



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-1.

C.P. (IB)/421(MB)2025

CORAM

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING DATED **18.08.2025**

NAME OF THE PARTIES : **State Bank Of India**

Vs

SU Toll Road Private Limited

Under Section 7 of the IBC, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//SKS//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI

CP (IB) No. 421/MB/2025

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 4(1) of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

In the matter of M/s. S.U. Toll Road Private Limited

STATE BANK OF INDIA,

State Bank Bhavan, Vidhan Bhavan Marg,
Nariman Point, Mumbai-400021.

...Applicant/Financial Creditor/Petitioner

Vs.

S U TOLL ROAD PRIVATE LIMITED

[CIN: U74999MH2007PTCI69I45]

Registered Office: Reliance Centre,
19, Walchand Hirachand Marg,
Ballard Estate, Mumbai-400 001.

...Respondent/Corporate Debtor

Pronounced On: 18.08.2025.

CORAM:

SHRI NILESH SHARMA, MEMBER (JUDICIAL).

SHRI SAMEER KAKAR, MEMBER (TECHNICAL).

Hearing: Physical.

Appearances:

For the Financial Creditor: Mr. Algaus S.M. a/w Mr. Murtaza Kachwala a/w
Aarti Sonawane i/b Argus Partners.

For the Corporate Debtor: Mr. Rohit Gupta a/w Mr. Kartik Hede i/b Mulla &
Mulla and CBC.



ORDER

[PER: CORAM]

1. This is an application filed on 23.12.2024 by the **Applicant- State Bank of India** (hereinafter also referred to as “Financial Creditor” or “the Petitioner”), against the **Respondent- SU Toll Road Private Limited** (hereinafter also referred to as “Corporate Debtor”), under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, ‘the Code’) r/w Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, seeking commencement of the Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor, appointment of Interim Resolution Professional (‘IRP) and declaration of moratorium. The amount claimed in default is INR 358,69,53,434.17/- (Rupees Three Hundred and Fifty-Eight Crores Sixty-Nine Lakhs Fifty-Three Thousand Four Hundred and Thirty-Four and Seventeen Paise Only).
2. On perusal of Part-I of Form 1, it is seen that the present application is filed by one Mr. Vasudeva Rao Kantheti in his capacity as Chief Manager in SAMB-III Branch, Mumbai. Further, an affidavit in support of the application is affirmed by the above-named Chief Manager.
3. A perusal of Part II of the application in Form 1 reveals that the Respondent/Corporate Debtor i.e. SU Toll Road Private Limited, is a body corporate having its registered office at Reliance Centre, 19, Walchand Hirachand Marg, Ballard Estate, Mumbai-400001.
4. In Part-III of Form 1, it is stated that the Applicant has proposed the name of Mr. Sanjay Kumar Mishra to be appointed as the IRP of the Corporate Debtor in the event that the petition gets admitted. The Applicant has also obtained the Written Consent in Form 2



from the proposed IRP above-named, the Certificate of Registration and the Authorisation for Assignment ('AFA'), the copies of which have been collectively annexed to this application as Annexure-4 (Colly). Perusal of AFA shows that the authorisation is valid from 19.11.2024 to 31.12.2025.

5. A perusal of Part IV of the application vide Form 1 reveals that the amount claimed to be in default by the Applicant/Financial Creditor is INR 358,69,53,434.17/-, which includes an outstanding interest of INR 74,46,60,660/- as on 31.10.2024. According to the Applicant, the first default was committed by the Corporate Debtor on 01st June, 2023.
6. The facts narrated by the Applicant in Part IV of the Application are stated hereinbelow:
 - i. The Corporate Debtor is engaged in the business of implementation, operation and maintenance of road projects and was awarded on a Build, Operate and Transfer basis a part of the existing carriageway from Km 0.313 to Km. 136.670 on the Salem-Ulundurpet section of the National Highway No. 68 in the State of Tamil Nadu ("Project").
 - ii. By virtue of the Facility Agreement dated 23rd June 2014, L&T Infrastructure Finance Company Limited ("LTIFL") and L&T Fincorp Limited ("LTFL") [hereinafter collectively referred to as the "Original Lenders"] sanctioned a total loan amount of INR 588 crores to the Corporate Debtor in the following manner:
 - (i) Both the lenders sanctioned INR 528 crores Rupee Term Loan towards refinancing of existing facilities ("Facility A"); and (ii) LTIFL separately sanctioned a Rupee Term Loan for an amount of INR 60 crores for the purpose of refinancing the equity investment by Reliance Infrastructure Limited in other



road project ("Facility B"). The Original Lenders executed a Security Trustee Agreement dated 23.06.2014 in favour of IDBI Trusteeship Services Limited.

- iii. Pursuant to the request of LTIFL, the State Bank of Mysore (now merged with the Financial Creditor) agreed to sanction a Term Loan of INR 75 crores to the Corporate Debtor vide Sanction Letter dated 29.10.2014. Similarly, pursuant to the request of LTIFL, the Financial Creditor agreed to sanction a Term Loan of INR 200 crores to the Corporate Debtor vide Sanction Letter dated 24.12.2014.
- iv. As per Clause 17.6 of the Facility Agreement, the Original Lenders were entitled to (in full or in part) assign, transfer, novate, arrange for refinance or otherwise securitise their rights, benefits or obligations under the said agreement to any bank or financial institution without any reference or notice to the Corporate Debtor. Accordingly, in the year 2015, the Original Lenders novated part of the Facilities amounting to INR 475 crores as follows:
 - (i) To Oriental Bank of Commerce (now Punjab National Bank) to the extent of INR 100 crores;
 - (ii) To Dena Bank (now Bank of Baroda) to the extent of INR 75 crores;
 - (iii) SBI's original facility of INR 200 crores was novated to the extent of INR 175 crores only;
 - (iv) To State Bank of Bikaner and Jaipur (now merged with Financial Creditor) to the extent of INR 50 crores;
 - (v) To State Bank of Mysore and Jaipur (now merged with Financial Creditor) to the extent of INR 75 crores.

The State Bank of Bikaner and the State Bank of Mysore merged with the State Bank of India w.e.f. 01st April, 2017 pursuant to the Gazette Notification dated 22.02.2017. In view of the above, the rights and claims of the Original Lenders



to the tune of INR 300 crores now stand in favour of the Financial Creditor and is the total amount of debt granted by the Financial Creditor to the Corporate Debtor.

- v. In or around 2015, the Corporate Debtor approached the Original Lenders i.e. L&T Infrastructure Finance Company Limited ("LTIFL") and L&T Fincorp Limited ("LTFL"), seeking financial assistance towards refinancing of existing facilities (i.e. Facility A) and equity investment by Reliance Infrastructure Limited (i.e. Facility B). Pursuant thereto, the Original Lenders sanctioned and disbursed the loan facilities. The Original Lenders novated the entire facilities in favour of various banks including the Financial Creditor.
- vi. The SBI Facilities were disbursed as under:

	Facility A:	
Sr. No.	Date	Amount
1.	02.03.2015	49,96,25,000
2.	10.03.2015	174,86,87,500
3.	30.03.2015	4,99,62,500
4.	31.03.2015	4,99,62,500
5.	30.06.2015	50,00,00,000
	Facility B:	
6.	31.03.2015	15,00,00,000
	TOTAL	299,82,37,500

- vii. Thus, the total amount of debt granted by the Financial Creditor to the Corporate Debtor was approximately INR 300 crores. The Corporate Debtor was liable to repay the SBI facilities in quarterly instalments, as more particularly stated in the sanction letters. The Corporate Debtor was also liable to pay interest thereon which was applied monthly.
- viii. However, the Corporate Debtor failed to adhere to the terms of the aforesaid sanction letters and the Facility Agreement, and it committed defaults in



payments of interest as well as repayment instalment. As per Clause 12 of the Facility Agreement, if the Corporate Debtor defaults in payments of repayment instalments and interest on any due date, the same shall constitute an event of default. The Corporate Debtor defaulted on its obligation to repay the SBI facilities under all six loan accounts on 01.06.2023 and on account of such defaults continuing thereafter, the loan accounts were classified as Non-Performing Assets ('NPAs') on 30.08.2023 in accordance with the guidelines issued by the Reserve Bank of India.

