

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

**C.P. No. (IB) 75/MB/C-III/2023**

Under Section 7 of the Insolvency and Bankruptcy Code,  
2016 read with Rule 4 of the Insolvency and Bankruptcy  
(Application to Adjudication Authority) Rule 2016

*In the matter of*

**Bank of India,**

Having its registered office at: Star House, C-5, "G" Block,  
Bandra Kurla Complex, Bandra (East), Mumbai- 400051

*.....Petitioner/ Financial Creditor*

**V/s.**

**Techno Satcomm India Private Limited,**

(CIN: U72900MH2008PTC178194)

Having its registered office at: 3, Manek Chambers, 1<sup>st</sup>  
Floor, 399A, Dr. D. B. Marg, Grant Road, Mumbai-  
400004.

*.....Respondent/ Corporate Debtor*

Order Pronounced on: **01.11.2023**

**Coram:** Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri. Charanjeet Singh Gulati, Member (Technical)

**For the Petitioner:** Ms. Geeta Toraskar i/b PRM Legal

**For the Respondent:** Mr. Abhishek L Tripathi

*Per: Hon'ble Smt. Lakshmi Gurung, Member (Judicial)*

1. This Company petition is filed by Bank of India (“**Petitioner/Financial Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Techno Satcomm India Pvt. Ltd. (“**Respondent/Corporate Debtor**”) by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**Brief facts of the case**

2. The Petitioner is a scheduled bank carrying on business through its different branches including one at Shop no.13 to 17, Lumbini Palace, Tejpal Road, Hanuman Road, Vile Parle East, Mumbai- 400057.
3. The Corporate Debtor was availing credit facilities from the Petitioner since 2011 and the same were revised from time to time. At the request of the Corporate Debtor, the Petitioner had reviewed the existing credit facilities and enhanced the same to Rs. 14,00,00,000/- (Rupees Fourteen Crores) vide sanction letter dated 22.12.2014. The sanction letter was modified vide letter dated 04.02.2015.
4. The Corporate Debtor committed default in making the repayment of loan amount. As per part IV of the petition the date of default has been mentioned as **21.07.2018** which is as per the record of the default issued by NESL. It is also mentioned that the Corporate Debtor was declared NPA as on **31.12.2018**. The default amount is mentioned as follows:

Sr. No.	Particulars	Amount in INR
<b>A. Principal outstanding amount (as on 31.12.2022) and interest up to NPA date 31.12.2018.</b>		
1.	Cash Credit (Stock)- Loan A/c No. 004630110000037	13,66,68,002.96/-
<b>B. Uncharged Interest @ 12.05 from date of NPA/Interest seizure up to 31.12.2022</b>		
1.	Cash Credit (Stock)- Loan A/c No. 004630110000037	8,22,10,691.95/-
<b>C. Penal Interest from date of NPA/Interest seizure up to 31.12.2022</b>		
1.	Cash Credit (Stock)- Loan A/c No. 004630110000037	98,44,582.01/-
<b>Total outstanding amount as on 31.12.2022 (A+B+C)</b>		<b>22,87,23,276.92/-</b>

**Reply of the respondent:**

5. In its reply dated 12.06.2023, the respondent/corporate debtor has taken various grounds like present petition is abuse of process of law, petitioner has not come with clean hands, non-disclosure of facts, parallel proceedings before DRT, non-service mandatory notice and limitation. Briefly, the Respondent has stated that:-

5.1 Respondent had availed the cash credit facility and was maintaining the said cash credit account by regularly depositing the interest component. The respondent's business was completely dependent upon the government entities like BSNL, Indian Railways, DMRC etc. There arose a dispute between the

Respondent and the BSNL on account of which arbitration proceedings were initiated by the respondent/corporate debtor against BSNL with a hope that the dispute between the corporate debtor and the said government entity i.e. BSNL. would be resolved through the Arbitration proceedings, however the dispute could not be resolved and as such the Respondent was entangled in the litigation thereby the cash credit facility availed by the respondent/ corporate debtor from the applicant could not be maintained and there was cash flow mismatch.

