IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH - II

KOLKATA

I.A. (I.B.) No. 530/KB/2026

IN

C.P. (I.B.) No. 12/KB/2026

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Axis Bank Limited

…..Financial Creditor

AND

Maa Chinnamasta Food Processors Private Limited

…. Corporate Debtor

AND

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of:

Maa Chinnamasta Food Processors Private Limited

…. Applicant

AND

Axis Bank Limited

…. Respondent

<u>Coram</u>:

Shri Labh Singh : Member (Judicial)

Ms. Rekha Kantilal Shah : Member (Technical)

<u>Appearances (via physical mode/virtual mode)-:</u>

<u>For the Financial Creditor</u>

i. Mr. Shaunak Mitra, Adv.
ii. Mr. Avishek Guha, Adv, Adv.
iii. Ms. Sweta Majumder, Adv.
iv. Ms. Anusha Nayek, Adv.

<u>For the Corporate Debtor</u>

i. Ms. Mamta Binani, Adv.

Date of Pronouncement-: 15.09.2026

<u>ORDER</u>

<u>Per: Rekha Kantilal Shah, Member (Technical)</u>

1. This is a Company Petition filed by Axis Bank Limited ("Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Maa Chinnamasta Food Processor Pvt. Ltd. ("Corporate Debtor"), on the ground of default in repayment of credit facilities extended to the Corporate Debtor.

2. **<u>C.P. (IB) 12 of 2026</u>**

2.1 It has been submitted that Maa Chinnamasta Food Processor Private Limited (hereinafter referred to as the "Corporate Debtor") approached Axis Bank Limited (hereinafter referred to as the "Financial Creditor") for availing certain credit facilities. Upon consideration, the Financial Creditor sanctioned several credit facilities on such terms and conditions as mentioned vide sanction letter dated 11.02.2021 and the said terms and conditions were duly accepted by the Corporate Debtor. The following credit facilities were sanctioned by the Corporate Debtor:-

a. Cash Credit I- INR 9,50,00,000/- (Indian Rupees Nine Crore and Fifty Lakhs)
b. Cash Credit II- INR 3,50,00,000/- (Indian Rupees Three Crore and Fifty Lakhs)
c. Term Loan I- INR 1,07,00,000/- (Indian Rupees One Crore and Seven Lakhs)
d. Term Loan II- INR 4,19,00,000/- (Indian Rupees Four Crore and Nineteen Lakhs)
e. Emergency Credit Line Guarantee Scheme-I INR 2,63,00,000/- (Indian Rupees Two Crores and Sixty Three Lakhs)

2.2 As such it has been submitted that, the Corporate Debtor had collectively borrowed credit facilities amounting to INR 20,89,00,000/- (Rupees Twenty Crore and Eighty Nine Lakhs).

2.3 It has been submitted that the terms and conditions as stipulated in the sanction advice was duly accepted and acknowledged by the Corporate Debtor in pursuance of the Resolution passed by the Board of Directors in a meeting held on 20.02.2021. It has further been submitted that in the said board resolution dated 20.02.2021 it was agreed and resolved that the terms and conditions of the sanction as stipulated in Sanction letter are duly accepted and it was further resolved that the Corporate Debtor would execute all the necessary loan documents

2.4 It has been submitted that pursuant to such sanction of credit facilities by the Financial Creditor, a Working Capital Loan agreement dated 24.02.2021 and the term loan agreement dated 24.02.2021 was executed by and between the Corporate Debtor and the Financial Creditor.

2.5 It has further been submitted that for security, inter alia, of the credit facility granted by the Financial Creditor to the Corporate Debtor, one Rahul Kumar and Raju Kumar Singh had executed Deed of Guarantee dated 24.02.2021, thereby executing unconditional, absolute and irrevocable guarantee in favour of the Financial Creditor.

2.6 It has been submitted that in pursuance of the said credit facilities, the Corporate Debtor had executed various security documents, including but not limited to the following:-

- Deed of hypothecation dated 24.02.2021
- Undertaking dated 24.02.2021
- Connected Pending Declaration dated 24.02.2021
- Deed of Undertaking dated 24.02.2021
- Declaration of beneficial ownership for companies

2.7 It has further been submitted that the said credit facilities were further renewed at the request of the Corporate Debtor and the personal guarantors vide a renewal letter dated 24.05.2022.

2.8 It has been submitted that the Corporate Debtor failed to adhere to terms and conditions agreed upon for availing the said facilities and defaulted in making payments and also failed to regularize various accounts of credits leading which, as per Banking rules and Regulations and RBI guidelines, the account of the Corporate Debtor was classified as NPA on 28.09.2022.

2.9 It has further been submitted that, a recall notice dated 06.07.2023 bearing number AXIS/SAG/EAST/2022-23/057 was issued to the Corporate Debtor and the personal guarantors wherein the Bank sought for INR 15,38,84,675.88/- being the amount due as on 28.09.2022 (the said amount including interest as computed till 31.08.2022, with further interest with effect from 01.09.2022) and provided a time of 7 (seven) days to make the payment."

2.10 It has further been submitted that the Bank issued a notice under 13(2) of the SARFAESI Act, 2002 dated 30.08.2023 bearing number AXISB/SAG/East/2023-24/091 to the Corporate Debtor as well as the personal guarantors, recalling the entire Facilities granted by the Financial Creditor to the Corporate Debtor and calling upon the Corporate Debtor to make payment of all outstanding amounts under the Facility, within 7 days from the date of receipt of the notice.

2.11 It has been submitted that the Borrower disregarded the aforementioned letter and failed to repay the outstanding amounts under the credit facility within the time period as stipulated in the notice.

2.12 It has been stated that on 16.10.2023, the Corporate Debtor through their Advocate responded to the Financial Creditor's Notice dated 30.08.2023 and stated that the said Notice under Section 13(2) issued by the Financial Creditor on 30.08.2023 purportedly does not have details with respect to the security agreement with regard to the credit facility, exact date of declaration of NPA and statement of account for the period from the date of sanction till the date of NPA, thereby stating that the Financial Creditor exercising the said Notice purportedly amounts to abuse of process of law.

2.13 It has been submitted that in response to the said reply dated 16.10.2023, the Financial Creditor further responded vide a letter dated 01.11.2023 bearing number AXISB/SAG/EAST/2023-24/128, thereby denying the contentions made by the Corporate Debtor and reiterated the date of NPA, the due amount and further called upon the Corporate Debtor to liquidate the outstanding dues, failing which the Financial Creditor shall have no option but to take further steps for enforcement of security interest as per SARFAESI Act, 2002 and/or any other law.

2.14 It has been submitted that subsequently, the Financial Creditor initiated proceeding being OA No. 82 of 2024 against the Corporate Debtor and its director before the Ld. Debt Recovery Tribunal at Patna.

