NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P3.

C.P. (IB)/700(MB)2025

CORAM:

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

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

NAME OF THE PARTIES: **Union Bank Of India**

Vs

Vardhan Agro Processing Limited

Under Section 7 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/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//AS//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/700/MB/2025

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

UNION BANK OF INDIA

[PAN No.: AAACU0564G]

1st Floor, Asset Recovery Branch

Suyog Plaza, 1278, Jangali Maharaj Rd.

Above McDonald's, Deccan Gymkhana, Pune – 411004.

…Financial Creditor

V/s

VARDHAN AGRO PROCESSING LIMITED

[CIN No.: U01119PN2011PLC140015]

At Post Pusesawali Tal Khatav

Dist. – Satara, Pusesawali – 415512.

...Corporate Debtor

Pronounced: 06.04.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv Mr. Rohit Gupta a/w Adv. Niharika Jalan a/w Adv. Mr. Parth Chaurasiaya

For Respondent: Adv. Mr. Shyam Kapadia a/w Adv. Mr. Rohan Agrawal a/w Adv. Mr. Krunal Jadha, Adv. Preeti Shukla

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 700 of 2025 (Application) was filed on 11.07.2025 by Union Bank of India, the Financial Creditor (FC) having PAN No.: AAACU0564G, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Vardhan Agro Processing Limited, the Corporate Debtor (CD), having CIN No.: U01119PN2011PLC140015.

1.2 This Application has been affirmed by one Mr. Amit Bhaskarrao Thorat, Chief Manager, Union Bank of India, Pune Asset Recovery Branch. As per Part IV of the Application, the amount claimed to be in default is Rs. 19,89,53,302.23/- (Rupees Nineteen Crore Eighty-Nine Lakhs Fifty-Three Thousand Three Hundred and Two and Twenty-Three Paisa only), out of which principal amount is Rs.15,48,29,500/- and interest amounts to Rs.4,41,23,802/-. The date of default/date of NPA is stated as 29.07.2023 *vide* Additional Affidavit dated 06.08.2025.

1.1 The Applicant has proposed Mr. Mahesh Goverdhan Bagla, having Registration No. IBBI/IPA-002/IP-N00689/2018-2019/12207, to act as the Interim Resolution Professional (IRP) in case the Application is admitted.

2. CONTENTIONS OF APPLICANT (FC)

2.1 Total amount of debt granted for the Term Loan Facility was Rs.30,00,00,000/-, with the following details:

Sr. No.	Date of Disbursement	Amount Disbursed (in Rs.)
1.	17.03.2017	3,00,00,000
2.	21.03.2017	2,50,00,000
3.	23.03.2017	1,00,00,000
4.	29.03.2017	25,00,000
5.	05.04.2017	1,75,00,000
6.	02.06.2017	4,00,00,000
7.	02.06.2017	1,00,00,000
8.	02.06.2017	1,50,00,000
9.	02.06.2017	25,00,000
10.	09.06.2017	50,00,000
11.	11.06.2017	75,00,000
12.	11.07.2017	2,75,00,000
13.	13.07.2017	1,65,00,000
14.	16.09.2017	3,00,00,000
15.	16.09.2017	20,00,000
16.	22.09.2017	7,00,000
17.	22.09.2017	75,00,000
18.	22.09.2017	70,00,000
19.	12.10.2017	1,00,00,000
20.	12.10.2017	50,00,000
21.	13.10.2017	30,00,000

22.	16.10.2017	20,00,000
23.	24.10.2017	30,00,000
24.	27.10.2017	5,00,000
25.	03.11.2017	1,00,00,000
26.	05.05.2018	3,00,000
	TOTAL	**30,00,00,000**

2.2 *Vide* sanction letter dated 21.12.2016, the Applicant sanctioned an amount of Rs. 30Crores for a period of 84 months (i.e., 7 years) on the condition that only an amount of Rs. 9 Crores would be disbursed first and the remaining amount only after completion of mortgage facilities for the remaining collateral securities, so as to ensure 100% collateral coverage of the limits so sanctioned. Accordingly, on 28.02.2017, (i) the Term Loan Agreement, and (ii) the Simple Mortgage Deed were executed. The charge was then registered with the ROC. Thereafter upon completion of the same, vide sanction letter dated 16th May,2017, the balance amount of Rs. 21,00,00,000/- was disbursed and in accordance thereto a further Simple Mortgage Deed dated 23.05.2017, was executed in favour of the Financial Creditor and the same was registered with the ROC.

2.3 Thereafter upon the request of the Corporate Debtor for additional funds, the Financial Creditor vide sanction letter dated 7th September,2020, sanctioned a Working Capital Term Loan under UGELC for an amount of Rs. 7.5 Crores for which various Deeds of Guarantees were executed.

2.4 The Corporate Debtor in and around April, 2023, committed default in repayment of the Term Loan facility and the Working Capital Term Loan Facility, and accordingly, the account of the Corporate Debtor was declared as Non -Performing Asset ("NPA") Account on 29th July, 2023. The Financial Creditor thereafter issued a notice dated 31st July, 2023 under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the Corporate Debtor.

2.5 Pursuant, thereto the Financial Creditor filed an Original Application (being OA (D) No. 34 of 2024) before the Hon'ble Debt Recovery Tribunal, Pune, with respect to outstanding dues of both the Term Loan and the Working Capital Term Loan. The same is still pending.

2.6 From August,2023 till December,2024, the Corporate Debtor made certain payments and fully paid the outstanding amounts in respect of the Working Capital Term Loan and thus that account was closed in terms of the full payment by the Corporate Debtor. However, the Corporate Debtor failed to make payments in respect of the Term Loan facility and thus as on date an amount of Rs.19,89,53,302.23/- is due and payable in respect of the Term Loan.

2.7 The loan was given against the following security:

1. All that piece and parcel of Industrial NA Land Bearing Survey No. 644/1 admeasuring 44100 sq. mtr. i.e. 2 Ha. 96 R. Potkharab 1 Ha. 45 R totally admeasuring 4 Ha. 41 R along with RCC construction present and in future; situated at Trimali, Taluka Khatav, Dist. Satara.

2. All piece and parcel of NA Plots 1 to 10 totally admeasuring area of 63339 sq. mtr. of Survey No. 644/2 situated at Trimali, Taluka Khatav, Dist Satara, Maharashtra

3. All that piece and parcel of Industrial NA land bearing Survey No. 242/1 admeasuring 17800 sq. mtr. i.e. 1 Ha. 69 R Potkharab 0 Ha. 09 Are totally admeasuring 1 Ha. 78 R along with RCC construction in future; situated at Pusesawali, Taluka Khatav, Dist Satara.

4. All that piece and parcel of Industrial NA Land bearing Survey No. 348 admeasuring 27700 sq. mtr. i.e. 2 Ha. 77 R along with RCC construction in future situated at Pusesawali, Taluka Khatav, Dist Satara.

5. All that piece and parcel of Industrial NA land towards eastern side of Survey No. 541 admeasuring 17500 sq. mtr. i.e. 1 Ha. 75 R along with RCC construction in future; situated at Goregaon Wangi Taluka Khatav Dist Satara.

6. All that piece and parcel of Industrial NA land bearing Survey No. 249 admeasuring 15400 sq. mtr. i.e. 1 Ha. 52 R Potkharab 0 Ha. 02 R totally admeasuring 1 Ha. 54 R along with RCC construction in future; situated at Pusewali, Taluka Khatav, Dist. Satara.

7. All piece and parcel of residential and commercial RCC building having basement floor plus three floors constructed as shops, hotel, residential house, hall totally construction admeasuring 15561.58 sq. ft. on survey no. 1087 totally admeasuring 0 ha. 18 R, out of which 4 R 5 Pai share i.e. 0 h. 5 R i.e. city survey no. 171/1B having Grampanchayat Milkat No. 1054 at Pusewali, Taluka Khatav, Dist Satara.

8. All that piece and parcel of Industrial NA Land bearing Survey No. 693 admeasuring 10800 sq. mtr. i.e. 1 Ha. 08 R along with RCC construction in future; situated at Trimali, Taluka Khatav, Dist Satara.

