



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
C.P.(IB)/365(AHM)2024

Order under Section 7 IBC

IN THE MATTER OF:

HDFC Bank Limited

V/s

JRA Infrastructure Limited

.....Applicant

.....Respondent

Order delivered on: 25/04/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

SD

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

SD

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

CP(IB)/365(AHM)2024

[An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

In the matter of **M/s. JRF Infrastructure Ltd.**

HDFC Bank Limited

Through its authorised representative

Mr. Anil Sankhla, Senior Manager

Having its registered office at:

HDFC Bank House Senapati Bapat Marg,

Lower Parel (West), Mumbai,

Maharashtra – 400 013 and

Having its Corporate Office at:

HDFC Bank Ltd., Department for Special

Operations, 3rd Floor, Shivalik-III, Nr.

Drive in Cinema, Drive in Road, Bodakdev,

Ahmedabad – 380054, Gujarat.

...Applicant/Financial Creditor

VERSUS

M/s JRA INFRASTRUCTURE LIMITED

Having its registered address at:

Ashok Villa, Opp. Old Adarsh School,

Deesa, District Banaskantha – 385535, Gujarat.

...Respondent/Corporate Debtor

Order pronounced on: 25.04.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)



**SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER
(TECHNICAL)**

A P P E A R A N C E

For the Applicant : Mr. Jaimin Dave, Adv. a.w. Ms.
Hirva Dave, Adv.

For the Respondent : Mr. Manish Bhatt, Sr. Adv. a.w.
Mr. Munjaal Bhatt, Adv.

O R D E R

1. The Present Application was filed on 22.11.2024 by the Applicant- HDFC Bank Limited (hereinafter referred to as **“Applicant/Financial Creditor”**) against the Respondent- M/s. JRA Infrastructure Ltd., (**“Respondent/Corporate Guarantor”**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“IBC, 2016”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **“IB (AAA) Rules, 2016”**) for initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as **“IRP”**) and declare the moratorium for having defaulted payment of its



outstanding dues **Rs.13,80,41,303.38ps.** including interest.

2. **Part I of Form 1** reveals that the Applicant is a Bank which was incorporated on 30.08.1984. The Applicant is having address at: HDFC Bank House, Senapati Bapat Marg, Lower Parel (West), Mumbai, Maharashtra- 400013.
3. It is submitted that the present application has been filed by Mr. Anil Sankhla, Senior Manager, being the Authorised Representative of the Applicant. That Mr. Anil Sankhla is authorised to sign the documents on behalf of the Applicant in terms of the Board Resolution dated 22.11.2023.
4. **Part-II of the Form-1** states that the Corporate Debtor - M/s. JRA Infrastructure Limited was incorporated on 18.07.2007 under CIN: U45201GJ2007PTC051343, having its registered office at: Ashok Villa, Opp. Adarsh School, Deesa, District Banaskantha, Gujarat- 385535.
5. **Part-III of the Form-1** reveals that the Applicant has named IP Mr. Rajendra Devidas Puranik, having Registration No. IBBI/IPA-001/IP-P02029/2020-



21/13149 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). A copy of Form-AA is attached as **Annexure-D**.

6. **Part-IV of the Form-1** indicates, as on 30.06.2024, the amount in default is Rs.13,80,41,303.38ps. Further, the Applicant has issued a Notice dated 30.04.2024 to the Corporate Debtor u/s 7 of the IBC, 2016. A copy of the Notice of Demand under section 7 of the IBC is annexed in the petition as **Exhibit I**.
7. It is submitted by the Applicant that the present application, which is filed on 22.11.2024, is within the period of limitation as the first default occurred on 06.07.2022, and the application filed on 22.11.2024 is within the three-year limitation period under Article 137 of the Limitation Act, 1963.
8. In the **synopsis** filed by the Applicant along with the Company Petition, it is submitted: -
 - i. The Corporate Debtor required financial assistance in the nature of Auto Loan, Auto Premium Loan, Ultra-Light Commercial Vehicles Facility, Commercial Equipment Facility, and Cash Credit Facility for



expansion of its business. Under the circumstances, the Corporate Debtor approached the Financial Creditor at its Deesa Branch Office and requested the aforesaid Credit Facilities. Considering the documents, declarations, and assurance made by the Corporate Debtor and application of the Corporate Debtor, the Financial Creditor sanctioned various credit facilities to the Corporate Debtor, aggregating to Rs. 24,36,55,942/-. Thereafter, the Corporate Debtor passed a board resolution and accepted the following credit facilities from the Financial Creditor:

Facility No.	Loan Account No.	Rate of Interest	Loan Amount (Rs.)	Date of Disbursement
Auto Premium Loan:				
1	119833785	7.40%	36,88,000/-	07.07.2021
Ultra-Light Commercial Vehicle Loan:				
2	121794572	7.50%	9,03,769/-	02.09.2021
Auto Loan:				
3	124038195	7.50%	9,50,000/-	02.11.2021
Commercial Equipment Loan:				
4	85371347	7.35%	48,25,406/-	12.04.2021
5	85371355	7.35%	48,25,406/-	12.04.2021
6	85371504	7.35%	4,39,62,818/-	12.04.2021
7	85373249	7.35%	34,74,292/-	13.04.2021
8	85373280	7.35%	34,74,292/-	13.04.2021
9	85373305	7.35%	34,74,292/-	13.04.2021
10	85373314	7.35%	34,74,292/-	13.04.2021
11	85373322	7.35%	34,74,292/-	13.04.2021
12	85373331	7.35%	34,74,292/-	13.04.2021
13	85373346	7.35%	34,74,292/-	13.04.2021
14	85373348	7.35%	34,74,292/-	13.04.2021
15	85373353	7.35%	34,74,292/-	13.04.2021



16	85373355	7.35%	34,74,292/-	13.04.2021
17	85373361	7.35%	34,74,292/-	13.04.2021
18	85373367	7.35%	34,74,292/-	13.04.2021
19	85373369	7.35%	34,74,292/-	13.04.2021
20	85373378	7.35%	34,74,292/-	13.04.2021
21	85373392	7.35%	34,74,292/-	13.04.2021
22	85442656	7.22%	25,96,000/-	26.05.2021
23	85442662	7.22%	31,97,000/-	26.05.2021
24	85495842	7.22%	23,36,400/-	16.06.2021
25	85495847	7.22%	25,59,400/-	16.06.2021
26	85495876	7.22%	26,01,000/-	16.06.2021
27	85495880	7.22%	26,01,000/-	16.06.2021
28	85796587	7.22%	32,44,000/-	20.09.2021
29	85796596	7.22%	32,44,000/-	20.09.2021
30	85403012	7.50%	15,61,000/-	30.04.2021
31	85464513	7.22%	31,97,000/-	05.06.2021
32	85624614	7.22%	26,01,000/-	26.07.2021
33	86113972	7.22%	26,48,363/-	30.12.2021
Cash Credit Facility				
34	50200002233161	Repo Rate + Spread of 6%	10,00,00,000/-	Date of Sanction: 30.06.2021
Total			24,36,55,942/-	

That to secure the above-mentioned credit facilities, the Corporate Debtor has also executed the following documents:

- a) Board Resolution,
- b) Loan cum Hypothecation Agreement along with Schedule cum Key Fact Statement,
- c) Irrevocable power of attorney,
- d) Loan and Guarantee with Schedule and Key Facts Statement,
- e) Master Facility Agreement,
- f) Demand Promissory Note,
- g) Letter of Continuing Guarantee,
- h) Letter of Hypothecation,
- i) Memorandum Relating to Charge over fixed deposit,
- j) Letter of Continuing Security,
- k) Undertaking cum indemnity,



- l) Letter of General Lien and Set Off, and
- m) Irrevocable Power of Attorney.

