NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1453 of 2026

IN THE MATTER OF:

Kumud Jain ...**Appellant(s)**

Versus

Kotak Mahindra Bank Ltd. & Anr. ...**Respondent(s)**

Present:

For Appellant	**:**	Mr. Ramji Srinivasan, Sr. Advocate with Ms. Garima Sharma, Mr. Avinash Pandey, Ms. Sheefali Munde, Mr. Aryansh Tripathi, Advocates.
For Respondents	**:**	Mr. Sumant Batra, Sr. Advocate with Mr. Akshay Goel, Mr. Kanishk Khetan, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Mr. Aditya Jain, Mr. Harsh Tandon, Advocates for R-1.

O R D E R
(Hybrid Mode)

I.A. No. 5619 of 2026- Heard Shri Ramji Srinivasan, Ld. Sr. Counsel appearing for the Appellant as well as Shri Sumant Batra, Ld. Sr. Counsel appearing for Respondent No. 1, on the issue of admission of the appeal and with regard to IA No. 5619 of 2026 whereby the prayer has been made to stay all further proceedings of the CIRP process including the constitution of the Committee of Creditors in pursuance of impugned order dated 15.07.2026 and perused the record.

2. Ld. Sr. Counsel appearing for the Appellant submits that the impugned order dated 15.07.2026 has been passed by the Ld. Adjudicating Authority without identifying the precise financial debt and without ascertaining the amount as well as the date of default and therefore could not be sustained.

3. It is further submitted that earlier a Petition was filed by the financial creditor i.e. Kotak Mahindra Bank Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) and the same was admitted vide order dated 06.09.2019 passed in Petition No. IB 672 (ND)/2019. However, this order was set aside by this Appellate Tribunal vide order dated 08.01.2020 passed in CA (AT) (Ins) No. 1349 of 2020, on the ground of limitation and thereafter the financial creditor approached the Hon'ble Supreme Court and assailed the aforesaid order of this Appellate Tribunal by filing Civil Appeal No. 2176 of 2020 and vide judgment dated 05.08.2022 though the debt was held time barred but in view of a new document relied on before the Hon'ble Supreme Court the matter was remanded back to the Ld. Adjudicating Authority to consider the application for CIRP a fresh after providing opportunity to the Appellant and Respondent to file additional affidavits disclosing documents/additional affidavit in response and thus the issue before the Ld. Adjudicating Authority was narrowed down to whether the OTS dated 20.12.2018 would constitute a fresh contract under Section 25 (3) of the Contract Act, 1872 and whether a debt arising from this OTS may be considered within limitation.

4. It is further submitted that Ld. Adjudicating Authority by passing order dated 29.08.2023 dismissed the Section 7 petition and it was held that though the OTS Proposal may be construed as promise to pay and a fresh Contract under Section 25 (3) of the Contract Act, 1872 but the application filed in Form I is not based on the debt amount promised to be paid under the said OTS and thus the application could not be admitted and thereafter an appeal was preferred by the financial creditor before this Appellate Tribunal and this

Appellate Tribunal vide order dated 17.07.2025 allowed the appeal filed by the financial creditor and placed reliance on Clause 6 (i) of the OTS dated 20.12.2018 and the order passed by this Appellate Tribunal was challenged before the Hon'ble Supreme Court by filing Civil Appeal Diary No. 40748 of 2025 and vide order dated 11.08.2025 the said appeal was not pressed by the Appellant.

5. It is vehemently submitted that the questions before the Ld. Adjudicating Authority for consideration were as to whether the OTS dated 20.12.2018 would constitute a fresh Contract under Section 25 (3) of the Contract Act, 1872 and whether the debt mentioned in the OTS i.e. Rs. 24.55 Crore is to be considered or the original debt mentioned in Section 7 Petition i.e. Rs. 46.63 Crore would be considered as debt and whether the application filed by the financial creditor under Section 7 of the Code is within limitation.

6. It is further submitted that the Section 7 Petition filed by the financial creditor with Form I has mentioned the default date of June, 2015 and the amount mentioned in Part IV is Rs. 46,63,35,337.31/- as on 27.11.2018 and therefore by the date of default mentioned in the application the debt was time barred and there was no mention of the OTS Proposal dated 12.12.2018 or 20.12.2018 and therefore the amount was also wrongly shown and as the debt was time barred and no effort was made to amend the petition the same could not be admitted by the Ld. Adjudicating Authority.

