

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
22-08-2023 AT 10:30 AM

IA (IBC) 985/2023 in CP(IB) No 77/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:

IDBI Bank

...Financial Creditor

VS

M/s. Trichy Tanjavur Expressways Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

CP (IB) No. 77/7/HDB/2022:

Order pronounced. Recorded vide separate sheets. In the result, the company petition is admitted into CIRP. IRP is appointed and interim moratorium is ordered.

IA (IBC) 985/2023

In the light of our findings in the company petition this IA 985/2023 is dismissed. No costs.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

CP (IB) No. 77/7/HDB/2022

*Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with
Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016.*

**IN THE MATTER OF M/S. TRICHY-THANJAVUR
EXPRESSWAYS LIMITED**

IDBI Bank Limited,
NMG Department,
D.No.5-9-89/1 and 2, Chapel Road,
P.B. Num 370, Hyderabad – 500001,
Represented by its General Manager

... Financial Creditor

Versus

M/s. Trichy-Thanjavur Expressways Limited
Represented by its Managing Director,
Madhucon House, Plot No.1129/A,
Road No.36, Hi-Tech City Road,
Jubilee Hills, Hyderabad – 500033,
Telangana, India.

... Corporate Debtor

Date of Order: 22nd August 2023

CORAM:-

**Dr. Venkata Ramakrishna Badarinath Nandula,
Hon'ble Member (Judicial)**

and

**Shri. Charan Singh,
Hon'ble Member (Technical)**

PARTIES/COUNSELS APPEARANCE:-

For Financial Creditor : Shri Trivikram Chitturu, Counsel.

For Corporate Debtor : Shri Vikram Poosarla, Sr. Counsel.

PER: BENCH
ORDER

This Petition is filed by IDBI Bank Limited, (hereinafter referred to as “Financial Creditor”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against M/s. Trichy-Thanjavur Expressways Limited, (hereinafter referred to as “Corporate Debtor”), alleging non-payment of Rs. 79,71,45,619.23 (*Rupees Seventy-Nine Crores Seventy-One Lakhs Forty-Five Thousand Six Hundred Nineteen Rupees and Twenty-Three Paise Only*), including interest is said to be due and payable by the Corporate Debtor to the Financial Creditor as on 31.01.2022.

2. The averments in brief of the Company Petition are:

2.1 It is averred that the Corporate Debtor is engaged in the business of execution of major infrastructure projects including national

highways etc., approached the consortium of lenders with lead bank being Canara Bank under project finance scheme with an estimation of Rs.390 Crores for execution of the project to develop, design, finance, procure, construct, operate and maintain, strengthen and widen the existing 2 lane stretch from km.80.00 to km.135.70 on National Highway No.67 (NH-67) in the State of Tamil Nadu to four-lane in accordance with the provisions of the concession agreement on Build, Operate and Transfer (BOT) basis.

2.2 It is stated that the Consortium of lenders to enable it to part-finance the project cost in principle had agreed to lend rupee term loan for an amount not exceeding Rs.261 Crores and the applicant/ Financial Creditor being one of the members of the consortium of lenders part-financed an amount of Rs.70 Crores.

2.3 It is averred that the Corporate Debtor has agreed to repay the rupee term loan in 126 installments commencing from 31.03.2011 till 31.03.2021. The Applicant Financial Creditor submits that as per the request of Corporate Debtor in terms of difficulties in repayment of principal amount, payment of interest and other monies has

restructured the facilities vide letter dt. 25.03.2013 under Joint Lenders Forum (JLF).

- 2.4 It is stated that the Corporate Debtor as part of restructuring the facilities has entered into Master Restructuring Agreement dt. 28.03.2013 (MRA). It is submitted that under the Master Restructuring Agreement dt. 28.03.2013 the Corporate Debtor owed an amount of Rs.62.30 Crores to the Financial Creditor herein out of the total dues of Rs.232.29 Crores to the Consortium. The Corporate Debtor agreed to repay the amount in 51 quarterly installments commencing from 30.06.2013 and ending on 31.12.2025 as per the Schedule IV annexed to MRA dt. 28.03.2013.
- 2.5 It is stated that the Corporate Debtor has executed the letter of Revival dt.06.05.2018 acknowledging the liability. The Corporate Debtor having committed defaults in payment of the instalments the account of the Corporate Debtor is classified as Non-Performing Asset (NPA) on 30.10.2018 as per the guidelines of RBI.
- 2.6 It is further stated that upon the defaults committed by the Corporate Debtor it has issued a notice dated 22.04.2019 calling upon the

Corporate Debtor to repay the total outstanding dues in the account and the Corporate Debtor failed to discharge the liability.

