IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA.

C.P(IB) No. 156/KB/2024

Date of Order:30.10.2026

(An application under Section 7 of the 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:

J.M. FINANCIAL ASSET RECONSTRUCTION COMPANY LIMITED,
In its capacity as Trustee of JMFARC – Federal Bank March 2016 – Trust having its Registered Office at 7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai – 400025.

...APPLICANT/FINANCIAL CREDITOR

Versus

STANDARD PHARMACEUTICAL LIMITED,
27, Mirza Galib Street, Kolkata – 700016.

...RESPONDENT/CORPORATE DEBTOR

With

I.A. (I.B.) No. 1083/KB/2025

In

C.P. (I.B.) No. 156/KB/2024

An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016.

In the Matter of:

STANDARD PHARMACEUTICAL LIMITED.

...APPLICANT

Versus

J.M. FINANCIAL ASSET RECONSTRUCTION COMPANY LIMITED.

...RESPONDENT

Coram: Shri Labh Singh, Hon'ble Member (Judicial)
Ms. Rekha K. Shah, Hon'ble Member (Technical)

Present:

For the applicant	Mr. Mainak Bose Ld. Sr. Advocate Mr. Yubraj Bhattacharaya Ld. Advocate

	Ms. Ramyani Bhattacharaya Ld. Advocate
For the Corporate Debtor	Ms. Noelle Banerjee, Ld. Advocate Mr. Abhidipto Tarafder, Ld. Advocate Mr. Dipanjan Dey, Ld. Advocate

O R D E R

Labh Singh, Member(Judicial)

1. The Financial Creditor/Applicant, JM Financial Asset Reconstruction Company Limited (hereinafter being referred to as the 'Applicant') has filed the instant application under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process (for short 'CIRP') in respect of the Corporate Debtor/Respondent Company, Standard Pharmaceuticals Limited (hereinafter being referred to as 'the Corporate Debtor').

2. It is appropriate to mention that the Applicant, is a public limited company with CIN: U67190MH2007PTC174287, having its

registered office at 7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, and Mumbai – 400025.

3. Ms. Sakshi Mehta, duly authorized on behalf of Applicant, has preferred the present application on behalf of the Applicant for initiation of CIRP against the Corporate Debtor under the Code. A copy of the board resolution authorising the former dated 31.05.2023 is annexed as **Annexure – C**.

4. The Corporate Debtor against whom initiation of CIRP has been prayed for, was incorporated on 04.12.1995 having its registered office at 27, Mirza Galib Street, Kolkata – 700016. Since the registered office of the Corporate Debtor is situated at West Bengal, this Tribunal having territorial jurisdiction over the State of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of CIRP in respect of Corporate Debtor under sub-section (1) of Section 60 of the Code.

5. Briefly stated the case of the Applicant is that the original lender, Federal Bank sanctioned credit facilities to the Principal Borrower, HR International Limited, secured by personal guarantees, hypothecation, and corporate guarantee and mortgage furnished by the Corporate Debtor. Upon declaration of the Borrower’s account as NPA, the

original lender assigned the financial assets of the Borrower along with the rights and title of the security interest and guarantees to the Applicant. The Borrower kept defaulting even after reconstruction of the liabilities by the Applicant, and after several failed settlement negotiations, the latter has filed this application.

5.1 The loan facilities availed by the Principal Borrower were secured by the way of personal guarantees, hypothecation of movable properties, corporate guarantee of Standard Pharmaceuticals Limited, the Corporate Guarantor/Corporate Debtor, and mortgage of the immovable property of the Corporate Debtor on such terms and conditions mentioned in the respective guarantee and security documents. During the year 2015, the overall sanctioned limit granted to Borrower stood at an aggregate of Rs. 46.70 Crore and all the securities and guarantees stood extended for these limits.

5.2 The Corporate Debtor executed a Guarantee Agreement dated 28th September 2015 in favour of the Original Lender to secure the due repayment of the outstanding dues of the Borrower to the extent of Rs. 7,41,22,000/ - (Rupees Seven Crore Forty One Lakh, Twenty Two Thousand Only) or the market value of 400 Cottahs of the mortgaged property of the Corporate Debtor, whichever is higher. Since, the Borrower

defaulted in repayment of its dues, the loan accounts of the Borrower were classified as non-performing assets on 31st December 2015 as per the extant guidelines of Reserve Bank of India by the Original Lender. Subsequently, the Original Lender assigned the financial assets of the Borrower along with all right, title and interest in the underlying security interest and guarantees etc. created therein in favour of the Applicant vide the Assignment Agreement dated 30th March 2016.

5.3 The Financial Creditor, thereafter, having stepped into the shoes of the secured lender of the Borrower, on the request of the Borrower entered into agreement for restructuring of outstanding financial assistance of the Borrower vide sanction letter dated 2nd August 2017 whereby the Borrower/Guarantor(s) were jointly and severally required to repay the outstanding dues of Rs. 12,75,00,000/- as on 1st August 2017 along with interest of 8% per annum compounded and payable quarterly in ten equal instalments as per the said sanction letter. The guarantees and mortgage, including that of the Corporate Debtor stood extended for this Restructuring.

