

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI COURT-II

CP (IB) No. 3500/MB/2019

[With Intervention Petition No. 9/MB/2024]

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

JM FINANCIAL ASSET RECONSTRUCTION COMPANY LIMITED

Registered Office: 7th Floor, Cnergy

Appasaheb Marathe Marg, Prabhadevi

Mumbai-400025, Maharashtra.

...Financial Creditor

V/s

SHUBH HOSPITALITY PRIVATE LIMITED

[CIN: U55101MH2005PTC187972]

Registered Office: 30, P.J. Ramchandani Marg

Opposite Radio Club, Colaba

Mumbai-400001, Maharashtra.

...Corporate Debtor

WITH

Intervention Petition No. 9/MB/2024

STRUFCON ENGINEERS

...Intervenor

Pronounced: 23.06.2026

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

- 1.2 The total amount of default alleged is Rs. 121,48,83,840.76/- (One Hundred Twenty-One Crore Forty-Eight Lakh Eighty-Three Thousand Eight Hundred Forty Rupees and Seventy-Six Paise) including the outstanding principal amount of Rs. 57,49,90,407/- along with the amount of Rs.63.98,93,433.76/- as simple interest, calculated at the rate of 12 (Twelve) per cent. per annum calculated from 07.06.2013 to 30.08.2019. It is based on the alleged default in repayment of Term Loan of Rs. 43,00,00,000/- sanctioned by Bank of India (Original Lender) as well as the judgment dated 07.06.2013 (DRT Judgment) passed by Debt Recovery Tribunal-II, Mumbai.
- 1.3 The dates of default as mentioned in Part IV of the Application is 30.06.2008 i.e., the date on which the CD's account was declared as Non-Performing Asset (NPA) and 07.06.2013 i.e., the date on which the Ld. DRT-II passed the judgment in favour of the FC in OA 143/2010. Due to the alleged default committed by the CD in payment of its outstanding dues, the FC prayed that CIRP may be initiated in respect of the CD under Section 7 of the IBC.
- 1.4 During the pendency of the Application, one entity named Strufcon Engineers, through its proprietor, Mr. Sahebrao Gangadhar Kadam, filed the Intervention Petition No. 9/MB/2024 (IVN. PTN. No. 9/2024) on 10.01.2024 to intervene in the Main Application. It is contended that the Intervenor was the possessory title holder of the premises known as "Shelly's Estate" bearing C.S. No. 10/384 of Colaba Division admeasuring at about 1036.71 Sq. Mtrs. at 30, P. J. Ramchandani Marg, Opp. Radio Club, Strand Road, Colaba, Mumbai - 400 001 (Shelly's Estate), which is the leasehold property of the CD.

2. CONTENTIONS OF FC

2.1 It is submitted that the FC is an Asset Reconstruction Company registered with the Reserve Bank of India under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and engaged in the business of acquisition and resolution of non-performing financial assets from banks and financial institutions while the CD is engaged in the business of hospitality. It is submitted that for business purposes, the CD approached the Original Lender for availing loan facilities. Consequently, the Original Lender sanctioned the Term Loan of Rs.43,00,00,000/- (Forty-Three Crore Rupees) in favour of the CD *vide* Sanction Letter dated 10.10.2006 and the said amount was disbursed on 21.12.2006.

2.2 To avail the term loan facility from the FC, the CD executed the following documents:

- a) Hypothecation cum Loan Agreement dated 05.11.2006;
- b) Term Loan Agreement dated 05.11.2006;
- c) Minutes of the CD's Board of Directors meeting dated 05.11.2006 regarding Term Loan of Rs. 43 Crores;
- d) Personal Guarantees dated 05.11.2006 of Mr. Atul Bisaria & others;
- e) Copy of Oral Assent dated 22.12.2006 for creation of mortgage over the leasehold land leased by Board of Trustees of Port of Mumbai (MPT) known as "Shelly's Estate" along with a building known as Shelly's Hotel standing thereon.;

2.3 However, the CD defaulted in repayment of the FC's Term Loan pursuant to which the CD's account was declared as NPA on 30.06.2008. The Original Lender also issued the notice dated 03.02.2009 under Section 13(2) of the SARFAESI Act. The FC placed the copy of the Statement of CD's Account from 24.05.2010 to 30.08.2019 as well as SARFAESI notice dated 03.02.2009 to highlight the CD's inability to repay the outstanding amount due to the Original Lender.

