NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1

C.P. (IB)/201(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**:** **Central Bank of India**

V/s

Aswinikrishnaa Textile Private Limited

Under Section 7 of the IBC.

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)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – VI

CP(IB)/201/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

Central Bank of India Limited
Stressed Asset Management Branch,
346, Standard Building, Third Floor,
Dr. D.N. Road, Fort, Mumbai- 400023

... Applicant/Financial Creditor

Vs.

M/s. Ashwinikrishnaa Textiles Pvt Ltd.
(Corporate Guarantor of Shri Vallabh
Pittie South West Industries Ltd.)
Registered Office:
Mill Premises, No 500,Chinnamathampalayam
Bilichi Post, Coimbatore, Tamil Nadu,
India, 641019

... 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 HYBRID MODE)

For Financial Creditor: Adv. Mr. Narpat Singh
For Corporate Debtor: Adv. Mr. Prakhar Tandon i/b Adv. Mr. Ravleen Sabharwal.

O R D E R

PER: **Bench**

1. This is an application filed by Central Bank of India, claiming to be financial creditor under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) against Ashwinikrishnaa Textiles Pvt. Ltd. (Corporate Debtor), Corporate Guarantor of Shri Vallabh Pittie South West Industries Ltd.
2. This application was affirmed by Mr. Rajeev Kumar Jha, stated to be Chief Manager, duly authorized by a power of attorney dated 8.10.2014.
3. The Corporate Debtor is a company having CIN No. **U17111TZ2008PTC014199** and was incorporated on 06.02.2008 having registered office at Mill Premises, No 500, Chinnamathamapalyam, Bilichi Post, Coimbatore, Tamil Nadu, India-641019.
4. The applicant has named **Ms. Dipti Narayan Mundra**, **IP Registration No - IBBI/IPA-001/IP-P-02845/2023-2024/14366** to be appointed as IRP in case the application is admitted.
5. It is stated that the total amount of Debt Granted by the Applicant under the Three Loan Facilities is INR 53,94,00,000/- comprising of 3 loans details of which have been provided in the application.
6. The amount claimed in default is Rs. 70,35,32,464.32 which comprises principal amount of Rs. 48,46,73,716.01, default interest of Rs. 21,85,21,248.31 and other charges amounting to Rs. 3,37,500.
7. The date of default is mentioned as 01.06.2024 (as per Loan Recall Notice dated 15.05.2024). The date of NPA is mentioned as 01.05.2022.
8. It is stated that the Corporate Debtor has issued a guarantee dated 28.06.2022 in favor of the Financial Creditor and clause 19 of the said

guarantee states “The Guarantor agrees that any admission or acknowledgment in writing signed by the Borrower of the liability or indebtedness of the Borrower or otherwise in relation to the aforesaid credit facilities and or any part payment as may be made by the Borrower towards the principal sum hereby guaranteed or any judgement, award or order obtained by the secured parties or any of them against the Borrower shall be binding on the Guarantor and the Guarantor accept the correctness of any statement of account that may be served on the Borrower which is duly certified by any Officer of the secured parties and the same shall be binding and conclusive as against the Guarantor also and the Guarantor further agrees that in the Borrower making an acknowledgement or making a payment, the Borrower shall in addition to its personal capacity, be deemed to act as the Guarantor's duly authorized agent in that behalf for the purpose of Section 18 and 19 of the Limitation Act of 1963. Applicant has attached the working computation of amount in default at Annexure-A..

9. It is stated that the applicant is holding Plant and Machinery owned by Ashwinikrishnaa Textile Pvt Ltd. as security.

10. NeSL record of default is attached at Annexure – E to G which is in “Authenticated” status.

11. The applicant has relied on the following documents: -

    a. Copy of Sanction Letter dated 12.03.2015.
    b. Copy of Board Resolution dated 20.03.2015.
    c. Copy of Board Resolution dated 29.04.2015.
    d. Copy of Deed of Corporate Guarantee dated 29.04.2015.
    e. Copy of Second Supplemental Working Capital Consortium Agreement dated 24.06.2015.

f. Copy of Deed of Guarantee dated 24.06.2015.
g. Copy of Sanction Letter dated 26.10.2020.
h. Copy of Sanction Letter dated 16.03.2021.
i. Copy of Board Resolution dated 24.03.2021.
j. Copy of Term Loan Agreement dated 26.03.2021.
k. Copy of Working Capital Term Loan Agreement dated 26.03.2021.
l. Copy of Undertaking by the Borrower dated 26.03.2021.
m. Copy of Hypothecation Agreement dated 26.03.2021.
n. Copy of Letter of Continuity dated 26.03.2021.
o. Copy of Demand Promisory Note dated 26.03.2021.
p. Copy of Board Resolution dated 29.01.2022.
q. Copy of Renewal Letter dated 09.02.2022.
r. Copy of Fifth Supplemental Working Capital Consortium Agreement dated 30.03.2022.
s. Copy of Inter se Agreement dated 30.03.2022.
t. Copy of Deed of Guarantee dated 30.03.2022.
u. Copy of Deed of Corporate Guarantee dated 28.06.2022.
v. Certificate under the Bankers Book of Evidence Act, 1981.
w. Copy of OTS Letter dated 27.12.2023.
x. Copy of Loan Recall cum Guarantee Invocation Notice dated 15.05.2024 along with the dispatch receipts and track reports downloaded from the Internet confirming the date of delivery.

