IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)
IN
CP(IB)-69/ND/2025

IN THE MATTER OF:

Standard Capital Markets Ltd.
(Through AR: Sh. Akash Bhatia)
Unit No. G-17, Krishna Apra Business Square,
Netaji Subhash Place, Pitampura,
Maurya Enclave, New Delhi-110034 **... Applicant/Financial Creditor**

Versus

Limelight Realtors Private Ltd.
224, Second Floor, Somdatt Chamber 9,
Bhikaji Cama Place, New Delhi-110066 **... Respondent/Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on 18.03.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Manayar Chandhok, Adv. Adithya Devarayan, Adv. Naman Ganda

For the Respondent : Adv. Pratham Mehrotra

ORDER

PER: SHRI. ASHOK KUMAR BHARDWAJ, MEMBER (J)

The present petition has been preferred by the Authorized Representative of Standard Capital Markets Limited (hereinafter referred to as **"Applicant/ Financial Creditor/FC"**) under Section 7 of the Insolvency and Bankruptcy

Code, 2016 (**"IBC"**) for initiation of corporate insolvency resolution process (CIRP) qua Limelight Realtors Private Limited (hereinafter referred to as **"Respondent/Corporate Debtor/CD"**).

2. As has been averred in the petition, Veer Chemicals Pvt. Ltd. (**"Veer/ Principal Borrower"**) sought loan facilities from Sammaan Capital Ltd. (previously known as Indiabulls Housing Finance) (**"SCL"**) to carry out construction activities and for building residential projects. Resultantly, the SCL issued a Letter sanctioning financial facility requested for by Veer, the Principal Borrower. Pursuant to the Sanction Letter, SCL and Veer entered into a Loan Agreement for an amount of Rs. 150,00,00,000/- dated 30.10.2018.

3. Thereafter, SCL disbursed the aforementioned amount of Rs. 150,00,00,000/- to Veer on 02.11.2018 and in support of the loan, the CD and its other sister concerns executed a Memorandum of Entry on 28.11.2020 creating a first ranking mortgage in favour of SCL with respect to land admeasuring 66.1326 acres situated in Village Sohna and Mohammedpur Gujjar, Tehsil Sohna, District Gurgaon, Haryana (**"Security Lands"**) and further executed a Deed of Hypothecation in favour of SCL, thereby creating a first-ranking charge over the receivables arising from the Security Lands.

4. On 01.10.2020, SCL and Veer executed an Addendum Agreement to the Loan Agreement, whereby the term of the Loan Agreement dated 30.10.2018 availed by Veer were extended till 05.10.2025. Further, the initial understanding of quarterly payments towards interest and 6 monthly payments towards principal were modified to a uniform system of quarterly payments qua both

principal amount of loan and interest thereon. Later, SCL executed Deed of Assignment dated 01.10.2024 in favour of the Financial Creditor herein, whereby SCL assigned the rights under the Loan Agreement mentioned above, as well as those under the other Loan Documents executed in support of Loan Agreement.

5. The FC served upon the Principal Borrower and Corporate Guarantors a Letter dated 01.10.2024 calling upon them to execute a Deed of Guarantee in support of the Loan Agreement which was executed on 03.10.2024 in terms of which the CD agreed to stand as a guarantor for the loan availed by Veer from SCL and further agreed to repay the loan in case of default.

6. As has been averred in the petition, on 05.10.2024, the Veer and the CD were under obligation to pay an EMI of Rs. 10,63,47,656/- towards the principal and Rs. 1,32,93,457/- towards the interest but failed to make the aforementioned payment due, thereby committing default under the Loan Agreement. Following the default committed, the FC issued letter dated 10.11.2024 to the CD and Veer calling upon them to repay the amount due within a period of 7 days. In reply the CD sought extension of 15 days for repayment of outstanding amount vide Letter dated 21.11.2024 which was denied by the FC vide its Letter dated 25.11.2024.