7. It is further submitted that when there was no mention of the OTS dated 20.12.2018 and the amount was also stated in the application which was existing prior to the OTS agreement the application filed by the financial creditor cannot be held to have been filed in pursuance of alleged new

agreement (OTS) dated 20.12.2018 which has been treated as a new Contract under Section 25 (3) of the Contract Act, 1872.

8. It is further submitted that no application under Section 5 of the Limitation Act has either been moved by the financial creditor before Ld. Adjudicating Authority and otherwise also there was no sufficient cause available to the Ld. Adjudicating Authority to have treated the petition, in absence of any application filed under Section 5 of the Limitation Act, within time and it was apparent on record that the financial creditor has sought to introduce Section 25 (3) of the Contract Act as the foundation of its claim only by way of an additional affidavit dated 23.11.2022, which was admittedly beyond the prescribed period of limitation and no application under Section 5 of the Limitation Act was moved.

9. It is further submitted that even after the matter earlier travelled to the Hon'ble Supreme Court the issue of limitation applicable to the claim of the financial creditor founded on Section 25 (3) of the Contract Act was kept open and undecided and in the earlier round of proceedings Ld. Adjudicating Authority has also not considered the issue of limitation in the background of Section 25 (3) of the Contract Act and the duty of the Ld. Adjudicating Authority was to consider the issue of limitation a fresh in the light of the applicability of Section 25 (3) of the Contract Act.

10. It is further submitted that the additional affidavit filed by the financial creditor before the Ld. Adjudicating Authority was to be taken as an amendment of pleadings as it introduces a new legal foundation and a new starting point of limitation which was never pleaded in Part IV of the Original Section 7 application and therefore the starting point of limitation set forth

through this additional affidavit was time barred as a new relief or cause of action could not be introduced by way of amendment after expiry of limitation and the amendment cannot relate back to defeat a right which has vested in the opposite party.

11. It is also submitted that only some liberty was granted by the Hon'ble Supreme Court and the same may never be construed that it will override the specific provision of the Limitation Act and thus it was the duty of the Ld. Adjudicating Authority to have considered the additional affidavit filed by the financial creditor as well as the debt as time barred and the same cannot be revived by any amendment even if it is filed in the guise of an affidavit, being time barred.

12. It is also submitted that in view of the observations of the Hon'ble Supreme Court the financial creditor cannot take any benefit of limitation from the cheques allegedly issued by the appellant and there cannot be any extension of limitation under Section 18 of the Limitation Act as there was no acknowledgment within three years of Limitation.

13. It is also submitted that when the Hon'ble Supreme Court has already held Section 7 application barred by limitation the issue could not be reopened by relying upon clause 6(i) of the OTS agreement dated 20.12.2018 and at the cost of repetition it is submitted that the said clause cannot revive a time barred debt or extend the limitation, overriding provisions of the Limitation Act.

14. Ld. Sr. Counsel for the Appellant further submits that above sequence of events would reveal that the CD has been unnecessarily dragged into the CIRP on the basis of a time barred debt and proceedings and further progress

of the CIRP and the constitution of the CoC would affect adversely the rights of the Corporate Debtor (CD) and therefore by providing interim stay the further progress of the CIRP and the constitution of CoC be stayed.

15. Ld. Sr. Counsel for the Appellant in support of his submissions has relied on following case laws:

(i)Sabarmati Gas Ltd. vs. Shah Alloys Ltd., (2023) 3 SCC 229.

(ii) Royal Construction vs. Gannon Dunkerley & Company Ltd., (2025) SCC Online NCLAT 618.

(iii) Deepak Mahadev Shirke vs. Unity Small Finance Bank Ltd., (2025) SCC Online NCLAT 677

(iv)Balwant Singh vs. Jagdish Singh, (2010) 8 SCC 685.

(v)Sesh Nath Singh vs. Baidyabati Sheoraphuli Co-Operative Bank, (2021) 7 SCC 313

(vi) Pathapati Subba Reddy vs. Special Deputy Collector, (2024) 12 SCC 336

(vii) H. Guruswamy and Ors. vs. A. Krishnaiah, (2025) SCC Online SC 54

(viii) Thirunagalingam vs. Lingeswaran, (2025) SCC Online SC 1093

(ix) State of Madhya Pradesh vs. Bherulal, (2020) 10 SCC 654

(x) Mrinmoy Maity vs. Chhanda Koley & Ors. (2024) 15 SCC 215

(xi) Shivamma vs. Karnataka Housing Board, (2025) SCC Online SC 1969

(xii) Gaurav Hargovindbhai Dave vs. ARCIL, (2019) 10 SCC 572.

