


C.P. (IB) No.68/KB/2024



IN THE NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH-II KOLKATA
(BEFORE LABH SINGH, MEMBER (JUDICIAL) AND REKHA KANTILAL
SHAH, MEMBER (TECHNICAL))

C.P. (IB) No. 68/KB/2024Date of Hearing: 12.11.2025Date of Order: 01.12.2025

In the Matter of:

STATE BANK OF INDIA,

A Body Corporate constituted under

the State Bank of India Act, 1955

having its corporate office at:

State Bank Bhawan, Madame Cama Road,

Mumbai - 400021 carrying on banking

business inter alia through on of`

its recovery branches named as

Stressed Assets Management Branch-11,

commonly known as "SAMB-11", 11th Floor,

Jawahar Vyapar Bhawan-1, Tolstoy Marg,

New Delhi-110 001.

Applicant/Financial Creditor

Versus

M/S. SURATGARH BIKANER TOLL

ROAD COMPANY PVT. LTD.

A company within the meaning of the

Companies Act, 1956 and having its

Registered Office at Divine Bliss, 2/3, 1st

Floor, Judges Court Road, Kolkata, West

Bengal-700 027.

Respondent/CORPORATE DEBTOR

Coram: Labh Singh, Hon'ble Member(Judicial)
Rekha Kantilal Shah, Hon'ble Member(Technical)

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Present:

For Financial Creditor	Mr. Joy Saha Ld. Sr. Advocate Mr.Snehasish Chakraborty Ld. Advocate
For Corporate Debtor	Mr. Ratnokar Banerjee Ld. Sr. Advocate Mr.Shaunak Mitra, Ld. Advocate Mr.Kanishk Kejriwal, Ld. Advocate Ms.Neha Somani, Ld. PCS


O R D E RLabh Singh Member(Judicial)

1. The present application has been filed by State Bank of India(hereinafter to be referred as 'the Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short "the IBC Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short 'the IBBI(AAA) Rules') with a prayer to trigger Corporate Insolvency Resolution Process(for short 'CIRP') in respect of respondent Company M/S Suratgarh Bikaner Toll Road Company Private Limited(hereinafter referred as "Corporate Debtor").
2. It is appropriate to mention that the Financial Creditor is a Body Corporate constituted under the State Bank Of India Act, 1955 having its Corporate Office at State Bank Bhawan, Madame

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Cama Road, Mumbai - 400 021 carrying on its banking business inter alia amongst others from one of its recovery Branch namely Stressed Assets Management Branch-II, commonly known as 'SAMB-II', 11th Floor, Jawahar Vyapar Bhawan 1, Tolstoy Marg, New Delhi-110 001.

3. Mr. Suresh Chandra Panda, Assistant General Manager, State Bank of India, SAMB-II Branch Kolkata, duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the IBC Code. A copy of Gazette Notification No. ORG/17405 dated 27.03.1987 and the letter of Authority dated 04.02.2023 has been placed on record.
4. The Corporate Debtor, M/S Suratgarh Bikaner Toll Road Company Private Limited, against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 20.02.2012 having its registered office situated at Divine Bliss, 2/3, 1st Floor, Judges Court Road, Kolkata West Bengal-700027. Since the registered office of the respondent Corporate Debtor is situated at Kolkata; and hence, this Tribunal having territorial jurisdiction over the State Of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of CIRP process in

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respect of the Corporate Debtor under sub-section (1) of Section 60 of the Code.

5. Shorn of unnecessary details, the facts as pleaded by the parties and relevant for the present Company Petition, are as follows:-

5.1 The case of the applicant is that the Corporate Debtor was created as an Special Purpose Vehicle(for short 'SPV') for Development and Operation of the road project by the Public Works Department of the Government of Rajasthan to augment the existing road from Kilometre(for short 'Km') 553.869 of NH-11 to Km 173.000 of NH-15 approximately 172.384 Km on the Bikaner-Suratgarh section via Kilometre 10.630 of NH No.15 in the State of Rajasthan.

5.2 The corporate debtor is a subsidiary Company of one MBL Infrastructures Ltd and the said company has also been admitted into CIRP process by an order passed by this Tribunal on 30.03.2017.

5.3 The Corporate Debtor availed credit facilities from the State Bank of Patiala since 2013 and also banking with several other banks and was enjoying various financial/credit facilities from the concerned banks. For the smooth financial activities and for proper financial management, the entire loan facilities were decided to be brought under one consortium under the supervision of Punjab


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National Bank, being the Lead Bank of the Consortium Members. The Corporate Debtor, pursuant to such consortium arrangement, has obtained an aggregate limit of Rs. 450 Crores from the consortium member Banks out of which Rs. 75,00,00,000/- (Rupees Seventy Five Crore Only) were sanctioned by the Financial Creditor herein vide its sanction letter dated 28.03.2013. The Corporate Debtor accepted the terms and conditions of the sanction letter dated 28.03.2013.

- 5.4 The Corporate Debtor, in order to avail and secure due repayment of the loan amount availed from the Financial Creditor and other Consortium Lender Banks, executed loan and security documents in favour of Consortium Lenders including the Financial Creditor which are (a) sanction letter dated 28.03.2013 Annexure- 1-G; (b) Common Term Loan Agreement dated 30.03.2013 Annexure-1-H; (c) Inter Creditor Agreement dated 30.03.2013 Annexure-1-I; (d) Security Agent appointment Agreement dated 30.03.2013 Annexure-1-K; (e) Lenders Agent appointment Agreement dated 30.03.2013 Annexure-1-L; (f) Common Deed of hypothecation dated 30.03.2013 Annexure-1-M; and (g) Agreement for pledge of shares dated 30.03.2013 Annexure-1-N; (h) Letter of Undertaking dated 30.03.2013; and (i) certified copy of the statement of Account Annexure-'1-S'.

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- 5.5 The Corporate Debtor, in order to secure the loan amount, created security interest by way of creation of first charge on all the movable and immovable assets, if any, of the project Company; first charge on the Escrow Account; first charge/assignment of all toll revenues and receivables of the borrower from the Project or otherwise; first charge on all intangible assets including but not limited to the Goodwill, undertaking, uncalled capital, and Intellectual Property Rights of the Project Company; assignment in favour of the lenders, all the rights, titles and interest of the borrower from all contracts, insurances, licenses in, to, under all the assets of the Project and all project documents (including the concession agreement), which the Borrower is party to including contractor, guarantee, liquidated damages and all other contracts relating to the project; first charge/assignment on the funds in Debt Service Reserve Account (DSRA); and lender's security package listed in the Project Document, including Substitution Rights and termination payments due in respect of the project in specified circumstances. The financial creditor has a charge over the enterprise value of the project with other banks on pari passu basis.
- 5.6 The Corporate Debtor although enjoyed and utilized the said credit facilities but in spite of repeated requests did not

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adhere to the terms and conditions of sanction of said credit facilities and did not pay outstanding dues within the time as specified in the terms and conditions of the sanction letter. The corporate debtor committed default in servicing of interest on Term Loan of Rs. 50 crore on 03.11.2016; and hence, the loan accounts were classified as an Non Performing Asset on 31.01.2017. Accordingly, the date of default on the part of the corporate debtor in repayment of its dues to the financial creditor herein is 03.11.2016.

5.7 Thereafter on 26.02.2016, 19.04.2018, 14.02.2020 and 06.02.2023, the corporate Debtor through its director executed the revival letters for revival of the loan account maintained with the Financial Creditor and the same are Annexure-1/O to Annexure 1-R respectively. It was specifically agreed that the said letters be treated as acknowledgment for the purpose of Section 18 of the Limitation Act 1963. The Corporate Debtor along with guarantors is liable to pay outstanding dues with interest, costs and charges. Thus, the loan account has been revived and liability has been acknowledged by the Corporate Debtor by executing revival letters Annexure-1/O to 1/R.

5.8 The Corporate Debtor defaulted to service the interest in the loan account maintained with the applicant bank and the default occurred on 03.11.2016. The Corporate Debtor also


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failed to pay installment in loan account. Thereafter, the Financial Creditor classified the loan account as non-performing assets on 03.01.2017 as per guidelines issued by Reserve Bank of India. The Corporate Debtor is liable to pay a sum of Rs.122,17,36,189.33 (Rupees One Hundred Twenty two Crore Seventeen Lakh Thirty Six Thousand One Hundred Eighty Nine and Thirty Three paisa Only) inclusive of interest up to 31.10.2023 to the Financial Creditor in respect of loan account with further interest in monthly rests till realization.