3. The contentions put forth by the Corporate Debtor in its Counter are:

3.1 Corporate Debtor denied the averments made by the Financial Creditor and submitted that the petition is liable to be dismissed.

3.2 It is stated that the Company Petition is not maintainable on the following grounds.

a. That the default is for reasons attributable to the Petitioner and therefore the present petition filed on such default is not maintainable under the provisions of the code.

b. That the Petitioner did not file record of default along with company petition from the information utility as mandated under section 7(3)(a) of the code.

c. That the Petitioner did not file declaration form as mandated under regulation 3(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) regulations, 2016.

d. The Petitioner has filed alleged Delegation of Power as at March, 2020, and it does not provide any specific authority to Smt.

Vidhya Bhaskar to sign and file the present company petition to represent on behalf of the Petitioner and that the Board Resolution filed is vague and not with respect to the filing of the present company petition.

- 3.3 It is stated that the Respondent has entered into a loan agreement with consortium of banks on 02.12.2006 wherein the Canara Bank was the lead bank and Petitioner herein was the escrow agent. It is stated that as per concession agreement, the Respondent has successfully completed the project and constructed a tollgate for collection of revenues from public towards toll charges.
- 3.4 It is stated that there are several contractual disputes between the Petitioner and Respondent in relation to execution of project. The Respondent also filed a Writ Petition No. 7450/2022 before the Hon'ble High Court of Telangana on 29.05.2020 and filed their counter and matter in relation to present cause of action is sub-judice.
- 3.5 It is stated that the lenders have acted contrary to the terms of the loan documents, escrow agreement, Substitution Agreement, Concession Agreement and other agreements. In result, the Respondent has failed to make the payment and has been requesting

for lenders' help for a past few years to cooperate for maintaining the project.

3.6 It is stated that concession agreement and escrow account agreement give priority to major maintenance work over the payments towards interest and principal amount, but contrary to the procedure laid down, the lenders have been firstly appropriating the amount towards interest and principal and thereby leaving hardly anything for the work of maintenance of the Highway. As a result, the work of Major Maintenance works (MMR works) could not progress as per the plan. Consequently, NHAI levied damages and penalty of almost Rs.122 crores for delay.

3.7 It is stated that as per escrow account agreement dated 02.12.2006 all the revenues collected by Respondent has to be mandatorily deposited into escrow account, after which Canara bank in consultation with Petitioner will deduct the amounts towards servicing of loans including dues etc. and the remaining revenues will be given to Respondent for its sustenance. The clause 3.3 provides order of priority in favour of operation management and maintenance works of expressway on priority basis. Therefore, the

Respondent has been insisting lenders' agent and escrow agent i.e., Canara bank and Petitioner herein to allow it to use entire toll collections for completion of major maintenance works and promise to complete major maintenance works.

3.8 It is stated that the Respondent has approached the Hon'ble High Court by filing WP.No. 7450 of 2020 seeking direction to Petitioner and Canara Bank to abide by terms of Escrow account agreement more particularly waterfall mechanism mandated under clause 3.3 by allowing Respondent to use entire toll collection for completion of the major maintenance works. It is stated that the Canara Bank has filed its counter in Writ Petition stating that Respondent did not adhere to escrow account agreement and that amounts cannot be withdrawn by Respondent. It is also stated that NHAI too has filed its counter stating that there has been delay from Respondent in maintenance works and same has been due to non-release of funds from lenders from the escrow account. The issues are pending adjudication before the Hon'ble Court and any orders passed by the Hon'ble High Court in the writ petition would have direct bearing on the adjudication of present company petition.

