



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

ITEM No.305
C.P.(IB)/31(AHM)2025

Order under Section 7 IBC

IN THE MATTER OF:

Unity Small Finance Bank Limited
V/s
Tensile Steel Limited

.....Applicant

.....Respondent

Order delivered on: 03/07/2025

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)/31(AHM)2025

[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 **Tensile Steel Limited**

Unity Small Finance Bank Limited

Having its registered office at:

Unit No. 1201, 1202 & 1203, 12th floor,
Ansal Bhawan, 16, K.G. Marg, New Delhi
G.P.O, Delhi- 110001

Also at:

1st Floor, B Wing, Vinay Bhavya
Complex, CST Road, Kalina,
Santa Cruz East, Mumbai- 400098.

...Applicant/Financial Creditor

VERSUS

M/s Tensile Steel Limited

Having its registered address at:

Hirabag, Vishwamitri Road,
Vadodara, Gujarat- 390009.

Email ID: tensile.stl@gmail.com.

...Respondent/Corporate Debtor

Order pronounced on: 03.07.2025



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/FC : Mr. Alok Dhir, Advocate.

For the Respondent/CD : Mr. Jaimin Dave, Advocate.

O R D E R

1. The Present Petition was filed on 16.12.2024 by the Applicant- **Unity Small Finance Bank Limited** (hereinafter referred to as "Financial Creditor") against the Respondent- **Tensile Steel Limited** (hereinafter referred to as "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. 66,41,49,324/-** including interest.

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2. **On perusal of Part-I of Form 1** reveals that the Financial Creditor is a Unity Small Finance Bank Limited, incorporated on 25.08.2021 with Corporate Identity Number U65990DL2021PLC385568. The Financial Creditor is having registered office at: Unit No. 1201, 1202 & 1203, 12th floor, Ansal Bhawan, 16, K.G. Marg, New Delhi, G.P.O, Delhi- 110001; and corporate office at 5th Floor, Centrum House, CST Road, Kalina, Santacruz East, Mumbai – 400098. The certificate of incorporation is annexed as **Annexure P-1** and the Master Data from the Ministry of Corporate Affairs is annexed as **Annexure P-2**. The Financial Creditor is the successor to Punjab and Maharashtra Co-operative Bank Limited, which merged with Unity Small Finance Bank Limited on 25.01.2022, as evidenced by the Gazette Notification annexed as **Annexure P-8**.
3. It is submitted that the present Petition has been filed by Mr. Ashokkumar M Manda, Assistant Vice President, being the Authorised Representative of the Financial Creditor. That Mr. Ashokkumar M Manda, is authorised to sign the



documents on behalf of the Financial Creditor in terms of the Board Resolution dated 24.10.2024, which is annexed at **Annexure-P-3**.

4. **On perusal of Part-II of the Form-1** reveals that the Corporate Debtor - Tensile Steel Limited is a company incorporated on 28.11.1960 under the Companies Act, 1956, with Corporate Identity Number: U99999GJ1960PLC001006, having its registered office at: Hirabag, Vishwamitri Road, Vadodara, Gujarat – 390009. The master data of the Corporate Debtor from the Ministry of Corporate Affairs is annexed as **Annexure P-4**.
5. **On perusal of Part-III of the Form-1** reveals that the Financial Creditor has proposed IP Mr. Bihari Lal Chakravarti, having Registration No. IBBI/IPA-002/IP-N00863/2019-20/12776, having an office at G C 901 Aditya Mega City, Vaibhav Khand, Indirapuram, Ghaziabad, Uttar Pradesh – 201014. under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). The written communication in Form 2, along with the certificate of registration and authorization for assignment,



is annexed as **Annexure P-5 (Colly)**. The Financial Creditor certifies that the proposed Interim Resolution Professional is qualified to act under the Insolvency and Bankruptcy Code, 2016.

6. **On perusal of Part-IV of the Form-1** reveals that the total dues as claimed by the Financial Creditor is Rs. 66,41,49,324/-, consisting of Rs.46,51,88,318/- being principal and amount of Rs.17,94,93,440/- as NPA interest receivables and Rs. 1,94,67,566/- as NPA Penal Interest Receivables. The date of default is stated to be 17.02.2020.
7. It is submitted by the Financial Creditor that the present petition is well within the limitation period, considering the date of default as 17.02.2020 and, in accordance with the order of Hon'ble Supreme Court in **Suo Moto Writ Petition (Civil) No. 3 of 2020**, excluding the period from 15.03.2020 to 28.02.2022 for the purpose of calculating the limitation period; the limitation period, therefore, ends on 01.02.2025, and the present petition has been filed within the prescribed timeframe. It is further stated that further without prejudice, the present case is a case of continuous



default as the Corporate Debtor vide its letter dated 14.07.2023 approached the Financial Creditor for settlement and an earlier Section 7 petition was disposed of on account of the said settlement. Pursuant to the settlement proposal, the authorised representative of the Corporate Debtor disbursed an amount of Rs. 50 Lakhs on 18.07.2024 and another instalment amounting to Rs. 50 Lakhs was disbursed on 25.07.2024. However, no further amount was disbursed to the Financial Creditor in terms of the settlement agreement. Therefore, the present petition is filed which is within the period of 3 years from the date of proposed settlement.