5.9 Therefore, as per part-IV of the application, it is claimed that as on 31.10.2023, a sum of Rs. 122,17,36,189.33/- (Rupees One Hundred Twenty two Crore Seventeen Lakh Thirty Six Thousand One Hundred Eighty Nine and Thirty Three paisa Only) is due and payable by the respondent company.

5.10 Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Prawincharan Prafulcharan Dwary for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/1P-N00331/2017-2018/10937 resident of 9B, Vardan Tower, Nr. Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad-380 014 Mobile no. 9426742700 with email address dwaryprawin@gmail.com,

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rdc_rca@yahoo.com/rdc@sunresolution.in Mr. Prawincharan Prafulcharn Dwary has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the IBBI(AAA) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Prawincharan Prafulcharn Dwary as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the IBC Code 2016 has been satisfied. The copies of consent given by Mr. Prawincharan Prafulcharn Dwary in Form 2 and registration certificate are annexed as Annexure 1/E.

5.11 The applicant has placed following documents on record to prove its claim:

- a) Common Term Loan Agreement dated 30.03.2013 Annexure-1-H;
- b) Inter Creditor Agreement dated 30.03.2013 Annexure-1-I;
- c) Security Agent appointment Agreement dated 30.03.2013 Annexure-1-K;
- d) Lenders Agent appointment Agreement dated 30.03.2013 Annexure-1-L;
- e) Common Deed of hypothecation dated 30.03.2013 Annexure-1-M;

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f) Agreement for pledge of shares dated 30.03.2013
Annexure-1

g) Letter of Undertaking dated 30.03.2013; Certified copy of
the statement of Account Annexure-'1-S'.

5.12 The applicant has also placed on record a copy of record of default filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor to prove debt and default and the same is at page 376-377 of the application as Annexure-I/V.


6. Respondent/ the Corporate Debtor appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the present company petition has been filed by the petitioner with fraudulent and malicious intent and not for any alleged insolvency resolution of the Respondent Company. The Respondent Company is solvent and, there is no default, as alleged in the present petition. The purported claim of the petitioner is misconceived, baseless. The petitioner has no cause of action for initiating any insolvency process against the Respondent and the present petition also does not disclose any cause of action. The Petitioner has suppressed relevant and material facts from this Tribunal. The Petition is barred by principle of estoppel, waiver, and acquiescence. The Petition is not

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maintainable either in law or on facts and accordingly, liable to be dismissed in limine.


6.1 On merits, it has been replied that the Concessionaire(hereinafter referred as "Corporate Debtor), consequent upon authority granted by Government of India, Ministry of Road Transport & Highways ("MoRTH") after a competitive bidding, was granted authority to construct, operate, and maintain two Lanning of Bikaner Suratgarh Section of National Highway No. 15 (from Kilometre No. 553.869 of National Highway-11 to Kilometre No. 173.00 of National Highway-15) via Kilometre No. 10.630 of National Highway No. 15 with paved shoulder in the State of Rajasthan(hereinafter referred "Project or Project Highway") through Public Private Partnership on Design, Build, Finance, Finance, Operate and Transfer(for short "DBOFT"). A Concession Agreement dated 09.05.2012(for short "Concession Agreement") was executed between the Governor of Rajasthan acting through Chief Engineer (NH), Public Works Department, Govt. of Rajasthan (for short 'Authority') and the Corporate Debtor.

6.2 It has further been replied that under the Concession Agreement, the Corporate Debtor was granted exclusive right, license and authority to construct, operate and maintain the project for a period of 16 years (hereinafter referred as

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'Concession Period'). The Corporate Debtor was to arrange finance for the project to the satisfaction of the Authority. The Authority was to fulfil 'Condition precedent' as set forth under Clause 4.1.2 of the Concession Agreement; and on fulfilment of the 'Condition precedent', the Authority was to declare 'Appointed Date'.

- 6.3 The Corporate Debtor was to start development/construction of the Project and complete the same in 730 day from the appointed date. The Concession Period was to start from the Appointed Date ending on Transfer Date i.e 16 (Sixteen) years including construction period of 730 (seven hundred thirty) days. On completion of 75% of construction of the total length of the Project Highway, a Provisional Completion Certificate (for short 'PCOD') was required to be issued; and on issuance of the PCOD, the Corporate Debtor would be entitled to demand and collect fee for such length of project in accordance with the provisions of Article 27 of the Concession Agreement and subject to the provisions of Clause 14.3.2 of the Concession Agreement for the completed portion of Project Highway. On completion of the construction of the entire project length, Completion Certificate or Commercial Operation Date (for short 'COD') was to be issued in terms of Clause 14.2 of the Concession Agreement. The Respondent is required to transfer the


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project asset to the Authority in accordance with the Concession Agreement at the end of the concession period.

6.4 There was a State Support Agreement dated 13.04.2010 executed between MoRTH and Government of Rajasthan. The Authority was required to fulfil several condition precedent prior to beginning construction before declaring 'Appointed Date'. The Corporate Debtor, in compliance with clause 9.1.1 of Concession Agreement, submitted performance security of Rs.25.05 Crore and requested the Authority to fulfil the condition precedent as per Clause 4.1.2 of the Concession Agreement.

6.5 The Corporate Debtor, in order to avail financial assistance, approached Banks/Financial Institutions(hereafter referred to as "Lender") for finance of project. The financial assistance sought for the project was "Project Centric" and not the usual "Borrower Centric" finance as per the RBI Prudential Norms. The repayment was to be made from User fees (Toll) collection after achieving 'COD'.

6.6 The Lenders would have a right to propose an Escrow Agreement in terms of concession agreement and a proposed substitution agreement. Therefore, three agreements, the proposed Common Loan Agreement, the proposed substitution agreement and the proposed escrow agreement arising from the

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same transaction relating to the Project and the agreements, are inextricably interconnected and intertwined in relation to the Concession agreement dated 09.05.2012.

- 6.7 Since the Project required substantial financial support, and hence, a group of Lenders came together as a Consortium Lenders to finance the same. The Punjab National Bank being the lead Bank of the Consortium with State Bank of Patiala now the applicant Bank and other members i.e Corporation Bank, Union Bank of India, Dena Bank (now Bank of Baroda), and Central Bank of India(hereinafter to be referred as "PNB Consortium") agreed to finance the project. The State Bank of Patiala, predecessor of the State Bank of India ("SBI, the applicant/Financial Creditor"), appraised the Project and issued sanction letter dated 28.03.2013 for sanction of a sum of Rs. 75 Crore i.e 16.67% of the total amount of Rs. 450 Crore as approved by PNB Consortium. It was clearly recorded in the sanction letter dated 28.03.2013 that the repayments of the project centric finance should be linked to achievement of Commercial Operation Date ("COD") which was contemporaneously expected to be on 04.11.2014; and accordingly, the repayments were scheduled to start from the end of 1st quarter after 9 months of moratorium i.e. Quarter ending October 2015.

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6.8 Thereafter, the Corporate Debtor submitted the draft financing agreements including the proposed escrow agreement and the proposed substitution agreement to the Authority. The Authority forwarded eight draft agreements to their legal Counsel, M/s M.V. Kini & Company, New Delhi, for vetting which were i. Draft Common Loan Agreement; ii. Draft Inter Creditor Agreement; iii. Draft Deed of Hypothecation Agreement; iv. Draft Lenders' Agent Appointment Agreement; v. Draft Security Agent Appointment Agreement; vi. Draft Pledge of Shares Agreement; vii. Draft Escrow Account Agreement and viii. Draft Substitution Agreement. The Corporate Debtor, vide letter dated 26.03.2013, provided to Authority the draft Financing documents duly vetted by the legal counsel of the Authority.


