NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1

C.P. (IB)/133(MB)2026

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **08.09.2026**

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

v/s

Heera Hospitality Private 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)/133/MB/2026

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

Union Bank of India

PAN No.AAACU0564G

1st Floor, Asset Recovery Branch ,

Suyog Plaza, 1278 Jangali Maharaj Road,

Above Mcdonald's , Deccan Gymkhana

Pune - 411004

…Financial Creditor

V/s

Heera Hospitality Private Limited

[CIN No. U55101MH1999PTC119887]

Sai Seva Hospital, Dhule Road,

Nandurbar- 425412

...Corporate Debtor

Pronounced: 08.09.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

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

For Respondent: Adv. Mr. Avinash Khanolkar a/w Adv. Gajendra Rajput & Adv. Mr. Maheshkumar Nulolu.

ORDER

[PER: CORAM]

1. BACKGROUND

1.1. C.P. (IB) No.133/MB/2026 (Application) was filed on 03.02.2026 by **Union Bank of India** the Financial Creditor (FC), 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 **Heera Hospitality Private Limited** the Corporate Debtor having CIN No.U55101MH1999PTC119887.

1.2. This Application has been affirmed by one Mr. Amit Bhaskar Rao Thorat, authorised signatory of the Applicant, vide Power of Attorney signed pursuant to the 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.3,45,11,940.74/- (Rupees Three Crore Forty-Five Lakhs Eleven Thousand and Nine Hundred Forty and Seventy-Four paisa only).

1.4. The date of default is stated as 10.04.2023

1.5. The Applicant has proposed the name of Mr. Mahesh Bagla, an Insolvency Professional , having Registration No. IBBI/IPA-002/IP-N00689/2018-2019/12207, 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. It is stated that the Corporate Debtor is a private limited company engaged in the business of operating hotels, restaurants, bars, holiday resorts, rest houses, clubs lodging and boarding and allied hospitality services in India and abroad and also rendering catering services, housekeeping services to business establishments and other organisations since year 2010.

2.2. In the year 2019, the Corporate Debtor approached the Financial Creditor seeking various credit facilities aggregating to Rs. 3,46,47,000/- for the purpose of its hotel and hospitality business.

2.3. The Financial Creditor vide sanction advice dated 26th August, 2019 approved the sanction and accordingly sanctioned a total amount of Rs. 3,46,47,000/-, which was fully disbursed on 9th October, 2019. Various security documents were executed between the Financial Creditor and the Corporate Debtor to secure the said facilities.

2.4. It is stated that due to the Covid-19 pandemic, the Corporate Debtor suffered huge losses and accordingly sought additional financial support by approaching the Financial Creditor for a Term Loan of ₹1.28 Crores under the Union Guaranteed Emergency Credit Line. The said facility was sanctioned and fully disbursed on 11th June, 2021.

2.5. Henceforth the total amount of debt granted is Rs. 4,74,47,000/-(Rupees Four Crores Seventy-Four Lakhs and Forty-Seven Thousand only) under two loan facilities, as detailed below:-

Sr No.	Date of Disbursemer	Particulars	Principal Amount
1.	30.09.2019	Cash Credit Facility	50,00,000/-
		Term Loan - I	59,55,000/-
		Term Loan - II	36,92,000/-
		Term Loan - III	2,00,00,000/-
2.	11.06.2021	Term Loan (UGECL)	1,28,00,000/-
		Total	4,74,47,000/-

2.6. The Corporate Debtor has also provided a Corporate Guarantee in respect of the debt of Heera-Ind Trading Private Limited through a Letter of Guarantee executed in favour of the Bank on 27th September, 2019 guaranteeing Cash Credit/Working Capital Limits of ₹40 Crore. As the account of Heera-Ind Trading Private Limited was classified as a Non-Performing Asset ("NPA") on 16th April, 2023 due to non-payment, in accordance with the guidelines of the Reserve Bank of India, the Financial Creditor invoked the said guarantee on 29th November, 2025. However, no response was received from Corporate Debtor.

2.7. The Corporate Debtor later became irregular in repayment of the loan facilities and committed defaults. Consequently, the accounts of the Corporate Debtor were classified as N.P.A on 10th April, 2023. Thereafter, the Financial Creditor issued a notice dated 24th April, 2023 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Subsequently a Recall Notice dated 3rd July, 2023 was also issued, calling upon the Corporate Debtor to repay the outstanding dues. Further, the Financial Creditor also filed an Original Application before the Debt Recovery Tribunal, Aurangabad, against the Corporate Debtor.

