



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

C.P. NO. (IB) 172 OF 2025

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:

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED,
(ACTING IN ITS CAPACITY AS A TRUSTEE NARCL TRUST -
0010), THROUGH ITS POWER OF ATTORNEY HOLDER, INDIA
DEBT RESOLUTION COMPANY LIMITED

... FINANCIAL CREDITOR

VERSUS

ERA INFRASTRUCTURE (INDIA) LTD.

... CORPORATE DEBTOR

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 04.11.2025

PRESENT:

For the Applicant

: Mr. P. Nagesh, Sr. Adv. Adv.
Mr. Abhishek Anand, Adv
Ms. Kaveri Ravat, Adv.
Mr. Shouryaditya Adv.
Ms. Aditi Sinha, Adv.
Ms. Palak Kalra, Adv.



For the Respondent : Mr. Sunil Fernandes, Sr. Adv.
Ms. Muskan Surana, Adv.
Ms. Divya Verma, Adv.
Ms. Manvi Jain, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present Company Application is filed by **NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED** (ACTING IN ITS CAPACITY AS A TRUSTEE OF NARCL TRUST - 0010) ('Applicant') through its Power of Attorney Holder, India Debt Resolution Company Limited (hereinafter referred to as "IDRCL") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with the following prayer with a prayer to trigger Corporate Insolvency Resolution Process in respect of Respondent Company **Era Infrastructure (India) Ltd.** ("Corporate Debtor") for default in repayment of financial debt of Rs. **385,38,41,870/-** (Indian Rupees Three Hundred Eighty-Five Crores Thirty-Eight Lakhs Forty- One Thousand Eight Hundred Seventy Only) comprising of **Principal Amount of Rs. 143,75,79,510** (Indian Rupees One Hundred Forty-Three Crores Seventy-Five Lakhs Seventy Nine Thousand Five Hundred Ten Only) and **Interest Amount comprising of Rs. 241,62,62,360/-** (Indian Rupees Two Hundred Forty-One Crores Sixty-Two Lakhs Sixty- Two Thousand Three Hundred Sixty Only)



- 2.** The Corporate Debtor i.e., **Era Infrastructure (India) Ltd.** having CIN: U45200DL2007PLC169191 is incorporated on 09.10.2007 under the provisions of the Companies Act, 1956 having its registered office situated at B-292, Chandra Kanta Complex, Shop No. 2 & 3, Near Metro Pillar No. 161, New Ashok Nagar, New Delhi 110096. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
- 3.** Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-

 - a.** The Financial Creditor, National Asset Reconstruction Company Limited (NARCL), acting as trustee of NARCL Trust-0010 and represented through its Power of Attorney Holder, India Debt Resolution Company Limited (IDRCL), has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against **Era Infrastructure (India) Limited** (“Corporate Debtor”), the **Corporate Guarantor** of Haridwar Highways Project Limited (“Borrower”). The Corporate Debtor executed a Corporate Guarantee dated 29.06.2016 in



favour of Bank of India (BOI) securing the Borrower's loan of INR 149.48 crores, disbursed under three facilities.

BOI Share under each Term Loan	Amount
Term Loan I	INR 100 crores
Term Loan II	INR 42.06 crores
Term Loan III	INR 7.42 crores
Total	INR 149.48 crores

b. The Applicant submitted that by virtue of an Assignment Agreement dated 28.03.2024, Bank of India (BOI) assigned its loan, along with the Corporate Guarantee, to National Asset Reconstruction Company Limited (NARCL), thereby transferring all corresponding rights and interests to the Financial Creditor. Consequently, NARCL has stepped into the shoes of BOI. Further, India Debt Resolution Company Limited (IDRCL) has been duly authorized to act on behalf of NARCL pursuant to a Power of Attorney dated 02.04.2024, and the present application has been signed by Mr. Pankaj Agnihotri, authorized under a Board Resolution dated 26.09.2024.

c. The Borrower entered into a Concession Agreement dated 24.02.2010 with the National Highways Authority of India (NHAI) for the augmentation of the Muzaffarnagar-Haridwar Section (131 km to 211 km) of National Highway No. 58, covering the States of Uttar Pradesh and



Uttarakhand, by undertaking four-laning works on a design, build, finance, operate, and transfer (DBFOT) basis (hereinafter referred to as the “Project”). The total Project cost was estimated at INR 1,100.60 crores. To part-finance the Project, the Borrower approached Axis Bank Limited for financial assistance. The Borrower was promoted by Era Infra Engineering Limited (“Era”), which is presently undergoing Corporate Insolvency Resolution Process (CIRP) under the Code, and its Resolution Plan is under implementation.

Term Loan I – INR 690.60 Crores

- d.** Pursuant to the Borrower’s request, **Axis Bank Limited** sanctioned a Term Loan of INR 690.60 crores (“**Term Loan I**”) for part financing the Project. To secure the said facility, and in accordance with the Board Resolution dated 31.07.2010, the Borrower executed the following financing and security documents in favour of Axis Bank and related parties:
 - i. Common Rupee Term Loan Agreement** dated **31.07.2010**;
 - ii. Lenders Agent Appointment Agreement** dated **31.07.2010**, appointing Axis Bank as the **Lenders’ Agent**;



- iii. **Deed of Hypothecation** dated **31.07.2010** in favour of **Axis Trusteeship Company Limited** (“Security Trustee”);
- iv. **Security Trustee Appointment Agreement** dated **31.07.2010**, appointing Axis Trusteeship Company Limited to hold the security on behalf of the lenders;
- v. **Escrow Agreement** dated **31.07.2010**, executed among the Borrower, Axis Bank (as Senior Lender and Escrow Bank), and NHAI;
- vi. **Substitution Agreement** dated **31.07.2010** among NHAI, the Borrower, and Axis Bank (as Lenders’ Representative); and
- vii. **Supplementary Escrow Agreement** dated **31.07.2010**, executed among Axis Bank (as Senior Lender, Lenders’ Agent, and Escrow Bank) and the Security Trustee.

e. To further secure Term Loan I, Era Infra Engineering Ltd. executed a Deed of Pledge dated 31.07.2010, pledging 25,500 equity shares (representing 51% of the Borrower’s paid-up share capital) in favour of the lenders. Additionally, M/s Open Joint Stock Company and Era, as Sponsors of the Borrower, executed a Sponsors’ Undertaking dated 31.07.2010 in favour of the Security Trustee, reaffirming their obligation to support the Borrower in meeting its debt obligations.



f. Pursuant to certain observations from NHAI, the Term Loan-I Documents were amended, and the Borrower executed the following amended financing and security documents:

- i. First Amendments dated **21.08.2010** to the Common Rupee Term Loan Agreement, Lenders Agent Appointment Agreement, Deed of Hypothecation, Security Trustee Appointment Agreement, and Supplementary Escrow Agreement; and
- ii. A Supplementary Escrow Agreement dated **20.10.2010**.

