

NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT III

Item No. 01

C.P. (IB)344(MB)/2024

CORAM:

SH. HARIHARAN NEELAKANTA IYER
MEMBER (Technical)

MS. LAKSHMI GURUNG
MEMBER (Judicial)

ORDER SHEET OF THE HEARING ON **29.06.2026**

(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: Unity Small Finance Bank Limited

VS

Awas Developers and Constructions Private Limited

Appearance

For Petitioner : Adv Princi Jaiswal (VC)

SECTION 7 OF THE IBC, 2016

ORDER

The above Company Petition is listed for pronouncement of order. The same is pronounced in the open court, vide a separate order.

Sd/-

HARIHARAN NEELAKANTA IYER
Member (Technical)

---Ram Kishan---

Sd/-

LAKSHMI GURUNG
Member (Judicial)

**Case Citation: (2026) ibclaw.in 2454 NCLT
IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

C.P.(IB)-344(MB)/C-III/2024

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

Unity Small Finance Bank Limited

Having office at:

Centrum House, CST Road, Vidyanagari Marg, Kalina Santacruz (E), Mumbai – 400098

CIN: U65990DL2021PLC385568

... Financial Creditor

Vs.

Awam Developers and Constructions Private Limited

Having Registered office at:

Room No. 06, Capri, 3rd Floor, Anant Kanekar Marg, Bandra (East), Mumbai – 400050

CIN: U70100MH1999PTC120960

... Corporate Debtor

Order pronounced on: 29.06.2026

Coram:

Sh. Hariharan Neelakanta Iyer
Member (*Technical*)

Ms. Lakshmi Gurung
Member (*Judicial*)

Appearances:

For the Financial Creditor : Adv. Pulkrit Sharma, Adv. Princi Jaiswal i/b Dhir and Dhir Associates

For the Corporate Debtor : Adv. Sagar Shetty a/w Adv. Akshay Naik, Adv. Disha Shah a/w Adv. Mujtaba Amberkar i/b A&P Partners

Per: Sh. Hariharan Neelakanta Iyer, Member (Technical)

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) by the Unity Small Finance Bank Limited (**Financial Creditor/Petitioner**) for initiating Corporate Insolvency Resolution Process (**CIRP**) against M/s. Awas Developers and Constructions Private Limited (**Corporate Debtor/Respondent**) for alleged default in repayment of **Rs. 140,12,93,950.92/-** as on 07.10.2019.

2. **Background of the case as emerging from Part IV of the Petition**

2.1 The Punjab and Maharashtra Cooperative Bank (**PMC Bank**) sanctioned a Mortgaged Overdraft Facility of Rs. 15 crores in favour of the Corporate Debtor on 31.03.2007. The said overdraft facility was enhanced from time to time and in the year 2019, the total sanctioned facility was Rs. 135 crores.

2.2 The details of security created in favour of PMC Bank as provided in Part V of the Petition is as follows:

- i. Non-Agriculture Land situated at Village Anakunnam, Taluka Kanayannur, District Emakulam, Kochin, Kerala, admeasuring 990 Cents, standing in the name of Mis. Awas Developers & Construction Pvt. Ltd.
- ii. Land parcels admeasuring a total of 34,388 sq. mts., comprised in Survey Nos. 17/6, 16/11, 20/1, 18/14, 24/5, 25/6/8, 6/1/2D, 181/8/1, 11/8/3, 104/9, 6/3B, 18/15B, 33/3, 33/6, 19/3, 5/1, 26/3 & 177 (admeasuring 9,920 sq. mts.) situated at Village Chulne, Taluka Vasai, District Palghar and Survey Nos. 105/2, 105/3, 101/13/2, 102/5, 103/2, 103/7, 164/10/ /2, 157 /6, 98/8, 98/2B, 102/2, 102/3, 105/1, 101/3, 104/13 and 105/4 (admeasuring 24,468 sq. mts.) situated at Village Dewanman, Taluka

Vasai, District Palghar, standing in the name of Mr. Rakesh Kumar Wadhwan.