2.8. The Corporate Debtor made certain intermittent payments and closed the Cash Credit Facility, Term Loan-I, and Term Loan-II on 06th July, 2024 but failed to regularize the Term Loan III account and the Union Guaranteed Emergency Credit Line account.

2.9. Despite multiple opportunities and statutory notices, the Corporate Debtor has failed to clear its dues. As on 30th November, 2025, an amount of Rs. 3,45,11,940.74/- (Rupees Three Crore Forty-Five Lakh Eleven Thousand Nine Hundred Forty and Seventy-Four Paise Only) remains outstanding and payable by the Corporate Debtor in respect of the aforementioned facilities.

2.10. The date of default and the date on which the account of the Corporate Debtor was classified as the N.P.A. is the same. Hence, the Financial Creditor has treated the date of N.P.A as the Default date i.e.10th April, 2023

2.11. Vide Additional Affidavit dated 27.02.2026, the Applicant has placed on record NeSL form D which reveals the status of Authentication of Default as "**Authenticated".**

2.12. The Applicant has attached the following documents along with the Application;-

a) Copy of the Letter of Authority authorizing Mr. Amit Bhaskarrao Thorat to submit the Application on behalf of the Financial Creditor

b) Copy of the Master Data of the Corporate Debtor

c) Copy of detailed working computation

d) Copy of the sanction advice dated 26th August, 2019

e) Copy of the Mortgage Deed dated September, 2019

f) Copy of the Charge Registration with ROC, Mumbai along with Charge Registration Certificate (Charge Identification Number - 100335537)

g) Copy of the Composite Hypothecation Deed dated 27th September, 2019

h) Copy of the undertaking dated 27th September,2019

i) Copy of the Note of the bank regarding the Sanction for the Term Loan of ₹1.28 Crores under the Union Guaranteed Emergency Credit Line to the Corporate Debtor

j) Copy of the notice dated 24th April,2023 under Section 13(2) of the SARFAESI Act, 2002

k) Copy of the Original Application filed before the Hon'ble DRT, Aurangabad.

l) Copy of the NESL Report

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

n) Copy of Certificates under Bankers Book evidence Act 1891

o) Copy of the N.P.A Certificate dated 11th December, 2025

3. <u>REPLY BY CORPORATE DEBTOR</u>

3.1. Affidavit in reply was filed on 26.03.2026 by the Respondent through Ms. Pranita Narendra Chaudhary, who is stated to be authorised Signatory of the Corporate Debtor.

3.2. The Corporate Debtor has raised the following preliminary objections:

a. Incorrect Date of Default

b. Breach of Contract by the Petitioner

c. Alleged Date of Default of the Petition is Non —Est in Law

d. Respondent is a Solvent Company

e. Fair Chance of Revival is to be granted

3.3. It is stated that the 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. It means that ,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 May, 2021 which is also now claimed to be in default. However, it is also pertinent to note that though the 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. Further, it is also pertinent to note that it is not case of the Petitioner that after the COVID period the CC Account of the Respondent became standard and there after again the same became irregular.

3.4. Further, it is stated that while declaring the Account of the Respondent as NPA the Petitioner has grossly violated the guidelines of the Reserve Bank of India . In this regard the Respondent would like to refer and rely a Master Circular of RBI dated 1 September,2001 which is annexed as Annexure 2.Accordingly, the Respondent would like to refer & rely over Clause 4.2. of the afore — mentioned Circular wherein 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 fit not to declare the said Account as NPA then and there even though in future also the Account never became standard/ regular

3.5. In this regard the Respondent would like to call upon the Petitioner to give plausible explanation qua this act since, it is case of the Respondent that the delay happened 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. In this regard the Respondent would also like to draw an attention of this Hon'ble Bench to a Clause 9 of the Sanction Letter of the CC Account (Page 36 of the Petition) wherein an Event of Default is clearly mentioned.

3.6. Accordingly, it may be noticed that non — service of any amount, including a non — service of interest amount, by the Borrower (Respondent)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. Accordingly, 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. However, just as to fit the Petition in the eyes of Law, in respectful submissions of the Respondent, the Petitioner has attempted to shift the Date of Default and averred in the Petition a date of 10th April, 2023 as date of default. And, in respectful submissions of the Respondent, such act of the Petitioner is clearly act of misguiding this Hon'ble Bench. It is settled position of Law that the Petitioner to the Insolvency Petition cannot change date of default as per its convenience and therefore, in respectful submissions of the Respondent, this Petition is not maintainable in the eyes of Law.