- ix. In view of such default, the Financial Creditor issued a Demand Notice dated 21.03.2024 u/s 13(2) of the SARFAESI Act, 2002 calling upon the Corporate Debtor to repay an outstanding debt of INR 324,94,62,715/- due and payable as on 28.02.2024 with further interest and charges within 60 days from the receipt of this notice.
- x. On 09.11.2023, the Corporate Debtor issued a Revival Letter to the Security Trustee thereby admitting its liability of repaying the loan facilities under the Facility Agreement for the purpose of Section 18 of the Limitation Act, 1963. In view thereof, the present application is filed within limitation.
- xi. An Inter-Creditor Agreement was executed between the Financial Creditor, Punjab National Bank, Bank of Baroda and LTIFL (now known as L&T Finance Limited) for effectuating a resolution plan in respect of the loan facilities, authorise and appoint the lead bank to facilitate the process and to take necessary actions and steps in connection with formulation and implementation of such resolution plan on terms and conditions as more particularly mentioned



therein. It is pertinent to note that no resolution plan has been approved by the creditors as on date.

- xii. On 09.10.2024, the Bank Guarantees were invoked by the Applicant and a part of the proceeds thereof falling to the pro rata share of the Financial Creditor, amounting to Rs. 16,38,180,29/- (Rupees Sixteen Crores Thirty-Eight Lakhs One Hundred Eighty and Twenty-Nine Only) was set off against part payment of the outstanding interest under the primary Loan Account No. 34771688621.
- xiii. In view of the foregoing, the Corporate Debtor is liable to pay the entire outstanding amount under the SBI Facilities to the Financial Creditor aggregating to INR 358,69,53,434.17/- as on 31.10.2024 which includes the outstanding interest accrued thereof. The Corporate Debtor has neither disputed the disbursements of loan facilities nor its liability to repay the debt. In fact, from the Revival Letter dated 09.11.2023, it is evident that the Corporate Debtor had acknowledged its liability. Hence this application is maintainable against the Corporate Debtor.

7. As stated in Part V of the Application, the Financial Creditor has relied upon the following documents which are attached to this application in order to prove the existence of Financial debt and the amount in default:

- i. Facility Agreement dated 23rd June, 2014 executed between LTFL, LTIFL and the Corporate Debtor.
- ii. Security Trustee Agreement dated 23rd June, 2014 executed in favour of the Security Trustee.
- iii. Sanction Letter dated 29.10.2014 issued by State Bank of Mysore (now the Financial Creditor) to the Corporate Debtor;
- iv. Sanction Letter dated 24.12.2014 issued by the Financial Creditor to the Corporate Debtor;



- v. Sanction Letter dated 17.06.2015 issued by State Bank of Bikaner & Jaipur (now the Financial Creditor) to the Corporate Debtor.
- vi. Sanction Letter dated 09.03.2018 issued by the Financial Creditor to the Corporate Debtor;
- vii. Promoters Undertaking dated 26.10.2016 executed by M/s. Reliance Infrastructure Limited in favour of the Security Trustee whereby M/s. Reliance Infrastructure Limited *inter-alia* agreed not to deal with or sell, dispose of, or transfer in any manner or encumber or create any third-party interest of any nature.
- viii. Indenture of Mortgage dated 12.08.2014 executed by the Corporate Debtor in favour of the Security Trustee.
- ix. Share Pledge Agreement dated 11.09.2014 executed by M/s. Reliance Infrastructure Ltd and M/s. Space Trade Enterprises Ltd in favour of the Security Trustee.
- x. Escrow Account Agreement dated 18 December 2014 executed between the Corporate Debtor, Axis Bank Ltd, Security Trustee and NHAI.
- xi. Substitution Agreement dated 18 December 2014 executed between the Corporate Debtor, Security Trustee and NHAI;
- xii. Non-Disposal Undertaking dated October 26, 2016 executed by M/s. Reliance Infrastructure Limited;
- xiii. A Memorandum of Operating Procedure dated 23.05.2017 in relation to the Escrow Account Agreement dated 18 December 2014 executed between the Corporate Debtor, the Financial Creditor, Security Trustee and LTIFL;
- xiv. An Intercreditor Agreement executed between the Financial Creditor, Punjab National Bank, Bank of Baroda and LTFL;
- xv. Bank Guarantee dated 30th September, 2014 ("Bank Guarantee 1") bearing no. 003GM09142730003 for an amount of Rs. 17,16,45,734/- drawn on Yes Bank Limited and Bank Guarantee dated 27th March, 2015 ("Bank Guarantee 2") bearing no.003GM03150860001 for an amount of Rs. 18,04,92,295/- drawn on Yes Bank in favour of the Financial Creditor;
- xvi. A copy of the Demand Notice dated 21st March, 2024 issued u/s 13(2) of the SARFAESI Act;
- xvii. A copy of the Revival Letter dated 09th November, 2023.
- xviii. Copies of the account statement of the Corporate Debtor for each Loan Account maintained in the books of the Financial Creditor.

8. The date of default as mentioned in Part IV of the Application is 01.06.2023.



9. The Applicant has attached the Record of Default at Annexure 46 which is in “Authenticated” status.

10. The Respondent-Corporate Debtor filed an IA No. 2768(MB)/2025 seeking to dismiss or to defer the hearing of the captioned Company Petition by a period of 90 days or such other reasonable amount of time as this Tribunal deems fit in the facts and circumstances of the case on the grounds that the debt due by the Respondent to the Applicant was being assigned to National Asset Reconstruction Company Limited (‘NARCL’) and therefore the Applicant in the present petition would be required to be substituted with NARCL in the event the debt was assigned to NARCL. The deference of the hearing of the matter was also sought to enable the parties to resolve the financial distress of the Corporate Debtor amicably through alternative measures outside the framework of IBC. However, the said IA came to be dismissed by this Bench, vide Order dated 20.06.2025, for the reasons stated therein. The Corporate Debtor had impugned the Order dated 20.06.2025 before the Hon’ble National Company Law Appellate Tribunal, New Delhi (‘NCLAT’) vide Company Appeal (AT) (Insolvency) No. 948 of 2025, which was dismissed by the Hon’ble NCLAT vide Order dated 08.07.2025. While dismissing the aforementioned appeal and upholding the impugned Order, the Hon’ble NCLAT had observed, *inter-alia*, as follows:

“3. We do not find any infirmity in the order of the adjudicating authority rejecting the I.A. by which appellant has prayed that the company petition filed by the financial creditor be dismissed, or to defer the hearing. The Appellant having already filed the reply, it is the adjudicating authority who has to hear both the parties and take a decision on the company petition.

