NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1 & P2.
IA (I.B.C)/5793(MB)2025 with
C.P. (IB)/697(MB)2025

CORAM:

SHRI NILESH SHARMA	**SHRI SAMEER KAKAR**
HON'BLE MEMBER (JUDICIAL)	**HON'BLE MEMBER (TECHNICAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **06.04.2026**

NAME OF THE PARTIES: **Beacon Trusteeship Limited**

Vs

Transcon Buildcon Private Limited

Under Section 7 and 60(5) of the IBC.

ORDER

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

Sd/-	**Sd/-**
NILESH SHARMA	**SAMEER KAKAR**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

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IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.697/MB/2025 with IA (I.B.C) No. 5793(MB)/2025

[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:

BEACON TRUSTEESHIP LIMITED
[acting in its capacity as the trustee of Debenture Holders]
5W, 5th Floor, Metropolitan Building
E Block, Bandra Kurla Complex (BKC)
Bandra (East)
Mumbai 400051, Maharashtra.

…Financial Creditor/Applicant

V/s

TRANSCON BUILDCON PRIVATE LIMITED
[CIN: U51909PN2017PTC170640]
Plot No. 94 to 103, 106(pt)
Site office Khotwadi, PM Marg
Near Milan International Hotel
Santacruz W
Mumbai 400054, Maharashtra.

...Corporate Debtor

Pronounced: 06.04.2026

CORAM:
HON’BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)
HON’BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

In CP and IA

Financial Creditor/Respondent in IA: Mr. Nausher Kohli a/w Adv. Mr. Aditya Trivedi i/b IndusLaw.

Corporate Debtor/ Applicant in IA: Adv. Mr. Rohan Agarwal a/w Adv. Mr. Ankit Pitti i/b S&T

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P. (IB) No.697/MB/2025 filed on 17.07.2025 by Beacon Trusteeship Limited, the Applicant (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") through Mr. Nanda Sitabe Sahani – Junior Associate of the Applicant *vide* Board Resolution dated 28.06.2024 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Transcon Buildcon Pvt. Ltd., the Corporate Debtor (CD).

1.2 The Applicant is acting in its capacity as a Debenture Trustee. The CD is a real estate development company. The CD herein is a corporate guarantor in respect of the non-convertible debentures issued by the Principal Borrower i.e., Transcon Skycity Private Limited to different debenture-holders, in respect of which the Applicant is acting as a Debenture Trustee.

1.3 The Applicant has proposed the name of Mr. Amit Vijay Karia having registration no. IBBI/IPA-001/IP-P-02600/2021-2022/13969 to act as an IRP along with his written communication in Form-2 and valid AFA till 31.12.2025. On perusal of the IBBI website, it is seen that the AFA of the IRP is valid till 31.12.2026.

1.4 The Applicant has relied on the following documents:

i. Copy of Master Data of the Applicant and Corporate Debtor

ii. Copy of Board Resolution in favour of the authorized signatory dated 28.06.2024

iii. Copy of Form 2 by the IRP dated 21.05.2025.

iv. Copy of the Form No. PAS-3 read with the board resolutions, evidencing allotment of debentures amounting to INR 62.39 crores by Transcon Skycity Private Limited

v. Copy of the Debenture Trustee Appointment Agreement dated 11.05.2022.

vi. Copy of the Debenture Trust Deed Cum Mortgage dated 11.05.2022.

vii. Copy of the Escrow Agreement dated 12.05.2022.

viii. Copy of the Deed of Corporate Guarantee dated 12.05.2022 of the Corporate Debtor.

ix. Copy of the Share Pledge Agreement dated 12.05.2022.

x. Copy of the Deed of Personal Guarantee dated 12.05.2022.

xi. Copy of the Deed of Hypothecation dated 12.05.2022.

xii. Copy of the Demand Promissory Note dated 11.05.2022.

xiii. Copy of the Letter of Continuity for the Demand Promissory Note dated 11.05.2022.

xiv. Copy of the Default Notice dated 31.05.2023, 25.08.2023 and 15.02.2024.

xv. Copies of the Default Notice dated 03.02.2025 issued by Applicant and Facility Agent.

xvi. Copies of the Compulsory Redemption Notice dated 25.02.2025 issued by Financial Creditor and Facility Agent.

xvii. Copy of the Invocation of Corporate Guarantee Notice dated 13.03.2025.

xviii. Copy of the Invocation of Personal Guarantee of Mr. Aditya Kedia and Ms. Kirti Kedia dated 13.03.2025

xix. Copy of the Invocation of Share Pledge Notice dated 13.03.2025.

xx. Copy of the Demand Notice dated 21.03.2025 issued by the Debenture Trustee's advocates.

xxi. Copy of the Order dated 09.05.2025 passed by the Bombay High Court in Commercial Arbitration Petition No. 389 of 2025.

xxii. Copy of Record of Default with Information Utility

xxiii. Copy of the Board Resolution of New India Builders for creation of security in favour of the Financial Creditor dated 09.04.2022.

xxiv. Copy of the Board Resolution of the Corporate Debtor and Transcon Skycity Private Limited authorizing the execution of the documents in relation to the issuance of debentures dated 09.04.2022.

xxv. Copy of the Power of Attorney dated 12.05.2022 in favour of the financial creditor to accomplish the purposes of the Deed of Hypothecation and Share Pledge Agreement.

xxvi. Copy of the financial statements of the Corporate Debtor for the year 2023-2024

xxvii. Copy of the Certificate of Registration of Charge dated 29.06.2022 by the Registrar of Companies

xxviii. Copy of the CERSAI Acknowledgment Report in respect of registration of security interest as per clause 5 of the DTD cum mortgage

xxix. Copy of the allotment letters in respect of 6239 (nos.) of NCDs issued by Transcon Skycity Private Limited.

2. <u>AVERMENTS OF THE APPLICANT</u>

2.1 As per Part-IV of the Application, the total amount claimed to be in default by the Applicant is Rs. 99,32,16,163 (Ninety-Nine Crores Thirty-Two Lakhs Sixteen

Thousand One Sixty-Three Rupees) as on 28.05.2025. The following is the table of the outstanding amount:

Particulars	**Amount (INR)**
Total Principal Outstanding (A)	62,39,00,000
Total Coupon Outstanding as on 28/05/2025 (B)	1,24,53,999
Redemption Premium Outstanding as on 28/05/2025 (C)	32,05,33,750
Management Fees Outstanding as on 28/05/2025 (D)	20,19,571
Default Penalty - at the rate of 03% on the entire Debenture Outstanding as on 28/05/2025 (E)	2,87,67,220
GST on Management Fees Outstanding as on 28/05/2025 and Default Penalty at the rate of 03% on the entire Debenture Outstanding as on 28/05/2025 (F)	55,41,622
Total Outstanding Amount	**99,32,16,163**

2.2 It is submitted that the debt has arisen in respect of 6239 secured, unrated, unlisted, redeemable, non-convertible debentures of Rs. 1,00,000/- each, aggregating to Rs. 62,39,00,000/- issued by Transcon Skycity Private Limited to debenture holders represented by the Financial Creditor/Debenture Trustee, by way of private placement (“NCDs”) under the Debenture Trust Deed cum Mortgage (DTD) dated 11.05.2022 wherein the CD acted as a guarantor/ co-obligor. The NCDs were issued to multiple debenture holders as specified in Form No. PAS-3, wherein the Financial Creditor acted as the Debenture Trustee for the debenture holders. Copies of the Form No. PAS-3 read with board resolutions are annexed as **Exhibit-E** to the Application.

