

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2285 of 2024

(Arising out of order dated 08.10.2024 passed by the National Company Law Tribunal, Mumbai Bench, in Company Petition (IB) No. C.P. (IB)/25(MB)2023)

In the matter of:

Praveen Mangilal Jain

Managing Partner,

M/s Vardhman Cables and Conductors

Having its Registered Office at:

129/C, Shinoli B.K. Tal,

Chandgad Kolhapur,

Maharashtra- 416507

...Appellant

Vs.

M/s. Elecon Energy Solutions Pvt. Ltd.

Having its Registered Office At:

110, Building No.2, Sector No.2

Millenium Business Park, Mahape,

Navi Mumbai -4000710

...Respondent

Present:

**For Appellant: Mr. Mayank Sapre and Mr. Dheeraj Kumar,
Advocates.**

For Respondents: Mr. Abhishek Samant, Advocate.

J U D G M E N T

(07th October, 2026)

Indevar Pandey, Member (T)

This Appeal has been preferred under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**Code**”) by the

Appellant/Operational Creditor assailing the order dated 08.10.2024 passed by the National Company Law Tribunal, Mumbai Bench (“Adjudicating Authority”) in C.P. (IB)/25(MB)2023, whereby the application filed by the Appellant under Section 9 of the Code was dismissed at the threshold on the ground of limitation. The Appellant contends that the Adjudicating Authority erred in treating 02.10.2018, being the date of the first invoice, as the date of default for the entire claim, without considering that the claim arose from 13 separate invoices issued between 02.10.2018 and 09.06.2020 and that the dates of default in respect of the individual invoices were distinct. The Appellant contends that the impugned order is cryptic and non-speaking and has resulted in erroneous dismissal of the Section 9 application on the ground of limitation.

Brief Facts of the Case

2. The brief facts of the case relevant to this appeal are given below:

- i) The **Appellant (M/s Vardhman Cables and Conductors)** is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing cables and conductors. the **Respondent (M/s Elecon Energy Solutions Pvt. Ltd.)** is the Corporate Debtor, which is engaged in the business of electrical infrastructure development and power distribution systems.
- ii) On 21.03.2017, the Appellant, along with its Joint Venture Company, M/s S.M. Electric Works, was awarded a Letter of Award for execution of works under the Integrated Power Development

Scheme ("IPDS") Part-II pursuant to Tender No. IP-232 of MSEDCL, Kalyan Rural Zone. In the year 2019, the Appellant and its Joint Venture appointed the Respondent as a subcontractor for execution of the assigned work.

- iii) In the course of the contractual relationship, the Respondent placed Purchase Orders upon the Appellant for supply of cables and conductors, pursuant to which the Appellant raised 13 invoices during the period from 02.10.2018 to 09.06.2020. The aggregate value of the invoices was stated to be Rs. 1,86,56,489/-, exclusive of interest. According to the Appellant, the materials covered by the invoices were supplied to and received by the Respondent, and the invoices stipulated payment within 45 days from receipt of the materials, with interest being payable in case of delayed payment.
- iv) Thereafter, the Appellant issued a demand notice under Section 8 of the Code on 18.08.2022, claiming an amount of Rs. 1,86,56,489/- towards the principal outstanding, together with interest of Rs. 1,18,66,208/-, aggregating to Rs. 3,05,22,697/-. The Respondent submitted its reply to the demand notice on 15.09.2022, to which the Appellant filed a rejoinder dated 22.09.2022.
- v) Subsequently, on 17.11.2022, the Appellant filed an Application under Section 9 of the Code before the Ld. Adjudicating Authority, being CP (IB) No. 25 of 2023, seeking initiation of Corporate Insolvency Resolution Process against the Respondent in respect of the alleged operational debt.