2.4 Later, the Original Lender assigned the loans/debts and security to JM Financial Asset Reconstruction Company Limited i.e., the present FC, *vide* a registered Assignment Agreement dated 18.08.2009. Pursuant to the execution of Assignment Agreement, the FC filed the Original Application No. 143/2010 (OA) before the Ld. DRT-II, Mumbai on 24.05.2010 against the CD, for recovery of the outstanding amount for Rs.57,49,90.407/-. The DRT passed the judgment on 07.06.2013 (DRT Judgment) in favour of the FC in the said OA, wherein the CD was, *inter alia*, directed to pay the amount of Rs.57,49,90.407/- along with interest at the rate of 12% per annum. However, there existed certain factual inaccuracies in the DRT Judgment and so, the FC filed the Review Application No. 8/2013 before the Ld. DRT. In the said Review Application, it was submitted that the DRT Judgment did not grant reliefs relating to declaration in respect of valid mortgage of CD's immovable properties as well as incorrect recording of fact about non-availability of mortgage premises. The Review Application was eventually allowed by DRT *vide* its order dated 12.05.2021 (Review Order) by carrying out the rectifications in the DRT Judgment as sought by the present FC. The FC has placed on record the copies of the said OA; the DRT Judgment; the Review

Application as well as the Review Order passed by the DRT by way of Additional Affidavit dated 11.08.2021 and Compilation of Documents dated 12.06.2026.

2.5 During the pendency of the aforesaid OA before Ld. DRT, the CD filed a Securitisation Application, S.A. No. 45/2011 for challenging the FC's possession notice dated 16.09.2011 as well as physical possession of the CD's property i.e., Shelly's Estate, which was dismissed *vide* DRT's order dated 03.04.2012. Further, the CD also filed the Writ Petition bearing WP No. 1442/2012 before Hon'ble Bombay High Court to seek clarification about the DRT's order dated 10.05.2012 which was allowed *vide* order dated 01.06.2012 in favour of the CD. Thereafter, the FC issued the possession notice dated 06.08.2012 to the CD and consequently, the CD filed another Writ Petition before Hon'ble Bombay High Court i.e., WP No. 17/2014 to challenge the termination of CD's leasehold rights in Shelly's Estate. But the said Writ Petition was dismissed by Hon'ble Bombay High Court *vide* its order dated 24.08.2016.

2.6 The Ld. Senior Counsel for the FC submitted that the CD, through its director, Mr. Jai Jiwat Lalwani made a one-time Settlement dated 18.07.2025 (OTS) wherein the CD offered the payment of Rs. 7,00,00,000/- (Seven Crore Rupees) as full and final settlement of all dues payable by the CD to the FC. However, the said OTS was rejected by the FC *vide* its rejection letter dated 29.07.2025 since the offered OTS amount was very low compared to the outstanding amounts. However, the CD's OTS letter indicates the acknowledgment and admission of debt and default committed by the CD in the present Application.

2.7 It is further submitted that the present Application is filed within limitation since the cause of action against the CD on account of the DRT Judgment attained finality only after the issuance of the aforesaid Review Order by Ld. DRT on 12.05.2021. So, the limitation period of three years would commence afresh from the date of Review Order i.e., 12.05.2021. Further, the CD's OTS proposal through its current director not only leads to a fresh cause of action but also demonstrates the debt and default against the CD in the present Application. The FC relied upon the decision of Hon'ble Supreme Court in *Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy* [(2021) 10 SCC 330].

