



**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT VI**

Item No. P2.

C.P. (IB)/1078(MB)2025

CORAM:

**SHRI SAMEER KAKAR**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA**  
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **14.05.2026**

NAME OF THE PARTIES: **Bank of India Limited**

**Vs**

**Distribution Logistics Infrastructure Pvt. Ltd**

**Under Section 7 of the IBC.**

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**ORDER**

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

**Sd/-**  
**NILESH SHARMA**  
**MEMBER (JUDICIAL)**

//VM//

**Sd/-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH – VI**

**CP(IB)/1078/MB/2025**

*(filed Under Section 7 of the Insolvency and Bankruptcy Code,  
2016 read with Rule 4 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority Rules, 2016)*

*In the matter of **BANK OF INDIA.***

**BANK OF INDIA**

**Branch Office:** SARM BRANCH  
70 /80, 1st Floor, M.G. Road, Bank of India  
Building., Fort, Mumbai-400001  
**Head Office:** Star House, C-5, "G" Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai- 400051  
**Registered Office:** Oriental Building,  
Ground Floor, 364, D.N Road, Fort, Mumbai  
Maharashtra

**... Applicant/Financial Creditor**

-Vs-

**DISTRIBUTION LOGISTICS INFRASTRUCTURE PRIVATE LIMITED**

113, 1st Floor,  
Shyam Kamal B Society,  
27 Tejpal Road,  
Vile Parle East, Mumbai- 400057

**... Respondent/Corporate Debtor**

**Order pronounced on 14.05.2026**

CORAM :

**SH. NILESH SHARMA, HON'BLE MEMBER (JUDICIAL)  
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**



**APPEARANCE (IN V-C MODE)**

For Financial Creditor: Adv. Ms. Ricky Sampat,i/b Mukini Law Firm  
For Corporate Debtor: Sr. Adv. Mr. Anupam Lal Das, Adv. Mr. Sinha  
Shrey Nikhilesh

**O R D E R**

**PER: BENCH**

1. This Application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency (Application to Adjudication Rules 2016).
2. The Applicant is a Banking Company incorporated under Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 and having CIN: U99999MH1906PLC000243.
3. The Application was affirmed by Mr. Parag Bhanagay, Chief Manager on 17.09.2025, who has been authorized to file this Application *vide* letter of authority dated 10.09.2025.
4. In terms of the order dated 14.10.2025, the Applicant has filed an Additional Affidavit dated 07.11.2025, modifying the Form- 1.
5. The Respondent in the matter is Distribution Logistics Private Limited having CIN: U85110MH1992PTC294462.
6. The Respondent was incorporated on 16.12.1992 and is having Registered office at 113, 1st Floor, Shyam Kamal B Society, 27 Tejpal Road, Vile Parle East, Mumbai 400057.
7. Perusal of the Part III reveals that the Applicant has named Mr. Prashant Jain having Registration no. IBBI/IPA-001/IP-



P01368/2018-19/12131 as the proposed IRP and has attached Form- 2 issued by the IRP.

8. Perusal of the Part IV reveals that the Corporate Debtor is engaged in the business of Logistics and Warehousing Industry, which includes the Construction and Management of Integrated Logistics Parts at various locations.
9. It is stated that the Financial Creditor had sanctioned a term loan of Rs. 57.50 Crore to Vikram Logistics Ltd., which later changed its name as Distribution Logistics Infrastructure Private Limited, for its Container Trains Project vide its sanction reference MLCB/DMW/2012-13/1092 dated 21.01.2013.
10. It is stated that in 2014, the said term loan was restructured by sanctioning an additional term loan of Rs. 4.89 Crores, existing term loan of Rs. 48.01 Crores was enhanced to Rs. 52.90 Crores vide Financial Creditor's sanction letter dated 11.12.2014.
11. In addition to the above, a fresh FITL of Rs. 12.70 Crores was sanctioned along with cash credit limit of Rs. 3.61 Crores.
12. It is stated that in 2016 the credit facilities sanctioned to the Corporate Debtor were reviewed/ restructured vide Financial Creditor's sanction letter dated 06.10.2016.
13. Accordingly, the existing credit limits sanctioned to the Corporate Debtor were reviewed at its outstanding level with aggregate sanction limit of Rs. 68.84 Crores by sanctioning a revised repayment plan for term loan and FITL.



14. It is stated that the above credit limits were sanctioned/disbursed/renewed/reviewed under the Consortium Banking Arrangement wherein Punjab National Bank was the lead Bank and Financial Creditor, BOB, UBI, SBI and LNTFL were the other Member Banks.
15. It is stated that in 2021, the Corporate Debtor approached all existing term lenders including the Financial Creditor and other members of the Consortium of working capital lender for One Time Restructuring (OTR).
16. It is stated that in agreeing with the said request, all the 3 consortiums viz., PNB consortium lenders, BOB consortium lenders and Working Capital Consortium lenders, which were hitherto led individually, came together and formed a single consortium led by BoB.
17. Under this arrangement the Financial Creditor vide its sanction letter dated 22.06.2021 sanctioned the following credit limits under OTR:

<b>[Rs. in Crs]</b>			
<b>Sr.</b>	<b>Nature of Limit</b>	<b>Existing</b>	<b>Proposed</b>
<b>1.</b>	Term Loan	50.31	53.46
<b>2.</b>	FITL - I	8.10	7.10
<b>3.</b>	FITL - II	-	7.62
<b>4.</b>	Cash Credit	-	-
<b>Total</b>		58.41	68.18



18. It is stated that considering the above sanctions, all Banks under the Consortium, led by Bank of Baroda, executed Master Restructuring Agreement on 26.06.2021.
19. It is stated that in 2022 the above all credit limits were reviewed at its outstanding level by the Financial Creditor vide its sanction letter dated 30.06.2022.
20. The details of the sanctioned credit facilities are as under:

[Rs. in Crs]

<b>Sr.</b>	<b>Nature of Limit</b>	<b>Existing</b>	<b>Proposed</b>
<b>1.</b>	Term Loan	53.46	53.46
<b>2.</b>	FITL - I	7.10	7.10
<b>3.</b>	FITL - II	7.62	5.59
<b>4.</b>	Cash Credit	-	-
<b>Total</b>		68.18	66.15

21. It is stated that the Corporate Debtor started facing liquidity issues due to which it was not prompt in payment of interest debited to the account on a continuous basis.
22. It is stated that the despite regular follow-ups, the Corporate Debtor did not take any steps to regularize the account.
23. It is stated that the default occurred on 29.12.2022 and therefore, the Financial Creditor classified the Cash Credit Account of the Corporate Debtor as NPA on 28.03.2023.



