IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

C.P. No. (IB) 3425/MB/C-III/2019

Along with

IA/5566/MB/C-III/2023

CP(IB)/3425/2019

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

In the matter of

1. Export-Import Bank of India

Centre One Building, 21st Floor, World Trade Centre, Cuffe Parade, Mumbai
Maharashtra – 400005

2. Bank of India, New York Branch

277 Park Ave B/t 47th & W 48th St.
New York, 10172
United States

3. State Bank of India

IFSC Banking Unit, No. 1401, 14th Floor, Hiranandani Signature Tower,
GIFT SEZ, Gandhinagar
Gujarat – 382355

4. Union Bank of India, Hong Kong Branch

Nine Queens Road, Central Unit No.1903-4,
Hong Kong

... Financial Creditors/Petitioners

Versus

Maneesh Pharmaceuticals Limited

29/33, Ancillary Industrial Plots, Govandi, Mumbai, – 400043, Maharashtra

...Corporate Debtor/Respondent

AND

IA/5566/2023

Under Rule 11 of the National Company Law Tribunal (NCLT) Rules, 2016

Maneesh Pharmaceuticals Limited

29/33, Ancillary Industrial Plots, Govandi Mumbai – 400043
Maharashtra

... Applicant

Vs.

1. Export-Import Bank of India

Centre One Building, 21st Floor, World Trade Centre, Cuffe Parade, Mumbai - 400005
Maharashtra

2. Bank of India, New York Branch

277 Park Ave B/t 47th & W 48th St., New York, 10172, United States

3. State Bank of India

IFSC Banking Unit, No. 1401, 14th Floor, Hiranandani Signature Tower, GIFT SEZ, Gandhinagar, Gujarat – 382355

4. Union Bank of India, Hong Kong Branch

Nine Queens Road, Central Unit No. 1903-4, Hong Kong

... Respondents

Order pronounced on: 15.10.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Financial Creditors : Mr. Vikram Nankani, Senior Advocate, a/w Mr. Aman Kacheria, Ms. Madhura Kulkarni, Ms. Jinal Shah, Ms. Palak Nenwani, Ms. Riya Hotchandani, Advocates, i/b Juris Corp.

For the Corporate Debtor : Mr. Janak Dwarkadas Senior Advocate, Mr. Gaurav Joshi, Senior Advocate, a/w Mr Rohan Rajadaksha, Mr. Ashish Pyasi, Ms. Kajol Punjabi, Ms. Anjali Shahi, Advocates, i/b Aendri Legal

Per: **Coram**

CP No. 3425/2019

1. This Petition has been jointly filed by Export-Import Bank of India (EXIM Bank), Bank of India (New York Branch), State Bank of India (SBI) and Union Bank of India ("**Petitioners/ Financial Creditors"**) to initiate Corporate Insolvency Resolution Process **("CIRP"**) against M/s Maneesh Pharmaceuticals Limited (**"Respondent/Corporate Debtor"**) under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (**"the Code"**) for the alleged default on part of the Corporate Debtor in repayment of debt.

I. A. 5566/2023

2. Corporate Debtor has filed this IA on 06.12.2023 seeking following reliefs:

   a) *To condone delay in filing this Application, if any.*
   b) *To permit and grant an opportunity to the Applicant/ Original Respondent to file its additional affidavit.*

c) The additional affidavit so filed be taken on record and the directions be given to the Ld. Registry to take same on record.

Relevant facts as they emerge from the pleadings

Facility Agreement

3. M/s Svizera Holdings B. V. **("Borrower")** is a wholly owned foreign subsidiary of the Corporate Debtor and was incorporated under the laws of Netherlands. The Financial Creditors extended a term loan facility of USD 45 million to the Borrower vide Agreement dated 24.09.2007 **("Facility Agreement").** The Corporate Debtor executed corporate guarantee in favour of the Financial Creditors. The said facility agreement was executed between the Financial Creditors, the Borrower, the Corporate Debtor as Guarantor and Barclays Bank PLC, Hong Kong Branch, as Agent and Offshore Security Trustee of the Financial Creditors. The Corporate Debtor had also entered into a memorandum of mortgage by deposit of title deeds and executed deed of hypothecation in favour of the Financial Creditors.

4. The loan amount was disbursed to the Borrower by the Financial Creditors on 28.09.2007.

5. Consequent to default by the Borrower, in making timely repayment of the loan amount, the account of the Borrower was classified as a Non-Performing Asset **("NPA")** by SBI on 26.06.2011, by EXIM Bank on 30.06.2011, by Union Bank on 30.06.2011 and by Bank of India on 31.07.2011.

6. On instructions of the Financial Creditors, Barclays Bank PLC, Hong Kong (**Facility Agent**), issued an Acceleration Notice dated 03.02.2012 in accordance with clause 22.18(b) of the Facility Agreement to the Borrower marking a copy to the Corporate Debtor. Since no payment was received, the Financial Creditors invoked the Corporate Guarantee by

issuing a Guarantee Invocation Notice dated 21.02.2012 calling upon the Corporate Debtor to pay the outstanding amount of USD 36,316,260.33 (due as on 30.01.2012).

Proceedings before the Queen's Bench, UK

7. Upon failure by the Borrower and Corporate Debtor in repaying the outstanding dues, the Facility Agent filed a suit on 22.02.2012, vide Case No. 2012 Folio 277 (**"Foreign Suit"**) against the Borrower and the Corporate Debtor before the Hon'ble High Court of Justice, Queen's Bench Division, Commercial Court, London (**Queen's Bench, UK**).

8. The Queen's Bench, UK passed an order dated **08.04.2014** ("**Foreign Judgment"**) and directed the Corporate Debtor to make payment of USD 35,355,064.80 along with interest and fees payable to the financial creditors. Thereafter, the first charge created on Tillomed Holdings Ltd was enforced by the offshore security trustee and USD 7,272,648.32 were realised therefrom and distributed amongst the Financial Creditors.

Proceedings before BIFR

9. While the foreign suit was pending, the Corporate Debtor filed, on 06.11.2012, a reference bearing case no. 74/2012 before the Board for Industrial and Financial Reconstruction (**"BIFR"**) under section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (**"SICA"**). The BIFR vide order dated **07.12.2012** restrained the company from disposing of or alienating any fixed assets of the company.

