



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

CP(IB) 686 MB 2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

IN THE MATTER OF

Bank of Baroda

Zonal Stressed Asset Recovery Branch,
Meber Chambers, Ground Floor, Dr.
Sunderlal Behl Marg, Ballard Estate,
Mumbai 400001.

... Financial Creditors

V/s.

Mis Arch Pharamalabs Limited

3rd Floor, Titanic Building, Chandivali
Farm Road, Nr. HDFC Bank, Andheri
(East), Mumbai – 400072.

... Corporate Debtors

Order delivered on :- 15.05.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Financial Creditor : Sr. Adv. Ravi Kadam a/w
Malhar Zatakia and Vinod Nagula



For the Corporate Debtor : Sr. Adv. Chetan Kapadia a/w Rohit Gupta

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by Bank of Baroda (hereinafter called “**the Petitioner**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Mis Arch Pharamalabs Limited (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 134,99,00,000/-.

The submissions by the Financial Creditor:-

2. The present Petition under Section 7 of Insolvency and Bankruptcy Code, 2016 is being filed against *Mis Arch Pharnalabs Limited* (“**Corporate Debtor**”) for the various credit facilities granted to it by Bank of Baroda (erstwhile Vijaya Bank).
3. The Applicant states that the Corporate Debtor is a Company incorporated under the Companies Act, 1956 and is engaged in manufacturing of active pharmaceutical ingredients, intermediaries and Contract Research and Manufacturing Services (CRAMS) segment. The Corporate Debtor has been availing credit facilities for carrying on its business from many banks and financial institutions including the Applicant.



4. Sometime in November 2008, at the request of the Corporate Debtor, the Corporate Debtor was sanctioned a Structured Mezzanine Corporate Facility (SMCF)-I of Rs. 2.83 crore by the Applicant vide its Sanction Letter.
5. Thereafter, the Corporate Debtor again approached the Applicant for obtaining Term Loan to the tune of Rs. 50.0 crore. Pursuant thereto, the Applicant vide its Sanction Letter dated 8th October 2011 sanctioned a Medium-Term Loan (MTL) to the Corporate Debtor.
6. Thereafter, at the request of the Defendant No. I, the Applicant vide its Sanction Letter dated 8th October 2011 sanctioned a Medium-Term Loan (MTL) to the Corporate Debtor of Rs.50 crores. Pursuant to the above, the Corporate Debtor in order to secure the said credit facilities, through Board Resolution dated 11th October 2011 the Corporate Debtor executed the following documents in favour of the Applicant:
 - i. Demand Promissory Note dated 12th October 2011;
 - ii. Undertaking dated 12th October 2011;
 - iii. Letter dated 11th October 2011 confirming that the borrowing is within the resolution passed by the shareholders of Corporate Debtor;
 - iv. Articles of Agreement dated 12th October 2011;
 - v. Letter of Guarantee of Mr. Ajit Karnath, Mr. Manoj T Jain dated 10th October 2011 and Mr. Rajendra P Kaimal dated 12th October 2011
7. Further, at the request of the Corporate Debtor, the Applicant



sanctioned a Structured Mezzanine Corporate Facility (SMCF)-II of Rs.2.83 crore by the Applicant vide its Sanction Letter dated 24th July 2012.

8. The Corporate Debtor started defaulting in the repayment of the above term loan since 12th April 2013 (date of default). Thereafter, the Corporate Debtor through its Directors, had issued certain cheques towards discharge of its liabilities under the aforesaid Credit Facilities. However, the said cheques were dishonored upon presentment by the Applicant. Therefore, the Applicant on 6th May 2013 issued Notice under Section 138 of the Negotiable Instrument Act, 1881 to the Corporate Debtor and its Directors. Subsequently, Criminal Complaint under Section 138 of Negotiable Instrument Act was filed before Metropolitan Magistrate, 28th Court, Esplanade, Mumbai. The same is pending as on date.
9. The Corporate Debtor had then approached the consortium of Lenders for restructuring of its dues. Considering the said request of the Corporate Debtor, vide Letter of Approval dated 24th October 2013, the account of the Corporate Debtor was restructured under the CDR mechanism. The facilities of the Applicant were restructured as under:

Sr. no.	Facility	Amount (Rs. in crore)
1.	Working Capital Tenn Loan (WCTL) <i>(by restructuring existing Short-Term Loan post carving out of OCD) – WCTL - 3 as</i>	42.84 (restructured)



	<i>per CDR package</i>	
2.	Term Loan (<i>by restructuring existing SMCF.s</i>) - TL - 3 as per CDR package	4.53 (restructured)
3.	Funded Interest Tenn Loan - I (FITL-1) - New (<i>to be created by way of fanding of interest in arrears on the TL and STL till the cut-off date</i>) - FITL - 3 as per CDR package	1.67 (fresh)
4.	Funded Interest Tenn Loan - 2 (FITL-2) - New (<i>to be created by way of fanding of interest in arrears on the TL / WCTL from the cut-off date i.e. 01.04.2013 till 31.03.2015</i>) - FITL- 4 as per CDR package	9.95 (fresh)
5.	Optionally Convertible Debenture (OCD)	7.17
	Total	66.16