7. The detailed particulars of the unpaid Financial debt claimed including total amount of default and date of default as mentioned by the Applicant in Part IV of the petition reads thus:-

PART-IV

PARTICULARS OF FINANCIAL DEBT		
1	**TOTAL AMOUNT OF DEBT GRANTED AND DATE OF DISBURSEMENT**	**Disbursed Amount** – INR 150,00,00,000/- **Date of Disbursement** – 02.11.2018
2	**AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR THE COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)**	The brief facts of the case are as follows: 1. The financial creditor, Standard Capital Markets Ltd. is a public limited company incorporate under the Companies Act, 1956 having its registered office at Unit No. G-17, Krishna Apra Business Square, Netaji Subhash Place, Pitampura, Maurya Enclave, New Delhi – 110034. 2. The Corporate Debtor, Limelight Realtors Private Ltd., is a public limited company incorporated under the Companies Act, 1956 and is engaged in the business of construction and real estate. 3. In 2018, Veer Chemicals Pvt. Ltd. ("**Veer**") approached Sammaan Capital Ltd. (previously known as Indiabulls Housing Finance) ("**SCL**") seeking loan facilities to carry out construction activities and for building residential projects. 4. After accepting Veer's request for loans, SCL issued a Sanction Letter to Veer for the loan as requested. A copy of the Sanction Letter issued by Sammaan Capital Ltd. to Veer Chemicals Pvt. Ltd. are annexed herewith and marked as **Annexure P-3**. 5. Pursuant to the Sanction Letter, on 30.10.2018, SCL and Veer executed a Loan Agreement for an amount of Rs. 150,00,00,000/-. A copy of the Loan Agreement dated 30.10.2018 executed between Sammaan Capital Ltd. and Veer Chemicals Pvt. Ltd. is annexed herewith and marked as **Annexure P-4**. 6. As per the terms of the Loan Agreement, Veer was obligated to make quarterly payments towards the interest component

		of the loan and payments towards principal were to be made on a six-monthly basis. Veer had assured SCL that the payments towards the loans would be made on a timely basis and no defaults would be committed by Veer. 7. Pursuant to Veer's request for disbursement, on 02.11.2018, SCL disbursed a total amount of Rs. 150,00,00,000/- to Veer. 8. In support of the Loan, the Corporate Debtor and its other sister concerns executed a Memorandum of Entry on 28.11.2020, creating a first-ranking mortgage in favour of SCL with respect to land admeasuring 66.1326 acres (approx.) situated in Village Sohna and Mohammedpur Gujjar, Tehsil Sohna, District Gurgaon, Haryana ("**Security Lands**"). A copy of the Memorandum of Entry dated 28.11.2020 is annexed herewith and marked as **Annexure P-5**. 9. Further, the Corporate Debtor and its sister concerns also executed a Deed of Hypothecation in favour of SCL, thereby creating a first-ranking charge over the receivables arising from the Security Lands. A copy of the Deed of Hypothecation dated 28.11.2020 is annexed herewith and marked as **Annexure P-6**. 10. On 01.10.2020, SCL and Veer executed an Addendum Agreement to the Loan Agreement, whereby the tenure of the Loan Agreement availed by Veer were extended till 05.10.2025. Further, the initial understanding of quarterly payments towards interest and 6-monthly payments towards principal were modified to a uniform system of quarterly payments towards both principal and interest. A copy of the Addendum Agreement dated 01.10.2020 are annexed herewith and marked as **Annexure P-7**.

11. On 01.10.2024, SCL was pleased to execute Deed of Assignment in favour of the Financial Creditor herein, whereby SCL assigned the rights under the Loan Agreements mentioned above, along with the rights under the other Loan Documents executed in support of Loan Agreement. By way of the above assignment, the Financial Creditor has stepped into the shoes of SCL qua the Loan Agreement executed between them and Veer, and therefore, the Financial Creditor has the rights to enforce payments under the same. A copy of the Deed of Assignment dated 01.10.2024 is annexed herewith and marked as **Annexure P-8**.

12. On 01.10.2024, the Financial Creditor also issued a Letter to the Corporate Debtor, calling upon them to execute a Deed of Guarantee in support of the Loan Agreement, as per the Obligors obligations under the Loan Agreements. A copy of the Letter dated 01.10.2024 issued by the Financial Creditor to the Corporate Debtor is annexed herewith and marked as **Annexure P-9**.

13. On 03.10.2024, the Corporate Debtor executed a Deed of Guarantee, whereby the Corporate Debtor agreed to stand as guarantor for the loan availed by Veer from SCL and agreed to repay the loan in case of the inability of Veer to repay the Loan. A copy of the Deed of Guarantee dated 03.10.2024 are annexed herewith and marked as **Annexure P-10**.

14. On 05.10.2024, Veer and the Corporate Debtor were under obligation to pay an EMI of Rs. 10,63,47,656/- towards principal and Rs. 1,32,93,457/- towards interest. The Corporate Debtor failed to make the above EMI Payments due on 05.10.2024 .and thereby committed a default under the Loan Agreement.