Further, the charge/mortgage created in respect of Term Loan I was duly registered with the Registrar of Companies under Section 132 of the Companies Act, 1956, vide Certificate of Registration dated 11.10.2010.

g. As per the Term Loan I Documents (and subsequent amendments), Axis Bank was entitled to assign or transfer all or part of its participation in Term Loan I to other lenders on identical terms and conditions. This arrangement was approved by Era, in its capacity as Sponsor, vide Board Resolution dated 13.11.2010, and by the Borrower vide Resolution dated 11.12.2010, agreeing to amend the existing loan documents and create corresponding securities in favour of the new lenders.



h. Subsequently, Axis Bank invited BOI, PNB, IOB, UBI, IIFCL, and UCO Bank (collectively, the “Lenders”) to participate in part financing the Project under Term Loan I, which the Lenders agreed to in specified proportions.

Name of the Lenders	Loan Amount (in INR)
Axis Bank	135.60 crores
PNB	100 crores
BOI	100 crores
IOB	100 crores
UBI	100 crores
IIFCL	105 crores
UCO	50 crores
Total	690.60 crores

i. To incorporate the addition of new lenders, the **Term Loan I Documents** were amended through the following instruments, all executed on **14.12.2010**:

- i. Amended and Restated Common Rupee Term Loan Agreement;
- ii. Amended and Restated Lenders’ Agent Appointment Agreement;
- iii. Amended and Restated Deed of Hypothecation;
- iv. Amended and Restated Security Trustee Appointment Agreement;



- v. Amended and Restated Supplementary Escrow Agreement;
- vi. Amended and Restated Deed of Pledge; and
- vii. Amended and Restated Sponsors' Undertaking.

j. As per Schedule III of the Amended and Restated Common Rupee Term Loan Agreement, Term Loan I was repayable in 46 equal quarterly instalments from FY ending 31.03.2016 to FY ending 31.03.2027, along with interest. Out of the sanctioned amount, INR 577.23 crores was disbursed to the Borrower. Additionally, a Deed of Personal Guarantee dated 14.12.2010 was executed by Mr. Hem Singh Bharana, Promoter-Director of the Borrower, in favour of the Security Trustee. An Inter-Creditor Agreement of the same date was executed among the lenders, the Security Trustee, and the lenders' agent. The Borrower also executed Balance and Security Confirmation Letters dated 06.06.2012 and 29.06.2013, acknowledging its liability under Term Loan I.

k. The Applicant submitted that due to financial difficulties, the Borrower's account was classified as SMA-2 under the RBI Joint Lenders Forum (JLF) Circular. Consequently, the lenders formed a JLF and, in the meeting held on 25.09.2014, approved a Corrective Action Plan (CAP) for restructuring the existing facilities. Since the Project cost had escalated from INR 1,100.60 crores to INR 1,563.55



crores, the lenders sanctioned an additional facility of INR 290.48 crores (**“Term Loan II”**) in agreed proportions as following:

Name of the Lenders	Loan Amount (in INR)
Axis Bank	57.04 crores
PNB	42.06 crores
BOI	42.06 crores
IOB	42.06 crores
UBI	42.06 crores
IIFCL	44.17 crores
UCO	21.03 crores
Total	290.48 crores

1. The Borrower and *Era* mutually agreed to create additional security to secure **Term Loan II**, and in furtherance thereof, executed the requisite resolutions and certificates. For restructuring, the following documents were executed:
 - (i) Master Restructuring Agreement dated 26.02.2015;
 - (ii) Undertaking dated 26.02.2015 executed by the Borrower;
 - (iii) Undertaking dated 31.03.2015 executed by *Era*;
 - (iv) Deed of Hypothecation dated 17.06.2015;
 - (v) Irrevocable Power of Attorney dated 17.06.2015 to the Deed of Hypothecation;
 - (vi) Second Amended and Restated Supplementary Escrow Agreement dated 17.06.2015;
 - (vii) Share Pledge Agreement dated 17.06.2015;



- (viii) Sponsors' Undertaking dated 31.03.2015 executed by *Era* in favour of Axis Bank and the Security Trustee;
- (ix) Deed of Personal Guarantee dated 31.03.2015 executed by the Personal Guarantor;
- (x) Certificate of Non-Applicability of Section 185 of the Companies Act, 2013 by *Era*;
- (xi) Charges for the restructured facility filed on 17.09.2015 and 04.12.2015; and
- (xii) Escrow Agreement dated 02.03.2016.

m. As per the Master Restructuring Agreement dated 26.02.2015, Term Loans I and II were repayable in 44 structured quarterly instalments commencing from 30.06.2018 and ending on 31.03.2029, as per the repayment schedule in Schedule III of the Agreement. The Applicant further submitted that pursuant to certain modifications suggested by NHAI, the Restructuring Documents were amended through the following:

- (i) Amendment Agreement dated 14.06.2016 to the Master Restructuring Agreement dated 26.02.2015;
- (ii) Amendment dated 14.06.2016 to the Deed of Hypothecation dated 17.06.2015;
- (iii) Amendment dated 14.06.2016 to the Security Trustee Agreement dated 17.06.2015;
- (iv) Amended and Restated Sponsors' Undertaking dated 14.06.2016; and
- (v) Second Amended and Restated Supplementary Escrow Agreement dated 17.06.2015.



Term Loan III – INR 51.26 Crores

- n.** In addition to Term Loans I and II sanctioned by BOI, the Borrower requested an additional term loan of INR 7.42 crores (collectively, the “Bank of India Term Loans”). As per BOI’s credit sanction requirements, the Corporate Debtor agreed to provide a corporate guarantee for the Bank of India Term Loans. Accordingly, the Corporate Debtor submitted the necessary resolutions and certificates for executing the corporate guarantee (collectively, the “Corporate Guarantee Documents”).
- o.** Subsequently, BOI issued a sanction letter dated 29.06.2016 for the further term loan of INR 7.42 crores. Pursuant to the Corporate Guarantee Documents, the Corporate Debtor executed a Corporate Guarantee dated 29.06.2016 for INR 149.48 crores, representing the total amount sanctioned under the Bank of India Term Loans.
- p.** The Applicant submitted that the Corporate Guarantee furnished by the Corporate Debtor is continuing in nature and remains in full force until BOI receives full payment under the Bank of India Term Loans. Additionally, it stated that, the Borrower admitted its liability for Term Loan II in the Balance & Security Confirmation Letters dated 23.12.2016.
- q.** Due to delays in commissioning, the Project cost overran by INR 81.70 crores. Part of this overrun, Rs. 51.24 crores, was



financed through an additional term loan facility dated 09.02.2017 (“Term Loan III”), with BOI agreeing to sanction INR 7.42 crores. Axis Bank, BOI, UBI, and UCO agreed to fund INR 28.61 crores, with the balance to be provided by other lenders who may join.

r. For Term Loan III, the Borrower executed the following security documents:

- i. Resolutions dated 06.02.2017 and 09.02.2017 by the Borrower;
- ii. Resolution dated 09.02.2017 by Era;
- iii. Letter dated 09.02.2017 under Section 180(1)(a) of the Companies Act, 2013 by Era;
- iv. Resolution dated 29.09.2014 under Section 293(1)(a) of the Companies Act, 2013.