6.9 The Superintending Engineer, vide letter no.2595 dated 02.11.2012, submitted the draft financing documents for vetting by their authorised legal counsel, M/s M.V. Kini & Co. In accordance with prudential norms on advances to Infrastructure sector and on the basis of the Concession Agreement dated 09.05.2012, the following sanction letters were received by the Corporate Debtor:-

Name of	Sanction Letter No. &	Amount
The Bank	Date	

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		(in crores)
Punjab National Bank	27.11.2012	150.00
Corporation Bank now Union Bank of India	OR/CBB/DLT/3956/2012-13 dated 02.01.2013	100.00
Dena Bank now Bank of Baroda	DB/CBB/Sanction/SBTRCPL/D -1427/2013 dated 19.03.2013	100.00
State Bank of Patiala now State Bank of India/Petitione r	CBND/AMT-1/AS/2012-13/728 6 dated 28.03.2013	75.00
Central Bank of India	CFB/CMD/2012-13/02/2074 dated 07.02.2013	75.00
Aggregate		500.00

6.10 The Corporate Debtor contributed equity of Rs. 170.07 Crore (Rupees one hundred seventy Crore and seven lakhs only) through its holding Company MBL Infrastructure Ltd which is a public limited Company listed on BSE & NSE and requested the PNB Consortium to participate in the project finance of Rs. 450 Crore in terms of RBI Prudential Norms on Advances for Infrastructure Segment. Although State Bank of Patiala (now the Petitioner) and Central Bank of India had sanctioned


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Rs. 75 Crore each towards the Project but each of them made available only Rs. 50 Crore as part of the financial tie up.

6.11 On 30.03.2013, the Corporate Debtor and the PNB Consortium executed the Common Loan Agreement, Inter-Creditor Agreement, Security Agent Appointment Agreement, Lenders' Agent Appointment Agreement, Deed of Hypothecation, Agreement to Pledge Shares and other documents. The repayments were linked to Commercial Operation Date (for short 'COD') which was defined as 04.11.2014; and accordingly, the repayments were scheduled from the Quarter ending March, 2016.

6.12 The repayments were to be paid out of the Users Fees (Toll) collected and deposited in the Escrow Account. The PNB, being lead Bank of PNB Consortium, vide letter dated 09.04.2013 conveyed to the Authority regarding execution of all financing documents and compliance of all requirements for financial closure for the Project by the Corporate Debtor. The Corporate Debtor submitted the compliance of its condition precedent as per Clause 4.1.3 of the Concession Agreement.

6.13 It is further replied that an Escrow Agreement dated 10.04.2013, Substitution Agreement dated 10.04.2013, and Common Loan Agreement arising from the same transactions i.e Project, were signed between the Corporate Debtor, Punjab

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National Bank for PNB Consortium and the Authority. Therefore, the Lenders without strictly performing or complying with their obligations to the Escrow Agreement, cannot insist for performance of obligation under common loan agreement and claim repayment on unilateral basis. The Corporate Debtor suffered considerable loss and hardship due to breach on the part of the Authority and Lenders.


6.14 The Authority was required to fulfil its condition precedent as set out in the Clause 4.1.2 of the Concession Agreement prior to declaring 'Appointed Date' to commence and complete the construction/development of the Project Highway within the stipulated construction milestones. Due to various breach and default on the part of the Authority, in acquiring land and in obtaining permits, clearances and approvals for the construction of the Project, the 'Appointment Date' was not declared. The Authority, vide letter dated 17.09.2013, informed that the 'Appointed Date' has been fixed as 16.09.2013 without fulfilling its condition precedent and compelled the Corporate Debtor to deposit Rs.50,00,000/-. The Corporate Debtor, vide letter dated 24.09.2013, accepted the 'Appointed Date' subject to dispute resolution as per the Concession Agreement and without prejudice to its rights and contentions.

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6.15 The Authority, vide letter dated 18.11.2013, directed the Corporate Debtor to pay the Independent Engineer fee of Rs. 50,34,084/- for the month of August to October 2013 and the Corporate Debtor deposited 50% amount i.e Rs.25,17,043/- by Demand Draft dated 16.12.2013 by forwarding letter no. SBTPL/ND/SC/2013/1723 dated 28.12.2013.

6.16 The Authority published a toll fee notification dated 07.01.2014 in the Gazette of India for the Project which was significantly delayed by the Authority. Moreover, the Fees Notification was not in terms of the Concession Agreement and therefore, by letter dated 23.05.2013, the Corporate Debtor submitted the provisional financial implications. The Corporate Debtor issued notice dated 24.10.2014 to the Authority for increased costs as a result of change in law pertaining to imposition of Environment Cess @ Rs. 5 per MT on "All Other Minerals", increase in Royalty on all minerals by Rs. 6 per MT, increase in VAT and Entry Tax on Cement, Bitumen, Emulsion and other materials in terms of Article 14.1 of the Concession Agreement. However, the Authority did not deposit the said amount in the Escrow Account.


6.17 The Corporate Debtor, vide letter dated 14.05.2015, requested for release of the performance security and the performance security of Rs. 25.05 crores was released. The Authority continued to delay the fulfilment of condition

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precedent. Due to delay in fulfilment/non-fulfilment/partial fulfilment of condition precedent by the Authority, the project was suffering delays.


6.18 The clause 14.3 of the Concession Agreement entitles the Corporate Debtor to receive Provisional Completion Certificate on completion of 75% of the project length. In view of the continuous delays/defaults by the Authority in fulfilling its obligations, the Corporate Debtor, vide letter dated 10.01.2015, requested the Authority for deferment of Project Milestones under Clause 35.3 of the Concession Agreement due to delay in achieving Commercial Operation Date (COD) and also requested for extension of the Concession Period. In response to the said letter, the Independent Engineer extended the Project Milestone-III to 29.02.2016 as against 29.05.2015 as per schedule-G and the project completion to 16.06.2016 as against 16.09.2015. Based on extension of Commercial Operation Date ('COD') to 16.6.2016, the PNB Consortium including the petitioner, agreed to shift repayment schedule from quarter ending March, 2016 to December 2016.

6.19 By letter no. SBTRCPL/2016/0757 dated 22.07.2016, the Corporate Debtor once again requested the Authority for deferment of Project Milestones and extension of the concession period in terms Clause 35.3 of the Concession

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Agreement in view of the non-fulfilment/delay in fulfilment partial fulfilment of condition precedent and obligations by the Authority. Due to huge delays caused by the Authority, the Project Cost increased substantially and required additional funding of Rs. 75 crores (Rupees seventy five crores only). This was conveyed to the PNB Consortium by the Corporate Debtor. By letter dated 30.08.2016, MoRTH (NHDP-IVA Cell) granted administrative and financial sanction for release of additional funds of Rs. 12.41 crores for meeting the requirements of various pre-construction activities including land acquisition, shifting of utilities, forest clearances etc.


6.20 The Independent Engineer determined the extension of time for completion of the Project up to 31.03.2017 by letter no. ICT:687:TPV:9215 dated 18.10.2016 for reasons attributable to the Authority. The delay in achieving Commercial Operation Date ('COD') was due to the defaults on the part of the Authority. Punjab National Bank, on behalf PNB Consortium, vide letter dated 04.07.2016 revised the Draw Down Schedule till December 2016. Thereafter, the PNB Consortium extended the Commercial Operation Date (COD) to 16.03.2017 and the Draw Down Schedule was also extended till December 2016, and the repayment Schedule was once again linked to the revised Commercial Operation Date ('COD').

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Accordingly, First Supplemental Agreement dated 19.12.2016 was signed and Master Joint Lenders' Forum Agreement was also signed between the Consortium Banks and the Concessionaire.


6.21 M/s MBL Infrastructure, the holding Company of the Corporate Debtor, had already contributed its part of equity of Rs.170.07 Crore (Rupees One hundred Seventy Crore and seven lakhs only) but due to defaults/delays on the part of the Authority, the holding Company of the Corporate Debtor was put to financial/liquidity constraints. The Corporate Debtor requested NOC from the Project Lenders to obtain additional funds for completion of the Project from other banks/financial institutions. In the alternative, the Corporate Debtor requested the PNB Consortium to grant Priority Term Loan-I for Rs. 25 crore and Priority Term Loan-II for Rs. 50 Crore for completion of the Project. However, despite several meetings, neither the NOC was given nor the Project Lenders/PNB Consortium granted the Priority Term Loan-I or II which was essential for completion of the Project.

6.22 MBL Infrastructure Ltd, the holding company of the Corporate Debtor, was the EPC Contractor for development of the Project. Due to huge delays caused by the Authority, losses were caused to MBL Infrastructure Ltd leading to liquidity

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constraints. By Order dated 30.03.2017, MBL Infrastructure Ltd was admitted to the CIRP process under IBC Code, 2016. The four out of five members of PNB Consortium i.e Punjab National Bank, Corporation Bank (now Union Bank of India), Bank of Baroda (erstwhile Dena Bank) and State Bank of India (Petitioner) were members of the Committee of Creditors (CoC) of MBL Infrastructure Ltd. The Adjudicating Authority, vide order dated 18.04.2018, approved the Resolution Plan dated 22.11.2017. The said Consortium Members, in their meeting held on 23.09.2023, decided to implement the Resolution Plan. It is also important to note that even in terms of the said resolution plan of MBL Infrastructure Limited, the Financial Creditor, being a stakeholder, is under an obligation to preserve and protect the Corporate Debtor and is estopped from taking any steps against it for insolvency.