12. Notice was issued by this Tribunal vide order dated 20.02.2025.

13. Order dated 20.03.2025 records as below: -

"The Affidavit of Service has been filed by the Applicant herein, which is dated 18.03.2025. The perusal of the AOS reveals that service through speed post was attempted on 01.03.2025 for which postal receipt is attached at Page No. 7. The Applicant has attached tracking report, which reveals that item could not be delivered. The Applicant further states that email service was effected.

Registry has also attempted the service; however, no tracking report is available on file for the same.

The Counsel for the Applicant requests for a substituted service, which is granted. Registry is directed to handover to the Applicant's Counsel notice for the purpose of paper publication.

14. The applicant thereafter filed another affidavit of service dated 17.04.2025. Order dated 21.04.2025 records as under:-

"Perusal of the AOS reveals that the notice was published in four newspapers i.e. "The New Indian Express" in English and "Dinamani" in Tamil, both have been published on 06.04.2025 in Coimbatore Edition. Further, the notice is also published in "The Free Press Journal" in English and "Navshakti" in Marathi on 06.04.2025, in Mumbai Edition. The Applicant has attached the original paper publications along with the AOS. In view of the above, service upon the Respondent is deemed to be complete."

15. Respondent was represented through Ld. Counsel who sought and was granted 7 days' time to file reply.

Contentions of the Corporate Debtor

16. A reply affidavit dated 15.05.2025 was filed by the Respondent duly affirmed by Mr. Gopal Lohia, Authorized Representative. The contentions of the respondent are summarized as below :-

a. The present Petition has been filed on 13th April 2023. It is settled law that before a Petition can even be entertained by this Hon'ble Tribunal, it must comply with all their requirements stipulated in The

Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016.

b. The applicant has not served a copy of the application to IBBI.

c. The petitioner is using this Tribunal as recovery forum. Reliance was placed on the landmark judgment of the Hon'ble Supreme Court in the case of 'K Kishan vs. Vijay Nirman Company Private Limited [2018 SCC Online SC 1013] wherein Hon'ble Supreme Court opined that creditors cannot use the Insolvency and Bankruptcy Code, 2016 either prematurely or for extraneous considerations or as a substantive tool for debt enforcement procedures.

d. Further, the Hon'ble Supreme Court of India in its Judgment dated 12th July 2022 in Vidarbha Industries v. Axis Bank 2022 SCC Online SC 841, paras. 60 to 90 has clarified the law with respect to proceedings under Section 7 of the Code and the factors that need to be considered prior to admitting a Petition under Section 7(5) of the Code. The Hon'ble Supreme Court has held as follows:

"60. There can be no doubt that a Corporate Debtor who is in the red should be resolved expeditiously, following the timelines in the IBC. No extraneous matter should come in the way. However, the viability and overall financial health of the Corporate Debtor are not extraneous matters.

61. The Adjudicating Authority (NCLT) found the dispute of the Corporate Debtor with the Electricity Regulator or the recipient of electricity would be extraneous to the matters involved in the petition. Disputes with the Electricity Regulator or the Recipient

of Electricity may not be of much relevance. The question is whether an award of the APTEL in favour of the Corporate Debtor, can completely be disregarded by the Adjudicating Authority (NCLT), when it is claimed that, in terms of the Award, a sum of Rs.1,730 crores, that is, an amount far exceeding the claim of the Financial Creditor, is realizable by the Corporate Debtor. The answer, in our view, is necessarily in the negative.

62. 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 require 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 over all financial health and viability of the Corporate Debtor under its existing management.

63. As pointed out by Mr. Gupta, Legislature has, in its wisdom, chosen to use the expression "may" in Section 7(5)(a) of the IBC. When an Adjudicating Authority (NCLT) is satisfied that a default has occurred and the application of a Financial Creditor is

complete and there are no disciplinary proceedings against proposed resolution professional, it may by order admit the application. Legislative intent is construed in accordance with the language used in the statute.

70. As argued by Mr. Gupta, had it been the legislative intent that Section 7(5)(a) of the IBC should be a mandatory provision, Legislature would have used the word 'shall' and not the word 'may'. There is no ambiguity in Section 7(5)(a) of the IBC. Purposive interpretation can only be resorted to when the plain words of a statute are ambiguous or if construed literally, the provision would nullify the object of the statute or otherwise lead to an absurd result. In this case, there is no cogent reason to depart from the rule of literal construction.

77. The fact that Legislature used 'may' in Section 7(5)(a) of the IBC but a different word, that is, 'shall' in the otherwise almost identical provision of Section 9(5)(a) shows that 'may' and 'shall' in the two provisions are intended to convey a different meaning. It is apparent that Legislature intended Section 9(5)(a) of the IBC to be mandatory and Section 7(5)(a) of the IBC to be discretionary. An application of an Operational Creditor for initiation of CIRP under Section 9(2) of the IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice has

been delivered to the Corporate Debtor by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.

78. On the other hand, in the case of an application by a Financial Creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the Adjudicating Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor.

79. The Legislature has consciously differentiated between Financial Creditors and Operational Creditors, as there is an innate difference between Financial Creditors, in the business of investment and financing, and Operational Creditors in the business of supply of goods and services. Financial credit is usually secured and of much longer duration. Such credits, which are often long-term credits, on which the operation of the Corporate Debtor depends, cannot be equated to operational debts which are usually unsecured, of a shorter duration and of lesser amount. The financial strength and nature of business of a Financial Creditor cannot be compared with that of an Operational Creditor, engaged in supply of goods and services. The impact of the non-payment of admitted dues could be far

more serious on an Operational Creditor than on a financial creditor.

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

88. Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.

89. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if

the Award/Decretal amount is incapable of realization. The example is only illustrative.

e. Respondent has been wrongfully declared/classified as NPA:-

a. It is the case of Petitioner that they had sanctioned a loan in favor of one Shri Vallabh Pittie South West Industries Limited (erstwhile Platinum Textiles Ltd) (hereinafter referred to as "Principal Borrower") for the following purported financial facilities:

Amount in Crore (Rs.)

Sr. No.	**Nature of Facility**	**Amount Sanctioned**
1.	**CC General Corporate**	**18.00**
2.	**Working Capital Demand Ln-Mclr**	**27.00**
3.	**GECL 2.0 Corporate**	**8.94**
	Total	**53.94**

b. It is the case of the Petitioner that the aforementioned purported loan that was extended to the Principal Borrower, the Principal Borrower,failed to maintain the financial discipline and the Principal Borrower's account was classified as Non-Performing Asset by Petitioner on 01st May 2022, however, no document or communication has been placed on record evidencing the same.

c. However, purportedly, the Corporate Debtor and the Petitioner Bank had executed a Deed of Corporate Guarantee dated 28th June 2022. Keeping in mind that the aforementioned Deed of Corporate Guarantee dated 28th June 2022 was executed much after the Principal Borrower's account purportedly was declared as NPA i.e., on 01st May 2022, this date would hold no relevance in case of the Corporate Debtor since the Corporate Debtor's alleged liability to repay, if any, only arose after execution of the aforementioned Deed of Corporate Guarantee dated 28th June 2022 and not prior. Therefore, any default which was suggested to have been occurred prior to the execution of Deed of Corporate Guarantee dated 28th June 2022, would not in any way or manner latch onto the Corporate Debtor. Furthermore, as per the terms of the Deed of Corporate Guarantee dated 28th June 2022, for the Corporate Debtor to be held liable to repay any amount to the Petitioner, first there had to be a default on the part of the Principal Borrower, which is absent in the present case.

d. In the meantime, it appears that one of the other Financial Creditors of the Principal borrowers namely Indian Overseas Bank ("IoB") had filed a Company Petition bearing CP (IB) No. 380 (MB) of 2023 against the Principal Borrower, the said Company Petition came to be admitted on 10th October 2023. Therefore, once again there was no default on the part of the Principal Borrower which could have then drawn its liability to Corporate Debtor herein. Respondent seeks liberty of this

Hon’ble Tribunal to place on record the order dated 10th October 2023.

e. It settled position in law that once a Company is admitted into CIRP the board of directors are suspended and no communication can be issued on their behalf, therefore, the OTS proposal 27th December 2023 (on the basis of which the Company Petition No. 213 of 2025 was admitted) was issued without proper authorization therefore cannot be considered as a valid admission of debt, this principle is rooted in the idea that a person's actions, including statements, can only bind them when they are made with the authority to do so. A communication from someone lacking authority is not legally binding or persuasive as evidence of debt recognition.

f. There is no default committed by the Respondent since no demand has been raised by the petitioner.

a. Thereafter, it is alleged by the Petitioner that as per terms of the purported Deed of Guarantee it is clear that the said Corporate Guarantee was payable ‘on demand’. From the terms of the purported Corporate Guarantee, it appears that for the Corporate Debtor was to be held liable to repay any debt, the Petitioner must first invoke the corporate guarantee as per the terms of the deed of guarantee. It was only after the said invocation of guarantee is when the Petitioner could have filed the said Company Petition under the provision of section 7 of Code against the Corporate Debtor. Respondent states that

without invocation, there was no debt due against the Corporate Debtor, and therefore, no default occurred, since a guarantee is a contractual obligation, and liability on the guarantor (in this case the Corporate Debtor) arises only when the creditor formally invokes it. Therefore, unless a guarantee explicitly provides for automatic liability, formal invocation remains a necessary step before any legal action against the guarantor can proceed, which are the admitted facts in the present case. Respondent states that this Hon'ble Tribunal may direct the Petitioner to place on record concrete evidence indicating that they have served a copy of the said notice invoking guarantee, invoking the Deed of Guarantee.

b. Respondent states that, it is the Petitioner's case they had issued a purported 'Loan Recall cum Guarantee Invocation Notice' dated 15th May 2024, with respect to alleged Corporate Guarantee given to purportedly secure the loan availed by the Principal Borrower. However, Respondent states that they have till date never received the aforementioned 'Loan Recall cum Guarantee Invocation Notice' dated 15th May 2024, neither by way of email nor by way of speed post. Therefore, unless the Petitioner can prove that they served a copy of the 'Loan Recall cum Guarantee Invocation Notice' dated 15th May 2024, the said Company Petition is not maintainable. Petitioner states that even as per Respondent's own tracking consignment report annexed to their Company Petition, the Loan Recall cum

Guarantee Invocation Notice' dated 15th May 2024 was returned to Petitioner without any remarks and not such notice was ever received by the Respondent.

g. The present company petition is filed premature in view of the resolution plan of Shrivallabh Pittie South West Industries Limited pending approval.

a. In the meantime, it appears that Shrivallabh Pittie South West Industries Limited, i.e., the Principal Borrower, which is undergoing CIRP, and is in the process of getting resolved., during several CoC meetings, especially, during the 8th COC meeting held on 17th February 2025, it was discussed that one Authum Investment & Infrastructure Limited (Authum) submitted a resolution plan for a sum of Rs. 56 crores, to the CoC of the principal borrower comprising of Petitioner herein. This Resolution Plan was towards full and final settlement of all the liabilities, including the personal guarantees and third-party securities. Thereafter, the Resolution Professional of the Principal Borrower convened the 9th CoC meeting on 27th February 2025. In this meeting, Authum, submitted the highest bid and has unequivocally stated that its proposal includes the third-party securities, corporate guarantee i.e., the subject guarantee.

