



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
C.P. NO. (IB) 777 OF 2024

**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

HARIDWAR HIGHWAYS PROJECT LIMITED

... 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 Senior Vice President /Authorised Representative Mr. Ekansh Kumar 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 **HARIDWAR HIGHWAY PROJECT LIMITED** ("Corporate Debtor") for default in repayment of financial debt of **INR 2386,51,75,911/-** (Indian Rupees Two Thousand Three Hundred Eighty-Six Crore Fifty-One Lakh Seventy-Five Thousand Nine Hundred Eleven Only) which comprises of **Principal Amount: INR 1021,39,84,859/-** (Indian Rupees One Thousand Twenty-One Crore Thirty-Nine Lakh Eighty-Four Thousand Eight Hundred Fifty-Nine Only) and **Interest Amount: INR 1365,11,91,052/-** (Indian Rupees One



Thousand Three Hundred Sixty-Five Crore Eleven Lakh Ninety-One Thousand Fifty-Two Only)

2. The Corporate Debtor i.e., **HARIDWAR HIGHWAY PROJECT LIMITED** having CIN: U45200DL2010PLC198587 is incorporated on 02.02.2010 under the provisions of the Companies Act, 1956 having its registered office situated at B-292, Chandra Kanta Comple~ 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** (acting as trustee of NARCL Trust-0010), has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) through its **Power of Attorney Holder, India Debt Resolution Company Limited (IDRCL)**, seeking initiation of the **Corporate Insolvency Resolution Process (CIRP)** against the Corporate Debtor. IDRCL has been duly authorised under the **Power of Attorney dated 02.04.2024**



executed by the Financial Creditor, and the application has been signed by Mr. Pankaj Agnihotri, duly authorised by IDRCL vide Board Resolution dated 20.03.2023.

- b.** The Corporate Debtor entered into a Concession Agreement dated 24.02.2010 with the National Highways Authority of India (**“NHAI”**) for augmentation of the existing road from km 131 to km 211 on the Muzaffarnagar–Haridwar section of NH-58 in the States of Uttar Pradesh and Uttarakhand, by way of four-laning on a design, build, finance, operate, and transfer (DBFOT) basis (hereinafter referred to as the “Project”). The Project cost was initially estimated at INR 1100.60 crores, for which the Corporate Debtor approached Axis Bank Limited to part-finance the Project. The holding company of the Corporate Debtor was ERA Infra Engineering Limited (herein after referred as **“ERA”**).
- c.** Pursuant to the request of the Corporate Debtor, Axis Bank Limited sanctioned a term loan of INR 690.60 crores for part-financing the Project (hereinafter referred to as *“Term Loan I”*). To secure the said facility, the Corporate Debtor executed the following financing and security documents in favour of Axis Bank:
- 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** (the *“Security Trustee”*);
 - iv. **Security Trustee Appointment Agreement** dated 31.07.2010;



- v. **Escrow Agreement** dated 31.07.2010 among Axis Bank (as Senior Lender and Escrow Bank), NHAI, and the Corporate Debtor;
 - vi. **Substitution Agreement** dated 31.07.2010 among NHAI, Axis Bank (as Lenders' Representative), and the Corporate Debtor;
 - vii. **Supplementary Escrow Agreement** dated 31.07.2010 among Axis Bank (as Senior Lender, Lenders' Agent, and Escrow Bank) and the Security Trustee.
- d. The Applicant submitted that, to further secure Term Loan I, ERA Infra Engineering Limited (ERA) executed a Deed of Pledge dated 31.07.2010, pledging 25,500 equity shares (representing 51% of the paid-up share capital) held by it in the Corporate Debtor. Additionally, M/s Open Joint Stock Company and ERA, as Sponsors of the Corporate Debtor, executed a Sponsors' Undertaking dated 31.07.2010 in favour of the Security Trustee.
- e. Pursuant to certain observations raised by NHAI, the Term Loan I Documents were amended as follows:
- i. **First Amendment dated 21.08.2010 to the Common Rupee Term Loan Agreement;**
 - ii. **First Amendment dated 21.08.2010 to the Lenders' Agent Agreement;**
 - iii. **First Amendment dated 21.08.2010 to the Deed of Hypothecation**
 - iv. **First Amendment dated 21.08.2010 to the Security Trustee Appointment Agreement**
 - v. **First Amendment dated 21.08.2010 to the Supplementary Escrow Agreement; and**
 - vi. **Supplementary Escrow Agreement dated 20.10.2010.**



(Hereinafter collectively referred to as the “**Amended Term Loan I Documents**”.)

