

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH, BENGALURU**

(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(Through web-based Video-Conferencing platform)

**C.P. (IB) No.32/BB/2023**

U/s 7 of I&B Code, 2016

R/w Rule 4 of I&B (AAA) Rules, 2016

**IN THE MATTER OF:**

**M/s. Religare Finvest Ltd.**

Registered Office at:

1407, 14<sup>th</sup> Floor, Chiranjiv Tower,

43, Nehru Place,

New Delhi – 110 019.

... Petitioner / Financial Creditor

**Versus**

**M/s. Stellence Pharmscience Pvt. Ltd.**

Registered Office at:

No.456, 1A & 1B, Industrial Area,

Jigani, Bangalore,

Karnataka – 562 106.

... Respondent / Corporate Debtor

**Order delivered on: 06<sup>th</sup> March, 2024**

**CORAM:** 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri Ajai P. Johnson, Adv.

For the Respondent : Shri Susheel Shankar, Adv.

**ORDER**

**Per: BENCH**

**1.** The instant Petition has been filed on 06.12.2022 u/s 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter as 'IBC / Code') r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s. Religare Finvest Limited** (hereinafter as 'Petitioner / Financial Creditor') through its Authorised Representative Mr. Lokesh Kumar Mittal,

Assistant Vice President-Legal, with a prayer to initiate the Corporate Insolvency Resolution Process in respect of **M/s. Stellence Pharmscience Pvt. Ltd.** (hereinafter as 'Respondent / Corporate Debtor') for defaulting an amount of Rs.21,38,75,169.23/- due and payable by the Corporate Debtor as on 28.11.2022, with the date of default being 01.10.2021.

**2.** The Corporate Debtor is a Company incorporated on 01.01.1992 under the provisions of Companies Act, 1956 bearing CIN: U85110KA1992PTC012673 with its registered office situated at Bengaluru. Hence, the jurisdiction lies with this Adjudicating Authority. Its Authorised Share Capital as per MCA Master Data is stated as Rs. 85,00,00,000/- (Rupees Eighty-Five Crores Only) & Paid-up Share Capital is Rs. 43,00,00,000/- (Rupees Forty-Three Crores Only). The Corporate Debtor is into manufacturing of medicines more particularly lifesaving drugs especially for the Country and the Global fight against the Covid Pandemic.

**3.** Brief facts of the case as stated by the Petitioner are as under:

(a) It is stated that the Corporate Debtor, along with other borrowers, availed four Loan Facilities from 2014 to 2015 totalling Rs. 29,00,31,556/- (Rupees Twenty-Nine Crore Thirty-One Thousand Five Hundred Fifty-Six Only) from the Financial Creditor, the details of which are given hereunder:

<b>Sr. No.</b>	<b>Loan Agreement/ Account No.</b>	<b>Loan Sanction/ Agreement Date</b>	<b>Sanctioned Loan Amount (Rs.)</b>
1.	XMORKRM00054865	05.09.2014	20,65,31,556
2.	XMORKRM00058030	06.02.2015	2,92,00,000
3.	XMORKRM00060067	05.05.2015	1,43,00,000
4.	XMORKRM00062610	28.07.2015	4,00,00,000
<b>Total</b>			<b>29,00,31,556</b>

The details of disbursement of above loans are as under:

<b>Sr. No.</b>	<b>Loan Account No.</b>	<b>Disbursement Date</b>	<b>Disbursed Amount (Rs.)</b>
1.	XMORKRM00054865	10.09.2014	20,65,31,556
2.	XMORKRM00058030	16.02.2015	2,92,00,000