b. It is essential to mention that the CoC, including the Petitioner, requested the prospective resolution applicants to enhance their offers. Consequently, Authum increased its offer from Rs. 56

crores to Rs. 67.50 crores. However, the plan submitted by it yet includes third-party assets, personal and corporate guarantees, proceeds from PUFE applications. In the 12th CoC Meeting Authum conveyed its intention in acquiring the Principal Borrower as a whole along with the personal guarantees and third-party securities (including the purported Corporate Guarantee extended the Corporate Debtor herein to the Petitioner). It is only after taking into account factors, it submitted a resolution plan for Rs. 67.50 crores. If the third- party security i.e., the subject properties are not included, then it will significantly impact the resolution and will lead to a downward revision of the plan. As per the terms of the Resolution Plan submitted by Authum stipulates that it shall pay a sum of Rs. 23.00 crores towards the creditors, including the Petitioner herein. Upon approval of the plan by the Ld. Adjudicating Authority, Mumbai Bench, the collaterals offered and the guarantees provided shall stand assigned to Authum. In addition to this, Resolution Plan under Clause 7.1.5 also stipulates that upon approval of the resolution plan by the Ld. Adjudicating Authority, the proceedings of any security interest or debt owned by or against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity. Copies of minutes of CoC meetings held by the Resolution Professional of Shrivallabh Pittie South West Industries Limited / Principal Borrower are annexed and marked as Annexure A – 3 to the Reply.

c. In furtherance of the above, a mere perusal of the said Resolution Plan submitted by the Authum to the CoC of principal borrower comprising of Central Bank of India, i.e., Petitioner herein, shows that Authum has offered to repay the debt of the Petitioner Bank, and as against the said 'settlement amount', Authum has sought assignment of the entire debt and mortgaged assets in their name. This would mean that upon approval of the Resolution Plan submitted by Authum, the entire debt owed as well the Corporate Guarantee shall be transferred in the name of Authum. The said Resolution Plan is currently under consideration by the CoC of the Principal Borrower (which includes Petitioner), therefore, the present Company Petition is premature and this Hon'ble Tribunal may consider these facts at the time of passing any order on the present Company Petition. Relevant portion of the Resolution Plan is reproduced hereinbelow:

"The Financial Creditors shall absolutely and unconditionally assign and transfer to the Resolution Applicant (acting through the Implementation Vehicle), the FC Assigned Assets and all present and future right, title, interest, obligation, and benefit, whether direct or indirect, that may accrue in respect thereof, to the end and intent that the Implementation Vehicle shall be legally and beneficially vested with all present and future right, title, interest, obligation, and benefit of such Financial Creditors in and in respect of the FC Assigned Assets, in consideration of the Financial Creditors' Payment payable to such creditors in

accordance with Clause 4.3.2 of Chapter IV (Treatment of Stakeholders) ("FC Assignment"). The FC Assigned Assets shall be free and clear of all encumbrances whatsoever. The Upfront FC Payment shall be payable by the Implementation Vehicle to the Financial Creditors simultaneously with the transfer of the FC Assigned Assets, on the Implementation Date. The Balance FC Payment shall be payable in accordance with the terms of FC NCDs as outlined in Schedule 3 (Indicative Terms of FC NCDs)."

In addition the above, Respondent submits that the resolution plan submitted by Authum stipulates that it shall pay a sum of Rs. 23.00 crores towards the creditors, including the Petitioner herein. Upon approval of the plan by the Ld. NCLT, the collaterals offered and the corporate guarantees provided shall stand assigned to Authum. A copy of the Resolution Plan submitted by a consortium / SPV of one 'Ankit A. Kothari and Authum Investment and Infrastructure Limited' is annexed and marked as Annexure A – 4 to the Reply.

d. It is stated that, clause 4.3.7 of the Resolution Plan also stipulates that it shall not affect the validity and enforceability of the security created by the third party for securing the debt of the Corporate Debtor. Authum shall have sole right, title, or interest in and shall be solely entitled to take any and all steps and remedies and records available to it under applicable law for recovery of the FC assigned assets from such guarantors and/or third parties security providers. The resolution plan under Clause 7.1.5 also

stipulates that upon approval of the resolution plan by the Ld. NCLT, the proceedings of any security interest / debt against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity.

e. Herein, it is important to note that the Corporate Debtor had challenged action of another similar secured creditor under the SARFAESI Act against them before the Ld. DRT, wherein, stay has been granted in Corporate Debtor's favor by the Ld. DRT.

Copies of orders passed by the Ld. DRT, Mumbai Bench is annexed and marked as Annexure A – 5 to the Reply.

f. In view of the foregoing, it is most respectfully prayed that the present petition be dismissed with exemplary costs.

17. No rejoinder was filed by the Applicant. Written submissions were filed by the Applicant which have since been considered by us.

18. Order dated 23.09.2025 records as under:-

Ld. Counsel for the Respondent states that the Corporate Debtor herein is a Corporate Guarantor to Shri Vallabh Pittie South West Industries Limited. It is stated that the main borrower is already under going CIRP as per the order of the Coordinate Bench of this Tribunal.

