



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

CP (IB) No.333/95/HDB/2022

(Under Section 60(2) and 95 of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

Between:

State Bank of India

... **Petitioner/ Financial Creditor**
A N D

Mr.Nannapaneni Ankappa Choudhary & another

... **Respondents**

PER BENCH

C O R A M:-

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

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

CORRIGENDUM DATED 08.03.2024

It is brought to the notice of this Tribunal that certain inadvertent error has crept in order dated 04.03.2024.

2. Since the error occurred through inadvertence, in exercise of power under Rule 154 of NCLT Rules, the same requires correction.

“154. Rectification of Order. - (1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification”



3. The error is corrected as under:

Inadvertent error occurred in para 15 of order dated 04.03.2024 in CP (IB) No.333/95/ HDB/2023.	It shall be read as
Insolvency Resolution Process is initiated against Mr. Nannapaneni Anna Rao, the Personal Guarantor.	Insolvency Resolution Process is initiated against Mr. Nannapaneni Ankappa Choudary, the Personal Guarantor

4. Rest of the contents of the order remain the same. This corrigendum be read along with the original order dated 04.03.2024.

Sd/-
Charan Singh
Member Technical

Sd/-
Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher



S.No.19

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
04-03-2024 AT 10:30 AM**

CP (IB) No. 333/95/HDB/2022

And

IA (IBC) 173/2024 in CP (IB) No. 333/95/HDB/2022

u/s. 95 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Petitioner

VS

Mr. Nannapaneni Ankappa Choudary
(Prismack Biotechnics Ltd)

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC) 173/2024

Learned Counsel Mr G Sanjeev Reddy, for Financial Creditor and Learned Counsel Smt Mummaneni Vazra Laxmi, for Personal Guarantor present through Video Conference.

Mr. Krishna Mohan Gollamudi, Resolution Professional present physically. According, to the resolution professional copy of the report has been served on the Personal Guarantor. Learned Counsel Smt Mummaneni Vazra Laxmi, for Personal Guarantor filed Vakalat and stated the Personal Guarantor has no objections to the report. In the light of the same matter passed over for orders.



-2-

Matter called again. RP report taken on record. **Accordingly, this application is allowed and disposed of.**

CP (IB) No. 333/95/HDB/2022

Orders pronounced. In the result, the Company Petition vide CP (IB) No. 333/95/HDB/2023 filed under the provisions of Section 95 of Code, 2016 is hereby admitted under the provisions of Section 100 of the Code, 2016 and Insolvency Resolution Process (IRP) is initiated against Mr. Nannapaneni Ankappa Choudary, the Personal Guarantor, and moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 2016.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



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

CP (IB) No.333/95/HDB/2022

*(Under Section 60(2) and 95 of the Insolvency and Bankruptcy
Code, 2016 read with Insolvency and Bankruptcy (Application to Adjudicating
Authority for Insolvency Resolution Process for Personal
Guarantors to Corporate Debtors) Rules, 2019.*

**In the matter of Sri Nannapaneni Ankappa Choudary (Personal
Guarantor to the Corporate Debtor – M/s.Prismack Biotechnics
Limited)**

Between:

STATE BANK OF INDIA
Corporate Office at:
State Bank Bhavan, Madam Cama Road,
Nariman Point Mumbai,
Maharashtra 400021.
Branch office: Prabhath Towers,
Gunfoundry, Hyderabad-500 001 (Stressed Assets
Management Branch),
Secunderabad Branch
represented by AGM Prakash Singh Bisht

... Petitioner/Financial Creditor

A N D

1. Mr.Nannapaneni Ankappa Choudhary,
Occ: Business Prismack Biotechnics Ltd,
R/o.9-1-12, Vinyaka Street,
Nidubrolu, Ponnur (M),
Guntur District.

... Respondent No.1/Personal Guarantor

2. M/s.Prismack Biotechnics Ltd.
Represented by its Managing Director
Registered office at Pent House,



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5th floor Susmit enclave,
D.No.6-3-200/2, Rajbhavan Road,
Somajiguda, Hyderabad-500082.

