



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/221(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **22.07.2025**

NAME OF THE PARTIES: **DSM Projects Private Limited**

Vs

A N Enterprises Infrastructure Services Private Limited

Under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate sheet. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//SVG//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI

CP (IB) No. 221/MB/2025

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 4(1) of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

In the matter of:

DSM PROJECTS PRIVATE LIMITED,

CIN: U45500MH2016PTC286904,

Having the Registered Office at: Flat No.01,
Ground Floor, Manisha Safalya B, M.G. Road,
Vishnu Nagar, Dombivali (West), Thane-421202.

...Applicant/Financial Creditor/Petitioner

Vs.

A N ENTERPRISES INFRASTRUCTURE SERVICES

PRIVATE LIMITED,

[CIN: U74900MH2012PTC230674]

Registered Office: 708, Gateway Plaza,
Hiranandani Gardens, A.S. Marg, Powai,
Mumbai, Maharashtra-400076.

...Respondent/Corporate Debtor

Pronounced On: 22.07.2025.

CORAM:

SHRI NILESH SHARMA, MEMBER (JUDICIAL).

SHRI SAMEER KAKAR, MEMBER (TECHNICAL).

Hearing: Physical.

Appearances:

Financial Creditor: Adv. Yash Momaya i/b. Adv. Vikramaditya Chavan.

Corporate Debtor: Adv. Deepak Deshmukh.

ORDER

[PER: CORAM]

1. This is an application filed on 16.12.2024 by the Applicant- M/s. DSM Projects Private Limited (hereinafter also referred to as the “Financial Creditor” or “Petitioner”), against the Respondent- A.N. Enterprises Infrastructure Services Private Limited (hereinafter also referred to as the “Corporate Debtor”), under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, ‘the Code’) r/w Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, seeking commencement of the Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor, appointment of Interim Resolution Professional (‘IRP) and declaration of moratorium. The amount claimed to be in default is INR 60,19,50,000/- along with outstanding interest is INR 38,87,32,822/- and the date of default is stated to be 13th March, 2022.
2. Vide Order dated 27.02.2025 of the predecessor Bench-Court V, NCLT Mumbai and Order dated 11.03.2025 passed by this Court, the Applicant has filed an Additional Affidavit dated 20.03.2025 placing certain additional documents on record. Thereafter, pursuant to the Order dated 21.03.2025, the Applicant filed amended Form I rectifying the date of default and incorporating additional documents as part of application. The reference in this order to the application or petition shall be construed as reference to the amended application/petition.
3. On perusal of Part-I of Form 1, it is seen that the present application is filed by M/s. DSM Projects Private Limited and the person authorised by the Board Resolution dated 21.11.2024, passed by the Corporate Debtor, to submit this application on its behalf is one Mr. Kunal Ambole. Further, an affidavit in support of the application dated 13.12.2024 is affirmed by the above-named authorised representative of the Applicant.



4. A perusal of Part II of the application in Form 1 reveals that the Respondent/Corporate Debtor i.e. A.N. Enterprises Infrastructure Services Private Limited, is a private limited company having its registered office at 708, Gateway Plaza, Hiranandani Gardens, A.S. Marg, Powai, Mumbai-400076.
5. On perusal of Part-III of Form 1, the Applicant has proposed the name of Mr. Pradeep Kumar Chakravarty to be appointed as the IRP of the Corporate Debtor in the event that this petition gets admitted. The Applicant has also obtained the Written Consent from the proposed IRP above-named in Form 2, the copy of which is annexed to the application as Annexure 2.
6. A perusal of Part IV of the application vide Form 1 reveals that the amount claimed to be in default by the Applicant/Financial Creditor is INR 60,19,50,000/- along with total outstanding interest of INR 38,87,32,822/- as on 12.12.2024. As evident from Part IV of the Application, the total amount of debt granted is INR 63,00,00,000/-. The date of default stated by the Applicant in Part IV of the application is 13th March, 2022.
7. The facts narrated by the Applicant in Part IV of the Application are stated hereinbelow:
 - i. The Corporate Debtor vide its application letter dated 01st September, 2017 requested and approached the Financial Creditor for a sanction of Inter-Corporate Deposit of Rs. 63 crores. Accordingly, the Financial Creditor executed a Loan Agreement dated 06.09.2017 with the Corporate Debtor for a sum of Rs. 63 crores as per the terms and conditions stated therein.
 - ii. The Credit Facilities were granted by the Financial Creditors after executing the Loan Agreement dated 06.09.2017. Due to continuous defaults by the Corporate Debtor, the Financial Creditor vide various notice/letters called upon