3.7. The Corporate Debtor has contended that there was non — adherence to the RBI guidelines for declaration of NPA. The Corporate Debtor relies upon the Notification dated **29.05.2015** issued by the Ministry of Micro, Small and Medium

Enterprises bearing no. S.O. (E) 1432 providing Framework for Revival and Rehabilitation of MSMEs. The copy of said Notification is annexed as Annexure 3. It is further submitted that the Reserve Bank in order to make the said Framework contained in the Notification dated 29.05.2015 compatible with the existing regulatory guidelines on "Income Recognition, Asset Classification and provisioning pertaining to Advances", had made certain changes in the said Framework, in consultation with the Central Government and issued revised Framework along with the operating Instructions vide the Communication dated 17.03.2016, addressed to all the Scheduled Commercial Banks. The copy of said Notification is annexed as Annexure 4.

3.8. Accordingly, vide Clause 4.8. of the said Notification the Reserve Bank of India has provided guidelines for revival & rehabilitation of the MSMESs. The salient features of the Framework are as under:

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

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

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

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

3.9. However, in the present case none of the directives i.e. either directives issued by the Ministry of MSME or directives of the Reserve Bank of India have been followed by the Petitioner which are mandatory to be followed and regardless of the same the Petitioner went ahead and declared the account of the Respondent was declared as NPA on 10th April, 2023 which ought not to have been done. And hence, it is, again to reiterate, being stated and submitted that the alleged Date of Default in the Petition is non — est in Law and hence, the Petition is not fit for admission

3.10. In support of the afore-mentioned contention, the Corporate Debtor places a reliance upon a Judgement passed by the Hon’ble Supreme Court of India in the bunch of Civil Appeals viz. *M/s. Pro Knits Versus The Board of Directors of Canara Bank & Ors.* along with other Civil Appeal wherein the Hon’ble Apex Court has clearly held that the afore mentioned directives of the Ministry of MSMEs & of the Reserve Bank of India are not directory but mandatory before declaring the account of MSME entity as NPA. The relevant Para of the said Judgement is reproduced herein-below for ready reference of this Bench:

> *“In view of the above, it is absolutely clear that the Instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises as notified by the Central Government vide the Notification dated 29" May, 2015 in exercise of the powers conferred under Section 9 of the MSMED Act, as revised by the RBI Notification dated 17" March, 2016, and the Master Directions i.e. the Reserve Bank of India (Lending 10 Micro, Small and Medium Enterprises Sector) Directions, 2016, issued*

by the Reserve Bank of India in exercise of the powers conferred by Section 21 and 35(4) of the Banking Regulation Act, having statutory force, are binding to all Scheduled Commercial Banks, licensed to operate in India by the Reserve Bank of India, as stated in the said Directions. It cannot be gainsaid that the Banking Regulation Act 1949 basically seeks to regulate banking business and mandates a statutory comprehensive and formal structure of banking regulation and supervision in India. Section 21 and Section 354 of the said Act empower the Reserve Bank of India to frame the policy and give directions to the banking companies in relation to the advances to be followed by the banking companies. Such directions have got to be read as supplement to the provisions of the Banking Regulation Act and accordingly are required to be construed as having statutory force and mandatory."

3.11. The Respondent has stated that a fair chance of revival is to be granted to the Respondent. In regard to the same reliance on the same Hon'ble Apex Court in the matter of M/s. Vidarbha Industries Power Limited v Axis Bank {(2022) 8 SCC352} wherein the Hon'ble Apex Court held that before admitting the Petition U/s. 7 of the Code the difficulties of the Corporate Debtor be looked into and a fair chance for revival be granted to the Corporate Debtor.

4. <u>REJOINDER</u>

4.1. The Affidavit in rejoinder dated 13.04.2026 is filed by Amit Bhaskarrao Thorat, Chief Manager, of the Financial Creditor, and the Authorised Representative of the Company.

4.2. It is stated that the account of Corporate Debtor was duly classified as Non-Performing Asset ("N.P.A") on 10th April, 2023 and the same is in consonance with the guidelines prescribed by the Reserve Bank of India ("RBI"). The Corporate Debtor has never raised any dispute regarding the classification of its account as N.P.A until in the reply of the present Company Petition.

4.3. The contention of the Corporate Debtor in respect of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSME") and the related RBI frameworks cannot override the operation of the Code, 2016. The Code, 2016 is a self-contained Code for Insolvency Resolution and CIRP can be validly initiated against the MSMEs once default is established. The date of default is relevant for the purpose of the admission of the Petition and where a Financial Debt and default are established, procedural noncompliance with the RBI guidelines does not defeat the statutory remedy.