24. It is stated that the Financial Creditor issued a Demand Notice on 23.12.2024 under Section 13 (2) of the SARFAESI Act, 2002.
25. It is submitted that there has been no positive response to the notice sent by the Financial Creditor. The amount claimed in the present Application is Rs. 77.30 Crores, as on 30.09.2024, the details of which are as under:

<b>Loan Account</b>	<b>Outstanding as at 30.09.2024</b>
<b>TL</b>	50,54,12,963.00
<b>FITL - I</b>	6,77,82,764.00
<b>FITL - II</b>	5,23,28,501.00
<b>Principal Amount</b>	62,55,24,228.00
<b>Nominal Interest</b>	12,62,83,723.61
<b>Penal interest</b>	2,12,28,778.99
<b>Total Dues</b>	<b>77,30,36,730.60</b>

26. It is stated that the Financial Creditor is holding the following securities:

- 1. First charge on all the immovable and movable. assets both present and future. including Lands (at Asaoti Palwal - Haryana and Borkhedi- Nagpur) and on 10 Rakes owned by the Borrower and Equipments, wagons and rolling stocks, plant and machinery, properties and other assets. (including receivables.) in relation to the Project(s).*
- 2. First mortgage and charge on paripasu basis on all project(s) specific intangible assets including but not the goodwill, undertaking, uncalled capital, and Intellectual*



*Property Rights of the container trains and LC (Logistics centres at Nagpur and Palwal – Haryana) business of the Borrower including all the insurances policies naming, for the benefit of the Lenders, the Security Trustee and the Lenders' Agent as an additional insured (as may be required by the Lenders)*

3. *A first charge over all Accounts and all other bank accounts of the Borrower all pertaining to the PNB Consortium Projects including the Trust and retention Account, sub-accounts thereof (or account in substitution thereof) including the PNB Consortium Debt Services Reserve Account that may be opened in accordance with this Agreement, the Trust and Retention Account, Agreement or any of the other Transaction Documents, the Existing TRA Accounts and all funds from time to time deposited therein and all funds of the Borrower, the Project Proceeds and all Permitted Investments, any other investments or other securities of the Borrower (including any irrevocable guarantee or fixed deposit maintained by the Borrower in lieu of the PNB Consortium DSR Amount) both present and future;*
4. *A first charge and assignment, by way of security, in*
  - i. *all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in the Project Documents pertaining to the PNB Consortium Projects including but not limited to the business contracts/ commercial agreement with railways and other Projects Participants under Project Documents relating to the PNB Consortium Projects, including but not limited to the business contracts/ commercial agreement with railways and other Project*



*Participants under Project Documents relating to the PNB Consortium Project, to the extent permitted, both present and future;*

- ii. the rights, title, interests and benefits of the Borrower in, to and under all the Clearances relating to PNB Consortium Projects, including but not limited to rail terminal, wagons and rolling stocks etc held by the Borrower (whether under lease or license), to the extent permissible by Applicable Laws, both present and future;*
- iii. all the right, title, interests, benefits, claims and demands whatsoever of the Borrower under the Concession Agreement provided by Ministry of Railways (as permitted), relating to PNB Consortium Projects, both present and future:*
- iv. all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in any letter of credit, guarantee (including contractor guarantees, bank guarantees, corporate guarantees) and Liquidated Damages (including contractual damages) and performance bond provided by any Project Participant and such other security provided/ to be provided by any Project Participant, relating to the PNB Consortium Projects, both present and future: and*
- v. all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower under all Insurance Contracts relating to BOB Consortium Projects, both present and future;*

*5. Encumbrance of interest, as per concession agreement, like rail terminal owned by the company or held by it on lease*



or license, wagons and rolling stocks etc in favour of lenders,

6. Assignment by way of security of the rights, title and interest in Concession (under the Concession Agreement) by execution of the Substitution Agreement with the "Lenders' Representative (as defined in the Substitution Agreement) and the railway administration, as required under the Concession Agreement.
7. A lien. (Pari passu basis shared with all lenders of PNB consortium) on the fixed deposit receipts ("FDRs") worth INR 15,00,00,000 (Rupees Fifteen Crs Only) till the creation and perfection of the security on the project land at Asoti-Palwal, Haryana
8. A first charge by way of mortgage on all the immovable assets of the Borrower situated at Palwal land aggregating to 5.79\* (five decimal seven nine acres) both present and future.
9. A first charge by way of mortgage on all the immovable assets of the Borrower situated at Nagpur (land aggregating to 5.43 (five decimal four three) acres), subsequent to the raise of the said land for transfer and remortgage;

**COLLATERAL:**

Pledge of 49% (forty-nine percent) of Shares of the Borrower.

**GUARANTEES:**

Name of Guarantors

1. Distribution and Logistics Infrastructure India, Mauritius (DLIIM)



2. Freightstar Pvt. Ltd.
3. Bhim Singh Yadav Property Ltd.
4. Deshpal Realtors Pvt. Ltd.

(A copy of Search Report is annexed and marked as Annexure “6”)

27. The Applicant has attached the following documents along with the Application:

- i. Copy of the Sanction Letter dated 20-01-2013 with reference no. MLCB/DMW/2012-13/1092 marked as: **“Annexure – 9”**
- ii. Copy of Sanction Letter dated 11.12.2014 with reference no. MLCb/PK/2014-15/702 marked as **“Annexure – 10”**
- iii. Copy of the Sanction Letter dated 22.06.2021 with BOI/MLCB/CC/DG/2021-22/118 marked as **“Annexure – 12”**
- iv. Copy of Sanction Letter dated 30.06.2022 with reference no. BOI/MLCB/CC/MR/2022-23/145 marked as **“Annexure- 13”**
- v. Copy of Common Loan Agreement/Term Loan Agreement dated 28.03.2013 marked as **“Annexure - 14”**
- vi. Copy of Security' Trustee Agreement dated 28.03.2013 marked as **“Annexure – 15”**
- vii. Copy of Deed of \_Hypothecation dated 28.03.2013 marked as **“Annexure – 16”**
- viii. Copy of the Deeds of Guarantee executed by :-
  - (i) Deshpal Logistics and infrastructure Pvt. Ltd
  - (ii) Freightstar Private Limited,
  - (iii) Bhim Singh. Yadav Logistics and Infrastructure for securing payment by



