

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT- I**

**Company Petition No. (IB) No.388/Chd/Pb/2019 And IA Nos.
1318/2023 & 1325/2023**

IN THE MATTER OF:

State Bank of India

.....Petitioner

Versus

Cosmas Research Lab Ltd.

....Respondent

AND IN THE MATTER OF IA No. 1318/2023: -

State Bank of India

Having its corporate office at

At Madame Cama Road, Mumbai-400021

Its Branch at Stressed Asset Management

Branch (SAMB), Civil Lines, Ludhiana,

....Applicant

Versus

Cosmas Research Lab Ltd

Village Gaunspura, Bhattian Road,

Hambran, Distt. Ludhiana, Punjab

...Respondent

AND IN THE MATTER OF IA No. 1325/2023

State Bank of India

Having its corporate office at

At Madame Cama Road, Mumbai-400021

Its Branch at Stressed Asset Management

Branch (SAMB), Civil Lines, Ludhiana,

....Applicant

Versus

Cosmas Research Lab Ltd

Registered Office

B-1-1446, Haibowal Khurd, Hambrain Road

Order delivered on : 09.02.2024

SECTION: Section 7 & 60(5) of IBC 2016

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the applicant in
IA No. 1318/23 &
IA No. 1325/23
and petitioner in the
main CP.

: Senior Advocate Munisha
Gandhi
Adv. Salina Chalana

For the respondent

: Senior Advocate Anand
Chhibbar,
Adv. Swati Vashist, PCA

For the Assistant General

Manager, State Bank of India

: Mr. K.N. Aggarwal in person.

ORDER

Per : Sh. L.N. GUPTA, M (T) & Sh. HARNAM SINGH THAKUR, M (J)

Both IA No.1315/2023 and IA No.1325/2023 are taken up together for discussion being interrelated and interconnected.

IA Nos. 1318/2023

The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, on behalf of the Financial Creditor, i.e. State Bank of India to place on record certain additional

documents as Annexure R-1 and R-2. The same are taken on record. **The IA- 1318/2023 is disposed of accordingly.**

IA No.1325/2023

The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, on behalf of the Financial Creditor, i.e. State Bank of India to place on record additional documents as Annexures R-1 to R-6. The same are taken on record. **The IA- 1325/2023 is disposed of accordingly.**

CP(IB) No.388/Chd/Pb/2019


The applicant State Bank of India (for brevity, the **“Applicant”**) has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **‘IBC, 2016’**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s Cosmas Research Lab Ltd (for brevity, the **"Respondent"**)

2. The Respondent namely, M/s Cosmas Research Lab Ltd is a Company incorporated on 02.05.2008 with CIN U24110PB2008 PLC031925 under the provisions of the Companies Act, 1956 having its registered office at B-1-1446, Haibowal Khurd, Hambrain Road Distt. Ludhiana, Punjab-141001, which is within the territorial jurisdiction of this Bench. The Authorized Share Capital of the Respondent Company is Rs. 25,00,00,000/- and the Paid-up Share Capital of the Company is Rs.249866000/- as per the Master Data.

3. In its application, it is averred by the Applicant that vide sanction letter No. RM-1/222, dated 17.03.2011, it had done the revalidation of Term Loan for an aggregate amount of Rs. 25 Crores ("**Credit Facilities**") to the Respondent. The detailed particulars of the unpaid Financial Debt claimed including the total amount of default and the date of default as mentioned by the applicant in Part IV of the application read thus:

PART - IV
PARTICULARS OF FINANCIAL DEBT

1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Loan (Amount in Rs.)	Date of Disbursement
		25,00,00,000/-	24/03/2011
TOTAL			
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURRED	Account No.	Amount Claimed to be in Default (In Rs.)
		31683916117	23,23,62,314
		Uncharged interest from 28.01.2013 to 31.03.2019	35,54,90,388.48
		Total	58,78,52,702.48
		Total Default Amount: 587852702.48 Days of Default :2246 days Days of Default has been calculated from 28.01.2013	



