

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB)/261 (MB)/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of Insolvency and bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Canara Bank

[PAN:AAACC6106G]

...Financial Creditor/Applicant

Versus

Indira Container Terminal Private Limited

[CIN:U63032MH2007PTC174100]

...Corporate Debtor/Respondent

Order Pronounced on 09.05.2024

Coram:

Hon'ble Member (Judicial)	:	Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical)	:	Sh. Prabhat Kumar

Appearances:

For the Financial Creditor	:	Mr. Ishtiaq Ali, Advocate
For the Corporate Debtor	:	Mr. Aman Kacheria, Advocate.

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Canara Bank** ("hereinafter referred to as the Financial Creditor/Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Indira Container Terminal Pvt. Ltd.** ("hereinafter referred to as the Corporate Debtor/Respondent/ICTPL").
2. The Applicant is a body corporate constituted under the Banking Companies (Acquisition and transfer of Undertaking) Act, 1970 having PAN:AAACC6106G with its head office at 112, J.C. Road, Bangalore - 560002.
3. The Respondent is constituted under the Companies Act, 1956 having Company Identification no. U63032MH2007PTC174100 with its head office at ICT Office, Indira Dock, Green Gate, Mumbai Port, Mumbai, Maharashtra - 400038. Its authorized share capital is Rs. 1,20,00,00,000/- and Paid up share Capital is Rs. 1,01,56,60,000/-. It is engaged in the business of operating and managing including development, modifications, and augmentation of the Ballard Pier Station Container Terminal and also development, constructions, and management of the Offshore Container Terminal in Mumbai Harbour.
4. The Applicant sanctioned the Term Loan of Rs. 210 Crore and communicated the same by its sanction letter dated 07.11.2008 stating the terms and conditions therein. The terms said terms and conditions were duly accepted.
5. As per the sanction letter of the said facility, the Corporate Debtor executed the following documents;

- i. Common Loan Agreement dated 14th November 2008.
 - ii. Indenture of Mortgage dated 18th December 2008.
 - iii. Lenders Agent Agreement dated 14th November 2008.
 - iv. Security Trusteeship Agreement dated 14th November 2008.
 - v. Inter-Creditor Agreement dated 14th November 2008.
 - vi. Trust and Retention Account Agreement dated 14th November 2008.
 - vii. The Corporate Debtor also filed the necessary changes before it secured Loan.
6. The account of the Corporate Debtor was classified as the Special Mentioned Account in accordance with the guidelines of the Reserve Bank of India ("RBI") vide Master Joint Lenders Agreement dated 2nd July 2014 since Financial Creditor observed financial stress in the account of the Corporate Debtor.
7. The Corporate Debtor approached the Petitioner on 29.12.2014 for restructuring of the Credit Facility availed by the Petitioner and Petitioner considered the request of the Corporate debtor and executed the Debt Restructuring Agreement dated 29.12.2014. However, the Regulatory timeline for the restructuring was lapsed on 31.03.2015 and the restructuring could not be implemented by the Corporate debtor.
8. The Applicant vide several letters to the Corporate Debtor had requested to regularize the accounts. Owing to the default in payment of interest and principal amount the account of Corporate Debtor slipped to NPA on 03.12.2013 in the Books of Applicant in 2013 in terms of guidelines issued by the RBI from time to time. Since the account had been classified as NPA, the Financial Creditor issued Demand Notice under Section 13(2) of the SARFAESI ACT, 2013 by letter dated 07.11.2008.
9. Corporate Debtor by the Revival Letter dated 6th June 2011, 13th August 2013, 1st December 2015, and 02nd January 2018 acknowledged the debt as well as the execution of loan and security documents by it for the purpose of Section 18 of Limitation Act, 1963. The Financial Creditor has filed

recovery application before the Hon'ble Debt Recovery Tribunal Mumbai ("DRT-1"), having suit number 51/2020 on February 8, 2019, which is pending.

