NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1

C.P. (IB)/514(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **12.06.2026**

NAME OF THE PARTIES**:** **UCO Bank**

V/s

Longrange Commodities 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)

//Sumant//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/514/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]

UCO Bank

[PAN: AAACU3561B]

10,BTM Sarani, Kolkata-700001

Branch Office -: 2/5& 3/5 , Girnar Tower,

New Palasia , Indore.

(M.P) 452003

…Financial Creditor

V/s

Longrange Commodities Pvt Ltd

[CIN No. 51909MH2009PTC194346]

Nav Vyapar Bhavan, 49, P.D Mello Road

Carnac Bunder, 5Th Floor , Office no. 525,526,527

Mumbai - 400009

...Corporate Debtor

Pronounced: 12.06.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Mr Rohit Dubey

For Respondent: Adv Mr. Rohit Gupta, Adv Mr. Munaf Virjee,Adv. Ms. Anuya Pathare i/b AMR Law.

ORDER

[PER: CORAM]

1. BACKGROUND

1.1. C.P. (IB) No.514/MB/2025 (Application) was filed on 12.04.2025 by UCO Bank, the Financial Creditor (FC), having PAN: AAACU3516B 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, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Longrange Commodities Private Limited the Corporate Debtor having CIN No. 51909MH2009PTC194346.

1.2. This Application has been affirmed by one Mr. Amit Potdar, authorised signatory of the Applicant vide Power of Attorney letter dated 17.06.2014

1.3. As per Part IV of the Application, the amount claimed to be in default is Rs.90,54,16,402.51/- (Rupees Ninety Crore Fifty-Four Lakhs Sixteen Thousand Four Hundred Two and Fifty-One Paisa Only).

1.4. The date of default is stated as 10.09.2015 when the Loan Account of the Corporate Debtor was turned Non-performing Asset in view of its

continuous failure to honour its repayment obligations as stated in Part IV of the Application.

1.5. Part V of the of the Application mentions the Securities held by the Applicant, which are as stated hereunder:

a. First exclusive charge on the entire current assets of the company comprising of stocks, spare parts, packing materials, internal stores and consumables, book, debts, receivables etc including goods in transit.

b. Equitable mortgage of Flat no. 74 at 7th Floor along with Garage no. 17 at ground floor, situated at Rajat Apartments, CHS Limited, Mount Pleasant Road, Malabar Hills, Mumbai 400006 with pledge of membership and share certificate no. 62 dated 22.09.1971 for five fully paid up shares bearing distinctive nos. 316 to 320 (both inclusive) in the capital/property of Rajat Apartments Co-op Housing Society Ltd., Mount Pleasant Road, Mumbai held in the name of M/s Namco Corp Ltd. Having estimated value of Rs. 10.00 crores (minimum).

c. Pledge of fixed deposit of Rs. 0.80 crores plus accrued interest.

d. Personal Guarantee of Mr. Vijay Soni and Mr. Namit Soni

e. Corporate Guarantee by Global Tradex Ltd.

1.6. The Applicant has proposed the name of Mr. Kuldeep Tank , an Insolvency Professional , having Registration No. IBBI/IPA-001/IP-P-02776/2020-2023/14255, to act as the Interim Resolution Professional

(IRP) (having valid Authorisation for Assignment up to 30.06.2027) (as per IBBI site), in case the Application is Admitted.

2. CONTENTIONS OF APPLICANT (FC)

2.1. The Applicant states that Corporate Debtor had requested and was sanctioned a credit facility in nature of Clean Overdraft facility limit of Rs. 10,00,00,000/- (Rupees Ten Crores Only), Letter Credit Limit of Rs. 90,00,00,000/- (Ninety Crores Only) and Bank Guarantee Limit of Rs. 5,00,00,000/- (Five Crores Only) totalling to sanctioned amount of Rs. 1,05,00,00,000/- (One Hundred and Five Crores only) plus applicable interests/other charges as per the agreed sanction terms mentioned under sanction letter bearing no. UCONP/SANC/16/2010-11 dated 22.05.2010.

2.2. Further the said facilities have been approved for renewal over the period from years 2011-2015 vide letters dated 15.12.2011, 29.06.2013, & 30.04.2015. The Copy of Sanction letters and relevant loan documents including Agreement for Hypothecation And Book Debts to Secure Demand Cash Credit, Agreement for Extension of Charge by way of Hypothecation over Current Assets to secure Non-Fund based facilities is attached as **Annexure 3** of the Application.

2.3. It is stated that the said facilities were obtained by the borrower by providing the securities namely first exclusive charge hypothecation on the current assets of the company, equitable mortgage on flat no. 7 on 7th floor and Garage no. 17 at Rajat Apartments Malabar Hill Mumbai, pledge

of fixed deposit of Rs. 0.80 crores and with the personal guarantee of the guarantor(s).

2.4. It is stated that the debt has been due since disbursed and became due in totality on the date it was recalled vide the loan recall notice dated 03.06.2015. The debt has remained due, defaulted and payable since then. The Copy of recall notice is Attached as Annexure A-6 to the Application.

2.5. The debt has been defaulted on 10.09.2015, when the Loan Account of the Corporate Debtor was turned Non-Performing Asset in view of its continuous failure to honour its repayment obligations.

2.6. Further a Demand Notice dated 01.10.2015 under section 13(2) of SARFAESI Act 2002 was issued calling the Corporate Debtor to pay the outstanding dues within 60 days. However, the Corporate Debtor failed to make payment of the entire outstanding dues of the Applicant.

2.7. The Applicant states that it is therefore approaching this Hon'ble Tribunal under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution process against the aforesaid Corporate Debtor on the ground of failure to repay the Financial Debt owed to the Financial Creditor by the Corporate Debtor.

2.8. The Applicant has attached the following documents along with the Application and /or additional affidavit.

a) Copy of the master data of the Corporate Debtor.

b) Copy of Consent Form along with Registration certificate

c) The Copy of Sanction Letter dated 22.10.2010, 15.12.2011, and 30.04.2015 along with the relevant loan facility documents executed by the Corporate Debtor

d) The Copy of Statement of the Financial Creditor in respect of the Corporate Debtor

e) Copy of the OTS request letter of the Corporate Debtor dated 25.08.2017, 21.12.2017, 29.12.2017, 22.12.2017, 03.01.2018 and 23.12.2020

f) Copy of Recall Notice dated 19.05.2015 along with notice of auction dated 08.03.2017 under SARFAESI Act, 2002.

g) Proof of service of advance copy to the IBBI

3. <u>ADDITIONAL AFFIDAVIT (FC) dated 10.07.2025</u>

3.1. This Tribunal vide order dated 03.06.2025, had granted an opportunity to the Applicant to file Additional Affidavit for bringing some Additional Documents on record.

3.2. Additional Affidavit dated 10.07.2025 was filed by the Applicant through Mr Ritesh Chowdhary, who is authorized signatory of the Applicant.

3.3. Further, the Applicant has submitted a copy of demand Notice dated 01.10.2025 issued under section 13(2) of the SARFAESI Act 2002. The Copy of the said Notice is attached as **Annexure A2** of the Additional Affidavit.

