



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **14.02.2025** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/99/CHE/2024
NAME OF THE PETITIONER(S) : Canara Bank
NAME OF THE RESPONDENT(S) : ARS Energy Pvt. Ltd.
UNDER SECTION : Sec 7 Rule 4 of IBC, 2016

ORDER

Present: Shri. Varun Srinivasan, Ld. Counsel for the Petitioner.
None for the Respondent.

Vide separate order pronounced in the Open Court, the petition is admitted.
CIRP is initiated against the Corporate Debtor M/s. ARS Energy Pvt. Ltd.

Ms. R. Bhuvaneswari is appointed as the IRP.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

vs



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

CP/IB/99/CHE/2024

*(filed under section 7 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016)*

In the matter of ARS ENERGY PRIVATE LIMITED

CANARA BANK

Asset Recovery Management Branch,
1st Floor Spencer, Towers II Building,
770, Anna Salai, Chennai – 600 002

...Applicant/Financial Creditor

-Vs-

ARS ENERGY PRIVATE LIMITED

D-109, 4th Floor, LBR Complex,
Chintamani, Anna Nagar East,
Chennai – 600 102

....Respondent/Corporate Debtor

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant: Varun Srinivasan, Advocate

For Respondent: E.Om Prakash, Senior Counsel for

P.S.Suman, Advocate

Order Pronounced on 14th February 2025



ORDER

(Heard Through Hybrid Mode)

This is an Application filed by **CANARA BANK** (hereinafter the “Financial Creditor”) against **ARS ENERGY PRIVATE LIMITED** (hereinafter the “Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. In Part-I of the Application, it is stated that the Financial Creditor viz., **Canara Bank** is a Banking Company constituted under the Banking Companies Acquisition and Transfer Undertakings Act, 1970. The Corporate Debtor herein viz., **ARS Energy Private Limited** was incorporated under the Companies Act, 1956 on 19.09.1990 with CIN:U40100TN1990PTC032178. In Part-II of the Application, the Registered office of the Corporate Debtor is stated to be D-109, 4th Floor, LBR Complex, Chintamani, Anna Nagar East, Chennai – 600 102.

3. In Part III of the application, the Financial Creditor has proposed one Ms.Ramanathan Bhuvaneshwari, with Registration No: IBBI/IPA-002/IP-N00306/2017-2018/10864 as an “Interim Resolution Professional” of



the Corporate Debtor. The Written Consent of the IRP is appended at Page Nos.2838-2843 of the Application typeset.

4. In Part-IV of the Application, it is stated that a total sum of Rs.110,57,11,831.97 (Rupees One Hundred and Ten Crores Fifty Seven Lakhs Eleven Thousand Eight Hundred and Thirty One and Ninety Seven Paise) is the amount claimed by the Financial Creditor as the Financial debt, due and payable by the Corporate Debtor. Further the date of default for the various accounts is as follows:

<u>S.No.</u>	<u>Account number</u>	<u>Nature of facility</u>	<u>Date of default.</u>
1.	2596261000029	Working Capital Overdraft –	30.06.2022
2.	2596703000003	GECL 2.0	30.09.2022
3.	170003406592	GECL 2.0 Extn	20.10.2022
4.	2596773000082	Term Loan	17.09.2022

5. A table setting out the computation of the default amount is as under:



S.No.	Account No.	Nature of facility	Principal amount	Interest amount
1.	2596261000029	Working Capital Overdraft	40,21,77,549.32	8,63,09,593.28(17.95%)
2.	2596703000003	GECL 2.0	9,10,16,665.00	1,58,87,698.13(9.10%)
3.	170003406592	GECL 2.0 Extn	5,07,99,990.00	51,35,354.62(8.95%)
4.	2596773000082	Term Loan	39,06,71,318.97	6,37,13,662.65(15.50%)
		Total of principal and interest (As on 31.08.2023)	Rs. 110,57,11,831.97/-	

6. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor to prove the existence of a 'Financial debt'.

FACTUAL MATRIX OF THE CASE:

7. It is stated that the Corporate Debtor herein had approached the Financial Creditor and other Consortium of Banks (4 others, Bank of Baroda, State Bank of India, Punjab National Bank and HDFC Bank) for availing financial assistance by way of Working Capital Overdraft, GECL 2.0, GECL 2.0 Extn Term Loan, amongst other facilities. After mutual negotiations, the Financial Creditor along with the consortium of banks



sanctioned the Term Loans and other Facilities. The credit facilities sanctioned by financial creditor (Canara Bank) are herein below:

ACCOUNT NO.	NATURE OF FACILITY
2596261000029	Working Capital Overdraft
2596703000003	GECL 2.0
170003406592	GECL 2.0 Extn
2596773000082	Term Loan

8. It is stated that as the Corporate Debtor failed to honour the commitments, the Financial Creditor along with the other consortium members, recalled the facilities. Accordingly, the accounts of the Corporate Debtor in the books of accounts of the Applicant were classified as a Non-Performing Asset.

9. It is stated that the Corporate Debtor had secured the loans by way of executing Memorandum of Deposit Title Deeds in addition to other securities created in favour of the Applicant /Financial Creditor.

10. It is stated that as the Corporate Debtor subsequently committed default in repayment of the credit facilities availed by it and in 'addition



to committing breach of several of the terms and conditions as agreed upon, the Applicant/Financial Creditor was constrained to recall the loan facilities, while demanding for repayment of the outstanding dues, with all concessions and sacrifices revoked. It is stated that the Applicant /Financial Creditor issued notice dated 20.09.2023 to the Corporate Debtor demanding payment.

11. It is stated that the Corporate Debtor also acknowledged its liability on the following dates and documents;

S.No	DATE	DESCRIPTION OF DOCUMENTS
1	24.09.2014	Revival letter executed by ARS Energy P Ltd (Formerly ARS Metals Ltd) in respect of working capital consortium agreement.
2	24.09.2014	Revival letter executed by ARS Energy P Ltd (Formerly ARS Metals Ltd) in respect of common loan agreement and common deed of hypothecation
3	04.02.2017	Demand Promissory for Rs. 10 Crores execute by ARS Energy in favour of Canara Bank Consortium
4	02.05.2019	Revival Letter executed by ARS Energy in favour of the consortium



5	02.05.2019	Acknowledgement of Debt and Security executed by ARS Energy in favour of Canara bank.
6	24.09.2019	Acknowledgement of Debt and Security for Rs. 44,85,39,520/- in favour of Canara Bank.
7	01.03.2021	Acknowledgement of debt and security executed by ARS Energy.
8	01.03.2021	Revival letter executed by ARS Energy
9	01.03.2021	Revival letter executed by ARS Energy in respect of working capital consortium agreement dated 05.09.2018.
10	19.08.2021	Revival letter executed by ARS Energy in respect of Working capital consortium agreement dated 15.09.2018.
11	31.03.2018	Balance Sheet as on 31.03.2018
12	31.03.2019	Balance Sheet as on 31.03.2019
13	31.03.2020	Balance Sheet as on 31.03.2020
14	31.03.2021	Balance Sheet as on 31.03.2021
15	31.03.2022	Balance Sheet as on 31.03.2022

12. It is stated that the Corporate Debtor has committed default in repayment of the said credit facilities availed by it. Even after several requests and demands made, the Corporate Debtor has failed to repay the said loan amounts. The total amount from the Corporate Debtor as on



31.08.2023 due and payable to the Applicant/Financial Creditor is as below:

S.No	Loan Account No	Nature of Loan/ Limit	Total Outstanding dues as on 31.08.2023 (Rs.)	Date of Default
1	2596261000029	Working Capital Overdraft	48,84,87,142.60	30.06.2022
2	2596703000003	GECL 2.0	10,69,04,363.13	30.09.2022
3	170003406592	GECL 2.0 Extn	5,59,35,344.62	20.10.2022
4	2596773000082	Term Loan	45,43,84,981.62	17.09.2022
	Total		110,57,11,831.97	

REPLY FILED BY THE RESPONDENT:

13. It is stated that the Corporate Debtor was originally incorporated as ARS Metals Limited on 19.09.1990 and registered with the Registrar of Companies, Tamil Nadu with the objectives of carrying on business in steel and energy business.



