt in clear terms. Acceptance of the promise is not contemplated and therefore, acknowledgement of time barred debt would attract Section 25(3) of the Contract Act and it would give a fresh cause of action for initiating the recovery.

20) It is noted that the said letter(s) contemplates that, *On payment of upfront amount, we shall be granted approval for sale of Wada land - 6, acres, and any offer received from party will be accepted to conclude the sale"; "payment arranged from our sources and sale proceeds of the secured assets appropriated to you should be considered* *towards the payment of the settlement amount*"; and "*on the acceptance of the above proposal, all the recovery proceedings/actions taken by you shall be kept in abeyance*". It is evident from these stipulations that the promise to pay was conditional and not having been accepted by the Petitioner with these conditions cannot constitute a clear and unconditional promise to pay. Hence, the said letters do not give rise fresh cause of action in terms of Section 25(3) of the Contract Act. Needless to say, as against the provisions of Section 18 of the Limitation Act, the acknowledgement of time barred debt would gives fresh cause of action for which the Petitioner would have a fresh remedy available.

21) Therefore, since, the invocation of Guarantee and the demand thereunder was made sometimes in the Year, 2014 and admittedly, the Petition was not filed within the period of 3 years. The Original Cause of Action would stand extinguished after the period of Limitation. Hence, the present Petition filed on the Original cause of action on the contention that the acknowledgement of time barred debt subsequently by the

Personal Guarantor would continue the same cause of action does not hold merits, therefore, the Petition would not survive.

22) In view of the above, we are of the Considered view that the present Petition as filed is barred by Limitation.

23) Accordingly, the Company Petition bearing CP (IB) No. 1117 of 2025, is disposed of as dismissed.

Sd/- **Sd/-**

PRABHAT KUMAR
MEMBER (TECHNICAL)

SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)

Vedant Kedare
(Stenographer)