The Applicant submitted that for the grant of Term Loan III, the following documents were executed:

- i. Common Rupee Loan Agreement dated 09.02.2017
- ii. Lenders’ Agent Agreement dated 09.02.2017, appointing Axis Bank as Lenders’ Agent.
- iii. Security Trustee Agreement dated 09.02.2017
- iv. Unattested Deed of Hypothecation dated 08.09.2017
- v. Share Pledge Agreement dated 09.02.2017
- vi. Power of Attorney dated 09.02.2017
- vii. Deed of Undertaking dated 09.02.2017 by Era
- viii. Personal Guarantees dated 14.03.2017 and 03.04.2017 by the Personal Guarantor
- ix. Balance Confirmation Letter dated 03.04.2017



Term Loan III Repayment and Subsequent Financing

s. Term Loan III was repayable in quarterly instalments from 30.09.2017 to 31.03.2020, along with interest. The Borrower issued Balance & Security Confirmation Letters dated 11.09.2017, and the charge was filed on 04.10.2017 with the RoC.

t. Subsequently, PNB, IOB, and IIFCL funded the remaining INR 22.65 crores of Term Loan III, executing the following:

- i. Deed of Accession dated 30.06.2017 by PNB
- ii. Resolution dated 30.06.2017 submitted to IOB
- iii. Deed of Accession dated 30.06.2017 by IOB
- iv. Deed of Accession and Deed of Adherence dated 14.06.2017 by IIFCL
- v. Undertaking dated 14.06.2017 in favour of IIFCL

Meanwhile, by letter dated 12.09.2017, the Borrower confirmed NHAI had released a grant of INR 210 crores, and Era infused equity of INR 286.85 crores. However, no further equity was infused due to the promoters distressed financial condition, leading to invocation of SDR.

u. Despite repeated extensions, the Borrower failed to achieve the Commercial Operations Date (COD) and other Project milestones. Thereafter, NHAI, by letter dated 25.07.2018, indicated its intention to terminate the Concession Agreement in respect of the Borrower and Era, while providing lenders an opportunity to propose a substitute



under the Substitution Agreement. By letter dated 06.08.2018, Axis Bank informed NHAI and the Borrower that the lenders had decided to substitute the Borrower with a nominated company, and the process to identify a suitable substitute was initiated.

- v.** The Applicant submitted that the Borrower failed to maintain financial discipline, and despite repeated reminders, its account remained irregular. Misutilization and diversion of funds by the Borrower and its promoters prevented achievement of COD and commencement of toll collection. Consequently, as per RBI guidelines, the account was classified as a Non-Performing Asset (NPA) with effect from 24.02.2017, and recall notices were issued by the lenders. By letter dated 03.04.2019 under Section 13(2) of the SARFAESI Act, BOI called upon the Borrower and the Corporate Debtor (as corporate guarantor) to repay the dues within 60 days, which the Borrower failed to do, thereby invoking the Corporate Debtor's liability under the Corporate Guarantee.
- w.** Accordingly, aggrieved by the Corporate Debtor's liability the lenders approached the Debts Recovery Tribunal, New Delhi (TA No. 276 of 2022) against the Borrower, while BOI separately filed against the Corporate Debtor, as the Corporate Guarantee was issued only to BOI. The Financial Creditor relies on the Original Application and pleadings as



necessary. It stated that the Borrower has remained in default, with accounts irregular and declared NPA from 24.02.2017, triggering events of default under Term Loans I, II, and III agreements. Despite repeated reminders, the Borrower failed to regularize the account.

- x.** It is further stated that the Borrower has acknowledged its liability for Term Loans I, II, and III (including amounts extended by BOI) in its balance sheets for 2019–2022 and by letter dated 23.09.2021. As the liability of a guarantor is coextensive with that of the Borrower, these acknowledgments constitute acknowledgment of debt under Section 18 of the Limitation Act, 1963, and the present application is within the limitation period.
- y.** That vide Assignment Agreement dated 28.03.2024, Term Loans I, II, III, including the Corporate Guarantee, were assigned by the lenders, including BOI, to NARCL/Financial Creditor. Consequently, NARCL/Financial Creditor has stepped into the shoes of the lenders and is filing this application in its capacity as a 'financial creditor' under Section 5(7) of the Code. The debt owed under the Corporate Guarantee constitutes a 'Financial Debt' under Section 5(8) of the Code.
- z.** As on 31.10.2024, the total outstanding debt, including interest, is INR 385,38,41,870/- comprising:



i. Principal: INR 143,75,79,510/-

ii. Interest: INR 241,62,62,360/-

4. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- a. The Answering Respondent is a company incorporated under the Companies Act, 1956, with registered office at B-292, Chandra Kanta Complex, New Ashok Nagar, New Delhi (CIN: U45200DL2007PLC169191), engaged in promoting, developing, engineering, consulting, and contracting in roads, highways, and infrastructure projects.
- b. Era Infra Engineering Ltd. (“EIEL”), incorporated on 03.12.1990, is an EPC company operating on a Build-Operate-Transfer (“BOT”) model, with projects across India. In 2006–2007, EIEL diversified into highway and railway sectors.
- c. The National Highway Authority of India (“NHAI”) issued a tender for four-laning the Muzaffarnagar–Haridwar section of NH-58 (131–211 Km) on a Design-Build-Finance-Operate-Transfer basis, with the project cost initially estimated at approximately INR 1,100.60 crores.
- d. The respondent submitted that NHAI issued a Request for Qualification (“RFQ”) requiring successful bidders to incorporate a Special Purpose Vehicle (“SPV”) as a limited liability company for project execution. EIEL, in consortium



with SIBMOST (a Russian company), submitted a bid, which NHAI accepted via Letter of Award dated 29.12.2009. Accordingly, M/s Haridwar Highways Pvt. Ltd. HHPL (SPV of EIEL) was incorporated on 02.02.2010 to construct, operate, and maintain the Project in compliance with the RFQ.