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

4.5. Further it is stated that for the admission of the Petition under Section 7 of the Code, 2016, the Adjudicating Authority only has to determine whether a "default" has occurred and whether the debt was due and remained unpaid and if the

Adjudicating Authority is of the opinion that a "default has occurred, it has to admit the Petition unless it is incomplete. In the present case, the default is clearly evidenced by inter alia the NeSL report which clearly reflects the status of default as "Authenticated".

4.6. Once a default is established, the Adjudicating Authority is bound to admit the Petition under Section 7 of the Code, 2016, unless there exists a bona fide dispute or the debt itself is not legally enforceable. It is also submitted that the Adjudicating Authority is not required to conduct a roving enquiry into disputes unless the debt is disputed with substantial grounds and in the present facts and circumstances, this Petition ought to be admitted.

4.7. The Financial Creditor states and submits that the Present Petition is not a recovery action but a statutory remedy available to the Financial Creditor under Section 7 of the Code, 2016, triggered upon the Corporate Debtor's default in servicing its financial debt and the same is confirmed by Mrs Vandana Chaudhari who is the guarantor of both the outstanding facilities and has clearly acknowledged the debt arising out of the UGECL claimed in the Petition filed under Section 94 of the Code, 2016. Therefore, allegations are baseless and an afterthought, aimed only evading the admitted liability.

4.8. t is submitted that Mrs. Vandana Chaudhary had given her personal guarantee for the repayment of the loan facilities sanctioned to the Corporate Debtor while she was holding the position of the Director of the Corporate Debtor. It is further submitted that the debt arising out of the UGECL Facility is acknowledged in the petition filed by Ms. Vandana Chaudhary under Section 94 of the Code, 2016.

4.9. The Financial Creditor states and submits that the date of default is taken in accordance with the law. The Financial Creditor further states and submits that the date of N.P.A is taken as the date of default. It is a settled provision of law that upon the declaration of the loan account as N.P.A., the date can be reckoned as the date of default to enable the Financial Creditor to initiate action under Section 7 of the Code, 2016. Therefore, the contention of the Corporate Debtor that the date of default is incorrect is just a baseless and an afterthought to evade its liability to pay the rightful dues owed to the Financial Creditor.

4.10. The Financial Creditor states and submits that the Financial Creditor has nowhere in the Petition has stated that the account of the Corporate Debtor was irregular during the Covid Period. Instead, the Financial Creditor, in fact, sanctioned the UGECL Facility at the request of the Corporate Debtor in line with the RBI guidelines / notifications. It is further submitted that no dispute has been raised by the Corporate Debtor on the ground that the account is not NPA, the only dispute raised by the Corporate Debtor is that the declaration of the account of the NPA is in violation of the guidelines of the RBI, which rightly proves that a default has occurred.

4.11. It is submitted that the Financial Creditor has not violated any guidelines of the RBI as alleged by the Corporate Debtor. The RBI vide its notification dated 23rd May,2020, introduced Covid Regulatory Package to mitigate the burden of debt servicing brought about by disruptions on account of the Covid-19 pandemic.

4.12. As on 28th May, 2021, account of the Corporate Debtor was "Standard", considering the account status of the Corporate Debtor and after assessing the eligibility of the Corporate Debtor, UGECL Facility was granted / sanctioned by the Financial Creditor. Notably, the said sanction of UGECL Facility of Rs. 1.28 Crores vide sanction letter dated 28 May, 2021, which was subsequently disbursed on 11th June, 2021, falls beyond the Section 10A period of the Code, 2016 and the outstanding amount in the UGECL Facility also exceeds the threshold limit of Rs. 1 Crore as prescribed under the Code, 2016. The Bank Account Statements of the Corporate Debtor further evidence that the payments were deposited by the Corporate Debtor. As such the account of the Corporate was not irregular as alleged by the Corporate Debtor.

4.13. The Financial Creditor states and submits that the Corporate Debtor is making false statements on oath that the entire amount under the UGECL Facility was not disbursed to the Corporate Debtor and further it is evident from the statement of accounts (Annexed as Annexure N-Colly in the Petition) that the entire amount has been disbursed under the UGECL Facility and Term Loan Facility - 111. It is further submitted that the entire amount of UGECL Facility i.e. Rs. 1.28 Crores was disbursed to the Corporate Debtor on 11th June, 2021 and the same is evident from the Statement of Accounts and assuming without admitting if the entire amount was not disbursed, the Corporate Debtor has never raised any disputes regarding the same and as a method to evade its absolute liability, the Corporate Debtor is raising baseless allegations without any proof or evidences.

