

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT 3, MUMBAI BENCH**

**C.P. No. CP(IB)-3425/(MB)/2019  
&  
MA 658/2020 IN CP(IB)-3425/  
(MB)/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) Bank of India, New York  
Branch,  
277, Park Ave B/t 47<sup>th</sup> & W  
48<sup>th</sup> St,  
New York, 10172,  
United States;
- 2) The Export Import Bank of  
India,  
Centre One Building, 21<sup>st</sup>  
Floor  
World Trade Centre, Cuffe  
Parade, Mumbai – 400 005;
- 3) State Bank of India,  
IFSC Banking Unit, No. 1401,  
14<sup>th</sup> Floor, Hiranandani  
Signature Tower,  
GIFT SEZ,  
Gandhi Nagar-382355;  
Gujarat, India;
- 4) Union Bank of India,  
Hong Kong Branch  
Nine Queens Road,  
Central Unit No. 1903-4  
Hong Kong

**..... Petitioners/  
Financial Creditors**

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Versus

Maneesh Pharmaceuticals  
Limited,  
29/33, Ancillary Industrial  
Plots,  
Govandi, Mumbai,  
Maharashtra 400043.

**..... Respondent/  
Corporate Debtor**

**Order delivered on : 25.03.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)  
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Mr. Shubhabrata Chakraborti, Counsel.

**For the Respondent:** Mr. Gaurav Joshi, Counsel a/w Mr. Ashish Pyasi, Advocate.

**Per: Chandra Bhan Singh, Member (Technical)**

**ORDER**

1. This Petition has been filed collectively by 4 Petitioners/ Financial Creditors on 30.08.2019 viz. **(i)** Bank of India, New York,10172, United States, **(ii)** The Export Import Bank of India, Cuffe Parade, Mumbai-400005, **(iii)** State Bank of India, Gandhi Nagar-382355, Gujarat and **(iv)** Union Bank of India, Central Unit No.1903-4, Hong Kong (hereinafter referred to as "**Petitioners**"), under Section 7 of the I&B Code 2016 to initiate Corporate Insolvency Resolution Process against M/s. Maneesh Pharmaceuticals Limited, Mumbai - 400043 (**Corporate Debtor**) for a financial debt of USD 45,000,000.

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**Brief history of the case:-**

2. **Submission by the Petitioners/ Financial Creditors:-**

According to the Petitioner/ Financial Creditor, the Corporate Debtor, M/s Maneesh Pharmaceuticals Limited, stood as guarantor for the term loan facility ("Facility") availed by the Svizera Holdings B.C., a wholly owned subsidiary of the Corporate Debtor ("Borrower") incorporated and existing under the laws of Netherlands, and having its registered office at Antennestraat, 43 1322 AH, Almere, PO Box 60300137AAY, Netherlands amounting to USD 45,000,000 from the Financial Creditors under the facility agreement dated 24.09.2007 ("Facility Agreement").

3. Barclays Bank PLC, Hongkong Branch was appointed as the "agent" of the finance parties ("Agent") under the Facility Agreement. Pursuant to transfer certificate dated 03.11.2008, part commitment of Barclays Bank PLC as the lender was transferred to Union Bank of India, Hong Kong. As on 26.07.2019, the loan made available by State Bank of India, Nassu Branch has been transferred to State Bank of India, Gift City Branch, Ahmedabad.

4. The total commitments of the Financial Creditors are as under:-

“

<i>Name of Lender</i>	<i>Total Commitment (USD)</i>	<i>Date of Disbursement</i>
<i>Bank of India, New York Branch</i>	<i>12,500,000/-</i>	<i>28<sup>th</sup> September 2007</i>

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<i>State Bank of India, Gift City Branch</i>	<i>12,500,000/-</i>	<i>28<sup>th</sup> September 2007</i>
<i>Export Import Bank of India</i>	<i>14,500,000/-</i>	<i>28<sup>th</sup> September 2007</i>
<i>Union Bank of India</i>	<i>5,000,000/-</i>	<i>28<sup>th</sup> September 2007</i>
<i>Total</i>	<i>40,000,000/-</i>	

”

5. The Petitioners submit that the facilities availed under the Facility Agreement were secured by security interest such as hypothecation, pledge, mortgage and for the purposes of the same *Vistra ITCL (India) Limited* (erstwhile *ILFS Trust Company Limited*) was appointed as security trustee vide Agreement dated 03.06.2008.
  