- vi) During the proceedings, the Ld. Adjudicating Authority sought clarification from the Appellant regarding, inter alia, the date of default, limitation and legibility of the invoices relied upon. The Appellant initially referred to 02.10.2018 as the date of default and thereafter, by way of additional affidavits, sought to clarify that the relevant date of default was 09.06.2020, being the date of the last invoice. The Appellant also placed reliance upon the exclusion of the period from 15.03.2020 to 28.02.2022 for computation of limitation.
- vii) After considering the pleadings and material placed on record, the Ld. Adjudicating Authority, vide order dated 08.10.2024, dismissed the Section 9 Application holding that the claim was barred by limitation. The Ld. Adjudicating Authority proceeded on the basis of the date of cause of action/default as 02.12.2018 and held that the period of three years had expired before the filing of the Section 9 Application on 17.11.2022. Aggrieved by the impugned order, the Appellant has preferred this appeal.

Submissions on behalf of the Appellant

3. Ld. Counsel submitted that the present Appeal principally concerns the manner in which the issue of limitation was considered by the Ld. Adjudicating Authority, while dismissing the Section 9 Application. It was submitted that the Ld. Adjudicating Authority had, during the pendency of the proceedings, specifically directed the Appellant to clarify the issue of limitation and had permitted the filing of an additional affidavit for that purpose.

4. It was submitted that two of the three additional affidavits placed on record were filed pursuant to specific orders of the Ld. Adjudicating Authority. The Additional Affidavit dated 13.02.2024 was filed pursuant to the order dated 17.01.2024, whereby the Appellant was directed to place legible and proper documents on record. Thereafter, by order dated 19.07.2024, the Ld. Adjudicating Authority granted Appellant one week's time to clarify the issue of limitation by way of an additional affidavit, pursuant to which the Additional Affidavit dated 09.08.2024 was filed.

5. Ld. Counsel further submitted that, notwithstanding the aforesaid orders and the additional affidavit filed pursuant thereto, the Impugned Order dated 08.10.2024 does not advert to the orders passed by the Ld. Adjudicating Authority or to the aspect of computation of limitation as it was furnished by the Appellant in the Additional Affidavit dated 09.08.2024. The Ld. Adjudicating Authority exclusively proceeded on the basis that because the cause of action arose on 02.12.2018 and held that since the three-year period expired on 02.12.2021, resulting in filing of Section 9 Application filed on 17.11.2022, being barred by limitation.

6. The Appellant contended that while arriving at the aforesaid conclusion, the Ld. Adjudicating Authority failed to give effect to the period directed to be excluded by the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No. 3 of 2020***. Reliance was placed upon the order dated 10.01.2022, whereby the period from 15.03.2020 to 28.02.2022 was directed to be excluded for the purposes of limitation in respect of judicial and quasi-judicial proceedings. It was submitted that the balance period of limitation available

as on 03.10.2021 was to become available from 01.03.2022 and, where such balance period exceeded 90 days, the longer period was to apply.

7. Ld. Counsel submitted that even if 02.12.2018, as stated in Part-IV of the Section 9 Application, is taken as the date of default, the claim would still remain within limitation, after giving effect to the exclusion directed by the Hon'ble Supreme Court. According to the computation placed on record in the Additional Affidavit dated 09.08.2024, 469 days had elapsed between 02.12.2018 and 14.03.2020, leaving a balance of 626 days. Upon recommencement of limitation from 01.03.2022, the said period would expire only on 17.11.2023, whereas the Section 9 Application was instituted on 17.11.2022. It was therefore submitted that the Application could not have been dismissed as barred by limitation.

8. He further submits that the Appellant was not seeking to alter or substitute the date of default mentioned in Part-IV of the Application. Part-IV specifically records 02.12.2018 as the date from which default commenced, with reference to the first invoice dated 02.10.2018. The Appellant's case, therefore, was that the said date itself, when correctly computed after giving effect to the exclusion of the limitation period directed by the Hon'ble Supreme Court, was sufficient to sustain the Application as being within limitation.

9. It was submitted that the thirteen invoices were issued on different dates and carried their respective credit periods. Consequently, each invoice had its corresponding due date, with the last invoice becoming due on 08.08.2020. According to the Appellant, if the computation of limitation is taken on the earliest date of default was adopted, without prejudice to the

Appellant's contention that the subsequent invoices would, in any event, have a later limitation period.

