

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 256/JPR/2020;
IA No. 334/JPR/2021
And CP (IB) No. 39(PB)2018

*(Application 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. **Administrator of Specified
Undertaking of Unit Trust of India**
with its registered office at UTI
Tower, 'Gn' Block, Bandra-Kurla
Complex, Bandra-East Mumbai-
400051

2. **UTI Trustee Company Private Limited**
UTI Tower, 'Gn' Block, Bandra-
Kurla Complex, Bandra-East,
Mumbai-400051

....Applicants-Financial Creditors

Versus

M/s Modern Syntex (India) Limited
Having its registered office at A-4,
Vijay Path, Tilak Nagar, Jaipur-302004,
Rajasthan

...Respondent-Corporate Debtor

Sd/-

Sd/-

IA No. 256/JPR/2020;
IA No. 334/JPR/2021
And CP (IB) No. 39(PB)2018

AND

In the matter of IA No. 256/JPR/2020:

Modern Syntex (India) Ltd.
A-4, Vijay path, Tilak
Nagar, Jaipur- 302004,
Rajasthan

...Applicant

Versus

**The Administrator of
Specified Undertaking of
Unit Trust of India &
Another**

...Non-Applicants

AND

In the matter of IA No. 334/JPR/2021:

Modern Syntex (India) Ltd.
A-4, Vijay path, Tilak
Nagar, Jaipur- 302004,
Rajasthan

...Applicant

Versus

**The Administrator of
Specified Undertaking of
Unit Trust of India &
Another**

...Non-Applicants

Present through video-conferencing:

For the Applicant

1). Mr. Aniruddha Joshi, Adv.

Sdr

Sdr

IA No. 256/JPR/2020;

IA No. 334/JPR/2021

And CP (IB) No. 39(PB)2018

- 2). Mr. Rajeev K Panday, Adv.
3). Mr. Naresh Trivedi, PCS
- For the Respondent : 1). Ms. Anju Jain, Adv.
2). Mr. Hitesh Sachar, Adv.
3). Mr. R.R. Maheshwari, CA

Order Pronounced on : 28.03.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The Present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (The Code) by '*Administrator of Specified Undertaking of Unit Trust of India*' and '*UTI Trustee Company Private Limited*' (Financial Creditors/Petitioner Companies) through authorised signatory, Ms. Anita Patole, for initiation of Corporate Insolvency Resolution Process (CIRP) against '*M/s Modern Syntex (India) Limited*' (Corporate Debtor). The Authority Letters of Petitioner Company No. 1 and Petitioner Company No. 2 authorising Ms. Anita Patole to represent the financial creditors in the instant petition have been annexed with the petition at Page No. 18 and 26 respectively.
2. The Corporate Debtor namely *M/s Modern Syntex (India) Ltd.* is a Company incorporated under the provisions of the Companies Act, 1956 on 12.11.1976 holding CIN No. L24302RJ1976PLC001780 with its

Sd/-

Sd/-

IA No. 256/JPR/2020;
IA No. 334/JPR/2021
And CP (IB) No. 39(PB)2018

registered office at A-4, Vijay Path, Tilak Nagar, Jaipur and falls within the territorial jurisdiction of this Adjudicating Authority.

3. The Authorized Share Capital of the Corporate Debtor is ₹1,60,00,00,000/- (Rupees One Hundred Sixty Crores) and Paid-Up Share Capital of the Company is ₹1,28,21,66,000/- (Rupees One Hundred Twenty-Eight Crores Twenty-One Lakhs Sixty-Six Thousand Only).

4. The facts of the case, as briefly stated in the application by the Financial Creditors are as follows:

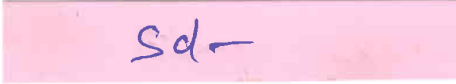
a. That the Corporate Debtor received finance from the Financial Creditors in the nature of Secured Redeemable Non-Convertible Debentures (NCD) of Rs. 5385 Lacs and Unsecured Transferable Notes (UTNs) of Rs. 700 Lacs vide sanction letters signed on various dates. The details of allotment of Secured Redeemable Non-Convertible Debentures (of Rs. 5385 Lacs) is as follows:

Sr. No.	Date of allotment	Description of NCD	Rs. in lacs
1.	24-09-95	15% NCDs	85
2.	03-01-95	17% Revised 16% NCDs	400
3.	30-09-95	17.5% NCDs	4400
4.	13-11-95	18% NCDs	500
Total			5385

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- b. The Corporate Debtor executed various documents including Letter of Allotment of 17.5% (Taxable) redeemable Non-Convertible Debentures of Rs. 100/-, Form No. 8 and Form No. 13 in accordance with the resolution passed at meeting of Board of Directors dated June 05,1995, Demand Promissory Note along with Advance Stamped Receipt for Receipt of Payment and Subscription Agreement dated June 21, 1995.
- c. Thereafter, at the request of the Corporate Debtor, the restructuring package was approved vide UTI's ref no. UT/DOIM/M-121/607/98-99 dated 09.09.1998 which has been annexed with the application as Annexure C. As per the terms enumerated in the Letter, the overdue interest and simple interest on the debt as on cut-off date of 30.09.1998 was to be converted into 16% Optionally Secured Fully Convertible Debentures (OFCDs) redeemable in 32 quarterly instalments commencing from 01.04.2000. The outstanding principal of all the UTNs and NCDs was to be converted into 17% NCDs redeemable in 32 quarterly instalments commencing from 01.04.2001. Thus, the repayment of the aforesaid 16% OFCDs and 17% NCDs was to be completed in 32 quarterly instalments. The Corporate Debtor vide letter dated 14.09.1998 conveyed the

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acceptance of the aforesaid approval. Copy of the same has been annexed with the Application at Annexure-D.