6. The Petitioners further submit that the Borrower (subsidiary of the Corporate Debtor) **defaulted** in the principal and interest repayment under the Facility Agreement. The Agent, as instructed by the Financial Creditors issued a notice dated 03.02.2012 (“Acceleration Notice”) to the Borrower as well as the Corporate Debtor/ Guarantor accelerating all the loans together with accrued interest and all other amounts accrued or outstanding under the Facility Agreement. Thereafter, a demand notice dated 21.02.2012 was also issued to the Corporate Debtor/ Guarantor with a copy to the Borrower requesting the Corporate Debtor/ Guarantor to pay the outstanding amount of USD 36,316,260.33 due as on 30.01.2012 inclusive of unpaid principal and interest accrued as well as the accelerated principal amount. However, no

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response/ objections to the demand notice was received from the Corporate Debtor/ Guarantor nor any payments of the overdue amount have been paid to the Petitioners by the Corporate Debtor.

7. According to the Petitioners, no response/ objections to the above demand notice has been received from the Corporate Debtor nor any payments of the overdue amount were paid to the Petitioners so far.
8. The Petitioner submits that the Borrower as well as the Corporate Debtor failed to repay the amounts due on the respective due dates and, therefore, as per the guidelines of RBI, the account of the Borrower was classified as Non-Performing Assets as under :-

“

<i>Lenders</i>	<i>Date of NPA</i>
<i>Bank of India, New York Branch</i>	<i>31.07.2011</i>
<i>State Bank of India, Gift City Branch</i>	<i>26.06.2011</i>
<i>Export Import Bank of India</i>	<i>30.06.2011</i>
<i>Union Bank of India, Hongkong Branch</i>	<i>30.06.2011</i>

”

9. The Petitioner submits that the Corporate Debtor had filed a reference under Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) on 08.11.2012. BIFR admitted the reference on 21.11.2014 and declared the Corporate Debtor as a sick industry company under Section 3(1)(o) of SICA. However, the reference stood abated on 01.12.2016 upon repeal of SICA which resulted in lifting of the moratorium under Section 22 of SICA.
10. The Financial Creditors through the facility agent, i.e., **Barclays Bank PLC**, under the Facility Agreement initiated proceedings for recovery of amounts due from the Corporate

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Debtor before the Hon'ble High Court of Justice Queen's Bench Division Commercial Court, London. The Petitioners submit that vide an Order and approved judgment passed by the said Hon'ble High Court, London, directed the Corporate Debtor and the Borrower to make payments to the facility agent (and accordingly to the lenders), *inter alia*, of USD 35,355,064.80 (approx. 212.13 Crores) along with interest and fees.

11. The Petitioners also submits that the facility granted to the Borrower was also secured as an offshore security by creating first priority charge over the shares of the Tillomed Holdings Limited under the Facility Agreement. According to the Petitioners, this share charge was sold by the offshore security trustee and an amount of USD 7,272,648.32 was received by the lenders. Therefore, the outstanding amount claimed is calculated after appropriating the above amount received by all the lenders.