3.4. The Applicant vide the Additional Affidavit states that the Corporate Debtor has acknowledged the debt in its audited Financial statement filed

before the MCA 21 portal. The Relevant portion of the balance sheets for FY 2015-16,17-18,19-20,20-21,21-22 and 2022-2023 are provided as **Annexure A1** of the Additional Affidavit.

4. REPLY BY CORPORATE DEBTOR

4.1. The Affidavit in reply was filed on 17.09.2025 by the Respondent through Mr. Keshav Soni, who is stated to be a Director and Authorized Signatory of the Corporate Debtor.

4.2. It is stated that misleading documents have been filed by the Applicant to show default. In Part IV, of the present Petition, the Financial Creditor has claimed that the debt was defaulted on 10.09.2015. Assuming without admitting, that that default has occurred on 10.09.2015 (which is an incorrect and misleading date), the Financial Creditor has, in order to substantiate its contention, has referred to a notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") dated 23.05.2017. However, no such notice forms part of the present Petition. Similarly, the Financial Creditor has referred to a loan recall notice dated 03.06.2015, however, no such notice forms part of the present Petition.

4.3. The Financial Creditor has in Part IV of the present Petition, further averred that the loan was defaulted when a notice issued under Section 13(2) of the SARFAESI Act dated 01.10.2015 was issued by the Financial Creditor. Further, the Financial Creditor has relied upon a purported loan recall notice dated 19.05.2015 to show that facilities granted to the

Corporate Debtor were recalled and accordingly, there was default on the part of the Corporate Debtor. Once again, no such notice dated 01.10.2015 has been annexed to the present Petition. The purported loan recall notice dated 19.05.2015 is addressed to Namco Industries Pvt. Ltd. and not the Corporate Debtor.

4.4. The Financial Creditor has further sought to rely upon a purported newspaper publication dated 08.03.2017 (at page 194 of Petition). Notably, even this newspaper publication refers to Namco Industries Pvt. Ltd. and not the Corporate Debtor.

4.5. The Financial Creditor has suppressed the fact that in recovery proceedings filed by it against the Corporate Debtor being Original Application No. 358 of 2015 before the Debts Recovery Tribunal at Jabalpur ("DRT Proceedings"), the Corporate Debtor has filed a Counterclaim No. 01 of 2016 whereby inter alia the Corporate Debtor has claimed an amount of INR 118.98 crores towards losses and loss of profits suffered due to reasons solely attributable to the Financial Creditor (which are more particularly mentioned in the counterclaim in detail). Hence, it is expressly denied that there is any default on the part of the Corporate Debtor which gives rise to any cause of action enabling the Financial Creditor to institute the present Petition. The Copy of Counter Claim filed before DRT Jabalpur is Attached as **Exhibit A to** the Reply.

4.6. There is not a single document on record filed by the Financial Creditor which proves or even remotely demonstrates that a default was committed by the Corporate Debtor, and (ii) the Financial Creditor has

consciously chosen to rely upon false and misleading documents, knowing these documents to be false.

4.7. Further it is stated that there are different dates of default. It is settled law that the date of default cannot be shifted or changed by the Financial Creditor. Additionally, the Financial Creditor has mentioned two different dates when the notice under section 13(2) of the SARFAESI Act was sent by the Financial Creditor to the Corporate Debtor. In Part-IV, Sr. No. l(f), the Financial Creditor states that the debt was allegedly further defaulted following the notice dated 23.05.2017 under section 13(2) of the SARFAESI Act. Thereafter in Part IV, Sr. No. 2, the Financial Creditor states that the outstanding debt further defaulted when the notice under section 13(2) of the SARFAESI Act was issued on 01.10.2015. Notably, both the notices have not been annexed by the Financial Creditor in the Petition. As there are two different dates of default as mentioned in the petition hence there is apparent material defect in it.

4.8. It is submitted that the present Company Petition is barred by the laws of limitation. It is settled law that the period of limitation for filing an application seeking insolvency is three years from the date of default. The alleged date of default as mentioned in Part IV, Sr. No. 2 of the Petition is 10.09.2015 and as mentioned in Part-IV, Sr. No. l (e) is 03.06.2015. However, both these dates are unsubstantiated and not explained in the captioned Petition.

4.9. Further the Financial Creditor has failed to demonstrate the basis on which the Financial Creditor has arrived at the date of default being

10.09.2015 or 03.06.2015. Further, the Petitioner has failed to corroborate these dates with any cogent proof and/or document. Further, the Petitioner has failed to demonstrate as to how the date of default co-relates to any document as annexed to the captioned Petition.

4.10. It is stated that inordinate delay of nearly seven (7) years after expiry of limitation in filing the captioned Company Petition has been nowhere explained by the Petitioner. Hence, there is no explanation as to basis and the legal right of the Petitioner to maintain this Petition after more than 10 years of date of default. Therefore, the petition is hopelessly barred by limitation and is liable to be dismissed.

4.11. Further it is stated that the letters addressed by Corporate Debtor for proposed One Time Settlement ("OTS") in the year 2017, 2018 and 2019 were acknowledgment of debt, which continued the period of limitation, such letters cannot be relied upon by the Financial Creditor as an acknowledgment of debt because these letters were strictly without prejudice and do not amount to an acknowledgment of debt and/or admission of liability under section 18 of the Limitation Act, 1963.

4.12. It is submitted that the Corporate Debtor along with its without prejudice offer letter dated 21.12.2017, had furnished a Demand Draft no 096793 dated 13.01.2018 for INR 1 crore to the Financial Creditor, With the condition that in the event the OTS proposal is not accepted amount of INR 1 crore would be returned forthwith on demand (Page 183 of the Petition). The receipt of the Demand Draft has been acknowledged by the Financial Creditor vide its letter dated 29.12.2017 (Page 185 of the

Petition) and the Financial Creditor had in the same letter undertaken to refund the same in case the OTS proposal is not approved by the Competent Authority.

4.13. Thereafter, the Financial Creditor vide its letter dated 03.01.2018, once again confirmed receipt of the said Demand Draft and informed that the amount of the Demand Draft will be refunded in the event the competent authority does not agree to the OTS. The Copy of letter is attached as Exhibit B to the Application.

4.14. However, despite such rejection of OTS by the Financial Creditor and efflux of nearly eight (8) years from such rejection, the Financial Creditor has till date, failed to refund the amount of INR 1 crore which was given by the Corporate Debtor to the Financial Creditor under the bona fide belief of settlement of the ongoing litigation pending before the DRT, Jabalpur. This Demand Draft was encashed by the Financial Creditor immediately. Such omission on the part of the Financial Creditor to refund the amount paid by the Corporate Debtor shows the mala fide conduct of the Financial Creditor. Whilst being in receipt of the funds of Rs. 1 crore, the Financial Creditor has chosen to separately institute the present proceedings, which it is not entitled to.

