

**An acknowledgment under the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay.**

<b>CASE TITLE</b>	Kotak Mahindra Bank Limited Vs. Kew Precision Parts Private Limited & Ors. <sup>1</sup>
<b>CASE CITATION</b>	Civil Appeal No. 2176 of 2020
<b>DATE OF ORDER</b>	05.08.2022
<b>COURT/ TRIBUNAL</b>	Supreme Court
<b>PROVISIONS REFERRED</b>	Section 7(5)(b) of the Code, Section 5,18 of Limitation Act
<b>CASE LAW REFERRED</b>	<ul style="list-style-type: none"><li>• Sesh Nath Singh &amp; Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd.</li><li>• Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddy and Another</li><li>• Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd.</li></ul>

**Brief of the case:**

The CD availed credit facilities from the Appellant (Financial Creditor), defaulted in repayment thereof and acknowledged liability to the Appellant by making offers of one time settlement. CD defaulted in payment of Rs.24,55,00,000/- to the appellant. In these circumstances, the appellant filed an application being Company Petition in the NCLT. The AA found that the account of the CD with the Appellant had been declared NPA on 30th September 2015. The Appellant was, however, relying on the proposal for one time settlement given by the CD on 12th December, 2018 to contend that the existence of financial debt had been admitted by the CD. The suspended Directors of the CD filed the appeal in the NCLAT contending that the petition filed by the Financial Creditor under Section 7 of the IBC was patently barred by limitation.

**Decision:**

Hon'ble SC allowed the appeal and held that an appeal being the continuation of original proceedings, the provision of section 7(5)(b) of the Code, for intimating the Financial Creditor (FC) before rejection of a claim, would be attracted. It also observed that,

*“There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay.*

*62. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.”*

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<sup>1</sup> <https://ibbi.gov.in/uploads/order/2bd7908ae442cd1dc967f4693c74ed68.pdf>