10. The Financial Creditors had filed a miscellaneous application no. 253/BC/2013 seeking intervention in the reference case pending before BIFR. Though the pleadings in the said MA was complete but before it could be decided, SICA was repealed and Insolvency and Bankruptcy Code, 2016 was enacted.

11. The reference made by the Corporate Debtor under the SICA was admitted by BIFR vide order dated 21.11.2014 and the Corporate Debtor was declared as a sick industrial company under section 3(1)(o) of the SICA and ICICI Bank was appointed as the Operating Agency under section 17(3) of SICA to prepare a Draft Rehabilitation Scheme for the Corporate Debtor. Consequent to the admission order, a moratorium was imposed with respect to the Corporate Debtor under SICA.

12. Before the approval of the draft Rehabilitation Scheme, the Government of India vide Notification No. S.O. 3568 (E) dated 25.11.2016 repealed SICA w.e.f. 01.12.2016 with enactment of the Insolvency & Bankruptcy Code, 2016 (**I&B Code**). Consequently, BIFR and AAIFR stood dissolved and the proceedings in respect of the Corporate Debtor under SICA stood abated.

Proceedings under I&B Code (First Round)

13. The Financial Creditors moved the present Company Petition under section 7 of the I&B Code. The company petition was dismissed by the Adjudicating Authority vide order dated 25.03.2022 holding that "*the Petition is time-barred as it has been filed after more than 5 years from the date of the final judgment of the London High Court and liable to be dismissed under the Limitation Act, 1963.*"

14. The Financial Creditors preferred an appeal bearing no. No. 579/2023 which was allowed by the Hon'ble National Company Law Appellate Tribunal (**"Appellate Tribunal"**) by order dated 09.05.2023. The Hon'ble Appellate Tribunal has noted that the date of default has to be taken when the guarantee invocation notice dated 21.02.2012 was given. Subsequently, the Hon'ble Appellate Tribunal has also noted that the foreign suit was decreed on **08.04.2014**. Relying on the decision of the Hon'ble Andhra Pradesh High Court in the case of ***Hyderabad Abrasives & Minerals vs. Andhra Cements Ltd. 2002 SCC Online AP 1080,*** the Hon'ble Appellate Authority held that benefit of exclusion of period for

computing the limitation period, spent while the Company was before BIFR shall be applicable even to those creditors who did not approach BIFR. In the one but last para, the Appellate Authority has noted that since the reference under SICA was registered on 07.12.2012 and SICA was repealed w.e.f. 01.12.2016, *"therefore limitation would start running from 01.12.2016 and shall go up to 01.12.2019. The application under Section 7 has admittedly been filed on 30.08.2019 which is prior to the expiry of period of limitation."* Thus the Hon'ble Appellate Authority set aside the order dated 25.03.2022 passed by the Adjudicating Authority holding that the impugned order was patently illegal.

15. The said order of Hon'ble Appellate Tribunal was challenged by the Corporate Debtor before the Hon'ble Supreme Court in Civil Appeal no. 4073/2023 which was dismissed vide order dated 04.07.2023. Subsequently, the Corporate Debtor has filed a Review Petition No. 1114/2023 which is pending before the Hon'ble Supreme Court at the time of hearing of the present C.P.

Proceedings under I&B Code (Second Round)

16. The Financial Creditors filed IA 2785/2023 seeking restoration of the original Company Petition which was accordingly restored vide order dated 05.07.2023.

17. On 25.10.2023, when the adjournment of hearing of section 7 was sought by the Respondent on the ground of pendency of the review petition, this Tribunal declined to adjourn the proceedings. The Tribunal recorded the request of the counsel for the Corporate Debtor to file further affidavits and posted the matter for 06.12.2023.

18. Aggrieved by the order of the Tribunal dated 25.10.2023, the Petitioners preferred appeal bearing no. 1548/2023 before Hon'ble Appellate Tribunal as they were aggrieved because of the proceedings being carried on by the Tribunal instead of admitting the company petition under

section 7 of I&B Code and also by the conduct of the Corporate Debtor seeking permission to file additional affidavit.

19. The Hon'ble Appellate Authority, vide order dated 06.12.2023, allowed the appeal of the Petitioners and directed the Adjudicating Authority to admit the application of the petitioner, in following terms:

> *"14. We have heard Counsel for the parties and after examining the record, are of the considered opinion that this is one such case in which direction has to be issued to the Tribunal to admit the application filed under Section 7 of the Code in view of the findings recorded by the Tribunal in its order dated 25.03.2022 wherein it has been held that the debt and default both are present in this case but the Tribunal did not admit the application only on the issue that the Application was found to be barred by limitation. The question of limitation was taken to the higher court and ultimately it has been proved that the application was within the limitation. In such circumstances, the Tribunal should not have gone in for further investigating on the issue as to whether there is debt and default in the present case for the purpose of admission of the application.*
>
> *15. Keeping in view of the aforesaid discussion, the present appeal is thus allowed. The Tribunal is directed to admit the application filed by the Appellant on the next date of hearing and pass further necessary orders in accordance with law."*

20. The above order of Hon'ble Appellate Tribunal dated 06.12.2023 was challenged before the Hon'ble Supreme Court under section 62 of I&B Code in Civil Appeal No. 8135/2023. The Hon'ble Supreme Court set aside the order of Hon'ble Appellate Tribunal dated 06.12.2023. The relevant portion of the order is reproduced below:

> *"8. .. Once the order of the NCLT was set aside, the order would cease to exist. The observations in regard to whether there was a debt due and payable would also not exist with the setting aside of the order. The order of the NCLAT, properly construed, dealt with the issue as to whether the debt was barred by limitation. A passing reference in the order of the*

NCLAT to whether the debt was in dispute must be read in the context of the nature of the appeal which arose from an order of the NCLT that the debt was barred by limitation. Hence, it would be inappropriate to read the order of the NCLAT as concluding the issue in regard to whether the application under Section 7 was or was not liable to be admitted. A stray observation in the order of the NCLAT cannot be regarded as a conclusive determination on merits. That apart, the order of the NCLT which contained an observation that the debt was not in dispute was set aside in appeal by the NCLAT in its entirety. Consequently, we are of the view that it was inappropriate for the NCLAT to direct the NCLT to admit the application under Section 7 straightaway without an evaluation of the rival contentions on merits.