(xiii) Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd., (2020) 15 SCC 1.

(xiv)Vashdeo R. Bhojwani vs. Abhyudaya Co-Operative Bank Ltd., (2019) 9 SCC 158

(xv) B.K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates, (2019) 11 SCC 633.

(xvi) Jignesh Shah vs. UOI, (2019) 10 SCC 750.

16. Shri Sumant Batra, Ld. Sr. Counsel appearing for Respondent No. 1/Financial Creditor/Bank submits that whatever issues have been highlighted by Ld. Sr. Counsel for the appellant have already been dealt with in earlier judgments and have been set at rest and they cannot be re-agitated again as they are barred by the Principle of Res Judicata.

17. While drawing our attention towards page no. 149 of the appeal paper book and at the operating portion of the judgment passed by the Hon'ble Supreme Court dated 05.08.2021 in Civil Appeal No. 2176 of 2020 it is submitted that the direction was given to the Ld. Adjudicating Authority to consider the application for CIRP afresh, in accordance with law, in the light of the observations made in the body of the judgment, after giving Appellant and Respondent opportunity to file additional affidavits disclosing documents/additional affidavit in response.

18. It is further submitted that the Hon'ble Supreme Court has also opined that the NCLAT in its judgment has not considered applicability of Section 25 (3) of the Contract Act, 1872 and also that the NCLAT has also not noticed the terms of settlement executed on 20.12.2018 and the NCLAT also did not

consider whether Section 25 (3) of the Contract Act would be attracted and also that the applicability of the Section 5 of the Limitation Act was also not considered. It is further submitted that the Hon'ble Supreme Court has also highlighted that no opportunity to rectify the defects in view of Section 7 (5) (b) of the Code has been given and had this opportunity might have been given the financial creditor might have got the opportunity to rectify the defects in its application moved under Section 7 by filing additional pleadings or documents.

19. It is vehemently submitted that an additional affidavit was filed by the Respondent Bank before the Ld. Adjudicating Authority on 23.11.2022 wherein it was specifically pleaded that the Corporate Debtor (CD), while letter dated 12.12.2018 admitted its liability by proposing an OTS till 31.12.2018 and when the proposed OTS was not acceptable to the financial creditor, the CD again vide letter dated 19.12.2018 proposed a revised OTS offer of Rs. 20.76 Crores and the financial creditor vide its letter dated 20.12.2018 agreed to accept the revised OTS offer for a sum of Rs. 24,55,00,000/- to be payable in full on or before 31.12.2018 towards the settlement of the total outstanding amount. However, the CD once again failed to honor its commitment as proposed in the OTS and in the DRT proceedings recovery certificate was issued by the DRT in pursuance of judgment dated 21.05.2019.

20. It is further submitted that it was specifically pleaded in paragraph no. 15 of the additional affidavit that the OTS settlement has accepted on 20.12.2018 and a default has been made with regard to this OTS Proposal by the CD and thus the Limitation is further enhanced.

21. Ld. Counsel for the Respondent Bank has also drawn our attention towards the defense of the Appellant which has been crystallized by the Ld. Adjudicating Authority in paragraph no. 14 of the order dated 29.08.2023 passed in CP No. 672 of 2019 and submits that these are the same points which have been argued by Ld. Sr. Counsel for the Appellant today and all these issues have already been decided in favour of the Appellant in the said judgment however the same has been reversed by this Appellate Tribunal by its judgment dated 17.07.2025 passed in CA (AT) (Ins) No. 1405 of 2023 and the said order was assailed by the Appellant before the Hon'ble Supreme Court by filing Civil Appeal Diary No. 40748 of 2025 and the appeal was dismissed as not pressed and thereafter the judgment of this Appellate Tribunal 17.07.2025 has become final and binding on the Appellant and the issues decided therein cannot be reopened now by the Appellant.

22. It is further submitted that so much so, even after not pressing the appeal before the Hon'ble Supreme Court on 11.08.2025 an application for review/ recall of order dated 17.07.2025 was moved by the Appellant before this Appellate Tribunal which was dismissed by this Appellate Tribunal vide order dated 12.12.2025 and the order dated 12.12.2025 passed by this Appellate Tribunal was again assailed before the Hon'ble Supreme Court by filing Civil Appeal Diary No. 5808 of 2026 and the appeal was dismissed by the Hon'ble Supreme Court vide order dated 06.02.2026.

23. It is vehemently submitted that appellant has not left any stone unturned in delaying the resolution of the CD and it is due to the clever tactics applied by the Appellant the impugned order could only be passed after 7 years of filing the petition by the Respondent Bank and now the Appellant

further wants to delay the proceedings by filing this frivolous appeal and no case is emerging in favour of the Appellant of interim stay.