**Submissions by the Corporate Debtor/ Respondent :-**

12. The Corporate Debtor/ Respondent submits that the alleged debt being payable by the Corporate Debtor is time barred. The Corporate Debtor says that, admittedly, the claims of the Petitioners as regards the amount as allegedly claimed to be in default is arising out of Loan Agreement dated 24.09.2007 where the date of default is mentioned as 21.02.2012. Further, the 'days of default' mentioned by all the Lenders is 2748 days.
13. The Respondent further submits that the date of default mentioned by the Lenders is as follows:-

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“

<i>Lenders</i>	<i>Date of NPA</i>
<i>Bank of India, New York Branch</i>	<i>31.07.2011</i>
<i>State Bank of India</i>	<i>26.06.2011</i>
<i>Export Import Bank of India</i>	<i>30.06.2011</i>
<i>Union Bank of India, Hongkong Branch</i>	<i>30.06.2011</i>

”

According to the Respondent, the then applicable RBI guidelines provided for default of 90 days before an account can be declared as NPA, therefore, contends that the date of default could not have been 21/02/2012, it had to be a date prior to the date when the account of Corporate Debtor was declared as NPA.

14. According to the Respondent, even if the date of default as submitted by the Petitioners is considered, the alleged debt is **clearly time-barred** and cannot be proceeded with further in view of Section 238 A of Insolvency and Bankruptcy Code, 2016, reproduced below:-

**“238A. 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.”*

The present Petition is filed by the Petitioners on 30/08/2019.

15. The Respondent also submits that, Article 137 of the Schedule of the Limitation Act, 1963 prescribes a period of three years from the date when the right to apply accrues for filing ‘any other application for which no period of

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*limitation is provided elsewhere*’. The Respondent states that the alleged date of default according to the Petitioner is 21/02/2012, the period for initiating insolvency proceedings against the Respondent expired on 20/02/2015, i.e. upon expiration of period of three years from the date when the right to apply accrued. The Respondent claims that the present Petition is beyond the statutory period of limitation and, therefore, liable to be dismissed. The Respondent also submits that the latest books of account of the Corporate Debtor also do not reflect any debt being due and payable to the Petitioners, thereby establishing the fact that the debt is clearly time barred in the instant case. Respondent also submits that IBC 2016 is not a debt recovery law and the provisions of the Code cannot be triggered in the year 2019 for a debt cause of action for which had allegedly accrued in 2012. Respondent further submits that Section 3(12) of the Code refers to debts that are “due and payable” in law, i.e., the debt that are not time-barred.

16. The Respondent states that the Petitioners’ submission that the default under the facility agreement dated 24/09/2007 is continuing since 21/02/2012 is a bald statement without any facts and material on record to prove that cause of action for initiating insolvency proceedings against the Respondent continued from 21/02/2012 to 30/08/2019.
17. The Respondent submits that the Hon'ble Supreme Court of India in *Jignesh Shah vs. Union of India* [2019 SCC Online SC 1254], while comprehensively examining the issue of limitation qua Insolvency and Bankruptcy Code, 2016 has held that :-

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*“21. The aforesaid judgments correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding up proceeding. In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgement of liability under Section 18 of the Limitation Act would certainly extend the limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding up proceeding.”*

18. The Respondent submits that the right to initiate proceeding under IBC accrues from the date when the debt became due and payable which results in default. It is this date alone that is relevant for the purpose of triggering limitation for filing of a Petition under IBC. The date of default, for each of the creditors, as stated in the Petition at Exhibit G is 21/02/2012. The instant Petition was filed on 30/08/2019. The purported judgment dated 08/04/2014 is not only an inadmissible document but the rights/relief(s) and claims thereunder stand waived. The Petitioners have admitted that pursuant to the purported judgment dated 08/04/2014 it realized a sum of USD 727648.32 from sale of offshore securities. After appropriating such amounts in 2014, the alleged dues stood automatically reduced. The Petitioners have not preferred any proceedings between 2014 to 2017. Therefore, in case any cause of action subsisted in 2014, the same expired in 2017. The Respondent argues that the

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instant Petition was filed by the Petitioners only in August 2019 without any cause of action and is hopelessly time-barred.

19. The Respondent submits that the impugned Petition is not only hopelessly time barred but the alleged claims are unsubstantiated, uncorroborated and unsupported by any documents on record and is not maintainable, therefore, liable to be dismissed.