... Respondent No.2/Corporate Debtor

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CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SHRI. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Appearance:-

For the Petitioner : Sri G.Sanjeeva Reddy, Counsel.
For the Respondent No.1/PG : Ms.Mummaneni Vazra Laxmi, Counsel.

PER: BENCH

1. This instant petition is filed by the Financial Creditor State Bank of India, (Stressed Assets Management Branch) under Section 95 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as "Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process ("IR Process") against Mr.Nannapaneni Ankappa Choudury, who is the Personal Guarantor of M/s.Prismack Biotechnics Limited (hereinafter referred to as "Corporate Debtor").



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2. The averments of the Petition in brief as follows:

- 2.1 It is averred that the Corporate Debtor (Respondent No.2) approached the Petitioner (Financial Creditor) through its Managing Director (Respondent No.1/Personal Guarantor) for the sanction of various credit facilities for its business purposes in the form of Fund Based Limits and Non-Fund Bases Limited totaling to Rs.24.78 crores vide Sanction Letter dated 10.09.2013. The credit facilities were sanctioned initially in the year 2009 with a limit of Rs.13.70 crores and the balance amounts during the years 2010 & 2012.
- 2.2 It is averred that the Managing Director of the Respondent No.2 requested the Petitioner in the year 2013 to sanction rehabilitation package in the nature of cash credit and term loan facilities with an aggregate limit of Rs.24.78 crores. On availing the rehabilitation package, the Respondent No.2 executed necessary loan/security documents. The Respondent No.1 stood as Personal Guarantor and executed Deed of Guarantee on 11.09.2013 in Form-C. **(Page Nos.48-53 of the Application).**
- 2.3 As the Respondent No.2 could not adhere to the repayment terms for the sanctioned credit facilities, the loan accounts became irregular. The Respondent No.2 requested the Consortium Lenders for restructuring of the debts and



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subsequently package was approved by the Corporate Debt Restructuring Empowered Group.

- 2.4 The Respondent No.1 executed a Personal Guarantee Agreement dated 11.09.2013 guaranteeing the due repayment of the various credit facilities are repayable with interest at contractual rate as per the rates prescribed by the Bank from time to time in accordance with RBI guidelines availed. The Respondents are also liable to pay penal interest at the rate of 2% over and above the contractual rate.
- 2.5 As the Respondent No.2 failed to adhere to the sanction terms and neglected to operate the Loan Accounts as per the terms and conditions of sanction, the Accounts were finally classified as NPA on 31.10.2010 as per extant guidelines issued by the Bank.
- 2.6 It is averred that the Petitioner issued notice to the respondents under Section 13(2) of SARFAESI Act, 2002 on 12.08.2014 to the Corporate Debtor as well as Guarantors to pay the outstanding dues within the time period mentioned in the notice. However, the Respondents neglected and failed to pay amount. Therefore, the Petitioner continued the recovery action and filed OA No.96 of 2015 before the Debt Recovery Tribunal at Visakhapatnam. **(Page Nos.84-96 of the Application).**



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- 2.7 It is averred that the Respondent No.2/Corporate Debtor approached the Petitioner with a compromise proposal to pay the loan outstandings. The Respondent No.2 had accepted the one time settlement (OTS) and agreed to adhere to the terms and conditions of OTS vide OTS approval letters dated 14.08.2018 and 20.08.2019. **(Page Nos.121 – 123 of the Application.**
- 2.8 It is averred that Respondent No.2/Corporate Debtor vide its letter dated 15.07.2016 had requested the Petitioner to accept, compromise proposal for settlement of dues within a maximum period of one year to make full payment. Letters dated 18.07.2016 and 13.12.2016 was written by the Respondent No.2 giving schedule of payment with willingness and commitment to pay dues with a maximum limit of Rs.11.70 crores.
- 2.9 The Petitioner averred that the Corporate Debtor alongwith other Directors and guarantors had approached the Financial Creditor and agreed for settlement of dues by way of compromise. The Financial Creditor conveyed its approval for the fine OTS amount of Rs.12 crores against total due of Rs.33.68 crores and revised terms and conditions were drawn. The Corporate Debtor and other guarantors had accepted the terms and conditions by signing the final OTS vide letter dated



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07.10.2016, which was approved by passing a resolution in the meeting of the Board of Directors of the Corporate Debtor on 09.12.2016.

