IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.64/ALD/2025

(An Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016)]

IN THE MATTER OF

Jammu and Kashmir Bank
Registered Office/ Corporate Office -
M.A Road, Srinagar, Jammu & Kashmir-190001
Branch office at: 8 Local Shopping Complex,
H-Pocket, Sarita Vihar, New Delhi-110076.
Also at:-
Impaired Asset Recovery Branch
JAMMU & KASHMIR BANK
ZO Delhi North (Gurgaon), Plot No.132-34,
Sector 44, Gurgaon - 122003 (HARYANA)-INDIA

...Applicant/Financial Creditor

Versus

Perfect Radiators & Oil Coolers Pvt. Ltd
Regd. Off.: Okhla Industrial Estate Phase - II,
New Delhi-110020

..Respondent/Corporate Debtor

Order Pronounced on: 07.01.2026

Coram:

Mr. Praveen Gupta	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

Appearances:

Sh. Rahul Chaudhary, Adv.	: For the Financial Creditor
Ms. Madhumita Bhattacharjee & Sh. Anant, Advs.	: For the Corporate Debtor

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ORDER

1. This Application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "IBC/Code") on 14.04.2025 by Jammu and Kashmir Bank Limited (hereinafter referred to as "Applicant/Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against M/s Perfect radiators and Oil coolers private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') being Corporate Guarantor of the M/s LEEL Electricals Limited (hereinafter referred to as " Principal Borrower").

2. In Part-I of the Application, details of Applicant M/s Jammu and Kashmir Bank ltd is given. It is a Banking Company incorporated under the Jammu and Kashmir Companies Act, 1956 and governed by the provisions of banking Regulation Act, 1949 and having its registered as well as corporate office at MA Road Srinagar, Jammu and Kasmir -190001 with one of its branch offices at 8 Local Shopping Complex, H-Pocket, Sarita Vihar, New Delhi-110076. The present Petition is filed by Mr Khurram Jah Rasool, posted at Impaired Asset Recovery Branch as Branch Head, duly authorised by the Applicant Bank, being Financial Creditor.

3. In Part II of the application, the details of the Corporate Debtor are mentioned wherein it is stated that the Corporate Debtor was incorporated on 16.06.2003 having CIN U34300DL2003PTC120935. It has Registered office locate at B-10/1, Okhla Industrial Area, Phase II, New Delhi-110020. The Corporate Debtor

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herein stood as Corporate Guarantor for the credit facilities -Cash Credit and ILC/FLC/BG availed by the Principal Borrower, M/s Leel Electricals Limited vide Working capital consortium agreement dated 01.05.2017. The Principal Borrower for which the Corporate Debtor herein gave corporate guarantee, was admitted for CIRP by this Tribunal vide order dated 04.03.2020 and subsequently it went into liquidation vide order dated 06.12.2021 passed by this Tribunal, and liquidation process of the Principal Borrower has been subsequently completed after distributing the proceeds of liquidation among the stakeholders of which the present Applicant Financial Creditors is also one of the stakeholders. Therefore, as per Section 60(2) of the Code, the present application filed by the Applicant against the Respondent Corporate Debtor being the Corporate Guarantor of the same Principal Borrower, is under the jurisdiction of this Tribunal.

4. In Part III of the Application, the Financial Creditor has proposed Mr. Bhoopesh Gupta, having IBBI Registration No. IBBI/IPA-001/IP-P01468/2018-19/12271, for appointing as the Interim Resolution Professional (hereinafter referred as the "IRP").

5. In Part-IV of the Application, the Applicant has stated that the amount in default is Rs. 63,16,83,342.24/- (Indian Rupees Sixty-Three Crores Sixteen Lakhs Eighty-Three Thousand Three Hundred Forty-Two and Paisa Twenty-Four Only) as on 31.12.2024 along with applicable rate of interest, penal interest. The Date of Default is mentioned as 31.01.2019.

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6. In Part V of the application, the following documents are referred to substantiate the loan facility disbursed to the Principal Borrower for which the corporate guarantee was given by the Corporate Debtor herein, which subsequently resulted into a debt in default: -

1. First Charge by way of hypothecation of Company's raw material, stock-in-process, finished goods, semi-finished goods, stores spares, goods in transit, whether lying in the godowns/warehouses of the Company or other wise and book-debts and other current assets (both present & future) on pari-passu basis with other lenders.

