IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

C.P. (I.B)/66(KB)2025

Date of Order: 30.10.2026

Section 7 of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

UCO Bank, a Banking Company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and having its head office at 10, B.T.M. Sarani, Kolkata - 700 001 and inter alia from its Asset Management Branch at 70A, Block - D, New Alipore, Kolkata - 700 053.

...Financial Creditor

VERSUS

M/s. Untag Fashions Pvt. Ltd., a company within the meaning of Companies Act, 1956 having its registered office at 113, Park Street, North Block, 10th Floor, Kolkata 700 016.

...Corporate Debtor

KOLKATA

C.P. (I.B)/66(KB)2025

CORAM:

Shri. Labh Singh, Hon'ble Member (Judicial)
Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

Counsel appeared through physically or virtually

For the applicant	Mr. Rahul Auddy, Adv. Mr. Aditya Gooptu, Adv.
For the respondent	Mr. Rachit lakhmani, Adv. Mr. Emon Bhattacharya, Adv. Ms. Pooja Sah, Adv. Mr. A. R Chowdhury, Adv.

O R D E R

(Heard Through Hybrid Mode)

LABH SINGH, MEMBER (JUDICIAL)

1. The present company petition has been filed by the UCO Bank(hereinafter to be referred as "Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as "the IBC Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency

Resolution Process (CIRP) in respect of respondent Company M/s. Untag Fashions Pvt. Ltd., (hereinafter to be referred to as "the corporate debtor").

2. It is appropriate to mention that the applicant UCO Bank, is a Banking Company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Mr. Kamod Kumar Pathak, duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant for initiation of CIRP process against the respondent under the IBC Code. A copy of the Power of Attorney dated 05.09.2022 has been placed on record.

3. The Corporate Debtor, against whom initiation of CIRP has been prayed for, was incorporated on 27.11.1947. Since the registered office of the respondent corporate debtor is situated at Kolkata, West Bengal and hence, this Tribunal having territorial jurisdiction over the State of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of CIRP process in respect of respondent/Corporate Debtor under sub-section (1) of Section 60 of the Code.

4. Briefly stated the facts of the case are that the Corporate Debtor availed various credit facilities from the Financial Creditor prior to June, 2017 with an existing total exposure

of Rs. 328 Lakh. Upon the Corporate Debtor's proposal for enhancement of the credit limits, the Financial Creditor, after considering the request, sanctioned and approved credit limits vide Letter of Sanction bearing No. KMR/ADV-SAN/11/2017-2018 dated 05.06.2017, comprising a Cash Credit limit of Rs. 225 Lakh and a Term Loan limit of Rs. 275 Lakh, aggregating to Rs. 500 Lakh, subject to compliance of the terms and conditions thereon.

4.1 To avail the renewed and enhanced credit facilities, the Corporate Debtor accepted the terms and conditions of the Letter of Sanction dated 05.06.2017 and executed necessary loan as well as security documents in favour of the Financial Creditor, including an on Demand Promissory Note for Rs. 2.25 Crore, Letter of Waiver, Letter of Continuity, and Composite Deed of Hypothecation for the Cash Credit Account all dated 07.06.2017, as well as an Agreement relating to the Term Loan dated 08.06.2017.

4.2 The Corporate Guarantor, in consideration of granting and restructuring the credit facilities at the request of Gopesh Majumder and Smt. Sharmistha Majumder, Directors/Personal Guarantors, along with M/s. Cozum Analystics Ltd., executed a Letter of Guarantee dated 07.06.2017 in favour of the Financial Creditor, guaranteeing repayment of all

indebtedness of the Corporate Debtor in respect of the overall credit facilities to the tune of Rs. 500 Lakh along with interest, costs, charges, and expenses.