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the Corporate for payments of the outstanding. Letters/Notices were dated 01st April 2018, 30th September 2018, 31st March 2019, 30th September 2019, 28th February 2020, 30th November 2022, 30th September 2023, 31st March 2024, 30th July, 2024 and the Legal Notice dated 02nd September, 2024. Reply to the aforementioned letters were made by the Corporate Debtor vide Letters dated 10th April 2018, 05th October 2018, 15th April 2019, 05th March 2022, 15th October 2023 and 02nd August 2024. Through the aforementioned correspondences, though the Corporate Debtor acknowledged the debt but failed to offer any substantive resolution or payment.

iii. The Applicant has attached the following documents to the application including the documents attached along with the additional affidavit dated 20.03.2025:

1. Annexure- 1: A Copy of the Authorization
2. Annexure- 2: Copy of the communication from the proposed insolvency professional in Form 2
3. Annexure- 3: Copy of the Request Letter.
4. Annexure- 4: A Copy of the Inter Corporate Loan Agreement dated 6th September 2017.
5. Annexure- 5: A Copy of the various reminder letters sent by the Financial Creditor to the Corporate Debtor.
6. Annexure- 6: A Copy of the replies to the various reminder letters sent by the Financial Creditor to the Corporate Debtor.
7. Annexure- 7: A Calculation Sheet.
8. Annexure-8: Copy of duly certified Bank Statement of Financial Creditor issued by Dombivli Nagari Sahakari Bank Ltd for the period 01st April, 2016 to 30th September, 2017.
9. Annexure-9 to 15: Copies of the Balance Confirmations issued by the Financial Creditor to the Corporate Debtor.
10. Annexure-16: Copies of the Audited Balance Sheets of Financial Creditor for the period of 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021 -2022, 2022-2023 and 2023-2024.
11. Annexure-17: Copies of the Audited Balance Sheets of Corporate Debtor for the period of 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021- 2022, 2022-2023 and 2023 -2024.
12. Master Data of Financial Creditor
13. Master Data of Corporate Debtor
14. Undertaking Letter regarding non-requirement of NSEL Report
15. Registration Certificate of IRP
16. Validity Certificate of IRP

iv. In regard to NeSL Record of Default, the Applicant has attached its letter dated 11.12.2024, stating that as the Applicant is not a financial institution, obtaining



the NeSL Report for filing the application u/s 7 of the Code is not applicable to the Petitioner Company.

8. **Reply Affidavit dated 02nd May, 2025** was filed and affirmed by one Mr. Prakash Dhavale, the Authorised Signatory of the Corporate Debtor. The above-named signatory is authorised by a board resolution passed at the meeting of the board of directors of the Corporate Debtor held on 27.02.2025, the copy of which is attached to the reply affidavit as Exhibit 'A'-Page 9. The contents of the aforesaid Affidavit are summarised hereinbelow:

- i. The Corporate Debtor submits that certain communications addressed by it have been misconstrued by the Financial Creditor as acknowledgments of debt. These communications were made in good faith and on a “without prejudice” basis during the course of commercial negotiations with the Financial Creditor with the objective of reaching an amicable settlement and thus, such communications do not by themselves constitute an acknowledgement of debt and default.
- ii. It is submitted by the Respondent that under Clause 14 of the Loan Agreement, the parties unequivocally agreed to resolve any dispute arising therefrom through arbitration under the Indian Arbitration and Conciliation Act, 1996. However, despite the existence of an agreed dispute resolution mechanism, the Financial Creditor has chosen to file the present petition. The Applicant is using the instant proceedings as a debt recovery tool which is against the spirit and objective of the Code.
- iii. The Corporate Debtor was incorporated on 07.05.2012 and has been engaged in the business of road construction, repair and maintenance for over a decade. In 2017, the Corporate Debtor was awarded sub-contracts worth approximately INR



1,000 crores. Besides that, the Corporate Debtor also had a repair and maintenance contract for Mumbai's 27 flyovers. During this period, the Corporate Debtor was in need of working capital and it was in this background on 01st September 2017, the Corporate Debtor approached the Financial Creditor requesting for a loan of INR 63 crores for its business activities. Pursuant to the aforesaid request, the Financial Creditor agreed to lend an amount of INR 63,00,00,000/- (Rupees Sixty-Three Crores only) to the Corporate Debtor on the terms and conditions set out in the Loan Agreement dated 06.09.2017 entered into between the parties hereto. The Corporate Debtor repaid a sum of INR 4.50 crores to the Financial Creditor in 2018 and assured the repayment of balance amounts as per the tranches set out in the Loan Agreement.

