

# Edelweiss Asset Reconstruction Co. Ltd vs Chemstar Organics India Ltd on 23 December, 2022

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39NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

COMPANY APPEAL (AT)(INSOLVENCY) NO.707/2021  
(Arising out of the judgement and order dated 03.06.2021  
passed by the National Company Law Tribunal, Mumbai  
Bench, in CP No.4044/2019)

In the matter of:

Edelweiss Asset Reconstruction Co Ltd  
(acting in its capacity as trustee of EARC SC Trust 233)  
Edelweiss House,  
Off CST Road, Kalina,  
Mumbai 400098

Appellant

Vs

Chemstar Organics (India Ltd)  
PNB House, Phirozsha  
Mehta Road, Fort,  
Mumbai 400001

Respondent

For Appellant: Mr. Neeraj Malhotra, Sr. Advocate, Mr Shreya  
Singh, Mr Nimish Kumar and Ms Vidhisha Haritwal, Advocates.

For Respondent: Mr Abhijeet Sinha, Mr. Shadab S Jan, Mr. Shivam  
Shukla, Mr Himanshu Satija, Ms Geetika Sharma, Ms Heena  
Kochar, Advocates.

## JUDGEMENT

(23 December, 2022) rd JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL) The present appeal was filed under Section 61 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'IBC'). The Appeal has been preferred against an order dated Company Appeal (AT)(Ins) No.707/2021 03.06.2021 passed in CP No.4044/2019 by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as the 'Adjudicating Authority').

By the said order the Adjudicating Authority has dismissed the petition filed under Section 7 of the IBC on behalf of the appellant primarily on the ground that it was barred by limitation.

2. The appellant herein is an Asset Reconstruction Company under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) who acquired the loan account of the Corporate Debtor i.e Chemstar

Organics (India) Ltd (hereinafter referred to as 'CD') from Bank of Baroda vide Assignment Agreement dated 26.03.2014. It is the case of the appellant that Respondent/CD was sanctioned loan by Bank of Baroda in the year 1998 and also various credit facilities were provided which are reflected in the following table:-

S.No. Sanction letters

1. Sanction letter dated 12.03.1998 provided the following facilities:

- |      |                              |
|------|------------------------------|
| i)   | Term Loan -2,50,000/-        |
| ii)  | Cash Credit 2,00,00,000/-    |
| iii) | Packing Credit 2,00,00,000/- |
| iv)  | Advance bill -2,00,00,000/-  |
| v)   | Cash Credit 50,00,000/-      |
| vi)  | Letter of Credit 25,00,000/- |
| vii) | Bank Guarantee 25,00,000     |

Company Appeal (AT)(Ins) No.707/2021 2 Sanction letter dated 07.04.1999 sanctioning Adhoc credit limit of Rs.70,00,000/-

3. As per the appellant, the CD's bank account became Non Performing Asset (hereinafter referred to as NPA) on 30.09.2000.

It is further case of the appellant that CD executed letters of acknowledgement on 05.10.2000 and 04.07.2003. Since the CD defaulted in payment the Bank of Baroda sent Notice on 04.06.2005 to the CD recalling the outstanding amount and CD sent a reply. Thereafter on 13.03.2006 the CD submitted a letter showing their willingness to settle the dues of financial creditor.

During interregnum period the Bank of Baroda under the provisions of SARFAESI Act assigned the debt of the CD to the appellant herein vide Assignment Agreement dated 26.03.2014. It further appears from the record that in the year 2016 SARFAESI proceedings were initiated and Notice under Section 13(2) of the SARFAESI Act was issued on 15.06.2016. Appellant thereafter took symbolic possession of the secured assets of the CD.

Thereafter besides SARFAESI proceedings number of other litigations were generated. Finally in the year 2019 the appellant filed a petition under Section 7 of the IBC for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) Company Appeal (AT)(Ins) No.707/2021 which was registered as CP (IB)4044/2019 in which proceedings, CD/Respondent appeared and raised objections regarding maintainability of the application on the ground of inordinate delay i.e. on the ground of limitation.

4. The learned Adjudicating Authority after hearing the parties concluded that application was barred by limitation and dismissed the company petition. Before further proceeding it is necessary to reproduce dates and facts which were incorporated in the table at internal page 7 of the impugned

order. The same is reproduced hereinbelow:-

Year Particulars Comments 04.05.1993 Letter of acknowledgement of Issued prior to the date debt of default for a sum of Rs.37 lakhs only 04.05.1993 Letter of acknowledgement of Issued prior to date of debt default for a sum of Rs.35.29 Lacs only 04.05.1993 Letter of acknowledgement of Issued prior to date of debt default for a sum of Rs.5.32 lacs and Rs.2.12 lacs only May 2000 DATE OF DEFAULT Company Appeal (AT)(Ins) No.707/2021 3 YERS PERIOD TO BE RECKONED FROM THIS DATE May 2003 3 years period of limitation expires.

04.06.2005 Demand Notice issued by the 1. Not issued by the petitioner's Advocate Respondent.

2. Not issued within 3 years from the date of default

3. Does not constitute acknowledgement under Section 18 of the Limitation Act.

20.08.2010 OTS letter by the Corporate

Debtor

1. Letter issued

'Without  
Prejudice."

2. Does not

constitute  
acknowledgment  
under Section 18  
of the Limitation  
Act.

3. Not issued within  
3 years from the  
date of default.

Company Appeal (AT)(Ins) No.707/2021 25.10.2011 Letter issued by Assignor Bank 1. Not issued by the Respondent.

2. Not issued within 3 years from the date of default

3. Does not constitute acknowledgement under Section 18 of the Limitation Act.

31.10.2014 Settlement proposal by the 1. Not issued within Respondent 3 years from the date of default.

2. Does not constitute acknowledgement under Section 18 of the Limitation Act.

3. Proposal rejected by the petition.

Company Appeal (AT)(Ins) No.707/2021 12.12.2014 Draft OTS proposed by CD 1. Letter issued 'Without Prejudice.'

2. Draft Notice cannot be taken as acknowledgement.

3. Issued after the expiration of period of limitation.

05.01.2015 OTS letter issued by Applicant 1. Not issued within 3 years from the date of default.

2. Does not constitute acknowledgement under Section 18 of the Limitation Act.

26.09.2017 Revocation letter issued by	1. Not	issued	by
application	Respondent.		

Company Appeal (AT)(Ins) No.707/2021

2. Not issued within 3 years from the date of default.

3. Does not constitute acknowledgement under Section 18 of the Limitation Act.

08.10.2018 Settlement proposal letter by	Issued	after	the
the Corporate Debtor	expiration		of
	period		of
	limitation.		

19.11.2018 Revised	request	for	OTS	Issued	after	the
proposed by the	Corporate			expiration		of

Debtor	period	of
	limitation.	
10.01.2019 Acceptance of OTS proposed	Issued after the	
by the applicant duly	expiration of	
acknowledged by the	period of	
Corporate Debtor	limitation.	
23.10.2019	Application under Section 7 filed after 9 years and	

5 months from the date of default.

Company Appeal (AT)(Ins) No.707/2021

5. Of course the learned Adjudicating Authority has reproduced the aforesaid tabular chart which were presented by the Respondent

6. Mr. Neeraj Malhotra, learned senior counsel has appeared on behalf of the appellant. He assailing the impugned order submitted that the Learned Adjudicating Authority has incorrectly relied on the tabular charge wherein it was elaborated that in view of dates and events and facts depicted in the chart the application under Section 7 of the IBC was barred by limitation, but real fact is otherwise. He submits that it is true the Learned Adjudicating Authority in its order has noticed that default in the case occurred in the month of May, 2000 and application under Section of 7 of IBC was filed on 23.10.2019 i.e. after 19 years 5 months from the date of default but the Adjudicating Authority failed to notice that by way of acknowledgement and event of One Time Settlement the period of limitation was regularised. He submits that the extension was periodically deemed to be extended in view of the fact that before expiry of three years during initial period acknowledgement was made and subsequently matter was pending under the SARFAESI Act and also the litigation went to the Hon'ble High Company Appeal (AT)(Ins) No.707/2021 Court. According to him those events makes it clear that from time to time period of limitation was extended and date on which petition under Section 7 was filed, was filed within the period of three years as prescribed in Section 18 of the Limitation Act.

According to learned senior counsel the order impugned is fit to be set aside and matter is required to be remitted back for reconsideration. Besides making oral submissions on behalf of the appellant, Notes of written submissions as well as additional written submission have been filed which are reproduced hereinbelow:

Written Submissions The present Appeal has been filed under Section 61 of the IBC, 2016 against the order of the Ld. Adjudicating Authority dated 03.06.2021 ("impugned order") in CP No. 4044/2019 titled as "Edelweiss Asset Reconstruction Company Limited vs Chemstar Organics (India) Limited"

by which the Ld. Adjudicating Authority had erroneously dismissed the Section 7 Application filed by the Appellant on the ground of bar of Limitation.