The Corporate Debtor agreed to repay the aforesaid credit facilities along with the contractual rate of interest as mentioned hereinbefore for Auto Premium Loan, Ultra-Light Commercial Vehicle, Auto Loan, Commercial Equipment Loan Facilities, and for Cash Credit Facility under the terms and conditions of the respective facility agreement. Furthermore, in case of default, the Corporate Debtor was also liable to pay additional interest @ @2% per month.

After availing of the aforesaid credit facilities, the Corporate Debtor failed and neglected to pay the regular monthly instalments per the terms and conditions agreed upon under the facility agreement. On account of continuous and deliberate default on the part of the Corporate Debtor, the account of the Corporate Debtor was also declared as a Non-Performing Asset.

- ii. That as on 12.07.2022, the Corporate Debtor was liable to pay Rs. 22,00,16,341/- to the Financial Creditor.
- iii. Under the circumstances, vide legal notice dated 13.07.2022, the Financial Creditor called upon Corporate Debtor to repay the outstanding dues of Rs. 22,00,16,341/- along with additional charges



and further running interest up to the date of realisation within 14 days of receipt of this notice.

- iv. Thereafter, once again, vide legal notice dated 22.07.2022, the Financial Creditor called upon Corporate Debtor to repay outstanding dues of Rs. 9,99,57,242/- due and payable under credit facility Account Number 50200002233161.
- v. That despite service of legal notices, the Corporate Debtor failed to pay the outstanding amount. Under the circumstances, on 15.11.2022, the Financial Creditor preferred Original Application being No. 523 of 2022 for recovery of an amount of Rs. 22,00,16,341/- before Ld. Debts Recovery Tribunal - I at Ahmedabad. The said Original Application is pending adjudication before the Ld. Debts Recovery Tribunal - I at Ahmedabad.
- vi. Thereafter, on 31.01.2024, the Financial Creditor issued one more demand notice to the Corporate Debtor through their advocate. Under the said demand notice, the Corporate Debtor was called upon to repay the outstanding dues of Rs. 13,53,79,956/- as on 31.12.2023, along with further running interest till the date of realisation, within 10 days of receipt of the demand notice. The said demand notice was duly served on the Corporate Debtor and its director.



- vii. As on 30.06.2024, the Corporate Debtor is liable to pay to the Financial Creditor an amount of Rs. 13,80,41,303.38/-, the details whereof are as under:

Sr. No.	Loan Account Number	Outstanding Amount (Rs.) due as on 30.06.2024
3	124038195	1,50,852.91/-
4	85371347	9,71,360.66/-
5	85371355	31,90,282.11/-
6	85371504	3,23,40,296.86/-
26	85495876	20,96,403.42/-
31	85464513	8,54,733.30/-
32	85624614	8,17,596.28/-
33	86113972	6,41,820.46/-
34	50200002233161	9,69,78,957.38/-
Total		13,80,41,303.38/-

- viii. However, the Corporate Debtor has failed to repay the outstanding loan amount towards various credit facilities to date.

9. To this, the respondent filed a **reply** on 10.02.2025 vide Inward Diary dated D845. The brief contentions of the Respondent in reply are as under: -

1. It is stated that Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") empowers the Adjudicating Authority to admit a Corporate Debtor into the Corporate Insolvency Resolution Process ("CIRP") upon an application made by a



Financial Creditor. However, the language used in the provision does not operate in a vacuum and is indicative of the discretionary power of the Adjudicating Authority in admitting any CD in CIRP keeping sight of the intent of the legislature. The said proposition is further fortified by the Hon'ble Supreme Court in the case of Vidarbha Industries Power Limited v. Axis Bank Limited reported in (2022) 8 SCC 352. The Hon'ble Apex Court, while expressing its view on the "discretionary power" of the Adjudicating Authority in admitting an application under Section 7 of IBC, has observed that the term "may" used in Section 7(5)(a) of IBC, renders this exercise of power discretionary and not mandatory. It has been further held that it is essential that the Adjudicating Authority may take measures to investigate relevant factors such as feasibility of initiating CIRP, financial health and viability of the Corporate Debtor and surrounding circumstances and arguments raised by the Corporate Debtor etc. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the Adjudicating Authority to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP. The relevant portion of the said judgment is being reproduced for the sake of convenience of Hon'ble Tribunal:



"The meaning and intention of Section 7(5)(a) of the IBC is to be ascertained from the phraseology of the provision in the context of the nature and design of the IBC. This Court would have to consider the effect of the provision being construed as directory or discretionary.

Ordinarily the word "may" is directory. The expression 'may admit' confers discretion to admit. In contrast, the use of the word "shall" postulates a mandatory requirement. The use of the word "shall" raises a presumption that a provision is imperative. However, it is well settled that the prima facie presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction.

On the other hand, in the case of an application by a Financial Creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the Adjudicating Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor.

The title "Insolvency and Bankruptcy Code" makes it amply clear that the statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the Adjudicating Authority (NCLT) to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP."

In the respectful submission of the CD, this is not a fit case for initiation of CIRP due to the multiple reasons mentioned hereunder and hence, the Adjudicating Authority may take these reasons under consideration.



2. Subsequently, the said dictum has time and again been adopted by various other Hon'ble Courts including this Tribunal in numerous cases. In the case of HDFC Bank Ltd. v. M/s John Energy Limited [CP(IB)/02(AHM)2022] disposed of vide Order dated 24.01.2023, this Tribunal, after taking into account the stand of the CD in their Affidavit in Reply, has taken note of the financial viability and the solvency of the CD and the liquidity crunch having impacted its repayments. After carefully considering the financial statements as well as estimated contract value of the on-going projects of the CD, this Tribunal rejected the Application filed by the FC.
3. In light of the above proposition of law, I humbly submit that FC herein is trying to utilise the provisions of IBC, for recovery of its debts which shall be demonstrated in the following portion of this Affidavit in Reply. As held by the Hon'ble Apex Court in the case of Swiss Ribbons Pvt. Ltd. v. Union of India & Ors. reported in (2019) 4 SCC 17, the primary focus of the legislation is to ensure continuation of the Corporate Debtor and that the object of the Code is the resolution and revival of the Corporate Debtor, and not simply the recovery of debt of a creditor.
4. At the outset, I humbly state and submit that the present Application is filed with a lone motive of recovering the debt due to the FC inspite of regular and timely repayments made



into other loan accounts of the present CD which are being maintained in the FC Bank. That the Application is contrary to the spirit of the IBC since the same is filed for the purpose of "recovery" and not "resolution" of the CD. Therefore, the present Application deserves to be dismissed in limine.