4. We thus do not find any ground to entertain the appeal.”



11. It is also apposite to state that during the course of hearing this matter on 28.05.2025, the learned Counsel for the Respondent had brought up the issue of assignment of debt to NARCL to the notice of this Bench. In that regard, this Bench had, *inter-alia*, observed in its Order dated 28.05.2025, as follows:

“4. Ld. Counsel for the Respondent at this stage states that several lenders are involved in the matter and that at the request of the Applicant and other lenders, assignment of debt to NARCL is contemplated by the lenders, and for which certain steps have been taken and they are fully cooperating with the lenders on the matter of assignment of debt.

5. Since officers of State Bank of India were available on VC, we asked Mr. Sanjeev Kumar (AGM), SAMB, Mumbai to comment upon the averments made across the bar by the Respondent’s Counsel. Mr. Sanjeev Kumar (AGM), SBI, Mumbai states that sale of NPA account to various ARCs is a matter of routine, this may happen or not happen in the present case and that the outcome is quite uncertain. He further stated that the Applicant is pressing the admission of the present Application.”

Therefore, taking on record the statement made by above-named officer of the Petitioner Bank, who had pressed for admission of the present application, this Bench proceeded with the matter and heard it at length and finally it was reserved for order on 28.05.2025.

12. **Reply Affidavit dated 09th May, 2025** was filed and affirmed by one Mr. Tarun Bhowmick, the Authorised Signatory of the Corporate Debtor. The contents of the aforesaid Affidavit are summarised below:

- i. The Corporate Debtor is a special purpose vehicle incorporated to undertake the work of developing, designing, engineering, financing, procuring, construction, operating and maintaining, strengthening of the existing carriageway and widening



thereof to four (4) lanes on the stretch from Km 0.313 to 136.67 Km (Salem-Ulundurpet section) of National Highway No. 68 under the National Highways Development Project ('NHDP-Phase III') in the State of Tamil Nadu on Build, Operate and Transfer ('BOT') Basis.

- ii. Vide a Concession Agreement dated 19.07.2007, the aforesaid Project was allotted to the Corporate Debtor by the National Highways Authority of India ('NHAI'). Under the Concession Agreement, the Corporate Debtor was entitled to operate and maintain the Project and toll plazas for a period of 25 years from the appointed date i.e. 15.01.2008.
- iii. The estimated project cost was evaluated at approximately INR 1105 crores and the same was agreed to be funded upon in a debt to equity ratio of 1.48:1 by the Corporate Debtor's Promoter Company and a Consortium of Lenders. The Promoter Company of the Corporate Debtor agreed to infuse a sum of Rs. 227 crores, grant of Rs. 212 crores while the consortium funded the Project to the tune of Rs. 650 crores.
- iv. Originally, the financial facilities were financed by Canara Bank led consortium in the year 2008, which in the year 2014 got refinanced by L&T Infrastructure Finance Company Limited (now known as L&T Finance Limited). L&T thereafter down sold INR 285 crores by way of a Rupee Term Loan and INR 15 crores by way of a sub-debt to State Bank of India (i.e. the Financial Creditor herein), Rs. 100 crores to Punjab National Bank ('PNB' erstwhile Oriental Bank of Commerce) and Rs. 75 crores to Bank of Baroda by way of a Rupee Term Loan during financial years 2015 and 2016.



- v. As on date, the Financial Creditor herein is the lead bank and at present, the ratio of individual lender's share in the consortium is as under-

<u>Sr. No.</u>	<u>Name of the Lender</u>	<u>Share</u>
1.	State Bank of India	47%
2.	Phoenix ARC Pvt Ltd	27%
3.	Punjab National Bank	15%
4.	Bank of Baroda	11%
	TOTAL	100%

- vi. Restructuring Proposal: The Lenders had executed an Inter-Creditor Agreement for effectuating a resolution plan in respect of the facilities and further to authorise the lead bank (i.e. SBI) to facilitate the process and to take necessary steps and actions in connection with the formulation and implementation of a resolution plan. In this regard, the initial discussions took place between NHAI, the Corporate Debtor and the Consortium of Lenders in a meeting held on 18.01.2023 wherein the Lenders informed about their willingness to consider a restructuring proposal. Pursuant thereto, SBI Capital Markets Limited ("SBI Cap") came to be appointed as the Advisor for the resolution of debt of the Corporate Debtor. Currently, the restructuring proposal is under consideration and discussion by the Lenders. The proposed restructuring proposal includes, *inter-alia*, grant of a moratorium on principal repayment and interest payment for a period of 2 years and 5 months from the cut-off date i.e. 01.05.2023 till 30.09.2025.
- vii. Another meeting took place on 22.02.2023 between NHAI, Lenders and the Corporate Debtor wherein it was informed that the lenders have agreed to grant a moratorium on principal repayment and interest payments from Feb'23 to Mar'25 in view of the proposed restructuring. In Joint Lenders meeting further held on



26.05.2023, the cut-off date was proposed as 01.05.2023 and moratorium will be granted from the cut-off date till 30.09.2025. Thus, from the foregoing, it is evident that the restructuring measures are progressing actively and have reached an advanced stage. Any premature order admitting the Corporate Debtor into CIRP at this juncture could disrupt this constructive progress and run counter to the very objective of the Code.

- viii. The first date of default as mentioned in Part IV of the petition is 01.06.2023, whereas in the Record of Default filed by the Financial Creditor with the Information Utility i.e. NeSL, the date of default is stated as 02.06.2023. Thus, there is an apparent inconsistency between the dates of default making the petition liable to be dismissed at the threshold. Further, even the amounts of default are not crystallised in the petition as there is a discrepancy between Part IV and records of NeSL.
- ix. As stated earlier, the Lenders had agreed to grant a moratorium to the Corporate Debtor from 01.05.2023 to 30.09.2025, the dates of default stated in the foregoing paragraph fall within the aforesaid period covered by moratorium and hence, the present petition is not maintainable.
- x. The Financial Creditor has levied interest during the period between 25.03.2020 and 24.03.2021, which is specifically barred by Section 10A of the Code.
- xi. During the execution of project, the Corporate Debtor faced several difficulties at the project site on account of various factors which ensued loss of revenue and impacted its financial status. The arbitration proceedings have been initiated by the Corporate Debtor for its claims towards revenue loss, losses caused due to delay



in handing over of certain portions of site, additional costs incurred towards idling of plant and machineries, force majeure, etc. It can be ascertained that huge sums of money are owed to the Corporate Debtor by a Government entity and the arbitration proceedings in respect of the same are likely to be concluded within a reasonable span. Thus, it is essential that sufficient time may be granted to the Corporate Debtor to pursue its claim whereupon the Corporate Debtor shall apply the amounts received entirely towards the repayment of the amounts due to the Lenders.

- xii. The amounts claimed by the Corporate Debtor in the arbitration proceedings are far in excess of the claims of the Financial Creditor in the petition and are in excess of the entire outstanding dues of the consortium of lenders, as can be more particularly seen from the table below-

<u>Sr. No.</u>	<u>Lender</u>	<u>Principal (as on 30.04.2025)</u>	<u>Interest Overdue (as on 30.04.2025)</u>	<u>Total Outstanding (as on 30.04.2025)</u>
1.	State Bank of India	272.64	77.60	350.24
2.	Phoenix ARC	157.12	39.94	197.06
3.	Punjab National Bank	87.35	24.42	111.77
4.	Bank of Baroda	63.24	17.41	80.65
	TOTAL	580.35	159.37	739.72

- xiii. Admission of a corporate debtor into the CIRP u/s 7(5)(a) of the Code is discretionary. Thus, in the facts and circumstances of the case, it is prayed that the Adjudicating Authority may either dismiss the petition or keep it in abeyance until the amounts due to the Corporate Debtor are realised by it. It is certainly not the object of the Code to penalise solvent companies which are temporarily facing financial stress due to factors not attributable to it.