4.15. Further it is also argued that the debt claimed by the Financial Creditor is not crystallized because under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Financial Creditor has already filed the DRT Proceedings seeking recovery of an amount of Rs.101,44,31,480/-. In these proceedings, the Corporate Debtor has filed

a counterclaim on or about 22.07.2016, whereby, it claimed recovery of an amount of Rs. 118.98 crores. Imperatively, this counterclaim was made and filed as far back as in 2016, hence, even before the IBC came into existence, the Corporate Debtor raised a dispute as regards the legitimacy of the Financial Creditor's claim, which forms subject matter of the present petition. Thus, there is no crystallization of debt as the same has been disputed by the Corporate Debtor. Notably, this fact has been suppressed by the Financial Creditor in the present Petition.

4.16. The Corporate Debtor has filed Counterclaim No.01 of 2016 in terms of the losses sustained by the Corporate Debtor because of the hasty, arbitrary, illegal action of the Financial Creditor as more specifically mentioned in the counterclaim filed by the Corporate Debtor. The proceedings before the DRT, Jabalpur are pending and at the stage of final hearing.

4.17. Hence, pending the adjudication of the Corporate Debtor's counter claim it is submitted that the present proceedings cannot be continued and ought to be dismissed kept in abeyance.

4.18. Further it is stated that the application is incomplete as

a. **No Mention of alleged Date(s) of Disbursement**: - The Form - 1 as prescribed under the Application to AA Rules, inter alia, in Part - IV (Sr. No. 1) stipulates that the "Total amount of debt granted date(s) of disbursement" be provided. However, in the present case, the Financial Creditor has failed to mention the dates of disbursement of the alleged debt. Instead, the Financial Creditor

has mentioned details about the alleged sanction letters in the place of disbursement of the facilities as required under Form-I.

b. **No Working Computation Attached:** 'The Form - 1 as prescribed under the Application to AA Rules,) inter alia, in Part - IV stipulates that the "Amount claimed to be in default and the Date on which the Default Occurred (attach the Workings (or computation of amount and days of default in tabular form)" be provided. However, the Financial Creditor has in said Form - 1 only provided for the date of default and the Financial Creditor has failed to mention the number of days from the date of default to the filing of the Petition as required under Part IV of Form-I .That there is deliberate concealment by the Financial Creditor to mention the number of days from the date of default is because the applicant is aware that the alleged debt is heavily time-barred.

c. **No requisite certificates under Section 2A of the Banker's Book of Evidence Act, 1891 annexed:-** Without admitting to any entry in the account statements or for that matter the account statements placed on record, it is submitted that in response to Part V (7) of the Company Petition, that is, "Copies of entries in a Banker's Book in accordance with the Banker's Books Evidence Act, 1891 (18 of 1891)", the Financial Creditor has failed to annex the requisite certificates as necessary to be provided under Section 2A of the Banker's Book of Evidence Act, 1891. A copy of the printout of entry or a copy of printout referred to in Section 2(8)

being "certified copy" of the Banker's Book of Evidence Act, 1891 must be accompanied by: (i) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager as per Section 2A(a) of the Banker's Book of Evidence Act, 1891; (ii) a certificate by a person in-charge of computer system containing a brief descriptions of the computer system and the particulars of certain necessary safeguards as set out under Section 2A(b) of the Banker's Book of Evidence Act, 1891; and (iii) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and behalf, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data as per Section 2A(c) of the Banker's Book of Evidence Act, 1891. However, the aforesaid Company Petition is bereft of the aforesaid documents and therefore, the Financial Creditor has failed to provide copies of entries in accordance with the provisions of the Banker's Books Evidence Act, 1891.

d. **Copy of the Present Petition not served upon the Insolvency and Bankruptcy Board of India:**- Rule 4 (3) of the Application to AA Rules stipulates that "The Applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post or speed post or by hand or by

electronic means, before filing with the Adjudicating Authority. ". In the present Petition, no such proof of service thereof to the Board i.e. the Insolvency and Bankruptcy Board of India has been produced. Further Rule 4 (3) of the Application to AA Rules were amended on 24.09.2020 to specifically include that a copy of an application shall be served upon the Board prior to filing .Hence, in the absence of any proof of service thereof, it is clear at the procedure mandatorily required to be adhered to by the Financial Creditor before filing the Present Petition has not been complied with.

4.19. It is stated that the Financial Creditor has claimed that the loan facility was sanctioned vide letter dated 20.10.2015 and that the said facilities were renewed over the period from the years 2011- 2015. However, the Financial Creditor has only produced the loan documents executed in the year 2010 and not produced the alleged agreements executed in the years 2011- 2015. This is because no documentation was ever executed between the parties after 2010. This shows the malafide conduct of the Financial Creditor in creating false and unsubstantiated loan facility documents, to falsely claim that the credit facility was renewed by the Financial Creditor in favour of the Corporate Debtor in the years 2011-2015, to create prejudice against the Corporate Debtor.

4.20. Further it is stated that Sub-regulation (1A) of the Regulation 20 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 provides as: "Before filing an application to initiate

corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation 21.

4.21. In view of the above-mentioned regulation, vide order dated 03.04.2023, the Hon'ble NCLT, New Delhi has called upon all creditors to produce the record of default issued by Information Utility for effective hearing on the cases. Further, vide Circular No. IBBI/IU/59/2023 dated 16.06.2023 issued by the Insolvency and Bankruptcy Board of India ("IBBI"), it has been notified that in due compliance of sub-regulation (1A) of the Regulation 20 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 and in furtherance of the aforesaid order dated 03.04.2023 of the Hon'ble NCLT, New Delhi, all the creditors Financial Creditors shall append the record of default issued by the information utility with application inter alia filed under Section 7 of the Code.

4.22. However, the Financial Creditor has failed to comply with the abovementioned requirement i.e has not filed Record of default with IU. In response to Part V (3) of the Company Petition, that is, "Record of Default with the Information Utility, if any Financial Creditor has responded as "N/ A". Therefore, the captioned Petition is defective on the aforesaid ground and deserves to be dismissed.

4.23. The Financial Creditor has indulged in forum shopping and multiplicity of proceeding by initiating multiple cases in multiple fora for the same subject matter. It is therefore pertinent to highlight · the conduct of the Financial Creditor who is using the legal proceedings to arm-twist the Corporate Debtor to seek unjustified payments from the Corporate Debtor by wrongfully approaching various forums and thereby abusing the process of law. The FC has already filed OA no. 358 of 2015 before the Hon'ble DRT, Jabalpur against the Corporate Debtor which has been contested by the Corporate Debtor. Hence, the Financial creditor is indulging in forum shopping and multiplicity of Proceedings on the same subject-matter with the mala fide intention to harass the Corporate Debtor.

4.24. The Corporate Debtor further states that the petition is filed maliciously and the objective of the petition is Recovery rather than Resolution.

5. REJOINDER

5.1. The Rejoinder is filed by One Ritesh Choudhary who is the Authorised Signatory of the Applicant.

5.2. The Applicant states that the law for initiation of the CIRP under Section 7 of IBC. settled that the 2016, is distinct from recovery proceedings. The existence of a claim/counterclaim or the pendency of a suit or recovery proceedings, including those before the DRT, does not preclude this Hon'ble Tribunal from ascertaining the existence of "Financial Debt" and "Default" for the purpose of admitting a Section 7 Petition.