**Rejoinder submitted by the Petitioners :-**

20. The Petitioner alleges that while the Foreign Suit was pending, the Corporate Debtor filed a 'reference' with the Board for Industrial and Financial Reconstruction (**BIFR**) under section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ("**SICA**") vide Form 'A' on 06.11.2012 vide Case No.74 of 2012 ("**Reference**"). The Hon'ble BIFR vide its Order dated December 07, 2012 restrained the Corporate Debtor from disposing of or alienating in any manner any fixed assets of the Corporate Debtor without the consent of the BIFR (the "**Non-disposal Order**"). The Petitioner submits that the Corporate Debtor made every possible attempt to sideline the Facility Agent and the Onshore Security Trustee from the proceedings before the Hon'ble BIFR.
21. The Facility Agent along with the Security Trustee filed an Intervention Application Miscellaneous Application No. 253/BC/2013 before the Hon'ble BIFR requesting to implead them in the Reference pending before the Hon'ble BIFR.

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22. The Petitioner further submits that on account of the statutory bar imposed on initiating any recovery proceedings against the Corporate Debtor under Section 22(1) of the SICA, the period during the pendency of the Reference till December 1, 2016 should be excluded. Accordingly, the captioned Petition filed in August 2019 i.e. within three years from the date of enforcement of Section 7 of the IBC is well within the limitation. The Petitioner also mentions that Section 22(5) of SICA which categorically provided that the period during which the company is in reference before the Hon'ble BIFR, shall be excluded while computing the period of limitation. Section 22(5) of SICA is reproduced below:-

*“22. Suspension of legal proceedings, contracts, etc. –*

.....

*(5) 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.”*

23. The Petitioners also submitted that in view of Section 22(5) of SICA, the right of the Financial Creditors to initiate proceedings under the IBC could commence only once the moratorium was lifted, i.e., on or after December 1, 2016 when the Repeal Act came into force.
24. According to the Petitioners, the Corporate Debtor had contested the Foreign Suit and as such the Foreign Decree was on merits. Further states that the Corporate Debtor had neither challenged the Foreign Decree nor satisfied it despite being completely aware of it, which *prima facie*

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proves that the Corporate Debtor is commercially insolvent. The Petitioners state that the Hon'ble Supreme Court in *Dena Bank vs C. Shivakumar Reddy & Anr.* [Civil Appeal no. 1650 of 2020] has observed 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.”*

**FINDINGS :-**

25. CP(IB)-3425/(MB)/2019 was filed on 30.08.2019 by the Financial Creditor against M/s Maneesh Pharmaceuticals Limited, the Corporate Debtor/ Guarantor who stood as a Guarantor for a term loan facility availed by Svizera Holdings BC, a wholly owned subsidiary of the Corporate Debtor (Guarantor) incorporated under the laws of Netherlands for a total amount of about USD 4.5 crore under a Facility Agreement with M/s Barclays Bank. The Bench notes that the loan amount was disbursed to the borrowers i.e., M/s Svizera Holdings by the Financial Creditor on 28.09.2007.
26. Barclays Bank PLC, Hongkong Branch was appointed as the “agent” of the finance parties (“Agent”) under the Facility Agreement. Pursuant to transfer certificate dated 03.11.2008, part commitment of Barclays Bank PLC as the lender was transferred to Union Bank of India, Hong Kong. As on 26.07.2019, the loan made available by State Bank of India, Nassu Branch has been transferred to State Bank of India, Gift City Branch, Ahmedabad.