2.8 Further, Section 14 of the Limitation Act, 1963 (Limitation Act) would be applicable in the present Application since the period of 03.02.2009 to 12.05.2021 was spent in the SARFAESI proceedings and the same shall be excluded in view of the Hon'ble Supreme Court's decision in *Shesh Nath Singh and Another vs Baidyabati Sheoraphuli Co-Operative Bank Limited and Another.*, [(2021) 7 SCC 313]. In view of default committed by the CD in repayment of outstanding amount, it is prayed that the CIRP be initiated against the CD.

3. CONTENTIONS OF CD (LALWANI FACTION/CURRENT MANAGEMENT)

3.1 It is submitted that the two factions of the directors of the CD have filed separate *Vakalatnama* on behalf of the same CD, as reflected in the order of this Adjudicating Authority dated 20.01.2020. This Tribunal observed the same *vide* orders dated 20.01.2020; 04.09.2023; and 14.09.2023.

3.2 The Ld. Counsel for the current management of the CD submitted that the Application is barred by limitation as it was filed in 2019 while the default

dates are mentioned in Part IV of the Application as 30.06.2008 and 07.06.2013 i.e., the dates on which the CD's account was declared as NPA and the DRT Judgment in the OA, respectively. Further, the FC failed to file any application for condonation of delay under Section 5 of the Limitation Act.

3.3 The FC cannot rely on the Review Order dated 12.05.2021 since it doesn't bring any finality to the DRT proceedings which had already concluded on 07.06.2013 and a note for Speaking to the Minutes cannot be treated as review application for the purpose of modification of the order and thereby extending the limitation by the same. To substantiate the argument, the Ld. Counsel for the CD relied upon the decisions of Hon'ble Supreme Court in *Akhil Bhartvarshiya Marwari Agarwal Jatiya Kosh and Others Vs Brijlal Tibrewal and Others* [(2019) 2 SCC 684] & *Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited and Another* [(2019) 10 SCC 572] as well as the judgment of the Hon'ble NCLAT, Principal Bench in *Corporation Bank Vs. SJN Energy Infrastructure Pvt. Ltd. and Ors.* [Company Appeal (AT) (Insolvency) No. 1184 of 2019] & *Industrial Forgings Industries Pvt Ltd Vs. A2Z Infra Engineering Ltd.* [(2025) SCC NCLAT 89].

3.4 The Review Order dated 12.05.2021 was not a review order in reality rather a mere rectification order for correcting certain errors in the original DRT Judgment. By correcting the mistakes in the DRT Judgment, the DRT had made it clear that the application filed by the FC styled as Review is in fact a 'Speaking to Minutes of order dated 07.06.2013. In any case, the Ld. Tribunal never intended to make any new findings or take any contrary view but merely corrected the errors and omissions contained in the original DRT Judgment.

3.5 It is further submitted that the FC has approached this Tribunal with malafide intention to harass the CD by filing the Section 7 IBC Application for recovery of money, which is contrary to the objectives of the IBC.

4. CONTENTIONS OF CD (BISARIA FACTION/ERSTWHILE MANAGEMENT)

4.1 The erstwhile director of the CD, Mr. Atul Bisaria, filed his reply dated 03.12.2019, wherein he not only challenged the present Application on the ground of limitation but also submitted that the present management of the CD i.e., Mr. Jai Jiwat Lalwani and other members have taken over the CD in a hostile and fraudulent manner in collusion with the Registrar of Companies and the Ministry of Corporate Affairs. Further, certain persons fraudulently became directors of the CD by forging documents and creating fabricated board resolution, etc. On account of the fraud committed by the present management, the Economic Offences Wing, Mumbai (EOW) already commenced criminal proceedings against them, which are currently pending before the Ld. Metropolitan Magistrate, Esplanade, Mumbai.

4.2 The Ld. Counsel for the erstwhile Management of the CD submitted that during the pendency of the present Application, Mr. Atul Bisaria passed away on 09.11.2022. Consequently, his wife, Mrs. Mihu Atul Bisaria, filed the Additional Affidavit dated 08.09.2023 to allow her to represent the CD on behalf of the erstwhile management.