9. All that piece and parcel of Industrial NA land bearing survey No. 722 admeasuring 15600 sq.mtr. i.e. 1 Ha. 56 R, along with RCC construction in future, situated at Trimali, Taluka Khatav, Dist. Satara

2.8 The NeSL Form-D as filed by the Applicant records the following:

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
India's First Information Utility

FORM D
RECORD OF DEFAULT(RoD)

(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s UNION BANK OF INDIA in respect of the default of debt as per details given below-

(a)	Name of the Submitter:	M/s UNION BANK OF INDIA
(b)	Schedule-2 Bank (Y/N):	Y
(c)	Name of Corporate Debtor:	M/s M/S VARDHAN AGRO PROCESSING LTD
(d)	Unique Debt Identifier Number:	AAACU0564G_576106390000002.00
(e)	Registered Address:	239 VIDHAN BHAWAN MARG, UNION BANK BHAWAN NARIMAN POINT MUMBAI
(f)	Total Outstanding Amount:	INR 194020851.00
(g)	Default Amount:	INR 194020851.00
(h)	Submission ID:	1
(i)	Date of Default:	29-07-2023
(j)	Status of Authentication of Default:	AUTHENTICATED
(k)	Authentication Completed on:	24-05-2025 02:34:41
(l)	Date of Last Acknowledgement of Debt (AoD):	Not Available

2.9 The Applicant has attached the following supporting documents along with the Application and Additional Affidavit dated 06.08.2025:

a) Master data of the Applicant and the CD.
b) Copy of the detailed working for computation of the amount with interest thereon.
c) Copy of the Sanction Letter dated 21.12.2016.
d) Copy of the Term Loan Agreement dated 28.12.2017.
e) Copy of the Mortgage Deed dated 28th February,2017.
f) Copy of the Sanction letter dated 16th May,2017.
g) Copy of the Mortgage Deed dated 23rd May, 2017.
h) A copy of the Charge Form registered with the ROC with respect to the Mortgage Created on 28th February,2017.

i) The copy of the Charge Form registered with the ROC with respect to the Mortgage Created on 23rd May,2017.

j) Copy of the demand notice dated 31s July,2023 under Section 13(2) of the SARFAESI Act, 2002.

k) Copy of the Original Application (D) No. 34 of 2024 filed before the Hon'ble DRT by the Financial Creditor against the CD and its directors.

l) The copy of the Statement of Accounts for the period 17th March,2017 to 30th June,2025.

m) Copy of the Form AOC-4 along with relevant extract of acknowledgment of XBRL Financial Statement(s) downloaded from MCA Portal.

n) Copy of the NESL Report.

o) Copy of the CIBIL Report.

p) Copy of the Certificate under Section 65 B of the Evidence Act in support of the Statement of Account.

q) AFA of the IRP.

3. <u>ADDITIONAL AFFIDAVIT (FC)</u>

3.1 The Applicant filed an Additional Affidavit dated 06.08.2025, affirmed by Mr. Amit Bhaskarrao Thorat, who is stated to be the Chief Manager of the Applicant.

3.2 The Applicant, through this Additional Affidavit, filed the modified Form 1 by specifically mentioning the date of default in Part- IV, particulars of the financial debt and the AFA of the IRP on record.

3.3 The modified Part – IV records the following addition to the original Part – IV:

*"**DATE ON WHICH THE DEFAULT OCCURRED***

The date of default has occurred on 29th July, 2023 and continues till date. The date of default and the date on which the account of the Corporate Debtor was classified as an NPA is the same.

The Default in payment of instalment and interest occurred on 30th April,2023, and accordingly on non-payment for their instalment amount, the account was declared as N.P.A on 29th July, 2023.

Date of initial default is 30th April, 2023. However, the Financial Creditor has treated date of N.P.A. as the Default date.

Date of Default/ Date of NPA: 29th July,2023"

4. CONTENTIONS OF CD

4.1 Affidavit-in-Reply dated 26.09.2025 was filed and affirmed by one Mr. Dhairyasheel Dyandeo Kadam, who is stated to be the Chairman and authorized representative of the CD.

4.2 The CD is registered as MSME vide registration No. UDYAM-MH-30-0017331. This is an undisputed position that the status of the Corporate Debtor as a registered MSME Enterprise is known to the Petitioner. The Corporate Debtor is entitled to statutory benefits of "Framework for Revival and Rehabilitation of MSMEs" notified by the Government under section 9 of the MSMED Act and RBI as well as its own MSME policy.

4.3 Notably, the Applicant has not followed the Notification and RBI Master Direction before classifying the account of the CD as NPA on 29/07/2023 and has committed flagrant breach of the Notification dated 29/05/2015 issued by Central Government and RBI Master Direction having statutory force as held by the Hon'ble Supreme Court in Pro Knits vs. Board of

Directors of Canara Bank [2024 SCC Online SC 1864]. As per its own MSME Policy as published on its website, the Petitioner is not entitled to initiate any "recovery proceeding" unless options for Rectification and Restructuring are not found feasible by the Committee for a stressed Micro, Small and Medium Enterprises constituted by the Petitioner as per the RBI Master Direction to resolve the stressed in the MSME accounts. The Petitioner is bound to implement the Government Notification and RBI Master Direction and refer the accounts of the Corporate Debtor to the Committee constituted for Revival and Rehabilitation of MSME accounts under the Framework of RBI Master Directions ["the Committee"]. Despite repeated requests and reminders which includes the personal meetings, the Petitioner has deliberately and dishonestly failed and neglected to refer the accounts of the Corporate Debtor to the Committee for revival and rehabilitation.

4.4 The Petitioner has committed breach of duty in rendering the banking services within the Framework of RBI Regulations causing immense prejudice to the Corporate Debtor. Further, the Petitioner has failed to comply with their duty and statutory obligations in implementing the statutory RBI Master Direction dated 21 /07/2016 issued under sections 21 and 35A of the Banking Regulation Act, 1949 having statutory force. The Petitioner have failed and neglected to comply with their public duty as Regulator and Implementing Agency of the Government Scheme for Rehabilitation and Revival of MSMEs.

4.5 On 21/12/2016, the Petitioner has claimed to have allegedly sanctioned a Term Loan of Rs.30 Crores to the CD for the purchase of plant and machinery, allegedly secured by a simple mortgage deed dated 20.02.2017 for an industrial plot at Trimali, Satara. On 07.09.2020, the Petitioner allegedly sanctioned a Working Capital Term Loan of Rs. 7.5 crores under the UGECL scheme during COVID-19, which has since been fully repaid, with no outstanding balance. Due to the COVID-19 pandemic, the Corporate Debtor's manufacturing operations were suspended, leading to cash flow issues, delayed payments from customers, and increased liabilities, which impacted the repayment of the term loan. The Petitioner was kept informed about the financial stress, which was caused by circumstances beyond the Corporate Debtor's control.

4.6 The Corporate Debtor being a registered MSME was entitled to statutory benefits of "Framework for Revival and Rehabilitation of MSMEs" notified by the Central Government under section 9 of MSMED Act as well as the Reserve Bank of India Circular dated 17/03/2016.

4.7 As required by the Reserve Bank of India, Petitioner has formulated and published its policy on Framework for Revival and Rehabilitation of MSMEs to provide a simpler and faster mechanism to address stress in MSME accounts. The Corporate Debtor account is covered by the RBI Master Direction as well as the Bank's own MSME policy. The silent features of the Bank's MSME policy are:

a) Bank is required to identify incipient stress in MSME loan accounts before it turns into Non-performing assets [Cl-3.1.1]

b) Branch maintaining the MSME loan account should consider and forward the stressed MSME account to the Committee for a suitable

Corrective Action Plan (CAP). In the case where the account SMA -2 category, this requirement is mandatory.[Cl-3.1.1.2]

c) The committee constituted as per clause 3.2.1 on receipt of information relating to the liabilities of MSME Enterprises, may send notice to the statutory creditors [Cl-4.4] and permit them to make their representation [Cl-4.4 and 4.2]

d) For restructuring of the debt exceeding Rs.10 crores the Committee shall conduct a detailed Techno Economic Viability (TEV) Study and finalised restructuring as per the Prudential Norms specified under clause-4.6.2.

e) As and by way of the Corrective Action Plan (CAP) the Committee may follow the option of Rectification [clause-5.3.1] or Restructuring [clause-5.3.2] in respect of MSME account.

f) Significantly, the process of recovery can be resorted only when the first two options viz. (i) clause-5.3.1 Rectification and (ii) clause-5.3.2 Restructuring are not found feasible [5.3.3.1]

4.8 By virtue of the above notification and master direction, the petitioner ought to have forwarded the stressed account of the Corporate Debtor to the Committee constituted for Revival and Rehabilitation of MSMEs as mandatorily required by the RBI Master Direction dated 21/07/2016 and as per the above stated relevant clauses of MSME policy of the Petitioner.

4.9 However, the Petitioner committed breach of Government Notification dated 29/05/2015 as well as Master Direction as they failed and neglected to refer the accounts to the Committee for Revival and Rehabilitation.

4.10 By letter dated 23/10/2020 the Corporate Debtor requested the Petitioner to restructure the Term Loan in accordance with RBI Guidelines. The Corporate Debtor requested for a moratorium of two years and agreed to serve interest on the balance outstanding. However, Petitioner failed and neglected to consider the restructuring proposal of the Petitioners and refer the stressed account of the Petitioners to the Committee for statutory Revival and Rehabilitation. This is mandatory requirement as per the RBI Master Direction dated 21/07/2016 and the Petitioner's own policy.