- iii. Land situated at Villages Chandansar and Kopari, Taluka Vasai, District Thane admeasuring a total area of 53,560 sq. mts., standing in the name of Mis. Privilege Power & Infrastructure Pvt. Ltd.
- iv. Land situated at Villages Dewanman and Chulne, Taluka Vasai, District Palghar admeasuring 34,388 sq. mts. Standing in the name of Mr. Rakesh Kumar Wadhwan.
- v. Land situated at Villages Chandansar and Kopari, Taluka Vasai, District Thane admeasuring a total area of 53,560 sq. mts., standing in the name of M/s. Privilege Power & Infrastructure Pvt. Ltd.
- vi. Personal Guarantee of Mr Rakesh Kumar Wadhwan, Mr. Sarang Rakesh Kumar Wadhwan.
- vii. Corporate Guarantee of M/s Privilege Power & Infrastructure Pvt. Ltd.

2.3 The PMC Bank issued Demand Notice dated 07.10.2019 calling upon the Corporate Debtor to pay a sum of Rs. 140,12,93,950.92 being the outstanding dues which includes the principal, interest and other charges.

2.4 Subsequently, another demand notice dated 15.01.2021 was issued demanding repayment of Rs. 170,29,90,954 as on 31.12.2020, from the Corporate Debtor.

2.5 The PMC Bank merged with the Petitioner vide the Punjab and Maharashtra Co-operative Bank Limited Scheme, 2022 with effect from 25.01.2022. Accordingly, the Petitioner became the financial creditor of the Corporate Debtor for the sanctioned facilities.

- 2.6 The Corporate Debtor has allegedly not repaid the outstanding dues and consequently, the Petitioner has filed the present Petition on 04.12.2023.
- 2.7 The Petition is supported with the following documents:
- i. Copies of various loan applications filed by the Corporate Debtor along with various Sanction Notes
 - ii. Copies of demand notices dated 07.10.2019 and 15.01.2021
 - iii. Copy of the PMC Bank Limited Scheme, 2022
 - iv. Copy of workings for computation of amount and days of default
 - v. Copy of Record of Default as maintained by National e-Governance Services Limited (NeSL)
 - vi. Copies of Income Tax Return for FY 2016-17 and 2017-18 of the Corporate Debtor
 - vii. Copy of the order dated 15.02.2023 passed by this Adjudicating Authority in the matter of Privilege Power and Infrastructure Pvt. Ltd., on an application filed by the same Petitioner
 - viii. Written Consent of proposed IRP along with AFA

3. **Reply by Corporate Debtor**

The Corporate Debtor filed its reply and has, *inter alia*, submitted the following:

- 3.1 It is submitted that the present reply is limited only to the extent of the contention regarding “date of default” and that the Corporate Debtor reserves its right to file a detailed reply and/or sur-rejoinder if required.
- 3.2 It is submitted that in Part IV of the Petition, the ‘date of default’ is stated as 07.10.2019. However, the records of the financial information maintained by NeSL, the of last repayment is stated as 05.02.2012 and the account of the Corporate Debtor was

declared as Non-Performing Asset (**NPA**) on 31.08.2012. Since default is a pre-requisite for declaring an account as NPA, thus, the default has occurred before 31.08.2012.

- 3.3 It is submitted that for the purpose of section 7 or 9 of the Code, the first default has to be considered. In the present case, the date of default is based on the demand notice issued under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**). It is submitted that section 13(2) of the SARFAESI Act is based on a default in debt or instalment thereof that has already taken place. Thus, default date cannot be shifted merely because the demand notice under section 13(2) of SARFAESI Act was issued on 07.10.2019.
- 3.4 It is further submitted that as per the Reserve Bank of India Master Circular on Prudential norms on Income Recognition Asset Classification and Provisioning pertaining to advances (RBI Circular), reveals that a loan account is classified as an NPA when the interest or principal remains overdue for a period of 90 days in respect of a loan account. This serves as the triggering event for the declaration of NPA, which is the point at which the date of default is determined.
- 3.5 It is submitted that the attempt of the Petitioner to shift the date of default is to overcome the bar of limitation of three years as per Article 137 of the Limitation Act, 1963.
- 3.6 It is further submitted that the Petitioner has produced the Statement of Accounts from April 2015 only to avoid limitation while the Petitioner has provided statements from March 2007 before the arbitration proceedings. The statement of account produced before the arbitration would show that post 02.05.2012, there has been no disbursement of any credit facility by the financial

creditor and no utilisation of credit facility by the Corporate Debtor from the financial creditor.