10. Pursuant to the above restructuring, the Corporate Debtor executed the following documents in favour of its Lenders:
- i. Master Restructuring Agreement dated 27¹¹¹ December 2013



ii. Security Trustee Agreement dated 27th August 2014

11. Subsequently, vide Letter dated 27th January 2016, the Corporate Debtor filed reference under Section 15 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985. Further, sometime in 2018, the Applicant filed an Original Application for recovery of Rs. 89,63,12,137/- before the Hon'ble Debt Recovery Tribunal - II, Delhi and the same is pending for adjudication as on date.
12. The Corporate Debtor has been acknowledging the dues of the Lenders including the Applicant in its yearly Annual Reports. In the last available Annual Report for the Financial Year 2019-2020 of the Corporate Debtor, the Corporate Debtor has acknowledged the debt of the Lenders to the tune of Rs. 3,602.78 crore, with Applicant's principal dues being Rs. 67.21 crore. The Corporate Debtor is continuing to default in payment of the outstanding dues of the Applicant and as on date, a total of Rs. 134.99 crore is due and payable by the Corporate Debtor to the Applicant. Therefore, the Applicant is filing the present Petition.

Reply filed by the Corporate Debtor:-

13. At the outset, the respondent has categorically denied the contents of the Petition in its entirety. The alleged debt mentioned in the Petition is also categorically denied. the claim of the Petitioner is not maintainable under the Insolvency and Bankruptcy Code, 2016 ("Code"). No contention, allegation, or averment of the Petitioner should be deemed admitted by the Respondent due to a lack of specific denial or traverse, unless expressly admitted herein.
14. Under a scheme of Amalgamation approved by Central Government,



Dena bank and Vijaya Bank have been amalgamated with Petitioner w.e.f from 1st April 2019. The erstwhile Vijaya Bank had filed Original Application No.568 of 2018 against the Respondent before Debts Recovery Tribunal, New Delhi seeking a declaration relating to default/date of default and the quantum of debt. Having subjected itself to the adjudicatory mechanism under the Recovery of Debts and Bankruptcy Act, 1993 ('RDB Act'), the Petitioner is forbidden from seeking this Hon'ble Tribunal's adjudication over the same acts/actions/facts/claims which are being adjudicated by the Hon'ble DRT, Delhi. It is submitted that the act of the alleged Petitioner of filing parallel proceedings constitutes needless multiplicity of proceedings which ought not to be entertained by this Tribunal. It is further stated that the issue of maintainability of the claim of Vijaya Bank has been raised by the Respondent in the above Original Application on the ground of limitation and the same is pending hearing before the Hon'ble Tribunal.

15. It is further stated that the Petitioner is engaged in the practice of forum shopping by with the intent to exert pressure and create obstacles in the Respondent's ongoing restructuring plan. It is further stated that the Petitioner has intentionally filed the present Petition, strategically using the Code as a recovery tool and this Tribunal as a recovery forum. Without prejudice to the above, it is submitted that the Petition deserves to be dismissed *in limine* on the following preliminary amongst other grounds, which are taken without prejudice to one another and in the alternate to each other.
16. Mr. Akhilesh Kumar, who has filed the Petition on behalf of the Petitioner is not Authorised by the Petitioner to file it. The Power of Attorney annexed to the Petition is given by Vijaya Bank to Mr.



Akhilesh Kumar before its amalgamation with the Petitioner. On amalgamation of erstwhile Vijaya Bank with the present Petitioner, the board of Vijaya Bank stood dissolved. Therefore, the Power of Attorney relied upon by the Petitioner is not a valid document for the filing of the Petition. Therefore, the Petition has not been filed by an Authorised representative of the Petitioner under rule 2(6) of NCLT rules read in conjunction with section 432 and 176 of the Companies Act 1956.

17. Furthermore, even if the issue of amalgamation set aside, the Power of Attorney granted by Vijaya Bank (which no longer exists after amalgamation in 2019) did not authorize Mr. Akhilesh Kumar to initiate the Corporate Insolvency Resolution Process against the Respondent. In fact, the said Power of Attorney is a general power of attorney, providing general powers to Vijaya Bank's employees long before the promulgation of the Code in 2016. The authorization required under the Insolvency and Bankruptcy Code can only be granted after the enactment of the Code. Proper and specific authorization forms the foundation of all proceedings under the Code. An invalid authorization undermines the basis of the Petition, and this cannot be rectified under the Code. Therefore, the Power of Attorney cannot be considered valid for filing the Petition.
18. Besides, the Petition is not maintainable as the claim of the Petitioner is also time-barred under Section 238 of the Code, read with Article 137 of the Limitation Act, 1963. The Petitioner could not file the present petition under the Code as it was filed beyond the three-year period from the alleged date of default, i.e., 30th September 2012.
19. The Petitioner has based its purported claim under three loans to the



