

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) 370/MB/2023**

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*

**L&T Finance Limited**, Having registered office at: - 15<sup>th</sup> Floor, PS SRIJAN Tech Park, Plot No.52, Block DN, Sector-V, Salt Lake City, Kolkatta-700 091, District: 24-Parganas North.

**..... Applicant/ Financial Creditor**

**Versus**

**Sterling Healthcare Limited**

Having registered office at: - 43, Atlanta, Nariman Point, Mumbai-400021.

**..... Corporate Debtor**

**Order Delivered on :- 07.12.2023**

*Coram:*

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

*Appearances (Hearing in Physical Mode):*

For the Financial Creditor: Adv. Nausher Kohli a/w Adv. Grishma Dalvi  
and Adv. Karun Singh.

For the Corporate Debtor: Adv. Niddhi Chheda.

**ORDER**

*Per: - Coram.*

1. This Company Petition is filed by **L&T Finance Limited** (hereinafter referred to as "Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. **Sterling Healthcare Limited**. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a **default** in repayment of outstanding debt of **INR 14,23,45,325/-** (Rupees Fourteen Crores, Twenty-Three Lakhs, Fourty-Five Thousand, Three Hundred and Twenty-Five Only) as on 02<sup>nd</sup> January, 2023.

**Facts of the Case as pleaded by the Financial Creditor in its Application u/s 7 are briefly stated hereunder:**

2. The present application has been filed by the Financial Creditor u/s 7 of the Code on account of the default committed by the Corporate Debtor of Rs. 14,23,45,325/- in repayment of the Working Capital

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Term Loan. The Working Capital Term Loan Agreement was entered into between M/s. Family Credit Limited and the Corporate Debtor on 28<sup>th</sup> June, 2016. Pursuant to the Scheme of Amalgamation approved by the Hon'ble Calcutta High Court vide Order dated 28<sup>th</sup> November, 2016 in Company Petition No. 866/2016 connected with Company Application No. 608/2016, Family Credit Limited got merged with the Financial Creditor and hence, the present application u/s 7 of the Code has been filed and is being prosecuted by L&T Finance Ltd i.e. the Financial Creditor.

3. On June 06, 2016 the Financial Creditor sanctioned a Working Capital Term Loan for an amount of INR 8,00,00,000/- (Rupees Eight Crores only). The Debt was secured by a Deed of Hypothecation dated 28<sup>th</sup> June, 2016, Personal Guarantee of Mr. Nitin Sandesara dated 28<sup>th</sup> June, 2016 and Demand Promissory Note dated 27<sup>th</sup> June, 2016 issued by the Corporate Debtor in favour of the Applicant/Financial Creditor. The Financial Creditor had disbursed the sanctioned loan amounts of Rupees Eight Crores as under:

<b><u>Date of Disbursement</u></b>	<b><u>Amount of Disbursement</u></b>
30.06.2016	3,20,00,000
29.09.2016	1,70,25,000
27.12.2016	1,53,00,000
29.03.2017	84,00,000
31.05.2017	72,75,000
<b>TOTAL</b>	<b>8,00,00,000/-</b>

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4. The first default occurred with respect to the loan facility on 30<sup>th</sup> September, 2016 and the same is also evident from the NeSL Report. Thereafter, part payments were made by the Corporate Debtor and thus, the default made on 30.09.2016 was partially regularised. Subsequently, there was a default in repayment by the Corporate Debtor on March 31, 2018. Since no recoveries were made thereafter, the account of the Corporate Debtor was classified as Non-Performing Asset on 29<sup>th</sup> June, 2018 as per the RBI Guidelines.
  
5. The Financial Creditor issued the Demand Notice dated 12<sup>th</sup> September, 2022 to the Corporate Debtor and the Personal Guarantor seeking repayment of outstanding amount as on 25<sup>th</sup> August, 2022. However, since the Corporate Debtor failed to make good the default, the Financial Creditor is constrained to file this petition.