8. The Financial Creditor has relied upon the following documents which are as under: -

Sr. No.	Particulars	Annexure
1.	Request Letter dated 14.07.2024	P-6
2.	Demand Notice dated 24.02.2020	P-7
3.	Symbolic Possession Letter dated 11.10.2022	P-9
4.	Indenture of Mortgage dated 09.01.2015	P-13



5.	Sanction Letters dated 24.11.2012; 05.12.2013; 22.2.2014; 30.06.2016; 07.03.2017; 11.05.2018	P-15 to P-20
6.	Demand Promissory Notes Dated 26.11.2012, 06.12.2013, 23.12.2014, 01.07.2016, 07.07.2018	P-21 to P-25
7.	Statement of Account of the CD	P-26

9. The Financial Creditor has placed the facts through this Petition in the following manner: -

- i. The present petition is filed by Unity Small Finance Bank Limited (hereinafter referred to as the "Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), seeking initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against Tensile Steel Limited (hereinafter referred to as the "Corporate Debtor"). The Corporate Debtor availed multiple financial facilities from the original lender, Punjab and Maharashtra Co-operative Bank Limited, which subsequently merged with the Financial Creditor as per the Gazette Notification dated



25.01.2022. The total amount of financial debt claimed in default is Rs. 66,41,49,324/- (Rupees Sixty-Six Crores Forty-One Lakhs Forty-Nine Thousand Three Hundred and Twenty-Four Only), comprising principal, interest, and penal interest.

- ii. It is stated that the Corporate Debtor approached the Original Lender viz. Punjab and Maharashtra Cooperative Bank Limited for One Time Import Letter of Credit amounting to USD 7,220,070/- (United States Dollar Seven Million Two Hundred and Twenty Thousand Seventy Only) amounting to Rs. 41,87,00,000/- (Rupees Forty-One Crores Eighty-Seven Lakhs Only). That the Original Lender was pleased to sanction the captioned amount vide Sanction Letter dated 24.11.2012.
- iii. It is further stated that vide Promissory Note dated 26.11.2012, the promoters of the Corporate Debtor i.e. Mr. Rajendra Kumar Mittal, Mr. Raj Krishnakumar Munjal, Mr. Ramesh Rasiklal Desai and Mr. Rajinder Kumar Miglani provided the guarantee to pay the

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captioned amount in case the Corporate Debtor defaults in the payment of amount due.

- iv. It is submitted that the Original Lender vide Sanction Letter dated 05.12.2013 was pleased to sanction an amount of Rs. 50 Crores to the Corporate Debtor, as a working capital requirement for the purchase of imported goods. The said amount was secured by hypothecation over the goods purchased and registered mortgage of the Land and Building located at Mouje, Manjalpur, Vadodara.
- v. It is further submitted that vide Sanction Letter dated 23.12.2014 bearing no. PM/CO/FX/2157/2014-15 an amount of Rs. 41,75,00,000/- (Rupees Forty-One Crores Seventy-Five Lakhs Only) was sanctioned. The said letter was secured through an Indenture of Mortgage executed between the Corporate Debtor and the Original Lender on 09.01.2015. Another Indenture of Mortgage was availed vide Sanction Letter dated 30.06.2016 for a sum of Rs. 80 Crores with a sub-limit of Rs. 41.75 Crores.

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- vi. It is stated that the Corporate Debtor availed the Loan facilities from the Original Lender vide two indentures of mortgages dated 09.01.2015 and 10.08.2016 respectively, and the services commenced as per the terms and conditions specified in the attached indentures. The credit facility was further renewed on 07.03.2017 as per the terms acknowledged and accepted by and between the Original Lender and the Corporate Debtor.
- vii. It is stated that the existing facility was renewed on 17 .03.2017 as per the letter for renewal of Inland/Import Letter of Credit Facility for a sum of Rs. 80 Crores. That vide Sanction Letter dated 16.10.2017, the Sanction Limit of the Corporate Debtor was reduced from Rs. 80 Crores to Rs. 50 Crores with a sub-limit of Rs. 41.75 Crores under the existing credit facility.
- viii. Pursuant to the Letter of Credit, the Corporate Debtor agreed to pay the Loan Amount of Rs. 41.75 Crores in terms of the Schedule II of the Indenture of Mortgages dated 09.01.2015 and 18.08.2016 respectively.

