



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 33/KB/2024

***A Petition 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:

Union Bank of India

... Financial Creditor/ Petitioner.

Versus

Solapur Tollways Private Limited

... Corporate Debtor/ Respondent.

And

IVN.P (IBC) No. 37/KB/2024

IN THE MATTER OF:

Bharat Road Network Limited

... Applicant.

Versus

Union Bank of India

... Financial Creditor.

And

I.A. (IB) No. 2198/KB/2024

IN THE MATTER OF:

Solapur Tollways Private Limited

Versus

Union Bank of India

... Respondent.

Date of Pronouncement: December 20, 2024.



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Company Petition (IB) No. 33/KB/2024

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI BALRAJ JOSHI, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

**For the Petitioner: Mr. Ratnanko Banerji, Sr. Adv.
 Mrs. Manju Bhuteria, Sr. Adv.
 Mr. Sayantak Das, Adv.
 Ms. Neha Shivhare, Adv.**

**For the Respondent: Mr. Shaunak Mitra, Adv.
 Mr. Subhradip Roy, Adv.
 Ms. Smiti Verma, Adv.
 Mr. Pranay, Adv.
 Mr. Souvik Bose, Adv.**

**For the application
in IVN 37 of 2024: Mr. K. R. Thakkar Sr. Adv.
 Ms. R. Singhee, Adv.
 Mr. V. Singh, Adv.
 Mr. S. K. Agarwal, Adv.**

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hybrid mode.

2. Heard the Learned Senior Counsel/ Learned Counsels at length.

3. This petition has been preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" by Union Bank of India, hereinafter referred to as "Petitioner/ Financial Creditor" against Solapur Tollways Private Limited, hereinafter

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referred to as “Respondent/ Corporate Debtor” seeking for a direct to initiate Corporate Insolvency Resolution Process, for brevity “CIR Process” in respect of the Corporate Debtor herein.

4. The total amount claimed to be in default is Rs. 195,55,15,022/- as on December 31, 2023, which includes the principal amount claimed to be in default of Rs. 184,23,36,839/- and the interest amount claimed to be in default of Rs. 11,31,78,183/-.

5. The Corporate Debtor’s account was classified as a Non-Performing Asset (NPA) following the guideline issued by the Reserve Bank of India on October 29, 2023, regarding defaults committed by the Corporate Debtor.

I. Factual Conspectus:

6. The Corporate Debtor is a special purpose vehicle originally promoted by SREI Infrastructure Finance Limited, hereinafter referred to as “SIFL” and Coastal Projects Limited, hereinafter referred to as “CPL”. The National High Authority of India, hereinafter referred to as “NHAI” had granted to the Corporate Debtor a concession to undertake the development of the existing project highway by four laning of Solapur to Maharashtra/ Karnataka border section of NH – 9 in the State of Maharashtra on Toll under the National Highway Development Project Phase II on design, build, finance, operate and transfer basis (hereinafter referred to as “Project”). The Corporate Debtor and NHAI entered into



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the Concession Agreement on February 29, 2012, for the development of the Project.

7. That, the Corporate Debtor had approached the Financial Creditor Union Bank for availing financial assistance in relation to the development of the Project and accordingly a Loan Agreement was executed between the Financial Creditor and Corporate Debtor for an amount of Rs. 588.42 Crore. The Loan Agreement dated August 03, 2013, annexed at pages 39-176 to the petition.

8. That, the Loan Agreement was amended and novated from time to time as under:

- (a)** First Amendment and Novation Agreement dated December 12, 2014.
- (b)** Second Amendment and Novation Agreement dated April 21, 2015.
- (c)** Third Amendment and Novation Agreement to the Loan Agreement dated October 19, 2015.
- (d)** Fourth Amendment and Novation Agreement dated February 15, 2016.

9. Pursuant to the amendment and novation of the Loan Agreement, the Corporate Debtor availed loans from various lenders, details as under:

- i. Rs. 200 Crore from Union Bank of India.
- ii. Rs. 160 Crore from IIFCL.
- iii. Rs. 100 Crore from Oriental Bank of Commerce.
- iv. Rs. 50 Crore from Srei.