5. It is stated that the CD is a renowned Government "AA" Class Contractor and is engaged in the business of construction of bridges, roads, public facilities etc. by participating in various Tenders floated by instrumentalities of the State. That CD has been a major player in the market for the past 17 years and has established substantial goodwill in the market owing to the quality of work delivered by the CD. That the CD has experience of dealing in projects which are of national importance throughout various states in India. In the last three years itself, CD has bagged contracts worth Rs. 275.25 Crore. That even as on date of filing of the Application, not only is the CD a going concern, but has also been actively conducting its business by participating in competitive bidding of various tenders floated by different authorities all across India. For instance, the CD has participated in Tenders floated by the State Government of Jharkhand vide notice dated 26.11.2024 for reconstruction of road, the approximate work value for which stands at Rs. 55,00,00,000/-.



6. Furthermore, it is submitted that the CD is currently maintaining 33 Loan Accounts in the very FC Bank. The details of all such accounts are also enumerated by the FC in the Application at Page no. 2. The said business loans are majorly availed as "vehicular loans" for acquisition of vehicles utilized in the construction business of the CD. Out of 33 Loan Accounts maintained by the CD, undisputedly, dues pertaining to as many as 22 Loan Accounts have been cleared without any haircut, quite in advance even before the tenure of the specified loan as per the respective loan agreements. For the said Accounts, NOCs have also been issued by the FC Bank certifying the repayment of the entire loan amount by CD.
7. Moreover, out of the 9 Loan Accounts mentioned in the present Application by the FC as "default accounts", regular payment of EMIs is being reflected in Loan Account Nos. 86113972, 85464513 and 85624614, which is evidenced from the statement of accounts. It is crucial to note that an amount of Rs. 1,26,530/- in respect of the dues pertaining to Loan Account No. 124038195 has also been cleared as on 22.01.2025. Details as to the proof of payment for the dues pertaining to Loan Account No. 124038195 is annexed at "ANNEXURE R-4" of the Reply. Therefore, in my humble understanding, the FC ought not have taken into account the Loan Account Nos. 86113972, 85464513 and 85624614 for



the purpose of filing the present Application since there never existed any default of payment of monthly installments qua the said accounts. The tabular representation for the Loan Accounts is available at page 8-13 of the Reply.

8. A bare reading of the above table unequivocally indicates that since the time the present CD has availed loan facilities from the FC Bank from the year 2021 onwards, regular loan repayments are being reflected in numerous bank accounts. An excel sheet indicating detailed data pertaining to 33 Loan Accounts is annexed at "ANNEXURE R-5" of the Reply.
9. Moreover, it is further submitted that the CD had also availed loan facilities from three other Banks/ Financial Institution namely, Kotak Bank, Yes Bank and Tata Motors Finance Ltd. starting from Financial Year 2020-2021. It is an admitted position that the CD is not facing any issues of default in repayment in respect of the said loan facilities.
10. It is stated that the CD is currently executing numerous high-work value projects across India including the states of Gujarat, Maharashtra and NOTAP Pikkim, some of which are on the verge of completion.
11. It is submitted that currently, there are two on-going projects of the CD in the State of Sikkim for "Construction of 2-Lane Specification Road with Paved Shoulder as re-alignment (Greenfield alignment) of existing stretch between Legship to Gyalshing of NH-510 (Design chainage from km



75.000 to km 90.210) under SARDP-NE Phase 'A' on EPC mode (Package-VI)", Tender floated by NHIDCL, Sikkim for an estimated project value of Rs. 89,56,00,000/-. As on date, the cost of the work successfully executed by the CD amounts to Rs. 59,25,00,000/-. Similarly, the CD has also been awarded the Tender for "Construction of 2-lane Specification Road with Paved Shoulder as re-alignment (Greenfield alignment) of existing stretch between Legship to Gyalshing of NH-510 (Design chainage from km 58.840 to km 75.00) under SARDP-NE Phase 'A' on EPC mode (Package V. The estimated value for the said project is Rs. 1,32,00,00,000/-. As on date, the cost of the work successfully executed by the CD amounts to Rs. 79,72,00,000/-. If this Tribunal admits the CD in Corporate Insolvency Resolution Process ("CIRP") under the captioned proceedings, the progress of the above on-going projects shall come to a standstill which will not only be a national loss, but also livelihood of as many as about 350 workmen deployed at the above referred sites in the State of Sikkim would be at stake.

12. It is further submitted that the CD has also been issued Letter of Award dated 16.12.2019 for a project to be executed in Alibaug, Maharashtra for "Improvement to Alibag Roha Kanghar Wave Road SH-91 (0/00 to 85/600 km) Road to Two Laning/ Two Laning with paved Shoulders under MRIP Package (Length of Road 85.63 km) on Hybrid Annuity Basis



in the State of Maharashtra". The work pertaining to be said project is on-going and the approximate work order value for the said project is Rs. 177.78/- Crore.

13. The CD has concluded work of 4 Tenders for Road Resurfacing floated by the Ahmedabad Municipal Corporation ("AMC"). The average work value of each such Tender is about Rs. 15,00,00,000/-. The works for the said projects stands complete as on date.
14. That, apart from the amount as due and payable by AMC, CD has a crystalized claim amounting to Rs. 2,90,52,415/- to be paid by IRCON International limited (A Government of India Undertaking) for the work pertaining to "Construction of civil works up to formation including Earthwork, blanketing, minor bridges, retaining walls, drains, ground improvement works, relocation existing roads etc. from Chainage 57+800 (IR216/23-25) to Chainage 71+141.5 (IR 229/9-11) in connection with construction of Western dedicated freight Corridor phase-II Vaitarna-Sachin Section. Infra work Package 884-B" completed by the CD as on 30.11.2021. The Letter of Acceptance indicating the work order value etc. is annexed at "ANNEXURE R-9" of the Reply.
15. In fact, at this stage, it is trite to note that the said receivable amount is well within the knowledge of the FC herein as can be established by the fact that in the proceedings initiated by the FC under the Securitization and Reconstruction of



Financial Assets and Enforcement of Security Interest Act, 2002 before the Ld. Debts Recovery Tribunal, Ahmedabad Bench ("DRT") against the CD, IRCON was made a party to one of those proceedings. The Application instituted by the FC before the Ld. DRT came to be numbered as Original Application no. 523 of 2022. That upon coming to knowledge of the abovesaid receivable by the CD from the said IRCON, the present FC filed an interim application in OA no. 523 of 2022 while making IRCON a party for charging lien upon the amount of Rs.5,24,29,217/-. However, the Ld. DRT, after hearing both FC and IRCON passed the Order dated 20.11.2023 holding that since IRCON is not made a party to the main OA as well as the fact that there is no privity of contract or a tripartite agreement between IRCON and FC, IRCON being a third party cannot be bound by any order of the Ld: DRT. Hence, with these observations, the said IA was disposed of.