2.3 It is submitted that the amount of Rs. 62,39,00,000/- was disbursed by the debenture holders and a total of 6239 NCDs were allotted to them as per the table below:

No.	Date of disbursement	Amount disbursed (INR)
1.	12.05.2022	46,75,00,000
2.	13.05.2022	2,63,75,000
3.	17.05.2022	61,25,000
4.	30.09.2022	2,30,00,000
5.	21.10.2022	2,00,00,000
6.	15.11.2022	8,00,00,000
7.	28.02.2023	9,00,00,000
	Total:	**62,39,00,000**

2.4 Transcon Skycity Private Limited (the principal borrower) needed financing i*nter alia* for meeting expenses related to the construction and development of its project named 'Fortune 500 Tower 1' bearing project no. P5180012431. In order to acquire financing, Transcon Skycity Private Limited issued NCDs which were subscribed to by certain debenture holders. Accordingly, a Debenture Trustee Appointment Agreement dated 11.05.2022 was executed between Transcon Skycity Private Limited and the Debenture Trustee (the Financial Creditor), whereby the Debenture Trustee agreed to act as Debenture Trustee for the benefit of the debenture holders in respect of the NCDs. Copy of the Debenture Trustee Appointment Agreement dated 11.05.2022 is annexed as **Exhibit-F** to the Application.

2.5 A Debenture Trust Deed cum Mortgage (DTD) dated 11.05.2022 was executed between Transcon Skycity Private Limited, Mr. Kirti Kedia, Mr. Aditya Kedia, Corporate Debtor, New India Builders (the "Obligors"), the Debenture Trustee (for the benefit of the debenture holders), and Dalmia Nisus Finance Investment Managers LLP (the "Facility Agent") for setting out the terms and conditions in

relation to issuance of the NCDs by the principal borrower to the Debenture Holders. Copy of the DTD dated 11.05.2022 is annexed as **Exhibit-G** to the Application.

2.6 The other transaction documents were entered into between the Transcon Skycity Private Limited, along with the Corporate Debtor and other Obligors for issuing up to 12500 (nos.) non-convertible debentures having face value Rs. 1,00,000 each and amounting upto Rs. 125,00,00,000/- wherein the Obligors were obligated to adhere to the terms, obligations and timelines mentioned therein. By way of the DTD, a mortgage was also created on certain lands for inter alia securing the redemption of the NCDs in favour of the Debenture Trustee, described in detail hereinbelow. An Escrow Agreement dated 12.05.2022 was executed between Transcon Skycity Private Limited, New India Builders, the Debenture Trustee, the Facility Agent, and HDFC Bank Ltd. inter alia for recording the manner in relation to the operation of the Debenture Account. Copy of the Escrow Agreement dated 12.05.2022 is annexed as **Exhibit-H** to the Application.

2.7 The credit facilities granted by the Applicant to the CD are secured by the following as per Part-V of the Application:

1. Debenture Trust Deed cum Mortgage dated 11.05.2022 (Exhibit G) inter alia executed by the Corporate Debtor creating a mortgage in favour of the Financial Creditor over the following: (reproduced as is from Deed Trust Deed cum Mortgage)

   i. All that pieces and parcels of land bearing Survey No.267 (part) corresponding to CTS No.622A/1 (part) admeasuring 1080 square meters or thereabouts, situate, lying and being at Village Mulund, Taluka Kurla in the registration district and sub district of Mumbai Suburban.

ii. All those pieces and parcels of land bearing Survey No.269 (part) corresponding to CTS No.622B/1 admeasuring 6167.10 square meters or thereabouts, situate, lying and being at Village Mulund, Taluka Kurla in the registration district and sub district of Mumbai Suburban

iii. All that piece and parcel of land bearings CTS No. 482 (part), 482/1 to 8 admeasuring in aggregate 352.33 square meters situate, lying and being at Village Borivali, Sodawala Lane, Borivali (West), Mumbai Suburban District and within the limits of Municipal Corporation of Greater Mumbai.

2. Deed of Corporate Guarantee dated 12.05.2022 executed by the Corporate Debtor in favour of the Financial Creditor, unconditionally guaranteeing to repay the outstanding amounts (the Outstandings as per the DTD) (Exhibit I).
3. Share Pledge Agreement dated 12 May 2022 executed between Kirti Kedia, Alka Infrastructure Private Limited and the Corporate Debtor creating pledge of 100% of their equity shares of the Corporate Debtor (comprising 100% shares of the Corporate Debtor) in favour of the Financial Creditor, i.e., as follows. The details of the pledged shares at Annex 3 of the Share Pledge Agreement dated 12.05.2022.
4. Deed of Personal Guarantee dated 12.05.2022 executed by Kirti Kedia and Aditya Kedia in favour of the Financial Creditor, unconditionally guaranteeing to repay the outstanding amounts (Outstandings as per the DTD) (Exhibit K).
5. Deed of Hypothecation dated 12.05.2022 executed by Transcon Skycity Private Limited and New India Builders in favour of the Financial Creditor

(Exhibit L) hypothecating the following: (reproduced from Deed of Hypothecation)

i. Right of Transcon Skycity Private Limited in all the movable assets including 100% (one hundred percent) of Project Receivables, (as defined under the Debenture Trust Deed) from sold, unsold stock, work in progress, inventory and any other Project Receivables/monies, bank accounts, movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets both present and future, in relation to the Project;

ii. Rights of Transcon Skycity Private Limited in all and any amounts held, owing to or received by or receivable or accruing on, in each case from time to time, by the Company in respect of their area/ revenue/ profit share and other entitlement in the Project, whether now, or at any time during the continuance of this Deed and which shall include the Project Receivables and all rights, title, interest, benefits, claims and demands whatsoever of the Company in, to or in respect of the said amounts as well as all the rights, title and interest of the Company in, to or in respect of any bank accounts in relation to the Project, including all the Collective Escrow Accounts (save and except the RERA Escrow Account);

iii. Rights of Transcon Skycity Private Limited in and under and/or in respect of the insurance policies with respect to the Project;

iv. DSRA maintained as fixed deposit lien marked in favour of the Debenture Trustee

v. Rights of New India Builders in the cash flows/ receivables arising from the Borivali Land including but not limited to any insurance proceeds received therefrom.

6. Demand Promissory Note dated 11.05.2022 executed by Transcon Skycity Private Limited (Exhibit M) read with the letter of continuity dated 11.05.2022 (Exhibit N).

2.8 It is submitted that around 2023, the principal borrower, the Corporate Debtor, and other Obligors contravened the provisions of DTD and other Finance Documents. On 31.05.2023, the Facility Agent issued a Default Notice to all the Obligors under the Finance Documents. Since Transcon Skycity Private Limited, the Corporate Debtor, and other Obligors under the DTD failed to cure the defaults specified in the Default Notice dated 31.05.2023, the Facility Agent was constrained to issue other Default Notices dated 25.08.2023 and 15.02.2024. However, the said parties failed to repay the outstanding amounts.

2.9 The Annexure 1 of the DTD provides detailed terms of the Debentures including the repayment of the principal amount, coupon and redemption premium. Clause 3.1. of Annexure 1 and Annex 10 of the DTD clearly provided that the First Redemption Date would be 31.01.2025 and reflected the indicative schedule of payment.

2.10 The principal borrower/issuer, the Corporate Debtor, and other Obligors were under an obligation to repay the Principal Repayment Instalment amounting to Rs.10,39,83,333/-, and the Redemption Premium amounting to Rs. 1,82,80,165/- by 31.01.2025, which they failed to repay. In this regard, the Debenture Trustee issued a notice dated 03.02.2025, intimating to pay the due amount within 10 days from the date of receipt of notice.