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- v. Rs. 50 Crore from Vijaya Bank.
- vi. Rs. 28.42 Crore from Syndicate Bank.

Total: Rs. 588.42 Crore.

10. That, the Corporate Debtor has committed default in repayment of the loan avail from the Financial Creditor Union Bank of India, and as on December 31, 2023, the total amount claimed to be in default is of Rs. 195,55,15,022/-. Hence, the Union Bank of India filed this petition under Section 7 of the I&B Code.

II. Submissions made by the Union Bank of India (Petitioner):

11. The Learned Senior Counsel, Mr. Ratnanko Banerji, appearing on behalf of the Financial Creditor, Union Bank of India would submit that as per the Loan Agreement dated 03.08.2013, read with the Fourth Novation and Amendment Agreement dated 15.02.2013, the petitioner agreed to disburse an amount of Rs. 200 Crore for part financing of the Project. He took us to Clause 5.7 of the Loan Agreement and would submit that the facility availed by the Corporate Debtor could be disbursed in one or more instalments subject to the borrower complying with the disbursement procedure stipulated in the Loan Agreement. Under the aforesaid clause, the petitioner disbursed of Rs. 174,00,28,128/- in favour of the Respondent in 43 instalments as on 03.06.2015. The Schedule of disbursement is annexed at page 267-270 to the petition.

12. Further, the Learned Senior Counsel would refer to Clause 2.6 (*Repayment*) of the Loan Agreement states that the Borrower shall

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repay the Loans to the Rupee Lender in 47 (forty-seven) unequal quarterly instalments as specified in the Amortization Schedule. **The first repayment instalment shall be due on June 30, 2016.** The last repayment instalment shall be paid on December 31, 2027.

13. Further, *Clause 3.1.1. (i) of Article III (Interest, Liquidated Damages, Commitment Charges; Etc) of the Loan Agreement* says that the Borrower shall pay to the Rupee Lender interest for the Interest Period at the Applicable Interest Rate on the Loans. Such interest shall be paid monthly in arrears on the Interest Payment Dates.

14. It is submitted that as per the Repayment Clause in the Loan Agreement, the principal amount so disbursed was to be repaid in accordance with the Amortisation Schedule (final Amortisation Schedule is annexed at Pages 254-256, Vol- II to the Petition). Further, in accordance with interest payment clause (Clause 3.1.1. of Article III of the Loan Agreement) read with definition of '*Interest Payment Date*' and '*Interest Period*' annexed at pages 140- 141, to the petition, the Corporate Debtor was under an obligation to pay interest to all the lenders at applicable interest rates of their respective loans monthly from the date of the initial disbursement.

15. The Learned Senior Counsel would further submit that the Corporate Debtor defaulted in repayment of interest on the principal and the instalments as per the repayment schedule and the loan account of the Corporate Debtor was classified as NPA as on 29.10.2023 per the RBI guidelines which triggered an '*Event of Default*' under the Clause 9.1 (a) (i) of the Loan Agreement which states that '*Failure by the Borrower in the repayment/ payment of the*



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Loans and/ or interest on the Loans and/ or any amounts payable under the Finance Documents on the respective Due Date default in repayment of interest or the principal amount for a continuous period of thirty (30) days would amount to an event of default' (at Page 113, Vol- I to the Petition).

16. That, the Petitioner recalled the Facility vide letter dated November 8, 2023, annexed at pages 7-8 to the Petitioner's Supplementary Affidavit dated 29.02.2024.

17. It is submitted that the Corporate Debtor has also sent Debit Balance Confirmation Letters dated March 28, 2018, April 6, 2022, and March 31, 2023, and Letter of confirmation dated May 29, 2019, to the Applicant, confirming the balance with respect to the Loan Agreement, annexed at pages 9- 15 of the Supplementary Affidavit dated 29.02.2024.

18. The Learned Senior Counsel would rely on the NeSL Report annexed at pages 490-496 to the Petition and submit that the default on the part of the Respondent has also been acknowledged and identified in the Report of the Information Utility. Further, he would submit that the Balance Sheet and Auditor's Report for the Financial Year 2022-2023 of the Corporate Debtor evidence existence of financial debt and default. As per the financial statements, the finance cost of the Corporate Debtor for the FY 2022-23 is Rs. 11,742.38 Lakh while the Corporate Debtor has incurred a loss of Rs. 14,720.39 Lakh thus making it evident that the Corporate Debtor is under grave financial distress. The Balance

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Sheet and Auditor's Report are annexed at pages 508-548 to the petition.