Our submissions on the issue of limitation a. The important dates for limitation purposes are being given in the table below:

Date	Event	Annexures
30.06.200	Date of NPA	

Company Appeal (AT)(Ins) No.707/2021 05.10.200 The Respondent executed two Letters of A-6/ o Acknowledgment both dated 05.10.2000. The letter Page of acknowledgment at Page 207-208 is about the term 206-210 loan account and vide this letter, the Respondent has acknowledged that an amount of Rs 2,18,37,775 was due as on 05.10.2000.

The second letter of acknowledgment at Page 209-210 is about the cash credit book debt account and vide this letter, the Respondent has acknowledged that an amount of Rs 26,15,760 was due as on 05.10.2000.

The Respondent Company had passed a Resolution in the meeting of the Board of Directors held on 29.09.2000 for execution of the above mentioned letters of acknowledgment.

Note: The reference of the said letters of acknowledgement and the said Board Resolution is mentioned in Para 5.25 of the OA No. 43/2007 (at Page 120) which was annexed as Exhibit K-3 to the Section 7 Application.

04.07.200 The Respondent executed as many as 8 letters of A- 3 acknowledgment in respect of different credit 7/Page facilities. By these letters, inter alia the Respondent 211-228 has admitted its liabilities about the outstandings as (Typed of 24.05.2003 in respect of Term Loan/cash credit copies book-debts /cash credit hypothecation of stocks/ from 229-255) BP/BD/FBP/FCD/ Packing credit/Term Loan(2) facilities. All these details are also mentioned in Para 5.32 of the OA No. 43/2007 (at Page 122) which was annexed as Exhibit K-3 to the Section 7 Application.

04.06.200 Demand notice issued by Bank of Baroda to the Exh. 0-5 5 Respondent demanding the payment of a sum of Rs. with the 13,37,83,309.98/- due as on 31.03.2005. Section Applicat Company Appeal (AT)(Ins) No.707/2021 ion/ Page 130-136 (137-145 Typed Copy) 29.06.200 Reply by the Respondent to the above Demand Notice A-8/ 5 containing the acknowledgment of liability Paras 2, 5, Page 7, 8, 11 and 12 at Page 256, 258 and 259 respectively 256-264 13.03.200 The

Respondent submitted a letter dated 13.03.2006 A-

6 to the bank containing a proposal for one time 9/Page settlement. In Para 2 and 3 of this letter the 265-266 Respondent has made an unconditional (267-268 acknowledgment of liability. Typed copy) Note: The reference of this letter dated 13.03.2006 was mentioned in Para 5.38 of the OA No. 43/2007 (at Page 122) 20.03.200 The above OTS was accepted by the Bank by its letter A-10/ 6 dated 20.03.2016. This letter also bears the signature Page Note: The reference of the said letter has been (270-271 mentioned in para 5.38 of the OA no. 43/2007 (at typed copy) Page 122) 06.06.200 The above OTS was revoked due to non-compliance 6 vide letter dated 06.06.2006.

Note: The reference of the said letter has been mentioned in para 5.38 of the OA no. 43/2007. (at Page 122) 15.06.200 Notice issued by BoB under Section 13(2) of SARFAESI A-

6	Act qua the residential property of the promoters of the Respondent	11/Page 272-277
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Company Appeal (AT)(Ins) No.707/2021 Typed Copy is being filed herewith. This typed Copy has been taken from SLP No. 31404/2012 filed by the Respondent in the Supreme Court 09.02.200 SA No. 04/2007 filed by the Promoters of the 7 Respondent under Section 17 of the SARFAESI Act in DRT-1 Mumbai.

Note: Reference of the above SA has been given in Delhi High Court order dated 17.09.2012 in WP No. 1478/2011 at Page No. 309.

09.03.200 OA No. 43/2007 was filed by Bank of Baroda in DRT Exh. K-3 7 Ahmedabad with the Section 7 Applicati on (Page No. 110-

128) April 2007 The Respondent filed a reference before BIFR under Section 15 of SICA.

Note: The reference of the above BIFR case has been given in Delhi High Court order dated 17.09.2012 in 05.04.200 Second Notice under Section 13(2) issued by Bank of A-12/ 8 Baroda qua the factory premises of the Respondent Page No. situated at villate Nandesari, Dist. Vadodara and at 278-282 Umraya, Taluka : Padra. District Vadodara.

Note: Reference of the above notice is given in Delhi High Court order dated 17.09.2012 in WP No. 1478/2011 at Page No. 310.

Typed Copy is being filed herewith. This typed Copy has been taken from SLP No. 31404/2012 filed by the Company Appeal (AT)(Ins) No.707/2021 Respondent in the Supreme Court 22.05.200 Reply of the Respondent to the Section 13(2) notice A-13/ 8 issued by Bank of Baroda containing the Page No. acknowledgment of liability. In para 6/Pg. 287 of the 283-296 said Reply it has been admitted that Bank of Baroda had granted a term loan of Rs. 2 crores to the Respondent. In para 10/Pg. 290,

the grant of Ad-hoc limit of Rs. 100 lacs has been admitted. Further in para 14/Pg.295, sanction of additional ad-hoc limit of Rs. 50 lacs has been admitted.

Note: Reference of the above reply is in Delhi High Court order dated 17.09.2012 in WP No. 1478/2011 at Page No. 310.

Typed Copy is being filed herewith. This typed Copy has been taken from SLP No. 31404/2012 filed by the Respondent in the Supreme Court 12.11.200 BIFR dismissed the reference as non-maintainable. A-14/ Page No. 297 -

Typed Copy is being filed herewith. This typed Copy 301 has been taken from SLP No. 31404/2012 filed by the (Relevant Respondent in the Supreme Court t page No. 301) FY 2009- Balance Sheet of the Respondent wherein the liability A- 10 of Rs. 27,785,532 as on 31.03.2010 towards the bank 22/Page has been duly acknowledged by the Respondent. The No. 343- (Signed on Balance Sheet has been signed on 05.08.2010. 375 05.08.201 (Relevant o at Page t page

375) No. 357) 16.08.201 The Respondent submitted a letter dated 16.08.2010 Exh. O-6 o to the bank containing a proposal for One Time with Settlement. In Para 1, 5 and 6 of this letter the Section 7 Respondent has made an unconditional Applicati acknowledgment of liability by offering to make One on/ Time Payment of Rs. 2.75Cr to the Bank for settlement Page Company Appeal (AT)(Ins) No.707/2021 of its dues No. 147- 20.08.201 The Respondent submitted a letter dated 20.08.2010 Exh. O-6 o to the bank. With this letter the Respondent enclosed with the DD for a sum of Rs. 10 lacs and requested the Section 7 bank to approve their OTS for an amount of Rs. 2.75 Applicati Crs as already proposed. The contents of this letter on/ amount to acknowledgement of liability. Page 24.09.201 The Respondent submitted a letter dated 24.09.2011 A-15/ 1 to Bank of Baroda containing the revised final offer of Page OTS for a sum of Rs. 4.60 Cr. The contents of this letter No. 302 amount to acknowledgement of liability.

10.10.201 The bank had declined the OTS proposal of the A-16/ 1 Respondent dated 24.09.2011 by its letter dated Page No. 26.09.2011. The Respondent by its letter dated 303 10.10.2011 requested the Bank to return the amount of 13 lacs which was lying with the Bank in No-Lien Account.

07.02.201 S.A. no. 04. 2007 was dismissed by DRT-I Mumbai. -----

Note:Reference of the above dismissal order is there in Hon'ble Delhi High Court order dated 17.09.2012 at Page 327 16.03.201 The Respondent submitted a revised OTS offer for the A-17/ 3 amount of Rs. 5.25 lacs. The Respondent enhanced Page No. OTS offer by 65 lacs as their earlier offer dated 304 24.09.2011 was for Rs. 460 lacs only.