Respondent: -

- i. Structured Mezzanine Corporate Finance Facilities (hereinafter referred to as “**SMCF-I**”) for Rs 2.83 crores on 14.11.2008;
- ii. Medium Term Loan (hereinafter referred to as “MTL”) for Rs 50 crores on 08.10.2011;
- iii. Structured Mezzanine Corporate Finance Facilities (hereinafter referred to as “**SMCF-II**”) for Rs 2.83 crores on 24.07.2012.
- iv. The first date default, if any, in the account in the Medium-Term Loan (hereinafter referred to as “MTL”) for Rs 50 crores took place **in September 2012**, therefore, the limitation of 3 years from such date of default ended on **30th September 2015**. Therefore, the Petition is barred under the Code. Without prejudice to the above, even if we go by the contention of the Petitioner that the account of the Respondent became a Non- Performing Asset on 12th June 2013, which would mean that the account was in default on 12th March 2013, still the claim of the Petitioner is barred by limitation.

20. It is further stated that the lenders of the Respondent agreed for restructuring of the Respondent under the CDR system in April 2013. However, the scheme could not be successfully implemented due to restrictions placed on the Respondent by the Hon’ble High Court regarding the creation of security on fixed and movable assets, as some of the lenders were not participating in the CDR scheme. The



Master Restructuring Agreement was also not executed by some of the lenders.

21. As there was no restructuring of the Respondent's account and no default under the CDR scheme, the date of default, if any, in this case remained 12th March 2013 and calculating the three-year period from the date of default, which is 12th March 2013, the limitation for filing the Petition against the Respondent expired on 12th March 2016. The Petitioner filed the Petition on 25th February 2023, rendering it hopelessly time-barred under the period prescribed of the Limitation Act, 1963.
22. It is further stated that the Petitioner has relied on the reference made by the Respondent to BIFR under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) on 21st January 2016, as well as the letter issued by the Board for Industrial and Financial Reconstruction (BIFR) dated 9th August 2016. It is noteworthy that this reference was not maintainable and was not accepted by the lenders since one of the lenders, IndusInd Bank, had assigned its debt to Pegasus ARC Pvt Ltd prior to the filing of the reference. Thus, according to Section 15(1) of the SICA, the reference was not maintainable. Therefore, it becomes evident that the reference initiated by the Respondent held no bearing in the year 2016, as proceedings pursued by other lenders against the Respondent continued. Consequently, the Petitioner cannot lay claim to any advantage resulting from the reference made under the SICA Act to extend the time limits prescribed by the Code. Therefore, the present Petition cannot be entertained by this Hon'ble Tribunal.
23. It is further stated that the Respondent had not acknowledged any



liability or debt of the Petitioner in the year 2016.

24. Even if it is considered, without conceding, that the Petitioner benefits from the reference made by the Respondent on 27th January 2016, it's important to note that upon the enactment of the IBC on 1st December 2016, the SICA was repealed, and all matters pending before the BIFR were deemed to have abated. As a result, the limitation period for the Petitioner's claim expired on 16th January 2017. In any case, the Petitioner's legal recourse against the Respondent, particularly in the context of pursuing the Petition under the Code lapsed in January 2017. Consequently, there is no basis for considering the Petition filed in 2023 as maintainable before this Hon'ble Tribunal.
25. Further, it is stated that the Petitioners have annexed the Balance Sheet of the Respondent for the year 2019-2020. There is no acknowledgment of the debt by the Respondent in the Balance Sheet, which could be used by the Petitioner to extend the limitation under Section 18 of the Limitation Act, 1963. The Respondent does not admit the debt of the Petitioner and is unaware of any documents acknowledging the Petitioner's claim.
26. Since there are no documents annexed to prove the default under the aforesaid facilities and the Statement of Accounts are not supported by the Bankers Books Evidence Act, 1961, therefore such claim of the Petitioner cannot be relied upon or taken into consideration for want of appropriate and proper documents under the Code. Further, The Petitioner has failed to provide bifurcation of amounts with respect to each facility as required for the purpose of deciding the date of default and the amount due under each facility whereas the Form under



section 7 of the Petition requires a proper computation of date and days of default under each facility.