- 3.9 It is stated that the mandatory provision under section 7(3)(a) of IB Code makes abundantly clear that it is the duty of the Financial Creditor to furnish record of default filed with the Information Utility or such other record (or) evidence of default along with the application. In the instant case the Financial Creditor has not furnished any such record along with the Company Petition from the Information Utility as required under section 7(3)(a) of IB Code. Non-compliance of mandatory provision mentioned supra would be sufficient to reject the company petition on this ground alone.
4. Both sides have also filed written arguments reiterating their oral submissions. Learned Senior Counsel for the respondent relied on the ruling of Hon'ble Supreme Court, in *Vidarbha Industries Power Limited Vs. Axis Bank*, (2022) 8 SCC 352 (Para 61) wherein it was held that, the adjudicating authority is required to consider the feasibility of initiation of Corporate Insolvency Resolution Process, and it should consider the overall financial health and viability of the Corporate Debtor.
5. In the light of the contest as above the Tribunal framed the following Points for consideration.

POINTS:

- (1) Whether a financial debt of a sum exceeding rupees one crore *is due and payable* by the respondent to the petitioner? if so, whether the respondent defaulted the same?
- (2) Whether NHAI had stepped into the shoes of the corporate debtor upon termination of the Concession Agreement by virtue of Clause 32.2 of the Concession Agreement? if so, whether the present petition is not maintainable against the respondent?

6. We have heard the learned counsel Shri Trivikram Chitturu for the Financial Creditor and learned Senior Counsel Shri Vikram Poosarla for the Corporate Debtor. Perused the record, written submissions and the case law.

Point.1.

Whether a financial debt of a sum exceeding rupees one crore *is due and payable* by the respondent to the petitioner? if so, whether the respondent defaulted the same?

A bare perusal of the counter filed by the corporate debtor discloses due admission of execution of a common loan agreement dated 02.12.2006 with the lenders for a sum of Rs.261 crores and the present petitioner/ financial creditor being one of the members of the lenders financed Rs. 70

crores to the corporate debtor. That apart, firm and categorical plea of the respondent that,

“Consequent to the termination of the Concession Agreement dated 15.06.2006 by NHAI, by virtue of Clause 32.2 of the said agreement NHAI alone shall pay the 90% of the debt due less insurance claims (if provided) as termination payment, which sum as per the escrow agreement dated 02.12.2006 shall be deposited by the NHAI into the escrow account and that the balance amount of 10% also shall be assigned to NHAI, thus, NHAI had replaced the role of Corporate Debtor from the date of termination of the Concession Agreement i.e. 17.03.2023, as such no liability can be attributed to the Corporate Debtor”,

is yet another clear and categorical admission of not only the *financial debt* in favor the petitioner but also *non-payment* of the same by the respondent.

7. The petitioner in compliance of Reg.2A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for the purposes of Section 7(3)(a) of the IBC has furnished Statement of Account certified as per Banker’s Evidence Act. The petitioner also furnished Report of Credit Rating Information Services of India Limited (CRISIL) dated 21.02.2022 wherein the credit facilities availed by the respondent from the petitioner are shown in the category of default. Therefore, the existence of a financial debt of a sum

over rupees one crore payable by the respondent to the petitioner, besides its nonpayment stands admitted.

8. Hon'ble Supreme Court of India, in order dated 31.08.2018 in the matter of M/s Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Civil Appeals No.8337-8338 of 2017, held that:

“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.

The above ruling on facts *squarely* applies to the case on hand. Therefore, we have no hesitation in holding that a financial debt of a sum over rupees one crore is due and payable by the respondent to the petitioner, and that the same is not paid by the respondent.

The Point is answered accordingly.

Point.2.

Whether NHAI had stepped into the shoes of the corporate debtor upon termination of the Concession Agreement by virtue of Clause

32.2 of the Concession Agreement? if so, whether the present petition is not maintainable against the respondent?

According to the Ld. Counsel for the Petitioner/financial creditor the respondent/corporate debtor either failed in understanding or is trying to misinterpret Clause 32.2 of Concession Agreement dated 15.06.2006, in contending that NHAI alone is liable to pay the entire debt to all the lenders including the present petitioner. According to the Ld. Counsel, the corporate debtor has failed to take note of the “*exclusion*” part in the definition of “*Debt Due*” under Clause 1.1(i) of Concession Agreement which reads as below.

“... but excluding any part of the principal that had fallen due for repayment one year prior to Termination Date unless such repayment had been rescheduled with prior consent of NHAI.”