Corporate Debtor dated 08-09-2017 marked  
as **“Annexure – 17- Colly”**

- ix. Copy of the PNB Consortium Deed of Hypothecation dated 26.06.2021 marked as **“Annexure – 18”**
- x. Copy of acknowledgement of debt dated 22.02.2024 issued by the Corporate Debtor marked as **“Annexure – 19”**
- xi. Copy of the Demand Notice issued under Section 13(2) of SARFAESI, 2002 (as amended) addressed to the Corporate Debtor dated 23.12.2024 marked as **“Annexure – 20”**

28. Notice was issued by this Tribunal vide order dated 19.11.2025, in response to which the Applicant filed an Affidavit of Service dated 05.12.2025.
29. It is stated that service upon the Respondent through speed post was made on 04.12.2025. Respondent appeared on 10.12.2025 through Ld. Counsel Mr. Sinha Shrey Nikhilesh and sought 7 days’ time to file Reply.
30. In terms of the liberty given to the Applicant vide order dated 19.11.2025, the Applicant filed a purshis, which is dated 25.02.2026, annexing therewith 3 “Records of Defaults”, which are under “Authenticated” status.
31. The details of the Record of Default as per the three Form- D issued by NeSL are as under:

<b>1.</b>	<b>Total outstanding amount:</b>	Rs. 505412963.00	Rs. 67782764.00	Rs. 52328501.00
<b>2.</b>	<b>Default amount:</b>	Rs. 21687963.00	Rs. 33866096.00	Rs. 11219236.00
<b>3.</b>	<b>Date of Default:</b>	29.12.2022	31.03.2023	30.11.2024



32. It is seen that these Records of Defaults were issued on different dates.

**Reply :-**

33. Reply has been filed by the Corporate Debtor through an Affidavit affirmed by one Mr. Sudarshan Aithal K., being authorized Representative, on 14.01.2026.

34. In reply the contentions of the Respondents are as under:

- i. That on 06.06.2009, the directors of Vikram Logistics and Maritime Services Private Limited ('VLMSP') now Distribution Logistics Infrastructure Pvt. Ltd. ('DLIPL') executed a Board Resolution approving the drawing of loan from BOB Consortium.
- ii. That on 27.06.2009 a common Loan Agreement was executed between Vikram Logistics & Maritime Service (P) Ltd. (now known as Distribution Logistics Infrastructure (P) Ltd.) as Borrower and the Bank of Baroda consortium as lenders for credit facilities.
- iii. That in the year 2013, the Corporate Debtor approached the Financial Creditor and requested for Cash Credit Facility for the purpose of working capital requirements for its business activities and as such, cash credit facility was sanctioned in favour of the Corporate Debtor by the Financial Creditor.
- iv. That on 28.03.2013, a Common Loan Agreement was executed between the Punjab National Bank, Bank of Baroda, Bank of India, Dena Bank and the Corporate Debtor; by virtue of which a consortium of banks was



formulated of which the Punjab National Bank was made as the lead bank.

- v. Subsequently, on 12.09.2014, a Certificate of Incorporation was issued pursuant to Change of Name of Vikram Logistics & Maritime Service (P) Ltd. to Distribution Logistics Infrastructure (P) Ltd., i.e., the Corporate Debtor.
- vi. That on 29.10.2014 a Master Restructuring Agreement was executed by the BOB consortium and Punjab National Bank Consortium and the Corporate Debtor as the borrower.
- vii. That the Corporate Debtor had availed cash credit facilities from two consortium of banks in-toto which are as follows:

**a. Bank of Baroda Consortium**

- i. Bank of Baroda
- ii. Punjab National Bank
- iii. State Bank of India
- iv. Union Bank of India
- v. L&T Infrastructure and Finance Ltd. (debt now taken over by ARCIL)

**b. Punjab National Bank Consortium**

- i. Punjab National Bank
- ii. Bank of Baroda
- iii. Bank of India
- iv. Dena Bank
- v. L&T Infrastructure and Finance Company Limited

35. Further, on 25.10.2016 a Master Flexible Structuring Agreement was executed between the Corporate Debtor, PNB Consortium and



the BOB consortium which was subsequently restated and amended on 08.09.2017.

36. That on 21.01.2021 an inter-creditor agreement was executed between the Bank of Baroda consortium, Punjab National Bank consortium and Working Capital consortium deciding to invoke the Resolution Process as on 30.12.2020.
37. That on 26.06.2021 another Master Restructuring Agreement was executed between the Bank of Baroda consortium and Punjab National Bank Consortium and the Corporate Debtor as borrower. It is submitted that due to the occurrence of Covid-19 pandemic, the PNB Consortium and the BOB Consortium were merged into one consortium herein, the Bank of Baroda was made as the lead bank of the consortium. It is further submitted that the loan facility taken by the Corporate Debtor was amended from time to time and the Corporate Debtor adopted different financial facilities from the consortium.
38. That during the time period from 2021 to 2025, the Corporate Debtor was working alongside the banks' consortium for Resolution of the debt but on 28.03.2023, the Financial Creditor declared the Corporate Debtor's facilities as NPA and subsequently, in March, 2024, the Corporate Debtor approached the banks' consortium with its proposal for a one-time settlement to be derived between the consortium members so that the issue pertaining to the debt owed by the Corporate Debtor against all consortium members can be settled together once and for all.