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27. It is the contention of the Financial Creditor that the Borrower committed defaults and the account of the borrower was classified as NPA in compliance with the RBI guidelines as mentioned below:-

<i>Lenders</i>	<i>Date of NPA</i>
<i>Bank of India, New York Branch</i>	<i>31.07.2011</i>
<i>State Bank of India, Gift City Branch</i>	<i>26.06.2011</i>
<i>Export Import Bank of India</i>	<i>30.06.2011</i>
<i>Union Bank of India, Hongkong Branch</i>	<i>30.06.2011</i>

28. Thereafter, in terms of the relevant provision of the Facility Agreement the Facility Agent on behalf of the Financial Creditors sent a loan acceleration notice dated 03.02.2021 to the Borrower and also to the Guarantor/ Corporate Debtor (i.e., M/s. Maneesh Pharmaceuticals Limited in the instant case) recalling the entire outstanding amount together with interest. Subsequently, upon failure of the Borrower and Guarantor in repaying the outstanding amount demanded by the loan acceleration notice, the Facility Agent, on behalf of the Financial Creditor, issued on February 21, 2012, a guarantee invocation notice.
29. It is clear to the Bench that there is a 'debt' in terms of section 3(11) and there is a 'default' in terms of Section 3(12) of the IBC. However, keeping in view that the date of NPA in respect of all the four loans are between 26.06.2011 to 31.07.2011 and the Petition has been filed only on 30<sup>th</sup> August, 2019, the limitation issue is very pertinent in the

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matter. The Bench has to take a call whether the debt is time-barred or not, in terms of provisions of the Limitation Act, 1963. The Bench before proceeding further would like to mention certain dates and events subsequent to the invocation of guarantee which will help in deciding the matter.

30.

<b>Date</b>	<b>Particulars of Event</b>
22.02.2012	The Facility Agent/ Financial Creditor filed against the Borrower and the Guarantor (Corporate Debtor) vide Case No. 2012 before the High Court of Justice Queen's Bench Division, London.
07.11.2012	The Corporate Debtor under SICA 1985 filed Form A which was registered as BIFR Case No. 74/2012.
December 07, 2012	BIFR restrained the guarantor i.e., Maneesh Pharmaceuticals, from disposing of or alienating any fixed assets of the Corporate Debtor without consent of BIFR.
Date not there in the Petition/ Reply.	The Financial Creditor filed an Intervention Application MA 253/BC/2013 with BIFR with request to implead them in the reference

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	pending before BIFR (Intervention Application).
20.05.2013	The BIFR, in MA 253/BC/2013 filed by the Financial Creditor, directed the Corporate Debtor (Maneesh Pharmaceuticals) to file a reply.
14.08.2013	In the written submission of the Corporate Debtor, the Corporate Debtor mentions that, on one hand Barclays Bank are seeking impleadment before BIFR under the provisions of SICA and on the other hand, they are violating the provisions of Section 22(1) of SICA by initiating and continuing proceedings in the Queen's Court in London High Court against the Guarantor and its wholly owned subsidiary and also making recovery. Therefore, it is violation of Section 22(1) of SICA by Barclays Bank and liable for penal action under Section 33 of SICA. Therefore, the Corporate Debtor requested the BIFR not to allow impleadment of Barclays Bank and dismiss MA 253 of 2013 filed by the Barclays Bank.
08.04.2014	Judgment passed by High Court of London directing the Guarantor, Maneesh Pharmaceuticals and the

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	Borrower Svizera to make payments to the Facility Agent (and accordingly to the lenders).
01.12.2016	Sick Industrial Companies (Special Provision) Repeal Act, 2003 and the BIFR was dissolved w.e.f. 15.12.2016.

31. As mentioned in the earlier paragraphs, the issue to be decided is whether as per the Limitation Act, 1963 the Debt claimed is time barred or not. The whole argument of the Petitioner hinges on the fact that it should be given benefit of the Queen's Court Order where he considered to proceed against the Corporate Guarantor in violation of Section 22(1) of SICA. Also at the same time the Petitioner intends to take shelter of BIFR u/s 22(5) of SICA which provides that the period during which the Company is in reference before the BIFR shall be excluded by computing the period of limitation even though he is in violation of Section 22(1) of SICA. Section 22(5) of SICA reads as under:-

*“22. Suspension of legal proceedings, contracts, etc. –*

.....