14. It is stated that vide order dated 19.12.2014 of Hon'ble Madras High Court, ARS Metals Private Limited demerged and the steel business of ARS Metals private Limited was transferred to ARS Steels and Alloy International Private Limited.

15. It is stated that consequent to this, on 12.02.2015, the name of 'ARS Metals Private Limited' was changed to ARS Energy private Limited.

16. It is stated that the Corporate Debtor was promoted by Mr. Ashwani Kumar Bhatia having vast experience in the field of steel and energy generation. The Corporate Debtor is in the business of power generation through coal-fired thermal power plant, using Indonesian (imported) coal. Mr. Ashwani Kumar Bhatia and Mr. Rajesh Bhatia are the directors of the Corporate Debtor and herein after collectively referred to as Promoter Directors'.

17. It is stated that the Corporate Debtor has set up a state of the art coal based captive-power plant at Chithurnatham village, Gummidipoondi Taluk, Tiruvallur District, Tamil Nadu which has the capacity to generate 60 MW energy (Power Plant). The Corporate Debtor also installed 230 KV dedicated transmission line to a TNEB (Tamil Nadu



Electricity Board) substation 7.5 km away from the Power Plant. The Corporate Debtor had been servicing customers with A+ credit rating.

18. It is stated that the Corporate Debtor's Power Plant is one of the classes of its kind and has created value addition to cater to the needs of the public in power generation and has a long-time vision of being a pioneer in the line of activity.

19. It is stated that by way of Common Loan Agreement dated 08.04.2011, a consortium of Banks led by the Applicant, agreed to lend term loans to the then-existing entity of the Corporate Debtor.

20. It is stated that subsequently, due to various refinancing, in respect of the Term Loans, four Supplementary Common Loan Agreements were entered into between the lenders and the Corporate Debtor on various dates, i.e. 09.05.2013, 19.11.2015, 11.04.2016 and 29.06.2017. As per the supplementary loan agreements, Andhra Bank exited from the consortium of banks and its facilities were taken over by the Bank of Baroda and the Applicant. Subsequently, Punjab National Bank exited from the consortium and Punjab National Bank's outstanding was transferred to HDFC Bank which was inducted into the consortium.



21. It is stated that the Corporate Debtor had approached the State Bank of India and the Oriental Bank of Commerce to refinance the Loans. State Bank of India and Oriental Bank of Commerce agreed to refinance the existing term loans pursuant to which the new consortium of lenders stood reconstituted i.e. Canara bank, Bank of Baroda, HDFC Bank, State Bank of India and Oriental Bank of Commerce. The Oriental Bank of Commerce merged with the Punjab National Bank in the year 2020.

22. It is stated that the Corporate Debtor availed financial assistance from the consortium of lenders, which was proposed to be used, *inter alia*, to meet part of the Project cost and for working capital requirements of the Power Plant pursuant to the following facility agreements entered into amongst the Corporate Debtor and the Lenders

- a) Common loan agreement dated 08.04.2011, read along with all supplemental common loan (Common Loan Agreement");
- b) Working capital consortium agreement dated 07.05.2013, read along with all supplemental working capital consortium agreements (Working Capital Consortium Agreement"



- c) Consortium working capital term loan agreement dated 29.06.2021 under the GECL Scheme 2.0 ("Consortium Working Capital Term Loan Agreement"); and
- d) Working capital term loan agreement under the GECL Scheme 2.0 (extension) ("Working Capital Term Loan Agreement").

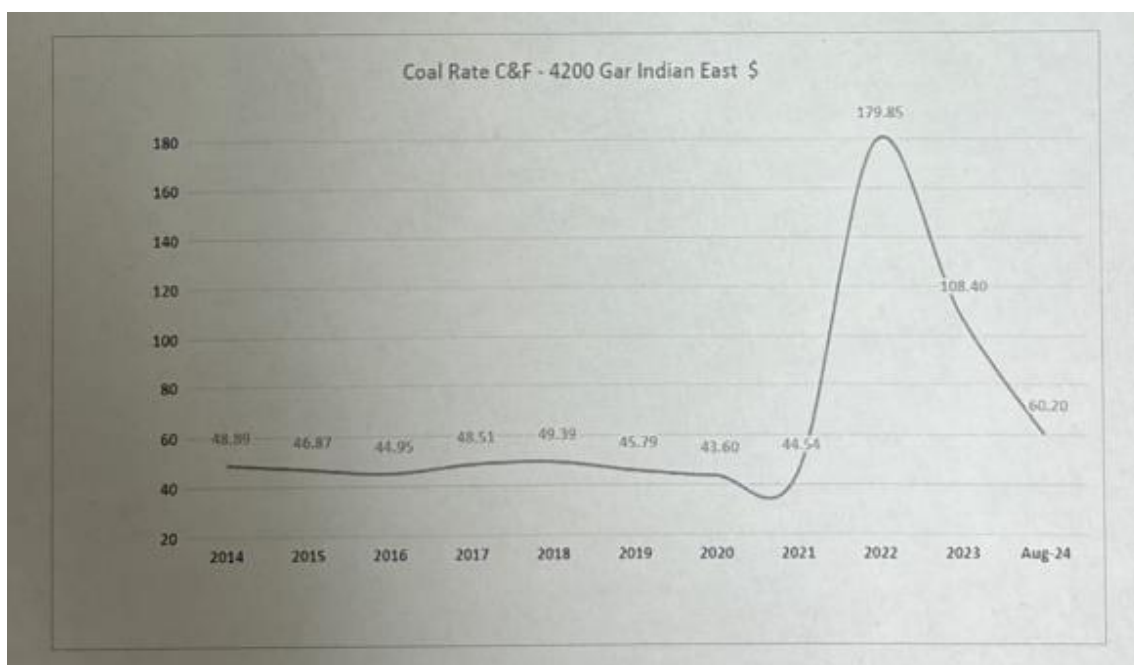
23. It is stated that the Corporate Debtor was demonstrating consistent growth, sustained improvement in profitability, and was consistent in promptly repaying the financial dues. The key financial highlights relating to performance of the Corporate Debtor up to F.Y 2022-2023 are as follows:

Financial Year	Net Profit/Loss for the F.Y	Finance Costs	Depreciation	EBIDTA	Repayment of Principal and Interest	Surplu s/Deficit left after bank payments
(Rupees in 'Crores')						
2013-2014	0.27	25.9	22.12	48.28	29.24	19.05
2014-2015	34.01	39.92	18.77	92.7	59.1	33.6
2015-2016	27.1	36.58	19.27	82.95	53.81	29.13
2016-2017	12.45	26.52	20.04	59.01	56.51	2.5
2017-2018	5.91	25.77	20.44	52.12	36.38	15.74
2018-2019	7.11	26.58	20.54	54.23	37.43	16.8
2019-2020	3.12	26.09	20.63	49.84	34.32	15.52
2020-2021	(28.59)	24.05	20.68	16.14	32.38	(16.24)
2021-2022	(80.57)	24.72	20.69	(35.16)	39.92	(75.09)



2022-2023	(87.86)	31.37	20.79	(-35.69)	31.37	(67.07)
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24. It is stated that the Corporate Debtor is heavily reliant on imported coal for the operation of its Power Plant, as it forms part of the key raw-material. Coal is an important commodity having economic value and the Price of Coal for the last 10 years is shown as under:



25. It is stated that the above chart clearly establishes that from 2014 to 2021, the purchase price of coal ranged from a minimum of USD 43.60 to a maximum of USD 49.39 per ton, including ocean freight charges of USD 7.50 per ton. Without factoring in freight, the coal price ranged from USD 36.10 to USD 41.89 per ton. Unfortunately, the coal prices increased in an



unprecedented manner during the year 2021-2022, and it followed a consistently upward trajectory, rising from USD 44.54 per ton to USD 179.85 per ton. The unprecedented increase in coal prices was about 300% rise during the peak of prices with no significant declines during this period;

Year	Price of Coal excluding Freight (In USD per tonne)	Freight Charges (In USD per tonne)	Price of Coal including Freight (In USD per tonne)	Remarks
2014-2021	36.10 - 41.89	7.50	43.60-49.39	Price range was stable.
2021-2022	44.54-179.85	9.50	54.04- 189.35	300% increase in price of coal during the said year.

26. It is stated that as a result, the entire industry was impacted by this unprecedented surge in coal prices, and these events were beyond the control of the Corporate Debtor or its promoters. Around 8 thermal power plants which were dependent on coal were shut down.