- iv. The Corporate Debtor had partly completed the projects discussed hereinbefore and the Corporate Debtor was ready and willing to execute the remaining work in accordance with the work orders issued in its favour. However, since the principal contractor abruptly terminated the work orders and released only partial payments, the projected cash flows of the Corporate Debtor were adversely affected thereby impairing its ability to service the loans it had availed for business purpose. The Corporate Debtor submits that these circumstances were beyond its control owing to which the repayment of agreed tranches as per the Loan Agreement could not take place from the year 2019 onwards.
- v. The outbreak of Covid-19 pandemic resulted in economic slowdown which adversely affected the infrastructure sector at large. The Corporate Debtor, like many others in the industry, suffered a sharp decline in revenue during 2020 to 2023 due to non-allocation of new contracts and interruptions in ongoing projects.



These challenges, being industry-wide and unforeseeable, have directly impacted the Corporate Debtor's cash flows and its payment obligations, including towards the Financial creditor.

- vi. The Corporate Debtor has been making sincere efforts to secure new contracts and restore liquidity. The management is in discussions for future projects and is confident of improving the financial position of the Corporate Debtor in the near future. The Corporate Debtor is hopeful that within a span of 12 to 18 months, it will be in a position to start discharging its repayment obligations in a phased manner.
- vii. The Corporate Debtor is a viable entity and therefore, subjecting it to CIRP would not be in the interest of any stakeholder. Admission of insolvency petition would cause serious prejudice to the public at large.
- viii. In light of the above submissions, the Corporate Debtor prays for dismissal of the instant petition and refer the parties to arbitration as per Clause 14 of the Loan Agreement.

9. Affidavit-in-Rejoinder dated 17th May, 2025: The Authorised Signatory of the Petitioner viz. Mr. Kunal Ambole, has filed an affidavit-in-rejoinder on behalf of the Applicant, which was affirmed on 17.05.2025. The contents of the aforesaid rejoinder are hereinbelow summarised:

- i. The Financial Creditor has filed an Additional Affidavit dated 20th March, 2025 bringing on record certain documents and facts essential to adjudicate this petition. It is denied that the Financial Creditor has misconstrued the communications addressed by the Corporate Debtor as an acknowledgment of debt. A bare perusal



- of the record before this Tribunal reveals that there were a series of acknowledgements of debt issued by the Corporate Debtor all of which clearly establish not only the jural relationship of creditor and debtor but also the factum of there being a default by the Corporate Debtor. It is denied that the parties were engaged in settlement discussions. Even assuming without admitting the settlement talks, the same is immaterial in the conspectus of Section 7 of the Code.
- ii. As regards the contention of arbitration, it is settled position in law that the existence of arbitration clause in a contract does not oust the jurisdiction of this Tribunal under the IB Code given that the proceedings before this Tribunal are not for recovery of debts.
 - iii. The plea of pandemic resulting in Corporate Debtor's inability to service its debt to the Financial Creditor is nothing but an admission of debt and default. The Financial Creditor was constrained to file this application u/s 7 of the Code to initiate CIRP against the Corporate Debtor due to non-repayment of outstanding debt due and payable by the Corporate Debtor.

ANALYSIS AND FINDINGS

10. We have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent. We have perused the materials and documents placed by both the parties on record of this Tribunal.
11. A perusal of the Loan Agreement dated 06.09.2017, which was executed between the parties herein, reveals that the Corporate Debtor agreed to borrow a loan of INR 63 crores from the Applicant at the rate of 10% p.a. payable on monthly basis, for its business and general corporate purpose. The tenure of the loan was fixed as 4 years



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and 6 months. The Bank Account Statement annexed at Annexure 8 to the application shows that a sum of INR 63,00,00,000/- was disbursed to the Corporate Debtor on 13.09.2017 from the bank account of the Applicant held with Dombivli Nagari Sahakari Bank Ltd, Vishnunagar Branch. Thus, the existence of financial debt and its disbursal to the account of the Corporate Debtor stands proven on record.

