IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA

C.P. (IB)/267(KB)2024

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:
M/s. Prithvi Finvest Co. Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at CF-361, Salt Lake City, Sector-I, Kolkata- 700064.

... ... Financial Creditor

Versus

M/s. Phyto Biotech Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Soods House, 3rd Floor, 26/N, Block-B, New Alipore, Kolkata- 700053.

... ... Corporate Debtor

Date of pronouncement: 15th May, 2026

CORAM:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)
Mr. Shaunak Mitra, Adv.] For the Financial Creditor
Mr. Saurav Jain, Adv.]

Mr. Rishav Banerjee, Adv.] For the Corporate Debtor
Mr. Dripto Majumdar, Adv.]
Mr. P.P. Bishwal, Adv.]

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. This Court convened via hybrid mode of conferencing.

2. The Learned Counsels for the parties were heard *in extenso*.

3. This application has been filed by M/s. Prithvi Finvest Co. Private Limited, the Financial Creditor to initiate corporate resolution against M/s. Phyto Biotech Private Limited, the Corporate Debtor to an alleged sum of ₹ 11,43,51,032/- (Rupees

Eleven crores forty-three lakhs fifty-one thousand and thirty-two only), the debt of default being 31st May, 2024.

Admitted facts:

4. The Financial Creditor is an NBFC which have granted loan to the Corporate Debtor.

5. The Corporate Debtor is a company within the meaning of the Companies Act, *inter alia*, engaged in the business of research and development in pharmaceutical industries. It was incorporated on 13th March, 2009.

6. The Corporate Debtor has submitted that it was incorporated on 13th March, 2009 by Ramesh Kumar Saraogi, Sankarlall Ajitsaria, Bijay Kumar Garodia and Arun Kumar Mohta. At present, Sankarlall Ajitsaria, SLA & Sons HUF and Vijay Kumar Garodia & Sons HUF continue to be shareholders in the alleged Corporate Debtor and hold 28000, 200000 and 300000 number of equity shares equivalent to 12.86 per cent of the total authorized, issued and paid-up capital of the alleged Corporate Debtor.

7. It is alleged that the Financial Creditor is a related party of the alleged Corporate Debtor.

Submission of the Financial Creditor:

8. The Financial Creditor had granted loan to the Corporate Debtor in several tranches from time to time totalling to ₹ 11,43,51,032/- (Rupees Eleven crores forty-three lakhs fifty-one thousand and thirty-two only). The last date on which the payment was received by the Financial Creditor towards principal was 18th March, 2016 as there is confirmation of books

of account by the Corporate Debtor for the period 1st April, 2016 to 31st March, 2018.

9. The Corporate Debtor had deducted the Tax Deducted at Source (TDS) under the provisions of the Income Tax Act, 1961 from the Financial Years 1st April, 2010 to 31st March, 2017 without making payment of the interest of the loan amount.

10. On 15th January, 2018, CIR process was initiated against the Financial Creditor and IRP was appointed. On 7th August, 2018, the IRP was replaced by Mr. Jitendra Lohia who was the Resolution Professional and then the Liquidator of the Financial Creditor by virtue of a liquidation order dated 2nd January, 2020. He had sent several letters to the Corporate Debtor via e-mail and speed post demanding outstanding amount as per books of account of the Financial Creditor, on diverse dates being 17th May, 2018, 6th April, 2019, 23rd May, 2020, 26th May, 2020 and 22nd June, 2020.

11. It is submitted that the Corporate Debtor has responded to one of the e-mails on 18th May, 2019, confirming the entire debt and assuring that it would be repaid once their financial position improved.

12. An appeal was preferred by the Directors of the Financial Creditor challenging the impugned liquidation order dated 2nd January, 2020 and the Liquidator filed an application being I.A. No.603/KB/2021 on behalf of the Financial Creditor to recover dues from M/s. Phyto Biotech Private Limited, the Corporate Debtor herein. Meanwhile, the appeal preferred by the Directors being Company Appeal (AT) (Insolvency) No.284 of 2020 was allowed by the Hon'ble National Company Law Appellate Tribunal and liquidation proceeding along with CIRP was declared non-est.

13. The Financial Creditor submits that record of financial information in Form C and record of default in Form D have been generated on 21st June, 2024 and 7th July, 2024 respectively. The date of default has been mentioned as 31st May, 2024.