- d. It has further been submitted that after the restructuring of Debt in September 1998, a sum of Rs. 112.56 Lacs was paid by the Corporate Debtor during 15.05.2000 to 25.10.2000 which was adjusted towards part payment of interest. Copy of the Statement of Accounts has been annexed as Annexure E.
- e. On 08.12.2000, the Corporate Debtor was referred to Board for Industrial and Financial Reconstruction (BIFR) vide Case No. 399/2000 on the basis of financial results as on 31.03.2000. Thereafter, the Corporate Debtor filed subsequent references with BIFR from time to time. It has been further submitted that the date of Default was 31.01.1999 whereas during the period starting from 2000 till 16.12.2016, the Corporate Debtor enjoyed the protection/bar on legal proceedings as per Section 22 of The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA).
- f. Meanwhile, in the year 2002, the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 was enacted whereby the body of Unit Trust of India was bifurcated into following entities:

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- i. The Administrator of the Specified Undertaking of the Unit Trust of India (SUUTI), a Successor to the erstwhile Unit Trust of India (UTI), having its Office at UTI Tower, Gn Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051
 - ii. UTI Trustee Company Pvt Ltd, the Trustee Company of UTI Mutual Fund (UTIMF), a successor to the erstwhile Unit Trust of India, acting through UTI Asset Management Company Limited, having its registered office at UTI Tower, 'Gn' Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051.
- g. Upon enactment of the Insolvency and Bankruptcy Code, 2016 (the Code) and in accordance with the provisions thereof, the last pending reference being Case No. 60/2010 in BIFR stood abated on 16.12.2016. Thus, there was a continuous default as on 16.12.2016.
- h. The Financial Creditors have submitted that the application has been filed within limitation considering the extension in limitation by virtue of pendency of proceedings in BIFR. Also, the pendency of proceedings in BIFR results firstly in creating a bar on initiation

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of legal proceedings and secondly in extending the limitation of legal proceedings.

5. In Part-III of Form No.1 Mr. Partha Sarathy Sarkar, Registration No. IBBI/IPA-002/IP-N00239/2017-18/10690 has been proposed as Interim Resolution Professional (**IRP**). Form No. 2 submitted by the proposed IRP is stated to be attached as Annexure – A of this application.
6. The Financial Creditors have submitted that the total outstanding financial debt as on 15.11.2017, along with interest, amounts to Rs. 33,00,34,87,999.99/- (Rupees Three Thousand Three Hundred Crores Thirty-Four Lacs Eighty-Seven Thousand Nine Hundred and Ninety-Nine and Ninety Nine Paise Only).

Part IV

Particulars of Financial Debt

Total amount of debt granted	UTI had sanctioned/subscribed to Secured Redeemable NCDs of Rs. 5385 Lacs and UTNs of Rs. 700 Lacs.			
Date(s) of Disbursement	The details of allotment of Secured Redeemable NCDs (of Rs. 5385 Lacs) is as follows:			
	Sr. No.	Date of allotment	Description of NCD	Rs. in lacs
	1.	24-09-95	15% NCDs	85
	2.	03-01-95	17% Revised	400

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		16% NCDs	
3.	30-09-95	17.5% NCDs	4400
4.	13-11-95	18% NCDs	500
Total			5385

As per the request of the Company, the restructuring package was approved vide UTI's letter ref no. UT/DOIM/M-121/607/98-99 dated 09/09/1998. As per the package the cut-off date was 30/09/1998. Outstanding principal of UTN (Rs. 700 lacs) & NCDs (Rs. 5385 lacs) were converted into 17% NCDs redeemable in 32 quarterly instalments from 1st April 2001 to 01.01.2009 and the accrued overdue/simple interest was converted into 16% OFCD (Rs.2831.82 Lacs)

Amount claimed to be in default and the date on which the default occurred

Total Amount Claimed to be in default by joint applicants is Rs. 33,00,34,87,999.99/- (*Rupees Three Thousand Three Hundred Crores Thirty-Four Lacs Eighty-Seven Thousand Nine Hundred and Ninety-Nine Only*) as on November 2017.

APPLICANT 1- ADMINISTRATOR OF SPECIFIED UNDERTAKING OF UNIT TRUST OF INDIA		
17% NCD		
Sr.	Particular	Amount (Rs.)