- xiv. It is submitted that huge sums are paid by the Corporate Debtor. The Corporate Debtor states that in the year June 2015, a sum of Rs. 650 crores was sanctioned in favour of the Corporate Debtor for the project. As on 30.04.2025, the Corporate Debtor has repaid amounts to the tune of INR 712.14 crores, of which Rs. 100.28 crore is appropriated towards principal repayment and Rs. 611.86 crore is appropriated towards interest. This demonstrates that despite debt servicing to the tune of Rs. 712.14 crore, the outstanding principal still reflects an amount of INR 580.35 crore. This fact can be well ascertained from the table furnished below:

<u>Sr. No.</u>	<u>Lender's Name</u>	<u>Amounts Disbursed</u>	<u>Principal Outstanding as on NPA date i.e. 30.08.2023</u>	<u>Principal Outstanding as on 30.04.2025</u>	<u>Amounts paid post NPA declaration</u>
1.	State Bank of India	300	289.02	272.64	16.38
2.	Phoenix ARC	175	166.70	157.64	9.57
3.	Punjab National Bank	100	92.73	87.35	5.38
4.	Bank of Baroda	75	67.11	63.24	3.88
	TOTAL	650	615.56	580.87	35.21

- xv. The Corporate Debtor has regularly serviced its debt obligations in a timely manner from 2015 until the account was declared as NPA on 30.08.2023. In fact, it can be seen from the table above that a sum of INR 35.21 crores has been repaid by the Corporate Debtor till 30.04.2025. This demonstrates the bona fide of the Corporate Debtor and shows that the Corporate Debtor has undertaken all the possible measures for repayment of its debt servicing obligations including pursuing various litigations for recoveries of amounts rightfully due to it and it is only a matter of time that the Corporate Debtor will be successfully able to recover from its existing crisis.



Thus, the petition on this ground alone is liable to be dismissed, or in the alternative, be kept in abeyance.

- xvi. It is an admitted position that the repayment schedule in respect of the financial facilities sanctioned by the Financial Creditor ends in the year 2030. As admitted by the Financial Creditor, the Corporate Debtor had agreed to repay the Facility A in door-to-door tenure of 15 years commencing from 2015. Thus, the repayment tenure has not yet ended and the petition as such is pre-mature.
- xvii. Lenders have executed an Inter-Creditor Agreement and under Clause 12.1 of the said agreement, it was agreed that on and from the reference date, the Lenders shall not-"*(a) commence any civil action or proceedings under IBC against the Borrower or other persons that have provided Third Party Security for recovery of their dues in respect of the Facilities or enforcement of any security interest provided by the Borrower or other persons or accelerate any Facilities provided to the Borrower. . . .*". Thus, the Petition on this ground alone is liable to be dismissed by this Tribunal.
- xviii. It is stated that the letter of authority dated 13.11.2024 as issued by the Financial Creditor in favour of its authorised signatory does not confer the power for initiation of insolvency/bankruptcy proceedings. Thus, the petition is filed without due authorisation and on this sole ground it deserves to be dismissed. It is further stated that the power to file suits and/or proceedings for recovery of amounts due or becoming due cannot be held to embrace the power to institute proceedings for insolvency or bankruptcy.



13. **Rejoinder**: The Applicant-Financial Creditor has filed its rejoinder on affidavit sworn by its Chief Manager Mr. Vasudeva Rao Kantheti on 16th May, 2025. The contents of the said rejoinder are recapitulated hereinbelow:

- a) The Corporate Debtor has alleged that the consortium of lenders i.e. the Financial Creditor, Bank of Baroda, Punjab National Bank and Phoenix ARC Pvt. Ltd. (collectively referred to as “Lenders”) had executed an Intercreditor Agreement for effectuating a resolution plan in respect of the facilities and are currently in discussion for considering the restructuring proposal of the Corporate Debtor. In this regard, it is stated that currently no discussions are being ensued between the Corporate Debtor and the Financial Creditor in respect of any restructuring proposal. Further, **no resolution plan has been approved by the Lenders by virtue of which a moratorium was in effect**. In fact, Punjab National Bank, another lender of the consortium, has already filed Company Petition (IB) No. 779 of 2024 before this Tribunal u/s 7 of the Code on 11.07.2024 as well as initiated recovery proceedings before the Ld. Debts Recovery Tribunal, Mumbai and both the proceedings are pending before the respective forums.
- b) The Applicant states that they are not aware of the meeting between the Corporate Debtor and the Consortium of Lenders that took place on 22.02.2023 as the Financial Creditor was not a participant therein. It is denied that the Lenders have agreed to a moratorium on principal repayment and interest payments from Feb’23 to Mar’23 in view of the proposed restructuring as is being alleged by the Corporate Debtor. A bare perusal of the Minutes of Meeting dated 22.02.2023 relied upon by the Corporate Debtor would clarify that the Corporate Debtor was required to submit a proposal for restructuring facilities, where after the Corporate Debtor



submitted a resolution plan. However, upon examination, the resolution plan was rejected by the lenders. Therefore, the question of granting a loan moratorium does not arise. It is also denied that the parties are on the verge of concluding the proposed restructuring which is expected to yield a mutually beneficial outcome for all stakeholders.

- c) It is denied that the present petition is barred by Section 10A of the Code. The Applicant submits that Section 10A precludes filing of an application u/s 7,9 and 10 of the Code for any default arising during the period covered from 25.03.2020 to 24.03.2021, but it does not bar a creditor from levying interest during the said period. The Corporate Debtor is attempting to misconstrue the provisions of the Code to wriggle out of its contractual and financial obligation.
- d) With respect to huge recovery to be made by the Corporate Debtor from third parties under the arbitration proceedings, the Applicant states that he is unaware of the same and even otherwise, when the debt and default are established from the records, it is a fit case to initiate CIRP of the Corporate Debtor and the pendency of arbitration proceedings by the Corporate Debtor are irrelevant.
- e) It is denied that a sum of INR 35.21 crores was paid by the Corporate Debtor after declaration of its accounts as NPA. The Applicant states that an amount of INR 35.21 crores was recovered by invoking the Bank Guarantee on account of the default committed by the Corporate Debtor. This recovery cannot be treated as repayment/servicing of debt. It is submitted that the Corporate Debtor defaulted on its obligations to repay the SBI Facilities under all the six loan accounts on 01.06.2023, post which the Corporate Debtor has not made a single payment to



the Financial Creditor and the same is demonstrated from the Statement of Accounts annexed by the Financial Creditor to the petition.

- f) In pursuance of Regulation 76(1) of the State Bank of India General Regulations, 1955 framed u/s 50 of the State Bank of India Act, 1955, the Financial Creditor has published a Gazette Notification dated 27.03.1987, bearing no. ORG/17405 *inter-alia* authorising all managers of the bank to sign all documents, instruments, letters, accounts, etc. in respect of all matters coming in discharge of functions of the posts held for the time being. The Authorised Representative of the Financial Creditor, who has signed the Petition, is a Chief Manager in SAMB-III Branch, Mumba, falling under Clause A (All Officers in the Grades of SMGS-IV and above) of the Gazette Notification. Thus, the Authorised Representative of the Financial Creditor is duly authorised to sign the present petition. Accordingly, it is denied that the petition is filed without authorisation or that the letter of authority dated 13.11.2024 does not confer the power for initiation of insolvency or bankruptcy proceedings.