5.4 The corporate guarantee of one Pushppalki Realty Private Limited was also taken by the Applicant to secure the

outstanding dues of the Borrower along with hypothecation of movables. The Borrower made payment of certain instalments; however, defaulted in making as per the terms of the restructured facility. Thereafter, the Borrower and/or the Corporate Guarantor(s) were irregular in making the repayments; and in view of the same, the Applicant/Financial Creditor sent letter dated 27th May 2019 and other several letters to the Borrower for repayment of dues as per terms of Restructuring. After a few other irregular payments and requests for delay in repayment by Borrower and/or the Corporate Guarantor(s), the last payment was received by Applicant on 13th July 2020, which was not as per the terms of the Restructuring. The Applicant, accordingly, issued a default letter dated 11th August 2020 for repayment of outstanding dues within 15 days from the date of the said letter.

5.5 The Principal Borrower failed to repay the dues even after repeated requests and sought deferment in payment, the applicant issued a revocation letter dated 6th January 2021 to the Borrower revoking the terms of Restructuring. The Applicant filed an O.A. No. 204 of 2021 before Learned Debt Recovery Tribunal III for recovery of its dues which is still pending adjudication. The Applicant has also issued a

notice under Section 13(2) of the SARFAESI Act on March 25, 2021 demanding an amount of Rs. 63,08,20,503.07/- (Rupees Sixty Three Crore, Eight Lakh, Twenty Thousand, Five Hundred and Three Only) as on February 28, 2021 along with further interest thereon till date of final repayment. The borrower failed to make payment and hence, the applicant issued possession notice dated 5th July 2021 under Section 13(4) of the SARFAESI Act, 2002 for enforcement of security interest.

5.6 Thereafter, the Borrower issued a settlement letter dated 18th February 2022 proposing to settle the outstanding dues for a consideration of Rs. 4.90 crore plus interest applicable at 11% p.a. along with a demand draft of Rs. 50 Lakh which was accepted by the Applicant vide its letter dated 8th April 2022, subject to the settlement offer being increased to Rs. 5.15 crore plus applicable interest at 11% p.a. and payable by 31st December 2022. However, the Borrower vide its letter dated 21st April 2022 stated their inability to pay the settlement amount proposed by the Applicant and requested settlement at increased amount of Rs. 5 crore, with other terms remaining the same. This was not commercially acceptable, and hence, the Applicant revoked the proposal for settlement vide its letter dated 24th May 2022 and returned the demand draft of the

Borrower. The Borrower again requested for settlement at an amount of Rs. 5 crore with agreed interest of 11% p.a. vide inter alia, its letter dated 26th May 2022. The proposal of the Applicant was rejected in the letter of the Applicant dated 1st June 2022, as the revised terms were not commercially acceptable to the Applicant.

5.7 It is stated that the Applicant/Financial Creditor, in terms of its letter dated 15th February 2023, invoked the Guarantee of the Corporate Debtor, which notice was delivered and acknowledged by the Corporate Debtor on 18th February 2023. In terms of the said notice dated 15th February 2023, the Applicant/Financial Creditor called upon the Corporate Debtor to make over payments within a period of 7 (seven) days from the receipt of the said notice.

5.8 It is submitted that the Borrower and/or the Corporate Guarantor have continuously defaulted in repayment of its dues. The Corporate Debtor has lost its economic viability and the very sub stratum of the Company has disappeared. It is submitted that the Corporate Debtor is commercially insolvent and unable to pay its debts in its usual course of business activities and hence, this application seeking initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor has been filed.

5.9 The applicant, in order to prove its case, relied upon documents which are deed of guarantee is annexed as **Annexure – K122**; assignment agreement is annexed as **Annexure – K126**; the letter dated 02.08.2017 is annexed as **Annexure – 128**; the letter dated 06.01.2021 and notice dated 25.03.2021 is annexed as **Annexure – K135; the** copies of the notices dated 25.03.2021 and 05.07.2021 are annexed as **Annexure – M10** and **Annexure – M11**; the letters dated 18.02.2022, 08.04.2022 and 21.04.2022 are annexed as **Annexure – M12**, **Annexure – M13** and **Annexure – M14**, respectively; and the letter of invocation dated 15.02.2023, along with the acknowledgment is annexed as **Annexure – K137**.

5.10 The Applicant has also placed on record a copy of record of default Form 'D' (Annexure-'J') filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Applicant. The said record shows that the claim of applicant is deemed authenticated as no objection has been recorded by Corporate Debtor.

5.11 Therefore, as per Part VI of the application, it is claimed that as on 31.10.2023, a sum of Rs. 95,16,31,799/- is due and payable by the Corporate Debtor.

5.12 Section 7(3) (b) mandates the Applicant to furnish an Interim Resolution Professional. In compliance thereof the applicant has proposed Decode Resolvency International Private Limited, for appointment as Interim Resolution Professional having registration number IBBI/IPE-0091/IPA-3/2022-23/50006, email – id: ip@decoderesolvency.com. Decode Resolvency International Private Limited has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2, at **page 33 of the application**, in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Decode Resolvency International Private Limited as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3) (b) of the Code has been satisfied.

