

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
**07-02-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**Company Petition IB/57/2021**  
U/s 7 of IBC, 2016

**IN THE MATTER OF:**

State Bank of India

**...Financial Creditor**

Vs

Prismack Biotechics Ltd

**...Corporate Debtor**

**CORAM:-**

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

**ORDER**

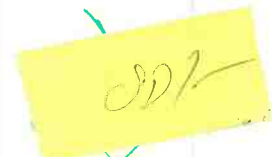
Orders in Company Petition IB/57/2021 pronounced vide separate sheets.

In the result, the company petition is allowed and Corporate Insolvency Resolution Process (CIRP) is ordered against the Corporate Debtor.



**MEMBER (T)**

*Srinivas*



**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**CP (IB) No.57/7/ HDB/2021**

APPLICATION UNDER SECTION 7  
OF I&B CODE, 2016 READ WITH  
RULE 4 OF I & B (AAA) RULES,  
2016.

In the matter between :

**State Bank of India**  
Corporate Office at State Bank Bhavan  
Free Press Journal Road  
Nariman Point  
Mumbai – 400021.

Branch Office at 5<sup>th</sup> Floor  
Rear Block of HMWSSB Compound  
D. No.6-2-915, Khairatabad  
Hyderabad – 500004.

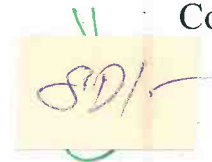
.. **Petitioner**  
Financial Creditor

VERSUS

**Prismack Biotechnics Limited**  
Registered Office at : Pent House  
5<sup>th</sup> Floor, Susmit Enclave, 6-3-900/2  
Rajbhavan Road, Somajiguda  
Hyderabad – 500 082.

.. **Respondent**  
Corporate Debtor





Date of order : 07.02.2022

Coram:

HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH  
NANDULA  
MEMBER (JUDICIAL)

and

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI  
MEMBER (TECHNICAL)

Parties / counsels present:

For the applicant : Shri G. Sanjeev Reddy

For the respondent : Ms. Mummaneni Vazra Laxmi

PER BENCH

ORDER

- I. This is a petition filed under section 7 of the I&B Code, 2016 by State Bank of India, hereinafter referred to as 'Financial Creditor', for initiation of Corporate Insolvency Resolution Process against the respondent alleging failure on the part of the respondent in discharging the financial debt of a sum of Rs.66,52,09,210.31 by the corporate debtor.

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- II. (i). Unlike in many other cases, in the case on hand it is not required for us to find whether or not a financial debt in favour of the petitioner payable by the respondent/ Corporate Debtor exists and also whether default in payment of financial debt by the Corporate Debtor has occurred, inasmuch as the respondent/ Corporate Debtor had categorically admitted availing of various credit facilities mentioned in the application from the Petitioner/ Financial Creditor and also default in repayment of the said credit facilities.
- (ii) It is also an admitted fact that the financial creditor, after classifying the account of the respondent as NPA, filed OA No.96 of 2015, before the Debt Recovery Tribunal (DRT), Visakhapatnam, 28.01.2015, for realisation of an amount of Rs.25,32,44,890.93 stated as due and the has been allowed by the DRT, by its order dated 22.09.2017. It is also not in controversy that three proposals of One Time Settlement (OTS) offered to the respondent did not fructify.

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(iii) However, the respondent corporate debtor vehemently, contends that the subject financial debt is hopelessly **barred by limitation**, as such corporate resolution process cannot be initiated against the corporate debtor and the company petition is liable to be dismissed.

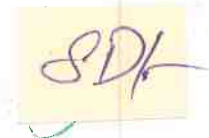
(iv) Therefore, in this backdrop the contest since confined only to the plea of bar of limitation, the only point that require the due consideration of this Adjudicating Authority is -

Whether financial debt demanded by the petitioner/ financial creditor under the demand notice as due and payable by the respondent/ corporate debtor is barred by limitation?

IV. Before we enter the discussion on the point, we wish to refer to certain dates and events, which are not in controversy, for better appreciation of the respective contentions of the learned counsels for both the sides.

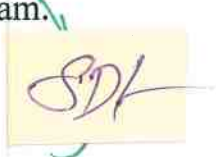
27.04.2013 The Corporate Debtor requested for release of working capital limits under the rehabilitation proposal.