2.15 It has been submitted that, subsequently on 22.04.2025, the Corporate Debtor issued a letter to the Financial Creditor and offered for a One Time Settlement of the entire dues by offering to pay INR 5,00,00,000/- (Indian Rupees Five Crores) to be payable within 6 (six) months from the date of sanction of compromise.

2.16 In response to the said letter dated 22.04.2025 issued by the Corporate Debtor offering One Time Settlement, the Financial creditor responded vide a letter dated 23.05.2025 bearing number AXIS/SAG/EAST/2025-26/024 and intimated that after careful consideration stated that the One Time Settlement does not permit for positive consideration and thereby rejected and declined the same.

2.17 As such, it has been submitted that the Corporate Debtor, its directors and personal guarantors have wilfully neglected to pay the outstanding debt amount. Hence a sum of Rs. 22,03,24,509.99/- (Twenty-Two Crores Three Lakhs Twenty-Four Thousand Five Hundred Nine and paisa Ninety-Nine only) inclusive of Principal Dues of Rs. 15,83,84,675.88/- (Indian Rupees Fifteen Crores Eighty-Three Lakhs Eighty-Four Thousand Six Hundred Seventy-Five and paisa Eighty-Eight Only) plus, inclusive of both unrealized and unapplied interest of Rs. 6,19,39,834.11/- (Indian Rupees Six Crores Nineteen Lakhs Thirty-Nine Lakhs Eight Hundred Thirty-Four and paisa Eleven only) calculated till 31.08.2025 and that in view of the aforesaid, the applicant has been constrained to file the present application.

2.18 The total outstanding debt has been submitted to be Rs. 22,03,24,509.99/- (Indian Rupees Twenty Two Crores Three Lakhs Twenty Four Thousand Five Hundred Nine and paisa Ninety Nine only) inclusive of the Principal Dues of Rs. 15,83,84,675.88/- (Indian Rupees Fifteen Crores Eighty-Three Lakhs Eighty-Four Thousand Six Hundred Seventy-Five and paisa Eighty-Eight Only) plus, inclusive of both unrealized and unapplied interest of Rs. 6,19,39,834.11/- (Indian Rupees Six Crores Nineteen Lakhs Thirty-Nine Lakhs Eight Hundred Thirty-Four and paisa Eleven only) calculated till 31.08.2025.

2.19 Further, the date of default has been submitted to be on 25.06.2024, which is also recorded in the NESL certificate generated by the Financial Creditor. However, the said petition is well within the period of limitation.

2.20 The details of the computation of amount of default and days of default alongwith a current Statement of Accounts of the Corporate Debtor in respect of the credit facilities availed from the Financial Creditor, duly certified under the Bankers Books Evidence Act 1891 (18 Of 1891) have also annexed to the instant in order to prove debt and default.

3. **Submissions of the Corporate Debtor as per its Reply**

3.1 Learned Counsel appearing on behalf of the Respondent submits that the present Section 7 application is misconceived and liable to be dismissed in limine. It is contended that the Financial

Creditor is seeking to use the insolvency process as a means of recovery of its alleged dues, particularly when proceedings in respect of substantially the same claim are already pending before the DRT, Patna in O.A. No. 82 of 2024.

3.2 It has further been submitted that the Financial Creditor has not approached this Tribunal with complete disclosure of the material facts. According to the Respondent, the Financial Creditor has failed to disclose the conditional and structured nature of the sanctioned facilities, the non-disbursement of Term Loan-II of Rs.4.19 crore, the disputes regarding the computation of the alleged outstanding amount, the Respondent’s repeated attempts at restructuring and settlement, and the pendency of the DRT proceedings.

3.3 It has been submitted that the Respondent had an established banking relationship with Indian Bank and was subsequently approached by the Financial Creditor around 2020 to shift its banking exposure. According to the Respondent, the Financial Creditor offered more favourable terms and represented that the sanctioned facilities would be smoothly and fully disbursed. Relying upon these representations, the Respondent shifted its banking relationship to the Financial Creditor.

3.4 It has been submitted that the sanction letter dated 11.02.2021 was not an unconditional sanction and that the facilities were structured around the completion of the project and phased disbursement. In particular, Term Loan-II of Rs.4.19 crore was a project-linked component intended to be disbursed in phases. According to the Respondent, despite its compliance with the required conditions, the Financial Creditor failed to disburse the said term loan, thereby affecting completion of the project and generation of cash flows.

3.5 It has been submitted that the resulting financial difficulties cannot be treated in isolation as a wilful default, since the Respondent attributes the same substantially to the Financial Creditor’s failure to perform its own obligations. It has been submitted that a party cannot take advantage of its own wrong. It has further been submitted that the non-disbursement is relevant to the determination of the alleged financial debt, particularly where a substantial portion of the sanctioned amount was never disbursed but interest is nevertheless stated to have been charged thereon.

3.6 Reliance has been placed upon the decision of the Hon’ble NCLAT in *Amit Narang v. Aditya Birla Finance Ltd.*, for the proposition that disbursal of funds against consideration for the time value of money is an essential ingredient of “financial debt”. According to the Respondent, an amount which was never disbursed cannot, merely because it was sanctioned, be treated as financial debt for the purposes of Section 5(8) of the IBC.

3.7 It has been submitted that the Corporate Debtor falls within the MSME category and was entitled to consideration under the RBI Framework for Revival and Rehabilitation of MSMEs dated 17.03.2016. It has been submitted that the Financial Creditor failed to meaningfully consider the Respondent's revival/restructuring proposal dated 03.12.2022 and instead proceeded with coercive measures. According to the Respondent, such conduct is inconsistent with the revival and corrective-action framework applicable to stressed MSME accounts.

3.8 It has been submitted that the Corporate Debtor had consistently acted bona fide and had made repeated efforts to resolve the financial difficulties. The Respondent relies upon its communications dated 19.04.2022 and 27.04.2022, its conditional acceptance of the subsequent sanction terms, its revival/restructuring proposal dated 03.12.2022 and its OTS proposal dated 22.04.2025. According to the Respondent, these documents demonstrate continuous engagement and willingness to resolve the dispute, contrary to the allegation of non-cooperation.

3.9 It has been submitted that the Financial Creditor imposed an onerous condition under the Renewal Sanction Letter dated 30.03.2022 requiring liquid security of Rs.60 lakh. It has been submitted that the Corporate Debtor had explained the practical difficulties in complying with the condition, including the security already provided through LIC policies and the collateral blocked with Indian Bank, and had sought reasonable accommodation. However, the Financial Creditor did not meaningfully respond and continued to withhold the facilities, which further affected the Respondent’s ability to commence commercial operations.

3.10 It has been submitted that the figures stated in the recall notice dated 06.07.2023, the SARFAESI notice dated 30.08.2023, subsequent correspondence, the DRT proceedings and the present Section 7 Petition are inconsistent. The Corporate Debtor has further disputed the computation of interest, penal charges and other components and has submitted that the alleged outstanding amount has not been properly reconciled.