- 2.10 It is averred that the Corporate Debtor having accepted the compromise to pay the One Time Settlement amount of Rs.12 crores by virtue of its board resolution dated 09-12-2016 requested the Financial Creditor to remove the security guard kept at the premises of Corporate Debtor. The request the Financial Creditor accepted the request of the Corporate Debtor to remove the security guard kept at the property. It was also made clear in the said letter dated 13-12-2016 that in case of failure to pay compromise amount as per the agreed terms, the e compromise will be treated as cancelled and the bank will be vested with the right to proceed under SARFESI ACT to recover its dues including sale of the properties. The Corporate Debtor agreed to abide by the conditions and endorsed its acceptance on dt. 14-12-2016 on the letter dt. 13-12-2016 with the following remarks:

"Received the letter. We agree and abide. Taken delivery of property in good condition"

- 2.11 The Corporate Debtor vide letter dated 20-03-2017 again requested the Financial Creditor to release one of its properties under mortgage. Pursuant to such request, the Corporate Debtor paid an amount of Rs.57.55 Lakhs (parked in no lien



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account) and Rs.20 Lakhs on 14-03-2017 alongwith cheque bearing No. 719474 dated 20-03-2017 for Rs.27.45 Lakhs. Thus, in total an amount of Rs.105 Lakhs was paid to the Financial Creditor, which was adjusted against the loan account.

- 2.12 It is averred that the Corporate Debtor again in the month of October, 2017 requested the Financial Creditor to accept the OTS Sanction that was approved vide letter No. SAMB.SEC.SBP.1003 dated 07.12.2016. The Corporate Debtor vide letter dated 30.10.2017 settled the dues to the bank by paying the compromise amount of Rs.12 crores.
- 2.13 It is submitted that the Hon'ble DRT, Visakhapatnam allowed the O.A.No.96/2015 against the Respondents herein and the other Personal Guarantors by name Sri.Nannapaneni Anna Rao, Smt.Nannapaneni Leela Kamala Kumari & Smt.Nannapaneni Chittamma by an order dt. 22-09-2017. Accordingly recovery certificate dated 22-09-2017 under sub-section 7 and 22 of Section 19 of the Recovery of the Debts due to Banks and Financial Institutions Act 1993 was issued in O.A.No.96/2015. Consequently, recovery proceedings in R.P.No.446/2017 was initiated against the Respondents before the Recovery Officer, DRT, Visakhapatnam. The Recovery Officer DRT, Visakhapatnam issued Demand Notice dated 05-07-2018 to the Respondent directing them to deposit the



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recovery certificate amounts within 15 days of the receipt of Demand Notice.

- 2.14 It is averred that the Guarantee executed by the Personal Guarantor was also invoked by the Petitioner by making a demand vide Form B Demand Notice dated 22-04-2022 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 on Respondent No.1 for making the payment of outstanding amount of Rs.87,09,42,902.34 including upto date interest availed towards Fund Based Facilities. The said Demand Notice was served on Respondent No.1 under acknowledgment dated 02-05-2022. However, the Personal Guarantor who is Respondent No.1 herein neglected and failed to make the payment.
- 2.15 It is averred that the Personal Guarantor for the CD and Respondent herein executed a Personal Guarantee of Agreement dated 11-09-2013 under which he undertook that on failure of the borrower to pay and/or discharge any of its guaranteed obligations in full or in part or on failure to comply with its obligations under the CDR documents, the Guarantor shall unconditionally and irrevocably upon demand raised by the Financial Creditor, pay to the Security Trustee without demur or protest forthwith the amount stated in the Demand