9. Therefore, according to the Id. Counsel in view of exclusion of principal sum that had fallen due for repayment one year prior to Termination Date, unless such period in the absence of repayment been rescheduled with prior consent of NHAI is changed, the plea that NHAI retrenchment compensation which is yet to be crystalized will not wipe of the subject debt of the petitioner in as much as the respondent’s current debts payable to all the financial creditors far exceeds the termination

compensation amount. That apart, it is contended that in pursuance of para 16.d of the Termination Letter dt.17.03.2023, NHAI has claimed about Rs.345 Crores, from the respondent under the head, 'Non-Payment of Damages/Payment Due to NHAI'. Therefore, in the background of mutual claims as above, according to the Ld. Counsel for the petitioner it cannot, at least for now, be said whether the corporate debtor will be receiving any amount from NHAI, leave alone satisfaction of the subject financial debt of the petitioner. Ld. Counsel further submitted that the writ petition filed by the respondent has no bearing on the default committed by the CD.

10. Shri. Vikram Poosarla, Ld. Sr. Counsel for the Corporate Debtor, while vehemently refuting the submissions made by the Ld. Counsel for the petitioner, submits that the corporate debtor is a special purpose vehicle which was formed for strengthening and widening the existing 55.75 Km stretch between Trichy-Thanjavur on National Highway 67 in the state of Tamil Nadu. According to the Ld. Sr. Counsel, on 15.06.2006 the Corporate Debtor entered into Concession Agreement with the National Highway Authority of India, for short "NHAI" for a four-way expressway of Tanjavur section - National Highway 67 on Build, Operate and Transfer basis ("BOT"), and subsequently on 02.12.2006 a loan

agreement has been entered with the Financial Creditor, and Canara Bank (Lead Bank) besides an escrow agreement with the Financial Creditor which provided modalities to utilize the revenues received from the tollgates.

11. Ld. Sr. Counsel, further submits that due to violation of the escrow agreement by the Financial Creditor several contractual disputes cropped up between the Corporate Debtor and the Financial Creditor and the same resulted in breach of the terms of the loan agreement. The Financial Creditor is also guilty of violation of Clause 3.3 of the escrow agreement which provides for the priority of release of funds in the escrow agreement. The Financial Creditor flouted the procedure laid down in the escrow agreement due to which the obligation mentioned under Schedule 'L' of the Concession Agreement, which provides for 'maintenance of the expressways once in five years' must be taken care by the Respondent, which has not been fulfilled. Ld. Sr. Counsel further submits that due to violation of the escrow agreement and the Concession Agreement dated 15.06.2006 by the Petitioner, the Respondent could not progress as per the agreed plans, which led NHAI levying damages and penalty of almost Rs. 144.36 crores, as on 31.03.2022.

12. Ld. Sr. Counsel further submitted that, the Financial Creditor and other Lenders did not adhere to the terms of the Concession Agreement dated 15.06.2006 and Escrow Account Agreement dated 02.12.2006 by appropriating the amounts directly without intimation to the Corporate Debtor, towards debt repayments of principal and interest amounts not leaving funds for the work of maintenance of Highway and violated the waterfall mechanism as enumerated in Clause 3.3 of Escrow Account Agreement pending the writ petition being W.P. No.7450/2020 filed by the Corporate Debtor before the Hon'ble High Court of Telangana to follow the Waterfall Mechanism, and the same is pending. Hence, the subject matter is *sub judice*.

13. Ld. Sr. Counsel further submitted that, the National Highways Authorities of India, vide its letter dated 29th October, 2022, suspended the toll operations by the Corporate Debtor and taken over the control of the Toll operations and the Escrow Account and the Corporate Debtor had been kept outside the Escrow Account since then. Subsequently, the NHAI had terminated the Concession Agreement on 17.03.2023 in a high-handed manner. Therefore, the Corporate Debtor had absolutely no role in the project from the date of suspension of the toll operations, since the NHAI had taken over the Road Project Asset and the Escrow Account

Control by leaving the Corporate Debtor outside, which indicates that there is no liability whatsoever on the part of Corporate Debtor which claimed by the Financial Creditor herein. It is further submitted that, the Concession Agreement dated 15.06.2006 under Clause 32.2 enumerate that upon the termination of the Concession Agreement by NHAI, it is the NHAI alone which shall pay the 90% of the debt due less insurance claims (if provided) as termination payment. As per the Escrow Agreement dated 02.12.2006, NHAI shall deposit the termination payments to the escrow account. It is further submitted that, the balance amount of 10% also shall be assigned to NHAI, since NHAI had replaced the role of Corporate Debtor from the date of termination of the Concession Agreement thereby no liability would cast upon the Corporate Debtor. If that being the case, the Financial Creditor ought to have proceeded against the NHAI for the alleged claim but not from the Corporate Debtor in view of the above circumstances, as the Corporate Debtor is relieved since the Financial Creditor chose to get the payment from NHAI by handing over the Asset to NHAI.