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- ix. Vide Promissory Note dated 07 .07.2018, the directors of the Corporate Debtor viz. Mr. Ramesh Desai, Mr. Mukesh Shah, Mr. Amit Shah and Mr. Rajinder Kumar Miglani jointly promised to pay the Original Lender an amount of Rs. 50 Crores, including interest, in case the Principal Borrower defaults in the payment of the Loan Amount.
- x. It is stated that the Corporate Debtor defaulted in repaying the loan amount in terms of the repayment schedule agreed upon by both the parties. The Original Lender on account of the Corporate Debtor being classified as NPA on 17.02.2020, issued a demand notice dated 24.02.2020 to the Corporate Debtor in terms of Section 13(2) of the SARF AESI Act and the same was hand delivered to the Corporate Debtor by the Original Lender.
- xi. It is submitted that the Original Lender viz, Punjab and Maharashtra Cooperative Bank merged with the Financial Creditor viz. Unity Small Finance Bank Limited vide Gazette Notification dated 25.01.2022

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bearing no. CG-DL-E25012022-232894. The Corporate Debtor failed to reply to the Section 13(2) Demand Notice and further made no payment of the dues. The Financial Creditor, accordingly, issued a Symbolic Possession Letter dated 11.10.2022. The same was hand delivered to the Corporate Debtor.

- xii. It is further stated that the Financial Creditor once again issued the Demand Notice dated 09.12.2022 to the Corporate Debtor in terms of Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2019, wherein last opportunity was granted to the Corporate Debtor to repay the entire amount due. However, no payment was made to the Financial Creditor.
- xiii. The Financial Creditor filed a Petition in terms of Section 7 of the Code bearing C.P.(IB) No. 300 of 2023 before this Hon'ble Tribunal to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor. Thereafter, the Corporate Debtor proposed to settle the entire amount due, hence the

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Financial Creditor sought time from this Hon'ble Tribunal till the first instalment of the settlement proposal is dispersed to the Financial Creditor.

- xiv. This Hon'ble Tribunal vide order dated 16.07.2024 disposed of the aforesaid Petition while taking note of the settlement as entered between the parties. Since, no payment has been made to the Financial Creditor as per the repayment schedule in terms of the Settlement Agreement. Hence, the present petition.
- xv. It is submitted that the Corporate Debtor paid an amount of Rs. 1 Crore to the Financial Creditor in terms of the prescribed schedule. However, no further amount was disbursed to the Financial Creditor.
- xvi. It is further submitted that the Financial Creditor is kept out of funds for such a long period and due to failure on part of the Corporate Debtor to discharge the debt amount disbursed by the Original Lender, the Financial Creditor has to suffer difficulties in carrying out the regular banking transactions/activities.



- xvii. It is stated that in light of the aforementioned facts and circumstances, the Corporate Debtor is liable to pay an outstanding amount of Rs. 66,41,49,324 (Rupees Sixty-Six Crores Forty-One Lakhs Forty-nine Thousand Three Hundred and Twenty-Four Only) including an interest amount of Rs. Rs. 17,94,93,440.00/- (Rupees Seventeen Crores Ninety-Four Lakhs Ninety-Three Thousand Four Hundred and Forty Only) calculated @14% p.a. including a penal interest amounting to Rs. 1,94,67,566.00/- (Rupees One Crore Ninety-Four Lakhs Sixty-seven Thousand Five Hundred and Sixty-Six Only).
10. The Financial Creditor filed an additional Affidavit on 10.02.2025 in compliance with the order dated 31.01.2025 to place on record Form-C, Letter dated 19.04.2024 of Corporate Debtor to the Financial Creditor and letter dated 04.06.2024 having proposed OTS. To address discrepancies in the default date and settlement documents. It confirms the default date as 17.02.2020 per Form C (Annexure B), clarifies that the letter dated 19.04.2024 (Annexure C) was



non-binding, and notes that the One-Time Settlement (OTS) proposal dated 04.06.2024 (Annexure D) was not accepted by the Corporate Debtor.