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No		
1.	Principal	60,85,00,000.00
2.	Simple Interest	2,09,09,41,197.00
3.	Over Due	20,19,70,90,812.00
4.	Penal Interest	75,38,63,029.00
Total [A]		23,65,03,95,038.00
16% OFCD		
1.	Principal	11,84,90,479.41
2.	Simple Interest	38,66,72,740.98
3.	Over Due	3,24,44,27,139.09
4.	Penal Interest	16,39,69,990.47
Total [B]		3,91,35,60,349.97
Total (A+B) [C]		27,56,39,55,387.97
APPLICANT 2- UTI TRUSTEE COMPANY PRIVATE LIMITED		
1.	Principal	16,46,92,190.58
2.	Simple Interest	53,74,43,861.01
3.	Over Due	4,50,94,91,524.90
4.	Penal Interest	22,79,05,035.52
Total [D]		5,43,95,32,612.02
Total (C+D)		33,00,34,87,999.99

7. This bench vide order dated 09.08.2018 closed the opportunity to file reply by the Corporate Debtor/Respondent in view of the Order of the Hon'ble Principal Bench, New Delhi dated 04.06.2018 whereby one last

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IA No. 256/JPR/2020;
IA No. 334/JPR/2021
And CP (IB) No. 39(PB)2018

opportunity was granted to the respondent to file reply within ten days. The Respondent filed an I.A No. 18/JPR/2018 seeking appropriate directions with respect to taking on record the proposed terms of settlement and recalling the order dated 09.08.2018. This bench after taking all the representations into consideration vide order dated 30.08.2018 listed the matter for final arguments of the main petition on 20.09.2018. The Respondent being aggrieved by the Order dated 30.08.2018 preferred a Writ Petition before the Hon'ble High Court of Rajasthan bearing No. 21159/2018. The High Court vide order dated 20.07.2020 observed as follows:

“In view of the prayer made in the Writ Petition and the submissions made by the learned counsels for the respondents, the writ petition is disposed of with the following direction: -

- (1) The proposed terms of settlement shall be taken into consideration by the learned Tribunal while deciding the main petition;*
- (2) The petitioner is given four weeks' time from today to file reply to the main petition. It is made clear that no further opportunity to file reply shall be extended to the Petitioner.”*

8. Subsequently, the Corporate Debtor filed reply to oppose the application filed by the Financial Creditors on the following grounds:
 - a. The Respondent/Corporate Debtor became sick in the year 2000 and on 08.12.2000, the reference to BIFR was made which was

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subsequently registered as Case No. 399/2000. The said reference continued till 01.12.2016 and stood abated on the said date upon coming into operation of the Code.

- b. As per sanction letter dated 09.09.1998, security was to be created within a period of 3 months from the date of sanction of restructuring failing which additional interest was to be charged @1.05% p.a. However, the Respondent did not create any security for converting restructured 17% debentures of Rs. 60.85 crores and has also not created security for restructured optionally secured fully convertible debentures of Rs. 28.31 Crores. As the Respondent/Corporate Debtor did not file any modification of the earlier charges return in Registrar of Companies ('ROC'), accordingly the Applicants/Financial Creditors are partly Secured Financial Creditors and partly Unsecured. It has also been submitted that the claim of the Applicants besides being extremely exorbitant is superfluous and therefore, non-maintainable under the law.
- c. In the year 2008, a one-time settlement ('OTS') was entered into with the Applicants for a total amount of Rs. 16 crores against the dues. The Respondent paid Rs. 2.4 Crores out of the settlement

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amount, however could not pay the remaining 13.6 crores due to pending reference and approval of Draft Rehabilitation Scheme before BIFR and also on account of heavy losses incurred by the Company because of unprecedented rise in oil prices leading to exorbitant increase in power and raw material cost. The Copy of the settlement dated 23.10.2008 has been annexed with the Reply as Annexure-R4.

- d. The Respondent/Corporate Debtor has made untiring endeavours to settle the outstanding dues except that of the Applicants/Financial Creditors which is solely attributable to their adamant and whimsical attitude. It has also been submitted that the Corporate Debtor is willing to pay the balance amount of Rs. 13.60 crores along with reasonable interest, if any, pursuant to the direction of the High Court Order dated 20.07.2020.
- e. The Corporate Debtor has also submitted that on 30.01.2018 a proposal for One Time Settlement was sent to the Petitioners/Financial Creditors which was rejected vide letter dated 05.02.2018. Thereafter, numerous letters came to be exchanged to arrive at a One Time Settlement but the same could not be achieved. The approach adopted by the Applicants/Financial

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Creditors in the entire process smacks of malafide and high-handed approach to coerce the Corporate Debtor into pressure and be liquidated. Such torturous act under the garb of a particular code is unwarranted and uncalled for especially when the entity despite being such unit has managed to settle its creditors and is on revival mode with the incoming investor desirous to invest in the unit.

- f. The Corporate Debtor also contended that the Applicants/Financial Creditors have filed the application without proper authorisation/Power of Attorney in favour of the Authorised Representative Ms. Anita Patole. The Authority Letters available at Pg. 18 and 26 of the Application are letter simplicitor as no Board Resolution has been filed in favour of the signatories to the aforesaid letter. It is a settled position of law that any proceedings be it a suit/application/complaint under any provisions of law, in case of corporate body, should be filed exclusively by a person who has been duly authorised. Therefore, the very foundation of the application which is resting on the alleged defective authorisation cannot be considered as proper authorisation.
- g. It has further been mentioned that the Application lacks the essential ingredients of Section 7 of the Code and in Part IV the

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Petitioners have deliberately mentioned wrong dates with respect to allotment of 15% NCD amounting to Rs. 85 Lacs as on 24.09.1995 against the correct date being 24.09.1985. The same has been done deliberately to cross the bar of Limitation.