1st pari passu charge on following :

a. Entire Fixed assets of the Company with WDV of Rs. 327.85 crores as on March 31, 2017;

b. Leasehold land measuring 7600 sq. meters, situated at Plot no. 16 17, Industrial area Kala Amb, District Sirmour in the State of Himachal Pradesh in the name of the Borrower.

c. Leasehold land admeasuring 20,000 sq. meters situated at Plot no. A146 (B C), at industrial area Bhiwadi in the state of Rajasthan, in the name of the Borrower.

d. Leasehold land bearing Plot No. S21-S22 admeasuring 4.00 acres, Non SEZ, Phase 3, SIPCOT Road, Mugundarayapuram, Ranipet, Dist. Vellore, Tamil Nadu,

e. Freehold Land admeasuring 1.1740 hectares, Khasra No. 1519 situated at village Salempur, Mehmood Second, District Haridwar in the State of Uttarakhand, in the name of Himalayan Mineral Waters Private Limited.

f. Factory land and building at Village Nizampur, Tauru- Rewari Road, Distt. Mewat (Haryana) in the name of Perfect Radiators & Oil Coolers. Pvt Ltd. (Khewat no. 201, Khata no. 211, Rect No. 19, Killa No. 19/1 (4-9), 11 (2-11), 12 (3-2), 20 (80), 21/1 (4-13) and Khewat no. 25, Khata no.27, Rect No.19, Killa No. 19/2(3-11) 22/1(1-7), (3-11), measuring 3.9 acre.

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g. Entire fixed assets of the company both present and future.

h. Counter guarantee of the company for NFB Limits:-

i. Personal Guarantee of legal heirs of late Mr. B.R. Punj. i.e. Bharat Raj Punj&

Corporate Guarantee of :

1. Himalayan Mineral Waters (P) Ltd.

2. Perfect Radiators Oil Coolers Pvt Ltd.

7. It has been submitted that the Principal Borrower availed Cash Credit and ILC/FLC/BG facilities amounting to Rs. 50 crores from the Financial Creditor herein vide sanction letter dated 11.12.2015. This was enhanced to Rs. 70 crores upon the request of the Principal Borrower vide sanction letter dated 13.02.2017. However, Principal Borrower, after the execution of security documents, surrendered the enhanced working capital facility of Rs. 20 crores (Fund-based 15 crores and Non-Fund based -05 crore) vide letter dated 02.05.2017 to the Financial Creditor herein. Thus, total borrowings by the Principal Borrower from the Financial Creditor remained to be Rs. 50 crores

8. In the year 2017, the Principal Borrower sold its consumer durable business to M/s Havells India Limited at an enterprise value of Rs. 1550 crores on debt-free cash basis. Pursuant to that, on further request made by the Principal Borrower, the Financial Creditor reduced the working capital limits to Rs. 37 Crore on pro-rata basis. Thereafter, at the request of the Principal Borrower and in consideration of letter dated 11.01.2018, the Financial Creditor, renewed the existing working capital facilities to the tune of Rs. 37 crores (Rupees Thirty-Seven Crores Only) in favour of the Principal Borrower under the consortium of

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Banks led by State Bank of India ("SBI") vide a Sanction letter bearing reference no. JKB/CHQ/A&AP/34822/2018-75 dated 09.04.2018. Under the said credit facilities, the Principal Borrower availed following loan facilities from the Applicant Financial Creditor: -

Sr. No.	Nature of facility	Limit sanctioned (Amt. in Crores) (Rs.)
1	Working Capital (Fund based)	28.00
2	LC/BG (Non-Fund based)	9.00
	Total	37.00

9. After the above fresh sanction of the loan, the Principal Borrower became irregular in payment of the aforesaid credit facilities and failed to make payment of the outstanding amounts under the said Credit Facility and committed a breach of the terms and conditions of the various documents executed. Hence, the Financial Creditor declared the Credit Facilities account of the Principal Borrowers as NPA on 31.01.2019 as per the prudential norms on the Income Recognition, Asset Classification and Provisioning pertaining to Advances issued by RBI. Thereafter, the Notice under 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 (SARFAESI) was issued on 12.03.2019. Copy of Notice under 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 (SARFAESI) dated 12.03.2019 has been annexed as Annexure — P8 with the Application.

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10. After issuing of above notice, the Borrower vide a One Time Settlement ("OTS") letter dated 03.12.2019, requested the Financial Creditor to enter into an OTS and offered Rs. 12.85 Crores as OTS amount to be paid as full and final settlement of the entire outstanding amount due to the Financial Creditor. However, the proposal of the Borrower was rejected by the Financial Creditor vide Letter dated 24.01.2020. A copy of the OTS letter dated 03.12.2019, along with the rejection letter dated 24.01.2020 has been annexed as Annexure- 09 (Colly.) with the Application. Upon failure to repay the outstanding dues, a Loan Recall Notice dated 06.02.2020 was issued on behalf of the Financial Creditor calling upon the Borrower and Corporate Debtor herein to repay the outstanding due amount under the Credit facilities. Copy of the Loan Recall Notice dated 06.02.2020 has been annexed as Annexure -P10 with the Application.