4.3 The Section 7 Application is defective since it was filed on the basis of incomplete documents. It is contended that the erstwhile directors had signed blank papers and given to some of employees of the CD for availing the loan facilities upon the instructions of the Original Lender and the FC.

Further, the Term Loan Agreement dated 05.11.2006 was not duly stamped and hence, it cannot be considered as evidence to determine the debt due to the FC by the CD in the present matter.

- 4.4 The FC is not entitled to the exemption under Section 14 of the Limitation Act since the SARFAESI proceeding initiated against the CD before the Ld. DRT were not *bona fide* before a court without jurisdiction. Per contra, the FC has exercised an independent and distinct legal remedy available under the provisions of the SARFAESI Act, which has no bearing on the present Application filed under Section 7 of the Code. The CD relied upon the judgment of Hon'ble NCLAT, Principal Bench in *Sri Bijay Kumar Agarwal vs State Bank of India.*, [(2022) SCC OnLine NCLAT 2722], wherein it was held that the remedy under Section 7 of the Code is a distinct and independent remedy and filing of an Original Application under the SARFAESI Act will have no effect on 'stopping the clock' as far as filing proceedings under Section 7 of the Code is concerned.

5. REJOINDER OF FC

- 5.1 The FC, *vide* its Rejoinder dated 15.01.2020, submitted that Mr. Atul Bisaria has no *locus standi* to represent the CD in the present proceedings since he was already removed as a director from the CD's board and had lost control over the affairs of the CD. The FC filed Written Submissions on 11.06.2026.
- 5.2 It is also submitted that the DRT Judgment dated 07.06.2013 stood merged with the Review Order dated 12.05.2021 as per the 'doctrine of merger' and the FC relied upon the decision of the Hon'ble Supreme Court in *Kunhayammed Vs. State of Kerala* [(2000) 6 SCC 359] and Hon'ble NCLAT

in *Yerramaneni Ramakrishna and Ors vs. Suraksha Realty Ltd. and Ors.*, [(2024) SCC OnLine NCLAT 1036] and *Industrial Forgings Industries Pvt Ltd Vs. A2Z Infra Engineering Ltd.* [(2025) SCC NCLAT 89].

- 5.3 The CD had admitted disbursement of term loan amount as well as default committed by it as evident from the perusal of their pleadings in S.A. No. 116/2018. Moreover, the FC tried to sell the CD's property i.e., Shelly's Estate through Sale Notice dated 30.08.2018 which indicates that the cause of action against the CD was continuing in nature and thus, the CD's contention of the present Application being barred by limitation cannot be accepted.

6. CONTENTION OF INTERVENOR IN IVN PETITION 9/2024

- 6.1 It is submitted by the Intervenor, M/s Strufcon Engineers, through its proprietor, Mr. Sahebrao Gangadhar Kadam that Mrs. Pramila Wadhawan, the original lessee of Shelly's Estate executed the Assignment Deed dated 07.05.2004 in favour of the Intervenor's proprietor for total consideration of Rs. 4.5 Crore. Later, she also executed the Development Agreement and Memorandum of Understanding (MOU) dated 07.03.2005 with the Intervenor regarding Shelly's Estate and construction of building upon the said land.
- 6.2 However, the original lessee transferred the aforesaid property in favour of the CD without the Intervenor's consent, through Assignment Deed dated 22.12.2006 for consideration of Rs.15,59,67,000/-. Pursuant to the Intervenor's objection, the MOU dated 07.03.2007 was executed between the Intervenor and the CD for the consideration amount of Rs.8,00,00,000/-. The CD had also executed the development Agreement dated 17.08.2008 in favour of the Intervenor.