3.	XMORKRM00060067	06.05.2015	1,43,00,000
4.	XMORKRM00062610	12.08.2015	4,00,00,000
<b>Total</b>			<b>29,00,31,556</b>

- (b) The Loan Account Nos. XMORKRM00054865 and XMORKRM00062610 were secured through the establishment of security interests by depositing Title Deeds in favour of the Financial Creditor. These Title Deeds pertain to properties described in detail in Part-V of the Petition. Additionally, Memorandum of Entry of First Time Mortgage by Deposit of Title Deeds were executed on 15.09.2014 and 30.07.2015, documenting the deposit of title deeds and the creation of security interests. Furthermore, the secured asset was duly registered with CERSAI.
- (c) It is stated that the Corporate Debtor failed to adhere to the repayment schedule and terms of the Loan Agreement, resulting in irregular and untimely repayment of loan dues. Consequently, the account was declared as a Non-Performing Asset on 30.11.2018. Subsequently, actions were initiated under the SARFAESI Act, 2002 to enforce the Financial Creditor's security interest and recover outstanding dues.
- (d) Following the execution of a Memorandum of Understanding (MoU) dated 29.08.2019 between the Financial Creditor and the Borrowers, which aimed to address overdue amounts and ensure regular EMI payments by 10<sup>th</sup> of each consecutive month, the Borrowers' accounts were upgraded to 'standard'. However, the Corporate Debtor defaulted on its EMI payment of Rs. 37,70,200/- on 01.10.2021, triggering a consistent pattern of defaults thereafter. Consequently, the Corporate Debtor's account was reclassified as Non-Performing Asset (NPA) on 01.04.2022. Since the Corporate Debtor committed default on 01.10.2021, the instant Petition falls within the period of limitation of three years. Further, the Corporate Debtor *vide* letter dated 25.01.2022 addressed to the Financial Creditor has acknowledged its debts and offered to settle the entire dues amounting to Rs. 13,21,54,441.88/-. However, this offer was rejected by the Financial

Creditor through a letter dated 14.02.2022. Therefore, the Corporate Debtor has also acknowledged its debt and default.

- (e) Furthermore, it is stated that as of 28.11.2022, the Corporate Debtor owes a total amount of Rs. 21,38,75,169.23/- (Rupees Twenty-One Crore Thirty-Eight Lakh Seventy-Five Thousand One Hundred Sixty-Nine and Paise Twenty-Three Only), the break-up of which is stated below:

Sr. No.	Loan Account No.	Principal Outstanding (Rs.)	Total Outstanding (Rs.)
1.	XMORKRM00054865	11,95,15,802.00	17,43,67,068.13
2.	XMORKRM00058030	1,85,18,818.00	2,56,81,238.36
3.	XMORKRM00060067	93,74,683.00	1,28,16,997.94
4.	XMORKRM00062610	0.00	10,09,864.80
	<b>Total</b>	<b>14,74,09,303.00</b>	<b>21,38,75,169.23</b>

- (f) In support of its case, Petitioner *inter alia* filed the following documents:

- i. Copy of Sanction Letters dated 05.09.2014, 06.02.2015, 05.05.2015 and 28.07.2015;
- ii. Copy of Loan Agreement Nos. XMORKRM00054865, XMORKRM00058030, XMORKRM00060067 & XMORKRM00062610
- iii. Memorandum of Deposit of Title Deeds dt. 15.09.2014 & 30.07.2015;
- iv. Copy of the Foreclosure Statement dated 28.11.2022 and Statement of Accounts as on 28.11.2022;
- v. Copy of letter dated 25.01.2022 issued by Corporate Debtor and reply dated 14.02.2022 issued by the Financial Creditor;
- vi. Financial Status of the Corporate Debtor for FYs 2019-20, 2020-21 and 2021-22;
- vii. Record of Financial Information submitted to NeSL in Form-C, which shows the Date of Default as 30.11.2018.

4. Pursuant to issuance of notice, Respondent filed its statement of objections *vide* Diary No.4282 dated 17.08.2023 by *inter alia* contending as under:

- (a) In the year 2014, the Corporate Debtor sought financial assistance from the Financial Creditor. Relying on the representations provided by the Corporate Debtor, the Financial Creditor approved financial assistance in the form of four Term Loans totalling to Rs.29,00,31,556/-. These facilities were secured by way of Memorandum of Deposit of Title Deeds dated 15.09.2014 and 30.07.2015.