3.7 The Corporate Debtor has denied all the statements made in the Petition.

4. **Rejoinder of Petitioner**

The Corporate Debtor filed its reply and has, *inter alia*, submitted the following:

4.1 It is submitted that according to the definition of the term “default” under section 3(12) of the Code, the right of the financial creditor to initiate CIRP against the Corporate Debtor was triggered the moment the Corporate Debtor fails to/ defaults in repaying the loan amount. In the present case, the right of the financial creditor was triggered when the Corporate Debtor failed to repay the loan amount i.e. 07.10.2019. It is submitted that even as per the NeSL record, the date of default reflected is 31.03.2019.

4.2 It is further submitted that the notice dated 07.10.2019 is not a notice under section 13(2) of the SARFAESI Act, 2002. The said notice clearly states that only in the event the Corporate Debtor fails to repay the outstanding dues, the PMC Bank would take necessary action under section 13 of the SARFAESI Act.

4.3 It is submitted that as per the repayment terms and conditions of the sanction letters, the repayment is based on “on demand/annual renewal” which would imply that the Corporate Debtor will be liable to repay the loan amount as and when demanded by the PMC Bank.

4.4 As regards the contention of the Corporate Debtor that the date of default must occur prior to the date of NPA, it is submitted that the date of default has to be the date on which default was actually committed. In the present case, the Corporate Debtor has been

withdrawing monies from the account of the said facility and the last sum withdrawn was on 16.02.2019 for an amount of Rs. 16,81,00,000. It is submitted that the Corporate Debtor in its Balance Sheet has also acknowledged the fact that the Corporate Debtor is holding the said Mortgage Overdraft Facility account with PMC Bank and is liable to repay the outstanding loan amount so withdrawn from PMC Bank.

- 4.5 Reliance is placed on the judgment of ***Laxmi Pat Surana vs. Union of India [(2019) 8 SCC 481]*** and it is submitted that section 7 of the Code comes into play when the Corporate Debtor commits default and not when the loan account of Corporate Debtor is classified as NPA and in case where the Corporate Debtor acknowledges the liability after declaration of NPA and before the expiration of three years, the limitation is renewed.
- 4.6 Without prejudice to the aforesaid, it is submitted that if the NPA date is considered, then too the facility was renewed on 01.09.2015 and 16.08.2018 and 06.02.2019 and this would amount to creation of fresh cause of action by virtue of Corporate Debtor's acknowledgement of the debt. Reliance is placed on the judgment of Hon'ble NCLAT in ***Edelweiss Asset Reconstruction Company Limited vs. Perfect Engine Components Pvt. Ltd. [2022 SCC Online NCLAT 1622]***.
- 4.7 It is submitted that the Corporate Debtor has not denied the debt and default and has admitted that the account of the Corporate Debtor has been classified as NPA due to the default and this can be the basis of the admission of the Petition.
- 4.8 It is further submitted that pursuant to the revelation of the fraud committed by Housing Development and Infrastructure Limited (HDIL) and its sister concerns along with the managing director of PMC Bank in September 2019, the RBI took control of PMC Bank which was subsequently amalgamated with the Petitioner with

effect from 25.01.2022. As soon as the Petitioner became cognizant of the financial transaction between PMC Bank and the Corporate Debtor, the Petitioner took immediate steps for initiation of CIRP and has filed the present Petition on 04.12.2023 i.e. within 679 days from the date of amalgamation.

4.9 The Petitioner has denied the contentions raised by the Corporate Debtor in its reply and submitted that the limited reply filed by the Corporate Debtor was to derail the proceedings.

4.10 The Petitioner has annexed *inter alia* the following documents to the Rejoinder:

- i. Copy of the extract of the copy of the statement of account showing the withdrawal of Rs. 16,81,00,000 by Corporate Debtor.
- ii. Copy of audited Balance Sheet from FY 2012 to 2018.
- iii. Copies of Statement of Accounts of the Corporate Debtor from 31.03.2007 to 31.10.2024.