6. The Corporate Debtor, in pursuance of notice upon it, appeared and filed its reply raising preliminary objection that the Applicant has no cause of action to file the

present application against the Corporate Debtor. The Corporate Debtor had already been discharged from its liability as a guarantor vide a tripartite agreement and a joint development agreement dated 03.08.2017.

6.1 It is submitted that the present application is barred by limitation as the revocation letter and the loan recall notices were issued during the prohibited period of Section 10A of the Code invoking the guarantee during the aforesaid period.

6.2 The present application has been filed with mala fide intention with ulterior motive to extract wrongful money from the Corporate Debtor which is not payable at all. The Corporate Debtor(Corporate Guarantor) stood discharged in respect of the guarantee dated 28.09.2015 due to act of the Financial Creditor. The Corporate Debtor(Corporate Guarantor) had extended limited guarantee dated 28.09.2015 for a sum of Rs. 7,41,22,000/- or market value of 400 cottahs of land with building at Serampore in order to secure loan facilities availed by the principal borrower.

6.3 The Corporate Debtor, in pursuance of agreement, handed over possession and occupation of the land measuring 400 cottahs, which is mortgaged to the Applicant, to PRPL. The PRPL, vide deed of hypothecation dated 11.08.2017, hypothecated the

development rights of the said property to the Applicant. Thus, the former stepped in the shoes of the Corporate Debtor to fulfil the obligations of a corporate guarantor. Thus, Standard Pharmaceuticals Ltd was not made a party to this Deed of Hypothecation because upon signing the development agreement its right on the land no longer existed.

6.4 It is further stated and submitted that by virtue of the said Tripartite Agreement, Joint Development Agreement dated 3rd August, 2017, and Deed of Hypothecation dated 11th August, 2017, it is axiomatic that the financial creditor herein has lost the security or has parted with the security interest of 400 cottahs of land situated at Ward No. 27, Serampore, District: Hooghly, by facilitating the handover of the said land in favour of Pushppalki Realty Private Limited from the corporate debtor thereby, discharging the corporate debtor/guarantor to the extent of the value of the said security as the Corporate Debtor had given guarantee only of the said piece of land.

6.5 Therefore, in view of such parting/losing of the security interest by the financial creditor in favour of a third party, the corporate debtor herein discharged and the present guarantee cannot be invoked as the entire security

interest mortgaged therein to the financial creditor no longer exists or remains with the corporate debtor herein and in fact stands superseded by the corporate guarantee executed by Pushppalki Realty Private Limited dated July 25, 2017 as it is for the same security of 400 Cottahs of Land which is no longer in possession of the Corporate Debtor. Therefore, the present company petition deserves to be dismissed.

6.6 The Corporate Debtor, in order to support averment made in the reply affidavit, has relied upon the copies of the Joint Development Agreement and Tripartite Agreement both dated 3rd August 2017 collectively marked with the letter "R-2"; a copy of the scheme sanctioned by BIFR in 2003 Annexure "R-3"; the document to prove sanction of plan on 31st October, 2014 Annexure "R-4"; a copy of notification published by the Ministry of Corporate Affairs date May 24, 2017 Annexure "R-5"; the copy of application filed by the corporate debtor before the NCLT, Kolkata bench allowed vide Order dated April 28, 2022 Annexure "R-6"; a copy of draft sanction letter Annexure "R-7" and a copy of No Objection Certificates issued from time to time by the financial creditor to the developer/Pushppalki collectively marked as Annexure "R-8".

7. The Applicant filed its rejoinder denying the averment made in the reply and reiterating the facts pleaded in the company petition. It is submitted that the instant petition is filed well within the period of limitation as the invocation letter was issued on 15.02.2023.

7.1 It is further submitted that due to the execution of the tripartite agreement, the underlying security was allowed to be diverted to PRPL. The surety can only be discharged of its liabilities where the borrower has been wholly discharged by the creditor or when the surety has been specifically discharged by the creditor by way of a written instrument.

7.2 It is submitted that in the development agreement dated 03.08.2017, it has been stated in Clause 9 and 13 that the rights and interest of the mortgaged property shall only be assigned to the PRPL on the payment of all dues of the JMFARC by the former, and no such payment has been made. It is further submitted that no development has taken place on the mortgaged property, and thus the sanctity of the agreement is in question. It has been prayed to allow the present application.

I.A. (I.B.) No. 1083/KB/2025

8. The present interlocutory application has been filed by Corporate Debtor praying for dismissal of the main application filed against the former as it is barred under Section 10A of the Insolvency and Bankruptcy Code of India, 2016 (for short the 'Code').

8.1 It is submitted that the Applicant has extended a limited guarantee, dated 28.09.2015, in favour of the Financial Creditor for a maximum sum of Rs. 7,41,22,000/- or the market value of 400 cottahs of land, with building at Serampore, whichever being of higher value, to secure the credit facilities availed by the Principal Borrower, H.R. International Limited.