A Resolution Plan with respect to that Corporate Debtor (main borrower) has been submitted by the Suspended Board of Directors and the COC has put the same Plan for voting.

4. Ld. Counsel for the Respondent further states that the Resolution Plan submitted by the suspended directors is the only Plan, which has been put to voting.

Ld. Counsel for the Applicant states that the guarantee issued is in favor of the consortium of lenders of Shri Vallabh Pittie South West Industries Limited and there are common COC Members in the present Respondent and Shri Vallabh Pittie South West Industries Limited.

Ld. Counsel for the Respondent states that in the Plan given by the suspended directors for the principal borrower the issue of the corporate guarantee by the present Corporate Debtor has also been addressed. He thereafter requests this Tribunal to defer the hearing in this matter awaiting the outcome of the voting on the Resolution Plan by COC.

19. In view of the averments of the Ld. Counsel for the Respondents that the Resolution plan is pending which deals with the corporate guarantee issued by the Corporate Debtor, this Bench deferred the matter on 10.10.2025, 03.11.2025, 26.11.2025 and 18.02.2025. The matter was reserved for order on 26.02.2026 and till that time no approval of the plan with respect to the principal borrower by the CoC of the principal borrower was placed before us for our consideration.

20. The Respondent has relied upon the following judgments: -

i. Vidarbha Industries v. Axis Bank 2022 SCC Online SC 841,

Analysis and Findings: -

21. We have heard both the sides and have perused the pleadings as were produced before us.

22. Followings are the admitted facts in the present matter :-

a. The Corporate Debtor herein had issued a Guarantee to the Applicant , which is dated 28.06.2022 for the loans extended by the

Applicant to one Shri Vallabh Pittie South West Industries Limited (Principal Borrower).

b. The Principal Borrower is undergoing CIRP.

c. In the CIRP of the Principal Borrower, the promoters of the Respondent Corporate Debtor/Suspended Director of the corporate Debtor have placed a resolution plan before the COC, which is yet to be approved by the COC.

d. The said resolution plan also deals with the guarantee issued by the Corporate Debtor.

e. The claim of the applicant has been admitted in the CIRP of the Principal Borrower.

23. In reply the Corporate Debtor has raised the following defence: -

a. Copy of application not served to IBBI which violates Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016.

b. The petitioner is using this Tribunal as recovery forum.

c. Respondent has been wrongfully declared/classified as NPA.

d. The deed of guarantee dated 28.06.2022 was executed post the account of the Principal Borrower was classified as NPA on 01.05.2022.

e. No proof of the invocation of the guarantee was placed by the applicant and as such the since a guarantee is a contractual obligation, and liability on the guarantor (in this case the Corporate Debtor) arises only when the creditor formally invokes it. Therefore, unless a guarantee explicitly provides for automatic liability, formal

invocation remains a necessary step before any legal action against the guarantor can proceed.

f. 'Loan Recall cum Guarantee Invocation Notice' dated 15th May 2024, was not received by the Respondent either by way of email nor by way of speed post.

g. Resolution plan of Principal Borrower will address the issue of guarantee once the same is approved by the COC.

24. For a better understanding of the matter, Clause 1 and 13 of the deed of guarantee dated 28.06.2022 are reproduced below: -

1. If at any time default shall be made by the Borrower in payment of the principal sum not exceeding Rs. 2,05,52,00,000/- (Rupees Two Hundred and Five Crores and Fifty Two Lakhs only) together with interest, penal interest, additional interest, costs, charges, expenses and/or other monies for the time being due to the said Banks and the lOB Consortium (herein after collectively referred to as "the secured parties") in respect of or under the aforesaid credit facilities or any of them, as agreed by the Borrower under the various security documents, the Guarantor shall forthwith on demand from the Lenders/IOB Consortium pay to the said Banks, as the case may be, the whole of such principal sum not exceeding Rs. 2,05,52,00,000/- (Rupees Two Hundred and Five crore and Fifty Two Lakhs only) together with interest, costs, charges, expenses and/or any other monies as maybe then due to the secured parties in respect of the aforesaid credit facilities and shall indemnify and keep indemnified the said Lenders and IOB

Consortium against all losses of the said principal sum, interest, penal interest, additional interest, or other monies due and all costs charges and expenses whatsoever which secured parties may incur by reason of any default on the part of the Borrower. Any such demand made by the said Lenders/lOB Consortium on the Guarantor shall be final, conclusive and binding notwithstanding any difference or any dispute among Said Banks, lOB Consortium and the Borrower or any other legal proceedings, pending before any court, tribunal, arbitrator or any other authority. The Guarantor shall be liable for interest on all the monies guaranteed hereunder on daily balance basis or at such other basis, compounded at monthly rests, till the date of actual realization of the dues by the said Banks. The Guarantor shall be bound by the rate/s of interest, as may be fixed by the said Banks from time to time, for the aforesaid credit facilities sanctioned to the Borrower. The Guarantor further agrees that the said Banks shall be within their absolute right to fix and revise the rate/s of interest and the manner of capitalization of the same, from time to time, in respect of all or any of the aforesaid credit facilities granted to the Borrower and in this regard the Guarantor agrees that notwithstanding anything contained in this agreement or in any other writings to the contrary, any change/revision in the rate of interest/manner of capitalization, shall be binding on the Guarantor also, if the same is published/displayed for the general information of public, in a newspaper OR on the website of the said Banks OR in the notice

board of the branch office of the said Banks from where the borrower has availed the said facilities or through entry of interest charged in the statement of Account/Loan Account of the Borrower. The revised rates of interest/ procedure shall be applicable and binding on the Guarantor from the effective date stated in the said publication/display. In the event of failure by the Guarantor to make payment as stated above, the Guarantor shall pay default/additional/penal interest as specified in relation to the aforesaid credit facilities for the Borrower till receipt of the aforesaid amounts by the said Banks to their satisfaction. The Guarantor hereby agrees and confirms its liability under this Deed of Guarantee is co-extensive with that of the borrower.