ANALYSIS AND FINDINGS

14. We have heard both the sides and perused the documents placed on record.

15. It is seen from the records that the financial debt arises out of a Facility Agreement dated 23rd June, 2014 executed between the Original Lenders (i.e. LTIFL & LTFL) and the Corporate Debtor, whereby the following two distinct facilities were sanctioned to the Corporate Debtor viz. Facility A and Facility B, as narrated in detail in the facts stated hereinbefore. It is also seen from the records that in the year 2015, the Original Lenders novated a part of the Facilities amounting to INR 475 crores as follows: (i) INR 175 crores of Facility A in favour of the Financial Creditor; (ii) INR 60



crores of Facility A and INR 15 crores of Facility B (total aggregating to INR 75 crores) in favour of the State Bank of Mysore (which is now merged with the Financial Creditor); (iii) INR 50 crores of Facility A in favour of the State Bank of Bikaner and Jaipur; (iv) To Oriental Bank of Commerce (now Punjab National Bank) to the extent of INR 100 crores; and (v) To Dena Bank (now Bank of Baroda) to the extent of INR 75 crores. We observe that by a Circular dated 20 March 2017 issued by the Reserve Bank of India, all the branches of State Bank of Bikaner and Jaipur and State Bank of Mysore were made a branch of the Financial Creditor. A copy of the RBI Circular dated 20 March 2017 evidencing the merger of the State Bank of Bikaner and Jaipur and State Bank of Mysore with State Bank of India along with the Gazette Notification dated 22 February 2017 is annexed by the Applicant and marked as Annexure – 24 to the application. It is also pertinent to note that the aforesaid facts have not been disputed by the Corporate Debtor. In view of the above, it is satisfactorily established that the rights and claims of the Original Lenders to the tune of INR 300 crores now stand in favour of the Financial Creditor and is the total amount of debt granted by the Financial Creditor to the Corporate Debtor

16. On perusal of the Statement of Account annexed by the Applicant at Annexure 45 (Colly) to the application, it is seen that the amounts were disbursed by the Applicant Bank to the account of the Corporate Debtor on various date, the details of which have been given in the table below:

<u>Facility Type</u>	<u>Date of Disbursal</u>	<u>Amount of Debt Disbursed (INR)</u>	<u>Corresponding Page No. of the Application</u>
A	02.03.2015	49,96,25,000	780
A	10.03.2015	174,86,87,500	726
A	30.03.2015	4,99,62,500	799



A	31.03.2015	4,99,62,500	817
A	30.06.2015	50,00,00,000	763
B	31.03.2015	15,00,00,000	745
	TOTAL	299,82,37,500	

Thus, the factum of disbursal of financial debt by the Financial Creditor to the Corporate Debtor stands proven on record. The above table shows that nearly three hundred crore rupees of debt was disbursed by the Applicant to the Corporate Debtor. It is again pertinent to note that the Respondent/Corporate Debtor has not disputed the factum of disbursal of debt by the Applicant.

17. We shall now ascertain the factum of default. For ascertaining the factum of default, it is necessary to refer to some of the terms and conditions of the Facility Agreement. The Facility Agreement prescribes repayment of two components viz. the principal debt and the interest. Clause 5 read with Schedule V (Repayment Schedule) of the Facility Agreement provides that the principal amount under the loan facilities is required to be repaid in fiscal quarterly instalments commencing from Financial Year 2015 till Financial Year 2030. As per Clause 4 read with the definition of 'Interest Payment Date' under Clause 1.1 of the Facility Agreement, the interest is due and payable on the outstanding loans on the first date of each calendar month immediately after the calendar month on which interest is payable by the Borrower for such Loan under this Agreement. As per Clause 12 of the Facility Agreement, an "Event of Default" would occur, *inter-alia*, when the borrower (i.e. the Corporate Debtor) defaults in payment of any repayment instalment or interest payment on any due date.

18. The date of default stated by the Applicant in the application is 01st June, 2023. As is evident from the Statement of Accounts, the Corporate Debtor defaulted in payment of interest for the month of May, 2023 which fell due on 01st June, 2023 in terms of



Clause 4 read with Clause 1.1 of the Facility Agreement. This constitutes an event of default as per Clause 12 of the Facility Agreement. It is further seen that due to continued default by the Corporate Debtor, the Financial Creditor declared all the six loan accounts of the Corporate Debtor (referred to in the table of disbursal hereinabove) as a Non-Performing Asset ('NPA') on 30th August, 2023 in accordance with the guidelines issued by the Reserve Bank of India. A perusal of loan account statement of the Corporate Debtor maintained in the books of Financial Creditor as on 31.10.2024, which is annexed to the application as Annexure 45 (Colly), reveals that soon after the loan accounts were classified as NPA, the unrealised interest on such loan account was reversed on 12th September, 2023 in conformity with the RBI guidelines. This only reaffirms the factum of default committed by the Corporate Debtor. We further observe that after the classification of loan accounts as NPA on account of non-payment of debt, the Applicant issued a Demand Notice dated 21st March, 2024 to the Respondent u/s 13(2) of the SARFAESI Act, 2002 calling upon the latter to pay a sum of INR 324,94,62,715/- within sixty days from the date of the notice. The Financial Creditor has also annexed the Records of Default in Form D issued by the Information Utility i.e. NeSL, in respect of the SBI facilities availed by the Corporate Debtor, the copies of which are annexed at Annexure 46 (Colly) to the application. The date of default stated in Form D is 02.06.2023 and the Status of Authentication of Default is shown as 'Authenticated' with Colour Code: Green.

19. The Corporate Debtor has stated at Para 52 of its Affidavit-in-Reply as follows:

"I say that the amounts claimed by the Corporate Debtor in the arbitration proceedings are far in excess of the claims of the Financial Creditor in the Petition, and are moreover in excess of the entire outstanding dues of the consortium of lenders, as can be more particularly seen from the table below-



<u>Sr. No.</u>	<u>Lender</u>	<u>Principal (as on 30.04.2025)</u>	<u>Interest Overdue (as on 30.04.2025)</u>	<u>Total Outstanding (as on 30.04.2025)</u>
1)	State Bank of India	272.64	77.60	350.24
2)	Phoenix ARC	157.12	39.94	197.06
3)	Punjab National Bank	87.35	24.42	111.77
4)	Bank of Baroda	63.24	17.41	80.65
	TOTAL	580.35	159.37	739.72

Thus, we see that the Corporate Debtor here has admitted that as on 30.04.2025, a sum of INR 350.24 crores is due to the Financial Creditor, out of which the principal loan is INR 272.64 crores and the remainder is towards the loan interest overdue.

20. It is further seen that the Corporate Debtor has made following statements and admissions as to the existence of debt and its repayment, at Para 65 & 66 of Affidavit-in-Reply, which are reproduced hereinbelow:

“65. In the year June 2015, a sum of Rs. 650 crore was sanctioned in favour of the Corporate Debtor for the Project. As on 30.04.2025, the Corporate Debtor has repaid amounts to the tune of Rs. 712.14 crore, of which Rs. 100.28 crore is appropriated towards principal repayment and Rs. 611.86 crore is appropriated towards interest. This demonstrates that despite debt servicing to the tune of Rs. 712.14 crore, the outstanding principal still reflects an amount of Rs. 580.35 crore. This fact can be well ascertained from the table furnished below.