16. It is stated that after the disposal of the above-referred IA, IRCON has not come forward and made payment of the above-said amount to which the CD is lawfully entitled to. When inquired by the CD, IRCON stated that they have been served with a copy of summons issued by the FC and in order to avoid any legal complications, they have not made payments. However, it is unfair on part of the FC to have not brought to the knowledge of IRCON the order dated



20.11.2023 or else these amounts would also have been paid by IRCON to CD by now. In light of the above factual background, the CD has addressed a letter dated 27.01.2025 to IRCON for payment of the outstanding amount of Rs. 2,90,52,415/-.

17. Therefore, to sum it up, it is submitted that not only has the CD been a major player in the market for the past 17 years and has established substantial goodwill, but also has numerous on-going projects across India. If this Hon'ble Tribunal were to admit the CD in CIRP, factors beyond the existence of debt may be taken into account in lines with the above-cited judicial pronouncements. The object of IBC is not to penalize otherwise solvent companies that are temporarily defaulting in repayment of their financial debts by initiating CIRP.

10. A **Rejoinder** is filed by the Applicant to the reply submitted by the Corporate Debtor on 11.03.2025 vide inward diary no. D1653. The Applicant denied all the contentions raised by the respondent and made submissions in the rejoinder, which are stated as under:

- i. With respect to Paragraph No. 1 and 2, It is stated that they are formal in nature and same does not require specific response.



ii. With respect to Paragraph No. 3, It is stated that the averments made therein are misconceived and baseless. It is submitted that reliance placed on the judgement of Vidarbha Industries Power Ltd. vs. Axis Bank Limited, reported in (2022) 8 SCC 352 is totally misconceived and baseless. It is submitted while citing this judgement, the Respondent has lost sight of the fact that a review petition was filed against this judgement.

iii. That in the review petition i.e. Axis Bank Limited vs. Vidarbha Industries Power Ltd., reported in (2023) 7 SCC 321, Hon'ble Supreme Court has clarified that this order was passed in the facts of the case. The relevant portion of the review order reads as under:

"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. To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes.

iv. Furthermore, in case of M. Suresh Kumar Reddy v. Canara Bank, reported in (2023) 8 SCC 387, the Hon'ble Supreme Court was pleased to hold thus:

9. The view taken in the case of Innoventive Industries Ltd.

(supra) has been followed by this Court in the case of E.S.



Krishnamurthy (supra) paragraph nos.32 to 34 of the said decision read thus:

In Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, a two-Judge Bench of this Court has explained the ambit of section 7 IBC, and held that the adjudicating authority only has to determine whether a "default" has occurred i.e. whether the "debt" (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application. unless it is incomplete....

14. Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries Power Ltd. (supra) was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries Power Ltd. (supra) cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries Ltd. (supra) and E.S. Krishnamurthy. The view taken in the case of Innoventive Industries Ltd. (supra) still holds good.

- v. With respect to Paragraph No. 4, It is submitted that the averments made therein are denied being false and baseless. It is submitted that reliance placed on order of this Hon'ble Tribunal in case of HDFC Bank Ltd. vs. M/s John Energy Limited, Company Petition (IB) 02 of 2022 is also*



misconceived. It is submitted that the said order was passed on the basis of Vidarbha Industries Power Ltd. vs. Axis Bank Limited, reported in (2022) 8 SCC 352 on 24.01.2024. However, later on the position of law was clarified by Hon'ble Supreme Court in case of M. Suresh Kumar Reddy v. Canara Bank, reported in (2023) 8 SCC 387 on 11.05.2023. Hence, it is not open for the Respondent to rely upon this order passed by this Hon'ble Tribunal in as much as lot of water has flown under the bridge thereafter and law has evolved over the time.

- vi. With respect to Paragraph No. 5, It is stated that the averments made therein are denied being false and baseless. It is denied that the Petitioner is trying to utilize the provisions of IBC for recovery of its debts. It is submitted that present petition is filed for the purpose of initiating Corporate Insolvency Resolution Process against the Respondent keeping in view the objects of Insolvency and Bankruptcy Code, 2016 as elaborated in Swiss Ribbons Pvt. Ltd. vs. Union of India, reported in (2019) 4 SCC 17. That present petition is filed with the sole intention of reviving and resolution of the debts of the Corporate Debtor.
- vii. With respect to Paragraph No. 6, It is denied that present petition filed with the lone motive of recovering the debt dues to the petitioner inspite of regular and timely repayments. It is submitted that Respondent has defaulted in repayment of debt due to the Petitioner and hence present petition is filed



for initiating Corporate Insolvency Resolution Process against the Respondent. It is submitted that Petitioner has exercised its statutory right under Section 7 of Insolvency and Bankruptcy Code, 2016 and same cannot be projected as action for recovering the debt. It is denied that the action is contrary to the spirit of Insolvency and Bankruptcy Code, 2016. It is denied that present petition is required to be dismissed on this ground.

- viii. With respect to Paragraph No. 7, It is stated that the averments made therein are not germane for the purpose of determination of this proceeding. It is submitted that Respondent ought to have services the credit facilities in case where it was a credible entity and a going concern. As demonstrated herein above, Hon'ble Supreme Court has time and against reiterated that once debt and default above Rs. 1,00,00,000/- (Rs One Crore) is established, this Hon'ble Tribunal will admit the petition filed under Section 7 of Insolvency and Bankruptcy Code, 2016. The factum about bagging of the contracts and experience in dealing with infrastructure projects will have no relevance for the purpose of adjudication of petition filed under Section 7 of Insolvency and Bankruptcy Code, 2016.
- ix. With respect to Paragraph No. 8, It is stated that the averments made therein are completely misconceived. It is submitted that Respondent will not be absolved from petition



filed under Section 7 of Insolvency and Bankruptcy Code, 2016 merely because liability some loan accounts have been settled. It is submitted that the fact remains that Respondent has committed debt and default above Rs. 1,00,00,000/- (Rs. One Crore). It is submitted that Respondent has also admitted to the fact all the loan accounts are not settled.

- x. With respect to Paragraph No. 9, It is stated that averments made therein are denied being false and baseless. It is submitted that Petitioner has classified the account of Respondent as Non-Performing Asset and called upon Respondent to repay the entire outstanding debt vide legal notice dated 13.07.2022. That despite calling upon Respondent to pay the entire outstanding amount, including outstanding amount under Loan Account Nos. 86113972, 85465513 and 85624614, the Respondent has not repaid the same. Similarly, the Respondent was called upon to pay the outstanding amount under Loan Account Nos. 86113972, 85465513 and 85624614 vide legal notice dated 31.01.2024. That despite service of legal notice, Respondent has not repaid the entire outstanding amount under these loan accounts. Hence, there is a default on the part of the Respondent and Petitioner filed present petition with respect to loan accounts that were outstanding on the date of filing the petition.
- xi. Furthermore, it is submitted that payment of EMI in Loan Account No. 124038195 on 22.01.2025 does not absolve



Respondent from the fact that even after taking into account this payment, there is a debit balance in Loan Account No. 124038195. It is submitted that even after taking into consideration payment of Rs. 1,26,530/- (Rupees One Lac Twenty-Six Thousand Five Hundred Thirty), there is debit balance of Rs. 17,28,37,286/- (Rs. Seventeen Crores Twenty-Eight Lacs Thirty-Seven Thousand Two Hundred Eighty-Six). Therefore, the documents produced by the Respondent itself indicates debt and default above Rs. 1,00,00,0000/- (Rs. One Crore) and hence present petition is required to be admitted.