12. The Loan Repayment Schedule, as stated in the aforementioned Loan Agreement, is reproduced hereinbelow:

Sr. No.	Repayment Period	Repayment Amount	Gross Interest Amount	Total TDS Amount	Net Interest
1.	13.09.2017 to 12.09.2018	6,00,00,000	6,02,42,466	60,24,247	5,42,18,219
2.	13.09.2018 to 12.09.2019	12,00,00,000	5,14,84,932	51,48,493	4,63,36,438
3.	13.09.2019 to 12.09.2020	18,00,00,000	3,67,29,508	36,72,951	3,30,56,557
4.	13.09.2020 to 12.09.2021	18,00,00,000	1,87,27,397	18,72,740	1,68,54,658
5.	13.09.2021 to 12.03.2022	9,00,00,000	26,21,918	2,62,192	23,59,726
	TOTAL	63,00,00,000	16,98,06,221	1,69,80,623	15,28,25,598

13. As per the ledgers contained in the confirmation of accounts, the copies of which have been annexed to the application from Annexures 9 to 15, the following details of payments received and made by the Corporate Debtor have come to our notice:

Receipts			Payments		
Date	Particulars	Amount (INR)	Date	Particulars	Amount (INR)
13.09.2017	Bank	63,00,00,000	13.10.2017	Bank	50,00,000
16.05.2018	Bank	50,00,000	14.11.2017	Bank	50,00,000
29.05.2018	Bank	50,00,000	13.12.2017	Bank	50,00,000
			16.01.2018	Bank	50,00,000
			16.02.2018	Bank	50,00,000
			13.03.2018	Bank	50,00,000
			17.04.2018	Bank	50,00,000
			16.05.2018	Bank	50,00,000
			29.05.2018	Bank	50,00,000
			06.06.2018	Bank	50,00,000
			05.07.2018	Bank	50,00,000



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				Closing Balance	58,50,00,000
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14. It is further seen from the records that the Corporate Debtor has been giving balance confirmations for the financial years from FY 2017-18 to FY 2023-24. The last such balance confirmation was given by the Corporate Debtor to the Applicant on 01.04.2024 in respect of FY 2023-24 wherein the Corporate Debtor has confirmed the closing balance of Principal Outstanding Loan of INR 58,50,00,000/- payable to the Financial Creditor. Thus, we find that the Corporate Debtor has been acknowledging its liability towards the Applicant from time to time. As per the terms and conditions of the Loan Agreement, the loan was repayable in 4 years and 6 months as per the instalments given in the Loan Repayment Schedule (supra). It is not in dispute that the Corporate Debtor received the loan of Rs. 63 crores on 13.09.2017. Therefore, the last date for repaying the entire loan is 13th March, 2022. However, the fact that the Corporate Debtor acknowledges debt due to the Applicant of INR 58.50 crores in its books of accounts as on 31.03.2024 proves that the Corporate Debtor failed to repay the debt to the Applicant the tenor of which expired on 13.03.2022. Thus, in our considered view, the factum of default on the part of the Corporate Debtor stands established on record and the Applicant has rightly ascertained 13th March, 2022 as the date of default. Since the present petition was filed on 16.12.2024, which is within three years from the date of default, it is held to be not barred by the law of limitation as prescribed under Article 137 of the Schedule to the Limitation Act, 1963.

15. There were several correspondences exchanged between the Applicant and the Respondent in relation to the loan repayment and outstanding balances from time to



time. For instance, vide Letter dated 10.04.2018 addressed by the Corporate Debtor to the Applicant, the Corporate Debtor stated as follows: *“Reference to your reminder regarding outstanding payment of loan taken from you, we would like to say that, we are in receipt of the reminder dt 01.04.2018 and we have started the repayment of the same. And we have paid Rs. 3 crs till March 2018 and balance will try to pay as and when it possible for us.”* In yet another Letter dated 02.08.2024, which was addressed by the Corporate Debtor to the Applicant, the Corporate Debtor stated the following: *“We are in receipt of various reminders regarding outstanding repayment of loan taken from you. Balance amount of Loan is Rs. 60,19,50,000.00. Once against, assure you that as and when it is possible you to pay the loan, we will surely honored the same. Thanks for bearing with us.”* In our considered view, the aforesaid letters tantamount to acknowledgements in writing having an effect u/s 18 of the Limitation Act, 1963. The aforesaid letters also support the case of the Applicant in establishing the existence of financial debt and its default by the Corporate Debtor.