9. We accordingly allow the appeal and set aside the impugned judgment and order of the NCLAT dated 6 December 2023. The application under Section 7 has already been restored to the file of the NCLT. ***The NCLT shall, after hearing the parties, determine as to whether the application under Section 7 is liable to be admitted. All the rights and contentions of the parties in that regard are kept open****.*

(emphasis provided)

21. Under this background, the matter came to be heard in length before this Tribunal, wherein the rival parties addressed the arguments.

ORDER IN IA 5566/2023

22. Before proceeding with the main matter, it would be appropriate to deal with IA No. 5566/2023 for completeness of the matter.

23. It is seen that the affidavit dated 28.11.2023 wherein additional submissions have been made by the Corporate Debtor has been annexed to the said IA. In pursuit of the same, this Tribunal decided to take up IA/5566/2023 and vide order dated 15.12.2023, directed the Petitioners in the main Company Petition, to file their reply to the said IA.

24. Accordingly, the Respondents in I.A. (original Petitioners) had filed their reply dated 04.01.2024, wherein it has been submitted that they are not

opposing the filing of the additional affidavit but deny the contentions made therein.

25. In view of the same, we consider it fit to allow IA/5566/2023 which has been filed for taking the additional affidavit on record and consider the submissions on merits. Accordingly, IA/5566/2023 is **allowed** and the additional affidavit dated 28.11.2023 annexed to the said IA is taken on record.

26. **Additional Submissions through Affidavit dated 28.11.2023**

In nutshell, the contents of the additional affidavit dated 28.11.2023 are as follows: -

a. There is a review petition bearing no. 1114/2023 pending before the Hon'ble Supreme Court and if the said review petition is allowed, then the present petition will not be maintainable. Therefore, the present petition be kept in abeyance and adjourned *sine die* till the outcome of the review petition.

b. Petition is incomplete as the Petitioners have failed to produce information utility report as required under section 7 of the Code.

c. The Corporate Debtor is having a good turnover and in the last financial year i.e. 2021-2022, it has earned a profit of about Rs. 56 crores and this turnaround is after paying all the financial creditors. The Corporate Debtor, at present, has no financial creditors.

d. While the SICA proceedings were pending in respect of the Corporate Debtor, a draft Debt Restructuring Scheme (DRS) was prepared by ICICI Bank (Operating Agency) which was approved by all the banks/financial creditors including Barclays. In the said DRS, it is specifically mentioned that since Barclays had in their possession two assets, namely, Tillomed UK and SBLC of USD 22.9 million

(Sanobiol, Brazil assets), it was agreed that no amount was to be paid to them as per the DRS. The Petitioners were not entitled for any payment under the DRS.

27. **Submissions on behalf of the Corporate Debtor**

27.1 Mr. Janak Dwarkadas, Senior Advocate appearing on behalf of the Corporate Debtor submitted that the present petition for initiation of insolvency of the corporate debtor, based on a **Foreign Decree** dated 08.04.2014 passed by Queen's Bench U.K. is not conclusive and enforceable unless it meets the tests set out under Section 13 of the Code of Civil Procedure, 1908 (CPC). He referred to Section 44A of CPC relating to Execution of decrees passed by Foreign Courts in reciprocating territory and contended that if it is shown to the satisfaction of the Executing Court that the foreign decree falls within any of the exceptions specified in clauses (a) to (f) of section 13 of Civil Procedure Code (CPC), then the Court shall refuse execution of such decree and if such foreign decree cannot be executable in India then no debt arises under such decrees.

27.2 He then took us to the facts of the case to show that the said foreign decree was passed during the pendency of reference filed by the Corporate Debtor under the provisions of SICA which provided moratorium to the Corporate Debtor, under section 22 of SICA. It was argued that the foreign decree was passed in violation of Indian laws and is hit by the provisions of section 13 of CPC and is not enforceable.

27.3 He referred to the provisions of Section 22 of SICA which provided that no suit for the recovery of money or for the enforcement of any guarantee against a sick industrial company can be proceeded except with the consent of the BIFR.

27.4 Mr. Dwarkadas further articulated his arguments that SICA is a beneficial piece of legislation under Entry 52 of List I of Seventh Schedule

which empowers the Parliament to legislate in respect of *"Industries, the control of which by the Union is declared by Parliament by law to be in the public interest"*. SICA was enacted for giving effect to the policy of the State towards securing principles of Article 39 of the Constitution of India. Reliance was placed on the judgment in ***Tata Davy Ltd. vs. State of Orissa & Ors [AIR 1998 SC 2928]*** and ***M/s Morgan Securities & Credits Pvt. Ltd. vs. Videocon Industries Ltd [AIR OnLine 2020 Del. 473]***

27.5 Concluding his argument on this point, he submitted that this Tribunal lacks jurisdiction to determine the conclusiveness of a Foreign Decree as held in the case of ***Usha Holding LLC vs. Francorp Advisors Pvt. Ltd. [Company Appeal (AT) (Ins) No. 188/2019]*** and civil courts alone are competence to do so under section 44A of CPC, therefore the present petition must be rejected on this ground itself.

27.6 Mr. Dwarkadas also cited following judgments:

a. ***Y. Narasimha Rao vs. Y. Venkata Lakshmi [(1991 SCR (2) 821]***, in which the Hon'ble Supreme Court has held that when a foreign judgment is founded on a jurisdiction not recognized by Indian Law, it is hit by section 13(c) of CPC and is not conclusive.

b. In ***Harinagar Sugar Mills Ltd. vs. M.W. Pradhan [(1996) 3 SCR 948]***, it was held that a winding up petition is a form of equitable execution. Drawing an analogy, section 7 petition is also a form of equitable execution and its execution/enforcement can be rejected by Indian court if the Court is satisfied that it falls foul of the clauses (a) to (f) of Section 13 of CPC.

c. In ***Jaldhi Overseas Pte. Ltd. vs. Steer Overseas Private Limited [TP No. 18/CTB/2019],*** a NCLT coordinate bench has held that the

petition is not maintainable on the basis of a foreign award without complying with the applicable law.

d. In **Peter Johnson John vs. M/s KEC International Limited [Company Appeal (AT) (Ins) No. 188/2019**, the Operational Creditor sought to rely on a foreign decree by stating that it is only a record supporting the creditor's claim for debt and therefore, it need not comply with section 13 and section 44 of CPC. However, Hon'ble NCLAT rejected the aforesaid contention and held that the decree must comply with requirements under section 13 of CPC.

