IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH- I

IA No. 219 of 2025
IN
CP(IB) No. 1241 of 2022
Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IA No. 219 of 2025
In the Application of
Mr. Sagar Sharma
…Applicant No. 1

Mr. Vishal Sharma
…Applicant No. 2

Versus

Mr. Rohit Mehra
…Respondent/Interim Resolution Professional

In the matter of
Assets Care & Reconstruction Enterprise Limited
…Petitioner/Financial Creditor
Versus

Hotel Horizon Private Limited
…Respondent/Corporate Debtor
Order Delivered On : 17.07.2025

Coram:

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Applicant : Pulkit Sharma a/w Rohan Agrawal and Akash Agarwal, Advocates

For the Respondent : Ameya Gokhale a/w Reshabh Jaisani, Kriti Kalyani and Ansh Kumar, Advocates

ORDER

1. This Application bearing **IA No. 219/2025** is filed by **Mr. Sagar Sharma** and **Mr. Vishal Sharma** ("**Applicants**") in the Corporate Insolvency Resolution Process ("**CIRP**") of **Hotel Horizon Private Limited** ("**Corporate Debtor**") under the provisions of the Insolvency and Bankruptcy Code, 2016 ("**Code**") seeking the following reliefs-

   a. *That this Hon'ble Tribunal be pleased to examine the contents of the present Application and after examining the same, be pleased to direct the Respondent Resolution Professional to reconstitute the COC and exclude third party entities being Union Bank of India, ACRE, JM Financials ARC and Phoenix ARC as members of COC in the Corporate Insolvency Resolution Process of Hotel Horizon Private Limited;*

   b. *That this Hon'ble Tribunal be please to examine the contents of the present application and after examining the same be pleased to direct the Interim Resolution Process to reject the claims of various third Party Financial Creditors as appearing in the agenda of 1st COC meeting and/or Direct the IRP to admit their claims only of the quantum which is legally permissible, if any, and also change the Classification of the said Parties and accordingly recalibrate the COC.*

c. *That this Hon'ble Tribunal be pleased to examine the contents of the present Application and after examining the same, be pleased to appoint third patty unbiased forensic transaction auditor to audit the claims of the third-party entities being Union Bank of India, ACRE, JM Financials ARC and Phoenix ARC and thereafter place its report on record before this Hon'ble Tribunal;*

d. *That this Hon'ble Tribunal be pleased to examine the contents of the present Application and after examining the same be pleased to direct the Respondent Resolution Professional to produce on record documents on the basis of which the claims of third-party entities as financial creditors have been admitted along with copies of Form C submitted by such third party entities.*

e. *That this Hon'ble Tribunal be pleased to examine the contents of the present Application and after examining the same be pleased to direct Respondent to disclose all documents including Form C, on the basis of which claims of Union Bank of India, ACRE, JM Financials ARC and Phoenix ARC have been admitted by;*

f. *Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to restrain the Respondent Resolution Professional from holding and conducting further meetings of the COC and allowing the third party entities being Union Bank of India. ACRE, JM financials ARC and Phoenix herein to attend the same;*

g. *Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to stay the further process of the CIRP of the Corporate Debtor;*

h. *Interim and ad-interim reliefs in terms of prayer clause (a) to (g may kindly be granted;*

i. *Any such order/directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case be passed.*

Brief Background

2.1 The Applicants are the suspended directors of the Corporate Debtor. This Tribunal had admitted the Corporate Debtor into CIRP vide

order dated 19.11.2024 and appointed the Respondent herein as the Interim Resolution Professional ("**IRP**"). The said admission order was challenged u/s 61 of the Code by the Applicants before the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") vide Company Appeal No. 2221 of 2024, which was dismissed vide order dated 17.02.2025. The Applicants challenged the said dismissal before the Hon'ble Supreme Court in Civil Appeal No. 3953/2025. However, the said appeal was dismissed by the Hon'ble Supreme Court vide order dated 04.04.2025, observing that the Applicants themselves have provided multiple settlement offers, and thus, there can be no question of non-disbursal of funds or doubt on any debt being due.

2.2 On 22.11.2024, the IRP published the Public Announcement in Form A and the last date of submission of claims was stated to be 03.12.2024. The IRP constituted the CoC and on 05.12.2024, issued a notice calling the 1st meeting of the Committee of Creditors ("**CoC**") on 11.12.2024. The IRP also uploaded a statement of claims on the IBBI website of 4 entities ("**Claimants**") under the "Financial Creditor" category comprising the following -

Name of Creditors	**Amount Admitted (In Rupees)**
Union Bank of India ("**UBI**")	2,22,18,10,357/-
Asset Care & Reconstruction Enterprise ("**ACRE**")	1,64,89,04,994/-
JM Financials ARC ("**JMF ARC**")	43,48,11,075/-
Phoenix ARC Private Limited ("**Phoenix ARC**")	Nil

2.3 Aggrieved by the rejection of their claim, Phoenix ARC filed an Application before this Tribunal, wherein vide order dated 10.12.2024, the IRP was directed to decide the claim of Phoenix ARC and the CoC constitution was to be in abeyance until such decision was made. Consequently, the CoC meeting scheduled to be held on 11.12.2024 was deferred.

Submissions made by the Applicant

3.1 On 11.12.2024, the Applicants informed the IRP that the claims of the 4 entities were time barred, fictitious and inflated and should not be admitted. The Applicants also informed the IRP of the various disputes between the Applicants and the Claimants' claims. Further, the Applicants called upon the Respondent to inform this Tribunal of the disciplinary action ordered against the Respondent No. 1 by the Hon'ble Delhi High Court vide order dated 25.10.2024.