4.3 To collaterally secure the credit facilities, a first charge by way of hypothecation was created over the primary security comprising fixed assets of the company created out of bank finance, stocks of raw materials, work in process, finished goods, consumable stores and spares, receivables, and other chargeable current assets, both present and future. Additionally, an equitable mortgage was created on 07.06.2017 in respect of: (i) piece or parcel of self-contained residential entire 1st floor of the G + 3 storied building, admeasuring a super built-up area of about 1350 Sq. Ft., with car parking space No. 1 measuring about 120 Sq. Ft., situated at Municipal Premises No. 1/1B/1, Dharmatala Road, P.S. - Kasba, Kolkata - 700 039, Dag No. 1869 under Khatian No. 1275, Mouza - Kasba, J.L. No. 13, Touzi Nos. 340 and 342, Ward No. 67 of the Kolkata Municipal Corporation being No. I-05430 for the year 2010, registered at the office of Additional Registrar of Assurance-I, Kolkata standing in the name of Gopesh Majumder, Director/Personal Guarantor; and (ii) office space admeasuring a super built-up area of about 2725 Sq. Ft. on

the 10th floor of the building known as Poddar Point at premises No. No. 113, Park Street, P.S. - Park Street, Kolkata - 700 016, Ward No. 61, Borough VII, registered at the office of Additional Registrar of Assurance-II, Kolkata standing in the name of M/s. Cozum Analytics Ltd., Corporate Guarantor.

4.4 Even after the renewal and enhancement of the credit facilities, the Corporate Debtor defaulted in operating the accounts in conformity with the terms and conditions stipulated in the Sanction Letter dated 05.06.2017 and related banking documents. The first default in servicing of interest occurred on 31.08.2018, and subsequently, the accounts were classified as Non-Performing Assets (NPA) in the books of the Financial Creditor with effect from 30.11.2018. As on the date of NPA, the outstanding dues (without interest, penal interest, etc.) stood at Rs. 5,17,37,846.76, inclusive of Rs. 2,54,68,037.74 under the Cash Credit facility and Rs. 2,62,69,809.02 under the Term Loan facility.

4.5 The Financial Creditor issued demand notice dated 13.12.2018 under Section 13(2) of the SARFAESI Act, 2002 upon the Corporate Debtor and the guarantors, claiming an aggregate sum of Rs. 5,17,37,846.76. However, despite the receipt of

demand notice, the Corporate Debtor failed and neglected to repay the outstanding dues.

4.6 Thereafter, the Financial Creditor on 13.01.2020 filed an application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 against the Corporate Debtor and the Directors/Guarantors before the Ld. Debts Recovery Tribunal – 1, being O.A. No. 10 of 2020 for recovery of its dues, which is still pending adjudication.

4.7 It is submitted that from time to time between December 2019 and November 2020, the Corporate Debtor submitted several proposals for restructuring the accounts. Subsequently, the Corporate Debtor approached the Financial Creditor with proposals for One Time Settlement (OTS), which were considered by the Financial Creditor and replied to vide letter dated 18.09.2024, stating that tdhe offer of OTS was acceptable within 27.09.2024. The Corporate Debtor, thereafter vide letter dated 27.09.2024, submitted an offer for Rs. 1.50 Crore as OTS amount against the outstanding sum of Rs. 4,69,67,786.54 (inclusive of interest charged up to 30.11.2018).

4.8 The Financial Creditor, in exercise of powers conferred under Section 13 read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, sold one of the secured

assets, being the self-contained residential entire 1st floor unit admeasuring 1350 Sq. Ft. along with car parking space, in favour of Ayush Tax & Finance Consultants Pvt. Ltd. vide Sale Certificate dated 17.08.2022.

4.9 As on 30.08.2024, the total amount claimed in default by the Financial Creditor, including uncharged interest and penal interest excluding interest from 01.09.2024, stands at Rs. 10,42,11,737.54, comprising Rs. 4,86,78,600.52 under the Cash Credit account and Rs. 5,55,33,137.02 under the Term Loan account, with total days of default calculated as 2254 days as on 1st February, 2025 from the date of NPA.

