

IN THE NATIONAL COMPANY LAW TRIBUNAL BENGALURU BENCH

CP (IB) No. 142/BB/2024

Application U/s. 7 of the Insolvency & Bankruptcy Code, 2016
read with Rule 4 of the Insolvency & Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

Encore Asset Reconstruction Company Private Limited

Having Regd. Office at: Caddie Commercial Tower,
Regus Business Centre, 5th Floor, Aerocity (DIAL),
South West Delhi, New Delhi – 110037

... Petitioner/Financial Creditor

VERSUS

Sri Lakshmi Motor Service Private Limited

Survey No.367, Village Malkhed,
Sedam Taluq Kalaburagi District,
Gulbarga, Sedam,
Karnataka, India, 585317

... Respondent/Corporate Debtor

Order delivered on: 20.08.2025

Coram: 1. Hon'ble Shri. Sunil Kumar Aggarwal, Member (Judicial)
2. Hon'ble Shri. Radhakrishna Sreepada, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Harish Srivatsa L.

For the Respondent : Shri Nikhil Sharma

O R D E R

1. This Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the IBC or the Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, on 12.01.2024 by **Encore Asset Reconstruction Company Private Limited** (hereinafter referred as the 'Petitioner/Financial Creditor') seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Sri Lakshmi Motor Service Private Limited** (hereinafter referred to as "Corporate Debtor/Respondent") for the default amount of Rs. 45,58,78,061/- (Rupees Forty-Five Crores Fifty-Eight Lakhs Seventy-Eight Thousand and Sixty-One only) wherein the principal amount is Rs. 39,63,00,000 (Rupees Thirty-Nine Crores

Sixty- Three Lakhs Only) and the interest is Rs. 5,95,78,061 (Rupees Five Crores Ninety-Five Lakhs Seventy-Eight Thousand and Sixty-One only) as on 28.11.2023 and date of default being 25.09.2021, as per Part IV of Form No. 1 of the Petition

2. Brief relevant facts of the Petition are given hereunder

- i. The Petitioner/Financial Creditor (acting in its capacity as trustee of the EARC-Bank 028-Trust) was incorporated on 28.10.2013 having its registered office at Caddie Commercial Tower, Regus Business Centre, 5th Floor, Aerocity (DIAL), South West Delhi, New Delhi – 110037. The Financial Creditor was assigned the aforesaid debts i.e. six credit facilities/loan accounts along with the underlying securities of the Corporate Debtor having principal amount of Rs.39,63,00,000 vide assignment agreement dated 31.03.2023 by City Union Bank.
- ii. The Corporate Debtor was incorporated on 23.04.2002 with CIN No. U50300KA2002PTC030408, under the Companies Act, 1956 having registered office at No. 2L, Industrial Suburb, Opposite CMTI, Tumkur Road, Yeswanthpur, Bangalore -560022 and is engaged in business of selling commercial vehicles and is having dealership of Eicher brand of Trucks.
- iii. The Corporate Debtor had availed six credit facilities from the City Union Bank for Principal amounts aggregating to ₹. 39,63,00,000 (Rupees Thirty-Nine Crores Sixty-Three Lakhs Only) which included Term Loans, OLCC and loan under Emergency Credit Line Guarantee Scheme. These facilities were extended under the terms and conditions set out in the respective Sanction Letters and Loan Agreements and a summary of the same is tabled below:

Loan Agreement No.	Disbursement Date	Loan Amount (in Rs.)	Amount Due (on 28.11.23)	Due Date	Loan Type
501812080012843	07.09.2015	2,65,00,000/-	57,02,562	25.09.2021	Term Loan
501812080030786	30.08.2017	3,00,00,000/-	3,49,12,417	25.09.2021	Term Loan
512020010011304	5.06.2018	22,00,00,000/-	29,64,63,259	25.09.2021	OLCC
501812080060187	13.01.2020	5,00,00,000/-	2,83,91,76	25.09.2021	Term Loan
5018L2080078121	23.02.2021	5,98,00,000	7,70,68,677	25.09.2021	ECLGS NEW
501812080079918	07.07.2021	1,00,00,000/-	1,33,39,379	25.09.2021	Term Loan