4.11 The Corporate Debtor repaid Rs.45.32 crores towards principal and interest to Petitioner. By letters dated 07/03/2022, 28/07/2022, and 15/01/2024 the CD requested the Petitioner for restructuring of term loan, but in vain.

4.12 By letter dated 12/03/2023, the Corporate Debtor specifically requested the Petitioner to consider the restructuring of the Term Loan account under MSME Scheme. The Corporate Debtor, inter alia, recorded that they have repaid Rs.33.39 crores, comprising of principal amount ofRs.14.65 crores and interest of Rs.18.75 crores. The Petitioners committed to pay Rs.50 lakhs per month towards the Term Loan from November 2023.

4.13 The Applicant was not entitled to classify the account as NPA, unless the Bank identified incipient stress in the subject account by creating three sub-categories under the Special Mention Account (SMA) as given in the RBI Framework for Revival and Rehabilitation of MSMEs. However, the Petitioner in flagrant breach and violation of Government Notification and RBI Master Direction illegally and unlawfully seized and classified the account of the Petitioners as NPA on 29/07 /2023 which was in the teeth of the directives and guidelines.

4.14 By letter dated 31/07/2023, the Petitioner illegally commenced recovery proceeding by issuing demand notice under section 13(2) of SARFAESI Act, for Rs.19,75,13,851/- and threatened to take possession of securities exceeding more than four times of their alleged claim. The said notice was apparently issued for an extraneous purpose to harass and pressurize the Petitioners. On 26/10/2023, the Petitioner through its Authorised Officer took symbolic possession of the assets with particulars as set out therein.

4.15 The CD were effectively engaged with the Petitioner to resolve the debt by restructuring of the term loans. By letters dated 26/10/2023 and 18/11/2023, the Corporate Debtor submitted comprehensive restructuring proposals. However, the Petitioner failed and neglected to take any step in respect of the said proposals.

4.16 By letter dated 11/12/2023, the Karad Branch of the Petitioner informed the Corporate Debtor that their accounts were transferred to Asset Recovery Branch, Pune.

4.17 The Petitioner illegally continued the recovery proceeding in utter derogation of RBI Master Direction and in apparent violation of its own MSME policy. The Petitioner was not entitled to classify the account of the Corporate Debtor as NPA and initiate recovery proceedings unless the Petitioners account was referred to the Committee for Revival and Rehabilitation and options for restructuring and revival of the Corporate Debtor's account was found not feasible by the Committee. This statutory exercise is given a complete go-bye at irremediable injury and immediate prejudice to the Corporate Debtor. By letter dated 12/01/2024, Petitioner recorded that its Competent Authority (not the committee constituted under

RBI Master Direction for MSMEs) had not considered restructuring proposals of the Petitioners as the same was not viable.

4.18 Significantly, at the meeting held on 21.02.2024, the bank official agreed to restructure the CD account. While referring to the meeting the Petitioner inter alia, recorded vide minutes dated 21.02.2024:

(i) Bank agreed to restructure the loan repayable in five years with a moratorium of six months.

(ii) The Petitioners showed willingness to deposit Rs.3.5 crores.

4.19 However, immediately thereafter, Petitioner illegally and erroneously issued a show cause notice dated 20.03.2024 for classifying the CD as a wilful defaulter with mala fide intent to deprive the Petitioners to restructure the account. By letter dated 17/04/2024, the Petitioner disputed and denied the false allegations contained in show cause notice dated 20/03/2024.

4.20 Eventually, vide email dated 27/07/2024, the Corporate Debtor requested the Petitioner to reschedule the term loan repayable in 72 months and promised to deposit 10% outstanding balance as upfront amount. The Petitioner did pay an upfront amount of Rs.2.23 crores which was adjusted towards UGECL loan. The said loan was accordingly closed.

4.21 By letter dated 17/01/2025, the Corporate Debtor once again requested Petitioner to restructure the account. The Directors of the borrower company even showed willingness to infuse Rs.3 crores towards outstanding loans. However, vide letter dated 30/01/2025, the Petitioner unreasonably declined restructuring proposal referring to a certain collateral issue of routing certain transactions.

4.22 On 14.05.2025, Petitioner issued a sale notice for auction scheduled on 26/06/2025.

4.23 By letter dated 24.05.2025, the CD once again pointed that the CD being MSME Enterprise is eligible for restructuring of loan as per RBI Master Direction. In a subsequent letter dated 26.05.2025, the CD once again requested Petitioner to consider restructuring of the loan.

4.24 However, by letter dated 31/05/2025, the Petitioner erroneously declined the Corporate Debtor's proposal without even referring the account to the Committee for Revival and Rehabilitation under the Framework of RBI Master Direction dated 21/07/2016.

4.25 In view of the illegal and erroneous action initiated under the SARFAESI Act contrary to the RBI Master Direction and its own MSME policy, the Corporate Debtor was constrained to file SA No.573 of 2025 before DRT Pune challenging the action and measures initiated by the Petitioner under the provisions of SARFAESI Act, 2002.

4.26 The Petitioner being a nationalized Bank is governed by the directives and guidelines by the Reserve Bank of India. The Notification issued by the Central Government dated 29/05/2015 as well as RBI Master Direction Mandates the Petitioner to refer the Corporate Debtor MSME account to the Committee for Revival and Rehabilitation .by following statutory mechanism prescribed therein. Pertinently, the Petitioner itself has adopted MSME policy as directed by the RBI. The said policy prohibits recovery proceedings unless restructuring procedures are considered by the statutory committee and the same is found not viable by the said Committee. The Petitioner was not entitled to classify the account as NPA without referring the CD account to the Committee. Petitioner is also entitled to initiate any recovery proceeding in absence of failure report of the Committee regarding restructuring. The entire action including various mode of recovery illegally and erroneously and unlawfully initiated by Petitioner are contrary to the Government Notification dated 29/05/2015 and RBI Master Direction dated 21/07/2016 as well as Bank's own MSMEs policy.

4.27 The Petitioner have omitted to give effect to the RBI Master Direction dated 21/07/2016 regarding restructuring of the petitioners account under the statutory framework of the said Direction. The Petitioner have failed to comply with their duty of enforcement of Directive. Petitioner as Implementing Agency and Petitioner as a regulatory authority, has a public law duty to implement and enforce the RBI Master Direction dated 21/07/2016. The Petitioner have failed to comply with the statutory duty as regulator and implementing agency in relation to the implementation of RBI Master Direction dated 21/0712016 in relation to the Corporate Debtor account.

4.28 Further, the Central Government in exercise of power conferred by Section 9 of MSMED Act has issued Notification containing instructions for the “Framework for Revival and Rehabilitation of MSMEs”. Salient features of “Framework for Revival and Rehabilitation of MSMEs are as under:

i) ***Before a loan account of an MSME turns into a Non Performing Asset (NPA)****, banks or creditors should identify incipient stress in the account by creating three subcategories under the Special Mention Account (SMA) category as given in the Framework.*

ii) Any MSME borrower may also voluntarily initiate proceedings under this Framework.

iii) Committee approach to be adopted for deciding corrective action plan.

iv) Time lines have been fixed for taking various decisions under the Framework."

4.29 The above Notification dated 29/05/2015 is adopted by the RBI vide Direction dated 21/07/2016 - i.e. the Master Directions i.e. the Reserve Bank of India (Lending to Micro, Small and Medium Enterprises Sector) Directions, 2016 issued by the Reserve bank of India in exercise of power conferred by sections 29 and 35(A) of the Banking Regulation Act. The RBI Notification has statutory force and it is binding all scheduled commercial banks including Petitioner. As per the RBI Master Direction the Petitioner ought to have referred the account of the Corporate Debtor to the Committee constituted under the Notification and RBI Master Direction for Revival and Rehabilitation of the accounts of the MSMEs. This requirement is held to be mandatory.

4.30 The Petitioner has not followed Notification dated 29/05/2015 as well as RBI Master Direction dated 21.07.2016 and its own MSME policy before classifying the account as NPA on 29.07.2023 and have committed breaches of the said Notifications having statutory force.

4.31 Despite various proposals dated 23/10/2020, 07/03/2022, 28/07/2022, 25/01/2023, 27/07/2024, 17/01/2025, 24/05/2025 submitted by the Corporate Debtor for restructuring of the MSME account of the Corporate Debtor and in flagrant breach and violation of the RBI Master Direction and its own MSME policy, the Petitioner has failed and neglected to refer the account to the Committee for restructuring. Petitioner has deliberately and mala fidely deprived the Corporate Debtor the benefit of Government Notification and RBI Master Direction as well as its own MSME policy as they are holding the securities four times of the alleged claim.