19. The Learned Senior Counsel would rely on the judgements rendered in *Innoventive Industries Ltd. v. ICICI Bank and Anr.*, reported in **(2018) 1 SCC 407** and *ES Krishnamurthy v. M/s Bharath Hi Tech Builders*, reported in **(2022) 3 SCC 161**, and submit that in the present case, the debt become due and payable under Section 7 and the Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred and accordingly, the petition deserves to be admitted.

III. Per contra, submissions made by the Respondent:

20. The Learned Counsel Mr. Shaunak Mitra, appearing on behalf of the Corporate Debtor would submit that the present applicant under Section 7 is a unique case and not regular one. Law is well-settled that in a Section 7 application, the moment the adjudicating authority is satisfied that there is a debt disbursed by the financial creditor and subsequently, a default has occurred on part of the corporate debtor, and the application is not timed barred, it must be admitted unless it is incomplete. The present case is quite different from the others and here, the corporate debtor has not committed a single rupee default.

21. Mr. Mitra, Ld. Counsel for the Respondent would submit that the true appreciation of the facts is that the corporate debtor has not committed any default towards its obligations under the Loan Agreement. The NHAI and the lender have committed the breaches.



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He took us to Clause 4.1.2 (at page 45 to the Reply Affidavit) and Clause 10.3.1 (at page 64 to the Reply Affidavit) of the Concession Agreement that the scheme of the Concession Agreement is that the Corporate Debtor as the concessionaire could start construction only after the declaration of the Appointed Date (AD), which in turn required the NHAI to complete its conditions precedent under the Concession Agreement. One of the conditions precedents under the Concession Agreement was that the NHAI would hand over 80% of the ROW to the Concessionaire, Corporate Debtor. It is argued that on account of the delay in the acquisition of ROW by the NHAI, the declaration of the Appointed Date was delayed by 28 months.

22. Further, it is argued that the Project was marred by several breaches at the hands of the NHAI such as delays in the diversion of forest land, environmental clearance, protests by the kishan cell. Due to the breaches, the Corporate Debtor was constrained to invoke arbitration against the NHAI seeking compensation for the breaches. The Corporate Debtor has filed a claim of INR 826,58,86,218 pending adjudication before the Ld. Arbitral Tribunal. **(Statement of claim filed by the CD- Annexure U at page 415 of CD's Opposition Vol. IV)**

23. Further, it is argued that it was the delay caused by the NHAI that led the lenders to agree to the Fifth, Sixth and Seventh Amendments to the Common Loan Agreement under which the Scheduled Commercial Operation Date (“**SCOD**”), the Availability Period and the dates of repayment were deferred. **(5th, 6th and 7th Amendments to the Common Loan Agreement- Annexures C, D and E of the CD's Opposition Vol. II)**

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24. It was further argued that the Corporate Debtor agreed to the declaration of AD despite the gross delay of 28 months since even though the Concession Agreement contemplated payment of an “Additional Concession Fee/ Premium” by the Corporate Debtor to the NHAI on the Commercial Operation Date/ COD, the Corporate Debtor’s name was included in the list of stressed projects which were eligible for deferment/ re-schedulement of premium. Acting contrary to its policy, however, the NHAI refused to allow deferment of premium when it became payable under the Concession Agreement. **(Cl. 25.4 at page 104 of CD’s Opposition Vol. I read with Cl. 26.2.1 at page 105 of CD’s Opposition Vol. I and NHAI’s policy on re-schedulement of payment of premium- Annexure N at page 340 of CD’s Opposition Vol. III)**

25. It is submitted that NHAI illegally withheld the deferment of premium and the extension of time in the Project contrary to its own policies, on 31.12.2021, it also issued an illegal notice of suspension to the Corporate Debtor suspending its rights under the Concession Agreement and taking over the Project. Due to intervening legal proceedings by the Corporate Debtor, the suspension notice took effect only from 12.01.2023. It is further submitted that while the maximum suspension period under the Concession Agreement and the Substitution Agreement is 270 days, the NHAI has illegally extended the suspension period far beyond the contractual stipulation and “manufactured” the purported default on which the Financial Creditor relies in the present proceedings. **(Letter of suspension- Annexure P at page 365 of CD’s Opposition Vol. III)**



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and Cl. 36.1 of the Concession Agreement- Suspension upon Concessionaire Default at page 133 of CD's Opposition Vol. I).