13.The Guarantor shall forthwith on demand made by the secured parties, deposit with the secured parties such sum or security or further sum or security as the secured parties may from time to time specify as security for the due fulfilment of its obligations under this Guarantee and any security deposited with the secured parties may be sold by the secured parties after giving to the Guarantor a reasonable notice of sale and the said sum or the proceeds of sale of the securities may be appropriated by the secured parties in or towards satisfaction of the said obligations and any liability arising out of non-fulfilment thereof by the Guarantor.

25. From the above two clauses we are of the view that a demand has to be made by the applicant on the respondent invoking the guarantee. It is the case of the applicant that they have invoked the guarantee vide a Loan

Recall cum Guarantee Invocation Notice' dated 15th May 2024 which is attached at page number 464 to 468 of the application. The applicant has attached the postal receipts at page number 466 of the application and the Track Consignment report issued by the Postal Authorities is attached at Page Number 467 and 468 of the application.

26. Perusal of the Track Consignment report of Postal Authorities reveals that the consignment was booked on 17.05.2024 and was returned to the **"Addressee"** on 27.05.2024.

27. The respondent Corporate Debtor has taken a specific objection in the Reply that the invocation was never carried out by the Applicant. Despite such specific objection, no rejoinder was filed by the Applicant placing on record proof of valid invocation of guarantee.

28. Hon'ble NCLAT in Pooja Ramesh Singh vs. State Bank of India Company Appeal (AT) (INS) No. 329 of 2023 has held that default in the guarantee arises only when the guarantee has been invoked.

29. Further in Company Appeal No. (AT) (INS) 191 of 2023 State Bank of India Vs. Deepak Kumar Singhania, Hon'ble NCLAT held that default shall arise on the part of Guarantor only when demand notice is issued as contemplated in the Deed of Guarantee.

30. Perusal of the guarantee agreement appended at page no. 287 reveals that the address of the Corporate Debtor herein as mentioned in the said deed of guarantee is **Registered Office: Mill Premises, No 500, Chinnamathampalayam Bilichi Post, Coimbatore, Tamil Nadu, India, 641019.**

31. The letter of invocation of guarantee being the loan recall cum guarantee invocation notice dated 15.05.2024 appended at page no. 464 reveals that the Applicant herein has addressed the said notice to the same address.

32. It is also seen from page no. 466 that the Applicant has attached the postal receipt which is for the same address.

33. The Applicant has attached the master data of the Corporate Debtor at page no. 23 of the Application which to reveals that address of the registered office of the Corporate Debtor is the same.

34. This Tribunal relies upon the Judgment of Hon'ble NCLAT in the matter of ***Paresh Rastogi v. Omkara Assets Reconstruction Pvt. Ltd. and Anr. Company Appeal (AT) (Insolvency) No. 2053 of 2024*** decided on 18.03.2025.

35. It is noted that the Hon'ble NCLAT has cited a catena of judgments in the said order in relation to the service of the notice. The relevant paras are produced herein below: -

> ***"45. The Hon'ble Supreme Court of India- CC Alavi Haji v. Palapetty Muhammed (supra) has held that***-
>
> *"14. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. …"*
>
> *[emphasis supplied]*

46. In another judgment of Hon'ble Apex Court in ***Greater Mohali Area Development Authority and Ors. Vs. Manju Jain and Ors. (2010) 9 SCC 157*** *the Hon'ble Apex Court held as under:*

"…

a.In C.C. Alavi Haji v. Palapetty Muhammed [(2007) 6 SCC 555: (2007) 3 SCC (Cri) 236] this Court reiterated a similar view that Section 27 of the General Clauses Act, 1897 and Section 114 Illustration (f) of the Evidence Act, give rise to a presumption that the service of a notice has been effected when it is sent to the correct address by registered post. This Court held as under: (SCC p. 564, para 14)

"14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post…. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

b.This Court has reiterated a similar view in Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602 : 1989 SCC (L&S) 393 : (1989) 10 ATC 396 : AIR 1989 SC 1433] , CIT v. V.K. Gururaj [(1996) 7 SCC 275: 1996 SCC (L&S) 579: (1996) 33 ATC 269] , Poonam Verma v. DDA [(2007) 13 SCC 154], Sarav Investment &Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund [(2007) 14 SCC 753: (2009) 1 SCC (Cri) 935], Union of India v. S.P. Singh [(2008) 5 SCC 438 : (2008) 2 SCC (L&S) 1] , Municipal

Corpn., Ludhiana v. Inderjit Singh [(2008) 13 SCC 506] and V.N. Bharat v. DDA [(2008) 17 SCC 321: AIR 2009 SC 1233] …."