27. The Petitioner has relied upon the following documents namely, (i) Articles of Agreement (ii) Letter of Guarantee (iii) Master Restructuring Agreement (iv) Security Trustee Agreement for its alleged claim of Rs.50 crores. The aforesaid documents were executed in Delhi. The Petitioner has apparently brought these documents into the State of Maharashtra for the purposes of filing the present Petition against the Respondent. As per the requirement under section 19 of the Maharashtra Stamp Act, 1958, these documents or copies thereof (as the case may be) are required to be stamped in accordance with the Bombay Stamp Act, 1958. In the absence of such payment, such documents cannot be looked into by this Tribunal. The stamp duty payable on the aforesaid documents in the State of Maharashtra is more than the stamp duty paid on the documents in New Delhi. Therefore, the said documents are required to be impounded in accordance with the provisions of the Bombay Stamp Act. The liability to pay the duty is on the Petitioner as the document has been brought into the State of Maharashtra without the consent of the Respondent. By virtue of Sections 18, 19, 33 and 34 of the Bombay Stamp Act, 1958, this Tribunal cannot act upon any documents which are not sufficiently stamped as per the provisions of the Act and is bound to impound the said documents and send the same to the appropriate authority who is required to deal with the same in accordance with Sections 37 and 39 of the Bombay Stamp Act 1958.

28. It is further stated that Form 1 should be accompanied by the required documents and records as specified in the Insolvency and



Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Petitioner has relied on the Statement of Accounts to support its case against the Respondent. However, these Statements of Accounts, annexed as Exhibit S, lack certification by the Petitioner and are in complete disarray and are not in accordance with the Bankers Book Evidence Act, 1891.

29. It is further stated that the Respondent had faced some financial difficulties in the year 2012-2013 due to which it had approached the Corporate Debt Restructuring Forum (“CDR”) through the lead bank i.e. ICICI Bank Ltd. for restructuring its debts. Majority of lenders agreed for the restructuring and found the project of the Respondent, viable and sustainable and approved the CDR scheme sanctioned under the aegis of the Reserve Bank of India. However, the additional funding by the Lenders did not take place for the reason that securities were not perfected *inter alia* due to orders passed in pending court proceedings filed against the Respondent by the lenders not participating in the CDR scheme. Eventually the CDR scheme could not be implemented for the Respondent.
30. The Respondent herein, however, made constant efforts to settle and restructure its liability with lenders and further made sustained efforts to ensure that the business went on despite no funds being available for its working capital. In the meanwhile, various creditors initiated winding up proceedings under the provisions of the Companies Act, 1956, before the Hon’ble Bombay High Court, by filing Company Petitions against the Respondent. One of the Creditors who initiated proceedings was Kotak Mahindra Bank Ltd (KMBL).
31. It is further stated that between the years 2013 and 2016, a substantial



acquisition of the debt of the Respondent was made by JMFARC. JM Financial Asset Reconstruction Company Ltd. acquired the debt of the Respondents constituting approx. 65% of the secured loans of Banks and FIs on 31st March, 2016. It is further submitting that JMFARC was also ready and willing to grant further financial assistance to the Respondent to overcome the financial difficulties faced by it.

32. Under a Restructuring Plan, JMFARC had also sanctioned and disbursed funds for Working capital to the Respondent. It is further stated that the Respondent was given new lease of life by JMFARC and hence the operating activities were increased by the Respondent.
33. The Respondent has taken enormous efforts to revive itself which is evident from the settlements it has reached with few creditors and are in the process of paying in a structured manner. In fact, the creditors so far have supported the Respondent by agreeing to the settlement proposal and accepting mutually agreed repayment structure proposed by the Respondent. It is earnestly submitted that, any obstruction in the aforesaid restructuring plan which has been entered into by the Respondent with JMFARC, who holds 98% of the total Debt of the Respondent as of today, will again create a precarious situation for the Respondent whereby the demand of the pending dues by all its creditors, workers, statutory dues and other payments, will again lead to a total financial collapse of the Respondent on account of the Petitioner who is trying to sabotage the restructuring plan by using IBC as a recovery tool.
34. It is further stated that the alleged claim made by the Petitioner is grossly misconceived and is liable to be dismissed at the very outset.



The claim is such, which involves seriously disputed questions of fact and law. the Petition has been filed by Petitioner only to create a pressure upon the Respondent. It is equally trite that the adjudication of such claim is required to be done only by way of filing of a suit and cannot be done in a summary proceeding by an Application u/s. 7 of the Code such as the present one.

35. It is stated that the Tribunal while deciding the present Application filed u/s. 7 of the Code has been burdened with a responsibility in so far as determining the occurrence of default in accordance with the provisions of law and, therefore, merely because the Petitioner claims of there being default, does not ipso facto entitle the Tribunal to admit the present Petition. In fact, the term default ought to be construed in larger sense, after taking into consideration the various definition of default as provided under various laws including the Code and only upon necessary examination and due determination of default can a Petition u/s. 7 be admitted. The Tribunal ought to take into consideration the hardship the Respondent and its shareholders and Directors have to undergo, in case the determination of default is not duly adjudicated upon by the Tribunal. The said fact coupled with the fact that the hardship caused to the Respondent owing to the illegal and wrongful acts and deeds of the Petitioner.
36. In the event, it has been submitted that Petition suffers from various defects and is completely bad in law and therefore, ought to be rejected at the outset under the provisions of the Code as read with the Rules.