26. Mr. Mitra, Ld. Counsel for the Respondent took us to Cl. 36.2.1 of the Concession Agreement, which states that during the period of suspension, it is the NHAI that collects all the toll and revenue from the Project and deposits the same in the escrow account. The said clause further states that it is the NHAI that shall be entitled to make withdrawals from the escrow account *“for meeting the costs incurred by it for remedying and rectifying the cause of suspension and thereafter **for defraying the expenses specified in Clause 31.3.**”* It is submitted that during the suspension period, it is in fact an obligation cast on the NHAI to service the debts of the lenders. **(Cl. 36.2.1 of the Concession Agreement at page 133 of CD's Opposition Vol. I read with Cl. 31.3 of the Concession Agreement at page 117 of CD's Opposition Vol. I)**

27. Mr. Mitra, Ld. Counsel for the Respondent in view of above submissions would contend that despite having grossly delayed the Project which essentially resulted in the curtailment of the Concession Period from 25 years to effectively only 21 years, the NHAI has refused to allow deferment of premium or extension of time to the Corporate Debtor. In fact, it has illegally suspended the rights of the Corporate Debtor to collect tolls, and despite being in control of the Escrow Account, has refused to service the debts of the senior lenders in contravention of the terms of the Concession Agreement.

28. Mr. Mitra, Ld. Counsel for the Respondent would submit that IIFCL, who is a member of the consortium, stopped disbursing loan

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amounts under the Common Loan Agreement since September 2019, despite knowing that the availability of funds was crucial to the timely completion of the project and its commercial operation. The Financial Creditor in the lenders' consortium meeting dated 07.07.2020 categorically observed and requested IIFCL to adhere to the commitment and disburse the pending LCNs immediately to support the project. The corporate debtor filed a civil suit against IIFCL for its breaches in disbursing the loan amount to the corporate debtor which is currently pending adjudication before the Ld. Civil Court Sealdah. It is submitted that IIFCL's defaults also had a cascading effect on the other members of the consortium, with PNB, Oriental bank of Commerce, Bank of Baroda, Vijaya Bank and Canara/ Syndicate Bank also grossly delaying the disbursement of their committed amounts. It is further submitted that the corporate debtor which had despite the odds achieved Milestone III under the Concession Agreement and required funds to complete the balance works under the Concession Agreement was gravely prejudiced by the lenders not disbursing or delaying disbursement of their committed amount to the corporate debtor.

29. It is alleged that the breaches committed by the NHAI as well as the lenders were within the knowledge of the financial creditor whose own understanding was that the NHAI and the members of the lenders' consortium were in breach and the Project had suffered despite the corporate debtor discharging all its obligations.

30. It is contended that the NHAI suspended the rights of the corporate debtor under the Concession Agreement vide the notice of suspension dated 31.12.2021 with effect from 12.01.2023. during

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the period of suspension, the NHAI was in control of the project of Escrow Account and was under an obligation to service the debts of the lenders. It was also the financial creditor's own understanding that the NHAI would service the debts of the senior lenders from the project escrow account.

31. It is further contended that financial creditor along with the NHAI has illegally extended the suspension period beyond the contractual stipulated maximum duration and is now claiming that the corporate debtor has defaulted. It is alleged that despite knowing that the corporate debtor had duly discharged its obligations under the Concession Agreement and the Common Loan Agreement, the financial creditor in a complete volte face, issued a notice of default dated 10.05.2023, on the same date also issued a notice with intention to substitute the corporate debtor.