11. The Financial Creditor filed an additional Affidavit on 25.02.2025 in compliance with the order dated 11.02.2025 to place on record the relevant period account statement demonstrating the classification of the account as account as Non-Performing Asset (NPA) and other relevant documents. To address the issue of a statement of accounts from 17.11.2019 to 22.06.2022 (Annexure A-2). Details of LCs issued to Blackstone Multi Trading Ltd. and Mitsui & Co. Ltd., totaling Rs. 50,72,22,949.68, with a net outstanding of Rs. 47,57,29,318.68 after a cash margin adjustment of Rs. 3,14,93,631, A copy of the LC dated 14.08.2019, copy of the Letter of Credits Bearing No. 01019IIBLU01135, 01019IIBLU01139, 1019IIBLU01144, 01019IIBLU01150, 01019IIBLU01153 AND 1019IIBLU00119, Copy of the Letter of Credit dated 31.07.2019 (Annexures A-3, A-4 Colly, A-5). It also includes the RBI press release dated 23.09.2019 (Annexure A-6).



12. The Financial Creditor also filed an additional Affidavit on 18.04.2025, to submit the NESL **Form D**, confirming the default date as 17.02.2020 as Annexure-A, with communication records and verification of procedural compliance.

13. In pursuance of the filing of the Present Petition and issuance of notice to the Corporate Debtor, the Corporate Debtor appeared and filed its **Reply** on 29.04.2025. The brief contentions of the Corporate Debtor in reply are as under: -

- a) It is submitted by the Corporate Debtor that the averments made by the Financial Creditor are not true and correct, the Financial Creditor is guilty of suppressio veri and suggestio falsi. It is further submitted that the Corporate Debtor denies all the averments made and contention raised in the Petition.
- b) It is stated that there is no debt and default within the meaning of section 7 of IBC, 2016.
- c) No disbursement was made under the sanction letter dated 11.05.2018, negating financial debt under Section 5(8) of the IBC. (b) An LC of USD 4,896,162.52 to Mitsui & Co. Ltd. was not honored by the Financial



Creditor (Letter dated 28.06.2021 issued by Mitsui & Co. Ltd to the erstwhile Bank, which is annexed as Annexure R1).

- d) Inconsistent default dates (17.02.2020 vs. 31.03.2020) render the petition conjectural.
- e) The petition is barred by Section 10A of the IBC if the default date is 31.03.2020.
- f) The petition is barred by res judicata due to the dismissal of CP(IB) No. 300/2023 on 16.07.2024.
- g) The petition is incomplete, lacking valuation reports, charge registration certificates, Bankers' Book entries, and a tabular interest computation.
- h) The OTS proposal dated 14.06.2023 was without prejudice and conditional, not an admission of debt.
- i) The Corporate Debtor is a solvent, going concern with assets worth Rs. 1165,86,42,682.

14. Theretofore, a **Rejoinder** is filed by the Financial Creditor to the reply submitted by the Corporate Debtor on 12.06.2025 vide inward diary no. D3365. The Financial Creditor denied all the contentions raised by the Corporate



Debtor and made submissions in the rejoinder, which are stated as under:

- i. The LCs constitute financial debt under Section 5(8)(h) of the IBC, with disbursements by beneficiary banks (NKGSB and Sumitomo Mitsui) constituting constructive disbursement, as per *Rajeev Kumar Jain v. Uno Minda Ltd.* (Company Appeal (AT) (Ins.) No. 947 of 2022).
- ii. The Financial Creditor is liable to settle LC obligations post-amalgamation (25.01.2022), as per Clause 6(2) of the Gazette Notification.
- iii. It is stated that, without prejudice, the Financial Creditor maintains the stance that the date of default is 17.02.2020, rectified per the NCLT order dated 31.01.2025
- iv. It is stated that the present Petition is maintainable as the date of default i.e. 17.02.2020 falls outside the period prescribed under section 10A of the code making Section 10A inapplicable (*Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.* ((2021) 4 SCC 258).
- v. It is submitted that the principle of Res Judicata does not apply as the earlier petition was dismissed on the

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grounds of a pending Settlement, not on the merits of the default. Therefore, Res judicata does not apply, as CP(IB) No. 300/2023 was dismissed due to OTS discussions, not on merits (*Sheodan Singh v. Daryao Kunwar* (C.A. Nos. 802-803 of 1963)).