4.10 Therefore, as per part-IV of the application, it is claimed that as on 30.08.2024, a sum of Rs. 10,42,11,737.54/- is due and payable by the respondent company.

4.11 Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Pratap Mukherjee, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P02515/2021-2022/13851 resident of 27A, Bhattacharjee Para Road, P.O. Thakurpukur, Kolkata – 700 063 with email – id : pratapmukherjee62@gmail.com. Mr. Pratap Mukherjee has agreed to accept the appointment as the

interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**page 16** of the application). There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Pratap Mukherjee as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the Code has been satisfied.

5. The applicant, in order to prove its case, has relied upon the following documents filed with present company petition:

(i) Master Data of the Corporate Debtor (**Annexure "B"**).

(ii) Letter of Sanction dated 05.06.2017 (**Annexure "D"**).

(iii) Demand Promissory Note for Rs. 2.25 Crore, Composite Deed of Hypothecation, Agreement relating to Term Loan, (**Annexure "E"**).

(iv) Demand Notice under Section 13(2) of the SARFAESI Act, 2002 dated 13.12.2018 (**Annexure "F"**).

(v) letters dated 18.09.2024 and 27.09.2024 containing OTS proposals (**Annexure "G"**).

(vi) Statements of Account maintained by the Financial Creditor, (**Annexure "H"**).

(vii) Schedule containing details of securities (**Annexure "I"**).

(viii) CIBIL Report (**Annexure "J"**).

6. The applicant has also placed on record a copy of record of default (Form-D) filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor. The said record proves that the claim of applicant is authenticated

7. Respondent appeared in pursuance to the notice issued by this Tribunal and filed its reply stating therein that Working Capital LC limit of Rs. 328.00 Lacs was sanctioned but the same was never availed or utilized by the Corporate Debtor due to the non-disbursement of the said amount by the Financial Creditor despite repeated requests, as a result of which the Corporate Debtor faced huge losses in business.

7.1 The Corporate Debtor, vide letter dated 22.09.2016, informed the Applicant about the delayed disbursement of working capital, pointing out that despite sanction on 01.07.2016, creation of charge on 01.08.2016, and deposit of loan processing charges on 25.07.2016, no disbursement was made

till September 2016, placing the company's vendors on the verge of blacklisting.

7.2 The Financial Creditor, after long persuasions, allowed the Corporate Debtor to utilize only Rs. 128.00 Lacs, which was insufficient for business activities whereupon the Corporate Debtor applied on 08.12.2016 for enhancing the credit limit to Rs. 731.00 Lacs. Due to delay in sanction and year-end processes, the Corporate Debtor was advised to accept a stopgap amount of Rs. 500.00 Lacs vide letter dated 02.06.2017 following which the Financial Creditor issued an enhanced sanction letter dated 05.06.2017.

7.3 Thereafter, pursuant to a clarification letter Ref. No. ZO/KOL/ADV/2016-17/355 dated 20.02.2017 issued by the Financial Creditor, the Corporate Debtor approached the vide letters dated 26.04.2017, 01.06.2017, and 02.06.2017 for enhancement of credit facilities to Rs. 731.00 Lacs and mortgaged another property situated at 1/1B/1, Dharmatala Road, P.S.- Kasba, Kolkata - 700 039 based on assurances, even though the entire previous loan was already fully secured.

7.4 The entire credit facilities were never disbursed in its favor, and due to delayed disbursement, the Corporate Debtor was unable to enjoy the moratorium period stipulated in the

sanction letter, having to start repayment within two days of disbursement while running its business on its own funds. Consequently, despite paying substantial amounts into the account, the deficiency in disbursal prevented the Corporate Debtor from completing its project, leading to a financial crisis and making the Corporate Debtor a forced defaulter unable to pay equated monthly installments.