- h. The reply also states that the filing of the Application is barred by Limitation. The sanctioned/subscribed Redeemable NCDs of Rs. 5385 Lacs and UTNs of Rs. 700 Lacs in the year 1994 and 1995 were restructured on 09.09.1998 due to default in payments from 01.04.1996, being the date when right to sue arose for the first time. The applicants restructured its debts and accordingly on 01.01.1999 when the interest for the quarter ended the payment became due on 31.12.1998 and the same was not paid. Therefore, three years of limitation from 01.01.1999 expired in the year 2002. The alleged debt as claimed to be due and payable is time barred. Accordingly, the Application is beyond limitation.
- i. It has been submitted that the Hon'ble Apex Court in *B.K. Educational Services Private Limited v. Parag Gupta and Associates (2018)11 SCC 633* made it clear that the provision of the Limitation Act, 1963 will apply to the application made under Section 7 and 9 of IBC. The Hon'ble Court also held that intent of

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IBC is not to give a new lease of life to debts which are already time barred and Article 137 will apply to the application filed under IBC. According to the Respondent, the Petitioners have deliberately not specified any date of default in Part IV of the Application.

- j. The Respondent has further contended that the Code is not an enforcement procedure for debts. The Code is a special act enacted for resolution of Corporate Persons keeping in mind the interest of concerned parties. It has been submitted that it is the case of the Applicant that till date they have not invoked their rights towards the adjudication of debt, since the year 1996, hence, IBC cannot be used as a substitute for Debt Adjudication and Enforcement Procedure, as held by the Hon'ble NCLAT in *M/s Reliance Asset Reconstruction Company Ltd. v. M/s Hotel Poonja International Private Limited [Company Appeal (AT)(Ins) No. 1011 of 2019]*.
- k. Further, it has been submitted that it is a settled proposition of law that Application under Section 7 of the Code is not a recovery claim or suit, it is just the resolution of Corporate Debtor. Section 7 has been brought into force on 1st December, 2016 vide S.O 3594(E) dated 30th November, 2016. Therefore, triggering CIRP in

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respect of defaults occurring prior to 1st December, 2016 would be impossible in view of Application of Article 137 of the Limitation Act, 1963.

1. The Respondent has relied on the following list of judgments to support his submissions:

- i. *S.P. Chengalvaraya Naidu (Dead) by Lrs. Vs. Jagannah (dead) By Lrs. And Others. (1994) 1 SCC 1*
- ii. *Nibro Limited Vs. National Insurance Co. Ltd. (Suit No. 933 of 1983 Decided on 06.03.1990)*
- iii. *Schemenge GMBH and Company Ledger Vs. Saddler Shoes Private Limited (Civil Suit No.689 of 1999 and Application No. 3189 of 1999 decided on 29.10.2010)*
- iv. *State Bank of Travancore Vs. Kingston Computers (I) P. Ltd Vs. Kingston Computers (I) P. Ltd. [Civil Appeal No.2014 of 2011 (Arising our of SLP (C) No. 18179 of 2009) Decided on 22.02.2011]*
- v. *B.K. Educational Services Pvt Ltd v. Parag Gupta and Associates (2019) 19 SCC 633*
- vi. *Jignesh Shah & Anr. Vs Union of India & Anr. [Writ Petition (Civil) No. 455 of 2019]*

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- vii. *Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. (Civil Appeal No. 4952 of 2019)*
- viii. *Vashdeo R Bhojwani Vs. Abhyudaya Co-operative Bank Ltd & Anr. (Civil Appeal No. 11020 of 2018)*
- ix. *Sagar Sharma & Anr. Vs. Phoenic ARC Pvt. Ltd. & Anr. (Civil Appeal No. 7673 of 2019)*
- x. *Babulal Vardharji Gujar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. And Another (Civil Appeal No. 6347 of 2019) 2020 SCC Online SC 647*
- xi. *V Hotels Limited Vs. Asset Reconstruction Company (India) Limited (Company Appeal (AT) (Insolvency) No. 525 of 2019)*
- xii. *M/s Reliance Asset Reconstruction Company Ltd. Vs. M/s Hotel Poonja International Private Limited (Company Appeal (AT)(INS) No. 1011 of 2019)*
- xiii. *A. Balakrishnan Vs. Kotak Mahindra Bank Limited (Company Appeal (AT) (Insolvency) No. 1406 of 2019)*
- xiv. *C. Shivakumar Reddy Vs. Dena Bank & Anr. [Company Appeal (AT) (Insolvency) No. 407 of 2019]*

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- xv. *Sumeet Maheshwari Vs. Navbharat Press (Bhopal) Private Limited & Anr. [Company Appeal (AT) (Insolvency) No. 197 of 2020]*
- xvi. *Bimalkumar Manubhai Savalia Vs. Bank of India (Company Appeal (AT) (Insolvency) No. 1166 of 2019)*
- xvii. *Bishal Jaiswal Vs. Asset Reconstruction Company (India) Ltd. & Anr. (Company Appeal (AT)(Insolvency) No. 385 of 2020)*
- xviii. *Rajesh Kumar Tekriwal Vs. Bank of Baroda (Company Appeal (AT) (Insolvency) No. 225 of 2020)*
- xix. *State Bank of India Vs. Krishidhan Seeds Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 972 of 2020)*
9. The Financial Creditors/Applicants vide Diary No. 929/2020 filed Rejoinder to the Reply preferred by the Corporate Debtor/Respondent and denied the averments mentioned in the Reply on the following grounds:
- a. The Financial Creditors/Applicants submitted that the Order of the Hon'ble High Court dated 20.07.2020 would not act as an impediment for this Authority to exercise its authority and jurisdiction in admitting the petition and appointing a