15. Accordingly, on 10.11.2024, the Financial Creditor issued a Letter to the Corporate Debtor and Veer, calling upon them to repay an amount of Rs. 10,63,47,656/- along with interest of Rs. 1,32,93,457/- within a period of 7 days, failing which the Financial Creditor would be constrained to

			undertake legal proceedings against the Corporate Debtor for effecting the recovery the amounts payable under the Loan Agreement. A copy of the Letter dated 10.11.2024 is annexed herewith and marked as **Annexure P-11**.
			16. On 21.11.2024, the Corporate Debtor issued a Letter to the Financial Creditor, seeking an extension of 15 days for the repayment of the outstanding amounts, thereby admitting the default committed by the Corporate Debtor. A copy of the Letter dated 21.11.2024 is annexed herewith and marked as **Annexure P-12**.
			17. On 25.11.2024, the Financial Creditor issued a Letter to the Corporate Debtor, denying their request for an extension for the repayment of the amount and called upon them to immediately repay the same, failing which the Financial Creditor would take recourse to the law. A copy of the Letter dated 25.11.2024 is annexed herewith and marked as **Annexure P-13**.
			18. It is submitted that thereafter, the Corporate Debtor has failed to repay the outstanding amount and the financial default continues to subsist.
			19. It is submitted that an amount of Rs. 54,50,31,740/-, is due and payable. The aforesaid amount is inclusive of the outstanding principal amount, pending installments etc.

8. As can be seen from Part IV of the petition (ibid), the Applicant has claimed an outstanding financial debt of Rs. 54,50,31,740/-. To buttress its plea, the Applicant has relied upon following documents:-

a. Copy of the Sanction Letter issued by Sammaan Capital Ltd. to Veer Chemicals Pvt. Ltd.

b. Copy of the Loan Agreement dated 30.10.2018 executed between Sammaan Capital Ltd. and Veer Chemicals Pvt. Ltd.

c. A copy of the Memorandum of Entry dated 28.11.2020

d. A copy of the Deed of Hypothecation dated 28.11.2020

e. Copy of the Addendum Agreement dated 01.10.2020

f. Copy of the Deed of Assignment dated 01.10.2024

g. Copy of the Letter dated 01.10.2024 issued by the FC to the CD

h. Copy of the Deed of Guarantee dated 03.10.2024

i. Copy of the Letter dated 10.11.2024, 21.11.2024 and 25.11.2024.

j. Copy of the Security Interest Report of the CERSAI.

9. Based on the facts described above, the Applicant has prayed for initiation of CIRP against the Respondent.

10. On issuance of notice, the respondent has filed its reply pleading that:-

i. Samaan Capital Limited issued Sanction letter and executed Loan Agreement in favour of Principal Borrower (Veer) towards a loan facility of Rs. 150,00,00,000/- on 30.10.2018.

ii. In terms of the agreement, the Respondent herein along with 6 other companies were enlisted as Guarantor for the Principal Borrower.

iii. Subsequently, Loan Agreement was amended by means of Addendum Agreement dated 01.10.2020, whereby the tenure of the loan facility was extended up to October 2025 and the following payment schedule was agreed upon the between the parties:-

Sl No.	Due Date(s)	Interest payable (Rs.)	Principal payable (Rs.)	Total Amount payable (Rs.)
1	05-Oct-21	16,89,85,634	-	16,89,85,634
2	05-Oct-22	16,89,85,634		16,89,85,634
3	05-Jan-23	4,02,97,234	10,63,47,656.25	14,66,44,890
4	05-Apr-23	3,69,39,131	10,63,47,656.25	14,32,86,787
5	05-Jul-23	3,35,81,028	10,63,47,656.25	13,99,28,685
6	05-Oct-23	3,02,22,926	10,63,47,656.25	13,65,70,582

7	05-Jan-24	2,68,64,823	10,63,47,656.25	13,32,12,479
8	05-Apr-24	2,35,06,720	10,63,47,656.25	12,98,54,376
9	05-Jul-24	2,01,48,617	10,63,47,656.25	12,64,96,273
10	05-Oct-24	1,67,90,514	10,63,47,656.25	12,31,38,170
11	05-Jan-25	1,34,32,411	10,63,47,656.25	11,97,80,068
12	05-Apr-25	1,00,74,309	10,63,47,656.25	11,64,21,965
13	05-Jul-25	67,16,206	10,63,47,656.25	11,30,63,862
14	05-Oct-25	33,58,103	10,63,47,656.25	10,97,05,759

iv. All due payments were made by the Principal Borrower towards the first 9 installments and the Demand Notice dated 10.11.2024 could only be issued against the 10th installment.