24. We have heard Ld. Counsel for the parties in depth and at the outset place on record that otherwise we may not have devoted many pages for writing an order on the issuance of interim stay or admission of appeal but having regard to the fact that various aspects of the matter has been argued by Ld. Counsel for the parties in depth, it has become necessary for us to put on record the complete factual backdrop of the case so that the factual position may be perceived in right perspective.

25. Perusal of the record would reveal that a petition under Section 7 of the Code was filed by the Respondent Bank against the Appellant for initiation of CIRP for a default of Rs. 46,63,35,337.31/- as on 27.11.2018 and the default is shown to have occurred in June, 2015 and vide order dated 06.09.2019 the CIRP was initiated against the CD.

26. It is further reflected that against the order dated 06.09.2019 of Ld. Adjudicating Authority an appeal being CA (AT) (Ins) No. 1349 of 2019 was preferred by the Suspended Director of the CD and by passing judgment dated 08.01.2020 the appeal was allowed and the application filed by the Respondent Bank before the Ld. Adjudicating Authority was adjudicated as barred by limitation.

27. It is also evident that against the judgment passed by this Appellate Tribunal dated 08.01.2020 whereby the petition filed by the Respondent Bank was held time barred, an appeal was filed by the Respondent Bank before the Hon'ble Supreme Court being Civil Appeal No. 2176 of 2020 and the Hon'ble Supreme Court while considering various issues raised by the parties set

aside the judgment passed by this Appellate Tribunal and remanded the matter back to the Ld. Adjudicating Authority to consider it afresh. The relevant part of the judgment passed by the Hon'ble Supreme court is reproduced as under for convenience:

> ***"67**. The Adjudicating Authority proceeded on the basis that the offer of settlement made by the Corporate Debtor on 12th December 2018 and rejection thereof by the appellate showed the Corporate Debtor had conceded that there was a continuous cause of action. It is, however, the case of the Appellant Financial Creditor in this appeal that terms of settlement were executed on 20th December 2018 whereby the Corporate Debtor agreed to repay the amount of Rs.24,55,00,000/- within 31st December 2018. The Adjudicating Authority, however, did not refer to any settlement. Nor did it address the question of whether any agreement for repayment of debt came into existence in December 2018 and, if so, whether the agreement would attract Section 25(3) of the Contract Act.*
>
> ***68.** The Appellate Tribunal (NCLAT) found that there was no acknowledgement of debt within the period of limitation of three years. Holding the application of the Appellant Financial Creditor, under Section 7 of the IBC, to be barred by limitation, the Appellate Authority (NCLAT) allowed the appeal.*
>
> ***69**. The Appellate Tribunal (NCLAT) also did not notice the terms of settlement stated to have been executed on 20th December 2018, possibly because the attention of the NCLAT was not drawn to any terms of the settlement. The Appellate Tribunal (NCLAT) did not, therefore, have the occasion to consider whether Section 25(3) of the Contract Act would be attracted. The Appellate Tribunal (NCLAT), as observed above, proceeded on the basis that the CIRP proceedings were barred by limitation in the absence of any acknowledgement of debt within the period of limitation, and closed the CIRP proceedings in the NCLT, without considering the question of applicability of Section 5 of the Limitation Act for condonation of delay, to proceedings under Section 7 of the IBC.*
>
> ***70** This Court is of the view that the Appellate Tribunal (NCLAT erred in closing the CIRP proceedings without giving the Appellant Financial Creditor the opportunity to explain if there was sufficient cause for the delay in approaching*

the NCLT. An appeal being the continuation of original proceedings, the provision of Section 7(5)(b) of the IBC, of notifying the Financial Creditor before rejection of a claim, would be attracted. If notified of the proposal to close the proceedings, the Appellant Financial Creditor might have got the opportunity to rectify the defects in its application under Section 7 by filing additional pleadings and/or documents. As held in Dena Bank (supra), documents can be filed at any time until the application for CIRP is finally dismissed.