10. The Corporate Debtor has failed to pay the dues, the principal outstanding amount being Rs. 118,76,27,878.85 (Rupees One Hundred Eighteen Crore Seventy-Six Lakh Twenty-Seven Thousand Eight Hundred Seventy-Eight and Eighty Five paisa only) Interest and others being Rs. 193,76,19,099.10 (Rupees One Hundred Ninety-Three Crore Seventy-Six Lakh Nineteen Thousand Ninety-Nine and Ten paisa only) amounting to Total Rs. 312,52,46,977.95 (Rupees Three Hundred Twelve Crore Fifty Two Lakh Forty Six Thousand Nine Hundred Seventy Seven and ninety five paisa only).
11. The Corporate Debtor had made an OTS proposal which was to be considered by the consortium lenders in which the Applicant is one of the member. However, the settlement did not materialize, hence the present petition.
12. The financial statement of Corporate debtor for Financial Year of 2022-23 has been placed on record by the Financial Creditor vide additional affidavit dated 05.04.2024.
13. The Respondent has filed Interlocutory Application no. 1593/2024 under section 65(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Adjudication (Application to Adjudicating Authority) Rules, 2016 before this bench.

Submissions of the Respondent:

The Respondent has contested the present Petition on the following grounds:

14. **Barred by limitation:** The credit facility was provided in the year 2008 and was restructured in the year 2014. The last acknowledgement is dated 02.01.2018 and there is neither an acknowledgement nor part payment after that. Since the Petition is filed in year 2023 it is beyond the period of limitation even if the said acknowledgement is taken into account.

15. The Applicant had financed a project and not merely lent to the Respondent. The credit facility was sanctioned after appraisal and due diligence of project receivables, as the repayment was to come from the income generated from the project, and not from any other funds of the Respondent. The Respondent has relied upon the decision given in the matter of *Vidarbha Industries vs Axis Bank* by the Hon'ble Supreme Court.
16. After issuing the loan recall notice dated 07.06.2018, the Applicant Bank along with other Lenders had participated in the settlement of disputes with MBPT (The Board of Trustees of the Port of Mumbai), and under the Concession Agreement, the Lenders including the Applicant are entitled to termination payment. Hence the Applicant has waived its rights to proceed under the Loan Agreement with the Corporate Debtor.
17. The brief facts in relation to project are as follows :
 - i) The Board of Trustees of the Port of Mumbai, now known as (MbPT) was desirous of implementing a Project envisaging Ballard Pier Station (BPS) comprising of an Offshore Container Terminal (OCT) in the Mumbai Harbour to be implemented in accordance with the Major Port Trusts Act, 1963 and the Guidelines through Private Sector Participation on Build, Operate and Transfer (BOT) basis. MbPT accepted the Proposal submitted by the Consortium of Gammon India Limited (GIL), Dragados Servicios Portuarios Y Logisticos SL of Spain now known as Noatum Ports Sociedad Limitada Unipersonal SLU (NPSL) and Gammon Infrastructure Projects Limited now known as AJR Infra And Tolling Limited (AJRITL). The Consortium incorporated a 50:50 Joint Venture Company, the Respondent (ICTPL), as a Special Purpose Vehicle (SPV) to implement the Project. GIL, and AJRETL held 50% equity stake while the balance 50% stake was held by NPSL and accordingly the License Agreement (LA) was signed between MBPT and ICTPL.
 - ii) The LA required the Licensee to take over the container operations of the BPS project from MbPT and operate it for a maximum period

of 5 years commencing from the Date of Award of the License or 2 years from the commissioning of the Offshore Container Terminal (OCT) Project whichever is earlier. ICTPL was required to pay 35.064% of the Gross Revenue earned from operating container cargo operations from BPS Project on monthly basis to MbPT as Revenue Share. As such ICTPL was allowed under the LA to operate the BPS terminal maximum upto 03.12.2012. ICTPL handed over the BPS terminal back to MbPT on 03.12.2012 as per the terms of LA.