- 6.3 The Ld. Counsel for the Intervenor submits that the Intervenor had no knowledge about the loan agreement involving the said property between the FC and the CD. As the possessory title holder of the said property, the Intervenor's rights would be adversely affected by the present Application and hence, the Intervenor was compelled to file the Intervention Petition No. 9/2024 on 10.01.2024.
- 6.4 In their reply to IVN. PTN. No. 9/2024, the CD's current management of the CD, i.e., Lalwani Faction, contended in their Joint Statement of Objections dated 27.05.2026, that the Intervenor had not served the copy of the Intervention Petition to the CD. It is further submitted that any claims of the Intervenor regarding its rights upon the said Property i.e., Shelly's Estate would be *void ab initio* in light of terminated lease, MPT's overriding rights and the decision of Hon'ble Bombay High Court in Writ Petition No. 17/2014 and thus, it cannot claim better rights than the rights possessed by the FC itself when the FC actually has no rights at all in the CD's leasehold property.

7. ANALYSIS AND FINDINGS

- 7.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the FC and the two factions of the present and erstwhile management of the CD.
- 7.2 The case of the FC is that the DRT Judgment dated 07.06.2013 has merged into the Review Order dated 12.05.2021 in terms of the 'doctrine of merger' as explained by the Hon'ble Supreme Court in *Kunhayammed Vs. State of Kerala* [(2000) 6 SCC 359]. Consequently, according to the FC, the limitation to file the present Application shifted from 07.06.2013 to 12.05.2021. Both

these submissions are controverted by the CD. In view of the above, the following issues need consideration of the Bench:

- (i) Whether the date of default is shifted from 07.06.2013 (the date of the DRT Judgment) to 12.05.2021 (the date of the Review Order) on ground of 'doctrine of merger'?
- (ii) Whether the present Application is hit by the law of limitation?

7.3 The case of the FC is that they have filed an application for review of the DRT Judgment as it contained certain infirmities that made the same unworkable. The FC filed Review Application on 01.07.2013 to correct the mistakes and inaccuracies in the DRT Judgment dated 07.06.2013, which was registered by the DRT on 06.07.2013. It is further submitted that due to administrative procedure, the entire proceeding was transferred from DRT-II to DRT-I, Mumbai on 29.06.2016. It is also submitted that the Review Application was received in DRT-I only on 16.11.2018, and it was heard by DRT-II on 12.05.2021, which passed the Review Order making corrections/amendments. Although the FC filed the Review Application, it was considered as '*Speaking to the Minutes*' of the DRT Judgment in the Review Order dated 07.06.2013 by the Ld. DRT. Be that as it may, the Ld. Presiding Officer, DRT clarified the intention of the tribunal to correct the error or omission in the DRT Judgment, by correcting/modifying the same. According to the FC, when the present Application was filed on 16.09.2019, the proceeding in DRT was in continuing process and therefore, the DRT Recovery Certificate issued on 07.06.2013 could not be enforced since the original DRT Judgment was unenforceable as the same contained certain

factual inaccuracies, especially with regard to the mortgaged asset. It is argued by the Ld. Sr. Counsel for the FC that the DRT Judgment dated 07.06.2013 attained finality only on 12.05.2021, when the DRT passed the Review Order. According to him, since the DRT proceedings continued before DRT Mumbai until 12.05.2021 (when the Review Order was passed in the DRT Judgment), the limitation to file the present Application had been extended from 07.06.2013 to 12.05.2021. This argument is strongly refuted by the Ld. Counsel for the CD.

7.4 In view of the contentions and rival contentions of the parties, we may examine the power of the DRT to review its orders as contained in Rule 5A of the Debts Recovery Tribunal (Procedure) Rules, 1993, which reads:

*“5A. Review. – (1) Any party considering itself aggrieved by an order made by the Tribunal on account of some **mistake or error apparent on the face of the record** desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.*

(2) xxx

(3)” (Emphasis added).