FINDINGS

37. We have heard the Counsel for the parties and have gone through the records.
38. During the course of the arguments the Ld. Counsel for the Petitioner has argued that there is no dispute with regard to the fact that the Corporate Debtor availed credit facility from the Petitioner in the year between 2008 and 2011 against execution of documents and under the said facilities last payment was made by the Corporate Debtor in the term loan account on 12.03.2013 and thereafter, there has been a continuous default since 12.04.2013, the date of default. Thus, according to the counsel for the Petitioner, the factum of debt and default stands established on record.
39. The Ld. Counsel for the Petitioner has further argued that the petition is well within the period of limitation. In this regard, the Ld. Counsel for the Petitioner has referred to several documents whereby the Corporate Debtor acknowledged its liability to pay the debt to the Financial Creditor from time to time and the same are master restructuring agreement, security trustee agreement dated 27.08.2014 etc. It has also been pointed by the Ld. Counsel for the Petitioner that the period during which BIFR proceedings remained pending that is from 29.01.2016 to 26.07.2016 shall also be excluded while calculating the limitation.
40. The Ld. Counsel for the Petitioner has further contended that the Corporate Debtor has been acknowledging the debt towards the lenders in the annual reports for the Year 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020. Apart from that the Corporate Debtor executed and filed consent terms dated 28.11.2017 with DRT-



II, Mumbai. The Ld. Counsel for the Petitioner has further contended that in the light of Hon'ble Supreme Court judgment passed in sue-moto Writ Petition No. 3/ 2020, the period from 15.03.2020 till 28.02.2022 is also liable to be excluded for the purposes of limitation and therefore, the petition is well within the period of limitation.

41. Ld. Counsel for the Petitioner has further argued that at the admission stage, provision of section 12A are not relevant and therefore, at this stage, merely because the other financial creditors holding more than 90% of the debt of the Corporate Debtor are against the initiation of CIRP, the instant application under Section 7 filed by the Petitioner bank cannot be scuttled.
42. On the other hand, the Counsel for the Respondent has argued that the Company is barred by the law of limitation. According to the Counsel for the Corporate Debtor the date of default has been claimed to be 12.04.2013 whereas the Company Petition has been filed on 25.02.2023. Counsel for the Corporate Debtor has further argued that the Petitioner has miserably failed to produce any document constituting a valid acknowledgement of the debt by Respondent on the basis of which the period of limitation can be deemed to have been extended. The Petitioner has further miserably failed to establish a chain of link to prove the so-called acknowledgments of debt to establish that the Petition is within time.
43. The Counsel for the Corporate Debtor has further argued that the Master Restructuring Agreement executed by the Corporate Debtor on 26.12.2013 cannot be considered as an acknowledgment of debt. Even if it is taken into consideration, it would extend the limitation



only 25.12.2016. As regard the Security Trustee Agreement dated 27.08.2014, it has been submitted by the Counsel for the Corporate Debtor submitted that it does not constitute acknowledgment as through this document no acknowledgment has been made nor any promise to pay was made by the Corporate Debtor. The document only create security interest in favour of the lenders pursuant to the Master Restructuring Agreement. Therefore, this document cannot be taken into account for extending the period of limitation.

44. Ld. Counsel for the Corporate Debtor has further argued that the Petitioner's reliance on the annual report for the year 2015-16 is wholly erroneous as the said annual report cannot be treated as acknowledgment of debt on the part of the Corporate Debtor. In this regard, it has been pointed out by the Counsel for the Corporate Debtor that in the annual report for the year 2015-16, the Corporate Debtor has not acknowledged any debt payable to the Petitioner nor the name of the petitioner is figuring anywhere in the said document as a Financial Creditor and, therefore, the annual report for the year 2015-16 could not be taken into consideration as an acknowledgment of debt on the part of the Corporate Debtor. The Counsel for the Corporate Debtor has further argued that the Petitioner has further relied on the annual reports for the year 2016-17, 2017-18 and 2018-19. However, in these annual reports also, the Corporate Debtor has not acknowledged any liability towards the Petitioner in specific and definite terms even though in the annual report for the year 2019-20 the Corporate Debtor has acknowledged its liability towards the lenders to the tune of Rs.3602.78 crores. According to the Ld. Counsel for the Corporate Debtor, collective acknowledgement towards all the lenders is of no use to the Applicant as the same was issued in the



year 2020 after a period of four years when the limitation had expired in December 2016. Therefore, according to the Counsel for the Corporate Debtors, looking at the case from any angle, ex-facie, the Petition is palpably barred by time.