3.11 Reliance has been placed upon the judgment of the Hon'ble’ NCLAT in *Jagdish R. Pahuja v. Punjab National Bank and Ors*. (NCLAT), in support of the submission that an inconsistent and unsupported claim, lacking proper reconciliation and evidence, cannot readily be treated as a crystallised debt for admission under Section 7.

3.12 It has been submitted that the Financial Creditor has also failed to produce adequate primary material supporting the disputed debits and calculations, including the basis of interest computation and evidence of actual disbursement corresponding to the amounts claimed. According to the Respondent, unexplained interest, penal components and unilateral adjustments render the claim uncertain and require proper reconciliation.

3.13 It has been submitted that the classification of the account as NPA on 28.09.2022 cannot, by itself, constitute conclusive proof of default. Reliance has been placed upon *Jagdish R. Pahuja* to submit that the RBI Framework for Revival and Rehabilitation of MSMEs is relevant when considering the conduct of a bank in classifying an MSME account as NPA. According to the Respondent, the Financial Creditor failed to follow the requisite revival and corrective measures before resorting to coercive recovery proceedings.

3.14 It has been submitted that while the Financial Creditor’s own records and pleadings indicate NPA classification on 28.09.2022, the present Section 7 Petition relies upon 25.06.2024 as the date of default. As such it has been submitted that this unexplained change in the date of default is material and renders the alleged cause of action uncertain.

3.15 On the issue of limitation, it has been submitted that the Section 7 Petition, filed on 01.12.2025, is barred by limitation. Reliance is placed upon the NeSL Certificate, wherein the debt contract date is stated as 30.03.2022, and upon the Financial Creditor’s own case regarding classification of the account as NPA on 28.09.2022. According to the Respondent, limitation under Article 137 of the Limitation Act, 1963 commenced from the date on which the right to sue accrued and cannot be extended merely by subsequently asserting a different date of default.

3.16 It has been submitted that the Financial Creditor cannot shift the date of default to 25.06.2024 merely to sustain the present proceedings. According to the Respondent, the differing dates relied upon before different forums demonstrate uncertainty regarding the very occurrence and date of default and render the present application liable to be rejected as barred by limitation.

3.17 It has further been submitted that the amount claimed as default in the NeSL Certificate differs from the amount stated in the present Section 7 Petition and from the amounts relied upon in the DRT and SARFAESI proceedings. It has been submitted that, these material variations further demonstrate that the alleged debt has not been properly crystallised and that the Financial Creditor has adopted different figures and dates before different forums.

3.18 It has been submitted that its OTS proposal dated 22.04.2025 was made bona fide and without prejudice, with a view to resolving the dispute. The proposal was not accepted or concluded and, according to the Respondent, cannot be treated as an acknowledgment of debt or default or otherwise relied upon to extend limitation. It has been submitted that the Financial

Creditor cannot selectively rely upon the OTS proposal while disregarding the circumstances and disputes which led to it.

3.19 It has been submitted that the Respondent is a running and viable concern and that its financial difficulties were temporary and substantially attributable to the Financial Creditor's failure to disburse the sanctioned Term Loan-II and provide the support represented at the time of the shift in banking relationship. It has been submitted that the Respondent has throughout demonstrated willingness to resolve the matter, while the Financial Creditor has adopted a recovery-oriented approach.

3.20 On the question of admission under Section 7, reliance has been placed upon *Vidarbha Industries Power Limited v. Axis Bank Limited*, wherein, according to the Respondent, the Hon'ble Supreme Court recognised that the use of the word "may" in Section 7(5)(a) confers a degree of discretion upon the Adjudicating Authority. It has been submitted that, even assuming the existence of financial debt, the surrounding circumstances, including the Financial Creditor's alleged non-disbursement, the disputed claim, the pending DRT proceedings and the Respondent's efforts at revival and settlement, warrant refusal of admission.

3.21 In view of the aforesaid submissions, the respondent has sought for the instant company petition to be dismissed.

4. **Submissions by the Financial Creditor as per its Rejoinder**

4.1 It has been submitted that the pendency of proceedings before the DRT does not bar initiation or continuation of proceedings under Section 7 of the IBC. It has been submitted that proceedings under the IBC are directed towards resolution of insolvency and are distinct from recovery proceedings, and there is no legal bar against pursuing remedies before the DRT as well as the Adjudicating Authority.

4.2 With regard to the alleged non-disbursement of Term Loan-II of Rs.4.19 crore, it has been submitted that the objection is misconceived and has no bearing on the present Petition. It has been stated that the sanction letter dated 12.02.2021 contemplated disbursement in phases and that the Financial Creditor duly disbursed Rs.16.70 crore under the first phase. It has been submitted that he present Petition is based upon the amounts actually disbursed and outstanding and not upon the undisbursed Term Loan-II.

4.3 It has further been submitted that disbursement of Term Loan-II was subject to fulfilment of specified pre-disbursement conditions, including provision of margin contribution, original bills and invoices, receipts, a Chartered Accountant’s certificate and creation of the stipulated securities. Under the renewal terms dated 24.05.2022, the Corporate Debtor was also required to provide liquid security of Rs.60 lakh and a monthly recurring deposit of Rs.5 lakh for 24 months. According to the Financial Creditor, these conditions were not fulfilled by the Corporate Debtor.

4.4 Reliance has been placed upon the Corporate Debtor's letter dated 12.05.2022, wherein it stated that it was not in a position to furnish the required upfront liquid security and recurring deposit. Relies has also been placed upon email dated 16.05.2022, wherein the Financial creditor had informed the Corporate Debtor that the term loan could not be disbursed in the absence of the stipulated securities and other pre-disbursement conditions.

4.5 It has therefore been submitted that the non-disbursement of the Rs.4.19 crore term loan resulted from the Corporate Debtor's own failure to satisfy the pre-disbursement conditions and cannot be relied upon to defeat a claim based upon the amounts already disbursed. It has also been submitted that the Section 13(2) notice records no outstanding amount in respect of the undisbursed term loan. The decision in *Amit Narang v. Aditya Birla Finance Ltd.* is therefore stated to be distinguishable on facts.

4.6 It has been submitted that the various settlement and OTS proposals made by the Corporate Debtor, including the letter dated 22.04.2025, constitute acknowledgments of the subsisting debt and default and do not assist the Corporate Debtor in resisting admission of the Petition. According to the Financial

Creditor, the said proposals also contain an assurance or promise to pay and reinforce the existence of the financial debt.

4.7 As regards the RBI Framework for Revival and Rehabilitation of MSMEs dated 17.03.2016, it has been submitted that the Corporate Debtor never made a valid restructuring request under the said framework and that its letter dated 03.12.2022 cannot be treated as such an application. It is further submitted that the Corporate Debtor failed to establish that it satisfied the eligibility requirements or complied with the procedure contemplated under the framework.