2.11 Further, on 25.02.2025, the Debenture Trustee and Facility Agent issued a Compulsory Redemption Notice calling upon Transcon Skycity Private Limited to redeem all the 6239 (nos.) of debentures having face value of Rs. 1,00,000/- along with the payment of coupon, default penalty, and other costs, as stipulated in the DTD and other finance documents, aggregating to Rs. 96,17,35,865/-. The parties having failed to pay the dues on 13.03.2025, the Debenture Trustee issued a notice inter alia invoking the Corporate Guarantee dated 12.05.2022 and calling upon the Corporate Debtor, Transcon Buildcon Private Limited, to repay the outstanding sum of Rs. 96,17,35,865/-. Further, letters dated 13.03.2025 were issued by the Debenture Trustee invoking the Personal Guarantee dated 12.05.2022, and calling upon Mr. Aditya Kedia and Kirti Kedia to repay the outstanding sum of Rs. 96,17,35,865/- and invoking the pledge on 55,750 equity shares of Mr. Kirti Kedia and Alka Infrastructure Private Limited ("Pledgors") in Transcon Skycity Private Limited. Copies of the notices for invocation of corporate guarantee, personal guarantees and pledge dated 13.03.2025 are annexed as **Exhibit-V, W, X & Y** to the Application.

2.12 The Applicant, thereafter, issued a Demand Notice dated 21.03.2025 through Advocates to Transcon Skycity Pvt Ltd, the Corporate Debtor and other obligors to repay the outstanding amount.

2.13 Transcon Skycity Private Limited, the principal borrower, filed Commercial Arbitration Petition No. 389 of 2025 in the Hon'ble Bombay High Court against the Debenture Trustee and Facility Agent under Section 9 of the Arbitration and Conciliation Act, 1996, in respect of the NCDs issued to the debenture holders. The Hon'ble Bombay High Court disposed of the petition by way of Order dated 09.05.2025.

2.14 In view of the above facts and circumstances, and upon the failure of the Corporate Debtor to make payments under the DTD and other Finance Documents, the Obligors remain in continued default, resultantly, the Debenture Trustee has filed the present Application under Section 7 of the Code on behalf of the debenture holders.

2.15 The date of default is mentioned as 31.01.2025. i.e., when the Event of Default occurred upon failure of the payment in terms of Annex 1 read with clause 9.1 read with the payment schedule of the Debenture Trust Deed Cum Mortgage dated 11.05.2022.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The CD's right to Reply was closed vide interim order dated 07.10.2025. However, the CD filed an IA No. 4758 of 2025 seeking to recall the order dated 07.10.2025 passed by this Tribunal to restore the right of the CD to file a reply. The prayers in the said IA were allowed and the IA was disposed of *vide* order dated 15.10.2025 and the CD was directed to file the reply.

3.2 The CD filed Affidavit-in-Reply on 15.10.2025, which is affirmed by Mr. Paresh Vayeda – Authorised Signatory of the CD.

3.3 The CD in its reply states that the Application is incomplete, defective and frivolous. The alleged default claimed to have been committed by the CD arises solely due to breaches by Dalmia Nisus Investment Managers LLP ("Dalmia Nisus") of the terms of the Debenture Trust Deed cum Mortgage dated 11.05.2022 ("DTD"). Dalmia Nisus failed to disburse the entire sanctioned facilities of Rs.125 crores in accordance with the agreed schedule, which consequently frustrated the real estate project viz. Fortune 500 Tower 1 ("Project") being developed by Transcon Skycity Private Limited, a sister concern of the CD. Dalmia Nisus' deliberate non-disbursal

of monies resulted in choking the cash flows of the Project and resultantly the same has seen little/no progress. The repayment obligations were entirely dependent on the inflow of monies to Transcon Skycity. Hence, there is absence of any default on the part of the CD.

3.4 The CD executed a Deed of Corporate Guarantee dated 12.05.2022 in favour of the Applicant, guaranteeing the due performance and repayment obligations of Transcon Skycity under the DTD.

3.5 As per the DTD, Dalmia Nisus was to disburse a sum of Rs.125,00,00,000 by subscribing to 12,500 NCDs to be issued by Transcon Sky city. The monies were inter alia to be utilised for the construction and development of the said Project. The said amount of Rs. 125 Crores was to be disbursed by Dalmia Nisus in the manner as stated at Clause 1 of Annex 1, Terms of the Debenture, wherein it is stated that the Amount shall be paid in tranches as contemplated by the DTD and further specified in Annex 10 (indicative Schedule of 7 Payment). Dalmia Nisus was to disburse the debt as per Annexure 10 of the DTD in the following tranches:

Date	**Amount to be disbursed (INR)**
15-02-2022	70 Crores
30-09-2022	5 Crores
30-04-2023	25 Crores
31-07-2023	25 Crores
Total	**125 Crores**

3.6 That Dalmia Nisus wilfully and without any plausible justification defaulted in performing its primary contractual obligation. The entire chain of subsequent obligations of Transcon Skycity was contingent upon such disbursal, and hence,

Dalmia Nisus's conduct amounts to a material breach of the DTD. A table depicting the promised sanction amount and the actual disbursal made is as follows:

Period	Sanctioned Amount	Actual Disbursal	Amount Not Disbursed
May, 2022	Rs.70 Crores	Rs.50 Crores	Rs.20 Crores
Out of the undisbursed amount of Rs.20 crores, the Financial Creditor disbursed Rs.12.39 Crores as below:			
30-09-2022		2.3 Crores	
21-10-2022		2 Crores	
15-11-2022		8 Crores	
28-02-2023		0.09 Crores	
September, 2022	5 Crores	-	5 Crores
April, 2023	25 Crores	-	25 Crores
July, 2023	25 Crores	-	25 Crores

3.7 The CD received a notice from Dalmia Nisus dated 31.05.2023, stating that Transcon Skycity had caused Non-financial event of default and provided a cure period of 25 days to cure the defaults. Further, the CD again received a notice from Dalmia Nisus dated 25.08.2023, calling upon full redemption of the debentures issued by Transcon Skycity and claiming a sum of Rs.75,52,53,737/-.

3.8 The Transcon Skycity, aggrieved by the such conduct, lodged a complaint with the Economic Offences Wing ("EOW") on 20.03.2025, wherein it was stated that the acts of Dalmia Nisus have caused criminal breach of trust for more than Rs. 1000 Crores, narrating the fraudulent acts of Dalmia Nisus and investigation was initiated against Dalmia Nisus. This fact has been suppressed by the Applicant in the present Application.

3.9 Transcon Skycity received a text message on 01.04.2025 that Pledged shares have been transferred to the Applicant pursuant to the invocation of pledge.

3.10 The Transcon Group (which includes the CD) was constrained to file a Commercial Arbitration Petition bearing No. 389 of 2025 before the Hon'ble Bombay High Court, inter alia, seeking directions qua Dalmia Nisus to disburse the remaining amount of Rs.62,61,00,000/- to enable completion of the project and thereby to secure repayment of the facility. In the said proceedings, Hon'ble Mr. Justice S.C. Gupte (Retd.) was appointed as the sole arbitrator to adjudicate upon the disputes and differences between the parties vide order dated 09.05.2025.