8.2 It is submitted that vide a Tripartite Agreement and Joint Development Agreement dated 03.08.2017, the Applicant handed over the possession and occupation of the land measuring 400 cottahs, situated at Ward No. 27, Serampore, Hooghly to Pushppalki Realty Private Limited (hereinafter referred to as 'PRPL'). These agreements have not been submitted by the Respondent in the main petition. Subsequently, the Respondent executed a deed of hypothecation dated 11.08.2017 with respect to the above-mentioned property in favour of PRPL.

8.3 It is submitted that after the Principal Borrower defaulted, the Respondent demanded repayment vide letters dated 27.11.2018 `and 22.03.2019 but did not invoke the guarantee. Subsequently, vide a letter dated 06.01.2021, the Respondent revoked the sanction letter dated 02.08.2017.

8.4 It is submitted that vide a letter dated 27.01.2021, the Respondent recalled the loan and called upon the Principal Borrower as well as the Applicant to pay a sum of Rs. 56,37,45,543/- and restrained the latter from dealing with the secured asset. Subsequent to this notice, a notice under Section 13(2) of the SARFAESI Act, 2002, dated 25.03.2021 was issued to the Borrower and the Applicant, once again invoking the guarantee.

8.5 It is further submitted that corporate guarantee is payable on demand as stated in Clause 10 of the deed; and that, as per Clause 11, the guarantee could only be invoked vide a demand notice. Thus, the notice dated 27.01.2021 and 25.03.2021 invoked the guarantee. It is the case of the Applicant that as these notices were issued during the prohibited period as per Section 10A of the Act and thus, the main petition is liable to be dismissed due to statutory bar.

8.6 It is submitted that the Applicant cannot resurrect a barred debt by issuing a new invocation notice dated 15.02.2023 after already invoking the guarantee vide notices dated 27.01.2021 and 25.03.2021.

9. Respondent/Financial Creditor filed its reply stating therein that due to irregularities in repayment, several letters demanding the same was sent and then, a formal default notice, dated 27.05.2019, was sent to the Principal Borrower, with the last payment being on 11.08.2020. On 11.08.2020, a letter demanding payment was issued for repayment within 15 days. After no action from the Applicant, the Respondent filed an Original Application before the Ld. DRT, Kolkata.

9.1 It is further submitted that the Applicant tried to reach a settlement vide letters dated 18.02.2022 and 26.05.2022, which were rejected by the Respondent as the amount proposed was not economically viable. Thus, owing to the continuous default and the failed settlements, the latter invoked the corporate guarantee vide a letter dated 15.02.2023, and asked to pay the dues within 7 days of the payment. Thus, the default does not arise in the Section 10A period.

9.2 It is categorically denied that the date of default is erroneously mentioned as 27.01.2023 and recall notice and

the notice issued under SARFASEI Act had invoked the guarantee. It is the Respondent's case that a mere notice recalling the credit facilities cannot be treated as an invocation nor can a notice under the SARFESAI Act, 2002 even though it might demand repayment. The demand notice should be in consonance with the deed of guarantee which requires a specific invocation upon demand. It is reiterated that the recall notice was issued to withdraw the credit facilities and to prohibit the Applicant from dealing with the secured assets.

9.3 The Corporate Debtor, in support of its present interlocutory application, has relied upon the copy of the corporate guarantee **Annexure – A**; a copy of the letter dated 06.01.2021 **Annexure – C**; the copy of the notices dated 27.01.2021 and 25.03.2021 **Annexure – D** and **Annexure – E, respectively.**

10. The applicant filed rejoinder and submitted that the Respondent does not retain a cause of action against the former as by an agreement dated 03.08.2017, PRPL consented to undertake the liability to make payments to the Respondent.

10.1 It is stated that PRPL had been making payments to the Respondent and thus no payment from the applicant was

received. A copy of a letter dated 13.08.2024 evidencing payments made by PRPL to the Respondent is annexed as **Annexure – A to the Rejoinder**.

10.2 It is further stated that after handing over the property to PRPL, PRPL and the Respondent entered into a second guarantee with respect to the same property and thus, thereby discharged the Applicant from their obligations under the deed of 2015.

11. Based on pleading of the parties and hearing Learned Counsel for the parties, the following question arises for consideration and decision by this Tribunal:

(i) Whether the present petition is barred by law of limitation?

(ii) Whether the Corporate Debtor is discharged as claimed by it?

(iii) Whether there is debt and default to initiate CIRP proceedings against the Corporate Debtor?

(iv) Whether the present petition deserves to be admitted in the CIRP process?