7.5 The Financial Creditor failed to fulfil its lender's liability, made the loan account a stressed asset, and declared the account as NPA on 30.11.2018 without co-operating for revival. The loan account had become stressed around 30.04.2018 as repayment became irregular. In such a scenario, the Applicant Bank was bound to implement the mandatory Master Direction, "Reserve Bank of India [Lending to Micro, Small and Medium Enterprises (MSME) Sector] Directions, 2016" issued vide Notification No. RBI/FIDD/2016-17/37 Master Direction FIDD.MSME & NFS.3/06.02.31/2016-17 dated 21st July, 2016, as well as the "Framework for Revival and Rehabilitation of MSMEs" notified vide Notification dated 29th May, 2015 under Section 9 of the MSMED Act, 2006, and RBI Notification dated 17th March, 2016. These notifications are mandatory in nature and should have been implemented in the case of the Corporate Debtor

company between the periods of 30.04.2018 to 30.08.2018. Instead of complying with these mandatory guidelines, the Applicant Bank issued a loan recall notice on August 02, 2018.

7.6 The Bank practiced fraud by failing to disburse about 30% of the project value amounting to Rs. 2.31 Crore more or less, thereby disrupting the project despite the Corporate Debtor investing an equal sum of money.

7.7 Despite various representations and a reply submitted to demand notice dated 13.12.2018 issued under Section 13(2) and a representation dated 12.02.2019 under Section 13(3A) of the SARFAESI Act, 2002, the applicant Bank issued a cryptic reply on 20.02.2019 refusing further assistance. While negotiating for restructuring on one hand, the Applicant Bank secretly proceeded under the SARFAESI Act and obtained an order dated November 22, 2019 from Learned District Magistrate South 24 Parganas for taking physical possession of a residential asset with police help.

7.8 The Financial Creditor issued possession notice dated 20.06.2019 under Section 13(4) of the SARFAESI Act 2002 published possession notices on 22.06.2019 in daily English newspaper “Kolkata Chronicle” and vernacular newspaper “ Yuga Sankha”, and took possession of the residential flat

measuring 1350 sq. ft. along with car parking space No. 1 measuring 120 sq. ft. at 1st Floor in "OM Apartment", 1/1B/1, Dharmtala Road, Kolkata - 700 039 at Mouza- Kasba, P.S. - Kasba, Dist- South 24 Parganas, J.L. No. 13, Touzi No. 340 & 342, Khatian No- 1275, Dag No. - 1869, Being No. I05430, ward no. 67, standing in the name of Mr. Gopesh Majumder. Aggrieved, the Corporate Debtor filed S.A. No. 41 of 2021 under Section 17 of the SARFAESI Act before Learned DRT-III Kolkata.

7.9 During the pendency of the Securitisation Application, the Financial Creditor accepted a written application dated 18.11.2020 submitted to its Kolkata Main Branch, opened a Current Account on 03.12.2020 at its Kolkata Main Branch, issued a cheque book following a request dated 22.02.2020, and induced the Corporate Debtor to invest Rs. 16,73,226/- in infrastructure and deposit Rs. 2.00 Lakh on 15.12.2020, giving rise to a concluded contract. The Financial Creditor, however, unilaterally and illegally debited the entire Rs. 2.00 Lakh against the loan account without notice, compelling the Corporate Debtor to file amendment application I.A. No. 1375 of 2021. DRT-III vide judgment dated April 21, 2022 dismissed S.A. No. 41 of 2020. The Corporate Debtor preferred Diary Appeal No. 162 of 2022

before Hon'ble DRAT Kolkata under Section 18 along with a pre-deposit waiver application; however, during its pendency, the Financial Creditor hastily auctioned the residential property to render the appeal infructuous, leading to dismissal of the appeal on 15.11.2022. Meanwhile, the Bank also initiated Section 19 recovery proceedings in O.A. No. 10 of 2020 before DRT-I, which remains pending.