It is worthwhile to mention here that the Corporate Debtor has regularly serviced its debt obligations in a timely manner for a period of 2015 years from 2023 till the date of declaration of account as NPA by the Financial Creditor on 30.08.2023. In fact, as can be seen from the following chart, even after the declaration of the account of Corporate Debtor as NPA, a sum of Rs. 35.21 crore has been repaid by the Corporate Debtor till 30.04.2025. In fact, the Corporate Debtor is regularly servicing its obligations towards payment of interest charges. A chart reflecting the status of repayments made to



the consortium of banks from the date of declaration of account as NPA till 30.08.2023 along with details of outstanding principal as on date of declaration of NPA and as on 30.04.2025 is tabulated herein below:

<u>Sr. No.</u>	<u>Lender's Name</u>	<u>Amounts Disbursed</u>	<u>Principal Outstanding as on NPA date i.e. 30.08.2023</u>	<u>Principal Outstanding as on 30.04.2025</u>	<u>Amounts paid post NPA declaration</u>
1)	State Bank of India	300	289.02	272.64	16.38
2)	Phoenix ARC	175	166.70	157.64	9.57
3)	Punjab National Bank	100	92.73	87.35	5.38
4)	Bank of Baroda	75	67.11	63.24	3.88
	TOTAL	650	615.56	580.87	35.21

Thus, on perusal of the aforesaid two paragraphs as also the table contained therein, we find that the Corporate Debtor has admitted that a sum of INR 300 crores was disbursed to it by the Financial Creditor and the Corporate Debtor has yet again admitted that as on 30.04.2025, a sum of INR 350.24 crores is outstanding to the Financial Creditor. Besides, the Corporate Debtor has made an admission of default on its part by stating that it was regular in servicing the debt obligations from 2015 to 2023 until the account was declared as NPA on 30.08.2023.

21. In view of the foregoing findings and discussions, we are satisfied that there exists a financial debt which is in default and that the default of more than rupees one crore has been committed by the Corporate Debtor in repayment of debt to the Financial Creditor.

22. We shall now proceed to deal with the objections taken by or on behalf of the Respondent/Corporate Debtor.



23. It has been averred by the Respondent that the lenders had executed an Inter-Creditor Agreement for effectuating a resolution plan in respect of the loan facilities and in this regard, discussions and meetings took place between NHAI, Corporate Debtor and the consortium of lenders wherein the lenders informed about their willingness to consider a restructuring proposal. The Respondent further avers that under the aforesaid restructuring proposal, the lenders had agreed to grant a loan moratorium of 02 years and 05 months from 01.05.2023 to 30.09.2025. Since the date of default (i.e. 01.06.2023) falls within the loan moratorium period, the petition is liable to be rejected. In response to the aforesaid averments of the Respondent, the Applicant has stated in its rejoinder affidavit at paragraph 17 that even though an Inter-Creditor Agreement was executed between the Financial Creditor and LTIFL for effectuating a resolution plan in respect of the loan facilities, no such resolution plan has been approved by the creditors/lenders till date. The Applicant has repeated and reiterated at paragraphs 21, 23 and 27 of the affidavit-in-rejoinder that no resolution plan or restructuring of the Facilities has been approved by the Consortium of Lenders till date. Therefore, the Applicant contends that the question of granting a loan moratorium on principal repayment or interest does not arise. We notice that the Corporate Debtor has not rebutted the fact asserted by the Applicant that no resolution plan or a restructuring proposal was approved by the lenders, by way of sur-rejoinder or otherwise. We further take note of the fact brought to our attention by the Applicant in its rejoinder that another lender of the consortium viz. Punjab National Bank, has also filed an application u/s 7 of the Code against the Corporate Debtor on 11.07.2024 vide CP(IB) No. 779(MB)/2024, which is currently pending for adjudication before Court Room No. V, NCLT-Mumbai Bench.



24. The Respondent has relied upon the Minutes of the Meeting dated 22.02.2023 at Exhibit C to the Affidavit-in-Reply, wherein it is stated, *inter-alia*, that during the consortium meeting, the lenders have in-principle agreed to restructure the loan and grant moratorium on principal repayment and interest payment starting from Feb'23 to Mar'25. However, on perusal of the aforesaid Minutes, we find that none was present in the meeting on behalf of the Financial Creditor in the aforesaid meeting and therefore, the said minutes cannot bind the Financial Creditor. Further, on perusal of the Minutes of the Joint Lenders Meeting dated 26.05.2023 at Exhibit D to the Affidavit-in-Reply wherein the representatives of the Financial Creditor were present, we notice that at Para 8 of the aforesaid minutes, it is stated as follows: ***"8. SBICAPS team requested all the lenders to provide a confirmation on the proposed Cut-off Date and moratorium period. All lenders unanimously accepted to consider 01st May 2023 as Cut-off date and moratorium period till 30th September 2025, however the same is subject to approval from their competent authorities."*** (Emphasis Supplied)

25. The Corporate Debtor has neither placed on record any approved resolution plan nor any approval from the competent authorities of the consortium lenders referred to in the foregoing paragraph, in order to prove the existence and/or enforcement of loan moratorium. In the absence of any sanctioned/approved resolution plan or any approval from the Competent Authorities of the consortium lenders for grant of moratorium on record of this Tribunal, we are unable to accept the contentions of the Respondent qua the loan moratorium.

26.1. The Respondent contends that under Clause 12.1 of the Inter-Creditor Agreement executed between June and August of the year 2023, it was specifically agreed that on and from the reference date (i.e. the date of the Inter Creditor Agreement), the



lenders shall not commence any civil action or proceedings under IBC against the Borrower for recovery of their dues in respect of the facilities or accelerate any facilities provided to the Borrower. In order to address the aforesaid contention of the Respondent, it shall be necessary to advert to Clauses 12.1 and 12.2 of Inter-Creditor Agreement the relevant extracts of which are reproduced hereunder:

"12.1. The Lenders agree and undertake that on and from the Reference Date, they shall not:

(a) commence any civil action or proceedings under IBC against the Borrower or other persons that have provided Third Party Security for recovery of their dues in respect of the Facilities or enforcement of any security interest provided by the Borrower or other persons or accelerate any Facilities provided to the Borrower.

(b) transfer or assign their Facility to any person, save and except to any person that agrees to enter into a Deed of Accession (if it is not already a party to this Agreement) and be bound by the Resolution Plan.

12.2 The aforesaid standstill provision will be operative for an initial period of 30 (thirty) days from the commencement of the Review Period. In any event that the Lenders decide on implementation of a Resolution Plan as the resolution strategy in accordance with the Regulatory Framework, then the standstill provision shall extend during the implementation of the Resolution Plan (which is currently 180 days from the end of the Review Period or such other period as may be prescribed for implementation of Resolution Plan under the Regulatory Framework) provided that the standstill period shall immediately lapse on implementation of the Resolution Plan or if the resolution process is terminated by the Majority Lenders."