Analysis & Findings

5. Heard the Ld. Counsel for parties and perused the records.
6. The Petitioner has filed the present Petition under section 7 of the Code seeking initiation of CIRP in respect of the Corporate Debtor.
7. The Corporate Debtor has filed a limited reply to the Petition. The limited issue raised in the reply pertains to the 'date of default' and 'limitation period'.
8. The arguments on behalf of the Corporate Debtor challenging the maintainability of the Petition are encapsulated below:
 - i. It is submitted that the Petitioner has stated the date of default as 07.10.2019 based on the notice dated 07.10.2019 which is a pre-enforcement notice issued prior to taking measures under Section

13 of the SARFAESI Act. The substance of the notice would clearly show that there has been prior alleged default and consequent NPA classification, and therefore the notice dated 07.10.2019 cannot be the source of default and the said notice being a subsequent recovery step by creditor cannot also postpone, extend, or redefine the date on which default had first occurred. Reliance is placed on the following judgments:

- a. *M/s. Metenere Global Ltd. v. M/s. MLC Estates LLP*
- b. *Milind Kashiram Jadhav v. State Bank of India*
- c. *State Bank of India v. Vivimed Labs Ltd.*

- ii. It is submitted that the limitation period for initiating insolvency proceedings under section 7 of the Code is three years from the date of default as held by Hon'ble NCLAT in ***Jagdish Prasad Sarada v. Allahabad Bank***. Thus, limitation is to be reckoned from the date of default, and not from any later event in the recovery process. Reliance is also placed on the judgment of Hon'ble Supreme Court in ***Sabarmati Gas Ltd. v. Shah Alloys Ltd.*** and ***SREI Equipment Finance Ltd. v. R.S. Kamthe Infrastructure Developers Pvt. Ltd.*** passed by NCLT, Mumbai Bench.
- iii. Referring to the submissions of the Petitioner in its Rejoinder, it is contended that the Petitioner has merely sought to improve its original case by introducing successive alternative dates and bases in an attempt to sustain the Petition on limitation. It is further submitted that a clear admission made in legal proceedings is binding and cannot ordinarily be withdrawn and therefore, having expressly pleaded 07.10.2019 as the date of default in the Petition, it is not open for the Petitioner to shift ground and rely upon alternative dates emerging from other documents, including the alleged NESL date of default, isolated account entries, or subsequent explanations in rejoinder. Reference is made to ***Ramdas Dutta v. IDBI Bank Ltd*** and ***Inakshi Sobti & Ors. v. Starlight Systems (I) Pvt. Ltd. & Anr.***

- iv. It is submitted that a Petition under Section 7 of the Code cannot be sustained on a shifting or migratory date of default and if the pleaded trigger date is unsustainable, the Petition necessarily fails. Further, the Petition cannot be salvaged by inviting this Adjudicating Authority to reconstruct a different date of default than the one expressly pleaded. Reference is made to the judgment of Hon'ble NCLAT in ***Deepak Mahadev Shirke vs. Unity Small Finance Bank Limited.***
9. The submissions advanced on behalf of the Petitioner are summarised as follows:
 - i. It is submitted that the interest debited to the loan account on 31.05.2012 remained unpaid for a period exceeding 90 days, thereby rendering the account irregular and the loan account was never regularised. It is submitted that pursuant to the notice dated 07.10.2019, default further occurred on 22.10.2019 i.e. expiry of 15 days from the date of the said Notice.
 - ii. It is submitted that an Arbitral Award dated 04.11.2025 was passed in favor of the Petitioner which was admitted by the Corporate Debtor during the hearing on 08.12.2025. Thus, the same would give rise to a fresh period of limitation. Reliance is placed on the judgment of ***Dena Bank (now Bank of Baroda) vs C Shivkumar Reddy and Another, (2021) 10 SCC 330.***
 - iii. Lastly, it is submitted that even for the sake of arguments, without admitting to the same, if the date of default had occurred in the year of 2012, the Corporate Debtor has continuously acknowledged the debt in the balance sheets from FY 2011-12 to 2017-18 which would extend the limitation period. It is submitted that the sanction letters, statement of account, statutory notices and acknowledgment in the Balance Sheets of the Corporate Debtor

establishes the subsistence of default within the meaning of the Code.