5.2 Due to above reasons, respondent was declared as NPA in or about in 2018 and the petitioner initiated debt recovery proceedings for the recovery of the aforementioned loan amount for a sum of Rs.14,00,00,000/- which proceedings were initiated prior to the present insolvency proceedings in/or about in the years 2019. As the petitioner has already taken the recourse of debt recovery proceedings before the debt recovery tribunal therefore, the issue in respect of the aforementioned CC facility and recovery in respect thereof is *sub-judice* and therefore, the petitioner is precluded from initiating the present insolvency proceedings. Since the applicant is actively pursuing against the respondent therefore simultaneous proceedings against the respondent is against the settled principles of law and contrary to the law laid down by the Apex Court in catena of Judgments and no person can be sued for same issue in two different Courts of law for the singular issue where the sum and substance are more or less same.

5.3 The respondent has only availed of enhanced credit facility from INR 14,00,00,000/- Crores and therefore assuming without admitting even if the respondent is liable to deposit the sum in respect of the enhanced credit facility of INR 14,00,00,000/- less Rs.1,30,00,000/- Crores already deposited in the CC Loan account, the respondent is only liable, assuming without

admitting, a total sum of Less than Rs. 12,70,00,000/- and therefore the claim as mentioned in the present petition is nothing but an attempt to mislead this Tribunal.

- 5.4 The respondent has attributed its inability to maintain CC Account on account of BSNL litigation, underfinancing by the petitioner and the non-performance of the government entities. The respondent is making all diligent efforts to bring in the cash flow to resurrect the company for its smooth functioning.
- 5.5 The Petitioner has failed to disclose one-time settlement (OTS) talk which was going between the Petitioner and the respondent. Moreover, the respondent has mortgaged sufficient tangible immovable asset which are offered as collateral security in the event of default which asset are worth more than Rs. 14 Crores which are just and sufficient to recover the actual dues in respect of CC facility availed by the respondent.
- 5.6 There has been repeated communications by and between the Applicant/Corporate Debtor and the Respondent/financial creditor in respect of the "OTS" scheme and recently on 2<sup>nd</sup> Feb 2023 a discussion in respect of OTS Scheme had taken place with the Respondent/Financial Creditor, despite the Respondent/Financial Creditor having complete knowledge of having OTS discussion with the Applicant/Corporate Debtor the Respondent/Financial Creditor deliberately at no point of time intimated to the Applicant/Corporate Debtor regarding filing of the present Insolvency Petition before this Hon'ble Tribunal which prima-facie goes to show that the respondent/financial creditor surreptitiously behind the back of the applicant/corporate debtor have attempted to drag the respondent/ corporate debtor in the present insolvency proceedings.

- 5.7 The petitioner before filing the present petition has not served statutory demand notice and advance notice which is mandatory under the Insolvency and Bankruptcy Code, 2016.
- 5.8 The arguments were heard and liberty was granted to both sides to file written submission. The Petitioner has filed written submission consisting of 3 pages along with copy of judgement relied upon. The Respondent has filed written submissions consisting of 22 pages substantial part of which is nothing but reiteration of the reply.

**Written submissions by Petitioner:**

6. The Corporate Debtor had approached the Applicant and requested for review of existing credit facilities for purpose of business. The Applicant considered the said request and enhanced the existing credit facilities from INR 7,50,00,000/- to 14,00,00,000/- vide sanction letter dated 22.12.2014.

**6.1 The aggregate amount defaulted by the Corporate Debtor**

The aggregate amount defaulted by the Corporate Debtor is INR 22,87,23,276.92/- (Indian Rupees Twenty Two Crores Eighty Seven Lacs Twenty Three Thousand Two Hundred Seventy Six and Ninety Two Paise Only) as on 31.12.2022. Following is the summary of outstanding debt:

Sr. No.	Particulars	Amount in INR
<b>A. Principal outstanding amount (as on 31.12.2022) and interest up to NPA date 31.12.2022</b>		
1.	Cash Credit (Stock) – Loan A/c No 004630110000037	13,66,68,002.96/-