- iv. The Financial Creditor submits that the Corporate Debtor had acknowledged the debt by way of Creation of Mortgage and done some part payment and the details whereof is tabled below

Loan Agreement No.	Date of Mortgage Acknowledgment of Loan amount	Date of Last Part Payment	Part Payment Amount	Due Date	Loan Type
501812080012843	05.08.2021	23.02.2021	1,00,000	25.09.2021	Term Loan
501812080030786	17.02.2021	23.02.2021	6,00,000	25.09.2021	Term Loan
512020010011304	03.04.2021	07.11.2022	10,104 /-	25.09.2021	OLCC
501812080060187	17.02.2021	14.09.2020	33,77,2651	25.09.2021	Term Loan
5018L2080078121	17.02.2021	30.07.2021	3,50,000/	25.09.2021	ECLGS New
501812080079918	07.07.2021	Nil	Nil	25.09.2021	Term Loan

- v. On 18.09.2021, the City Union Bank had issued a demand cum loan recall notice to the Corporate Debtor to repay the total outstanding amount as mentioned therein within 7 days of receipt of the said notice demanding repayment of ₹34,78,05,163/- (Rupees Thirty-Four Crores Seventy-Eight Lakhs Five Thousand One Hundred and Sixty-Three only), being the outstanding amount as on 18.09.2021 along with applicable interest. Further, various follow up letters were also issued by City Union Bank to the Corporate Debtor to regularise the account but the corporate Debtor failed to pay the outstanding dues .
- vi. Further, due to irregularities in the loan account and default in repayment of Loan by the, Corporate Debtor to regularise the Account, the Corporate Debtor's accounts were classified as Non-Performing Asset (NPA) on 20.09.2021 by the City Union Bank, in accordance with the RBI guidelines.
- vii. Despite being in receipt of demand cum loan recall notice dated 18.09.2021 by the City Union Bank, the Corporate Debtor failed to pay **Rs.34,78,05,163/-** (Rupees Thirty Four Crore Seventy Eight Lakh Five Thousand One Hundred and Sixty Three Only) along with applicable interest for the respective loan accounts. Hence the date of default occurred and recorded as 25.09.2021 i.e. date of expiry of recall notice of 7 days period as payment was not made by the Corporate Debtor.
- viii. On 31.03.2023, City Union Bank, executed a deed of assignment dated 31.03.2023, assigning the loans disbursed to the Corporate Debtor by City Union Bank under Loan Agreement together with all rights, title and interest in the financing documents and the underlying security interest, pledges and/or guarantees in respect of such loans in favour of the petitioner, i.e. Encore Assets Reconstruction Private Limited on 'as is where is', 'as is what is' and 'without recourse' basis. It is further submitted that the City Union Bank had informed the Corporate Debtor about the assigning of the debt to the Petitioner vide letter dated 11.04.2023.