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Provisional Insolvency Resolution Professional once a prima facie case is found to be in favour of the petitioners. The “consideration” of any offer/proposal would be at appropriate stage defined under IBC Code and would be considered while “deciding the main petition”. For the purpose of appreciating the jurisdiction and authority of this Tribunal reliance was placed on the preamble of the Code.

- b. The Petitioners further submitted that the OTS sanctioned by the Petitioner No. 1 in terms of its letter dated 23.10.2008 was cancelled in August 2009 & all original liabilities were restored in terms of Petitioner No. 1’s letter dated 12.08.2009. Copy of the same has been annexed as Annexure A of the Rejoinder.
- c. It has also been submitted that the Respondent/Corporate Debtor failed multiple times (in the year 1998, 1999, 2000 & 2008) and neglected to fulfil its commitment/s made, way back in the year 1998. Also, the settlement proposal which was then accepted by the Petitioner No. 1 ceased to be effective and valid. Further the respondent no more remained entitled to seek any waiver or concession that was earlier considered by the Petitioner since the OTS was cancelled vide petitioner’s letter dated 12.08.2009 and

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all original liabilities were restored. Therefore, any “consideration” of settlement proposal of the Corporate Debtor would be only in the four corners of the Code and not on the basis of any legal or contractual rights available to the Corporate Debtor and no such legal right exists in favour of the Respondent/Corporate Debtor outside the framework under IBC Code.

d. It was further mentioned in the rejoinder that as per the OTS sanctioned, the Corporate Debtor was required to make a payment of Rs. 16 Crores whereas no payment was made, hence the OTS was cancelled in August 2009. In December 2009, SUUTI, received Rs. 2.40 Crores from IFCI from the sale proceeds of two units of the Company sold under SARFAESI Act 2002 situated at Alwar, Rajasthan. After the repeal of Sick Industrial Companies (Special Provisions) Act, 1985, the reference to what transpired before BIFR is not relevant for the purpose of deciding this petition which is within four corners of the IBC Code.

e. It has been submitted that as per Annexure C of the Application, the instalments under restructuring sanctioned in September


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1998 were to commence from 01.04.2000. The Corporate Debtor's reference was registered with BIFR on 08.12.2000. On 16.12.2016, the reference stood abated and the petition is dated 04.01.2018. Considering the time gap of 8 months between April and December 2000 and 12 months subsequently between abating of reference and filing of petition, it is clear that the petition is within limitation considering the extension in limitation period by virtue of pending proceedings in BIFR. Secondly, the pendency of proceedings in BIFR results firstly in creating a bar on initiation of legal proceedings and secondly in extending the limitation for legal proceedings. This can in no way be construed as if the instalments under sanctioned terms would enjoy a moratorium period of the whole span of years when the matter was pending before BIFR. The instalments fell due on respective dates. The only implication of BIFR was extension of limitation to file legal proceedings for enforcing debt. The contention of the Respondent stating that default could not have been taken place so long as the BIFR proceedings were pending is erroneous. It is clear from the proposal of settlement that there was a default.

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10. The Financial Creditors vide Diary No. 602/2021 dated 05.03.2021 filed an affidavit clarifying the authority/power of the person who had moved this petition herein. It has been submitted that the Application for institution of CIRP was signed and affirmed by Ms. Anita Patole who was duly authorised on behalf of both the applicants to file the said application. The copy of the Authority Letter given to Ms. Anita Patole by UTI Asset Management Company Limited is already annexed with the Application. The Applicant No. 1 at Page No. 20 of the Application and the Applicant No. 2 at Page No. 16 of the Affidavit dated 04.03.2021, have filed respective resolutions dated 08.03.2003 and 07.04.2003 empowering UTI Asset Management Company Limited to institute legal proceedings on their behalf. The Corporate Debtor filed objections to the aforementioned affidavit vide Diary No. 1461/2021 dated 29.07.2021 stating that the Applicants without the leave of this Authority proceeded to file an Additional Affidavit and also brought on record certain new documents as annexures which were not part of the court record and hence, the same cannot be taken on record. To decide the controversy, we take the affidavit dated 04.03.2021 on record.
11. The first issue for consideration is whether Ms. Anita Patole was duly authorised to depose on behalf of the applicants in the present

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application filed under Section 7 of the Code for initiation of CIRP against the Corporate Debtor.

