

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH - I, HYDERABAD**

C.P. (IB) No.277/7/HDB/2023

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

JM Financial Asset Reconstruction Company Limited

Registered Office at 7th Floor, Cnergy,
Appasaheb Marathe Marg, Prabhadevi,
Mumbai – 400025

(Acting in its capacity as trustee of
JMFARC – KVB Iris II March 2016 – Trust)

...FINANCIAL CREDITOR

VERSUS

KOBO BIOTECH LIMITED

(Formerly known as Avon Lifesciences Limited)

CIN No. L24110TG1993PLC016112,
Registered office at Plot No. 121A/1,
Western Hills, Addagutta Society, Opp. JNTU,
Kukatpally, Hyderabad, Telangana – 500072.

...CORPORATE DEBTOR

Date of Order: 13.08.2024



Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Financial Creditor : Mr. VVSN Raju, Counsel

For Corporate Debtor : None Present

PER BENCH

ORDER

1. This is a Petition filed by 'JM Financial Asset Reconstruction Company Limited acting in the capacity as trustee of JMFARC-KVB Iris II March 2016-Trust' (hereinafter referred as 'Financial Creditor') under Section 7 of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of 'Corporate Insolvency Resolution Process' (hereinafter referred as 'CIRP') of 'Kobo Biotech Limited' (formerly known as 'Avon Lifesciences Limited' and hereinafter



referred as 'Corporate Debtor'). The details of the alleged Financial Debt are as follows:

Principal Amount	:	Rs.34,67,57,444.11/-
Interest	:	Rs.56,79,91,486.97/-
Penal Interest	:	Rs.13,63,89,828.41/-
Total Amount Claimed	:	Rs.1,05,11,38,759.49/-.
Alleged date of default	:	30.12.2015

Facts as narrated by the Financial Creditor

2. It was submitted that vide Sanction Letter dated 07.07.2009, 'Karur Vysya Bank' (hereinafter referred as 'KVB') sanctioned a term loan of Rs.40 crores to the Corporate Debtor and in pursuance of the same entered into an Agreement for Credit Facilities dated 10.07.2009 incorporating the terms and conditions for the said term loan of Rs.40 crores (**Annexure 4 & 5**).
3. It was submitted that at the request of Corporate Debtor, KVB restructured the existing credit facilities of the Corporate Debtor to an amount of Rs.26 crores vide Sanction Letter dated 12.10.2013 and a Restructuring Agreement dated 14.10.2013 was entered into between KVB and the Corporate Debtor. It was submitted that Agreement for Credit Facilities, Funded Interest Term Loan



Agreement and Supplementary Agreement dated 14.10.2013 were also entered into between KVB and the Corporate Debtor **(Annexure 6 to 10)**.

4. It was submitted that vide Sanction Letter dated 20.03.2015, KVB granted a Corporate Loan of Rs. 2 crores and in furtherance of the same, Agreement for Credit Facilities dated 29.03.2015 was entered into between KVB and the Corporate Debtor **(Annexure 11 & 12)**.
5. It was submitted that the Corporate Debtor failed to pay the interests and also the principal instalments on the credit facilities sanctioned by KVB. That on account of the same, KVB declared the account of the Corporate Debtor as Non-Performing Asset (NPA) on 30.12.2015.
6. It was submitted that vide Assignment Agreement dated 28.03.2016, the Financial Creditor herein acquired from KVB the financial assets of Corporate Debtor which included all the rights, title, interest, security interest, personal guarantees. It was submitted that the Financial Creditor in the capacity of a Trustee of JMFARC-Axis Iris II March 2016-Trust and JMFARC-PNB Iris II September 2018-



Trust, also acquired the financial assets of the Corporate Debtor from Axis Bank and Punjab National Bank respectively.