10. Having considered the rival contentions of both sides, the bone of contention in the present case is the 'date of default' stated in Part IV of the Petition. Accordingly, the following questions emerge for determination:

I. *Whether in the given facts and circumstances, the date of default has been correctly identified?*

II. *Whether the present Petition is filed within limitation?*

I. Whether date of default has been correctly identified?

11. Part IV of the Petition mentions the date of default as follows:

2.	<i>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</i>	<i>Total amount of Default – INR 140,12,93,950.92/- on 07.10.2019 (Date of default)</i> <i>The Corporate Debtor started defaulting in meeting its debt obligations towards the Financial Creditor, thereby constraining the Financial Creditor to issue Demand Notice dated 07.10.2019 calling upon the Borrower to pay a total sum of Rs. 140,12,93,950.92/- being the outstanding dues (Principal, interest and other charges). Since the Corporate Debtor failed to repay the debt even after issuance of demand notice, the Financial Creditor sent another demand notice dated 15.01.2021 for repayment of the total debt.</i> <i>Date of Default: 07.10.2019</i>
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12. It is seen that the 'date of default' as stated in the Petition is the date of demand notice sent to the Corporate Debtor by PMC Bank. We also note that the Petitioner has cited following dates of default in its pleadings:

Sr. No.	Document	Date of Default
1	Petition	07.10.2019
2	NeSL Form C	31.03.2019
3	Written Submission	22.10.2019

13. The Corporate Debtor, in its reply, has referred to the statement of account placed on record by the Petitioner and contended that since the account of Corporate Debtor was classified as NPA on 31.08.2012 and therefore, the Petition is barred by limitation. It is submitted that the first default has to be taken into account for the purpose of adjudicating a petition under section 7 or 9 of the Code. The contention of the Corporate Debtor is supported with following judgements:

- a. *Milind Kashiram Jadhav vs. State Bank of India [Company Appeal (AT) (Ins) No. 1589 of 2023]*
- b. *State Bank of India vs. Vivimed Labs Limited [CP (IB) No.167/BB/2022 & I.A.No. 634/2023]*
- c. *SREI Equipment Finance Limited vs. RS Kainthe Infrastructure Developers Private Limited [CP(IB) 1058 MB 2022]*

14. Ld. Counsel for the Petitioner submits that management of PMC Bank was taken over by RBI in September 2019 and that the default has occurred when the Corporate Debtor failed to pay the outstanding dues pursuant to the notice dated 07.10.2019 sent by PMC Bank after appointment of Administrator by the RBI. Reliance is also placed on NeSL Record wherein the date of default is stated as 31.03.2019.

15. It is settled law that any recall notice subsequent to the default would not shift the date of default, as held by Hon'ble NCLAT in the matter of ***Milind Kashiram Jadhav vs. State Bank of India [Company Appeal (AT) (Ins) No. 1589 of 2023]***. The relevant observations are as follows:

“62. Section 3(12) of the IBC deals with the expression 'Default' to mean non-payment of debt when whole or any part of instalment of the amount has become due and payable, thus, when on the loan accounts being classified as NPA the whole of the debt is due and payable - it is a 'Default' under the IBC, thus, the date of NPA can be taken as the date of default. In fact, the default has been persisting prior to 90 days of NPA declaration date.

63. Hon'ble Apex Court in the "**B.K. Educational Services Private Limited Vs. Parag Gupta and Associates**" [(2019) 11 SCC 633] had observed as under:

“... .. It is thus clear that since the Limitation Act is applicable to applications filed Under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. **"The right to sue". therefore, accrues when a default occurs.** If the default has occurred over three years prior to the date of filing of the application, the application would be barred Under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”

[Emphasis supplied]

64. And in the instant case the default was occurring 90 days prior to the NPA declaration (September 27, 2019). It is difficult to accept the argument of the Appellant that this date should not be treated as the date of default.

... ..

70. Appellant's arguments to treat the recall date as the date of default therefore cannot be sustained, in the abovementioned background.

71. Consequently, the reliance on the date of NPA declaration (27.09.2019) by the Adjudicating Authority instead of the date of recall (18.08.2020), is therefore correct and also supported by the judicial precedents and also the facts in the instant case. And as the date of recall [11.08.2020] cannot be taken as the date of default, therefore Appellant cannot get any advantage of the 10A period under IBC.”