11. Further, as the Borrower failed to repay its remaining outstanding dues, the Financial Creditor sent a Guarantee Invocation Notice dated 12.02.2020 to all the Guarantor(s) calling upon them to pay the outstanding amount due to be paid by the Financial Creditor. Copy of the Guarantee Invocation Notice dated 12.02.2020 has been annexed as Annexure-P11 with the Application.

12. Further, as the Principal Borrower failed to repay its remaining outstanding dues, the Applicant Financial Creditor invoked the guarantee vide the Guarantee Invocation Notice dated 01.01.2022 which was sent to the Corporate Guarantor. Copy of the Guarantee Invocation Notice dated 01.01.2022 has been annexed as Annexure -P12 with the Application. Furthermore, the Corporate Debtor has also

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acknowledged the Debt in the Balance Sheet of the financial years 2021-2022 and 2023-2024 under the Note No.17 and 16 respectively pertaining to "Other Information and Disclosures". A copy of the Balance Sheets for the financial years 2021-2022 and 2023-2024 has been annexed as Annexure -P12A with the Application.

13. It is stated that the Financial Creditor maintained the accounts of the Principal Borrower and the statement of account, which shows a debit balance (Outstanding Balance) as on 30.11.2024, as mentioned in the table below: -

S. No.	Credit Facilities	Outstanding as on 31.12.2024 (In Rs.)
1	Cash Credit (Fund Based) (0426020100000029)	63,16,83,342.24/-
2	ILC/FLC/BG (Non-Fund based)	-
	Total	**63,16,83,342.24/-**

Date on which the debt fell due:

S. No.	Nature of Facility	Limit Sanctioned (Amount in crores) (in Rs.)	Debt fell due (Devolvement Date)
1.	Working Capital (fund-based)	28.00	31.1.2019
2.	LC/BG (Non-Fund based)	9	31.1.2019

REPLY ON BEHALF OF THE CORPORATE DEBTOR

14. The Respondent filed a reply having Dairy No. 2249 dated 13.11.2025 and countered the averments of the Applicant Financial Creditor made in the

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Application u/s 7 filed by it, based on the following major contentions stated as below: -

I. <u>Claim filed by the Applicant is inadmissible</u>

a. It is contended by the Respondent Corporate Debtor herein that in addition to submitting its claim before the Liquidator appointed in the liquidation proceedings of the Principal Borrower, it had also filed an application bearing no. CP(IB)/37/ALD/2022, titled *Jammu & Kashmir Bank Vs. Himalayan Mineral Waters Pvt. Ltd* against another Corporate Guarantor. However, the present Financial Creditor/Applicant has filed this instant Application under Section 7 by suppressing the material fact that it had already filed an identical claim in a Section 7 application under CP(IB)/37/ALD/2022 for admission of the same claims against another Corporate Guarantor i.e. M/s Himalayan Mineral Waters Pvt. Ltd. for the same Principal Borrower. It is submitted that the said application was admitted by this Tribunal vide order dated 03.06.2024, following which a Resolution Plan was also approved by this Tribunal vide order dated 12.08.2025, after being approved by the Committee of Creditors (CoC) members of the said Corporate Debtor, namely Himalayan Mineral Waters Pvt. Ltd. in exercise of the commercial wisdom of CoC. The present Applicant/Financial Creditor was a constituent of that CoC with a voting share of 7.33% and had voted in favour of the Resolution Plan through e-voting on 03.03.2025, prior to instituting the current Section 7 application.

b. It is also submitted that once the Financial Creditor/Applicant herein had claimed the same set of claims against the Principal Borrower and the said claim is also admitted by the Liquidator of the Principal Borrower and thereafter, also filed an application under Section 7 of IBC against another Corporate Guarantor whereupon CIRP has been initiated and now Resolution Plan has already been approved vide order dated 12.08.2025,

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the instant application under Section 7 of IBC is barred in pursuance of the Section 31 of the IBC by reaching to the finality of claim and having binding effect of an approved Resolution Plan of another Corporate Guarantor against the same set of claims.