- iii) The LA also contained provisions for Offshore Container Terminal (OCT). As per the LA an OCT was required to be developed which could handle large container cargo vessels. The LA required ICTPL to construct two offshore berths and construct a "Y" Trestle. ICTPL was also required to procure other necessary equipment and was to operate the OCT for a period of 27 years and earn revenue from handling container cargo operations.
- iv) The Project cost for development of the OCT project and for operations and maintenance of BPS project was estimated at Rs 1015.66 Crores. A consortium of 5 Lenders led by the Applicant after doing the required appraisals individually provided sanctions for a term loan of Rs 812.53 Crores. The balance amount of Rs 213.13 Crores was to be infused by the two joint venture partners (Promoters) as equity/quasi equity.
- v) A Common Loan Agreement (CLA) between all the consortium of 5 lenders (Lenders) and ICTPL as the borrower was executed. Out of the total sanctioned amount of Rs. 812.53 Crores the Lenders had infused only Rs. 493.78 Crores while the Promoters had infused Rs. 138.79 Crores till date. ICTPL was required to repay the entire loan in 52 structured instalments commencing from 03.03.2012 (i.e. 2.25 years after commencing operations from the Scheduled Commercial

Operation Date (SCOD)/ Date of Commencement of Commercial Operations (DCCO) of 03.12.2010) upto 03.12.2024.

18. The Respondent has submitted that MbPT was required to perform its obligations and hand over the said assets to ICTPL to enable ICTPL, to perform its share of obligations under the LA. The LA required both MbPT and ICTPL to perform obligations within specific time limits for implementation of the Project. However, due to defaults by MbPT in fulfilling its obligations, ICTPL could not undertake its share of obligations. The Respondent has placed on record the delays committed by MbPT. MbPT, on recommendations of the Independent Engineer, M/s Scott Wilson (India) Private Limited, (appointed under the terms of LA) had to extend the SCOD/DCCO, 3 times (first one upto 11.09.2012, Second one upto 31.03.2014 and last one upto 31.01.2016) for their inability to complete their share of obligations under the LA.
19. ICTPL has submitted interim claim of Rs. 904 Crores to MbPT for reimbursement of additional costs on account of delays, which have been rejected by MbPT. The aforesaid delays of over 13 years by MbPT increased the Project cost substantially. From the originally envisaged cost of Rs 1015 Crores the envisaged Project Cost is estimated at over Rs 2500 Crores.
20. ICTPL inspite of the Project not achieving SCOD/DCCO commenced the payment/refund of loan instalments from 03.03.2012 by borrowing funds from its Promoter AJRITL. A total amount of Rs 37.77 Crores was infused by the Promoter AJRITL to enable ICTPL to meet the loan repayment schedule under the CLA and pay interest on the loan which was at the assumption that MbPT would complete its obligations to enable ICTPL to complete theirs under the LA and commence commercial operations. This shows the Respondents and its Promoter's intention of ensuring that Lenders interest are protected. However, with continuing delays it was difficult for ICTPL, and the Promoter to continuously infuse additional funds. Moreover, the Lenders had stopped further disbursement of loan after disbursing Rs 494 Crores out of Rs 812 Crores sanctioned.