27.7 The next objection to the section 7 petition was regarding **Insufficient Stamping.** It was submitted that the Facility documents were executed in Netherlands. The provisions of the Maharashtra Stamp Act, 1958 lay down that if any document executed out of Maharashtra is proposed to be acted upon or utilized for any purpose in the State and/or proposed to be implemented in the State, then the differential stamp duty has to be paid within three months after it has been first received in the State. However, no such stamp duty has been paid by the Petitioners on the Facility Agreement dated 24.09.2007 which is the crux document in the present matter. Moreover, the loan documents have also not been duly stamped after receipt in Maharashtra within the prescribed time limit. Since the documents are not duly stamped, hence the same cannot be relied upon by the Petitioners for any purposes unless sufficient stamp duty is paid after the same are duly impounded.

27.8 In **Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re,** the Hon'ble Supreme Court held that stamping is a jurisdictional issue. In the present case, since the foreign decree is based on unstamped documents, the same is without jurisdiction and therefore, is hit by section 13(c) of CPC.

28. **Submissions on behalf of the Financial Creditors**

28.1 Mr. Vikram Nankani, Senior Advocate appearing for the Financial Creditors, submitted that SICA does not have extra-territorial jurisdiction and therefore, there was no requirement to seek any prior consent of BIFR before pursuing the foreign suit in UK since there was no bar under SICA to pursue foreign suit. Reliance was placed on ***Ashapura Minechem Ltd vs. Armada (Singapore) Pte. Ltd., 2016 SCC OnLine Bom 5326*** and ***Murablack India Limited vs. UBS AG and Ors, 2000 SCC OnLine Bom 584***. It was therefore contended that there was no violation of any Indian law and the foreign decree is not against public policy.

28.2 Mr. Nankani submitted that Section 44A of CPC comes into play only if the foreign decree is filed for execution. However, under section 7, the Financial Creditors have not filed the foreign decree for its execution but merely as an evidence of default by the Corporate Debtor under Regulation 2A of the CIRP Regulations, 2016. He further submitted that the foreign judgment is one of the evidences to prove debt and default on part of the Corporate Debtor. Reliance was placed on **Dena Bank vs Sivakumar Reddy & Anr. (2021) 10 SCC 330** wherein it was held that *a final judgment and/or decree of any Court or Tribunal or any Arbitral Award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 of the IBC.*

28.3 In addition to the above evidence of default, that there is acknowledgment of Debt and Default by the Corporate Debtor by way of following:

a. The Financial Creditors have relied on the suit proceedings before the Queen's Bench, UK, stating the Corporate Debtor had admitted that it is unable to repay the sums due to the Financial Creditors because of its compromised financial condition.

b. In the intervention application no. MA/253/BC/2013 filed by the Petitioners in the reference under SICA, the Corporate Debtor filed its reply wherein it has unequivocally and unconditionally admitted that Corporate Guarantee was given by the Corporate Debtor in respect of the term loan of USD 45 million extended to the Borrower.

c. The Corporate Debtor had filed an Interlocutory Application No. 5901/2023 before the Hon'ble NCLAT requesting deferment of hearing before this Tribunal on the ground that the Corporate Debtor is settling the matter with the Financial Creditors. The Corporate Debtor had admitted that a principal amount of Rs. 290 crores is due and payable by the Corporate Debtor to the Financial Creditors. The Corporate Debtor by its letters dated 30.11.2023 and 08.12.2023, which letters were annexed to the IA/5901/2023 has unequivocally and unconditionally acknowledged the debt due to the Financial Creditors and their compromised condition due to which default had occurred.

28.4 In response to objection regarding **Insufficient Stamping,** it was submitted that the Financial Creditors' claim is not solely based on the Facility Agreement but on other admissions and acknowledgments by the Corporate Debtor. Once debt and default are established, mere insufficient stamping of any document cannot be an impediment in initiating CIRP against a corporate debtor. The NCLAT in ***Ashique Ponnamparambh vs. Federal Bank Limited [2021 SCC OnLine NCLAT 611]*** held that even if an agreement is insufficiently stamped, a company petition under IBC can still be admitted if there are other documents to prove the debt and default. Mere insufficient stamping of any document cannot be an impediment in initiating CIRP against a Corporate Debtor as held in ***Hiren Meghji Bharani vs. Shankheshwar Properties Pvt. Ltd. [Company Appeal (AT) (Ins) No. 446/2023].***

Reply to the additional affidavit filed by Corporate Debtor in IA/5566/2023

28.5 The Hon'ble NCLAT in ***Vijay Kumar Singhania vs. Bank of Baroda & Ors. [Company Appeal (AT) (Ins) No. 1058/2023]*** has held that an application under section 7 need not be rejected on account of non-filing of Information Utility Certificate. Any evidence of default under section 7(3) of I&B Code can be relied upon by the Adjudicating Authority.

28.6 It was next submitted that this Tribunal's power is limited to determining whether or not a default has occurred, and once it is satisfied that there is debt and default, the Adjudicating Authority is bound to admit Section 7 petition regardless of the solvency of the Corporate Debtor. Reliance was placed on following judgments:-

a. ***Axis Bank Ltd vs. Vidarbha Industries Power Limited [2022 SCC OnLine SC 1339].***
b. ***Monotrone Leasing Pvt. Ltd. vs. PM Cold Storage Pvt. Ltd. [Company Appeal (AT) (Ins) No. 99/2020].***
c. ***Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd. [2021 SCC OnLine SC 513].***
d. ***Shrem Residency Pvt. Ltd. vs. Shraman Estates Pvt. Ltd. [2023 SCC OnLine NCLAT 70].***

28.7 It was further submitted that the purported Draft Rehabilitation Scheme (DRS) prepared under the provisions of SICA is not a binding document as it was merely a draft scheme, and moreover was prepared by other creditors of the Corporate Debtor excluding the Petitioners.