7. It was submitted that as there was no repayment of the outstanding amounts by the Corporate Debtor, the Financial Creditor along with JM Financial Asset Reconstruction Company Limited acting in the capacity as 'Trustee of JMFARC-Axis Iris II March 2016-Trust' (hereinafter referred as 'JMFARC-Axis Trustee') and 'JMFARC-PNB Iris II September 2018-Trust' (hereinafter referred as 'JMFARC-PNB Trustee'), issued a notice dated 16.02.2017 to the Corporate Debtor and the guarantors under Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'SARFAESI Act') asking to pay the outstanding amounts as mentioned therein as on 31.01.2017. It was submitted that the amounts mentioned in the notice dated 16.02.2017 also contains the amount payable to the Financial Creditor and the same comes to a tune of Rs.42,06,57,041/-. It was submitted that the Corporate Debtor acknowledged this notice dated 16.02.2017 along with the debt vide acknowledgment of debt dated 26.03.2019. It was further



submitted that in the Annual Reports for the Financial Years from 2015-16 to 2022-23, the Corporate Debtor acknowledged the debt owed to the Financial Creditor (**Annexure 14 to 22**).

8. It was submitted that the Corporate Debtor defaulted in paying Rs. 1,05,11,38,759.49 to the Financial Creditor as on 31.10.2023 and hence, the Financial Creditor is seeking initiation of CIRP of the Corporate Debtor.

Counter of Corporate Debtor

9. It was submitted that the claim of the Financial Creditor is not genuine or legitimate and hence the present Petition is liable to be dismissed.
10. In response to the plea of acknowledgment of Financial Debt in the Annual Reports of the Corporate Debtor it was submitted that the Corporate Debtor had only referred to all the debts procured from Financial Institutions collectively and that did not particularly admit the amount as sought by the Financial Creditor in the present Petition.
11. It was submitted that the Financial Creditor in the present Petition mentioned the total amount granted by KVB to the Corporate Debtor



as Rs.74.76 crores but the default amount claimed was Rs.1,05,11,38,759.49/- as on 31.10.2023. It was submitted that the Financial Creditor did not justify as to the rate of interest charged and arriving at an exorbitant default amount.

12. It was submitted that the Assignment Agreement through which the Financial Creditor is filing the present Petition itself has many disputable clauses viz., Clause 2.1.1 and 2.2.5. It was submitted that in Clause 2.1.1, there are contradicting statements wherein at one point the Assignee (Financial Creditor herein) is stated to be a holder of the rights of Assignor (KVB) in trust and at other point the Assignee was deemed to be full and absolute owner. It was submitted that in accordance with Clause 2.2.4, the Corporate Debtor was not notified about the Assignment Agreement. It was submitted that as per Clause 2.1.4 and 2.1.5 of the Assignment Agreement, the Financial Creditor is to pay purchase consideration to KVB and an electronic receipt will be issued by KVB in this regard. It was submitted that the Financial Creditor did not file any receipt of such purchase consideration. It was submitted that unless these disputed



clauses of the Assignment Agreement are resolved, the present Petition cannot be adjudicated.

Rejoinder of the Financial Creditor

13. Denying the contents of the Counter of the Corporate Debtor, it was submitted by the Financial Creditor that the signatory of Counter of Corporate Debtor Mr. Rajendra Kaimal lacks proper authorization to represent the Corporate Debtor. It was submitted that the authorization of Mr. Rajendra Kaimal to represent the Corporate Debtor was not brought on record before this Tribunal.
14. It was submitted that the Corporate Debtor in the annual reports admitted that the Corporate Debtor secured loans from the banks by way of pari-passu charge on the assets. It was submitted that as per Annexure 28 and 29 of the Company Petition, the Financial Creditor has pari-passu charge on the assets of the Corporate Debtor and that the same constitutes an acknowledgement of debt by the Corporate Debtor. It was submitted that the Corporate Debtor in the annual report for the year 2022-23 (Page 730 of the Petition) admitted that the Financial Creditor was assigned majority loans availed by the



Corporate Debtor and that basing on the same, the Financial Creditor filed the present Petition.