v. The aforementioned Demand Notice was not served on the correct address of the Respondent in terms of the Deed of Guarantee, instead was sent to old address of the Respondent which was subsequently received on 20.11.2024. On receipt of the said notice, the Respondent sent reply dated 21.11.2024 to the Applicant herein seeking extension of 15 days for making the due payment which was denied by the Applicant by means of letter dated 25.11.2024.

vi. Issuance of Demand Notice dated 10.11.2024 and subsequent filing of the present petition is not only arbitrary but is also an abuse to the process under the IBC to seek lump sum and is issued just to seek premature payment of the amounts pending due and payable under the Loan Agreement.

vii. Amount of Rs. 54,50,31,740/- is wrongfully mentioned as due and payable in contradiction to the payment schedule agreed between the parties and their own Demand Notice dated 10.11.2024 which is limited to demand of Rs. 10,63,47,656/- towards the principal amount and Rs. 1,32,93,457/- towards the interest.

viii. All the agreements between the parties contemplate Arbitration and recourse under the SARFAESI Act, 2002 as available remedies to the parties in case of breach or default.

ix. Disputed question of fact revolve around 'default' and the parties need to be relegated to the contractually agreed remedy of arbitration. Relying upon the judgment of Hon'ble Supreme Court in Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund & Ors. [(2021) 6 SCC 436], the Adjudicating Authority may dismiss the petition if it is satisfied that the situation is not yet ripe to call it a default and that the company is a profit making company.

x. The CD also relied upon judgment of Hon'ble Supreme Court in GLAS Trust Company LLC vs. BJJU Raveendran & Ors. [2024 SCC OnLine SC 3032] wherein it referred to the celebrity decision in Swiss Ribbons and reaffirmed that it is resolution of insolvency and not the recovery which is the core principle of IBC. The relevant para of the judgment reads thus:-

> *"**39.** From the above, the following guiding principles emerge, which we must keep in mind while determining the issues raised in the present appeal:*
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> *.....*
>
> *c. IBC must not be used as a tool for coercion and debt recovery by individual creditors. Improper use of the IBC mechanism by a creditor includes using insolvency as a substitute for debt enforcement or attempting to obtain preferential payments by coercing the debtor using insolvency proceedings. That the mechanism under the IBC must not be used as a money recovery*

mechanism has been reiterated in a consistent line of precedent by this Court;"

xi. The Respondent is a viable company and should not be allowed to be plunged into insolvency and liquidation over marginal delay in payment of 1/4th installment.

11. We have heard the submissions of both parties and perused the pleadings on record. As can be seen from the reply, the Respondent has not disputed the existence of default but only contended that the there has been default of only the 10th installment as per the payment schedule reproduced hereinabove. At this stage, we find it appropriate to refer to Section 3(12) of the Code which defines 'default' as follows:

*"**3. Definitions.—***

(12) Default means no-payment of debt when whole or any part or instalment of amount of debt has become due and payable and is not paid by the debtor or the corporate debtor as the case may be."

12. It is admitted fact in the instant case that default has occurred and we are satisfied that the conditions laid down under Sec. 7(5) of the Code have satisfied. Apropos, the Hon'ble Supreme Court in the case of **M/s Innoventive Industries Limited v. ICICI Bank & Anr.** (Civil Appeal Nos. 8337-8338 of 2017), discussed extensively the scope of Sec. 7 of the IBC and held that it is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred. The relevant para of the judgment reads thus:-

"28. .....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."

13. The Respondent could further contend that the demand notice was not served at the correct address of the Respondent and on receipt of the notice, it sought time extension to pay the due installment amount which was later rejected by the FC. It could further espouse that the agreements between the parties contemplate Arbitration and recourse under the SARFAESI Act, 2002 as available remedies to the parties in case of breach or default and pleaded to be relegated to arbitration.

14. As can be seen from Section 7(5) of IBC, 2016, while taking a decision regarding admission or rejection of an application filed under Section 7(1) of the Code, what we need to see is that there is debt and default regarding the same. Apparently, the Respondent has committed default in terms of the provisions of Section 7(5) of IBC, 2016 and deserves to be admitted.