7.10 Following the dismissal of the appeal and during the pendency of O.A. No. 10 of 2020 , the Bank issued an OTS proposal letter dated 18.09.2024, whereupon the Corporate Debtor submitted a written proposal. However, the Bank utilized settlement discussions merely to revive limitation and subsequently rejected the proposal, initiating insolvency proceedings against personal guarantors under Section 95 of the Code in C.P. (I.B)/361(KB)2024 and C.P. (I.B)/362(KB)2024.

7.11 Aggrieved by the denial of mandatory restructuring, the Corporate Debtor filed Writ Petition WPA No. 4457 of 2025 under Article 226 before the Hon'ble High Court at Calcutta. Hon'ble High Court vide order dated February 28, 2025 granted liberty to the Corporate Debtor to approach the Stressed MSME Committee for relief. Although this order was communicated vide letter dated March 07, 2025, the Financial

Creditor vide letter dated March 11, 2025 imposed impermissible conditions, and failed to reply to a clarification letter dated April 09, 2025.

7.12 While restructuring talks were ongoing, the Financial Creditor on May 13, 2025 served an photocopy order dated 05.04.2025 passed by Learned Chief Judicial Magistrate, Calcutta in Case No. MISCS 197/2023 under Section 14 of the SARFAESI Act to take physical possession of Office Space situated at Poddar Point, north block, top floor, 113, Park Street, Kolkata - 700 016 owned by Cozum Analytics Limited.

7.13 In response, the Corporate Debtor filed S.A. 175/2025 before DRT-I Kolkata, which passed an interim order dated May 15, 2025 restraining the Financial Creditor from taking steps regarding the Office Space, which order continues to subsist. Furthermore, the Corporate Debtor preferred an appeal against the Single Bench order before the Hon’ble Division Bench of the High Court in MAT No. 987 of 2025 along with two applications, which remains pending adjudication.

7.14 The Corporate Debtor submitted that its financial difficulties were attributable exclusively to the breach and default committed by the Bank in disbursing only Rs. 5 Crores against the sanctioned sum of Rs. 7.31 Crores, with

disbursal delayed across 9 months. Had the Corporate Debtor known the Bank would fail its lending obligations, it would not have entered into the loan agreement. Since the Bank disrupted the business, it could not have declared the account as NPA, nor could recovery or insolvency proceedings be initiated at its instance. The declaration of NPA and subsequent coercive actions were mala fide, in violation of law, and intended to cover up the Bank's own defaults.

7.15 The personal and corporate guarantees executed were subject to the Bank's strict compliance with sanction terms and RBI MSME guidelines; as the Bank breached these obligations, the guarantees stand vitiated and are no longer subsisting. The allegations of default, and the account statements being unilaterally prepared by the Bank.

7.16 The settlement offers and OTS proposals submitted by the Corporate Debtor were strictly "without prejudice" and cannot be construed as an admission of debt or liability.

7.17 The instant Company Petition has not been filed in good faith but as an undue recovery tool and weapon of coercion, contrary to the spirit of the Insolvency and Bankruptcy Code, 2016. Moreover, the Company Petition is hopelessly barred by the laws of limitation, lacks merit, and deserves to be dismissed with exemplary costs.

8. The Financial Creditor filed its rejoinder to reply filed by the Corporate Debtor denying the allegations made and affirming averment made in the Company Petition and stated that the Corporate Debtor in its Reply Affidavit has not raised a single dispute or incorrectness regarding the amount due and in default. The Corporate Debtor has categorically admitted the debt due in its Balance Sheets up to 31st March 2018 which are public documents, noting that the Corporate Debtor failed to file any balance sheets with the ROC or hold any Annual General Meeting after 2018.

8.1 The settlement and restructuring proposals submitted by the Corporate Debtor in 2019 and 2020 are the Corporate Debtor's own documents which clearly establish the debt due. The deponent affirming the Reply Affidavit on behalf of the Corporate Debtor is not duly authorized as no board resolution was annexed, casting serious doubt on how a defunct, irregular, and closed company could hold board meetings.