4.8 The Financial Creditor has also relied upon its reply dated 25.01.2023, which, according to it, addressed the defaults and non-compliances of the Corporate Debtor. Reliance is placed upon *Jagdish R. Pahuja v. Punjab National Bank & Ors.* to submit that an MSME seeking benefit of the RBI framework must itself remain vigilant and produce the necessary authenticated and verifiable material establishing its eligibility.

4.9 It has further been submitted that the Written Statement filed by the Corporate Debtor in O.A. No.82 of 2024 before the DRT contains admissions and acknowledgments concerning the debt. According to the Financial Creditor, the Corporate Debtor’s own pleadings and settlement proposals sufficiently establish the existence of the financial debt and default.

4.10 With regard to the alleged inconsistency in the date of default, the Financial Creditor submits that the date of default mentioned in the NeSL Certificate is 25.06.2024, which is the same date pleaded in the Company Petition. It is therefore contended that there is no inconsistency between the Information Utility record and the Petition. It has further been submitted that, even if the date of NPA classification, i.e. 28.09.2022, is considered as the date of default, the Petition would still be within limitation.

4.11 It has been submitted that the allegation that the amount claimed is inconsistent, inflated or unsupported is incorrect. It has been submitted that the amount of Rs.22,03,24,509.99/- is supported by the records and statements of account and that the Corporate Debtor has not produced any material sufficient to displace the Financial Creditor's claim.

4.12 It has been submitted that the judgments relied upon by the Corporate Debtor, including *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* and *Swiss Ribbons Pvt. Ltd. v. Union of India*, do not assist the Corporate Debtor on the facts of the present case. According to the Financial Creditor, once the existence of financial debt and occurrence of default are established, and the statutory threshold is satisfied, there is no basis to refuse admission of the Section 7 Petition on the grounds urged by the Corporate Debtor.

4.13 It has further been submitted that the Corporate Debtor's alleged financial distress and its own admissions regarding its inability to meet its financial obligations support, rather than defeat, the initiation of CIRP. It has been denied that the Corporate Debtor is presently a viable and financially sound concern or that its difficulties were caused by any act or omission of the Financial Creditor.

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5. This is an application filed by the Corporate Debtor seeking rejection of the Company Petition filed by the Financial Creditor.

6. **SUBMISSIONS ON BEHALF OF THE APPLICANT/CORPORATE DEBTOR**

6.1 The principal ground made in the present application is that the Company Petition has been instituted by a person who was not duly authorised by the Board of Directors of the Financial Creditor and is, therefore, not maintainable.

6.2 It has been submitted that valid authorisation to institute proceedings under Section 7 is a foundational requirement. The person presenting the application on behalf of the Financial Creditor must have the authority of the competent corporate body. According to the Applicant, the absence of such authority goes to the root of the institution of the proceedings and cannot be treated as a mere procedural irregularity.

6.3 It has been submitted that, in the present case, Part I, Serial No. 5 of Form I states that Mr. Amitabha Mukhopadhyay has instituted the proceedings pursuant to a Board Resolution dated 23.08.2017. However, the document annexed in support of this assertion is, according to the Applicant, not a Board Resolution but a certified true copy of a Circular Resolution passed by the Committee of Whole-Time Directors on 23.08.2017.

6.4 It has been submitted that a resolution of the Committee of Whole-Time Directors cannot, without proper authority or delegation, be treated as a resolution of the Board of Directors. Thus, the very document relied upon by the Financial Creditor does not establish the Board authorisation specifically pleaded in Form I.

6.5 It has further been submitted that the Applicant paragraph 1 of the Affidavit filed by the Financial Creditor in support of the Company Petition states that the deponent was authorised *"by virtue of a Board Resolution dated 23.08.2017 passed by the Board Members of the Financial Creditor Association."* According to the Applicant, this statement is contrary to the record. The Financial Creditor is Axis Bank Limited, and there is no document showing the existence of any *"Financial Creditor Association"* having authority to institute the proceedings. Further, the document actually annexed is a Circular Resolution of the

Committee of Whole-Time Directors of Axis Bank Limited and not a resolution of either the Board or any such Association.

6.6 It is therefore been submitted that the discrepancy is material, as it concerns the very source of authority of the person who instituted the Section 7 proceedings. It has further been submitted that the requirement of proper corporate authorisation is supported by Section 179 of the Companies Act, 2013, which deals with the powers of the Board of Directors. Reliance has also been placed upon Secretarial Standard–1 (“SS-1”), stated to have statutory force under Section 118(10) of the Companies Act, 2013. According to the Applicant, matters of material significance, including material defaults in financial obligations, require consideration at the Board level and cannot be assumed to have been validly dealt with by a Committee in the absence of the necessary authority or delegation.

6.7 The Applicant has further relied upon the MCA Notification dated 27.02.2019 bearing S.O. 1091(E), and has submitted that the statutory and regulatory framework reinforces the requirement of appropriate Board-level authorisation for significant corporate actions. It is therefore contended that the Committee of Whole-Time Directors could not, merely by virtue of its constitution, exercise the powers of the Board for instituting insolvency proceedings unless such authority was otherwise validly conferred.

6.8 It has further been submitted that initiation of insolvency proceedings is a significant corporate action carrying serious consequences for the Corporate Debtor. The Financial Creditor was therefore required to demonstrate that the person instituting the proceedings was duly authorised by the competent corporate authority at the time of institution. According to the Applicant, no such Board Resolution has been produced despite the statement in Form I that one existed.

6.9 Learned Counsel appearing on behalf of the applicant have also referred to the Financial Creditor’s Form MGT-7 Annual Return, filed for the financial year 2017–18 and have submitted that the said document does not disclose the holding of any Board or Committee meeting during the relevant period. This, according to the Applicant, further raises a question regarding the existence and validity of the authorisation relied upon by the Financial Creditor.

6.10 In support of the contention that proper authorisation is fundamental to the maintainability of proceedings under the IBC, reliance is placed upon the judgment of the Hon’ble NCLAT in *M. Sai Eswara Swamy v. Siti Vision Digital Media Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 706 of 2021. The Applicant submits that the said decision recognises the importance of proper authorisation for the institution of proceedings under Sections 7 and 9 of the IBC.

6.11 It has further been submitted that where the person instituting the proceedings lacked the requisite authority at the time of institution, a subsequent or post facto ratification cannot cure the foundational defect.

6.12 As such, it has been submitted that the instant Company Petition is void ab initio and liable to be rejected at the threshold, without entering into the merits of the alleged financial debt or default. It has further been submitted that permitting the proceedings to continue despite the alleged absence of valid authorisation would amount to allowing an unauthorised proceeding to remain pending before the Tribunal.