15. It was submitted that the quantum of debt is not to be considered at the stage of admission of Petition if the amount of default is above Rs. 1 crore.
16. In response to the contentions made by the Corporate Debtor challenging the terms of Assignment Agreement, it was submitted that the contents of the assignment agreement cannot be challenged in a Petition under Section 7 of IBC. It was submitted that the Corporate Debtor was also intimated about the assignment agreement by way of a letter dated 31.05.2016 (**Annexure 1**).
17. In light of the contest put forth as above, the following points emerge for the consideration of this Tribunal:
 1. **Whether a Financial Debt of a sum exceeding rupees one crore due and payable by the by the Corporate Debtor to the Financial Creditor? If so, whether the Corporate Debtor has defaulted in repaying the same?**
 2. **Whether the present Petition is within the period of limitation?**
 3. **Whether the person representing the Corporate Debtor has a proper authorization?**



18. When the matter came up for hearing on 19.06.2024, Mr. VVSN Raju, Ld. Counsel for the Financial Creditor was present and there was no representation for the Corporate Debtor. Upon hearing the Ld. Counsel for the Financial Creditor, this Tribunal granted the liberty to both the sides to file written submissions and posted the matter for pronouncement of orders on 26.07.2024. Both sides have filed written submissions. We have heard both the sides, perused the record, written submissions and the case law filed by both the parties.

POINT 1:

Whether a Financial Debt of a sum exceeding rupees one crore is due and payable by the Corporate Debtor to the Financial Creditor? If so, whether the Corporate Debtor has defaulted in repaying the same?

THE SUBMISSIONS

19. Ld. Counsel for Financial Creditor submits that the Corporate Debtor was sanctioned credit facilities by KVB by way of a sanction letter dated 07.07.2009 and an Agreement dated 10.07.2009 was entered in this regard. Ld. Counsel further submits that there was a restructuring in the earlier credit facilities vide Sanction Letter dated 12.10.2013 and a Restructuring Agreement along with Agreement for Credit Facilities, Funded Interest Term Loan Agreement and



Supplementary Agreement dated 14.10.2013 were entered into between KVB and Corporate Debtor. Ld. Counsel submits that KVB also granted a Corporate Loan of Rs. 2 crores to the Corporate Debtor by way of a sanction letter dated 20.03.2015 and an Agreement for Credit Facilities dated 29.03.2015 was entered into in this regard.

20. Ld. Counsel for the Financial Creditor further submits that on account of failure of Corporate Debtor to service the credit facilities, KVB declared the account of Corporate Debtor as NPA on 30.12.2015. Ld. Counsel for the Financial Creditor submitted that vide Assignment Agreement dated 28.03.2016, the Financial Creditor herein acquired the financial assets of Corporate Debtor from KVB.
21. Ld. Counsel for the Financial Creditor also submitted that the Financial Creditor herein along with JMFARC-Axis Trustee and JMFARC-PNB Trustee issued a notice dated 16.02.2017 under Section 13(2) of SARFAESI Act asking the Corporate Debtor to pay the outstanding amounts as on 31.01.2017. Ld. Counsel submitted that this notice was acknowledged by the Corporate Debtor vide



Acknowledgement of Debt dated 26.03.2019. Ld. Counsel for Financial Creditor further submitted that the Corporate Debtor also acknowledged the debt in the Annual Reports for the Financial Years 2015-16 to 2022-23. Ld. Counsel submitted that in the Annual Report for the Financial Year 2022-23, the Corporate Debtor acknowledged the debt owed to the Financial Creditor.

22. Ld. Counsel for the Financial Creditor submitted that the financial facilities granted by KVB to the Corporate Debtor herein were validly acknowledged from time to time by the Corporate Debtor and that the present Petition has been filed well within the, prescribed period of limitation.
23. It is pertinent to state here that, despite an objection taken as regards the authorization of the signatory to the Counter, Mr. Rajendrakumar Kaimal, the Corporate Debtor failed to produce any documentary proof.
24. In the written submissions filed on behalf of the Corporate Debtor the Corporate Debtor only refuted the quantum of amount claimed to be in default. It was submitted that the amount of loan granted by KVB was Rs.74.76 crores but that the Financial Creditor did not



substantiate as to how the interest was charged and a default amount of Rs.1,05,11,38,759.49/- was arrived at.