27. It is stated that the Corporate Debtor kept the Applicant and the other consortium members apprised of the fact that the unprecedented increase in the price of the imported coal, along with the severe shortage



in supply, caused widespread disruptions across the industry. The Corporate Debtor also met with the Applicant and the other consortium members at regular intervals and proposed plans to restructure the credit facilities availed by the Corporate Debtor.

28. It is stated that the Corporate Debtor in a meeting with the consortium of banks held on 29.12.2023 informed the consortium of banks about the force majeure events which included the unprecedented surge in coal prices.

29. It is stated that the Corporate Debtor has displayed its sincerity in the payment of debt / loans availed throughout until the COVID pandemic hit viz., January 2020. It is stated that the lockdown was imposed in March 2020. Inter-alia in view of the above, the Corporate Debtor's Power Plant was shut down from 27.03.2022 due to unprecedented increase in coal prices, and scarcity of coal in domestic as well as international markets.

30. It is stated that the Corporate Debtor in a meeting with the consortium of banks held on 24.06.2022 had informed as follows:

- a. That the Power Plant was shut down from 28.03.2022;



- b. That the Corporate Debtor would incur losses if it would resume operation of its Power Plant in the current market scenario;
- c. That the Corporate Debtor was trying alternatives like changing boiler configuration to adopt Dolachar coal blend mix and enhanced captive usages; and
- d. The Corporate Debtor was unable to commit on resuming operation of Power plant due to highly volatile coal prices and non-revival of tariff by TANGEDCO to industrial consumers.

31. It is stated that the Corporate Debtor in a meeting with the consortium of banks held on 21.07.2022 had informed as follows:

- a. That there was no visibility in coal prices coming down in the near future;
- b. The Promoters of the Corporate Debtor with the help of its group Company had been supporting Corporate Debtor in meeting commitments to the lenders; and
- c. Therefore, the Promoter Director proposed restructuring of the facilities in the said meeting

32. It is stated that the Corporate Debtor's expense in operating and maintaining its Power Plant were three-fold:



- a. Firstly, expenses relating to the import of coal which is primary raw material to keep its power plant active. For this the Corporate Debtor had relied on the credit facilities it obtained from the Consortium of Banks;
- b. Secondly, was the expenses relating to keeping the Power Plant operative; and
- c. Thirdly, out of the revenue generated from operating its Power Plant, the Corporate Debtor had to service the loans.

33. It is stated that the Corporate Debtor used to import Indonesian coal as a fuel to operate its Power Plant. As a standard business practice, the Corporate Debtor usually places an order of approximately 75,000 to 80,000 metric tonnes single vessel of coal in a single tranche to make the procurement cost-effective. The Corporate Debtor used to open letters of credit in advance to place an order for the import of coal from Indonesia.

34. It is stated that since the Power plant was non-operational since 27.03.2022, there was no cash flow available with the Corporate Debtor to meet the operational expenses on monthly basis. The Corporate Debtor's operational expenses include expenses incurred towards the upkeep of the Power Plant in order to be ready for operations at any point of time.



35. It is stated that the Managing Director of the Corporate Debtor in a meeting with the consortium of banks held on 25.07.2022 had presented a plan for restructuring of its credit facilities. It is stated that the restructuring plan was rejected for the following reasons:

- a. Sale of the coal stock was allegedly sufficient to meet the entire commitments to the lenders in FY2022-23 and why the restructuring plan did not contemplate the same;
- b. The challenges faced by the Corporate Debtor were temporary in nature;
- c. The entire commitments towards lenders during the year FY 2022-23 was Rs.45.00 Crore which allegedly could be met through a mixture of measures such as part disposal of stock, advance from customers with whom and infusion of promoters support.

36. It is stated that without any support from the consortium members, the Corporate Debtor's promoters infused the following substantial funds from its group company named ARS Steels Private Limited inter-alia to keep the account regular and to meet with the operational expenses of the Power Plant:



<u>S. No</u>	<u>Year</u>	<u>Amount Infused</u> <u>('In Rs')</u>
1.	2018-21	20.00 Crores
2.	2021-22	8.25 Crores
3.	2022-23	12.50 Crores
4.	2023-24	7.65 Crores
5.	2024- Upto July 24	0.66 Crores
Total		49.06 Crores

37. It is stated that the Managing Director of the Corporate Debtor in a meeting with the consortium of banks held on 22.08.2022 presented another restructuring plan.

38. It is stated that the Corporate Debtor's Managing Director in the meeting with the Consortium members dated 22.08.2022 apprised the Applicant and the consortium members that the Corporate Debtor would resume operations by November, 2022.

39. It is stated that on 29.08.2022, Canara Bank illegally declared the Corporate Debtor's loan account as NPA. This illegal declaration of Corporate Debtor's loan account as NPA acted as a deterrent as the Corporate Debtor could not obtain further funds from the sanctioned amount that was required for operations. Hence, it was impossible for the Corporate Debtor to commence operations by November, 2022. The Banks



neither considered the Corporate Debtor's restructuring proposal nor did it provide the Corporate Debtor an opportunity to resume the operations in the Power Plant.

40. It is stated that the Managing Director of the Corporate Debtor in a meeting with the consortium of banks held on 30.08.2022 that given all the force majeure events, the Corporate Debtor requires restructuring of the credit facilities as this is the only way to resume operations. The Managing Director of the Corporate Debtor in the said meeting stated as follows:

- a. Other than the amounts already sanctioned by the Consortium, no additional funds was sought by the Corporate Debtor under the proposed restructuring
- b. The promoters will infuse the margin as required under the RBI's restructuring guidelines;
- c. The consortium members will not face any haircut on the outstanding debt; and
- d. The Corporate Debtor is agreeable to including a Right of Recompense clause, which would allow the consortium to recover any waived or reduced amounts at a later stage if the company's financial health improves.



41. It is stated that while the Corporate Debtor and its promoters had placed various revised proposals for consideration, the Banks refused to consider the same. As a matter of fact, the Applicant and consortium members started insisting Corporate Guarantee from the other group company of the Corporate Debtor and also to mortgage assets of the group Company of the CD for the purpose of disbursement and continuing the loan accounts.

42. It is stated that the Consortium, in its meeting dated 23.12.2022, appointed a forensic auditor, Kansal Singla and Associates ('Forensic Auditor), to conduct a forensic audit of the Corporate Debtor. The Corporate Debtor provided a reply dated 06.03.2023, giving a para-wise answer to the Forensic Auditor's observations placed before the Consortium. The findings of the said Forensic Audit were discussed in the Consortium meeting held on 18.03.2023, attended by 17 members, including the forensic auditor and 16 representatives from the respective banks in the Consortium. The following are the relevant extracts of the minutes of the Consortium Meeting dated 18.03.2023:

Sri. R. Krishnaprasad, Deputy General Manager, Canara Bank, welcomed

lenders once again and informed that the forensic audit observations were



discussed point-wise during the last consortium meeting and the company has given replies to the queries raised which have also been incorporated in the final audit report and the same was circulated to the lenders. He requested lenders to raise clarifications on any points related to the Forensic Audit.

Forensic Auditor, Shri. SK Arora of M/s. Kansal Singla & Associates informed that audit report was discussed in detail in last meeting and queries were clarified & replies from the company were incorporated & declared the account as 'No Fraud'.

CGM, Canara Bank enquired that whether all lenders are in line with the conclusion of Forensic Audit. Lenders unanimously agreed that this is a case of 'No Fraud', and to take up with the respective sanctioning authorities for closure of Forensic Audit.

DGM, Canara Bank informed that the company booked an operating loss of Rs. 92.00 Crs during FY2021-22.

DGM, Canara Bank informed that the present discussion is on closure of forensic audit & JLM will evaluate the restructuring proposal separately and only if promoters bring in Promoters contribution as per expectation of the lenders, the same will be pursued/examined.



DGM, Canara Bank informed that as the Forensic Audit report concluded as No Fraud, whichever bank has Red Flagged the account may withdraw it. Lenders agreed for the same.

Mr. Arun, CM, SBI informed that the withdrawal of Red Flagging would be taken up for approval and would be done.