4.32 The Petitioner has obtained Techno Economic Viability (TEV) Report dated 11.03.2025 for restructuring from M K Advisory and Engineering Services Pvt Ltd. The said Report has strongly recommended for restructuring of the term loan on the basis of following conclusion:

i) The promoters are adequately resourceful to run the business of Jaggery & Khandasari unit.

ii) Adequate existing land & building for existing plant for manufacturing of Jaggery & Khandasari.

iii) Existing machinery, utilities and other miscellaneous assets are adequate.

iv) The current infrastructure in the form of existed building is adequate.

v) The company Informed that, adequate raw material is available from the market and company would not face any problem to acquire the same.

vi) Based on the data provided and observations during the site visit, the project is considered to be technically feasible.

vii) Utilities like water, electricity, steam are in place and adequate for production needs.

viii) There is adequate demand potential in the market. The unit should not face any problem of marketing.

ix) The company already have experience team for marketing and handling manufacturing operations.

4.33 Considering the above, it is recommended that the request ofthe company sounds reasonable and feasible and may be considered as fair banking risk. However, the Petitioner did not submit the above Report to the Committee constituted under the RBI Direction for MSME. The recommendation of professional is unjustly and arbitrarily ignored.

4.34 It is stated that the interest cannot be claimed after an account has been classified as a Non-Performing Asset (NPA). The Petitioner claims that it had classified the Corporate Debtor's account as an NPA on September 22, 2019. However, despite such classification, the Petitioner continued to levy interest on the outstanding amount, including interest on interest, which is impermissible under law.

4.35 The RBI, through its Master Circular on *Prudential Norms on Income Recognition, Asset Classification, and Provisioning pertaining to Advances* dated July 1, 2015, expressly prohibits the charging of interest once an account has been classified as a Non-Performing Asset (NPA). The relevant clause is reproduced below:

> *"**3.4 Interest Application***
>
> *On an account turning NP A, banks should reverse the interest already charged and not collected by debiting Profit and Loss account, and stop further application of interest. However, banks may continue to record such accrued interest*

in a Memorandum account in their books. For the purpose of computing Gross Advances, interest recorded in the Memorandum account should not be taken into account."

4.36 Therefore, the Petitioner is not entitled to levy interest. However, the accounts submitted by the Petitioner indicate that interest has been charged. Moreover, without prejudice to the foregoing contentions and strictly without admitting any liability, it is asserted that the Petitioner has wrongfully imposed penal interest and additional interest components, which are impermissible under law.

4.37 Therefore, an application under Section 7 of the IBC must inter alia necessarily provide documents and cogent evidence showing (i) existence of a debt, (ii) disbursement of a debt, and (iii) default of a debt, in the present Petition, though the Petitioner alleges that there is an alleged debt payable by the Respondent in respect of which there is an alleged default. However, the same lacks proof of the alleged debt and the alleged default. In the absence of a Petitioner being able to prove the sanction, disbursement and default of a debt by the Corporate Debtor, the present Petition filed under Section 7 of the Code, must necessarily fail and be dismissed.

4.38 It is stated that in view of the above stated facts, there is no iota of doubt that the present Petition maliciously and fraudulently seeks initiation of a corporate insolvency resolution process against the Respondent. I say that the Petitioner is guilty and punishable under the provisions of Section 65 of the Code for filing Present Petition with a fraudulent and malicious intent.

4.39 The CD has attached the following supporting documents along with the Reply:

a) A copy of MSME Registration Certificate together with GST certificate of the Corporate Debtor.

b) Copy of Notification dated 29.05.2015.

c) A copy of RBI Master Direction dated 21/0712016.

d) A copy of MSME policy of the Petitioner uploaded on the website.

e) A copy of letter dated 23.10.2020.

f) A copy of letters dated 07.03.2022, 28.07.2022 and 15.01.2024.

g) Copy of letter dated 12.03.2023.

h) Copy of letters dated 26.10.2023 and 18.11.2023.

i) Copy of letter dated 11.12.2023.

j) Copy of letter dated 12.01.2024.

k) Copy of Minutes of Meeting dated 21.02.2024.

l) A copy of notice dated 20.03.2024.

m) Copy of Reply dated 17.04.2024.

n) Copy of letter dated 17.01.2025.

o) Copy of letter dated 30.01.2025.

p) Copy of letter dated 14.05.2025.

q) Copy of letter dated 24.05.2025.

r) Copy of letter dated 31.05.2025.

s) A copy of Techno Economic Viability (TEV) Report dated 11.03.2025.

5. REJOINDER

5.1 A rejoinder dated 10.11.2025 was filed and affirmed by one Mr. Amit Bhaskarrao Thorat, who is stated to be the Chief Manager and authorized representative of the Applicant.

5.2 The entire reply is silent on the fact of debt not actually being due and payable. Moreover, in a letter dated 17th January, 2025, (annexed at Exhibit N to the Affidavit in Reply), the Corporate Debtor has explicitly admitted the outstanding dues. Therefore, the same is admitted by the Corporate Debtor. The Corporate Debtor has also not raised any dispute regarding the debt owed to the Financial Creditor and the default committed therein. It is submitted that the Financial Creditor sanctioned loan facilities to the Corporate Debtor which was accordingly disbursed and the same is clearly reflected in the books of the accounts and other supporting documents annexed with the Petition. It is further submitted that the Corporate Debtor has also not raised any dispute regarding the total outstanding amount and the disbursement of the loan facilities.

5.3 It is submitted that for the admission of the Petitioner under Section 7 of the Code, 2016, the Adjudicating Authority only has to determine whether a "default" has occurred and whether the debt was due and remained unpaid and if the Adjudicating Authority is of the opinion that a "default" has occurred, it has to admit the Petition unless it is incomplete. In the present case, the default is clearly evidenced by inter alia the NeSL report which clearly reflects the status of default as "Authenticated".

5.4 It is thus a settled position of the law that once a default is established the Adindicating Authority is bound to admit the Petition under Section 7 of the Code, 2016, unless there exists a bona fide dispute or the debt itself is not legally enforceable. It is also submitted that the Adjudicating Authority is not required to conduct a roving enquiry into disputes unless the debt is disputed with substantial grounds and in the present facts and circumstances, since there is no dispute regarding debt and default, this Petition ought to be admitted.

5.5 At the outset, it is submitted that the present petition is opposed solely on the ground that it seems as though they were entitled to the restructuring as per the Reserve Bank of India (RBI) Framework, being an MSME, they were not given. This contention is liable to be rejected for various reasons as set out in detailed hereinbelow. It is briefly submitted that:

a) As far as Code, 2016 is concerned, it is not a recovery mechanism in which restructuring has to be attempted prior to proceeding with the filing of the petition so as to say that it cannot be compared with the provisions of Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 or any other banking recovery mechanism. In fact, Code, 2016, is a mechanism which is put into place to revive the Corporate Debtor and in fact revive the MSME Corporate Debtor with the special protection that the promoters of the MSME can give a revival plan. Therefore, this is a statutory mechanism which is run under the supervision of this Hon'ble Tribunal, and one cannot contend that the mechanism under RBI Framework has to be a condition precedent before applying to this Hon'ble Tribunal under the provisions of Code, 2016 for revival of the Corporate Debtor.

b) The provisions of the Code, 2016 overrides the provisions of the other acts. It has been time and again held that any other restructuring revival mechanism which has come prior to that of coming into force the provisions of Code, 2016, in such a situation Code, 2016 will override and similar views have been taken in respect of BRU/MRU undertakings. This in fact, has correlation with declaration of Non-Performing Asset ("NPA"). The entire argument is on the basis that declaration of NPA is wrongly done as the guidelines are not followed. As far as exercising remedy under IBC of Section 7 cr 9 or 10 the declaration of NPA has no relevance. It is on the event of default, a petition is filed under Section 7 and declaration of NPA has no bearing for filing of the Petition. Though, at times the declaration of NPA and date of default is placed similarly because the declaration of NPA is treated as default. As a matter of fact, the default is non-payment of principal or interest instalment as envisaged under the Code, 2016 and failure to do so gives a cause of action to approach this Hon'ble Tribunal. Therefore, this whole argument that the declaration of NPA is not correct has no bearing because it is immaterial whether the account is NPA or not for the purpose of filing the Petition.

c) Perusal of the record and correspondences between the parties will also demonstrate that this argument is just an afterthought taken at this stage after not having requested or raised this issue at any stage. It is also a matter of fact that a contrary stand to that of the stand now being taken was taken by the Corporate Debtor as set out hereinbelow. Therefore, now one cannot after having taken a completely different route of having Trust and Retention Account ("TRA"), One-time settlement, can come in contend that this was not undertaken.

d) In any events as set out hereinbelow, the Corporate Debtor was not qualified for any such exercise and in that view of the matter, this whole argument is of no basis. In view of the above and for the reasons as set out in detail it is respectfully submitted that this defense needs to be rejected, and the Petition needs to be admitted.