3.11 During the investigation, Dalmia Nisus, apprehending exposure of its mala fide conduct, approached the Transcon Group for an amicable settlement. Acting in good faith and at Dalmia Nisus' insistence, the Transcon Group withdrew its EOW Complaint on 12.08.2025 to facilitate resolution of disputes. The withdrawal was acknowledged to Mr. Amit Goenka via WhatsApp, confirming the mutual understanding to conclude all proceedings. The said understanding was again breached by Dalmia Nisus and the Applicant persisted with the present Application causing irreparable loss and damage to the CD.

3.12 Further, the Applicant sent a notice dated 23.09.2025 under Section 69 of the Transfer of Property Act, 1882 intimating their intention to exercise rights to take possession of the mortgaged properties and to invoke other powers, rights, and remedies available under law. Pursuant to this notice, the Advocate of the Transcon Group addressed an email dated 25.09.2025 to the Learned Sole Arbitrator apprising him of the issuance of the notice under Section 69 of the TOP Act by the Applicant and seeking an urgent hearing in that regard and the hearing was scheduled for 08.10.2025. To safeguard the rights, the Transcon Skycity and others

were constrained to file Commercial Arbitration Petition having lodging No. 31289 of 2025 before the Hon'ble Bombay High Court under Section 9 of the Arbitration and Conciliation Act, 1996, dated 29.09.2025, seeking interim protection against coercive measures by the Applicant.

3.13 It is submitted that on 08.10.2025, the interim application under section 17 of the Arbitration Act was heard by the Learned Sole Arbitrator. Upon hearing the parties, the following interim relief was granted:

> "1 .... *the following order is passed by consent of parties:*
>
> *(i) Respondents, who have got the pledged shares (pursuant to the Share Pledge Agreement referred to above), transferred unto themselves, shall not deal with those shares by entering into any transaction with any third party till the parties' applications under Section 17 are heard by this Tribunal;*
>
> *(ii) In case the Respondents propose to take any further steps, post issue of notice under Section 69 of the Transfer of Property Act, 1882, in respect of the mortgage created in their favour under the security documents referred to above, they shall give a notice of five working days to the Claimants to enable the latter to take such steps as they may be advised;*
>
> *(iii) Claimant No. 1 shall disclose all its assets, including their particulars, values and encumbrances, if any, by filing an affidavit of disclosure within a period of two weeks from today;*
>
> *(iv) The Respondents may file their detailed reply to the Claimants' Application under Section 17 and also supplement their own applications under Section 17, if they so desire, within two weeks from today;*
>
> *(v) The Claimants may file a Rejoinder dealing with the Respondents' comprehensive reply within one week thereafter and also file a reply to the Respondents' Application under Section 17 within three weeks from today.*
>
> *(vi) The reference is fixed on 10th November 2025 at 4:30 p.m. at the same venue for hearing of both applications."*

3.14 The Repayment clause under the DTD at Annexure 1-: Terms of Debentures, and Clause 3.1 of the DTD stipulates that the repayment of the Principal amount is to be deferred for 30 months after the commencement date, after which the principal

amount is to be paid in six quarterly instalments along with applicable premium. The entire repayment mechanism of the amounts under the DTD was promised on the basis of the generation of cashflows by Transcon Skycity from the development of the said project, which was heavily dependent on the assurances that the said money was disbursed on time by Dalmia Nisus. Hence, the repayment of monies was contingent upon Dalmia Nisus disbursing the entire financial facility of Rs.125 crores. The partial disbursement of the sanctioned facility rendered it impossible for Transcon Skycity to complete construction of the said project, thereby stalling cashflow generation and crippling its financial position.

3.15 A sum in excess of Rs. 150 to 200 Crores being recoverable from Dalmia Nisus, no monies are due and payable by the said Transcon Skycity to Dalmia Nisus/Financial Creditor. Hence, consequently, the CD is not liable to make any payments to Dalmia Nisus/Financial Creditor under its Corporate Guarantee dated 12.05.2022 which was furnished by the CD on the consideration that Dalmia Nisus would subscribe to the entirety of 12,500 NCDs aggregating to Rs. 125 Crores which was to be utilised for the development of the said Project.

4. REJOINDER

4.1 The Applicant submits that the CD's contention with regard to maintainability of the Application is incorrect and baseless as the CD has failed to establish as to how the debt was not created and how it did not default in the repayment of the said debt. The Applicant states that it has placed on record all the necessary documents to demonstrate existence of the financial debt.

4.2 The allegation that the Applicant has failed to disburse the entire amount of Rs. 125 Crores to the CD and this failure led a cash flow crunch is baseless for the reason that there exists no obligation, contractual or otherwise, compelling the

Financial Creditor and/or the debenture holders to subscribe to the entirety of the debentures permitted under the DTD. The DTD does not stipulate any such mandatory commitment. A party already in default of repaying the portion of the debentures that were issued and disbursed cannot be permitted to argue that its failure to repay is due to non-subscription of the balance debentures. Recital B of the DTD clearly demarcates that "*the Company proposed to issue up to 12,500 (Twelve Thousand Five Hundred) senior, secured, redeemable, non-convertible debentures ("Debentures") of face value Rs. 1,00,000/- each*", the said Recital is abundantly clear to demarcate that the use of the term "up to" clearly denoting a ceiling limit and not a fixed funding obligation on the part of the Facility Agent or the Debenture Trustee.

4.3 It is submitted that a sum of Rs. 62.39 Crores was raised and credited to the account of Transcon Skycity Private Limited. The said disbursement, duly acknowledged through the Company's filings under Form PAS-3, corresponding Board Resolutions and allotment letters, constituted valid issuance and allotment of 6,239 debentures under the DTD.

4.4 Under Clause 4.2 and 4.3 of the Corporate Guarantee, the Guarantor expressly undertook to be a primary obligor and waived all rights to claim discharge on account of any variance or non-performance by other parties. Consequent to the debt and default, the Corporate Guarantor shall not be discharged until all Outstanding Amounts are cleared.

4.5 The allegation with regard to the purported claims against the Facility Agent as sub-judice under Arbitration is completely contrary of the well settled principle of law which clearly specifies that that Section 7 proceedings under the Code are independent proceedings and the same shall proceed notwithstanding other

actions, by virtue of Section 238 of the Code which provides that the Code overrides other laws. As also the CD has nowhere disputed the accrued debt and is evident from the Petition that the there was a clear default on behalf of the CD in repayment of the debt.

5. INTERLOCUTORY APPLICATION BY APPLICANT (CORPORATE DEBTOR) (I.A. No. 5793 OF 2025)

5.1 This is an Interlocutory Application (IA) bearing No. 5793/MB/2025, filed by Transcon Buildcon Private Limited, the Applicant/Corporate Debtor, on 12.12.2025 under section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016 against the Beacon Trusteeship Limited, the Respondent/Financial Creditor.

5.2 This Application challenges the maintainability of the Application filed under Section 7 of the Code [CP (IB) No. 697/2025] by the Respondent. The Applicant argues that present Application filed by the Respondent should be dismissed on the ground of malicious and fraudulent initiation of CIRP.

5.3 The Applicant seeks the following prayers against the Respondent:

i. This Hon'ble Tribunal be pleased to dismiss the present Company Petition No. 697 of 2025 as having been filed with fraudulent and malicious intentions and not for the purpose of insolvency resolution of the Corporate Debtor;

ii. Pending the hearing of and final disposal of the present Application, proceedings in Company Petition No. 697 of 2025 be stayed/ kept in abeyance;

iii. Impose penalty under Section 65(1) of the Insolvency and Bankruptcy Code, 2016 upon the Financial Creditor for fraudulent initiation of CIRP against the Corporate Debtor; and For Costs;

iv. Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice, equity, and good conscience.