43. It is stated that the Consortium, in its meeting dated 18.03.2023, based on the report of the Forensic Auditor, unanimously held that this was a case of 'No Fraud'. It is stated that to that date, the Consortium did not provide ARS Energy with a copy of the findings in respect of the Forensic Audit Report. The Applicant vide its mail dated 17.04.2023, sent a different version of the minutes of the Consortium Meeting dated 18.03.2023, which did not include any of the extracts referred to in the earlier paragraphs of the Reply. These extracts included an unanimous agreement among the Consortium members that this was a case of 'No Fraud'.

44. It is stated that the Consortium recognized the incipient distress that the account was going into and the fact that the same was arising out of the factors beyond the Corporate Debtor's control.



45. It is stated that the Corporate Debtor submitted its restructuring proposal on 19.04.2023. It is stated that the same was received by the Consortium only because this was the case where the entire consortium unanimously agreed that it is a case of 'No Fraud

46. It is stated that the salient features of the restructuring plan dated 19.04.2023 were as under:

S.No	Particulars	Details
1.	Cut-off date	31.05.2022
2.	Outstanding Fund- Based Credit Facilities as on cut-off date	Rs.19.46 Crores
3.	Outstanding non-fund-based Credit Facilities as on cut-off date	Rs.37.38 Crores
4.	Conversion of Unsustainable Debt to Compulsorily Convertible Preference	Rs.90.54 Crores

	Shares (CCPS)	
5.	Repayment period of Sustainable Debt	March 2040
6.	Power Purchase Agreements ('PPA') arrangements of the Corporate Debtor going forward	-



47. It is stated that this Plan was considered by the consortium in its meeting held on 19.04.2023 and the consortium expressed concerns about several aspects of the Plan.

48. It is stated that the Corporate Debtor then gave a revised restructuring plan on 21.07.2023 with the following salient features:

S.no	Particulars	Details
1.	Cut-off date	31.05.2022
2.	Outstanding Fund- Based Credit Facilities as on cut-off date	Rs.19.46 Crores
3.	Outstanding non-fund-based Credit Facilities as on cut-off date	Rs.37.38 Crores
4.	Conversion of Unsustainable Debt to Compulsorily Convertible Preference Shares (CCPS)	Rs.90.54 Crores
5.	Repayment period of Sustainable Debt	March 2040
6.	Power Purchase Agreements ('PPA') arrangements of the Corporate Debtor going forward	-



49. It is stated that this was considered at the Consortium meeting dated 21.07.2023 and concerns about the restructuring plan were raised only on three issues:

- i Whether the unsustainable debt should be converted into Equity or debt instrument?
- ii. Promoter contribution was insufficient
- iii. The assumptions that the coal price and PPA structure were not practical.

50. It is stated that the Corporate Debtor then worked very hard and came up with a revised Restructuring Proposal on 13.09.2023 addressing all of these specific issues. Unfortunately, the Consortium took the decision to reject all attempts to restricting the financial assets without reference to the revised proposal dated 13.09.2023.

51. It is stated that the Consortium's decision to proceed for recovery is also vitiated by its failure to take note of the fact that the Corporate Debtor is involved in the power sector which is a highly regulated sector. The Corporate Debtor, being a Power Generating company, has no control over various elements, including the supply of coal, the price of coal and freight charges for the import of coal, all of which are regulated by the governments of various countries. The Applicant has declared the



Corporate Debtor's loan account as NPA without considering sectoral issues and ground realities affecting different sectors.

52. It is stated that the Applicant / Canara Bank has initiated Multiple Proceedings against the Corporate Debtor, Corporate Guarantors and Personal Guarantors before different forums for the same cause of action, only as a means for recovery and building pressure for releasing the payments.

53. It is stated that the consortium members including the Applicant filed an application O.A 6 of 2024 under Section 19 of the RDB Act on 8.12.2023 before the Hon'ble DRT, against the Corporate Debtor, Corporate Guarantors and Personal Guarantors to recover the debt allegedly owed by the Corporate Debtor.

54. It is stated that the Applicant herein filed an application CP(IB) 99 of 2024 on 16.02.2024 before the Tribunal for initiating CIRP against the Corporate Debtor.

55. It is stated that on 30.04.2024, State Bank of India filed an application before the Tribunal for initiating CIRP against the Corporate Debtor; and



56. It is stated that State Bank of India also filed applications CP(IB) 115 of 2024, CP(IB) 116 of 2024, and CP(IB) 117 of 2024 before the Tribunal against the Leading Estates Limited, BGS Credit Private Limited and East Delhi Leasing Private Limited, who have their registered office at New Delhi, under Section 7 of the Code.'

57. It is stated that the Applicant has also filed Application CP(IB) 57 of 2024 and CP(IB) 58 of 2024 before this Tribunal to initiate the Insolvency Resolution Process against the Personal Guarantors, who are residents of New Delhi.

58. It is stated that the Applicant and State Bank of India have initiated multiple proceedings against the corporate debtor in different forums. It is stated that this Application is to initiate CIRP against an otherwise solvent and viable company which committed the default due to force majeure events beyond the control of the Corporate Debtor and the Application ought to be dismissed inter-alia on the following grounds:

- a. That the Applicant sanctioned a GECL 2.0 Extension Loan of Rupees. 5.08 Crores to the Company on 05.01.2022. The Repayment Schedule of the said loan provided a moratorium of 12 months from the date of the first disbursement. The first disbursement of the GECL 2.0 Extension Loan was on 05.01.2022 and from 20.01.2022 to 19.01.2023 the said loan was not due and repayable on account of the



moratorium. However, the Applicant has claimed under Part-IV of the Application that the Corporate Debtor had allegedly defaulted payment of the GECL 20 Extension Loan on 20.10.2022, during which there was a moratorium on the said loan and the same was not repayable.

b. On page 9 of the application, the authorized officer of the applicant has incorrectly certified that he is fully qualified and permitted to act as an Insolvency Resolution Professional under the Insolvency and Bankruptcy Code, 2016, along with its associated rules and regulations. Instead, he should have certified that the proposed Interim Resolution Professional, as mentioned on page 4 of the application, is fully qualified and permitted to act as an Insolvency Resolution Professional in accordance with the same code and regulations

c. The Applicant ought to have taken into record the commercial hardships and unforeseen circumstances beyond the control of the Corporate Debtor. In spite of which the Corporate Debtor used all its reasonable efforts to keep the Power Plant operational.

d. Though, Section 7(1) of the Code inter-alia provides that the financial creditor may jointly file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, the other members of the Consortium have chosen not to file an application before this Tribunal probably for the reasons mentioned in this Application.

e. The Corporate Debtor, in the meetings held with the consortium, had time and again stated that the Corporate Debtor faced an unprecedented situation, which was purely a force majeure event. The Corporate Debtor has a longstanding relationship with the bankers, and the Corporate Debtor maintained a 20-year record of recovery by promptly servicing the loans. Due to force majeure events such as COVID-19 and the Russian-Ukraine war, there was



unprecedented rise in the price of coal and shortage in supply of coal as set out in detail in this Reply.

f. The Consortium members including the Applicant in their meeting dated 21.07.2023 unanimously agreed to pursue recovery actions including initiating CIRP of the Corporate Debtor. That the Applicant has filed this Application to initiate CIRP against the Corporate Debtor as a substitute for recovery procedure, solely for the purpose of the debt recovery, despite the fact that the Corporate Debtor was a solvent entity and is a going concern before the force majeure events.

g. In fact, the Consortium members, including the Applicant, had been contemplating approaching this Tribunal as early as 22.08.2024, even before the Corporate Debtor's loan account was notified as Non-Performing Asset. Hence, the entire basis of the Applicants Company Petition is flawed, as the intention of the Consortium in approaching this Tribunal is solely for the purpose of the debt recovery.

h. The Applicant's act of refusing the Corporate Debtor revised Restructuring Proposal on 13.09.2023 addressing the specific issues raised in the Consortium meeting dated 21.07.2023 further establishes that the Applicant's was not inclined towards resolution of the Corporate Debtor and the intention of the Applicant was to initiate recovery proceedings against the Corporate Debtor;

i. The Applicant's decision to initiate CIRP against the Corporate Debtor is also vitiated by its failure to take note of the fact that the Corporate Debtor is involved in the power sector which is a very highly regulated sector. The Corporate Debtor, being a Power Generating company, has no control over various elements, including the supply of coal, the price of coal and freight charges for the import of coal, all of which are regulated by the governments of various countries. The Applicant has initiated recovery against the