3.2 The Respondent No. 1 admitted the claim of Phoenix ARC on 12.12.2024 and issued a Notice dated 12.12.2024 at 10:49 pm for the 1st CoC meeting to be held on 18.12.2024 at 10:30 am. It is submitted that this is in contravention of the Code as it does not provide the minimum statutory time limit to conduct CoC meetings. It is submitted that the Respondent No. 1 has hastily admitted the claims without due verification. Further, the the agenda for the 1st CoC in fact expressly admits that the Regulations prescribe the 1st CoC meeting can only be held on 19.12.2024 pursuant to a notice issued on 12.12.2024.

3.3 As per the 1st CoC meeting, the IRP constituted the CoC as follows-

Composition of Committee of Creditors ("CoC")
Quorum of the meeting

S. No.	Name of the Creditor	Address	Admitted Amount (In INR)	Voting Share
1.	Union Bank of India ("UBI")	Union Bank of India,Stress Asset management Branch- Mumbai 104, Bharat House, M. S Marg, Fort Mumbai 400 023	2,22,18,10,357	46.15%
2.	Assets Care & Reconstruction Enterprise Limited ("ACRE")	14th Floor, EROS Corporate Tower, Nehru Place, New Delhi - 1 10019	1,64,89,04,994	34.25%
3.	Phoenix ARC Private Limited ("Phoenix")	3rd Floor, Wallace Towers, 139/140/B/1, Crossing of Sahar Road and Western Express Highway, Vile Parle East, Mumbai - 400057	50,89,79,980	10.57%
4.	JM Financial Asset Reconstruction Company Limited	7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai - 400025	43,48,11,075	9.03%
		Total	4,81,45,06,406	100%

3.4 **Objections to the admission of the claim filed by the Union Bank of India**

3.4.1 It is submitted that the UBI had preferred Company Petition No. 737 of 2023 before this Tribunal for initiation of CIRP against the Corporate Debtor, which was later withdrawn as recorded in this Tribunal's order dated 19.01.2024. The Applicant's stance then and now is the same that the debt claimed by UBI is time barred as well as not due and payable in law. Admittedly, these loans were repayable in December 2015/January 2016 as per the sanction letters of UBI. It is submitted that circular entries/transactions carried on the same day as reflected in the Loan account statements do not constitute a financial debt or foist any liability on the borrower and nor can such circular entries transactions extend limitation in any manner whatsoever. Disbursement of debt for time value of money is very essential to constitute a financial debt which is evidently missing in this case. The Applicants had informed the IRP of these facts vide e-mail dated 11.12.2024 and had sought the Form C and supporting documents regarding UBI's claims to which they received no response.

3.4.2 Further, the Corporate Debtor and the Applicants have raised the grievance of a lack of actual disbursement by the Claimants. The Claimants, in inter-se disputes, cannot reach a common agreement on the issue of determining the actual debt and the proportionate

share among inter-se lenders of the actual financial debt. The Lead Lender, UBI, has also pleaded helplessness in this regard; however, the RP has, within a couple of days, unilaterally admitted all the claims.

3.5 **Objections to the admission of the claim filed by ACRE**

3.5.1 It is submitted that ACRE has claimed Rs. 169 crores that HDFCL, the original lender, had allegedly disbursed. The said alleged claim is disputed on the following grounds-

a) the claim is time-barred,
b) no actual disbursements have been shown to be made,
c) claim is based on false and fictitious entries and doctored documents, and
d) unsecured claim is wrongly classified as secured loan.

3.5.2 As per ACRE's own case, the last date of default is 28.02.2018, making the claim time-barred under the Code.

3.5.3 It is submitted that ACRE has created a false impression that the Corporate Debtor has enjoyed the benefit of the sanctioned facilities without showing the proof of actual disbursements and documents in support of the actual disbursements as per the transaction agreements. The original lender, HDFCL, has created fictitious entries without actual disbursement, which is a breach of the transaction documents and RBI norms. ACRE has relied on self-made excel sheets, without backed by any certificate under the Banker's Book Evidence Act or authentic Loan Account and Bank Account Statements.

3.5.4 In accordance with Section 18 of the Code, r/w Regulation 8 of the CIRP Regulations, the RP ought to have verified the Form C along with the supporting documents, as ACRE has failed to produce any document to prove its claim.

3.6 **Objections to the admission of the claim filed by JMF ARC**

3.6.1 It is submitted that JMF ARC had initially preferred Company Petition No. 905/2020 before this Tribunal for initiation of CIRP against the Corporate Debtor claiming a debt of Rs. 100,08,10,184/- as an Assignee of debts assigned by ICICI Bank Limited vide the Assignment Agreement dated 30.09.2016.

3.6.2 JMF ARC in its Company Petition contended that the total debt disbursed by ICICI Bank is Rs.25 Crores as per the opening Balance Statement of Accounts dated 31.03.2012 and Form 1. JMF ARC contends that the Assignor ICICI Bank originally sanctioned a Senior Rupee Term Loan Facility of Rs. 326 Crores and a subordinate Rupee Term Loan Facility of Rs. 25 crores, however, the Corporate Debtor has only availed partial disbursement of Rs. 25 Crores out of the Senior Term Loan Facility of Rs. 326 Cores. It is stated in the Company Petition that the date of disbursement was 06.05.2011; however, the date of default alleged is 30.06.2016, being the date of classification of the account as NPA. Further, a claim of Rs. 100 Crores is made and contended to be an amount of default as on 26.02.2020.