<b>B. Uncharged Interest @ 12.05 from date of NPA/Interest seizure up to 31.12.2022</b>		
1.	Cash Credit (Stock) – Loan A/c No 004630110000037	8,22,10,691.95/-
<b>C. Penal Interest from date of NPA/Interest seizure up to 31.12.2022</b>		
1.	Cash Credit (Stock) – Loan A/c No 004630110000037	98,44,582.01/-
<b>TOTAL OUTSTANDING AMOUNT AS ON 31.12.2022 (A+B+C)</b>		<b>22,87,23,276.92/-</b>

### 6.2 Admission of debt and default by the Corporate Debtor

The Corporate Debtor has also admitted the amount of default in its Affidavit of Reply (Para 12, Page 7) and also agreed that there was various OTS discussion were held between the parties. Further to mention that the Corporate Debtor has never disputed the amount of default and limitation period in its Affidavit in Reply in the captioned matter.

### 6.3 The present Company Petition is filed within Limitation

The various dates evidencing the filing of petition within limitation is as follows;

<b>Date</b>	<b>Particulars</b>	<b>Page No. &amp; Exhibit reference in Company Petition</b>
21.07.2018	Date of default for the Cash Credit facility as per the NeSL Records	Exhibit- 6A (VOL 1 Page no 57 to 70)

31.12.2018	Date of Loan Account NPA	Exhibit- 20 (VOL 3 Page no. 472)
05.10.2019	Date of Possession Notice	Exhibit- 22 (VOL 3 Page no. 477)
03.10.2019	Copy of Public Announcement of Possession Notice	Exhibit- 23 (VOL 3 Page no. 478-480)
<b>03.12.2019</b>	<b>Copy of Acknowledgement of Debt</b>	<b>Exhibit- 21 (VOL 3 Page no. 473-476)</b>
15.03.2020 To 28.02.2022	Hon'ble Supreme Court has vide its Order dated 10.01.2022 in Suo Moto Writ Petition (C) No. 3 of 2020, excluded the period from 15.03.2020 till 28.02.2022 for the purpose of computation of period of limitation.	Copy of Judgement attached herewith
25.01.2023	Hence the present Company Petition is filed within limitation period	

6.4 That before expiration of 3 years from the original date of default, there is an Acknowledgement of Debt dated 3<sup>rd</sup> December 2019 provided by the Corporate Debtor acknowledging the outstanding debt of INR 13,68,35,522.96/- which is attached as an Exhibit-21 (Page no 473 to 476, VOL. 3) of the Company Petition, hence the fresh period of limitation for purpose of section 18 of the Limitation Act, 1963 to be considered from date of acknowledgement of debt i.e. 3<sup>rd</sup> December 2019 for another 3 years which would have expired on 2<sup>nd</sup> December 2022.

6.5 In addition to above, it is also pertinent to state that on account of Covid-19 pandemic, the Hon'ble Supreme Court has vide its Order dated 10.01.2022 in ***Suo Moto Writ Petition (C) No. 3 of 2020***, excluded the period from 15.03.2020 till 28.02.2022 for the purpose of computation of period of limitation and the present Company Petition was filed on 25.01.2023 thereby the present Company Petition is filed well within the period of limitation.

**6.6 The Petitioner relies on following cases:-**

a. The Hon'ble Supreme Court of India in its order in ***Suo Motu Writ Petition (C) NO. 3 OF 2020*** wherein the Hon'ble Supreme Court directed that:

*5 "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".*

b. The NCLT, Chandigarh Bench in the case of CP(IB) No. 171/Chd/Pb/2022 in the matter of ***Tricon Dry Chemicals LLC vs Supreme Polytubes Limited*** dated 18.08.2023.

c. The Hon'ble Supreme Court in ***Laxmi Pat Surana vs. Union Bank of India & Anr. Appeal No. 2734 OF 2020*** [Para 35,36,37] has held that if there is an acknowledgement of debt in writing within a limitation period, a fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgement of debt.

d. The Hon'ble National Company Law Appellate Tribunal (NCLAT) in its judgement in ***Vivek Jha v. Financial Services India Private Ltd. & Anr. (Company Appeal (AT) Insolvency No. 756 of 2018)***, observed that *"In law, an Acknowledgement in writing within expiration of prescribed period will mark a new*

*commencement period for limitation to base a claim and the same will not create a new contract.*

- 6.7 In the present case the Corporate Debtor has acknowledged the debt on 3<sup>rd</sup> December 2019 hence the period of limitation runs thereafter.