25.09.201 The Respondent submitted a letter dated 25.09.2013 A-18/ 3 assuring that either Alchemist ARC or Phoenix ARC Page No. will pay the entire OTS Amount of Rs. 5.25 crores. 305-306 31.10.201 The Respondent vide its letter dated 31.10.2014 has Exh. O-8 4 submitted an OTS Proposal offering two options - Rs. with 5.25 crores to be payable in 3 years or Rs. 8.78 crores Section 7 Applicati Company Appeal (AT)(Ins) No.707/2021 repayable in 8 years on/ Page No. 151-



12.12.201 The Respondent by its letter dated 12.12.2014 Exh. O-9 4 submitted its revised OTS offer for an amount of Rs. with 710 lacs with upfront payment of Rs. 70 lacs Section 7 Applicati on/ Page No. 153-155 05.01.201 Letter by the Appellant accepting the OTS proposal of Exh. O- 5 the Respondent dated 12.12.2014. As per the said 10 with letter, the OTS of Rs. 7.10 crores Rs. 035 Cr. was Section 7 payable on issue of OTS Sanction letter and the Applicati balance Rs. 6.75 Cr. was payable on or before on/ 31.03.2016. This letter is duly accepted by the Page Authorized Signatory of the Respondent. No. 156- 07.01.201 Part-Payment of Rs. 35,00,000. Please 5 refer to Exh. O-

The said part-payment has been acknowledged by the 15 with Respondent in the Settlement Letter dated 10.01.2019 Section 7 Applicati which is signed by both Appellant and the on/ Respondent.

Page No. 31.03.201 Default in payment of OTS amount as per OTS 6 Sanction letter dated 05.01.2015 26.09.201 The Appellant vide its letter dated 26.09.2017 has Exh. O- 7 revoked the OTS proposal dated 05.01.2015 11 with Section 7 Applicati on/ Page Company Appeal (AT)(Ins) No.707/2021 08.10.201 The Respondent vide its letter dated 08.10.2018 has Exh. O-

8	requested for One Time Settlement (OTS) of the entire dues to Edelweiss ARC/BoB. The Respondent offered Rs. 684 lacs -	12 with Section 7 Applicati on/
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i. Rs. 125 lacs within 30 days and Page ii. Remaining Rs. 559 lacs within 6 months No. 159- (relevant Page No. 160) 23.10.201 The Appellant vide letter dated 23.10.2018 has Exh. O- 8 rejected the above OTS proposal as the amount due on 13 with 26.02.2014 was more than Rs. 50 crores Section 7 Applicati on/ Page 19.11.201 Revised request for OTS proposal by Respondent Exh. O- 8 offering Rs. 675 lacs out of which Rs. 125 lacs was 14 with payable within 15 days of receipt of NOC for sale of Section 7 Nandesari factory and remaining Rs. 550 lacs by Applicati 31.03.2019 on/ Page No. 168- 06.12.201 Part-Payment of Rs. 35,00,000 17.12.201 Part-Payment of Rs. 15,00,000 through RTGS.

Vide letter dated 18.12.2018, the Respondent A-19/ confirmed the Appellant about the payment of Rs. 15 Page No. 18.12.201 10.01.201 The Bank conveyed its acceptance to the offer of OTS Exh. O- 9 submitted by the Respondent by their letter dated 15 with 03.12.2018 under this OTS, the settlement amount Section 7 was 7.10 Cr. out of which Rs. 0.35 Cr. was received Applicati Company Appeal (AT)(Ins) No.707/2021 in January 2015 and the further sum of Rs. 0.50 Cr. on/ had also been received. On the issue of the said letter Page No. the Respondent has to make the payment of Rs. 1.25 170-173 Cr. and the balance amount of Rs. 5 Cr. was payable by 25.03.2019. This letter is duly accepted by the director of the Respondent.

10.01.201 9	Part-Payment of Rs. 125,00,000 /Page No. 170-173, Respondent has submitted a post dated cheque of Rs. 5.00Cr. for the outstanding OTS amount.	Respondent has itself admitted in the Affidavit Reply filed on
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15.02.20  
20 in  
paras  
E(a) and  
E(b)/  
Page No.

16.01.201 Board Resolution passed by Respondent Exh. 0-  
9 acknowledging and approving the above OTS 15 with  
Section 7  
Applicati  
on/  
Page No.

29.03.201 Revocation of the OTS proposal dated 10.01.2019 Exh. 0-  
9 owing to failure of the Respondent to make the 15 with  
Section 7  
Applicati  
on/  
Page No.

04.11.201 The Appellant filed Section 7 Application Page No.  
9 83-101

Company Appeal (AT)(Ins) No.707/2021 b. From the above table, it is crystal clear that the Section 7 Application which had been filed on 04.11.2019 was without any iota of doubt within the prescribed period of limitation.

c. Reliance is placed on the following judgements wherein it has been held that the period of pendency of O.A./period of pendency of proceedings under SARFAESI Act i.e., (from 09.02.2007 upto 07.02.2012) is liable to be excluded in the computation of the limitation period. Also, if there is acknowledgment of debt in the balance sheets or the OTS proposal, the period of limitation would be extended :

i. Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd and Anr. (Hon'ble SC) dated 22.03.2021, MANU/SC/0205/2021 (Para 87 is relevant) (Annexure A-29 of Rejoinder) Note: It has been held in this case that the period spent in proceedings under SARFAESI Act, 2002 is liable to be excluded.

ii. Phoenix ARC Pvt. Ltd. vs Nagaur Water Supply Company Pvt. Ltd.

(Hon'ble NCLAT) dated 01.04.2021 MANU/NL/0125/2021 (Para Nos. 38-39 are relevant) (Annexure A-26 of Rejoinder) Note: It has been held in this case that acknowledgment of liability in the balance sheets will extend the period of limitation.

iii. Kishanlal Likhmichand Bothra vs Canara Bank (Hon'ble NCLAT) dated 24.03.2021 MANU/NL/0104/2021 (Para Nos. 13 and 14 are relevant) (Annexure A-28 of Rejoinder) Note: It has been held in this case that if there is acknowledgment of debt in the balance-sheets or the OTS Proposal, the period of limitation would get extended if the acknowledgment is made before the period of limitation expires.

iv. Dena Bank Vs. C. Shivkumar Reddy and Ors, (Hon'ble SC) dated on 04.08.2021 MANU/SC/0502/2021 2021 (Para No. 143 is relevant) (Annexure A-30 of Rejoinder) Company Appeal (AT)(Ins) No.707/2021 Note: It has been held in this case that Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings Under Section 7 of the IBC.

v. Sandeep Jindal Vs State Bank of India (Hon'ble NCLAT) dated 08.04.2021 MANU/NL/0138/2021 MANU/NL/0138/2021 (Para No. 28 is relevant) (Annexure A-27 of Rejoinder) Note: It has been held in this case that t Annual Returns/Audited Balance Sheets, one-time settlement proposals, proposals to restructure loans, by whatever names called, cannot be simply ignored as debarred from consideration and in every given matter, it would be a question of applying the facts to the law and vice versa, to see whether or not the specific contents, spell out an acknowledgement under the Limitation Act."

Therefore, in this manner aforesaid, section 7 Application was well within limitation.

d. The Appellant alongwith the main Appeal has also filed an IA No. 1876 of 2021 to place on record the Additional documents which was previously not filed before Ld. NCLT, Mumbai. The Respondent filed the Reply of the said Application on 01.03.2022. The Respondent in the said Reply had raised its objection on the ground that introduction of the Additional Documents at the Appellate Stage is impermissible, and that even otherwise, no case has been made out by the Appellant for allowing the said Additional Documents to be relied upon or placed on record at this stage of the proceedings.

e. As regards, the issue of filing additional documents along with the Appeal, the reliance is placed on the following judgments wherein it was held that the additional documents presented at a later stage will not be disregarded on the technical grounds or it cannot be removed out of consideration only because they were not on record before Ld. NCLT.

Company Appeal (AT)(Ins) No.707/2021

i) Manasi Indrajit Wadkar vs. Union Bank of India and Ors. dated 27.05.2021 of Hon'ble NCLAT MANU/NL/0183/2021 (Para No. 10 is relevant) (annexed as Annexure A-24 of Rejoinder)

ii) Wizman Impex Pvt. Ltd. vs Kedrion Biopharma Inc. dated 07.02.2022 of Hon'ble Supreme Court MANU/SC/0207/2022 (Para No. 8-9 are relevant) (annexed as Annexure A-25 of Rejoinder).

#### Additional Written Submissions on behalf of Appellant

1. The present written submissions are being filed in pursuance to the liberty granted by the order dated 16.11.2022 by this Hon'ble Tribunal. It is submitted that the Appellant had earlier also filed the written submissions vide diary no. 39574 dated 17.09.2022. The instant written submissions may please be read in continuation of the earlier written submissions.

2. It is submitted that during the course of the final arguments, the Hon'ble Tribunal's attention had been drawn to the Written Submissions filed by the Appellant before the Ld. Adjudicating Authority on 30.03.2021 whereby it was quite clear and evident that the Section 7 filed by the Appellant was well within the limitation. A copy of the said Written submission is available at Annexure A-21 (Pages 328-342 of the Appeal Book).