3.6.3 However, it is submitted that out of the aforesaid Rs. 25 crores, ICICI Bank disbursed only an amount of Rs. 9.51 Crores in the Escrow Account opened by ICICI Bank and controlled and operated by the Bank. The said amount of Rs. 9.51 Crores was transferred to the current account operated only by the Corporate Debtor. The remaining amount of Rs. 15.50 Crores is allegedly towards the processing fee.

3.6.4 Further, the ICICI Bank in its Credit Committee approval Meeting held on 28.06.2016 has agreed to refund the processing fee as the entire loan could not be disbursed. Even otherwise, it is obvious that there cannot be a processing fee of Rs. 15.5 Crores for the

disbursement of Rs.9.51 Crores. The Credit Committee noted that the processing fee of Rs. 15.5 Crores was collected upfront on 31.03.2012 and that the same should be fully refunded along with interest till the date of payment at the rate of 14.82 % p.a. to the Corporate Debtor since the entire loan as committed could not be disbursed to the Corporate Debtor. Therefore, the Committee resolved and agreed that the Bank shall repay the said processing fee along with interest @ 14.82% p.a. till the time the loan is repaid/closed by the Corporate Debtor. It is to be noted that upon assignment of debt, the loan stands closed with nil balance in the books of IClCl Bank; therefore, the liability of the Bank to pay/refund the processing fee with interest also kicks in. Therefore, JMFARC, while making a claim, ought to have brought it to the attention of the IRP and the IRP should then set off the said amount of processing fee along with interest payable till date while admitting the claim.

3.6.5 Further, for evergreening the accounts, ICIC Bank without any authorisation, kept on transferring amounts in the Escrow Account unilaterally, and immediately, the said amounts were diverted back to their own account. These deposits and withdrawals were without any instruction and/or any authority, and the Account itself shows a circular flow of funds. The Applicants had stopped servicing the loan on account of differences way back in 2013, but ICICI Bank did not classify the account as NPA till 2016 on the basis of these alleged amounts in the escrow accounts and ICICI Bank claims amounts of Rs. 18.48 Crores, but none of these amounts from the escrow accounts have ever been transferred to the current account of the Corporate Debtor for its benefit, save and except Rs.9.51 Crores.

3.6.6 Therefore, it is the contention of the Applicants that JMFARC is not entitled to claim disbursement of any amount apart from

Rs. 9.5 crores as there is no disbursement, and a clear fraud is played by the ICICI Bank and JMF ARC. However, the RP has admitted an amount of Rs. 43 crores as the principal amount. This shows that the RP has constituted the CoC based on unverified claim amounts, therefore, the CoC constitution is bad in law.

3.7 **Objections to the admission of the claim filed by Phoenix ARC**

3.7.1 Phoenix ARC had filed Company Petition No. 1458 of 2017 u/s. 7 of the I Code which was admitted by the Adjudicating Authority on 29.01.2019. The Applicants challenged the aforesaid Order before the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") and accordingly vide order dated 05.09.2019, the Hon'ble NCLAT dismissed the said Appeal. Further, in Civil Appeal No. 7673/2019, vide Order dated 30.09.2019, the Hon'ble Supreme Court was pleased to set aside the Order of the Hon'ble NCLAT dated 05.09.2019, stayed the order dated 29.01.2019 and remanded the matter back to the Hon'ble NCLAT. The Order dated 30.09.2019 passed by Hon'ble Supreme Court directed the Hon'ble NCLAT to decide the Appeal on the issue of limitation in view of the law laid down in BK Educational vs Parag Gupta.

3.7.2 In remand, the Hon'ble NCLAT decided the point of limitation in favor of the Applicants herein, and rightly held that the Petition filed by the Appellant u/s 7 of the Code is barred by limitation for the following reasons-

(i) Phoenix ARC has accepted, and the record shows that default has taken place prior to 09.09.2014.

(ii) Statement of Loan A/c produced by Phoenix ARC shows that amounts were due and payable prior to 21.09.2014 i.e, more than three years prior to the date of filing.

(iii) Phoenix ARC has failed to produce any document to suggest that the debt has been acknowledged as per Section 18 of the

Limitation Act i.e., prior to the cut off date of 3 years from 09.09.2014.

3.7.3 Therefore, in spite of the fact that the claim of Phoenix ARC is adjudicated to be time-barred, the IRP has erroneously admitted the claim and failed to act in due compliance of the Code and CIRP Regulations.

Submissions made by the Resolution Professional

4.1 The Resolution Professional appointed by this Tribunal after resignation of Respondent Resolution Professional was asked to place on record a fact sheet along with his opinion on the admitted claims alleged to be improperly admitted, which was placed by him vide Additional Affidavit dated 18.02.2025.

4.2 The RP has relied on the decision of the Hon'ble NCLAT in the matter of ***Dr. Arabinda Kumar Rath v. Siba Kumar Mohapatra, Company Appeal (AT) (Ins No. 1482 of 2023*** to submit that the Applicants herein, viz the suspended management of the Corporate Debtor has no locus to raise unfounded allegations about the quantum of claims claimed by the Financial Creditors and admitted by the RP, merely because the appellant therein was the personal guarantor of the ex-management, and they cannot be seen to unduly persist with their allegations that the claims of the Financial Creditor were inflated and exaggerated to the detriment of the Corporate Debtor.

4.3 Further, it is submitted that the RP does not have adjudicatory powers, the RP's functions are administrative in nature and limited to collation and verification of the creditor's claims; it is not open to the RP to reject the claims on the basis of any debts being held to have been time-barred to file an application for initiation of CIRP under the Code; the amounts referred as "liquidated damages" are in fact

additional obligations in the nature of interest, penalty, default interest etc. duly agreed by the Corporate Debtor in the Loan agreement(s); and the claims have been verified and collated by the RP based on the contracts and supporting documents shared by the cclaimants, as he did not have the opportunity to corroborate the same or verify the same with internal records of the Corporate Debtor on account of the same not being made available with the RP.