10. Ld. Counsel further submitted that the objection raised by the Respondent regarding the absence of a formal amendment to Part-IV of the Application was misconceived. Since, the Appellant was not relying upon a substituted date of default and was proceeding on the date already disclosed in the application no formal amendment was required in Part-IV of the Application. Reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd., (2021) 3 SCC 224***, to contend that an applicant is required to proceed on the basis of the date of default disclosed by it. It was submitted that the facts of ***Ramdas Dutta v. IDBI Bank Ltd., Company Appeal (AT) (Ins.) No. 1285 of 2022***, were distinguishable, as in that case the date of default had not at all been mentioned in Part-IV, whereas in the present case the date of default was specifically stated.

11. Ld. Counsel submits that the additional affidavits could validly be taken into consideration, particularly as the same were filed with the leave and pursuant to the directions of the Ld. Adjudicating Authority before admission of the Section 9 Application. In this regard, reliance was placed upon ***Ramdas Dutta***, wherein the filing of a supplementary affidavit, permitted by the Adjudicating Authority in the circumstances of that case, was not disapproved.

12. He submits that the first eight invoices had fallen due on or before 11.03.2020 and, therefore, the defaults relating thereto were prior to the cut-

off date prescribed under Section 10A of the Code. It was submitted that the Explanation to Section 10A expressly excludes defaults committed prior to 25.03.2020 from the operation of the said provision.

13. He further submits that, in respect of the said eight invoices, the invoice amount was Rs. 86,52,817/-, while interest calculated at 24% per annum up to 31.07.2022 amounted to Rs. 70,94,646/-, making the aggregate claim Rs. 1,57,47,463/-. According to the Appellant, the contractual interest stipulated in the invoices forms part of the operational debt and, consequently, the claim in respect of the said invoices was above the threshold prescribed under Section 4 of the Code.

14. Ld. Counsel, however, submitted that the Appellant was not inviting this Tribunal to undertake an adjudication upon the underlying debt, default or the dispute raised by the Respondent. According to the Appellant, the Ld. Adjudicating Authority had dismissed the Section 9 Application solely on the ground of limitation and had not returned any finding on the existence of debt, default or pre-existing dispute. The limited prayer, therefore, was that the finding on limitation be set aside and the matter be remitted to the Ld. Adjudicating Authority for consideration of the Section 9 Application on merits in accordance with law.

15. On the aforesaid submissions, Ld. Counsel for the Appellant prayed that the Impugned Order dated 08.10.2024 be set aside, the Section 9 Application be held to be within limitation, and C.P. (IB)/25(MB)2023 be restored to the file of the Ld. Adjudicating Authority for adjudication on the remaining issues in accordance with law.

Submissions of the Respondent

16. Ld. Counsel for the Respondent submits that the Ld. Adjudicating Authority has rightly dismissed the Section 9 Application by order dated 08.10.2024, having found the same to be barred by limitation. It was submitted that the Appellant, in its original Section 9 Application, had categorically disclosed 02.12.2018 as the date of default. The said disclosure, according to the Respondent, cannot subsequently be altered so as to overcome the bar of limitation. The Respondent's submissions are also reflected in the written submissions placed on record.

17. Ld. Counsel submits that the Appellant, after filing the Section 9 Application, sought to rely upon subsequent affidavits to shift the alleged date of default from 02.12.2018 to 09.06.2020. It was contended that the date of default is fundamental to an Application under Section 9 of the Code, since limitation is computed from the date of default. A subsequent invoice, correspondence or accounting entry cannot, by itself, furnish a fresh cause of action once limitation has commenced.

18. Respondent placed reliance upon the judgment of the Hon'ble Supreme Court in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd., (2021) 3 SCC 224***, wherein the Hon'ble Supreme Court proceeded on the basis of the date of default disclosed by the Appellant in the statutory proceedings and rejected an attempt to rely upon an earlier date. According to the Respondent, the principle emerging from the said judgment is that a party cannot subsequently alter the date of default disclosed in the statutory

pleadings for the purpose of bringing the proceedings within the prescribed period of limitation.

19. It was further submitted that the aforesaid principle has been followed by this Tribunal in ***Ramdas Dutta v. IDBI Bank Ltd., Company Appeal (AT) (Ins.) No. 1285 of 2022***. The Respondent contended that limitation under the Code commences from the date on which the default occurs and not from any subsequent date sought to be relied upon by the creditor. It was submitted that the Appellant, having specifically pleaded 02.12.2018 as the date of default, cannot now seek to re-characterise the default for the purpose of limitation.