c. The Respondent Corporate Debtor further submitted in its reply that the Financial Creditor/Applicant herein has admittedly disclosed in part IV of Form 1 that it has received Rs. 9,31,52,095.23/- from its admitted claim filed before the Liquidator of the Principal Borrower but miserably failed to adjust the same amount i.e., Rs. 9,31,52,095.23/- as already received, from the present claim of outstanding dues as shown in the present application filed before this Tribunal.

d. As submitted by the Respondent Corporate Debtor, the Financial Creditor/Applicant herein has already elected the remedy of CIRP in relation to the same debt enforced against another Corporate Guarantor i.e. M/s Himalayan Mineral Waters Pvt. Ltd. and obtained an approved resolution plan in that process against the said Corporate Guarantor. The resolution plan constitutes the final adjudication of the claim standing in that CIRP. Now, permitting the Financial Creditor/Applicant herein to initiate a fresh Section 7 application for the same debt against another guarantor, i.e., Corporate Debtor herein, would permit re-opening the same Lis , which is contrary to the spirit of IBC and will lead to unjust enrichment of the Applicant Financial Creditor. Therefore, in view of the Respondent Corporate Debtor , the present Application is impermissible.

II. **<u>Present Application is Time-Barred</u>**

a. It is also contended by the Respondent Corporate Debtor that this application is time-barred by limitation. The Financial Creditor/Applicant has mentioned the alleged date of default as 30.01.2019 in Part IV of Form 1 and

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hence, as per Article 137 of the Limitation Act, 1963, the period of limitation for initiating proceedings under Section 7 of the IBC expired on 30.01.2022.

b. Further, even after applying the exclusion granted by the Hon'ble Supreme Court in In Re: Cognizance for Extension of Limitation, (2022) 3 SCC 117, whereby the period from 15.03.2020 to 28.02.2022 stood excluded for calculating the period of Limitation. The limitation could be extended only up to December 2023, and any entry post-December 2023 cannot revive the limitation under Section 18. Therefore, the instant application, having been filed in April 2025, is time-barred.

c. Furthermore, it is also contended by the Respondent that Financial Creditor has wrongly placed reliance on the Corporate Debtor's balance sheets for FY 2021-22 and FY 2023-24 contending acknowledgment of debt would extend the limitation period under Section 18 of the Limitation Act. In this respect, it is stated that an acknowledgment to extend limitation must be clear, unqualified, and executed before expiry of the prescribed period *(Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366)*. The alleged entries in the balance sheet of FY 2023-24, being made long after expiry of the extended limitation period, cannot revive a dead claim. Moreover, the debt in question already stands dealt with and extinguished under an approved Resolution Plan in the CIRP of another Corporate Guarantor namely Himalayan Mineral Waters Pvt. Limited vide order dated 12.08.2025 passed by this Tribunal in CP (IB)/37/ALD/2022 under Section 31 of the Code (Ghanashyam Mishra & Sons v. Edelweiss ARC, (2021) 9 SCC 657). Hence, the so-called acknowledgments have no legal efficacy to extend limitation or to sustain the present proceeding, which deserves to be dismissed due to expiry of the limitation period.

NOTE ON BEHALF OF THE FINANCIAL CREDITOR

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15. The Applicant Financial Creditor has filed a short note on 07.12.2025 wherein it is averred that objections raised by the Corporate Debtor in its reply are baseless, and hence denied.

16. It is averred by the Applicant that the Corporate Debtor has acknowledged that Principal Borrower availed the credit facilities from the Applicant Financial Creditor and for securing such facilities, it gave Corporate Guarantee. These facts are not disputed by the Corporate Debtor in its reply.

17. It is also averred that the liability of the Corporate Debtor is arising out of the Deed of Guarantee executed on granting of the credit facilities to the Principal Borrower and the same is an independent contract. Admission of claim by the Resolution Professional/Liquidator in liquidation proceedings of the Principal Borrower or resolution process of another Corporate Debtor, being the Corporate Guarantor of the Principal Borrower in CP IB no. 37/ALD/2022 does not bear any impact on this proceeding initiated against a separate Corporate Debtor being a second Corporate Guarantor. At this stage, the Adjudicating Authority only has to satisfy whether there is a debt (more than the amount of the threshold limit) which is due and payable to the Applicant and upon satisfaction, has to admit the application filed under section 7 of the Code, 2016. In this regard, the Applicant has placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of ***Lalit Kumar Jain versus Union of India & ors (2021) 9 SCC 321,*** wherein it has been held as under: -

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125. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.... "

18. Further, it is averred by the Applicant that present application is not Barred by limitation period which is clearly demonstrated from the series of events which are enumerated in a table as below: -