**PRELIMINARY SUBMISSIONS/OBJECTIONS:**

39. That the Corporate Debtor had availed credit facilities from several banks and as such two consortiums were formed, i.e., Bank of Baroda consortium; and Punjab National Bank consortium which was further merged into one consortium led by Bank of Baroda in



the year 2021 and the said consortium included the following banks:

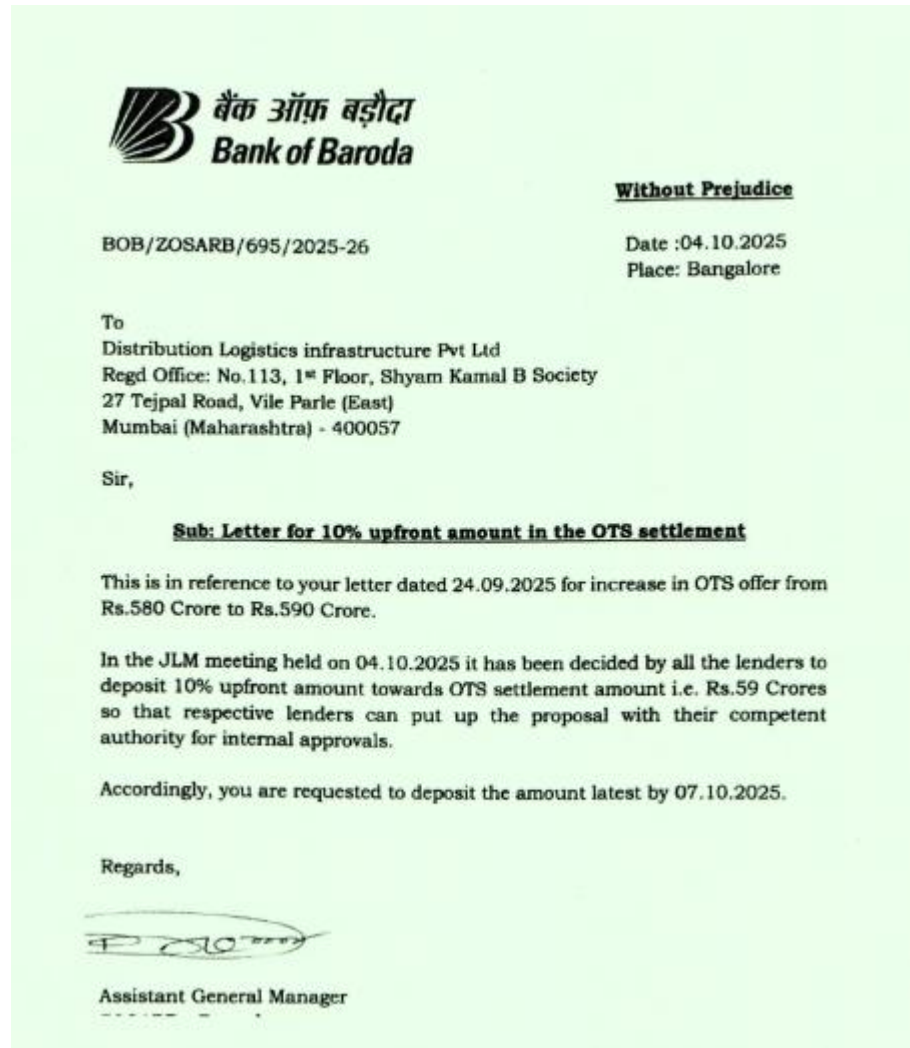
- a. Bank of Baroda
- b. Bank of India
- c. Punjab National Bank
- d. Union Bank of India
- e. State Bank of India
- f. Asset Reconstruction Company (India) Ltd

40. That at the outset it is submitted that the Financial Creditor is part of the consortium of banks being led by the Punjab National Bank which was later merged with the Bank of Baroda consortium and now is led by the Bank of Baroda and that the Corporate Debtor is in the process of attaining a One-Time Settlement ('OTS) from the consortium within which the debt pertaining to the Financial Creditor is also covered.
41. That since the year 2021, the Corporate Debtor is in talks with the officials of the banks forming part of the consortium including the Financial Creditor herein and that since 2021, various Joint-Lender's meetings ('JLM') have been held.
42. That the Corporate Debtor vide its letter dated 15.01.2025 offered a sum of Rs. 580 Crores to the consortium towards settlement of the entire debt. It is pertinent to mention that the Financial Creditor holds 9.4% approx... of the entire debt, i.e., Rs. 65 Crores in principle out of Rs. 689 Crores (total debt of the consortium). Copy of letter dated 15.01.2025 is annexed and marked as **ANNEXURE R-1**.
43. That the Corporate Debtor initially had offered Rs. 580 Crores towards settlement of the entire debt owed to the consortium members. It is submitted that further on 24.09.2025, the Corporate Debtor after various discussions with the consortium members in various Joint Lender forum meetings increased its offer from Rs. 580 Crores to Rs. 590 crores. In pursuance to the letter dated 24.09.2025,



the consortium members led by Bank of Baroda, accepted the revised enhanced proposal of the Corporate Debtor for the sum of Rs. 590 Crores. Copy of minutes of JLM meetings are annexed and marked as **ANNEXURE R-2**. Copy of letter dated 24.09.2025 is annexed and marked as **ANNEXURE R-3**.

44. Furthermore, it is submitted that the Financial Creditor has always attended the meetings of the JLM and is part of the said consortium.
45. It is most respectfully submitted that Bank of Baroda on behalf of all members of the consortium vide letter dated 4.10.2025 granted its consent for deposit of 10% upfront amount qua OTS settlement and the financial creditor is well aware of letter dated 4.10.2025 The contents of notice dated 04.10.2025 are reproduced herein for this Hon'ble Tribunal's ready reference:





46. It is also submitted that although the consortium vide letter dated 4.10.2025 had asked the Corporate debtor to deposit 10% of the OTS offer amount, the consortium still sought to conduct auction of the corporate debtor's debt vide Swiss challenge method to ARCs /Banks /NBFCs/Fls /HFCs. In the said auction, the corporate debtor's offer of Rs. 590 Crore was kept as anchor bid.
47. It submitted that the said auction notice was published on 07.10.2025 in Business standard and the auction through Swiss challenge method was to be conducted on 27.11.2025. Copy of Publication dated 07.10.2025 is marked and annexed as **ANNEXURE R-4.**
48. That in parallel to the Swiss challenge auction process, the Corporate Debtor issued letter dated 04.10.2025 to the Bank of Baroda (lead bank of consortium) acknowledging the condition of 10% payment upfront imposed upon the Corporate Debtor and confirmed that the payment will be made in time. Copy of letter dated 04.10.2025 accepting upfront payment conditions is annexed and marked as **ANNEXURE R-5.**
49. That in response to the auction under Swiss challenge method no ARCs or any other financial institution placed their bid towards the debt of the Corporate Debtor and thus, the Corporate Debtor's OTS offer stood victorious by Swiss-Challenge Method.
50. That subsequently, the Bank of Baroda, on behalf of all the lenders vide its letter dated 30.10.2025 has declared the Corporate Debtor the 'successful bidder' in terms of the Swiss Challenge Process run by the consortium. Copy of letter dated 30.10.2025 issued by the consortium declaring the Corporate Debtor as successful bidder is annexed and marked as **ANNEXURE R-6.**
51. That the Corporate Debtor vide its response letter dated 31.10.2025 to the demand letter dated 04.10.2025 had agreed to the payment terms for upfront payment of Rs. 59 Crores (10% of the OTS amount) It is submitted that subsequent to the response dated 31.10.2025,