14. It is submitted that the total amount claimed to be in default which is ₹ 11,43,51,032/- (Rupees Eleven crores forty-three lakhs fifty-one thousand and thirty-two only) is inclusive of principal amount of ₹ 3,92,90,538/- (Rupees Three crores ninety-two lakhs ninety thousand five hundred and thirty eight only) plus interest till 31st May, 2024 at the rate of 9 per cent per annum on cumulative basis amounting to ₹ 7,50,60,494/- (Rupees Seven crores fifty lakhs sixty thousand four hundred and ninety-four only).

15. It is claimed that initial default happened on 7th April, 2019 whereafter the Corporate Debtor was in continuous default and, therefore, the default is of 1881 days as on 31st May, 2024.

16. **Submissions of the Corporate Debtor:**

The Corporate Debtor has vehemently opposed admission on the following grounds:

(i) the petition is barred by limitation;

(ii) the petitioner, who claims to be a Financial Creditor is a related party of the Corporate Debtor;

(iii) there is no acknowledgement of debt beyond 2013 and, therefore, the debt is a time barred debt;

(iv) the last acknowledgment in balance sheet on 30th March, 2016 and, therefore, this petition filed in 2024 is barred by limitation;

(v) the Financial Creditor wants the period of CIRP and liquidation to be excluded from computable period which is not permissible in law;

(vi) such exclusion can be allowed only for approaching in the wrong forum and whereas the National Company law Tribunal was not a wrong forum.

(vii) dismissal of the appeal is only on the ground that the Financial Creditor being an NBFC, any proceedings under Section 7 against it ought to have been filed with the approval of the Reserve Bank of India and thus, with the approval of the Reserve Bank of India a Section 7 petition could have been preferred against the Financial Creditor and, therefore, the National Company Law Tribunal was not a wrong forum.

(viii) there was no agreement between the parties for grant of loan or for levying of interest.

17. The Corporate Debtor has alleged that shareholders of both the companies being common, e-mail of the Corporate Debtor has been hacked and balance confirmation has been created. Hence, purported balance confirmation should not be relied upon.

Analysis and Findings:

18. We have heard the learned Advocates from both the sides and perused the materials on record.

19. The issue that crops up for determination is (i) whether the present CP at the instance of the Financial Creditor which has itself come out of CIRP, is maintainable against the present Corporate Debtor; (ii) whether the petition is within the prescribed period of limitation.

20. Discernible facts

i. Admittedly and irrefutably the Financial Creditor went into CIRP by an order dated 15th January, 2018 and was ordered liquidation by an order dated 2nd January, 2020.

ii. The Hon'ble National Company Law Appellate Tribunal has *set aside* the process by its order dated 31st January, 2024. The Financial Creditor having come out of CIRP has preferred this company petition in 2024.

iii. It is not in dispute that the Corporate Debtor received amounts in several tranches from the Financial Creditor between 2009 and 2014 as a loan for the expansion of the business of the Corporate Debtor, repayable with interest at the rate of 9 per cent. Therefore, in regard to a "debt" that is a "financial debt", a Section 7 petition would squarely be maintainable.

iv. The balance confirmation from **page 86 (Annexure P9)** which appears to be on behalf of M/s. Phyto Biotech Private Limited, the Corporate Debtor as on 1st April, 2017, is of ₹ 6,07,09,165/- (Rupees Six crores seven lakhs nine thousand one hundred and sixty-five only). The Corporate Debtor has, however, alleged that its e-mail has been hacked to create this balance confirmation.

v. Tax Deducted at Source (TDS) deduction as it appears from Form 26AS at **pages 88 to 96 (Annexure P10)** shows that TDS has been deposited from 2010 onwards till 2017.

vi. The audited balance sheet of the Corporate Debtor at **page 132** of the company petition shows business loan taken from M/s. Prithvi Finvest Co. Private Limited to the tune of ₹ 5,61,60,190/- (Rupees Five crores sixty-one lakhs

sixty thousand one hundred and ninety only) as on 31st March, 2016.

vii. Part payments have been received till 18th March, 2016. There was a confirmation letter from the Corporate Debtor dated 18th May, 2019 in response to a letter dated 6th April, 2019 asking M/s. Phyto Biotech Private Limited to repay the dues of M/s. Prithvi Finvest Co. Private Limited. The Director, Mr. Arun Kumar Mohta for M/s. Phyto Biotech Private Limited has stated as under:

> *"You have requested as to repay the dues amount to Prithvi Finvest Co. Private Limited immediately. In this connection, we would like to inform you that at present we are going through financial crunch and there is no inflow of funds in the Company. So we are not in a position to repay the dues immediately."*

viii. The Corporate Debtor has been requested to pay the dues immediately and there is no denial of the fact that the Corporate Debtor owed the Financial Creditor an amount of ₹ 6,16,52,165/- (Rupees Six crores sixteen lakhs fifty-to thousand one hundred and sixty-five only) as on 18th May, 2019.