3. It is submitted that while filing the Written Submission before the Hon'ble Adjudicating Authority on 30.03.2021, a copy of the same had been duly mailed to Ld. Counsel of the Respondent also. A copy of the email dated 30.03.2021 is filed herewith as ANNEXURE A. In that email, CC is marked Company Appeal (AT)(Ins) No.707/2021 to Mr. Shadab Jan to his email id i.e., shadab.jan@crawfordbayley.com. In Para 3 of the said email, it is stated that " that the present email is being marked to the Advocates for the Corporate Debtor as and by way of service upon them."

4. Our submissions on the issue of limitation a. The important dates for limitation purpose are being given in the table below:

Date	Event	Annexures already filed before Ld. Adjudicating Authority	Remarks
31.05.2000	Date of default by the Respondent		This date was mentioned in Section Application (Please refer Page 94 of the Appeal Book Vol-1)
30.09.20	Date of NPA		-do-

05.10.2000	The Respondent executed a Letter of Acknowledgment dated 05.10.2000 in pursuance to its Board Resolution dated 29.09.2000	The reference of the said letter of acknowledgement and the said Board Resolution is mentioned in Para 5.25 of the OA No. 43/2007. A copy of the OA No. 43/2007 had been filed	The LADs are already filed as Annexure A-6/ Page 206-210 of the Appeal
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Company Appeal (AT)(Ins) No.707/2021 alongwith Section 7 Application as Exhibit K-3.

The copies of the said Board Resolution dated 29.09.2000 and LAD dated 05.10.2000 were not before the Ld. Adjudicating Authority and the same have been filed before this Hon'ble Appellate Tribunal as Annexure A-6 (colly) /Page 206-210 alongwith IA 1876/2021 for placing on record the Additional Documents

04.07.2003	The Respondent executed as many as 8 letters of acknowledgment in respect of	The reference of the said letters has been given in Annexure	The letters are filed as
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different credit facilities. By these Para 5.32 of the A-7/Page letters, inter alia the Respondent OA No. 43/2007. 211-228 has admitted its liabilities about (Typed the outstandings as of copies from 24.05.2003 in respect of Term The copies of the 229-255) Loan/cash credit book-debts letters of /cash credit hypothecation of acknowledgment stocks/ BP/BD/FBP/FCD/ dated 04.07.2003

Packing credit/Term Loan(2) were not before facilities. the Ld. Adjudicating Authority and the Company Appeal (AT)(Ins) No.707/2021 same have been filed before this Hon'ble Appellate Tribunal as Annexure A-7 (colly) /Page 211-

255 alongwith IA  
1876/2021 for  
placing on record  
the Additional  
Documents.

04.06.20 Demand notice issued by Bank of Annexed as Exh.  
05 Baroda to the Respondent 0-5 with the  
Section 7

demanding the payment of a sum Application/ of Rs. 13,37,83,309.98/- due as Page 129-136 on 31.03.2005. (137-145 Typed Copy) of the Appeal paper book.

Note: This  
document was on  
record before the  
Ld. Adjudicating  
Authority

29.06.20 Reply by the Respondent to the This document A-8/ Page  
05 256-264 of

above Demand Notice dated was not before the Ld. Adjudicating the Appeal 04.06.2005 containing the Authority. It has Paper book acknowledgment of liability in been filed alongwith IA No. Paras 2, 5, 7, 8, 11 and 12 at 1876/2021 for Page 256, 258 and 259 taking on record the Additional Company Appeal (AT)(Ins) No.707/2021 respectively documents.

13.03.20 The Respondent submitted a The reference of A-9/Page 06 letter dated 13.03.2006 to the this letter dated 265-266 bank containing a proposal for 13.03.2006 was (267-268 one time settlement. In Para 2 mentioned in Para Typed copy) and 3 of this letter the 5.38 of the OA No. of the Appeal Respondent has made an 43/2007.

paper book unconditional acknowledgment of liability.

The copy of the said letter dated 13.03.2006 was not before the Ld. Adjudicating Authority and the same has been filed before this Hon'ble Appellate Tribunal as Annexure A-9 (Pages at 265-

(267-268 Typed  
copy) of the  
Appeal paper  
book alongwith IA

1876/2021 for  
placing on record  
the Additional  
Documents

20.03.20 06	The above OTS was accepted by the Bank by its letter dated 20.03.2016. This letter also bears the signature of the Respondent	The reference of the said letter has been mentioned in para 5.38 of the OA no. 43/2007 at Page 122.	A-10/ Page 269 (270-271 typed copy) of the Appeal Paper book
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Company Appeal (AT)(Ins) No.707/2021 The copy of the said letter dated 20.03.2006 was not before the Ld. Adjudicating Authority and the same has been filed before this Hon'ble Appellate Tribunal as Annexure A-10 (Pages at 269 (270-271 typed copy) of the Appeal Paper book alongwith IA 1876/2021 for placing on record the Additional Documents 15.06.20 Notice issued by BoB under The copy of the A-11/Page 06 Section 13(2) of SARFAESI Act said letter dated 272-277 of qua the residential property of the 15.06.2006 was the Appeal promoters of the Respondent not before the Ld. Paper Book Adjudicating Authority and the same has been filed before this Hon'ble Appellate Tribunal as Annexure A-11 (Pages at Pages 272-277) of the Appeal Paper book alongwith IA 1876/2021 for placing on record the Additional Documents.

Company Appeal (AT)(Ins) No.707/2021 However, there is reference of this demand notice at Para 2 (iii) in the Written submission dated 30.03.2021 filed before Ld. Adjudicating Authority which is Annexure 21 of the present Appeal.

09.02.20 07	SA No. 04/2007 filed by the Promoters of the Respondent under Section 17 of the SARFAESI Act in DRT-1 Mumbai.	Reference of the above SA has been given in Delhi High Court order dated 17.09.2012 in WP No. 1478/2011 at Page No. 309 of the Appeal paper book. Reference of the said SA No. 01/2007 has also been given in Para 2 (iv) in the Written	A-20/Page 308-327 of the Appeal Paper Book
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submission  
dated  
30.03.2021 filed  
before           Ld.  
Adjudicating  
Authority.

09.03.2007      OA No. 43/2007 was filed by A copy of OA No.  
Bank of Baroda in      DRT 43/2007 was on  
Ahmedabad                      record before Ld.  
Adjudicating

Company Appeal (AT)(Ins) No.707/2021 Authority as an Annexure K-3 of Section 7 Application.  
The same is available at Page No. 110-

128            of    the  
Appeal            paper  
Book.

April            The Respondent filed a reference The reference of  
2007            before BIFR under Section 15 of the above BIFR  
SICA.                      case has been  
   given in Delhi  
   High Court order  
   dated 17.09.2012  
   in      WP            No.  
   1478/2011. The  
   said Judgment is  
   Annexure A-20  
   (Page 308-327) to  
   the Appeal Paper  
   Book      and the  
   reference of the  
   BIFR case has  
   been      given in  
   Para 3/Page 310  
   of    the            said  
   judgment.

05.04.2008	Second Notice under Section 13(2) issued by Bank of Baroda qua the factory premises of the Respondent situated at villate Nandesari, Dist. Vadodara and Umraya, Taluka : Padra. District Vadodara.	Reference of the above notice is given in Delhi High Court order dated 17.09.2012 in      WP            No. 1478/2011      in Para No. 3 at	A-12/ Page      No. 278-282 of the Appeal Paper book
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Page 310 of the  
Appeal Book.  
This notice was  
not available  
before the Ld.  
Adjudicating

Company Appeal (AT)(Ins) No.707/2021 Authority and the same has been filed before this Hon'ble Tribunal with IA No. 1876/2021 for placing on record the Additional Documents 22.05.20 Reply of the Respondent to the Reference of the A-13/ 08 Section 13(2) notice issued by above reply is in Page No. Bank of Baroda containing the Delhi High Court 283-296 acknowledgment of liability. In order dated Para 6/Pg. 287 of the said 17.09.2012 in WP Reply, it has been admitted that No. 1478/2011 at Bank of Baroda had granted a Page No. 310. term loan of Rs. 2 crores to the This reply was not Respondent. In Para 10/Pg.

290, the grant of Ad-hoc limit  
of Rs. 100 lacs has been  
admitted. Further in para  
14/Pg.295, sanction of  
available before  
the Ld.  
Adjudicating  
Authority and the  
same has been

additional ad-hoc limit of Rs.

filed before this 50 lacs has been admitted.

Hon'ble Tribunal  
with IA No.  
1876/2021 for  
placing on record  
the Additional  
Documents

12.11.20 08	BIFR dismissed the reference as non-maintainable.	Reference of the dismissal of BIFR case on 12.11.2008 is in Delhi High Court order dated 17.09.2012 in WP No. 1478/2011 at Para 5/Page No.	A-14/ Page No. 297 -301 (Relevant page No. 301)
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However, the

Company Appeal (AT)(Ins) No.707/2021 order dated 12.11.2008 was not available before the Ld. Adjudicating Authority and the same has been filed before this Hon'ble Tribunal with IA No. 1876/2021 for placing on record the Additional Documents FY 2009- FY 2009-10 This balance A-22/Page 10 sheet was not No. 343-

(Signed on 05.08.2010 at Page

(Signed 375)

on

05.08.20

10 at

Page

375)

the Ld. (Relevant

Adjudicating page No.