5.3. That as regards to the allegation made by the Respondent regarding suppression of the fact with respect to the pending DRT proceedings is

misleading, for the reason that the Applicant is not bound by law to disclose such DRT proceedings before this Hon'ble Tribunal as DRT proceedings and CIRP under IBC, 2016 are entirely independent proceedings.

5.4. Further it is stated that Respondent has merely filed the counter-claim before the Ld. DRT, Jabalpur, the same has not been adjudicated or approved as a set-off towards the existing financial debt of INR 90,54,16,402.51/-. No substantial progress has been made vis acceptance of the said counter-claim of Rs. 118.98 crores. Even otherwise the claim is baseless, false and frivolous. it has claimed an amount of INR 118.98 crores towards the losses and loss of profits suffered due to reasons solely attributable to the Financial Creditor. However, at this juncture it is extremely relevant to to the one Time Settlement dated 25.08.2017 proposed by the Respondent corporate Debtor, wherein it is mentioned that:-

> "subsequent to our availment of limits, as we were mostly in the business of import, the volatility of the currency adversely affected working of the company und the same clubbed with fall in prices of imported material eroded the entire net worth of the company and so much so accumulated huge/financial losses. The losses incurred by the company have exceeded Rs. 62,84,98,475/-. The losses suffered are in addition to debtors which are mostly over 360 days old and if realistic.

figures of receivables are crystallised the actual losses suffered will be even more.

5.5. Further it is stated that merely filing of a counter claim does not give the Respondent an opportunity to deny existence of the financial debt altogether. This is a blatant denial of the financial dues by the Respondent towards the financial debt which is rightly owed by the Applicant.

5.6. It has been further contended by the Respondent that there is no crystallisation of debt due to the pending DRT proceedings. However, such an argument that the debt is not crystallised due to Corporate Debtor's pending counter-claim before the Ld. DRT Jabalpur is incorrect understanding of law. The pendency of the Respondent's counterclaim, even one for a higher amount, does not automatically extinguish the Applicant's right to initiate CIRP under Section 7 IBC,2016.

5.7. Further the Applicant states that no misleading documents are being filed by it. Respondent very conveniently and mischievously suppressing the fact that the Corporate Debtor's name has been changed all this while. The name pf the Corporate Debtor at the time of incorporation of the company in the year 2009 was Long range Infrastructure Private Limited, which was subsequently changed to Namco Coal Private Limited in 2011, Namco Commodities Private Limited in 2012, and finally to Long range Commodities Private Limited in 2014. The copy of Certificate of Incorporation and Fresh Certificate of incorporation Consequent upon Change of Name of the Corporate Debtor as filed with the ROC is attached as **Annexure R5** of the Rejoinder.

5.8. Further it is stated that Corporate Debtor has itself acknowledged that it was formerly known as Namco Commodities Pvt Ltd in the OTS Offer dated 25.08.2017. Moreover, such an allegation does not germane to the fundamental requirements for admitting a Section 7 petition and has purportedly has no relevance to show the existence of debt and default, hence does not render the instant petition defective.

5.9. With respect to the different date of defaults the applicant states that there are no multiple dates of default, as the date of default perceived by the Applicant is 10.09.2015, which is the date when the account of respondent was classified as NPA which is very categorically stated in the Application.

5.10. Further it is stated that Respondent is manipulating the facts with respect to date of default by reading Part IV (Form 1). Sr. No. 1(e) and , whilst these paragraphs are to be constructed harmoniously and not in isolation. As Sr. No. 1(e) at page 11 simply states that the debt has become due and the same was recalled vide the loan recall notice dated 03.06.2015 and ever since the debt has remained due, defaulted and payable. While Sr. No. 1(f) at page 12 states that the debt was classified as NPA on 10.09.2015. It is humbly submitted by the Applicant that even in farthest of thoughts/interpretation/construction these two paragraphs [i.e. Sr. No. 1(e) and 1(f) at page 11 and 12] does not lead to the conclusion of two dates of default, more so, when Sr. No. 2 explicitly mentions 10.09.2015 (classification of NPA) as the date of default.

5.11. Further there have been multiple acknowledgements of debt made by the Respondent Corporate Debtor right after the classification of account as NPA. There have been series of correspondences made by the Corporate Debtor which acknowledged the debt, that includes tn. request for withdrawal of SARFAESI Actions , OTS proposals and Acknowledgement in Balance Sheets therefore renewing the limitation period.

5.12. With regards to Form 1 is incomplete it is stated that the objection pertaining to incompleteness of the Section 7 Petition (Form-I), it is humbly submitted that the Applicant has submitted the complete petition as prescribed under Section 7 of the IBC,2016 read with Rule 4 of the insolvency and Bankruptcy [Application to Adjudicating Authority) Rules, 2016 and has furnished all the evidentiary documents along with the main petition and by way of filing Additional Affidavit on 17.07.2025 which is being reflected on the DMS portal of the NCLT website

5.13. Moreover, it is alleged by the Respondent that Section 13(2) Notice dated 01.10.2015 under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (SARFAESI Act, 2002) is not annexed with the main petition. This averment by the Respondent is baseless. The said Section 13(2) Notice is annexed with the rejoinder as **Exhibit R3**

5.14. Further as regards the allegation of non-annexation of requisite certificate under Section 2A of the [Banker's Book of Evidence Act, 1891] is concerned , it is submitted that such a non-annexation is merely a

procedural requirement regarding the admissibility of the bank account statement as evidence. It is not a fatal defect that warrants in limine dismissal of the Petition. certificate under Section 2A of the Banker's Book Evidence Act, 1891 is attached Annexure-R6 to the Rejoinder.

5.15. The contention of the Respondent regarding the intimation of present petition not being served upon the Insolvency and Bankruptcy Board of India (IBBI) is false and misleading. (IAAA) bearing acknowledgement id. IAAA -0425-007 351 with the IBBI and has duly informed regarding the initiation of CIRP of the Corporate Debtor. The copy of the proof of acknowledgement with the IBBI has been already submitted before the Hon'ble NCLT and the same is being reflected on the DMS portal of the NCLT website.

5.16. That as regards the allegation made by the Respondent regarding non-registration of default with the Information Utility (lU) is concerned, it is submitted by the Applicant that the requirement of registration of default with the Information Utility is not mandatory. As per the scheme of the Insolvency and Bankruptcy Code, 2016 and as per the requirements under Section 7(3)(a), "the Financial Creditor shall along with the application furnish- record of default recorded with the information utility or such other record or evidence of default that may be specified.