26.2. Thus, on perusal of the Inter-Creditor Agreement, we find that the standstill period referred to in Clause 12.1, particularly in sub-clause (a), was operative only for an initial period of 30 days from the commencement of review period and it could be



extended during the period of implementation of the resolution plan. As discussed hereinbefore, in the instant case, the Respondent has failed to prove the existence of any resolution plan approved by the lenders. Therefore, the standstill period could only operate only for an initial period of 30 days from the commencement of review period, as defined under *Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019*. The said directions define the Review Period as under:

B. Implementation of Resolution Plan

*“9. All lenders must put in place Board-approved policies for resolution of stressed assets, including the timelines for resolution. Since default with any lender is a lagging indicator of financial stress faced by the borrower, it is expected that the lenders initiate the process of implementing a resolution plan (RP) even before a default. In any case, once a borrower is reported to be in default by any of the lenders mentioned at 3(a), 3(b) and 3(c), lenders shall undertake a prima facie review of the borrower account **within thirty days from such default (“Review Period”)**. During this Review Period of thirty days, lenders may decide on the resolution strategy, including the nature of the RP, the approach for implementation of the RP, etc. The lenders may also choose to initiate legal proceedings for insolvency or recovery.”*

26.3. Thus, it is seen that review period means thirty days from the date of default within which the lenders are required to undertake a prima facie review of the borrower account. In present case, the date of default is stated to be 01st June, 2023 and the date of NPA is stated to be 30th August, 2023. Thus, the review period commences from 01st June, 2023 and accordingly, the standstill period expired on 30th June, 2023. Even if we were to take the date of NPA as the commencement of review period, yet the standstill period expired on 29th September, 2023. Since the



present petition was filed on 30.11.2024, which is much after the expiry of standstill period, we are of the considered view that the Applicant is not precluded by Clause 12 of the Inter-Creditor Agreement from filing this petition. Even otherwise, the right to initiate insolvency proceedings is a statutory right, as outlined in Section 6 of the Code, and is not derived from a contract. Therefore, a contractual clause cannot prevent a creditor from filing a petition under the Code. This means that even if a contract includes a clause attempting to restrict this right, it will not be effective against the creditor's ability to file an application under the IBC. Accordingly, we reject the contention of the Respondent that the Applicant is precluded from filing the present Petition under Clause 12.1 of the Inter-Creditor Agreement.

27. The Respondent has contended that the petition is filed without due authorisation as the Letter of Authority dated 13.11.2024 issued by the Financial Creditor in favour of its authorised signatory does not confer the power for initiation of insolvency proceedings. However, we are unable to agree with the aforesaid contention. In pursuance of Regulation 76(1) of the State Bank of India General Regulations, 1955 framed u/s 50 of the State Bank of India Act, 1955, the Financial Creditor had published a Gazette Notification dated 27.03.1987, bearing no. ORG/17405 *inter-alia* authorising all managers of the bank to sign all documents, instruments, letters, accounts, receipts, letter and advices, etc. **connected with the current or authorised business of the bank** in respect of all matters coming in discharge of functions of the posts held for the time being. The copy of the aforesaid notification is seen at page 43 of the application. The Authorised Representative of the Financial Creditor, who has signed the Petition, is a Chief Manager in SAMB-III Branch, Mumbai, falling under Clause A (All Officers in the Grades of SMGS-IV and above) of the Gazette Notification. Further, the Letter of Authority dated 13.11.2024 authorises the Chief



Manager Mr. Vasudeva Rao Kantheti to take necessary steps for signing/filing application/modifications or any other documents at any Court/Tribunal for the account of MIs S U Toll Road Pvt. Ltd. Also, Mr. Vasudeva Rao Kantheti is authorized and empowered by virtue of the aforementioned letter of authority to give evidence in any Court of Law /Tribunal and to sign, verify, confirm, identify and to do all acts, deeds, and things on behalf of the Applicant Bank in the said account of M/s. S U Toll Road Pvt. Ltd. Thus, in our considered view, the Authorised Representative of the Financial Creditor is duly authorised to sign and file the present petition. Accordingly, the contention of the Respondent that the petition is filed without authorisation or that the letter of authority dated 13.11.2024 does not confer the power for initiation of insolvency or bankruptcy proceedings, is rejected as being utterly baseless and devoid of any merit.

28. The Respondent has contended that the petition is premature as the loan repayment is still pending. The Respondent contends that the facilities sanctioned by the Financial Creditor ends in the year 2030, as the Corporate Debtor had agreed to repay the Facility A in door-to-door tenure of 15 years commencing from 2015. Thus, according to the Respondent, since the repayment hasn't ended yet, the petition as such is premature. We have already dealt with the issue of default in the foregoing paragraphs and more particularly in Paragraphs 17 and 18 of this order. As per Clause 12.2 of the Facility Agreement dealing with the 'Consequences of Event of Default' *inter-alia* gives right to the lender not only to accelerate the loan facilities but also to exercise the rights available to the lenders under the law. As the right to accelerate the loan facilities upon occurrence of the event of default is available to the Lender(s)/Applicant and that the said right has been availed by the Applicant by recalling the loan vide demand notice dated 21.03.2024, the argument- that the loan



tenor hasn't expired yet and therefore the petition is premature-cannot be sustained in law as well as in the facts of this case.

29. The Respondent has contended that there is inconsistency in the date of default which renders dismissal of the instant petition. The Respondent in its reply affidavit has pointed out that the date of default stated in Part IV of the Petition is 01.06.2023, whereas in the NeSL Record of Default, the date of default is shown to be 02.06.2023. We notice that there is a difference of only one day in the date of default, which in our view, is not fatal to this application rendering its dismissal. In the instant case, we find that the details of default filed by the Financial Creditor before the Information Utility were mailed to the Corporate Debtor and thereafter, three reminder emails were sent. However, since the Corporate Debtor did not respond even after three reminders, the report given by the Information Utility-NeSL shows the status of authentication of default as 'Authenticated' with Colour Code: Green as per Regulation 21 of the IBBI (Information Utilities) Regulations, 2017 read with Table 2 laid thereunder. Thus, we observe that the Corporate Debtor has not disputed the debt or the date of default when the information of default was communicated to it by the Information Utility and has raised this plea only at the stage of filing the reply on affidavit. Even otherwise, since we have already held herein that the inconsistency of just one day in the date of default cannot prove to be a fatal defect for rendering dismissal of this petition, we are not inclined to entertain such an objection.

30. The Respondent objects that the application is barred by Section 10A of the Code as the interest has been calculated and charges have been levied for the period between 15.03.2020 and March 2021. We find the aforesaid objection to be misconceived. Section 10-A of the Code only precludes a creditor from filing an application u/s 7, 9



or 10 of the Code, as the case may be, for initiation of CIRP for any default arising between 25.03.2020 and 24.03.2021. In the instant case, since the default took place on 01.06.2023, Section 10-A of the Code cannot be applied to the facts of this case and hence, we reject the aforesaid contention.

31. The Respondent submits that Section 7(5)(a) of the Code is discretionary. The Respondent states that it is a solvent company which is currently undergoing a temporary financial stress. The Respondent further submits that huge sums of monies are owed to the Corporate Debtor. It is pleaded in the affidavit-in-reply that during the course of execution of the project, various disputes and differences arose between the Corporate Debtor and the NHAI, which ultimately led to the former invoking arbitration proceedings against the latter under the Arbitration and Conciliation Act, 1996. It is further stated that these proceedings are being governed by the Indian Council of Arbitration wherein the Corporate Debtor has filed its claims for approximately a sum of INR 841.23 crores whereas NHAI filed its counter-claim for approximately INR 328 crores. The Respondent pleads that the amounts claimed by the Corporate Debtor in arbitration proceedings are far in excess of the claims of the Financial Creditor in the petition. It is submitted on behalf of the Respondent that facts of the case are similar to **Vidarbha Industries Power Ltd. v. Axis Bank Ltd (Citation: 2022 SCC Online SC 841)** and therefore the law laid down therein must be applied to hold that this is not a fit case for initiation of CIRP against the Corporate Debtor.