28.8 Ld. Counsel contends that section 7(3)(a) of I&B Code provides that the Financial Creditor shall furnish the record of default recorded with the information utility or such other record or evidence of default as may be specified. Further, Regulation 2A of the IBBI (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016 provides that a Financial Creditor may furnish a certified copy of entries in the relevant account in the bankers' book or an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired. In the present case, the Petitioners have submitted that a **certificate under section 2A(B) of Bankers' Book Evidence Act, 1891 as well as a certified copy of the decree dated 08.04.2014 passed by Queen's Bench, UK.**

DISCUSSION & FINDINGS

29. We have given our anxious consideration to the submissions, contentions and legal issues raised by the parties. Based on the facts of the case and rival contentions of the parties, the issues that arise for consideration in the present case are:

Issues for determination

I. *Whether in the facts and circumstances of the present case, the foreign judgment dated 08.04.2014 is valid evidence of debt for the purpose of initiating insolvency resolution process of the Corporate Debtor under IBC?*

II. *Whether in the facts and circumstances of the case, 'debt' and 'default' exists for initiating corporate insolvency resolution process under section 7 of I&B Code?*

I Foreign Decree as evidence of debt

30. It may be noted that the foreign decree has been passed on merits by a Superior Court of a reciprocating territory. Therefore, the decree for the purposes of execution/enforceability under Section 47 of CPC shall be conclusive unless it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of

section 13. It would be profitable to reproduce Section 13and section 44A of CPC here:

> *"**13. When foreign judgment not conclusive –** A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except –*
>
> *(a) where it has not been pronounced by a Court of competent jurisdiction;*
> *(b) where it has not been given on merits of the case;*
> ***(c)** where it appears on the face of the proceedings to be founded on an incorrect view of international law or **a refusal to recognize the law of India in cases in which such law is applicable;***
> *(d) where the proceedings in which the judgment was obtained are opposed to natural justice;*
> *(e) where it has been obtained by fraud;*
> ***(f) where it sustains a claim founded on a breach of any law in force in India.***
>
> ***44A. Execution of decrees passed by Courts in reciprocating territory** —*
>
> *(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.*
> *(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.*
> *(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and **the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.***

Explanation 1.-- "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and superior Courts, with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2.-- "Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment."

31. It is the contention of the Corporate Debtor that the foreign decree falls in the exceptions of the clauses of Section 13 of CPC. The foreign decree dated 08.04.2014 was passed during the moratorium under section 22 of SICA, The objective of SICA was to secure the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto. Therefore, all proceedings are suspended while a reference by a sick industrial company is pending before BIFR. The foreign decree violated the provisions of SICA, therefore execution of such decree in India is against the public policy of India.

32. We observe that the reference was made by the Corporate Debtor under the SICA on 06.11.2012 which was registered as reference case no. 74/2012 and injunction order was passed on 07.12.2012 restraining the Corporate Debtor from alienating its assets. The reference was admitted vide order dated 21.11.2014 and the Corporate Debtor was declared as a 'sick industrial company' under section 3(1)(o) of the SICA and ICICI

Bank was appointed as the Operating Agency under section 17(3) of SICA to prepare a Draft Rehabilitation Scheme for the Corporate Debtor.

33. For the completeness of the discussions, we may refer to Section 22 of the SICA which is set out below:-

> *"**22. Suspension of legal proceedings, contracts, etc**.—*
> *(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."*

34. In ***TATA Davy Ltd. vs. State of Orissa and Others (supra)***, the Hon'ble Supreme Court has held that SICA has been enacted in public interest and pursuant to Article 39 of the Indian Constitution and is based on the public policy of India. The relevant extract is given below:

> *"The Central Act (which refers to SICA) is enacted under Entry 52 of List I of the Seventh Schedule. The said Entry 52 empowers Parliament to legislate in respect of "Industries, the control of which by the Union is declared by Parliament by law to be in the public interest". The Central Act declares that it is "for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution", namely, "that the ownership and control of the material resources of the community are so distributed as best*

to subserve the common good" and "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment".

35. In the case of ***Raheja Universal Limited vs. NRC Limited & Ors. [Civil Appeals No. 1920, 1921, 1922 & 1923 of 2012]*** the Hon'ble Supreme Court made a detailed analysis on the scope of sections 21 and 22 of the SICA Act, 1985 and concluded as follows:_

> *"**31.** Where Section 22(1) deals with the restrictions and limitations vis-à- vis the court proceedings while Section 22(3) of the Act of 1985 deals with the agreement, intents or other obligations as stated in that provision and declarations which will be made by the BIFR for the purposes of finalization and effective implementation of the scheme. There, Section 22A deals with restrictions and prohibitory orders which the BIFR can pass, all for the purposes of preparation of the scheme and proper implementation and effective management of the revival of the sick industrial company. These provisions have to be read along with the provisions of Section 26 of the Act of 1985 which ousts the jurisdiction of the civil courts and vests exclusive jurisdiction for the specified purposes with the BIFR. Another relevant provision in this regard is Section 32 of the Act of 1985, which gives an overriding effect to the provisions of the Act of 1985 over the other laws in force except the law specifically stated therein. Sections 22, 22A, 26 and 32 have to be read and construed conjointly. A common thread of legislative intent to treat this law as a special law, in contradistinction to the other laws except the laws stated in the provisions and to ensure its effective implementation with utmost expeditiousness, runs through all these provisions."*

36. As already discussed, Mr. Janak Dwarkadas argued that Section 22 of SICA is analogous to section 14 of I&B Code. In **Alchemist Asset Reconstruction Company Limited vs. Hotel Gaudavan Private Limited and Ors. [(2018) 16 SCC 94]**, the Hon'ble Supreme Court has held that since arbitration proceedings continued, and an award came to be passed therein during the continuance of the moratorium under

section 14 of I&B Code, the said proceedings and the Award are null and *non-est*. Thus, applying the same principle in the present case, the Corporate Debtor submits that in view of the prohibition under section 22 of SICA which is akin to section 14 of IBC, a suit for enforcement of the security interest against a company shall not lie or to be proceeded with except with the consent of the BIFR or the appellate authority, as the case may be which in the present case was not taken hence the foreign decree is against the law in force in India and is clearly hit by section 13 of CPC. He had argued that the debt under the foreign decree will arise only if the foreign decree is made enforceable by a competent court as per the provisions of section 44A of CPC read with section 13 of CPC.