12. The Affidavit in support of the Application for initiation of CIRP by Financial Creditors has been filed by Ms. Anita Patole which is annexed at Page 16 and 24 of the Application. Along with the Affidavit two authority letters have been filed which are marked as Exhibit A and Exhibit B at Page 18 and 26 respectively. Vide the aforementioned Authority Letter marked as Exhibit A, Ms. Anita Patole has been duly authorised to sign/execute/affirm and deliver the Vakalatnama, Affidavits, Reply Affidavits, Rejoinders in the matter of Modern Syntex (India) Ltd for the benefit of the Administrator of SUUTI i.e. Applicant No. 1 herein by Shri B.Babu Rao, CEO SUUTI. It is also clear from the extracts of meeting of Board of Advisors of SUUTI held on 08.03.2003 that the responsibility for continuation of the existing Legal Actions (both Civil and Criminal) and power of institution and defending of Legal Actions was delegated to UTI Asset Management Company Private Limited (UTI AMC). Further the Petitioners submitted an affidavit vide Diary No. 602/2021 dated 05.03.2021 along with extracts of the meeting of Board of Advisors of Applicant No. 1 held on 05.11.2014. As per the same, Shri B.Babu Rao was designated as the

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CEO of SUUTI. Thereby, Ms. Anita Patole was duly authorised by Applicant No. 1.

13. With respect to Applicant No. 2, the deponent Ms. Anita Patole has been authorised vide Exhibit B dated 26.12.2017 by the Executive Vice President & Head of Dealing, UTI Assets Management Co. Ltd. to sign/execute/affirm and deliver the Vakalatnama, Affidavits, Reply Affidavits, Rejoinders in the matter of Modern Syntex (India) Ltd for the benefit of UTI Trustee Pvt Ltd. The Petitioners vide Diary No. 602/2021 dated 05.03.2021 submitted an Affidavit clarifying the authority of the deponent under Section 7 Application. As per the notification dated 15.01.2003 issued by the Ministry of Finance and Company Affairs (Department of Economic Affairs), the UTI Trustee Company Private Limited, in its capacity as trustee of UTI Mutual Fund was notified as the specified company for the purpose of the Unit Trust of India (Transfer of Undertaking and Repeal) Ac, 2002. Further as per the Extracts of the Minutes of the meeting of the Board of Directors of Applicant No. 2 held on 07.04.2003, the UTI Asset Management Company Private Limited was empowered to institute/defend Legal Actions (both Civil and Criminal) either by itself or through Lead Institutions etc. Therefore, it is clear that Ms. Anita Patole was duly

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authorised by the concerned authority to file the affidavit in support of Application under Section 7 of the Code on behalf of Applicant No. 2.

14. The next issue that needs to be answered is whether the present application has been filed within limitation. The Respondent has submitted that the filing of the present Application is barred by Limitation and there is no mention of the date of default in part IV of the Petition. The Respondent has contended that provisions of Limitation Act, 1963 will apply to the application made under Section 7 and 9 of IBC and for the same relied upon judgment of the Hon'ble Supreme Court in *B.K. Educational Services Pvt Ltd v. Parag Gupta and Associates (2019) 19 SCC 633*. The Respondent has also laid down three scenarios i.e. in case the default is considered from default of interest amount then the date of default is 31.12.1996, in case the default is considered from the default of principal amount then the date of default is 14.06.1996 and in case the date of default is considered as per the Restructuring Scheme then the date of default is 01.01.1999, therefore, the petition is time barred. The Financial Creditors have rebutted this contention of the Respondent/Corporate Debtor by contending that the Respondent has time and again defaulted in payment of the due amount therefore, there is a continuous default by

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the Corporate Debtor. It has also been contented that no proceedings could be taken due to BIFR Reference and as soon as the BIFR reference was abated, the legal bar ended and Financial Creditors filed the present petition enforcing their right.

15. We first take up the position in law regarding the applicability of the Limitation Act in IBC. To consider the same the following provisions of law are to be kept in mind:

Section 238A of the Insolvency and Bankruptcy Code:

“[Limitation- The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be]”

Limitation Act:

“18. Effect of acknowledgement in writing-

- (1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
- (2) *.....”*

“19. Effect of payment on account of debt or of interest on legacy- *Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in his behalf, a fresh period of*

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limitation shall be computed from the time when the payment was made:

Provided”

Section 137 of the Act of 1963 states that if the period of limitation has not been specified for any application, then the period of limitation shall be 3 years from the date when the right to initiate a cause of action accrues.

16. Section 238A of the Code came to be inserted vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, with effect retrospectively from 06.06.2018. Combined reading of Section 238A of the Code and Article 137 of the Limitation Act, 1963 reveals that the period of limitation for computation under the code will be 3 years from when the right to initiate accrues i.e. in the present case the date of default. Furthermore, Section 18 and Section 19 state that a fresh period will be computed from the time when the acknowledgment was so signed and when the last payment was made before the expiration of the prescribed period respectively.

17. Further it is necessary to refer to the following judgments which clarify the applicability of the Limitation Act, 1963 before the Adjudicatory Authority, NCLAT, DRT and DRAT:

- a. *B.K. Educational Services Private Limited Vs. Parag Gupta & Associates (2019) 11 SCC 633*

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- b. *Yogeshkumar Jashwantlal Thakkar Vs. Indian Overseas Bank & Ors. (NCLAT Company Appeal (AT) (Insolvency) No. 236 of 2020)*
- c. *Laxmi Pat Surana v. Union Bank of India & Anr. ((2021) 8 SCC 481)*

The aforementioned judgments have been quoted to enunciate the applicability of the Limitation Act, 1963 under the Insolvency and Bankruptcy Code, 2016.