4.4 It is also submitted that the period of limitation does not extinguish the right of claim over the underlying debt and only bars the remedy to seek enforcement of the debt. Therefore, even if the debt is held to be time-barred, it only leads to a bar on the creditor to enforce a remedy, but does not extinguish the underlying right which the remedy relates to.

4.5 The definition of "claim" under Section 3(6) of the Code is widely worded and includes a right to payment, even if it is disputed. Unlike an Application under Section 7 or 9 of the Code where any of the creditors of a Corporate Debtor exercise their remedy basis a debt and its consequent default, and where a time-barred debt cannot be the basis of admission of an Application filed for the initiation of CIRP, a "claim" is merely a record of the dues which are owed by the Corporate Debtor to its creditors.

Submissions made by the Committee of Creditors

5.1 Since, the present application was for examination of the admitted claims of the Financial Creditors and they had entered appearance in the matter, accordingly they were allowed to file their comments on the application as well the RP's report on their claims.

5.2 The Applicants have failed to provide details of outstanding dues as per their records and books and have failed to submit any calculations, computations or amounts, which, according to them, are due and payable by the Corporate Debtor to the Financial

Creditors despite having been specifically asked by this Tribunal. It is settled law that where the debtor disputes the debt/liability but withholds its own books of account, the debtor is not entitled to challenge the amount claimed by the petitioner/plaintiff and the calculation thereof.

5.3 The Applicants have challenged the claims of each of the Financial Creditors on the ground that each of the claims is barred by limitation. However, the Applicants have failed to demonstrate what was the period of limitation to file the claims by the Financial Creditors before the RP and how the claim of each Financial Creditor is barred by limitation. The Limitation Act, 1963 does not apply to filing of claims before the RP. It is submitted that the period of limitation for filing an Application under Section 7 or 9 of the IBC is 3 years under Article 137 of the Limitation Act, 1973. However, there is no provision in the Code which prescribes the period of limitation for filing a claim before the RP. In this regard, it is pertinent to note that Section 238A of the Code provides that the same only applies to proceedings and appeals before the NCLT and the NCLAT, as the case may be. The application of the said provision cannot be extended to the filing of the claims before the RP. It is submitted that the law of limitation merely extinguishes the remedy and not the right to recover the debt. Further, since each of the Financial Creditors had filed a Suit or an Original Application under the RDB Act, which was pending at the time of commencement of the CIRP of the Corporate Debtor, none of the claims of the Financial Creditors can be said to be time barred.

5.4 Nonetheless, even if the argument of the Applicants that the limitation period for filing of claims before the resolution professional is 3 years is accepted, the claims of the financial creditors cannot be held to be barred by limitation, as the debt owed by the Corporate Debtor to each of the Financial Creditors is acknowledged by the Corporate Debtor from time to time by making an Settlement

proposal to the consortium of financial creditors. It is settled law that an acknowledgement under Section 18 of the Limitation Act, 1963, is not required to relate to any specific amount but an acknowledgement of the jural relationship between the parties is sufficient for the application of Section 18.

5.5 The liquidated damages and/or penal interest constitute "time value of money" for the money lent by the lender to the borrower and the same would constitute a financial debt as such charges are in nature of interest only.

Submissions made by the Applicant in Reply to the Report of the Resolution Professional

6.1 It is submitted that the RP has admitted in his affidavit that in spite of the specific order of this Tribunal regarding time-barred and inflated claims, he has not considered this issue at all.

6.2 It is a well settled position in law that claims stand frozen as on date of Commencement of Insolvency. In spite of the same, the RP has allowed the Financial Creditors to file multiple claims which were increased by hundred of crores with every new submission of claim. There is no justification as to how a revised claim with respect to inadmissible charges/ interest etc. can be admitted as financial claims.

6.3 It is settled law that Additional interest, Liquidated Damages, Interest on Arrears of Liquidated Damages, Further Interest etc., are in the nature of damages/penalty. Hence, the RP could not have admitted and classified the same as financial debt.

6.4 It is submitted that vide email dated 12.12.2024, the Applicants had shared all the information in relation to the objections to the claims and the relevant legal proceedings pertaining to all the Financial

Creditors with the IRP. The IRP was aware and was in possession of all the requisite and critical information to verify the claims filed by the Coe members.

Findings

8. Heard learned Counsel and perused the material available on record.

8.1 The primary question is whether the applicant has locus to maintain the present application challenging the claims of financial creditors, which were verified by the Resolution Professional on the basis of records available with him, even though there was no complaint from any of the financial creditors as to the quantum of other financial creditors admitted by the Resolution Professional.

8.2 It is relevant to refer to the decision of the Hon'ble NCLAT in the case of ***Dr. Arabinda Kumar Rath v. Siba Kumar Mohapatra, (2025) ibclaw.in 344 NCLAT***, wherein it was held that

"*11. In such circumstances, we are of the considered view that it was only reasonable on the part of the Adjudicating Authority to infer that the apprehensions of the TDB in respect of the claim filed by ISARC stood allayed. We are also inclined to agree with the RP that when there were only two Financial Creditors in the CoC and they had settled their doubts and ambiguities about each other's claim and there was no inter se dispute between them on the quantum of claim, they had actually opted and chosen to put a quietus to the matter. That being the ground situation, the suspended management of the Corporate Debtor has no locus to raise unfounded allegations about the quantum of claims claimed by the Financial Creditors and admitted by the RP. When TDB was fully satisfied about the fairness and reasonableness of the claim filed by the other Financial Creditor, we find no reasons to disagree with the findings returned by the Adjudicating Authority that merely because the Appellant was the personal guarantor of the ex-management, they cannot be seen to unduly persist with their allegations that the claims of the Financial*

Creditor were inflated and exaggerated to the detriment of the Corporate Debtor."

