



**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT VI**

Item No. P2

C.P. (IB)/1124(MB)2025

CORAM:

**SHRI SAMEER KAKAR**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA**  
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **16.06.2026**

NAME OF THE PARTIES:

**Union Bank of India**

**V/s**

**Pratham-Heera Sales Private Limited**

**Under Section 7 of the IBC**

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**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)**

//Sumant//

**Sd/-**

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI**

**BENCH-VI**

**C.P. (IB)/1124/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**

**Through**

**Amit Bhaskar Rao Thorat**

[CIN:-U99999MH1919PTC000615

239,Union Bank Bhavan,

Vidhan Bhavan Marg,

Nariman Point, Mumbai- 400021

**...Financial Creditor**

V/s

**Pratham Heera Sales Private Limited**

[CIN No. U52100MH2012PTC230417]

CSN 570/A , Krida Bhavan , Nandurbar,

Maharashtra , 424001

**...Corporate Debtor**

**Pronounced: 16.06.2026**

**CORAM:**

**HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)**

**HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)**



**Appearances: Hybrid**

For Applicant: Adv. Mr. Amir Arsiwala a/w Adv. Mr. Saniya Anjum.

For Respondent: Adv. Mahesh Nulolu, Adv. Mr. Avinash Khanolkar & Adv. Mrs. Khushboo Bhanushali.

**ORDER**

***[PER: CORAM]***

**1. BACKGROUND**

1.1. C.P. (IB) No.1124/MB/2025 (Application) was filed on 21.10.2025 by Union Bank of India the Financial Creditor (FC), having CIN:U99999MH1919PTC000615 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 the **Pratham Heera Sales Private Limited** Corporate Debtor having CIN No.U52100MH2012PTC230417

1.2. This Application has been affirmed by one Amit Bhaskarrao Thorat, authorised signatory of the Applicant vide Power of Attorney signed in Board Resolution passed on 14.09.2009.

1.3. As per Part IV of the Application, the amount claimed to be in default is Rs.73,21,49,498.98/- (Rupees Seventy-Three Crore Twenty-One Lakhs Forty-Nine Thousand and Four Hundred Ninety-Eight and Ninety-Eight Paise Only).

1.4. The date of default and the date of NPA is stated as 10.04.2023.



1.5. The Applicant has proposed the name of Mr. Ankur Kumar, an Insolvency Professional, having Registration No. IBBI/IPA-002/IP-N-00113/2017-2018/10283 , to act as the Interim Resolution Professional (IRP) , in case the Application is Admitted. However, Applicant during the hearing dated 06.05.2026 stated that there is no issue in appointment of any other IRP than the proposed IRP and therefore was directed by this Tribunal to file a pursish in regard to the same.

1.6. The Applicant has filed a Pursish dated 15.05.2025 stating that the Proposed IRP has withdrawn his consent for Appointment as IRP and has requested this Tribunal to Appoint any other insolvency professional as the IRP.

1.7. The particulars of security held by the Applicant with respect to facility provided to the Corporate Debtor are mentioned in Part-V of the Application.

- a. First charge in terms of hypothecation agreement of goods and debts (SD-06) dated 27.09.2019 for Rs. 45.00 crores, on all present and future raw materials ,semi-finished and finished goods, consumable stores & spares and moveable property of any kind which are now or in future stored in the Corporate Debtor's premises or godown and at Holtarphe Haveli Nandurbar ,Village Shinde Palse Nasik and at other places hired by Corporate Debtor including any of the said goods with any of the Corporate Debtor's agent or at any of the Corporate Debtor's agencies or in course of by the ship, rail or otherwise.
- b. First charge over the Corporate Debtor's all present and future book debts, outstanding monies, deposits, receivable claims and bills, contract, securities,



investments which are now due and owing or which may at any time hereafter during the continuance of the security becoming due and owing to the Corporate Debtor in the course of its business by all or any person or party without prejudice to the rights or the Bank against the Corporate Debtor as such surety or guarantor.