18. It is settled proposition of law that provisions of the Limitation Act, 1963 are applicable during computing limitation under the Insolvency and Bankruptcy Code, 2016. In the present petition it is observed that the Corporate Debtor received finance from the Financial Creditors in the nature of Secured Redeemable NCDs of Rs. 5385 Lacs and UTNs of Rs. 700 Lacs in the year 1995. Thereafter, restructuring package was approved on 09.09.1998 as per which the overdue interest and simple interest as on 30.09.1998 i.e. Rs. 2831.82 Lacs was converted into 16% OFCDs redeemable in 32 quarterly instalments commencing from 01.04.2000 and the principal of all the UTNs (Rs. 700 Lacs) and NCDs (Rs. 5385 Lacs) was converted into 17% NCDs redeemable in 32 quarterly instalments commencing from 01.04.2001. Acceptance of the

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same was conveyed vide letter dated 14.09.1998 by the Corporate Debtor. The Statement of Accounts show that the Corporate Debtor during the period from 15.05.2000 to 25.10.2000 paid a sum of Rs. 112.56 Lacs. Thereafter, the matter came to be referred to BIFR on 08.12.2000.

19. As per Section 22 of SICA, the Corporate Debtor enjoyed protection/bar on legal proceedings from the time of reference till 01.12.2016 i.e. the date of abatement of the BIFR reference. The Hon'ble NCLAT in *Gauri Prasad Goenka, Ex-Chairman of NCR Limited Vs. Punjab National Bank and Anr (2019 SCC Online NCLAT 1137)* has observed that as per Section 22(5) of SICA the legal proceedings attracted to the case of a Sick Industrial Unit are suspended. Section 22(5) states that in computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded. Therefore, the remedy for the enforcement of right by the Creditor to recover the outstanding debt from the Debtor through the medium of a suit for recovery of money remains suspended for the period during the pendency of inquiry under Section 16,17 or appeal under Section 25 of SICA.

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20. Admittedly, in the instant case the Corporate Debtor was referred to SICA on 08.12.2000. While SICA came to be repealed, Section 7 of the Code was enforced w.e.f. from 01.12.2016. It is therefore, clear that on account of statutory bar the period commencing from 08.12.2000 to 01.12.2016 stands excluded under the aforesaid provisions rendering the Financial Creditors ineligible to file for recovery of outstanding debt or take any other appropriate remedy in law through the ordinary mode i.e. by way of filing of suit etc. Therefore, for the purpose of limitation such period has to be excluded and the petition has been filed well within limitation.
21. Looking into the issue of Default, we see that the Respondent has raised these three scenarios which are tabulated as follows:

<i>Scenario Number</i>	<i>Default</i>	<i>Date of Default</i>
<i>1</i>	<p>In case the date of default is considered from the default of interest amount: First Default of interest occurred on 01.04.1996 of the interest for the quarter ended 31.03.1996. Accordingly, the 3 years expired on 31.03.1999. The defaulted interest up to 31.03.1996 and thereafter interest up to 30.09.1998 was converted into OFCD in terms of Restructuring Scheme. The conversion into OFCD of Rs. 28.31 crores confirms the default in payment of interest from quarter ending 31.03.1996.</p>	31.03.1996

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2	<p>In case the date of default is considered from the default of Principal Amount: SUUTI sanctioned financial assistance of Rs. 400 Lacs by way of UTN vide sanction letter dated 12.10.1994, the disbursement was made on 15.12.1994 and amount was to be repaid after 18 months from disbursement i.e. 14.06.1996.</p>	14.06.1996
3	<p>In case the date of default is considered as per Restructuring Scheme: Date of default is 01.01.1999 based on first instalment on principal as well as on converted OFCD from 01.10.1998 to 31.12.1998 according to restructuring scheme. Thereafter, the time of reference to BIFR is also excluded i.e. from 08.12.2000 till 01.12.2016. Hence the total number of days taken to file the present petition is 1106 days whereas under IBC the petition is to be filed within 3 years from the date of default (i.e. $365 \times 3 = 1095$ days).</p>	01.01.1999

22. The contention of the Respondent stating that the Petitioner has deliberately mentioned the wrong date of 24.09.1995 in place of 24.09.1985 regarding allotment of 15% NCD amounting to Rs. 85 Lacs has not been considered in the abovesaid scenarios, therefore, we are not considering the same at the time of considering the issue of Limitation.
23. From the factual matrix before us, we have examined the aforesaid scenarios and observed that there are multiple defaults in the present

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case. Firstly, the Corporate Debtor availed facilities from UTI which became irregular. Thereafter, admittedly the restructuring package was approved on 09.09.1998 as per which the quarterly instalments were commencing for 16% OFCDs and 17% NCDs from 01.04.2000 and 01.04.2001 respectively. It is clear from the same that the aforementioned Scenario No. 1 and Scenario No. 2 do not stand on firm ground because of the acceptance of the Restructuring Scheme by the Corporate Debtor vide letter dated 14.09.1998. Furthermore, the Statement of Accounts show that a sum of Rs. 112.56 Lacs was paid by the Corporate Debtor during 15.05.2000 to 25.10.2000. Thereafter, the matter was referred to BIFR, the period of which, as stated above has been excluded for the purpose of computing limitation.