4.14. The Corporate Debtor has not provided any evidence and proof to substantiate its claim that part of the funds disbursed was “deducted from the pending overdue amounts of the Cash Credit Facility”. Keeping this in mind and as per the own case of the Corporate Debtor, it is to be assumed that the said amount was in fact adjusted against the Cash Credit Facility, in that case, the arguments raised by the Corporate Debtor in the reply are completely contradictory as on one hand, the Corporate Debtor is contending that the Cash Credit Facility has been adjusted and therefore there is no default in respect of the said facility and on the other hand the Corporate Debtor is contending that the Cash Credit Facility is in default.

4.15. The Financial Creditor states and submits that the Cash Credit Facility, Term Loan Facility — I, Term Loan Facility - 11 sanctioned by the Nashik Merchant Co-operative Bank Limited are fully repaid and as per the sanction letter dated 28th May. 2021 (Annexed as Annexure J in the Petition), the Financial Creditor took over the Cash Credit Facility, Term Loan Facility — I, Term Loan Facility — II from Nashik Merchant Co-operative Bank Limited, however it is of no relevance as the facilities has been fully repaid on 6th July, 2024 and the only facilities disbursed by the Financial Creditor i.e. Cash Credit Facility and Term Loan Facility - III are still pending outstanding as on date.

4.16. It is submitted by the Corporate Debtor that declaration of N.P.A is wrongly done as the guidelines are not followed. As far as exercising remedy under Code, 2016 in Section 7, 9 or 10, the declaration of the N.P.A has no relevance. It is on the event of default; a petition is filed under Section 7 and declaration of N.P.A has no bearing for filing of the Petition. Though at times the declaration of N.P.A and date of default is placed similarly because the declaration of N.P.A is treated as default. As a matter of fact, the default is non-payment of principal or interest instalment as envisaged under the Code, 2016 and failure to do so gives a cause of action to approach this Hon'ble Tribunal. Therefore, this whole argument that the declaration of N.P.A is not correct has no bearing because it is immaterial whether the account is N.P.A or not for the purpose of filing the Petition.

4.17. It is further submitted that as per the Notification dated 29 May, 2015 issued by the Union of India under Section 9 of the MSME Act as well as Notification of the Reserve Bank of India dated 17th March, 2016 it is clearly stated that the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises are applicable to MSMEs having loan limits upto Rs. 25 Crore, including accounts under consortium or multiple banking arrangement. It is submitted that as per the Master Data of the Corporate Debtor (Annexed as Annexure B in the Company Petition), it can clearly be seen that the total loan amount sanctioned to the Corporate Debtor is Rs. 26,35,67,000/- (Rupees Twenty-Six Crores Thirty-Five Lakhs Sixty-Seven Thousand) and therefore the Corporate Debtor does not even qualify to be an eligible MSME as it clearly exceeds the threshold limit of Rs. 25 Crores and therefore the entire argument of the Corporate Debtor on the point of MSME is without any merit and is liable to be rejected at threshold. The Financial Creditor would like to rely over a judgement passed by the Hon'ble Bombay High Court in the matter of Vardhan Agro Processing Ltd. and another Versus Union Bank of India, 2026 SCC OnLine Bom 585, wherein it is categorically held in Paragraph 34 that, "the yardstick for determining eligibility of a micro, small and medium enterprise under the said framework for revival and rehabilitation of micro, small and medium enterprises have to be loan limit of Rs. 25 Crores.

4.18. In the present case, the amount sanctioned to the Corporate Debtor is above the threshold limit and therefore the Corporate Debtor does not qualify to be eligible for the benefit of the said framework and the master circular. It is a settled provision of law the Code, 2016 is a self-contained Code for Insolvency Resolution and CIRP can be validly initiated against the MSMEs once default is established. The date of default is relevant for the purpose of the admission of the Petition and where a Financial Debt and default are established, procedural non-compliance with the RBI guidelines does not defeat the statutory remedy.

5. WRITTEN SUBMISSIONS (FC)

5.1. The Financial Creditor has further has relied upon the same argument as recorded in its Application and Rejoinder and for the sake of brevity we are not recording the same herein.

6. WRITTEN SUBMISSION(CD)

6.1. The Respondent has further has relied upon the same argument as recorded in its Reply and for the sake of brevity we are not recording the same herein.