5.17. The Applicant states that the Hon'ble NCLAT , in Vijay Kumar Singhania v. Bank of Baroda and Another (Comp App (AT)(INS) No. 1058 of 2023) on 13.12.2023 wherein it was held that Section 7(3)(a) gives financial creditors the liberty to either furnish the record of default issued by the IU

or any other evidence of default as prescribed therefore an application filed under Section 7 is not liable to be set aside for the want of record of default issued by the IU. The said judgment was further upheld by the Hon'ble Supreme Court of India in Vijay Kumar Singhania v. Bank of Baroda and Another (Diary No. 5768 of 2024)

5.18. The Respondent Corporate Debtor's assertion that the Section 7 Application is barred by limitation is baseless and without substance. That the allegations regarding time barred petition are denied in totality and rebutted in substance for the reason that the limitation period of three years under Article 137 of the Limitation Act, 1963, read with Section 238A of the IBC, is calculated from the date of default. However, it is pertinent to note here that the Respondent Corporate Debtor has time and again acknowledged the debt vide their One Time Settlement offers, the last being on 23.12.2020 and it is based on these OTS proposals the Applicant avers that the period of limitation has been extended due to such written acknowledgments of the Corporate Debtor

5.19. Moreover, the Respondent itself has admitted in their reply that they have issued OTS in the year 2017,2018, and 2020 and hence the period of limitation is to be counted from 23.12.2020. Further the reliance can be placed on the judgement of the Hon'ble Supreme Court in "In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020, wherein the Hon'ble Supreme Court extended the limitation period for all proceedings due to the COVID-I9 pandemic, effective from March 15,2020,until March 14,2021 and later on until

February 28, 2022. Therefore, on calculating the limitation period from 23.12.2020 and after excluding the period from 15.03.2020 till 28.02.2022, the instant petition is well within the limitation period.

5.20. Even otherwise the debt stands acknowledged in financial statements of the Corporate Debtor until FY 2022-2023, which are already on record.

5.21. Further the Applicant has provided rhe chronological dates and events are reiterated as under:

S. No.	Relevant Date	Relevant Event
1.	19.05.2015	Loan Recall Notice was issued by the Applicant.
2.	03.06.2015	Loan Recall Notice was issued by the Applicant.
3.	10.09.2015	Date of classification of the account as NPA.
4.	01.10.2015	Section 13(2) Notice under SARFAESI Act, 2002 was issued by the Applicant.
5.	FS 2015-2016	Financial statement of the Corporate Debtor for FY 2015-16 filed along with form AOC-4 acknowledging the debt.
6.	20.12.2016	Letter of Corporate Debtor acknowledging the debt.
7.	FS 2016-2017	Financial statement of the Corporate Debtor for FY 2016-17 filed along with form AOC-4 acknowledging the debt.
8.	25.08.2017	One Time Settlement proposed by the Corporate Debtor.
9.	21.12.2017	One Time Settlement proposed by the Corporate Debtor.
10.	FS 2017-2018	Financial statement of the Corporate Debtor for FY 2017-18 filed along with form AOC-4 acknowledging the debt.
11.	03.01.2018	One Time Settlement proposed by the Corporate Debtor.
12.	FS 2018-2019	Financial statement of the Corporate Debtor for FY

		2018-19 filed along with form AOC-4 acknowledging the debt.
13.	23.12.2020	One Time Settlement proposed by the Corporate Debtor.
14.	FS 2019-2020	Financial statement of the Corporate Debtor for FY 2019-2020 filed along with form AOC-4 acknowledging the debt.
15.	FS 2020-2021	Financial statement of the Corporate Debtor for FY 2020-21 filed along with form AOC-4 acknowledging the debt.
16.	FS 2021-2022	Financial statement of the Corporate Debtor for FY 2021-22 filed along with form AOC-4 acknowledging the debt.
17.	FS 2022-2023	Financial statement of the Corporate Debtor for FY 2022-2023 filed along with form AOC-4 acknowledging the debt.

5.22. Further the Applicant has placed reliance on the following judgements :-

a. Laxmi Pat Surana vs. Union Bank of India & Anr. Appeal No. 2734 OF 2020.

b. Vivek Jha v. Financial Services India Private Ltd. & Anr. (Company Appeal (AT) Insolvency No. 756 of 2018),

c. Vidyasagar Prasad vs. UCO Bank and Ors. [MANU/SC/1141/2024]

d. ITC Limited vs. Blue Coast Hotels Limited and Ors. [civil Appeal Nos. 2928-2930 OF 2018]

e. Bikram Bhadur vs. union Bank of India and Ors. [MANU/NL/0874/2024]

f. Rakesh Kumar Gupta v. Mahesh Bansal & Anr. in Coimpany Appeal (AT)(Insolvency) No. 1408 of 2019

g. Harkirat S Bedi vs. Oriental Bank of Commerce MANU/NL/0207/2019 : (2019) 108 taxmann.com 110 (NCLAT)

5.23. Further the Applicant in rejoinder has provided following documents.

i. The copy of the sanction letters dated 22.05.2010, 15.12.2011, 24.06.2013 and 30.04.2015.

ii. The copy of the loan recall notices dated 19.05.2015 and 03.06.2015

iii. The copy of Section 13(2) notice dated 01.10.2015

iv. The copy of the Notice of Sale dated 23.05.2017 .

v. The copy of Certificate of Incorporation and Fresh Certificate of incorporation Consequent upon Change of Name of the Corporate Debtor as filed with the ROC.

vi. Certificate under Section 2A of the Banker's Book of Evidence Act, 1891

6. SURJOINDER

6.1. The Surjoinder is affirmed by Mr. Keshav Soni , Director and Authorised Signatory of the Corporate Debtor on 04.11.2025

6.2. The Corporate Debtor states that Financial Creditor is still relying upon incorrect documents which do not concern the Corporate Debtor despite the Corporate Debtor pointing out such dishonest conduct of the Financial Creditor

in its Reply. The Financial Creditor has stated that the sanctioned amounts were recalled vide notices dated 19.05.2015 and 03.06.2015. A bare perusal of the recall notice dated 19.05.2015 (at page 62 of the Rejoinder) reveals that the said notice is addressed to Namco Industries Private Limited and not the Corporate Debtor. Namco Industries Private Limited and the Corporate Debtor Namco Commodities Private Limited are two different entities.

6.3. Further the certificate under 2A of the Banker's Book of Evidence is not valid . This certificate does not specify any amounts and is general and generic in nature. In any event this certificate is incomplete, without any particulars and thus, it cannot be relied upon by the Financial Creditor for any purposes relating to present Petition.

6.4. It is stated that the letter of renewal of credit facilities on the letter head of the Financial Creditor which is addressed to the Corporate Debtor is purported. This purported letter nowhere bears signature of any director or guarantor of the Corporate Debtor. The Corporate Debtor and / or its directors or employees or key managerial personnel, have never accepted any purported renewal of credit facilities. In such circumstances, absent any acknowledgement of renewal of credit facilities by the Corporate "Debtor, the Financial Creditor has again made false statements to mislead this Hon'ble Court, by relying upon the alleged sanction letter dated 30.04.2015, to desperately prove that credit facilities granted by the Financial Creditor were renewed in the year 2015. It is evident and clear that the Financial Creditor has miserably failed to even remotely prove sanction, disbursement and/or default of any purported credit facilities by the Corporate Debtor.

6.5. Further the Corporate Debtor states that in explanation offered by the Financial Creditor, in no way sheds any light on how Namco Industries Private Limited and the Corporate Debtor are related, and how a recall notice addressed to Namco Industries Private Limited can hold good while stablishing and enforcing an alleged default and debt due from the Corporate Debtor.

7. ANALYSIS AND FINDINGS

7.1. We have considered the pleadings in the matter and have heard the Ld. Counsels for the parties. We have also considered the written submissions filed by both the parties , which in our view summarize the arguments presented in the pleadings and as such for the sake of brevity we are not discussing them in detail here.