Issue No. (i)

12. Learned Counsel appearing for the Corporate Debtor submitted that the Financial Creditor has wrongly mentioned the date

of default as 25.02.2023. The Guarantee Agreement dated 28.09.2015 provides that the Guarantor agrees with and guarantees to the Bank the due payment and discharge on demand of all amounts due and payable to the Bank. The outstanding dues of the borrower were restructured vide restructuring agreement dated 02.08.2017. The last payment was received by the Financial Creditor on 13.07.2020 during Section 10A Period. The Financial Creditor issued notice dated 11.08.2020 upon the borrower and guarantors including the Corporate Debtor calling upon to make full payment within 15 days failing which settlement agreement will be revoked and legal proceedings will be initiated and ultimately, on 06.01.2021, the Financial Creditor issued notice for revocation of settlement agreement and all legal proceedings were continued for recovery of outstanding dues.

13. He further argued that the Financial Creditor, through its Advocate, issued legal notice dated 27.01.2021 to the borrower and Corporate Debtor for recalling loan amount of Rs. 56,37,45,543.11 along with interest within a period of 15 days. Therefore, the Guarantee was invoked in terms of Guarantee Agreement dated 28.09.2015 during the prohibited period of Section 10A of the Code. The Financial Creditor is deliberately insisting on an alleged notice of invocation

dated 15.02.2023. The question arises whether the guarantee agreement dated 28.09.2015 was invoked during Section 10 period or on 15.02.2023.

14. It is an admitted fact that the Deed of Guarantee is a continuing guarantee and is payable on demand. The Deed of Guarantee(**Annexure – K123**) provides that the amount guaranteed shall be payable on demand. The Clause 10 of the Deed of Guarantee further provides that a demand shall be deemed to have been made by leaving notice upon the last known address of the Corporate Guarantor. It is a settled proposition of law that a guarantee payable on demand shall become enforceable as when the notice of invocation is served on the guarantor.

15. The Financial Creditor, in the present petition, has claimed the date of default as 25.02.2023 which is 7th day from the receipt of the letter of invocation dated 15.02.2023**(Annexure – K137)** by the Corporate Debtor on 18.02.2023. The Corporate Debtor submits that the loan recall notice (**Annexure – K-136)** was issued on 27.01.2021 and the demand notice dated 25.03.2021(**Annexure-M10**) issued under Section 13(2) of the SARFAESI Act 2002 is considered as the notice invoking the guarantee. Therefore, both the dates fall under the prohibited period of Section 10A of the

Code and accordingly, the Applicant is statutorily barred from filing the present application.

16. The question whether the guarantee has been invoked or not, has to be decided after going through the terms and conditions of the Guarantee Agreement. On this aspect, Hon'ble NCLAT, Delhi in the case of ***Ujwal Gupta v. Union Bank of India and Anr., (2026) ibclaw.in 18 NCLAT held that***:

> *"**32**. Thus, what has been highlighted by the aforesaid judgment is that it would be the terms and conditions of the agreement executed between the parties with regard to the guarantee which would be relevant to assess as to whether the guarantee has been sufficiently invoked or not. Therefore, whether a guarantee may be invoked by giving notice under Section 13(2) of the SARFAESI Act depends on the terms of the guarantee and the content of the notice. If the notice clearly demands payment from the personal guarantor in terms of the guarantee, it can be treated as an invocation of the guarantee. The facts and the wording of the notice are crucial in this determination".*

17. In the instant case, it is pertinent to refer relevant ***clause no. 3 and 10 of the Guarantee Agreement dated 28.09.2015*** which provide that:

> *"**3**. The Guarantee shall be a continuing guarantee and shall not be considered as wholly or partially satisfied or exhausted by any payment from time to time made to the **B**ank or any settlement of any accounts or by region of the account being brought to a credit at any time or from time to time or it's being drawn upon to the full extent or exceeding the full extent of the limit from time to time and its being reduced or extinct and thereafter reopened. The Guarantee shall continue in force notwithstanding the discharge of the principal by operation of law or by death or the death of all or any of us and shall cease only on payment of the amount guaranteed hereunder either by me or any of us.*
>
> ***10**. A demand in writing shall be deemed to have been duly given to me/us or my/our heirs or assigns by leaving the same at my/our last known address hereunder written and shall be effectual notwithstanding any change of address or*

notwithstanding notice thereof to the Bank and such demand, if sent by post shall be deemed to have received by me/us or my/our heirs, assigns within 24 hours after posting thereof and shall be sufficient if signed by any officer of the Bank and in proving such service it shall be sufficient proof that the letter containing the demand was properly addressed and put into the post".

Thus, the Guarantee Agreement dated 28.09.2025 specifically provides that the guarantee shall be a continuing guarantee and will be deemed to be invoked upon demand in writing duly signed by any officer of the Bank issued by the Financial Creditor upon the Corporate Guarantor.