20. Ld. Counsel further pointed out that even the Additional Affidavit dated 09.08.2024, upon which the Appellant now places reliance, records 02.12.2018 as the date of alleged default. It was therefore contended that the Appellant's own pleadings and subsequent affidavit are consistent in recognising 02.12.2018 as the relevant date. The Respondent submitted that the Appellant cannot simultaneously rely upon the said date for one purpose and contend for a different date at the appellate stage. Such an approach, according to the Respondent, amounts to approbation and reprobation and cannot be permitted.

21. Ld. Counsel also disputed the Appellant's contention that the Ld. Adjudicating Authority had directed it to alter the date of default. It was submitted that the order dated 16.10.2023 merely required the Appellant to furnish a clear statement of the invoices with complete particulars. Thereafter, the order dated 17.01.2024 permitted the Appellant to place

legible and proper documents on record. The subsequent order dated 19.07.2024 granted one week's time to the Operational Creditor to clarify the issue of limitation by filing an additional affidavit. According to the Respondent, none of these orders authorised the Appellant to amend or substitute the date of default pleaded in Part-IV of the Section 9 Application.

22. It was submitted that the first Additional Affidavit dated 27.09.2023 was filed by the Appellant before the subsequent affidavits and, according to the Respondent, constituted an attempt to alter the original case regarding the date of default. The Respondent contended that a clarification affidavit cannot be used as a device to materially improve or alter the foundational pleadings, particularly where such alteration directly affects the maintainability of the proceedings on the ground of limitation.

23. Ld. Counsel further submitted that the Appellant's reliance upon the orders passed by the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No. 3 of 2020*** does not assist its case. It was submitted that the limitation period, computed from 02.12.2018, expired on 02.12.2021. According to the Respondent, the case therefore falls within the situation contemplated by paragraph 5(III) of the order dated 10.01.2022, where the limitation would have expired during the period from 15.03.2020 to 28.02.2022. In such circumstances, the Respondent contended that the benefit available was a period of 90 days from 01.03.2022, which expired on 01.06.2022. The Section 9 Application having been filed only on 17.11.2022, it was submitted that the Application remained barred by limitation even after applying the benefit of the orders passed in the *Suo Motu* proceedings.

24. Respondent submits that the Section 9 Application was also not maintainable on account of the existence of a pre-existing dispute between the parties. It was submitted that the Respondent had, prior to issuance of the demand notice under Section 8, raised disputes regarding the amounts claimed by the Appellant and that the correspondence exchanged between the parties demonstrated the existence of such dispute. Reliance was placed upon ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***, to contend that where a plausible dispute requiring investigation exists prior to the issuance of the demand notice, the insolvency jurisdiction under Section 9 cannot be invoked as a mechanism for recovery of a disputed debt.

25. It is also submitted, without prejudice, that part of the claim relied upon by the Appellant relates to invoices issued during the period covered by Section 10A of the Code. It was contended that the invoices dated between 05.05.2020 and 09.06.2020 relate to the period during which the statutory prohibition contained in Section 10A operated. Consequently, according to the Respondent, the Appellant cannot rely upon such defaults for initiation of CIRP under Section 9 of the Code.

26. In view of the aforesaid submissions, Ld. Counsel for the Respondent submits that the Appellant has failed to demonstrate any error in the finding recorded by the Ld. Adjudicating Authority on limitation. It was contended that the date of default disclosed in the original Section 9 Application remains 02.12.2018, and the subsequent attempt to rely upon a later date is impermissible. The Respondent, therefore, prayed that the Appeal be

dismissed and the order dated 08.10.2024 passed by the Ld. Adjudicating Authority be affirmed.