Authority and the 357)

same has been

filed before this

Hon'ble Tribunal  
with IA No.  
1876/2021 for  
placing on record  
the Additional  
Documents

16.08.20  
10

The Respondent submitted a letter dated 16.08.2010 to the bank containing a proposal for One Time Settlement. In Para 1, 5 and 6 of this letter the Respondent has made an unconditional acknowledgment of liability by offering to make One Time Payment of Rs. 2.75Cr to the Bank for settlement of its dues

This letter was part of Section 7 Application before the Ld. Adjudicating Authority as Exh. 0-6 (available at Page No. 147-148 of the Appeal Paper Book)

20.08.20 The Respondent submitted a This letter was

letter dated 20.08.2010 to the part of Section 7 Company Appeal (AT)(Ins) No.707/2021 10 bank. With this letter the Application before Respondent enclosed the DD for a the Ld. sum of Rs. 10 lacs and requested Adjudicating the bank to approve their OTS for Authority as Exh. an amount of Rs. 2.75 Crs as O-6 (available at already proposed. The contents of Page No. 146 of this letter amount to the Appeal acknowledgement of liability. Paper Book) 24.09.20 The Respondent submitted a This letter was not A-15/ 11 letter dated 24.09.2011 to Bank available before Page No. of Baroda

containing the revised the Ld. 302 of the offer of OTS for a sum of Rs. 4.60 Adjudicating Appeal Cr. The contents of this letter Authority and the Paper Book amount to acknowledgement of same has been liability. filed before this Hon'ble Tribunal with IA No. 1876/2021 for placing on record the Additional Documents 26.09.20 BoB declined the aforesaid OTS Reference of this 11 letter dated 24.09.2011 by its letter has been letter dated 26.09.2011 given by the Respondent in their letter dated 10.10.2011 mentioned below 10.10.20 As mentioned above, BoB had This letter was not A-16/ 11 declined the OTS proposal of the available before Page No. Respondent dated 24.09.2011 by the Ld. 303 of the its letter dated 26.09.2011. Adjudicating Appeal Authority and the Paper Book same has been In view of the same, the filed before this Respondent by its letter dated Hon'ble Tribunal 10.10.2011 requested the Bank with IA No. to return the amount of 13 lacs 1876/2021 for which was lying with the Bank in placing on record No-Lien Account. the Additional Company Appeal (AT)(Ins) No.707/2021 Documents 25.10.20 BoB turned down the request of This letter was 11 the Respondent to refund the part of Section 7 amount of Rs. 13.00 lacs for the Application before reasons mentioned therein. the Ld. Adjudicating Authority as Exh.

O-7 (available at Page No. 149-

150 of the  
Appeal Paper  
Book)

07.02.20 S.A. No. 04. 2007 was dismissed Reference of the 12 by DRT-I Mumbai. above dismissal order is there in Hon'ble Delhi High Court order dated 17.09.2012 in Para 26 at Page 327 of the Appeal Paper Book.

However, the  
dismissal order  
dated 07.02.2012  
is not on record.

16.03.20 13	The Respondent submitted a revised OTS offer for the amount	This letter was not A-17/ available before	
	of Rs. 5.25 Cr. The Respondent	the	Page No. Ld.

enhanced OTS offer by 65 lacs as Adjudicating their earlier offer dated Authority and the 24.09.2011 was for Rs. 460 lacs same has been only. filed before this Hon'ble Tribunal with IA No. 1876/2021 for placing on record the Additional Documents Company Appeal (AT)(Ins) No.707/2021 25.09.20 The Respondent submitted a This letter was not A-18/ 13 letter dated 25.09.2013 assuring available before Page No. that either Alchemist ARC or the Ld. 305-306 Phoenix ARC will pay the entire Adjudicating OTS Amount of Rs. 5.25 crores. Authority and the same has been filed before this Hon'ble Tribunal with IA No. 1876/2021 for placing on record the Additional Documents 26.03.20 The Appellant submits that the Copy of the 14 loan account of the Respondent Assignment was assigned to the Appellant by Agreement dated Bank of Baroda vide Assignment 26.03.2014 was Agreement dated 26.03.2014 Exhibit-E to the application.

Please refer item no. 7 at Page 84 of the Appeal Book 31.10.20 The Respondent vide its letter Exh. O-8 with 14 dated 31.10.2014 has submitted Section 7 an OTS Proposal offering two Application/ options - Rs. 5.25 crores to be Page No. 151- payable in 3 years or Rs. 8.78 152 of the Appeal crores repayable in 8 years Paper book which is a part of Annexure-3 of the Appeal 12.12.20 The Respondent by its letter Exh. O-9 with 14 dated 12.12.2014 submitted its Section 7 revised OTS offer for an amount Application/ of Rs. 710 lacs with upfront Page No. 153- payment of Rs. 70 lacs 155 of the Appeal Paper book which is a part of Company Appeal (AT)(Ins) No.707/2021 Annexure-3 of the Appeal 05.01.20 By this letter, the Appellant Exh. O-10 with 15 accepted the OTS proposal of the Section 7 Respondent dated 12.12.2014. Application/ As per the said letter, the OTS Page No. 156- amount was Rs. 7.10 crores and 157 of the out of that, Rs. 0.35 Cr. was Appeal Paper payable on issue of OTS Sanction book which is a letter and the balance Rs. 6.75 part of Annexure-

Cr. was payable on or before 3 of the Appeal 31.03.2016. This letter is duly accepted by the Authorized Signatory of the Respondent.

07.01.20 Part-Payment of Rs. 35,00,000. Exh. O-15 with 15 Section 7 Application/ The said part-payment has been Page No. 171 of acknowledged by the the Appeal Paper Respondent in the Settlement book which is a Letter dated 10.01.2019 which is part of Annexure-

signed by both Appellant and the 3 of the Appeal Respondent. This letter dated 10.01.2019 is available at Pages 170-173 of the Appeal Paper book.

31.03.20 Default in payment of OTS 16 amount as per OTS Sanction letter dated 05.01.2015. The Respondent had to make the payment of Rs. 6.75 Cr. on or before 31.03.2016 which he defaulted to make.

26.09.20 The Appellant vide its letter dated Exh. O-11 with proposal dated 05.01.2015 Application/ Company Appeal (AT)(Ins) No.707/2021 08.10.20 The Respondent vide its letter Exh. O-12 with 18 dated 08.10.2018 has requested Section 7 for One Time Settlement (OTS) of Application/ the entire dues to Edelweiss Page No. 159-

ARC/BoB.	The	Respondent	166 (relevant
offered Rs. 684 lacs -			Page No. 160)of
			the Appeal
i. Rs. 125 lacs within 30 days			Paper book
and			

ii. Remaining Rs. 559 lacs within 6 months 23.10.20 The Appellant vide letter dated Exh. O-13 with 18 23.10.2018 has rejected the Section 7 above OTS proposal as the Application/ amount due on 26.02.2014 was Page No. 167 of more than Rs. 50 crores the Appeal Paper Book 19.11.20 Revised request for OTS proposal Exh. O-14 with 18 by Respondent offering Rs. 675 Section 7 lacs out of which Rs. 125 lacs Application/ was payable within 15 days of Page No. 168- receipt of NOC for sale of 169 of the Nandesari factory and remaining Appeal Paper Rs. 550 lacs by 31.03.2019 Book

06.12.20 Part-Payment of Rs. 35,00,000 Exhibit F at Page 18 109 (Vol.I) of the Application Additionally, reference of the said payment has been made in Para 3 (z) in the Written submission dated 30.03.2021 filed before Ld. Adjudicating Authority. Please Company Appeal (AT)(Ins) No.707/2021 refer to Page 339 of the Appeal Book 17.12.20 Part-Payment of Rs. 15,00,000 Annexed as 18 through RTGS. Exhibit F at Page 109 (Vol.I) of the Company Petition.) Additionally, reference of the said payment has been made in Para 3 (aa) in the Written submission dated 30.03.2021 filed before Ld. Adjudicating Authority. Please refer to Page 339 of the Appeal Book Vide letter dated 18.12.2018, the This letter was not A-19/ Page Respondent confirmed to the available before No. 307 18.12.20 18 Appellant about the payment of the Ld. Rs. 15 lacs through RTGS on Adjudicating 17.12.2018. Authority and the same has been filed before this Hon'ble Tribunal with IA No. 1876/2021 for placing on record the Additional Documents.