45. Ld. Counsel for the Corporate Debtor has further argued that the present Petition is nothing but a gross abuse of the process of law as well as the provisions of the IB Code, which has been filed for recovery of the outstanding dues. According to the Counsel for the Corporate Debtor, the IB Code, 2016 is not a recovery mechanism legislation. Rather the same aims at resolution of the distressed Corporate Debtors. In this regard, the Counsel for the Corporate Debtor has further pointed out that JMFARC is presently holding 90 percent of the debt of the Corporate Debtor. The said entity has filed a separate intervention Application seeking and supporting the dismissal of the present proceedings.
46. Ld. Counsel for the Corporate Debtor has argued that the JMFARC has been tirelessly working towards the resolution of the entire debt of the Corporate Debtor. The Counsel for the Corporate Debtor has further contended that even the Petition is admitted, the CIRP will be bound to be withdrawn considering the fact that the presently JMFARC is holding more than 90 percent share of the debt owed by the Corporate Debtor and would be having that much voting share in the event of CoC being constituted, therefore, the admission of the present Petition would be an exercise in futility and sheer weightage of time.
47. We have weighed the contention raised by the counsel for the parties and have also carefully gone through the records.



48.

The primary objection raised by the Ld. Counsel for the Corporate Debtor is with regard to the issue of limitation. As per the case of the Petitioner, initially the Corporate Debtor was extended structured mezzanine corporate facility of 2.83 Crores vide sanctioned letter dated 14.11.2008. Thereafter, vide sanctioned letter dated 08.10.2011 medium term loan of 50 Crore was sanctioned against execution of various documents like Demand Promissory Note, undertaking, letter of guarantee etc. Thereafter, again vide sanctioned letter dated 24.07.2012 structured mezzanine corporate facility of 2.83 Crore was sanctioned. As per the Petitioner, the Corporate Debtor defaulted in repayment of the outstanding dues and on the request of the Corporate Debtor the account was restructured under Corporate Debt Restructuring (CDR) mechanism vide sanctioned letter dated 19.10.2013. Pursuant to the restructuring, the Corporate Debtor executed Master Restructuring Agreement dated 27.12.2013 and Security Trustee Agreement dated 27.08.2014. As the Corporate Debtor again failed to meet the commitments under the approved restructuring, its account was classified as NPA w.e.f. 12.06.2013 accordingly, the petitioner has claimed the date of default as 12.04.2013.

49. Though the petition was filed on 25.02.2023, the Ld. Counsel for the Petitioner has relied upon certain acknowledgements made by the Corporate Debtor from time to time by which the period of limitation stood extended from time to time and if the said acknowledgements are taken into account, the petition is liable to be held to have been filed within the period of limitation.

50. The first acknowledgement was made by the Corporate Debtor when the Master Restructuring Agreement was executed on 27.12.2013



which is signed by all the Financial Creditors including Vijaya Bank, an entity which merged with the Petitioner bank subsequently. In the schedule 1 & schedule 2 attached with the agreement, the name of the bank and the outstanding dues under each category has been expressly mentioned and the total liability on account all the loan facility agreements towards Vijaya Bank is stated to be Rs.56.20 Crores. Therefore, this constitutes a valid acknowledgement.

51. The second acknowledgement was made by the Corporate Debtor when it executed Security Trustee Agreement on 27.08.2014. In this document also, the name of all the financial creditors of the corporate debtor has been expressly mentioned and the name of Vijaya Bank figures in the schedule-1 attached with the agreement at Sr. No. 33. Therefore, this also constitutes a valid acknowledgement which had the effect of extending the period of limitation upto 26.08.2017.
52. It is also not a disputed fact that a BIFR reference was made by the corporate debtor under section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 on 29.01.2016 and the said reference was decided on 26.07.2016. It can also not be disputed that the period of 177 days from 29.01.2016 to 26.07.2016, being moratorium period under the aforesaid Act is liable to be deleted while calculating the period of limitation. If the said period is excluded, the limitation would be deemed to have been extended upto 23.02.2018.
53. The next acknowledgement on the part of the Corporate Debtor is claimed to have been made on 30.09.2016 when the Annual Report for the financial year 2015-16 was signed by the Corporate Debtor whereby the debt was acknowledged on consolidated basis. We have perused the Annual Report for the year 2015-16 filed with the



rejoinder as Exhibit-F whereby the defaulted amount due towards the financial institutions, banks and debenture holders has been stated to be to the extent of Rs. 658 Crores. It has been argued on behalf of the corporate debtor that this cannot be considered as an acknowledgement as the name of the petitioner bank or that of Vijaya Bank is not mentioned anywhere in this Annual Report. However, we consider this argument as specious. It is not the case of the corporate debtor that prior to 30.09.2016, when the Annual Report was finalized, the debt of Vijaya Bank had been paid. Rather, it is evident from record that ever since the loan was declared NPA in the year 2013, no amount was repaid. In this context, a reference can, be made to the law laid down in *Lahore Enamelling and Stamping Company Limited vs. A. K. Bhalla and others AIR 1958 P & H 341* whereby it was held that debts due to creditors not mentioned by name but included in the item relating to “Loans (Unsecured)” or as due to “Sundry Creditors” mentioned in the balance sheet amount to acknowledgment within the provisions of Section 19 of the Indian Limitation Act so as to extend the period of limitation w.e.f. the date of the signing of acknowledgment. In this very case, there is a reference to another case titled as *Jones vs. Bellegrove Properties Limited 1949 (1) All ER 948 (W)* whereby it was held that if the plaintiff had lent a sum of 1807 Pounds to the defendant company in which he was a shareholder and at the general meeting of the company, in 1946, the plaintiff was handed by a director the accounts of the company, signed by the accountants and two directors, which included the balance sheet for the years 1939 to 1945, in each of which was the entry “Sundry Creditors 7638 Pounds”. It was held by the King’s Bench Division that parol evidence was admissible to show that the sum mentioned in the entry included the debt to the