- vi. It is submitted that there is sufficient evidence, including NESL records and bank statements, satisfies Section 7(3)(a) requirements (*Swiss Ribbons Pvt. Ltd. v. Union of India* ((2019) 4 SCC 17); *Univalve Projects Pvt. Ltd. v. Union of India* (WPC No. 5595 of 2020))

15. The Financial Creditor filed **Written Submission** on 26.06.2025 and reiterated the debt of Rs. 66,41,49,324, comprising principal (Rs. 46,51,88,318), interest (Rs. 17,94,93,440), and penal interest (Rs. 1,94,67,566). Details LCs issued to Blackstone Multi Trading Ltd. and Mitsui & Co. Ltd., totaling Rs. 50,72,22,949.61, with a net outstanding of Rs. 47,57,29,318.68. Argues that LC obligations constitute financial debt under Section 5(8)(h), and RBI restrictions on PMC Bank (23.09.2019) do not absolve the Corporate Debtor's liability. The default date of 17.02.2020 is outside the Section 10A period, and res judicata is inapplicable.



16. The Financial Creditor also relied upon various judgments in support of its submissions, which are mentioned herein under:

- i. Judgment of the Hon'ble NCLAT in the matter Rajeev Kumar Jain V. Uno Minda Limited & Anr, Company Appeal (AT) (INS.) NO. 947 OF 2022.
- ii. Judgment of the Hon'ble Supreme Court of India in the matter of Laxmi Pat Surana V. Union of India (2021) 8 SCC 481
- iii. Judgment of the Hon'ble NCLAT in the matter of Bikram Bhadur V. Union Bank of India (NCLAT, CA(AT)(INS) NO. 1289/2024)
- iv. Judgment of the Hon'ble NCLAT in the matter of Puneet B. Bhatia V. ASREC (INDIA) LTD. CA (AT) (INS) NO. 139/2024
- v. Judgment of the Hon'ble Supreme Court of India in the matter of Dena Bank V. C. Shivkumar Reddy and ANR. CIVIL APPEAL NO. 1650 OF 2020
- vi. Judgment of the Hon'ble Supreme Court of India in the matter of Ramesh Kymal V. Siemans Gamesa Renewable Power PVT. LTD. (2021) 4 SCC 258
- vii. Judgment of the Hon'ble Supreme Court of India in the matter of Sheodan Singh V. Daryo Kunwar (C.A. NOS. 802-803 OF 1963).
- viii. Judgment of the Hon'ble Supreme Court of India in the matter of Swiss Ribbons PVT. LTD. VS. Union of India [(2019) 4 SCC 17]
- ix. Judgment of the Hon'ble Supreme Court of India in the matter of Univalue Projects PVT. LTD. VS. Union of India (WPC NO. 5595 OF 2020).



17. The Corporate Debtor also filed their **Written Submission** on 24.06.2025. The Corporate Debtor denied debt and default, citing non-disbursement under the 11.05.2018 sanction letter. Argues that constructive disbursement is not recognized under Section 5(8), and *Rajeev Kumar Jain* is misapplied. Claims the petition is barred by Section 10A, res judicata, and incomplete documentation. Asserts its solvency with assets worth Rs. 1165,86,42,682.

18. The Corporate Debtor also relied upon various judgments in support of its submissions, which are mentioned herein under:

- (i). *Pioneer Urban Land & Infrastructure Ltd. v. Union of India* ([2019] 108 taxmann.com 147 (SC),
- (ii). *Anuj Jain v. Axis Bank Ltd.* ([2020] 114 taxmann.com 656 (SC),
- (iii). *Group Captain Atul Jain v. Tripathi Hospital (P.) Ltd.* ([2023] 155 taxmann.com 24 (NCLAT-New Delhi),
- (iv). *Kotak Mahindra Bank Limited v. India Steel Works Limited* (C.P. No. 779/IBC/MB/2023, NCLT Mumbai) to support its arguments.



- 19.** 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.
- 20.** The following issues are framed for determination and adjudication:
- (i) Whether the Financial Creditor has established a financial debt under Section 5(8) of the IBC, particularly with respect to LC obligations?**
 - (ii) Whether the Corporate Debtor has defaulted on the financial debt, and if so, whether the default date is 17.02.2020 or 31.03.2020?**
 - (iii) Whether the petition is barred by Section 10A of the IBC?**
 - (iv) Whether the petition is barred by res judicata due to the dismissal of CP(IB) No. 300/2023?**
 - (v) Whether the petition complies with procedural requirements under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016?**
 - (vi) Whether the Corporate Debtor's solvency and OTS proposal impact the admissibility of the petition?**
 - (vii) Whether the petition should be admitted for initiation of CIRP?**

20. Findings and Reasoning on the Issue No. (i):



20.1. **Existence of Financial Debt:** The Financial Creditor claims that the financial debt of Rs. 66,41,49,324 arises from LCs issued by PMC Bank at the Corporate Debtor's request for suppliers, including Blackstone Multi Trading Ltd. and Mitsui & Co. Ltd. The LCs, detailed in the Additional Affidavit dated 25.02.2025 include: (a) LC No. 010191NLOT01525 (multiple bills, 19.08.2019–28.08.2019) totaling Rs. 12,11,97,890. (b) LC No. 010191NLOT01563 (09.09.2019) for Rs. 1,02,08,277. (c) LC No. 007191MPLU00033 (31.07.2019) for Rs. 36,58,16,782.61. The total amount due is Rs. 50,72,22,949.68, with a net outstanding of Rs. 47,57,29,318.68 after adjusting a cash margin.