- e. HHPL entered into a Concession Agreement with NHAI dated 24.02.2010 for the Project, initially estimated at INR 1,100.60 crores. For financing, HHPL approached Axis Bank, and as the Project sponsor, EIEL executed an EPC Agreement with HHPL on 14.06.2010 for construction and completion of the Project.
- f. To finance the Project, HHPL approached Axis Bank, which sanctioned Rs. 690.60 crores ("Term Loan I") and executed a Common Rupee Term Loan Agreement ("CTL-I") dated 31.07.2010, amended on 21.08.2010. Under CTL-I, Axis Bank could assign its participation to other lenders. Accordingly, BoI (now assigned to NARCL) and other lenders joined in financing Term Loan I, with BoI's share being Rs. 100 crores out of the total Rs. 690.60 crores.
- g. Due to the increase in Project cost from Rs. 1,100.60 crores to Rs. 1,563.55 crores, the Lenders sanctioned an additional term loan of Rs. 290.48 crores ("Term Loan II"), with BoI providing Rs. 42.06 crores, pursuant to a Master Restructuring Agreement dated 26.02.2015 (as amended). Further, as NHAI failed to provide 80% of the required land



in a freely accessible state, the Project cost increased by another Rs. 81.70 crores, of which Rs. 51.24 crores was funded through Term Loan III under an Additional Term Loan Facility dated 09.02.2017.

- h. The Respondent submitted that of the Rs. 51.24 crores under Term Loan III, Rs. 7.42 crores were granted by BoI, bringing BoI's total financial assistance to HHPL to Rs. 149.48 crores (Rs. 100 crores + Rs. 42.06 crores + Rs. 7.42 crores, collectively "BoI Loans"). Accordingly, the Answering Respondent executed a Corporate Guarantee dated 29.06.2016 in favour of BoI for the entire amount of Rs. 149.48 crores.
- i. The Respondent further submitted that during the Project, HHPL faced multiple delays not attributable to it. Despite this, NHAI terminated the Concession Agreement via letter dated 25.07.2018. HHPL's account was classified as a Non-Performing Asset ("NPA") effective 24.02.2017, and BoI invoked the Corporate Guarantee extended by the Answering Respondent via letter dated 03.04.2019. Subsequently, the entire debt of HHPL, including BoI's exposure, was assigned to NARCL by the Lenders vide Assignment Agreement dated 28.03.2024. After initiating proceedings against HHPL, NARCL has now filed the present Section 7 application against the Respondent, who stands as the Corporate Guarantor for the BoI Loans.



- j. EIEL, parent company of HHPL, has been executing large-scale infrastructure projects—including highways, airports, railways, power plants, metros, and industrial complexes—since 1990, and has secured various NHAI tenders, including the Project herein.
- k. Union Bank of India, a lender of EIEL, filed CP (IB) No. 190 of 2017 under Section 7 of the Code before this Hon'ble NCLT, leading to EIEL's admission into CIRP on 08.05.2018. The Committee of Creditors approved a Resolution Plan submitted by M/s SA Infrastructure Consultants Pvt. Ltd. with 98.13% voting, which was sanctioned by the Hon'ble NCLT on 11.06.2024.
- l. The Respondent submitted that BoI, the assignor of the debt to NARCL, actively participated in the 29th CoC meeting of EIEL, wherein the Resolution Plan submitted by SA Infra was approved. Under the said Plan, the arbitral proceeds from EIEL's SPVs, including HHPL, were earmarked for repayment of EIEL's dues. Having stepped into the shoes of BoI, NARCL is bound by its assignor's decisions and actions. Thus, BoI/NARCL were fully aware that the SPV proceeds would be applied towards EIEL's resolution, leaving no residual assets with the SPVs. In line with this, a Sharing of Arbitral Proceeds Agreement ("SAP Agreement") dated 05.09.2024 was executed between EIEL, its assenting financial creditors (including BoI), and SA Infra, expressly



providing that arbitral proceeds from HHPL would be utilized to satisfy the financial creditors' admitted claims in EIEL's CIRP.

m. It is the contention of the Respondent that NARCL, as assignee of the debt from the original lenders, has acknowledged the integrated business structure of EIEL and its SPVs, including HHPL. The Flash Report submitted by EIEL to the CDR Cell, comprising the consortium of lenders (including BoI), detailed this interdependence, and the CDR Cell approved EIEL's restructuring based on it. Having stepped into the lenders' position, NARCL is bound by their rights and obligations. By consenting to the Resolution Plan and executing the SAP Agreement, NARCL agreed to the utilisation of HHPL's assets for settling EIEL's debts. Accordingly, having consented to and benefitted from such appropriation, NARCL has waived its right to initiate separate recovery proceedings against the Corporate Guarantor, as its remedies against the Principal Borrower stand exhausted.

n. It is submitted that the present Application suffers from procedural irregularity as the date of default remains ambiguous and has not been clearly established. A definite and specific date of default is a mandatory requirement under Section 7 of the Code for determining limitation and maintainability. The Applicant has mentioned the date of



default as 03.04.2019, whereas the Record of Default (RoD) issued by NeSL records the date of default as 24.02.2017 and leaves the column “Last Event of Default” marked as “*Not Available.*” To support its contention it has relied upon the order passed by Hon’ble NCLT in *Winntus Scaffolding Pvt. Ltd. v. Aishwarya Business Corporation Pvt. Ltd.*, CP(IBC)/44/KOB/2022, wherein it was held that mentioning the *date of default* in the prescribed form is mandatory. Similarly, in *Ramdas Dutta v. IDBI Bank Ltd.*, Company Appeal (AT) (Ins) No. 1285 of 2022, relying on *Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.*, (2021) 3 SCC 224, it was reiterated that the *date of default cannot be changed.*

- o. Further, it has been alleged by the Respondent that the present petition is barred by limitation. It is submitted that the Applicant invoked the Corporate Guarantee on 03.04.2019, triggering the limitation period for filing a petition under Section 7 of the Code, which expired on 03.04.2022. The Applicant relies on the Letter dated 23.09.2021 allegedly acknowledging the debt, claiming an extension of limitation under Section 18 of the Limitation Act, 1963. It stated that assuming without admitting that such acknowledgment was made, the extended limitation period expired on 23.09.2024, while the present Application



was filed only on 06.02.2025, i.e., after a delay of nearly five months.

5. Rejoinder on behalf of Applicant

- a. It is alleged by the Respondent that NHAI failed to provide 80% of the land required for the Project, causing delays beyond the Borrower's control. However, such issues are irrelevant to the present proceedings, which concern the Corporate Debtor's default in honouring the Corporate Guarantee executed in favour of BOI for the loan of INR 149.48 crores disbursed to the Borrower under three facilities.
- b. The Applicant submitted in its rejoinder that the Financial Creditor has not waived its right to recover from the Borrower. The CIRP of the Borrower's parent company, Era Infra Engineering Limited ("EIEL"), is independent and unrelated to the present default under the Corporate Guarantee. The Corporate Debtor's contention to the contrary is misleading. It is further denied that the Financial Creditor has exhausted remedies or waived rights. It is well settled, as held in *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.* (Civil Appeal No. 4656 of 2021, decided on 23.07.2024), that CIRPs against the Borrower and the Guarantor may proceed simultaneously.