71*. The appeal is, therefore, allowed. The impugned judgment and order of the NCLAT is set aside to the extent that the CIRP proceedings have been closed. The Adjudicating Authority shall consider the application for CIRP afresh, in accordance with law, in the light of the observations made above, after giving the Appellant and the Respondent opportunity to file additional affidavits disclosing documents/additional affidavit in response".*

28. Perusal of this judgment would reveal that Hon'ble Supreme Court found that this Appellate Tribunal noticed that there was no acknowledgment of debt within three years' period holding the Section 7 petition filed by the Respondent Bank to be barred by limitation however in the same breath Hon'ble Supreme Court further held that the Appellate Tribunal did not notice the terms of settlement dated 20.12.2018 and was not having any occasion to consider the applicability of Section 25 (3) of the Contract Act and also of Section 5 of the Limitation Act to proceedings under Section 7 of the Code and further held that the Appellate Tribunal erred in closing the CIRP proceedings without giving Financial Creditor an opportunity to explain if there was sufficient cause for delay in approaching the Adjudicating Authority and also opined that the appeal being the continuation of the original proceedings the provision of Section 7 (5) (b) of the Code would attract in order to provide an opportunity to the financial creditor before rejecting his claim in order to

provide him an opportunity to rectify the defects in its application by filing additional pleadings and/or documents.

29. We also notice that on the matter remanded back by the Hon'ble Supreme Court the appellant has filed an IA being IA No. 6309 of 2022 before the Ld. Adjudicating Authority under Rule 11 of the NCLT Rules, 2016 to dismiss the petition filed by the Respondent Bank being barred by limitation and the Ld. Adjudicating Authority after noticing the judgment passed by the Hon'ble Supreme Court did not find any merit in the application and rejected the same however the said order of the Ld. Adjudicating Authority of date 23.02.2023 was challenged by the Appellant before this Appellate Tribunal by filing CA (AT) (Ins) No. 305 of 2023 which was also dismissed by this Appellate Tribunal vide order 15.03.2023 passed therein.

30. It is further reflected that thereafter, after the additional affidavit has been filed by the Respondent Bank and a reply has also been filed by the appellant the order dated 29.08.2023 was passed by the Ld. Adjudicating Authority whereby the petition filed by the Respondent Bank was dismissed. The relevant part of the said judgment is reproduced as under:

> "***14***. *The main defense of the Corporate Debtor is limitation. Therefore, we need to examine the issue with reference to the following questions:*
> ***I***. *Whether the Section 7 application has been filed within 3 years of date of default as applicable under Article 137 of the Limitation Act, 1963?*
> ***II***. *If the answer to the Question I is in the negative, whether there has been an acknowledgement of debt or part payment of debt by the Corporate Debtor in terms of Section 18 or 19 of the Limitation Act, 1963, within the original period of Limitation, so as to extend the Limitation from the date of such acknowledgement or part payment?*
> ***III***. *If the answer to Question II is also in the negative, whether there has been a promise to pay under Section*

25(3) of the Indian Contract Act, 1872, albeit after expiry of the original period of Limitation of 3 years?

***IV**. If the answer to the Question III is in the affirmative, whether the Application filed in Form I is based on the debt amount promised to be paid by the Corporate Debtor under Section 25(3) of the Contract Act but defaulted in such payment?*

***18**. It is pertinent to note here again that a 'promise to pay', under Section 25(3) of the Contract Act, 1872, gives rise to a fresh contract, independent of the original debt, which may or may not have been acknowledged. In the instant case both parties are ad idem on the fact that the OTS proposal dated 20.12.2018 was accepted by the Applicant herein. Therefore, a fresh contract, independent of the original debt, was entered into by both the parties on acceptance of the OTS proposal by the Applicant Bank. Now, we need to examine, whether the instant application under Section 7 of the Code is based on this fresh contract between the parties or not?*

***19**. When we examine the facts of the present application we find that, the original debt of the Applicant is already time barred, and the Applicant's claim can only survive on the basis of the fresh contract i.e. on the basis of the One Time Settlement Agreement entered between the Financial Creditor and the Corporate Debtor. However, we find that, the Debt mentioned in Part IV of the petition is the original debt which is time barred. The OTS dated 20.12.2018 which was agreed between the Financial Creditor and the Corporate Debtor is for an amount of Rs. 24.55 Crores only, which is agreed to be paid by the Corporate Debtor as per the OTS. However, the Financial Creditor claims that the debt due and payable as on 18.11.2019 is for an amount of Rs. 62,47,43,978/-, which is not in accordance with the OTS which was entered between the parties for an amount of Rs. 24.55 Crores only.*