	NPA Date: 28.01.2013 Working Sheet regarding computation of amount and days of default is annexed herewith and marked as <u>ANNEXURE A-5.</u>
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4. Thus, as per Part IV of the application (ibid), the Applicant has claimed an outstanding "financial debt" of Rs. 58,78,52,702.48 /- and relied on 28.01.2013 as the "date of default". It has been added that the Account of the Respondent Company was classified as NPA on account of default on 28.01.2013. It is further submitted that on 29.11.13, the Applicant Bank issued the Loan Recall Notice-cum-invocation of Guarantees, calling upon the CD and other obligors to pay the defaulted amount.

5. To buttress its plea, the Applicant has relied on the following documents:

- i. Sanction Letter dated 17.03.2011 duly accepted by the Corporate Debtor.
- ii. Copy of Board Resolution passed by the corporate debtor dated 17.03.2011
- iii. Agreement of Loan for overall limit dated 18.03.2011 executed between the Corporate Debtor and the Financial Creditor.
- iv. Agreement of Hypothecation of goods and assets dated 18.03.2011 executed between the Corporate Debtor and the Financial Creditor.
- v. Copy of the Deed of Guarantee dated 18.03.2011 for Overall Limit executed by the Guarantors of the Corporate Debtor in favour of the Financial Creditor.
- vi. Letter Regarding the Grant of Individual Limits within the Overall Limit dated 18.03.2011 executed by the Corporate Debtor.
- vii. Letter dated 11.05.2011 regarding confirmation of deposition of Title Deeds relating to property at 56-C Udham Singh Nagar Ludhiana etc.
- viii. Letters by Punjab National Bank to the financial creditor dated 04.05.2011 and 10.05.2011.
- ix. Letter dated 11.05.2011 by Punjab National bank in favour of the financial creditor wherein, giving consent of ceding charge on Pari-passu basis for Tem Loan of Rs.27.00 Cr given by Punjab National Bank and Rs.25.00 Cr given by Financial Creditor.

- x. Affidavit of Directors and Guarantors on stamp paper dated 26.06.2013 duly attested by Notary was submitted to the Financial Creditor giving their net worth.
- xi. Notice dated 29.11.2013 to the corporate debtor by the Financial Creditors.
- xii. Copy of Board Resolution dated 19.12.2013 passed by the corporate debtor.
- xiii. Revival letter dated 23.12.2013 executed by the financial creditor in favour of the corporate debtor.
- xiv. Notice dated 19.03.2014 under section 13(2) of the SARFAESI, Act 2002 executed by the Financial Creditor to the Corporate Debtor.
- xv. Reply of the objections raised by the corporate debtor giving by the financial creditor dated 23.05.2014.
- xvi. Possession Notice dated 21.11.2014 by the Financial Creditor and CIBIL report of the Corporate Debtor dated 23.06.2015.
- xvii. Statements of accounts and Notice U/S 13(2) of the SARFAESI Act, 2002 dated 31.03.2014 along with the objections raised by the Corporate Debtor and reply to the objections raised by the Corporate Debtor dated 23.05.2014.

6. Based on the facts described above and the documents, the Applicant has prayed for the initiation of CIRP against the Respondent.

7. On issuance of the notice, the Respondent has filed its reply dated 27.05.2022 stating mainly the following:

7.1 The petition is not maintainable because it has not been filed by a duly authorized person. It has been filed by a sub-delegatee, the

authorization and power of the person delegating the said authority is not available on record.

7.2 The documents filed with the application are neither original nor proved in accordance with law. The applicant has failed to fulfil the mandate of law and file the statutory form/Application as per the requisite statutory norms, even Form-1, Part-V is incomplete.

7.3 The date of default as defined under IBC, 2016 is 28.01.2013, when the account of the Corporate Debtor was declared NPA and the present petition has been filed before this NCLT in July 2019, which is beyond the statutory period of three years as provided under the Limitation Act, 1963.