7. **<u>REPLY/SUBMISSIONS ON BEHALF OF THE FINANCIAL CREDITOR</u>**

7.1 Learned Counsel appearing on behalf of the Financial Creditor, at the outset, submits that the present Interlocutory Application is misconceived and liable to be dismissed in limine. It has been submitted that the objection raised by the Applicant is essentially with regard to the authorisation of the person who instituted the Company Petition and does not dispute either the existence of the financial debt or the occurrence of default.

7.2 It has been submitted that Mr. Amitabha Mukhopadhyay, the deponent, is the Assistant Vice President of the Financial Creditor and has been duly authorised to affirm the reply affidavit on its behalf.

7.3 It has further been submitted that the objection raised by the Applicant is technical in nature and has been raised only with a view to delay the adjudication of the Section 7 proceedings. It is contended that a challenge to the authorisation document, by itself, does not extinguish or otherwise affect the financial debt due and payable by the Corporate Debtor. According to the Financial Creditor, the substantive rights arising from an admitted financial debt and default cannot be defeated on the basis of a curable procedural objection.

7.4 Reliance has been placed upon the judgment of the Hon'ble NCLAT in *Vinodkumar Nihalchand Parmar v. Mr. Anuj Bajpai, IRP of DEE Plone Polyster Pvt. Ltd.*, wherein, according to the Financial Creditor, an initial defect in authorisation was treated as a curable defect and was held to stand cured upon the subsequent filing of the requisite Board Resolutions during the proceedings. It has been submitted that procedural defects should not defeat substantive justice, particularly where the existence of debt and default is not disputed.

7.5 It has further been submitted that, even where a defect in the authorisation is noticed, the Adjudicating Authority has the power to grant an opportunity to the Financial Creditor to rectify the same within the prescribed period. According to the Financial Creditor, therefore, an alleged defect in authorisation cannot, without affording an opportunity to cure, be made the sole ground for rejection of the Company Petition at the threshold.

7.6 It has further been submitted that the proceedings under Section 7 are primarily concerned with the existence of a financial debt and the occurrence of default. It is contended that procedural objections cannot be permitted to override substantive rights, particularly when the Corporate Debtor has not disputed the debt or the occurrence of default.

7.7 As regards the source of authority, it has been submitted that the authorisation of Mr. Amitabha Mukhopadhyay does not rest upon the Circular Resolution dated 23.08.2017 considered in isolation. It is submitted that there is a complete chain of authorisation originating from the Board of Directors of the Financial Creditor.

7.8 In this regard, it has been submitted that the Board of Directors, at a duly convened meeting held on 27.07.2017, passed a Board Resolution authorising the Whole-Time Directors to issue a Charter conferring authority upon designated officers and employees of the Financial Creditor to institute legal proceedings, including proceedings under Section 7 of the IBC.

7.9 Pursuant to the aforesaid Board Resolution, the Circular Resolution/Charter dated 23.08.2017 was issued by the Committee of Whole-Time Directors. It has been submitted that the authority of the deponent therefore flows from the Board Resolution dated 27.07.2017 read with the subsequent instruments issued pursuant thereto and is not founded upon the Circular Resolution dated 23.08.2017 in isolation.

7.10 The Financial Creditor has further placed on record the Board Resolution dated 27.07.2017 and the Charter of the Committee of Whole-Time Directors dated 17.08.2020 as Annexure "A". It has been submitted that these documents establish the requisite authority to institute and continue the present proceedings. The Financial Creditor further submits that, even assuming without admitting that there was any defect in the earlier documents, the same stands cured by placing the aforesaid Board Resolution and Charter on record along with the reply affidavit.

7.11 The Financial Creditor has also relied upon the Circular Resolution of the Committee of Whole-Time Directors of Axis Bank Limited dated 23.08.2017 and the master Board Resolution dated 27.07.2017. According to the Financial Creditor, these documents, when read together, establish a valid chain of authority in favour of the officers competent to institute legal proceedings on its behalf.

7.12 As regards the expression "Financial Creditor Association" appearing in paragraph 1 of the Affidavit in Support, Learned Counsel submits that the said expression cannot be read in isolation or treated as displacing the authorisation documents forming part of the record. It has been submitted that the affidavit and the documents annexed to the Company Petition are required to be read together and harmoniously.

7.13 It has further been submitted that the Financial Creditor is admittedly a “Financial Creditor” within the meaning of the IBC and that the amount claimed in the Company Petition is above the statutory threshold prescribed for initiation of proceedings under Section 7. It has therefore been submitted that the objection regarding the wording used in the affidavit cannot defeat the substantive proceedings, particularly when the underlying authorisation documents are available on record.

7.14 It has further been submitted that the Applicant’s reliance upon the MGT-7 Annual Return and other internal corporate records of the Financial Creditor is misplaced. According to the Financial Creditor, such documents and the alleged absence of reference to meetings therein do not determine the validity of the authority conferred upon its officers and are not relevant to the adjudication of the Section 7 petition.

7.15 It has been submitted that the scope of adjudication under Section 7 is limited to examining whether there is a financial debt and whether a default has occurred. It has further been submitted that the proceedings cannot be delayed or derailed by collateral inquiries into its internal corporate records, particularly when such inquiries do not dispute the debt or default forming the basis of the Company Petition.

7.16 In view of the above submissions, the Financial Creditor prays that the present Interlocutory Application be dismissed and that C.P. (IB) No. 12/KB/2026 be proceeded with in accordance with law.

8. **REJOINDER/SUBMISSIONS ON BEHALF OF THE APPLICANT/CORPORATE DEBTOR**

8.1 It has been submitted on behalf of the Applicant that the objection raised in the present Application is not a mere technical objection but concerns the validity of the very institution of the Section 7 proceedings. According to the Applicant, the requisite authority must exist at the time of institution and cannot be conferred subsequently by way of explanations, additional documents or post facto ratification.

8.2 It has been submitted that the existence of financial debt and occurrence of default cannot, by themselves, cure the absence of valid authority to institute the proceedings.

8.3 It has further been submitted that the Financial Creditor has incorrectly referred to the present Application as IA No. 294/KB/2026 instead of IA (IBC) No. 530/KB/2026, which, according to the Applicant, reflects inadequate verification of the record.

8.4 It has been submitted that there is a distinction between a defect in an existing authority and a complete absence of authority. According to the Applicant, the present case falls in the latter category. It has been submitted that no valid Board Resolution authorising the institution of the Section 7 proceedings has been produced, either with the original Petition or with the Reply.

8.5 In this regard, reliance has again been placed upon the MCA Notification dated 27.02.2019 bearing S.O. 1091(E), under which an application on behalf of a Financial Creditor may be filed by a person duly authorised by the Board of Directors of a company. It has been submitted that requirement cannot be satisfied merely by relying upon an internal committee or administrative arrangement. Reliance is also placed upon *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, in support of the submission that the application must be complete in all respects at the stage of admission.