6.23 The Corporate Debtor, in reply to the show cause notice issued by the Authority, stated that there was no default on the part of the Corporate Debtor and requested the Authority to defer the Project Milestone and extend the concession in accordance with Clause 35.3 of the Concession Agreement. A meeting was held on 05.05.2017 at Jaipur under the Chairmanship of Chief Engineer (NH) which was attended by the Project Lenders also. In the said meeting, the

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requirement of Priority Term Loan-I of Rs. 25 Crore and Priority Term Loan-II of Rs. 50 Crore was discussed and agreed by all.

6.24 Upon request of the Corporate Debtor for one time infusion of funds of Rs. 50 crores as per MoRTH policy, the Authority by letter dated 24.07.2017 requested MoRTH to consider the request of the Corporate Debtor for One Time Infusion of Funds of Rs. 50 Crore. The Corporate Debtor pursued with the Project Lenders to either approve Priority Charge in favour of an external lender or to sanction and disburse Rs. 25 Crore from existing PNB Consortium members as Priority Term Loan-I.

6.25 By letter dated 30.08.2017, the Lead Bank for PNB Consortium recorded the requirement of additional funds of Rs. 75 Crore (Priority Term Loan-I for Rs. 25 Crore and Priority Term Loan-II for Rs. 50 Crore) to all the Project Lenders and also to the Authority, MoRTH, Lenders' Engineer and Independent Engineer. Despite various defaults and breaches on the part of the Authority and due to the delay in obtaining the priority term loan from the PNB Consortium, the Authority, vide letter dated 07.09.2017, advised the Corporate Debtor to make a representation within 15 days failing which the Authority would issue termination Notice under Clause 37.1.2 of the Concession Agreement. The


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Lender's Representative was also issued a copy of such notice to make a representation within 15 days stating their intention to substitute the Corporate Debtor under the Substitution Agreement or to ensure that the alleged defaults are cured within a suitable period.

6.26 The Corporate Debtor, vide letter no. SBTRCPL/2017/0687D dated 09.09.2017, requested the Lead Bank, PNB Consortium to issue NOC for Priority Loan of Rs. 25 Crore and allow the proceeds of collection of user fees (Toll Collection) from the project to be used as balance funds for achieving Commercial Operation Date ('COD').


6.27 The Corporate Debtor, vide letter no. SBTRCPL/2017/0910 dated 16.09.2017, informed the Lenders' Representative about the Notice dated 07.09.2017 issued by the Authority. PNB the Lead Bank of PNB Consortium, vide letter dated 18.09.2017, replied to the Authority's Notice dated 07.09.2017 and requested the Authority to keep the intention to issue termination notice in abeyance and allow a curing period of 180 days to the Corporate Debtor to comply with the provisions of the Concession Agreement.

6.28 The Authority, vide letter dated 06.10.2017 addressed to the PNB the Lead Bank with copy to the Corporate Debtor, agreed to the PNB representation as per Clause 37.7.3 of the Concession Agreement. The Corporate Debtor, vide letter no.

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SBTRCPL/2017/1014 dated 18.10.2017, submitted the plan to the Authority for achievement of the PCOD.


- 6.29 The Corporate Debtor, vide letter no. SBTRCPL/2018/112 dated 05.03.2018, requested that in view of the inaction of the Lenders as well as MoRTH for providing the additional funds of Rs. 75 Crore, the Cure Period may be extended by additional 90 days. The Independent Engineer, vide letter no. ICT:687:TPY:3022 dated 20.04.2018, stated that the Lenders, despite agreeing to sanction Priority Term Loan-I for Rs. 25 Crore, have not disbursed the same and recommended for issuing a letter to MD & CEO of Punjab National Bank by the Authority. The Authority, vide letter dated 24.04.2018, requested the MD and CEO of Punjab National Bank to finalise financing of the Project so that PCOD and COD could be achieved by the Corporate Debtor. The PNB, the Lenders' Representative by letter dated 19.05.2018 conveyed to the Authority about sanction of Priority Term Loan-I for Rs. 25 Crore along with copy of sanction letter dated 18.05.2018 and requested the Authority to extend the date for achieving Provisional Commercial Operation Date (PCOD) by 31.07.2018 as a pre-condition for disbursement of Priority Term Loan-1 for Rs. 25 Crore.
- 6.30 The Project Director vide letter dated 29.05.2018 agreed with the recommendation of the Independent Engineer to keep

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the notice of intention to terminate in abeyance till 31.07.2018 with the approval of MoRTH. A meeting was held under the chairmanship of Hon'ble Cabinet Minister, MoRTH. The Lenders' Representative had committed to MoRTH and the Authority for priority Term Loan-I of Rs. 25 Crore and Priority Term Loan-II of Rs. 50 Crore. A meeting was held on 02.06.2018 and it was agreed that the Priority Term Loan-I of Rs. 25 crore will be disbursed and priority charge will be ceded by all the Lenders on time.

6.31 The Authority, vide letter dated 04.06.2018, requested the MoRTH to agree with the recommendation of the Independent Engineer, and the Project Director to extend the Cure Period Notice till 31.07.2018 in view of the sanction of Priority Term Loan-I of Rs. 25 Crore by Punjab National Bank. The documents for Priority Term Loan-1 of Rs. 25 crore were executed and conveyed to the Authority by the Corporate Debtor vide letter no. SBTRCPL/2018/0290 dated 09.06.2018.

6.32 The Corporate Debtor had effectively fulfilled the requirements stipulated in Clause 14.3 of the Concession Agreement for works required to be completed for granting Provisional Completion Certificate under Clause 14.3 of the Concession Agreement and requested the Independent Engineer and the Authority to issue Provisional Completion Certificate. The Independent Engineer, vide letter dated


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23.12.2018, recommended PCOD-1 for project length of 156.635 km in accordance with Clause 14.3 of Concession Agreement.

6.33 However, the Authority required a confirmation from the Lenders that on issue of PCOD, the toll collected shall only be used for completion of the project and the Lenders will not recover/appropriate any funds deposited in the Escrow Account by way of Toll/Debt/Equity till achievement of full completion of the Project except for servicing of interest and instalment of Priority Loan of Rs. 25 Crore.

6.34 PNB, the Landers representative, after due consultation with all the Lenders, issued letter dated 26.11.2018 confirming that the Lenders will not recover/appropriate any funds deposited in the Escrow Account by way of Toll/Debt/Equity till achievement of full completion of the Project except for servicing of interest and instalment of Priority Loan of Rs. 25 Crore. Accordingly, the repayment of the project finance participation was to start on achievement of full Commercial Operation Date ('COD') . Therefore, there is no question of any debt or default as claimed or alleged by the Financial Creditor/Applicant.

6.35 The Chief Engineer (NH) took approvals from higher authorities of Government of Rajasthan and conveyed the Authority approval to the Independent Engineer for the PCOD. After the requisite approvals, the Independent Engineer

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issued Provisional Certificate vide letter no. ICT:687:TPV:0155 dated 18.02.2019. Accordingly, the toll operation for the Project Highway started with effect from 17.02.2019. The Corporate Debtor, confirmed the commencement of commercial operation and started toll collection which are being regularly deposited in the Escrow Account in terms of the Escrow Agreement.


6.36 It is further replied that in between 07.08.2018 and 27.04.2020, a total sum of Rs. 28,59,06,483 was paid by the Corporate Debtor to Punjab National Bank as full and final repayment of the Priority Term Loan-I together with interest. The PCOD-1 of the Project was issued by the Authority on a condition that the Lenders will not recover/appropriate any funds deposited in the Escrow Account by way of Toll Debt/Equity till achievement of full completion of the Project except for servicing repayment of Priority Loan of Rs. 25 Crore and the Consortium of Lenders will provide Priority Term Loan-II for Rs. 50 Crore for earliest completion of the Project. However, despite the commitments and unconditional undertaking by the Consortium of Lenders, they neither granted any NOC enabling the Concessionaire to procure such loan from other banks/financial institutions nor sanctioned the Priority Loan-II for Rs. 50 Crore.