7.4 The Hon'ble Supreme Court in its judgment dated 30.09.2019 in the matter of **Sagar Sharma & Anr. Vs. Phoenix ARC Private Limited & Anr., (2019) 10 SCC 353** following its own ruling in the matter of **B.K. Educational Services Private Limited vs. Parag Gupta and Associates, (2019) 11 SCC 633** has reiterated that the date of coming into force of the Insolvency and Bankruptcy Code 2016 on 01.12.2016 does not and cannot form a trigger point of limitation for applications filed under the Code and since "Applications" are Petitions which filed under IBC, it is only Article 137 of the Limitation Act, 1963, which will apply to such Applications under the Code. Furthermore, in the case of **C. Shivakumar Reddy Vs. Dena Bank & Anr. Company Appeal (AT) (Insolvency) No. 407 of 2019**, Hon'ble National Company Law Appellate Tribunal in its judgment dated 18.12.2019, following the ratio of the judgment of **B.K. Educational (Supra)** held that the limitation period

starts from the date of default i.e. the date when the account was declared NPA and set aside the order passed by the Adjudicating Authority initiating CIRP against the Corporate Debtor, thus dismissing the Application under Section 7 of IBC, filed by Dena Bank in that case. Accordingly, the claim of the Financial Creditor herein is a time-barred claim and the petition needs to be dismissed on this ground only.

8. In counter response, the Applicant has filed its rejoinder dated 06.12.2022 and written submissions dated 30.01.23 and a short note dated 06.04.2023 (on the point whether the petitioner - SBI Bank could have filed the present petition independently without the consent of the co-creditor i.e. Punjab National Bank) stating mainly the following :

8.1. The Financial Creditor is a bank and abides by the guidelines of RBI. The Gazette Notification No. ORG/ 17405 dated 02.05.1987 clearly specifies the class of officers, who can exercise the Signing Power to the extent specified against each officer. The Gazette Notification is also annexed along with the Section 7 Application filed by the Financial Creditor as Annexure-A-1.

8.2 The entries in the balance sheet amounts to acknowledgement of debt and extends limitation. The relevant balance sheets are enclosed as Annexure-A1 in the application.

8.3 The bank had filed an application for recovery of its dues before DRT, Chandigarh against the present Corporate Debtor along with its guarantors/mortgagors, which was allowed by the Hon'ble DRT and the Recovery Certificate was issued on 20.06.2019. The Demand Notice in the

recovery proceeding was issued on 29th January 2021. Consequently, a fresh cause of action also arises in favour of the Applicant Bank being a secured financial creditor. Thus, the present application is within the limitation period.

8.4 The Applicant has placed reliance upon the judgment of **C. Shivakumar Reddy vs. Dena Bank & Anr. Company Appeal (AT) (Insolvency) no. 407 of 2019**, which has been set aside by the Hon'ble Supreme Court in **Dena Bank vs. C. Shivakumar Reddy & Anr. Civil Appeal No. 1650 of 2020** observing that an application under Section 7 of the IBC would not be barred by limitation on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were acknowledgements of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years. Thus, the present claim of the financial creditor is not barred by time.

8.5 The Corporate Debtor has accepted in their averments that they have defaulted and are unable to pay the stipulated repayment as per schedule as the unit of the Corporate Debtor was still at the implementation stage and yet to commence operations. When an account is declared NPA by any branch, the account is transferred to Stressed Asset Management Branch and the same cannot be disputed as it is the banking norms.

8.6 Lastly, NCLT does not have any jurisdiction over SARFAESI actions as the reply is misleading and filed with a mala-fide intention of defeating

the SARFAESI measures initiated by the financial creditor in order to recover its dues from the corporate debtor.

9. We heard the submissions of both parties and perused the pleadings on record, including the Written Submissions and short note of Applicant. The Respondent in its defence has contended that the petition is not maintainable because it has not been filed by the duly authorized person. Moreover, the present petition has been filed before this Adjudicating Authority in July 2019, which is beyond the statutory period of 03 years as provided under the Limitation Act, 1963. Further, the financial creditor has filed the present petition independently without the consent of co-creditor, i.e., Punjab National Bank.