- (b) It is contended that the Financial Creditor in its Synopsis stated that the Borrowers' accounts were upgraded to 'standard' following a MoU dated 29.08.2019. However, Financial Creditor deliberately omitted to include this Memorandum to conceal the true state of affairs from this Tribunal. This MoU, crucial for determining the amount due from the Corporate Debtor to the Financial Creditor, was withheld with the intention of inaccurately inflating the dues owed by Corporate Debtor. The Corporate Debtor diligently followed the terms of the said MoU and made significant payments as outlined in its Schedule. These payments are evident in the Ledger Statement.
- (c) It is also contended that the principal amount, along with accrued interest, for the loan detailed in the Sanction Letter dated 28.07.2015 and Loan Agreement in XMORKRM00062610 was settled in September, 2016. Only late payment charges were purportedly claimed by the Financial Creditor, which the Corporate Debtor vehemently contested, citing errors and omissions on the part of Financial Creditor. This is supported by an email dated 12.09.2016 from Financial Creditor's representative to Corporate Debtor.
- (d) The Respondent, being a company engaged in manufacturing life-saving drugs, is recognized as a Micro, Small and Medium Enterprise (MSME) *vide* MSME Certificate dated 17.02.2016. In May 2020, the Government of India, Ministry of Finance introduced the Emergency Credit Guarantee Line Scheme (ECLGS), offering 100% guarantee coverage for additional working capital term loan facilities to COVID-19 affected businesses, including MSMEs. The Corporate Debtor qualified for this Scheme, tailored for MSMEs, entitling them to a 20% top-up over the existing loan amount with a 24-month moratorium. The Financial Creditor expressly acknowledged and admitted the Respondent's eligibility, as demonstrated in Annexure R11.
- (e) The Respondent under the said Scheme sought capital funding to increase production of life-saving drugs amidst the COVID-19 outbreak. A letter of

interest dated 06.10.2020 was issued to the CEO of the Financial Creditor, requesting: (i) Disbursal of Additional Loan of Rs 3.14 Crores as per ECGLS Scheme, (ii) EMI adjustment until Additional Loan credit, (iii) Loan restructuring under MSME Scheme & (iv) Rationalizing Security Comfort.

- (f) On 19.11.2020, the Financial Creditor proposed loan reconstruction to the Corporate Debtor, who responded on 21.11.2020, stating verbal communication about the RBI embargo on ECGLS scheme and sought clarification over the rationale of not providing a complete 24-month EMI waiver. The Respondent noted disproportionate collateral worth Rs. 72 Crores against a Rs. 15 Crores loan due to the Petitioner's policy on second charges. It contended that the estimated property value as of 12.08.2023, surpasses Rs.100 Crores, whereas the claimed loan quantum by the Financial Creditor in the instant Petition is Rs. 25 Crores. A 2018 CBRE valuation report valued the mortgaged land and building at Rs. 79.6 Crores. A 2022 valuation by approved valuer Mr. Lakshmi Narasinha KA valued the land at Rs. 59.35 Crores. These valuations indicate that the mortgaged property's current worth exceeds Rs. 100 Crores, which is far beyond the Rs. 25 Crores loan amount claimed by the Financial Creditor.
- (g) *Vide* email dt.21.11.2020, the Corporate Debtor requested the Financial Creditor to release certain land Khatas, structured as separate parcels, to provide additional security, ensuring 2X loan exposure comfort due to the property's higher value. Subsequently, on 14.12.2020, the Financial Creditor responded via email from the Religare Relationship Team, stating that due to being under RBI corrective action plan, they cannot entertain incremental funding requests, however, assured to evaluate the possibility of second seeding on the collateral and promised updates soon. A copy of the said response is attached as Annexure R11.
- (h) On 23.12.2020, the Corporate Debtor formally applied for the Debt Restructuring under the MSME Scheme, following instructions from the Financial Creditor. Additionally, on 09.01.2021, a letter was issued to the Chief Manager of Financial Creditor, requesting modification of collateral

charge to rationalize security comfort due to the Petitioner's reluctance to disburse additional ECLGS top-up loans or share pari-pasu charges with other banks, as detailed in Annexure R13. Deliberations between both Parties, including a meeting held on 22.02.2023, were documented and attached as Annexure R14. It is contended that the Corporate Debtor requested for the release of certain surveys on 08.06.2022, to secure additional working capital during the pandemic, as their medicine demand surged. The Financial Creditor had previously accepted this release, and Surveyors and Legal Teams had already conducted calculations.