the Corporate Debtor has also made part payment towards the amount payable under the OTS terms. Copy of response letter dated 31.10.2025 is annexed and marked as **ANNEXURE R-7**.

52. That it is most respectfully submitted that consortium has already conducted/tried to conduct auction of the debt of the corporate debtor vide Swiss challenge method and the corporate debtor bid being declared as successful bid ensures that the bid amount of corporate debtor (now offer of OTS of Rs. 590 crore) is maximum value that can be derived from the corporate debtor.
53. That the OTS issued to the Corporate Debtor by the banks' consortium is still active and is in compliance stage and the Petitioner herein by way of the present petition is trying to derail the entire process of settlement of dues with an intent of causing damages not only to the Corporate Debtor but also to the other banks forming part of the consortium.
54. It is submitted that the Financial Creditor herein is only 9.4% stakeholder in the consortium and the act of Financial Creditor to pursue the present petition before this Hon'ble Tribunal jeopardizes the entire One-Time Settlement entered into with the banks' consortium and is not only causing impediment to the Corporate Debtor but also to the other member banks of the consortium.
55. That the Hon'ble Supreme Court in the case of R.K. Industries (Unit-II) LLP v. HR Commercials Pvt. Ltd. reported in **(2022) ibclaw.in 104 SC** has categorically observed that the Swiss Challenge is a **well-recognized, transparent, and valid mode** of sale under the IBC. It falls under the 'any other means category of Regulation 33 of the Liquidation Process Regulations, which allows Liquidator flexibility to maximize realizations and clarifies that while the **Swiss Challenge Method** is a preferred tool for transparency, it is not a "straitjacket".
56. That the Hon'ble Supreme Court in the case of HPCL Bio-Fuels Ltd vs Shahaji Bhanudas Bhad reported in **2024 INSC 851** categorically held that;



"103. What can be discerned from aforesaid decisions is that insolvency proceedings are fundamentally different from proceedings for recovery of debt such as a suit for recovery of money, execution of decree or claims for amount due under arbitration, etc. The first distinguishing feature that sets apart ordinary recovery proceedings from insolvency proceedings is that under the former the primary relief is the recovery of dues whereas under the latter the primary concern is the revival and rehabilitation of the corporate debtor. No doubt both proceedings contemplate an aspect of recovery of debt, however in insolvency proceedings, the recovery is only a consequence of the rehabilitation/ resolution of the corporate debtor and not the main relief.

104. The second distinguishing feature is that although both proceedings entail recovery of debt to a certain extent, however they are different inasmuch as when it comes to recovery proceedings it is the individual creditor's debt which is sought to be recovered, whereas in insolvency proceedings it is the entire debt of the company which is sought to be resolved. The former is only for the benefit of the individual creditor who initiates the recovery proceedings whereas the latter is for the benefit of all creditors irrespective of who initiates insolvency.

105. The last distinguishing feature is that, a recovery proceeding be it a suit or arbitration is initiated by a creditor where an amount is due and is unpaid by a debtor, in other words the intention behind initiating a recovery proceeding is simpliciter for the full recovery of amount which is unpaid to it. However, in an insolvency proceeding there is no guarantee of recovery of the entire debt. A creditor opts for insolvency where an amount of such threshold is unpaid, that the creditor has an apprehension that the debtor in its



*current state and under the existing management in all likelihood will be unable to repay that debt in the future i.e., there is no likely prospect of any recovery, and thus it would be beneficial to take the risk of initiating insolvency which even though does not guarantee full recovery, in order for a new management to take over the corporate debtor and to recover at least some amount of debt before it is too late. Thus, the underlying intention behind initiating insolvency is not with the intention of recovering the amount owed to it, but rather with the intention that the corporate debtor is resolved / rehabilitated through a new management as soon as possible before it becomes unviable with no prospect of any meaningful recovery of its dues in the near future.*

*106. Thus, by no stretch of imagination can insolvency proceedings be construed as being for the same relief as any ordinary recovery proceedings, and therefore no case is made out for exclusion of time under Section 14(2) of the Limitation Act, 1963."*

57. That the said view has been taken by the Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors, reported in **(2019) 4 SCC 17** and Pioneer Urban Land & Infrastructure Ltd. & Anr. v. Union of India & Ors, reported in (2019) 8 SCC 416 also wherein the Hon'ble Supreme Court has again emphasized that IBC is not a debt recovery mechanism. It observed that when CIRP is initiated the aspect of recovery of debt is completely outside the control of the creditor and there is no guarantee of recovery or refund of the entire amount in default. A creditor initiates insolvency under the Code not for the relief of recovery of debt but rather for rehabilitating the corporate debtor and for a new management to take over.