plaintiff and the entry constituted to the acknowledgment of the debt due to the plaintiff within the meaning of the Limitation Act, 1939. In these circumstances, it can be safely held that the debt acknowledged in the Annual Report for the year 2015-16 included the debt of Vijaya Bank as well even if the name of the bank is not specifically mentioned in the annual report. Moreover, it is not the case of the Corporate Debtor that any part of the debt was repaid prior to the annual report in question. Therefore, the acknowledgment of debt made in this annual report as also the subsequent annual reports, should be treated as legal and valid acknowledgment despite the fact that the name of the bank is not mentioned specifically in the said reports though the total figure of the liability is mentioned.

54. The Petitioner has further relied upon the Annual Report for the year 2016-17 which also similarly constitutes acknowledgment of debt on the part of the Corporate Debtor. In this Annual Report also, the total outstanding dues towards financial institutions, Banks etc. has been acknowledged to be outstanding to the tune of Rs.919.26 Crores on consolidated basis. Therefore, this also constitutes valid acknowledgment.
55. The Financial Creditor has further relied upon the consent terms executed by the Corporate Debtor with JM Financial Asset Reconstruction Company on 28.11.2017. However, this cannot be treated as a valid acknowledgement of the outstanding dues of Vijaya Bank as the name of the said bank does not figure anywhere in the consent terms.
56. The Financial Creditor has also relied upon the Annual Report for



the year 2017-18 annexed with the rejoinder as Exhibit-F whereby also the debt has been acknowledged by the corporate debtor on consolidated basis as on 07.09.2018. In this Annual Report, the consolidated outstanding dues towards banks and financial institutions swelled to Rs.100.29 Crores.

57. In addition to this, the Financial creditor has also relied upon the Annual Report for the year 2018-19, also annexed with the rejoinder, wherein too the debt towards the banks and financial institutions have been acknowledged on consolidated basis. The Financial Creditor has further relied upon the Annual Report for 2019-20 whereby also the Corporate Debtor has acknowledged its liability towards the banks and financial institutions on consolidated basis.
58. In the light of the aforesaid acknowledgement made by the Corporate Debtor from time to time, it cannot be said that the petition is barred by time. Here it can also not be forgotten that as per the order of the Hon'ble Supreme Court passed in sue-moto Writ Petition No.3/2020, the period from 15.03.2020 till 28.02.2022 is liable to be excluded from reckoning while calculating the limitation period.
59. It has further been argued by the counsel for the Corporate Debtor that the 90% of the lenders are resisting the admission of the present company petition. In this regard, the Ld. Counsel for the Corporate Debtor has pointed out that JMFARC presently holds 98% of the consolidated financial debt of the Corporate Debtor. In the year 2016-17 and 2017-18 the respondent gradually restarted operations at 4 out of its 7 manufacturing sites where it is receiving good response from the domestic and overseas customers. JMFARC along with the Corporate Debtor approach the petitioner for restructuring of the loan



but the petitioner rejected the proposal even though the petitioner is only an unsecured creditor and its debt ranks much lower to the debt of JMFARC. The Ld. Counsel for the Corporate Debtor has further argued that the present petition has been filed with a malicious intent by a minority unsecured creditor holding less than 2% of the debt which is nothing but to derail and jeopardise the overall restructuring of the debt of the Corporate Debtor which is presently over Rs. 3000 Crores. The Ld. Counsel for the Corporate Debtor has further argued that the proceeding under section 7 of the Code cannot be used as a recovery mechanism and the petitioner, by filing the present petition, is simply seeking to recover its outstanding dues from the Corporate Debtor which has just begun its recovery and revival with the help of its largest lender i.e. JMFARC and the process of revival cannot be allowed to be scuttled at the instance of lender holding less than 2% of the total debt of the Corporate Debtor. In support of his contention the Ld. Counsel for the Corporate Debtor has placed reliance upon *SS Engineers Vs. HPCL 2022 SSC online SC 1385* whereby it was held that NCLT, exercising power under section 7 or 9 of IBC, is not a debt collection forum and it is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claim by an Operational Creditor. On this very point counsel for the Corporate Debtor has further relied upon *Sesh Nath Singh Vs. Baidyati Sheoraphuli Co-operative Bank Limited* whereby it is held that an Adjudicating Authority under IBC is not a substitute forum for collection of debt in the sense it cannot reopen debt which are barred by law or debts, recovery of which has become time barred.