7.2. On perusal of the documents, we observe that the UCO Bank sanctioned 3 credit facilities to M/s Longrange Infrastructure Private Limited(Now Longrange Commodities Pvt Ltd .i.e. Applicant) namely clean over draft limit amounting to Rs.10 Crore(fund-based facility) which was to be repaid along with interest @ 12.25% per annum, Letter of Credit limit of Rs.90 crore and Bank Guarantee limit of 5 crore(Non-fund-based facility) , which aggregates to Rs.105 crore, vide sanction letter dated 22.05.2010.

7.3. The facilities were secured by various documents including Hypothecation and Book Debts to secure demand cash credit agreement dated 26.07.2010, Agreement for extension of charge by way of Hypothecation over current assets to secure non-fund-based facilities, permanent / Omnibus Counter Guarantee, Corporate Guarantee Deed by Namco Corp Ltd dated 26.07.2010, Personal Guarantee by Mr. Vijay Soni and Mr. Namit Soni dated 26.07.2010.

7.4. Further on perusal of the account statement as produced along with the Application, the funds came to be disbursed from 24.09.2010 and onwards. The outstanding balance as per the Account Statement as on 29.10.2024 is Rs. 90,54,16,402.

7.5. The Applicant through its rejoinder has filed Banker's Book Evidence Act Certificate to support the account statement.

7.6. Further, the Financial Facility got renewed from time to time vide renewed sanction letter dated 15.12.2011, 24.06.2013, and 30.04.2015.

7.7. It is pertinent to note that the Corporate Debtor changed its name to Namco Coal Private Limited vide Certificate of Incorporation Consequent upon change of name dated 12.09.2011 from erstwhile name i.e. M/s Longrange Infrastructure Private Limited. Again, vide certificate dated 12.03.2012 the name of Corporate Debtor was changed to Namco Commodities Private Limited. Further, once again the name of Corporate Debtor was changed to Longrange Commodities Private Limited vide fresh certificate of incorporation consequent upon change of name dated 24.02.2014, which was issued by the Ministry of Corporate Affairs. The documents have been placed on record by the applicant.

7.8. The account of the Corporate Debtor became irregular and hence a recall notice was issued by the Applicant on 19.05.2015 and 03.06.2015. Thereafter a demand notice under Section 13(2) of the SARFAESI Act 2002 was issued to the Corporate Debtor and the Guarantors to pay the outstanding dues within a period of 60 days, however, the same was not repaid. Further a sale notice

was also issued under Rule 8(6) of the Security Interest (Enforcement) Rules 2002.

7.9. Hence in view of the information provided in the Application and other documents placed on record, this Tribunal is of the view that a financial debt within the meaning of Section 5 (8) was disbursed, which was for time value of money and which was defaulted by the Corporate Debtor.

7.10. Further the contention of the Corporate Debtor in regard to limitation aspect, the date of default as mentioned in part IV of the Application is 10.09.2015. Thereafter, Corporate Debtor proposed various OTS proposals first being made on 25.08.2017 thereafter on 21.12.2017, 03.01.2018 and 23.12.2020. Each of these proposals was within a period of 3 years from the date of default or the date of last acknowledgement of debt made by the Corporate Debtor and that these OTS proposals extended the limitation period further.

7.11. The Corporate Debtor has also acknowledged the debt in its financial statements for the Financial years 2015-2016,2017-18,2019-20,2020-21,2021-22 and the latest being for FY 2022-2023. On page No. 9 of the Additional Affidavit the applicant has produced Balance Sheet for FY 2015-16 wherein it is observed that short term borrowings of Rs. 99.43 Crores are there. The same is disclosed in auditors report. Further in subsequent balance sheets for FY 2017-18,2019-20,2020-21 and 2021-22 the Corporate Debtor has acknowledged the Debt. Again, in FY 2022-23 the balance sheet shows a total current liability of Rs. 90.38 crores which is further disclosed in the auditor's report. The relevant extracts of Financial Statement for FY 2022-2023 are reproduced below:

[100100] Balance sheet

Unless otherwise specified, all monetary values are in INR

	31/03/2023	31/03/2022
Balance sheet [Abstract]		
Equity and liabilities [Abstract]		
Shareholders' funds [Abstract]		
Share capital	5,00,00,000	5,00,00,000
Reserves and surplus	-75,68,85,964	-75,60,02,351
Money received against share warrants	0	0
Total shareholders' funds	-70,68,85,964	-70,60,02,351
Share application money pending allotment	0	0
Deferred government grants	0	0
Minority interest	0	0
Non-current liabilities [Abstract]		
Long-term borrowings	0	0
Other long-term liabilities	0	0
Long-term provisions	0	0
Total non-current liabilities	0	0
Current liabilities [Abstract]		
Short-term borrowings	90,37,74,725	90,37,74,725
Trade payables	0	0
Other current liabilities	1,17,951	93,048
Short-term provisions	0	0
Total current liabilities	90,38,92,676	90,38,67,773
Total equity and liabilities	19,70,06,712	19,78,65,422
Assets [Abstract]		
Non-current assets [Abstract]		
Fixed assets [Abstract]		
Tangible assets	89,185	89,185
Intangible assets	0	0
Tangible assets capital work-in-progress	0	0
Intangible assets under development or work-in-progress	0	0
Total fixed assets	89,185	89,185
Non-current investments	0	0
Deferred tax assets (net)	3,95,761	3,95,761
Long-term loans and advances	0	0
Other non-current assets	1,00,57,900	1,00,57,900
Total non-current assets	1,05,42,846	1,05,42,846
Current assets [Abstract]		
Current investments	0	0
Inventories	41,51,000	41,51,000
Trade receivables	15,43,13,481	15,43,13,481
Cash and bank balances	1,52,738	2,40,333
Short-term loans and advances	2,77,83,724	2,85,57,724
Other current assets	62,923	60,038
Total current assets	18,64,63,866	18,73,22,576
Total assets	19,70,06,712	19,78,65,422

Disclosure in auditors report relating to default in repayment of financial dues

According to the information and explanation given to us and on the basis of our examination of records, the company has defaulted in repayments of dues to bank, details of which are as follows: Name of the Lender Amount of Default as on 31.03.2021 (Amount in Crores) Period of Default Remark UCO BANK 29.71 Since May 2015 Letter of Credit Overdue UCO BANK 7.79 Since July -2015 Letter of Credit Overdue UCO BANK 52.88 Since September -2015 Letter of Credit Overdue Total 90.38

7.12. Similar acknowledgements are available in the annual accounts of the corporate debtor for the Financial years 2015-2016,2017-18,2019-20,2020-21,2021-22 which for the sake of brevity are not reproduced herein.