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Certificate as if he were primary obligor or principal debtor and not merely as surety in respect of the amount, the amount stated in the Demand Certificate. He further undertook that any demand made or given by the Security Trustee to the guarantor shall be final and conclusive and binding evidence that the liability of the guarantor has accrued. It is pertinent to note here that the Respondent/Personal Guarantor undertook and agreed vide clause 8 under the said Personal Agreement of Guarantee dated 11.09.2013 that the Financial Creditor shall have power to vary, alter, waive, release or modify any or all provisions of the CDR documents and that as such his liability to service the outstanding debt of Corporate Debtor shall remain unaffected irrespective of any such variation, alteration, waiver, release or modification. **(Page Nos.35-44 of the Application).**

- 2.16 The Petitioner submitted that the Respondent No.2 was referred to this Tribunal for CIRP process vide CP (IB)No. 57/7/HDB/2021 and the same was admitted to CIRP vide order dated 07-02-2022
- 2.17 It is submitted that the cause of action for this petition arose first on 12-08-2014 when a demand notice under Section 13 (2) of SARFAESI ACT was served by the Petitioner upon Respondent No.1 and Respondent No. 2 along with the Corporate Guarantors demanding repayment of debt due. The cause of action also arose when the Respondent No.2 on



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various dates, i.e., 15-07-2016, 03-12-2016, 18-07-2016, 07-12-2016, 13-12-2016, 20-03-2017 agreed to pay the amounts under One Time Settlement. It also arose when the recovery case in O.A.No.96/2015 filed against the Respondent herein was allowed by an order dated 22-09-2017. The cause of action also arose when the Respondent No.2 confirmed and agreed to pay the compromise amount of Rs.12 crores vide letter dated 30-10-2017. It also arose when the Learned Recovery Officer, DRT, Visakhapatnam issued Demand Notice dated 05-07-2018 to the Respondents to pay the debt amount. The Cause of action also arose when NCLT Hyderabad Bench by an order dated 07-02-2022 admitted the petition under Section 7 of IBC, 2016 and appointed IRP (Insolvency Resolution Professional). The cause of action also arose when the NCLT Hyderabad Bench by an order dated 07-02-2022 allowed the company petition and CIRP was ordered against Respondent No.2/Corporate Debtor ordering for liquidation of Respondent No.2. The cause of action also arose on 22-04-2022 when the Guarantee was invoked by issuing a Form B Demand Notice by the Petitioner to the Respondent No.1 calling upon him/her to pay the amount. As the Respondent No.1 herein failed to pay the amount the cause of action is continuing. It is a settled legal position that the cause of action against Guarantors who executed continuing Guarantee arise on the date of demand. The same was



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elaborately explained by the Hon'ble Supreme Court in the matter of “*Margaret Lalita Samuel vs Indo Commercial Bank Ltd*”. Hence the cause of action arose on 22-04-2022 and mentioned hereinabove in this para and as such it is continuing till date.

- 2.18 In view of the aforesaid facts and circumstances, the Petitioner has filed this Application before this Tribunal praying for initiation of insolvency resolution process against the Respondent No.1 namely, Mr.Nannapneni Ankanna Choudary, Personal Guarantor to the Corporate Debtor under the provisions of the IBC, 2016. i.e., the Respondent No.2 herein before this Hon'ble Tribunal under the provisions of the IBC, 2016.
3. In the counter the Respondent No.1/Personal Guarantor has submitted that Respondent No.1/Personal Guarantor is one of the Personal Guarantor of the Respondent No.2 Company M/s.Prismack Biotechnics Limited which was established as an Integrated Biotechnology complex to Manufacture Fish Meal, Dry Fish, Fish Oil. Shell Meal and Co. Generation of Power for Captive Consumption. The Respondent No.2 company Debtor availed various credit facilities from the Financial Creditor for the purpose of Working Capital and Term Loan for setting up of the project i.e., Plant & Machinery and Construction of Factory from time to time over a period of time. Due to adverse market conditions beyond the control of the management of the Company



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suffered losses as a result of which the account became NPA on 28-06-2012 i.e., 10 years back and the Financial Creditor initiated recovery proceedings under SARFAESI Act 2002. The Financial Creditor filed O.A. No. 96/2015 before Hon'ble DRT Visakhapatnam and the Hon'ble DRT passed orders on 22-09-2017 and recovery certificate was issued on 22-09-2017.