16. Even otherwise, in the instant case, the Corporate Debtor has admitted its default in repayment of debt to the Financial Creditor, which is evident from the following paragraphs of the Affidavit in Reply dated 02.05.2025:

*“14. The Corporate Debtor had partly completed the projects referred to in paragraphs 9 and 10 above. The Corporate Debtor was ready and willing to execute the remaining work in accordance with the work orders issued in its favour. However, the principal contractor, for reasons best known to it, abruptly terminated the work orders and released payment only for the work completed up to that point. **This sudden termination adversely affected the projected cash flows of the Corporate Debtor and significantly impaired its ability to service the loans it had availed for business purposes.**”*



15. It is submitted that these were circumstances beyond control of the Corporate Debtor, owing to which the repayment of agreed tranches as per Loan Agreement could not take place in the year 2019 onwards.

Impact of Covid-19 Pandemic

16. The outbreak of the Covid-19 pandemic and the resultant economic slowdown has adversely affected the infrastructure sector at large. The Corporate Debtor, like many others in the industry, suffered a sharp decline in revenue during 2020 to 2023 due to non-allocation of new contracts and interruptions in ongoing projects. These challenges, being industry-wide and unforeseeable, have directly impacted the Corporate Debtor's cash flows and its payment obligations, including towards the Financial Creditor. This was informed to the Financial Creditor during the meetings held between the representatives of the parties. The Financial Creditor, understood the situation of infrastructure projects owing to unavailability of manpower, did not raise any demands of repayment of loan amounts during this period.

18. Without prejudice to the preliminary objections raised with respect to the maintainability of the Petition, the Corporate Debtor is hopeful that it would be able serve its financial obligations towards the Financial Creditor, in a phased manner within a span of 12 to 18 months. The Corporate Debtor is willing to discharge its financial obligations towards the Financial Creditor, provided sufficient time mentioned above is granted to it. (Emphasis Supplied)

17. Learned Counsel for the Respondent has contended that under Clause 14 of the Loan Agreement, the parties unequivocally agreed to resolve any disputes arising therefrom through arbitration under the Indian Arbitration and Conciliation Act, 1996. However, despite the existence of an agreed dispute resolution mechanism, the Financial Creditor has chosen to file the present petition u/s 7 of the Code. We are unable to appreciate the aforesaid contention placed on behalf of the Respondent as



mere existence of arbitration clause in the loan agreement does not bar the jurisdiction of this Tribunal to order CIRP of the Corporate Debtor u/s 7 of the Code.

The Hon'ble Supreme Court of India in *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund & Ors.* [Neutral Citation: 2021 INSC 216] has observed, *inter-alia*, as follows:

*"25. As noted, the issue which is posed for our consideration is arising in a petition filed under Section 7 of IB Code, before it is admitted and therefore not yet an action in rem. In such application, the course to be adopted by the Adjudicating Authority if an application under Section 8 of the Act, 1996 is filed seeking reference to arbitration is what requires consideration. The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no elaboration. In that view, notwithstanding the fact that the alleged corporate debtor filed an application under Section 8 of the Act, 1996, the independent consideration of the same dehors the application filed under Section 7 of the IB Code and materials produced therewith will not arise. The Adjudicating Authority is duty bound to advert to the material available before him as made available along with the application under Section 7 of the IB Code by the financial creditor to indicate default along with the version of the corporate debtor. This is for the reason that, keeping in perspective the scope of the proceedings under the IB Code and there being a timeline for the consideration to be made by the Adjudicating Authority, the process cannot be defeated by a corporate debtor by raising a moonshine defence only to delay the process. In that view, even if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority has a duty to advert to contentions put forth on the application filed under Section 7 of the IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not. While doing so the contention put forth by the corporate debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default. **If the irresistible conclusion by the Adjudicating Authority is that there is default and the***



debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause.