20.2. The Financial Creditor argues that these LCs constitute financial debt under Section 5(8)(h) of the IBC, which includes counter-indemnity obligations arising from LCs issued by a bank. The Corporate Debtor received goods and services, and beneficiary banks (NKGSB and Sumitomo Mitsui) discounted the bills, crystallizing the Financial Creditor's liability post-amalgamation



(25.01.2022). The Financial Creditor cites *Rajeev Kumar Jain v. Uno Minda Ltd.*, which holds that disbursements made on behalf of the Corporate Debtor constitute financial debt.

20.3. The Corporate Debtor contends that no financial debt exists due to non-disbursement by the Financial Creditor, relying on *Pioneer Urban Land and Anuj Jain*, which require disbursement against the time value of money. The Corporate Debtor cites a letter dated 28.06.2021 from Mitsui & Co. Ltd. (Annexure R1), stating that the LC of USD 4,896,162.52 was not honored due to RBI restrictions on PMC Bank (23.09.2019).

20.4. This Tribunal notes that Section 5(8)(h) explicitly includes counter-indemnity obligations for LCs. The Corporate Debtor's receipt of goods, as evidenced by the statement of accounts (Annexure A-2) and LC documents (Annexures A-3, A-4 Colly, A-5), establishes its obligation to indemnify the bank. The letter from NKGSB Bank dated 09.02.2022 confirms crystallized obligations, and the Financial



Creditor's liability to settle these under the amalgamation scheme (Amalgamation of Punjab and Maharashtra Bank with Unity Finance, the Financial Creditor) does not negate the Corporate Debtor's liability. The Corporate debtor purchased goods from suppliers, namely Blackstome Multi Trading Limited and Mitsui and Co. Ltd. In the normal course, the CD was obliged to pay the supplier located in a foreign country. However, the suppliers sold goods on receipt of payments through LCs. The CD entered into LC arrangement with the Punjab and Maharashtra Bank and this bank had arrangements with the beneficiary/ correspondent banks. The beneficiary bank/correspondent banks honoured the the LCs submitted by the suppliers,, and the suppliers received the payment for the supplies made. Now, the FC/Unity Finance was to pay the beneficiary bank,, but due to the the moratorium by the RBI on the payments by Unity Finance, it would pay later after the moratorium was over. However, the FC is liable to pay to the beneficiary bank, and the CD is obliged to pay the FC as per its agreement

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concerning LCs. The Rajeev Kumar Jain judgment clarifies that disbursements by beneficiary banks on behalf of the Corporate Debtor constitute financial debt. The Corporate Debtor's reliance on Pioneer Urban Land and Anuj Jain is inapplicable, as those cases address direct disbursements, whereas LC obligations are specifically covered under Section 5(8)(h). Thus, a financial debt exists.

21. Findings and Reasoning on the Issue No.(ii):

21.1. **Default and Date of Default:** The Financial Creditor asserts the default date as 17.02.2020, when the Corporate Debtor's account was classified as an NPA, evidenced by the SARFAESI notice dated 24.02.2020 (Annexure P-7), statement of accounts (Annexure A-2), and NESL Form D (18.04.2025). The default arose from non-payment of LC No. 010191NLOT01525, due on 17.11.2019. The Financial Creditor cites *Laxmi Pat Surana v. Union of India* ((2021) 8 SCC 481), *Bikram Bhadur v. Union Bank of India* (CA(AT)(Ins) No. 1289/2024), and *Puneet B. Bhatia v. Asrec (India) Ltd.*



(CA(AT)(Ins) No. 1391/2024), which hold that the NPA date can be the default date.

21.2. The Corporate Debtor argues that the default date of 31.03.2020 in Annexure P-12 conflicts with 17.02.2020, rendering the petition conjectural. The Corporate Debtor claims that if 31.03.2020 is accepted, the date falls in the period covered by Section 10A, petition is barred by Section 10A.

21.3. The Financial Creditor clarified in the affidavit Dated 07.02.2025 that 31.03.2020 was a clerical error, rectified per the NCLT order dated 31.01.2025. The NESL Form D confirms 17.02.2020, consistent with the SARFAESI notice and banking regulations, which classify an account as NPA 90 days after default.