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6.37 A meeting of the Consortium of lenders was held on 05.03.2019 for sanction of Priority Term Loan-II for Rs.50 Crore. The Corporate Debtor, vide letter no. SBTRCPL/2019/0297 dated 29.03.2019, appraised the Authority about the meeting with the Consortium of Lenders on 05.03.2019 for sanction of Priority Term Loan-II for Rs. 50 Crore. The independent Engineer, vide letter no. ICT:687:TPV:4128 dated 31.05.2019, recorded the failure of the consortium of lenders for non-adherence of their undertaking and non-releasing of Priority Term Loan-II of Rs. 50 Crore and recommended the approval of extension of time upto 31.03.2020.


6.38 A meeting of the Consortium of Lenders was held on 17.06.2019 wherein the outcome of the meeting, held on 28.05.2019 at PWD, Rajasthan chaired by Addl. Chief Secretary was discussed. The Authority had shown displeasure on the delay on part of PNB Consortium in providing sanction of additional funding of Rs. 50 Crore for achieving the completion. The Consortium of Lenders agreed to provide Priority Term Loan-II of Rs. 50 Crore as undertaken by them.

6.39 Punjab National Bank, in its capacity as representative of the consortium, informed all the Consortium of Lenders regarding its recommendation and accordingly the Corporate Debtor, vide letter no. SBTRCPL/2019/0728 dated 26.06.2019,

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requested the Authority to hold a meeting with senior officials of the Bank at MoRTH Headquarter to resolve the issue of NOC for obtaining Priority Term Loan-II of Rs. 50 crores for earliest completion of the Project. A meeting was held on 31.07.2019 at MoRTH Headquarters and PNB Consortium agreed to sanction and release Priority Term Loan-II of Rs. 50 crores. A meeting of the consortium of lenders was held on 06.08.2019 regarding the sanction of Priority Term Loan-II of Rs. 50 crores and all banks agreed to provide NOC for the same.


6.40 Thereafter, a meeting was held on 05.12.2019 under the Chairmanship of Hon'ble Cabinet Minister of MoRTH and Chairman of State Bank of India where SBI agreed to the issuance of NOC for Priority Term Loan-I and Priority Term Loan-II. The issue of One Time Infusion of Rs. 50 crores was also discussed in the meeting. Upon notice dated 18.01.2020, a meeting was called for review of the Project by Hon'ble Minister on 23/24.01.2020 in which the General Manager of Punjab National Bank(Lenders Representative) was also present. PNB, as the representative of the Consortium of lenders, had promised and provided undertaking to the Authority for release of the Priority Term Loan-II of Rs. 50 crores without any further delay. However, neither the Priority Term Loan-II by the Consortium of Lenders nor the

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One Time Infusion of Funds of Rs. 50 crores by the Authority was released to the Corporate Debtor. The Corporate Debtor, with limited funds out of the toll collected, continued with the completion of the balance work.

6.41 In accordance with the terms of the appraisal note, sanctions, understanding, Common Loan Agreement and Undertaking given by the consortium of lenders, repayment of the loan stood extended to the date of Completion/full COD. The lenders were obliged not to make any demand prior to the Completion/full COD and the repayment schedule was to be recast/revised. However, not only did the consortium of lenders fail to sanction and release Priority Term Loan-II of Rs.50 Crores but also illegally recovered/misappropriated aggregate amount of Rs. 165,13,65,739/- from the Escrow Account, in breach of the undertaking to the Authority and in breach of order of priority.


6.42 The Authority, vide letter dated 25.03.2020/26.03.2020, suspended the right of the Corporate Debtor under the Concession Agreement to collect User Fees (Toll). The Corporate Debtor, vide its letter no. SBTRCPL/2020/673 dated 26.03.2020, recorded the said fact and suspended the collection of the user fees (to11). However, the Corporate Debtor continued to maintain the project as per provisions

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of the Concession Agreement resulting in financial/liquidity constraints to it.

6.43 The Corporate Debtor, vide letter no. SBTRCPL/2020/1053 dated 29.07.2020, requested the Authority for granting Revenue shortfall Loan of Rs. 50 crores (Rupees fifty crores) on account of Covid-79 as part of Atmnirbhar Bharat Scheme. The Corporate Debtor had been requesting the Consortium of Lenders for sanction and disbursement of Priority Term Loan-II for Rs. 50 crores and also the One Time Fund Infusion of Rs. 50 crores (Rupees fifty crores) by MoRTH as per policy circular of MoRTH.

6.44 The Independent Engineer, vide letter no. ICT:687:TPV:3134 dated 03.08.2020, and the Project Director cum Superintending Engineer, PWD, vide letter no. 410 dated 04.08.2020, respectively recommended the Revenue Shortfall Loan of Rs. 50 crores (Rupees fifty crores) on account of Covid-19 as part of Atmnirbhar Bharat Scheme. The Corporate Debtor, vide letter no. SBTRCPL/2020/1389 dated 06.10.2020 and by letter no. SBTRCPL/2020/1599 dated 07.12.2020, requested the Independent Engineer and the Authority for issuing Provisional Completion Certificate-2 for additional length. The Independent Engineer, vide letter no. ICT:687:TPV:5880 dated 21.12.2020, recommended for issuing of Provisional Completion Certificate-2 for an additional


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length of 9.780 km. Accordingly, the Superintending Engineer PWD, vide by letter no. 1023 dated 23.12.2020, recommended to the Authority the issuance of the Provisional Completion Certificate-2.

6.45 The Corporate Debtor had been facing various difficulties in collection of overloading fees, non-fulfilment of condition precedent by the Authority, non-fulfilment of commitments of the Consortium of Lenders and the Authority in disbursing Priority Term Loan-II of Rs. 50 crores by the Consortium of Lenders or One Time Infusion of Rs. 50 crores by the Authority and also lack of support by the Authority. Due to Kisan Andolan, the collection of user fees (to11) suffered adversely.

6.46 A meeting of all stakeholders including the Lenders' Representative was held where all the Consortium of Lenders agreed for issuance of NOC for Revenue Shortfall Loan. The Consortium of Lenders agreed that toll collection deposited in Escrow Account shall be used exclusively for completion of the project and the Consortium of Lenders shall not recover any amount till that time.


6.47 The Authority, vide letter no. D-252 dated 25.02.2021, has recommended to MoRTH regarding the release of Revenue Shortfall/Covid Loan under Atmnirbhar Bharat Yojana of Government of India. Upon issuance of PCOD-III, the

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Corporate Debtor has started collection of User Fees (To11) for the additional length and the total length.

6.48 Therefore, in view of the above, there is no default on the part of the Corporate Debtor under the terms of the Common Loan Agreement dated 30.03.2013 read with the Escrow Agreement dated 30.03.2013. The Consortium of Lenders would be entitled to realize money based on the correct repayment schedule linked to Commercial Operation Date(COD) which is 08.06.2023. The loan account for all intents and purposes is to be treated as regularized, in any event, under clause 9.1.3 of the Escrow Agreement. The Consortium of lenders including the Financial Creditor is obliged to indemnify and hold harmless the Corporate Debtor from any losses or claims as aforesaid which have arisen due to failure of the Escrow Bank to fulfil its obligations as per clause 9.1.3 of the Escrow Agreement. The Corporate Debtor agrees and undertakes to deposit into Escrow Account with all monies received in relation to the Project from any source including insurance claim.

6.49 It has further been submitted by the Corporate Debtor that it has already referred the disputes including the excess recovery by the Consortium of Lenders, including the Petitioner/ State Bank of India and led by Punjab National Bank, to arbitration in the terms of arbitration agreement


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contained in the Escrow Agreement and the Substitution Agreement. Hence, there is no question of admission of insolvency proceedings against the Corporate Debtor as it is a solvent company. The crystallized claim and other claims in the arbitration are far in excess of what is wrongfully claimed as due from the Corporate Debtor in the present Petition. Therefore, this is a case of resolution of disputes through Arbitration proceedings and not a case of admission into Insolvency proceedings

6.50 It has further been submitted that the Corporate Debtor, a public interest infrastructure company, is carrying on businesses of operating toll roads and collecting toll fees therefrom and hence, admission of Corporate Debtor in insolvency on the basis of a disputed debt when there is no default, will be totally against public interest. The Corporate Debtor has in excess of a hundred employees collecting toll fees and maintaining the highway infrastructure.


6.51 The Corporate Debtor has prayed for dismissal of the present company petition being devoid of merit as there is no debt or default.

7. The applicant Company filed its rejoinder denying the averment made in the reply affidavit filed by the corporate debtor and reiterated the facts as pleaded in the company

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petition which are not reproduced here in entirety for sake of brevity. It has been replied to the reply affidavit that the Corporate Debtor is trying to prove a dispute between the parties on the ground that there is dispute with the Government of Rajasthan; however, it has no relevance to the present petition filed under Section 7 of the IBC Code 2016.