- c. Simple Mortgage deed dated 09.09.2019 for Rs. 45.00 crores bearing day book No. 3287 executed before Sub Registrar, Nandurbar with respect to the properties mentioned in Schedule - I of the said mortgage deed.
- d. Charge over all those machinery/ plants/vehicle/ capital goods/ assets purchased or to be purchased by the Corporate Debtor out of the UGCL Term Loan of in tune of Rs. 9.0 crores as specified in Schedule (A) 1 of the Term Loan Agreement (SD-19) dated 26.11.2021, whether installed or not, or whether lying loose or in cases or in transit to Corporate Debtor's premises.
- e. Charge over all those existing and future machinery/ plants/ vehicle/ capital goods/ assets/ craft and all those assets/movable properties capable of passing by delivery as specified in Schedule A(2) of the Term Loan Agreement (SD-19) dated 26.11.2021, whether installed or not, and whether now lying loose or in cases and now being or at any time in course of transit to the premises/ factory of the Corporate Debtor at Nandurbar, whatsoever and whenever in the possession or occupation of the Corporate Debtor.
- f. Supplementary Simple Mortgage deed dated 24.11.2021 for Cash Credit Hypothecation Limit (existing limit) + Rs. 45.0 crores (CELC) for Term Loan+ Rs. 9.0 crores for Term Loan under Covid Union Guaranteed Emergency

Credit Line (UGECL 2.0) = Total Rs.58.50 crores in favour of the Corporate Debtor with respect to the properties mentioned in Schedule -I of the said mortgage deed, registered and executed before Sub Registrar, Nandurbar bearing day book No. 4869.

## 2. **CONTENTIONS OF APPLICANT (FC)**

2.1. It is stated that Corporate Debtor is a company incorporated under the Companies Act, 1956 and is engaged in the business of liquor distribution, and has availed various credit facilities from the Applicant from time to time. The Credit facilities include:-

- a. Cash Credit Facility for the business of wholesale alcoholic beverage in tune of Rs. 45,00,00,000/- (Rupees Forty-Five Crore only) with interest i.e., MCLR (8.50) + 4.65% per annum, vide sanction letter dated 26.08.2019.
- b. CECL of Rs. 4,50,00,000/- (Rupees Four Crores and Fifty Lakhs only) vide its sanction FGMO/PUNE/ADV/237/2020-21 dated 27.07.2020.
- c. Cash Credit under the Union Guaranteed Emergency Credit Line (UGECL) Scheme for expansion of business on 24.11.2021, to the tune of Rs. 9,00,00,000/- (Rupees Nine Crore only) with interest i.e., @7.80% per annum, vide sanction letter dated 24.11.2021

2.2. Details of Disbursement are given herein below:-

### ***Date Of Disbursement***

<b><i>Sr. No.</i></b>	<b><i>Facility</i></b>	<b><i>Date of Disbursement</i></b>
<b><i>1.</i></b>	<b><i>Cash Credit of Rs. 45 Crores</i></b>	<b><i>27.08.2019</i></b>
<b><i>2.</i></b>	<b><i>CECL of Rs. 4.5 Crores</i></b>	<b><i>04.08.2020</i></b>
<b><i>3.</i></b>	<b><i>Cash Credit under UGECL of Rs. 9.0 Crores</i></b>	<b><i>26.11.2021</i></b>

Applicant has also attached the statement of A/c and Bankers Book Evidence Act Certificate with the Application.

2.3. It is stated that the loan account of the Corporate Debtor was classified as Non-Performing Asset (NPA) by the Applicant on 10.04.2023. Applicant has attached the NPA certificate at Page No. 812 of the application. Despite repeated follow-ups, the Corporate Debtor has failed to repay the outstanding amounts and is in continuous default.

2.4. The Applicant thereafter issued a demand notice dated 24.04.2023 under section 13(2) of the SARFAESI Act 2002. The SARFAESI Notice is attached at page no. 498 of the Application.

2.5. Further it is stated that Corporate Debtor has availed various facilities from the Applicant and failed to repay the debt along with interest thereon aggregating to Rs.73,21,49,498.98/- being principal amount of Rs.55,25,29,283.85/- and interest amounting to Rs.17,96,20,215.13/-, as on 31.08.2025 owed to the Financial Creditor together with the applicable interest, penal interest, premia, charges etc., thereon at the contractual rates and terms until payment / realization to the satisfaction of Financial Creditor. The accompanying Form-1 has been filed on account of the financial debt owed by the Corporate Debtor in terms of the Facilities as defaulted.

2.6. The Applicant has attached the Form-D issued by NeSL which reveals that the default is in “**Authenticated**” status vide Additional Affidavit dated 24.11.2025.