- (i) Pursuant to the said MoU, the Financial Creditor agreed to waive LPP/OD/Legal Charges of Rs. 1,91,63,802 on each loan account upon payment of Rs. 1,12,72,898 by 30.08.2019, as stipulated in Proviso 5. Further, both Parties agree that upon payment of Rs. 1,12,72,898 as per Clause 4(a), the LPP/OD/Legal Charges will be waived and revised outstanding amount will be Rs. 17,39,37,743.
- (j) It is contended that the Corporate Debtor fulfilled the conditions outlined in Annexure R2, as evidenced by the Ledger Statement in Annexure R3. However, during debt settlement, the Financial Creditor reneged on its Agreement, including LPP/OD/Legal charges, alleging a breach of conditions in Annexure R2. This is evident in the Foreclosure letters dated 28.11.2022, as per Annexure P15 of the Petition.
- (k) It is also contended that the Respondent is neither a wilful defaulter nor insolvent, but deferred the EMI payments for the cause of Jus in Rem. The Petitioner neither rejected nor disbursed the due amount, leaving the Respondent unaware until Foreclosure Statement was issued. Further, the Respondent is close to receiving funds from an investor, as communicated to Petitioner in the Meeting Minutes dated 22.02.2023. The investor has approved a loan of Rs. 84 Crores as per sanction letter dated 22.05.2023 (enclosed as Annexure-R19), and is currently awaiting the RBI approval.
- (l) In support of its contentions, the Corporate Debtor relied on the following decisions:

- i. *Hon'ble Supreme Court in the matter of Vidarbha Industries Power Ltd. vs. Axis Bank Ltd. in Civil Appeal No.46233 of 2022 decided on 12.07.2022;*
- ii. *Olive Tree Retail Pvt Ltd & Anr. vs. South Indian Bank Ltd & Anr., decided on 19.01.2023 by the Hon'ble High Court of Calcutta in WPA No. 11406/ 2022;*
- iii. *Guharoy Food Joint and Hotel Pvt Ltd & Anr. vs. The State of West Bengal & Ors., decided on 30.03.2023 by the Hon'ble High Court of Calcutta in WPA No.12769 of 2022.*

5. In response to the above, the Petitioner filed Rejoinder *vide* Diary No.4836 dated 18.09.2023, by *inter alia* further stating as under:

- (a) The Corporate Debtor's replies extensively admit defaults, affirming the insolvency. These acknowledgments include defaults in EMI payments and diverted that money for drug manufacturing, an application for Debt Restructuring citing decline in production, shutdown of operations and decline in sales and profit, deferral of EMIs for essential drug production and a proposed One-Time Settlement (OTS) on 25.01.2022 for an amount of Rs. 13,21,54,441.88; all rejected by the Financial Creditor. These admissions unequivocally indicate deliberate default on debt repayment, necessitating resolution under the Code since under the provisions of the IBC, 2016, the cause of default is not relevant as long as there is a default exceeding the threshold limit.
- (b) The Adjudicating Authority, u/s 7 of the Code, solely examines evidence provided by the Financial Creditor to verify debt and its default, regardless of dispute over the debt. Supreme Court precedents including *Innoventive Industries Ltd. v. ICICI Bank*, and *M. Suresh Kumar Reddy v. Canara Bank & Ors.*, in *Civil Appeal No.7121 of 2022* reinforce that even partial non-payment of due debt constitutes default warranting admission under the Code. The sole ground for rejecting such applications is if the debt hasn't become due and payable. The Financial Creditor has sufficiently demonstrated existence of the debt and its default in this Petition.

- (c) The Corporate Debtor's loan repayment irregularities led to its account being declared NPA on 30.11.2018. Despite an MOU dated 29.08.2019 regularizing accounts, another default occurred on 01.10.2021, with continuous defaults thereafter, resulting in the account being declared NPA again on 01.04.2022. A Foreclosure Statement dated 28.11.2022 shows a total due amount of Rs. 21,38,75,169.23 to the Financial Creditor. Additionally, a Record of Default under the IBBI Regulations, 2017, and updated financial information from NeSL were submitted as evidence of default.
- (d) It is reiterated that the default date is 01.10.2021 and the application being filed on 06.12.2022 falls within the 3-year limitation period from the default date. Even if considering 30.11.2018 as the default date, the application is within limitation: MOU dated 29.08.2019 acknowledged liability, triggering a fresh limitation period. On 25.01.2022, the Corporate Debtor acknowledged the debt again. Therefore, the application falls within the 3-year period from the last acknowledgement, as per Section 18 of the Limitation Act.
- (e) The Respondent-Corporate Debtor disputes the debt quantum due to additional charges contrary to the terms of the said MOU. In this regard, it is stated that the debt calculation is based on the Agreement between the Parties. Further, the quantum of debt (even if disputed by the Corporate Debtor) is immaterial for the purpose of adjudication of an application u/s 7 of IBC so long as the debt is more than the minimum threshold amount of Rs. 1 Crore as provided u/s 4 of the Code.
- (f) The Corporate Debtor contends that as the Property's value surpasses the debt, the instant Petition should be dismissed as per *Vidarbha Industries* precedent. However, Section 7 provides a specific remedy for Financial Creditors, overriding other laws. The Hon'ble Supreme Court in *M. Suresh Kumar Reddy v. Canara Bank & Ors.*, clarified that *Vidarbha Industries'* context was specific to its facts, where receivables exceeded the debt. In light of the subsequent judgement of Hon'ble Supreme Court in *M. Suresh*