**Written submissions by Respondent:**

7. The respondent has filed written submission running into 22 pages trying to answer each and every paragraphs of the pleadings, while reply has already been filed and considered. This practice is deprecated. The written submission is expected brief and precise concerning only the legal issue/legal proposition raised during oral submission and the case law supporting the same not by way of pleading. Anyhow the submissions of the respondent are summarized briefly:
- 7.1 The basis of filing the present application is based on the event that took place on 21.07.2018 and therefore, the cause of action occurred on that date. The present application is filed on 25.01.2023 and is beyond the period of limitation and deserves to be dismissed.
- 7.2 The financial creditor has filed the present company petition no 75 of 2023 only in the year 2023 whereas the applicant's account was declared as NPA on 31.12.2018 and as such there was no ground for filing the present company petition u/s 7 of insolvency and bankruptcy code in year 2023.
- 7.3 The Hon'ble Supreme Court in its order dated 10.01.2022 in ***Suo Motu Writ Petition (C) NO. 3 OF 2020*** has excluded the period from 15.03.2020 till 28.02.2022 however, has granted only a period of 90 days from 1.03.2022 for filing the Petition as

discussed in para 5(III) reads of the judgment which is reproduced below:

*“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.”*

7.4 The Respondent has relied upon judgment by the Hon'ble Supreme Court in **Sagufa Ahmed & ORS. V/s Upper Assam Plywood Products Pvt. Ltd. & ORS. ([2020] 9 S.C.R. 472) dated 18.09.2020.**

7.5 The respondent submitted that it was regularly depositing and maintaining the CC account facility duly provided by the applicant to the respondent, however on account of the aforesaid arbitration proceedings, the smooth functioning and day to day affairs of the company was grossly affected and therefore the respondent company even after taking its efforts was able to deposit the interest component of the CC facility therefore prima facie from the conduct of the respondent herein it is abundantly clear that the respondent herein since the day of availing the said facility had an intention of maintaining the CC facility and since the respondent was able to maintain the CC facility and due to its performance and regularly maintaining the CC facility account duly provided by the Petitioner/ Financial Creditor to the respondent/ corporate debtor, the applicant have provided enhanced CC facility to the respondent by providing additional CC limit of Rs. 14,00,00,000/- Crores.

7.6 The overall debt as reflected in the memo of petition by the applicant is to the tune of Rs.22,87,23,276.92 (Rupees Twenty Two Crore Eighty Seven Lakh Twenty Three Thousand Two

Hundred Seventy Six and Ninety to Paise Only) which outstanding is arbitrary sham, bogus and a ballooned figure as the respondent is not liable to pay any sum as claimed by the applicant/ financial creditor herein.

7.7 The Respondent is falling in the category of SME and is also registered in respect thereof therefore, it is covered under the notification dated 29th may 2015 issued by the Government of India for revival and rehabilitation of Micro, Small and Medium enterprises as per the said Gazette Notification it is incumbent upon the respondent/ financial creditor to provide shelter to the SME's and to provide them revival and rehabilitation mechanism as mentioned in the GR dated 29.5.2015 which the Financial creditor has miserably failed to do.

7.8 It is humbly submitted that if the respondent/ financial creditor would have extended the benefits arising out of the said GR dated 29.5.2015 the applicant could have taken the benefit of the said GR and under the umbrella of said GR the applicant could have revived his company and would have maintained his CC facility without any hindrance, obstruction from any entity.