18. The question arises whether recall notice dated 27.01.2021 constitute notice of invocation of guarantee agreement dated 28.09.2015. It is pertinent to note here that the recall notice dated 27.01.2021 was issued to the Principal Borrower and Guarantors including the Corporate Debtor, Standard Pharmaceuticals Limited. The subject of notice is recall of financial assistance granted to M/s H R International, the Borrower. It is pertinent to refer ***para no. 7, 10, 11 and 12 of the recall notice 27.01.2021*** which are relevant for

deciding the controversy between the parties and the same provides as under:

> *"**7.** In the view of the ongoing default by the Borrower and in terms of the Guarantee Agreement, we hereby call upon you, being the Guarantor and demand payment of sum of Rs. 84,91,26,617/- (Rupees Eighty Four Crore Ninety One Lakh Twenty Six Thousand Six Hundred Seventeen Only) or the market value of the Mortgaged Property, whichever is higher. In case you, the Guarantor fails to make payment as aforesaid within 7 (seven) days hereof, JMFARC shall be constrained to initiate legal action against you as may be necessary at your own risks as to the costs and consequences thereof, not limiting to actions taken for enforcing the guarantee and realizing the dues".*
>
> ***10**. In view of the above and on account of the Borrower and guarantors defaulting on the repayment of outstanding dues in spite of various reminders from Our Client, Our Client was constrained to revoke the restructuring dated August 2, 2017 vide its letter dated 6th January 2021.*

***11**. In the circumstances aforesaid, we on behalf of Our Client hereby state that all loan facility extended to the Borrower stands recalled and we finally call upon you, to forthwith pay our client and aggregate sum of INR 56,37,45,543.11(Rupees Fifty Six Crores Thirty Seven Lakh Forty Five Thousands Five Hundred and Forty Three and Paisa Eleven Only) being the outstanding amount together with interest at the agreed documented rates payable under the diverse agreements and/ or documents as on November 30, 2020 particular whereof set out in Schedule C hereto together with further interest and other charges thereon with effect from the date at the contractual rates within 15(fifteen) days from the date of receipt of this notice.*

***12**. In case the Borrower/ Guarantors fail to repay the amount mentioned within 15 days from the date of receipt of this notice, Our Client shall be constrained to initiate suitable legal action for recovery of its dues".*

Thus recall notice specifically states that the restructuring agreement dated 02.08.2021 stands revoked due

to default in repayment of outstanding dues by the Borrowers and the Guarantors. Therefore, the Borrowers and Guarantors were called upon to repay the amount within 15 days from the date of receipt of notice.

19. This fact is further corroborated from *para no. 5 of the Letter of Invocation dated 15.02.2023* that a loan recall notice was sent to the Borrower as well as the Guarantors through its Advocate for recall of the credit facilities. It is pertinent to refer to ***para no. 5 of the letter dated 15.02.2023*** which provides as under:

> *"However, the Borrower and its Guarantor continue to default in repayment of their outstanding dues despite several reminders from JMFARC. Thus, JMFARC was constant to revoke its restructuring vide its letter dated January 6 2021. Subsequently, a recall letter was also issued to the Borrower and its guarantors by JMFARC through its appointed advocate for recall of the facility availed by the Borrower vide a letter dated January 27, 2021".*

Thus, it is an undisputed fact that recall notice dated January 27, 2021 was issued by the Financial Creditor through its Advocate to the Borrower and the Guarantors

including the Corporate Debtor herein. Thus, the guarantee was invoked during Section 10A period.

20. If a guarantee is invoked during the period prescribed by Section 10A, Hon'ble NCLAT, Delhi, in the case of ***Mudhit Madanlal Gupta v. Supreme Constructions and Developers Pvt. Ltd., (2023) ibclaw.in 473 NCLAT*** held:

> ***"7.*** When the Financial Creditor has invoked the corporate guarantee of the corporate guarantor by the notice dated 16.10.2020 and asked the corporate guarantor to make the payment within seven days from the receipt of the notice, the default has occurred during the 10A period and the default dated 02.07.2019 which is default alleged against the Principal Borrower cannot be put to a default for corporate guarantor. Liability of corporate guarantor although is coextensive of the Principal Borrower but when the Guarantee requires invocation of the guarantee deed, default on the guarantor shall be the date when corporate guarantee has been invoked."

21. It is pertinent to note that the demand notice dated 25.03.2021 issued under Section 13(2) of the SARFAESI Act 2002 was duly served upon the Borrower and the Guarantors

including the Corporate Debtor. It has categorically been averred in said demand notice dated 25.03.2021 that the borrowers and guarantors have defaulted in payment of interest and principal instalment of loans and have failed to pay the loan amount which resulted in classification of the accounts as non performing asset on 31.12.2015. Therefore, the borrower and guarantors were called upon to pay the outstanding amount of Rs. 63,08,20,503.07(Rupees Sixty Three Crore Eight Lakh Twenty Thousands Five Hundred Three and Paisa Seven Only) outstanding as on 28.02.2021.

22. Moreover, the principal borrower sent a proposal vide letter dated 18.02.2022 to the Financial Creditor for revising the liabilities. It was requested for revision of previous sanction to HRIL for pending dues of the borrower against payment of Rs. 490 lakh along with interest till completion of payment as full and final payment towards entire outstanding dues.

23. Learned Counsel for the Corporate Debtor argued that the said communication has been issued by the borrower and not the Corporate Debtor; therefore the same is irrelevant and of no consequence. The Corporate Debtor has not issued any communication after invocation of guarantee in the year 2021; however, Learned Counsel appearing for the Financial

Creditor argued that an acknowledgment by the principal borrower is an acknowledgment by the Guarantor. He has relied upon judgment passed by Hon'ble Supreme Court in case of Laxmi Pat Surana Vs. Union Bank of India 2021 8 SCC 481.