8.3 In the present case, the claims from 4 secured financial creditors i.e. Union Bank of India, ACRE (Original Lender HDFC Bank), Phoenix ARC (Original lender IDFC Bank) and JMFARC (Original lender ICICI Bank) were received by the Respondent RP and the claims of 3 secured creditors were admitted as per statement of claims uploaded on 04.12.2024. Thereafter, the claim of Phoenix ARC, the 4th financial creditor whose claim was earlier not admitted in view of the Order dated 7.2.2020 passed by Hon'ble NCLAT dismissing Phoenix ARC's application u/s 7 of I B Code numbered as CP(IB) No. 1458/2017 on ground of Limitation, was also updated as per Statement of Claims uploaded on 12.12.2024. Thereafter, the claims of all these 4 financial creditors were revised as per Statement of Claims uploaded on 08.01.2025. Subsequently, Phoenix ARC and the Union Bank of India assigned their debt in favour of CFM Asset Reconstruction Private Limited (CFMARC) on 29th March 2025 and 04th April 2025 and revised list of Secured Creditors dated 10.04.2025 was filed before this Tribunal. Thereafter, ACRE assigned its debt in favour of JMFARC as stated in the revised list of Secured Creditors dated 21.04.2025 filed before this Tribunal. Accordingly, as on date, there are 2 financial creditors in the CoC, i.e. JMFARC and CFMARC.

8.4 The Applicant herein has filed this Application challenging the verification process conducted by the Respondent RP raising a principal ground of limitation, and other issues having bearing on the quantum of debt, more particularly, in relation to claim of Phoenix ARC now succeeded by CFMARC and claim of JMFARC originally owed to ICICI Bank. As regards the computational aspect of the claim in relation to each of these 4 financial creditors, the incumbent RP has referred to relevant clauses entitling the claimant financial

creditor for the amounts verified by the RP while adjudicating the claim.

8.5 During the course of hearing on 25.06.2025, the Applicant was also asked by this Tribunal to give the details of outstanding owed to all these 4 original financial creditors under each component duly certified by their Chartered Accountant and the matter was posted on 30.06.2025 as the Applicant had requested for 3-4 days to do so. However, no such computation was placed on record by the Applicant even at the time of filing of their written submissions and the matter was reserved for orders on 07.07.2025. In view of this, we are of the considered view that the Applicants' objections with respect to the computation of the amounts of claims are unfounded and does not require any further consideration in the absence of the workings of such claims as per them placed on record.

8.6 Though we are bound to follow the decision of the Hon'ble NCLAT in the decision of **Dr. Arabinda Kumar Rath** that suspended management of the Corporate Debtor has no locus to raise unfounded allegations about the quantum of the claims raised by these financial creditors, however, we note that the contention of the Applicants in relation to (i) claim of Phoenix ARC; (ii) claim of JMFARC for ICICI Bank Loan as assignee; (iii) the limitation aspect; and (iv) characterisation of certain charges as financial debt requires adjudication by this Tribunal as these issues involve question of law and facts, which the Resolution Professional otherwise would not have appreciated while verifying the claims in view of the limited scope of inquiry involved in such verification process. Accordingly, we consider it appropriate to deal with these issues in the following paras.

8.7 Before we proceed to examine the aspect of limitation, it is pertinent to note the following facts :

a. The Applicants had admittedly provided the Books of Accounts of the Corporate Debtor only upto 31.03.2017 and no Books of Accounts of the Corporate Debtor have been stated to have been maintained thereafter. There is no dispute that the debts owed to all these 4 original financial creditors are recorded in the Books of Accounts of the Corporate Debtor and accordingly would have continued to be recorded had the Corporate Debtor maintained its regular Books of Accounts as mandated under Section 128 of the Companies Act, 2013. It is trite law that entries in the Books of Accounts of the Corporate Debtor constitutes valid acknowledgement.

b. The Corporate Debtor was earlier admitted into CIRP on an Application of Phoenix ARC (CP(IB) 1458/2017) on 29.01.2019 which came to be set aside on 07.02.2020, accordingly, there was a moratorium in force during that period and the said period has to be excluded in terms of Section 15(1) of the Limitation Act, 1963.

c. The Corporate Debtor had also sent a letter dated 14.08.2019 to the erstwhile CoC (constituted in CP(IB) No. 1458/2017) titled as Proposal for One Time Settlement. The said letter at Sr. No. 10, states that "*The Corporate Debtor proposes to pay the entire amount of True Principal received by the Corporate Debtor without any haircut or discount. The True Principal shall be paid along with interest till Cut-off date as One Time Settlement of all Lenders and the same is tabulated below:*

Lender	NPA Date	True Principal As On	Interest At 8.5 % p.a.	Total Amount
	Cut-off Date	Cut-Off Date	(MCLR-Lead Bank)	*₹ Crores*
Union Bank of India	Oct-18	93.01	55.51	148.52
HDFC Limited	Oct-18	81.72	26.14	107.86
IDFC_Phoenix ARC	Mar-15	33.32	8.29	41.60
ICICI_JM-ARC	Jun-16	8.29	2.99	11.28
Total		**216.33**	**92.93**	**309.26**