S. NO.	PARTICULARS	DATE
1.	Loan account of the Borrower was declared NPA	31.1.2019
2.	Notice under section 13(2) of the SARFEASI ACT, 2002	12.03.2019
3.	OTS Letter issued by the Borrower	31.02.2019
4.	Guarantee Invocation Notice	30.12.2021
5.	Hon'ble Supreme court in SMW (C) no. 03 of 2020 excluded the period of limitation from 15.03.2020 to 01.3.2022i.e 1095 days	16.11.2024
6.	Limitation Period expired till 15.03.2020=104 days from 03.12.2019	
7.	Period of limitation available from 01.3.2020 is 1095 days -104 days =991 days from 01.3.2022	

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8.	Balance Sheet for the FY-2021-22 and FY-2023-24	2027

Thus, the present application deserved to be admitted and is not barred by Limitation.

19. The Corporate Debtor has filed a written submission in compliance with the order dated 08.12.2025, wherein the aforementioned contentions raised in the reply have been reiterated, which is not reproduced herein for the sake of brevity.

FINDINGS AND ORDER OF THE TRIBUNAL

20. We have heard the Ld. Counsels of both parties and also perused the records and examined the pleadings filed before us. The main issues which are before us to be decided in respect of the present Application u/s 7 are:

i. **Whether the present application is filed within the prescribed period of limitation?**
ii. **Whether there are debt and default within the meaning of the IBC?**

i. **Whether the present application is filed within the prescribed period of limitation**

21. For examining the first issue relating to limitation, we have carefully gone through the documents on record. It is evident from the documents submitted on record that the Principal Borrower availed loan facilities from the Applicant during 2015 and 2017, pursuant to which the Corporate Debtor executed Corporate Guarantee Deeds, dated 01.05.2017, securing the said credit facilities.

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Upon the principal borrower's default to repay the said loan, its loan account was classified as NPA on 31.01.2019, which is also recorded as the date of default in Part IV of the application. The Corporate Debtor has disputed the admission of application stating that it is barred by limitation. As per the Corporate Debtor, the period of limitation for initiating proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 expired on 30.01.2022 as per the Limitation Act 1963, taking the date of default as 31.01.2019 shown in Part IV of the present Application filed u/s 7. It is argued by the Corporate Debtor that even after applying the exclusion granted by the Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation, (2022) 3 SCC 117*, whereby the period from 15.03.2020 to 28.02.2022 stood excluded for calculating the period of Limitation. The limitation, at best, could be extended only up to December 2023, and any entry post December 2023 cannot revive the limitation under Section 18 of the Limitation Act. The Corporate Debtor has also disputed the effect of the debt being acknowledged in the Balance Sheets of the Corporate Debtor, contending that the entry in the Balance Sheet of FY 2023-24 cannot be treated as a valid acknowledgement of a dead claim.

22. For examining this issue, it is necessary to take into account the events that occurred after the account of the Principal Borrower was declared NPA on 31.01.2019. The Applicant issued a statutory notice under Section 13(2) of the SARFAESI Act on 12.03.2019. For settlement of liability, Principal Borrower gave OTS Proposal vide letter dated 03.12.2019. In terms of Article 137 of the

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Limitation Act, 1963, the Applicant was entitled to a period of three years from the date of default to initiate action. During the period of limitation of three years applicable for the Principal Borrower, the Applicant Financial Creditor invoked the Corporate Guarantee on 12.02.2020 and 01.01.2022, calling upon the Corporate Debtor/Guarantor herein to pay the outstanding debt within the period of seven days. As neither the Principal Borrower nor the Corporate Debtor discharged the outstanding liability despite issuing of these demand notices, a fresh cause of action has accrued to the Applicant in respect of the Corporate Guarantor as the limitation for filing the insolvency application against the Corporate Guarantor starts after a default is committed by the Corporate Guarantor in paying the debt demanded in the guarantee invocation notice. The first guarantee invocation letter was issued on 12.02.2020, in which 7 days' time was given for the payment of debt, but the same was not paid, therefore, the date of default in case of the Corporate Guarantor herein can be said to have occurred on 19.02.2020. Thereafter, considering the order of the Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation, (2022) 3 SCC 117*, after excluding the period falling between 15.03.2020 to 28.02.2022, the period of limitation would extend up to 03.02.2025 [total days available of 1095 (-) 25 days expired up to 15.03.2020]. During the duration of the said period, the outstanding debt has also been acknowledged by the Principal Borrower/Corporate Debtor in its Balance Sheet of the FYs 2021-2022 and 2023-24, which constitute acknowledgements under Section 18 of the Limitation Act,