2.7. 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) Copies of certificate of Registration of Charges by the Registrar of Companies and index of Charges as available on MCA website
- c) A copy of the record of default with the information utility.
- d) A copy of Sanction Letter dated 26.08.2019 for Rs. 45.00 Crores
- e) A copy of Demand Promissory Note dated 27.09.2019, for Rs 45.00 Crores
- f) A copy of Simple Mortgage Deed dated 09.09.2019 for Rs. 45.00 Crores bearing day book No. 3287.
- g) A copy of hypothecation agreement of goods, and debts (SD-06) dated 27.09.2019, for Rs 45.00 Crores.
- h) A copy of Letter of Guarantee (SD-01) dated 27.09.2019, for Rs. 45.00 Crores.
- i) A copy of Letters of Undertaking not to alienate hypothecated goods (AD-12) dated 27.09.2019, for 45.00 Crores.
- j) Letter of Confirmation for MCLR Loans (SD-23A) dated 27.09.2019, for Rs. 45.0 crores
- k) A copy of Interest Agreement SD-24 (MCLR -New) dated 27.09.2019.
- l) A copy of Letter of Continuity AD-09 (M) dated 27.09.2019, for 45.00 Crores.
- m) A copy of Sanction Letter dated 24.11.2021 for Rs. 9.0 crores.
- n) Copy of General Term Loan Agreement (SD-18) dated 26.11.2021 for Rs. 09.0 Crores
- o) Copy of Term Loan Agreement (SD-19) dated 26.11.2021 , for Rs. 9.0 Crores.
- p) Copy of Demand Promissory Note dated 26.11 .2021 for Rs. 9.0 Crores.



- q) Copy of Hypothecation agreement of goods and debts (SD-06) dated 26.11.2021, for Rs. 9.0 Crores.
- r) Copy of Supplementary Simple Mortgage deed dated 24.11.2021 bearing day book No. 4869.
- s) Copy of Letter of Undertaking/ Declaration dated 26.11.2021 by the Directors, for Rs. 9.0 Crores
- t) Copy of Letter of Undertaking from Corporate Debtor dated 26.11.2025, for Rs. 9.0 Crores.
- u) Copy of Letter of Undertaking from Guarantors, dated 26.11.2021, for Rs. 9.0 Crores
- v) Copy of Letter of Undertaking from partners (AD-11), dated 26.11.2021, for Rs. 9.0 Crores
- w) Copy of Request Letter for EBLR Base Loan dated 26.11.2021 for Rs. Rs. 9.0 Crores.
- x) Copy of Interest Agreement for EBLR base loan dated 26.11.2021 for Rs. 9.0 Crores.
- y) Copy of Letter of Continuity (AD-09) dated 26.11.2021 for Rs. 9.0 Crores.
- z) Copy of Debit Balance Confirmation dated 31.03.2022.
- aa) Copy of SARFAESI notice dated 24.04.2023
- bb) Copy of Statement of Account for 323805010075084.
- cc) Copy of Statement of Account for 341505010001227
- dd) Copy of Statement of Account for 341506990000208
- ee) Copy of Bankers' Book Evidence certificate.

ff) Copies of Audited Annual Accounts of the Corporate Debtor for the Financial Year 2019-2020, 2020-2021, and 2021-2022 as available in the records of MCA

### **3. REPLY BY CORPORATE DEBTOR**

- 3.1. An Affidavit in reply was filed on 29.01.2026 by the Respondent through Mr. Vandana Ravindra Choudhary, who is stated to be an Authorized Signatory of the Corporate Debtor.
- 3.2. It is stated that the Applicant has no authority to initiate Insolvency as the Power of Attorney is not duly signed and verified by the Attorney or the authorized representative. Further, it is also being demonstrated that the said alleged Power of Attorney was notarized before the Notary person without properly verifying the authenticity of the said document.
- 3.3. It is also stated that the purported Power of Attorney does not confer any authority to the signatory to initiate Insolvency Application /Process against the Respondent on behalf of the Petitioner. Beside the Attorney for initiation of the Petition the said Power of Attorney does not even confer any power over the Signatory to represent the Corporate Debtor before any Court of Law.
- 3.4. Further as per section 113 of the Companies Act 2013, it is specifically mentioned that any Body Corporate / Company shall be represented by a Person only in a situation wherein such powers are conferred through a Resolution of the Board of Company and not otherwise. However, interestingly, the Power of Attorney, which is being relied in the Petition, is nowhere supported by any Resolution passed by the Board of the Petitioner.