- ix. The Petitioner submits that the above loan accounts were also captured in the balance sheet of the Corporate Debtor for the Financial Year 2019-20 under long term Borrowings and short-term borrowings which is Annexure –E to the Petition.
 - x. Therefore, as on 28.11.2024, the total amount due to Financial Creditor by Corporate Debtor is ₹ 45,58,78,061/-. Rupees Forty-Five Crores Fifty-Eight Lakhs Seventy-Eight Thousand and Sixty-One only). Despite multiple opportunities, the Corporate Debtor has failed to repay the financial debt, and the default continues. Hence, the Petitioner is constrained to file this Petition under Section 7 of the IBC, 2016 for initiation of the CIRP against the Corporate Debtor.
3. The Respondent has filed reply/Objections to petitioner's claim on 16.04.2025 wherein it is contended that:
- i. The Corporate Debtor- M/s Lakshmi Motor Service Private limited is a leading dealer in Bangalore concerning Eicher trucks and commercial vehicles. The Corporate Debtor is recognized for its expertise, integrity, and strong market position, the company continues to lead the way in offering top-notch Eicher trucks and reliable service in its segment. |
 - ii. The Instant Petition is filed by alleged Financial Creditor by virtue of the Debt being assigned to it by way of an alleged Assignment Agreement dated 31.03.2023 entered with City Union Bank. The said assignment agreement 31.03.2023 entered between City Union Bank and Encore Asset Reconstruction Company is void in law because the said agreement does not provide if the consideration for the said assignment agreement has been paid by assignee to assignor or not. Further, there is no mode of transfer mentioned in the said agreement due to which, the genuineness of the assignment agreement is entirely questioned as consideration is not passed. It is further submitted that the Corporate Debtor had filed an Original Suit being O.S. No. 26814/2022 against City Union Bank in the City Civil Court and had obtained an interim order of injunction on 25.11.2022 against City Union Bank and the assignment agreement dated 31.03.2023 was made during the pendency of injunction granted by City Civil Court due to which the assignment agreement dated 31.03.2023 becomes void and the instant petition can be dismissed on this ground alone as initiation of CIRP based on a void agreement is impermissible. The Corporate

Debtor also submits that the Financial Creditor's application to implead itself in O.S. No. 26814/2022, filed on 25.03.2024, remains pending for adjudication

- iii. The Corporate Debtor submits that the Financial Creditor has suppressed material facts and come to this Adjudicating Authority with unclean hands as the City Union Bank has also filed an application under Order VII Rule 11 of the Civil Procedure Code, 1908 in said civil suit which was rejected on 30.09.2023. Further, the Corporate Debtor submits that the City Union Bank has also filed OA No. 456 of 2022 which is pending adjudication before the Debt Recovery Tribunal, Bangalore and the Recovery Certificate has not yet been issued as the matter is fixed for appellant evidence. Moreover, by suppressing material facts the Financial Creditor has violated the judgement of Hon'ble Supreme Court in ***K. Jayaram Vs Bengaluru. Development Authority, 2021 SCC Online SC 1194.***
- iv. The instant Petition filed by the Petitioner to initiate CIRP Proceedings against the Corporate Debtor is speculative as various facts have been suppressed and misrepresented by the Financial Creditor with a view to create a higher liability and unsubstantiated claims have been made to cause prejudice to the Corporate Debtor.
- v. The Corporate Debtor contends that there are Discrepancies in Date of default and claim made by the Financial Creditor as stated in the Petition by the Financial Creditor as the petition specifies 25.09.2021 as the Date of Default, seven days after the Recall Notice dated 18.09.2021, which indicated that the account would be classified as a Non-Performing Asset (NPA) on 20.09.2021. The Corporate Debtor questions the validity of this timeline, arguing that the Financial Creditor has not justified why the default was recorded five days after the NPA classification. This discrepancy raises doubts about whether the default was properly constituted under the IBC. Additionally, the Corporate Debtor disputes the claimed outstanding amount, asserting that the interest and penal charges were calculated unjustifiably, leading to an inflated balance that does not align with the original loan terms.
- vi. The petition is a veiled attempt at debt recovery rather than a genuine effort to resolve insolvency, which is contrary to the objectives of the Code and therefore it should be dismissed under Section 65(1) of the Code. The Financial Creditor claims an outstanding amount of Rs. 45.58 crore as of 28.11.2023, derived from a sanctioned loan of Rs. 39.63 crore. However, the Corporate Debtor disputes the accuracy of this amount as interest and penal charges have been arbitrarily escalated without

transparent calculation or supporting documentation to show higher liability. The absence of detailed account statements raises doubts about the legitimacy of the claimed amount, rendering the petition speculative. The Corporate Debtor cites the Judgement of Hon'ble NCLAT in *Anita Jindal v. Jindal Buildtech Pvt. Ltd. (2022) ibclaw.in 564 NCLAT*, wherein it was held that initiating CIRP for recovery purposes, rather than resolution, violates the IBC's spirit and is barred under Section 65(1) of the Code