8. The non-provision of subsequent debt does not in any way dilute the event of default under the original facilities. The petitioner has reiterated the averments made in the company petition and disputed all allegations contrary thereto. It has been submitted that the Corporate Debtor has miserably failed to disprove the case of the applicant and prayed for admission of the Corporate Debtor in insolvency.
9. The Corporate Debtor filed its sur-rejoinder denying the averment made in the rejoinder and reiterated the averment made in the reply affidavit which are also not reproduced here in entirety for sake of brevity. It has been stated that the Corporate Debtor is a Medium Enterprise under the Micro, Small and Medium Enterprises Development Act, 2006. RBI has issued guidelines for revival and rehabilitation of MSME and it is incumbent upon the Financial Creditor to restructure the Project Centric Finance granted to the respondent. It is clearly established that the allegation of default committed by the Respondent is totally without basis


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and falsified by records and the petitioner's own documentation. The Petition has been filed with fraudulent and malicious intent and for purposes other than to resolve any purported insolvency. Therefore, a prayer has been made for dismissal of the present Company Petition.

10. Based on pleading of the parties and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for determination:


- i. Whether there is the existence of financial debt as defined in Section 5(8) of the IBC Code 2016?
- ii. Whether there is default as defined in Section 3(12) of the IBC Code 2016?
- iii. Whether the present petition filed under Section 7 of IBC Code 2016 is hit by principle of res sub-judice due to pendency of arbitration proceedings?
- iv. Relief, to which the applicant is entitled?

11. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard Mr. Joy Saha Learned Sr. Advocate appearing for the Financial Creditor and Mr. Ratnkar Banerjee Ld. Sr. Advocate appearing for the Corporate Debtor; and after hearing the learned Sr. Counsels for the parties, we shall now proceed to consider the present

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company petition on its merits, specifically within the ambit of points involved in the instant application.

12. Mr. Joy Saha Ld. Sr. Advocate appearing for the Financial Creditor vehemently argued that there is debt and default; and hence, this Tribunal has to admit the corporate debtor in CIRP process. He has relied upon judgment passed by Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in case of State Bank of India Versus N.S Engineering Projects Pvt. Ltd. (2023) ibclaw.in NCLAT 79. He has further relied upon judgments passed by Hon'ble Apex Court in case of Innovative Industries Limited Versus ICICI Bank & Anothers 2017 SCC OnLine 1025, and M. Suresh Kumar Reddy Versus Canara Bank & Others 2023 SCC OnLine SC 608.
13. Mr. Rantokar Banerjee Ld. Sr. Advocate appearing for the Corporate Debtor vehemently argued that there was no default as on date of filing of the present petition or even as on date. It has further been argued that till 31st March 2025, the Consortium of Banks have recovered an amount Rs. 182.63 crores against applicable interest and principal aggregating to Rs. 93.55 crores. Therefore, the lenders have made excess recovery Rs. 89.07 crores till 31st of March 2025 which is a subject matter of arbitration already invoked by the Corporate Debtor in terms of Escrow Agreement dated 10.04.2013. The Corporate Debtor has filed counter claim in

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recovery proceedings filed before DRT Delhi which is pending adjudication before the DRT Delhi.

14. Mr. Ratnkar Banerjee Ld. Sr. Advocate further argued that the date for repayment of the loan under the Common Term Loan Agreement date 30th March 2013 as extended by supplemental agreement dated 19th December 2016 was further extended by exchange of letters, NOC, minutes of meeting and by the conduct of financial creditor, including SBI, the present Financial Creditor. The loan amount of Rs. 450 crore was disbursed by all the five members of Consortium Lenders in escrow account but out of which only two Members i.e Punjab National Bank and State Bank of India have filed their petitions under Section 7 IBC on the ground that there is default in repayment of loan.
15. Mr. Ratnkar Banerjee Ld. Sr. Advocate further argued that financial participation by the applicant SBI/Financial Creditor is a special type 'Project Centric Finance' as per guidelines issued by RBI including Prudential Norms on Advances to Infrastructure Sector dated 18.03.2013 and not 'Borrower Centric Finance'. The RBI has recognised such finance to be secured finance in terms of Concession Agreement due to reason of user charges/toll/tariff payments and contribution by all stakeholders being deposited in the

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Escrow Account and recovery is to be made from receivable and deposit being made in the Escrow Account.


16. He further argued that as per main Common Term Loan Agreement dated 30.03.2014, the loan repayment was to commence after 9 months of completion of construction; however, the Consortium Lenders including SBI, the Financial Creditor extended the commencement date for repayment of loan upto 31.12.2016 by Supplemental Agreement. The Punjab National Bank being the lead Bank of Consortium lenders has shifted/rescheduled repayment from time to time based on extension of completion/Commercial Operation Date(COD) by PWD, Rajasthan Government; and hence, there is no default in repayment of loan as alleged. The Common Loan Agreement is linked to the terms and conditions mentioned in the Concession Agreement dated 09.5.2012 which is part of the Common Loan Agreement dated 30.03.2013. The Concession Agreement has provided for extension of concession period in case of delay in 'COD'.
17. Learned Sr. Counsel for Corporate Debtor further argued that as per sanction letter dated 28.03.2013 issued by State Bank of Patiala now the applicant SBI, repayment was agreed in 40 unequal quarterly instalments after a period of two years of construction and nine months of moratorium. Thereafter, as per revised sanction letter dated 18th January 2016, the

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scheduled Commercial Operation Date(COD) was shifted from 16th September 2015 to 16 June 2016, and accordingly repayment was to begin from December 2016 till September 2026. The further revised sanction letter dated 7th September 2016 provides for shifting of Commercial Operation Date (COD) from 16th June 2016 to 16 March 2017. Thus, repayment of loans always remained linked to COD.

Issue No. (i)

18. Needless to say, that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs.1,00,00,000/- (Rupees One Crore). In view of the Section 4 of the Code, the moment default is of Rupees one crore or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.
19. In the facts and circumstances of this case, it is evident that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that the State Bank of Patiala which has now merged with the applicant, SBI/Financial Creditor, being one of the PNB Consortium Member, has sanctioned an amount of Rs. 75,00,00,000/- (Rupees Seventy Five crores Only) to the Corporate Debtor but allocated and disbursed an amount of

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Rs. 50 Crores under the Consortium Agreement. This fact is not disputed by the Corporate Debtor in its reply affidavit.

20. Thus, there is the existence of debt as defined in Section 5(8) of the IBC Code 2016. Accordingly, the issue no. (i) is decided in favour of the applicant, SBI/Financial Creditor.


Issue No. (ii)

21. The applicant/Financial Creditor has stated that default in repayment of loan occurred on 03.11.2016 when the corporate debtor defaulted in servicing the interest and/or instalment in the Term Loan Account of Rs. 50 crores as per term and conditions of Sanction Letter dated 28.03.2013 and Common Term Loan Agreement dated 30.03.2013. The applicant Bank/Financial Creditor has relied upon the account statement (Annexure 1-S) and NESL Form 'C' (Annexure 1-V) to substantiate its claim.

22. Mr. Joy Saha Ld. Sr. Advocate appearing for the Financial Creditor submitted that default occurred due to non-service of interest and repayment of installment in Term Loan account. He has drawn the attention of the Tribunal towards the Term Loan Agreement dated 30.03.2013(Annexure-1/H). A perusal of clause 7.1 of the Term Loan Agreement dated 30.3.2013 (Annexure-1/H) reveals that the non-payment and/or non servicing of interest in the loan account on the respective due dates constitute as an event of default.


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23. The supplemental loan agreement 19.12.2016 provides that the revised date of completion of Project shall be 16th March, 2017; and the revised amortization schedule of loan of Rs.450.00 Crores, to be paid in 40 (Forty) Unequal Quarterly Instalments commencing from quarter ending in December 2016, shall be as per the Schedule-III attached to the said Supplemental Loan Agreement thereto. It has further been provided in supplemental loan agreement dated 19.12.2016 that the borrower shall pay interest on principal amount to the lenders on the interest payment dates as set out in the Schedule-IV from time to time. The payment of interest shall commence on the first interest payment date falling immediately after the date of initial disbursement, The applicable rate of interest shall be subject to review after 'COD'.
24. Though the Corporate Debtor started making payment of interest after the date of initial disbursement; however, it stopped servicing interest from the month of September 2016 which resulted in default on 03.11.2016. Accordingly, the Financial Creditor classified the loan account as non performing asset on 31.01.2017 as per guideline issued by Reserve Bank of India. It is further clear from the statement of account(Annexure A 1-S) that the unrealised

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interest amount of Rs. 1,62,64,446.00 was reversed in the loan account on 07.02.2017.