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1963. As a result, the limitation period stood extended up to 31.03.2027, taking into account the acknowledgement reflected in the Balance Sheet for FY 2023-24. This application was filed on 14.04.2005, which is well within the period of limitation. Recently, the Hon'ble NCLAT, New Delhi, in the matter of ***UCO Bank v. Poddar Mech Tech Services Pvt. Ltd.,*** *(2025) ibclaw.in 1125 NCLAT* held that an entry made in the books of account, including the balance sheet of Principal Borrower amounts to an acknowledgment by Guarantor within the meaning of Section 18 of the Limitation Act. The relevant paras of the said judgement are reproduced below: -

"...

27. Thus, in ***Asset Reconstruction Co. (India) Ltd. vs. Bishal Jaiswal, (2021) 6 SCC 366,*** *Hon'ble Supreme Court held that the question of applicability of Section 18 of the Limitation Act on IBC is no longer res Integra as two recent judgments* ***(Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd.,(2021)ibclaw.in 49 SC, decided on 22.03.2021 and Laxmi Pat Surana v. Union Bank of India (2021) ibclaw.in 53 SC, decided on 26.03.2021)*** *have applied the provisions of Section 14 and Section 18 of the Limitation Act to the IBC and that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act.*

28. *The aforesaid legal citations are sufficient to conclude that any acknowledgment made by the principal borrower would be deemed to be an acknowledgment by the corporate guarantor also. Since, it appears to be an admitted situation that up to the financial year 2019-2020, 2020-2021, 2021-*

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2022 the debt was shown by the principal borrower in his financial statements and the acknowledgment made by the principal borrower is as good as the acknowledgment made by the guarantor, therefore, by virtue of Section 18 of Indian Limitation Act, 1963 the limitation to file an application under Section 7 of the IBC was available to the appellant till 2024 while the applications aforesaid under Section 7 of the Code have been filed in the year 2023. Therefore, in our considered opinion a patent illegality has been committed by the ld. Tribunal in rejecting the application filed by the appellant under Section 7 of the Code.

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23. In view of the aforesaid legal citations and the facts as emerged from the record discussed in previous para of this order as regards to issuance of notice by the Applicant for invocation of Corporate Guarantee and failure of the Respondent Corporate Debtor/Guarantor herein to pay the debt invoked in the said guarantee invocation notice and further applying the order the Hon'ble Supreme Court for excluding the period falling within the Covid pandemic and also taking into account the debt acknowledged by the Principal Borrower/Corporate Debtor in its Balance Sheet for the F.Y. 2023-24, it is clearly established that this application is well within the period of limitation.

ii. <u>Whether there are debt and default within the meaning of the I&B Code, 2016?</u>

24. With regard to the second issue concerning the determination of debt and default, it is evident from the record that the Principal Borrower i.e. M/s LEEL Electricals Limited had availed loan facilities aggregating to Rs. 50 crores from the

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Applicant Financial Creditor as has already been discussed in this order. These borrowings constitute the admitted foundation of the financial relationship between the Applicant and the Principal Borrower. Further, it is also taken into consideration that in order to secure the above loan facilities, the Corporate Debtor executed a Deed of Corporate Guarantee on 01.05.2017 in favour of the Applicant Bank. Upon the Principal Borrower's default to repay the loan, its loan account was classified as NPA on 31.01.2019, which is also recorded as the date of default in Part IV of the application. Thereafter, Applicant Financial Creditor issued notice under Section 13(2) of the SARFEASI Act, 2002 on 12.03.2019. The Applicant thereafter recalled the fund-based and non-fund-based facilities amounting to Rs. 50 cores vide a letter dated 06.02.2020; however, no repayment was effected, resulting in the invocation of Corporate Guarantee on 12.02.2020 and 01.01.2022. In the meantime, the Principal Borrower submitted OTS proposal vide letter dated 03.12.2019 of Rs. 12.85 crores which was rejected by the Applicant vide letter dated 24.01.2020.