**Reply on Behalf of the Corporate Debtor (in brief):**

6. The Corporate Debtor submits that the alleged debt claimed to be due and payable to the Financial Creditor is not a financial debt, hence the petition fails. According to the Corporate Debtor, since its loan account with the Financial Creditor has been classified as NPA, the Corporate Debtor cannot be called upon to pay the said debt under any circumstances.
  
7. This Application has been filed by the Applicant against the principles of natural justice as the Petition is filed without issuance of any demand notice for the alleged claim ignoring the principle of audi alteram partem. Hence, the present petition deserves to be dismissed in limine.

8. Reliance has been placed upon the judgment of Hon'ble Supreme Court in **B.K. Educational Services (P) Ltd v/s Parag Gupta & Associates-** (2019) 11 SCC 633, wherein the Hon'ble Apex Court had held that the Limitation Act, 1963 is applicable to the proceeding u/s 7 or 9 of the Code from its inception. Hence, Article 137 of the Schedule to the Limitation Act, 1963 gets attracted. The right to sue, therefore, accrues when a default occurs. The loan account was classified and declared as NPA on 29<sup>th</sup> June, 2018, whereas the Petition has been filed on 16.03.2023. As the period of more than 3 years has already lapsed, the Petition is barred by the law of limitation.
9. The Management of the Corporate Debtor have been devoting full time exclusively for management and business of the Respondent. The business of pharmaceutical is managed with full passion and dedication. In spite of this, the Corporate Debtor is facing tough financial crisis. There are many employees with the Corporate Debtor who earn their livelihood and there are many people who get employment indirectly. Apart from these, there are indirect employees of the suppliers, contractors, agents, agencies, etc. who earn their livelihood from the Corporate Debtor. This Hon'ble Tribunal may consider the impact of CIRP on the Corporate Debtor and the people who are depending on it.

**Rejoinder on behalf of the Financial Creditor**

10. The Working Capital Term Loan Facility availed by the Corporate Debtor qualifies the definition of financial debt u/s 5(8) of the Code. The Hon'ble Supreme Court of India in M/s. Orator Marketing Pvt

Ltd v/s. M/s. Samtex Desinz Pvt Ltd (Civil Appeal No. 2231 of 2021) has categorically held that any money borrowed against payment of interest comes within the definition of a financial debt. Hence, the plea taken by the Corporate Debtor that the debt is not a financial debt under the Code, is frivolous and baseless.

11. The Financial Creditor in its rejoinder affidavit has stated that no demand notice is required to be issued by a Financial Creditor before initiating a proceeding u/s 7 of the Code. Be that as it may, the Financial Creditor has not only served a demand notice dated September 12, 2022 on the Corporate Debtor, but also sent multiple communications and reminders before filing of this petition.

12. In respect of the defence of limitation taken by the Corporate Debtor, the Financial Creditor has submitted in rejoinder that if the Order dated January 10, 2022 passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 03 of 2020 reported in (2022) 3 SCC 117 is taken into consideration, then the period from 15<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022 shall stand excluded for the purpose of limitation in all judicial and quasi-judicial proceedings. In light of the above, the Financial Creditor submits that the above-captioned Company Petition filed on 16<sup>th</sup> March, 2023 is within the prescribed period of limitation.

### **ANALYSIS AND FINDINGS**

13. We have heard the counsel for the parties and gone through the records.

14. During the course of argument, the counsel for the Financial Creditor has argued that in this case the factum of existence of financial debt and its default committed by the Corporate Debtor has been proved on record. The Counsel for the Financial Creditor has further contended

that in the reply filed by the Corporate Debtor, the existence of the debt has not been denied. The counsel for the Petitioner has further referred to Exhibit 'D' annexed with the Petition to prove the disbursement of the loan amount. The counsel for the Financial Creditor further referred to Working Capital Loan Agreement dated 28<sup>th</sup> June, 2016 on the basis of which the loan was advanced to the Corporate Debtor. According to the counsel for the Petitioner, the Corporate Debtor failed to repay the outstanding amount despite having received the Demand Notice dated 12.09.2022. The counsel for the Petitioner further urged that the petition be admitted.