ANALYSIS AND FINDINGS

27. We heard the Ld. Counsel for the parties and gone through the documents on record.

28. Ld. Adjudicating Authority has disposed of the C.P.(IB)/25(MB)2023 vide the impugned order dated 08.10.2024 solely on the ground of Limitation. The impugned order is extracted below:-

“ORDER SHEET OF THE HEARING HELD ON 08.10.2024

*NAME OF THE PARTIES: Praveen Mangilal Jain Managing Partner
Vardhman Cables And Conductors
Vs.
Elecon Energy Solutions Private Limited*

SECTION: 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

- 1. Adv. Garodia a/w Adv. Bhoomika Lodhe for the Operational Creditor present through physical mode. Adv. Sachin Subhash Tigde for the Corporate Debtor present through physical mode.*
- 2. The captioned company petition has been filed on 17.11.2022 by **Praveen Mangilal Jain** (Managing Partner of M/s. Vardhman Cables And Conductors) viz. Operational Creditor herein, seeking initiation of Corporate Insolvency Resolution Process of **Elecon Energy Solutions Private Limited** viz. Corporate Debtor.*
- 3. The Operational Creditor, in Part-IV of the captioned company petition, has cited the Date of Default as 02.12.2018 at the backdrop of thirteen invoices raised pursuant to “..Original Purchases order and subsequent telephonic order.” The total amount due and*

payable qua the said invoices (exclusive of interest), is contended to be INR 1,86,56,489/-.

4. *Upon evincing the materials which form part of the records hereto; The period of three years, as mandated u/s. 18 of the Limitation Act, 1963, from the date of cause of action viz. 02.12.2018 culminates on 02.12.2021. The captioned company petition has however been filed belatedly viz. 17.11.2022, and clearly falls out of the purview of the period earmarked at the behest of Hon'ble Apex court (In Suo Moto Writ Petition No. (Civil) 03 of 2020). The captioned petition is therefore, hopelessly barred by limitation and suffers from want of maintainability.*
5. *In the present circumstances therefore, the captioned company petition is hereby **Dismissed**. No Order as to costs."*

Sd/-
ANU JAGMOHAN SINGH
Member (Judicial)

Sd/-
KISHORE VEMULAPALLI
Member (Technical)

29. In para-4 of the impugned order Ld. Adjudicating Authority had taken note of Section 18 of Limitation Act, 1963 and decided that date of cause of action arose on 02.12.2018 and therefore the limitation period ended after three years i.e. on 02.12.2021. The company petition has been filed belatedly on 17.11.2022 and it took a view that it clearly falls out of the purview of the period mentioned in the judgment of Hon'ble Supreme Court in ***Suo Motu Writ Petition No. (Civil)- 03 of 2020***. It, therefore, held the petition filed by the Appellant under Section 9 of the Code to be barred by the limitation.

30. The Appellant herein contends that Ld. Adjudicating Authority's reading of the judgment of Hon'ble Supreme Court in *Suo Motu Writ Petition No. (Civil)- 03 of 2020* has been erroneous and as the last date of limitation i.e. 02.12.2021 falls within the COVID exemption period, his limitation would

recommenced from 01.03.2022 and the period of limitation falling within the exemption period of 15.03.2020 to 28.02.2022 would be added from 01.03.2022. It is his submission that the balance limitation period for the instant case would be 626 days from 01.03.2022 and the same would expire on 17.11.2023.

31. The impugned order has been passed solely on the ground of limitation and therefore, the only issue which falls for our consideration is whether the Application filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) on 17.11.2022 was within the period of limitation?

32. The date of default as stated in Part-IV Section 9 application is 02.12.2018. The Section 9 application should accordingly have been filed within three years from 02.12.2018 as per the provisions of Section 18 of Limitation Act. Accordingly, the last date for filing the application would be 02.12.2021, however, the application u/s 9 of the Code was filed by the Appellant on 17.11.2022.

33. The Adjudicating Authority takes note of these facts and also takes note of Sua Motu judgment of Hon’ble Supreme Court (supra) and holds that the application is barred by limitation.

34. In our view the interpretation of the period of exemption by the Ld. Adjudicating Authority is erroneous. Para-5 of the Sua Motu judgment of Hon’ble Supreme Court is extracted below:-

“5. Taking into consideration the arguments advanced by Ld. counsel and the impact of the surge of the virus on public health

and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. **In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.***
- IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*

(Emphasis supplied)

35. The Adjudicating Authority has considered the first part of para-3 of the judgment (supra), whereby 90 days is allowed as extended period of limitation from 01.03.2022. If this view is accepted then the limitation period would have

ended on 29.05.2022. As the application u/s 9 was filed on 17.11.2022, it was treated as barred by limitation.