25. Meanwhile, one Operational Creditor M/s MKM technologies Private limited filed an application bearing CP IB No. 189/ALD/2019 against the same Principal Borrower i.e. M/s Leel Electricals Limited under section 9 of the IBC, 2016 due to nonpayment of its operational debt. This Tribunal vide order dated 04.03.2020 initiated CIRP against the Principal Borrower. Then, vide order dated 06.12.2021, liquidation proceeding was initiated against the Principal Borrower in which the Applicant Financial Creditor herein filed claim also. The Applicant

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Financial Creditor herein had also filed an application under section 7 bearing CP(IB)/37/ALD/2022 titled as *Jammu & Kashmir Bank Vs. Himalayan Mineral Waters Pvt. Ltd.* after invoking the guarantee against another Corporate Guarantor i.e. M/s Himalayan Mineral Waters Pvt. Ltd. Subsequently, Resolution plan of the Himalayan Mineral Waters Pvt. Ltd has also been approved by this Tribunal on 12.08.2025 wherein Applicant has filed its claim.

26. In this regard taking into account the actions already taken by the Applicant Financial Creditor herein for realising its outstanding debt as discussed in aforesaid paras, the Respondent Corporate Debtor has disputed the filing of the present Application stating that Applicant herein has already availed the remedy of CIRP in relation to the same debt and obtained an approved resolution plan in that process, wherein it submitted its claim before the resolution professional of Himalayan Mineral and Water Limited in CP (IB) No. 37/ALD/2022, and it was admitted. The resolution plan has already been approved by this Tribunal, which constitutes final adjudication of the claim standing in that CIRP. Now, the Financial Creditor/Applicant herein has initiated a fresh proceeding under section 7 for the same debt against another guarantor i.e., Corporate Debtor herein and it would amount to permitting re-opening of the same Lis, which is contrary to the spirit of the IBC and will lead to unjust enrichment of the Applicant Financial Creditor herein. The present Application is therefore, impermissible as stated by the Respondent Corporate Debtor. Reliance is placed on the judgement passed by the Hon'ble National Company Law Appellate

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Tribunal in the *Dr. Vishnu Kumar Agarwal Vs. M/s. Piramal Enterprises Ltd.: [Company Appeal (AT) (Insolvency) No. 346 & 347 of 2018].*

27. We have considered the above submissions of the Corporate Debtor. After examination of the records connected with the above-mentioned two proceedings i.e. one liquidation proceeding against the Principal Borrower and second insolvency proceeding against the Corporate Guarantor, M/s Himalayan Mineral Waters Pvt Ltd., we find that during the liquidation proceeding of the Principal Borrower, though Rs. 49,57,94,158/- was admitted by the Liquidator but an amount of Rs. 9,31,52,095.23/- was only paid to the Applicant Financial Creditor. In resolution proceeding of Himalayan Minerals Pvt. Ltd., though claim of Rs. 58,18,76,715/- was admitted by the Resolution Professional but only Rs. 2,39,97,861/- approximately is computed to be payable to the Applicant Financial Creditor on approval of the Resolution Plan based on the size of the Plan. Thus, out of the total outstanding dues of Rs. 63,16,83,342.24/- payable by the Principal Borrower, the Applicant Financial Creditor has already been paid Rs. 9,31,52,095.23/- from the liquidation proceedings against the Principal Borrower. The balance amount of Rs. 2,39,97,861/- is payable from another Corporate Guarantor in terms of its approved resolution plan. Therefore, a substantial amount of debt of the Principal Borrower due to be paid to the Applicant Financial Creditor herein is still outstanding. Thus, the present Corporate Debtor being the second Corporate Guarantor against whom the present Application has been filed, this Application against it would be

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considered for its resolution in respect of the remaining debt of Rs. 51,45,33,386 (Rs. 63,16,83,342.24 – [Rs. 9,31,52,095.23+ Rs. 2,39,97,861]), which have remained unpaid by the Corporate Debtor herein even after invocation of the corporate guarantee against it. This debt is much beyond the threshold of Rs. 1 crore as contemplated under the provisions of the Code.

28. The Corporate Debtor has not denied the execution of the deed of guarantee dated 01.05.2017 and admitted that there exist debt and default under the loan facility extended by Applicant Financial Creditor out of which only Rs. 9,31,52,095/- has been received in the liquidation proceedings of the Principal Borrower. The role of this tribunal in proceedings initiated under section 7 application is only to see the existence of debt and default which is clearly subsisting in this case and whether such unpaid debt is more than the threshold limit or not. Looking to the outstanding amount of loan still subsisting even after payments made to the Financial Creditor herein out of two proceedings as mentioned by the Corporate Debtor in its reply and also discussed in previous paras of this order, it can be clearly seen that total outstanding amount of debt is still remaining to be Rs. 51,45,33,386 (Approximately) which is more than the threshold limit of Rs. 1 crore.