Corporate Debtor without considering sectoral issues and ground realities affecting different sectors.

j. That the Applicant and consortium members failed to recognise the tireless efforts taken by the Corporate Debtor, despite the occurrence of force majeure events, to float the business of the Corporate Debtor, including but not limited to as promoters consistently infusing further capital into the Corporate Debtor, during the times of financial distress, aggregating to a sum of Rs. 49.06 Crores from 2018-21 to July 2024.

k. This very action of the Corporate Debtor's promoters was to ensure that the plant and the machinery installed therein (which are part of the assets hypothecated to the Applicant and other consortium members) do not turn obsolete, and this further proves that the Corporate Debtor was prepared to restart its operations in full capacity/full swing provided the other factors beyond its reasonable control became favourable.

l. That the Applicant ought to have noticed that the temporary closure of its factory was attributable to the impact on coal prices due to the then ongoing Russia-Ukraine War and, therefore, the Corporate Debtor was unable to run its power plant.

m. The Applicant failed to recognize that the then ongoing international trade situation in terms of the ban on the import of coal from Australia to China and the impact caused to the Corporate Debtor's business as the Corporate Debtor was dependent on imported coal to run its Power Plant and this coal was imported primarily from Indonesia

n. That the Applicant failed to take on record that the rate of coal during the first half of 2023 was so high that it made the Corporate Debtor's business plans non-viable. The Applicant and the other consortium members were made aware ahead of time of the facts,



and the Applicant failed, by rejecting the assurance given by the Corporate Debtor and its promoters that the Corporate Debtor was fully ready to restart the power plant's operations.

o. That the Applicant and consortium members failed to notice that the Corporate Debtor had achieved a revenue of Rs. 109.49 crores in Financial Year 2022 against revenue of Rs. 140.34 crores in Financial Year 2021 with a decrease of approximately 22%, the Corporate Debtor had a negative EBIDTA of Rs.35.15 crores in the Financial Year 2021-22 against a positive EBIDTA of Rs.16.13 crores in Financial Year 2020-2021 which evidences that the Corporate Debtor's operations and profitability have been adversely impacted by factors that were completely beyond its reasonable control. However, in spite of all disruptions in the operations and losses in the Financial Year 2021-22, the Corporate Debtor's promoters had meticulously used all their efforts to keep the account standard and regular till May 2022.

p. That the Applicant had failed to take on record that the Corporate Debtor had pre-emptively approached the Applicant and consortium members to work out a restructuring proposal of the various credit facilities availed by it and had always acted in good faith, been negotiating with the Applicant and consortium members towards working of a viable plan/proposal, including convening several meetings and appointing a restructuring agent to consistently work on the suggestions made by the Applicant and consortium members on various restructuring plans submitted throughout the period beginning from 21.03.2022 till the last meeting that was conducted viz, the Joint Lenders Meeting held on 11.10.2023. However the Applicant and the consortium members did not accept any part of the several restructuring proposals submitted and denied to accept any of the said proposals by stating mere vague reasons that were arrived at without looking into/considering the practical aspects involved in the execution of such plans proposed by the Corporate Debtor.



q. That the Applicant and consortium members failed to notice the steps taken by the Corporate Debtor to ensure revenue generation, and as part of the objective, the Corporate Debtor had, in fact, modified its power plant to make the plant use of alternate fuel like Dolachar Coal. The Corporate Debtor had envisaged a total capex of Rs. 3.14 Crores/ (Indian Rupees Three Crores and Fourteen Lakhs only) as the consumption of Dolachar coal will bring down the total coal cost, which in turn will result in profitability.

r. The Applicant has created a web of litigations by initiating multiple proceedings against the Corporate Debtor, which are extremely prejudicial to the Corporate Debtor, Corporate Guarantors and its Personal Guarantors, nothing but a mere wastage of precious judicial hours and reckless spending of public money.

s. That admission of this application is not obligatory merely on the proof a debt and the alleged default of the Corporate Debtor as this Tribunal ought to look into the relevant factors concerning the present case such as:

- i. the illegal classification other Corporate Debtor's Loan account as NPA
- ii. the Consortium's unlawful rejection of the Corporate Debtor's revised resolution plan 13.09.2023,
- iii. multiple Parallel and frivolous proceedings initiated by the members of the Consortium including the Corporate Debtor,
- iv. the impeccable track record of the Corporate Debtor and its promoters,
- v. the members of the Consortium unanimously agreeing that this is a case of no fraud,
- vi. The Corporate Debtor's promoters consistently infusing further capital into the Corporate Debtor, during the times of



financial distress, aggregating to a sum of Rs. 49.05 Crores om 2018-21 to July 2024,

vii. the overall financial health of Corporate Debtor under its existing management prior to the occurrence of the force majeure events, and

viii. The Corporate Debtor's consistent growth, sustained improvement in profitability under its existing management before the force majeure events:

59. In view of the above, the Corporate Debtor has prayed that this Tribunal may dismiss this application.

ADDITIONAL DOCUMENTS FILED BY THE APPLICANT BANK

60. The Applicant has filed the documents vide S.R.No.6192 dated 19.12.2024 as under:

- a) Working Capital / Open Cash credit account statement
- b) Drawing Power permitted for the month of June, 2022 along with Stock Statement issued by the Corporate Debtor for the month of May, 2022 vide letter dated 10.06.2022
- c) Term Loan Account Statement
- d) Letter dated 23.09.2022 issued by the Applicant to the Corporate Debtor demanding payment
- e) Letter dated 29.09.2022 issued by the Applicant to the Corporate Debtor declaring the Account as NPA



- f) Letter issued by the Corporate Debtor dated 07.11.2022 to the Applicant providing Account becoming NPA
- g) Letter issued by the Corporate Debtor dated 11.11.2022 to the Applicant providing reasons for the Account becoming NPA
- h) RBI Master Circular dated 01.07.2011 on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances
- i) RBI Master Circular dated 08.05.2023 on Income. Recognition, Asset Classification and Provisioning pertaining to Advances

ADDITIONAL DOCUMENTS FILED BY THE RESPONDENT:

61. The Respondent has also filed the documents vide S.R.No.6132 dated 17.12.2024 as under:

- a) Version of Minutes of Meeting dated 18.03.2023 received by the Corporate Debtor vide Applicant's email dated 17.04.2023.
- b) Applicant's email dated 17.04.2023 addressed to the Corporate Debtor
- c) Applicant's GECL 2.0 Extension Sanction letter dated 05.01.2022

WRITTEN SUBMISSIONS FILED BY THE RESPONDENT:

62. The Corporate Debtor has filed the Written Submissions vide S.R.No.198 dated 10.01.2025. It is stated that the Corporate Debtor has



utilized only the Principal amount of the sanctioned facilities, leaving the Corporate Debtor sanctioned limits of Rupees 124 Crores that remain unutilized. During the time of financial distress, the Corporate Debtor in good faith had refrained from utilizing Rs.124 crores and sought the assistance of the consortium to revive its business and get back on its feet. (Paras 3 and 8 of FC's Demand Notice dated 20.09.2023 at Page No: 2812, Volume 17 of Application).

63. It is stated that Corporate Debtor's Promoters have infused funds into the company for a cumulative value of Rs.155.47 crores (approx.) from the date of inception. This includes the Promoter's infusion of funds through ARS Steels Private Limited to the tune of Rs.49.06 Crores during the period from 2018 to July 2024. The majority was spent during the force majeure period to maintain the Power Plant. (Para 24 at page no:11 of the Corporate Debtor 's reply dated 22.11.2024).