24. As per Section 18 and 19 of the Limitation Act, 1963, a fresh period of limitation will be computed from the date of acknowledgement of debt and payment on account of debt made before the expiration of the said period. The last payment was made by the Corporate Debtor on 25.10.2000 therefore, a fresh period of limitation shall be computed from that date of default. In addition to the same, a One Time Settlement as sanctioned by the Petitioner No. 1 in terms of its letter dated 23.10.2008 was cancelled in August 2009. Also, the Hon'ble

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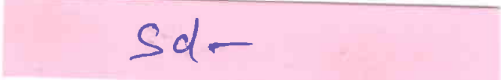
High Court has vide order dated 20.07.2020 directed this Authority to consider the settlement at the time of deciding the main petition. It is a settled position of law that settlement amounts to acknowledgement of debt which in the present case has been done vide proposed One Time Settlement. Therefore, the present petition has been filed within the stipulated time as per the provisions of law.

25. Lastly, the Hon'ble High Court vide order dated 20.07.2020 directed that the proposed terms of settlement shall be taken into consideration by the Tribunal while deciding the main petition. We have considered the settlement put forth by the Corporate Debtor. The OTS has not resulted in a mutually acceptable conclusion between the Corporate Debtor and the Financial Creditors, therefore, we move ahead with the present petition. The Apex Court in the recent judgment in *E.S.Krishnamurthy & Ors Vs. Bharath Hi Tech Builders Pvt. Ltd. (Civil Appeal No. 3325 of 2020)* dated 14.12.2021 has held that the Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute. Therefore, after due consideration of the settlement put forth by the Corporate Debtor, we are not inclined to force the settlement upon the Financial Creditors.

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26. Upon a detailed consideration of the application and documents filed by the Applicant, it is apparent that the payment of the claim amount has been defaulted by the Corporate Debtor. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
27. The Applicant has named one Mr. Partha Sarathy Sarkar with Registration No. IBBI/IPA-002/IP-N00239/2017-18/10690, duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed his consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating therein that no disciplinary proceedings are pending against the named IRP.
28. Consequences of commencement of CIRP shall be inter-alia as follows:
- a. The Insolvency Resolution Professional proposed by the Applicant Mr. Partha Sarathy Sarkar is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016 including the issue of the publication in widely circulated Newspapers as contemplated under the provisions of IBC, 2016 and calling for the

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claims from the creditors of Corporate Debtor and collation of the same shall be done.

- b. Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- c. The said IRP shall act strictly with the provisions of IBC, 2016 and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP, as it unfolds, concerning the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

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- d. In terms of Section 7 of IBC, 2016, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out the CIRP. A copy of this order shall also be communicated to IBBI for its records.
29. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update. In the circumstances, CP (IB) No. 39(PB)2018 is admitted.

IA No. 256/JPR/2020

- I. The Corporate Debtor moved an application numbered as IA/256/JPR/2020 under Section 75 of the Code read with Rule 11 of the NCLT Rules, 2016 against the Petitioner/Financial Creditors for furnishing false information and concealment of material particulars in the Application filed under Section 7 for initiation of CIRP. It has been submitted in the IA that no exact date of default has been mentioned in the main petition which is mandatory in terms of the scheme of the Code. Further the petitioner has also failed to mention the OTS dated 23.10.2008 or the payment received from the

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Corporate Debtor. Also, it has been mentioned that Ms. Anita Patole had no authorisation on behalf of the Petitioners to file affidavit in the main petition. Reply to this application was filed vide Diary No. 928/2020 dated 08.10.2020. Rejoinder to the same was filed vide Diary No. 826/2020 dated 24.11.2020. The contentions put forth in the present IA are mere technicalities sought to be amplified by the Corporate Debtor without being fatal in any way.

- II. The above has been adequately examined in the preceding narrative. Therefore, the Interim Application IA No. 256/JPR/2020 filed by the Corporate Debtor is dismissed and accordingly stands disposed of.

IA No. 334/JPR/2020

- I. The Corporate Debtor moved an application under Rule 11 of the NCLT Rules, 2016 vide Diary No. 2068/2021 seeking urgent appropriate directions in terms of the Order of the High Court of Rajasthan dated 20.07.2020. It has been submitted by the Corporate Debtor that in case the settlement is not considered at the stage when the final order has been reserved in the main petition, the whole purpose and intent of the order passed by the Hon'ble High Court would be defeated and same would be great violation of natural

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justice and would also amount to flouting the directions passed by the High Court in its extraordinary jurisdiction of Article 226 of the Constitution of India.

- II. In our examination of the order of the Hon'ble High Court dated 20.07.2021 conceptually viewed with the recent judgment passed by the Hon'ble Supreme Court in *E.S.Krishnamurthy & Ors Vs. Bharath Hi Tech Builders Pvt. Ltd. (Civil Appeal No. 3325 of 2020)* dated 14.12.2021, the Interim Application IA No. 334/JPR/2020 filed by the Corporate Debtor is dismissed and accordingly stands disposed of.

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(Deep Chandra Joshi)
Judicial Member

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(Raghu Nayyar)
Technical Member