The Applicant further submitted that the charge/mortgage created in respect of **Term Loan I** was duly registered with the Registrar of Companies (RoC) under Section 132 of the Companies Act, 1956, vide Certificate of Registration of Mortgage dated 11.10.2010.

- f. As per the **Term Loan I Documents** (as amended), **Axis Bank** was entitled to assign or transfer, in whole or in part, its participation in Term Loan I to other lenders on identical terms and conditions. The Corporate Debtor, vide Board Resolution dated 11.12.2010, consented to such amendments and agreed to create corresponding securities in favour of the new lenders. This was further ratified by **ERA Infra Engineering Limited (ERA)**, as Sponsor, vide Resolution dated 13.11.2010. Pursuant thereto, Axis Bank invited **Punjab National Bank (PNB)**, **Bank of India (BOI)**, **Indian Overseas Bank (IOB)**, **Union Bank of India (UBI)**, **India Infrastructure Finance Company Ltd. (IIFCL)**, and **UCO Bank (UCO)** (hereinafter collectively referred to as the “**Lenders**”) to participate in part-financing the Project under **Term Loan I**, which the Lenders accepted in the agreed 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

g. Repayment of **Term Loan I** was structured in quarterly instalments commencing from the financial year ending 31.03.2016 and concluding in the financial year ending 31.03.2027, along with applicable interest. Out of the total sanctioned amount, INR 577.23 crores was disbursed to the Corporate Debtor by the lenders. A Deed of Guarantee dated 14.12.2010 was executed by Mr. Hem Singh Bharana, Promoter-Director of the Corporate Debtor (the "*Personal Guarantor*"), in favour of the Security Trustee, whereby he undertook joint and several liability with the Corporate Debtor for repayment of the dues. Additionally, an Inter-Creditor Agreement dated 14.12.2010 was executed among the lenders, the Security Trustee, and the Lenders Agent. The Corporate Debtor further executed Balance and Security Confirmation Letters dated 06.06.2012 and 29.06.2013, acknowledging its liability towards Term Loan I.



**Restructuring of the Corporate Debtor's Account and Sanction
of Term Loan II – INR 290.48 Crores**

- h.** Due to operational and financial stress, the Corporate Debtor's account was classified as **SMA-2** under the Joint Lenders' Forum (JLF) Circular issued by the Reserve Bank of India (RBI). Consequently, the lenders constituted a Joint Lenders' Forum (JLF) and formulated a Corrective Action Plan (CAP) in accordance with the said Circular. Pursuant to the JLF meeting held on 25.09.2014, the CAP was approved for restructuring Term Loan I. **Considering the escalation of the Project cost from INR 1100.60 crores to INR 1563.55 crores**, the lenders also sanctioned an **additional facility of INR 290.48 crores** (hereinafter referred to as **"Term Loan II"**) to the Corporate Debtor, in the agreed proportion among the lenders.

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

- i.** For the sanction of Term Loan II, the Corporate Debtor and ERA Infra Engineering Limited (ERA) agreed to provide additional security, supported by requisite Board Resolutions and Certificates. In furtherance of the restructuring, the following



documents were executed (hereinafter collectively referred to as the “**Restructuring Documents**”):

- i. **Master Restructuring Agreement** dated 26.02.2015;
 - ii. **Undertaking** dated 26.02.2015 executed by the Corporate Debtor;
 - iii. **Sponsor’s 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, whereby ERA, the Personal Guarantor (Mr. Hem Singh Bharana), Alok Khanna, Amit Bharana, Nikhil Bharana, and Vaibhav Bharana pledged 74% of the equity shares of the Corporate Debtor in favour of the Security Trustee, along with a Power of Attorney dated 17.06.2015;
 - viii. **Deed of Personal Guarantee** dated 31.03.2015 executed by the Personal Guarantor;
 - ix. **Certificate of Non-Applicability of Section 185 of the Companies Act, 2013** issued by ERA;
 - x. **Charge Documents** filed by the Corporate Debtor on **17.09.2015** and **04.12.2015** for the restructured facility; and
 - xi. **Escrow Agreement** dated 02.03.2016.
- j. Under the Master Restructuring Agreement dated 26.02.2015, Term Loan I and Term Loan II became repayable in 44 structured quarterly instalments, commencing on 30.06.2018 and concluding on 31.03.2029, as per the repayment schedule set out in Schedule III of the said Agreement. Pursuant to certain



modifications suggested by NHAI, the Restructuring Documents were further amended as follows (collectively referred to as the **“Amended Restructuring Documents”**):

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

The Corporate Debtor, vide Balance and Security Confirmation Letter dated 23.12.2016, duly acknowledged its liability towards Term Loan II.