- 3.1 It is averred that the personal guarantor executed deed of guarantee on 11-09-2013 and apart from that document, no other document has been executed by the answering Respondent and placed on record by the Petitioner herein to prove that the debt has been acknowledged by the answering Respondent.
- 3.2 It is submitted that as per the application the date of default is 10.10.2014 i.e., the due date of paying the debt as per the demand notice issued on 12-08-2014 and that since no document has been provided by Respondent No.1 to the Financial Creditor/Petitioner as acknowledgement of debt by the Respondent No. 1 after the date of default i.e., on 10-10-2014 and therefore the instant Company Petition is not only barred by limitation but is also not maintainable and is untenable.
- 3.3 It is submitted that Article 137 of the Limitation Act provides 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. As per Article 137 of



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Limitation Act right to apply accrues when a default occurs and in the present case the date of default is on 12-08-2014 i.e., the date on which the demand notice issued u/s 13(2) of SARFESI Act, 2002.

- 3.4 It is submitted that the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1166 of 2019 between ***Bimalkumar Manubhai Savalia vs Bank of India & Anr***, it was held that proceedings before the Debt Recovery Tribunals (DRT) under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) etc., will not extend the period of limitation for the purpose of Insolvency & Bankruptcy Code, 2016. The relevant extracts of para 9 is given below:

“With regard to the limitation, the Adjudicating Authority observed that the date of mortgage is 18.11.2010, The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'SARFAESI') and Debt Recovery Tribunal (in short 'DRT') started in 2017, One Time Settle (in short OTS) revised offer from 12 Crores to 14.56 Cores, vide letter dated 01.06.2016 was submitted by the Corporate Debtor to the Financial Creditor - Bank and the credits have come to the loan account on 31.03.2017. The Adjudicating Authority, by observing above, held that the Application is within limitation taking into account the OTS proposal dated 01.06.2016 and the amounts which have come from the Guarantor into the loan account of the Financial Creditor on 31.03.2017. We are of the view that the SARFAESI and DRT proceeding will not extent the period of limitation since those proceedings are independent and as per section 238 of IBC, the Insolvency and Bankruptcy



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Code is a complete Code and will have overriding effect on other laws. Therefore, the proceedings initiated or pending in DRT, either initiated under SARFAESI or under debts and due to Banks and Financial Institutions cannot be taken into account for the purposes of limitation.”

3.5 It is submitted that Hon'ble Tribunal in the matter of "**C. Shivkumar Reddy Vs. Dena Bank and Anr.**" in Company Appeal (AT)(Insolvency) No. 407 of 2019 dated 18.12.2019, after considering the Judgment of the Hon'ble Supreme Court, in the matter of "**Jignesh Shah and Anr. Vs. Union of India (UOI) and Anr.**" reported in MANU/SC/1319/2019 and (2019) SCC OnLine SC 1254 and "**Gaurav Horgovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr.**" in Civil Appeal No. 4952 of 2019 and "**B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates**" passed in Civil Appeal No. 23988 of 2017 reported in (2019) 11 SCC 633 held in paragraph-7 as under:

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“There is nothing on record to suggest that the Corporate Debtor or its authorised representative by its signature has accepted or acknowledged the debt within 3 years from the date of default or from the date when account was declared NPA i.e., on 31.12.2013" And set-aside the impugned order dated 21st March, 2019 passed by the Adjudicating Authority (National Company Tribunal), Bengaluru Bench in CP (IB) No.244/BB/2018 and Law dismiss the application under Section 7 of the I&B code filed by the Dena Bank.”