- 3.5. The Corporate Debtor further states that the date of default in part IV of the Application is 10.04.2023. It is stated that Account of the Respondent was irregular and during wake of Pandemic COVID - 19 the Corporate Debtor faced huge liquidity crunch and therefore, the Petitioner sanctioned additional financial assistance to the Respondent through Emergency Credit Line facility.
- 3.6. The Loan Account of the Respondent, qua the Cash Credit limits, was irregular during COVID period itself. And hence, an additional Credit Facility was sanctioned by the Petitioner, through different loan account, in the month of August, 2020 which stood subsequently closed.
- 3.7. Cash Credit Account (CC Account) of the Respondent was irregular during COVID period neither the limits were renewed nor the account was declared as Non-Performing Asset (NPA) by the Petitioner at that period only.
- 3.8. The Petitioner has grossly violated the guidelines of the Reserve Bank of India in that regard and declared the alleged NPA regardless of the provisions of Law. Master Circular of RBI dated 01.09.2001 is annexed as **Annexure 2**. As per Clause 4.2. of the Circular it is categorically provided that a Financial Institution / Bank shall not postpone the identification of NPA account. However, in the present Petition, as stated supra, though the CC Account of the Corporate Debtor was irregular during COVID itself: the Petitioner thought it fit not to declare the said Account as NPA then and there even though in future also the Account never became standard/ regular.
- 3.9. Hence delay in declaring the Account of the Respondent as NPA was purely intentional just as to fit the present Petition outside the period covered U/s. 10A of the Code.



- 3.10. The Corporate Debtor further also states that Clause 9 of the Sanction Letter of the CC Account (Page 88 of the Petition) wherein an Event of Default is clearly mentioned that non-service of any amount, including a non-service of interest amount, by the Borrower to the Petitioner would cause an Event of Default and as per the Clause 9.2. therein in an event such Event of Default occurs then all amount outstanding as on said Default becomes due & payable.
- 3.11. Hence as the Respondent account was not regular during COVID period itself, in respectful submissions of the Respondent, the Event of Default had occurred then and there only and hence, the cause of action for filing the Petition was occurred at that time only.
- 3.12. Since the Petitioner has sought to change a Date of Default, which is categorical qua the provisions of Code this Petition cannot be admitted.
- 3.13. The Petitioner claims to have sanctioned certain credit facilities to the Respondent. However, in actual the CC Account of the Respondent is arising out of Take Over Transaction happened between the Petitioner and The Nasik Merchants Co-operative Bank Limited. However certain facilities were sanctioned on paper, the Petitioner has failed to disburse the entire sanctioned amount, thereby severely affecting the working capital cycle and day-to-day operations of the Respondent.
- 3.14. The Corporate Debtor repeatedly raised objections with regard to excessive rate of interest, arbitrary debit entries, non-application of concessional rates as assured by the Financial Creditor and non- supply of correct statements of account. The said objections were never addressed by the Financial Creditor.



3.15. Further, as the Petitioner has unilaterally decided to declare the Account of the Respondent as NPA without following due process of Law. It is also noteworthy that before issuance of Demand Notice U/s. 13 (2) of the SARFAESI Act, 2002 there was no prior communication by the Petitioner to the Respondent qua the declaration of NPA.

3.16. The Petitioner has not even adhered to the RBI guidelines for Restructuring of Loan / Credit Facilities granted to a MSME Entity. And therefore, in respectful submissions of the Respondent, for lack of any demand, prior to unilateral declaration of Account as NPA, there is no default attributable to the Respondent.

3.17. The Corporate Debtor argues that the proposed IRP lacks independence as the Proposed IRP is also the proprietor of a Law firm i.e EZY laws which is representing the Applicant in the present petition.

3.18. It is stated that as per provisions of Clause 5 of the First Schedule to the Insolvency & Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 which provides as follows :

*“An insolvency professional must maintain complete independence in its professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences”*

3.19. However, since in the present case the proposed Interim Resolution Professional himself representing the Petitioner before this Hon'ble Bench for Admission hearing of the Petition clearly demonstrates the fact that the proposed Interim Resolution Professional is not independent and hence, the proposed Interim

Resolution Professional cannot be appointed as IRP, in an event this Hon'ble Bench finds the Petition is Admissible.