24. Hon'ble NCLAT in case of ***Laxmi Pat Surana(Supra) in para no. 43*** **and 44** held that:

> *"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 came 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 persons 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 the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee 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) acknowledgements, 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 acknowledgement in writing signed by the party against such right to initiate resolution process under Section 7 IBC ensues. Section 18 would come into play every time when the principal borrower and/or the corporate guarantor(corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of prescribed period of limitation including the fresh period of limitation due to the acknowledgement of debt, from time to time, for instituting of proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability

in respect of which the financial creditor can initiate action under Section 7 IBC".

44. In the present case, NCLT as well as NCLAT have adverted to the acknowledgements by the principal borrower as well as the corporate guarantor-corporate debtor after declaration of NPAT from time to time and lastly on 8-12-2018. The fact that acknowledgement within the limitation period was only by the principal borrower and not the guarantor, would not absolve the guarantor of its liability flowing from the letter of guarantee and Memorandum of mortgage. The liability of the guarantor being co-extensive with the principal borrower under Section 128 of the contract act, it triggers the movement principal borrower commits default in paying the acknowledgement debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and the memorandum mortgage unless it expressly provide to the contrary".

25. In the instant case, the principal borrower, after receipt of demand notice dated 06.01.2021 and 27.01.2021, did not pay the loan amount; however, the principal borrower

acknowledged the debt by letter dated 18.02.2022 in writing and duly signed by its authorised person and promised to clear the pending dues and offered settlement. The Financial Creditor made a counter offer to agree for settlement subject to payment of Rs. 5.15 crore as an initial amount of settlement together with payment of interest by 31.12.2023.

26. The Principal Borrower further acknowledged its liability to pay the debt vide written letter dated 21.04.2022 and promised to pay an amount of Rs. 5 crores as an initial amount of settlement. The Corporate Debtor, again vide letter dated 26.05.2022, promised to pay Rs. 5 crore on renewed terms and conditions which were not acceptable to the Financial Creditor and hence, the same was rejected.

27. Thus, the acknowledgment made by the principal borrower in letter dated 18.02.2022, 21.04.2022 and 26.05.2022 for settlement of the loan account within the period of limitation extended the period of limitation against the Corporate Guarantor as the liability of the guarantor follow from the guarantee deed which is a continuing guarantee as discussed above.

28. Consequent upon failure of the Principal Borrower to discharge the debt, the Financial Creditor invoked the guarantee against the present Corporate Guarantor vide

letter dated 15.02.2023. The said letter of invocation dated 15.02.2023 was duly served upon the Corporate Debtor(Corporate Guarantor). Since, the corporate guarantee was a continuing guarantee to the extent of Rs.7,41,22,000/ or the market value of 400 Cottahs of land with building and structure and hence, the invocation of guarantee on 15.02.2023 was well within the period of limitation.

29. The present Company Petition has been filed on the basis of invocation of guarantee on 15.02.2023. The invocate letter dated 15.02.2023 was served upon the Corporate Debtor(corporate guarantor) on 18.02.2023. The Corporate Debtor(corporate guarantor) failed to pay the debt within seven days from the date of receipt of letter of invocation of guarantee and hence, the default occurred on 25.02.2023. The instant company petition being filed on 29.01.2024 is well within the period of limitation and is not hit by the provision of Section 10A of the Code.

Issue (ii)

30. The other contention raised by the Corporate Debtor is that the Applicant does not have cause of action against the former because vide the Joint Development Agreement dated 03.08.2017, the former assigned its liabilities to Pushppalki Realty Private Limited. It is pertinent to refer

the relevant clauses of the Deed of Guarantee. Clause 1 of the deed states the following:

'This Guarantee shall be a continuing security binding me/us and my/our personal representatives until the expiration of Three calendar months from the receipt by the bank of a notice in writing to discontinue it and notwithstanding the discontinuance by or any release or granting of time or indulgence to any one or more of us this Guarantee shall remain as a continuing security as to the other or others and if discontinued by notice, this Guarantee shall nevertheless as to party or parties giving such notice continue to be available (subject to the aforesaid limit of total amount) for and shall extend to all indebtedness and liabilities of the Principal to you at the date of the receipt of such notice whether they are certain or contingent and whether payable forthwith or at some future time or times and also for and to all credits then established by you for the Principal and for and to all credit facilities granted to cheques, drafts, bills, notes and negotiable instruments drawn by or for the account

of the principal on you and dated or purporting to be dated on or before such date although presented to or paid by you after such date and in the event of my/our any of us dying or becoming under disability the liability of the executors, administrators or legal representatives of such person so doing and of his estate shall continue until the expiration of three calendar months from the receipt by the Bank of a written notice given by such legal representatives (or the survivors or survivor of me/us) to determine this Guarantee.'