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- 3.6 It is submitted that as per definition of debt in Section 3 (11) of Insolvency and Bankruptcy Code, 2016 "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt; therefore, the expression "debt due" in the definition undersections 3(11) of IBC mean debts that are "due and payable" in law, i.e., the debts that are not time-barred.
- 3.7 It is submitted that since no document has been provided by Respondent No.1 to the Financial Creditor/Petitioner for acknowledgement of debt by the Respondent No.1 after the date of default on 12-08-2014, therefore the instant Company Petition is not only barred by limitation but is also not maintainable and is untenable.
- 3.8 It is submitted that without prejudice to what is state supra, even if the date of default is considered as the date of passing the Judgement by Hon'ble DRT, Visakhapatnam in OA No.96/2015 on 22- 09-2017 and recovery certificate was issued on 22.09.2017, as per Article 137 of the Limitation Act right to apply accrues within 3 years from the date of right accrued and even in the present case, right to apply accrued on the date of issuance of recovery certificate, i.e., 22.09.2017 and within 3 years from 22.09.2017, i.e., or before 22.09.2020 but the present application/petition filed in the month of July, 2022 is therefore is



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time barred and to be dismissed in limini and is not maintainable on the ground of limitation.

3.9 In view of the above facts and circumstances, it is prayed that since no documents have been provided by the Respondent No.1 to the Financial Creditor/Petitioner in acknowledgement of debt, but also the present petition is not only barred by limitation and also not maintainable and untenable. Hence, liable to be dismissed with costs.

4. The Rejoinder filed by the Petitioner, by re-iterating the contents of the Petition, apart from that it is stated that:

4.1 Petitioner denied all the averments and allegations of the Respondent No.1 in his reply.

4.2 It is averred that the statement made by the Respondent that apart from execution of the deed of guarantee on 11.09.2013, no other document has been executed by the Respondent No,1 is factually incorrect and hence denied. Similarly, the contention of the Respondent No.1 that the present Petition is time barred and the same is not maintainable is also incorrect and hence denied. It is also an admitted fact that the demand notice was issued on 12.08.2014 claiming the outstanding amounts from not only the Respondent No.2 but also the Respondent No.1 and other guarantors.



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4.3 It is averred that the Respondent No.1 is misinterpreting the Article 137 of the Limitation Act to suit her convenience. In this regard, the Financial Creditor submits that under law the present application under Section 95 of IBC is very much within limitation.

4.4 The Financial Creditor substantiates its contention as to how the Company Petition is within limitation by stating the following facts in chronological order:

- i. It is admitted fact that the Respondent No.2/Corporate Debtor availed credit facilities under the sanctioned letter dated 10.09.2013 under the Rehabilitation Package.
- ii. The Respondent no.1 stood as personal guarantor and executed deed of guarantee dated 11-9-2013.
- iii. The Respondent No.2 Corporate Debtor failed to adhere to the repayment terms for the sanctioned credit facilities resulting in the loan Accounts becoming irregular. Thus, as a result the loan Accounts of Respondent No.2'Corporate Debtor was classified as "NPA".
- iv. The Financial Creditor initiated SARFAESI action and issued demand notice dated 12-8-2014 U/s 13(2) of SARFAESI Act calling upon the Respondents to pay the outstanding dues within 60 days from the date of the demand notice.
- v. The financial creditor initiated recovery action and filed a recovery case in OA.No.96 of 2015 before the Debts Recovery Tribunal, Visakhapatnam against the Respondents herein.



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- vi. The Respondent No.2/Corporate debtor offered compromise proposal to pay the loan Outstandings and thus accepted the one-time settlement and given consent to adhere to the terms and conditions of one-time settlement vide OTS approval letters dated 7-12- 2016, 14-8-2018, and 20-9-2019.
- vii. The Respondent No.2/Corporate Debtor in the meeting of its Board of Directors held on 9-12-2016 passed a resolution to the effect that the Financial Creditor had approved the one time settlement and advised to pay the dues of Rs.12.00 crores. The Corporate Debtor agreed to abide by the terms and conditions and endorsed its acceptance on 14-12-2016 under the covering letter dated 13-12-2016
- viii. The Corporate Debtor came up with a request vide letter dated 20-3-2017 requesting the Financials Creditor to release one of the properties that were mortgaged. Pursuant to such request the Corporate Debtor paid an amount of Rs.57.55 lakhs on 20- 03-2017 and Rs.20.00 lakhs on 14-03-2017 and both the amounts were parked in No lien Account.
- ix. The Hon'ble Debt Recovery Tribunal, Visakhapatnam by an order dated 23-09-2017 allowed the O.A.No.96 of 2015 against the Respondents herein. The Recovery Officer DRT, Visakhapatnam issued demand notice on 05-07-2018 in RP No. 446 of 2017 to the Respondents herein to pay the debt.
- x. The Guarantee Agreement Executed by the Respondent No.1 was also invoked by the Financial Creditor by making a demand in form "B" vide demand notice dated 22-04- 2022 under Rule 7(1) IBC Rules 2019.
- xi. The Respondent No.1 being the personal guarantor under the guarantee agreement dated 11-09-2013 under which she