***20**. We are of the considered view that according to the fresh contract under Section 25 (3) of the Indian Contract Act, 1872 i.e. the promise to pay the time barred debt in writing by the Debtor, the Corporate Debtor's liability arises only with respect to the amount agreed in the OTS and not the entire amount of original debt. The Financial Creditor's contention that the limitation period for the previous debt will be increased further on the basis of the One Time Settlement does not hold ground for the reasons discussed supra. As the quantum of debt claimed and the quantum of debt agreed to be paid in OTS is different, the instant application cannot be held to be maintainable on the basis of promise to pay under Section 25 (3). We have already* *concluded, that the debt claimed on the basis of the previous loan agreements by the Financial Creditor does not hold ground, as it is barred by limitation under Article 137 of the Limitation Act.*

***21**. In the light of the above this Adjudicating Authority concludes that, the instant petition **COMPANY PETITION IB (IBC)/672(ND) 2019** cannot be admitted and is hereby dismissed".*

31. We further notice that an appeal was preferred by the Respondent Bank against the above mentioned order of the Ld. Adjudicating Authority dated 29.08.2023 being CA (AT) (Ins) No. 1405 of 2023 and this Appellate Tribunal after considering the various issues highlighted before it allowed the appeal and set aside the order passed by the Ld. Adjudicating Authority. The relevant part of the said judgment is also reproduced as under:

"24. The facts mentioned herein above are not in dispute that there was a previous round of litigation between the parties till the Hon'ble Supreme Court when the Hon'ble Supreme Court noticed Section 25(3) of the Act and remanded the matter back to the Tribunal for considering the OTS between the parties dated 20.12.2018 as per which the Respondent was to pay the entire agreed amount before 31.12.2018 which had not been paid at all. In the past also, when the Respondent was given a recall notice qua Rs. 18,19,40,434/- on 07.10.2015 by the bank, it had issued 10 cheques of Rs. 19,34,00,000/-, however, all cheques were dishonoured and criminal proceedings had to be initiated by the Bank against the respondent which are still pending. We are not commenting much upon the conduct of the Respondent who had been playing hide and seek with the Appellant regarding payment of its dues but ultimately the bank believed the Respondent when it came with the proposal of the payment of OTS amount of Rs. 24.55 Cr. when the Bank was proceedings against it under the provision of the SARFAESI Act. The Bank showed its magnanimity and agreed to the OTS amount of Rs. 24.55 Cr. which was to be paid by the Respondent before 31.12.2018 but again there was a default. Thus, there is a continuous default by the Respondent in paying the dues of the Bank. However, this time when the OTS documents

were executed, the Bank was little careful and therefore it provided clause 6(i) in the said documents in which it was categorically mentioned that "(1) the Appellant reserves the right to revoke the present approval and in such an event of revocation, the decision of the Appellant shall be final and binding on the Borrower and on the guarantors. In case of Appellant exercising the right of revocation, all the reliefs and concessions/sanctioned/granted shall be treated as withdrawn and all the terms and conditions of the original agreement(s)/loan and security documents shall come into force"

25. This condition in the OTS scheme is sufficient to knock down the case of the Respondent who has argued that a new contract came into being and in the absence of pleadings in Part IV, application under Section 7 was not maintainable. The CD cannot escape from its lability by taking such hyper technical pleas. Suffice it to say that once the Hon'ble Supreme Court had found that provisions of Section 25(3) empowers the Appellant to continue with this application, filed under Section 7, when the amount of almost Rs. 40 Cr. was admitted at the time when the OTS was given. The Respondent was duty bound to pay the amount which was agreed to at Rs. 24.55 before 31.12.2018. The Appellant bank consciously made a provision in the OTS documents of reviving original loan agreement, therefore, there is no strength in the argument of the Respondent and the Tribunal has committed a patent error in dismissing the application filed under Section 7.

26. In view of the aforesaid discussion, the present appeal succeeds and the impugned order is set aside. However, without any order as to costs.

I.As, if any, are hereby closed".

32. We further notice that the order passed by this Appellate Tribunal dated 17.07.2025, was challenged by the Appellant before the Hon'ble Supreme Court by filing Civil Appeal Diary No. 40748 of 2025 and after hearing the parties at length the appeal was not pressed by the Counsel for the Appellant and was thus dismisses as not pressed. The order passed by the Hon'ble Supreme Court dated 11.08.2025 is also reproduced as under:

"1. Application seeking permission to file the Civil Appeal is granted.

2. Application seeking exemption from filing certified copy of the impugned order is allowed.

3. After hearing the learned Senior Counsel appearing for the parties at length, the learned Senior Counsel appearing for the appellants, upon instructions, from his client does not press this Appeal.