### **FINDINGS/OBSERVATIONS**

8. On considering the submissions of both sides and upon perusing the record, this Bench is of the view that there is clear admission by the corporate debtor about the “debt and default” and that the account was declared NPA on 31.12.2018 and there is acknowledgement of debt by the Corporate Debtor on 03.12.2019.

9. As far the plea of parallel proceedings before the DRT is concerned, the same is not tenable as the proceedings under Insolvency and Bankruptcy Code are different than the DRT

proceedings and the purpose of present proceedings is resolution of the Corporate Debtor and not recovery from the Corporate Debtor.

10. As far the dispute relating to quantum of outstanding debt is concerned, there is an acknowledgment of debt on 03.12.2019 by the corporate debtor issued to the Financial Creditor, Bank of Baroda admitting the debt of Rs. 13,68,35,522.96 (Rupees Thirteen due and payable as on 02.12.2019. This is annexed to the petition as Exhibit 21. The said acknowledgement has not been denied by the Corporate Debtor in its reply. Therefore, there clear admission of debt to the extent of Rs. 13,68,35,522.96 and any dispute relating to the exact quantum of debt is not relevant for the proceedings under section 7 of the IBC as long as there is an admission of debt for more than Rs. 1 Crore and default in payment. In the present case, it is very clear from the admission in the reply of Corporate Debtor that the Corporate Debtor has committed default.
11. As far the plea regarding notice to the Corporate Debtor before filing section 7 of IBC is concerned, there is no such requirement to issue mandatory notice before filing section 7 petition unlike under section 9 petition where demand notice under section 8 of the IBC is mandatory.
12. The only issue for adjudication in the present case is whether the present Company Petition is filed within limitation or not.
13. The Corporate Debtor has issued the acknowledgement on 02.12.2019, therefore, the limitation period starts from 02.12.2019. Thereafter the period from 15.03.2020 to 28.02.2022 has to be excluded by virtue of order dated 27.04.2021 passed by **Hon'ble Supreme Court in "In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020**. The present application has

been e-filed on 25.01.2023 and hard copy was filed on 03.02.2023. The total number of days from the date of acknowledgment till the date of filing of the petition (after exclusion of covid period from 15.03.2020 to 28.02.2022) is 432 days which is within the limitation period of three years.

14. Though, the ground mentioned in para 7.3 above was not neither taken up in reply nor pressed up during the oral submission and therefore we were not required to deal with it but looking at the nature of the ground which is taken up repeatedly by corporate debtors we wish to clarify that what Hon'ble Supreme Court in "***In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020*** gave extended period of 90 days in those cases where the actual balance limitation period of limitation available was less than 90 days. It essentially meant that even if after excluding the period from 15.03.2020 to 28.02.2022 the petition was required to be filed within a period less than 90 days, in such cases the limitation was further extended by 90 days. The Hon'ble Supreme Court has clearly indicated that in those cases where the actual balance period of limitation is greater than 90 days, such longer period shall apply and not 90 days shall apply. In the present case after the exclusion period of 15.03.2020 to 28.02.2022, there was more than 90 days available to the of the petitioner for filing the present petition hence the petitioner will get the benefit of entire excluded period from 15.03.2020 to 28.02.2022 and not limited to 90 days.
15. The Respondent relied upon judgement of ***Sagufa Ahmed & ORS. V/s Upper Assam Plywood Products Pvt. Ltd. & ORS. ([2020] 9 S.C.R. 472) dated 18.09.2020*** does not support the Respondent as the facts were different in context of appeal and are not applicable in the present case.

16. For the reasons discussed above, this Tribunal is of the considered view that the existence of “debt” and “default” stands proved in this case and the Company Petition is within limitation.
17. Accordingly, the above company petition is admitted by passing the following;

**ORDER**

- a. The above Company Petition No. (IB) 75 (MB)/2023 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Techno Satcomm India Private Limited**.
- b. This Bench hereby appoints Mr. Kamal Kishor Gurnani (**kamalgurnaniip@gmail.com**), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01463/2018-2019/12338 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs 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. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by COC.
- 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 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; 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

*---Rajeev Kr. ---*

**Sd/-**

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**