31. Thus, it is quite clear from the aforementioned clause that the Deed of Guarantee is a continuing guarantee, and the same would stand discontinued only in the event that a notice to that effect is given by the Bank to the Guarantor. In the instant case, there is no such notice of discontinuance of the guarantee on record.

32. Learned Counsel for the Corporate Debtor argued that there is no subsisting guarantee between the Corporate Debtor and the Financial Creditor in view of tripartite agreement dated 03.08.2017 and Joint Development Agreement dated 03.08.2017 executed between the applicant, Principal Borrower and PRPL to which Corporate Debtor was not a party. Further, a deed

of hypothecation dated 11.08.2017 was executed between the Applicant, Principal Borrower and PRPL. Thus, after execution of the said documents, the Financial Creditor has no cause of action against the Corporate Debtor.

33. It is relevant to refer the relevant clause of the Deed of Hypothecation dated 11.08.2017(**Annexure – K129**), which provides as under:

"6.3 ***Other Security***

(i) The security created herein is in addition and without prejudice, to any other security, guarantee, undertaking, lien, indemnity or other right or remedy which the Lender may now or hereafter hold for the Secured Loans Outstanding or any part thereof.

(ii) This Security shall neither be merged in, or nor in any way exclude, or be affected by any other Security Interest, right of recourse or other right whatsoever (or the invalidity thereof) which the Lender may now or at any time thereafter hold or have (or would apart from this security hold or have) as regards to the Security Provider or any

other person in respect of the Secured Loans Outstanding.

(iii) This security may be enforced against the Security Provider without first having recourse to any other rights of the Lender.'

34. The aforementioned deed of hypothecation acknowledges the existence of the tripartite agreement dated 03.08.2017 and a joint development agreement dated 03.08.2017 in clause 6.2. The existence of the aforesaid documents is not in dispute. From the above stated clause of the hypothecation deed, it is clear that the execution of the said documents will not affect any of the other securities or guarantees that have been executed against the principal loan. Hence, the deed of guarantee dated 28.09.2015 is not superseded by the hypothecation deed in any manner.

35. The tripartite agreement dated 03.08.2017 and a joint development agreement dated 03.08.2017 were executed between the Principal Borrower, PRPL and the Corporate Debtor. The PRPL, vide these agreements, took the responsibility to meet the commitments to the Financial Creditor as per the restructuring letter dated 02.08.2017 but the Financial Creditor was not made a party to this. It is further observed that there is no clause in both the deeds executed

which may prove that it will override any documents executed.

36. The clause 2 of the deed of guarantee further states that the guarantee is 'additional and without prejudice to any other securities or obligations' the Applicant may have from the Corporate Debtor and that all rights and remedies are reserved in the Applicant's favour.

37. In light of the above discussion, this Tribunal is of the view that the deed of guarantee is not superseded by any of the subsequent instruments executed. The contention of the Corporate Debtor that the Financial Creditor has no cause of action against the Corporate Debtor cannot stand. The Corporate Debtor is still bound by the Deed of Guarantee dated 28.11.2024.

38. It is a settled proposition of law that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1 Crore. In view of the Section 4 of the Code, the moment default is of Rs. 1 Crore or more, the application to trigger CIRP under the Code is maintainable. Further, the Corporate Debtor has failed to show that there is no debt or

default in existence so as to avoid the provisions of the Code.

Issue No.(iii) & (iv)

39. In the facts and circumstance of the present and our observation thereon, it has been established that the Financial Creditor clearly comes within the definition of Financial Creditor. The material placed on record further confirms that Applicant and the Corporate Debtor had executed a deed of guarantee for the loans availed by the Principal Borrower, which was duly invoked by the Applicant upon the Principal Borrower's default. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

40. The Applicant has duly submitted Form – D, annexed as **Annexure – J**, which shows the status of the debt is 'deemed to be authenticated' against the Principal Borrower and thus, the existence of debt is ascertained.

41. We are satisfied that the present application is complete in all respects and the Applicant is entitled to claim its

outstanding financial debt from the Corporate Debtor and that there has been default in payment of the financial debt.

42. In the view of the above discussion, **C.P. (I.B.) No. 156/KB/2024** is **admitted** and **I.A. (I.B.) No. 1083/KB/2025** is **dismissed** on merits.

43. As a sequel to the above discussion, the following directions are issued:

i. Decode Resolvency International Private Limited, having Registration No.: IBBI/IPE-0091/IPA-3/2022-23/50006 and email – id: ip@decoderesolvency.com is appointed as an Interim Resolution Professional for the Corporate Debtor.

ii. In pursuance of Section 13(2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Code.

iii. We direct the Applicant to deposit a sum of Rs. 3 Lakhs with the Interim Resolution Professional namely Decode Resolvency International Private Limited to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Applicant. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

iv. The moratorium is declared in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1) (a), (b), (c) and (d) of the Code. Thus, the following prohibitions are imposed:

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;

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.

v. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3) (b) of the Code.

vi. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim

Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

44. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West Bengal at the earliest possible but not later than three days from today.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member(Judicial)

T.Roy (LRA)