However, reference of the said payment has Company Appeal (AT)(Ins) No.707/2021 been made in Para 3 (aa) in the Written submission dated 30.03.2021 filed before Ld. Adjudicating Authority. Please refer to Page 339 of the Appeal Book 10.01.20 The Bank conveyed its Exh. O-15 with 19 acceptance to the offer of OTS Section 7 submitted by the Respondent by Application/ their letter dated 03.12.2018. Page No. 170- Under this OTS, the settlement 173 of the amount was 7.10 Cr. out of which Appeal Paper Rs. 0.35 Cr. was received in Book January 2015 and the further sum of Rs. 0.50 Cr. had also been received. On the issue of the said letter the Respondent had to make the payment of Rs. 1.25 Cr.

on issue of OTS sanction letter and the balance amount of Rs. 5 Cr. was payable by 25.03.2019.

This letter is duly accepted by the director of the Respondent.

10.01.20 Part-Payment of Rs. 1.25 Cr. Respondent has Respondent also submitted a paras E(a) and post dated cheque of Rs. 5.00Cr. E(b) the Affidavit for the outstanding OTS amount. Reply filed on 15.02.2020 before Ld. Adjudicating Authority Page No. 182 of the Appeal Paper Book 16.01.20 Board Resolution passed by Exh. O-15 with Company Appeal (AT)(Ins) No.707/2021 approving the above OTS Application/ Page No. 173 of the Appeal Paper Book 29.03.20 Revocation of the OTS proposal Exh. O-15 with 19 dated 10.01.2019 owing to Section 7 failure of the Respondent to make Application/ the payment in terms of OTS Page No. 174 of the Appeal Paper Book 04.11.20 The Appellant filed Section 7 Page No. 83-101 19 Application of the Appeal Paper Book b.It is submitted that there is no specific denial by the Respondent either in their Reply to the Appeal or in Reply to IA No. 1876/2021 for taking on record the Additional documents of any of the additional documents which have been filed along with the said IA No. 1876/2021. It implies that the genuineness or authenticity of any of the Additional documents is beyond any doubt.

c.It is crystal clear that the Section 7 Application which had been filed on 04.11.2019 was without any iota of doubt within the prescribed period of limitation.

7. Learned senior counsel for the appellant by way of referring to the tabular chart incorporated in para 4 of additional written submissions which we have quoted hereinabove, has tried to justify that after the date of default i.e. 31.05.2000 and date of NPA i.e. 30.09.2000 Respondents issued the

acknowledgement in pursuance of the Board Resolution dated 5.10.2000 and thereafter Company Appeal (AT)(Ins) No.707/2021 on 04.07.2003 Respondent executed as many as eight letters of acknowledgement in respect of different credit facilities. Learned senior counsel by way of referring to aforesaid chart has tried to persuade the Court that continuance of events reflects that from time to time period of limitation was extended and as such the learned Adjudicating Authority has committed serious error in rejecting the application on the ground of limitation.

8. Mr. Abhijeet Sinha, learned counsel appearing on behalf of sole Respondent/CD opposing the appeal submits that the learned Adjudicating Authority has committed no error warranting interference with the impugned order. He submits that the appellant in a casual manner had filed petition under Section 7 of the IBC oblivious of the fact that the appellant was filing petition under Section 7 after expiry of more than 19 years from the date of default. He further submits that even before the Adjudicating Authority the appellants had not specifically mentioned as to what was actual date of default and what was the actual debt. In such a situation the Learned Adjudicating Authority was having no option but to reject the petition on the ground of limitation.

9. According to Mr Sinha, learned counsel in the application it has been indicated that CD's account was declared as NPA on Company Appeal (AT)(Ins) No.707/2021 30.06.2000. However, thereafter no cogent material was brought on record to show that within three years from the date of NPA there was any fact or document available for extending the period of limitation. He submits that of course before this Appellate Tribunal some of the dates and events have been explained in the tabular chart in the written submissions but those facts were not brought to the notice of the Adjudicating Authority and in the absence of those information the learned Adjudicating Authority was not expected to pass an order in favour of the appellant. Mr. Sinha, learned counsel besides orally opposing the appeal has also placed written submission which was filed in the present proceeding on behalf of the Respondent. We propose to reproduce the written submissions:

#### WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT I. SUMMARY

1. On 23rd October 2019, the Appellant filed an application - C.P. (IB) 4044 of 2019 ("said Company Petition") under Section 7 of the Insolvency & Bankruptcy Code, 2016 ('Code') seeking initiation of CIRP of the Respondent for a claim of Rs. 142,55,35,318/-

(INR One Hundred and Forty Two Crore Fifty Five Lakh Thirty Five Thousand Three Hundred and Eighteen Only). The date of default as stated in Form I of the said Company Petition was May 2000 which is 19 years 5 months from the date of filing.

2. By Impugned Order dated 3 rd June 2021, the Adjudicating Authority dismissed the said Company Appeal (AT)(Ins) No.707/2021 Company Petition. Although various grounds were raised by the Respondent to oppose admission, the Adjudicating Authority dismissed the said Company Petition solely on the ground of limitation holding that the Appellant has failed to produce necessary acknowledgments of liability within 3 years from the date of default which would renew the period of limitation.

3. By the present Appeal, the Appellant has sought to assail the Impugned Order, and has also filed I.A. No. 1876 of 2021 ("said IA") seeking to produce certain additional documents which were not produced in the said Company Petition before the Adjudicating Authority.

4. In view of the fact that the said IA was pending adjudication, and the additional documents sought to be relied upon were not brought on record at the relevant time, the Respondent has filed its Affidavit in Reply dated 26th May 2022 opposing the appeal on the basis of documents on record before the Adjudicating Authority, and reserved its right to deal with the additional documents as and when the said IA is decided. Infact, as on date of final hearing of the present Appeal, the said IA was still pending adjudication and thus the additional documents were yet to be permitted.

5. Accordingly, on 16th November 2022 (i.e., date of final hearing), the parties have confined their arguments to the documents produced along with pleadings before the Adjudicating Authority in the said Company Petition.

II. APPLICATION IS BARRED BY LIMITATION i. No documents produced from 3 years from Date of Default

1. The Appellant has admitted that the Date of Default is in May 2000. Therefore, prima facie the Application being filed on 23rd October 2019 i.e. 19 years 5 months after the Date of Default is barred by limitation;

Company Appeal (AT)(Ins) No.707/2021

2. The Applicant has failed to produce any acknowledgment of liability or prove any part payment within the prescribed period of limitation of 3 years as under Section 18 or 19 of the Limitation Act to save limitation under Article 137 of the Limitation Act. Therefore, any such document purporting to be an acknowledgment of debt or liability would be irrelevant for the purposes of Section 18 of the Limitation Act, and thus would not revive limitation. (Sesh Nath Singh vs Baidyabati Sheraphuli Co-op. Bank Ltd. - (2021) 7 SCC 313 - Para 64) & (Laxmipat Surana v Union Bank of India 2021 8 SCC 481-Para 43)

3. Under Section 18 of the Limitation Act, a document must meet the following ingredients to qualify as an acknowledgment in writing to extent the period of imitation:

- a. Acknowledgment must be made in writing;
- b. Acknowledgment must be made by person against whom claim is made;
- c. Acknowledgment must be made before expiration of limitation period;

4. Therefore, acknowledgment of liability, if any, has to be prior to the expiration of period of limitation (i.e., 3 years from date of default), and any document executed after three years from date of default would not revive limitation. In Sampuran Singh vs Niranjana Kaur-(1999) 2 SCC 679) the

Hon'ble Supreme Court Company Appeal (AT)(Ins) No.707/2021 as follows has laid down that any acknowledgment of liability has to be prior to expiration of period of limitation, and any such acknowledgment after the period of limitation would not assist the party concerned:

9. In his endeavour, learned counsel for the appellants, referred to Section 18 of the Limitation Act to hold that the acknowledgement by the original mortgagees to the respondents, through the said registered document dated 11th January 1960, the period of limitation is revive which would only start from that date of acknowledgement hence the suit filed in the year 1980 would be within limitation. The said submission is without any force. Section 18, sub-section (I), itself starts with the words "18. (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made...".

Thus, the acknowledgment, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgement. In the present case, admittedly the oral mortgage deed is in March 1893. If the period of limitation for filing suit for redemption is 60 years then limitation for filing a suit would expire in the year 1953. Thus, by the execution of this document dated 11th January 1960 it cannot be held by virtue of Section 18 that the period of limitation is revived afresh from this date.