3.20. It is stated that the Corporate Debtor must get a fair chance for revival.

3.21. The Corporate debtor has relied on the following

- a. M/s. Vidarbha Industries Power Limited v Axis Bank {(2022) 8 SCC 352}.
- b. M/s. Rushabh Civil Contractors Private Limited versus Centrio Lifespaces Limited CP (IB) 2161/ MB / 2019.
- c. Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd, (2021) 3 SCC 224.

#### **4. REJOINDER**

4.1. It is stated that the Respondent's elaborate challenge to the authority of the signatory is wholly misconceived and factually incorrect. The Company Petition has been instituted by a duly authorized officer the financial Creditor pursuant to valid internal authorization, delegation and power vested in the officer in accordance with the established banking structure.

4.2. The Respondent's insistence that on a specific Board Resolution under Section 113 of the Companies Act can authorize the filing of insolvency proceedings is legally flawed, As corporate entities, particularly banking institutions, act through authorized officers authorised through internal delegations and more so Companies Act, 2013 is not applicable to the Applicant , being a public sector Bank, which is governed by the Banking (Acquisition and Transfer of Undertaking) Act, 1970 and Scheme made thereunder.

4.3. It is stated that that the Respondent's attempt to dispute the date of default is not only factually incorrect but also legally irrelevant to admission of a Section 7

Company Petition. Default as defined under Section 3(12) of the Code, occurs when a debt becomes due and payable and is not paid. The Company Petition relies upon contemporaneous banking records and account statements and classification of the loan account as NPA to establish default.

4.4. That the Respondent's allegations that the Financial Creditor failed to disburse sanctioned amounts or charged excessive interest are vague, unsupported and clearly an afterthought. The loan accounts were operational for several years; funds were availed utilised and reflected in the Respondent's own financial statements and communications. The Respondent's continued dealings with the financial Creditor and its own acknowledgment of outstanding dues conclusively establish the financial relationship and negate the allegation of non-disbursement.

4.5. That the Respondent's assertion that before issuance of Demand Notice [u/s.13 (2) of the SARFAESI Act, 2002 there was no prior communication by the Petitioner to the Respondent qua the declaration of NPA is irrelevant to the maintainability of the Section 7 Company Petition. The Hon'ble High Court in M/s Neelam Beverages vs State of Madhya Pradesh, (2022) ibclaw.in 276 HC and Puritan Trust Vs. Punjab National Bank and others 2014 SCC Online Jhar 2064 held that no prior notice is required to be issued before classifying the account of a person as NPA.

4.6. With respect to lack of Independence of proposed IRP it is stated that proposed IRP, though involved as an arguing counsel in the Section 7 filing. is a qualified, independent insolvency professional bound by the IBBI Code of Conduct (Schedule to IBBI ([Insolvency Professionals) Regulations . This Code mandates integrity, objectivity. and avoidance of conflicts. The professional has affirmed no

conflict in the consent Form. Any prior representational role was in a professional capacity and does not create bias against other stakeholders.

4.7. However, vide hearing held on 06.05.2026 the Counsel for Applicant stated that he has no objection for changing the IRP and further has filed a purshis wherein the IRP has withdrawn his consent for appointment as the IRP.

4.8. It is stated that the Respondent repeatedly asserts that it is solvent and willing to repay dues. Such assertions do not negate the fact of default. That the solvency of the Respondent cannot be a defence once default is established.

## **5. WRITTEN SUBMISSIONS (FC)**

5.1. The Applicant has relied on the following Judgements:-

- a. Innoventive Industries Ltd. v. ICICI Bank & Anr (2018) 1 SCC 407
- b. M/s Neelam Beverages v. State of Madhya Pradesh, (2022) ibclaw.in 276 HC
- c. Paritran Trust v. Punjab National Bank & Ors. 2014 SCC OnLine Jhar 2064
- d. State Bank of India v. Ram Dev International Ltd.(2018, NCLAT),
- e. K.J. Vinod (Insolvency Professional) v. The Registrar, NCLT, Chennai Bench & Ors. (W.P. No. 22949 of 2025, decided in 2025).
- f. M. Suresh Kumar Reddy v. Canara Bank reported in MANU/SC/0561/2023: (2023) 8 SCC 387.

## **6. ANALYSIS AND FINDINGS**

6.1. We have considered the pleadings in the matter and have heard the Ld. Counsels for the parties.

6.2. On perusal of the documents it is observed that vide sanction letter dated 26.08.2019 the Applicant sanctioned a Cash Credit facility with limit of Rs.45.00 crore to the Corporate Debtor. This facility was secured by various agreement

including Demand Promissory Note, Simple Mortgage Deed, Hypothecation Agreement and Letter of Guarantee.