21.4. This Tribunal finds that the default date of 17.02.2020 is substantiated by multiple documents. The Laxmi Pat Surana and Bikram Bhadur judgments affirm that the NPA date is a valid default date. The Corporate Debtor provides no evidence to dispute the default on 17.11.2019,

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leading to NPA classification on 17.02.2020. The rectification of the NESL record resolves the discrepancy. Thus, a default occurred on 17.02.2020.

22. Findings and Reasoning on the Issue No.(iii):

22.1. **Applicability of Section 10A.** The Corporate Debtor submits that if the default date is 31.03.2020, the petition is barred by Section 10A, which prohibits CIRP initiation for defaults between 25.03.2020 and 24.03.2021, as per notifications S.O. 3265(E) dated 24.09.2020 and S.O. 4638(E) dated 22.12.2020.

22.2. The Financial Creditor argues that the default date of 17.02.2020 predates the Section 10A period, citing *Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.* ((2021) 4 SCC 258), which holds that Section 10A applies only to defaults on or after 25.03.2020.

22.3. This Tribunal finds that the default date of 17.02.2020, established through the SARFAESI notice, statement of accounts, and NESL Form D, falls outside the Section 10A embargo period. The *Ramesh Kymal* judgment supports



this position. The Corporate Debtor's reliance on 31.03.2020 is irrelevant post-rectification. Thus, Section 10A does not bar the petition.

23. Findings and Reasoning on the Issue No.(iv):

23.1.**Applicability of Res Judicata:** The Corporate Debtor contends that the dismissal of CP(IB) No. 300/2023 on 16.07.2024 bars the present petition under res judicata, as the Financial Creditor did not appeal the order, citing *Kotak Mahindra Bank Limited v. India Steel Works Limited*.

23.2.The Financial Creditor argues that the prior petition was dismissed due to an OTS proposal (Annexure P-6), and not on merits, citing ***Sheodan Singh v. Daryao Kunwar (C.A. Nos. 802-803 of 1963***, which requires a decision on merits for res judicata to apply.

23.3.The Hon'ble Supreme Court's ruling in ***Prem Kishore Vs. Brahm Prakash (2023 SCC OnLine SC 356)***, in para 34 held that clearly establishes that res judicata applies only when a prior matter has been decided on its merits and attained finality. Dismissals on technical or procedural



grounds, such as insufficient information, do not attract this principle.

23.4. This Tribunal notes that the NCLT order dated 16.07.2024 (Annexure P-11) dismissed the prior petition due to settlement discussions, not on the merits of debt or default. The ***Sheodan Singh*** as well as ***Prem Kishore*** judgments clarify that res judicata applies only to decisions on merits.

23.5. In the present case, the earlier dismissal falls within the exceptions outlined by the ***Hon'ble Supreme Court*** and does not constitute ***res judicata***.

23.6. The Corporate Debtor's reliance on *Kotak Mahindra Bank* is misplaced, as the prior dismissal was procedural. Thus, res judicata does not apply.

24. Findings and Reasoning on the Issue No.(v):

24.1. **Procedural Compliance:** The Corporate Debtor alleges that the petition is incomplete, lacking valuation reports, charge registration certificates, Bankers Book entries, and a tabular interest computation, as required under Rule 4.

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24.2. The Financial Creditor submits that it has provided sufficient evidence, including sanction letters (annexed with the Petition as Annexures P-15 to P-20), mortgages (annexed with the Petition as Annexures P-13, P-14), Demand Promissory Notes (annexed with the Petition as Annexures P-21 to P-25), NESL Certificate of Default in the shape of **Form D** (annexed with Additional Affidavit dated 18.04.2025 as Annexure-A), and a statement of accounts (annexed with Additional Affidavit dated 25.02.2025 as Annexure A-2), citing **Swiss Ribbons Pvt. Ltd. and Univalue Projects Pvt. Ltd.**, which allow alternative evidence under Section 7(3)(a) of the IBC, 2016.

24.3. This Tribunal finds that Rule 4 requires evidence of debt and default. The Financial Creditor's documents, including NESL Form D, SARFAESI notice, and LC details, substantiate the claim. The Swiss Ribbons and Univalue Projects judgments permit such evidence. While valuation reports and charge certificates are absent, the mortgages and LC documents establish the secured debt. The absence of a tabular interest computation is not fatal, as the debt

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breakdown is provided. Thus, the petition complies with procedural requirements.