58. It is most respectfully submitted that this act of the Petitioner is towards recovery of money from the Corporate Debtor instead of the resolution of a company which is the essence of the Insolvency and Bankruptcy Code, 2016 and as such the petition is liable to be dismissed. The Hon'ble Supreme Court and the Hon'ble NCLAT in plethora of cases have observed and emphasized that the purpose of the Insolvency and Bankruptcy Code, 2016 is for resolution and revival of defaulting companies and the same shall not be used as recovery mechanism by the Creditors. The present petition filed by the Petitioner goes against the very essence of the IBC and is totally prejudicial to the Corporate Debtor and the other banks of the consortium and if admitted; will derail the entire process of settlement going on between the consortium and the Corporate Debtor.
59. In conclusion, it is submitted that the Corporate Debtor is willing to settle its debts with the entire consortium; of which the Financial Creditor is a part of, in a time bound manner, which will lead to resolution and conclusion of the debt owed by the Corporate Debtor to the Financial Creditor without there being a need to initiate CIRP process in the case of the Corporate Debtor.
60. In the light of the submissions made hereinbefore, the Corporate Debtor most humbly prays that this Hon'ble Court may be pleased to:
- i. Dismiss the petition filed by the Financial Creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 on account of the issue being resolved by way of OTS with the consortium of banks; and/or*
  - ii. Pass any other such further orders as this Hon'ble Court may deem fit and proper in the interest of justice.*



**Rejoinder: -**

61. Applicant has filed a Rejoinder through Mr. Manoj Kumar Chaudhary affirmed on 14.02.2026. In the Rejoinder, the Applicant has stated as under:

- i. "I say and submit that the Corporate Debtor in its Reply has admitted the existence of Debt and Default. The averments are introductory and do not rebut the statutory ingredients under Section 7 of the Insolvency and Bankruptcy Code, 2016. The Reply of the Corporate Debtor only revolves around OTS which was never implemented. One cannot take shield of OTS which is not even implemented to stall the Insolvency Proceedings.
- ii. I say and submit that when the debt becomes due and remains unpaid to the Financial Creditor, the default is established. In case of a Financial Creditor, the Adjudicating Authority has only to determine whether a "default" has occurred, i.e., whether the "debt" (which is not disputed) was due and remained unpaid. In the event of a default and that the debt would be due and remain unpaid, the Application under Section 7 of IBC ought to be admitted as observed by the Hon'ble Supreme Court of Innoventive Industries Ltd. v. ICICI Bank in Civil Appeal Nos. 8337-8338 of 2017.
- iii. Therefore, I say that in the instant case, the debt, the default and that the debt having remain unpaid is admitted by the Corporate Debtor in its Affidavit in Reply and there is no whisper of dispute/ defense regarding Debt and Default. Secondly, the entire Affidavit in Reply revolves around the OTS only. As such, the application of the Financial Creditor under Section 7 of the Code



deserves to be admitted. I state that the contentions raised by the Corporate Debtor through the said Reply do not find any legal basis under aegis of the Code for the purpose of Section 7 thereof.

- iv. I submit that the Reply is a clear attempt to delay and derail the insolvency proceedings by projecting an alleged One Time Settlement (OTS), which has remained unimplemented for more than one year and has never culminated into any binding or enforceable settlement.
- v. The Respondent is merely using the OTS as a shield to stall admission of the present Petition, which constitutes an abuse of the process of this Hon'ble Tribunal.
- vi. I submit that, the discussion on OTS proposal is going on for more than a year. Initially, the Respondent submitted its OTS proposal for Rs. 517 crores on 15.03.2024, which was enhanced to Rs. 550 crores on 27.09.2024 and further enhanced to Rs. 574 crores on 15.10.2024. It is pertinent to mention that none of the OTS proposals find its logical end. In other words, the Respondent's OTS proposal remained on paper only. Thereafter again, the Respondent submitted a fresh OTS proposal for Rs. 580 crores on 15.01.2025, for which they secured in-principle approval in the Joint Lenders Meeting [JLM] held on 25.02.2025. However, due to failure on the part of respondent in paying the upfront amount and also failure on their part to show the source of funds to meet the OTS amount, in-principle approval letter issued to the Respondent was withdrawn on 10<sup>th</sup> March 2025. Subsequently, again in the month of September 2025, the Respondent submitted a revised OTS proposal for Rs 590



crores vide its letter dated 24th September 2025 and a detailed discussion was held in this regard in the JLM meeting held on 31.10.2025. According to the proposal, the Respondent is supposed to pay upfront payment of Rs 59 crores on or before, 15.11.2025. But the Respondent has failed again. They could not keep up their commitment and failed to deposit upfront amount on 15.11.2025 and also on subsequent dates as agreed by them. Finally, as reported in JLM held on 26.12.2025, the Respondent, vide its letter dated 24.12.2025, sent to AGM, Bank of Baroda, sought further time i.e. up to 15th February, 2026 to deposit upfront amount and remaining payment after 30 days from the receipt of all lenders final sanction letter. In the said letter they also requested lenders to reduce upfront amount from 10% of OTS amount to 5%. Till date, the Respondent is not in a position to finalize the name of the fund arranger to finance the OTS amount. Adding to this still there exist uncertainty as far as approvals of lenders to Respondent's OTS proposal is concerned. I say and submit that this is a clear tactic played by the Respondent to delay and derail the proceedings initiated by the Petitioner. **Annexed and marked as Annexure A is the copy of the Corporate Debtor's Letter dated 24.12.2025 to Bank of Baroda. Also annexed and marked as Annexure B Colly is the copy of the JLM Meeting dated 31.10.2025 and 26.12.2025.**

- vii. I say and submit that mere acceptance of settlement proposals by other financial Creditors in the consortium does not restrain the rights of this Financial Creditor to pursue its legal remedies under this Code, nor is this Financial Creditor bound to follow the decision of other financial Creditors, that too under the dictate of the



defaulting Corporate Debtor. It is pertinent to submit that in the matter of The Bijnor Urban Cooperative Bank Limited, Bijnor & others v. Meenal Agarwal & others (Civil Appeal No. 7411 of 2021), the Hon'ble Supreme Court held that the grant of benefit of OTS scheme cannot be prayed as a matter of right.

- viii. It further stated that no bank can be compelled to accept a lesser amount under the OTS scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/ mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom.
- ix. I say and submit that the Respondent has failed to disclose that even the mandatory upfront 10% amount under the alleged OTS has not been deposited till date. The defense raised is illusory and intended solely to delay admission of the Petition. The reliance placed on consortium meetings and internal correspondence is completely misconceived. Repeated extensions granted by lenders were conditional and never amounted to waivers of default.
- x. The Hon'ble Supreme Court has consistently held that the Code is not a recovery mechanism but a resolution framework intended to replace a failed management and ensure revival of the Corporate Debtor through a time-bound process. Therefore, I humbly submit that, the prayer (i) & (ii) made in the Affidavit in Reply, in paragraph Number 37 should be rejected with exemplary cost.