*(5) 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.”*

So, the moot issue before the Bench is whether the Petitioner can take advantage of provisions of SICA under Section 22(5) of the SICA while all along it had been

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violating Section 22(1) and continued with proceeding at the London Court. In this regard it is an admitted fact that the Financial Creditor was not a party before SICA and on his Application for impleadment before SICA, no decision was taken by BIFR. Also, the debt amount due to the Petitioner is not mentioned in Form A of the SICA Application by the Corporate Debtor. It had filed an MA for impleadment in the matter in 2013 .

32. Before the Bench goes into discussing the limitation issue it would be worthwhile to know that the Corporate Debtor/ Corporate Guarantor, M/s Maneesh Pharmaceuticals Limited (“**MPL**”) had filed a reference under SICA on 7.11.2012 and thereafter provisions under Section 22(1) of SICA commenced from the date on which the restraint Order or “calm” period was declared by BIFR on 07.12.2012. In the Form A of the reference which was filed, the debt amount due to the Petitioner was not mentioned. Aggrieved by this, the Financial Creditor/ Facility Agent filed an Intervention Application MA 253/BC/2013 as an Intervention Application with the following prayer:-

- “
- (a) *implead Barclays Bank Plc, acting in its capacity as the Facility Agent to the Lenders and IL & FS Trust Company Limited, acting in its capacity as Security Trustee, the Applicants herein, in the present proceedings before the Hon'ble Board;*
- (b) *pass no order or direction in the matter without due notice to the Applicants.*”

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33. Therefore, the Bench notes that this Application for impleading themselves as a proper party was made by the Petitioner. Thereafter, in the hearing of BIFR held on 20.05.2013, the BIFR directed Barclays Bank, the Facility Agent, to serve a copy of the MA 253/BC/2013 on all the parties and further directed the Corporate Guarantor, Maneesh Pharmaceuticals, to file their response to MA within four weeks. Again, in the BIFR hearing held on 27.01.2014 and 24.04.2014, Barclays was directed by BIFR to file a copy of the MA No.253/BC/2013 along with supporting documents and a direction was also given to Maneesh Pharmaceuticals (Corporate Debtor) to file their reply.
34. It is worthwhile to note that in this BIFR matter, in the reply dated 14.08.2013, the Corporate Debtor, Maneesh Pharmaceuticals (Corporate Guarantor) had prayed before BIFR to dismiss MA 253/2013 as Maneesh Pharmaceuticals has not availed any loan assistance from Barclays Bank and as such Barclays Bank cannot be a party to the present proceedings of the Company before BIFR as per Section 19(2) of SICA. Further, alternatively M/s Maneesh Pharmaceutical mentioned that BIFR may issue direction/ pass necessary Orders so as to compel Barclays Bank to bring all securities pooled in with other lenders for approximately USD 23.42 Million claim to be settled under BIFR guidance.
35. Also in the hearing held on 24.04.2014 Maneesh Pharmaceuticals had sought from BIFR permission for placement of additional documents on record, which BIFR allowed. In these additional documents Maneesh

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Pharmaceuticals Limited (MPL) had made the following submissions for dismissing MA 253/BC/2013 filed by Barclays Bank for their impleadment in the BIFR proceedings. The same is reproduced as under:-

***“3. It may be observed from the above documents that at the one hand M/s Barclays Bank Plc and IL & FS Trust Company Limited are seeking impleadment before your honour under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and on the other hand they are violating the provisions of Section 22(1) of SICA by initiating and continuing not only the recovery suit against company and its wholly owned subsidiary M/s Svizera Holdings BV (SHBV), but also by making the recovery by selling the charged assets.***

***4. The said violation of Section 22(1) of SICA on the part of Barclays Bank Plc and IL & FS Trust Company Limited, make them liable for penal action under Section 33 of SICA and for declaration of the recovery actions taken by them as null and void and for the same the Company is in the process of filing an Misc. Application before Your Honour.”***

36. The Bench notes that no decision was given by BIFR on this Application and with effect from 01.12.2016, SICA was repealed and BIFR was dissolved. In its submission before BIFR by the Corporate Debtor, MPL had clearly mentioned that MA for impleadment of Barclay Bank & IL & FS Trust Company may be dismissed. MPL had further mentioned that on one hand Barclay Bank is seeking impleadment before BIFR under the provision of SICA 1985 and on the other hand they are violating the

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provision of Section 22(1) of SICA by initiating and continuing the proceedings before London Court for recovery against the MPL and its wholly owned subsidiary SHVP.