14. Ld. Sr. Counsel also submitted that, Corporate Debtor has submitted its One Time Settlement (OTS) proposal to the Financial Creditor and deposited an amount of Rs.6 Crores in No-lien Account

shared by the Financial Creditor. However, the Financial Creditor had rejected the OTS proposal even after appropriation of the amounts from the Escrow Account as stated supra, with an ill intention to take the advantage of default and termination payments from NHAI as per the Escrow Agreement.

15. According to the Ld. Sr. Counsel Insolvency of the respondent is not viable for the Corporate Debtor, for the following reasons.

- i. The Lenders, including the Company Petitioner in the consortium meeting dated 02.03.2019 have unanimously decided that the resolution plan is not viable.
- ii. The Company as well as the lenders have failed to identify an investor or buyer due to the following reasons:
 - Left over concession period is too low
 - Penalties levied by NHAI
 - Major Maintenance works with are to be undertaken.
 - Toll revenue too low.

16. Ld. Sr. Counsel placed reliance on the ruling of Hon'ble Supreme Court in Vidarbha Industries Power Limited v. Axis Bank, (2022) 8 SCC 352 (Para 61), wherein it was held that the adjudicating authority is required to consider the feasibility of initiation of Corporate Insolvency Resolution Process, and it should consider the overall financial health and

viability of the Corporate Debtor. And contended that instead of seeking admission of the respondent into insolvency resolution, the petitioner is having the following options as per the Concession Agreement:

- i. Corporate Debtor's OTS proposal by leaving the asset to Corporate Debtor.
- ii. Substitution of the Concession as per the Substitution Agreement by appropriating the Asset to Substituter.
- iii. By ignoring the Corporate Debtor and availing the 90% termination payment as per the Concession Agreement, having chosen of the option by the Financial Creditor, 90% and by handing over of the asset to NHAI.

17. According to the Ld. Sr. Counsel having chosen the 3rd option, the respondent is relieved from its position as Corporate Debtor, thereby NHAI had virtually entered into the shoes of Corporate Debtor. Hence the respondent/Trichy Tanjore Expressways Limited, is no longer in the status of Corporate Debtor as on date, since no liability exists on its part.

18. Having heard the Ld. Counsels and on careful perusal of the record, we state that a bare reading of definition of 'debt' contained in the Concession Agreement discloses in unequivocal terms the said definition excludes the principal sum that had fallen due for repayment one year prior to termination date, unless such repayment had been rescheduled

with prior consent of NHAI. Since it is nobody's case that NHAI had consented for rescheduling the payment, NHAI is not liable for the principal sum that had fallen due for repayment one year prior to termination date. The letter of termination being dated 17.03.2023 the date to be reckoned for the purpose of excluding the retrenchment compensation will be one year prior to 17.03.2023. The present company petition has been filed on 04.03.2022 claiming default in payment of financial debt of a sum of Rs.79,71,45,619.23 as on the date of filing this petition. Therefore, we are unable to find any force in the submission of the respondent that NHAI had virtually entered into the shoes of Corporate Debtor; as such no liability exists on the part of the Corporate Debtor towards the petitioner as on date, as such the present petition is not maintainable against the respondent and the said submission shall invariably fail.

19. Moreover, the fact that NHAI, under Termination Letter dt.17.03.2023 under the head 'Non-Payment of Damages/Payment due to NHAI' has claimed a sum of Rs.345 Crores from the respondent under various headings also dislodges the plea of the respondent that termination compensation extinguishes the subject liability of the respondent towards

the petitioner inasmuch as even assuming that the entire termination compensation which is yet to be crystalized when goes to the escrow account for apportioning among all the consortium of lenders, considering the debt exposure of the respondent towards the petitioner, the liability of the respondent towards the petitioner will not be reduced below one crore rupees in the light of the facts and the figures placed before us. In so far as the ruling in re, Vidarbha Industries Power Limited Vs. Axis Bank (supra), wherein it was observed that that the *Adjudicating Authority, should consider the overall financial health and viability of the Corporate Debtor for admitting to CIRP process.* We aptly refer herein to the following pleadings in the counter and the written submissions filed by the respondent.