- vii. The Respondent was regularly serving the debt before onset of the COVID-19, and the default occurred only due to economic hardship caused by COVID-19. Further, the Corporate Debtor had written several mails to the City Union Bank to release an amount of Rs. 23 Lakhs, which was to be adjusted against the interest. The email emphasized that the company was in the process of recovering from significant losses and had only resumed operations after a prolonged downturn due to COVID-19 Lockdown. The email further highlighted that the operations were adversely affected due to the funds being blocked in the account. After several requests, the City Union Bank sanctioned a sum of Rs. 5,98,00,000/- under the Emergency Credit Line Guarantee Scheme ("ECLGS"). However, the City Union Bank proceeded to adjust the sanctioned amount from ECLGS towards the arrears of interest accrued without prior notice or obtaining consent of the Corporate Debtor.
- viii. Further, the Financial Creditor's actions under the SARFAESI Act, particularly the issuance of a notice under Section 13(2) on 17.11.2021, despite ongoing negotiations for loan restructuring. The Corporate Debtor responded to this notice on 26.11.2021 and 17.12.2021, denying liability and requesting supporting documents, which the Financial Creditor failed to provide. Moreover, the Financial Creditor did not seek physical possession of the properties under Section 13(4) of the SARFAESI Act, 2002 and a related matter (O.A. No. 456/2022) remains pending before the Debt Recovery Tribunal (DRT-II) without a recovery certificate. These procedural lapses, combined with the coercive tactics of labelling the Corporate Debtor as a "wilful defaulter" with agencies like NeSL and CIBIL demonstrate arbitrary and unjust conduct by the Financial Creditor.
- ix. In view of the above-stated facts and grounds, it is submitted that the petition filed by the Petitioner is not only contrary to facts but also suppresses material information

relevant to the fair and just adjudication of this matter. The Petitioner, in its actions, has not only disregarded the statutory and contractual obligations but has also engaged in unlawful recovery practices, which have caused severe financial distress to the Corporate Debtor. Thus, the Corporate Debtor prays for dismissal of the Petition in the ends of justice and equity.

4. The Petitioner has filed rejoinder on 23.04.2025 vide Diary No. 2130 stating as under:

- i. The statement of objections filed by the Corporate Debtor is wholly misconceived, devoid of merit, and deserves to be rejected *in limine*.
- ii. **Validity of Assignment Agreement:** The Assignment Agreement dated 31.03.2023 is legally valid, duly registered, and executed with City Union Bank's confirmation via a letter dated 11.04.2023. The assignment complies with Section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) and the assignee is recognized as a Financial Creditor under the IBC. The City Union Bank Ltd had assigned six (6) loan accounts of the Corporate Debtor along with few other loan accounts to the Financial Creditor for a valuable consideration of Rs.43,99,00,000/- vide assignment agreement dated 31.03.2023, the same has been credited to the City Union Bank in terms of clause 2.1.4 of assignment agreement and the said agreement for assignment of debts is valid and recognised under Section 5 (7) of the Code. Moreover, the Hon'ble Karnataka High Court in its Judgement dated 28.02.2024 in the case of ***Gstaad Hotels Pvt. Ltd vs Union of India & others***, ***W.P No.6037 of 2023***, has held that assignment of asset to a new entity by the lender need not be on an express consent of the borrower and knowledge to the borrower would be sufficient for the assignment agreement. It is further submitted that City Union Bank has confirmed the valid assignment of loans pertaining to the Corporate Debtor and has duly served assignment notice on the Corporate Debtor vide its letter dated 11.04.2023. As such Corporate Debtor has no Locus to Challenge the Assignment.
- iii. **Financial Creditor has not suppressed any material facts-** The Corporate Debtor contends that the assignment occurred during an interim injunction order dated 25.11.2022 passed in O.S. No. 26814/2022, rendering it invalid. It is clarified that the interim order only restrained a public auction scheduled for 28.11.2022 and did

not prohibit debt assignment. The Corporate Debtor's selective presentation of the order is labelled as a malicious attempt to mislead the tribunal.