25. Findings and Reasoning on the Issue No.(vi):

25.1. Impact of Solvency and OTS Proposal: The Corporate Debtor claims to be a solvent, going concern with assets worth Rs. 1165,86,42,682 and argues that the OTS proposal dated 14.06.2023 was without prejudice, not an admission of debt.

25.2. The Financial Creditor argues that solvency is irrelevant under Section 7, citing *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* (2022) 8 SCC 352, and that the OTS proposal and partial payments of Rs. 1,00,00,000 indicate acknowledgment of liability.

25.3. This Tribunal finds that CIRP admission is mandatory once debt and default are established, rendering solvency irrelevant. The OTS proposal and payments suggest acknowledgment, though not conclusive. The focus under Section 7 remains on debt and default, which are established.



26. Findings and Reasoning on the Issue No.(vii):

26.1. **Admissibility of the Petition:** The Financial Creditor seeks CIRP initiation, supported by comprehensive evidence, and proposes Mr. Bihari Lal Chakravarti as IRP. The Corporate Debtor's objections are addressed above.

26.2. This Tribunal finds that the financial debt of Rs. 66,41,49,324 is established under Section 5(8)(h), with a default on 17.02.2020, outside the Section 10A period. The petition complies with Rule 4, and res judicata does not apply. The proposed IRP's credentials are unchallenged.

27. The present Petition is complete in terms of Section 7 (5) of the Code. The 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 Petition. Moreover, the said default is not covered under the period exempted under Section 10A of the IBC, 2016.



28. The Hon'ble Supreme Court in the case of ***Innoventive Industries Limited Vs. ICICI Bank Limited & Anr. (2017) ibclaw.in 02 SC***, wherein it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC 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

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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.

29. The view taken in the case of **Innoventive Industries** has been followed by the Supreme Court in the case of **E S Krishnamurthy & Ors. Vs. Bharath Hi Tech Builders Pvt. Ltd. (2021) ibclaw.in 173 SC** held that the



Adjudicating Authority must either admit the application under Section 7(5)(a) or it must reject the application under Section 7(5)(b). The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available. The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.

30. Supreme Court in ***M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (2023) ibclaw.in 67 SC*** held that the decision in the case of ***Vidarbha Industries (2022) ibclaw.in 91 SC*** cannot be read and understood as taking a view which is contrary to the view taken in the cases of ***Innoventive Industries [2017] ibclaw.in 02 SC*** and ***E.S. Krishnamurthy (2021) ibclaw.in 173 SC***.



The view taken in the case of **Innoventive Industries** still holds good. The Hon'ble Supreme Court observed that:

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

31. In light of the above findings, this Tribunal is satisfied that the Financial Creditor is entitled to the relief as sought. The Corporate Debtor's default justifies the admission of the petition and the initiation of CIRP under the Code. Hence, the Petition filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process (CIRP) against the Respondent/Corporate Debtor deserves to be admitted.

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

- (i) The Respondent/Corporate Debtor- **Tensile Steel Limited** is **admitted** in the Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the IBC, 2016.



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

- 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 Securitisation 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. The moratorium does not apply to transactions notified by the Central Government, as per Section 14(3)(a) of the IB Code, 2016.*

(iii) The order of moratorium under section 14 of the Code shall come to 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 the Corporate Debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) As proposed by the Financial Creditor, we appoint **Mr. Bihari Lal Chakravati**, having Registration No. IBBI/IPA-002/IP-N00863/2019-20/12776, (e-mail: blchakravati.associate@gmail.com, Mobile No. 99109-93376), under section 13(1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement (e.g., newspapers, websites) under Regulation 6(2) of IBBI Regulations, 2016, of the initiation of the Corporate Insolvency Resolution Process and call for submissions of claims under section 15 within three days of appointment as per



Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as required by Section 13(1)(b) of the Code.

- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its promoters, or any other person associated with the management of the Corporate Debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Corporate Debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the Corporate Debtor's assets and documents without any delay whatsoever within seven days of this order. 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 shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate Debtor company as a going concern as a part of the obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority a periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Financial Creditor to pay IRP a sum of **Rs.5,00,000/- (Rupees Five Lakh Only)** in advance 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. The payment shall be made to a designated bank account to be provided by the IRP within three days of appointment, and this amount shall be adjustable against the IRP's fees as approved by the Committee of Creditors under Regulation 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (xii) The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional, the concerned



Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update the Master Data of the Corporate Debtor on the MCA portal to reflect its status as 'under Corporate Insolvency Resolution Process' pursuant to this order and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

33. Accordingly, the Petition **CP(IB)/31/AHM/2025** is hereby **admitted**. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

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Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)