- xii. With respect to Paragraph No. 10, It is stated that the averments made therein are denied being false and baseless. It is submitted that on account of irregularity in payments, the account of Respondent is classified as Non-Performing Asset. Furthermore, the Petitioner has also called upon Respondent to repay the entire outstanding loan by way of legal notices dated 13.07.2022 and 31.01.2024. However, Respondent has miserably defaulted in repayment of such loan.
- xiii. With respect to Paragraph No. 11, It is stated that the averments made therein are not germane for the purpose of adjudication of this proceeding. It is submitted that merely because Respondent is not facing issues with other bank / financial institution cannot be a ground to defer/ dismiss present petition filed under Section 7 of Insolvency and



Bankruptcy Code, 2016 more particularly when documents produced by Respondent itself indicates debt and default above Rs. 1,00,00,000/- (Rs. One Crore).

xiv. With respect to Paragraph No. 12 to 14, It is stated that the averments made are not germane for the purpose of adjudication of this proceeding. It is submitted that merely because Respondent is executing some high value projects across India which are on verge of completion cannot be ground to defer/ dismiss present petition filed under Section 7 of Insolvency and Bankruptcy Code, 2016 more particularly when documents produced by Respondent itself indicates debt and default above Rs. 1,00,00,000/- (Rs. One Crore). It is submitted that in case where petition is admitted, the Resolution Professional appointed by this Hon'ble Tribunal will take over these projects and ensure its completion since he is under an obligation to keep the Corporate Debtor as going concern.

xv. It is further submitted that on examination of master data of the Respondent it is evident that multiple financial institution has charge over the assets of the Corporate Debtor. It is submitted that Axis Bank and Dena Bank has charge of Rs. 35,00,00,000/- (Rs. Thirty-Five Crores). Similarly Bank of Baroda has charge of Rs. 50,00,00,000/- (Rs. Fifty Crores) and Kotak Mahindra Bank has charge of approximately 20,00,00,000/- (Rs. Twenty Crores). In addition to that there



is charge of Tata Motor Finance Ltd. and Yes Bank to the tune of approximately 10,00,00,000/- (Rs. Ten Crores). Therefore, there are substantial liabilities on the Respondent and merely having projects in hand will not indicate financial capacity of the Respondent.


- xvi. With respect to Paragraph No. 15, It is stated that the averments made are not germane for the purpose of adjudication of this proceeding. It is submitted that completion of 4 tender for road resurfacing floated by Ahmedabad Municipal Corporation with average work value of Rs. 15,00,00,000/- (Rs. Fifteen Crores) will have no relevance to the present proceedings. It is submitted that Respondent ought to have honored the credit facilities availed by it. It is submitted that after having defaulted in payment of loan amount exceeding Rs. 1,00,00,000/- (Rs. One Crores), it is not open for the Respondent to put up such sham defenses.
- xvii. With respect to Paragraph No. 16, it is stated that the averments made are not germane for the purpose of adjudication of this proceeding. It is submitted that a crystallized claim with the Respondent is not held relevant in the adjudication of a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, as long as there is a default on the part of the Respondent above Rs. 1,00,00,000/- (Rs. One Crore). It is submitted that in the present case, documents produced by the Respondent itself indicate debt



and default above Rs. 1,00,00,000/- (Rs. One Crore). Hence, the present petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, is required to be admitted.

xviii. With respect to Paragraphs No. 17 and 18, it is stated that the averments made are not germane for adjudication of this proceeding. It is submitted that the pendency of Original Application No. 523 of 2022 before the Ld. The Debt Recovery Tribunal at Ahmedabad is not relevant to the proceedings. It is submitted that the order dated 20.11.2023, whereby an interim application for joining IRCON as a party to Original Application No. 523 of 2022, will not be relevant to the present proceedings. It is well-established law that Original Application No. 523 of 2022 filed under the Recovery of Debts and Bankruptcy Act, 1993, and present proceedings initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016 operate in different spheres and both can continue simultaneously.

xix. Furthermore, non-receipt of payment from IRCON cannot be attributed to the Petitioner. It is submitted that the Respondent ought to have initiated appropriate actions against IRCON for the recovery of outstanding dues from IRCON. It is further submitted that all these facts are not relevant for the purpose of adjudication of the present proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016.



xx. With respect to Paragraph No. 19, I say and submit that the averments made are misconceived and baseless. It is reiterated that averments made by the Respondent with respect to substantial goodwill and ongoing projected are not relevant for the present proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016. It is also denied that the Respondent has committed default on account of factors beyond the control of the Respondent. It is submitted that the Respondent has failed to bring out any factor on account of which the default has occurred, much less a factor beyond its control. It is submitted that the object of the Insolvency and Bankruptcy Code, 2016, is to revive the Corporate Debtor, and admission of the present petition will facilitate the revival and restructuring of the Respondent.

11. Respondent filed **Sur-Rejoinder** to the rejoinder submitted by the Applicant on 19.03.2025 vide inward diary no. D1838. The contention mentioned in the Sur-Rejoinder is stated as under:

- i. It is stated that the present reply to the Rejoinder dated 20.03.2025 was filed by the Applicant to clarify a certain factual position and in terms of the leave granted by this Tribunal vide Order dated 11.03.2025.



- ii. It is submitted that the Respondent denies every averment made by the Applicant, and my non-dealing with the point-wise contentions may not be construed as an admission on my part. The contentions taken in the reply filed by the Respondent dated 07.02.2025 may be treated as a part of this sur-rejoinder.
- iii. The contents of Paragraphs No. 1, 2, and 3 are formal and do not require a specific response.
- iv. The contents of Paragraph No. 4 are denied. It is stated that the contents of the chart produced at Page no. 8 of the Reply dated 07.02.2025 filed by the Respondent have admittedly not been disputed. The said allegation shall be dealt with in the later portion of this sur-rejoinder
- v. The contents of Paragraphs no. 5 and 6 are formal and do not require a specific response.
- vi. The contents of Paragraph nos. 7, 8, 9 and 10 are denied and It is stated that firstly, the findings rendered by the Hon'ble Supreme Court in **Vidharbha Industries Power Ltd. v. Axis Bank**



Limitedare as such not set aside by the Hon'ble Supreme Court vide the review petition cited by the Applicant nor is it overruled in the subsequent decision of M. Suresh Kumar Reddy v. Canara Bank. In the humble understanding of the Respondent, it is merely clarified that before relying upon any ratio, the findings of the same may have to be interpreted in light of the facts of each case, which in itself is a long-standing established position of law. For the purpose of clarity, the decision in Vidharbha Industries Power Ltd. v. Axis Bank Limited [reported in (2022) 8 SCC 352] was rendered on 12.07.2022. Furthermore, the decision in the review petition i.e., Axis Bank Limited v. Vidharbha Industries Power Ltd. [reported in (2023) 7 SCC 321] was rendered on 22.09.2022 and the decision in M. Suresh Kumar Reddy v. Canara Bank [reported in (2023) 8 SCC 387] was rendered on 11.05.2023. In response to the averment of the Applicant as to the non-applicability of the ratio laid down in case of Vidharbha Industries Power Ltd. v. Axis Bank Limited to the present case,



it is humbly submitted that the principles so laid down under the facts and circumstances of the said case are very well adopted by various Hon'ble National Company Law Tribunals including this Hon'ble Tribunal in various Section 7 applications. Even otherwise, it is a well-established principle that while dealing in matters pertaining to insolvency and resolution of a corporate debtor, the first endeavour of the adjudicating authority shall be the revival of the company rather than resolution.