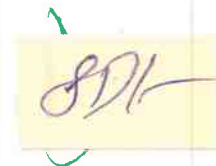


- 11.09.2013 Under the Rehabilitation Package loan documents were executed.
- 13.09.2013 | The Corporate Debtor requested the Financial Creditor to
- 14.09.2013 | release and disburse the amounts to meet the working
- 18.10.2013 | capital requirements.
- 04.12.2013 The Corporate Debtor informed the Financial Creditor that they brought Rs.5 Lakhs unsecured loans and also would bring an amount of Rs.39.5 lakhs.
- 05.06.2014 The Corporate Debtor requested the Financial Creditor to grant time till 15-07-2014 to make the repayments and would show positive results.
- 22.07.2014 The Corporate Debtor approached the Financial Creditor and came up with a proposal of one time settlement (OTS) of its loan outstanding.
- 12.08.2014 The Financial Creditor issued Demand Notice under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to liquidate the debts due, when it found that the Corporate Debtor failed to repay the loan outstanding and when loan accounts became highly irregular.
- 28.01.2015 Financial Creditor filed OA No.96 of 2015 against the Corporate Debtor before DRT, Visakhapatnam.





- 15.07.2016 The Corporate Debtor requested the Financial Creditor for sanction of compromise for settlement of dues.
- 18.07.2016 The Corporate Debtor gave payment schedule.
- 03.12.2016 The Corporate Debtor came forward to pay the dues by increasing the offer at Rs.11.60 crores.
- 07.12.2016 The Corporate Debtor gave its willingness to pay the dues of Rs.12 crores.
- 09.12.2016 The Corporate Debtor in the meeting of its Board of Directors resolved to pay Rs.12 crores towards full and final settlement of the dues which is evident from certified extract of Board Resolution.
- 13.12.2016 The Financial Creditor conveyed sanction of compromise.
- 14.12.2016 It was accepted by way of endorsement made by the Corporate Debtor agreeing to abide by the terms and conditions.
- 20.03.2017 The Corporate Debtor informed the Financial Creditor that pursuant to the compromise under the OTS giving remittances details in the loan account on 14-03-2017 & 20-03-2017.
- 30.10.2017 The Corporate Debtor conveyed confirmation to the Financial Creditor about compromise amount of Rs.12 crores to settle the dues.



- 14.08.2018 The Financial Creditor informed the Corporate Debtor about OTS approval under scheme for OTS of NPA's.
- 20.08.2019 The Financial Creditor informed the Corporate Debtor about the OTS approval under scheme for OTS of NPA's.
- 22.09.2017 OA No.96 of 2015 filed by the applicant against the respondent and others was allowed and a recovery certificate was issued.

V (i). Needless to say that the burden is always on the Suitor/Applicant to establish that the claim as made is not barred by limitation. Learned counsel for the Financial Creditor, at the outset referred to Article 137 of the Limitation Act, and contended that in terms of Article 137 of the Limitation Act, the period of limitation of three years, shall begin to run from the date when default had occurred and not from the date of the declaration of the account of the barrower as NPA.

(ii). Ld. Counsel then referred to Article 18 of limitation Act, which is as below, and submitted that, if acknowledgement of debt takes place within three years of period of limitation prescribed, then the period of limitation stands extended by another three years from the date of the said acknowledgement of debt.

*“Effect of acknowledgment in writing. —*

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*(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment 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) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

*Explanation. —For the purposes of this section, —*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*

*(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”*

(iii). Learned counsel also invited our attention to various dates of sanction of credit facilities, rehabilitation package, OTS proposals and the purported acknowledgement of debt by the Managing Director of the Corporate Debtor vide letters dated 14.08.2018 and 20.08.2019, besides order dated 22.09.2017 allowing the OA filed by the Corporate Debtor, and submitted that the claim as filed by the Financial Creditor is well within the period of limitation prescribed under Article 137 of the Limitation Act.




(iv). Learned counsel further submitted, a fresh period of limitation of 3 years from 22.09.2017 has accrued in favour of the financial creditor consequent to allowing of the OA No.96 of 2015 filed by the petitioner against the respondent by the DRT, Visakhapatnam.

(v) Learned counsel also relied on the ruling of the Hon'ble Supreme Court of India in re. Suo Motu case and contended that limitation, if any, in this case stood extended and the application is barred by limitation.