32. Further, it is claimed that the instant case falls squarely within the scope of Section 65 of the I&B Code. It is submitted that the instant petition has been filed when the financial creditor had already issued a notice on 10.05.2023 with intend to substitute the corporate debtor with a Nominated Entity. NHAI's response on 05.08.2024 to the corporate debtor's termination notice clearly indicates that as per the lenders and NHAI, the substitution process is ongoing in which case, the enders cannot be permitted to take a diametrically opposite stance. It is contended that the scheme of agreements i.e., the Concession Agreement, Common Loan Agreement and Substitution Agreement is such that the claims of the lenders secured through the Project itself. The asset created in the case of a concession agreement is the concession or project itself



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for the purpose of which the lenders advance monies and the understanding of all the parties.

33. We have noted the rival contentions of both the parties.

IV. Analysis and Findings:

34. The discernible facts are:

- a. NHAI and the corporate debtor entered into a Concession Agreement on 29.12.2012 for the development of the existing project highway from Solapur to the Maharashtra-Karnataka border.
- b. On 03.08.2013, the Petitioner Bank and the Corporate Debtor entered into a Loan Agreement for Rs. 588.42 Crore to carry out the project. On the same day, SREI Infrastructure Finance Limited (SREI) and Coastal Projects Limited undertook to become sponsors for the corporate debtor under the Loan Agreement.
- c. On 12.12.2014, the first amendment and novation agreement to the Loan Agreement was executed whereby the petitioner released and discharged itself from rights and obligation under the Loan Agreement to the extent of a novated commitment of Rs. 160 Crore to India Infrastructure Finance Company Limited (IIFCL) and Coastal Projects Limited ceased to be a sponsor to the Project and SREI and its associates or affiliates were



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accorded the approval to become a sponsor to the Project.

- d. On 21.04.2015, the second amendment and novation agreement to the Loan Agreement was executed whereby the Petitioner Bank released and discharged itself from the rights and obligations under the Loan Agreement to the extent of a novated commitment of Rs. 100 Crore to Oriental Bank of Commerce (OBC) and Rs. 128.42 Crore to SREI.
- e. On 19.10.2015, the third amendment and novation agreement to the Loan Agreement whereby SREI released and discharged itself from the rights and obligations under the Loan Agreement to the extent of a novated commitment of Rs. 50 Crore to Vijaya Bank.
- f. On 15.02.2016, the fourth amendment and novation agreement to the Loan Agreement was executed whereby the commitment from the various lenders stood at Rs. 200 Crore.
- g. It is submitted that on 03.06.2015, under Clause 5.7 of the Loan Agreement, the Petitioner Bank made a disbursement of Rs. 174 Crore in favour of the corporate debtor in 43 instalments.
- h. The correspondence was made on 19.08.2019 by the Petitioner Bank to the Corporate Debtor for regularization of overdue in the loan account of the



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Corporate Debtor. The account of the Corporate Debtor was moved to default status in CRILC and classified as SMA-0.

- i. On 25.09.2019, further correspondence was made by the Applicant to the Corporate Debtor issuing financial default notice and intimation of initiation of recovery action upon the Corporate Debtor's account being classified as an SMA-1 account.
- j. On 12.01.2023, another Correspondence from NHAI was made suspending the Concession Agreement. It is argued that previously, the suspension of the Concession Agreement came into force on December 31, 2021, through a communication issued by NHAI under the terms of the Concession Agreement. Hon'ble High Court and Arbitration Tribunal issued a stay on the suspension of the Concession Agreement till November 11, 2022. It is further argued that in furtherance of the current suspension, the Project was handed over to NHAI to complete the balance works.
- k. On 04.02.2023, the Default cum Recall Notice sent by Petitioner Bank to the corporate debtor wherein the Petitioner Bank called upon the corporate debtor to pay INR 186.10 Crores (principal outstanding) and INR 2.10 Crores (interest outstanding) due as on 31.03.2023, annexed at pages 286-340 to Affidavit in Opposition.

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1. On 10.05.2023, the Petitioner Bank issued a notice for declaration of event of default in terms of the financing agreement and exercise of right of substitution of the corporate debtor in terms of the Substitution Agreement.

m. The Petitioner Bank filed this company petition on 05.02.2024.