8.6 As regards the Board Resolution dated 27.07.2017 relied upon by the Financial Creditor in its Reply, it has been submitted that the document annexed as Annexure “A” does not support the submission made by the Financial Creditor. According to the Applicant, the document relates to a meeting held on 25.07.2017 and continued on 26.07.2017 and does not disclose any meeting on 27.07.2017. It has further been submitted that even the minutes relied upon do not contain any specific resolution or deliberation authorising the institution of proceedings under Section 7 of the IBC or authorising any officer for that purpose.

8.7 It has further been submitted that the Financial Creditor has not specifically answered the Applicant’s challenge to the alleged Board Resolution dated 23.08.2017 relied upon in the original Petition. Instead, the Financial Creditor now seeks to rely upon a different Board Resolution dated 27.07.2017, together with the subsequent Charter. According to the Applicant, this change in the stated source of authority demonstrates the inconsistency in the Financial Creditor’s case.

8.8 Reliance has also been placed by the Corporate Debtor upon the Form MGT-7 Annual Return of the Financial Creditor for the financial year ending 31.03.2018. It has been submitted that the statutory return does not disclose any Board Meeting dated 27.07.2017. According to the Applicant, this discrepancy has not been satisfactorily explained and further supports its contention that the alleged Board authorisation was not in existence at the time of institution of the proceedings.

8.9 With regard to the Committee of Whole-Time Directors, it has been submitted that the Committee does not possess an independent power to institute proceedings under the IBC. It has been submitted that Clause 5(v) of the Charter itself makes the Committee’s authority subject to matters specifically authorised by the Board. In the absence of proof of such Board authorisation, according to the Applicant, the Committee could not have conferred the requisite authority upon the concerned officer.

8.10 It has therefore been submitted that the Circular Resolution dated 23.08.2017 and the subsequent Charter cannot, either individually or collectively, substitute the mandatory Board authorisation required for institution of the Section 7 proceedings. According to the Applicant, the present case concerns absence of authority at inception and not a mere irregularity in the exercise or documentation of an existing authority; consequently, the defect cannot be cured by subsequent documents or explanations.

8.11 It has further been submitted that the expression “Financial Creditor Association” appearing in the supporting Affidavit, coupled with the different versions regarding the source of authority, further demonstrates the inconsistencies in the Financial Creditor’s case.

8.12 It has been submitted that the Financial Creditor has failed to establish a valid chain of authority from the Board of Directors to the person who instituted the Section 7 proceedings. It has further been submitted that the subsequent reliance upon different documents and explanations cannot retrospectively confer authority or validate an otherwise unauthorised institution of proceedings.

8.13 On the aforesaid basis, it has been submitted that the Section 7 Petition was not validly instituted and is liable to be dismissed at the threshold as void ab initio and non est in law. It is further submitted that the question of debt and default need not be examined unless the threshold requirement of valid institution is first satisfied.

9. **ISSUES**

9.1 On the basis of the submissions made by the parties we have framed the following issues:-

- Whether the non-disbursement of Term Loan-II of Rs. 4.19 crore affects the debt and default claimed by the Financial Creditor?
- Whether the alleged non-consideration of the Corporate Debtor's restructuring proposal under the RBI Framework for Revival and Rehabilitation of MSMEs dated 17.03.2016 is a ground available to this Tribunal for declining admission of the application under Section 7 of the Insolvency and Bankruptcy Code, 2016?
- Whether the Company Petition is barred by limitation?
- Whether the Application has been instituted by a duly authorised person?

- Whether the Financial Creditor has proven debt and default on the part of the Corporate Debtor?

10. **<u>Findings and Analysis</u>**

<u>Whether the non-disbursement of Term Loan-II of Rs. 4.19 crore affects the debt and default claimed by the Financial Creditor?</u>

10.1 The Respondent-Corporate Debtor has contended that Term Loan-II ("TL-II") of Rs. 4.19 crore, though sanctioned by the Financial Creditor, was not disbursed despite compliance with the requisite conditions and that such non-disbursement adversely affected its financial position. It is further contended that the Financial Creditor cannot be permitted to take advantage of its own wrong. The Financial Creditor, on the other hand, submits that TL-II was a conditional facility and that the present Petition is founded only upon the financial facilities actually disbursed.

10.2 The material placed on record does not support the contention that TL-II constituted an unconditional obligation on the part of the Financial Creditor to disburse Rs. 4.19 crore. The original sanction as well as the renewal sanction contemplated disbursement subject to the fulfilment of specified conditions, including creation of security and contribution of the promoter's margin. The renewal sanction dated 30.03.2022 further stipulated, as conditions precedent to disbursement, an upfront liquid security of Rs. 60 lakh and a recurring deposit of Rs. 5 lakh per month for 24 months. The terms of the renewal also contemplated infusion of funds by the Corporate Debtor and compliance with other specified conditions before release of the TL-II facility.

10.3 Furthermore, in its letter dated 12.05.2022, the Corporate Debtor itself stated that it was not in a position to furnish the requisite upfront liquid security and recurring deposit at that stage. It proposed that the recurring deposit be furnished only after commencement of commercial production and further stated that, if the Bank was not in a position to disburse the term loan without such security, the Bank could withdraw the TL-II facility from the sanction.

10.4 The Financial Creditor was not under an unconditional obligation to disburse TL-II notwithstanding non-fulfilment of the stipulated conditions. On the contrary, the communication records an admitted inability on the part of the Corporate Debtor to furnish the security required prior to disbursement and proceeds on the basis that non-disbursement, in the event of non-compliance with the said condition, was a possible consequence.

10.5 The response of the Financial Creditor dated 16.05.2022 is also consistent with the aforesaid position. The Bank declined to proceed with the disbursement of TL-II in the absence of the stipulated security and maintained that disbursement could not be made without compliance with the applicable conditions. At the same time, it offered the Corporate Debtor the option of accepting the renewal at the existing level without pursuing disbursement of TL-II for the time being, with liberty to seek disbursement upon fulfilment of the requisite conditions.

10.6 In the present case, the material on record does not establish any such default on the part of the Financial Creditor. Rather, it indicates that the disbursement remained conditional upon compliance with requirements which the Corporate Debtor itself acknowledged that it was unable to fulfil at the relevant time.

10.7 It is also noted that the debt forming the subject matter of the present Petition comprises only the financial facilities actually disbursed, namely, CC-I, CC-II, TL-I and ECLGS, and that the undisbursed TL-II of Rs. 4.19 crore does not form part of the amount claimed. Thus, in our considered view, the non-disbursement of TL-II would have no bearing upon the existence or computation of the financial debt in respect of the facilities actually availed by the Corporate Debtor.

10.8 In view of the aforesaid discussion, we are of the considered view that TL-II was a conditional and project-linked facility and that its disbursement was subject to fulfilment of specified conditions. Further, the material placed on record, establishes that the Corporate Debtor was, at the relevant time, unable to furnish the stipulated security. The non-disbursement of TL-II, therefore, cannot, on the material before us, be attributed to any wrongful withholding by the Financial Creditor.