16. It is noticed that the loan account of the Corporate Debtor was classified as NPA with effect from 31.08.2012 (A/c No. 002140700005964). However, it is seen that after the classification of the account of Corporate Debtor as NPA, the PMC Bank and Corporate Debtor have

- executed sanction letters on 01.09.2015, 16.08.2018 and 06.02.2019 for enhancement of credit facilities.
17. As per clause 2.2.7.8 of the RBI Master Circular – ‘Income Recognition, Asset Classification, Provisioning and Other Related Matters – UCBs’ dated 01.04.2025, *“in case a restructured asset, which is a standard asset on restructuring, is subjected to restructuring on a subsequent occasion, it should be classified as substandard. If the restructured asset is a sub-standard or a doubtful asset and is subjected to restructuring, on a subsequent occasion, **its asset classification will be reckoned from the date when it became NPA on the first occasion.**”*
 18. Accordingly, despite the subsequent renewal/enhancement of the credit facilities, upon occurrence of default the Corporate debtor’s account classification will be reckoned from the date when it became NPA on the first occasion i.e. with retrospective effect from 31.08.2012.
 19. However, even if we consider the demand notice sent to the Corporate Debtor on 07.10.2019 demanding payment of Rs. 140,42,93,950.92/- towards the outstanding dues owed by the Corporate Debtor to the PMC Bank, it is noted that the Corporate Debtor was called upon to make the payment within a period of 15 days from the date of the said notice. Thus, even if, for sake of argument, we go by the submission of the Petitioner that default has to be construed from the date of notice, then too the default would occur only after the expiry of 15 days i.e. on 22.10.2019.
 20. As far as the NeSL record is concerned, it is observed that the Petitioner has placed on record the ‘Record of Financial Information – Form C’ and not the ‘Record of Default – Form D’ issued by NeSL. In absence of Form D issued by NeSL, the Form C which is merely submitted by a creditor for recording of financial information cannot be taken as evidence of default under section 7(3) of the Code.
 21. Accordingly, we hold that the date of default has not been identified correctly in the Petition. Thus, issue I is answered in negative.

22. This would bring us to the next two questions i.e. whether the Petition is filed within limitation and whether in absence of a correct date of default, the Adjudicating Authority could admit the present petition.

II. Whether the Petition is filed within the limitation Period?

23. The Hon'ble Supreme Court in the matter of **Laxmi Pat Surana vs. Union of India [(2021) 8 SCC 481]** has observed:

“43. Ordinarily, upon declaration of the loan account/ debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under section 7 IBC. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7 consciously uses the expression “default” – not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under section 7 IBC enures.”

24. Accordingly, this Adjudicating Authority deems it appropriate to reckon the acknowledgment of the debt by the Corporate Debtor for the purpose of limitation from the date of NPA i.e. 31.08.2012, which is the first NPA date.
25. The Petitioner has placed on record the following documents to substantiate that the Petition is within limitation:
- i. Sanction Letters

- ii. Statement of Account
 - iii. Audited Balance Sheets of the Corporate Debtor from Financial Years 2011-12 to 2017-18.
26. On perusal of the records, it is found that the Corporate Debtor had availed various credit facilities from the PMC Bank which was enhanced from time to time. It is noticed that even after the purported classification of CD's account as NPA on 31.08.2012, the Corporate Debtor and PMC Bank executed the sanction letters dated 01.09.2015, 16.08.2018 and 06.02.2019. As per the sanction letter dated 06.02.2019, it is seen that the credit limit was enhanced from Rs. 75.25 crores to Rs. 135 crores.
27. The Corporate Debtor, in its reply, has denied receiving any amount from the PMC Bank after 02.05.2012. The Corporate Debtor has referred to the Statement of Accounts of the Corporate Debtor to show that there was no credit disbursement by PMC Bank to the Corporate Debtor post 02.05.2012.
28. At this juncture, it is relevant to refer to the financial statements of the Corporate Debtor. The Petitioner has placed on record the financial statements of the Corporate Debtor for the Financial Years (FYs) 2011-12, 2013-14, 2014-15, 2016-17 and 2017-18. It is apropos to quote the relevant extract from the Financial statements:

Balance Sheet for the year ended 31.03.2012

5. SHORT TERM BORROWINGS

<i>Particulars</i>	<i>As at 31st March 2012 (Amount in Rs.)</i>	<i>As at 31st March 2011 (Amount in Rs.)</i>
<i>Secured, considered good</i>		
(a) Loans repayable on demand from co-op Bank	30,42,80,970	30,38,53,986
<i>(b) Nil (Previous year 23) redeemable 13% Non-Convertible Debentures of Rs. 10 lacs each fully paid</i>		2, 10,00,000
Total	30,42,80,970	30,38,53,986