25. It is pertinent to note that on 03.06.2017, there are credit and debt entries of Rs. 3,89,14,446.68 out of which one is "Credit Interest Adjustment" entry and second is 'Interest' debit entry for the same amount. Therefore, interest amount of Rs. 3,89,14,446.68 has been adjusted and debited in the loan account.
26. An interest adjustment entry corrects the books for interest earned but not yet paid, while a debit interest on a loan statement means the borrower owes more interest, which will be added to the loan balance. Since, in this case, the interest amount has been debited in the loan account on the same date, and hence, it was not due to repayment of loan but for interest which earned on loan amount and not paid at the relevant time.
27. As per Common Term Loan Agreement dated 30.03.2013, the loan repayment was to commence after 9 months of completion of construction, and linked to commercial operation date which is defined as having the same meaning as assigned in Article 15 of the Concession Agreement dated 09.05.2012. As per Article 15, Commercial Operation Date('COD') means the date on which completion certificate or provision certificate is

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issued. The relevant Article 15 is being reproduced verbatim as under:

“Two-laning shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provision of Article 14, and accordingly, the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued(“the COD”). The Project Highway shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with provision of Article 27 and subject to provision of clause 14.3.2.”

28. Thus, it is undisputed fact that repayment of loan was to commence as per Term of Loan Agreement dated 30.03.2013 linked to Concession Agreement dated 09.05.2012. The applicant/Financial Creditor, issued letter dated 18.01.2016 (Annexure R-317) wherein it has clearly been mentioned that its competent authority had approved shifting of Scheduled Commercial Operation Date(for short “SCOD”) from 16.9.2015 to 16.6.2016 and further approved availability period of Term Loan upto 16.9.2016 and lateral shift in repayment schedule of the Rupee Term Loan to start from quarter ending

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December 2016 commensurate to shift in 'SCOD' in line with consortium members. It was made clear that all other terms and conditions of the existing sanction shall remain unchanged.


29. The applicant Bank/Financial Creditor further vide Sanction letter dated 07.9.2016 (Annexure R-318), approved shifting of Scheduled Commercial Operation Date(for short "SCOD") from 16.6.2016 to 16.03.2017 and further approved availability period of Term Loan upto 31.12.2016. It was further made clear that all other terms and conditions of the existing sanction shall remain unchanged. The Provisional Completion Certificate was issued on 15.02.2019 as is clear from letter No. SBTRCPL/2019/0160 dated 19.02.2019 issued by the Chief Engineer Cum RO, MORTH, New Delhi(Annexure-R-113).
30. Thus, tenure and schedule of the loan was extended from time to time due to extension/shifting of Commercial Operation Date. However, except shifting of date of Commercial Operation Date and accordingly deferment of repayment of loan which linked to Commercial Operation Date, no other existing terms and condition of Common Term Loan Agreement dated 30.03.2013 were ever changed which includes servicing of interest and instalment of priority term loan of Rs. 25 crores.

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31. Furthermore, a perusal of the JLM meeting dated 14.11.2018 as well as the letter dated 14.11.2018 reveals that the lenders have agreed that they would not appropriate funds from the Escrow Account till achieving full completion of project or 30.06.2019 whichever is earlier except for servicing of interest and instalment of Priority Term Loan of Rs. 25 crores. It is relevant to reproduce here relevant clause (iv) of letter dated 14.11.2018 (Annexure-A/D to Rejoinder) written by Punjab National Bank to Independent Engineer ICT Ltd New Delhi and the same read as under:

“The lenders will not recover/appropriate any funds deposited in escrow account by way of Toll/Debt/Equity till achievement of full completion of project or 30.06.2019 whichever is earlier except servicing of interest and instalment of priority term loan of Rs. 25 crore. The lenders are willing to consider funding of the project for completion of project subject to performance of project/cash flow after COD.”


32. The Corporate Debtor has further relied upon communication letter dated 26.11.2018 issued by Punjab National Bank written to Chief Engineer(NH), PWD, Government of Rajasthan wherein it has been stated that lenders will not recover/appropriate any fund deposited in Escrow Account

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except servicing of interest and instalment of Priority Term Loan of Rs. 25 crores. The relevant part of the letter dated 26.11.2018 is being reproduced verbatim as under:


“---.Though there is no such precondition for issue of PCOD as per the Concession Agreement, we confirm that “The Lenders will not recover appropriate any funds deposited in Escrow Account by way of Toll/Debt/Equity till achievement of full completion of the project except for servicing of interest and instalment of Priority Loan of Rs. 25 Crores.”

33. Mr. Ratnkar Banerjee Ld. Sr. Advocate appearing for the Corporate Debtor argued that all the Consortium Banks including SBI had granted NOC and had agreed that the Lenders will not recover any interest or principal, prior to the repayment of the entire Priority Loan of Rs. 25 Crore. Therefore, such priority loan was repaid with interest by 27.04.2020; and hence, at least till 27.04.2020, the applicant SBI/Financial Creditor had undertaken not to recover any interest or principal on its Term Loan of Rs. 50 Crore. Therefore, the contention of the Financial Creditor that there was default as on 03.11.2016 is erroneous.
34. Learned Sr. Advocate for the Corporate Debtor interpreted the word “except for servicing of interest and instalment of

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Priority Loan of Rs. 25 Crores” incorporated in letter dated 14.11.2018 and 26.11.2018 in the context that except servicing of interest and instalment of Priority Term Loan-1 of Rs. 25 Crores, interest on all other loan account including interest on SBI/Financial Creditor Term Loan of Rs.50 crore were also deferred. However, this interpretation of the Corporate Debtor is not acceptable at all in view of the fact that had this been intention of the author of the letter then it should have mentioned only the word ‘payment of instalment of Priority Term Loan of Rs. 25 crore’ instead of interest and instalment of Priority Term Loan of Rs. 25 crore. An instalment in a loan account is inclusive of interest and not only principal amount except where there is agreement either to pay principal amount or service interest only. This fact is fortified from the statement of account of Term Loan of Rs. 50 crore wherein the Corporate Debtor has started servicing interest after initial date of disbursement and regularly serviced interest till September 2016.

35. It is also crystal clear from Sanction Letter dated 07.9.2016 (Annexure R-318), which approved shifting of Scheduled Commercial Operation Date(‘SCOD’) from 16.6.2016 to 16.03.2017 and further approved availability period of Term Loan upto 31.12.2016 with rider that all other terms

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and conditions of the existing sanction letters shall remain unchanged. Therefore, clause (a) of 'Event of Default' of sanction letter dated 28.03.2013 (Annexure 1-G) wherein it has been recorded that any instalment of principal amount or interest on facility remaining unpaid for a period exceeding thirty days on their respective due date shall be deemed to be an event of default.

36. The Common Term Loan Agreement dated 30.03.2013 (Annexure 1-H) provides that 'Event of Default' shall mean all or any of the events specified in clause 7.1 of the said agreement. The sub-clause (b) of clause 7.1 provides that subject to the provision of Article 37 of the Concession Agreement, the event of default shall mean if default has been committed by the Borrower in payment of any instalment of interest on the Loans and/or payment of any amount payable pursuant to the Common Term Loan Agreement or a Security Document on respective due date or on being demand by the lender as the case may be. The Corporate Debtor has failed to prove that service of interest was deferred as per concession agreement 09th May 2012.
37. The supplemental agreement dated 19.12.2016 provides that the date of completion of project was shifted to 16.03.2017 and re-scheduling of 40 unequal quarterly instalment from end of quarter December 2016. The Corporate Debtor was bound

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to pay interest on the interest payment dates to the Lenders as per revised rate of interest as set out in Schedule-IV attached thereto on the principal amount of the loan outstanding from time to time. The relevant clause sub clause (a),(b) and (c) clause 5 of Supplemental Agreement dated 19.12.2016 are reproduced verbatim as under:

(a) That the revised Date of Completion of Project shall be 16th March 2017.

(b) That the revised Amortisation Schedule of Loans of Rs. 450.00 Crores in 40(Forty) Unequal Quarterly Installments commencing from the end of quarter December, 2106 shall be as per the schedule-III hereunder.