37. Mr. Vikram Nankani, Senior Advocate appearing for the Financial Creditors, on the other hand submitted that SICA does not have extra-territorial jurisdiction and therefore, there was no requirement to seek any prior consent of BIFR before pursuing the foreign suit in UK since there was no bar under SICA to pursue foreign suit. Reliance was placed on **Ashapura Minechem Ltd** (supra) and **Murablack India Limited** (supra), as already noted.

38. Mr. Nankani, as noted earlier, has argued that the foreign judgment is one of the evidences of default on the part of the Corporate Debtor as provided under Regulation 2A of the CIRP Regulations, 2016. The phrase *"order of a court or tribunal"* in Regulation 2A does not exclude a foreign judgment. The foreign decree has been annexed to the petition under section 7 as an evidence of default for initiating corporate insolvency resolution process of the corporate debtor and not for execution of the foreign decree. The test of Section 13 of CPC and the procedure under section 44A is required only when the decree is filed for execution.

39. We perused both the judgments of **Ashapura** (supra) as well as **MuraBlack** (supra) and examined Regulation 2A of IBBI (CIRP) Regulations, 2016.

i. Relevant paragraphs in **Murablack** (supra) are reproduced below:

"7. In the instant case we are concerned at the highest with a suit filed by the person in whose favour the guarantee was given, i.e., defendant No. 1 against the guarantor, defendant No. 5. Under sub-section (2) of Section 1, the Act extends to the whole of India. The suit by defendant No. 1 against defendant No. 5 is filed in Switzerland. Prima facie, therefore, the provisions of Section 22 which have only territorial application would not be attracted. Apart from that, defendant No. 1 does not have any office in this country. What the plaintiff in fact is seeking to do is to restrain defendant No. 1 from proceeding with the suit instituted by defendant No. 1 in Switzerland against defendant No. 5 in September, 1999, i.e., even before an application was moved by the plaintiff before the BIFR. Courts would not injunct proceedings in a foreign court unless this court by itself would have jurisdiction to grant the relief, considering other factors. Defendant No. 5 in terms of the provision of the guarantee given to defendant No. 1 had agreed to submit to the jurisdiction of the Swiss court and Swiss law. Can the provisions of the Sick Industrial Companies Act be read into Swiss law? Similarly, the plaintiffs pursuant to an agreement with defendant No. 1 has agreed that it is the Swiss court that alone has jurisdiction and further that Swiss law would be applicable."

ii. Relevant paragraphs of **Ashapura** (supra) are reproduced below:

"29. A conjoint reading of Section 1(2) and Section 21 of the SICA clearly indicates that the provisions of the SICA are extended only to the whole of India and not outside India. The expression "any of the properties of the Industrial Company" in Section 22 of the SICA will have to be read with Section 1(2) of the SICA which provides for territorial jurisdiction of the BIFR which is extended only to any part of this country and not outside India. A reference to the judgment of this Court in the case of Murablack India Limited (supra) will be useful to deal with this issue raised by the learned senior counsel for the respondents. It is held by this Court in the said judgment that

prima facie, provisions of Section 22 which have only territorial application would not be attracted to restrain a party from proceeding with the suit instituted outside India even before an application was moved by other party before the BIFR. It is held that the Courts would not injunct proceedings in a foreign Court unless this Court by itself would have jurisdiction to grant the relief and considering other factors.

30. In my view, the facts before this Court in the case of Murablack India Limited (supra) are identical to the facts of this case. Though this Court had made such observation prima facie to this effect in paragraph 7 of the said judgment, on interpretation of Section 1(2) read with Section 22 of the SICA, I am of the view that prior consent of the BIFR under Section 22 was not required to be obtained by the respondent no.1 to execute the said two foreign awards against the petitioner in any country other than India. ***In my view, prior consent of the BIFR was required only if an application for execution of a decree, for winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company in India was made."***

(***emphasis provided***)

40. From a careful reading of **Ashapura** (supra) as well as **Murablack** (supra), it can be seen that in both the aforementioned cases, there was no challenge to the execution of foreign decree in India. In Ashapura (supra) injunction was sought to the proceedings outside India and in Murablack (supra) execution was sought outside India. In that context the Hon'ble Bombay High Court has held that prior consent of BIFR is not necessary before filing an application for execution of foreign awards in a country other than India and for execution in respect of properties of a company situated outside India. The Hon'ble Bombay High Court, in para 30 of **Ashapura** (supra) reproduced above, has held that prior consent of BIFR was required if an application for execution of a decree was made in India.

41. We observe that foreign decree dated 08.04.2014 has been partly satisfied by sale of the shares of the Corporate Debtor held in one M/s

Tillomed Holdings Ltd which is a UK-based Company following Ashapura (supra). Therefore, there is no quarrel on the legal propositions laid down in Ashapura and Murablack. During the hearing, both the parties appeared to be in consensus as to the limited jurisdiction of this Tribunal in deciding whether a foreign decree is legal or illegal and both the parties have relied on the judgment of Hon'ble NCLAT in ***Usha Holdings LLC & Anr. Vs. Francorp Advisors [Company Appeal (AT) (Ins) No. 44/2018]*** wherein it has been held as follows:

> *"7. … we hold that the Adjudicating Authority not being a Court or 'Tribunal' and 'Insolvency Resolution Process' not being a litigation, it has no jurisdiction to decide whether a foreign decree is legal or illegal. Whatever findings the Adjudicating Authority has given with regard to legality and propriety of foreign decree in question being without jurisdiction is nullity in the eye of law."*

42. In view of the aforesaid judgment, there is no need to give findings on executability or otherwise of the foreign decree dated 08.04.2014 in India and therefore no further discussions are warranted on this account as this issue is beyond the jurisdiction of this Tribunal under section 7 of I&B Code.