7.13. In regard to the above this Tribunal is guided by the judgment of the Hon'ble Supreme Court in the matter of **Dena Bank v. C. Shivkumar Reddy, (2021) 10 SCC 330,** wherein it was held as under:-

> *"139- Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act….Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years."*

7.14. The 3-year limitation period would start from the date of default i.e 10.09.2015. Thereafter the Corporate Debtor acknowledged the debt vide its OTS letter for the first time on 25.08.2017, which is well within limitation thereby causing a fresh 3-year limitation to start thereon. Again on 21.12.2017 revised OTS offer was proposed thereby extending the limitation for another 3 years. Again on 03.01.2018 and 23.12.2020 the Corporate Debtor pursued the OTS proposal with the Applicant, which were within limitation period as stipulated by section 18 of the limitation Act and as a result of the last OTS offer dated 23.12.2020 the period of limitation was extended by further three years ending till 22.12.2023. Moreover, in this regard it is relevant to state here that as per order

of Hon'ble Supreme Court in suo moto Writ Petition (c) No. 3 of 2020 it was the directed that the entire period from March 15, 2020, to February 28, 2022, was excluded when computing limitation periods across all judicial and quasi-judicial proceedings. Moreover, the Corporate Debtor has acknowledged the debt through its financial statements for the FY 2015-16,2017-18,2019-20,2020-21 ,2021-22 and the latest being 2022-2023 thereby extending the limitation to further three years ending in 2026.The Application which is filed on 12.04.2025 is therefore within the limitation period.

7.15. The Corporate Debtor has stated that these letters shall not be constituted as Acknowledgement due to these OTS proposals being Strictly without prejudice. However, this Tribunal is guided by the Judgement of Hon'ble Supreme Court in matter **of ITC Limited Vs Blue Coasts Hotels Ltd** (CIVIL APPEAL Nos. 2928-2930 OF 2018) wherein it was held that mere use of word without prejudice does not absolve a party of acknowledgement. The Relevant extract is reproduced herein below-;

Letter of Undertaking "Without Prejudice"

"35. Much was sought to be made of the words "without prejudice" in the letter containing the undertaking that if the debt was not paid, the creditor could take over the secured assets. The submission on behalf of the debtor that the letter of undertaking was given in the course of negotiations and cannot be held to be an evidence of the acknowledgement of liability of the debtor, apart from being untenable in law, reiterates the attempt to evade liability and must be rejected. The submission that the letter was written without prejudice to the legal rights and remedies available under any law and therefore the acknowledgement or the undertaking has no legal effect must likewise be rejected. This letter is reminiscent of a letter that fell for consideration in

Spencer's case as pointed out by Mr. Harish Salve, "as a rule the debtor who writes such letters has no intention to bind himself further than is bound already, no intention of paying so long as he can avoid payment, and nothing before his mind but a desire, somehow or other, to gain time and avert pressure."

It was argued in a subsequent case that an acknowledgment made "without prejudice" in the case of negotiations cannot be used as evidence of anything expressly or impliedly admitted. The House of Lords observed as follows:

> *"But when a statement is used as acknowledgement for the purpose of s. 29 (5), it is not being used as evidence of anything. The statement is not an evidence of an acknowledgement. It is the acknowledgement." Therefore, the without prejudice rule could have no application. It said: "Here, the respondent, Mr. Rashid was not offering any concession. On the contrary, he was seeking one in respect of an undisputed debt. Neither an offer of payment nor actual payment."*

We, thus, find that the mere introduction of the words "without prejudice" have no significance and the debtor clearly acknowledged the debt even after action was initiated under the Act and even after payment of a smaller sum, the debtor has consistently refused to pay up."

7.16. Considering the facts this Tribunal is of the view that as the Application was filed on 12.04.2025 it is well within the limitation period.

7.17. As regard to the contention of Corporate Debtor that Financial Creditor is indulged in forum shopping as the proceedings are pending in DRT Jabalpur and a counter Claim has been filed by the Corporate Debtor. This Tribunal would rely on the Judgement of Hon'ble NCLAT in the matter of **Amar Vora vs City Union Bank Limited (Company Appeal (AT) (CH) (Ins) No. 130 of 2022)** wherein it was held that Financial Creditor can file application for

initiation of CIRP in NCLT even though the same debt is pending for adjudication before any other Forum. The relevant portion of the Judgement is reproduced here under;

> *"In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7 ,9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant."*

7.18. Another Contention of the Corporate Debtor is with respect to multiple date of defaults. We have noticed that the account of the Corporate Debtor became NPA on 10.09.2015 due to defaults committed by the Respondent. The Applicant has clearly mentioned the date of default as 10.09.2015. The Applicant has in part IV further stated that the debt is further defaulted when after issuance of Section 13(2) Notice , the CD has defaulted. The Applicant has further stated in Part IV that the debt is further defaulted when debt was acknowledged by the Corporate Debtor by way of an OTS dated 23.12.2020 and its still stand in default of the outstanding debt. As such, the Applicant has clearly stated that date of default which is also the date of NPA in part IV of the Application and that by way of other assertions the Applicant has disclosed the

fact of subsequent default by the CD and we do not think that by doing so the Applicant has done something to make this application as non-maintainable.

7.19. The Corporate Debtor also contends that Certificates under Section 2A of the Bankers Book of Evidence Act 1891 are not annexed with the Application. The Applicant has, however in the rejoinder submitted the Bankers Book Evidence Act Certificate under section 2A of the said Act and Certificate under section 65(4)(c) for loan account number ending with 000137 for a period from 23.09.2010 to 30.06.2025. However, in sur joinder the Corporate Debtor has contended that the Certificates are incomplete as no bank statements are attached along with the same. However, in our considered view these certificates are complete in nature as the same are in respect of the account statement attached along with the application on Page No. 110 to 178 the said fact is clearly stated by the Applicant in Para C(III) and (IV) of its rejoinder, the said paras are reproduced hereunder hence this contention of the Applicant is overruled.

iii. That as regards the allegation of non-annexation of requisite certificate under Section 2A of the Banker's Book of Evidence Act, 1891 is concerned, it is humbly submitted by the Applicant the such a non-annexation is merely a procedural requirement regarding the admissibility of the bank account statement as evidence. It is not a fatal defect that warrants *in limine* dismissal of the Petition.

iv. Moreover, the bank account statement of the Corporate Debtor is already submitted by the Applicant and the same is annexed as Annexure-4 (Page 109) of the main company petition and as regards the requirement of **certificate under Section 2A of the Banker's Book of Evidence Act, 1891 is concerned the same is being attached and marked as ANNEXURE-R6.**

7.20. It is the plea of the Corporate Debtor that the Insolvency and Bankruptcy Board of India had issued a Circular (notification no. IBBI/IU/59/2023), dated 16.05.2023 which makes it mandatory for the creditors to file information as to the the date of default with the information utility. Therefore, the record of utility is a necessity for application filed under Section 7 and Section 9 of the Code to be effectively heard. However, no such record has been filed by the

Applicant. At this moment it is pertinent to revisit Section 7(3)(a) of the Insolvency and Bankruptcy Act 2016 and Regulation 2-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulation , 2016

- Section 7 (3) of Insolvency and Bankruptcy Act , 2016 – *The financial creditor shall, along with the application furnish—*

  (a) *record of the default recorded with the information utility or such other record or evidence of default as may be specified*.

- Regulation 2-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulation , 2016 - *Record or evidence of default by financial creditor -For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely:-*

  (a) certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891);

  (b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.]