29. Now, regarding the issue of inadmissibility of claim on account of availing remedy in the insolvency proceedings of Principal Borrower and its one of two Corporate Guarantors as stated above. The Principal Borrower as well as the Corporate Guarantor, Himalayan Mineral Waters Pvt Ltd, went into the CIRP

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Proceedings due failure of the Principal Borrower to repay the debt, leading to default.

30. In this regard, it is noteworthy to mention that the Hon'ble Supreme Court in the case of *Lalit Kumar Jain vs Union of India, (2021) 9 SCC 321,* has held that the release or discharge of a Principal Borrower from the debt owed by it to its creditor by an involuntary process i.e., by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract. The judgment of the Hon'ble Supreme Court has settled the law on this issue.

31. Having considered the specific facts and circumstances of this case as discussed above, the liability of the Corporate Debtor as the Corporate Guarantor, stands automatically enforced as the guarantee for repayment of loan of the Principal Borrower being co-extensive and co-terminous with the liability of the Corporate Guarantor and the outstanding debt still remaining to be paid as found by us as discussed in aforesaid paras, is more than the threshold limit of Rs. 1 crore. Therefore, the contentions raised by the Corporate Debtor in its reply does not subsist. The existence of debt and the occurrence of default on the part of the Principal Borrower as well as by the present Corporate Debtor being the Corporate Guarantor after invoking of guarantee against it, stand conclusively established from the materials submitted on record.

32. After considering the entire facts and circumstances of the case so far discussed above, we are of the considered opinion that in the present case, default on

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repayment of the debt has occurred and the Section 7 Petition filed by the Financial Creditor is complete in all aspects providing all the details of debt and default as required in Part IV of the Application in Form 1 , also proposing the name of the IRP in Part III of the of the Application and attaching all the necessary supporting documents as required in Part V of the Application. Considering that all the criteria as required under the IBC are fulfilled, we find that this Application deserves to be admitted u/s 7 for initiating CIRP against the Corporate Debtor/Guarantor.

33. Accordingly, this Tribunal admits this Application and orders to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor/Guarantor.

34. The Financial Creditor has proposed the name of Insolvency Professional , Mr. Bhoopesh Gupta, having Registration No. IBBI/IPA-001/IP-P-01468/2018-2019/12271, R/0 645A/533B Janki Vihar Colony Sector I, Prabhat Chauraha, Jankipuram, Lucknow, Uttar Pradesh,226031, Email ID: cabhoopesh@rediffmail.com to be appointed as the IRP who has also filed his consent in Form – 2 and upon verification from the IBBI website, it is seen that the said person holds a valid Authorisation for Assignment till 31.12.2026.

35. Accordingly, this Application is admitted u/s 7 of the Code, 2016, under the following terms and conditions.

i. The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016, for initiating the Corporate

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Insolvency Resolution Process against the Corporate Debtor, i.e., Perfect Radiators and Oil Coolers Private Limited, is hereby admitted.

ii. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii. This Adjudicating Authority hereby appoints Mr. Bhoopesh Gupta to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 34 above.

iv. The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 has commenced from the date of this order prohibiting the following:

a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

vi. Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

vii. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

viii. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

ix. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it, u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

x. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors (hereinafter referred as "CoC") and shall file a report certifying the constitution of the CoC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the CoC within seven days of filing the report of the constitution of the CoC.

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xi. The CoC in its first meeting shall appoint a Resolution Professional (hereinafter referred as "RP") as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.

xii. The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the Backup and regarding service provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case, accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs.

xiii. The Statutory Auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.

xiv. The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "CIRP Regulations, 2016").

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xv. The Financial Creditor shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 4(3) of the CIRP Regulations, 2016.

xvi. In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for the retrieval of relevant information from the systems of the corporate debtor.

xvii. The IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench/IBBI/MCA for this purpose.

xviii. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances.

xix. The IRP/RP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

xx. The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.

xxi. The IRP/RP is directed to approach all the concerned Government Departments and authorities as discernible from the books of account of the Corporate Debtor requesting them to file claims if any amount is outstanding against the Corporate Debtor.

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xxii. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.

xxiii. The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.

xxiv. The IRP/RP is further directed to send regular progress reports to this Tribunal every month.

xxv. We direct the Financial Creditor to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

36. A certified copy of the order shall be communicated to both the Applicant Financial Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Financial Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.

37. List CP **(IB) 64/ALD/2025** on 09.02.2026 for filing of the progress report/further proceeding.

Compared by me
Mahesh Sahai
12/01/2026

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date: 07.01.2026

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

FREE OF COST

12.01.2026
V. K. Asthana
Deputy Registrar
National Company Law Tribunal
Allahabad Bench, Prayagraj (U.P.)