6.3. Thereafter another facility namely Union Guaranteed Emergency Credit Line (UGECL2.0) was sanctioned to the Corporate Debtor for a sum of Rs. 9.00 Crore at a rate of 7.8% vide sanction letter dated 24.11.2021. The Repayment terms for the same were that a moratorium of 12 months shall prevail from the date of disbursement and thereafter in 48 equal monthly instalments the loan amount needs to be repaid.

6.4. This financial facility came to be executed on 26.11.2021 along with demand Promissory note, Hypothecation agreement, Supplementary Simple Mortgage Deed, Letter of undertaking from Borrowers and Guarantors.

6.5. The Cash Credit facility was disbursed on different dates starting from 30.09.2019. The amount pertaining to UGECL 2.0 was disbursed on 26.11.2021. The Applicant has also attached Certificate under Bankers Books Evidence Act 1891 which supports the disbursements.

6.6. The Applicant further issued a Demand Notice under Section 13(2) of the SARFAESI Act 2002 demanding an amount of Rs. 55,67,37,454.42. However, the Corporate Debtor has not paid the outstanding amount till date.

6.7. The Applicant has attached NeSL Form D which reveals that the default is in **“Authenticated”** Status.

6.8. However, the Applicant has not produced documents with regards to the claimed financial facility of CECL for Rs 4.5 Crore.

6.9. Further at this moment this Tribunal shall consider whether the debt is due, which is payable and whether the same is being defaulted or not. Hence in our

considered view the Financial Creditor has placed enough evidence and documents consisting of Sanction Letters ,Term Loan Agreements, Bank Statement etc. to show that a financial debt is due and payable and the same is defaulted by the Corporate Debtor.

6.10. One of the contentions of the Corporate Debtor is that the Authorised Signatory has no authority to initiate Insolvency Petition. With regard to this issue on perusal of the documents, it is observed that on page No. 31 of the Application the Applicant has attached a copy of Power of Attorney wherein Mr. Amit Bhaskarroa Thorat has been authorised and empowered to commence , prosecute , endorse or defend any legal proceeding in any Court or Tribunal. Further this Tribunal has placed reliance on the judgement of Hon'ble NCLAT in matter of Palogix Infrastructure Pvt. Ltd. v. ICICI Bank Ltd. (2017) ibclaw.in 16 NCLAT) wherein the Hon'ble NCLAT held that that general authorisation given to an officer of the financial creditor by means of a power of attorney, would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under Section 7 of the Code, merely because the authorisation was granted through a power of attorney. The relevant para of the said judgement is reproduced herein

*“36. In so far as, the present case is concerned, the ‘Financial Creditor’-Bank has pleaded that by Board’s Resolutions dated 30th May, 2002 and 30th October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any ‘Financial Creditor’ or ‘Operational Creditor’ or ‘Corporate Applicant’ in favour of its officers to do needful in legal proceedings by and against the ‘Financial Creditor’ / ‘Operational Creditor’/ ‘Corporate Applicant’, mere use of word ‘Power of. Attorney’ while delegating such power will not take away the authority of such officer and ‘for all purposes it is to be treated as an*

'authorization' by the 'Financial Creditor'/'Operational Creditor'/'Corporate Applicant' in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the 'Authorized Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I&B Code'."

In the instant case Mr. Amit Bhaskarroa Thorat is an officer and is acting as a Chief Manager of the Applicant. Hence mere use of word Power of Attorney will not disentitle him to file section 7 of the IBC. Hence the contention of the Corporate Debtor is not maintainable

6.11. Another contention of the Corporate Debtor is that the date of default is stated incorrectly. It is stated that Cash Credit account was irregular during 10A period even then the account was not declared as NPA. In this regard it is observed that the defaults, if any, during the COVID-19 period were cured, new loans were sanctioned and the Corporate Debtor paid and cleared the defaults. It is also noted that fresh GECL facilities were sanctioned by the applicant, as per the applicable norms of RBI, fresh GECL loans could not have been sanctioned and disbursed if the account was already an NPA. It is further noted that the entire CECL facilities have since been repaid by the Corporate Debtor.

6.12. However, on perusal of documents and statement of accounts it is observed that financial facility namely UGECL 2.0 was never paid by the Corporate Debtor. The default in that financial facility was outside the 10A period which was above the threshold limit as per section 4 of the Insolvency and Bankruptcy Code 2016.