43. Now we deal with the various judgments relied upon by the Corporate Debtor:

a. The judgment in ***Y. Narasimha Rao vs. Y. Venkata Lakshmi [(1991 SCR (2) 821]*** was in the context of validity of a divorce decree covering the various facades of Hindu Marriage Act. The provisions of I&B Code are different in nature. Therefore this judgment does not help the Corporate Debtor.

b. The case of ***Harinagar Sugar Mills Ltd. vs. M.W. Pradhan [(1996) 3 SCR 948]*** was in the context of a winding up petition under Companies Act, 1956.

c. In the case of ***Marine Geotechnic LLC vs. Coastal Marine Construction & Engineering Ltd [2014 SCC OnLine Bom 309*** it was observed as follows:-

> *"18. ….. The argument was that such a petitioner need not wait till the foreign decree was made a decree of an Indian court; he could file on the original cause of action straightaway……. With no regard at all to Section 13 of the CPC. That can only mean this: that Section 13 must be confined to civil proceedings, and for the purposes of a winding up petition it is permissible to ignore it altogether. I do not see how this can possibly be done.*

d. However, in the case of ***China Shipping Development Co. Ltd. Vs. Lanyard Foods Ltd [(2008) 142 Comp Cas 647 Bom],*** the Hon'ble Bombay High Court has held that "*a winding up petition would be maintainable on the basis of a judgment of a foreign court* and that *this remedy invoked by the Petitioner cannot be regarded as an exercise for the execution of the decree of English Court.*" The Hon'ble Bombay High Court in this case had admitted the winding up petition based on the foreign judgment after examining its conclusiveness under section 13 of CPC. Otherwise also, the contours, scope and objectives I&B Code are different from the scope of winding up petition under Companies Act, 1956. Therefore, no analogy with section 7 application under I&B Code on the ground of equitable execution can be drawn.

e. In Peter ***Johnson John (Employee) vs. KEC International Limited [Company Appeal (AT) (Ins) No. 188/2019]*** it was held:

> *"7. It is well settled that foreign decree either of reciprocating or non reciprocating territory not passed on merits or not satisfying the requirements of Section 13 of CPC cannot be the basis of winding up petition. An ex-parte decree based on default summary judgment for non appearance before a foreign court cannot be relied upon for seeking winding up of*

a company. Such decree cannot be held conclusive as it has not been given on merits of the case.

8. … Unless the decretal amount is adjudicated upon by the Hon'ble High Court of Bombay as a legally payable claim, the same would not constitute a "Debt" in the hands of Appellant – Operational Creditor and unless the debt is crystallized and payable in law, the issue of default would not be attracted.

From the aforesaid paragraphs, we note two distinguishing features. Firstly, the observations were made in the context of an ex-parte foreign decree not passed on merits. Secondly, in that case the application was under section 9 of I&B Code by an Operational Creditor and the Operational Creditor had already filed for execution of the order before the Hon'ble Bombay High Court which was pending adjudication which constitutes a 'pre-existing dispute' and therefore, a petition under section 9 of the Code was not maintainable.

44. We would now consider the submissions argument of Mr. Nankani that foreign decree is being submitted as an evidence of default under Regulation 2A of IBBI CIRP Regulations, 2016 and not for execution. We shall first refer to section 7 of the I&B Code:

*"**Section 7. Initiation of corporate insolvency resolution process by financial creditor.***
(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.
***
(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish--

(a) record of the default recorded with the information utility or ***such other record or evidence of default as may be specified;***

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.
*****"

45. It can be seen from the above that under section 7(3) of the Code, the Financial Creditor is required to furnish record of default recorded with the information utility or such other record or evidence of default as may be specified. For this purpose, Regulation 2A was inserted to the CIRP Regulations w.e.f. 13.11.2020 which is reproduced below for ease of reference:

*"**2A. Record or evidence of default by financial creditor.***
For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely: -

(a) certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891);

(b) ***an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired****."*

46. Regulation 2A(b) provides that any order of a Court can be used as evidence under section 7(3) of IBC. The I&B Code does not define the word 'Court', however, section 3(37) of the I&B Code states that *words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, the Securities Contact (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.*

47. Thus, we have to refer to section 2(29) of the Companies Act, 2013 wherein the term 'Court' has been defined as follows:

> *"**2(29). "Court"** – (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);*
>
> *(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;*
>
> *(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;*
>
> *(iv) the Special Court established under section 435;*
>
> *(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law."*

48. It is clear from the above that the word 'Court' does not include a Foreign Court as per section 2(29) of the Companies Act, 2013. But Foreign Court is used under CPC and a safeguard is provided to judgment debtor to object to the execution of a foreign decree under section 44A of CPC and if the Executing Court is satisfied that the foreign decree falls under any of the exceptions carved out by section 13 of CPC, it is mandatory for the Executing Court to reject the execution.

49. The Petitioners have relied on ***China Shipping Development Co. Ltd. Vs. Lanyard Foods Ltd [(2008) 142 Comp Cas 647 Bom]*** to contend that a winding up petition is maintainable on the basis of a foreign judgment and the same does not amount to execution of the said judgment.

50. We are conscious of the present era of globalization in which recognition of foreign decree is important to protect the rights of foreign lenders and to act as deterrent on the defaulting Indian parties taking shelter under frivolous objections.

51. We must add that the executability of a foreign decree becomes significant in cases where recovery of a debt is sought. However, the intention behind the enactment of the I&B Code is not recovery of debt but resolution of the Corporate Debtor which has been elucidated in **Dena Bank case** (supra), extract of which is given below:

> ***"67.*** *The IBC aims at promoting, inter alia, investments and also resolution of insolvency of Corporate persons. As per its Statement of Objects and Reasons "the objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.*
>
> ***68.*** *Under the scheme of the IBC, the Insolvency Resolution Process begins, when a default takes place, in the sense that a debt becomes due and is not paid."*

52. It is clear from the above that the objective of the Code is resolution of companies and not recovery of the debt for which purpose execution of a foreign decree becomes a requisite condition. However, in the present case, the foreign decree is merely produced as an evidence of debt and not for enforcement or recovery purpose and this Adjudicating Authority

not being a recovery forum, can take cognizance of a foreign decree to establish debt and default, which issue is no more *res integra*.