- vii. That this Tribunal in ICICI Bank Limited Vs. John Energy Limited [CP (IB) No. 146/NCLT/AHM/2023] vide order dated 16.05.2024 has, while dealing with an application filed under Section 7 of the IBC has taken into account the financial health of the concerned corporate debtor and has also accounted for its on-going projects and goodwill in the market in light of the observations made in Vidarbha. While analysing the abovementioned aspects in-depth, this Hon'ble Tribunal has also taken recourse to the findings rendered in Vidarbha and has held that the



same squarely applies to the facts of the above case. Basis the same, this Hon'ble Tribunal rejected the application filed by the financial creditor. For convenience, the relevant paragraph is reproduced below:

"The Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. vs. Union of India &Ors., (2019) 4 SCC 17 has held that the primary focus of the legislation is to ensure revival and continuation of the Corporate Debtor and not simply the recovery of debt. The law laid down by the Hon'ble Apex Court in Vidarbha Industries Power Ltd. (2022) 8 SCC 352 squarely applies to the facts of present case as the company is solvent otherwise, and has to be restructured within the process of regulatory framework given to the creditors before triggering insolvency or the creditor has to pursue an independent exit route with the borrower."

What is important to be noted is that the above decision rendered by this Hon'ble Tribunal is dated post M. Suresh Kumar Reddy v. Canara Bank as



relied by the Applicant. Therefore, it is submitted that the impression of the Applicant that the observations made in Vidarbha are rendered nugatory is misconstrued. A copy of the Order dated 16.05.2024 passed in ICICI Bank Limited v. John Energy Limited is annexed at "ANNEXURE R-12" of the said affidavit.

- viii. The contents of Paragraphs nos. 11, 12, 13, and 14 are evasive, and the Applicant has failed to justify the averments taken by the Respondent in its reply dated 07.02.2025. The Applicant is further unable to demonstrate how the financial health of the Respondent, as well as its ongoing projects, has little to no bearing on the outcome of the present application.
- ix. With respect to the contents of Paragraph nos. 15, 16, and 17, it is further submitted that the contents of the chart produced at Page no. 8 of the Reply dated 07.02.2025, filed by the Respondent, have admittedly not been disputed. For the sake of brevity, the same is not being produced herein. However, a



bare perusal of the same would indicate that out of 33 loan accounts maintained with the Applicant Bank, dues pertaining to as many as 22 loan accounts have been cleared without any haircut and some of the said loan accounts have been regularized even before the applicable period which indicates the financial health of the Respondent.

- x. The contents of Paragraph nos. 18 and 19 are evasive since the Applicant has not disputed the regular repayments being made in loan accounts pertaining to other banks/ financial institution.
- xi. Moreover, in the contents of Paragraph nos. 18 and 19 are evasive since the Applicant has not disputed the regular repayments being made in loan accounts pertaining to other banks/ financial institution. Moreover, in addition to the contents of Paragraph no. 9 of the Reply dated 07.02.2025, in addition to the loan facilities availed from other banks/financial institution as mentioned therein, there is a much higher loan exposure of the Respondent with the Bank of Baroda of about Rs. 17,50,00,000/- fund



based facilities and about Rs. 32,50,00,000/- non-fund-based facilities which were extended since the year 2000. Furthermore, Axis Bank has also extended Rs. 10,00,00,000/- fund-based facilities and about Rs. 25,00,00,000/- non-fund-based facilities since the year 2015. Undisputedly, those banks have not taken any adverse view in respect of those facilities. It is humbly submitted that on one hand, the execution of ongoing projects may not be a sole criterion so far as an application under Section 7 is concerned however, the same has to be coupled with the financial health of a corporate debtor to take a holistic view of the viability of the corporate debtor. In the present case, the Applicant has been unable to substantially refute to both the above aspects which may be taken note of.

- xii. The contents of Paragraph no. 20 are denied and it is stated that on the contrary, it is the Respondent who has stated on oath as to the on-going loan facilities of the Respondent with other banks/ financial institution. However, it may be noted that the



referred charge holder banks have admittedly not approached this Hon'ble Tribunal under Section 7. On the contrary, the fact that the Applicant bank is relying on the charges of other banks demonstrates that the lone motive of this application is recovery of money and not resolution of the Respondent which may be taken into account.

- xiii. The contents of Paragraph no. 21 are denied and it is stated that as demonstrated above by way of placing reliance on the decision rendered in ICICI Bank Limited v. John Energy Limited [CP (IB) No. 146/NCLT/AHM /2023], if this Hon'ble Tribunal admits the CD in CIRP, the progress of the above on-going projects shall come to a standstill which will not only be a national loss, but also livelihood of as many as about 350 workmen deployed at the on-going projects of the Respondent.
- xiv. The contents of Paragraph nos. 22, 23 and 24 are denied and it is stated that the proceedings initiated by the Applicant under the Securitization and Reconstruction of Financial Assets and Enforcement



of Security Interest Act, 2002 before the Ld. DRT is still pending adjudication. In furtherance of Paragraph no. 18 of the Reply dated 07.02.2025, it is reiterated that the order passed by the Ld. DRT of IRCON not being concerned with OA no. 523 of 2022 [Annexure R-10 was in fact never communicated to IRCON by the Applicant bank which at the first place filed the application for joining IRCON as a party. Since then, IRCON has not come forward to make payments. At the cost of repetition, it is stated that it is unfair on part of the Applicant to have not brought to the knowledge of IRCON the order dated 20.11.2023, which has admittedly created an impediment for the Respondent to recover the amount realizable from the said party.


xv. The contents of Paragraph nos. 25 and 26 are hereby denied, and the response to the above paragraphs may be taken into account.

12. The Applicant filed an additional Affidavit on 06.01.2025 in compliance of order dated 16.12.2024 to place on record Certificate in support of the Account Statements



produced along with the captioned application in terms of Section 2(3) of the Banker's Books Evidence Act, 1891 as required under Regulation 2A(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016.