*Kumar Reddy (Supra)* it is clear that the Adjudicating Authority has to restrict itself to determination of debt and default at the stage of admission of an application u/s 7 of the Code. Reliance has also been placed upon the Judgment of Hon'ble NCLAT in *Rajesh Kedia, Ex-Director of Ajanta Paper and General Products Ltd. v. Phoenix ARC Pvt. Ltd., (2022) SCC OnLine NCLAT 147.*

- (g) It is further stated that any issue/grievance of the Corporate Debtor with regard to the ECLGS scheme is irrelevant for the instant case as the same is beyond the jurisdiction of this Tribunal. It is averred that the Corporate Debtor in its email dated 14.12.2020 had clarified that there was no circular from RBI stating that a waiver of EMI's is to be processed in the absence of ECLGS scheme. It was also informed to the Corporate Debtor that in terms of RBI moratorium norms, six months moratorium was to be extended to all the eligible borrowers and the same was extended to the Corporate Debtor from March 2020 to August 2020. The Financial Creditor was under no obligation to extend any other benefit to the C.D. nor was under an obligation to modify the Charge on the collateral securities.
- (h) It is stated that in terms of Clause 4(c) of the MOU dated 29.08.2019, the Financial Creditor had agreed to waive the LPP/OD/Legal Charges subject to meeting of repayment schedule and timelines by the Corporate Debtor. Further, in the said Clause it was specifically clarified that in case of any default by the Corporate Debtor, the entire LPP/OD/Legal Charges would be reinstated and made applicable with immediate effect. Therefore, when the Corporate Debtor defaulted again on 01.10.2021 in payment of EMI, the LPP/OD/Legal Charges were reinstated by the Financial Creditor. Further, expectation of getting any alleged funding from an investor shall have no impact on an application u/s 7 of the Code.

6. Additionally, the Petitioner filed its written submissions *vide* Diary No.5160 dated 09.10.2023, while reiterating the facts as stated supra, has further stated that vide MOU dt.29.08.2019 the Corporate Debtor has acknowledged its liability to the tune of Rs. 20,43,74,442.77 and that the Record of Default

in Form-D has also been filed. It is stated that the period from 15.03.2020 till 28.02.2022 stand excluded for the purposes of limitation by virtue of order of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.03 of 2020. It is reiterated that *vide* letter dt.25.01.2022 the Corporate Debtor acknowledged its debt and default of Rs.17,26,58,637, hence fresh period of limitation shall be reckoned from this date in terms of Section 18 of the Limitation Act. Hence, in any event the present application is within three years from 30.11.2018, 29.08.2019 and 25.01.2022. Petitioner has also placed reliance upon the following decisions i.e., *Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407*; *E.S. Krishnamurthy & Ors. v. Bharath Hi-Tecch Builders Pvt. Ltd., (2022) 3 SCC 161*.

7. Further, the Respondent filed its additional statement of objections *vide* Diary No. 6419 dated 19.12.2023 by *inter alia* further contending that the Financial Creditor ought to have issued a notice prior to the date of default, i.e. 01.10.2021 stating the event(s) of default which it has not produced and which is the mandatory notice to constitute an event of default as envisaged in Proviso 15.3 of the Loan Agreement which is annexed as Annexure P-7, Annexure P-9, Annexure P-11 and Annexure P-13 in the Petition. In view of the non-availability of the mandatory notice under proviso 15.3 and proviso 15.1 of the of the Loan Agreement, the event of default has not triggered and therefore the date of default mentioned in the Petition i.e. 01.10.2021 stands obsolete and the Financial Creditor has failed to establish the default. It is also contended that the main CP refers to MOU dated 29.08.2019 which brings the last date of limitation being 28.02.2022 while this CP was filed on 02.12.2022 showing four months of delay, hence, in violation of the reckoned limitation period. Further, the Financial Creditor itself rejected the OTS letter dated 25.01.2022 by their own statement on 14.02.2022 and therefore, the letter dt.25.01.2022 stands obsolete and cannot be considered as reckoning of fresh limitation period u/s 18 of the Limitation Act. As per the contention of the Financial Creditor, the quantum of default on the date of default i.e.