From the above, it is seen that the DRT’s power to review is to correct any mistake or error apparent on the face of the record. The DRT does not enjoy any power to revision or modification of its judgment. It is seen that the Review Application preferred by the then FC, for correcting certain errors which had crept in the DRT Judgment, was inferred by the Ld. Presiding Officer as ‘Speaking to the Minutes’ of the DRT Judgment. The Ld. DRT looked into the case for review, as pleaded, and verified the DRT Judgment,

considered the errors apparent on the face of the record and passed the Review Order. It is the contention raised by the FC that once the Review Order is passed, the original order (DRT Judgment) would merge with the subsequent Review Order. The Ld. Sr. Counsel for the FC has brought to our attention the 'doctrine of merger' as decided by the Hon'ble Supreme Court in *Kunhayammed* (Supra). However, on a perusal of the above judgment, it emerges that the context in that matter was different. The Hon'ble Supreme Court referred to the 'doctrine of merger' in the context where an appeal or revision is provided against an order, and the superior forum modifies, reverses or affirms the decision put in issue before it, then the decision of the subordinate forum merges in the decision by the superior forum. This is a common law doctrine based on the principles of propriety in the hierarchy of judicial system. Since the Review Order of the DRT Judgment is passed not by a superior forum but by the DRT itself, the said decision of the Hon'ble Apex Court is inapplicable in the present context. The FC has also cited the judgment of the Hon'ble NCLAT in *Yeramaneni Ramakrishna and Others Vs. Suraksha Realty Ltd. and Others* [2024 SCC OnLine NCLAT 1036] to advance the merger doctrine by contending that limitation reckons from the date of the rectification order to correct typographical error, and not from the date of the original order. Another decision of the Hon'ble NCLAT in *Industrial Forgings Industries Pvt. Ltd.* [2025 SCC OnLine 89], has also been referred to buttress the same point. But we find that both the above decisions have no relevance in the case on hand, as those decisions relate to condonation of delay in filing appeals.

7.5 The next interesting contention advanced by the FC is that by virtue of the Review Order dated 12.05.2021 that corrected prayers (b) and (c) of the DRT Judgment dated 07.06.2013, the original directions against the Defendants (CD herein) were modified, in the sense that the CD was allowed maximum six months for redemption of their mortgaged property from 12.05.2021. According to the Ld. Sr. Counsel for the FC, as six months allowed to the CD had already been elapsed, the Respondents (CD herein) lost their right to redeem the mortgaged property, which has given the FC fresh cause of action against the CD, to sell their mortgaged property and recover the outstanding dues. We are unable to buy these arguments, in the context of the IBC, as the purpose of the Review Order is to carry the amendments by way of corrections of the mistakes to the body of the original DRT Judgment. After the Review Order was passed on 12.05.2021, the corrections allowed, became part of the body of the DRT Judgment dated 07.06.2013. Moreover, in the Written Submissions of the FC dated 25.04.2019, in the Review Application No. 8/2013, it was, *inter alia*, submitted by them as follows:

“After passing of the Order, the Applicant within the period of limitation which is available for filing Review, has filed an Application before the Tribunal to rectify the mistake of wrongly recording certain facts. It is respectfully submitted that this application can be considered, Application under Section 19(25) or application for speaking to minutes and the order can be corrected.”

In view of the above, we hold that the Review Order dated 12.05.2021, by textual amendments, has the only effect of correcting the mistakes and omissions in the DRT Judgment dated 07.06.2013. Thus, the date of default, as pleaded in Part IV of the Application, is not shifted from 07.06.2013 (the date of the DRT Judgment), to 12.05.2021 (the date of the Review Order), in terms the 'doctrine of merger'. Thus, issue (i) is thus decided against the FC.