- k.** Owing to delays in commissioning of the Project, the Project cost escalated by INR 81.70 crores, of which INR 51.26 crores was financed by the lenders through an additional Rupee Term Loan Facility dated 09.02.2017 (hereinafter referred to as **“Term Loan III”**). Under this facility, Axis Bank, Bank of India (BOI), Union Bank of India (UBI), and UCO Bank (UCO) agreed to provide INR 28.61 crores, while the balance was to be contributed by other participating lenders.
- 1.** In connection therewith, the Corporate Debtor and ERA executed the following authorisations and resolutions:
 - (i) **Board Resolutions** dated 06.02.2017 and 09.02.2017 by the



Corporate Debtor;

(ii) **Resolution** dated 09.02.2017 by ERA;

(iii) **Letter dated 09.02.2017** from ERA confirming security coverage under Section 180(1)(a) of the Companies Act, 2013; and

(iv) **Resolution dated 29.09.2014** under Section 293(1)(a) of the Companies Act, 1956.

m. Subsequently, the following documents were executed for the grant and security of **Term Loan III** (collectively referred to as the "**Term Loan III Documents**"):

(i) **Common Rupee Loan Agreement** dated 09.02.2017;

(ii) **Lenders' Agent Agreement** dated 09.02.2017 appointing Axis Bank as the 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 executed by ERA;

(viii) **Deeds of Personal Guarantee** dated 14.03.2017 and 03.04.2017 executed by the **Personal Guarantor (Mr. Hem Singh Bharana)**; and

(ix) **Balance Confirmation Letter** dated 03.04.2017.

n. The Applicant stated that **Term Loan III** was repayable in **quarterly instalments** commencing on **30.06.2019** and concluding on **31.03.2020**, along with applicable interest. The **Corporate Debtor** also executed **Balance and Security Confirmation Letters dated 11.09.2017**, acknowledging its liability, and duly **registered the charge for Term Loan III** with the **Registrar of Companies (RoC)** on **04.10.2017**. Subsequently, **PNB, IOB, and IIFCL** sanctioned the remaining portion of **Term**



Loan III amounting to **INR 22.65 crores**, for which the following documents were executed:

- (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; and
- (v) **Undertaking** dated 14.06.2017 in favour of IIFCL.

Meanwhile, the Corporate Debtor, vide letter dated 12.09.2017, confirmed that NHAI had released a grant of INR 210 crores, and ERA, as promoter, had infused equity of INR 286.85 crores. However, due to financial distress and other constraints, the required additional equity infusion was not made, leading to the invocation of the Strategic Debt Restructuring (SDR) in the account.

- o. Despite repeated extensions, the Corporate Debtor failed to achieve the **Commercial Operation Date (COD)** and other key Project milestones. Subsequently, **NHAI**, vide letter dated **25.07.2018**, indicated its intention to terminate the **Concession Agreement** inter alia against the Corporate Debtor and **ERA**, while affording the lenders an opportunity to represent their intent to substitute the Corporate Debtor under the **Substitution Agreement**. Pursuant thereto, by letter dated **06.08.2018**, **Axis Bank** informed NHAI and the Corporate Debtor that the lenders had decided to substitute the Corporate Debtor with a nominated



entity, and the process for identifying a suitable substitute was initiated.