01.10.2021 is only Rs.37,70,200 which is far less than the minimum threshold of Rs. 1 Crore.

8. Heard the Ld. Counsels for the Petitioner and the Respondent and perused the pleadings on record.
9. It is the case of the Financial Creditor that the Corporate Debtor has availed four loan facilities from it totalling Rs. 29,00,31,556, secured by depositing Title Deeds and creating security interests. Despite an MOU dated 29.08.2019 regularizing accounts, the Corporate Debtor defaulted on its EMI payment on 01.10.2021, followed by continuous defaults, leading to the Account of Corporate Debtor being declared as NPA again on 01.04.2022. A Foreclosure Statement dated 28.11.2022 shows a total amount of Rs. 21,38,75,169.23 due to the Financial Creditor. The Corporate Debtor acknowledged its debts in an OTS proposal letter dated 25.01.2022, offering to settle the dues, which the Financial Creditor rejected on 14.02.2022. It is asserted that the replies of the Corporate Debtor extensively admitted the defaults, affirming its insolvency. The contentions raised by the Corporate Debtor have been adequately responded to by the Petitioner in the Rejoinder and the Written Submissions mentioned above.
10. On a perusal of the records, it is seen from Part-IV of Form-1 of the Petition that the date of default is mentioned as 01.10.2021 with the total amount due to the Financial Creditor is Rs. 21,38,75,169.23 as on 28.11.2022. When the Corporate Debtor was irregular in making payments of the loan dues as per the agreed terms and conditions of the loan, the account of the Corporate Debtor was initially declared as Non-Performing Asset (NPA) on 30.11.2018. The Financial Creditor has initiated actions under the SARFAESI Act, 2002 to enforce its security interest and recover its dues. The Corporate Debtor filed an SA bearing No.175 of 2019 before the Hon'ble Debts Recovery Tribunal-1, Bangalore, challenging the actions taken by Financial Creditor under the provisions of SARFAESI Act, 2002. During the pendency of same, the Parties herein have executed a Memorandum of Understanding dated

29.08.2019, whereby the Corporate Debtor undertook to clear / pay the regular EMI in terms of the Loan Agreement and accordingly the Accounts of the Corporate Debtor were classified as 'standard'. It is stated that owing to Corporate Debtor's failure to honour its commitment in terms of the Loan Agreement and the repayment schedule, the Corporate Debtor committed default on 01.10.2021 as defined u/s 3(12) of the Code, when the Corporate Debtor's EMI of Rs. 37,70,200 became due and payable but defaulted in payment of the same. Therefore, the account of the Corporate Debtor was freshly classified as NPA on 01.04.2022. There was an OTS proposal from the Corporate Debtor dated 25.01.2022, attached at Page 233 to 239 of the C.P.; which constitutes an acknowledgement by the Corporate Debtor for the Debt and Default. Further, the Financial Creditor *vide* Diary No.293 dt.12.01.2024 has filed a Record of Default in Form-D issued by NeSL, which shows the date of default for the loan facilities as 01.10.2021. It is seen that the instant Petition was filed on 06.12.2022, which is well within the 3-years period of limitation as per the provisions of Section 18 of the Limitation Act.

11. The Corporate Debtor *vide* letter 25.01.2022 addressed to the Financial Creditor offered to settle its dues for a total amount of Rs. 13,21,54,441.88 (Rupees Thirteen Crores Twenty-One Lakhs Fifty-Four Thousand Four Hundred Forty-One and Eighty-Eight Paise Only) (as per Page 233 to 239 of Company Petition). This amounts to clear acknowledgement of the debt the Corporate Debtor availed from the Financial Creditor in the form of aforesaid loan facilities and the default thereof. Therefore, the ingredients of 'debt' and 'default' has been satisfied as required under the Code. Ld. Counsel for the Petitioner has relied upon recent decision of the Hon'ble NCLAT in *Narendrabhai v. PNB Housing Finance Ltd. & Anr. in Company Appeal (AT) (Insolvency) No.1461 of 2023 decided on 03.01.2024* wherein at Para 27 it, *inter alia*, observed as under:

*“27. The Hon'ble Apex Court in the case of **Innoventive Industries Limited v. ICICI Bank (2018) 1 SCC 407**, has laid down the guiding principles to admit or reject an application filed under Section 7 of the IBC. Under the ambit*