7.6 As far as the next issue regarding limitation is concerned, we have seen that the FC's claim is also based on the DRT Judgment dated 07.06.2013 along with the Review Order dated 12.05.2021. The two date(s) of default mentioned in Part IV of the present Application are (i) 30.06.2008, i.e., the NPA date and (ii) 07.06.2013, i.e., the date on which the DRT Judgment was passed in favour of the FC by the Ld. DRT in the OA. The present Application was filed on 26.09.2019, much after the period of three years from the alleged date(s) of default. It is settled law that limitation is always a mixed question of facts and law. The Ld. Counsel for the CD vehemently contested the Application on the ground that the same is hopelessly barred by limitation. On the contrary, the Ld. Sr. Counsel for the FC forcefully opposed the challenge on the ground that only the Review Order dated 12.05.2021 had brought finality to the original DRT Judgment for the purpose of the Section 7 IBC Application. The Review Order is produced on record through the FC's Additional Affidavit dated 12.06.2026. As we have already found that the Review Order was essentially a mere correction or rectification order and the principle of merger to subsequent order cannot be applied to allow the extension of limitation period.

7.7 It is, therefore, necessary to consider Sections 14 and 18 of the Limitation Act, 1963 (Limitation Act) for the purpose of determination of the extension of limitation period in the present case. Section 14 states:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.— (1) *In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence **another civil proceeding**, whether **in a court of first instance** or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, **from defect of jurisdiction or other cause of a like nature**, is unable to entertain it.*

(2) *In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence **another civil proceeding**, whether **in a court of first instance** or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, **from defect of jurisdiction or other cause of a like nature**, is unable to entertain it.*

(3) xxx

Explanation. — For the purposes of this section, —

(a) *in excluding the time during which **a former civil proceeding was pending**, the day on which that proceeding was instituted **and the day on which it ended** shall both be counted;*

(b) *a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*

(c) ***misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.**”*

7.8 It is not the case of the FC that it was prosecuting the matter against the CD in another court without jurisdiction, and that for the defect in the jurisdiction of that court or other causes of the like nature, the court was unable to entertain it. After the DRT Judgment was passed on 07.06.2013, the FC filed the application for review of the Judgment for removing certain inaccuracies and to amend the same by making necessary corrections/modifications. By the Review Order dated 12.05.2021, the original Judgment was corrected/modified and the corrected/modified portions merged with the original DRT Judgment. A Revision Application to review the judgment filed in the same DRT to correct certain mistakes/modifications cannot be regarded as a separate civil proceeding in another court without jurisdiction. The Ld. Sr. Counsel for the FC relied upon the judgment of the Hon'ble Supreme Court in *Sesh Nath Singh Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd.* [(2021) 7 SCC 313] and argued that the present Applicant is entitled to the benefit of Section 14 of the Limitation Act as the OA was still pending until 12.05.2021, when the Review Order was passed. In the case on hand, however, the proceeding which were initiated before the DRT was neither without jurisdiction nor was there any defect in the jurisdiction or cause of like nature to extend the benefit of Section 14. Hence, *Sesh Nath* (Supra) has no application in the facts of the present matter. Furthermore, the Hon'ble Supreme Court in unequivocal terms held in *Gaurav Hargovindbhai Dave Vs. Asst Reconstruction Company (India) Limited and Another* [(2019) 10 SCC 572] that an application filed under Section 7 of the IBC would only fall within the residuary Article 137 of the Limitation Act.

7.9 It is also necessary to consider Section 18(1) of the Limitation Act, which reads:

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

In the present matter, the FC has produced a One Time Settlement proposal dated 18.07.2025, made by the director and majority shareholder of the CD, in his individual capacity. The FC cited *Kotak Mahindra Bank Ltd. Vs. Kew Precision Parts Private Limited & Ors.* [(2022) 9 SCC 364], to contend that owing to the OTS proposal made by the CD on 18.07.2025, the period of limitation is extended in terms of Section 25 of the Indian Contract Act, 1872 (ICA). The coordinate Bench’s decision in *Central Bank of India Vs. JS Designer Limited* [2025 SCC OnLine 6284] is also on the point of enforceability of time-barred debt on a written promise to pay under Section 25 of the ICA. The FC cited the judgment of the Hon’ble Supreme Court in *Dena Bank* (Supra), wherein the Apex Court held that there is no reason why an offer of one-time settlement of a live claim, made within the period of limitation, should also not be construed as an acknowledgment to attract Section 18 of the Limitation Act, if the requirements of Section 18 are satisfied. According to the FC, this OTS gives rise to a fresh period of limitation and thus the Application is maintainable. Relying on *Dena Bank* (Supra), it was also argued by the Ld. Sr. Counsel for the FC that the present