During the tenure of the Concession Agreement, the Corporate Debtor failed to maintain financial discipline, and despite repeated reminders, its account remained irregular. Mis-utilisation and diversion of funds by the Corporate Debtor, its promoters, directors, and sponsors prevented achievement of the COD and commencement of toll collections, which were essential for repayment of the Term Loans. Consequently, as the Corporate Debtor was unable to regularize its account and discharge its dues, its account was classified as a **Non-Performing Asset (NPA)** w.e.f. **24.02.2017** in accordance with **RBI guidelines**, and the lenders subsequently issued **recall notices** to the Corporate Debtor, as detailed below:

Name of the Lenders	Date of Classification as NPA w.e.f. 24.02.2017	Date of Recall Notice
Axis Bank	31.03.2018	30.01.2019
PNB	31.03.2018	01.02.2019
BOI	01.05.2018	03.04.2019
IOB	24.03.2017	22.01.2019
UBI	31.03.2018	01.07.2018
IIFCL	30.06.2017	02.05.2019
UCO	28.05.2018	23.08.2018

- p. The Applicant submitted that the **Corporate Debtor** has remained in **default**, with its account continuing to be irregular. Accordingly, **events of default** under **Clause 7.1.1** of the **Common Rupee Term Loan Agreement** (Term Loan I), **Clause 6.1(a) & (b)** of the



Master Restructuring Agreement (Term Loan II), and **Clause 7.1(a) & (b)** of the Common Rupee Loan Agreement (Term Loan III) have occurred and subsist, and the accounts were classified as NPA w.e.f. 24.02.2017. Due to the continuing default, the lenders filed an application before the Debts Recovery Tribunal, New Delhi (Transfer Application No. 276 of 2022) against the Corporate Debtor and its promoter, which is pending for adjudication

- q.** Further, the Applicant submitted that the Corporate Debtor, by letter dated 23.09.2021, acknowledged its liability under Term Loans I, II, and III. Its annual financial statements for 2019–2022 which have been annexed as **Annexure P-32 in VOLUME IX (pg. 1597-1692)** also reflect this liability, constituting an acknowledgment under Section 18 of the Limitation Act, 1963. The present application is thus filed within the limitation period.
- r.** Pursuant to the **Assignment Agreement dated 28.03.2024, Term Loans I, II, and III** were assigned to **National Asset Reconstruction Company Limited (NARCL)**, which has stepped into the lenders' shoes. The outstanding amount as on **30.04.2023**, assigned to the Financial Creditor, was **INR 2,028,17,80,099/-** (inclusive of interest).
- s.** NARCL, in its capacity as a financial creditor under Section 5(7) of the Code, has filed the present application, the debt constituting financial debt under Section 5(8). The total outstanding as on 08.08.2024 is INR 2,386,51,75,911/-, comprising:



(i) **Principal:** INR 1,021,39,84,859/-

(ii) **Interest:** INR 1,365,11,91,052/-

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

- a.** The Answering Respondent, Haridwar Highways Private Limited, is a Special Purpose Vehicle (SPV) incorporated on 02.02.2010 under the Companies Act, 1956. Its promoter, Era Infra Engineering Ltd. (EIEL), incorporated on 03.12.1990, is an engineering, procurement, and construction company operating on the Build-Operate-Transfer (BOT) model across India. In 2006–2007, EIEL diversified into the highway and railway sectors.
- b.** The National Highway Authority of India (NHAI) issued a tender for the four-laning of the Muzaffarnagar–Haridwar section of NH-58 (km 131–211) on a Design-Build-Finance-Operate-Transfer (DBFOT) basis, with the Project cost initially estimated at Rs. 1,100.60 crores. Subsequently, NHAI issued a Request for Qualification (RFQ), wherein Clause 2.2.6 required any successful bidder to incorporate a Special Purpose Vehicle (SPV) in the form of a Limited Liability Company for executing the Project.
- c.** Subsequently, **EIEL** and **SIBMOST** (a Russian company) participated in the Project bid as a consortium, which was accepted by NHAI based on EIEL’s experience, vide Letter of Award dated 29.12.2009. Accordingly, the Answering Respondent (HHPL) was incorporated by EIEL on 02.02.2010, in compliance with



Clause 2.2.6 of the RFQ, solely to execute the Project and fulfill EIEL's contractual obligations. Upon incorporation, HHPL entered into a Concession Agreement dated 24.02.2010 with NHAI for the Project, initially estimated at Rs. 1,100.60 crores.