*of Section 7 of the Code, the Adjudicating Authority is to only determine whether a 'default' has occurred and whether the 'debt', which may still be disputed, was due and remained unpaid. A debt may not be due if it is not payable in law or in fact. The moment the Adjudicating Authority is satisfied that a default has occurred, the Application must be admitted unless it is incomplete.....”*

*(Emphasis supplied)*

- 12.** It is clear from the above that the Adjudicating Authority is to only determine whether a 'default' has occurred and whether the 'debt', which may still be disputed, was due and remained unpaid, and once the Adjudicating Authority is satisfied that a default has occurred the Application must be admitted unless it is incomplete. It is apt to note that the Accounts of the Corporate Debtor were regularised pursuant to the terms of MOU dated 29.08.2019 executed between the Parties herein. Subsequent to its Account being made as NPA on 01.10.2021 due to Respondent's failure to adhere to the terms of MOU, the Corporate Debtor through its letter dated 25.01.2022 has clearly acknowledged its debt to the Financial Creditor. In view of the defaulted amount being acknowledged by the Corporate Debtor which is beyond the minimum threshold limit of Rs. 1 Crore, the threshold requirement as provided under Section 4 of the I&B Code, 2016 is satisfied; and the Financial Creditor has also proposed the name of the Insolvency Professional along with his consent.
- 13.** Further, the Ld. Counsel for the Respondent has filed a Memo dt.29.01.2024 by *inter alia* stating that the Corporate Debtor has moved a Writ Petition in WP No.2344 of 2024 before the Hon'ble High Court of Karnataka which is arising from the same cause of action as is in the instant Company Petition and stated that they are constrained to do the same because of the limited scope of determining factors empowered with this Tribunal u/s 7 of the Code, and that the value of the assets of the Corporate Debtor is seven times larger than the total liability including the claim of the Financial Creditor herein. Since the Financial Creditor herein and the Respondent in WP No.2344 of

2024 filed its objection / letter dated 23.01.2024 of its inconvenience to settle the debts of the Corporate Debtor herein, the same has been challenged again by the latter *vide* WP No.2775 of 2024.

- 14.** Subsequently, Ld. Counsel for the Petitioner has filed documents *vide* Diary No.790 dated 05.02.2024 enclosing the copy of the Orders passed by the Hon'ble High Court of Karnataka in WP No.2344 of 2024 and WP No.2775 of 2024. It is seen that Hon'ble High Court *vide* order dated 30.01.2024 in WP No.2775 of 2024 has held that pendency of the Petition will not come in the way of any proceedings before any fora.
- 15.** In view of the foregoing reasons, we are of the considered view that the instant Petition is liable to be admitted. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore Only), the **Petition** is **admitted** in respect of the Corporate Debtor i.e. **M/s. Stellence Pharmscience Private Limited** under Section 7 of the I&B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- (a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
  - (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
  - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

It is further directed that the supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor.

The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority 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.

**16.** The Financial Creditor in Part-III of Form-1 has proposed Mr. Naveen Kumar Jain, a qualified insolvency professional as Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent of the said IRP in Form-2 dated 02.12.2022 along with Affidavit dated 12.01.2023 is placed on record, wherein, the IRP *inter alia* affirmed that he is eligible to be appointed as IRP in the case of Corporate Debtor and that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

**17.** In view of the above, the Bench hereby appoints **Mr. Naveen Kumar Jain**, bearing Regn. No. IBBI/IPA-001/IP-P00650/2017-2018/11097 residing at 2236, Sector 46, Gurugram-122001 having Mobile: 8130301706, Email: [insolvencyprofessional@rediffmail.com](mailto:insolvencyprofessional@rediffmail.com) **as an IRP of the Corporate Debtor.** The IRP is directed to take the steps as mandated under Sections 15, 17, 18,

20 and 21 of IBC, 2016. The IRP is also directed to file a copy of valid AFA within seven days from the date of receipt of copy of this Order.

- 18.** The Financial Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 19.** The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
- 20.** A copy of the order shall be communicated to both the Parties. Ld. Counsel for the Petitioner shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.

**Sd/-**  
**MANOJ KUMAR DUBEY**  
**MEMBER (TECHNICAL)**

*jsr*

**Sd/-**  
**T. KRISHNAVALLI**  
**MEMBER (JUDICIAL)**