13. The Applicant filed an additional Affidavit on 28.01.2025 in compliance with the order dated 07.01.2025 to place on record Revised Form-2 of the proposed Insolvency Professional.
14. The Applicant filed Written Submission on 15.04.2025, and the Respondent filed their Synopsis on 15.04.2025.
15. We have heard Ld. Counsel for the Applicant/Financial Creditor as well as Ld. Counsel for the Respondent/Corporate Debtor and perused the material available on record.
16. The observation and findings of this Tribunal are as follows: -
 - a) The Application has been filed under section 7 by the Financial Creditor against the Corporate Debtor 'JRA



Infrastructure Ltd., seeking the admission of the Corporate Debtor into the Corporate Insolvency Resolution Process.

b) The Financial Creditor and Corporate Debtor executed following documents on 03.03.2020:

- i. *Board Resolution,*
- ii. *Loan cum Hypothecation Agreement along with Schedule cum Key Fact Statement,*
- iii. *Irrevocable power of attorney,*
- iv. *Loan and Guarantee with Schedule and Key facts statement,*
- v. *Master Facility Agreement,*
- vi. *Demand Promissory Note,*
- vii. *Letter of Continuing Guarantee,*
- viii. *Letter of Hypothecation,*
- ix. *Memorandum Relating to Charge over fixed deposit,*
- x. *Letter of Continuing Security,*
- xi. *Undertaking cum indemnity,*
- xii. *Letter of General Lien and Set Off, and*
- xiii. *Irrevocable Power of Attorney.*

c) It is seen that the Applicant sanctioned various Credit Facilities to the Corporate Debtor aggregating to Rs. 24,36,55,942/-. The Disbursement chart is reproduced below:



Facility No.	Loan Account No.	Rate of Interest	Loan Amount (Rs.)	Date of Disbursement
Auto Premium Loan:				
1	119833785	7.40%	36,88,000/-	07.07.2021
Ultra-Light Commercial Vehicle Loan:				
2	121794572	7.50%	9,03,769/-	02.09.2021
Auto Loan:				
3	124038195	7.50%	9,50,000/-	02.11.2021
Commercial Equipment Loan:				
4	85371347	7.35%	48,25,406/-	12.04.2021
5	85371355	7.35%	48,25,406/-	12.04.2021
6	85371504	7.35%	4,39,62,818/-	12.04.2021
7	85373249	7.35%	34,74,292/-	13.04.2021
8	85373280	7.35%	34,74,292/-	13.04.2021
9	85373305	7.35%	34,74,292/-	13.04.2021
10	85373314	7.35%	34,74,292/-	13.04.2021
11	85373322	7.35%	34,74,292/-	13.04.2021
12	85373331	7.35%	34,74,292/-	13.04.2021
13	85373346	7.35%	34,74,292/-	13.04.2021
14	85373348	7.35%	34,74,292/-	13.04.2021
15	85373353	7.35%	34,74,292/-	13.04.2021

16	85373355	7.35%	34,74,292/-	13.04.2021
17	85373361	7.35%	34,74,292/-	13.04.2021
18	85373367	7.35%	34,74,292/-	13.04.2021
19	85373369	7.35%	34,74,292/-	13.04.2021
20	85373378	7.35%	34,74,292/-	13.04.2021
21	85373392	7.35%	34,74,292/-	13.04.2021
22	85442656	7.22%	25,96,000/-	26.05.2021
23	85442662	7.22%	31,97,000/-	26.05.2021
24	85495842	7.22%	23,36,400/-	16.06.2021
25	85495847	7.22%	25,59,400/-	16.06.2021
26	85495876	7.22%	26,01,000/-	16.06.2021
27	85495880	7.22%	26,01,000/-	16.06.2021
28	85796587	7.22%	32,44,000/-	20.09.2021
29	85796596	7.22%	32,44,000/-	20.09.2021
30	85403012	7.50%	15,61,000/-	30.04.2021
31	85464513	7.22%	31,97,000/-	05.06.2021
32	85624614	7.22%	26,01,000/-	26.07.2021
33	86113972	7.22%	26,48,363/-	30.12.2021
Cash Credit Facility				
34	50200002233161	Repo Rate + Spread of 6%	10,00,00,000/-	Date of Sanction: 30.06.2021
Total			24,36,55,942/-	



- d) Thereafter, due to continuous default on the respondent's part, the Corporate Debtor's account was declared as NPA. The Applicant called upon Corporate Debtor to repay the Outstanding dues of Rs.22,00,16,341/- vide Legal Notice dated 12.07.2022 and issued another Notice on 22.07.2022 to repay outstanding dues of Rs.9,99,57,242/- payable under credit facility account number 50200002233161.
- e) The applicant has failed to pay the dues despite notices filed for an Original Application No. 523 of 2022 before DRT for Rs.22,00,16,341/-, which is pending to date.
- f) The applicant thereon issued another Demand Notice. The Corporate Debtor was called upon to repay the outstanding dues of Rs.13,53,79,956/- as on 31.12.2023, along with further running interest till the date of realisation, within 10 days of receipt of the demand notice.



g) It is seen that the Financial Creditor has produced NeSL Form-D before this Tribunal. The status of Authentication, as shown under Form-D, is Authenticated.

h) The Contentions of the Respondents are:

1. Discretionary power under Section 7 of the Code to admit a Corporate Debtor into CIRP [Vidarbha Industries Power Limited v. Axis Bank Limited reported in (2022) 8 SCC 352].
2. The CD has a strong financial and business background and has prospective growth in the construction of bridges and roads industry.
3. Current status of the 33 loan accounts shows that 22 accounts have been cleared, EMIS are being regularly paid for 3 accounts, 4 accounts have been cleared through Repo Sale, and the CD is actively pursuing to close the remaining 4 accounts. Therefore, the CD has regularised the majority of the accounts.
4. No difficulties/default in repayment faced by the CD regarding 3 other Banks/ Financial Institutions.



5. Substantial income inflow expected by virtue of ongoing projects and recovery of completed projects.

6. Malicious attempt on the part of FC to misguide IRCON, or else an amount of Rs. 5,24,29,217/- would have been received by CD till now.

17. The Contention of the Respondent that the admission of the Corporate Debtor under section 7 provides for discretionary power to the Tribunal as per the Judgment of the Hon'ble Supreme Court in the matter of Vidarbha Industries Power Ltd. V. Axis Bank Ltd. However, this contention does not hold a candle as the Hon'ble Supreme Court in ***M. Suresh Kumar Reddy .Vs. Canara Bank [(2023) 8 SCC 387, paras 9, 13]*** clarified that *Vidarbha Industries* was fact-specific and reaffirmed that under Section 7, the tribunal must admit the application if a debt and default above INR 1 crore are established, as held in *Innoventive Industries Ltd. v. ICICI Bank Ltd.* [(2018) 1 SCC 407, paras 28, 30], The relevant portion of the said judgment is reproduced as under:

“ ...

9. The view taken in the case of *Innoventive Industries*³ has been followed by this Court in the case of *E.S. Krishnamurthy and others*². Paragraph nos.32 to 34 of the said decision read thus:



32. In *Innoventive industries* [*Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, paras 28 and 30 : (2018) 1 SCC (Civ) 356], a two-Judge Bench of this Court has explained the ambit of Section 7 IBC, and held that the adjudicating authority only has to determine whether a “default” has occurred i.e. whether the “debt” (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application unless it is incomplete.”