5. Hence, the Appellant having failed to produce any acknowledgment of liability/debt within the period of three Company Appeal (AT)(Ins) No.707/2021 years of date of default, the claim is barred by limitation.

ii. Documents produced relate to period after three year period

6. As stated above, the Appellant has not produced any document within the period of three years from the date of default which would revive limitation for the Company Petition filed before the Adjudicating Authority. The documents produced by the Appellant are after the period of limitation which would not extend the limitation under Section 18 or 19 of Limitation Act, 1961.

7. Even otherwise, such documents relied upon by the Appellant do not constitute any acknowledgment of debt, and thus would not have extended the period of limitation even if the same related to period within 3 years from date of default. The following tabular representation clearly shows that such documents produced by the Appellant do not constitute acknowledgement under Section 18 of the Limitation Act: (The table contains documents produced before the Adjudicating Authority in the Company Petition) Year Particulars Comments J' May DATE OF DEFAULT 3 year period to be reckoned from this date.

May  
2003

3 YEAR PERIOD OF LIMITATION  
EXPIRES



04/06/2021 Anx. A-3 (Pg. 1. Not issued by the Respondent 005 206) Company Appeal (AT)(Ins) No.707/2021

2. Not issued within 3 years Demand Notice issued from the date of default by Appellant's

3. Does not constitute Advocate acknowledgment under Section 18 of the Limitation Act.

20/08/2021 Anx -A3 1. Not issued within 3 years 010 (Pg\_146) from the date of default

2. Does not constitute OTS Letter by the acknowledgment under Section Corporate Debtor 18 of the Limitation Act;

3. Letter issued "WITHOUT PREJUDICE"

25.10.2021 Anx: - A3 (Pg. 1. Not issued by the Respondent 11 149) 2. Not issued within 3 years from the date of default Letter issued by Assignor 3. Does not constitute Bank acknowledgment under Section 18 of the Limitation Act.

31/10/2021 Anx - A3 (Pg. 1. Not issued within 3 years 014 151) from the date of default

2. Does not constitute Settlement proposal by acknowledgment under Section the Respondent 18 of the Limitation Act.

12/12/2021 Anx - A3 (Pg. 1. Draft Notice cannot be taken

153) 014 as acknowledgment Draft OTS proposal by the 2. Issued "WITHOUT PREJUDICE"

Corporate Debtor via email 3. Issued after the expiration of period of limitation.

05/01/2022 Anx -A3 (Pg. 1. Not issued within 3 years 015 156) from the date of default Appellant 2. Does not constitute OTS Letter acknowledgment under Section issued by 18 of the Limitation Act.

26/09/2021 Anx - A3 (Pg. 1. Not issued by the Respondent 017 158) 2. Not issued within 3 years Revocation Letter issued from the date of default by Appellant 3. Does not constitute acknowledgment under Section 18 of the Limitation Act.

08/10/2021 Anx - A3 (Pg. 159) Issued after the expiration of 018 period of limitation.

Settlement proposal letter by the Corporate Debtor Company Appeal (AT)(Ins) No.707/2021 19/11/2021 Anx - A3 (Pg. 168) Issued after the expiration of 018 period of limitation.

Revised request for OTS proposal by the Corporate Debtor 10/01/2022 Aux - A3 (Pg. 158) Issued after the expiration of 019 period of limitation.

Acceptance of OTS  
proposal by the  
Appellant duly  
acknowledged by the  
Corporate Debtor

23/10/2 Application under Section 7 filed after 9 years and 5 months from 019 the date of default

8. In summary, the following conclusions arise from the above tabular representations:

- a. None of the above letters have been issued by the Respondent within 3 years of the date of default;
- b. None of the above letters would constitute acknowledgment of liability within Section 18 of Limitation Act;
- c. None of the above letters would extent the period of limitation;

9. The Appellant has failed to produce a chain of acknowledgments from May 2000 which will prove that the claim is not barred from limitation. Instead, the documents relied upon by the Appellant are much after the expiry of period of limitation. and thus would not aid the Appellant in saving the present Application from being barred by limitation.

10. In addition to the aforesaid, the letters of OTS offers relied upon by the Appellant do not constitute acknowledgment of debt in terms of Section 18 of the Limitation Act, as the said Company Appeal (AT)(Ins) No.707/2021 offers were rejected by the Appellant as held by this Hon'ble Appellate Authority in the case of Bimalkumar Manubhai Savalia v. Bank of India & Anr. [Company Appeal (AT) Ins.

No. 1166/2019 dated 5th March 2020 - para 9).

11. Furthermore, the reliance upon orders passed by DRT is also misplaced as filing of any recovery proceedings (within limitation) does not have any bearing on the period of limitation for proceedings under the Insolvency and Bankruptcy Code, 2016 as held by the Hon'ble Supreme Court of India in the case of (Jignesh Shah vs Union of India (2019) 10 SCC 750 (Para 21).

12. Therefore, the Company Petition filed by the Appellant is clearly barred by the law of limitation as I applicable to the Code. Therefore, it is submitted that this Hon'ble Appellate Tribunal be pleased to dismiss the present Appeal with cost.

III. RELIANCE ON WRITTEN SUBMISSIONS BEFORE ADJUDICATING AUTHORITY i. Additional documents produced in written submissions before Adjudicating Authority

13. At the outset, the submissions and documents being relied upon in the written submissions were neither pleaded nor argued before the Adjudicating Authority, and were produced Company Appeal

(AT)(Ins) No.707/2021 for the first time in the written submissions after the closure of arguments. In this regard, this Hon'ble Appellate Tribunal in Central Bank of India v Himmat Steel Foundry Limited [Company Appeal (AT) (Insolvency) No. 286 of 2022 (Para

16)] has held that arguments having no foundation in application under Section 7 of the Code must be disregarded.

Even the Hon'ble Supreme Court in the case of Bachhaj Nahar v Nilima Mandal (2008) 17 SCC 491 (Para 10) has laid down the importance of pleadings and its effect as thus:

10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are :

(i) No amount of evidence can be looked into, j upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the court.

(ii) A Court cannot make out a case not pleaded. The court should confine its f decision to the question raised in pleadings.

Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

14. In view of the above, the attempt of the Appellant to fill the Company Appeal (AT)(Ins) No.707/2021 inherent defects and lacunae of limitation by relying upon the Written Submissions filed by it before the Adjudicating Authority (Anx A21 - Page 328) must be disregarded from consideration.

15. Without prejudice to the above, it is submitted that even on merits, the reliance of the Appellant on the Written Submissions is erroneous. More particularly, the Appellant has sought to rely upon the following excerpts from the written submissions to contend that the period of limitation had stood extended within three years from date of default:

Para 3(d) & (e) Page 333 of Appeal

(d) On 30th June 2003, the Corporate Debtor has confirmed, admitted and acknowledged that the liability by passing resolution for execution of LAD. (Please see Exhibit K-3 at para 5.32 of OA at Pages 270 (Vol II) of the Company Petition)

(e) On 13th March 2006, the Corporate Debtor submitted a letter inter alia showing their willingness to settle dues of the Financial Creditor.

(Please see Exhibit K-3 at para 5.39 of the OA at Page 271 (Vol II) of the Company Petition) Company Appeal (AT)(Ins) No.707/2021

16. Firstly, the arguments taken in the Written Submissions have neither been pleaded in Form 1 to the Company Petition nor in the Affidavit in Rejoinder filed before the Adjudicating Authority. Such arguments have been raised for the first time in the written submissions. The Written Submissions were never shared with the Respondent at the relevant time.

17. Secondly, assuming that the arguments raised can be permitted, the above passages cannot constitute an acknowledgement of debt/liability as the same are referring to pleadings/averments made by the Appellant in its Original Application filed before the Debt Recovery Tribunal.

18. Thirdly, the documents referred to in the above passages of the written submissions have not been produced by the Appellant before the Adjudicating Authority in the Company Petition. The Appellant has merely produced a copy of the Original Application (at Exhibit K-3 of the Company Petition) but has failed to produce the documents referred therein. (See Index of Company Petition at Page 85 of Appeal).

19. Therefore, on all three counts above, the contention of the Appellant must fail.

ii. Applicability of Section 22(5) of SICA

20. The Appellant has raised a ground that the exclusion of period under Section 22(5) of the SICA Act would be available Company Appeal (AT)(Ins) No.707/2021 to the Appellant, and thus the time period spent in course of references and appeal before BIFR/AIFR would stand excluded.

21. Likewise, the above contention has been raised for the first time in written submissions before the Adjudicating Authority, and the same was never pleaded in its Form I/Rejoinder or made during oral arguments.