c. It is submitted that there is no ambiguity or procedural irregularity in the date of default as alleged by the Corporate Debtor. The Corporate Debtor is merely attempting to create confusion to evade CIRP proceedings. The Financial Creditor has clearly stated the date of default as 03.04.2019, the date of invocation of the Corporate Guarantee—in Part IV of the Section 7 Application. Hence, the judgments relied upon by the Corporate Debtor are inapplicable. Further, under Section 7(3)(a) of the Code, furnishing the NeSL Record of Default is optional, and the Financial Creditor has already provided sufficient documentary evidence to establish both the debt and the date of default beyond doubt.

d. The Applicant submitted that the Section 7 Application has been filed well within the limitation period. The Corporate Guarantee was invoked on 03.04.2019, and though the initial limitation expired on 03.04.2022, a fresh period commenced under Section 18 of the Limitation Act, 1963, pursuant to the Borrower's acknowledgments of debt in its balance sheets for 2019–2022 and its letter dated 23.09.2021. These acknowledgments extended the limitation until March 2025. The Corporate Debtor has deliberately ignored these admissions. Reliance is placed on *Laxmi Pat Surana v. Union Bank of India* (Civil Appeal No. 2734 of 2020) and *Sri Bijay Kumar Agarwal v. State Bank of India* [Company Appeal (AT) (Ins.) No. 105 of 2022], wherein



it was held that acknowledgment by the principal borrower equally binds the guarantor.

ANALYSIS AND FINDING

6. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the Application, Reply filed by the Corporate Debtor and the Rejoinder filed by the Applicant.
7. Further, it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 2016. The definition of Financial Creditor is reproduced herein in verbatim: -

5. Definitions: - (7) “financial creditor” means any person to whom a financial debt is owed and include a person to whom such debt has been legally assigned or transferred to;
8. On perusal of the casfile, we note that the Corporate Debtor/ Respondent herein, is acting as the *Corporate Guarantor* of *Haridwar Highways Project Limited (“the Borrower”)* who had executed a *Corporate Guarantee* dated 29.06.2016 in favour of Bank of India for a loan facility aggregating to ₹149.48 crores extended to the Borrower under three distinct term loan facilities.
9. That Bank of India (“**BOI**”) had extended financial assistance aggregating to ₹149.48 crores to the Borrower, Haridwar Highways Project Limited (“Borrower”), under the following term loan facilities:
 - a) Term Loan I of INR 100 crores granted pursuant to the Amended and Restated Common Rupee Term Loan



Agreement dated 14.12.2010;

- b) Term Loan II of INR 42.06 crores sanctioned under the Master Restructuring Agreement dated 26.02.2015; and
- c) Term Loan III of INR 7.42 crores extended under the Common Rupee Loan Agreement dated 09.02.2017.

10. A Corporate Guarantee dated 29.06.2016 was executed by the Corporate Debtor herein in favour of Bank of India for securing the financial assistance disbursed to the Borrower under Term Loans I, II, and III. The relevant clause of the is reproduced herebelow:

“7. Bank of India, being of the Existing Lenders, has called upon the Guarantor to furnish a guarantee in favour of the Lender' for its portion/share in the Term Loan of INR 149,48,00,000% (Indian Rupees One Hundred Forty Two Crore and Six Lakh only) ("BOI Additional Term Loan").”

11. It is further stated that, by virtue of an Assignment Agreement dated 28.03.2024, the debts owed to Axis Bank Limited (“Axis”), Bank of India (“BOI”), Indian Infrastructure Finance Company Limited (“IIFCL”), Indian Overseas Bank (“IOB”), Punjab National Bank (“PNB”), Union Bank of India (“UBI”), and UCO Bank (“UCO”) were assigned to the Financial Creditor, National Asset Reconstruction Company Limited (“NARCL”). The present application has been instituted only in respect of the exposure of BOI, which had been secured by the aforesaid Corporate Guarantee executed by the Corporate Debtor. Thereby, by virtue



of Assignment Agreement dated 28.03.2024, the Applicant herein has clearly stepped into the shoes of the assignor and therefore is fully entitled to exercise its right to initiate proceeding under Section 7 of the Code.

12. In Part IV of the Section 7 application, the Applicant has stated the date of default as **03.04.2019**, being the date on which the Corporate Debtor, in its capacity as Corporate Guarantor under the Corporate Guarantee, was called upon to repay the amounts due under the Bank of India Term Loans vide notice dated 03.04.2019. As the Borrower failed to maintain financial discipline and its account remained irregular, the lenders classified the account as Non-Performing Asset (NPA) with effect from **24.02.2017**, and subsequently issued recall notices to the Borrower. Thereafter, Bank of India issued a notice dated **03.04.2019** under Section 13(2) of the SARFAESI Act, 2002.

13. As it has been settled by the Hon'ble Supreme Court in catena of judgments that the Limitation Act, 1963 is applicable to the proceedings under the Code, 2016 (**B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633**). The basic idea behind the application of the Limitation Act, 1963 is not to give life to time barred debts (**Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1**). The mentioning of Date of Default in the Form-1 under Part IV is only for the purposes of reckoning of the Limitation Period within which a Financial Creditor has to exercise his rights, so that a



financial creditor does not sleep over his right. Section 238 A of the Code provides for the provision of the Limitation Act, 1963 to apply to proceedings before the Adjudicating Authority. Accordingly, the time period for filing the application u/s 7 of the Code is governed by Article 137 of the Schedule to the Limitation Act, 1963 which provides for exercising the right within period of 3 years, from the date when the right to apply accrues. Hence, the Financial Creditor has to file the application within 3 years from the date when the right to apply accrue i.e. the date of default (**Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330**). Relevant paragraphs are extracted below:

“99. There can be no dispute with the proposition that the period of limitation for making an application under Section 7 or 9 IBC is three years from the date of accrual of the right to sue, that is, the date of default. In Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd. [Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd., (2019) 10 SCC 572 : (2020) 1 SCC (Civ) 1] authored by Nariman, J. this Court held : (SCC p. 574, para 6)

“6. ... The present case being “an application” which is filed under Section 7, would fall only within the residuary Article 137.”

131. It is not in dispute that Respondent 2 is a corporate debtor and the appellant Bank, a financial creditor. The question is, whether the petition under Section 7 IBC has been instituted within 3 years from the date of default. “Default” is defined in Section 3(12) to mean “non-payment of a debt which has become due and payable whether in whole or any part and is not paid by the corporate debtor”.