21. The Lenders led by the Lead Bank, Canara Bank, approached Reserve Bank of India (RBI) and submitted a proposal for a One-time Special Dispensation for restructuring of the account and extending the SCOD/DCCO upto 31.12.2015 vide their letter dated 29.10.2013. In the said application the Lenders confirmed that delays were not attributable to ICTPL and as such have sought relief from RBI for setting up of the SCOD/DCCO on realistic basis at 31.12.2015. The Applicant again approached RBI vide their letter dated 28.03.2014 requesting RBI to allow One Time Special Dispensation by extending the SCOD/DCCO upto 31.03.2016 and allowing the Lenders to restructure the account.
22. It is pertinent to note that even though the Lenders under the leadership of Canara Bank were seeking approval for extension of SCOD/DCCO and restructuring of the loan account, ICTPL's Promoter AJRITL, had infused additional funds in the form of Intercorporate Loans amounting to Rs 37.77 Crores, of which Rs 16.67 Crores were used for payment of loan instalments which as per the Repayment Schedule in the CLA commenced from 03.03.2012 even though commercial operations at OCT had not commenced. This was done only to ensure that the account remains standard, and the balance amount of Rs 21.10 Crores (Rs 37.77 Crs less Rs 16.67 Crores) was mainly used for meeting the Loan interest servicing requirements upto 31.03.2014.
23. However, application by the Application was not accepted by RBI. Hence, the very act of Canara Bank to seek extension of SCOD/DCCO to 31.03.2016, shows that Canara Bank was confident in project commencing commercial operations from 31.03.2016, However, with RBI not approving the extension of SCOD/DCCO, Canara Bank and other Lenders classified the account as NPA retrospectively and stopped further disbursement of funds. It should be noted that the Applicant continued to disburse its share of loan to ICTPL upto 26.03.2015 (Rs 31,21,08,000/-) while declaring the account as NPA 03.12.2013.

24. ICTPL in the year 2012 had approached MbPT that the national asset it had created be "Put to Use" so that atleast some Revenue can be generated from handling cargo which would improve the Project's viability.
25. MbPT informed ICTPL vide letter dated 25.06.2015 that it would charge Revenue Share @ 55% against 35.064% stated in the LA. Based on discussions with the Lenders, it was agreed that after paying Revenue Share of 55% to MbPT, out of the balance revenue from trial operations 20% will be used for the operations and maintenance expenses to carry-out the trial operations and the balance 25% will be used for meeting Lenders debt servicing obligations. From the commencement of the above referred alternate interim operations upto 31.03.2022, ICTPL has earned revenue of Rs.568.66 Crores, of which Rs.312.71 Crores (55%) has been paid to MbPT as Revenue Share while Rs.165.19 Crores (29%) has been paid to Lenders while Rs.90.75 Crores (16%) is released for operational and maintenance expenses.
26. Hence, the Lenders who control the release of funds since they control the Escrow Bank Accounts in which the revenue funds are deposited, have against their own sanctions drawn 29% of funds (4% more i.e., around Rs 23 Crores more) from the total revenue earned by ICTPL upto 31.03.2022 against 25% agreed upon in their own sanctions. As a result, ICTPL is unable to carryout regular maintenance work of the offshore berths.
27. ICTPL registered itself under the new Project Management Group (PMG) formed by Government of India (GoI) under the Cabinet Secretariat in November 2014 to take advantage of the GoI's initiative to kick-start stalled projects. It was allotted Sno 947 and Project ID of CS 4000021. MbPT was invited by MoS vide their letter dated 15.12.2014 to attend the meeting called by PMG to discuss all matters relating to the OCT project. As per the Minutes of Meeting, all matters including classification of Loan Account as NPA, delays by MbPT in completing dredging, filling of PD and VD, Security clearance for container cargo equipment from ZPMC of China was taken-up and deliberated upon with officials from MOS, RBI, Home

Ministry and representative from MbPT, ICTPL and the applicants etc. in the PMG meetings.