10.9 Accordingly, the objection raised by the Respondent on account of non-disbursement of TL-II of Rs. 4.19 crore is **rejected**.

Whether the alleged non-consideration of the Corporate Debtor's restructuring proposal under the RBI Framework for Revival and Rehabilitation of MSMEs dated 17.03.2016 is a ground available to this Tribunal for declining admission of the application under Section 7 of the Insolvency and Bankruptcy Code, 2016

10.10 It is well settled, as held by the Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, that the jurisdiction of the Adjudicating Authority under Section 7 is confined to satisfying itself of the existence of a financial debt and a default in respect thereof exceeding the threshold prescribed under Section 4 of the IBC. Once so satisfied, the Adjudicating Authority is left with no discretion but to admit the application, subject only to it being complete.

10.11 On the question of the RBI Framework, this Tribunal has considered the letter dated 03.12.2022 addressed by the Corporate Debtor. While the letter does set out the financial difficulties faced by the Corporate Debtor and proposes certain terms of accommodation, it does not, on its face, invoke the RBI Framework or the Corporate Debtor's status as an MSME, nor does it comply with the requirements set out in paragraph 4.1 of the Framework – there is no audited financial statement, no disclosure of the Corporate Debtor's complete liabilities including statutory dues, and no application in a format enabling the Financial Creditor to constitute or refer the matter to a Committee for Stressed MSMEs under paragraph 3 of the Framework.

10.12 It is relevant that the Hon'ble Supreme Court in *M/s. Pro Knits v. The Board of Directors of Canara Bank & Anr.*, (2024) 10 SCC 292, while holding the RBI Framework binding on lending institutions, equally emphasised that *"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."* This reciprocal obligation was reiterated by the NCLAT in *Jagdish R. Pahuja v. Punjab National Bank & Ors.* (supra).

10.13 In the present case, the Corporate Debtor, having addressed its letter dated 03.12.2022 and having received the reply dated 25.01.2023 from the Financial Creditor, which, while not accepting the claims made, did not foreclose discussion but linked it to regularisation of overdues, has placed no material on record to show that it thereafter pursued the matter further, sought reconsideration, formally invoked the RBI Framework, or approached the Financial Creditor (or, if applicable, any Committee constituted under the Framework) with the documentation contemplated under paragraph 4.1 of the scheme. The subsequent communication relied upon by the Corporate Debtor is an OTS proposal dated 22.04.2025, over two years later, which cannot be treated as a continuation of, or follow-up to, the 03.12.2022 proposal, and does not itself purport to invoke the RBI Framework.

10.14 We are, in these circumstances, unable to accept that the Financial Creditor was under any obligation, statutory or otherwise, to treat the letter dated 03.12.2022 as an invocation of the RBI Framework, or that the action of the Financial Creditor, amounts to a breach of the Framework such as would vitiate the present proceedings. The submission made by the Corporate Debtor, bears the character of an afterthought rather than a genuine invocation of restructuring under the Framework mentioned hereinabove.

<u>Whether the Company Petition is barred by Limitation?</u>

10.15 It has been submitted on behalf of the Corporate Debtor that the instant petition is barred by limitation. As per the application, the Financial Creditor had classified the account of the Corporate Debtor on 28.09.2022. Further, as per the application the date of default for the purpose of the instant proceedings have been stated to be 25th June, 2024, as recorded in the NESL certificate.

10.16 Even if the date of default as stated in the NESL certificate is disregarded for computation of limitation, and the date of classification of the account of the Corporate Debtor as NPA is considered to the actual date of default, it is seen that the Corporate Debtor vide its letter dated 22.04.2025 had submitted an proposal for One Time Settlement to the Financial Creditor. The said OTS proposed an amount of Rs. 5 crores in final settlement of all outstanding dues owed by the Corporate Debtor. It also stated that the Corporate Debtor had availed credit facilities of Term Loans and CC to run a Rice Mill.

10.17 In our considered view, the said proposal for One Time Settlement is an acknowledgement of debt in as much, as it have been given in writing and has been provided before the expiry of the original period of limitation. As such, in terms of Section 18 of the Limitation Act, 1963, a fresh period of limitation would begin from the date when the acknowledgment was signed i.e., 22.04.2025.

10.18 Hence, the present petition filed on 12.01.2026 is well within the period of limitation and not barred by limitation.

Whether the Application has been instituted by a duly authorised person?

10.19 The learned counsel appearing for the Corporate Debtor has vehemently contended that the present Application has been instituted without proper authority and, therefore, is not maintainable.

10.20 In Part-I of Form No. 1 filed by the Financial Creditor, it has been stated that Mr. Amitabha Mukhopadhyay is the person authorised to submit the Application on behalf of the Financial Creditor. It has further been stated that such authority emanated from a resolution of the Board of Directors of Axis Bank Limited dated 23.08.2017.

10.21 However, upon perusal of the record, it is noticed that the document annexed to the Application is, in fact, a certified true copy of the Circular Resolution passed by the Committee of Whole Time Directors of Axis Bank Limited on 23.08.2017. By the said resolution, certain employees of the Financial Creditor were authorised to execute Vakalatnamas, applications, affidavits and other documents for the purpose of initiating or conducting proceedings under the Insolvency and Bankruptcy Code, 2016. The name of Mr. Amitabha Mukhopadhyay finds place at Serial No. 98 of the said list.

10.22 The principal submission of the Corporate Debtor is founded upon the notification issued by the Ministry of Corporate Affairs on 27.02.2019, according to which an application for initiation of the Corporate Insolvency Resolution Process may be filed by a person duly authorised by the Board of Directors of the company. It is contended that the power to authorise an officer for instituting proceedings under the Code could not have been exercised by the Committee of Whole Time Directors, as such power vested exclusively with the Board of Directors. Consequently, according to the Corporate Debtor, the authority in favour of Mr. Amitabha Mukhopadhyay was not validly conferred and the Application is liable to be rejected on that ground alone.

10.23 The Financial Creditor, in its reply, has placed on record an extract of the minutes of the 177th Meeting of the Board of Directors of Axis Bank Limited held on 25th and 26th July, 2017. The said minutes demonstrate that the Board of Directors had approved the revised Charter of the Committee of Whole Time Directors of the Bank.

10.24 Clause 5(p) of the revised Charter expressly provides that one of the functions of the Committee of Whole Time Directors is:

"to authorise employee(s) or others to execute, for and on behalf of the Bank, agreements, applications, deeds, documents and any other writings in connection with the business of the Bank."

10.25 It is significant that the aforesaid meeting of the Board of Directors is also reflected in the Form MGT-7 placed on record by the Corporate Debtor itself. Thus, there is material demonstrating that, prior to the authorisation dated 23.08.2017, the Board of Directors had approved the revised Charter conferring upon the Committee of Whole Time Directors the power to authorise employees to execute applications and other documents on behalf of the Bank.