(vi) Therefore, according to the Ld. Counsel, viewed from any angle, the present OA filed having been filed on 05.11.2020 vide Diary No.5439 is well within the period of limitation.

(vii) In support of the above plea, the learned counsel also placed reliance on the following rulings.

- (a) Laxmi Pat Surana Vs. Union Bank of India & another, rendered in Civil Appeal No.2734 of 2020, LL 2021 SC 186, by Hon'ble Supreme Court
- (b) ARC (India) Ltd Vs. Bishal Jaiswal & another, in Civil Appeal No.323 of 2021, by Hon'ble Supreme Court of India.

(vii) Thus contending, the learned counsel for the Financial Creditor prayed this Tribunal to order initiation of CIRP against the Corporate Debtor herein.





VI. (i). **Per contra**, the learned counsel for the Corporate Debtor, while strongly refuting the submissions made by the learned counsel for the Financial Creditor reiterated that the subject debt is hopelessly barred by limitation, as such, the application is liable to be dismissed on this count alone. Placing reliance on Article 137 of the Limitation Act, the learned counsel submitted that default in this case had occurred on 28.06.2012 when the account of the respondent has been declared as NPA, and the present application having been filed on 05.11.2020, is hopelessly barred by of limitation.

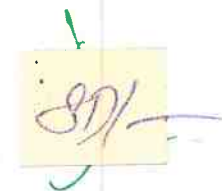

(ii). Insofar as the OTS proposals are concerned, learned counsel submitted that since the said OTS proposals were not accepted by the respondent, the limitation cannot stand extended. The learned counsel has further submitted that after cancellation of compromise proposal dated 13.12.2016, the respondent never requested for any settlement much less under letters dated 14.08.2018 and 20.08.2019. So much so, the contention of the petitioner that the respondent acknowledged the debt on 14.08.2018 and 20.08.2019 is baseless and unfounded.

(iii) Thus, the learned counsel prayed this Tribunal to dismiss the petition as the subject debt is hopelessly barred by limitation.

(iv) In support of his contention the learned counsel has placed reliance on the following rulings.

- (i) B.K. Educational Services Pvt Ltd Vs. Parag Gupta & Associates, Civil Appeal No.23988 of 2017, by Hon'ble Supreme Court.
- (ii) Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt Ltd & another, by Hon'ble Supreme Court, in Civil Appeal No.6347 of 2019
- (iii) Decision of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.1166 of 2019 in the matter of Bimalkumar Manubhai Savalia Vs. Bank of India & another.
- (iv) Decision of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 225 of 2020 in the matter of Rajendra Kumar Tekriwal Vs. Bank of Baroda.
- (v) Decision of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.183 of 2020 in the matter of Jagdish Prasad Sarad Vs. Allahabad Bank.

VII. (i). We have heard the learned counsels for both the sides at length, perused the Written Submissions and the case law filed by both the sides.



VIII. (i) At the outset, we intend to state that the issue 'whether the date of declaration of NPA be reckoned as the date of default or the date on which the corporate debtor commits default, be considered as default, for the purpose of Section 7 of I&B Code, is no longer res integra, as Hon'ble Supreme Court of India, in re, Asset reconstruction company Ltd, supra, held that,

*“Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” - not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be”.*

(ii). Therefore, in view of the above ruling, the argument of the Ld. Counsel for the corporate debtor, that default in this case had occurred on 28.06.2012 when the account of the respondent has been declared as NPA, and since the present application is filed on 05.11.2020, the same is hopelessly barred by of limitation, needs to be discarded outrightly.

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(iii). Since the expression “default” has been defined in Section 3(12) of I&B Code, to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be, it is to be seen when the amount of debt in this case became due and payable by the corporate debtor herein.

(iv). Article 137 of the Limitation Act, which is a residual provision, provides for the period of limitation in case of any other application for which no period of limitation is provided elsewhere **as three years from the time when the right to apply accrues.**

(v). Hon’ble Supreme Court of India, in B.K. Educational Services Private Limited Versus Parag Gupta And Associates, while setting aside the order of Hon’ble NCLAT, which held that Limitation Act is not applicable to applications under Section 7 or Section 9 of the IB Code filed on and after commencement of IB Code (i.e. 1 December 2016) till the date of 2018 Amendment (i.e. 6 June 2018), categorically held that 2018 Amendment will have **retrospective effect** and the Limitation Act is applicable to

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applications filed under the IB Code from the inception of the IB Code, further went on to hold that Article 137 of the Limitation Act will be applicable to applications under IB Code.