132. *It is true that, when the petition under Section 7 IBC was filed, the date of default was mentioned as 30-9-2013 and 31-12-2013 was stated to be the date of declaration of the account of the corporate debtor as NPA. However, it is not correct to say that there was no averment in the petition of any acknowledgment of debt. Such averments were duly incorporated by way of amendment, and the adjudicating authority rightly looked into the amended pleadings.*

133. *As observed above, the appellant Bank filed the petition under Section 7 IBC on 12-10-2018. Within three months, the appellant Bank filed an application in the NCLT, for permission to place additional documents on record including the final judgment and order/decree dated 27-3-2017 in OA No. 16 of 2015 and the recovery certificate dated 25-5-2017, enabling the appellant Bank to recover Rs 52 crores odd. The judgment and order/decree of the DRT and the recovery certificate gave a fresh cause of action to the appellant Bank to initiate a petition under Section 7 IBC.*

134. *On or about 5-3-2019, the appellant Bank filed another application for permission to place on record additional documents including inter alia financial statements, annual report, etc. of the period from 1-4-2016 to 31-3- 2017, and again, from 1-4-2017 to 31- 3-2018 and a letter dated 3-3-2017 proposing a one-time settlement. This application was also allowed on 6-3-2021. The adjudicating authority, took into consideration the new documents and admitted the petition under Section 7 IBC.* 135. *Even assuming that documents were brought on record at a later stage, as argued by Mr. Shivshankar, the adjudicating authority was not precluded from considering the same. The documents were brought on record before any final decision was taken in the petition under Section 7 IBC.* 136. *A final judgment and order/decree is binding on the judgment debtor. Once a*



claim fructifies into a final judgment and order/ decree, upon adjudication, and a certificate of recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/ decree and/or the amount specified in the recovery certificate.

137. *The appellant Bank was thus entitled to initiate proceedings under Section 7 IBC within three years from the date of issuance of the recovery certificate. The petition of the appellant Bank, would not be barred by limitation at least till 24-5-2020.*

138. *While it is true that default in payment of a debt triggers the right to initiate the corporate resolution process, and a petition under Section 7 or 9 IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238-A IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Sections 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.*

14. Further the dictum laid down in **Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330** has also been followed by Hon'ble National Company Law Appellate Tribunal in **Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622**. The relevant paragraphs are extracted below:

“4. The brief point, which falls for consideration in this Appeal is whether the Adjudicating Authority was justified in



dismissing the Application filed under Section 7 of the Code as ‘barred by Limitation’ and also holding that there was no ‘default’.

5. *We are of the considered view that the issue of Limitation is to be tested on the touchstone of the ratio of the Hon'ble Apex Court in ‘Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy’ wherein the Hon'ble Apex Court has clearly laid down that Judgment/decree for money or Certificate of Recovery or Arbitral Award in favour of the ‘Financial Creditor’, constitutes an ‘acknowledgement of debt’ and gives rise to a fresh cause of action, provided it is within three years of the default:*

The Hon'ble Apex Court in ‘Laxmi Pat Surana v. Union Bank of India’ has observed as follows:

“43. 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 IBC. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” - not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to nonpayment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but



before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC ensures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the Financial Creditor can initiate action under Section 7 IBC.”

7. In the aforesigned Judgment, the Hon'ble Apex Court has clearly laid down the principle that the 'date of default' does not mean a strict interpretation that it has to be the 'date of NPA' in fact, the 'date of default' defined under Section 3(12) of the Code is to mean 'non-payment of a debt which has become 'due and payable' whether in whole or any part and is not paid by the Corporate Debtor'.
8. It is also seen from the Balance Sheets that there has been an 'acknowledgement of liability' upto the years 2018-2019. The contention of the Learned Counsel for the Respondent that the Restructuring Letters were sanctioned beyond three years of the date of NPA and therefore is 'barred by Limitation' is untenable as at the cost of repetition we hold that as per the ratio of the Hon'ble Apex Court in 'Laxmi Pat



Surana' (Supra) the 'date of default' cannot be strictly construed as the date of NPA. The material on record shows that the 'Corporate Debtor' has been consistently acknowledging its 'debt' from 31.03.2010 onwards by way of letters in Restructuring Packages, and also by way of communication the Appellant/Financial Creditor for Restructuring, apart from the liability being shown in the Balance Sheets."

15. As per the contention of the Respondent the application is barred by limitation, we note that The Date of Default has been stated as 03.04.2019, being the date on which the Corporate Debtor, in its capacity as Corporate Guarantor under the Corporate Guarantee, was called upon to discharge the outstanding liability under the Bank of India Term Loans vide letter dated 03.04.2019. Further, the Borrower has duly acknowledged its liability in respect of the said financial debt, secured by the Corporate Guarantee, through its balance sheets for the financial years 2019, 2020, 2021, and 2022, as well as by its letter dated 23.09.2021.

16. We are inclined to refer to the Corporate Guarantee dated 29.06.2016 furnished by the Corporate Debtor which is continuing in nature and will be in force and effect until the entire payment has been received by BOI under the Bank of India Term Loans. The relevant clause of the Corporate Guarantee is reproduced here below:

"3. In the event of Concessionaire Default (as defined under the Concession Agreement) or in the 'event of shortfall in the repayment



of Secured Obligations to the Existing Lenders during the Concessionaire event of default, the Guarantor shall, upon demand, forthwith pay to the Lender Without demur all the amounts due and payable by the Borrower to the Lender under the Master Restructuring Agreement and the Guarantee Facility Agreement in the event the Borrower does not commit any such default in complying with the terms and conditions as contained in the Concession Agreement, the aforesaid corporate guarantee shall be released and the Guarantor shall be absolved of all its obligations to the Lender.

4. CONTINUING GUARANTEE

4.1 This Guarantee shall be:

(A) A continuing guarantee remaining in full force and effect against the Guarantor, until payments in full have been received by the Lender of each and every part of all the monies payable/paid by the Borrower to the Lender under the Master Restructuring Agreement as mentioned in Clause 3 above, including without limitation, towards the principal amount of the BOI Additional Loan together with all interest, additional interest, liquidated damages, up-front fee, premia on prepayment, costs, charges, expenses and all other monies that may from time to time become due and payable and remain unpaid to the Lender under the Master Restructuring Agreement, in accordance with the Master Restructuring Agreement. The Lender may make multiple or successive demands upon the Guarantor and any such demands shall not be considered or regarded as an invocation of all the obligations under this Guarantee; provided, however, such invocations or demands shall not prejudice or affect the rights of the Lender to make further additional invocations or demands; and



(B) In addition to and not in substitution for or in derogation of any other guarantee or security held by the Lender from time to time in respect of the obligations of the Borrower under the Master Restructuring Agreement and the rights of the Lender under this Guarantee shall not be in any way prejudiced or affected by anyone or more other securities or guarantees, for any other loan whether from the Guarantor or from any other person; which the Lender may now or subsequently hold.

4.2 Notwithstanding: any discharge, release or settlement from time to time between the Lender and the Guarantor, if any payment made by the Guarantor to the Lender is avoided or set aside or ordered to be surrendered, paid away, refunded or reduced by virtue of any provision, law or enactment relating to bankruptcy, insolvency, liquidation, winding-up, composition or arrangement or otherwise, the Lender ;shall be entitled to enforce this Guarantee as if no such discharge, release or settlement had occurred and as if no such payment had been made.”