Counter dt.23.05.2022 page 6 para 14

“... Since beginning of operation (2011), the Respondent has been incurring losses and the cumulative financial losses till end of March 2021 is Rs.196.79 Crores against the paid-up capital of Rs.64.65 Crores i.e., entire net worth was eroded and still Respondent is going through financial loss. ...”

CD Written Submissions dt.08.07.2023 page 7 para 7.ii

No investor or buyer is interested due to:

- Penalties levied by NHAI
- Major Maintenance works are to be undertaken

- The termination of the Concession Agreement by NHAI and taking over the project has resulted in the disappearance of the Company's substratum.

Therefore, even according to the respondent since the beginning the respondent has been incurring losses and the cumulative financial losses till end of March 2021 is Rs.196.79 Crores against the paid-up capital of Rs.64.65 Crores i.e., entire net worth was eroded and still Respondent is going through financial loss. That apart, admittedly, the claim by NHAI of a sum of Rs.345 Crores from the respondent under the head, 'Non-Payment of Damages/Payment Due to NHAI' is staring at the respondent.

Therefore, even according to the respondent the financial health of the respondent being very poor the ruling in re, Vidarbha Industries Power Limited Vs. Axis Bank (supra) cannot be applied to the case on hand.

20. We usefully refer, herein to the ruling of Hon'ble NCLAT, Principal Bench, in Company Appeal (AT) (Insolvency) No. 1526 of 2022, in re, Sunder Nagar Cooperative Housing Societies Union limited vs State Bank of India, wherein it was held that,

"We have heard Counsel for the parties and are of the considered opinion that in the given facts and circumstances of the case Vidarbha Industries Power Limited (Supra), relied upon by the Appellant, is not applicable because 14 Company Appeal (AT) (Insolvency) No. 1526 & 1527 of 2022 there is a clear admission

on the part of the Corporate Debtor of the amount of debt due in view of the letter dated 31.01.2018”.

21. In our discussion on point 1, supra, we have firmly held that the financial debt of a sum over rupees one crore is due and payable by the respondent to the petitioner, and that the same is not paid and also applied M/s.Innoventive Industries Ltd. Vs. ICICI Bank & Anr., supra. Therefore, in the light of the ruling supra, ruling in re, Vidarbha Industries Power Limited Vs. Axis Bank (supra) cannot be applied to the case on hand.

Hon’ble Supreme Court in *M. Suresh Kumar Reddy Vs. Canara Bank & Ors.* Civil Appeal No. 7121 of 2022 decided on 11.05.2023 has held that:

“13. Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries was in the setting of facts of the case before this court. Hence, the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innovative Industries and E.S. Krishnamurthy. The view taken in the case of Innovative Industries still holds good.”

22. Therefore, in the light of our discussion and the case law as above, we reject the submission of the respondent that, the prayer for admission of the respondent into CIRP be rejected or deferred.

The point is answered accordingly.

23. Therefore, in light of our analysis on Points (1) and (2) above and the case law referred supra, we are satisfied that the petitioner had established existence of financial debt of a sum over Rs.1 crore due and payable by the respondent and its non-payment.

24. We also found that the petition is in order. Hence, we hereby admit the Company Petition.

25. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(A) Corporate Debtor, **M/s Trichy- Thanjavur Expressways Limited** is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of

2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(D) 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, concessions, clearances or a similar grant or right during the moratorium period.

(E) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(F) That the order of **moratorium** shall have effect **from the date of this order** till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-

Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints **Shri Raghu Babu Gunturu** having Registration No. IBBI/IPA-002/IP-N00025/2016-2017/10053 as Interim Resolution Professional, whose contact details are:

e-mail ID: raghu[at]ezresolve[dot]in

Address: T-402B, Technopolis, Chikoti Gardens
Begumpet, Hyderabad – 500016.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP has filed Form-2 dated 22.02.2022. His Authorization for Assignment is valid till 03.11.2023. This information is available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.

(K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.

26. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

27. Accordingly, this Petition is admitted.

Sd/-
(Charan Singh)
Hon'ble Member (Technical)

Sd/-
(Dr.Venkata Ramakrishna Badarinath Nandula)
Hon'ble Member (Judicial)

Sridher