- d.** The Respondent submitted that Pursuant to the Concession Agreement, the Answering Respondent (**"HHPL"**) entered into an EPC Agreement dated 14.06.2010 with EIEL for the design, construction, and maintenance of the Project, making EIEL the EPC Contractor. EIEL infused Rs. 3,70,000/- as primary equity in HHPL and, through its wholly-owned subsidiary Era Infrastructure (India) Limited, invested an additional Rs. 43.03 crores via preferential shares. A Performance Bank Guarantee of Rs. 37.70 crores was also submitted to NHAI by EIEL.
- e.** To complete the Project, HHPL, through EIEL, approached Axis Bank, which sanctioned Rs. 690.60 crores (Term Loan I) via a Common Rupee Term Loan Agreement dated 31.07.2010, amended on 21.08.2010. Axis Bank had the right to assign its participation to other banks, and accordingly, Punjab National Bank, Bank of India, Indian Overseas Bank, Union Bank of India, IIFCL, and UCO Bank (collectively, "Lenders") joined in part-financing Term Loan I.
- f.** As the Project cost escalated from Rs. 1,100.60 crores to Rs. 1,563.55 crores, the Lenders sanctioned an additional Term Loan II of Rs. 290.48 crores, formalized through a Master Restructuring Agreement dated 26.02.2015. As per HHPL's balance sheet for FY



2023-24, EIEL claims Rs. 1,549.77 crores, which remains unpaid as on 31.03.2024.

- g.** The Respondent submitted that NHAI failed to provide 80% of the required land in a free and unencumbered state, causing further project delays. Consequently, the Project cost increased by Rs. 81.70 crores, and the Lenders sanctioned an additional Term Loan III of Rs. 51.24 crores on 09.02.2017.
- h.** The Respondent further submitted that along with other securities, Era Infrastructure (India) Ltd., EIEL's master SPV, executed a Corporate Guarantee dated 29.06.2016 in favor of Bank of India to secure its credit facility to the Answering Respondent. Despite facing delays beyond its control, the Answering Respondent was adversely affected when NHAI terminated the Concession Agreement on 25.07.2018. Subsequently, the consortium of Lenders—Axis Bank, Bank of India, Punjab National Bank, IIFCL, Indian Overseas Bank, and UCO Bank—assigned their debt to the Applicant via a Joint Assignment Agreement dated 28.03.2024, prompting the filing of the present application.
- i.** It stated that EIEL, the parent company of the Answering Respondent, has secured multiple NHAI tenders for highway construction, maintenance, and operation, including the present Project. One of EIEL's lenders, Union Bank of India, filed CP (IB) No. 190 of 2017 under Section 7 before this Adjudicating Authority, and EIEL was admitted into CIRP vide order dated



08.05.2018. The CoC of EIEL subsequently approved a Resolution Plan by M/s SA Infrastructure Consultants Pvt. Ltd. with 98.13% votes, which was later sanctioned by this Hon'ble NCLT. It further stated that the Answering Respondent's claims were included in the Resolution Plan, as it envisaged payments to EIEL's creditors—including the Lenders—through proceeds from arbitral awards secured in favour of EIEL and its SPVs, encompassing those due to the Answering Respondent.

- j.** The Lenders, whose debt has been assigned to the Applicant and who were part of EIEL's CoC, assented to EIEL's Resolution Plan. Having stepped into the Lenders' shoes, the Applicant was aware that SPV proceeds would be used to resolve EIEL, leaving SPVs with no remaining assets. Accordingly, a Sharing of Arbitral Proceeds Agreement ("SAP Agreement") dated 05.09.2024 was executed between EIEL, the assenting financial creditors (including the Applicant, NARCL, and SA Infra), stipulating that proceeds from the Answering Respondent's arbitrations would be applied toward the claims of financial creditors in EIEL's CIRP.
- k.** The Respondent submitted that the Resolution Plan expressly included the claims of EIEL's SPVs, including the Answering Respondent, providing that arbitral proceeds from its disputes would be used to settle EIEL's claims. Pursuant thereto, a Sharing of Arbitral Proceeds Agreement ("**SAP Agreement**") dated 05.09.2024 was executed between EIEL, the Applicant, and other financial creditors, agreeing that proceeds from the Answering



Respondent's arbitrations would be distributed among EIEL's creditors. The Applicant acknowledged the intertwined structure of EIEL and its SPVs, including HHPL, as evidenced in the Flash Report submitted to the CDR Cell, which outlined the interdependency. By agreeing to utilize HHPL's assets for repayment of EIEL's debts, the Applicant waived its right to recover directly from the Answering Respondent. Accordingly, the Applicant, as assignee of the Lenders and participant in EIEL's Resolution Plan, is bound by its terms and cannot pursue the same claims directly against the Answering Respondent.