22. Section 22(5) of the SICA Act is reproduced below for reference:

22. Suspension of legal proceedings, contracts, etc.-

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

23. Without prejudice to the preliminary objections, it is submitted that the exclusion of time period under Section 22 (5) of the SICA Act would not be available to Appellant for the purposes of proceedings under Section 7 of the Code for the following reasons:

a. The exclusion of period is available only for such rights/privileges/obligations/liabilities which have been suspended by virtue of any pendency of reference before BIFR or AIFR;

b. There was no right to initiate corporate Company Appeal (AT)(Ins) No.707/2021 insolvency resolution process available to the Appellant at the relevant time when the reference of Respondent before BIFR/AIFR was pending which would lead to suspension of any such right. Hence, the question of any exclusion of time for exercise of such right would not arise;

c. Even otherwise, assuming that SICA was presently in force, the pendency of any reference before BIFR/AIFR would not restrict the right to initiate insolvency resolution process in light of overriding provisions under the Code;

24. Therefore, in view of the above, the exclusion sought by the Appellant cannot be granted or considered in respect of proceedings under the Code.

#### IV. REMAND IS THE APPROPRIATE COURSE -

##### ADDITIONAL DOCUMENTS AND SAID IA

25. As regards the additional documents sought to be produced are concerned, the Respondent has not been afforded any chance to deal with the same before the Adjudicating Authority. Since the Appellant has filed the said IA the proper course of action to be adopted would be to remand the matter as laid Company Appeal (AT)(Ins) No.707/2021 down by the Hon'ble Supreme Court in *Wizaman Impex Private Limited vs Kedrion Biopharma Inc.* (2022) sec 810:

6. It appears from the perusal of the record that the respondent applicant, in appeal against the aforesaid order of the NCLT. moved an application (I.A. No. 2685 of 2020) before the Appellate Tribunal and thereby, sought permission to produce the exchanges of e-mails from 03.11.2017 to 11.01.2019 with respect to the propositions for settlement of dues.

Admittedly, the said documents were not on record before the NCLT.

9. For what has been discussed and observed hereinabove, in our view, the appropriate course in this matter would be to set aside the impugned order dated 15.12.2021 passed by NCLAT to the extent it has allowed the application under Section 9 of the Code filed by the applicant-respondent but while retaining the other part of the impugned order taking the documents filed with I.A. No. 2685 of 2020 on record. After taking the said documents on record, for the appropriate process of adjudication in the matter, it is also considered just and proper that the order dated 06.10.2020 passed by NCLT be also set aside and the NCLT be directed to re-consider the application under Section 9 of the Code as filed by the applicant- respondent while taking into consideration the additional documents now taken on record and at the same time, while extending an adequate

opportunity of hearing to the corporate debtor.

26. Therefore, in case this Hon'ble Appellate Tribunal is inclined to allow the said IA, and permit introduction of additional documents, the proper course of action would be to remand the matter to the Adjudicating Authority so that the matter be Company Appeal (AT)(Ins) No.707/2021 heard afresh after providing the Respondent an opportunity to deal with the additional documents.

10. Taking aid from the facts disclosed in the written submissions he submits that the default in the present case had taken place in the month of May, 2000. However, first so called demand notice was issued by the Advocate of Bank of Baroda on 04.06.2005. Meaning thereby that 1st demand notice itself was issued beyond the period of limitation. He submits that once the claim of the appellant was barred by limitation by any subsequent act there was no reason to presume that the period of limitation was extended. Besides this he submits that even so called acceptance of OTS proposed by the appellant and duly acknowledged by the CD had occurred on 10.01.2019 which was obviously much after the expiry of the period of limitation and as such in any event the limitation was not required to be condoned and rightly learned Adjudicating Authority has rejected the application.

11. Besides hearing learned counsel for the parties we have also examined the materials available on record. In the present case besides filing Notes of written submissions the Respondent has filed reply and rejoinder was also filed on behalf of the appellant.

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12. On examination of the tabular chart which has been noticed by the Learned Adjudicating Authority we are of the considered opinion that the learned Adjudicating Authority has committed no error in dismissing the petition filed under Section 7 of the IBC, by impugned order primarily on the ground of limitation. Of course before this Appellate Tribunal the appellant through tabular chart has tried to persuade the Court that from time to time the period of limitation was extended, on examination of the same it is evident that no such information/documents were brought to the notice of the Adjudicating Authority either by filing application under Section 7 of the IBC or by way of filing any supplementary affidavit.

In the tabular chart which has been detailed in additional written submission filed on 09.12.2022 on behalf of the appellant, it is evident that the appellant himself has admitted that number of such documents and information were not available before the Adjudicating Authority. The fact regarding execution of letter of acknowledgement dated 05.10.2000 in pursuance to its Board Resolution dated 29.09.2000 which is at Sr.No.3 in the tabular chart in Column 3 the appellant has admitted "the copies of said Board Resolution dated 29.09.2000 and LAD dated 05.10.2000 were not before the learned Adjudicating Authority and the same Company Appeal (AT)(Ins) No.707/2021 has been filed before the Hon'ble Appellate Tribunal as Annexure alongwith IA No.1876 of 2021." Similarly in Sr. No.4 in Column No.1 date has been mentioned as 04.07.2003 and 2 nd column it has been mentioned that Respondent executed as many as 8 letters of acknowledgement in respect of different credit facilities.

By these letters inter alia the Respondent has admitted its liability about the outstanding as on 24.05.2003 in respect of term loan/cash credit/book debt/cash credit hypothecation of stock/DP/BD/FBP/FCD/Packing credit/term loan (two facilities).

However, in the 3rd column the appellant admits that copies of letters of acknowledgement dated 04.07.2003 were not before the learned Adjudicating Authority and same have been filed before this Hon'ble Tribunal as Annexures alongwith IA No.1876 of 2021.

Again in tabular chart which is at running page 3 of the Additional written submissions in Sr. No.2 dated 29.06.2005 in Column No.2 reply of Respondent to demand notice has been mentioned.

However, in 3rd column the appellant admits that those documents were not before the Adjudicating Authority. It has been filed alongwith IA No.1876/2021. Even the fact relating to acceptance of OTS by Bank which is at Sr. No.4 dated 20.03.2006 at running page 3 of the Additional written submission in Column 3 the Company Appeal (AT)(Ins) No.707/2021 appellant admits that copy of letter dated 20.03.2006 was not before the Adjudicating Authority and same has been filed before this Appellate Tribunal alongwith IA No.1876/2021. Even notice issued under Section 13(2) of SARFAESI Act which is reflected at running page 4 of additional written submission in Column 2 date is mentioned as 05.06.2006. However, in Column No.3 the appellant has admitted that the said letter dated 05.06.2006 was not before the Adjudicating Authority and has been filed before this Appellate Tribunal alongwith IA No.1876/2021.

13. The statement made in additional written submission reflects admission of the appellant that important information/documents showing extension of period of limitation was not brought to the notice of the Adjudicating Authority and as such on the ground of absence of such information the appellant may not be allowed to point out fault in the order of the Adjudicating Authority on the point of limitation. Of course the appellant while admitting non-

availability of such document/information before the Adjudicating Authority has stated that those documents were brought in IA No.1876/2021 filed before this Appellate Tribunal, however, on examination of the entire order sheet in the present proceeding it is evident that the said IA was never allowed by this Tribunal and Company Appeal (AT)(Ins) No.707/2021 as such it would be difficult for us to lay our hand on those documents which were annexed with IA No.1876/2021. Moreover, at the Appellate Stage normally new documents may not be taken note of which were not available before the Court below. However, in a special and exception circumstances though even at Appellate Stage a new document can be examined. Since in the present appeal IA No.1876/2021 through which new documents were being brought on record itself was not allowed, we may not take note of documents annexed with the IA.

14. On examination of the charts provided by both the side it appears that for several years the matter was pending before the Debt Recovery Tribunal. The period consumed by the appellant during the SARFAESI proceeding may not be excluded in terms of Section 14 of the Limitation Act. In respect of getting the period consumed in a different proceeding excluded, it is required to be established that an incorrect jurisdiction was invoked only then period consumed in such

proceeding can be claimed to be excluded. However, in the present case it is not the case of the appellant that they had approached incorrect forum having no jurisdiction to entertain the claim. If we examine those period it is evident that period of three years had already expired while Company Appeal (AT)(Ins) No.707/2021 pursuing the SARFAESI proceeding by the appellant. In the present case before the NCLT the appellant has not satisfied with cogent material as to whether after date of default within three years there was any valid acknowledgment by the Respondent/CD regarding the date or any other facts were available. This reflects that all the events have taken place much after the expiry of 1 st three years of limitation and as such the appellant may not get any benefit for regularisation of the limitation period. The Adjudicating Authority in absence of any such document showing continuously extension of period of limitation has rightly passed the impugned order.

15. We do not find any ground to interfere with the impugned order. The appeal stands dismissed.

(Justice Rakesh Kumar) Member (Judicial) (Dr. Ashok Kumar Mishra) Member (Technical) bm  
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