[Emphasis Supplied]

***47**.Such like situations have been noted in the legal precedents— including **St. Alfred Education Trust v. Kone Elevator India Pvt. Ltd. (supra)** and **Alavi Haji v. Palapetty Muhammed (supra)** — which have been relied upon by the Respondents. The Hon'ble High Court of Madras herein **St. Alfred Education Trust (supra)** held:*

"21. In the light of the communications exchanged between the parties, the aforesaid conclusion reached by the learned Judge, in our view, is perfectly correct. In the suit, the respondent/plaintiff has taken all efforts to serve summons on the appellant/defendant. It is settled law that if the notice is sent to the correct and last known address of the defendant, the same has to be deemed to be served, whether it is actually served or not. In the present case, summons have been served to the correct and last known address of the appellant. It is not the case of the appellant that summons have been sent to a wrong address. Further, the appellant has not informed about their change of business place. In such circumstances, it can be inferred that summons have been duly served on the appellant, but they failed to contest the suit. Therefore, the application filed by the appellant in the year 2019 to set aside the ex parte decree dated 24.04.2009, after a decade, was rightly dismissed by the learned Judge, by the order impugned herein, which need not be interfered with, at the hands of this court."

[Emphasis Supplied]

"……..

50. Basis Section 27 of General Clauses Act, 1897, the service of the notice gets affected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. Under these conditions the arguments of the Appellant-PG cannot be accepted that service of demand notice was not affected.

51. All above judgments support the case of the Respondents that support the proposition that notice served to the last known or registered address is deemed effective even if the recipient does not physically receive it. The Appellant's failure to update his address cannot now be used to invalidate such service.

……

53. Further the Respondent No.1- Omkara had sent the Recall Notice, Invocation Notice and Demand Notice to the Appellant on the address provided in the Guarantee Deed, being the last known address provided by the Appellant in terms of Clause 22 of the Guarantee Deed. The Appellant has not claimed that the address on which the Recall Notice, the Invocation Notice and the Demand Notice were sent was incorrect or does not belong to the Appellant. Also, the Appellant has not claimed that any fresh address was provided to the Respondent No.1 (or Piramal or DHFL), hence the address mentioned in the Guarantee Deed remained the last known

address of the Appellant as provided to the Respondent No.1. It is also noted that address on the memo of parties is the same which was in the invocation notice and also the demand notice. This was the last known address as provided in the Guarantee Deed and shall be deemed to have been served as per Section 27 of the General Clauses Act, 1897. It is claimed by the Appellant-PG that Section 27 of the General Clauses Act, 1897, createsa presumption that a notice properly addressed, prepaid, and sent via registered post is deemed to be served at the time it would ordinarily be delivered. It contends that the presumption under Section 27 is rebuttable and not conclusive. If the addressee provides credible evidence of non-receipt or non-delivery, the presumption can be displaced. The absence of a postal acknowledgment receipt or tracking information indicating non-delivery. But in the facts and circumstances of the case this rebuttal is not credible and is without merit and cannot be accepted.

54. The claim of the Appellant that the Since the invocation notice and the demand notice were issued in accordance with the provisions of the Guarantee Deed and which constitutes a separate contract between the parties; therefore, the claim of the Appellant-PG is not maintainable.

55. Therefore, the grounds raised by the Appellant- PG on validity of service are without merits and are not acceptable and doesn't provide any support to the Appeal. Accordingly, the arguments of the Appellant that service of various notices have not been done cannot be accepted."

36. Considering the above judgment, it is safe to conclude that the Applicant has served the Respondent the notice on the address, which is the registered address of the Respondent, last known to the Applicant and also the same is available in the Master Data of the Respondent. On page No. 326 of the Reply of the Respondent dated 15.05.2025, a certified copy of the resolution of the Board of Directors of the Respondent has been attached. The said resolution was passed at the meeting of the board held on 04.04.2025 at 11:00 A.M. The said resolution is printed in the letterhead of the Respondent which contains the same address of the Respondent which is registered with the MCA and to the said address only the invocation notice was dispatched by the Applicant. Further, the fact that the status of the tracking report stating “Item Delivered [To: Central Bank 2 (Security Personnel)]” and without any remark, it is deemed to be serviced, as the Respondent has not communicated any change in the address to the Applicant neither has the Respondent updated his address. In this regard a reference is made to para 51 of the Paresh Rastogi Judgment wherein Hon’ble Supreme Court by referring to the other judgments cited has observed that, “all above judgments support the case of the Respondents that support the proposition that notice served to the last known or registered address is deemed effective even if the recipient does not physically receive it. The Appellant’s failure to update his address cannot now be used to invalidate such service”. In para 47 of the above judgment, Hon’ble Supreme Court has referred to an order of Hon’ble High Court of Madras in the matter of St. Alfred Education Trust wherein Hon’ble High Court has held that “it is settled law that if the notice is sent to the correct

and last known address of the defendant, the same has to be deemed to be served, whether it is actually served or not."

37. Considering the above referred judgements, we are of the view that if the Applicant has posted the invocation letter through registered post at the correct address of the Respondent, the latter cannot claim that the said letter has not been served upon it especially considering that the Respondent is having the same address as its registered office and that it has not notified the Applicant about change of its address, if any and therefore, the Respondent cannot raise the objection that the invocation of guarantee was not carried out by the Applicant.

38. As regards the simultaneous CIRP of the Corporate Debtor and the principal borrower, we rely upon the Judgment of the Hon'ble Supreme Court in Civil Appeal no. 6094 of 2019 in the matter of **ICICI Bank vs ERA Infrastructure (India) Limited** decided on 26.02.2026.

39. More particularly para 100 which is reproduced below:-

100. To reiterate, the contention that simultaneous proceedings must be necessarily barred apprehending double enrichment is far-fetched and stands rejected, particularly in view of the safeguards mentioned hereinabove.