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undertook that on failure of the borrower to pay under and/or discharge any of its guaranteed obligations in full or in part or on failure to comply with its obligations under the CDR documents, the Guarantor shall unconditionally and irrevocably upon demand raised by the Financial Creditor, pay to the Security Trustee without demur or protest forthwith the amount stated in the Demand Certificate as if he were primary obligor or principal debtor and not merely as surety in respect of the amount, the amount stated in the demand Certificate. He further undertook that any demand made or given by the Security Trustee to the guarantor shall be final and conclusive and binding evidence that the liability of the guarantor has accrue

- 4.5 The Financial Creditor had established that the claim made against the Respondent no.1 is not barred by limitation. The terms stipulated under Article 137 of Limitation Act the period of limitation of three years begins to run from the date when default had occurred. Article 18 of Limitation Act also stipulate that the acknowledgement of debt takes place within three years period of limitation prescribed., then the period of limitation stands extend by another 3 years form the date of acknowledgement of debt.
- 4.6 It is submitted that the Petitioner had invoked the personal guarantee against the Respondent No.1 by issuing demand notice. The Respondent No.1 failed to comply with such demands made by the Petitioner. As such, the Petitioner is constrained to seek appropriate legal remedy be initiating the proceedings against the



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Respondent No.1 by invoking the provisions under Section 95 of the IBC.

5. Further stated that on seeing through the lens of the principles of the Contract Act, the most significant characteristic of the guarantee contract is coextensive liability of the principal debtor and the guarantor (Section 128). The implication of this section being that the liability of the guarantor is immediate and cannot be deferred until the creditor exhausts his remedies against the principal debtor.
6. In case of ***Bank of Bihar Vs. Damodar Prasad & Anr***, the judgment held that before payment of debt, guarantor has no right to command the terms to the creditor, as in asking the creditor to pursue his remedies against the debtor in the first instance. It is the business of the Guarantor to see if the principal debtor pays and not that the creditor.
7. Pursuant to framing of Personal Guarantors Insolvency Rules, 2019 which came into effect from 01.12.2019, permitting the Petitioner Bank to institute IR Process against the Personal Guarantors, the Petitioner Bank issued a demand notice dated 12.08.2014 to the Personal Guarantor, in Form B of the Code demanding payment of the amount in default along with acknowledgement receipt.
8. On presentation of this instant petition, in terms of the Section 99 of the Code, 2016 and directed the Resolution Professional/Shri Krishna Mohan Gollamudi to issue notice to the Personal Guarantor and notice was send through registered post and the same was delivered. The



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Application vide IA.No.173 of 2024 filed by the Resolution Professional, recommending the admission of the Petition under Section 95 of the Code, 2016 and the Resolution Professional in the application stated that the Petitioner has sent the demand notice in Form-B dated 12.08.2014. Based on the facts the RP is recommending for approval of the Petition filed by through RP of financial creditor against the personal guarantor Sri.Nannapaneni Ankappa Choudary to the corporate debtor M/s.Prismack Biotechnics Limited.

9. In the light of the aforesaid factual matrix the point arises for our consideration is:

Whether an Insolvency Resolution Process can be ordered against the Personal Guarantor under Section 100 of the Insolvency and Bankruptcy Code, 2016?