(c) The Borrower shall pay on the Interest Payment Dates, to the Lenders, as per revised Applicable Interest Rate(s) as set out in Schedule-IV hereunder on the principal amounts of the Loan outstanding from time to time. The payment of interest shall commence on the First Interest Payment Date falling Immediately after the date of Initial Disbursement. The Applicable Rate of Interest shall be subject to review after COD.”

38. Thus, from perusal of Supplemental Agreement dated 19.12.2016, it is clearly evident that only the revised date

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of completion of project was shifted to 16.03.2017 and revised amortisation schedule of loans of Rs. 450 crores, in 40 unequal quarterly instalment commencing from the end of quarter December 2016, was fixed as per Schedule-III attached to the said supplemental agreement instead of quarter ending March 2016 fixed as per Common Loan Agreement dated 30.03.2013.

39. It is crystal clear from clause 5(c) of Supplemental Agreement dated 19.12.2016 that the Corporate Debtor was bound to pay interest on the interest payment dates to the Lenders as per revised rate of interest as set out in Schedule-IV attached thereto on the principal amount of the loan outstanding from time to time. The payment interest date was never changed and it was to commence on the first interest payment date falling immediately after the date of initial disbursement. The initial disbursement has been defined in the Common Term Loan Agreement dated 30.03.2013 which means the first disbursement under the said agreement. Thus, there was no change in servicing of interest on Term loan of Rs. 50 Crores.
40. Thus, it is not in dispute that the lenders have agreed not to appropriate funds from Escrow Account till achieving full completion of project. However, the obligation of servicing the interest and instalment on priority term loan of Rs. 25

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crores were never deferred or changed. The use of the word interest means interest on all loan accounts including Term Loan Account of Rs. 50 Crore sanctioned and disbursed by the applicant bank/Financial Creditor.


41. Therefore, in view of the above, the plea of the respondent Corporate Debtor, that all the Consortium Members including SBI/the Financial Creditor had granted NOC and the applicant Bank/Financial Creditor has agreed not to recover interest on its Term Loan of Rs. 50 crore prior to repayment of entire Priority Term Loan of Rs. 25 crores, is not tenable at law. The terms and conditions of original Term Loan Agreement dated 31.01.2013 and Supplemental Agreement dated 19.12.2016 on aspect of servicing of interest in loan accounts never changed by subsequent communication entered between the parties vide letters dated 14.11.2018 and 26.11.2018. There was no novation of original Common Term Loan Agreement dated 31.01.2013 and Supplemental Loan Agreement dated 19.12.2016 qua servicing of interest in the loan accounts as per Section 62 of the Indian Contract Act 1872.
42. The debt and default is corroborated from perusal of Form-C filed with Information Utility NeSL wherein it has been recorded that default has occurred on 03.11.2016. The default has been deemed to be authenticated in the

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Information Utility record i.e NeSL. The Corporate Debtor made a representation vide letter dated 23.10.2025 to Nodal Officer NeSL during pendency of the present matter that alleged default should be marked as 'disputed' instead of deemed to be authenticated'. However, the default with Information has already been recorded as 'deemed to be authenticated'


43. Hon'ble NCLAT in case of State Bank of India Versus N.S Engineering Projects Pvt. Ltd. (2023) ibclaw.in NCLAT 79 vide order dated 3rd February 2023 held that when the Corporate Debtor is unable to pay debt and has committed default, the Adjudicating Authority is not required to go into the reasons of default and ignore real status of the Corporate Debtor and close its eye to the fact that the Corporate Debtor needs insolvency. The relevant para no. 24 of the judgment is being reproduced herein which is as follow:

“24. Under the Scheme of IBC, when a Corporate Debtor is unable to pay its debt, which becomes payable, it is a warning signal for Corporate Debtor and when an Application is filed by a Financial Creditor to initiate CIRP under Section 7 and there are ample material that Corporate Debtor is unable to pay its debt and has committed

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default, the Adjudicating Authority is not required to go into the reasons of default and ignore the real status of the Corporate Debtor and close its eyes to the fact that the Corporate Debtor needs insolvency resolution. Red signal having been flagged by the Applicant, ignoring the precarious financial situation and status of the Corporate Debtor and not taking remedial action to bring back the Corporate Debtor on its track by adopting resolution process as per IBC and reject the Application on the reasons of default, is clearly contrary to the whole Scheme of the IBC. There being sufficient material before the Adjudicating Authority that consistent defaults have been committed by the Corporate Debtor and it is unable to pay its debt, rejection of Section 7 Application on the ground that for default committed by the Corporate Debtor, the Financial Creditors have also to be blamed is closing the eyes to the Scheme of the insolvency resolution.”


44. On the same proposition of law, Hon'ble Supreme Court in case of Innovative Industries Limited Versus ICICI Bank and Others 2017 SCC OnLine 1025 held that on default of financial debt by the Corporate Debtor, the Adjudicating

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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. The relevant observation of the Hon'ble Apex Court which is law of the land under Article 141 of the Constitution of India is being reproduced as follow:

“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 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.”

45. Hon'ble Apex Court in case of M. Suresh Kumar Reddy Versus Canara Bank & Others 2023 SCC OnLine SC 608 held that once NCLT is satisfied that default has occurred, there is hardly a discretion left with NCLT to refuse admission of the

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application under Section 7 of IBC Code 2016. The relevant para no.10 is reproduced as follow:

“10. 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 subsection 12 of Section 3 of the IB Code which reads thus:

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

(12) “default” means nonpayment 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 nonpayment 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 of the IB Code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be ejected. Otherwise, there is no ground available to reject the application”.


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46. Therefore, in view of the above, this Tribunal comes to the final conclusion that the Corporate Debtor has failed to service interest in the Term Loan Account of Rs. 50 Crore and default occurred on 03.11.2016 defined in Section 3(12) of the IBC Code 2016. Accordingly, this issue is decided in favour of the financial creditor and against Corporate Debtor.

Issue No. (iii)

47. The Corporate Debtor has taken a plea that the present petition is barred by principle of res-subjudice due to pendency of arbitration proceeding on invocation of the arbitration clause of Escrow Agreement and the Substitution Agreement both dated 10.04.2013 by the Corporate Debtor. Therefore, proceeding of the present petition requires it to be stayed till the adjudication of the matter in arbitration.

48. It is a well settled principle of law enunciated by Hon'ble NCLAT that there is no bar for filing or proceeding with company petition under Section 7 of IBC Code 2016 despite parallel arbitration proceeding going on between the parties. On this aspect Hon'ble NCLAT in case of Mr. Ram Ratan Modi Versus Sumangal Dealmark Pvt. Limited 2025 SCC OnLine NCLAT 1352 held that:

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“104. The last question relating to the issue of pendency of arbitral proceedings having any bar on the initiation of CIRP under Section 7 of IBC has been very well established herein earlier. We have already noted that there is no bar in the initiation of CIRP proceedings even if arbitral proceedings are pending. Indus Biotech (2021) allows parallel remedies; insolvency must proceed if debt and default exist”.

49. Therefore, plea of the Corporate Debtor that it has already referred the disputes including the excess recovery by the Consortium of Lenders including the Petitioner/ State Bank of India, which is led by Punjab National Bank, to arbitration in the terms of arbitration agreement contained in the Escrow Agreement and the Substitution Agreement both dated 10.04.2013 and hence, the Corporate Debtor could not be admitted in insolvency is devoid of merits and not tenable at law.

Issue No. (iv)

50. On a bare perusal of Form-1 filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

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51. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt as discussed above.
52. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application deserves to be admitted and hence, hereby admitted.
53. Mr. Prawincharan Prafulchran Dwary, resident of 9B, Vardan Tower, Near Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad-380014, having registration no. IBBI/IPA-002/1P N00331/2017-2018/10937 and having mobile no. 9426742700 and email.ID:dwaryprawin@gmail.com,rca@yahoo.com/rdc@sunresolution.in is appointed as an Interim Resolution Professional for the corporate debtor.
54. 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 and Bankruptcy Code, 2016.
55. We direct the applicant Financial Creditor to deposit a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) with the Interim Resolution Professional namely Mr. Prawincharan Prafulchran

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Dwary to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 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 will be subject to adjustment towards Resolution Process cost as per applicable rules.

56. The moratorium is declared 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

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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.”

57. 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.
58. The Interim Resolution Professional shall perform all his functions 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. 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

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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 an appropriate order. 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 its 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.

59. The Registry is directed to communicate a copy of this order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West Bengal, Kolkata at the earliest possible but not later than three days from today.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)