- iv. **Maintainability of the Section 7 Petition and Date of Default:** The Corporate Debtor defaulted on repayments, leading to the classification of the six credit facilities as Non-Performing Assets on 20.09.2021. After a recall notice issued on 18.09.2021 the default date is noted as 25.09.2021 following the failure to repay within the seven-day period stipulated in the said notice. Hence the date of default 25-09-2021 is valid in terms of the section 3(12) of the Code and the petition is valid and maintainable.
- v. **Misrepresentation of Legal Precedents:** - The Financial Creditor states that the Corporate Debtor's reliance on rulings like *Vidarbha Industries Power Ltd. vs. Axis Bank Ltd* and *Anita Jindal vs. Jindal Buildtech Pvt. Ltd* is misplaced as these do not preclude the Financial Creditor's right to initiate CIRP. The Financial Creditor cites *Swiss Ribbons Pvt. Ltd. vs. Union of India, MANU/SC/0079/2019* and *E S Krishnamurthy & Ors. Vs. M/s Bharath Hi Tech Builders Pvt. Ltd. MANU/SC/1249/2021* to state that the Adjudicating Authority's role is limited to verifying the existence of a debt & default, which is clearly established here.
- vi. **Existence of Debt and Default:** The Corporate Debtor has admitted the total amount outstanding in the loan accounts on 04.02.2022 and on 30.03.2022 under registered partial receipt deeds executed in favour of City Union Bank Ltd before the Sub-Registrar, Rajajinagar, Bangalore vide Doc No.5832/2021-22 and 7578/2021-22 respectively, **Annexure – C and D** to the rejoinder. Further, the Corporate Debtor has itself admitted the existence of default of Rs. 33.65,27,643 and stated its inability to service such huge default vide letter dated 17-06-2021. That clearly establishes full consent of Corporate Debtor for various transactions in concerned accounts and the malicious intent to enrich itself to protract the repayment of outstanding dues. The Information Utility report and the CIBIL report of the Corporate Debtor demonstrate the magnitude of outstanding credit facilities, which recorded the occurrence of 'default' in payment of its debts.

5. Heard Ld. Counsels for the parties and perused the record.

6. The Petition was filed on 12.01.2024 citing date of default as 25.09.2021 which matches with the Record of Default ('ROD') issued by NESL. The RoD annexed as **Annexure**

Q7 also specifies the status of authentication of ‘default’ as ‘deemed to be authenticated’ The total amount claimed by the Petitioner as due and payable as on 31.05.2024 is ₹45,58,78 061/-. The dispute sought to be raised by the Corporate Debtor qua the date of default is misconceived as either the date of declaration of loan accounts as NPA could have been taken to be the date of default as has been held in ***Laxmi Pat Surana vs. Union Bank of India & Anr.*** - (2021) 8 SCC 481 “that ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the Financial Creditor to initiate action under Section 7 of the Code” or even a subsequent date can be adopted as held in ***Koncentric Investments Limited and Anr. v. Standard Chartered Bank, London, and Anr., 2022 SCC Online NCLAT 1254:***

*"21. The Insolvency and Bankruptcy Code including rules and regulations, do not indicate that it is mandatory for the Financial Creditor to rush to file Section 7 Application whenever first default is committed in payment of interest. Although it had liberty to file an application even if there is default in payment of interest. Section 7(1) of the Code uses the expression when a default has occurred there is no indication under Section 7 of the Code that unless an Application is filed on first default committed, no application can be filed when subsequent defaults are committed. **The Financial Creditor is at liberty to file Section 7 Application but is neither mandatory nor necessary that on first default Financial Creditor should rush to the Insolvency Court.** Financial Creditor may await and give more time to Corporate Debtor to find out as to whether actually the Corporate Debtor has become insolvent and unable to repay the debt and even Financial Creditor ignores non-payment of interest when the Corporate Debtor first defaulted it shall not lose its right to file Application under Section 7 of the Code when default of instalment or whole amount became due." (Emphasis added)*