On perusal of the section and regulation mentioned above it is our view that the FC, along with the Application, shall furnish the either record of default with the Information Utility or any other evidence, which may be specified. The same is specified in regulation 2A which states that evidence may include certified copy of entries in the relevant account in the bankers' book. The

applicant has produced the account statement of the Corporate Debtor in the Application from page no.110 and Relevant Certificate in the Rejoinder. Hence this tribunal is of the view that as the Applicant has produced sufficient evidence of default and therefore non-filing of NeSL record of default along with the application does not make the Application not worthy of lawful consideration.

7.21. Further the Judgement of Hon'ble NCLAT in matter of **Vijay Kumar Singhania v/s Bank of Baroda & ors. Company Appeal (AT) (Insolvency) No.1058 of 2023** has held that Record of Default with information Utility is not mandatory to initiate CIRP proceedings against the Corporate Debtor. The relevant paragraph is extracted as below;-

> *Before the Adjudicating Authority, submission on the basis of the argument which has been advanced by the Appellant before us that no information of default from the information utility have been filed, application deserves to be rejected was raised and dealt with by the Adjudicating Authority. It is useful to extract the following observations in paragraph 11 of the judgment of the Adjudicating Authority:- "…….As far as the plea of default being not recorded with the information utility is concerned, as can be seen from Section 7 (3)(a) of the IBC, 2016, along with the application, the Financial Creditor may furnish the record of default recorded with the information utility or such other or record or evidence of default as may be specified. Besides, as can be seen from Regulation 2A of IBBI (Insolvency Resolution Process for Corporate Persons Regulations), 2016, for the purpose of Clause (a) of sub-section 3 of Section 7 of the Code (ibid), the Financial Creditor may furnish a certified copy of entries in the relevant account in Banker's Book as evidence of default. In the present case, the Petitioner has enclosed the copies of the statement of account in respect of Account Nos. 05860600004851 and 05860500000127 along with the interest calculation sheet and Certificate under Section 2(A) of Banker's Book Evidence Act, 1891, as Annexure-7 to the Petition, which is valid evidence in terms of the provisions of Regulation 2A(a) of IBBI (CIRP) Regulations, 2016. As far as the plea of Regulation 20(1A) of IBBI (Information Utilities) Regulations, 2017 is concerned, in terms of the*

said provision, before filing an application to initiate CIRP the creditor should file the information of default with the Information Utility and the IU shall process the information for the purpose of issuing record of default in accordance with Regulation 21 of the Regulations. The Regulation nowhere provides that the information of default recorded by IU can be the only evidence to be relied on while taking a decision regarding the admission of a Petition under Section 7 of IBC, 2016. Even otherwise also, neither the IBBI (IU) Regulations, 2017 nor the order issued by the Registrar, NCLT can have overriding effect qua the provisions of Regulation 7(3)(a) of the IBC, 2016. In the wake, we are unable to countenance the plea raised by the Respondent i.e., in the absence of a record of default recorded by IU, an application filed under Section 7 of IBC, 2016 may not be admitted."

7.22. The Corporate Debtor has contended that Copy of petition is not served upon IBBI. However, the Applicant has already Annexed Form 1A (IAAA) at page number 203 of the Application, which has acknowledgement of the IBBI.

7.23. It is contended by the Corporate Debtor that a Renewal of Credit facilities letter dated 30.04.2015 was not signed. In this regard this Tribunal is of the opinion that amount was disbursed in 2010 and the same was defaulted. Further the debt has been acknowledged by the Corporate Debtor vide various OTS letters latest being of 23.12.2020 and vide audited financial statements of the Cd for various years including FY 2022-2023 Moreover a number of other documents produced by the Applicant along with the Application and thereafter leave no doubt about the existence of debt and default . Hence this contention of the Corporate Debtor is not considered.

7.24. The objections regarding alleged defects in the petition are also liable to be rejected. Procedural defects which are curable cannot defeat substantive rights where debt and default are otherwise established. In the present case, the Applicant has placed on record necessary documents through Rejoinder

and Additional Affidavit, thereby proving the default committed by the Corporate Debtor.

7.25. The Respondent has contended that the recall notice dated 19.05.2015 attached at Page No. 62 of the Rejoinder pertains to another entity i.e. Namco Industries Pvt. Ltd. and not to the CD herein. We have noticed the that the contention of the CD in this regard is right, however, it does not invalidate the Application filed by the Applicant as on Page No. 65 of the Rejoinder, recall notice dated 03.06.2015 address to the CD has been attached.

7.26. The Corporate Debtor has objected that no date of disbursement is mentioned in part IV of the Application. However, the Applicant has provided Account Statement along with the Application wherein it is observed that the funds came to be disbursed from 24.09.2010 and onwards. Hence this Contention of the Corporate Debtor is untenable.

7.27. Further, the Corporate Debtor has failed to pay the outstanding amount, which is way above the threshold limit of Rs One Crore as stipulated under Section 4 of the Code and that the Applicant has established the existence of debt and default exceeding the threshold with the help of documents attached with the Application.

7.28. Further this Tribunal has relied on 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,** wherein the Hon'ble Supreme Court held while examining the validity of the admission of the Corporate Debtor to CIRP has laid down as under :-

B. Validity of CIRP Admission.

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

29. It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crores 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. 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. Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.26 A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.27 "Operational creditor" is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.28 "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and

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

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

"30…… in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

33. Reiterating the ratio in Innoventive (supra), this Court in ES Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: "34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."

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

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

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

"61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would

trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of Aptel referred to above and the overall financial health and viability of the corporate debtor under its existing management.

……

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

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

"6. The elucidation in para 90 and other paragraphs [of the judgment under review] were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."

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

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

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

liability as on 02.01.2024 was Rs. 3103.31 crore, which far exceeds the bills raised on WBSEDCL to the tune of Rs 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.

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

(emphasis wherever required supplied)

To summarize the above judgment, we observe as under :-

a. 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.

b. When the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor.

c. 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).

d. The Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt.

e. 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.

7.29. In view of the above , the Applicant has successfully demonstrated the existence of a financial debt , as the transaction involves money borrowed against the payment of interest under section 5(8)(a) of IBC 2016, the occurrence of default, which is way above the threshold as stipulated under Section 4 of the Code , and continuing nature of such default supported by clear documentary evidence.

7.30. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. Kuldeep Tank, having Registration No. IBBI/IPA-001/IP-P-02776/2022-23/14255 and Authorization for Assignment (AFA) which is valid upto 30.06.2027 as per IBBI portal as the proposed IRP and as per the Form 2 attached along with the Application , no disciplinary proceedings are going on against the said IP. Further, this Application is complete as all the required documents have been attached along with the Application. Accordingly, the present Application is fit for admission under Section 7 of the IBC, 2016.

7.31. 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) 514/MB/2025 filed under Section 7 of IBC, 2016, by UCO Bank , the Applicant (FC) ,for initiating CIRP

in respect of Longrange Commodities Private Limited, the Corporate Debtor, 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**,** Kuldeep Tank , having Registration No. **IBBI/IPA-001/IP-P-02776/2022-2023/14255** and **e-mail address** cakuldeeptank@gmail.com having valid Authorisation for Assignment up to 30.06.2027 (as per IBBI site) 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, Mumbai Maharashtra, 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 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/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER(TECHNICAL)

//Sumant//