35. Ld. Sr. Counsel for the Petitioner Bank would submit that during the pendency of the present company petitioner, the corporate debtor issued a 'Notice of Termination under Article 37.3.2 of the Concession Agreement' dated 19.07.2024, hereinafter referred to as 'Termination Notice', wherein the corporate debtor has sought to terminate the Concession Agreement and has demanded a Termination Payment to the tune of Rs. 1,445.60 Crore from the NHAI in terms of Article 37.3.2 of the Concession Agreement.

36. It is further submitted that NHAI issued a response to the Termination Notice wherein the NHAI has stated the following:

- i. Termination Notice is illegal and is not acceptable to the NHAI.
- ii. The claim of the corporate debtor for termination payment is rejected.
- iii. Since Notice of default dated 10.05.2023, has already been issued by the Petitioner Bank, the corporate debtor does not have the power to issue termination notice and only lender can proceed for termination and substitution in terms of the



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Substitution Agreement dated 04.09.2013 entered between the Petitioner Bank, the corporate debtor and NHAI.

37. We would note the main allegation of the Corporate Debtor that the NHAI and lenders have committed breach under the Loan Agreement executed on 03.08.2013 and under the Loan Agreement the rights and obligations of the lenders are several and that the Petitioner Bank is not liable for the obligation of the other lenders. Further allegation is that since the concession agreement stands terminated, thus, the termination payment payable by NHAI in terms of Clause 37.3 to the Petitioner Bank will discharge the debt of the Petitioner Bank.

38. We would further note that as per the Loan Agreement read with the fourth Novation and Amendment Agreement dated 15.02.2016. the Petitioner Bank had agreed to disburse an amount Rs. 200 Crore for part financing of the Project. As per Clause 5.7 of the said Loan Agreement, the facility availed by the corporate debtor could be disbursed in one or more instalments subject to the borrower complying with the disbursement procedure stipulated in Loan Agreement. We find that the Petitioner Bank in terms of the said clause, made a disbursement of Rs. 174,00,28,128 in favour of the corporate debtor in 43 instalments as on 03.06.2015. the account statements and bankers book certificate are annexed at pages 497-507 to the Petition.

39. We find that the Clause 2.6 (*Repayment*) of the Loan Agreement states that the Borrower shall repay the Loans to the Rupee Lender in 47 (forty-seven) unequal quarterly instalments as



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specified in the Amortization Schedule. **The first repayment instalment shall be due on June 30, 2016.** The last repayment instalment shall be paid on December 31, 2027.

40. Further, *Clause 3.1.1. (i) of Article III (Interest, Liquidated Damages, Commitment Charges; Etc) of the Loan Agreement* says that the Borrower shall pay to the Rupee Lender interest for the Interest Period at the Applicable Interest Rate on the Loans. Such interest shall be paid monthly in arrears on the Interest Payment Dates.

41. It is a settled position of law that to admit an application under Section 7 of the I&B Code filed by the Financial Creditor triggering the insolvency proceedings in respect of the Corporate Debtor, the Adjudicating Authority is required to check whether there is any “debt” and “default”, the application is complete, the amount of default crosses the threshold financial limit and the application is not barred by limitation.

42. We would rely upon the judgement passed by the Hon’ble NCLAT in ***Vineet Khosla vs. Edelweiss Asset Reconstruction Company Ltd.*** reported at **MANU/NL/0427/2019** wherein it is held that:

*“[...] it is clear that at the stage of admission of Application under Section 7, the requirement is to give limited Notice and the considerations would be to see whether or not satisfaction by Adjudicating Authority could be reflected on the basis of Sub-Section (5) of Section 7. **If there is a financial debt, which is more than Rs. 1 Lakh and there is a default and if the Application is complete, the Application would have to be admitted.** The*



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*Corporate Debtor is entitled to point out **that a default has not occurred in the sense that the ‘debt’ which may include a disputed claim is not due.** Corporate Debtor may point out that the debt is not due by showing that it is not payable in law or in fact.”*

(Emphasis Added)

43. It is a settled position of law that in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has to check the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. In this context, the Hon’ble Apex Court in the case of ***Innoventive Industries Ltd. v. ICICI Bank*** reported at **(2018) 1 SCC 407: MANU/SC/1063/2017** has laid down that:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