15. On the other hand, the counsel for the Corporate Debtor has argued that the debt owed to the Petitioner is not a financial debt defined u/s 5(8) of the Code as the loan account has been legally classified as Non-Performing Asset ('NPA'). Hence, the instant Petition filed u/s 7 of the Code is liable to fail. The learned Counsel for the Corporate Debtor further submits that the loan account was classified and declared as NPA by the Financial Creditor on 29<sup>th</sup> June, 2018, whereas the Petition has been filed on 16.03.2023. As the period of more than 3 years has already lapsed, the Petition is barred by the law of limitation under Article 137 of the Limitation Act, 1963. The Counsel for the Corporate Debtor has denied the receipt of the Demand Notice dated September 12, 2022 and further argues that the principle of natural justice, namely audi alteram partem, has not been followed by the Petitioner herein before filing this Petition. As the Petition is hopelessly barred by the law of limitation, the debt is not due and payable to the Petitioner and also, as no demand notice has been served in violation of natural justice principles, the Counsel for the Corporate Debtor submits that the present petition should be dismissed with costs.

16. We have weighed the contentions raised by the counsel for the parties and also gone through the records.
17. The Working Capital Term Loan Agreement dated 28<sup>th</sup> June, 2016 was executed between the erstwhile Financial Creditor namely M/s. Family Credit Limited and the Corporate Debtor. Pursuant to the Scheme of Merger approved by the Hon'ble Calcutta High Court in Company Petition No. 866 of 2016 vide Order dated 28.11.2016, Family Credit Limited merged with the Financial Creditor and therefore, the debt owed by the Corporate Debtor to erstwhile Financial Creditor, post-merger stood transferred to the Financial Creditor. So far as the factum of existence of the financial debt is concerned, the same is proved by the Working Capital Term Loan Agreement and the Deed of Hypothecation both executed on 28<sup>th</sup> June, 2016 by the Corporate Debtor. The disbursal of the term loan is evidenced by the Statement of Account for the period from 30<sup>th</sup> June, 2016 to 02<sup>nd</sup> January, 2023 annexed by the Petitioner at Exhibit 'D' to the Petition. Further, the Information Utility Report of NeSL annexed by the Petitioner at Exhibit 'C' describes the nature of debt as 'Financial', records the date of default as 30-09-2016 and the outstanding amount in default at INR 9,74,79,450/- as on 31<sup>st</sup> August, 2021.
18. The Corporate Debtor has not denied the receipt of loan, but the only objection raised in this behalf is that the debt lent by the Applicant/Petitioner to the Corporate Debtor cannot be termed as 'financial debt' under the provisions of IBC because the Corporate Debtor's account was legally converted into NPA on 29<sup>th</sup> June, 2018. We find this contention to be misplaced and misconceived. Financial Debt, as defined u/s 5(8) of the Code means "*a debt along with interest, if*

*any, which is disbursed against the consideration for the time value of money and includes (a.) money borrowed against the payment of interest.”*

Therefore, the Working Capital Term Loan advanced by the Financial Creditor to the Corporate Debtor squarely falls under the definition of ‘financial debt’ u/s 5(8) of the Code and merely because the loan account of the Corporate Debtor has been classified by the Financial Creditor as Non-Performing Asset (‘NPA’), the debt does not cease to be a financial debt. Classification of an account as NPA in the books of creditor pursuant to the guidelines of RBI, has no bearing under the Code. At the cost of repetition, we state that there is no provision in law whereby the financial debt loses its character and nature as such, upon being classified as NPA. Thus, the plea taken by the Respondent that the Working Capital Term Loan, which has been classified as NPA, does not qualify the definition of ‘financial debt’ under the provisions of the Code, is meritless.