64. It is stated that the Financial Creditor and the consortium members had sanctioned credit facilities under GECL 2.0 Scheme to the Corporate Debtor to the tune of Rupees 38.30 Crores. (Working Capital Term Loan GECL 2.0 Extension loan agreement dated 30.03.2022 at Volume 5 and



Volume 6 of the Application at Page nos: 866 to 895). The principal amount in respect of the said facilities were to be repaid by the Corporate Debtor in 48 months door-to-door tenor commencing from the date of disbursement after a moratorium period as tabled below (Schedule III of (Working Capital Term Loan GECL 2.0 loan agreement dated 30.03.2022 at Volume 6 of the Application at Page nos: 893):

Lender	Moratorium Period start date	Moratorium Period End date	Duration
FC	05.01.2022	February 2023	12 months
Bank of Baroda	23.02.2022	March 2024	24 months
State Bank of India	02.12.2021	December 2023	24 months
Punjab National Bank	17.11.2021	November 2022	12 months
HDFC Bank	13.12.2021	February 2024	24 months

65. It is stated that during the moratorium of the said facilities intended for the Corporate Debtor to restart its operations and revive its business, the Account of the Corporate Debtor was declared as NPA. Due to this, the Corporate Debtor was deprived of its drawing power and the very



facilities granted by the Financial Creditor and the consortium members to revive the business operations.

66. It is stated that the Corporate Debtor 's Managing Director had informed that the Power Plant was shut down on 27.03.2022 due to abnormal coal prices and post-COVID disruptions that caused industry-wide stress (Para 3 of the MOM dated 24.06.2022 at page no: 1028, Volume no:6 of the Application). The Corporate Debtor's management has been trying alternatives like changing configuration of Power Plant's boiler to adopt Dolachar coal blend mix and enhance the Power Plants captive usage. The change in configuration involved a capital expenditure of Rs.3.50 Crores which the Corporate Debtor has invested through its own funds. Corporate Debtor's MD also agreed to provide the Financial Creditor and the consortium members a concrete plan of action by 15.07.2022.

67. It is stated that Corporate Debtor's MD informed the consortium in their meeting dated 22.08.2022 that Corporate Debtor would resume operations from November 2022. (Para 2 of the MOM dated 22.08.2022 at Page no: 1035 Volume no:6 of the Application). It is stated that all the lenders unanimously insisted on resuming operations immediately to



prevent the account from slipping into NPA before the restructuring plan is implemented (Para 12 of the MoM dated 22.08.2022 at page no: 1037, Volume no: 6 of the Application). Financial Creditor and the consortium members agreed to allow operations in the Corporate Debtor's loan account with a maximum cap of Rs. 50 Lakhs per month for the Corporate Debtor inter-alia to meet statutory dues, salaries to employees and to keep the plant in preservation mode. (Para 14 of the MOM dated 2022 at Volume no:6 of the Application).

68. It is stated that the Financial Creditor and consortium members had agreed in principle to restructure the facilities subject to respective banks' internal guidelines and policy, subject to inter-alia that all restructuring requirements of RBI including signing of Inter Creditor Agreement, Pledge of Shares by the Corporate Debtor, Forensic Audit for last 3 years, Technological Economic Viability Study report, RP 4 rating (minimum) shall mandatorily be complied with by the Corporate Debtor (Para 16.2 of the MOM dated 30.08.2022 at page no 1043, Volume no:6 of the Application).



69. It is stated that a meeting of the Consortium members was convened and held on 18.03.2023, wherein the Forensic Auditors report was discussed in detail (MOM dated 18.03.2022 at Page no:1061, Volume no:6 of the Application).

i. It is stated that the Forensic Auditor declared the Account of the Corporate Debtor as 'No Fraud (Para 3, Page no: 1061 of the MOM dated 18.03.2022 at Page no: 1061, Volume no:6 of the Application) (Note: To this date, the Consortium has not provided CD with a copy of the Forensic Audit Report and the findings therein.)

ii. FC and the Consortium members unanimously agreed that this is a case of 'No Fraud'. FC and the Consortium members agreed that each of the banks may withdraw the Red Flagging of the Account (Para 4, Page no: 1061 of the MOM dated 18.03.2022 at Page no: 1061, Volume no: 6 of the Application).

70. To support its submissions, the Corporate Debtor filed a compilation of Judgements vide S.R.No. 6194 dated 19.12.2024 and has relied on the Hon'ble Supreme Court Judgement in the case of *Vidharbha Industries Power Ltd vs Axis Bank Ltd (2022 8 SCC 352)* where it was held as under :



"76. The fact that the legislature used "may" in Section 7(5)(a) IBC but a different word, that is, "shall" in the otherwise almost identical provision of Section 9(5)(a) shows that "may" and "shall" in the two provisions are intended to convey a different meaning. It is apparent that the legislature intended Section 9(5)(a) IBC to be mandatory and Section 7(5)(a) IBC to be discretionary. An application of an operational creditor for initiation of CIRP under Section 9(2) IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice have been delivered to the corporate debtor by the operational creditor and no notice of dispute has been received by the operational creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.

77. On the other hand, in the case of an application by a financial creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the adjudicating authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the



corporate debtor. The adjudicating authority may in its discretion not admit the application of a financial creditor”

”81. The title “Insolvency and Bankruptcy Code” makes it amply clear that the statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of the IBC to penalise solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) IBC, therefore, confers discretionary power on the adjudicating authority (NCLT) to admit an application of a financial creditor under Section 7 IBC for initiation of CIRP” (On Pg no: 25 of the compilation of cases dated 16.12.2024 relied by CD)

”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 realization. The example is only illustrative"

71. The other Judgements relied on by the Corporate Debtor in support of its contentions are as follows;

- a) Suresh Kumar Reddy vs Canara Bank (2023) 8 SCC 387*
- b) Laxmi Pat Surana vs Union of India (2021) SCC 481*
- c) Dena Bank vs Siva Kumar Reddy(2021)10 SCC 330*



d) Milind Kashiram Jadhav vs. State Bank of India CA (AT) (Insolvency)

No. 1589 of 2023

e) Vidayasagar Prasad vs UCO Bank and another 2024 SCC Online SC

2993

f) Amar Alloys Private Limited vs State Bank of India 2019 SCC OnLine

P&H 571

g) Atibir Industries Co.Limited vs State Bank of India WPO No. 722 of 2023

h) HDFC Bank Limited Vs. John Energy Limited CP(IB)/02(AHM)/2022

i) Central Bank of India vs Simplex Infrastructure [2023 SCC OnLine

NCLT 258]

FINDINGS OF THIS TRIBUNAL:

72. Heard the submissions of both the parties and perused the documents on record.

73. The applicant has filed the written submissions vide S.R.No.197 dated 10.01.2025. It is seen that the applicant had issued a communication on 23.09.2022 to the Corporate Debtor bringing to its attention that it has failed to meet the various loan repayments undertaken by it and accordingly requested the Corporate Debtor to pay its outstanding dues. (Annexed @ Page No. 43 of the Affidavit filed by the Applicant on



18.12.2024). As the Corporate Debtor failed to pay the amounts due and payable to the various lenders including this Applicant herein, all accounts of the Corporate Debtor maintained with the Applicant herein were classified as NPA with effect from 28.09.2022. This fact was duly communicated to the Corporate Debtor vide letter dated 29.09.2022 (Annexed @Page No. 45 of the Affidavit filed by the Applicant on 18.12.2024). In the same communication dated 29.09.2022, it was also brought to the attention of the Corporate Debtor that the default has been committed by the Corporate Debtor with effect from 30.06.2022 qua this Applicant and accordingly all of its accounts slipped into NPA.

74. It is seen from the application that the Applicant had also issued a demand notice under Section 13(2) of the SARFAESI Act, 2002, on behalf of itself and other lenders calling upon the Corporate Debtor to pay the outstanding amounts. The Corporate Debtor vide letter dated 18.11.2022 provided unsubstantiated grounds for not maintaining the financial discipline and not paying the amounts due and payable to the Applicant. In sudden *volte face*, and in contradiction to the earlier communication dated 07.11.02022 and 11.11.2022, the Corporate Debtor in its communication dated 18.11.2022, questioned the classification of its'



accounts as NPA without any basis. (Annexed @ Volume 17 Page No. 2820 of the Application).

75. During the hearing the applicant has placed a RBI Circular dated 08.05.2023. The clause 2.2.2 of the circular reads as under:

2.2.2 Treatment of NPAS - Borrower-wise and not Facility-wise

(i) In respect of a borrower having more than one facility with a bank, all the facilities granted by the bank will have to be treated as NPA and not the particular facility or part thereof which has become irregular/NPA

(ii) However, in respect of consortium advances or financing under multiple banking arrangements, each bank may classify the borrowal accounts according to its own record of recovery and other aspects having a bearing on the recoverability of the advances. Each bank shall follow the principle at (i) above for NPA classification of a borrower.