5.6 The account of the Corporate Debtor was duly classified as NPA on 29th July, 2023 and the same is in consonance with the guidelines prescribed by the Reserve Bank of India. The Corporate Debtor vide letter dated 26th October, 2023 (Annexed at Exhibit "H1" of the Reply) accepted its account status as NPA without any disputes and further assured the Financial Creditor that it would regularize its account but failed to do so.

5.7 Pursuant to that, in the interest of the Corporate Debtor, the Financial Creditor around September, 2024, approved the Hold in Operation of the account of the Corporate Debtor but even thereafter, the Corporate Debtor in spite of having an annual turnover of Rs. 56 Crores in the FY 2024-25 (as more particularly set out in Exhibit N of the Reply) failed to regularize it's account and accordingly, the Petitioner rejected the request for restructuring of the account of the Corporate Debtor.

5.8 The contention of the Corporate Debtor in respect of the MSMED Act and the related RBI frameworks cannot override the operation of the Code, 2016. The Code, 2016 is a self-contained Code for Insolvency Resolution and the date of default is relevant for the purpose of the admission of the Petition.

5.9 The intention of the Code, 2016 is for reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the shareholders. With respect of the Corporate Debtor being MSME, the intention of the Code, 2016 is not to push them into Insolvency or liquidation and affect the livelihood of employees and workers rather it promotes their entrepreneurship by granting exemption one of which being permitting a promoter who is not a wilful defaulter, to bid for the MSME in insolvency.

5.10 The Financial Creditor had sanctioned loan to the Corporate Debtor in the year 2016 and thereafter in September, 2020 the Financial Creditor sanctioned a Working Capital Term Loan under the UGELC which was accordingly closed in the year 2023 in terms of the full repayment by the Corporate Debtor. The Corporate Debtor allegedly suffered huge losses due to the Covid-19 pandemic and therefore the Corporate Debtor vide letter dated 23rd October, 2020 (Annexed at Exhibit E of the Reply) requested for restructure of the loan in accordance with the RBI Guidelines dated 6th August, 2020.

5.11 The Corporate Debtor vide letter dated 12th March, 2023 (Annexed at Exhibit G of the Reply) again requested the Financial Creditor to restructure the account of the Corporate Debtor for a period of five years and further informed that if such request is granted than the Corporate Debtor will be able to repay the entire outstanding amounts.

5.12 In the year 2023-2024, the Corporate Debtor made repeated request for the restructuring of its accounts and the Financial Creditor also provided ample opportunities to the Corporate Debtor to regularize its account but the Corporate Debtor failed to regularize its account. The Financial Creditor vide its letter dated 12th January, 2024 (Annexed at Exhibit J of the Reply) informed the Corporate Debtor that the restructuring of the loan is not viable as per the Financial Creditor's policy and also requested to upgrade/close the account to avoid any further legal action.

5.13 In spite of giving multiple opportunities to the Corporate Debtor to regularize its account, the Corporate Debtor failed to do so, the Identification Committee on Willful Defaulters was constituted in consonance with the RBI guidelines and the Identification Committee in the meeting dated 3rd February, 2024, concluded that the default is willful in nature and accordingly the Committee prima facie identified the Corporate Debtor as "Wilful Defaulter" and was constrained to issue show cause notice dated 20th March, 2024, giving 15 days' time to the CD to make necessary submissions as to why Corporate Debtor shouldn't be classified as the "Wilful Defaulter". (Annexed at Exhibit L of the Reply).

5.14 It is pertinent to note that in the reply dated 17th April, 2024 to show cause notice of the Financial Creditor, the Corporate Debtor has not raised any dispute regarding the wrongful declaration of its account as NPA and also not raised any dispute regarding non-compliance of the frameworks of the RBI by the Financial Creditor. In fact, the reply clearly admits that the loan amount of Rs. 30 Crores was sanctioned and disbursed to the Corporate Debtor and that it has defaulted on it.

5.15 The Financial Creditor vide its letter dated 12th January, 2024, (annexed as Exhibit J to the Reply) rejected all the restructuring proposal offered by the Corporate Debtor made, as the same was not found to be viable as per the Bank's Policy.

5.16 Despite the above facts and considering the multiple request(s) made by the Corporate Debtor, the Financial Creditor vide letter dated 9th

September, 2024, approved for opening of the TRA with the Financial Creditor and also permitted "Hold in operations" in the TRA Account with cutback of 15% from the revenue generated from the Corporate Debtor operation.

5.17 The Financial Creditor vide show cause notice dated 20th December, 2024, again provided an opportunity to provide an explanation for not complying with the terms and conditions of the TRA facility. As per the terms of the sanction, all the transactions were to be routed through the current account held by the Financial Creditor, however, the Corporate Debtor, has knowingly failed to comply with the said conditions. The Financial Creditor further informed the Corporate Debtor that no restructuring proposal can be considered by the Financial Creditor until the entire sale proceeds are routed through the designated TRA Account. The Financial Creditor further informed the Corporate Debtor that they would be forced to cancel the hold in operation and all the reliefs granted would be revoked. The Corporate Debtor even thereafter failed to repay any amount from the hold in operations owed to the Financial Creditor in spite of huge turnovers reported from the GST returns during April,2024, to October, 2024, but none of the transaction was routed through the TRA account where the 15% cutback was to be utilized for serving the Financial Creditor dues.

5.18 The Corporate Debtor vide letter dated 17th January, 2025 (Annexed at Exhibit Q of the Reply) again requested for Loan restructuring and sanction of the Working Capital Loan which was rejected by the Financial Creditor vide letter dated 30th January, 2025 (Annexed at Exhibit O of the Reply). The Financial Creditor also informed the Corporate Debtor that in spite of having an annual turnover of Rs. 56 Crores in the FY 2024-25, the Corporate Debtor failed to regularize its account and diverted the fund which were for the repayment of its dues.

5.19 From the above it can be seen that the Corporate Debtor has through all its correspondences admitted the debt and default.

5.20 The Corporate Debtor was also provided with multiple opportunities to regularize its account but had consciously chosen not to do so.

5.21 From the documents provided by the Corporate Debtor, it is evident that the funds were available with the Corporate Debtor, but the Corporate Debtor chose not to repay but also refrained from regularizing the account which shows the real intention of the Corporate Debtor.

5.22 In view of the aforesaid, the Financial Creditor has every reason to believe that all the aforesaid baseless and vague claims raised by the Corporate Debtor are an afterthought to evade liability to pay the rightful dues owed to the Financial Creditor. Therefore, the Corporate Debtor should not be allowed to shy away from its obligations and the present petition be admitted.

6. <u>SHORT NOTE OF SUBMISSION (FC) dated 04.12.2025</u>

6.1 The Petitioner vide sanction letter dated 21st December,2016, (*Annexure E at Page 28-35 of Vol 1 of C.P.*) sanctioned a loan amount of Rs. 30,00,00,000/- to the Respondent. In furtherance of the said sanction letter, on 28th February,2017, the Petitioner and the Respondent entered into a Term Loan Agreement *(Annexure F at Page 37-49 of Vol 1 of C.P.)* for the said loan amount of Rs. 30,00,00,000/-. The Petitioner and the Respondent executed a Simple Mortgage Deed dated 28th February,2017, (*Annexure G at Page 50-65 of Vol 1 of C.P.*) to secure the loan facilities.

6.2 After the Respondent complied with the terms and conditions, the Petitioner vide sanction letter dated 16th May,2017, (*Annexure H at Page 66-70 in Vol 1 of C.P.*) sanctioned the remaining amount i.e. Rs. 21,00,00,000/-. The Petitioner and the Respondent again executed a Simple Mortgage Deed dated 23rd May,2017, (*Annexure I at Page 71-85 of Vol 1 of C.P.*) to further secure the loan facilities.

6.3 The Petitioner disbursed the entire amount of Rs. 30,00,00,000/- in 27 instalments starting from the period of 17th March,2017, till 5th May,2018. Details of the Disbursement in Part IV @ Page 7-8 of the Additional Affidavit.

6.4 The Respondent was irregular in repayment of the instalment of the principal amount and the interest amount and despite various request made by the Petitioner to regularize the loan account, the Respondent failed to do so and accordingly the Respondent committed default. Date of Default is 29th July,2023, which is also the date of N.P.A. Despite multiple opportunities such as OTS proposal were provided to the Respondent, the Respondent still committed default and in view of thereof, the Present Petition is filed by the Petitioner under Section 7 of the Code, 2016.

6.5 It is an admitted fact that the loan was taken by the Respondent, loan was disbursed and the loan amount was utilized and thereafter the Respondent committed default in repayment of the said loan.