Per Contra, the Applicant has annexed various documents to prove that this petition has been filed by the duly authorized person and the Application is within limitation. During the hearing, in support of its contentions, the Ld. Counsel for the Applicant referred to the Sanction Letter dated 17.03.2011 (Pg. 125), Loan Recall Notice (pages 8-10 of IA 1446/2022) issued on behalf of the Applicant Bank, and the working sheet regarding computation of amount and days of default. The Applicant has also contended that there is no Inter-Se/consortium agreement between the Financial Creditor and Punjab National Bank.

10. To examine the first contention of the Respondent that the petition is not maintainable because it has not been filed by the duly authorized person, we refer to the document placed by the applicant i.e. "the Govt. of India, Gazette Notification of the Applicant Bank, which reads as given overleaf:

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GAZETTE NOTIFICATIONS

(Ref: para 19.1 of Chapter No. 2)

- 1 -

(Published in Part III, Section IV of the Gazette of India, dated the 2nd May, 1987)

No. ORG / 17405

**STATE BANK OF INDIA
CENTRAL OFFICE
Bombay, the 27th March 1987**

NOTICE

In pursuance of Regulation 76 (1) of the State Bank of India General Regulations 1953, framed under Section 50 of the State Bank of India Act 1953, the Executive Committee of the Central Board hereby authorizes the under noted class of officers to exercise the Signing Power to the extent specified against each of the Officers below -

- A. All Officers in the Grades of SMGS-IV and above:
To sign all documents, instruments, accounts, receipts, letters & advices, etc. connected with the current or authorized business of the Bank in respect of all matters coming in discharge of functions of the posts held for the time being.
- B. All Branch Managers / Managers of Divisions in the Grades of MMGS-III, MMGS-II and JMG-L.
To sign all documents, instruments, accounts, receipts, letters and advices, etc. connected with the current or authorized business of the Bank in respect of all matters coming in discharge of functions of the posts held for the time being.
- C. All Managers (Accounts) / Accountants / Heads of Cash Departments at Branches (Managers (Cash), Deputy Managers (Cash) and Assistant Managers (Cash))
Power to discharge bills of exchange, promissory notes, documents of title to goods, which come to them in discharge of functions of the post held for the time being.

All officers, employees of the Bank on whom above signing powers are conferred shall continue to exercise the powers conferred on them for the discharge of their functions notwithstanding the place of the posting.

The existing notifications as to signing powers shall operate subject to the above modification and to the extent to which these are not inconsistent with anything contained in this notification.