7. ANALYSIS AND FINDINGS

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

7.2. On perusal of the documents it is observed that Applicant vide sanction letter dated 26th August, 2019 took over the Cash Credit limit of Rs. 50 Lakhs, Term Loan Facility I of Rs. 59.55 Lakhs and Term Loan Facility II of Rs. 36.92 Lakhs which was sanctioned by the Nashik Merchant Co-operative Bank Limited to the Corporate Debtor and further sanctioned another Term Loan Facility - III for an amount of Rs. 2 Crores to the Corporate Debtor.

7.3. Further this financial facility was secured by various documents including Letter of undertaking , Mortgage Deed for a property, Composite Hypothecation deed dated 27.09.2019.

7.4. Thereafter, the Corporate Debtor again approached the Financial Creditor for an UGECL Facility for an amount of Rs. 1.28 Crores and accordingly, the Financial Creditor vide sanction letter dated 28th May, 2021 sanctioned an amount of Rs. 1.28 Crores to the Corporate Debtor.

7.5. As per the statement of Accounts it is observed that the Term Loan facility- III was disbursed on 09.10.2019 and UGECL facility was disbursed on 11.07.2021. The

Applicant has also attached Certificate under Bankers Books Evidence Act 1891 which supports the disbursements.

7.6. The Applicant has placed on record NPA certificate which states that account of the Corporate Debtor was declared as Non-Performing Asset on 10.04.2023. Thereafter the Applicant issued a demand Notice dated 24.04.2023 under Section 13(2) of the SARFAESI Act 2002.

7.7. Thereafter the Corporate Debtor made certain payment in respect of Cash Credit facility, Term Loan -I and II however failed to repay the Term Loan – III and UGECL facility. The outstanding amount has not been paid by the Corporate Debtor till date.

7.8. Furthermore, a bare perusal of Explanation II to the amended Section 7 of the Code reveals that where a financial institution produces a record of default registered with an Information Utility, such record shall be deemed sufficient for the Adjudicating Authority to ascertain the existence of default. In the instant case, the Applicant—being a Scheduled Bank i.e. a financial institution within the meaning of Section 2(14)(a) of the Code—has produced the NeSL Form D, which reflects the status of default as **'AUTHENTICATED**.' Section 7 of the Code, as amended, is reproduced hereunder:"

"Section 7: Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation. —For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) 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;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

[(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(a) admit the application, if it is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or

(b) reject the application, if it is satisfied that a default has not occurred or the application under sub-section (2) is incomplete or a disciplinary proceeding is pending against the proposed resolution professional:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b), give a notice to the applicant to rectify the defect in his application within seven days from the date of receipt of such notice from the Adjudicating Authority:

Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (2), it shall record the reasons for such delay in writing.

Explanation I.—For the purposes of this sub-section, it is hereby clarified that where the requirements under clause (a) have been complied with, no other ground shall be considered to reject an application filed under this section.

<u>Explanation II. —For the removal of doubts, it is hereby clarified that where a record of default in respect of a financial debt owed to a financial institution recorded with the information utility has been furnished along with the application filed by such financial institution under this section, such record shall be considered sufficient for the Adjudicating Authority to ascertain the existence of default under this section.]</u>

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

7.9. As per the scheme of the Code, at the time of admission, this Tribunal shall consider whether the debt is due and payable and whether the same is under default or not. Hence in our considered view the Financial Creditor has placed enough evidence and documents including copy of the sanction letter, Mortgage Deed ,Composite Hypothecation Agreement, Statement of Account along with Certificate under Bankers Books Evidence Act 1891 and more particularly Record of Default issued by NeSL in respect of both the loan accounts, which demonstrates the aggregate amount in default to be Rs. 2.40 Crore Rupees and the Status of Authentication of Default as **"AUTHENTICATED"** thus satisfying the requirement of Explanation -II to Section 7 sub section 5 of the Code to show that a financial debt is due which is way above the threshold of One Crore Rupees, which is payable to the Financial Creditor and the same is defaulted by the Corporate Debtor.

7.10. The Corporate Debtor has contended 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 UGECL facilities were sanctioned by the applicant, as per the applicable norms of RBI, fresh UGECL loans could not have been sanctioned and disbursed if the account was already an NPA.

7.11. However, on perusal of documents and statement of accounts it is observed that financial facilities namely UGECL and Term Loan-III were never repaid by the Corporate Debtor. The default in the said financial facilities were outside the 10A period which was above the threshold limit as per section 4 of the Insolvency and Bankruptcy Code 2016.