28. Based on these meetings ICTPL, MbPT and the Lenders with support from the MoS held several rounds of discussions to revive the Project on a permanent basis. A draft Settlement Agreement was prepared. The final copy of the draft Settlement Agreement was sent by MbPT for its "In Principle" approval from ICTPL. As per the said email the Standing Finance Committee of Government of India had approved the restructuring of the Project and had recommended for the Cabinet's approval for which MoS is moving the Cabinet Note. The Lenders gave their individual sanctions for the said Draft Settlement Agreement.
29. Discussions were held with officials of MoS for finalizing the revival plan based on the Draft Settlement Agreement. The entire terms of the Draft Settlement Agreement were discussed and approved with minor changes for submission to Cabinet/CCEA which was accepted by all the stakeholders. In the Minutes of Meeting (MoM), of Niti Ayog dated 20.03.2018, forwarded to ICTPL on 15.05.2018 by MbPT, that under Para 4 of the MoM, Lenders who were represented by Canara Bank when invited by the committee to express their views, Canara Bank had categorically stated that the option of "NCLT is not good for them". Further under Para 6(d)(ii) it was also stated that all the three parties i.e. Lenders, ICTPL and MbPT had agreed in principle to enter into a Settlement Agreement.
30. In its reply to Canara Bank's recall notice, vide letter dated 11.07.2018, ICTPL, requested Canara Bank and other Lenders to wait for decision by the Cabinet/CCEA. ICTPL, requested Lenders to withdraw the Recall Notice as at that juncture it was unwarranted and uncalled for. However, vide letters dated 26.07.2018, Canara Bank informed ICTPL that it has invoked the Substitution clause.
31. ICTPL approached the Hon'ble High Court of Delhi filing a Writ Petition on 09.08.2018 praying for implementing the decisions taken in the Joint Meeting held under the Chairmanship of Niti Ayog in New Delhi on

- 20.03.2018. An Order was passed by Hon'ble High Court of Delhi on 14.08.2018 wherein ICTPL was permitted to make representation and that Canara Bank who had issued a Loan Recall Notice dated 07.06.2018 were directed not to implement their notice.
32. MbPT, which had earlier circulated the draft Settlement Agreement it had approved, made a complete U-turn and vide their letter dated 27.09.2018 rejected the Draft Settlement Agreement levelling malicious and false allegations.
33. The said failures of MbPT has been recorded and certified by Independent Engineer appointed under LA when they recommended for extension of SCOD/DCCO; Canara Bank in their letter requesting Reserve Bank of India for Special Dispensation to extend the SCOD/DCCO; and MoM held under the Cabinet Secretariat, Government of India, Project Monitoring Group. On the other hand, the Lenders led by Canara Bank had without waiting for the decision of the Cabinet Committee of Economic Affairs (CCEA) of Government of India with regards to the approval of Settlement Agreement, issued Loan Recall Notice on 07.06.2018 and invoked Substitution clause vide their letter dated 26.07.2018.
34. ICTPL vide their letters dated 05.10.2018 requested MbPT to pay interim claims of Rs 904 Crores, reconsider the rejection of the Draft Settlement Agreement else treat the letter dated 05.10.2018 as ICTPL's Dispute Notice under Clause 23.1 of the LA on account of MbPT's defaults and called upon MbPT to resolve the disputes amicably and to treat the letter as Notice of Termination under Clause 19.1 of the LA on account of MbPT's defaults.
35. ICTPL tried to settle the matter amicably but since there was no headway in the amicable settlement process, ICTPL notified MbPT vide letter dated 18.02.2019 of initiating, arbitration process under clause 23.3 of the LA.
36. ICTPL was required to file an application with Hon'ble High Court Bombay under Section 9 of the Arbitration and Conciliation Act, 1996 and amendments thereof on 09.07.2019 for seeking relief from the Hon'ble High Court Bombay against any coercive actions by MbPT. The Hon'ble High

Court of Bombay held that ICTPL can file an application under Section 17 of Arbitration and Conciliation Act, 1996 for seeking relief and all contentions made by both the parties are to be agitated before the Arbitral Tribunal.