26. That apart if the conclusion is that there is default and the debt is payable, due to which the Adjudicating Authority proceeds to pass the order as contemplated under sub-section 5(a) of Section 7 of IB Code to admit the application, the proceedings would then get itself transformed into a proceeding in rem having erga omnes effect due to which the question of arbitrability of the so called inter se dispute sought to be put forth would not arise. On the other hand, on such consideration made by the Adjudicating Authority if the satisfaction recorded is that there is no default committed by the company, the petition would stand rejected as provided under sub-section 5(b) to Section 7 of IB Code, **which would leave the field open for the parties to secure appointment of the Arbitral Tribunal in an appropriate proceedings as contemplated in law and the need for the NCLT to pass any orders on such application under Section 8 of Act, 1996 would not arise.**

27. Therefore, to sum up the procedure, it is clarified that in any proceeding which is pending before the Adjudicating Authority under Section 7 of the IB Code, if such petition is admitted upon the Adjudicating Authority recording the satisfaction with regard to the default and the debt being due from the corporate debtor, any application under Section 8 of the Act, 1996 made thereafter will not be maintainable. In a situation where the petition under Section 7 of IB Code is yet to be admitted and, in such proceedings, if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority is duty bound to first decide the application under Section 7 of the IB Code by recording a satisfaction with regard to there being default or not, even if the application under Section 8 of Act, 1996 is kept along for consideration. In such event, the natural consequence of the consideration made therein on Section 7 of IB Code application would befall on the application under Section 8 of the Act, 1996.” (Emphasis Supplied)



Thus, applying the law as laid down by the Hon'ble Apex Court in Indus Biotech Private Limited (supra), since in the instant case we are satisfied as to the existence of debt and default by the Corporate Debtor, there is no occasion for us to dismiss the petition on the ground of existence or invocation of arbitration clause.

18. The Hon'ble Supreme Court in its landmark judgment in M/s. **Innoventive Industries Ltd. v. ICICI Bank & Anr.** (Judgment dated August 31, 2017 in Civil Appeal Nos. 8337-8338 of 2017) has held as follows:

*"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant.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. (Emphasis Supplied)*

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."



19. In view of the foregoing findings, discussions and analysis, we are satisfied that the Corporate Debtor has committed a default in repayment of debt which is due and payable to the Financial Creditor. We have also found that the Applicant has attached all the documents required to be filed along with the Petition/Application and therefore, we hold that the application filed by the Applicant is complete. The Applicant has also proposed the name of Mr. Pradeep Kumar Chakravarty as the proposed IRP and as per the consent given by the above-named proposed IRP, there are no disciplinary proceedings pending against him. Hence, as per the law laid down by the Hon'ble Apex Court in Innoventive Industries Ltd case (supra), we are left with no choice but to admit this application u/s 7(5)(a) of the Code. Accordingly, we pass the following orders:

ORDER

- i. The Corporate Debtor- M/s. **A N ENTERPRISES INFRASTRUCTURE SERVICES PRIVATE LIMITED** [CIN: U74900MH2012PTC230674], is admitted into the Corporate Insolvency Resolution Process under Section 7(5)(a) of the Code.
- ii. As a consequence thereof, moratorium under Section 14 of 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 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 the 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 sub-section (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 sub-sections (2) and (2A) of Section 14 of IBC, 2016.
 - v. We hereby appoint **Mr. Pradeep Kumar Chakravarty**, an Insolvency Professional having (Email:pkc195710@gmail.com) registration no. **IBBI/IPA-**



003/IP-N00123/2017-2018/11338, as the Interim Resolution Professional ('IRP') of the Corporate Debtor.

- vi. The Financial Creditor is directed to pay an advance of **Rs. 2,00,000/-** (Rupees Two Lakhs Only) to the above-named 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.
- vii. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016. 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 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 IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- viii. This Adjudicating Authority directs the IRP to make a public announcement for 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.
- ix. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.
- x. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, COURT VI

- xi. The IRP shall be under 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, to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.
- 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 MCA portal specifically mentioning regarding admission of this Application 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.
- xiv. **Accordingly, CP (IB)/221 (MB)2025 stands admitted.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)
SVG-LRA VI.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)