By the order of the Executive Committee of the Central Board

Sd/-
Managing Director

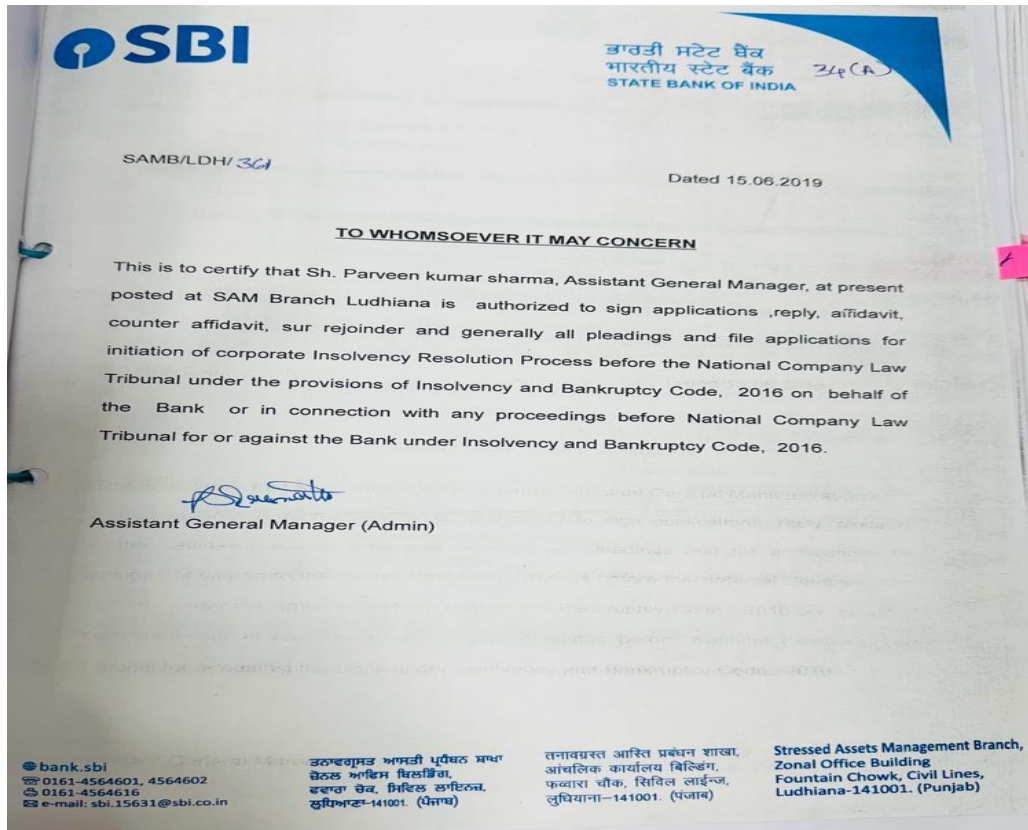
Volume-1

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Further, the Applicant bank has placed on record the Specific authorization for filing application before NCLT under IBC, which reads as follows:



Thus, on perusal of the Gazette Notification of the Applicant Bank and Specific authorization for filing application before NCLT under IBC, this Bench observes that the Application has been filed by the duly authorized person Sh. Praveen Kumar Sharma, Assistant General Manager-SBI.

11. Now, we would like to examine the Respondent's second contention that the petition is barred by limitation. We have already noted above while perusing Part IV of Application (Particulars of Financial Debt) that the Date of default relied upon by the Applicant is 28.01.2013. During the course of arguments, the Applicant referred to the CIBIL Report dated 23.06.2015 as per which there was an outstanding balance of Rs. 22,94,88,900/- is reflected against the Account No. "00000031683916117" of the corporate debtor. The said report is reproduced below for the sake of immediate reference:

Credit Information Bureau (India) Limited
IN ASSOCIATION WITH DLN & BRADSTREET AND TRANS UNION



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Report Order Number: W-4985395
 Report Order Date: 23-Jun-2015
 Loan Amount Applied (Rs): 100,000.00
 Product Name: COMMERCIAL CIR
 User ID: bs00013762
 Member Reference Number:

Current Balance						
Asset Class						
Period	Jul 2012	Jun 2012	May 2012	Apr 2012	Mar 2012	Feb 2012
Current Balance						
Asset Class						
Period	Jan 2012	Dec 2011	Nov 2011	Oct 2011	Sep 2011	Aug 2011
Current Balance						
Asset Class						
Guarantor Details	No Guarantor Information Available					
Credit Facility 21						
Credit Facility Type	OTHERS		Credit Grantor Name	STATE BANK OF INDIA		
Account Number	00000031683916117					
Sanction Date	Sanctioned Amount	Currency Code	Drawing Power	Current Balance	Asset Classification	
24 - Mar - 2011	25,00,00,000	INR	13,92,56,479	22,94,88,900	874 DAYS PAST DUE	
Willful Default Status	Willful Default Date	Suit Filed Status	Suit Filed Amount	Suit Filed Date	Account Status	Last Reported Date
NOT WILFUL DEFAULTER		*No Suit Reported by the Member			OPEN	31 - Mar - 2015
24 Month History						
Period	Feb 2015	Jan 2015	Dec 2014	Nov 2014	Oct 2014	Sep 2014
Current Balance	22,94,88,900	22,94,88,900	22,94,88,900	22,94,88,900	22,94,88,900	22,94,88,900
Asset Class	843 DAYS PAST DUE	815 DAYS PAST DUE	784 DAYS PAST DUE	753 DAYS PAST DUE	723 DAYS PAST DUE	692 DAYS PAST DUE
Period	Aug 2014	Jul 2014	Jun 2014	May 2014	Apr 2014	Mar 2014
Current Balance	22,94,88,900	22,94,88,900	22,94,88,900	22,94,88,900		22,94,88,900
Asset Class	662 DAYS PAST DUE	631 DAYS PAST DUE	600 DAYS PAST DUE	570 DAYS PAST DUE		478 DAYS PAST DUE
Period	Feb 2014	Jan 2014	Dec 2013	Nov 2013	Oct 2013	Sep 2013
Current Balance	22,94,88,900	22,94,82,425	22,94,82,425	22,94,82,425	22,94,82,425	
Asset Class	450 DAYS PAST DUE	419 DAYS PAST DUE	588 DAYS PAST DUE	358 DAYS PAST DUE	327 DAYS PAST DUE	
Period	Aug 2013	Jul 2013	Jun 2013	May 2013	Apr 2013	Mar 2013
Current Balance	22,94,82,425	22,94,82,425				
Asset Class	297 DAYS PAST DUE	266 DAYS PAST DUE				
Guarantor Details						
Guarantor 1						
Guarantor Name	Guarantor D-J-N-S @ Number	Guarantor Type	Guarantor PAN			
MUNISH CHOPRA		BUSINESS ENTITY REGISTERED IN INDIA/GOVERNMENT				
Address	H NO -66-S, KITCHLU NAGAR LUDHIANA, LUDHIANA	State / Union Territory	28			
City / Town	LUDHIANA	PIN Code	141001			
District		Country				
Telephone		Fax Number				
		Last Reported Date	31 - Mar - 2015			
Guarantor 2						
Guarantor Name	Guarantor D-J-N-S @ Number	Guarantor Type	Guarantor PAN			

Further, during the course of arguments, the Applicant also referred to the Financial Statement of the corporate debtor for the period from 01.04.2016

to 31.03.2017 (page 49 of rejoinder), which reflects the borrowing from the Applicant Bank by the CD. The said Financial Statement of the corporate debtor for the period from 01.04.2016 to 31.03.2017 is reproduced below for immediate reference:

COSMAS RESEARCH LAB LIMITED Standalone Financial Statements for period 01/04/2016 to 31/03/2017

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Classification of borrowings (Table)

.(2)

Unless otherwise specified, all monetary values are in INR

Classification based on time period (Axis)	Long-term (Member)		Short-term (Member)	
	Rupee term loans from banks (Member)		Working capital loans from banks (Member)	
Subclassification of borrowings (Axis)	Secured borrowings (Member)		Secured borrowings (Member)	
	01/04/2016 to 31/03/2017	01/04/2015 to 31/03/2016	01/04/2016 to 31/03/2017	01/04/2015 to 31/03/2016
Borrowings notes (Abstract)				
Details of borrowings (Abstract)				
Details of borrowings (Line items)				
Borrowings	52,39,51,905	52,36,79,463	15,57,62,776	17,72,21,731
Nature of security (Abstract)				
Nature of security	Term Loans from Punjab National Bank and State Bank of India	Term Loan from Punjab National Bank & State Bank of India	Working Capital loans from banks	Working Capital Loan
Details of personal security given by promoters, other shareholders or other third parties, though such security does not result in classification of borrowings as secured	Secured by way of EM of Company's Land measuring 42K situated at Village Gaunspura, Bhatian Road, Hambran, Ludhiana on pari-passu basis with Banks.	Secured by way of EM of Company's Land measuring 42K situated at Village Gaunspura, Bhatian Road, Hambran, Ludhiana on pari-passu basis with Banks.		