6.6 The default can clearly be evidenced by the NeSL report clearly reflecting the status of default as “Authenticated”.

6.7 It is a settled position of the law that once a default is established, the Adjudicating Authority is bound to admit the petition under Section 7 of the Code, 2016 unless there exists a bona fide dispute or the debt itself is not legally enforceable and in the present case in absence of such a dispute and the petition being complete, the present petition ought to be admitted. Reliance is placed on the judgement passed in the matter of *Innoventive Industries Limited Versus ICICI Bank and Another (2018) 1 Supreme Court Cases 407.*

6.8 The Respondent has not raised any disputes regarding the classification of its account as NPA which can be seen in letter dated 26th October,2023. The Respondent had assured the Petitioner that it would regularize its account, and multiple opportunities were provided to the Respondent but even thereafter the Respondent failed to regularize its account. From the correspondences and from the documents annexed by both the parties, the Respondent has chosen not to regularize its account and is now raising baseless and vague claims to evade its liability to pay the rightful dues owed to the Petitioner.

6.9 The provisions of the Code, 2016 override the provisions of the other acts. It has been time and again held that any other restructuring revival mechanism which has come prior to that of coming into force the provisions of Code,2016, in such a situation Code, 2016 will override and similar views have been taken in respect of BRU/MRU undertakings. This in fact, has no correlation with declaration of Non-Performing Asset ("**NPA**").

6.10 The entire argument is on the basis that declaration of NPA is wrongly done as the guidelines are not followed. As far as exercising remedy under IBC of Section 7 or 9 or 10 the declaration of NPA has no relevance. It is on the event of default, a petition is filed under Section 7 and declaration of NPA has no bearing for filing of the Petition. Though, at times the declaration of NPA and date of default is placed similarly because the declaration of NPA is treated as default. As a matter of fact, the default is non-payment of principal or interest instalment as envisaged under the Code, 2016 and failure to do so gives a cause of action to approach this Hon'ble Tribunal. Therefore, this whole argument that the declaration of NPA is not correct has no bearing because it is immaterial whether the account is NPA or not for the purpose of filing the Petition. Reliance is placed on judgement in the matter of *The Canara Bank Limited Versus Swaminarayan Diamonds Private Limited 2025 SCC OnLine NCLT 5181* & in the matter of *HDFC Bank Limited Versus Dhanlaxmi Electricals Private Limited 2025 SCC OnLine NCLT 4487* & in the matter of *Punjab National Bank Versus Pride Coke Private Limited 2025 SCC OnLine NCLT 4202.*

6.11 The account of the Corporate Debtor was duly classified as NPA on 29th July,2023, and the same is in consonance with the guidelines prescribed by the Reserve Bank of India. The Corporate Debtor vide letter dated 26th October,2023, *(Annexed at Exhibit "H1" of the Reply)* accepted its account status as NPA without any disputes and further assured the Financial Creditor that it would regularize its account but failed to do so.

6.12 Pursuant to that, in the interest of the Corporate Debtor, the Financial Creditor around September,2024, approved the Hold in Operation of the account of the Corporate Debtor but even thereafter, the Corporate Debtor in spite of having an annual turnover of Rs. 56 Crores in the FY 2024-25 *(as* *more particularly set out in Exhibit N of the Reply)* failed to regularize it's account and accordingly, the Petitioner rejected the request for restructuring of the account of the Corporate Debtor.

7. WRITTEN SUBMISSIONS (CD)

7.1 The Applicant, on 21.12.2026, sanctioned a Term Loan of Rs.30 Crores for purchase of plant and machinery, secured by a simple mortgage dated 20.02.2017 for an industrial plot at Trimali, Satara.

7.2 On 07.09.2020, the Applicant sanctioned WCTL of Rs.7.5 Crores under the UGECL Scheme during COVID-19; the said facility has been fully repaid.

7.3 CD, being a registered MSME (UDYAM-MH-30-0017331), on 23.10.2020 formally requested restructuring of Term Loan as per RBI Guidelines and sought a two-year moratorium.

7.4 Further letters reiterating restructuring request; cumulative repayments aggregating to Rs.45.32 Crores made towards principal and interest.

7.5 Detailed representation for restructuring under MSME Framework; informed repayment of Rs.33.39 Crores and the CD committed to Rs.50 lakhs p.m. from Nov 2023.

7.6 On 29.07.2023, Applicant illegally classified the account as NPA without referring to the MSME Committee or following RBI Framework; acted in breach of Notification 29.05.2015 & RBI Master Direction 21.07.2016.

7.7 Demand Notice u/s 13(2) SARFAESI for Rs.19.75 Crores issued on 31.07.2023; followed by symbolic possession on 26.10.2023—actions contrary to statutory MSME framework.

7.8 Corporate Debtor, on 26.10.2023 and 18.11.2023, submitted comprehensive restructuring proposals post-classification; Petitioner failed to act.

7.9 On 11.12.2023, the Petitioner transferred the account to Asset Recovery Branch, Pune, continuing recovery contrary to RBI Directions & Bank policy.

7.10 Bank's letter dated 12.01.2024 stated "Competent Authority" found restructuring not viable—not by the statutory Committee—hence noncompliance with mandatory RBI procedure.

Legal & Statutory Breaches Summarised

Sr. No.	Issue	Legal Position / Authority	Inference
1.	Failure to Refer to MSME Committee	Govt. Notification 29.05.2015 and RBI Master Direction 21.07.2016 (issued u/s 21	Mandatory requirement; Petitioner in breach—NPA classification void.

		& 35A of Banking Regulation Act).	
2.	Violation of RBI Circulars having statutory force	Pro Knits v. Canara Bank (2024 SCC Online SC 1864); Central Bank of India v. Ravindra (2002 1 SCC 367); HSBC v. Awaz (2025 3 SCC 52).	RBI Directions have binding statutory character; non-compliance renders actions illegal.
3.	Security-based discrimination	Sardar Associates v. Punjab & Sind Bank (2009 8 SCC 257).	Holding excess security does not justify denying statutory MSME benefits.
4.	Illegality of continuing recovery under SARFAESI	Clauses 5.3.1 – 5.3.2 of Bank's MSME Policy – recovery only permissible after Committee finds restructuring unfeasible.	Petitioner's SARFAESI action premature & ultra vires.
5.	Interest levy post-NPA classification	RBI Master Circular (01.07.2015) – Prudential Norms on Income Recognition & Asset Classification cl. 3.4.	Post-NPA interest & penal interest charge impermissible; Petitioner acted contrary to law.
6.	Malicious intent under Section 65 IBC	Fraudulent initiation of proceedings despite absence of proof of disbursement, debt & default.	Petition under Section 7 IBC is malafide & liable to be dismissed with costs.

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

8.1 We have perused the documents as placed before us and heard both the Ld. Counsels for the Applicant and the CD.

8.2 The undisputed/admitted facts in this matter are:

a) The Applicant sanctioned a Term Loan of Rs.30,00,00,000/- to the CD *vide* sanction letter dated 21.12.2016 for a tenure of 84 months.

b) The CD created security by way of Simple Mortgage Deeds dated 28.02.2017 and 23.05.2017.

c) The entire sanctioned amount was disbursed in 27 tranches between 17.03.2017 and 05.05.2018.

d) Instalments due from April 2023 onwards were not paid as per schedule.

8.3 However, several issues remain disputed, namely:

a) The legality of the NPA classification.

b) The alleged mandatory reference to the Committee for Revival and Rehabilitation under the MSME Framework of 2015 not made by the Applicant.

c) The charging of interest post NPA.

d) The contention that restructuring proposals were viable and pending consideration.

8.4 The loan was disbursed against consideration for time value of money, carrying interest and a defined repayment schedule. The mortgage deeds and registration of charge demonstrate that the transaction was structured as a secured financial facility. Under Section 5(8) of the IBC, this squarely qualifies as a financial debt. The CD has not raised any plea of fraud, coercion, or invalidity of documents. Therefore, the foundational requirement of Section 7 stands satisfied and the existence of financial debt is proved beyond doubt.

8.5 The occurrence of default is established from multiple independent sources. The CD's own letters seeking restructuring and deferment acknowledge financial stress and inability to service instalments. The classification as NPA on 29.07.2023 was followed by issuance of SARFAESI notice, which was never set aside by any competent forum. Most significantly, the default stands authenticated by NeSL. Under Section 7 read with Section 3(12), default means non-payment of a debt when due and payable, including part thereof. Even if only one instalment remains unpaid beyond its due date, default occurs. In the present case, several instalments remain unpaid, and the outstanding principal alone exceeds Rs.15 Crores, which is far above the statutory threshold under Section 4 of the IBC.

8.6 The CD’s challenge to NPA classification and alleged non-compliance with the MSME rehabilitation framework does not negate default. Even assuming for argument's sake that certain procedural requirements under RBI guidelines were not followed, such issues may at best give rise to regulatory or civil consequences. They do not extinguish the underlying debt nor convert a due and payable instalment into a non-due liability. The IBC is a complete and overriding legislation, and Section 238 gives it precedence over inconsistent laws. The enquiry under Section 7 is summary in nature and does not extend to adjudicating alleged irregularities in the classification of accounts.