8.2 The allegations raised by the Corporate Debtor regarding loan disbursements in 2016 and 2017 are bogus, frivolous, out of context, and have no connection whatsoever with the admitted default in repayment occurring thereafter. Loan enhancement is not a right of the borrower, and denying any

default in disbursement on the part of the Bank, even presuming but not admitting a one month delay in disbursement in 2016, there is no reason as to why defaults would occur in 2018 when the account turned NPA.

8.3 The Corporate Debtor made clear admissions in paragraphs 15, 17, and 20 of its Reply Affidavit stating that it was not in a position to repay the loan and make EMI payments, thereby admitting default. The Corporate Debtor's admission of approaching the Bank for restructuring and experiencing a genuine financial and commercial crisis proves the existence of debt and default, as the question of restructuring does not arise in the absence of debt and default, making the resolution of the Corporate Debtor an absolute necessity.

8.4 There was no requirement to implement the RBI MSME circulars referred to by the Corporate Debtor, and the non-implementation thereof involves no irregularity or fraud as alleged in paragraph 29 of the Reply Affidavit. Regarding the actions taken under the SARFAESI Act, 2002, all steps were executed in perfect accordance with the law and without any illegality.

8.5 The Corporate Debtor and its management misused the disbursed funds, turning the entity loss-making, and defaulted in repayment in 2018. Under a Section 7 petition

under the Insolvency and Bankruptcy Code, the Tribunal is only required to examine whether there is a debt due and whether there is a default. This Adjudicating Authority is not the forum to agitate grievances against SARFAESI actions taken in 2018/2019, particularly when the Corporate Debtor failed to obtain any protection in the Section 17 petition filed by it before the DRT.

8.6 The Corporate Debtor's repeated approaches to the Bank for settlement of the loan account, as referenced in paragraphs 54 to 57 of the Reply Affidavit, constitute a further admission of default, since settlement or restructuring is sought only in cases of prior default and irregularity, not in regular accounts. The various court litigations cited by the Corporate Debtor have no bearing on the present petition, nor is there any order of stay or embargo against initiating CIRP against the Corporate Debtor, which is a chronic loan defaulter. The Corporate Debtor admitted the disbursement of Rs. 5 crores by the Financial Creditor, but audaciously failed to repay and siphoned out public money exceeding Rs. 10 crores.

8.7 The loan account was declared NPA in strict compliance with RBI guidelines, and loan disbursements were carried out in phases depending upon the fulfillment of conditions by the

borrower. The Financial Creditor denied flouting the loan agreement, breaching contractual obligations, or causing business losses to the Corporate Debtor.

8.8 The Financial Creditor categorically denied that the Company Petition was filed in bad faith, as a recovery tool, out of coercion, vengeance, or personal grudge, or that it is barred by the laws of limitation. Therefore, it has been prayed to allow the present company petition and admit the Corporate Debtor in the CIRP process.

9. Based on pleading of the parties and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for consideration and decision thereon:

i) Whether the present Company Petition is filled within the period of limitation;

ii) Whether the Applicant Financial Creditor has established the existence of a “financial debt” and the occurrence of “default”;

iii) Whether the pendency of parallel recovery/SARFAESI proceedings operate as a bar to the admission of the present Section 7 petition.

10. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by

the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Issue No.(i)

11. The period of limitation for initiating CIRP is three years from the date of default. However, Section 18 of the Limitation Act provides that a written acknowledgment of liability signed by the debtor prior to the expiration of the limitation period gives rise to a fresh period of limitation computed from the date of such acknowledgment. It is pertinent to refer the provision of Section 18 of the Limitation Act 1963 which read as under:

> *"18. (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."

12. It is well-settled proposition of law, as laid down by the Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. [(2021) ibclaw.in 55 SC] and Dena Bank v. C. Shivakumar Reddy and Anr., [(2021) ibclaw.in 69 SC]***, that entries in audited financial statements/balance sheets, written restructuring proposals, and OTS offers operate as unequivocal acknowledgments of debt under Section 18, thereby continuously extending the limitation period. The relevant observation of the Hon'ble Supreme Court in case of ***Dena Bank v. C. Shivakumar Reddy and Anr(Supra)*** is excerpted below:

"118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset

Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. [(2021) ibclaw.in 55 SC] (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 18 ["Bengal Silk Mills"] and in Re Pandem Tea Co. Ltd., 19 the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana 20 and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.