25. It was submitted that the Assignment Agreement dated 28.03.2016 contains ambiguous clauses which are to be determined first and then the present Petition is to be adjudicated.

OUR ANALYSIS & FINDINGS

26. At the outset, we wish to state that it is not in dispute that Rs.40 crores were sanctioned in favour of Corporate Debtor by KVB, the native lender vide sanction letter dated 07.07.2009. Pursuant to the said sanction, agreement for credit facilities dated 10.07.2009 has been entered whereby working capital credit facilities for an amount of Rs.40 crores which is to be repaid with interest, costs, charges and expenses, also has been entered by the Corporate Debtor with the native lender KVB.

27. Subsequent to this, a Restructuring Agreement dated 14.10.2013 was entered into between the native lender and the Corporate Debtor. As per this agreement, the earlier credit facilities granted vide Agreement for Credit Facilities dated 10.07.2009 were restructured



into a “term loan” facility with an overall limit of Rs.26 crores and this agreement too consists of the interest clauses.

28. A perusal of the statements as maintained by native lender in respect of the account of the Corporate Debtor for the period between 01.04.2014 to 07.06.2016 clearly mentions that the afore-stated credit facilities were disbursed to the Corporate Debtor, on 15.07.2009 for an amount of Rs.10 crores, and the balance amounts between 30.04.2014 and 30.03.2016. It is also an undisputed fact that the above debt along with the securities were assigned by the native lender in favour of the Petitioner herein by an Assignment Agreement dated 28.03.2016.
29. As already observed, the Corporate Debtor has not disputed the sanction and availing of the above stated credit facilities. Thus, on perusal of the above referred documents, we are satisfied fully that a debt of a sum exceeding rupees one crore has come into existence, due and payable by the Corporate Debtor, and that the same is a financial debt as within the meaning of Section 5(7) of IBC.
30. The Financial Creditor filed the Record of Default in Form D maintained with the National E-Governance Services Limited. The



same states the amount of default as Rs. 5,39,22,678/- and the date of default as 30.12.2015. It states that the information was submitted on 16.11.2023 and the authentication was completed on 12.12.2023. The status of authentication of the default information is shown as "DEEMED TO BE AUTHENTICATED". In lieu of the same, this Tribunal observes that there is a default committed by the Corporate Debtor towards Financial Creditor for an amount exceeding one crore rupees.

Hence, the point is answered accordingly.

POINT 2:

Whether the present Petition is within the period of limitation?

31. This Tribunal observes that vide Sanction Letter dated 07.07.2009, KVB granted a term loan of Rs. 40 crores to the Corporate Debtor and an agreement dated 10.07.2009 was entered in this regard. These credit facilities were restructured vide Sanction Letter dated 12.10.2013 and consequently, a Restructuring Agreement dated 14.10.2013 was signed by the Corporate Debtor. As per this restructuring agreement, a Term Loan of Rs.26 crores is to be paid by the Corporate Debtor to KVB in 18 equal quarterly instalments



starting from 30.09.2015 to 31.12.2019 and the amount to be paid was Rs.1,45,00,000/- per instalment.

32. It is the case of the Financial Creditor that the Corporate Debtor defaulted in paying these instalments and alleged that on failure to pay the instalments, the account of the Corporate Debtor was declared as NPA on 30.12.2015. It was stated by the Financial Creditor that this date of declaration as NPA is the date of default committed by the Corporate Debtor. But it is pertinent to mention that the date of declaration of NPA cannot be considered as the date of default committed by the Corporate Debtor. The actual date of default is to be taken into consideration for the purpose of limitation. In general, as per the norms of RBI, the date of declaration as NPA will be 90 days from the date of default. If taken so, in the present case, the date of default falls on 01.10.2015 which is the date on which there arose a cause of action in favour of the Financial Creditor against the Corporate Debtor. Also, the initial instalment to be paid by the Corporate Debtor in respect of the term loan of Rs.26 crores falls on 30.09.2015. As the Corporate Debtor failed to pay even the initial instalment, the date of default falls on 01.10.2015.