8.7 Writ Petition No. 14750 of 2025 was filed by the CD herein against the Applicant Bank before the Hon’ble Bombay High Court seeking the following prayers:

> *“(a) That this Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, order or direction under Article 226 of Constitution of India*

directing the Respondent No.2 to take regulatory action to implement the Government Notification dated 29/05/2015 and RBI Master Direction dated 21/07/2016 and direct Respondent No.3 to refer the Petitioners MSME account to the Committee for restructuring of the debt under the RBI Master Direction dated 21/07/2016 and MSMEs policy of Respondent No.3.

(b) That this Hon'ble Court be pleased to declare that the RBI Master Direction dated 21/07/2016 issued by Respondent No.2 is binding on the Respondent No.3 Bank and the Bank is obligated to refer the Petitioners account to the Committee for debts Restructuring within the Framework of RBI Master Direction dated 21/07/2016.

(c) That this Hon'ble Court be pleased to declare that the inaction /omission of Respondent Nos.2 and 3 in implementing the Government Notification dated 29/05/2015 and RBI Master Direction dated 21/07/2016 and failure to refer Petitioners account to the Committee for restructuring of the debt under the above Master Direction are ex-facie illegal, contrary to law, and the same be quashed and set aside.

(d) That the Hon'ble Court be pleased to declare that the classification of Petitioners account as NPA on

29/07/2023 and initiation of recovery proceedings in breach and violation of RBI Master Direction dated 21/07/2016 and MSME policy of Respondent No.3 are illegal, null and void and the same be quashed and set aside.

(e) That pending the hearing and final disposal of the above Writ Petition, the Hon'ble Court be pleased to:

(i) order and direct Respondent No.3 refer the account of Petitioner No.1 to the Committee for debt restructuring in accordance with the RBI Master Direction dated 21/07/2016 and MSME policy of Respondent No.3; and

(ii) restrain Respondent No.3 by an interim injunction from taking any further recovery proceedings or coercive action based on default and NPA dated 29/07/2023.

(f) For ad-interim reliefs in terms of prayer clause (e) above.

(g) For costs of this Petition;

(h) For such other and further reliefs as the nature and circumstances of the case may require and this Hon'ble Court may deem fit and proper."

8.8 Hon'ble Bombay High Court *vide* interim order dated 16.12.2025 recorded the following:

> *"4. Having so expressed our views, the learned Counsel appearing for Respondent No.3 – Bank states on instructions that Respondent No.3 – Bank will seek an adjournment before the NCLT on Thursday i.e. 18th December, 2025 when the matter has been stood over for admission of the Petition, to a date beyond when the present Petition shall be heard for interim relief. The statement is accepted."*

The Hon'ble Bombay High Court, in its final judgment dated 29.01.2026 in the said Writ Petition, deals with the decision of ***Pro Knits Vs. Board of Directors of Canara Bank and Ors.***, (2024) 10 SCC 292 in connection with the matter at hand and records as under:

> *"36. It is also relevant to note that clause 1 of the said Framework for Revival and Rehabilitation of MSMEs dated 17.03.2016, pertaining to the eligibility of an MSME, stipulates that the Framework will be applicable to MSMEs having loan limits upto Rs.25 crores, including accounts under consortium or multiple banking arrangement. This indicates that the loan limit of Rs.25 crores includes accounts under consortium or multiple banking arrangement. In this context, letters dated 07.03.2022 and 28.07.2022 sent by the petitioner No.1 to the respondent No.3 - Bank assume relevance. These letters show that term loan facility of Rs.30 crores was made available to the*

petitioner No.1 and other loan facilities such as, UGECL, Covid loan, pledge loan, H & T loan (personal guarantee), H & T loan (corporate guarantee) and bank guarantee were specified therein. In the letter dated 07.03.2022, the total sanctioned amount under these heads came to Rs.87.51 crores and the outstanding amount came to Rs.48.49 crores as on 28.02.2022 and as per the letter dated 28.07.2022, the sanctioned amount came to Rs.87.51 crores and the outstanding amount came to Rs.44.68 crores as on 28.07.2022. Considering the said figures stated by the petitioner No.2 itself, we find no substance in the contention of the petitioners that the petitioner No.1 ought to have treated as an 'eligible MSME' for the benefit of the said Framework, Master Circular as well as the Notification issued by the respondent No.1 - Union of India.

37. It is in these circumstances that the position of law relied upon by the petitioners will have to be considered, in the context of the judgement rendered by the Supreme Court in the case of ***Pro Knits Vs. Board of Directors of Canara Bank and others*** *(supra). A perusal of the said judgement indeed shows that the respondent No.3 - Bank is required to examine as to whether a borrower is entitled for the* *benefit of the Framework for Revival and Rehabilitation of MSMEs, before classifying the loan account of an MSME borrower as NPA. Although the MSME borrower can also apply for the benefit under the said Framework, as per the ratio laid down in the said judgement of the Supreme Court, it is for the bank or banking company to examine suo moto regarding the benefit of the Framework to be extended to an MSME borrower before declaring the loan account as NPA. But, it is crucial to understand that the said position of law will apply only to an 'eligible MSME borrower'. It cannot be said that the said position of law would apply to all the MSMEs, without reference to the eligibility criterion specified in the Framework for Revival and Rehabilitation of MSMEs devised by the respondent No.2 - RBI and the Master Circular issued in that context. An MSME borrower must be an eligible MSME for the benefit of the Framework, without which the position of law clarified by the Supreme Court in the case of* ***Pro Knits Vs. Board of Directors of Canara Bank and others*** *(supra) cannot be applied.*

38. This Court having rendered the finding hereinabove that the petitioner No.1 does not qualify to be an 'eligible MSME' for the benefit of the said Framework and the Master Circular, the petitioners *cannot claim that a fundamental error was committed by the respondent No.3 - Bank while dealing with the defaulting loan account of the petitioner No.1. It can also not be said that the actions undertaken by the respondent No.3 - Bank, in the facts and circumstances of the present case, could be said to be in violation of the position of law clarified by the Supreme Court in the case of* **Pro Knits Vs. Board of Directors of Canara Bank and others** *(supra)***.**

39. The petitioner No.1 cannot claim that since it had claimed to be an MSME in a couple of communications addressed to the respondent No.3 - Bank, the law laid down by the Supreme Court in the case of ***Pro Knits Vs. Board of Directors of Canara Bank and others*** *(supra) and the subsequent judgement in the case of* ***Shri Shri Swami Samarth Construction & Finance Solutions and another Vs. Board of Directors of NKGSB Co-op. Bank Ltd. and others*** *(supra), has been satisfied. A proper appreciation of the subsequent judgement of the Supreme Court in the case of* ***Shri Shri Swami Samarth Construction & Finance Solutions and another Vs. Board of Directors of NKGSB Co-op. Bank Ltd. and others*** *(supra) shows that although the position of law laid down in the case of* ***Pro Knits***

Vs. Board of Directors of Canara Bank and others *(supra) has been reiterated, a significant clarification has been given. It is specifically laid down in the said subsequent judgement that when the bank or the secured creditor does not have conscious knowledge that the defaulting borrower is an MSME, it can classify the defaulting MSME as NPA and even issue demand notice under Section 13(2) of the Securitization Act, without the mandatory requirement of identifying incipient stress in the account of the defaulting MSME borrower. It is further laid down that after a demand notice is issued to such an MSME borrower, it is incumbent upon such a borrower to assert its claims, including claiming the benefit of the Framework devised by the respondent No.2 - RBI by citing reasons, supported by an affidavit, which would then require the bank or the secured creditor to keep further action under the Securitization Act in abeyance.*

40. The position of law clarified by the Supreme Court in the subsequent judgement in the case of ***Shri Shri Swami Samarth Construction & Finance Solutions and another Vs. Board of Directors of NKGSB Co-op. Bank Ltd. and others*** *(supra), thus makes it clear that even if the MSME borrower claims the benefit of* *the aforesaid Framework devised by the respondent No.2 - RBI, it must, at the first opportunity, give all the details supporting its claim, including submitting an affidavit as contemplated under the Master Circular of respondent No.2 - RBI, the aforesaid Framework as well as the Notification issued by the respondent No.1 - Union of India.*

41. In the present case, the petitioners cannot claim that since the respondent No.3 - Bank did not specifically assert that the petitioner No.1 was not an eligible MSME, it was absolved from putting on record its detailed reasons and material along with affidavit for claiming eligibility under the Framework. This is not a case where the respondent - No.3 Bank proceeded against the petitioner without conscious knowledge about the status of the petitioner No.1 being an 'eligible MSME borrower'. The actions of the respondent No.3 - Bank clearly indicate that notwithstanding the passing reference and general claim made by the petitioner No.1 being an MSME borrower, the said respondent proceeded consciously on the basis that the petitioner No.1 could not be treated as an 'eligible MSME borrower'. In such a situation, the petitioners cannot claim the benefit of the law laid down by the Supreme Court in the cases *of **Pro Knits Vs. Board of Directors of Canara Bank and others** (supra) and **Shri Shri Swami Samarth Construction & Finance Solutions and another Vs. Board of Directors of NKGSB Co-op. Bank Ltd. and others** (supra).*

42. As noted hereinabove, the moment it is found that the petitioner No.1 could not be said to be an 'eligible MSME', the respondent No.3 - Bank was clearly entitled to proceed against the petitioner No.1 under the extant guidelines on Corporate Debt Restructuring / Joint Lenders' Forum mechanism. This is exactly what the respondent No.3 - Bank did by offering the petitioner No.1 alternative methods of restructuring its debt by granting facility of TRA Account and hold in operation. In this context, the conduct of of the petitioner No.1 assumes significance.