5.4 It is submitted that present Company Petition is a product of calculated malice and a coercive strategy devised by the Financial Creditor with the sole intent of exerting undue pressure upon the Applicant and to gain wrongful control over its valuable assets under the guise of insolvency proceedings. Under the Code, punishment is prescribed under Section 65 for Fraudulent or malicious initiation of Corporate Insolvency Resolution proceedings.

5.5 Further, the repayment obligation of the Applicant was contingent upon full and timely disbursal, and the Respondent's non-performance destroyed the very substratum of the contract.

5.6 The alleged "default" arises from the Respondent's own failure to disburse funds in accordance with the agreed terms. A party in breach cannot rely upon its own non-performance to allege default by the counterparty. Consequently, the fundamental ingredient of "default" under Section 7(5) is absent.

6. <u>REPLY TO THE I.A. BY THE RESPONDENT/FINANCIAL CREDITOR</u>

6.1 The Applicant's/CD's allegation that the Respondent/Financial Creditor has failed to disburse the entire amount to Rs.125 Crores and due to this the CD faced cash flow crunch, which resulted in default being made by the CD. The same has no merit and substance and is misleading and is solely to evade the repayment of the debt for the reasons that there exists no obligation, contractual or otherwise, compelling the debenture holders to subscribe to the entirety of the debentures permitted under the Debenture Trust Deed (hereinafter referred to as the "DTD"). The DTD does not stipulate any such mandatory commitment for subscription. The

alleged requirement to disburse the entirety of the Rs. 125 Crores before repayment obligation arose is patently false, and contrary to the express terms of the DTD.

6.2 It is legally absurd for the Applicant/Corporate Debtor to expect further disbursements while being in continuous breach of its own contractual duties under the financial documents. Consequently, the alleged cash flow crunch is a direct result of the Corporate Debtor and the Obligor' s own failures and cannot be invoked as a defence to justify its default in failure to repay the debt resulting in the present proceedings.

6.3 The Annexure 1 of the DTD clearly stipulates due dates for coupon and redemption payments, irrespective of project performance. In accordance with the conditions stipulated in the DTD the redemption was triggered on 31.01.2025 and resulted in a debt and a default. Further under Clause 4.2 and 4.3 of the Corporate Guarantee, the Guarantor expressly undertook to be a primary obligor and has irrevocably waived all rights to claim discharge on account of any variance or non-performance by other parties. Consequently, upon occurrence the debt and default, the liability of the Corporate Guarantor continues unabated and shall not stand discharged until all Debenture Outstanding are fully paid.

6.4 It is submitted that the purported claims stated to be sub judice under Arbitration, hold no merit and in any manner affect the existence of the financial debt or the occurrence of default. By virtue of Section 238 of the Code which provides that the Code overrides other laws. Accordingly, the Corporate Debtor's attempt to stall the adjudication of the present Section 7 Petition by reference to unrelated proceedings is unsustainable.

6.5 The Corporate Debtor has failed to make out any case on merits to show how the present Petition filed by the Financial Creditor is a malicious or fraudulent attempt. The Financial Creditor has placed on record ample documentary evidence demonstrating the existence of the financial debt and the demand raised for repayment by the Financial Creditor upon the Corporate Debtor.

6.6 It is specifically denied that the Financial Creditor sought or induced withdrawal of the EOW complaint as a precondition for settlement, or that any assurance, representation or commitment was made that insolvency proceedings would not be initiated thereafter. No settlement was ever arrived at between the parties.

7. <u>REJOINDER TO THE I.A. BY THE APPLICANT/CORPORATE DEBTOR</u>

7.1 It is submitted that in terms of the Debenture Trust Deed, the fulfillment of conditions precedent and issuance of a satisfaction notice to the Facility Agent and the Debenture Trustee, being the Financial Creditor herein, constituted a mandatory prerequisite for issuance of the debentures. It is pertinent to note that the said conditions were duly complied with by Transcon Skycity Private Limited, which issued a Condition Precedent Satisfaction Notice addressed to Dalmia Nisus Finance Investment Managers LLP and Beacon Trusteeship Limited vide its letter dated 12th May, 2022. Pursuant thereto, and upon due acknowledgment of such compliance, the debentures were duly issued.

7.2 In any event, Respondent No. 1, having failed to perform its principal and reciprocal contractual obligations, is not entitled to seek compulsory redemption.

7.3 It is of utmost significance that the Respondent, in its own Company Petition filed under Section 7 of the Code, has categorically pleaded at Paragraph 31 that it has enforced its security interest by invocation of pledge. The Respondent has specifically stated that pursuant to such invocation, NSDL, vide its message dated

01.04.2021, confirmed that 33410 equity shares of Transcon Skycity Private Limited, being the Principal Borrower, stood transferred in favour of the Financial Creditor. Message is at Page No. 82 at Annexure B to the Company Petition, reproduced herein:

> "*On 27/03/2025, 33410 TRANSCON SKYCIT debited due to invocation of pledged securities from ur demat a/s no xxxxOJ 151. NDSL*"

7.4 The aforesaid averment is an admission on record that the Respondent has already exercised and enforced its security interest against the Principal Borrower by appropriating pledged shares. The Respondent has not disputed the factum of such transfer of shares either in its Reply or otherwise. The enforcement of pledge and transfer of shares is thus an admitted and concluded event.

8. <u>ANALYSIS AND FINDINGS</u>

8.1 We have heard the Ld. Counsels for the Applicant and the CD and have perused the records as placed before us. Our findings in the matter are as under: -

8.2 As the contentions of the IA are similar to that of the Reply filed by the CD in the main Petition, we will be dealing with the main Petition for the sake of brevity and to avoid repetition and a single order shall be passed in both IA and CP.

8.3 On perusal of the records it is seen that the Transcon Skycity Private Limited (Principal Borrower) had issued certain Non-Convertible Debentures (NCDs) for the purposes of financing construction and development of a project 'Fortune 500 Tower 1'. A DTD dated 11.05.2022 was entered into between the parties for issuing upto 12500 NCDs amounting to a total of Rs. 125,00,00,000/-.

8.4 Further, a Debenture Trustee Appointment Agreement dated 11.05.2022 was executed between the Principal Borrower and the Applicant, wherein the Applicant was appointed as the Debenture Trustee. It is not denied that an Escrow Agreement

dated 12.05.2022 was executed between the Principal Borrower, New India Builders, the Applicant, the Facility Agent and HDFC Bank Ltd. for the purposes of recording the manner in relation to operation of the Debenture Account.

8.5 To secure the redemption of the NCDs, various finance documents were executed between the Principal Borrower along with the CD and other obligors such as Debenture Trust Deed Cum Mortgage dated 11.05.2022, Deed of Corporate Guarantee dated 12.05.2022, Share Pledge Agreement dated 12.05.2022, Deed of Personal Guarantee dated 12.05.2022, Deed of Hypothecation dated 12.05.2022, Demand Promissory Noted dated 11.05.2022 and Letter of Continuity dated 11.05.2022.

8.6 It is not denied that in terms of the DTD dated 11.05.2022, an amount of Rs. 62,39,00,000/- was disbursed by the Applicant in furtherance of which 6239 (Nos.) NCDs were allotted to certain allottees.

8.7 On the failure of the Principal Borrower to cure the defects, the CD and other obligors were to cure the defects as noted in the two Default notices dated 25.08.2023 and 15.02.2024 which were issued upon the parties.