XXX XXX XXX XXX

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that



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the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

(Emphasis added)

44. We find that Default on part of the corporate debtor has also been acknowledged and identified in the record of default by way of a Report furnished by the NeSL, annexed at pages 490-496 to the petition. Further the Petitioner Bank has provided the following documents to substantiate the existence of financial debt and default on part of the corporate debtor:

- i.** Balance Sheet and Auditor's Report of the corporate debtor for FY 2022-223.
- ii.** Letter dated 08.11.2023, recalling the credit facilities extended to the corporate debtor on account of default in servicing payments in accordance with the Loan Agreement.

45. We would discern that in the present case, there may be dispute in respect of compliance of the clauses of Loan Agreement, however, the position of law is settled that the moment a debt becomes due and payable, the Adjudicating Authority is satisfied that the default has occurred, a petition under Section 7 of the Code must be admitted. The Adjudicating Authority is not empowered to probe into the dispute between the parties. We would refer to the judgment rendered by the Hon'ble Apex Court in **E.S.**



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Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd., reported in (2022) 3 SCC 161: 2021 SCC OnLine SC 1242, wherein, it has been held that:

*“34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. **The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred.** Based upon its decision, **the adjudicating authority must then either admit or reject an application, respectively.** These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). **The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute.**”*

(Emphasis Added)

46. In view of the ratio supra, the Adjudicating Authority has merely to examine the factors that the ‘debt’ along with the interest if any is disbursed against the time value of money by the creditor and ‘default’ on part of the debtor. We draw support from the Hon’ble Apex Court’s definition of “Financial Debt” to initiate Corporate Insolvency Resolution process, which is as under:

(a) In ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India*** reported in **(2019) 8 SCC 416**, it was held that:

“any debt to be treated as financial debt, there must happen disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money.”

(Emphasis added)



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(b) In *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited* reported in (2020) 8 SCC 401, it was held that:

“the essential condition of financial debt is disbursement against the consideration for time value of money.”

(Emphasis added)

(c) In *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) it was held that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...”

(Emphasis added)

47. Thus, in terms of the above discussions, we are of the view that the present petition is complete in all respects and not barred by limitation. There exists a ‘debt’ that is due and payable. Further, the amount claimed to be in default is far in excess to the threshold limit as prescribed under Section 4 of the I&B Code.

48. In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 33/KB/2024** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:



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- i.** The Application filed by **UNION BANK OF INDIA (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **SOLAPUR TOLLWAYS PRIVATE (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 asset 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 (54 of 2002);*
 - d)** *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*



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[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **“Mr. Sanjay Kumar Mishra”**, Address: Dreams Complex, 4C-1605, LBS Marg, Bhandup (W), Mumbai - 78 Email ID: ipsanjaymishra@rediffmail.com, having registration no. IBBI/IPA-001/IP-P01047/2017-2018/11730, as the **Interim Resolution Professional (IRP)**. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, annexed as Annexure 4 at Pages 36-



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38 to this application. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board of ICAI. In addition, further necessary disclosures have been made by “**Mr. Sanjay Kumar Mishra**” as per the requirement of the IBBI Regulations. Hence, we appoint “**Mr. Sanjay Kumar Mishra**” as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the



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time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

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49. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

50. Post the Company Petition on **05 / 02 / 2025** for hearing the Periodical Progress Report by the IRP/RP as appointed herein.

51. **IVN.P (IBC) No. 37/KB/2024** has been preferred by Bharat Road Network Limited seeking for a direction to implead to the present case. The intervenor herein would submit that it has provided a substantial funding amounting to Rs. 250.43 Crore to support the corporate debtor. It is argued that the resolution of disputes surrounding the project will directly impact its financial interest and obligations. In view of decisions passed in the company petition, this intervention petition is **disposed of** accordingly. The applicant can file its claim against the corporate debtor before the IRP appointed herein.