43. A perusal of the documents on record shows that after giving sufficient opportunity to the petitioner No.1, post declaration of the loan account as 'NPA' on 29.07.2023, the respondent No.3 Bank, on 09.09.2024, permitted the petitioner No.1 to open TRA Account and also permitted hold in operations in TRA Account with deduction of 15% from the revenue generated from the operation. This facility was *provided to the petitioner No.1 so that it could continue its operation while routing all its revenue through the TRA Account, from which 15% would be deducted to satisfy the dues of the respondent No.3 - Bank. This was a step taken by the respondent No.3 - Bank to ensure that the petitioner No.1 is not closed down and the outstanding dues of the bank are also satisfied in a systematic and assured manner.*

44. The petitioner No.1 failed to take benefit of the said facility and in that backdrop, on 20.12.2024, the respondent No.3 - Bank, through its Chief Manager and Branch Head, was constrained to issue a show cause notice to the petitioner No.1. It was recorded in the show cause notice that GST returns of the petitioner No.1 Unit itself demonstrated sales turnover of Rs.27.43 crores during April 2024 and October 2024, but, none of the transactions were routed by the petitioner No.1 through the TRA Account where 15% cut back was to be undertaken, to be utilized for serving the dues of the respondent No.3 - Bank. It was recorded that such actions on the part of the petitioner No.1 were defeating the very purpose of providing the facilities. In that backdrop, it was recorded that while undertaking such action, the restructuring proposal moved by the petitioners could not be considered and *that, written explanation was expected from the petitioner No.1, failing which, the said facility was to be withdrawn and appropriate action was to be taken against it.*

45. This was followed up by the respondent No.3 - Bank on 30.01.2025 by sending a letter to the petitioner No.1, stating that the actions of the petitioner No.1 had clearly proved that the purpose for which the TRA Account and hold in operation facility was provided, had been defeated and that the petitioner No.1 was diversifying the funds. In this backdrop, a request for restructuring of the loan account made on behalf of the petitioner No.1 was not considered and notice was issued for sale of immovable property of the petitioner No.1. There were further e-mails exchanged between the parties and on 31.05.2025, the respondent No.3 - Bank was constrained to communicate to the petitioner No.1 that in the light of the OTS not being honoured, the TRA Account and hold in operation facility being misutilized by the petitioner No.1 and the impossibility of merging of loans and reduction of rate interest clearly demonstrated that there was no other option for the respondent No.3 - Bank, but to further proceed against the petitioner No.1.

46. We find that the aforesaid documents placed on record clearly indicate that no fault can be found in the approach adopted by the respondent No.3 - Bank and that, it is the petitioners, who are to blame for their predicament. In the facts and circumstances of the present case, the petitioners have neither made out a case on law nor on facts and hence, we do not find any merit in the present writ petition.

47. In view of the above, the writ petition is dismissed. Consequentially, the respondent No.3 - Bank is relieved of its statement made before this Court. Resultantly, the respondent No.3 - Bank would be entitled to proceed with the application / proceeding initiated by it before the NCLT, in accordance with law."

8.9 The CD filed an appeal before the Hon'ble Supreme Court challenging the order passed by the Hon'ble Bombay High Court in the aforementioned Writ Petition. The SLP bearing no. SLP (C) No. 7230 of 2026 was later withdrawn by the CD on 26.02.2026. The same was communicated to this Tribunal through a preacipe dated 27.02.2026.

8.10 We rely upon the Hon'ble Bombay High Court's judgment in the said Writ Petition, which has found that the CD is not eligible to rely upon the judgment of Pro Knits (*supra*) as it has clearly exceeded the loan limit of Rs.25 Crores as provided in the Framework applicable to MSMEs.

8.11 We rely upon the judgment of Hon'ble Supreme Court in the matter of ***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, wherein Hon'ble Supreme Court 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</u>

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):

"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 acorporate 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)

8.12 In paragraph 28, the Hon'ble Court held that receipt of various sums under restructuring proposals does not amount to acceptance of restructuring nor novation of the loan agreement, and that part payments do not constitute full satisfaction so as to render a Section 7 application inadmissible. In the present case, the CD relies heavily on the fact that it has repaid approximately Rs.45.32 Crores over time. However, repayment of earlier instalments does not wipe out subsequent default. The relevant question is whether any debt remains due and unpaid on the date of filing. The answer is unequivocally yes. In paragraph 29 of the same judgment, the Supreme Court rejected arguments based on commercial viability and operational status, observing that such facts "though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application." The CD has placed reliance on a Techno Economic Viability Report dated 11.03.2025 recommending restructuring and has highlighted its business operations and turnover. However, viability is a matter for the Committee of Creditors to examine during CIRP. It cannot be used as a shield to resist admission once default is established. Further, in paragraph 32, the Hon'ble Supreme Court clarified that at the stage of admission, the Adjudicating Authority is only to ascertain the existence of default from records of the information utility or evidence furnished by the financial creditor. It is not required to examine disputes regarding feasibility, restructuring, or broader equitable considerations. Paragraph 34 reinforces that the IBC restricts the scope of enquiry merely to existence of default of a debt due and payable and nothing more. Therefore, once the Applicant has produced loan documents, statement of account, SARFAESI notice, and NeSL authentication, the statutory threshold for admission is crossed.

8.13 Even if the CD disputes the calculation of interest post NPA, the principal outstanding of more than Rs.15 Crores itself exceeds the statutory minimum. Minor disputes as to quantification do not defeat admission when substantial default is evident. The Adjudicating Authority is not expected to conduct a forensic audit of interest computation at the admission stage.

8.14 The object of the IBC is resolution and revival, not punishment. The CD, who fall within the definition of an "MSME", enjoys certain relaxations under

Section 240A and may participate in the resolution, subject to eligibility. Thus, the initiation of CIRP provides a structured opportunity for revival under the supervision of a Resolution Professional and the Committee of Creditors.

8.15 The judgments cited by the Applicant are supportive of admission of this matter.

8.16 In view of the admitted execution of loan documents, undisputed disbursement of Rs.30 Crores, clear default from April 2023, authentication of default by NeSL, substantial outstanding principal, unsuccessful restructuring efforts, judgment of the Hon'ble Bombay High Court in the Writ Petition filed by the CD and the limited scope of enquiry under Section 7 as clarified by the Hon'ble Supreme Court in Power Trust (*supra*), the statutory ingredients for admission stand fully satisfied. The defences raised do not strike at the existence of debt or default. Accordingly, there exist detailed, factual and legally sustainable reasons for admitting the present Application under Section 7 of the IBC. We have also noticed that the applicant has given the required information in the application and has attached the relevant documents along with the application and accordingly the application is complete. Further, the applicant has proposed the name of an IP to be appointed as IRP and from the consent letter of the said IP it is observed that there is no disciplinary proceeding going on against the said IP.

8.17 We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) No. 700/MB/2025 filed under Section 7 of IBC, 2016, by Union Bank of India, the Applicant (FC) for initiating CIRP in respect of Vardhan Agro Processing Limited, the CD, is **admitted.**

We further declare a moratorium under Section 14 of IBC, 2016 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 the 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, and;

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 IBC 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 immediately as specified under Section 13 of the IBC 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. Mahesh Goverdhan Bagla**, having **Registration No. as IBBI/IPA-002/IP-N00689/2018-2019/12207**, and **e-mail address** **maheshgbagla@gmail.com,** having AFA valid till 30.06.2026**,** as the IRP to carry out the functions under the IBC.

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 IBC. The officers and managers of the Corporate Debtor are directed to provide all 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 IBC 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 Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) 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 Financial Creditor on priority upon the funds becoming 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 Financial Creditor, 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	**SAMEER KAKAR**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

//AS//