7. Even if the first default had occurred prior to the date of NPA, the Financial Creditor did not lose its right to file an Application under Section 7 of the Code on occurrence of subsequent defaults when the instalment or whole amount or interest became due. No question of limitation has been raised in the objections. Even otherwise the acknowledgement of debt vide letter dated 17.06.2021 and partial payments vide registered receipts in 2022 took the case beyond pale of such contention.
8. For the assignment of financial asset, it is relevant to cite ***Gstaad Hotels Pvt. Ltd vs Union of India & others, W.P No.6037 of 2023*** wherein Hon’ble Karnataka High Court has held that

15. The underlying principle is that the assignment of asset to a new entity by the lender need not be on an express consent of the borrower. Knowledge to the borrower would be suffice and knowledge to the petitioner in the case at hand

cannot be disputed. Therefore, the plea of assignment being contrary to the Master Circulars as is projected is untenable and all submissions shrouded with the plea of it being contrary to Master Circulars are all unsustainable. Assignment or reassignment by private entities or in the business of banking is best left to bankers, borrowers and the lenders unless it runs contrary to any statutory provision either under the SARFAESI Act or Circulars issued by the Reserve Bank of India which are held to have statutory force. I do not find any statutory aberration in the case at hand qua Master Circulars issued by the Reserve Bank of India

9. The plea of corporate debtor that the assignment being without consideration cannot form edifice for instituting the present petition, is extraneous as its existence has been conveyed by the assignor City Union Bank to the Corporate Debtor vide its letter dated 11.04.2023 which remains unquestioned and the said bank has nowhere stated that the consideration stated in the assignment agreement has not been received. The respondent/Corporate Debtor really has no locus to challenge the validity and efficacy of assignment agreement dated 31.03.2023.
10. The Petitioner has placed on record the Sanction Letters, Loan Agreements, the Deed of Assignment dated 31.03.2023, computation which evidence the subsisting liability and establish the Petitioner's locus to initiate the present proceedings under the Code. The Corporate Debtor has not denied the existence of debt or the occurrence of default. The only explanation offered is that its commercial activities suffered financial distress caused by rising input costs and the impact of the COVID-19 pandemic. While these submissions may provide context to the current financial condition of the Corporate Debtor, they do not constitute a valid defence against the existence of a "financial debt" or "default" within the meaning of Sections 5(8) and 3(12) of the Code. The Corporate Debtor has not filed its financial statements to evidence its solvency or profit making potential. Rather in their letter dated 17.06.2021 the Corporate Debtor unequivocally acknowledged the liability of Rs. 33,65,27,643 as on 31.05.2021 while stating that they are not in position to service the huge Debt. It was proposed that:-

- 1) Waive Rs.10 Crores from our liability out of the interest we have already paid,
- 2) Give the working capital requirement in the form of overdraft account with the limit of 10 crores.
- 3) Term loan of Rs.13.65 crores for a period of 10 years with the moratorium period of 2 years
- 4) The working capital overdraft account under sl.no2 and Term loan under sl.no3 may be granted with the interest of not more than 8% PA in order to enable me to service the same.

In addition to the above Rs.3 crores may be sanctioned and released under “Emergency Credit Line Guarantee Scheme (ECLGS) to meet the urgent working capital requirement for survival of our company.”

There is a clear affirmation of liability in the letter which further reinforces the continuity and subsistence of default, irrespective of whether settlement efforts are ultimately fructified.

11. Under Section 7 of the IBC, to initiate the CIRP, the Financial Creditor is only required to establish the existence of a financial debt and the occurrence of default. The material placed on record including the corroborative NeSL Record of Default, loan documentation, and subsequent correspondence demonstrate compliance with these statutory thresholds. The Corporate Debtor’s repeated attempts to restructure the debt categorically admit the factum of default. It further corroborates its continued inability to service the debt on the same becoming due. In this context, Hon’ble Supreme Court of India in the case of ***Innoventive Industries Ltd. vs. ICICI Bank and Ors., (2018) 1 SCC 407*** has held as under:

“...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.”