The above communication categorically acknowledges the liability of the corporate Debtor qua all 4 original financial creditors, accordingly, extending the period of limitation.

d. The Corporate Debtor had written a letter dated 21.11.2021 to Union Bank of India stating that –"*Based on discussions, HDFC has shown its willingness to enter into an OTS at a level of 50% of the Running Ledger amount as on date of NPA and a similar offer is proposed to UBI as well*." It is further stated therein that "*In light of the above, we hereby offer an OTS amount for Union Bank of India to 106 crores*."

e. A letter dated 10.03.2021 was sent by the Corporate Debtor to HDFCL, predecessor of ACRE to pay Rs. 85 crores for settlement. This letter clearly signifies the acknowledgement in relation to debt owed to ACRE (HDFC debt assigned to it) as well as UBI debt. Thereafter, another OTS proposal was sent on 28.12.2023 to UBI offering to pay Rs. 200 crores towards the final settlement of the amounts. Another OTS proposal was sent o ACRE on 27.06.2023 offering to pay Rs. 105 crores.

8.8 In so far as the debt owed to ACRE is concerned, the CP(IB) No. 1241/2022 came to be admitted on an Application filed by ACRE and the issue of limitation was considered by this Tribunal as well as the Hon'ble NCLAT. Further, the OTS proposals sent by the Corporate Debtor clearly extends the period of limitation. Accordingly, the claim of the ACRE cannot be held to be time-barred. It is seen from the OTS letter written to HDFCL that the Corporate

Debtor had stated that – "*significant portion of the claims submitted by the lenders pertain to unilateral disbursements towards interests, fees etc. without authorisation by the Corporate Debtor and/or not in tune with the sanctioned purposes of the facilities granted*." The Corporate Debtor has contended that the amounts disbursed by these financial creditors to themselves towards payment of interest and other obligations, arising against existing disbursed loans, should be excluded from the determination of the principal amount actually disbursed for the business of the Corporate Debtor. It is pertinent to appreciate that those obligations, if not paid through the disbursed amounts due from the Corporate Debtor, had remained due and payable thereby keeping the original outstanding. In such case also, the total outstanding would have remained same. Nonetheless, the appropriation of disbursed amounts against the due obligations had only resulted into advantageous position to the Corporate Debtor as it had relieved the Corporate Debtor from the levy of penal or additional interest, otherwise chargeable on default amounts under the agreement. The contention of the applicant of circular transaction has no relevance in the matter, as the utilisation of disbursed principal component of loan towards paying the outstanding obligations against the existing dues from the Corporate Debtor took place on the disbursement requests tendered by the Corporate Debtor for the purpose. Accordingly, this argument may have some force while negotiating a settlement in the context of principal due, but this argument has no merit in so far as the total amount due from the Corporate Debtor is concerned.

8.9 In so far as the debt owed to UBI is concerned, the said debt was classified as NPA on 21.10.2018 and there was a moratorium in force in view of order in CP(IB) No. 1458/2017 from 29.01.2019 to 07.02.2020. The 1st OTS proposal was received on 14.08.2019, thereafter 2nd on 21.11.2021 and 3rd on 28.12.2023. Accordingly, in our considered view the said claim cannot be said to be time-barred in view of extension of timelines on account of moratorium and OTS

letters on 3 occasions. The Corporate Debtor has contended that the amounts disbursed by these financial creditors to themselves towards payment of interest and other obligations arising against existing disbursed loans should be excluded from the determination of the principal amount actually disbursed for the business of the Corporate Debtor. It is pertinent to appreciate that those obligations, if not paid through the disbursed amounts due from the Corporate Debtor, had remained due and payable thereby keeping the original outstanding. In such case also, the total outstanding would have remained same. Nonetheless, the appropriation of disbursed amounts against the due obligations had only resulted into advantageous position to the Corporate Debtor as it had relieved the Corporate Debtor from the levy of penal or additional interest, otherwise chargeable on default amounts under the agreement. The contention of the applicant of circular transaction has no relevance in the matter, as the utilisation of disbursed principal component of loan towards paying the outstanding obligations against the existing dues from the Corporate Debtor took place on the disbursement requests tendered by the Corporate Debtor for the purpose. Accordingly, this argument may have some force while negotiating a settlement in the context of principal due, but this argument has no merit in so far as the total amount due from the Corporate Debtor is concerned.

8.10 In so far as the debt owed to JMFARC is concerned, the date of 1st default is stated to be 01.04.2016 and there was a moratorium in force in view of order in CP(IB) No. 1458/2017 from 29.01.2019 to 07.02.2020. JMFARC also filed a CP No. 905/2020 on 12.03.2020 seeking initiation of CIRP against the Corporate Debtor in terms of Section 7 of the IB Code and was disposed of as infructuous on 27.11.2024 after admission of the Corporate Debtor into CIRP in terms of Order dated 19.11.2024. The loans are acknowledged in the Books of Accounts of the Corporate Debtor for the year ended 31.03.2017 as well as in the letter dated 14.08.2019 sent to the

erstwhile CoC, of which the predecessor of JMFARC was a member. Accordingly, this claim cannot be said to be time-barred. The Applicant has contended that the Original Lender, ICICI Bank had agreed to refund the processing fee on the undisbursed amount along with the interest thereon. For this purpose, the minutes of the 244th Credit Committee Meeting of the ICICI bank held on 28.06.2016 was placed on record, which reads as under –

"The Committee was briefed that the Company has agreed to repay the entire facility subject conditions as follows :

- *The Bank agrees to refund the processing fee, as the entire loan could not be disbursed*
- *The Bank pays interest on the refunded fee from the date of charging of fee till date of refund, calculated at the interest rate charged on the Rupee Term Loan facility*

The Committee was briefed that processing fee of Rs.0.14 billion (4.00%) of the total facility amount of Rs.3.51 billion was collected upfront on March 31, 2012.