Applicant approached this Adjudicating Authority after obtaining a final order and/or decree in the recovery proceedings; and since the decree remained unsatisfied, it would give rise to a fresh period of limitation for initiation of CIRP. We respectfully disagree with this argument as it is the original case of the FC that the period of limitation of three years runs from 07.06.2013, the date of DRT Judgment. However, after passing the Review Order on 12.05.2021, the FC wishes to take advantage by arguing that the date of default shifted from 07.06.2013. We have already found that the claim of the FC for shifting the date of default to 12.05.2021 cannot be accepted. Hence, the facts and circumstances of the present case are entirely different from *Dena Bank* (Supra).

7.10 Nevertheless, on a perusal of the OTS, it is seen that the proposal was made by the present director of the CD strictly on 'without prejudice' basis, reserving all available rights and remedies. Further, it has been categorically maintained in the OTS proposal that the pending Application before NCLT is being contested, *inter alia*, on the ground of limitation. It is also clarified that the OTS proposal shall not be construed as an admission of liability, acknowledgment of debt or waiver of any defence. Furthermore, the CD's OTS proposal of 18.07.2025 was rejected by the FC by letter dated 29.07.2025. Be that as it may, this OTS proposal made by one faction of the management of the CD on 18.07.2025, without prejudice basis, cannot be regarded as a contract within the meaning of Section 25 of the ICA. It was held by the Hon'ble NCLAT in *Bimalkumar Manubhai Vs. Bank of India and Anr.* [(2020) ibclaw.in 247 NCLAT] that since the one-time settlement was not accepted by the financial creditor, the same cannot be treated as

acknowledgment in view of Section 18 of the Limitation Act. Hence, we hold that the OTS is incapable of extending the period of limitation. Thus, issue (ii) is also answered against the FC.

7.11 The law is settled that the objective of the IBC is not to revive time-barred debts. The Review Order was passed by the Ld. DRT only on 12.05.2021 post-filing of the Application in 2019. On a close examination of the Review Order, it is clearly seen that the Ld. Tribunal, has only corrected the mistakes and apparent error on the face of the record of the DRT Judgment. In other words, the Ld. DRT has allowed corrections to the DRT Judgment by deleting, adding and correcting certain portions of the text. Further, pursuant to the corrections/modifications, the corrected/modified portions have become part of the original DRT Judgment. When we construe the Review Order as an instrument to make corrections/modifications, the same cannot be considered as a document that extends limitation, which is determinable otherwise than the Review Order. Hence, we are not inclined to accept the arguments advanced by the Ld. Sr. Counsel for the FC that the Review Order is capable of extending the limitation, as otherwise determinable by the law of limitation.

7.12 Filing the present Application under Section 7 of the IBC even before passing the Review Order clearly indicates that the present Applicant was merely making the IBC proceeding experimental, without any intention to resolve the insolvency of the CD but as a chance of recovery of debts. In view of the above discussions, we are not inclined to pass any order in their favour. The present Application under Section 7 is found to be devoid of any merit and is to be disposed of as such.

ORDER

In the result, **CP (IB) No. 3500/MB/2019** filed by JM Financial Asset Reconstruction Company Limited, the FC, under Section 7 of the IBC read with Rule 4 of the AAA Rules, for initiating CIRP in respect of Shubh Hospitality Private Limited, the CD, is **rejected**. Consequently, **Intervention Petition No. 9/MB/2024**, filed by Strufcon Engineers, is dismissed as infructuous.

We make it clear that any observations made in this Order should not be construed as expressing opinion on the right of the FC to recover any amount due from the CD. The right of the FC before any other judicial forum shall not be prejudiced on the ground of rejection of this Application.

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//LRA-Tanmay Jain//