“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 *Innoventive Industries* and *E.S. Krishnamurthy*. **The view taken in the case of *Innoventive Industries* still holds good.**”

18. It is the contention of the Respondent that the Corporate Debtor is actively doing business and it has prospective growth in the construction of bridges and roads industry. Also has bagged some valuable on-going projects which can help with the recovery.
19. It is also the contention of the Corporate Debtor that the Corporate Debtor has already paid most of the loan accounts, and other financial institutions/Banks have no difficulties in repayment faced by the Corporate Debtor.
20. With respect to the above-mentioned contentions, it is not pertinent to take note of these contentions in the matters under section 7. As demonstrated time and again by the Hon’ble Apex Court, if there is a debt and default above Rs. 1



Cr and the application is filed well within the limitation period, then the corporate debtor can be admitted to the CIRP. It is very much clear from the pleadings that the amount was disbursed, and the default amount remaining is above Rs. 1 Cr although most of the accounts have been settled by the Corporate Debtor, the amount is still above 1 cr. is outstanding. The financial health of ongoing projects, while relevant for resolution, does not preclude admission when default is established.

- 21.** During the course of the hearing on 16.04.2025, the Sr. Counsel for the Corporate Debtor was stating that the present Petition be dismissed being not maintainable inter-alia because of the financial health of the Respondent /Corporate Debtor or in the alternative an order in terms of Judgment of the Hon'ble NCLAT rendered in Company Appeal (AT)(Ins.) No. 1323 of 2022 in **Ashok Kumar Tyagi Vs. Uco Bank and Ors.** may be considered, which was opposed by the counsel for the Applicant. The relevant portion of the said order is reproduced as under:

"Ld. Senior counsel for the Respondent in concluding the submission submitted that the present petition be dismissed being not maintainable inter-alia in view of the financial health of the



Respondent/CD or alternate and order in terms of the judgment of the Hon'ble NCLAT rendered in Company Appeal (AT) (Insolvency) No. 1323 of 2022 in Ashok Kumar Tyagi Vs. Uco Bank and Ors., which is opposed by the Counsel for the applicant and relied upon another judgment of the Hon'ble NCLAT on the issue."

22. It was also stated by the Senior Counsel for the Respondent that the Corporate Debtor admitted that there is debt and default. However, there is an OTS proposal ready if time is granted to put it forth before the Applicant for consideration given the above-mentioned order of the Hon'ble NCLAT stating as under:

"25. We have already found that the impugned order dated 28.10.2022, admitting Section 7 Application was an order, which cannot be faulted in law. However, we are inclined to direct that for a period of 60 days, no further steps in pursuance of the order dated 28.10.2022 of the Adjudicating Authority shall be taken and interim directions issued by this Tribunal by order dated 21.11.2022 shall continue for a period of 60 days, during which period, the Bank may take a final decision in reference to the OTS proposal lastly increased by the Corporate Debtor by its letter dated 03.05.2023, accepting the offer of the Bank for Outstanding Ledger Balance. In event of a settlement accepted by the Bank, the Bank is permitted to file an application through IRP to close the CIRP."

23. It is seen that the Respondent has submitted a letter dated 17.03.2025, wherein it is mentioned that the CD is requesting rescheduling of payment of interest in the CC account up to 30.04.2025 and also proposes to make payments towards equipment finance loans on the same date, i.e. 30.04.2025. with respect to the principal amount of CC



account is concerned, the said liability was proposed to be cleared on or before 31.05.2026. The contents of the said letter are reproduced as under:

“Due to non-receipt of funds from IRCON, we request reschedulement of payment of interest in CC Account, upto 30.04.2025. We also propose to make payment towards equipment finance loans by the same date i.e., 30.04.2025. Insofar as the principal amount of CC Account is concerned, in an appropriate spread over manner, the said liability is proposed to be cleared on or before 31.05.2026. However, the regular interest on the said CC Account will be duly paid by us. The above is our without prejudice proposal and with a bona fide intention to discharge the dues of your esteemed bank and this proposal may not be construed as acceptance on our part.”

- 24.** Since it can be seen from the judgment of the Hon'ble Supreme Court in the matter of ***M. Suresh Kumar Reddy Vs Canara Bank & Ors.*** (Civil Appeal No. 7121 OF 2022) stating that in the matter of Section 7, the only thing which is to be seen while ordering in Section 7 matters is whether there is a debt and default.
- 25.** The present application is complete in terms of Section 7 (5) of the Code. The Applicant/Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt



is more than rupees one crore, which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of the IBC, 2016.

26. Further, the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited***, has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC, which is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and



documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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.



27. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiating the corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

28. Accordingly, in light of the above facts and circumstances, it is hereby ordered as under: -

(i) The Respondent/Corporate Debtor- **M/s. The JRA Infrastructure Ltd.** is admitted in the Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

(ii) As a consequence, thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c. any action to foreclose, recover or enforce any



security interest created by the corporate debtor in respect of its property, including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

e. The provisions of sub-Section (1) shall, however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator, and to a surety in a contract of guarantee to a Corporate Debtor.

(iii) 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 Adjudicating Authority approves the Resolution Plan under subsection (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of subsections (2) and (2A) of Section 14 of IBC, 2016.



- (v) As proposed by the Financial Creditor, we appoint **Mr. Rajendra Devidas Puranik**, having Registration No. IBBI/IPA-001/IP-P01011/2017-18/11662, (email-rdpuranik@gmail.com, Mobile No.9820127828), under section 13 (1)(c) of the Code to act as Interim Resolution Professional (“**IRP**”) of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP shall perform all its functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016, for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with the IRP, do not



assist or co-operate with the IRP, is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.
- (viii) The IRP is expected to take full charge of the Corporate Debtor's assets and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The IRP shall be under a duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a



going concern as a part of the obligation imposed by Section 20 of the IBC, 2016.

- (xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor, and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in the MCA portal, specifically mentioning regarding admission of this Application, and shall forward the compliance report to the Registrar, NCLT.

29. However, considering the specific fact pattern of the case, and the decision of the Hon'ble NCLAT rendered in **Ashok Kumar**



Tyagi Vs. UCO BANK and Ors. and letter dated 17.03.2025 of Restructuring and Proposal of Payment against the outstanding dues, the **implementation of this order**, including the moratorium under Section 14 and the IRP's duties, is deferred **for 120 days** from the date of this order to allow the Respondent/Corporate Debtor to submit a concrete OTS/restructuring proposal. During this period, the Corporate Debtor shall maintain its assets and operations as a going concern and provide regular updates to the Applicant/FC on its financial status.

30. The Respondent/Corporate Debtor shall submit a concrete OTS/Restructuring Proposal within 7 days from the date of the pronouncement of the order to the Financial Creditor. The Applicant/FC shall respond within 15 days, and both parties shall engage in good-faith negotiations to explore a settlement. In the event of reaching a settlement, the Applicant/FC may file an application through the IRP to close the CIRP and withdraw the petition
31. However, if the parties are unable to reach a settlement, CIRP proceedings shall commence **after 120 days** from the date of



this order. Thereafter, **IRP** shall **act** and **proceed** in accordance with the directions given here in above as per law. The directions given in paragraphs 29-30 of this order shall become inoperative after 120 days. It is made clear that under no circumstances will any further extension be given, qua the directions given in here in above paragraphs 29-30, after 120 days from the date of this order.

- 32.** In view of the above observation, **CP(IB)/365(AHM)2023** stands **Admitted** but defers implementation for 120 days as stated above. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)

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