33. As there is no period of limitation prescribed under IBC for initiation of CIRP, Article 137 of The Limitation Act, 1963 is to be taken into account and the same provides a limitation period of 3 years from the date of accrual of cause of action. When so calculated, the period of limitation for initiating an action by way of the present Petition ends on 30.09.2018.
34. We have also perused **Annexure 22** - Acknowledgment of Debt dated 26.03.2019 and find that Corporate Debtor has given acknowledgment and confirmation for a debt of Rs.110,94,81,467/- outstanding as on 31.01.2019. We further observe that this letter of acknowledgment is even signed by the Guarantors to the facilities. In view of the said acknowledgement of debt, limitation period gets extended up to 25.03.2022 and if we exclude the relaxation as granted by Hon'ble Supreme Court of India from 15.03.2020 to 28.02.2022 for the purpose of limitation period on account of Covid-19, the limitation period further gets extended up to 10.03.2024. Since this petition was filed on 21.11.2023, it falls well within the prescribed period of limitation.



35. Further, the Corporate Debtor, in the Annual Reports for the Financial Years 2015-16 to 2022-23 has also acknowledged the debt owed to the banks under the head **Term Loans** provided in the **Notes on Financial Statements**. This mention by the Corporate Debtor in respect of the credit facilities granted by KVB and later assigned to the Financial Creditor herein constitute a valid acknowledgement under Section 18 of The Limitation Act, 1963.
36. In lieu of the above discussion, the present Petition, being filed on 21.11.2023, can be treated as well within the period of limitation.

Hence, the point is answered accordingly.

POINT 3:

Whether the person representing the Corporate Debtor has a proper authorization?

THE SUBMISSIONS

37. Ld. Counsel Mr. VVSN Raju submits that Mr. Rajendrakumar Kaimal who represented the Corporate Debtor in his capacity as non-executive Director lacks a proper authorization. Ld. Counsel submits that no document was brought on record showing that Mr. Rajendrakumar Kaimal was validly authorized to represent the



Corporate Debtor and in the absence of the same, the Counter filed on behalf of the Corporate Debtor cannot be taken on record.

38. On the other hand, the Corporate Debtor did not refute this contention of the Financial Creditor.

OUR ANALYSIS & FINDINGS

39. It is a settled position of law that a Company, being an artificial juristic person, is to be represented by a person who was authorized to represent the Company. In the present case, though Mr. Rajendrakumar Kaimal claims himself as authorized representative, no document was brought before this Tribunal to show that he was authorized to represent the Corporate Debtor in the present case. In the absence of the same, this Tribunal cannot consider the representation of Corporate Debtor through Mr. Rajendrakumar Kaimal as a valid one. In lieu of the same, the counter dated 10.05.2024 filed on behalf of the Corporate Debtor cannot be taken on record.

Hence, the point is answered accordingly.

40. In lieu of the above discussion, this Tribunal is satisfied that the Petitioner has successfully established the financial debt of a sum



exceeding Rupees One Crore and its default by the Corporate Debtor. It is also found that the present Company Petition is in order. Therefore, it is a fit case to put the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP).

41. Accordingly, the Company Petition is admitted and the Corporate Debtor is put in CIRP forthwith.

42. Hence, the Adjudicating Authority admits this Petition under Section 7 of Insolvency & Bankruptcy Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

(A) Corporate Debtor, M/s. Kobo Biotech Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of IBC.

(B) The Bench hereby prohibits 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 any 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.



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

- (I) Proposed IRP has filed Form-2 dated 02.11.2023 at Annexure 26. His Authorisation for Assignment (AFA) is valid up to 19.11.2024 as per 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.
- (K) The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

43. Accordingly, this Petition is admitted



Charan Singh
Member (Technical)

Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Anil

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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निर्णय का तारीख
DATE OF JUDGEMENT... 13/8/24 23
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