Classification of borrowings (Table)

.(3)

Unless otherwise specified, all monetary values are in INR

Classification based on time period (Axis)	Short-term (Member)			
	Loans repayable on demand (Member)		Loans repayable on demand from banks (Member)	Loans repayable on demand from others (Member)
Subclassification of borrowings (Axis)	Secured borrowings (Member)		Secured borrowings (Member)	Secured borrowings (Member)
	01/04/2016 to 31/03/2017	01/04/2015 to 31/03/2016	01/04/2016 to 31/03/2017	01/04/2015 to 31/03/2016
Borrowings notes (Abstract)				
Details of borrowings (Abstract)				
Details of borrowings (Line items)				
Borrowings	2,87,89,256	3,99,36,199	2,87,89,254	3,99,36,199
Nature of security (Abstract)				
Nature of security	[As Per Member (s)]	[As Per Member (s)]	PNB UR Loan	PNB UR Loan



On perusal of the aforesaid documents, we find that the present application filed by the Applicant Bank is well within the limitation in the following manner:

S.No.	Documents	Dated	Period of Limitation till
1.	Date of default (As per Part IV of Application) (Particulars of Financial Debt): /NPA	28.01.2013	27.01.2016
2.	CIBIL Report (page 320 of petition-Vol 2)	23.06.2015	22.06.2018
3.	Financial Statement for period 01/04/2016 to 31/03/2017 (page 49 of rejoinder)	31.03.2017	30.03.2020
4.	Date of filing of Present petition		04.04.2019

12. As regards the third objection of the Respondent regarding the present application being filed by SBI alone without the consent of the co-creditor i.e. Punjab National Bank, the Applicant Bank vide its short note dated 06.04.2023 has submitted that there is no Inter-Se/Consortium agreement between the Financial Creditor (SBI) and Punjab National Bank and has contended that any member of Consortium of Banks/lenders can individually filed an application under Section 7 of IBC, 2016. The Applicant has relied upon the judgment in **Ferro Alloys Corporation Ltd. V. Rural Electrification Corporation Ltd. Company Appeal (AT) (Insolvency) No. 92 of 2017**, in which the Hon'ble NCLAT has held that Consortium of Banks have no role to play at the time of the admission of the application under Section 7 of the Code.

For examining the present objection, we refer to Section 7 (1) of the Code which reads as follows:

“A financial creditor either by itself or jointly with ¹other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.”

(Emphasis placed)

Thus, from a bare perusal of the above provision, it can be inferred that a Financial Creditor either by itself or jointly, with other financial creditors can file a Section 7 application. Thus, we find no force in the contention of the Respondent that the Applicant Bank - SBI could not have filed the present application without the consent of the Punjab National Bank and hence, rejected.

13. The Applicant Bank has also placed on record the loan recall notice under section 13(2) of SARFAESI Act, 2002, which is reproduced below:

Raju Chopra

Advocate

Punjab & Haryana High Court

98787-54321

e-mail: rajuchopraadvocate@gmail.com



Chamber: 368, 11rd. Floor,
Judicial Complex, New Courts,
Ludhiana. Tel.: 0161-5009368

Residence: "RAMESHWARAM"
98-F, Kitchlu Nagar, Ludhiana.
Tel.: 0161-2300898

Ref. No. : _____

CALL-UP NOTICE

Dated : 29-11-13

To

1. Cosmas Research Lab Limited,
Village Gaunspur, Humbran Road, Ludhiana,
2. Sh.Puneet Jain son of Late Sh.Pawan Kumar Jain,
3. Sh.Mannu Jain son of Late Sh.Pawan Kumar Jain,
Directors Cosmas Research Lab Limited,
Rs/o 99, Raman Enclave, Near Rishi Nagar, Ludhiana.
4. Sh.Sanjay Kumar Jain son of Late Sh.Pawan Kumar Jain,
5. Sh.Tanuj Jain son of Late Sh.Pawan Kumar Jain,
Directors Cosmas Research Lab Limited,
Rs/o 56-C, Udham Singh Nagar, Ludhiana.