The Committee was briefed that current proposal was also for condonation of breach of Financial Covenant for FY-2015 and Waiver of repayment penalty. The Committee was further briefed that subject to the client prepaying the entire outstanding facility, the current proposal was for refund of processing fees of Rs.0.14 billion and payment of interest on processing fee of Rs.0.14 billion being refunded at facility rate (14.82% per annum) for the applicable period. (April 1, 2012 till date of refund). The Committee was briefed that for the period April 1, 2012 till June 30, 2016 (expected date of repayment), the interest amount to be paid was Rs.0.11 billion. The Committee was further briefed that if the Company pays at a date later than June 30, 2016, the interest on the additional period would be paid.

The Committee approved the above proposal, without modifications, and as evidenced by a certified office record."

8.10.1 It was argued by the learned Counsel for the Financial Creditor that this proposal was subject to the Corporate Debtor repaying the balance amount. However, we do not find any merit in this contention as the statement – "*If the company pays at a date later than 30.06.2016, the interest on the additional period would be paid*" clearly suggests that the proposal to refund was on equitable ground whereby the ICICI bank ought not to have collected processing fees on such quantum of loan as it refused to disburse that amount. Accordingly, we direct the RP to rework the claim on the basis of this proposition and revise the List of Claims accordingly.

8.11 As regards the claim of Phoenix ARC, it was argued that this claim could not have been admitted by the respondent RP after the Section 7 Application filed by Phoenix ARC having been dismissed on the specific ground of limitation by the Hon'ble NCLAT in CP(IB) No. 1458/2017. It is relevant to refer order dated 07.02.2020 passed by Hon'ble NCLAT in this matter, the relevant part of the said order is reproduced hereunder-

"*19. It has been accepted by the Respondent that the record shows that the 'Corporate Debtor' defaulted making payment of the aforesaid Loan amount prior to 9th September, 2014. Both the Loan accounts as relied by the 'Financial Creditor' are maintained by the Assignor, which also makes it clear that the amounts under Loan Nos.2 and 3 were payable prior to the 2lst September, 2014. As, the 'Corporate Debtor' having committed default prior to 9th September, 2014, i.e. much before the assignment of debt to Phoenix ARC Private Limited, we hold that the Application under Section 7 of the I&B Code was barred prior to 9th September, 2017.*

20. The Application under Section 7 of the I&B Code was filed on 29th September, 2017, i.e., much after three years of the cut-off period of default, which was prior to 9th September, 2017.

21. There is nothing on the record to suggest that the Appellant acknowledged the debt to Phoenix ARC Private Limited prior to cut-off date of three years in terms of Section 18 of the Limitation Act, 1963……

22. In fact, prior to the said date, Phoenix ARC Private Limited was not in picture and it was assigned with debt subsequently. The 1st Respondent has also failed to bring on record any such acknowledgement made by the 'Corporate Debtor' with the IDFC Bank or other Lenders prior to 9th September, 2017."

8.11.1 From the bare perusal of this order, it is evident that the Application of Phoenix ARC in CP(IB)No. 1458/2017 was found barred by limitation after recording that there was no acknowledgement from the Corporate Debtor in favour of IDFC Bank (original lender succeeded by Phoenix ARC) or other Lenders. The Hon'ble NCLAT also took note of the fact that the debt was assigned to Phoenix ARC by Original Lender much later to the commission of default.

8.11.2 It is relevant to note that the debt due to IDFC Bank is acknowledged in the Books of Accounts of the Corporate Debtor till 31.03.2017, extending the limitation period, and this fact did not come to the notice of the Hon'ble NCLAT leading to dismissal of CP(IB) No. 1458/2017 on the ground of limitation. Further, an OTS Letter dated 21.08.2019 addressed to all the CoC members, including Phoenix ARC, during the CIRP Of the Corporate Debtor under CP(IB) No. 1458/2017, acknowledges the debt due to the IDFC Bank by the Corporate Debtor. Both, the acknowledgement in the Balance Sheet as well as the OTS Letter dated 21.08.2019 were not before Hon'ble NCLAT. It was also stated by the Learned Counsel for Financial Creditor that an OA/424/2020 field by Phoenix ARC on 27.07.2020 before DRT-I, Delhi for the similar debt claimed is pending thereat and the

Application filed by the Corporate Debtor seeking its dismissal on the ground of limitation was dismissed on 14.03.2020. However, the Financial Creditor has not explained as to why OTS letter dated 21.8.2019 was not brought to the notice of Hon'ble NCLAT when the matter was sub-judice thereat and which came to be decided much later in terms of Order dated 7.2.2020.

8.11.3 Though, these information have been placed on record before us, yet the judgement of the Hon'ble NCLAT dated 07.02.2020 is still in force as the SLP No. 2808/2020 filed by Phoenix ARC on 15.07.2020 before the Hon'ble Supreme Court challenging the Hon'ble NCLAT order dated 07.02.2020 is still pending and there is no order staying the Order dated 7.2.2020. In view of these facts, we are of considered view that it would not be proper for us to re-examine the issue of limitation in relation to debt owed to Phoenix ARC, when there was no disability on part of Financial Creditor to apprise Hon'ble NCLAT about the OTS proposal dated 21.8.2019. Accordingly, we are bound to follow the decision dated 7.2.2020 and hold the debt of Phoenix ARC being barred by Limitation.