6.13. The Applicant has attached an NPA certificate along with the Banker Book Evidence Certificate which states that the Accounts of the Corporate Debtor became NPA on 10.04.2023. No judicial pronouncement has been placed before us by the respondent to support the contention that NPA date is other than 10.04.2023. Hence this contention of the Corporate Debtor is untenable.

6.14. As the date of default is 10.04.2023 and the Application being filed on 21.10.2025, it is observed that the Application is well within limitation.

6.15. The contentions of the Corporate Debtor regarding excessive interest being applied by the Applicant, arbitrary debit entries, non-application of concessional rates and that the Applicant has failed to disburse the entire sanctioned amount, thereby severely affecting the working capital cycle and day-to-day are not relevant for the purpose of this Application and are merely afterthought and moonshine. No documents/Evidences have been provided by the Applicant with regards to the same.

6.16. The Corporate Debtor has relied upon the following judgments, which in our view do not help its case for the following reasons:-

- a. Judgment of Hon'ble Supreme Court in the matter of M/s. Vidarbha Industries Power Limited v Axis Bank {(2022) 8 SCC 352} does not apply to the facts of this case as the Supreme Court has time and again in its various judgements held that the Judgement of Vidarbha was pronounced keeping in mind the peculiar facts of the case and cannot be held as a precedent. Further at the time of admission, the Adjudicating Authority only needs to ascertain whether debt is due and payable and the same is being defaulted by the Corporate Debtor.

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- b. Judgment of Hon'ble Supreme Court in the matter of Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd, (2021) 3 SCC 224 does not come to rescue the case of the Respondent as the Applicant has been able to demonstrate with the help of the documents placed on record that the default occurred after the 10A period and that the defaults which occurred during the COVID period were cured by the respondent.
- c. We are of the view that the applicant has given a valid power of attorney to the person who is an employee of the bank. The objections of the Corporate Debtor in our considered view do not hold water. Further we are of the view that judgment in the case of M/s. Rushabh Civil Contractors Private Limited versus Centrio Lifespaces Limited CP (IB) 2161/ MB / 2019 does not come to the rescue of the Corporate Debtor as in that case the application was initiated by a Director whose authorization via the Board Resolution was strictly confined to representing the company in business affairs concerning its property and he was never authorised to initiate a Corporate Insolvency Resolution Process (CIRP). However, in the present case the Applicant has given valid power of Attorney to Mr. Amit Bhaskarroa Thorat who is Authorised and empowered to commence , prosecute , endorse or defend any legal proceeding in any Court or Tribunal.

6.17. Further this Tribunal has relied on the Judgement 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**, wherein the Hon'ble Supreme Court has held while examining the validity of the admission of the Corporate Debtor to CIRP 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.<sup>26</sup> 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.<sup>27</sup> "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.<sup>28</sup> "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.*<sup>29 31</sup>. In *Swiss Ribbons (P) Ltd. v. Union of India* [(2019) ibclaw.in 03 SC],<sup>30</sup> 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. 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)*:

“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)*

6.18.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.

6.19. We notice that Hon'ble Supreme Court in above judgment has taken into cognizance decision in the matter of Innoventive Industries Ltd (Supra) as relied upon by the Applicant herein.

6.20. 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.

6.21. The Applicant has filed pursuant wherein the Proposed IRP has withdrawn his consent as the Appointment and has requested this Tribunal to Appoint IRP. Hence this Tribunal appoints Insolvency Professional (IP) i.e. Arihant Nenawati, having Registration No. IBBI/IPA-001/IP-P00456/2017-2018/10799 and Authorization for Assignment (AFA) which is valid up to 30.06.2027 as per IBBI portal as the IRP. 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.

6.22. 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) 1124/MB/2025 filed under Section 7 of IBC, 2016, by Union Bank of India, the Applicant (FC) ,for initiating CIRP in respect of **Pratham Heera Sales 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, Mr Arihant Nenawati, having Registration No IBBI/IPA-001/IP-P00456/2017-2018/10799 and **e-mail address** [arahant.nenawati@truvisoryipe.com](mailto:arahant.nenawati@truvisoryipe.com) having valid Authorisation for Assignment up to 31.12.2026 (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)**

//Sumant//

Sd/-

**SAMEER KAKAR  
MEMBER(TECHNICAL)**