Sir,

I, as an Advocate, for & on behalf of my client State Bank of India, a body corporate constituted under the State Bank of India Act, 1955 having its Corporate Office at Madame Cama Road, Nariman Point, Mumbai; one of its Local Head Offices at Sector-17, Chandigarh and presently through Deputy General Manager, Industrial Finance Branch, Golden Tower, Dholewal Chowk, Ludhiana, I, hereby serve you with following notice:-

1. That this notice is in continuation to various earlier letters and reminders, wherein you were called upon to regularize your Medium Term Loan of Rs.25 Crore availed by you to tune of Rs.23.93 Crore. You have failed and neglected to regularize your said account and hence the necessity has arisen to serve you with the present CALL-UP NOTICE.
2. That the following is the position of your aforesaid account:-

Facility	Loan Amount	Outstanding
Medium Term Loan	Rs.25-00 Crore	Rs.22,94,82,425/-

These amount includes interest applied upto 30/09/2012.

3. That you have failed to submit to my client regularly and at periodical and on due dates, the stipulated installments in your Term Loan account alongwith interest.
4. That you have failed to adhere to financial discipline and norms of my client and despite of giving you a long rope to adjust the irregularities in your account, you have miserably failed to regularize your aforesaid account.
5. That the irregularities in your aforesaid account has neither been appreciated by my client nor by its Controlling Authorities.
6. That you notices no.2 to 5 alongwith Smt.Kamla Jain wd/o Sh.Pawan Kumar Jain, Smt.Anjana Jain w/o Sh.Puneet Jain, Smt.Sucheta Jain w/o Sh.Sanjay Jain, Smt.Shaveta Jain w/o Sh.Tanuj Jain, Smt.Jyoti Jain w/o Sh.Manu Jain & Sh.Munish Chopra s/o Sh.M.R.Chopra have stood as surety/guarantee for the repayment of aforesaid term loan availed by you & have also executed various security documents in favour of my client in this regard. Further they have also created equitable mortgage on their respective properties detailed as under:
 - a) Property/factory land and building measuring 42K-0M, situated at Village Gaunspura, Humbran Road, Ludhiana, together with building, plant and machinery including all movable and immovable fixtures, owned by company/ notices no.1.



14. Furthermore, from the pleadings, we also notice that as part of the Comprehensive Debt Restructuring Proposal ('CDRP'), the Respondent Company itself had proposed to the Applicant Bank for a one-time settlement of its dues, which in terms of the judgment of the Hon'ble Supreme Court in "**Dena Bank (now Bank of Baroda) vs. C.**

Shivakumar Reddy and Anr.” is an acknowledgment of debt. The relevant para of the judgment (supra) dated 04.08.2021 reads thus:

*“141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.** In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019”.*

(Emphasis placed)

15. Thus, in terms of the abovementioned discussion, we find that the petitioner Bank has been able to successfully establish the debt and default beyond doubt on the part of the Respondent in repayment of its financial debt.

16. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.”

17. As proposed by the Applicant, this Bench appoints Mr. Rajender Kumar Jain as IRP having Registration IBBI/IPA-001/IP-P00543/2017-2018/10968 Email ID: amicusthe@gmail.com The antecedents of the proposed IRP have been verified by the Legal Research Associate of this Adjudicating Authority. This Adjudicating Authority further orders that:

Mr. Rajender Kumar Jain, as an IRP having Registration No. IBBI/ IPA-001 /IP-P00543 /2017-2018/ 10968, Email ID amicusthe@gmail.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

18. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

19. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent, and the IRP named above by the Court Officer/Registry of this Tribunal.

20. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.

Sd/-
(L. N. Gupta)
Member (T)

Sd/-
(Harnam Singh Thakur)
Member (J)