8.11.4 It was also submitted by Ld. Counsel for Financial Creditor that the facilities of the financial creditors herein are secured by the mortgage and the limitation prescribed therefor under the Limitation Act, 1963 is 12 years. The learned Counsel for the Applicant relied upon a decision of the Hon'ble NCLAT in the matter of ***Ome Prakash Verma vs. Amit Jain & Ors Company Appeal (AT) (Insolvency) No. 827 of 2020,*** wherein it was held that –

"17. When an Application under Section 7 cannot be entertained for a debt, which is barred by time and is liable to be rejected, any addition in the claim which may fall into the category of time barred debt, also

cannot be entertained. The Appellant having objected to the addition of claim consequent to assignment by United Bank of India, it had every right to agitate the issue and pray for adjudicatory orders from the Adjudicating Authority, which he did by filing an Application being I.A. No.415 of 2020. The Adjudicating Authority by misplaced observation rejected the Application without considering the merits of the claim."

8.11.5 Since, the order dated 07.02.2020 is still in force on ground of limitation, we are bound to follow the said Order. Further, the legal principle laid down in Ome Prakash Verma (Supra) also binds us. Hence, the Section 7 application filed by Phoenix ARC on basis of same debt having been held to be time barred, the same debt could not have been admitted in the CIRP of the Corporate Debtor in view of the legal principle laid down in Ome Prakash Verma (Supra) on ground of mortgage debt having extended period of limitation.

8.12 As regards the contention that additional interest, liquidated damages, and interest on arrears of liquidated damages are in the nature of damages/penalty, hence, they cannot be construed as financial debt, it is pertinent to note the definition of these terms from the Lenders Agreements. The financial debt has been defined under Section 5(8) of the Code as to mean a debt along with interest, if any. The word "interest" has not been defined under the Code. Section 2(7) of the Interest Tax Act, 1974 defines the word "interest" to mean "*interest on loans and advances made in India and includes--*

(a) commitment charges on unutilised portion of any credit sanctioned for being availed of in India; and

(b) discount on promissory notes and bills of exchange drawn or made in India,

but does not include--

(i) interest referred to in sub-section (1B) of section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);

(ii) discount on treasury bills;"

8.12.1 Section 2(1) Usurious Loans Act, 1918 defines "interest" to mean "*rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise*".

8.12.2 The above 2 definitions clearly show that any levy in connection with the lending falls within the definition of interest. Section 5(8) of the Code specifically includes interest within the ambit of financial debt. Merely the usage of the word "penal/damages" to the levy of additional interest/charge under a financing document cannot exclude such levy from the definition of interest so long as such levy or charge is connected to the lending arrangement between the parties.

8.12.3 It is also pertinent to note that the rate of interest is determined after taking into account the degree of risk attached to the borrower and levy of penal/additional interest are meant to cover the additional risk arising on default of its obligations by the borrower. Accordingly, the stipulation of multiple interest on the same loan arising from different set of events only takes care of the various risk arising from such event. Hence, we are of the considered view that all such levies form part of the interest and consequentially are a financial debt. It is pertinent to note that the interest on penal interest and claim towards incidental charges has already been excluded by the Respondent RP, Accordingly, we do not find any force in the contention that penal interest/liquidated damages ought to be considered as other debts instead of financial debt. The judgements relied by the Applicants on this issue are distinguishable on the facts as these decisions holding such

amounts falling outside financial debt dealt with the issue of liquidated damages under the development contract or the levy of interest dehors the principal component.

8.13 The Applicant has also submitted that the claims of the Financial Creditor stood frozen on insolvency commencement date, accordingly the Financial Creditors could not have claimed the revised amounts by filing revised claims after reworking of the applicable interest rates and other levies in terms of the agreements and the Respondent Resolution Professional ought not to have allowed such revision and admitted such revised amounts of claim. We note that such quantum of interest and other charges have increased on account of levy of compounding interest, certain other charges which were earlier not levied and application of higher interest on the loans from UBI in terms of specific stipulation in the loan agreement with the Corporate Debtor. Since the revised amounts pertain to the period prior to commencement of insolvency date, we of the considered view that revision in the claims is permissible for including the amounts earlier omitted to be claimed subject to verification of such revision by the Resolution Professional.

8.14 The Corporate Debtor has alleged that the interest rates and other levies have been taken by the Resolution Professional for verification of the claim of the Financial Creditors from the agreement which have subsequently been superseded by the later agreements entered by the Corporate Debtor with the Union Bank of India. The Applicant has placed those agreements on record, accordingly we consider it appropriate to direct Resolution Professional to consider those agreements as well, if not considered earlier, and rework the claim amount of UBI.

9. In view of the aforesaid we hold as follows:
   a. The claim of UBI, JMFARC and ACRE are not time barred.
   b. The claim of Phoenix ARC is time barred in view of order dated 07.02.2020 passed by Hon'ble NCLAT read with Hon'ble NCLAT decision in Ome Prakash Verma (Supra);
   c. The claim of JMFARC in relation to ICICI Bank debt shall be reworked after taking into consideration refund of processing fee of Rs.0.14 billion as well as interest as agreed by ICICI Bank in their Credit Committee meeting;
   d. The interest and other levies in relation to UBI loan shall be reverified after taking into consideration the effect of agreements, if any, entered into after the facility agreement dated 25th May 2012.
   e. The additional interest, liquidated damages, and interest on arrears of liquidated damages are financial debts.

10. Accordingly, IA No. 219/2025 is **partly allowed** and disposed of.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)

/SP/