15. Also, in terms of **Laxmi Pat Surana vs. Union of India** (Civil Appeal No. 2734 of 2020), it could be ruled that the CIRP can continue simultaneously both qua corporate guarantor and principal borrower. The relevant excerpt of the judgment reads thus:-

"22. .....That action can still proceed against the guarantor being a corporate debtor, consequent to the default committed by the principal borrower. There is no reason to limit the width of Section 7 of the Code despite law permitting initiation of CIRP against the corporate debtor, if and when default is committed by the principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively."

16. In **M. Suresh Kumar Reddy vs. Canara Bank & Ors.** (Civil Appeal No. 7121 of 2022), Hon'ble Supreme Court ruled that it is not for the Tribunal to facilitate settlement. In the said case, Hon'ble Supreme Court could water down the view taken in Vidarbha Industries wherein it was ruled that the financial health of a Corporate Debtor need to be kept in view while ordering the commencement of CIRP. The relevant excerpt of the judgment reads thus:-

> *"**9.** The view taken in **Innoventive Industries** has been followed by this Court in the case of **E.S. Krishnamurthy and others.** Paragraph nos. 32 to 34 of the said decision read thus:*
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> > ***32.** In Innoventive industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, paras 28 and 30 : (2018) 1 SCC (Civ) 356], **a two-Judge Bench of this Court has explained the ambit of Section 7 IBC, and held that the adjudicating authority only has to determine whether a "default" has occurred i.e. whether the "debt" (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application unless it is incomplete.** Speaking through Rohinton F. Nariman, J., the Court has observed : (SCC pp. 438-39, paras 28 & 30)*
> >
> > > *"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1*

is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. 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.'

33. *In the present case, the adjudicating authority noted that it had listed the petition for admission on diverse dates and had adjourned it, inter alia, to allow the parties to explore the possibility of a settlement. Evidently, no settlement was arrived at by all the original petitioners who had instituted the proceedings. The adjudicating authority noticed that joint consent terms dated 12-2-2020 had been filed before it. But it is common ground that these consent terms did not cover all the original petitioners who were before the adjudicating authority. The adjudicating authority was apprised of the fact that the claims of 140 investors had been fully settled by the respondent. The respondent also noted that of the claims of the original petitioners who have moved the adjudicating authority, only 13 have been settled while, according to it "40 are in the process of settlement and 39 are pending settlements". Eventually, the adjudicating authority did not entertain the petition on the ground that the procedure under IBC is summary, and it cannot manage or decide upon each and every claim of the individual homebuyers. The adjudicating authority also held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it would dispose of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time-frame. The petition was accordingly disposed of by directing the respondent to settle the remaining claims no later than within three months, and that if any of the remaining original petitioners were aggrieved by the settlement*

process, they would be at liberty to approach the adjudicating authority again in accordance with law. The adjudicating authority's decision was also upheld by the appellate authority, who supported its conclusions.

34. *The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC.* ***The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively.*** *These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute.*

(emphasis added)

10. *Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:*

*"**3. Definitions:** - In this Code, unless the context otherwise requires—*

.. ..

(12) *"default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"*

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.

11. *Reliance is placed on the decision of this Court in* ***Vidarbha Industries*** *and in particular, what is held therein in paras 86 to 89 which reads thus:-*

"86. Even though Section 7(5)(a) IBC may confer discretionary power on the adjudicating authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.

87. ***Ordinarily, the adjudicating authority (NCLT) would have to exercise its discretion to admit an application under Section 7 IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the corporate debtor in payment of the debt, unless there are good reasons not to admit the petition.***

88. The adjudicating authority (NCLT) has to consider the grounds made out by the corporate debtor against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of the corporate debtor, and the awarded/decretal amount exceeds the amount of the debt, the adjudicating authority would have to exercise its discretion under Section 7(5)(a) IBC to keep the admission of the application of the financial creditor in abeyance, unless there is good reason not to do so. The adjudicating authority may, for example, admit the application of the financial creditor, notwithstanding any award or decree, if the award/decretal amount is incapable of realisation. The example is only illustrative.

89. In this case, the adjudicating authority (NCLT) has simply brushed aside the case of the appellant that an amount of Rs 1730 crores was realisable by the appellant in terms of the order passed by APTEL in favour of the appellant, with the cursory observation that disputes if any between the appellant and the recipient of electricity or between

the appellant and the Electricity Regulatory Commission were inconsequential."