Balance Sheet for the year ended 31.03.2014**5. SHORT TERM BORROWINGS**

<i>Secured, considered good</i>		
(a) Loans repayable on demand from co-op Bank	42,74,43,027	35,44,16,876
Total	42,74,43,027	35,44,16,876

Balance Sheet for the year ended 31.03.2015**5. SHORT TERM BORROWINGS**

<i>Secured, considered good</i>		
(a) Loans repayable on demand from co-op Bank	51,56,09,652	42,74,43,027
Total	51,56,09,652	42,74,43,027

Balance Sheet for the year ended 31.03.2017**4. SHORT TERM BORROWINGS**

<i>Secured, considered good</i>		
(a) Loans repayable on demand from co-op Bank	75,10,05,509	62,23,93,378
Total	75,10,05,509	62,23,93,378

Balance Sheet for the year ended 31.03.2018**4. SHORT TERM BORROWINGS**

<i>Secured, considered good</i>		
(a) Loans repayable on demand from co-op Bank	88,87,01,817	75,10,05,509
Total	88,87,01,817	75,10,05,509

29. Thus, it is clear that the Corporate Debtor has acknowledged its liability towards PMC Bank in its audited financial statements. As per the audited financial statement as on 31.03.2018, a total default of Rs. 88,87,01,817 is being shown as outstanding. As per the MCA record of the Corporate Debtor as on 07.11.2023, the last balance sheet was prepared on 31.03.2018. Thus, the last acknowledgement of debt in the financial statement of the Corporate Debtor was on 31.03.2018.

30. We note that subsequently, the Corporate Debtor had also signed a letter dated 16.08.2018 wherein the Corporate Debtor has confirmed and acknowledged that a sum of Rs. 75,25,00,000 exclusive of interest is outstanding. The relevant extract of the letter is reproduced below:

“We, M/s Awas Developers and Constructions Pvt Ltd (Borrower), Rakesh Kumar Wadhawan (surety No. 1) and Sarang R Wadhawan, M/s Privilege Power & Infrastructure Ltd (Surety No. 2), had executed the above said documents for the Cash Credit Limited of Rs. 75,25,00,000/- (Rs. Seventy five Crore Twenty five lakhs only).

*We confirm and acknowledge that a sum of Rs. 75,25,00,000/- (Rs. Seventy five Crore Twenty five lakhs only exclusive of interest @ 13.00% from _____ to **till date** outstanding from us jointly and severalty and that all charges, expenses etc. incurred and debited to the said account, subsequent interest, charges, expenses, etc. is also due.”*

31. The aforesaid acknowledgment bears the stamp and signature of the Corporate Debtor and its directors.
32. There is no documentary evidence to show that the Corporate Debtor has acknowledged the debt or default after 16.08.2018.
33. While it is noted that a board resolution was passed on 08.02.2019 to approach PMC Bank for renewal cum enhancement of credit facility from Rs. 75.25 crores to Rs. 135 crores. However, the said resolution does not expressly acknowledge amounts due and payable by the Corporate or default by the Corporate Debtor.
34. Ld. Counsel for the Petitioner had submitted that the sanction letters issued by the PMC Bank would extend the limitation. Reliance was placed on ***Edelweiss Asset Reconstruction Company Limited vs. Perfect Engine Components Pvt. Ltd. [2022 SCC On Line NCLAT 1622]***. In the said case, there was consent terms entered into between the CD and the FC and a restructuring letter was executed wherein it was stated that in case of non-compliance of any of the terms of restructuring letter, all liabilities as per original application shall be

restored. It was noted by Hon'ble NCLAT that the second Restructuring was cancelled vide Letter dated 01.06.2018 and the CD in its reply to the cancellation letter had admitted that the terms of the Restructuring Package could not be adhered to. In this context, it was held, "*the Corporate Debtor has been consistently acknowledging its 'debt' 31.03.2010 onwards by way of letters in Restructuring Packages, and also by way of communication the Appellant/'Financial Creditor' for Restructuring, apart from the liability being shown in the Balance Sheets*".