7.12. The Applicant has attached an NPA certificate along with the Banker's Book Evidence Act 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

7.13. As the date of default is 10.04.2023 and the Application being filed on 03.02.2026, it is observed that the Application is well within limitation.

7.14. The Corporate Debtor has contended that the Financial Creditor failed to comply with the RBI Prudential Norms, the MSME Revival and Rehabilitation Framework and the RBI Directions before classifying its account as NPA on 10.04.2023 is legally unsustainable. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in M/s Pro Knits v. Board of Directors, Canara Bank & Ors.

7.15. In regard to the above, this Tribunal is of the considered view that there can be no dispute regarding the binding nature of the RBI Directions and the MSME Framework upon banks. However, the limited jurisdiction of this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code is to ascertain whether a financial debt exists and whether a default, as defined under Section 3(12) of the Code, has occurred. In terms of Sections 7(3), 7(4) and 7(5), the existence of default is to be determined from the Information Utility records or other documentary evidence placed on record and not solely on the basis of the date of NPA classification. In the present case, the Financial Creditor has produced the loan and security documents, certified Statements of Account, the Recall Notice dated 03.07.2023, and the authenticated NeSL Record of Default reflecting the default dated 10.04.2023. These documents independently establish the occurrence of default.

7.16. The NPA classification is essentially a regulatory and system-driven exercise undertaken for asset classification and provisioning under the RBI norms. Even assuming that there was any procedural irregularity in the process of NPA classification or compliance with the MSME Framework, the same would not extinguish the admitted financial debt or the independently established default under the Code. The Corporate Debtor has also failed to place on record any document to demonstrate that it had approached the Applicant with the request for considering restructuring under the MSME framework or to show that it is eligible for the restructuring under the said framework .Further, by virtue of Section 238 of the Insolvency and Bankruptcy Code, the provisions of the Code have an overriding effect over any inconsistent law or instrument. Therefore, once the Financial Creditor establishes the existence of financial debt and default in accordance with the requirements of the Code, the alleged procedural non-compliance with the RBI guidelines or MSME Framework, by itself, cannot defeat a petition under Section 7. The ratio laid down in Pro Knits is distinguishable on facts and does not create an absolute bar for initiation of CIRP where debt and default otherwise stand proved. Accordingly, this Tribunal finds no merit in the aforesaid objection raised by the Corporate Debtor, and the same is liable to be rejected.

7.17. Further the Hon'ble Supreme Court in the matter of M/s Pro Knits vs The Board of Directors of Canara Bank & Anr. (2024) 10 SCC 292 has held that MSMEs need to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the Banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework . The relevant paragraphs of the said judgement are reproduced herein;-

> *"6. It may be noted that the very object and purpose of the MSMED Act is to provide for facilitating the promotion and development and enhancing the competitiveness of Micro, Small and Medium Enterprises and for matters connected therewith and incidental thereto. Section 9 thereof empowers the Central Government to take measures for the purpose of facilitating such promotion and development and enhancing competitiveness of MSMEs by specifying the programmes, guidelines or instructions as it may deem fit, by issuing notifications.*

……

9. Thus, Section 21 read with Section 35-A makes it clear that the directions issued by the Reserve Bank of India to the banking companies are binding on them and they are bound to comply with such directions.

……

14. In view of the above, it is absolutely clear that the Instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises as notified by the Central Government vide the Notification dated 29-5-2015 in exercise of the powers conferred under Section 9 of the MSMED Act, as revised by the RBI Notification dated 17-3-2016, and the Master Directions i.e. the Reserve Bank of India [Lending to Micro, Small and Medium Enterprises (MSEM) Sector] Directions, 2016, issued by the Reserve Bank of India in exercise of the powers conferred by Sections 21 and 35-A of the Banking Regulation Act, having statutory force, are binding on all scheduled commercial banks, licensed to operate in India by the Reserve Bank of India, as stated in the said Directions. It cannot be gainsaid that the Banking Regulation Act, 1949 basically seeks to regulate banking business and mandates a statutory comprehensive and formal structure of banking regulation and supervision in India.

……

21. It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the defaulters-borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the bank/creditor concerned that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the bank/creditor concerned in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage. <u>Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework</u>

for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the MSMEs concerned to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the Banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework."