36. In this case period from 15.03.2020 till 02.12.2021 would fall within the COVID exemption period, which comes to 626 days. This period of 626 days would be the additional period, by which limitation would be extended from 01.03.2022 as per the last sentence of para-3 of *Suo Motu* judgment supra.

37. We are of the view that the Ld. Adjudicating Authority has not taken in account the last sentence of the judgment of Hon'ble Supreme Court. The para-3 provides that irrespective of limitation period falling during the 15.03.2020 to 28.02.2022, the minimum of 90 days extension would be provided to the party for filing applications. Even if the limitation period ended on 15.03.2020, the party concerned would get 90 days from 01.03.2022 to file his appeal. In cases, where such period of limitation under the COVID exemption period was more than 90 days, the balance period falling within the exemption period is to be added from 01.03.2022.

38. In the present factual matrix, the balance period of limitation from 15.03.2020 to 02.12.2021 (the date on which the Limitation period would have ended u/s 18 of Limitation Act) is 626 days. Therefore, by adding this period to date of restart of limitation i.e., 01.03.2022, the end date of limitation comes to 17.11.2023. The Section 9 application was filed on 17.11.2022 and is therefore well within the limitation.

39. This Tribunal had considered this issue in several judgments. In one such case in “**Company Appeal (AT) (Ins) No. 1294 of 2023 in Akzo Noble India Ltd. vs. Stan Cars Pvt. Ltd.**”, the with identical facts this Tribunal had considered the matter. The relevant paragraphs 13, 45 & 46 of the judgment are extracted below:

“13. Ld. Counsel further submitted that the Ld. Tribunal erred in not taking into consideration the time excluded by the Hon’ble Apex Court due to the exclusion of time on account of COVID-19. Taking the exemption period on account the Limitation calculation would be as follows:

Event	Limitation
<i>Date of default calculated as 21.11.2018 as per agreement dated 21.11.2017</i>	<i>Three years from date of default is 21.11.2021</i>
<i>Supreme court suo moto in WP/3/2020 excluded from 15.03.2020 to 28.02.2022</i>	<i>After exclusion of the mentioned time, the date of end of limitation is 05.11.2023</i>
<i>Date of Filing Application U/s 7 IBC</i>	<i>28.10.2022 (within Limitation)</i>

45. The second contention of the Appellant relates to the exemption of Covid-19 period by Hon’ble Supreme Court. We have noted that the limitation period from 15.03.2020 to 31.05.2022 has been excluded by the Hon’ble Supreme Court for all purposes vide their Suo Motu Writ Petition (C) No.-3 of 2020 vide their Order dated 10.01,2022. The directions of Hon’ble SC in the Suo-Motu case (supra) are extracted below:

“I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

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

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

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

46. Based on the directions in the Suo-Motu Judgement (supra) the balance period of limitation from 15.03.2020 has to be added to 01.03.2022 to get the revised date of limitation. In the instant case the period is one year 8 months and 6 days. The revised end date of limitation would then be 06.11.2023. The section 7 application in this case was filed on 28.10.2022 which was well within limitation period.”

40. We note that the aforesaid judgment of this Appellate Tribunal in *Akzo Nobel (supra)* is based on identical facts and is squarely applicable to the present factual matrix. The judgment has attained finality as there is no appeal pending against the same.

41. In view of the findings above, we are of the view that Ld. Adjudicating Authority has made an erroneous finding regarding the limitation. The application filed by the Appellant under Section 9 of the Code was well within

the limitation period. Accordingly, the impugned order is set aside; the Appeal is allowed; and the C.P. (IB)/25(MB)2023 is restored to its original position. The matter is remanded to the Adjudicating Authority for adjudicating the same on merits. Parties to appear Ld. NCLT, Mumbai Bench-IV (Adjudicating Authority) on 14.10.2026. Pending IAs, if any, are closed. No order as to costs.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

Place: New Delhi

Harleen