119. In Bengal Silk Mills Co. (supra) the Calcutta High Court held:-

"9. …I am unable to agree with the reasoning of the Nagpur decision that a balance-sheet does not save limitation because it is drawn up under a duty to set out the claims made on the company and not with the intention of acknowledging liability. The balance-sheet contains admissions of liability; the agent of the company who makes and signs it intends to make those admissions. The admissions do not

cease to be acknowledgements of liability merely on the ground that they were made in discharge of a statutory duty. I notice that in the Nagpur case the balance-sheet had been signed by a director and had not been passed either by the Board of Directors or by the company at its annual general meeting and it seems that the actual decision may be distinguished on the ground that the balance-sheet was not made or signed by a duly authorized agent of the company."

11. To come under section 19 an acknowledgement of a debt need not be made to the creditor nor need it amount to a promise to pay the debt. In England it has been held that a balance-sheet of a company stating the amount of its indebtedness to the creditor is a sufficient acknowledgement in respect of a specialty debt under section 5 of the Civil Procedure Act, 1833 (3 and 4 Will – 4c. 42), see Re : Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd., [1928] Ch. 836……."

13. In the instant case, the record demonstrates an unbroken chain of debt acknowledgments establishing the petition's timeliness, beginning with the Corporate Debtor's admission

of its outstanding financial liability in its audited Balance Sheet for the financial year ending 31.03.2018 followed by multiple written debt restructuring proposals admitting both the underlying liability and its inability to pay on 26.08.2019, 23.12.2019, and 18.11.2020.

14. Furthermore, the entire period from 15.03.2020 to 28.02.2022 stands excluded from the computation of limitation pursuant to the binding directions of the Hon'ble Supreme Court in ***IN RE: Cognizance for Extension of Limitation, [(2022) ibclaw.in 02 SC***]. The relevant portion of the judgment is excerpted below:

> *"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*
>
> ***I.*** *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any*

general or special laws in respect of all judicial or quasi-judicial proceedings.

II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

IV. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting*

proceedings, outer limits (within which the court or Tribunal can condone delay) and termination of proceedings."

15. Each acknowledgment was executed prior to the expiration of the prevailing limitation window. The Corporate Debtor issued an OTS offer of Rs. 1.5 Crores on 27.09.2024 in response to the Financial Creditor's communication dated 18.09.2024, thereby unequivocally re-acknowledging the total outstanding liability and default. Excluding the COVID-19 extension period, the written acknowledgment dated 27.09.2024 extended the period of limitation by three years up to 27.09.2027. Consequently, the instant Company Petition filed on 04.02.2025 is well within the period of limitation.

Issue No.(ii) & (iii)

16. The proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 is summary in nature and strictly circumscribed to the determination of two foundational elements: whether a financial debt exists, and whether a default exceeding the prescribed statutory threshold has occurred.

17. As settled by the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank and Anr., (2017) [ibclaw.in 02 SC]***, the moment the Adjudicating Authority is satisfied that

a default has occurred and that the application is complete in form, the petition must be admitted. The relevant para no. 28 of the judgment is excerpted below:

> *"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under*

Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating

authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has

merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

18. An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1 Crore. In view of Section 4 of the Code, the moment default is of Rs. 1 Crore or more, the application to trigger CIRP under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

19. The plea raised by the Corporate Debtor that the petition cannot be entertained during the pendency of recovery proceedings before the Debt Recovery Tribunal or ongoing

measures under the SARFAESI Act, 2002 is legally unsustainable. On this aspect, Hon'ble NCLAT in case of ***Sh. Y.Y. Butchi Babu v. State Bank of India and Anr., (2026) ibclaw.in 21 NCLAT held that***:

