

**DEBTS RECOVERY APPELLATE TRIBUNAL, DELHI**

**Misc. Appeal No.133/2024**  
**Arising out of TA No.76/2022 (DRT-III, Delhi)**

**Item No. 17**

**Nikhil Poddar**  
**V.**  
**Punjab National Bank**

**01.07.2026 Hon'ble Dr. Justice Sudhir Kumar Jain**

Present: Ms. Anisha Jain, Advocate for appellant through VC  
Sh. S.K. Garg, Advocate for respondent through VC

This matter is taken up through Hybrid hearing.

**Misc. Appeal No.133/2024**

1. The present appeal is filed to impugn the order dated 18.03.2024 passed by DRT-III, Delhi in O.A. bearing T.A. No. 76/2022 title as **Punjab National Bank V. Vanasthali Textile Industries Limited and others**. The appellant was defendant no.2 before DRT-III, Delhi.

2. The defendant no.2 was stated to be served with the complete paper book of O.A. on 06.09.2019 but Written Statement was filed on 26.11.2019 vide diary no. 18427. Thereafter DRT-III, Delhi vide impugned order dated 18.03.2024 observed that the Written Statement filed on behalf of the appellant, i.e. defendant no.2 was filed beyond the statutory period of 30 days and the Tribunal does not have the power to condone the delay beyond the prescribed period and as such the Written Statement was ordered to be taken off from the record. The relevant portion pertaining to the appellant is reproduced as under:

**6. So far as, defendant no.2 is concerned, it is recorded by the Registrar in the order dated 19.01.2024 that defendant no.2 was served with complete OA paper book on 06.09.2019 through dasti, however the WS was filed by defendant no. 2 vide diary no. 18427 dated 26.11.2019.**

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Hence, it is appeared that the WS of defendant no. 2 was also filed beyond the statutory period of 30-days as prescribed under RDB Act 1993. Even the Written Statement filed after expiry of limitation period. Hence, WS filed by defendant no.2 is also taken off the record.

3. The counsel for the appellant after referring the judgement dated 23.06.2026 passed by DRAT, Chennai in M.A:50/2026 titled as **G Jawahar & another V M/s City Union Bank Limited** argued that the delay in filing the written statement on behalf of the appellant before DRT can be condoned. The relevant portion of the judgment is as under:-

19.2 The matter was listed before Learned Presiding Officer for the first time only on 15.12.2022. Even on 15.12.2022, the Learned Presiding Officer, did not pass any order under Rule 12(7) of DRT (Procedure) Rules, 1993, and instead, graciously granted time till 09.06.2023 for filing the Written Statement by extending time, from time to time, on the following dates i.e., 09.05.2023 and 30.05.2023. It is an admitted fact that the Respondent Bank also not raised any objection for the delayed filing of Written Statement on 09.06.2023. It proceeded to file Proof Affidavit on 21.09.2023 and no objection was taken before the Tribunal with regard to delayed filing of the Written State till the OA was allowed on 02.05.2024.

20. The decision referred above in M/s. SCG Contracts Indian Private Limited V. K.S. Chanmankar Infrastructure Private Limited & others., shows that the delayed filing of Written Statement was agitated against immediately on its receipt. That is not the case here. MA 21/2026 was filed objecting the delayed filing of the Written Statement, only after the remand order was passed in CRP No. 2492/2024. Prior thereto, the OA was allowed by the Learned Presiding Officer, of course, without properly considering the pleadings and evidence produced by both the parties, on 02.05.2024.

21. The question now looms large is whether the respondent bank can challenge the delayed filing of Written Statement after tacitly admitting the delayed filing of the Written Statement and participating in the enquiry on the basis of the Written Statement filed with delay and without raising this issue before the Hon'ble High Court in CRP No. 2492/2024? This Tribunal is of the view that the Respondent had lost its right to challenge the delayed filing of the Written Statement on the principles of acquiescence, waiver and *estoppel*. It is no doubt that there can be no waiver/*estoppel* against a statute. However, the conduct of the Respondent in not challenging the delayed filing of the Written Statement from 09.06.2023 till the filing of MA 21/2026, is highly belated and is hit by acquiescence. A

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party, who knowingly participates in the proceedings without raising objection, forfeits his right to challenge the procedural irregularities at a later stage.