76. It is seen from the application that the Corporate Debtor had acknowledged its debt by way of execution of various documents which are tabulated hereunder:



S.No.	Date	Description of documents	Page No.
1.	24.09.2014	Revival letter executed by ARS Energy P Ltd (Formerly ARS Metals Ltd) in respect of working capital consortium agreement.	Volume 17 2739
2.	24.09.2014	Revival letter executed by ARS Energy P Ltd (Formerly ARS Metals Ltd) in respect of common loan agreement and common deed of hypothecation.	Volume 17 2740
3.	04.02.2017	Demand Promissory for Rs. 10 Crores execute by ARS Energy in favour of Canara Bank Consortium.	Volume 17 2741-2741
4.	02.05.2019	Revival Letter executed by ARS Energy in favour of the consortium.	Volume 17 2742-2742

5.	02.05.2019	Acknowledgement of Debt and Security executed by ARS Energy in favour of Canara bank.	Volume 17 2743-2743
6.	24.09.2019	Acknowledgement of Debt and Security for Rs. 44,85,39,520/- in favour of Canara Bank.	Volume 17 2746-2746
7.	01.03.2021	Acknowledgement of debt and security executed by ARS Energy.	Volume 17 2747-2747
8.	01.03.2021	Revival letter executed by ARS Energy	Volume 17 2748-2748
9.	01.03.2021	Revival letter executed by ARS Energy in respect of working capital consortium agreement dated 05.09.2018.	Volume 17 2749-2749
10.	19.08.2021	Revival letter executed by ARS Energy in respect of Working capital consortium agreement dated 05.09.2018.	Volume 17 2750-2750
11.	31.03.2018	Balance Sheet as on 31.03.2018	Volume 17 2754-2756
12.	31.03.2019	Balance Sheet as on 31.03.2019	Volume 17 2767
13.	31.03.2020	Balance Sheet as on 31.03.2020	Volume 17 2778
14.	31.03.2021	Balance Sheet as on 31.03.2021	Volume 17 2791
15.	31.03.2022	Balance Sheet as on 31.03.2022	Volume 17 2802



77. With respect to the contention of wrongful classification of accounts of the Corporate Debtor as NPA with effect from 29.09.2022, the applicant in its written submissions has stated that the Applicant has classified the accounts of the Corporate Debtor as per the mandate issued by RBI vide master circular RBI/2011-12/66 dated 01.07.2011 and in consonance with the Circulars issued by the RBI, wherein an asset has to be classified as NPA borrower wise and not facility wise. (Annexed @ Page No. 68 of the Affidavit filed by the Applicant on 18.12.2024). Considering that the default was committed by the Corporate Debtor with respect to the Working Capital Facilities on 30.06.2022, all accounts of the borrower/Corporate Debtor were classified as NPA with effect from 28.09.2022. The Corporate Debtor, in terms of its earlier communications dated 07.11.2022 and 08.11.2022, having accepted its account slipping into NPA and not questioning the same before the appropriate forum, cannot now by way of a defence, question the classification. The requisite to maintain an application under Section 7 as held by the Hon'ble Supreme Court in the case of *Laxmi Pat Surana Vs. Union Bank of India & Anr.* MANU/SC/0221/2021 and the Hon'ble NCLAT in the case of *Edelweiss Asset Reconstruction Company Limited Vs. Perfect Engine Components Pvt. Ltd.* MANU/NL/1043/2022, is the occurrence of



default and when it occurred and not with respect to the date of classification of the Corporate Debtors' account as NPA. As stated above, such an issue ought to have canvassed before Appropriate Authority and cannot be raised under the guise of the counter filed before this Tribunal. Dehors the above, the Applicant unequivocally submits that the account of the borrower has been classified as NPA in consonance to the guidelines issued by the RBI and hence is valid.

78. In relation to contention of the corporate Debtor that there is no default committed by it in view of the period of Moratorium with respect to the repayment of loan facilities, we find that the said statement is not only self-contradictory to the communications made by them above but is also highly misconceived for the following reasons:

a. As stated above, the Corporate Debtor availed 4 loan facilities.

With respect to the Working Capital facilities and Term Loan facilities, there is no stipulation for moratorium period and consequently the argument of the Corporate Debtor is flawed.

b. With respect to the GECL 2.0 and GECL 2.0 extension, as the business of the borrower underwent stress due to Covid-19

Pandemic, the said facility was approved by the Government of



India for the purpose of meeting the exigency circumstance during the Covid period. Furthermore, GECL 2.0 Moratorium has already ended, hence there was no moratorium period applicable as on date.

c. In this context, the Applicant had issued a letter dated 05.11.2022 for the purpose of GECL 2.0 extension scheme. As per the said sanction letter, it was made explicitly clear that the terms and conditions of the sanction, including any moratorium period, if any, would be subject to the circulars/ guidelines issued by RBI from time to time. The relevant portion of the sanction letter dated 05.01.2022, filed by the Respondent/Corporate vide the index of documents filed by the Corporate Debtor on 09.12.2024 at page number 9 is extracted hereunder for ease of reference:

"5. All other terms and conditions as applicable to such advances shall be strictly adhered to as per bank Circular/ RBI Guidelines issued from time to time."

d. As stated above, as per the circular, the account of the Corporate Debtor should be classified as NPA borrower wise and not account wise. Since, the Corporate Debtor had committed default with



respect to the Working Capital Facilities on 30.06.2022, all accounts were classified as NPA with effect from 28.09.2022. The Corporate Debtor thereafter did not pay the outstanding due with respect to all the 4 loan accounts and committed default as per the table extracted herein above in Paragraph 1.

e. Therefore, the Corporate Debtor cannot use the feeble argument of there being a moratorium when the Corporate Debtor itself had contributed to the various defaults and its accounts being classified as NPA.

79. The applicant has denied the contention of the Corporate Debtor that due to the force majeure events, the Corporate Debtor could not maintain the financial discipline, and hence could not repay the Applicant the defaulted amounts. Such an argument cannot be made especially in a Section 7 Application. This is in light of the decision of the Hon'ble Supreme Court in the case of *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors. MANU/SC/0408/2017*, wherein it was held that commercial impossibility or hardship amongst other grounds, cannot be a bar in performing contractual obligations, which is what the Corporate Debtor is intending to project before this



Tribunal. The above principle has been upheld in several other judgments. Furthermore, in the event such an argument on grounds of force majeure is sought to be brought by the Respondent/ Corporate debtor, it should have been done before the appropriate Civil Court. Additionally, it is also the legislative intent to exclude only the period stipulated in Section 10A and not for defaults committed either prior or post that period. In the present case, all defaults committed by the Corporate Debtor do not fall within the period stipulated in Section 10A, hence, this is the reason why the force majeure ground cannot be raised by the Respondent/ Corporate Debtor.

80. The applicant has stated that there is no question of equity while dealing with Applications under the Code, as held by the Hon'ble Supreme Court in the case of *E.S. Krishnamurthy vs M/S Bharath Hi Tech Builders Pvt. Ltd. MANU/SC/1249/2021*, in the case *supra*, it is held as follows:

“29. The IBC is a complete code in itself. The Adjudicating Authority and the Appellate Authority are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelises and circumscribes the ambit of such jurisdiction.



Thus, while the Adjudicating Authority and Appellate Authority can encourage settlements, they cannot direct them by acting as courts of equity."

81. The Applicant has relied on a catena of decisions of the Hon'ble Supreme Court that even assuming but not conceding that there is a period of moratorium with respect to the GECL facilities, considering there being no moratorium in the Working Capital and Term Loan Facilities, which comprise of the significant portion of the default amount (over Rs.79 Crores), which default amount is beyond the threshold limit prescribed under Section 4 the Code, the present Application will have to be admitted. The decisions placed by the Applicant are as follows:

- a) M. Suresh Kumar Reddy vs Canara Bank & Ors. MANU/SC/0561/2023 (Para 10)*
- b) Innoventive Industries Ltd. Vs. ICICI Bank and Ors., MANU/SC/1063/2017 (Para 28)*
- c) Rajesh Kedia, Ex-Director of Ajanta Paper and General Products Ltd. Vs. Phoenix ARC Private Limited and Ors. MANU/NL/0228/2022 (Para 13)*
- d) Kotak Mahindra Bank Limited Vs. Kew Precision Parts Private Limited and Ors. MANU/SC/0971/2022 (Para 14)*



e) *Dena Bank (now Bank of Baroda) Vs. 'C. Shivakumar Reddy & Anr.*

MANU/SC/0502/2021 (Para 118)

f) *Kotak Mahindra Bank Limited Vs. Kew Precision Parts Private Limited and Ors*

MANU/SC/0971/2022 (Para 64)

82. The Hon'ble Supreme Court in the case of *M. Suresh Kumar Reddy vs Canara Bank 2023 8 SCC 387* in para 11 has held as follows:

11. 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 due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.