60. We have considered the aforesaid contention raised by the Ld.



Counsel for the Corporate Debtor. However, in our considered view, the rights of a Financial Creditor having outstanding dues of about Rs. 130 Crores cannot be jettisoned and foreclosed at the very outset just because one entity called JMFARC has acquired or holds more than 90% of the debt owed by the Corporate Debtor. There is no such provision in the IBC and, therefore, a comparatively bigger lender cannot be allowed to arm-twist the other lenders to usurp their rights. So far as the case law laid down in *SS Engineers vs. HPCL (Supra)* relied upon by the Counsel for the Corporate Debtor is concerned, the same is not applicable to the instant case as the cited case was a case u/s 9 of the Code, 2016 and there was a pre-existing dispute between the parties due to which the admission of the Petition was declined and besides the Corporate Debtor was a solvent Company whereas it is not so in the instant case. Similarly, the reliance upon *Sesh Nath Singh vs. Baidyabati Sheoraphuli Co-operative Bank Limited (Supra)* is also misplaced which deals with primarily condonation of delay u/s 5 and section 14 of the Limitation Act, 1936. As discussed and held in the foregoing part of this order, the present Petition is well within the period of limitation.

61. Another argument has been raised on behalf of the corporate debtor that since the corporate debtor is on its way to recovery an revival consequent upon re-structuring of its debt by JMFARC, it should not be allowed to be pushed into insolvency necessarily as it would derail the corporate debtor's revival completely. It has also been argued that in the law laid down by the Hon'ble Supreme Court in the *Vidarbha Industries Limited Vs. Axis Bank Limited*, the viability of the corporate debtor must be gauged properly before initiating insolvency proceedings.



62.

Even these contentions raised on behalf of the corporate debtor does not seem to be tenable. In the context of the corporate debtor, there does not appear to be any circumstances on the basis of which the law laid down in the Vidarbha Industries Case (Supra) could be attracted to this case. Here the corporate debtor has admittedly not paid any money to the petitioner since the year 2013 out of the outstanding dues of Rs. 130 Crores. There is no other circumstance which could indicate that the corporate debtor would be able to repay its debt running into more than Rs. 3000 Crores any time in near future. Therefore, the contention that the corporate debtor does not deserves to be pushed into insolvency is wholly erroneous.

63.

Similarly, the argument raised on behalf of the Corporate Debtor that even if the petition is admitted, it would be in exercise in futility also seems fallacious. This argument has been raised on the premise that since JMFARC holds more than 90% of the debt of the corporate debtor, the petition would be bound to be withdrawn at the instance of JMFARC. Even this contention raised on behalf of the Corporate debtor seems to be totally untenable. Prima-facie, under Section 12A read with the relevant Regulations, only an applicant, who files a Petition under section 7 or 9, is entitled to withdraw. Therefore, to presume at the stage that the petition, even if admitted, would be compulsively withdrawn at the instance of JMFARC would not be appropriate.

64.

It has also been argued on behalf of the Corporate Debtor that the Petition has not been filed by a duly authorized person and, therefore, is liable to be dismissed on this ground alone. However, even this contention is not correct. In this regard, a reference can be made to the Power of Attorney Exhibit-A which was executed in favour of



Shri Akhilesh Kumar Jain on 06.03.2008 by the then Vijaya Bank which subsequently merged with the Financial Creditor as per clause 11 of the said Power of Attorney, Shri Akhilesh Kumar Jain was authorized to institute all suits and other legal proceedings relating to the business of the bank in any civil or criminal court of judicature in or outside India and generally to do all such acts, deeds and things as he shall think expedient. It is, therefore, evident from the Power of Attorney that Shri Akhilesh Kumar Jain was authorized and competent to file the present Petition. Simply because the then Vijaya Bank merged with the Financial Creditor would not mean that the said Power of Attorney became extinct.

65. No other pointes have been raised on behalf of the corporate debtor.
66. As an upshot of the forgoing discussion, we are of the considered view that the Petitioner has been able to establish the factum of financial debt and its default having been committed by the corporate debtor and further that the Petition has been filed well within the period of limitation. Therefore, we deem it to be a fit case for admission u/s 7 of the IB Code, 2016. Accordingly, the present Petition is admitted in the following terms:

ORDER

- a. **The above Company Petition No. (IB) -686 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Mis Arch Pharamalabs Limited.**
- b. This Bench hereby appoints Mr. Sanjay Garg,
Registration No: IBBI/IPA001/IP-P-



01865/2019-2020/12919 as the Interim Resolution Professional email :- Rp.Sanjaygarg@gmail.com, address; 193 Agroha Kunj Sector-13, Rohini, New Delhi 110085, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
- k. The name of the Respondent nos. 2 and 3 shall stand deleted from the array of parties.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

ANKIT

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)