8.8 It is stated in the DTD at Clause 3.1 of Annex 1 and 10, that the date of first redemption of the NCDs would be 31.01.2025, as per which the Principal Borrower was under an obligation to repay the Principal Instalment and Redemption Premium. Clause 3.1 of Annex 1 is reproduced as under:

> ***"3. Principal Moratorium and Repayment of Principal Amount and Redemption Premium***
>
> *3.1 The Parties agree that there shall be a moratorium in respect of the repayment of the Principal Amount until 30 (thirty) months from the Commencement Date (the Principal Moratorium). It is clarified that the Principal Moratorium will not be applicable and shall cease to be in operation, upon the occurrence of an Event of Default, during such Principal Moratorium.*

The Principal Amount will be repaid by the Company in 6 quarterly instalments (each a "Redemption Date"), after the expiry of Principal Moratorium. The first Redemption Date shall be at the end of 33rd (Thirty Third) month from the Commencement Date and thereafter at the end of 36th (Thirty Six), 39th (Thirty ninth), 42nd (Forty Second), 45th (Forty Fifth) and 48th (Forty Eighth) month from the Commencement Date. The indicative schedule of payment is annexed as Annex 10 (Indicative Schedule of Payment) to the Schedule of Part B of this Deed hereunder. It is clarified that the first Redemption Date shall be January 31, 2025 irrespective of the Commencement Date.

The Redemption Premium shall be paid along with Principal Amount repayment on each Redemption Date as specified in Clause 3.2 of this Annex and more particularly specified in Annex 10 (Indicative Schedule of Payment) of Schedule to Part B of this Deed."

8.9 From the above clause, it is noticed that the first redemption date was on 31.01.2025 and the Principal Borrower committed a default by not paying the due amount on the said date.

8.10 On the failure to repay the outstanding amounts, the Applicant and the Facility Agent issued a Compulsory Redemption Notice for 6239 NCDs along with accrued interest and other costs under DTD and thereafter, the Applicant issued a Notice dated 13.03.2025 invoking the Corporate Guarantee of the Corporate Guarantor (the CD herein) to pay the outstanding amount of Rs. 96,17,35,865/-. The CD failed to make any payment towards the Debenture Outstanding amount under the DTD dated 11.05.2022.

8.11 The CD has contended that:

i. the present Application is not maintainable as default not substantiated

ii. that non-disbursal/short financing by Dalmia Nisus (Facility Agent) led to the default by the CD,

iii. the present Application is an attempt to disrupt the business of the CD,

iv. the claims against facility agent are sub judice under arbitration, therefore liability of CD does not accrue

v. the Application is malicious, fraudulent and abuse of process

vi. the Corporate Guarantee stands discharged due to the Financial Creditor's breach and variation of terms without consent

8.12 The first contention of the CD that the present Application is not maintainable on the ground that no proof is attached to substantiate the default is a bald statement as the Applicant has placed on record documents to prove that the default has occurred on the part of the Principal Borrower and the CD. The said documents amongst others include Default Notices dated 31.05.2023, 25.08.2023 and 15.02.2024, copies of the default notice dated 03.02.2025 issued by Applicant and Facility Agent, copies of the Compulsory Redemption Notice Dated 25.02.2025 issued by Financial Creditor and Facility Agent, copy of the Invocation of Corporate Guarantee Notice dated 13.03.2025, copy of invocation of Personal Guarantee notices dated 13.03.2025, copy of the Invocation of Share Pledge Notice Dated 13.03.2025, copy of the Demand Notice dated 21.03.2025 issued by the Debenture Trustee's Advocates and copy of record of default with information utility in Form D, reflecting the status of authentication of default as "Deemed to be Authenticated". Moreover, the settlement proposal as made by the CD vide its Additional Affidavit dated 13.01.2026 and making of a payment of Rs. 2 crores in the Escrow account maintained with the Applicant, as recorded in the interim order dated 14.01.2026 does not leave any doubt above the existence of debt and default.

8.13 The contention that the non-disbursal of the remaining finance by Dalmia Nisus to the Principal Borrower led to the default on part of the CD. It is seen from Term Sheet at Annexure 11 of the DTD, that the terms agreed upon between the parties is that the issuance of Debentures was upto 12500 Debentures and not a demand fixed infusion i.e. total 12500 Debentures to be issued to the Principal Borrower.

Therefore, this contention is misplaced by the CD. The relevant portion of the DTD is reproduced hereunder:

> *"B. To meet the above purpose and fund the execution of the Project, the Company now proposes to issue up to 12,500 (Twelve Thousand Five Hundred) senior, secured, redeemable, non-convertible debentures (the "Debentures") of face value of INR 1,00,000/- (Indian Rupees One Lakh Only) each aggregating up to INR 125,00,00,000/- (Indian Rupees One Hundred and Twenty Five Crores Only) (the "Principal Amount") on a private placement basis in terms of the Private Placement Offer Letter [Pursuant to section 42 and rule 14(1) of Companies (Prospectus and Allotment of Securities) Rules, 2014], which is in accordance with the Debenture Trust Deed and to be utilized in one or more Tranches at the discretion of the Facility Agent in pursuance to the above, the Company has obtained due authorization vide (a) the board resolution of the Company dated April 9 2022 (b) Shareholders resolution dated April 9 2022, under Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014]. The Principal amount is to be utilised for the permitted End Use (as defined hereunder), wherein Dalmia Nisus Finance Investment Managers LLP will be acting as the Facility Agent, representing interest of the Debenture Holders (as defined hereunder) and the Debenture Trustee (as explained under the Debenture Trust Deed)."*

8.14 It is also relevant here to refer to the judgment of Hon'ble NCLAT in ***SBI v. N.S. Engineering Projects Pvt. Ltd. [(2023) ibclaw.in 79 NCLAT]***, wherein it was held that non-disbursal of even sanctioned amount of loan is not a ground for rejection of an application under Section 7 of the Code. The relevant portion of the said judgment is reproduced hereunder:

> *"17. From the judgment of the Adjudicating Authority as noticed above in State Bank of India's case, it is clear that Adjudicating Authority has based its decision of rejecting Section 7 Application on the ground that the default committed by the Corporate Debtor in restructuring its debt, there is contributory negligence by the State Bank of India as well as Punjab National Bank. The fact that certain portion of sanction amount of financial facilities could not be disbursed by the Financial Creditors can be ground for rejecting Section 7 Application has already been answered by the Hon'ble Supreme Court in its judgment in* ***Innoventive Industries Limited*** *(supra).*
>
> *………………*
>
> *21. The Clause (u) of the Restructuring Agreement entered between the parties is in the identical words as Clause 20(t), which was noticed by the Hon'ble Supreme Court in Innoventive Industries Ltd. The Hon'ble Supreme Court in Innoventive Industries Ltd. having held that* ***"The Obligation of the corporate debtor was, therefore, unconditional and did not depend upon infusing of funds by the creditors into the***

> ***<u>appellant company</u>"*** *is a declaration of law in reference to an Application under Section 7. The view taken by the Adjudicating Authority in the impugned order dated 28.06.2022 is clearly not in consonance with the law declared by the Hon'ble Supreme Court in Innoventive Industries Ltd. (supra). This alone is sufficient to set aside the impugned order passed by the Adjudicating Authority.*
>
> *…………….*
>
> *24. Under the Scheme of IBC, when a Corporate Debtor is unable to pay its debt, which becomes payable, it is a warning signal for Corporate Debtor and when an Application is filed by a Financial Creditor to initiate CIRP under Section 7 and there are ample material that Corporate Debtor is unable to pay its debt and has committed default, <u>the Adjudicating Authority is not required to go into the reasons of default and ignore the real status of the Corporate Debtor and close its eyes to the fact that the Corporate Debtor needs insolvency resolution</u>. Red signal having been flagged by the Applicant, ignoring the precarious financial situation and status of the Corporate Debtor and not taking remedial action to bring back the Corporate Debtor on its track by adopting resolution process as per IBC and reject the Application on the reasons of default, is clearly contrary to the whole Scheme of the IBC. There being sufficient material before the Adjudicating Authority that consistent defaults have been committed by the Corporate Debtor and it is unable to pay its debt,* ***<u>rejection of Section 7 Application on the ground that for default committed by the Corporate Debtor, the Financial Creditors have also to be blamed is closing the eyes to the Scheme of the insolvency resolution.</u>*** *" (Emphasis Supplied)*