37. It is clear to the bench that on one hand the Facility Agent and Trustee of the Petitioner had participated before BIFR and at the same time the Petitioner continued before the Queen's Bench by filing a Suit in February 2012, continued through the hearing all along 2012, 2013 and obtained a judgment dated 08.04.2014. The Petitioner never informed either the Queen's Bench that they are impleading before BIFR nor they informed BIFR that they are continuing with the Suit before London High Court. The Bench is of the clear view that even though they could not succeed in impleading, but assuming that they intend to take advantage of 'Moratorium' under SICA, the proceedings before the Queen's Bench could not have been proceeded.
38. Further, Barclays Bank never applied before BIFR under the provisions of SICA for grant of permission to proceed against the Corporate Guarantor. In absence of this, under no circumstances the Petitioner can state that they were restrained in any manner on account of pendency of proceedings with the BIFR. Therefore, for the purposes of 'limitation' the period between admission of reference with SICA on 07.11.2012, till the date when SICA was repealed on 01.12.2016 cannot be allowed to be excluded while computing the limitation period for filing the present Petition.

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39. The Bench notes that the Petitioner cannot take twin advantage, i.e., proceeding against the Corporate Guarantor in the High Court of London during 2012, 2013 and 2014 and getting a judgment in its favour and also at the same time trying to seek advantage u/s 22(1) of BIFR which prohibits the Creditors to proceed against the Corporate Debtor at the stage of draft revival of the scheme. The contention of the Financial Creditor that it was restricted to enforce the Foreign Decree due to Moratorium in place under Section 22 is not correct as he never made any Application before BIFR for grant of permission to proceed against the Corporate Debtor. Therefore, it is wrong on part of the Financial Creditor to say that they were restrained to proceed against MPL on account of pendency of the proceeding with BIFR. Oddly, therefore, on one hand the Petitioner seeks that the period under BIFR to be excluded, however, during the same period he went against and continued the suit in London High Court in 2012, 2013 and 2014 and obtained a final decree.
40. The Bench is of the view that as far as 'limitation' is concerned, the period of limitation would commence from the date when the account of the Borrower had become NPA, i.e., in June-July 2011. Further, the Foreign Suit before London HC was filed on 22.02.2012, on which a judgment finally came in favour of the Petitioner/ Facility Agent on 08.04.2014. Therefore, for the counting of period of limitation the time spent while pursuing the matter in London High Court between 22.02.2012 to 08.04.2014 is to be excluded. The present Petition was filed on

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30.08.2019 which is more than five years from the date when London High Court had passed the Order on 08.04.2014. This Bench also notes that no submission or document has been placed before this Bench by way of acknowledgement of debt u/s 18 of the Limitation Act, 1963 or by way of any reflection in the balance sheet of the Company, i.e., Maneesh Pharmaceuticals Limited during the period under consideration which can enhance the limitation period.

41. Therefore, in all, 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. Accordingly, the Bench “**dismisses**” the Company Petition No. **CP(IB)-3425/(MB)/2019** filed by the Petitioners.
42. MA 658/2020 in CP(IB)-3425/(MB)/2019 has been filed by the Respondent and the submission by the Respondent M/s Maneesh Pharmaceuticals Limited is for dismissal of the Petition, *inter alia*, on the issue of limitation. In the Reply to the main CP 3425/2019 similar submission has been made by the Respondent, therefore, MA 658/2020 is considered to be subsumed in the Reply and, therefore, becomes ‘**infructuous**’.

Sd/-  
Chandra Bhan Singh  
Member (Technical)

Sd/-  
H V Subba Rao  
Member (Judicial)