(vi). Hon'ble Supreme Court of India, in re, Dena Bank (Now Bank of Baroda) vs C. Sivakumar Reddy rendered vide order dated 04.08.2021, in Civil Appeal No.1650 of 2020 held that:

*“In effect, this Court speaking through Nariman J., approved the proposition that an application under Section 7 or 9 of the IBC may be time barred, even though some other recovery proceedings might have been instituted earlier, well within the period of limitation, in respect of the same debt. However, it would have been a different matter, if the applicant had approached the Adjudicating Authority after obtaining a final order and/or decree in the recovery proceedings, if the decree remained unsatisfied. This Court held that a decree and/or final adjudication would give rise to a fresh period of limitation for initiation of the Corporate Insolvency Resolution Process”.*

*“To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years”.*

(vii) In the same ruling, it was further emphatically held that;

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*“Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid”,*

(viii). Admittedly, the financial creditor herein, on 29.01.2015 (within three years from 28.06.2012) filed OA No.96 of 2015, before the Debts Recovery Tribunal, against the corporate debtor herein, for recovery of an amount of Rs. 25,32,44,890.93ps, to gather with interest, said to be outstanding as on 29.01.2015. The OA was allowed in favour of the financial creditor and pursuant thereto on 22.09.201 a Recover Certificate has been issued in favour of the financial creditor herein by the DRT, Visakhapatnam. Therefore, a fresh period of limitation of 3 years commencing from 22.09.2020 has accrued in favour of the financial creditor.

(ix) Since the said recovery certificate remained unsatisfied by the certificate debtor/the corporate debtor herein, the financial creditor on



05.11.2020, vide Dy. No.5439 Dt.05/11/2020, filed the present Company Petition under section 7 of IBC, before this Tribunal, for initiation of Corporate Insolvency Resolution Process, against the corporate debtor herein, however, beyond three years from 22.09.2017.

(x) Here, we refer to the ruling of Hon'ble Supreme Court of India, in re, Suo moto, Writ Petition Number (Civil) No.3 of 2020, dated 23.03.2020, where in it was ordered as follows:

*“On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before courts/ tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.”*

(xi) Therefore, the present application though ought to have been filed on or before 21.09.2020 for the purpose of limitation, but filed on 05.11.2020, by virtue of the ruling (supra), shall be deemed to have been filed within the period of limitation.

(xii). Insofar as rulings of the Hon'ble NCLAT, supra, relied on by the Ld. Counsel for the respondent, we respectfully discard them in view of the authoritative pronouncement of the Hon'ble Supreme Court of

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India, in ARC (India) Ltd Vs. Bishal Jaiswal & another and Dena Bank vs C. Sivakumar Reddy (supra).

(xiii). Therefore, in light of our discussion as afore stated and the law as laid down by the Hon'ble Supreme Court in the rulings (supra), we emphatically hold that the financial debt, payment of which was demanded by the Petitioner/financial creditor, under the demand notice dated 12.08.2014 is not barred by limitation.

The point is answered accordingly.

IX. The financial Creditor has not suggested the name of Interim Resolution Professional and requested the Tribunal to appoint from the panel of Insolvency Professionals issued by IBBI.

X. In the light of our finding on the point above, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016 with costs, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -


(A) Corporate Debtor, M/s Prismack Biotechnics Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.

(B) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

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

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to





the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(F) That the order of moratorium shall have effect from this day, the 7<sup>th</sup> February 2022 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, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints **Shri M. Madhusudan Reddy** having Registration No.IBBI/ IPA-001/ IP-P00843/ 2017-18/ 11427 as Interim Resolution Professional, whose contact details are:

e-mail ID: mmreddyca@gmail.com

Address: MMR Lion Corp, 4<sup>th</sup> Floor, HSR Eden

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Beside Cream Stone Road No.3, Banjara Hills  
Hyderabad – 500 034.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP filed Form-2. Authorisation for Assignment is valid upto 29.11.2022. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

Accordingly, this Petition is admitted.

  
VEERA BRAHMA RAO AREKAPUDI  
MEMBER (TECHNICAL)

  
DR. N.V. RAMAKRISHNA BADARINATH  
MEMBER (JUDICIAL)

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