(emphasis added)

12. *A review petition was filed by Axis Bank Ltd. seeking a review of the decision of* ***Vidarbha Industries*** *on the ground that the attention of the Court was not invited to the case of* ***E.S. Krishnamurthy.*** *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* ***Vidarbha Industries*** *was in the setting of facts of the case before this Court. Hence, the decision in* ***Vidarbha Industries*** *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.*** *The view taken in* ***Innoventive Industries*** *still holds good."*

17. Besides, it is not the case of the CD that it's current financial health is such that it can discharge the amount of debt. The contention on behalf of the CD was that if the landed property mortgaged with the FC is sold, the entire amount of debt may be discharged. Under no circumstances, the asset on which

the FC has the charge can be perceived as available with CD for disposal to fetch the money to discharge the debt. It is not so that currently, the CD has funds available to repay the amount of default. The Ld. Counsel for the CD also never offered any settlement or repayment of the amount of debt. He argued the case on merits. Even otherwise also, if the CD is in a position to discharge the amount of debt, it may always persuade the FC to take steps under Sec. 12A of IBC, 2016. As far as the present proceedings are concerned, the IBC provides only 14 days time for taking decision by the Adjudicating Authority on admission or rejection of an application preferred under Sec. 7 of the Code. Though there are judicial precedents providing that the timelines stipulated in IBC are not binding, but recently in State Bank of India vs. Murari Lal Jalan & Ors. (Civil Appeal No. 12220-12221 of 2024), Hon'ble Supreme Court ruled that the Tribunal should endeavor to adhere to strict timelines provided in the Code. Relevant excerpt of the judgment reads thus:-

> *"**167.** Given the importance of the IBC, 2016 for the betterment of the economy at large, it is imperative that the insolvency ecosystem be continuously strengthened through a regular identification of its shortcomings and a quick redressal of its practical deficiencies. This would significantly improve its implementation and yield better results for all the stakeholders involved. While the receptiveness of the regime to the incorporation of novel and relevant recommendations is important, it is paramount that there also be strict adherence to the existing provisions of the Code, both in letter and spirit.*
>
> ***X X X***
>
> ***182.** Moving on to certain efficiency issues within the NCLTs and NCLAT, it has been noticed over a period of time that there is a serious lack of timely admission and disposal of the applications filed as regards the*

initiation of CIRP, approval of the resolution plan and liquidation. This only adds to the uncertainty of the process and prolongs the dispute thereby jeopardizing the interest of all the stakeholders involved. Adjudication in a time-bound manner would help prevent any further deterioration of the value of the corporate entity. The integrity of the original timelines laid down by the Code and the Resolution Plan must not be allowed to be violated since it would dilute the objective of the Code in its entirety, erode investor confidence and hinder all corporate restructuring efforts."

18. Even otherwise also, no request for adjournment was made by the CD, and the Ld. Counsel for the CD argued the matter on merits. Even when his reply was not uploaded on DMS, he handed over the physical copy of the same across the Bar and submitted that he did not want to delay the decision on admission of the application. Such approach of the Ld. Counsel for the CD deserve appreciation.

19. As far as the plea of the CD regarding remedies under Arbitration and SARFAESI Act, 2002 are concerned, as can be seen from Sec. 238 of the IBC, the provision of the Code have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Sec. 238 of the Code reads thus:-

*"**238. Provisions of this Code to override other laws.—** The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

20. We may also be not oblivious of the fact that the object of IBC, 2016 is not to provide remedy to the creditor and is not to provide substitute to recovery forum. The objective of the Code is to rescue the CD and put it back to its feet.

21. We could also satisfy ourselves regarding non-pendency of legal proceedings against the IP proposed to be appointed as IRP. The consent given by IP in the prescribed form i.e. Form-2 is placed on record at page 188 of the petition and the declaration given by the IP regarding non-pendency any legal proceedings against it reads thus:-

> *"(iv) certify that there are no disciplinary proceedings pending against me with the Board or ICSI Institute of Insolvency Professionals."*

22. No plea was ever raised by CD that there is any deficiency in the application or the application is incomplete. Thus, we are satisfied that the application meet the requirement of the provisions of Sec. 7(3) & (5) of the Code. In view of the aforementioned, **we are left with no option but to admit the present application. Ordered accordingly. In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

23. As proposed by the Petitioner **Mr. Sapan Mohan Garg** having Registration No. IBBI/IPA-002/IP-N00315/2017-2018/10903 & email sapan10@yahoo.com is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order.

24. It is further ordered that Mr. Sapan Mohan Garg shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

25. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

26. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner/Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

27. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(CHARANJEET SINGH GULATI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)