19. The Ld. Counsel for the Corporate Debtor has vehemently argued that the Petition should be dismissed as it is hopelessly barred by the law of limitation. The Ld. Counsel for the Corporate Debtor submits that the alleged default, according to the case version of the Financial Creditor, occurred on 31<sup>st</sup> March, 2018 and the account was classified as NPA on 29<sup>th</sup> June, 2018. Therefore, the petition u/s 7 of the Code should have been filed on or before the expiry of limitation on 31<sup>st</sup> March, 2021 (from the date of purported default) or at the highest, on or before 29<sup>th</sup> June, 2021 (from the date of declaration of NPA). To buttress her arguments regarding limitation, the Ld. Counsel for the Corporate Debtor has relied upon the judgment of the Hon’ble Supreme Court in the case of B.K. Educational Services (P) Ltd v/s. Parag Gupta & Associates, reported in (2019) 11 SCC 633, to assert that Article 137 of

the Schedule to the Limitation Act, 1963 applies to the applications u/s 7 or 9 of the Code since its inception and the right to sue accrues when a default occurs.

20. We have given our thoughtful consideration to the contentions raised by the learned counsel for the Corporate Debtor including the issue of limitation. The present **Petition** has been **filed on 16<sup>th</sup> March, 2023**. As per Schedule II to the Working Capital Term Loan Agreement dated 28<sup>th</sup> June 2016, a principal of INR 2,00,00,000/- (Rupees Two Crores Only) was due and payable by the Corporate Debtor on 31<sup>st</sup> March, 2018 in repayment of loan and interest on loan was also required to be serviced quarterly in arrears. On perusal of the Statement of Account annexed by the Petitioner at Exhibit 'D', we find that the last amount in respect of the Working Capital Term Loan was received from the Corporate Debtor on 27<sup>th</sup> March, 2018 and thereafter, the debt has not been serviced at all. Thus, the last date on which **default occurred** is **31<sup>st</sup> March, 2018** and the loan account was classified as Non-Performing Asset on 29<sup>th</sup> June, 2018. The *Hon'ble Supreme Court in M.A. No. 21 of 2022 in Suo Motu Writ Petition (C) No. 03 of 2020* reported in **(2022) 3 SCC 117** has held at Para 5 of the Order dated January 10, 2022 as follows:

*"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, **it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation** as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."*

*“III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”*

Until 14<sup>th</sup> March 2020, a period of 01 year, 11 months and 15 days (computed from 31<sup>st</sup> March, 2018) has already lapsed. The period from 15<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022 shall stand excluded for the purpose of computing limitation, as per the afore-stated order of the Hon’ble Supreme Court. Thus, the balance period of limitation remaining from 01<sup>st</sup> March, 2022 is 01 year and 15 days which expires on 16<sup>th</sup> March, 2023. As the present petition has been filed on 16<sup>th</sup> March 2023, it is held to be within limitation. Hence, the contention of the Ld. Counsel for the Corporate Debtor that the petition is hopelessly barred by the law of limitation is devoid of merit and is accordingly being rejected.

21. Further, as per Schedule II to the Working Capital Term Loan Agreement dated 28<sup>th</sup> June 2016, the principal of Rs. 2 crore per annum was payable from 31<sup>st</sup> March, 2018 to 31<sup>st</sup> March, 2021. The Demand Notice was issued by the Financial Creditor to the Corporate Debtor on 12<sup>th</sup> September, 2022 recalling the entire loan amount. Thus, until before the issuance of aforesaid demand notice, the working capital term loan was payable in installments as stated hereinabove. Hence, the default in repayment of each loan installment of Rs. 2 crores due on 31<sup>st</sup> March of every year gives an independent and a fresh cause of action and therefore, the period of limitation under Article 137 of the

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Schedule to the Limitation Act, 1963 will be computed in respect of each default that has happened on 31<sup>st</sup> March. The table below shows the computation of limitation:

<b><u>Sr. No.</u></b>	<b><u>Date of Default</u></b>	<b><u>Amount Due every year (Rupees)</u></b>	<b><u>Expiry of Limitation On</u></b>
1.	31 <sup>st</sup> March, 2018	2,00,00,000/-	16 <sup>th</sup> March, 2023
2.	31 <sup>st</sup> March, 2019	2,00,00,000/-	31 <sup>st</sup> March, 2022
3.	31 <sup>st</sup> March, 2020	2,00,00,000/-	31 <sup>st</sup> March, 2023
4.	31 <sup>st</sup> March, 2021	2,00,00,000/-	31 <sup>st</sup> March, 2024.

The last two instalments of rupees two crores each are due on 31<sup>st</sup> March, 2023 and 31<sup>st</sup> March, 2024. Hence, the petition is held to be within limitation. Even otherwise, if it is taken into consideration that the entire loan fell due on first default committed on 31<sup>st</sup> March, 2018, then too, the period of limitation expires on 16<sup>th</sup> March, 2023. The petition has been filed on 16<sup>th</sup> March, 2023. Hence, the present petition, without an iota of doubt, is held to be within limitation.

22. Counsel for the Corporate Debtor had submitted that the Corporate Debtor is not in receipt of the Demand Notice dated September 12, 2022 allegedly issued by the Financial Creditor. The Corporate Debtor in its Affidavit-in-Reply filed on 18<sup>th</sup> September, 2023 has averred at Para 9 therein that the petition has been filed without issuance of any demand notice for the alleged default/claim. Therefore, the Ld. Counsel for the Respondent/Corporate Debtor argued that since the petition has been filed by the Financial Creditor without issuing a demand notice on the Corporate Debtor in ignorance of the principles of natural justice, more particularly the principle of “audi alteram partem”, the Petition deserves to be dismissed in limine. Per contra, the Ld. Counsel for the Financial Creditor has submitted that unlike Section 8 & 9 of the Code, there is no such statutory requirement for a Financial Creditor to issue a demand notice to the Corporate Debtor before filing a Petition u/s 7 of the Code. We agree with the submission of the Ld. Counsel for the Applicant/Financial Creditor that there is no statutory requirement under the Code (or under the Rules and Regulations laid thereunder) to issue a Demand Notice to the Corporate Debtor before filing a Petition u/s 7 of the Code. Therefore, the submission on behalf of Corporate Debtor that the Petition should be dismissed for want of demand notice is meritless.

23. No other points have been raised on behalf of the Corporate Debtor. Even otherwise the factum of existence of financial debt and its default stand proven on record. It has also been established that the petition is within time.

24. The Corporate Debtor in its Affidavit-in-reply stated at Para 20 as follows: “20. Further, the Respondent made sincere efforts to repay the loan

*amount, even initiating payments in the form of interest. Unfortunately, the company's financial struggles and mounting losses proved insurmountable, causing difficulties in fulfilling their obligation to repay the loan."* As the Corporate Debtor has expressed its inability to fulfill its obligation to repay the loan, this is all the more reason to admit the Corporate Debtor into the corporate insolvency resolution process.

25. As a result of the foregoing discussion, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms.

**ORDER**

- (a) The petition bearing **CP(IB)-370/MB/2023** filed by **L&T FINANCE LIMITED** the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s. **STERLING HEALTHCARE LIMITED** [CIN: U85110MH2007PLC171223] is hereby **admitted;**
- (b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium-
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the

Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Mr. Dhiren Shantilal Shah**, an Insolvency Professional having registration No. **IBBI/IPA-001/IP-P00220/2017-2018/10419**, (email: [dss@dsshah.in](mailto:dss@dsshah.in)), **is hereby appointed as Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of **₹ 5,00,000/-** (Rupees Five Lakhs only) with the IRP towards the initial **CIRP costs** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

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- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

**Sd/-**

**ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**