8.15 It is also important to note here that it is a settled position of law that in a Section 7 application, existence of any dispute does not bar admission of the said application in case the applicant has been able to establish the existence of debt and default for an amount exceeding threshold of Rs. 1 Crore and in this matter the Applicant has been able to establish the same based on the documents placed on record and therefore the issue as to non-disbursal of remaining amount, even if there was an obligation on the part of the Applicant to do so, the same does not affect the admissibility of this application. The relevant judgments in regard to the said legal position are stated in the latter part of this order.

8.16 Further, the Application being an attempt to disrupt the business of the CD is not proved by the CD. Moreover, the Applicant is entitled to take legal recourse in case failure by the principal borrower and by the Corporate Debtor and the Applicant

cannot be prevented from following the said recourse on the ground that the said recourse may disrupt the business of the CD. In any case, the proceedings under Section 7 of the Code are for the resolution of the Corporate Debtor, which is beneficial for all the stakeholders and by no means be treated as disruption of the business of the CD.

8.17 The contention that the claims against Facility Agent are sub judice under Arbitration. It is well settled principle of law that the pendency of arbitration proceedings does not affect the proceedings under the Code, as Section 238 of the Code gives the provisions of this Code an overriding effect over other laws. In this regard, it is relevant to refer to the judgment of Hon'ble NCLAT in ***Marg Ltd. v. Tata Capital Financial Services Ltd.,*** Company Appeal (AT)(Insolvency) No. 219 of 2018 [***(2018) ibclaw.in 159 NCLAT]***, wherein it was held that pendency of an arbitration proceeding does not bar the proceedings under section 7 of the Code. The relevant portion of this judgment is reproduced hereunder:

> *"As the question of 'existence of dispute' does not arise in a petition under Section 7 of the I&B Code, the application cannot be rejected on the ground of 'existence of dispute' due to the pendency of the arbitration proceedings. The fact that there is a 'debt' due to 'Financial Creditor' and the 'Corporate Debtor' defaulted to pay the amount has not been disputed. Therefore, the application cannot be rejected."*

8.18 As it is contested by the CD that the Application is malicious and fraudulent for the purpose that this Application is filed for other than insolvency resolution. It is seen that the Applicant has proved beyond doubt the existence of debt and default by placing the documents and hence, this contention of the CD is said to be meritless. Moreover, the proceedings under Section 7 of the Code are not adversarial and are

for the benefit of all the stakeholders as through the resolution process, the interests of all concerned parties including that of the corporate debtor are taken care of.

8.19 It is stated that the Corporate Guarantee stands discharged due to the Financial Creditor's breach and variation of terms without consent. We note that there is an invocation of corporate guarantee vide letter dated 13.03.2025 (annexed at page no. 532-537). This invocation is in line with the terms of the Deed of Guarantee dated 12.05.2022 wherein it is stated at clause 1(a) and 4.1 that,

> *"1(a) guarantees to the Debenture Trustee (acting for the benefit of the Debenture Holders) the due and punctual observance and performance by the Company of all its obligations under or pursuant to the Debenture Trust Deed and agrees to pay to the Debenture Trustee from time to time on demand all sums of money which the Company are at any time liable to pay to the Debenture Holder under or pursuant to the Debenture Trust Deed and which have become due and payable but have not been paid at the time such demand is made.*
>
> *4.1 The Guarantors obligation to pay arises first when a notice in writing is given to it by the Debenture Trustee requiring the Guarantor to make payment hereunder and after such notice is given by the Debenture Trustee, the Debenture Trustee may if necessary proceed to enforce the Guarantor's obligations and liabilities hereunder without first proceeding against and resorting to all or any of its or Debenture Holders' remedies against the Company."*

8.20 It is also relevant here to refer to clauses 4.2 and 4.3 of the Deed of Guarantee dated 12.05.2022, wherein the corporate debtor had waived its right of discharge in case of any variation in the terms or non-performance by other parties. The said clauses are reproduced hereunder:

> *"4.2 The Guarantor hereby confirms and declares that notwithstanding anything contained in any other document or otherwise, the Guarantor shall be considered as a primary obligor to the Debenture Holder / Debenture Trustee for payment of all the Outstandings as Specified in the Definitive Agreements.*

> *4.3 The Guarantor shall not be discharged or exonerated, until all amounts due under the Definitive Agreements have been duty received by the Debenture Trustee/ Debenture Holder."*

8.21 This Tribunal has relied on the judgment of the co-ordinate Bench Hyderabad in ***Bank of Baroda v. M. Srinivasa Babji, [CP (IB) No. 128 of 2026],*** wherein it has referred to the Hon'ble Supreme Court and Hon'ble NCLAT, where it was held that,

> "35. It is a settled position of law that although the liability of the Principal Borrower and the Guarantor is co-extensive, the liability of the Guarantor arises solely from the Contract of Guarantee. The Hon'ble National Company Law Appellate Tribunal, in Pooja Ramesh Singh v. State Bank of India, has lucidly explained the legal position governing the date of default vis-à-vis a guarantor. The relevant observations of the Hon'ble NCLAT are reproduced hereinbelow:
>
> > *24. The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. <u>When default is committed by the Borrower, the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code</u>. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12), in addition to expression 'due' occurring in Section 3(11), uses two additional expressions i.e. "payable" and "is not paid by the debtor or corporate debtor". The expression 'is not paid by the debtor' has to be given some meaning. As laid down by the Hon'ble Supreme Court in Syndicate Bank vs. Channaveerappa Beleri & Ors. (supra<u>), a guarantor's liability depends on terms of his contract.</u> There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."*

8.22 In the present case, it is an admitted position that the Corporate Guarantor executed a Deed of Guarantee dated 12.05.2022, wherein the liability of the Guarantor is expressly stipulated to arise "on demand." The said Deed of Guarantee further prescribes the specific manner in which such a demand is required to be issued and

served. The Applicant has issued notice to the Corporate Guarantor vide letter dated 13.03.2025 as per the above clause.

8.23 Moreover, it is also seen from the interim order dated 14.01.2026, wherein the CD had filed an Additional Affidavit dated 13.01.2026 placing on record a copy of Settlement proposal and had made a payment of Rs. 2 Crores in the Escrow Account maintained by the Applicant and the same is confirmed by the Applicant. The relevant portion of the Settlement Agreement dated 13.01.2026 is reproduced as under:

> ***"In terms of the said Settlement Proposal, the Corporate Debtor has proposed to pay an aggregate sum of Rs. 88,18,02,167 (Rupees Eighty Eight Crores Eighteen Lakhs Two Thousand One Hundred Sixty Seven Only) in a phased manner commencing from 12th January, 2026 and concluding on 31st August, 2026."***

8.24 From the above, it is clear that there is an admission of debt and default on part of the CD.

8.25 The date of default is mentioned as 31.01.2025 when the Event of Default occurred upon failure of the payment in terms of Annex 1 read with clause 9.1 read with the payment schedule of the Debenture Trust Deed Cum Mortgage dated 11.05.2022. The last disbursement as per the own admission of the CD has been made by the Applicant to the Principal Borrower on 28.02.2023. The Applicant has filed the Application on 17.07.2025, which is within limitation period.