21. Implications of the decisions cited by the parties:

A. Decisions cited by the Financial Creditor in support of his contentions:

(i) HPCL Bio-Fuels Ltd. vs. Shahaji Bhanudas Bhad reported in (2024) SCC OnLine SC 3190.

(ii) Sesh Nath Singh and Another vs. Baidyabati Sheoraphuli Co-Operative Bank Limited and

Another reported in (2021) 7 SCC 313, to contend that -

> *"In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."*

(iii) M/s. Orator Marketing Pvt. Ltd. vs. M/s. Samtex Desinz Pvt. Ltd. in Civil Appeal No.2231 of 2021, para 31 to contend that,

> *"Financial Debt includes interest free loans advanced to finance the business operations of a corporate body and definition of Financial Debt in Section 5 (8) of IBC does not expressly exclude an interest free loan".*

(iv) Desana Impex Ltd. vs. Brick and Motar Reality P. Ltd. in Company Appeal (AT) (Insolvency) No.318 of 2024 to contend that**,**

> *"acknowledgement of debt by corporate debtor through confirmation of accounts is sufficient material on record to suggest that the disbursement has been made and interest is being paid by the respondent and there is acknowledgement of*

liability through confirmation of accounts in several financial years, the loan transaction meets the test of time value of money through the agreed interest rate and is to be treated as a debt."

(v) Vidyasagar Prasad vs. UCO Bank & Anr. in Civil Appeal No.1031 of 2022 to contend that,

"entries in balance sheets amount to clear acknowledgement of debt event without a demarcation as to what the corporate debtor post to the financial creditor a section 7 petition can be admitted."

B. Decisions cited by the Corporate Debtor:

(i) Prarthana Sales Private Limited and Another vs. Burnpur Cement Limited in C.P. (IB) No.964/KB/2020 to contend that the

"when the financial debt, disbursement and default do not reconcile with the documents placed on record it cannot be concluded that a bona fide financial debt exist."

22. Inference:

(i) According to the decision in **Sesh Nath Singh and Another (supra)**

"63. Section 238-A makes the provisions of the Limitation Act applicable to proceedings under the IBC before the adjudicating authority and the appellate authority (NCLAT) "as far as

may be". Section 14(2) of the Limitation Act which provides for exclusion of time in computing the period of limitation in certain circumstances, provides as follows:

*"14. Exclusion if time of proceeding bona fide in court without jurisdiction. –(1) * * **

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

Further, *"64. under Section 18 of the Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing if fresh period of limitation, from the date on which the acknowledgement is signed."*

Thus, exclusion is permissible where the party had proceeded in a "wrong forum" which is not established in the present case.

(ii) The Financial Creditor (FC in short) has sought for exclusion of the entire period right from the date CIRP was initiated against it and till it was *set aside* by the Hon'ble

National Company Law Appellate Tribunal, during which period according to the FC, it was not able to file a Section 7 petition against the Corporate Debtor. The NCLT was not a "wrong forum" for pursuing a petition under Section 7.

(iii) As evident, the Financial Creditor herein wants exclusion of almost 6 years from the total computable period while its matter was pending before the NCLT and NCLAT whereas in terms of Section 11 of IBC the Resolution Professional as well as the Liquidator was well within its rights to initiate CIRP against the Corporate Debtor and even under Section 33 (5) the Financial Creditor could have filed a suit against the Corporate Debtor upon taking due approval from Adjudicating Authority.

(iv) Admittedly, "default" has occurred in the year 2009 to 2010. There is no acknowledgement of debt in the balance sheets during 2010 to 2016. According to the decision in **Sesh Nath Singh and Another (supra),**

> *"64. under Section 18 of the Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing if fresh period of limitation, from the date on which the acknowledgement is signed."*

Such acknowledgement must be before expiry of the period of limitation. Subsequent acknowledgments will not extend the limitation that has expired long before the first acknowledgment.

(v) Hence, exclusion of the period of 6 months as sought for, from total computable period is not permissible.

(vi) Consequently, the alleged default being of 2009 to 2010 and there being no acknowledgment of debt between 2010 to 2016, the present petition preferred in the year 2024 is hopelessly time barred

(vii) Accordingly, this company petition being **C.P. (IB)/267(KB)2024** is **dismissed**.

23. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps**.**

24. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order signed on this the 15th day of May, 2026.

SM (Steno)