62. Written Submissions have been filed by the Applicant reiterating the facts in the Application and the Rejoinder the same has been considered by us.

**Analysis**

63. The Applicant has filed this Application under Section 7 of the Code claiming a default of Rs. 77,30,36,730.60 as on 30.09.2024.

64. It is the case of the Applicant that various credit facilities were sanctioned to the Corporate Debtor from 2013 to 2014 under consortium arrangements from time to time being term loan, fund based working capital facilities, FITL- I and FITL- II.

65. The said facilities were disbursed to the Corporate Debtor from time to time.

66. The Corporate Debtor could not maintain financial discipline and the Applicant has restructured the debt under a Master Restructuring Agreement dated 26.06.2021.

67. It is the case of the Applicant that the Corporate Debtor failed to honour the terms of the said Restructuring Agreement and despite repeated follow-ups the account of the Corporate Debtor was not regularized and the Default was not cured.

68. Due to the Default, Account of the Corporate Debtor was classified as NPA by the Financial Creditor on 28.03.2023 as per the extant RBI Guidelines.



69. The Applicant issued a Demand Notice dated 23.12.2024 under Section 13 (2) of SARFAESI Act, 2002, calling upon the Corporate Debtor to discharge its outstanding liabilities, however, the Corporate Debtor failed to act upon the Demand Notice.
70. The Corporate Debtor in its reply has admitted to the existence of loan, Disbursement and Default. The Corporate Debtor has also admitted the existence of Master Restructuring Agreement dated 26.06.2021.
71. The main contention of the Corporate Debtor in Reply is that it has offered an OTS on 15.01.2025 for a sum of Rs. 580 Crore, which has since been enhanced to Rs. 590 Crore, *vide* letter dated 24.09.2025.
72. The said OTS letter was accepted by Bank of Baroda on behalf of all the Member of the Consortium *vide* letter dated 04.10.2025 and the Corporate Debtor was asked to deposit up-front amount of 10% aggregating to Rs. 59 Crore by 07.10.2025.
73. It is stated that a swiss challenge auction was carried out by the consortium leader, i.e., Bank of Baroda, however, since no ARC or any other financial institution placed their bid towards the debt, the Corporate Debtor's OTS offer stood victorious by swiss challenge method.
74. The Bank of Baroda on behalf of the lenders *vide* its letter dated 30.10.2025 has declared the Corporate Debtor as successful bidder in terms of swiss challenge process run by the consortium.



75. It is also seen that since the upfront amount of Rs. 59 Crores could not be deposited by the Corporate Debtor and for the same several requests have been made by the Corporate Debtor to extend the time period for deposit of the initial amount of Rs. 59 Crore.
76. Another contention of the Respondent is that the financial Creditor herein is only 9.4% stakeholders in the consortium and if the present petition is admitted, it will jeopardize the entire One Time Settlement entered into with the Banks' consortium. It is the contention of the Applicant that through the Present Petition, the Corporate Debtor is attempting recovery and not the Resolution of the Corporate Debtor.

**Written submissions of Applicant: -**

77. The Applicant has relied upon the following citations:
- i. The Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank & Anr.* (2018).
  - ii. The Hon'ble Supreme Court of India in the *Bijnor Urban Cooperative Bank Limited, Bijnor & Ors. Vs. Meenal Agarwal & Ors.* (Civil Appeal No. 7411 of 2021).

**Judgments relied by the Corporate Debtor: -**

78. The Respondent has relied upon the following citations:
- i. The Hon'ble Supreme Court in the case of ***Hpcl Bio-Fuels Ltd vs Shahaji Bhanudas Bhad*** reported in **2024 INSC 851**.



- ii. The Hon'ble Supreme Court in the case of ***Swiss Ribbons Pvt. Ltd & Anr. v. Union of India & Ors.*** reported in **(2019) 4 SCC 17.**
- iii. The Hon'ble Supreme Court in the case of ***Pioneer Urban Land & Infrastructure Ltd. & Anr. v. Union of India & Ors.*** reported in **(2019) 8 SCC 416.**
- iv. The Hon'ble Supreme Court in the case of ***R. K. Industries (Unit-II) LLP v. HR Commercials Pvt. Ltd.*** reported in **(2022) ibclaw.in 104 SC.**

79. We have gone through the above judgments, we are of the view that decision of Hon'ble Supreme Court in the matter of Innoventive Industries Ltd. (Supra) more particularly Para-30 of the said judgment is most relevant in this case. The said para is reproduced below:

*“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.”*



80. We also agree with the Applicant that the judgment in Bijnor Urban Cooperative Bank Limited (Supra) wherein it was held by Hon'ble Supreme Court that a Borrower as matter of right cannot use an OTS to defeat Insolvency Proceedings.
81. As regards R. K. Industries (Supra), we observe that the said judgment was with regard to the validity of sale under Swiss Challenge Method in liquidation. Hence, reliance placed on this judgment by the Corporate Debtor is misplaced.
82. As regards HPCL Bio-Fuels Limited (Supra) we are afraid the ratio of the decision is very much against the Respondent. As Hon'ble Supreme Court has held very clearly that Insolvency Proceedings cannot be construed as recovery proceedings.
83. Similar is the position as held by Hon'ble Supreme Court in the matter of Swiss Ribbons (Supra) and Pioneer Urban Land and Infrastructure Limited (Supra).
84. This Tribunal has placed reliance on the Hon'ble Supreme Court in Civil Appeal No(s). 2211/2024 decided on 18.02.2026 in the matter of **Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors.** while examining the validity of the admission of the Corporate Debtor to CIRP has laid down as under :-

***"B. Validity of CIRP Admission***

28. *The other aspect on which the Appellant has heavily relied is the acceptance of various sums of money paid by the Corporate Debtor purportedly under the 1st and 2nd restructuring proposals, which according to them amounts to deemed approval of such proposal. As discussed earlier, such argument flies in the face of the fact that the*



*2nd Respondent had resolutely maintained and rightly so, that the restructuring proposals were underpinned on pre-implementation conditions which the Corporate Debtor had failed to fulfil. Under such circumstances, receipt of various sums of money would not amount to acceptance of the restructuring proposals, thereby novating the earlier loan agreement. Neither would such part payments constitute full satisfaction of the existing debt so as to render the Section 7 application inadmissible.*