> *"53. The Appellants also placed reliance on the pendency of Section 19 proceedings before the DRT to argue that the Section 95 proceedings should be deferred. In this regard, reference may be made to decision of this Tribunal in State Bank of India v. Abhijeet Ferrotech Ltd., (supra) where the Tribunal examined a question as to whether an application under the IBC could be rejected solely on the ground that DRT proceedings were pending and that the DRT had passed certain orders. The Tribunal held that proceedings under Section 19 which were still inconclusive could not prevent admission of proceedings under the IBC, and that such pendency was not a ground to hold an insolvency application as barred. Thus, pendency of Section 19 proceedings before the DRT cannot, by itself, bar consideration of insolvency proceedings."*

20. In the facts and circumstance of this case, it is seen that the applicant clearly comes within the definition of

Financial Creditor. The material placed on record further confirms that applicant financial creditor had disbursed the credit facilities to the Corporate Debtor. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

21. It is further pertinent to note that recently, the provision of Section 7 of the Code has been amended whereby Explanation-II has been added wherein it has been recorded that when a financial debt is owed to a financial institution, a record of default furnished by an information utility will be sufficient for the Adjudicating Authority to ascertain the existence of default. Therefore, it is relevant to refer the provision of Section of the Code and the same read as under:

> *"**7.** (1) A Financial Creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a*

corporate debtor[J4] before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of Section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project[J5], an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first

and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code(Amendment) Act 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain[17] the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(a) admit the application, if it is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or

(b) reject the application, if it is satisfied that a default has not occurred or the application under sub-section (2) is incomplete or a disciplinary

proceeding is pending against the proposed resolution professional:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b), give a notice to the applicant to rectify the defect in his application within seven days from the date of receipt of such notice from the Adjudicating Authority:

Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (2), it shall record the reasons for such delay in writing.

Explanation I.--For the purposes of this sub-section, it is hereby clarified that where the requirements under clause (a) have been complied with, no other ground shall be considered to reject an application filed under this section.

Explanation II.--For the removal of doubts, it is hereby clarified that where a record of default in respect of a financial debt owed to a financial institution recorded with the information utility

has been furnished along with the application filed by such financial institution under this section, such record shall be considered sufficient for the Adjudicating Authority to ascertain the existence of default under this section".

22. Thus, a bare perusal Explanation-II attached to Section 7 of the Code, it is very much clear that when the record of default with regard to debt owed to the Financial Institution recorded with information utility has been filed with the Adjudicating Authority, it shall be sufficient for the Adjudicating Authority to ascertain the existence of default under Section 7 of the Code.

23. In the instant case, the Financial Creditor has placed on record by way of supplementary record, a copy of record of default Form 'D' filed with the NeSL. The record of default proves that there is total outstanding debt of Rs. 5,84,87,763.13 with date of default as on 30.11.2028. As per status of authentication, the default is authenticated. There is nothing on record to disbelieve the said evidence of the Financial Creditor.

24. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate

debtor and that there has been default in payment of the financial debt.

25. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted with the following orders:

(i) Mr. Pratap Mukherjee, having registration number IBBI/IPA- having email - id pratapmukherjee62@gmail.com is appointed as an Interim Resolution Professional for the corporate debtor.

(ii) In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (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 and Bankruptcy Code, 2016.

(iii) We direct the applicant Financial Creditor to deposit a sum of Rs. 3 Lakhs with the Interim Resolution Professional namely Mr. Pratap Mukherjee to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 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.

(iv) The moratorium is declared 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 interest created 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."*

(v) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or 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.

(vi) The Interim Resolution Professional shall perform all his functions 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. 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 exmanagement 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 Tribunal with a prayer for passing an appropriate order. 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 its 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.

26. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West Bengal, Kolkata at the earliest possible but not later than three days from today.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

SRIDHAR.R(LRA)