24. As already stated in the M/s. SCG Contracts Indian Private Limited case, the non-filing of the Written Statement within the period of 120 days was challenged immediately, especially, prior to the disposal of the main suit. On the other hand, in the case before hand, the belated filing of the Written Statement was not challenged before the Tribunal till OA was disposed of on 02.02.2024. Even in CRP No. 2492/2024 before Hon'ble High Court, this issue was not raised. Only after remand, the MA 21/2026 was filed and allowed. Certainly, the principles of waiver, acquiescence, *estoppel* by conduct applies to the Respondent.

25. Waiver is an intentional relinquishment of known right. In *Kanchan Udyag Limited Vs. United Spirits Limited* in *Civil Appeal No. 1168/2007*, the Hon'ble Supreme Court while dealing with the principles of waiver and acquiescence in paragraph 22, held that waiver and acquiescence may be express or implied. Much will again depend on the nature of the contract, and the facts of each case. Waiver involves voluntary relinquishment of a known legal right, evincing awareness of the existence of the right and to waive the same. If a party entitled to a benefit under a contract, is denied the same, resulting in violation of a legal right, and does not protest, foregoing its legal right, and accepts compliance in another form and manner, issues will arise with regard to waiver or acquiescence by conduct. For better appreciation, relevant portions are extracted here under:-

“22.....Waiver and acquiescence may be express or implied. Much will again depend on the nature of the contract, and the facts of each case. Waiver involves voluntary relinquishment of a known legal right, evincing awareness of the existence of the right and to waive the same. If a party entitled to a benefit under a contract, is denied the same, resulting in violation of a legal right, and does not protest, foregoing its legal right, and accepts compliance in another form and manner, issues will arise with regard to waiver or acquiescence by conduct. In the facts of the present case, the conduct of the appellant in placing orders and receiving supply of concentrates directly from M/s. VEC, for a period of nearly one year, and continuing to do so even after it wrote to the respondent in this regard, without recourse to any legal remedies for denial of its legal right to receive concentrates from the respondent, undoubtedly amounts to waiver by conduct and acquiescence by it to the new arrangement. The plea that it was done under compulsion, and not voluntarily, is devoid of any material, substance and evidence. It is unacceptable and merits

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no consideration. Alternatively, if it was an assignment under Clause 5 of the agreement, there had been no termination of the contract by the respondent. Waiver by conduct was considered in *P. Dasa Muni Reddy vs. P. Appa Rao*, (1974) 2 SCC 725, observing as follows

“13. Abandonment of right is much more than mere waiver, acquiescence or laches.....Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and so understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question.....”

26. In *Bichitrananda Behera V. State of Orissa and Ors.* in 2023 INSC 902, the Hon’ble Supreme Court discusses the concept of acquiescence, delay and laches as follows:-

“25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may

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become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.”

13) “12. The statement of law has also been summarised in Halsbury’s Laws of England, Para 911, p. 395 as follows: ‘In determining whether there has been such delay as to amount to laches, the chief points to be considered are: (i) acquiescence on the claimant’s part; and (ii) any change of position that has occurred on the defendant’s part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.’

It is no doubt that the respondent, though had the right to protest the receipt of the Written Statement immediately, or at least prior to the disposal of the OA, on 02.05.2024, and by raising the issue during hearing of CRP No. 2492/2024, failed to do that. Only after the remand, the respondent filed MA 21/2026. From the proposition laid down on the principles of waiver and acquiescence in the aforesaid decisions, this Tribunal is of the view that, the respondent lost the opportunity of protesting of the late filing of the Written Statement on the principles of acquiescence by conduct and wavier.