35. In the present case, we are mindful that there has been renewal/enhancement of credits from time to time. However, mere renewal/enhancement of debt would not amount to novation of earlier loan. In order to novate the original credit facility, there must exist a valid restructuring agreement clearly specifying that acceptance of such restructuring proposal would amount to novation of the existing credit facility.
36. The Petitioner has placed on record the various loan applications (which are undated) submitted by the Corporate Debtor wherein the Corporate Debtor has merely sought for credit facilities. There is neither any admission of debt or default nor any proposal to renew or restructure such debt. Similarly, the sanction letters issued by PMC Bank which are signed by the Corporate Debtor, merely states about the enhancement of credit limit and the terms and conditions thereof and there is no such admission of debt or default under the existing sanction letters. Mere sanction letters without evidence of any disbursement does not establish debt and default. Thus, the observations of Hon'ble NCLAT in ***Edelweiss ARC vs. Perfect Engine*** (*supra*) would not apply in the present facts and circumstances.
37. Accordingly, we construe that the last acknowledgement of the debt was made by the Corporate Debtor on 16.08.2018 and on that basis, the limitation of three years would end on 16.08.2021. The limitation period after considering the exclusion of limitation period granted by Hon'ble

Supreme Court in ***Suo Moto Writ Petition (C) No. 3 of 2020 in Re: Cognizance for Extension of Limitation*** is as follows:

Particulars	Date
Last Acknowledgement	16.08.2018
Limitation Period Ends on	16.08.2021
Period Excluded as per <i>Suo Moto (supra)</i> judgment	15.03.2020 to 28.02.2022
Limitation period after excluding the excluded period	01.08.2023

38. Thus, the limitation period of 3 years from the date of last acknowledgement i.e. 16.08.2018 would end on 01.08.2023 after excluding the period excluded by Hon'ble Supreme Court in ***Suo Moto Writ Petition (supra)***. The present Petition has been filed only on 04.12.2023 and therefore, is time-barred.
39. The Petitioner has relied on the Arbitral Award dated 04.11.2025 and submitted that the arbitral award would give rise to fresh cause of action. However, we note that the Arbitral Award was passed subsequent to the filing of the petition. The present petition under section 7 of the Code has to be decided as on the date of filing of the petition and not based on subsequent events.
40. The Petitioner has also referred to order dated 15.02.2023 passed by NCLT – Mumbai Bench V in the matter of ***Unity Small Financial Bank vs Privilege Power and Infrastructure Pvt. Ltd. [CP 1358 of 2020]***, and it is submitted that in similar circumstances, the CP was admitted.
41. We have perused the said order dated 15.02.2023. It is noticed that while certain facts are similar including demand notice dated 07.10.2019 and a similar acknowledgement given by the CD therein on 16.08.2018. However, additionally the Adjudicating Authority also noted that the CD therein acknowledged the debt on 11.07.2018, 07.08.2019 and

08.08.2019 and the Petition was filed in the year 2020. In the present case, the after 16.08.2018, there is no record to show that there has been any acknowledgment of debt and the Petition is filed on 04.12.2023 which is beyond 3 years.

42. It was also submitted on behalf of the Petitioner that pursuant to the revelation of the fraud in PMC Bank, the RBI took control of PMC Bank which was subsequently amalgamated with the Petitioner with effect from 25.01.2022 and as soon as the Petitioner became cognizant of the financial transaction between PMC Bank and the Corporate Debtor, the Petitioner took immediate steps for initiation of CIRP.
43. We are of considered view that the limitation period for the purpose of admitting a section 7 petition has to be computed from the date of default after considering the subsequent acknowledgements, if any, by the Corporate Debtor. Thus, fraud detected by RBI or the supersession of the erstwhile management of PMC Bank by RBI or the date of merger of PMC Bank with the Petitioner does not come to the rescue of the Petitioner and therefore, would not shift the period of limitation.
44. Thus, in view of our discussions above, we hold that the Petition is barred by limitation. Accordingly, Issue II is also answered in negative. Since it is settled law that a petition under section 7 of the Code filed beyond the prescribed limitation period is to be dismissed, the Petition having filed beyond the limitation period is not maintainable.
45. Accordingly, we pass the following order:

ORDER

- i) The Company Petition No. 344/2024 filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. Awas Developers and Constructions Private Limited is hereby **dismissed** on the ground of limitation.

- ii) It is clarified that dismissal of the present Petition shall not preclude the Petitioner from taking appropriate steps on the basis of subsequent events including arbitral award, etc. in accordance with law.

SD/-

Hariharan Neelakanta Iyer
Member (Technical)

SD/-

Lakshmi Gurung
Member (Judicial)

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