*29. It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crore from 01.11.2024 to 31.03.2025. It also has a continuous fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI scheme and had earned EBIDTA of Rs. 20 crore per month during the CIRP. These facts though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application.*

*30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof. Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.<sup>26</sup> A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.<sup>27</sup> "Operational creditor" is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.<sup>28</sup> "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.<sup>29</sup> 31. In *Swiss Ribbons (P) Ltd. v. Union of India* [(2019) ibclaw.in 03 SC],<sup>30</sup> such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks*



*and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.*

32. *In light of such classification, the Code makes a distinction in the manner in which an insolvency process may be initiated by a financial creditor under Section 7, IBC in contradistinction to an operational creditor under Section 8 and 9, IBC. Unlike an operational creditor, a financial creditor may trigger an insolvency process under Section 7 in respect of default of any financial debt, whether owed to itself or to any other financial creditor. While the financial creditor may directly file an application under Section 7 setting out the particulars of the financial debt and evidence of default, the operational creditor, on the occurrence of a default, is to first deliver a demand notice of the unpaid debt to a corporate debtor and the latter may within 10 days of receipt of such demand notice bring to the notice of the operational creditor the existence of a dispute or record the pendency of a pre-existing suit or arbitration proceeding in respect of such debt. Once a corporate debtor demonstrates a dispute regarding the existence of the debt, the insolvency process stands aborted vis-à-vis the operational creditor. But when the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor which has been succinctly summed up in Innoventive (supra):*

*“30..... 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. *Reiterating the ratio in Innoventive (supra), this Court in ES Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: “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.”*

34. *In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under Section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company.*

*The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is “to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation.”*

35. *The Appellant has heavily relied on Vidarbha (supra) to argue that the Adjudicating Authority has ample discretion to apply its mind to relevant factors including the feasibility of initiation of insolvency process notwithstanding the existence of default on a debt due and payable by the Corporate Debtor. In Vidarbha (supra), this Court observed:-*

*“61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC’s appeal, pending in this Court,*



*order of Aptel referred to above and the overall financial health and viability of the corporate debtor under its existing management.*

.....

90. *We are clearly of the view that the adjudicating authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a corporate debtor was in default in payment of the debt there would be no option to the adjudicating authority (NCLT) but to admit the petition under Section 7 IBC.”*
36. *However, in review, this Court clarified that observations made in Paragraph 90 are restricted to the facts of Vidarbha (supra):-*
- “6. *The elucidation in para 90 and other paragraphs [of the judgment under review] 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.”*
37. *Finally, the apparent dichotomy between Innoventive (supra) and Vidarbha (supra) was set at rest in M. Suresh Kumar Reddy (supra), wherein this Court observed: “14. 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 Innoventive Industries and E.S. Krishnamurthy. The view taken in Innoventive Industries still holds good.”*
38. *In light of the ratio in M. Suresh Kumar Reddy (supra) there is no cavil that the ratio in Innoventive (supra) lays down the correct proposition of law and the observations in Vidarbha (supra) were made in the facts of the case and do not operate as binding precedent.*
39. *Even otherwise on facts, Vidarbha (supra) does not come to the aid of the Appellant. In Vidarbha (supra), this Court had taken note of an award passed by APTEL in favour of the corporate debtor which far exceeded the claim of the financial creditor, and held in the setting of such facts, initiation of CIRP was unwarranted. In the present case, Appellant’s contention regarding Corporate Debtor’s viability is highly dubious. Though the Corporate Debtor strenuously demonstrates its commercial viability, the NCLAT has noted that the extent of outstanding liability as on 02.01.2024 was Rs. 3103.31 crore, which far exceeds the bills raised on WBSIEDCL to the tune of Rs 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.*
40. *For these reasons, we are of the opinion the admission of the Section 7 application was lawful and does not call for interference.”*  
*(emphasis wherever required supplied)”*



85. To summarize the above judgment, we observe as under: -
- a. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process must be initiated. Section 3(12) defines “default” as non-payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.
  - b. When the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor.
  - c. 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).



- d. The Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt.
- e. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more.
86. Applying the ratio of Power Trust (supra), we are of the view that the applicant has advanced a financial debt, which is in default, for an amount exceeding Rs. 1 Crore and that the Applicant has placed necessary proofs including the record of default issued by the information utility, which clearly indicates that the debt is in default and, therefore, this Application deserves to be admitted.
87. We also hold that as all the required documents have been attached by the Applicant, the Application is complete in all respect.
88. In view of the above we are forced to order for CIRP of the Respondent.
89. Further, the Applicant has proposed the name of Mr. Prashant Jain having Registration no. IBBI/IPA-001/IP-P01368/2018-19/12131 to be appointed as the IRP, attached its consent in Form 2 and from the said Form 2 it is observed that there is no disciplinary proceeding pending against the proposed IRP. Perusal of the IBBI site reveals that AFA is valid till 31.12.2026.
90. In view of the above, we are of the view that the Application filed by the Applicant herein deserves to be admitted.



91. We make it clear that at this stage, we have not crystalized the amount as claimed in this application, the same is left to be collated by the IRP.

92. We pass the following order:

**ORDER**

- i. The Corporate Debtor- DISTRIBUTION LOGISTICS INFRASTRUCTURE PRIVATE LIMITED [CIN: U85110MH1992PTC294462], is admitted into the Corporate Insolvency Resolution Process under Section 7(5)(a) of the Code.
- ii. As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:
  - a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - b. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - c. any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and



Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
  - e. The provisions of sub-section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to the Corporate Debtor.
- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.



- v. We hereby appoint Mr. Prashant Jain, an Insolvency Professional having (Email: ipprashantjain@gmail.com) registration no. IBBI/IPA-001/IP-P01368/2018-19/12131, as the Interim Resolution Professional ('IRP') of the Corporate Debtor.
- vi. The Financial Creditor is directed to pay an advance of Rs. 3,00,000/- (Rupees Three Lakhs Only) to the above-named IRP within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- vii. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.



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



Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

- xiv. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

**Sd/-**

**NILESH SHARMA**  
**MEMBER (JUDICIAL)**  
//RG (Steno)//

**Sd/-**

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**