37. The Arbitral Tribunal was constituted and hearings commenced thereafter. Meanwhile joint meeting was held for settlement of disputes under the Conciliation process. The Lenders agreed to consider the Conciliation process subject to their approvals by their respective authorities. MbPT vide their letter dated 08.10.2021, requested ICTPL to give consent to the Conciliation process for resolving all the disputes raised in the Arbitration by a Conciliation and Settlement Committee (CSC). As part of its request Canara Bank, being the Lenders representative, conveyed to the Chairman Conciliation and Settlement Committee for major ports vide their letter dated 20.06.2022 that all the Lenders have given their consent approval with a rider that ICTPL be paid only 25% equity value, MbPT to get valuation done and if valuation is less than Rs. 300 Crores then MbPT to make total payment of Rs 300 Crores to Lenders and ICTPL.
38. In the meantime, ICTPL has been submitting Resolution Plans to the Lenders for amicable settlement. These plans could not be implemented as they also depended on MbPT granting permissions to ICTPL to handle All Clean Cargo from the OCT berths. Due to failure of the resolution plans, ICTPL submitted a One Time Settlement Proposal on 02.03.2022 for Rs.150 Crores to the Lenders taking the risk of uncertainty of MbPT's continuing its approval for the alternate interim operations. In the discussions following the proposal submitted to the Lenders, ICTPL has shown its willingness to discuss the settlement offer for an amicable settlement.
39. However, Canara Bank, the Lead Lender again without waiting for the CSC to complete the process on conciliation in which Canara Bank is also an active participant nor providing any response to the One Time Settlement Proposal again prematurely initiated the Corporate Insolvency Resolution

Process (CIRP) under the IBC 2016. This shows that Canara Bank is not interested in any Conciliation Process initiated by the Government of India nor is ready for any amicable settlement and intends to pursue the process under IBC 2016 which it itself had in the meeting with Niti Ayog had termed the NCLT process as not beneficial to Lenders interests.

40. Moreover, the Respondent is an SPV and its only asset is a Concession Agreement. Consequently, no resolution is either permissible or possible unless and until the Government of India/Ministry of Shipping/MbPT agrees to any form of resolution under the Concession Agreement including payments to the Lenders thereunder. This exercise is under progress and therefore, no purpose whatsoever shall be served and/or achieved in the CIRP under IBC. The Concession Agreement inexplicably connects the Lenders thereto and therefore; all resolutions must be within the four corners of the Concession Agreement since any modification thereof without the approval of MbPT is not permissible.

Submissions of the Applicant vide Rejoinder:

41. Vide its rejoinder, the Applicant states that the application is under limitation in accordance with the provisions of section 18 of limitation Act, 1963 ("Limitation Act"). The Respondent has admitted the fact that Escrow Account/Trust & Retention Account is being maintained by the Respondent with the Escrow Bank wherein whatever revenue is earned by the Corporate Debtor from activities of Projects in accordance with the provisions of License Agreement, is regularly deposited in the Escrow Account/ Trust & Retention Account and the payment to the Lenders and other beneficiaries including the Corporate Debtor is being made from time to time. The revenue as deposited in the Escrow Account is being shared with the ratio of 55:25:20 monthly. On the basis of the certificate issued by the chartered accountant firm, etc., the Applicant is reserving part payment from the Corporate Debtor on monthly basis, therefore, pursuant to the

section of 19 & 20 of Limitation Act, a fresh period of limitation is to be computed from the date of payment made every month by the Escrow Bank.

42. Despite the monthly payment received by the Applicant, the outstanding amount of the Applicant is Rs. 113,82,92,335.81/- as the principal amount, and Rs. 225,97,65,178.55/- as interest including other monies Rs. 339,80,57,514.36/-. Moreover, present promoters/ directors are not in a position to implement the Projects as they are not infusing their fund as they promised under the financing documents with the lenders including the Applicant.
43. The Applicant further submits that pursuant to MoS Guidelines there is no bar that the lenders cannot initiate the action for resolution of insolvency under Section 7 of the Code.

Findings-

44. Heard learned counsel for both the parties and perused the material produced on record.
45. There is no dispute that there exists a financial debt and the same is in default. Further, the Financial Creditor is getting monthly payments from trust & retention account, wherein the operation revenue of Corporate Debtor is getting deposited, in accordance with understanding with MBPT and Corporate Debtor. Since there is a monthly recovery towards the Financial Debt due from the Corporate Debtor's trust and Retention account, it cannot be said that this application is barred by limitation because each recovery from such account further extends the period of limitation. Nonetheless, the continued withdrawal from such account of the Corporate Debtor by the Financial Creditor coupled with acknowledgement of this fact by the Corporate Debtor in itself constitutes the acknowledgement of debt. Moreover, vide its revival letter dated 06.06.2011, the Corporate debtor has clearly admitted the liability to the Applicant. The same is evident upon perusal of other documents produced on record by the Applicant. Accordingly, we hold that this application is

within limitation period and there exists a financial debt and default in repayment thereof.