4. In view of the aforesaid, the Civil Appeal is dismissed as not pressed".

33. It is also reflected that even after not pressing the Civil Appeal before the Hon'ble Supreme Court on 11.08.2025 the Appellant chooses to file a review/recall application before this Appellate Tribunal being review application no. 6 of 2025 which was later on converted into the recall application with the prayer to recall and set aside the order dated 17.07.2025 passed by this Appellate Tribunal due to allegedly incorrect observations made in paragraph no. 25 and paragraph no. 12 of that judgment. The recall application was dismissed by this Appellate Tribunal vide order dated 12.12.2025 and this order was further challenged by the Appellant before the Hon'ble Supreme Court by filing Civil Appeal Diary No. 5808 of 2026 and vide order dated 06.02.2026 passed therein the appeal was dismissed. The order dated 06.02.2026 passed by the Hon'ble Supreme Court is also reproduced as under:

"1. Delay condoned.
2.We find no good ground to interfere with the impugned order dated 12.12.2025 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi.
3.The appeal is, accordingly, dismissed.
4.Pending application(s), if any, stands disposed of".

34. It is thereafter the impugned order has been passed by the Ld. Adjudicating Authority on 15.07.2026, which is impugned before us. The relevant part of that judgment is also reproduced as under:

> ***"16**. In view of the foregoing, the principal issue that arises for consideration is as follows:*
> *"Whether the present Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 is within limitation on the basis of the OTS dated 20.12.2018, being a fresh and enforceable contract within the meaning of Section 25(3) of the Indian Contract Act, 1872?"*
> ***17**. This Adjudicating Authority shall now proceed to examine the aforesaid issue in light of the pleadings on record and the judgments of the Hon'ble Supreme Court and the Hon'ble NCLAT.*
> ***18**. Admittedly, the account of the Corporate Debtor was classified as NPA in June, 2015 and a recall notice was issued on 07.10.2015. The OTS proposals dated 12.12.2018, 19.12.2018 and the final OTS dated 20.12.2018 were executed beyond a period of three years from the date of default. This offer was accepted, and terms of settlement were signed. The Section 25(3) of the Indian Contract Act recognises the validity of a written and signed promise to pay a debt which has become unenforceable solely by reason of limitation. Such a promise constitutes an enforceable contract independent of the original debt and furnishes a fresh cause of action.*
> ***19**. In the present case, it is not disputed that the OTS dated 20.12.2018 was executed/and accepted by the parties. Under the said OTS, the Corporate Debtor unequivocally acknowledged its liability and undertook to pay the settled amount of Rs. 24.55 Crores on or before 31.12.2018. The OTS, therefore, satisfies the requirements of Section 25(3) of the Indian Contract Act and constitutes a fresh and enforceable contract between the parties.*
> ***20**. It is pertinent to note here again that a 'promise to pay', under Section 25(3) of the Contract Act, 1872, gives rise to a fresh contract, independent of the original debt, which may or may not have been acknowledged. In the instant case both parties are ad idem on the fact that the OTS proposal dated 20.12.2018 was accepted by the Applicant herein. Therefore, a fresh contract, independent of the original debt, was entered into by both the parties on acceptance of the OTS proposal by the Applicant Bank. The period of limitation for maintaining the present proceedings*

is therefore required to be reckoned with reference to the default under the OTS and not the original date of NPA.
***21**. As per the observations of the Hon'ble NCLAT, in its Order dated 17.07.2025 that 'Suffice it to say that once the Hon'ble Supreme Court had found that provisions of Section 25(3) empowers the Appellant to continue with this application, filed under Section 7, when the amount of almost Rs. 40 Cr. was admitted at the time when the OTS was given.'*
***22**. In view of the foregoing discussion, this Adjudicating Authority has come to the conclusion that the OTS dated 20.12.2018 constitutes a valid and enforceable contract within the meaning of Section 25(3) of the Indian Contract Act, 1872. The default committed by the Corporate Debtor thereunder furnished a fresh cause of action to the Financial Creditor. Consequently, the objection regarding limitation is unsustainable and stands rejected.*
***23**. It is further noted that Clause 6(1) of the OTS provided that, upon default by the Corporate Debtor, all concessions granted under the settlement would stand withdrawn and the terms of the original loan and security documents would revive and come into full force and effect. The said clause has already been upheld by the Hon'ble NCLAT vide judgment dated 17.07.2025. Consequently, upon failure of the OTS, the Financial Creditor became entitled to enforce its rights under the original loan documents and claim the outstanding amount in accordance therewith.*
***24**. The material placed on record establishes the existence of a financial debt and the occurrence of default on the part of the Corporate Debtor. This Adjudicating Authority is, therefore, satisfied that the requirements of Section 7 of the Insolvency and Bankruptcy Code, 2016 stand fulfilled".*