8.26 The Applicant has placed on record the NeSL record of default in Form D, which reflects the Status of Authentication of default as 'Deemed to be Authenticated' and the total outstanding amount as Rs.98,07,14,606/- and date of default as 31.01.2025.

8.27 Further, this Tribunal places reliance on the judgment of ***Hon'ble Supreme Court in Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors. [Civil Appeal No(s). 2211/2024 decided on 18.02.2026]*** while examining the validity of the admission of the Corporate Debtor to CIRP has laid down as under :-

"B. Validity of CIRP Admission

28. The other aspect on which the Appellant has heavily relied is the acceptance of various sums of money paid by the Corporate Debtor purportedly under the 1st and 2nd restructuring proposals, which according to them amounts to deemed approval of such proposal. As discussed earlier, such argument flies in the face of the fact that the 2nd Respondent had resolutely maintained and rightly so, that the restructuring proposals were underpinned on pre-implementation conditions which the Corporate Debtor had failed to fulfil. Under such circumstances, receipt of various sums of money would not amount to acceptance of the restructuring proposals, thereby novating the earlier loan agreement. Neither would such part payments constitute full satisfaction of the existing debt so as to render the Section 7 application inadmissible.

29. It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crore from 01.11.2024 to 31.03.2025. It also has a continuous fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI scheme and had earned EBIDTA of Rs. 20 crore per month during the CIRP. These facts though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application.

30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. <u>The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.</u> Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.26 A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.27 "Operational creditor" is defined as a person to

whom an operational debt is owed and includes any person to whom such debt has been legally assigned.28 "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.29 31. In Swiss Ribbons (P) Ltd. v. Union of India [(2019) ibclaw.in 03 SC],30 such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.

32. In light of such classification, the Code makes a distinction in the manner in which an insolvency process may be initiated by a financial creditor under Section 7, IBC in contradistinction to an operational creditor under Section 8 and 9, IBC. Unlike an operational creditor, a financial creditor may trigger an insolvency process under Section 7 in respect of default of any financial debt, whether owed to itself or to any other financial creditor. While the financial creditor may directly file an application under Section 7 setting out the particulars of the financial debt and evidence of default, the operational creditor, on the occurrence of a default, is to first deliver a demand notice of the unpaid debt to a corporate debtor and the latter may within 10 days of receipt of such demand notice bring to the notice of the operational creditor the existence of a dispute or record the pendency of a pre-existing suit or arbitration proceeding in respect of such debt. Once a corporate debtor demonstrates a dispute regarding the existence of the debt, the insolvency process stands aborted vis-à-vis the operational creditor. <u>But when the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor which has been succinctly summed up in Innoventive (supra):</u>

"30…… 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."

33. Reiterating the ratio in Innoventive (supra), this Court in ES Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: "34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. 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."

34. In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under Section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company.

The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."

35. The Appellant has heavily relied on Vidarbha (supra) to argue that the Adjudicating Authority has ample discretion to apply its mind to relevant factors including the feasibility of initiation of insolvency process notwithstanding the existence of default on a debt due and payable by the Corporate Debtor. In Vidarbha (supra), this Court observed:-

"61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of Aptel referred to above and the overall financial health and viability of the corporate debtor under its existing management.

…………………………………………………………………

90. We are clearly of the view that the adjudicating authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a corporate debtor was in default in payment of the debt there would be no option to the adjudicating authority (NCLT) but to admit the petition under Section 7 IBC."

36. However, in review, this Court clarified that observations made in Paragraph 90 are restricted to the facts of Vidarbha (supra):-

"6. The elucidation in para 90 and other paragraphs [of the judgment under review] 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."

37. Finally, the apparent dichotomy between Innoventive (supra) and Vidarbha (supra) was set at rest in M. Suresh Kumar Reddy (supra), wherein this Court observed: "14. Thus, it was clarified by the order in review that the decision in Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in Innoventive Industries and E.S. Krishnamurthy. The view taken in Innoventive Industries still holds good."

38. In light of the ratio in M. Suresh Kumar Reddy (supra) there is no cavil that the ratio in Innoventive (supra) lays down the correct proposition of law and the observations in Vidarbha (supra) were made in the facts of the case and do not operate as binding precedent.

39. Even otherwise on facts, Vidarbha (supra) does not come to the aid of the Appellant. In Vidarbha (supra), this Court had taken note of an award passed by APTEL in favour of the corporate debtor which far exceeded the claim of the financial creditor, and held in the setting of such facts, initiation of CIRP was unwarranted. In the present case, Appellant's contention regarding Corporate Debtor's viability is highly dubious. Though the Corporate Debtor strenuously demonstrates its commercial viability, the NCLAT has noted that the extent of outstanding liability as on 02.01.2024 was Rs. 3103.31 crore, which far exceeds the bills raised on WBSEDCL to the tune of Rs 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.

40. For these reasons, we are of the opinion the admission of the Section 7 application was lawful and does not call for interference."

(emphasis wherever required supplied)

8.28 The Applicant has proposed the name of Mr. Amit Vijay Karia to act as the Interim Resolution Professional (IRP) and has given his declaration in Form 2, *inter alia*, stating that no disciplinary proceeding is pending against him. The Applicant has

filed an Additional Affidavit on 28.01.2026 and has attached valid AFA in Form B of the IRP which is valid till 31.12.2026.

8.29 Thus, it is clear from perusal of the record that an amount more than the threshold limit of Rs.1 Crore under Section 4 of the Code was due and payable by the CD to the Applicant. Hence, we find that the Applicant has been able to substantiate the existence of a financial debt due and payable by the CD which remained unpaid. The debt so owed by the CD to the Applicant falls within the definition of "financial debt" under Section 5(8) of the Code.

8.30 In view of the above, we find that requisite conditions necessary to trigger CIRP in respect of the CD are fulfilled, the Application is complete as all the relevant documents have been attached by the Applicant along with the Application. As a result, the matter deserves to be admitted under Section 7 of the Code.

8.31 At this stage we are not quantifying the exact amount under default, which the IRP will do. We are satisfied that there exists a debt which is in default in excess of Rs. 1 Crore.

ORDER

In view of the aforesaid findings, Application bearing I.A (I.B.C)/5793(MB)2025 is hereby **dismissed** and C.P.(IB) No.697/MB/2025 filed under Section 7 of the Code by Beacon Trusteeship Limited, the Applicant, for initiating CIRP in respect of **Transcon Buildcon Private Limited**, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below: -

I. We prohibit-

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 possession of the Corporate Debtor.

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

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Amit Vijay Karia** a registered Insolvency Professional having Registration Number **IBBI/IPA-001/IP-P-02600/2021-2022/13969** and e-mail address ipamitkaria@gmail.com having valid Authorisation for Assignment up to 31.12.2026 as the IRP to carry out the functions under the Code.

VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.

VIII. That the IRP/IP shall submit to this Tribunal monthly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Applicant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three Lakh) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Applicant on priority upon the funds available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

XI. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.

XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XIII. The Registry is directed to immediately communicate this Order to the Applicant, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.

XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
NILESH SHARMA **MEMBER (JUDICIAL)**	**SAMEER KAKAR** **MEMBER (TECHNICAL)**

//VM//