10.26 The sequence of authorisation is, therefore, material. The power was first vested by the Board of Directors in the Committee of Whole Time Directors under the revised Charter and, in exercise of the power so delegated, the Committee thereafter authorised Mr. Amitabha Mukhopadhyay, amongst other officials, to execute applications and documents in connection with proceedings under the Code. The authorisation in favour of the said officer cannot, therefore, be viewed in isolation from the authority conferred upon the Committee by the Board itself.

10.27 In our considered view, the requirement contemplated under the notification dated 27.02.2019 stands substantially and duly satisfied. The authority to institute proceedings has not originated independently from the Committee of Whole Time

Directors. Rather, the source of such authority is traceable to the Board of Directors, which had approved the revised Charter and, thereunder, empowered the Committee of Whole Time Directors to authorise employees to execute applications and other documents on behalf of the Bank. The subsequent authorisation of Mr. Amitabha Mukhopadhyay was consequently an exercise of a power validly delegated by the Board.

10.28 It is also noteworthy that both the revised Charter and the minutes evidencing its approval pre-date the resolution of the Committee of Whole Time Directors dated 23.08.2017. The mere circumstance that these documents were not placed on record along with the Application cannot, by itself, invalidate an authority which otherwise existed on the date of institution of the proceedings. The validity of the authorisation must necessarily be tested with reference to the existence and source of the authority, and not merely on the basis of the date on which the supporting documents were brought on record.

10.29 The contention regarding the discrepancy in the date of the Board Meeting also does not commend acceptance. Even assuming that the date of the Board Meeting was inadvertently mentioned as 27.07.2017 in the reply instead of 25.07.2017, such discrepancy, in the facts of the present case, appears to be no more than a typographical or inadvertent error. The material placed on record, including the minutes of the Board Meeting and the Form MGT-7, sufficiently establishes the existence of the relevant authorisation. To reject the instant application on such a hyper-technical ground, when the substantive authority is otherwise established from the record, would defeat the ends of justice.

10.30 There is also considerable merit in the submission that the functioning of a large banking institution necessarily requires an appropriate mechanism for delegation of authority. It would be neither practicable nor consistent with the ordinary course of corporate governance to require the Board of Directors of a large financial institution to convene on every occasion merely to authorise the institution of an individual proceeding under the Code. The delegation of such functions to a duly constituted committee, cannot be regarded as invalid.

10.31 The test, therefore, is not whether the Board of Directors itself passed a separate resolution authorising Mr. Amitabha Mukhopadhyay in respect of the present proceedings, but whether the authority exercised by him can be traced to the Board through a valid chain of delegation. In the present case, such a chain is clearly established: the Board of Directors approved the revised Charter; the Charter empowered the Committee of Whole Time Directors to authorise employees to execute applications and other documents on behalf of the Bank; and the

Committee, in exercise of that delegated power, authorised Mr. Amitabha Mukhopadhyay.

10.32 Accordingly, we find that the Application has been instituted by a duly authorised person and that the objection raised by the Corporate Debtor on this score is devoid of merit. The issue is, therefore, answered in favour of the Financial Creditor and against the Corporate Debtor.

Whether the Financial Creditor has proven debt and default on the part of the Corporate Debtor?

10.33 For the purpose of establishing the existence of the debt, the Financial Creditor has placed on record, inter alia, a copy of the Sanction Letter duly executed by the Director of the Corporate Debtor, as well as a copy of the Board Resolution of the Corporate Debtor approving the availment of financial assistance from the Financial Creditor in terms of the Sanction Letter dated 11.02.2021. These documents, read cumulatively, sufficiently establish the existence. Accordingly, we are of the considered view that the Financial Creditor has duly discharged the burden of proving the debt.

10.34 Further, the letter dated 22.04.2025 sent by the Corporate Debtor proposing a one time settlement of its dues for an amount of ₹ 5 Crores (Rupees Five Crores) further substantiates the existence of debt.

10.35 For the purpose for establishing default, the Financial Creditor has brought on record Record of Default in Form D issued by National E Governance Services Limited whereby it has been Status of Authentication of Default has been shown to be ***"Authenticated".*** It has also brought on record the Statement of Accounts of the Corporate Debtor duly certified under the Bankers Books of Evidence Act, 1891. As such, it on the basis of records, the Financial Creditors has also established default made by the Corporate Debtor.

10.36 Hence, in our considered view, the Financial Creditor has duly established the existence of the debt as well as the occurrence of default. The record further establishes that the amount of debt in default is in excess of the statutory threshold prescribed under the Insolvency and Bankruptcy Code, 2016, which presently stands at ₹1 Crore (Rupees One Crore).

11. In terms of the foregoing discussion, we REJECT the application filed by the Corporate Debtor being **I.A. (I.B.) 530 of 2026** and **ALLOW** the petition bearing **Company Petition (IB) No. 12/KB/2026** filed under Section 7 of the I&B Code, and accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIR Process) in respect of the Corporate Debtor by the following Orders:

11.1 The Petition filed by FC under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the

Corporate Insolvency Resolution Process in respect of Kakan Rice Mill Private Limited (CD).

11.2 As a consequence of this Petition being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

11.3 Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment decree or order in any court of law, Tribunal, arbitration panel or other authority:

ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset or any legal right or beneficial interest therein;

iii. 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 (54 of 2002);

iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

11.4 The Applicant has proposed the name of **Mr. Vishal Shekhar**, having Registration No. **IBBI/IPA-002/IP-N00593/2018-2019/11891 (Email: vs.vishalshekhar@gmail.com)**, as the "IRP". We have perused that there is a written communication and consent of IRP in Form 2, annexed at pages 59 to 62 to the petition, as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. In addition, further necessary disclosures have been made by "**Mr. Vishal Shekhar**" as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint "**Mr. Vishal Shekhar**" as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

11.5 In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and call for the submission of claims under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11.6 During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

11.7 The Interim Resolution Professional is also free to take police assistance to take full charge of the CD, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.

11.8 The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the CD.

11.9 The FCs shall be liable to pay to IRP a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) as payment to meet the costs of CIRP arising out of issuing public notice for inviting claims and running the CIRP, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

11.10 In terms of sections 7(5) and 7(7) of the Code, the Registry of this Adjudicating Authority is hereby directed to communicate this order to the FC, the CD and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

11.11 Additionally, the Registry of this Adjudicating Authority shall serve a copy of this order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the CD. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

11.12 The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

11.13 The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the CD, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

11.14 The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

12. In terms of the directions given hereinabove, we hereby **reject** and **dismiss** the application filed by the Corporate Debtor being **I.A. (I.B.) 530 of 2026**.

13. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

14. Post the Company Petition on **21.10.2026** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

Order dated the 15th of September, 2026.

HT (LRA)