35. The above placed backdrop of events would reflect that the Hon'ble Supreme Court in its judgment dated 05.08.2021, has categorically noticed the difference between the applicability of Section 18 of the Limitation Act and Section 25 (3) of the Contract Act and in paragraph no. 69 of the same noted that this Appellate Tribunal did not notice the terms of settlement stated to have been executed on 20.12.2018 possibly because the attention of the NCLAT was not drawn to the terms of the settlement and also that the question of applicability of Section 5 of the Limitation Act for condonation of

delay was also not considered and thereafter found that this Appellate Tribunal has erred in closing the CIRP proceedings without giving the financial creditor any opportunity to explain if there was sufficient cause for the delay in approaching the adjudicating authority and further noticed that had an opportunity been given the financial creditor might have rectified the defect.

36. We also notice that after the matter was remanded by the Hon'ble Supreme Court to the Ld. Adjudicating Authority the petition of the Respondent Bank was dismissed by the Ld. Adjudicating Authority by passing order dated 29.08.2023 and as highlighted herein before, 4 issues were framed by Ld. Adjudicating Authority and were all decided in favour of the CD. However, in the appeal filed against the said order which was disposed of vide order dated 17.07.2025, this Appellate Tribunal specifically noticed the direction of the Hon'ble Supreme Court with regard to section 25 (3) of the Contract Act and noticing that the Bank was aggrieved by continuous default committed by the CD, it became careful and this time in the OTS dated 20.12.2018 inducted a clause i.e. clause 6(i) which has categorically stipulated that the Respondent Bank reserves the right to revoke the OTS/approval and in such an event the decision of the Respondent Bank shall be final and binding on the borrower and incase of revocation all the reliefs and concessions sanctioned or granted shall be treated as withdrawn and the original agreement/loan shall come into force as if no such reliefs were ever granted. This Appellate Tribunal goes on to hold that this condition in the OTS scheme is itself sufficient to demolish the defense of the CD in terms that

a new contract came into being and in the absence of any pleading in Part IV, the application under Section 7 is not maintainable.

37. We are also of the prima facie view that failure in not honoring the terms of the OTS would have resulted in the revival of the original amount for which the Section 7 application was filed by the Bank and moreover when the finding recorded by this Appellate Tribunal in order dated 17.07.2025 passed in CA (AT) (Ins) No. 1405 of 2023 was not interfered with by the Hon'ble Supreme Court by passing judgment dated 11.08.2025 in Civil Appeal Diary No. 40748 of 2025, as the appeal was not pressed before the Hon'ble Supreme Court, the appellant cannot re- agitate the same issues again and again and decision of this Appellate Tribunal has become binding on the Appellant.

38. It is to be further noticed that even after not pressing the appeal before the Hon'ble Supreme Court the appellant moved an application for recall/review before this Appellate Tribunal claiming the same relief and highlighting issues which were earlier argued and the said recall application was dismissed by us and the appeal preferred against the same was also dismissed by the Hon'ble Supreme Court.

39. The appellant did not stop here and it again moved an application before the Ld. Adjudicating Authority for dismissal of the petition moved under Section 7 of the Code on the question of limitation, which was dismissed and an appeal preferred against the same was again dismissed by this Appellate Tribunal.

40. Since the findings and reasons recorded by this Appellate Tribunal in its judgment dated 17.07.2025 (CA A(T) (Ins) No. 1405 of 2023) has become binding and final the same may not be reopened and re-agitated by the

appellant again and again. We notice that the matter was remanded back by the Hon'ble Supreme Court on 05.08.2021 and thereafter the appellant/CD has managed to consume 5 more years by moving multifarious applications and appeals. Thus keeping in view all the facts and circumstances of this case and having an eye on the fact that the matter has travelled before the Hon'ble Supreme Court thrice and appellant has failed to get any relief, we do not find any good ground on the basis of which any interim order may be passed in favour of the appellant.

41. In view of the reasons given herein before, the interim stay application moved by the appellant is hereby rejected.

42. The Respondent No. 1 is already represented before us, he may file reply within two weeks from today with an advance copy to the Ld. Counsel for the Appellant who in turn if so wish may file rejoinder within one week thereafter.

43. Notice be issued to the Respondent No. 2-IRP. Steps along with process fee as well as requisites be taken within 4 working days from today.

44. List on **14.09.2026** under the caption 'for hearing'.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
14.08.2026
sr/mr