1. The Respondent further submitted that the present Application fails to specify a clear date of default. The Applicant cites 24.02.2017, but the NeSL Record of Default notes the **"Last Event of Default"** as **"Not Available"** and as per settled law, debt and default are essential for a Section 7 application, and a specific date of default is mandatory. To support its contention the Respondent has relied upon the following Orders:

- i. **Winntus Scaffolding Pvt. Ltd. v. Aishwarya Business Corporation Pvt. Ltd.**, [CP(IBC)/44/KOB/2022], wherein Adjudicating Authority had held that mentioning the specific date of default in the prescribed form is mandatory as per Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.
- ii. **Ramdas Dutta v. IDBI Bank Ltd. & Anr.**, [Company Appeal (AT) (Ins) No. 1285 of 2022], wherein the Hon'ble NCLAT



reiterated that the date of default is a fixed and immutable fact and cannot be subsequently altered by the bank.

- iii. **Santoshi Finlease Pvt. Ltd. v. State Bank of India** (NCLAT, Company Appeal (AT) (Insolvency) No. 974/2023), wherein the Hon'ble NCLAT observed that debt and default must be strictly established and not merely alleged.

ANALYSIS AND FINDING

5. 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.
6. The matter was first listed on **27.11.2024**, when notice was directed to be issued to the Respondent. On **09.12.2024**, the Applicant sought time to file proof of service. Subsequently, on **12.12.2024**, the learned counsel appearing for the Applicant submitted that the notice issued to the Respondent had been returned "unserved" and, accordingly, sought permission to effect substituted service through publication. Pursuant thereto, in compliance with the order dated **12.12.2024**, the Applicant caused publication of notice in two daily newspapers on **15.01.2025** and filed the affidavit of service along with proof thereof. Despite such publication and repeated opportunities, none appeared on behalf of the Corporate Debtor, nor was any reply or affidavit filed. Accordingly, on **03.02.2025**, when the matter was taken up for hearing, despite repeated calls, there was



no appearance on behalf of the Respondent. Hence, the Corporate Debtor was proceeded against **ex parte**.

7. During the course of hearing of this matter, on 15.04.2025, the bench issued some clarification and noted that the date of default was stated as **24.02.2017**, when the Corporate Debtor's account was classified as NPA. As per RBI's IRACP norms, an account is declared NPA only after 90 days of non-payment; hence, the actual default would have occurred earlier. Although the Corporate Debtor had acknowledged the debt on **23.09.2021**, the precise date of default remained unclear. The NeSL Record of Default was "Deemed Authenticated" but did not mention the *Last Event of Default*. Accordingly, the Petitioner was directed to file an affidavit clarifying (i) the exact date of default with proof and (ii) the reason for the missing default date in the NeSL record. Accordingly, the Applicant filed an affidavit on in terms of Order dated 15.04.2025.
8. Meanwhile, the Corporate Debtor filed IA No. 903/2025, contending that it was unaware of the pendency of CP (IB) No. 777(ND)/2024 under Section 7 of the Code, as no notice was served. It first learned of the proceedings upon discovering the order dated 03.02.2025, which recorded its ex parte status. The Petition was initially listed on 27.11.2024, with notice directed to be served; however, as the notice was returned unserved, substituted service through newspaper publication was ordered on 12.12.2024. The Corporate Debtor submitted that its absence



was unintentional and solely due to non-service of notice. Accordingly, vide order dated 11.08.2025, this Adjudicating Authority, in the interest of justice, equity, and adherence to the principle of *audi alteram partem*, deemed it appropriate to grant the Corporate Debtor an opportunity of hearing, subject to payment of costs of ₹5,00,000/- to be deposited in the Prime Minister's National Relief Fund. Aggrieved by the said decision, the Respondent/ Corporate Debtor preferred an appeal, wherein Hon'ble NCLAT reduced the cost to Rs. 1 lakh and accordingly, the Respondent was permitted to deposit the cost by 24.08.2025 and file the reply by 25.08.2025, as per the previously fixed schedule.