10. We have heard the Learned Counsel Shri G.Sanjeeva Reddy, for the Petitioner and Learned Counsel Mrs.Mummaneni Vazra Laxmi, for Respondent No.1/Personal Guarantor and Learned Resolution Professional Shri Krishna Mohan Gollamudi, for the Petitioner perused the record.
11. At the outset it may be stated that the Petitioner Bank has initiated Corporate Insolvency Resolution Process against the Corporate Debtor i.e., M/s.Prismach Biotechnics Limited vide CP (IB) No. 57/7/HDB/2021 under Section 9 of the Code, 2016 which was admitted by this Adjudicating Authority vide order dated 07.02.2022 and the



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instant petition is initiated against the Personal Guarantor of the Corporate Debtor. RP in the instant petition has observed that creditor has send demand notice in Form-B on 12.08.2014 to Respondent No.1 intimating the total amount of debt including interest is Rs.87,09,42,902.34. But personal guarantor failed to repay the amount due towards the creditor within 14 days from the date of receipt of demand notice and recommended initiation of Insolvency Resolution Process against R-1 in terms of Section 99 (7) of IBC, 2016.

12. Since Corporate Debtor has given consent to One Time Settlement vide OTS approval letter dated 20.09.2019, it extends limitation period for Guarantor also by 3 years as the liability of the Guarantor is co-extensive. We rely upon the judgement of the Hon'ble Supreme Court of India in ***Dena Bank (now Bank of Baroda) versus C.Shivakumar Reddy and Anr***, Civil Appeal No.1650 of 2020, which is reproduced below:

"141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016- 2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019."

13. Therefore, in the light of un-deniable factors, this Tribunal carefully examined the instant petition filed by RP. As per the petition it is clear that the personal guarantor has not offered any repayment plan. We therefore, find no reason to reject the instant petition filed by RP. Hence, we admit the petition.



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14. Therefore, in the light of our discussions above, on perusal present petition filed by Financial Creditor, record and case laws, we consider it is a fit case to order insolvency resolution process against Respondent No.1/Personal Guarantor.
15. Hence, the instant Company Petition vide CP (IB) No. 333/95/HDB/2022 filed under the provisions of Section 95 of Code, 2016 is hereby admitted under the provisions of Section 100 of the Code, 2016 and Insolvency Resolution Process is initiated against Mr. Nannapaneni Anna Rao, the Personal Guarantor, and moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 2016. During the moratorium period-
 - a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
 - b) The Creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
 - c) The debtor shall not transfer, alienate, encumber or dispose of any of her assets or her legal rights or beneficial interest therein;



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- d) The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- e) The Petitioner Bank herein, has proposed the name of Shri. Krishna Mohan Gollamudi, having Registration No. IBBI/IPA-003/IP-N000161/2018-2019/11952 insolvency Professional to act as Resolution Professional, who has given his consent dated 19.07.2022 in Form-A. Hence, this Tribunal appoints: **Shri. Krishna Mohan Gollamudi**, having Registration No. IBBI/IPA-003/IP-N000161/2018-2019/11952, email id: krishnamohangolluamudi@gmail .com, Address: Flat No.107, Maurya Towers, Adikmet Road, Vidyanagar, Hyderabad – 500044, Mobile No.9573622744.
- f) The Resolution Professional is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days from the date of uploading of this order on the website of NCLT, Hyderabad, inviting the claims from all creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of the Code. The publication of notice shall be made in newspapers, one in English and other in vernacular (Telugu) which have wide circulation in the State where the Personal Guarantor and Corporate Debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the



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Registry. One shall be placed on our website by the Registry and the other shall be affixed in the premises of this Adjudicating Authority.

- g) The Resolution Professional in exercise of the powers conferred under the Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The Personal Guarantor shall prepare, in consultation with the Resolution professional, a repayment plan containing a proposal to the creditors for restructuring of her debts or affairs as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.
- h) In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of creditors should be summoned., he shall specify the details as provided under Section 106(3). The date of meeting shall not be less than fourteen days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106 of the Code, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the Code.



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- i) The meeting of the creditors shall be conducted in accordance with the provisions Sections 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to the Authority, copies of which shall be provided to the guarantor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.
- j) The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.

Sd/-
Charan Singh
Member Technical

Sd/-
Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Vinod/ Sridher