53. Reference is made to the observations of Hon'ble Appellate Tribunal in ***V. R. Hemantraj vs. Stanbic Bank Ghana Ltd & Anr [Company Appeal (AT) (Ins) No. 213/2018]***, decided on 29.08.2018**:**

> *"8. The aforesaid decision of the Hon'ble Supreme Court makes it clear that on the basis of any record of the Adjudicating Authority is satisfied that there is a 'debt' and default has occurred, the Adjudicating Authority is required to admit the application.*
>
> *9. Application under Section 7 is filed in Form I which is in 5 Part. It is not a recovery proceeding or a proceeding for determination of claim on merit, which can be decided only by a court of competent jurisdiction. Application under Section 7 or 9 or 10 of I&B Code being not money claim or suit and not being an adversarial litigation, the Adjudicating Authority is not required to write a detailed decision as to which are the evidence relied upon for its satisfaction. The Adjudicating Authority is only required to be satisfied that there is a 'debt' and default has occurred.*
>
> *11. The learned Senior Counsel appearing on behalf of the appellant submitted that the decree is an ex parte decree, but such issue cannot be decided while entertaining an application under Section 7 or by the Adjudicating Authority or even by this Appellate Tribunal. The Adjudicating Authority has not been empowered to give such declaration.*
>
> *12. The decree passed by High Court of Justice, Queens Bench Division, Commercial Court of England, can be challenged only before the Court of Competent jurisdiction. The same cannot be assailed before the Adjudicating Authority, till its existence is denied.*
>
> *13. Admittedly 'M/s Rajkumar Impex Ghana Ltd', a subsidiary of the Corporate Debtor, was granted medium term loan by 1st Respondent. It is also not in dispute that 'M/s Rajkumar Impex Pvt Ltd' (Corporate Debtor) which is the holding company of*

'M/s Rajkumar Impex Ghana Ltd' has executed a guarantee in favour of the 'Stanbic Bank Ghana Ltd' (1st Respondent). The guarantee given by the Corporate debtor, is on record. The decree passed by the High Court is an evidence in support of such guarantee. As admittedly the debt amount has not been paid by the Corporate Debtor, the Adjudicating Authority rightly admitted the application."

54. In ***Stanbic Bank Ghana (supra),*** the Hon'ble Appellate Tribunal has, in clear terms, held that the decree passed by High Court of Justice, Queens Bench Division, Commercial Court of England is an evidence in support of guarantee and admittedly the debt amount has not been paid by the Corporate Debtor and application has been rightly admitted, holding thereby that a foreign decree is an evidence of debt and non-payment of which makes the corporate debtor liable for admitting to insolvency process. This judgment has been upheld by the Hon'ble Supreme Court vide order dated 12.10.2018 in Civil Appeal No. 9980/2018

55. Considering from both angles i.e. Regulation 2A and judgment in ***Stanbic Bank Ghana (supra),*** we conclude that the foreign decree for the purpose of initiation of insolvency has to be accepted an evidence of debt. The first issue is accordingly answered in affirmative.

II <u>Establishment of debt and default</u>

56. The Corporate Debtor has neither denied the loan borrowed by its foreign subsidiary i.e. the Principal Borrower nor the Corporate Guarantee executed by it to secure the loan. Admittedly, the loan amount has not been repaid by the Corporate Debtor.

57. We note that the Corporate Debtor has, in various proceedings, has acknowledged the debt and also offered to settle the same, in the draft Rehabilitation Scheme and also before the Hon'ble Appellate Tribunal and has not placed any evidence to show that the foreign decree has been fully discharged. Thus, a *prima facie* case of existence of debt and default has been established.

58. Further, perusal of the petition shows that the Petitioners have annexed the certificates under section 2A(B) of the Bankers' Books Evidence Act, 1891 certifying the entries in the relevant accounts in the Petitioners' Books, details of which are given below:

i. Certificate of Bank of India, New York Branch dated 01.08.2019
ii. Certificate of Export-Import Bank of India dated 15.03.2019
iii. Certificate of Union Bank of India dated 08.04.2019
iv. Certificate of State Bank of India dated 25.07.2019

59. The certified copies of entries in the accounts in the Bankers' Books as defined in section 2(3) of the Bankers' Books Evidence Act, 1891 is sufficient evidence of default as per Regulation 2A(a) of the CIRP Regulations.

60. As regards issue raised by the Corporate Debtor that the documents executed between the Petitioners and the Corporate Debtor are insufficiently stamped/unstamped, we note that the said documents have merged into the foreign decree dated 08.04.2014 which forms the basis of the proceedings hereunder and therefore, we deem it unnecessary to deal with the said issues as we have already decided on the validity of the foreign decree dated 08.04.2014 as sufficient evidence of debt.

61. The Petitioners, in their reply to additional affidavit dated 28.11.2023 filed by the Corporate Debtor, had brought on record two letters dated 30.11.2023 and 08.12.2023 whereby the Corporate Debtor made settlement proposals to the Petitioners which were, however, rejected by the Petitioners. The Petitioners argue that the proposals dated 30.11.2023 and 08.12.2023 also amounts to acknowledgement of debt and default and this Tribunal on being satisfied with the same, is bound to admit the instant application. The issue of bar of limitation has already

been decided and accepted by the Corporate Debtor that the petition is within limitation.

62. Considering the facts of the present case and looking at them from whichever angle, we have no hesitation to conclude that debt and default has been established. Thus, the second issue is also answered in positive.

63. It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in **Innoventive Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]** wherein it was held as follows:

> *"28. … **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete,** in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority. 30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*
>
> ***(Emphasis Provided)***

64. Upon perusal, this Tribunal is of considered opinion that debt and default has been established and the default amount is also in excess of the minimum amount stipulated in section 4(1) of the Code. The Petition

is also within the limitation period, and therefore we are satisfied that the present petition is maintainable.

65. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 3425 of 2019 is **admitted** and ordered as follows:

ORDER

i) The above Company Petition No. (IB) 3425 (MB)/2019 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Maneesh Pharmaceuticals Limited**.

ii) The Petitioner has proposed the name of **Mr. Asish Narayan,** Registration No. IBBI/IPA-002/IP-N00444/2017-2018/11274, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 01.08.2019 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Upon verification, we note that the AFA of the proposed IRP is valid upto 03.12.2024. Accordingly, **we appoint Mr. Asish Narayan as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.

iii) 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 (IRP) 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 the Committee of Creditors.

iv) There shall be a moratorium under section 14 of the Code prohibiting the following:

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 of 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;
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.

v) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

vi) 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.

vii) 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.

viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. 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.

x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.

xii) The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.

xiii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

66. Accordingly, the Company Petition No. 3425 of 2019 and the connected IA 5566/2023 stands **allowed and disposed of**.

Sd/-
Charanjeet Singh Gulati
Member (Technical)

Sd/-
Lakshmi Gurung
Member (Judicial)

Uma, LRA