9. The Applicant in Part IV of the Application has mentioned the date of default as 24.02.2017. In this backdrop, it is relevant to understand that the adjudicating authority under the present legislation has a very limited role to play while admitting or rejecting an application filed under section 7 of The Code. One of the important factor to be considered in an application under section 7 is the existence of debt and thereby non-payment of debt i.e. default **(Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1)**. This is also evident from the bare language mentioned under Section 6 and 7 of The Code.
10. The Applicant stated in Part IV of the Section 7 application that the date of default was 24.02.2017, corresponding to the date on



which the Corporate Debtor's account was classified as NPA. Reliance was placed on the recall notices issued by the lenders, informing the Corporate Debtor that its account had been classified as NPA with effect from 24.02.2017 in accordance with the RBI guidelines. The recall notices further recorded that despite repeated extensions, the Corporate Debtor failed to achieve the Commercial Operation Date (COD) and other project milestones and also defaulted in servicing its term loan obligations. Even after such intimation, the Corporate Debtor did not rectify the default, and the account continued to remain NPA.

11. To support its contention the Applicant has placed its reliance on the judgment in ***Milind Kashiram Jadhav v. State Bank of India & Anr., [Company Appeal (AT) (Ins.) No. 1589 of 2023, decided on 25.04.2024]***, wherein it was held that the date of NPA classification constitutes a valid "date of default" for initiating proceedings under Section 7 of the IBC. The said view was subsequently upheld by the Hon'ble Supreme Court in *Civil Appeal No. 7990 of 2024* vide order dated 02.08.2024.

"56. In adherence to Reserve Bank of India (RBI) regulations, the classification of Non-Performing Assets (NPAs) serves as a pivotal measure for maintaining the financial health and stability of the banking sector. When a borrower defaults on loan payments for a stipulated period, typically 90 days, the loan account is rightfully classified as an NPA. This classification isn't arbitrary; it's a well-defined threshold indicating a lapse in repayment obligations.

57. Consider the scenario at hand: a loan instalment due on June 30, 2019, remains unpaid. Following the regulatory protocol, on September 27, 2019, marking the 90th day of default, the loan account was rightly categorized as an NPA.



This classification is not an arbitrary punishment but rather a consequence of a fundamental breach of repayment terms.

58. Upon classification as an NPA, the entirety of outstanding dues, encompassing both principal and accrued interest, becomes immediately due and payable. This measure is imperative for banks and financial institutions to safeguard their interests and maintain liquidity.

59. Following the classification of the loan accounts of the Corporate Debtor as Non-Performing Assets (NPA), there was a glaring absence of efforts on the part of the Appellant/Corporate Debtor to rectify the situation and regularize the accounts. This default persisted as long as the loan accounts remained classified as NPAs.

60. Crucially, the onus lies on the borrower to rectify the default and regularize the loan account. Unfortunately, in this instance, the borrower, despite ample opportunity, failed to address the defaulted payments, thus perpetuating the default status. Such inaction cannot be condoned or overlooked.

61. In the light of these considerations, the bank is well within its rights to pursue its options for the outstanding amounts owed by the borrower.

62. Section 3(12) of the IBC deals with the expression 'Default' to mean non-payment of debt when whole or any part of instalment of the amount has become due and payable, thus, when on the loan accounts being classified as NPA the whole of the debt is due and payable - it is a 'Default' under the IBC, thus, the date of NPA can be taken as the date of default. In fact, the default has been persisting prior to 90 days of NPA declaration date."

- 12.** 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/decreed 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/decreed 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.

- 13.** 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’⁷ 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 aforementioned 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.”

14. In addition, the Corporate Debtor, vide its letter dated 23.09.2021, expressly acknowledged the subsisting debt and default in repayment of the financial liability. The **Hon’ble Supreme Court in Laxmi Pat Surana v. Union Bank of India & Anr., Civil Appeal No. 2734 of 2020**, has categorically held that an acknowledgment of debt in writing within the limitation period triggers a fresh limitation period under Section 18 of the Limitation Act, 1963. Accordingly, the present application cannot be said to be barred by limitation. Furthermore, the Corporate Debtor has consistently acknowledged the outstanding debt in its balance sheets for the financial years 2019, 2020, 2021, and 2022, which have been annexed as **Annexure P-32 in VOLUME IX (pg. 1597-1692)** thereby reaffirming the continuity of liability.
15. It has been settled by the catena of judgments that Section 18 of the Limitation Act is applicable to IBC proceeding. The Code does not exclude the application of Section 6, 14 or 18 or any other provision of Limitation Act to proceeding under IBC provided that the said acknowledgments are made before the expiry of 3 years.