40. Further this Tribunal has also relied on the judgement of Hon'ble NCLAT in matter of **State Bank of India vs Athena Energy Ventures Private Limited Company Appeal (AT) (Ins) No.633 of 2020** wherein the Hon'ble NCLAT held

16.We find substance in the arguments being made by the learned Counsel for Appellant which are in tune with the Report of ILC. The ILC

in para – 7.5 rightly referred to subsequent Judgement of "Edelweiss Asset Reconstruction Company Ltd. v. Sachet Infrastructure Ltd. and Ors." dated 20th September, 2019 which permitted simultaneously initiation of CIRPs against Principal Borrower and its Corporate Guarantors. In that matter Judgment in the matter of Pirmal was relied on but the larger Bench mooted the idea of group Corporate Insolvency Resolution Process in para – 34 of the Judgement. The ILC thus rightly observed that provisions are there in the form of Section 60(2) and (3) and no amendment or legal changes were required at the moment. We are also of the view that simultaneously remedy is central to a contract of guarantee and where Principal Borrower and surety are undergoing CIRP, the Creditor should be able to file claims in CIRP of both of them. The IBC does not prevent this. We are unable to agree with the arguments of Learned Counsel for Respondent that when for same debt claim is made in CIRP against Borrower, in the CIRP against Guarantor the amount must be said to be not due or not payable in law. Under the Contract of Guarantee, it is only when the Creditor would receive amount, the question of no more due or adjustment would arise. It would be a matter of adjustment when the Creditor receives debt due from the Borrower/Guarantor in the respective CIRP that the same should be taken note of and adjusted in the other CIRP. This can be conveniently done, more so when IRP/RP in both the CIRP is same. Insolvency and Bankruptcy Board of India may have to lay down regulations to guide IRP/RPs in this regard.

41. As regards the serving copy of the Application to IBBI, the Applicant has attached at page no. 472 form 1A (AAA) being proof of service to IBBI along with Application.

42. The objection of the Respondent that its account was wrongfully declared/classified as NPA is not tenable for the reason that this Tribunal is not having the jurisdiction in regard to the said issue. An Application under Section 7 of the IBC has to be made based on the default in making

payment of the financial debt of more than Rs. 1 crore and the date of NPA is not relevant for the purpose of making of such an Application.

43. The contention of the Corporate Debtor that resolution plan of the Principal Borrower will address the issue of guarantor's debt is not considered as till the present date no resolution plan has been approved or come up before the AA. Therefore, we can conclude that there exists the debt and default.

44. The other grounds raised by the Respondent i.e. the deed of guarantee dated 28.06.2022 was executed post the account of the principal borrower was classified as NPA on 01.05.2022 or the resolution plan of principal borrower will address once the same is approved by the CoC, are in our view of no aid to the Respondent. The execution of the Corporate Guarantee post declaration of the account as NPA does not make the said guarantee invalid. Further, presently there is no resolution plan approved by the CoC in the CIRP of the principal borrower and therefore, the debt and default, based on which the present Application has been filed by the Applicant, exist and therefore, this Tribunal can proceed with the admission of the present Application. In case, the said debt gets settled or repaid, the Respondent, through the Applicant and the IRP/RP to be appointed may move appropriate application before this Tribunal for seeking appropriate orders.

45. As such the objections of the Corporate Debtor overruled as having no merit.

46. At this stage this Tribunal is guided by the Judgment of 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.26 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.27 "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.28 "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.29

31. In Swiss Ribbons (P) Ltd. v. Union of India [(2019) ibclaw.in 03 SC],30 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. <u>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 WBSEDCL 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)

47. 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 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.

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.

48. Applying the ratio of Power Trust (supra), we are of the view that as the applicant has advanced a financial debt which is in default for an amount

exceeding Rs. 1 Crore. Moreover, this Bench is not required to go into further details and that the finds in regard to existence and default of financial debt exceeding Rs. One Crore is sufficient to admit this Application. The applicant has placed necessary proof being record of default issued by the information utility which clearly states the status of authentication of default as “AUTHENTICATED”. We also hold that the Application is complete as all the required information and documents have been provided/attached with the Application. Based on the consent of the proposed IRP attached with the Application, in our view there are no disciplinary proceedings pending against the proposed IRP.

49. In terms of the above we are compelled to order commencement of CIRP on the Corporate Debtor **M/s. Ashwinikrishnaa Textiles Pvt Ltd.**

50. Accordingly, we pass the following order.

51. As a consequence of the above analysis, the present Application being ***CP(IB)/201/MB/2025*** is being admitted in terms of Section 7 of the Code consequently, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor.

52. In view of the forgoing, we order for commencement of Corporate the Insolvency Resolution Process against the Corporate Debtor herein in terms of the following.

i. The Respondent/Corporate Debtor- ***M/s. Ashwinikrishnaa Textiles Pvt Ltd.*** is admitted to the Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016.

ii. As a consequence, thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016:

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. Since the Applicant has named an IRP, we hereby appoint ***Ms. Dipti Narayan Mundra***, having registration no ***IBBI/IPA-001/IP-P-02845/2023-2024/14366*** and e-mail ID ip.dipti@gmail.com. (AFA valid till 31.12.2026) as the IRP of the Corporate Debtor.

vi. 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.

vii. 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.

viii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.

ix. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

x. The IRP shall be under a 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.

xi. **The Financial Creditor is directed to pay an advance of Rs. 3,00,000/-** (Rupees Three Lakhs Only) to the 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.

xii. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission

of this Application and shall forward the compliance report to the Registrar, NCLT.

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

xiv. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.

53. Accordingly, ***CP(IB)/201/MB/2025*** stands ***admitted***. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL**)**