83. In view of the above said judgment it is clear that there is a debt and due on the part of the Corporate Debtor. Hence, the contention of the Corporate Debtor with respect to no debt and default will not hold water.

84. Vide order dated 09.12.2024, this tribunal recorded as under;

Present: Ld. Counsel Shri. Varun Srinivasan for the Petitioner.

Ld. Counsel Shri. Anandavenu for the Respondent.

Reply filed. Cost paid.

Arguments on behalf of the Petitioner heard.

Ld. Counsel for the Respondent submits that the Respondent has submitted a settlement proposal.

Ld. Counsel for the Petitioner states that the proposal given by the Respondent has already been turned down.

List the petition for arguments on behalf of the Respondent on 10.12.2024.

85. It is evident from the above order that the Respondent had made a Settlement proposal and the same was turned down by the Financial Creditor. It is thus manifestly clear that the Respondent has admitted the debt.



86. The Applicant has also placed on record the default certificate/report procured by him from NeSL, where the amount of debt and default are reported. The relevant pages of the report of NeSL are placed at page nos. 1689 to 1738 of the petition which reflects the status as '*authenticated*'.

87. It has been ruled by the Hon'ble NCLAT in *Vipul Himlatal Shah vs. Teco Industries in Company Appeal (AT) (Insolvency) No. 470 of 2022 [(2022) ibclaw.in 379 NCLAT]*, that the report of information utility (NeSL) is sufficient evidence to arrive at the conclusion qua the amount of debt and default. Para 16 of the order reads as under:

*"16. In the light of the detailed discussion as above, it is clear that in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility, moreso when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record has been done by the corporate debtor earlier. We also note that in the judgment of **Rushabh Civil Contractors Pvt. Ltd. vs. Centrio Lifespaces Ltd. (supra)**, which has been cited by the Learned Counsel for Appellant, the record that formed the basis for financial debt and default was*



found to be forged and fabricated, which is not the case in the present appeal.

Therefore, this judgment does not come to the rescue of the Appellant."

88. On a careful perusal of the application along with the supporting documents placed by the Financial Creditor as tabulated above in para 76 of this order, we are of the view that there is a debt and default on the part of the Corporate Debtor. The Applicant has rightly classified the account as NPA and the default is not impacted by Moratorium.

89. It is relevant to extract the letter dated 23.09.2022 issued by the Applicant to the Corporate Debtor declaring the account as NPA:

45

Ref: LCB:CHN:ARS: 572/2022	Date: 29.09.2022
Managing Director, M/s. ARS Energy Pvt Ltd., No. D-109, LBR Complex, 4th Floor, Anna Nagar, Chennai-600 012.	
Dear Sir,	
Sub: M/s.ARS Energy Pvt Ltd., Account slipped to NPA _ Book liability of Rs. 94.46 Crs with us. Ref: Our consortium meetings dated 22.07.2022, 25.08.2022 & 30.08.2022	
<p>This is to inform you that all accounts of M/s. ARS Energy P Ltd., with our bank have slipped to NPA after the business hours of 28.09.2022 with book liability of Rs. 94.46 Crs. The company has devolved 31 bill payments under LCs to the tune of Rs.37.03 Crs and the account is overdrawn for more than 90 days and allowed to slip to NPA.</p> <p>Further to inform you that the repayments to consortium banks have been overdue since 30.06.2022 and the plant was also kept shut down since 27.03.2022 citing reasons of unviability while heaps of coal stocks are kept idle at the plant.</p> <p>We have conducted consortium meetings on various dates i.e., 22.07.2022, 25.08.2022 and 30.08.2022. During last consortium meeting dated 30.08.2022, the lenders discussed and deliberated the options available to lenders at length. The lenders have also insisted for below critical points for accepting any kind of restructuring plan proposed by the company :</p> <ol style="list-style-type: none"> 1. The company has to keep all the accounts with all the lenders as Standard till the accounts get restructured. 2. All restructuring requirements of RBI including signing of ICA, Pledge of Shares by the company, Forensic Audit for last 3 years, TEV Study report, RP 4 rating (minimum) etc shall be complied with. 3. Corporate Guarantee of M/s. ARS Steels & Alloy International Pvt., Limited is mandatory for restructuring. 4. Coal Stock has to be reconciled to the satisfaction of the lenders. 5. PPA agreements shall be in force as on 01.11.2022. <p>However, the company has not acted responsibly and allowed the accounts to slip into NPA. The MD of company / top management of the company are insensitive to the above stated demands/requests of the lenders.</p> <p>In this case, as a lead bank of the consortium, we have no choice but to pursue for Change of Management.</p>	
R KRISHNA PRASAD DEPUTY GENERAL MANAGER	
LARGE CORPORATE BRANCH Spencer Tower I, Ground Floor, 770, Anna Salai Chennai - 600 002	Phone : 28497011/28497013/28497015 DGM : 28497014/28497012 Fax : 28497016 E Mail : cb2396@canarabank.com



90. In view of the facts as stated supra and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option but to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

91. The issue as to the classification of the account of the Corporate Debtor as NPA as illegal or unlawful cannot be decided by this forum. The Corporate Debtor ought to have challenged the same before the appropriate forum.

92. The Hon'ble Supreme Court in the matter of *Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr*; (2021) 100 SCC 330 while dealing with the acknowledgment of debt under Section 18 of the Limitation Act, 1963 in respect of the dues appearing in the Balance Sheet, has held in para 118, 124, 125 and 139 as follows:

118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra) authored by Nariman, J. this Court quoted with



approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 18 [“Bengal Silk Mills”] and in Re Pandem Tea Co. 19 Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana 20 and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.

124. *The finding of the NCLAT that there was nothing on record to suggest that the ‘Corporate Debtor’ acknowledged the debt within three years and agreed to pay debt is not sustainable in law, in view of the Statement of Accounts/Balance sheets/Financial Statements for the years 2016-2017 and 2017-2018 and the offer of One Time Settlement referred to above including in particular, the offer of One Time Settlement made on 3rd March, 2017.*

125. *Section 18 of the Limitation Act speaks of an Acknowledgment in writing of liability, signed by the party against whom such property or right is claimed. Even if the writing containing the acknowledgment is undated, evidence might be given of the time when it was signed. The explanation clarifies that an acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. ‘Signed’ is to be construed to mean signed personally or by an authorised agent....*

139. *Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav*



Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.

93. The Hon'ble Supreme Court in the case ***Innoventive Industries Limited -Vs- ICICI Bank & Anr., (2018) 1 SCC 407*** has held that Tribunal is required to see whether there is a 'debt' which is due and payable under the law and whether the default is more than Rupees One Lakh (now Rupees One Crore). The moment the default amount exceeds rupees one crore, this Tribunal is required to initiate a Corporate Insolvency Resolution Process as against the Corporate Debtor.

94. For the aforesaid reasons and Judgements cited *supra*, this Tribunal orders to initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz, ***ARS Energy Private Limited***.



95. The Financial Creditor has proposed the name **Ms.Ramanathan Bhuvaneshwari, with Registration No: IBBI/IPA-002/IP-N00306/2017-2018/10864 (email: bhoona.bhuvan@gmail.com))** as the Interim Resolution Professional (IRP) who has also filed her consent in Form – 2. Upon verification from the IBBI website, it is seen that the Authorization for Assignment is valid up to 31.12.2025. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file her report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

96. As a consequence of the Application being **admitted** in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:



- 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the



use or continuation of the license or a similar grant or right during moratorium period;

97. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;



- (b) a surety in a contract of guarantee to a corporate debtor.

98. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

99. Based on the above terms, the Application stands **admitted** in terms of Section 7 (5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also



furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V