3. Section 19(5)(i) provides that the defendant has to present the written statement of his defence within a period of 30 days from the date of service of summons along with original documents or true copies thereof. The proviso to the said section further provides that if the defendant fails to file the written statement within the said period of thirty days, it can be extended in exceptional and special circumstances to be recorded in writing for a period not exceeding 15 days. Section 19(5)(i) of the Act reads as under:-

**Section 19.**

**(5)(i) the defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with**

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original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

**Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing extend the said period by such further period not exceeding fifteen days to file the written statement of his defence;**

4. It is reflecting that the defendant has to file written statement within maximum period of 45 days. The issue whether there can be further extension beyond 45 days to file written statement was subject matter of consideration of superior courts. The High Court of Delhi in **Anita Garg and others V State Bank of India**, 2021 SCC OnLine Del 4311, in para 32 observed that Section 19(5)(i) of the Act does not provide for forfeiture of right to file written statement if it is not filed within the stipulated time or the extended time but the written statement filed beyond the stipulated time or extended time cannot be brought on record. The relevant para 32 of the judgment is reproduced as under:-

**32. Though, Section 19(5)(i) does not, in terms, provide for the forfeiture of the right to file the written statement. If it is not filed within the stipulated time, or the extended time that could and may be granted, in our view, the consequence would be the same, as the written statement filed beyond the stipulated time, or extended time which could legally be granted for that purpose, cannot be brought on record. The intention of the Parliament can be gathered not only from the Statement of Objects and Reasons set out hereinabove, but also from the outer limit of time, for which extension may, in a deserving case by following the guideline laid down in the Section, be granted. The proceedings before the DRT are also proceedings arising out of commercial dealings and the disputes are commercial disputes. It would not stand to reason, that while the Parliament sought to enforce strict timelines for expeditious disposals of commercial disputes by enacting the Commercial Courts Act, it did not do so in respect of disputes of the same kind, decided by the Debt Recovery Tribunals. The only reason for not incorporating the forfeiture clause in Section 19 is, that the existing provision contained in Section 19 leads to the same conclusion.**

5. The Supreme Court in **New India Assurance Co. Ltd. V Hilli Multipurpose Cold Storage (P) Ltd.**, (2020) 5 SCC 757, considered the issue whether the stipulated time or extended time for filing the written statement under the Consumer Protection Act, 1986, which is similar to Section 19(5)(i) of the Act, can

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be extended or not and observed that the time limit specified for filing the response to the complaint is mandatory and not directory. The relevant para 33 of the said judgment is reproduced as under:-

**33. Once consequences are provided for not filing the response to the complaint within the time specified, and it is further provided that proceedings complying with the procedure laid down under sub-sections (1) and (2) of Section 13 of the Consumer Protection Act shall not be called in question in any court on the ground that the principles of natural justice have not been complied with, the intention of the legislature is absolutely clear that the provision of sub-section (2)(a) of Section 13 of the Act in specifying the time-limit for filing the response to the complaint is mandatory, and not directory.**

6. The legal proposition as laid down by the Supreme Court was further re-affirmed and reiterated in **Daddy's Builders Private Limited & another V Manisha Bhargawa & another**, (2021) 3 Supreme Court Cases 669 and **Dr. Vijay Dixit & others V Pagadal Krishna Mohan & others**, 2024 SCC OnLine SC 2279. It is apparent from the pronouncement of the Supreme Court that Section 13 although in the context of the Consumer Protection Act, 1986, which is similar to the provisions contained in Section 19(5)(i) of the Act, the period of 45 days cannot be extended for filing the written statement by the defendant. The counsel for the appellant could not point out any specific legal provision where the filing of Written Statement can be extended beyond 45 days. There is no illegality or infirmity in the order passed by DRT-III, Delhi. This is passed on the settled legal proposition. The present appeal is devoid of any merit and is accordingly dismissed.

  
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**(Dr. Justice Sudhir Kumar Jain)**  
**Chairperson**

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