7.18. Further judgement of the Hon'ble Supreme Court in Pro Knits supra has been reaffirmed and elaborated by another judgment of the Hon'ble Apex Court in Shri Shri Swami Samarth Construction and Finance Solution Vs Board of Directors of NKGSB Co-op. Bank Ltd. 2025 SCC OnLine SC 1566 which is to the effect:

"8. Pro Knits is a decision of a co-ordinate Bench of this court holding, inter alia, that the notification is binding on the lending banks/secured creditors. Finding to the contrary by the High Court of Bombay in the judgment and order under challenge in the appeal was, thus, quashed. Though while stressing that the terms of the framework need to be followed by the lending banks/secured creditors before the account of an micro, small and medium enterprise is classified as non-performing asset, this decision also lays stress on the obligation of the micro, small and medium enterprises by holding that "it would be equally incumbent on the part of the micro, small and medium enterprises concerned to be vigilant enough to follow the process laid down under the said framework, and bring to the notice of the banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said framework".

7.19. Applying the aforesaid ratio as laid down in judgement of Hon'ble SC on Pro Knits (Supra) and Shri Shri Swami Samarth (Supra) the Respondent has failed to demonstrate verifiable documents/material to show its eligibility to get the benefit of the said Framework. Moreover, the Adjudicating Authority while adjudicating a

Section 7 application is empowered only to verify whether a default has occurred or not.

7.20. This Tribunal also refers to Section 238 of the IBC 2016, which is reproduced herein below:

> ***“238. Provisions of this Code to override other laws–*** *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of law.”*

7.21. The Corporate Debtor has relied upon the Judgment of Hon’ble Supreme Court in the matter of M/s. Vidarbha Industries Power Limited v Axis Bank {(2022) 8 SCC 352}, which does not apply to the facts of this case as the Supreme Court has time and again, in its various judgements including the judgement in the matter of Suresh Kumar Reddy vs Canara Bank (2023) ibclaw.in 67 SC 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, as per the provisions of Section 7 as reproduced above , the Adjudicating Authority only needs to ascertain whether debt is due and payable and the same is being defaulted by the Corporate Debtor.

7.22. Furthermore, the Corporate Debtor relied on the judgments of the Hon’ble NCLAT in Puneet Resutra v. Jammu and Kashmir Bank Limited [Company Appeal (AT) (Ins) No. 752 of 2023] and Transfer Appeal (AT) No. 227/2021 [Company Appeal (AT) (Ins) No. 326/2020]. However, these judgments do not aid the Corporate Debtor, as it has failed to produce sufficient documentation to demonstrate its solvency.

7.23. Further this Tribunal has relied upon 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 while examining the validity of the admission of the Corporate Debtor to CIRP, has laid down as under :-

B. Validity of CIRP Admission.

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

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

30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. <u>The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.</u> Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to *whom a financial debt is owed and includes a person to whom such debt has been legally assigned.26 A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.27 "Operational creditor" is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.28 "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.29 31. In Swiss Ribbons (P) Ltd. v. Union of India [(2019) ibclaw.in 03 SC],30 such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.*

32. In light of such classification, the Code makes a distinction in the manner in which an insolvency process may be initiated by a financial creditor under Section 7, IBC in contradistinction to an operational creditor under Section 8 and 9, IBC. Unlike an operational creditor, a financial creditor may trigger an insolvency process under Section 7 in respect of default of any financial debt, whether owed to itself or to any other financial creditor. While the financial creditor may directly file an application under Section 7 setting out the particulars of the financial debt and evidence of default, the operational creditor, on the occurrence of a default, is to first deliver a demand notice of the unpaid debt to a corporate debtor and the latter may within 10 days of receipt of such demand notice bring to the notice of the operational creditor the existence of a dispute or record the pendency of a pre-existing suit or arbitration proceeding in respect of such debt. Once a corporate debtor demonstrates a dispute regarding the existence of the debt, the insolvency process stands aborted vis-à-vis the operational creditor. <u>But when the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the</u>

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)

7.24. 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.

7.25. 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.

7.26. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. Mr. Mahesh Bagla, having Registration No. IBBI/IPA-002/IP-N-00689/2018-2019/12207 and Authorization for Assignment (AFA) which is valid up to 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.

7.27. 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) 133/MB/2026 filed under Section 7 of IBC, 2016, by Union Bank of India ,the Applicant (FC) ,for initiating

CIRP in respect of Heera Hospitality 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 Mahesh Bagla, having Registration No. IBBI/IPA-002/IP-N-00689/2018-2019/12207 and **e-mail address** maheshgbagla@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 quaterly 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/-	**Sd/-**
NILESH SHARMA **MEMBER (JUDICIAL)**	**SAMEER KAKAR** **MEMBER(TECHNICAL)**

//Sumant/