12. The Petitioner has clearly demonstrated the existence of principal financial debts owed by the Corporate Debtor much above the threshold prescribed under section 4 of the Code as on 28.11.2023, and the occurrence of default on 25.09.2021, which has remained uncured despite repeated notices and opportunities. The issue of imposition of excessive interest & penalty are not even required to be delved at this stage. The subsequent proposals of the Corporate Debtor to part pay the admitted debt does not nullify the occurrence of default. OTS negotiations are purely contractual in nature and cannot be treated as a waiver or novation of the original debt. The law on this issue is well-settled and has been reiterated by the Hon’ble Supreme Court in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352***. Further, the Petition is complete in terms of statutory requirements under Section 7(3) of the Code, including documents establishing the financial debt, occurrence of default, and the assignment of debt in favour of the Petitioner.

13. The Corporate Debtor has further urged that default has occurred due to economic hardship caused by spread of COVID-19. While this Authority is conscious of the social and economic impact of COVID-19 pandemic on employment and business activity, the statutory scheme under IBC mandates admission once the twin conditions of "debt" and "default" are satisfied. The date of loans indicate that the respondent was financially surviving/functional only on loans in various formats being extended by City Union Bank even prior to the onset of pandemic.

14. Initiation of steps under SARFAESI Act or seeking impleadment in the Civil suit by the financial creditor does not dent its entitlement to institute Insolvency proceedings under section 7 IBC as has been held in ***Punjab National Bank v. M/s Vindhya Cereals Pvt. Ltd., (2020) ibclaw.in 239 NCLAT*** and the relevant paragraphs of the said judgement of NCLAT is reproduced below for:-

“9.....we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force.

10. In such circumstance, we are of the considered view that Ld. Adjudicating has incorrectly held that after initiating proceedings under SARFAESI Act the Appellant i.e. Financial Creditor should be precluded from filing application under Section 7 of I&B Code”.

15. In the light of above analysis **Company Petition bearing CP (IB) No. 142/BB/2024 is allowed and respondent Sri Lakshmi Motor Service Private Limited is admitted to CIRP** and moratorium is declared in terms of Section 14 of the Code. As a necessary corollary, following prohibitions are imposed for all concerned to comply with:

- 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;

16. It is directed that the supply of essential goods or services to the Corporate Debtor, shall not be terminated or suspended or interrupted during the moratorium period in accordance with subsection (2) of Section 14 of the Code;
17. The provisions of Sub- section (3) of Section 14 of the Code shall however, not apply to such transactions 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 a Corporate Debtor;
18. The order of moratorium becomes effective forthwith till completion of the CIRP or until this Authority approves the Resolution Plan under sub-section (1) of Section 31 of the Code, or passed an order for liquidation of Corporate Debtor under Section 33 of the IB Code, 2016 as the case may be;
19. In Part-III of Form No.1, **Mr. Indrajit Mukherjee**, bearing Registration No. IBBI/IPA-001/IP-P-01533/2018-2019/12450 having registered address at Flat No. 705, A Wing Deep Towers, D N Nagar, Andheri (W) Mumbai 400053, contact no.:+91 7045312912 and email: indrajitmukherjee15@yahoo.co.com has been proposed as an Interim Resolution Professional (IRP). His written consent and credentials have been given in Form No.2. In view of the settled legal proposition, we appoint **Mr. Indrajit Mukherjee** as the Interim Resolution Professional of Corporate Debtor. The IRP is directed to take the steps as mandated under the IBC, particularly under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
20. The Financial Creditor shall deposit a sum of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** with the IRP for meeting the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors. In addition, the RP shall issue individual notices to Jurisdictional Income Tax Authority; Principal Commissioner of Income Tax (Judicial), Bengaluru; Regional Provident Fund Commissioner; GST Commissioner; Commercial Tax Authority; recognized Labour Unions.

21. The IRP shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Authority on or before the expiry of **thirty days** from the date of his appointment, and shall convene first meeting of the Committee **within seven days** for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular **monthly progress reports** to this Adjudicating Authority.
22. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the IRP forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his email address forthwith.

-Sd/-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd/

SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)