Once an acknowledgment is done, a fresh cause of action arises, thereby extending the limitation period.

16. 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.



- 17.** 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;

- 18.** The Respondent has contended that it is merely a Special Purpose Vehicle (SPV) incorporated exclusively for executing specific contracts and projects under the operational and financial control of its parent company, EIEL. It is submitted that the Respondent, in its independent capacity, has no standalone assets, business operations, or going concern potential. In this regard, we note that reference has been made to the Resolution Plan approval order dated 11.06.2024 passed by this Adjudicating Authority in respect of EIEL, wherein it was expressly clarified that the Resolution Plan does not deal with any third-party collateral pertaining to any financial creditor, including dissenting financial creditors of EIEL. Further, the said Resolution Plan does not extend to or cover the debts owed by any of EIEL’s SPVs, including the present Corporate Debtor. Moreover, the SAP Agreement relied upon by the Respondent pertains to arbitral proceeds arising from the EPC Agreement, which are unrelated to the debt and default forming the subject matter of the present proceedings. It is also pertinent to note that, as per the SAP Agreement, the arbitral proceeds referred to in



Schedule 2 relate to disputes and claims of EIEL against third parties, and the utilisation of such proceeds is earmarked solely for settlement of the creditors' claims of EIEL, not its subsidiary SPVs.

- 19.** In order to admit an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), the Hon'ble 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.



- 20.** 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.
- 21.** 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.
- 22.** 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.
- 23.** 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.

24. 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)- 777/(PB)/2024) stands admitted and the CIRP is hereby initiated against Haridwar Highway Projects Limited.**

25. 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@insolvencyservices.in is appointed as an Interim Resolution Professional (IRP) for corporate debtor.

26. 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.”



- 27.** 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.
- 28.** 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.
- 29.** 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.

- 30.** 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.
- 31.** 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.
- 32.** 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.
- 33.** 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.

- 34.** Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **CP (IB) No. 777(ND)/2024 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. 60 OF 2025
IN
C.P. (IB) NO. 777(ND)/2024

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

HARIDWAR HIGHWAYS PROJECT LIMITED

...RESPONDENT

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.
Mr. Abhishek Anand, Adv.
Ms. Kaveri Ravat, Adv.
Mr Shouryaditya Adv.
Ms. Aditi Sinha, Adv.
Ms. Palak Kalra, Adv.



ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present application has been filed by M/s Era Infra Engineering Limited ('Intervenor') 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. It is submitted that the Corporate Debtor 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”).

- d.** 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”).
- e.** In furtherance of the same, a Concession Agreement dated 24.02.2010 (“Concession Agreement”) was executed between the Corporate Debtor and NHAI. It is submitted that the Corporate Debtor 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.
- f.** It is relevant to mention that the Corporate Debtor herein was operated under the direct control, authority and supervision of the Intervenor. All the major decisions concerning the Corporate Debtor herein were



taken at the behest of the Intervenor, thereby reinforcing its status as mere extensions of the Intervenor.

- g.** 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. These loans were secured by corporate guarantees of the Intervenor.
- h.** Further based on the sanction terms of the CoL prior to disbursement of the project loans by the CoL, the Intervenor executed a EPC Contract with the Corporate Debtor for the construction development and maintenance of the Project.
- i.** It is submitted that the Corporate Debtor was not an independent entity per se, rather 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 Corporate Debtor on the Intervenor.
- j.** That 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 Corporate Debtor through the Intervenor had diligently fulfilled their obligations. NHAI, vide Letter dated 25.07.2018, wrongfully and arbitrarily terminated Concession Agreement.
- k.** It is further submitted that several arbitral proceedings are pending on account of this which involves both the Intervenor as well as the Corporate Debtor. Owing to such multiple wrongful termination by



NHAI, the Intervenor, being the sponsor entity responsible for the SPVs, defaulted in servicing its creditors.

- 1.** 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
- m.** At this juncture, it is most relevant to mention here that in view of this functional unity between the Corporate Debtor and the Intervenor, the recoveries that are expected from the pending arbitral proceedings initiated by the Corporate Debtor against NHAI have been factored in the approved Resolution Plan of the Intervenor. 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.
- n.** 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 Corporate Debtor, 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.
- o.** 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.

- p.** 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.
- q.** 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. 777 of 2024**, 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.



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.

6. 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)**