32. We have carefully examined and weighed the aforesaid contention and submission put forth by the Respondent. It is true that Hon'ble Supreme Court in Vidarbha Industries Power Ltd (supra) has held that Adjudicating Authority may exercise its



discretion to either admit, not to admit or to keep the admission of the petition in abeyance in the facts and circumstances of the case. However, the Hon'ble Supreme Court in **M. Suresh Kumar Reddy v. Canara Bank & Ors.** (vide Judgment dated May 11, 2023 in Civil Appeal No. 7121 of 2022) has, *inter-alia*, observed as follows

*"12. A Review Petition was filed by the Axis Bank Limited seeking a review of the decision of **Vidarbha Industries**¹ on the ground that the attention of the Court was not invited to the case of **E.S. Krishnamurthy**². While disposing of Review Petition by Order dated 22nd September 2022, this Court held thus:*

"The elucidation in paragraph 90 and other paragraphs were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case.

To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes."

*13. Thus, it was clarified by the order in review that the decision in the case of **Vidarbha Industries**¹ was in the setting of facts of the case before this Court. Hence, the decision in the case of **Vidarbha Industries**¹ cannot be read and understood as taking a view which is contrary to the view taken in the cases of **Innoventive Industries**³ and **E.S. Krishnamurthy**². The view taken in the case of **Innoventive Industries**³ still holds good." (Emphasis Supplied)*

33. Thus, the Hon'ble Supreme Court of India has categorically held in **M. Suresh Kumar Reddy(supra)** that the Vidarbha Industries judgment cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries and E.S. Krishnamurthy and the view taken in the case of Innoventive Industries still holds good. Accordingly, we rely upon the Hon'ble Supreme Court's judgment in M/s. **Innoventive Industries Ltd. v. ICICI Bank & Anr.** (Judgment dated



August 31, 2017 in Civil Appeal Nos. 8337-8338 of 2017), wherein it has been held as follows:

*“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant.It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete**, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. **It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.**” (Emphasis Supplied)*

34. Besides the above, we have also observed that the facts in the present case are totally different than the facts in the Vidharbha case, as in the latter case the CD was having an amount of Rs. 1730 Crores recoverable from Maharashtra Electricity Regulatory Commission pursuant to an order of Appellate Tribunal for Electricity (APTEL), which was pending for recovery due to the pendency of a Civil Appeal before the Hon’ble Supreme Court. As per the CD in Vidharbha matter, implementation of order of APTEL would enable it to clear its outstanding dues to the Applicant lender. However, in the present case the stand of the CD has been that huge sums of money are owed to the CD by a government entity and the arbitration proceedings in respect of the same are likely to be concluded within a reasonable



span. The CD has failed to bring anything on record to demonstrate that within a reasonable period of time the default to its lenders can be cleared.

35. The stand of the Applicant based on Vidharbha judgment cannot be accepted for another reason, which is that under the existing insolvency law i.e. IBC, the trigger for initiation of insolvency proceedings is based on default in making payment of the debt exceeding the minimum threshold of Rs. One Crore. The same is irrespective of the fact that a CD is having valuable assets in its balance sheet including the claims for recovery of money against its debtors and others. However, in the earlier insolvency regime, which was in the form of Sick Industrial Companies (Special Provisions) Act, 1985, the trigger for initiation of insolvency process was not based on default in payment of debt and that the same was based on the erosion in net worth of the CD i.e. if the liabilities of the CD are more than the value of its assets, the insolvency process in the form of rehabilitation process will commence. However, if value of assets of the CD is more than its liabilities or in other words, the net worth of the CD is positive, the insolvency process will not trigger though the CD has defaulted in making payment of its dues to its creditors. As such, under IBC the value of assets of the CD including receivables from its debtors may be more than the liabilities of the CD, however, if the CD has defaulted in making payment of the debt exceeding the threshold, the insolvency process gets kicked in. Further, as per its preamble, one of the objectives of IBC is to complete the reorganization and insolvency resolution of different entities in a time bound manner and therefore, the plea taken by the CD for grant of sufficient time to it to pursue its claim in the arbitration proceedings to enable it to repay the dues of the lenders out of the amount to be received as a result of the said proceedings, cannot be accepted as there is total uncertainty about whether at all the outcome of these proceedings will be in favour of the CD as also the uncertainty



in regard to the time frame for recovery of the said amounts. Moreover, the CD has failed to make out a case for its financial viability and therefore in our view even the Vidharbha Judgment does not come to the rescue of the CD.

36. The present petition is filed on 30.11.2024, which is within three years from the date of default i.e. 01.06.2023. Therefore, the present application is held to be within limitation period prescribed under Article 137 of the Schedule to the Limitation Act, 1963. On perusal of the Written Consent in Form 2 dated 23.10.2024 given by the proposed IRP, a copy of which is annexed to the application as Annexure 4 (Colly) along with the Authorisation for Assignment and Certificate of Registration, it seen that the proposed IRP viz. Mr. Sanjay Kumar Mishra, has certified that there is no disciplinary proceeding pending against him with the Board or Insolvency Professional Agency of the Institute of Chartered Accountants of India. In the instant case, for the reasons stated in the foregoing paragraphs, we are satisfied that the Corporate Debtor has defaulted in repayment of financial debt to the Applicant and such default is well over the minimum threshold of Rs. 1 crore, as prescribed u/s 4 of the Code. We are also satisfied that the application filed u/s 7 of the Code is complete and there is no disciplinary proceeding pending against the proposed resolution professional. Therefore, applying the law laid down by the Hon'ble Supreme Court in Innoventive Industries Ltd. v. ICICI Bank (supra), we are of the firm view that the instant application **deserves to be admitted** u/s 7(5)(a) of the Code.

37. Accordingly, we pass the following orders:



ORDER

- i. The Corporate Debtor i.e. **S.U. TOLL ROAD PRIVATE LIMITED** [CIN: U74999MH2007PTCI69I45], is **admitted** into the Corporate Insolvency Resolution Process under Section 7(5)(a) of the Code.
- ii. As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:
 - a. 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;
 - b. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
 - e. The provisions of sub-section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to the Corporate Debtor.



- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- v. We hereby appoint **Mr. Sanjay Kumar Mishra**, an Insolvency Professional having (Email: ipsanjaymishra@rediffmail.com) registration no. IBBI/IPA-001/IP-P01047/2017-2018/11730, as the Interim Resolution Professional ('IRP') of the Corporate Debtor.
- vi. The Financial Creditor is directed to pay an advance of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) to the above-named IRP within a period of 7 days from the date of this order **to meet the cost of CIRP** arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- vii. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its



Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- viii. This Adjudicating Authority directs the IRP to make a public announcement for the initiation of CIRP and call for the submission of claims under Section 15, as required by section 13(1)(b) of the IBC, 2016.
- ix. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.
- x. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern, to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.
- xii. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.



- xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.
- xiv. **Accordingly, CP (IB)/421(MB)2025 stands admitted.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)
SVG-LRA VI.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)