17. The **Hon'ble Supreme Court** in **Laxmi Pat Surana vs. Union Bank of India & Anr. Appeal No. 2734 of 2020** has held that if there is an acknowledgement of debt in writing within a limitation period, a fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgement of debt. Further, we are inclined to refer to the decision of the Hon'ble Appellate Tribunal in **Sri Bijay Kumar Agarwal v. State Bank of India and Another** [Company Appeal (AT) (Ins.) No. 105 of 2022; decided on 27.04.2022] **wherein it was held that the acknowledgement given by the principal borrower also binds the corporate guarantor.** Therefore, in view of the aforesaid



ruling, it stands established that the limitation period stood extended by virtue of the acknowledgments made by the Borrower (Haridwar Highway Projects Limited) in its balance sheets for the financial years 2019, 2020, 2021, and 2022, as well as through its letter dated 23.09.2021. Accordingly, it is concluded that there has been a clear acknowledgment of the debt, and hence, the present application has been instituted well within the prescribed period of limitation. By no stretch of imagination can the same be construed as barred by limitation. We further take reliance from Judgement passed by Hon'ble Supreme Court in **M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387**

“11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.

“Default” is defined under sub-section (12) of Section 3 IBC which reads thus:

3. Definitions.—In this Code, unless the context otherwise requires—

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;” Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under



Section 7 can be rejected. Otherwise, there is no ground available to reject the application.”

In our considered view, given the subsequent acknowledgments of debt by the Corporate Debtor, the Application falls within the limitation period, and the Financial Creditor cannot be precluded from exercising its statutory rights.

18. In order to admit an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), the Adjudicating Authority must be satisfied that the statutory requirements for initiating the Corporate Insolvency Resolution Process (CIRP) are duly met. The first and foremost requirement is the existence of a financial debt as defined under Section 5(8) of the IBC. A financial debt refers to a debt that is disbursed against the consideration for the time value of money, which includes loans, bonds, debentures, or any other financial instruments specified under the provision. The applicant must establish that the Corporate Debtor had availed such financial debt and that the liability to repay the same has arisen. Then, there must be a “default” in repayment of the said financial debt, as defined under Section 3(12) of the IBC, which refers to non-payment of the whole or any part of the debt when it has become due and payable. Further, the application must be filed by a Financial Creditor in the prescribed form and manner, duly accompanied by requisite documents and affidavits under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.



- 19.** Once the Adjudicating Authority is satisfied with the existence of a financial debt, the occurrence of default, and procedural compliance, it is bound to admit the petition. The Authority has limited discretion at this stage and cannot conduct a deeper enquiry into the merits or defences unless the application is incomplete or legally barred.
- 20.** Applying the principles enunciated above to the facts of the present case, it is evident that all statutory requirements for admission under Section 7 of the Insolvency and Bankruptcy Code, 2016, stand fulfilled. The existence of a financial debt is clearly established through the Term Loan I, II, and III and other supporting documents filed by the Financial Creditor. These documents substantiate that a financial debt, as defined under Section 5(8) of the IBC, was duly disbursed to the Corporate Debtor.
- 21.** On perusal of the documents, we find that the application, filed under Section 7 of the IBC by the Financial Creditor, is duly supported by all requisite documents. With no statutory bar to its admission, and in view of the undisputed financial debt, established default, and procedural compliance, the initiation of CIRP is warranted.
- 22.** With regard to the existence of debt and default, on a perusal of Form – I and the documents annexed with the application, we are satisfied that the applicant clearly comes within the definition of



Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a debt and its default.

23. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant /financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present company application **(C.P. No. (IB)- 172 /(ND)/2025) stands admitted and the CIRP is hereby initiated against ERA INFRASTRUCTURE (INDIA) LTD.**

24. The applicant in Part-III of the application has proposed the name of **Mr. Alok Kumar Agarwal** as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P00059/2017-2018/10137. **Mr. Alok Kumar Agarwal**, having registration number: IBBI/IPA-001/IP-P00059/2017-2018/10137 and email - alok@insolvncyservices.in is appointed as an Interim Resolution Professional (IRP) for corporate debtor.

25. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows



from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

Thus, the following prohibitions are imposed:

- 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 IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

26. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to



the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

- 27.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
- 28.** We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2,00,000/- (Two Lakh Rupees Only) with the Interim Resolution Professional namely Mr. Alok Kumar Agarwal to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
- 29.** The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19,



20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

30. It is further made clear that all the 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 Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

31. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

32. In terms of section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.



33. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **CP (IB) No. 172 (ND)/2025 stands admitted.**

Sd/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

**IVN.P. NO. 59 OF 2025
IN
C.P. (IB) NO. 172 (ND)/2025**

IN THE MATTER OF:

ERA INFRA ENGINEERING LIMITED

...INTERVENOR

VERSUS

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

...RESPONDENT

AND IN THE MATTER OF:

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

(ACTING IN ITS CAPACITY AS A TRUSTEE OF NARCL TRUST -0010)
THROUGH ITS POWER OF ATTORNEY HOLDER,
INDIA DEBT RESOLUTION COMPANY LIMITED

...FINANCIAL CREDITOR

VERSUS

ERA INFRASTRUCTURE (INDIA) LIMITED

...CORPORATE DEBTOR

Order Delivered on: 04.11.2025

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant	:	Mr. P. Nagesh, Sr. Adv. Adv. Mr. Abhishek Anand, Adv Ms. Kaveri Ravat, Adv. Mr. Shouryaditya Adv. Ms. Aditi Sinha, Adv. Ms. Palak Kalra, Adv.
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ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present application has been filed by M/s Era Infra Engineering Limited ('Intervenor') through its Authorised Representative, Mr. Niladari Chatterji under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of the NCLT Rules, 2011 seeking following reliefs:
 - a. *Allow the instant application;*
 - b. *Allow the Intervenor to be arrayed as a party to CP (IB) No. 777 of 2024; and/ or*
 - c. *Pass any other Order in the favour of the Intervenor in the interest of justice, equity and good conscience*

2. SUBMISSIONS BY THE INTERVENOR

- a. The Intervenor is an Engineering Procurement and Construction Company incorporated on 03.12.1990 under the provisions of the Companies Act, 1956, bearing CIN: L74899DL1990PLC041350, having registered office at B-292, Chadra Kanta Complex, shop No. 2 & 3, Near Metro Pillar No. 161, New Ashok Nagar, New Delhi, India- 110096. The Intervenor operates largely under the Build Operate-Transfer ("BoT") model and has successfully executed projects across India.
- b. The Intervenor was awarded several tenders from the National Highways Authority of India ("NHAI") for construction, maintenance and operation of highways across the country. The tender documents of NHAI mandated the formation of Special Purpose Vehicles ("SPV") for the execution of its projects, and in order to execute these projects, the



Intervenor herein availed credit facilities from various banks, collectively referred to as Consortium of Lenders (“CoL”).