46. The Respondent has pleaded that it is an SPV and its only asset is a Concession Agreement. Consequently, no resolution is either permissible or possible unless and until the Government of India/Ministry of Shipping/MbPT agrees to any form of resolution under the Concession Agreement including payments to the Lenders thereunder. This exercise is under progress and therefore, no purpose whatsoever shall be served and/or achieved in the CIRP under IBC. The objective of the code is the resolution of stress of the Corporate Debtor and any resolution, in accordance with commercial wisdom of its Financial Creditors, is binding on all stakeholders including the government and its functionalities. Accordingly, we do not find any substance in this regard, as put forth by the Corporate Debtor.
47. The Corporate Debtor has also pleaded that they have claim of Rs. 906 Crores against MbPT arising from delay in implementation of the project attributable to the part of MbPT. The Respondent has further relied upon the decision of the Hon'ble Supreme Court in Vidarbha Industries Ltd. We note that, though the claim was made against MbPt however the same was rejected and even the Corporate Debtor's request for reconsideration could not pass through. Accordingly, it cannot be said that any amount is recoverable from MbPT on this account in fact and circumstances of the case. The reliance placed on Vidarbha Industries Ltd. is ill founded and this decision came to be delivered in peculiar facts and circumstances of the case as held by the Hon'ble Court while disposing of Review Petition by Order dated 22nd September 2022 that "*The elucidation in paragraph 90 and other paragraphs were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case*". This decision was later on dealt with in the case of ***M. Suresh Kumar Reddy Vs. Canara Bank & Ors (2023) ibclaw.in 67 SC*** by the Hon'ble Supreme Court and it was held at para 13 that "*Thus, it was clarified by the*

order in review that the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries(((2018) 1 SCC 407)) and E.S. Krishnamurthy(((2022) 3 SCC 161)). The view taken in the case of Innoventive Industries(((2018) 1 SCC 407)) still holds good". In the present case, the Corporate Debtor has itself submitted that no resolution is either permissible or possible unless and until the Government of India/Ministry of Shipping/MbPT agrees to any form of resolution under the Concession Agreement including payments to the Lenders thereunder. Accordingly, we are of considered view that there exist no exceptional circumstances so as to warrant a discretionary power, even if one is said to vest with this tribunal.

48. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. The application made by the Financial Creditor is complete in all respects as required by law. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
49. The Financial Creditor has proposed the name of **Mr. Dinesh Kumar Aggarwal**, Registration No. **IBBI/IPA-002/IP-N00890/2019-2020/12843**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
50. It is, accordingly, hereby ordered as follows: -
51. The Petition bearing **CP (IB)/261 (MB)/2023** filed by **Canara Bank** [PAN:AAACC6106G], the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency

Resolution Process (CIRP) against **Indira Container Terminal Pvt. Ltd.** [CIN: U63032MH2007PTC174100], the Corporate Debtor, is **admitted**.

52. There shall be a moratorium under section 14 of the IBC, in regard to the following:

- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

53. Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

54. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

55. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
56. **Mr. Dinesh Kumar Aggarwal**, Registration No. **IBBI/IPA-002/IP-N00890/2019-2020/12843**, having registered address at 1507 07, Highland Park, Kolshet Road, Behind D Mart, Thane, Maharashtra-400607, **Email ID: dinesh.aggarwal31@gmail.com**, **Mobile:07042544044** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
57. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
58. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
59. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
60. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in

this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

61. In view of admission of company petition into CIRP, IA 1593 of 2024 is disposed of in terms of order in company petition.

Sd/-

Prabhat Kumar
Member (Technical)
<MK>

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)