52. **I.A. (IB) No. 2198/KB/2024** has been preferred by the corporate debtor Solapur Tollways praying an order for taking on record the facts and circumstances stated in this application along with the documents. It is submitted that after conclusion of arguments, on or about October 17, 2024, the corporate debtor has filed an application under Section 9 of the Arbitration and Conciliation Act, 1996, before the Hon'ble High Court at Delhi



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against NHA I and the financial creditor herein, for securing the termination amount as envisaged under the contract. The present application is being filed on behalf of the corporate debtor for consideration at the time of adjudicating of the company petition.

53. We would refer to the judgment rendered by the Hon'ble NCLAT in ***Century Aluminium Company Ltd. v. Religare Finvest Ltd. reported in (2024) ibclaw.in 698 NCLAT***, wherein the Hon'ble NCLAT relied on the judgment of Hon'ble Apex Court in ***Indus Biotech Pvt. Ltd. Vs. Kotak India Venture (Offshore) Fund, (Earlier known as Kotak India Venture Limited) & Ors. reported in (2021) 6 SCC 436***, and held that:

“13. Learned Counsel for both the Parties have referred to the Judgment of the Hon'ble Supreme Court in `Indus Biotech Pvt. Ltd.' (Supra) where the Hon'ble Supreme Court had occasion to consider the provisions of Arbitration and Conciliation Act, 1996, and the provision of Section 7 of the IBC. The ratio of the Judgment of `Indus Biotech Pvt. Ltd.' (Supra) can be culled out by Paragraph 29 of the Judgment, which is as follows:

*“29. Therefore, to sum up the procedure, it is clarified that in any proceeding which is pending before the adjudicating authority under Section 7 of IB Code, **if such petition is admitted upon the adjudicating authority recording the satisfaction with regard to the default and the debt being due from the corporate debtor, any application under Section 8 of the 1996 Act made thereafter will not be maintainable. In a situation where the petition under Section 7 of IB Code is yet to be admitted and, in such proceedings, if an application under***



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Section 8 of the 1996 Act is filed, the adjudicating authority is duty-bound to first decide the application under Section 7 of the IB Code by recording a satisfaction with regard to there being default or not, even if the application under Section 8 of the 1996 Act is kept along for consideration. In such event, the natural consequence of the consideration made therein on Section 7 of IB Code application would befall on the application under Section 8 of the 1996 Act.”

14. From the law laid down by the Hon’ble Supreme Court, it is clear that if an Application under Section 8 of the Arbitration and Conciliation Act, 1996, is filed, the Adjudicating Authority is duty bound to proceed first to decide the Application under Section 7 by recording a satisfaction with regard to their being default or not. **The fact that whether Arbitration Proceedings are pending on the date when Section 7 Application is filed or it is sought to be initiated subsequent to filing of Section 7 Application is immaterial.** The remedy under Section 7 is a special remedy, keeping the object and purpose of the IBC Code. When it is brought in the notice of the Adjudicating Authority that a Corporate Debtor needs a resolution it having committed default in payment of debt, the Court is obliged to consider the Section 7 Application to find out as to whether there is a debt and default. The Insolvency Resolution of a Corporate Debtor which needs Insolvency Resolution can await adjudication of Arbitration Proceedings nor the Application under Section 7 can be kept pending till the adjudication of Arbitration Proceeding is completed. Allowing the Application under Section 8 filed by the Corporate Debtor amounts to asking the Adjudicating Authority to wait till Arbitration Proceedings are decided which is not in accord with the scheme of the IBC and shall defeat the entire purpose and object of the IBC. Adjudicating



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Authority in the Impugned Order has rightly rejected Application under Section 8 filed by the Corporate Debtor for referring to the dispute between the parties to the Arbitrator.

54. In view of the ratio laid down in **Century Aluminium (Supra)** and in **Indus Biotech Pvt. Ltd. (Supra)**, mere filing an application under Section 9 of the Arbitration and Conciliation Act, 1996, does not affect the admission under Section 7 of the I&B Code. We would also note that the Hon'ble Delhi High Court on 23.10.2024 passed an order in respect of the said application under Section 9 of the Arbitration and Conciliation Act, 1996, which appears to not impact the present proceedings under Section 7 of the I&B Code.

55. In view of above, this interlocutory application is **disposed of**.

56. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**Balraj Joshi
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 20th Day of December 2024.

Bose, R. K. [LRA]