- c.** The Haridwar Highways Project Limited (“HHPL”) is one such SPV of the Intervenor, incorporated on 02.02.2010 under the provisions of the Companies Act, 1956 bearing CIN: U45200DL2010PLC198587 having its registered office at B-292, Chandra Kanta Complex, shop No. 2 & 3, Near Metro Pillar No. 161, New Ashok Nagar, New Delhi, India – 110096.
- d.** It is submitted that the HHPL was specifically incorporated by the Intervenor herein as a SPV under Clause 2.2.6 of Request for Qualification (“RFQ”) in the tender issued by the NHAI, which mandated the successful bidder to incorporate a SPV in the form of Limited Liability Partnership for the purpose of construction, operation and maintenance of the Muzaffarnagar Haridwar Section, from km 131.00 to km 211.00 of NH-58 in the state of Uttar Pradesh and Uttarakhand (“the Project”).
- e.** The Intervenor along with SIBMOST, a company incorporated under the laws of Russia, participated in the bidding process of the Project in consortium as per the terms laid down by NHAI and submitted their bid which was accepted by NHAI vide Letter of Award dated 29.12.2009 (“LoA”).
- f.** In furtherance of the same, a Concession Agreement dated 24.02.2010 (“Concession Agreement”) was executed between the HHPL and NHAI. It is submitted that the HHPL was established solely to fulfil the requirements mandated by NHAI and therefore, in line with this intent,



the Intervenor entered into an EPC Agreement dated 24.02.2010 with the Corporate Debtor, which unequivocally placed the entire responsibility for the design, construction, and maintenance of the Project on the Intervenor herein. The Intervenor not only mobilized resources and oversaw the critical aspects of the Project but also provided financial guarantees, reaffirming its central role in ensuring the Project's successful completion.

- g.** It is relevant to mention that the HHPL herein was operated under the direct control, authority and supervision of the Intervenor. All the major decisions concerning the HHPL herein were taken at the behest of the Intervenor, thereby reinforcing its status as mere extensions of the Intervenor.
- h.** The debt of the CoL (including the assignees of the debt i.e the Financial Creditor herein) were project loans availed for the construction and development of the Project.
- i.** Further, based on the sanction terms of the CoL prior to disbursement of the project loans by the CoL, the Intervenor executed an EPC Contract with the Corporate Debtor for the construction development and maintenance of the Project. These loans were secured by corporate guarantees of the Intervenor, including a Corporate Guarantee extended by the Corporate Debtor herein in favor of Bank of India (the assignee of the Financial Creditor).
- j.** It is submitted that the HHPL was not an independent entity per se, rather it functioned only as an alter ego of the Intervenor, which was



created solely to meet the tender requirements. It is evident that the CoL even prior to the sanction of the loans was well aware of the dependency of the HHPL on the Intervenor.

- k.** Further, NHAI failed to provide the right of way for 80% of the required land for the Project in a free and unencumbered manner as stipulated under the Concession Agreement, even though the HHPL, through the Intervenor had diligently fulfilled their obligations. Vide Letter dated 25.07.2018, NHAI wrongfully and arbitrarily terminated Concession Agreement.
- l.** It is further submitted that several arbitral proceedings are pending on account of this which involves both the Intervenor as well as the HHPL. Owing to such multiple wrongful termination by NHAI, the Intervenor, being the sponsor entity responsible for the SPVs, defaulted in servicing its creditors.
- m.** Consequently, Union Bank of India initiated CIRP against Era Infra, which was admitted by the Hon'ble NCLT on 08.05.2018. After deliberation, the Resolution Plan submitted by M/s SA Infrastructure Consultants Pvt. Ltd. ("SRA") was approved by the Committee of Creditors ("CoC") with 98.13% voting share and subsequently approved by the NCLT on 11.06.2024
- n.** At this juncture, it is most relevant to mention here that in view of this functional unity between the HHPL and the Intervenor, the recoveries that are expected from the pending arbitral proceedings initiated by the HHPL against NHAI have been factored in the approved Resolution Plan



of the Intervenor, and the debt of HHPL has also been dealt with in the said Resolution Plan. In the said Resolution Plan, the arbitral proceeds of the Corporate Debtor have already been counted for to pay the creditors of the Intervenor, and the Financial Creditor herein has consented to the same.

- o.** This is also apparent from the fact that a Sharing of Arbitral Proceeds Agreement (“SAP Agreement”) was executed between the assenting financial creditors of the Intervenor, the Intervenor and the SRA which states that the arbitral proceeds of the HHPL, when realized, shall be used to pay the creditors of the Intervenor. Therefore, the Financial Creditor cannot proceed against the Corporate Debtor herein, despite being a signatory to the SAP Agreement.
- p.** It is submitted that in light of the decision of the Hon’ble Delhi High Court dated 01.08.2025 and the Hon’ble Supreme Court dated 01.09.2025, this Hon’ble NCLT has been recognized as the competent forum to adjudicate the matter. In view of the same, the Intervenor has moved the present Application seeking intervention in the captioned matter.
- q.** It is submitted that if the Intervenor is not made a party to the captioned Petition, grave loss and injustice will be caused to the Intervenor herein. Thus, it is most humbly prayed that the Intervenor may kindly be given an opportunity to be heard.
- r.** It is most respectfully submitted that the Intervenor being the parent company of the Corporate Debtor, is entitled to be arrayed as a party to



the captioned Petition. It is trite in law that if a party is likely to suffer any grievance from the outcome of the case, then such party shall be entitled to get himself impleaded in the matter. For assessing if a party is necessary or proper to the suit, reference shall be made to the reliefs that have been claimed in such a matter. In the captioned Petition, Financial Creditor has already agreed that the assets and proceeds of the Corporate Debtor shall be dealt with in accordance with the approved Resolution Plan of the Intervenor.

ANALYSIS AND FINDINGS

3. We have heard the Ld. Counsel on behalf of the Applicant herein and further perused the averments made in the Application.
4. Upon perusal of the records and proceedings, it is observed that this Bench has already passed a detailed and reasoned order in C.P. (IB) No. 172 of 2025, wherein all the contentions raised by the present Applicant were duly considered and dealt with. The said order comprehensively examined the issues pertaining to the existence of debt and the aspect of limitation.
5. It is noted that the debt in question has been duly established and further, the principal application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed within the prescribed period of limitation. In view thereof, no fresh or substantive ground has been presented by the Applicant to warrant interference with the earlier findings of this Bench.



That proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) are inherently time-bound in nature, with strict timelines prescribed by the legislature to ensure expeditious resolution of insolvency cases and to prevent any undue delay in the process. In the present case, it is evident that the instant application has been filed with the sole intent to derail and frustrate the ongoing insolvency resolution process and to defeat the very objective of the Code, which is to ensure maximization of value of assets and timely resolution. Such frivolous and dilatory tactics not only undermine the spirit of the IBC but also cause prejudice to the rights of legitimate stakeholders and creditors who are awaiting resolution within the statutory framework.

7. Accordingly, this Bench finds no merit in the present Application. The same, being devoid of substance and bereft of any valid legal basis, **stands dismissed.**

Sd/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)